SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-966-22T1

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| STATE OF NEW JERSEY, | : | CRIMINAL ACTION |
| Plaintiff-Respondent, | : | On Appeal from an Order of the Superior Court of New Jersey, Law |
| v. | : | Division, Ocean County. |
| MICHAEL SUAREZ, | : | Indictment No. 93-07-580 |
| Defendant-Appellant. | : | Sat Below: |
| | : | Hon. Guy P. Ryan, P.J.Cr. |
| | : | |

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# BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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Dated: March 8, 2024

DEFENDANT IS CONFINED

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## PRELIMINARY STATEMENT

The prohibition on cruel and unusual punishment protects young people against long sentences. In particular, the Comer case provides for a lookback: a juvenile offender who has spent twenty years in prison is entitled to a resentencing. The resentencing court must then consider developmental science showing that juveniles are less culpable and more amenable to rehabilitation than fully mature adults. If, as is likely, the juvenile offender is fit to reenter society after having served twenty years, the resentencing court must impose a new sentence that allows him to do so.

Defendant Michael Suarez was convicted of a homicide that occurred in 1991 -- when he was nineteen years old. He has now served over thirty-two years in prison. Suarez moved for resentencing under Comer.

That motion was improperly denied. Suarez should have the same constitutional protection and receive the same lookback as a seventeen-year-old. Science shows that a period of late adolescence extends through at least age twenty. Late adolescents are like juveniles in their diminished culpability and in their likelihood of reform. Indeed, the highest courts of Washington State, Michigan, and Massachusetts have held, based on this science, that late adolescents are entitled to the same constitutional protection as juveniles against long sentences.

New Jersey should follow suit. Having offended when he was nineteen years old and having spent more than twenty years in prison, Suarez should have a Comer resentencing.

## PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

This appeal is from the denial of defendant-appellant Michael Suarez's motion to correct an illegal sentence. (Da 17 to 28) Suarez was nineteen years old when the offenses occurred on August 3, 1991. (Da 7; PSR 1) [2]

Ocean County indictment number 93-07-580 charged Suarez with (1) murder, N.J.S.A. 2C:11-3a(1), -3a(2); (2) felony murder, 2C:11-3a(3); (3) first-degree robbery, 2C:15-1; (4) second-degree burglary, 2C:18-2; (5) third-degree burglary, 2C:18-2; and (6) fourth-degree unlawful possession of a weapon, 2C:39-5d. (Da 1 to 4)

In 1995, Suarez had a jury trial, with the Honorable Edward J. Turnbach, J.S.C., presiding. The prosecution testimony was that Joel Blevins was found stabbed to death in his Island Heights apartment on the morning of August 3, 1991. (Da 10)[3] A bloody palm print matched Suarez, who lived across the street. (Da 10 to 11) Under interrogation, Suarez admitted that he had gone to

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[1] In this particular brief, a combined section avoids repetition and is easier to follow.

[2] "Da" refers to the appendix attached to this brief. "PSR" will refer to the presentence report dated October 27, 1992. The transcripts are the following:
1T - February 10, 1995 (trial)
2T - March 24, 1995 (sentencing)
3T - October 28, 2022 (resentencing motion)

[3] In summarizing the evidence, the motion court relied on the terse fact statement in the prosecutor's response to the motion. (Da 18 to 19) The present brief cites to the more complete factual summary in the Appellate Division decision on direct appeal. (Da 10 to 13)

Blevins's apartment to rob him. Suarez told interrogators that he had surprised Blevins, had stabbed him multiple times in the head and neck, and had taken his wallet. (Da 11) Suarez's account appeared to be consistent with the physical evidence at the scene. (Da 10, 11, 14)

At trial, Suarez testified that he and Blevins were drinking buddies. Suarez was an abuser of alcohol, cocaine, marijuana, pills, and LSD. In the hours leading up to the stabbing, Suarez was consuming beer, cocaine, and valium. Suarez testified that his intoxication had caused him to have no recollection of the stabbing, although he did not deny having done it. (Da 12) Suarez had previously confessed to recalling the stabbing because the interrogators had implied that the charges might be reduced because of his cooperation. (Da 13)

Two other witnesses corroborated Suarez's account that he had been consuming intoxicants before the stabbing. In addition, a defense psychiatrist diagnosed Suarez with major depression and poly-substance abuse. The psychiatrist opined that Suarez could not have purposely or knowingly stabbed Blevins because the combination of beer and valium had rendered Suarez "at least semi-comatose." (Da 13)

The jury convicted on all counts. (Da 5 to 6; 1T 9-19 to 10-16) On March 24, 1995, Judge Turnbach sentenced Suarez to life with a thirty-year parole bar for murder; to twenty years with a ten-year parole bar for first-

degree robbery; and to ten years with a five-year parole bar for second-degree burglary. The sentences on the two lesser charges were concurrent with each other and consecutive to the murder sentence. The remaining counts merged. The aggregate was life plus twenty years with a forty-year parole bar. (Da 7; 2T 14-20 to 15-21)

In 2022, Suarez commenced the litigation underlying the present appeal by filing a pro se motion to correct an illegal sentence. Counsel was assigned, and the attorneys for both sides filed briefs. On October 28, 2022, an oral argument occurred before the Honorable Guy P. Ryan, P.J.Cr. (3T) Defense counsel argued that the Comer[4] case -- which provides resentencings to seventeen-year-olds -- should extend to nineteen-year-old offenders such as Suarez. (3T 3-23 to 9-20) Counsel explained as follows. The issue of extending Comer was an open one that the Law Division had the power to decide in Suarez's favor. (3T 4-18 to 5-6) Moreover, the science upon which previous decisions were based showed that the mental development of nineteen-year-olds was similar to that of seventeen-year-olds: "[T]hey both act impulsively and make poor decisions but they're all, both capable of being rehabilitated." (3T 5-7 to 14) Courts in Washington, Michigan, and Massachusetts had accepted that the science applies beyond juveniles. (3T 5-15 to 6-4) Counsel asked the Law

[4] State v. Comer, 249 N.J. 359 (2022).

Division to likewise apply the science, hold that Suarez's sentence was illegal, and grant him a Comer resentencing. (3T 8-17 to 9-20)

On November 2, 2022, Judge Ryan issued a written decision denying the resentencing motion. (Da 17 to 28) The court perceived an unresolved debate around the country as to whether constitutional protections against long sentences should extend beyond juveniles. (Da 24 to 26) Specifically as to Comer, the court reasoned that the decision applied only to juveniles and that any expansion of the decision "should be more appropriately addressed by our Supreme Court." (Da 27 to 28) Based on this notion that extending Comer was beyond the Law Division's power, the court refused to hear testimony on the developmental science at an evidentiary hearing. (Da 28)

On November 30, 2022, the Office of the Public Defender filed a notice of appeal. (Da 29 to 32)

At this writing, Suarez is fifty-two years old and has spent more than thirty-two years in prison for offenses committed as a nineteen-year-old.

# LEGAL ARGUMENT

## POINT I

**A RESENTENCING SHOULD OCCUR BECAUSE THE COMER DECISION -- WHICH ENTITLES JUVENILE OFFENDERS TO A RESENTENCING AFTER TWENTY YEARS -- SHOULD EXTEND TO NINETEEN-YEAR-OLD OFFENDERS LIKE DEFENDANT SUAREZ, WHO SHARE THE SAME CHARACTERISTICS AS JUVENILES. U.S. CONST. AMENDS. VIII, XIV; N.J. CONST. ART. I, ¶ 12. (ruling below at Da 17 to 28)**

In a landmark decision, the New Jersey Supreme Court held that juvenile offenders are entitled to be resentenced after serving twenty years in prison. State v. Comer, 249 N.J. 359, 401 (2022). The decision was based on the immaturity of juveniles, which diminishes their culpability, and on the strong likelihood that juvenile offenders will reform with age.

The developmental science shows that late adolescents -- which include nineteen-year-olds -- are like juveniles in their immaturity and likelihood of reform. Therefore, the highest courts of Washington State, Michigan, and Massachusetts have held, based on the science, that late adolescents are entitled to the same constitutional protection as juveniles against long sentences. New Jersey should follow suit. Having offended when he was nineteen and having spent thirty-two years in prison, Suarez should have a Comer resentencing.

