

No. 17-912

IN THE
Supreme Court of the United States

BOBBY BOSTIC,

Petitioner,

v.

RHODA PASH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSOURI

**BRIEF FOR THE CAMPAIGN FOR FAIR
SENTENCING OF YOUTH AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The Campaign for the Fair Sentencing of Youth is a national coalition and clearinghouse that leads, coordinates, develops and supports efforts to implement fair and age-appropriate sentences for youth, with a focus on abolishing life without parole sentences for youth. The Campaign provides technical assistance on strategic communications, litigation and advocacy to attorneys, advocates, organizers and others working at the state and federal levels. The Campaign engages in public education and communications efforts to provide decision-makers and the broader public with the facts, stories and research that will help them to fully understand the impacts of these sentences upon individuals, families and communities.

Incarcerated Children's Advocacy Network (ICAN) is the United States' only national network of formerly incarcerated youth and is a project of the Campaign for the Fair Sentencing of Youth. ICAN's mission is to address youth violence through restorative means and advocate for age-appropriate and trauma-informed alternatives to extreme sentences for children. ICAN is committed to creating a fair and just society that recognizes the scientifically-proven developmental differences between adolescents and adults. All ICAN members were convicted of serious crimes in adult court, and many were given a life sentence. Through sharing their personal stories, ICAN

1. Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part; no counsel or a party made a monetary contribution to fund its preparation or submission; and no person other than *amicus* or its counsel made such a monetary contribution. The parties have consented to the filing of this brief.

members work to highlight children’s unique capacity for rehabilitation by providing living examples of positive change.

Amicus has a particular interest in this case because the effect of the rule in Missouri is that juvenile offenders are never given the opportunity to demonstrate their rehabilitation in their life time. This rule disregards the Eighth Amendment limitation on juvenile sentences recognized in *Graham v. Florida*, 560 U.S. 48 (2010) and its progeny.

SUMMARY OF ARGUMENT

Amicus curiae submits this brief in support of Petitioner to share the stories of formerly incarcerated youth who have been released from prison and are now productive citizens in their communities. These real-life examples demonstrate the unique rehabilitative potential of youthful offenders, because they ratify this Court’s pronouncement that “children are constitutionally different from adults for purposes of sentencing” because of their “diminished culpability and greater prospects for reform.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

Like Petitioner, the people whose stories are told in this brief were convicted of serious crimes as children, but unlike Petitioner, they were given “a chance to demonstrate growth and maturity.” *Graham v. Florida*, 560 U.S. 48, 73 (2010). Ralph Brazel, Sean Taylor, Xavier McElrath-Bey, and Edwin Desamour outgrew their adolescent behavior, bettered themselves, and are now contributing meaningfully to their communities. Their stories of reform and redemption are not exceptions, but

living proof that all children have the capacity for positive growth.

This Court should reject Missouri’s superficial interpretation of the Eighth Amendment and recognize that every juvenile offender should be given an opportunity to demonstrate their growth and maturity in their lifetime, consistent with the principle established in *Graham*. *Amicus* supports Petitioner’s request that the Court should summarily reverse and remand this case for resentencing consistent with the principles of *Graham v. Florida*, or grant the Petition and set the case for plenary review.

ARGUMENT

I. THE UNIQUE CHARACTERISTICS OF YOUTH REQUIRE DISTINCT AND PROTECTIVE TREATMENT UNDER THE EIGHTH AMENDMENT.

The unique characteristics of youth require distinct and protective treatment under the Eighth Amendment. Science, reason, and fundamental notions of decency embedded in the Eighth Amendment command one conclusion: “children are constitutionally different.” See *Miller*, 567 U.S. at 461. In *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham*, *Miller*, and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), this Court underscored that children are categorically less culpable than adults for their actions. To reach this conclusion, this Court relied on “developments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds.”

In particular, this Court relied on three developmental characteristics that distinguish children from adults when determining culpability. First, “children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.” *Montgomery*, 136 S. Ct. at 733 (quoting *Roper*, 543 U.S. at 569) (internal quotation marks omitted); *see also Miller*, 132 S. Ct. at 2458. Adolescent brains are biologically less capable of understanding that saying “no” to peer pressure in the short-term can result in better long-term outcomes. *See, e.g.*, Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 *Am. Psychologist* 1009, 1014 (2003).

