

No. SJC-11693 & No. SJC-09265

Commonwealth of Massachusetts
Supreme Judicial Court

COMMONWEALTH

vs.

SHELDON MATTIS

COMMONWEALTH

vs.

JASON ROBINSON

ON APPEAL FROM THE SUFFOLK SUPERIOR COURT

**CORRECTED BRIEF FOR THE COMMITTEE FOR PUBLIC COUNSEL SERVICES AS
AMICUS CURIAE IN SUPPORT OF MESSRS. MATTIS AND ROBINSON**

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INTRODUCTION

Having taken testimony from four eminent experts regarding “the latest advances in scientific research on adolescent brain development and its impact on behavior . . . after the age of seventeen,” *Commonwealth v. Watt*, 484 Mass. 742, 756 (2020), the Superior Court (Ullmann, J.) ruled that mandatory death-in-prison sentences for first degree murder are disproportionate under art. 26 of the Declaration of Rights when imposed on adolescents who were between eighteen and twenty years of age at the time of the crime, because such sentences are based on a “mismatch[] between the culpability of a class of offenders and the severity of a penalty.” Add. 59, quoting *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 659 (2013) (*Diatchenko I*).

This ruling rests on a number of “Preliminary Findings” made on the basis of Judge Ullmann’s evaluation of the “expertise and credibility of the [expert] witnesses” whose testimony he heard and received,¹ and of the “reliability” of various peer-reviewed studies

¹ Judge Ullmann heard the testimony of Dr. Steinberg (who testified before him in Mr. Robinson’s case) and received the transcripts of the testimony of Drs. Galván, Kinscherff, and Morse (who testified before Judge Roach in Mr. Mattis’s case). After the cases were consolidated by this Court, Judge Ullmann, “on [his] own initiative” brought Dr. Galván back for the purpose of confirming that no new studies had been published which contradicted her testimony before Judge Roach that the science had established that late adolescents were more prone to sensation seeking than both individuals under eighteen and individuals over twenty-one, and were more susceptible to peer influence than older individuals. Add. 36 (referring to the “limited additional testimony” that Dr. Galván provided before Judge Ullmann on April 8, 2022).

presented to him that supported his findings regarding age and brain development. Add. 37. The ruling rests as well on nine “Core Findings of Fact,” Add. 43-46, in which Judge Ullmann finds in essence that, in all of the ways that mattered to this Court’s constitutional analysis in *Diatchenko I*, adolescents between eighteen and twenty are the same as seventeen-year-olds.²

No claim has been made that any of the factual findings made below are clearly erroneous. In the absence of such error—and in the context of postconviction fact-finding regarding a claim that a prison sentence imposed on a juvenile offender is constitutionally disproportionate under art. 26—this Court “accept[s] the judge’s subsidiary findings of fact . . . and leave[s] to the judge the responsibility of determining the weight and credibility to be given . . . testimony presented at the motion hearing.” *Commonwealth v. Perez*, 480 Mass. 562, 567 (2018) (*Perez II*) (citation omitted). Here, Judge Ullmann’s findings—which were made in accord with this Court’s specific remand orders following its decision in *Watt*—bespeak a thorough understanding of the relevant science, come to this Court unchallenged,

² The core facts found below are that, as a group, adolescents between eighteen and twenty: (a) have less ability than older individuals to “control their impulses in emotionally arousing situations” and are more similar to sixteen- and seventeen-year-olds in this regard than they are to twenty-one and twenty-two year-olds; (b) are more prone to “sensation seeking,” including risk-taking in pursuit of rewards, than both individuals under eighteen and individuals over twenty-one; (c) are more susceptible to peer influence and more likely to engage in risky behavior in the presence of peers than older individuals; and (d) have a greater capacity to change than older individuals “because of the plasticity of the brain during these years.” Add. 43-46.

and should “be left undisturbed.” *Custody of Eleanor*, 414 Mass. 795, 799 (1993).