### A. Legal Background: Juveniles Receive Constitutional Protection Against Lengthy Sentences Because of Their Diminished Culpability and Likelihood of Reform, Characteristics Described by the Miller Factors.

Cruel and unusual punishment is unconstitutional. U.S. Const. amend. VIII, XIV; N.J. Const. art. I, ¶ 12. Under a series of decisions, this constitutional protection limits the severity of the sentence that may be imposed on a young offender. An offender who was under eighteen at the time of the offense may not receive the death penalty, Roper v. Simmons, 543 U.S. 551 (2005); may not receive life without parole for a non-homicide offense, Graham v. Florida, 560 U.S. 48 (2010); and may not receive life without parole for a homicide -- except in the unusual circumstance that the juvenile offender is found to be incorrigible, Miller v. Alabama, 567 U.S. 460 (2012). Moreover, a court must make this finding of incorrigibility before sentencing a juvenile offender to a lengthy term of years that approaches life without parole. State v. Zuber, 227 N.J. 422 (2017).

In the most recent Comer decision, our Supreme Court held that the mandatory thirty-year parole bar for murder, see N.J.S.A. 2C:11-3(b)(1), is cruel and unusual punishment when applied to juvenile offenders. Accordingly, juvenile offenders are entitled, after serving twenty years in prison, to be resentenced and considered for release. Comer, 249 N.J. at 401, 403.

These decisions relied upon developmental science, which shows that juvenile offenders are less culpable and more amenable to rehabilitation than older offenders. At the outset, the decisions identified three general characteristics of juveniles.

First, juveniles are irresponsible and impetuous, leading them to be "overrepresented statistically in virtually every category of reckless behavior." Roper, 543 U.S. at 569 (quoting Jeffrey Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Review 339, 339 (1992)). These traits make juveniles' misconduct less morally reprehensible than that of adults. Roper, 543 U.S. at 570.

Second, juveniles have less ability to escape negative environments and are more susceptible to the influences in those environments. Id. at 569, 570 (citing Laurence Steinberg & Elizabeth S. Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)).

Third, anti-social behavior -- "even a heinous crime" -- is rarely a sign that a juvenile has an "irretrievably depraved character." Roper, 543 U.S. at 570. The recklessness and impetuousness of youth tends to subside as an individual matures: "Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem

behavior that persist into adulthood." Id. (quoting Steinberg & Scott (2003), supra, at 1014). See also Comer, 249 N.J. 399-400 (discussing research that juvenile offenders are overwhelmingly likely to desist from crime by their mid-twenties).

Because of juveniles' lesser culpability and high likelihood of reform -- and because of the near impossibility of identifying at the original sentencing the rare juveniles who will be incorrigible -- a life sentence without parole is often a grossly disproportionate penalty. See Miller, 567 U.S. at 477-79; see also Comer, 249 N.J. at 394-95, 397-400. Therefore, the protection against cruel and unusual punishment requires that life without parole be "uncommon" for juveniles, even in homicide cases. Miller, 567 U.S. at 479-80; Comer, 249 N.J. at 387. See also Montgomery v. Louisiana, 577 U.S. 190, 195, 209, 212 (2016) (emphasizing that life without parole is a disproportionate penalty for the "vast majority" or "all but the rarest" juvenile offenders.) When a juvenile is eligible for such a penalty, the sentencing court must consider the "Miller factors":

> (1) the juvenile's "chronological age and its hallmark features -- among them, immaturity, impetuosity, and failure to appreciate risks and consequences";
>
> (2) "the family and home environment that surrounds him -- and from which he cannot usually extricate himself -- no matter how brutal or dysfunctional";

> (3) "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";
>
> (4) the effect of youth on his defense "-- for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys"; and
>
> (5) whether the circumstances suggest "the possibility of rehabilitation."

Comer, 249 N.J. at 387 (quoting Miller, 567 U.S. at 477-78).

Unless circumstances show, despite consideration of these factors, that a juvenile offender is incorrigible -- which, to repeat, should be a rare event -- the sentence must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Comer, 249 N.J. at 390, 394-95 (quoting Graham, 560 U.S. at 75); see also Miller, 567 U.S. at 479-80.

The Zuber decision extended Miller protection to those juvenile offenders who are eligible for a parole bar that is the practical equivalent of life without parole. Comer, 249 N.J. at 388-89 (discussing Zuber, 227 N.J. at 429, 446-47). Additionally, Zuber highlighted how sentences with "lengthy" parole bars were problematic for juvenile offenders, given their propensity to mature and reform; the absence of a mechanism for a court to later review such a sentence raised "serious constitutional issues." Comer, 249 N.J. at 388-89 (discussing Zuber, 227 N.J. at 451-52). At the time, this Court asked the legislature to

consider providing for later review of lengthy juvenile sentences. Comer, 249 N.J. at 389 (discussing Zuber, 227 N.J. at 452-53).

In the subsequent Comer decision, the Court observed that the legislature had failed to enact such a law in the intervening five years, although a bill to allow resentencing of juvenile offenders after twenty years in prison was pending. Comer, 249 N.J. at 389. The Court compared statutes from various other states that entitled juvenile offenders to resentencing or parole consideration after approximately twenty years. Id. at 390-91. The Court also highlighted court decisions from two other states that held all mandatory minimum sentences to be cruel and unusual punishment for juveniles. Id. at 391-93.

With that background, the Court considered whether New Jersey's sentencing scheme for murder -- which requires a thirty-year parole -- is cruel and unusual punishment for a juvenile under the State Constitution. A punishment is unconstitutional if any one of the following three propositions is true: (1) the punishment does not "conform with contemporary standards of decency"; (2) the punishment is "grossly disproportionate to the offense"; or (3) the punishment goes "beyond what is necessary to accomplish any legitimate penological objective." Id. at 383.

The Court concluded that a thirty-year parole bar for juveniles fails all three tests. Id. at 394-400. First, current trends in the law show that the

punishment does not conform to contemporary standards of decency. Id. at 394-96. The analysis of the second and third tests was based on the characteristics summarized in the Miller factors. That is, given the immaturity and diminished culpability of juveniles, the punishment is in many cases grossly disproportionate to the offense. Id. at 397-98. Given these same characteristics -- plus juveniles' likelihood of reform with maturity -- the punishment goes beyond what is necessary for retribution, deterrence, incapacitation, or rehabilitation. Id. at 398-400.

The main constitutional concerns, explained the Court, were (1) the mandatory imposition of a "decades-long" sentence without consideration of individualized circumstances and (2) the lack of a provision for the sentencing court to review the sentence after the youth has likely matured and reformed. See id. at 401.

The Court concluded that all juvenile offenders are entitled to be resentenced after twenty years in prison. The resentencing court should consider the Miller factors and decide whether the offender has matured, been rehabilitated, and is fit for release. Id. at 401, 403. The resentencing court will have the discretion to impose any base sentence within the statutory range, and to impose a parole disqualifier as low as twenty years. Id. at 403.

### B. Nineteen-Year-Olds Should Receive the Same Constitutional Protection Against Lengthy Sentences Because the Miller Factors Apply Equally to Them.

The above precedents dealt specifically with juveniles because the offenders at issue were, in fact, juveniles. For example, the defendants in Miller were fourteen years old. Miller, 567 U.S. at 465, 468. The defendants in Zuber were seventeen. Zuber, 227 N.J. at 430, 433. The defendants in Comer were fourteen and seventeen. Comer, 249 N.J. at 371, 374. Thus, the copious language in these cases referring to "juveniles" was not meant to limit constitutional protection to age seventeen. Rather, it was meant to extend protection to age seventeen, when such protection did not exist before. Whether these decisions should extend beyond the age of seventeen is unresolved in New Jersey. The motion court had an obligation to decide whether to extend Comer and was incorrect to consider the issue foreclosed. (Da 28) See State v. Roper, 362 N.J. Super. 248, 252-53 (App. Div. 2003) (emphasizing "the trial court's responsibility in the first instance to address and render a reasoned opinion upon any question brought before it" and expressing "dismay" at the trial court's deferral of an "extremely significant question" to the appellate courts).

