IN THE SUPREME COURT
STATE OF WYOMING
SHAWNA GOETZ, CLERK
FILED
March 17, 2025
10:44:54 AM
CASE NUMBER: S-24-0323

IN THE SUPREME COURT, STATE OF WYOMING

CHRISTOPHER ROBERT HICKS,	)	
	)	
Appellant,	)	
	)	
v.	)	No. S-24-0323
	)	
THE STATE OF WYOMING,	)	
	)	
Appellee.	)	

BRIEF OF APPELLEE

Bridget Hill #6-3616
Wyoming Attorney General

Jenny L. Craig #6-3944
Deputy Attorney General

Kristen R. Jones #7-5203
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
(307) 777-7977

ATTORNEYS FOR APPELLEE

TABLE OF CONTENTS

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Cases **Page No.**

Cases **Page No.**

Cases **Page No.**

Cases **Page No.**

Statutes

Statutes **Page No.**

Rules

Other Authorities

Other Authorities **Page No.**

STATEMENT OF JURISDICTION

This appeal arises from the denial of a motion to correct an illegal sentence filed by Christopher Robert Hicks in the District Court for the Sixth Judicial District, Campbell County, Wyoming. (4564 R. at 1349-57).[1] The district court filed the order denying the motion on December 5, 2024. (*Id.*). An order denying a motion to correct an illegal sentence is an appealable order. *Majors v. State*, 2017 WY 39A, ¶ 5, 401 P.3d 889, 890 (Wyo. 2017). As required by Rule 2.01 of the Wyoming Rules of Appellate Procedure, Hicks timely filed his notice of appeal within thirty days of the order, on December 6, 2024. (4564 R. at 1358). Therefore, this Court has jurisdiction to determine the constitutionality of Hicks's sentences under article 5, section 2 of the Wyoming Constitution.

Hicks also challenges the constitutionality of three Wyoming statutes and asks this Court to clarify his constitutional rights under those statutes. (Appellant's Br. at 47). However, he did not comply with the jurisdictional requirement that the Attorney General be given notice and the opportunity to be heard in the district court proceedings. (4564 R. at 1335); Wyo. Stat. Ann. § 1-37-113. Accordingly, this Court does not have jurisdiction to consider the constitutionality of Wyoming's first-degree murder statutes or to review the

---

[1] This appeal involves two trial court records and the records each contain both hand-written and computer-generated Bates numbering. The State will refer to the computer-generated page numbers and will identify the records by case number, for example (4564 R. at 123).

district court decision on this issue. *Tobin v. Pursel*, 539 P.2d 361, 365-66 (Wyo. 1975) (dismissing an appeal because the Attorney General was not served in the district court and the statutory notice requirement is "mandatory and go[es] to the jurisdiction of the court"); *Conrad v. Uinta Cnty. Republican Party*, 2023 WY 46, ¶¶ 28-30, 529 P.3d 482, 493-94 (Wyo. 2023) (refusing to consider constitutional challenge to a statute because the Attorney General was not notified of or allowed to participate in the litigation).

STATEMENT OF THE ISSUES

1. Does res judicata bar consideration of Hicks's claims?

2. Does this Court have jurisdiction to consider the constitutionality of three challenged statutes?

3. Did the district court abuse its discretion when it denied Hicks's motion to correct an illegal sentence in which he argued that his life-without-parole sentences violate the United States and Wyoming Constitutions because he was nineteen at the time he participated in two murders?

4. If Hicks's sentences are constitutional, are they nevertheless illegal because the sentencing court did not properly consider mitigating factors before imposing sentence?

STATEMENT OF THE CASE

I. Nature of the Case

In 2006, a jury convicted Hicks of one count of first-degree murder as an accessory and two counts of conspiracy to commit first-degree murder for his role in killing two teenagers. He was nineteen at the time of his crimes and was sentenced to three consecutive terms of life imprisonment without the possibility of parole. In 2024, Hicks filed his third motion under Rule 35 of the Wyoming Rules of Criminal Procedure. He argued that his sentences were unconstitutional due to his young age. He asserted that *Miller v. Alabama*, 567 U.S. 460 (2012), which abolished mandatory life-without-parole for juvenile offenders, must be extended to young adults through the age of twenty because brain science shows that young adults are indistinguishable from juveniles. Relatedly, he argued that the statutes regarding sentencing for first-degree murder are unconstitutional as applied to young adults. The district court denied the motion, finding that Hicks had not shown his sentences or the statutes were unconstitutional.

On appeal, Hicks asserts that the district court reached the wrong conclusion and that it applied the wrong law. He argues that his sentences are unconstitutional under the Eighth Amendment and provisions of the Wyoming Constitution that prohibit "cruel or unusual punishment" and require equal protection of the laws. Even if his sentences are constitutional, he urges this Court to remand his case for a *Miller*-style individualized sentencing hearing, because he says the district court did not consider the mitigating effect of his youth before imposing sentence.

The State contends that the district court properly denied Hicks's motion for a number of reasons. First, res judicata bars Hicks's claims because he has raised this same claim on previous occasions. To decide this issue, this Court should apply the holding in *Best v. State*, 2022 WY 25, ¶ 5, 503 P.3d 641, 643 (Wyo. 2022), which barred a similar claim by a young adult seeking to extend juvenile life sentencing jurisprudence to his own case.

Second, Hicks should not be permitted to challenge the constitutionality of statutes in this matter because he did not provide the jurisdictionally required notice to the Attorney General and because Rule 35(a) only permits the correction of "an illegal sentence." To decide this issue, this Court should consider *Conrad*, ¶¶ 28-30, 529 P.3d at 493-94, in which this Court refused to consider a constitutional challenge to a statute because the Attorney General was not notified of or allowed to participate in the district court case.

Third, if this Court considers the constitutionality of Hicks's life sentences, it should find that the district court correctly denied the motion under *Nicodemus v. State*, 2017 WY 34, 392 P.3d 408 (Wyo. 2017), and *Roper v. Simmons*, 543 U.S. 551 (2005). These cases specifically recognized that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18…. however, a line must be drawn." *Nicodemus*, ¶ 21, 392 P.3d at 414) (quoting *Roper*, 543 U.S. at 574) (emphasis removed). Hicks presents no objective indicia that societal standards of decency have shifted since the 2012 *Miller* decision or the 2017 *Nicodemus* decision such that this Court must find that sentencing young adults to life in prison is now unconstitutional.

Finally, this Court should not remand Hicks's case for a new sentencing hearing. In 2006, the court and jury considered many aggravating and mitigating factors, including Hicks's youth, before imposing sentence. Thus, Hicks has already received a *Miller*-style sentencing hearing.

II. Facts Relevant to the Issues Presented for Review

In 2005, Hicks shared a home with forty-year-old Kent Proffit, Sr. and three other men aged eighteen and nineteen: Kent Proffit, Jr., Jacob Martinez, and Jeremy Forquer. *Hicks v. State*, 2008 WY 83, ¶ 3, 187 P.3d 877, 879 (Wyo. 2008). After a plan to sell a large amount of marijuana "went bad," Proffit Sr. helped Hicks and Martinez resolve the situation, telling them that they "owed him favors." *Id.*, ¶ 4, 187 P.3d at 879.

At the time, Proffit Sr. was awaiting trial on sexual assault charges. *Id.*, ¶ 5, 187 P.3d at 879. Proffit Sr. told Hicks and Martinez that he expected them to kill the alleged victim, his fifteen-year-old stepson, BC. *Id.*; (Trial Tr., Vol. 10, at 13) (giving BC's age). Proffit Sr. also told Hicks and Martinez that he would have them killed if they did not kill BC. *Id.*, ¶ 9, 187 P.3d at 880. In late November 2005, Hicks, Martinez, and another teenager drove to BC's home. *Id.*, ¶ 10, 187 P.3d at 880. Martinez entered the home and shot BC. *Id.* The group disposed of the gun and hid the empty bullet casing at the home of a man they hoped to frame for the murder. *Id.*

Around this time, Proffit Sr. also told Hicks and Martinez that Forquer was working for the police. *Id.*, ¶ 6, 187 P.3d at 879. He said Forquer would tell the police about their involvement with drugs and their plans to kill BC. *Id.* Together, they formulated a plan to kill Forquer. *Id.* In October 2005, Hicks put Forquer in a chokehold and held him until he

lost consciousness. *Id.*, ¶ 7, 187 P.3d at 879. Martinez tightened a rope around Forquer's neck until he died. *Id.* Hicks and the other roommates then disposed of Forquer's body and cleaned the scene of his murder. *Id.*, ¶ 8, 187 P.3d at 879-80.

III. Relevant Procedural History

A. Pretrial Proceedings

The State charged Hicks with two counts of first-degree murder as an accessory under Wyo. Stat. Ann. § 6-2-101 and two counts of conspiracy to commit first-degree murder under Wyo. Stat. Ann. §§ 6-2-101 and 6-1-303(a). (4563 R. at 169; 4564 R. at 126). For each charge, Hicks could be sentenced to death, life imprisonment without parole or life imprisonment according to law if convicted. Wyo. Stat. Ann. § 6-2-102(b) (2004); § 6-1-201(b)(iii). The State sought the death penalty in relation to the murder of BC. (4563 R. at 204). As aggravating factors to justify the death penalty, it asserted Hicks "knew or reasonably should have known the victim was less than seventeen (17) years of age," that BC was a witness when he was killed, and that Hicks had also participated in Forquer's murder. (*Id.* at 204-05); *see* Wyo. Stat. Ann. § 6-2-102(h)(x).