This Court “review[s] independently the application of constitutional principles to the facts found.” *Perez II*, 480 Mass. at 568 (citation omitted). Judge Ullmann applied art. 26’s principles of proportionality, as explained by this Court in *Diatchenko I*, see 466 Mass. at 669,³ to the facts found to conclude that, by the age of twenty-one, the brain of a late adolescent is not sufficiently developed, either structurally or functionally, such that it can reliably be said, “at that point time,” *id.* at 670, that a particular offender is beyond redemption. This conclusion is compelled by the science and follows ineluctably from the logic of *Diatchenko I*. The Court should therefore affirm the ruling below and should also extend the prohibition against life without the possibility of parole under art. 26 to late adolescents who had not reached the age of twenty-one at the time of the offense. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (the command of equal justice under law “is essentially a direction that all persons similarly situated should be treated alike”).

INTEREST OF AMICUS CURIAE

The Committee for Public Counsel Services (CPCS) is a statewide agency mandated to plan, oversee, and coordinate the delivery of legal services to certain indigent litigants, including criminal

³ “In the present circumstances, the imposition of a sentence of life in prison without the possibility of parole for the commission of murder in the first degree by a juvenile under the age of eighteen is disproportionate not with respect to the offense itself, but with regard to the particular offender.” *Diatchenko I*, 466 Mass. at 669.

defendants charged with first degree murder. G.L. c. 211D, §§ 1, 5, 8. There are approximately 200 people in addition to Sheldon Mattis and Jason Robinson in the custody of the Department of Correction serving mandatory life-without-parole sentences for first degree murder convictions and who were between eighteen and twenty years of age at the time of the offense. See Brief for Amici Curiae, Boston University Center for Antiracist Research, *et al.* at 15, *Commonwealth v. Mattis*, No. SJC-11693. CPCS has an interest in this case because the Court's decision will affect the substantial interests of these individuals, most of whom are currently or were formerly represented by CPCS-assigned counsel, and many of whom have been serving their life-without-parole sentences for decades. See *Diatchenko I*, 466 Mass. at 666 (decision foreclosing life without parole for specific class of persons must be applied to those members of class whose convictions are final in order to ensure that such persons "do not face a punishment that our criminal law cannot constitutionally impose on them").

SUMMARY OF THE ARGUMENT

I. Since 2014, the Massachusetts Parole Board has held about seventy parole hearings for the juvenile homicide offenders who were serving mandatory life-without-parole sentences for first degree murder convictions when *Diatchenko I* was decided, and who became eligible for parole consideration as a result of that decision. An analysis of the outcomes of those hearings makes clear that the remedy fashioned by this Court for the *Diatchenko* cohort can protect public safety and provide members of a class of homicide offenders originally sentenced to serve unconstitutional life-without-parole sentences with a

meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Infra* at 10-17.

2. Dirceu Semedo, Alfred Therrien, and William Florentino are late adolescent homicide offenders. Each was charged with a homicide that occurred when they were between eighteen and twenty years of age, each was convicted of first degree murder, and each is serving life without the possibility of parole, as mandated by G.L. c. 265, § 2 and G.L. c. 127, § 133A. Collectively, they have been behind bars for 131 years. Their criminal conduct and the trajectory of their lives before and after prison embody the validity of the “central intuition” on which *Diatchenko I* is based—that young people “who commit even heinous crimes are capable of change.” *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). *Infra* at 18-27.

ARGUMENT

- I. Experience indicates that the remedy adopted by this Court for the original *Diatchenko* cohort—declaring the members of the affected class eligible for parole consideration after serving fifteen years of their life sentences—can be applied to protect public safety and provide late adolescents serving constitutionally disproportionate life-without-parole sentences with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Nine years ago, when this Court held that “all sentences of life without the possibility of parole for juvenile offenders violate art. 26 of the Massachusetts Declaration of Rights,” *Diatchenko I*, 466 Mass. at 675 (Lenk, J., concurring), it declared that Gregory Diatchenko and the other sixty-five juvenile homicide offenders then serving such sentences in Massachusetts would be eligible for parole when they

had served fifteen years of their life sentences. *Id.* at 674.⁴ At that time, the Court stated, it would become “the purview of the Massachusetts parole board to evaluate the circumstances surrounding the commission of the crime, including the age of the offender, together with all relevant information pertaining to the offender’s character and actions during the intervening years since conviction.” *Id.* By this process, members of the *Diatchenko* cohort would be afforded their rights under both art. 26 and the Eighth Amendment to a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.*, quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010). See *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016) (“A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. . . . Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have

