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Nov 27 2023

S.C. SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph K. Anderson, III, Chief Administrative Law Judge

Op. No. 6021 (S.C. Ct. App. filed Nov. 18, 2023)
Case No. 2023-001750

STEWART BUCHANAN,..... PETITIONER,

v.

S.C. DEP'T PROB., PAROLE & PARDON SERVS.,..... RESPONDENT.

APPENDIX

ALLISON FRANZ
ROSALIND S.D. MAJOR
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044
allison@justice360sc.org
rosalind@justice360sc.org

Other Counsel of Record:

MATTHEW C. BUCHANAN
S.C. Dep't Prob., Parole & Pardon Servs.
P.O. Box 207
Columbia, SC 29202

Counsel for Respondent

JOHN H. BLUME
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030
jb94@cornell.edu

Counsel for Petitioner

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court

Honorable Ralph K. Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001554

STEWART BUCHANAN, #69848 APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES RESPONDENT.

RECORD ON APPEAL

John H. Blume

Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030

Matthew C. Buchanan

S.C.D.P.P.
P.O. Box 50666
Columbia, SC 29250
(803) 734-9012

Lindsey S. Vann

Hannah Lyon Freedman

Megan Barnes

Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044

ATTORNEYS FOR APPELLANT

ATTORNEY FOR RESPONDENT

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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

January 30, 2019

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

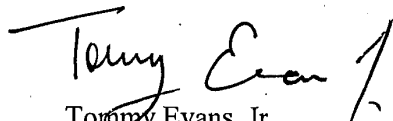
RE: Stewart Buchanan, #69848 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Lenski:

Please find enclosed for filing the *Record on Appeal* dated January 30, 2019, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Laura Young, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 18-ALJ-15-0039

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

STEWART BUCHANAN, #69848 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Record on Appeal*, dated January 30, 2019, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 30th day of January, 2019, addressed to:

Laura Young, Esquire
900 Elmwood Avenue, Suite 00
Columbia, S.C. 29201

I further certify that all parties required by Rule 61 to be served have been served.


Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 18-ALJ-15-0039

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

STEWART BUCHANAN, #69848.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ...RESPONDENT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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The State of South Carolina

County of YORK

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on the 3rd Mon day of June,

19 73, the Grand Jurors of York County present upon their oath:

That Stewart Russell Buchanan

did with malice aforethought in YORK County on or about the 18th day

of May, 19 73, kill one Aileen M. Boone

by means of a certain knife

and that the said Stewart Russell Buchanan

did die in York County as a proximate result thereof on or about the

18th day of May, 19 73.

The sentence of the court is that the defendant(s) Stewart
Russell Buchanan
 be confined at hard labor on the public works of York County for a term of
life
 or for a like term in the State Penitentiary, or pay a fine of _____
 _____ dollars.

York, South Carolina

25 day of Sept, 19 73

Frank Egger
 Presiding Judge

M/W

~~Age~~ D.O.B. - 3-16-56

S.S.N. - 250-06-1233

Address - 113 Thomas Ave
 Trout Mill, SC

21,859
 South Carolina

AL SESSIONS

Term, 19 73

ATE

BUCHANAN

NT FOR

R

Heathly
 man of Grand Jury

COLUMBIA, S. C. 29205

Solicitor

Mike D. Bay

Against the peace and dignity of the State.

Witnesses

Howard Long

W. E. Ervin

R. E. Kimbrell

W. D. Thomas

W. E. Sutton

J. F. Johnson

Verdict

*Guilty With
Recommendation For
Mercy*

R. W. Greeley

Foreman

The State of South Carolina
YORK

County of _____

COURT OF GENERAL SESSIONS

June

Term, 19 73

THE STATE

VS.

STEWART RUSSELL BUCHANAN

INDICTMENT FOR

MURDER

MIKE S. JOLLY

True Bill
James A. Seate, Jr.
Foreman of Grand Jury

McGAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205

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Mont Myrie, SC

25 day of Aug, 1973

Frank Egger
Presiding Judge

DUPLICATE

File No. _____

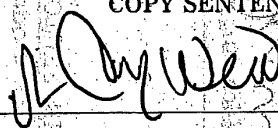
The State of South Carolina
County of Greenville

MAGISTRATE COURT

THE STATE
VS

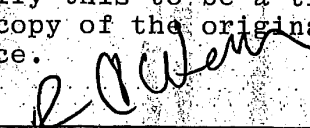
Stewart R. Buchanan

COPY SENTENCE



Magistrate

I certify this to be a true and
exact copy of the original
sentence.



R. Carey Werner
Greenville County
Magistrate

DUPLICATE

DUPLICATE

The State of South Carolina
COUNTY OF GREENVILLE

Township

January 4, 19 82

THE STATE

vs.

Stewart R. Buchanan

IN MAGISTRATE COURT

CHARGED WITH OFFENSE OF

DUI

No Valid Drivers License

SENTENCE

DUI - 20 days or \$50

) This sentence to run consecutively with

No D. L. - 20 days or \$25

) any other sentence imposed.

TOTAL SENTENCE 40 DAYS TO RUN CONSECUTIVELY WITH ANY OTHER SENTENCE

State of South Carolina

COUNTY OF GREENVILLE

I, R. Carey Werner Magistrate for Township
in Greenville County, State aforesaid, do hereby certify that the foregoing is a true copy of the sentence
pronounced by me in the case above entitled.

Magistrate

The above defendant delivered to

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
 Governor



JERRY B. ADGER
 Director

2221 Devine Street, Suite 600
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9220
 Fax: (803) 734-9440
 www.dppps.sc.gov

November 15, 2018

Mr. Stewart Buchanan #00069848
 Perry Correctional Institution
 430 Oaklawn Rd.
 Pelzer, SC 29669

RE: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following **CONCLUSION OF LAW**:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws: The Parole Board has determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
 Indication Of Violence In This Or Previous Offense
 Use Of Deadly Weapon In This Or Previous Offense
 Vote Count: Unanimous To Reject

Sincerely,

Nettie C. Jacobs
 Board Support Services

11/14/2018

R.010

Inmate Name Stewart Buchanan	SCDCH# 069848

Department of Probation, Parole and Pardon Services P.O. Box 50666 Columbia, SC 29250

Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates a expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmates; parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in on way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes on or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature X: Stewart Buchanan	Date 8-7-2018	Witness [Signature]	Date 8-7-2018

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 18-ALJ-15-0039

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

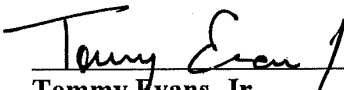
STEWART BUCHANAN, #69848 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ...RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



Tommy Evans, Jr.,
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

January 30, 2019

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ralph King Anderson III, Chief Administrative

Appellate Case No. 18-ALJ-15-0039

Stewart Buchanan, SCDC#69848. Appellant,

v.

State of South Carolina Probation, Parole and Pardon Services. Respondent.

**SUPPLEMENTAL
RECORD ON APPEAL**

John H. Blume
Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
Jb94@cornell.edu
(607)255-1030
Attorney for Appellant

Tommy Evans, Jr.
Assistant General Counsel
SC Department of Probation, Parole and
Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
Attorney for Respondent

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**Memorandum in Support of Favorable Parole Recommendation for Stewart
Buchanan**

Introduction

In 1973, seventeen year old Stewart Buchanan was sentenced to life imprisonment with the possibility of parole (after ten years) following his guilty plea to murder. Stewart confessed and accepted responsibility for killing his next-door neighbor by pleading guilty and willingly accepting the (then) maximum punishment, thus sparing the victim's surviving family members the ordeal of a trial. He now comes before this Board seeking parole for the nineteenth time having served forty-five years in the South Carolina Department of Corrections (SCDC). Stewart has more than demonstrated his rehabilitation and reformation through his positive institutional record and participation in numerous counseling, rehabilitative and religious programs. His demonstrated intelligence, vocational skills, and plan for reentry into society should give this Board confidence that Stewart is fully prepared to be, and will be, a productive and successful member of society if he is granted parole.

An Individualized Determination of Youth

This Board's parole determination must be informed by the United States Supreme Court's recent juvenile sentencing cases, all of which are driven by one core principle: "children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). The Court has unambiguously declared that the Eighth Amendment requires decision-makers – and this Board is now the decision-maker -- to consider the influence of the juvenile offender's youth on the offense and juveniles' innate propensity to change. Therefore, a lifetime in prison is "a disproportionate sentence for all but the rarest of children, those whose crimes reflect irreparable corruption." *Montgomery v. Louisiana*, 136 S. Ct. 718, 726 (2016), as revised (Jan. 27, 2016) (describing *Miller*) (internal quotations

omitted). A state cannot determine “at the outset that [juvenile] offenders never will be fit to reenter society.” *Graham v. Florida*, 560 U.S. 48, 75 (2010). Otherwise, a person sentenced for a crime committed as a juvenile must be given a “realistic opportunity” for release. *Id.* at 82. The Supreme Court of South Carolina has outlined the following factors to be considered in calibrating the appropriate amount of time a juvenile offender should serve:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

Aiken v. Byars, 410 S.C. 534, 544 (2014) (quoting *Miller*, 132 S. Ct. at 2468).

I. Reasons Stewart Buchanan Should Be Paroled

A. Hallmark Features of Youth

As noted previously, Stewart was a juvenile at the time of the offense. As such, his moral culpability was – by definition – less than adult offenders convicted of the same/similar offenses. This is necessarily so because juveniles “have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 132 S. Ct. at 2464 (internal quotations omitted). Juveniles’ incomplete neurological development reduces their culpability because their behavior is not a function of incorrigibility, but a result of biological

traits that change as they age. Over the past forty-five years in the SCDC, Stewart has matured and developed into a responsible adult.

Stewart's childhood and teenage years were tumultuous as he lacked a functional family support system. Thus he was even more immature at the time of the offense than most seventeen year olds as he struggled to navigate between an unstable home life, difficulties at school and a peer group that was involved with drugs and alcohol. In the period leading up to his offense, Stewart was temporarily removed from his home and spent a short period of time in foster care at the J.C. Boys Home. This time away from home made it difficult to establish or maintain any strong friendships with peers. After being returned to his parents' custody, things did not improve; his parents were absent most of the time, and his sister, who essentially raised him, had just runaway from home. Stewart's parents, who had been emotionally and physically absent before, now split their attention between working and trying to address his sister's issues. As is common with teenagers in such situations, Stewart began engaging in attention seeking behavior at home and at school, which only exacerbated matters.

However, this teenage behavior is not evidence of Stewart's character today. As the neuroscientific literature has proven and the Supreme Court has recognized, a juvenile's "character is not as well formed as an adult's [and] his traits are less fixed." *Miller*, 132 S. Ct. at 2464. The traits children may display as juveniles are "less likely to be evidence of irretrievable depravity" but instead are biological; such characteristics are due to the fact that juveniles are not as neurologically developed as adults. *Id.* In fact, the brain continues to develop into an individual's mid to late twenties.¹ This

¹ Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS AND OFFENDERS 428, 430–37 (2012). Dr. Laurence Steinberg is a developmental psychologist specializing in adolescent development. His research has been repeatedly cited by the United States Supreme Court in cases about juvenile justice issues.

explains why few individuals who commit offenses – even violent offenses -- in their youth commit serious criminal offenses as they get older. We know that their criminal behavior is frequently a reflection of their immaturity, lack of impulse control, and traumatic childhood experiences.² As juveniles grow older and their brains develop, they begin to mature out of the reckless behavior underlying criminal conduct.³ Stewart's pre and post incarceration behavior follows this same pattern – he is no longer an impulsive teenager, but is now a mature and reformed adult.

B. Family and Home Environment

Stewart was born in 1956 in Fort Mill, South Carolina as the last of three children to his parents, John and Ila Buchanan. His father was mostly absent throughout Stewart's childhood. Stewart's mother often used to tell neighbors and friends that John, an alcoholic who drifted from job to job worked two jobs: one to support the family and one to support his drinking. When present, John was a man of few words and rarely paid attention to Stewart or his siblings except when he enforced the corporal punishments he believed were necessary to successfully raise a child. John would often backhand Stewart or hit him with a belt as punishment. Once when Stewart brought home a report card that John believed was less than satisfactory, his father punched him in the face without saying a word. Stewart's relationship with his mother was not much better. Ila was known in the family for being cold and aloof. She rarely expressed love or affection for Stewart, instead – possibly as a result of the bitterness produced by an unhappy marriage – was highly critical of her children. His parents' strained marriage was also fueled by his father's adultery. On one occasion, Stewart's mother purportedly tried to run over one of John's mistresses with her car,

² Kathryn C. Monahan, Laurence Steinberg, Elizabeth Cauffman & Edward P. Mulvey, *Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence-limited and persisting antisocial behavior*, 25 Dev. and Psychopathology 1093, 1102–04 (2013) (finding that only nine percent of serious juvenile felons continued engaging in criminal behavior after transition into adulthood).

³ *Id.* at 1104.

and as a result of the fallout from this incident, his family temporarily left the Fort Mill area. Stewart's mother threatened to leave John on many occasions, and did a few times for short periods of time, but ultimately she stayed in the unhappy marriage.

Due to Stewart's physically absent father and emotionally absent mother, his care fell to his two older siblings, particularly his sister, Janice. Janice was nine years older than Stewart, and did most of the work taking care of and raising Stewart throughout his childhood. She treated Stewart as if he were her own child rather than her brother – the two spent so much time together that Stewart would often call her “Mommy” growing up, forgetting that she was his sister and not his mother. Stewart's older brother, John Jr., was sixteen years older than Stewart. John joined the military shortly after Stewart was born and after that, Stewart only had the chance to see him every few months.

The already difficult family dynamic was strained by the Buchanans' financial struggles and difficulty fitting in with their community. The family moved to Roanoke Rapids, North Carolina when Stewart was an infant, and returned to Fort Mill when he was seven in 1962. Returning to Fort Mill was difficult for Stewart and his family: Fort Mill was a tight-knit community of less than 3,000 at the time. The Buchanans struggled to find acceptance as outsiders in the town that valued historic ties and close family connections. Stewart specifically struggled to find acceptance at his new school in Fort Mill not just because he was new, but also because he was overweight for his age. At only six years old, Stewart weighed 100 pounds, and by age sixteen he weighed over 200 pounds. Despite being a bright, energetic seven-year-old boy, Stewart's peers ridiculed and picked on him because of his weight. From age seven, until at least age twelve, Stewart was bullied at school and was unable to make any close friends amongst his peers.

Feeling trapped at home and excluded at school, Stewart began acting out for attention. He became a class clown, often getting in trouble for smarting-off to the

teachers or pulling pranks at school. Stewart began committing small reckless acts outside of school as well. When Stewart was about thirteen years old, he took a guitar from his neighbor's house during the day when no one was home. As a result, he was sent to juvenile detention and put on unsupervised probation. During this time, a social worker asked if he would like to live somewhere other than his house with his parents. Miserable and desperate to get out of his parent's house, Stewart readily accepted and moved to the J.C. Boys' Home. Stewart moved schools again, now going to a school in Rock Hill. The J.C. Boys' Home was a difficult place for Stewart (and many other boys), and after six months he was returned to his parent's custody.

Stewart's return home left him worse off than when he had left – he had missed the last six months at his high school and had also been gone from home. Any relationships he had previously with peers at school or other children his age had deteriorated from his time away. At the same time, Stewart's relationship with his family had taken another nose-dive when his sister, Janice, ran away from home. Janice ran away with a boy and got married, shortly thereafter followed by a divorce and subsequent second marriage. After the second marriage, Janice and her new husband went all over the country in a stolen rental car, writing bad checks and running up debt using the Buchanan family address for credit. Any attention Stewart's parents may have given him prior to this evaporated as the family spent most of the time now worrying about the financial situation she had left them in. Perhaps the greatest blow to Stewart was that Janice – whom he treated more as a mother than sister – had abandoned him at home.

Stewart turned to drinking and drugs to find solace from the strain he felt both at home and school. He fell in with a crowd of older teenagers embracing the radicalism coming out of the 1960's, who encouraged Stewart to turn to drinking and drugs as the solution for his problems. Stewart finally felt accepted and like he might have a home amongst this new group of friends. With no guidance from any family or

friends, Stewart quickly acquiesced to his new friends' advice and began regularly drinking and using drugs.

The United States and South Carolina Supreme Courts have recognized the significant impact that a juvenile's environment has on him, a factor this Board should consider. The Supreme Court concluded that juveniles are morally less culpable because they are "more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller v. Alabama*, 132 S. Ct. at 2464. Specifically, the court noted that evidence of abuse and neglect was "particularly relevant." *Id.* at 2467 (internal quotation marks omitted).

Stewart's family and home environment exemplifies exactly the type of parental neglect and abuse *Miller* and *Aiken* consider particularly relevant and mitigating. Throughout his childhood and adolescence, Stewart lacked a stable environment and positive role models. His parents were both physically and emotionally absent from his childhood. From Stewart's difficulties moving to Fort Mill and being bullied beginning school, Stewart was unable to make friends with people his own age whom he could rely on. At seventeen, Stewart did not have the support of his family or any friends to guide him or act as a role model as he matured, and he lacked the emotional and financial ability to extricate himself from the setting in which he grew up in.

C. Circumstances of the Offense

In the early summer of 1973, Stewart was taking courses at York Technical College in auto mechanics, working night shifts to gain experience at Ryder Trucking, and drinking and doing drugs with his newfound friends. In the three weeks leading up to the crime, Stewart had started using methamphetamines and LSD in large quantities. As a result, he had stopped attending class and wasn't sleeping.

On May 17, 1973, the day that inalterably changed a number of lives including his, Stewart had been drinking on his break with a few of the other mechanics at his job. After work, Stewart went to a friend's house where he took several hits of LSD, an illicit drug that affects an individual's perception of the world around him and impacts his thought process often leading to distorted perceptions and sudden mood changes. At approximately 1:30 a.m. Stewart then went to two other bars where he continued drinking.

According to the trial record and interviews with Stewart, his memory of that night is a blur and most of his recollection is based on what he believes occurred and what the police told him. While still experiencing the psychotropic effects of LSD, Stewart went into his next-door neighbor's house sometime before 3:00 a.m. on May 18th. The victim saw him and confronted him. In a panic, Stewart pulled out the small knife he kept in his pocket, stabbed her and ran back to his car. Stewart, having not fully grasped what happened, drove around town in a haze before returning home. His father discovered the neighbor's body in her yard and called the police. Given the proximity of the homes, the police questioned Stewart who admitted that he was the guilty party. Stewart told the police what he could recall and that he did not have complete control of his actions that night. Then and now Stewart takes full responsibility for his actions and the consequences thereof. In sum, he cooperated with law enforcement and accepted responsibility for his actions.

D. Incompetencies of Youth and the Criminal Justice System

Stewart confessed to the crime and took responsibility for his actions. He accepted the advice of his attorney to plead guilty knowing that he would receive the then maximum sentence of life imprisonment with the possibility of parole. No "charge bargaining" was attempted in this case. It is important for this Board to keep in mind that, in 1973, when Stewart pled guilty, many – if not most -- persons who were convicted at trial or pled guilty to murder were granted parole after ten years or

soon thereafter. It was indeed rare for a convicted murderer not to be granted parole after twenty years. Thus, when Stewart waived his right to jury trial, his attorney virtually guaranteed him that he would be paroled in less than twenty years. Seventeen year old Stewart Buchanan had no idea that SCDC's release policies would change as he aged in prison and that ten years, would turn to twenty, then thirty, then forty before he would again come before this Board requesting parole. This is not to diminish Stewart's responsibility for his crime – he takes full responsibility for his actions – but only to advise the Board that at the time of his 1972 guilty plea it was inconceivable that he would still be incarcerated in 2018 and at an age past his prison life expectancy⁴.

E. Rehabilitation

Stewart's reformation is direct proof that rehabilitation can and does occur. The United States Supreme Court recognized that a juvenile's character is not as "well-formed" and his traits "less fixed" than an adult; therefore, the juvenile's behavior can be rehabilitated and is "less likely to be evidence of irretrievable depravity." *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). This Board should consider Stewart's reformation during his last forty-five years in the SCDC.

Stewart was only 17 years old when he first entered the SCDC – he is now 62 years old. Over the last forty-five years in the SCDC, Stewart has spent his time reflecting on his past mistakes, taking advantage of opportunities available to him and attempting to acquire skills that will allow him to meaningfully contribute to his community. Stewart's record and activities clearly evidence his commitment to reforming himself and giving to others, even if he is no longer in the SCDC.

Upon entering the SCDC, Stewart became part of Manning's Comprehensive Drug Abuse Program. At only 17, he began giving back to the SCDC community by going to schools and churches to dissuade other teenagers and children from doing

⁴ See Tab 9 of this packet, Affidavit of Vera Dolan and Life Expectancy in the SCDC, Exhibit 10. Stewart's life expectancy is 53.9 years of age so he has exceeded that by 8 years.

drugs. Stewart's volunteer work continued when, as President of the Tyger River Correctional Institution's Chamber of Commerce, he raised \$350 for Hope, a camp for children with intellectual disabilities.

Stewart has also been committed to helping other inmates in the SCDC community as well. Stewart strongly believes in education and, when possible, has tried to help other inmates learn as well. Stewart has been a certified Laubach literacy tutor for over 40 years, and eventually awarded the level of Master Laubach tutor. Stewart frequently volunteers to aid in courses offered by the SCDC and outside of class, on his own time, to help other inmates with their schoolwork. Stewart has volunteered as a teaching assistant or as an aide in some of the night school programs consistently throughout his time at SCDC. He volunteered as a teaching aide at Kirkland Correctional Institution, Tyger River Correctional Institution, Broad River Correctional Institution, Northside Correctional Institution, and at McCormick Correctional Institution. Most recently while at McCormick Correctional Institution between 2009 and 2017, Stewart taught an English class at night school to approximately 30 students. He also started his own course to teach other inmates basic legal research and writing skills.

Stewart has also worked to help the lives of other inmates at SCDC while striving to improve his own counseling and interpersonal skills. For eight months at Northside Correctional Institution, Stewart volunteered as an Inmate Grievance Clerk. As an Inmate Grievance Clerk, Stewart worked to resolve approximately 480 claims informally through mediation. Stewart also served the SCDC community as a volunteer counselor in the psychiatric unit while at Kirkland and became a hospice volunteer. As a hospice volunteer, Stewart would befriend inmates likely to pass away within the next twelve months. Stewart would visit the patients every other day and talk to them about their thoughts and feelings as their life came to an end. Stewart would often read the Bible with his patients and help them try to find comfort.

Stewart has continued on his path of reformation and rehabilitation as a member of the Character Based Unit (CBU) at McCormick Correctional Institution and most recently at Perry Correctional Institution. The CBU is intended as a society of inmates that are genuinely concerned with becoming responsible, functioning members of a community – whether that community is in prison, on a job site, or with their families. Members of the CBU are focused on rehabilitation and changing themselves. CBUs are demanding and the selection committee considers an inmate's disciplinary history, ability to contribute, demonstrated interest in rehabilitation, mental stability, and credibility in the population. In order to even get a bunk in the CBU, Stewart had to demonstrate his willingness to commit to reformation and to be part of the community. An inmate in the CBU must take a minimum of two classes, and must provide a service to the CBU community, and engage in a quarterly review process where his contribution to the community and use of the educational and rehabilitative sources are evaluated by his peers. As an active, exemplary member of his CBU, Stewart has met all the requirements of being a part of the CBU and committed himself to rehabilitation.

While in the SCDC, Stewart has become a devout, sincere Christian. Stewart's devotion to religion is evident from the time and sacrifice he has given for what he feels is his higher calling of spreading the word of Jesus Christ. As early as 1992, Stewart was volunteering as a chaplain at Tyger River Correctional Institution and while out on work release, he spent his time outside the prison walls attending church every Sunday he could at Trinity Baptist Church. Stewart has been actively involved with Kairos since 2000. Kairos is a Christian Ministry Program that begins with a three-and-a-half-day weekend of discussions, meditations, and talks about God and Christianity focused on fostering a Christian community in prison. When possible, Stewart meets with his bible study group, or when he is at correctional institutions that do not have them, he works with others to create and organize a bible study

group. Stewart also frequently meets with spiritual leaders to discuss his own actions and reformation: as far back as 1987, Stewart would try to meet with Reverend Byrds every Tuesday at Stevenson Correctional Institution. Stewart now regularly is mentored by and works with Pastor Tammy Blom, who visits him at Perry Correctional Institution as well as a mentor through JumpStart, Frank Ledvinka. Earlier this year, Stewart was given a tremendous honor when he was asked to give a sermon at Kairos' weekend retreat. In the following excerpt taken from his sermon, Stewart discussed how he continues to believe in Jesus Christ after all this time:

“It was in 1973 when everyone told this 17-year-old to plead guilty and I would be out in 10 years. Society's attitude changed, and I was never paroled. Here I am now, 45 years later, aged 62... I've had my dreams, plans and expectations raised up and destroyed over and over for 45 years... Now, I am absolutely free from that world of sorrow because the Beauty of the Mystery of Kairos, Jesus Christ Himself, lives inside me.”

Stewart, of course, is not perfect, and he has been written up for incidents over the years. The incidents Stewart has been written up for are comprised almost entirely of minor infractions over forty-five years at the SCDC and the majority of his disciplinaries occurred when he was younger. Stewart tries to stay to himself and out of trouble within the SCDC; the few disciplinaries he has received are instances where he was not the instigator, but had no choice but to protect himself. Stewart has grown and matured considerably since then.

Stewart has never been required to do any of the volunteer work and community service he has performed. He has chosen (and still chooses) to do so because he wants to make his community, and the world at large, a better place even in small ways. His commitment to reformation is clear from his deeds of service over

the past forty-five years. Stewart is the model of what South Carolina's Correctional Institutions strive to instill in the individuals who pass through its program – he is reformed, and has learned skills necessary to succeed in the outside world. His record, other activities, and his award of Inmate of the Year in 1985 serve as proof of that.

F. Release Plan

Stewart has been enrolled in Jump Start since February 2018. Stewart will graduate from Jump Start on November 14, 2018 at the Blue Level – the highest possible level of completion. Jump Start is a Christian based organization whose focus is helping men transition back into the workforce and society outside of prison. Individuals who complete the program have a much lower recidivism rate than others in part due to the Christian values that infuse the program. Jump Start also prevents homelessness and puts ex-offenders and former addicts in a positive Christian environment. For the past eight months, Stewart has worked hard to succeed in the Jump Start program which instructs inmates not only on skills for a job and getting hired, but on becoming an accountable, responsible, successful citizen outside of prison.

As a graduate of Jump Start, Stewart will be able to live in transitional housing provided by the program for two years after his release. He also will be able to rely on the program for help getting a job and being part of the mentoring program as well. Jump Start will also help Stewart through the process of buying a home after successfully completing two years of Jump Start. Jump Start has programs, connections, and an Employment Director who will be available to help Stewart find a job.

Additionally, Stewart will be leaving the SCDC with the skills he has culminated outside of Jump Start on his own to be a successful, productive member of society. For many years Stewart maintained jobs outside of the prison walls, allowing him to develop work and personal skills that will be invaluable to him as he transitions back

into society. He worked as a service consultant at Newsome Chevy World in Columbia in 1993. While he was there, he met the owner of Astro Glass and went to work for him, eventually becoming a manager. He worked there until 1996 at which point SCDC policy changed and Stewart was no longer eligible for work release due to his crime. Stewart has also taken business courses through USC Spartanburg and Midlands Technical College. Stewart has completed numerous vocational programs including Computer Concepts and a 740-hour course in Core Electronics. In both courses, Stewart earned all 3's, the highest level possible, in every evaluation category. Stewart has also completed a 200-hour course in Carpentry I, a 300-hour course in Carpentry II, and a 15-hour course in Carpentry Safety. Stewart, again, earned all 3's, the highest level possible, in every possible evaluation category. Most recently in August of this year, Stewart completed 200 hours of on-the-job training as an Administrative Clerk.

In 2016 Stewart participated in WorkKeys, an assessment used to measure the workplace skills that can affect job performance. Stewart earned a ranking of Gold, the second highest rank possible, for his assessment in Applied Mathematics, Reading for Information and Locating Information. Stewart was ranked as a level six in applied mathematics, out of a possible seven levels, showing that Stewart can set up and solve problems containing extraneous information or information out of logical order and involving multiple step calculations. Stewart was ranked a level five for Locating Information out of a possible six, indicating that he can correctly use complicated workplace graphics, such as complex forms and tables, multivariable graphs, and detailed diagrams, and can summarize information using graphics. Finally, Stewart was ranked a level seven in Reading for Information, the highest rank possible, showing that Stewart can apply concepts from densely detailed selections, such as excerpts from complex regulatory and legal documents to new situations. Stewart's high test

scores reflect the hard work he has done to improve and educate himself to the highest degree possible while in the SCDC.

Conclusion

Stewart Buchanan should be granted parole. He has been incarcerated for forty-five years for a crime he committed as a juvenile. His lack of a criminal record before the offense and his institutional record in the Department of Corrections demonstrate that the crime was a product of his youth and circumstances. Stewart accepted responsibility for his offense at the time of his arrest by confessing when questioned by the police and by pleading “straight up” to murder. He has grown up in the SCDC and has taken advantage of many programming opportunities, including drug and alcohol counseling, Kairos and Jump Start. He has the intelligence, skills and work ethic to succeed on the “outside.” He has also been a positive member of the many institutions he has been in helping other inmates as a tutor. Taking all the circumstances into account, he should be given the opportunity for release, especially given his age, remorse, rehabilitation and new outlook on life. Stewart’s reformation, combined with his concrete release plan, set up him up for success as a contributing member of society upon his release.

Thus, for these reasons this Board should grant Stewart Buchanan parole following his hearing on November 14, 2018.

Susan C. Knight, Ph.D., ABPP
 Licensed Clinical Psychologist
 Board-Certified Forensic Psychologist
 knight@apsforensic.com

Applied Psychological Services, LLC
 1941 Savage Rd., Ste. 100A-606
 Charleston, South Carolina, 29407
 (843) 637-5729-Phone; (843) 410-2802-Fax

PAROLE HEARING EVALUATION

Examinee: BUCHANAN, Stewart

Date of Birth/SCDC #: March 16, 1956 / #069848

Dates of Evaluation: May 2, 2018; and October 19, 2018

Examiner: Susan C. Knight, Ph.D., ABPP

IDENTIFYING DATA: Mr. Stewart Russell Buchanan is a 62-year-old, divorced, Caucasian male, currently incarcerated in the South Carolina Department of Corrections [SCDC] for a conviction of Murder. His conviction stems from an incident that occurred in York County on May 18, 1973, when he was 17 years and two months old. On September 25, 1973, he was sentenced to a life term, with parole eligibility after 10 years. Thus, he has been incarcerated in SCDC for over 45 years, since September 26, 1973. Mr. Buchanan's defense counsel, Ms. Laura Young, Esq., requested a forensic psychological evaluation to evaluate Mr. Buchanan in preparation for his parole hearing in November 2018. Pursuant to this request, the examiner assessed his developmental and psychosocial functioning prior to his incarceration; his functioning over his incarceration; his risk for future violence; and transition needs. Mr. Buchanan was evaluated on the above listed dates at Perry Correctional Institution.

SUMMARY OPINION: Based on the totality of data gathered in the evaluation, to include clinical interviews and psychological testing with Mr. Buchanan; interviews with his cousin; visiting pastor; senior SCDC Chaplain Larry Epps, and SCDC Captain Adam Bradburn; a review of interview memoranda; and a review of available academic, legal, mental health, medical, and correctional records; the following is opined as summarized.

Offense: At the time of the homicide, Mr. Buchanan was age 17, with corresponding social and neurobiological immaturity. He was also severely intoxicated, which comprised his reasoning, judgment and impulse control. Since commission of the crime, he has taken full responsibility, with expressions of remorse found throughout his records and interviews.

Course of Incarceration: Mr. Buchanan has earned many accomplishments and honors. He has pursued multiple educational endeavors and vocational trainings, with few disciplinary events.

Risk Assessment: Using an empirically validated risk assessment measure consisting of 20 risk variables, within Historical, Clinical, and Risk Management domains, Mr. Buchanan is opined at low risk for re-offense. Given the role of substances in the homicide offense, and several substance-related diagnoses (in remission), substance use treatment is his primary recommended 'risk management' strategy. Any additional psychopathology contributing to risk was not found.

Transition Plan: If paroled, Mr. Buchanan will reside in JumpStart housing in Spartanburg, South Carolina. He can reside in this facility for up to two years, where they will provide emotional and spiritual support, and assist with vocational pursuits. In speaking with Chaplain Epps, who assigns the housing for JumpStart, he confirmed he would recommend Mr. Buchanan for this housing. He would alert them that a 'blue folder' is coming, which signals the highest honor within the organization, as it signifies the person is "a shining example of what a man can do." He will let them know to expect Mr. Buchanan to assume a leadership role in the house.

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 1 Board-Certified Forensic Psychologist

SOURCES OF INFORMATION: The following sources of information were reviewed in forming the opinions found in this report:

Records

1. York County Birth Certificate, birth date March 16, 1956, date issued January 30, 2017;
2. Academic records from the Roanoke Rapids School District, Rock Hill School District and Fort Mill School District, dated from August 1962 to May 1972;
3. York County Sheriff's Department Arrest Warrant and Complaint, dated May 18, 1973;
4. York County Indictment for Murder, dated June 3, 1973;
5. Academic transcript from York Technical College, dated June 6, 1973;
6. York County Sentencing Transcript, dated September 25, 1973;
7. SCDC medical and correctional records dated September 26, 1973 to February 2017;
8. Numerous Certificates of Participation/Completion, dated from 1975 to 2018;
9. Thirteen letters of accolades and support, dated from April 1975 to October 2018;
10. Resume(s) of Stewart Buchanan, from October 1973 to October 2018;
11. Academic transcript and records from the University of South Carolina, dated Spring/Summer 1974 and Summer/Fall 1981;
12. Narrative and Biographical Information for S. Buchanan, dated January 14, 1981;
13. Letter from S. Buchanan, to the 'Estate of Mr. William Boone,' dated June 24, 1990;
14. Richland County Clerk of Court Files, dated from 1991 to 2015;
15. Records from the South Carolina Office of Indigent Defense, dated from 2003 to 2005;
16. York County Clerk of Court Files, dated from 2004 to 2013;
17. SCDC Record Summary Sheet, dated September 25, 2018;
18. SLED Criminal History 'Arrest Record,' dated October 22, 2018;
19. SCDC Offender Management System, Inmate Offense History, dated October 24, 2018;

Interviews and Testing

20. Interview memoranda with SCDC staff, to include Sgt. Gloria Scales, Lt. Rodeshia Taylor, Ms. Juanita Moss, Principal Callan and Mr. Albert Hall, on January 11, 2018;
21. Interview memorandum with Mr. Buchanan's former spouse, Ms. Janice Bradley, on April 31, 2018;
22. Clinical Interview with Mr. Stewart Buchanan, lasting four hours, on May 2, 2018;
23. Interview (by telephone) with his first cousin, Mr. Michael Short, on October 2, 2018;
24. Interview (by telephone) with visiting pastor, Ms. Tammy Blom, on October 3, 2018;
25. Interview (by telephone) with JumpStart mentor and retired pastor, Mr. Frank Ledvinka, on October 16, 2018;
26. Clinical Interview and Psychological Testing with Mr. Stewart Buchanan, lasting five and one half hours on October 19, 2018;
27. Interview (by telephone) with senior SCDC Chaplain Larry Epps, on October 24, 2018;
28. Interview (by telephone) with SCDC Cpt. Adam Bradburn, on October 29, 2018.

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Buchanan was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and may be used to prepare a report for his attorney, which, at his attorney's discretion, may be distributed to the parole board. He was also informed that the nature of the evaluation did not include a treatment relationship with the examiner and treatment would not be provided. Mr. Buchanan endorsed understanding the parameters of the evaluation and provided his consent to proceed.

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Pertinent Social History [Pre-Offense]: Mr. Buchanan was raised in Roanoke Rapids, North Carolina, until age 7, and then in Fort Mill, South Carolina. He was raised by married parents and with two older siblings. His father worked in a cotton mill and his mother was a homemaker. He described his father as a heavy drinker and gambler who was often “absent” from the home. His mother was excessively critical, and emotionally absent, often preoccupied with his father’s infidelity. Such adverse home circumstance led to a dysfunctional family life. Additionally, Mr. Buchanan struggled with obesity as a youth, and was relentlessly bullied. He felt “ridiculed and ostracized” by his peers. *[School records note his teacher described him as “very fat” in elementary school]*. Therefore, due to teasing over his weight, he often “skipped school to hide in the woods.” He reported multiple suspensions, primarily due to these absences, and as well as one expulsion. *[These are not reflected in his school records]*. Further, as a young teenager, he broke into a neighbor’s home and stole a guitar, for which he was placed on unsupervised probation through the Family Court.

He attended school through the 9th grade, with school records indicating he withdrew from Fort Mill High School in May 1972. At the time of his arrest, he had been attending classes at York Technical College in automotive studies. His transcript indicates he began classes in the fall of 1972. His only term of formal employment was at a truck rental company, where he was working at the time of his arrest.

Prior to his incarceration, he had no history of mental health treatment, or major medical illness. However, he developed problematic use of substances. At age 12, he began socializing with an older peer group who used drugs. With them, he felt “cool, I was their young mascot.” He felt accepted for the first time by a group of peers. They provided him alcohol, LSD and other substances, which he continued to use throughout his teenage years. At age 16, he desired to join the military, but was still overweight. Therefore, his family doctor prescribed “amphetamines” for weight loss. He quickly developed a tolerance and dependence on this substance, and began using intravenously, which continued until the time of his arrest.

Homicide Offense: The York County Sheriff’s Office Complaint Report indicated that on May 18, 1973, at 3:40 a.m., Mr. Buchanan’s father contacted law enforcement regarding “someone lying in the front yard.” He had “went out to get his paper” when he saw “the body.” The adult female victim was pronounced dead at the scene due to multiple stab wounds. The report noted “the window on the front porch was opened and raised, but there were no signs of a fight inside of the house.” Mr. Buchanan was arrested the same day, and confessed to law enforcement.

During the present evaluation, Mr. Buchanan fully acknowledged the conduct as charged, in that at age 17, he entered his neighbor’s home in the nighttime hours. He was severely intoxicated, having used 12 ‘hits’ of LSD, injected amphetamines and used alcohol in the hours prior to the offense. He had been using these substances daily for several weeks prior to his arrest. He did not know why he entered the home, other than severe intoxication and “feeling mischievous” as a teenager. He had carried a knife for several weeks, and had it in his pocket. Once in the home, he “had no purpose, no goal” and was “walking aimlessly.” The adult female resident startled when she saw him, ran out of the house and began calling his mother’s name. He panicked, stabbed her, and fled the scene. He returned home some hours later after throwing the knife in a nearby lake. He confessed to law enforcement later that day. *[Per the transcript, Mr. Buchanan’s account is very much in line with the account from his sentencing hearing in September 1973].*

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Mr. Buchanan became emotional and tearful when discussing offense details. He expressed great remorse towards the victim, in that he “could never repay or restore what I did.” He also stated, “my crime created a shock wave that went through society and unnerved people, at a time when violence wasn’t as commonplace, it had a ripple effect, I feel tremendous guilt for causing that ‘ripple.’” He believes the root cause of the offense was related to his reasons for using drugs. These included very poor self-esteem and “inner turmoil, I didn’t want to live, didn’t feel like I could make anything out of my life, I was self-destructive.” He did not believe his offense would have occurred had he not been so intoxicated.

COURSE OF INCARCERATION: Given the length of his incarceration, Mr. Buchanan has been housed at numerous institutions. Most recently, he was transferred to Perry Correctional Institution on January 16, 2018, for the “Lifers Rehabilitation Program,” which was a “pilot program” at the time. He presently resides in a character-based unit.

Pre-Mid 1990’s: Prior to the mid-1990’s, SCDC’s policies regarding inmate activities were vastly different. Inmates were allowed to work and attend school off-campus, take weekend leave, have conjugal visits on campus, drive department vehicles and other privileges. For the first 23 years of his incarceration, Mr. Buchanan was subject to these policies. For example, from 1974 to 1975, he traveled to schools to speak with students about drugs, prison life and other pertinent issues, including participation in the ‘Get Smart’ program. In 1975, he traveled to schools to act in a play called ‘The Way Prison Life Is.’ He worked with the USC Drama Department and ETV to film this play for distribution to criminal justice organizations. In 1975, he worked an “institutional van driver,” for two years driving over 100 miles per day. In 1976, he “drove dump trucks” off campus for a local county.

He also participated in “work release,” which “allowed a prisoner to work a civilian job, pay room and board” and was housed at a facility “with no fences or anything.” In 1981, he worked off-campus for Tietex in Spartanburg. He also attended classes at USC Spartanburg, stating, “the van would drop me off and I would attend classes, go to the library,” just like any other coed. The prison van would pick him up in the evening. He regularly took “48 or 72 hours passes” during which he visited his wife, and attended community church services. In 1994, he worked at Newsome Chevy World as a service consultant. Subsequently, he began work at Astro Glass, where he worked as a manager until March 1996, when all violent offenders were removed from work release. In 1997, SCDC “took all violent offenders and put them back behind the fence” and he was not allowed to return to an open institution.

Academic: Mr. Buchanan earned his GED in November 1973 in SCDC. Per his USC transcript, he attended college coursework through USC in the Spring and Summer of 1974; and from USC-Spartanburg in the Summer of 1981. He earned A’s to C’s. He withdrew in the fall of 1981. In 2016, he completed ACT WorkKeys, scoring in the top two levels [gold] in all tested domains.

Vocational: Aside from his jobs held off campus, he has held many different types of jobs within SCDC, including Canteen Operator; Office Clerk; Radio Dispatcher; Chief Clerk; Professional Personnel; Senior Teacher Assistant; Labor Crew; General Worker; Furniture Assembler; Classroom Leader; Inmate Grievance Clerk; Senior Canteen Operator; Food Service Aide; Teacher Assistant; Quality-Control Tech; Senior Shop Operator; Teacher Aide; Secretary; Mechanic Helper; Mechanic; Chaplain Assistant; Sanitation Worker; Wardkeeper; Hauler;

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Unemployed Community Program [Coordinator]; Landscape Laborer; Material Handling; Literacy Program; Electronic Assembler; Electronic Repair; Custodial Worker; Painter; Recreation Assistant; Machine Operator; Construction Trainee; and Wardkeeper Assistant. Many of these positions have resulted in promotions and advancement. He has also earned over 1450 hours in various vocations, including carpentry, computer skills, electronics, and administrative services. In addition, he has taught himself to sew over the decades, with a talent in this area.

Interpersonal: Until their deaths, Mr. Buchanan's parents visited frequently, and he maintained a close relationship with them. His brother has also since passed away, as have many other family members. Regarding intimate relationships, Mr. Buchanan has been married twice during his incarceration. He was first married in 1981, having known his wife for three years prior to his marriage. They married at Tigerville Baptist Church. He had conjugal 'car' visits with her as per SCDC policy at the time. The marriage ended after 10 days when he received a DUI while on pass to see her. *[She is now deceased]*.

He met his second wife in the early 1990's, initially exchanging letters, which progressed to visits. They dated for two and one half years, during which they also had conjugal visits. In July 1993, they married "during an 8-hour pass" at Cross State Park in Spartanburg, South Carolina. His family was present and his mother officiated. On his second pass, they honeymooned at a local hotel. He described this relationship as "great, we were real good friends, had the best of times, so in love." Once SCDC stopped inmate passes, their relationship became distant. They separated in 2003, with their divorce finalized in 2004. *[An interview memorandum from his former wife indicates she is not opposed to his release, and described their marriage in positive terms]*. He is not currently in a relationship as he does "not want to burden others" to see him.

Disciplinary: Per Mr. Buchanan's 'Record Summary Sheet' from SCDC dated September 25, 2018, he has had no escapes and "no criminal charges while in custody." He has "no priors" and "no detainers." Regarding disciplinary actions, he has been convicted of one 'Assaultive Disciplinary,' in November 1988 of "Striking an Employee [Without a Weapon]." *[The examiner attempted to speak with this officer; however, he passed away in 2003]*. Disciplinary records indicate the role of substances as Mr. Buchanan was "staggering" and "slurring his words." Officers noted this was "unusual behavior" from him, and attempted to take him to the infirmary. The altercation occurred when they attempted to place handcuffs on him. For this incident, he received 30 days of administration segregation, and a custody drop from AA to A.

Regarding 'Non-Assaultive Disciplinary,' from February 1977 to October 2016, he has been convicted of 31 infractions, with 16 of those 'Major Infractions.' Of note, in 1981, he received a DUI while out on pass in Greenville County, for which he was ordered to pay a fine by the magistrate's court. His disciplinary history was discussed at length with him. Substances have played a primary role in his infractions, even if the infraction was not a substance charge. He reported using substances over his incarceration, including alcohol, marijuana, synthetic cannabis and methamphetamine. Additionally, he has two 'Fighting Without a Weapon' charges, from 2011 and 2016, both with his roommate of many years. Mr. Buchanan met his roommate in 1973 when they were both 17 years old and were new admissions to SCDC. They are now 62 years old. They have often roomed together, and have a very close brotherly relationship, with occasional bickering. Neither altercation was serious or involved a weapon, and no one was hurt. For each incident, they "lost privileges" for 30 days, and, "they put us back in the same room."

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Medical: Mr. Buchanan has remained largely healthy over his incarceration. However, he was found positive for Hepatitis C in August 2011. He is not a candidate for treatment based on SCDC's criteria (e.g., lab results out of range). He would like to pursue treatment if released. Mr. Buchanan has also recently been fitted for a hearing aid due to hearing loss in his right ear. No other major medical condition has been identified, and he does not take any type of medication.

Mental Health: Regarding mental health history, he has had multiple psychological evaluations throughout the years for routine policy reasons. His last available evaluation is from 1995. Documents from these evaluations do not indicate that he has been formally diagnosed with a major mental illness or personality disorder. Early in his incarceration, he reported participating in counseling programs, including the Comprehensive Drug Abuse Therapy Program. Since this was a federally funded program, and not SCDC's program, there are no available records. Additional documents reference that he participated in other counseling programs in the 1970's and early 1980's, which seemed related to self-improvement rather than treatment of a mental disorder.

Additionally, beginning in 2005, Mr. Buchanan sought evaluation from a specialist in Gender Identity Disorder [GID]. At this time, he found himself "in life with no expectations, and I questioned who I was." He explained his father had recently died, and he had also recently divorced. He had experienced feelings associated with this disorder since childhood, and "read a lot of books on GID and really tested myself." In September 2008, and at the request of prison officials, Dr. Donna Schwartz-Watts evaluated him, and diagnosed *Sexual Disorder, Not Otherwise Specified* and *Adjustment Disorder with Depressed Mood*. She recommended a "full sexual disorders work-up" by a specialist at USC. However, records do not indicate this ever occurred. She also recommended antidepressant medication, and that his case manager should begin counseling for gender-related issues and stressors.

Pursuant to her evaluation, Mr. Buchanan took Zoloft [antidepressant] for three months in 2008/2009 to assist with depression and anxiety. He did not believe the medication was helpful, and discontinued use. He was also involved in a civil suit with SCDC to obtain the appropriate treatment for GID. However, he eventually "withdrew" from this action and discontinued his efforts. On August 18, 2009, he declined any mental health services, which is his last contact with mental health to date, and last reference to gender issues in his records. As of this date in 2009, his diagnoses were "*Sexual Disorder, Not Otherwise Specified*; and *Depression Not Otherwise Specified*."

Accomplishments/Activities: Mr. Buchanan has earned multiple accomplishments and completed many different activities over his incarceration. This is reflected in his many certificates of participation and completion dated from 1975 to 2018. A summary of his activities includes, but it not limited to the following. In 1977, he became certified as a Laubach literacy tutor from the Greenville Literacy Center, and assisted other inmates in learning to read. He continued this work for years, through the early 1990's, eventually earning a 'Master' certificate as a Laubach teacher. In 1980, he was awarded 'Outstanding Inmate of the Year' at Travelers Rest CI. In 1984, he worked tutoring as a teacher's aide, when SCDC asked that he teach his own course. He taught 30 students literacy, math and GED preparation. Also in 1984, he was President of the Dutchman CI Junior Chamber of Commerce, and directed fundraising efforts. He raised \$350 for Camp Hope [for citizens with intellectual disabilities].

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In 1985, he was appointed as the Inmate Grievance Clerk, and assisted inmates to resolve grievances informally. Also in 1985, he was selected as 'Outstanding Inmate of the Year' at Dutchman CI. In 1987, became trained in the counseling technique of Transactional Analysis, serving as a volunteer counselor in the psychiatry unit. In 1999 and 2000, he became involved in Kairos, which continued for years; and worked as a hospice volunteer. During 2009 to 2017, he worked as a Character Based Unit clerk, taught an English and math workshop and started a class on basic legal research. Most recently, in September 2018, he finished JumpStart, a 40-week Christian-based program with intensive programming and strict expectations. When discussing JumpStart, he expressed a deep Christian faith. He has "been filled with a total satisfaction of knowing that God has always loved me;" and "wants to live my life examined."

Collateral Interview Data: In addition to reviewing his entire SCDC file, the examiner interviewed individuals familiar with Mr. Buchanan, and reviewed memoranda of interviews conducted by his legal team.

Sgt. Gloria Scales: Sgt. Scales was interviewed on January 11, 2018, at McCormick CI, where Mr. Buchanan resided from May 2009 to April 2015. Sgt. Scales had selected Mr. Buchanan to work as her clerk, and supervised him on the Character Unit for two years. She described him as a hard worker, who was precise, and followed protocol. She believed he tried to better himself, unlike a lot of inmates, and that he was a 'model' inmate. He got along well with other inmates, and when they would occasionally 'pick' on him, he would seek assistance through proper channels. She reported he helped teach classes at McCormick, even teaching a Spanish class. He would assist other inmates with legal work, sewing, and maintenance. She also recalled he was religious and attended services. She was of the opinion that he deserves a chance at parole, and is hopeful he would be released.

Lt. Rodeshia Taylor: Lt. Taylor was interviewed on January 11, 2018, at McCormick CI, and was very familiar with Mr. Buchanan. She described him as a "really good, really respectful guy." She never had any problems from him, and he always followed the rules. She recalled that he would help others in the dorm, in the cafeteria, and with his sewing skills. She stated he attended church frequently. He worked well with other inmates, and she believed he made good progress while at McCormick. She believed he would be able to 'make it outside' of prison and was hopeful he would make parole.

Ms. Juanita Moss: Ms. Moss was a civilian worker in food service at McCormick CI, and was interviewed on January 11, 2018. Mr. Buchanan worked for her in the cafeteria. She described him as very respectful, and that he always offered his assistance. She recalled he had a good character, and positive attitude. She also described him as a "model inmate" and was upset when he was moved to Perry CI. She asked the warden about his move, as he never caused trouble, made staff feel safe, and was good with the younger, 'rowdier' inmates. She related a lot of staff were upset to see him leave. She believes he would be successful out of prison, and would be happy to give him a recommendation for work.

Mr. Albert Hall: Mr. Hall taught carpentry at McCormick during Mr. Buchanan's residence, and was interviewed on January 11, 2018. He taught Mr. Buchanan carpentry for two years. Mr. Hall described him as very compliant, quiet, precise and that he took pride in his work. He was respected and well liked by other inmates and did not have issues with others.

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Mr. Hall reported Mr. Buchanan took special care to teach a “slow” inmate who needed extra assistance. He stated this individual was able to earn his carpentry certificate because of Mr. Buchanan. He believes Mr. Buchanan would be successful on parole if given a job opportunity. He referenced Mr. Buchanan’s time in the community workforce, pre-mid 1990’s, when he was “running that business,” referring to Mr. Buchanan’s employment with Astro Glass.

Principal Callan: Principal Callan also knew Mr. Buchanan from her time at McCormick and was interviewed on January 11, 2018. She described him as smart, and that he worked towards improving himself while in prison. She noted he was never absent from classes, and was a hard worker. He had done very well on his assessments, earning “gold” and “platinum” levels in WorkKeys, and had taken every carpentry course McCormick had to offer, which was all five.

Chaplain Larry Epps: The examiner interviewed senior SCDC Chaplain Larry Epps on October 24, 2018. He has known Mr. Buchanan for “six to eight months.” He described Mr. Buchanan attending religious services and events on a consistent basis, and that he “seems like a genuine person.” He was impressed with Mr. Buchanan reaching out to him for spiritual guidance and instruction. He did not see the “jaded” quality he sometimes sees with inmates. Instead, “he seems so normal, so calm, quiet with a smile, warm handshake, very respectful.” Chaplain Epps indicated he has not seen anything to give him pause or concern regarding Mr. Buchanan’s release on parole. He stated, “my word means something to me” and that he would not hesitate to divulge “red flags” if he saw them. Instead, Chaplain Epps stated, “If he got out tomorrow, I would be happy to know he bought a home on my street.”

Chaplain Epps further stated he is “deeply involved” in religious programming at SCDC, including JumpStart. He stated Mr. Buchanan will be given “blue folder” designation at JumpStart’s graduation, which means “you’re a shining example of what a man can do, you’re leader material, we want you to consider leading the next group or being a teacher.” He further stated he has approved only two individuals for blue folders over the last two years, out of approximately 105 individuals. Mr. Buchanan was “the only blue folder I agreed to this year” and “some years we don’t give out any at all, green [next level down] is good enough.”

He stated that if Mr. Buchanan makes parole, “I get the housing packet for JumpStart, I do that, I will let them know they have a blue folder coming.” This means JumpStart would expect Mr. Buchanan to take a leadership role in the house and in the organization. Chaplain Epps had also reached out to “retired pastor” Frank Ledvinka about Mr. Buchanan. Pastor Ledvinka indicated to him that he wanted to offer Mr. Buchanan a “full time ministry” opportunity if released.

SCDC Captain - Adam Bradburn: Cpt. Bradburn was interviewed by this examiner on October 29, 2018. He has worked for SCDC for 10 years, and has known Mr. Buchanan for “9 to 10 months, since he came to Perry.” Cpt. Bradburn is “over his dorm” and described Mr. Buchanan as “real polite, friendly, me and him have sat and talked, never gave me any sign of problems...” He stated he has “not had one complaint” from any inmate or staff member about Mr. Buchanan. He further stated, “if Mr. Buchanan made parole or got released, I wouldn’t have no problem with him living right down the road from my house, I wouldn’t have any concern about it, I would stop and speak with him for a few minutes.”

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JumpStart Mentor - Frank Ledvinka: Mr. Frank Ledvinka was interviewed by this examiner on October 16, 2018, and is Mr. Buchanan's civilian mentor through JumpStart. He is also a retired pastor. Mr. Ledvinka saw Mr. Buchanan "every week for six months," and "continues to see him" even though he has completed the program. He stated Mr. Buchanan will be formally graduating the program in several weeks. Mr. Ledvinka shared his impressions of Mr. Buchanan as "positive, I felt a leaning to mentor him...genuine, looking for change, faith plays a great part in his life..." If Mr. Buchanan is released on parole, Mr. Ledvinka plans to continue to mentor him and "work with him as he adapts to a new beginning."

Visiting Pastor - Tammy Blom: Pastor Tammy Blom was interviewed by this examiner on October 3, 2018. She is the lead pastor at Heyward Street Church in Columbia, South Carolina. She began seeing Mr. Buchanan in the Spring of 2017, and has seen him four times, with the last time in the Spring of 2018. They also frequently communicate by mail, email and letters. She has found him "much more positive and focused over time, in making the transition, he now has hope." During her work with him, she noticed he is "very committed to JumpStart, very serious about the homework." She described him as "sincere, articulate, takes great pride in doing things well, gets fulfillment from being responsible, I have found him to be honest with me." She believes he is "deserving of opportunity outside of prison, he expresses remorse, he's very interested in following the steps to gain such opportunity."

Cousin - Michael Short: Mr. Buchanan's first cousin, Mike Short, was interviewed by this examiner on October 2, 2018. As most of Mr. Buchanan's relatives are deceased, Mr. Short is one of the few left in the state, and resides in Fort Mill, South Carolina. He has worked in insurance for many years, was a county councilman for York County and an ordained minister for approximately 20 years. Mr. Short is related on the paternal side of the family, and grew up around Mr. Buchanan, although he is five years older. He described Mr. Buchanan "as a really nice guy, part of the family..." He was "in total shock" at Mr. Buchanan's arrest. He has recently visited with Mr. Buchanan at SCDC, and "feels like he has made a significant change, he was excited and proud about the changes he had made." He expressed emotional and social support for Mr. Buchanan and would welcome him back in the family circle.

CLINICAL PRESENTATION: For each interview, Mr. Buchanan presented as neatly dressed in prison-issued attire, with very good attention to grooming and hygiene. He was polite, cooperative and forthcoming. His mood was stable and pleasant, with appropriate and full range of affect. His speech was of normal rate, volume and prosody. There were no abnormalities observed in his psychomotor functioning. His thought process was linear and organized, with no bizarre content. Judgment and insight appeared good. There were no overt indicators of major mental disorder, personality disorder or cognitive deficits.

Clinical Functioning: Mr. Buchanan reported no symptoms consistent with a mental disorder, including major mood instability related to depression, mania, hypomania, or anger dyscontrol; psychotic symptomatology; self-injurious conduct, suicide attempts, or suicidal or homicidal ideation; traumatic stress; chronic elevated anxiety, panic attacks, intrusive worry or phobias; or obsessive-compulsive symptoms. With regard to current functioning, he reported no dysregulation in mood, affect, appetite, sleep, energy level, concentration, memory or cognition.

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Psychological Testing: On October 19, 2018, Mr. Buchanan was administered the **Minnesota Multiphasic Personality Inventory®, 2nd Edition (MMPI®-2)**. The MMPI®-2 is a psychological assessment measure designed to assess personality and affective functioning. Validity indicators are included measuring a test-taker's overall approach and response style. Results from Mr. Buchanan's MMPI®-2 testing indicate the following.

Validity scales were well within normal limits. He responded to all items; responded consistently and without exaggeration or minimization of symptomatology; and with no defensiveness detected: F-Scale [T = 48]; L-Scale [T = 43]; K-Scale [T = 51]; and S-Scale [T = 51].

'Parent' Clinical scales were significant for one scale elevation on Scale 4 [T = 69], with a corresponding subscale elevation [Pd₂, T = 73]. All other scales were within normal limits. Content parent scales were within normal limits, with one component scale elevated [ASP₂, T = 74]. Supplementary scales and PSY-5 scales were all within normal limits

Critical Items: Additional clinical findings are best assessed through his responses to the *Critical Items*, which were reviewed with Mr. Buchanan. He endorsed 21 items over 11 domains of functioning. In sum, after a detailed discussion of his responses, Mr. Buchanan's endorsement of *Critical Items* did not reflect symptoms consistent with mental disorder, personality disorder or other psychopathology.

Primary Clinical Findings: Although a clinical 'spike' was found on scales corresponding to aspects of anti-sociality, the evaluation did not uncover that Mr. Buchanan meets criteria for a related condition, such as Antisocial Personality Disorder (ASPD). There is no indication that he would have met Conduct Disorder as a child or adolescent, which is a diagnostic prerequisite for ASPD. Although he had one arrest as a juvenile, this would not be sufficient, as a pattern of multiple rule violations and misconduct over several domains is required.

In addition, neither clinical contacts, nor collateral data, support additional diagnostic criteria of ASPD, to include: engaging in repeated acts that are grounds for arrest; deceitfulness; impulsivity; reckless disregard for safety of self or others; consistent irresponsibility; lack of remorse; or irritability and aggressiveness indicated by repeated physical fights or assaults. On the contrary, his prison record indicates an exceptionally responsible worker, with very few physical altercations, and a positive demeanor and attitude. Collateral and interview data indicate expressed remorsefulness, and ability for empathy.

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DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the bases of the above data and according to the *Diagnostic and Statistical Manual for Mental Disorders, 5th Edition*, (DSM-5).

- **Diagnosis:**
(Previously Axis I & Axis II)
 - Stimulant [Amphetamine and Methamphetamine] Use Disorder, Moderate, In Early Remission, In a Controlled Environment
 - Alcohol Use Disorder, Moderate, In Sustained Remission, In a Controlled Environment
 - Cannabis Use Disorder, Mild, In Sustained Remission, In a Controlled Environment
 - Unspecified Gender Dysphoria, by History
- **Medical Conditions:**
(Previously Axis III)
 - Hepatitis C [Diagnosed 8/2011]
 - History of Positive PPD with INH Treatment [1970's]
 - Hearing Loss Right Ear

Mr. Buchanan is assigned substance-related diagnoses of *Stimulant Use Disorder*, *Alcohol Use Disorder*, and *Cannabis Use Disorder*. He used amphetamines heavily prior to his arrest, and this substance was implicated in his offense. He has also used methamphetamine in prison, leading to tolerance and weight loss. He used alcohol heavily prior to his offense, and incurred a DUI in 1981 while on pass. He used cannabis prior to, and during his incarceration, with cannabis related infractions in prison. He has also abused a variety of other substances, including hallucinogens (LSD), and benzodiazepines. However, his use of these substances is either very remote (no use of LSD since age 17), or do not meet criteria for a disorder.

As per DSM-5, the qualifier '*In Early Remission*' is used to indicate that, "none of the criteria for the disorder has been met for at least 3 months but less than 12 months." The qualifier '*In Sustained Remission*' is used for his Cannabis and Alcohol Use Disorders to indicate, "none of the criteria for the substance use disorder have been met at any time during a period of 12 months or longer." The qualifier '*In a Controlled Environment*' is used with all substance disorders to indicate that his access to substances is somewhat restricted given his incarceration.

During the current evaluation, Mr. Buchanan reported underlying gender dysphoria at times, but he no longer acts on these feelings with regard to dress, appearance or mannerisms. He reported no clinically significant distress or impairment in any domain of functioning due this dysphoria. He is no longer seeking treatment for this condition, and has not made efforts to do so since 2009. Therefore, to reflect his history of symptoms and diagnosis in this clinical domain, he is assigned the diagnosis of Unspecified Gender Dysphoria, by History.

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VIOLENCE RISK ASSESSMENT: A violence risk assessment measure was utilized to supplement the above data and more formally evaluate the issue of future violence risk.

HCR-20^{V3}: The **HCR-20^{V3}** is an interview and assessment tool designed to assess an individual's risk of future violence. This tool has been subject to rigorous empirical validation, and is used routinely in parole evaluations for those serving life sentences.^{1,2} The HCR-20^{V3} is comprised of twenty items in *Historical*, *Clinical* and *Risk Management* domains that combine to assess an individual's overall level of violent recidivism risk. Thus, the measure captures past, present, and future risk variables. These variables have been demonstrated via research to correlate with an individual's risk of violence. Items are assessed for the *presence* of the risk factor, and the *relevancy* (*low, moderate or high*) of the item to address future violence for that individual. Information on these variables was obtained through in-depth clinical interviews with Mr. Buchanan, and by review of collateral data.

▪ **Historical** variables are considered over an individual's lifetime and include history of: 1) *violence*; 2) *violent attitudes*; 3) *antisocial behaviors*; 4) *instability of relationships*; 5) *instability of employment*; 6) *substance use*; 7) *major mental illness*; 8) *personality disorders*; 9) *traumatic experiences*; and 10) *problems with treatment response*.

With regard to **history of violence**, Mr. Buchanan has four alleged instances of violence over the course of his lifetime. The most serious incident by far involves the offense conduct, consisting of a homicide by stabbing which occurred over 45 years ago. He has three additional instances, which occurred during his current incarceration. These consisted of a physical altercation with a corrections officer in 1988; and two minor physical altercations with another inmate in 2011 and 2016. Neither instance involved the use of weapons, or injury to any party. Records pertaining to the former indicate he was intoxicated, and received minimal disciplinary action. The latter involved his longstanding roommate on both occasions, with records indicating they were "fussing." They received minimal disciplinary action and were not separated. There is no known additional history of violence, either prior to, or during, his present incarceration. Although he has had very few instances of violence over his 62 years, given the seriousness of the offense conduct, this factor is considered historically *present*, and of *high relevance*.

Regarding a related factor, data did not indicate that Mr. Buchanan has a history of entrenched **violent attitudes**; therefore, this factor is *not present*.

Considering a pattern of **antisocial behaviors** (criminal activity other than violence), at age 15, he incurred juvenile charges of misdemeanor Housebreaking and Larceny, after he broke into a neighbor's house and took a guitar. He received "unsupervised probation" and attended vocational rehabilitation. [The Department of Juvenile Justice indicated, "no records found" for Mr. Buchanan]. As an adult, his SLED 'Arrest History' reflects only his Murder charge from May 1973. Further, his disciplinary record in SCDC indicates relatively few infractions given the length of time he has been incarcerated. He has been convicted of 31 infractions over 45 years,

¹ Laura S. Guy et al., *Influence of the HCR-20, LS/CMI, and PCL-R on Decisions About Parole Suitability Among Lifers*, 39 LAW HUMAN BEHAV 232 (2015).

² David R. Shaw, Office of the Inspector General, *Special Report: The Board of Parole Hearings: Psychological Evaluations and Mandatory Training Requirements* [July 2010], <https://www.oig.ca.gov>.

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which equals 541 months or 16,469 days. Half of his infractions have been 'minor' in nature. Additionally, most of his infractions would not be considered 'antisocial' conduct, as they would not be illegal if in the community (e.g., being out of place, not standing for count, having tobacco, having cash, not returning items to their place, having an extra cooler, etc.). Therefore, this factor is not present.

In consideration of instability in relationships, Mr. Buchanan has had two serious [intimate] relationships over his lifetime. From 1978 to 1981, he was involved with a female peer, whom he married in 1981. Although their relationship lasted three years, the marriage was brief. He realized it was a mistake to marry, with situational factors an impediment to the marriage. Therefore, they divorced amicably after 10 days. He married a second time in 1993, which lasted approximately 13 years. Interview data from his second wife indicate it was a "happy and loving marriage." This relationship ended primarily due to SCDC policy changes regarding revocation of inmate passes outside of the institution, which significantly curtailed their time together. Therefore, he has a history of two long-term intimate relationships; and does not have a pattern of relationship instability, characterized by multiple short-term, turbulent or conflictual relationships. As such, this factor is not present.

Regarding instability of employment history, at age 17, Mr. Buchanan was employed at the time of his arrest. During his incarceration, he has held multiples types of jobs, with most ending for various legitimate reasons (e.g., transfer among institutions, transfer among jobs, etc.). He has also held jobs in prison industries, and off campus during the early part of his incarceration. These employers wrote letters of commendation for his excellent work. Of note, his history is not reflective of long periods of unemployment, firings, poor performance reviews, conflicts with supervisors or coworkers, or other chronic problems. Therefore, this factor is not present.

Regarding history of substance abuse, Mr. Buchanan heavily abused substances as a teenager, primarily LSD, alcohol and amphetamines, and experimented with other substances. Substances were directly implicated in the homicide offense, as he was severely intoxicated at the time. He has also acknowledged substance use in prison, with substances involved in his one altercation with a corrections officer in 1988; and has been the cause of other infractions (e.g., contraband). He also carries several substance-related diagnoses. While there is no indication of present use, this factor is considered historically present and, given the role of substances in the offense conduct is highly relevant to risk management strategies.

For the risk factor of major mental disorder, Mr. Buchanan does not meet criteria for a major mental illness. SCDC records indicate a 2008 diagnosis of *Sexual Disorder Not Otherwise Specified*; and diagnoses to indicate depressive symptoms (*Adjustment Disorder with Depression* and *Depression Not Otherwise Specified*). Regarding the former, in 2005, Mr. Buchanan believed he may have Gender Identity Disorder based on longstanding gender dysphoria, with related behaviors. He sought treatment for this disorder, and underwent an evaluation by a psychiatrist. The evaluator recommended a full sexual disorder "work-up," rendering the 'NOS' diagnosis. [To the present examiner's knowledge, this recommended assessment did not occur].

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In the present evaluation, Mr. Buchanan described residual feelings of incongruence regarding his biological and desired gender, however, he no longer experiences a desire to act on these feelings. He reported no clinically significant distress, and no efforts at treatment. Therefore, to capture his diagnostic history, he is assigned the diagnosis of *Unspecified Gender Dysphoria, by History*. His prior depression diagnoses were related to his adjustment around this issue at this time. The current evaluation did not uncover any evidence of depressive symptomatology. Therefore, while this risk factor is present due to the assignment of a historical diagnosis, it is considered of low relevance to risk management.

Additionally, he does not meet criteria for a personality disorder of any kind. SCDC records do not indicate diagnoses of personality disorders, and he did not meet criteria for a personality disorder upon current clinical evaluation. Therefore, this factor is not present.

Regarding history of traumatic experiences, Mr. Buchanan has a history of childhood bullying, with resulting psychological consequences (e.g., poor self-esteem and self-worth, self-loathing, etc.). However, he does not endorse any trauma-related symptomatology (e.g., nightmares, flashbacks, intrusive memories, etc.). Therefore, although this risk factor is considered historically present, it is of low relevance, indicating that it is not relevant in developing risk management strategies.

Mr. Buchanan has no history of problems with treatment response. He has no history of problems complying with mental health treatment, rehabilitation or supervision programs. On the contrary, his record indicates completion of numerous psychosocial programs, with good compliance, response, and cooperative attitude. Regarding his history of mental health treatment, he tried an antidepressant when offered. However, he determined it did not work for him, and discontinued treatment, as appropriate to his situation. Therefore, this factor is not present.

- **Clinical** risk factors are considered over the past six months and include recent problems with: 1) *degree of insight*; 2) *violent ideation or intent*; 3) *symptoms of major mental disorder*; 4) *instability of functioning*; and 5) *treatment or supervision response*.

Mr. Buchanan's degree of insight into his functioning and situation is quite sophisticated. Over time, he has engaged in an in-depth 'self-study' of sorts, analyzing his prior decisions and conduct, and how they relate to his present life circumstance. He is of above-average intelligence, and able to engage in such exercises, in an effort to enhance his understanding and improve his life. He possesses insight into his problem with substances, their adverse impact on his life, and the need for abstinence. He also possesses good insight into factors related to the offense conduct. Therefore, this factor is not present.

There is no indication that Mr. Buchanan has had any recent problems with violent ideation or intent, therefore this risk factor is not present. He does not have a major mental illness; therefore, he has no recent symptoms of major mental disorder, including affective, behavioral or cognitive instability. As such, this risk factor is not present. He is clinically stable at the present time, and thus his stability of functioning is good; therefore, this risk factor is not present. He has had no issues with recent treatment or supervision response, as he had recently successfully completed JumpStart, which has involved a high degree of supervision, both from other inmates and staff. Therefore, this factor is not present.

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▪ **Risk Management** factors represent an assessment of variables (out of custody) over the next six months, and include future issues or problems with: 1) *professional services and plans*; 2) *his living situation*; 3) *level of personal support*; 4) *treatment or supervision response*; and 5) *level of stress and coping*.

Regarding *professional services and plans*, Mr. Buchanan plans to participate in a residential spiritual program (JumpStart) for up to two years post-release. This program can provide any necessary professional or social service needs, to include basic necessities, employment prospects, and other needs. In speaking with the Chaplain who assigns the housing for JumpStart, he plans to recommend Mr. Buchanan for Jumpstart's outside activities and programs, as well as a housing slot. Therefore, his plan for professional services and plans is realistic and attainable; therefore this factor is not present. Relatedly, his *living situation* will be secure for up to two years after his release as he will be a resident of the JumpStart house. Subsequently, the program will assist in finding stable residence upon his discharge. Therefore, this risk factor is not present.

With regard to *level of personal support*, Mr. Buchanan will have the JumpStart community as a strong source of support. He has also developed a relationship with a retired pastor, who is his civilian mentor in Jumpstart. During the examiner's interview, this individual stated he plans to continue this mentor relationship if Mr. Buchanan is released. He will also have the support of his first cousin, who expressed to the examiner that he would welcome Mr. Buchanan back into the family circle. Therefore, this risk factor is not present.

Regarding the factor of future *treatment or supervision response*, Mr. Buchanan has no significant history of compliance issues. On the contrary, he just completed JumpStart, and earned a "blue folder" which, per the awarding Chaplain, is a rare honor. He has no significant interpersonal or clinical impediments that would hinder a positive response to psychosocial interventions or [parole] supervision. He has been very agreeable to proposed plans by the examiner, and his attorney, and maintains a positive attitude and optimism regarding his potential release. Therefore, evidence supports a future positive treatment and supervision response. As such, this factor is not present.

Finally, the risk factor of future problems with *level of stress or coping* was considered. If released on parole, Mr. Buchanan would be faced with the challenges of adjusting to a very different 'outside world' than what he experienced prior to his incarceration. This is likely to be stressful for anyone in his situation. However, JumpStart would be an asset in dealing with this transition and his civilian mentor has pledged to work with him on these transition issues. Mr. Buchanan also has significant cognitive and intellectual resources, coupled with stable mental functioning, that would help mitigate stress and bodes well coping. Therefore, this risk factor is considered present, as any transition of this magnitude would create some level of stress, but of only moderate relevance, given his support system and individual strengths.

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In sum, based on the evaluation and application of the HCR-20^{V3} risk factors to Mr. Buchanan's specific history and situation, it is opined that two out of 20 risk factors are present, and highly relevant. These factors include: *History of Violence* and *Substance Use*. These factors are highly relevant to the development of risk management strategies, and should be incorporated into any risk assessment plan. The former factor is static and represents historical violence related to his homicide offense, with only three episodes of minor violence over the past 45 years. The latter factor of Substance Use is relevant, as his prior violence is related to his use of substances. This factor can be targeted through a course of substance use treatment, and requirement that he abstain from all substances if paroled. Regular and frequent drug testing would also be advised.

An additional factor was present and of moderate relevance, to include any future issues with *Stress and Coping*, which is to be expected if released after so much time. Such issues can be addressed through available services in JumpStart, and his support network. Two additional factors were present, but of low relevance when considering risk management strategies. The factor of *Traumatic Experiences* was historically present during his childhood. However, it is not a current clinical issue in need of intervention, with no adverse impact on his functioning. Secondly, the factor of *Major Mental Disorder* refers to his diagnosis of Unspecified Gender Dysphoria, by History, which does not appear to significantly impact his functioning.

Taken together, in consideration of his individual, case-specific details, and available risk management strategies, data from the HCR-20^{V3} indicates Mr. Buchanan does not represent a significant risk for future violent acts. His primary risk factor is substance use, which can be addressed through ongoing education, treatment and monitoring. In sum, his risk finding is predicated on Mr. Buchanan adhering to his release plan of JumpStart, to all prescribed parameters of his parole, and complete abstinence from all substances.

SUMMARY: Based on the totality of data, to include clinical interviews and psychological testing with Mr. Buchanan; interviews with his cousin; visiting pastor; senior SCDC Chaplain Larry Epps, and SCDC Captain Adam Bradburn; and a review of available academic, legal, mental health, medical, and correctional records; the following is opined.

Psychosocial History [Pre-Offense]: Mr. Buchanan was raised within a dysfunctional family environment, with an alcoholic absentee father, and an emotionally distant mother. Per his school records, he was obese, and struggled with peer acceptance, bullying and social ostracism. These factors facilitated gravitation towards an older peer group, which involved him in substance use. His substance use eventually became excessive, which was the case at the time of his arrest. He did not finish high school, despite the intelligence to do so, and at age 17, was without direction or guidance in his life, which he now terms a 'self-destructive' path.

Per 'parole criteria' set forth by the SC Board of Pardons and Paroles,³ "*The offender's prior criminal record and adjustment under any previous programs of supervision*," was considered as part of his pre-offense history. He had one arrest as a juvenile, completing a term of unsupervised probation successfully. He had no prior adult criminal record before the homicide offense.

³ <https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+2017.pdf>.

Name: BUCHANAN, Stewart
Date of Birth: March 16, 1956

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S. Knight, Ph.D., ABPP
Board-Certified Forensic Psychologist

Offense: Per the Board's criteria, "*The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;*" as well as the, "*the offender's understanding of the causes of his past criminal conduct*" were assessed. At the time of the homicide, Mr. Buchanan was age 17, with corresponding social and neurobiological immaturity. He was also severely intoxicated, which comprised his reasoning, judgment and impulse control. Since commission of the crime, he has taken full responsibility, with expressions of remorse found throughout his records and interviews. He demonstrated good insight into the adverse developmental factors facilitating his substance use as a teenager, which in turn, was heavily implicated in the offense.

In consideration of the Board's parole criteria regarding, "*The offender's attitude toward family members, the victim, and authority in general,*" Mr. Buchanan expressed significant remorse regarding the victim. This was found during the present evaluation, and supported by data in his record and interviews.

Course of Incarceration: In consideration of the Board's parole criteria: "*The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself;*" "*The offender's employment history, including his job training and skills and his stability in the workplace;*" and "*The offender's efforts to solve his problems;*" the following was found. Mr. Buchanan has earned many accomplishments and honors, with heavy involvement in educational endeavors and vocational trainings. He has had many promotions in his employment, and has resided in character-based units for years. He has just completed JumpStart, a rigorous 40-week program guided by Christian principles, and earned the highest honor available in the program.

Mr. Buchanan has accumulated multiple letters of accolades over the decades, from 1975 to 2018, which speak to these criteria. In these letters, his supervisors, employers, SCDC staff, and others describe him as: having a "truly outstanding" work performance; "always seeking to improve himself;" "trustworthy;" "high level of dedication;" "unusual amount of loyalty;" "reliable and trustworthy;" "keeps a good attitude;" "determined person with high goals and the willingness to try to achieve them;" "holds himself accountable for his actions;" "done a lot of self-study so that the time he must spend in prison is used in a beneficial way;" "definitely seen psychological growth;" "performance was exceptional;" "very reliable and trustworthy;" "he never failed my trust and the work was completed with a great amount of professionalism;" an "asset;" "did excellent work and made rapid progress;" "showed high standards as a scholar;" "highly regarded;" "very dependable;" "conscientious;" "excellent attitude;" "outstanding employee;" "tremendous cooperation in any task you were given;" "high degree of professional conduct;" "unique and trustworthy;" "valuable asset;" "performed exceptionally;" "consistent friendly, courteous and professional service;" "very knowledgeable and professional;" "outstanding performance;" "very capable and dependable;" "honest in his work;" "very courteous and professional manner;" "definite asset;" and a "very bright and competent person."

SCDC personnel interviewed by this examiner, and others, further indicates he has made a very positive adjustment, with staff indicating no hesitation regarding his potential release on parole. Further, regarding his 'adjustment in confinement,' he has had relatively few disciplinary events given the length of his incarceration, having been convicted of 16 'Major' infractions over 45 years.

Name: BUCHANAN, Stewart
Date of Birth: March 16, 1956

17 S. Knight, Ph.D., ABPP
Board-Certified Forensic Psychologist

Risk Assessment: In consideration of the Board's parole criteria of, "*the risk that the offender poses to the community*," Mr. Buchanan was assessed using an empirically validated risk assessment measure (HCR-20^{v3}). This measure consists of 20 risk variables, within Historical, Clinical and Risk Management domains. Results indicate Mr. Buchanan is at low risk for future violent recidivism. Although age of offender is not measured by the HCR-20^{v3}, his age of 62 would further reduce his risk given that youthful offenders account for the majority of violent crime. Given the role of substances in the homicide offense, and several substance-related diagnoses (in remission), substance use treatment is recommended as his primary 'risk management' strategy. Any additional psychopathology contributing to risk was not found

The Board's parole criteria of, "*The offender's physical, mental, and emotional health*" was also considered in assessing his risk. Mr. Buchanan is clinically stable, and without symptoms of mental disorder. He is in good health aside from a 2011 diagnosis of Hepatitis C, for which he would like treatment; and hearing loss, for which he wears a hearing aid.

Transition Plan: Per the Board's parole criteria: "*The adequacy of the offender's overall parole plan, including his proposed residence and employment*," Mr. Buchanan has proposed the following. If released on parole, he plans to reside at the JumpStart house in Spartanburg, South Carolina. Chaplain Epps verified this plan, as he approves the housing assignments for JumpStart. Mr. Buchanan can reside at the JumpStart house for up to two years. They will involve him in vocational pursuits, to include "woodworking, a furniture type company, other construction." As noted above, Chaplain Epps would like to see Mr. Buchanan take a leadership role in the house as well, possibly pursuing ministry as a vocation with Pastor Ledvinka. He would also alert them that a 'blue folder' is coming, which signals the highest honor within the organization, as it signifies the person is "a shining example of what a man can do." He will let them know to expect Mr. Buchanan to step into a leadership role in the house.

In consideration of the Board's criteria of, "*The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle*," the examiner spoke with his first cousin, Michael Short. Mr. Short would welcome Mr. Buchanan back into the 'family circle,' providing him psychosocial and emotional support.

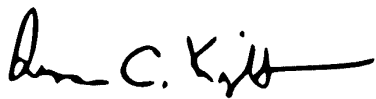
In discussing his transition plan, Mr. Buchanan understood he would be subject to frequent drug tests by his parole officer. He also understood that substance treatment may be recommended, of which he is amenable. To cope with the stress of transition, he would utilize support from the JumpStart community, from Pastor Ledvinka, and from his cousin, Mr. Short. In discussing his future, he considered his life over the long-term, and referenced his heavy involvement in ministry. He stated, "I have a future now, I can't take that for granted, no time to squander anymore, I have one shot to make it work."

Name: BUCHANAN, Stewart
Date of Birth: March 16, 1956

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S. Knight, Ph.D., ABPP
 Board-Certified Forensic Psychologist

Respectfully Submitted



Susan C. Knight, Ph.D., ABPP
Licensed Clinical Psychologist
Board-Certified Forensic Psychologist

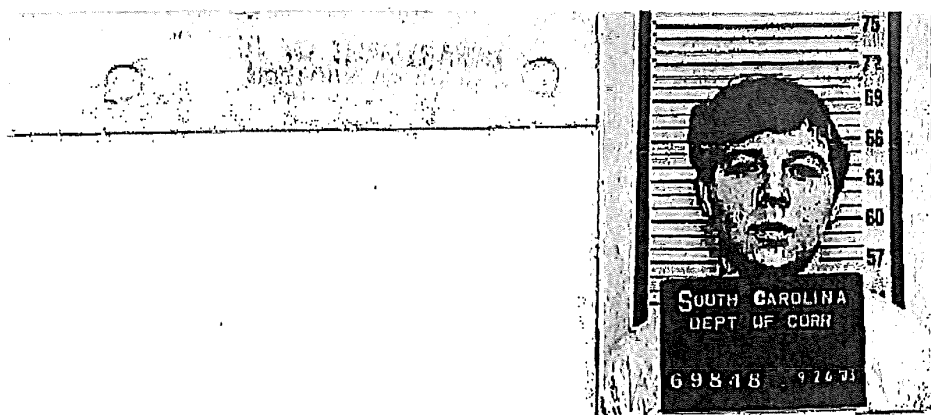
October 30, 2018

Date Signed

Name: BUCHANAN, Stewart
Date of Birth: March 16, 1956

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S. Knight, Ph.D., ABPP
Board-Certified Forensic Psychologist



Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC726

SOUTH CAROLINA DRIVER LICENSE				4753489
BUCCHANAN - STEWART RUSSELL				EXPIRES ON YOUR BIRTHDAY 19 79
113 THOMAS AVE.				
PORT HILL, S.C. 29715				
DATE OF ISSUE	DATE OF BIRTH	SEX		
6-25-75	3-16-56	M		
CODE	HEIGHT	WEIGHT		
4602JaJR	5-11	195		
SIGNATURE Stewart Buchanan				
RESTRICTIONS				

Stewart Buchanan
Handy-Driver
11-8-75

PALMETTO UNIFIED SCHOOL DISTRICT

PRESENTS

TO

STEWART RUSSELL BUCHANAN

IN RECOGNITION OF THE SATISFACTORY
COMPLETION OF 200 HOURS OF
ON-THE-JOB TRAINING

ADMINISTRATIVE CLERK I

Given on this 03 day of August, 2018



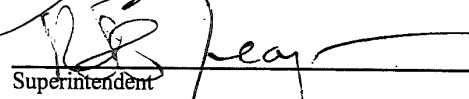
Supervisor / Instructor



Division Director / School Leader



Vocational Director



Superintendent

Administrative Clerk

Validation of Award

This certificate serves as documentation of contact hours and is not intended for licensing purposes.

**Competencies Demonstrated: The award recipient
has demonstrated the following**

1. Knowledge of general filing, copy machine use, mail sorting, receptionist duties, and computer usage.
2. Typing skills (minimum 25 WPM).
3. Work area cleanliness.
4. Knowledge of office supplies. (Pens, paper pencils, pencil sharpeners, file cabinets, etc.)
5. Knowledge of data keeping.

**Character Traits: The following traits have been
demonstrated by the recipient.**

1. Punctuality
2. Initiative
3. Decisiveness
4. Loyalty
5. Patience
6. Self-Control
7. Truthfulness
8. Enthusiasm
9. Obedience
10. Diligence
11. Flexibility
12. Responsibility.

E0515214-418126-6

ACT WorkKeys®
Summary*Report for:* STEWART R BUCHANAN*Test Date:* 05/2016*Test Site:* SCDOC*Report Date:* 05/11/2016**Applied Mathematics** (Levels range from 3 to 7) Level: 6 Scale Score: 85

This person scored at Level 6. Individuals with Level 6 skills can set up and solve problems containing extraneous information or information presented out of logical order and involving multiple-step calculations on a mixture of whole numbers, fractions, decimals, or percentages.

Reading for Information (Levels range from 3 to 7) Level: 7 Scale Score: 85

This person scored at Level 7. Individuals with Level 7 skills can apply concepts from densely detailed selections, such as excerpts from complex regulatory and legal documents, to new situations. They can understand difficult concepts and complex procedures containing jargon and technical terms whose definitions must be derived from context. Level 7 is the highest level measured by this test.

We hope you find this WorkKeys information useful. If you have questions about these scores or about the WorkKeys system or skills, please contact WorkKeys (96), ACT, 2201 North Dodge Street, P. O. Box 168, Iowa City, IA 52243.

LS=Level Scores:

Use for selection, promotion, or other individual high-stakes purposes. For more information on Level Scores go to: <http://www.act.org/workkeys/pdf/forms/interp.pdf>

SS=Scale Scores:

Use to show growth over time and provide group comparisons in outcome measurement. Not intended for selection and hiring. Scale Score range: 50-90. For more information on Scale Scores go to: http://www.act.org/workkeys/pdf/scale_score_interp_guide.pdf

E0516658-418126-7

ACT WorkKeys®
Summary

Report for: STEWART R BUCHANAN
Test Site: SCDOC

Test Date: 06/2016
Report Date: 06/08/2016

Locating Information (Levels range from 3 to 6) Level: 5 Scale Score: 84

This person scored at Level 5. Individuals with Level 5 skills can correctly use complicated workplace graphics, such as complex forms and tables, multivariable graphs, and detailed diagrams, to compare trends and main points, and/or summarize information within a single graphic or across more than one graphic representing related information.

We hope you find this WorkKeys information useful. If you have questions about these scores or about the WorkKeys system or skills, please contact WorkKeys (96), ACT, 2201 North Dodge Street, P. O. Box 168, Iowa City, IA 52243.

LS=Level Scores:

Use for selection, promotion, or other individual high-stakes purposes. For more information on Level Scores go to: <http://www.act.org/workkeys/pdf/forms/interp.pdf>

SS=Scale Scores:

Use to show growth over time and provide group comparisons in outcome measurement. Not intended for selection and hiring. Scale Score range: 50-90. For more information on Scale Scores go to: http://www.act.org/workkeys/pdf/scale_score_interp_guide.pdf

Palmetto Unified School District Presents This Vocational Certificate

Be It Known that STEWART BUCHANAN has satisfactorily
completed a #) 300 hour course of instruction in CARPENTRY II
and on the recommendation of the Principal and Faculty the Palmetto Unified School
District awards this certificate

Given at McCormick South Carolina, this 11th day of March 2015

Archie W. Hise
Vocational Instructor

B. Callan
Principal/Lead Teacher

John
Educational Director

Ray
Superintendent

Competencies for Teacher Assistant

Rating Scale:

3	Skilled	Works independently with no supervision
2	Moderately Skilled	Performs job completely with limited supervision
1	Limited Skilled	Requires instruction and close supervision
N	No Exposure	Has no experience or knowledge in this area

3	2	1	N	Technical Skills
X				Set up and operate audio visual equipment
X				Prepare bulletin board displays
X				Operate a computer for instructional and clerical tasks
X				Understand and work from a prepared lesson plan
X				Maintain a neat and organized work area
X				Manage files and records
X				Communicate effectively in writing and oral expression
X				Prepare materials and classroom for class activities
X				Pay attention to detail
X				Knowledge of computational skills, algebra, geometry and their applications
X				Tutor/assist students individually or in small groups to reinforce learning concepts presented by teachers
X				Follow instructions
X				Demonstrates technical skills required by the vocational class

Soft (Pro Social) Skills are rated as Acceptable (A) or Unacceptable (U)

A	U	Exhibits Social Skills
X		Ability to Accept Constructive Criticism
X		Adaptability
X		Attendance
X		Dependability
X		Listening Skills
X		Self control
X		Punctuality
X		Teamwork
X		Confidentiality
X		Integrity (honest and ethical)

Certificate of Attendance

This Certifies that

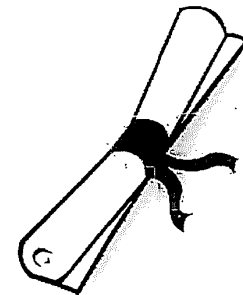
Stewart Buchanan

Has Completed A Year In

Kingdom Builders

at

McCormick Correctional Institution



Awarded December, 2014

Reverend N. Barber

Reverend N. Barber
Senior Clinical Chaplain III

James Parker

James Parker
Associate Warden, Programs

Leroy Cartledge

Leroy Cartledge
Warden

Palmetto Unified School District
Presents
This Vocational Certificate

Be It Known that STEWART BUCHANAN has satisfactorily
completed a 200 hour course of instruction in CARPENTRY I
and on the recommendation of the Principal and Faculty the Palmetto Unified School
District awards this certificate

Given at McCormick, South Carolina, this 6th day of November, 20 14

Albert W. Hise
Vocational Instructor

Bonnie Callan
Principal/Head Teacher

John C. Odom
Vocational Director

Ray
Superintendent

COURSE COMPETENCIES CHECKLIST

DIRECTIONS:

The student's degree of skill in performing each course competency is evaluated by the rating scale shown in the chart below. The numerical ratings of 3, 2, 1, and N DO NOT represent the traditional school grading system of A, B, C, and D. The numbers represent the skill level demonstrated by the student when performing the course competencies. The different skill levels are defined in the ratings chart.

