

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

CASE NO. 157738

THE PEOPLE OF THE
STATE OF MICHIGAN,

MI COA #335862

Plaintiff/Appellee,
v

Kent Cty. Circuit Ct.
#03-004460-FC

DEMARIOL BOYKIN,

Defendant/Appellant.

APPELLANT'S APPENDIX
TO APPELLANT'S SUPPLEMENTAL BRIEF ON APPEAL

F. Randall Karfonta P15713
Attorney for Def./Appellant
113 N. Main, POB 565
Leland, MI 49654-0565
(231) 256-2200
karfonta@leelanau.com

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Judge: LEIBER, HONORABLE
DENNIS

Case No. 03-04460-FC

Ticket No.
CTN: 41 03 000930 02

THE STATE OF MICHIGAN

By: KONCKI, KELLE A

-vs-

BOYKIN, DEMARIOL DONTAYE DFNDT
THUMB CF # 474035
3225 JOHN CONLEY RD
LAPEER, MI 48446
827 GENEVA AVE SE
GRAND RAPIDS, MI 49507
827 GENEVA SE
827 GENEVA SE
GRAND RAPIDS, MI 49507
Dob: 04/19/1985 Sex: M
Lic: Sid: 2262082L

By: KARFONTA, F. RANDALL
113 N MAIN
P.O. BOX 565
LELAND, MI 49654

Plate#:
Make:
Year: Accident: No
Type:
Venue:
Location: 61ST

Bond: Set:
Type: Posted:

AGENT, SW COOK CO CIR CT SUPWIT
CLK (IL)
SANDIFER, MARVIN RAY CODEF
ADAMS, BEN, ROBBIE WIT
ALLEN, CINDY WIT
ALWARD, OFFICER SCOTT WIT
ARSENAULT, OFFICER GREGG WIT
BAYLIS, OFFICER ADAM WIT
BAYLIS, OFFICER ADAM WIT
BELK, CHIEF KEVIN WIT
BERNARD, OFFICER JASON WIT
BETZ, DET. PHIL WIT
BOILLAT, DET ERIC WIT
CROSS, MONIQUE RASHON WIT
CURTISS, OFFICER KAREN WIT
DUKE, OFFICER MICHAEL WIT
EDWARDS, KIRA WIT
FARRIS, CAPTAIN JAMES WIT
GOOTJES, OFC. THOMAS WIT
HAMILTON, MARVIN RAY WIT
HERALD, OFFICER CECILE WIT
HORNbacher, OFFICER ERIC WIT
HUFFMAN, OFFICER JEREMY WIT
JELE, DORIS WIT
JOHNSTON, OFFICER DAVID WIT
KAZIKIEWICZ, OFFICER WIT
MELISSA
LAFAVE, #086 OFFICER WIT
MITCHELL, MONICA WIT
NEEDHAM, OFFICER PATRICK WIT
NOVAKOWSKI, DAVID WIT
PEGUES, KEYON WIT
PETERS, OFFICER JONATHAN WIT
POSTMA, SERGEANT CHRIS WIT
RILEY, OFFICER JOHN WIT
ROBINSON, RAYMOND WIT
ROSS, OFFICER GRETCHEN WIT
SANDIFER, CHARLES TYRONE WIT
SATTERTHWAITE, OFFICER WIT
CURTIS
SMITH, HAROLD WIT
THOMAS, AMY WIT
WALTER, CASSANDRA WIT
WARWICK, LIEUTENANT PAUL WIT
WILLIAMSON, JOE WIT
WOJCZYNSKI, SERGEANT JAMES WIT
BROYLES, MICHAEL VICTIM_REP
MCCALEB, LINDA VICTIM_REP
GRIFFIN, OFFICER GREGORY CW
START, DR DAVID DOCTOR

Charges:

Ct.1 750.316-C HOMICIDE - OPEN MURDER - STATUTORY
SHORT FORM
Offense Dt: 01/29/2003 Cvr:
Arrest Dt: 01/29/2003
Comments: FOUND GUILTY ON ALL COUNTS.
APA KONCKI, ATTY JOHNSON

