THOSE WHO FELL THROUGH THE GAP OF JUSTICE

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In the state of Pennsylvania, when juveniles are sentenced to juvenile facilities for violent crimes, they can be held in such facilities until their 21st birthday.
Section 7, 43 P.S. §48 of child labor laws state that minors are between the ages of 12-21.
The Constitution of Pennsylvania - Judiciary Article V (ii) Juvenile Matters classify disorderly minors between the ages of 18-20 years of age.
42 Pa.C.S. §6302 states: A child is an individual who is under the age of 21 years who committed an act of delinquency before reaching the age of 18.
42 Pa.C.S. §6303 and Rules of Juvenile Court Procedure Rule 120 states: A juvenile is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have, upon or after the juvenile's tenth birthday, committed a delinquent act before reaching eighteen years of age.

The above statutes dictate Pennsylvania's definition of how old a juvenile is considered to be in this state. The American Bar Association's 2004 study on brain development and legal culpability encompassed all youth up to their mid-20's when they stated, "The frontal lobe determines impulse control, risk assessment, and moral reasoning, and it is the last part of the brain to fully develop." The court in Miller/Jackson's decision relied on neuroscience which proved that the brain does not reach its full development stage until the age of 25 and that [teenagers] tend to depend on the part of the brain that mediates fear and other gut reactions--the amygdala--when making decisions. However, this same court created in its opinion, a split in the medical finding's age applicability. This double standard creates ambiguous understanding in the determination of age appropriateness when applying this decision in different states. Clearly, in this state alone, there are several statutes that declare a child being anywhere from 17 to 21.

The Honorable Judge Mary Jane Bowes wrote in the decision of Commonwealth v. Ludwig that, "Perhaps the U.S. Supreme Court may in the future determine mandatory life imprisonment sentences for adults under 25, violate the 8th Amendment...That day has not come yet." I say that day should come, and it should start now, not after decades of appeals on Miller's decision. It can be done collectively by "6 degrees of separation."

Based on the U.S. Supreme Court's decision in Miller/Jackson, I've compiled a detailed argument that pushes the legislature to once again permit its judges to use limited discretion in its courtrooms and permit juries to review mitigating factors before sentencing offenders under 26 years of age to life sentences without parole, and make such legislation retroactive. Senator Daylin Leach is on board from the response we received thus far. Who do you know, who knows someone, who knows someone...."6° of Separation".

We need the Judiciary behind us, we need reputable agencies behind us. WE NEED YOU BEHIND US!

Now, it's certainly sad to say, but I've been here since dirt was discovered! So I don't know how the internet works, or facebook, but if you can download my argument, send it individually to your representative, your senator, your United States senator, and agencies who support the release of deserving life-sentenced inmates.

EXCERPTS TAKEN FROM THE U.S. SUPREME COURT OPINION ON 6/25/12

1. Those cases relied on three significant gaps between juveniles and adults. First, children have a "'lack of maturity and an underdeveloped sense of responsibility,'" leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more vulnerable...to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. Ibid. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." And in Graham, we noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds" -for example, in "parts of the brain involved in behavior control." We reasoned that those findings - of transient rashness, proclivity for risk, and inability to assess consequences--both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his "'deficiencies will be reformed.'" Roper and Graham emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because "'the heart of the retribution rationale'" relates to an offender's blameworthiness, "'the case for retribution is not as strong with a minor as with an adult.'" [pgs. 8 & 9 Opinion of the court].

Argument: This should apply to all offenders up to and including 25 years old since their brain isn't fully developed until the age of 25.

2. Life without parole "forswears altogether the rehabilitative ideal." It reflects "an irrevocable judgment about an offender's value and place in society," at odds with a child's capacity for change. [pg. 10].

Argument: The same rehabilitative ideal that is seen in a juvenile is also seen in teenagers between the years of 18 & 19, as well as in the undeveloped brain of individuals 25 and under.

3. Most fundamentally, Graham insists that "youth" matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole [pg. 10].

Argument: Section 7, 43 P.S. §48 states that "youth" is between 12-21 yrs. old. Teenagers are "youth" and individuals whose brain are not fully developed would be included.

4. "An offender's age," we made clear in Graham, "is relevant to the Eighth Amendment," and so "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." [pg. 4].

Argument: The same argument can be said about offenders up to and

including 25 yrs. old because their brain isn't fully developed and it should be applicable to what this opinion was decided based on, which was scientific knowledge of the development of the brain. [Our decisions rested not only on common sense--on what "any parent knows"--but on science and social science as well. [pg. 8].

