Appellate Docket 1-15-2060

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. ADDOLFO DAVIS, Petitioner-Appellant.	)	Appeal from Cook County Circuit Court Criminal Division Honorable Angela M. Petrone Judge Presiding No. 91-CR-03548

BRIEF OF THE ILLINOIS COALITION FOR THE FAIR SENTENCING OF CHILDREN AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Illinois Coalition for the Fair Sentencing of Children (the "Coalition") is a group of organizations, entities, and professionals with experience and knowledge centering on adolescent development, especially with respect to how young people interact with the juvenile and criminal courts.[1] The Coalition also has studied and closely followed U.S. Supreme Court and Illinois Supreme and Appellate Court jurisprudence regarding the sentencing and rehabilitation of youthful offenders. Based on the understanding that children are fundamentally different than adults in ways that require special consideration at sentencing, the Coalition and its member organizations have lent their expertise to children and families involved with the justice system, both in courts and legislatures around the country. Moreover, in addition to conducting extensive research and publishing a report regarding children serving life sentences in Illinois, the Coalition and its member organizations have filed *amicus curiae* briefs in watershed cases regarding the special status of children in the justice system such as *Graham v. Florida*, 560 U.S. 48 (2010), *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), *Miller v. Alabama*, 567 U.S. __, 132 S. Ct. 2455 (2012), *People v. Davis*, 2014 IL 115595, and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016).

The Coalition, as *amicus curiae* to the Court, contends that the United States and Illinois Supreme Courts have increasingly determined that children, while capable of committing terrible crimes that cause irreparable harm, have a

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[1] The Coalition's members are listed in the Appendix.

diminished culpability and tremendous capacity to change and rehabilitate. Young people are, therefore, so much more than their worst act. The Coalition, by and through its member organizations, therefore respectfully submits this brief urging this Court to vacate Mr. Davis' unconstitutional life-without-parole sentence and remand for a new sentencing hearing that comports with the Illinois and U.S. Constitution, as well as the logic, science, and principles that undergird the United States Supreme Court's recent decisions.

II. INTRODUCTION

Addolfo Davis has been resentenced to die in prison because he foolishly went along with two older individuals into a robbery-turned-murder when he was just 14 years old. That 14-year-old boy lived in deplorable conditions in an overcrowded home, with no father and with a substance-abusing mother who loved drugs more than her son. (C. 331-32 (Apr. 18, 2011 Aff. of Dr. Marty Beyer ("Beyer Aff.")).) He became a ward of the state shortly before the incident leading to his incarceration. *People v. Davis*, 388 Ill. App. 3d 869, 874 (1st Dist. 2009). Barely literate, he signed a written statement prepared by the police because he was embarrassed by, and felt pressure from, his intoxicated mother. (C. 343 (Beyer Aff.).) Addolfo's home life was so intolerable that when he signed the written statement, he thought he would be "going to the Audy Home. *I loved the Audy Home.*" (*Id.* (emphasis added).) Instead, he was sentenced to life in prison and has bounced between Stateville and Tamms, the now-closed supermax facility.

When he was convicted, the court had no sentencing discretion. Thus, Addolfo did not initially receive an opportunity to demonstrate his lesser culpability, his personal background, or his capacity for change. *People v. Davis*, 2012 IL App (1st) 112577-U. In 2014, however, the Illinois Supreme Court held that Addolfo's mandatory sentence was unconstitutional and remanded the case to the trial court for resentencing. *People v. Davis*, 2014 IL 115595. More than 20 years after his conviction, Addolfo finally received the opportunity to prove himself capable of rehabilitation, and to show that—at 38—he was no longer the young boy who participated in the crime when he was 14.

After remand, Addolfo's case was the first in Illinois to go back before a judge in Cook County for resentencing under the strictures of *Miller*, 132 S. Ct. 2455. Addolfo's resentencing was completed before the United States Supreme Court followed the *Miller* decision with a confirmatory decision in *Montgomery*, emphasizing that "a lifetime in prison is a disproportionate sentence for all but the rarest of children." 136 S. Ct. at 726. As of the date of this submission, Addolfo is the only youthful offender in Cook County to have his initial sentence of life without the possibility of parole reinstated following *Miller*.