⁴ The Court in *Diatchenko I* noted the parties’ understanding that there were then “approximately” sixty-two individuals who were in the custody of the Department of Correction serving mandatory life-without-parole for first degree murder convictions predating *Miller* and who were under eighteen at the time of the offense. *Diatchenko I*, 466 Mass. at 658 n.7. Shortly after *Diatchenko I* was released, the Parole Board assembled a list identifying sixty-five individuals who fell into this class, along with their new parole eligibility dates. Add. 61 (“Juvenile First Degree Murder List”) (Feb. 3, 2014). The parole eligibility dates for a few of the listed individuals have since been corrected. One person not on the list was recognized to be a member of the cohort in 2019 following a correction of the record as to his date of birth. See n.15, *infra* at 19.

since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment”).⁵

The remedy that this Court fashioned for the *Diatchenko* cohort has worked well overall.⁶ Forty-four members of the cohort had already served at least fifteen years by December 24, 2013, when *Diatchenko I* was issued. Those individuals became “eligible to be

⁵ Justice Spina’s opinions for the Court in *Diatchenko I* and *Commonwealth v. Brown*, 466 Mass. 676 (2013), which were decided on the same day, devised this elegant remedy by invoking the “principle of severability,” see *Opinion of the Justices*, 330 Mass. 713, 726 (1953), to invalidate, as applied to persons who were under eighteen at the time of the offense, so much of G.L. c. 265, § 2 and G.L. c. 127, § 133A as then provided that “no person” serving a life sentence for first degree murder was eligible for parole. *Diatchenko I*, 466 Mass. at 667, 672-673 & n.17; *Brown*, 466 Mass. at 680-689. Juvenile homicide offenders serving sentences that were now unconstitutional by dint of those provisions of the Legislature’s sentencing scheme for murder would be subject instead to “the next most severe penalty [then] provided” in that scheme, *viz.*, life with the possibility of parole after fifteen years. *Id.* at 682. The Legislature subsequently amended the statutory provisions in issue to align with the new landscape. See *Diatchenko v. District Attorney for the Suffolk Dist.*, 471 Mass. 12, 15 n.8 (2015) (*Diatchenko II*), citing G.L. c. 265, § 2, as amended through St. 2014, c. 189, § 5; G.L. c. 127, § 133A, as amended through St. 2014, c. 189, § 3.

⁶ The following analysis of how the *Diatchenko* cohort has fared before the Parole Board is based on (1) information from the Board, current as of October 28, 2022, in response to a public records request regarding the outcomes of all “*Diatchenko* hearings” since 2014, Add. 63; (2) the “Juvenile First Degree Murder List” referred to in n.4, *supra* at II, Add. 61; and (3) a review of the records of decision issued by the Board following hearings for members of the cohort. Such records “indicat[e] the reasons for the decision” of the Board to grant or deny parole. G.L. c. 127, § 130. They are public records, see *id.*, and most of those pertaining to members of the *Diatchenko* cohort are available on the [Board’s website](#).

considered for parole immediately.” *Diatchenko I*, 466 Mass. at 673. Since December 24, 2013, twelve more individuals—for a total of fifty-six—have reached the fifteen-year mark. Fifty of these fifty-six individuals (89 percent) have been provided with at least an initial parole hearing. Thirty-seven of those who have had hearings (74 percent) have been granted parole.⁷ Sixteen of those granted parole (43 percent) were found suitable for release after their initial hearing.⁸ The other twenty-one individuals (57 percent) were denied parole after their initial hearing, given a setback ranging from two to five years, and paroled after a review hearing or hearings.⁹ Thirteen of the fifty

⁷ By way of comparison, the overall parole rates for all lifers in Massachusetts from 2016 through 2020 have ranged from 24 percent to 49 percent. [Massachusetts Parole Board, 2021 Annual Statistical Report 21](#).

⁸ It should be noted that most of those members of the cohort paroled after their initial hearing had already been imprisoned for well over fifteen years—some for over thirty years—when they became parole eligible as a result of *Diatchenko I*. The most extreme example is Frederick Clay, who had been behind bars for thirty-five years—since the age of sixteen—when a majority of the Parole Board voted to parole him following his initial hearing in 2015. See *Clay v. Massachusetts Parole Board*, 475 Mass. 133, 133-134 (2016).