5. "An offender's juvenile status can play a central role" [pg. 11].

Argument: What do we look at actually in the determination of an offender's juvenile status? Age? Mind development? or both?

6. And Graham makes plain these mandatory schemes' defects in another way: by likening life-without-parole sentences imposed on juveniles to the death penalty itself. Life-without-parole terms, the Court wrote, "share some characteristics with death sentences that are shared by no other sentences." Imprisoning an offender until he dies alters the remainder of his life" by a forfeiture that is irrevocable." And this lengthiest possible incarceration is an "especially harsh punishment for a juvenile," because he will almost inevitably serve "more years and a greater percentage of his life in prison than an adult offender." [pg. 12].

Argument: Case in point - My codefendant was 16. I was 19. Both teenagers. He is the principle offender of our case. He will be released on the U.S. Supreme Court's decision in Miller/Jackson if the courts in Pennsylvania see the decision retroactively. Yet, I will remain in prison based on the felony act law that he is no longer governed by. My brain at 19 was no more developed than his, and he was more culpable than I was. Therefore this argument certainly applies to me. I was only a teenager, who had been physically and sexually abused from the age of 5 to 15, I had been hospitalized in a mental institution in my adolescent years, I had become a severe codependant who had my life saved at my job during a hold-up by my codependant 10 days prior to this terrible tragedy. I didn't have the ability to say "no" when he asked me to be the look out in his hold up 10 days later. On the day of the tragedy, I had obviously tried to take my own life by swallowing about 14 pills and when my family members tried to throw the rest in the toilet, I went in the toilet and retrieved them, putting them in my mouth. Clearly an action that proved I had lost all human sensibility. All of this occurred only moments before that tragic horrible murder occurred. Imprisoning me until I die alters the remainder of my life by a forteiture that is irrevocable. And if this lengthiest possible incarceration is an "especially harsh punishment for my codependant, who was 16, then it to is especially harsh punishment for me at 19 also, because I have inevitably served more years and a greater percentage of my life in prison than an adult offender, of which I wasn't. I was 19 when my crime occurred. I am 60 years old now and see no way out of prison without a bill being drafted that's made retroactive that will review life-sentenced offenders under the age of 26 when their crimes occurred.

7. The penalty when imposed on a teenager, as compared to an older person, is therefore "the same...in name only." [pg. 12].

Argument: This holds true if you are under 20. 18 and 19 are still the ages of a teenager.

8. As we observed, "youth is more than a chronological fact." It is a time of immaturity, irresponsibility, "impetuousness, and recklessness." It is a moment and "condition of life when a person may be most susceptible to influence and to psychological damage." Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features...It prevents taking into account the family and home environment that surrounds him--and from which he cannot usually extricate himself--no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth. [pgs. 13 & 15].

Argument: This statement holds for any offender up to and including 25 whose brain is not fully developed.

9. "Just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered" in assessing his culpability. [pg. 14].

Argument: Once again, this statement encompasses any offender up to the age of 25 because of brain development. They refer to a youthful defendant and a defendant who is between the ages of 18-25 is still considered "youthful", and should be considered in criminal proceedings.

10. Such mandatory penalties, by their nature, preclude a sentencer from taking into account of an offender's age and the wealth of characteristics and circimstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other--17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses--but really, as Graham noted, a greater sentence than those adults will serve. [pg. 14].

Argument: Note where it states, "a greater sentence than those adults will serve". This is not true if they are in the category of what neuroscience proved is an undeveloped brain. Note where it states, "each juvenile will receive the same sentence as the vast majority of adults committing similar homicide offenses". If I were to rewrite and inject, "each juvenile will receive the same sentence as the vast majority of adults [18-25] committing similar homicide offenses". One can clearly see the argument for there being no difference in being 17 or being between 18 and 25 according to the neuroscience study

that the U.S. Supreme Court based its decision on.

11. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it. [pg. 15].

Argument: Rehabilitation was a very important factor with the commutation board and institutions. However, institutions have long since abandoned the idea of rehabilitation, and the commutation board no longer works for life-sentenced applicants. No woman has had her life-sentence commuted since 1990. If giving anyone, especially a teenager life without the possibility of parole disregards the possibility of rehabilitation because it is the hope that one day the teenager will be rehabilitated and can successfully be re-integrated back into society, then that hope is cancelled with a sentence of life without parole for anyone under the age of 26, and especially since their brain is not fully developed until 25.

12. "When compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability". And so too does Jackson's family background and immersion in violence: Both his mother and his grandmother had previously shot other individuals. At least, a sentencer should look at such facts before depriving a 14-year-old of any prospect of release from prison. [pg. 16].