The Circuit Court's decision cannot stand. In an unbroken series of Supreme Court and Illinois decisions during a span of nearly 10 years, the courts have relied on cognitive and psychological studies showing that when it comes to blameworthiness, children are not like adults. Almost every child should receive a second chance because almost no child (or as the Supreme Court has

said, only the *rarest* child) is irreparably corrupted. But when the Circuit Court resentenced Addolfo here, it committed a fundamental error that infected the entire framework of its decision. As set forth in the Resentencing Order:

> I read the articles written by Lawrence Steinberg of Temple University which discuss recent studies of cognitive and affective development in adolescene and ar detailed above. Initial hypotheses was that adolescents had poor cognitive skills relevant to decision making and risky behavior. *However, there is substantial evidence that adolescents engage in dangerous activities despite knowing and understanding the risks involved.* More research need to be done to take this field beyond speculation. [*Sic.*]

(May 4, 2015 Resentencing Order ("Resentencing Order") at 31 (emphasis added).)

In reaching this conclusion, the court exceeded its mandate. This passage reflects a fundamental misunderstanding of the applicable resentencing process, and it marks the starting point at which the Circuit Court departed from Supreme Court precedent. The Circuit Court reached a result opposite to well-settled cognitive and psychological science as accepted by the United States and Illinois Supreme Courts, causing the judge to view the case through the wrong lens. The Coalition therefore submits this amicus brief in support of Addolfo Davis and urges that the Court remand with instructions to conduct a resentencing hearing consistent with the Supreme Court's holdings in *Miller* and *Montgomery*.

III. ARGUMENT

A. The Circuit Court Exceeded Its Mandate and Misapplied the Constitutional Framework Established in the Supreme Court's Decisions on How to Sentence Youthful Offenders.

By questioning well-established cognitive and psychological research, the Circuit Court disregarded the Illinois and U.S. Supreme Courts' determination that "children are constitutionally different from adults for purposes of sentencing.'" *People v. Davis*, 2014 IL 115595, at ¶ 20 (quoting *Miller*, 132 S. Ct. at 2464). Children "'have diminished culpability and greater prospects for reform.'" *People v. Reyes*, 2016 IL 119271, at ¶ 9 (quoting *Miller*, 132 S. Ct. at 2464). Although "citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions," "the literature confirms what experience bears out." *J.D.B.*, 564 U.S. at 273 n.5.

Binding precedent accepts that several cognitive and psychological factors negate any inference from childhood behavior that an individual is inherently, unfixably corrupt and therefore deserving to die in prison. For example, the decisions emphasize the distinction between the "unfortunate yet ***transient*** immaturity of youth" and "***irreparable*** corruption." *Montgomery*, 136 S. Ct. at 734 (emphasis added); *People v. Ortiz*, 2016 IL App (1st) 133294, at ¶ 19; *People v. Nieto*, 2016 IL App (1st) 121604, at ¶ 46. As the U.S. Supreme Court has stated, "'incorrigibility is inconsistent with youth.'" *Miller*, 132 S. Ct. at 2465 (quoting *Graham*, 560 U.S. at 73).

The precedent contains a stern warning to sentencing courts: the type of sentence that Addolfo received in this case should be the exceedingly rare exception to a particularly ironclad rule. After all, "'[i]t is difficult *even for expert psychologists* to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *People v. Gipson*, 2015 IL App (1st) 122451, at ¶ 52 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)). Respectfully, judges and prosecutors are not expert psychologists, so this Court's skepticism should be at its zenith when the Circuit Court has attempted, as it did here, to assess the validity of the studies leading to decisions like *Roper*, *Miller*, *Montgomery*, and the Illinois Supreme Court decision in this very case.

Ultimately, a sentence of life without the possibility of parole is a profoundly unjust punishment for a youthful offender: it amounts to nothing short of "denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the youthful offender], he will remain in prison for the rest of his days." *Reyes*, 2016 IL 119271, at ¶ 9. The sentencing court can no longer treat a child with the same prejudice and skepticism as it treats adults who commit heinous crimes. Giving force to overwhelming scientific literature and "commonsense propositions" about what drives children to commit crimes, recent Eighth Amendment precedent has all but eliminated the courts' discretion to sentence a youthful offender to life without parole. *Nieto*, 2016 IL App (1st)

121604, at ¶ 46 ("*Montgomery* indicates that not even an exercise of discretion will preclude a *Miller* challenge.").

Under *Miller* and its progeny, the sentencing analysis in cases involving the youthful offenders is different. As early as the 2005 decision in *Roper v. Simmons*, the Court outlined three traits of children that make them constitutionally different from adults: they have "[a] lack of maturity and an underdeveloped sense of responsibility . . . [which] often result in impetuous and ill-considered actions and decisions"; they are "more vulnerable or susceptible to negative influences and outside pressures"; and their "personality traits . . . are more transitory [and] less fixed." 543 U.S. at 569-70.