⁹ In response to the previously-noted public records request, see n.6, *supra* at 12, the Parole Board assembled two lists of “*Diatchenko* Related Parole Hearings,” the first pertaining to all cases in which parole was granted and the second pertaining to all cases in which parole was denied. Add. 63-65. The names of eighteen individuals appear on both lists. In the letter accompanying its response, the Parole Board states that individuals’ names appear on both lists “if they were rescinded or revoked the first time and reappear for another hearing.” Add. 65. This is not accurate. With a couple of exceptions, the individuals whose names appear on both lists were denied parole after their

juvenile lifers who have had hearings (26 percent) have not been granted parole after one or more hearings. The Parole Board states that three [of the thirty-seven] individuals who were granted parole after a *Diatchenko* parole hearing were subsequently subject to parole violation or parole forfeiture proceedings.” Add. 65.¹⁰

At least until *Miller* was decided in 2012, a juvenile homicide offender seeking to come to terms with the meaning of “life without the possibility of parole” had to face the fact that, no matter how he might behave or what he might accomplish behind bars, he was destined to die before ever being “allowed to go upon parole outside prison walls and inclosure.” *Dinkins v. Massachusetts Parole Board*, 486 Mass. 605, 611 (2021), quoting G.L. c. 127, § 130. See *Graham v. Florida*, 560 U.S. 48, 70 (2010) (suggesting that life without parole may be cruel in the constitutional sense because it “means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days”) (citation omitted).¹¹

initial hearing and later granted parole after a review hearing, and therefore fall into both categories of cases for which the Board provided lists.

¹⁰ The Board’s response does not list these individuals or provide information about the nature of the violations, e.g., whether they were “technical” in nature, for a “non-arrest,” or for a “new arrest.” See [Massachusetts Parole Board, 2021 Annual Statistical Report](#) at 21. That said, over 80 percent of Massachusetts parolees whose parole was revoked in 2021 were violated on either “technical” grounds or for a “non-arrest.” *Id.*

¹¹ This “denial of hope,” *Graham*, 560 U.S. at 70, underlies the Court’s discussion in *Diatchenko I* as to how and why “imprisonment until

Diatchenko I changed that. Most notably for purposes of these cases, lifers who may have resigned themselves to their fate and seen no purpose in seeking to improve themselves now had a concrete reason to engage in the rehabilitative programming and personal development necessary to demonstrate a probability that they would be able to successfully make the difficult transition back into society if paroled.

Since 2014, the Board has held approximately seventy hearings to consider whether a juvenile homicide offender originally sentenced to life without the possibility of parole deserved to be granted a parole permit. These hearings, like all lifer hearings, have been open to the public and held before the Board's "full membership." G.L. c. 127, § 133A. A reading of the records of decision pertaining to these hearings suggests that, for members of the *Diatchenko* cohort, getting a positive parole vote has been neither easy nor impossible. Particularly with respect to those juvenile lifers who received a positive vote after having initially been denied, the Board's decisions support the propositions that the fact of parole eligibility and the process of periodic evaluations of suitability for supervised release can themselves be rehabilitative. See Lyons, Parole: Evidence of Rehabilitation and Means to Rehabilitate, 58 Boston B. J. 21, 22 (Fall 2014) (decisions to parole juvenile homicide offenders who became parole-eligible by virtue of *Diatchenko I* "can . . . be accurately described as both evidence

death" is "strikingly similar, in many respects, to the death penalty." *Diatchenko I*, 466 Mass. at 670 & n.15.

of rehabilitation and a means of effecting the sentencing goal of rehabilitation”).

For example, in 2003, when he was sixteen years old, Kentel Weaver shot and killed a fifteen-year old boy in his neighborhood whom he suspected of having stolen a friend’s bicycle. He was convicted of first degree murder and sentenced to life without parole, but became parole-eligible in 2019 pursuant to *Diatchenko I*. At his initial parole hearing, held on June 18, 2019, Mr. Weaver was asked about an incident seven years previously, when he stabbed another prisoner. “Mr. Weaver said that he felt hopeless while serving life without the opportunity for parole. After the *Diatchenko* decision, Mr. Weaver described a turning point, where he began to incur fewer disciplinary reports.” [Massachusetts Parole Board, In the Matter of Kentel Weaver \(June 1, 2020\)](#). Parole was denied and Mr. Weaver was given a three-year setback. *Id.*

