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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

CHRISTOPHER T. SHANAHAN,

Defendant-Appellant.

No. 45716-2018

**Jefferson County Case No.
CR 1995-502**

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT,
IN AND FOR THE COUNTY OF JEFFERSON

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INTRODUCTION

Appellant Christopher Shanahan relies on the facts and arguments in his opening brief, and will not repeat those here, but he does wish to take this opportunity to reply to a few topics raised in the State's brief.

The State contends primarily that because Mr. Shanahan did not receive a formal sentence of life in prison without the possibility of parole, any argument that his life sentence, with 35 years fixed, is now illegal due to fundamental changes in constitutional law related to juvenile sentencing fails. (Brief of Respondent, pp. 5-6.) Mr. Shanahan respectfully disagrees and contends that the State overlooks several core constitutional principles from *Roper, Graham*, *Miller*, and *Montgomery* that apply to his case.

The State also asserts that a claim that Mr. Shanahan's sentence amounts to cruel and unusual punishment under the Eighth Amendment based on disproportionality is barred by res judicata because an Eighth Amendment proportionality claim was raised in Mr. Shanahan's direct appeal under then existing law. (Brief of Respondent, pp. 8-9.) This is not the same claim, however, due to subsequent and material changes in the law. Res judicata does not bar the Court from addressing it.

REPLY ARGUMENT

I.

The constitutional rules from *Miller* and *Montgomery* apply to this case.

The State argues that, "*Miller* only applies to juvenile offenders who were sentenced to fixed life terms. Shanahan was not sentenced to a fixed life term. *Miller*, therefore, does not apply to Shanahan's case or sentence." (Brief of Respondent, p. 5.) In pressing its argument, the State reduces the constitutional law to an overly simplistic baseline and ignores core principles and reasoning from *Miller* and *Montgomery*, which were themselves a culmination of over a decade of legal transformation related to juvenile sentencing.

The primary rule to emerge from the line of Supreme Court cases set out in Mr. Shanahan's opening brief is the children are constitutionally different than adults and must be sentenced differently. Scientific research, and now constitutional law, tell us this. Children and adolescents are impulsive. *Miller v. Alabama*, 132 S.Ct. 2455, 2467‐68 (2012). They can be reckless. *Id*. They take risks without appreciating the consequences. *Id*. They are more prone to a negative family environment and peer influences. *Id*. They are at a disadvantage in dealing with police and prosecutors, including in determining whether to plead guilty. *Id*. The do not mature mentally and morally until their mid-20s. *Id*. All of these characteristics diminish their culpability. *Id*. at 2465. The typical equation for sentencing adult offenders must necessarily yield to an altogether different calculus

for juveniles. For instance, deterrence is less effective on youthful offenders. *Id.* Childhood characteristics also weaken a rationale for extreme punitiveness. *Id*. at 2466. And there is a much stronger likelihood of change and rehabilitation. *Id*. at 2465.

In short, children whose crimes reflect the transient immaturity of youth are in a *constitutionally distinct class*, separate and apart from adults who commit the same crime. Christopher Shanahan is a member that class.

Other state courts have held the principles and reasoning from *Roper* to *Graham* to *Miller* to *Montgomery* apply to cases in which a juvenile offender was sentenced to something other than life without the possibility of parole, *see* Brief of Appellant, pp. 12-14 (discussing cases), and this Court should follow their lead. *See also Peterson v. State*, 193 So.3d 1034, 1038-39 (Fl. Dist. Ct. App. 2016) ("we conclude that the court's admonition that a constitutional sentence is one that provides a meaningful opportunity for *early* release is not satisfied simply because the juvenile may be geriatrically released from prison at some point before the conclusion of his or her statistical or actuarial life expectancy.")(emphasis in original); *Davis v. State*, 415 P.3d 666 (Wyo. 2018) (reaffirming that a lengthy term for years can be the "functional equivalent" of a life sentence triggering *Miller* review, holding that there is a presumption against life sentences for juveniles, and setting out certain procedures for sentencing juveniles.)

Nevertheless, the State contends that even if *Miller* were to apply to this case, Mr. Shanahan received constitutionally adequate consideration of the attributes of youth.

