IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case No. 2021-1158
	:	
Appellee,	:	On Jurisdictional Appeal from the Ashland County
	:	Court of Appeals, Fifth Appellate District
-- vs --	:	
	:	Court of Appeals No. 20-COA-015
TYLER MORRIS aka	:	
TYLER MULLINS	:	
	:	:
Appellee.	:	

REPLY BRIEF
OF APPELLANT, TYLER MORRIS AKA TYLER MULLINS

BRIAN A. SMITH (0083620) (COUNSEL OF RECORD)
Brian A. Smith Law Firm, LLC
123 South Miller Road, Suite 250
Fairlawn, OH 44333
(330) 701-1750 (Telephone)
(330) 247-2191 (Facsimile)
attybsmith@gmail.com (Email)

COUNSEL FOR APPELLANT, TYLER MORRIS AKA TYLER MULLINS

CHRISTOPHER R. TUNNELL (0072036) (COUNSEL OF RECORD)
Prosecuting Attorney
Ashland County Prosecuting Attorney's Office
110 Cottage Street, 3rd Floor
Ashland, Ohio 44805
(419) 289-8857 (Telephone)
(419) 281-3865 (Facsimile)
ctunnell@ashlandcounty.org (Email)

COUNSEL FOR APPELLEE, STATE OF OHIO

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page(s)

Statutes

Other Sources

ARGUMENT REGARDING PROPOSITION OF LAW

Proposition of Law No. I[1]:

> A trial court that sentences a defendant to life in prison, for an offense committed when the defendant was a juvenile, violates Article I, Section 9 of the Ohio Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution, when the trial court fails to consider the defendant's youth as a factor in sentencing.

The Ohio Attorney General (hereinafter "Attorney General") contends, in its Amicus Curiae Merit Brief, that the United States Supreme Court has only required that "before imposing such a sentence [of life in prison without the possibility of parole], courts must hold a 'hearing where youth and its attendant characteristics are considered as sentencing factors.'" Merit Brief of Amicus Curiae Ohio Attorney General (hereinafter "Amicus Brief"), p. 1, citing *Jones v. Mississippi*, 141 S.Ct. 1307, 1317 (2021). However, it was the United States Supreme Court's earlier decision in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), that stated a hearing was required. The Supreme Court stated in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), that a sentencing court must consider an offender's youth and attendant characteristics—a ruling which the Court stated its decision in *Jones* "does not overrule." *Jones*, supra, at 1321.

The Court's decision in *Jones* does not overrule, or limit, this Court's prior decision in *State v. Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803. This is because the Court in Jones left room for states to impose additional sentencing requirements. *Jones*, supra, at 1323. It explicitly referenced a scenario in which states "may require sentencers

[1] For purposes of this Merit Brief, Morris's Proposition of Law II is referred to as Proposition of Law I.

to make extra factual findings before sentencing an offender under 18 to life without parole," as this Court has required. *Jones*, supra, at 1323; see also *Patrick*, supra. The Court in *Jones* also made clear that this was one of a range of possible requirements states could impose, stating that "All of those options, and others, remain available to the States." *Jones*, supra, at 1323, citing Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* (2018).

The Attorney General contends that "there is no plausible argument that the Eighth Amendment, as originally understood, required courts to consider offender's ages before imposing a sentence." Amicus Brief, p. 10. It argues that the Eighth Amendment's prohibition against cruel and unusual punishment "'relates' only 'to the character of the punishment, and not the process by which it is imposed.'" Amicus Brief, pp. 9-10, citing *United States v. Tsarnaev*, 142 S.Ct. 1024, 1037 n. 2 (2022). However, recent decisions from the United States Supreme Court have cited the Eighth Amendment in imposing sentencing restrictions. See, e.g., *Miller*, supra, at syllabus (holding that "The Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders"). Also, other Court decisions have cited the Eighth Amendment in ruling on various aspects of the "process" by which a sentence is imposed. See, e.g., *Payne v. Tennessee*, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991) (ruling pertaining to victim impact statements in capital murder sentencing); and *Brown v. Sanders*, 546 U.S. 212, 126 S.Ct. 884, 163 L.Ed.2d 723 (2006) (consideration of "special circumstances" in death penalty sentencing).

The recent decisions from the Court have rendered the "character" and "form" of the punishment is as a distinction without a difference. For example, a sentencing court

applying the Court's decision in *Miller*, supra, would be required to consider the offender's juvenile status in determining whether to sentence that offender to life without parole. In doing so, the Eighth Amendment's prohibition against cruel and unusual punishment would, by necessity, apply to the "process" by which the trial court imposed its sentence. The line becomes blurred almost beyond recognition, because there is no way to determine whether a prohibition against sentences of life without parole for juvenile offenders applies to the "character" of the punishment itself, in sentencing a juvenile offender to such a harsh punishment, or to the "process" by which the punishment is imposed, by, presumably, requiring a trial court to make a distinction between juvenile and adult offenders in the "process" of sentencing.

