

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

2019-0655

Plaintiff-Appellee

VS.

:  
:  
: On APPEAL from the Mahoning  
: County Court of Appeals  
: Southern Appellate District

KYLE PATRICK,  
Defendant-Appellant

:  
:  
: C.A. Case No. 17 MA 0091

OFFICE OF AMICUS CURIAE, OFFICE OF THE CLERK OF COURT

7081 West Boulevard  
Suite No. 4  
Youngstown, Ohio 44512-4362  
(330) 758-7700  
(330) 758-7757 (fax)  
[lbjuhasz@gmail.com](mailto:lbjuhasz@gmail.com)

*Counsel of Record*  
*Defendant-Appellant, Kyle Patrick*

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**Statements of Interest of Amicus Curiae**

The Office of the Ohio Public Defender ("OPD") is a state agency, designed to represent criminal defendants, adults, and juveniles, and to coordinate defense efforts

have been committed to the Ohio Department of Corrections



The **Central Juvenile Defender Center** ("CJDC") is a public interest organization that works to improve access to counsel and quality of representation for youth in the juvenile justice system. CJDC provides training, support, and technical assistance to juvenile defenders in Kentucky, Ohio, Tennessee, Indiana, Missouri, Kansas, and Arkansas. CJDC is one of 9 regional affiliates of the National Juvenile Defender Center in Washington, D.C. CJDC has participated as Amicus Curiae before federal and state

*Children's Law Center has worked on behalf of adolescents in a number of*

investigators and support staff. In total, the office handles over 10,000 cases annually.

Cuyahoga County Court of Common Pleas juvenile cases in the Juvenile Division of

The Schubert Center for Child Studies ("Schubert Center") is an academic center

~~at the University of Colorado Boulder, where it is housed in the~~

~~Department of Psychology, 355 UCB, Boulder, CO 80508-0355.~~

~~The Schubert Center is a 501(c)(3) nonprofit organization.~~

~~Its mission is to advance research, practice, policy, and education~~

~~for the well-being of children and adolescents.~~

bridges research, practice, policy and education for the well-being of children and

~~adolescents. The Schubert Center Faculty Association is a 501(c)(3) nonprofit~~

~~organization that supports the Schubert Center's mission.~~

Statement of the Case and Facts

Kyle Patrick was 17 years old in 2012, when he was charged with multiple felony offenses, including aggravated murder and aggravated robbery. *State v. Patrick*, 7th Dist. Mahoning No. 17MA0091, 2019-Ohio-1189, ¶ 2. Kyle initially plead guilty to amended charges; but, four days later, filed a pro se motion to withdraw his plea because he did

not understand the implications of his admission and of the consequences of the plea.

