COVER LETTER

12-14-21
(Date of mailing to the Supreme Court)

Clerk's Office
Michigan Supreme Court
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

RE: PEOPLE OF THE STATE OF MICHIGAN v Robert Earl Hawkins #254254
(Print your name)

Supreme Court No. 162086 (Leave blank - the Clerk will assign a number for you.)
Court of Appeals No. 346587 (Get this number from the Court of Appeals decision.)
Trial Court No. 17-040882 9-FC (Get this number from Court of Appeals brief or the PSIR.)

Dear Clerk:

Enclosed please find the originals of the documents checked below. (Put a check mark in the boxes of the documents you are sending.) I am indigent and cannot provide four copies.

- ☐ Application for Leave to Appeal
- ☐ Copy of Trial Court decision
- ☐ Copy of Court of Appeals decision
- ☐ PSIR (required **only** if you raise an issue related to the sentence imposed on your conviction **and** the PSIR was not previously filed with the Court of Appeals)
- ☐ Transcript of jury instructions (required **only** if you are challenging an instruction on appeal **and** the transcript was not previously filed with the Court of Appeals)
- ☑ Motion to Waive Fees / Affidavit of Indigency
- ☑ Proof of Service
- ☑ Other Motion For Permission To File Amicus Curiae Brief, Amicus Curiae Brief

****You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals****

Robert E. Hawkins
(Sign your name)

254254
(Print your name and, if incarcerated, MDOC number)

Carson City Correctional Facility
(Print name of correctional facility if incarcerated)

10274 Boyer Road
(Print your address or address of correctional facility)

Carson City, MI 48811

Copy sent to:

_____

INSTRUCTIONS

1. You will need 2 copies and the originals of this letter and the pleadings listed above.
2. Mail the originals of this letter and the pleadings to the Supreme Court Clerk.
3. Mail 1 copy of this letter and the pleadings to the prosecutor.
4. Keep 1 copy of this letter and the pleadings for your file.

Robert Earl Hawkins #254254
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811

Dated: 12/14/21

Clerk's Office
Michigan Supreme Court
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

RE: People v Kamo Knicombi Parks,
MSC No. 162086

Dear Clerk:

Please find for electronically filing in the above case number: Motion For Permission To File An Amicus Curiae Brief, Amicus Curiae Brief, Motion To Waver Fees, and Proof of Service.

Thank you for your time in this important matter.

Yours truly,
Robert E. Hawkins
Robert E. Hawkins

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Supreme Court No.162086
COA No. 346587
Cir. Court No. 17-0408829-FC

KEMO KNICOMBI PARKS
~~ROBERT EARL HAWKINS~~,
Defendant-Appellant.

MOTION FOR PERMISSION TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT OF KAMO KNICOMBI PARKS

NOW COMES, Robert Earl Hawkins, in pro se, pursuant to this Court's Order in People v Parks, MSC No. 162086, ask this Honorable Court for permission to file an amicus curiae brief.

1. On September 24, 2021, this Court ruled that "[t]he defendant shall file a supplemental brief" and shall address "whether the defendant's whether the United States Supreme Court's decision in Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and Montgomery v Louisiana, 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016), should be applied to defendants who are over 17 years old at the time they committed a crime and who are convicted of murder and sentenced to mandatory life without parole, under the Eighth Amendment to the United Stated Constitution or Const 1963, art 1 section 16, or both."

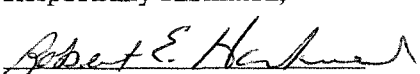
2. Mr. Hawkins have interests in the determination on the issue being addressed in this case.

3. Mr. Hawkins move to this Honorable Court to ask for permission to file an Amicus Curiae brief.

WHEREFORE, Mr. Hawkins requests that this Honorable Court to Grant him permission to file the attached Amicus Curiae brief.

Dated: 12/14/21

Respectfully submitted,



Robert Earl Hawkins #254254
In pro se
Carson City Correctional Facility
10274 Boyer Rd.
Carson City, MI 48811

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Supreme Court No.162086
COA No. 346587
Cir. Court No. 17-0408829-FC

KEMO KNICOMBI PARKS
~~ROBERT EARL HAWKINS~~,
Defendant-Appellant.

Brief of Amicus Curiae Robert Earl Hawkins In Support of Kamo Knicombi Parks

Robert Earl Hawkins #254254
In Pro Se
Carson City Correctional Facility
10274 Boyer Rd.
Carson City, MI 48811

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS

OTHER AUTHORITIES

QUESTION PRESENTED

I. WHETHER THIS COURT SHOULD EXTEND MILLER - TYPE PROTECTIONS TO INDIVIDUALS BETWEEN THE AGES 18 AND 21.

Amicus, "Yes."