Comer should extend at least through the age of twenty because scientific research establishes that the Miller factors apply equally to eighteen- to twenty-year-olds.

First of all, an offender of this age, like a juvenile, almost inevitably ages out of crime (Miller factor five). Criminologists often refer to the "age-crime curve," i.e., the age distribution of offenders. The overall contours of the curve are so well-accepted that it has been called "one of the brute facts of criminology." Travis Hirschi & Michael Gottfredson, Age and the Explanation of Crime, 89 Am. J. of Sociology 552, 552 (1983). That is, offending peaks in the late teens and early twenties, and then drops throughout the mid-twenties. This overall pattern is persistent, even though the age distribution of offenders varies somewhat if offending is broken down in detail by place, by era, or by specific crime. Ben Matthews & John Minton, Rethinking One of Criminology's "Brute Facts": The Age-Crime Curve and the Crime Drop in Scotland, 15 Euro. J. of Criminology 296, 297-98, 305-11 (2017); National Institute of Justice, Study Group on the Transition from Juvenile Delinquency to Adult Crime, From Youth Justice Involvement to Young Adult Offending (March 10, 2014), available at https://nij.ojp.gov/topics/articles/youth-justice-involvement-young-adult-offending#noteReferrer12; Rolf Loeber & David P. Farrington, eds., From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention 5-6 (2012); Darrell Steffensmeier & Cathy Streifel, Age, Gender, and Crime Across Three Historical Periods: 1935, 1960, and 1985, 69 Social Forces 869, 876-86 (1991); Darrell J. Steffensmeier

et al., Age and the Distribution of Crime, 94 Am. J. of Sociology 803, 812-23 (1989); David P. Farrington, Age and Crime, 7 Crime and Justice 189, 191-201 (1986); Hirschi & Gottfredson (1983), supra, at 554-62.

Desistence studies -- which follow a specific sample of offenders over time -- are consistent with the age-crime curve. That is, those who offend in their late teens and early twenties tend to desist from crime as time goes by. By their late twenties and early thirties, these young adult offenders are similar to the general population in their unlikelihood of committing crimes. See R. Karl Hanson, Long-Term Recidivism Studies Show That Desistance Is the Norm, 45 Crim. Just. & Behavior 1340, 1341-42 (2018); Alfred Blumenstein & Kiminori Nakamura, Redemption in the Presence of Widespread Criminal Background Checks, 47 Criminology 327, 337-40 (2009); Keith Soothill & Brian Francis, When do Ex-Offenders Become Like Non-Offenders?, 48 Howard J. Crim. Just. 373, 375-77, 380-83 (2009); Megan C. Kurlychek et al., Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement, 53 Crime & Delinquency 64, 72-76 (2007).

Studies like these have produced an overwhelming consensus among developmental scientists that individuals in their late teens and early twenties disproportionately engage in risky behaviors and criminal activity -- but generally age out of these misbehaviors within a few years. Laurence Steinberg,

Adolescent Brain Science and Juvenile Justice Policymaking, 23 Psy. Pub. Pol. And L. 410, 413 (2017); Elizabeth S. Scott, et al., Symposium: Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641, 642, 645-46 (2016); Laurence Steinberg et al., Psychosocial Maturity and Desistence from Crime in a Sample of Serious Juvenile Offenders, U.S. Dep't of Justice - Office of Juvenile Justice Delinquency Prevention Bulletin 6 (March 2015).

This transient misbehavior occurs because those in their late teens and early twenties continue to mature in a period that developmental scientists call "late adolescence." Grace Icenogle and Elizabeth Cauffman, Adolescent Decision Making: A Decade in Review, 31 Journal of Research on Adolescence 1006, 1007 (2021). In situations of emotional arousal, late adolescents still lack foresight and impulse control -- and these traits are not developed until approximately the mid-twenties (Miller factor one). Center for Law, Brain & Behavior at Massachusetts General Hospital, White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers 10-16 (January 27th, 2022); Icenogle and Cauffman (2021), supra, at 1009-10; Elizabeth Scott et al., Bringing Science to Law and Policy: Brain Development Social Context, and Justice Policy, 57 Wash. U.J.L.& Pol'y 13, 26-27 (2018); Steinberg (2017), supra, at 414; Scott et al. (2016), supra, at 642, 646-47, 649;

Alexandra O. Cohen et al., When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts, 27 Psychological Science 549, 559-60 (2016); Steinberg et al. (2015), supra, at 7-8.

Moreover, like juveniles, late adolescents are still highly susceptible to peer pressure and to family and environmental influences (Miller factors two and three). Center for Law, Brain & Behavior (2022), supra, 17-26; Icenogle and Cauffman (2021), supra, at 1010-11; Karol Silva at al., Adolescents in Peer Groups Make More Prudent Decisions When a Slightly Older Adult Is Present, 27 Psychological Science 322, 327-29 (2016). And late adolescents continue to have difficulties making rational, future-oriented decisions in stressful legal contexts (Miller factor four). Center for Law, Brain & Behavior (2022), supra, 27-35.

Neuroscience teaches that the continuing relevance of the Miller factors to late adolescents stems from their still-developing brains. Foresight and impulse control are most associated with the brain's prefrontal cortex. In this part of the brain, the connections undergo a pruning and growth process that continues through the mid-twenties. Thus, to a large extent, scientists believe that late adolescents cannot help their misbehavior. Robert J. McCaffrey and Cecil R. Reynolds, Neuroscience and Death as a Penalty for Late Adolescents, 7 Journal of Pediatric Neuropsychology 3, 4-7 (2021); Icenogle and Cauffman

(2021), supra, at 1012; Scott et al. (2018), supra, at 28-30; Scott et al. (2016), supra, at 651-52; Alexandra O. Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temp. L. Rev. 769, 785-87 (2016); Alexandra O. Cohen et al. (2016), supra, at 559-60; Mariam Arain et al., Maturation of the Adolescent Brain, 9 Neuropsychiatric Disease and Treatment 449, 450-56 (2013); Catherine Lebel and Christian Beaulieu, Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood, 31 The J. of Neuroscience 10937, 10943 (2011); Nico U.F. Dosenbach et al., Prediction of Individual Brain Maturity Using fMRI, 329 Science 1358, 1359 (2010); Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Annals of the N.Y. Acad. Of Sci. 77, 83 (2004).

Overall, developmental scientists perceive a maturational imbalance in late adolescents. The parts of the brain that seek rewards and novel sensations mature rapidly at puberty, while those parts that control impulses and anticipate consequences continue to develop well into a person's twenties. Icenogle and Cauffman (2021), supra, at 1009-12; Laurence Steinberg, et al., Around the World, Adolescence Is a Time of Heightened Sensation Seeking and Immature Self-Regulation, 21 Developmental Science e12532, at 10-12 (2016).

This research has caused the leading experts in adolescent development to advocate that late adolescents be protected against severe adult sentences,

just as juveniles are. See McCaffrey and Reynolds (2021), supra, at 7; Scott et al. (2016), supra, at 659, 661-62. As an authoritative review of the science put it:

> There is no clear way to differentiate in clinically or practically meaningful ways the functioning of the brains of 17-year-olds from those aged 18, 19, and 20 in terms of risk-taking behaviors, the ability to anticipate the consequences of their actions (i.e., engage in a real time cost-benefit analysis in the context of a crime, as well as being able to engage in what some states define as deliberateness in committing a homicide during another felony act), to evaluate and avoid negative influences of others, and to demonstrate fully formed characterological traits not subject to substantive change over the next decade of their lives.

McCaffrey and Reynolds (2021), supra, at 4.

Other states are heeding the developmental scientists and are extending protections to late adolescents under their eighth-amendment analogues. The Washington State Supreme Court held that eighteen- through twenty-year-olds are entitled to the same protection as juveniles against life sentences. In re Monschke, 482 P.3d 276, 288 (Wash. 2021). This decision was reached after the Supreme Court independently examined the developmental science. Id. at 284-86. The court concluded that "no meaningful cognitive difference" exists between juveniles and eighteen- to twenty-year-olds. Id. at 287, 288. Therefore, under the Washington Constitution, Miller protections were extended up to age twenty. Id. at 288.