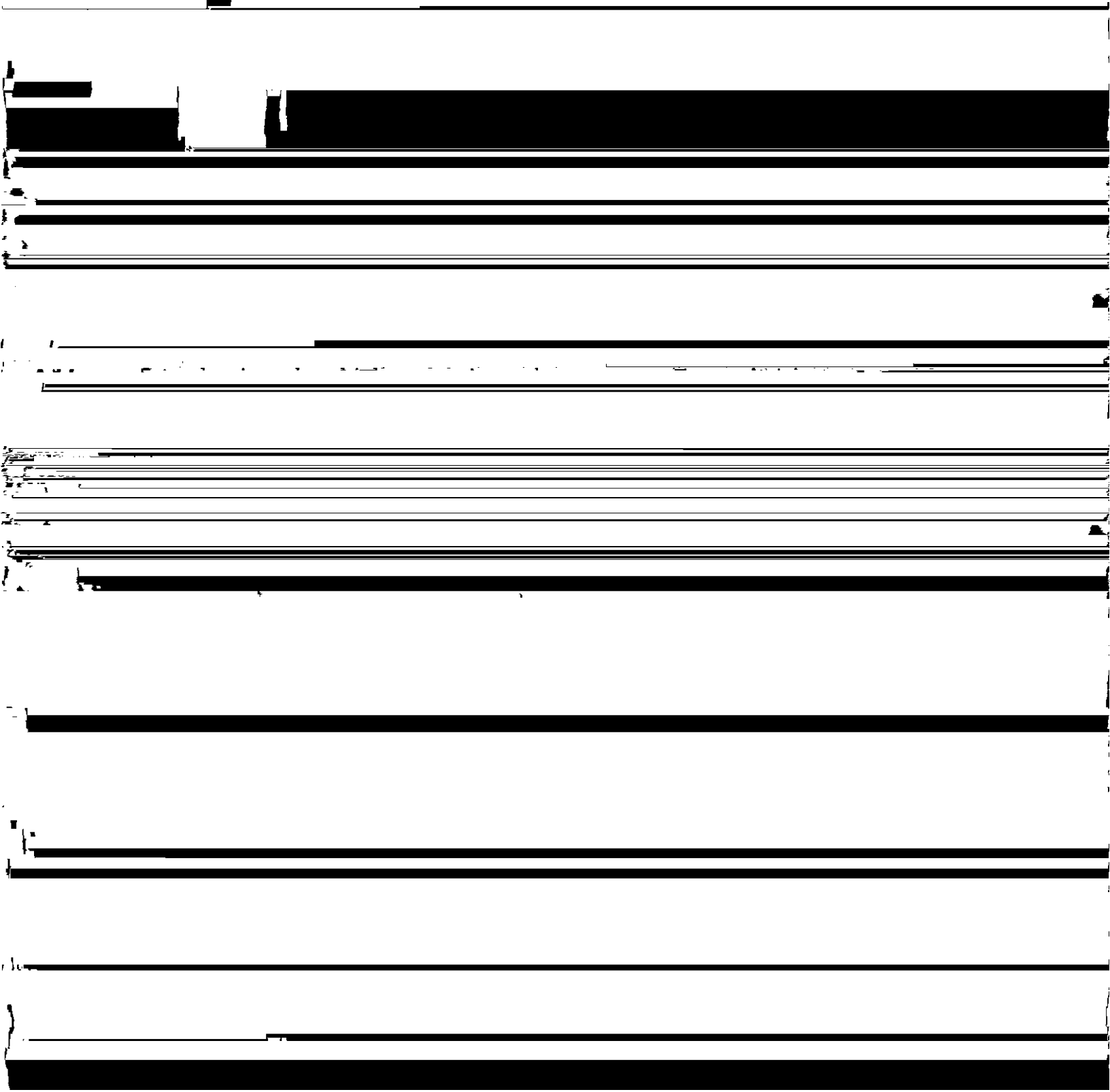
Concerning his constitutional challenge, the appellate court found that *Roper v. Simmons* did not apply to Kyle's case because "appellant was not sentenced to death." *Id.* at ¶ 10

citing *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Further, the Seventh District determined that the U.S. Supreme Court's decision in *Graham v. Florida* was distinguishable because *Graham* concerned the imposition of life without parole

sentences for juveniles who were convicted of nonhomicide offenses. *Id.* at ¶ 14-15. In

Accordingly, the Eighth Amendment protects child offenders categorically "from a final determination while they are still youths that they are irreparably corrupt and undeserving of a chance to reenter society." *Moore* at ¶ 42.