Mr. Weaver had his review hearing on June 9, 2022. On October 2022, the Board granted Mr. Weaver a parole permit to a long-term residential treatment program. In its record of decision, the Board stated that Mr. Weaver had “invested fully in his rehabilitation, completing Violence Reduction, Restorative Justice reading group, and GPMP,” and also had “obtained his GED and associates degree and completed vocational training.” [Massachusetts Parole Board, In the Matter of Kentel Weaver \(Oct. 19, 2022\)](#). “The Board also notes that

[Mr. Weaver] has benefited from the programming to fully address his need areas.” *Id.*¹²

If this Court holds that life without the possibility of parole violates art. 26 as applied to late adolescents convicted of a first degree murder that was committed before the offender turned twenty-one, there is no reason to think that those who become eligible for parole as a result will fare, as a group, either substantially better or substantially worse than the *Diatchenko* cohort. Rather, it can reasonably be assumed that many will be paroled while others will not, and that the Parole Board will in any event continue to strictly construe its mandate of granting a parole permit to a prisoner “only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with

¹² See also [Massachusetts Parole Board, In the Matter of John Jones \(May 16, 2016\)](#) (initial parole hearing resulting in denial of parole and three-year setback: “From 1995 to 2013, . . . Mr. Jones did not engage in any programming. When asked about this period of his incarceration, Mr. Jones told the Board that he had become resigned to his fate. He said that he believed he had committed a terrible crime and, therefore, deserved to remain incarcerated for the remainder of his life. After learning he was eligible for parole, Mr. Jones reengaged in programming in 2013 and has been active since that time); [Massachusetts Parole Board, In the Matter of John Jones \(Apr. 29, 2019\)](#) (Jones’s review hearing resulting in granting of parole: “When the Board noted that [Mr. Jones’s] initial institutional adjustment was poor, Mr. Jones acknowledged his poor behavior, but attributed it to his youth, ongoing substance issues, and the reality that he would likely die in prison”); [Massachusetts Parole Board, In the Matter of Malik Abdul-Aziz \(June 15, 2022\)](#) (review hearing resulting in granting of parole following initial denial and five-year setback: “[Mr. Abdul-Aziz’s] adjustment has significantly improved since he became eligible for parole pursuant to *Diatchenko*”).

appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society.” G.L. c. 127, § 130. See also 120 Code Mass. Regs. § 300.04.

II. Judge Ullmann’s findings pertaining to the capacity of late adolescents to change are supported by the stories of prisoners currently in the custody of the Department of Correction who have spent decades behind bars following convictions for first degree murders committed when they were between eighteen and twenty years old.

The three lifers whose criminal conduct and lives before and after their convictions are summarized below were each between eighteen and twenty years of age when they offended. Each has already spent a “lifetime” behind bars, in the sense that they have been imprisoned longer than they had been free. Their stories illustrate the capacity of late adolescents to change for the better as they mature, even without a rational basis for believing that their self-improvement could make a difference to a parole board.

Dirceau Semedo was eighteen years old on April 22, 1992, when he and between ten and twelve others, mostly males in their teens and early twenties, gathered in front of a restaurant in Dorchester at around midnight. Without provocation, one of the young men in the group, James Villaroel, threw a bottle against the front of the restaurant and shouted, “Let’s shut him down.” Mr. Villaroel, who was twenty-three years old, led the group into the restaurant. Without saying a word, Mr. Villaroel struck Charleston Sarjeant—a customer waiting for his order—in the head with a large radio. Within seconds, the group surrounded the victim and began hitting him. Witnesses

placed Mr. Semedo at the scene and testified that he held the victim by the hood of his jacket and kicked, punched, and stomped him. A minute or two into the attack, Mr. Villaroel began stabbing the victim while others in the group continued to hit and kick him. The victim died of multiple stabs wounds with blunt head trauma. It was a senseless and brutal murder.

Mr. Semedo was prosecuted on a joint venture theory, convicted of first degree murder, and sentenced to life without the possibility of parole.¹³ James Villaroel and other coventurers—including Aristides Duarte and Adriano Barros—were tried separately and also convicted of first degree murder.¹⁴ Mr. Duarte and Mr. Barros were both seventeen at the time of the crime and both have been paroled.¹⁵ A few

¹³ See *Commonwealth v. Semedo*, 422 Mass. 716 (1996).

