ROBIN KAY LORD, ESQUIRE
Attorney ID # 002031986
210 South Broad Street, Suite B
Trenton, NJ 08608
Phone: (609) 393-4499
Fax: (609) 393-0411
Email: Robin@robinlordlaw.com
Attorney for Defendant, Aaron Sheppard

STATE OF NEW JERSEY,	:	**SUPERIOR COURT OF NEW JERSEY**
Plaintiff-Respondent	:	**GLOUCESTER COUNTY**
	:	
	:	**APP. DIV. DKT NO.: A-002009-24**
v.	:	
	:	**ACCUSATION NO. 03-10-0811-A**
	:	**Criminal Action**
AARON SHEPPARD,	:	
Defendant-Appellant	:	**Sat Below: Honorable Kevin T.**
	:	**Smith, J.S.C.**

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

July 7, 2025

Law Offices of Robin Kay Lord, LLC
210 South Broad Street, Suite B
Trenton, New Jersey 08608
(609) 393-4499

Robin Kay Lord, Esq.
Attorney ID No. 002031986
robin@robinlordlaw.com

Defendant is Confined

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PRELIMINARY STATEMENT

This case presents a profound question of justice and procedural fairness arising from the sentencing of a young adult offender. Aaron Sheppard was a 20 year-old drug addict who broke into a tire store to steal money to support his long term drug habit. Unfortunately, the store was not vacant and a struggle ensued resulting in the death of the victim. When he was arrested, the police terminated the interview because they recognized that he was very high on drugs. Just three months later, on the advice of appointed counsel, he pled guilty to an accusation for felony murder resulting in a 35 year sentence, with a 30 year stip.

The central issue before this Court concerns whether a 20 years old offender should be afforded a resentencing hearing with the individualized consideration and protections now mandated by Comer for juvenile offenders. The evolving jurisprudence recognizes the diminished culpability of emerging adults, as well as their unique capacity for growth and rehabilitation, meriting an opportunity to demonstrate same at a resentencing hearing after serving 20 years. Such a hearing was initially granted below, an expert report was submitted to the court, and a motion date was scheduled where the defendant's expert, Dr. Tarika Daftary-Kapur, was prepared to testify. Numerous exhibits were also supplied demonstrating his extraordinary rehabilitation during incarceration. While the hearing was pending, a panel of this Court decided State v. Jones, 478 N.J. Super 532 (App. Div. 2024),

declining to apply Comer to youthful offenders over the age of 18. As a result, relying on Jones, the court below denied the defendant's motion without a hearing.

As demonstrated below, the Jones panel was mistaken to apply a rigid and inflexible standard to youthful offenders over the age of 18 serving lengthy sentences. Such an approach deprives the youthful offender of individual consideration that conforms with "contemporary standards of decency," that is required to pass constitutional muster under the eighth amendment. As observed in Zuber, these standards are continuously evolving, leaving little room for rigid interpretation. Refusing a Comer resentencing for defendants over the arbitrary age of 18, is not backed by the neuroscience that has guided us this far. In modern day, we now recognize that the cortex of the brain that controls judgment, reason and impulsive behavior, does not fully mature until the early twenties. Consequently, our legal framework must align with this brain and social science to ensure constitutional validity and consistency with contemporary standards of decency.

PROCEDURAL HISTORY

On July 9, 2003, Mr. Sheppard was arrested and charged with first-degree Felony Murder contrary to N.J.S.A. 2C:11-3(a)(3) and related offenses. At the time of his arrest, he was 20 years old. On October 8, 2003 – only 3 months later – on the advice of counsel, Mr. Sheppard accepted a plea deal and pled guilty to first-degree Felony Murder by way of Accusation No. 2003-10-811-A (Da 1) in exchange for an

anticipated sentence of 35 years of New Jersey State Prison with a 30-year parole bar as well as an 85% parole disqualifier pursuant to the No Early Release Act (NERA). (Da 2-5) During his plea colloquy, the "factual basis for his guilty plea was provided almost exclusively by 'yes' and 'no' answers to leading questions by his attorney." State v. Sheppard, 2011 WL 2682911 at *1 (2011). On November 21, 2003, Mr. Sheppard was sentenced to 35 years NERA with a 30-year parole ineligibility stipulation. (Da 6-8) At the time of sentencing, Mr. Sheppard's assigned counsel, stated only the following on Mr. Sheppard's behalf:

> Judge, I have nothing further on this. Obviously, pretty much any time there is a homicide, there are people who are distressed, and this puts a human face on it for those of us who work here every day. You know the mighty and the meek are all the same.

([1]T:12-21 to 13-1).

Mr. Sheppard filed an appeal of his sentence in September 2004. The Appellate Division affirmed his sentence on August 3, 2005. (Da 9). Mr. Sheppard then filed a pro se Petition for Post-Conviction Relief (PCR) on February 8, 2008, which was supplemented by assigned counsel in May 2009. The PCR court denied Mr. Sheppard's PCR on September 28, 2009 without an evidentiary hearing. (Da 10-24) However, on appeal, on July 12, 2011, the Appellate Division reversed the denial of the PCR and remanded for an evidentiary hearing. (Da 25-38) On remand,

[1] T refers to the sentencing transcript dated 11-21-2003

an evidentiary hearing was held, after which the PCR court again denied Mr. Sheppard's PCR on March 13, 2018. (Da 39) Mr. Sheppard appealed again, and on January 2, 2020, the Appellate Division affirmed the denial of his PCR. State v. Sheppard, 2020 WL 30420 (2020).

On May 27, 2021, Mr. Sheppard filed a Notice of Motion for PCR, however, thereafter moved to withdraw this Motion on February 18, 2022, as Mr. Sheppard did not want to pursue a PCR. Instead, on July 22, 2022, Mr. Sheppard filed a Motion to Withdraw his Guilty Plea R. 3:21-1, and for a New Trial Based on Newly Discovered Neuroscience Evidence per R. 3:20-2 or, in the alternative, for a Reduction of Sentence, R. 3:21-10(b)(5). The defendant then hired private counsel who arranged for a forensic evaluation focusing on the Miller/Zuber/Comer factors which was supplied to the court as an attachment to the legal memo, along with documentation of his numerous rehabilitative accomplishments while in prison. (DA 40-97). The basis of Mr. Sheppard's motion was the recent developments in psychology and cognitive neuroscience – now widely accepted by both State and Federal courts, including the New Jersey Supreme Court and U.S. Supreme Court – which indicate that a human brain is not fully developed until its mid-20s. Mr. Sheppard sought various forms of relief based upon these recent developments. However, the primary relief sought was a resentencing pursuant to State v. Comer, 249 N.J. 359 (2022).

A hearing date for the motion was scheduled where it was anticipated that the expert would testify on behalf of the defendant. However, before the hearing took place, a panel decided State v. Jones, 478 N.J. Super 532 (App. Div. 2024). Relying upon Jones, the court below denied the hearing on the papers. (Da 124-144).

STATEMENT OF FACTS

On July 9, 2003, Mr. Sheppard was charged with the murder of Joseph Green, who was found deceased in his place of business, Nomar Tire, earlier that same day.

When Mr. Sheppard was arrested, police attempted to interview him at around 8:35 PM. However, he had taken heroin at approximately 4:00 PM that day, so police determined that Mr. Sheppard was under the influence and stopped the interview. Sheppard, 2020 WL 30420*2. Later, at around midnight, police again attempted to interview Mr. Sheppard. After reading him his Miranda rights, Mr. Sheppard asked for an attorney. However, after the detective advised Aaron that he was facing "thirty to life", Mr. Sheppard agreed to speak with them.

Mr. Sheppard confessed to committing the murder in the course of what was essentially meant to be a burglary of the Nomar Tire store.[2] Mr. Sheppard admitted

[2] In his PSR, Defendant's Version stated: "Mr. Sheppard admitted that he broke into Romar Tire with the intention of stealing money. He broke in through a second-floor window and then made his way to the store area. Once he was in the store area the defendant found the victim sleeping on a mattress. There was a brief struggle during which Mr. Sheppard inflicted the fatal injuries. The defendant indicated that he struck the victim with a tool which he found in the store. Mr. Sheppard maintained that he did not have the intention of harming anyone when he entered the store. His

that he stole a camera from the store, took it to Camden, sold it, and used the proceeds to purchase heroin which he ingested the same day. Prior to the murder, Mr. Sheppard spent the day at a friend's house, drinking beer and taking pills. After his confession, he was taken to the county jail at 2:30 AM. The medical intake form, completed by a nurse at the jail, stated that Mr. Sheppard was still "very high."

