SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19954

STATE OF CONNECTICUT

v.

TAUREN WILLIAMS-BEY

BRIEF OF AMICUS CURIAE CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION WITH ATTACHED APPENDIX

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STATEMENT OF ISSUES

1. Under the Connecticut Constitution, Article First, §§ 8-9, are all juveniles entitled to a sentencing proceeding at which the court expressly considers the youth related factors required by the United States Constitution for cases involving juveniles who have been sentenced to life imprisonment without possibility of release? See *Miller v. Alabama*, 567 U.S. 460 (2012)?

2. If the answer to question one is in the affirmative and a sentencing court does not comply with the sentencing requirements under the Connecticut Constitution, does parole eligibility under General Statutes § 54-125a(f) adequately remedy any state constitutional violation?

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

Founded in 1988, the Connecticut Criminal Defense Lawyers Association ("CCDLA") is a statewide bar organization comprised of approximately 300 lawyers who are dedicated to defending persons accused of criminal and motor vehicle offenses. As a non-profit organization, CCDLA is solely funded by its membership, which consists of attorneys from both the private and public sectors. CCDLA seeks to improve the criminal justice system by ensuring that the individual rights of defendants as guaranteed by the Connecticut and United States constitutions are protected and fairly and equally applied. To this end, CCDLA also works to improve the criminal justice system through legislative and procedural reform. CCDLA's members regularly represent individuals who are convicted of serious crimes committed when those individuals were juveniles and who subsequently are sentenced to life or life-equivalent terms of incarceration. As a result, CCDLA and its members possess a depth of experience in this area and are uniquely qualified to assist the Court with additional analysis demonstrating why juveniles in Connecticut should be afforded greater sentencing protections under the Connecticut Constitution, and why parole eligibility is not a sufficient alternative.

[1] Pursuant to Practice Book § 67-7, the undersigned states that: (1) no portion of this brief was written by counsel for a party to this appeal; (2) neither any party to this appeal, nor its counsel, contributed to the cost of the preparation or submission of this brief; and (3) no person or entity, other than the amicus and its members, contributed to the cost of the preparation or submission of this brief.

STATEMENT OF FACTS AND PROCEEDINGS

This certified appeal arises from the denial of a motion to correct an illegal sentence filed pursuant to Practice Book § 43-32.

On January 4, 2000, the defendant entered a plea of guilty to murder as an accessory, in violation of General Statutes §§ 53a-54a and 53a-8. On February 25, 2000, the trial court, *Clifford, J.*, after waiving the preparation of a presentence investigation report, sentenced the defendant to thirty-five years in prison. The defendant, who was a juvenile at the time of the offense, did not appeal his conviction.

On December 16, 2013, the defendant filed a motion to correct an illegal sentence pursuant to Practice Book § 43-22. In that motion, he claimed that, because the sentencing court had not taken into account the youth related factors identified in *Miller v. Alabama*, 576 U.S. 460 (2012) and *Graham v. Florida*, 560 U.S. 48 (2010), his sentence violated the Sixth, Eighth, and Fourteenth Amendments to the US Constitution and Article First, §§ 8 and 9 of the Connecticut Constitution.

On July 29, 2014, the trial court, *Alexander, J.*, dismissed the defendant's motion, concluding that "the relief sought exceeds the jurisdiction of this court." The defendant appealed and the appellate court affirmed on alternate grounds, stating that while the trial court improperly determined it lacked jurisdiction, the defendant's sentence did not violate the Eighth Amendment as interpreted in *Miller*. *State v. Williams-Bey*, 167 Conn.App. 744, 747 (2016). The appellate court further held that for juvenile defendants whose sentences violated *Miller* but who were eligible for special parole under General Statutes § 54-125a(f), "resentencing is not required under our state constitution." *Williams-Bey*, 167 Conn.App. at 781.

The defendant then filed a petition for certification to appeal. On February 7, 2017, this Court issued an order, sua sponte, remanding the case to the appellate court with direction to reconsider its ruling that the trial court had jurisdiction over the motion to correct an illegal sentence in light of the holdings in *State v. Delgado*, 323 Conn. 801 (2016) and

State v. Boyd, 323 Conn. 816 (2016). (Both *Delgado* and *Boyd* were issued subsequent to the appellate court's initial ruling in this case). On May 9, 2017, the appellate court concluded that it was constrained by *Delgado* and *Boyd* to conclude that the trial court properly dismissed the defendant's motion to correct an illegal sentence.