Second, “children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Montgomery*, 136 S. Ct. at 733 (quoting *Roper*, 543 U.S. at 569) (internal quotation marks omitted); *see also Miller*, 132 S. Ct. at 2458; *Graham*, 560 U.S. at 68. Indeed, “the parts of the brain involved in behavior control continue to mature through late adolescence.” *Graham*, 560 U.S. at 68. Children, therefore, often “underestimate the risks in front of them and focus on short-term gains rather than long-term consequences.” Barry Feld, *The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 *Ohio St. J. Crim.* 107, 116-17 (2013). Children under eighteen cannot vote, purchase alcohol, serve on a jury, execute a contract, or rent a car: examples of policies enacted in recognition of the inherent developmental immaturity associated with youth. *See Roper*, 543 U.S. at 569.

And third, “a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.” *Montgomery*, 136 S. Ct. at 733 (quoting *Roper*, 543 U.S. at 570) (internal quotation marks omitted); see also *Miller*, 132 S. Ct. at 2458. As this Court explained in *Graham*, “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” 560 U.S. at 68. The signature qualities of adolescence—among them impetuosity and recklessness—subside as children grow into adulthood, even for children who commit serious crimes. See *Roper*, 543 U.S. at 570; see also *Feld*, 11 Ohio St. J. Crim. at 117.

II. THE LIFE STORIES OF FORMERLY INCARCERATED YOUTH ILLUSTRATE THAT EVEN SERIOUS CRIMES COMMITTED BY CHILDREN REFLECT TRANSIENT IMMATURITY AND RATIFY THE PRINCIPLES ON WHICH THIS COURT’S EIGHTH AMENDMENT JURISPRUDENCE IS GROUNDED.

This Court’s mandate in *Graham*, that youth who commit non-homicide offenses receive a “meaningful opportunity to obtain release”, is axiomatic in light of four examples from ICAN members Ralph Brazel, Sean Taylor, Xavier McElrath-Bey, and Edwin Desamour, whose lives demonstrate that the “bad acts [they] committed as a teenager are not representative of [their] true character.” *Graham*, 560 U.S. at 79. Not only do their examples show young people are developmentally capable of change when given a chance. Each of these individuals had histories of

violent crime but succeeded in becoming productive and law-abiding citizens. Brazel, Taylor, McElrath-Bey, and Desmaour were given an opportunity to demonstrate their maturation. A mandate, like Missouri's, that a child die in prison destroys both the child's and society's ability to benefit from that growth and rehabilitation.

The accounts of Brazel, Taylor, McElrath Bey and Desamour are representative of so many incarcerated young people whose lives could embody the vision of *Graham's* "meaningful opportunity to obtain release" if given a true to chance to at rehabilitation. Consideration of their examples should help this Court recognize the importance of acting on this matter.²

A. Ralph Brazel

Ralph Brazel is a husband and father, and every day his deep religious faith compels him to better himself and his community. Yet before this Court's decision in *Graham*, Brazel was serving life without parole for a nonhomicide offense committed while he was an adolescent.

Brazel describes his childhood as transient. Brazel moved with his mother and brother every two years as his mother sought new opportunities to better their circumstances. After moving several times within Florida, in fifth grade, Brazel's family moved from Florida to New

2. While three of these examples are youth who were convicted of homicide, each youth was given a chance by the penal system to demonstrate their reform and maturity. Petitioner, who was convicted of nonhomicide offenses, by virtue of the Missouri court's interpretation will not.

Jersey, and then moved again in eighth grade. At age fourteen, Brazel's mother next talked about moving the family to North Carolina. Fearing that another move to an unknown school and unknown community would disrupt his life yet again, and in an act of immature defiance, Brazel went to Florida to visit family and refused to return home to his mother. As Brazel reflects now, "leaving my mother is what got me in trouble."

In Florida, Brazel began to follow around an older family member who dealt drugs, and over time Brazel joined in the effort. Looking back, Brazel sees that he was surrounded by individuals who used or dealt drugs. "My dad was on drugs, his wife was on drugs, my uncle was selling drugs. I didn't have any positive role models to step in and tell me not to go that route."

After dealing drugs from ages fifteen to seventeen, Brazel was indicted for his participation in the drug operation and given three life-without-parole sentences. "As a teenager, I couldn't process what it was to have a sentence of life without parole," Brazel says. "It didn't hit me until a year or so later. One day I was sitting down watching TV, and suddenly I had an acute awareness that I was sentenced to spend the rest of my life incarcerated."