The distinct attributes of youth have been the defining principle upon which the

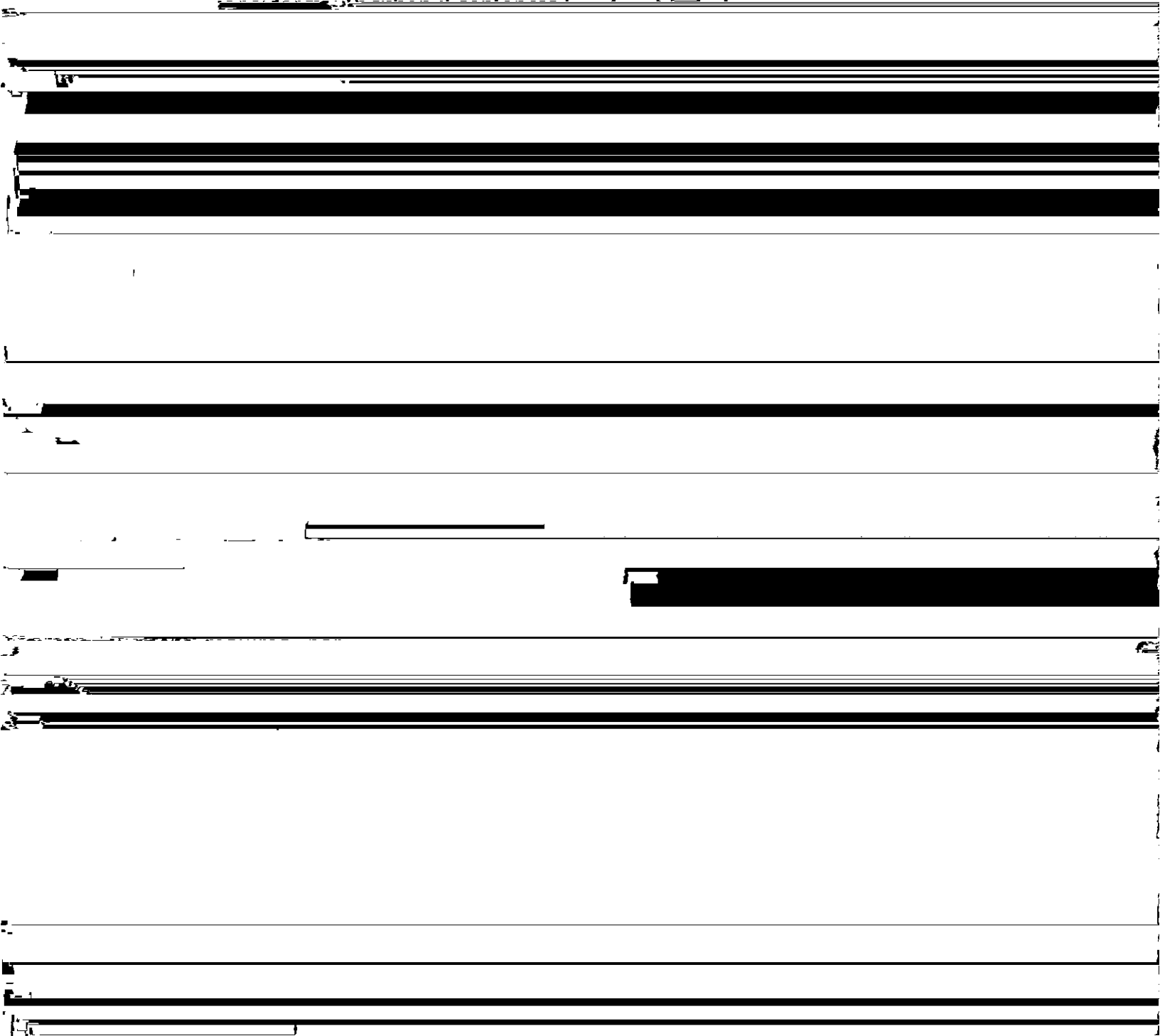


the Eighth Amendment's prohibition against cruel and unusual punishments.

**Petitioner's Proposition of Law: Imposition of any life imprisonment sentence upon a juvenile offender without taking into consideration factors commanded by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of Ohio violates those provisions.**

**A. A juvenile offender's sentence is unconstitutional when the trial court does not**

~~consider the offender's individual circumstances.~~



L.Ed.2d 825. And, more recently, the Court prohibited the mandatory imposition of life

L.Ed.2d 407.