Since his incarceration over 20 years ago, Aaron has achieved many accomplishments that undeniably establish his monumental and successful efforts at rehabilitation. (Da 98-123). In support of his Comer resentencing motion the Defendant retained private counsel who arranged for the Defendant to be evaluated by a forensic psychologist who specializes in adolescent development as it relates to the criminal justice system. (Da 145-159). Dr. Daftary-Kapur has extensive experience in the Miller/Zuber/Comer factors and considerations courts must contemplate in the resentencing/reentry decision for youthful offenders who received very lengthy sentences for their violent crimes. Dr. Daftary-Kapur opined that the neuroscience does not support the bright line that is drawn at 18 and on the contrary suggests that emerging adults are more similar to adolescents in their behavior in emotionally charged situations than older adults. "In sum, based on the state of the science, the line for adulthood does not start at 18, and the logic of

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only intention was to take money. The defendant reported that even during the struggle he did not intend to cause a fatal wound to the victim."

Graham, Miller, Zuber, and Comer, particularly the Miller factors, apply equally to those between the ages of 18 and 21." (Da 160-174). She further opined that given that Aaron Sheppard was 20 at the time of the offense, he met the criteria for resentencing under Comer criteria. In support of this opinion, Dr. Daftary-Kapur conducted a Miller factor analysis as reflected in Comer. (Da 160-174).

LEGAL ARGUMENT

POINT I

RECENT DEVELOPMENTS IN BRAIN SCIENCE AND THE EVOLUTION OF LEGISLATION AND CASELAW RECOGNIZE THE REMEDY SOUGHT HERE (Da 124-144)

As we have come to learn in recent studies of the human brain, the adolescent brain does not fully develop until the age of 26, which, by no coincidence, is also the age when the crime rate begins to desist. "Scientists refer to that as the 'age-crime curve,' which shows that more than 90% of all juvenile offenders desist from crime by their mid-20s." State v. Comer, Id at 399. Although the age-crime curve has been accounted for in dozens of studies, the complexity of why juveniles desist from crime has only recently been understood. New findings show that desistance is in fact developmentally preordained: As the juvenile brain matures, involvement in crime subsides. The age-crime curve, with its drastic drop off in crime after late adolescence, matches up with "research in neurobiology and developmental psychology . . . that [shows] the brain doesn't finish developing until the mid-20s,

far later than we previously thought." Vincent Schiraldi & Bruce Western, Why 21 year-old Offenders Should Be Tried in Family Court, Wash. Post (Oct. 2, 2015); see also Graham, 560 U.S. at 68 ("[P]arts of the brain involved in behavior control continue to mature through late adolescence."). The Pathways to Desistance Study, the "most comprehensive data set currently available about serious adolescent offenders," shows that the "process of maturing out of crime is linked to th[is] process of maturing more generally." DOJ Juvenile Justice Bulletin 1, 9. As a byproduct of maturation that occurs in all juveniles, the "general desistance process is at work for all offenders," and "even the most serious delinquents desist" from crime. A Portrait of the Serious Juvenile Offender: More Complicated than Often Portrayed, Pathways Newsletter Volume 5, http.pathwaysstudy.pitt.edu/documents/PathwaysNewsletter_vol5.pdf. This is even true for violent offenders. See Alex. R. Piquero, Youth Matters: The Meaning of Miller for Theory, Research and Policy Regarding Developmental/Life-Course Criminology, 39 New Eng. J. on Crim. & Civ. Confinement 347, 356 (2013)("[A]mong those individuals who do commit violence the likelihood of repeating is very rare."). Desistance, therefore, can be seen as a foregone conclusion of psychological maturity. As a juvenile matures, his brain matures and his involvement in crime declines. See also Elizabeth S. Scott & Laurence Steinberg, Blaming Youth, 81 Tex. L. Rev. 799, 820-21 (2003) (documenting several

psychiatric studies to conclude that crime committed by youths is better understood as "experimentation in risky behavior . . . [as] part of identity development" that, in the vast majority of cases, "desists naturally as individuals develop a stable sense of self and maturity of judgment").

Over time, our caselaw has evolved to reflect this recognition by science that the juvenile and young adult brain is underdeveloped. Only 20 years ago, it was not unlawful in the United States to execute a juvenile as young as age 16. See Stanford v. Kentucky, 492 U.S. 361, 380 (1989); but see State v. Bey, 112 N.J. 45, 102-105 (1988) (forbidding such executions in the State of New Jersey). It was not until 2005, in Roper v. Simmons, that our United States Supreme Court overruled Stanford and held that the execution of any juvenile violates the Eighth Amendment. 543 U.S. 551, 578 (2005) (explaining that "[j]uveniles' susceptibility to immature and irresponsibly behavior means their irresponsible conduct is not as morally reprehensible as that of an adult").

In Graham v. Florida, 560 U.S. 48, 74 (2010), the Supreme Court held that juveniles convicted of non-homicide offenses may never be sentenced to life without parole, no matter how heinous the crime. The Court endorsed the neuroscience indicating that misbehavior was rooted in the structure of the adolescents' still maturing brains:

> [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and

> adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.

Id. at 68. The Court thus recognized that juveniles are less culpable and more amenable to rehabilitation than adults. The Court explained, **a State "must ... give [juvenile offenders] ... some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation**." Id. at 75. (emphasis added).

In Miller v. Alabama, 567 U.S. 460, 465 (2012), the Court held that even for homicide offenses, "mandatory life-without-parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishment.' " The Court further held that a sentencing court is required to consider a number of factors relating to the "'mitigating qualities of youth,'" which are now known as the "Miller factors." Id. at 476-78. The Court recognized that applying those factors, the penalty of life-without-parole will be "uncommon," because it is "the rare juvenile offender whose crime reflects irreparable corruption." Id. at 479-80.

The Court noted "three significant gaps between juveniles and adults," which require treating juveniles differently for sentencing purposes:

> First, children have a "'lack of maturity and an underdeveloped sense of responsibility,'" leading to recklessness, impulsivity, and heedless risk-taking. Roper, supra, 543 U.S. at 569. 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]." Id. at 570.

Ibid. (alterations in original). In turn, this "diminish[es] the penological justifications for imposing the harshest sentences" upon them. Id. at 471-72.

Then, in Montgomery v. Louisiana, 577 U.S. 190, 193-96 (2016), the Supreme Court held that the Miller decision was fully retroactive. The Court held that "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" Id. at 208, quoting Miller, supra). The breadth of the decision, our Supreme Court ruled, extends beyond "life" sentences: The Court held that "when a juvenile facing a very lengthy term of imprisonment is first sentenced," the sentencing judge must evaluate the Miller factors to "'take into account how children are different, and how those differences counsel against irrevocably sentencing them" even to "lengthy" sentences though not "officially 'life without parole.'" Id. at 447-48, 451.

In New Jersey, in the companion cases of State v. Comer and State v. Zuber, 227 N.J. 422, 448 (2017), our Supreme Court went even further than Miller, building upon the landmark rulings and growing scientific consensus that juvenile brains

develop much later than previously thought. In Zuber, the Court addressed Miller and the cases upon which it relied, and made clear that their reasoning is not limited to mandatory life-without-parole sentences. Relying on Miller, the Court held that "when a juvenile facing a very lengthy term of imprisonment is first sentenced," the sentencing judge **must** evaluate the Miller factors to "'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" Id. at 451 (quoting Miller, supra, 567 U.S. at 480). (Emphasis added).

The Court thus expressly rejected the idea that a sentence must be life without parole in order to trigger these protections. Ibid. The New Jersey Supreme Court opined that:

> court[s] should consider factors such as defendant's "immaturity, impetuosity, and failure to appreciate risks and consequences"; "family and home environment"; family and peer pressures; "inability to deal with police officers or prosecutors" or his own attorney; and "the possibility of rehabilitation."

Id. at 453 (quoting Miller, 567 U.S. at 477-78). Though declining to decide the issue of exactly what sentence triggers these protections, the Court noted that the imposition of "**lengthy sentences with substantial periods of parole ineligibility . . . would raise serious constitutional issues**" and called upon the Legislature "to consider enacting a scheme that provides" for such review. Id. at 453. (emphasis added).

Significantly, Zuber interpreted R. 3:21-10(b)(5)'s allowance that an illegal sentence may be challenged "at any time" to include retroactive Miller-like challenges to lengthy juvenile sentences that were imposed years ago without regard for what are now significant constitutional concerns. The Court further elaborated that the prohibition against cruel and unusual punishment contained in our State Constitution, N.J. Const. art. 1, ¶ 12, "can offer greater protection . . . than the Federal Constitution demands[.]" Id. at 438.

Our Supreme Court then gave specific directions about what should occur at Zuber's resentencing:

> At a new sentencing hearing, the trial court should consider the Miller factors when it determines the length of his sentence and when it decides whether the counts of convictions should run consecutively. * * * The sentencing judge should also 'view defendant as he stands before the court' at sentencing and consider any rehabilitative efforts since his original sentence.

Id. at 453.

The following year, in 2018, our New Jersey Supreme Court further relied on the "scientific and sociological studies have shined new light on adolescent brain development and on the recidivism rates of juvenile[s]," in declaring presumptive lifetime sex-offender registration for juveniles unconstitutional. State in Interest of C.K., 233 N.J. 44, 74 (2018). This "new light" shows that because "juveniles do not possess immutable psychological or behavioral characteristics," and "age tempers

the impetuosity, immaturity, and shortsightedness of youth," juveniles are more aptly deemed "works in progress." Id.

