STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS

STATE VS.

TERRELL ARTIETH SMITH

AKA:

Race: Black/African American Sex: M

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip:

DL#: [redacted] SID# [redacted]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2014GS1006001

A/W: 2014AI1010203048

Date of Offense: 06/11/2014

S.C. Code §: 16-23-0490

CDR Code #: 0549

RECEIVED

MAY 17 2017

SC Court of Appeal

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: **Possession Of A Weapon During The Commission Of A Violent Crime**

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted; ☐ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation; ☐ Negotiated Sentence; ☐ Recommendation by the State

ATTEST:

Charles W. Patrick, III, Assistant Solicitor SC Bar # 101831 | Defendant | Attorney for Defendant SC Bar # 76922

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center** for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ 0 provided that upon the service of _____ days/months/years and or payment of $ _____ plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-5999, 6000

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 1092 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing**

Total: $_____ plus 20% fee: _____ $_____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

☐ **Ordered** **PTUP** _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund.

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$
§14-1-211 (A)(2)(DUI Surcharge)	$100	$ 100.00
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	$	$ 3.75
TOTAL		$ 125.75

Other: _____

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____
DEPUTY CLERK

☐ Appointed PD or appointed other counsel.

§47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Dan Mrll

Court Reporter: Denise Lauder

Presiding Judge: _____

Judge Code: 2336

Sentence Date: 5/9/17

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TERRELL ARTIETH SMITH

AKA:

Race: Black/African American Sex: M

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL# [redacted] SID# [redacted]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1006000
A/W: 2014A1010203047
Date of Offense: 06/11/2014
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: **Attempted Murder**

In violation of § **16-03-0029** of the S.C. Code of Laws, bearing CDR Code # **3410**

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence; ☐ Recommendation by the State.

ATTEST:

Charles W. Patrick, III, Assistant Solicitor 101831 SC Bar #

Defendant

Attorney for Defendant 76922 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**, for a determinate term of 30 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ provided that upon the service of _____ days/months/years and or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-5999, 0001

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 1092 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☒ Def. Waives Hearing

Total: $_____ plus 20% fee: _____ $: _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund

Other: _____

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	$	$ 3.15
TOTAL		$ 128.15

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Tonya Vanderhorst
DEPUTY CLERK

☐ Appointed PD or appointed other counsel, §47-12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Dawn Mahl

Court Reporter: Denise Lawder

Presiding Judge: Kristi Laye

Judge Code: KLY

Sentence Date: 5/9/17

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TERRELL ARTIETH SMITH

AKA:

Race: Black/African American Sex: M

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL#: [redacted] SID#: [redacted]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1005999
A/W: 2014A1010203046
Date of Offense: 06/11/2014
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: **Murder**

In violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor I° or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted; ☐ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation; ☐ Negotiated Sentence; ☐ Recommendation by the State.

ATTEST: CWP

Charles W. Patrick, III, Assistant Solicitor SC Bar # 101831 | Defendant | Attorney for Defendant SC Bar # 76922

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center** for a determinate term of 35 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-0000, 0001

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 1092 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing

Total: $_____ plus 20% fee: _____ $_____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$ 100.00
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 61.6 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$ 3.75
TOTAL		$ 125.75

☐ Ordered PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund

Other: _____

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Onya Canfield
DEPUTY CLERK

☐ Appointed PD or appointed other counsel; §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Dea Arnold

Court Reporter: Denise Lawler

Presiding Judge: Judith Lang

Judge Code: 215

Sentence Date: 5/9/17

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
STATE OF SOUTH CAROLINA	)	INDICTMENT #: 2014-GS-10-5999, 2014-GS-10-6000, 2014-GS-10-6001
-versus-	)	
TERRELL ARTIETH SMITH,	)	
Defendant.	)	**VERDICT FORM**

VERDICT

As to 2014-GS-10-5999, Murder:

We, the Jury, find the Defendant Terrell Artieth Smith

____NOT GUILTY.

OR

_X_GUILTY.

As to 2014-GS-10-6000, Attempted Murder:

We, the Jury, find the Defendant Terrell Artieth Smith

____NOT GUILTY.

OR

_X_GUILTY.