When it prohibited mandatory life-without-parole sentences for children in *Miller*, the Court elaborated upon the cognitive and developmental factors that a court must consider in mitigation when sentencing youthful offenders. These include (1) chronological age and its consequent "immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the family and home environment; (3) peer pressure or other external influence as reflected in the offense conduct; (4) the extent to which the characteristics of youth themselves may have led to conviction of a more serious offense; and (5) the "possibility of rehabilitation." 132 S. Ct. at 2468.

With respect to children, more than any other group of individuals, the Eighth Amendment to the United States Constitution embodies a rehabilitative principle that all but requires a second chance. The distinct characteristics of

children mean they are categorically less culpable and have a greater capacity for redemption than adults who commit the same crimes. Thus, the Court has held life imprisonment to be inappropriate for "all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" *Montgomery*, 136 S. Ct. at 726 (quoting *Roper*, 543 U.S. at 573).

Moreover, the emphasis placed on rehabilitation in *Miller* has entered into the rarefied category of significant and substantive constitutional decisions which receive retroactive application. As an implicit result, the courts have placed an emphasis on *accuracy* over *finality* when it comes to a youthful offender. *See generally Montgomery*, 136 S. Ct. 718; *People v. Davis*, 2014 IL 115595. The U.S. Supreme Court has therefore continually remanded life sentences for reconsideration under *Montgomery* where it was apparent that the sentencing courts did not faithfully apply the *Miller* framework. *See, e.g., Tatum v. Arizona*, 580 U.S. ___, 137 S. Ct. 11, 11-13 (2016).

The trends evident in these decisions are similarly visible in actions by the Illinois General Assembly. In July of 2015, the Legislature amended the state's sentencing laws and dictated the minimum set of facts and circumstances a court must consider before sentencing any person found to have committed an offense under the age of 18. These youth-related factors include "age, impetuosity, and level of maturity at the time of the offense," as well as the existence of "outside

pressure" and the offender's home environment, among other considerations.[2] 730 ILCS 5/5-4.5-105(a) (eff. Jan. 1, 2016).

Accordingly, the decision in this case represents a deviation from an enduring trend—including the decision in Addolfo's earlier appeal to the Supreme Court. *See Davis*, 2014 IL 115595. Upon remand from the Illinois Supreme Court, the Circuit Court reinstituted a sentence of life without parole despite Addolfo's young age of 14 at the time of the incident leading to his incarceration. Erroneously, the court failed to "consider [Addolfo's] special characteristics [at age 14] even when exercising discretion" in resentencing him. *Nieto*, 2016 IL App (1st) 121604, at ¶ 49. "Where the record affirmatively shows that the trial court failed to comprehend and apply such factors in imposing a discretionary sentence of natural life without the possibility of parole, a juvenile defendant is entitled to relief." *Id.*

On its face, the Resentencing Order failed to comprehend or apply the *Miller/Montgomery* sentencing framework. Indeed, the Resentencing Order demonstrated an acute skepticism that youthful offenders are marked by a reduced blameworthiness and increased ability to learn and improve, and also skepticism about the logical and scientific underpinnings of the growing tide of decisions under the Eighth Amendment.

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[2] This law was not yet on the books at the time of Addolfo's resentencing, but the fact that it was signed into law fewer than three months after the Resentencing Order was entered is further proof that Illinois has increasingly come to recognize the importance of careful evaluation of the attendant qualities of youth in the context of the sentencing of youthful offenders.

First, the Circuit Court placed substantial weight on factors that are irrelevant and even antithetical to the analysis prescribed in *Miller* and *Montgomery*. When resentencing a child offender under those precedents, for instance, any consideration of the gravity and circumstances of the offense must be undertaken in light of the mitigating factors of youth. *See Adams v. Alabama*, 578 U.S. ___, 136 S. Ct. 1796 (2016) (Sotomayor, J., concurring) (noting the Court's "repeated exhortation that the gruesomeness of a crime is not sufficient to demonstrate that a juvenile offender is beyond redemption"). Here, however, the Resentencing Order merely concluded that Addolfo "planned to kill" and "was a willing shooter" and thus that Addolfo's participation was neither "immature, impetuous, or impulsive." (Resentencing Order 29.) This reasoning is impermissibly circular. The court simply excused itself from considering whether 14-year-old Addolfo's demonstrable immaturity and impetuosity (*see* Section III.B, below) resulted in the supposed "plan" to kill.[3]