Similarly, Miller protections were extended to eighteen-year-old offenders under the Michigan Constitution -- with a further extension to nineteen-year-olds likely. See People v. Parks, 987 N.W.2d 161, 171 (Mich. 2022). Similar to the Washington court, the Michigan Supreme Court independently examined the developmental science and found it incontrovertible. Id. at 173. The court described the scientific consensus that eighteen-year-olds continue in a period of "late adolescence." Id. at 174. Late adolescents share with younger teenagers the characteristics outlined in the Miller factors -- particularly a lack of appreciation of risks and consequences, a tendency to act impetuously and under peer pressure, and a likelihood of desisting from misbehavior once their brains mature. Id. at 174-75, 178. The court concluded that "in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 years old." Id. at 75. Therefore, Miller had to apply to eighteen-year-olds. Id. at 176-83.

Because defendant Parks offended when he was eighteen, the Michigan Supreme Court did not reach the issue of whether Miller protections might extend to older offenders. But the court noted that the Miller factors appeared to apply "in some form" into the twenties and thus hinted at further extension. See id. at 171.

In yet another similar decision, the Massachusetts Supreme Court extended Massachusetts's constitutional protection through age twenty. See Commonwealth v. Mattis, 224 N.E.3d 410, 415, 428 (Mass. 2024). Massachusetts's twist on Miller is an absolute ban on life-without-parole sentences for young offenders. Id. at 415, 420. In extending that protection through age twenty, the Supreme Court relied heavily on developmental science, which had been presented in this case at an evidentiary hearing. See id. at 416-18, 428. Again, the science showed that eighteen- to twenty-year-old offenders share the characteristics outlined in the Miller factors -- particularly a tendency to act impetuously, to seek new sensations, to succumb to peer pressure, and to desist from misbehavior after brain maturation. Id. at 420-24.

In sum, the developmental science shows that late adolescents are like juveniles; therefore, constitutional protections against lengthy sentences that are enshrined in Miller, Zuber, and Comer should be extended at least through age twenty. In particular, Comer applies as follows. Given late adolescents' immaturity and diminished culpability, a thirty-year parole bar with no look-back resentencing is in many cases grossly disproportionate to the offense. See Comer, 249 N.J. at 397-98. Given these same characteristics -- plus late adolescents' likelihood of reform with maturity -- the standard punishment goes beyond what is necessary for retribution, deterrence, incapacitation, or

rehabilitation. See id. at 398-400. Thus, for late adolescents, the standard punishment fails two of the three tests for cruel and unusual punishment.[5] Late adolescents, like juveniles, should be eligible for resentencing after twenty years.

Indeed, our Supreme Court has signaled an openness to extending Comer to late adolescents. The Court favorably quoted a developmental science article on how offending peaks in the late teens and early twenties and then declines thereafter. Comer, 249 N.J. at 399 n.5. The Court has also stated its understanding that the new mitigating factor for offenders under twenty-six is a response to the Miller/Zuber line of cases. State v. Rivera, 249 N.J. 285, 301-02 (2021) (discussing N.J.S.A. 2C:44-1b(14)). It is difficult to imagine that our Supreme Court would not follow the developmental science and the enlightened reasoning of courts in Washington, Michigan, and Massachusetts.

Because Suarez committed his offenses at the age of nineteen and has served more than twenty years -- specifically, he has served thirty-two years of his aggregate forty-year parole bar -- he should have a Comer resentencing.

[5] Because all three tests must be passed, see id. at 383, we need not consider the third test, whether the punishment conforms to contemporary standards of decency. Nevertheless, the Massachusetts Supreme Court perceived a trend away from extreme sentences for emerging adults aged eighteen through twenty. The court noted the many ways that the law treats those under twenty-one as irresponsible and noted domestic and international trends away from life sentences. See Mattis, 224 N.E.3d at 424-28.

As an alternative to ordering an immediate resentencing, the Court should order a remand for a hearing to consider expert testimony on the developmental science, and to decide if the Comer lookback should extend to nineteen-year-olds.

## CONCLUSION

For the reasons stated, the order denying the motion for resentencing should be reversed, and the case should be remanded for resentencing. In the alternative, the case should be remanded for a hearing to consider expert testimony on the developmental science, and to decide if the Comer lookback should extend to nineteen-year-olds.

Respectfully submitted,

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BY: ___/s/ Peter T. Blum_____
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Dated: March 8, 2024

**FILED,** Clerk of the Appellate Division, April 24, 2024, **A-000966-22**, **AMENDED**

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LETTER IN LIEU OF BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

The Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: STATE OF NEW JERSEY (Plaintiff-Respondent) v.
MICHAEL SUAREZ (Defendant-Appellant)
Docket No. A-0966-22T1

Criminal Action: On Appeal from an Order of the Superior Court of New Jersey, Law Division, Ocean County.

Sat Below: Hon. Guy P. Ryan, P.J.Cr.

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Honorable Judges:

This letter brief and appendix is submitted in lieu of a formal brief on behalf of the State. See R. 2:6-2(b); R. 2:6-4(a).

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## PRELIMINARY STATEMENT

In 1991, defendant brutally and senselessly murdered his friend and neighbor, Joel Blevins, while on bail awaiting trial for other violent offenses. On August 3, 1991, twenty-five-year-old Blevins was found lying in the fetal position between his bed and a wall on scattered, blood-soaked sheets. He was stabbed eleven times. During the course of the investigation, police matched defendant's palm print to a bloody print found in Bevins's home. After being confronted with the results of the fingerprint analysis, defendant confessed to the murder in a taped statement. He admitted to going to Blevins's home in the early morning hours to commit a robbery, but proceeded to stab him several times with a knife. Defendant stole Blevins's wallet containing five dollars and an ATM card. Defendant was nineteen years old at the time of the crimes.

A jury found defendant guilty of murder, felony murder, robbery, burglary and unlawful possession of a weapon. In aggregate, defendant was sentenced to life imprisonment, with a forty-year period of parole ineligibility, to run consecutive to the sentence he was already serving for a Monmouth County armed robbery. His sentence was upheld on direct appeal.

In 2022, defendant filed a motion to correct an illegal sentence. His sole argument to the trial court and on appeal is that the mandatory thirty-year parole bar for murder constitutes cruel and unusual punishment as applied to "late

adolescent offenders." But the relevant precedent on cruel and unusual punishment from both the United States Supreme Court and the New Jersey Supreme Court has consistently drawn the constitutional line between childhood and adulthood at eighteen years old. As such, defendant may have been a young adult, but he was an adult nonetheless for constitutional purposes when he brutally murdered Blevins.

Defendant asks this Court to "extend" the New Jersey Supreme Court's 2022 decision in State v. Comer—creating a twenty-year "look-back" provision for juvenile homicide offenders—to eighteen-to-twenty-year-old offenders. This Court should decline to do so, especially where, after Comer, the Supreme Court maintained the constitutional line of eighteen between juveniles and adults. In addition, the out-of-state cases defendant relies upon all involve mandatory life without parole sentences, rather than parole eligibility after thirty years.

In short, defendant's sentence for his egregious adult criminal conduct, under which he will have an opportunity for parole after serving forty years, is in no way unlawful. Thus, this Court should affirm the trial court order denying defendant's motion to correct an illegal sentence.

## COUNTERSTATEMENT OF PROCEDURAL HISTORY

On August 9, 1991, a criminal complaint was issued against defendant charging him with murder, contrary to N.J.S.A. 2C:11-3 (count one), and robbery, contrary to N.J.S.A. 2C:15-1 (count two). (Pa1).

On September 22, 1992, defendant waived indictment and pleaded guilty to first-degree murder, contrary to N.J.S.A. 2C:11-3(a)(1)(2), under Ocean County Accusation No. 92-09-879-A, before the Honorable Peter J. Giovine, J.S.C., pursuant to a plea agreement. (Pa2 to 5; PSR1, 7). In exchange for his guilty plea, the prosecutor agreed to recommend a sentence of thirty years with a thirty-year period of parole ineligibility—the mandatory minimum sentence—and dismiss the robbery charge. (Pa2 to 3; PSR1, 7). On February 3, 1993, defendant moved to withdraw his guilty plea, which Judge Giovine granted on April 2, 1993. (Pa6).