The Attorney General's argument is that, because the Eighth Amendment and Article I, Section 9 of the Ohio Constitution, at the time they were enacted, did not make a distinction between juveniles and adults for purposes of determining punishment, that the Eighth Amendment should not be read to require a sentencing court to consider youth as a factor in sentencing. Amicus Brief at 9, 11. However, the Eighth Amendment forbids, as it has in the past, "extreme sentences that are grossly disproportionate to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). As the United States Supreme Court earlier noted, "The principle of proportionality is deeply rooted in common-law jurisprudence. It was expressed in Magna Carta, applied by the English courts for centuries, and repeated in the English Bill of Rights in language that was adopted in the Eighth Amendment." *Solem v. Helm*, 463 U.S. 277, syllabus, fn. a, 284-286, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983).

The Attorney General also argues that because the provision addressing proportional sentences was dropped from the 1851 Ohio Constitution, that Article I, Section 9 "does not require unique treatment of seventeen-year-old homicide offenders." Amicus Brief at 12. However, it does not necessarily follow that the framers of the 1851 Constitution intended "that the Constitution today contains no right to proportional sentences." Id. However, this Court has recognized a proportionality component of the protection against cruel and unusual punishment in Article I, Section 9, noting that "[l]ack of proportionality is a key factor" in whether a punishment violates the constitutional protection. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, ¶ 59, citing Ohio Const., Art. I, § 9, and *State v. Chaffin*, 30 Ohio St.2d 13, 282 N.E.2d 46 (1972), paragraph three of the syllabus.

It is also possible that the framers of the 1851 Constitution believed the provision addressing proportional sentences to be redundant, or surplusage, in light of Article I, Section 9, and that there was no longer a need to include the separate provision. Since the Attorney General concedes that there is no record, from the debates at the 1851 Constitutional Convention, discussing why the proportionality provision was removed, it is plausible that the framers believed it to no longer be necessary. Amicus Brief at 12.

The Attorney General's argument fails to take into account two factors. One is the blurred distinction between the "character" of the punishment and the "process" by which it is imposed. This has taken place due, at least in part, to the additional statutory and constitutional requirements with which a trial court is required to comply as part of sentencing. For example, a trial court must consider the principles and purposes of felony sentencing under R.C. 2929.11, as well as the seriousness and recidivism factors under

R.C. 2929.12. It must also be "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders." R.C. 2929.11(B). A trial court imposing a felony sentence also "shall not base the sentence upon the race, ethnic background, gender, or religion of the offender." R.C. 2929.11(C). This does not even include the sentencing statutes under R.C. 2929.13 and 2929.14, or statutes that contain sentencing rules specific to an offense.

Second, it fails to take into the "objective indicia of society's standards" in determining what, specifically, constitutes cruel and unusual punishment under the Eighth Amendment. See, e.g., *Roper v. Simmons*, 543 U.S. 551, syllabus, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Looking to societal standards to determine "cruel and unusual punishment" is not a recent phenomenon. The United States Supreme Court has employed this standard, in some form, going back over one hundred years. See, e.g., *Weems v. United States*, 217 U.S. 349, 30 S.Ct. 1544, 54 L.Ed. 793 (1910) (holding that "[t]he Eighth Amendment is progressive, and does not prohibit merely the cruel and unusual punishments known in 1689 and 1787, but may acquire wider meaning as public opinion becomes enlightened by humane justice"). The Court has also applied this standard in contexts involving adults as well as juveniles. See, e.g., *Trop v. Dulles*, 356 U.S. 86, 100-101, 2 L.Ed.2d 630, 78 S.Ct. 590 (1958) (holding that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man," and that "[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society"). The Court has cited a similar standard in holding that executions of mentally disabled individuals "are 'cruel and unusual

punishments' prohibited by the Eighth Amendment." *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).

The Attorney General argues that the Eighth Amendment, as originally read, contained no proportionality restrictions "to the extent proportionality concerns justify the special treatment of juveniles." Amicus Brief at 10. However, the United States Supreme Court has rejected this approach, such as in holding that the death penalty for offenders under the age of eighteen is unconstitutional. See *Roper*, supra. The Court later held that juvenile offenders could not be sentenced to life without parole for non-homicide offenses—again citing the proportionality principle of the Eighth Amendment. *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).

