SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3000-23T4

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from an Order of the Superior Court of New Jersey, Law
v.	:	Division, Middlesex County.
RAHJIV SMITH,	:	Indictment No. 04-02-00153
Defendant-Appellant.	:	Sat Below:
	:	Hon. Andrea G. Carter, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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Dated: April 17, 2025

DEFENDANT IS CONFINED

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[1] The Law Division brief and exhibits are included in the appendix because the motion was denied on the papers without a hearing. The facts presented and the legal arguments preserved are "germane to the appeal." See R. 2:6-1(a)(2).

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PRELIMINARY STATEMENT

Defendant Rahjiv Smith's motion for a Comer resentencing was improperly denied.

The prohibition on cruel and unusual punishment protects young people against long sentences. In particular, the Comer case provides for a lookback: an adolescent under age eighteen is entitled to a resentencing after serving twenty years. The resentencing court must then consider developmental science showing that adolescents are more impulsive, more susceptible to negative influences, and more amenable to rehabilitation than fully mature adults. If, as is likely, the adolescent offender has matured and reformed after twenty years, the court must impose a new sentence that allows him to reenter society.

Defendant Rahjiv Smith was convicted of a murder stemming from an incident in 2003 -- when he was eighteen years old. He was sentenced to fifty years, with an eighty-five percent parole bar. Smith has now been incarcerated for over twenty-one years.

Smith should have the same constitutional protection as a seventeen-year-old adolescent. As shown by defense expert Tarika Daftary-Kapur, Ph.D. -- a leading academic researcher on adolescent development -- scientists generally accept that a period of late adolescence extends through age twenty. Late adolescents are like younger adolescents in their impulsiveness, susceptibility

to negative influences, and 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 younger adolescents against long sentences.

New Jersey should follow suit. Having offended when he was eighteen years old and having served more than twenty years, Smith should have a Comer resentencing.

The main obstacle to granting Smith a Comer resentencing is an Appellate Division precedent. A prior panel took the view that New Jersey Supreme Court decisions preclude the lower courts from extending Comer to adolescents who were beyond age seventeen. The prior panel was mistaken: no decision in the Comer line of cases involved an adolescent older than seventeen. The issue of extending Comer beyond seventeen is open. The present panel should disagree with the prior panel, reach the issue, and decide it in Smith's favor.

PROCEDURAL HISTORY

This appeal is from the denial of defendant-appellant Rahjiv Smith 's motion for resentencing. (Da 6 to 56) [2] Smith was eighteen years old when the offense occurred in December 2003. (Da 1, 4, 8)

Middlesex County indictment number 04-02-00153 charged Smith with purposeful or knowing murder, N.J.S.A. 2C:11-3a(1), -3a(2), and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4a. (Da 1) In July 2005, Smith was tried before a jury, with the Honorable James F. Mulvihill, J.S.C., presiding. Smith was found guilty as charged. (Da 2 to 3; 1T 69-11 to 70-4)

On September 23, 2005, Judge Mulvihill sentenced Smith. The weapon possession charge was merged. For murder, Smith received a sentence of fifty years with an eighty-five percent parole bar. (2T 41-18 to 42-11; Da 4) On September 27, 2007, a panel of the Appellate Division affirmed on direct appeal. (Da 18 to 24)

In 2022, Smith commenced the litigation underlying the present appeal by filing a pro se motion for resentencing in the Law Division. Counsel from the Office of the Public Defender was assigned. Counsel supplemented the

[2] "Da" refers to the appendix for defendant-appellant. "PSR" will refer to the presentence report. "1T" will refer to transcript of the last day of trial on July 26, 2005. "2T" will refer to the sentencing transcript of September 23, 2005.

motion with briefing and exhibits, including an expert report. (Da 6 to 45) The prosecutor responded in writing. No evidentiary hearing or oral argument occurred. On May 10, 2024, the Honorable Andrea G. Carter, J.S.C., issued a written order and statement of reasons denying the motion for resentencing. (Da 46 to 56)

On May 30, 2024, the Office of the Public Defender filed a notice of appeal on Smith's behalf. (Da 57 to 59)

STATEMENT OF FACTS

A. The Offense

The defense's motion brief and the motion court's decision summarized the evidence at trial by relying on the decision on direct appeal. (Da 8 to 9, 18 to 20, 48 to 51) The incident occurred on December 17, 2003, when defendant Rahjiv Smith was eighteen years old. (Da 1, 4, 8, 18) On the morning of December 16, Smith told his friend Jose Nunez that their acquaintance Troy Brown planned to rob them. That evening, when the three were together, Smith and Brown argued, Brown pushed Smith and called him a "bitch," and the two scuffled. According to Nunez, Smith was embarrassed afterwards and suggested that he would "murder" Brown. (Da 19)

The three were together again late that night. Smith and Nunez had been drinking beer, and all three smoked phencyclidine (PCP). Nunez testified that he and Brown had been walking ahead of Smith, when Smith shot and killed Brown. (Da 19) In his own statement, Smith admitted that he had shot Brown. But Smith stated that Nunez had given him the gun, that Nunez and Brown had gotten into an altercation, and that he had shot Brown on Nunez's demand. (Da 20)

At trial, the defense argued that Smith should be convicted of aggravated manslaughter, rather than murder. (Da 18) The jury nevertheless convicted of

murder. (Da 2 to 3, 18; 1T 69-11 to 70-4) Smith received a sentence of fifty years with an eighty-five percent parole bar. (2T 41-18 to 42-11; Da 4, 18)

B. Resentencing Motion and Decision

In 2022, Smith commenced the litigation underlying the present appeal by filing a pro se motion for resentencing in the Law Division. On August 31, 2023, assigned counsel supplemented the motion. (Da 6 to 45) The arguments in defense counsel's papers boiled down to the following: eighteen- to twenty-year-olds continue in a period of late adolescence, sharing with younger adolescents the characteristics described in the Miller factors (Miller v. Alabama, 567 U.S. 460, 477-78 (2012)); on that basis, other states had extended constitutional protection against long sentences to late adolescents; likewise, constitutional protection under State v. Comer, 249 N.J. 359, 401 (2022), should extend to age twenty; and Smith should have a Comer resentencing because he was eighteen when offending and was about to reach the twenty-year mark in prison. (Da 7, 10 to 17)

The defense supported the resentencing motion with the expert report of developmental scientist Tarika Daftary-Kapur, Ph.D. Dr. Daftary-Kapur explained the main premise of the defense argument: scientists generally accept

that a period of late adolescence continues through age twenty and that the Miller factors are applicable through that age. (Da 28 to 45)

The court denied the motion in a written decision, without holding an evidentiary hearing or oral argument. (Da 46 to 56) The court reasoned that the leading precedents from the United States and New Jersey Supreme Courts had protected adolescents under age eighteen against long sentences. (Da 54 to 56) While acknowledging that eighteen-year-olds may be likewise immature, the court refused to extend Comer to age eighteen because "extensive policy shifts should only be [e]ffected by the legislature or the New Jersey Supreme Court." (Da 56) (cleaned up)

At this writing, Smith has served over twenty-one years in prison and is forty years old.