Interest and Identity of Amicus Curiae

In 1996, Robert Earl Hawkins received a mandatory sentence of life without the possibility of parole for an offense he committed when he was just 20-year-old. In recent research, it shows that young adults, like Mr. Hawkins, possess the same adolescent characteristic that the United states Supreme Court has determined reduce criminal culpability, mandatory life without parole sentences.

SUMMARY OF THE ARGUMENT

In Miller v Alabama, the United States Supreme Court ruled that mandatory life without parole sentences are unconstitutional for individual who were juveniles at the time of their offenses under the Eighth Amendment's prohibition on cruel and unusual punishment. 657 US 460, 465; 132 S Ct 2455, 183 L Ed 2d 497 (2012). The Court, relying on the same underlying scientific research used to bar the death penalty for juveniles, held that children are less culpable than their adult counterparts because of their immaturity, impetuosity, susceptibility to peer influence, and greater capacity for change. id. Further research now indicates that young people retain these characteristics between the ages 18 and 21. Because individuals between 18 and 21-year-olds possess the same adolescent characteristic that the Supreme Court has determined reduce criminal culpability, mandatory life without parole sentences for this population are also disproportionate under both the Eighth Amendment and Article 1, sec. 16 of the Michigan Constitution.

This Court should therefore grant Mr. Parks application for leave to appeal and extend Miller and Montgomery's protection to individuals who were under 21-year-olds at the time of the offense was committed.

ARGUMENT

I. THIS COURT SHOULD EXTEND MILLER-TYPE PROTECTIONS TO INDIVIDUALS BETWEEN THE AGES 18 AND 21.

In 2005, the Roper Court held the death penalty unconstitutional for persons under the age of 18 and in drawing that line, stated:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have

> discussed, however, a line must be drawn. The plurality in Thompson drew the line at 16. In the intervening years the Thompson plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of Thompson extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

Roper v. Simmons, 543 U.S. 551, 574; 125 S. Ct 1183; 161 L. Ed 2d 1 (2005). The Roper Court relied on national consensus and the diminished penological justification resulting from the hallmark characteristics of youth. See Id. at 567, 572-73. In Roper the defendant was 17 years and 5 months old at the time of the murder. id. at 556, 618.

In 2010, the Supreme Court in Graham v Florida extended the reasoning in Roper to find that life imprisonment without parole is unconstitutional for juvenile nonhomicide offenders. See Graham v Florida, 560 US 48, 74; 130 S Ct 2011; 1761, L Ed 2d 825 (2010).
Like Roper Court, the Graham Court again considered national consensus and the fact that the characteristics of juveniles undercut the penological rationales that justified life without parole sentences for nonhomicide offenses. See id. at 53. thus, the Graham Court did not need to reconsider the life drawn at age 18 in Roper. But rather adopted the line without further analysis, quoting directly Roper. See id. at 74-75 ("Because '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood; those who were below that age when the offense was committed may not be sentenced to life without parole for nonhomicide crime." (quoting Roper, 543 US at 574)).

In 2012, the Supreme Court in Miller further extended Graham to hold that mandatory imprisonment without parole is unconstitutional for juvenile offenders, including those convicted of homicide. See Miller, 567 US at 465. The defendants in Miller were 14 years old at the time of the crime, and the Miller Court, like the Graham Court, adopted the line drawn in Roper at age 18 without considering whether the line should be moved or providing any analysis to support that line. See id. at 465. ("We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eight Amendment's prohibition on 'cruel and unusual punishments.'").

The Court in Roper, Graham, and Miller thus looks to the available scientific and sociological research at the time of the decisions to identify differences between juveniles under the age of 18 and fully mature adults----differences that undermine the penological justifications for the sentences in question. See Roper, 543 U.S. at 569 - 72; Graham, 560 U.S. at 68-75; Miller, 567 U.S. at 471 ("our decision rested not only on common sense----on what "any parent knows" --

- but on science and social science as well.") The Supreme Court in these cases identified "[t]hree general differences between juveniles under 18 and adults": (1) that juveniles have a "lack of maturity and undeveloped sense of responsibility," often resulting in "impetuous and ill-considered actions and decisions;" (2) that juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;" and (3) that "the character a juvenile is not as well formed as that of an adult." Roper, 543 U.S. at 569-70; see also Graham, 560 U.S. at 68; Miller, U.S. at 471-72.

Because of these differences, the Supreme Court concluded that juveniles are less culpable for their crimes than adults and therefore the penological justifications for the death penalty and life imprisonment without the possibility of parole apply with less force to them than adults. See Roper, 543 U.S. at 570-71; Graham, 560 U.S. at 69-74; Miller, 567 U.S. at 472-73.