Argument: The sentencer should be permitted to look at the same factors for any offender under the age of 26, that he is about to sentence when there's a possibility of being sentenced to life without parole, simply because of the lack of maturity and full development of the brain.

13. "A state is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation". [pg. 17].

Argument: Forty years ago, my judge sentenced me to life and instructed my attorney to explain to me that my release on parole would be the sole discretion of the state parole board. I had no reason not be believe that the judge, district attorney, and defense attorney didn't know what they were talking about. My judge came up to S.C.I.Muncy and visited with me while on tour. He told me that if I behaved myself, that he would sign my parole papers after I served at least the maximum sentence required for 3rd degree murder. When I finally changed the errors of my ways, the legislature had changed that maximum to forty years. This year made forty years for me, and when I applied for parole, I was told that they have no jurisdiction over my life sentence with parole. This leaves me with no meaningful opportunity to obtain release based on my demonstrated maturity and rehabilitation. I am in court with this issue right now. So when you say life without parole, you, in the words of the Court in Graham, "forswears altogether the rehabilitative ideal".

14. In many states, for example, a child convicted in juvenile court

must be released from custody by the age of 21.

Argument: This mandate allows for an offender to be up to 20 before considering them an adult who obviously could not be permitted to remain in a juvenile facility. The definition doesn't give a "specific age". It's determined by "factors". The state's legislature typically have enacted age to their standards. At 18 you can serve in the military. Yet you're not old enough to drink until you're 21 "legally". High school - can attend until you're 20 in many states. So if you are 18 and in school, are you an adult of student?

15. Graham, Roper, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment. [pg. 27].

Argument: Any jury or judge should have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for any offender whose brain is not fully developed.

16. For another thing, Graham recognized that lack of intent normally diminishes the "moral culpability" that attaches to the crime in question, making those that do not intend to kill "categorically less deserving of the most serious forms of punishment than are murderers." [See Breyer, J., Concurring pg. 2].

Argument: Then why not apply this to co-defendants who weren't the principle offenders up to and including 25 since their brain is not fully developed yet?

17. Given Graham's reasoning, the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim. [See Breyer, J., Concurring pg. 2].

Argument: This should also apply to teenagers between the ages of 18-19 and offenders up to the age limit that neuroscience says the brain takes to be fully developed.

18. I recognize that in the context of felony-murder cases, the question of intent is a complicated one. The felony-murder doctrine traditionally attributes death caused in the course of a felony to all participants who intended to commit the felony, regardless to whether they killed or intended to kill. This rule has been based on the idea of "transferred intent"; the defendant's intent to commit the felony satisfies the intent to kill required for murder. [See Breyer, J., Concurring pgs. 2-3].

Argument: The felony-murder doctrine should be repealed period.

19. But in my opinion, this type of "transferred intent" is not sufficient to satisfy the intent to murder that could subject a juvenile to a sentence of life without parole...We do not rely on transferred intent in determining if an adult may receive the death penalty. [See Breyer, J., Concurring pg. 3].

Argument: Therefore, it should not be sufficient to satisfy the intent to murder that could subject any offender to life without the possibility of parole, and especially when the offender's brain is not yet fully developed, and who did not pull the trigger.

20. Moreover, regardless to our law with respect to adults, there is no basis for imposing a sentence of life without parole upon a juvenile who did not himself kill or intend to kill. At base, the theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate. Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively. [See Breyer, J., Concurring pg. 4].

Argument: The ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we also know any offender whose brain isn't fully developed yet, lacks capacity to do effectively and we base that evidence on the development of the brain in teenagers.

21. "Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a state's duty toward children." To apply the doctrine of transferred intent here, where the juvenile did not kill, to sentence a juvenile to life without parole would involve such a fallacious reasoning." [See Breyer, J., Concurring pg. 4].

Argument: This reasoning should also apply to offenders up to and including 25 because of their brain development.

Distinctions are made between "teenagers" and "juveniles" simply because the term "teenager" is defined as an individual between the ages of 13-19. However, my argument applies to all individuals up to and including the age of 25 years old because neuroscience says their brain is not fully developed, and therefore, cannot be held with the same accountability as an adult whose brain has fully developed.

I urge you as legislators to pass a bill that allows judges and juries to consider mitigating circumstances when considering sentencing offenders up to and including 25, whose brain is not yet fully developed, and make such legislation retroactive. Doing so will prevent anyone from falling through the gap of justice which has been created by splitting the age applicability of the U.S. Supreme Court's decision in Miller/Jackson.