As to 2014-GS-10-6001, Possession of a Weapon During the Commission of a Violent Crime:

We, the Jury, find the Defendant Terrell Artieth Smith,

____NOT GUILTY.

OR

__X__GUILTY.

I certify that this decision is the unanimous decision of the Jury.

Forrest A. Fuller

Forrest Fuller, Foreperson.
September 22, 2016.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Tonya Vandehey
DEPUTY CLERK

BCS20140706741

DOCKET NO. 2014GS1005999

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1409658

ARREST WARRANT NUMBER

2014A1010203046

DATE OF ARREST

July 2, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date. OCT 6 - 2014

VERDICT

Guilty

9/22/16

Foreperson of Petit Jury *Date*

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

TERRELL ARTIETH SMITH
DOB:
B/M

Indictment for

Murder

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 6, 2014 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about June 11, 2014, with malice aforethought, TERRELL ARTIETH SMITH did kill and murder Brandon Bennett by means of stabbing him multiple times, and that Brandon Bennett did die in Charleston County as a proximate result thereof on June 11, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. &F.C.
By
DEPUTY CLERK

BCS20140706741

DOCKET NO. 2014GS1006000

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1409658

ARREST WARRANT NUMBER

2014A1010203047

DATE OF ARREST

July 2, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date OCT 6 - 2014

VERDICT

Guilty.

9/22/16

Foreperson of Petit Jury *Date*

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

TERRELL ARTIETH SMITH
DOB: 1/
B/M

Indictment for

Attempted Murder

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. G.S. & F.C.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 6, 2014 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about June 11, 2014, the Defendant, TERRELL ARTIETH SMITH, did, with intent to kill and malice aforethought, attempt to kill Darryl Bennett. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

BCS20140706741

DOCKET NO. 2014GS1006001

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1409658

ARREST WARRANT NUMBER-

2014A1010203048

DATE OF ARREST

July 2, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date OCT 6 - 2014

VERDICT

Guilty

9/22/16

Foreperson of Petit Jury *Date*

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

TERRELL ARTIETH SMITH
DOB:
B/M

Indictment for

Possession of a Weapon During the Commission of a Violent Crime

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 6, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession of a Weapon During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about June 11, 2014, the Defendant, TERRELL ARTIETH SMITH, did possess a knife or visibly display what appeared to be a knife during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

State of South Carolina,

Plaintiff,

vs.

TERRELL ARTIETH SMITH,

Defendant.

IN THE COURT OF GENERAL SESSIONS
THE NINTH JUDICIAL CIRCUIT

Case No.: 2014GS1005999, 2014GS1006000, 2014GS1006001
Charges: Murder, Attempted Murder, Possession of Weapon During Commission of Violent Crime

MOTION TO PRECLUDE LIFE WITHOUT PAROLE AS A PUNISHMENT

THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITION AND ARTICLE 1 § 15 OF THE SOUTH CAROLINA CONSTITUTION PRECLUDE LIFE WITHOUT PAROLE AS A PUNISHMENT FOR JUVENILE OFFENDERS.

I. Introduction.

Over the last decade, the Supreme Court of the United States has dramatically altered the legal framework governing the sentencing of juvenile offenders. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court held that the Eighth Amendment's prohibition against cruel and unusual punishment prevented states from sentencing juveniles to death. Next, in *Graham v. Florida*, 560 U.S. 48 (2009), the Court went a step further, holding that sentencing juvenile offenders to life imprisonment without the possibility of parole for non-homicide offenses was also barred by the Cruel and Unusual Punishment Clause. In 2012, the Court determined in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), that even in homicide cases, states are precluded from imposing mandatory life without parole sentences on juvenile offenders. And most recently, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), the Court held *Miller* to be "a new substantive rule that, under the Constitution, must be retroactive" and effectively ordered new sentencing

proceedings for hundreds of individuals who had been sentenced to mandatory life without parole as juveniles. All four cases were grounded in one core Eighth Amendment principle: "children are constitutionally different from adults for purposes of sentencing." *Miller*. at 2464.