RATING SCALE:

Score	Practical work skill level
3	Skilled: can work independently with no supervision.
2	Semi-skilled: performs job completely with limited supervision.
1	Limited skill: requires instruction and close supervision.
N	No exposure: has no experience or knowledge in this area.

CARPENTRY 1: TOOLS AND MATERIALS

COMPETENCY

[illegible]

- A. Perform Safe Work Practices
 - 1. Demonstrate safe work habits
 - 2. Keep a clean, orderly, and safe work area
 - 3. Operate a fire extinguisher
 - 4. Demonstrate the safe use of hand and power tools
- B. Demonstrate Cutting, Shaping, and Fastening Skills
 - 1. Utilize hand tools
 - 2. Operate power tools
- C. Identify and Select Building Materials
 - 1. Appraise lumber types, sizes, and uses
 - 2. Appraise fastener types, sizes, and uses
- D. Demonstrate Life Skills
 - 1. Demonstrate essential life skills necessary in the construction field
 - 2. Examine carpentry background information

Palmetto Unified School District
Presents
This Vocational Certificate

Be It Known that STEWART BUCHANAN has satisfactorily
completed a 15 hour course of instruction in CARPENTRY SAFETY
and on the recommendation of the Principal and Faculty the Palmetto Unified School
District awards this certificate

Given at McCormick, South Carolina, this 6th day of October, 20 14

Albert W. Hsu
Vocational Instructor

Bonnie Callan
Principal/Lead Teacher

John Combs
Vocational Director

John Combs
Superintendent

COURSE COMPETENCIES CHECKLIST

DIRECTIONS: The student's degree of skill in performing each course competency is evaluated by the rating scale shown in the chart below. The numerical ratings of 3, 2, 1, and N **DO NOT** represent the traditional school grading system of A, B, C, and D. The numbers represent the skill level demonstrated by the student when performing the course competencies. The different skill levels are defined in the ratings chart.

SCORE	PRACTICAL WORK SKILL LEVEL
3	Skilled: can work independently with no supervision.
2	Semi-skilled: performs job completely with limited supervision.
1	Limited skill: requires instruction and close supervision.
N	No exposure: has no experience or knowledge in this area.

3	2	1	N	MODULE #	MODULE COMPETENCIES
					Identify and demonstrate job-site safety precautions related to hazard identification, risk assessment, health hazard exposures, personal protective equipment use, signs, signals, barricades, housekeeping, electrical dangers, fire prevention, energized tools, fall protection, ladders, scaffolds, lock out/tag out, permits, welding, trenching, excavations, heavy equipment, concrete, and emergency response.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Mental Health Services

STATEMENT
OF
PARTICIPATION

SEP 15 2008

LEE C. WILSON

THIS IS TO ACKNOWLEDGE THAT Stewart Buchanan #069848
HAS PARTICIPATED IN 7 of 8 Sessions
OF Depression Mgt. Group

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS.

DATE: 8/27/08



H. B. Jones, CCC
Lee C. Wilson
INSTITUTION

Palmetto Unified School District No. 1

Presents

This Vocational Certificate

Be It Known that Stewart Buchanan has satisfactorily
 completed a 740 hour course of instruction in Core Electronics
 and on the recommendation of the Principal and Faculty the Palmetto Unified School
 District awards this certificate

Given at Bennettsville South Carolina, this 4th day of March 2003

Cecil Daney

Vocational Instructor
Cecil Daney

Horace M. Bass

Principal
Horace M. Bass

[Signature]

Supervisor, Vocational Education
Port Sharpe

[Signature]

Superintendent
Mendell Blanton

MAJOR AREAS

DIRECTIONS: Evaluate the student using the rating scale below, and check the appropriate number to indicate the degree of competency. The ratings 3, 2, 1, and N are not intended to represent the traditional school grading system of A, B, C, and D. The description associated with each of the numbers focuses on level of student performance for each of the tasks listed below.

RATING SCALE:

- 3 - Skilled - can work independently with no supervision
- 2 - Moderately skilled - can perform job completely with limited supervision
- 1 - Limitedly skilled - requires instruction and close supervision
- N - No exposure - has no experience or knowledge in this area

CORE ELECTRONICS

3 2 1 N

☒	☐	☐	☐	A.	Demonstrating Safe Work Habits and Procedures
☒	☐	☐	☐	B.	Demonstrating Proficiency in DC Electronics
☒	☐	☐	☐	C.	Demonstrating Proficiency in AC Electronics
☒	☐	☐	☐	D.	Demonstrating Proficiency in Semiconductor Devices
☒	☐	☐	☐	E.	Demonstrating Proficiency in Electronic Circuits
☒	☐	☐	☐	F.	Demonstrating Proficiency in Soldering and Assembling Techniques
☒	☐	☐	☐	G.	Demonstrating Proficiency in Basic Digital Electronics

Competency Certificate

This is to certify that:

Stewart Buchanan

*Achieved the performance levels acknowledged
on the reverse side for the program of*
Core Electronics

And is therefore recognized

This 4th *Day of* March, 2003



Cecil Sainey

Instructor

Cecil Sainey

Horace M. Bass

Administrator

Horace M. Bass

MAJOR COMPETENCY AREAS

DIRECTIONS: Evaluate the student using the rating scale below, and check the appropriate number to indicate the degree of competency. The ratings 3, 2, 1, and N are not intended to represent the traditional school grading system of A, B, C, and D. The description associated with each of the numbers focuses on level of student performance for each of the tasks listed below.

RATING SCALE:

- 3 - Skilled--can work independently with no supervision
- 2 - Moderately skilled--can perform job completely with limited supervision
- 1 - Limitedly skilled--requires instruction and close supervision
- N - No exposure--has no experience or knowledge in this area

CORE ELECTRONICS

3	2	1	N	
☒	☐	☐	☐	A. Demonstrating Safe Work Habits and Procedures
☒	☐	☐	☐	B. Demonstrating Proficiency in DC Electronics
☒	☐	☐	☐	C. Demonstrating Proficiency in AC Electronics
☒	☐	☐	☐	D. Demonstrating Proficiency in Semiconductor Devices
☒	☐	☐	☐	E. Demonstrating Proficiency in Electronic Circuits
☒	☐	☐	☐	F. Demonstrating Proficiency in Soldering and Assembling Techniques
☒	☐	☐	☐	G. Demonstrating Proficiency in Basic Digital Electronics

COMMUNICATION ELECTRONICS

☐	☐	☐	☐	A. Demonstrating Safe Work Habits and Procedures
☐	☐	☐	☐	B. Demonstrating Basic Installation and Maintenance Procedures
☐	☐	☐	☐	C. Demonstrating Proficiency in Servicing and Repairing Transmitting and Receiving Systems
☐	☐	☐	☐	D. Demonstrating Proficiency in Operating and Servicing of Microwave Communication Systems
☐	☐	☐	☐	E. Demonstrating Proficiency in Servicing VCR and Camcorder Equipment

COMPUTER ELECTRONICS

☐	☐	☐	☐	A. Demonstrating Safe Work Habits and Procedures
☐	☐	☐	☐	B. Demonstrating Proficiency in Digital Electronics
☐	☐	☐	☐	C. Demonstrating Proficiency in Understanding Computers and Related Components
☐	☐	☐	☐	D. Demonstrating Proficiency in Maintaining and Servicing Computer Equipment
☐	☐	☐	☐	E. Demonstrating Proficiency in Basic Microcomputer Repair

INDUSTRIAL ELECTRONICS

☐	☐	☐	☐	A. Demonstrating Safe Work Habits and Procedures
☐	☐	☐	☐	B. Demonstrating Proficiency in Electronic Circuits
☐	☐	☐	☐	C. Demonstrating Proficiency in Digital Electronics
☐	☐	☐	☐	D. Demonstrating Proficiency in Maintaining and Repairing Industrial Electronic Control Systems
☐	☐	☐	☐	E. Demonstrating Proficiency in Maintaining Power Supplies

Palmetto Unified School District No. 1
Certificate
of
Achievement

This Certifies That

Stewart Buchanan

is Awarded this Certificate for

Computer Concepts

Given at Bennettshille, S.C., this 19th day of November, A. D., 20 02

Cecil D. Dancy

Stewart Buchanan

MAJOR AREAS

DIRECTIONS: Evaluate the student using the rating scale below, and check the appropriate number to indicate the degree of competency. The ratings 3, 2, 1, and N are not intended to represent the traditional school grading system of A, B, C, and D. The description associated with each of the numbers focuses on level of student performance for each of the tasks listed below.

RATING SCALE:

- 3 - Skilled - can work independently with no supervision
- 2 - Moderately skilled - can perform job completely with limited supervision
- 1 - Limitedly skilled - requires instruction and close supervision
- N - No exposure - has no experience or knowledge in this area

COMPUTER CONCEPTS

3	2	1	N	
☒	☒	☒	☒	A. Demonstrating Proficiency in Introduction to Computers
☒	☒	☒	☒	B. Demonstrating Proficiency in Identifying Hardware
☒	☒	☒	☒	C. Demonstrating Proficiency in Communicating with Computers
☒	☒	☒	☒	D. Demonstrating Proficiency in Managing Computer Files
☒	☒	☒	☒	E. Demonstrating Proficiency in Exploring the Desktop
☒	☒	☒	☒	F. Demonstrating Proficiency in Understanding Word Processing
☒	☒	☒	☒	G. Demonstrating Proficiency in Understanding Spreadsheets
☒	☒	☒	☒	H. Demonstrating Proficiency in Understanding Databases
☒	☒	☒	☒	I. Demonstrating Proficiency in Understanding Publishing and Presentations
☒	☒	☒	☒	J. Demonstrating Proficiency in Understanding Data Integration
☒	☒	☒	☒	K. Demonstrating Proficiency in Understanding Multimedia Applications.
☒	☒	☒	☒	L. Demonstrating Proficiency in Understanding Networks
☒	☒	☒	☒	M. Demonstrating Proficiency in Understanding the Internet

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
HOSPICE AND PALLIATIVE SERVICES PROGRAM**

Certificate of Completion

HOSPICE INMATE VOLUNTEER TRAINING

Twenty nine (29) Contact Hours

Presented to:

STEWART BUCHANAN

SCDC # 069848



Margaret Eiler 11-08-00
SCDC Hospice Coordinator

Robert McFeeley
Associate Warden for Programs/Support

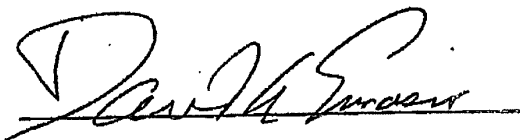
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Social Work Services

CAMPBELL WORK CENTER

STATEMENT
OF
PARTICIPATION

THIS IS TO ACKNOWLEDGE THAT Stewart R. Buchanan, SCDC# 069848HAS PARTICIPATED IN 7 Sessions, January 9 - November 1, 1995OF "SUBSTANCE ABUSE AWARENESS COUNSELING GROUP"THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS REPORTS ARE
AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.DATE: November 1, 1995

J.V. SNEALY, JR., MSW, ACSW, LISW
SOCIAL WORKER

SCDC 261 (Rev. 1/88)

Abernethy Release for Stewart Buchanan 69848 Mar. '9, 2017 GC1419

N-6

Warden's Office
Stewart Buchanan

69848

Laubach Way To Reading Diploma

SKILL BOOK 1

This is to certify that

RONNIE SULLIVAN

has finished Laubach Way to Reading, Skill Book 1
and is ready to study Laubach Way to Reading, Skill Book 2



Laubach Literacy Action

U.S. Program of Laubach Literacy International
Box 131, 1320 Jamesville Avenue
Syracuse, NY 13210

PALMETTO LITERACY COUNCIL
by Stewart R. Buchanan
Instructor

Robert S. Laubach
Chairman-Board of Trustees
Laubach Literacy International

MARCH 23, 1993
Council or City Date

Local Literacy Organization Office Record

Laubach Way to Reading Diploma
Skill Book 1

TEACHER OR ADMINISTRATOR

Before awarding this Certificate, detach this stub, fill it in, and mail to your local volunteer literacy organization

Student's Name RONNIE SULLIVAN

Address 504 BROADCAST DR.

SPARTANBURG SC 29303
City State Zip

I hereby certify that this student has finished studying Skill Book 1 of the Laubach Way to Reading and has fulfilled requirements for this certificate

STEWART BUCHANAN
Name of Teacher or Administrator

PALMETTO LITERACY COUNCIL
Literacy Council or Organization

504 BROADCAST DR.
Address of Teacher or Administrator

SPARTANBURG SC 29303
City State Zip

Date MARCH 23, 1993

Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC1420

069848 43

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Social Work Services

**STATEMENT
 OF
 PARTICIPATION**

THIS IS TO ACKNOWLEDGE THAT Stewart Buchanan
 HAS PARTICIPATED IN Four Hours
 OF Listening Skills

LEVEL OF PARTICIPATION

POOR _____ AVERAGE _____ GOOD _____ EXCELLENT xxx

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS
 REPORTS ARE AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: 2-20-92



Geraldine P. Littlejohn
 SOCIAL WORKER

C.A.C.I.
 INSTITUTION

CHRISTIAN DEVELOPMENT

Diploma

IS AWARDED TO

MR. STEWART R. BUCHANAN

For the completion of any 5 courses, or approximately 25 hours, in the
CHURCH STUDY COURSE

This diploma and the three seals represent 20 courses or approximately

100
HOURS

*of Christian education that have contributed to personal
Christian development and church involvement*

OCTOBER 1991

DATE

FIRST BAPTIST FT MILL

CHURCH

PASTOR

FT MILL

CITY

SC

STATE

The Church Study Course is promoted by the Sunday School Board, Brotherhood Commission,
and Woman's Missionary Union of the Southern Baptist Convention

James T. Harper, Jr.
President
Sunday School Board

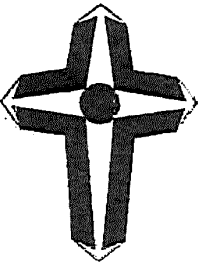
James D. Williams
President
Brotherhood Commission

Lellanna N. O'Brien
Executive Director
Woman's Missionary Union

Issued by the Sunday School Board

Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC1888

MasterLife Diploma Part I



MR. STEWART R. BUCHANAN

upon completion of the prescribed discipleship courses in MasterLife I is qualified to pursue leadership training in MasterLife II.



OCTOBER 1991

Date

FIRST BAPTIST FT MILL

Church

FT MILL

City

SC

State

James H. Simpson, III
State Discipleship Training Director

Ray T. Edgemore
Director, Discipleship Training Department

Querry T. Willis Jr
Manager, Leadership Development Section

Lloyd Elders
President, Sunday School Board

The Church Study Course is promoted by

Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC1889

LAUBACH LITERACY ACTION CERTIFICATE

FILED JUN 09 1989

THIS IS TO CERTIFY THAT Stewart Buchanan HAS SATISFACTORILY
COMPLETED THE REQUIREMENTS FOR Master TUTOR Literacy
(Senior or Master) (Literacy or ESOL)
IN ACCORDANCE WITH APPROVED LAUBACH LITERACY ACTION STANDARDS.

LIA
Laubach Literacy Action
A Division of Laubach Literacy International
Box 131, 1320 Jamesville Avenue
Syracuse, New York 13210

Sister Margaret Hodge
Certified Trainer / Literacy Chairman
John A. Wate
Executive Director, Laubach Literacy Action
Robert S. Laubach
Chairman—Board of Trustees, Laubach Literacy International
June 5, 1989
Date

611-8

#069848

MUR. # 124

murray

FILED AUG 31 1988

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Social Work Services

Classification
CopySTATEMENT
OF
PARTICIPATION

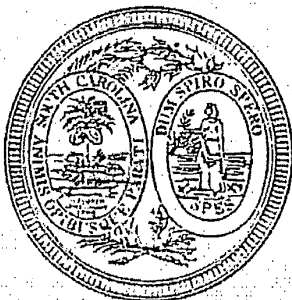
THIS IS TO ACKNOWLEDGE THAT Stewart Buchanan # 69848
 HAS PARTICIPATED IN 3 Months
 OF Therapy Group

LEVEL OF PARTICIPATION

POOR _____ AVERAGE _____ GOOD _____ EXCELLENT *

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS
 REPORTS ARE AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: October 30, 1988



Barbara Craig
 SOCIAL WORKER

Stevenson C.I.
 INSTITUTION

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Social Work Services

STATEMENT
OF
PARTICIPATION

THIS IS TO ACKNOWLEDGE THAT STEWART BUCHANAN # 69848
HAS PARTICIPATED IN 8 WEEKS (12 HOURS)
OF "LIFE AFTER PRISON" - TRANSITION TO THE COMMUNITY GROUP

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS REPORTS ARE
AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: 7-19-88

Barbara Craig

SCDC 26-1 (Rev. 1986)

FILED AUG 26 1988

Rec'd. SCI Classification. AUG 23 1988

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Social Work Services

STATEMENT
OF
PARTICIPATION

THIS IS TO ACKNOWLEDGE THAT STEWART R. BUCHANAN 69848
HAS PARTICIPATED IN 8 WEEKS (12 HOURS)
OF DECISION MAKING

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS REPORTS ARE
AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: 7-14-88

Barbara Craig

SCDC 26-1 (Nov. 1986)

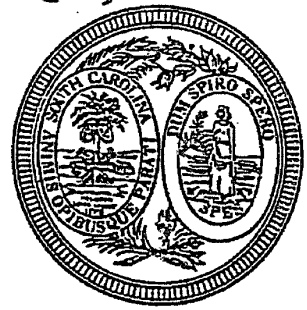
Rec'd. SCI Classification AUG 23 1988
JUL 11 1988

69848

69848

South Carolina Department of Corrections

RECEIVED
JAN 1 3 1988
Central Records Office



Certificate of Completion

Presented to

STEWART BUCHANAN

Upon Successful Completion of
TRANSACTIONAL ANALYSIS RAP GROUP

On this 19th Day of AUGUST

In the Year of 1987 A.D.

Betty L. Sheriff
Betty Sheriff, Northside Correctional Center
Social Work Services, Volunteer

Betty J. Harrison
Bettye J. Harrison, Northside Correctional Center
Social Work Services, Social Worker

Abernethy Release for Stewart Buchanan 69848 Mar 9, 2017 GC1139

CERTIFICATE of TRAINING

THIS CERTIFICATE IS AWARDED TO

STEWART BUCHANAN

69848

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION
OF THE STRESS MANAGEMENT PROGRAM
CONSISTING OF 4 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at NORTHSIDE, this 22 day of MAY, A. D., 1987

William C. Bryant
Director

Assistant Director

Shannon
Project Director

South Carolina Department of Corrections



Certificate of Training

Presented to

Stewart R. Buchanan

In Recognition of Successfully Completing

Inmate Grievance Committee Training

On this 30th Day of April

In the Year of 1987 A.D.

Michael D. Toy

Janice M. Toy

69848

CERTIFICATE of TRAINING

THIS CERTIFICATE IS AWARDED TO

STEWART R. BUCHANAN

69848

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE Anger Management PROGRAM

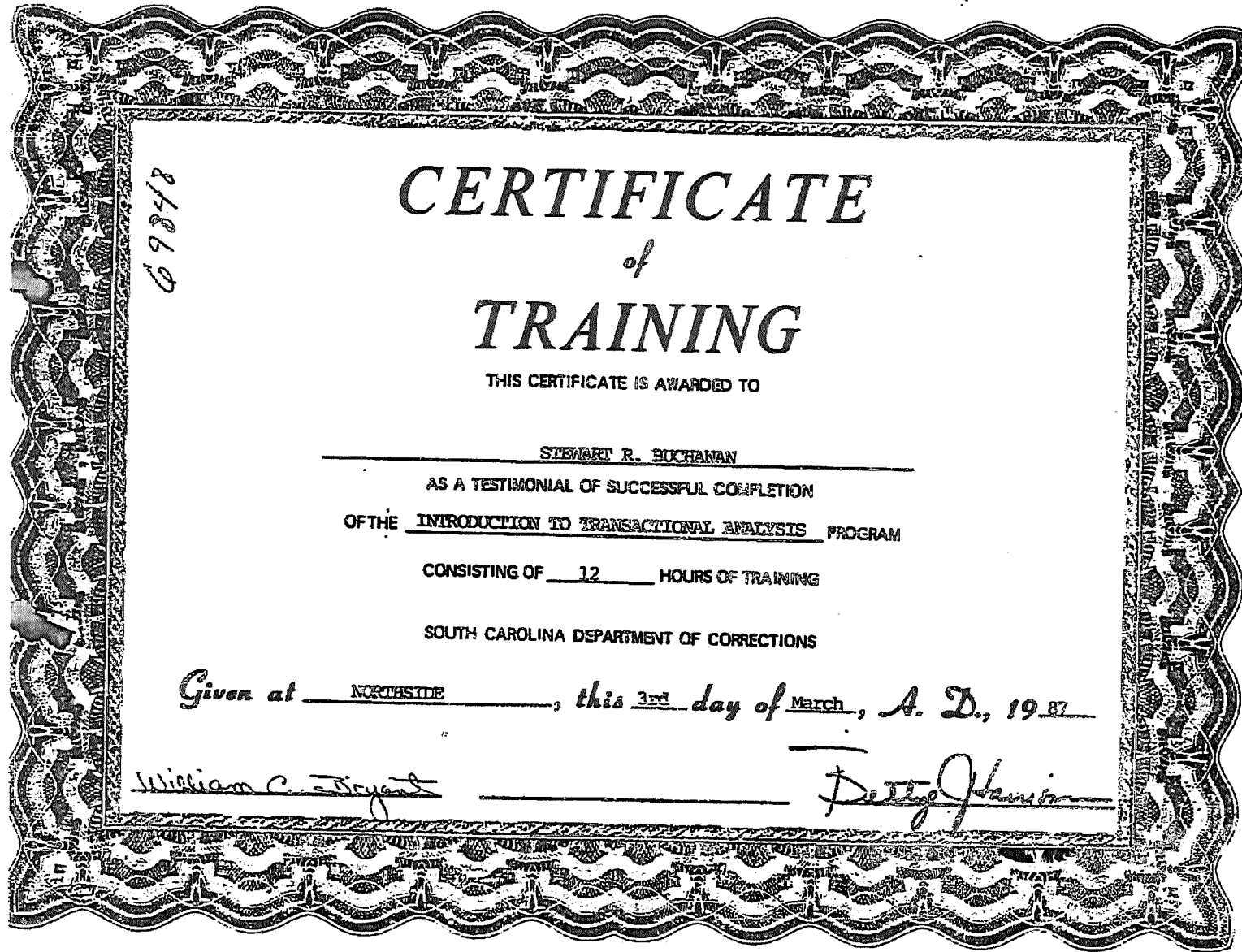
CONSISTING OF 4 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at Northside, this 7th day of April, A. D., 19 87

William C. Bryant

Buchanan





May it be Known that

STEWART R. BUCHANAN

HAS DISPLAYED OUTSTANDING PARTICIPATION IN THE
SERENITY GROUP OF ALCOHOLICS ANONYMOUS PROGRAM
AND IS DESERVING OF RECEIVING SPECIAL RECOGNITION

on

this 8th day of August

19 86

As an Expression of Appreciation for Courtesies

[Signature]

[Signature]

CERTIFICATE of TRAINING

THIS CERTIFICATE IS AWARDED TO

STEWART R. BUCHANAN

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE NUTRITION PROGRAM

CONSISTING OF 2 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at Northside Correctional, this 30th day of May, A. D., 1986
Institution

J. H. Phil
Director

Assistant Director

Martha R. W. W. W.
Project Director

CERTIFICATE of TRAINING

THIS CERTIFICATE IS GRANTED TO
S. T. [REDACTED] N. N.
AS A TESTIMONY OF SUCCESSFUL COMPLETION
OF THE [REDACTED] PROGRAM
CONSISTING OF [REDACTED] HOURS OF TRAINING



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at Perry Correctional Institution, this 20th day of March, A. D., 1986

James M. Jay
Director

Michael W. Toy
Assistant Director

M. D. Matthews
Project Director

PRESENTED TO

Stewart Buchanan -

BY THE

Dutchman Jaycees

&

THE UNITED STATES JAYCEES

CONSCIOUS OF YOUR
CONCERN FOR MANKIND,

AND OUR NATION,

EXPRESS, IN THIS WAY, OUR
APPRECIATION FOR YOUR SUPPORT.

Dated This Day Nineteenth of December 1935

Danny Dittus
Secretary

William Garvin
President

CERTIFICATE
OF APPRECIATION

CERTIFICATE of TRAINING

THIS CERTIFICATE IS AWARDED TO

Stewart Buchanan

69588

AS A TESTIMONY OF SUCCESSFUL COMPLETION

OF THE

Value Certification

PROGRAM

CONSISTING OF

1

HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at

1981

this

8th

day

of

March

A. D.,

1985

Stewart Buchanan

Director

Stewart Buchanan

Assistant Director

Stewart Buchanan

Program Director

CERTIFICATE of TRAINING

THIS CERTIFICATE IS AWARDED TO

Stewart Buchanan 69848

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE Anger Management PROGRAM

CONSISTING OF 4 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at DCI, this 4th day of Feb., A. D., 1985

[Signature]
Director

[Signature]
Assistant Director

[Signature]
Project Director

Education Department

Presents

This Certificate of Merit

To

STEWART BUCHANAN

For

Exceptional Teacher Aid Work

Belindus J. Johnson
PRINCIPAL

Edna Marshall
EDUCATION COUNSELOR

APRIL, 1984

DATE

A. Layne Coleman
DIRECTOR, Division of Educational Services

Marybeth Hughes
TEACHER

Education Department

Presents

SEDC

#69848

C-I 59

This Certificate of Merit

To

Stewart Buchanan

For

Exceptional Teacher Aid Work

Wendell Blanton

PRINCIPAL

Archie Marshall

EDUCATION COUNSELOR

April 30, 1983

DATE

H. P. Coleman

DIRECTOR, Division of Educational Services

Rich Hughes

TEACHER

LITERACY TUTORING CERTIFICATE

This is to certify that
Stewart Buchanan
has satisfactorily completed a 10 hour workshop
with emphasis on tutoring basic reading and writing
(in basic reading & writing, or English as a new language)
conducted in accordance with approved Laubach NALA standards.



Paul H. Petersen Chairman
NALA Certified Trainer

Robert S. Laubach
President, Laubach Literacy International
Greenville Literacy Association
Council or City

December 7, 1977 Date

Stock No. 353

Drug Abuse Esquire Award presented to:

STUART BUCHANAN

for the month of April 1975

George Rutherford
INSTITUTIONAL
REPRESENTATIVE

Bruce E. Osee

Johnny J. Benjamin

Henry A. Clemons

Johnny Blake

Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC2129

TO: Inmate Stewart Buchanan #69848
FROM: Ms. Ginger Thomas, Appalachian Nursing Supervisor
SUBJECT: CPR Training
DATE:
cc: a-2

I would like to commend you at this time for your initiative and interest in improving your skills by passing cardio-pulmonary training. This is certainly a step in the direction of self-improvement and community benefit.

A copy of this letter will be entered in your permanent file as a record of this excellent training.

Ginger Thomas
Ginger Thomas

GT/nh
cc: Warden's file

Wendell Blanton, Retired Educator
South Carolina Department of Corrections
May 10, 2018

To Whom It May Concern:

Stewart Buchanan worked for me when I was Guidance Counselor at Manning Correctional Institution in the middle 1970's. He provided administrative support and assisted with administering standardized placement tests. Based on a format I provided, he performed an item analysis of the test questions utilizing the results to assign learning activities. He kept records and provided material for reports. During the testing process, he assisted in keeping order in the testing area and had opportunities to interact with other inmates in a structured setting. He always interacted in an appropriate and professional manner.

Mr. Buchanan later worked for me after I became Principal of the school at Kirkland Correctional Institution in the 1980's. He performed similar duties to include organizing school attendance rolls and student records. Due to our close working relationship I also had the opportunity to provide counsel and support to him in his adjustment to the prison environment. Stewart was a very bright and competent person. He was a quick learner. I can never recall a time when I had reason to question his truthfulness or trustworthiness in the performance of his duties.

I am aware that Stewart Buchanan was convicted of a very serious crime. This occurred when he was very young. Hopefully he has moved beyond this stage of life and has developed the skill to cope with life more appropriately.

Sincerely,



Wendell Blanton



September 20, 1995

Stewart Buchanan
4530 Broad River Road
Columbia, SC 29210

To whom it may concern;

Over the past few months I have been associated through business dealings with Mr. Stewart Buchanan. As an outside salesman, I am accustomed to dealing with individuals who do not value their word or measure their personal integrity with follow-through. On rare occasions I encounter glass shop owners or managers who operate with an attitude of professionalism and integrity. These people do what they say, return phone calls and treat me with respect.

I am proud to say that in all of my dealings with Stewart Buchanan, I found him to fit into that high degree of professional conduct - uncommon in this industry. He has proven to be a unique and trustworthy individual who values his word and commitment far higher than the average business person.

In addition to personal conduct, Stewart has shown a higher proficiency than average regarding computerization and automation. Most individuals in his job position are reticent when approaching automation. Stewart has approached this project with extreme confidence and trust in both his ability and ours as his vendor. This has made the progress of our project much smoother. I can tell he is a valuable asset to Astro Glass.

In conclusion, I would like to state that all of these observations and perspectives were arrived at independently with absolutely no knowledge of Stewart's position as a convict participating in a work-release program. This is not necessarily an endorsement of Stewart's personal life. I have learned, however, that a person's ethical conduct in business as on the golf course is often directly related to their personal behavior. If this is true in Stewart's case then he is truly an unusual individual.

Sincerely,

Michael Dean
Southeastern Regional Director
GlasPac Total Solutions

The Industry Leader in Glass Software Solutions

Corporate & Sales Office:

12725 SW 66th Avenue Suite 104, Portland, Oregon 97223
(503) 684-5066 Sales: (800) 209-2369 Fax: (503) 624-0433

Utah Office:

117 South 700 East, American Fork, Utah 84003
(801) 756-3091 (800) 888-9874 Fax: (801) 756-3099

Glass Dept
1819 Two Notch Road
Columbia, South Carolina 29204
(803) 254-6176

September 14, 1995

South Carolina Parole & Pardon Department
P.O. Box 50666
Columbia, South Carolina 29205

Re: Stewart R. Buchanan

Dear Parole Board Members:

On behalf of Stewart Buchanan, please allow me to introduce myself. I am the manager of Glass Depot, a wholesale glass distribution company in Columbia, SC. Through my business association with Astro Glass, 110 Greystone Blvd., Columbia SC, I have become an acquaintance of Mr. Buchanan.

Over the past year, I have worked with Mr. Buchanan and found him to demonstrate consistent friendly, courteous and professional service to me, his Astro Glass colleagues, and customers. I have personally observed Mr. Buchanan interacting with customers in a very knowledgeable and professional manner. Additionally, Mr. Buchanan has taken the initiative to fully implement, maintain, and train other staff on the glass-software computer tracking system used at Astro Glass. His expertise in this area has been an asset to Astro Glass, their customers, and vendors. His many hours of hard work has resulted in improved productivity, better efficiency, and quality customer service.

I hope that my recommendation for Mr. Buchanan's parole will have some positive influence on your decision to allow him to return to society and establish himself as a model citizen. Should you need any additional information, please do not hesitate to contact me.

Sincerely,



Ray Archibald
Manager





ASTRO GLASS COMPANY, INC.

AUTO • COMMERCIAL • RESIDENTIAL
PO BOX 7911 • COLUMBIA, S.C. 29202-7911

James B. Furr, Owner/Operator
Astro Glass Company, Inc.
110 Greystone Blvd.
PO Box 7911
Columbia, SC 29202-7911
June 29, 1995

SC Pardon & Parole Board
PO Box 50666
Columbia, SC 29205

Dear Pardon & Parole Board Members:

It is my understanding that you will be considering the pardon and parole of Stewart R. Buchanan, #69848. I emphatically recommend and request that you act in Stewart's favor.

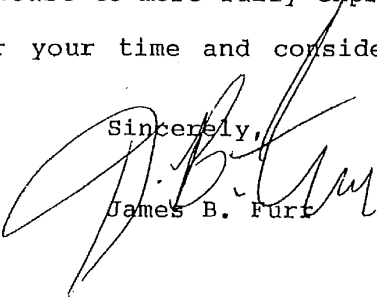
Stewart has been employed by Astro Glass Company as Assistant Manager, focusing on administration, sales and customer relations. He has performed exceptionally and has contributed much to the growth of this business.

Before employing Stewart, I had very strong feelings in favor of the death penalty and life sentences without parole for persons convicted of similar crimes. However, after getting to know Stewart and seeing how hard he has worked to redeem himself into being a contributing member of society, I have had cause to reconsider those strong feelings I had. I am able to see now that there are situations in which mercy and a second chance is most appropriate. Regardless of what Stewart did to be in prison, Stewart deserves a second chance.

I fully support Stewart's release into society and I ensure my continued support during his adjustment into civilian life. Stewart also has the support of a loving and devoted wife and family. I believe Stewart will be successful in life and that the time for this opportunity has come. I request to attend any hearing relating to his release to more fully express my support.

Thank you for your time and consideration of this matter.

Sincerely,



James B. Furr

252-7177

MOBIL® GLASS SERVICE

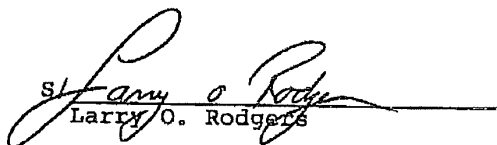
Mobile 730-7209

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
BROAD RIVER CORRECTIONAL INSTITUTION
VEHICLE RESTORATION PLANT

MEMORANDUM

DATE: December 12, 1989
SUBJECT: RECOMMENDATION
FROM: Larry O. Rodgers, Production Manager II
Vehicle Restoration Plant
Broad River Correctional Institution

Inmate Stewart Buchanan, #69848, is to be recommended for his contribution toward the start-up of the BRCI Vehicle Restoration Plant. He has shown diligent effort in all jobs assigned to him. He takes pride in his work and is always willing to assist management and others. He requires only limited supervision after given an assigned task, and he is more than willing to work extra time, including Saturdays. His punctuality is to be commended, as well as his personal appearance and hygiene.


Larry O. Rodgers

D 2-4
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

NORTHSIDE CORRECTIONAL CENTER

MEMORANDUM

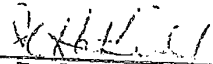
TO: Stewart Buchanan, #069848
FROM: John C. Hatfield, Warden
Northside Correctional Center
SUBJECT: VOLUNTEER SERVICE
DATE: January 19, 1987

I wish to take this opportunity to commend you for your work in adding to the tremendous success of our Christmas Activities.

The Bible tells us that it is indeed more blessed to give than receive. Each inmate who participated in even a small part of the organization of these evenings of fellowship and gift giving, gave of himself, which is the greatest gift that can be given.

Mrs. Rise Wells, our Christmas Coordinator and I, appreciate the willingness to help and your tremendous cooperation in any task you were given.

/s/


John C. Hatfield, Warden

JCH/rsw

cc: Central Records
Warden's Jacket



South Carolina Department of Corrections

P.O. BOX 21287 444 BROAD RIVER ROAD, COLUMBIA, SOUTH CAROLINA 29221-1287
TELEPHONE (803) 758-6444
WILLIAM D. LEEKE, Commissioner

Appalachian Regional Office
Route 7, Box 14
Spartanburg, South Carolina 29303

RECEIVED
December 16, 1985
DEC 18 1985

WARDEN'S OFFICE

Mr. Stewart Buchanan SCDC #69848
Dutchman Correctional Institution
Route 1, Box 323
Enoree, South Carolina 29335

Dear Mr. Buchanan:

Congratulations on being selected "Outstanding Inmate of the Year - 1985" from Dutchman Correctional Institution.

Your being nominated by your institution shows that you are highly regarded by fellow inmates and the SCDC staff as well.

Selection of the outstanding inmate to represent this region called for a most difficult decision by the committee. After a great deal of deliberation, Mr. Joe E. Johnson of Northside Correctional Center was selected as the Appalachian Correctional Region "Outstanding Inmate of the Year - 1985."

A copy of this letter indicating this honor afforded to you will be in your permanent record. Congratulations on such a tremendous personal achievement.

Sincerely,

Donald F. Dease
Regional Administrator (ACR)

DFD:jsm

cc: Mr. William D. Catoe
Central Records
✓ Inmate File
File



south carolina department of corrections

P.O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE (803) 758-6444
WILLIAM D. LEEKE, Commissioner

Dutchman Correctional Institution
Route 1, Box 323
Enoree, South Carolina 29335

March 27, 1985

Mr. Stewart R. Buchanan, SCDC #69848
Dutchman Correctional Institution
Route 1, Box 323
Enoree, South Carolina 29335

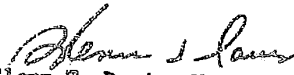
Dear Mr. Buchanan:

Congratulations on being selected as the Greivance Clerk for Dutchman Correctional Institution.

As you are aware, the Grievance Clerk is a very important and demanding job. Your duties and responsibilities are outlined in the attached Dutchman policy letter. My Administrative Assistant, Mr. Harold K. Hawkins, will be your primary contact on matters for discussion with me.

Again, congratulations and I am confident you will carry out your duties in an outstanding and professional manner.

Sincerely,


Glenn T. Davis, Warden
Dutchman Correctional Institution

GTD/jvn

Attachment

cc. Mr. Donald F. Dease
Mr. Harold K. Hawkins
✓ Offender Records
Warden's Jacket (Inmate Stewart R. Buchanan)



UNIVERSITY OF SOUTH CAROLINA
at SPARTANBURG
SPARTANBURG, S.C. 29303

Spartanburg 578-1830
Greenville 271-9111

September 21, 1932

Presiding Members
South Carolina Parole and Community
Corrections Board

This is in response to a request for a reference for Mr. Stewart R. Buchanan.

My contact with Mr. Buchanan arises from the student-teacher relationship at USC-S. Mr. Buchanan attended two of my classes in Sociology, during which I became well acquainted with him as a student and person. As a student, Mr. Buchanan did excellent work and made rapid progress in the study of sociology. His attendance in class was perfect, showed high standards as a scholar, and succeeded with a variety of students.

Mr. Buchanan has been of valuable assistance to me as a guest speaker in my classes, and his assistance has been highly regarded by my colleagues at the University.

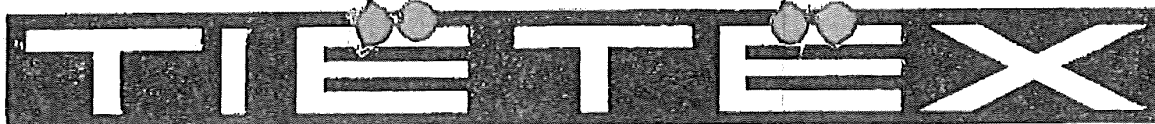
I will be glad to provide further information should it be necessary.

Sincerely,

Friedrich V. Wenz

Friedrich V. Wenz, Ph. D.
Associate Professor

The University of South Carolina: USC Aiken; USC Salkehatchie, Allendale, USC Beaufort; USC Columbia, Coastal Carolina College, Conway, USC Lancaster, USC Spartanburg, USC Sumter; USC Union; and the Military Campus.



TIETEX CORPORATION

80. BLACKSTOCK RD. ■ P.O. BOX 8218 ■ SPARTANBURG, S.C. 29304 ■ TEL. (803) 574-0500 ■ TELEX 809483

File #69848

August 20, 1982

TO: Presiding Members
South Carolina Parole and Community Corrections Board

Stewart R. Buchanan was employed with Tietex Corporation on August 27, 1981, thru the Spartanburg Pre-Release Center - South Carolina Department of Corrections. He started as a Card Operator in our Carding Department at a rate of pay of \$4.70 per hour. Upon leaving on December 7, 1981, he was making \$5.50 per hour and was able to run most jobs in the Carding Department in a very efficient manner. Because of Stewart's quickness to learn, his knowledge of the various jobs in the department, and his outstanding work record, Stewart was being considered for a promotion to a Carding Technician at the time of his leaving.

Stewart was a very dependable employee, carrying out all instructions in a conscientious manner. He displayed an excellent attitude and was able to work well with his supervisors and fellow employees.

We understand that Stewart will be coming up for parole soon. Since he was an outstanding employee and is recommended for rehire with Tietex Corporation - as the job market permits, we recommend that Stewart be considered for parole.

SINCERELY,

TIETEX CORPORATION

Amy Almond

Mrs. Amy Almond
Personnel Manager

cc: Floyd Medford, Carding Manager
File

Date: July 13, 1982

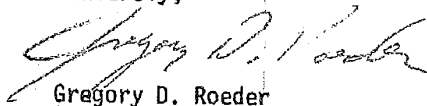
LETTER OF APPRECIATION

The purpose of this letter is to acknowledge the participation of Stewart Buchanan, SCDC# 69848, in my dissertation research which was conducted within Kirkland Correctional Institution of the South Carolina Department of Corrections during June and July, 1982. This project was conducted with the approval of the South Carolina Department of Corrections and conformed to all of its research guidelines. The participation of all individuals also conformed to the ethical guidelines of the American Psychological Association.

I would like to describe the conditions under which this individual participated in my dissertation. His involvement was voluntary in that he had the option to refuse without any threat of punishment. No rewards (monetary or otherwise) were given to him in exchange for his participation. He also understood that his cooperation would not necessarily be related to any reaction from the Parole Board, a transfer to an open institution, an upgrade in custody status, or any other institutional privileges or favorable treatment. In essence, he was made aware of the fact that his participation would not necessarily produce any benefits for him whatsoever.

In spite of the lack of any guaranteed rewards, this individual volunteered his time and his cooperation in order to assist me. He understood that the purpose of my study was to develop a training program for enhancing problem solving skills with adults. I appreciate his cooperation and unselfish participation and feel this behavior is a positive reflection upon his character. I thank him very much for his assistance in this enormous undertaking and wish him the best of luck for a better future.

Sincerely,



Gregory D. Roeder

GDR:cjw
cc: Warden's Records
cc: File

Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC1873

PIEDMONT WORK RELEASE CENTER
Route #7, Box 182
Spartanburg, South Carolina 29303

July 14, 1981

Mr. Dan Maulsby
Dean of College & Academics
Wofford College
North Church Street
Spartanburg, S. C. 29301

Re: Stewart Buchanan
SCDC #69848

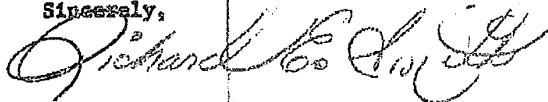
Dear Mr. Maulsby:

In regard to the above named subject, Stewart was transferred to Piedmont Work Release Center February 10, 1981, to perform staff duty as an Inmate Clerk. His duties consist of answering the telephone, dispatching messages on the center radio, and doing various typing assignments, along with other related duties. Stewart has performed his job very well and seems very knowledgeable. He has a good working attitude and is always willing to help whenever possible.

Stewart has shown an interest in furthering his education while being incarcerated which should help him tremendously upon his release from the South Carolina Department of Corrections. He will be eligible to go out into the community to pursue employment under the Work Release Program in the next few months.

Any assistance we may render in helping Stewart to further his education, please feel free to call on us.

Sincerely,



Richard E. Smith
Deputy Superintendent

RES:lbc

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
 APPALACHIAN CORRECTIONAL REGION
 TRAVELERS REST CORRECTIONAL CENTER

M E M O R A N D U M

TO: WHOM IT MAY CONCERN
 FROM: Fred J. Smith, Supervisor
 SUBJECT: JOB PERFORMANCE
 INMATE STEWART R. BUCHANAN, SCDC #69848
 DATE: January 12, 1981

Be advised that Stewart R. Buchanan was assigned to supervising the office and 4 clerks at Travelers Rest Correctional Center (Professional Personnel - EWC # 02100). The EWC Job Description enclosed within his Wardens Jacket describes the duties he performed and I further state that his performance was exceptional. The position is very responsible, managing the handling of all state paper work (including confidential, but not maximum confidential, work), radio and telephone communications, etc. He had proven himself to me as being very reliable and trustworthy. In the approximately 2½ years he filled this position, he never failed my trust and the work was completed with a great amount of professionalism.

As the result of his performance, I recommend him for office-type work upon his transfer from Travelers Rest, if possible. I am sure he will perform as well as at this center and he will be an asset to whatever division who employs him.

Fred J. Smith

Fred J. Smith

South Carolina Department of Corrections
Appalachian Correctional Regional Office
319 North Pine Street
Spartanburg, South Carolina 29302

January 7, 1981

Mr. Stewart W. Buchanan (SCDC #69848)
Travelers Rest Correctional Center
Route 2, Box 648
Travelers Rest, South Carolina 29609

Dear Mr. Buchanan:

Congratulations on being selected by the Classification Team at your center as "Outstanding Inmate of the Year - 1980."

As you know, the criteria and qualifications for selection of this high honor were quite stringent. Your being nominated by your center shows that you are highly regarded by fellow inmates and SCDC staff as well.

Selection of the outstanding inmate to represent this region called for a most difficult decision by the committee. After a great deal of deliberation, Mr. William R. Holland of Piedmont Work Release Center was selected as the Appalachian Correctional Region's "Outstanding Inmate of the Year - 1980."

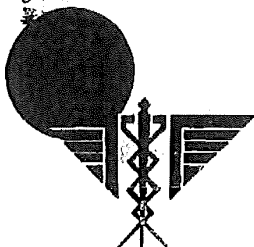
A copy of this letter indicating the high honor afforded to you will be placed in your permanent record. Again, congratulations on such a tremendous personal achievement.

Sincerely,


William D. Catoe
Regional Administrator

WDC:LDP:jsm

cc: Mr. Jesse W. Strickland
Central Records
Warden's File
File



Foothills Mental Health Clinic

A Division of the Greenville Mental Health Center
A Facility of the South Carolina Department of Mental Health

2901 Poinsett Highway / University Square Shopping Center
Greenville, South Carolina 29609 / (803) 246-1784

January 5, 1981

Mr. Ford Mason
Psychological Services
Human Services Division
S. C. Department of Corrections
4444 Broad River Road
Columbia, SC 29221

Re: Stewart R. Buchanan

Dear Mr. Mason:

I regret that you did not receive my letter of 12/3/80, nor the second copy of the letter which I mailed before Christmas.

I am most emphatically confirming Stewart R. Buchanan's active participation in three months of group therapy at the Travelers Rest Correctional Center. Stewart attended the weekly group without fail, spontaneously shared his insights and feelings, and helped facilitate other group members' successful participation. He showed mature acceptance of confrontation and a tactful manner in confronting.

I have definitely seen psychological growth during the time I have known Stewart, and I have no doubts that he can handle increasing responsibility as he progresses toward the freedom he is earning.

Sincerely,

E. Lynn Christian
E. Lynn Christian, M.A.
Psychologist

ELC/sw

Lay Christian Association

ROUTE 1, BOX 322-B

TRAVELERS REST, SC 29690

PHONE 803-836-6392

April 26, 1980

RE: Stewart R. Buchanan

Gentlemen,

I am a religious services volunteer at the Travelers Rest Correctional Center and have been teaching a Bible Study there each week since September, 1979. I work for Lay Christian Association as Director of Social Ministries. I have come to know Stewart rather well since September, and have also learned about him from those who worked with him at Manning.

Stewart has spent a majority of his spare time studying philosophy, religion, and learning to cope with his past and build a future. I have worked for the D.C. Department of Corrections in Lorton, Virginia as a school teacher, and have done volunteer work at other institutions in South Carolina. Most of the prisoners I have worked with are concerned only with passing time, but Stewart has come to have a more responsible, mature view of his time in prison. He has taken correspondence courses and done a lot of self-study, so that the time he must spend in prison is used in a beneficial way rather than totally wasted.

I feel Stewart has done a lot of growing and maturing since he first entered prison. He holds himself accountable for his actions, and I am confident that he will become a responsible citizen upon release from prison.

Thank-you for your consideration of this letter.

Sincerely,

*Carolyn B. Rice*Carolyn B. Rice
Dir. Social Ministries

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

APPALACHIAN CORRECTIONAL REGION

TRAVELERS REST CORRECTIONAL CENTER

M E M O R A N D U M

To: Mr. William D. Gatoe, Coordinator, Institutional Operations
Appalachian Correctional Regional Office

From: Fred J. Smith, Supervisor
Travelers Rest Correctional Center

Subj: CUSTODY CHANGE OF INMATE STEWART BUCHANAN, SCDC#69848

Date: April 10, 1978

Per your memorandum dated March 16, 1978 concerning the advancement of Inmate Stewart R. Buchanan, SCDC#69848, to "AA" Custody the following information is submitted as required by the directive from Commissioner Loeke dated June 28, 1976 for inmates of a crime of notariety.

During Inmate Buchanan's incarceration at this Center I have come to know him as a determined person with high goals and the willingness to try to achieve them. He is assigned to the office as a clerk and in this direct contact I have found him to be reliable and trustworthy. He keeps a good attitude and is a good worker.

Stewart is presently active in the Mental Health program, Drug Abuse, is the secretary of Alcoholics Anonymous and takes care of all the paperwork for the religious services held at this Center. He has tried to start a Jaycees program here but due to a lack of inmate volunteers it has not yet been possible but I feel that he can accomplish this soon. Also, he has written a proposal to start a program in the Appalachian Correctional Region working with juveniles who have gotten into trouble within the community, which is now being considered.

In checking with the officials of York County as to their feelings toward this custody change Mr. William E. Sutton, Sheriff, gave his approval of Inmate Buchanan being placed in "AA" Custody over the telephone and sent a letter to verify this which you will find attached.

In view of the above information and in reviewing his record I find that, even though his record is not perfect, he has tried hard since being incarcerated and this, along with his going past the requirements of the South Carolina Department of Corrections in performance and time requirements, I feel that Inmate Buchanan is deserving of being placed in "AA" Custody.

Fred J. Smith
Fred J. Smith

I recommend approval: *R. McGinnis*

Roger McGinnis, Classification Specialist

Abernethy Release for Stewart Buchanan 69848 Mar. 9, 2017 GC2053

South Carolina Department of
Corrections
Appalachian Regional Office
319 North Pine Street
Spartanburg, South Carolina
29302

October 26, 1977

Mr. Stewart Buchanan #69848
Oaklawn Correctional Center
Route #3, Box 194
Pelzer, South Carolina 29669

Dear Stewart:

In reference to your letter of October 14, 1977 requesting information on your program participation at Cherokee Correctional Center, it has been verified that you actively participated in Mental Health Group Therapy from September of last year until you were transferred to Intake Service Center in March of this year. The officers at Cherokee also stated that you assisted Mr. McGinty in Adult Basic Education classes by helping other inmates individually and holding study periods with no supervision. Our records also indicate that you participated in panel discussions at local schools and churches on several occasions.

I hope this information will be helpful to you in future endeavors.

Sincerely,

Martha A. Wannamaker
Coordinator
Program Services

MAW:fs

cc: Warden's file
Central Records



House of Representatives - State of South Carolina - Colum

J. C. DUNCAN
DISTRICT NO. 36--SPARTANBURG COUNTY

HOME ADDRESS:
ROUTE 1, BOX 222
LYMAN, S. C. 29355

COMMITTEE:
EDUCATION AND PUBLIC WORKS

April 28, 1976

File
Sub

69848

Mr. Stuart Buchanan
W/M 69848
Central Correctional Institute
Columbia, South Carolina

Dear Mr. Buchanan:

Please accept my appreciation for the cooperation and effort which you put forth to make the panel discussion a successful one. Your attitude was a very persuasive one and I feel that the discussion was very beneficial.

It was a pleasure being with you and if I may be of service to you at any time, please do not hesitate to call on me.

With best wishes, I am

Sincerely,

J. C. Duncan
J. C. Duncan

JCD:bs

M E M O R A N D U M

To: Warden Martin, Manning Correctional Institution
From: Wendell Blanton, Guidance Counselor, M.C.I.
Subject: Recommendation of Stewart Buchanan for "A" Trustee
Date: April 10, 1975

Inmate Stewart Buchanan has worked under my supervision as Testing and Evaluating Specialist for a period of seven (7) months. During this period his work performance has been truly outstanding. He has a high level of dedication to his job. On many occasions his actions have demonstrated an unusual amount of loyalty to the school staff, particularly to the principal and myself. His job requires that he is trustworthy in maintaining control over the test booklets and other materials. He has often contributed to the maintenance of control of the testing area and has shown that he is not easily influenced by others. He has followed all rules regarding the control and use of the telephone.

Stewart is the type of individual who is always seeking to improve himself. He has passed his G.E.D. since coming to Manning Correctional Institution and has continued his education in the college program. He is now taking a correspondence course from the University of South Carolina and is making excellent grades. He has actively participated in the Drug Abuse Program and other group therapy programs.

Because of his outstanding record and high level of performance it is my pleasure to recommend Stewart Buchanan for "A" Trustee. In my three and one-half years with the Department of Corrections, I have not seen an inmate who is more deserving of being up-graded to "A" status.

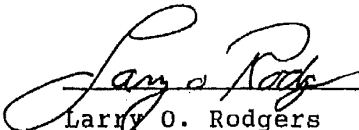

Wendell Blanton

TO WHOM IT MAY CONCERN:

Stewart Buchanan, SCDC #69848, is to be commended for his outstanding performance with all functions in Prison Industries. He began with us as Quality Control Technician and was promoted to Quality Control Shop Supervisor soon after. The many facets of his skills are evidenced in his daily administrative work. He also has the ability to perform hands on mechanical or body and fender repairs when required. He is quick to grasp new procedures and does not hesitate to share his knowledge with others. Stewart is a very capable and dependable employee. He is dedicated to performing any assignment and is always willing to devote his own free time to making sure an assignment is completed to satisfaction.

Stewart is honest in his work and has a good relationship with those he comes in contact with. He conducts himself in a very courteous and professional manner at all times. He will not hesitate to offer suggestions that he feels would benefit the day to day operations of Prison Industries and help to maintain a smooth flow in operations.

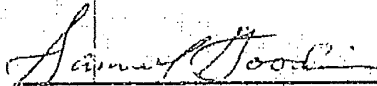
Stewart is very knowledgeable in all practices and procedures of Prison Industries. His quick mind and dedication are a definite asset to the entire work group at Prison Industries.


Larry O. Rodgers
Production Manager II

With pleasure I have noted the congratulatory message to the graduating students of the Manning Education Department. By diligently applying themselves to their studies, the following students have successfully passed the CED test, and will be awarded a State High School Diploma:

Lamont Jackson	68753
John Sullivan	67430
James Walls	68733-Y
Kenneth Segal	66977
Ralph Flaisted	69027-Y
Randall McCall	69568-Y
Martin Rozier	69765-Y
Jazz Davis	69868-Y
Stewart Buchanan	69848

I wish to add my congratulations to those of the Education Department. Your efforts have been noted; It is through achievements of this nature that you reflect credit upon both yourself and the institution. This letter along with the congratulatory message from the Education Department will be placed in your file. We will be looking forward to your continued progress.


 Samuel Goodwin, Warden MCI

Stewart Russell Buchanan

430 Oaklawn Road
Pelzer, SC 29669
864-243-4700

OBJECTIVE

To secure a responsible position utilizing my knowledge, skills and abilities to the benefit of me and my employer.

SKILLS

- Documenting – Filing – Arranging – Research – Compiling Records
- Facilities Maintenance – Grounds Maintenance – Landscaping
- Electronic Wire Harness Assembly – Coding – Quality Control
- Organized – Dependable – Conscientious – Flexible – Adaptable
- Able to Work Independently or as a Team Member

WORK HISTORY

1996 – Present

State of South Carolina, SCDC, Columbia, SC

Resident Services – Clerk – Tutor

- Assisting the teacher in the implementation of the daily program and in planning and preparing the learning environment.
- Coordinate programs and tutor residents to insure their success.
- Maintain files to track progress and regulatory requirements.
- Assisting residents in the areas of character building and life skills.

Facilities Maintenance

- Kill and remove weeds and unwanted vegetation.
- Plant trees, shrubs, grasses and wildflowers.
- Cut, mow, clip, edge and care for lawns, plants and trees.

Division of Industries – Electronic Harness Assembly

- Routes and ties wires to form wire harness used in electrical and electronic equipment or systems:
- Selects wires of specified color, marking, or length, and loops wires between guide pegs on harness board, following color-coded lines or sequential numbers on board or diagram.
- Wraps and ties wires together at designated points to form harness.

1993 – 1996

Astro Glass, Columbia, SC

Manager

- Direct responsibility for automotive, commercial and residential sales, marketing, customer service, and employee training.
- Coordinate scheduling of installations, financing and insurance claims.
- Doubled sales and increased profitability margin 24%.

EDUCATION

2004

SC Work Force Development, Columbia, SC – Work Keys Gold

1981 – 1987

USC – Spartanburg Methodist – Midlands Tech – Continuing Education

1973

Palmetto Unified School District, Columbia, SC – High School Diploma

RESUME

BUCHANAN, Stewart Russell

PRESENT ADDRESS: Northside Correctional Center, 504 Broadcast Drive,
Spartanburg, South Carolina 29303

PERMANENT ADDRESS: 113 Thomas Avenue, Fort Mill, South Carolina 29715

PERMANENT TELEPHONE: (803) 547-4812

DOB: 03/16/56 HT: 5'10" WT: 190 SSN: 250-06-1233

EMPLOYMENT OBJECTIVE: My 14 years experience in the field of correctional administration has given me a well-rounded view of and experience in office management and operations of a multi-faceted organization. Regardless of any entry-level position, I believe my background will lend assistance to the administrative effectiveness of any agency division.

WORK HISTORY:

December, 1986 -- Present: Inmate Grievance Clerk, Northside Correctional Center. Supervisor Mrs. Gloria Miller, Grievance Coordinator.

Duties: To individually provide a complaint channel for a 290 inmate population facility in accordance with governing policy, to include but not limited to conducting interviews, field investigations, factual/policy analysis, report writing, scheduling Institutional Grievance Committee hearings and presenting complaints, ensuring time limits are observed and processing complaints through all appeal levels.

October, 1986 -- Oct., 1986: Canteen Supervisor, Northside Correctional Center. Supervisor Mr. Blackwell.

Duties: To manage all canteen operations (laterally transferred due to hospitalization).

May, 1986 -- October, 1986: Classification Clerk, Northside Correctional Center. Supervisor Mr. John H. Fagan.

Duties: To ensure the effective completion of assigned secretarial duties toward processing classification-type work.

April, 1985 -- May, 1986: Inmate Grievance Clerk, Dutchman Correctional Institution. Supervisor Mr. Harold Hawkins.

Duties: Same as at Northside Correctional Center above, excepting for an institution of 540 inmates, and no Institutional Grievance Committee operations.

December, 1984 -- April, 1985: Classification Clerk, Dutchman Correctional Institution. Supervisor Mr. Robert Goforth.

Duties: To ensure the effective completion of assigned secretarial duties toward processing classification-type work.

- 2 -

September, 1983 -- December, 1984: Chief Clerk, Education Department, Kirkland Correctional Institution. Supervisor Ms. Mary Joyce Shealy.

Duties: To ensure the effective completion of student testing, records development for incoming students, and complete any other necessary administrative duties as needed.

June, 1982 -- September, 1983: Chief Clerk, Classification, Kirkland Correctional Institution. Supervisor Mr. Dennis Renew.

Duties: To supervise all clerks in the completion of all classification-related paperwork for all caseworkers.

December, 1981 -- April, 1982: Classification Clerk, Northside Correctional Center. Supervisor Mr. John H. Fagan.

Duties: To ensure the effective completion of assigned secretarial duties toward processing classification-type work.

August, 1981 -- December, 1981: Carding Operator, Tietex Corporation, Supervisor (Vacant).

Duties: To maintain normal production operation of carding machines.

February, 1981 -- August, 1981: Radio Operator/Switchboard Operator/Clerk, Piedmont Work Release Center. Supervisor Mr. John R. Lark.

Duties: To maintain radio and telephone communication with outside sources during normal and emergency operations of the center, and perform clerical duties as needed.

January, 1978 -- August, 1981: Professional Personnel, Office Manager, Travelers Rest Correctional Center, Supervisor Mr. Fred J. Smith.

Duties: To perform as a focal point for all divisions (i.e., Food Service, Classification, Security, Program Services, etc.) for the completion of all paperwork for the center, supervision of 4 clerks during 3 shifts, and all radio/"flash-folder" production during escapes.

August, 1977 -- January, 1978: Warden's Clerk, Oaklawn Correctional Center. Supervisor Mr. Ronald L. Hamby.

Duties: To personally perform all duties listed above without additional clerical support for a 119 inmate center.

May, 1977 -- August, 1977: Inmate Medical Technician, Hillcrest Correctional Center. Supervisor Mr. Charles Mason, LPN.

Duties: To assist medical staff in the performance of their duties, to supervise "medical watch" on patients and perform intact assessment physicals.

February, 1977 -- May, 1977: Radio Operator/Switchboard Operator/Clerk, Oaklawn Correctional Center. Supervisor Mr. Ronald L. Hamby.

Duties: To maintain radio and telephone communication with outside sources during normal and emergency operations of the center, and perform clerical duties as needed.

October, 1976 -- January, 1977: Cafeteria/Commissary Clerk, Cherokee Correctional Center. Supervisor Mr. John O'Donald.

Duties: To be solely responsible for the effective administrative operations of both the cafeteria and commissary.

- 3 -

August, 1975 -- October, 1976: Classification Clerk, Manning Correctional Institution. Supervisor Mr. Sonny Dukes.

Duties: To ensure the effective completion of assigned secretarial duties toward processing classification-type work.

October, 1973 -- August, 1975: Testing & Evaluating Specialist, Education Department, Manning Correctional Institution. Supervisor Mr. Wendell Blanton.

Duties: Primarily responsible for ensuring that each potential student is properly tested, evaluate the scores for proper class placement, and development of education department records.

EDUCATION: Certificate (GED), September, 1973, Manning Corr. Inst.
University of South Carolina, 1 Year, Major Psy/Soc (No Minor)

VOLUNTEER ACTIVITIES -- AWARDS/HONORS:

President, Dutchman Jaycees
Board of Governors, JAIL (Jaycees Alliance for Institutional Liberties)
Sgt. of Arms, JAIL
Advisor, Inmate Advisory Council, on Reorganization.
Legal Advisor, Inmate Advisory Council, NELSON Suit issues
Substitute Law Library Clerk, DCI Law Library
Secretary, NCC Inmate Advisory Council
Secretary, NCC Alcoholics Anonymous
Outstanding Inmate of the Year, Travelers Rest Correctional Center, 1980
Outstanding Inmate of the Year, Dutchman Correctional Institution, 1985

REFERENCES: Mrs. Gloria Miller, Grievance Coordinator, Northside Correctional Center
504 Broadcast Drive, Spartanburg, South Carolina 29303
Mr. John H. Fagan, Classification Caseworker, SAME AS ABOVE
Mrs. Frances B. Tipton, Classification Caseworker, SAME AS ABOVE

- 1986: Northside Correctional Center: Clerk for Classification, Supervisor John H. Fagan. Promoted to Grievance Clerk. Had individual counseling with social worker, Betty Harrison, and attended church services occasionally.
- 1987-1988: Stevenson Correctional Center: Groundskeeper. Promoted to Laundry Operator. Took classes at Midlands Tech. Participated in the weight lifting program and went to church occasionally. Had individual counseling with social worker, Barbara C.
- 1989-1991: Broad River Correctional Institution: Education tutor. Clerk for Production Manager, Vehicle Restoration Plan, Prison Industries. Learned collision mechanical parts/labor estimating, auto body repair and painting, vehicle service documenting and billing.
- 1991-1992: Dutchman Correctional Institution: Clerk for Classification Office. Played drums in a band, Appalachian Express. Volunteered as reporter/editor for statewide inmate newspaper, *The About Face*.
- 1992-1993: Cross Anchor Correctional Institution: Chaplain's Clerk, attended religious programs.
- 1993: Livesay Work Release Center: Staff assignment as custodian for administrative building. Married Janice Bradley.
- 1993-1996: Campbell Work Release Center: Work release participant. Employed at Newsome Chevy World as service consultant and Astro Glass as manager. During this period I enjoyed regular passes with my wife and attended church weekly.
- 1996-1997: Stevenson Correctional Center: Cafeteria Clerk. Attended multiple church programs weekly.
- 1997-1998: Broad River Correctional Institution: Cafeteria Clerk. Promoted to shipping/receiving in prison industries plant.
- 1998: Kershaw Correctional Institution: Prison industries plant moved and kept the same job as I had at BRCL.
- 1998-1999: Allendale Correctional Institution: Food service, line server. Attended church services.
- 1999-2005: Evans Correctional Institution: Minimum wage prison industries making wiring harnesses. Transferred to education, enrolled in 2 year electronics course. Went through Kairos 4 day walk.

2005-2008: Lee Correctional Institution: Prison industries apparel plant and then moved to the Recreation Department Hobby Craft Coordinator.

2008-2009: Lieber Correctional Institution: Cafeteria clerk.

2009-2017: McCormick Correctional Institution: Dorm worker, moved to horticulture and then became the Character Based Unit Clerk. Tutored math on Wednesdays, conducted English workshop on Fridays and taught "Intro to Legal Research."

2017: Lee Correctional Institution: dorm worker.

2018: Perry Correctional Institution: Character Based Living Unit, Jump Start, taken many classes – Mental Development, Character First, Courageous Resolution, Instructor's Development, Living Social Contract, Addiction Recovery, Authentic Manhood and Leadership Development.

UNIVERSITY OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA 29208

STUDENT NAME BUCHANAN, STEWART R.		MATRICULATION DATE 250-06-1233		SOCIAL SECURITY NUMBER	
NAME OF PARENT OR GUARDIAN BUCHANAN, JOHN E.		LIBERAL ARTS U/GRAD SCHOOL - CURRICULUM		SEX M	
P.O. BOX 8173		COLUMBIA CITY		STATE SC	
NUMBER & STREET		LOCATION		STATE	
LAST SCHOOL ATTENDED GED		COLUMBIA		HS GRAD. DATE	
500 verbal		SAT total		CLASS RANK	
CEEBS Scholastic Aptitude Test Scores		ENTRANCE CLASS		NO IN CLASS	
USC DEGREE		MAJOR		GRADUATION DATE	
RANK IN SCHOOL		RANK IN CLASS		RANK IN SCHOOL	

GRADING SYMBOLS

Grades are explained as follows:

A - Excellent	S - Satisfactory	Totals are explained as follows:
B - Good	AUD - Auditor	Attempted Hours - Course hours for which enrolled.
C - Fair	I - Incomplete	Credited Hours - Course hours accepted toward degree for which enrolled, if any.
D - Poor	NC - No Credit	NC Hours - Course hours for which grades of NC or I are received.
F - Failure	NCS - No Credit, Satisfactory time of withdrawal from USC	GPR Hours - Course hours used in computation of Grade Point Ratio.

* Law School Only

Work taken off-campus is designated by the following letters preceding the course number:

A Aiken Campus	F Extension Field	K Kingstree	N Charleston Naval Base	S Salkehatchie Campus	X Shew AFB
B Beaufort Campus	G Georgetown	L Lancaster Campus	Q Orangeburg Hospital	U Union Campus	Y Beaufort MCAS
C Correspondence Courses	H Conway Campus	M Myrtle Beach AFB	R Regional - Others	W Spartanburg Campus	Z Ft. Jackson

100-299 Primarily for Freshmen and Sophomores 300-699 For Juniors, Seniors, and Graduates 700-800 Graduates

Descriptive Title of Course	Dept.	Course Number	Grade	Hours	Att. Hours	Grd. Hours	NC, I Hours	G.P.R. Hours	Grade Points	Grade Point Ratio
ADMITTED BY SPECIAL ACTION OF ADMISSIONS COMMITTEE TO TAKE COURSES AT THE CENTRAL CORRECTIONAL INSTITUTE.										
250-06-1233 SPRING 1974										05/11/77
LIBERAL ARTS PROGRAM MAJ=										
CONTEMP. FICTION	ENGL	282	C	3	3	3		3	6	
U.S. HISTORY SINCE 1865	HIST	202	C	3	3	3		3	6	
INTRODUCTORY SOCIOLOGY	SOCY	101	C	3	3	3		3	6	
SEMESTER TOTALS				9	9	9		9	18	2.000
YEARLY TOTALS				9	9	9		9	18	2.000
CUMULATIVE TOTALS				9	9	9		9	18	2.000
250-06-1233 SUM I 1974										08/11/77
LIBERAL ARTS PROGRAM MAJ=										
LITERATURE AND RHETORIC	ENGL	101	B	3	3	3		3	9	
ELEMENTARY PSYCHOLOGY	PSYC	101	B	3	3	3		3	9	
SEMESTER TOTALS				6	6	6		6	18	3.000
YEARLY TOTALS				6	6	6		6	18	3.000
CUMULATIVE TOTALS				15	15	15		15	30	2.500
250-06-1233 SUMMER II 1974										08/21/77
LIBERAL ARTS PROGRAM MAJ=										
INTRO ANTHROPOLOGY	ANTH	101	C	3	3	3		3	6	
CRITICAL APPR. TO LIT	ENGL	102	C	3	3	3		3	6	
SEMESTER TOTALS				6	6	6		6	12	2.000
YEARLY TOTALS				12	12	12		12	24	2.500
CUMULATIVE TOTALS				21	21	21		21	42	2.333

A true copy of the record on file in the Office of the University Registrar, University of South Carolina

Aaron C. Marterer
University Registrar

MICROFILMED NOV 1977

University Registrar

Grades issued after August 30, 1978 are on a revised grading system (listed below)

AS-119 8-11-78

Grades are explained as follows: A - Excellent B+ - Very Good B - Good C+ - Above Average C - Average D+ - Below Average D - Poor F - Failure A-, B-, C-, and D- for School of Medicine Only	Totals are explained as follows: Hours Carried - Hours Earned - GPR Hours - Grade Points - Grade Point Ratio -	Course hours for which enrolled Course hours passed Course hours used in computation of Grade Point Ratio GPR hours times the value of the Grade A=4.0, B+=3.5, B=3.0, C+=2.5, C=2.0, D+=1.5, D=1.0, F=0.0, Other symbol=0.0; School of Medicine Only - A=4.0, A-=3.7, B+=3.3, B=3.0, B-=2.7, C+=2.3, C=2.0, C-=1.7, D+=1.3, D=1.0, D-=0.7, other symbols =0.0 Grade Points divided by GPR Hours.

Descriptive Title of Course	Dept.	Course Number	Grade	Hours	Hours Carried	Hours Earned	GPR Hours	Grade Point	GPR
250-06-1233 SUM I 81 BASE		(8120)							07/24/81
SPARTANBURG MAJ=160									
SEMESTER TOTALS				0	0	0	0.0	0.000	
CUMULATIVE TOTALS				18	18	18	42.0	2.333	
250-06-1233 SUMMER I 1981		(8121)							07/24/81
SPARTANBURG MAJ=160									
SOCIOLOGY OF THE FAMILY	SOCY	W305	B	3	3	3	9.0		
SEC OF DELINQ YOUTH BEH	SOCY	W350	A	3	3	3	12.0		
SEMESTER TOTALS				6	6	6	21.0	3.500	
CUMULATIVE TOTALS				24	24	24	63.0	2.625	

This transcript is official only when embossed with the seal of the University of South Carolina and signed by Aaron C. Marterer, University Registrar

Sheet _____ of _____
STUDENT BUCHANAN, STEWART J.
Last First M

Curriculum _____

Descriptive Title of Course	Dept.	Course Number	Grade	Hours Carried	Hours Earned	GPR Hours	Grade Point	GPR
250-06-1233 SUMMER II 1981		18131						08/19/81
SPARTANBURG MAJ-160								
CRIM JUSTICE ORG THEORY SCRJ		W470	A	3	3	3	12.0	4.000
SEMESTER TOTALS				3	3	3	12.0	2.778
CUMULATIVE TOTALS				27	27	27	75.0	2.778
250-06-1233 FALL 1981		18141						09/10/81
SPARTANBURG MAJ-160								
FUND OF ACCOUNTING I BADM		W225	W					WITHDREW
WITHDREW: 09/10/81								
PRIN OF MACROECONOMICS SECC		W121	F	3		3		WITHDREW
SOCIAL DEMOGRAPHY SSOC		W310	W					
WITHDREW: 09/10/81								
SEMESTER TOTALS				3	0	3	0.0	0.000
CUMULATIVE TOTALS				30	27	30	75.0	2.500
MICROFILMED JUL - 1984								

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Aaron C. Marterer
University Registrar

A true copy of the record
on file in the Office of the
University Registrar,
University of South Carolina

Ann C. Martin
University Registrar

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001

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF GUILTY PLEA
6 Stewart Russell Buchanan,)
7 Defendant.) York, South Carolina
8 September 25, 1973
9

10 B E F O R E :

11 Honorable Frank Eppes, Presiding Judge
12

13 A P P E A R A N C E S :

14 Mike S. Jolly, Esq.
15 Solicitor, Sixteenth Judicial Circuit

16 David Lyle, Esq.
17 Attorney at Law
18 Rock Hill, South Carolina
19 Attorney for Defendant
20
21
22

23 Janet M. Fischer
24 Court Reporter
25

JANET M. FISCHER

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Mr. Jolly

5

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Mr. Lyle

10

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CONFESSION PUBLISHED

12

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Mr. Jolly

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1 Confession of Defendant

11

2 Knife

14

3 Fountain pen

16

PROCEEDINGS

2 THE COURT: We are about to go into the trial of the case
3 of the State of South Carolina versus Stewart Russell Buchanan.
4 Is any member of the Jury Panel kin by blood or marriage to
5 Stewart Russell Buchanan, if so please stand.

b (No response)

THE COURT: Is any member of the Jury Panel kin by blood
or marriage to the deceased Alene M. Boone, if so please
stand.

10 (No response)

11 THE COURT: Does any member of the Jury Panel know of any
12 reason that they cannot give the State of South Carolina and
13 Stewart Russell Buchanan a fair and impartial trial, if so
14 please stand.

13 (No response)

16 THE COURT: The jury is qualified.

1 (the jury was chosen and sworn by the Clerk of Court and
2 the indictment was published to the jury by Solicitor Jolly
3 charging the Defendant Stewart Russell Buchanan with murder.
4 The Defendant was re-arraigned at this time and stated that
5 he was guilty and asked for the mercy of the Court.)

22 THE COURT: Mr. Bailiff, take the ladies and gentlemen
23 of the jury to their jury room for a few minutes please.

24 OUT OF THE PRESENCE OF THE JURY:

15 THE COURT: Would you ask the Defendant to stand up here

1 please. Stewart Russell Buchanan, when the Solicitor read the
2 indictment to you and asked you how you would like to be
3 tried you said "By God and Your Country" and he asked you
4 how you pled and you said you pleaded guilty, asking for
5 recommendation of mercy. You understand that you have the
6 right to go to trial?

7 DEFENDANT BUCHANAN: Yes sir.

8 QUESTIONS BY THE COURT OF THE DEFENDANT BUCHANAN:

9 Q. The jury may find you guilty or they may find you not
10 guilty, and you want to enter a guilty plea and ask for the
11 recommendation of mercy to the Court?

12 A. Yes sir.

13 Q. Has anybody promised you anything or has anybody threatened
14 you?

15 A. No sir.

16 Q. You're doing that freely and voluntarily?

17 A. Yes sir.

18 Q. Mr. Dave Lyle is your lawyer?

19 A. Yes sir.

20 Q. He has advised you of all of your rights?

21 A. Yes sir.

22 Q. You're satisfied with his service?

23 A. Yes sir.

24 Q. It is your wish for the Solicitor to tell the jury that
25 you are pleading guilty and asking for mercy and then let Mr.

1 Lyle put up the psychiatric report that they have for you?

2 A. Yes sir.

3 Q. Anything else you want to ask him?

4 SOLICITOR JOLLY: No sir.

5 Q. How old are you?

6 A. Seventeen.

7 Q. Are your mother and father in the courtroom?

8 A. Yes sir.

9 Q. All right, have a seat. Bring the jury back in.

10 IN THE PRESENCE OF THE JURY:

11 SOLICITOR JOLLY: Your Honor, please, it is stipulated
12 between the State and the Defense that the late Mrs. Alene M.
13 Boone died on May 18th, 1973 as the result of a knife wound and
14 that was in York County.

15 OFFICER BOBBY KIMBRELL,
16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY SOLICITOR JOLLY:

18 Q. State your full name please.

19 A. Bobby Kimbrell.

20 Q. And what do you do?

21 A. Detective with the York County Sheriff's Department.

22 Q. And how long have you been in law enforcement, Mr.
23 Kimbrell?

24 A. Approximately fourteen years.

25 Q. All right sir, and I'll ask you where you live.

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- 1 A. Route 2, Fort Mill.
- 2 Q. And did you personally know the late Mrs. Alene M. Boone?
- 3 A. Yes sir.
- 4 Q. And what is her husband's name?
- 5 A. William Boone.
- 6 Q. And is that Mr. Boone in the middle over there behind the
- 7 State's table?
- 8 A. That's correct.
- 9 Q. And where did Mr. and Mrs. Boone live?
- 10 A. 111 Thomas Avenue in Fort Mill, or just out of Fort Mill.
- 11 Q. Do you know approximately how old she was?
- 12 A. She was approximately forty-four.
- 13 Q. And Mr. Kimbrell, do you know the defendant Stewart
- 14 Russell Buchanan?
- 15 A. yes sir.
- 16 Q. And where does he live?
- 17 A. 113 Thomas Avenue.
- 18 Q. Is that next door to the Boone's residence?
- 19 A. That's correct.
- 20 Q. And with whom did Stewart Russell Buchanan live with?
- 21 A. His mother and father.
- 22 Q. And I'll ask you whether or not on May 18th, 1973 you
- 23 had occasion to investigate the death of Mrs. Alene M. Boone?
- 24 A. Yes sir.
- 25 Q. And where were you when you got the call to go there and

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1 . investigate?

2 A. At home.

3 Q. And approximately what time was it?

4 A. Approximately a quarter until four.

5 Q. And go ahead and tell us what you did as a result of that
6 call please sir.

7 A. When I arrived at the scene, turned in the driveway, I
8 noticed an object lying in the yard. I got out of the patrol
9 car, I went to this object, and found it to be a body, the
10 body of Mrs. Boone. I left the body and went into the home,
11 inside of the house, and I went to the bedroom. When I
12 arrived a window in the front of the house approximately two
13 feet high from the porch was raised with no screen on it. I
14 went in the house and we dusted for fingerprints inside of
15 the home. In the meantime, Mr. Boone had contacted Dr. Culp,
16 a M.D. in Fort Mill and in the process of us investigating
17 inside the house Dr. Culp came and I went outside with Dr.
18 Culp. He pronounced Mrs. Boone dead there at the scene. The
19 Coroner was called and of course the ambulance. In the process
20 of us investigating inside of the house a palm print was lifted
21 from the front window.

22 Q. A what?

23 A. A palm print.

24 Q. A palm print?

25 A. A hand print, yes sir.

JANET M FISCHER

- 1 Q All right, go ahead.
- 2 A We made the pictures there at the home. We went to the
3 funeral home and made pictures of the body and approximately
4 eight a.m. we went back to the scene to talk with the
5 neighbors and at approximately ten a.m. Stewart Buchanan and
6 his father both were picked up, they were asked to go to the
7 County Building for questioning. They were advised of their
8 rights at the County Building.
- 9 Q All right, you say advised of their rights?
- 10 A Yes sir.
- 11 Q Were they advised of their rights in your presence?
- 12 A Yes sir.
- 13 Q Are you familiar with the proper method that you are
14 to advise an accused of their rights?
- 15 A Yes sir.
- 16 Q Were they promised anything?
- 17 A No sir.
- 18 Q Was any hope of reward held out?
- 19 A No sir.
- 20 Q Were they threatened in any manner?
- 21 A No sir.
- 22 Did they appear to understand their rights?
- 23 A Yes sir.
- 24 Q Were they told that they had the right to have an
25 attorney there?

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1 A. They were.

2 Q Were they advised if they decided to give a statement
3 that they could stop at any time?

4 A. That's correct.

5 Q And did they appear to you to understand their rights?

6 A. They did.

7 Q And did they voluntarily waive their rights and agree
8 to talk with you?

9 A. That's correct.

10 Q This was at the Sheriff's office in the County Building
11 in Rock Hill?

12 A. Yes sir.

13 Q Approximately what time was this?

14 A. This was approximately ten to ten-fifteen a.m.

15 Q At that time were you dressed in street clothes like you
16 are now?

17 A. Yes sir.

18 Q Not in uniform?

19 A. No sir.

20 Q Did you wear any weapon or anything?

21 A. No sir.

22 Q At this time did Stewart Russell Buchanan make a statement
23 to you?

24 A. Not at that time. Later in the afternoon he did make a
25 statement.

1 Q. The same day?

2 A. The same day.

3 Q. Was his statement reduced to writing?

4 A. Yes sir.

5 Q. Did you give him a copy of it?

6 A. Yes sir.

7 Q. Did he sign it?

8 A. Yes sir.

9 Q. Did he sign a receipt for a copy of the statement?

10 A. Yes sir.

11 Q. And a copy was given to him?

12 A. That's correct.

13 Q. Do you have that statement with you?

14 A. Yes sir.

15 Q. We would offer this, Your Honor.

16 MR. LYLE: Your Honor, before this statement is
17 introduced, I would like the privilege of examining the
18 witness. I don't know whether I would do that out of the
19 presence of the jury or in their presence.

20 THE COURT: I don't think it makes any difference. Go
21 ahead.

22 CROSS EXAMINATION BY MR. LYLE:

23 Q. Where was this statement given?

24 A. The York County Sheriff's office in Rock Hill.

25 Q. That's in Rock Hill?

1 Q Who else was present besides you and Stewart?

2 A Detective Ervin.

3 Q Both of you all witnessed this?

4 A Yes.

5 Q Is it your testimony that he understood what he was doing
6 at the time?

7 A Yes sir.

8 Q He was in his right mind?

9 A Yes sir.

10 Q Of course you're not a psychiatrist and I'm not either, but
11 in your judgment he was in his right mind?

12 A Yes sir.

13 Q He was not under the influence of any drugs or anything of
14 that nature?

15 A No sir.

16 Q I believe you said he gave you this statement on the
17 same day?

18 A Yes sir, that's correct.

19 Q That's all the questions I have. We would have no
20 objection to the statement.

21 THE COURT: Let it be marked.

22 (the confession of the Defendant was marked State's Exhibit
23 1, without objection)

24 SOLICITOR JOLLY: At this time I would like to publish the
25 statement, Your Honor.

1 THE COURT: All right.

2 SOLICITOR JOLLY: "Statement of Stewart Russell Buchanan;
3 Place, York County Building, 529 South York Avenue; Date, May
4 18th, 1973; time, 7:45 p.m. Personally appears Stewart Russell
5 Buchanan and makes the following statement of my own free
6 will and accord without any fear of bodily harm or any promise
7 of reward on the part of anyone. I make this statement in
8 the presence of Gene Ervin and Bobby Kimbrell, who I know
9 as Police Officers with the York County Sheriff's Department.
10 My name is Stewart Russell Buchanan and I am seventeen years
11 old and I live with my parents at 113 Thomas Avenue, Fort
12 Mill. My mother's name is Ila Grace Buchanan and my father's
13 name is John Edmond Buchanan. I left work about 1:30 a.m. on
14 the 18th day of May and I went to the Q-Brew Lounge located
15 on South Boulevard in Charlotte and I stayed there until about
16 2:15 a.m. While I was there I drank some beer and shot pool.
17 I then went to Bill's Lounge and stayed there until about 2:35
18 a.m. I also drank some beer there. I then left and came to Fort
19 Mill and parked my car at the hedge row before getting to
20 Mrs. Boone's home. I got out of the car and walked up on
21 the Boone's porch and took my boots off. I raised the window
22 and went into the bedroom. I do not know what my intentions
23 were at this time. I then walked into the kitchen, and back
24 to the hallway and then the light came on in the bedroom. I
25 was mighty drunk. Mrs. Boone saw who I was and she called my

1 name twice. She was about eight feet from me and she went
2 out the window. She had gotten out of the window before I
3 realized what was going on. She was on the porch by the time
4 I started for the window. When I got to the window I saw
5 her jump off the porch and stumble and I leaped directly out
6 the window, and was going to hit her but I couldn't. I then
7 ran to the edge of her yard towards my house and I realized
8 that my car was parked in the road. I stopped for a few
9 seconds and Mrs. Boone was calling my mother's name. I
10 reached in my back pocket and got my knife and started
11 towards her. The next thing I know I had stabbed her. I don't
12 know how many times I stabbed her. After this I went and
13 got my boots and went to my car. I got in my car and backed
14 it into the Davis' driveway and drove out to the highway
15 before I turned on the lights and then went to Lake Haigler.
16 I got out of the car and washed my knife off and then decided
17 to just throw it in the lake. I then washed my hands off, and
18 I realized that I had cut my right hand below the index finger.
19 I went back to the car and got a rag and wet it and washed
20 off my steering wheel. I then went home and started to
21 change clothes and take a bath. My father was up and he went
22 out to get the paper and when he came back in I heard him
23 calling the police and he told them that he had found this
24 Boone lady laying in the yard with blood all over her. The
25 police arrived shortly thereafter. During the occurrence of

1 the above statement, I did not have complete control of my
2 actions. Signed, Stewart Buchanan; witnesses, W. Eugene Ervin
3 and R. E. Kimbrell. I have read or had read to me the above
4 statement and it is true to the best of my knowledge. I have
5 been given the opportunity to change any part or parts of it,
6 but I do not wish to. Signed, Stewart Buchanan; witnesses,
7 W. Eugene Ervin, and R. E. Kimbrell. I have been given a copy
8 of this statement. Signed, Stewart Buchanan." Mr. Kimbrell,
9 let me ask you this, was the knife recovered?

10 A. Yes sir.

11 Q. And where was it found?

12 A. The knife was recovered out of Lake Haigler approximately
13 a mile and six or eight tenths from the scene.

14 Q. Do you have that knife with you?

15 A. Yes sir.

16 MR. LYLE: Your Honor, in view of the fact that it has
17 been stipulated that she did die of a knife wound, this would
18 have no probative value and I would object to it coming in.

19 THE COURT: I overrule your objection.

20 (the knife was marked State's Exhibit 2, over Defendant's
21 objection)

22 Q. Were you there when that knife was found Mr. Kimbrell?

23 A. Yes sir.

24 Q. About how far out in the lake was it found?

25 A. Approximately forty feet.

- 1 Q Now, you mentioned prior to the introduction of the
2 statement, that you recovered a palm print?
- 3 A That's correct.
- 4 Q Where was that palm print lifted?
- 5 A It was lifted from the window ceiling from the window that
6 was raised on the front porch.
- 7 Q And I'll ask you whether or not that palm print was found
8 to be the print of the Defendant's?
- 9 A It did.
- 10 Q Now this incident did occur in York County, South Carolina;
11 did it not?
- 12 A That's correct.
- 13 Q Did you find a fountain pen during your investigation?
- 14 A Yes sir.
- 15 Q Where was it found?
- 16 A The pen was found beside Mrs. Boone's body in the yard the
17 morning of the investigation.
- 18 Q And did you determine the ownership of the fountain pen?
- 19 A Yes sir.
- 20 Q And who did that pen belong to?
- 21 A Mr. Kitchens that works at Ryder Trucking Lines.
- 22 Q All right sir, and do you know where the Defendant worked?
- 23 A He worked at the same location, Ryder's.
- 24 Q That has Ryder's Rental on it?
- 25 A Yes sir.

1 Q We would offer this.

2 MR. LYLE: No objection.

3 (the pen was marked State's Exhibit 3, without objection)

4 Q Now how did you determine that that pen was from Ryder's?

5 A By Mr. Kitchens, an employee of Ryder's Rental. He
6 identified the pen as being his and the one that the Defendant
7 was using the day he left work.

8 Q All right, now how did he identify it?

9 A He had two and he had engraved his name on both pens.

10 Q And his name is engraved on that pen?

11 A Yes sir.

12 Q Where?

13 A About middle ways of it there.

14 Q All right, thank you sir. Now, did your investigation
15 reveal that the bedroom pictures that you have, that that
16 bedroom was the one that Mrs. Boone had been sleeping in?

17 A Yes sir.

18 Q Does your investigation reveal that that was the room that
19 the baby normally slept in and that she just happened to be
20 sleeping in it at that time?

