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COLORADO SUPREME COURT
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Certiorari to the Colorado Court of Appeals,
11 CA 2030
Denver County District Court No. 05CR4442

GUY LUCERO,
PETITIONER,
v.

THE PEOPLE OF THE STATE OF COLORADO,
RESPONDENT.

13SC624

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REPLY BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that except for length this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that: The brief does not comply with C.A.R. 28(g) as it contains 8655 words. An appropriate motion is being filed.

\s\ *Eric A. Samler*

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ARGUMENT

I. BECAUSE THE LIFE OF THE VICTIM WAS NOT TAKEN, MR. LUCERO STANDS CONVICTED OF A NON-HOMICIDE OFFENSE WITHIN THE MEANING OF *GRAHAM v. FLORIDA*, 560 U.S. 48 (2010).

A. THE ANSWER BRIEF IGNORES THE COLORADO STATUTE.

The People completely ignore the Colorado law that clearly defines the term "homicide" as "the killing of a person by another." §18-3-101(1), C.R.S. The statute provides a lesser sentence for an attempt than for a completed crime. (*See* OB at p. 9). The Answer Brief does not even cite this very clear statute.

B. NO OTHER COURT IN THE COUNTRY HAS TAKEN THE POSITION ADVOCATED BY THE PEOPLE IN THIS CASE.

The only purported authority cited by the People for its position is an unreported decision from Delaware, in a case in which the defendant was in fact convicted of a completed homicide (as well as an additional attempted homicide). *Twyman v. State*, 26 A.3d 215 (Del. 2011)(unpublished disposition). This unpublished disposition has been cited only twice: once as *dicta* in an Illinois Court of Appeals decision (*People v. Gipson*, 34 N.E.3d 560, 580 (Ill. App. Ct. 2015)), in which the juvenile's 52-year sentence was struck down as disproportionate under an Illinois statutory provision, and once in passing by a

Federal Magistrate in a memorandum order barring the petitioner's habeas petition as time barred under AEDPA – *Cervantes v. Biter*, CV 13-4880-R-RZ, 2014 WL 2586884, at *4 (C.D. Cal. Feb. 7, 2014)(not reported in F.Supp.2d), *report and recommendation adopted,* 2014 WL 2586887 (C.D. Cal. June 10, 2014)(not reported in F.Supp.2d). These are hardly the types of references that this Court should regard as persuasive or even relevant.

No Court that has directly addressed the issue has held that an attempted homicide is anything but a "non-homicide" offense for *Graham* purposes. No authority interprets *Graham* as permitting a life imprisonment sentence on a 15-year-old convicted of attempted murder. In 2012, California held that a sentence of 110 years to life on a juvenile for three attempted homicide convictions violated *Graham*. *People v. Caballero,* 282 P.3d 291 (Cal. 2012). In *Bramlett v. Hobbs,* 463 S.W.3d 283 (Ark. 2015), the Arkansas Supreme Court began where this Court should, with the state statutes. Like Colorado's statute (§18-3-101(1), C.R.S.), the Arkansas statutes define "murder" and "homicide" as an act that "causes the death of a person." *Id.* at 287 (citing Ark.Code Ann. §§5–10–101 through -105). The Arkansas Supreme Court notes that Black's Law Dictionary defines homicide as "the killing of one person by another." *Ibid*, quoting Black's Law Dictionary, 751 (8th ed. 2004). The Arkansas Supreme Court ruled that attempted capital murder

is not a "homicide offense" for purposes of *Graham*. *Bramlett v. Hobbs*, 463 S.W.3d at 288.

With its denial of rehearing in *Gridine v. State*, 175 So. 3d 672, 672 (Fla. 2015) on September 24, 2015, the Florida Supreme Court joined the growing tide of state Supreme Courts that apply *Graham*'s teachings to attempted homicide offenses.

C. THE SUPREME COURT DID NOT RULE BY IMPLICATION.

Acknowledging that there is no language in *Graham* or *Miller v. Alabama*, 132 S. Ct. 2455 (2012) that defines as a "homicide" a crime in which the victim is not killed, the People instead say that: (1) the *Graham* Court cited a study whose authors included attempted murder in its category of "homicide crime" (AB at 33, citing "the Annino Study"); (2) the *Graham* Court referred to seven (7) Israeli prisoners, and some of them might have been held for attempted murder (AB at 34); and (3) the *Graham* Court lists Hawaii as a jurisdiction that allows LWOP sentences for "homicide" offenses, yet in the Attorney General's review of the Hawaii statute, the Attorney General believes that it covers attempted homicides (AB at 35); *ergo*, according to the Attorney General, the Supreme Court must have known this and therefore must have meant to include non-homicides as "homicide

crimes," even though the Court never says that explicitly in any of its opinions. These arguments are fallacious and will be addressed below.

Fundamentally, though, the notion that the Supreme Court would have made this ruling by implication is flat wrong. If in fact the Court in *Graham* intended to allow the imposition of an LWOP sentence on an individual who did not commit a murder the Court certainly would have not done so by implication, but would have expressly stated its intention to allow an LWOP sentence for a juvenile convicted of attempted homicide. The United Supreme Court does not issue rulings indirectly, by asking the readers of its opinions to parse studies it cites, or investigate particular sentences of Israeli prisoners.

The fact that the Annino study defined "attempted homicide" as a "homicide" offense does not mean that the *Graham* Court considered an *attempted homicide* the equivalent of a *homicide*. There is a big difference in the harm caused by those two crimes. If the Supreme Court truly believed that the moral culpability of the offenders was equivalent, or that somehow the moral culpability in an attempted murder warrants ignoring the offender's immaturity (while that same immaturity must be taken into account in a murder case), the Supreme Court certainly would have said so directly.