In *Aiken v. Byars*, 410 S.C. 534, 542–43, 765 S.E.2d 572, 576 (2014), the South Carolina Supreme Court embraced the reasoning of the United States Supreme Court that "youth has constitutional significance" and "must be afforded adequate weight in sentencing." After examining the sentencing hearings in cases where juveniles were sentenced to life without parole in this State in light of these decisions, the South Carolina Supreme Court concluded that the Eighth Amendment required that they be resentenced. The key defect in South Carolina's sentencing practices noted in *Aiken* was the failure to "fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543. The Defendant is before this Court not for a resentencing, but for initial sentencing pursuant to the standards of *Miller* and *Aiken*. He now moves that this Court remove life without parole as a sentencing option.

II. Juvenile Offenders' Criminal Culpability is Diminished in Ways that Make Life Without Parole Excessive and Cruel and Unusual.

A closer examination of the Court's reasoning in *Miller* is of particular importance to the issues raised in this section of the motion: whether a juvenile offender can ever be sentenced to life imprisonment without the possibility of parole.[1] The Court first observed that the question presented implicated "two strands of precedent reflecting our concern with proportionate punishment." *Miller*, 132 S.Ct. at 2463. The first set of cases adopted "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of the penalty." *Id.* (citing *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding that the

[1] The Court explicitly reserved judgment on whether the Eighth Amendment categorically prohibits sentencing juveniles to life imprisonment without parole regardless of the offense or the procedures used as this question was not presented to them. *Miller*, 132 S.Ct. at 2469.

death penalty is disproportionate for non-homicide crimes committed by adults), and *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that the death penalty may not be imposed upon persons with mental retardation)). After reaffirming that *Graham* "likened life without parole for juveniles to the death penalty itself," the Court turned to the second strand of relevant cases: those holding that mandatory imposition of capital punishment violates the Eighth Amendment. *Id.* at 2463–64 (citing *Woodson v. North Carolina*, 428 U.S. 280 (1976), and *Lockett v. Ohio*, 438 U.S. 586 (1978)). The Court then concluded that "the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Id.* at 2464.

The Court in *Miller* explained that all its recent holdings regarding juveniles hinged on the now established constitutional maxim that juveniles have both "diminished culpability and greater prospects for reform" and are thus "'less deserving of the most severe punishments.'" *Id.* at 2464 (quoting *Graham*, 560 U.S. at 68). The lessened culpability and possibility of rehabilitation are grounded in three constitutionally significant differences between juveniles and adults:

- Children are less mature and developed than adults, leading to "recklessness, impulsivity, and heedless risk-taking," *id.*;
- Children are more "vulnerable . . . to negative influences and outside pressures," and have "limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings," *id.* (internal quotations omitted);
- Children's actions are "less likely to be evidence of irretrievable depravity" because "a child's character is not as well formed as an adult's" and "his traits are less fixed," *id.* (internal quotations omitted).

These differences, *Miller* noted, result in part from a consistently growing body of social science and neuroscience research conclusively establishing that: a) only a small percentage of adolescents who commit crimes, even serious crimes, "'develop entrenched patterns of problem

behavior,'" *id.* at 2464 (quoting *Roper*, 543 U.S. at 570), and, b) there are fundamental differences between the brains of juveniles and adults in areas "'involved in behavior control.'" *Id.* at 2464–65 (quoting *Graham*, 560 U.S. at 68). Because the brains of juveniles are not "fully mature in regions and systems related to higher executive functions such as impulse control, planning and risk avoidance," juveniles have a constitutionally different level of moral blameworthiness and, for that reason, the penological justifications for any criminal punishment—deterrence and retribution—are inconsistent with life without parole sentences. *Id.* at 2464 n.5 (quoting Brief of the American Psychological Association et al.). The same characteristics that make this category of offenders less culpable necessarily mean that "'an irrevocable judgment about a [juvenile] offender's value and place in society,' [is] at odds with a child's capacity for change."[2] *Id* at 2465.

Miller reaffirmed what the Court had previously established in *Graham* and *Roper*: "Children are constitutionally different from adults for the purposes of sentencing." *Id.* at 2464. This immutable constitutional fact led the Court in *Roper* and *Graham* to declare that juveniles may not be sentenced to death regardless of the circumstances of the crime, and to similarly ban life without parole for non-homicide offenses, regardless of the underlying facts of the case. In *Miller*, the Court simply took the next logical step and held that the Eighth Amendment also bars mandatory life without parole sentences for homicides committed by juveniles.