It is also clear from the Resentencing Order that the Circuit Court impermissibly considered the deterrent and public safety aspects of incarceration. (Resentencing Order 32 ("This sentence is necessary to deter

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[3] Moreover, the Circuit Court's finding that Addolfo was a "willing shooter" is inconsistent with the record. Although the jury's verdict is not at issue in this appeal, events involving the jury are illuminating. "During deliberations, the jury sent a note to the trial court asking, 'Does a defendant actually have to be proven to have pulled the trigger of the murder weapon during a home invasion or is that person legally responsible for the conduct of another who did?'" *People v. Davis*, 388 Ill. App. 3d 869, 874 (1st Dist. 2009) (noting that over Addolfo's objection, the trial judge answered these questions "no" and "yes," respectively).

others. It is necessary protect the public from harm.").) The Supreme Court rejected this approach in *Miller* and *Montgomery* and announced a presumption—to be upheld in all but the rarest cases—that a youthful offender's sentence should aim to rehabilitate and release. *See Miller*, 132 S. Ct. at 2465 ("[T]he same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment.") (internal quotation omitted).

Third, the Circuit Court failed to consider certain mitigating factors emphasized in the *Miller* and *Montgomery* decisions. The court's reliance on Addolfo's prior history and difficulties in school disregarded ample evidence that they arose from the many severe difficulties in Addolfo's childhood. (*See* Section III.B, below.) The Resentencing Order also failed to address the extent to which Addolfo's youth at the time he was charged and tried interfered with his ability to communicate with counsel and therefore secure an adequate defense for himself. *See J.D.B.*, 564 U.S. at 271-77. Above all, the Circuit Court did not address "the question *Miller* required if not only to answer, but to answer correctly: whether [Addolfo's] crimes reflected 'transient immaturity' or 'irreparable corruption.'" *Adams*, 136 S. Ct. at 1800 (quoting *Montgomery*, 136 S. Ct. at 734). Given the Supreme Court's admonition in the *Montgomery* decision that life without parole is an appropriate sentence *only* for the rarest of youthful offenders, the court's oversight warrants remand to a different judge for further resentencing.

Perhaps even more troubling, the Circuit Court disregarded a fundamental premise behind the Court's recent sentencing decisions: that childhood entails an appreciable degree of "immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller*, 132 S. Ct. at 2468. This proposition was rejected outright in the Resentencing Order, which cites without attribution "articles written by Lawrence Steinberg of Temple University," presumably the 2003 and 2005 articles attached to the order. (Resentencing Order 31.) Based on the court's understanding of these articles, the court found that "there is substantial evidence that adolescents engage in dangerous activities despite knowing and understanding the risks involved" and "more research need[s] to be done." (*Id.*) The Circuit Court's reservations are ill-founded and contrary to unambiguous precedent. Based on evidence from the years 2005 to 2012, the Supreme Court found, in *Miller*, that "[t]he evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s [2005] and *Graham*'s [2010] conclusions ***have become even stronger***." *Miller*, 132 S. Ct. at 2464 n.5 (emphasis added).

Thus, what the Circuit Court here deemed to be "speculation" based on incomplete research is, in fact, a legal principle clearly established by the U.S. Supreme Court—and one that the Court has recognized as having a demonstrable basis in science. *See Graham v. Florida*, 560 U.S. at 68 (noting that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"). Indeed, the principle is so well-

established in science and law that the Court has recognized it a matter of *common sense*. *See J.D.B.*, 564 U.S. at 272.

In the end, the Circuit Court erroneously regarded Addolfo with the skepticism which, if ever appropriate, should be reserved only for adults rather than a 14 year old, like Addolfo at the time of his offense. The rationale and tenor of the Resentencing Order reflects a wholesale disregard for the findings and holdings of the U.S. and Illinois Supreme Courts. Accordingly, this Court should vacate Addolfo's sentence and remand the case for further resentencing before a different judge.

B. Addolfo Is Not The Rare Exception to the Presumption Against Life Sentences for Child Offenders.

Addolfo was 14 at the time of the incident that resulted in the lifetime of incarceration he now appeals. He was born in 1976 "to a 19-year old mother who used drugs and alcohol while pregnant with him." (C. 331 (Beyer Aff.).) His home life just a year before the events at issue was characterized by:

> poor supervision, poor nutritional diet, unsanitary living environment and poor parenting . . . His grandmother is primary caretaker, although mother resides in the home, she provides little nurturance, discipline, emotional or financial support. There is often conflict between mother and grandmother over caretaking of Addolfo . . . The household is quite chaotic, as numerous relatives continuously parade in and out of the home. Family members sleep on couches or on mattresses with no sheets . . . extremely unsanitary. The entire family has poor hygiene. Meal preparation is sporadic. Addolfo has poor school attendance because he has few clothes and they are worn.