The oblique reference to seven (7) Israeli juveniles serving life imprisonment sentences is less than persuasive. *See Graham*, at 80-81. As the source cited in *Graham* makes clear, at least four of these defendants were definitely convicted of murder.[1] In the other three cases, the offenses are not identified, but may have been homicide. However, it was clear then, and clearer now, that Israel allows a parole process even for such homicide offenses.[2] Regardless, the Israeli reference is hardly the type of precedent that should persuade this court to rule that, notwithstanding Colorado law, an attempted murder is a "homicide" offense. It certainly does not establish that, under the Eighth Amendment, an *attempted homicide* is the same as a *homicide.*

As for the *Graham* Court's Hawaii reference, the People are simply incorrect when they assert that Hawaii defines *attempted homicide* as a *homicide* and imposes the same sentence for both. The Statute cited by the People, H.R.S.

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[1]Amnesty International, Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 106, n. 322 (2005), cited in *Graham*, at 81.

[2]It is at best unclear that Israel ever allowed life sentences for juveniles convicted of attempted murder. According to Professor Connie de la Vega of the University of San Francisco Law School, Israel has made clear that any juvenile sentenced to life is parole eligible. *See* Connie de la Vega and Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice,* 42 U.S.F.L. Rev. 983, 986,1002-03 (2008). Moreover, the last juvenile life imprisonment sentence in Israel was in 2004. *Id*. at n. 14.

§571-22 (2006) (AB at 34) is the provision that allows a juvenile court to transfer jurisdiction to the adult criminal court if the juvenile is charged with either first-or second-degree murder or attempted first-degree murder. At the time of *Graham*, the applicable Hawaii sentencing provision was codified at H.R.S. §706.656 – not the provision quoted by the People in the Answer Brief. H.R.S. §706.656 was ***NOT*** an LWOP statute; it provided parole after twenty (20) years:

> (1) Persons convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without possibility of parole.
>
> As part of such sentence the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment.

H.R.S, § 706-656(1)(2008 Supp. Pamphlet).

Thus, while technically the sentence in Hawaii for attempted murder was LWOP, the law provided that after twenty years the sentence shall be commuted to life *with* parole. This is not a true LWOP sentence. While *Graham*'s Hawaii reference may not be that clear, what is clear is that Hawaii does not impose true LWOP for attempted homicide, and therefore it should not persuade this Court to rule that, in Colorado, an attempt is the same as a completed homicide.

II. *GRAHAM v. FLORIDA*, 560 U.S. 48 (2010) AND *MILLER v. ALABAMA*, 132 S. CT. 2455 (2012), APPLY TO LUCERO'S CONSECUTIVE TERM-OF-YEARS SENTENCES.

The fundamental flaw permeating the Answer Brief is the People's failure to recognize that, in *Graham*, the United States Supreme Court was applying a "categorical" bar under the Eighth Amendment. See e.g., AB at 24, citing *People v. Tate*, 2015 CO 42, ¶ 10 for the proposition that the Supreme Court did not "categorically bar a penalty, but only mandated that a sentencer follow a certain process."

After the Answer Brief was filed, the U.S. Supreme Court issued *Montgomery v. Louisiana,* 136 S. Ct. 718 (2016) which expressly contradicted the language the People rely upon:

> Louisiana points to *Miller* 's statement that the decision 'does not categorically bar a penalty for a class of offenders or type of crime— ...' [quoting *Miller*, 132 S.Ct. at 2471]. *Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* [*v. Simmons,* 543 U.S. 551 (2005)] or *Graham*. *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*. Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. The only difference between *Roper* and *Graham*, on the one hand, and *Miller*, on the other hand, is that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole

> could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.

Montgomery, 136 S.Ct. at 734. *See also ibid:*

> *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.' [*Miller*, 132 S.Ct. at 2465].

In light of *Montgomery*, it cannot be seriously doubted that this case is about a categorical bar – not a procedure.

Understanding that this fundamental flaw permeates all aspects of the People's arguments, Mr. Lucero will still address each of them.

A. LUCERO IS NOT ADVANCING ONLY A PROCEDURAL RULE. *GRAHAM* AND *MILLER* APPLY RETROACTIVELY.

The People cite *People v. Tate*, 2015 CO 42, to support their claim that to the extent Mr. Lucero is requesting certain procedures, he is not entitled for those procedures to be applied retroactively. AB, at 23-24. *Montgomery* forecloses such an argument. In *Montgomery*, the Court held that the procedural aspect of the *Miller* decision, i.e. the necessity for an individualized sentencing hearing, is not required for its own sake, but is rather a procedure necessary to enforce a substantive right:

> The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.

Montgomery, 136 S.Ct. at 735. Thus, *Miller* applies retroactively.

Contrary to the People's assertion, Mr. Lucero is not just complaining about procedures, and he does not believe that, so long as the sentencing court follows certain procedures, it is free to impose a sentence of any length upon him. Regardless of the procedures followed, a sentence like the one imposed upon Mr. Lucero is unconstitutional under the Eighth Amendment because he was a juvenile at the time of the crime, and his sentence does not provide a meaningful opportunity for release.

B. THE EIGHTH AMENDMENT CAN PROHIBIT CERTAIN PENALTIES FOR JUVENILE CONDUCT, EVEN THOUGH THEY MAY BE CONSTITUTIONAL WHEN PRESCRIBED FOR ADULT CONDUCT, AND EVEN IF THE CATEGORICAL BAR APPLIES TO COURTS AS WELL AS LEGISLATURES.

The People seem to argue that Eighth Amendment cannot restrict judicial sentencing practices, but can restrict only legislative bodies. AB, at 19-21. The People also argue that, until legislatures have abandoned the practice, it cannot be unconstitutional. AB at 25.

If the People's arguments were true, then the U.S. Supreme Court could never have ruled the way it did in *Atkins v. Virginia*, 536 U.S. 304 (2002),

Roper, or *Tison v. Arizona,* 481 U.S. 137 (1987), to name just a few such cases. For that matter, the Supreme Court could never have decided *Graham* itself, in which it barred sentences for juvenile conduct that still stood for adults. The categorical approach taken by the Supreme Court in *Graham*, *Miller*, and *Roper* relates to the characteristics of the defendant (a juvenile at the time of the conduct). This was made even clearer in *Montgomery* where the Court held that a punishment (LWOP) can be categorically barred for a subgroup of individuals ("children whose crimes reflect transient immaturity") while remaining potentially available for other juveniles ("those rare children whose crimes reflect irreparable corruption.") As the Court made clear:

> The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.