Finally, in 2022, our Supreme Court decided more was needed to protect youthful offenders from serving constitutionally unsound lengthy mandatory sentences and pronounced: "we therefore hold under the State Constitution that juveniles may petition the court to review their sentence after 20 years." State v. Comer, supra at 401.

> Juvenile offenders sentenced under the statute may petition for a review of their sentence after having spent 20 years in jail. At the hearing on the petition, judges are to consider the Miller factors -- including factors that could not be fully considered decades earlier, like whether the defendant still fails to appreciate risks and consequences, and whether he has matured or been rehabilitated. See Miller, 567 U.S. at 477-78, 132 S.Ct. 2455; Zuber, 227 N.J. at 451-52, 152 A.3d 197.A defendant's behavior in prison since the time of the offense would shed light on those questions. Other factors, like the circumstances of the homicide offense, would likely remain unchanged. Both parties may also present additional evidence relevant to sentencing. See Zuber, 227 N.J. at 450, 152 A.3d 197. In particular, the trial court should consider evidence of any rehabilitative efforts since the time a defendant was last sentenced. See State v. Randolph, 210 N.J. 330, 354-55, 44 A.3d 1113 (2012).

State v. Comer, supra at 403. In other words, defendants who were waived up and sentenced on a murder to the mandatory 30-year stipulation, are now eligible to be resentenced to 10 years less.

Statutorily, our legal landscape for youthful offenders has evolved as well. That is, not only have the courts been concerned in recent years with how youthful

offenders have traditionally been treated, the Legislature is similarly troubled and has acted accordingly to fix this system. Our new juvenile waiver statute is intended to revamp the current juvenile waiver statute to place emphasis on rehabilitation rather than punishment. Under the new statute, the minimum age for waiver was raised from 14 to 15, there is an exclusive list of waivable offenses, and, if a case is waived but the juvenile is ultimately convicted only of a lesser, non-waivable offense, the case is sent back to the juvenile court and the conviction converted to an adjudication of delinquency. N.J.S.A 2A:4A-26.1(c)(1), (2); N.J.S.A. 2A:4A-26.1(f)(2). Moreover, any waived juvenile who is convicted of a waivable offense is now presumptively housed in a juvenile facility until age 21, not an adult prison. N.J.S.A. 2A:4A-26.1(f)(1).

The legislature did not stop there with ameliorative measures for juvenile offenders. In July 2017, in a move designed to comply with Miller and its progeny, the legislature enacted L. 201 c. 150 (eff. July 21, 2017), which amended N.J.S.A. 2C:11-3(b)(5) to eliminate life without parole for waived juveniles convicted of murder, and to replace that scheme with a 30-to-life range, with 30 years of parole ineligibility.

Also, on October 19, 2020, the Legislature amended N.J.S.A. 2C:44-1 to add mitigating factor fourteen which now provides that a sentencing judge "may

properly consider" that "[t]he defendant was under 26 years of age at the time of the commission of the offense."

Accordingly, there has been a considerable trend in recognizing the underdevelopment of the human brain and the implementation of new constitutional protections to keep current with the science.

POINT II

THE COURT BELOW ERRED IN REFUSING TO CONSIDER A RESENTENCING BECAUSE THE LANDMARK COMER DECISION – WHICH ENTITLES JUVENILE OFFENDERS TO A RESENTENCING AFTER TWENTY YEARS – SHOULD EXTEND TO TWENTY-YEAR-OLD OFFENDERS LIKE DEFENDANT WHO SHARE THE SAME CHARACTERISTICS AS JUVENILES (Da 124-144)

The adolescent brain does not magically mature at one's 18th birthday. In fact, all the research shows that at 18 the brain is a good 7 years away from maturity. The generally accepted neuroscience research confirms that the region of the brain governing judgment, reasoning, impulse control and risk assessment does not fully form until the mid-twenties. See United States Department of Justice, Office of Juvenile and Delinquency Prevention, Annual Report, at 8 (2005)[3] (confirming that adolescents "often use the emotional part of the brain, rather than the frontal lobe, to make decisions" and "[t]he parts of the brain that govern impulse, judgment, and other characteristics may not reach complete maturity until an individual reaches age

[3] available at https.ojp.gov/pdffiles1/ojjdp/212757.pdf

21 or 22"); Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Annals N.Y. Acad. Science 105-09 (June 2004) (reporting study confirming that in adolescents the prefrontal cortex, the "executive" part of the brain important for controlling reason, organization, planning, and impulse control, does not fully mature until the early twenties); Kenneth J. King, Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children From Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights, 2006 Wis. L. Rev. 431, 435-40 (2006)(neurological development continues into a person's twenties and affects decision-making ability, impulsivity, and ability to consider the consequences of actions).

Like teenagers, individuals in their early twenties are still disproportionately likely to engage in risky behaviors and criminal activity. 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).[4] This misbehavior occurs not because those in their early twenties

[4] Available at https.ojjdp.gov/pubs/248391.pdf

lack cognitive capacity; indeed, in a low-pressure situation, even a sixteen-year-old can process information and reason logically like a fully-grown adult. Laurence Steinberg et al., Are Adolescents Less mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop, 64 Am. Psychologist 583, 586, 592 (2009).[5]

Rather, the main issue is that, in situations of emotional arousal, those in their early twenties still lack impulse control – and this control is not developed until approximately the mid-twenties. 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; Steinberg et al. (2015), supra, at 7-8; Steinberg et al. (2009), supra, at 591, 592-93. See also Brent Roberts et al., Patterns of Mean-Level Change in Personality Traits Across the Life Course: A Meta-Analysis of Longitudinal Studies, 132 Psychological Bulletin 1, 14-15 (2006) (finding that personality changes more during young adulthood than at any other period). [6]

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[5] Available at https.apa.org/pubs/journals/releases/amp-64-7-583.pdf

[6] Available at https.researchgate.net/publication/7337585_Patterns_of_Mean-Level_Change_in_Personality_Traits_Across_the_Life_Course_A_Meta-Analysis_of_Longitudinal_Studies

Neuroscience teaches that the source of maturing impulse control in the early to mid-twenties is in the structure of the developing brain. Impulse control is most associated with the brain's prefrontal cortex. In this part of the brain, the connections undergo a pruning and growth process that does not end until the mid-twenties. Thus, scientists largely believe, those in their early twenties cannot help their misbehavior. 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., When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts, 27 Psychological Science 549, 559-60 (2016);[7] Mariam Arain et al., Maturation of the Adolescent Brain, 9 Neuropsychiatric Disease and Treatment 449, 450-56 (2013)[8]; Catherine Lebel & Christian Beaulieu, Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood, 31 The J. of Neuroscience 10937, 10943 (2011)[9]; Nico U.F. Dosenbach et al., Prediction of Individual Brain Maturity Using fMRI, 329 Science 1358, 1359

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[7] Available at https.templelawreview.org/lawreview/assets/uploads/2016/08/Cohen-et-al-88-Temp.-L.-Rev.-769.pdf

[8] Available at https.dovepress.com/maturation-of-the-adolescent-brain-peer-reviewed-article-NDT

[9] Available at http.jneurosci.org/content/31/30/10937

(2010)[10]; Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Annals of the N.Y. Acad. Of Sci. 77, 83 (2004).[11]

This research has led the leading experts in adolescent development to advocate moving from a binary paradigm of criminal justice to a tripartite paradigm. The binary paradigm makes those under eighteen eligible for juvenile court; but once eighteen is reached, a person generally loses any significant protection associated with youth. See Scott et al. (2016), supra, at 658-59. A tripartite system would establish an intermediate category for those aged eighteen through the early twenties. Because the brains of these youths are becoming more mature to some degree, they would not necessarily be eligible for juvenile court. Steinberg (2017), supra, at 416-17; Scott et al. (2016), supra, at 664-66. But because of their brains' continuing immaturity in other areas -- especially impulse control -- these emerging adults would be eligible for sentence mitigation and for the protections of Roper, Graham, and Miller. See Scott et al. (2016), supra, at 659, 661-62.

Interestingly enough, long before Miller, our legislature has recognized that emerging adults lack judgment and impulse control, establishing laws that protect them and the public from this physiological imbalance in the brain. In 1982 the legal

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[10] Available at https.ncbi.nlm.nih.gov/pmc/articles/PMC3135376/

[11] Available at http.thesciencenetwork.org/docs/BrainsRUs/ANYAS_2004_Giedd.pdf

drinking age was raised to 21. N.J.S.A. 9:17B-1b. You have to be 21 to gamble in a casino. N.J.S.A. 5:12-119. A firearm can not be purchased until the age of 21. N.J.S.A. 2C:58-3c(4). You must be 21 to purchase cannabis. And, a person cannot serve as a police officer until the age of 21. N.J.S.A. 40A:14-127. Hence, the application of Comer to young adults aligns with existing legislative measures in this state. Applying the principles of Comer to these young adults would plainly not be a foreign concept.