On July 14, 1993, an Ocean County Grand Jury returned the instant, superseding indictment—Indictment No. 93-07-00580-I—charging defendant with first-degree murder, contrary to N.J.S.A. 2C:11-3(a)(1)(2) (count one); first-degree felony murder, contrary to N.J.S.A. 2C:11-3(a)(3) (count two); first-degree armed robbery, contrary to N.J.S.A. 2C:15-1 (count three); second-degree armed burglary, contrary to N.J.S.A. 2C:18-2 (count four); third-degree burglary, contrary to N.J.S.A. 2C:18-2 (count five); and fourth-degree unlawful

possession of a weapon, contrary to N.J.S.A. 2C:39-5(d) (count six). (Da1 to 3; Da7).

The Honorable Edward J. Turnbach, J.S.C., presided over defendant's jury trial. (1T[1]). On February 10, 1995, the jury found defendant guilty on all counts. (Da5 to 6; 1T9-15 to 10-20).

On March 24, 1995, defendant appeared before Judge Turnbach for sentencing. (2T). On count one, murder, Judge Turnbach sentenced defendant to life imprisonment with a thirty-year period of parole ineligibility. (Da7; 2T15-7 to 11). Count two, felony murder, merged with count one. (Da7; 2T15-12 to 13). On count three, armed robbery, the judge imposed a sentence of twenty years with a ten-year period of parole ineligibility. (Da7; 2T14-20 to 23). On count four, armed burglary, the judge sentenced defendant to ten years, with a five-year period of parole ineligibility. (Da7; 2T14-24 to 15-3). Counts five and six merged with count four for sentencing purposes. (Da7; 2T15-4 to 6). The murder sentence was ordered to run consecutively to the robbery sentence, and the burglary sentence was ordered to run concurrently with the robbery sentence. (Da7; 2T14-24 to 15-3; 15-9 to 11). Therefore, the aggregate sentence imposed was life imprisonment plus twenty years, with a forty-year

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[1] Defendant did not produce the trial transcripts aside from the verdict and sentencing transcripts.

period of parole ineligibility, to run consecutive to the sentence defendant was already serving for a Monmouth County armed robbery.[2] (Da7; Da18; 2T15-14 to 18).

Defendant filed a direct appeal, and this Court affirmed defendant's convictions and sentence. (Da10); State v. Suarez, No. A-800-95 (App. Div. Dec. 1, 1997) (slip op. at 2). The New Jersey Supreme Court denied defendant's petition for certification on May 20, 1998. (Pa7); State v. Suarez, 154 N.J. 608 (1998).

On July 31, 2019, defendant filed a pro se motion to correct an illegal sentence. (Da18). Appointed counsel filed a supplemental brief on June 1, 2020. On August 20, 2020, the Honorable Wendel E. Daniels, P.J.Cr., denied defendant's motion. (Da18).

On July 27, 2022, defendant filed another pro se motion to correct an

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[2] Defendant committed the instant offenses while on bail awaiting trial for charges under Monmouth County Indictment No. 91-03-00386-I for first-degree armed robbery and third-degree aggravated assault, contrary to N.J.S.A. 2C:12:1(b)(2). (PSR6; Pa8). On November 1, 1993, defendant pleaded guilty to the armed robbery charge. (Pa8). On December 17, 1993, he was sentenced to a ten-year term of imprisonment, after which he was tried and sentenced in this case. (Pa8). It is unclear from the record when exactly defendant began serving his Ocean County sentence. (Pa9). Given his current parole eligibility date of April 10, 2037 and the forty-year period of parole eligibility, it seems that defendant began serving his Ocean County sentence in April 1997 and has served twenty-seven years thus far. (Pa9).

illegal sentence. (Da18). Appointed counsel filed a supplemental brief substantially identical to defendant's pro se brief on September 15, 2022. (Da 18).

On October 28, 2022, the Honorable Guy P. Ryan, P.J.Cr., heard argument on defendant's motion. (3T). On November 2, 2022, Judge Ryan issued an eleven-page written decision denying defendant's motion. (Da17 to 28).

On November 30, 2022, defendant timely filed his notice of appeal. (Da29 to 32).

## COUNTERSTATEMENT OF FACTS

On the morning of August 3, 1991, twenty-five-year-old Joel Blevins was found lying in the fetal position between his bed and a wall on scattered, blood-soaked sheets. (PSR2; Da10). He was stabbed eleven times—four times on the left side of the neck, three times on the right side of his neck, one time in the chest, twice in his upper back, and once in the forearm. (PSR2). The autopsy identified the cause of death as multiple stabbing wounds leading to hemorrhage. (PSR2).

During the course of the investigation, police matched defendant's palm print to a bloody print found at the murder scene. (Da10 to 11). After being confronted with the results of the fingerprint analysis, defendant confessed to the murder in a taped statement. (Da10 to 11).

Defendant told investigators he was dropped off by a friend at approximately 3:00 a.m. and sat on his front porch. (PSR2). He proceeded across the street to Blevins's residence to commit a robbery. (PSR2). Defendant entered through the unlocked front door and stole a vase with some dollar bills and change in it. (PSR2). He explained that he heard a noise from upstairs, so he left. (PSR2). Defendant said he went home, grabbed a knife, and returned to Blevins's home. (PSR2). After re-entering the house, defendant went upstairs and surprised Blevins. (PSR2; Da11). Defendant threw a knife at him, and Blevins fell by the bed. (PSR2; Da11). Defendant stabbed Blevins repeatedly in the head and neck, despite Blevins attempting to get up during the attack. (PSR2; Da11). Defendant then shifted the mattress off the box spring and over Blevins's body. (PSR2; Da11). He took Blevins's wallet and left. (PSR2; Da11).

One year prior to the murder, defendant was sent to live with his aunt and uncle, who lived across the street from Blevins. (Da8). Defendant and Blevins had been friends, and defendant did not provide an explanation for stabbing him. (PSR2). At trial, defendant testified that he was impaired the night of the murder. (Da12). He claimed not to have any recollection of the murder itself and disavowed the contents of his police statement, though he did not deny killing Blevins. (Da12).

As noted by this Court on direct appeal, defendant's police statement was corroborated at trial in several respects. (Da14). The palm print on the wall at the murder scene—which expert testimony established was created after the blood was present—was a match to defendant. (Da14). Additionally, defendant's description of the number and location of stab wounds and his admission that he pushed the mattress over Blevins's body coincided with testimony from officers who responded to the murder scene. (Da14).

The jury convicted defendant on all counts, and he is currently serving a life sentence with a forty-year period of parole ineligibility. (Da5 to 7, 18; 1T9-19 to 10-16; 2T15-14 to 18). At the time of the crimes, defendant was nineteen years old and on bail awaiting trial for an aggravated assault and armed robbery in Monmouth County. (PSR6; Pa8).

## LEGAL ARGUMENT

### POINT I

SINCE DEFENDANT WAS AN ADULT WHEN HE BRUTALLY MURDERED HIS VICTIM, HE IS NOT ENTITLED TO A RESENTENCING UNDER STATE V. COMER, WHICH ONLY APPLIES TO JUVENILES.

Defendant was nineteen years old when he brutally murdered Joel Blevins in his own residence. He may have been a young adult, but he was an adult nonetheless. Defendant asks this Court to extend the New Jersey Supreme

Court's decision in State v. Comer, 249 N.J. 359 (2022)—creating a twenty-year "look-back" provision for juvenile homicide offenders—to eighteen-to-twenty-year-old offenders. This Court should decline to do so, especially where, after Comer, the Supreme Court maintained the constitutional line of eighteen between juveniles and adults. See State v. Ryan, 249 N.J. 581 (2022). In short, defendant's sentence for his egregious adult criminal conduct, under which he will have an opportunity for parole after serving forty years, is constitutional and should be affirmed.