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[2] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 BRAIN AND COGNITION 160, 162 (2010) ("From this perspective, middle adolescence (roughly 14–17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And, in fact, many risk behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving."); Sarah-Jayne Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397 ("The plentiful data that consistently paint a picture of the adolescent brain as relatively immature might speak against the relatively young age of criminal responsibility and harsh sentences for adolescents.").

For these reasons, the Court concluded that a sentence of life without parole, when imposed on a teenager as compared to an adult is the same "in name only." *Id.* at 2466. From a constitutional perspective, it is akin to the death penalty. *Id.* at 2466 ("[W]e viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment."). Thus, the Court held that the same constitutional protections afforded adults in capital cases must be provided in any case where a juvenile faces a possible sentence of life without parole. *Id.* at 2468 ("[A] similar rule [to capital cases] should apply when a juvenile confronts a sentence of life (and death) in prison"). The Eighth Amendment, in fact, demands "individualized sentencing . . . analogous to [that required in] capital punishment [cases]." *Id.* It was both the fact that the sentences were mandatory as well as the absence of a process for allowing a juvenile to present the full range of mitigating evidence at a meaningful sentencing hearing similar to the penalty phase of a capital trial which rendered the life without parole sentences imposed upon the petitioners constitutionally infirm. *Id.*

Significantly, "[n]othing the Court said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." *Id.* at 2465. Those characteristics are "evident in the same way, and to the same degree" in juveniles who commit homicide as they are in those who commit armed robbery, kidnapping or any other offense. *Id.* at 2465. In short, the constitutional difference between juvenile and adult offenders does not turn in any respect on the nature of the crime, and any purported distinction on that basis finds no support in the Court's recent decisions.

The Court's recent holding in *Montgomery v. Louisiana* emphasized how uncommon a juvenile life without parole sentence should be. The Court stated that is only "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without

parole is justified." *Montgomery*, 136 S.Ct. at 733. However, as the Court has recognized, there is great difficulty in distinguishing between the "unfortunate" and the truly culpable offender: "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Graham*, 560 U.S. at 72–73. Elaborating on the cruelty of imposing a life without parole sentence on a juvenile, the Court noted "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.'" *Miller*, 132 S.Ct. at 2469 (quoting *Roper*, 543 U.S. at 573); *see also Graham*, 560 U.S. at 68–69. Rather, "incorrigibility is inconsistent with youth." *Miller*, 132 S.Ct. at 2465 (internal quotation marks omitted).[3] Indeed, it is difficult for even highly-trained child psychologists and psychiatrists to differentiate juvenile offenders whose crimes are the product of permanent fixed character traits from those whose crimes are the result of circumstances and the transient qualities of youth. *Id.* at 2469 (citing *Roper*, 543 U.S. at 573, and *Graham*, 560

[3] Many individuals who committed serious crimes as juveniles have gone on to lead very productive lives. Wilbert Rideau, for example, was convicted of committing murder as a teenager and sentenced to death. *See Rideau v. Louisiana*, 373 U.S. 726 (1963). During his incarceration, he began writing for the prison newspaper and received numerous awards for his writing. Sometimes referred to as "the most rehabilitated man in America," (Life Magazine 1993), he was eventually released after his conviction was overturned by the federal courts. Post-release, he has authored several award-winning books. Erwin James, From Death Row Inmate to Acclaimed Author, THE GUARDIAN, (May 31, 2011), http://www.theguardian.com/society/2011/may/31/wilbert-rideau-rehabilitate-prisoners. Alan Simpson was convicted when he was seventeen years old of destroying government property. Facing years in prison, the judge instead decided to impose a sentence of two years of probation. With the help of a probation officer, Simpson turned his life around. He eventually went to college, graduated from law school, and after serving in the Wyoming state legislature was elected to the United State Senate. Brief of Former Juvenile Offenders Charles S. Dutton, Former Sen. Alan K. Simpson, R. Dwayne Betts, Luis Rodriguez, Terry K. Ray, T.J. Parsell, and Ishmael Beah as Amici Curiae in Support of Petitioners, Graham v. Florida, 560 U.S. 48 (2010) Nos. 08-7412, 08-7621.

U.S. at 68). It is equally difficult for a judge to make such a determination. This difficulty leads to the unacceptable risk that a juvenile may receive a constitutionally disproportionate sentence of life without parole. The fact that the judge took age into consideration is not enough to render such a sentence constitutional—if the sentence is disproportionate, it is necessarily unconstitutional. *Montgomery*, 136 S.Ct. at 734 ("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.'") (quoting Roper, 543 U.S., at 573).