Overall, the evidence is clear that late-adolescent brains, are far more similar to juvenile brains, as described in Miller, 567 U.S. at 471-479, than to the brains of fully matured adults. In fact, it would be a difficult task for the prosecution here to even attempt to refute this scientific consensus in terms of neurological development, as evidence by their stance below. There is no meaningful distinction in this regard between those who are 17 years old and those who are 20 years old. This begs the question, why are we drawing a line on an arbitrary chronological age that can have no relationship to the emotional age of the individual? Culpability is derived from one's state of mind, not one's state of age. The resentencing procedure espoused in Comer is the appropriate mechanism for assessing the individual characteristics of the defendant, as opposed to an arbitrary cutoff.

1. **OTHER JURISDICTIONS EXTENDING MILLER BEYOND 17, TO THE "EMERGING" ADULT OFFENDER .**

The Supreme Judicial Court of Massachusetts, Massachusetts' highest appellate court, after a remand to develop the record with regard to brain development after the age of 17, concluded that life without parole for 18 to 20 year olds constituted cruel and unusual punishment. Commonwealth v. Mattis, 224 N.E.3d 410, 439, (2024). "Today, neuroscientists and behavioral psychologists know significantly more about the structure and function of the brains of [eighteen] through [twenty year olds] than they did [twenty] years ago ...." This is the result of years of targeted research and greater access to relatively new and sophisticated brain imaging techniques, such as structural magnetic resonance imaging (sMRI) and functional magnetic resonance imaging (fMRI)." Id at 421.

In U.S. v. Sepulveda, 762 F.Supp.3d 153 (D. R.I .2025) a federal district court, citing Mattis, Id, ordered a resentencing for a 20 year old offender sentenced to life without parole. In so doing federal court highlighted, as did Mattis, the other jurisdictions who have recognized that "emerging adult offenders require different treatment than older adult offenders:"

> [T]the District of Columbia now provides a chance at sentence reduction for people who were under twenty-five years old when they committed a crime. D.C. Code § 24-403.03. In 2019, Illinois enacted a law allowing parole review at ten or twenty years into a sentence for most crimes, exclusive of sentences of life without parole, if the individual was under twenty-one years old at the time of the offense. 730 Ill. Comp. Stat. 5/5-4.5-115. Effective January 1, 2024, Illinois also ended life without parole for most individuals under twenty-one years old, allowing review after they serve forty years. Ill. Pub. L. No. 102-1128, § 5 (2022). California has extended youth offender parole eligibility to individuals who committed offenses before twenty-five years of

> age. Cal. Penal Code § 3051. Similarly, in 2021, Colorado expanded specialized program eligibility, usually reserved for juveniles, to adults who were under twenty-one when they committed a felony. Colo. House Bill No. 21-1209 (2021) (enacted). In Wyoming, "youthful offender" programs were revised to offer reduced and alternative sentencing for those under thirty years old. Wyo. Stat. Ann. §§ 7-13-1002, 7-13-1003.

United States v. Sepulveda, Id at160.

In California, the parole laws for youthful offenders, when it was first enacted in 2013, applied only to individuals who committed their crimes before the age of 18. In more recent years, in keeping up with the brain science and the Eighth Amendment, the Legislature has expanded the statute to persons incarcerated for a crime committed between ages 18 and 25 are entitled to a parole hearing during the 15th, 20th, or 25th year of their incarceration. Cal.Pen. Code, § 3051, subd. (b).

In Michigan, despite the U.S. Supreme Court in Miller drawing the line at 17, they decided to afford younger adults greater protection under their Eighth Amendment, (as New Jersey routinely does), consistent with the emerging brain science. "We hold that mandatorily subjecting 18-year-old defendants convicted of first-degree murder to a sentence of life without parole violates the principle of proportionality derived from the Michigan Constitution." People v. Parks, 987 N.W.2d 161, 183 (2022).

In Washington, their Supreme Court set aside mandatory life without parole sentences for two defendants convicted of murder, ages 19 and 20, as a violation of their state constitution and remanded for resentencing. "We hold that the aggravated

murder statute's rigid cutoff at age 18 combined with its mandatory language creates an unacceptable risk that youthful defendants without fully developed brains will receive a cruel LWOP sentence." Matter of Monschke, 482 P.3d 276, 286 (2021). "Modern social science, our precedent, and a long history of arbitrary line drawing have all shown that no clear line exists between childhood and adulthood." Matter of Monschke, id at 277, (2021).

New Jersey courts have consistently provided criminal defendants with broader protections compared to those in other jurisdictions. Throughout its legal history, New Jersey has stood as a steadfast pillar in safeguarding the rights of defendants across numerous facets of the criminal justice system, consistently upholding principles of fairness, proportionality, and constitutional protection where others have faltered or hesitated. We have seen this in the fourth amendment, fifth amendment, as well as eyewitness identification, to name a few. Based on scientific evidence from neuroscience, there is no rational or logical basis for New Jersey to discontinue this trajectory with regard to emerging adults who have been given lengthy prison sentences.

POINT III

THE SENTENCE IN THIS CASE CONSTITUTES AN ILLEGAL SENTENCE IN VIOLATION OF THE CONSTITUITONAL PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT (Da 124-144)

The Eighth Amendment to our United States Constitution and Article I, Paragraph 12 of our New Jersey State Constitution expressly prohibit cruel and unusual punishment. U.S. Const. Amend VIII; XIV N.J. Const. art. I, ¶ 12. The test to determine whether a punishment is cruel and unusual under the New Jersey Constitution is as follows: "First, does the punishment for the crime conform with contemporary standards of decency? Second, is the punishment grossly disproportionate to the offense? Third, does the punishment go beyond what is necessary to accomplish any legitimate penological objective?" State v. Zuber, 227 N.J. 422, 438 (2017). The constitutional prohibition "against excessive punishment 'flows from the basic precept of justice that punishment for crime should be graduated and proportioned to the offense.'" Zuber, 227 N.J. at 437 (quoting Roper v. Simmons, 543 U.S. 551, 560 (2005).

Despite the similarities between Article I, Paragraph 12 and the Eighth Amendment, the protections against cruel and unusual punishment under our State Constitution have been deemed broader than those afforded under the Federal Constitution. Ibid.; see also State v. Ramseur, 106 N.J. 123, 169 (1987) ("this Court

recognizes its freedom -- indeed its duty -- to undertake a separate analysis under the cruel and unusual punishment clause of the New Jersey Constitution"). This broadening of the cruel and unusual punishment clause has been applied in the context of the death penalty, juvenile sentencings, and sentences of the mentally ill. See, e.g., Zuber, 227 N.J. at 438; Ramseur, 106 N.J. at 190; State v. Gerald, 113 N.J. 40, 76 (1988). What is deemed "cruel and unusual" is not assessed by looking at the sentence itself in a vacuum, but must be viewed in the context of the individual and their conduct.

Comer has made it clear that a 30 year parole bar violates the Eighth Amendment for a juvenile if it fails to allow for an individual assessment both at the sentencing and after. In an effort to save the constitutionality of a 30 year mandatory sentence, the juvenile is allowed a resentencing hearing after 20 years. As stated, the basis for this has nothing to do with the juveniles chronological age, but rather the science demonstrating the attributes of the underdeveloped brain as it relates to his criminal behavior. The question becomes, how can this unconstitutionality simply go away two years later when the neuroscience demonstrates there is no real difference between the two ages as the prefrontal cortex of the brain, important for controlling reason, organization, planning, and impulse control, does not fully mature until the early twenties. The answer is simple, it does not. Accordingly, a 20

year old must be afforded the same opportunity at resentencing, otherwise his sentence is in violation of the Eighth Amendment and hence an illegal sentence.

Moreover, Graham and Miller are explicitly premised on the belief that the Eighth Amendment prohibits **disproportionately** harsh punishments. It has long been the jurisprudence in our state that the sentencing of defendants **similarly situated** must be proportionate in all material respects. As recognized in State v. Moran, "[t]his Court often has taken affirmative steps to ensure that sentencing and disposition procedures, whether authorized by statute or court rule, will not produce widely disparate results for similarly situated defendants." 202 N.J. 311, 326 (2010). Accordingly, consistent with the constitutional goal of proportionate punishments for similarly situated defendants, "emerging adults," at least those 20 years of age, must receive the same protections and considerations as those under 18. It offends all notions of fairness that two defendants only a day apart, (17 turning 18) that are recognized in science to have the same evolving brain development, can have such disproportionate outcomes in the Criminal Justice System. To save the constitutional impact of State v. Comer, emerging adult defendants over the age of 18, who receive a 30 year mandatory period of parole ineligibility, or worse, must be allowed to petition the court for resentencing after serving 20 years. The 18 year cutoff is an arbitrary number not rationally related to the science or research. As indicated by Dr. Daftary-Kapur "the neuroscience does not support the bright line that is drawn

at 18 and on the contrary suggests that 18-25 year olds are more similar to adolescents in their behavior in emotionally charged situations than older adults." (Dr. Daftary-Kapur report at page 15).