The defendant again petitioned for certification to appeal to this Court, which granted the petition and certified the two questions identified in the statement of issues, above.[2]

ARGUMENT

I. The Connecticut Constitution Should Afford Juveniles Greater Protection Than The Minimum Provided Under The US Constitution As Recognized In *Graham* And *Miller*

A. Standard of Review

Plenary: The interpretation of the meaning and scope of the provisions of the Connecticut Constitution involves a question of law over which this Court exercises plenary review. *State v. Orr*, 291 Conn. 642, 650 (2009). In conducting its review, the Court is guided by the principles set forth in *State v. Geisler*, 222 Conn. 672, 684-86 (1992).

B. Argument

Under Connecticut law, "[t]he age of one who has committed a particular act forbidden by law has *always* been an element necessary to make that act a crime." (Emphasis added). *State v. Samuel M.*, 159 Conn.App. 242, 267, *aff'd*, 323 Conn. 785 (2016), citing *State v. Elbert*, 115 Conn. 589, 593 (1932); 2 Z. Swift, *A Digest of the Laws of the State of Connecticut* (1823) at 361.

In conducting its analysis of the defendant's state constitutional claim, the appellate court only briefly considered the "historical approach" under *Geisler*. (The 2nd *Geisler* factor counsels the Court to take into account "historical insights into the intent of our constitutional forebears." *State v. Santiago,* 318 Conn. 1, 17-18; Geisler, 222 Conn. At 684-85). The court found that this factor arguably weighed against the defendant, since "[a]t the time of the

[2] With respect to any additional, relevant facts, the amicus adopts the statement of facts in the brief of the defendant-appellant.

adoption of its 1818 constitution, Connecticut followed the common law and treated fourteen and fifteen year olds as adults when charged with a felony offense. It was not until 1921 that Connecticut established by statute a juvenile justice system." *State v. Williams-Bey*, 167 Conn.App. at 777. The court further concluded that, in any event, this historical consideration "offers no insight into the specific question of whether the state constitution mandates the resentencing of juvenile offenders whose sentences violate *Miller* upon retroactive application." *Id.*

The amicus respectfully suggests that the appellate court missed the historical point, and failed to consider several important historical factors that are relevant to the issues before this Court. And whether or not any specific historical factor expressly or impliedly mandates resentencing is not the relevant question in any event. The question is whether Connecticut's constitutional and common law history reflects an understanding that juveniles should be treated differently with respect to conviction and sentencing of crimes, which it convincingly does. It is for this Court to decide whether that history is sufficient, in conjunction with its consideration of the other *Geisler* factors and the over-arching constitutional question, to find that the Connecticut Constitution confers greater rights to juvenile defendants than those provided under the federal counterpart.

First, it is important to recall that the constitutional floor provided under federal law is just that, a floor below which the states may not fall; it is not a bar above which they may not rise. This Court repeatedly has recognized that "[w]e may find greater protection of individual rights under our state constitution than that provided by the federal constitution. It is well established that federal constitutional … law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights...." *State v. Miller*, 227 Conn. 363, 3799 (1993), citing *State v. Oquendo*, 223 Conn. 635, 649 (1992).

In *Miller*, this Court was asked to decide whether warrantless searches of vehicles impounded at a police station were acceptable under the Connecticut Constitution. The

United States Supreme Court already had decided, in *Chambers v. Maroney*, 399 U.S. 42 (1970), that such searches were permissible under the Fourth Amendment. This Court noted both that it was "not bound" by the decision in *Chambers* and that it had on several occasions concluded that "the state constitution provides broader protection of individual rights than does the federal constitution." *State v. Miller*, 227 Conn. at 380, citing *State v. Oquendo*, supra; *State v. Marsala*, 216 Conn. 150 (1990); *State v. DeFusco*, 224 Conn. 627 (1993). Ultimately, the Court departed from *Chambers* and held that the searches in question were unconstitutional under Connecticut law.

The *Miller* Court pointed out, and the Court has reiterated in a number of decisions since, that on the specific question of civil liberties, the Court is particularly careful to find the independent contours of constitutional protection in Connecticut.