(*Id.*) Addolfo described the "most difficult thing" in his childhood was "having a mother who loved drugs more than she loved me." (C. 332.)

Addolfo grew up in circumstances that would have profoundly arrested any child's development. He spent his early childhood in grossly unsanitary and overcrowded conditions, underfed and lacking adequate clothing, and subjected alternatingly to abuse and neglect on both physical and emotional levels. (C. 331-35.) Addolfo suffered from a range of untreated physical and mental health issues, including exhaustion, self-inflicted injuries to his head and body, insomnia, severe anxiety, malnourishment, intellectual disabilities, and chronic depression.[4] (*Id.*)

In February 1990, just months before the robbery, Addolfo's probation officer reported that Addolfo's "home environment was 'very poor,' his attendance at schools was a problem, and his behavior was worsening due to lack of supervision." The probation officer "warned that Addolfo might put himself in danger because of his lack of judgment" and, because Addolfo's home situation was so "'unstable and in such a chaotic state,'" the probation officer and a DCFS social worker agreed that Addolfo "'should be removed from home.'" (C. 334.) After reviewing the facts and circumstances of Addolfo's childhood, Dr. Beyer concluded:

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[4] In the Resentencing Order, the Circuit Court observed that Addolfo's father was absent and his mother was addicted to drugs, but did not apparently regard this or any other aspect of Addolfo's upbringing as particularly mitigating, focusing more on social services that the family received than on the effect of the conditions on Addolfo's development. (Resentencing Order 27, 29.)

> Juvenile probation did not provide intensive services and did not urge the court to push the Department of Children and Family Services to place him in a residential placement until he was 14, even though the policy reports of his early offenses demonstrate that they were survival crimes of a youngster who was hungry. Rejection by his parents and hunger for food, housing and nurturance drove Addolfo to older friends and the gang became his family. Early, repeated trauma, school failure and immature thinking affected his behavior as a teenager—including his offense.

(C. 329 (Beyer Aff.).)

Addolfo simply was not the rare, incorrigible child for whom life without parole is a proportionate punishment.

> Addolfo had a horrific life story by the age of 14. DCFS repeatedly documented his dire living conditions but did not protect him. Mental health evaluations described his damaging family problems but trauma treatment and removal from home were not recommended. A private agency provided mentoring which was obviously not sufficient given what their reports reflected about his home life. His homelessness and survival crimes came to probation's attention, but it took years from his first arrest for stealing food to a court order for DCFS to place Addolfo.

(C. 336 (Beyer Aff.).)

A child's capacity for rehabilitation is the single most important factor underlying recent decisions that have found children to be different for purposes of sentencing. Here, according to Dr. Beyer, "the single best predictor of the likelihood of Addolfo's rehabilitation by age 21 was his educational and emotional progress in the Audy Home in the months between his arrest and the transfer hearing." (C. 346.) Given what the courts have now recognized about children, it should be no surprise that:

> His amenability at the Audy Home indicated that Addolfo's delinquency was environmentally determined: removed from his family and the need to survive on the street and provided with education and counseling, he thrived in juvenile rehabilitation program. In fact, DCFS records in [March 1993] (2 ½ years after his arrest when he was 16) noted that he was a "model person" and one of the best students in the Audy Home school.

(C. 347 (Beyer Aff.).)

Addolfo did not, however, continue to receive the support —however minimal— that helped to place him back on track. Instead, he was sentenced like an adult to a life in prison and shipped as a teenager to facilities like Stateville and Tamms. Despite the deeply negative influence of gangs on the young Addolfo,[5] he was placed right back into a community filled with Gangster Disciples. *See Hill v. Godinez*, 955 F. Supp. 945, 949 (N.D. Ill. 1997) (detailing the prevalence and influence of the gang at Stateville). As for Tamms (Illinois' failed supermax experiment), that facility was closed in 2012 during the pendency of a lawsuit in which the judge found that "Tamms imposes drastic limitations on human contact, so much so as *to inflict lasting psychological and emotional harm* on inmates confined there for long periods." *See Westefer v. Snyder*, 725 F. Supp. 2d 735, 769 (S.D. Ill. 2010) (emphasis added) *vacated on other grounds by* 682 F.3d 679 (7th Cir. 2012).