Ct.2 750.227B-A WEAPONS FELONY FIREARM
Offense Dt: 01/29/2003 Cvr:
Arrest Dt: 01/29/2003
Comments: FOUND GUILTY ON ALL COUNTS.
APA KONCKI, ATTY JOHNSON

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Ct.3 769.12 HABITUAL OFFENDER - FOURTH OFFENSE
NOTICE
Offense Dt: 01/29/2003 Cvr:
Arrest Dt: 01/29/2003
Comments:

Sentencing:

Ct.1 Sentence Suspended Credit
Jail (Days)
Fines
Costs
Restitution
Probation(Mo) Expires:
Comm Svc (Hr)
REMARKS: RE-SENTENCE.
CR VANDENHEUVEL, APA FORSYTH, ATTY
BOEKELOO

Ct.2 Sentence Suspended Credit
Jail (Days)
Fines
Costs
Restitution
Probation(Mo) Expires:
Comm Svc (Hr)
REMARKS: SEE CT 1
Ct.3 Sentence Suspended Credit
Jail (Days)
Fines
Costs
Restitution
Probation(Mo) Expires:
Comm Svc (Hr)
REMARKS:

| No. | Filed | Action | Operator | Fine/Cost | Due |
|-----|----------|---|------------|-----------|------|
| 1 | 11/22/16 | CLAIM OF APPEAL & ORDER APPOINTING COUNSEL F. RANDALL KARFONTA (Attorney) on behalf of DEMARIOL DONTAYE BOYKIN (DEFENDANT) | CLACCOUNT | 0.00 | 0.00 |
| 2 | 11/17/16 | NOTICE OF RIGHT TO APPEAL & REQUEST FOR APPOINTMENT OF ATTORNEY | CLACCOUNT | 0.00 | 0.00 |
| 3 | 11/09/16 | STIPULATION & ORDER TO APPROVE AMENDED JUDGMENT | CLBARB | 0.00 | 0.00 |
| 4 | 10/28/16 | REQUEST & NOTICE TO ALLOW ELECTRONIC MEDIA COVERAGE OF COURT PROCEEDINGS(WZZM) | CLACCOUNT | 0.00 | 0.00 |
| 5 | 10/28/16 | AMENDED JUDGMENT OF RE-SENTENCE(JUDGE LEIBER)(MDOC-MIN. 40 YRS. & MAX. 60 YRS. ON CT. #1, MANDATORY 2 YRS ON CT. #2 COMM. 4-30-03. CT. #1 CONSECUTIVE TO CT. #2. \$120 SMC, \$60 CVR) | CLACCOUNT | 0.00 | 0.00 |
| 6 | 10/28/16 | HELD The following event: RE-SENTENCING DATE scheduled for 10/28/2016 at 1:30 pm has been resulted as follows: Result: HELD Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D HELD ON THE RECORD COURT REPORTER: VANDEN HEUVEL, BOBBI Certificate #: CSR-5219 RE-SENTENCE. CR VANDENHEUVEL, APA FORSYTH, ATTY BOEKELOO | CCLISAGIBS | 0.00 | 0.00 |
| 7 | 10/21/16 | DEFENDANT DEMARIOL BOYKIN'S SENTENCING MEMORANDUM | CLACCOUNT | 0.00 | 0.00 |
| 8 | 10/13/16 | PEOPLE'S RE-SENTENCING MEMORANDUM & POS | CLBARB | 0.00 | 0.00 |
| 9 | 10/11/16 | WRIT OF HABEAS CORPUS(MDOC-BROOKS CORR. FACILITY FOR RESENTENCING ON 10-28-16) | CLBARB | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
|-----|----------|--|------------|-----------|------|
| 10 | 10/07/16 | SCHEDULED Event: RE-SENTENCING DATE Date: 10/28/2016 Time: 1:30 pm Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: HELD | NLGREENB | 0.00 | 0.00 |
| 11 | 09/21/16 | ADJOURNED DUE TO OTHER REASONS The following event: RE-SENTENCING DATE scheduled for 09/30/2016 at 1:30 pm has been resulted as follows: Result: ADJOURNED DUE TO OTHER REASONS Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D | NLGREENB | 0.00 | 0.00 |