Montgomery, 136 S.Ct. at 734. After *Montgomery*, the People simply have no argument on this point. The sole purpose of the Eighth Amendment is not, as the People suggest, simply to act "as a check on the legislature's authority to impose a specific punishment."

Contrary to the State's position in the Answer Brief (*e.g*., p. 11), courts -- not just legislatures -- are restricted by the Eighth Amendment's categorical rules.

The *Miller* Court made clear that there are constitutional limits on both the legislature's ability to proscribe certain punishments for juveniles as well as limits on the trial court's ability to impose certain sentences on juveniles. *Miller*, at 2469 ("we require [the sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.").

The People essentially argue that a punishment cannot be "cruel and unusual" until the majority of state legislatures have already voluntarily abandoned the punishment. (AB at 9-10). They argue that, until this occurs, Mr. Lucero cannot prove any objective indicia against an aggregate life imprisonment sentence "based on separate crimes against multiple victims." *Ibid*.

At the outset, it must be remembered that Guy Lucero was not involved in "separate crimes against multiple victims." While there were multiple victims, there was but one criminal incident.

The People's real complaint is with the judicial methodology used. They wished that courts looked only to "objective indicia" of societal disapproval of a sentencing practice, as evidenced through reformative actions already taken by state legislatures. AB at 9-10, 25-26 (citing state statutes ostensibly to show a lack of a "national consensus"). For this proposition, the People cite the case that

Roper overruled, *Stanford v. Kentucky,* 492 U.S. 361 (1989). *See* AB at 25 ("In attempting to meet that test, a defendant carries a "'heavy burden'" of establishing a national consensus against a sentencing practice. *Stanford v. Kentucky*, 492 U.S. 361, 373 (1989), *abrogated on another ground by Roper*, 543 U.S. at 574-75.") In fact, *Stanford* was abrogated on the exact ground for which the People cite it, the outmoded notion that the Court cannot correct an Eighth Amendment violation until after legislatures have already acted:

> Last, to the extent *Stanford* was based on a rejection of the idea that this Court is required to bring its independent judgment to bear on the proportionality of the death penalty for a particular class of crimes or offenders, *id*., at 377–378 (plurality opinion), it suffices to note that this rejection was inconsistent with prior Eighth Amendment decisions, *Thompson[v. Oklahoma*, 487 U.S. 815, 833–838 (1988)] (plurality opinion); *Enmund* [*v. Florida,* 458 U.S.782,797 (1982)]; *Coker [v. Georgia*, 433 U.S. 584, 597 (1977)] (plurality opinion). It is also inconsistent with the premises of our recent decision in *Atkins.* 536 U.S., at 312–313, 317–321.

Roper, 543 U.S. at 574-575. In *Roper,* the Court not only repudiated the "objective indicia" standard used in *Stanford v. Kentucky*, but the Court said that it had already done so in *Atkins v. Virginia*, *supra*:

> [In *Atkins*,] [t]he inquiry into our society's evolving standards of decency did not end there. The *Atkins* Court neither repeated nor relied upon the statement in *Stanford* that the Court's independent judgment has no bearing on the acceptability of a particular punishment under the Eighth Amendment. Instead we returned to the rule, established in decisions predating *Stanford*, that ‘ 'the Constitution contemplates that in the end our

> own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.' ' 536 U.S., at 312 (quoting *Coker v. Georgia,* [*supra*, at 597] (plurality opinion)).

Roper, 543 U.S. at 563. Thus, the Court rejected the *Stanford* notion that courts are reduced to a mere tabulation of societal preferences, as expressed through statutes. Courts play a much more active role and make a determination "in the exercise of our own independent judgment…." *Roper*, 543 U.S. at 563. While national and international norms are not irrelevant to the consideration, there is no required "objective indicia" test, rather the Court brings its own judgment to bear on these constitutional questions.

In keeping with this judicial methodology, the *Graham* Court did not find the sentence unconstitutional merely because more states than not had already abandoned the practice of imposing LWOP sentences for juvenile non-homicide offenses. The reason why the Court held that it is unconstitutional to sentence a juvenile to death (*Roper*); why it held it was unconstitutional to sentence a juvenile who did not commit a homicide to LWOP (*Graham*), and why it is unconstitutional to impose a LWOP sentence on all but the rarest of juveniles (*Miller; Montgomery*) is that, for purposes of sentencing, children are "constitutionally different." The Supreme Court in *Montgomery* requires this Court, and lower Colorado courts, to distinguish between classes of juveniles:

> *Miller* ...[has] rendered life without parole an unconstitutional penalty for ‘a class of defendants because of their status’—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.

Montgomery, 136 S.Ct. at 734. If a line must be drawn, it is drawn between a juvenile “whose crimes reflect the transient immaturity of youth,” and other persons – adults and juveniles whose crimes reflect incorrigibility, not youth.

C. THE PEOPLE UTTERLY FAIL TO ACCOUNT FOR THE DIFFERENCES BETWEEN CHILDREN AND ADULTS.

The People make no attempt to argue that the sentencing statutes and judicial practices that resulted in Guy Lucero’s effective life imprisonment sentence have any meaningful mechanisms for taking into account his youth. In fact, the People never offer any theory for how the constitutionally-significant differences between children and adults are to be accounted for in this case. The Supreme Court has ruled that children are constitutionally different and thus cannot be sentenced in the same manner as adults. Nothing the Supreme Court said in *Roper, Graham, Miller,* or *Montgomery* applies only to children who kill. Nor does it make any sense that, constitutionally, sentencing courts must take youth into account in murder cases, but not in attempted murder cases.