Among many other pre-trial motions, Hicks filed a "Motion to Quash Aggravating Factors as Inconsistent with Wyoming Constitution." (4563 R. at 253; 4564 R. at 208). He argued that Wyoming Constitution article 1, section 15 lays out "a mission statement for the Penal Code," declaring "[t]he Penal code shall be framed on the humane principles of reformation and prevention." (*Id.*). He asserted that the death penalty "cannot be said to have any reformative effect." (*Id.*). In addition, he claimed the death penalty has no general deterrent effect and serves only as a specific deterrent. (4563 R. at 254; 4564 R. at 209).

Hicks asserted that none of the aggravating factors alleged by the State were "related to the humane principles of reformation and prevention," therefore the death penalty could not be imposed in his case without violating the Wyoming Constitution. (4563 R. at 253-54; 4564 R. at 208-09). The court denied this motion because this Court has held that the death penalty does not violate the Eighth Amendment or article 1, sections 14-15 of the Wyoming Constitution. (4563 R. at 482) (citing *Hopkinson v. State*, 632 P.2d 79, 150 (Wyo. 1981); *Hopkinson v. State*, 664 P.2d 43, 54 (Wyo. 1983)).

B. Convictions

On the parties' stipulation, the district court joined Hicks's two cases for trial. (4563 R. at 513). On September 1, 2006, the jury convicted Hicks of murdering BC. (4563 R. at 793). It also convicted him of conspiracy to murder BC and Forquer. (*Id.* at 792, 794). Hicks was acquitted of murdering Forquer. (*Id.* at 791).

C. Sentencing Hearings

Because the State sought the death penalty for the charges involving BC, the jury sentenced Hicks on those convictions. *See* Wyo. Stat. Ann. § 6-2-102(b) (stating "the sentencing hearing shall be conducted before the jury which determined the defendant's guilt"). The court sentenced Hicks on the third conviction related to Forquer's murder. (Oct. 20, 2006 Sent'g Hr'g). Before the first hearing, Hicks filed a list of mitigating factors for the court and jury to consider. (4563 R. at 797).

The district court also ordered a presentence investigation. (*Id.* R. at 827). The October 2006 report included information about Hicks's childhood, move to Wyoming,

school and jail discipline, brief service in and medical discharge from the Army National Guard, and mental health struggles. (*Id.* at 860-72).

1. First Sentencing Hearing

On September 6, 2006, the jury heard sentencing evidence and arguments related to the two convictions for BC's murder. (Sept. 6, 2006 Trial Tr., Vols. 19 and 20). Hicks's mother testified that he had just turned twenty "in the last couple of days." (Sept. 6, 2006 Trial Tr., Vol. 19, at 34). She agreed he was "a very young adult" and she described him as a "follower." (*Id.* at 45, 47).

A counselor from the jail also testified. (*Id.* at 49-50). She explained that women generally develop faster and mature earlier than men. (*Id.* at 51). She opined that "cognitively and emotionally" men tend to mature in their "later 20s." (*Id.* at 51-52). Hicks also called a pastor with whom he had worked in the jail. (*Id.* at 55). The pastor opined that Hicks sought forgiveness and was "capable of redemption." [2] (*Id.* at 57, 61).

During arguments, Hicks's attorney started by describing a picture of himself at the age of nineteen. (Sept. 6, 2006 Trial Tr., Vol. 20, at 27). He said, "I was a boy … I wasn't even the same person at that point in time." (*Id.*). "[A]s I matured, I had an opportunity to make something of myself." (*Id.* at 32). The attorney spoke of Hicks's history and described him as "a young man that might be somewhat lost," but was not "completely

[2] The transcript says "capable of detention," but this appears to be a typo. In context, it is clear the pastor is speaking of redemption. (Sept. 6, 2006 Trial Tr., Vol. 19, at 56-57).

depraved." (*Id.* at 31). He concluded, "this is a 19-year-old boy…. I would ask you not to kill this boy." (*Id.* at 32-33).

In rebuttal, the State asserted "this is not a case involving one bad decision" or "one monumental mistake." (*Id.* at 33). Instead, Hicks had sixty to ninety days and "multiple opportunities to change his mind." (*Id.*). The State argued that the aggravating factors in Hicks's case outweighed the mitigating evidence. (*Id.* at 35).

The district court instructed the jury that it must "consider aggravating and mitigating circumstances relevant to the question of sentence." (4563 R. at 964, 969) (citing Wyo. Stat. Ann. § 6-2-102(d)(ii)). The instructions explained, "[m]itigating circumstances include any aspect of the Defendant's background or character, or any other fact or circumstance which in fairness or mercy supports … a sentence less than death." (*Id.* at 966).

At least five more instructions reiterated that the jury must "consider" and "give effect" to mitigating circumstances presented by Hicks or independently deduced by the jury. (4563 R. at 981, 983, 984, 986, 993, 998). Instruction P listed five "statutory mitigating circumstances" the jury was required to consider: Hicks's criminal history, the extent of his participation in the crimes, whether he "acted under extreme duress or under the substantial domination of another person," Hicks's age at the time of the crimes, and any other fact of Hicks's character or the offenses "which serves to mitigate his culpability." (*Id.* at 983); *see* Wyo. Stat. Ann. § 6-2-102(j) (listing statutory mitigating circumstances). The next instruction listed additional, non-statutory mitigators advanced

by Hicks: that he voluntarily joined the military, helped law enforcement solve BC's murder, and "demonstrated good behavior during pretrial detention." (4563 R. at 984).

Instructions X and Y included forms on which the jury indicated that it unanimously agreed "that the age of the Defendant at the time of the crime is a mitigating circumstance." (*Id.* at 994, 999). It also found that Hicks "acted under extreme duress or under the substantial domination of another person" and that Hicks's depression mitigated his culpability. (*Id.*). In addition, the jury agreed that Hicks had voluntarily joined the military, helped law enforcement solve BC's murder, and "demonstrated good behavior during pretrial detention." (*Id.* at 996, 1001). The jury sentenced Hicks to two terms of life without parole. (*Id.* at 1011-12).

2. Second Sentencing Hearing

On October 20, 2006, the district court held a second sentencing hearing related to the conviction for conspiracy to murder Forquer. (Oct. 20, 2006 Sent'g Hr'g. Tr.). Because the State did not seek the death penalty for this charge, the district court made the sentencing decision.

This hearing was shorter than the first, but the district court explained that it gave "due consideration to the presentence investigation report" and had "listened to all of the testimony" at trial. (*Id.* at 15). It also found the jury's sentencing decision "instructive." (*Id.*). It imposed a third life-without-parole sentence for conspiring to murder Forquer. (*Id.* at 15). The court elected to run all three of the sentences consecutively. (*Id.* at 16).

D. Direct Appeal

Hicks appealed his convictions. *Hicks*, ¶ 1, 187 P.3d at 878. He argued that the district court should have suppressed post-arrest statements he made to law enforcement and that he was entitled to a new trial because the State suppressed exculpatory evidence. *Id.*, ¶ 2, 187 P.3d at 879. He made no argument regarding his sentences or the manner in which they were imposed. *See, generally, id.* This Court affirmed Hicks's convictions and sentences. *Id.*, ¶ 38, 187 P.3d at 885.

E. Rule 35 Motions

1. First Rule 35 Motion

In October 2020, Hicks sent an eloquent and well-reasoned letter to the sentencing judge requesting that the court modify the three life sentences to include the possibility of parole and to run concurrently. (4563 R. at 1116-17). The request did not reference Rule 35 or any other avenue of relief. (*Id.*).

In this letter, Hicks focused on his age at the time of the crimes, United States Supreme Court precedent about juvenile sentencing, and scientific discoveries surrounding adolescent brain development. He emphasized

> new Scientific studies done recently that [were] not available at the time of [his] sentencing and judgment that [have] influenced the United States Supreme Court in deciding juvenile life sentences without the possibility of parole as unconstitutional due to the fact that the human brain is not fully developed until the age of 25 years old and so therefore mandating that juvenile offenders can change and should be given a second chance.

(*Id.* at 1117). He pointed to Wyoming statutes adopted since his conviction that prohibit life without parole for juveniles. (*Id.*). Hicks also cited Wyoming's Youthful Offender

Transition Program as evidence that Wyoming recognizes "youthful offenders should be given second chances." (*Id.*). Hicks also argued that "any human being could change for the better" and that "humanitarian practices" are "the ethical moorings that hold the punitive system in check." (*Id.* at 1118).

Hicks clarified that he was not contesting the legality of his sentences because he was nineteen at the time of his crimes. (4563 R. at 1117). Nevertheless, he said his crimes reflected the fact that he "was still a teenager whose brain was not fully developed, in an abusive, life threatening, high risk, high stress environment." (*Id*.). He urged the court to reduce his sentences, which "would be following suit based off the United States Supreme Court's ruling and staying within the youthful offender science that young adults can change and should be given second chances." (*Id.*).

Hicks enclosed a 2019 position statement from Mental Health America opposing life without parole sentences for "emerging adults," defined as individuals between eighteen and twenty-five years old. (4563 R. at 1121-30). In the article, the authors discussed adolescents' difficulty with impulse control, suppression of anger, decision making, risk assessment, and other cognitive functions. (*Id.* at 1122). It declared: "It is important to emphasize that the science of brain development supporting these findings has been well-established for more than twenty-years." (*Id.*).