A defendant may challenge an illegal sentence at any time. R. 3:21–10(b)(5). A sentence is illegal if it "exceeds the maximum penalty provided in the Code for a particular offense" or is *"**not imposed in accordance with law**."* State v. Acevedo, 205 N.J. 40, 45 (2011) (quoting State v. Murray, 162 N.J. 240, 247 (2000)). New Jersey law is unambiguous that an illegal sentence is one that is "imposed without regard to some constitutional safeguard," State v. Tavares, 286 N.J. Super. 610, 618 (App. Div.), certif. denied, 144 N.J. 376 (1996); accord Zuber, 227 N.J. at 437 (2017). Graham, Miller, Zuber and Comer could not have been more explicit about the constitutional safeguard required when sentencing juveniles: consideration of youth. Any sentence that fails to consider this for an emerging adult when his brain is not fully developed is an illegal sentence.

Thus, this Court should reverse the trial courts denial of Mr. Sheppard's motion to correct an illegal sentence and allow him to be resentenced under Comer.

POINT IV

THE ZUBER/ COMER/ MILLER FACTORS WEIGH IN FAVOR OF A RESENTENCING IN THIS MATTER (Da 160-174)

Comer directs that the Miller factors be considered in resentencing, they are:

> [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 extricate himself – no matter how brutal or dysfunctional.
>
> [3] the circumstances of the … offense, including the extent of his participation in the conduct and the way familiar and peer pressures may have affected him.
>
> [4] [The fact] that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to aid his own attorneys.
>
> [5] the possibility of rehabilitation.

Miller, 567 U.S. at 477-78.

As noted, the defendant was evaluated by a forensic psychologist, Dr. Daftary-Kapur, who specializes in adolescent development as it relates to the criminal justice system. Dr. Daftary-Kapur has extensive experience in the Miller/Zuber/ Comer factors. As fully detailed in her report, she opines within a reasonable degree of certainty that Aaron Sheppard, 20 at the time of the offense,

meets the criteria for resentencing under Comer criteria. In support of this opinion, Dr. Daftary-Kapur conducted a Miller factor analysis:

> 1. Aaron's chronological age and developmental immaturity at the time of the incident made him more susceptible to impulsive behavior and a diminished capacity to appreciate the risks and consequences of his actions.
> 2. Aaron's instant offense was impulsive and unplanned.
> 3. Aaron experienced a number of adverse childhood experiences including physical abuse as a child and a teenager, lack of a stable home, and sexual abuse in juvenile detention—all factors that impact development of self-control and are linked to maladaptive behaviors in adolescence.
> 4. Aaron was less competent to navigate the adult legal system.
> 5. Aaron's prison record attests to his capacity for change and positive rehabilitation.
> 6. Aaron had no disciplinary actions against for the last 15 years of his incarceration, and no serious violent infractions.

(Da 174).

In conducting a resentencing, the central issue is whether, after the passage of many years, that previous offender has changed, has been rehabilitated, and is now fit to return to society. Here, the evidence demonstrates that Mr. Sheppard has been rehabilitated.

As noted by Dr. Daftary-Kapur:

> Aaron has shown extraordinary rehabilitation during his incarceration. Firstly, he has only a handful of non-violent, low-level disciplinary infractions in over 20 years of incarceration. Secondly, he has participated in a large number of programs (approximately 20 plus programs), has obtained a number of vocational certifications, has his Associates Degree, and is a few classes away from a Bachelor's degree from Rutgers University in Justice Studies. His professor of

> research Methods, Dr. Douglas Evans provided an extremely positive letter of support for both his academic work and his character**.**

(Da 171).

It must also be noted that the Defendant's serious drug addiction fueled this crime. In fact, at the time of his arrest, the police noted he was too high to even interrogate. The PSR explains that Mr. Sheppard began first consuming alcohol "sometime between ages 6 and 8 years old" and that by age 13, he was using alcohol more frequently as well as using marijuana and cocaine. By age 15 or 16, Mr. Sheppard started using pills (mostly painkillers), and at age 17 he was using cocaine on a daily basis as well as using heroin. Significantly, Mr. Sheppard "reported that he was high on heroin when he committed the instant offense." In fact, "his motive for committing the burglary which resulted in the instant offense was to get money to buy drugs."

A large body of research and scholarly analysis recognizes that the deterrence rationale for sentencing is weak in circumstances where a defendant's drug addiction compromises his/her ability to rationally choose not to engage in criminal behavior. Paul 25H. Robinson & John M. Darley, The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best, 91 Geo. L. J. 949, 955-56; see also Linda C. Fentiman, Rethinking Addiction: Drugs, Deterrence, and the Neuroscience Revolution, 14 U. Pa. J. L. & Soc. Change 233 (analyzing, within the context of the deterrence rationale for criminal sentencing,

extensive scientific research on the neurological and psychological mechanisms and behavioral effects of drug addiction).

Also, Mr. Sheppard suffered from a history of mental health issues which originated prior to the offense. In his PSR, it was indicated that Mr. Sheppard's mental health was "Poor." It further stated that, "The defendant reported that he is currently depressed and admitted to previous periods when he experienced suicidal ideation." Though the PSR also indicated that Mr. Sheppard denied any specific diagnosis or medications, this was inaccurate and corrected on the record by Mr. Sheppard's attorney. Specifically, the attorney informed that he was in receipt of a "stack of meds" that he "received this afternoon" presumably from the jail, including Seroquel. (T:3-16 to 4-9). See State v. Nataluk, 316 N.J. Super. 336 (App. Div. 1998),(mental health history should be considered in mitigation at sentencing.).

Accordingly, if this Court were to grant a remand for a resentencing hearing, the Miller factors and other mitigation will demonstrate that Aaron is fit for reentry to society.

POINT V

THE TRIAL ERRED BY REFUSING THE DEFENDANT A RESENTENCING HEARING AND RELYING UPON STATE V. JONES. (Da 124-144)

The defendant maintains that the trial court committed error when it changed its mind and refused to entertain a Comer resentencing hearing, relying upon State v. Jones, Id.

1. Factual distinctions.

It must first be noted that the within case is distinguishable from Jones in many respects. While it is acknowledged that Jones denied the defendants a resentencing as a bright-line rule without getting into the individual merits, Mr. Sheppard's case is different. The defendant submitted a significant resentencing package to the lower court indisputably demonstrating that he has been rehabilitated and deserves reentry to society. Notably, the State offered very little to dispute this. As noted, the defendant filed as an attachment to his trial court submissions an expert report from a forensic psychologist who has extensive experience in the resentencing/reentry decision for youthful offenders who received very lengthy sentences for their violent crimes. As fully detailed in her report, she opines within a reasonable degree of certainty that Aaron Sheppard, 20 at the time of the offense, meets the criteria for resentencing under Comer criteria. (Da 161-175) Dr. Daftary-Kapur's opinion is not only based on her interview and evaluation of the defendant, but she reviewed his

prison records, which included his participation in a large number of programs, vocational certificates, and educational accomplishments, including a college degree. The Jones panel did not have such a complete record before it. This is a significant distinction, highlighting the uniqueness of Mr. Sheppard's rehabilitation journey and the compelling evidence presented.

The lower court's decision to forego a resentencing hearing, relying on Jones, failed to give due weight to the individualized factors that Comer requires courts to assess. Mr. Sheppard's record is replete with indicators of significant personal growth and a steadfast commitment to transformation—factors that differentiate his circumstances from the categorical denial issued in Jones. Moreover, Dr. Daftary-Kapur's thorough review and expert conclusions constitute substantial, credible evidence that should have prompted a resentencing, rather than a summary denial. In disregarding these individualized considerations, the trial court not only overlooked the spirit of Comer but also risked perpetuating an inflexible application of precedent, contrary to the evolving standards of juvenile and youthful offender resentencing jurisprudence.

2. The Jones panel got it wrong when it applied an inflexible rigid approach.

Respectfully, the defendant submits that the Jones panel failed to recognize their ability to grant the relief sought by the defendants before it. Courts are obliged

to move beyond mechanistic applications of precedent when it conflicts with modern day notions of fairness. In Jones, the panel appeared to recognize that 18 was an arbitrary threshold, unsupported by the brain science, but a threshold it felt it was obligated to uphold. "[O]ur institutional role as an intermediate court appellate court is a limited one. We are bound to follow the precedents of the United States Supreme Court and the Supreme Court of New Jersey." Jones at 551. The problem with that statement is that neither the United States Supreme Court, nor the New Jersey Supreme Court has held in any decision that the Miller factors should never be applied to emerging adults. Moreover, New Jersey courts have repeatedly held that the U.S. Supreme Court is simply the floor, and not the ceiling, when it comes to constitutional rights in this state.