"An illegal sentence is one that is contrary to the Code of Criminal Justice or constitutional principles." State v. R.K., 463 N.J. Super. 386, 400 (App. Div. 2020) (citing State v. Acevedo, 205 N.J. 40, 45 (2011); and State v. Veney, 327 N.J. Super. 458, 462 (App. Div. 2000)). "An illegal sentence may be corrected at any time so long as the sentence has not been completely served." Ibid. (citing State v. Schubert, 212 N.J. 295, 309 (2012)). A trial court's determination of the constitutionality of a sentence is a legal question subject to de novo review. Ibid. (citing State v. Drake, 444 N.J. Super. 265, 271 (App. Div. 2016)).

Under N.J.S.A. 2C:11-3(b)(1), the Legislature mandated a thirty-year period of parole ineligibility for adults convicted of murder. That decision is presumed constitutional. Whirlpool Properties v. Dir., Div. of Taxation, 208 N.J. 141, 175 (2011). Indeed, "[o]ur courts have demonstrated a steadfast

adherence to the principle 'that every possible presumption favors the validity of an act of the Legislature.'" State v. Trump Hotels & Casino Resorts, 160 N.J. 505, 527 (1999) (quoting N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972), appeal dismissed, 409 U.S. 943 (1972)). The judiciary's power to invalidate a legislative act thus "has always been exercised with extreme self restraint, and with a deep awareness that the challenged enactment represents the considered action of a body composed of popularly elected representatives." Ibid. Consistent with this policy of restraint, "a legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reasonable doubt." Harvey v. Bd. of Chosen Freeholders, 30 N.J. 381, 388 (1959); Gangemi v. Berry, 25 N.J. 1, 10 (1957). The party challenging the statute bears the "heavy burden" of demonstrating its invalidity. Trump Hotels, 106 N.J. at 526.

Defendant cannot meet his heavy burden of overcoming the presumed constitutionality of N.J.S.A. 2C:11-3(b)(1). The premise of his argument is that eighteen-to-twenty-year-old homicide offenders "should have the same constitutional protection" as juveniles. (Db7). But the relevant precedent on cruel and unusual punishment from both the United States Supreme Court and the New Jersey Supreme Court has consistently maintained that age eighteen marks the line between childhood and adulthood under the Eighth Amendment.

Beginning with Roper v. Simmons, 534 U.S. 551 (2005), the United States Supreme Court held that offenders cannot be sentenced to death for crimes committed before they turned eighteen. The Court reasoned that while "the qualities that distinguish juveniles from adults do not disappear when an individual turns [eighteen]," there are also some individuals under eighteen who "have already attained a level of maturity some adults will never reach." Ibid. Acknowledging the need for a bright line, the Court drew it at age eighteen, emphasizing that point is "where society draws the line for many purposes between childhood and adulthood." Id. at 574.

Then, in Graham v. Florida, 560 U.S. 48 (2010), the Court barred sentences of life without parole for juveniles convicted of non-homicide offenses. The Court again drew the constitutional line at age eighteen: "Because '[t]he age of [eighteen] is the point where society draws the line for many purposes between childhood and adulthood,' those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime." Id. at 74-75 (quoting Roper, 543 U.S. at 574).

Next, in Miller v. Alabama, 567 U.S. 460 (2012), the Court considered the constitutionality of mandatory-life-without-parole sentences imposed on two fourteen-year-old juveniles convicted of murder. The Court ultimately held that "mandatory life without parole for those under the age of [eighteen] at the time

of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Id. at 465 (emphasis added). The Court set forth five factors that should be considered before a juvenile homicide offender is sentenced to life without parole: (1) defendant's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) defendant's family and home environment; (3) "the circumstances of the homicide offense," including the extent of defendant's participation and the potential effect of familial and peer pressures; (4) the disadvantage juveniles face in criminal proceedings due to "the incompetencies associated with youth"; and (5) the possibility of defendant's rehabilitation. Id. at 477-78.

Miller did not prohibit sentencing a juvenile homicide offender to the "harshest prison sentence" of life without the possibility of parole, but it did demand individualized sentencing for defendants facing that penalty. Ibid. At its core, Miller required "'only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence." Id. at 483.

The United States Supreme Court's post-Miller jurisprudence has held fast to the longstanding rule that childhood ends and adulthood begins at eighteen for constitutional purposes. In Montgomery v. Louisiana, 577 U.S. 190, 194

(2016), the Court clarified that Miller applied retroactively to "juvenile offenders" whose convictions and sentences were final when Miller was decided. And most recently, in Jones v. Mississippi, 593 U.S. ___, 141 S. Ct. 1307 (2021), the Court noted that "sentencing an offender who was under [eighteen] at the time of the crime raises special constitutional considerations." Id. at 1314.

Notably, in Jones, the Court largely abandoned its use of the term "juvenile," utilizing it in only six instances, four of which were direct quotations from prior opinions. Id. at 1315, 1317, 1318. Instead, the Court almost exclusively used the term "individuals under [eighteen]." See, e.g. id. at 1314. In recounting its series of youth-sentencing cases, the Court reaffirmed the clear, constitutional line at age eighteen:

> In a series of Eighth Amendment cases applying the Cruel and Unusual Punishments Clause, this Court has stated that youth matters in sentencing. In Roper v. Simmons, 543 U.S. 551 (2005), the Court concluded that the Eighth Amendment prohibits capital punishment for murderers who were under [eighteen] at the time of their crimes. And in Graham v. Florida, 560 U.S. 48 (2010), the Court held that the Eighth Amendment prohibits life without parole for offenders who were under [eighteen] and committed nonhomicide offenses. Importantly, however, Graham did not prohibit life without parole for offenders who were under [eighteen] and committed homicide. . . . .
>
> And then in Miller in 2012, the Court allowed life-without-parole sentences for defendants who

> committed homicide when they were under [eighteen], but only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to "consider the mitigating qualities of youth" and impose a lesser punishment.
>
> [Jones, 141 S. Ct. at 1314 (emphases added).]

The New Jersey Legislature, as well as the New Jersey Supreme Court, has also consistently drawn the line between childhood and adulthood at eighteen years old. The New Jersey Code of Juvenile Justice defines "juvenile" as "an individual who is under the age of [eighteen] years." N.J.S.A. 2A:4A-22(a). An "adult" is defined as "an individual [eighteen] years of age of older." N.J.S.A. 2A:4A-22(b).

In State v. Zuber, 227 N.J. 422 (2017), the New Jersey Supreme Court considered the constitutionality of lengthy terms-of-years sentences imposed on two offenders who were seventeen years old when they committed their respective crimes. Id. at 428-34. In remanding the cases for resentencing, the Court held that sentencing judges must evaluate the Miller factors before sentencing juveniles to the functional equivalent of life without parole. Id. at 451. In its opinion, the Court also "ask[ed] the Legislature to consider enacting a scheme that provides for later review of juvenile sentences with lengthy periods of parole ineligibility." Id. at 453.

Later, in Comer, the Court considered the constitutionality of the

mandatory thirty-year parole bar for murder, "as applied to juveniles." 249 N.J. at 369. To "save the statute from constitutionality infirmity," the Court ruled that it will "permit juvenile offenders convicted under the law to petition for a review of their sentences after they have served two decades in prison." Id. at 370. At that time, judges will assess the factors set forth in Miller. Ibid. "After evaluating all the evidence, the trial court would have discretion to affirm or reduce the original base sentence within the statutory range, and to reduce the parole bar to no less than [twenty] years." Ibid. The Comer Court did not extend this right of review to offenders who were eighteen or older at the time of their crimes.

Soon after, in Ryan, the Court rejected an adult defendant's claim that allowing courts to count crimes committed while under the age of eighteen as predicate offenses for the "Three Strikes Law," N.J.S.A. 2C:43-7.1(a), violates Miller and Zuber. 249 N.J. 581. The defendant committed two first-degree armed robberies at age sixteen—the first strike. Id. at 586. After his release from prison, at the age of twenty-three, Ryan committed two first-degree armed robberies—the second and third strikes. Ibid.

In rejecting Ryan's constitutional challenge to application of the Three Strikes Law, the Court noted that "Miller and Zuber are uniquely concerned with the sentencing of juvenile offenders to lifetime imprisonment or its functional

equivalent without the possibility of parole." Id. at 601. But Ryan "committed his second and third armed robberies as a twenty-three year old, and was therefore an adult being sentenced for a crime committed as an adult." Ibid. The Court determined that neither Miller nor Zuber precluded application of the Three Strikes Law to adult defendants. Id. at 601-02. In so holding, the New Jersey Supreme Court confirmed that its decision in Zuber did not "extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen." Id. at 596.