The People never account for the fact – recognized in *Roper, Graham, Miller*, and *Montgomery* – that because of the innate characteristics of children, as

evidenced by scientific and sociological studies, they are constitutionally different than adults for purposes of sentencing. Especially after *Montgomery*, it cannot be doubted that life imprisonment can be imposed upon a juvenile only (1) when a person is killed, and, even when a person is killed, (2) when the child's crime reflects "irreparable corruption." *See Montgomery*, at 726 (quoting *Miller*, at 2469 and *Roper*, at 573); *id.*, at 734 (again, *quoting Miller*, at 2469 and *Roper*, at 573). *See also id.*, at 736. The People offer no mechanism for how, in a case like Guy Lucero's, this Court or the sentencing court is supposed to distinguish between "children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." *Montgomery,* at 735. So, under the State's approach, LWOP would be extremely rare when the victim dies, but not when the victim lives.

The question before this Court is not simply whether the sentence imposed fits squarely within the contours of a categorical ban (*i.e.*, LWOP for a juvenile nonhomicide offender) but rather how this Court is going to ensure that the sentence imposed is proportional under the Eighth Amendment, considering the fact that "children are constitutionally different from adults for purposes of sentencing" (*Miller,* at 2464). "[A]n offender's age ..."is relevant to the Eighth Amendment, ... [and] criminal procedure laws that fail to take defendants'

youthfulness into account at all would be flawed." *Miller*, at 2465-66 (*quoting Graham*).

Penological justifications are relevant to the constitutional analysis, *see e.g. Graham*, 560 U.S. at 71, *citing Kennedy v. Louisiana*, 554 U.S. 407, 440-447 (2008); *Roper,* 543 U.S. at 571–572; *Atkins,* 546 U.S. at 318–320. The significant constitutional differences between children and adults "diminish the penological justification for imposing the harshest sentence on juvenile offenders even when they commit terrible crimes." *Id.*, at 2465. This is why procedures alone will not satisfy the constitution:

> *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.' *Id.*132 S.Ct., at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects " 'unfortunate yet transient immaturity.' " *Id.,* at 132 S.Ct., at 2469 (quoting *Roper,* 543 U.S., at 573).

Montgomery, at 734.

Even with appropriate procedures, the Court still must answer a question of constitutional significance: whether a sentence of 84 years upon a person who was 15 years old at the time of the crime, and where the crime involved a single impetuous act which did not result in serious injury to anyone, is penologically

justified, as it is the existence of a penological justification for the sentence that ensures that the sentence does not violate the Eighth Amendment.

D. THE BETTER-REASONED CASES ARE THOSE THAT APPLY *GRAHAM* AND *MILLER* TO AGGREGATE SENTENCES.

The People contend that *Graham* does not apply here because *Graham* addressed only an actual LWOP sentence resulting from a single crime, not aggregate sentences based on separate crimes. AB, p. 3. The issue of aggregate sentences was not directly before the *Graham* Court, so it is not at all surprising that the Court did not directly address that issue.

However, as noted above, the Court's decisions in *Graham, Roper,* and *Miller* were not based solely on the fact that the punishments at issue were already rarely imposed. Those decisions were based in large part upon the constitutional fact that sentencing practices that are permissible for adults are not necessarily permissible for children. This feature of the *Graham* opinion is driving not only the number of jurisdictions that are quickly adopting this view, but also the superior quality of the constitutional analysis in such cases.

As shown below, at least the following jurisdictions have held that *Graham* and *Miller* are applicable to term-of-years sentences:

<u>State appellate and/or Supreme Courts</u>

Bear Cloud v. State, 334 P.3d 132 (Wyo. 2014) (*Miller* applies not only to 'LWOP' cases but also to functional equivalent of LWOP, in this case an aggregate sentence of over 45 years imprisonment.)

State v, Null , 836 N.W.2d 41 (Iowa 2013) (imposition of aggregate sentence does not remove case from ambit of *Miller* principles.)

State v. Ronquillo, 361 P.3d 779 (Wash. App. Div. 1, 2015) (*Miller* applies to *de facto* aggregate sentence of 51.3 years.)

Henry v. State, 175 So. 3d 675 (Fla. 2015) (Florida Supreme Court concluded the *Graham* Court had no intention of limiting its new categorical rule to sentence denominated under the exclusive term of 'life in prison;' therefore defendant's ninety-nine year sentence for sexual battery, kidnapping, robbery, carjacking, and burglary of a dwelling, arising out of acts against a single victim when he was 17 years of age violated *Graham.*)

Gridine v. State, 175 So. 3d 672, 672 (Fla. 2015) (seventy-year sentence for juvenile convicted of attempted first-degree murder, attempted armed robbery and aggravated battery violated *Graham*).

People v. Caballero, 282 P.3d 291 (Cal. 2012) (Sentence of 110 years to life for juvenile convicted of three attempted murders violated *Graham*).[3]

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[3]Following the California Supreme Court's ruling in *Caballero*, the California Legislature enacted Senate Bill No. 260, adding section 3051 to the Penal Code, which provides minors sentenced to a determinate term of years or a life term an opportunity to prove their rehabilitation and secure release on parole after serving a prescribed term of confinement. Cal. Penal Code § 3051. Depending upon the age of the offender at the time of the offense, review is provided at 15 years, or 20 years, or 25 years. *See id.*, subsections (b)(1), (2), and (3).

Casiano v. Comm'r of Corr., 115 A.3d 1030 (Conn. 2015) (*Miller* applies to 50-year sentence for juvenile shooter convicted of felony murder. The 50-year sentence was a functional life imprisonment sentence as there was no hope for release.)

State v. Springer, 856 N.W.2d 460, 470 (S.D. 2014)("We are not implying that a lengthy term-of-years sentence, like the 261-year sentence here, can never be a *de facto* life sentence. We emphasize that Springer's parole eligibility at age 49 prevents us from concluding that he received a *de facto* life sentence. Springer has a meaningful opportunity to obtain release.")

Brooks v. State, 2015 WL 7782309 (Fla. App. 5th Dist. Dec. 4, 2015)(Concurrent 65-year sentences imposed on a juvenile constituted cruel and unusual punishment.)