The authors also discussed U.S. Supreme Court precedent "recogniz[ing] the potential for adolescents to be reformed[.]" (*Id.*) (citing *Roper*, 543 U.S. at 570; *Graham v. Florida*, 560 U.S. 48, 67 (2010)). They discussed *Miller*, *Bear Cloud*, and Wyoming's requirement that juveniles be given the opportunity for parole after serving twenty-five

years of a life sentence. (*Id.* at 1124-25) (citing *Miller*, 567 U.S. 460; *Bear Cloud v. State*, 2014 WY 113, 334 P.3d 132 (Wyo. 2014)). The paper also asserted "[t]he deterrent value of life without parole has yet to be demonstrated." (*Id.* at 1126). More broadly, "research has shown that the threat of adult criminal sanctions has no measurable effect on juvenile crime." (*Id.*). The authors concluded, "using the same logic the Court used in *Graham*, emerging adults should not be subjected to mandatory life without parole." (*Id.* at 1123).

The district court denied Hicks's request because its jurisdiction to modify his sentences was limited to one year. (*Id.* at 1143). Hicks did not appeal.

2. Second Rule 35 Motion

That same month, Hicks filed a second motion for sentence reduction referencing Rule 35(b). (4563 R. at 1145). He again emphasized that he had "just turned 19" at the time of the murders, but "the brain is not fully developed until the age of 25[.]" (*Id.* at 1148-49). He said this scientific fact "should be taken into consideration in regards to laws, rights, and treatment of criminal offenses and defendants sentences." (*Id.* at 1149). He asked the district court to reduce his sentence "in light of this new science" and the ruling in *Miller*. (*Id.*).

Again, the district court dismissed Hicks's motion for lack of jurisdiction. (*Id.* at 1160). Hicks did not appeal.

3. Third Rule 35 Motion

In July 2024, with the assistance of counsel, Hicks filed a third motion challenging his sentence under Rule 35(a). (*Id.* at 1173; 4564 R. at 1010-1243). Hicks argued that the statutes which permit the imposition of life sentences for young adults are unconstitutional

"because a mandatory LWOP sentence for a late adolescent violates the individualization requirement of *Miller* as well as multiple provisions of the Wyoming Constitution." (4564 R. at 1012). He asserted youth "must be taken into consideration before imposing LWOP sentences [on young adults] because they share the *Roper* characteristics of youth." (*Id.* at 1013). Hicks claimed that in 2006 his legal team entirely failed to mention his youth during either of the 2006 sentencing hearings. (*Id.* at 1018).

The State argued in response that Hicks's motion was barred by re judicata because the issue could have been raised in Hicks's direct appeal. (4564 R. at 1339). It asserted that Hicks did not present good cause to avoid the application of res judicata because his motion was "based upon non-binding authority and policy arguments." (*Id.* at 1340, 1344-45). The State also argued that Hicks's policy arguments could not meet his "heavy burden" to demonstrate the challenged statutes were unconstitutional. (*Id.* at 1340).

The State relied on *Nicodemus*, in which the appellant was an adult but under the statutory age of majority when he committed two murders. *Nicodemus*, ¶ 24, 392 P.3d at 414. Nicodemus argued under *Miller* and the Wyoming Constitution that those under the age of minority could not be sentenced to life or life without parole. *Id.*, ¶ 29, 392 P.3d at 415. This Court rejected that argument, reaffirming an earlier holding that the death penalty and life without parole do not violate either constitution. *Id.*, ¶ 33, 392 P.3d at 416. The district court agreed that Hicks's claim was "barred" under *Nicodemus*. (4564 R. at 1352).

IV. Ruling Presented for Review

The district court denied Hicks's motion without a hearing. (*Id.*). The court based its ruling on *Nicodemus*. (*Id.*).

Like Hicks, Nicodemus argued his life sentences were unconstitutional under *Miller* and article 1 of the Wyoming Constitution. (*Id.* at 1352-53). But this Court rejected the claims. (*Id.*). It recognized that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18…. **however, a line must be drawn**." *Nicodemus*, ¶ 21, 392 P.3d at 414) (quoting *Roper*, 543 U.S. at 574) (emphasis added in *Nicodemus*). "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood." *Id.* (quoting *Roper*, 543 U.S. at 574). Applying *Nicodemus*, the district court concluded that Hicks's Eighth Amendment argument failed because the United States Supreme Court chose in *Roper* to recognize the societal distinction between those over and under eighteen years old. (4564 R. at 1353).

The district court also held that Hicks's Wyoming Constitution arguments failed under *Nicodemus*. (*Id.*). The court first determined that Hicks bore the burden of proving the statutory sentencing provisions were unconstitutional. (*Id.* at 1354) (citing *Nicodemus*, ¶ 29, 392 P.3d at 415). Hicks attempted to improve upon Nicodemus's arguments by citing more sections of the Wyoming constitution and providing evidence of an evolving scientific and social understanding of young adults. (*Id.* at 1355). But the court found Hicks's additional argument and evidence did not meet his heavy burden or overcome the precedent set in *Nicodemus*. (*Id.*).

The district court agreed that it was required to consider "the evolving standards of decency" when assessing Hicks's sentences. (*Id.*). However, it quoted at length from the United States Supreme Court guidance that courts should not act as legislators. (*Id.* at 1356) (citing *Gregg v. Georgia*, 428 U.S. 153, 174-76 (1976)). Likewise, the court quoted

Nicodemus as holding that the Wyoming Legislature could have extended *Miller*'s protection to offenders over eighteen, but "it did not choose a more protective line." (*Id.* at 1357) (quoting *Nicodemus*, ¶ 23, 392 P.3d at 414). The court decided it would "not substitute its judgment for that of the legislature." (*Id.*).

ARGUMENT

I. Res judicata bars consideration of Hicks's claims.

Hicks makes several interrelated arguments that his sentences are unconstitutional. However, this Court should hold that res judicata bars Hicks's appeal because he could have raised these issues in an earlier proceeding—and in fact he did make variations of these same arguments before trial and in his two 2020 requests for sentence reduction.

A. Standard of Review

Whether res judicata bars a motion to correct an illegal sentence is a question of law that this Court considers de novo. *Best*, ¶ 5, 503 P.3d at 643.

B. Hicks could have raised his sentencing and statutory challenges in an earlier proceeding.

Citing various constitutional provisions, Hicks argues that he is entitled to a new sentencing hearing because the 2012 holding of *Miller v. Alabama*, which forbids mandatory life-without-parole sentences for juvenile offenders, should be extended to young adults like him. (Appellant's Br. at 1-2) (citations omitted). He does not address res judicata in his appellate brief, but Hicks argued to the district court that his claim was not barred under the doctrine. (4564 R. at 1019). The district court denied the motion on the merits, but this Court may affirm the decision "on *any* legal ground appearing in the record." *Lacey v. State*, 2003 WY 148, ¶ 10, 79 P.3d 493, 495 (Wyo. 2003) (emphasis in original). Hicks's claims are barred because he has already raised them multiple times in the district court, and any new arguments he presents now could have been presented in earlier proceedings.

Although a Rule 35(a) motion can be brought at any time, such motions are subject to res judicata. *Best*, ¶ 8, 503 P.3d at 644. "*Res judicata* bars litigation of issues that were or *could have been determined* in a prior proceeding." *Id.*, ¶ 7, 503 P.3d at 643 (italics in original). The doctrine serves "to promote judicial economy and finality, prevent repetitive litigation, prevent inconsistent results, and increase certainty in judgments." *Peterson v. State*, 2023 WY 103, ¶ 6, 537 P.3d 749, 750-51 (Wyo. 2023). These interests "demand disciplined application of the preclusive doctrine." *Gould v. State*, 2006 WY 157, ¶ 16, 151 P.3d 261, 266 (Wyo. 2006) (citing *Nixon v. State,* 2002 WY 118, 51 P.3d 851 (Wyo. 2002)). It follows that defendants have an obligation to present their illegal sentence claims in a timely fashion. *Id.*, ¶ 17, 151 P.3d at 266. "Rule 35 is not a substitute for an appeal as of right or appropriate post-conviction relief measures." *Mead v. State*, 2 P.3d 564, 566 (Wyo. 2000) (citation omitted).

This Court applied the res judicata bar to illegal sentence claims in *Best* and *Kurtenbach*. There, the appellant asserted that his life sentence was cruel and unusual in violation of the Eighth Amendment. *Best*, ¶ 4, 503 P.3d at 643. Best relied on 2014 and 2017 decisions by this Court in juvenile life sentence cases, even though he was a young adult when he was convicted and sentenced for attempted first-degree murder. *Id.*, ¶¶ 3-4, 503 P.3d at 643; *Best v. State*, S-21-0172 (Sept. 20, 2021 Brief of Appellee) (showing Best was twenty-five at the time of his offense). This Court held that res judicata barred Best's arguments because he could have raised the validity of his sentence on direct appeal in 1987 or in a later motion. *Best*, ¶¶ 6-7, 503 P.3d at 643; *but see Nicodemus*, ¶ 15, 392 P.3d

at 412 (finding Nicodemus could not have raised a similar issue in his direct appeal or an earlier motion to reduce sentence because *Miller* was not decided until later).

Similarly, in *Kurtenbach*, this Court found a Rule 35(a) appeal was barred by res judicata because the appellant had challenged his sentence in previous proceedings. *Kurtenbach v. State*, 2013 WY 80, ¶ 7, 304 P.3d 939, 941 (Wyo. 2013). This Court observed that "the previous motion was much shorter and did not lay out the myriad of constitutional issues he now raises, but the essence of the first motion and the remedy sought is identical to the motion that is the basis of this appeal." *Id.* "Additionally, the facts and circumstances surrounding his constitutional claims were known to the appellant at the time he filed the first motion and, thus, he ***could*** have raised these additional bases for the alleged illegality of his sentence then." *Id.* (emphasis in original).