21 MR. LYLE: Your Honor, I would like for the Solicitor to
22 ask questions instead of testifying.

23 Q Do you know whose room it was?

24 A Yes sir.

25 Q Whose?

1 A. It was the room of the daughter.

2 Q. The daughter of Mrs. Boone?

3 A. Yes.

4 Q. She's thirteen?

5 A. Yes sir.

6 Q. You may examine him.

CROSS EXAMINATION BY MR. LYLE:

8 Q. I don't have but a couple of questions that I want to ask
9 you. How many lakes are there around Fort Mill?

10 A. There are a number of lakes..

11 Q. That's quite a large lake there isn't it?

12 A. It is.

13 Q. How many acres would you say it is?

14 A. Probably thirty to thirty-five acres.

15 Q. How did you know to go to that lake?

16 A. Stewart Buchanan advised us where he threw the knife.

17 Q. He told you?

18 A. Yes sir.

19 Q. He also told you where he got that pen, didn't he?

20 A. That's correct.

21 Q. What I'm trying to get at is he made a complete revelation
22 of everything -- he held nothing back?

23 A. That's correct.

24 Q. Did you find him to be a gentlemanly sort of individual?

25 A. In the dealings we had with him about the incident.

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18

1 Q You had absolutely no trouble with him at all, did you?

2 A No sir.

3 Q I believe that's all.

4 SOLICITOR JOLLY: Thank you Mr. Kimbrell, you may come
5 down.

6 WILLIAM COY BOONE, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY SOLICITOR JOLLY:

9 Q State your full name.

10 William Coy Boone.

11 Q Where do you live?

12 A 1428 Nicholson Avenue, Rock Hill.

13 Q Mr. Boone, to whom are you married to?

14 A I was married to Alene Moore Boone.

15 Q How old was she?

16 A She was forty-three.

17 Q And to this marriage I believe one child was born?

18 A Yes sir.

19 Q What is her name?

20 A Her name is Teresa Lynn Boone.

21 Q Where did Mrs. Boone work?

22 A She worked for Springs Mills in Fort Mill.

23 Q On what shift?

24 A First.

25 Q And where do you work?

JANET M. FISCHER

1 A. I work for the same company. I work the night shift.

2 Q. Would that be the third shift?

3 A. That's right.

4 Q. And so on the night that this incident occurred, you were
5 not at home, you were working on the third shift?

6 A. That's right.

7 Q. And of course you were not there and you don't know what
8 happened?

9 A. No sir, I don't know what happened.

10 Q. I think that's all. You may examine him.

11 MR. LYLE: No questions.

12 SOLICITOR JOLLY: That's the State's case, Your Honor.

13 MR. LYLE: Could I have a few minutes, Your Honor?

14 THE COURT: Yes sir. Take the jury in the jury room please.

15 AFTER THE RECESS (in the presence of the Jury)

16 THE COURT: Mr. Lyle, you're not offering any testimony?

17 MR. LYLE: No sir, Your Honor.

18 SOLICITOR JOLLY: Your Honor, the death penalty in this
19 State has been knocked down by the Supreme Court of the United
20 States. The State in the presence of the Sheriff and counsel
21 for the defense, we met prior to Court, and went over the
22 psychiatric report of this seventeen year old defendant which
23 the State had access to and in view of those circumstances and
24 in view of the fact of his plea at the time of arraignment, the
25 State would recommend to the Jury that they return a verdict of

1 guilty with a recommendation of mercy to the Court.

2 THE COURT: Do you have anything to add to that?

3 MR. LYLE: Just that we ask the Jury to return a verdict
4 with a recommendation to mercy.

5 THE COURT: All right, let me have the indictment. Mr.
6 Foreman, ladies and gentlemen of the jury, of course as
7 you all know, the United States Supreme Court has abolished the
8 capital punishment for the time being in this State. The Jury
9 is the only one that can recommend mercy and when we arraigned
10 this boy he did plead guilty and ask for mercy in your
11 presence. A number of years ago that would probably have been
12 a ground for a mistrial. The Defense has made available to
13 the Court, which is a confidential report -- the Psychiatrist
14 was not able to be here. Had he been here we would have had
15 him testify, but since he is not here I can't submit these
16 records to you because they are confidential, but he did say
17 for them to turn them over to the Court. You are the only ones
18 that can recommend mercy to this Defendant charged in this
19 indictment with murder. So, you can recommend mercy for any
20 reason or no reason. You are the sole judges of the facts as
21 you heard them and it is for you to decide what to do. So,
22 Mr. Foreman and ladies and gentlemen, from reading these
23 reports while you were outside when we accepted his plea of
24 guilty with a recommendation of mercy -- but it is still a
25 question for the jury. So, on the back of this indictment, Mr.

1 Foreman, if you would write what your verdict is and sign your
2 name as Foreman. Of course the State has recommended, and I
3 recommend to you, that you do find a verdict of guilty with
4 a recommendation of mercy to the Court. You may now retire.

5 (the jury retired at 11:50 a.m. to begin their deliberation
6 and shortly thereafter notified the Court that they had a
7 question to ask)

8 IN THE PRESENCE OF THE JURY:

9 THE COURT: Mr. Foreman, I believe you indicated that you
10 had a question?

11 THE FOREMAN: Yes sir. What is the difference in a verdict
12 of Guilty and a verdict of Guilty with a recommendation of
13 mercy as far as sentence is concerned?

14 THE COURT: Guilty would mean death by electrocution and
15 the Supreme Court has outlawed that, and the Legislature has
16 not made any provision otherwise, so guilty without recommenda-
17 tion is illegal at this time. Guilty with a recommendation of
18 mercy carries a sentence of life imprisonment.

19 THE FOREMAN: What is the possibility of parole?

20 THE COURT: After ten years a person is considered for
21 parole. After they have served ten years. Any other
22 questions?

23 THE FOREMAN: No sir.

24 THE COURT: All right, you may retire.

25 (the jury notified the Court at 12:05 that they had agreed

1 on a verdict)

2 IN THE PRESENCE OF THE JURY:

3 THE CLERK: Mr. Foreman, have you agreed on a verdict?

4 THE FOREMAN: Yes sir.

5 THE CLERK: Pass it up please. In the case of the State
6 vs. Stewart Russell Buchanan, verdict, Guilty with a
7 recommendation of mercy. Mr. Foreman, ladies and gentlemen,
8 if that be your verdict, so say you all.

9 (the jury nodded in the affirmative)

10 THE COURT: Come around Mr. Buchanan. Of course, Mr.
11 Lyle, I have had the benefit of the doctor's report and of
12 course his entering a plea, stating that he did want to plead
13 guilty, saved the State from having to go through an entire
14 trial and since the United States Supreme Court has outlawed
15 the death penalty, I think this is the best way for this
16 situation to be handled. Mr. Buchanan, do you have anything to
17 say before I pass sentence on you?

18 MR. LYLE: Your Honor, would you indulge me just a moment?

19 THE COURT: Yes sir.

20 MR. LYLE: I have stood before this Bar many a time and
21 this is about the saddest occasion that I've ever had to come
22 before this Bar. Of course needless to say that a man has
23 lost his wife, a child has lost her mother and Mr. and Mrs.
24 Buchanan are standing here losing their son and a young man who
25 had potential has just fouled up. As Your Honor has stated, you

1 have read the report. I have made every effort that I could
2 possibly make, and I do want to thank the Sheriff and his
3 Department and the Silicitor for the cooperation that we have
4 received in trying to find out what we could about this. I
5 realize your hands are tied, Your Honor. I realize that there
6 is nothing that you can do but sentence this man, the
7 sentence is automatic.

8 THE COURT: Well, it is a tragic situation and I try to
9 talk to all of these young people. This is the thing, the
10 type of thing that is probably brought about by drugs, some
11 type of drugs mixed with beer. It is a terrible situation and
12 I hope that he can salvage some phase of his life and try to
13 make a good life for himself. I do know of one man that
14 finally got a pardon and worked at the Department of Corrections
15 and helps in the Rehabilitation program there. I had the
16 unfortunate occasion to be associated with him in a case
17 similar to this when I was practicing law. Taking into
18 consideration everyting, the sentence of the Court is that you,
19 Stewart Russell Buchanan, be confined to the Public Works of
20 York County or the State Penitentiary for and during your
21 natural life.

22 (Whereupon the case was ended)

23

24

25

Vera Dolan
SCDC Life Expectancy Tables

The enclosed affidavit was drafted and signed by Vera Dolan on May 5, 2017. Ms. Dolan is an epidemiologist and consultant. She was hired to help determine an accurate life expectancy for a male entering SCDC at the time he was a juvenile. Her tables and exhibits are also included.

As a white male who entered SCDC at the age of 17, Mr. Buchanan could expect to live 36.9 additional years from his year of entry, 1974. He has been in prison for 45 years and his life expectancy is 53.9 years of age. Mr. Buchanan is currently 62 years old and has outlived his expectancy by 8 years.

Vera F. Dolan who appeared personally before me, affirms and states the following:

1. I, Vera F. Dolan, am an epidemiologist and consultant. My business is located in Las Vegas, Nevada.
2. *Referral Question:* In 2015, I was asked by a lawyer representing a juvenile previously sentenced to life without parole to conduct an investigation and develop a life table with life expectancies specific to male inmates in the South Carolina Department of Corrections (“SCDC”). The question to be answered by my investigation was: what is the proper and accurate life expectancy for a male entering SCDC at the time he was a juvenile?
3. *Qualifications:* I am an epidemiologist¹ with a Bachelor’s degree in public health from Johns Hopkins University and a Master’s of Science in Public Health in epidemiology from the University of North Carolina, Chapel Hill. I have over 30 years of experience in the life and health insurance industries. I am a Fellow of the Academy of Life Underwriting, which is the highest credential in life insurance underwriting. I am currently a private consultant for the life insurance industry and related industries.
4. I have published over 33 peer reviewed articles in which I prepared a mortality ratio analysis from raw population data. I have prepared life tables for over 35 years, beginning when I was a student studying for my Masters of Science in Public Health. My current curriculum vitae is attached as Exhibit 1.
5. I have been qualified as an expert in life expectancy, life insurance, and epidemiology in state and federal courts throughout the country. In South Carolina, I was qualified as an expert in life expectancy and epidemiology in the Williamsburg County Court of General Sessions. In that court, I testified about my South Carolina study and life expectancy findings for SCDC inmates.
6. *Definition of Relevant Terms:*
 - a. **Life expectancy:** the statistical calculation of the average length of life expected for an individual of a certain age, sex, race, and/or other risk factor.
 - b. **Life table:** data laid out in a table format to show how a statistical calculation of life expectancy is done.

¹ An epidemiologist is similar to an actuary in that both are professionals who create life tables to determine life expectancies for various populations. Epidemiologists, unlike actuaries, have a medical background and specialize in the study of health and disease in populations statistically.

- c. **Mortality rate:** the rate at which people die within a given age, sex, race and/or other risk factor group. A mortality rate is calculated by dividing the number of deaths occurring within a given population by the total number of that population at risk of death.
7. *South Carolina Code Life Expectancy Tables:* The South Carolina legislature adopted life expectancy tables, which are contained in S.C. Code § 19-1-150. The tables found in the South Carolina Code were derived from the 2001 Commissioners Standard Ordinary Mortality Tables (“CSO Mortality Tables”). The CSO Mortality Tables were created by the Society of Actuaries in conjunction with the National Association of Insurance Commissioners to provide statutory guidance to state insurance commissioners in figuring out what statutory reserves should be for insurers in their state. The CSO Mortality Tables do not reliably predict the life expectancy for the general population or an incarcerated population because they are based on the lives of insured people, essentially selecting a portion of the population that is much healthier than the general population. An additional problem with the tables is that they were created in 2001 with data much older than 2001 causing concerns that the data relied upon by the tables is outdated and unreliable.
 8. *Methodology:* To determine life expectancies for male inmates in SCDC, I reviewed approximately 68,000 male inmate records provided to me by SCDC.² The SCDC information included a unique identifier for each inmate (in place of the inmate’s name), their date of entry to SCDC, their age at entry, and the date of release or death (where applicable). Those records originally included all inmates incarcerated from 1996-2015 and included follow-up data through the first half of 2016. Of the 68,000 records, I identified 3,000 duplicate records and excluded them from my final data set. I also identified and excluded a small number of records where the dates of admission and dates of death or release were incongruent. After making these exclusions, I reviewed the records of the remaining 64,204 unique inmates. For purposes of this affidavit, the records of the 64,204 inmates reviewed are referred to as the “SCDC Population.”
 9. In the SCDC records provided to me was information from the South Carolina Department of Health and Environmental Control (“DHEC”) on all of those individuals who died between 1996 and 2016. As part of the preparation of the records provided to me, DHEC used the identifying information provided by SCDC to link the SCDC database with DHEC’s information. I was thus provided with the

² I did not receive data from the South Carolina Department of Juvenile Justice, so I did not have sufficient data to calculate the mortality rates of 15, 16, or 17 year olds. This does not affect the accuracy of the reported life expectancies for inmates 18 years old and older because, as discussed below, life expectancy is based on mortality rates for people the same age as the individual and those older than that individual.

date of death and the age at the time of death for each individual within the SCDC population who died at some point after they entered SCDC.³

10. *Mortality Rate Calculation:* To determine life expectancies from the SCDC Population, I first needed to determine the mortality rates for each year of age of people incarcerated in SCDC. Exhibit 2 shows my mortality rate calculations for all individuals incarcerated in SCDC between 1996 and 2015 (Exhibits 3 and 4 show my calculations for black inmates only and white inmates only, respectively). The following is a description of my mortality rate calculations, using column references to the tables in Exhibits 2, 3, and 4.

- a. The first column labeled **Age** lists ages 15 through 97. This range was used because an individual who was incarcerated at SCDC at some point between 1996 and 2015 was alive at each age between 15 and 97.
- b. The second column labeled **Alive** represents the number of men from the SCDC Population who passed through a given age during the time period between 1996 and 2015.
- c. The third column labeled **Dead** provides the number of men within the SCDC Population who died at a given age any time between 1996 and 2016.
- d. The fourth column labeled **Total** provides the total of the “Alive” and “Dead” columns, which is the total population at risk of death during a given age.
- e. The fifth column labeled **Mortality Rate** provides the rate at which men in the SCDC population die at any given age. The mortality rate is calculated by dividing the number of people who died (column three) at a given age by the total number of people at risk of death (column four) during the same age.
- f. The sixth column labeled **Smoothed Mortality Rate** provides the trend of the mortality rate. In statistics, when dealing with raw data like the data relating to the population considered in this case, the rate calculations can have anomalies and bumps such that smoothing is necessary to identify the actual trend over time. To find the trend for the SCDC population mortality

³ The individuals died either during their incarceration or after their release from SCDC. Reliance on mortality information both during incarceration and after release is standard methodology in the actuarial field for calculating the life expectancy of individuals who have been incarcerated. Using this data provides the most reliable calculation for the life expectancy of a juvenile sentenced to a prison term of any length of time. Other analyses, including a study of deaths of incarcerated individuals serving life sentences shows the observed age at the time of death for those individuals who died while incarcerated is substantially lower than the life expectancy calculated from the data obtained from DHEC. See §§ 17-18.

rate, I calculated the three-year moving average of the mortality rates by averaging a given age's mortality rate with the two ages surrounding it. As the data became sparser at the older ages, I used a five-year moving average, which included the mortality rate at a given age and the two ages above and below it. This calculation found the trend in these mortality rates for a more accurate calculation of life expectancies at each age.

11. *Mortality Ratio Calculation:* I next compared the SCDC Population mortality rates with the general United States population mortality rates.

- a. The seventh column on Exhibits 2-4 labeled **US Population Mortality Rate** provides the most current mortality rates by age for males in the US population available at the time of this analysis. These mortality rates were determined by the Centers for Disease Control ("CDC") and is used in life tables published in the CDC's Vital Statistics Reports. The CDC mortality rates are calculated for life tables for the all US males, for black US males only, and for white US males only; these life tables are attached as Exhibits 5, 6, and 7 respectively.⁴ On SCDC Population Mortality Rate tables (Exhibits 2-4) for various races, the US Mortality rate was obtained from the US Life Table for the same race.
- b. The eighth, and final column, on Exhibits 2-4 labeled **Mortality Ratios** compares the smoothed mortality rate from the SCDC Population at a given age with the US Population mortality rate for the same age. The mortality ratio is calculated by dividing the SCDC Population mortality rate by the US Population mortality rate, meaning any mortality ratio over 1.0 indicates the SCDC Population mortality rate is higher than the US Population mortality rate. Mortality ratios are provided only for ages in which there were at least five deaths among the SCDC Population in order to ensure the accuracy of the resulting ratios and life expectancies.

12. *Race Specific Calculations:* I created mortality rate and mortality ratio tables for all races, blacks only, and whites only because doing so is consistent with the CDC analysis of the US population, which shows that race has a significant effect on mortality rates.

13. *Creation of Life Tables:* Life tables provide life expectancies based on mortality rates from a given population. Using the mortality ratios calculated in Exhibits 2-4, I created life tables for the SCDC Population. I created individual life tables for all males, all black males, and all white males, which are attached as Exhibits 8, 9, and 10, respectively. The following is a description of the life expectancy calculations, using column references to the tables in Exhibits 8, 9, and 10.

⁴ The mortality rates on the CDC US Population Life Tables are found in the column labeled **Probability of dying between ages x and x + 1** on Exhibits 5-7.

- a. The first column labeled **Age** lists all ages 0-100.
- b. The second column labeled **Basic Mortality** provides the mortality rate at a given age from the US Population Life Tables (Exhibits 5-7).
- c. The third column labeled **Mortality Risk Factor** is the mortality ratio calculated on the SCDC Population Mortality Rate Tables in Exhibits 2-4.
- d. The fourth column labeled **Adjusted Mortality** provides the US mortality rate for a given age adjusted by the mortality risk factor (mortality ratio) using multiplication.⁵ At ages where there was sufficient mortality data (five or more deaths at any given age) from the SCDC Population, the adjusted mortality rate equals the mortality rate calculated from the SCDC Population data.⁶ At ages where there was insufficient mortality data (four or less deaths at any given age) from the SCDC Population, the adjusted mortality rate equals the US Population mortality rates.
- e. The fifth column labeled **Population at Risk** starts with a hypothetical cohort, or population of 100,000 at age 0. This population is decreased at each successive age by the number of deaths that occurred at the previous age. For example, in the SCDC Life Table for all races (Exhibit 8), the population at risk in age 0-1 is the full hypothetical cohort of 100,000 less 658 deaths that occurred during the first year of life.
- f. The sixth column labeled **Deaths** provides the number of deaths expected to occur at a given age. This number is calculated by multiplying the adjusted mortality rate (column four) by the population at risk (column five).
- g. The seventh column labeled **Interval Person-years** provides the number of years lived by the remaining population during a given age. This is calculated by subtracting one half of the number of deaths during that age from the population at risk during a given age (this assumes the individuals who die during that year live an average of half the year before dying).
- h. The eighth column labeled **Cumulative Person-years** provides the total number of years left to be lived by the entire population surviving to a given

⁵ I used the mortality ratio (comparing the SCDC Population mortality rates to the US Population mortality rates) because I did not have mortality rates for all ages from the SCDC Population data. Specifically, there is not sufficient data for male SCDC inmates at the very youngest and very oldest ages. In order to create a credible life table, one needs to have mortality rates for all of the ages. Use of the mortality ratio to create an adjusted mortality rate is standard practice in the actuarial field when reviewing populations that do not have enough data to calculate credible mortality rates for all ages.

⁶ These ages are designated by highlighting in the Mortality Risk Factor column.

age. This is calculated by totaling the interval-person years for a given age and all of the ages after that age.

- i. The ninth column labeled **Life Expectancy** provides the remaining life expectancy for any SCDC inmate surviving to a given age. It is calculated by dividing the cumulative person-years (column eight) by the population at risk (column five) at a given age.
- j. To use the life expectancy to calculate the age to which an SCDC inmate is expected to live, on average, locate the age of the inmate in the age column and identify the corresponding life expectancy, then add the person's age to the life expectancy. For example, on the Life Table for blacks only (Exhibit 9), a black male inmate in SCDC at age 18 has a remaining life expectancy of 38.2 years. This individual would, therefore, be expected to live to age 56 (18 + 38.2).

14. *Notes on Using Life Tables:* Because race is a risk factor affecting life expectancy, it is most appropriate to use the life table for the race corresponding to the actual inmate to determine the life expectancy for that inmate. For example, a black male inmate's life expectancy is most accurately determined by using the Life Table for black males only (Exhibit 9). A white male inmate's life expectancy is most accurately determined by using the Life Table for white males only (Exhibit 10). Hispanic or Latino inmates' life expectancies are most accurately calculated by using the Life Table for white males only (Exhibit 10) because SCDC classifies them as white.⁷ Life expectancies for inmates of other races can most accurately be calculated by using the Life Table for all races⁸ (Exhibit 8).

15. *Findings:* The SCDC Population Life Tables (Exhibits 8-10) can be compared to the US Population Life Tables (Exhibits 5-7). Comparing the life expectancy for 18 year old males of any race in the general US Population and the SCDC Population reveals that an 18 year old in the general US Population has a remaining life expectancy of 59.1 years (expected death at 77 years old) and an 18 year old male in SCDC has a remaining life expectancy of 37.3 years (expected death at 55 years old). The 18 year old who is incarcerated in SCDC, accordingly, has a life expectancy that is 21.8 years shorter than a male in the general US Population.

⁷ Because SCDC does not classify Hispanic or Latino inmates separately from whites, the white male only mortality rates and life table include data from Hispanic and Latino inmates.

⁸ In addition to classifying inmates as black or white, SCDC uses classifications for Pacific Islander, Asian, American Indian, unknown, and other, but these categories of inmates did not include a sufficient number of inmates to allow for creation of a life table specific to them. Thus, all races are included in the Life Table for all races and that table can be used for inmates who do not fall within the black, white or Hispanic/Latino categories.

16. The Life Tables created based on the SCDC Population clearly indicate that any person who has been incarcerated in SCDC has a lower life expectancy than a person in the general US Population.
17. *Observed Data on Deaths in SCDC:* SCDC also provided me with information on all inmates serving a life sentence who died in SCDC between January 2001 and June 2016. The number of deaths during this period was not sufficient to create a credible life table for inmates serving life sentences who died while incarcerated.⁹ I was, however, able to compare the actual life span of the individuals who died to their expected age of death based on the US Population Life Tables.¹⁰ I grouped these individuals by the age of their last admission to SCDC and calculated the average number of years difference between their actual age at death and their expected age at death in the table below.

Age at Last Admission Group	Average Difference Observed vs Expected Age at Death
16 to 19	-31.8
20 to 24	-26.5
25 to 29	-21.4
30 to 39	-21.7
40 to 49	-16.8
50 to 59	-10.0
60 up	-4.9

As this table shows, the individuals sentenced to life who entered SCDC between the ages of 16 and 19 died while incarcerated an average of 31.8 years earlier than predicted by the US Population life expectancies.

18. The SCDC Population Life Table for all races shows (Exhibit 8) a life expectancy for a 16 year old male incarcerated in SCDC for any length of time is 39.2 years, which is 21.8 years less than the life expectancy of a 16 year old male in the general US Population. The calculations above, based on observed deaths, show the actual

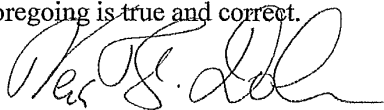
⁹ In order to create a credible life table, the population data must include five deaths at each age. During the period of 2001 to 2016, there were 262 deaths among inmates serving a life sentence. This was insufficient data to create a life table. While the data set is not large enough to create a life table, it is sufficient to show the mortality risk trend of people serving life imprisonment in SCDC as compared to the general US Population.

¹⁰ Because these deaths occurred between 2001 and 2016, I used the life expectancies published in 2000 for the general US Population. Since 2000, the life expectancies for the general population have increased.

life span of a 16 year old serving life imprisonment was 31.8 years less than the life expectancy of a 16 year old male in the general US Population. This demonstrates that a male incarcerated in SCDC for life is at a much higher risk of mortality and has a significantly shorter life expectancy than the general US Population.

19. *Other Notes:* My life expectancy calculations were completed in 2016 with records from 1996 to 2015 and mortality data through 2016. I recommend updating mortality data and mortality ratios every five years. I recommend a full twenty-year look back, as was completed here, be completed again in ten years.

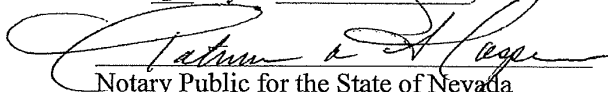
I affirm, under the penalty of perjury, that the foregoing is true and correct.



VERA F. DOLAN

Sworn to and subscribed before me

This 5 day of MAY, 2017



Notary Public for the State of Nevada

My commission expires: 10-18-2020

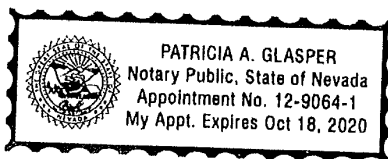


Exhibit 1

Vera F. Dolan

6238 Belgium Drive, Las Vegas, Nevada 89122-7592
702.476.8500 / dolanvp@consultancy.com

EDUCATION and PROFESSIONAL CERTIFICATIONS

MSPH University of North Carolina at Chapel Hill, Epidemiology, 1981
BA The Johns Hopkins University, Public Health, 1979
FALU Fellow of the Academy of Life Underwriting, 1998
ELS Editor in the Life Sciences, 2003

EXPERIENCE

Principal, VFD Consulting, Inc., 1989 to Present

Providing life and health insurance and related industries mortality and underwriting research, market research, product development, business development and technology, underwriting education and training, and litigation support to multinational clients, including:

AIG American General Life Cos.
American Family Life Insurance Co.
AVS Underwriting
Bank of America
Calypso Biomedical
Canada Life Reinsurance
Charles Schwab & Co.
Clinical Reference Laboratory
decydeWARE
Drinker, Biddle & Reath
Edwards Lifesciences
EMSI (formerly PMSI)
Farmers Mutual Insurance Co.
FaxWatch
Federal Home Loan Bank (San Francisco)
First Financial Underwriting Services
General American Life Insurance Co.
Golden Gateway Financial
Hank George, Inc.
Health Net of California
Heritage Labs
HSBC Insurance Services
Independent Order of Foresters
Insure.com

LabOne
Life Settlement Consulting & Management
Los Angeles County Crime Laboratories
MetLife Canada
MIB Group
Millennium Pharmaceuticals
Mutual of Omaha
North Coast Opportunities
On The Risk – The Journal of the Academy of Life Underwriting
PartnerRe Life (formerly Winterthur Life Reinsurance)
Pacific Blue Cross
PPO Oklahoma
Protective Life Insurance Co.
Safe Harbor Resources
Sagcor Financial Corporation
Society of Actuaries
Thomson Management Solutions
21st Services
Wells Fargo Bank
Western Reserve Life Assurance Co. of Ohio
Xcelerate Corporation

Vera F. Dolan

Curriculum Vitae, continued

Expert witness services provided to the following:

Multiple retentions:

Andres, Andres & Moore, Santa Ana, CA
Barger & Wolen, Irvine, CA and New York, NY
County of Hawaii, Hilo, HI
Donahue Horrow, El Segundo, CA
Lewis & Roca, Phoenix, AZ

McCue-Pauley & Associates, Dallas, TX
Taylor Anderson, Denver, CO
U.S. Department of Justice
Wilson Elser Moskowitz Edelman & Dicker, Los Angeles and San Diego, CA

Expert witness brokers:

AMFS / Medical Experts Nationwide
Consolidated Consultants
Insurance Expert Network
ForensisGroup
LITILI

Medical Advisors, Inc
Medical Consultant Services
The TASA Group
Thomson Reuters Expert Witness Service

Single cases:

Andrews Kurth, Dallas, TX
Bolt Keenley Kim, Berkeley, CA
Campano Law Group, Lancaster, CA
Carlin & Buchsbaum, Long Beach, CA
Carmody Torrance Sandak Hennessey, Waterbury, CT
City of Torrance, Torrance, CA
Corr Cronin Michelson Baumgardner Preece, Seattle, WA
Coughlin Law Firm, San Diego, CA
Cozen O'Connor, Wilmington, DE
Deitchman & Deitchman, Placerville, CA
Demas Law Group, Sacramento, CA
Dressler Law Office, New Haven, CT
Egan & Pechtel, Kennewick, WA
Epstein Becker & Green, Los Angeles, CA
Evan Freirich, Boulder, CO
Fairchild, Price, Haley & Smith, Nacogdoches, TX
Fallgatter Farmand & Catlin, Jacksonville, FL
Ferguson, Skipper, Shaw, Keyser, Baron & Tirabassi, Sarasota, FL
Friedman, Rubin & White, Anchorage, AL
Gilchrist & Rutter, Santa Monica, CA
Graves & King, Riverside, CA
Greenberg Traurig, Denver, CO
Greene Broillett & Wheeler, Santa Monica, CA
The Healy Law Firm, Chicago, IL
Hinshaw & Culbertson, Los Angeles, CA
Hoagland, Fitzgerald & Pranaitis, Alton, IL
Diana Holt, LLC, Columbia, SC
Jardine Law Office, DeForest, WI
Kent D. Jensen Law Office, Burley, ID
Johnson Schachter & Lewis, Sacramento, CA
Kantor & Kantor, Northridge, CA
Katten Muchin Rosenman, Los Angeles, CA
Kitch Drutchas Wagner Valitutti & Sherbrook, Detroit, MI
Knapp Petersen Clarke, Glendale, CA
Koch Degn & Gomez, Visalia, CA
Law Office of Andy Basseri, Beverly Hills, CA
Law Offices of Benjamin Blakeman, Los Angeles, CA
Law Offices of Robert A. Brenner, Woodland Hills, CA
Law Office of Sean Brew, San Diego, CA
Law Offices of James Matthew Brown, San Diego, CA

Law Offices of Clyde I. Butts, Walnut Creek, CA
Law Offices of Michael Jay Green, Honolulu, HI
Law Office of Katherine MacKinnon, St. Louis Park, MN
Law Office of Stephen W. Penn, Morgan Hill, CA
Law Office of Charles M. Ray, Newport Beach, CA
Law Office of Kenneth U. Reyes, Los Angeles, CA
Law Offices of Cary T. Tanaka, Honolulu, HI
Law Office of Edward J. Thomas, Bakersfield, CA
Little Mendelson, San Jose, CA
MacMorris & Carbone, Stockton, CA
Daniel Q. Mahone, Frederick, MD
McArdle, Frost & Brinton, Chicago, IL
McDermott Will & Emery, Chicago, IL
McDowell & Osburn, Manchester, NH
McFall Burnett & Brinton, Manteca, CA
Meyers McConnell Reisz Siderman, Los Angeles, CA
Milavetz Gallop & Milavetz, Edina, MN
Morris Polich & Purdy, San Francisco, CA
Myers & Gornel, Las Vegas, NV
Nicholas & Tomasevic, San Diego, CA
Norton Rose Fulbright US, Houston, TX
Ogden Murphy Wallace, Seattle, WA
Pyle Sims Duncan & Stevenson, San Diego, CA
Renaud Cook Drury Mesaros, Phoenix, AZ
Riverside County Public Defender, Riverside, CA
Saur Law Office, Laguna Hills, CA
Schumacher Francis & Nelson, Charleston, WV
Segal and Kirby, Sacramento, CA
Seyfarth Shaw, Chicago, IL
SGH Martineau, London, England
Shook Hardy & Bacon, Kansas City, MO
Sigelman Law Corporation, Beverly Hills, CA
Snell & Wilmer, Phoenix, AZ
South Carolina Commission on Indigent Defense, Columbia, SC
Stanley Law Offices, Syracuse, NY
Stennett & Casino, San Diego, CA
Vaka Law Group, Tampa, FL
Webb Bordson Law Group, San Diego, CA
David K. Wilson & Associates, Sherman, TX
Whitfield & Eddy, Des Moines, IA
Winters & Associates, San Diego, CA

Vera F. Dolan

Curriculum Vitae, continued

Consulting Projects – Underwriting

- Life Underwriting Requirements Research, 2004 to Present Providing methodologies, analysis and write-up of insurance testing laboratory data to initiate new products and services. Conducting cohort mortality studies to improve life underwriting risk assessment.
- Life Policy and Procedures Manual, 2014 Revised and updated life insurance policy and procedures manual based on current underwriting and business operations.
- Health Medical Underwriting Manual, 2010 Adapted medical underwriting manual for supplemental health insurance products.
- Structured Settlement Underwriting Manual, 2008 Developed underwriting manual for structured settlements based on current processes.
- Life Claims Audit, 2007 Performed random selection of cases and designed case data extraction sheet for large life insurance claims study.
- Critical Illness and Disability Income Training, 2006 Prepared and presented training to life underwriters in critical illness and disability income underwriting.
- Underwriting Manual Research and Writing, 2006 Adapted traditional life underwriting manual for simplified life, disability and waiver of premium products.
- Life Settlement Experience Analysis, 2006 Analysis of life settlement mortality to determine predictive factors.
- Life Underwriting Research, 2001 to 2003 Constructed life tables from medical literature to validate life underwriting guidelines. Produced quantitative and qualitative life underwriting manual guidance.
- Life Settlement Underwriting Research, 1998 to 2004 Provided model and design of automated life expectancy calculation system, data collection instruments, evaluation scoring and impairment risk factor weights.
- Insurance Services Product Development, 1997 to 1998 Provided analysis of disease mortality, incidence and prevalence to develop new insurance services product.
- Pension Underwriting Research, 1994 Provided biostatistical research basis to a multinational consortium for a new type of impaired risk European pension product.

Consulting Projects - Business Development and Technology

- Simplified Products Survey and Report, 2005 Conducted survey of top-selling simplified products for underwriting and business process lessons learned.
- New Business Process Review and Optimization, 2004 to 2005 Examined current life new business processes to identify opportunities for decreasing redundancies, handoffs, and inefficiencies.
- Underwriting Decision Software Development, 2004 to 2005 Product and market development of life underwriting software that uses advanced logic engine
- Freelance Writing and Editing, 2004 Editing and writing summaries of medical articles, medical conferences, and insurance topics for physicians and consumers.
- Underwriting Operations Annual Report, 2004 Assisted in editing, writing and analysis of metrics presented in life underwriting operations report for 2003.
- Business Process Improvement, 2003 Interviewed underwriting and business support staff to prepare future improvement in life insurance business process workflow.

Vera F. Dolan

Curriculum Vitae, continued

Consulting Projects - Banking

- Enterprise Technology Plan, 2000 Collaborated on design of three-year technology plan for a Federal bank.
- Financial Services Experience Analysis and Strategy, 1995 to 1998 Provided statistical analysis and models to select business and consumer customers for acquisition and retention programs. Estimated bank account life expectancies using actuarial life table methods.
- Human Resources Automation Plan, 1993 Collaborated in development of plan and prototype for automated human resources management.

Certificate of Appreciation for 30 Years of Contribution, *On The Risk - Journal of the Academy of Life Underwriting*, May 4, 2016

Associate Editor, *On The Risk - Journal of the Academy of Life Underwriting*, 2004-Present

Contributing Editor, *On The Risk - Journal of the Academy of Life Underwriting*, 1994-1997

Kaiser Foundation Health Plan, Oakland, California

Medical Economics and Statistics, 1988 to 1989

Converted community-based pricing approach to experience-based rating for a \$2.5 billion premium enterprise. Conducted underwriting market study of 20,000 employers. Conducted analyses to determine competitive pricing for 2+ million member optical and pharmaceutical programs.

Transamerica Occidental Life Insurance Company, Los Angeles, California

New Business Underwriting Research, 1985 to 1988

Provided analysis of company data and medical literature to support management and underwriting decisions. Developed original methods for actuarial analyses now used for automated systems underwriting \$1.5 billion in annual business.

Lincoln National Reinsurance, Ft. Wayne, Indiana

Underwriting Research, 1982 to 1985

Provided analysis of company data and medical literature to support management and underwriting decisions.

University of North Carolina, Chapel Hill, North Carolina

Department of Biostatistics, 1981 to 1982

Performed statistical analyses for multinational clinical trials.

National Institute of Occupational Safety and Health, Cincinnati, Ohio

Industrywide Studies Branch, Biometry Section, Summer 1980

Performed proportionate mortality analysis of death certificate data for evidence of excess brain tumors among petrochemical workers. Performed analysis of medical records for evidence of excess birth anomalies among railroad workers exposed to dioxin.

Vera F. Dolan

Curriculum Vitae, continued

PUBLICATIONS - INSURANCE

"Advantages of a Life Expectancy Using Life Insurance Underwriting and Life Settlement Methods in the Legal Setting" VFD Consulting, Inc.

"Highlights of the 2016 CLIMOA Annual Scientific Meeting" On The Risk - Journal of the Academy of Life Underwriting, Vol. 32, No. 4, 2016

"Hemoglobin Screening Independently Predicts All-Cause Mortality" J. Insurance Medicine, Vol. 45, No. 2, 2015, with Michael Fulks and Robert L. Stout

"Adjusting Measured Creatinine for Low Serum Glucose to Improve Mortality Prediction" On The Risk - Journal of the Academy of Life Underwriting, Vol. 31, No. 3, 2015, with Michael Fulks and Robert L. Stout

"Changing the 'Normal Range' for Blood Pressure from 140/90 to 130/any Improves Risk Assessment" J. Insurance Medicine, Vol. 45, No. 1, 2015, with Michael Fulks and Robert L. Stout

"2014 CRL Blood Pressure Study of Life Insurance Applicants" J. Insurance Medicine, Vol. 45, No. 1, 2015, with Michael Fulks and Robert L. Stout

"Which eGFR Calculation Offers the Best Mortality Prediction for Insurance?" On The Risk - Journal of the Academy of Life Underwriting, Vol. 31, No. 2, 2015, with Michael Fulks and Robert L. Stout

"Using Urine Protein Creatinine Ratio Alone or Reflexing to Urine Albumin in the Applicant with HbA1c Elevation" On The Risk - Journal of the Academy of Life Underwriting, Vol. 31, No. 1, 2015, with Michael Fulks and Robert L. Stout

"Basic Laboratory Testing" In: Basic Life Insurance Underwriting, ALU 101 Textbook, Sixth Ed. Academy of Life Underwriting, 2014, with Michael Fulks and Robert L. Stout

"Evaluating the Risk of Renal Disease Using Urine Proteinuria or Urine Albuminuria in the Applicant with HbA1c Elevation" On The Risk - Journal of the Academy of Life Underwriting, Vol. 30, No. 4, 2014, with Michael Fulks and Robert L. Stout

"Advantages of a Life Expectancy Using Life Insurance Underwriting and Life Settlement Methods in the Legal Setting" Defense Research Institute Life, Health and Disability Newsletter, Vol. 25, Issue 2, June 26, 2014

"Serum Globulin Predicts All-Cause Mortality for Life Insurance Applicants" J. Insurance Medicine, Vol. 44, No. 2, 2014, with Michael Fulks and Robert L. Stout

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"Juvenile Life Without Parole Sentencing and Resentencing Case Update" CLE presentation (4.5 hours, course no. 168516), University of South Carolina School of Law, Columbia, South Carolina, December 16, 2016

"Isolated Hematuria: What Is the Risk?" Northern California Life Insurance Association, Walnut Creek, California, May 10, 2012

"Positive Cocaine Tests and Mortality" Northern California Life Insurance Association, Berkeley, California, September 17, 2009

Vera F. Dolan

Curriculum Vitae, continued

PRESENTATIONS, continued

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“Research Results: Potential Impact of a Pandemic on the U.S. Health Insurance System” Society of Actuaries Health Spring Meeting, Los Angeles, California, May 28, 2008, with Jim Toole and Jim Walbridge

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“Underwriting Simplified Issue Life Insurance Products” Group Underwriting Association of America, San Diego, California, October 31, 2006, with Ernie Testa

“The Life Settlements Market” Society of Actuaries Annual Meeting, Chicago, Illinois, October 18, 2006, with Tony Duscio and Jay Vadiveloo

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Vera F. Dolan

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Last update March 31, 2017

Exhibit 2

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for all races; N=64,204

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	All races Dead	Total	Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
15	3	0	3	0.000000		0.000439	
16	90	0	90	0.000000		0.000552	
17	831	0	831	0.000000		0.000675	
18	2,272	6	2,278	0.002634	0.002701	0.000807	3.3
19	4,322	12	4,334	0.002769	0.003011	0.000942	3.2
20	6,585	24	6,609	0.003631	0.003233	0.001085	3.0
21	8,457	28	8,485	0.003300	0.003812	0.001216	3.1
22	9,725	44	9,769	0.004504	0.004359	0.001310	3.3
23	10,374	55	10,429	0.005274	0.005486	0.001353	4.1
24	10,409	70	10,479	0.006680	0.006254	0.001358	4.6
25	10,065	69	10,134	0.006809	0.006646	0.001351	4.9
26	9,552	62	9,614	0.006449	0.007431	0.001349	5.5
27	8,993	82	9,075	0.009036	0.007899	0.001353	5.8
28	8,454	70	8,524	0.008212	0.008922	0.001371	6.5
29	8,014	77	8,091	0.009517	0.009048	0.001399	6.5
30	7,681	73	7,754	0.009414	0.009188	0.001432	6.4
31	7,465	65	7,530	0.008632	0.010131	0.001464	6.9
32	7,199	90	7,289	0.012347	0.010670	0.001496	7.1
33	6,904	77	6,981	0.011030	0.011365	0.001528	7.4
34	6,738	73	6,811	0.010718	0.010614	0.001563	6.8
35	6,473	66	6,539	0.010093	0.010348	0.001613	6.4
36	6,288	65	6,353	0.010231	0.011223	0.001682	6.7
37	5,989	81	6,070	0.013344	0.012599	0.001764	7.1
38	5,823	84	5,907	0.014220	0.014226	0.001857	7.7
39	5,670	87	5,757	0.015112	0.015292	0.001964	7.8
40	5,529	93	5,622	0.016542	0.016436	0.002083	7.9
41	5,286	95	5,381	0.017655	0.017101	0.002227	7.7
42	5,114	89	5,203	0.017106	0.017659	0.002414	7.3
43	5,012	93	5,105	0.018217	0.018047	0.002653	6.8
44	4,901	94	4,995	0.018819	0.019173	0.002939	6.5
45	4,734	99	4,833	0.020484	0.021675	0.003243	6.7
46	4,545	120	4,665	0.025723	0.025268	0.003563	7.1
47	4,164	127	4,291	0.029597	0.027663	0.003922	7.1
48	3,971	113	4,084	0.027669	0.030107	0.004320	7.0
49	3,715	127	3,842	0.033056	0.032962	0.004749	6.9
50	3,453	137	3,590	0.038162	0.038314	0.005193	7.4
51	3,193	146	3,339	0.043726	0.041608	0.005647	7.4
52	2,920	131	3,051	0.042937	0.044710	0.006122	7.3
53	2,669	133	2,802	0.047466	0.045803	0.006630	6.9
54	2,372	117	2,489	0.047007	0.050491	0.007181	7.0
55	2,068	125	2,193	0.057000	0.053517	0.007779	6.9
56	1,852	111	1,963	0.056546	0.055167	0.008415	6.6
57	1,624	89	1,713	0.051956	0.057715	0.009074	6.4
58	1,418	98	1,516	0.064644	0.061413	0.009727	6.3
59	1,213	88	1,301	0.067640	0.069713	0.010371	6.7
60	1,057	88	1,145	0.076856	0.078531	0.011034	7.1
61	878	88	966	0.091097	0.082366	0.011738	7.0
62	733	63	796	0.079146	0.086399	0.012489	6.9
63	635	62	697	0.088953	0.083857	0.013335	6.3
64	549	50	599	0.083472	0.085654	0.014319	6.0
65	444	41	485	0.084536	0.087103	0.015482	5.6
66	379	39	418	0.093301	0.096722	0.016824	5.7
67	324	41	365	0.112329	0.097724	0.018330	5.3
68	271	26	297	0.087542	0.091657	0.019900	4.6
69	234	19	253	0.075099	0.089544	0.021539	4.2

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for all races; N=64,204

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	All races Dead	Total	Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
70	194	23	217	0.105991	0.095649	0.023396	4.1
71	152	20	172	0.116279	0.090170	0.025476	3.5
72	136	14	150	0.093333	0.096203	0.027794	3.5
73	125	8	133	0.060150	0.097922	0.030350	3.2
74	102	12	114	0.105263	0.091534	0.033204	2.8
75	85	11	96	0.114583	0.094742	0.036345	2.6
76	76	7	83	0.084337	0.109378	0.039788	2.7
77	57	7	64	0.109375	0.111855	0.043720	2.6
78	52	8	60	0.133333	0.114580	0.048335	2.4
79	45	6	51	0.117647	0.116462	0.053650	2.2
80	34	5	39	0.128205	0.125356	0.059565	2.1
81	29	3	32	0.093750		0.065848	
82	22	4	26	0.153846		0.072956	
83	20	1	21	0.047619		0.080741	
84	19	0	19	0.000000		0.089357	
85	17	1	18	0.055556		0.099650	
86	14	2	16	0.125000		0.110901	
87	13	1	14	0.071429		0.123146	
88	10	3	13	0.230769		0.136412	
89	13	0	13	0.000000		0.150710	
90	9	0	9	0.000000		0.166038	
91	8	0	8	0.000000		0.182374	
92	7	0	7	0.000000		0.199676	
93	10	0	10	0.000000		0.217880	
94	15	1	16	0.062500		0.236903	
95	2	0	2	0.000000		0.256636	
96	2	0	2	0.000000		0.276954	
97	2	0	2	0.000000		0.297713	
Total deaths		4,239					

Exhibit 3

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for blacks only; N=40,454

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	Black Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
15	2	0	2	0.000000		0.000655	
16	60	0	60	0.000000		0.000822	
17	543	0	543	0.000000		0.001004	
18	1,504	5	1,509	0.003313	0.003033	0.001206	2.5
19	2,898	8	2,906	0.002753	0.003351	0.001421	2.4
20	4,498	18	4,516	0.003986	0.003383	0.001654	2.0
21	5,847	20	5,867	0.003409	0.004059	0.001874	2.2
22	6,867	33	6,900	0.004783	0.004333	0.002041	2.1
23	7,453	36	7,489	0.004807	0.005139	0.002134	2.4
24	7,508	44	7,552	0.005826	0.005656	0.002168	2.6
25	7,216	46	7,262	0.006334	0.005943	0.002186	2.7
26	6,842	39	6,881	0.005668	0.006574	0.002212	3.0
27	6,426	50	6,476	0.007721	0.007412	0.002230	3.3
28	5,938	53	5,991	0.008847	0.008178	0.002245	3.6
29	5,604	45	5,649	0.007966	0.008357	0.002259	3.7
30	5,284	44	5,328	0.008258	0.007893	0.002267	3.5
31	5,059	38	5,097	0.007455	0.008957	0.002276	3.9
32	4,786	54	4,840	0.011157	0.009753	0.002300	4.2
33	4,554	49	4,603	0.010645	0.010648	0.002350	4.5
34	4,392	45	4,437	0.010142	0.010346	0.002426	4.3
35	4,152	43	4,195	0.010250	0.009901	0.002527	3.9
36	3,937	37	3,974	0.009311	0.010548	0.002646	4.0
37	3,679	45	3,724	0.012084	0.012161	0.002772	4.4
38	3,525	54	3,579	0.015088	0.013441	0.002896	4.6
39	3,452	46	3,498	0.013150	0.015186	0.003027	5.0
40	3,291	58	3,349	0.017319	0.015133	0.003179	4.8
41	3,101	47	3,148	0.014930	0.015972	0.003369	4.7
42	3,016	48	3,064	0.015666	0.015002	0.003607	4.2
43	2,941	43	2,984	0.014410	0.014833	0.003902	3.8
44	2,870	42	2,912	0.014423	0.015822	0.004251	3.7
45	2,739	52	2,791	0.018631	0.019842	0.004616	4.3
46	2,611	71	2,682	0.026473	0.024402	0.005016	4.9
47	2,421	70	2,491	0.028101	0.026482	0.005513	4.8
48	2,274	58	2,332	0.024871	0.026654	0.006129	4.3
49	2,127	59	2,186	0.026990	0.028625	0.006838	4.2
50	1,988	70	2,058	0.034014	0.032107	0.007586	4.2
51	1,830	67	1,897	0.035319	0.035336	0.008344	4.2
52	1,681	64	1,745	0.036676	0.038086	0.009145	4.2
53	1,541	68	1,609	0.042262	0.041294	0.010011	4.1
54	1,360	64	1,424	0.044944	0.046430	0.010959	4.2
55	1,183	65	1,248	0.052083	0.049429	0.011995	4.1
56	1,055	57	1,112	0.051259	0.050691	0.013107	3.9
57	937	48	985	0.048731	0.056749	0.014274	4.0
58	794	60	854	0.070258	0.061732	0.015455	4.0
59	677	48	725	0.066207	0.072218	0.016630	4.3
60	585	51	636	0.080189	0.082261	0.017888	4.6
61	466	52	518	0.100386	0.093277	0.019207	4.9
62	363	40	403	0.099256	0.093367	0.020451	4.6
63	320	28	348	0.080460	0.093350	0.021595	4.3
64	269	30	299	0.100334	0.089763	0.022717	4.0
65	206	20	226	0.088496	0.097257	0.023933	4.1
66	183	21	204	0.102941	0.107622	0.025369	4.2
67	152	23	175	0.131429	0.114021	0.027104	4.2
68	116	14	130	0.107692	0.117090	0.029089	4.0
69	95	12	107	0.112150	0.107763	0.031191	3.5

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for blacks only; N=40,454

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	Black Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
70	78	9	87	0.103448	0.115344	0.033429	3.5
71	60	9	69	0.130435	0.116942	0.035780	3.3
72	55	4	59	0.067797		0.038397	
73	48	3	51	0.058824		0.041254	
74	39	5	44	0.113636		0.044174	
75	30	5	35	0.142857		0.047704	
76	27	2	29	0.068966		0.051047	
77	18	3	21	0.142857		0.054624	
78	17	3	20	0.150000		0.059628	
79	15	2	17	0.117647		0.064976	
80	11	2	13	0.153846		0.070676	
81	9	1	10	0.100000		0.076651	
82	8	0	8	0.000000		0.085516	
83	7	0	7	0.000000		0.092664	
84	6	0	6	0.000000		0.100307	
85	5	0	5	0.000000		0.108460	
86	4	1	5	0.200000		0.117140	
87	5	0	5	0.000000		0.126357	
88	4	0	4	0.000000		0.136120	
89	3	0	3	0.000000		0.146432	
90	2	0	2	0.000000		0.157294	
91	3	0	3	0.000000		0.168701	
92	2	0	2	0.000000		0.180641	
93	3	0	3	0.000000		0.193099	
94	7	0	7	0.000000		0.206052	
95	1	0	1	0.000000		0.219470	
96	1	0	1	0.000000		0.233321	
97	1	0	1	0.000000		0.247561	
Total deaths		2,351					

Exhibit 4

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for whites only; N=22,081

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	White Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
15	1	0	1	0.000000		0.000414	
16	28	0	28	0.000000		0.000522	
17	268	0	268	0.000000		0.000641	
18	717	1	718	0.001393		0.000773	
19	1,325	4	1,329	0.003010		0.000909	
20	1,944	6	1,950	0.003077	0.003181	0.001053	3.0
21	2,427	8	2,435	0.003285	0.003500	0.001185	3.0
22	2,647	11	2,658	0.004138	0.004806	0.001283	3.7
23	2,697	19	2,716	0.006996	0.006919	0.001333	5.2
24	2,676	26	2,702	0.009623	0.008440	0.001349	6.3
25	2,620	23	2,643	0.008702	0.009056	0.001354	6.7
26	2,466	22	2,488	0.008842	0.010391	0.001365	7.6
27	2,316	32	2,348	0.013629	0.009974	0.001379	7.2
28	2,265	17	2,282	0.007450	0.011864	0.001401	8.5
29	2,173	32	2,205	0.014512	0.011735	0.001432	8.2
30	2,161	29	2,190	0.013242	0.013335	0.001467	9.1
31	2,177	27	2,204	0.012250	0.013876	0.001502	9.2
32	2,195	36	2,231	0.016136	0.013753	0.001536	9.0
33	2,147	28	2,175	0.012874	0.013955	0.001570	8.9
34	2,150	28	2,178	0.012856	0.012136	0.001609	7.5
35	2,131	23	2,154	0.010678	0.011928	0.001665	7.2
36	2,177	27	2,204	0.012250	0.013112	0.001742	7.5
37	2,158	36	2,194	0.016408	0.014128	0.001829	7.7
38	2,156	30	2,186	0.013724	0.016339	0.001921	8.5
39	2,078	40	2,118	0.018886	0.016139	0.002023	8.0
40	2,117	34	2,151	0.015807	0.019133	0.002135	9.0
41	2,066	48	2,114	0.022706	0.019370	0.002273	8.5
42	2,001	40	2,041	0.019598	0.022267	0.002459	9.1
43	1,991	50	2,041	0.024498	0.023331	0.002703	8.6
44	1,956	52	2,008	0.025896	0.024755	0.002997	8.3
45	1,922	47	1,969	0.023870	0.025127	0.003309	7.6
46	1,864	49	1,913	0.025614	0.027223	0.003631	7.5
47	1,684	56	1,740	0.032184	0.030095	0.003984	7.6
48	1,638	55	1,693	0.032487	0.035454	0.004366	8.1
49	1,540	67	1,607	0.041693	0.039239	0.004768	8.2
50	1,428	65	1,493	0.043537	0.046941	0.005179	9.1
51	1,325	78	1,403	0.055595	0.050285	0.005596	9.0
52	1,210	66	1,276	0.051724	0.054307	0.006034	9.0
53	1,104	65	1,169	0.055603	0.052714	0.006508	8.1
54	990	53	1,043	0.050815	0.057024	0.007026	8.1
55	868	60	928	0.064655	0.060073	0.007591	7.9
56	780	54	834	0.064748	0.062302	0.008191	7.6
57	672	41	713	0.057504	0.060358	0.008812	6.8
58	608	38	646	0.058824	0.062585	0.009425	6.6
59	520	40	560	0.071429	0.068333	0.010028	6.8
60	458	37	495	0.074747	0.076123	0.010645	7.2
61	402	36	438	0.082192	0.072227	0.011305	6.4
62	362	23	385	0.059740	0.079569	0.012031	6.6
63	308	33	341	0.096774	0.074694	0.012880	5.8
64	276	20	296	0.067568	0.082340	0.013896	5.9
65	233	21	254	0.082677	0.085880	0.015110	5.7
66	191	18	209	0.086124	0.079940	0.016503	4.8
67	169	18	187	0.096257	0.074702	0.018045	4.1
68	153	11	164	0.067073	0.079705	0.019623	4.1
69	139	6	145	0.041379	0.083840	0.021262	3.9

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for whites only; N=22,081

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	White Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
70	116	14	130	0.107692	0.086566	0.023146	3.7
71	92	11	103	0.106796	0.085347	0.025278	3.4
72	81	10	91	0.109890	0.097071	0.027630	3.5
73	77	5	82	0.060976	0.095204	0.030219	3.2
74	63	7	70	0.100000	0.092364	0.033126	2.8
75	55	6	61	0.098361	0.088990	0.036255	2.5
76	49	5	54	0.092593	0.095477	0.039716	2.4
77	39	4	43	0.093023		0.043757	
78	35	5	40	0.125000		0.048405	
79	30	4	34	0.117647		0.053785	
80	23	3	26	0.115385		0.059839	
81	20	2	22	0.090909		0.066176	
82	14	4	18	0.222222		0.073348	
83	13	1	14	0.071429		0.081302	
84	13	0	13	0.000000		0.090236	
85	12	1	13	0.076923		0.100743	
86	10	1	11	0.090909		0.112235	
87	8	1	9	0.111111		0.124750	
88	6	3	9	0.333333		0.138311	
89	7	0	7	0.000000		0.152931	
90	6	0	6	0.000000		0.168603	
91	5	0	5	0.000000		0.185302	
92	5	0	5	0.000000		0.202980	
93	7	0	7	0.000000		0.221569	
94	8	1	9	0.111111		0.240976	
95	1	0	1	0.000000		0.261085	
96	1	0	1	0.000000		0.281762	
97	1	0	1	0.000000		0.302853	
Total deaths		1,874					

EXHIBIT 5

Table 2. Life table for males: United States, 2011Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table02.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0-1	0.006575	100,000	658	99,427	7,629,389	76.3
1-2	0.000445	99,342	44	99,320	7,529,961	75.8
2-3	0.000301	99,298	30	99,283	7,430,641	74.8
3-4	0.000240	99,268	24	99,256	7,331,358	73.9
4-5	0.000183	99,244	18	99,235	7,232,101	72.9
5-6	0.000169	99,226	17	99,218	7,132,866	71.9
6-7	0.000150	99,210	15	99,202	7,033,648	70.9
7-8	0.000134	99,195	13	99,188	6,934,446	69.9
8-9	0.000115	99,181	11	99,176	6,835,258	68.9
9-10	0.000097	99,170	10	99,165	6,736,082	67.9
10-11	0.000085	99,160	8	99,156	6,636,917	66.9
11-12	0.000092	99,152	9	99,147	6,537,761	65.9
12-13	0.000132	99,143	13	99,136	6,438,613	64.9
13-14	0.000213	99,130	21	99,119	6,339,477	64.0
14-15	0.000323	99,109	32	99,093	6,240,358	63.0
15-16	0.000439	99,077	43	99,055	6,141,265	62.0
16-17	0.000552	99,033	55	99,006	6,042,210	61.0
17-18	0.000675	98,979	67	98,945	5,943,204	60.0
18-19	0.000807	98,912	80	98,872	5,844,259	59.1
19-20	0.000942	98,832	93	98,785	5,745,387	58.1
20-21	0.001085	98,739	107	98,685	5,646,602	57.2
21-22	0.001216	98,632	120	98,572	5,547,917	56.2
22-23	0.001310	98,512	129	98,447	5,449,345	55.3
23-24	0.001353	98,383	133	98,316	5,350,898	54.4
24-25	0.001358	98,250	133	98,183	5,252,582	53.5
25-26	0.001351	98,116	133	98,050	5,154,399	52.5
26-27	0.001349	97,984	132	97,918	5,056,349	51.6
27-28	0.001353	97,852	132	97,785	4,958,431	50.7
28-29	0.001371	97,719	134	97,652	4,860,646	49.7
29-30	0.001399	97,585	137	97,517	4,762,994	48.8
30-31	0.001432	97,449	140	97,379	4,665,477	47.9
31-32	0.001464	97,309	143	97,238	4,568,098	46.9
32-33	0.001496	97,167	145	97,094	4,470,860	46.0
33-34	0.001528	97,021	148	96,947	4,373,766	45.1
34-35	0.001563	96,873	151	96,797	4,276,819	44.1
35-36	0.001613	96,722	156	96,643	4,180,022	43.2
36-37	0.001682	96,565	162	96,484	4,083,378	42.3
37-38	0.001764	96,403	170	96,318	3,986,894	41.4
38-39	0.001857	96,233	179	96,144	3,890,576	40.4
39-40	0.001964	96,054	189	95,960	3,794,432	39.5
40-41	0.002083	95,866	200	95,766	3,698,472	38.6
41-42	0.002227	95,666	213	95,560	3,602,706	37.7
42-43	0.002414	95,453	230	95,338	3,507,147	36.7
43-44	0.002653	95,223	253	95,096	3,411,809	35.8
44-45	0.002939	94,970	279	94,830	3,316,713	34.9
45-46	0.003243	94,691	307	94,537	3,221,882	34.0
46-47	0.003563	94,384	336	94,216	3,127,345	33.1
47-48	0.003922	94,047	369	93,863	3,033,129	32.3
48-49	0.004320	93,679	405	93,476	2,939,266	31.4
49-50	0.004749	93,274	443	93,052	2,845,790	30.5
50-51	0.005193	92,831	482	92,590	2,752,738	29.7
51-52	0.005647	92,349	522	92,088	2,660,148	28.8
52-53	0.006122	91,827	562	91,546	2,568,060	28.0
53-54	0.006630	91,265	605	90,963	2,476,514	27.1
54-55	0.007181	90,660	651	90,335	2,385,551	26.3
55-56	0.007779	90,009	700	89,659	2,295,216	25.5
56-57	0.008415	89,309	752	88,933	2,205,557	24.7
57-58	0.009074	88,557	804	88,156	2,116,624	23.9
58-59	0.009727	87,754	854	87,327	2,028,469	23.1
59-60	0.010371	86,900	901	86,450	1,941,141	22.3
60-61	0.011034	85,999	949	85,525	1,854,692	21.6

See footnote at end of table.

Table 2. Life table for males: United States, 2011—Con.Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table02.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
61–62	0.011738	85,050	998	84,551	1,769,167	20.8
62–63	0.012489	84,052	1,050	83,527	1,684,616	20.0
63–64	0.013335	83,002	1,107	82,449	1,601,089	19.3
64–65	0.014319	81,895	1,173	81,309	1,518,641	18.5
65–66	0.015482	80,723	1,250	80,098	1,437,332	17.8
66–67	0.016824	79,473	1,337	78,804	1,357,234	17.1
67–68	0.018330	78,136	1,432	77,420	1,278,430	16.4
68–69	0.019900	76,703	1,526	75,940	1,201,010	15.7
69–70	0.021539	75,177	1,619	74,367	1,125,070	15.0
70–71	0.023396	73,558	1,721	72,697	1,050,702	14.3
71–72	0.025476	71,837	1,830	70,922	978,005	13.6
72–73	0.027794	70,007	1,946	69,034	907,083	13.0
73–74	0.030350	68,061	2,066	67,028	838,049	12.3
74–75	0.033204	65,995	2,191	64,900	771,021	11.7
75–76	0.036345	63,804	2,319	62,645	706,121	11.1
76–77	0.039788	61,485	2,446	60,262	643,477	10.5
77–78	0.043720	59,039	2,581	57,748	583,215	9.9
78–79	0.048335	56,458	2,729	55,093	525,467	9.3
79–80	0.053650	53,729	2,883	52,287	470,374	8.8
80–81	0.059565	50,846	3,029	49,332	418,086	8.2
81–82	0.065848	47,817	3,149	46,243	368,754	7.7
82–83	0.072956	44,669	3,259	43,039	322,511	7.2
83–84	0.080741	41,410	3,343	39,738	279,472	6.7
84–85	0.089357	38,066	3,402	36,366	239,734	6.3
85–86	0.099650	34,665	3,454	32,938	203,368	5.9
86–87	0.110901	31,211	3,461	29,480	170,430	5.5
87–88	0.123146	27,749	3,417	26,041	140,950	5.1
88–89	0.136412	24,332	3,319	22,672	114,910	4.7
89–90	0.150710	21,013	3,167	19,429	92,237	4.4
90–91	0.166038	17,846	2,963	16,364	72,808	4.1
91–92	0.182374	14,883	2,714	13,526	56,443	3.8
92–93	0.199676	12,169	2,430	10,954	42,918	3.5
93–94	0.217880	9,739	2,122	8,678	31,964	3.3
94–95	0.236903	7,617	1,804	6,715	23,286	3.1
95–96	0.256636	5,812	1,492	5,067	16,571	2.9
96–97	0.276954	4,321	1,197	3,722	11,505	2.7
97–98	0.297713	3,124	930	2,659	7,782	2.5
98–99	0.318755	2,194	699	1,844	5,123	2.3
99–100	0.339914	1,495	508	1,241	3,279	2.2
100 and over	1.000000	987	987	2,038	2,038	2.1

SOURCE: CDC/NCHS, National Vital Statistics System.

EXHIBIT 6

Table 17. Life table for non-Hispanic black males: United States, 2011Spreadsheet version available from: http://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table17.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0-1	0.012502	100,000	1,250	98,927	7,173,820	71.7
1-2	0.000674	98,750	67	98,716	7,074,893	71.6
2-3	0.000494	98,683	49	98,659	6,976,177	70.7
3-4	0.000356	98,634	35	98,617	6,877,518	69.7
4-5	0.000316	98,599	31	98,584	6,778,901	68.8
5-6	0.000258	98,568	25	98,555	6,680,317	67.8
6-7	0.000224	98,543	22	98,532	6,581,762	66.8
7-8	0.000193	98,521	19	98,511	6,483,230	65.8
8-9	0.000161	98,502	16	98,494	6,384,719	64.8
9-10	0.000128	98,486	13	98,480	6,286,225	63.8
10-11	0.000107	98,473	11	98,468	6,187,746	62.8
11-12	0.000118	98,463	12	98,457	6,089,278	61.8
12-13	0.000183	98,451	18	98,442	5,990,821	60.9
13-14	0.000310	98,433	31	98,418	5,892,379	59.9
14-15	0.000481	98,402	47	98,379	5,793,961	58.9
15-16	0.000655	98,355	64	98,323	5,695,583	57.9
16-17	0.000822	98,291	81	98,250	5,597,260	56.9
17-18	0.001004	98,210	99	98,160	5,499,010	56.0
18-19	0.001206	98,111	118	98,052	5,400,849	55.0
19-20	0.001421	97,993	139	97,923	5,302,797	54.1
20-21	0.001654	97,854	162	97,773	5,204,874	53.2
21-22	0.001874	97,692	183	97,600	5,107,101	52.3
22-23	0.002041	97,509	199	97,409	5,009,501	51.4
23-24	0.002134	97,310	208	97,206	4,912,092	50.5
24-25	0.002168	97,102	211	96,997	4,814,886	49.6
25-26	0.002186	96,891	212	96,786	4,717,890	48.7
26-27	0.002212	96,680	214	96,573	4,621,104	47.8
27-28	0.002230	96,466	215	96,358	4,524,531	46.9
28-29	0.002245	96,251	216	96,143	4,428,173	46.0
29-30	0.002259	96,035	217	95,926	4,332,030	45.1
30-31	0.002267	95,818	217	95,709	4,236,104	44.2
31-32	0.002276	95,600	218	95,492	4,140,395	43.3
32-33	0.002300	95,383	219	95,273	4,044,904	42.4
33-34	0.002350	95,163	224	95,052	3,949,631	41.5
34-35	0.002426	94,940	230	94,825	3,854,579	40.6
35-36	0.002527	94,709	239	94,590	3,759,755	39.7
36-37	0.002646	94,470	250	94,345	3,665,165	38.8
37-38	0.002772	94,220	261	94,089	3,570,820	37.9
38-39	0.002896	93,959	272	93,823	3,476,730	37.0
39-40	0.003027	93,687	284	93,545	3,382,908	36.1
40-41	0.003179	93,403	297	93,255	3,289,363	35.2
41-42	0.003369	93,106	314	92,949	3,196,108	34.3
42-43	0.003607	92,793	335	92,625	3,103,159	33.4
43-44	0.003902	92,458	361	92,277	3,010,533	32.6
44-45	0.004251	92,097	392	91,901	2,918,256	31.7
45-46	0.004616	91,706	423	91,494	2,826,355	30.8
46-47	0.005016	91,282	458	91,053	2,734,861	30.0
47-48	0.005513	90,824	501	90,574	2,643,807	29.1
48-49	0.006129	90,324	554	90,047	2,553,233	28.3
49-50	0.006838	89,770	614	89,463	2,463,186	27.4
50-51	0.007586	89,156	676	88,818	2,373,723	26.6
51-52	0.008344	88,480	738	88,111	2,284,905	25.8
52-53	0.009145	87,742	802	87,340	2,196,794	25.0
53-54	0.010011	86,939	870	86,504	2,109,454	24.3
54-55	0.010959	86,069	943	85,597	2,022,950	23.5
55-56	0.011995	85,126	1,021	84,615	1,937,352	22.8
56-57	0.013107	84,105	1,102	83,553	1,852,737	22.0
57-58	0.014274	83,002	1,185	82,410	1,769,184	21.3
58-59	0.015455	81,817	1,264	81,185	1,686,774	20.6
59-60	0.016630	80,553	1,340	79,883	1,605,589	19.9
60-61	0.017888	79,213	1,417	78,505	1,525,705	19.3

See footnotes at end of table.

Table 17. Life table for non-Hispanic black males: United States, 2011—Con.Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table17.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
61–62	0.019207	77,796	1,494	77,049	1,447,201	18.6
62–63	0.020451	76,302	1,560	75,522	1,370,151	18.0
63–64	0.021595	74,742	1,614	73,935	1,294,629	17.3
64–65	0.022717	73,128	1,661	72,297	1,220,695	16.7
65–66	0.023933	71,466	1,710	70,611	1,148,398	16.1
66–67	0.025369	69,756	1,770	68,871	1,077,787	15.5
67–68	0.027104	67,986	1,843	67,065	1,008,915	14.8
68–69	0.029089	66,144	1,924	65,182	941,851	14.2
69–70	0.031191	64,220	2,003	63,218	876,669	13.7
70–71	0.033429	62,216	2,080	61,177	813,451	13.1
71–72	0.035780	60,137	2,152	59,061	752,274	12.5
72–73	0.038397	57,985	2,226	56,872	693,214	12.0
73–74	0.041254	55,759	2,300	54,608	636,342	11.4
74–75	0.044174	53,458	2,361	52,278	581,733	10.9
75–76	0.047704	51,097	2,438	49,878	529,456	10.4
76–77	0.051047	48,659	2,484	47,417	479,578	9.9
77–78	0.054624	46,175	2,522	44,914	432,161	9.4
78–79	0.059628	43,653	2,603	42,352	387,246	8.9
79–80	0.064976	41,050	2,667	39,716	344,895	8.4
80–81	0.070676	38,383	2,713	37,026	305,178	8.0
81–82	0.076651	35,670	2,734	34,303	268,152	7.5
82–83	0.085516	32,936	2,817	31,528	233,849	7.1
83–84	0.092664	30,119	2,791	28,724	202,321	6.7
84–85	0.100307	27,328	2,741	25,958	173,597	6.4
85–86	0.108460	24,587	2,667	23,254	147,639	6.0
86–87	0.117140	21,920	2,568	20,637	124,386	5.7
87–88	0.126357	19,353	2,445	18,130	103,749	5.4
88–89	0.136120	16,907	2,301	15,757	85,619	5.1
89–90	0.146432	14,606	2,139	13,537	69,862	4.8
90–91	0.157294	12,467	1,961	11,487	56,326	4.5
91–92	0.168701	10,506	1,772	9,620	44,839	4.3
92–93	0.180641	8,734	1,578	7,945	35,219	4.0
93–94	0.193099	7,156	1,382	6,465	27,274	3.8
94–95	0.206052	5,774	1,190	5,179	20,809	3.6
95–96	0.219470	4,584	1,006	4,081	15,630	3.4
96–97	0.233321	3,578	835	3,161	11,548	3.2
97–98	0.247561	2,743	679	2,404	8,388	3.1
98–99	0.262144	2,064	541	1,794	5,984	2.9
99–100	0.277019	1,523	422	1,312	4,190	2.8
100 and over	1.000000	1,101	1,101	2,878	2,878	2.6

NOTE: This life table is based on death rates that have been adjusted for race and ethnicity misclassification on death certificates.
SOURCE: CDC/NCHS, National Vital Statistics System.

EXHIBIT 7

Table 14. Life table for non-Hispanic white males: United States, 2011Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table14.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0-1	0.005524	100,000	552	99,517	7,643,091	76.4
1-2	0.000413	99,448	41	99,427	7,543,575	75.9
2-3	0.000273	99,407	27	99,393	7,444,148	74.9
3-4	0.000229	99,379	23	99,368	7,344,755	73.9
4-5	0.000156	99,357	15	99,349	7,245,387	72.9
5-6	0.000160	99,341	16	99,333	7,146,038	71.9
6-7	0.000146	99,325	14	99,318	7,046,705	70.9
7-8	0.000132	99,311	13	99,304	6,947,387	70.0
8-9	0.000114	99,298	11	99,292	6,848,082	69.0
9-10	0.000095	99,286	9	99,282	6,748,790	68.0
10-11	0.000082	99,277	8	99,273	6,649,509	67.0
11-12	0.000088	99,269	9	99,264	6,550,236	66.0
12-13	0.000125	99,260	12	99,254	6,450,972	65.0
13-14	0.000201	99,248	20	99,238	6,351,718	64.0
14-15	0.000305	99,228	30	99,213	6,252,480	63.0
15-16	0.000414	99,197	41	99,177	6,153,268	62.0
16-17	0.000522	99,156	52	99,130	6,054,091	61.1
17-18	0.000641	99,105	64	99,073	5,954,960	60.1
18-19	0.000773	99,041	77	99,003	5,855,888	59.1
19-20	0.000909	98,964	90	98,920	5,756,885	58.2
20-21	0.001053	98,875	104	98,822	5,657,965	57.2
21-22	0.001185	98,770	117	98,712	5,559,143	56.3
22-23	0.001283	98,653	127	98,590	5,460,431	55.3
23-24	0.001333	98,527	131	98,461	5,361,841	54.4
24-25	0.001349	98,395	133	98,329	5,263,380	53.5
25-26	0.001354	98,263	133	98,196	5,165,051	52.6
26-27	0.001365	98,130	134	98,063	5,066,855	51.6
27-28	0.001379	97,996	135	97,928	4,968,792	50.7
28-29	0.001401	97,860	137	97,792	4,870,864	49.8
29-30	0.001432	97,723	140	97,653	4,773,072	48.8
30-31	0.001467	97,583	143	97,512	4,675,419	47.9
31-32	0.001502	97,440	146	97,367	4,577,907	47.0
32-33	0.001536	97,294	149	97,219	4,480,540	46.1
33-34	0.001570	97,145	153	97,068	4,383,321	45.1
34-35	0.001609	96,992	156	96,914	4,286,252	44.2
35-36	0.001665	96,836	161	96,755	4,189,338	43.3
36-37	0.001742	96,675	168	96,591	4,092,583	42.3
37-38	0.001829	96,506	177	96,418	3,995,992	41.4
38-39	0.001921	96,330	185	96,237	3,899,574	40.5
39-40	0.002023	96,145	195	96,047	3,803,337	39.6
40-41	0.002135	95,950	205	95,848	3,707,290	38.6
41-42	0.002273	95,745	218	95,637	3,611,442	37.7
42-43	0.002459	95,528	235	95,410	3,515,805	36.8
43-44	0.002703	95,293	258	95,164	3,420,395	35.9
44-45	0.002997	95,035	285	94,893	3,325,231	35.0
45-46	0.003309	94,750	313	94,594	3,230,338	34.1
46-47	0.003631	94,437	343	94,266	3,135,744	33.2
47-48	0.003984	94,094	375	93,907	3,041,479	32.3
48-49	0.004366	93,719	409	93,515	2,947,572	31.5
49-50	0.004768	93,310	445	93,088	2,854,058	30.6
50-51	0.005179	92,865	481	92,625	2,760,970	29.7
51-52	0.005596	92,384	517	92,126	2,668,345	28.9
52-53	0.006034	91,867	554	91,590	2,576,220	28.0
53-54	0.006508	91,313	594	91,016	2,484,630	27.2
54-55	0.007026	90,719	637	90,400	2,393,614	26.4
55-56	0.007591	90,081	684	89,739	2,303,214	25.6
56-57	0.008191	89,397	732	89,031	2,213,475	24.8
57-58	0.008812	88,665	781	88,274	2,124,444	24.0
58-59	0.009425	87,884	828	87,470	2,036,169	23.2
59-60	0.010028	87,056	873	86,619	1,948,700	22.4
60-61	0.010645	86,183	917	85,724	1,862,081	21.6

See footnotes at end of table.

Table 14. Life table for non-Hispanic white males: United States, 2011—Con.Spreadsheet version available from: http://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table14.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
61–62	0.011305	85,265	964	84,783	1,776,357	20.8
62–63	0.012031	84,301	1,014	83,794	1,691,574	20.1
63–64	0.012880	83,287	1,073	82,751	1,607,780	19.3
64–65	0.013896	82,214	1,142	81,643	1,525,029	18.5
65–66	0.015110	81,072	1,225	80,459	1,443,386	17.8
66–67	0.016503	79,847	1,318	79,188	1,362,927	17.1
67–68	0.018045	78,529	1,417	77,821	1,283,739	16.3
68–69	0.019623	77,112	1,513	76,355	1,205,919	15.6
69–70	0.021262	75,599	1,607	74,795	1,129,563	14.9
70–71	0.023146	73,991	1,713	73,135	1,054,768	14.3
71–72	0.025278	72,279	1,827	71,365	981,633	13.6
72–73	0.027630	70,452	1,947	69,478	910,268	12.9
73–74	0.030219	68,505	2,070	67,470	840,789	12.3
74–75	0.033126	66,435	2,201	65,335	773,319	11.6
75–76	0.036255	64,234	2,329	63,070	707,985	11.0
76–77	0.039716	61,905	2,459	60,676	644,915	10.4
77–78	0.043757	59,447	2,601	58,146	584,239	9.8
78–79	0.048405	56,845	2,752	55,470	526,093	9.3
79–80	0.053785	54,094	2,909	52,639	470,623	8.7
80–81	0.059839	51,184	3,063	49,653	417,984	8.2
81–82	0.066176	48,122	3,184	46,529	368,331	7.7
82–83	0.073348	44,937	3,296	43,289	321,802	7.2
83–84	0.081302	41,641	3,385	39,948	278,513	6.7
84–85	0.090236	38,256	3,452	36,530	238,565	6.2
85–86	0.100743	34,804	3,506	33,050	202,035	5.8
86–87	0.112235	31,297	3,513	29,541	168,985	5.4
87–88	0.124750	27,785	3,466	26,052	139,444	5.0
88–89	0.138311	24,319	3,364	22,637	113,392	4.7
89–90	0.152931	20,955	3,205	19,353	90,755	4.3
90–91	0.168603	17,750	2,993	16,254	71,402	4.0
91–92	0.185302	14,758	2,735	13,390	55,149	3.7
92–93	0.202980	12,023	2,440	10,803	41,758	3.5
93–94	0.221569	9,583	2,123	8,521	30,955	3.2
94–95	0.240976	7,459	1,798	6,561	22,435	3.0
95–96	0.261085	5,662	1,478	4,923	15,874	2.8
96–97	0.281762	4,184	1,179	3,594	10,951	2.6
97–98	0.302853	3,005	910	2,550	7,357	2.4
98–99	0.324194	2,095	679	1,755	4,807	2.3
99–100	0.345609	1,416	489	1,171	3,052	2.2
100 and over	1.000000	926	926	1,881	1,881	2.0

NOTE: This life table is based on death rates that have been adjusted for race and ethnicity misclassification on death certificates.
SOURCE: CDC/NCHS, National Vital Statistics System.