In prison Brazel grew from an immature adolescent boy into a confident and thoughtful man. Brazel dedicated himself to studying and decided he would become the best human being he could be. He enrolled in classes, including Spanish and Arabic language classes. He studied history, leadership, social sciences, and sign language, and he trained in electrical construction and maintenance. Brazel also dedicated himself to work opportunities and rose to

the rank of internal auditor at a factory in the Federal Bureau of Prisons.

While Brazel committed to making the most of his life inside prison, he never gave up hope of freedom. “I never believed I was going to stay in prison all my life. My faith gave me hope,” Brazel says. And the opportunity for freedom came in this Court’s decision in *Graham*. Following *Graham*, Brazel became eligible for parole and was released in 2013, weeks before his 40th birthday.

When Brazel walked out the door of the prison, he felt confident that he had value to offer society. “I wanted to get married and to earn a living the correct way, so that my family could enjoy it freely,” Brazel says. Since his release, Ralph has become an active member of the advocacy community. He is a co-founder of the Incarcerated Children’s Advocacy Network and a board member of the Campaign for the Fair Sentencing of Youth. Brazel has a wife and a young son and works as Operations Manager at a mosque in Southern California.

“For those of us who went to prison as children, we’re behind when we come home. We’re behind in starting a family, we’re behind professionally. It’s a lot of firsts for us, and I am grateful for each and every one of them.”

B. Sean Taylor

Sean Taylor is 45 and works to help the formerly incarcerated transition back into society in the Denver area. In his job, he guides people on a path he too has navigated—a path he was not sure he would ever have the chance to travel. At age seventeen, Taylor was charged

with first-degree murder after shooting into a rival gang member's house, killing a fellow seventeen-year-old. He was subsequently tried, convicted, and sentenced to life in prison with the possibility of parole after forty calendar years. Taylor was born in Springfield, Massachusetts to a mother who had him at age eighteen. Taylor's father, a heroin addict, was in and out of his life before being sent to prison when Sean was six.

Overwhelmed by the financial burden of raising two sons on her own, Taylor's mother sent Taylor and his brother to live with an aunt in Denver until she could get on her feet enough to take care of the boys again. When Taylor was eleven, his mother joined her sons in Denver, but soon after arriving, she developed a crack addiction. The family struggled to pay rent on income from her low-wage jobs and was evicted regularly. Taylor looked to the streets for role models. "Unfortunately, in my neighborhood, if you don't have a lot of positive male role models, negative male role models become your role model," Taylor says. At age fifteen, Taylor joined the Bloods, lost interest in school, and eventually stopped going. Instead, he sold crack to make money.

As a Blood, he also regularly clashed with the local Crips, and after losing several fights, Taylor acquired a gun to intimidate his rivals. Taylor says he never planned to shoot anyone, but three days after his seventeenth birthday, he was riding with three older gang members when the driver confronted a Crip outside of the car. Taylor told the driver to get back in and said he would shoot into the Crip house instead. He fired one shot toward what he thought was empty space. Later, on the evening news, he found out that someone in the house had been

killed. Taylor was in disbelief. A sense of dread descended on him. He thought of how his mother would feel if he had been the victim instead. Police soon arrived at his mother's house and told her that she should advise her son to turn himself in. The next morning, she picked Taylor up and took him to the police station.

Taylor was sentenced to life in prison, with forty calendar years before he was eligible for parole. At first, he remained in the gang. But after a year in prison, he started reflecting on his poor life choices. He realized that he was continuing the same negative behavior that had landed him in prison. Taylor resolved to change his life. He started studying Islam and dedicated himself to his new faith. One day, he invited his former gang friends to the gym to tell them he was leaving the gang. "I said, whatever the consequence may be, let's get it over with, but I'm ready to dedicate myself to something positive."

Taylor earned his GED in prison and had planned to take college classes until the college program was eliminated. Taylor nonetheless pursued education on his own, reading voraciously. He was invited to become an adult basic education tutor and teaching, including students learning English as a second language, because he had learned conversational Spanish in prison as well. He worked in a variety of other jobs: as a library technician, a janitor, in the prison garment factory, and even for the state DMV call center, where trained prisoners answered first-level calls from people who needed replacement licenses. "I started to feel like, there's no reason why my life had to be unfulfilled, just because I was in prison," Taylor says.