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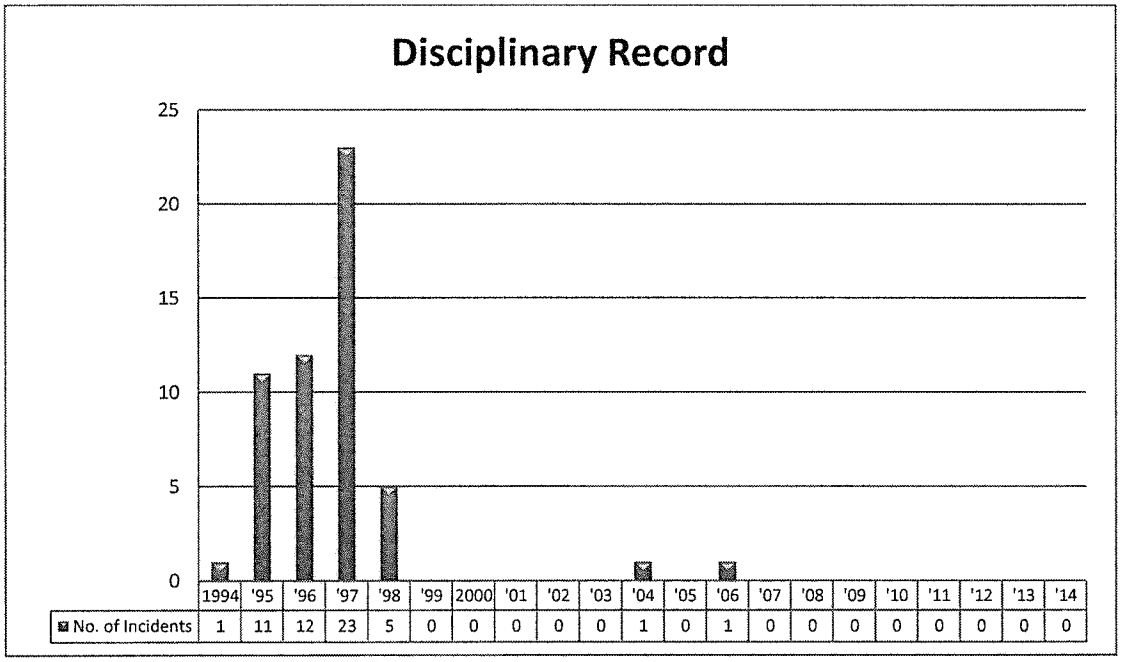
[5] When asked later in life what would have happened if he had disobeyed the older gang members who cajoled him into participating in the robbery for which he has been sentenced, Addolfo stated, "I would have gotten beaten or kicked out of the gang. You want to please your family. They were the only people who loved me. Now I see the gang as a false reality, but then I got the love I was searching for from the gang." (C. 341.)

Cruel is the irony, then, that the Circuit Court disregarded the "psychological and emotional harm," *id.*, caused by Addolfo's incarceration and instead focused on his continuing youthful rashness as he struggled to adjust to prison life in his late teens, up through just after his 21st birthday in August 1997. (Resentencing Order 20-25.) The following graphic summarizes Addolfo's tickets as recorded in the record presented to the Circuit Court:



Indeed, the court held Addolfo's gang affiliations *against* him. Ignoring the influence that gangs have on a child lacking in family support, the Resentencing Order found that Addolfo should be locked away for the rest of his life because he gave into "gang membership and activity" and "had a substantial criminal history." (Resentencing Order 32.) In Addolfo's case, affiliating with a gang may well have been the only way to survive: he was ignored by his

biological parents, he was ignored by social services, and he was eventually transferred into a prison dominated by gangs when he was still underage.

The Circuit Court's decision contains the *superfecta* of *Miller* errors. Holding Addolfo's gang affiliation against him is precisely what the Supreme Court warned against when it wrote that children "are more vulnerable to negative influences and outside pressures, including from their family and peers" and "lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. 2455, at 2464. Stating that Addolfo's sentence will deter others directly contradicts the Supreme Court's determination that "deterrence" cannot "do the work in this context" (*i.e.*, justifying harsh sentencing of youth) because the special characteristics that make youth different "make them less likely to consider potential punishment." *Id.* at 2465. Finding that Addolfo showed a "disregard for human life," even without any concrete evidence that he shot and killed anyone, merely glosses over his presumed (and demonstrable) "immaturity, impetuosity, and failure to appreciate risks and consequences" at the time of his crime. *See id.* at 2468; *see also Eddings v. Oklahoma*, 455 U.S. 104 (1982) (invalidating death sentence for 16-year old who shot a police officer point-blank because the court failed to consider the mental and emotional development of the youth). Finally, and as explained above, the Supreme Court requires acceptance of scientific principles and evidence that the Circuit Court refused to accept. *See, e.g., Miller*, 132 S. Ct. 2455, 2464 ("Our

decisions rested not only on common sense . . . but on science and social science as well.").