LEGAL ARGUMENT

A RESENTENCING SHOULD OCCUR BECAUSE THE COMER DECISION -- WHICH REQUIRES A RESENTENCING AFTER AN ADOLESCENT OFFENDER UNDER AGE EIGHTEEN SERVES TWENTY YEARS -- SHOULD EXTEND TO ADOLESCENTS AGED EIGHTEEN, LIKE SMITH. U.S. CONST. AMENDS. VIII, XIV; N.J. CONST. ART. I, ¶ 12. (ruling below at Da 46 to 56)

In a landmark decision, the New Jersey Supreme Court held that adolescent offenders under age eighteen 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 adolescents, which diminishes their culpability, and on the strong likelihood that adolescent offenders will reform with age.

The developmental science shows that late adolescents -- which include eighteen-year-olds -- are like younger adolescents 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 younger adolescents against long sentences. New Jersey should follow suit. Having offended when he was eighteen and having spent over twenty-one years in prison, Smith should have a Comer resentencing.

Moreover, the issue of extending Comer is open and should be decided by the Appellate Division. A prior panel that decided otherwise in State v. Jones, 478 N.J. Super. 532 (2024), was mistaken.

A. Legal Background: Adolescents Under Eighteen Receive Constitutional Protection Against Lengthy Sentences Because of Their Immaturity 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 an adolescent 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 adolescent 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 an adolescent under eighteen 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 adolescents under eighteen. Accordingly, adolescents under eighteen 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 adolescents under eighteen are less culpable and more amenable to rehabilitation than older offenders. At the outset, the decisions identified three general characteristics of adolescents under eighteen.

First, young people 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 the misconduct of those under eighteen less morally culpable. Roper, 543 U.S. at 570.

Second, young people 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)). These traits also diminish their culpability. See Roper, 543 U.S. at 570.

Third, anti-social behavior -- "even a heinous crime" -- is rarely a sign that a young person has an "irretrievably depraved character." Id. 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 adolescent offenders are overwhelmingly likely to desist from crime by their mid-twenties).

Because of the lesser culpability and high likelihood of reform of adolescents under eighteen -- and because of the near impossibility of identifying at the original sentencing the rare adolescents 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 adolescents under eighteen, 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 an adolescent under eighteen 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 an adolescent under eighteen 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 pre-eighteen-year-olds 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 adolescents under eighteen, 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 sentences for those under eighteen. 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 adolescent offenders after twenty years in prison was pending. Comer, 249 N.J. at 389. The Court compared statutes from various other states that entitled adolescents under eighteen 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 adolescents under eighteen. Id. at 391-93.

With that background, the Court considered whether New Jersey's sentencing scheme for murder -- which requires a thirty-year parole bar -- is cruel and unusual punishment for a pre-eighteen-year-old 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 adolescents under eighteen 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 adolescents under eighteen, the punishment is in many cases grossly disproportionate to the offense. Id. at 397-98. Given these same characteristics -- plus adolescents' 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 adolescents under eighteen 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. Eighteen-Year-Old Adolescents Should Receive the Same Constitutional Protection Against Lengthy Sentences Because the Miller Factors Apply Equally to Them.

Comer should extend at least through age twenty because the Miller factors apply equally to eighteen- to twenty-year-old adolescents. This proposition was supported in the resentencing motion by the expert report of Tarika Daftary-Kapur, Ph.D. (Da 28 to 45 120 to 137) Dr. Daftary-Kapur is Professor of Justice Studies at Montclair State University and is a leading expert on adolescent development. Her many publications include the famous Philadelphia study on the recidivism of young offenders. (Da 29 to 30) Her expert report reviewed the scholarship on adolescence, with the goal of reporting the scientific consensus on whether the Miller factors were applicable past age seventeen. (Da 29) Dr. Daftary-Kapur notes that, since Miller, approximately one hundred

new publications "explored the brain's development through late adolescence." (Da 32)

According to Dr. Daftary-Kapur, experts generally divide adolescence into phases, including early adolescence (ages ten to thirteen), middle adolescence (ages fourteen to seventeen) and late adolescence (ages eighteen to twenty). (Da 29) See also Grace Icenogle and Elizabeth Cauffman, Adolescent Decision Making: A Decade in Review, 31 Journal of Research on Adolescence 1006, 1007 (2021). Dr. Daftary-Kapur's overall conclusion is that the Miller factors are applicable to late adolescents:

> [U]nder certain circumstances, [late adolescents] are more like individuals in early and middle adolescence in behavior and psychological functioning (particularly in pressured or social contexts), vulnerability to peer pressure, and prospect for rehabilitation. Thus, because brain structure and function, as well as an individual's behavior, personality, and propensity for risk-taking are all in flux through late adolescence, there is no rational scientific basis for drawing a line at age 18 for adulthood. In sum, based on the state of the science, the line for adulthood doesn't start at 18, and the logic of *Graham*, *Miller*, and *Montgomery*, particularly the *Miller* factors, apply equally to those between the ages of 18 and 20.

(Da 33) (footnote omitted)

Most importantly, Dr. Daftary-Kapur explains, a late adolescent, like an adolescent under eighteen, almost inevitably ages out of crime. (Da 40 to 44) Criminologists often refer to the "age-crime curve," i.e., the age distribution of

offenders. The contours of the curve are "one of the most established facts in the field of criminology." (Da 40) The curve is "universal," applying through different era and cultures. (Da 41) Essentially, "offending behavior peaks in late adolescence (ages 18-21) and gradually drop thereafter, with the overwhelming majority of individuals desisting from offending by age 40." (Da 40 to 41) (footnote omitted) See also Travis Hirschi & Michael Gottfredson, Age and the Explanation of Crime, 89 Am. J. of Sociology 552, 552, 554-62 (1983) (calling the age-crime curve "one of the brute facts of criminology").