The issue here is whether the teachings of Miller/Zuber/Comer, which cite a plethora of scientific support for the proposition that the brain does not fully mature at 18, should be applied to a 20 year old offender. Contrary to their holding, no rule, statute nor precedent prohibited the Jones panel from applying Comer to a defendant older than 17. The Jones panel's reliance upon State v Ryan, Id. as an affirmative statement by our Supreme Court that the Zuber/Comer principles could never be found to apply to a 20 year old is misplaced.

Ryan involved the application of the Three Strikes law, not a resentencing pursuant to Comer. The Ryan defendant was 23 when he committed the qualifying

offense making him a three striker. While the 2 prior offenses did occur at age 16, the Ryan Court made it clear that the three strikes law applies to those offenders "who have forfeited the opportunity to attempt rehabilitation having failed repeatedly to desist from serious criminal conduct." Ryan 249 N.J. at 601. (emphasis added). The foundation of Comer is to provide youthful offenders an opportunity to demonstrate rehabilitation. The intent of the Three Strikes law clearly conflicts with this purpose. As stated in Ryan, Three Strike offenders lost that opportunity by the commission of their third violent offense. Since the Ryan defendant forfeited his opportunity to demonstrate rehabilitation, the premise of Comer, could NEVER apply to him. That is not the case here. The defendant has no real history of violence deserving of a finding that he has forfeited an opportunity at demonstrating rehabilitation.

Additionally, Zuber/Comer did not address the applicability of Miller to a 20 year old youthful offender. The issue was simply not before it. In fact, that is all the Court was saying when it said "[w]e did not, however, extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of 18." Ryan, Id at 596. This was dicta simply explaining the issue that was before it in Zuber. The suggestion in Jones, and followed by the trial court here, that Ryan gave it "clear guidance," not to apply Comer to a youthful offender is unsupported by a plain reading of Ryan. It is understood that the defendants in

Comer were under the age of 18. It is also understood that the court in Comer "did not extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of 18." Ryan at 596. This begs the question. The issue here is whether this Court should extend the principles in Comer, backed by years of scientific research and studies, to this 20 year old offender who has clearly demonstrated his extensive accomplishments at rehabilitation during the last 22 years of his life while in prison. The application of an arbitrary cut off that has no rational basis to its stated purpose, and contrary to well established research, runs afoul to the constitution. It does not conform with contemporary standards of decency, it goes beyond what is necessary to accomplish the penological objective, and grossly disproportionate to the offense. Only one of these three is necessary to render the punishment a violation of the eighth amendment State v. Gerald, 113 N.J. 40,78 (1988).

POINT VI

ALTERNATIVELY, THE DEFENDANT IS ENTITLED TO A NEW TRIAL BASED ON NEWLY DISCOVERED BRAIN SCIENCE EVIDENCE THAT CONSTITUTES A VIABLE DIMINISHED CAPACITY DEFENSE (Da 124-144)

"Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did not have a state of mind which is an element of the offense." N.J.S.A. 2C:4-2. As noted supra, recent

developments in brain science make it clear that a 20 year old brain's capacity for impulse control is compromised by his underdeveloped brain. A mental deficiency that results in a loss of emotional control has been recognized to qualify for a diminished capacity defense. "We now hold that all mental deficiencies, including conditions that cause a loss of emotional control, may satisfy the diminished-capacity defense if the record shows that experts in the psychological field believe that that kind of mental deficiency can affect a person's cognitive faculties, and the record contains evidence that the claimed deficiency did affect the defendant's cognitive capacity to form the mental state necessary for the commission of the crime." State v. Nataluk, supra at 344.

Here, the defendant, suffering from depression and highly under the influence of drugs, was further compromised by what science now tells us is an underdeveloped brain effecting his impulse control. This newly discovered science constitutes the basis for a new trial, pursuant to R.3: 20-2. Alternatively, a basis to withdraw his plea pursuant to R. 3:21-1, to correct a manifest injustice.

CONCLUSION

For the foregoing reasons and authorities cited in support thereof, the defendant respectfully requests that his appeal be granted and that the matter be remanded for a resentencing hearing as defined by State v. Comer.

Respectfully submitted,

/s/ Robin Kay Lord
Robin Kay Lord, Esq.
Attorney ID No. 002031986

MICHAEL MELLON,
Assistant Prosecutor
Attorney ID No. 16506-2015
GLOUCESTER COUNTY PROSECUTOR'S OFFICE
P.O. BOX 623
WOODBURY, NEW JERSEY 08096
(856) 384-5500
mmellon@co.gloucester.nj.us

ANDREW B. JOHNS,
Gloucester County Prosecutor
GLOUCESTER COUNTY PROSECUTOR
P.O. BOX 623
WOODBURY, NEW JERSEY 08096

LETTER-BRIEF ON BEHALF OF STATE-RESPONDENT

Appellate Division
DOCKET No.: A-2009-24T3
CRIMINAL ACTION

STATE OF NEW JERSEY	:	The Superior Court Of New Jersey, Gloucester County, Law Division,
Plaintiff-Respondent	:	
v.	:	Accusation No. 03-10-0811-A
AARON SHEPPARD,	:	Sat Below: Hon. Kevin T. Smith, J.S.C.
Defendant-Appellant	:	DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief on appeal pursuant to R. 2:6-2(b).

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PROCEDURAL HISTORY

For purposes of this response, the State accepts the Defense statement of procedural history.

STATEMENT OF FACTS

For purposes of this response, the State accepts the Defense statement of facts.

LEGAL ANALYSIS AND APPLICATION

POINT I - THIS APPLICATION SHOULD BE SUMMARILY DISMISSED.

New Jersey Court Rule 2:8-3 provides in relevant part,

> (b) Appellate Division. Any party to an appeal may move the Appellate Division for summary disposition in accordance with R. 2:8-1(a). Such motion shall demonstrate that the issues on appeal do not require further briefs or full record. The motion may be filed at any time after filing of the notice of appeal; provided, however, that the motion for summary disposition may not be filed, absent leave granted by the court, if 25 days have elapsed from the filing of all respondent briefs. The court may deny the motion; may grant it by affirming, reversing, or modifying the judgment or order appealed from on the record before it or on such further record as it may direct; or may take such other action in respect of limitation of the issues or otherwise as it deems appropriate. The court may summarily dispose of any appeal on its own motion at any time, and on such notice, if any, to the parties as the court directs, provided that the merits have been briefed. A motion for summary disposition shall toll the time prescribed by these rules for further perfection of the appeal.
>
> [R. 2:8-3.]

For the reasons that follow, the State submits that the arguments raised by the Defense are precluded by State v. Jones, and furthermore that this court has indicated as much on several occasions. See 478 N.J. Super. 532 (App. Div. 2024), See also, State v. Abruzia, 2025 N.J. Super. Unpub. LEXIS 804, (Sa1-Sa4), State v. Hedgespeth, 2025 N.J. Super. Unpub. LEXIS 816, (Sa5-Sa8), State v. Farina, 2025 N.J. Super. Unpub. LEXIS 814, (Sa9-Sa12), State v. Suarez, 2025 N.J. Super. Unpub. LEXIS 806, (Sa13-Sa15), State v. Nicini, 2024 N.J. Super. Unpub. LEXIS 2634, (Sa16-Sa17).

Additionally, Defendant's claims related to his mental health and substance abuse have already been considered and refuted by both the Post-Conviction Relief ("PCR") court below and this court.

Accordingly, and for the reasons that follow, the State moves for summary disposition in accordance with R. 2:8-3.

A. BOTH THIS COURT AND THE SUPREME COURT HAVE DECLINED TO EXTEND THE COMER ANALYSIS TO ADULT OFFENDERS.

Counsel's argument in brief is a familiar one. It is an attempt to entice the judiciary to legislate from the bench, relying on the Court's decision issued in State v. Comer, 249 N.J. 359 (2022). Counsel would have this court extend the ruling of Comer to the Defendant, who was 20 years old at time of the offense in

question. (Db7). This court has previously considered and rejected the argument that Comer should apply to 20-year-old Defendants in State v. Jones 478 N.J. Super. 532 (App. Div. 2024). The Defense has presented nothing which would suggest a diverging analysis and conclusion is warranted in this case. Accordingly, this application should be denied.

In Comer, much of the science discussed in the Appellant's brief was considered. See Id. at 399-400. The Court found that lengthy sentences for juveniles were not necessarily an issue of constitutional concern in and of themselves, provided appropriate safeguards were in place. Id. at 401 (noting examples of such limitations in the cases of Graham v. Florida 560 U.S. 48 (2010) (prohibiting juvenile sentences of life without parole for non-homicide offenses) and State v. Zuber, 227 N.J. 422, 429 (2017) (requiring judges to consider the Miller factors before sentencing a juvenile offender to the practical equivalent of life without parole)). Instead, the Court took issue with the fact that trial courts "lack[ed] discretion to assess a juvenile's individual circumstances and the details of the offense before imposing a decades-long sentence with no possibility of parole; and the court's inability to review the original sentence later, when relevant information that could not be foreseen might be presented." Id. at 401. The Court addressed these issues by holding that juveniles convicted under the

homicide statute are allowed to petition for a review of their sentence after serving twenty years in prison, noting that "children are constitutionally different from adults for purposes of sentencing." Id. at 384 (quoting Miller v. Alabama, 567 U.S. 460, 471 (2012)).