Miller and *Montgomery* require a judge sentencing a child offender to consider how the offender's home environment and other factors affected his or her maturity, responsibility, and ultimately culpability around the time of the offense, and during the criminal proceedings (to the extent the characteristics of childhood might have influenced the offender's ability to aid in his or her legal defense). Here again, Addolfo presented substantial evidence in mitigation. For years leading up to the offense, Addolfo struggled in school, owing at least in part to his intellectual and emotional disabilities, as well as other factors related to his home life such as a lack of clothing. (C. 331, 339-40 (Beyer Aff.).) Addolfo also presented evidence that his criminal history—advanced as an aggravating factor by the government when he was sentenced—should have been considered in light of the poverty in which he grew up, and the fact that he had initially turned to criminal activity in order to survive. (C. 335-36.) Lastly, there is ample reason to believe that Addolfo's intellectual disabilities and consistent difficulties with communication, both of which were compounded by the conditions in which he grew up, hindered his ability to facilitate his own legal defense and communicate with defense counsel.[6] *See J.D.B.*, 564 U.S. at 271-77; *see also* C. 344 (Beyer Aff.).

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[6] Rather than analyzing a possible connection between the horrific conditions in which Addolfo grew up and the subsequent difficulties he had in school, the

Miller and *Montgomery* also emphasize the importance of considering a child offender's prospects for rehabilitation in determining whether that offender merits a sentence of life in prison without the possibility of parole. Addolfo's conduct since he has been incarcerated—and in particular his conduct over the past decade—strongly belies any assertion that he is so irretrievably depraved as to merit a life sentence. Addolfo has demonstrated an academic aptitude that he was not able to achieve attending school under the conditions of his early childhood. (*E.g.* Resentencing Order 14.) He has also excelled in the arts, displaying talent as a painter, and writing a book of poetry that has been published and used to teach young children. (*Id.* 15-16, 32.) The vast majority of incidents in Addolfo's prison disciplinary records occurred very early in his incarceration, with no violent incidents occurring after he turned 21, and no infractions at all recorded in the past decade. (*Id.* 25-26.) This evidence, as well as the accounts of numerous individuals who wrote letters of support or testified on Addolfo's behalf, further demonstrates that Addolfo does not represent the

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Circuit Court characterized those difficulties as themselves evidence of a delinquent character, and was skeptical of the fact that while Addolfo "could not be persuaded" to attend school when he was younger, he was able to perform better in a "structured setting" once he was incarcerated. (Resentencing Order 29.) The court did not address whether Addolfo's prior offenses—which was one of the central factors considered in aggravation at sentencing and at resentencing—could have been owing in some part to his childhood difficulties. The effect of Addolfo's disabilities on his ability to facilitate his legal defense was also ignored. (*See generally id.*)

exceptionally rare, "permanently incorrigible" youthful offender who deserves to spend the rest of his life in prison without any hope of release.[7]

IV. CONCLUSION

The U.S. Supreme Court, and the Supreme and Appellate Courts of this State, have indicated, time and again, that life-without-parole sentences are not appropriate for children—even those children who, unfortunately, participate in crimes during which individuals are killed. Precedent could not be clearer: a youthful offender, regardless of the crime, cannot be sentenced to life in prison unless he is 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.

Here, the Circuit Court misapplied the Supreme Court's sentencing framework and gave woefully insufficient attention to an astounding record of childhood strife before determining that Addolfo forfeited his freedom forever at

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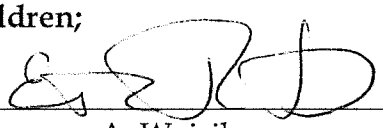
[7] In the Resentencing Order, the Circuit Court found Addolfo's paintings "very insightful," (Resentencing Order 30), but rejected nearly every other item of rehabilitation evidence. Addolfo's book of "alleged poetry" was rejected as evidence of mitigation because it was not produced to the court—though the court did acknowledge in the Resentencing Order that the book was available for purchase on Amazon.com. (*Id.* 17.) The Circuit Court also neglected to examine Addolfo's prison disciplinary history with due regard to the characteristics of his youth, emphasizing only the number of infractions and overlooking the fact that they had nearly all occurred shortly after Addolfo was incarcerated. (*See id.* 20-26.) Lastly, the Circuit Court rejected a number of the individuals that testified to Addolfo's rehabilitation or improved character as biased or uninformed, focusing on what elements of the records particular supporters had failed to read, whether other supporters were paid experts, and (most commonly) whether individual supporters belonged to a "cause" of individuals who oppose unduly harsh sentences for youthful offenders.