¹⁴ See *Commonwealth v. Barros*, 425 Mass. 572 (1997); *Commonwealth v. Johnson*, 425 Mass. 609 (1997).

¹⁵ *Duarte*: In 2013, about six months before *Diatchenko I* was decided, the trial judge (Mulligan, J.) reduced Mr. Duarte’s conviction to second degree murder, making him immediately eligible for parole. In reducing the conviction, Judge Mulligan “relied on a variety of factors, including Duarte’s lack of a prior criminal record; his young age at the time of the murder; that Villaroel, rather than Duarte, was the instigator and principal aggressor; and that Duarte’s participation in the assault was fairly attributable to his association with influential peers.” [Massachusetts Parole Board, In the Matter of Aristides Duarte \(Nov. 21, 2014\)](#). Mr. Duarte was paroled following his initial hearing on April 14, 2014, having been in prison for twenty-two years. *Id.*

Barros: Adriano Barros’s true name is Joao Miranda. He was seventeen on the date of the murder. When arrested, he gave a false name and a false date of birth, which identified him as eighteen years old. It was not until 2019 that the record was corrected to reflect his actual date

months older than these codefendants, Mr. Semedo has begun his fourth decade behind bars.

Mr. Semedo's life following his conviction reveals the transformation of an impressionable and impulsive teenager who succumbed to peer-group pressure and poor judgment into a middle-aged man who has dedicated himself for years to improving the lives of his fellow prisoners. He is a devout Roman Catholic and serves as the clerk to the chaplain at Old Colony Correctional Center (OCCC). He distributes the Eucharist during services when no ordained priest is available and sets up worship services and spaces for all religious denominations at OCCC.

For many years, Mr. Semedo has participated in Project Youth, a program that brings high school students to OCCC to hear from prisoners about the consequences of criminal behavior. Talking to young people about the paths he took as a youth has helped Mr. Semedo gain an understanding of the harm he caused and the importance of educating young people about ways to avoid the impulsive actions and bad decisions characteristic of young adults. He has also been trained in OCCC's "Companion Program," in which he works with a fellow prisoner who is mentally disabled to help him with daily activities and advocate appropriately for his needs. Prisoners such as Mr.

of birth and he became eligible for parole under *Diatchenko I*. He appeared before the Board for his initial hearing in 2020. He was denied parole and given a two-year setback. He was granted parole in 2022 after a review hearing. He was forty-nine years old and had been in prison for thirty years. [Massachusetts Parole Board, In the Matter of Joao Miranda \(Apr. 28, 2021\)](#); [Massachusetts Parole Board, In the Matter of Joao Miranda \(Dec. 1, 2022\)](#).

Semedo who participate in this program are chosen based upon a history of good behavior and a demonstrated ability to work productively and sensitively with vulnerable peers.

Dirceau Semedo is more than thirty years away from the horrific crime which resulted in the death of a blameless man. In many ways, he bears little resemblance to the teenager who jointly participated in that crime. Yet, he remains keenly aware of the irreversible harm that he caused, and of the importance of continuing his work for positive change from within the prison as a manifestation of his own transformational change and rehabilitation.

Alfred Therrien was twenty years old on June 3, 1967, when he held up Natoli's Farm Market in Framingham and shot two people in the process, killing one of them. He was charged with first degree murder—punishable at the time by death—as well as attempted murder, assault with a dangerous weapon, armed robbery, and theft of a motor vehicle. In order to avoid the death penalty, Mr. Therrien pleaded guilty to all charges except first degree murder, to which he offered a plea to second degree murder. On March 13, 1968, the judge accepted that plea over the Commonwealth's objection, stating that he “doubt[ed] whether a jury would impose the death penalty on these people because of their ages.” (Mr. Therrien's codefendant was sixteen.)