Dr. Daftary Kapur explains how desistence studies -- which follow a specific sample of offenders over time -- are consistent with the age-crime curve. When former adolescent offenders reach middle age, their rate of reoffending is negligible -- in various desistence studies one to two percent. (Da 41 to 44) In short, Miller factor five, which points to the high likelihood that adolescents will reform with time, is fully applicable to late adolescents. (Da 40 to 44)

According to Dr. Daftary-Kapur, the transient misbehavior of late adolescents is explained by the other Miller factors. 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). (Da 31 to 32, 33 to 37) See also B.J. Casey, et al., Making the Sentencing

Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders, 5 Annual Review of Criminology 321, 327-29 (2022); 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.

Moreover, like adolescents under eighteen, late adolescents are still highly susceptible to peer pressure and to family and environmental influences (Miller factors two and three). (Da 32 to 33, 37 to 38) See also 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). (Da 38 to 40) See also Center for Law, Brain & Behavior (2022), supra, 27-35.

The continuing relevance of the Miller factors to late adolescents, explains Dr. Daftary-Kapur, has a biological basis in 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, late adolescents also cannot help their misbehavior. (Da 33 to 35) See also Casey et al. (2022), supra, at 329-31; 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; 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. (Da 34) See also 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).

After reviewing the science, Dr. Daftary-Kapur restated her conclusion:

> It is clear from the science that the immaturity of youth 17 and under discussed by the SCOTUS in multiple opinions extends to those between the ages of 18 and 20, and as such the constitutional protections under *Miller* afforded to early and middle adolescents warrant extension to late adolescents as well. . . . [T]he theory that the characteristics described in the *Miller* factors are also characteristic of 18- to 20-year-olds has been supported through over two decades of methodologically valid scientific research. The theory has been tested, has been subjected to peer review, and has been generally accepted in the developmental science community.

(Da 44 to 45)

Indeed, leading experts in adolescent development advocate for protecting late adolescents against severe adult sentences, just like younger adolescents. See Casey et al. (2022), supra, at 337; McCaffrey and Reynolds (2021), supra, at 7. 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. The plea of developmental scientists is to "let the evidence speak . . . and extend Roper and Miller beyond 17

to at least the 18-20 period of young adulthood." Casey et al. (2022), supra, at 337.

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 younger adolescents against life sentences. In re Monschke, 482 P.3d 276, 288 (Wash. 2021). This decision was reached after the court independently examined the developmental science. Id. at 284-86. The court concluded that "no meaningful cognitive difference" exists between eighteen- to twenty-year-olds and younger adolescents. 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. See People v. Parks, 987 N.W.2d 161, 171 (Mich. 2022). Like 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 adolescents 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. The court has granted review to decide whether to extend Miller to ages nineteen and twenty. See People v. Czarnecki, 7 N.W.3d 556 (Mich. 2024); People v. Bouie, 7 N.W.3d 557 (Mich. 2024).

In yet another similar decision, the Massachusetts Supreme Judicial 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 court relied heavily on developmental science, which had been presented 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 younger adolescents; therefore, constitutional protections against lengthy sentences that are enshrined in Miller, Zuber, and Comer should extend 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 lookback 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.[3] Late adolescents, like juveniles, should be eligible for resentencing after twenty years.

[3] 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 Judicial Court perceived a domestic and international trend away from extreme sentences for late adolescents aged eighteen through twenty. The court also noted the many ways that the law treats those under twenty-one as irresponsible. See Mattis, 224 N.E.3d at 424-28. Moreover, a trend is emerging, in statutory as well as constitutional law, of retroactively affording late adolescents the benefit of parole or

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 Smith committed his offense at the age of eighteen and has served more than twenty years, he should have a Comer resentencing. As an alternative to an immediate resentencing, the Court should order a remand for a hearing to consider expert testimony on adolescent development, and to decide if the Comer lookback should extend to eighteen-year-olds.

C. The Issue of Extending Comer is Open, and a Prior Appellate Division Panel Was Incorrect to Decide Otherwise.

A subsequent Appellate Division panel may disagree with a prior panel. State v. Harrell, 475 N.J. Super. 545, 564 (App. Div. 2023). The prior panel in

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resentencing. See The Sentencing Project, The Second Look Movement: A Review of the Nation's Sentence Review Laws (May 15, 2024)

State v. Jones, 478 N.J. Super. 532 (App. Div. 2024), was mistaken. The present panel should reach a different result.

The Jones panel held that the lower courts do not have the institutional authority to extend the protection of Comer to eighteen- to twenty-year-olds. See Jones, 478 N.J. Super. at 549-51. The Jones decision consolidated three appeals. All three appellants were from eighteen to twenty years old when offending, had served at least twenty years, and had moved for resentencing under Comer. See Jones, 478 N.J. Super. at 541-47.

The panel did not reach the merits of extending Comer to the three defendants. Thus, the panel made no reference to Comer's three-part test for cruel and unusual punishment. See Comer, 249 N.J. at 383. Nor did the Jones panel acknowledge that, in applying this test, Comer relied on the characteristics of juveniles described in the Miller factors. See Comer, 249 N.J. at 387, 397-400 (citing Miller, 567 U.S. at 477-78). Nor did the Jones panel dispute that the Miller factors apply equally to eighteen- to twenty-year-olds.

Rather than reach the merits, the panel disavowed the power to extend Comer. The panel gave two main rationales. First, the panel traced the history of the leading United States and New Jersey Supreme Court cases and concluded that Comer "was limited to juvenile offenders" and "neither explicitly not implicitly extended this right of sentence review to offenders who [were]

between eighteen and twenty years of age when they committed their crimes." See Jones, 478 N.J. Super. at 535-39, 550. Second, the panel extensively quoted language from State v. Ryan, 249 N.J. 581 (2022), suggesting that the sentence of a person older than seventeen "d[id] not implicate Miller or Zuber." Jones, 478 N.J. Super. at 550-51 (quoting Ryan, 249 N.J. at 586-87, 596, 600-01). In this connection, the panel noted a Ryan footnote quoting the United States Supreme Court to the effect that age eighteen "is the point where society draws the line for many purposes." Jones, 478 N.J. Super. at 550-51 (quoting Ryan, 249 N.J. at 600 n.10, which quoted, in turn, Simmons, 543 U.S. at 574). The panel concluded that it was "bound" by precedent not to extend Comer. Jones, 478 N.J. Super. at 551.

The Jones decision was mistaken. 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. Simmons, 543 U.S. at 556. Graham was sixteen. Graham, 560 U.S. at 53. The defendants in Miller were fourteen. Miller, 567 U.S. at 465, 467. The defendants in Zuber were seventeen. Zuber, 227 N.J. at 433.

Thus, one will search in vain in these United States and New Jersey Supreme Court 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.