In short, under the well-established precedent, defendant may have been a young adult, but he was an adult nonetheless when he committed the brutal murder of Joel Blevins at nineteen years old. Indeed, defendant recognizes that his requested relief would require this Court to "extend" Comer "beyond the age of seventeen." (Db14).

This Court should decline defendant's request to extend New Jersey Supreme Court precedent. See Pannucci v. Edgewood Park Senior Hous. - Phase 1, LLC, 465 N.J. Super. 403, 414 (App. Div. 2020) ("[P]laintiff does not ask us to fill a gap in the law; she asks us to change the law the Supreme Court has established. That, we may not do."). This Court has stated it would not infer a "departure from controlling precedent" absent "an unmistakable" signal from the Supreme Court, State v. Hicks, 283 N.J. Super. 301, 308 (App. Div. 1995),

recognizing that any such "departure should be undertaken 'by the court of last resort, and not by the Appellate Division,'" In re State ex rel. A.C., 115 N.J. Super. 77, 84 (App. Div. 1971) (quoting Casale v. Housing Authority, City of Newark, 42 N.J. Super. 52, 62 (App. Div. 1956)). Here, there is no "unmistakable signal" from the Supreme Court that Comer, which was decided January 10, 2022, should extend to adult homicide offenders. To the contrary, the Court in Ryan, decided February 7, 2022, found that neither Miller nor Zuber applied to a defendant being sentenced for a crime committed as an adult. Likewise, the Legislature thus far has elected not to extend Zuber or Comer to defendants aged eighteen or older.

Defendant's reliance on three out-of-state cases extending Miller to young adults is unavailing for two main reasons. First, many other courts have reached the opposite result and refused to extend Miller to adults. See, e.g., In re Manning, 24 F.4th 1107, 1109-10 (6th Cir. 2022) (denying habeas petitioner leave to file successive habeas petition seeking an extension of Miller to defendant who was eighteen at the time of his offense); In re Rosado, 7 F.4th 152, 159-60 (3d Cir. 2021) (denying habeas petitioner leave to file successive habeas petition where "Miller set a clear age limit," petitioner fell "on the wrong side of the limit" at nearly eighteen-and-a-half years old, and finding court cannot "redraw th[e] line" set by the United States Supreme Court); United

States v. Sierra, 933 F.3d 95, 97 (2d Cir. 2019) (declining to extend Miller to defendants who committed crimes between eighteen and twenty-two years of age); United States v. Marshall, 736 F.3d 492, 498 (6th Cir. 2013) (recognizing "[t]he Supreme Court's decisions limiting the types of sentences that can be imposed upon juveniles all presuppose that a juvenile is an individual with a chronological age under [eighteen]" and thus refusing to apply Miller where defendant was between eighteen and twenty at time of crimes); United States v. Hoffman, 710 F.3d 1228, 1233 (11th Cir. 2013) (refusing to apply Miller to crime committed by adult offender); Crow v. State, 923 N.W.2d 2, 8, 11 (Minn. 2019) (holding that Miller did not apply to twenty-two-year-old defendant convicted of murder); Commonwealth v. Cintora, 69 A.3d 759, 764 (Pa. Super. Ct. 2013) (holding that Miller was inapplicable to defendants aged nineteen and twenty-one at time of crimes); Sloan v. State, 418 S.W.3d 884, 892 (Tex. App. 2013) (ruling that Miller's holding is limited to juveniles).

Second, the cases defendant relies on are readily distinguishable because they all involved mandatory sentences of life without parole. See In Re Monschke, 482 P.3d 276, 288 (Wash. 2021) (extending Miller protections through age twenty for defendants sentenced to life in prison without the possibility of parole); People v. Parks, 987 N.W.2d 161, 171 (Mich. 2022) (extending Miller protections through age eighteen for defendants sentenced to

life in prison without the possibility of parole); Commonwealth v. Mattis, 224 N.E.3d 410, 415, 428 (Mass. 2024) (banning mandatory life-without-parole sentences for defendants through age twenty). Defendant's case does not present the issue of whether a young adult offender can be sentenced to life without the possibility of parole. Indeed, defendant was not sentenced to life without parole. Instead, he will be eligible for parole after an aggregate term of forty years in prison.

Here, as Judge Ryan noted below in denying defendant's motion, defendant was not sentenced to life without parole. (Da26). Instead, he will be eligible for parole after an aggregate term of forty years in prison—thirty years on his felony murder conviction, and a consecutive term of ten years on his armed robbery conviction. Under these circumstances, defendant's reliance on cases involving the "harshest possible penalty" of life without the possibility of parole is misplaced. See Miller, 567 U.S. at 479.

Further, defendant's out-of-state cases are inapposite considering the remedy he seeks. Monschke, Parks, and Mattis might offer persuasive support for extending Miller to offenders who were eighteen years old or above when they committed their crimes. But that is not what defendant seeks from this Court; he argues instead that defendants sentenced for crimes committed at age nineteen should be entitled to the Comer twenty-year look-back. (Db24). To so

extend Comer, this Court would first have to disregard clear New Jersey Supreme Court precedent that Miller's protections do not extend to defendants sentenced for crimes committed when those defendants were over the age of eighteen. Ryan, 249 N.J. at 596. After accepting that Miller protections should apply to defendants sentenced for crimes committed at age nineteen, this Court would then have to extend the Comer look-back period accordingly. There is simply no justification for such a departure from controlling New Jersey precedent.

## CONCLUSION

Based on the foregoing, the State urges this Court to affirm the order denying defendant's motion to correct an illegal sentence.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-966-22T1
Ind. No. 93-07-580

# REPLY BRIEF FOR DEFENDANT-APPELLANT

| | | |
|---|---|---|
| STATE OF NEW JERSEY, | : | CRIMINAL ACTION |
| Plaintiff-Respondent, | : | On Appeal from an Order of the Superior Court of New Jersey, Law Division, Ocean County |
| v. | : | |
| **MICHAEL SUAREZ**, | : | Sat Below: Hon. Guy P. Ryan, P.J.Cr.. |
| Defendant-Appellant. | : | |

DEFENDANT IS CONFINED

Your Honors: Pursuant to R. 2:6-2(b), this letter is filed in lieu of a formal reply brief on behalf of the defendant-appellant.

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## PROCEDURAL HISTORY AND STATEMENT OF FACTS

This brief is filed on behalf of defendant-appellant Michael Suarez and in reply to plaintiff-respondent's brief. Defendant relies on the procedural history and statement of facts in his main brief.

## LEGAL ARGUMENT

**A RESENTENCING SHOULD OCCUR BECAUSE THE LANDMARK COMER DECISION -- WHICH ENTITLES JUVENILE OFFENDERS TO A RESENTENCING AFTER TWENTY YEARS -- SHOULD EXTEND TO NINETEEN-YEAR-OLD OFFENDERS LIKE DEFENDANT SUAREZ, WHO SHARE THE SAME CHARACTERISTICS AS JUVENILES. U.S. CONST. AMEND. VIII, XIV; N.J. CONST. ART. I, ¶ 12. (ruling below at Da 17-28)**[1]

The logic is inescapable. Comer was based on the Miller factors. The Miller factors are applicable at least through age twenty. Therefore, Comer must be extended through age twenty -- and certainly to an nineteen-year-old offender like Suarez

Respondent's brief conspicuously ignores this analysis. Respondent makes no reference to Comer's three-part test for cruel and unusual punishment. That is, a punishment is unconstitutional if any one of the following

[1] "Da" refers to the appendix attached to defendant-appellant's main brief. "Db" will refer to that brief. "Pb" will refer to plaintiff-respondent's brief.

three propositions is true: (1) the punishment does not "conform with contemporary standards of decency"; (2) the punishment is "grossly disproportionate to the offense"; or (3) the punishment goes "beyond what is necessary to accomplish any legitimate penological objective." State v. Comer, 249 N.J. 359, 383 (2022).