Francis v. State, 2015 WL 7740389 (Fla. App. 3rd Dist. Dec. 2, 2015)(finding unconstitutional an 85-year aggregate sentence on a juvenile for two counts of armed robbery, one count of attempted armed robbery and two counts of aggravated assault with a firearm)

State v. Boston, 363 P.3d 453 (Nev. 2015)(*Graham* applies to aggregate sentences that constitute life without the possibility of parole for a nonhomicide offense committed by a juvenile.)

State v. Keodara, 364 P.3d 777, ¶¶29-31 (Wash. Ct. App. 2015) (unpublished portion of opinion)(831-month sentence based on the statutory presumptive minimum term for all charges which included first-degree murder and first-degree assault, with firearm specifications, and first-degree unlawful possession of firearm violated *Miller*.)

Federal District Courts

Thomas v. Pa., Civ. No. 10-4537, 2012 WL 6678686 (E.D. Pa. 2012) (not reported in F.Supp.2d)(84-year sentence violates *Graham*.)

United States v. Mathurin, 2011 WL 2580775 (S.D. Fla. 2011) (not reported in F.Supp.2d) (A 307-year aggregate sentence pursuant to mandatory consecutive sentencing must be reduced to 53 years.)

Hayden v. Keller, No. 5:10-CT-3123-BO, ___ F.Supp.3d ___, 2015 WL 5773634 (E.D.N.C. 2015) (not reported in F.Supp.3d) (In §1983 actions, Juvenile offender's life sentence for several nonhomicide offenses while labeled as one "with parole" (eligible for parole after 20 yrs) violates the Eighth Amendment because it is the functional equivalent of a life sentence.)

<u>Federal appellate courts</u>

Moore v. Biter, 725 F.3d 1184 (9th Cir. 2013) (Sentence of over 254 years for forcible rape and other nonhomicide crimes committed when the defendant was 16 years old violated the Eighth Amendment pursuant to *Graham*.)

McKinley v. Butler, 809 F.3d 908 (7th Cir. 2016)(*Miller v. Alabama* applies to two consecutive 50-year sentences imposed on a juvenile for a homicide.)

Given the explosion of cases in a wide variety of jurisdictions around the country, it is flat wrong to suggest (as the People do, AB at 29) that the majority of jurisdictions have declined to apply *Graham/Miller* to aggregate term-of-years sentences.

In reviewing the other jurisdictions, however, it is not their mere number that is persuasive, it is their reasoning. The constitutional differences between children and adults do not somehow vanish if the sentence imposed is denominated as a LWOP sentence and arises from a single criminal count, or is a

lengthy term-of-years sentences comprised of two, three, four or five separate sentences. This fact was not lost upon the Washington Court of Appeals which recently addressed this very same argument and applied *Miller* to a term-of-years sentence:

> In *Miller,* one of the petitioners, Kuntrell Jackson, was convicted of felony murder *and* aggravated robbery. *Miller,* 132 S.Ct. at 2461. The Supreme Court reversed his mandatory life sentence with no indication that it should be treated differently on remand than a mandatory life sentence for a single crime. Since *Miller,* the United States Supreme Court in several cases involving aggregate crimes has granted certiorari, vacated sentences of life without parole, and remanded for further consideration in light of *Miller. Blackwell v. California,* 133 S.Ct. 837 (2013); *Mauricio v. California,* 133 S.Ct. 524 (2012); *Bear Cloud v. Wyoming,* 133 S.Ct. 183, 183–84 (2012); and *Whiteside v. Arkansas,* 133 S.Ct. 65, 66 (2012). On remand in *Bear Cloud,* the Wyoming Supreme Court held that an individualized sentencing hearing was required under *Miller,* not only when the sentence is life without parole, but also when aggregate sentences result in the functional equivalent of life without parole. *Bear Cloud v. State*, 334 P.3d 132, 141–44 (Wyo.2014); *see also Null,* 836 N.W.2d at 73 ('we agree with appellate courts that have concluded the imposition of an aggregate sentence does not remove the case from the ambit of *Miller* 's principles.') Viewing these more recent authorities as persuasive, we conclude that the aggregate nature of Ronquillo's 51.3–year sentence does not protect it from a *Miller* challenge.

State v. Ronquillo, 361 P.3d at 785. As the Nevada Supreme Court recognized in *State v. Boston*, 363 P.3d at 457:

> Nowhere in the *Graham* decision does the Supreme Court specifically limit its holding to offenders who were convicted for a *single* nonhomicide offense, and the State does not cite to any language in the case to support its claim that the *Graham* decision does.

In fact, as the Nevada Court observed, the defendant in *Graham*

> did not receive the specific sentence of life without parole; he received the sentence of life in a jurisdiction that abolished its parole system. *Graham,* 560 U.S. at 57. Therefore, just like Boston, Graham received the functional equivalent of life without parole. *See id.*

Id. at 457. *See also Moore v. Biter*, 725 F.3d at 1192:

> *Graham* recognized that " '[i]n some cases ... there will be negligible difference between life without parole and other sentences of imprisonment.' " *Id.* at 2028 (quoting *Harmelin v. Michigan,* 501 U.S. 957, 996 (1991)).

As the overwhelming majority of jurisdictions have concluded after *Graham* and *Miller*, there is no cogent reason not to apply *Graham* to aggregate sentences. *Graham* held that every juvenile convicted of a nonhomicide offense must be granted a meaningful opportunity for release. While *Graham* held that a state does not have to guarantee the release of a juvenile offender, it made it abundantly clear that the court cannot make the determination at sentencing that a juvenile offender is so incorrigible that he should be denied a meaningful opportunity for release.

In *Montgomery, supra,* the Supreme Court held that (1) LWOP sentences are unconstitutional even for those juveniles whose acts resulted in a death if the juvenile's crime does not demonstrate "irreparable corruption" and (2) absent such a finding, the juvenile's sentence must provide for a meaningful opportunity for release. While the issue of an effective LWOP sentence was not before the *Montgomery* Court, its reasoning shows that the juvenile's status creates the categorical bar. The juvenile's status is the same regardless of whether the life imprisonment sentence results from imposition of a sentence on one count, or on two or more counts.