Two months later, Mr. Therrien moved to withdraw his guilty plea to second degree murder. At the hearing on that motion, held on March 14, 1969, the judge asked Mr. Therrien “several times” if he understood that, by withdrawing his plea, he would be subjecting himself to trial on a first degree murder charge (for which the mandatory

punishment, if the jury did not recommend death, was life without the possibility of parole). Mr. Therrien “answered in the affirmative,” adding by way of explanation, “I now think I can be found not guilty.” The judge allowed the motion, commenting that “[t]he law cannot protect fools from themselves. . . . [F]ar be it from me to deny you your right to be tried for first degree murder.” Accordingly, Mr. Therrien was tried for and convicted of murder in the first degree. “[T]he jury recommended that the death penalty be not imposed.” Albert Therrien has been serving life without the possibility of parole ever since.¹⁶

Albert Therrien is now seventy-six years old. If, at the age of twenty-two, he had not decided to ask the judge to vacate his guilty plea to second degree murder, he might have been paroled forty years ago. An older defendant with better-developed reasoning skills probably would not have made such a foolish decision. See *Miller v. Alabama*, 567 U.S. 460, 477-478 (2012) (sentencing a young defendant as if he were an adult ignores the possibility “that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys”).

During the first decades of his fifty-five years behind bars, Mr. Therrien was housed in MCI-Walpole’s “Ten Block,” one of the most dangerous prisons in the country. Drugs, gangs, and violence were routine. As a young man with no direction, and in his mind, with nothing to lose, Mr. Therrien succumbed to drugs, alcohol, and

¹⁶ *Commonwealth v. Therrien*, 359 Mass. 500, 502-503 (1971).

violence. He was abused and beaten as a child, ran away from home, and ended up in “reform schools,” including the notorious Lyman School for Boys and the Shirley Industrial School for Boys. Mr. Therrien does not offer his own difficult childhood as a justification for his crimes. Instead, he fully accepts responsibility for them and tries to focus his efforts on things he can now control, including his own behavior and his interactions with others. Over time, and with the help of counseling and programming, Mr. Therrien resolved to change his life. He had dropped out high school. Over the course of his life behind bars, Mr. Therrien studied for and was awarded a GED, an associate’s degree through Bunker Hill Community College, and a bachelor’s degree, *magna cum laude*, through Boston University Metropolitan College. With other prisoners at MCI-Norfolk, he established a curriculum for a juvenile counseling program called Project Revamp. As the inmate-director of the program, he has provided counseling to hundreds of young people who came into the prison with school groups. Project Revamp was designed to encourage young people to take seriously their choices and to choose a goal of making something positive out of their lives. In Project Revamp, young people are warned about the dangers of criminal behavior. Mr. Therrien also counseled youth while he was in minimum security at the Concord Farm and NCCI-Gardner. His goal was to help young people avoid the fate he brought upon himself. He has been successful in these programs because he understands first hand the mindset of troubled youth and also knows that young people have a great capacity to mature and change with counseling and the passage of time.

Mr. Therrien has proved himself to be reliable and trustworthy. Before Willie Horton, he was granted twenty-four successful forty-eight hour furloughs. He did not abuse the trust given him and followed the rules while he was out and returned to prison each time. Although prisoners serving life without parole can no longer be classified to the lowest security settings, Mr. Therrien's raw score on the DOC's classification instrument indicates that he continues to be an appropriate candidate for a minimum security setting.

Over the course of fifty-five years, Mr. Therrien has seen the ebb and flow of Massachusetts' correctional system. He has taken advantage of opportunities for self-improvement and to prove that he has been rehabilitated. When he was granted furloughs and when he was housed in minimum security facilities, he was able to demonstrate that he was not a threat to the public. He has learned to steer clear of trouble even in places where trouble and confrontation are common. He has gone for decades without a disciplinary infraction, and, although he is a lifer, he has earned well over a thousand days of good time for program participation and prison industry employment.

For decades, Mr. Therrien sought purpose in his prison life and overcame many obstacles. However, as he now approaches the ninth decade of his life, he has begun to question whether he should forgo future medical treatment. This case has given him hope that he may have an opportunity to demonstrate how far removed he is from the deeply troubled late adolescent whose criminal conduct caused such pain and destruction. Remorse and sorrow remain deep parts of who he is—a quiet and thoughtful senior citizen who does what he can to

be of service to others within his prison community. He evolved in this way with no rational reason to expect that he would ever be released. Alfred Therrien stands as proof that a person who makes serious mistakes in his youth is not by definition irredeemable. To the contrary, through education, programming, and long personal introspection, he has turned his life around.