Res judicata also bars Hicks's appeal. *Id.*, ¶ 7, 304 P.3d at 941. Like Kurtenbach, Hicks has filed previous motions asking the district court to consider new developments in brain science, apply *Miller*, and reduce his sentences to allow for the possibility of parole. (4563 R. at 1116-18). The motions were well-supported with literature about the brain development of emerging adults. (*Id.* at 1121-30). Certainly, Hicks's pro se requests were shorter and less detailed than the hundreds of pages submitted by his current attorneys, but "the essence" of the motions was the same. *Kurtenbach*, ¶ 7, 304 P.3d at 941. Even before Hicks was sentenced, *Roper* recognized that the traits which make juvenile offenders less culpable than adults "do not disappear when an individual turns 18." *Roper*, 543 U.S at 574. Thus, the facts and circumstances surrounding Hicks's current claim were known to

him before trial and he could have raised additional arguments based on the Wyoming Constitution at that time. *Id.*

Hicks made sentencing arguments based on the Wyoming Constitution even before his 2006 trial. In his motion to quash aggravating factors, Hicks asserted the death penalty is inconsistent with the "humane principles" language of article 1, section 15. (4563 R. at 253; 4564 R. at 208). He now raises that same argument as applied to life sentences for young adults. (Appellant's Br. at 12). Once again, the record demonstrates that the bases of Hicks's current arguments were known to him and his trial attorneys almost twenty years ago. Hicks has already raised his current claim, and could have raised additional arguments, in his direct appeal or at any other time in the last nineteen years.

The district court rejected Hicks's constitutional sentencing claims three times, before and after sentencing, and he chose not to appeal any of those decisions. "A W.R.Cr.P. 35(a) motion to correct an illegal sentence may not be used to revisit issues already considered and decided." *Brown v. State*, 894 P.2d 597, 598 (Wyo. 1995). This Court should apply res judicata and rule that Hicks's current claims are barred.

C. The ends of justice do not compel this Court to consider this appeal.

Even where res judicata bars a claim, an appellant may avoid the bar if he shows good cause why he did not raise his arguments sooner. *Best,* ¶ 8, 503 P.3d at 644. Additionally, this Court will consider a Rule 35(a) appeal if "the interests of justice require." *Hamill v. State*, 948 P.2d 1356, 1359 (Wyo. 1997). In this case, no good cause compels this Court to consider the merits of Hicks's claim.

This Court's decisions in *Leonard* and *Hamill* illustrate the application of good cause in res judicata analysis. In *Leonard*, the appellant argued that his multiple sentences violated double jeopardy. *Leonard v. State,* 2014 WY 128, ¶ 5, 335 P.3d 1079, 1080-81 (Wyo. 2014). He attempted to avoid the application of res judicata by asserting that his request for relief was based on a case decided after his direct appeal. *Id.*, ¶ 8, 335 P.3d at 1081. But this Court found that a different case, decided before Leonard's conviction, controlled the question presented. *Id.*, ¶ 9, 335 P.3d at 1082. Therefore, Leonard "had every opportunity" to present his sentencing claim in his initial appeal. *Id.*, ¶ 10, 335 P.3d at 1082. The Rule 35(a) claim was therefore barred by res judicata. *Id.*; *see also Hopkinson v. State*, 708 P.2d 46, 49 (Wyo. 1985) (finding questions presented were barred by res judicata because "[n]o new facts or law are presented which shed any new light on the case").

In *Hamill*, this Court considered whether it should reach the merits of a claim barred by res judicata where the appellant made "no attempt to explain" why he did not raise a sentencing claim earlier. *Hamill*, 948 P.2d at 1359. Hamill was convicted in 1979, then filed motions to reduce his sentence in 1980 and 1981. *Id.* at 1357-58. Around 1990, Hamill filed his first motion to correct an illegal sentence. *Id.* at 1358. Then he filed a second motion challenging the legality of his sentence in 1996, which the district court denied on res judicata grounds. *Id.* In his second Rule 35(a) motion, Hamill relied heavily on a case decided in 1980, but he did not explain why he did not raise the issue in his earlier motions. *Id.* at 1358-59. Hamill also did not allege that he did not know about the 1980 case sooner. *Id.* at 1359.

This Court held that any issues identified in the 1980 decision "could, and should, have been raised on several occasions prior to his second petition to correct his sentence." *Id.* Then this Court considered, on its own initiative, whether the interests of justice required consideration of Hamill's claim despite his failure to timely raise it. *Id.* at 1359. It held that Hamill's sentences were "well within the statutory parameters" and the district court had properly reviewed the record before denying Hamill's Rule 35(a) motion. *Id.* Moreover, the Court held that nothing in the later-decided case actually affected Hamill's sentences. *Id.*

As in *Leonard* and *Hamill*, Hicks argued that res judicata should not bar his Rule 35 motion because the law—and science—has evolved since his conviction and appeal. (4564 R. at 1019). However, *Miller* was decided in 2012, and the science of brain development supporting *Miller* "has been well-established" since before 2000. (*See* 4564 R. at 954). More to the point, Hicks was aware of *Miller* and *Roper* and the supporting scientific evidence in 2020. (*See id.* at 1117). He also argued that his sentence must conform to the "humane principles" of the Wyoming Constitution before his 2006 trial, and in 2020 he presented evidence that Wyoming is particularly inclined to provide greater protections to young offenders. (4564 R. at 208, 1117-18). Hicks could and should have raised his claims earlier.

Furthermore, it cannot be said that Hicks's constitutional claims are so important that the ends of justice require review. This Court routinely applies res judicata in appeals challenging the constitutionality of a sentence. *See, e.g., Amin v. State*, 2006 WY 84, 138 P.3d 1143 (Wyo. 2006) (barring claims that concurrent life sentences were cruel and

unusual and violated double jeopardy and that Wyoming's habitual offender statute is unconstitutional); *Goetzel v. State*, 2017 WY 141, ¶¶ 8-10, 406 P.3d 310, 311-12 (Wyo. 2017) (refusing to consider double jeopardy claim); *Barrowes v. State*, 2019 WY 8, ¶ 21, 432 P.3d 1261, 1267-68 (Wyo. 2019) (barring claim that sentence was disproportionate to crime and therefore unconstitutional under the Eighth Amendment). This Court should find that Hicks's claim is likewise barred and that no good cause compels a merits decision in this case.

II. This Court should not consider the constitutionality of statutes as part of this appeal.

Hicks raises two interrelated constitutional claims: that Wyoming's first-degree murder statutes are unconstitutional as applied to young adults and that his three life-without-parole sentences are unconstitutional because he was a young adult at the time of his crimes. (Appellant's Br. at 47). However, he did not comply with the notice requirements for challenging a statute as unconstitutional. These requirements are jurisdictional, so this Court should not consider Hicks's statutory challenges. *Tobin*, 539 P.2d at 365. Instead, this Court should only decide Hicks's narrower claim that his own sentences are illegal under the United States and Wyoming Constitutions. While the two claims are rooted in common facts, law, and science, the distinction is crucial because the particular issue on appeal determines the legal test this Court will apply and the comparative burden on the litigants. Hicks frames his appeal as a statutory challenge in an attempt to shift the burden to the State, and this Court should not allow that tactic.

A. Standard of Review

This Court determines de novo whether it has subject matter jurisdiction to consider particular claims. *Kurtenbach v. State*, 2012 WY 162, ¶ 10, 290 P.3d 1101, 1104 (Wyo. 2012). Likewise, "[t]he determination of whether the appropriate rule was applied to a set of facts is a question of law, requiring *de novo* review." *Gee v. State*, 2014 WY 9, ¶ 7, 317 P.3d 581, 583 (Wyo. 2014) (citations omitted).

B. Hicks did not comply with mandatory notice requirements for challenging the constitutionality of statutes.

Hicks's central claim, as illustrated by his statement of issues, is that his sentences are unconstitutional under various provisions of the state and federal constitutions. (Appellant's Br. at 1-2). However, he states that he is challenging his sentences "by challenging three statutory provisions." (*Id.* at 47). He also made this argument to the district court. (4564 R. at 1011). But, Hicks did not comply with jurisdictional notice requirements, so this Court should not consider his statutory challenges. *Tobin*, 539 P.2d at 365-66; *Conrad*, ¶¶ 28-30, 529 P.3d at 493-94.

The Uniform Declaratory Judgments Act allows individuals to "obtain a declaration of rights, status or other legal relations" as "affected by the Wyoming constitution or by a statute." Wyo. Stat. Ann. § 1-37-103. If the statute in question "is alleged to be unconstitutional, the attorney general of the state shall be served with a copy of the proceeding and may be heard." Wyo. Stat. Ann. § 1-37-113. When a litigant fails to provide notice to the Attorney General in the trial court, this Court has no jurisdiction to consider his statutory challenge on appeal. *Tobin*, 539 P.2d at 365-66. The statutory challenge claim must be refused, even if this Court is able to consider other aspects of the appeal. *Conrad*, ¶¶ 28-30, 529 P.3d at 493-94.

Importantly, the notice requirement of § 1-37-113 does not distinguish between facial and as-applied challenges. Hicks describes his challenge as an "as-applied challenge." (Appellant's Br. at 9, 24, 55). Apparently, he is seeking a narrow remedy from this Court—relief for himself and not for an entire class of inmates. *See Citizens United v.*

Fed. Election Comm'n, 558 U.S. 310, 331 (2010) (discussing the distinction between facial and as-applied challenges). Nevertheless, "once a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity" of a statute. Richard H. Fallon, Jr., *As-Applied and Facial Challenges and Third-Party Standing*, 113 Harv. L. Rev. 1321, 1339 (2000). For that reason, regardless of how a litigant labels his constitutional challenge, it is imperative that the Attorney General be given notice and the opportunity to participate in the trial court.