To conclude that *Graham* is inapplicable to aggregate sentences, this Court would have to conclude that *Graham* must be interpreted as meaning that a juvenile who is convicted of more than one count is constitutionally different than other juveniles (and constitutionally different than juveniles convicted of homicide) and that by virtue of being convicted of more than one count, he or she has forfeited his or her right to be treated constitutionally different than an adult for purposes of sentencing. *See McKinley v. Butler, supra*. To read *Graham* and *Miller* in such a fashion effectively eviscerates their holdings. As the California Supreme Court in *Caballero* noted:

> Graham's analysis does not focus on the precise sentence meted out. Instead, as noted above, it holds that a state must provide a juvenile offender 'with some realistic opportunity to obtain release' from prison during his or her expected lifetime.

Caballero, 282 P.3d at 295 (quoting *Graham*, *supra*, at 82). *See* Amicus Brief of Colorado Criminal Defense Bar, pp. 2-5.

For the People to suggest that Mr. Lucero's status as a juvenile at the time the crime was committed is somehow immaterial to the considerations before the court because he was convicted of more than one count "applies the holding of *Graham* in a manner that contravenes *Graham's* foundational principle," namely, "that courts must account for differences between children and adults." *LeBlanc v. Mathena,* No. 2:12CV340, 2015 WL 4042175, at *12 (E.D. Va. July 1, 2015). This court should reject the People's interpretation, keeping in mind the very significant fact that Mr. Lucero was sentenced for multiple counts occurring in one criminal episode, not for various counts arising in separate criminal incidents. This criminal incident reflects the transient qualities of youth that are a scientific, constitutionally-recognized fact. The aggregate sentence imposed here violates the foundational constitutional underpinnings of *Graham* and *Miller,* which require that juveniles be sentenced under laws that take their youth into account in

a meaningful way, and that imposition of sentences of life imprisonment should be exceedingly rare.

The Answer Brief notes in passing that there are cases that contradict its position, AB at 35, citing *Bramlett, Gridine*, and an earlier Florida intermediate appellate court opinion (*Manuel v. State,* 48 So.3d 94, 97 (Fla. App. 2010)), but the People offer no answer to any of these cases and suggest no reason that they are not powerful persuasive authority. Instead the People cite cases that they claim support their position that *Graham* is limited to a sentence denominated as LWOP imposed for a single count. The cases cited by the People (AB, pp. 29-31) suffer defects, and should not be relied upon for guidance by this Court:

1. Two of the cases cited by the People do not address the issue but rather based their ruling on their belief that the sentence imposed provides a meaningful opportunity for relief (*See Orr v. United States*, 2013 U.S. Dist Lexis 173191 (W.D.N.C. 2013)(finding sentence not the functional equivalent of life) (no finding that *Graham* did not apply to aggregate sentences); *Adams v. State*, 707 S.E.2d 359 (Ga. 2011) (25 year sentence followed by lifetime parole for sex offense on young child);

2. One of the cases involved sentencing of an adult where the issue was whether a juvenile adjudication could be used to enhance the adult sentence for a drug offense committed by the adult (*United States v. Scott*, 610 F.3d 1009 (8th Cir. 2010));

3. One case, decided before *Miller*, involved an LWOP sentence for a juvenile convicted of homicide (*Loggins v. Thomas,* 654 F.3d 1204 (11th Cir. 2011);

4. One involves an order entered in a federal district court case (*Bell v. Haws*, CV09-3346-JFW MLG, 2010 WL 3447218, at *2 (C.D. Cal. July 14, 2010) report and recommendation adopted, 2010 WL 3430515 (C.D. Cal. Aug. 27, 2010), which was subsequently vacated by the 9th Circuit Court of Appeals (*vacated sub nom. Bell v. Lewis*, 462 Fed. Appx. 692 (9th Cir. 2011)(not reported in F.2d).

5. At least one case is in limbo because the State Supreme Court has taken up the issue and it is still pending. The People cite *People v. Gay,* 960 N.E. 2d 1272 (Ill. App. 4th 2011), but fail to mention that in *People v. Reyes*, 2015 IL App (2d) 120471, 2015 WL 2088882, the Court made the same finding but in *Reyes*, the Illinois Supreme Court has agreed to hear the case. *See People v. Reyes*, 39 N.E.3d 1009 (Ill. 2015).

5. That leaves only two state cases – one from Arizona (*State v. Kasic*, 265 P.3d 410 (Ariz. Ct. App. 2011) and one from Louisiana (*State v. Brown*, 118 So. 3d 332 (La. 2013)) – and two federal AEDPA cases from the 6th Circuit Court of Appeals (*Bunch v. Smith*, 685 F.3d 546 (6th Cir.2012) and *Goins v. Smith*, 556 F. Appx 434 (6th Cir. 2014)), both of which are federal habeas cases and thus apply an AEDPA standard of review.[4]

The Answer Brief cites numerous state statutes presumably for the proposition that various state sentencing statutes give the sentencing court discretion as to whether to impose consecutive or concurrent sentences, and thus the People conclude that these states approve of the imposition of decades-long

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[4] Under AEDPA, the question is whether the state court decision is clearly contrary to an explicit, controlling decision issued by the United States Supreme Court. The petitioner has to show that "the state court's ruling ... was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrison v. Richter*, 562 U.S. 82, 103 (2011). That standard is not relevant in this court.

sentences upon juveniles. This is hardly relevant, given the rapid change in sentencing practices following *Graham*, *Miller*, and *Montgomery*.

In *Montgomery*, the U.S. Supreme Court picked only one state statute to highlight – a Wyoming statute that permits juveniles to seek parole after confinement for twenty-five (25) years. *See Montgomery*, at 736, citing Wyo. Stat. Ann. § 6–10–301(c)(2013) Colorado does not have such a statute. Instead, Colorado has a statute that makes no provision for treating juveniles differently than adults, and that does not provide juvenile offenders with a meaningful opportunity for release upon reaching biological maturity.

E. THE SENTENCE IMPOSED ON MR. LUCERO IS UNCONSTITUTIONALLY CRUEL BECAUSE IT DOES NOT PROVIDE A MEANINGFUL OPPORTUNITY FOR RELEASE.