(Brief of Respondent, pp. 6-7.) As the State points out, Mr. Shanahan's trial counsel presented some mental health testimony related to aspects of Mr. Shanahan's *personal* development and maturity. (*Id*.) And, in its written findings regarding the weighing of aggravating and mitigating circumstances (as if this were a death-eligible case), the trial court noted Mr. Shanahan's age and expressed "hope" that he could be rehabilitated. (Appeal No. 23, 965, Clerk's Rec., p. 191.) But the court more than negated even that snippet of consideration with a notation that "murders continue in our society and, alarmingly, they are all too often committed by teenagers." (*Id*.)

This review is simply not the type of searching inquiry that the Eighth Amendment requires. As Mr. Shanahan wrote in his opening brief, the distinction that the Idaho Supreme Court has previously made when reviewing pre-*Miller* sentences is whether a trial court adequately considered the developmental state of an adolescent's brain compared to an adult and how youth are more prone to impulsivity and more likely to be able to be rehabilitated. (Brief of Appellant, pp. 15-18) (citing and comparing *Johnson v. State*, 162 Idaho 213, 223, 395 P.3d 1246, 1258 (2017) and *Adamcik v. State*, 163 Idaho 114, 408 P.3d 474, 488 (2017), with *Windom v. State*, 162 Idaho 417, 398 P.3d 150 (2017)). In this case, the trial court was presented with some mental health evidence of Mr. Shanahan's personal development, but not it was not presented with evidence about, nor did it meaningfully weigh and assess, *adolescent development generally* and how that bears on the likelihood of rehabilitation compared to an adult. In the mid-

1990s, that was not on the constitutional radar. Now it is mandated. Mr. Shanahan's case is more like *Windom* in that regard, and not like *Johnson* or *Adamcik*.

II.

Res judicata is not a bar to this Court's consideration of a claim that, in light of an intervening and material change in the law, Mr. Shanahan's sentence is disproportionate and independently violates the Eighth Amendment.

The State next asserts that because an Eighth Amendment claim was raised on direct appeal in 1999, in which Mr. Shanahan's counsel argued that the sentence was disproportionate to the offense, "re-litigation of this issue is barred by the doctrine of res judicata." (Brief of Respondent, p. 8.)

"Res judicata is comprised of claim preclusion (true res judicata) and issue preclusion (collateral estoppel)." *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). "Under principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties upon the same claim." *Id*. (citation omitted). The doctrine of res judicata contains narrow exceptions, however, including "ineffective assistance of counsel, newly discovered evidence, or changes in the controlling law." *State v. Lankford*, 127 Idaho 608, 618, 903 P.3d 1305, 1315 (1995) (citing *Aragon v. State*, 114 Idaho 758, 760 P.2d 1174 (1988)).

That last exception mentioned in *Lankford* applies here. There has been a fundamental shift in the law since the time that this claim was initially raised and decided. As such, this is not the same claim. The constitutional analysis that must be applied when a juvenile is sentenced to a lengthy term for years – regardless whether it is a life sentence – must be viewed through a much different lens than the one that the Court of Appeals used. There, it focused heavily on the facts of the offense. *State v. Shanahan*, 133 Idaho 896, 901, 994 P.2d 1059, 1064 (Ct. App. 1999). Now, courts are required to take into consideration the attendant characteristics of youth, which squarely informs the individual juvenile's level of culpability, the proper role of deterrence and punishment, and the capacity for rehabilitation, in ways that were not a requirement at the time of appellate review in the 1990s.

In fact, in 2012 the *Miller* Court brushed aside strict adherence to the longstanding disproportionality test from *Harmelin v. Michigan*, 501 U.S. 957 (1991), noting that it was inapposite. The Court wrote, "*Harmelin* had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders. We have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children." *Miller*, 132 S.Ct. 2455, 2470 (2012). Just as "death is different" in capital case review "children are different too." *Id*.

This Eighth Amendment claim is a new one. For that reason, this Court should conclude that res judicata does not prohibit consideration of the merits anew. Mr.

Shanahan's youthful characteristics fit in all of the categories set out in *Graham*, *Miller*, and *Montgomery*, as he has addressed in his opening brief. (Brief of Appellant, pp. 21-22.) Taking those factors in consideration, a sentence of life in prison with 35 years fixed, imposed on a juvenile who was 15 years old when he committed this crime is far beyond excessive and is cruel and unusual punishment under the Eighth Amendment.

CONCLUSION

Mr. Shanahan requests that this Court reverse the district court's order and remand for further proceedings.

Respectfully submitted on this 27th day of November, 2018.

Craig Durham
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that this Reply Brief has been served on the following on this 27th day of November, 2018, by filing it and serving it through the Court's e-filing system:

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