The potential for reform that is present in all juvenile offenders requires States to maintain the possibility of eventual release as a sentencing option. It would be constitutionally excessive to render a final, permanent judgment that a juvenile offender should never be released; a mechanism for future review must be available, because States cannot ignore the juvenile's "potential to attain a mature understanding of his own humanity." *Roper*, 543 U.S. at 573–74.

Because the Court was confronted only with cases involving mandatory sentences of life without parole, it did not reach the question of whether "the Eighth Amendment requires a categorical bar on life without parole for juveniles." *Miller*, 132 S.Ct. at 2469. However, the Court did establish a presumption against such sentences:

> [G]iven 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." 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. (internal quotation marks omitted). The Court further emphasized in *Montgomery* that *Miller* had gone a long way towards eliminating life without parole for juveniles and re-iterated that such sentences should be scarcely given: "*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S.Ct. at 734. The constitutional reasoning that drove the decisions in *Roper*, *Graham*, *Miller*, and *Montgomery* leads inexorably to the conclusion that any life without parole sentence imposed on a juvenile offender is cruel and unusual punishment proscribed by the Eighth Amendment. *See Montgomery*, 136 S.Ct. at 734 ("[T]he penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'") (quoting *Miller*, 132 S.Ct. at 2465). There can be no genuine doubt that the Supreme Court will eventually so hold. Thus, rather than wait for the High Court to act, this Court should now declare that life without parole sentences are barred for juvenile offenders by the Eighth Amendment of the United States Constitution and Article I § 5 of the South Carolina Constitution.

III. The National and International Consensus Against Sentencing Juveniles to Life Imprisonment Without the Possibility of Parole.

The Eighth Amendment's prohibition on cruel and unusual punishment is measured against the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). While "the standard for extreme cruelty 'itself remains the same, . . . its applicability must change as the basic mores of society change.'" *Kennedy*, 554 U.S. at 419 (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972)) (Burger, C.J., dissenting). In order to determine whether the language of the Eighth Amendment applies, the Court looks to contemporary societal norms. *See* Robert J. Smith et al., *The Way the Court Gauges Consensus*

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF GENERAL SESSIONS FOR THE NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, v. TERRELL ARTIETH SMITH, Defendant.	Case No.: 2014GS1005999, 2014GS1006000, 2014GS1006001 Charges: Murder, Attempted Murder, Possession of Weapon During the Commission of a Violent Crime **DEFENDANT'S MOTION TO DECLARE S.C. CODE § 16-3-20(A) MANDATORY MINIMUM UNCONSTITUTIONAL AS APPLIED TO JUVENILE DEFENDANTS**

THE THIRTY YEAR MANDATORY MINIMUM SENTENCE SET FORTH IN S.C. CODE § 16-3-20(A) VIOLATES THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 15 OF THE SOUTH CAROLINA CONSTITUTION AS APPLIED TO JUVENILE OFFENDERS

The Defendant, Terrell Artieth Smith, moves this Court for a declaration that the mandatory minimum sentencing scheme for murder set forth in S.C. Code § 16-3-20(A), is unconstitutional as applied to juvenile offenders. *See, e.g., Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). As discussed in more detail below, these cases establish that juveniles are constitutionally different than adults for sentencing purposes and that any punishment in cases involving juvenile offenders must take those differences into account if it is to be proportional to both the offender and the offense. Among other things, accounting for those differences requires recognition of the fact that the penological justifications which support lengthy mandatory minimum sentencing for adults do not apply equally to juveniles. Therefore, this Court must not subject Terrell Artieth Smith, who was a juvenile at the time of the offense for which he is to be sentenced, to the same mandatory minimum sentence as an adult offender.

I. The Mandatory Minimum in S.C. Code § 16-3-20(A) is Unconstitutional as Applied to Juveniles because it Does Not Treat Juveniles as Constitutionally Different for Sentencing Purposes.