EXHIBIT 8

Appendix A. 2011 U.S. General Population Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
0-1	0.006575	1.0	0.0065750	100,000	658	99,427	5,474,009	54.7
1-2	0.000445	1.0	0.0004450	99,342	44	99,320	5,374,582	54.1
2-3	0.000301	1.0	0.0003010	99,298	30	99,283	5,275,262	53.1
3-4	0.000240	1.0	0.0002400	99,268	24	99,256	5,175,979	52.1
4-5	0.000183	1.0	0.0001830	99,244	18	99,235	5,076,723	51.2
5-6	0.000169	1.0	0.0001690	99,226	17	99,218	4,977,488	50.2
6-7	0.000150	1.0	0.0001500	99,209	15	99,202	4,878,271	49.2
7-8	0.000134	1.0	0.0001340	99,194	13	99,188	4,779,069	48.2
8-9	0.000115	1.0	0.0001150	99,181	11	99,176	4,679,882	47.2
9-10	0.000097	1.0	0.0000970	99,170	10	99,165	4,580,706	46.2
10-11	0.000085	1.0	0.0000850	99,160	8	99,156	4,481,541	45.2
11-12	0.000092	1.0	0.0000920	99,152	9	99,148	4,382,385	44.2
12-13	0.000132	1.0	0.0001320	99,143	13	99,137	4,283,238	43.2
13-14	0.000213	1.0	0.0002130	99,130	21	99,120	4,184,101	42.2
14-15	0.000323	1.0	0.0003230	99,109	32	99,093	4,084,982	41.2
15-16	0.000439	1.0	0.0004390	99,077	43	99,056	3,985,889	40.2
16-17	0.000552	1.0	0.0005520	99,034	55	99,007	3,886,833	39.2
17-18	0.000675	1.0	0.0006750	98,979	67	98,946	3,787,827	38.3
18-19	0.000807	3.3	0.0027013	98,912	267	98,779	3,688,881	37.3
19-20	0.000942	3.2	0.0030114	98,645	297	98,497	3,590,103	36.4
20-21	0.001085	3.0	0.0032334	98,348	318	98,189	3,491,606	35.5
21-22	0.001216	3.1	0.0038118	98,030	374	97,843	3,393,417	34.6
22-23	0.001310	3.3	0.0043592	97,656	426	97,443	3,295,574	33.7
23-24	0.001353	4.1	0.0054859	97,230	533	96,964	3,198,131	32.9
24-25	0.001358	4.6	0.0062542	96,697	605	96,395	3,101,168	32.1
25-26	0.001351	4.9	0.0066459	96,092	639	95,773	3,004,773	31.3

Appendix A. 2011 U.S. General Population Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
26-27	0.001349	5.5	0.0074312	95,453	709	95,099	2,909,001	30.5
27-28	0.001353	5.8	0.0078989	94,744	748	94,370	2,813,902	29.7
28-29	0.001371	6.5	0.0089216	93,996	839	93,577	2,719,532	28.9
29-30	0.001399	6.5	0.0090478	93,157	843	92,736	2,625,956	28.2
30-31	0.001432	6.4	0.0091878	92,314	848	91,890	2,533,220	27.4
31-32	0.001464	6.9	0.0101313	91,466	927	91,003	2,441,330	26.7
32-33	0.001496	7.1	0.0106698	90,539	966	90,056	2,350,328	26.0
33-34	0.001528	7.4	0.0113651	89,573	1,018	89,064	2,260,272	25.2
34-35	0.001563	6.8	0.0106137	88,555	940	88,085	2,171,208	24.5
35-36	0.001613	6.4	0.0103475	87,615	907	87,162	2,083,123	23.8
36-37	0.001682	6.7	0.0112230	86,708	973	86,222	1,995,961	23.0
37-38	0.001764	7.1	0.0125987	85,735	1,080	85,195	1,909,740	22.3
38-39	0.001857	7.7	0.0142256	84,655	1,204	84,053	1,824,545	21.6
39-40	0.001964	7.8	0.0152915	83,451	1,276	82,813	1,740,492	20.9
40-41	0.002083	7.9	0.0164363	82,175	1,351	81,500	1,657,679	20.2
41-42	0.002227	7.7	0.0171008	80,824	1,382	80,133	1,576,179	19.5
42-43	0.002414	7.3	0.0176592	79,442	1,403	78,741	1,496,046	18.8
43-44	0.002653	6.8	0.0180473	78,039	1,408	77,335	1,417,306	18.2
44-45	0.002939	6.5	0.0191735	76,631	1,469	75,897	1,339,971	17.5
45-46	0.003243	6.7	0.0216755	75,162	1,629	74,348	1,264,074	16.8
46-47	0.003563	7.1	0.0252682	73,533	1,858	72,604	1,189,727	16.2
47-48	0.003922	7.1	0.0276631	71,675	1,983	70,684	1,117,123	15.6
48-49	0.004320	7.0	0.0301072	69,692	2,098	68,643	1,046,439	15.0
49-50	0.004749	6.9	0.0329621	67,594	2,228	66,480	977,796	14.5
50-51	0.005193	7.4	0.0383143	65,366	2,504	64,114	911,316	13.9
51-52	0.005647	7.4	0.0416080	62,862	2,616	61,554	847,202	13.5

Appendix A. 2011 U.S. General Population Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
52-53	0.006122	7.3	0.0447095	60,246	2,694	58,899	785,648	13.0
53-54	0.006630	6.9	0.0458032	57,552	2,636	56,234	726,749	12.6
54-55	0.007181	7.0	0.0504908	54,916	2,773	53,530	670,515	12.2
55-56	0.007779	6.9	0.0535175	52,143	2,791	50,748	616,986	11.8
56-57	0.008415	6.6	0.0551671	49,352	2,723	47,991	566,238	11.5
57-58	0.009074	6.4	0.0577152	46,629	2,691	45,284	518,248	11.1
58-59	0.009727	6.3	0.0614132	43,938	2,698	42,589	472,964	10.8
59-60	0.010371	6.7	0.0697133	41,240	2,875	39,803	430,375	10.4
60-61	0.011034	7.1	0.0785312	38,365	3,013	36,859	390,573	10.2
61-62	0.011738	7.0	0.0823663	35,352	2,912	33,896	353,714	10.0
62-63	0.012489	6.9	0.0863986	32,440	2,803	31,039	319,818	9.9
63-64	0.013335	6.3	0.0838569	29,637	2,485	28,395	288,780	9.7
64-65	0.014319	6.0	0.0856537	27,152	2,326	25,989	260,385	9.6
65-66	0.015482	5.6	0.0871033	24,826	2,162	23,745	234,396	9.4
66-67	0.016824	5.7	0.0967221	22,664	2,192	21,568	210,651	9.3
67-68	0.018330	5.3	0.0977241	20,472	2,001	19,472	189,083	9.2
68-69	0.019900	4.6	0.0916566	18,471	1,693	17,625	169,612	9.2
69-70	0.021539	4.2	0.0895439	16,778	1,502	16,027	151,987	9.1
70-71	0.023396	4.1	0.0956488	15,276	1,461	14,546	135,960	8.9
71-72	0.025476	3.5	0.0901705	13,815	1,246	13,192	121,415	8.8
72-73	0.027794	3.5	0.0962033	12,569	1,209	11,965	108,223	8.6
73-74	0.030350	3.2	0.0979219	11,360	1,112	10,804	96,258	8.5
74-75	0.033204	2.8	0.0915335	10,248	938	9,779	85,454	8.3

Appendix A. 2011 U.S. General Population Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
75-76	0.036345	2.6	0.0947418	9,310	882	8,869	75,675	8.1
76-77	0.039788	2.7	0.1093784	8,428	922	7,967	66,806	7.9
77-78	0.043720	2.6	0.1118552	7,506	840	7,086	58,839	7.8
78-79	0.048335	2.4	0.1145796	6,666	764	6,284	51,753	7.8
79-80	0.053650	2.2	0.1164621	5,902	687	5,559	45,469	7.7
80-81	0.059565	2.1	0.1253563	5,215	654	4,888	39,911	7.7
81-82	0.065848	1.0	0.0658480	4,561	300	4,411	35,023	7.7
82-83	0.072956	1.0	0.0729560	4,261	311	4,106	30,612	7.2
83-84	0.080741	1.0	0.0807410	3,950	319	3,791	26,506	6.7
84-85	0.089357	1.0	0.0893570	3,631	324	3,469	22,716	6.3
85-86	0.099650	1.0	0.0996500	3,307	330	3,142	19,247	5.8
86-87	0.110901	1.0	0.1109010	2,977	330	2,812	16,105	5.4
87-88	0.123146	1.0	0.1231460	2,647	326	2,484	13,293	5.0
88-89	0.136412	1.0	0.1364120	2,321	317	2,163	10,809	4.7
89-90	0.150710	1.0	0.1507100	2,004	302	1,853	8,646	4.3
90-91	0.166038	1.0	0.1660380	1,702	283	1,561	6,793	4.0
91-92	0.182374	1.0	0.1823740	1,419	259	1,290	5,233	3.7
92-93	0.199676	1.0	0.1996760	1,160	232	1,044	3,943	3.4
93-94	0.217880	1.0	0.2178800	928	202	827	2,899	3.1
94-95	0.236903	1.0	0.2369030	726	172	640	2,072	2.9
95-96	0.256636	1.0	0.2566360	554	142	483	1,432	2.6
96-97	0.276954	1.0	0.2769540	412	114	355	949	2.3
97-98	0.297713	1.0	0.2977130	298	89	254	594	2.0
98-99	0.318755	1.0	0.3187550	209	67	176	341	1.6
99-100	0.339914	1.0	0.3399140	142	48	118	165	1.2
100+	1.00000	1.0	1.0000000	94	94	47	47	0.5

EXHIBIT 9

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
0-1	0.012502	1.0	0.0125020	100,000	1,250	99,007	5,516,944	55.2
1-2	0.000674	1.0	0.0006740	98,750	67	98,717	5,417,937	54.9
2-3	0.000494	1.0	0.0004940	98,683	49	98,659	5,319,221	53.9
3-4	0.000356	1.0	0.0003560	98,634	35	98,617	5,220,562	52.9
4-5	0.000316	1.0	0.0003160	98,599	31	98,584	5,121,946	51.9
5-6	0.000258	1.0	0.0002580	98,568	25	98,556	5,023,362	51.0
6-7	0.000224	1.0	0.0002240	98,543	22	98,532	4,924,807	50.0
7-8	0.000193	1.0	0.0001930	98,521	19	98,512	4,826,275	49.0
8-9	0.000161	1.0	0.0001610	98,502	16	98,494	4,727,763	48.0
9-10	0.000128	1.0	0.0001280	98,486	13	98,480	4,629,269	47.0
10-11	0.000107	1.0	0.0001070	98,473	11	98,468	4,530,790	46.0
11-12	0.000118	1.0	0.0001180	98,462	12	98,456	4,432,322	45.0
12-13	0.000183	1.0	0.0001830	98,450	18	98,441	4,333,866	44.0
13-14	0.000310	1.0	0.0003100	98,432	31	98,417	4,235,425	43.0
14-15	0.000481	1.0	0.0004810	98,401	47	98,378	4,137,009	42.0
15-16	0.000655	1.0	0.0006550	98,354	64	98,322	4,038,631	41.1
16-17	0.000822	1.0	0.0008220	98,290	81	98,250	3,940,309	40.1
17-18	0.001004	1.0	0.0010040	98,209	99	98,160	3,842,060	39.1
18-19	0.001206	2.5	0.0030332	98,110	298	97,961	3,743,900	38.2
19-20	0.001421	2.4	0.0033507	97,812	328	97,648	3,645,939	37.3
20-21	0.001654	2.0	0.0033826	97,484	330	97,319	3,548,291	36.4
21-22	0.001874	2.2	0.0040591	97,154	394	96,957	3,450,972	35.5
22-23	0.002041	2.1	0.0043329	96,760	419	96,551	3,354,015	34.7
23-24	0.002134	2.4	0.0051386	96,341	495	96,094	3,257,465	33.8
24-25	0.002168	2.6	0.0056559	95,846	542	95,575	3,161,371	33.0
25-26	0.002186	2.7	0.0059428	95,304	566	95,021	3,065,796	32.2

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
26-27	0.002212	3.0	0.0065743	94,738	623	94,427	2,970,775	31.4
27-28	0.002230	3.3	0.0074117	94,115	698	93,766	2,876,349	30.6
28-29	0.002245	3.6	0.0081778	93,417	764	93,035	2,782,583	29.8
29-30	0.002259	3.7	0.0083570	92,653	774	92,266	2,689,548	29.0
30-31	0.002267	3.5	0.0078932	91,879	725	91,517	2,597,282	28.3
31-32	0.002276	3.9	0.0089569	91,154	816	90,746	2,505,765	27.5
32-33	0.002300	4.2	0.0097525	90,338	881	89,898	2,415,019	26.7
33-34	0.002350	4.5	0.0106481	89,457	953	88,981	2,325,122	26.0
34-35	0.002426	4.3	0.0103458	88,504	916	88,046	2,236,141	25.3
35-36	0.002527	3.9	0.0099009	87,588	867	87,155	2,148,095	24.5
36-37	0.002646	4.0	0.0105482	86,721	915	86,264	2,060,941	23.8
37-38	0.002772	4.4	0.0121608	85,806	1,043	85,285	1,974,677	23.0
38-39	0.002896	4.6	0.0134407	84,763	1,139	84,194	1,889,393	22.3
39-40	0.003027	5.0	0.0151857	83,624	1,270	82,989	1,805,199	21.6
40-41	0.003179	4.8	0.0151330	82,354	1,246	81,731	1,722,210	20.9
41-42	0.003369	4.7	0.0159715	81,108	1,295	80,461	1,640,479	20.2
42-43	0.003607	4.2	0.0150020	79,813	1,197	79,215	1,560,019	19.5
43-44	0.003902	3.8	0.0148330	78,616	1,166	78,033	1,480,804	18.8
44-45	0.004251	3.7	0.0158215	77,450	1,225	76,838	1,402,771	18.1
45-46	0.004616	4.3	0.0198424	76,225	1,512	75,469	1,325,934	17.4
46-47	0.005016	4.9	0.0244018	74,713	1,823	73,802	1,250,465	16.7
47-48	0.005513	4.8	0.0264818	72,890	1,930	71,925	1,176,663	16.1
48-49	0.006129	4.3	0.0266542	70,960	1,891	70,015	1,104,738	15.6
49-50	0.006838	4.2	0.0286250	69,069	1,977	68,081	1,034,724	15.0
50-51	0.007586	4.2	0.0321075	67,092	2,154	66,015	966,643	14.4
51-52	0.008344	4.2	0.0353362	64,938	2,295	63,791	900,628	13.9

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
52-53	0.009145	4.2	0.0380858	62,643	2,386	61,450	836,838	13.4
53-54	0.010011	4.1	0.0412941	60,257	2,488	59,013	775,388	12.9
54-55	0.010959	4.2	0.0464298	57,769	2,682	56,428	716,375	12.4
55-56	0.011995	4.1	0.0494287	55,087	2,723	53,726	659,947	12.0
56-57	0.013107	3.9	0.0506911	52,364	2,654	51,037	606,221	11.6
57-58	0.014274	4.0	0.0567492	49,710	2,821	48,300	555,184	11.2
58-59	0.015455	4.0	0.0617318	46,889	2,895	45,442	506,885	10.8
59-60	0.016630	4.3	0.0722177	43,994	3,177	42,406	461,443	10.5
60-61	0.017888	4.6	0.0822606	40,817	3,358	39,138	419,038	10.3
61-62	0.019207	4.9	0.0932768	37,459	3,494	35,712	379,900	10.1
62-63	0.020451	4.6	0.0933672	33,965	3,171	32,380	344,188	10.1
63-64	0.021595	4.3	0.0933499	30,794	2,875	29,357	311,808	10.1
64-65	0.022717	4.0	0.0897633	27,919	2,506	26,666	282,452	10.1
65-66	0.023933	4.1	0.0972571	25,413	2,472	24,177	255,786	10.1
66-67	0.025369	4.2	0.1076218	22,941	2,469	21,707	231,609	10.1
67-68	0.027104	4.2	0.1140207	20,472	2,334	19,305	209,902	10.3
68-69	0.029089	4.0	0.1170901	18,138	2,124	17,076	190,597	10.5
69-70	0.031191	3.5	0.1077634	16,014	1,726	15,151	173,521	10.8
70-71	0.033429	3.5	0.1153442	14,288	1,648	13,464	158,370	11.1
71-72	0.035780	3.3	0.1169415	12,640	1,478	11,901	144,906	11.5
72-73	0.038397	1.0	0.0383970	11,162	429	10,948	133,005	11.9
73-74	0.041254	1.0	0.0412540	10,733	443	10,512	122,058	11.4
74-75	0.044174	1.0	0.0441740	10,290	455	10,063	111,546	10.8

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
75-76	0.047704	1.0	0.0477040	9,835	469	9,601	101,484	10.3
76-77	0.051047	1.0	0.0510470	9,366	478	9,127	91,883	9.8
77-78	0.054624	1.0	0.0546240	8,888	485	8,646	82,756	9.3
78-79	0.059628	1.0	0.0596280	8,403	501	8,153	74,111	8.8
79-80	0.064976	1.0	0.0649760	7,902	513	7,646	65,958	8.3
80-81	0.070676	1.0	0.0706760	7,389	522	7,128	58,313	7.9
81-82	0.076651	1.0	0.0766510	6,867	526	6,604	51,185	7.5
82-83	0.085516	1.0	0.0855160	6,341	542	6,070	44,581	7.0
83-84	0.092664	1.0	0.0926640	5,799	537	5,531	38,511	6.6
84-85	0.100307	1.0	0.1003070	5,262	528	4,998	32,980	6.3
85-86	0.108460	1.0	0.1084600	4,734	513	4,478	27,982	5.9
86-87	0.117140	1.0	0.1171400	4,221	494	3,974	23,505	5.6
87-88	0.126357	1.0	0.1263570	3,727	471	3,492	19,531	5.2
88-89	0.136120	1.0	0.1361200	3,256	443	3,035	16,039	4.9
89-90	0.146432	1.0	0.1464320	2,813	412	2,607	13,005	4.6
90-91	0.157294	1.0	0.1572940	2,401	378	2,212	10,398	4.3
91-92	0.168701	1.0	0.1687010	2,023	341	1,853	8,186	4.0
92-93	0.180641	1.0	0.1806410	1,682	304	1,530	6,333	3.8
93-94	0.193099	1.0	0.1930990	1,378	266	1,245	4,803	3.5
94-95	0.206052	1.0	0.2060520	1,112	229	998	3,558	3.2
95-96	0.219470	1.0	0.2194700	883	194	786	2,561	2.9
96-97	0.233321	1.0	0.2333210	689	161	609	1,775	2.6
97-98	0.247561	1.0	0.2475610	528	131	463	1,166	2.2
98-99	0.262144	1.0	0.2621440	397	104	345	704	1.8
99-100	0.277019	1.0	0.2770190	293	81	253	359	1.2
100+	1.00000	1.0	1.0000000	212	212	106	106	0.5

EXHIBIT 10

Appendix C. 2011 U.S. General Population Non-Hispanic White Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
White men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
0-1	0.005524	1.0	0.0055240	100,000	552	99,517	5,349,849	53.5
1-2	0.000413	1.0	0.0004130	99,448	41	99,428	5,250,332	52.8
2-3	0.000273	1.0	0.0002730	99,407	27	99,394	5,150,905	51.8
3-4	0.000229	1.0	0.0002290	99,380	23	99,369	5,051,511	50.8
4-5	0.000156	1.0	0.0001560	99,357	15	99,350	4,952,143	49.8
5-6	0.000160	1.0	0.0001600	99,342	16	99,334	4,852,793	48.8
6-7	0.000146	1.0	0.0001460	99,326	15	99,319	4,753,459	47.9
7-8	0.000132	1.0	0.0001320	99,311	13	99,305	4,654,141	46.9
8-9	0.000114	1.0	0.0001140	99,298	11	99,293	4,554,836	45.9
9-10	0.000095	1.0	0.0000950	99,287	9	99,283	4,455,544	44.9
10-11	0.000082	1.0	0.0000820	99,278	8	99,274	4,356,261	43.9
11-12	0.000088	1.0	0.0000880	99,270	9	99,266	4,256,987	42.9
12-13	0.000125	1.0	0.0001250	99,261	12	99,255	4,157,722	41.9
13-14	0.000201	1.0	0.0002010	99,249	20	99,239	4,058,467	40.9
14-15	0.000305	1.0	0.0003050	99,229	30	99,214	3,959,228	39.9
15-16	0.000414	1.0	0.0004140	99,199	41	99,179	3,860,014	38.9
16-17	0.000522	1.0	0.0005220	99,158	52	99,132	3,760,835	37.9
17-18	0.000641	1.0	0.0006410	99,106	64	99,074	3,661,703	36.9
18-19	0.000773	1.0	0.0007730	99,042	77	99,004	3,562,629	36.0
19-20	0.000909	1.0	0.0009090	98,965	90	98,920	3,463,626	35.0
20-21	0.001053	3.0	0.0031812	98,875	315	98,718	3,364,706	34.0
21-22	0.001185	3.0	0.0035003	98,560	345	98,388	3,265,988	33.1
22-23	0.001283	3.7	0.0048065	98,215	472	97,979	3,167,601	32.3
23-24	0.001333	5.2	0.0069188	97,743	676	97,405	3,069,622	31.4
24-25	0.001349	6.3	0.0084401	97,067	819	96,658	2,972,217	30.6
25-26	0.001354	6.7	0.0090557	96,248	872	95,812	2,875,559	29.9

Appendix C. 2011 U.S. General Population Non-Hispanic White Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
White men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
26-27	0.001365	7.6	0.0103911	95,376	991	94,881	2,779,747	29.1
27-28	0.001379	7.2	0.0099736	94,385	941	93,915	2,684,867	28.4
28-29	0.001401	8.5	0.0118636	93,444	1,109	92,890	2,590,952	27.7
29-30	0.001432	8.2	0.0117347	92,335	1,084	91,793	2,498,063	27.1
30-31	0.001467	9.1	0.0133350	91,251	1,217	90,643	2,406,270	26.4
31-32	0.001502	9.2	0.0138762	90,034	1,249	89,410	2,315,627	25.7
32-33	0.001536	9.0	0.0137534	88,785	1,221	88,175	2,226,218	25.1
33-34	0.001570	8.9	0.0139552	87,564	1,222	86,953	2,138,043	24.4
34-35	0.001609	7.5	0.0121357	86,342	1,048	85,818	2,051,090	23.8
35-36	0.001665	7.2	0.0119280	85,294	1,017	84,786	1,965,272	23.0
36-37	0.001742	7.5	0.0131122	84,277	1,105	83,725	1,880,487	22.3
37-38	0.001829	7.7	0.0141275	83,172	1,175	82,585	1,796,762	21.6
38-39	0.001921	8.5	0.0163393	81,997	1,340	81,327	1,714,178	20.9
39-40	0.002023	8.0	0.0161387	80,657	1,302	80,006	1,632,851	20.2
40-41	0.002135	9.0	0.0191327	79,355	1,518	78,596	1,552,845	19.6
41-42	0.002273	8.5	0.0193702	77,837	1,508	77,083	1,474,249	18.9
42-43	0.002459	9.1	0.0222673	76,329	1,700	75,479	1,397,166	18.3
43-44	0.002703	8.6	0.0233308	74,629	1,741	73,759	1,321,687	17.7
44-45	0.002997	8.3	0.0247547	72,888	1,804	71,986	1,247,928	17.1
45-46	0.003309	7.6	0.0251269	71,084	1,786	70,191	1,175,942	16.5
46-47	0.003631	7.5	0.0272227	69,298	1,886	68,355	1,105,751	16.0
47-48	0.003984	7.6	0.0300949	67,412	2,029	66,398	1,037,396	15.4
48-49	0.004366	8.1	0.0354544	65,383	2,318	64,224	970,999	14.9
49-50	0.004768	8.2	0.0392386	63,065	2,475	61,828	906,775	14.4
50-51	0.005179	9.1	0.0469414	60,590	2,844	59,168	844,947	13.9
51-52	0.005596	9.0	0.0502853	57,746	2,904	56,294	785,779	13.6

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White men only

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52-53	0.006034	9.0	0.0543075	54,842	2,978	53,353	729,485	13.3
53-54	0.006508	8.1	0.0527141	51,864	2,734	50,497	676,132	13.0
54-55	0.007026	8.1	0.0570244	49,130	2,802	47,729	625,635	12.7
55-56	0.007591	7.9	0.0600728	46,328	2,783	44,937	577,906	12.5
56-57	0.008191	7.6	0.0623023	43,545	2,713	42,189	532,970	12.2
57-58	0.008812	6.8	0.0603584	40,832	2,465	39,600	490,781	12.0
58-59	0.009425	6.6	0.0625852	38,367	2,401	37,167	451,182	11.8
59-60	0.010028	6.8	0.0683332	35,966	2,458	34,737	414,015	11.5
60-61	0.010645	7.2	0.0761226	33,508	2,551	32,233	379,278	11.3
61-62	0.011305	6.4	0.0722265	30,957	2,236	29,839	347,046	11.2
62-63	0.012031	6.6	0.0795687	28,721	2,285	27,579	317,207	11.0
63-64	0.012880	5.8	0.0746940	26,436	1,975	25,449	289,628	11.0
64-65	0.013896	5.9	0.0823396	24,461	2,014	23,454	264,180	10.8
65-66	0.015110	5.7	0.0858800	22,447	1,928	21,483	240,726	10.7
66-67	0.016503	4.8	0.0799398	20,519	1,640	19,699	219,243	10.7
67-68	0.018045	4.1	0.0747021	18,879	1,410	18,174	199,544	10.6
68-69	0.019623	4.1	0.0797052	17,469	1,392	16,773	181,370	10.4
69-70	0.021262	3.9	0.0838395	16,077	1,348	15,403	164,597	10.2
70-71	0.023146	3.7	0.0865662	14,729	1,275	14,092	149,194	10.1
71-72	0.025278	3.4	0.0853467	13,454	1,148	12,880	135,102	10.0
72-73	0.027630	3.5	0.0970708	12,306	1,195	11,709	122,222	9.9
73-74	0.030219	3.2	0.0952045	11,111	1,058	10,582	110,514	9.9
74-75	0.033126	2.8	0.0923638	10,053	929	9,589	99,932	9.9

Appendix C. 2011 U.S. General Population Non-Hispanic White Male Life Table
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75-76	0.036255	2.5	0.0889904	9,124	812	8,718	90,343	9.9
76-77	0.039716	2.4	0.0954766	8,312	794	7,915	81,625	9.8
77-78	0.043757	1.0	0.0437570	7,518	329	7,354	73,710	9.8
78-79	0.048405	1.0	0.0484050	7,189	348	7,015	66,357	9.2
79-80	0.053785	1.0	0.0537850	6,841	368	6,657	59,342	8.7
80-81	0.059839	1.0	0.0598390	6,473	387	6,280	52,685	8.1
81-82	0.066176	1.0	0.0661760	6,086	403	5,885	46,405	7.6
82-83	0.073348	1.0	0.0733480	5,683	417	5,475	40,521	7.1
83-84	0.081302	1.0	0.0813020	5,266	428	5,052	35,046	6.7
84-85	0.090236	1.0	0.0902360	4,838	437	4,620	29,994	6.2
85-86	0.100743	1.0	0.1007430	4,401	443	4,180	25,375	5.8
86-87	0.112235	1.0	0.1122350	3,958	444	3,736	21,195	5.4
87-88	0.124750	1.0	0.1247500	3,514	438	3,295	17,459	5.0
88-89	0.138311	1.0	0.1383110	3,076	425	2,864	14,164	4.6
89-90	0.152931	1.0	0.1529310	2,651	405	2,449	11,301	4.3
90-91	0.168603	1.0	0.1686030	2,246	379	2,057	8,852	3.9
91-92	0.185302	1.0	0.1853020	1,867	346	1,694	6,796	3.6
92-93	0.202980	1.0	0.2029800	1,521	309	1,367	5,102	3.4
93-94	0.221569	1.0	0.2215690	1,212	269	1,078	3,735	3.1
94-95	0.240976	1.0	0.2409760	943	227	830	2,658	2.8
95-96	0.261085	1.0	0.2610850	716	187	623	1,828	2.6
96-97	0.281762	1.0	0.2817620	529	149	455	1,206	2.3
97-98	0.302853	1.0	0.3028530	380	115	323	751	2.0
98-99	0.324194	1.0	0.3241940	265	86	222	429	1.6
99-100	0.345609	1.0	0.3456090	179	62	148	207	1.2
100+	1.00000	1.0	1.0000000	117	117	59	59	0.5

BLUME FRANKLIN-BEST & YOUNG, LLC

ATTORNEYS AT LAW

JOHN H. BLUME
ELIZABETH FRANKLIN-BEST
LAURA W. YOUNG
KEIR M. WEYBLE OF COUNSEL
DAVID I. BRUCK OF COUNSEL

900 Elmwood Avenue, Suite 200
COLUMBIA, SOUTH CAROLINA 29201
PHONE: (803) 765-1044
FAX: (803) 765-1143

August 31, 2018

Jerry B. Adger, Director
South Carolina Department of Probation, Parole and Pardon Services
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, SC 29250

Re: Stewart Buchanan (SCDC# 069848)

Dear Mr. Adger:

I am counsel for Stewart Buchanan, who was 17 years old at the time he was sentenced to a term of life imprisonment. Pursuant to the law in existence at the time of the offense (May 18, 1973), Mr. Buchanan first became eligible for parole in 1983. Since his initial parole eligibility date, he has been denied parole on 19 occasions. He is now 62 years old. As will be set forth in detail below, since Mr. Buchanan was a juvenile (under the age of eighteen) at the time of the offense, and since he did not receive the benefit of an individualized sentencing hearing as is now required by the Eighth Amendment to the United States Constitution and the South Carolina Supreme Court's decision in *Aiken v. Byars*, 410 S.C. 534, 544 (2014), it now falls to the parole board to consider his youth and its attendant circumstances and provide a meaningful opportunity for release.

Recent decisions by both the Supreme Court of the United States and the Supreme Court of South Carolina have established that juveniles are different from adults for sentencing purposes. Following the reasoning of these decisions, individuals who committed crimes when they were juveniles should receive special consideration during parole hearings and, absent strong evidence of irreparable corruption, are entitled to a meaningful opportunity for release. I write to outline the recent United States Supreme Court and South Carolina Supreme Court decisions and, in the spirit of these decisions, request a special hearing for Mr. Buchanan.

In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the Supreme Court held that juveniles convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of special circumstances including "diminished culpability and heightened capacity for change." *Id.* at 2469. *Miller's* analysis is based on previous Supreme Court holdings that certain punishments are disproportionate when applied to juveniles, violating the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551 (2005), held that the Eighth Amendment bars capital punishment for juvenile offenders, and *Graham v. Florida*, 560 U.S. 48, 75 (2010), held that the Eighth Amendment bars life without parole for juvenile nonhomicide offenders. Under *Graham*, the Constitution requires parole systems to offer "some

meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham*, 560 U.S. at 75.

Miller also established that a lifetime in prison is “a disproportionate sentence for all but the rarest of children, those whose crimes reflect irreparable corruption.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 726 (2016), *as revised* (Jan. 27, 2016) (describing *Miller*, internal quotations omitted). In *Aiken v. Byars*, the Supreme Court of South Carolina outlined the factors that a court must consider before sentencing juveniles, including:

- (1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”;
- (2) the “family and home environment” that surrounded the offender;
- (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him;
- (4) the “incompetencies associated with youth—for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys”; and
- (5) the “possibility of rehabilitation.”

410 S.C. at 544 (quoting *Miller*, 132 S. Ct. at 2468). As noted above, Mr. Buchanan was a juvenile at the time of the offense and he was sentenced before *Miller* and *Aiken* and thus did not receive the benefit of the meaningful consideration of his youth at sentencing.

Most recently, in *Montgomery v. Louisiana*, the Supreme Court noted that for juveniles sentenced to life without parole a state may remedy the *Miller* violation by considering them for parole, rather than resentencing them. 136 S. Ct. at 736. The Court gave examples of specific evidence that would be relevant to parole considerations for Montgomery, including that he organized a prison boxing team, worked in a prison silkscreen department, and served as a role model to other inmates. *Id.*

Mr. Buchanan should also be given the opportunity to present evidence of maturity and rehabilitation. It is incumbent on the South Carolina Board of Pardons and Paroles to allow these juvenile offenders a meaningful opportunity for parole. This opportunity is not to remedy a *Miller* violation, but it is necessary to align the Board with the Supreme Court’s decisions in cases with juvenile offenders. These cases have consistently reflected an understanding that juveniles are different. They are less blameworthy for their crimes and are more amenable to rehabilitation. The Board must ensure that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment. If Mr. Buchanan is not afforded a meaningful opportunity to demonstrate maturity and rehabilitation, his sentence becomes the functional equivalent of an unconstitutional sentence of life without parole. In Mr. Buchanan’s case, the last 14 parole denials have been based on the nature of his original offense. Denying parole to a juvenile offender on the basis of the one thing he cannot change is inconsistent with the current legal principles relevant to deciding whether a juvenile should be released back into society.

This is exactly what a federal district court ruled when it applied the rationale of *Graham*, *Miller*, and *Montgomery* to a juvenile offender who had been sentenced to life with parole for a homicide offense, but denied multiple times. *Maryland Restorative Justice Initiative v. Hogan*, No. CV ELH-16-1021, 2017 WL 467731 (D. Md. Feb. 3, 2017). There the court rejected the State’s motion to dismiss, holding that the plaintiffs had presented a plausible claim that Maryland’s system of parole amounts to de facto life without parole because it did not provide them with a realistic and meaningful opportunity for release in violation of the Eighth Amendment. *Id.* at *27. In Maryland, while the parole board may recommend that parole be granted, the governor has exclusive authority and absolute discretion to reject any application

for parole for any reason or for no reason at all. *Id.* at *6. As a result, the court held, plaintiffs had sufficiently alleged that “Maryland’s parole system operates as a system of executive clemency, in which opportunities for release are ‘remote,’ rather than a true parole scheme in which opportunities for release are ‘meaningful’ and ‘realistic,’ as required by *Graham*.” *Id.* at *27.

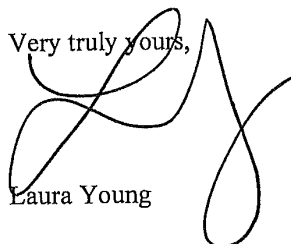
This case underlines that whether a juvenile is sentenced to “life without parole” or “life with parole,” can become irrelevant. The real issues are those set forth by *Graham*: (1) whether he or she actually has received the opportunity to obtain release based on demonstrated maturity and rehabilitation, (2) whether this opportunity is “meaningful,” and (3) whether the parole system takes into account the lesser culpability of juvenile offenders. *Graham*, 560 U.S. at 75.

In light of these recent developments in the constitutional law governing juvenile sentencing, states are requiring their parole boards to follow newly implemented standards for individuals who are now adults, but were juveniles at the time of the offense. Consistent with this growing national trend, we request that the Board:

1. Offer compensation for a person with expertise in adolescent brain development and behavior to perform an evaluation of Mr. Buchanan, and require the Board to consider the written evaluation of this expert.
2. Schedule the hearing at a different time from hearings for adult offenders and allow testimony from mental health professionals and/or other witnesses.
3. In addition to the criteria applicable to all offenders already outlined by the Board, consider:
 - a. Age at the time of the offense, the hallmark features of youth, and the diminished culpability of juveniles compared to that of adults;
 - b. The incompetencies associated with youth—for example, the offender’s inability to deal with police officers or prosecutors (including on a plea agreement) or the offender’s incapacity to assist his own attorneys;
 - c. Immaturity at the time of the offense, and any subsequent growth and increased maturity of the juvenile offender during incarceration;
 - d. Home and community environment at the time of the offense;
 - e. The circumstances of the offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him;
 - f. The offender’s intellectual capacity;
 - g. Efforts made toward rehabilitation, including participation in available rehabilitative and educational programs while in prison;
 - h. Evidence of remorse; and
 - i. Any other mitigating factor or circumstance submitted by the offender.
4. Require the Board to provide specific findings of fact in support of its decision.

Only if South Carolina requires special hearings for juvenile offenders and mandates the consideration of the above factors in these hearings, will the State be in accord with the United States and South Carolina Supreme Court decisions establishing different substantive and procedural rules for cases – including parole hearings – involving juvenile offenders. We hope that your response reflects the evolving case law and that of other states.

Very truly yours,


Laura Young

Appendix

Massachusetts

See *Diatchenko v. District Attorney for Suffolk Dist.*, 1 N.E.3d 270 (Mass. 2013); *Commonwealth v. Brown*, 1 N.E.3d 259 (Mass. 2013)

1. Counsel is appointed to help with the initial application for parole for juvenile offenders convicted of first- and second-degree murder.
2. The superior court is authorized to allow payment of expert fees for the initial parole hearing.
3. Juvenile offenders are entitled to judicial review of the parole board decision.
4. The parole hearing is held in person before all seven board members.

Connecticut

S.B. 796, Jan. Sess. (Conn. 2015)

1. Counsel is appointed a year before the parole hearing for indigent juvenile offenders.
2. The board must apply special criteria in juvenile offender cases, including whether the offender has demonstrated rehabilitation considering his age at the time the crime was committed, and whether he has demonstrated remorse and increased maturity.
3. The board must use validated risk assessment and needs assessment tools and its risk-based structured decision making and release criteria in making a determination.
4. The parole hearing is held in person rather than the typical videoconference.
5. The board may permit testimony from mental health professionals or other witnesses.

California

S.B. 260 (Cal. 2013)

1. Juvenile offenders are entitled to appointed counsel for parole hearings.
2. Counsel may submit written materials before the hearing.
3. The parole board must give great weight to the diminished culpability of juveniles, the hallmark features of youth, and the subsequent growth and maturity of the juvenile offender.
4. If the board uses psychological evaluations and risk assessment tools to assess growth and maturity, the board must employ a licensed psychologist to administer the evaluations.

Louisiana

La. Rev. Stat. Ann. 15:574.4

1. The board must meet in a three-member panel and must consider a written evaluation of the juvenile offender compiled by a person with expertise in adolescent brain development and behavior, as well as any other relevant evidence.
2. The panel must provide specific findings of fact in support of its decision.
3. Counsel may submit written materials before the hearing.

West Virginia

W. Va. Code §§ 61-11-23, 62-12-13b

1. The board must ensure a meaningful opportunity for the juvenile offender to obtain release.
2. The board must consider the diminished culpability of juveniles compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the juvenile offender during incarceration.
3. The board must also consider:
 - a. A review of educational and court documents;
 - b. Participation in available rehabilitative and educational programs while in prison;
 - c. Age at the time of the offense;
 - d. Immaturity at the time of the offense;

- e. Home and community environment at the time of the offense;
- f. Efforts made toward rehabilitation;
- g. Evidence of remorse; and
- h. Any other factors or circumstances the board considers relevant.

Nebraska

Legis. B. 44, 103 Leg., 1st Sess. (Neb. 2013)

1. The board must consider:
 - a. The offender's participation in available rehabilitative and educational programs while incarcerated;
 - b. The offender's age at the time of the offense;
 - c. The offender's level of maturity;
 - d. The offender's ability to appreciate the risks and consequences of his or her conduct;
 - e. The offender's intellectual capacity;
 - f. The offender's level of participation in the offense;
 - g. The offender's efforts toward rehabilitation; and
 - h. Any other mitigating factor or circumstance submitted by the offender.

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov

September 17, 2018

Ms. Laura W. Young
Blume, Franklin-Best, & Young, LLC
900 Elmwood Ave., Suite 200
Columbia, South Carolina 29201

RE: Stewart Buchanan SCDC#069848

Dear Ms. Young:

I have been instructed by our director Mr. Jerry B. Adger to address the letter you wrote to him regarding your above referenced client. According to your letter you are requesting the Board to conduct a hearing pursuant to the South Carolina Supreme Court decision of *Aiken v. Byers*. You wish this hearing will reveal evidence of his immaturity when he committed this offense. The Board and the Director are separate entities. Director Adger has no influence over the board or any decision relating to parole. Pursuant to the criteria placed in South Carolina law the Board must consider the record before during and after imprisonment, so the age and immaturity of the offender was taken into consideration.

Within your letter you compare Mr. Buchanan's case to the United States Supreme Court decision of *Miller v. Alabama*, and its equivalent, the South Carolina decision of *Aiken v. Byers*. Within these two decisions these Court's decided that it is a violation of the Eighth Amendment of the United States Constitution to sentence a juvenile to a sentence of life without the benefit of parole. Mr. Buchanan is currently being allowed to appear before the Parole Board; therefore, neither of these cases are relevant to Mr. Buchanan's situation.

In the United States Supreme Court case of *Montgomery v. Louisiana*, the Court decided,

Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to

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reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller's* central intuition –that children who commit even heinous crimes are capable of change.

Montgomery v. Louisiana, 136 S.Ct. 718, 736 (2016)

Your client is currently being allowed to appear before the board, so he is not being denied any constitutional right. The fact he has not been granted parole does not deny any right that exist. He has a right to a hearing not a right to be granted parole. Parole is a privilege not a right. *Sullivan v. S.C. Dept. of Corrections*, 355 S.C. 437, 586 S.E.2d 124 n.5 (2004).

Within your letter you also raise the fact that Mr. Buchanan has been denied parole on fourteen different occasions due to the “nature and seriousness” of the offense he committed. It is your position that the use of this as a reason for denial is “denying parole to a juvenile offender on the basis of the one thing he cannot change is inconsistent with the current legal principles relevant to deciding whether a juvenile should be released back into society.” At the conclusion of his last hearing Mr. Buchanan was denied parole due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) the use of a deadly weapon in this or a previous offense. Though these reasons for denial pertains to the offense committed which will never change, these reasons for denial are legal and follow the criteria found in 24-21-640. As long as it is revealed that the Board applied the mandatory criteria, the use of the events of the offense as a reason for denial is lawful. See, *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008).

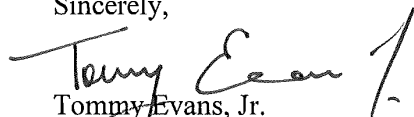
Mr. Buchanan is eligible for parole so he is being allowed to appear before the Board. During these hearings, Mr. Buchanan is allowed either through himself or through counsel to present before the Court factors that he was a juvenile at the time he committed the offense. He can also present any other mitigating evidence to influence the Board into granting parole. This is the determination the Court stated should be made in both the *Miller* and *Aiken* decisions. Factors regarding his age at the time he committed the offense, and inmate records are factors already considered when the Board consider the characteristics of the current offense and other statutory mandated factors such as those outlined in 24-21-640 and 24-21-10(F)(1). What you have requested from the Board is already being done each time Mr. Buchanan appears.

Due to the scarce resources and the lack of time available for an all-volunteer Board, these extensive reforms you are requesting are not mandated pursuant to South Carolina law. It is also unnecessary due to the fact the youth of the offender at the time of the offense is already being considered. Our records reveal that Mr. Buchanan is scheduled for a hearing on October 11, 2018. If you or Mr. Buchanan are willing to present evidence of his youth and his relative change while incarcerated it is your right to do so.

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I hope that this answers any inquiries you may have regarding this matter. Good luck in all of your future endeavors. With kind regards I remain,

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:te

MILLER v. ALABAMA
Cite as 132 S.Ct. 2455 (2012)

2455

Evan MILLER, Petitioner

v.

ALABAMA.

Kuntrell Jackson, Petitioner

v.

Ray Hobbs, Director, Arkansas

Department of Correction.

Nos. 10–9646, 10–9647.

Argued March 20, 2012.

Decided June 25, 2012.

Background: Following transfer from state juvenile court to state circuit court and affirmation of transfer, 928 So.2d 1081, defendant was convicted in the Alabama Circuit Court, Lawrence County, No. CC–06–08, A. Phillip Reich II, J., of capital murder committed when he was 14 years old. Defendant appealed his conviction and the resulting sentence of life in prison without possibility of parole. The Alabama Court of Criminal Appeals, 63 So.3d 676, affirmed. In another case, after affirmance of a defendant's convictions in Arkansas for capital felony murder and aggravated robbery committed at age 14, 359 Ark. 87, 194 S.W.3d 757, defendant petitioned for state habeas relief, challenging his sentence of life in prison without possibility of parole. The Arkansas Circuit Court, Jefferson County, dismissed the petition. Defendant appealed. The Arkansas Supreme Court, — S.W.3d —, 2011 WL 478600, affirmed. Certiorari was granted in each case.

Holding: The Supreme Court, Justice Kagan, held that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments.

Reversed and remanded.

Justice Breyer filed a concurring opinion, in which Justice Sotomayor joined.

Chief Justice Roberts filed a dissenting opinion, in which Justices Scalia, Thomas, and Alito joined.

Justice Thomas filed a dissenting opinion, in which Justice Scalia joined.

Justice Alito filed a dissenting opinion, in which Justice Scalia joined.

1. Federal Courts ⇨509

Supreme Court, on certiorari review of decision of state supreme court affirming the dismissal of defendant's state habeas petition alleging that mandatory imposition of sentence of life without possibility of parole on defendant, who was convicted of capital felony murder committed at age 14, constituted violation of Eighth Amendment prohibition of cruel and unusual punishment, would not consider contention raised by State for first time in Supreme Court that state law in effect at time of defendant's sentencing allowed trial judge to suspend the life-without-parole sentence; State had never raised the contention in state courts, state courts had treated defendant's sentence as mandatory, and Supreme Court would abide by that interpretation of state law. U.S.C.A. Const. Amend. 8; A.C.A. § 5–4–104(b) (2000); § 12–28–403(b)(2) (Repealed).

2. Sentencing and Punishment ⇨1480, 1482

The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions, which right flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense. U.S.C.A. Const. Amend. 8.

3. Sentencing and Punishment ⇨1482

The concept of proportionality of punishment is central to the Eighth Amendment. U.S.C.A. Const. Amend. 8.

4. Sentencing and Punishment ¶1482

The concept of proportionality of punishment, which is central to the Eighth Amendment, is viewed less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society. U.S.C.A. Const.Amend. 8.

5. Infants ¶2683**Sentencing and Punishment** ¶1607

Mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. U.S.C.A. Const.Amend. 8.

6. Sentencing and Punishment ¶1642, 1667

Imposing the death penalty for nonhomicide crimes against individuals, or imposing it on mentally retarded defendants, violates the Eighth Amendment. U.S.C.A. Const.Amend. 8.

7. Sentencing and Punishment ¶1643

The Eighth Amendment bars capital punishment for children. U.S.C.A. Const. Amend. 8.

8. Sentencing and Punishment ¶1607

The Eighth Amendment prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense. U.S.C.A. Const.Amend. 8.

9. Infants ¶2662

Children are constitutionally different from adults for purposes of sentencing, and because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments. U.S.C.A. Const.Amend. 8.

10. Infants ¶2662

The distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile

offenders, even when they commit terrible crimes.

11. Sentencing and Punishment ¶1607

The characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate punishment for a juvenile. U.S.C.A. Const.Amend. 8.

12. Sentencing and Punishment ¶1607

Imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children. U.S.C.A. Const.Amend. 8.

13. Sentencing and Punishment ¶1653, 1757

Capital defendants must have an opportunity to advance, and the judge or jury a chance to assess, any mitigating factors, so that the death penalty is reserved only for the most culpable defendants committing the most serious offenses. U.S.C.A. Const.Amend. 8.

14. Sentencing and Punishment ¶1607

In light of children's diminished culpability and heightened capacity for change, appropriate occasions for sentencing juveniles to life in prison without possibility of parole will be uncommon, and that is especially so because of the great difficulty of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. U.S.C.A. Const.Amend. 8.

15. Homicide ¶1572**Sentencing and Punishment** ¶1607

While a sentencer's ability to impose a sentence of life imprisonment without possibility of parole on a juvenile convicted of homicide is not foreclosed, the sentencer must take into account how children are different, and how those differences coun-

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Cite as 132 S.Ct. 2455 (2012)

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sel against irrevocably sentencing them to a lifetime in prison. U.S.C.A. Const. Amend. 8.

16. Sentencing and Punishment ⇨1667, 1700

Limiting a mandatory death penalty law to particular kinds of murder cannot cure the law's constitutional vice of disregarding the circumstances of the particular offense and the character and propensities of the offender. U.S.C.A. Const. Amend. 8.

West Codenotes

Limited on Constitutional Grounds

LSA-R.S. 14:30(C), 14:30.1(B)

V.T.C.A., Penal Code § 12.31(a)

Code 1975, § 13A-5-45(f)

West's A.C.A. § 5-4-104(b)

Code 1975, § 13A-6-2(c)

A.R.S. § 13-752

C.G.S.A. § 53a-35a(1)

11 Del.C. § 4209(a)

West's F.S.A. § 775.082(1)

HRS § 706-656(1) (1993)

I.C. § 18-4004

M.C.L.A. § 791.234(6)(a)

M.S.A. § 609.106, subd. 2

Neb.Rev.St. § 29-2522

RSA 630:1-a(III)

18 Pa.C.S.A. § 1102(a, b)

61 Pa.C.S.A. § 6137(a)(1)

SDCL §§ 22-6-1(1), 24-15-4

13 V.S.A. § 2311(c)

West's RCWA 10.95.030(1)

Syllabus *

In each of these cases, a 14-year-old was convicted of murder and sentenced to a mandatory term of life imprisonment without the possibility of parole. In No. 10-9647, petitioner Jackson accompanied two other boys to a video store to commit a robbery; on the way to the store, he learned that one of the boys was carrying a shotgun. Jackson stayed outside the store for most of the robbery, but after he entered, one of his co-conspirators shot and killed the store clerk. Arkansas charged Jackson as an adult with capital felony murder and aggravated robbery, and a jury convicted him of both crimes. The trial court imposed a statutorily mandated sentence of life imprisonment without the possibility of parole. Jackson filed a state habeas petition, arguing that a mandatory life-without-parole term for a 14-year-old violates the Eighth Amendment. Disagreeing, the court granted the State's motion to dismiss. The Arkansas Supreme Court affirmed.

In No. 10-9646, petitioner Miller, along with a friend, beat Miller's neighbor and set fire to his trailer after an evening of drinking and drug use. The neighbor died. Miller was initially charged as a juvenile, but his case was removed to adult court, where he was charged with murder in the course of arson. A jury found Miller guilty, and the trial court imposed a statutorily mandated punishment of life without parole. The Alabama Court of Criminal Appeals affirmed, holding that Miller's sentence was not overly harsh when compared to his crime, and that its mandatory nature was permissible under the Eighth Amendment.

Held: The Eighth Amendment forbids a sentencing scheme that mandates

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of

the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

life in prison without possibility of parole for juvenile homicide offenders. Pp. 2463 – 2475.

(a) The Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1. That right "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned' " to both the offender and the offense. *Ibid*.

Two strands of precedent reflecting the concern with proportionate punishment come together here. The first has adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. See, e.g., *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525. Several cases in this group have specially focused on juvenile offenders, because of their lesser culpability. Thus, *Roper v. Simmons* held that the Eighth Amendment bars capital punishment for children, and *Graham v. Florida*, 560 U.S. —, 130 S.Ct. 2011, 176 L.Ed.2d 825, concluded that the Amendment prohibits a sentence of life without the possibility of parole for a juvenile convicted of a nonhomicide offense. *Graham* further likened life without parole for juveniles to the death penalty, thereby evoking a second line of cases. In those decisions, this Court has required sentencing authorities to consider the characteristics of a defendant and the details of his offense before sentencing him to death. See, e.g., *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (plurality opinion). Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life without parole for juveniles violates the Eighth Amendment.

As to the first set of cases: *Roper* and *Graham* establish that children are constitutionally different from adults for sentencing purposes. Their "lack of maturity" and "underdeveloped sense of responsibility" lead to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569, 125 S.Ct. 1183. They "are more vulnerable . . . to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid*. And because a child's character is not as "well formed" as an adult's, his traits are "less fixed" and his actions are less likely to be "evidence of irretrievable depravity." *Id.*, at 570, 125 S.Ct. 1183. *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

While *Graham*'s flat ban on life without parole was for nonhomicide crimes, nothing that *Graham* said about children is crime-specific. Thus, its reasoning implicates any life-without-parole sentence for a juvenile, even as its categorical bar relates only to nonhomicide offenses. Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. The mandatory penalty schemes at issue here, however, prevent the sentencer from considering youth and from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. This contravenes *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.

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Graham also likened life-without-parole sentences for juveniles to the death penalty. That decision recognized that life-without-parole sentences “share some characteristics with death sentences that are shared by no other sentences.” 560 U.S., at —, 130 S.Ct., at 2027. And it treated life without parole for juveniles like this Court’s cases treat the death penalty, imposing a categorical bar on its imposition for nonhomicide offenses. By likening life-without-parole sentences for juveniles to the death penalty, *Graham* makes relevant this Court’s cases demanding individualized sentencing in capital cases. In particular, those cases have emphasized that sentencers must be able to consider the mitigating qualities of youth. In light of *Graham*’s reasoning, these decisions also show the flaws of imposing mandatory life-without-parole sentences on juvenile homicide offenders. Pp. 2463–2469.

(b) The counterarguments of Alabama and Arkansas are unpersuasive. Pp. 2469–2475.

(1) The States first contend that *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836, forecloses a holding that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. *Harmelin* declined to extend the individualized sentencing requirement to noncapital cases “because of the qualitative difference between death and all other penalties.” *Id.*, at 1006, 111 S.Ct. 2680 (KENNEDY, J., concurring in part and concurring in judgment). But *Harmelin* had nothing to do with children, and did not purport to apply to juvenile offenders. Indeed, since *Harmelin*, this Court has held on multiple occasions that sentencing practices that are permissible for adults may not be so for children. See *Roper*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Graham*, 560 U.S. —, 130 S.Ct. 2011.

The States next contend that mandatory life-without-parole terms for juveniles cannot be unconstitutional because 29 jurisdictions impose them on at least some children convicted of murder. In considering categorical bars to the death penalty and life without parole, this Court asks as part of the analysis whether legislative enactments and actual sentencing practices show a national consensus against a sentence for a particular class of offenders. But where, as here, this Court does not categorically bar a penalty, but instead requires only that a sentencer follow a certain process, this Court has not scrutinized or relied on legislative enactments in the same way. See, e.g., *Sumner v. Shuman*, 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56.

In any event, the “objective indicia of society’s standards,” *Graham*, 560 U.S., at —, 130 S.Ct., at 2022, that the States offer do not distinguish these cases from others holding that a sentencing practice violates the Eighth Amendment. Fewer States impose mandatory life-without-parole sentences on juvenile homicide offenders than authorized the penalty (life-without-parole for nonhomicide offenders) that this Court invalidated in *Graham*. And as *Graham* and *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702, explain, simply counting legislative enactments can present a distorted view. In those cases, as here, the relevant penalty applied to juveniles based on two separate provisions: One allowed the transfer of certain juvenile offenders to adult court, while another set out penalties for any and all individuals tried there. In those circumstances, this Court reasoned, it was impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice). The same is true here. Pp. 2469–2473.

(2) The States next argue that courts and prosecutors sufficiently consider a juvenile defendant's age, as well as his background and the circumstances of his crime, when deciding whether to try him as an adult. But this argument ignores that many States use mandatory transfer systems. In addition, some lodge the decision in the hands of the prosecutors, rather than courts. And even where judges have transfer-stage discretion, it has limited utility, because the decisionmaker typically will have only partial information about the child or the circumstances of his offense. Finally, because of the limited sentencing options in some juvenile courts, the transfer decision may present a choice between a light sentence as a juvenile and standard sentencing as an adult. It cannot substitute for discretion at post-trial sentencing. Pp. 2474–2475.

No. 10–9646, 63 So.3d 676, and No. 10–9647, 2011 Ark. 49, — S.W.3d —, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. BREYER, J., filed a concurring opinion, in which SOTOMAYOR, J., joined. ROBERTS, C.J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined. ALITO, J., filed a dissenting opinion, in which SCALIA, J., joined.

Bryan A. Stevenson, Montgomery, AL, for Petitioner.

John C. Neiman, Jr., Solicitor General, for Respondent.

Bryan A. Stevenson, Counsel of Record, Randall S. Susskind, Alicia A. D'Addario, Equal Justice Initiative, Montgomery, AL, for Petitioner.

John Porter, Clay Crenshaw, Henry Johnson, Stephanie Reiland, Jess R. Nix, Assistant Attorneys General, Luther Strange, Attorney General, John C. Neiman, Jr., Solicitor General, Counsel of Record, Prim F. Escalona, Andrew L. Brasher, Deputy Solicitors General, Office of the Alabama Attorney General, Montgomery, AL, for Respondent.

For U.S. Supreme Court Briefs, See:

2012 WL 92505 (Pet.Brief)

2012 WL 588454 (Resp.Brief)

2012 WL 837389 (Reply.Brief)

Justice KAGAN delivered the opinion of the Court.

The two 14-year-old offenders in these cases were convicted of murder and sentenced to life imprisonment without the possibility of parole. In neither case did the sentencing authority have any discretion to impose a different punishment. State law mandated that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate. Such a scheme prevents those meting out punishment from considering a juvenile's "lessened culpability" and greater "capacity for change," *Graham v. Florida*, 560 U.S. —, —, —, 130 S.Ct. 2011, 2026–2027, 2029–2030, 176 L.Ed.2d 825 (2010), and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties. We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments."

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I

A

In November 1999, petitioner Kuntrell Jackson, then 14 years old, and two other boys decided to rob a video store. En route to the store, Jackson learned that one of the boys, Derrick Shields, was carrying a sawed-off shotgun in his coat sleeve. Jackson decided to stay outside when the two other boys entered the store. Inside, Shields pointed the gun at the store clerk, Laurie Troup, and demanded that she “give up the money.” *Jackson v. State*, 359 Ark. 87, 89, 194 S.W.3d 757, 759 (2004) (internal quotation marks omitted). Troup refused. A few moments later, Jackson went into the store to find Shields continuing to demand money. At trial, the parties disputed whether Jackson warned Troup that “[w]e ain’t playin’,” or instead told his friends, “I thought you all was playin’.” *Id.*, at 91, 194 S.W.3d, at 760 (internal quotation marks omitted). When Troup threatened to call the police, Shields shot and killed her. The three boys fled empty-handed. See *id.*, at 89–92, 194 S.W.3d, at 758–760.

Arkansas law gives prosecutors discretion to charge 14-year-olds as adults when they are alleged to have committed certain serious offenses. See Ark.Code Ann. § 9–27–318(c)(2) (1998). The prosecutor here exercised that authority by charging Jackson with capital felony murder and aggravated robbery. Jackson moved to transfer the case to juvenile court, but after considering the alleged facts of the crime, a psychiatrist’s examination, and Jackson’s juvenile arrest history (shoplifting and several incidents of car theft), the trial court denied the motion, and an appellate court affirmed. See *Jackson v. State*, No. 02–

535, 2003 WL 193412, *1 (Ark.App., Jan. 29, 2003); §§ 9–27–318(d), (e). A jury later convicted Jackson of both crimes. Noting that “in view of [the] verdict, there’s only one possible punishment,” the judge sentenced Jackson to life without parole. App. in No. 10–9647, p. 55 (hereinafter *Jackson App.*); see Ark.Code Ann. § 5–4–104(b) (1997) (“A defendant convicted of capital murder or treason shall be sentenced to death or life imprisonment without parole”).¹ Jackson did not challenge the sentence on appeal, and the Arkansas Supreme Court affirmed the convictions. See 359 Ark. 87, 194 S.W.3d 757.

[1] Following *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), in which this Court invalidated the death penalty for all juvenile offenders under the age of 18, Jackson filed a state petition for habeas corpus. He argued, based on *Roper*’s reasoning, that a mandatory sentence of life without parole for a 14-year-old also violates the Eighth Amendment. The circuit court rejected that argument and granted the State’s motion to dismiss. See *Jackson App.* 72–76. While that ruling was on appeal, this Court held in *Graham v. Florida* that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders. After the parties filed briefs addressing that decision, the Arkansas Supreme Court affirmed the dismissal of Jackson’s petition. See *Jackson v. Norris*, 2011 Ark. 49, — S.W.3d —. The majority found that *Roper* and *Graham* were “narrowly tailored” to their contexts: “death-penalty cases involving a juvenile and life-imprisonment-without-parole cases for nonhomicide offenses involving a juvenile.” *Id.*, at 5, — S.W.3d, at —. Two justices dissented. They noted that Jack-

1. Jackson was ineligible for the death penalty under *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plu-

rality opinion), which held that capital punishment of offenders under the age of 16 violates the Eighth Amendment.

son was not the shooter and that “any evidence of intent to kill was severely lacking.” *Id.*, at 10, — S.W.3d, at — (Danielson, J., dissenting). And they argued that Jackson’s mandatory sentence ran afoul of *Graham*’s admonition that “[a]n offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.*, at 10–11, — S.W.3d, at — (quoting *Graham*, 560 U.S., at —, 130 S.Ct., at 2031).²

B

Like Jackson, petitioner Evan Miller was 14 years old at the time of his crime. Miller had by then been in and out of foster care because his mother suffered from alcoholism and drug addiction and his stepfather abused him. Miller, too, regularly used drugs and alcohol; and he had attempted suicide four times, the first when he was six years old. See *E.J.M. v. State*, 928 So.2d 1077, 1081 (Ala.Crim.App. 2004) (Cobb, J., concurring in result); App. in No. 10–9646, pp. 26–28 (hereinafter Miller App.).

One night in 2003, Miller was at home with a friend, Colby Smith, when a neighbor, Cole Cannon, came to make a drug deal with Miller’s mother. See 6 Record in No. 10–9646, p. 1004. The two boys followed Cannon back to his trailer, where

all three smoked marijuana and played drinking games. When Cannon passed out, Miller stole his wallet, splitting about \$300 with Smith. Miller then tried to put the wallet back in Cannon’s pocket, but Cannon awoke and grabbed Miller by the throat. Smith hit Cannon with a nearby baseball bat, and once released, Miller grabbed the bat and repeatedly struck Cannon with it. Miller placed a sheet over Cannon’s head, told him “I am God, I’ve come to take your life,” and delivered one more blow. *Miller v. State*, 63 So.3d 676, 689 (Ala.Crim.App.2010). The boys then retreated to Miller’s trailer, but soon decided to return to Cannon’s to cover up evidence of their crime. Once there, they lit two fires. Cannon eventually died from his injuries and smoke inhalation. See *id.*, at 683–685, 689.

Alabama law required that Miller initially be charged as a juvenile, but allowed the District Attorney to seek removal of the case to adult court. See Ala.Code § 12–15–34 (1977). The D.A. did so, and the juvenile court agreed to the transfer after a hearing. Citing the nature of the crime, Miller’s “mental maturity,” and his prior juvenile offenses (truancy and “criminal mischief”), the Alabama Court of Criminal Appeals affirmed. *E.J.M. v. State*, No. CR–03–0915, pp. 5–7 (Aug. 27, 2004) (unpublished memorandum).³ The State ac-

2. For the first time in this Court, Arkansas contends that Jackson’s sentence was not mandatory. On its view, state law then in effect allowed the trial judge to suspend the life-without-parole sentence and commit Jackson to the Department of Human Services for a “training-school program,” at the end of which he could be placed on probation. Brief for Respondent in No. 10–9647, pp. 36–37 (hereinafter Arkansas Brief) (citing Ark. Code Ann. § 12–28–403(b)(2) (1999)). But Arkansas never raised that objection in the state courts, and they treated Jackson’s sentence as mandatory. We abide by that interpretation of state law. See, e.g., *Mullaney v.*

Wilbur, 421 U.S. 684, 690–691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975).

3. The Court of Criminal Appeals also affirmed the juvenile court’s denial of Miller’s request for funds to hire his own mental expert for the transfer hearing. The court pointed out that under governing Alabama Supreme Court precedent, “the procedural requirements of a trial do not ordinarily apply” to those hearings. *E.J.M. v. State*, 928 So.2d 1077 (Ala.Crim.App.2004) (Cobb, J., concurring in result) (internal quotation marks omitted). In a separate opinion, Judge Cobb agreed on the reigning precedent, but urged

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cordingly charged Miller as an adult with murder in the course of arson. That crime (like capital murder in Arkansas) carries a mandatory minimum punishment of life without parole. See Ala.Code §§ 13A-5-40(9), 13A-6-2(c) (1982).

Relying in significant part on testimony from Smith, who had pleaded to a lesser offense, a jury found Miller guilty. He was therefore sentenced to life without the possibility of parole. The Alabama Court of Criminal Appeals affirmed, ruling that life without parole was “not overly harsh when compared to the crime” and that the mandatory nature of the sentencing scheme was permissible under the Eighth Amendment. 63 So.3d, at 690; see *id.*, at 686–691. The Alabama Supreme Court denied review.

We granted certiorari in both cases, see 565 U.S. —, 132 S.Ct. 548, 181 L.Ed.2d 395 (2011) (No. 10–9646); 565 U.S. —, 132 S.Ct. 548, 181 L.Ed.2d 395 (2011) (No. 10–9647), and now reverse.

II

[2–4] The Eighth Amendment’s prohibition of cruel and unusual punishment “guarantees individuals the right not to be subjected to excessive sanctions.” *Roper*, 543 U.S., at 560, 125 S.Ct. 1183. That right, we have explained, “flows from the basic ‘precept of justice that punishment for crime should be graduated and proportioned’” to both the offender and the offense. *Ibid.* (quoting *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910)). As we noted the last time we considered life-without-parole sentences imposed on juveniles, “[t]he concept of proportionality is central to the Eighth Amendment.” *Graham*, 560 U.S., at —, 130 S.Ct., at 2021. And we view that

the State Supreme Court to revisit the question in light of transfer hearings’ importance. See *id.*, at 1081 (“[A]lthough later mental

concept less through a historical prism than according to “the evolving standards of decency that mark the progress of a maturing society.” *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion)).

[5–8] The cases before us implicate two strands of precedent reflecting our concern with proportionate punishment. The first has adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. See *Graham*, 560 U.S., at —, 130 S.Ct., at 2022–2023 (listing cases). So, for example, we have held that imposing the death penalty for nonhomicide crimes against individuals, or imposing it on mentally retarded defendants, violates the Eighth Amendment. See *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). Several of the cases in this group have specially focused on juvenile offenders, because of their lesser culpability. Thus, *Roper* held that the Eighth Amendment bars capital punishment for children, and *Graham* concluded that the Amendment also prohibits a sentence of life without the possibility of parole for a child who committed a nonhomicide offense. *Graham* further likened life without parole for juveniles to the death penalty itself, thereby evoking a second line of our precedents. In those cases, we have prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his

evaluation as an adult affords some semblance of procedural due process, it is, in effect, too little, too late”).

offense before sentencing him to death. See *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion); *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978). Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.⁴

[9] To start with the first set of cases: *Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, “they are less deserving of the most severe punishments.” *Graham*, 560 U.S., at —, 130 S.Ct., at 2026. Those cases relied on three significant gaps between juveniles and adults. First, children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569, 125 S.Ct. 1183. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “con-

tro[.] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievabl[e] deprav[ity].” *Id.*, at 570, 125 S.Ct. 1183.

Our decisions rested not only on common sense—on what “any parent knows”—but on science and social science as well. *Id.*, at 569, 125 S.Ct. 1183. In *Roper*, we cited studies showing that “[o]nly a relatively small proportion of adolescents” who engage in illegal activity “‘develop entrenched patterns of problem behavior.’” *Id.*, at 570, 125 S.Ct. 1183 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003)). And in *Graham*, we noted that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”—for example, in “parts of the brain involved in behavior control.” 560 U.S., at —, 130 S.Ct., at 2026.⁵ We reasoned that those findings—

4. The three dissenting opinions here each take issue with some or all of those precedents. See *post*, at 2479–2480 (opinion of ROBERTS, C.J.); *post*, at 2482–2485 (opinion of THOMAS, J.); *post*, at 2487–2489 (opinion of ALITO, J.). That is not surprising: their authors (and joiner) each dissented from some or all of those precedents. See, e.g., *Kennedy*, 554 U.S., at 447, 128 S.Ct. 2641 (ALITO, J., joined by ROBERTS, C.J., and SCALIA and THOMAS, JJ., dissenting); *Roper*, 543 U.S., at 607, 125 S.Ct. 1183 (SCALIA, J., joined by THOMAS, J., dissenting); *Atkins*, 536 U.S., at 337, 122 S.Ct. 2242 (SCALIA, J., joined by THOMAS, J., dissenting); *Thompson*, 487 U.S., at 859, 108 S.Ct. 2687 (SCALIA, J., dissenting); *Graham v. Collins*, 506 U.S. 461, 487, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (THOMAS, J., concurring) (contending that *Woodson* was wrongly decided). In par-

ticular, each disagreed with the majority’s reasoning in *Graham*, which is the foundation stone of our analysis. See *Graham*, 560 U.S., at —, 130 S.Ct., at 2036 (ROBERTS, C.J., concurring in judgment); *id.*, at —, 130 S.Ct., at 2043–2056 (THOMAS, J., joined by SCALIA and ALITO, JJ., dissenting); *id.*, at —, 130 S.Ct., at 2058 (ALITO, J., dissenting). While the dissents seek to relitigate old Eighth Amendment battles, repeating many arguments this Court has previously (and often) rejected, we apply the logic of *Roper*, *Graham*, and our individualized sentencing decisions to these two cases.

5. The evidence presented to us in these cases indicates that the science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger. See, e.g., Brief for American Psychological Association

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of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s “moral culpability” and enhanced the prospect that, as the years go by and neurological development occurs, his “‘deficiencies will be reformed.’” *Id.*, at —, 130 S.Ct., at 2027 (quoting *Roper*, 543 U.S., at 570, 125 S.Ct. 1183).

[10] *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because “[t]he heart of the retribution rationale” relates to an offender’s blameworthiness, “‘the case for retribution is not as strong with a minor as with an adult.’” *Graham*, 560 U.S., at —, 130 S.Ct., at 2028 (quoting *Tison v. Arizona*, 481 U.S. 137, 149, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987); *Roper*, 543 U.S., at 571, 125 S.Ct. 1183). Nor can deterrence do the work in this context, because “‘the same characteristics that render juveniles less culpable than adults’”—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment. *Graham*, 560 U.S., at —, 130 S.Ct., at 2028 (quoting *Roper*, 543 U.S., at 571, 125 S.Ct. 1183). Similarly, incapacitation could not support the life-without-parole sentence in *Graham*: Deciding that a “juvenile offender forever will be a danger to society” would require “mak[ing] a judgment that [he] is incorrigible”—but “‘incorrigibility is inconsistent with youth.’” 560 U.S., at —, 130 S.Ct., at 2029 (quoting *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky.App.

et al. as *Amici Curiae* 3 (“[A]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court’s conclusions”); *id.*, at 4 (“It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning

1968)). And for the same reason, rehabilitation could not justify that sentence. Life without parole “forswears altogether the rehabilitative ideal.” *Graham*, 560 U.S., at —, 130 S.Ct., at 2030. It reflects “an irrevocable judgment about [an offender’s] value and place in society,” at odds with a child’s capacity for change. *Ibid.*

Graham concluded from this analysis that life-without-parole sentences, like capital punishment, may violate the Eighth Amendment when imposed on children. To be sure, *Graham*’s flat ban on life without parole applied only to nonhomicide crimes, and the Court took care to distinguish those offenses from murder, based on both moral culpability and consequential harm. See *id.*, at —, 130 S.Ct., at 2027. But none of what it said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Those features are evident in the same way, and to the same degree, when (as in both cases here) a botched robbery turns into a killing. So *Graham*’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses.

[11] Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. In the circumstances there, juvenile status precluded a life-without-parole sentence, even though an adult could receive it for a similar crime. And in other contexts as well, the characteristics of youth, and the

ahead, and risk avoidance”); Brief for J. Lawrence Aber et al. as *Amici Curiae* 12–28 (discussing post-*Graham* studies); *id.*, at 26–27 (“Numerous studies post-*Graham* indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency” (footnote omitted)).

way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate. Cf. *id.*, at —, 130 S.Ct., at 2028–2032 (generally doubting the penological justifications for imposing life without parole on juveniles). “An offender’s age,” we made clear in *Graham*, “is relevant to the Eighth Amendment,” and so “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.*, at —, 130 S.Ct., at 2031. THE CHIEF JUSTICE, concurring in the judgment, made a similar point. Although rejecting a categorical bar on life-without-parole sentences for juveniles, he acknowledged “*Roper*’s conclusion that juveniles are typically less culpable than adults,” and accordingly wrote that “an offender’s juvenile status can play a central role” in considering a sentence’s proportionality. *Id.*, at —, 130 S.Ct., at 2039; see *id.*, at —, 130 S.Ct., at 2042 (Graham’s “youth is one factor, among others, that should be considered in deciding whether his punishment was unconstitutionally excessive”).⁶

[12] But the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations. By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham*’s (and also *Roper*’s) foundational principle: that imposition of a State’s most severe

penalties on juvenile offenders cannot proceed as though they were not children.

And *Graham* makes plain these mandatory schemes’ defects in another way: by likening life-without-parole sentences imposed on juveniles to the death penalty itself. Life-without-parole terms, the Court wrote, “share some characteristics with death sentences that are shared by no other sentences.” 560 U.S., at —, 130 S.Ct., at 2027. Imprisoning an offender until he dies alters the remainder of his life “by a forfeiture that is irrevocable.” *Ibid.* (citing *Solem v. Helm*, 463 U.S. 277, 300–301, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983)). And this lengthiest possible incarceration is an “especially harsh punishment for a juvenile,” because he will almost inevitably serve “more years and a greater percentage of his life in prison than an adult offender.” *Graham*, 560 U.S., at —, 130 S.Ct., at 2028. The penalty when imposed on a teenager, as compared with an older person, is therefore “the same . . . in name only.” *Id.*, at —, 130 S.Ct., at 2028. All of that suggested a distinctive set of legal rules: In part because we viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment. We imposed a categorical ban on the sentence’s use, in a way unprecedented for a term of imprisonment. See *id.*, at —, 130 S.Ct., at 2022; *id.*, at —, 130 S.Ct., at 2046 (THOMAS, J., dissenting) (“For the first time in its history, the Court declares an entire class of offenders immune from a noncapital sentence using the categorical approach it

6. In discussing *Graham*, the dissents essentially ignore all of this reasoning. See *post*, at 2478–2480 (opinion of ROBERTS, C.J.); *post*, at 2488–2489 (opinion of ALITO, J.). Indeed, THE CHIEF JUSTICE ignores the points made in his own concurring opinion. The only part of *Graham* that the dissents see fit to note is the distinction it drew between homicide and nonhomicide offenses. See

post, at 2480–2481 (opinion of ROBERTS, C.J.); *post*, at 2488–2489 (opinion of ALITO, J.). But contrary to the dissents’ charge, our decision today retains that distinction: *Graham* established one rule (a flat ban) for nonhomicide offenses, while we set out a different one (individualized sentencing) for homicide offenses.

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previously reserved for death penalty cases alone"). And the bar we adopted mirrored a proscription first established in the death penalty context—that the punishment cannot be imposed for any nonhomicide crimes against individuals. See *Kennedy*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525; *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977).

[13] That correspondence—*Graham*'s "[t]reat[ment] [of] juvenile life sentences as analogous to capital punishment," 560 U.S., at —, 130 S.Ct., at 2038–2039 (ROBERTS, C.J., concurring in judgment)—makes relevant here a second line of our precedents, demanding individualized sentencing when imposing the death penalty. In *Woodson*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944, we held that a statute mandating a death sentence for first-degree murder violated the Eighth Amendment. We thought the mandatory scheme flawed because it gave no significance to "the character and record of the individual offender or the circumstances" of the offense, and "exclud[ed] from consideration . . . the possibility of compassionate or mitigating factors." *Id.*, at 304, 96 S.Ct. 2978. Subsequent decisions have elaborated on the requirement that capital defendants have an opportunity to advance, and the judge or jury a chance to assess, any mitigating factors, so that the death penalty is reserved only for the most culpable defendants committing the most serious offenses. See, e.g., *Sumner v. Shuman*, 483 U.S. 66, 74–76, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987); *Eddings v. Oklahoma*, 455 U.S. 104, 110–112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Lockett*, 438 U.S., at 597–609, 98 S.Ct. 2954 (plurality opinion).

Of special pertinence here, we insisted in these rulings that a sentencer have the ability to consider the "mitigating qualities of youth." *Johnson v. Texas*, 509 U.S.

350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). Everything we said in *Roper* and *Graham* about that stage of life also appears in these decisions. As we observed, "youth is more than a chronological fact." *Eddings*, 455 U.S., at 115, 102 S.Ct. 869. It is a time of immaturity, irresponsibility, "impetuousness[,] and recklessness." *Johnson*, 509 U.S., at 368, 113 S.Ct. 2658. It is a moment and "condition of life when a person may be most susceptible to influence and to psychological damage." *Eddings*, 455 U.S., at 115, 102 S.Ct. 869. And its "signature qualities" are all "transient." *Johnson*, 509 U.S., at 368, 113 S.Ct. 2658. *Eddings* is especially on point. There, a 16-year-old shot a police officer point-blank and killed him. We invalidated his death sentence because the judge did not consider evidence of his neglectful and violent family background (including his mother's drug abuse and his father's physical abuse) and his emotional disturbance. We found that evidence "particularly relevant"—more so than it would have been in the case of an adult offender. 455 U.S., at 115, 102 S.Ct. 869. We held: "[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered" in assessing his culpability. *Id.*, at 116, 102 S.Ct. 869.

In light of *Graham*'s reasoning, these decisions too show the flaws of imposing mandatory life-without-parole sentences on juvenile homicide offenders. Such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from

a chaotic and abusive one. And still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a *greater* sentence than those adults will serve.⁷ In meting out the death penalty, the elision of all these differences would be strictly forbidden. And once again, *Graham* indicates that a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison.

So *Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U.S., at —, 130 S.Ct., at 2032 (“[T]he

features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Both cases before us illustrate the problem. Take Jackson's first. As noted earlier, Jackson did not fire the bullet that killed Laurie Troup; nor did the State argue that he intended her death. Jackson's conviction was instead based on an aiding-and-abetting theory; and the appellate court affirmed the verdict only because the jury could have believed that when Jackson entered the store, he warned Troup that “[w]e ain't playin’,” rather than told his friends that “I thought you all was playin’.” See 359 Ark., at 90–92, 194 S.W.3d, at 759–760; *supra*, at 2461. To be sure, Jackson learned on the way to the video store that his friend Shields was carrying a gun, but his age could well have affected his calculation of the risk that posed, as well as his willingness to walk away at that point. All these circumstances go to Jackson's culpability for the offense. See *Graham*, 560 U.S., at —, 130 S.Ct., at 2027 (“[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability”). And so too does Jackson's family background and immersion in violence: Both his mother and his grandmother had previously shot other individuals. See Record in No. 10–9647,

7. Although adults are subject as well to the death penalty in many jurisdictions, very few offenders actually receive that sentence. See, e.g., Dept. of Justice, Bureau of Justice Statistics, S. Rosenmerkel, M. Durose, & D. Farole, *Felony Sentences in State Courts 2006—Statistical Tables*, p. 28 (Table 4.4) (rev. Nov. 22,

2010). So in practice, the sentencing schemes at issue here result in juvenile homicide offenders receiving the same nominal punishment as almost all adults, even though the two classes differ significantly in moral culpability and capacity for change.

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pp. 80–82. At the least, a sentencer should look at such facts before depriving a 14-year-old of any prospect of release from prison.

That is true also in Miller's case. No one can doubt that he and Smith committed a vicious murder. But they did it when high on drugs and alcohol consumed with the adult victim. And if ever a pathological background might have contributed to a 14-year-old's commission of a crime, it is here. Miller's stepfather physically abused him; his alcoholic and drug-addicted mother neglected him; he had been in and out of foster care as a result; and he had tried to kill himself four times, the first when he should have been in kindergarten. See 928 So.2d, at 1081 (Cobb, J., concurring in result); Miller App. 26–28; *supra*, at 2461–2462. Nonetheless, Miller's past criminal history was limited—two instances of truancy and one of “second-degree criminal mischief.” No. CR-03-0915, at 6 (unpublished memorandum). That Miller deserved severe punishment for killing Cole Cannon is beyond question. But once again, a sentencer needed to examine all these circumstances before concluding that life without any possibility of parole was the appropriate penalty.

[14, 15] We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. *Graham*, 560 U.S., at —, 130 S.Ct., at 2030 (“A State is not required to guarantee eventual freedom,” but must

provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper*, 543 U.S., at 573, 125 S.Ct. 1183; *Graham*, 560 U.S., at —, 130 S.Ct., at 2026–2027. Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.⁸

III

Alabama and Arkansas offer two kinds of arguments against requiring individual-

8. Given our holding, and the dissents' competing position, we see a certain irony in their repeated references to 17-year-olds who have committed the “most heinous” offenses, and their comparison of those defendants to the 14-year-olds here. See *post*, at 2477 (opinion of ROBERTS, C.J.) (noting the “17-year old [who] is convicted of deliberately murdering an innocent victim”); *post*, at 2478 (“the most heinous murders”); *post*, at 2480 (“the worst types of murder”); *post*, at 2489 (opin-

ion of ALITO, J.) (warning the reader not to be “confused by the particulars” of these two cases); *post*, at 2489 (discussing the “17½-year-old who sets off a bomb in a crowded mall”). Our holding requires factfinders to attend to exactly such circumstances—to take into account the differences among defendants and crimes. By contrast, the sentencing schemes that the dissents find permissible altogether preclude considering these factors.

ized consideration before sentencing a juvenile to life imprisonment without possibility of parole. The States (along with the dissents) first contend that the rule we adopt conflicts with aspects of our Eighth Amendment caselaw. And they next assert that the rule is unnecessary because individualized circumstances come into play in deciding whether to try a juvenile offender as an adult. We think the States are wrong on both counts.

A

The States (along with Justice THOMAS) first claim that *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), precludes our holding. The defendant in *Harmelin* was sentenced to a mandatory life-without-parole term for possessing more than 650 grams of cocaine. The Court upheld that penalty, reasoning that “a sentence which is not otherwise cruel and unusual” does not “becom[e] so simply because it is ‘mandatory.’” *Id.*, at 995, 111 S.Ct. 2680. We recognized that a different rule, requiring individualized sentencing, applied in the death penalty context. But we refused to extend that command to noncapital cases “because of the qualitative difference between death and all other penalties.” *Ibid.*; see *id.*, at 1006, 111 S.Ct. 2680 (KENNEDY, J., concurring in part and concurring in judgment). According to Alabama, invalidating the mandatory imposition of life-without-parole terms on juveniles “would effectively overrule *Harmelin*.” Brief for Respondent in No. 10–9646, p. 59 (hereinafter Alabama Brief); see Arkansas Brief 39.

We think that argument myopic. *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. Capital punishment, our decisions hold, generally comports with the Eighth Amendment—except it cannot be imposed on children. See *Roper*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1; *Thompson*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702. So too, life without parole is permissible for non-homicide offenses—except, once again, for children. See *Graham*, 560 U.S., at —, 130 S.Ct., at 2030. Nor are these sentencing decisions an oddity in the law. To the contrary, “[o]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.” *J.D.B.*, 564 U.S., at —, 131 S.Ct., at 2404 (quoting *Eddings*, 455 U.S., at 115–116, 102 S.Ct. 869, citing examples from criminal, property, contract, and tort law). So if (as *Harmelin* recognized) “death is different,” children are different too. Indeed, it is the odd legal rule that does *not* have some form of exception for children. In that context, it is no surprise that the law relating to society’s harshest punishments recognizes such a distinction. Cf. *Graham*, 560 U.S., at —, 130 S.Ct., at 2040 (ROBERTS, C.J., concurring in judgment) (“*Graham*’s age places him in a significantly different category from the defendan[t] in . . . *Harmelin*”). Our ruling thus neither overrules nor undermines nor conflicts with *Harmelin*.

[16] Alabama and Arkansas (along with THE CHIEF JUSTICE and Justice ALITO) next contend that because many States impose mandatory life-without-parole sentences on juveniles, we may not hold the practice unconstitutional. In considering categorical bars to the death penalty and life without parole, we ask as part of the analysis whether “‘objective indicia of society’s standards, as expressed in legislative enactments and state practice,’” show a “national consensus” against a sentence for a particular class of offenders.

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Graham, 560 U.S., at —, 130 S.Ct., at 2022 (quoting *Roper*, 543 U.S., at 563, 125 S.Ct. 1183). By our count, 29 jurisdictions (28 States and the Federal Government) make a life-without-parole term mandatory for some juveniles convicted of murder in adult court.⁹ The States argue that this number precludes our holding.

We do not agree; indeed, we think the States' argument on this score *weaker* than the one we rejected in *Graham*. For starters, the cases here are different from the typical one in which we have tallied legislative enactments. Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty. And in so requiring, our decision flows straightforwardly from our precedents: specifically, the principle of *Roper*, *Graham*, and our individualized sentencing cases that youth matters for purposes of

meting out the law's most serious punishments. When both of those circumstances have obtained in the past, we have not scrutinized or relied in the same way on legislative enactments. See, e.g., *Sumner v. Shuman*, 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (relying on *Woodson*'s logic to prohibit the mandatory death penalty for murderers already serving life without parole); *Lockett*, 438 U.S., at 602–608, 98 S.Ct. 2954 (plurality opinion) (applying *Woodson* to require that judges and juries consider all mitigating evidence); *Eddings*, 455 U.S., at 110–117, 102 S.Ct. 869 (similar). We see no difference here.

In any event, the “objective indicia” that the States offer do not distinguish these cases from others holding that a sentencing practice violates the Eighth Amendment. In *Graham*, we prohibited life-without-parole terms for juveniles committing nonhomicide offenses even though 39 jurisdictions permitted that sentence. See 560 U.S., at —, 130 S.Ct., at 2023. That is 10 *more* than impose life without parole on juveniles on a mandatory basis.¹⁰ And

9. The States note that 26 States and the Federal Government make life without parole the mandatory (or mandatory minimum) punishment for some form of murder, and would apply the relevant provision to 14-year-olds (with many applying it to even younger defendants). See Alabama Brief 17–18. In addition, life without parole is mandatory for older juveniles in Louisiana (age 15 and up) and Texas (age 17). See La. Child. Code Ann., Arts. 857(A), (B) (West Supp. 2012); La.Rev.Stat. Ann. §§ 14:30(C), 14:30.1(B) (West Supp.2012); Tex. Family Code Ann. §§ 51.02(2)(A), 54.02(a)(2)(A) (West Supp. 2011); Tex. Penal Code Ann. § 12.31(a) (West 2011). In many of these jurisdictions, life without parole is the mandatory punishment only for aggravated forms of murder. That distinction makes no difference to our analysis. We have consistently held that limiting a mandatory death penalty law to particular kinds of murder cannot cure the law's “constitutional vice” of disregarding the “circumstances of the particular offense and the character and propensities of the offender.”

Roberts v. Louisiana, 428 U.S. 325, 333, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976) (plurality opinion); see *Sumner v. Shuman*, 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987). The same analysis applies here, for the same reasons.

10. In assessing indicia of societal standards, *Graham* discussed “actual sentencing practices” in addition to legislative enactments, noting how infrequently sentencers imposed the statutorily available penalty. 560 U.S., at —, 130 S.Ct., at 2023. Here, we consider the constitutionality of mandatory sentencing schemes—which by definition remove a judge's or jury's discretion—so no comparable gap between legislation and practice can exist. Rather than showing whether sentencers consider life without parole for juvenile homicide offenders appropriate, the number of juveniles serving this sentence, see *post*, at 2477, 2478–2479 (ROBERTS, C.J., dissenting), merely reflects the number who have committed homicide in mandatory-sentencing

in *Atkins*, *Roper*, and *Thompson*, we similarly banned the death penalty in circumstances in which “less than half” of the “States that permit[ted] capital punishment (for whom the issue exist[ed])” had previously chosen to do so. *Atkins*, 536 U.S., at 342, 122 S.Ct. 2242 (SCALIA, J., dissenting) (emphasis deleted); see *id.*, at 313–315, 122 S.Ct. 2242 (majority opinion); *Roper*, 543 U.S., at 564–565, 125 S.Ct. 1183; *Thompson*, 487 U.S., at 826–827, 108 S.Ct. 2687 (plurality opinion). So we are breaking no new ground in these cases.¹¹

Graham and *Thompson* provide special guidance, because they considered the same kind of statutes we do and explained why simply counting them would present a distorted view. Most jurisdictions au-

thorized the death penalty or life without parole for juveniles only through the combination of two independent statutory provisions. One allowed the transfer of certain juvenile offenders to adult court, while another (often in a far-removed part of the code) set out the penalties for any and all individuals tried there. We reasoned that in those circumstances, it was impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice). In *Thompson*, we found that the statutes “t[old] us that the States consider 15-year-olds to be old enough to be tried in criminal court for serious crimes (or too old to be dealt with effectively in juvenile court), but t[old] us nothing about the

jurisdictions. For the same reason, THE CHIEF JUSTICE’s comparison of ratios in this case and *Graham* carries little weight. He contrasts the number of mandatory life-without-parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, with “the corresponding number” of sentences in *Graham* (*i.e.*, the number of life-without-parole sentences for juveniles who committed serious nonhomicide crimes, as compared to arrests for those crimes). *Post*, at 2461–2462. But because the mandatory nature of the sentences here necessarily makes them more common, THE CHIEF JUSTICE’s figures do not “correspon[d]” at all. The higher ratio is mostly a function of removing the sentencer’s discretion.

Where mandatory sentencing does not itself account for the number of juveniles serving life-without-parole terms, the evidence we have of practice supports our holding. Fifteen jurisdictions make life without parole discretionary for juveniles. See Alabama Brief 25 (listing 12 States); Cal.Penal Code Ann. § 190.5(b) (West 2008); Ind.Code § 35–50–2–3(b) (2011); N.M. Stat. §§ 31–18–13(B), 31–18–14, 31–18–15.2 (2010). According to available data, only about 15% of all juvenile life-without-parole sentences come from those 15 jurisdictions, while 85% come from the 29 mandatory ones. See Tr. of Oral Arg. in No. 10–9646, p. 19; Human Rights Watch, State Distribution of Youth Offenders Serving Juvenile Life Without Parole (JLWOP), Oct. 2, 2009, online at <http://www.hrw.org/news/>

2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole (as visited June 21, 2012, and available in Clerk of Court’s case file). That figure indicates that when given the choice, sentencers impose life without parole on children relatively rarely. And contrary to THE CHIEF JUSTICE’s argument, see *post*, at 2462, n. 2, we have held that when judges and juries do not often choose to impose a sentence, it at least should not be mandatory. See *Woodson v. North Carolina*, 428 U.S. 280, 295–296, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion) (relying on the infrequency with which juries imposed the death penalty when given discretion to hold that its mandatory imposition violates the Eighth Amendment).

11. In response, THE CHIEF JUSTICE complains: “To say that a sentence may be considered unusual *because* so many legislatures approve it stands precedent on its head.” *Post*, at 2479. To be clear: That description in no way resembles our opinion. We hold that the sentence violates the Eighth Amendment because, as we have exhaustively shown, it conflicts with the fundamental principles of *Roper*, *Graham*, and our individualized sentencing cases. We then show why the number of States imposing this punishment does not preclude our holding, and note how its mandatory nature (in however many States adopt it) makes use of actual sentencing numbers unilluminating.

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judgment these States have made regarding the appropriate punishment for such youthful offenders.” 487 U.S., at 826, n. 24, 108 S.Ct. 2687 (plurality opinion) (emphasis deleted); see also *id.*, at 850, 108 S.Ct. 2687 (O’Connor, J., concurring in judgment); *Roper*, 543 U.S., at 596, n., 125 S.Ct. 1183 (O’Connor, J., dissenting). And *Graham* echoed that reasoning: Although the confluence of state laws “ma[de] life without parole possible for some juvenile nonhomicide offenders,” it did not “justify a judgment” that many States actually “intended to subject such offenders” to those sentences. 560 U.S., at —, 130 S.Ct., at 2025.¹²

All that is just as true here. Almost all jurisdictions allow some juveniles to be tried in adult court for some kinds of homicide. See Dept. of Justice, H. Snyder & M. Sickmund, *Juvenile Offenders and Victims: 2006 National Report* 110–114 (hereinafter 2006 National Report). But

most States do not have separate penalty provisions for those juvenile offenders. Of the 29 jurisdictions mandating life without parole for children, more than half do so by virtue of generally applicable penalty provisions, imposing the sentence without regard to age.¹³ And indeed, some of those States set no minimum age for who may be transferred to adult court in the first instance, thus applying life-without-parole mandates to children of any age—be it 17 or 14 or 10 or 6.¹⁴ As in *Graham*, we think that “underscores that the statutory eligibility of a juvenile offender for life without parole does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration.” 560 U.S., at —, 130 S.Ct., at 2026. That Alabama and Arkansas can count to 29 by including these possibly (or probably) inadvertent legislative outcomes does not preclude our determination that mandatory life without parole for juveniles violates the Eighth Amendment.

12. THE CHIEF JUSTICE attempts to distinguish *Graham* on this point, arguing that there “the extreme rarity with which the sentence in question was imposed could suggest that legislatures did not really intend the inevitable result of the laws they passed.” *Post*, at 2480. But neither *Graham* nor *Thompson* suggested such reasoning, presumably because the time frame makes it difficult to comprehend. Those cases considered what legislators intended when they enacted, at different moments, separate juvenile-transfer and life-without-parole provisions—by definition, before they knew or could know how many juvenile life-without-parole sentences would result.

13. See Ala.Code §§ 13A-5-45(f), 13A-6-2(c) (2005 and Cum. Supp. 2011); Ariz.Rev.Stat. Ann. § 13-752 (West 2010), § 41-1604.09(I) (West 2011); Conn. Gen.Stat. § 53a-35a(1) (2011); Del.Code Ann., Tit. 11, § 4209(a) (2007); Fla. Stat. § 775.082(1) (2010); Haw. Rev.Stat. § 706-656(1) (1993); Idaho Code § 18-4004 (Lexis 2004); Mich. Comp. Laws Ann. § 791.234(6)(a) (West Cum. Supp. 2012); Minn.Stat. Ann. §§ 609.106, subd. 2 (West 2009); Neb.Rev.Stat. § 29-2522

(2008); N.H.Rev.Stat. Ann. § 630:1-a (West 2007); 18 Pa. Cons.Stat. §§ 1102(a), (b), 61 Pa. Cons.Stat. § 6137(a)(1) (Supp.2012); S.D. Codified Laws § 22-6-1(1) (2006), § 24-15-4 (2004); Vt. Stat. Ann., Tit. 13, § 2311(c)(2009); Wash. Rev.Code § 10.95.030(1) (2010).

14. See Del.Code Ann., Tit. 10, § 1010 (1999 and Cum. Supp. 2010), Tit. 11, § 4209(a) (2007); Fla. Stat. § 985.56 (2010), 775.082(1); Haw.Rev.Stat. § 571-22(d) (1993), § 706-656(1); Idaho Code §§ 20-508, 20-509 (Lexis Cum. Supp. 2012), § 18-4004; Mich. Comp. Laws Ann. § 712A.2d (West 2009), § 791.234(6)(a); Neb.Rev.Stat. §§ 43-247, 29-2522 (2008); 42 Pa. Cons.Stat. § 6355(e) (2000), 18 Pa. Cons.Stat. § 1102. Other States set ages between 8 and 10 as the minimum for transfer, thus exposing those young children to mandatory life without parole. See S.D. Codified Laws §§ 26-8C-2, 26-11-4 (2004), § 22-6-1 (age 10); Vt. Stat. Ann., Tit. 33, § 5204 (2011 Cum. Supp.), Tit. 13, § 2311(a) (2009) (age 10); Wash. Rev. Code §§ 9A.04.050, 13.40.110 (2010), § 10.95.030 (age 8).

B

Nor does the presence of discretion in some jurisdictions' transfer statutes aid the States here. Alabama and Arkansas initially ignore that many States use mandatory transfer systems: A juvenile of a certain age who has committed a specified offense will be tried in adult court, regardless of any individualized circumstances. Of the 29 relevant jurisdictions, about half place at least some juvenile homicide offenders in adult court automatically, with no apparent opportunity to seek transfer to juvenile court.¹⁵ Moreover, several States at times lodge this decision exclusively in the hands of prosecutors, again with no statutory mechanism for judicial reevaluation.¹⁶ And those "prosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decisionmaking." Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, P. Griffin, S. Addie, B. Adams, & K. Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* 5 (2011).

Even when States give transfer-stage discretion to judges, it has limited utility. First, the decisionmaker typically will have only partial information at this early, pre-trial stage about either the child or the circumstances of his offense. Miller's case provides an example. As noted earlier, see n. 3, *supra*, the juvenile court denied Miller's request for his own mental-health expert at the transfer hearing, and the

appeals court affirmed on the ground that Miller was not then entitled to the protections and services he would receive at trial. See No. CR-03-0915, at 3-4 (unpublished memorandum). But by then, of course, the expert's testimony could not change the sentence; whatever she said in mitigation, the mandatory life-without-parole prison term would kick in. The key moment for the exercise of discretion is the transfer—and as Miller's case shows, the judge often does not know then what she will learn, about the offender or the offense, over the course of the proceedings.

Second and still more important, the question at transfer hearings may differ dramatically from the issue at a post-trial sentencing. Because many juvenile systems require that the offender be released at a particular age or after a certain number of years, transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without parole). In many States, for example, a child convicted in juvenile court must be released from custody by the age of 21. See, e.g., Ala. Code § 12-15-117(a) (Cum. Supp. 2011); see generally 2006 National Report 103 (noting limitations on the length of juvenile court sanctions). Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility

15. See Ala.Code § 12-15-204(a) (Cum. Supp. 2011); Ariz.Rev.Stat. Ann. § 13-501(A) (West Cum. Supp. 2011); Conn. Gen.Stat. § 46b-127 (2011); Ill. Comp. Stat. ch. 705, §§ 405/5-130(1)(a), (4)(a) (West 2010); La. Child. Code Ann., Art. 305(A) (West Cum. Supp. 2012); Mass. Gen. Laws, ch. 119, § 74 (West 2010); Mich. Comp. Laws Ann. § 712A.2(a) (West 2002); Minn.Stat. Ann. § 260B.007, subd. 6(b) (West Cum. Supp. 2011); § 260B.101, subd. 2 (West 2007); Mo.Rev.Stat. §§ 211.021(1), (2) (2011); N.C. Gen.Stat. Ann. §§ 7B-1501(7), 7B-1601(a),

7B-2200 (Lexis 2011); N.H.Rev.Stat. Ann. § 169-B:2(IV) (West Cum. Supp. 2011), § 169-B:3 (West 2010); Ohio Rev.Code Ann. § 2152.12(A)(1)(a) (Lexis 2011); Tex. Family Code Ann. § 51.02(2); Va.Code Ann. §§ 16.1-241(A), 16.1-269.1(B), (D) (Lexis 2010).

16. Fla. Stat. Ann. § 985.557(1) (West Supp. 2012); Mich. Comp. Laws Ann. § 712A.2(a)(1); Va.Code Ann. §§ 16.1-241(A), 16.1-269.1(C), (D).

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of parole or a lengthy term of years. It is easy to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate. For that reason, the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court—and so cannot satisfy the Eighth Amendment.

IV

Graham, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment. We accordingly reverse the judgments of the Arkansas Supreme Court and Alabama Court of Criminal Appeals and remand the cases for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BREYER, with whom Justice SOTOMAYOR joins, concurring.

I join the Court's opinion in full. I add that, if the State continues to seek a sentence of life without the possibility of parole for Kuntrell Jackson, there will have to be a determination whether Jackson "kill[ed] or intend[ed] to kill" the robbery victim. *Graham v. Florida*, 560 U.S. —, —, 130 S.Ct. 2011, 2027, 176 L.Ed.2d 825 (2010). In my view, without such a finding, the Eighth Amendment as interpreted in *Graham* forbids sentencing Jackson to

such a sentence, regardless of whether its application is mandatory or discretionary under state law.

In *Graham* we said that "when compared to an adult murderer, a juvenile offender *who did not kill or intend to kill* has a twice diminished moral culpability." *Ibid.* (emphasis added). For one thing, "compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed." *Id.*, at —, 130 S.Ct., at 2026 (internal quotation marks omitted). See also *ibid.* ("[P]sychology and brain science continue to show fundamental differences between juvenile and adult minds" making their actions "less likely to be evidence of 'irretrievably depraved character' than are the actions of adults" (quoting *Roper v. Simmons*, 543 U.S. 551, 570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005))); *ante*, at 2464. For another thing, *Graham* recognized that lack of intent normally diminishes the "moral culpability" that attaches to the crime in question, making those that do not intend to kill "categorically less deserving of the most serious forms of punishment than are murderers." 560 U.S., at —, 130 S.Ct., at 2027 (citing *Kennedy v. Louisiana*, 554 U.S. 407, 434–435, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Tison v. Arizona*, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987)). And we concluded that, because of this "twice diminished moral culpability," the Eighth Amendment forbids the imposition upon juveniles of a sentence of life without parole for nonhomicide cases. *Graham*, *supra*, at —, —, 130 S.Ct., at 2027, 2034.

Given *Graham*'s reasoning, the kinds of homicide that can subject a juvenile of-

fender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim. Quite simply, if the juvenile either kills or intends to kill the victim, he lacks “twice diminished” responsibility. But where the juvenile neither kills nor intends to kill, both features emphasized in *Graham* as extenuating apply. The dissent itself here would permit life without parole for “juveniles who commit the worst types of murder,” *post*, at 2480 (opinion of ROBERTS, C.J.), but that phrase does not readily fit the culpability of one who did not himself kill or intend to kill.

I recognize that in the context of felony-murder cases, the question of intent is a complicated one. The felony-murder doctrine traditionally attributes death caused in the course of a felony to all participants who intended to commit the felony, regardless of whether they killed or intended to kill. See 2 W. LaFave, *Substantive Criminal Law* §§ 14.5(a) and (c) (2d ed. 2003). This rule has been based on the idea of “transferred intent”; the defendant’s intent to commit the felony satisfies the intent to kill required for murder. See S. Kadish, S. Schulhofer, & C. Streiker, *Criminal Law and Its Processes* 439 (8th ed. 2007); 2 C. Torcia, *Wharton’s Criminal Law* § 147 (15th ed. 1994).