In this case, Hicks did not file a declaratory judgment action per se, but he did assert within his Rule 35(a) motion that three statutes are unconstitutional. (Appellant's Br. at 47; 4564 R. at 1011). The content of his motion, rather than the title, should control the consideration of his claims. *See Leonard*, ¶ 5, 335 P.3d at 1080-81 (looking to the substance of a Rule 35 motion rather than its title to identify the claim raised). The district court understood that Hicks was seeking declaratory relief and it considered his statutory challenge on the merits. (4654 R. at 1353-54). It found that because Hicks was the party challenging the statutes, he bore the "heavy" burden of "clearly and exactly show[ing] the unconstitutionality beyond any reasonable doubt." (*Id.* at 1354) (citing *Nicodemus*, ¶ 29, 392 P.3d at 415). Ultimately, the district court determined that Hicks had not met his burden and that it would not "substitute its judgment for that of the legislature" by prescribing sentencing possibilities for young adults. (*Id.* at 1355-57) (relying on *Gregg*, 428 U.S. at 174-76).

On appeal, Hicks argues that the district court was not only wrong in its decision, but that it applied the wrong burden to his statutory challenges. (Appellant's Br. at 55). He

argues the "unconstitutional beyond a reasonable doubt" standard should be abandoned altogether. (*Id.* at 55-57). He also argues it is the wrong standard to apply in his case because the statutes he challenges implicate a fundamental right. (*Id.* at 57). Instead, Hicks asserts the State bears the burden to prove the statutes are constitutional. (*Id.* at 57-58).

This Court does not need to resolve the question of the proper standard and proper burden, because it cannot consider Hicks's statutory challenges. In the district court, Hicks served his Rule 35(a) motion on the county attorney but did not provide notice to the Attorney General. (4564 R. at 1335). Because Hicks failed to comply with the notice requirement of § 1-37-113, the district court did not have jurisdiction to consider and decide Hicks's statutory challenge. *Tobin*, 539 P.2d at 365-66. Likewise, this Court has no jurisdiction to consider Hicks's statutory challenges. *Id.* It follows that the State has no obligation to defend the constitutionality of the statutes in this appeal.

This Court should address only the claim that Hicks's individual sentences are unconstitutional. On that claim, Hicks bears the burden and this Court considers his legal arguments de novo. But narrowing the focus of this Court's consideration does not limit the relief available to Hicks—the possible determination that his sentences are illegal.

C. Rule 35(a) proceedings only permit the correction of illegal sentences.

Additionally, Rule 35(a) motions are not an appropriate vehicle to challenge the constitutionality of statutes. Litigants challenging the constitutionality of a statute should follow the Declaratory Judgment Act, filing their challenge when it is ripe and including the proper parties.

Rule 35(a) allows a sentencing court to correct "an illegal sentence" at any time. The rule serves to correct individual sentencing mistakes efficiently by allowing a defendant a simple and speedy vehicle to raise his claim in the sentencing court that made the alleged mistake. The rule further allows the sentencing court to quickly correct its mistakes with a minimum of process and without a hearing. W.R.Cr.P. 35(a). Contemplating the reach of Rule 35, this Court has said it "will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions." *Hamilton v. State*, 2015 WY 39, ¶ 16, 344 P.3d 275, 282 (Wyo. 2015) (citation omitted) (holding Rule 35 cannot be used by the State to increase a sentence).

Hicks is attempting to use a Rule 35 motion to declare certain statutes unconstitutional as applied to him. (Appellant's Br. at 47). If this Court allows him to advance the claim, then the Court can grant broader relief by declaring the statutes unconstitutional as to an entire class of offenders. *Citizens United*, 558 U.S. at 331. Rule 35 only contemplates the correction of "an illegal sentence"—the one before the court. W.R.Cr.P. 35(a). The rule does not provide a substitute for a direct appeal or for any other "appropriate post-conviction relief measures." *Mead*, 2 P.3d at 566 (citation omitted). "While it is certainly true that district courts have jurisdiction to correct illegal sentences at any time, a party cannot create jurisdiction by titling a pleading as something it is not." *Garnett v. State*, 2014 WY 80, ¶ 9, 327 P.3d 749, 751 (Wyo. 2014) (Davis, J., concurring).

This Court should find that Rule 35(a) can only be used to correct individual sentences and cannot be used to challenge statutes, either facially or as applied to a class of offenders. When deciding a Rule 35(a) motion, courts can and should interpret the

relevant statutes and constitutional provisions. *Garcia v. State*, 2007 WY 48, ¶ 7, 153 P.3d 941, 943 (Wyo. 2007); *Counts v. State*, 2014 WY 151, ¶ 11, 338 P.3d 902, 905 (Wyo. 2014). But courts should not "enlarge, stretch, expand, or extend" Rule 35(a) by deciding challenges to the constitutionality of a statute. *Hamilton*, ¶ 16, 344 P.3d at 282.

III. The district court correctly denied Hicks's motion for sentence correction because his sentences are constitutional.

Hicks does not argue that his sentences were illegal when they were imposed. He asserts that United States Supreme Court precedent and advances in neuroscience demand that this Court find his sentences have become unconstitutional. (Appellant's Br. at 46). If this Court addresses the merits of Hicks's arguments, it should reject his Rule 35 claim. Mandatory life sentences for young adult murderers are constitutional. *Miller*, 567 U.S. at 465. Hicks does not show that evolving standards of decency require this Court to find otherwise.

A. Standard of Review

Rule 35(a) allows a court to "correct an illegal sentence at any time." W.R.Cr.P. 35(a). "An illegal sentence is one that exceeds statutory limits, imposes multiple terms of imprisonment for the same offense, or otherwise violates constitutions or other law." *Veatch v. State*, 2023 WY 79, ¶ 8, 533 P.3d 505, 508 (Wyo. 2023) (citation omitted). This Court reviews the denial of a motion to correct an illegal sentence for an abuse of discretion. *Best*, ¶ 5, 503 P.3d at 643.

"[H]owever, if the sentence is *ab initio* illegal, discretion is limited." *Parker v. State*, 882 P.2d 1225, 1227 (Wyo. 1994). This Court considers de novo whether a sentence is illegal. *Best*, ¶ 5, 503 P.3d at 643. "The determination of whether a sentence is illegal is made by reference to the authorizing statute or applicable constitutional provisions and is, therefore, a matter of statutory interpretation. Interpretation of statutes is a question of law," which are also considered de novo. *Garcia*, ¶ 7, 153 P.3d at 943 (citations omitted).

Nevertheless, "in assessing a punishment selected by a democratically elected legislature against the constitutional measure, [courts] presume its validity." *Gregg*, 428 U.S. at 175.

B. Hicks does not show that his sentences are unconstitutionally excessive.

Hicks argues that his sentences—and all life sentences given to offenders under the age of twenty-one—are unconstitutionally cruel or unusual under both the United States and Wyoming Constitutions. (Appellant's Br. at 24-54). However, he does not demonstrate that his sentences are excessive in light of objective indicia of society's evolving standards of decency. *Roper*, 543 U.S. at 564.

The prohibition against cruel or unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." *Miller*, 567 U.S. at 469 (quoting *Roper*, 543 U.S. at 560); *see also Norgaard v. State*, 2014 WY 157, ¶¶ 23-26, 339 P.3d 267, 274-75 (Wyo. 2014) (discussing Wyo. Const. art. 1, § 14). Punishments must be proportional "to both the offender and the offense." *Miller*, 567 U.S. at 469.

The concept of proportionality turns on "the evolving standards of decency that mark the progress of a maturing society." *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)); *see also Norgaard*, ¶ 29, 339 P.3d at 276 (considering evolving standards of decency in relation to a state constitutional claim). "This is because the standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Graham*, 560 U.S. at 58 (cleaned up). To identify and understand "evolving standards of decency," courts look to "objective indicia of consensus, as expressed in

particular by the enactments of legislatures that have addressed the question" and state practices. *Roper*, 543 U.S. at 564.[3]

1. Hicks does not show that his sentences violate the Eighth Amendment.

Hicks devotes one paragraph of his brief to the assertion that his sentences are cruel and unusual under the Eighth Amendment (Appellant's Br. at 54). He argues that his sentences violate the federal constitution for the same reasons they violate the state constitution. (*Id.*). The argument is confusing because much of Hicks's state constitution arguments are premised on the idea that the Wyoming Constitution provides "greater protections" than the federal constitution. (*Id.* at 1, 8, 10, 16, 18, 20, 21, 22, 42, 48, 49). Nevertheless, Hicks's federal constitutional claim fails for the same reason as his state constitution argument: Hicks does not show his sentences are cruel or unusual.

In a series of landmark cases over the past twenty years, the United States Supreme Court has considered the categorical sentencing protections owed to juveniles under the

---

[3] If he were only challenging his own sentences as disproportional to other first-degree murder sentences, this Court would consider three factors: "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Villafana v. State*, 2022 WY 130, ¶ 29, 519 P.3d 300, 308 (Wyo. 2022) (quoting *Solem v. Helm*, 463 U.S. 277 (1983)).