S.C. Code § 16-3-20(A) states that "[a] person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life." S.C. Code § 16-3-20(A). Because it was enacted long before *Miller* and *Aiken*, the statute does not differentiate between adults and juveniles, and it requires the same mandatory minimum sentence for both classes of offenders. Under the statute, just like an adult, a juvenile may never, regardless of the circumstances, receive a sentence less than thirty years of day for day imprisonment. The statute has not been updated to conform to current Eighth Amendment jurisprudence and thus now runs contrary to the established constitutional maxim that juveniles are different than adults for sentencing purposes. *Miller*, 132 S. Ct. at 2464.[1]

a. The Eighth Amendment of the United States Constitution and Article 1, § 15 of the South Carolina Constitution Prohibit the Imposition of the Same Mandatory Minimum Sentence on both Adults and Juveniles because Juveniles Have Diminished Culpability and Greater Prospects for Reform.

The Supreme Court in *Miller* explained that its recent decisions concerning juveniles— *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that that the Eighth Amendment's prohibition against cruel and unusual punishment prevented states from sentencing juveniles to death) and *Graham v. Florida*, 560 U.S.

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[1] South Carolina courts have not evaluated § 16-3-20(A) in the post-*Miller* landscape, nor has the legislature amended the statute to meet the changing panoramic of juvenile jurisprudence since *Graham*. Most recently, but still before *Miller* and *Aiken*, the Court of General Sessions for the Ninth Judicial Circuit rejected a challenge to the mandatory minimum as applied to juveniles in *South Carolina v. Pittman*, No. 04-GS-12-571, 04-GS-12-572, 2005 WL 831970 (S.C. 9th Cir. G.S. April 11, 2005). In that case, the court analyzed § 16-3-20(A) under the Eighth Amendment's evolving standards of decency test and was "not convinced that standards of decency have evolved to such an extent that would no longer permit juveniles to be sentenced to lengthy terms of imprisonment." *Id.* at *4. The view taken by that court is no longer correct under *Graham*, *Miller*, and *Aiken*, which require individualized sentencing for juveniles, drawing from their youth and its attendant characteristics before fashioning an appropriate sentence.

48 (2009) (holding that sentencing juvenile offenders to life imprisonment without the possibility of parole for non-homicide offenses was also barred by the Cruel and Unusual Punishment Clause) — hinged on the now-established constitutional maxim that juveniles have both "diminished culpability and greater prospects for reform" and are thus "less deserving of the most severe punishments." *Miller*, 132 at 2464 (quoting *Graham*, 560 U.S. at 68). The Court's observations with regard to lessened culpability and greater prospects for rehabilitation are grounded in three constitutionally significant differences between juveniles and adults:

- Children are less mature and developed than adults, leading to "recklessness, impulsivity, and heedless risk-taking," *id.*;
- Children are more "vulnerable . . . to negative influences and outside pressures," and have "limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings," *id.* (internal quotations omitted);
- Children's actions are "less likely to be evidence of irretrievable depravity" because "a child's character is not as well formed as an adult's" and "his traits are less fixed," *id.* (internal quotations omitted).

These differences, *Miller* noted, result in part from a consistently growing body of social science and neuroscience research[2] conclusively establishing that: (a) only a small percentage of adolescents who commit crimes, even serious crimes, "'develop entrenched patterns of problem behavior,'" *id.* at 2464 (quoting *Roper*, 543 U.S. at 570), and, (b) there are fundamental differences between the brains of juveniles and adults in areas "'involved in behavior control.'" *Id.* at 2464–65 (quoting *Graham*, 560 U.S.

[2] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 BRAIN AND COGNITION 160, 162 (2010) ("From this perspective, middle adolescence (roughly 14–17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And, in fact, many risky behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving."); Sarah-Jayne Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397 ("The plentiful data that consistently paint a picture of the adolescent brain as relatively immature might speak against the relatively young age of criminal responsibility and harsh sentences for adolescents.").

at 68). Because the brains of juveniles are not "fully mature in regions and systems related to higher executive functions such as impulse control, planning and risk avoidance," juveniles have a constitutionally different level of moral blameworthiness and, for that reason, the penological justifications—deterrence and retribution—for *any* criminal punishment are inconsistent with the most severe sentences. *See id.* at 2464 n.5 (quoting Brief of the American Psychological Association et al.).