The U.S. Supreme Court has repeatedly reiterated that "a child's age is far 'more than a chronological fact.'" *J.D.B. v. North Carolina*, 564 U.S. 261, 263, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011). "It is a fact that generates commonsense conclusions about behavior and perception." *Id.* These conclusions directly impact a child's culpability and apply to all children as a class. *Id.* In *Miller*, the Court explained that a trial court must consider a



are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Id.*, citing *Roper* at 570.

The studies cited by the U.S. Supreme Court demonstrate that children's "transient rashness, proclivity for risk, and inability to assess consequences" not only lessen a child's "moral culpability," but also "enhance[] the prospect that as the years go by and

psychological development occurs, the child's ability to understand the consequences of his actions will increase." *Id.*

child with no consideration for his own safety and the safety of other children.

be squared with the Supreme Court and this Court's recognition that "children are

in Ohio are appointed by the Director of Rehabilitation and Correction under R.C. §

~~E140.09. The Director is authorized to appoint, remove, and suspend any~~

in its formation, it is unavoidable that external politics likely play a role in who gets

released.

For exactly these reasons, the American Law Institute ("ALI") has been highly

appear to support these claims. Between 1990 and 2015, the number of [redacted]

accidents in Ohio, based on reports each year, ranged from [redacted] to [redacted].

(available at: <https://www.daytondailynews.com/news/state--regional-govt--politics/ohio-parole-board-under-fire-from-victims-inmates-and-lawmakers/v3iPhe6kmV9wTm8SOyCnzQ/>); see also Ohio Adult Parole Authority

Yearly Parole Board Reports (available at: <https://drc.ohio.gov/reports/parole>).

In Ohio, as in most states, an individual is not entitled to release on parole. The

a life without parole sentence. Such a result would offend Due Process and the Eighth

2011). In Washington, Montana and Iowa, children are no longer subjected to...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. A juvenile offender's sentence is unconstitutional when it denies him the

The record below reflects that the trial court instructed the jury on complicity and that the jury did not make a specific finding that Kyle was the shooter in this case.



- i. **"Meaningful opportunity" means that juvenile offenders must be given the chance to spend a substantial part of their lives outside of prison.**

The U.S. Supreme Court "viewed the concept of 'life' in *Miller* and *Graham* more

effectively incarcerated for 'life' if he will have no opportunity to truly reenter society or have anything meaningful life outside of prison" *Moore*, 140 Ohio St. 23, 557, 2016 OH

Although the Court did not give numeric figures when defining "meaningful opportunity" in years, it did give guidance to sentencing courts by highlighting what

~~defining principles require different treatment of~~

example, it found that lawful sentences must recognize a juvenile offender's "capacity for change and limited moral culpability" offer "hope of restoration" give "chance for

*Moore* 149 Ohio St. 3d 557, 2016-Ohio-8288, 73 N.E.3d 1127 at ¶ 30 (citing a six-year difference between the life expectancy of white and black males). Also, life expectancy is an average. See Elizabeth Arias et al., *National Vital Statistics Reports: United States Life Tables, 2014*, Department of Health and Human Services (2017), <https://www.cdc.gov/nchs/nvss/life-tables>.

<https://perma.cc/XQ3L-22HB> (accessed February 28, 2019). In a normal distribution, about half of people will live long enough to reach or exceed their life expectancy. The other half will not. And, as the California Supreme Court aptly observed in deciding to reject the use of life expectancy tables, “[a]n opportunity to obtain release does not seem ‘meaningful’ or ‘realistic’ within the meaning of *Graham* if the chance of living long enough to make use of that opportunity is roughly the same as a coin toss.” *People v. Contreras*, 4 Cal. 5th 349, 364, 411 P.3d 445, 229 Cal. Rptr.3d 249 (2018).

offenders the opportunity to leave prison in order to die but to live part of their lives in society.

*Id.* at ¶ 46. Juvenile offenders “must be given the opportunity to show their crime did not

prison walls must be restored.” *Id.*, quoting *Montgomery* at 736-737. A sentence that

regulates parole revocation until age 50 does not restore the law of 1968.

hypertension, stroke, asthma, chronic bronchitis, cancer, diabetes, and arthritis." *Casiano* at 1047.