Yet the Jones panel seemed to take 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. Consider, for example, the language from Simmons discussing how eighteen "is the point where society draws the line for many purposes." Simmons, 543 U.S. at 574. 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 respect, 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 protection should extend beyond seventeen-year-olds was not before the court, and no older age was analyzed. Nor was any older age before the courts in any of the other leading decisions mentioned above.

Likewise, the Jones panel took the language of Ryan out of context. There is no doubt that "considered" dicta from controlling authority is binding. State v. Rose, 206 N.J. 141, 183 (2011). To provide guidance in future cases, appellate counsel and appellate courts will often opine points that go beyond the reasoning needed to dispose of the current case. For example, the United States Supreme Court's guidance on the precise content of the Miranda

warnings might be dismissed as dicta because the Court could have ruled for Ernesto Miranda on the basis that he was not given any warning. But no lower court could properly disregard the considered, intentional, and detailed guidance of the Supreme Court on the content of the warnings. Rose, 206 N.J. at 183 (discussing Miranda v. Arizona, 384 U.S. 436 (1966)).

"On the other hand," this Court has stated," not every word and every phrase contained in a Supreme Court opinion constitutes binding precedent. Much depends on the character of the dictum." In re A.D., 441 N.J. Super. 403, 422 (App. Div. 2015) (internal quotation omitted). When a dictum is "obiter" -- a passing comment made without deep consideration or the intent of providing guidance -- lower courts may properly discount it. Id. at 422-23.

Thus, for example, the Appellate Division had to consider the statutory requirement that a Megan's Law registrant be free of a new "offense" to qualify for termination of registration. Did that mean free of any new offense, or merely free of a new sex offense? Id. at 405. In a previous case, the New Jersey Supreme Court had stated that termination was authorized for "persons who have not committed a sex offense." Id. at 421. (quoting In re J.G., 169 N.J. 304, 337 (2001)). In that previous case, however, the Supreme Court had decided that the no-offense requirement did not apply to juveniles. A.D., 441 N.J. Super. at 421-22 (discussing J.G., 169 N.J. at 337). The character of any

new offense was not at issue in the precedent: "[T]he issue of whether the term offense . . .meant offense generally, or sex offense . . . does not appear to have been raised or briefed by the parties or analyzed by the Court. Rather, the Court's reference to sex offense appears to be a passing comment." A.D., 441 N.J. Super. at 423. In the end, the Appellate Division decided that the Supreme Court's dictum carried no weight and that, contrary to the dictum, "offense" meant any new offense. Id.

In another similar case, the Appellate Division had to decide whether an Alcotest operator was required to turn over the Alcohol Influence Report ("AIR") to the arrestee. State v. Sorensen, 439 N.J. Super. 471, 477, 486 (App. Div. 2015). In a previous case, the New Jersey Supreme Court had stated that the "operator must retain a copy of the AIR and give a copy to the arrestee." Id. at 478, 487 (quoting State v. Chun, 194 N.J. 54, 82 (2008)). In that previous case, however, the main issue in dispute was whether Alcotest results were reliable and admissible. See Sorensen, 439 N.J. Super. at 478 (discussing Chun, 194 N.J. at 65). In context, the Supreme Court's statement about turning over the AIR appeared to be a description of the general police practice, not a statement of what the law required. Sorensen, 439 N.J. Super. at 486-88 (discussing Chun, 194 N.J. at 75-84, 134-54) This conclusion was reinforced by the Supreme Court's failure to provide any reasoning for the purported

requirement. Sorensen, 439 N.J. Super. at 489-90. In the end, the Appellate Division decided that the Supreme Court's "terse" dictum was not "deliberate" and that, contrary to the dictum, the operator was not automatically required to turn over the AIR. Id. at 489, 491.

In yet another similar case, the Appellate Division had to decide whether an employee's New Jersey residency alone conferred jurisdiction on the Division of Worker's Compensation. In a previous case, the New Jersey Supreme Court had stated: "As a resident of New Jersey, [an employee] can bring his action in New Jersey." Marconi v. United Airlines, 460 N.J. Super. 330, 338-39 (App Div. 2019) (quoting Bunk v. Port Authority, 144 N.J. 176, 181 (1996)). In that previous case, however, the issue in dispute was whether a statutory ban on dual disability benefits for public employees applied to an employee of the Port Authority. Marconi, 460 N.J. Super. at 339 (discussing Bunk, 144 N.J. at 184) Jurisdiction had not been raised as an issue, and the statement about jurisdiction had been made in passing. The Appellate Division decided that the Supreme Court's dictum carried no weight and that, contrary to the dictum, New Jersey residency alone did not confer jurisdiction. See Marconi, 460 N.J. Super. at 339-40.

These examples reflect the ancient understanding of how the common law process works. Chief Justice John Marshall cautioned that prior cases cannot be read like one is reading the plain language of a statute:

> It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Cohens v. Va, 19 U.S. 264, 399-400 (1821).

Yet the Jones panel read far more into the dicta of Ryan than the context allows. Ryan, who was twenty-three when committing his current offense, never argued that constitutional protection should extend beyond age seventeen. Rather, Ryan argued that the protections of Miller v. Alabama, 567 U.S. 460 (2012), and State v. Zuber, 227 N.J. 422 (2017), were triggered because his three-strikes life sentence was caused by a prior juvenile offense. As the Supreme Court described Ryan's argument:

> Defendant contends that allowing sentencing courts to count juvenile offenses as strikes when imposing on defendants mandatory life-without-parole sentences violates both the Eighth Amendment of the United States Constitution, and Article I, Paragraph 12

> of the New Jersey Constitution. He argues that juvenile-age convictions are not the same as convictions for offenses committed as an adult and therefore cannot be considered under the Three Strikes Law because juveniles are less culpable and less deserving of such severe punishment than adults. Defendant notes that, in sentencing him to life without parole, the court did not apply the Miller factors to his first strike or consider how young he was at the time of the offense.

Ryan, 249 N.J. at 590.

The Supreme Court rejected this argument on the straightforward basis that the recidivist statute did not penalize any crime besides the latest crime of the twenty-three-year-old Ryan. Cases protecting seventeen-year-olds against long sentences were viewed as irrelevant:

> Miller and Zuber are uniquely concerned with the sentencing of juvenile offenders to lifetime imprisonment or its functional equivalent without the possibility of parole.
>
> Defendant 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. There is nothing in Miller or Zuber that precludes application of a recidivist statute such as the Three Strikes Law to an adult defendant who meets the carefully considered statutory requirements set by the Legislature. Indeed, as we made clear in Oliver, the enhanced sentence under the Three Strikes Law is not imposed " 'as either a new jeopardy or additional penalty for earlier crimes,' but instead as a 'stiffened penalty for the latest crime.' "

Ryan, 249 N.J. at 601 (citations omitted).