Guy Lucero's sentence violates *Graham*'s constitutional mandate that a juvenile offender be afforded a "meaningful opportunity for release." Providing an opportunity for release only after decades in prison denies this young offender an opportunity to live a meaningful life in the community and meaningfully contribute to society. *See, e.g., State v. Pearson,* 836 N.W.2d 88, 96 (Iowa 2013) (striking down a 35-year sentence that would render the juvenile eligible for parole at age 52 because it violated *Miller* by "effectively depriv[ing] of any chance of an earlier release and the possibility of leading a more normal adult

life."). In 2015, the Connecticut Supreme Court applied *Miller* to a sentence that required that the juvenile offender serve fifty years before being eligible for release:

> A juvenile offender is typically put behind bars before he has had the chance to exercise the rights and responsibilities of adulthood, such as establishing a career, marrying, raising a family, or voting. Even assuming the juvenile offender does live to be released, after a half century of incarceration, he will have irreparably lost the opportunity to engage meaningfully in many of these activities and will be left with seriously diminished prospects for his quality of life for the few years he has left..... The United States Supreme Court viewed the concept of 'life' in *Miller* and *Graham* more broadly than biological survival; it implicitly endorsed the notion that an individual is effectively incarcerated for 'life' if he will have no opportunity to truly reenter society or have any meaningful life outside of prison. *See Graham, supra*, at 560 U.S. at 75 (states must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' for juvenile nonhomicide offender).

Casiano, 115 A.3d at 1046-47.

As used in *Graham*, the term "meaningful opportunity for release" means more than simply, as the People suggest, that such an opportunity be given at some point within Mr. Lucero's lifetime. *Graham* used the term "*meaningful* opportunity to obtain release based on maturity and rehabilitation," and criticized an LWOP sentence because it denies a juvenile offender the right to reenter the community, which signifies an irrevocable judgment about the offender's value and place in society. (*Graham,* 560 U.S. at 74-75). It would be untenable to

conclude that, for a crime where no one was seriously injured, a sentence requiring a juvenile offender to serve forty years behind bars before earning a first parole opportunity provides a "meaningful opportunity to obtain release" within the meaning of *Graham*. At best, this sentence creates a mathematical possibility of a release when he is approaching sixty years old (and is eligible for AARP membership). Such a sentence denies hope of a meaningful life outside prison walls and provides as little incentive for rehabilitation as a sentence that is explicitly "without parole." The fact that over the next two or three decades Mr. Lucero can accumulate additional earned and/or good time and thus become eligible for parole a few years earlier does nothing to address the foundational constitutional underpinnings of *Graham* and *Miller*.

Amicus Colorado Criminal Defense Bar persuasively argues that "meaningful opportunity for release" is not the same thing as "parole eligibility," and explains why the Colorado parole statutes fail to provide such an opportunity. While *Graham, Miller*, and *Montgomery* provide a fundamental Eighth Amendment liberty interest, the Colorado statutes provide little more than wishful thinking, with a mere "privilege," no rights, no meaningful opportunity for notice or to be heard, and nothing that would meet the high bar set by the U.S. Supreme Court's constitutional holdings in this area. The People effectively concede the

Amicus' arguments by completely ignoring them. Thus, this Court should not attempt to adopt an arbitrary rule that a parole hearing after, say, forty years would satisfy the Eighth Amendment.

F. GUY LUCERO IS NOT ASKING THIS COURT TO "AUTONOMOUSLY ORDER" A PARTICULAR SENTENCE, BUT RATHER, HE ASKS THIS COURT TO GIVE GUIDANCE TO THE DISTRICT COURT.

The People confabulate Mr. Lucero's suggestions for guidance to the lower court on resentencing with a request that this Court impose a particular sentence. Mr. Lucero agrees that this Court would not be the appropriate body to impose a sentence. He asks this Court to rule that his aggregate sentence is unconstitutional, strike it down, and remand for imposition of a constitutional sentence.

As this Court will undoubtedly elect to provide guidance to the district court on the factors in should consider in arriving at a constitutional sentence, Mr. Lucero has offered such guidance in both the Opening and Reply Briefs. This Court should also draw upon the sources and arguments provided by the Amici Briefs in support of Mr. Lucero, and upon the well-reasoned opinions of courts around the country that are granting relief.

The first undeniable principle is that the sentencing court must hold an individualized sentencing hearing where the sentencer must actually give mitigating effect to the characteristics of youth as set forth in *Graham* and *Miller*:

> *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity.

See Montgomery, 136 S. Ct. at 734 (internal quotation marks omitted; citing *Miller* and *Roper*).

Mere acknowledgment of the juvenile's chronological age is insufficient to satisfy the Eighth Amendment. Instead the sentencing courts must consider fully the principles annunciated in *Miller,* including, according to the Alabama Supreme Court, the following:

> (1) the juvenile's chronological age at the time of the offense and the hallmark features of youth, such as immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile's diminished culpability; (3) the circumstances of the offense; (4) the extent of the juvenile's participation in the crime; (5) the juvenile's family, home, and neighborhood environment; (6) the juvenile's emotional maturity and development; (7) whether familial and/or peer pressure affected the juvenile; (8) the juvenile's past exposure to violence; (9) the juvenile's drug and alcohol history; (10) the juvenile's ability to deal with the police; (11) the juvenile's capacity to assist his or her attorney; (12) the juvenile's mental-health history;

(13) the juvenile's potential for rehabilitation; and (14) any other relevant factor related to the juvenile's youth.