In *Miller*, the Supreme Court reaffirmed what it had previously established in *Graham* and *Roper*: "Children are constitutionally different from adults for the purposes of sentencing." *Id.* at 2464. The Court in *Miller* emphasized that juveniles "cannot be viewed simply as miniature adults," *Id.* at 2470, and, as a result, their punishments should also be different because of their diminished culpability and greater prospects for reform. *Id.*[3] The South Carolina Supreme Court embraced this reasoning in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). In *Aiken*, the Court recognized that "youth has constitutional significance" and "must be afforded adequate weight in sentencing." *Id.* at 543. Applying those principles, the Court went on to hold that all South Carolina juveniles currently serving life without parole were entitled to resentencing because the proceedings which led to those sentences failed to "fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543; *see also id.* (declaring exploration "of the defendant's juvenility" an "affirmative requirement" for an Eighth Amendment-compliant sentencing scheme).

The current mandatory minimum scheme for the crime of murder is inconsistent with *Miller* and *Aiken* because it erroneously places juveniles and adults on equal footing for sentencing purposes. Both juvenile and adult offenders are subject to the same mandatory minimum of thirty years imprisonment and thus the sentencing scheme ignores the now firmly established scientific and constitutional differences

[3] The Supreme Court of the United States recently reaffirmed those principles in *Montgomery v. Louisiana*, 136 S. Ct. 718, 732–735. (2016).

between juveniles and adults. Due to their diminished culpability arising from the hallmark features of youth, juvenile offenders must be treated differently. *Miller v. Alabama*, 132 S. Ct. at 2468 ("in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult.").

b. The South Carolina Mandatory Minimum Sentencing Scheme for Murder Removes the Ability for the Sentencer to Exercise its Discretion and Adequately Implement an Individualized Sentence as Required by the United States and South Carolina Supreme Court.

The mandatory minimum sentence in S.C. Code § 16-3-20(A), as applied to juveniles, also violates the Eighth Amendment's requirement of individualized sentencing for juveniles established in *Miller*. Two strands of Eighth Amendment precedent are relevant here. The first, as discussed above, applies the Court's concerns for proportionate punishment to juveniles. Applying the Eighth Amendment's proportionality principle, the Court instituted a "categorical ban on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." *Miller*, 132 S. Ct. at 2463–64. The second has addressed mandatory sentences for adult offenders on various occasions. *See e.g., Hamelin v. Michigan*, 501 U.S. 957 (1991) (upholding a mandatory sentence of life without parole for possessing a large quantity of cocaine); *Ewing v. California*, 538 U.S. 11 (2003) (upholding a mandatory sentence of 25 years to life for the theft under California's three-strikes recidivist statute). Taken together, these two lines of cases establish the proposition that mandatory sentencing schemes permitted for adults are not permissible for juveniles.

Additionally, *Miller* established that the protections of individualized sentencing jurisprudence apply to juveniles in non-capital cases. *Id.* at 2470. The Court also made clear that individualized sentencing for juveniles in adult court should "follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* at 2471. Consistent with that mandate, a sentencer may not impose life imprisonment without the possibility of parole on a juvenile offender without first accounting for how children are different as a class, the particular circumstances of

the child and the child's offense, and how those differences counsel against irrevocably sentencing a juvenile to a lifetime in prison. *See Miller*, 132 S. Ct. at 2467–68. Thus, *Miller* requires that juveniles convicted of murder receive an individualized sentencing hearing designed to take into consideration the factors attendant to youth and the circumstances of the offense before fashioning an adequate sentence. *See id.* at 2460 (suggesting that mandatory schemes for juveniles that eliminate the sentencer's discretion to impose a lesser and more appropriate punishment "run[] afoul of our cases' requirement of individualized sentencing").[4]

Mandatory minimum sentences, by their very nature, do not permit the implementation of individualized sentencing contemplated in *Miller* and *Aiken*. Specifically in this case, the arbitrary 30 year minimum ties the sentencer's hands and eliminates the exercise of discretion to determine the appropriate sentence. Under the sentencing scheme in § 16-3-20(A), juveniles will receive the same sentence of 30 years to life in prison as adults, regardless of mitigating evidence and the applicability of sentencing factors outlined by the court in *Miller* and *Aiken*. The mandatory minimum sentencing provision vitiates a sentencer's ability to craft a lesser sentence if it deems such a sentence appropriate after its consideration of those factors. While that regime may have been permissible in the pre-*Miller* era, it cannot be squared with the Eighth Amendment rules that now govern juvenile sentencing.[5]

