COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-11693

COMMONWEALTH

v.

NYASANI WATT and SHELDON MATTIS

MOTION BY AMICI DISTRICT ATTORNEYS FOR THE NORTHWESTERN AND BERKSHIRE DISTRICTS FOR LEAVE TO FILE LETTER IN LIEU OF BRIEF

Pursuant to Mass. R. App. P. 2 and 15, amici District Attorneys for the Northwestern and Berkshire Districts hereby move for leave to submit a short letter to the Court in lieu of a brief.

Amici respectfully submit that there is good cause to suspend the Rules of Appellate Procedure applicable to the filing of briefs with respect to the letter amici seek leave to submit. It is two pages in length and serves to inform the Court of the position of two District Attorneys rather than present extended legal argument. Amici submit that a short letter better serves the Court's interests in efficiency and brevity.

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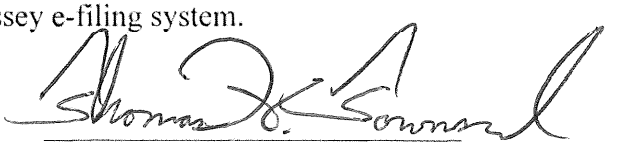
CERTIFICATE OF SERVICE

Northwestern, SS. November 15, 2019

I, Thomas H. Townsend, hereby certify that I have this day caused the foregoing motion for leave to file a letter in lieu of a brief, and the letter to the Supreme Judicial Court of even date, to all counsel of record via the Massachusetts Odyssey e-filing system.



Thomas H. Townsend

November 15, 2019

Supreme Judicial Court
John Adams Courthouse
1 Pemberton Square
Suite 2500
Boston, MA 02108

Re: *Commonwealth v. Nyasani Watt & Sheldon Mattis*, SJC-11693

Dear Chief Justice Gants and Associate Justices of the Supreme Judicial Court:

The District Attorneys for the Northwestern District (representing Franklin County, Hampshire County, and the Town of Athol) and the Berkshire District (representing Berkshire County) write in support of the position that art. 26 of the Massachusetts Declaration of Rights precludes the imposition of a mandatory sentence of life in prison without the possibility of parole for offenders who commit murder when they are age 18, 19, or 20. See Defendants' principal brief, pp.74-78; Defendants' reply brief, pp.6-9; Amicus brief, Commonwealth v. Garcia, SJC-11423, pp.39-42. Instead, such offenders should receive an individualized sentencing hearing consistent with Miller v. Alabama, 567 U.S. 460, 477-480 (2012).

Our views matter. The United States Supreme Court has repeatedly proclaimed that the views of "prosecutors weigh heavily in the balance" in determining the scope of the Eighth Amendment's prohibition of cruel and unusual punishments. Thompson v. Oklahoma, 487 U.S. 815, 833 (1988), quoting Edmund v. Florida, 458 U.S. 782, 797 (1982). See Spaziano v. Florida, 468 U.S. 447, 464 (1984). This Court should accord the views expressed in this letter comparable consideration in determining the scope of art. 26's prohibition of cruel or unusual punishments.

We submit that permitting 18-, 19-, and 20-year-olds to be sentenced, without an individualized inquiry, to life imprisonment without the possibility of parole, while constitutionally prohibiting as unusually harsh such a sentence for their 17-year-old counterparts, "shocks the conscience and offends fundamental notions of human dignity." Commonwealth v. Jackson, 369 Mass. 904, 910 (1976). Rather, we submit, consistent with research on adolescent-brain development, see, e.g., Icenogle, G., et al., *Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational sample*, Law and Human Behavior, 43 (1), 69-85 (2019), that art. 26 requires an individualized Miller hearing in such cases. At such a hearing, the sentencing judge would consider, in determining whether to sentence the offender to a term of life in prison without the possibility of parole, the following factors:

(1) the defendant's "chronological age and its hallmark features — among them, immaturity, impetuosity, and failure to appreciate risks and consequences";

(2) "the family and home environment that surrounds" the defendant;

(3) "the circumstances of the homicide offense, including the extent of [the defendant's] participation in the conduct and the way familial and peer pressures may have affected him" or her;

(4) whether the defendant "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth — for example, [the defendant's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the defendant's] incapacity to assist his [or her] own attorneys"; and

(5) "the possibility of rehabilitation."

Commonwealth v. Costa, 472 Mass. 139, 147 (2015), quoting Miller, supra. We foresee that, after such a hearing, there may be 18- to 20-year-olds who will be judged to deserve a life sentence without the possibility of parole. But the very fact of an individualized hearing ensures that such a sentence is consonant with justice and constitutional dictates.

Respectfully submitted,

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