Thus, Ryan never argued that Miller/Zuber protections should extend beyond his eighteenth birthday; instead, Ryan argued for the relevance of Miller/Zuber on the premise that his sentence was partly a penalty for an offense committed before he was eighteen. The Supreme Court simply rejected this premise. The Supreme Court had no occasion to consider whether or not to extend Miller/Zuber beyond seventeen. And the Supreme Court provided zero reasoning for the purported decision -- which would have been momentous had it been reached -- that Miller/Zuber would not extend beyond seventeen.

In short, the Supreme Court's language in Ryan -- such as the observation that the Court "did not . . . extend Miller's protections to defendants . . . over the age of eighteen," see Ryan, 249 N.J. at 596 -- should not be taken out of context. Such statements were merely describing a legal background that Ryan did not contest. The Supreme Court would be surprised to learn that it actually decided in Ryan that constitutional protection should not extend beyond age seventeen. Any dictum that could be read that way was unconsidered and unintentional. The Jones panel was mistaken in deciding that Ryan foreclosed consideration of the merits of extending constitutional protection. See Jones, 478 N.J. Super. at 550-51.

Accordingly, the present panel should disagree with Jones. Because the issue of extending Comer is open, the lower courts have an obligation 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).

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 eighteen-year-olds.

Respectfully submitted,

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BY: ___/s/ Peter T. Blum_____
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Dated: April 17, 2025

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May 14, 2025

LETTER BRIEF 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. Rahjiv Smith (Defendant-Appellant)
Docket No. A-3000-23T4

Civil Action: On Appeal from a Final Judgment of the Superior Court of New Jersey, Law Division, Middlesex County, Denying Motion for Resentencing.

Sat Below: The Hon. Andrea G. Carter, J.S.C.

Honorable Judges:

In accordance with R. 2:6-2(b), this letter brief is submitted by respondent State of New Jersey in response to appellant's brief.

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TABLE OF JUDGMENTS

TABLE OF STATE'S APPENDIX
(SEPARATE COVER)

[1] The State's brief is submitted to show what was raised below. R. 2:6-1(a)(2).

COUNTER-STATEMENT OF PROCEDURAL HISTORY

On February 3, 2004, the grand jurors for Middlesex County returned Indictment Number 04-02-00153, charging defendant Rahjiv Smith with first degree purposeful or knowing murder, contrary to N.J.S.A. 2C:11-3a(1), (2) (count one) and with second degree possession of a weapon with unlawful purpose, contrary to N.J.S.A. 2C:39-4a (count two). (Da1; Da4).[1]

The Honorable James F. Mulvihill, J.S.C., presided over defendant's jury trial in July 2005. (1T). On July 26, 2005, the jury found defendant guilty as charged. (Da2-4; 1T69-11 to 1T70-4). On September 23, 2005, Judge Mulvihill sentenced defendant on count one to 50 years in prison, subject to defendant serving 85% under the No Early Release Act (NERA). (Da4; 2T41-18 to 24). The judge merged count two with count one for purposes of sentencing. (Da4;2T42-11). The judge also imposed restitution and the appropriate mandatory monetary penalties. (Da5; 2T42-12 to 20).

Defendant appealed the Judgment of Conviction, and the Appellate Division upheld it on September 27, 2007, in a per curiam opinion. (Da18-24).

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[1] Citations to the record are as follows:
"Da" defendant's appendix;
"Db" defendant's brief;
"Sa" State's appendix;
"1T" Transcript dated July 26, 2005;
"2T" Transcript dated September 23, 2005.

The New Jersey Supreme Court denied certification on March 27, 2008. State v. Smith, 194 N.J. 445 (2008).

In September 2010, defendant filed a petition for post-conviction relief (PCR), which was denied by the trial court without an evidentiary hearing on January 20, 2012. (Sa1). On April 4, 2014, in a per curiam opinion, the Appellate Division reversed and remanded for an evidentiary hearing on defendant's claim of ineffective assistance of counsel. (Sa1-3). Judge Mulvihill presided over the evidentiary hearing on June 19, 2014, and rendered his decision denying relief on August 25, 2014. (Sa4). Defendant appealed and the Appellate Division upheld the denial of PCR in a per curiam opinion dated July 1, 2016. (Sa4-6).

On August 31, 2023, defendant filed a motion for resentencing under State v. Comer, 249 N.J. 401 (2022). (Da6-45). The State filed its letter in opposition on October 31, 2023. (Sa7-14). The Honorable Andrea G. Carter, J.S.C., presided over defendant's motion and denied it in a written opinion on May 10, 2024. (Da46-56).[2]

Defendant filed a Notice of Appeal on May 30, 2024. (Da57-59).

[2] The parties consented to the court deciding the motion on the papers. (Da46; Da47).

COUNTER-STATEMENT OF FACTS

The Appellate Division on direct appeal outlined the facts of defendant's crimes, which involved the early morning, December 17, 2003, murder of 20-year-old Troy Brown in New Brunswick. (Da18-20; 2T27-8 to 9). Defendant, who was 18 years old, was friends with Brown and they "hung out together." (2T6-1 to 3; 2T38-22 to 23). At the 2005 jury trial, defendant did not dispute that he killed Brown but argued his conduct was reckless and manifested an extreme indifference to the value of human life, which supported a verdict of aggravated manslaughter. (Da18). The jury was not convinced and found defendant guilty of purposeful or knowing murder. (Da18).

On December 16, 2003, defendant was with his friend, Jose Nunez. (Da19). Defendant told Nunez that he believed Brown was planning on robbing him or Nunez. (Da19). Later that same day, defendant, Nunez and other individuals met at defendant's home on Remsen Avenue in New Brunswick. (Da19). Brown joined them around 8:00 p.m. (Da19). Defendant and Brown got into an argument and Brown placed his fingers against defendant's face and pushed him, saying, "You're a bitch." (Da19). They got into a scuffle after which Brown left the house. (Da19). Defendant was embarrassed and upset by the altercation with Brown. (Da19). He reiterated to Nunez his belief that Brown was out "to get him." (Da19). Defendant said

to Nunez, "[T]hese people think I am a bitch. . .I'm going to show them. I'm going to lay a murder game down." (Da19).