But in my opinion, this type of “transferred intent” is not sufficient to satisfy the intent to murder that could subject a juvenile to a sentence of life without parole. As an initial matter, this Court has made clear that this artificially constructed kind of intent does not count as intent for purposes of the Eighth Amendment. We do not rely on transferred intent in determining if an adult may receive the death penalty. Thus, the Constitution forbids imposing capital punishment upon an aider and abettor in a robbery, where that individual did not intend to kill and simply was

“in the car by the side of the road . . . , waiting to help the robbers escape.” *Enmund*, *supra*, at 788, 102 S.Ct. 3368. Cf. *Tison*, *supra*, at 157–158, 107 S.Ct. 1676 (capital punishment permissible for aider and abettor where kidnaping led to death because he was “actively involved” in every aspect of the kidnaping and his behavior showed “a reckless disregard for human life”). Given *Graham*, this holding applies to juvenile sentences of life without parole *a fortiori*. See *ante*, at 2466–2467. Indeed, even juveniles who meet the *Tison* standard of “reckless disregard” may not be eligible for life without parole. Rather, *Graham* dictates a clear rule: The only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who “kill or intend to kill.” 560 U.S., at —, 130 S.Ct., at 2027.

Moreover, regardless of our law with respect to adults, there is no basis for imposing a sentence of life without parole upon a juvenile who did not himself kill or intend to kill. At base, the theory of transferring a defendant’s intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate. See 2 LaFave, *supra*, § 14.5(c). Yet the ability to consider the full consequences of a course of action and to adjust one’s conduct accordingly is precisely what we know juveniles lack capacity to do effectively. *Ante*, at 2464–2465. Justice Frankfurter cautioned, “Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a State’s duty toward children.” *May v. Anderson*, 345 U.S. 528, 536, 73 S.Ct. 840, 97 L.Ed. 1221 (1953) (concurring opinion). To apply the doctrine of transferred intent here, where the juvenile did not kill, to sentence a juvenile

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to life without parole would involve such “fallacious reasoning.” *Ibid.*

This is, as far as I can tell, precisely the situation present in Kuntrell Jackson’s case. Jackson simply went along with older boys to rob a video store. On the way, he became aware that a confederate had a gun. He initially stayed outside the store, and went in briefly, saying something like “We ain’t playin’” or “I thought you all was playin’,” before an older confederate shot and killed the store clerk. *Jackson v. State*, 359 Ark. 87, 91, 194 S.W.3d 757, 760 (2004). Crucially, the jury found him guilty of first-degree murder under a statute that permitted them to convict if, Jackson “attempted to commit or committed an aggravated robbery, and, in the course of that offense, he, or an accomplice, caused [the clerk’s] death under circumstance manifesting extreme indifference to the value of human life.” *Ibid.* See Ark.Code Ann. § 5–10–101(a)(1) (1997); *ante*, at 2468. Thus, to be found guilty, Jackson did not need to kill the clerk (it is conceded he did not), nor did he need to have intent to kill or even “extreme indifference.” As long as one of the teenage accomplices in the robbery acted with extreme indifference to the value of human life, Jackson could be convicted of capital murder. *Ibid.*

The upshot is that Jackson, who did not kill the clerk, might not have intended to do so either. See *Jackson v. Norris*, 2011 Ark. 49, at 10, — S.W.3d — (Danielson, J., dissenting) (“[A]ny evidence of [Jackson’s] intent to kill was severely lacking”). In that case, the Eighth Amendment simply forbids imposition of a life term without the possibility of parole. If, on remand, however, there is a finding that Jackson did intend to cause the clerk’s death, the question remains open whether the Eighth Amendment prohibits the imposition of life without parole upon a juve-

nile in those circumstances as well. *Ante*, at 2469.

Chief Justice ROBERTS, with whom Justice SCALIA, Justice THOMAS, and Justice ALITO join, dissenting.

Determining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy. Our role, however, is to apply the law, not to answer such questions. The pertinent law here is the Eighth Amendment to the Constitution, which prohibits “cruel and unusual punishments.” Today, the Court invokes that Amendment to ban a punishment that the Court does not itself characterize as unusual, and that could not plausibly be described as such. I therefore dissent.

The parties agree that nearly 2,500 prisoners are presently serving life sentences without the possibility of parole for murders they committed before the age of 18. Brief for Petitioner in No. 10–9647, p. 62, n. 80 (Jackson Brief); Brief for Respondent in No. 10–9646, p. 30 (Alabama Brief). The Court accepts that over 2,000 of those prisoners received that sentence because it was mandated by a legislature. *Ante*, at 2471–2472, n. 10. And it recognizes that the Federal Government and most States impose such mandatory sentences. *Ante*, at 2470–2471. Put simply, if a 17-year-old is convicted of deliberately murdering an innocent victim, it is not “unusual” for the murderer to receive a mandatory sentence of life without parole. That reality should preclude finding that mandatory life imprisonment for juvenile killers violates the Eighth Amendment.

Our precedent supports this conclusion. When determining whether a punishment is cruel and unusual, this Court typically begins with “objective indicia of society’s standards, as expressed in legislative enactments and state practice.” *Graham v.*

Florida, 560 U.S. —, —, 130 S.Ct. 2011, 2022, 176 L.Ed.2d 825 (2010); see also, e.g., *Kennedy v. Louisiana*, 554 U.S. 407, 422, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Roper v. Simmons*, 543 U.S. 551, 564, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). We look to these “objective indicia” to ensure that we are not simply following our own subjective values or beliefs. *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). Such tangible evidence of societal standards enables us to determine whether there is a “consensus against” a given sentencing practice. *Graham*, *supra*, at —, 130 S.Ct., at 2022–2023. If there is, the punishment may be regarded as “unusual.” But when, as here, most States formally require and frequently impose the punishment in question, there is no objective basis for that conclusion.

Our Eighth Amendment cases have also said that we should take guidance from “evolving standards of decency that mark the progress of a maturing society.” *Ante*, at 2463 (quoting *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); internal quotation marks omitted). Mercy toward the guilty can be a form of decency, and a maturing society may abandon harsh punishments that it comes to view as unnecessary or unjust. But decency is not the same as leniency. A decent society protects the innocent from violence. A mature society may determine that this requires removing those guilty of the most heinous murders from its midst, both as protection for its other members and as a concrete expression of its standards of decency. As judges we have no basis for deciding that progress toward greater decency can move only in the direction of easing sanctions on the guilty.

In this case, there is little doubt about the direction of society’s evolution: For

most of the 20th century, American sentencing practices emphasized rehabilitation of the offender and the availability of parole. But by the 1980’s, outcry against repeat offenders, broad disaffection with the rehabilitative model, and other factors led many legislatures to reduce or eliminate the possibility of parole, imposing longer sentences in order to punish criminals and prevent them from committing more crimes. See, e.g., Alschuler, *The Changing Purposes of Criminal Punishment*, 70 U. Chi. L.Rev. 1, 1–13 (2003); see generally *Crime and Public Policy* (J. Wilson & J. Petersilia eds. 2011). Statutes establishing life without parole sentences in particular became more common in the past quarter century. See *Baze v. Rees*, 553 U.S. 35, 78, and n. 10, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) (Stevens, J., concurring in judgment). And the parties agree that most States have changed their laws relatively recently to expose teenage murderers to mandatory life without parole. Jackson Brief 54–55; Alabama Brief 4–5.

The Court attempts to avoid the import of the fact that so many jurisdictions have embraced the sentencing practice at issue by comparing this case to the Court’s prior Eighth Amendment cases. The Court notes that *Graham* found a punishment authorized in 39 jurisdictions unconstitutional, whereas the punishment it bans today is mandated in 10 fewer. *Ante*, at 2471. But *Graham* went to considerable lengths to show that although theoretically allowed in many States, the sentence at issue in that case was “exceedingly rare” in practice. 560 U.S., at —, 130 S.Ct., at 2026. The Court explained that only 123 prisoners in the entire Nation were serving life without parole for nonhomicide crimes committed as juveniles, with more than half in a single State. It contrasted that with statistics showing nearly 400,000 juveniles were arrested for serious nonho-

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micide offenses in a single year. Based on the sentence's rarity despite the many opportunities to impose it, *Graham* concluded that there was a national consensus against life without parole for juvenile non-homicide crimes. *Id.*, at —, 130 S.Ct., at 2024–2026.

Here the number of mandatory life without parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, is over 5,000 times higher than the corresponding number in *Graham*. There is thus nothing in this case like the evidence of national consensus in *Graham*.¹

The Court disregards these numbers, claiming that the prevalence of the sentence in question results from the number of statutes requiring its imposition. *Ante*, at 2471–2472, n. 10. True enough. The sentence at issue is statutorily mandated life without parole. Such a sentence can only result from statutes requiring its imposition. In *Graham* the Court relied on the low number of actual sentences to explain why the high number of statutes allowing such sentences was not dispositive. Here, the Court excuses the high number of actual sentences by citing the high number of statutes imposing it. To

say that a sentence may be considered unusual *because* so many legislatures approve it stands precedent on its head.²

The Court also advances another reason for discounting the laws enacted by Congress and most state legislatures. Some of the jurisdictions that impose mandatory life without parole on juvenile murderers do so as a result of two statutes: one providing that juveniles charged with serious crimes may be tried as adults, and another generally mandating that those convicted of murder be imprisoned for life. According to the Court, our cases suggest that where the sentence results from the interaction of two such statutes, the legislature can be considered to have imposed the resulting sentences “inadvertent[ly].” *Ante*, at 2472–2474. The Court relies on *Graham* and *Thompson v. Oklahoma*, 487 U.S. 815, 826, n. 24, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion), for the proposition that these laws are therefore not valid evidence of society's views on the punishment at issue.

It is a fair question whether this Court should ever assume a legislature is so ignorant of its own laws that it does not understand that two of them interact

1. *Graham* stated that 123 prisoners were serving life without parole for nonhomicide offenses committed as juveniles, while in 2007 alone 380,480 juveniles were arrested for serious nonhomicide crimes. 560 U.S., at —, 130 S.Ct., at 2024–2025. I use 2,000 as the number of prisoners serving mandatory life without parole sentences for murders committed as juveniles, because all seem to accept that the number is at least that high. And the same source *Graham* used reports that 1,170 juveniles were arrested for murder and non-negligent homicide in 2009. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, C. Puzzanchera & B. Adams, Juvenile Arrests 2009, p. 4 (Dec. 2011).

2. The Court's reference to discretionary sentencing practices is a distraction. See *ante*, at

2471–2472, n. 10. The premise of the Court's decision is that mandatory sentences are categorically different from discretionary ones. So under the Court's own logic, whether discretionary sentences are common or uncommon has nothing to do with whether mandatory sentences are unusual. In any event, if analysis of discretionary sentences were relevant, it would not provide objective support for today's decision. The Court states that “about 15% of all juvenile life-without-parole sentences”—meaning nearly 400 sentences—were imposed at the discretion of a judge or jury. *Ante*, at 2471–2472, n. 10. Thus the number of discretionary life without parole sentences for juvenile murderers, relative to the number of juveniles arrested for murder, is about 1,000 times higher than the corresponding number in *Graham*.

with each other, especially on an issue of such importance as the one before us. But in *Graham* and *Thompson* it was at least plausible as a practical matter. In *Graham*, the extreme rarity with which the sentence in question was imposed could suggest that legislatures did not really intend the inevitable result of the laws they passed. See 560 U.S., at —, 130 S.Ct., at 2025–2026. In *Thompson*, the sentencing practice was even rarer—only 20 defendants had received it in the last century. 487 U.S., at 832, 108 S.Ct. 2687 (plurality opinion). Perhaps under those facts it could be argued that the legislature was not fully aware that a teenager could receive the particular sentence in question. But here the widespread and recent imposition of the sentence makes it implausible to characterize this sentencing practice as a collateral consequence of legislative ignorance.³

Nor do we display our usual respect for elected officials by asserting that legislators have *accidentally* required 2,000 teenagers to spend the rest of their lives in jail. This is particularly true given that our well-publicized decision in *Graham* alerted legislatures to the possibility that teenagers were subject to life with parole only because of legislative inadvertence. I am aware of no effort in the wake of *Graham* to correct any supposed legislative oversight. Indeed, in amending its laws in response to *Graham* one legislature made especially clear that it *does* intend juveniles who commit first-degree murder to receive mandatory life without parole. See Iowa Code Ann. § 902.1 (West Cum. Supp. 2012).

In the end, the Court does not actually conclude that mandatory life sentences for juvenile murderers are unusual. It

instead claims that precedent “leads to” today’s decision, primarily relying on *Graham* and *Roper*. *Ante*, at 2464. Petitioners argue that the reasoning of those cases “compels” finding in their favor. Jackson Brief 34. The Court is apparently unwilling to go so far, asserting only that precedent points in that direction. But today’s decision invalidates the laws of dozens of legislatures and Congress. This Court is not easily led to such a result. See, e.g., *United States v. Harris*, 106 U.S. 629, 635, 1 S.Ct. 601, 27 L.Ed. 290 (1883) (courts must presume an Act of Congress is constitutional “unless the lack of constitutional authority . . . is clearly demonstrated”). Because the Court does not rely on the Eighth Amendment’s text or objective evidence of society’s standards, its analysis of precedent alone must bear the “heavy burden [that] rests on those who would attack the judgment of the representatives of the people.” *Gregg*, 428 U.S., at 175, 96 S.Ct. 2909. If the Court is unwilling to say that precedent compels today’s decision, perhaps it should reconsider that decision.

In any event, the Court’s holding does not follow from *Roper* and *Graham*. Those cases undoubtedly stand for the proposition that teenagers are less mature, less responsible, and less fixed in their ways than adults—not that a Supreme Court case was needed to establish that. What they do not stand for, and do not even suggest, is that legislators—who also know that teenagers are different from adults—may not require life without parole for juveniles who commit the worst types of murder.

That *Graham* does not imply today’s result could not be clearer. In barring life

3. The Court claims that I “take issue with some or all of these precedents” and “seek to relitigate” them. *Ante*, at 2464, n. 4. Not so:

applying this Court’s cases exactly as they stand, I do not believe they support the Court’s decision in this case.

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without parole for juvenile nonhomicide offenders, *Graham* stated that “[t]here is a line ‘between homicide and other serious violent offenses against the individual.’” 560 U.S., at —, 130 S.Ct., at 2027 (quoting *Kennedy*, 554 U.S., at 438, 128 S.Ct. 2641). The whole point of drawing a line between one issue and another is to say that they are different and should be treated differently. In other words, the two are in different categories. Which *Graham* also said: “defendants who do not kill, intend to kill, or foresee that life will be taken are *categorically* less deserving of the most serious forms of punishment than are murderers.” 560 U.S., at —, 130 S.Ct., at 2027 (emphasis added). Of course, to be especially clear that what is said about one issue does not apply to another, one could say that the two issues cannot be compared. *Graham* said that too: “Serious nonhomicide crimes . . . cannot be compared to murder.” *Ibid.* (internal quotation marks omitted). A case that expressly puts an issue in a different category from its own subject, draws a line between the two, and states that the two should not be compared, cannot fairly be said to control that issue.

Roper provides even less support for the Court’s holding. In that case, the Court held that the death penalty could not be imposed for offenses committed by juveniles, no matter how serious their crimes. In doing so, *Roper* also set itself in a different category than this case, by expressly invoking “special” Eighth Amendment analysis for death penalty cases. 543 U.S., at 568–569, 125 S.Ct. 1183. But more importantly, *Roper* reasoned that the death penalty was not needed to deter juvenile murderers in part because “life imprisonment without the possibility of parole” was available. *Id.*, at 572, 125 S.Ct. 1183. In a classic bait and switch, the Court now tells state legislatures that—*Roper*’s promise notwithstanding—they

do not have power to guarantee that once someone commits a heinous murder, he will never do so again. It would be enough if today’s decision proved Justice SCALIA’s prescience in writing that *Roper*’s “reassurance . . . gives little comfort.” *Id.*, at 623, 125 S.Ct. 1183 (dissenting opinion). To claim that *Roper* actually “leads to” revoking its own reassurance surely goes too far.

Today’s decision does not offer *Roper* and *Graham*’s false promises of restraint. Indeed, the Court’s opinion suggests that it is merely a way station on the path to further judicial displacement of the legislative role in prescribing appropriate punishment for crime. The Court’s analysis focuses on the mandatory nature of the sentences in this case. See *ante*, at 2466–2469. But then—although doing so is entirely unnecessary to the rule it announces—the Court states that even when a life without parole sentence is not mandatory, “we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Ante*, at 2469. Today’s holding may be limited to mandatory sentences, but the Court has already announced that discretionary life without parole for juveniles should be “uncommon”—or, to use a common synonym, “unusual.”

Indeed, the Court’s gratuitous prediction appears to be nothing other than an invitation to overturn life without parole sentences imposed by juries and trial judges. If that invitation is widely accepted and such sentences for juvenile offenders do in fact become “uncommon,” the Court will have bootstrapped its way to declaring that the Eighth Amendment absolutely prohibits them.

This process has no discernible end point—or at least none consistent with our Nation’s legal traditions. *Roper* and *Gra-*

ham attempted to limit their reasoning to the circumstances they addressed—*Roper* to the death penalty, and *Graham* to non-homicide crimes. Having cast aside those limits, the Court cannot now offer a credible substitute, and does not even try. After all, the Court tells us, “none of what [*Graham*] said about children . . . is crime-specific.” *Ante*, at 2465. The principle behind today’s decision seems to be only that because juveniles are different from adults, they must be sentenced differently. See *ante*, at 2467–2469. There is no clear reason that principle would not bar all mandatory sentences for juveniles, or any juvenile sentence as harsh as what a similarly situated adult would receive. Unless confined, the only stopping point for the Court’s analysis would be never permitting juvenile offenders to be tried as adults. Learning that an Amendment that bars only “unusual” punishments requires the abolition of this uniformly established practice would be startling indeed.

* * *

It is a great tragedy when a juvenile commits murder—most of all for the innocent victims. But also for the murderer, whose life has gone so wrong so early. And for society as well, which has lost one or more of its members to deliberate violence, and must harshly punish another. In recent years, our society has moved toward requiring that the murderer, his age notwithstanding, be imprisoned for the remainder of his life. Members of this Court may disagree with that choice. Perhaps science and policy suggest society should show greater mercy to young killers, giving them a greater chance to reform themselves at the risk that they will kill again. See *ante*, at 2464–2466. But that is not our decision to make. Neither the text of the Constitution nor our prece-

dent prohibits legislatures from requiring that juvenile murderers be sentenced to life without parole. I respectfully dissent.

Justice THOMAS, with whom Justice SCALIA joins, dissenting.

Today, the Court holds that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” *Ante*, at 2460. To reach that result, the Court relies on two lines of precedent. The first involves the categorical prohibition of certain punishments for specified classes of offenders. The second requires individualized sentencing in the capital punishment context. Neither line is consistent with the original understanding of the Cruel and Unusual Punishments Clause. The Court compounds its errors by combining these lines of precedent and extending them to reach a result that is even less legitimate than the foundation on which it is built. Because the Court upsets the legislatively enacted sentencing regimes of 29 jurisdictions without constitutional warrant, I respectfully dissent.¹

I

The Court first relies on its cases “adopt[ing] categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty.” *Ante*, at 2463. Of these categorical proportionality cases, the Court places particular emphasis on *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), and *Graham v. Florida*, 560 U.S. —, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). In *Roper*, the Court held that the Constitution prohibits the execution of an offender who was under 18 at the time of his offense. 543 U.S., at

1. I join THE CHIEF JUSTICE’s opinion because it accurately explains that, even accept-

ing the Court’s precedents, the Court’s holding in today’s cases is unsupportable.

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578, 125 S.Ct. 1183. The *Roper* Court looked to, among other things, its own sense of parental intuition and “scientific and sociological studies” to conclude that offenders under the age of 18 “cannot with reliability be classified among the worst offenders.” *Id.*, at 569, 125 S.Ct. 1183. In *Graham*, the Court relied on similar considerations to conclude that the Constitution prohibits a life-without-parole sentence for a nonhomicide offender who was under the age of 18 at the time of his offense. 560 U.S., at —, 130 S.Ct., at 2030.

The Court now concludes that *mandatory* life-without-parole sentences for duly convicted juvenile murderers “contraven[e] *Graham*’s (and also *Roper*’s) foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Ante*, at 2466. But neither *Roper* nor *Graham* held that specific procedural rules are required for sentencing juvenile homicide offenders. And, the logic of those cases should not be extended to create such a requirement.

The Eighth Amendment, made applicable to the States by the Fourteenth Amendment, provides that: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” As I have previously explained, “the Cruel and Unusual Punishments Clause was originally understood as prohibiting torturous *methods* of punish-

ment—specifically methods akin to those that had been considered cruel and unusual at the time the Bill of Rights was adopted.” *Graham, supra*, at —, 130 S.Ct., at 2044 (dissenting opinion) (internal quotation marks and citations omitted).² The clause does not contain a “proportionality principle.” *Erving v. California*, 538 U.S. 11, 32, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003) (THOMAS, J., concurring in judgment); see generally *Harmelin v. Michigan*, 501 U.S. 957, 975–985, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (opinion of SCALIA, J.). In short, it does not authorize courts to invalidate any punishment they deem disproportionate to the severity of the crime or to a particular class of offenders. Instead, the clause “leaves the unavoidably moral question of who ‘deserves’ a particular nonprohibited method of punishment to the judgment of the legislatures that authorize the penalty.” *Graham, supra*, at —, 130 S.Ct., at 2045 (THOMAS, J., dissenting).

The legislatures of Arkansas and Alabama, like those of 27 other jurisdictions, *ante*, at 2470–2471, have determined that all offenders convicted of specified homicide offenses, whether juveniles or not, deserve a sentence of life in prison without the possibility of parole. Nothing in our Constitution authorizes this Court to supplant that choice.

II

To invalidate mandatory life-without-parole sentences for juveniles, the Court also

2. Neither the Court nor petitioners argue that petitioners’ sentences would have been among “the ‘modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted.’” *Graham*, 560 U.S., at —, n. 3, 130 S.Ct., at 2048, n. 3 (THOMAS, J., dissenting) (quoting *Ford v. Wainwright*, 477 U.S. 399, 405, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986)). Nor could they. Petitioners were 14 years old at the time they committed their crimes. When the Bill of Rights was ratified,

14-year-olds were subject to trial and punishment as adult offenders. See *Roper v. Simmons*, 543 U.S. 551, 609, n. 1, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (SCALIA, J., dissenting). Further, mandatory death sentences were common at that time. See *Harmelin v. Michigan*, 501 U.S. 957, 994–995, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). It is therefore implausible that a 14-year-old’s mandatory prison sentence—of any length, with or without parole—would have been viewed as cruel and unusual.

relies on its cases “prohibit[ing] mandatory imposition of capital punishment.” *Ante*, at 2463. The Court reasons that, because *Graham* compared juvenile life-without-parole sentences to the death penalty, the “distinctive set of legal rules” that this Court has imposed in the capital punishment context, including the requirement of individualized sentencing, is “relevant” here. *Ante*, at 2466–2467. But even accepting an analogy between capital and juvenile life-without-parole sentences, this Court’s cases prohibiting mandatory capital sentencing schemes have no basis in the original understanding of the Eighth Amendment, and, thus, cannot justify a prohibition of sentencing schemes that mandate life-without-parole sentences for juveniles.

A

In a line of cases following *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (*per curiam*), this Court prohibited the mandatory imposition of the death penalty. See *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion); *Roberts v. Louisiana*, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976) (same); *Sumner v. Shuman*, 483 U.S. 66, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987). *Furman* first announced the principle that States may not permit sentencers to exercise unguided discretion in imposing the death penalty. See generally 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346. In re-

sponse to *Furman*, many States passed new laws that made the death penalty mandatory following conviction of specified crimes, thereby eliminating the offending discretion. See *Gregg v. Georgia*, 428 U.S. 153, 180–181, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). The Court invalidated those statutes in *Woodson*, *Roberts*, and *Sumner*. The Court reasoned that mandatory capital sentencing schemes were problematic, because they failed “to allow the particularized consideration” of “relevant facets of the character and record of the individual offender or the circumstances of the particular offense.” *Woodson*, *supra*, at 303–304, 96 S.Ct. 2978 (plurality opinion).³

In my view, *Woodson* and its progeny were wrongly decided. As discussed above, the Cruel and Unusual Punishments Clause, as originally understood, prohibits “torturous methods of punishment.” See *Graham*, 560 U.S., at —, 130 S.Ct., at 2044 (THOMAS, J., dissenting) (internal quotation marks omitted). It is not concerned with whether a particular lawful method of punishment—whether capital or noncapital—is imposed pursuant to a mandatory or discretionary sentencing regime. See *Gardner v. Florida*, 430 U.S. 349, 371, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977) (Rehnquist, J., dissenting) (“The prohibition of the Eighth Amendment relates to the character of the punishment, and not to the process by which it is

3. The Court later extended *Woodson*, requiring that capital defendants be permitted to present, and sentencers in capital cases be permitted to consider, any relevant mitigating evidence, including the age of the defendant. See, e.g., *Lockett v. Ohio*, 438 U.S. 586, 597–608, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion); *Eddings v. Oklahoma*, 455 U.S. 104, 110–112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Skipper v. South Carolina*, 476 U.S. 1, 4–5, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986);

Johnson v. Texas, 509 U.S. 350, 361–368, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993). Whatever the validity of the requirement that sentencers be permitted to consider all mitigating evidence when deciding whether to impose a nonmandatory capital sentence, the Court certainly was wrong to prohibit mandatory capital sentences. See *Graham v. Collins*, 506 U.S. 461, 488–500, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (THOMAS, J., concurring).

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imposed"). In fact, "[i]n the early days of the Republic," each crime generally had a defined punishment "prescribed with specificity by the legislature." *United States v. Grayson*, 438 U.S. 41, 45, 98 S.Ct. 2610, 57 L.Ed.2d 582 (1978). Capital sentences, to which the Court analogizes, were treated no differently. "[M]andatory death sentences abounded in our first Penal Code" and were "common in the several States—both at the time of the founding and throughout the 19th century." *Harmelin*, 501 U.S., at 994–995, 111 S.Ct. 2680; see also *Woodson*, *supra*, at 289, 96 S.Ct. 2978 (plurality opinion) ("At the time the Eighth Amendment was adopted in 1791, the States uniformly followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses"). Accordingly, the idea that the mandatory imposition of an otherwise-constitutional sentence renders that sentence cruel and unusual finds "no support in the text and history of the Eighth Amendment." *Harmelin*, *supra*, at 994, 111 S.Ct. 2680.

Moreover, mandatory death penalty schemes were "a perfectly reasonable legislative response to the concerns expressed in *Furman*" regarding unguided sentencing discretion, in that they "eliminat[ed] explicit jury discretion and treat[ed] all defendants equally." *Graham v. Collins*, 506 U.S. 461, 487, 113 S.Ct. 892, 122 L.Ed.2d 260 (1993) (THOMAS, J., concurring). And, as Justice White explained more than 30 years ago, "a State is not constitutionally forbidden to provide that the commission of certain crimes conclusively establishes that a criminal's character is such that he deserves death." *Roberts*, *supra*, at 358, 96 S.Ct. 3001 (dissenting opinion). Thus, there is no basis for concluding that a mandatory capital sentencing scheme is unconstitutional. Because the Court's cases requiring individualized sentencing

in the capital context are wrongly decided, they cannot serve as a valid foundation for the novel rule regarding mandatory life-without-parole sentences for juveniles that the Court announces today.

B

In any event, this Court has already declined to extend its individualized-sentencing rule beyond the death penalty context. In *Harmelin*, the defendant was convicted of possessing a large quantity of drugs. 501 U.S., at 961, 111 S.Ct. 2680 (opinion of SCALIA, J.). In accordance with Michigan law, he was sentenced to a mandatory term of life in prison without the possibility of parole. *Ibid.* Citing the same line of death penalty precedents on which the Court relies today, the defendant argued that his sentence, due to its mandatory nature, violated the Cruel and Unusual Punishments Clause. *Id.*, at 994–995, 111 S.Ct. 2680 (opinion of the Court).

The Court rejected that argument, explaining that "[t]here can be no serious contention . . . that a sentence which is not otherwise cruel and unusual becomes so simply because it is 'mandatory.'" *Id.*, at 995, 111 S.Ct. 2680. In so doing, the Court refused to analogize to its death penalty cases. The Court noted that those cases had "repeatedly suggested that there is no comparable [individualized-sentencing] requirement outside the capital context, because of the qualitative difference between death and all other penalties." *Ibid.* The Court observed that, "even where the difference" between a sentence of life without parole and other sentences of imprisonment "is the greatest," such a sentence "cannot be compared with death." *Id.*, at 996, 111 S.Ct. 2680. Therefore, the Court concluded that the line of cases requiring individualized sentencing had been drawn at capital cases, and that there was "no basis for extending it further." *Ibid.*

Harmelin's reasoning logically extends to these cases. Obviously, the younger the defendant, "the great[er]" the difference between a sentence of life without parole and other terms of imprisonment. *Ibid.* But under *Harmelin*'s rationale, the defendant's age is immaterial to the Eighth Amendment analysis. Thus, the result in today's cases should be the same as that in *Harmelin*. Petitioners, like the defendant in *Harmelin*, were not sentenced to death. Accordingly, this Court's cases "creating and clarifying the individualized capital sentencing doctrine" do not apply. *Id.*, at 995, 111 S.Ct. 2680 (internal quotation marks omitted).

Nothing about our Constitution, or about the qualitative difference between any term of imprisonment and death, has changed since *Harmelin* was decided 21 years ago. What *has* changed (or, better yet, "evolved") is this Court's ever-expanding line of categorical proportionality cases. The Court now uses *Roper* and *Graham* to jettison *Harmelin*'s clear distinction between capital and noncapital cases and to apply the former to noncapital juvenile offenders.⁴ The Court's decision to do so is even less supportable than the precedents used to reach it.

III

As THE CHIEF JUSTICE notes, *ante*, at 2481–2482 (dissenting opinion), the Court lays the groundwork for future incursions on the States' authority to sentence criminals. In its categorical proportionality cases, the Court has considered "objective indicia of society's standards, as expressed in legislative enactments and

state practice' to determine whether there is a national consensus against the sentencing practice at issue." *Graham*, 560 U.S., at —, 130 S.Ct. at 2022 (quoting *Roper*, 543 U.S., at 563, 125 S.Ct. 1183). In *Graham*, for example, the Court looked to "[a]ctual sentencing practices" to conclude that there was a national consensus against life-without-parole sentences for juvenile nonhomicide offenders. 560 U.S., at —, 130 S.Ct., at 2023–2025; see also *Roper*, *supra*, at 564–565, 125 S.Ct. 1183; *Atkins v. Virginia*, 536 U.S. 304, 316, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).

Today, the Court makes clear that, even though its decision leaves intact the discretionary imposition of life-without-parole sentences for juvenile homicide offenders, it "think[s] appropriate occasions for sentencing juveniles to [life without parole] will be uncommon." *Ante*, at 2469. That statement may well cause trial judges to shy away from imposing life without parole sentences and embolden appellate judges to set them aside when they are imposed. And, when a future petitioner seeks a categorical ban on sentences of life without parole for juvenile homicide offenders, this Court will most assuredly look to the "actual sentencing practices" triggered by this case. The Court has, thus, gone from "merely" divining the societal consensus of today to shaping the societal consensus of tomorrow.

* * *

Today's decision invalidates a constitutionally permissible sentencing system based on nothing more than the Court's belief that "its own sense of morality . . .

4. In support of its decision not to apply *Harmelin* to juvenile offenders, the Court also observes that "[o]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults." *Ante*, at 2470 (quoting *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct.

2394, 2404, 180 L.Ed.2d 310 (2011) (some internal quotation marks omitted)). That is no doubt true as a general matter, but it does not justify usurping authority that rightfully belongs to the people by imposing a constitutional rule where none exists.

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pre-empt that of the people and their representatives.” *Graham, supra*, at —, 130 S.Ct., at 2058 (THOMAS, J., dissenting). Because nothing in the Constitution grants the Court the authority it exercises today, I respectfully dissent.

Justice ALITO, with whom Justice SCALIA joins, dissenting.

The Court now holds that Congress and the legislatures of the 50 States are prohibited by the Constitution from identifying any category of murderers under the age of 18 who must be sentenced to life imprisonment without parole. Even a 17½-year-old who sets off a bomb in a crowded mall or guns down a dozen students and teachers is a “child” and must be given a chance to persuade a judge to permit his release into society. Nothing in the Constitution supports this arrogation of legislative authority.

The Court long ago abandoned the original meaning of the Eighth Amendment, holding instead that the prohibition of “cruel and unusual punishment” embodies the “evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion); see also *Graham v. Florida*, 560 U.S. —, —, 130 S.Ct. 2011, 2020–2021, 176 L.Ed.2d 825 (2010); *Kennedy v. Louisiana*, 554 U.S. 407, 419, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Roper v. Simmons*, 543 U.S. 551, 560–561, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Atkins v. Virginia*, 536 U.S. 304, 311–312, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002); *Hudson v. McMillian*, 503 U.S. 1, 8, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992); *Ford v. Wainwright*, 477 U.S. 399, 406, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); *Rhodes v. Chapman*, 452 U.S. 337, 346, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981); *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251

(1976). Both the provenance and philosophical basis for this standard were problematic from the start. (Is it true that our society is inexorably evolving in the direction of greater and greater decency? Who says so, and how did this particular philosophy of history find its way into our fundamental law? And in any event, aren’t elected representatives more likely than unaccountable judges to reflect changing societal standards?) But at least at the start, the Court insisted that these “evolving standards” represented something other than the personal views of five Justices. See *Rummel v. Estelle*, 445 U.S. 263, 275, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980) (explaining that “the Court’s Eighth Amendment judgments should neither be nor appear to be merely the subjective views of individual Justices”). Instead, the Court looked for objective indicia of our society’s moral standards and the trajectory of our moral “evolution.” See *id.*, at 274–275, 100 S.Ct. 1133 (emphasizing that “judgment should be informed by objective factors to the maximum possible extent” (quoting *Coker v. Georgia*, 433 U.S. 584, 592, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion))).

In this search for objective indicia, the Court toyed with the use of public opinion polls, see *Atkins, supra*, at 316, n. 21, 122 S.Ct. 2242, and occasionally relied on foreign law, see *Roper v. Simmons, supra*, at 575, 125 S.Ct. 1183; *Enmund v. Florida*, 458 U.S. 782, 796, n. 22, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Thompson v. Oklahoma*, 487 U.S. 815, 830–831, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988); *Coker*, 433 U.S., at 596, n. 10, 97 S.Ct. 2861 (plurality opinion).

In the main, however, the staple of this inquiry was the tallying of the positions taken by state legislatures. Thus, in *Coker*, which held that the Eighth Amendment prohibits the imposition of the death penal-

ty for the rape of an adult woman, the Court noted that only one State permitted that practice. *Id.*, at 595–596, 97 S.Ct. 2861. In *Enmund*, where the Court held that the Eighth Amendment forbids capital punishment for ordinary felony murder, both federal law and the law of 28 of the 36 States that authorized the death penalty at the time rejected that punishment. 458 U.S., at 789, 102 S.Ct. 3368.

While the tally in these early cases may be characterized as evidence of a national consensus, the evidence became weaker and weaker in later cases. In *Atkins*, which held that low-IQ defendants may not be sentenced to death, the Court found an anti-death-penalty consensus even though more than half of the States that allowed capital punishment permitted the practice. See 536 U.S., at 342, 122 S.Ct. 2242 (SCALIA, J., dissenting) (observing that less than half of the 38 States that permit capital punishment have enacted legislation barring execution of the mentally retarded). The Court attempted to get around this problem by noting that there was a pronounced trend against this punishment. See *id.*, at 313–315, 122 S.Ct. 2242 (listing 18 States that had amended their laws since 1986 to prohibit the execution of mentally retarded persons).

The importance of trend evidence, however, was not long lived. In *Roper*, which outlawed capital punishment for defendants between the ages of 16 and 18, the lineup of the States was the same as in *Atkins*, but the trend in favor of abolition—five States during the past 15 years—was less impressive. *Roper*, 543 U.S., at 564–565, 125 S.Ct. 1183. Nevertheless, the Court held that the absence of a strong trend in support of abolition did not matter. See *id.*, at 566, 125 S.Ct. 1183 (“Any difference between this case and *Atkins* with respect to the pace of abolition

is thus counterbalanced by the consistent direction of the change”).

In *Kennedy v. Louisiana*, the Court went further. Holding that the Eighth Amendment prohibits capital punishment for the brutal rape of a 12-year-old girl, the Court disregarded a nascent legislative trend *in favor of permitting capital punishment* for this narrowly defined and heinous crime. See 554 U.S., at 433, 128 S.Ct. 2641 (explaining that, although “the total number of States to have made child rape a capital offense . . . is six,” “[t]his is not an indication of a trend or change in direction comparable to the one supported by data in *Roper*”). The Court felt no need to see whether this trend developed further—perhaps because true moral evolution can lead in only one direction. And despite the argument that the rape of a young child may involve greater depravity than some murders, the Court proclaimed that homicide is categorically different from all (or maybe almost all) other offenses. See *id.*, at 438, 128 S.Ct. 2641 (stating that nonhomicide crimes, including child rape, “may be devastating in their harm . . . but in terms of moral depravity and of the injury to the person and to the public, they cannot be compared to murder in their severity and irrevocability” (internal quotation marks and citation omitted)). As the Court had previously put it, “death is different.” *Ford*, *supra*, at 411, 106 S.Ct. 2595 (plurality opinion).

Two years after *Kennedy*, in *Graham v. Florida*, any pretense of heeding a legislative consensus was discarded. In *Graham*, federal law and the law of 37 States and the District of Columbia permitted a minor to be sentenced to life imprisonment without parole for nonhomicide crimes, but despite this unmistakable evidence of a national consensus, the Court held that the practice violates the Eighth Amendment. See 560 U.S., at —, 130 S.Ct., at 2043–

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2044 (THOMAS, J., dissenting). The Court, however, drew a distinction between minors who murder and minors who commit other heinous offenses, so at least in that sense the principle that death is different lived on.

Today, that principle is entirely put to rest, for here we are concerned with the imposition of a term of imprisonment on offenders who kill. The two (carefully selected) cases before us concern very young defendants, and despite the brutality and evident depravity exhibited by at least one of the petitioners, it is hard not to feel sympathy for a 14-year-old sentenced to life without the possibility of release. But no one should be confused by the particulars of the two cases before us. The category of murderers that the Court delicately calls “children” (murderers under the age of 18) consists overwhelmingly of young men who are fast approaching the legal age of adulthood. Evan Miller and Kuntrell Jackson are anomalies; much more typical are murderers like Donald Roper, who committed a brutal thrill-killing just nine months shy of his 18th birthday. *Roper*, 543 U.S., at 556, 125 S.Ct. 1183.

Seventeen-year-olds commit a significant number of murders every year,¹ and some

of these crimes are incredibly brutal. Many of these murderers are at least as mature as the average 18-year-old. See *Thompson*, 487 U.S., at 854, 108 S.Ct. 2687 (O'Connor, J., concurring in judgment) (noting that maturity may “vary widely among different individuals of the same age”). Congress and the legislatures of 43 States have concluded that at least some of these murderers should be sentenced to prison without parole, and 28 States and the Federal Government have decided that for some of these offenders life without parole should be mandatory. See *Ante*, at 2471–2472, and nn. 9–10. The majority of this Court now overrules these legislative judgments.²

It is true that, at least for now, the Court apparently permits a trial judge to make an individualized decision that a particular minor convicted of murder should be sentenced to life without parole, but do not expect this possibility to last very long. The majority goes out of its way to express the view that the imposition of a sentence of life without parole on a “child” (i.e., a murderer under the age of 18) should be uncommon. Having held in *Graham* that a trial judge with discretionary sentencing authority may not impose a sentence of life without parole on a minor

1. Between 2002 and 2010, 17-year-olds committed an average combined total of 424 murders and nonnegligent homicides per year. See Dept. of Justice, Bureau of Justice Statistics, § 4, Arrests, Age of persons arrested (Table 4.7).

2. As the Court noted in *Mistretta v. United States*, 488 U.S. 361, 366, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989), Congress passed the Sentencing Reform Act of 1984 to eliminate discretionary sentencing and parole because it concluded that these practices had led to gross abuses. The Senate Report for the 1984 bill rejected what it called the “outmoded rehabilitation model” for federal criminal sentencing. S.Rep. No. 98–225, p. 38 (1983). According to the Report, “almost everyone

involved in the criminal justice system now doubts that rehabilitation can be induced reliably in a prison setting, and it is now quite certain that no one can really detect whether or when a prisoner is rehabilitated.” *Ibid*. The Report also “observed that the indeterminate-sentencing system had two ‘unjustif[ed]’ and ‘shameful’ consequences. The first was the great variation among sentences imposed by different judges upon similarly situated offenders. The second was uncertainty as to the time the offender would spend in prison. Each was a serious impediment to an evenhanded and effective operation of the criminal justice system.” *Mistretta*, *supra*, at 366, 109 S.Ct. 647 (quoting S.Rep. No. 98–225, at 38, 65 (citation omitted)).

who has committed a nonhomicide offense, the Justices in the majority may soon extend that holding to minors who commit murder. We will see.

What today's decision shows is that our Eighth Amendment cases are no longer tied to any objective indicia of society's standards. Our Eighth Amendment case law is now entirely inward looking. After entirely disregarding objective indicia of our society's standards in *Graham*, the Court now extrapolates from *Graham*. Future cases may extrapolate from today's holding, and this process may continue until the majority brings sentencing practices into line with whatever the majority views as truly evolved standards of decency.

The Eighth Amendment imposes certain limits on the sentences that may be imposed in criminal cases, but for the most part it leaves questions of sentencing policy to be determined by Congress and the state legislatures—and with good reason. Determining the length of imprisonment that is appropriate for a particular offense and a particular offender inevitably involves a balancing of interests. If imprisonment does nothing else, it removes the criminal from the general population and prevents him from committing additional crimes in the outside world. When a legislature prescribes that a category of killers must be sentenced to life imprisonment, the legislature, which presumably reflects the views of the electorate, is taking the position that the risk that these offenders will kill again outweighs any countervailing consideration, including reduced culpability due to immaturity or the possibility of rehabilitation. When the majority of this Court countermands that democratic decision, what the majority is saying is that members of society must be exposed to the risk that these convicted murderers, if released from custody, will murder again.

Unless our cases change course, we will continue to march toward some vision of evolutionary culmination that the Court has not yet disclosed. The Constitution does not authorize us to take the country on this journey.



AMERICAN TRADITION PARTNERSHIP, INC., fka Western Tradition Partnership, Inc., et al.

v.

Steve BULLOCK, Attorney General of Montana, et al.

No. 11–1179.

June 25, 2012.

Background: Corporations brought declaratory judgment action in state court, seeking declaration that Montana statute regulating independent corporate expenditures on behalf of candidates and requiring establishment of political committee for political expenditures on behalf of candidates violated corporations' free speech rights. The District Court, County of Lewis and Clark, Jeffrey M. Sherlock, J., declared statute unconstitutional and denied corporations' motion for attorney fees. State appealed and corporations cross-appealed. The Montana Supreme Court, McGrath, C.J., 271 P.3d 1, reversed, upholding the statute.

Holding: On petition for certiorari, the United States Supreme Court held that Montana statute violated the First Amendment.

Certiorari granted; judgment reversed.

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HEARN, J. concurs. PLEICONES, BEATTY and KITTREDGE, JJ., concurring in result only.



Pleicones, J., filed opinion concurring separately.

Toal, C.J., filed dissenting opinion in which Kittredge, J., joined.

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Tyrone AIKEN, Matthew Clark, Eric Graham, Bradford M. Haigler, Angelo Ham, J'Corey S. Hull-Kilgore, Damian Inman, Rogert Legette, Terriel Mack, Jennifer L. McSharry, Wallace Priester, Davon Reed, Dondre M. Scott, Edgar L. Thomas, James Van, et al., Petitioners,

v.

William R. BYARS, Jr., Director, South Carolina Department of Corrections, and Alan Wilson, Attorney General of South Carolina, Respondents.

Appellate Case No. 2012-213286.
No. 27465.

Supreme Court of South Carolina.

Heard Jan. 8, 2014.

Decided Nov. 12, 2014.

Background: Fifteen Defendants who were sentenced to life without parole as juveniles petitioned for resentencing in light of a decision of the United State Supreme Court.

Holdings: The Supreme Court, Hearn, J., held that:

- (1) United State Supreme Court decision in *Miller v. Alabama*, holding that mandatory imposition of life without parole on juveniles was cruel and unusual punishment, applied retroactively, and
- (2) life without parole sentences for juveniles without individualized consideration of youth constituted cruel and unusual punishment.

Petitions granted.

1. Courts ⇌100(1)

United State Supreme Court decision in *Miller v. Alabama*, which held that mandatory imposition of sentences of life without possibility of parole on juveniles constituted cruel and unusual punishment, announced a new substantive constitutional rule and, therefore, could be applied retroactively on collateral review; rule excluded certain class of defendants, juveniles, from specific punishment, life without parole absent individualized consideration of youth. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.) U.S.C.A. Const. Amend. 8.

2. Courts ⇌100(1)

A new constitutional rule is substantive, so as to permit retroactive application, if it prohibits the States from criminalizing certain conduct or prohibits a certain category of punishment for a class of defendants because of their status or offense. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.)

3. Courts ⇌100(1)

New substantive constitutional rules apply retroactively on collateral review because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.)

4. Courts ⇌100(1)

A new constitutional rule that merely regulates the manner in which a defendant is adjudicated guilty is procedural and does not apply retroactively. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.)

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5. Infants ⇌3011

Sentencing and Punishment ⇌1607

United State Supreme Court decision in *Miller v. Alabama*, which held that mandatory imposition of sentences of life without possibility of parole on juveniles constituted cruel and unusual punishment, precluded imposition of life sentences on juveniles without the possibility of parole under nonmandatory sentencing scheme without individualized consideration of defendants' youth; *Miller* court unequivocally held that youth had constitutional dimension when determining appropriateness of lifetime of incarceration with no possibility of parole, and *Miller* did more than ban mandatory life sentencing schemes for juveniles, it established affirmative requirement that courts fully explore impact of a defendant's juvenility on the sentence rendered. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.) U.S.C.A. Const.Amend. 8.

6. Infants ⇌3011

Sentencing and Punishment ⇌1607

Before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.)

John H. Blume, Sheri L. Johnson, Keir M. Weyble, of Cornell Law School, of Ithica, NY; Elizabeth Franklin-Best, of Blume, Norris, & Franklin-Best, LLC, of Columbia; Joshua A. Bailey, of Finklea Law Firm, of Florence; Charles Grose, Jr., of Grose Law Firm, of Greenwood; Diana L. Holt, of Diana Holt, LLC, of Columbia; and Chief Appellate Defender Robert M. Dudek, of Columbia, all for Petitioners.

Attorney General Alan M. Wilson, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General J. Benjamin Aplin, all of Columbia, for Respondents.

1. In South Carolina, pursuant to Section 63-19-20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, *Miller* extends to defendants under

Christopher D. Scalzo, of Greenville, for Amicus Curiae, S.C. Public Defender Association.

Joseph M. McCulloch, Jr., of Law Offices of Joseph M. McCulloch, Jr., of Columbia, and Abby F. Rudzin and Abby C. Johnston, both of O'Melveny & Myers, LLP, of New York, NY, for Amicus Curiae, The South Carolina State Conference of the NAACP.

John S. Nichols, of Bluestein Nichols Thompson & Delgado, LLC, of Columbia, for Amicus Curiae, South Carolina Psychological Association.

Justice HEARN.

In this case brought in our original jurisdiction, fifteen inmates who were sentenced to life without parole as juveniles petition this Court for resentencing in light of the United States Supreme Court's decision in *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).¹ We hold their sentences violate the Eighth Amendment under *Miller* and the petitioners and those similarly situated are entitled to resentencing.

FACTUAL/PROCEDURAL
BACKGROUND

The petitioners were all convicted for homicides committed while they were juveniles. Some pled guilty and others were convicted after a jury trial. Some were found directly responsible for the relevant homicide while others were convicted under a theory of accomplice liability. All were sentenced to life without parole according to existing sentencing procedures, which made no distinction between defendants whose crimes were committed as an adult and those whose crimes were committed as a juvenile. In most of the sentencing hearings—but not all—defense counsel mentioned the age of the defendant at the time of the crime, and in some cases, there was a brief discussion of the defendant's life prior to commission of

eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen.

the crime. Of the fifteen petitioners, thirteen of their cases have become final.²

The petitioners filed a petition for a writ of certiorari in our original jurisdiction, naming the Director of the South Carolina Department of Corrections, William R. Byars, Jr., and Attorney General Alan Wilson as the respondents. We granted certiorari to address the effect of *Miller* on the petitioners and others similarly situated who were sentenced to life without parole as juveniles.

ISSUES PRESENTED

- I. Does *Miller* apply retroactively?
- II. Does *Miller* apply to juveniles who received a nonmandatory sentence of life without parole?

LAW/ANALYSIS

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.³ Although the earliest Eighth Amendment cases focused on the barbarous nature of a punishment, the jurisprudence evolved to encompass challenges to the proportionality of the sentence to the offense. *Gregg v. Georgia*, 428 U.S. 153, 170–72, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976). When considering whether a sentence is proportional, the Supreme Court has acknowledged that the scope of the Eighth Amendment is not static, but "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion).

In *Miller*, the United States Supreme Court confronted a challenge to the mandatory imposition of life without parole sentences on juveniles as violative of the Eighth Amendment's prohibition of cruel and unusual punishments. 132 S.Ct. at 2461. In con-

sidering this question, the Supreme Court analyzed two strands of precedent impacting the proportionality compelled by the Eighth Amendment. The first line of cases dealt with categorical bans on certain sentences based on the inability to reconcile the class of offenders and the severity of the penalty. In *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the Supreme Court invalidated the death penalty for all juvenile offenders. Thereafter, in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), the Court held that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders. The *Miller* Court noted that *Graham* equated life without parole sentences for juveniles to the death penalty, invoking a second line of cases that require sentencing authorities to consider the individual characteristics of a defendant and the details of his offense prior to imposing a sentence of death. 132 S.Ct. at 2463–64; see also *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion) (holding that "in all but the rarest kind of capital case" the sentencer must "not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death"); *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (requiring "consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death"). The Court therefore held that "the confluence of these two lines of precedent leads to the conclusion that mandatory life-without parole sentences for juveniles violates the Eighth Amendment." 132 S.Ct. at 2464. A sentencer must be allowed to consider that "youth is more than a chronological fact," and carries with it "immatu-

2. Our holding is moot with respect to Damian Inman, whose convictions and sentences were reversed on other grounds in *State v. Inman*, 409 S.C. 19, 760 S.E.2d 105 (2014), and Dondre Scott, whose convictions and sentences were reversed on other grounds in *State v. Scott*, 406 S.C. 108, 749 S.E.2d 160 (Ct.App.2013).

3. The Eighth Amendment applies against the states by virtue of the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 666–67, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

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ity, irresponsibility, impetuosity[, and recklessness,” factors as transient as youth itself. *Id.* at 2467 (alteration in original). Although a court may still sentence a juvenile to life without parole after an individualized hearing, the Court cautioned that given “children’s diminished culpability and heightened capacity for change” the “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Id.* at 2469.

I. RETROACTIVITY

[1] Before considering whether *Miller* applies to juveniles who received a sentence of life without parole under a nonmandatory scheme, we first must resolve the threshold issue of whether *Miller* applies retroactively.

Under our current jurisprudence, the United States Supreme Court’s decision in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), governs whether a new rule of criminal procedure is retroactive.⁴ *Talley v. State*, 371 S.C. 535, 640 S.E.2d 878 (2007). In *Teague*, the Supreme Court held that a new constitutional rule of criminal procedure should not apply to cases that became final before the new rule is announced. 489 U.S. at 310, 109 S.Ct. 1060. However, this general prohibition against the retroactive application of new constitutional rules is subject to two exceptions.⁵ First, a new rule may be applied retroactively if the rule is substantive. *Id.* at 311, 109 S.Ct.

1060. Second, a new rule may be applied retroactively if it is a “watershed rule” of criminal procedure. *Id.* We need not consider whether *Miller*’s holding constitutes a watershed rule because we find it is substantive and thus meets *Teague*’s first exception.

[2–4] A rule is substantive if it prohibits the States from criminalizing certain conduct or prohibits “a certain category of punishment for a class of defendants because of their status or offense.” *Saffle v. Parks*, 494 U.S. 484, 494, 110 S.Ct. 1257, 108 L.Ed.2d 415 (1990) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2984, 106 L.Ed.2d 256 (1989), abrogated by *Atkins v. Virginia*, 536 U.S. 304, 321, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002)). New substantive rules apply retroactively on collateral review because they “necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him.” *Schiro v. Summerlin*, 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004) (internal quotation marks omitted). By contrast, a rule that merely regulates the manner in which a defendant is adjudicated guilty is procedural. *Id.*

We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.⁶ The rule plainly excludes a certain class of defendants—juveniles—from specific punishment—life without parole absent individualized considerations of youth.⁷

4. This Court has not addressed whether it should employ a more expansive analysis for determining retroactivity after *Danforth v. Minnesota*, 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008), which held that state courts can use a broader test than *Teague*. *Id.* at 282, 128 S.Ct. 1029 (holding that *Teague* “does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed ‘nonretroactive’ under *Teague*”). We find it unnecessary to do so today because *Miller* is clearly retroactive under *Teague*.

5. The parties do not dispute that *Miller* announced a new rule, only whether an exception applies.

6. Our holding is in accord with several other jurisdictions that have addressed this question. See, e.g., *People v. Williams*, 367 Ill.Dec. 503, 982 N.E.2d 181, 196–97 (Ill.App.Ct.2012); *State v. Ragland*, 836 N.W.2d 107, 116 (Iowa 2013);

Diatchenko v. Dist. Attorney for Suffolk Dist., 466 Mass. 655, 1 N.E.3d 270, 281 (2013); *Jones v. State*, 122 So.3d 698, 702 (Miss.2013); see also Erwin Chemerinsky, *Chemerinsky: Juvenile Life-Without-Parole Case Means Courts Must Look at Mandatory Sentences*, A.B.A. J. Law News Now (Aug. 8, 2012, 8:30 AM), <http://www.abajournal.com/news/article/chemerinsky-juvenile-life-without-parole-case-means-courts-must-look-at-sen/> (“[*Miller*] says that it is beyond the authority of the criminal law to impose a mandatory sentence of life without parole. It would be terribly unfair to have individuals imprisoned for life without any chance of parole based on the accident of the timing of the trial.”).

7. We fear that the dissent is conflating the retroactivity analysis and the applicability analysis. A particular jurisdiction’s statutory framework has no bearing on the threshold determination of whether *Miller* applies retroactively. A new rule

Failing to apply the *Miller* rule retroactively risks subjecting defendants to a legally invalid punishment. Moreover, while not in itself determinative, we find support for our conclusion in the Court's decision to apply the rule announced in *Miller* to the companion case *Jackson v. Norris*, 2011 Ark. 49, 378 S.W.3d 103 (2011). Although *Miller* was on direct appeal, *Jackson* involved a petition for habeas corpus after the affirmance of the defendant's convictions. That case was therefore final and was before the Court on collateral review. As noted by the Iowa Supreme Court, "There would have been no reason for the Court to direct such an outcome if it did not view the *Miller* rule as applying retroactively to cases on collateral review." *Ragland*, 836 N.W.2d at 116.

II. SCOPE OF MILLER'S HOLDING

A. Applicability of *Miller* to the petitioners

[5] Having concluded the rule in *Miller* applies retroactively, we now turn to whether it extends to the petitioners, who were sentenced to life without parole under a non-mandatory statutory scheme.

In analyzing the precedent relevant to the constitutional question before it, the Court in *Miller* noted that *Roper* and *Graham* established that children were constitutionally different from adults for sentencing purposes, a conclusion that was based on common sense as well as science and social science. 132 S.Ct. at 2464. "*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 2465. Specifically, the Court noted juveniles differ from adults in their general "lack of maturity and [] underdeveloped sense of responsibility," "vulnerability] . . . to negative influences and outside pressures, including family and peers," and still evolving character and personality traits. *Id.* at 2464 (ellipsis in original) (quoting *Roper*, 543 U.S. at 569–70, 125 S.Ct. 1183). Important to our determination of the breadth

announced by the Supreme Court is not amorphous; it is either a substantive rule of law that

of the *Miller* decision is this statement by the majority: "*Graham's* reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses." *Id.* at 2465.

Thus, the *Miller* Court unequivocally held that youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole, and that the mandatory penalty schemes at issue prevented the sentencing authority from considering the differences between adult and juvenile offenders before imposing a sentence of life without parole. Focusing on *Graham's* treatment of juvenile life sentences as analogous to capital punishment, the majority held that *Woodson* and its progeny required an individualized sentencing proceeding before imposing a sentence of life without parole on a juvenile offender. *Id.* at 2467.

We recognize that in holding the Eighth Amendment proscribes a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, the Court did not expressly extend its ruling to states such as South Carolina whose sentencing scheme *permits* a life without parole sentence to be imposed on a juvenile offender but does not *mandate* it. Indeed, the Court noted that because its holding was sufficient to decide the cases before it, consideration of the defendants' alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles was unnecessary. *Id.* at 2469. However, we must give effect to the proportionality rationale integral to *Miller's* holding—youth has constitutional significance. As such, it must be afforded adequate weight in sentencing.

Thus, we profoundly disagree with the position advanced by the respondents and the dissent that the import of the *Miller* decision has no application in South Carolina. *Miller* is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the

applies retroactively, or it is not.

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Constitution. Contrary to the dissent's interpretation, *Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered.

As evidenced by the record, although some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered.⁸ Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. *Miller* holds the Constitution requires more. As the majority states succinctly, "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* We believe this statement deserves universal application. The absence of this level of inquiry into the characteristics of youth produced a facially unconstitutional sentence for these petitioners. In our view, whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment. The petitioners and those similarly situated are accordingly entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight.

8. The dissent's discussion of the individual sentencing hearings—in particular its recitation of Angelo Ham's—does not dissuade us of the accuracy of this statement. Instead it highlights the distinction between its reading of *Miller* and ours—we recognize and give credence to the decision's command that courts afford youth and its attendant characteristics constitutional meaning. The dissent would simply continue to treat the characteristics of youth as any other fact.

We are likewise unfazed by the dissent's criticism that we have failed to pinpoint an abuse of discretion; that admonition appears to arise from a fundamental misunderstanding of our

B. Appropriate Procedure

We turn finally to the scope of the resentencing hearings that we order today. *Miller* requires the sentencing authority "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S.Ct. at 2469. Consequently, *Miller* establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation." 132 S.Ct. at 2468.

While we do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case,⁹ we are mindful that the *Miller* Court specifically linked the individualized sentencing requirements of capital sentencing to juvenile life without parole sentences. 132 S.Ct. at 2463, 2467–68. Thus, the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above.

holding. We have determined that the sentencing hearings in these cases suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*. We decline to denominate the error an abuse of discretion because the sentencing courts in these instances did not have the benefit of *Miller* to shape their inquiries. Those courts will have the opportunity on resentencing to exercise their discretion within the proper framework as outlined by the United States Supreme Court.

9. See Chemerinsky, *supra* note 6.

[6] Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances. Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision. However, *Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.¹⁰

CONCLUSION

We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Accordingly, any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.

BEATTY, J., concurs. PLEICONES, J., concurring in a separate opinion. TOAL, C.J., dissenting in a separate opinion in which KITTREDGE, J., concurs.

Justice PLEICONES:

I agree with the majority that petitioners and those similarly situated should be allowed to seek resentencing in a proceeding that complies with the standards announced in *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). While I agree with the dissent that *Miller* does not require that we grant relief to juveniles who received discretionary life without the possibility of parole (LWOP) sentences, and that the majority exceeds the scope of current Eighth Amendment jurisprudence in order-

10. We decline the dissent's invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole. The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein

ing relief under *Miller*; I would reach the same result under S.C. Const. art. I, § 15.

For the reasons given above, I concur in the result reached by the majority to allow persons sentenced as juveniles to LWOP to be resentenced upon their timely request.

Chief JUSTICE TOAL:

I respectfully dissent. I would find the petitioners are not entitled to resentencing pursuant to *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), because the *Miller* decision is retroactive only with respect to juveniles sentenced to mandatory life without parole (LWOP), and because South Carolina utilizes a non-mandatory sentencing scheme.¹¹

Pursuant to *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), a court decision implicating a constitutional right applies retroactively when the holding creates a new substantive rule or is a watershed rule of criminal procedure. *Talley v. State*, 371 S.C. 535, 541–44, 640 S.E.2d 878, 880–82 (2007) (citing *Teague*, 489 U.S. at 300–01, 305, 311–12, 109 S.Ct. 1060). A rule is a new substantive rule if it prohibits a certain category of punishment for a class of defendants because of their status or offense. *Id.* at 543, 640 S.E.2d at 882; *see also Schriro v. Summerlin*, 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004) (stating new substantive rules apply retroactively on collateral review because they “carry a significant risk that a defendant . . . faces a punishment that the law cannot impose on him” (internal quotation marks omitted)).

As the majority acknowledges, *Miller* “plainly excludes a certain class of defendants—juveniles—from specific punishment—[mandatory LWOP].” *See also Miller*, 132 S.Ct. at 2460; *People v. Davis*, 379 Ill. Dec. 381, 6 N.E.3d 709, 722 (Ill.2014). As such, I agree that *Miller* is retroactive with

and to sentence juveniles in light of this new constitutional jurisprudence.

11. *See* S.C.Code Ann. §§ 16–3–20(A), –85(C) (2003 & Supp.2010) (permitting a discretionary sentence of LWOP for murder or homicide by child abuse, but also imposing mandatory minimum terms of imprisonment for each crime).

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respect to any juvenile sentenced to mandatory LWOP.

However, I depart from the majority with respect to the scope of *Miller's* retroactive application. *Miller's* holding explicitly applies only where sentencing courts were “preclude[d] . . . from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it,” because the courts did not “have the opportunity to consider mitigating circumstances.” *Id.* at 2467, 2475. Were South Carolina to employ a mandatory sentencing scheme, such as those at issue in *Miller*, I would not hesitate to retroactively apply the holding to any prisoner collaterally attacking his sentence.

However, South Carolina employs a discretionary sentencing scheme, in which sentencing courts consider all mitigating evidence presented by the criminal defendant. *See* S.C.Code Ann. §§ 16–3–20(A), –85(C). Thus, South Carolina courts already consider the hallmark features of youth.

To the extent the majority wishes to provide courts with more explicit directions to consider the *Miller* factors in future sentencing hearings, I do not object; however, such future direction does not change the fact that petitioners’ sentencing courts were given “the opportunity to consider mitigating circumstances.” *Miller*, 132 S.Ct. at 2475 (emphasis added); *see also id.* at 2466 (“But the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations [regarding youth and impetuosity]. By removing youth from the balance—by subjecting a juvenile to the same [LWOP] sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender.” (emphasis added)).

12. In its zeal to reach its desired result, the majority makes no inquiry into whether the sentencing courts abused their discretion. *See State v. Dawson*, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013) (“In criminal cases, the appellate court sits to review errors of law only. A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law.” (emphasis added) (citations omitted)); *see also State v. Cantrell*, 250 S.C. 376, 379, 158

In my opinion, it is a leap of faith for the majority to extend *Miller's* holding—*expressly applicable only to mandatory sentencing schemes*—to a discretionary sentencing scheme, and to require strict compliance with a rule that the Supreme Court has not yet set forth. The majority states that it is simply “giv[ing] effect to the proportionality rationale integral to *Miller's* holding”; however, I find significant the fact that the majority cannot cite a single other jurisdiction with a discretionary sentencing scheme that has decided to apply *Miller* retroactively to discretionary LWOP sentences. Accordingly, I would find *Miller* does not apply retroactively in discretionary sentencing jurisdictions such as South Carolina.

Ironically, the majority and I agree that *Miller's* holding means that juveniles may not be sentenced to mandatory LWOP because courts must consider each juvenile’s individual circumstances; however, the majority’s holding does exactly the opposite, ordering resentencing for *all* of the petitioners, *with no individualized consideration of the adequacy of their original sentencing hearing*. Even if I were to agree that *Miller* applies retroactively in South Carolina, we must consider whether the sentencing courts abused their discretion in sentencing each of the petitioners.¹²

Perhaps the best example from the petitioners’ sentencing hearings of how the courts exercised discretion and considered the juveniles’ individual circumstances is shown through the joint sentencing hearing of Petitioner Angelo Ham (Petitioner Ham) and his juvenile co-defendant, Dennis Hunter (Hunter). The sentencing testimony revealed that Petitioner Ham, Hunter, and Anthony Robinson (Robinson) (collectively, the defendants) jointly planned and executed an armed robbery during which Robinson murdered the victim (Victim), an elderly store manager.¹³

S.E.2d 189, 191 (1967) (stating a judge is given broad discretion during sentencing proceedings and it is presumed that he or she has considered the information presented during the sentencing proceeding before imposing a punishment).

13. At the time of the crime, Petitioner Ham was fifteen years old, Hunter was seventeen years old, and Robinson was nineteen years old. Neither Hunter nor Robinson is a petitioner here because

The day before the murder, Robinson shot his live-in girlfriend, and the police issued an arrest warrant for Robinson for assault and battery with intent to kill. Needing money so that he could leave town and avoid arrest, Robinson approached Petitioner Ham and Hunter and asked them to help him plan a robbery. Petitioner Ham maintained that he participated in the planning and execution of the robbery under duress, claiming that Robinson threatened to kill him if he refused to help. However, others testified at the sentencing hearing that Petitioner Ham was the "leader of this pack" because Petitioner Ham was the one who knew Victim prior to the robbery, and because Petitioner Ham was aware of Victim's habit of working late at the store by himself, thus making Victim a more accessible target.

Under the influence of marijuana and cocaine, the defendants drove to Victim's store after the store had closed for the night. Hunter stayed in the car, while Petitioner Ham and Robinson approached the store. Petitioner Ham convinced Victim to open the door, and he and Robinson rushed past Victim into the store. The defendants were aware that Victim kept a gun at the store, and Robinson therefore immediately shot Victim ten times.¹⁴

The police arrested the defendants soon after the robbery and murder. Hunter immediately gave a videotaped statement to the police, and strongly and consistently indicated his willingness to testify against both of his co-defendants. Based on Hunter's testimony, the State noticed Robinson with its intent to seek the death penalty against him.¹⁵

Petitioner Ham and Hunter pled guilty to robbery and murder. In a joint sentencing

the court did not sentence Hunter to LWOP, and because Robinson was an adult when he committed the crimes and is thus unaffected by *Miller's* holding.

14. Victim's body exhibited defensive wounds, indicating that he did not die immediately.

15. Petitioner Ham likewise agreed to give a videotaped statement admitting his guilt in the robbery and murder; however, he was more apprehensive about testifying against Robinson because the two were incarcerated in the same

hearing, the Solicitor and Victim's family recounted Victim's community service and moral characteristics, such as his generosity to his employees and the community as a whole.

In mitigation, Petitioner Ham's and Hunter's attorneys painted a colorful picture of the boys' pasts. First and foremost, the attorneys cited the boys' youth, specifically noting that their youth made them ineligible for the death penalty because they lacked the judgment of an adult and could not reason or make "correct decisions" like an adult could.

Petitioner Ham's attorney stated that prior to being "waived up" to circuit court, a doctor evaluated Petitioner Ham and recommended that he remain in the juvenile system to face these charges, a recommendation which the court ultimately disregarded. The doctor noted that Petitioner Ham had a "borderline" I.Q. score and a third grade reading comprehension level.¹⁶ Notes from Petitioner Ham's school file indicated that Petitioner Ham was "easily influenced by others" and succumbed readily to peer pressure. Moreover, the testimony revealed that Petitioner Ham had little to no contact with his father while he was growing up, that he had an older brother who was currently in jail, and that he was "in and out" of the Department of Juvenile Justice throughout his youth. Finally, Petitioner Ham's attorney stated that his stepfather abused him, and that Petitioner Ham witnessed numerous acts of domestic violence between his mother and stepfather.

Hunter's background was similar, revealing that his grandmother and grandfather raised Hunter and his four younger siblings. While living with his grandparents, Hunter performed well in school and avoided trouble. However, when Hunter was fourteen, Hunter's grandfather died, Hunter's performance

facility, and he was concerned that Robinson would retaliate against him if he chose to testify. Ultimately, Robinson entered a guilty plea in exchange for receiving a LWOP sentence. After Robinson pled guilty, Petitioner Ham stated that he would have testified against Robinson had the matter gone to trial.

16. The court later spoke to Petitioner Ham and found that, to the extent he suffered from a limited I.Q., he was nonetheless fully able to rationalize, think, and communicate.

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in school declined sharply, and Hunter began “hanging out with the wrong crowd.” Ultimately, Hunter dropped out of school in ninth grade. Although Hunter eventually wished to return to school, the school refused to readmit him because of his numerous behavioral problems. At age fifteen, Hunter began breaking the law, “and it was just downhill at that point.” Hunter’s grandmother, mother, and sister all remained involved in his life and supported him throughout the court proceedings.

After hearing all of the relevant testimony, the court acknowledged that punishing Petitioner Ham and Hunter would not restore Victim’s life or the lives of his family members, who were distraught throughout the proceedings. The court differentiated between Hunter—who remained in the car throughout the robbery and murder and thus had no contact with Victim—and Petitioner Ham, who lured Victim to the door and was an active participant in the crimes. The court likewise noted that Hunter immediately realized the consequences of his actions and took steps to ensure that he and his co-defendants were brought to justice, whereas Petitioner Ham was merely willing to testify had Robinson’s case gone to trial.

Finally, the court gave Petitioner Ham and Hunter the opportunity to speak. Hunter chose not to address the court or Victim’s family; however, Petitioner Ham took the opportunity to inform the court that he felt his attorney was “ineffective” and that therefore his sentence “shouldn’t be carried on [sic] today” because he “d[id]n’t want him as [his] counsel [any] more.” After resolving the issue, the court asked four separate times whether there was any evidence Petitioner Ham would like to call to the court’s attention in order to aid the court in determining an appropriate sentence. Rather than expressing remorse or reiterating his attorney’s previous statements, Petitioner Ham denied his guilt in the crimes entirely, stating that “just because we was at this store at a particular time ... doesn’t mean that we actually killed anybody, we actually robbed anybody, we even committed a crime.” Petitioner Ham further accused Hunter and Robinson of lying in their confessions, and denied

that the eyewitnesses’ testimony corroborated the defendants’ guilt.

The court then stated:

Mr. Hunter and Mr. Ham, one of the things judges try to look at to see what is the possibility of some type of rehabilitation. What degree of remorse might exist when it comes to making a determination in sentencing.

Mr. Hunter, from your standpoint it appears that there is a terrible crime that has been committed; that there is some recognition of what you have done, your responsibility in it, and your desire to try and have judgment entered in connection with this matter and to have the consequences of your sentence, whatever that sentence might be.

Mr. Ham, on your behalf, however, it appears that there is no real sense of remorse; that having pled guilty you’re now trying to recant the testimony that you previously gave; that as to your involvement that previous statements are incorrect and you have no remorse and you have no acceptance of the responsibility in connection with this matter.

...

I ... find that ... you have simply refused to accept and acknowledge any responsibility in here and—today and give me any hope that there is any reason to believe that you can be rehabilitated.

The court then sentenced Petitioner Ham to LWOP for Victim’s murder; however, the court found that Hunter’s situation was “different.” The court stated that Hunter showed “some semblance that you can live long enough and/or remorseful enough that you should get the opportunity to live in society again at an advanced age.” Therefore, the court sentenced Hunter to forty years for Victim’s murder.

In considering Petitioner Ham’s sentencing hearing, I cannot see how the sentencing court abused its discretion. Rather, I applaud the sentencing court in conducting such a thorough hearing, one in which it already considered each of the five *Miller* factors. Accordingly, it strikes me as absurd that the majority orders resentencing for *all*

petitioners without considering the adequacy of the original hearings.¹⁷

Further, and more egregiously, the majority fails to give adequate instructions to the resentencing courts regarding how to conduct the resentencing hearings. As demonstrated, *supra*, at least some of the original sentencing hearings were entirely compliant with *Miller*. For those cases, the majority does not provide any further direction to the resentencing courts regarding how to conduct a new hearing, nor identifies any facts that the courts should consider on remand that were not already considered. Rather, the majority simply directs all of the resentencing courts to give "constitutional meaning" to youth and its attendant characteristics, and to "fully explore the impact of the defendant's juvenility on the sentence rendered." These two directives are unmistakably vague and provide little concrete guidance, thus demonstrating the adequacy of the original hearings. See *Cantrell*, 250 S.C. at 379, 158 S.E.2d at 191 (stating that a sentencing judge is presumed to have considered the information presented during the sentencing proceeding before imposing a punishment).¹⁸ While the majority may disagree with the propriety of the petitioners' sentences, the Court is not a fact finder, and must apply the relevant legal principles. It is of no use to say that the sentencing hearings were inadequate, and simultaneously fail to give specific instruction to the resentencing court on how to avoid the same mistake in the future.

In my view, the dangers present in *Miller*—namely, that the sentencing courts were foreclosed from considering age as a mitigating factor based on the imposition of manda-

tory LWOP—were simply not present in the petitioners' cases. Specifically, when a juvenile is sentenced to LWOP by way of a discretionary sentencing scheme, the unifying principle from *Roper*, *Graham*, and *Miller*—that children, for purposes of imposing the most serious punishments, are constitutionally different—is not violated. See *Miller*, 132 S.Ct. at 2466-68, 2474-75 ("Such mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it").

Thus, I would ultimately find *Miller* does not apply retroactively to discretionary LWOP sentences, and certainly does not entitle each and every petitioner to resentencing. The petitioners each received a discretionary sentence, which *Miller* explicitly permits. See *Miller*, 132 S.Ct. at 2469.

CONCLUSION

For the foregoing reasons, I would find the rule announced in *Miller* does not apply retroactively to the petitioners herein, or any other similarly situated defendants who collaterally attack their convictions. Therefore, I would deny petitioners' requests for resentencing.

KITTREDGE, J., concurs.



17. To be sure, unlike Petitioner Ham's sentencing hearing, and given the limited records before us, some of the petitioners' hearings could be viewed as less than exemplary; however, again, we must make such a determination on an individual basis, considering the specific circumstances of each hearing, and determining whether sentencing the petitioner to LWOP in that particular case was an abuse of the sentencing court's discretion.

18. For similar reasons, I find the majority's statement that the "absence of *this* level of inqui-

ry into the characteristics of youth produced a facially unconstitutional sentence" unhelpful to the resentencing courts. (Emphasis added). The majority disavows requiring a sentencing hearing which mirrors the penalty phase of a capital case, but to the extent Petitioner Ham's hearing does not comply with *Miller*, I am at a loss as to what—besides a penalty-phase-like hearing—would suffice.

Cook)). There is, in sum, a long history of treating the operative language in § 3282(a) as providing a nonjurisdictional defense that a defendant must press at trial to insert into the case.

In keeping with § 3282(a)'s text, context, and history, we conclude that § 3282(a) provides a nonjurisdictional defense, not a jurisdictional limit.

B

Because § 3282(a) does not impose a jurisdictional limit, the failure to raise it at or before trial means that it is reviewable on appeal—if at all—only for plain error. See Fed. Rule Crim. Proc. 52(b) (providing for consideration of “[a] plain error that affects substantial rights” even though the error “was not brought to the court’s attention”). We conclude, however, that a district court’s failure to enforce an unraised limitations defense under § 3282(a) cannot be a plain error.³

[17] As explained above, a statute-of-limitations defense becomes part of a case only if the defendant puts the defense in issue. When a defendant presses a limitations defense, the Government *then* bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period or by establishing an exception to the limitations period. See *Cook*, *supra*, at 179. When a defendant fails to press a limitations defense, the defense does not become part of the case and the Government does not otherwise have the burden of proving that it filed a timely indictment. When a defendant does not press the defense, then,

3. Because we conclude that the failure to enforce § 3282(a)'s limitations defense cannot be plain error, we do not resolve whether the failure to raise that defense in the District Court amounts to waiver (which some courts have held to preclude all appellate review of

there is no error for an appellate court to correct—and certainly no plain error.

A defendant thus cannot successfully raise the statute-of-limitations defense in § 3282(a) for the first time on appeal. The Fifth Circuit correctly refused to consider Musacchio's limitations defense here.

* * *

For the foregoing reasons, we affirm the judgment of the Fifth Circuit.

It is so ordered.



Henry MONTGOMERY, Petitioner

v.

LOUISIANA.

No. 14–280.

Argued Oct. 13, 2015.

Decided Jan. 25, 2016.

As Revised Jan. 27, 2016.

Background: State prisoner, who had been convicted of murder and sentenced to life without parole for a crime he committed as a juvenile, moved to correct an illegal sentence. The Louisiana District Court for the 19th Judicial District, Parish of East Baton Rouge, No. 48–489, entered an order denying the motion. Prisoner applied for a supervisory writ. The Louisiana Supreme Court, 141 So.3d 264, entered an order denying the application. Certiorari was granted.

the defense) or forfeiture (which some courts have held to allow at least plain-error review). See *United States v. Franco-Santiago*, 681 F.3d 1, 12, n. 18 (C.A.1 2012) (collecting cases).

MONTGOMERY v. LOUISIANA

Cite as 136 S.Ct. 718 (2016)

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Holdings: The Supreme Court, Justice Kennedy, held that:

- (1) Supreme Court has jurisdiction to review a state collateral review court's failure to give retroactive effect to a new rule which the Constitution requires to be applied retroactively;
- (2) federal Constitution requires state collateral review courts to give retroactive effect to new substantive rules of federal constitutional law under the *Teague* framework; and
- (3) Supreme Court's decision in *Miller v. Alabama*, prohibiting under Eighth Amendment mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that was retroactive on state collateral review, abrogating *Martin v. Symmes*, 782 F.3d 939, *Johnson v. Ponton*, 780 F.3d 219, *Chambers v. State*, 831 N.W.2d 311, and *State v. Tate*, 130 So.3d 829.

Reversed and remanded.

Justice Scalia filed a dissenting opinion, in which Justice Thomas and Justice Alito joined.

Justice Thomas filed a dissenting opinion.

1. Infants ⇌2683

Sentencing and Punishment ⇌1607

Under the Eighth Amendment's prohibition of cruel and unusual punishment, a juvenile convicted of a homicide offense cannot be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing. U.S.C.A. Const.Amend. 8.

2. Infants ⇌2683

Sentencing and Punishment ⇌1607

Mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on cruel

and unusual punishments; by making youth, and all that accompanies it, irrelevant to imposition of that harshest prison sentence, mandatory life without parole poses too great a risk of disproportionate punishment. U.S.C.A. Const.Amend. 8.

3. Infants ⇌2683

Sentencing and Punishment ⇌1607

Under the Eighth Amendment's prohibition of cruel and unusual punishment, sentencing courts must consider a juvenile homicide offender's diminished culpability and heightened capacity for change before condemning him or her to die in prison pursuant to a sentence of life in prison without parole. U.S.C.A. Const.Amend. 8.

4. Infants ⇌2683

Sentencing and Punishment ⇌1607

Under the Eighth Amendment's prohibition of cruel and unusual punishment, lifetime in prison, without parole, is a disproportionate sentence for all but the rarest of juvenile homicide offenders, those whose crimes reflect irreparable corruption. U.S.C.A. Const.Amend. 8.

5. Sentencing and Punishment ⇌2254

Under Louisiana law, an "illegal sentence," as basis for a motion to correct an illegal sentence, is primarily restricted to those instances in which the term of the prisoner's sentence is not authorized by the statute or statutes which govern the penalty. LSA-Cr.P. art. 882.

See publication Words and Phrases for other judicial constructions and definitions.

6. Criminal Law ⇌1134.78, 1556

Sentencing and Punishment ⇌2256

In the ordinary course, Louisiana courts will not consider a challenge to a disproportionate sentence on collateral review; rather, as a general matter, prisoners must raise Eighth Amendment sentencing challenges on direct review.

U.S.C.A. Const.Amend. 8; LSA-C.Cr.P. art. 882.

7. Sentencing and Punishment ⇨2256

Louisiana's collateral review courts will consider a motion to correct an illegal sentence based on a decision of the Supreme Court holding that the Eighth Amendment to the federal Constitution prohibits a punishment for a type of crime or a class of offenders. U.S.C.A. Const. Amend. 8; LSA-C.Cr.P. art. 882.

8. Courts ⇨100(1)

Federal Courts ⇨3164(3)

If the federal Constitution establishes a rule for criminal cases and requires that the rule have retroactive application, then the Supreme Court has jurisdiction to review a state court's refusal to give the rule retroactive effect on state collateral review.

9. Courts ⇨97(1)

States may not disregard a controlling, federal constitutional command in their own courts.

10. Courts ⇨100(1)

Under *Teague* framework, a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced.

11. Courts ⇨100(1)

New substantive rules of constitutional law for criminal cases are not subject to the *Teague* general bar on retroactively applying new constitutional rules of criminal procedure to convictions that were final when the new rule was announced.

12. Courts ⇨100(1)

"Substantive rules" of constitutional law for criminal cases, which are not subject to the *Teague* general bar on retroactively applying new constitutional rules of criminal procedure to convictions that

were final when the new rule was announced, include rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.

See publication Words and Phrases for other judicial constructions and definitions.

13. Courts ⇨100(1)

Under the *Teague* framework, courts must give retroactive effect, on collateral review, to new watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.

14. Courts ⇨100(1)

The *Teague* framework for determining the retroactivity of new rules of constitutional law for criminal cases requires the retroactive application of new substantive and watershed procedural rules in federal habeas proceedings.

15. Courts ⇨100(1)

The *Teague* framework for determining the retroactivity of new rules of federal constitutional law for criminal cases does not preclude state courts from giving retroactive effect to a broader set of new constitutional rules than *Teague* itself required.

16. Courts ⇨100(1)

When a new substantive rule of federal constitutional law controls the outcome of a case, the federal Constitution requires state collateral review courts to give retroactive effect to that rule under the *Teague* framework.

17. Criminal Law ⇨12.5

Sentencing and Punishment ⇨8

When a State enforces a proscription or penalty barred by the federal Constitu-

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tion, the resulting conviction or sentence is, by definition, unlawful.

18. Courts ⇌100(1)

“Procedural rules” of constitutional law for criminal cases, which are generally subject to the *Teague* bar on retroactively applying new constitutional rules of criminal procedure to convictions that were final when the new rule was announced, are rules designed to enhance the accuracy of a conviction or sentence by regulating the manner of determining the defendant’s culpability.

See publication Words and Phrases for other judicial constructions and definitions.

19. Criminal Law ⇌12.5

Sentencing and Punishment ⇌8

Even the use of impeccable factfinding procedures cannot legitimate a guilty verdict where the conduct being penalized is constitutionally immune from punishment, nor can the use of flawless sentencing procedures legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed.

20. Habeas Corpus ⇌445

A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment.

21. Courts ⇌100(1)

Habeas Corpus ⇌445

A conviction or sentence imposed in violation of a substantive rule of constitutional law is not just erroneous but contrary to law and, as a result, void, and it follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

22. Courts ⇌100(1)

A penalty imposed on a state prisoner pursuant to an unconstitutional law is no less void because the prisoner’s sentence became final before the law was held unconstitutional; there is no grandfather clause that permits States to enforce punishments the federal Constitution forbids, and to conclude otherwise would undercut the Constitution’s substantive guarantees.

23. Courts ⇌100(1)

No circumstances call more for the invocation of a rule of complete retroactivity of a new constitutional rule of criminal law than when the conduct being penalized is constitutionally immune from punishment.

24. Courts ⇌97(1)

Under the Supremacy Clause, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the federal Constitution, and if a state collateral proceeding is open to a claim controlled by federal law, the state court has a duty to grant the relief that federal law requires. U.S.C.A. Const. Art. 6, cl. 2.

25. Courts ⇌100(1)

Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

26. Courts ⇌100(1)

The retroactive application of substantive rules of federal constitutional rule does not implicate a State’s weighty interests in ensuring the finality of convictions and sentences; no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose.

27. Federal Courts ⇐3164(3)

Supreme Court had jurisdiction to review Louisiana prisoner's claim that the Court's decision in *Miller v. Alabama*, prohibiting under Eighth Amendment mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that was retroactive on state collateral review, and that the Louisiana Supreme Court erred by failing to recognize its retroactive effect. U.S.C.A. Const.Amend. 8; LSA-Cr.P. art. 882.

28. Courts ⇐100(1)

Supreme Court's decision in *Miller v. Alabama*, prohibiting under Eighth Amendment mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that was retroactive on state collateral review, because *Miller* did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole, by determining that sentencing a child to life without parole is constitutionally excessive for all but the rare juvenile offender whose crime reflects irreparable corruption; abrogating *Martin v. Symmes*, 782 F.3d 939, *Johnson v. Ponton*, 780 F.3d 219, *Chambers v. State*, 831 N.W.2d 311, and *State v. Tate*, 130 So.3d 829. U.S.C.A. Const.Amend. 8.

29. Infants ⇐2683

Sentencing and Punishment ⇐1607

The Eighth Amendment bars, as disproportionate punishment for juveniles, life without parole for juvenile nonhomicide offenders. U.S.C.A. Const.Amend. 8.

30. Infants ⇐2682

The Eighth Amendment prohibits, as disproportionate punishment for juveniles, capital punishment for those under the age of 18 at the time of their crimes. U.S.C.A. Const.Amend. 8.

31. Sentencing and Punishment ⇐1482

Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence. U.S.C.A. Const.Amend. 8.

32. Sentencing and Punishment ⇐1607

Children are constitutionally different from adults for purposes of sentencing, and these differences result from children's diminished culpability and greater prospects for reform.

33. Infants ⇐2683

Sentencing and Punishment ⇐1607

Under the Eighth Amendment, before sentencing a juvenile to life without parole, the sentencing judge must take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. U.S.C.A. Const.Amend. 8.

34. Courts ⇐100(1)

When a new substantive rule of constitutional law for criminal cases is established, the Supreme Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems, and fidelity to this important principle of federalism should not be construed to demean the substantive character of the federal right at issue.

35. Sentencing and Punishment ⇐1607

A State may remedy a violation of *Miller v. Alabama*, prohibiting under Eighth Amendment mandatory life sentences without parole for juvenile offenders, by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. U.S.C.A. Const.Amend. 8.

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Syllabus *

Petitioner Montgomery was 17 years old in 1963, when he killed a deputy sheriff in Louisiana. The jury returned a verdict of “guilty without capital punishment,” which carried an automatic sentence of life without parole. Nearly 50 years after Montgomery was taken into custody, this Court decided that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment’s prohibition on “‘cruel and unusual punishments.’” *Miller v. Alabama*, 567 U.S. —, —, 132 S.Ct. 2455, 2460, 183 L.Ed.2d 407. Montgomery sought state collateral relief, arguing that *Miller* rendered his mandatory life-without-parole sentence illegal. The trial court denied his motion, and his application for a supervisory writ was denied by the Louisiana Supreme Court, which had previously held that *Miller* does not have retroactive effect in cases on state collateral review.

Held:

1. This Court has jurisdiction to decide whether the Louisiana Supreme Court correctly refused to give retroactive effect to *Miller*. Pp. 727–733.

(a) *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334, a federal habeas case, set forth a framework for the retroactive application of a new constitutional rule to convictions that were final when the new rule was announced. While the Court held that new constitutional rules of criminal procedure are generally not retroactive, it recognized that courts must give retroactive effect to new watershed procedural rules and to substantive rules of constitutional law. Substantive constitutional rules include “rules forbidding criminal punishment of certain primary conduct” and “rules prohibiting a

certain category of punishment for a class of defendants because of their status or offense,” *Perry v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256. Court-appointed *amicus* contends that because *Teague* was an interpretation of the federal habeas statute, not a constitutional command, its retroactivity holding has no application in state collateral review proceedings. However, neither *Teague* nor *Danforth v. Minnesota*, 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859—which concerned only *Teague*’s general retroactivity bar for new constitutional rules of criminal procedure—had occasion to address whether States are required as a constitutional matter to give retroactive effect to new substantive rules. Pp. 727–729.

(b) When a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. This conclusion is established by precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application. As *Teague*, *supra*, at 292, 312, 109 S.Ct. 1060, and *Perry*, *supra*, at 330, 109 S.Ct. 2934, indicate, substantive rules set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State’s power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful. In contrast, where procedural error has infected a trial, a conviction or sentence may still be accurate and the defendant’s continued confinement may still be lawful, see *Schriro v. Summerlin*, 542 U.S. 348, 352–353, 124 S.Ct. 2519, 159 L.Ed.2d 442; for this

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of

the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

reason, a trial conducted under a procedure found unconstitutional in a later case does not automatically invalidate a defendant's conviction or sentence. The same possibility of a valid result does not exist where a substantive rule has eliminated a State's power to proscribe the defendant's conduct or impose a given punishment. See *United States v. United States Coin & Currency*, 401 U.S. 715, 724, 91 S.Ct. 1041, 28 L.Ed.2d 434. By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of recognizing that substantive rules must have retroactive effect regardless of when the defendant's conviction became final; for a conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment," *Ex parte Siebold*, 100 U.S. 371, 376–377, 25 L.Ed. 717. The same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose, *Penry*, *supra*, at 330, 109 S.Ct. 2934. It follows that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. This Court's precedents may not directly control the question here, but they bear on the necessary analysis, for a State that may not constitutionally insist that a prisoner remain in jail on federal habeas review may not constitutionally insist on the same result in its own postconviction proceedings. Pp. 729–733.

2. *Miller's* prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review. The "foundation stone" for *Miller's* analysis was the line of precedent holding certain punishments disproportionate when applied to juveniles, 567 U.S., at —, n. 4, 132 S.Ct., at 2464, n. 4. Relying on *Roper*

v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, and *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825, *Miller* recognized that children differ from adults in their "diminished culpability and greater prospects for reform," 567 U.S., at —, 132 S.Ct., at 2464, and that these distinctions "diminish the penological justifications" for imposing life without parole on juvenile offenders, *id.*, at —, 132 S.Ct., at 2465. Because *Miller* determined that sentencing a child to life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption," *id.*, at —, 132 S.Ct., at 2469, it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—*i.e.*, juvenile offenders whose crimes reflect the transient immaturity of youth, *Penry*, 492 U.S., at 330, 109 S.Ct. 2934. *Miller* therefore announced a substantive rule of constitutional law, which, like other substantive rules, is retroactive because it "'necessarily carr[ies] a significant risk that a defendant'"—here, the vast majority of juvenile offenders—"faces a punishment that the law cannot impose upon him." *Schriro*, *supra*, at 352, 124 S.Ct. 2519.