Eighth Amendment. *See State v. Mares*, 2014 WY 126, ¶¶ 12-15, 335 P.3d 487, 493-95 (Wyo. 2014) (summarizing state and federal jurisprudence). However, the Court did not extend protections to adults like Hicks or announce any reasoning that compels this Court to invalidate his sentences. The cases warrant careful consideration:

***Roper v. Simmons*, 543 U.S. 551 (2005)**

In 2005, the Supreme Court held that juveniles could not be sentenced to death for their crimes. *Roper*, 543 U.S. at 578. Before *Roper*, children as young as sixteen could be executed under *Stanford v. Kentucky*, 492 U.S. 361 (1989), which found no national consensus rendering the practice cruel or unusual. The *Roper* Court began its analysis by considering whether that national consensus had changed. *Id.* at 564. It found that "30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach." *Id.* The Court noted that these numbers mirrored the statistics that led the Court to prohibit the execution of those with intellectual disabilities in *Atkins v. Virginia*, 536 U.S. 304 (2002). *Id.*

The *Roper* Court then looked to the practice of executing juveniles in the twenty states that allowed it. *Id.* It found that only three states had executed juveniles in the previous ten years. *Id.* at 565. More important was the "consistency of the direction of change." *Id.* at 566 (citation omitted). Since the Supreme Court affirmed the practice of executing juveniles in *Stanford*, no state that had prohibited juvenile capital punishment chose to reinstate it. *Id.* The Court interpreted these trends to "provide sufficient evidence

that today our society views juveniles … as 'categorically less culpable than the average criminal.'" *Id.* at 567 (citing *Atkins*, 536 U.S. at 316).

The *Roper* Court went on to discuss the differences between juveniles and adults. "First, as any parent knows and as the scientific and sociological studies … tend to confirm," juveniles lack maturity and have an underdeveloped sense of responsibility. *Id.* at 569. Second, juveniles are comparatively susceptible "to negative influences and outside pressures, including peer pressure." *Id.* Third, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Id.* at 570. The Court concluded that juveniles are more capable of change than adults and "a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570.

The Supreme Court recognized that its choice to protect only juveniles under the Eighth Amendment would attract "the objections always raised against categorical rules." *Id.* at 574. It specifically acknowledged that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Id.* Nevertheless, it found "a line must be drawn." *Id.* Because eighteen "is the point where society draws the line for many purposes between childhood and adulthood," the Court concluded eighteen should also be the line for capital punishment. *Id.*

***Graham v. Florida*, 560 U.S. 48 (2010)**

In 2010, the Supreme Court announced that a juvenile offender could not be sentenced to life without the possibility of parole for a non-homicide crime. *Graham*, 560 U.S. at 74-75. The decision clarified that "[a] State is not required to guarantee eventual

freedom to a juvenile offender convicted of a nonhomicide crime," but it must give juveniles "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75.

The *Graham* Court explained that "[a] juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult." *Id.* at 68 (internal quotation marks and citation omitted). It found that the "observations in *Roper* about the nature of juveniles" remained true. *Id.* "[P]sychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *Id.*

***Miller v. Alabama*, 567 U.S. 460 (2012)**

In 2012, the Supreme Court determined that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller*, 567 U.S. at 470. The decision examined two cases in which fourteen-year-old murderers were sentenced to life imprisonment without the possibility of parole because "the sentencing authority [did not] have any discretion to impose a different punishment." *Id.* at 465. The Court held that a mandatory life-without-parole sentence was categorically unconstitutional for juveniles because the practice prevented sentencing courts from considering their "lessened culpability and greater capacity for change." *Id.* at 465 (cleaned up) (quoting *Graham*, 560 U.S. at 68).

The *Miller* Court reasoned that what *Roper* and *Graham* held about the transitory traits of children was not crime-specific. *Id.* at 473. Thus, juvenile murderers must be given "some meaningful opportunity to obtain release." *Id.* at 479. The decision did not bar life-

without-parole sentences for juveniles, only mandatory sentences that did not give the sentencing judge or jury the opportunity to consider the mitigating circumstances of "age and age-related characteristics and the nature of" the crime. *Id.* at 489.

Notably, the *Miller* Court did not consider any new scientific evidence or evolved standards of decency in reaching its decision. Instead, it synthesized the holdings in *Graham* and *Roper* to determine that sentencing courts must consider the offender's youth and the nature of the murder before imposing life without parole. *Id.* One dissenting opinion noted that the majority did not apply the evolving standards test. *Id.* at 513 (Alito, J., dissenting). It also labeled the test "problematic from the start," asking: "Is it true that our society is inexorably evolving in the direction of greater and greater decency?" *Id.* at 510 (Alito, J., dissenting). Another dissent, joined by four justices, observed "decency is not the same as leniency." *Id.* at 495 (Roberts, C.J., dissenting).

As discussed more below, Hicks attempts to provide "objective indicia" that societal standards of decency have evolved since *Roper* and *Miller* and now require more lenient sentencing of young adult murderers. (Appellant's Br. at 23-37). But his evidence comes up short. Hicks asserts that three states have abolished mandatory life-without-parole for young adults and twenty-one states have no mandatory life-without-parole for murder regardless of the offender's age. (*Id.* at 36-37). These facts "do[] not establish the degree of national consensus" needed to find Wyoming's first-degree murder sentencing practices unconstitutional. *Stanford*, 492 U.S. at 370-71 (finding no consensus where only fifteen states prohibited the execution of sixteen-year-olds); *Roper*, 543 U.S. at 552-53 (finding

consensus where thirty states prohibited the execution of juveniles and the others only rarely imposed it). This Court should therefore reject Hicks's Eighth Amendment claim.

2. Hicks does not show that his sentences violate sections 14, 15, or 16 of article 1 of the Wyoming Constitution.

Hicks devotes a significant portion of his brief to the proposition that Wyoming's Constitution provides greater individual rights than the federal constitution. (Appellant's Br. at 10-22). He focuses on three provisions within article 1:

- "Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted." Wyo. Const., art. 1, § 14.
- "The penal code shall be framed on the humane principles of reformation and prevention." Wyo. Const., art. 1, § 15.
- "No person arrested and confined in jail shall be treated with unnecessary rigor. The erection of safe and comfortable prisons, and inspection of prisons, and the humane treatment of prisoners shall be provided for." Wyo. Const., art. 1, § 16.

However, Hicks does not show how any of these provisions provides greater rights for young adults compared to older adults. *See Ramirez v. State*, 2023 WY 70, ¶ 16, 532 P.3d 230, 235 (Wyo. 2023) (requiring that an appellant's "analysis must include why, 'in a given situation, a state constitution should be considered as extending broader rights to its citizens than does the United States Constitution'") (quoting *Sheesley v. State*, 2019 WY 32, ¶ 15, 437 P.3d 830, 837 (Wyo. 2019)). More specifically, Hicks provides no "objective indicia" of a societal consensus in Wyoming that requires more lenient treatment of young murderers. *Roper*, 543 U.S. at 564.

The district court correctly followed this Court's holding in *Nicodemus* about extending *Miller* protections under the Wyoming Constitution. (4564 R. at 1352). In 1992, Nicodemus pleaded guilty to two first-degree murders that he committed when he was eighteen years old. *Nicodemus*, ¶ 1, 392 P.3d at 410. He was sentenced to two consecutive life sentences. *Id.* Nicodemus filed a Rule 35(a) motion to correct his allegedly illegal sentence, relying on the 2012 *Miller* decision. *Id.*, ¶ 16, 392 P.3d at 412. At the time of his crimes, the age of majority in Wyoming was nineteen. *Id.*, ¶ 25, 392 P.3d at 415. Nicodemus reasoned that he was legally a juvenile under Wyoming's law, so *Miller* prohibited the imposition of his life sentences. *Id.*, ¶ 19, 392 P.3d at 413.

This Court rejected his argument, holding that *Miller* did not announce a variable rule that could be extended to eighteen-year-olds. *Id.*, ¶ 20, 392 P.3d at 413-14. It explained that "the *Miller* Court followed the reasoning of *Roper* and *Graham*" and drew a bright line at the age of eighteen. *Id.*, ¶¶ 21-22, 392 P.3d at 414 (citation omitted). This Court recognized that a state could choose to extend *Miller* protections to young adult offenders. *Id.*, ¶ 23, 392 P.3d at 414. "Notably, however, when Wyoming enacted legislation to bring its life imprisonment statutes into compliance with the *Miller* requirements, it did not choose a more protective line." *Id.*, ¶ 23, 392 P.3d at 414.

This Court also considered Nicodemus's claim that his sentences were nevertheless unconstitutional under the Wyoming Constitution. *Id.*, ¶ 29, 392 P.3d at 415. Nicodemus argued that the broader "cruel or unusual" and "humane principles" protections of article 1, sections 14 and 15 meant that § 6-2-101(b) was unconstitutional because it mandated life without parole for an eighteen-year-old child. *Id.*, ¶¶ 29, 31, 392 P.3d at 415-16. This

Court first rejected the premise that Nicodemus was a child under Wyoming law. *Id.*, ¶ 30, 392 P.3d at 415. Thus, the relevant question was "not whether the Wyoming Constitution prohibits sentencing a 'child' to life in prison without the possibility of parole, but rather whether it prohibits sentencing an eighteen-year-old to life without the possibility of parole." *Id.* The *Nicodemus* Court also rejected the idea that life sentences are cruel or inhumane when given to eighteen-year-olds. *Id.*, ¶ 33, 392 P.3d at 416. It reaffirmed that the death penalty and life sentences do not violate the Wyoming Constitution. *Id.*, ¶ 33, 392 P.3d at 416 (citing *Castle v. State*, 842 P.2d 1060, 1061 (Wyo. 1992)). The *Nicodemus* Court further held that the constitutional provisions do not preclude sentencing practices that serve "objectives such as retribution, deterrence, and removal from society." *Id.*, ¶¶ 34-35, 392 P.3d at 416. Ultimately, this Court determined that Nicodemus had not met his burden to show his sentences violated the Eighth Amendment or article 1, sections 14 and 15. *Id.*, ¶¶ 38-39, 392 P.3d at 417.