> Moreover, we have held that in the area of fundamental civil liberties—which includes all protections of the declaration of rights contained in article first of the Connecticut constitution—we sit as a court of last resort. In such constitutional adjudication, our first referent is Connecticut law and the full panoply of rights Connecticut citizens have come to expect as their due. Accordingly, decisions of the United States Supreme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but they are to be followed by Connecticut courts only when they provide no less individual protection than is guaranteed by Connecticut law.... Recognizing that our state constitution is an instrument of progress ... is intended to stand for a great length of time and should not be interpreted too narrowly or too literally ... we have concluded in several cases that the state constitution provides broader protection of individual rights than does the federal constitution.

(Citations omitted; internal quotation marks omitted.) *State v. Miller*, 227 Conn. at 379–80; see *State v. Ross*, 230 Conn. 183, 247–48 (1994).

This line of cases makes clear that the starting point for independent analysis of the state constitutional questions about juvenile sentencing in this case has nothing to do with juveniles. This Court is not bound by *Miller v. Alabama* or *Graham v. Florida*. Whatever those cases say about the rights of juveniles, whether youth related factors must be considered, or whether a parole hearing is a sufficient remedy, this Court must consider the question as a state matter from the outset. The question is thus *not* how a Connecticut court should

implement *Miller v. Alabama* (or at least not only that); it is instead what level of protection the Connecticut Constitution affords juvenile defendants – separate from whatever federal protection they have - and how Connecticut courts should implement *that* protection. Connecticut history suggests that both the protections and their implementation should be sturdier than those offered under the federal rule.

Throughout its history, Connecticut has recognized that juveniles may lack sufficient maturity to understand the consequences of otherwise criminal acts. In his 1795 *System of Laws*, Zephania Swift considered that "exercise of will" that is essential to the commission of a crime, and noted that the necessary will was wanting in the case of infants who lacked sufficient understanding and capacity to discern good from evil. 2 Z. Swift, *A System of the Laws of the State of Connecticut* (1795) at 368. He described the common law at the time as follows:

> Infants under the age of seven years are supposed to be totally incapable of committing a crime. Between the age of seven and fourteen years, it is presumed that they are incapable; but as this is considered to be the doubtful period, his capacity of discerning between good and evil, must be the rule of determining. … *The rule cannot be dependent on the age of the delinquent, because we find great difference of capacity and discretion at the same age, but it must wholly depend on the strength of the understanding and the capacity to discern good and evil.*"

(Emphasis added). *Id.*

This concept came generally to be known as the "infancy defense" and was commonly invoked until the implementation of a separate juvenile justice system in 1921. At that point, juveniles were subject to a finding of delinquency, rather than the conviction of a crime, so the defense was held not to apply. See *State v. Tyvonne M.*, 211 Conn. 151, 161 (1989). Importantly, the infancy defense involved more than the simple question of whether or not the juvenile possessed the mens rea necessary to commit the crime, and applied even when that mens rea arguably was present. "The law recognized that while a child may have actually intended to perform a criminal act, children in general could not reasonably be presumed capable of differentiating right

from wrong.... The presumptions of incapacity were created to avoid punishing those who, because of age, could not appreciate the moral dimensions of their behavior, and for whom the threat of punishment would not act as a deterrent." (Citation omitted.) *In re Tyvonne M.*, 221 Conn. at 156, see *State v. Samuel M.*, 159 Conn. App. at 267.

Even the separate concept of juvenile delinquency demonstrates a long-held position in Connecticut that minors should be afforded different treatment. More than 130 years ago, this Court considered a statute providing that "Justices of the peace shall have power to commit to the State Reform School … any boy under the age of sixteen years, who is in danger of being brought up, or is brought up, to lead an idle or vicious life. Acts of 1881, ch. 119." (Internal quotation omitted). *Reynolds v. Howe,* 51 Conn. 472, 476 (1884). Weighing the constitutionality of a juvenile delinquency rule, the *Reynolds* court noted that "[s]tatutes like this have been in existence for the past two hundred years, and it is very late to call their constitutionality in question." *Id.* Importantly, it is clear that the concept of delinquency was seen as an alternative to criminal proceedings, and was meant to further the state's interest in protecting and guiding minors where parents had failed or were unable to do so. See *In re Tyvonne M.*, 221 Conn. at 161.