A State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders. This would neither impose an onerous burden on the States nor disturb the finality of state convictions. And it would afford someone like Montgomery, who submits that he has evolved from a troubled, misguided youth to a model member of the prison community, the opportunity to demonstrate the truth of *Miller's* central intuition—that children who commit even heinous crimes are capable of change. Pp. 732–736.

2013–1163 (La.6/20/14), 141 So.3d 264, reversed and remanded.

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KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C.J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion.

Richard D. Bernstein, appointed by this Court, as amicus curiae.

Michael R. Dreeben for the United States as amicus curiae, by special leave of the Court, supporting the Petitioner.

S. Kyle Duncan, Washington, DC, for Respondent.

Mark D. Plaisance, Thibodaux, LA, for Petitioner.

Mark Plaisance, Lindsay Jarrell Blouin, Office of the Public Defender, Thibodaux, LA, Sean Collins, Baton Rouge, LA, Marsha Levick, Emily C. Keller, Jean W. Strout, Philadelphia, PA, Jeffrey J. Pokorak, Boston, MA, for Petitioner.

James D. “Buddy” Caldwell, Louisiana Attorney General, Trey Phillips, First Assistant, Attorney General, Colin A. Clark, Assistant Attorney General, Louisiana Department of Justice, Baton Rouge, LA, Hillar C. Moore, III, District Attorney, Dylan C. Alge, Assistant District Attorney, Baton Rouge, LA, S. Kyle Duncan, Duncan PLLC, Washington, DC, for Respondent.

For U.S. Supreme Court briefs, see:

2015 WL 5064004 (Resp.Brief)

2015 WL 5562186 (Resp.Brief)

2015 WL 4512201 (Pet.Brief)

2015 WL 5634432 (Reply.Brief)

Justice KENNEDY delivered the opinion of the Court.

[1] This is another case in a series of decisions involving the sentencing of of-

fenders who were juveniles when their crimes were committed. In *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile’s special circumstances in light of the principles and purposes of juvenile sentencing. In the wake of *Miller*, the question has arisen whether its holding is retroactive to juvenile offenders whose convictions and sentences were final when *Miller* was decided. Courts have reached different conclusions on this point. Compare, e.g., *Martin v. Symmes*, 782 F.3d 939, 943 (C.A.8 2015); *Johnson v. Ponton*, 780 F.3d 219, 224–226 (C.A.4 2015); *Chambers v. State*, 831 N.W.2d 311, 331 (Minn.2013); and *State v. Tate*, 2012–2763, p. 17 (La.11/5/13), 130 So.3d 829, 841, with *Diatchenko v. District Attorney for Suffolk Dist.*, 466 Mass. 655, 661–667, 1 N.E.3d 270, 278–282 (2013); *Aiken v. Byars*, 410 S.C. 534, 548, 765 S.E.2d 572, 578 (2014); *State v. Mares*, 2014 WY 126, ¶¶ 47–63, 335 P.3d 487, 504–508; and *People v. Davis*, 2014 IL 115595, ¶ 41, 379 Ill.Dec. 381, 6 N.E.3d 709, 722. Certiorari was granted in this case to resolve the question.

I

Petitioner is Henry Montgomery. In 1963, Montgomery killed Charles Hurt, a deputy sheriff in East Baton Rouge, Louisiana. Montgomery was 17 years old at the time of the crime. He was convicted of murder and sentenced to death, but the Louisiana Supreme Court reversed his conviction after finding that public prejudice had prevented a fair trial. *State v. Montgomery*, 248 La. 713, 181 So.2d 756, 762 (1966).

Montgomery was retried. The jury returned a verdict of “guilty without capital punishment.” *State v. Montgomery*, 257

La. 461, 242 So.2d 818 (1970). Under Louisiana law, this verdict required the trial court to impose a sentence of life without parole. The sentence was automatic upon the jury's verdict, so Montgomery had no opportunity to present mitigation evidence to justify a less severe sentence. That evidence might have included Montgomery's young age at the time of the crime; expert testimony regarding his limited capacity for foresight, self-discipline, and judgment; and his potential for rehabilitation. Montgomery, now 69 years old, has spent almost his entire life in prison.

[2-4] Almost 50 years after Montgomery was first taken into custody, this Court decided *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407. *Miller* held that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on "'cruel and unusual punishments.'" *Id.*, at —, 132 S.Ct., at 2460. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," mandatory life without parole "poses too great a risk of disproportionate punishment." *Id.*, at —, 132 S.Ct., at 2469. *Miller* required that sentencing courts consider a child's "diminished culpability and heightened capacity for change" before condemning him or her to die in prison. *Ibid.* Although *Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile, the Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect "'irreparable corruption.'" *Ibid.* (quoting *Roper v. Simmons*, 543 U.S. 551, 573, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)).

After this Court issued its decision in *Miller*, Montgomery sought collateral review of his mandatory life-without-parole sentence. In Louisiana there are two principal mechanisms for collateral chal-

lenge to the lawfulness of imprisonment. Each begins with a filing in the trial court where the prisoner was convicted and sentenced. La.Code Crim. Proc. Ann., Arts. 882, 926 (West 2008). The first procedure permits a prisoner to file an application for postconviction relief on one or more of seven grounds set forth in the statute. Art. 930.3. The Louisiana Supreme Court has held that none of those grounds provides a basis for collateral review of sentencing errors. See *State ex rel. Melinie v. State*, 93-1380 (La.1/12/96), 665 So.2d 1172 (*per curiam*). Sentencing errors must instead be raised through Louisiana's second collateral review procedure.

This second mechanism allows a prisoner to bring a collateral attack on his or her sentence by filing a motion to correct an illegal sentence. See Art. 882. Montgomery invoked this procedure in the East Baton Rouge Parish District Court.

[5,6] The state statute provides that "[a]n illegal sentence may be corrected at any time by the court that imposed the sentence." *Ibid.* An illegal sentence "is primarily restricted to those instances in which the term of the prisoner's sentence is not authorized by the statute or statutes which govern the penalty" for the crime of conviction. *State v. Mead*, 2014-1051, p. 3 (La.App. 4 Cir. 4/22/15), 165 So.3d 1044, 1047; see also *State v. Alexander*, 2014-0401 (La.11/7/14), 152 So.3d 137 (*per curiam*). In the ordinary course Louisiana courts will not consider a challenge to a disproportionate sentence on collateral review; rather, as a general matter, it appears that prisoners must raise Eighth Amendment sentencing challenges on direct review. See *State v. Gibbs*, 620 So.2d 296, 296-297 (La.App.1993); *Mead*, 165 So.3d, at 1047.

[7] Louisiana's collateral review courts will, however, consider a motion to correct

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an illegal sentence based on a decision of this Court holding that the Eighth Amendment to the Federal Constitution prohibits a punishment for a type of crime or a class of offenders. When, for example, this Court held in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), that the Eighth Amendment bars life-without-parole sentences for juvenile nonhomicide offenders, Louisiana courts heard *Graham* claims brought by prisoners whose sentences had long been final. See, e.g., *State v. Shaffer*, 2011–1756, pp. 1–4 (La.11/23/11), 77 So.3d 939, 940–942 (*per curiam*) (considering motion to correct an illegal sentence on the ground that *Graham* rendered illegal a life-without-parole sentence for a juvenile nonhomicide offender). Montgomery’s motion argued that *Miller* rendered his mandatory life-without-parole sentence illegal.

The trial court denied Montgomery’s motion on the ground that *Miller* is not retroactive on collateral review. Montgomery then filed an application for a supervisory writ. The Louisiana Supreme Court denied the application. 2013–1163 (6/20/14), 141 So.3d 264. The court relied on its earlier decision in *State v. Tate*, 2012–2763, 130 So.3d 829, which held that *Miller* does not have retroactive effect in cases on state collateral review. Chief Justice Johnson and Justice Hughes dissented in *Tate*, and Chief Justice Johnson again noted her dissent in Montgomery’s case.

This Court granted Montgomery’s petition for certiorari. The petition presented the question “whether *Miller* adopts a new substantive rule that applies retroactively on collateral review to people condemned as juveniles to die in prison.” Pet. for Cert. i. In addition, the Court directed the parties to address the following question: “Do we have jurisdiction to decide whether the Supreme Court of Louisiana correctly

refused to give retroactive effect in this case to our decision in *Miller*?” 575 U.S. —, 135 S.Ct. 1546, 191 L.Ed.2d 635 (2015).

II

The parties agree that the Court has jurisdiction to decide this case. To ensure this conclusion is correct, the Court appointed Richard D. Bernstein as *amicus curiae* to brief and argue the position that the Court lacks jurisdiction. He has ably discharged his assigned responsibilities.

Amicus argues that a State is under no obligation to give a new rule of constitutional law retroactive effect in its own collateral review proceedings. As those proceedings are created by state law and under the State’s plenary control, *amicus* contends, it is for state courts to define applicable principles of retroactivity. Under this view, the Louisiana Supreme Court’s decision does not implicate a federal right; it only determines the scope of relief available in a particular type of state proceeding—a question of state law beyond this Court’s power to review.

[8, 9] If, however, the Constitution establishes a rule and requires that the rule have retroactive application, then a state court’s refusal to give the rule retroactive effect is reviewable by this Court. Cf. *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) (holding that on direct review, a new constitutional rule must be applied retroactively “to all cases, state or federal”). States may not disregard a controlling, constitutional command in their own courts. See *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 340–341, 344, 4 L.Ed. 97 (1816); see also *Yates v. Aiken*, 484 U.S. 211, 218, 108 S.Ct. 534, 98 L.Ed.2d 546 (1988) (when a State has not “placed any limit on the issues that it will entertain in collateral proceedings . . . it has a duty to grant the relief that federal

law requires"). *Amicus*' argument therefore hinges on the premise that this Court's retroactivity precedents are not a constitutional mandate.

[10–13] Justice O'Connor's plurality opinion in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), set forth a framework for retroactivity in cases on federal collateral review. Under *Teague*, a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. *Teague* recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Penry v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989); see also *Teague*, *supra*, at 307, 109 S.Ct. 1060. Although *Teague* describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as . . . not subject to the bar." *Schriro v. Summerlin*, 542 U.S. 348, 352, n. 4, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004). Second, courts must give retroactive effect to new "'watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding.'" *Id.*, at 352, 124 S.Ct. 2519; see also *Teague*, 489 U.S., at 312–313, 109 S.Ct. 1060.

[14] It is undisputed, then, that *Teague* requires the retroactive application of new substantive and watershed procedural rules in federal habeas proceedings. *Amicus*, however, contends that *Teague* was an interpretation of the federal habeas stat-

ute, not a constitutional command; and so, the argument proceeds, *Teague*'s retroactivity holding simply has no application in a State's own collateral review proceedings.

To support this claim, *amicus* points to language in *Teague* that characterized the Court's task as "'defin[ing] the scope of the writ.'" *Id.*, at 308, 109 S.Ct. 1060 (quoting *Kuhlmann v. Wilson*, 477 U.S. 436, 447, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986) (plurality opinion)); see also 489 U.S., at 317, 109 S.Ct. 1060 (White, J., concurring in part and concurring in judgment) ("If we are wrong in construing the reach of the habeas corpus statutes, Congress can of course correct us . . ."); *id.*, at 332, 109 S.Ct. 1060 (Brennan, J., dissenting) ("No new facts or arguments have come to light suggesting that our [past] reading of the federal habeas statute . . . was plainly mistaken").

[15] In addition, *amicus* directs us to *Danforth v. Minnesota*, 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008), in which a majority of the Court held that *Teague* does not preclude state courts from giving retroactive effect to a broader set of new constitutional rules than *Teague* itself required. 552 U.S., at 266, 128 S.Ct. 1029. The *Danforth* majority concluded that *Teague*'s general rule of nonretroactivity for new constitutional rules of criminal procedure "was an exercise of this Court's power to interpret the federal habeas statute." 552 U.S., at 278, 128 S.Ct. 1029. Since *Teague*'s retroactivity bar "limit[s] only the scope of federal habeas relief," the *Danforth* majority reasoned, States are free to make new procedural rules retroactive on state collateral review. 552 U.S., at 281–282, 128 S.Ct. 1029.

Amicus, however, reads too much into these statements. Neither *Teague* nor *Danforth* had reason to address whether

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States are required as a constitutional matter to give retroactive effect to new substantive or watershed procedural rules. *Teague* originated in a federal, not state, habeas proceeding; so it had no particular reason to discuss whether any part of its holding was required by the Constitution in addition to the federal habeas statute. And *Danforth* held only that *Teague*'s general rule of nonretroactivity was an interpretation of the federal habeas statute and does not prevent States from providing greater relief in their own collateral review courts. The *Danforth* majority limited its analysis to *Teague*'s general retroactivity bar, leaving open the question whether *Teague*'s two exceptions are binding on the States as a matter of constitutional law. 552 U.S., at 278, 128 S.Ct. 1029; see also *id.*, at 277, 128 S.Ct. 1029 (“[T]he case before us now does not involve either of the ‘*Teague* exceptions’”).

[16] In this case, the Court must address part of the question left open in *Danforth*. The Court now holds that when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. This holding is limited to *Teague*'s first exception for substantive rules; the constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here.

This Court's precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application establish that the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final.

The category of substantive rules discussed in *Teague* originated in Justice Harlan's approach to retroactivity. *Teague* adopted that reasoning. See 489 U.S., at 292, 312, 109 S.Ct. 1060 (discussing *Mackey v. United States*, 401 U.S. 667, 692, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971) (opinion concurring in judgments in part and dissenting in part); and *Desist v. United States*, 394 U.S. 244, 261, n. 2, 89 S.Ct. 1030, 22 L.Ed.2d 248 (1969) (Harlan, J., dissenting)). Justice Harlan defined substantive constitutional rules as “those that place, as a matter of constitutional interpretation, certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.” *Mackey*, *supra*, at 692, 91 S.Ct. 1160. In *Penry v. Lynaugh*, decided four months after *Teague*, the Court recognized that “the first exception set forth in *Teague* should be understood to cover not only rules forbidding criminal punishment of certain primary conduct but also rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” 492 U.S., at 330, 109 S.Ct. 2934. *Penry* explained that Justice Harlan's first exception spoke “in terms of substantive categorical guarantees accorded by the Constitution, regardless of the procedures followed.” *Id.*, at 329, 109 S.Ct. 2934. Whether a new rule bars States from proscribing certain conduct or from inflicting a certain punishment, “[i]n both cases, the Constitution itself deprives the State of the power to impose a certain penalty.” *Id.*, at 330, 109 S.Ct. 2934.

[17, 18] Substantive rules, then, set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting

conviction or sentence is, by definition, unlawful. Procedural rules, in contrast, are designed to enhance the accuracy of a conviction or sentence by regulating “the manner of determining the defendant’s culpability.” *Schiro*, 542 U.S., at 353, 124 S.Ct. 2519; *Teague*, *supra*, at 313, 109 S.Ct. 1060. Those rules “merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise.” *Schiro*, *supra*, at 352, 124 S.Ct. 2519. Even where procedural error has infected a trial, the resulting conviction or sentence may still be accurate; and, by extension, the defendant’s continued confinement may still be lawful. For this reason, a trial conducted under a procedure found to be unconstitutional in a later case does not, as a general matter, have the automatic consequence of invalidating a defendant’s conviction or sentence.

[19] The same possibility of a valid result does not exist where a substantive rule has eliminated a State’s power to proscribe the defendant’s conduct or impose a given punishment. “[E]ven the use of impeccable factfinding procedures could not legitimate a verdict” where “the conduct being penalized is constitutionally immune from punishment.” *United States v. United States Coin & Currency*, 401 U.S. 715, 724, 91 S.Ct. 1041, 28 L.Ed.2d 434 (1971). Nor could the use of flawless sentencing procedures legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed. “No circumstances call more for the invocation of a rule of complete retroactivity.” *Ibid*.

By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of giving retroactive effect to constitutional rights that go beyond procedural guarantees. See *Mackey*, *supra*, at 692–693, 91 S.Ct. 1160 (opinion of Harlan, J.) (“[T]he writ has historically been

available for attacking convictions on [substantive] grounds”). Before *Brown v. Allen*, 344 U.S. 443, 73 S.Ct. 397, 97 L.Ed. 469 (1953), “federal courts would never consider the merits of a constitutional claim if the habeas petitioner had a fair opportunity to raise his arguments in the original proceeding.” *Desist*, 394 U.S., at 261, 89 S.Ct. 1030 (Harlan, J., dissenting). Even in the pre-1953 era of restricted federal habeas, however, an exception was made “when the habeas petitioner attacked the constitutionality of the state statute under which he had been convicted. Since, in this situation, the State had no power to proscribe the conduct for which the petitioner was imprisoned, it could not constitutionally insist that he remain in jail.” *Id.*, at 261, n. 2, 89 S.Ct. 1030 (Harlan, J., dissenting) (citation omitted).

[20, 21] In *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717 (1880), the Court addressed why substantive rules must have retroactive effect regardless of when the defendant’s conviction became final. At the time of that decision, “[m]ere error in the judgment or proceedings, under and by virtue of which a party is imprisoned, constitute[d] no ground for the issue of the writ.” *Id.*, at 375. Before *Siebold*, the law might have been thought to establish that so long as the conviction and sentence were imposed by a court of competent jurisdiction, no habeas relief could issue. In *Siebold*, however, the petitioners attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if “this position is well taken, it affects the foundation of the whole proceedings.” *Id.*, at 376. A conviction under an unconstitutional law

“is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in

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the sense that there may be no means of reversing it. But . . . if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.*, at 376–377.

As discussed, the Court has concluded that the same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose. *Penry*, *supra*, at 330, 109 S.Ct. 2934; see also Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 151 (1970) ("Broadly speaking, the original sphere for collateral attack on a conviction was where the tribunal lacked jurisdiction either in the usual sense or because the statute under which the defendant had been prosecuted was unconstitutional or because the sentence was one the court could not lawfully impose" (footnotes omitted)). A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. See *Siebold*, 100 U.S., at 376. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

Siebold and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time. These precedents did not involve a state court's postconviction review of a conviction or sentence and so did not address whether the Constitution requires new substantive rules to have retroactive effect in cases on state collateral review. These decisions, however, have important bearing on the analysis necessary in this case.

[22, 23] In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that "[a]n unconstitu-

tional law is void, and is as no law." *Ibid.* A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees. Writing for the Court in *United States Coin & Currency*, Justice Harlan made this point when he declared that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." 401 U.S., at 724, 91 S.Ct. 1041. *United States Coin & Currency* involved a case on direct review; yet, for the reasons explained in this opinion, the same principle should govern the application of substantive rules on collateral review. As Justice Harlan explained, where a State lacked the power to proscribe the habeas petitioner's conduct, "it could not constitutionally insist that he remain in jail." *Desist*, *supra*, at 261, n. 2, 89 S.Ct. 1030 (dissenting opinion).

[24, 25] If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court "has a duty to grant the relief that federal law requires." *Yates*, 484 U.S., at 218, 108 S.Ct. 534. Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to

give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

[26] As a final point, it must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences. *Teague* warned against the intrusiveness of "continually forc[ing] the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." 489 U.S., at 310, 109 S.Ct. 1060. This concern has no application in the realm of substantive rules, for no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose. See *Mackey*, 401 U.S., at 693, 91 S.Ct. 1160 (opinion of Harlan, J.) ("There is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose").

[27] In adjudicating claims under its collateral review procedures a State may not deny a controlling right asserted under the Constitution, assuming the claim is properly presented in the case. Louisiana follows these basic Supremacy Clause principles in its postconviction proceedings for challenging the legality of a sentence. The State's collateral review procedures are open to claims that a decision of this Court has rendered certain sentences illegal, as a substantive matter, under the Eighth Amendment. See, e.g., *State v. Dyer*, 2011-1758, pp. 1-2 (La.11/23/11), 77 So.3d 928, 928-929 (*per curiam*) (considering claim on collateral review that this Court's decision in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825, rendered petitioner's life-without-parole sentence illegal). Montgomery alleges that *Miller* announced a substantive constitutional rule and that the Louisiana Su-

preme Court erred by failing to recognize its retroactive effect. This Court has jurisdiction to review that determination.

III

[28] This leads to the question whether *Miller's* prohibition on mandatory life without parole for juvenile offenders indeed did announce a new substantive rule that, under the Constitution, must be retroactive.

As stated above, a procedural rule "regulate[s] only the manner of determining the defendant's culpability." *Schriro*, 542 U.S., at 353, 124 S.Ct. 2519. A substantive rule, in contrast, forbids "criminal punishment of certain primary conduct" or prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Penry*, 492 U.S., at 330, 109 S.Ct. 2934; see also *Schriro*, *supra*, at 353, 124 S.Ct. 2519 (A substantive rule "alters the range of conduct or the class of persons that the law punishes"). Under this standard, and for the reasons explained below, *Miller* announced a substantive rule that is retroactive in cases on collateral review.

[29-31] The "foundation stone" for *Miller's* analysis was this Court's line of precedent holding certain punishments disproportionate when applied to juveniles. 567 U.S., at —, n. 4, 132 S.Ct., at 2464, n. 4. Those cases include *Graham v. Florida*, *supra*, which held that the Eighth Amendment bars life without parole for juvenile nonhomicide offenders, and *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, which held that the Eighth Amendment prohibits capital punishment for those under the age of 18 at the time of their crimes. Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of

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determining a defendant's sentence. See *Graham*, *supra*, at 59, 130 S.Ct. 2011 ("The concept of proportionality is central to the Eighth Amendment"); see also *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910); *Harmelin v. Michigan*, 501 U.S. 957, 997–998, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (KENNEDY, J., concurring in part and concurring in judgment).

[32] *Miller* took as its starting premise the principle established in *Roper* and *Graham* that "children are constitutionally different from adults for purposes of sentencing." 567 U.S., at —, 132 S.Ct., at 2464 (citing *Roper*, *supra*, at 569–570, 125 S.Ct. 1183; and *Graham*, *supra*, at 68, 130 S.Ct. 2011). These differences result from children's "diminished culpability and greater prospects for reform," and are apparent in three primary ways:

"First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable to negative influences and outside pressures,' including from their family and peers; they have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.'" 567 U.S., at —, 132 S.Ct., at 2464 (quoting *Roper*, *supra*, at 569–570, 125 S.Ct. 1183; alterations, citations, and some internal quotation marks omitted).

As a corollary to a child's lesser culpability, *Miller* recognized that "the distinctive attributes of youth diminish the penological justifications" for imposing life without parole on juvenile offenders. 567 U.S., at —, 132 S.Ct., at 2465. Because retribu-

tion "relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." *Ibid.* (quoting *Graham*, *supra*, at 71, 130 S.Ct. 2011; internal quotation marks omitted). The deterrence rationale likewise does not suffice, since "the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." 567 U.S., at —, 132 S.Ct., at 2465 (internal quotation marks omitted). The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender "forever will be a danger to society." *Id.*, at —, 132 S.Ct., at 2465 (quoting *Graham*, 560 U.S., at 72, 130 S.Ct. 2011). Rehabilitation is not a satisfactory rationale, either. Rehabilitation cannot justify the sentence, as life without parole "forswears altogether the rehabilitative ideal." 567 U.S., at —, 132 S.Ct., at 2465 (quoting *Graham*, *supra*, at 74, 130 S.Ct. 2011).

[33] These considerations underlay the Court's holding in *Miller* that mandatory life-without-parole sentences for children "pos[e] too great a risk of disproportionate punishment." 567 U.S., at —, 132 S.Ct., at 2469. *Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Ibid.* The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of "children's diminished culpability and heightened capacity for change," *Miller* made clear that "appropriate occasions

for sentencing juveniles to this harshest possible penalty will be uncommon." *Ibid.*

Miller, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id.*, at —, 132 S.Ct., at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "unfortunate yet transient immaturity." *Id.*, at —, 132 S.Ct., at 2469 (quoting *Roper*, 543 U.S., at 573, 125 S.Ct. 1183). Because *Miller* determined that sentencing a child to life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption," 567 U.S., at —, 132 S.Ct., at 2469 (quoting *Roper*, *supra*, at 573, 125 S.Ct. 1183), it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. *Penry*, 492 U.S., at 330, 109 S.Ct. 2934. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it "necessar[ily] carr[ies] a significant risk that a defendant"—here, the vast majority of juvenile offenders—"faces a punishment that the law cannot impose upon him." *Schriro*, 542 U.S., at 352, 124 S.Ct. 2519 (quoting *Bousley v. United States*, 523 U.S. 614, 620, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)).

Louisiana nonetheless argues that *Miller* is procedural because it did not place any punishment beyond the State's power to impose; it instead required sentencing courts to take children's age into account before condemning them to die in prison. In support of this argument, Louisiana

points to *Miller*'s statement that the decision "does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Miller*, *supra*, at —, 132 S.Ct., at 2471. *Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham*. *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*. Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. The only difference between *Roper* and *Graham*, on the one hand, and *Miller*, on the other hand, is that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.

To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence. See 567 U.S., at —, 132 S.Ct., at 2471. Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural requirement necessary to implement a substantive guarantee with a

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rule that “regulate[s] only the *manner of determining* the defendant’s culpability.” *Schiro*, *supra*, at 353, 124 S.Ct. 2519. There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. See *Mackey*, 401 U.S., at 692, n. 7, 91 S.Ct. 1160 (opinion of Harlan, J.) (“Some rules may have both procedural and substantive ramifications, as I have used those terms here”). For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner’s conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. See, e.g., *Atkins v. Virginia*, 536 U.S. 304, 317, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (requiring a procedure to determine whether a particular individual with an intellectual disability “fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus” that execution is impermissible). Those procedural requirements do not, of course, transform substantive rules into procedural ones.

The procedure *Miller* prescribes is no different. A hearing where “youth and its attendant characteristics” are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. 567 U.S., at —, 132 S.Ct., at 2460. The hearing does not replace but rather gives effect to *Miller*’s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.

[34] Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child’s incorrigibility. That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee. When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States’ sovereign administration of their criminal justice systems. See *Ford v. Wainwright*, 477 U.S. 399, 416–417, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) (“[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences”). Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment.

For this reason, the death penalty cases Louisiana cites in support of its position are inapposite. See, e.g., *Beard v. Banks*, 542 U.S. 406, 408, 124 S.Ct. 2504, 159 L.Ed.2d 494 (2004) (holding nonretroactive the rule that forbids instructing a jury to disregard mitigating factors not found by a unanimous vote); *O’Dell v. Netherland*, 521 U.S. 151, 153, 117 S.Ct. 1969, 138 L.Ed.2d 351 (1997) (holding nonretroactive the rule providing that, if the prosecutor

cites future dangerousness, the defendant may inform the jury of his ineligibility for parole); *Sawyer v. Smith*, 497 U.S. 227, 229, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990) (holding nonretroactive the rule that forbids suggesting to a capital jury that it is not responsible for a death sentence). Those decisions altered the processes in which States must engage before sentencing a person to death. The processes may have had some effect on the likelihood that capital punishment would be imposed, but none of those decisions rendered a certain penalty unconstitutionally excessive for a category of offenders.

The Court now holds that *Miller* announced a substantive rule of constitutional law. The conclusion that *Miller* states a substantive rule comports with the principles that informed *Teague*. *Teague* sought to balance the important goals of finality and comity with the liberty interests of those imprisoned pursuant to rules later deemed unconstitutional. *Miller*'s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.

[35] Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, e.g., Wyo. Stat. Ann. § 6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a dispro-

portionate sentence in violation of the Eighth Amendment.

Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.

Petitioner has discussed in his submissions to this Court his evolution from a troubled, misguided youth to a model member of the prison community. Petitioner states that he helped establish an inmate boxing team, of which he later became a trainer and coach. He alleges that he has contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates. These claims have not been tested or even addressed by the State, so the Court does not confirm their accuracy. The petitioner's submissions are relevant, however, as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.

* * *

Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison. Perhaps it can be established that, due to exceptional circumstances, this fate was a just and proportionate punishment for the crime he committed as a 17-year-old boy. In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it

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did not, their hope for some years of life outside prison walls must be restored.

The judgment of the Supreme Court of Louisiana is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice SCALIA, with whom Justice THOMAS and Justice ALITO join, dissenting.

The Court has no jurisdiction to decide this case, and the decision it arrives at is wrong. I respectfully dissent.

I. Jurisdiction

Louisiana postconviction courts willingly entertain Eighth Amendment claims but, with limited exceptions, apply the law as it existed when the state prisoner was convicted and sentenced. Shortly after this Court announced *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), the Louisiana Supreme Court adopted *Teague's* framework to govern the provision of postconviction remedies available to state prisoners in its state courts as a matter of state law. *Taylor v. Whitley*, 606 So.2d 1292 (La.1992). In doing so, the court stated that it was “not bound” to adopt that federal framework. *Id.*, at 1296. One would think, then, that it is none of our business that a 69-year-old Louisiana prisoner’s state-law motion to be resentenced according to *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), a case announced almost half a century after his sentence was final, was met with a firm rejection on state-law grounds by the Louisiana Supreme Court. But a majority of this Court, eager to reach the merits of this case, resolves the question of our jurisdiction by deciding that the Constitution requires state postconviction courts to adopt *Teague's* exception for so-called “substantive” new rules and to provide state-law

remedies for the violations of those rules to prisoners whose sentences long ago became final. This conscription into federal service of state postconviction courts is nothing short of astonishing.

A

Teague announced that federal courts could not grant habeas corpus to overturn state convictions on the basis of a “new rule” of constitutional law—meaning one announced after the convictions became final—*unless* that new rule was a “substantive rule” or a “watershed rul[e] of criminal procedure.” 489 U.S., at 311, 109 S.Ct. 1060. The *Teague* prescription followed from Justice Harlan’s view of the “retroactivity problem” detailed in his separate opinion in *Desist v. United States*, 394 U.S. 244, 256, 89 S.Ct. 1030, 22 L.Ed.2d 248 (1969) (dissenting opinion), and later in *Mackey v. United States*, 401 U.S. 667, 675, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971) (opinion concurring in judgment in part and dissenting in part). Placing the rule’s first exception in context requires more analysis than the majority has applied.

The Court in the mid-20th century was confounded by what Justice Harlan called the “swift pace of constitutional change,” *Pickelsimer v. Wainwright*, 375 U.S. 2, 4, 84 S.Ct. 80, 11 L.Ed.2d 41 (1963) (dissenting opinion), as it vacated and remanded many cases in the wake of *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Justice Harlan called upon the Court to engage in “informed and deliberate consideration” of “whether the States are constitutionally required to apply [*Gideon's*] new rule retrospectively, which may well require the reopening of cases long since finally adjudicated in accordance with then applicable decisions of this Court.” *Pickelsimer*, *supra*, at 3, 84 S.Ct. 80. The Court answered that call in

Linkletter v. Walker, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965). *Linkletter* began with the premise “that we are neither required to apply, nor prohibited from applying, a decision retrospectively” and went on to adopt an equitable rule-by-rule approach to retroactivity, considering “the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.” *Id.*, at 629, 85 S.Ct. 1731.

The *Linkletter* framework proved unworkable when the Court began applying the rule-by-rule approach not only to cases on collateral review but also to cases on direct review, rejecting any distinction “between convictions now final” and “convictions at various stages of trial and direct review.” *Stovall v. Denno*, 388 U.S. 293, 300, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). It was this rejection that drew Justice Harlan’s reproach in *Desist* and later in *Mackey*. He urged that “all ‘new’ rules of constitutional law must, at a minimum, be applied to all those cases which are still subject to direct review by this Court at the time the ‘new’ decision is handed down.” *Desist*, *supra*, at 258, 89 S.Ct. 1030 (dissenting opinion). “Simply fishing one case from the stream of appellate review, using it as a vehicle for pronouncing new constitutional standards, and then permitting a stream of similar cases subsequently to flow by unaffected by that new rule constitute an indefensible departure from th[e] model of judicial review.” *Mackey*, *supra*, at 679, 91 S.Ct. 1160.

The decision in *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), heeded this constitutional concern. The Court jettisoned the *Linkletter* test for cases pending on direct review and adopted for them Justice Harlan’s rule of redressability: “[F]ailure to apply a newly declared constitutional rule to criminal cases pending on direct review violates

basic norms of constitutional adjudication.” 479 U.S., at 322, 107 S.Ct. 708 (emphasis added). We established in *Griffith* that this Court must play by our own “old rules”—rules we have settled before the defendant’s conviction and sentence become final, even those that are a “clear break from existing precedent”—for cases pending before us on direct appeal. *Id.*, at 323, 107 S.Ct. 708. Since the *Griffith* rule is constitutionally compelled, we instructed the lower state and federal courts to comply with it as well. *Ibid.*

When *Teague* followed on *Griffith*’s heels two years later, the opinion contained no discussion of “basic norms of constitutional adjudication,” *Griffith*, *supra*, at 322, 107 S.Ct. 708, nor any discussion of the obligations of state courts. Doing away with *Linkletter* for good, the Court adopted Justice Harlan’s solution to “the retroactivity problem” for cases pending on collateral review—which he described not as a constitutional problem but as “a problem as to the scope of the habeas writ.” *Mackey*, *supra*, at 684, 91 S.Ct. 1160 (emphasis added). *Teague* held that federal habeas courts could no longer upset state-court convictions for violations of so-called “new rules,” not yet announced when the conviction became final. 489 U.S., at 310, 109 S.Ct. 1060. But it allowed for the previously mentioned exceptions to this rule of nonredressability: substantive rules placing “certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe” and “watershed rules of criminal procedure.” *Id.*, at 311, 109 S.Ct. 1060. Then in *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), the Court expanded this first exception for substantive rules to embrace new rules “prohibiting a certain category of punishment for a class of defendants because of their status or offense.” *Id.*, at 330, 109 S.Ct. 2934.

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Neither *Teague* nor its exceptions are constitutionally compelled. Unlike today's majority, the *Teague*-era Court understood that cases on collateral review are fundamentally different from those pending on direct review because of "considerations of finality in the judicial process." *Shea v. Louisiana*, 470 U.S. 51, 59–60, 105 S.Ct. 1065, 84 L.Ed.2d 38 (1985). That line of finality demarcating the constitutionally required rule in *Griffith* from the habeas rule in *Teague* supplies the answer to the not-so-difficult question whether a state postconviction court must remedy the violation of a new substantive rule: No. A state court need only apply the law as it existed at the time a defendant's conviction and sentence became final. See *Griffith*, *supra*, at 322, 107 S.Ct. 708. And once final, "a new rule cannot reopen a door already closed." *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 541, 111 S.Ct. 2439, 115 L.Ed.2d 481 (1991) (opinion of Souter, J.). Any relief a prisoner might receive in a state court after finality is a matter of grace, not constitutional prescription.

B

The majority can marshal no case support for its contrary position. It creates a constitutional rule where none had been before: "*Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises" binding in both federal and state courts. *Ante*, at 729. "Best understood." Because of what? Surely not because of its history and derivation.

Because of the Supremacy Clause, says the majority. *Ante*, at 731. But the Supremacy Clause cannot possibly answer the question before us here. It only elicits another question: What federal law is supreme? Old or new? The majority's champion, Justice Harlan, said the old

rules apply for federal habeas review of a state-court conviction: "[T]he habeas court need only apply the constitutional standards that prevailed at the time the original proceedings took place," *Desist*, 394 U.S., at 263, 89 S.Ct. 1030 (dissenting opinion), for a state court cannot "toe the constitutional mark" that does not yet exist, *Mackey*, 401 U.S., at 687, 91 S.Ct. 1160 (opinion of Harlan, J.). Following his analysis, we have clarified time and again—recently in *Greene v. Fisher*, 565 U.S. —, —, —, 132 S.Ct. 38, 43–44, 181 L.Ed.2d 336 (2011)—that *federal* habeas courts are to review state-court decisions against the law and factual record that existed at the time the decisions were made. "Section 2254(d)(1) [of the federal habeas statute] refers, in the past tense, to a state-court adjudication that 'resulted in' a decision that was contrary to, or 'involved' an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made." *Cullen v. Pinholster*, 563 U.S. 170, 181–182, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011). How can it possibly be, then, that the Constitution requires a *state* court's review of its own convictions to be governed by "new rules" rather than (what suffices when federal courts review state courts) "old rules"?

The majority relies on the statement in *United States v. United States Coin & Currency*, 401 U.S. 715, 91 S.Ct. 1041, 28 L.Ed.2d 434 (1971), that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." *Ante*, at 729–730 (quoting 401 U.S., at 724, 91 S.Ct. 1041). The majority neglects to mention that this statement was addressing the "circumstances" of a conviction that "*had not become final*," *id.*, at 724, n. 13, 91 S.Ct. 1041 (emphasis added), when

the “rule of complete retroactivity” was invoked. *Coin & Currency*, an opinion written by (guess whom?) Justice Harlan, merely foreshadowed the rule announced in *Griffith*, that all cases pending on direct review receive the benefit of newly announced rules—better termed “old rules” for such rules were announced *before* finality.

The majority also misappropriates *Yates v. Aiken*, 484 U.S. 211, 108 S.Ct. 534, 98 L.Ed.2d 546 (1988), which reviewed a state habeas petitioner’s Fourteenth Amendment claim that the jury instructions at his trial lessened the State’s burden to prove every element of his offense beyond a reasonable doubt. That case at least did involve a conviction that was final. But the majority is oblivious to the critical fact that Yates’s claim depended upon an *old rule*, settled at the time of his trial. *Id.*, at 217, 108 S.Ct. 534. This Court reversed the state habeas court for its refusal to consider that the jury instructions violated that *old rule*. *Ibid.* The majority places great weight upon the dictum in *Yates* that the South Carolina habeas court “ha[d] a duty to grant the relief that federal law requires.” *Ante*, at 731 (quoting *Yates, supra*, at 218, 108 S.Ct. 534). It is simply wrong to divorce that dictum from the facts it addressed. In that context, *Yates* merely reinforces the line drawn by *Griffith*: when state courts provide a forum for postconviction relief, they need to play by the “old rules” announced *before* the date on which a defendant’s conviction and sentence became final.

The other sleight of hand performed by the majority is its emphasis on *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717 (1880). That case considered a petition for a federal writ of habeas corpus following a federal conviction, and the initial issue it confronted was its jurisdiction. A federal court has no inherent habeas corpus power, *Ex*

parte Bollman, 4 Cranch 75, 94, 2 L.Ed. 554 (1807), but only that which is conferred (and limited) by statute, see, e.g., *Felker v. Turpin*, 518 U.S. 651, 664, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996). As *Siebold* stated, it was forbidden to use the federal habeas writ “as a mere writ of error.” 100 U.S., at 375. “The only ground on which this court, or any court, without some special statute authorizing it, [could] give relief on *habeas corpus* to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void.” *Ibid.* Turning to the facts before it, the Court decided it was within its power to hear *Siebold*’s claim, which did not merely protest that the conviction and sentence were “erroneous” but contended that the statute he was convicted of violating was unconstitutional and the conviction therefore void: “[I]f the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes.” *Id.*, at 376–377. *Siebold* is thus a decision that expands the limits of this Court’s power to issue a federal habeas writ for a federal prisoner.

The majority, however, divines from *Siebold* “a general principle” that “a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.” *Ante*, at 731. That is utterly impossible. No “general principle” can rationally be derived from *Siebold* about constitutionally required remedies in state courts; indeed, the opinion does not even speak to constitutionally required remedies in *federal* courts. It is a decision about this Court’s statutory power to grant the Original Writ, not about its constitutional obligation to do so. Nowhere in *Siebold* did this Court intimate that relief was constitutionally required—or as the

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majority puts it, that a court would have had “no authority” to leave in place Siebold’s conviction, *ante*, at 730 – 731.

The majority’s sorry acknowledgment that “*Siebold* and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time,” *ibid.*, is not nearly enough of a disclaimer. It is not just that they “do not directly control,” but that the dicta cherry picked from those cases are irrelevant; they addressed circumstances fundamentally different from those to which the majority now applies them. Indeed, we know for sure that the author of some of those dicta, Justice Harlan, held views that flatly contradict the majority.

The majority’s maxim that “state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution,” *ante*, at 731, begs the question rather than contributes to its solution. Until today, no federal court was *constitutionally obliged* to grant relief for the past violation of a newly announced substantive rule. Until today, it was Congress’s prerogative to do away with *Teague*’s exceptions altogether. Indeed, we had left unresolved the question whether Congress had already done that when it amended a section of the habeas corpus statute to add backward-looking language governing the review of state-court decisions. See Antiterrorism and Effective Death Penalty Act of 1996, § 104, 110 Stat. 1219, codified at 28 U.S.C. § 2254(d)(1); *Greene*, 565 U.S., at —, n., 132 S.Ct., at 44, n. A maxim shown to be more relevant to this case, by the analysis that the majority omitted, is this: The Supremacy Clause does not impose upon state courts a constitutional obligation it fails to impose upon federal courts.

C

All that remains to support the majority’s conclusion is that all-purpose Latin canon: *ipse dixit*. The majority opines that because a substantive rule eliminates a State’s power to proscribe certain conduct or impose a certain punishment, it has “the automatic consequence of invalidating a defendant’s conviction or sentence.” *Ante*, at 730. What provision of the Constitution could conceivably produce such a result? The Due Process Clause? It surely cannot be a denial of due process for a court to pronounce a final judgment which, though fully in accord with federal constitutional law at the time, fails to anticipate a change to be made by this Court half a century into the future. The Equal Protection Clause? Both statutory and (increasingly) constitutional laws change. If it were a denial of equal protection to hold an earlier defendant to a law more stringent than what exists today, it would also be a denial of equal protection to hold a later defendant to a law more stringent than what existed 50 years ago. No principle of equal protection requires the criminal law of all ages to be the same.

The majority grandly asserts that “[t]here is no grandfather clause that permits States to *enforce punishments the Constitution forbids*.” *Ante*, at 731 (emphasis added). Of course the italicized phrase begs the question. There most certainly is a grandfather clause—one we have called *finality*—which says that the Constitution does not require States to revise punishments that were lawful when they were imposed. Once a conviction has become final, whether new rules or old ones will be applied to revisit the conviction is a matter entirely within the State’s control; the Constitution has nothing to say about that choice. The majority says that there is no “possibility of a valid result” when a new substantive rule is not

applied retroactively. *Ante*, at 729–730. But the whole controversy here arises because many think there is a valid result when a defendant has been convicted under the law that existed when his conviction became final. And the States are unquestionably entitled to take that view of things.

The majority's imposition of *Teague*'s first exception upon the States is all the worse because it does not adhere to that exception as initially conceived by Justice Harlan—an exception for rules that “place, as a matter of constitutional interpretation, certain kinds of primary, private individual conduct beyond the power of the criminal lawmaking authority to proscribe.” *Mackey*, 401 U.S., at 692, 91 S.Ct. 1160 (emphasis added). Rather, it endorses the exception as expanded by *Penry*, to include “rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” 492 U.S., at 330, 109 S.Ct. 2934. That expansion empowered and obligated federal (and after today state) habeas courts to invoke this Court's Eighth Amendment “evolving standards of decency” jurisprudence to upset punishments that were constitutional when imposed but are “cruel and unusual,” U.S. Const., Amdt. 8, in our newly enlightened society. See *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958). The “evolving standards” test concedes that in 1969 the State had the power to punish Henry Montgomery as it did. Indeed, Montgomery could at that time have been sentenced to death by our yet unevolved society. Even 20 years later, this Court reaffirmed that the Constitution posed no bar to death sentences for juveniles. *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989). Not until our People's “standards of decency” evolved a mere 10 years ago—nearly 40 years after Montgomery's sentence was imposed—did this Court declare the death

penalty unconstitutional for juveniles. *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Even then, the Court reassured States that “the punishment of life imprisonment without the possibility of parole is itself a severe sanction,” implicitly still available for juveniles. *Id.*, at 572, 125 S.Ct. 1183. And again five years ago this Court left in place this severe sanction for juvenile homicide offenders. *Graham v. Florida*, 560 U.S. 48, 69, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). So for the five decades Montgomery has spent in prison, not one of this Court's precedents called into question the legality of his sentence—until the People's “standards of decency,” as perceived by five Justices, “evolved” yet again in *Miller*.

Teague's central purpose was to do away with the old regime's tendency to “continually force the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards.” 489 U.S., at 310, 109 S.Ct. 1060. Today's holding thwarts that purpose with a vengeance. Our ever-evolving Constitution changes the rules of “cruel and unusual punishments” every few years. In the passage from *Mackey* that the majority's opinion quotes, *ante*, at 731–732, Justice Harlan noted the diminishing force of finality (and hence the equitable propriety—not the constitutional requirement—of disregarding it) when the law punishes non-punishable conduct, see 401 U.S., at 693, 91 S.Ct. 1160. But one cannot imagine a clearer frustration of the sensible policy of *Teague* when the ever-moving target of impermissible punishments is at issue. Today's holding not only forecloses Congress from eliminating this expansion of *Teague* in federal courts, but also foists this distortion upon the States.

II. The Retroactivity of *Miller*

Having created jurisdiction by ripping *Teague*'s first exception from its moorings,

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converting an equitable rule governing federal habeas relief to a constitutional command governing state courts as well, the majority proceeds to the merits. And here it confronts a second obstacle to its desired outcome. *Miller*, the opinion it wishes to impose upon state postconviction courts, simply does not decree what the first part of the majority's opinion says *Teague*'s first exception requires to be given retroactive effect: a rule "set[ting] forth categorical constitutional guarantees that place certain criminal laws and punishments *altogether* beyond the State's power to impose." *Ante*, at 729 (emphasis added). No problem. Having distorted *Teague*, the majority simply proceeds to rewrite *Miller*.

The majority asserts that *Miller* "rendered life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Ante*, at 734. It insists that *Miller* barred life-without-parole sentences "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*." *Ante*, at 734. The problem is that *Miller* stated, quite clearly, precisely the opposite: "Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer *follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty." 567 U.S., at —, 132 S.Ct., at 2471 (emphasis added).

To contradict that clear statement, the majority opinion quotes passages from *Miller* that assert such things as "mandatory life-without-parole sentences for children 'pos[e] too great a risk of disproportionate punishment'" and "'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'" *Ante*, at 733–734 (quoting *Miller*, *supra*, at —, 132 S.Ct., at 2469). But to say that a punishment might be inappropriate and disproportionate for certain juvenile offenders is not to say that it is unconstitutionally void. All of the statements relied on by the majority do nothing more than express the *reason* why the new, youth-protective *procedure* prescribed by *Miller* is desirable: to deter life sentences for certain juvenile offenders. On the issue of whether *Miller* rendered life-without-parole penalties unconstitutional, it is impossible to get past *Miller*'s unambiguous statement that "[o]ur decision does not categorically bar a penalty for a class of offenders" and "mandates only that a sentencer follow a certain process . . . before imposing a particular penalty." 567 U.S., at —, 132 S.Ct., at 2471. It is plain as day that the majority is not applying *Miller*, but rewriting it.¹

And the rewriting has consequences beyond merely making *Miller*'s procedural guarantee retroactive. If, indeed, a State is categorically prohibited from imposing life without parole on juvenile offenders whose crimes do not "reflect permanent incorrigibility," then even when the procedures that *Miller* demands are provided the constitutional requirement is not necessarily satisfied. It remains available for

1. It is amusing that the majority's initial description of *Miller* is the same as our own: "[T]he Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances

in light of the principles and purposes of juvenile sentencing." *Ante*, at 725. Only 15 pages later, after softening the reader with 3 pages of obfuscating analysis, does the majority dare to attribute to *Miller* that which *Miller* explicitly denies.

the defendant sentenced to life without parole to argue that his crimes did not in fact "reflect permanent incorrigibility." Or as the majority's opinion puts it: "That *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child²³ whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Ante*, at 735.

How wonderful. Federal and (like it or not) state judges are henceforth to resolve the knotty "legal" question: whether a 17-year-old who murdered an innocent sheriff's deputy half a century ago was at the time of his trial "incorrigible." Under *Miller*, bear in mind, the inquiry is whether the inmate was seen to be incorrigible when he was sentenced—not whether he has proven corrigible and so can safely be paroled today. What silliness. (And how impossible in practice, see Brief for National District Attorneys Assn. et al. as *Amici Curiae* 9–17.) When in *Lockett v. Ohio*, 438 U.S. 586, 608, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978), the Court imposed the thitherto unheard-of requirement that the sentencer in capital cases must consider and weigh all "relevant mitigating factors," it at least did not impose the substantive (and hence judicially reviewable) requirement that the aggravators must outweigh the mitigators; it would suffice that the sentencer *thought* so. And, fairly read, *Miller* did the same. Not so with the "incorrigibility" requirement that the Court imposes today to make *Miller* retroactive.

But have no fear. The majority does not seriously expect state and federal collateral-review tribunals to engage in this silliness, probing the evidence of "incorrigibility" that existed decades ago when defendants were sentenced. What the ma-

jority expects (and intends) to happen is set forth in the following not-so-subtle invitation: "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Ante*, at 736. Of course. This whole exercise, this whole distortion of *Miller*, is just a devious way of eliminating life without parole for juvenile offenders. The Court might have done that expressly (as we know, the Court can decree *anything*), but that would have been something of an embarrassment. After all, one of the justifications the Court gave for decreeing an end to the death penalty for murders (no matter how many) committed by a juvenile was that life without parole was a severe enough punishment. See *Roper*, 543 U.S., at 572, 125 S.Ct. 1183. How could the majority—in an opinion written by the very author of *Roper*—now say *that* punishment is *also* unconstitutional? The Court expressly refused to say so in *Miller*. 567 U.S., at —, 132 S.Ct., at 2469. So the Court refuses again today, but merely makes imposition of that severe sanction a practical impossibility. And then, in Godfather fashion, the majority makes state legislatures an offer they can't refuse: Avoid all the utterly impossible nonsense we have prescribed by simply "permitting juvenile homicide offenders to be considered for parole." *Ante*, at 736. Mission accomplished.

Justice THOMAS, dissenting.

I join Justice SCALIA's dissent. I write separately to explain why the Court's resolution of the jurisdictional question, *ante*, at 739–744, lacks any foundation in the Constitution's text or our historical traditions. We have jurisdiction under 28 U.S.C. § 1257 only if the Louisiana Su-

2. The majority presumably regards any per-

son one day short of voting age as a "child."

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preme Court's decision implicates a federal right. That condition is satisfied, the Court holds, because the Constitution purportedly requires state and federal postconviction courts to give "retroactive effect" to new substantive constitutional rules by applying them to overturn long-final convictions and sentences. *Ante*, at 729. Because our Constitution and traditions embrace no such right, I respectfully dissent.

I

"[O]ur jurisprudence concerning the 'retroactivity' of 'new rules' of constitutional law is primarily concerned, not with the question whether a constitutional violation occurred, but with the availability or nonavailability of remedies." *Danforth v. Minnesota*, 552 U.S. 264, 290–291, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008). Accordingly, the issue in this case is not whether prisoners who received mandatory life-without-parole sentences for crimes they committed decades ago as juveniles had an Eighth Amendment right not to receive such a sentence. Rather, the question is how, when, and in what forum that newfound right can be enforced. See *ibid*.

The Court answers that question one way: It says that state postconviction and federal habeas courts are constitutionally required to supply a remedy because a sentence or conviction predicated upon an unconstitutional law is a legal nullity. See *ante*, at 729–733. But nothing in the Constitution's text or in our constitutional tradition provides such a right to a remedy on collateral review.

A

No provision of the Constitution supports the Court's holding. The Court invokes only the Supremacy Clause, asserting that the Clause deprives state and federal postconviction courts alike of pow-

er to leave an unconstitutional sentence in place. *Ante*, at 731–732. But that leaves the question of what provision of the Constitution supplies that underlying prohibition.

The Supremacy Clause does not do so. That Clause merely supplies a rule of decision: *If* a federal constitutional right exists, that right supersedes any contrary provisions of state law. See Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"). Accordingly, as we reaffirmed just last Term, the Supremacy Clause is no independent font of substantive rights. *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. —, —, 135 S.Ct. 1378, 1383, 191 L.Ed.2d 471 (2015).

Nor am I aware of any other provision in the Constitution that would support the Court's new constitutional right to retroactivity. Of the natural places to look—Article III, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment—none establishes a right to void an unconstitutional sentence that has long been final.

To begin, Article III does not contain the requirement that the Court announces today. Article III vests "[t]he judicial Power" in this Court and whatever inferior courts Congress creates, Art. III, § 1, and "extend[s]" that power to various "Cases . . . and Controversies," Art. III, § 2. Article III thus defines the scope of *federal* judicial power. It cannot compel *state* postconviction courts to apply new substantive rules retroactively.

Even if the Court's holding were limited to federal courts, Article III would not justify it. The nature of "judicial power" may constrain the retroactivity rules that Article III courts can apply.* But even our broad modern precedents treat Article III as requiring courts to apply new rules only on *direct* review. Thus in *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), the Court suggested—based on Justice Harlan's views—that “after we have decided a new rule in the case selected, the integrity of judicial review requires that we apply that rule to all similar cases pending on direct review.” *Id.*, at 322–323, 107 S.Ct. 708. But, as Justice Harlan had explained, that view of Article III has no force on collateral review: “While the entire theoretical underpinnings of judicial review and constitutional supremacy dictate that federal courts having jurisdiction on direct review adjudicate every issue of law . . . fairly implicated by the trial process below and properly presented on appeal, federal courts have never had a similar obligation on habeas corpus.” *Mackey v. United States*, 401 U.S. 667, 682, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971) (opinion concurring in judgment in part and dissenting in part).

The Court's holding also cannot be grounded in the Due Process Clause's prohibition on “depriv[ations] . . . of life, liberty, or property, without due process of law.” Amdts. V and XIV, § 1. Quite possibly, “[d]ue process of law” was originally used as a shorthand expression for governmental proceedings according to the “law of the land” as it existed at the time of those proceedings.” *In re Winship*, 397 U.S. 358, 378, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (Black, J., dissenting) (emphasis

added); accord, *Johnson v. United States*, 576 U.S. —, —, 135 S.Ct. 2551, 2572–2573, 192 L.Ed.2d 569 (2015) (THOMAS, J., concurring in judgment). Under that understanding, due process excluded any right to have new substantive rules apply retroactively.

Even if due process required courts to anticipate this Court's new substantive rules, it would not compel courts to revisit settled convictions or sentences on collateral review. We have never understood due process to require further proceedings once a trial ends. The Clause “does not establish any right to an appeal . . . and certainly does not establish any right to collaterally attack a final judgment of conviction.” *United States v. MacCollom*, 426 U.S. 317, 323, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (plurality opinion); see *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987) (“States have no obligation to provide [postconviction] relief”). Because the Constitution does not require postconviction remedies, it certainly does not require postconviction courts to revisit every potential type of error. Cf. *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 165–166, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000) (SCALIA, J., concurring in judgment) (“Since a State could . . . subject its trial-court determinations to no review whatever, it could *a fortiori* subject them to review which consists of a nonadversarial reexamination of convictions by a panel of government experts”).

Nor can the Equal Protection Clause justify requiring courts on collateral review to apply new substantive rules retroactively. That Clause prohibits a State

* For instance, Article III courts cannot arrive at a holding, refuse to apply it to the case at hand, and limit its application to future cases involving yet-to-occur events. The power to rule prospectively in this way is a quintessen-

tially legislative power. See *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 106–110, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993) (SCALIA, J., concurring).

from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” Amdt. XIV, § 1. But under our precedents “a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.” *Armour v. Indianapolis*, 566 U.S. —, —, 132 S.Ct. 2073, 2080, 182 L.Ed.2d 998 (2012) (internal quotation marks omitted; ellipsis in original).

The disparity the Court eliminates today—between prisoners whose cases were on direct review when this Court announced a new substantive constitutional rule, and those whose convictions had already become final—is one we have long considered rational. “[T]he notion that different standards should apply on direct and collateral review runs throughout our recent habeas jurisprudence.” *Wright v. West*, 505 U.S. 277, 292, 112 S.Ct. 2482, 120 L.Ed.2d 225 (1992); see *Brecht v. Abrahamson*, 507 U.S. 619, 633–635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993). Thus, our precedents recognize a right to counsel on direct review, but not in collateral proceedings. Compare *Douglas v. California*, 372 U.S. 353, 355–358, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963) (courts must provide counsel on an initial direct appeal), with *Finley, supra*, at 555, 107 S.Ct. 1990 (no such right on habeas). The Fourth Amendment also applies differently on direct and collateral review. Compare *Mapp v. Ohio*, 367 U.S. 643, 654–660, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (courts on direct review must exclude evidence obtained in violation of the Fourth Amendment), with *Stone v. Powell*, 428 U.S. 465, 489–496, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) (no relitigation of such claims on collateral review).

These distinctions are reasonable. They reflect the “significant costs” of collateral

review, including disruption of “the State’s significant interest in repose for concluded litigation.” *Wright, supra*, at 293, 112 S.Ct. 2482 (internal quotation marks omitted). Our equal protection precedents, therefore, do not compel a uniform rule of retroactivity in direct and collateral proceedings for new substantive constitutional rules.

B

The Court’s new constitutional right also finds no basis in the history of state and federal postconviction proceedings. Throughout our history, postconviction relief for alleged constitutional defects in a conviction or sentence was available as a matter of legislative grace, not constitutional command.

The Constitution mentions habeas relief only in the Suspension Clause, which specifies that “[t]he Privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” Art. I, § 9, cl. 2. But that Clause does not specify the scope of the writ. And the First Congress, in prescribing federal habeas jurisdiction in the 1789 Judiciary Act, understood its scope to reflect “the black-letter principle of the common law that the writ was simply not available at all to one convicted of crime by a court of competent jurisdiction.” Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 466 (1963). Early cases echoed that understanding. *E.g., Ex parte Watkins*, 3 Pet. 193, 202, 7 L.Ed. 650 (1830) (“An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction of the subject, although it should be erroneous”).

For nearly a century thereafter, this Court understood the Judiciary Act and

successor provisions as limiting habeas relief to instances where the court that rendered the judgment lacked jurisdiction over the general category of offense or the person of the prisoner. See *Wright, supra*, at 285, 112 S.Ct. 2482 (recounting history). Federal habeas courts thus afforded no remedy for a claim that a sentence or conviction was predicated on an unconstitutional law. Nor did States. Indeed, until 1836, Vermont made no provision for any state habeas proceedings. See Oaks, *Habeas Corpus in the States 1776-1865*, 32 U. Chi. L. Rev. 243, 250 (1965). Even when States allowed collateral attacks in state court, review was unavailable if the judgment of conviction was rendered by a court with general jurisdiction over the subject matter and the defendant. *Id.*, at 261-262.

The Court portrays *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717 (1880), as a departure from this history and as the genesis of a constitutional principle that "a conviction obtained under an unconstitutional law warrants habeas relief." *Ante*, at 731. But *Siebold*—a case construing the scope of federal habeas review under the 1789 Judiciary Act—does not support the Court's position. *Ante*, at 740-744 (SCALIA, J., dissenting). *Siebold* did not imply that the Constitution requires courts to stop enforcing convictions under an unconstitutional law. Rather, *Siebold* assumed that prisoners would lack a remedy if the federal habeas statute did not allow challenges to such convictions. 100 U.S., at 377 ("It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it").

Moreover, when Congress authorized appeals as a matter of right in federal criminal cases, the Court renounced *Siebold* and stopped entertaining federal habeas challenges to the constitutionality of

the statute under which a defendant was sentenced or convicted. See Bator, *supra*, at 473-474, and n. 77. If the Constitution prevented courts from enforcing a void conviction or sentence even after the conviction is final, this Court would have been incapable of withdrawing relief.

The Court's purported constitutional right to retroactivity on collateral review has no grounding even in our modern precedents. In the 1950's, this Court began recognizing many new constitutional rights in criminal proceedings. Even then, however, the Court did not perceive any constitutional right for prisoners to vacate their convictions or sentences on collateral review based on the Court's new interpretations of the Constitution. To the contrary, the Court derived *Miranda* warnings and the exclusionary rule from the Constitution, yet drew the line at creating a constitutional right to retroactivity. *E.g.*, *Linkletter v. Walker*, 381 U.S. 618, 629, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965) ("[T]he Constitution neither prohibits nor requires retrospective effect. As Justice Cardozo said, 'We think the Federal Constitution has no voice upon the subject'").

Only in 1987, in *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649, did this Court change course and hold that the Constitution requires courts to give constitutional rights some retroactive effect. Even then, *Griffith* was a directive only to courts on *direct* review. It held that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." *Id.*, at 328, 107 S.Ct. 708. It said nothing about what happens once a case becomes final. That was resolved in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)—which announced the narrow exceptions to the rule against retroactivity on collateral review—but which did so by

MONTGOMERY v. LOUISIANA
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interpreting the scope of the federal habeas writ, not the Constitution.

II

A

Not only does the Court's novel constitutional right lack any constitutional foundation; the reasoning the Court uses to construct this right lacks any logical stopping point. If, as the Court supposes, the Constitution bars courts from insisting that prisoners remain in prison when their convictions or sentences are later deemed unconstitutional, why can courts let stand a judgment that wrongly decided any constitutional question?

The Court confronted this question when *Siebold* and other cases began expanding the federal habeas statute to encompass claims that a sentence or conviction was constitutionally void. But the Court could not find a satisfactory answer: "A judgment may be erroneous and not void, and it may be erroneous *because* it is void. The distinctions . . . are very nice, and they may fall under the one class or the other as they are regarded for different purposes." *Ex parte Lange*, 18 Wall. 163, 175–176, 21 L.Ed. 872 (1874).

The lack of any limiting principle became apparent as the Court construed the federal habeas statute to supply jurisdiction to address prerequisites to a valid sentence or conviction (like an indictment). See Bator, 76 Harv. L. Rev., at 467–468, and n. 56, 471. As Justice Bradley, *Siebold*'s author, later observed for the Court: "It is difficult to see why a conviction and punishment under an unconstitutional law is more violative of a person's constitutional rights, than an unconstitutional conviction and punishment under a valid law." *In re Nielsen*, 131 U.S. 176, 183, 9 S.Ct. 672, 33 L.Ed. 118 (1889).

I doubt that today's rule will fare any better. By refashioning *Siebold* as the foundation of a purported constitutional right, the Court transforms an unworkable doctrine into an immutable command. Because Justice Bradley's dicta in *Siebold* was a gloss on the 1789 Judiciary Act, Congress could at least supply a fix to it. But the Court's reinvention of *Siebold* as a constitutional imperative eliminates any room for legislative adjustment.

B

There is one silver lining to today's ruling: States still have a way to mitigate its impact on their court systems. As the Court explains, States must enforce a constitutional right to remedies on collateral review only if such proceedings are "open to a claim controlled by federal law." *Ante*, at 731. State courts, on collateral review, thus must provide remedies for claims under *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), only if those courts are open to "claims that a decision of this Court has rendered certain sentences illegal . . . under the Eighth Amendment." See *ante*, at 732.

Unlike the rule the Court announces today, this limitation at least reflects a constitutional principle. Only when state courts have chosen to entertain a federal claim can the Supremacy Clause conceivably command a state court to apply federal law. As we explained last Term, private parties have no "constitutional . . . right to enforce federal laws against the States." *Armstrong*, 575 U.S., at —, 135 S.Ct., at 1383. Instead, the Constitution leaves the initial choice to entertain federal claims up to state courts, which are "tribunals over which the government of the Union has no adequate control, and which may be closed to any claim asserted under a law of the United States." *Osborn v. Bank of United*

States, 9 Wheat. 738, 821, 6 L.Ed. 204 (1824).

States therefore have a modest path to lessen the burdens that today's decision will inflict on their courts. States can stop entertaining claims alleging that this Court's Eighth Amendment decisions invalidated a sentence, and leave federal habeas courts to shoulder the burden of adjudicating such claims in the first instance. Whatever the desirability of that choice, it is one the Constitution allows States to make.

* * *

Today's decision repudiates established principles of finality. It finds no support in the Constitution's text, and cannot be reconciled with our Nation's tradition of considering the availability of postconviction remedies a matter about which the Constitution has nothing to say. I respectfully dissent.



MENOMINEE INDIAN TRIBE OF
WISCONSIN, Petitioner

v.

UNITED STATES et al.

No. 14-510.

Argued Dec. 1, 2015.

Decided Jan. 25, 2016.

Background: Indian tribe that operated health care system for tribal members pursuant to self-determination contract with Secretary of Health and Human Services (HHS) brought action against HHS, alleging breach of that contract. The United States District Court for the District of Columbia, 539 F.Supp.2d 152, dismissed

tribe's claims in part, and, 2008 WL 3919158, denied tribe's motion to reconsider. The United States Court of Appeals for the District of Columbia Circuit, 614 F.3d 519, reversed and remanded. On remand, the District Court, Rosemary M. Collyer, J., 841 F.Supp.2d 99, granted summary judgment in favor of government. Tribe appealed. The Court of Appeals, Cornelia T.L. Pillard, Circuit Judge, 764 F.3d 51, affirmed. Certiorari was granted.

Holding: The Supreme Court, Justice Alito, held that tribe was not entitled to equitable tolling of limitations period, abrogating *Arctic Slope Native Assn., Ltd. v. Sebelius*, 699 F.3d 1289.

Affirmed.

1. Indians ⇨139

Congress enacted the Indian Self-Determination and Education Assistance Act (ISDA) to help Indian tribes assume responsibility for aid programs that benefit their members. Indian Self-Determination and Education Assistance Act, § 2 et seq., 25 U.S.C.A. § 450 et seq.

2. Limitation of Actions ⇨104.5

Assuming that *Holland v. Florida* applies outside the habeas context, a nonhabeas litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.

3. Limitation of Actions ⇨104.5

Assuming that *Holland v. Florida* applies outside the habeas context, the "extraordinary circumstances" prong of the equitable tolling test is met only where the circumstances that caused a nonhabeas litigant's delay are both extraordinary and beyond its control.

South Carolina Department of Parole and Community Corrections

HON. WALTER D. TYLER, JR.,
CHAIRMAN
DISTRICT SIX

HON. JOHN E. HUSS, D.D.
DISTRICT ONE

HON. RHETT JACKSON
SECRETARY
DISTRICT TWO

HON. H.L. LACKEY
MEMBER-AT-LARGE



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VICE CHAIRMAN
DISTRICT THREE

HON. MARION BEASLEY
DISTRICT FOUR

HON. LEE R. CATHCART
DISTRICT FIVE

ADDRESS: 2221 DEVINE ST.
6TH FLOOR
P.O. BOX 50666
COLUMBIA, S.C. 29250

January 12, 1983

Mr. Stewart R. Buchanan (69848)
Kirkland Correctional Institution
4344 Broad River Rd.
Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After thorough consideration of all facts in your case, the Board at its meeting today, has rejected your plea for Parole. In an effort to help you understand the action taken, some significant reasons for the decision are indicated below:

Nature and seriousness of your offense.
Unfavorable institutional adjustment.
Use of deadly weapon in this or previous offense.

Based on your maximum sentence, you will again be eligible for Parole consideration on January 12, 1984.

Very truly yours,

Grady A. Wallace, Commissioner

Judy A. Boland
(Mrs. Judy A. Boland)
Executive Secretariat

JAB:aa

cc: David Bartles
Wayne Myrick, York County
Bobby F. Wood, Greenville County
Rex Carter, Attorney



South Carolina Department of
PAROLE AND COMMUNITY CORRECTIONS

Headquarters: 2221 Devine St., P.O. Box 50666, Columbia, SC 29250
 Phone: 758-8390

January 25, 1984

Mr. Stewart R. Buchanan (69848)
 Kirkland Correctional Institution
 4344 Broad River Rd.
 Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After thorough consideration of all facts in your case, the Board at its meeting today, has rejected your plea for Parole. In an effort to help you understand the action taken, some significant reasons for the decision are indicated below:

Nature and seriousness of your offense.

Based on your maximum sentence, you will again be eligible for Parole consideration on January 25, 1985.

Very truly yours,

Grady A. Wallace, Commissioner

(Mrs.) Judy A. Boland
 Executive Secretariat

JAB:kd

cc: Mr. David Bartles
 Mr. Wayne Myrick, York County
 Mr. Bobby F. Wood, Greenville Co.
Mr. Rex L. Carter, Atty

South Carolina Department of Parole and Community Corrections

HON. CHARLES R. SANDERS, JR.
CHAIRMAN
DISTRICT THREE

HON. RHETT JACKSON
SECRETARY
DISTRICT TWO

HON. JOHN E. HUSS, D.D.
DISTRICT ONE

HON. H. L. LACKEY
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FRANK B. SANDERS
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GRADY A. WALLACE
COMMISSIONER

HON. MARION BEASLEY
VICE CHAIRMAN
DISTRICT FOUR

HON. LEE R. CATHCART
DISTRICT FIVE

HON. WALTER N. LAWSON
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P. O. BOX 50866
COLUMBIA, S. C. 29250

January 28, 1985

Mr. Stewart R. Buchanan (69848)
Dutchman Correctional Institution
Route 1, Box 323
Enoree, SC 29335

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After thorough consideration of all facts in your case, the Panel Board at its meeting today, has rejected your plea for Parole. In an effort to help you understand the action taken, some significant reasons for the decision are indicated below:

Nature and seriousness of your offense.
Indication of violence in this or previous offense.
Use of deadly weapon in this or previous offense.
Background indicates need for medical attention physical and/or mental.

Based on your maximum sentence, you will again be eligible for Parole consideration on January 28, 1986.

Very truly yours,

Grady A. Wallace, Commissioner

(Mrs.) Judy A. Boland
Executive Secretariat

JAB:kd

cc: Mr. David Bartles
Mr. Wayne Myrick, York County
Mr. Bobby F. Wood, Greenville Co.
Mr. John D. Elliott, Attorney

South Carolina Department of Parole and Community Corrections

HON. MARION BEASLEY
CHAIRMAN
DISTRICT FOUR

HON. RHETT JACKSON
SECRETARY
DISTRICT TWO

HON. JOHN E. HUSS, D.D.
DISTRICT ONE

HON. DR. JERRY M. NEAL
DISTRICT THREE



FRANK B. SANDERS
EXECUTIVE DIRECTOR

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COMMISSIONER

HON. H. L. LACKEY
VICE CHAIRMAN
MEMBER-AT-LARGE

HON. LEE R. CATHCART
DISTRICT FIVE

HON. WALTER N. LAWSON
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P O BOX 50665
COLUMBIA, S. C. 29250

January 22, 1986

Mr. Stewart R. Buchanan (69848)
Dutchman Correctional Institution
Route 1, Box 323
Enoree, SC 29335

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After thorough consideration of all facts in your case, the Board at its meeting today, has rejected your plea for Parole. In an effort to help you understand the action taken, some significant reasons for the decision are indicated below:

Nature and seriousness of your offense.
Indication of violence in this or previous offense.
Use of deadly weapon in this or previous offense.

Based on your maximum sentence, you will again be eligible for Parole consideration on January 22, 1987.

Very truly yours,

Grady A. Wallace, Commissioner

(Mrs.) Judy A. Boland
Executive Secretariat

JAB:crw

cc: Mr. David Bartles
Mr. Wayne Myrick, York County
Atty. John D. Elliott
Mr. Bobby F. Wood, Greenville Co.

South Carolina Department of Parole and Community Corrections

HON. H. L. LACKEY
CHAIRMAN
MEMBER AT LARGE

HON. LEE R. CATHCART
SECRETARY
DISTRICT FIVE

HON. JOHN E. HUSS, D.D
DISTRICT ONE

HON. DR. JERRY M. NEAL
DISTRICT THREE



THOMAS J. CLEARY
INTERIM EXECUTIVE DIRECTOR

GRADY A. WALLACE
COMMISSIONER
February 4, 1987

HON. RHETT JACKSON
VICE CHAIRMAN
DISTRICT TWO

HON. MARION BEASLEY
DISTRICT FOUR

HON. WALTER N. LAWSON
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P.O. BOX 50666
COLUMBIA, SC 29250

Mr. Stewart R. Buchanan (69848)
Northside Correctional Center
Route 7, Box 30
Spartanburg, SC 29303

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After thorough consideration of all facts in your case, the Board at its meeting today, has rejected your plea for Parole. In an effort to help you understand the action taken, some significant reasons for the decision are indicated below:

Nature and seriousness of offense.
Indication of violence in this or previous offense(s).
Use of deadly weapon in this or previous offense(s).

Based on your maximum sentence, you will again be eligible for Parole consideration on February 4, 1989.

Very truly yours,

Grady A. Wallace, Commissioner

G. Anderson Surles
Deputy Director for
for Parole Examinations

GAS:shr

cc: Mr. David Bartles
Mr. Wayne Myrick, York County
Mr. Bobby F. Wood, Greenville Co.

South Carolina Department of Probation, Parole, and Pardon Services

HON. RHETT JACKSON
CHAIRMAN
DISTRICT TWO

HON. LEE R. CATHCART
SECRETARY
DISTRICT FIVE

HON. WILLIE E. GIVENS, JR., D.D.
DISTRICT ONE

HON. RAYMOND J. ROSSI
MEMBER AT LARGE



MICHAEL J. CAVANAUGH
EXECUTIVE DIRECTOR

GRADY A. WALLACE
COMMISSIONER

February 15, 1989

HON. DR. JERRY M. NEAL
VICE CHAIRMAN
DISTRICT THREE

HON. MARION BEASLEY
DISTRICT FOUR

HON. J. P. HODGES
DISTRICT SIX

ADDRESS: 2221 DEVINE STREET
P. O. BOX 50666
COLUMBIA, SC 29250

Mr. Stewart Buchanan (69848)
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After careful consideration of your record before and after imprisonment, the Parole Board has decided that you do not yet merit a lessening of the rigors of imprisonment. Your parole has therefore been denied.

Reasons for rejection:

- Nature and seriousness of current offense.
- Indication of violence in this or prior offense.
- Use of a deadly weapon in this or previous offense.

Parole will be granted when it shall appear to the satisfaction of the Board that you have shown a disposition to reform; that by your conduct you merit a lessening of the rigors of imprisonment; that the interest of society will not be impaired; that you have secured suitable employment; and in the future you will probably obey the law and lead a correct life.

In light of your current conviction, you will again be eligible for parole consideration on February 1, 1991.

Sincerely,

Grady A. Wallace
Commissioner

GAW/cc

cc: Mr. David Bartles
Wayne Myrick, York County
Mr. Bobby F. Wood, Greenville Co.

State of South Carolina
 Department of Probation, Parole, and Pardon Services

HON. RAYMOND J. ROSSI
 Chairman
 Member-At-Large

HON. J.P. HODGES
 Vice Chairman
 District Six

HON. WILLIE E. GIVENS, JR., D.D.
 Secretary
 District One

HON. J. RHETT JACKSON
 Chairman, 1987 - 1988
 District Two

HON. DR. JERRY M. NEAL
 Chairman, 1989 - 1990
 District Three

HON. MARION BEASLEY
 Chairman, 1985 - 1986
 District Four

HON. LEE R. CATHCART
 District Five

2221 DEVINE STREET, SUITE 600
 POST OFFICE BOX 50666
 COLUMBIA, SOUTH CAROLINA 29250
 (803) 734-9220

MICHAEL J. CAVANAUGH
 Commissioner

February 13, 1991

Mr. Stewart Russell Buchanan (69848)
 Dutchman Correctional Institution
 Route 1, Box 323
 Enoree, SC 29335

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After careful consideration of your record before and after imprisonment, the Parole Board has decided that you do not yet merit a lessening of the rigors of imprisonment. Your parole has therefore been denied.

Reasons for rejection:

Nature and seriousness of current offense.
 Indication of violence in this or prior offense.
 Use of a deadly weapon in this or previous offense.

Parole will be granted when it shall appear to the satisfaction of the Board that you have shown a disposition to reform; that by your conduct you merit a lessening of the rigors of imprisonment; that the interest of society will not be impaired; that you have secured suitable employment; and in the future you will probably obey the law and lead a correct life.

In light of your current conviction, you will again be scheduled for a parole consideration hearing on or about February 13, 1993.

Sincerely,

Michael J. Cavanaugh
 Commissioner

MJC/cmc

cc: Mr. David Bartles
 Steve Smart, Greenville Co.
 Wayne Myrick, York County

DIVISION OF
 OPERATIONS/FIELD SERVICES
 (803) 734-9240

DIVISION OF
 PAROLES AND PARDONS
 (803) 734-9262

DIVISION OF
 ADMINISTRATIVE SERVICES
 (803) 734-9244

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State of South Carolina
Department of Probation, Parole, and Pardon Services

DAVID M. BEASLEY
Governor



WILLIAM E. GUNN
Director

2221 DEVINE STREET, SUITE 600
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COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

September 19, 1995

Mr. Stewart R. Buchanan (69848)
Campbell Work Release Center
4530 Broad River Rd.
Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.
The reason(s) for rejection are:

- Nature and seriousness of the offense.
- Indication of violence in this or previous offense(s).
- Use of deadly weapon in this or previous offense(s).

In light of your current conviction, your next parole hearing will be on or about September 19, 1997.

Sincerely,

William E. Gunn

WEG:dgb

cc: Mr. David Bartles
Steve Smart, Greenville Co.
Wayne Myrick, York County

State of South Carolina
Department of Probation, Parole and Pardon Services

DAVID M. BEASLEY
 Governor



STEPHEN G. BIRNIE
 Interim Director

2221 DEVINE STREET, SUITE 600
 POST OFFICE BOX 50666
 COLUMBIA, SOUTH CAROLINA 29250
 Telephone: (803) 734-9220
 Facsimile: (803) 734-9440

October 15, 1997

Mr. Stewart Buchanan (69848)
 Broad River Correctional Institution
 4460 Broad River Road
 Columbia, SC 29210

Re: NOTICE OF REJECTION

Dear Mr. Buchanan :

After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

The reason(s) for rejection are:

Nature and seriousness of the offense.

Indication of violence in this or previous offense(s).

Use of deadly weapon in this or previous offense(s).

In light of your current conviction, your next parole hearing will be on or about October 15, 1999.

Sincerely,

Carla J. Smalls

Carla J. Smalls
 Deputy Director
 for Pardons and Pardon Services

CJS : klq

State of South Carolina
Department of Probation, Parole and Pardon Services

JIM HODGES
Governor



STEPHEN K. BENJAMIN
Director

2221 DEVINÉ STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

February 3, 2000

Mr. Stewart Buchanan (69848)
Evans Correctional Institution
201 E. Market Street
Bennettsville, SC 29512

Re: NOTICE OF REJECTION

Dear Mr. Buchanan :

It is my responsibility to inform you of the action of the South Carolina Board of Pardons and Paroles relative to your recent parole hearing.

After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole January 19, 2000.

The reason(s) for rejection are:

Nature and seriousness of the offense.

Indication of violence in this or previous offense(s).

Use of deadly weapon in this or previous offense(s).

In light of your current conviction, your next parole hearing will be on or about January 19, 2002.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Acting Deputy Director
for Pardons and Paroles

GAB:klq

State of South Carolina
Department of Probation, Parole and Pardon Services

JIM HODGES
Governor



JOAN B. MEACHAM
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440

January 29, 2002

Mr. Stewart Russell Buchanan #00069848
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 295125202

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



STEPHEN G. BIRNIE
Chief of Staff

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

March 9, 2004

Mr. Stewart Russell Buchanan #00069848
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 295125202

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

March 1, 2006

Mr. Stewart Russell Buchanan #00069848
Lee Correctional Institution
990 Wisaky Hwy.
Bishopville, SC 29010

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you of the action of the South Carolina Board of Parole and Pardons relative to your recent parole hearing. After careful consideration of your record before and after imprisonment, the Parole Board has rejected you for parole.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

The reason(s) for rejection are:

Nature And Seriousness Of Current Offense

Indication Of Violence In This Or Previous Offense

Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



SAMUEL B. GLOVER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

February 6, 2008

Mr. Stewart Russell Buchanan #00069848
Lee Correctional Institution
990 Wisaky Hwy.
Bishopville, SC 29010

Re: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you of the action of the South Carolina Board of Pardons and Paroles. After considering all of the criteria listed within Section 24-21-640 and the Department policy, parole is denied due to the reason(s) listed below.

You will be notified 30 days prior to your next scheduled parole reconsideration date.

Reason(s) for Rejection:

Nature And Seriousness Of Current Offense

Indication Of Violence In This Or Previous Offense

Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn A. Bright".

Gwendolyn A. Bright
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

MARK SANFORD
 Governor



SAMUEL B. GLOVER
 Director

2221 Devine Street, Suite 600
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9220
 Fax: (803) 734-9440
www.dppps.sc.gov

February 10, 2010

Mr. Stewart Buchanan #00069848
 McCormick Correctional Institution
 Route 2
 Box 100
 McCormick, SC 29835

RE: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
 Indication Of Violence In This Or Previous Offense
 Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

Heyward A. Hinton
 Director of Hearings & Parole Board Support

2/10/2010

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
 Governor



KELA E. THOMAS
 Director

2221 Devine Street, Suite 600
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9220
 Fax: (803) 734-9440
 www.dppps.sc.gov

June 13, 2012

Mr. Stewart Buchanan #00069848
 McCormick Correctional Institution
 386 Redemption Way
 McCormick, SC 29899

RE: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
 Indication Of Violence In This Or Previous Offense
 Use Of Deadly Weapon In This Or Previous Offense
 Prior Criminal Record Indicates Poor Community Adjustment

Sincerely,

Catherine Cooper
 Director of Parole Board Support

6/13/2012

R.314

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
 Governor



JERRY B. ADGER
 Director

2221 Devine Street, Suite 600
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9220
 Fax: (803) 734-9440
 www.dppps.sc.gov

October 12, 2016

Mr. Stewart Buchanan #00069848
 McCormick Correctional Institution
 386 Redemption Way
 McCormick, SC 29899

RE: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following **CONCLUSION OF LAW**:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
 Indication Of Violence In This Or Previous Offense
 Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

Larry Ray Patton, Jr.
 Director of Parole Board Support Services

10/11/2016

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
 Governor



JERRY B. ADGER
 Director

2221 Devline Street, Suite 600
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9220
 Fax: (803) 734-9440
www.dppps.sc.gov

November 15, 2018

Mr. Stewart Buchanan #00069848
 Perry Correctional Institution
 430 Oaklawn Rd.
 Pelzer, SC 29669

RE: NOTICE OF REJECTION

Dear Mr. Buchanan:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
 Indication Of Violence In This Or Previous Offense
 Use Of Deadly Weapon In This Or Previous Offense
 Vote Count: Unanimous To Reject

Sincerely,

Nettle C. Jacobs
 Board Support Services

11/14/2018

Transcript of 11-15-18 Parole Board Hearing for Stewart Buchanan

Unknown: Stewart Russell Buchanan, 16

Mr. Chairman: Good morning, Mr. Buchanan, how are you today, sir?

Mr. Buchanan: I'm doing fine, thank you.

Mr. Chairman: Mr. Buchanan, please introduce the people who came in with you today, sir.

Mr. Buchanan: Okay, so to my right is my attorney, Laura Young,

Ms. Young: Good morning

Mr. Buchanan: ...to my left, is retired Pastor Frank Ledvinka from Mauldin, South Carolina. To my left behind here is Pastor Tammy Blom Pastor of Heyward Street Church in Columbia South Carolina. Sitting in the center, is Dave Johnson from Jumpstart. And to my right is Charles {inaudible}. He's a retired insurance agent and he was a county councilman in York County and he's a pastor in York County now.

New Speakers: [Inaudible exchange]

New Speaker: Welcome to everyone and, your attorney, is it Ms. Moore? I'm sorry, I didn't quite get your [name].

Ms. Young: Ms. Young

Mr. Chairman: Ms. Young, I'm sorry. Welcome, Ms. Young. Ms. Young, would you like to begin or would you like your client to begin?

Ms. Young: I would like to just briefly make a few remarks and then turn it over. I've gotten to know Stewart really well over the last two years that I have been working with him. When I first met him, he was a man who appeared to have lost almost all hope. He'd been in for 43 years, and he had lost a lot of family a lot of friends just through time and through his strength and faith he has managed to reconnect with family and also foster new relationships on the outside with some spiritual guiders and you know, I really hope that the board will finally this time see that Mr. Buchanan deserves an opportunity at a meaningful life on the outside of prison.

As you guys know from the packet of information and your own investigation: He was 17 at the time that he committed this crime. He immediately took responsibility, he cooperated with law enforcement and then he ultimately plead guilty and took responsibility for his actions. He always has been extremely remorseful and he still is extremely remorseful and cries when discussing the crime. He feels terrible about the choices that he made as an adolescent and he's now been in prison for forty-five years, which is almost three times the amount that he would have spent as a free man. You can tell from the packet that he has taken advantage of classes, and counseling, and programs, and jobs, and for many years, he worked outside the prison. He sold cars at a car dealership in Columbia and was a manager at Astroglass in Columbia. He has many letters of commendation and support over the years and those are all included in your packets as well. In addition, you'll see that Dr. Susan Knight who is a licensed psychologist and very experienced in this work performed a really thorough evaluation of Mr. Buchanan and found Stewart to be a good candidate for parole. He is about to graduate from Jumpstart this afternoon with a blue folder which is the highest level of completion and that will be his plan upon release, if you guys, you know, give him a chance, he'll work with [inaudible] Jumpstart, get a job through Jumpstart and have that opportunity. Both Chaplain Epps and Captain Bradburn here at Perry Correctional Institution described him as a great person who they would love as a neighbor and they had zero concerns about him being released. If Stewart had gotten a life without parole sentence as a juvenile, he would have already gone back to court and been re-sentenced to 30 or 40 years but because he has a parole eligible life sentence, the courts won't take his case. And so that means it falls to you guys, that his fate is in your hands and he's extraordinarily sorry for the life that he took as a teenager but he is smart, and he's hardworking, and he is going to be a success and I just ask that you please give him the chance that he deserves to create a meaningful life on the outside.

Mr. Chairman:

Thank you, Ms. Young. Mr. Buchanan, obviously this is a very serious charge. Was [sic] drugs or alcohol involved?

Mr. Buchanan:

Mr. Chairman, about three weeks before this happened, I had started injecting amphetamines every day. I was taking LSD most every day, also. I was only getting a couple of

hours of sleep at night. I was really living on the edge. On the day that the crime happened, I remembered for ten years only taking 5 tablets of LSD that day, and I learned ten years later from a service that I had taken 7 additional tablets of LSD. There's only one time in my life I had ever been that intoxicated and in the middle of the night, the shops were even closed down at 2 o'clock in the morning at that time, and I was riling around, nowhere to go, nothing to do. A juvenile idea came in to get into some mischief, and I didn't expect anybody would be at the house because they normally worked third shift. When I broke into the house, I was discovered there and I panicked. It took me five and a half years to remember the crime itself. It was so horrendous and I was so shocked by my behavior. I stabbed the woman to death and I'm so very sorry for that. And I realize[d] that I not only took that life and hurt that one individual family, but back in '73, the level of violence in society was nothing like it is today and I know that what I did sent a shockwave throughout society that affected millions of lives beyond anything that I could imagine, and I am responsible for that damage that I did too. And I'm so very sorry for it and I am trying my best to demonstrate through my participation in programs and trying to assist other people in getting education by being tutors and being involved in people's lives with [inaudible] professional counselors, I'm trying to rebuild myself and also help others rebuild themselves in here. Because I owe a debt and I'll be continuously paying that debt for the remainder of my life.

Mr. Chairman:

Okay. So, we talked about the drugs. Tell me about what kind of drug programs you have taken since you've been incarcerated.

Mr. Buchanan:

In 1973-1976, there was the federal reform for comprehensive drug abuse therapy program that they offered at Manning. In that program, I went from levels one through level four, which was known as the intensive group. The intensive group also went out to schools and spoke to children about drug abuse, criminal life, [inaudible] prison life and paroled child relations. I was invited as part of a panel to speak of the 1976 ETA workshop at [inaudible] Hotel in Columbia. I helped make a film.

Ms. Young:

[Inaudible] You've done NA and AA.

- Buchanan: Yes, I participated in NA and AA. Matter of fact, right now, I am involved in an addiction recovery course in the character-based unit that we have here at McCormick.
- Mr. Chairman: Tell me, the addiction recovery program, what have you learned from that?
- Mr. Buchanan: I learned that you have certain triggers that will always be there throughout your life. It's gonna make you think you want something, when you ultimately don't. And all you do is you take time to stop and think and decide "is this the future that you want?" I am so free from drugs and alcohol and [inaudible] I am glad to be able to not have to chase that addiction, to feed that never-ending craving. I am able to be a free and responsible adult and that is what I've learned to become and what I want to continue to be.
- Mr. Chairman: Okay. Alright, now let's hear from your supporters. Would anyone like to make a brief statement? I'm really interested in how you can support Mr. Buchanan if we grant him parole. I can hear from a couple of you if you're brief please. Who would you like to speak, Mr. Buchanan?
- Pastor Tammy: I'm [Tammy] Blom, I'm a pastor at Heyward Street United Methodist in Columbia. I have known Stewart since March 2017 when I was assigned to his team. I have since then visited him at McCormick, Lee, and Perry. We started out communicating via mail. And then we have since communicated every week via email for the past year and then through Connect Network. I wanted to speak about Stewart's faith since I was asked to be a spiritual adviser. And he was raised a Christian by his parents in Fort Mill. He was involved in church as a child, very heavily involved. And then when he became part of prison life, he explored other options for faith. And now as an adult has come back to his Christian faith and what I have seen is there's been an awakening for him here at Perry where his faith has changed his behavior and that I have seen him take himself out of situations based on his faith. Last spring when they were locked down due to the riot at Lee, his roommate was a constant source of negativity and racial slurs, and as soon as Stewart had the opportunity, he asked to be removed from that situation because it was not the right place for him. And then I have seen him put himself into situations. He visits, every week, the assisted living unit. He goes up on Sundays as part of their Sunday school

and visits with the men there who may not have a lot of visitors and are certainly folks who need that sort of touch. And so Stewart has had this awakening and this rejuvenation of his faith that very much structures and guides his behavior. And I see this as something that is long term and I see this as him moving into Jumpstart after leaving prison that this is something that will continue.