the tender age of 14. As demonstrated above, Addolfo's life story, as well as his age and personal circumstances at the time of the incident, should make it impossible to reach the conclusion that he was "irreparably corrupt." Upon reviewing the Resentencing Order, the only reasonable interpretation of its holding is that the Circuit Court refused to consider the rehabilitative ideal and determined to make an example of Addolfo Davis.

The Circuit Court erred. Accordingly, the Coalition strongly urges that this Court vacate Addolfo Davis's life sentence and remand for further resentencing proceedings consistent with the entirety of *Miller* and *Montgomery*, to be held before a different judge.

Dated: **December 2, 2016**

The Illinois Coalition for the Fair Sentencing of Children;

By: 

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APPENDIX

(Information Regarding *Amicus Curiae*)

The Illinois Coalition for the Fair Sentencing of Children

The Illinois Coalition for the Fair Sentencing of Children is comprised of Illinois attorneys, academics, child advocates, and concerned citizens who are advocating for the abolition of life without parole for children under the age of eighteen. Its members have conducted extensive research on the development of children and their capabilities of growth, reform, and rehabilitation – if given the chance to succeed. In February 2008, the Coalition published a report highlighting the issues surrounding the 103 juveniles serving life sentences in Illinois. Moreover the Coalition filed an *amicus* brief in support of Mr. Davis's 2012 appeal to the First District of the Appellate Court of Illinois, as well as another *amicus* brief before the Supreme Court of Illinois when it ruled on Mr. Davis's case in 2013.

The Coalition's members are:

- ACLU of Illinois
- Amnesty International, Midwest Region
- Cabrini Green Legal Aid
- Center on Wrongful Convictions of Youth, Bluhm Legal Clinic, Northwestern Pritzker School of Law
- Chicago Alliance Against Racist and Political Repression
- Chicago Council of Lawyers
- Chicago Lawyers' Committee for Civil Rights Under Law, Inc.
- Children and Family Justice Center, Bluhm Legal Clinic, Northwestern Pritzker School of Law
- Communities and Relatives of
- Federal Criminal Justice Clinic, The University of Chicago Law School
- First Defense Legal Aid
- Human Rights Watch, Chicago Committee
- The James B. Moran Center for Youth Advocacy
- John Howard Association of Illinois
- Justice Not Prisons
- Juvenile Justice Initiative
- Lawndale Christian Legal Center
- Law Office of the Cook County Public Defender
- The Positive Anti-Crime Thrust
- Precious Blood Ministry of

Illinois Incarcerated Children

- Communities United
- Community Renewal Society
- Cook County Bar Association
- Edwin F. Mandel Legal Aid Clinic, The University of Chicago Law School
- The Exoneration Project at The University of Chicago Law School

Reconciliation

- Project NIA
- Restore Justice Illinois
- Sargent Shriver National Center on Poverty Law
- Tamms Year Ten
- Trinity United Church of Christ
- Uptown People's Law Center
- Youth Advocate Programs, Inc.

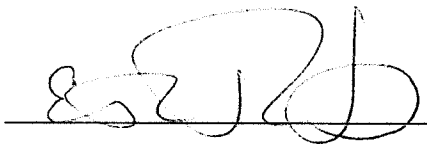
Appellate Docket 1-15-2060

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. ADDOLFO DAVIS, Petitioner-Appellant.	Appeal from Cook County Circuit Court Criminal Division Honorable Angela M. Petrone Judge Presiding No. 91-CR-03548

CERTIFICATION OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rules 341(a), (b) and 367. The length of this amicus brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 24 pages.

By: 

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CERTIFICATE OF SERVICE

I, Eric M. Roberts, an attorney, state that on this **2nd day of December, 2016**, I caused the foregoing Brief of *Amicus Curiae* to be delivered via UPS Overnight Courier to the following:

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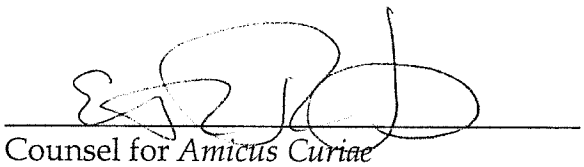

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