The Attorney General also claims that because "Morris's[2] counsel argued for a more lenient sentence because of Morris's youth," and because the trial court stated on the record that it had considered the principles and purposes of sentencing under R.C. 2929.11 and 2929.12 before sentencing Morris, that Appellant's "claim that the trial court failed to consider his youth and attendant characteristics before imposing his sentence . . . is hard to square with the record." Amicus Brief at 19-20, citing Merit Brief of Appellant at 13. However, the arguments of Morris's trial counsel in the record do not prove that the trial court actually considered them. Furthermore, the trial court had an obligation to go beyond R.C. 2929.11 and 2929.12 and *separately* consider the youth of the offender in

[2] Appellant has since had his name legally changed to Tyler A. Mullins. However, Appellant is referred to as "Morris" for purposes of this Brief since this is the name used at the time of trial, in the transcript, and in proceedings before the Fifth District Court of Appeals.

sentencing. *Patrick*, supra, at ¶ 2, citing R.C. 2929.03. If this Court determines the trial court's cursory statement that it "fully considered the provisions of O.R.C. Chapter 2929" as sufficient to satisfy this requirement, it effectively reads its previous requirement in *Patrick* out of existence, since there is no evidence to support that it "separately" considered youth as a factor.

The Attorney General's contention that the issue of whether Article I, Section 9 of the Ohio Constitution is to be interpreted differently than the Eighth Amendment "is not properly before this Court" is incorrect. Amicus Brief at 19. This Court accepted jurisdiction in this case on the second proposition of law Morris raised in his appeal, which is whether "A trial court that sentences a defendant to life in prison, for an offense committed when the defendant was a juvenile, violates *Article I, Section 9 of the Ohio Constitution*, and the Eighth and Fourteenth Amendments to the United States Constitution, when the trial court fails to consider the defendant's youth as a factor in sentencing." (Emphasis added).

Throughout Appellant's Merit Brief, Appellant has contended that his sentence violated *both* the Eighth Amendment and Article I, Section 9 of the Ohio Constitution. "The Ohio Constitution, Article I, Section 9, contains its own prohibition against cruel and unusual punishment. It provides unique protection for Ohioans." *C.P.*, supra, at ¶ 59, citing Ohio Const., Art. I, § 9, and *Arnold v. Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993), paragraph one of the syllabus. A finding of cruel and unusual punishment is "limited to those involving sanctions which under the circumstances would be considered shocking to any reasonable person." *C.P.*, supra, at ¶ 59, citing *McDougle v. Maxwell*, 1 Ohio St.2d 68, 70, 203 N.E.2d 334 (1964). "A punishment does not violate the

constitutional prohibition against cruel and unusual punishments, if it be not so greatly disproportionate to the offense as to shock the sense of justice of the community." *C.P.*, supra, at ¶ 59, citing *Chaffin*, supra, at paragraph three of the syllabus. The trial court's failure to properly consider Morris's youth as a factor, before sentencing him to 38 years to life in prison, meets these criteria and constitutes a constitutional violation.

Even though the language of the two constitutional provisions is nearly identical, the Ohio Constitution was adopted in 1851, approximately 60 years after the adoption of the Bill of Rights, and, as the Attorney General points out, has a differing legislative history. Although Appellant maintains that there are both federal and state constitutional grounds to find that Morris's sentence was unconstitutional, this Court has exclusive and final jurisdiction over questions of state constitutional law. See Ohio Const., Art. IV, §§ 1-2. Common pleas courts, like all Ohio courts, are subject to the Ohio Constitution. See Ohio Const., Art. IV, § 4. Therefore, this Court has adequate grounds to find a violation of Article I, Section 9 of the Ohio Constitution, based on the record and prior decisions of this Court such as *Patrick*, supra.

Because the trial court did not consider Morris's youth as a factor in sentencing, and because Morris was a juvenile at the time of the offenses, the trial court's sentence of Morris to life in prison constituted cruel and unusual punishment under both the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution. As a result, Morris's sentence should be reversed, and his case remanded to the Ashland County Court of Common Pleas for resentencing.

CONCLUSION

For the reasons stated hereinabove, the decision of the Fifth District Court of Appeals is incorrect. Therefore, Appellant respectfully requests that this Honorable Court reverse such decision.

Respectfully submitted,

/s/*Brian A. Smith*
BRIAN A. SMITH (0083620)
Brian A. Smith Law Firm, LLC

COUNSEL FOR APPELLANT, TYLER MORRIS AKA TYLER MULLINS

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Reply Brief, including the Appendix hereinafter, was served upon the following parties and/or counsel by electronic mail, on this 23rd day of May, 2022:

Christopher R. Tunnell, Esq.
Ashland County Prosecuting Attorney
ctunnell@ashlandcounty.org

Nadine Hauptman, Esq.
Ashland County Assistant Prosecuting Attorney
nhauptman@ashlandcounty.org

Benjamin Flowers, Esq.
Solicitor General, Office of the Ohio Attorney General
benjamin.flowers@ohioago.gov

/s/*Brian A. Smith*
BRIAN A. SMITH (0083620)
Brian A. Smith Law Firm, LLC