Shortly thereafter, the Court declined to extend the Comer ruling to an adult when considering the appropriateness of a life without parole sentence pursuant to the Three Strikes Law. State v. Ryan, 249 N.J. 581 (2022). There, the defendant argued that the Miller factors should also be applied to his first strike, as he was a juvenile at the time of the offense. Id. at 590. The Court disagreed, noting that in Zuber it had not "extend[ed] Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen. . . [and 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 596, 601. In a pertinent footnote, the Court noted that "[t]he Legislature has chosen eighteen as the threshold age for adulthood in criminal sentencing. Although this choice may seem arbitrary, 'a line must be drawn,' and '[t]he age of [eighteen] is the point where society draws the line for many purposes between childhood and adulthood.'" Id. at 600 n.10 (citations omitted).

Two years later, in State v. Jones, the Appellate Division was asked to extend the principles of Comer to adults and to allow offenders between the ages of 18 and 20 to petition for resentencing because "developmental science recognizes no meaningful cognitive difference between juveniles and young adults." 478 N.J. Super. 532, 542 (App. Div. 2024). The Division also declined to do so, noting that the Comer "decision was limited to juvenile offenders tried and convicted of murder in adult court." Id. at 549. See also 550-51 (citing the aforementioned footnote from State v. Ryan, 249 N.J. 581, 600 n.10 (2022)). The Division emphasized that its "role as an intermediate appellate court is a limited one" and that it was required to follow the precedent established by the High Courts. Id. at 551. It found no reason to break from those rulings, noting the expressed limitation of Comer, and reiterating that it did not apply to adults. Id. at 551.

Here, regardless of whether the Defense argues under the guise of Zuber, Comer, the 8th Amendment, or brain science; the result is the same. The application should be denied as this court has consistently held that it will not extend the Comer decision and its analysis to defendants eighteen or older at the time when the offence in question was committed. Despite this court's clear and consistent rulings on this issue, Counsel filed this application in disregard for

those rulings. However, nothing has been presented here which should alter this court's consistent refusal to extend the analysis, and this application should therefore be denied without further briefing or oral argument.

B. DEFENDANT'S CLAIMS RELATED TO HIS MENTAL HEALTH AND SUBSTANCE ABUSE HAVE ALREADY BEEN CONSIDERED BY BOTH THE PCR COURT BELOW AND THIS COURT.

Defendant has previously raised the issue of substance abuse and mental health in an attempt to negate his culpability. Such issues were considered and deemed unfounded by the PCR court below. (Da000017-Da000020). This court affirmed on that issue, but remanded for an evidentiary hearing to determine whether Defendant had the appropriate mental capacity when he made incriminating statements and entered his plea. (Da000037-Da000038). An evidentiary hearing was held, the PCR court again considered and denied Defendant's contentions, and this court affirmed that decision, stating,

> Applying these principles, there is ample evidence in the record to support Judge Allen-Jackson's conclusion that Last made a well-calculated, tactical decision not to risk losing an advantageous plea offer by filing a *Miranda* motion that would likely be unsuccessful. In employing this strategy, Last tapped into his decades of experience, and determined that a motion judge would find that defendant was sober by the time he made his confession over eight hours after he had ingested heroin or any other intoxicating substance. This was corroborated by the minute details defendant was able to recall about the murder and all the events leading up to it, together with his later efforts to sell the camcorder. Defendant knew he had the right to counsel and, indeed,

> invoked that right around midnight, before deciding to voluntarily waive it forty minutes later.
>
> . . . .
>
> Last testified that in his discussions with defendant leading up to the entry of the plea, he did not observe "any signs of unusually slow mentation or drowsiness, dop[i]ness or any of those features" that would have led him to postpone the plea hearing. There was also no evidence of a lack of understanding or disoriented thinking on defendant's part during the plea proceedings. Last testified that if he had thought defendant was impaired, he would not have proceeded to put through the plea. However, defendant showed no signs of impairment.
>
> Last's view of his interactions with defendant was corroborated by Dr. Simring, who testified that Seroquel would not have adversely affected defendant's ability to understand the plea proceedings. Judge Allen - Jackson again found that Dr. Simring's expert testimony on this subject was more credible than that of defendant's expert, and we again defer to her determination on this point. [State v. Sheppard, 2020 N.J. Super. Unpub. LEXIS 1, *11-15., (Sa18-Sa24)]

Accordingly, the Defendant should not be permitted to relitigate this issue under the guise of a Comer application. Cf. State v. Preciose, 129 N.J. 451, 459 (1992) (noting that "[p]ost-conviction relief is neither a substitute for direct appeal, R. 3:22-3, nor an opportunity to relitigate cases already decided on the merits, R. 3:22-5.").

CONCLUSION

For the aforementioned reasons, and pursuant to R. 2:8-3, Defendant's application should be **SUMMARILY DISMISSED**, as the issues raised do not require further briefs or full record.

Respectfully submitted,

s/ *Michael C. Mellon*

Michael C. Mellon,
Assistant Prosecutor

Dated: September 22, 2025

ROBIN KAY LORD, ESQUIRE
Attorney ID # 002031986
210 South Broad Street, Suite B
Trenton, NJ 08608
Phone: (609) 393-4499
Fax: (609) 393-0411
Email: Robin@robinlordlaw.com
Attorney for Defendant, Aaron Sheppard

STATE OF NEW JERSEY,	**:**	**SUPERIOR COURT OF NEW JERSEY**
Plaintiff-Respondent	**:**	**GLOUCESTER COUNTY**
	:	
	:	**APP. DIV. DKT NO.: A-002009-24**
v.	**:**	
	:	**ACCUSATION NO. 03-10-0811-A**
	:	**Criminal Action**
AARON SHEPPARD,	**:**	
Defendant-Appellant	**:**	**Sat Below: Honorable Kevin T.**
	:	**Smith, J.S.C.**

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT

October 7, 2025

Law Offices of Robin Kay Lord, LLC
210 South Broad Street, Suite B
Trenton, New Jersey 08608
(609) 393-4499

Robin Kay Lord, Esq.
Attorney ID No. 002031986
robin@robinlordlaw.com

Defendant is Confined

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PRELIMINARY STATEMENT

The State's brief urges this Court to deny relief on the sole ground that State v. Comer, 249 N.J. 359 (2022), is limited to offenders under the age of eighteen, and relies on State v. Jones, 478 N.J. Super 532 (App. Div. 2024) as support. That position both misreads Comer and misstates the constitutional obligations imposed by the Eighth Amendment and Article I, ¶ 12 of the New Jersey Constitution.

Comer was not simply a case about chronological age; it was a decision grounded in constitutional proportionality, the recognition of emerging science on late adolescent development, and the judiciary's obligation to ensure that punishment does not become cruel or unusual. To deny resentencing solely because Aaron Sheppard was 20 at the time of the offense elevates form over substance and perpetuates the disproportionality Comer sought to cure.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendant will rely upon his statement of facts and procedural history in his previously filed July 7, 2025 brief. The State has now filed a response. The following is submitted in reply thereto.

LEGAL ARGUMENT

POINT I

NEITHER THIS COURT NOR THE SUPREME COURT HAS FORECLOSED THE EXTENSION OF COMER TO EMERGING ADULTS LIKE THE DEFENDANT.

The State's position in this matter is perplexing. They begin their opposition by asserting that the defendant's "application" should be summarily dismissed pursuant to R. 2:8-3. First, the litigation before this Court is not an "application", rather, it is a direct appeal of the trial court's denial of various post-conviction motions filed by the defendant. Second, R. 2:8-3, is entitled "Motion for Summary Disposition." The State has filed no such motion. For this reason alone, the defendant's appeal should be considered unopposed.

A. The State Overstates the Case Law.

The State claims that "both this Court and the Supreme Court" have declined to extend Comer to adult offenders. (Pb2). That assertion is overstated.

The New Jersey Supreme Court has not squarely decided the question for 18 to 20 year olds. At most, Comer reserved the issue and left the door open for future challenges supported by science and proportionality. Any Appellate Division opinion, such as State v. Jones, is persuasive only and not binding on this Panel. This Court is free to reject Jones as it is a court of equal jurisdiction. "[O]ur court rules anticipate the need for the New Jersey Supreme Court to resolve splits between

appellate panels. Rule 2:12–4 provides that one ground for a grant of certification by the Supreme Court is if the decision under review is in conflict with any other decision of the same or a higher court." State v. K.P.S., 221 N.J. 266, 281 (2015).

This Court is free to adopt the view most consistent with the New Jersey Supreme Court's controlling precedent in Comer. Ultimately, only the Supreme Court can conclusively resolve the issue, but until then, the constitutional command of proportionality requires this Court to extend Comer's protections to late adolescents like Defendant.