Defendant and Nunez purchased and drank some beer and were at defendant's home around 11:00 p.m. when Brown showed up. (Da19). Defendant, Nunez, Brown and some other individuals were outside where they smoked some PCP. (Da19). At around 2:00 a.m. on December 17, defendant, Nunez and Brown were walking along the street in the vicinity of defendant's home. (Da19). Nunez and Brown were walking together in front of defendant. (Da18; Da19). When Nunez lit a cigarette, Brown asked Nunez for a light. (Da19). As Nunez reached over to light Brown's cigarette, he heard a single gunshot and saw Brown fall forward onto the sidewalk. (Da19). As Brown lay on the ground in a pool of blood, defendant said, "we got to get this out of here." (Da19). Defendant picked up Brown's ankles and dragged Brown's body face down and by the legs into the backyard of a nearby residence. (Da19).

Defendant and Nunez returned to defendant's home. (Da19). Defendant immediately washed his hands in the kitchen, telling Nunez he needed to get the gun powder off his hands. (Da19). The two of them went back outside and Nunez left the area. (Da19). Later that morning, Nunez rejoined defendant

and two other men, who were smoking PCP, and the four of them went to defendant's bedroom. (Da19).

In the interim, the police learned about the shooting, discovered Brown's body and their investigation led them to defendant's home. (Da19). Police entered the home and spoke with defendant and the three others with him, advising them that they were there to investigate Brown's death. (Da19). All four agreed to be transported to police headquarters to continue the investigation. (Da19).

New Brunswick Police Detective Pamela Knighton arrived at the crime scene around 3:00 a.m. on December 17. (Da19). When she went to defendant's home, defendant and his friends had already been taken to headquarters. (Da19). However, she spoke to defendant's grandfather, Marion Smith, who owned the residence. (Da19). The detective told defendant's grandfather that defendant was believed to have been involved in Brown's killing. (Da19). She asked for consent to search the home. (Da19). Mr. Smith gave consent. (Da19). He also agreed to give a statement at police headquarters. (Da19). Police secured the home and took Mr. Smith to headquarters, but no search was conducted at this time. (Da19).

At the police station, Mr. Smith said he heard a single gunshot, and defendant came home shortly afterwards. (Da19). Upon arriving home,

defendant asked if Mr. Smith had called the police. (Da19). After police finished taking Mr. Smith's statement, he was taken back to his residence, which was still being secured by police. (Da19). Before taking him home, Detective Knighton again asked Mr. Smith for consent to search his home. (Da19). Mr. Smith gave his consent and signed consent to search form. (Da19).

Nunez gave a statement to police that morning, and he outlined his interactions with defendant leading up to the shooting. (Da19). He told police that he believed defendant hid the murder weapon in his bedroom, even though he denied seeing the gun. (Da19). At about 3:00 a.m. on December 17, the police applied for and obtained a search warrant for defendant's bedroom. (Da19).

At about 4:30 a.m. on December 17, Detective Knighton and other officers went to defendant's home. (Da19). Police searched the entire home. (Da19). No evidence was found in defendant's bedroom, but a loaded .380 caliber handgun was found in the closet of a spare bedroom. (Da19). Ballistics evidence showed that the seized gun was the murder weapon. (Da19-20).

At about 12:45 p.m. on December 17, Detective Knighton approached defendant at the police station to take a statement from him. (Da20). After

reading defendant his Miranda[3] rights, defendant declined to give a statement. (Da20). Later, defendant informed police he wished to talk. (Da20). At 6:00 p.m. on December 17, Detective Knighton spoke with defendant after police searched the home and seized the gun. (Da20). By this time, defendant had been arrested for Brown's murder and a complaint had been signed. (Da20). At 6:35 p.m., defendant signed a Miranda waiver form. (Da20). He gave a tape-recorded statement and admitted killing Brown. (Da20). Defendant claimed that Nunez had original possession of the murder weapon, and that Nunez gave it to him. (Da20). Defendant said he put the gun in his pocket. (Da20). Defendant claimed that as they walked, Nunez and Brown got into an argument. (Da20). When Nunez told him to shoot, he did. (Da20).

The medical examiner determined that Brown had been shot at point blank range. (Da20). The muzzle of the gun was in contact with the hooded sweatshirt Brown was wearing when the gun was fired. (Da20). The bullet moved in a straight line from the back of Brown's head to the front. (Da20). The trajectory of the bullet was not consistent with physical struggle. (Da20). The cause of death was a gunshot wound penetrating the head and brain. (Da20).

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[3] Miranda v. Arizona, 384 U.S. 436 (1966).

Defendant did not testify at the 2005 jury trial. (Sa3). On PCR, he challenged trial counsel's advice to him that he should not testify. (Sa2). The Appellate Division upheld the denial of PCR on this ground, holding that trial counsel testified at the PCR hearing that defendant's version of the shooting was presented to the jury through his recorded statement to police, so there was no support for defendant's claim that counsel was ineffective. (Sa5).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION FOR RESENTENCING UNDER STATE V. COMER, 249 N.J. 359 (2022). (Da47-56).

Defendant contends that the trial court abused its discretion in denying his motion for resentencing pursuant to State v. Comer, 249 N.J. 359 (2022). The State submits that the resentencing authorized by the Supreme Court in Comer for juvenile offenders who had been sentenced in adult court to lengthy prison terms for murder does not apply to defendant because he was an adult when he committed his crimes. The trial court properly denied defendant's motion.

To place defendant's motion and the trial court's decision into context, some legal background is necessary. Beginning in the mid-2000's, the United

States Supreme Court issued opinions dealing with juvenile offenders serving lengthy prison sentences which implicated the Eighth Amendment's ban on cruel and unusual punishment. The New Jersey Supreme Court issued opinions based upon this precedent from the U.S. Supreme Court.

In Roper v. Simmons, 543 U.S. 551, 568 (2005), the Supreme Court held that the Eighth Amendment barred imposition of the death penalty on offenders who were under the age of 18 at the time they committed their crimes. In Graham v. Florida, 560 U.S. 48, 82 (2010), the Supreme Court held unconstitutional the sentencing of juvenile offenders to life imprisonment without parole for non-homicide crimes, ruling that a juvenile offender must have the opportunity to obtain release based upon rehabilitation and maturity. Id. at 75. In Miller v. Alabama, 567 U.S. 460, 479-80 (2012), the Supreme Court invalidated sentencing schemes that mandated life without parole for juvenile offenders but left open the possibility of a sentencing court imposing such a sentence in homicide cases if the mitigating effect of the defendant's age was properly considered. In Montgomery v. Louisiana, 577 U.S. 190, 212 (2016), the Supreme Court held that its ruling in Miller was retroactive, which meant sentences imposed contrary to Miller could be remedied by resentencing or consideration for parole.