He thought about what he wanted to do and decided he wanted to help kids get out of gangs. So, he began mentoring younger prisoners. He also helped mediate conflicts between different gangs and groups in prison. After more than fifteen years in prison, and with support from his assistant warden, Taylor sought relief from Colorado's Juvenile Clemency Board. In early 2011, two years after filing his petition, he was called to the sergeant's office. The sergeant spun his computer monitor around and showed Taylor the screen: the Governor had commuted his sentence, and he would be eligible for parole in six months. Taylor felt like he was dreaming, then snapped back to reality when another inmate in the office at the time grabbed him and said, "You're going home!"

Upon his release from prison, Taylor went to a halfway house. At first, he "felt like an alien," living among residents who had been in prison for only five or six years. When Taylor's cousin handed him an iPhone, he didn't know how it worked. He would stand on the porch and marvel at the trees, "[b]ecause there are no trees in the prison yard." In addition, a woman he had known since he was ten years old got back in touch with him, and they have now been married for more than three years. Taylor's first post-prison job was at a recycling facility, where he broke down and sorted old electronics for \$10 an hour. He then earned his certification as a personal trainer and began doing that independently to earn money.

Now, he works as the deputy director of the Second Chance Center, a nonprofit that works to integrate previously incarcerated men and women back into the community. Taylor helps teach job and basic life skills classes, as well as restorative justice, and he also provides

group and one-on-one mentoring. “I feel like I’m serving a better purpose . . . by doing that work out here as opposed to in prison,” he says. “If I can do that gang outreach or intervention work out here, then maybe I can stop a young man who’s the same age as me when I got locked up from picking up a gun. That’s the fulfillment, to be able to say we might actually have saved some young man’s life, not only from getting shot to death, but from throwing his own life away.”

Taylor is thankful for the chance to live a life defined by more than his worst moment. And he believes others convicted as children should also have the opportunity for release, because he knows firsthand how those who grow up in prison can mature. “The possibilities for redemption are endless, because we were kids,” he says. “Some of us make tragic choices as kids. But does that mean that we can’t change? A kid who didn’t have any good role models and followed the bad people in life? There’s always going to be some positive thing that comes along to help you become a better person, and all you have to do is latch onto it. That’s what I did. I started to look at everything good I wanted to be.”

C. Xavier McElrath-Bey

Xavier McElrath-Bey works as Senior Adviser and National Advocate at the Campaign for the Fair Sentencing of Youth, where he founded ICAN, a national coalition of formerly incarcerated youth that advocates for age-appropriate sentencing alternatives to life without parole. McElrath-Bey speaks about children’s unique capacity for positive change to audiences around the country, including law enforcement, judges, and corporate

leaders. Before joining the Campaign, he worked as a clinical field interviewer at Northwestern University, gathering research data on the mental health needs and outcomes of formerly incarcerated youthful offenders. He is a father and a resource to men and women coming home from prison. And his current life would have been unimaginable to him when he was a thirteen-year-old facing a murder charge.

Born to an abusive, alcoholic father and a mother who struggled with mental health issues, McElrath-Bey grew up on the South Side of Chicago in a home that was filled with violence but short on food, clothing, and love. In response to these living conditions, McElrath-Bey began acting out at an early age. He was first arrested for stealing when he was nine. At age eleven, he joined a gang and was in and out of Chicago's Juvenile Temporary Detention Center.

When he was not in detention, McElrath-Bey spent most of his time on the street to avoid his home life and committed crimes to provide for himself. Though he now realizes he was "living under a false illusion of love and acceptance," as a child, he viewed the gang as his family. "I felt safer in the streets with my friends than in my own home. We all seemed to have similar family problems, and we forged a bond with each other," he says. "I had no idea where my life was heading, and to be honest, those thoughts never really crossed my mind."

By the time he was twelve, McElrath-Bey had accumulated nineteen arrests and seven convictions for charges including armed robbery, aggravated battery, and unlawful use of weapons. At thirteen, he participated in the killing of a fourteen-year-old rival gang member.

Although he did not physically kill the rival gang member, he helped lure him to an abandoned building where the boy was beaten to death. McElrath-Bey pleaded guilty and was convicted of first-degree murder.