Mr. Chairman:

One more person.

Pastor #2:

My name is Frank Ledvinka, I am a pastor, retired, but involved in ministries. I am also a counselor. I met Stewart forty weeks ago when I joined the Jumpstart program. I have built a relationship with Stewart that is second to none. I believe in this man, he has exhibited I think great love for his God, for me, and for others. I have seen him reach out, he is accepted by many others. I have seen him grow. He has also shared with me his heart. I have been in tearful sessions with him as he goes back over things he wished he had not done. But I recommend him, I am proud of him, I feel good about him, I feel that he needs a chance to demonstrate what God is doing in his life. He also is a man who will demonstrate that regardless of where he is. I believe in him, I celebrate his life, and I ask you to consider prayerfully that you will give him that chance. Thank you.

Mr. Chairman:

Thank you very much for being here. Any questions from any board members? Anything else you want to make sure the board knows today, Mr. Buchanan?

Mr. Buchanan:

I will not fail you or society if you give me a chance.

Mr. Chairman:

Thank you, sir. Anything in closing, Ms. Young?

Ms. Young:

No.

Mr. Chairman:

Thank you for all being hearing. If you all step outside, we will get an answer for you shortly. Thank you very much.

Mr. Buchanan:

Thank you.

Unknown:

We have this opposition. They have 71 signatures in opposition.

Unknown:

[Inaudible] opposition.

Unknown:

Here.

Unknown:

No.

Mr. Chairman:

Mr. Buchanan will be denied parole Day 1, 2, and 3. The vote is unanimous.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Stewart Buchanan, #69848,	)	Docket No.: 18-ALJ-15-0039-AP
	)	
Appellant,	)	
	)	
vs.	)	ORDER
	)	
South Carolina Department of Probation,	)	
Parole and Pardon Services,	)	
	)	
Respondent.	)	
_____	)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Stewart Buchanan (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On November 15, 2018, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) denied him parole. On December 7, 2018, Appellant filed a Notice of Appeal with the Court seeking judicial review of the Board's denial of parole. Appellant alleges the Board's decision violated his right to due process under the Fourteenth Amendment and violated the prohibition against cruel and unusual punishment under the Eighth Amendment of the United States Constitution and the corresponding provisions of the South Carolina Constitution because the Board failed to give Appellant's juvenile status at the time of the offense its constitutionally appropriate weight. Appellant also asks this Court to order the Board to grant him parole because he is the longest-serving juvenile offender in South Carolina and he has demonstrated his rehabilitation and shown he is not the rare juvenile whose crimes reflect irreparable corruption.¹

¹ Although it does not appear to be a significant consideration in this case, the portion of Appellant's argument asserting that parole should be granted because he is the longest-serving juvenile offender is unsound. If he is granted parole because he is the longest-serving juvenile offender, then the next longest-serving juvenile offender should also be granted parole for that reason, thereby creating a cascade effect of granting parole based only upon comparative service.

BACKGROUND

On May 18, 1973, when Appellant was seventeen years old, he entered his neighbor's home through a bedroom window. The neighbor recognized Appellant and then went out the window into the front yard. Appellant followed the neighbor into the front yard and stabbed the neighbor several times, killing her. Appellant was thereafter arrested and charged with murder. He gave a full confession and pled guilty to murder. Appellant was sentenced to the then-mandatory punishment for murder: life imprisonment with the possibility of parole after ten years.

On January 12, 1983, Appellant made his initial appearance before the Board. The Board denied Appellant parole. Appellant has been denied parole sixteen times since his initial appearance with his last appearance on November 14, 2018. At the November 14th hearing, Appellant presented mitigating evidence and evidence of his rehabilitation to the Board. However, following his appearance on November 14th, the Board issued an unanimous notice of rejection on November 15, 2018, in which it made the following conclusions of law and findings of fact:

CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1) of the South Carolina Code of Laws. The Parole Board has determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense

Indication Of Violence In This Or Previous Offense

Use Of Deadly Weapon In This Or Previous Offense

ISSUES

1. Whether the Board violated Appellant's Fourteenth Amendment right to due process and violated the Eighth Amendment's prohibition of cruel and unusual punishment under the United States Constitution and the corresponding provisions of the South Carolina Constitution when it failed to give Appellant's juvenile status at the time of the offense its constitutionally appropriate weight?

2. Whether this Court can order the Board to grant Appellant parole when Appellant is the longest-serving juvenile offender in South Carolina and he has demonstrated his rehabilitation and shown he is not the rare juvenile whose crimes reflect irreparable corruption?

STANDARD OF REVIEW

When reviewing the Department's decisions in inmate parole matters, the ALC is constrained to review these cases in its appellate capacity. *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 599, 576 S.E.2d 149 (2003); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380 of the South Carolina Code). Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2018). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly arbitrary or affected by an error of law. *See Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). Finally, "when appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced" *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

DISCUSSION

Jurisdiction

The Court's jurisdiction to hear this case is very narrow. Initially, the Court derived its jurisdiction to hear administrative appeals from inmates in *Al-Shabazz v. State*, which conferred jurisdiction on this Court to hear cases that arose in two ways: "(1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Id.* 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The Court was charged with ensuring that the minimal constitutional requirements of due process were met in these cases where a state-created liberty or property interest was at issue. *Id.* at 369-79, 527 S.E.2d at 750.

Thereafter, the South Carolina Supreme Court (Supreme Court) expanded this Court's jurisdiction to hear cases where an inmate is permanently denied parole eligibility. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 (holding "the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process"). Notably, "[a]lthough the Court [in *Furtick*] found S.C. Code Ann. § 24–21–620 created a liberty interest in the one-time determination of parole eligibility, it was quick to note that the statute did not create a liberty interest in parole." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003). Parole is a privilege, not a right, and the routine denial or granting of parole is generally not appealable unless the inmate can show that he was "rendered ineligible for parole due to the procedure employed by the Parole Board." *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 495–96, 661 S.E.2d 106, 110 (2008); see *Sullivan*, 355 S.C. at 443 n. 4, 586 S.E.2d at 124 n. 4.

In *Cooper*, the Supreme Court held the Board's failure to permanently deny an inmate parole eligibility is not necessarily dispositive because it would oversimplify the Board's decision. *Cooper*, 377 S.C. at 498, 661 S.E.2d at 111. The Supreme Court then held that if the Board "deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Id.* at 499, 661 S.E.2d at 111.² In other words, "the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures." *Id.* at 499, 661 S.E.2d at 112.

The required statutory criteria referenced in *Cooper* include "the factors outlined in section 24–21–640 and the fifteen factors published in its parole form." *Id.* Additionally, the limited appeal of parole decisions is governed by the APA, which requires that "a final decision in an agency adjudication of a contested case . . . 'include findings of fact and conclusions of law, separately stated.'" *Id.* (quoting S.C. Code Ann. § 1–23–350 (2005)). In *Cooper*, the Supreme Court held the Board could avoid a violation of due process if it "clearly states in its order denying

² Following the *Cooper* decision, the General Assembly amended section 1-23-600(D) of the South Carolina Code to provide that "[a]n administrative law judge shall not hear an appeal . . . involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." 2008 S.C. Acts No. 334, § 7 (effective June 16, 2008). Since *Cooper* remains good law, the ALC follows the Supreme Court's decision in that case.

parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form.” *Id.* at 500, 661 S.E.2d at 112. “If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure.” *Id.* If the Board’s decision demonstrates it followed the applicable procedural criteria under *Cooper*, then this Court can summarily dismiss the appeal. *Id.*

Section 24-21-640 discusses the following criteria for the Board, in relevant part:

The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

*

*

*

The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public.

S.C. Code Ann. § 24-21-640. The Department’s “written, specific criteria” include:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate’s offense, the circumstances surrounding the offense, and the inmate’s attitude toward it;
3. The inmate’s prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate’s attitude toward his/her family, the victim, and authority in general;
5. The inmate’s adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate’s employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate’s physical, mental and emotional health;
8. The inmate’s understanding of the cause of his/her past criminal conduct;
9. The inmate’s efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available

to inmates to help with their problems;

10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;

11. The willingness of the Community into which the inmate will be released to receive the inmate;

12. The willingness of the inmate's family to allow his/her to return to the family circle;

13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmates' parole;

14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate

15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.

16. Other factors considered relevant in a particular case by the Board.

South Carolina Department of Probation, Parole and Pardon Service, *Criteria for Parole Consideration*, <https://www.dppps.sc.gov/content/download/200476/4681336/file/Criteria+for+Parole+Consideration.pdf>.

Additionally, after *Cooper*, the legislature passed a law requiring the Department to establish and utilize a validated risk and needs assessment tool when evaluating parole. S.C. Code Ann. § 24-21-10(F) (Supp. 2018). This risk assessment tool is known as COMPAS and has been incorporated into the Board's written criteria and must be considered by the Board in addition to the other aforementioned statutory criteria. *See Cooper*, 377 S.C. at 499, 661 S.E.2d at 112 (holding "the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures."); *see also Ruff v. S.C. Dep't of Prob.*, No. 2015-UP-309 (S.C. Ct. App. dated June 24, 2015) (holding the actuarial risk and needs assessment is one of the statutory criteria to which the Board must adhere).

Constitutional Violations

Appellant contends the Board's parole review was constitutionally deficient because it did not meaningfully consider Appellant's juvenile status at the time he committed the offense.

Appellant argues the Board's failure to meaningfully consider his status violated his Fourteenth Amendment constitutional right to due process and violated the Eighth Amendment prohibition against cruel and unusual punishment under the United States Constitution and the corresponding provisions of the South Carolina Constitution. See U.S. Const. amend. XIV. § 1; U.S. Const. amend. VIII; S.C. Const. art. I, § 3, S.C. Const. art. I, § 15. Appellant supports his argument with citations to four United States Supreme Court (U.S. Supreme Court) cases: *Roper v. Simmons*, 543 U.S.551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Appellant also cites to this State's Supreme Court's decision in *Aiken v. Byers*, 410 S.C. 534, 765 S.E.2d 572 (2014). In his brief, Appellant contends the decisions in these cases reflect a "legal sea-change" and have resulted in the following newly-developed constitutional principles:

1. Children are fundamentally different from adults in critical ways that significantly diminish their moral culpability.
2. Due to these differences, the proceedings which determine whether they should be confined for life or released must be different, both procedurally and substantively.
3. The state authority with the power to confine or release a juvenile offender must fully consider all of the class characteristics attendant to youth as well as individual mitigating circumstances emerging from the person's social history and mental and emotional development.
4. A juvenile offender is presumptively entitled to release on a demonstration of maturity and rehabilitation, and only in the rare, exceptional case where the state establishes that the juvenile is irreparably corrupt, may a juvenile be confined for the remainder of his life.

Appellant contends these newly developed constitutional principles have created new procedural and substantive requirements for youth sentencing that "demand meaningful consideration of the attendant class and individual characteristics of youth." Moreover, Appellant contends that if the characteristics of youth are given the appropriate weight, it is clear that the Board denied Appellant parole based solely on immutable facts related to his offense in violation of the Fourteenth and Eight Amendments and the corresponding provisions of the South Carolina Constitution.³

³ This argument implies that if Appellant's youth had been considered, the Board would have granted him parole, thus further implying that because the Board denied Appellant parole, they did not consider his youth when making their decision.

In response, the Department essentially argues the Board complied with all statutory parole criteria and the Department's written criteria as required under *Cooper* and, therefore, minimal procedural due process was met, and no further analysis is necessary. The Department further argues that Appellant's juvenile status was, and always has been, considered as part of the parole criteria under § 24-21-640 and its accompanying written criteria.

Cooper Analysis

Appellant's argument in this case clearly goes beyond the boundaries of an analysis under *Cooper*. Nevertheless, Appellant raises one issue within the *Cooper* analysis. Specifically, he argues that the Board improperly based its denial of parole on immutable facts that Appellant cannot change. In this case, the Board denied Appellant's parole based upon the following findings of fact that are not subject to change after the offense: The Nature and Seriousness of the Current Offense, Indication of Violence In This Or Previous Offense, and Use of Deadly Weapon In this Or Previous Offense.

In *Cooper*, our Supreme Court determined the Board erred because it only considered non-changing, immutable facts without considering the other factors as required by section 24-21-640 and the Department's fifteen-factor form. See *Cooper*, 377 S.C. at 502, 661 S.E.2d at 113 ("In the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper."). To remedy this, the Supreme Court held the Board must show it considered section 24-21-640 and the Department's written criteria to comply with due process. *Id.* at 500, 661 S.E.2d at 112.

In this case, the Board's letter denying Appellant parole clearly states that it considered the factors outlined in § 24-21-640, the Department's Form 1212 (the written criteria), and the actuarial risk and needs assessment. See *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (holding the Board can meet the requirement of due process if it "clearly states in its order denying parole that it considered the factors outline in section 24-21-640 and the fifteen factors published in its parole form"). Additionally, the Board's order contains separate findings of fact and conclusions of law consistent with the Supreme Court's edict in *Cooper*. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112; § 1-23-350. Therefore, the Board met the minimum constitutional due process requirements outlined in *Cooper*.

Notably, *Cooper* does not prohibit the Board from relying on immutable factors in its findings of fact, it merely requires the Board to consider all the statutory criteria in its decision making. *See Cooper*, 377 S.C. at 499 n.5, 661 S.E.2d at 112 n.5 (noting “[t]hese reasons [the nature and seriousness of the current offense; an indication of violence in this or a previous offense; and the use of a deadly weapon in this or a previous offense] would be sufficient to deny parole in the Board's discretion, if the Board's decision evinced consideration of section 24–21–640 and its own criteria”). Additionally, *Cooper* does not require the Board to explain its reasoning for its decision in detail, and this Court is not empowered to engage in a substantive review of the Board’s decision beyond determining the Board followed proper procedure.⁴ *Id.* at 500, 661 S.E.2d at 112 (“If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure.”). All *Cooper* and § 1-23-350 require is that the findings of fact and conclusions of law be separately stated, as they were here. Therefore, based on the Record, the Court finds the Department’s decision is consistent with *Cooper*. *See id.* (“If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure.”).

However, Appellant’s argument goes beyond the scope of *Cooper*. Specifically, Appellant is not attacking the Department’s failure to consider the statutorily mandated criteria; rather, he is arguing the existing criteria are constitutionally deficient as applied to him.

Is the Existing Parole Criteria Constitutionally Deficient?

Appellant appears to argue current case law has established a substantive constitutional requirement that the Board *expressly* consider an inmate’s juvenility at the time the offense during its parole review and give it the proper constitutional weight. Specifically, in his brief, Appellant makes the following statements indicating Appellant argues the Board must incorporate a new substantive constitutional requirement in its review:

⁴ Even if the Court could engage in a more thorough review, it could not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. *See* § 1-23-380(5).

- “Because the Board now holds the key to [Appellant’s] release, it was required to take account of the newly recognized Eighth Amendment rules and to expressly consider the impact of youth in a manner consistent with *Aiken*.”⁵
- “*Roper, Graham, Miller and Montgomery*⁶ created a liberty interest for juveniles in meaningful parole review.”
- “Although there is no right to parole, the Eighth Amendment provides juveniles with an entitlement to demonstrate maturity and rehabilitation.”
- “[D]enying parole to a juvenile who has been rehabilitated would constitute an Eighth Amendment violation, and the state can have no legitimate interest in undermining the constitution.”
- “In South Carolina, the legislature has chosen to leave the existing institutions to implement *Aiken*’s mandates, but the Board does not distinguish between parole review for juvenile offenders and parole review for adult offenders.”
- It is insufficient that the Board gives [Appellant] an opportunity to present information about his youth because that presentation does not guarantee that the Board will give [Appellant’s] youth and rehabilitation their constitutionally correct weight.”
- “[A] decision from the Board that purports to have considered youth but that is silent on the question is arbitrary and capricious.”
- “Consistent with the Court’s acknowledgment that the overwhelming majority of juvenile offenders are capable of reform, the Eighth Amendment requires the Board to employ a presumption of release for juvenile offenders.”
- “Additionally, the Board must review and consider material and make informed assessments about the hallmarks of youth.”

At first glance, this case presents as an as-applied attack on the constitutionality of the existing parole criteria in this State. See *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017), *reh’g granted* (Nov. 17, 2017) (“The line between facial and as-applied relief is [a] fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation.” (citing 16 C.J.S. Constitutional Law § 153, at 147 (2015))); *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (explaining a facial challenge requires showing that the law is “incapable of any valid application”); *Doe*, 421 S.C. at 503, 808 S.E.2d at 813 (noting in an “as-applied” challenge, “the party challenging the

⁵ *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014).

⁶ *Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 1200 (2005); *Graham v. Fla.*, 560 U.S. 48, 75, 130 S. Ct. 2011, 2030 (2010), *as modified* (July 6, 2010); *Miller v. Alabama*, 567 U.S. 460, 489, 132 S. Ct. 2455, 2475 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016).

constitutionality of the statute claims that the application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional” (internal quotation marks and citation omitted)). Appellant is not arguing the existing criteria are unconstitutional in every application; rather, Appellant is arguing the criteria are unconstitutional as applied to juvenile offenders like himself. See *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011) (explaining that “finding a statute or regulation unconstitutional as applied to a specific party does not affect the facial validity of that provision”).

Although this Court cannot determine the constitutionality of a law, the Supreme Court has ruled that this Court may address as-applied constitutional challenges to statutes and regulations. *Al-Shabazz*, 338 S.C. at 379 n.12, 527 S.E.2d at 755 n.12 (“When an inmate challenges the constitutionality of a statute, Department and the ALJ must follow the statute and leave the question of whether it is constitutional to the courts.”); *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (“ALJs are an agency of the executive branch of government and must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation.”); *Travelscape, LLC*, 391 S.C. at 109, 705 S.E.2d at 39 (“[O]ur decision today does not affect the ALC's inability to decide facial challenges to a statute or regulation; those are legal questions that are properly raised for the first time on appeal or in a declaratory judgment action before the circuit court.”); *Id.* at 109, 705 S.E.2d at 38–39 (“We . . . hold that ALCs are empowered to hear as applied challenges to statutes and regulations.”); *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012) (“Because Appellant's claim constitutes an as-applied constitutional challenge to the policy, the ALC could have ruled on this claim.”).

However, Appellant's as-applied challenge is premised on his assertion that case law has created a new substantive constitutional right to a “meaningful” parole review for inmates who were sentenced as juveniles, and this right requires the Board to expressly consider an inmate's youth and give it the proper constitutional weight. A review of the current case law does not convince this Court such a substantive constitutional right currently exists.

The U.S. Supreme Court precedent discussing juvenile offenders and sentencing has established that it is unconstitutional to sentence juvenile offenders to (1) death, (2) life without parole in non-homicide cases, or (3) mandatory life without parole in homicide cases. See *Roper*

v. Simmons, 543 U.S. 551, 578, 125 S. Ct. 1183, 1200 (2005) (“The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.”); *Graham v. Fla.*, 560 U.S. 48, 75, 130 S. Ct. 2011, 2030 (2010), *as modified* (July 6, 2010) (holding “while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life”); *Miller v. Alabama*, 567 U.S. 460, 489, 132 S. Ct. 2455, 2475 (2012) (“By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.”); *Montgomery v. Louisiana*, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016) (holding *Miller* applied retroactively as a substantive change to constitutional law and holding “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them”). Our Supreme Court followed *Miller* in *Aiken v. Byars* recognizing that “*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.” 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014).

This line of cases, including our Supreme Court’s decision in *Aiken v. Byars*, dealt with application of the Eighth Amendment’s prohibition against cruel and unusual punishment in the context of sentencing a juvenile to death or to life *without* the possibility of parole. *Miller*, *Montgomery*, and *Aiken* specifically stand for the principle that a juvenile offender cannot be sentenced to life without parole without a meaningful review of “youth and its attendant characteristics” to determine whether the sentence is appropriate for “the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility,” thereby avoiding an “excessive sentence for children whose crimes reflect transient immaturity.” *Montgomery*, 136 S. Ct. at 734-35.

Here, Appellant was not sentenced to life without parole. Rather, his sentence allowed him the opportunity for parole after serving ten years. Moreover, he was granted that opportunity after ten years and has been allowed to appear before the Board regularly ever since. Therefore, the line of cases cited by Appellant are distinguishable from this case because this case does not

concern a sentence of life without parole. See *Graham, Miller, Montgomery, supra*. The South Carolina Court of Appeals recently recognized this distinction in *State v. Finley*, when it refused to grant a juvenile offender’s request for resentencing pursuant to *Aiken* because the juvenile had received a sentence granting him parole eligibility after thirty-years’ imprisonment and not a sentence of life *without* parole like in *Graham, Miller* and *Aiken*. Op. No. 5665 (S.C. Ct. App. filed July 17, 2019) (Shearouse Adv. Sh. No. 29 at 27). Thus, although the cases cited by Appellant certainly recognize that juvenile offenders differ from non-juvenile offenders in their moral culpability and rehabilitation, current precedent does not specifically address whether a juvenile sentenced to life *with* parole is constitutionally entitled a more extensive parole review than he currently receives under South Carolina law.

In fact, although the U.S. Supreme Court held “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them,” it did not prescribe any particular features for the parole review. *Montgomery*, 136 S. Ct. at 736. Rather, in *Miller* and *Montgomery*, the U.S. Supreme Court was more concerned with ensuring that juvenile offenders received the *opportunity* for parole at the sentencing stage. *Miller*, 567 U.S. at 471 (explaining “*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing”); *id.* at 476 (“Of special pertinence here, we insisted in these rulings that a sentencer have the ability to consider the “mitigating qualities of youth.”); *Montgomery*, 136 S. Ct. at 736 (“Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.”).

Since there is no precedent holding that either the United States Constitution or the South Carolina Constitution requires specific parole criteria for juvenile offenders, this Court has no authority to impose such a constitutional requirement. As the South Carolina Supreme Court recently noted in *State v. Slocumb*, “while we are duty-bound to enforce the Eighth Amendment consistent with the Supreme Court’s directives, our duty to follow binding precedent is fixed upon case-specific holding rather than general expressions in an opinion that exceed the scope of any particular holding.” 426 S.C. 297, 307, 827 S.E.2d 148, 153 (2019). Indeed, in *Slocumb* our Supreme Court refused to extend the maxims expressed in *Graham* to juveniles sentenced to *de*

facto life sentences (term-of-years sentences longer than a natural life) because the U.S. Supreme Court had not expressly extended its ruling to such individuals. *Id.* at 315, 827 S.E.2d at 157. Specifically, our Supreme Court stated, “we decline to extend *Graham*’s explicit holding based solely on the general rationale underlying the opinion without further input from the Supreme Court as to how the Eighth Amendment applies to situations where a juvenile nonhomicide offender commits multiple crimes against multiple victims at multiple points in time.” *Id.* at 312, 827 S.E.2d at 156.

Thus, the limited holdings in the U.S. Supreme Court cases cannot be used to formulate a new principle of substantive constitutional law before this Court. *See id.* Similarly, although this Court has the authority to enforce existing constitutional law or consider as-applied challenges to the constitutionality of statutes and regulations in keeping with its jurisdiction, this Court, being a creature of the executive branch, has no authority to establish a new substantive constitutional right. *See Slocumb, supra; Video Gaming Consultants, Inc.*, 342 S.C. at 38, 535 S.E.2d at 644 (“ALJs are an agency of the executive branch of government and must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation.”).

Order the Board to Grant Parole

Appellant articulates his second issue as whether this Court can order the Board to grant Appellant parole. The Court cannot order the Board to grant Appellant parole. Because the Board met the due process requirements of *Cooper*, this Court’s limited review is complete. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (“If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure.”). The Record shows Appellant presented mitigating evidence to the Board, including evidence of rehabilitation, and the Board has discretion to deny Appellant parole despite the presentation of mitigating evidence.

CONCLUSION

This Court’s narrow jurisdiction in this case confines the Court to determine the Department’s denial of parole was consistent with *Cooper* and afforded Appellant minimum due

process. Because the Department met the requirements of *Cooper*, this case amounts to a routine denial of parole and this Court has no authority to conduct any further review. *See id.*

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

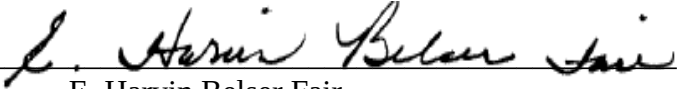
AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

August 13, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

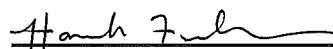
A handwritten signature in black ink, reading "E. Harvin Belser Fair", is written over a horizontal line.

E. Harvin Belser Fair
Judicial Law Clerk

August 13, 2019
Columbia, South Carolina

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Hannah L. Freedman

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court

Honorable Ralph K. Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001554

STEWART BUCHANAN, #69848 APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES RESPONDENT.

BRIEF OF APPELLANT

JOHN H. BLUME #747

Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030

LINDSEY VANN #101408

HANNAH L. FREEDMAN #103373

MEGAN BARNES #104368

Justice 360
900 Elmwood Ave, Suite 200
Columbia, SC 29201
(803) 765-1044

COUNSEL FOR APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

1. In light of the legal sea change applicable to juvenile sentencing over the past decade, does due process require the Parole Board to adopt a set of procedures specific to juvenile offenders in order to protect their constitutional right to live “some years of life outside prison walls,” *Montgomery v. Louisiana*, 136 S. Ct. 718, 736–37 (2016)?
2. Does Stewart Buchanan’s continued incarceration of forty-seven years for a crime he committed as a juvenile, despite demonstrated maturity and rehabilitation, constitute disproportionate punishment in violation of the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution?

STATEMENT OF THE CASE

Stewart Buchanan has been an inmate in the South Carolina Department of Corrections (SCDC) for forty-seven years—since he was seventeen-years old—which gives him the distinction of being the longest continuously incarcerated juvenile in this state. R. pp. 140, 151. He has been denied parole eighteen times since first becoming parole eligible in 1983. R. pp. 299–316. As will be discussed in more detail below, the denials cannot be justified by his institutional record, which overall has been quite satisfactory. The last fifteen parole denials were not a reflection of poor prison behavior or a defect in his re-entry plan, but rather were based exclusively on the one thing he cannot change: the facts and circumstances of his offense. *See* R. pp. 299–316.¹

¹ In 1973 when Stewart was seventeen years old, he was charged with, and shortly thereafter pled guilty to, the murder of his neighbor, forty-three-year-old Ariene Boone. R. pp. 131–34, 140. The basic facts are not in dispute. Stewart, disoriented from a mix of alcohol, drugs, and lack of sleep, climbed through his neighbor's window in the early morning hours of May 18, 1973. *See* R. pp. 25–26, 36, 140. Ms. Boone saw him, called Stewart’s name, and climbed out of another window onto her porch. R. pp. 140–41. Stewart followed her out the window and when she ran into the yard and began yelling his mother's name, he stabbed her to death. R. p. 141. Stewart’s father called the police. R. p. 141. Stewart was taken into custody later the same day and, when questioned by law enforcement, gave a full confession (which included the location of the murder weapon). R. p. 145.

Stewart's most recent parole hearing was held on November 15, 2018. R. p. 317. The packet he sent to Board members contained ample information, detailed below, linking his offense to the transient qualities of youth and further demonstrating that he not only is suitable for release but that he is ready and able to be successful if granted parole.

Stewart's upbringing was marked by neglect and emotional and physical abuse. Stewart's father was an alcoholic who drifted from job to job and place to place and was absent from Stewart's life for long stretches of time. R. p. 22. When he was physically present, he either ignored Stewart or beat him, sometimes with his hand to Stewart's face, sometimes with a belt. R. p. 22. His mother also failed him. She was highly critical of Stewart and the rest of his siblings, offering little emotional support, kindness, or warmth. R. p. 22. His parents' behavior and detachment left Stewart's older sister Janet to serve as a stand-in parent, until she, too, abandoned Stewart. R. pp. 22–23. When Stewart was still a young teenager, Janet met a boy, ran away from home, got married, got divorced, and remarried a man with whom she travelled the country in a stolen car, writing bad checks and running up debt under the Buchanan family address. R. p. 24. Left without the one person to whom he felt emotionally connected, Stewart fell in with an older crowd and began to drink and use drugs in an attempt to cope with his home life and emotional trauma. R. pp. 24–25. As Dr. Susan Knight, PhD., a licensed forensic clinical psychologist who evaluated Stewart, explained, it is against this backdrop of “social and neurobiological immaturity,” “severe[] intoxicat[ion]” and compromised “reasoning, judgment and impulse control” that nearly fifty years ago Stewart committed the crime for which he is still incarcerated.² See R. p. 50.

² The circumstances leading up to and surrounding Stewart's offense specifically involved the factors that a sentencing court must consider before sentencing a juvenile to life in prison without parole. See *infra* Section I; *Aiken v. Byars*, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014) (quoting *Miller v. Alabama*, 567

Only four months after his arrest, Stewart entered a guilty plea, expressed his deep, sincere remorse, and accepted the (then) mandatory minimum sentence for murder: life imprisonment with the possibility of parole after ten years. R. pp. 150–51. At the sentencing hearing, the trial judge acknowledged that Stewart’s crime was the product of a “tragic situation” and expressed his hope that Stewart could “salvage some phase of his life.” R. p. 151. His attorney advised him, based on the then-existing practice of the Parole Board, that if he maintained a good institutional record, he would likely be granted parole when, or not long after, he first became parole eligible. R. pp. 26–27. When he entered his guilty plea at age 17, Stewart reasonably believed, based on then established parole board practice, that he would be granted parole after serving 10 years (or soon thereafter). R. pp. 26–27. Nearly fifty years later, however, Stewart remains in prison.

During his incarceration, Stewart has become a role model in the prison community. He has had relatively few infractions, and those he has received came primarily in his teenage and young-adult years, before he matured.³ R. pp. 30, 38. He has taught other prisoners how to read and write, served as a teacher’s aide, and taught his own courses on various subjects. R. p. 28. He participated in the community outside the prison walls as well, from speaking to schoolchildren about the dangers of drug use through the “Get Smart” program to raising \$350 for citizens with

U.S. 460, 477–78 (2012)). Stewart was a young man who did not feel at home with his family and this yearning to belong made him extremely susceptible to the pressures of his peers and the escapism provided to him by drugs and alcohol. *See* R. p. 36.

³ For example, Stewart’s sole assault charge, which did not involve a weapon, happened in November 1988. R. p. 38. He also had two non-assaultive charges, also without a weapon, when he was attempting to help his long-term, mentally ill roommate through psychotic episodes on April 11, 2011 and October 5, 2016. R. pp. 38, 45. He had one issue on a pass, a DUI in 1981, for which he was ordered to pay a fine by the magistrate’s court, but he has not been charged for any substance use or contraband ownership in decades. R. p. 38. Although Stewart spent significant time in the community on work release, he has had no attempted escapes and no criminal charges or convictions except for the DUI. R. p. 38. In short, his record is excellent, especially considering that he entered SCDC as a teenager and has spent his entire adult life behind bars.

intellectual disability. R. pp. 37, 39. He taught himself how to sew, participated in a film used by criminal justice organizations, and volunteered for church community service when he was allowed to leave on passes. R. pp. 29, 38. Stewart worked three civilian jobs in the community in a work-release program, has earned almost 1,500 hours in vocational training, and has held thirty-six work positions⁴ within the prison. R. pp. 37–38. Since January 2018, he has been confined at Perry Correctional Institute in the “Lifers Rehabilitation Program.” R. p. 37. This is a character-based housing unit (CHU) which is only available to inmates who have been, and remain, disciplinary incident free. R. p. 29. He also was accepted into and completed JumpStart, a prison ministry and re-entry program. R. p. 31.

Stewart also presented the Board with evidence of a viable release plan. He had arranged housing and employment in Spartanburg as a result of receiving a “blue folder” recommendation from JumpStart (the highest level, given to less than 2% of graduates). R. p. 41. This guaranteed that if Stewart were released, he would receive two years of support from pastors and therapists as well as access to housing and vocational support. R. p. 41.

In addition, Dr. Knight’s psychological evaluation included the administration of an empirically-validated risk assessment,⁵ from which Dr. Knight concluded that Stewart posed a low risk for re-offending, especially with continued substance abuse treatment. R. pp. 45, 51.

⁴ Stewart has been incarcerated for 47 years, and therefore, on average has held each job for approximately 1.3 years. Never one to be idle, Stewart has taken advantage of learning new jobs and gaining new skills moving up to different levels of jobs and to different types of jobs as he has moved around to different SCDC facilities during the length of his incarceration. The number of job opportunities he has been given speaks to his ability to learn new skills and adapt to whatever is asked of him. If he was not fulfilling the requirements of these jobs, he would not continually be given new and different job opportunities spanning last four decades.

⁵ The HCR-20^{v3} is an interview and assessment tool designed to assess an individual's risk of future violence. It includes twenty items that measure past, present and future risk. R. p. 45.

According to Dr. Knight, Stewart “demonstrate[s] good insight into the adverse developmental factors facilitating his substance abuse as a teenager, which in turn, was heavily implicated in the offense.” R. p. 50. Stewart has “taken full responsibility [for his crime], with expressions of remorse throughout his records and interviews,” and ministers who have worked with Stewart in recent years told Dr. Knight that he is “[g]enuine, looking for change,” “a shining example of what a man can do,” and deserving of an opportunity outside of prison. R. pp. 34, 41, 50, 51.

Prior to the hearing, Stewart's attorney sent a letter to the Department of Probation, Parole and Pardon Services (PPP) describing the sea change in constitutional law applicable to juvenile life sentences. *See, e.g., Aiken*, 410 S.C. at 544, 765 S.E.2d at 577. Those opinions, counsel explained, constitutionalized the principle that “children are different” from adults for sentencing and parole purposes. R. pp. 211–15. These differences mean that the decision whether to incarcerate a juvenile for life (and thus whether to grant a juvenile parole) must consider the class characteristics of youth identified by the courts as well as any individual mitigating circumstances associated with the case. Counsel explained that because the judge who sentenced Stewart did not have the benefit of those decisions, and because South Carolina has not granted resentencing hearings to juveniles sentenced to life with parole, it was now incumbent on the Board to take those same factors into account in deciding whether to grant him parole. R. p. 213. Specifically, counsel requested that the Board consider Stewart's age, immaturity, intellectual capacity, and home environment at the time of the offense; the circumstances of the offense and how they were affected by the hallmark features of youth; the culpability of juveniles compared to that of adults; and how Stewart's youth affected his interactions with law enforcement, counsel and the criminal justice system. R. p. 213.

In response, attorneys for the PPP assured Stewart that the Board would consider “factors that he was a juvenile at the time he committed the offense,” as well as “any other mitigating evidence.” R. p. 217. But they did not. Following Stewart’s parole hearing, one of many heard that day,⁶ the Board “deliberated” for less than a minute (forty-three seconds). No member of the Board indicated that Stewart’s status as a juvenile offender played any role in their consideration of his application for parole, and the Board denied Stewart parole for the eighteenth time based solely on the circumstances of the impulsive crime that Stewart committed as a teenager almost five decades ago. R. pp. 321–22.

Stewart challenged the Board’s ruling in the Administrative Law Court (ALC), but the ALC dismissed his appeal, leaning heavily on *Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 499, 661 S.E.2d 111 (2008), which held that when the Board “deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate’s right to parole eligibility and, thus, infringes on a state-created liberty interest.” R. pp. 323–38. This interest, the ALC reasoned, does not exist in the context of a “routine denial or granting of parole” and such a denial is therefore “not appealable unless the inmate can show that he was ‘rendered ineligible for parole due to the procedure employed by the Parole Board.’” R. p. 326 (quoting *Cooper*, 377 S.C. at 495–96, 661 S.E.2d at 106, 110). Thus, the ALC concluded, its hands were tied. Although no decision maker has ever fully considered Stewart’s youth, vulnerability, and later rehabilitation, and although the Board has no formal procedure for doing so, the ALC deemed the Board’s actions comported with “the minimum constitutional due process

⁶ See South Carolina Department of Probation, Parole and Pardon Services, *Parole & Pardon Hearings*, https://www.dppps.sc.gov/FAQ#parole_pardon_hearings (last accessed January 2, 2020) (“The Parole Board hears up to 70 cases per day so their time is limited.”).

requirements outlined in *Cooper*” because its denial letter included an assurance that it had considered the factors outlined in S.C. Code Ann. § 24-21-640. R. pp. 326, 337.

In sum, despite Stewart’s suitability for parole on all matrixes, the Board, after no meaningful deliberation, denied parole for the eighteenth time based on a single parole factor: “nature and seriousness of current offense.” R. p. 316. Stewart’s most recent denial makes two things clear: (1) the Board’s latest decision, affirmed by the ALC, violated Stewart’s rights under the Eighth Amendment to the United States Constitution, Article I, Section 15 of the South Carolina Constitution, and due process because the Board failed to give constitutionally appropriate weight to the fact that children are constitutionally different; and, (2) because Stewart’s last fifteen parole denials, spanning over thirty years, have been based on the unchangeable nature and circumstances of the offense, the Board is never going to grant him parole.

Thus, this case does not involve a routine denial of parole, and this Court has jurisdiction to remedy the constitutional violations in either of two ways. The Court could order another parole hearing at which the Board is mandated to give meaningful consideration to the “hallmark characteristics of youth,” as defined by the United States and South Carolina Supreme Courts, based on a complete presentation from Stewart’s attorneys. Alternatively, and more appropriately, this Court could order the Board to grant Stewart parole because, as a juvenile “whose crime[] reflected only transient immaturity” and not “irreparable corruption[],” Stewart is entitled to live “some years of life outside prison walls.” *See Montgomery v. Louisiana*, 136 S. Ct. 718, 736–37 (2016).

STANDARD OF REVIEW

This Court has jurisdiction to review an appeal from an ALC's decision. S.C. Code Ann. § 1-23-610(A)(1). This Court may reverse or modify an ALC's decision if the appellant's substantive rights have been prejudiced because the ALC's "finding, conclusion, or decision is . . . in violation of constitutional or statutory provisions . . . or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *Id.* § 1-23-610(B).

ARGUMENT

I. THERE HAS BEEN A FOUNDATIONAL SHIFT IN THE SUBSTANTIVE CONSTITUTIONAL LAW APPLICABLE TO JUVENILE SENTENCING PROCEEDINGS.

Since 2005, the United States Supreme Court has fundamentally altered the relationship between juvenile offenders and the criminal justice system, steadily shifting juvenile offenders into a distinct category from adult offenders, warranting them unique protections and considerations with respect to punishment. The new legal regime shift is grounded in the principle that emerged in *Roper v. Simmons*—juveniles are different, and therefore must be treated differently. 543 U.S. 551 (2005). Ultimately, this recategorization of juveniles has changed the standards of proportionality required by the Eighth Amendment when meting out punishments for this class of offenders, and in turn, has new due process implications

This paradigm shift in the juvenile sentencing landscape began with *Roper v. Simmons*, in which the Court reversed its prior decision in *Stanford v. Kentucky*, 492 U.S. 361 (1989) and held that juveniles, as a class, have categorically reduced moral culpability to such an extent that to execute a person for a crime committed as a juvenile would violate the Eighth Amendment. 543

U.S. at 574. The *Roper* Court reviewed then-available scientific research on juvenile development⁷ from which it distilled three characteristics that differentiate juveniles from adult offenders:

- 1) Children “lack maturity and responsibility and are more reckless than adults,” which leads to “impetuous and ill-considered actions,” *id.* at 569;
- 2) Children are “more vulnerable or susceptible to negative influences and outside pressures,” “have less control . . . over their environment,” and “lack the freedom that adults have to extricate themselves from a criminogenic setting,” *id.*; and
- 3) Children's characters are “not as well formed as th[ose] of an adult,” and their personalities are “more transitory” and “less fixed.” Therefore, “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character,” *id.* at 570.

In light of these class-wide traits that reduce all juveniles’ moral culpability, the Court held that the penalty of death was a disproportionate punishment for a juvenile offender. *Id.* at 572–73.

Next, in *Graham v. Florida*, the Court was confronted with a juvenile sentenced to life without parole who, while on parole for a separate burglary, broke into a house, held the occupants at gunpoint while ransacking the house searching for money, and then refused to surrender, leading police on a high-speed chase. 560 U.S. 48, 55 (2010). Notwithstanding the severity of Graham’s offenses, the Court reiterated that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,” and therefore, life without parole is a disproportionate punishment for juveniles who commit non-homicide offenses. *Id.* at 68. Instead, the Court explained that due to their lesser culpability, juvenile offenders are “less deserving of the most severe punishments,” and thus, under most circumstances, must be given a “realistic” and

⁷ E.g., Erik Erikson, *IDENTITY: YOUTH AND CRISIS* (1968); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339 (1992); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009 (2003).

“meaningful opportunity for release based on demonstrated maturity and rehabilitation.” *Id.* at 74–75.

In its third major juvenile sentencing decision, the Court held that juveniles found guilty of murder may not be subjected to mandatory life without parole sentences. *Miller*, 567 U.S. at 489. In cases where a juvenile is facing life without parole, the Court held that the Eighth Amendment requires an individualized sentencing hearing, similar to the penalty phase of a capital trial. *Id.* Again, like in *Roper* and *Graham*, the *Miller* Court reiterated that a juvenile’s age and the “wealth of characteristics and circumstances attendant to it” are mitigating factors that the criminal justice system must, at some point, consider. *Id.* at 476.⁸

Four years later, the Court held that *Miller* announced a new substantive rule of constitutional law that applies retroactively. *Montgomery*, 136 S. Ct. at 736–37. In *Montgomery*, the Court was clear that “a lifetime in prison is a disproportionate sentence for all but the rarest of children whose crimes reflect ‘irreparable corruption.’” *Id.* at 725. Thus, after *Montgomery*, states must give juvenile offenders the opportunity to live “some years of life outside prison walls” unless the state officials responsible for determining whether those individuals should be released make a finding based on the totality of the evidence that the offenders have demonstrated “irreparable corruption.” *See id.* at 736–37.

The South Carolina Supreme Court embraced these same principles in *Aiken v. Byars* and held that the then-existing state sentencing procedures were deficient because they treated adult

⁸ Justice Kagan, who authored *Miller*, recently emphasized that the opinion can be summarized in two words—“youth matters”—and that the lesson of the case is that “whoever the sentencer is, has to take youth into account.” Transcript of Oral Argument at 10–11, *Mathena v. Malvo*, 139 S. Ct. 1317 (2019) (No. 18-217).

and juvenile offenders the same. 410 S.C. 534, 536–37, 765 S.E.2d 572, 573. The Court clarified that *Miller* “does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered.” *Id.* at 543, 765 S.E.2d at 577. The gravity of the *Aiken* petitioners’ crimes, all homicides, did not affect the need for juvenile-specific sentencing hearings. *Id.* at 537, 765 S.E.2d at 573. Instead, *Aiken* requires that a sentencing authority “carefully and thoughtfully consider[]” the factors which uniquely impede children: (1) the hallmark features of youth including “immaturity, impetuosity, and failure to appreciate the risks and consequences;” (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys;” and (5) the “possibility of rehabilitation.” *Id.* at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477–78).⁹

Looking at these cases as a whole, the following constitutional principles emerge:

- 1) Children are fundamentally different from adults in critical ways that significantly diminish their moral culpability.
- 2) Due to these differences, all proceedings which determine whether they should be confined for life or released must be different, both procedurally and substantively.
- 3) The state authority with the power to confine or release a juvenile offender must fully consider all of the class characteristics attendant to youth as well as individual mitigating circumstances emerging from the person’s social history and mental and emotional development.

⁹ In light of these recent decisions, many states have recognized the constitutional deficiencies in their substantive and procedural criminal law and have modified it accordingly through both judicial and legislative means. See *infra* Section II.B.2.ii.

- 4) A juvenile offender is presumptively entitled to release on a demonstration of maturity and rehabilitation, and only in the rare, exceptional case where the state establishes that the juvenile is irreparably corrupt, may a juvenile be confined for the remainder of his life.

Each of these principles has emerged since Stewart was sentenced to life in prison and each applies retroactively. They have also shifted the balance of the proportionality component of the Eighth Amendment to a standard that is now much more forgiving to juvenile offenders than the legal regime in effect at the time of Stewart's offense and initial sentencing hearing.

No state official with the power to confine or release Stewart has ever applied these principles to Stewart's case. Because the Board (and only the Parole Board) now holds the key to his release, it was required by the Eighth and Fourteenth Amendments, and the corresponding provisions of the South Carolina Constitution, to expressly consider the impact of Stewart's youth in a manner consistent with *Montgomery* and *Aiken*. Likewise, the ALC should have considered these changes in the law and held that the Board's procedures for juvenile offenders were insufficient. The failures of the Board and ALC to do so violated the Eighth Amendment, Article I, Section 15 of the South Carolina Constitution, and due process under the Fourteenth Amendment and Article I, Section 3 of the South Carolina Constitution.

II. THE CHANGE IN LAW IMPLICATED A LIBERTY INTEREST AND PPP'S INADEQUATE PROCEDURES VIOLATED DUE PROCESS.

A. *Stewart Has a Liberty Interest in a Meaningful Opportunity for Release*

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The Due Process Clause protects an individual's right to both procedural and substantive due process. *Washington v. Glucksberg*, 521 U.S. 702, 719–20 (1997). The government violates an individual's procedural

due process rights when it deprives them of a protected liberty or property interest, *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999), and an inmate has a right to due process protections if the interest they assert falls within the implicit meaning of liberty or if it flows from an expectation created by state law or policies, *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). This interest must also be greater than a “mere hope,” *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 11 (1979), meaning that parole procedures that eliminate all hope of release trigger due process, *see Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (per curiam).

As a matter of state constitutional law, when the Parole Board relies on procedures that fail to take account of all legally mandated information, those procedures infringe on inmates’ liberty interests. *Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). In a similar vein, when the courts or the legislature announce substantive changes to the law that “affect[] an inmate’s substantial personal right to . . . correct parole review,” those changes implicate due process. *See Barton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 413, 745 S.E.2d 110, 120 (2013). In both scenarios, the South Carolina Supreme Court has recognized that a parole denial is not “routine” and this Court therefore has jurisdiction to evaluate the constitutionality of the Parole Board’s procedures.

Juvenile offenders serving parole-eligible life sentences, unlike adults, have a right to parole—a “meaningful opportunity” to be released and spend “some years of life outside prison walls”—so long as they demonstrate that do not fall into the very small group of incorrigible, irredeemable persons. *See Graham*, 560 U.S. at 75; *Montgomery*, 136 S. Ct. at 737. The changes in constitutional law applicable to juvenile sentencing detailed above implicate constitutionally protected liberty interests in two ways: (1) they identified a new range of legally mandatory

information that decision-makers must consider before condemning juveniles to die in prison, *see Cooper*, 377 S.C. at 499, 661 S.E.2d at 111; and, (2) they brought about substantive changes to the law that affects juvenile lifers' "substantial personal right" to have a decision-maker consider youth, *see Barton*, 404 S.C. at 413–14, 745 S.E.2d at 120.

Stewart was sentenced to life with the possibility of parole in a different legal era, when juveniles charged with murder were legally indistinguishable from adults. That is no longer the case, and as a matter of law, children are now "constitutionally different" for sentencing and release purposes.¹⁰ It follows, then, that like juveniles who are charged with murder post-*Miller* and *Aiken*, who are entitled to hearings that are procedurally and substantively different from adult hearings, juveniles who were sentenced for the same crimes pre-*Miller* and *Aiken* are also entitled to hearings that are procedurally and substantively different from adult hearings. South Carolina has chosen to put the *exclusive* key to these juvenile offenders' release in the hands of the Parole Board, and thus it must modify both its procedures and criteria for release to comply with the Eighth Amendment principles described previously. The Board's failure to do so violates due process.

B. *The Process that Stewart is Due*

If a given state procedure implicates an inmate's liberty interests, procedural due process requires that the state provide sufficient process in order to fully protect the interests at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 323 (1976). In weighing the adequacy of existing procedures, courts must balance three factors: (1) the individual liberty interest at stake; (2) "the risk of an

¹⁰ Since the *Aiken* decision, 27 juvenile offenders have been convicted of murder in South Carolina. Of those, two have been sentenced to life without parole and the remaining 25 received an average sentence length of 39.46 years—more than seven years fewer than Stewart has already served.

erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and, (3) the government's interest in maintaining the existing procedures. *See id.* at 335.

I. Stewart's Interest in a Parole Process that Gives Him a Meaningful Opportunity for Release is Weighty

“Freedom from imprisonment—from restraint—lies at the heart [of due process].” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). A juvenile serving a parole-eligible life sentence suffers a “grievous loss” equivalent to the interest implicated by parole revocation when, despite evidence of rehabilitation, they are denied parole. *Cf. Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). This is because, as described above, a juvenile serving a life sentence has a right to parole—to freedom from continued government restraint—unless they are incorrigible. *See Montgomery*, 136 S. Ct. at 733–34; *Miller*, 567 U.S. at 479–80. Whereas non-juvenile offenders have at most an interest in the *possibility* of parole, all but the most irredeemable juvenile offenders have been promised their eventual freedom—the question is *when* and not *if*. Juvenile offenders who appear at their parole hearing rightfully expect that they will be released, and therefore, their liberty interest is weighty. The decision to deny parole to a juvenile serving a life sentence, the decision “whether the [person] will be free or in prison, is a matter of obvious great moment” to the juvenile. *See Wolff v. McDonnell*, 418 U.S. 539, 560 (1974).

2. *PPP's Current Parole Review Process Produces an Unacceptably High Number of Incorrect Parole Denials for Juvenile Offenders and the Costs of Implementing a More Accurate Systems Are Minimal*

i. *The Current Procedural Shortcomings*

Stewart's case illustrates the Board's procedural shortcomings in light of *Roper*, *Graham*, *Miller*, and *Montgomery*. The Board's position before the ALC was that it need only do three things to comply with procedural due process, regardless of the juvenile status of the person appearing before it: (1) notify the putative parolee of its findings of fact and conclusions of law, separate from one another, S.C. Code Ann. § 1-23-350; *Cooper*, 377 S.C. at 500, 661 S.E. at 112; (2) consider the statutory guidelines, a requirement that may be fulfilled by simply putting in writing the words "we considered the guidelines," *Cooper*, 377 S.C. at 500, 661 S.E. at 112 (referring to S.C. Code Ann. § 24-21-640); and, (3) consider any factors written in its parole form (there are currently sixteen), which may also be fulfilled with a similarly formulaic written acknowledgement, *id.*

In practice, the process is mechanistic, with no room for meaningful consideration of youth, much less meaningful consideration. The Board holds a brief hearing where the juvenile offender may or may not have counsel or other representatives and supporters present. *See R.* pp. 317–22. Most hearings last five to ten minutes, but in some cases the putative parolee gets far less time. The deliberations following the hearing can be exceptionally short, even where the person seeking release has given a robust presentation. The "deliberations" at Stewart's most recent hearing, for example, lasted forty-three seconds which involved no discussion of the merits of his application and only the length of time for the members to vote. Parole Hearing of Stewart Buchanan (November 18, 2018); *see also R.* pp. 321–22. At the conclusion of a hearing, the members of the

Board vote and announce their decision to grant or deny parole. Several days after a denial, the Board sends a form letter to the juvenile offender with a list of reasons for the denial. In Stewart's most recent denial, for example, the Board listed three findings—all immutable characteristics concerning the offense that Stewart committed as a *juvenile*. R. p. 316. All eighteen of Stewart's parole denials have been based on the same reason: "the nature and seriousness of the offense."¹¹ Nowhere in its decision did the Board address any of the factors that the Supreme Court has emphasized differentiate juvenile offenders from adult offenders. This "process" is insufficient because it does not guarantee that the Board will give Stewart's youth and rehabilitation their constitutionally correct weight.¹²

Moreover, a decision from the Board that purports to have considered youth but that is silent on the question is arbitrary and capricious. *See Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (where there was no evidence that the Board considered the legislatively-mandated parole factors, holding that the parole denial was arbitrary and capricious). The Board's position—that it may rely

¹¹ Fifteen out of eighteen of Stewart's parole denial letters cited the same three reasons using virtually the same form language: (1) "nature and seriousness of current offense," (2) "indication of violence in this or previous offense," and (3) "use of deadly weapon in this or previous offense." *See* R. pp. 299–316. Reason (1) was cited by the Board every time it has denied Stewart parole and reasons (2) and (3) were each cited in the last fifteen of Stewart's parole denials. R. pp. 299–316.

¹² In fact, there is reason to fear that the Parole Board's current practice makes it disproportionately harder for juveniles to receive parole. The Board uses the COMPAS risk assessment in making their decisions. COMPAS's General Recidivism Risk and Violent Recidivism Risk scales both consider age at the first offense as a factor *increasing* the risk that they will reoffend. Tim Brennan & William Dieterich, *Correctional Offender Management Profiles for Alternative Sanctions*, in HANDBOOK OF RECIDIVISM RISK/NEEDS ASSESSMENT TOOLS 55–56 (Jay Singh *et al.* eds. 2017). Consequentially, the risk assessment systematically over-predicts recidivism among people seeking parole who are currently over age 44. Sharon Lansing, *New York State COMPAS- Probation Risk and Need Assessment Study*, CRIM. JUST. RES. REP. 14 (Sept. 2012) (finding that COMPAS over-estimated risk "for cases involving offenders age 44 or older with differences generally spanning up to 12 percentage points" and explaining that the over-estimation "of the likelihood of rearrest for older-offender cases may be due in part to the fact that the importance of criminal history as a predictor diminishes as an offender's age increases - as he or she 'ages out' of offending").

solely on the immutable characteristics of the original offense and pay no attention to the “critical” developments in Stewart’s behavior post sentencing—effectively disclaims any need to give juvenile offenders guidance about what they can and should do to improve their chances for parole. *See Greenholtz*, 442 U.S. at 15. This myopic focus in practice undermines one of the primary objectives of parole: to incentivize incarcerated people to invest in rehabilitation and refrain from poor behavior while imprisoned.

ii. *How the Board’s Procedures May Be Improved*

The chief aim of due process with respect to factfinding is to “minimize the risk of erroneous decisions.” *Id.* at 13. Accordingly, the quality of the process should be proportional to the importance of the need to reduce the relevant error. *Id.* Therefore, in the context of a juvenile serving parole-eligible life with a weighty interest living some time outside prison walls, the cost of maintaining a process that does not give full consideration to legally relevant, “reliable, probative evidence [is] particularly high.” *See Bd. of Probation & Parole v. Scott*, 524 U.S. 357, 365 (1998). Because the Board’s current mechanistic process for reviewing juvenile offenders does not meet the above standards and thus violates the Due Process Clauses of both the Federal and State Constitutions, this Court could rule that it be immediately discontinued and allow the legislature to prescribe the remedy. Alternatively, this Court has the authority to delineate the remedy.

In other jurisdictions, courts have held that adult parole procedures are insufficient to accurately protect juvenile offenders’ liberty interests. For example, in Missouri, a federal district court, looking to *Miller* and *Montgomery*, held that the state’s practice of denying juvenile offenders parole based on the “circumstances of the offense” violated *Miller*’s central tenet

regarding rehabilitation and maturity. *See Brown v. Precythe*, No. 2:17-CV-04082-NKL, 2018 WL 4956519, at *9 (W.D. Mo. Oct. 12, 2018). Similarly, a federal district court in North Carolina held that the state's prison release procedures were inadequate for juvenile offenders because the officials making release determinations did not consider the diminished culpability of juvenile offenders by distinguishing the review process of juveniles from that of adults. *Hayden v. Keller*, 134 F.Supp.3d 1000, 1009 (E.D.N.C. 2015). In general, a parole board's cursory explanations have been found to be insufficient and lacking, especially when the board only directly addresses immutable characteristics such as the nature and circumstances of the offense. *See Brown*, 2:17-CV-04082-NKL, 2018 WL 4956519, at *9.

State legislatures have also amended their parole statutes in the wake of the *Graham* trilogy. For example, Arkansas, California, the District of Columbia, and West Virginia now require their parole boards to specifically consider juvenile offenders' "hallmark features of youth," "diminished culpability," and subsequent growth and maturity since being incarcerated.¹³ Ark. Code Ann. § 16-93-621; Cal. Penal Code § 4801; D.C. Code Ann. § 24-403.03; W. Va. Code § 62-12-13b; *see also* Conn. Gen. Stat. § 54-125a (providing similar guidance); S.B. 1008, 80th Leg. Assemb., Reg. Sess. (Or. 2019) (as passed by the Oregon Senate and House) (adopting similar guidance). Illinois passed a similar statute last year, and the guidelines for Rhode Island's parole board require it to consider youth. H.B. 0531, 100th Gen. Assemb., Reg. Sess. (Ill. 2019); R.I. Parole Board, 2018 Guidelines § 1.5(F)(2), <http://www.paroleboard.ri.gov/guidelines/> UPDATED

¹³ Alternatively, other states have given these juvenile offenders resentencing hearings where a judge considers these same factors related to youth. Colo. Rev. Stat. Ann. § 18-1.3-401; N.D. Cent. Code Ann. § 12.1-32.

%20PB%20Guidelines%202018v2.pdf. All of these legislative enactments reflect the foundational principles upon which the Court’s ruling in *Miller* was based. *See Miller*, 567 U.S. at 477.

Many of these states have borrowed extensively from the Supreme Court’s language and legal framework. In fact, the West Virginia and California statutes and the Rhode Island guidelines directly address the importance of being compliant with the case law immediately following either the importance of considering a juvenile offender’s diminished culpability, meaningful opportunity to obtain release, hallmark features of youth, or subsequent growth and maturation.¹⁴ Moreover, the West Virginia legislature specifically noted that the purpose of its juvenile offender amendments was to “establish parole review mechanisms for juveniles sentenced in adult court . . . in line with the meaning and spirit of” *Roper*, *Graham*, and *Miller*. H.B. 4210, 81st Leg., Reg. Sess. (W. Va. 2014). In California and Arkansas, the legislatures cited *Miller* when expressing the intent and need respectively for their legislation. S.B. 294, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); S.B. 260, 2013–2014 Leg., Reg. Sess. (Cal. 2013).

Some states have also guaranteed a right to counsel for juvenile offenders who become eligible for release on parole. In Oregon and Connecticut, for example, a juvenile offender has the right to appear with counsel at his or her hearing and indigent juvenile offenders are guaranteed

¹⁴ *E.g.*, Cal. Penal Code Ann. § 4801 (“[T]he board, in reviewing a [juvenile offender’s] suitability for parole pursuant . . . shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.”); W. Va. Code Ann. § 62-12-13b(a) (“the parole board shall ensure that the procedures governing its consideration of the person’s application for parole ensure that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines to do so that are consistent with existing case law”); R.I. Parole Board, 2018 Guidelines § 1.5(F)(2) (“When a [juvenile offender] becomes eligible for parole . . . the Parole Board shall ensure that the procedures governing its consideration of the person’s application for parole make certain that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines . . . that are consistent with existing case law.”).

court-appointed counsel. Conn. Gen. Stat. Ann. § 54-125a(f)(3); Or. Rev. Stat. § 420A.203(3)(b). In the District of Columbia and Arkansas, counsel is permitted to speak on the offender's behalf, while Connecticut allows counsel to submit evidence at the hearing. Ark. Code Ann. § 16-93-621(b)(3); Conn. Gen. Stat. Ann. § 54-125a(f)(3)(B); D.C. Code Ann. § 24-403.03(b)(2).

In light of the legal developments that have occurred over the past two decades and looking to the example of states that have already acted, PPP can reform its parole determination procedures and become compliant with the Court's directives by doing the following:

- 1) Before a scheduled parole hearing, a juvenile offender should be provided with counsel to review his or her case to present before the Board. And, if the juvenile offender chooses, the designated counsel should be allowed to present the offender's case before the Board.
- 2) At the hearing, there should be a designated time at which the juvenile offender may present evidence of maturity and rehabilitation.
- 3) A presumption in favor of release should apply at the parole hearing. The vast majority of juvenile offenders will be able to demonstrate maturity and rehabilitation. *See Montgomery*, 136 S. Ct. at 733–34; *Miller*, 567 U.S. at 479–80. Thus, only when a juvenile's prison record establishes that they are one of "the rarest of children" whose behavior reflects "irreparable corruption" should the Board deny parole. *See Montgomery*, 136 S. Ct. at 725.
- 4) If the Board denies parole to a juvenile offender, the Board must provide a written explanation for its denial, which includes findings of whether the juvenile offender demonstrated maturity and rehabilitation and reasoning for why any such demonstration was not sufficient for the offender's release.
- 5) If the Board denies parole to a juvenile offender, he or she should have the right to appeal the merits of the Board's decision to the ALC, which in turn should have be authorized to review the Board's negative determination de novo.

These procedures would ensure that the Board adequately considers a juvenile offender's maturity and rehabilitation in line with decisions from the United States Supreme Court and Supreme Court of South Carolina. Furthermore, in the event of a parole denial, the juvenile offender has some assurance that the Board's determination was based on incomplete maturation, giving the incarcerated person a reason to continue to reform, and in the case of an erroneous

determination, the juvenile offender has a written record from which an appellate body can more readily correct the error. Additionally, the right to counsel provides juvenile offenders with the requisite representation that they would have had at their original sentencing hearings. Juvenile offenders like Stewart had a sentencing hearing that failed to consider the “hallmark features of youth” and this subsequent parole hearing is meant to correct this prior wrong. Because these juvenile offenders would have had a right to counsel at their initial sentencing hearings, that same right should be provided now during this corrective process. Lastly, it is imperative that the risk of a wrong decision is minimized when the weighty interests in cases like these are at stake. Therefore, a juvenile offender who is denied parole should have the right to appeal the Board’s decision to the ALC, which may review that decision using an “abuse of discretion” standard in order to ensure that the Board has not made an arbitrary determination.

3. *There is Virtually No Governmental or Public Interest in Maintaining the Existing Procedures*

PPP has no legitimate interest in preserving procedures that produce unconstitutional outcomes. *See infra* Section III. Moreover, the costs of implementing these additional parole review requirements for PPP are relatively minimal.

Stewart and similarly situated juvenile offenders have a weighty liberty interest in a meaningful opportunity for release where they can adequately demonstrate maturity and rehabilitation. The suggested guidelines in Section II.B.2.ii. would ensure that these individuals are no longer subject to procedures that disproportionately produce erroneous parole denials for juvenile offenders.

III. THE BOARD'S FIFTEENTH PAROLE DENIAL BASED SOLELY ON AN OFFENSE THAT WAS THE PRODUCT OF THE TRANSIENT QUALITIES OF YOUTH, IN THE FACE OF OVERWHELMING EVIDENCE OF REHABILITATION, VIOLATES THE CONSTITUTIONAL PROHIBITIONS ON CRUEL AND UNUSUAL PUNISHMENT IN THE EIGHTH AMENDMENT AND THE SOUTH CAROLINA CONSTITUTION.

A. *Article I, Section 15 of the South Carolina Constitution Requires a More Searching Proportionality Review than the Eighth Amendment*

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. In interpreting the scope of this amendment, the United States Supreme Court has looked to the original meaning of the phrase "cruel and unusual" and concluded that at the time the amendment was ratified, the phrase was "directed against punishments . . . disproportionate to the offense involved." *Gregg v. Georgia*, 428 U.S. 153, 169 (1976). Because the concept of "disproportionate punishment" is not "static," the Court's analysis under the Eighth Amendment requires an assessment of moral culpability in light of "the evolving standards of decency that mark the progress of a maturing society." *Id.* at 172–73 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).¹⁵ This standard and the United States Supreme Court opinions applying it

¹⁵ The Court has repeatedly held that various forms of punishment that are disproportionate to the nature of the alleged offense violate the Eighth Amendment's evolving standards requirement. For example, in *Weems v. United States*, the Court looked to the history of the Eighth Amendment and the legislative debate that preceded its enactment and in light of that, held that a punishment of twelve years in irons at hard labor was unconstitutionally excessive for the crime of falsifying public records. 217 U.S. 349 (1910). In *Trop v. Dulles*, the Court held that the Army could not, consistent with the Eighth Amendment, expatriate a person convicted of desertion because to do so would subject the person to a punishment "decried by civilized people. 356 U.S. at 100–01. And in *Robinson v. California*, the Court invalidated a Los Angeles statute that criminalized narcotics addiction because "in the light of contemporary knowledge," the statute impermissibly punished innocent conduct in violation of evolving standards. 370 U.S. 660, 666 (1962); see also *Manning v. Caldwell*, 930 F.3d 264 (4th Cir. 2019) (en banc) (invalidating a municipal ordinance that criminalized possession or consumption of alcohol by a person declared a "habitual drunkard").

“set[] the floor for individual rights while the state constitution establishes the ceiling.” *State v. Forrester*, 343 S.C. 637, 643–44, 541 S.E.2d 837, 840 (2001).

In interpreting the state constitution, the South Carolina Supreme Court has followed a similar mode of constitutional analysis. Where the language in the South Carolina Constitution differs from the language in the federal constitution, an appellate court’s interpretative task is to determine whether the state constitution “provide[s] greater protection than the federal Constitution.” *Id.* at 644, 541 S.E.2d at 840. This mode of analysis first looks to any textual differences between the two documents and clues from state legislative history. *See id.* at 644–47, 541 S.E.2d at 840–42. The next step is to survey parallel language in other states’ constitutions and, where other states have language similar to that in the South Carolina Constitution, any judicial opinions interpreting that language. Finally, the appellate court should consider whether any newly proposed interpretation of the state constitution is consistent with past precedent. *Id.* at 645–48, 541 S.E.2d at 841–42. Applying that methodology here, it is clear that the language of Article I, Section 15 of the South Carolina Constitution sweeps more broadly than the language in the Eighth Amendment and that as a matter of state constitutional law, the Board’s repeated parole denials have rendered Stewart’s sentence unconstitutionally disproportionate.

1. The Text of the State Constitution is Broader Than That in the Federal Constitution

Article I, Section 15 provides, in relevant part: “Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.” S.C. Const. art. I § 15; *cf.* U.S. Const. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”). As a matter of plain language interpretation, the differences between the

South Carolina and federal constitutions are significant. First and most obviously, the drafters of the South Carolina constitution elected to use a disjunctive framing, while the federal constitution is conjunctive. In standard English usage, a disjunctive indicates alternatives. This difference suggests that the South Carolina constitution provides more protection than its federal counterpart: a punishment need only be cruel *or* unusual, not both, to violate the state constitution. *See Jennings v. Jennings*, 401 S.C. 1, 11–12, 736 S.E.2d 242, 247 (2012) (Toal, C.J., concurring); *see also* Commentary to 1998 Amend., Fla. Const. art. 1 § 17 (explaining that the Florida legislature amended the state constitution by substituting the word “and” for “or” because the “change conforms the prohibition with the parallel statement in the federal constitution” and “also raises the bar on the part of a defendant by requiring proof of both prohibitions rather than one or the other”); *People v. Bullock*, 485 N.W.2d 866, 872 (Mich. 1992); *People v. Anderson*, 493 P.2d 880, 885 (Cal. 1972) (en banc), *superseded by* Cal. Const. art. I § 27. Grammatically, then, as a matter of state law “[t]he prohibition of punishment that is unusual but not necessarily cruel carries an implication that unusually excessive imprisonment is included in that prohibition.” *Bullock*, 485 N.W.2d at 872; *see also Anderson*, 493 P.2d at 885 (“[T]he delegates modified the California provision before adoption to substitute the disjunctive ‘or’ for the conjunctive ‘and’ in order to establish their intent that both cruel punishments and unusual punishments be outlawed in this state,” (footnotes omitted)).

The conclusion that Article I, Section 15 sweeps more broadly than the Eighth Amendment is reinforced by the fact that the South Carolina Constitution includes three distinct categories of punishment that the drafters understood to be unconstitutional: cruel punishment; corporal punishment; and unusual punishment. This drafting form is unique among the constitutions in all

American jurisdictions, including those that prohibit cruel or unusual punishments.¹⁶ The choice to list punishments, one more specific and two more general, all separated by disjunctives, is a textual indication that the drafters contemplated the prohibition of three distinct categories and that the prohibitions should therefore be read broadly. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 225 (2008) (rejecting the narrowing principles of *ejusdem generis* and *noscitur a sociis* as applied to a statutory phrase that “is disjunctive, with one specific and one general category” and concluding that, as a textual matter, the contested phrase had to be broadly construed).

The limited legislative history that is available confirms this reading of the constitution. The precursor to the cruel punishment provision first appeared in the South Carolina constitution in 1790, which provided that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.” S.C. Const. art. IX § 4 (1790); *see also id.* (1861) (same); S.C. Const. art. IX § 5 (1865) (same). Then, in 1895 white Democrats called a constitutional convention to rewrite the reconstruction-era constitution in an effort to disenfranchise newly freed African

¹⁶ Compare S.C. Const. art. I § 15 (“nor shall cruel, nor corporal, nor unusual punishment be inflicted”) with, e.g., Ala. Const. art. I § 15 (“excessive fines shall not be imposed nor cruel or unusual punishment inflicted”); Ark. Const. art. II § 9 (“nor shall cruel or unusual punishments be inflicted”); Cal. Const. art. I § 6 (“nor shall cruel or unusual punishments be inflicted”); Haw. Const. art. I § 12 (“nor cruel or unusual punishment [shall be] inflicted”); Kan. Const. Bill of Rights § 9 (“nor cruel or unusual punishment [shall be] inflicted”); La. Const. art. I § 20 (“No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment.”); Me. Const. art. I § 9 (“nor [shall] cruel nor unusual punishments [be] inflicted”); Md. Const. art. 9002 § 25 (“nor [shall] cruel nor unusual punishment [be] inflicted”); Mass. Const. Pt. 1, art. 26 (“No magistrate or court of law shall . . . inflict cruel or unusual punishments.”); Mich. Const. art. I § 16 (“cruel or unusual punishment shall not be inflicted”); Minn. Const. art. I § 5 (“nor [shall] cruel or unusual punishments [be] inflicted”); Miss. Const. art. III § 28 (“Cruel or unusual punishment shall not be inflicted.”); Nev. Const. art. I § 6 (“nor shall cruel or unusual punishments be inflicted”); N.H. Const. art. I § 33 (“No magistrate or court of law shall . . . inflict cruel or unusual punishments.”); N.C. Const. art. I § 27 (“nor [shall] cruel or unusual punishments [be] inflicted”); N.D. Const. art. I § 11 (“nor shall cruel or unusual punishments be inflicted”); Okla. Const. art. II § 9 (“nor [shall] cruel or unusual punishments [be] inflicted”); Tex. Const. art. I § 13 (“nor [shall] cruel or unusual punishment [be] inflicted”); Wyo. Const. art. I § 14 (“nor shall cruel or unusual punishment be inflicted”).

Americans. See D. D. Wallace, *The South Carolina Constitutional Convention of 1895*, 4 SEWANEE REV. 348, 350–51 (1896) (explaining that the purpose of the 1895 convention was “to take time by the forelock, and disenfranchise the negro before the next election”); see also *Journal of Proceedings, South Carolina Constitutional Convention*, at 443–44 (1895) (statement of B.R. Tillman) (describing the 1895 convention as directed at rewriting a constitution that placed white men “under the rule of our ex-slaves”). When the members of the 1895 convention met, the newly admitted western states—most of which had adopted a disjunctive phrasing of the prohibition on cruel or unusual punishments—provided “constitutional models” that “reflected a concern on the part of their drafters not only that cruel punishments be prohibited, but that disproportionate and unusual punishments also be independently proscribed.” *Anderson*, 493 P.2d at 884–85. Unsurprisingly, the drafters of the 1895 constitution did not follow those constitutional models and instead adopted the following language in Article I, Section 19: “Excessive fines shall not be imposed, nor cruel and unusual punishments inflicted, nor shall witnesses be unreasonably detained. Corporal punishment shall not be inflicted.” *Journal of Proceedings, South Carolina Constitutional Convention*, at 136 (first reading); *id.* at 277 (final reading).

In the late 1960s, however, the General Assembly formed a Committee to Make a Study of the South Carolina Constitution of 1895. Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, at 10 (June 1969) [hereinafter Final Report]. The purpose of the Committee was to “strengthen the [constitution] and render it capable of meeting modern needs and future expectations.” *Id.* at 8. On September 15, 1967, the members of the Committee assigned to the Declaration of Rights met to discuss what became Article I, Section 15 (former Sections 19 and 20) and decided to substitute the disjunctive “nor” for the conjunctive “and.” They compared

the South Carolina Constitution to the Model Constitution¹⁷ and although “[t]he committee fully agreed that the protections provided in these sections should remain,” they settled on combining the sections and rewording the language. Book I, Proceedings of the Committee to Make a Study of the Constitution of South Carolina, 1895, at 11 (Aug. 25, 1966–Dec. 29, 1967); *see also* Final Report at 19 (noting the Committee’s intent to “modernize the language “in Article I § 15). The drafters explicitly decided “to accept the recommendation of the Model, but to make two additions: retain the restriction on using corporal punishment and retain the protection for witnesses.” Book I, Proceedings of the Committee to Make a Study of the Constitution of South Carolina, 1895, at 11.

The Committee’s decisions to adopt the Model Constitution and to include a separate prohibition on corporal punishment are significant. The Model Constitution and the 1969 amendments were drafted against the backdrop of the Eighth Amendment and the United States Supreme Court cases interpreting it. *See* MODEL STATE CONSTITUTION at 35. From the early 1960s, when the Model Constitution was drafted, to the late 1960s, when the South Carolina amendments were drafted, there was a nationwide expansion of rights for criminal defendants, and especially criminal defendants and juveniles in state court proceedings. *See, e.g., In re Gault*, 387 U.S. 1 (1967) (extending due process to juvenile proceedings); *Ker v. California*, 374 U.S. 23 (1963) (incorporating the Fourth Amendment); *Robinson*, 370 U.S. 660 (incorporating the Eighth

¹⁷ The Model Constitution was an effort to offer states a plan of government premised on civic responsibility and based on a review of the language in state constitutions in effect at the time of its drafting. *See* Introduction *in* MODEL STATE CONSTITUTION (6th ed. 1963). The cruel and unusual prohibition in the Model provided: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.” *Id.* at 33, section 1.06(b). At the time the Model Constitution was drafted in 1963, all states other than Illinois and Connecticut had prohibitions on cruel or unusual punishment in their constitutions. *Id.* at 34.

Amendment). The fact that the South Carolina drafters looked to the Model Constitution is an indication, then, that the drafters in 1969 and the voters in 1971 were intentionally adopting a constitution with more robust protections for criminal defendants. The drafters' decision to retain the specific prohibition against corporal punishment, which goes further than the Eighth Amendment and the Model Constitution, is another indication of the same legislative intent. Moreover, this inference is reinforced by other amendments the Committee undertook at the same time, which the Supreme Court of South Carolina has interpreted as "offering a higher level of . . . protection" than the federal constitution. *See Forrester*, 343 S.C. at 647, 541 S.E.2d at 842.

In sum, the amendments that gave rise to the current form of Article I, Section 15 were part of a sweeping set of reforms intended to liberalize the 1895 Constitution and expand protections for criminal defendants. Together, the text of Article I, Section 15 and the legislative history that gave rise to that text "favor[] an interpretation offering a higher level of . . . protection than the [Eighth] Amendment." *See id.* As the Michigan Supreme Court reasoned, "[w]hatever the legal terms 'cruel' and 'unusual' were understood to mean in 1791 when the Eighth Amendment was ratified—or in 1689 when its antecedent, the English Bill of Rights, was adopted," by the 1960s (when Michigan and South Carolina amended their constitutions), "those words had been interpreted and understood by the United States Supreme Court . . . for more than half a century to include a prohibition on grossly disproportionate sentences." *Bullock*, 485 N.W.2d at 873 (citing *Weems*, 217 U.S. at 366–67 and *Harmelin v. Michigan*, 501 U.S. 957, 1010–11 (1991) (White, J., dissenting)).

2. *Other States Whose Constitutions Have Disjunctive Punishment Clauses Have Interpreted Their Constitutions as Requiring a More Robust Proportionality Review Than What the Eighth Amendment Demands*

Eighteen states other than South Carolina use “or” or “nor” instead of “and” in their constitutional prohibitions on forms of punishment. Of those eighteen, courts in seven states have interpreted their constitutions as requiring a more searching proportionality review than the Eighth Amendment.¹⁸ See *Anderson*, 493 P.2d at 884–87 (California); *State v. Baxley*, 656 So.2d 973, 977 (La. 1995); *State v. Dobbins*, 215 A.3d 769, 784 (Me. 2019); *Diatchenko v. Dist. Att’y for Suffolk Dist.*, 1 N.E.3d 270, 283 (Mass. 2013); *Bullock*, 485 N.W.2d at 872 (Michigan); *State v. Vang*, 847 N.W. 2d 248, 263 (Minn. 2014); *Johnson v. State*, 61 P.3d 1234, 1249 (Wyo. 2003); see also *State v. Bassett*, 428 P.3d 343, 349 (Wash. 2018) (explaining that the Washington Constitution is more protective than the Eighth Amendment because the Washington Constitution “prohibits conduct that is merely cruel; it does not require that the conduct be both cruel and unusual” (internal quotation omitted)); *State v. Enderson*, 804 A.2d 448, 454–55 (N.H. 2002) (acknowledging that the state constitution is at least as protective as the Eighth Amendment). Only three of the eighteen states—Kansas, North Carolina, and Texas—have expressly held that the disjunctive phrasing does not extend further than the Eighth Amendment. But see *Medley v. N.C. Dep’t of Corr.*, 412 S.E.2d 654, 659–60 (N.C. 1992) (Martin, J., concurring) (“The disjunctive term ‘or’ in the State Constitution expresses a prohibition on punishments more inclusive than the Eighth

¹⁸ Courts in the following states have not expressly ruled on the question of whether their constitutions are co-extensive with or more protective than the Eighth Amendment: Alabama; Arkansas; Hawai’i; Maryland; Mississippi; Nevada; North Dakota; and Oklahoma. Courts in the following states have held that their constitutions are coextensive with the Eighth Amendment: Kansas, *State v. Scott*, 961 P.2d 667, 670 (Kan. 1998); North Carolina, *State v. Green*, 502 S.E.2d 819, 828 (N.C. 1998); and Texas, *Reyes v. State*, 557 S.W.3d 624, 631 (Tex. Ct. App. March 29, 2017).

Amendment.”). Moreover, even in states that use the conjunctive form, legislative history supports the idea that the disjunctive form sweeps more broadly. For example, when Florida amended its constitution in 1998 to expressly preserve capital punishment, legislators also changed the word “or” into the word “and” because, they explained, that amendment “raise[d] the bar on the part of a defendant by requiring proof of both prohibitions rather than one or the other.” Commentary to 1998 Amend., Fla. Const. art. 1 § 17.

Nationwide, then, the consensus view is that when a state’s constitution prohibits cruel *or* unusual punishment, the state constitution requires a more searching proportionality review. In practice, this has involved comparing the sentence at issue with sentences imposed on similarly situated individuals, and in a different context, the Supreme Court of South Carolina has implicitly endorsed this kind of proportionality review. *See State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011) (expressing concern with proportionality review in capital cases that is limited to a review of similar sentences, not similar defendants); *see also, e.g., Baxley*, 656 So.2d at 977; *Bullock*, 485 N.W.2d at 873; *Vang*, 847 N.W.2d at 263. Moreover, when the South Carolina Supreme Court previously expanded the rights of juveniles beyond the federal Constitutional floor, the critical vote came from a member of the Court who explicitly relied on this language in the state constitution. *See Aiken*, 410 S.C. at 545–46, 765 S.E.2d at 578 (Pleicones, J., concurring) (noting that “the majority exceeds the scope of current Eighth Amendment jurisprudence in ordering relief under *Miller*” but that “I would reach the same result under S.C. Const. art. 1, § 15”); *see also Brown v. State*, 10 N.E.3d 1, 4, 8 (Ind. 2014) (downwardly revising a juvenile’s aggregate sentence of 150 years because under the Indiana Constitution, the sentence was “inappropriate” and disproportionate); *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016)

(categorically barring life without parole for juveniles under the Iowa Constitution); *State v. Lyle*, 854 N.W.2d 378, 400–01 (Iowa 2014) (holding that “all mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional” under the Iowa Constitution); *Diatchenko*, 1 N.E.3d at 283–84 (holding that under the Massachusetts Constitution, a sentence of life without parole for a juvenile “is disproportionate not with respect to the offense itself, but with regard to the particular offender”); *Bassett*, 428 P.3d at 351–52 (holding that juvenile life without parole is unconstitutional under the Washington Constitution, which uses “nor”).

B. Stewart’s Sentence Is Unconstitutionally Disproportionate

Stewart is the longest-serving juvenile offender with a parole-eligible life sentence in South Carolina. When he entered prison, Richard Nixon was president, the United States was entrenched in the Vietnam War, and a group of women were allowed to run in the Boston Marathon for the first time. Stewart has served nearly fifty years, outlasting his reasonable life expectancy and growing into a reformed man. Under both the Eighth Amendment, and even more so under the South Carolina Constitution, his continued punishment is cruel, unusual, and grossly disproportionate to the offense he committed and the person he has become.

Because maturity and rehabilitation can only occur post-offense, juvenile offenders, like Stewart, who are serving life sentences with the possibility of parole must be able to establish their progress in a formal setting, at a later date, and with meaningful consideration, *i.e.*, at a parole hearing. *See Md. Restorative Just. Initiative v. Hogan*, CV ELH-16-1021, 2017 WL 467731, at *21 (D. Md. Feb. 3, 2017); *see also Greiman v. Hodges*, 79 F.Supp.3d 933, 943 (S.D. Ia. 2015) (“It is axiomatic that a juvenile offender could only prove increased maturity and rehabilitation warranting release from custody at some time well after a sentence is imposed.”). If the decision

to grant or deny parole hinges solely on the nature of Stewart's offense, he has no way of positively affecting the Parole Board's decision-making, and it follows that he has no meaningful opportunity for parole because characteristics like maturity can only be proved by examining the period after sentencing. Thus, denying juveniles like Stewart the opportunity to reenter society after they have demonstrated rehabilitation subjects them to continued punishment based on the crime. *See Hayden*, 134 F. Supp.3d at 1001 (finding that *Graham* mandates consideration of maturity after sentencing). A juvenile like Stewart who has matured and been rehabilitated but who is nevertheless denied parole has been denied their rights under the Eighth Amendment.

Despite the fact that Stewart has been incarcerated longer than any juvenile offender in this State, in its Order rejecting Stewart's appeal, the ALC concluded that the United States and South Carolina Supreme Court's juvenile sentencing decisions were irrelevant because Stewart was not sentenced to life without parole. R. pp. 334–35. That is technically true; he has been given the opportunity to appear before the Board. But, that "opportunity" has been rendered meaningless, not only due to the procedural failures described in Section II, *supra*, but also by the Board's myopic focus and reliance on the nature and circumstances of the offense. This now decades old pattern and practice makes it clear that the Board never intends to parole Stewart and thus he will die in prison unless this Court intervenes. Stewart is not asking for a new constitutional right. Instead, he is asking that an existing right be extended to him, as the ALC's Order acknowledged: "[a]llowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." R. p. 335 (citing *Montgomery*, 136 S. Ct. at 736). Because the Supreme Court has held that all juvenile offenders who have

previously been sentenced to life without parole are entitled to a meaningful opportunity for release where their subsequent maturation and growth should be considered (save for the rare incorrigible one), then a fortiori juvenile offenders with lesser sentences must at least have this same opportunity. *See Graham*, 560 U.S. at 75; *Montgomery*, 136 S. Ct. at 736. Thus, contrary to the ALC's determination, *Roper*, *Graham*, *Miller*, and *Montgomery* are all relevant to Stewart's case. *See R.* pp. 334–35.

Rather than demonstrating incorrigibility, the homicide for which Stewart remains incarcerated was the impulsive, impetuous act of an abused, neglected, drunk and high teenager. Today, Stewart is the success story the criminal justice system hopes will take place with all juvenile offenders: the easily influenced 17-year-old with a laundry list of issues stemming from his troubled childhood has transformed into a strong, educated man who has managed to have a positive influence in his community. *See R.* pp. 36–42. He has taken responsibility for his actions, reflected on his past behavior, and made every effort to repent for his actions. He has sought opportunities to educate and better himself, and he has gone out of his way to assist fellow inmates, educate them, and assist them in their own rehabilitation efforts. Stewart's rehabilitative journey, borne out in his prison records and ongoing educational mission, is evidence in and of itself that a juvenile convicted of a serious offense can turn their life around during incarceration. Moreover, Stewart's current age and extensive release plan are strong predictors of long-term prospects for a successful reentry into society.

Firsthand accounts from those who interact with Stewart day-in and day-out corroborate his complete rehabilitation. For example, Sergeant Gloria Scales, who selected Stewart to work as her clerk during his stay at McCormick Correctional Institute from May 2009 until April 2015,

characterized Stewart as a “model” inmate who helped teach classes and assist other inmates with legal work, sewing, and maintenance. R. p. 40. According to Sergeant Scales, Stewart deserves a chance at parole and she remains hopeful that he will be released. R. p. 40. Similarly, Lieutenant Rodeshia Taylor, also from McCormick, is confident that Stewart would be able to “make it outside” of prison and is hopeful that he will be paroled. R. p. 40.

Juanita Moss, a food service worker who also got to know Stewart while he was at McCormick, also described him as a “model inmate,” even going on to say that she was upset when he was moved to Perry Correctional Institute and subsequently asked the warden about Stewart’s move because he “never caused trouble, made the staff feel safe, and was good with the younger ‘rowdier’ inmates.” R. p. 40. Ms. Moss remains confident that Stewart would be successful out of prison and has offered to give him a recommendation for work. R. p. 40.

Albert Hall, who taught Stewart carpentry for two years at McCormick also stated that Stewart was well-liked and respected by the other inmates. R. p. 40. Mr. Hall even credited Stewart’s efforts taking special time with a “slow” inmate to that inmate’s success in earning his carpentry certificate. R. pp. 40–41. Like all of Stewart’s other prison supervisors, Mr. Hall believes that Stewart would be successful if released on parole if given a job opportunity. R. p. 41.

Chaplain Larry Epps, who first met Stewart in 2018, stated “if [Stewart] got out tomorrow, I would be happy to know he bought a home on my street.” R. p. 41. SCDC Captain Adam Bradburn, who knows Stewart from his time at Perry, stated “if Mr. Buchanan made parole or got released, I wouldn’t have no problem with him living right down the road from my house, I wouldn’t have any concern about it.” R. p. 41. And visiting Pastor Tammy Blom, who met with

Stewart multiple times, described Stewart as “deserving of opportunity outside of prison” and as a man who “expresses remorse.” R. p. 42.¹⁹

All of these facts, however, were irrelevant to the Board, as they were in Stewart’s numerous previous requests for parole. Thus, despite the overwhelming evidence of “demonstrated maturity and rehabilitation,” *Graham*, 560 U.S. at 75, and Stewart’s right to spend “some years of life outside prison walls,” *Montgomery*, 136 S. Ct. at 737, he was denied parole based on the permanently unchangeable nature and circumstances of the offense. Given the Board’s actions at his last parole hearing (i.e., the lack of deliberation and consideration of his juvenile status and characteristics), and the multi-decade pattern of denying him parole because of the underlying offense, two things are evident. First, a “lifetime in prison is a disproportionate sentence” for Stewart because the nature and circumstances of the offense and the evidence of rehabilitation do not permit anyone, including the Board, to determine that he is beyond redemption. *See id.* at 726. Second, the pattern of and reason for denying Stewart parole have established that the Board is never going to release him, and thus the Board has gone beyond its authority and transformed his parole-eligible life sentence into a *de facto* life without parole sentence. By ignoring Stewart’s demonstrated rehabilitation and effectively converting his sentence to life without parole, the Parole Board, and the ALC by affirming the Board’s decision, are disproportionately punishing Stewart in direct violation of the Eighth Amendment.

¹⁹ These statements from those who have gotten to know Stewart over the last 40 years are not only significant due to their content but also because they are made by those who are very familiar with the realities of crime and the prison system—those who are not naïve enough to blindly see the best in people or easily manipulated by inmates acting in bad faith. If these individuals do not believe Stewart is a threat, then there would be very few people who could believe that he is.

If the bar the Board sets for release is so high that Stewart is not able to reach it despite almost five decades of development and growth, then it is unconstitutionally high, not only for Stewart but for all parole-eligible juvenile offenders serving life sentences. By repeatedly refusing to give adequate constitutional weight to Stewart's youth (and the class characteristics attendant thereto), the individual mitigating circumstances in his case, and his demonstrated maturity and rehabilitation the Board and the ALC have effectively condemned Stewart to die in prison. This is the exact sentence that the Supreme Court has said to be disproportionate in direct violation of the United States and South Carolina Constitutions. Thus, the ALC's decision to uphold the Board's arbitrary of parole based on the nature and circumstances of the offense, which is the one thing Stewart can never change, constitutes cruel and unusual punishment.

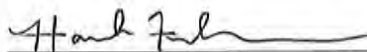
CONCLUSION

Stewart Buchanan went to prison when he was seventeen years old. R. p. 19. Now, forty-seven years later, he is sixty-three. He has been incarcerated longer continuously than any other juvenile offender in South Carolina, and he already outlived his reasonable life expectancy in SCDC. He has gone from a teenager to a senior citizen behind prison walls, despite demonstrable growth and rehabilitation. The Board's refusal to give constitutionally adequate consideration to the class and individual characteristics of youth and its repeated reliance on the unchangeable facts of the crime committed by an impulsive, intoxicated child violates the Eighth and Fourteenth Amendments and Article I, Sections 3 and 15 of the South Carolina Constitution.

Therefore, for the above stated reasons, this Court should reverse the judgment of the ALC and either: a) order the Board to conduct a new parole hearing that procedurally and substantively

conforms to established constitutional principles governing when a juvenile offender can be incarcerated for life; or, b) order the Board to grant Stewart parole.

Respectfully submitted,



JOHN H. BLUME #747

Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030

LINDSEY VANN #101408

HANNAH L. FREEDMAN #103373

MEGAN BARNES #104368

Justice 360
900 Elmwood Ave, Suite 200
Columbia, SC 29201
(803) 765-1044

May 4, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
THE ADMINISTRATIVE LAW COURT
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001554

STEWART BUCHANAN,

Appellant,

v.