In 2017, the New Jersey Supreme Court considered this precedent State v. Zuber, 227 N.J. 422 (2017), where two 17-year-old juveniles in separate cases, Ricky Zuber and James Comer, had been waived to adult court and received lengthy prison sentences for their crimes. Both defendants argued that their sentences were unconstitutional under Miller and amounted to life in prison without parole. Id. at 434-37. The Supreme Court in Zuber ruled that sentencing courts must consider how children are different and must consider the relevant factors outlined in Miller, which include immaturity, the family and home environment, the inability to deal with police or counsel and the possibility of rehabilitation. Id. at 451. The Supreme Court in Zuber remanded for resentencing. Id. at 453.

In 2022, the New Jersey Supreme Court issued its decision in Comer, where the Supreme Court reviewed Comer's resentencing, as well as that of another juvenile waived to adult court, James Zarate, who had been convicted of murder committed when he was 14 years old. Comer, 249 N.J. at 453, 374-81. Comer had been resentenced to a mandatory minimum term of 30 years in prison for felony murder and Zarate had been resentenced to life imprisonment subject to the parole bar under the No Early Release Act (NERA). Id. at 453. The issue was whether juvenile offenders who were prosecuted as adults and

convicted of murder were constitutionally entitled to reconsideration of their sentences after serving 20 years of imprisonment. Id. at 369-70.

In Comer, the Supreme Court reiterated that children lack maturity and are more vulnerable to outside forces. Id. at 394. The Court in Comer examined adolescent behavioral science articles which explained that youths do not reach maturity until years after they turn 18. Id. at 399-400. The Court in Comer held that offenders who were juveniles when they committed their offenses could seek a hearing after serving at least 20 years in prison. Id. at 401. The sentencing court would be required to assess the factors set forth in Miller, whether the juvenile offender still failed to appreciate the risks and consequences of his actions and whether he had matured or been rehabilitated. Id. at 370. The sentencing court would also be required to consider the juvenile's behavior in prison. Ibid.

After the Supreme Court's decision in Comer, defendants, who were young adults when they committed their crimes and who were serving lengthy prison sentences, sought resentencing under Comer, arguing that they were entitled to resentencing after serving 20 years. See State v. Jones, 478 N.J. Super. 532, 439 (App. Div.), certif. denied, 259 N.J. 304, 314, 315 (2024). All these applications for Comer resentencings were denied by the trial courts; the denials were upheld by the Appellate Division in unpublished opinions; and

defendants' Petitions for Certification denied by the New Jersey Supreme Court. Id. at 539-40.

Then, in Jones, the Appellate Division addressed this recurring issue in a published decision that was a consolidated appeal involving three defendants and held that the resentencing authorized in Comer did not apply to defendants who were adults when they committed their crimes. Id. at 547-51.

The appellate panel in Jones cited to the New Jersey's Supreme Court decision in State v. Ryan, 249 N.J. 581 (2022), decided one month after Comer, as support for its conclusion, because in Ryan, the defendant argued that the Miller factors applied to his "first strike" conviction used to support his sentence under New Jersey's Three Strikes Law but the Supreme Court rejected his argument because he was an adult when he committed his third offense and was sentenced as an adult. Id. at 549-50. The appellate panel in Jones quoted language from the Supreme Court's decision in Ryan where our Supreme Court outlined how it had built upon "federal juvenile sentencing jurisprudence" and had extended the Miller factors to situations to where a juvenile was facing a term of imprisonment that was the functional equivalent of life without parole. Id. at 550, quoting Ryan, 249 N.J. at 596, 600-01. But, of importance, the Supreme Court in Ryan expressly held that "[w]e did not,

however, extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen." Ibid.

The appellate panel in Jones also held that its institutional role as an intermediate court was limited and it was bound to follow the rulings of the U.S. Supreme Court and the New Jersey Supreme Court. Id. at 551. The sentences imposed on the defendants in the consolidated Jones appeal were authorized by the Code and were legal sentences. Ibid. The Supreme Court's decision in Comer was limited to juveniles, and there was no basis to overrule the trial court's denials of the applications for resentencing under Comer. Ibid.

The Appellate Division's published ruling in Jones was issued on May 31, 2024. Id. at 532. On November 15, 2024, the New Jersey Supreme Court denied the respective Petitions for Certification filed by the three defendants in the consolidated appeal. Jones, 259 N.J. at 304, 314, 315. Following the Appellate Division's published decision in Jones, defendants who were young adults when they committed their crimes continued to raise the issue of extending Comer.

In State v. Curtin, 2024 WL 3665568, *8 (App. Div. 2024), an unpublished opinion issued on August 6, 2024, the Appellate Division, citing Jones, rejected defendant's claim that his crimes committed when he was 19 years old required consideration of developmental science about youthful

offenders. The New Jersey Supreme Court denied certification on November 1, 2024. State v. Curtin, 258 N.J. 567 (2024).

In State v. Nicini, 2024 WL 4586233, *1-2 (App. Div. 2024), an unpublished opinion rendered on October 28, 2024, the Appellate Division rejected the defendant's claim that the resentencing under Comer for juveniles should be extended to defendants like him, who were young adults when they committed their crimes. The Nicini panel, citing Jones, declined to extend Comer to offenders who were young adults when they committed their crimes. Ibid. The panel in Nicini saw no basis to deviate from the ruling in Jones. Ibid. On March 14, 2025, the New Jersey Supreme Court denied certification. State v. Nicini, 260 N.J. 204 (2025).

Against this backdrop, defendant in this case sought resentencing under the tenets of Comer. He filed a pro se motion for resentencing on September 28, 2022, and the Public Defender filed a brief in support of the motion on August 31, 2023. (Da6-27). The Public Defender attached to his brief a July 20, 2023, report from a Professor of Justice Studies at Montclair State University, who was retained by the Public Defender to prepare a "scientific report. . .summarizing the state of the science regarding neurobiological and psychological development during late adolescence; trajectories of offending and desistence; and data on the risk of re-offense for individuals sentenced as

youth." (Da29-45). The Public Defender argued that the ruling in Comer should be extended to defendant, because an 18-year old is entitled to the same constitutional protection of a 17-year old. (Da10). The Public Defender acknowledged that in Comer the defendants were under the legal age of 18 when they committed their crimes, however, he claimed the extension of Comer to adult offenders was "unresolved." (Da13). He relied on July 2023 professor's report and on out of state opinions where youthful adult offenders were afforded protection against lengthy prison sentences. (Da14-16).

The State filed its opposition brief on October 24, 2023. (Sa7-14). The State, relying on the New Jersey Supreme Court's ruling in Ryan, argued that the resentencing authorized in Comer for juveniles waived to adult court did not extend to defendants who were adults when they committed their crimes. (Sa13).