Hicks asserts that his petition is distinguishable from Nicodemus's because he presents "substantial scientific evidence" where Nicodemus did not. (Appellant's Br. at 22). In other words, Hicks asserts that he can show that "evolving standards of decency" compel this Court to move the *Roper* cutoff of eighteen-years-old, established in 2005 and affirmed in *Miller* in 2012, to include young adults as well as juveniles. But careful consideration of his brief shows this is not the case.

First, Hicks leans heavily on the idea that "modern-day neuroscience has established that late adolescents have the same characteristics as juveniles that led to the recognition in *Roper/Graham/Miller* (as well as *Bear Cloud II, III*, and *Davis I*) that 'children are

different' and far less culpable than adults." (Appellant's Br. at 24). But *Roper* acknowledged as much in 2005. The Supreme Court understood, "as any parent knows," that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Roper*, 543 U.S. at 569, 574.

In *Miller*, the Supreme Court relied on this same reasoning when it chose to apply the same cutoff for mandatory life without parole. *Miller*, 567 U.S. at 471. Although scientific study has apparently revealed more about the "why" behind juvenile immaturity—including synaptic pruning and myelination—the "what" has been known since long before *Roper*. Indeed, when Hicks first approached the district court in 2020 asking for a sentence reduction, he attached a paper that confirmed "the science of brain development supporting" sentencing protection for young adult offenders "has been well-established" since before 2000. (4563 R. at 1122).

Hicks next attempts to show "our social understanding of the 'age of majority' has substantially changed since *Roper*." (Appellant's Br. at 24). He argues that the age of majority was twenty-one for centuries and was only reduced to eighteen in 1971 with the passage of the Twenty-Sixth Amendment. (*Id.* at 33). This fact does not show that society has since moved the line between "childhood and adulthood." *Roper*, 543 U.S. at 574. If anything, it shows a trend toward lowering the age of adulthood.

Hicks also points to statistics that show adults are choosing to get married and have children later and that most young adults are still financially dependent on their parents. (Appellant's Br. at 34). He does not show that these trends illustrate immaturity in today's young adults—and perhaps they prove the opposite. *See, e.g.*, Lilly Blomquist, *This Is Why*

Younger Generations Are Waiting to Get Married, Brides Mag. (May 13, 2024), https://www.brides.com/why-getting-married-in-your-30s-is-the-new-normal-4768894 (explaining that Millennials and Gen Z are "seeking higher education more than those in the past, and … they're spending their early and mid-20s developing their careers, attaining financial independence, and working on their personal growth—rather than starting their lives after marriage").

Hicks also mentions that three states have barred life without parole for young adults. (Appellant's Br. at 36-37). However, he does not analyze these cases or attempt to draw any parallels between the societal consensuses in those states and the societal understanding of adulthood in Wyoming. In fact, each of these states acted in reliance on state-specific factors that do not apply here. Washington abolished mandatory life without parole for offenders under twenty-one years old. *In re Monschke*, 482 P.3d 276, 277 (Wash. 2021). The court relied heavily on state statutes and precedent which recognized "flexibility" in the age of majority for Washingtonians. *Id.*, 482 P.3d at 283-86 (citing, inter alia, *State v. Koome*, 530 P.2d 260 (Wash. 1975), which rejected eighteen "as an arbitrary bright line" for consent to abortion). Michigan abolished mandatory life without parole for eighteen-year-olds based largely on "Michigan's legal traditions." *People v. Parks*, 987 N.W.2d 161, 176-82 (Mich. 2022). The court held that sentencing eighteen-year-old murders to life without parole "is particularly antithetical" to rehabilitation, which "is the only penological goal enshrined in [Michigan's] proportionality test as a criterion rooted in Michigan's legal traditions." *Id.* (internal quotation marks and citation omitted). Most recently, Massachusetts abolished mandatory life without parole for eighteen to twenty-

year-olds. *Commonwealth v. Mattis*, 224 N.E.3d 410, 415 (Mass. 2024). That court placed particular emphasis on state legislative action protecting young adult offenders, including "sweeping reforms" within the Department of Correction beginning in 2018. *Id.* at 424-25. Notably, two of these states had abolished the death penalty for all offenders before taking this incremental next step to abolish life without parole for young offenders. *Roper*, 543 U.S. at 579 (Appendix A). None of these cases provides any persuasive authority for Hicks because they relied on factors not present in Wyoming.

Finally, Hicks attempts to show that life without parole is unusual because only about 2% of inmates (47 out of 2,376 as of a particular day in 2024) are serving life without parole for murders they committed between the ages of eighteen and twenty. (Appellant's Br. at 44-45). But he does not provide any context for this number. For example, he does not demonstrate that courts and juries tend to choose the minimum sentence for young adults convicted of first-degree murder. He also does not analyze second-degree murder cases to compare the rates at which Wyoming courts choose to impose life rather than a lesser term of years for younger offenders.

Even if Hicks succeeds in showing that some aspects of young adulthood have changed since 2012, he does not present any evidence that "evolving standards of decency" in Wyoming compel more lenient sentencing of young adult murderers. Without proof of evolving standards of decency surrounding the sentencing of murderers, this Court has no reason to extend *Miller* protections to a broader class of offenders.

C. Hicks does not show that his sentences violate equal protection.

Hicks also challenges his sentences under equal protection provisions of the Wyoming Constitution. (Appellant's Br. at 47). He claims he is "being treated differently than a similarly situated juvenile." (*Id.*). Hicks has not shown that he is similarly situated to the juveniles who receive *Miller* protections. He therefore does not show that his sentences violate equal protection.

Hicks cites three provisions of article 1 in support of his equal protection claim:

- "In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal." Wyo. Const. art. 1, § 2.
- "[T]he laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction." Wyo. Const. art. 1, § 3.
- "The enumeration in this constitution, of certain rights shall not be construed to deny, impair, or disparage others retained by the people." Wyo. Const. art. 1, § 36.

First, Hicks's reliance on section 3 is improper, because this section applies only to "political rights." Wyo. Const. art. 1, § 3. Political rights involve a citizen's power to participate in government, such as by voting and holding office. *Political right*, Black's Law Dictionary (11th ed. 2019); *Cathcart v. Meyer*, 2004 WY 49, ¶ 47, 88 P.3d 1050, 1068 (Wyo. 2004) (citing Wyo. Const. art. 6, § 1). The right against cruel or unusual punishments is not a political right.

More importantly, Hicks's equal rights argument is indistinguishable from his cruel or unusual argument. Hicks is only entitled to the protections juveniles receive if he is similarly situated. *Roper* abolished capital punishment for juveniles in large part because it held juveniles are "categorically less culpable" and categorically more disposed to reformation than adult offenders. *Roper*, 543 U.S. at 567. *Miller* similarly rejected mandatory life-without-parole sentences for children because such mandates prevented courts from "considering a juvenile's lessened culpability and greater capacity for change." *Miller*, 567 U.S. at 465 (cleaned up). No controlling precedent or shift in "evolving standards of decency" establishes that Hicks is similarly situated or entitled to the same protections as juveniles. Thus, his sentences do not violate Wyoming's equal protection provisions.

D. This Court should not act as legislators.

In 2005, the *Roper* Court drew the line at eighteen for capital punishment. *Roper*, 543 U.S. at 574. The Supreme Court chose this cutoff as "the point where society draws the line for many purposes between childhood and adulthood." *Id.* The *Miller* Court chose the same cutoff in 2012. *Miller*, 567 U.S. at 465. Since 2004, the Wyoming Legislature has also consistently used that same cutoff when punishing offenders for first-degree murder. 2004 Wyo. Sess. Laws 42; 2013 Wyo. Sess. Laws 75-76. This Court should not act as legislators and move that line.

Under the constitutional separation of powers, "[t]he legislative branch has the exclusive power to define crimes and to prescribe punishments for those crimes." *Daugherty v. State*, 2002 WY 52, ¶ 15, 44 P.3d 28, 34 (Wyo. 2002). Therefore, "in

assessing a punishment selected by a democratically elected legislature against the constitutional measure, [courts] presume its validity." *Gregg*, 428 U.S. at 175. The Supreme Court cautioned, "while we have an obligation to insure that constitutional bounds are not overreached, we may not act as judges as we might as legislators." *Id.* at 174-75 (reinstating the death penalty after thirty-five state legislatures readopted the penalty).

Hicks argues that sentencing a young adult to life in prison as punishment for taking another life is necessarily excessive and therefore unconstitutionally cruel. (Appellant's Br. at 37-44). In effect, he argues that the Legislature has not recognized and reacted to a new community consensus around punishing murders and this Court must correct that oversight by substituting its own judgment. As the district court observed, however, courts are not designed to be representative bodies. (4564 R. at 1356) (citing *Gregg*, 428 U.S. at 175). "[L]egislatures, not courts, are constituted to respond to the will and consequently the moral values of the people." (*Id.*) (citing *Gregg*, 428 U.S. at 175).