In other words, Connecticut common law, at least since the 18th century, has recognized what *Miller* and *Graham* (and *Roper v. Simmons*, 543 U.S. 551 (2005)) have only more recently acknowledged at the federal level – that the age of the defendant *must* be a factor in criminal proceedings. It is thus of no moment that, as the appellate court observed, in 1795 children over the age of fourteen were subject to criminal penalties as if they were adults. The point is not that a juvenile who was approximately the defendant's age at the time of the crime might have been punished as an adult in 1795. The point is that age matters, and that children under a certain age should be treated differently; the underlying rationale for the rule does not change

just because our developing understanding causes us to select a different age at which the rule is applied.

Indeed, the underlying rationale of *Miller* and *Graham*, and of this Court's decisions in *State v. Riley*, 315 Conn 637 (2015), *State v. Taylor G.*, 315 Conn. 734 (2015) and *Cassiano v. Commissioner of Correction*, 317 Conn. 52 (2015) is based on the recently developed understanding that adolescent brains are different than we once believed they were, and that an "ever growing body of authoritative evidence" suggests a constitutionally significant difference between adult and juvenile brains. *Riley*, 315 Conn. At 654-55. We now know that adolescents mature at different rates, and mature differently with respect to different characteristics within their personalities – all of which was unknown until recently. The difference is thus one of degree, not substance – Connecticut law always has recognized the importance of drawing a line between adults and children in criminal matters; we simply understand today that the line must be drawn in a different place.

There also is no doubt that, despite a specific constitutional reference, Connecticut has long recognized a prohibition under the state constitution against cruel and unusual punishments. "It is by now well established that the constitution of Connecticut prohibits cruel and unusual punishments under the auspices of the dual due process provisions contained in article first, §§ 8 and 9. Those due process protections take as their hallmark principles of fundamental fairness rooted in our state's *unique common law, statutory, and constitutional traditions*.... Although neither provision of the state constitution expressly references cruel or unusual punishments, it is settled constitutional doctrine that both of our due process clauses prohibit governmental infliction of cruel and unusual punishments." (Emphasis added, citations omitted; footnote omitted.) *State v. Santiago*, 318 Conn. at 17–18.

In light of Connecticut's history of treating minors with additional care when it comes to criminal consequences – a history that seemingly encompasses *all* of Connecticut's history - this Court should consider departing upwards from the rule in *Miller v. Alabama.* In

particular, the Court should consider whether it makes sense that protection for juveniles at sentencing should apply only to life sentences, or only to life-equivalent sentences, or only to sentences of 10 years or more, where the General Assembly currently paces the line. If the point is that children are different, and that their differences concern not only their ability to form the intent necessary to commit a crime, but also to understand the consequences even where they can form the intent. And if the further point is that those differences involve more than the changes that maturity brings that are separate and distinct from the rehabilitative changes that incarceration supposedly causes in adults, but also the life altering result of placing a child in prison – for any period of time – then the length of the possible sentence should not matter. Any sentence imposed without considering the differences between adults and children could have lasting negative effects on both the juveniles in question and on society at large.

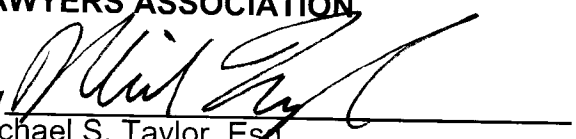
For similar reasons, parole eligibility is inadequate because, to fully consider the important youth related factors identified in *Riley* and *Cassiano*, the trial court should do so at the time the initial sentence is passed, without the influence of a prior decision (perhaps by a different judge) that a lengthy sentence is warranted. A trial court should not have to put aside respect for a prior decision (or the logic of its own prior decision) in order to fairly consider the significance of a defendant's juvenile status on the appropriate sentence.

CONCLUSION

For the reasons suggested above and those set forth in the brief of the defendant-appellant, the amicus respectfully submits that the answer to the first certified question should be in the affirmative and the answer to the second certified question should be in the negative.

AMICUS CURIAE,

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION

By 

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CERTIFICATION

Pursuant to Practice Book §§ 67-2, 67-7 I hereby certify the following:

1. This brief complies with all provisions of this rule;

2. This brief has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;

3. This brief is a true copy of the brief that was submitted electronically pursuant to subsection (g) of this section;

4. A true electronic copy of this brief was delivered via e-mail to the counsel of record listed below on January 2, 2018, and said electronic copies redacted any personal identifying information where necessary to comply with the provisions of this rule;

5. In accord with Practice Book § 62-7, a copy of this brief was sent to each counsel of record, as further detailed below.

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