The trial court issued its decision denying defendant's motion on May 10, 2024, which was 21 days before the Appellate Division issued its published opinion in Jones. (Da47-56). The trial court ruled that the Supreme Court in Comer did not question the sentencing framework for adults convicted of murder. (Da55). The Comer ruling was confined to juveniles. (Da55; Da56). The trial court ruled that defendant's arguments were best left for the Legislature regarding sentencing options for youthful adult offenders. (Da56).

In any event, the trial court held that a departure from precedent must come from the New Jersey Supreme Court. (Da56). Now, on appeal, defendant contends that the panel deciding his case is not bound by Jones. (Db24-26). He argues that Jones was wrongly decided. (Db26). For the following reasons, defendant's invitation to extend the ruling in Comer should be rejected.

The earlier outline of appellate decisions, both unpublished and published, which have all rejected the argument being advanced by defendant here, bring to the forefront the observation made by Justice Jacobs that the principle of stare decisis affords a "measure of stability" and is of "great societal value." David v. Government Employees Ins. Co, 360 N.J. Super. 127, 142 (App. Div.), quoting Watson v. U.S. Rubber Co., 24 N.J. 598, 603 (1957), certif. denied, 178 N.J. 251 (2003). The arguments advanced by defendant, along with the out of state cases he relies upon, (Db21-23), were thoroughly addressed by the Appellate Division in Jones and do not support extending Comer to adult offenders. Jones, 478 N.J. Super. at 548-49. The published ruling in Jones is consistent with decisions of other appellate panels rejecting the claim being advanced by defendant. The New Jersey Supreme Court has consistently denied certification in these cases. There is no basis to question

the soundness of the Appellate Division's repeated rejection of the defense bar's attempt to extend the ruling in Comer to adult offenders.

Defendant has not offered anything new or different to support his contention that the Appellate Division's holding in Jones was wrongly decided. The Appellate Division's ruling in Jones comports with the New Jersey Supreme Court's ruling in Comer, which was limited to juvenile offenders, and with the New Jersey Supreme Court's ruling in Ryan, which expressly stated that Comer only applied to juvenile offenders. The doctrine of stare decisis is not absolute and can give way "under cogent circumstances" to correct judicial errors, Watson, 24 N.J. at 603, however, those circumstances do not exist here.

As the Supreme Court stated in Ryan, "a line must be drawn," and the Legislature "has chosen eighteen as the threshold age for adulthood in criminal sentencing." Ryan, 249 N.J. at 600 n.10. Defendant here was an adult when he killed Troy Brown in December 2003. For his crime, he was sentenced in accordance with the Code and is serving a legal sentence for purposeful or knowing murder. He is not entitled to resentencing under the tenets of Comer.

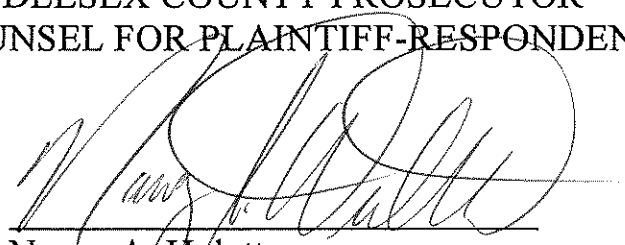
For the reasons outlined above, the trial court's denial of defendant's motion for resentencing under Comer should be upheld.

CONCLUSION

For the foregoing reasons, the State urges this court to affirm the denial of defendant's motion for resentencing under State v. Comer, 249 N.J. 359 (2022).

Respectfully submitted,

YOLANDA CICCONE
MIDDLESEX COUNTY PROSECUTOR
COUNSEL FOR PLAINTIFF-RESPONDENT

BY: 
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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3000-23T4
Ind. No. 04-02-00153

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, Essex County
v.	:	
RAHJIV SMITH,	:	Sat Below: Hon. Andrea G. Carter, J.S.C.
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 Rahjiv Smith and in reply to plaintiff-respondent's brief. Defendant relies on the procedural history and statement of facts in his main brief filed on April 17, 2025.

LEGAL ARGUMENT

A RESENTENCING SHOULD OCCUR BECAUSE THE COMER DECISION -- WHICH REQUIRES A RESENTENCING AFTER AN ADOLESCENT OFFENDER UNDER AGE EIGHTEEN SERVES TWENTY YEARS -- SHOULD EXTEND TO ADOLESCENTS AGED EIGHTEEN, LIKE SMITH. U.S. CONST. AMENDS. VIII, XIV; N.J. CONST. ART. I, ¶ 12. (ruling below at Da 46 to 56)

Defendant relies on his main brief -- especially subpoint C of that brief, which explains why State v. Jones, 478 N.J. Super. 532 (App. Div. 2024), is incorrect and should not be followed. The present brief is mainly a quick legal update.

Michigan recently joined Washington and Massachusetts in extending state constitutional protection against long sentences through age twenty. See People v. Taylor, ___ N.W.3d ___, 2025 WL 1085247 (Mich. April 10, 2025). Like the courts in Washington and Massachusetts, the court in Michigan relied heavily on indisputable developmental science showing that twenty-year-olds share the characteristics of younger adolescents. See Taylor, 2025 WL

1085247, at *6-*7, *9-*10, *14. Although Michigan had already extended constitutional protection to eighteen-year-olds like Smith, see People v. Parks, 987 N.W.2d 161 (Mich. 2022), the Taylor case again demonstrates the rock-solid consensus regarding the developmental science and the emerging consensus regarding the science's implications.

It is also worth quickly emphasizing how Smith's case differs from prior New Jersey appeals raising the same issue, including Jones. None of the prior cases had a record containing an expert report. In Smith's case, the defense filed a comprehensive expert report from one of New Jersey's leading experts on adolescent development. That report demonstrates that eighteen- to twenty-year-olds share the characteristics of younger adolescents. (Da 28 to 45)

Thus, Smith's case has the best possible record and is occurring during continued development of the law in favor of protecting late adolescents. If a panel is ever going to acknowledge the mistake made in Jones, now would be a good time.

And that mistake is grave. The underlying issue of extending State v. Comer, 249 N.J. 359 (2022), is extraordinarily important and has the potential to affect many long-serving incarcerated people. These middle-aged and elderly people have almost certainly matured and reformed since offending as

adolescents. Yet the Jones decision dashes the hopes of these people without even entertaining their claims.

CONCLUSION

For the reasons stated here and in Smith's main brief, 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 eighteen-year-olds like Smith.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: ___/s/ Peter T. Blum_____
PETER T. BLUM
Assistant Deputy Public Defender