When first incarcerated, McElrath-Bey maintained his gang affiliation and continued to get into fights. At age 18, McElrath-Bey assaulted a corrections officer during a prison riot and was put in solitary confinement for a year. In solitary, McElrath-Bey had no choice but to reflect on his life. “I finally had to face myself,” he says. “I thought about all the people I had hurt. I thought about the 14-year-old kid who died as a result of such destructiveness. I thought about his family and my family. Eventually, I just broke down in tears. It was then, with my growing maturity, that I began to think about the deeper meaning of life. I started to contemplate the morality of what had happened, and also how I was deceived by the illusions of gang life.” When he was released from solitary confinement, McElrath-Bey renounced membership in his gang and turned towards education.

While in prison, he earned his associate’s degree and bachelor’s degree through a program with Roosevelt University. He maintained a 4.0 GPA and was inducted into the school’s honor society. He also worked as an academic office clerk to help other inmates obtain their GEDs. McElrath-Bey decided to focus his future work on helping other troubled youth avoid the pitfalls he encountered. “I came to believe that I could be somebody in life once I was released,” he says. McElrath-Bey earned his release from prison in October 2002, after serving thirteen years of his sentence. Soon after his release, he re-enrolled at Roosevelt University and earned his master’s degree in counseling and human services.

In his current job, McElrath-Bey works with other formerly incarcerated youth and travels regularly to meet with stakeholders in the criminal justice community and discuss sentencing reform. The position has brought him back to his old neighborhood, where he has an office in a community center. Being there, he says, reminds him what he's fighting for: keeping kids with "limited resources and opportunities" from ever having to stand in front of a judge and face criminal punishment, like he did.

McElrath-Bey emphasizes that although he is a living testament of the potential for positive change, he is in no way the exception. "Many of the juveniles I was incarcerated with, those who I grew up with in prison, are now free," he says. "They also have had a second chance at life after serving over a decade in prison, and they don't take their freedom for granted. Like me, they also vowed to try and help other kids from making the same mistakes we made."

D. Edwin Desamour

Edwin Desamour's life in Philadelphia is dedicated to his family and the community. Desamour is a committed father and the founder and executive director of the Philadelphia nonprofit Men in Motion in the Community ("MIMIC"). MIMIC uses mentoring, community engagement, and educational enrichment to build bridges of community support and social bonds for Philadelphia's high-risk youth, young adults, and previously incarcerated men. Desamour works to keep Philadelphia's children out of trouble and the streets free of violence. But Desamour's younger life looked vastly different from the devoted community member and family man that he is today.

Desamour grew up surrounded by violence and was given his first gun at the young age of twelve. At sixteen, Desamour accompanied a group of friends across town to seek revenge on behalf of another friend who had been beaten up. During the altercation, a teenager was killed. Desamour was arrested, certified as an adult, and faced a first-degree murder charge and life without parole. Ultimately, Desamour was found guilty of third-degree murder and sentenced to twenty years.

Desamour remembers sitting in the adult correctional facility with several other youth who were certified as adults. As they talked about what they wanted to be “when they grew up,” their list was the same as all kids: doctors, police officers, businessmen. “We all laughed, and then for a moment there was just silence in the room,” Desamour said. “What happened to all those hopes and dreams? What went wrong? Then the stories began: abuse in the home, drugs, violence and poverty all around us. We were all good kids but because of our surroundings we were not able to handle peer pressure and make good decisions.”

“While I was incarcerated, the prospect of parole kept me motivated,” Desamour reflected. “It forced me to stay away from trouble and was an incentive to look for ways to better myself. Yet, many of the guys with a sentence of life without parole who served alongside me still did everything they could to become better educated, participate in available activities, and become productive individuals.”

Desamour was paroled over twenty years ago, but he has never forgotten other youth offenders who remain incarcerated, including one of his co-defendants.

Desamour's co-defendant was a teenager when he went to prison but is now a middle-aged man. He never had the same opportunities as Desamour to grow a family and a life outside of prison. Desamour helped found MIMIC following his release from prison in order to influence other young lives and deter them from causing the harm that he did. "I live each day with the regret that I am responsible for taking another person's life," Desamour said. "I can never change that. But I have proven that I should not be judged solely by that horrible act. That is not the sum of who I am."

CONCLUSION

For the foregoing reasons, *Amicus Curiae*, the Campaign for the Fair Sentencing of Youth, and its project, the Incarcerated Children's Advocacy Network, requests that the judgment of the Supreme Court of Missouri be summarily reversed and be remanded for resentencing in light of *Graham*, or the Court should grant the petition and set the case for merits review.

Respectfully submitted,

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