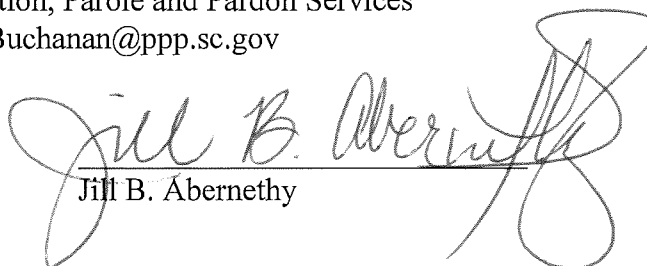
SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Brief of Appellant was served electronically, this 5th day of May 2020, upon the following:

Matthew Buchanan
Department of Probation, Parole and Pardon Services
Matthew.Buchanan@ppp.sc.gov


Jill B. Abernethy

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Docket Number 18-ALJ-15-0039-AP

Appellant Case No.: 2019-001554

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STEWART BUCHANAN, #69848.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

FINAL BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 20202
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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Matthew C. Buchanan
General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 20202
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Does due process require the Parole Board to adopt a set of procedures specific to inmates who committed their offenses as juveniles?
2. Does the Appellant's continued incarceration of forty-seven years for a crime he committed as a juvenile constitute disproportionate punishment in violation of the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution?
3. The Board is the sole authority that may grant parole in South Carolina, so the Appellant's request that this Court order parole cannot be granted.

STATEMENT OF THE CASE

On May 18, 1973, the Appellant entered the home of his neighbor by prying open a bedroom window and then went from the bedroom to other parts of the house. He returned to the victim's bedroom where she was awakened. Recognizing him as her neighbor, she called the Appellant by name. The Appellant started toward her, she ran and climbed out the open window. The Appellant also climbed out after her. He caught her in the front yard, drew out a pocket knife, and stabbed her several times. She broke away, and he caught her again about thirty feet away from the front porch. The Appellant then stabbed her again numerous times. After the incident the Appellant returned to his house next door. The victim's body was later discovered by a letter carrier who contacted the authorities. The Appellant was later arrested and charged with the offense of murder. After his arrest and after being given his *Miranda* warnings, the Appellant gave a full confession.

On September 25, 1973, the Appellant appeared before the Honorable Frank Eppes and pled guilty to the offense of murder. The Court sentenced the Appellant to the only sentence a court could give at the time: a period of incarceration for the remainder of his natural life. At the time the Appellant committed this offense, South Carolina law allowed an individual serving a life sentence for murder parole eligibility upon the service of ten years. (R.p.5-p.7).

On January 12, 1983, the Appellant made his initial appearance before the Parole Board. The Board denied the Appellant parole at that time. (R.p. 299). Since this initial appearance the Appellant has appeared before the Board an additional sixteen times, each resulting in a denial of parole. The Appellant's most recent appearance occurred on November 14, 2018, parole was denied unanimously due to: 1) the nature and seriousness of the current offense; 2) an indication of violence in this or a previous offense; and, 3) the use of a deadly weapon in this or a previous

offense. (R.p.10). Upon being informed of this denial of parole the Appellant filed a notice of appeal before the Administrative Law Court (ALC).

On August 13, 2019, the Honorable Ralph King Anderson, III, affirmed the Parole Board's denial of parole, determining that the Board complied with the minimum due process required in parole hearings. Therefore, the Appellant's denial of parole was a routine denial of parole and as such, the ALC lacked authority to conduct further review. (R.p.323-p.337).

The Appellant has now brought this appeal alleging that the Board violated due process, Eighth Amendment of the United States Constitution, the South Carolina Constitution, and his liberty interest. The Appellant argues that there has been a "legal sea change" in the realm of juvenile sentencing that requires the Board apply special consideration to inmates who committed their crimes as a juvenile. He also argues that because he has been incarcerated for forty-seven years without being granted parole, he is being disproportionately punished in violation of the Eighth Amendment of the United States Constitution and Article I, Section 15 of the South Carolina Constitution.

The Respondent will argue that no such Constitutional or due process rule exists that requires the Parole Board to change its procedures for those inmates who committed their offenses while they were juveniles, given that the recent federal and state case law speak only to sentencing and not to parole consideration. Furthermore, Respondent will argue that pursuant to South Carolina law, department policy, and the validated risk assessment, the youth of the Appellant at the time of his crime was considered prior to his denial of parole. Lastly, the Respondent will argue that the law only provides that the inmates who committed their offenses as juveniles have the right to parole hearings, and not the right to be granted parole. The brief of the Respondent supporting the above referenced defenses follows.

STANDARD OF REVIEW

In an appeal from an ALC decision, the Administrative Procedures Act provides the standard of review. S.C. Code Ann. §1-23-610(B). This Court may only reverse the decision of the ALC if that decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id. “The [C]ourt may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.” *Id.* In determining whether the ALC's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *Hill v. S.C. Dep't of Health and Env'tl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ARGUMENTS

1. **Due process does not mandate that the Parole Board change its processes to give special consideration to inmates who committed their offenses as juveniles.**

A. Juvenile defendants get special consideration at sentencing, not parole hearings.

The Appellant argues that there has been a shift in the Constitutional Law as it relates to the sentencing of defendants who committed their crimes as juveniles. This is absolutely true when it comes to sentencing. However, there is no similar shift when it comes to parole hearings.

Defendants who commit their crimes as juveniles may not be sentenced to death.¹ *Roper v. Simmons*, 543 U.S. 551 (2005). They may not be sentenced to life in prison without the possibility of parole for non-homicide offenses.² *Graham v. Florida*, 560 U.S. 48 (2010). And they may not be sentenced to life without the possibility of parole for homicide under a mandatory sentencing scheme.³ *Miller v. Alabama*, 567 U.S. 460 (2012). Furthermore, the *Miller* decision was held to be a substantive rule of constitutional law, and was therefore to be applied retroactively. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016). These U.S. Supreme Court cases in the last fifteen years have admittedly changed the way juvenile defendants may be sentenced in this country.

Although the *Miller* decision limited its holding to mandatory sentencing schemes that required life without the possibility of parole, the South Carolina Supreme Court ordered resentencing of all juveniles who received a life without parole sentence. *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). The offense of murder without aggravating circumstances committed

¹ "The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed." *Roper*, 534 U.S. at 578.

² "This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole." *Graham*, 560 U.S. at 74.

³ "We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479.

after January 1, 1996, carries a possible penalty of thirty years to life without the possibility of parole (LWOP). S.C. Code §16-3-20(A). Even if the sentence was not LWOP but a term of years, the defendant is not eligible for parole. S.C. Code §24-13-100.

The Court in *Aiken* extended resentencing hearings to those inmates who committed their offenses as a juvenile and received a sentence of LWOP. Basing its ruling on *Miller*, the Court ordered that sentencing court must consider:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

Aiken, 410 S.C. at 544, 765 S.E.2d at 577.

After considering these factors, the court may still sentence the defendant to LWOP. However, LWOP may only be the sentence after the court has considered an individualized hearing exploring the “hallmark features of youth.” *Id.* at 545, 578.

The Appellant reasons that the above-cited cases as a whole show a number of constitutional principles that change the due process requirements of parole hearings as well. He cites to a number of different states that have made such changes to their parole decisions and urges this Court to make a similar ruling. He argues that the laws have created a new liberty interest in actually receiving parole, rather than the opportunity for parole hearings.

This “sea change” is not so pervasive as the Appellant would make out, however. He did not take into consideration the cases that have blocked the “sea change” in juvenile sentencing that he claims is so pervasive throughout the country.

For example, our Supreme Court in *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148, (2019) looked at a sentence that carried a term of years instead of a LWOP, even one that amounted to a de facto life sentence. Slocumb was sentenced to a total of 130 years of incarceration without the possibility of parole for a series of brutal non-homicide offenses. In weighing its reasoning against *Graham v. Florida* rather than *Miller v. Alabama* because of the non-homicide nature of the offenses, the Court determined that because *Graham* specifically prohibited life without parole for non-homicide cases committed by juveniles, the case was distinguishable. “[W]e decline to extend *Graham*’s explicit holding based solely on the general rationale underlying the opinion without further input from the Supreme Court as to how the Eighth Amendment applies to situations where a juvenile nonhomicide offender commits multiple crimes against multiple victims at multiple points in time.” *Id.* at 312, 827 S.E.2d at 156.

If the wave of change to the way juveniles could be sentenced was truly so inexorable as the Appellant insists, the Supreme Court would not have made such a ruling in *Slocumb*.

As another matter, the *Miller v. Alabama* opinion and its progeny do not contemplate or address South Carolina law as it existed prior to January 1, 1996. The current law gives a sentencing judge discretion over the sentence for murder, from thirty years up to life in prison without the possibility of parole.

Prior to January 1, 1996, however, South Carolina’s murder statute provided for a different punishment. The court could only sentence the defendant – juvenile or adult – to life, but *with* the possibility of parole. At the time of the Appellant’s offense, South Carolina law provided parole eligibility after the service of ten years. S.C. Code Ann. §16-3-20(1976).

The Appellant received at sentencing the very solution that *Montgomery v. Alabama* prescribed for LWOP sentences. “A State may remedy a *Miller* violation by permitting juvenile

homicide offenders to be considered for parole, rather than by resentencing them.” 136 S.Ct. at 736. The U.S. Supreme Court could have suggested that the *Miller* factors be used in by the authorities deciding parole, but declined to do so.

In the absence of such a mandate, there is no requirement that the South Carolina Parole Board change its practices and apply the *Miller-Aiken* factors to parole consideration. The South Carolina Supreme Court mandated those five factors be considered by the *sentencing* court. “*Miller* requires the sentencing authority “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 544, 765 S.E.2d at 577 (quoting *Miller*, 132 S.Ct. at 2469).

A more closely aligned case the Court of Appeals is found in *State v. Finley*, 427 S.C. 419, 831 S.E.2d 158 (Ct. App. 2019). This inmate, who like the Appellant, committed his murder when he was a juvenile and received a parole-eligible life sentence. However, his parole eligibility was to commence after thirty years of incarceration due to the law at the time of his offense in 1992. *Id.* at 422, n. 2.

Finley argued unsuccessfully that his life sentence with the possibility of parole after thirty years constituted a de facto life sentence and entitled him to a resentencing under *Aiken*. The Court of Appeals, citing the remedy in *Montgomery*, held that his parole eligibility cured any Eighth Amendment violations. Furthermore, the court did not prescribe any special considerations for the Parole Board when Finley receives his parole hearings.

B. The Board’s reliance on the facts of the offense do not violate Due Process.

The Appellant also argues that the Board’s denial of parole for its stated reasons of 1) nature and seriousness of the offense; 2) indication of violence; and 3) use of a deadly weapon

violates due process because those factors are unchanging events in the past. He argues that because the Board denied him based on those factors, that the Board is giving him a de facto life sentence.

This is simply not the case, as the Parole Board followed the procedures outlined by the South Carolina Supreme Court in *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). The order of denial in the present case clearly reveals that all of the criteria as well as the risk assessment were considered prior to denial. Once this is revealed, there are no grounds for appeal.⁴ Since due process was provided, the ALC is limited in any decision that could be made regarding the final decision of the Parole Board.

Pursuant to South Carolina law and *Cooper*, all that must be revealed is a finding of fact and conclusion of law separately stated.⁵ The Board is not required to describe the underlying thought process as to why the decision was made. As long as the letter of rejection states a reason or reasons for denial and that the Board considered the criteria and risk assessment, the order is valid.

The Administrative Law Court correctly affirmed the Board's decision to deny parole. Under Section 1-23-350, a finding of fact and conclusion of law need not be presented in any particular format but need only be sufficiently detailed to enable the reviewing court to determine whether the fact findings are supported by evidence and whether the law has been correctly applied. *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (S.C. App. 1988). The order of denial clearly

⁴ The Parole Board clearly stated in its notice of rejection that it considered the statutory criteria and the criteria set forth in Form 1212 which is sufficient under *Cooper. Compton v. S.C. Dept. of Probation, Parole and Pardon Services*, 385 S.C. 476, 684 S.E.2d 175 (2009).

⁵ A final decision shall include findings of fact and conclusions of law separately stated. S.C. Code Ann. §1-23-350 (2018).

stated that the mandatory criteria and risk assessment was considered which would be a conclusion of law. The reasons for denial were lawful and reasonable, which is considered a finding of fact.

The Appellant argues that because the Board has denied his request for parole based on the facts and circumstances of the offense – which is fixed in the past and cannot be changed – that the Board has therefore permanently denied him parole. He advances the theory that because the Board denied him for that reason, that they will never change their minds and that they will forever deny him parole. This, clearly, is not correct. Each time he appears before the Board, he is provided with a real opportunity for parole before the only body in the state that is authorized to grant parole. The Appellant also fails to consider that the Board roster changes over time..

The Board is obviously not beholden to its previous decisions. Otherwise, an inmate would only have one meaningful chance at parole and then be forever denied until the completion of his or her sentence. The Code, also, requires that the inmate receive hearings following a denial of parole. S.C. Code § 24-21-645(D). Just because the Appellant hasn't received parole yet doesn't mean he never will.

2. The prohibitions on cruel and unusual punishment in the Eighth Amendment and the South Carolina Constitution are not violated by repeated denials of parole, even for inmates who committed their offenses as juveniles.

The Appellant argues that he is being punished disproportionately because as a former juvenile offender, he has served a longer period of time incarcerated than an inmate who committed his offense as an adult.

A. The Eighth Amendment.

This idea that juvenile offenders serve a disproportionate sentence because they presumably have a longer life with which to serve, admittedly does factor into the U.S. Supreme

Court's limitations on life *without* parole. However, the Court has specifically not concluded that the juvenile offender *must* therefore receive parole. "A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." *Graham*, 560 U.S. at 75.

If the Supreme Court specifically allowed for a non-homicide juvenile offender to conceivably never be granted parole, then clearly a juvenile offender who committed homicide may indeed never be granted parole.

This also follows from the Court's allowance that there may be a "rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S.Ct. at 733.

The U.S. Supreme Court has not held that inmates who committed their crimes as juveniles must be eventually paroled. The Appellant has quoted *Montgomery* as somehow implying that conclusion, saying that he is guaranteed "some years of life outside prison walls." *Id.* at 737. However, he only quotes a part of that sentence, which reads more completely that, "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and if it did not, *their hope for* some years of life outside prison walls must be restored." *Id.* at 736-737 (emphasis added). The Court extended hope for release, but not a guarantee of release.

In conclusion, despite the "legal sea change" for juvenile offenders that Appellant asserts, there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 99 S.Ct. 2100 (1979).

B. The South Carolina Constitution.

The Appellant argues that grammatically, the South Carolina Constitution is different and more expansive than the Eighth Amendment. By prohibiting “cruel *or* unusual punishment” instead of “cruel and unusual punishment,” he argues, South Carolina affords a greater protection against such penalties. S.C. Const. Art. I, §15.

However, despite the argument and diligent research the Appellant has provided, he cannot say that South Carolina has ever granted inmates the right to parole. Instead, South Carolina courts have consistently held that parole is a privilege, not a right. See *Sullivan v. S.C. Dept. of Corrections*, 355 S.C. 437, 443 n. 4, 586 S.E.2d 124, 127 n. 4 (2003), citing *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003).

In the event that this Court holds that the South Carolina Constitution does provide more protection than the Eighth Amendment, the State still submits that it does not go so far as to give inmates who committed their crimes as juveniles the right to parole. Furthermore, the State submits that the Board’s current parole consideration criteria factors in the youth of the inmate and the other factors found in *Aiken v. Byars*. Because the circumstances surrounding the underlying crime are always considered, the age of the Appellant is also a circumstance that existed during the commission of the offense.

In *Aiken*, the Court ruled that a juvenile cannot be sentenced to a life without parole sentence unless the Defendant receives an individualized hearing where the mitigating hallmark features of youth are fully explored. *Aiken*, at 578. A parole hearing, while not a sentencing hearing, is an individualized hearing. The age of the Appellant at the time the crime was committed is one of many factors surrounding the facts and circumstances of the crime. The General

Assembly created mandatory criteria that must be considered prior to each final decision. The South Carolina Code of Laws specifically state:

The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. §24-21-640 (2018).

Within South Carolina law the Board is also responsible for creating its own criteria.⁶ This criteria must reflect all of the aspects of the statutory criteria and include a review of the prisoner's disciplinary and other records. S.C. Code Ann. §24-21-640 (2018) This Board criteria is always considered and includes:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal record and his/her adjustment under any previous programs of supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections had made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes living arrangements where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment.

⁶ The board must establish written specific criteria for the granting of parole and provisional parole. S.C. Code Ann. §24-21-640 (2018).

11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family and any witnesses to the crime about the release of the inmate;
15. The actuarial risk and needs assessment outlined in section 24-21-10(F)(1) of the S.C. Code of laws; which evaluates based on criminal involvement, relationships/lifestyle, personality/attitudes, family, social exclusion and mental health;
16. Other factors considered relevant in a particular case by the Board.

Although *Aiken* only states what the sentencing authority must carefully and thoughtfully consider, the Board's statutory and developed criteria cover many of the same factors. Clearly, the "family and home environment" that surrounded the offender; the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; and 5) the "possibility of rehabilitation"⁷ are covered in the above-referenced criteria.

While it can be argued that the hallmark features of youth including "immaturity, impetuosity, and failure to appreciate the risk and consequences" and the "incompetencies associated with youth – for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorney's"⁸ are not specifically outlined, the State submits that those two considerations are far more important for the sentencing court to consider when fashioning a sentence that could result in life without the possibility of parole, rather than when the inmate is before the Parole Board. The inmate appearing before the Board is clearly no longer a juvenile when parole eligibility is set ten, twenty, or thirty years after the sentence began. Furthermore, the Board is not concerned with

⁷ *Aiken*, at 544 (quoting *Miller*, at 477-78).

⁸ *Id.*

plea agreements, involuntary confessions, or ineffective assistance of counsel – all of which are the province of other appellate matters. Also, nothing prevents the parole applicant from exploring these factors when addressing the Board during the hearing.

3. The Board is the sole authority that may grant parole in South Carolina, so the Appellant's request that this Court order parole cannot be granted.

The Appellant is his request for relief has, in addition for asking for a wildly different procedure by the Parole Board, requested that this Court order the Board to grant him parole. In his brief he includes multiple pages of descriptions of the support he has garnered and examples that he uses to support his stated rehabilitation.

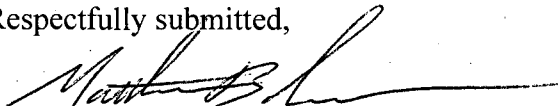
Commendable as his purported rehabilitation may be, it is simply not up to this Court to declare that he be released to parole. The court may not substitute its judgment for the judgment of the agency, or board, as to the weight of the evidence on questions of fact. S.C. Code Ann. §1-23-380 (2018). The Board has determined that the Appellant should not receive a lessening of his sentence by being released to parole. The Appellant has therefore attempted to garner sympathy or to persuade this Court that the Parole Board's decision is erroneous and should therefore be corrected by ordering the Board to reverse its decision. His suggested remedy is not permitted by law.

CONCLUSION

The Appellant is clearly frustrated with the Board's repeated refusal to grant him parole. However, parole is a privilege, not a right. Although the laws regarding juveniles being sentenced to life without parole has changed over the last fifteen years, parole *eligibility* is the proscribed solution for juveniles otherwise sentenced to life without parole. Because the Appellant was

sentenced to life with the possibility of parole; his sentence is already constitutional. He therefore is asking for what this Court cannot give him: the guarantee or right to parole, or the usurping of the Board's authority by this Court granting him parole. Based on the forgoing reasons the Respondent respectfully requests the ALC's ruling be affirmed and the Appellant's appeal be dismissed.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 293
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
May 1, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Docket Number 18-ALJ-15-0039-AP

Appellant Case No.: 2019-001554

STEWART BUCHANAN, #69848.....APPELLANT

v.

RECEIVED
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SC Court of Appeals

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and
with the South Carolina Supreme Court's order dated August 13, 2007.

Matthew C. Buchanan
General Counsel

May 1, 2020

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court

Honorable Ralph K. Anderson, III, Administrative Law Judge

Appellate Case No. 2019-001554

STEWART BUCHANAN, # 69848 APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES RESPONDENT.

REPLY BRIEF OF APPELLANT

JOHN H. BLUME #747

Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030

LINDSEY S. VANN #101408

HANNAH L. FREEDMAN #103373

MEGAN BARNES #104368

Justice 360
900 Elmwood Ave, Suite 200
Columbia, SC 29201
(803) 765-1044

COUNSEL FOR APPELLANT

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ARGUMENT IN REPLY

I. THE UNDERLYING EIGHTH AMENDMENT PRINCIPLES DESCRIBED IN THE *MILLER* TRILOGY AND *AIKEN* EXTEND TO STEWART’S CASE.

Respondent, the South Carolina Department of Probation, Parole, and Pardon Services (PPP), argues that the sea change in juvenile sentencing law mandated by the *Miller-Aiken* line of cases extends only to sentencing proceedings, not to parole hearings. Br. of Resp’t 6–7. According to PPP, if *Miller* and *Aiken*’s reasoning extended to parole, the United States Supreme Court in *Miller* or the South Carolina Supreme Court in *Aiken* would have said so, but the Courts “declined to do so.” *Id.* at 7.

It is true that *Miller* and *Aiken* (and their progeny) addressed juvenile sentencing, not parole, but that is only because the cases before the courts involved state sentencing schemes. *See Miller v. Alabama*, 567 U.S. 460 (2012); *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). It is axiomatic that appellate courts only resolve the issues before them. *See Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 202, 831 S.E.2d 667, 672 (2018) (“[W]e point out that—as in all cases before this Court—we decide only the issues before us in *this* case.”); *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (“It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop.”). The assertion that Stewart’s claims are foreclosed because *Miller* and *Aiken* are silent on parole, when the issue was not before them, misses the mark.

Similarly, PPP’s corollary argument that *Miller* and *Aiken* have no application to Stewart’s case ignores the fundamental principle that the state’s and the nation’s highest courts announce rules whose logic extends to future cases. And the logic underpinning the *Miller* trilogy and *Aiken*—“children are different”—extends to Stewart’s case. *See Miller*, 567 U.S. at 481. PPP’s

only response is that the South Carolina Supreme Court has not yet ruled on this specific legal claim—a fact that Stewart does not dispute.¹

Instead, Stewart’s argument is that because Stewart was a juvenile when he was sentenced to life in prison, and because no decision-maker has ever considered his juvenile status, the logic from the juvenile sentencing cases dictates that his youth must be given some reasoned consideration by the Board as the state agency which now literally contains the key to his release. As PPP points out, Stewart was sentenced before life without parole was a statutory option. Br. of Resp’t at 6 (citing S.C. Code Ann. § 16-3-20 (1976)). There is no logical or equitable reason why a juvenile sentenced post-1996 should receive an entirely new sentencing hearing where he can present evidence of his youth and later rehabilitation, while a juvenile, like Stewart, who was sentenced pre-1996 is treated no differently than an adult and, by PPP’s logic, is never entitled to have any state decision-maker consider his youth and later rehabilitation.

The Supreme Court of the United States has made clear that sentencing and parole are not mutually exclusive proceedings. In *Montgomery*, the Court described the two ways states could

¹ PPP’s discussion of *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019), as evidence of “cases that have blocked the ‘sea change’ in juvenile sentencing” ignores that case’s narrow holding. Br. of Resp’t at 5–6. PPP fails to acknowledge that *Slocumb* hinged on the Supreme Court of South Carolina’s determination that “a long line of Supreme Court precedent prohibits [the Court] from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set.” *Id.* at 306, 827 S.E.2d at 153. Declining to extend *Graham*’s holding to *de facto* life sentences, the Court went on to say that “[n]either *Graham* nor the Eighth Amendment, as interpreted by the Supreme Court, currently *prohibits* the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence on a juvenile nonhomicide offender.” *Id.* at 314–15, 827 S.E.2d at 157 (emphasis added). Thus, *Slocumb* merely makes clear that *Miller* and *Aiken* do not prohibit South Carolina from sentencing a juvenile who has committed multiple offenses over an extended period of time to a term of years that is the functional equivalent of life without parole.

In addition to the caselaw cited in Stewart’s opening brief, the state legislature, post-*Slocumb*, extended additional protections to juveniles facing adult prison terms. The Raise the Age Law, effective July 1, 2019, changed the definition of “child” from a person under the age of seventeen to a person under the age of eighteen. 2016 Act No. 268, S.B. 916, § 4 (July 1, 2019); *see also* S.C. Code Ann. § 63-19-20(a). The result this law is that courts in the state now have more flexibility when sentencing juvenile offenders and more opportunities to keep young people out of adult prisons.

remedy *Miller* violations going forward: resentencing or parole eligibility. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016). Whichever route the states opted for, *Montgomery* explained, would remedy the substantive Eighth Amendment violations *Miller* prohibited because “[a]llowing [juvenile] offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.” *Id.* The underlying point is that, regardless of how states decided to remedy *Miller* violations, the only way to ensure that juveniles are not “forced to serve a disproportionate sentence” is to take into account their youth. *See id.* States cannot remedy a *Miller* violation by making juvenile offenders parole eligible but refusing to consider evidence of rehabilitation because doing so would ignore “the truth of *Miller*’s central intuition—that children who commit even heinous crimes are capable of change.” *Id.*

PPP’s argument highlights the ways in which the Board has failed to take account of Stewart’s youth, without giving an affirmative account of why the logic from *Miller*, *Aiken*, and the rest of the juvenile sentencing cases do not apply to Stewart. PPP acknowledges that the Board gives little weight to the “hallmark features of youth” described in *Miller* and *Aiken* because “[t]he inmate appearing before the Board is clearly no longer a juvenile.” Br. of Resp’t at 13. But that is just as true for Stewart as it is true for the individuals who, post-*Aiken* and post-*Montgomery* received resentencing hearings: by the time they received new hearings, many of them had served multiple decades of imprisonment and, like Stewart, were “clearly no longer . . . juvenile[s].” *See* Br. of Resp’t at 13. Nevertheless, these individuals were entitled to new sentencing hearings because the original sentencing court had not considered their youth (and its attendant characteristics) at the time of the offense, plus any new evidence of rehabilitation. For example, in *Montgomery*, the United States Supreme Court described the claim of the named petitioner, Henry

Montgomery, that he had evolved “from a troubled, misguided youth to a model member of the prison community.” *Montgomery*, 136 S. Ct. at 736. The Court detailed Mr. Montgomery’s contributions to the prison’s silkscreen department, his efforts in founding a prison boxing team, and his role as a guide and support for other inmates—precisely the kind of evidence that parole boards regularly consider. *See id.* This, the Court explained, was “an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.” *Id.* Thus, it cannot be the case that because Stewart is “clearly no longer a juvenile,” his youth at the time of his offense is no longer “important” in terms of assessing his moral culpability. *See Br. of Resp’t* at 13.

Similarly, PPP acknowledges that “the incompetencies associated with youth” get little weight at hearings before the Board because “the Board is not concerned with plea agreements, involuntary confessions, or ineffective assistance of counsel.” *Br. of Resp’t* at 13–14. This, too, is an acknowledgement that Stewart’s youth has never been given constitutionally appropriate weight. In Stewart’s case, the “incompetencies associated with youth” directly impacted his decision to take a plea, to negotiate with prosecutors, and to navigate the court system: Stewart was led to believe that if he pled guilty to murder, he would likely serve no more than ten years. [cite to record]. Stewart’s youth and “inability to deal with . . . prosecutors (including on a plea agreement) [and his] incapacity to assist his own attorney” directly impacted the outcome of his criminal proceeding. *See Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

II. STEWART IS SERVING A DISPROPORTIONATE SENTENCE BECAUSE OF THE BOARD’S ARBITRARY AND CAPRICIOUS PROCESS.

PPP argues that this Court should not consider the Board’s past behavior—eighteen parole denials, including fifteen based only on the nature of the offense—as evidence that Stewart’s parole-eligible sentence has been converted to a parole-ineligible sentence. *Br. of Resp’t* at 9. In PPP’s words, “the Board roster changes over time,” so “[j]ust because the Appellant hasn’t

received parole yet doesn't mean he never will." *Id.* This argument ignores the fundamental due process obligations the Board owes to putative parolees.

The South Carolina Parole Board is part of PPP, an executive agency, whose power derives solely from a legislative delegation of authority. *See* S.C. Code Ann. § 24-21-10. Accordingly, decisions by the Board are governed by the same standards that govern other executive agencies, including the requirement that the Board provide putative parolees with due process protections. *See Cooper v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008); *see also Compton v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). Inherent in due process is the requirement that agency decisions not be arbitrary or capricious. S.C. Code Ann. § 1-23-380(5)(f); *see also Cooper*, 377 S.C. at 500, 661 S.E.2d at 112.

PPP's argument that Stewart's only path to release is hoping that the Board's composition changes and new members view the facts of his offense (the only basis for his last fifteen parole denials) differently than past Board members is an implicit acknowledgement that the process is arbitrary as parole hinges on the vagaries of idiosyncratic decision-makers. Stewart's release or continued incarceration after decades of demonstrated rehabilitation cannot legally depend on who sits on the Board because the Board's decisions must be based on the objective criteria promulgated pursuant to S.C. Code Ann. § 24-21-640. *See Cooper*, 377 S.C. at 499–500, 661 S.E.2d at 111–12.

Moreover, the Board's decades-long pattern of denying Stewart parole is strong evidence that his parole-eligible sentence has been impermissibly converted, by the Board, into a parole-ineligible sentence. *See id.* at 495–96, 661 S.E.2d at 110. Stewart has sought parole for thirty-two years and he has already outlived his reasonable life expectancy in SCDC. Despite the Board's

composition changing many times over these three decades, Stewart's parole denials were always based on the nature and seriousness of the offense; the past fifteen denials were solely based on that parole criterion. The consistency of the Board's decision-making—despite Stewart's maturity and rehabilitation, and the Board's changing membership—demonstrates the arbitrariness with how it renders its determinations and reasoning.

III. THIS COURT HAS THE POWER TO REVERSE THE AGENCY'S DECISION AND HOLD THAT THE ONLY LEGALLY PERMISSIBLE OUTCOME IN STEWART'S CASE IS RELEASE.

PPP asserts that this Court lacks the authority to order the Board to release Stewart because, in PPP's view, Stewart "is clearly frustrated with the Board's repeated refusal to grant him parole" and he "has therefore attempted to garner sympathy." Br. of Resp't at 14. According to PPP, this Court has no authority to remedy an unlawful parole determination under any circumstances. *See id.*

This argument ignores both the nature of Stewart's requested remedies and the legal framework from which Stewart has requested those remedies. Stewart's opening brief raises two primary claims and seeks two different remedies. First, Stewart argues that the Board's parole process violates due process; the remedy he seeks is a new parole hearing using a juvenile-specific process. Br. of App. at 13–23. Second, Stewart argues that in the face of overwhelming evidence of his rehabilitation, the Board's refusal to grant him parole on the basis of the nature of the offense violates the Eighth Amendment and Article I, Section 15 of the South Carolina Constitution because his punishment is disproportionate to his moral culpability; the remedy he seeks is an order that his sentence is unconstitutional and that he is therefore entitled to immediate release. *Id.* at 32–37.

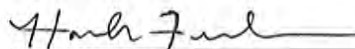
This Court has authority under the South Carolina Administrative Procedures Act (APA) to review a final agency decision—including a parole denial—and "reverse or modify" the

agency's decision "if substantial rights of the appellant have been prejudiced" because the agency's decision or factual findings are "in violation of constitutional or statutory provisions"; "made upon unlawful procedure"; "affected by other error of law;" "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"; or "arbitrary or capricious or characterized by abuse of discretion." S.C. Code Ann. 1-23-380(5). The statute does not limit the nature of relief this Court may order. Instead, it permits this Court to "reverse or modify" decisions from PPP and the Board that are unconstitutional, arbitrary or capricious, or otherwise wrong as a matter of fact or law. Stewart's requested remedy flows directly from this statutory authority: he asks the Court to hold that his continued detention is unlawful and a product of an abuse of the agency's discretion and issue an order to that effect. On remand to the agency, the Board would no simply lack the discretion to deny Stewart parole.

CONCLUSION

For the reasons set forth above, as well as for the reasons presented in Stewart's Opening Brief, this Court should reverse the judgment of the ALC and either order the Board to conduct a new parole hearing that is tailored to Stewart's juvenile offender status or issue an order that Stewart's continued detention is unlawful.

Respectfully submitted,



JOHN H. BLUME #747

Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030

LINDSEY S. VANN #101408

HANNAH L. FREEDMAN #103373

MEGAN BARNES #104368

Justice 360
900 Elmwood Ave, Suite 200
Columbia, SC 29201
(803) 765-1044
hannah@justice360sc.org

May 4, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
THE ADMINISTRATIVE LAW COURT
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001554

STEWART BUCHANAN,

Appellant,

v.

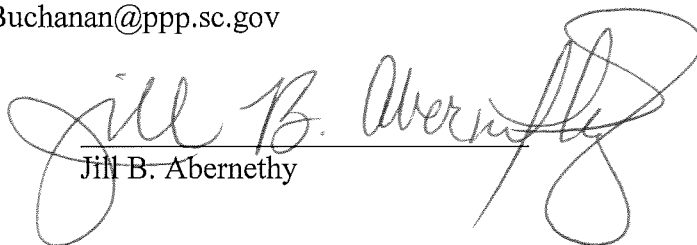
SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Reply Brief of Appellant was served electronically, this 5th day of May 2020, upon the following:

Matthew Buchanan
Department of Probation, Parole and Pardon Services
Matthew.Buchanan@ppp.sc.gov


Jill B. Abernethy

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stewart Buchanan, #69848, Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, Respondent.

Appellate Case No. 2019-001554

Appeal From The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Opinion No. 6021
Heard May 3, 2023 – Filed August 30, 2023

AFFIRMED

Hannah Lyon Freedman, of Justice 360, and John H.
Blume, III, of Law Office of John Blume, both of
Columbia, for Appellant.

Matthew C. Buchanan, of South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

THOMAS, J.: Stewart Buchanan appeals the order of the Administrative Law Court (ALC), which affirmed the denial of parole by the Parole Board of the South Carolina Department of Probation, Parole and Pardon Services (the Board), arguing (1) the Board's procedures violated his right to due process and (2) his forty-seven years of incarceration for a crime he committed as a juvenile constitutes cruel and unusual punishment. We are constrained to affirm.

FACTS

On May 18, 1973, Buchanan broke into the victim's home in the early morning hours. The victim, Buchanan's neighbor, awoke and fled the house. Buchanan stabbed her to death in the front yard. Buchanan, who was seventeen years old at the time, was under the influence of a mix of drugs and alcohol and a lack of sleep. In September of 1973, Buchanan pled guilty to murder and was sentenced to life imprisonment. At the time, an individual sentenced to life in South Carolina was eligible for parole upon the service of ten years. The trial court made a confidential report from Buchanan's psychiatrist available to the jury, which returned a verdict of guilty with a recommendation of mercy.¹

Buchanan first appeared before the Board on January 12, 1983, and was denied parole. He has now appeared before the Board at least eighteen times and been denied parole each time. Regarding the most recent denial in November 2018, parole was denied due to: (1) the nature and seriousness of the offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense.

Prior to the most recent parole hearing, Buchanan submitted a Memorandum in Support of Favorable Parole Recommendation. The memo reported Buchanan had "more than demonstrated his rehabilitation and reformation through his positive institutional record and participation in numerous counseling, rehabilitative[,] and religious programs." The memo argued the Board should consider the factors enumerated in *Aiken v. Byars*.²

¹ At the time of the hearing, the death penalty had been abolished, yet a jury still determined whether to recommend mercy.

² 410 S.C. 534, 765 S.E.2d 572 (2014). The *Aiken* court held that a sentencing court considering a sentence of life without parole (LWOP) for a juvenile offender must consider:

- (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence";
- (2) the "family and home environment" that surrounded the offender;

As to the first factor, the hallmark features of youth, the memo explained Buchanan was a juvenile at the time of the crime, with a juvenile's lack of maturity, underdeveloped sense of responsibility, and incomplete neurological development. The memo notes Buchanan's childhood was tumultuous with an unstable family life, difficulties at school, and a peer group that was involved with drugs and alcohol. His parents were absent most of the time, his older sister had just run away from home, he spent time in a boys' home, and he "began engaging in attention seeking behavior at home and at school"

Regarding the second factor, family and home environment, the memo reported that Buchanan's father was "an alcoholic who drifted from job to job" and when he was home, enforced corporal punishments, including backhanding, punching in the face, and hitting with a belt. Buchanan's mother was "cold and aloof" and highly critical of her children. In addition, she once allegedly attempted to run over one of Buchanan's father's mistresses and threatened to leave her husband many times "and did a few times for short periods of time." The family moved to Fort Mill, a town of less than 3,000 at the time, when Buchanan was seven years old. Buchanan did not fit in well in the small community. He was overweight, weighing over 200 pounds by the time he was sixteen years old. He was teased at school and became the class clown, often getting in trouble. After his older sister, who acted somewhat as a surrogate mother to him, ran away, and Buchanan returned from a short stay at a boys' home, he "turned to drinking and drugs."

(3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him;

(4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and

(5) the "possibility of rehabilitation."

Id. at 544, 765 S.E.2d at 577 (alterations in original) (quoting *Miller v. Alabama*, 567 U.S. 460, 477–78 (2012)). These factors are generally referred to as the *Miller* factors. The parties here also refer to them as the *Aiken* factors.

The memo describes Buchanan's situation at the time of the offense when considering the third factor from *Miller*, the circumstances of the offense. During the summer of 1973, Buchanan began using methamphetamines and LSD, had stopped attending his auto mechanics classes at York Technical College, was working night shifts, and was not sleeping. The night of the offense, he took several hits of LSD and drank excessively. His recollection of the night in question was "a blur." Buchanan admitted to the police that he committed the offense and told them "he did not have complete control of his actions that night." However, "[t]hen and now[, he] takes full responsibility for his actions and the consequences thereof."

In its discussion of the fourth factor, the incompetency of youth when dealing with the criminal justice system, the memo notes that at the time he pled guilty, Buchanan accepted the advice of his attorney, who "virtually guaranteed him that he would be paroled in less than twenty years" because many persons convicted of murder were granted parole after ten years of service, and it was rare not to be granted parole after twenty years.

Finally, as to the fifth factor, the possibility of rehabilitation, the memo notes Buchanan has spent the last forty-five years incarcerated and has taken advantage of the opportunities available to him. While he was still seventeen years old, he became part of Manning's Comprehensive Drug Abuse Program by visiting schools and churches to dissuade other teenagers from using drugs. Within the prison, he has been certified as a literacy tutor for more than forty years. He tutors, teaches English at night school, and started his own course to teach inmates basic legal research and writing. He has also worked as a volunteer Inmate Grievance Clerk and a hospice volunteer, and is a member of the Character Based Unit (a society of inmates focused on rehabilitation), which is demanding and requires a good disciplinary history, ability to contribute, demonstrated interest in rehabilitation, mental stability, and credibility. Buchanan volunteers as a chaplain in the prison and, when on work release, he is actively involved with Trinity Baptist Church and Kairos, a Christian ministry program.

In addition, Buchanan has been enrolled in the release plan, Jump Start. He was to graduate on November 14, 2018, "at the Blue Level — the highest possible level of completion." Jump Start is a Christian-based organization that focuses on transitioning men back into the workforce and society after prison. As a parolee and graduate of Jump Start, Buchanan would be provided transitional housing for two years, be mentored, and receive assistance getting a job and eventually buying

a home. He completed extensive business and vocational courses, completed more than 500 hours of carpentry training, and worked as a manager for Astro Glass during a work release program. Buchanan submitted numerous certificates of training, volunteerism, and education, and letters in support of his parole from educators, potential and past employers, and prison employees.

Dr. Susan Knight, a forensic psychologist, examined Buchanan in preparation for the parole hearing. She noted Buchanan had some disciplinary charges during his incarceration; however, she concluded he did not represent a significant risk for future violent acts. Dr. Knight interviewed numerous employers, prison employees, a chaplain, and others, who positively described Buchanan as follows: a model inmate; a hard worker; a "really good, really respectful guy"; of "good character"; respected and well-liked by other inmates; helpful to other inmates; smart; deeply involved in religion; "If he got out tomorrow, I would be happy to know he bought a home on my street"; sincere, articulate, and honest; and remorseful. Dr. Knight concluded Buchanan suffered from no psychological disorders and found, "[H]is prison record indicates an exceptionally-responsible worker, with very few physical altercations, and a positive demeanor and attitude. Collateral and interview data indicate [he] expressed remorsefulness[] and [the] ability for empathy."

Dr. Knight reviewed the criteria used by the Board and concluded that, as to the nature and seriousness of the offense, Buchanan took full responsibility, demonstrated remorse, and recognized with good insight the factors that facilitated his substance abuse. As to his adjustment while in confinement, Dr. Knight reiterated Buchanan's many accomplishments and honors. Regarding her assessment of Buchanan's risk to the community, Dr. Knight found he was at low risk for future violent recidivism, and she identified substance abuse treatment as his primary risk management strategy. Finally, as to the Board's criterion of the adequacy of an offender's parole plan, Buchanan has been approved for two years of housing at Jump Start and has the opportunity of employment in a ministry and involvement through Jump Start in woodworking, a furniture company, and other construction.

Buchanan's attorney also submitted a letter to the Board, arguing that after *Aiken*, it needed to consider Buchanan's "youth and its attendant circumstances and provide a meaningful opportunity for release." The letter requested the Board (1) hire an expert in adolescent brain development and consider the expert's written evaluation; (2) schedule the parole hearing at a different time from hearings for adult offenders and allow testimony from mental health professionals and other

witnesses; and (3) consider the factors of youth, including the incompetency of youth regarding the legal system, immaturity, home and community environment at the time of the offense, evidence of remorse, and efforts made toward rehabilitation.

The Board responded to the letter, arguing Buchanan was not being denied any constitutional rights. The Board noted, "Though [its] reasons for denial . . . will never change, these reasons for denial are legal" The Board also stated, "As long as it is revealed that the Board applied the mandatory criteria, the use of the events of the offense as a reason for denial is lawful."

At the hearing before the Board, Buchanan was represented by his attorney and accompanied by three pastors and Dave Johnson from Jump Start. Buchanan explained the events of the offense and his subsequent involvement in a comprehensive drug abuse therapy program, Narcotics Anonymous, and Alcoholics Anonymous. Buchanan's attorney spoke on his behalf. Pastor Tammy Blom also spoke on his behalf, concluding she envisioned Buchanan "moving into Jump [S]tart after leaving prison." Pastor Frank Ledvinka also spoke, indicating he believed in Buchanan, saw Buchanan's great love of God and others, and asked the Board to give him a chance. The hearing indicates the Board had "71 signatures in opposition." According to Buchanan, the Board deliberated for less than a minute before verbally denying his request for parole. In a subsequent letter, the Board stated it considered the following in denying parole:

- (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record . . . ;
- (2) the factors published in Department Form 1212 (Criteria for Parole Consideration);
- (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws[;] and
- (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1) of the South Carolina Code of Laws.

Buchanan appealed to the ALC.

In its order affirming the Board, the ALC noted its review was confined to a determination of whether the Board's denial of parole afforded Buchanan due process and was consistent with *Cooper v. South Carolina Department of*

Probation, Parole & Pardon Services.³ The ALC rejected Buchanan's argument that recent case law had created a new substantive constitutional right to a "meaningful" parole review for inmates who were sentenced as juveniles, which required the Board to expressly consider an inmate's youth in determining parole. In addition, the ALC found it did not have the authority to "establish a new substantive constitutional right." The ALC denied Buchanan's request that it order the Board to grant parole. This appeal followed.

STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2022) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency. The court of appeals may reverse or modify the decision only if substantive rights of the appellant have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law. *Id.*

LAW/ANALYSIS

A. Due Process

Buchanan argues the "legal sea change" applicable to juvenile *sentencing* during the past decade or so requires the Board to adopt procedures that will allow juvenile offenders to have their youth and immaturity considered in *parole decisions*. See *Roper v. Simmons*, 543 U.S. 551, 578 (2005) ("The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed."); *Miller*, 567 U.S. at 489 (finding juveniles convicted of homicide could not be subjected to mandatory LWOP sentences, "regardless of their age and age-related characteristics and the nature of their crimes" because to do so would "violate [the] principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment"); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (holding "that for a juvenile offender who did not commit homicide[,] the Eighth Amendment forbids the sentence of life without parole"); *Montgomery v. Louisiana*, 577 U.S. 190, 212–13 (2016) (giving *Miller* retroactive effect and stating, "In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are

³ 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008), *abrogated on other grounds by Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023).

constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.").

South Carolina recognized these principles in *Aiken* as to sentencing, holding the sentences of "fifteen inmates who were sentenced to life without parole as juveniles" violated the Eighth Amendment under *Miller*. 410 S.C. at 536–37, 765 S.E.2d at 573. Our supreme court acknowledged the "affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543, 765 S.E.2d at 577. *Aiken* held that a sentencing court considering an LWOP sentence for a juvenile offender must consider the *Miller* factors. *Id.* at 544, 765 S.E.2d at 577.

Buchanan argues the Board's current parole review process violates his due process rights by not also requiring the Board to consider these factors in reviewing his parole applications. Buchanan notes that fifteen of his eighteen parole denials cite, virtually verbatim, the same three reasons for denial:

- (1) the nature and seriousness of the current offense;
- (2) an indication of violence in this or a previous offense;
- and
- (3) the use of a deadly weapon in this or a previous offense.

According to Buchanan, the Board's process is insufficient because it does not require the Board to consider his youth and rehabilitation. Buchanan argues many jurisdictions have judicially or legislatively required parole boards to specifically consider the "hallmark features of youth" in considering parole of juvenile offenders.

The Board argues the change in the law as it relates to juvenile sentencing has not been extended beyond sentencing in South Carolina, maintaining *Miller* and *Aiken* require the factors of youth be considered only by the sentencing court, not the Board. *Id.* at 544, 765 S.E.2d at 577 (explaining that *Miller* mandates consideration of the factors of youth by "the sentencing authority"). In addition, the Board maintains that because Buchanan's sentence provides for parole eligibility, *Miller* and *Aiken* do not apply. See *Montgomery*, 577 U.S. at 212 ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.").

The statutory factors that must be considered by the Board are as follows:

The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. § 24-21-640 (Supp. 2022). In addition, the Board must consider the factors enumerated in its parole form.⁴

⁴ The current list of the factors on Form 1212 are as follows:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of [C]orrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes [an] inmate[']s living arrangements, where he/she will live and who he[/she] will live with; the character of those with whom the inmate plans to associate in both

In *Cooper*, our supreme court explained the Board's procedure is proper "if [the Board] clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the . . . factors published in its parole form." 377 S.C. at 500, 661 S.E.2d at 112; see also *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (relying on the holding in *Cooper* to affirm a denial of parole because the parole board "clearly stated in its [order] that it considered the [section 24-21-60] criteria and the criteria set forth in Form 1212").

As found by the ALC, the Board's denial of parole met the requirements of *Cooper* and the ALC had authority to review the decision.⁵ Based on what *Cooper* says

his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;

11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate[;]
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of [L]aws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health[; and]
16. Other factors considered relevant in a particular case by the Board.

South Carolina Department of Probation, Parole and Pardon Services, *Criteria for Parole Consideration*, <https://www.dppps.sc.gov/content/download/200476/4681336/file/Criteria+for+Parole+Consideration.pdf>

⁵ Following the South Carolina Supreme Court's decision in *Cooper*, the General Assembly amended section 1-23-600(D) of the South Carolina Code to provide that "[a]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits . . . or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." 2008 S.C. Acts No. 334, § 7 (effective June 16, 2008). The ALC and our supreme court have continued to review these appeals where they implicate an alleged deprivation of due process. See *Rose v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 429 S.C. 136, 144, 838 S.E.2d 505, 510 (2020) (reviewing a claim

about a routine denial of parole, this is a routine denial and the ALC correctly affirmed the Board. We recognize there is tension between the principle that inmates are entitled to a meaningful parole review and what appears to be serial denials of parole based solely on factors that do not change and that have no relation to an inmate's rehabilitation. Even so, we read the authorities to instruct that the court system's role does not include looking behind the Board's statement that it has considered all of the factors and made its decision. As noted by the Board, despite Buchanan's claim that "the Board has denied his request for parole based on the facts and circumstances of the offense[,] which [are] fixed in the past and cannot be changed[,]" Buchanan has not been permanently denied parole and "[j]ust because [he] hasn't received parole yet doesn't mean he never will." See *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 (stating "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process") (emphasis in original); S.C. Code Ann. § 24-21-645(D) (Supp. 2022) ("[U]pon a negative determination of parole, prisoners in confinement for a violent crime . . . must have their cases reviewed every two years for the purpose of a determination of parole"); S.C. Code Ann. § 16-1-60 (Supp. 2022) ("For purposes of definition under South Carolina law, a violent crime includes the offense[] of[] murder").

The Board asserts as long as its notice of rejection states it followed the statutory and Form 1212 criteria, its order of denial is valid. Based on the law currently

that Rose had been granted parole in 2001 but remained incarcerated in 2020); *Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 419, 745 S.E.2d 110, 123 (2013) (reviewing a parole denial for an alleged *ex post facto* violation); see generally *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) (reviewing an appeal from the Board's decision finding Furtick ineligible for parole because an inmate has a liberty interest in gaining access to the Board and a permanent denial of eligibility implicates a liberty interest requiring due process); *Al-Shabazz v. State*, 338 S.C. 354, 376–77, 527 S.E.2d 742, 754 (2000) (finding the ALC has the authority to review non-collateral and administrative agency decisions); cf. *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 171, 886 S.E.2d 671, 674 (2023) (explaining "[an inmate's grievance] claim that implicates a state-created liberty or property interest is not required for the ALC to have subject matter jurisdiction over the appeal. However, the ALC is not required to hold a hearing in every matter and may summarily dismiss an inmate's grievance if it does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees").

existing in South Carolina, we must agree. However, we are concerned regarding the perfunctory manner in which Buchanan's request for parole was denied. Although Buchanan and other juveniles similarly situated are technically eligible for parole, the continuing denial of parole based on the same factors, all unchangeable and related to their offenses, gives no guidance to these inmates about what can be done to improve their chances of parole and is, in essence, equivalent to being ineligible for parole. Under the current system, it appears no passage of time served (here, forty-seven years) or showing of rehabilitation (here, eighteen parole reviews now indicating Buchanan "has more than demonstrated his rehabilitation") can change his fate before this Board. The public policy behind *Roper*, *Graham*, and *Miller*, to restore hope to juvenile offenders for some life outside of prison, is thwarted by the Board's continued reliance on factors existing at the time of the conviction with little or no apparent consideration of subsequent rehabilitation efforts. The prospect of parole, including meaningful parole hearings, incentivizes good conduct while imprisoned and encourages participation in rehabilitative programs, which reduces recidivism rates. See Amanda Dick, *The Immature State of Our Union: Lack of Legal Entitlement to Prison Programming in the United States as Compared to European Countries*, 35 Ariz. J. Int'l & Compar. L. 287, 291 (2018). Additionally, parole reduces prison populations by releasing rehabilitated inmates, lessening the fiscal burden of incarceration by eliminating spending on the detention of individuals who no longer pose a threat to society.

In this case, Buchanan argues he confessed, he accepted the advice of his attorney to plead guilty, "his attorney virtually guaranteed him that he would be paroled in less than twenty years[,] and the jury recommended mercy. He has been imprisoned for fifty years for a crime he committed at age seventeen. And there appears to be no dispute—none—that he has been an exemplary inmate and demonstrated remorse, rehabilitation, and a low risk for recidivism.

We reluctantly affirm the ALC's finding that the Board followed the proper procedure when it denied Buchanan parole because the Board's order of denial stated the Board had considered "the factors outlined in [s]ection 24-21-640" and "the factors published in Department Form 1212." See *Risher v. S.C. Dep't of Health & Env't Control*, 393 S.C. 198, 204, 712 S.E.2d 428, 431 (2011) ("A decision of the ALC should be upheld . . . if it is supported by substantial evidence in the record."); *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (providing the procedure for denying parole is proper "if [the parole board] clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in [Form 1212]"); *Compton*, 385 S.C. at 479, 685

S.E.2d at 177 (affirming a denial of parole because the parole board's order complied with the *Cooper* requirements). Although the Board has complied with the minimal requirements necessary for this to satisfy the standard our supreme court articulated in *Cooper*, we are sympathetic to Buchanan's argument that it appears inmates who offended while juveniles are not given meaningful review regarding parole. Our role is one that is limited to operating within the framework set by statutory law and by our supreme court's precedents. It may well be good policy for the Legislature to review and/or revise the parole system to assure the factors of youth are a part of considering parole in these cases rather than permitting the seemingly perfunctory review now standardly given, but that is the Legislature's decision, not ours.

B. Cruel and Unusual Punishment

Buchanan argues the Board's multiple denials of parole over so many years violates the cruel and unusual punishment prohibitions in the United States and South Carolina Constitutions. We disagree.

The United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. XIII. The South Carolina Constitution provides, "Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained." S.C. Const. art. I, § 15. Under either Constitution, we find no violation.

"[P]arole is a privilege, not a matter of right Parole is a creature of statute and is exclusively in the province of the legislative branch of government. The General Assembly empowers the Department to administer the parole program." *Major v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 384 S.C. 457, 465, 682 S.E.2d 795, 799 (2009). "[T]he *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149.

A State is not required to guarantee eventual freedom to a juvenile offender What the State must do, however, is give defendants . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth

Amendment prohibits a State from imposing a life without parole sentence on a juvenile non[-]homicide offender, it does not require the State to release that offender during his natural life.

Graham, 560 U.S. at 75. We agree with the ALC that neither the United States Supreme Court nor our supreme court requires specific parole criteria to be considered in determining whether to grant parole, and the Board's denial of parole did not constitute cruel and/or unusual punishment under either Constitution.

CONCLUSION

Based on the foregoing, the order of the ALC is

AFFIRMED.

MCDONALD and HEWITT, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From The Administrative Law Court
Honorable Ralph K. Anderson III, Chief Administrative Law Judge
Docket Number 18-ALJ-15-0039-AP

Appellate Case No. 2019-001554

STEWART BUCHANAN, # 69848 APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES RESPONDENT.

PETITION FOR REHEARING

On August 30, 2023, this Court issued its published opinion in *Stewart Buchanan v. South Carolina Department of Probation, Parole, and Pardon Services*, Op. No. 6021 (Ct. App. filed August 30, 2023). Therein, this Court affirmed the Administrative Law Court's decisions below and denied Appellant's requests for relief. Pursuant to Rule 221(a), SCACR, Appellant petitions for rehearing. Appellant respectfully submits the following points and arguments in support of the petition for rehearing.

Buchanan is constitutionally entitled to a proceeding in some tribunal that has the authority to offer him a meaningful opportunity for release where the hallmark features of youth identified by the Supreme Courts of the United States and South Carolina are actually considered. He has never been afforded such a proceeding. As discussed more fully in the briefing for this appeal, there has been a sea change in the constitutional law applicable to juveniles in the last two decades.

See, e.g., *Roper v. Simmons*, 534 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48; *Miller v. Alabama*, 567 U.S. 460 (2012); *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014); *Montgomery v. Louisiana*, 577 U.S. 190 (2016). This change in law is grounded in understanding the ways in which children are categorically different from adults in ways that significantly diminish their moral culpability and thus must be taken into account in deciding whether he should remain in custody and for how long.¹

The shift in juvenile sentencing law clearly establishes that individuals who commit offenses while they were juveniles are entitled to a decision maker who “carefully and thoughtfully consider[s]” the ways in which children are constitutionally different than adults in proceedings determining whether the juvenile will be confined or released from prison. *Aiken*, 410 S.C. at 544, 765 S.E.2d 577. In South Carolina, this not only applies to juveniles facing the most serious sentencing options, namely life without parole, but also has been extended to all juveniles. The Supreme Court of South Carolina has recognized that all juvenile offenders are entitled to consideration of the mitigating factors of youth set forth in *Aiken*. *Jones v. State*, __ S.C. __, 889 S.E.2d 590, 596 (S.C. 2023) (“[W]e are mindful that juveniles are entitled to careful sentencing under the Eighth Amendment, and we direct circuit court judges to consider the mitigating factors of youth articulated in *Aiken v. Byars*.”). After over a decade of developed jurisprudence on

¹ The United States Supreme Court and the Supreme Court of South Carolina have both recognized at least five factors that need to be weighed in the balance in cases involving juvenile offenders: (1) the hallmark features of youth including “immaturity, impetuosity, and failure to appreciate the risks and consequences;” (2) the “family and home environment” that surrounded the child; (3) the circumstances of the offense, including the extent of the child’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth,” including an “inability to deal with police officers or prosecutors (including on a plea agreement) or . . . incapacity to assist his own attorneys;” and (5) the “possibility of rehabilitation.” *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477-78). These factors must be “carefully and thoughtfully considered” by state authorities with the power to confine a juvenile. *Id.*

juveniles, this is not a new substantive constitutional right, as the ALC determined, but rather is a fundamental principle that has to be procedurally implemented to ensure juvenile offenders are not receiving disproportionate punishments.²

In its opinion, this Court puts a central focus on how the state and federal decisions revolutionizing juvenile sentencing only provide due process protections to juveniles in a *sentencing* proceeding context. No such limiting principle is found in those cases. Rather, the emphasis is on providing juveniles sentenced to life imprisonment with an “opportunity for release,” with a recognition that the juvenile protections can be constitutionally afforded by providing consideration of the same factors associated with juvenility in parole proceedings so long as a juvenile’s ability to rehabilitate is actually considered in the parole proceedings. *E.g.*, *Montgomery*, 577 U.S. at 212. As a matter of state constitutional law, when the Parole Board fails to take account of all legally mandated information, it infringes on inmates’ liberty interests. *Cooper v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008). The changes in juvenile sentencing law created a new category of legally mandated information—the mitigating characteristics of youth—that decision-makers must consider before sentencing juveniles to die in prison. *Id.* Because the Board never took these factors into account, the Board violated Appellant’s “substantial personal right” to have a decision-maker consider the *Aiken* factors with respect to his case.

The “perfunctory” manner of parole denials that the Court noted, which consists of a minutes-long hearing followed by a form denial letter at which the same unchangeable factors are

² The United States Supreme Court has recognized that although this is a substantive constitutional guarantee, it is accompanied by explicit procedural requirements to give effect to it. *Montgomery*, 577 U.S. at 209–10. These procedural components are what give effect to the constitutional protections. *Id.* at 210.

routinely cited, does not provide a process that gives effect to the considerations of juvenility that the Supreme Court of South Carolina and the United States Supreme Court explicitly require. None of the articulated factors in S.C. Code § 24-21-640 or PPP's Form 1212, which the Board purports to consider in denying parole, recognize the factors set forth by *Miller* and *Aiken*. Stewart has not been afforded the constitutionally required consideration of juvenility under *Aiken* to make such a sentence permissible.

Finally, Appellant submits that the Court has made an error of law in its determination that the Board's decision rendered Appellant "equivalent to being ineligible for parole," *Buchanan* at *12, but simultaneously constituted a routine denial of parole. *Id.* at *11. As a matter of law, if the Board renders a decision that permanently denies parole to an otherwise parole-eligible inmate, the denial implicates a state-created liberty interest and is not a routine denial of parole. *Cooper*, 377 S.C. at 497-98, 661 S.E.2d at 110-11; *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003); *Sullivan v. S.C. Dep't of Corrections*, 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 124 n.4 (2003). Regardless of whether the Board has complied with *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 685 S.E.2d 175 (2009), by including a cursory allegation that it has considered the required factors in its denial letter, courts must give effect to the due process guarantee of *Cooper* by remedying the Board's unlawful action where, as here, the Board violates due process by rendering parole-eligible inmates "equivalent to being ineligible for parole." In other words, this Court is not constrained by *Cooper* or *Compton* if it decides, as it did here, that Appellant has been rendered ineligible for parole. Instead, if the Court finds that the Board's decision has permanently denied Appellant parole, the Court is permitted—indeed, required—to also recognize as a matter of law that the decision was not a routine denial of parole. Moreover, given that this Court has found that Appellant has been

rendered parole ineligible, as a matter of law his current sentence constitutes cruel and unusual punishment under *Aiken* and *Miller* since no decision maker has ever considered the mitigating factors of youth as applicable to his case.

Based upon the above arguments, Appellant respectfully requests that this Court grant the petition for rehearing, reverse the judgment of the Administrative Law Court, and either (a) order the Board to conduct a new parole hearing that procedurally and substantively conforms to established constitutional principles governing when a juvenile offender can be incarcerated for life; or (b) order the Board to grant Appellant parole.

Respectfully submitted,

/s/Rosalind S.D. Major

LINDSEY S. VANN #101408

ROSALIND S.D. MAJOR #106017

ALLISON FRANZ #105189

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

lindsey@justice360sc.org

rosalind@justice360sc.org

allison@justice360sc.org

JOHN H. BLUME #743

Cornell Law School

159 Charles Evans Hughes Hall

Ithaca, NY 14853

(607) 255-1030

jb94@cornell.edu

September 13, 2023.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal From The Administrative Law Court
Honorable H.W. Funderburk, Jr., III, Administrative Law Judge

SEP 13 2023
SC Court of Appeals

Appellate Case No. 2019-001554

STEWART BUCHANAN, # 69848 APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellant's Petition for Rehearing was served by first class United States mail, postage prepaid, this 13th day of September, 2023, upon the following:

Matthew Buchanan
South Carolina Department of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

Rosalind Major

Rosalind S.D. Major



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 15, 2023

Mr. John H. Blume, III, Esquire
Mrs. Lindsey Sterling Vann, Esquire
Ms. Allison Ann Franz, Esquire
Ms. Rosalind Sarah Duval Major, Esquire
900 Elmwood Ave
Suite 200
Columbia SC 29201

Re: Stewart Buchanan, #69848 v. SCDPPPS
Appellate Case No. 2019-001554

Dear Counsel:

This will acknowledge receipt of the petition for rehearing.

By copy of this letter, opposing counsel is requested to file a return no later than ten (10) days from the date of this letter.

Very truly yours,

A handwritten signature in blue ink, reading "Jenny A. Kitchings".

CLERK

cc: Hannah Lyon Freedman, Esquire
Matthew C. Buchanan, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Case No. 18-ALJ-15-0039-AP

Appellate Case No. 2019-001554

Stewart Buchanan, #69848.....APPELLANT

v.

South Carolina Department of Probation, Parole and
Pardon Services,.....RESPONDENT

RETURN TO PETITION FOR REHEARING

Respondent, the South Carolina Department of Probation, Parole and Pardon Services hereby submits this Return to Appellant's Petition for Rehearing dated September 13, 2023. Respondent would show that this Court's published opinion was ultimately correct in its affirmation of the Administrative Law Court, and therefore this Court should deny the petition. Alternatively, the Court should reissue a nearly identical opinion with the removal of the language stating repeated routine denials of parole based on the same factors is "equivalent to being ineligible for parole."

Appellant has not raised new arguments in his request for reconsideration. The case law he cites, notably *Aiken v. Byars*, 410 S.C. 534 765 S.E.2d 572 (2014) and the U.S. Supreme Court cases *Roper v. Simmons*, 534 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v.*

Alabama, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), all speak to the sentencing of juvenile defendants. Appellant has merely reiterated his argument that he believes these cases should be applied to parole consideration when they clearly only address the sentencing phase, and even then only apply when the court must decide whether the juvenile defendant is facing a life sentence without the possibility of parole. When Appellant committed his offense in 1973, South Carolina law provided for parole eligibility for all offenses, including murder. Therefore, because release to parole is not a sentencing decision and because Appellant is eligible for parole in the first place, the cited cases do not apply to his situation.

“Under *Miller v. Alabama*, an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment.” *Jones v. Mississippi*, 141 S.Ct. 1307 (2021) (citations omitted). The Supreme Court clarified in *Jones* that *Miller* does not require a finding of permanent incorrigibility before sentencing a juvenile defendant to life without parole.

Clearly, this holding does not continue the trend in the “shift in juvenile sentencing law” that Appellant claims has occurred. Even at sentencing judges are not required to make a specific finding of permanent incorrigibility when they sentence a juvenile to life without parole, so this Court correctly ruled that the Board was similarly not required to make a finding of continued incorrigibility when it makes a routine denial of parole when it affirmed the ALC.

Notably, *Graham* distinctly holds that a “State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime.” *Id.* at 75. Even though *Graham* prohibits life-without-parole sentences for nonhomicide juvenile offenders, it does not guarantee parole. Instead, just as in *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979), the Constitution does not guarantee early release from an otherwise legitimate

sentence. Put another way, the Board does not take anything away from a parole-eligible inmate when it denies parole. After a denial, the inmate will again have the opportunity for parole at a subsequent hearing – but not a right to parole.

In light of this axiom, Respondent urges this Court to not only deny the petition, but to also rethink its misgivings over Appellant's repeated denials of parole. *Parole is not a right*. The Board is the absolute authority over parole decisions in South Carolina. *Cooper v. S.C. Dep't of Probation, Parole and Pardon Services*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008). Inmates such as Appellant are fond of making the argument that repeated denials by the Board is the equivalent of being permanently denied parole eligibility. This is, of course, a fallacy. Parole-eligible inmates have the right to be considered for parole, but not to be granted parole. Even after repeated denials, they are still parole eligible, and may hope to be paroled at a future hearing. This is particularly true as the Board membership changes over time as new members are appointed by the governor with confirmation by the Senate.

Respondent respectfully urges this Court to not further embolden the line of thinking that suggests simply not being granted parole means that one has been made ineligible for parole. Instead, this Court should affirm that parole is a grace to which no inmate is entitled, and only the Parole Board may grant it at its discretion. Any change in this framework must necessarily come from our Legislature.

Furthermore, Respondent also takes issue with this Court's characterization of the Board's decision as being made in a "perfunctory manner." The Board hears fifty-five to sixty-five requests for parole each hearing day, so time allotted to each hearing is understandably limited. What is frequently overlooked, however, is the time each individual Board member takes in advance of each hearing, reading through the materials prepared by both the Department of Probation, Parole

and Pardon Services, and the inmate and his supporters. Although the Board is required to state the reasons for denial in its rejection letter, the sheer number of inmates heard on a given day necessitate the abbreviated summation of the reasons for denial – such as the nature and seriousness of the offense, indication of violence, and use of a deadly weapon. *Cooper* has held that such reasons are sufficient. *Id.* at 499 n. 5, 661 S.E.2d at 111 n. 5.

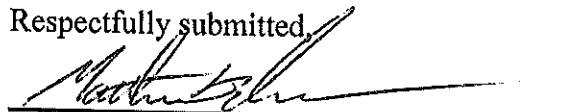
Importantly, Appellant cannot say that the Board was not aware of his status as someone who committed his offense as a juvenile. The record clearly shows within the Memorandum in Support of Favorable Parole Recommendation submitted to the Board in advance of the hearing that a great amount of information about Appellant's young life leading up to the offense had been presented to the Board, including his age. Thus, the Board met the requirements of S.C. Code § 24-21-640, in "carefully consider[ing] the record of the prisoner before, during, and after imprisonment." The Board was aware of Appellant's record and age at the time of the offense, yet elected to deny him parole. Respondent respectfully submits that this Court correctly determined that the Board remains the sole authority over parole decisions and affirmed the same holding of the Administrative Law Court. Consequently, this Petition for Rehearing should be denied.

CONCLUSION

Appellant has failed to raise a new argument in his Petition for Rehearing, and instead restates the incorrect assertion that the requirements for judges when weighing the possibility of imposing life without parole sentences to juvenile defendants must also be applied to the Parole Board when considering parole for inmates who committed their offenses as juveniles. Clearly, the cases Appellant relies upon speak only to the sentencing of juvenile defendants, and should not be expanded to parole consideration hearings as there is no precedential basis. Furthermore,

Respondent respectfully urges this Court to affirm the clear fact that repeated denials of parole are not the same as permanent ineligibility for parole, and arguments to that effect hold no weight.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
September 19, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Case No. 18-ALJ-15-0039-AP

Appellate Case No. 2019-001554

Stewart Buchanan, #69848.....APPELLANT

v.

South Carolina Department of Probation, Parole and
Pardon Services,.....RESPONDENT

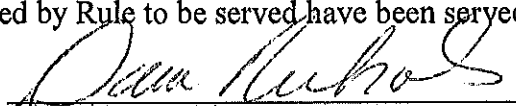
CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, certify that I have served the
within Return to *Petition for Rehearing*, dated September 19, 2023, on Appellant by depositing a
copy of the same in the United States mail, postage prepaid, this 19th day of September, 2023,
addressed to:

Lindsey S. Vann, Esquire
Allison Ann Franz, Esquire
Rosalind Sarah Duval Major, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, S.C. 29201

John Blume, III, Esquire
Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853

I further certify that all parties required by Rule to be served have been served.


Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

The South Carolina Court of Appeals

Stewart Buchanan, #69848, Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, Respondent.

Appellate Case No. 2019-001554

ORDER

The petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn.

Paul E. Thomas

J.

Stephanie P. McDonald

J.

3L L-H

J.

Columbia, South Carolina

cc:

Hannah Lyon Freedman, Esquire

John H. Blume, III, Esquire

Matthew C. Buchanan, Esquire

Lindsey Sterling Vann, Esquire

Allison Ann Franz, Esquire

Rosalind Sarah Duval Major, Esquire

The Honorable Ralph King Anderson, III

FILED
Oct 18 2023

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Stewart Buchanan, #69848, Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, Respondent.

Appellate Case No. 2019-001554

Appeal From The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Opinion No. 6021
Heard May 3, 2023 – Filed August 30, 2023
Withdrawn, Substituted, and Refiled October 18, 2023

AFFIRMED

Hannah Lyon Freedman, of Justice 360, and John H.
Blume, III, of Law Office of John Blume, both of
Columbia, for Appellant.

Matthew C. Buchanan, of South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

THOMAS, J.: Stewart Buchanan appeals the order of the Administrative Law Court (ALC), which affirmed the denial of parole by the Parole Board of the South Carolina Department of Probation, Parole and Pardon Services (the Board), arguing (1) the Board's procedures violated his right to due process and (2) his

forty-seven years of incarceration for a crime he committed as a juvenile constitutes cruel and unusual punishment. We are constrained to affirm.

FACTS

On May 18, 1973, Buchanan broke into the victim's home in the early morning hours. The victim, Buchanan's neighbor, awoke and fled the house. Buchanan stabbed her to death in the front yard. Buchanan, who was seventeen years old at the time, was under the influence of a mix of drugs and alcohol and a lack of sleep. In September of 1973, Buchanan pled guilty to murder and was sentenced to life imprisonment. At the time, an individual sentenced to life in South Carolina was eligible for parole upon the service of ten years. The trial court made a confidential report from Buchanan's psychiatrist available to the jury, which returned a verdict of guilty with a recommendation of mercy.¹

Buchanan first appeared before the Board on January 12, 1983, and was denied parole. He has now appeared before the Board at least eighteen times and been denied parole each time. Regarding the most recent denial in November 2018, parole was denied due to: (1) the nature and seriousness of the offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense.

Prior to the most recent parole hearing, Buchanan submitted a Memorandum in Support of Favorable Parole Recommendation. The memo reported Buchanan had "more than demonstrated his rehabilitation and reformation through his positive institutional record and participation in numerous counseling, rehabilitative[,] and religious programs." The memo argued the Board should consider the factors enumerated in *Aiken v. Byars*.²

¹ At the time of the hearing, the death penalty had been abolished, yet a jury still determined whether to recommend mercy.

² 410 S.C. 534, 765 S.E.2d 572 (2014). The *Aiken* court held that a sentencing court considering a sentence of life without parole (LWOP) for a juvenile offender must consider:

(1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence";

As to the first factor, the hallmark features of youth, the memo explained Buchanan was a juvenile at the time of the crime, with a juvenile's lack of maturity, underdeveloped sense of responsibility, and incomplete neurological development. The memo notes Buchanan's childhood was tumultuous with an unstable family life, difficulties at school, and a peer group that was involved with drugs and alcohol. His parents were absent most of the time, his older sister had just run away from home, he spent time in a boys' home, and he "began engaging in attention seeking behavior at home and at school"

Regarding the second factor, family and home environment, the memo reported that Buchanan's father was "an alcoholic who drifted from job to job" and when he was home, enforced corporal punishments, including backhanding, punching in the face, and hitting with a belt. Buchanan's mother was "cold and aloof" and highly critical of her children. In addition, she once allegedly attempted to run over one of Buchanan's father's mistresses and threatened to leave her husband many times "and did a few times for short periods of time." The family moved to Fort Mill, a town of less than 3,000 at the time, when Buchanan was seven years old. Buchanan did not fit in well in the small community. He was overweight, weighing over 200 pounds by the time he was sixteen years old. He was teased at school and became the class clown, often getting in trouble. After his older sister,

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- (2) the "family and home environment" that surrounded the offender;
 - (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him;
 - (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and
 - (5) the "possibility of rehabilitation."

Id. at 544, 765 S.E.2d at 577 (alterations in original) (quoting *Miller v. Alabama*, 567 U.S. 460, 477–78 (2012)). These factors are generally referred to as the *Miller* factors. The parties here also refer to them as the *Aiken* factors.

who acted somewhat as a surrogate mother to him, ran away, and Buchanan returned from a short stay at a boys' home, he "turned to drinking and drugs."

The memo describes Buchanan's situation at the time of the offense when considering the third factor from *Miller*, the circumstances of the offense. During the summer of 1973, Buchanan began using methamphetamines and LSD, had stopped attending his auto mechanics classes at York Technical College, was working night shifts, and was not sleeping. The night of the offense, he took several hits of LSD and drank excessively. His recollection of the night in question was "a blur." Buchanan admitted to the police that he committed the offense and told them "he did not have complete control of his actions that night." However, "[t]hen and now[, he] takes full responsibility for his actions and the consequences thereof."

In its discussion of the fourth factor, the incompetency of youth when dealing with the criminal justice system, the memo notes that at the time he pled guilty, Buchanan accepted the advice of his attorney, who "virtually guaranteed him that he would be paroled in less than twenty years" because many persons convicted of murder were granted parole after ten years of service, and it was rare not to be granted parole after twenty years.

Finally, as to the fifth factor, the possibility of rehabilitation, the memo notes Buchanan has spent the last forty-five years incarcerated and has taken advantage of the opportunities available to him. While he was still seventeen years old, he became part of Manning's Comprehensive Drug Abuse Program by visiting schools and churches to dissuade other teenagers from using drugs. Within the prison, he has been certified as a literacy tutor for more than forty years. He tutors, teaches English at night school, and started his own course to teach inmates basic legal research and writing. He has also worked as a volunteer Inmate Grievance Clerk and a hospice volunteer, and is a member of the Character Based Unit (a society of inmates focused on rehabilitation), which is demanding and requires a good disciplinary history, ability to contribute, demonstrated interest in rehabilitation, mental stability, and credibility. Buchanan volunteers as a chaplain in the prison and, when on work release, he is actively involved with Trinity Baptist Church and Kairos, a Christian ministry program.

In addition, Buchanan has been enrolled in the release plan, Jump Start. He was to graduate on November 14, 2018, "at the Blue Level — the highest possible level of completion." Jump Start is a Christian-based organization that focuses on transitioning men back into the workforce and society after prison. As a parolee

and graduate of Jump Start, Buchanan would be provided transitional housing for two years, be mentored, and receive assistance getting a job and eventually buying a home. He completed extensive business and vocational courses, completed more than 500 hours of carpentry training, and worked as a manager for Astro Glass during a work release program. Buchanan submitted numerous certificates of training, volunteerism, and education, and letters in support of his parole from educators, potential and past employers, and prison employees.

Dr. Susan Knight, a forensic psychologist, examined Buchanan in preparation for the parole hearing. She noted Buchanan had some disciplinary charges during his incarceration; however, she concluded he did not represent a significant risk for future violent acts. Dr. Knight interviewed numerous employers, prison employees, a chaplain, and others, who positively described Buchanan as follows: a model inmate; a hard worker; a "really good, really respectful guy"; of "good character"; respected and well-liked by other inmates; helpful to other inmates; smart; deeply involved in religion; "If he got out tomorrow, I would be happy to know he bought a home on my street"; sincere, articulate, and honest; and remorseful. Dr. Knight concluded Buchanan suffered from no psychological disorders and found, "[H]is prison record indicates an exceptionally-responsible worker, with very few physical altercations, and a positive demeanor and attitude. Collateral and interview data indicate [he] expressed remorsefulness[] and [the] ability for empathy."

Dr. Knight reviewed the criteria used by the Board and concluded that, as to the nature and seriousness of the offense, Buchanan took full responsibility, demonstrated remorse, and recognized with good insight the factors that facilitated his substance abuse. As to his adjustment while in confinement, Dr. Knight reiterated Buchanan's many accomplishments and honors. Regarding her assessment of Buchanan's risk to the community, Dr. Knight found he was at low risk for future violent recidivism, and she identified substance abuse treatment as his primary risk management strategy. Finally, as to the Board's criterion of the adequacy of an offender's parole plan, Buchanan has been approved for two years of housing at Jump Start and has the opportunity of employment in a ministry and involvement through Jump Start in woodworking, a furniture company, and other construction.

Buchanan's attorney also submitted a letter to the Board, arguing that after *Aiken*, it needed to consider Buchanan's "youth and its attendant circumstances and provide a meaningful opportunity for release." The letter requested the Board (1) hire an expert in adolescent brain development and consider the expert's written

evaluation; (2) schedule the parole hearing at a different time from hearings for adult offenders and allow testimony from mental health professionals and other witnesses; and (3) consider the factors of youth, including the incompetency of youth regarding the legal system, immaturity, home and community environment at the time of the offense, evidence of remorse, and efforts made toward rehabilitation.

The Board responded to the letter, arguing Buchanan was not being denied any constitutional rights. The Board noted, "Though [its] reasons for denial . . . will never change, these reasons for denial are legal" The Board also stated, "As long as it is revealed that the Board applied the mandatory criteria, the use of the events of the offense as a reason for denial is lawful."

At the hearing before the Board, Buchanan was represented by his attorney and accompanied by three pastors and Dave Johnson from Jump Start. Buchanan explained the events of the offense and his subsequent involvement in a comprehensive drug abuse therapy program, Narcotics Anonymous, and Alcoholics Anonymous. Buchanan's attorney spoke on his behalf. Pastor Tammy Blom also spoke on his behalf, concluding she envisioned Buchanan "moving into Jump [S]tart after leaving prison." Pastor Frank Ledvinka also spoke, indicating he believed in Buchanan, saw Buchanan's great love of God and others, and asked the Board to give him a chance. The hearing indicates the Board had "71 signatures in opposition." According to Buchanan, the Board deliberated for less than a minute before verbally denying his request for parole. In a subsequent letter, the Board stated it considered the following in denying parole:

- (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record . . . ;
- (2) the factors published in Department Form 1212 (Criteria for Parole Consideration);
- (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws[;] and
- (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1) of the South Carolina Code of Laws.

Buchanan appealed to the ALC.

In its order affirming the Board, the ALC noted its review was confined to a determination of whether the Board's denial of parole afforded Buchanan due process and was consistent with *Cooper v. South Carolina Department of Probation, Parole & Pardon Services*.³ The ALC rejected Buchanan's argument that recent case law had created a new substantive constitutional right to a "meaningful" parole review for inmates who were sentenced as juveniles, which required the Board to expressly consider an inmate's youth in determining parole. In addition, the ALC found it did not have the authority to "establish a new substantive constitutional right." The ALC denied Buchanan's request that it order the Board to grant parole. This appeal followed.

STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2022) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency. The court of appeals may reverse or modify the decision only if substantive rights of the appellant have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law. *Id.*

LAW/ANALYSIS

A. Due Process

Buchanan argues the "legal sea change" applicable to juvenile *sentencing* during the past decade or so requires the Board to adopt procedures that will allow juvenile offenders to have their youth and immaturity considered in *parole decisions*. See *Roper v. Simmons*, 543 U.S. 551, 578 (2005) ("The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed."); *Miller*, 567 U.S. at 489 (finding juveniles convicted of homicide could not be subjected to mandatory LWOP sentences, "regardless of their age and age-related characteristics and the nature of their crimes" because to do so would "violate [the] principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment"); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (holding "that for a juvenile offender who did not commit homicide[,] the Eighth Amendment forbids

³ 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008), *abrogated on other grounds by Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023).

the sentence of life without parole"); *Montgomery v. Louisiana*, 577 U.S. 190, 212–13 (2016) (giving *Miller* retroactive effect and stating, "In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.").

South Carolina recognized these principles in *Aiken* as to sentencing, holding the sentences of "fifteen inmates who were sentenced to life without parole as juveniles" violated the Eighth Amendment under *Miller*. 410 S.C. at 536–37, 765 S.E.2d at 573. Our supreme court acknowledged the "affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543, 765 S.E.2d at 577. *Aiken* held that a sentencing court considering an LWOP sentence for a juvenile offender must consider the *Miller* factors. *Id.* at 544, 765 S.E.2d at 577.

Buchanan argues the Board's current parole review process violates his due process rights by not also requiring the Board to consider these factors in reviewing his parole applications. Buchanan notes that fifteen of his eighteen parole denials cite, virtually verbatim, the same three reasons for denial:

- (1) the nature and seriousness of the current offense;
- (2) an indication of violence in this or a previous offense;
- and
- (3) the use of a deadly weapon in this or a previous offense.

According to Buchanan, the Board's process is insufficient because it does not require the Board to consider his youth and rehabilitation. Buchanan argues many jurisdictions have judicially or legislatively required parole boards to specifically consider the "hallmark features of youth" in considering parole of juvenile offenders.

The Board argues the change in the law as it relates to juvenile sentencing has not been extended beyond sentencing in South Carolina, maintaining *Miller* and *Aiken* require the factors of youth be considered only by the sentencing court, not the Board. *Id.* at 544, 765 S.E.2d at 577 (explaining that *Miller* mandates consideration of the factors of youth by "the sentencing authority"). In addition, the Board maintains that because Buchanan's sentence provides for parole eligibility, *Miller* and *Aiken* do not apply. See *Montgomery*, 577 U.S. at 212 ("A

State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.").

The statutory factors that must be considered by the Board are as follows:

The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

S.C. Code Ann. § 24-21-640 (Supp. 2022). In addition, the Board must consider the factors enumerated in its parole form.⁴

⁴ The current list of the factors on Form 1212 are as follows:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of [C]orrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes [an] inmate[']s living arrangements, where he/she will live and who he[/she] will live

In *Cooper*, our supreme court explained the Board's procedure is proper "if [the Board] clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the . . . factors published in its parole form." 377 S.C. at 500, 661 S.E.2d at 112; *see also Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009) (relying on the holding in *Cooper* to affirm a denial of parole because the parole board "clearly stated in its [order] that it considered the [section 24-21-60] criteria and the criteria set forth in Form 1212").

As found by the ALC, the Board's denial of parole met the requirements of *Cooper* and the ALC had authority to review the decision.⁵ Based on what *Cooper* says

with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;

11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate[;]
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of [L]aws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health[; and]
16. Other factors considered relevant in a particular case by the Board.

South Carolina Department of Probation, Parole and Pardon Services, *Criteria for Parole Consideration*, <https://www.dppps.sc.gov/content/download/200476/4681336/file/Criteria+for+Parole+Consideration.pdf>

⁵ Following the South Carolina Supreme Court's decision in *Cooper*, the General Assembly amended section 1-23-600(D) of the South Carolina Code to provide that "[a]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits . . . or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." 2008 S.C. Acts No. 334, § 7 (effective June 16, 2008). The ALC and our supreme court have continued to review these appeals where they implicate an alleged deprivation of due process. *See Rose v. S.C. Dep't of Prob., Parole &*

about a routine denial of parole, this is a routine denial and the ALC correctly affirmed the Board. We recognize there is tension between the principle that inmates are entitled to a meaningful parole review and what appears to be serial denials of parole based solely on factors that do not change and that have no relation to an inmate's rehabilitation. Even so, we read the authorities to instruct that the court system's role does not include looking behind the Board's statement that it has considered all of the factors and made its decision. As noted by the Board, despite Buchanan's claim that "the Board has denied his request for parole based on the facts and circumstances of the offense[,] which [are] fixed in the past and cannot be changed[,] " Buchanan has not been permanently denied parole and "[j]ust because [he] hasn't received parole yet doesn't mean he never will." See *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 (stating "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process") (emphasis in original); S.C. Code Ann. § 24-21-645(D) (Supp. 2022) ("[U]pon a negative determination of parole, prisoners in confinement for a violent crime . . . must have their cases reviewed every two years for the purpose of a determination of parole"); S.C. Code Ann. § 16-1-60 (Supp. 2022) ("For purposes of definition under South Carolina law, a violent crime includes the offense[] of[] murder").

Pardon Servs., 429 S.C. 136, 144, 838 S.E.2d 505, 510 (2020) (reviewing a claim that Rose had been granted parole in 2001 but remained incarcerated in 2020); *Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 419, 745 S.E.2d 110, 123 (2013) (reviewing a parole denial for an alleged *ex post facto* violation); see generally *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) (reviewing an appeal from the Board's decision finding Furtick ineligible for parole because an inmate has a liberty interest in gaining access to the Board and a permanent denial of eligibility implicates a liberty interest requiring due process); *Al-Shabazz v. State*, 338 S.C. 354, 376–77, 527 S.E.2d 742, 754 (2000) (finding the ALC has the authority to review non-collateral and administrative agency decisions); cf. *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 171, 886 S.E.2d 671, 674 (2023) (explaining "[an inmate's grievance] claim that implicates a state-created liberty or property interest is not required for the ALC to have subject matter jurisdiction over the appeal. However, the ALC is not required to hold a hearing in every matter and may summarily dismiss an inmate's grievance if it does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees").

The Board asserts as long as its notice of rejection states it followed the statutory and Form 1212 criteria, its order of denial is valid. Based on the law currently existing in South Carolina, we must agree. However, we are concerned regarding the perfunctory manner in which Buchanan's request for parole was denied. Although Buchanan and other juveniles similarly situated are technically eligible for parole, the continuing denial of parole based on the same factors, all unchangeable and related to their offenses, gives no guidance to these inmates about what can be done to improve their chances of parole and is very nearly equivalent to being ineligible for parole. Under the current system, it appears no passage of time served (here, forty-seven years) or showing of rehabilitation (here, eighteen parole reviews now indicating Buchanan "has more than demonstrated his rehabilitation") can change his fate before this Board. The public policy behind *Roper*, *Graham*, and *Miller*, to restore hope to juvenile offenders for some life outside of prison, is thwarted by the Board's continued reliance on factors existing at the time of the conviction with little or no apparent consideration of subsequent rehabilitation efforts. The prospect of parole, including meaningful parole hearings, incentivizes good conduct while imprisoned and encourages participation in rehabilitative programs, which reduces recidivism rates. See Amanda Dick, *The Immature State of Our Union: Lack of Legal Entitlement to Prison Programming in the United States as Compared to European Countries*, 35 Ariz. J. Int'l & Compar. L. 287, 291 (2018). Additionally, parole reduces prison populations by releasing rehabilitated inmates, lessening the fiscal burden of incarceration by eliminating spending on the detention of individuals who no longer pose a threat to society.

In this case, Buchanan argues he confessed, he accepted the advice of his attorney to plead guilty, "his attorney virtually guaranteed him that he would be paroled in less than twenty years[,] and the jury recommended mercy. He has been imprisoned for fifty years for a crime he committed at age seventeen. And there appears to be no dispute—none—that he has been an exemplary inmate and demonstrated remorse, rehabilitation, and a low risk for recidivism.

We reluctantly affirm the ALC's finding that the Board followed the proper procedure when it denied Buchanan parole because the Board's order of denial stated the Board had considered "the factors outlined in [s]ection 24-21-640" and "the factors published in Department Form 1212." See *Risher v. S.C. Dep't of Health & Env't Control*, 393 S.C. 198, 204, 712 S.E.2d 428, 431 (2011) ("A decision of the ALC should be upheld . . . if it is supported by substantial evidence in the record."); *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (providing the procedure for denying parole is proper "if [the parole board] clearly states in its

order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in [Form 1212]"); *Compton*, 385 S.C. at 479, 685 S.E.2d at 177 (affirming a denial of parole because the parole board's order complied with the *Cooper* requirements). Although the Board has complied with the minimal requirements necessary for this to satisfy the standard our supreme court articulated in *Cooper*, we are sympathetic to Buchanan's argument that it appears inmates who offended while juveniles are not given meaningful review regarding parole. Our role is one that is limited to operating within the framework set by statutory law and by our supreme court's precedents. It may well be good policy for the Legislature to review and/or revise the parole system to assure the factors of youth are a part of considering parole in these cases rather than permitting the seemingly perfunctory review now standardly given, but that is the Legislature's decision, not ours.

B. Cruel and Unusual Punishment

Buchanan argues the Board's multiple denials of parole over so many years violates the cruel and unusual punishment prohibitions in the United States and South Carolina Constitutions. We disagree.

The United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The South Carolina Constitution provides, "Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained." S.C. Const. art. I, § 15. Under either Constitution, we find no violation.

"[P]arole is a privilege, not a matter of right Parole is a creature of statute and is exclusively in the province of the legislative branch of government. The General Assembly empowers the Department to administer the parole program." *Major v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 384 S.C. 457, 465, 682 S.E.2d 795, 799 (2009). "[T]he *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149.

A State is not required to guarantee eventual freedom to a juvenile offender What the State must do, however, is give defendants . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to

explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile non[-]homicide offender, it does not require the State to release that offender during his natural life.

Graham, 560 U.S. at 75. We agree with the ALC that neither the United States Supreme Court nor our supreme court requires specific parole criteria to be considered in determining whether to grant parole, and the Board's denial of parole did not constitute cruel and/or unusual punishment under either Constitution.

CONCLUSION

Based on the foregoing, the order of the ALC is

AFFIRMED.

MCDONALD and HEWITT, JJ., concur.