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[4]At least two jurisdictions, Florida and Iowa, have recently held that mandatory minimum schemes for juveniles violate the Eighth Amendment under *Miller* because they deprive the sentencer of the discretion to consider youth and its attendant characteristics. *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014) (holding that the mandatory sentencing schemes for juveniles offenders deprive a sentencing court the discretion to consider the youth of the defendant under *Miller*); *Florida v. Burton*, No. 94-10478 (Fla Cir. Ct. Sept. 23, 2016) (declaring the mandatory minimum sentence for juveniles convicted of murder in adult court unconstitutional because it effectively barred individualized sentencing as required in *Miller*). The field of juvenile sentencing has drastically changed over the last ten years, and the mandatory minimum for juveniles in § 16-3-20(A) has not evolved to meet the new standards.

[5] The Supreme Court's decision in *Penry v. Lynaugh*, 492 U.S. 302 (1989), which held that individualized sentencing requires a vehicle through which it can give effect to mitigating evidence, further supports defendant's position. In *Penry*, the Court found that Texas's capital sentencing scheme failed to give

For these reasons, the mandatory minimum set forth in S.C. Code § 16-3-20(A) violates the Eighth Amendment and Article I, Section 15 of the South Carolina Constitution as applied to juvenile offenders because it removes the sentencer's discretion to determine the appropriate sentence by confining their choices to the same sentencing range prescribed for adult offenders. Thus, it should be utilized in this case.

c. This Court can Fashion an Appropriate Remedy that Cures the Constitutional Violation of S.C. Code § 16-3-20(A) as Applied to Juveniles.

This Court could declare S.C. Code § 16-3-20(A) unconstitutional as applied in this case, and defer future action until the legislature enacts a sentencing scheme that comports with current constitutional jurisprudence. Alternatively, this Court could, until such time as a new sentencing range is enacted, temporarily apply the sentencing scheme for voluntary manslaughter contained in S.C. Code § 16-3-50, for juveniles convicted of murder. This option functions as a constitutional safe harbor under *Miller* and *Aiken* because it applies the juvenile jurisprudential principle of diminished culpability. Diminished culpability indicates a diminished *mens rea*. Through this solution, juveniles would be sentenced under the mental state immediately preceding murder: voluntary manslaughter. The sentencing scheme in § 16-

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effect to Penry's mitigation evidence because the scheme did not ask for the consideration of his intellectual disability and history of abuse with regards to the special issues in the statutory scheme. The special issues presented to the sentencer made it impossible to know whether or not the jury was able to give effect to the mitigating evidence of Penry's intellectual disability and history of abuse. In ordering that the state court resentence Penry, the Court expressed its concerns with sentencing schemes that provide the sentencer with mitigation evidence, but not with a vehicle that gives effect to the evidence.

Similarly, § 16-3-20(A) prevents a sentencer from giving effect to the mitigating realities of juvenility. By applying the same sentence to juveniles and adults, it is impossible to tell if and how the sentencer gave effect to the special mitigating circumstances of youth. Moreover, the mandatory scheme precludes a sentencer from giving full effect to the constitutional relevance of youth. The mandatory 30 year minimum bars a sentencer from giving the least culpable juvenile a lessened punishment as compared to an adult. This effectively constrains a sentencer's use and application of juvenility as mitigating evidence. That constraint, as the court found in *Penry*, abrogates the Eighth Amendment requirement of individualized sentencing.

3-50 also provides the sentencer with a range of sentencing options, thus providing the opportunity for the comprehensive implementation of individualized sentencing. Under this temporary solution, a juvenile would face a sentence of 2–30 years imprisonment. This Court would then apply the constitutional relevance of youth under *Miller* and *Aiken*. By taking into account a juvenile's diminished culpability, and providing for individualized sentencing, the Court would conform to current federal and state constitutional standards.

II. Conclusion

This Court should declare that South Carolina's mandatory minimum sentencing scheme, S.C. Code § 16-3-20(A), for murder as unconstitutional, as applied to juveniles, because the mandatory minimum scheme violates the defendant's rights under the Eighth Amendment of the United States Constitution and Article I Section 15 of the South Carolina Constitution.

Respectfully submitted,

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