Further, studies suggest that incarceration drastically reduces life expectancy.

actuarial sciences in determining precise mortality dates." *Null*, 836 N.W.2d at 71; *Wyatt*

*L. Bear Cloud v. State of Wyoming*, 2014 WY 113, 334 P.3d 132, 142 (Wyo. 2014). The Supreme

Court of New Jersey concurred, holding that "[j]udges \* \* \* should not resort to general life-expectancy tables when they determine the overall length of a sentence," since "those tables rest on informed estimates, not firm dates, and the use of factors like race, gender, and income could raise constitutional issues." *State v. Zuber*, 227 N.J. 422, 152 A.3d 197, 214 (N.J. 2017).

- iii. For juvenile offenders, a "meaningful opportunity" should include an opportunity to go before the parole board after 15 years of incarceration.

In *Moore*, the Supreme Court recognized that "in the wake of *Graham* and *Miller*,

many of the new statutes have allowed parole eligibility for juveniles sentenced to long

|               |  |           |
|---------------|--|-----------|
| Montana       | Mon. Code Ann. Section 46-18-222(1)    | ¼ of term |
| Nevada        | Nev. Rev. Stat. Ann. Section 213.12135 | 15        |
| West Virginia | W.Va. Code Section 61-11-23(b)         | 15        |
| Wyoming       | Wyo. Stat. Ann. Section 6-10-301(c)    | 25        |

At the time *Graham* was decided, 37 of the states in the U.S. permitted life-without-parole sentences for juvenile nonhomicide offenders; and, now, at least 24 of them prohibit sentences that exceed 50 years for these youth and at least 12 of them prohibit sentences that exceed 20 years (or less) before granting the opportunity for parole. This

significant, because a necessary part of an Eighth Amendment analysis is whether a sentence violates the "evolving standards of decency." And, it is evident that the nationwide trend in juvenile sentencing is toward much earlier opportunities for

sentences, the commission recommended parole at age 40. *Id.* The proposed language recommended that the parole board, in considering whether to grant parole to juvenile offenders, be required to consider "specific factors related to juveniles, including the diminished culpability of youth and the prisoner's subsequent growth and maturity." *Id.*

In addition, the commission recommended that the board be required to review juvenile offenders' sentences at least every ten years following their initial review. *Id.*



antisocial and criminal behavior as they mature into adults, review of the juvenile's

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and the juvenile's progress should be assessed regularly. *See, e.g.,* Models for Change, *Research on Pathways to Desistance: December 2012 Update A (2012)* (concluding that "it is hard

Marsha L. Levick (PHV 1729-2019)

Andrew R. Keats (PHV 20847-2019)

**JUVENILE LAW CENTER**

1315 Walnut Street, 4<sup>th</sup> Floor

Philadelphia, PA 19107

(215) 625-0551; (215) 625-2808 (fax)

[mlevick@jlc.org](mailto:mlevick@jlc.org)

[a.keats@jlc.org](mailto:a.keats@jlc.org)

*Counsel for Amici Curiae  
Juvenile Law Center, et. al.,*

### Certificate of Service

I hereby certify that a copy of the foregoing **BRIEF OF AMICI CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER, JUVENILE LAW CENTER, ET. AL.** was sent by regular U.S. mail, postage prepaid, on October 7, 2019, to John Juahsz, Counsel of Record for Kyle Patrick at 7081 West Boulevard, Suite No. 4, Youngstown, Ohio 44512-4362, and Assistant Mahoning County Prosecutor, Ralph M. Rivera, 21 West Boardman Street, Youngstown, Ohio 44503.

/s/: Brooke M. Burns  
Brooke M. Burns (0080256)  
Chief Counsel, Juvenile Department

*Counsel for Amicus Curiae  
Office of the Ohio Public Defender*