Ex parte Henderson, 144 So. 3d 1262, 1284 (Ala. 2013)*, citing Commonwealth v. Knox*, 50 A.3d 732 (Pa.Super.Ct. 2012). *See also People v. Gutierrez*, 324 P.3d 245, 268-69 (Cal. 2014); *Caballero, supra* ; *Null, supra; Parker v. State*, 119 So.3d 987, 995–996, 998 & fn. 18 (Miss.2013); *State v. Hart*, 404 S.W.3d 232, 241 (Mo.2013); *Commonwealth v. Batts,* 620 Pa. 115, 66 A.3d 286, 297 (2013); *Bear Cloud,* 294 P.3d at 47; *People v. Carp*, 828 N.W.2d 685, 720 (Mich. App. 2012); *Daugherty v. State,* 96 So.3d 1076, 1079 (Fla.Dist.Ct. App. 2012); *State v. Fletcher*, 112 So.3d 1031, 1036–1037 (La.Ct.App.2013); *see also Williams v. Virgin Islands,* 59 V.I. 1024, 1041 (V.I.2013), all setting forth factors the sentencing Court must consider pursuant to *Graham* and *Miller* before imposing either a LWOP sentence on a homicide offender or a lengthy term-of-years sentence on a non-homicide offender.

III. THIS COURT SHOULD REVERSE THE COURT OF APPEALS' RULING THAT THE APPEAL OF THE DENIAL OF MR. LUCERO'S RULE 35(B) MOTION WAS REALLY AN APPEAL OF A RULE 35(C) MOTION.

The People argue that the Court of Appeals converted Lucero's motion "so that his claim could be reviewed." AB, p. 40. This argument ignores, however,

the procedural implications of that "conversion," i.e., it may effectively bar forever him raising his meritorious constitutional challenges to his conviction.

Mr. Lucero would have been in a far better position had the Court of Appeals adhered to the rule of party presentation. If the motion had been denominated a Rule 35(b) claim, it is true, the appeal probably would have been dismissed. But that would have left Mr. Lucero free to raise his constitutional challenges to his conviction, and any constitutional claims to his sentence that were not otherwise procedurally barred.

The People essentially regard this dilemma as one implicating the effective assistance of postconviction counsel, i.e., "the fact that his counsel decided not to raise additional Crim. P. 35(c) claims when it raised his *Graham* claim." AB at 42, n. 3. Obviously, Counsel did not raise "additional" Rule 35(c) claims because she was filing as a Rule 35(b) motion; the prosecutor responded as if it was a Rule 35(b) motion, and the district court treated it as a Rule 35(b) motion. It was the Court of Appeals that *sua sponte* "converted" the Rule 35(b) motion into a Rule 35(c) motion. If this Court upholds the Court of Appeals' conversion, then post-conviction counsel would indeed be deemed to have rendered ineffective assistance, because Mr. Lucero is entitled to effective assistance of post-conviction counsel (*Silva v. People*, 156 P.3d 1164 (Colo. 2007)). Ineffective

assistance of postconviction counsel -- by, ostensibly, not knowing that she was, in fact, filing a Rule 35(c) motion -- should not act as a procedural bar to Mr. Lucero's meritorious post-conviction claims. But it was the Court of Appeals -- not postconviction counsel -- that created this situation after the fact, and it is shows why this Court should reverse the Court of Appeals' violation of the rule of party presentation.

The People urge this Court to ignore Mr. Lucero's concerns about the successivity problem created by the Court of Appeals because it allegedly "was not "comprised within the issue presented and should not be considered." AB at 42, n. 3. That is ridiculous. The successivity problem was the reason he sought review on this issue, and that is apparent from the petition for the writ of *certiorari* and the *certiorari* question itself. Mr. Lucero's argument about the successivity problem shows the harm from the Court of Appeals' action.

The People assert that "[a]t his Crim. P. 35(b) hearing, Lucero was allowed to present evidence regarding his youth, his family dynamics, and his potential for rehabilitation." AB p. 43, citing R. Tr. 6/10/11, pp. 18-22. However, the record belies this. The district court, at the hearing stated as follows:

> All right. This comes on -- the Court has ordered us -- or I have ordered us to have this 35(b) hearing on the motion for reconsideration.'m -- you know, it's -- it's unusual for me to have a

> hearing like this, and I just want everybody to know where I stand at this point, so I'm not pulling any punches at this time.My biggest consideration in holding this hearing was to see Mr. Lucero again and hopefully to hear from him. I have read the motion. I have read the response. I know everybody's positions, but I want you to be able to adequately give this to me. I rather doubt I'm going to give you a decision today, so that everybody understands when we leave this court house, we're not going to know. I'd rather do a written decision on this. I don't mean any disrespect to anyone, but I want to make certain that I get this one right. What I would like to do is begin with Mr. Lucero's side. I would prefer that everything that we can do be done by offer of proof and then move to the prosecutor and then give Mr. Lucero an opportunity to speak to me directly.

R.Tr. 6/10/11 pp. 2-3, ll. 9-4.

Clearly the district court treated this as a Rule 35(b) motion, and thus rather than granting an evidentiary hearing, which would be the presumption at a Rule 35(c) hearing – *see People v. Lopez*, 13CA1681 (Colo.App. Apr. 23, 2015) -- and rather than actually considering the mitigating factors of youth as *Graham, Miller*, and *Montgomery* require, the district court simply proceeded on "offers of proof." Thus, Mr. Lucero was not allowed to present evidence regarding his youth, his family dynamics, his potential for rehabilitation, or information that would show why this crime was not the result of incorrigibility or irreparable corruption, but the transient qualities of youth.

The proper remedy in this case is for this Court to remand this matter for a full evidentiary hearing on both the issue of the appropriate constitutional sentence

after *Graham, Miller*, and *Montgomery*, and to further allow Mr. Lucero to proceed on the Rule 35(c) post-conviction motion that he filed in the district court shortly after the court of appeals' surprise "conversion" of his Rule 35(b) appeal to a Rule 35(c) appeal.

CONCLUSION

This Court should reject the People's suggestion that this Court turn a blind eye to Guy Lucero and leave him serving an 84-year-sentence for a single incident occurring when he was merely fifteen years old, even though such a sentence indisputably does not provide a meaningful opportunity for release upon his reaching maturity.

Respectfully submitted this 22nd day of February, 2016.

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of February 2016, I transmitted via the Integrated Colorado Courts E-filing system (ICCES) the foregoing Reply Brief to John Lee, Criminal Appeals Division, Office of the Attorney General.

/s/ *Eric A. Samler*
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