B. Comer is a Constitutional Principle, Not a Bright-Line Age Rule.

The State mischaracterizes Comer as creating a rigid under-18 rule. In fact, Comer rested on constitutional proportionality under Article I, ¶ 12 of the New Jersey Constitution and the Eighth Amendment. Its reasoning emphasized modern neuroscience and the recognition that immaturity, impulsivity, and capacity for change persist **beyond** the age of 18. The logic of Comer necessarily extends to "late adolescents" such as Defendant, who was 20 years old at the time of the offense.

In fact, the Jones court recognized this when it stated "[i]n reaching its decision, the Court in Comer examined adolescent behavioral science articles, explaining many youths do not reach maturity **until years after** they turn eighteen. Id. at 399-400. The Court noted one scientist opined in a 2013 article, 'adolescents and individuals in their **early 20s** are more likely than either children or somewhat

older adults to engage in risky behaviour.' Id. at 399 n.5 (quoting Laurence Steinberg, The Influence of Neuroscience on U.S. Supreme Court Decisions about Adolescents' Criminal Culpability, 14 Nature Revs. Neuroscience 513, 515 (2013))." Jones, 478 N.J. Super at 538. (emphasis added). Remarkably, while Comer addressed the facts before it, at no time did it preclude resentencing to 20-year-olds. In fact, the science cited therein offers substantial support for its application to the 20 year old offender.

POINT II

THE UNDISPUTED RECORD BELOW IS RIPE FOR THIS COURT TO APPLY COMER TO THIS 20-YEAR-OLD OFFENDER WHO WAS SIMILARLY SITUATED, ACCORDING TO THE SCIENCE, WITH AN OFFENDER UNDER THE AGE OF 18.

It is revealing that there is no real contest of the facts. It is undisputed that Aaron Sheppard was a 20-year-old drug addict who broke into a tire store to steal money to support his long-term drug habit. In fact, he was described by law enforcement and medical staff as very high at the time of his arrest. It is further not contested that after serving over 20 years in prison he has achieved many accomplishments that undeniably establish his vast and successful efforts at rehabilitation. (Da 98-123).

Equally undisputed are the credentials of Dr. Daftary-Kapur, a forensic psychologist who specializes in adolescent development as it relates to the criminal

justice system. (Da 145-159). Dr. Daftary-Kapur has extensive experience in the Miller/Zuber/Comer factors and considerations courts must contemplate in the resentencing/reentry decision for youthful offenders who received very lengthy sentences for their violent crimes. Not only are her credentials not contested, but there has been no opposition to her opinion that neuroscience does not support the bright line that is drawn at 18 and that emerging adults are similar to adolescents in their brain development. "In sum, based on the state of the science, the line for adulthood does not start at 18, and the logic of Graham, Miller, Zuber, and Comer, particularly the Miller factors, apply equally to those between the ages of 18 and 21." (Da 160-174).

In addition to her uncontested opinion that the bright line cut off at 18 has no basis in science, also uncontested was her opinion that Aaron Sheppard, 20 at the time of the offense, met the criteria for resentencing under Comer criteria. Defendant's initial brief fully addressed this analysis and does not require repetition.

Notwithstanding these facts that all parties seem to agree upon, the State urges this Court to apply a rigid inflexible approach to an arbitrary age cutoff in which the experts all agree have no rational basis, or scientific foundation. Nor is there any N.J. Supreme Court precedent supporting such an approach. It is worth reminding that an Eighth Amendment challenge begins with an assessment of whether the punishment conforms with "contemporary standards of decency." State v. Zuber, 227

N.J. 422, 438 (2017). "Contemporary," refers to present day standards based on present day science and not that of the past. For this reason alone, the analysis cannot be based on a rigid cutoff enacted by the legislature in 1978 and became effective on September 1, 1979, a time when computers and cell phones were nonexistent and New Jersey had the death penalty. Notably, when the Criminal Code was enacted, 18 was the legal drinking age. It was later changed to 21, recognizing the lack of judgment and impulse control in emerging adults. N.J.S.A. 9:17B-1b.[1]

The question remains, should courts apply Comer to only those under the age of 18, where contemporary standards of well documented neuroscience indicate that there is no rational basis for it?

Moreover, when similarly situated individuals are treated differently there must be a rational basis for that disparate treatment. "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). "Equal protection does not preclude the use of classifications, but requires only that those classifications not be arbitrary." Secure Heritage, Inc. v. City of Cape May, 361 N.J. Super. 281, 300 (App. Div.

[1] It is no coincidence that other activities, where good judgment is critical, i.e., gambling, purchasing a firearm, buying cannabis, require the actor to be 21.

2003). Individuals who committed crimes at 17 years and 364 days are not meaningfully distinct from those who committed them at 18 or 20, especially in light of the scientific consensus recognized in Comer. Accordingly, the denial of the Comer decision to a 20-year-old in the face of undisputed neuroscience, well supported by the record below, is an arbitrary denial of equal protection.

Moreover, the unpublished decisions relied upon by the State are not considered precedent and not binding on any court. R. 1:36-3. As fully explored in his merits brief, the defendant maintains that the Jones decision is flawed and should not be controlling here. That panel relied heavily on a footnote in State v. Ryan, 249 N.J. 581 (2022) which stated:

> "The Legislature has chosen eighteen as the threshold age for adulthood in criminal sentencing. Although this choice may seem arbitrary, 'a line must be drawn,' and '[t]he age of [eighteen] is the point where society draws the line for many purposes between childhood and adulthood.' Roper, 543 U.S. at 574."
> [Id. at 600 n.10.]

The Jones Panel took this footnote, with all the hallmarks of dictum, out of context. Putting aside the fact that Ryan did not involve resentencing after serving 20 years and brain science, neither Comer nor the within matter is about the legislature choosing an arbitrary threshold age. Rather, to save the statute from being struck down as a violation of the Eighth Amendment as shown by the well-documented science, Comer allowed teenagers under the age of 18 a later opportunity to show they have matured, to present evidence of their rehabilitation,

and to try to prove they are fit to reenter society. All Aaron Sheppard is seeking is to have this Court apply the very same neuroscience that is the foundation of Miller and Comer to this 20-year-old offender who has served more than 20 years in prison and has more than amply demonstrated his rehabilitation. The science makes no distinction in these ages, neither should the court.

As previously noted, the Jones Panel erroneously believed it was limited in its appellate role. "[O]ur institutional role as an intermediate court appellate court is a limited one. We are bound to follow the precedents of the United States Supreme Court and the Supreme Court of New Jersey." Jones at 551. The problem with that statement is that neither the United States Supreme Court, nor the New Jersey Supreme Court has held in any decision that the Miller factors should never be applied to emerging adults.

Further, the Jones Panel's reliance upon unpublished opinions and denials of petitions for certification by the New Jersey Supreme Court is contrary to our rules and has no precedential value.[2] R.1:36-3.

This notwithstanding, it is appellant's position that his case is uniquely ripe for Comer resentencing. Unlike Jones and the unpublished cases before it, the record

[2] The Jones court noted the lack of propriety in citing to unpublished decisions but asserted it was necessary "to provide a full understanding of the issues presented." Jones, 478 N.J. Super. at 540, n.1.

below is complete. This is not a request for a remand to establish a record or assign counsel. Submitted to the trial court below was an undisputed report from an expert establishing that neuroscience does not support a bright line drawn at 18, and that Aaron Sheppard has demonstrated that he has been rehabilitated and deserves reentry to society. Notably, the State offered nothing to dispute this. This unchallenged expert report further underscores the absence of any credible basis for the State's insistence on adhering to an arbitrary age cutoff. The motion below was filed well in advance of the Jones decision. The State had ample time to evaluate the defendant and offer evidence in opposition.

In light of the uncontested evidence regarding both the science and the individual circumstances of Mr. Sheppard, the State's refusal to engage with the substantive merits of his claim only amplifies the inequity inherent in its position. The record before this Court clearly demonstrates that contemporary neuroscience supports extending the same resentencing opportunities to emerging adults like Mr. Sheppard, whose rehabilitation has been substantiated and whose continued incarceration would contravene present-day standards of decency and equal protection under the law. The State's silence in response to this evidence not only fails to rebut its compelling rationale, but also highlights the urgent need for judicial intervention to ensure that sentencing practices align with modern scientific understanding and constitutional principles. As recognized by the New Jersey

Supreme Court 14 years ago, our laws are ever evolving and should align with modern research and science. See, State v. Henderson, 208 NJ. 208 (2011) (modern advances in social science research mandated the Court to completely revise the law on eyewitness identification to conform with contemporary science).

CONCLUSION

For the foregoing reasons and for those set forth in defendant appellant's principal brief, this court should reverse the trial court's order denying resentencing of the defendant and remanded for further proceedings consistent with Comer.

Respectfully submitted,

/s/ Robin Kay Lord
Robin Kay Lord, Esq.
Attorney ID No. 002031986