A. Recent Research Now Shows Neuroscience and Development Psychology Continues For Individuals Between The Ages 18 and 21.

In 2003, Dr. Laurence Steinberg and Elizaneth Scott published a study that the court in Roper and Miller relied to confirm its understanding that the appropriate line between childhood and adulthood. See Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am Psychologist 1009, 1014 (2003). Since that study, Dr. Steinberg has published numerous papers concluding that research now shows that the parts of the brain active in most "crime situations," including those associated with characteristics of impulse control, propensity for risky behavior, vulnerability, and susceptibility of peer pressure, are still developing at age 21. Steinberg Does Recent Research on Adolescent Brain Development Inform the Mature Doctrine, 38 J Med & Phil 256 (2013); see also Scott et al, Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L Rev 641, 642 (2016) ("Over the past decade, developmental psychologist and neuroscientists have found that the biological and psychological development continues into the early twenties, well beyond the age of majority.")

In recent testimony before the United States District Court for the District of Connecticut in Cruz v United States, Dr. Steinberg explained that the 2003 study the Court relied on "focused on people younger than 18, Dr. Steinberg testified that, if he were to write the article today, with the developments in scientific knowledge about late adolescence, he would say 'the same things are true about people who are younger than 21." Cruz v United States, 2018 WL 1541898 (D Conn) (No. 3:11-cv-00787), vacated on other ground by Cruz v. United States, 826 Fed. Appx 49 (CA 2, Sept. 11, 2020) (Eighth Amendment did not forbid a mandatory life sentence who was 18 at the time of his crime.)

Recent research in neuroscience and developmental psychology indicates that individuals between the ages of 18 and 21 share many of these characteristic. Since Roper was decided, scientists have established that "biological and psychological development continues into the early twenties." Elizabeth S. Scott et al., Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Ford L Rev 641 (2016). Brain-imaging studies "have shown continued regional development of the prefrontal cortex, implicated in judgment and self-control [,] beyond the teen years and into the twenties." Alexandra O. Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temple L Rev 769 (2016) (collecting articles). Researchers have found that in "negative emotional situations," such as conditions of threat, young adults between the age of 18 and 21 perform significantly worse than adults in their mid-20s-and more like those under 18. Alexandra O. Cohen et al., When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts, 27 Psychol Sci 549, 559-60 (2016). "It is also well established that young adults, like teenagers, engage in risky behavior, such as... criminal activity to a greater extent than older adults." Scott et al., supra 642. In short, empirical research has found that "[a]lthough eighteen to twenty-one-year-olds are in some ways similar to individuals in their mid twenties, in other ways, young adults are more like adolescents in their behavior, psychological functioning, and brain development." at 646.

The same kind of scientific research that led the Miller Court to conclude that children are categorically less culpable for their crime likewise applies to individuals between the ages of 18 and 21. See Young Adulthood as a Transitional Legal Category, 85 Ford L Rev at 662. (noting that developmental scientific research supports "a presumption that mandatory minimum adult sentencing regime should exclude young adult offenders"). Adolescents 'Cognitive Capacity, 43 L & Him Beh at 83 (noting that "teens---and young adults---are relatively less likely to have the self-restraint necessary to deserve the privileges and penalties we reserve for people we judge to be fully responsible for their behavior"). Indeed, the American Bar Association has recognized in the death penalty context that drawing the constitutional line at 18 "no longer fully reflects the state of the science on adolescent development." American Bar Association, ABA Resolution 111: Death Penalty Due Process Review Project Section of Civil Rights and Social Justice Report to the House of Delegates (February 2018), p 6.

B. The Mandatory Life-Without-Parole Sentence For Individuals Between 18 And 21-Year-Olds Violates The 1963 Michigan Constitution's Ban On Cruel Or Unusual Punishment And The Eighth Amendment's Prohibits On Cruel And Unusual Punishment.

In light of evolving scientific evidence that adolescents are just immature, reckless, and impulsive as younger adolescents, the reasoning in Miller applies equally to them. Like young