The Wyoming Legislature prescribed three potential punishments for Hicks: death, life without parole, or life according to law. Wyo. Stat. Ann. § 6-2-102(a) (2004). These possibilities applied because Hicks was an adult and because he committed premeditated first-degree murder. The Wyoming Legislature abolished capital punishment for juveniles in 2004—before *Roper*. 2004 Wyo. Sess. Laws 42. In so doing, it made the judgment that capital punishment should continue to exist for those over eighteen. *Id.*

In 2012, *Miller* abolished mandatory life sentences and directed that juveniles be given a "meaningful opportunity" for release. *Miller*, 567 U.S. at 479. But it did not dictate

specific practices or parameters to the states. *See, generally, id.* To implement *Miller*, the Legislature again amended the statutes surrounding first-degree murder. 2013 Wyo. Sess. Laws 75-76. It chose to take a particularly lenient approach by abolishing all life-without-parole sentences for juveniles and giving juvenile murderers the opportunity for parole after serving twenty-five years. *Id.* But again, the Legislature chose not to extend these protections to adults. *Id.*

Notably, the Legislature also prescribes vastly different penalties for first-degree and second-degree murder. *Compare* § 6-2-101(b) (2004) and § 6-2-104(a) (1982). For the less severe crime of murdering another without premeditation, the possible sentencing range is twenty years to life in prison, compared to a minimum sentence of life for premeditated murder. Wyo. Stat. Ann. § 6-2-104(a). Thus, the Legislature has chosen to tie the severity of possible punishments to the severity of the crime, consistent with *Roper*'s logic that those who are less culpable should be treated more leniently. The distinction between first- and second-degree murder also seems to recognize the distinction between hot and cold cognition Hicks discusses in his brief. (Appellant's Br. at 42). Hicks planned two murders over two or more months, suggesting that he acted in cold cognition rather than simply reacting to an emotionally charged situation. *Hicks*, ¶¶ 3-8, 187 P.3d at 879-80.

To be sure, the Legislature also recognized a young adult's greater likelihood of reformation with the creation of the Youthful Offender Transition Program. 1988 Wyo. Sess. Laws 164-65. The Program allows sentencing judges to recommend young offenders under thirty-years-old for special rehabilitation programming separate from the general

inmate population. Wyo. Stat. Ann. §§ 7-13-1001 through -1003. It also allows sentencing courts to reward successful participants with a sentence reduction. Wyo. Stat. Ann. § 7-13-1002. But the program does not accept offenders who have committed a felony so severe it is punishable by death or life in prison. Wyo. Stat. Ann. § 7-13-1003(b). The terms of the program show that the Legislature choose to provide incentives to young offenders who prove their capacity for change. But the Legislature did not change the severity of sentence that courts could impose on young offenders and it determined that the most serious young offenders would not be eligible to participate.

The way in which the Legislature crafted and amended Wyoming's murder statutes in response to changing contemporary standards demonstrates that our criminal penalties are carefully calibrated to the gravity of the offense and the age of the offender. This Court should not substitute its judgment for that of the Legislature by finding that changing contemporary standards demand action where our elected representatives have chosen not to act.

Hicks does not show that his sentences have become unconstitutional based on objective indicia of society's evolving standards of decency. *Roper*, 543 U.S. at 564. This Court should therefore affirm the denial of his Rule 35(a) motion.

IV. This Court should not grant Hicks a new sentencing hearing.

In his final issue, Hicks argues that even if his sentences are constitutional, this Court should nevertheless grant him a new *Miller*-style sentencing hearing. (Appellant's Br. at 58). Specifically, he asserts that his "youthfulness was not considered" at his original sentencing hearings. (*Id.*). That is inaccurate. The record very clearly shows that the jury and sentencing court properly considered Hicks's youth, so this Court should reject his argument. (4563 R. at 994, 999).

A. Standard of Review

This Court reviews the denial of a motion to correct an illegal sentence for an abuse of discretion. *Best*, ¶ 5, 503 P.3d at 643. It determines de novo whether a sentence is illegal. *Id.*

B. The jury and the court properly considered Hicks's youth as a mitigating circumstance before imposing sentence.

Hicks argues that this Court should grant him a new sentencing hearing because the jury and court did not consider his youth before imposing his life-without-parole sentences. (Appellant's Br. at 58-60) (citing *Bear Cloud v. State*, 2013 WY 18, ¶ 42, 294 P.3d 36, 47 (Wyo. 2013)). However, the record clearly demonstrates that Hicks already received two individualized sentencing hearings at which the jury and the court considered his youth and a number of other mitigating circumstances. (Sept. 6, 2006 Trial Tr., Vols. 19 and 20; Oct. 20, 2006 Sent'g Hr'g Tr.). The jury and the court still chose to impose life without parole. (4564 R. at 1349-57). Because Hicks already received an individualized sentencing

hearing that specifically considered his youth, this Court has no reason to grant him another hearing.

In felony cases in Wyoming, the district court must receive a presentence investigation report, and typically the court considers the report before sentencing. W.R.Cr.P. 32(a). The report must discuss "the history and characteristics of the defendant, including prior criminal record ... and any circumstances affecting the defendant's behavior." *Id.* The court must also hold a sentencing hearing, where it must allow the defendant to "present any information in mitigation of the sentence." W.R.Cr.P. 32(c). The court "should give consideration to all circumstances—aggravating as well as mitigating." *Noel v. State*, 2014 WY 30, ¶ 42, 319 P.3d 134, 147 (Wyo. 2014) (citation omitted). "The court must consider the crime, its attendant circumstances, and the character of the defendant when assessing a reasonable sentence to be imposed." *Id.*; *Wilks v. State*, 2002 WY 100, ¶ 41, 49 P.3d 975, 991 (Wyo. 2002).

For juveniles charged with homicide, the Eighth Amendment specifically requires an individualized sentencing hearing and prohibits the mandatory imposition of life-without-parole sentences. *Miller*, 567 U.S. at 465. *Bear Cloud* further suggested a number of factors for trial courts to consider when sentencing juveniles for homicide offenses: the circumstances of the homicide, the extent of the defendant's participation "and the way familial and peer pressure may have affected" him, "the character and record of the individual offender," "the background and mental and emotional development of a youthful defendant," the defendant's age, his "family and home environment," his relative

inability to assist in his own defense, and "the juvenile's potential for rehabilitation." *Id.* (citation omitted).

Although Hicks was not a juvenile when he committed his crimes and *Miller* had not yet been decided, the district court complied with Rule 32 and existing precedent and gave him two individualized sentencing hearings before imposing sentence. (Sept. 6, 2006 Trial Tr., Vol. 19; Oct. 20, 2006 Sent'g Hr'g Tr.). At the first hearing, the jury heard mitigating evidence presented by Hicks's family, friends, and counselors. (Sept. 6, 2006 Trial Tr., Vol. 19). It said Hicks was a follower and was cognitively and emotionally immature, yet capable of redemption. (*Id.*). The jury clearly credited this evidence because it indicated that it unanimously found "that the age of the Defendant at the time of the crime is a mitigating circumstance." (4563 R. at 994, 999).

The jury also unanimously agreed that other *Miller*-esque factors served to mitigate Hicks's culpability: Hicks was depressed, had voluntarily joined the military, helped law enforcement solve BC's murder, and "demonstrated good behavior during pretrial detention." (*Id.* at 996, 1001). The mitigation evidence apparently persuaded the jury to not impose the death penalty as the State requested. (*Id.* at 1011-12). Instead, the jury sentenced Hicks to two terms of life without parole for his role in BC's murder. (*Id.*). Then the district court held a second sentencing hearing and took more evidence. (Oct. 20, 2006 Sent'g Hr'g Tr.). While that hearing was much shorter than the first, the court indicated that it considered all of the evidence it heard during trial and at the first sentencing hearing before it imposed a third life-without-parole sentence as punishment for his role in Forquer's murder. (Oct. 20, 2006 Sent'g Hr'g Tr. at 15).

Hicks's assertion that his "youthfulness was not considered" mischaracterizes the record. (Appellant's Br. at 58). The jury and the court specifically considered his youth. They also considered several other factors specifically listed by *Miller*, although *Miller* was decided six years later. (4563 R. at 994-96, 999-1001). In effect, Hicks already received a *Miller*-style sentencing hearing.

Hicks does not cite any legal authority that compels or permits this Court to grant him a new sentencing. Moreover, a new *Miller* hearing can have no effect in Hicks's case because he already received one.

CONCLUSION

For the foregoing reasons, the State of Wyoming respectfully requests that this Court affirm the district court's denial of Hicks's motion to correct an illegal sentence in all respects.

DATED this 17th day of March 2025.

/s/ Bridget Hill
Bridget Hill #6-3616
Wyoming Attorney General

/s/ Jenny L. Craig, by Kristen R. Jones
Jenny L. Craig #6-3944
Deputy Attorney General

/s/ Kristen R. Jones
Kristen R. Jones #7-5203
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
Telephone: (307) 777-7977
Kristen.Jones1@wyo.gov

Attorneys for Appellee

CERTIFICATE REGARDING ELECTRONIC FILING AND SERVICE

I, Kristen R. Jones, hereby certify that the foregoing BRIEF OF APPELLEE was filed and served electronically via the Wyoming Supreme Court C-Track Electronic Filing System, this 17th day of March 2025, on the following:

Devon Walter Petersen
506 South 8th Street
Laramie, WY 82070
(307) 460-4333

Thomas Carl Garvie
121 Grand Avenue, No. 202
Laramie, WY 82070

and was served via first-class United States mail on:

Lauren McLane
1000 E. University Ave, Dept. 3035
Laramie, WY 82071

Thomas Roberts
Phillips Black
1901 S 9th Street, Suite 608
Philadelphia PA 19148

Kyle Charles Barry
State Law Research Initiative
1879 Oak Street, Apt. 2
San Francisco CA 94117

The undersigned also certifies that all required privacy redactions have been made and, with the exception of those redactions, every document submitted in digital form or scanned .pdf is an exact copy of the written document filed with the Clerk, and that the document has been scanned for viruses and is free of viruses.

/s/ Kristen R. Jones
Kristen R. Jones
Wyoming Attorney General's Office