Except in an oblique way, respondent also fails to acknowledge Comer's reliance on the characteristics of young people described in the Miller factors. (Pb 15) See Comer, 249 N.J. at 387, 399 n.5 (citing Miller v. Alabama, 567 U.S. 40, 477-78 (2012)). The Miller factors are what caused Comer to hold that a thirty-year parole bar for juveniles failed two of the three tests for cruel and unusual punishment. That is, given the immaturity and diminished culpability of juveniles, the thirty-year bar is in many cases grossly disproportionate to the offense. Comer, 249 N.J. at 397-98. Given these same characteristics -- plus juveniles' likelihood of reform with maturity -- the punishment goes beyond what is necessary for retribution, deterrence, incapacitation, or rehabilitation. Id. at 398-400.[2]

Nor does respondent dispute that the Miller factors apply equally to eighteen- to twenty-year-olds. As explained in appellant's main brief, the sci-

[2] The Court also held that the punishment failed the third test because current trends in the law show that it does not conform to contemporary standards of decency when applied to juveniles. Id. at 394-96.

ence is incontrovertible. (Db 14-20) Thus, other states are following the inescapable logic of extending constitutional protection against long sentences past age seventeen. (Db 20-22) See Commonwealth v. Mattis, 224 N.E.3d 410 (Mass. 2024); People v. Parks, 987 N.W.2d 161 (Mich. 2022); In re Monschke, 482 P.3d 276 (Wash. 2021).

Rather than grapple with the actual legal test and the implications of the developmental science, respondent's principal argument is that prior precedent forecloses the Law Division and Appellate Division from applying Comer to a nineteen-year-old. (Pb 10-17) To the contrary, this issue is open: the New Jersey Supreme Court has not yet decided whether Comer should extend beyond seventeen. The offenders at issue in Comer were fourteen and seventeen, and the Court had no occasion to opine on any other age. See Comer, 249 N.J. at 371, 374. The same can be said of the cases leading up to Comer. Simmons was seventeen. Roper v. Simmons, 543 U.S. 551, 556 (2005). Graham was sixteen. Graham v. Florida, 560 U.S. 48, 53 (2010). The defendants in Miller were fourteen. Miller, 567 U.S. at 465, 467. Montgomery was seventeen. Montgomery v. Louisiana, 577 U.S. 190. 194 (2016). The defendants in Zuber were seventeen. State v. Zuber, 227 N.J. 422, 430, 433 (2017). Jones was fifteen. Jones v. Mississippi, 593 U.S. 98, 102 (2021).

Thus, one will search in vain in these cases for any substantial discussion of late adolescents aged eighteen through twenty. No analysis of the specific characteristics of this age group is to be found. No analysis of whether the Miller factors apply to this age group is to be found. No application of any constitutional test to this age group is to be found. And ultimately, no decision is to be found on whether constitutional protection should extend to this age group.

Given the absence of any discussion of late adolescents, respondent resorts to taking the copious language in these cases referring to "juveniles," "children," and the like out of context. This language was not meant to limit constitutional protection to age seventeen. It was meant to extend protection to age seventeen. For example, respondent emphasizes the language from Simmons discussing how eighteen "is the point where society draws the line for many purposes." Simmons, 543 U.S. at 574. (Pb 11). Let us examine more of the relevant passage:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality opinion in Thompson drew the line at 16. In the intervening years the Thompson plurality's conclusion that offenders under

> 16 may not be executed has not been challenged. The logic of Thompson extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

Id.

Read in the full context, this passage was extending protection against the death penalty from fifteen-year-olds, see Thompson v. Oklahoma, 487 U.S. 815 (1988), to seventeen-year-olds like the defendant Simmons. In other words, the "line" was being moved from sixteen to eighteen. In this connection, the court had analyzed at length how contemporary standards of decency were against the death penalty for people below eighteen, Simmons, 543 U.S. at 564-67, and how the penalty was disproportionate and served no penological purpose for people below eighteen, id. at 568-74. Whether the constitutional line should move any further beyond eighteen was not before the court and was not analyzed. Nor was it before the courts in any of the other leading decisions mentioned above.

Respondent similarly attempts to draw far more meaning from State v. Ryan, 249 N.J. 581 (2022), than that precedent will bear. (Pb 15-16) Ryan was not a juvenile and was not even younger than twenty-one. Rather, he was a twenty-three-year-old offender who argued that a prior juvenile offense should not count as one of three "strikes" subjecting him to a life sentence. Ryan, 249

N.J. at 587-88, 590. In rejecting this argument, the Supreme Court emphasized that it was only judging the "penalty for the latest crime" of the twenty-three-year-old; the Court viewed cases protecting younger offenders against long sentences as irrelevant. See id. at 600-01. Thus, Ryan had nothing to do with extending Comer to a nineteen-year-old like Suarez. The language of Ryan should not be taken out of its narrow context.

In short, the issue of extending constitutional protection beyond age seventeen remains open. The Law Division and Appellate Division are not being asked to reverse controlling precedent -- which, of course, they have no power to do -- but to extend precedent. The lower courts should not shirk their duty to decide the issue. See State v. Roper, 362 N.J. Super. 248, 252-53 (App. Div. 2003) (emphasizing "the trial court's responsibility in the first instance to address and render a reasoned opinion upon any question brought before it" and expressing "dismay" at the trial court's deferral of an "extremely significant question" to the appellate courts).

Respondent briefly attempts to point to a body of case law contrary to the well-reasoned and persuasive decisions from Washington, Michigan, and Massachusetts. But respondent's cited decisions have little useful reasoning. (Pb 12-16) Some of the decisions did not even involve the issue of whether offenders older than seventeen should categorically receive constitutional protec-

tion; respondent nevertheless attempts to draw dicta from the decisions. See United States v. Marshall, 736 F.3d 492, 498-500 (6th Cir. 2013) (rejecting the argument that the defendant, because of a hormone deficiency that made him childlike, should be an individual exception to a line drawn at eighteen); United States v. Hoffman, 710 F.3d 1228, 1232-33 (11th Cir. 2013) (rejecting a forty-three-year-old defendant's argument that a juvenile conviction should not be a predicate offense).

Other of the decisions were based on procedural grounds, without directly reaching the merits of whether constitutional protection should be extended. See In re Manning, 24 F.4th 1107, 1109 (6th Cir. 2022) (holding under the applicable habeas statute that only a right already recognized by the United States Supreme Court could be a basis for collateral relief); In re Rosado, 7F. 4th 152, 158-60 (3d Cir 2021) (same); See Commonwealth v. Cintora, 69 A.3d 759, 764 (Pa. Super. Ct. 2013) (holding under the applicable Pennsylvania statute that only a right already recognized by the United States or Pennsylvania Supreme Court could be a basis for collateral relief); Sloan v. State, 418 S.W.3d 884, 891-92 (Tex. App. 2013) (rejecting on preservation grounds an effort to extend Miller).

And the pair of decisions that rejected extending constitutional protection have no reasoning beyond very briefly observing -- like respondent here --

that the leading cases did not go beyond age seventeen. See United States v. Sierra, 933 F.3d 95, 97 (2d Cir. 2019); Crow v. State, 923 N.W.2d 2, 11 (Minn. 2019).

Finally, respondent tries to distinguish the Washington, Michigan, and Massachusetts decisions by observing that they involved defendants serving life without parole, while Suarez is not serving life without parole. (Pb 18-19) Respondent's suggestion seems to be that the protection of Miller and Zuber might be extended to late adolescents, without extending the protection of Comer. That makes no sense. All three cases were based on the characteristics of juveniles summarized in the Miller factors. (Db 8-13) If late adolescents share the same characteristics as juveniles, they should benefit from all three cases; there is no basis to choose between the cases.

In short, the law, the science, and the better-reasoned cases dictate that Comer should extend to the nineteen-year-old Suarez. Suarez should have a resentencing. In the alternative, the Court should order a remand for a hearing to consider expert testimony on the developmental science, and to decide if the Comer lookback should extend to nineteen-year-olds.

## CONCLUSION

For the reasons stated here and in appellant's main brief, the order denying the motion for resentencing should be reversed, and the case should be remanded for resentencing.

Respectfully submitted,

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