In light of evolving scientific evidence that adolescents are just immature, reckless, and impulsive as younger adolescents, the reasoning in Miller applies equally to them. Like young adolescents, 18 to 21 year olds have "diminished culpability and greater prospects for reform," Miller, 567 US at 471. Their "distinctive attributes of youth" diminish penological justifications for imposing the harshest sentences" on them, "even when they commit terrible crimes." Id. at 472. "Because [t]he heart of the retribution rational relate to an offender's blame worthiness, the case for retribution is not as strong with a minor as an adult." Id., quoting Graham, 560 US 71 (quotation marks omitted; alterations in original). 18 to 21-year-olds, who share the same qualities as youth as younger children, likewise have diminished culpability and blameworthiness. Nor does deterrence justify a mandatory life-without-parole sentence for individuals between 18 and 21-year-olds, because "the same characteristics that rendered [them] less culpable than [older] adults--- their immaturity, recklessness, and impetuosity ---make them less likely to consider potential punishment." Id., quoting Graham, 560 US at 72 (quotation marks omitted). Similarly, incapacitation requires a determination of incorrigibility, which "is inconsistent with youth." Id. at 473, quoting Graham 560 US at 72-73. And a life-without-parole sentence "forswears altogether rehabilitative ideal." Id., quoting Graham 560 US at 74. Finally, because life-without-parole sentences "share some characteristics with death sentences that are shared by no other sentences," Graham, 560 US at 69, individualized considerations of a defendant's "age and the wealth of characteristics and circumstances attendant to it," Miller, 567 US at 476, is just as important for individuals between 18 and 21-year-olds as it was in Miller.

The Eighth Amendment requires courts to consider the scientific consensus on adolescent development in determining the constitutionality of mandatory life without parole for individuals between the age of 18 and 21-year-olds. As the U.S. Supreme Court has instructed, the Eighth Amendment "acquire[s] meaning as public opinion becomes enlightened by a humane justice." Hall v. Florida, 572 US 701, 708; 134 S. Ct. 1986; 188 L Ed 2d 1007 (2014). In Atkins v Virginia, the U.S. Supreme Court held that the Eighth Amendment prohibits Imposition of the death penalty on intellectually disabled individuals. 536 US at 321. In Hall v Florida, 572 US 701, the U.S. Supreme Court invalidated a Florida statute requiring an IQ score of 70 or lower before permitting a capital defendant to represent evidence of an intellectual disability to avoid the death penalty. The court noted that the Florida statute was inconsistent with "established medical practice" because it took an IQ score as conclusive evidence of intellectual disability "when experts in the field would consider other evidence." Id. at 712. The Court further noted that "[i]n determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinion." Id. at 710; see also Moore v Texas, 137 S Ct 1039, 1050, 1053; 197 LEd 2d 416 (2017) (holding that in determining whether an offender has an intellectual disability for

of the issue "deviated from prevailing clinical standards"). Similarly, here, the law must follow the science and recognized that 20-year-old are entitled to the constitutional protections afforded to youth. Just as "[i]ntellectual with disability is a condition, not a number," Hall, 572 US at 723, "youth is more than a chronological fact," Miller, 567 US at 476.

There is nothing in Miller that prohibits this court from holding mandatory life without parole unconstitutional for individuals between the ages of 18 and 21. For example, In Matter of Monschke, 197 WN. 2d 305482 P.3d 276 (Wash. Mar. 11, 2021) the Washington supreme Court examined whether Article I, sec. 14 of that state's constitution ---which bars the infliction of "cruel punishment" prohibits the imposition of mandatory sentences of life without parole on 18, 19, and 20-year-olds. Looking to U.S. Supreme Court case law, Washington legislative enactment's, and the latest neurological science, the Washington Supreme Court concluded that:

> There is no meaningful cognitive difference between 17-year-olds and many 18-year-olds. When it comes to Miller's prohibition on mandatory LWOP sentences, there is no constitutional difference either. Just as courts must exercise discretion before sentencing a 17-year-old to die in prison, so must they exercise the same discretion when sentencing an 18-,19-, or 20-year-old.

Monschke, 2021 WI 923319, at *13. The Court thus vacated the petitioners' sentences and remanded "each case for a new sentencing hearing at which the trial court must consider whether each defendant was subject to the mitigating qualities of youth." In doing so, the Washington Supreme Court extended Miller-type protections to 18, 19, and 20-year-olds.

Because the Michigan Constitution provides "greater protection" than the Eighth Amendment, it would be cruel and unusual to cling to an arbitrary line at age 18 for purposes of imposing the harshest possible prison sentence when research now shows neurodevelopmental that individuals between the ages 18 and 21 not truly adults. Imposing a mandatory life-without-parole sentence on 18 to 21-year-olds "poses too great a risk of disproportionate punishment" and violates both Michigan Constitution and the Eighth Amendment. Miller, 567 US at 479.

CONCLUSION

Wherefore, amici curiae respectfully requests that this Honorable Court grant Miller-type protection for individuals between the ages of 18 and 21.

Dated: 12/14/21

Respectfully submitted,

Robert Earl Hawkins #254254
In pro se
Carson City Correctional Facility
10274 Boyer Rd.
Carson City, MI 48811