William Florentino was twenty years old on December 16, 1977, when he entered a liquor store in Everett with William Smallwood. Smallwood announced, “This is a holdup,” and shortly thereafter shot and killed a customer who failed to respond to Smallwood’s command to move to the rear of the store. The Commonwealth proceeded against Mr. Florentino on a theory of joint venture and felony murder. He was convicted of first degree murder and armed robbery and sentenced to life without the possibility of parole.¹⁷

Although he did not pull the trigger, Mr. Florentino fully accepts responsibility for the murder. He had been drinking and doing drugs before he went into the liquor store with Smallwood. His actions were impulsive and dangerous. Their tragic consequences were a culmination of a troubled childhood. Mr. Florentino was raised in a family struggling with substance use. He was physically abused by his family members. His upbringing was chaotic and violent, and his behavior as a child was often the result of impulsivity and a failure to consider consequences.

While in prison, Mr. Florentino has participated in events that transformed his thinking about himself, the world, and the people

¹⁷ *Commonwealth v. Florentino*, 381 Mass. 193, 194 (1980).

around him. He joined twelve-step groups, vowed to swear off drugs and alcohol, and embraced his Catholic faith and its teachings. Now sixty-five years old, Mr. Florentino has a long record of positive achievements. He earned a bachelor of arts degree from Boston University. He has participated in scores of programs that focus on rehabilitation and nonviolence, including restorative justice and peer counseling, and he has worked for decades in the institutional religious community as a chaplain's clerk, acolyte, and eucharistic minister. In this community, Mr. Florentino has organized and participated in dozens of events supporting the prison faith community. He has been allowed to work in prison industries that involve a high level of trust, including taking care of children in the Children's Playhouse program and working as a carpenter in places within the prison that are not open to general population. He has consistently held jobs and participated in programming that have resulted in hundreds of days of earned good time, even though, as a lifer, good time cannot affect his sentence. Mr. Florentino had a difficult start in life, but committed himself decades ago to taking responsibility for his actions and to spend his time seeking positive results for himself and those around him. He has not had a disciplinary ticket in over ten years and, based on his DOC classifications, his risk of recidivism and violence are both low.

* * *

Dirceau Semedo, Alfred Therrien, and William Florentino are three of many examples of the transformation and rehabilitation of people who, during their late adolescence, committed crimes with tragic consequences. Each was found guilty by a jury of their peers.

Their convictions were affirmed by this Court. Their criminal conduct is not excused. But there is now a scientific lens through which that conduct can be better understood. The arc of these men's lives illustrate the validity of the scientific research as to how brain development impacts behavior. They should be given an opportunity to demonstrate that they will live and remain at liberty without violating the law and that their release on parole is not incompatible with the welfare of society.

CONCLUSION

For the foregoing reasons, the Court should extend the rule and remedy of *Diatchenko I* to persons convicted of first degree murder and sentenced to life without the possibility of parole for offenses that occurred before such persons had reached the age of twenty-one.

Respectfully submitted,

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ADDENDUM

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 0084CR10975
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SJC-11693

COMMONWEALTH

vs.

JASON ROBINSON

COMMONWEALTH

vs.

~~SHELDON MATTIS~~

**FINDINGS OF FACT ON BRAIN DEVELOPMENT AND SOCIAL BEHAVIOR
AND RULING OF LAW ON WHETHER MANDATORY LIFE-WITHOUT-PAROLE
SENTENCES FOR DEFENDANTS AGE 18 THROUGH 20 AT THE TIME OF THEIR
CRIMES VIOLATES THE MASSACHUSETTS DECLARATION OF RIGHTS**

I. INTRODUCTION

Pursuant to G.L. c. 265, § 2(a), the Massachusetts statute that governs the penalties for murder, the defendant in Suffolk Co. Case No. 0084CR10975, Jason Robinson (“Robinson”), and the defendant in Suffolk Co. Case No. 1184CR11291, Sheldon Mattis (“Mattis”), are serving mandatory sentences of life in prison without the possibility of parole based on their convictions for first-degree murder in separate crimes committed when they were respectively 19 and 18 years old.

As of December 2021, both cases were pending before the Supreme Judicial Court (“SJC”) following evidentiary hearings in the Superior Court before two different judges on