| 12 | 08/09/16 | WRIT OF HABEAS CORPUS(MDOC-BROOKS CORRECTIONAL FACILITY TO KCSD FOR RE-SENTENCING ON 9/30/16) | CLACCOUNT | 0.00 | 0.00 |
| 13 | 08/08/16 | ORDER RE: DEF'S RESENTENCING PURSUANT TO MONTGOMERY V LOUISIANA AND MCL 769.25a FILED | CLACCOUNT | 0.00 | 0.00 |
| 14 | 08/08/16 | SCHEDULED Event: RE-SENTENCING DATE Date: 09/30/2016 Time: 1:30 pm Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: ADJOURNED DUE TO OTHER REASONS | CCLISAGIBS | 0.00 | 0.00 |
| 15 | 08/05/16 | AMENDED ORDER ASSIGNING NEW COURT APPOINTED COUNSEL CHARLES F. BOEKELOO (Attorney) on behalf of DEMARIOL DONTAYE BOYKIN (DEFENDANT) | CLBARB | 0.00 | 0.00 |
| 16 | 08/04/16 | ORDER APPOINTING APPELATE COUNSEL CHARLES F. BOEKELOO (Attorney) on behalf of DEMARIOL DONTAYE BOYKIN (DEFENDANT) | CLBARB | 0.00 | 0.00 |
| 17 | 05/03/13 | REQUEST FOR DOCUMENTS FROM THE ATTORNEY GENERAL OFFICE FILED (MAILED ENTIRE FILE & DOCKET ENTRIES 5-10-13) | CLCHERYL | 0.00 | 0.00 |
| 18 | 10/24/12 | NOTICE OF RECEIPT OF RECORD ON APPEAL FROM THE MICHIGAN SUPREME COURT FILED | CLCHERYL | 0.00 | 0.00 |
| 19 | 10/24/12 | ORDER FROM THE SUPREME COURT DATED 10-22-12 DENYING APPLICATION FOR LEAVE TO APPEAL | CLBARB | 0.00 | 0.00 |
| 20 | 04/13/12 | NOTICE OF TRANSMISSION TO THE MICHIGAN SUPREME COURT SENT TO WILLIAM A FORSYTH AND DEMARIOL DONTAYE BOYKIN FILED (SC #144853) | CLCHERYL | 0.00 | 0.00 |
| 21 | 04/13/12 | CONTENT OF TRANSMISSION TO THE MICHIGAN SUPREME COURT FILED (SC #144853) | CLCHERYL | 0.00 | 0.00 |
| 22 | 02/06/12 | ORDER FROM THE COURT OF APPEALS DATED 2-3-12 DENYING DELAYED APPLICATION FOR LEAVE TO APPEAL | CLBARB | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
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| 23 | 10/07/11 | OPINION AND ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT | CLBARB | 0.00 | 0.00 |
| 24 | 07/11/08 | ANSWER IN OPPOSITION TO MOTION FOR RELIEF FROM JUDGMENT & POS | CLBARB | 0.00 | 0.00 |
| 25 | 05/04/07 | ORDER REQUIRING STATE TO FILE A RESPONSE FILED | CLTRACYD | 0.00 | 0.00 |
| 26 | 01/31/07 | CRIMINAL FINANCE FILE PURGED | CCJANET | 0.00 | 0.00 |
| 27 | 10/12/06 | MOTION TO SUPPLEMENT THE 6500 MOTION, MEMORANDUM & POS FILED | CLCOUNTJ | 0.00 | 0.00 |
| 28 | 04/26/06 | MOTION FOR RELIEF FROM JUDGMENT, BRIEF, MOTION FOR WAIVER OF FEES & COSTS, AFFIDAVIT, MOTION FOR APPOINTMENT OF COUNSEL, MOTION FOR REMAND, MOTION FOR EVIDENTIARY HEARING, MOTION FOR NEW TRIAL & POS FILED(ORAL ARGUMENT REQUESTED) | CLBARB | 0.00 | 0.00 |
| 29 | 03/28/06 | ORDER DENYING DEF'S. MOTION FILED | CLTRACYD | 0.00 | 0.00 |
| 30 | 03/02/06 | MOTION FOR RELIEF FROM JUDGMENT, BRIEF IN SUPPORT, MOTION FOR WAIVER OF FEES & COSTS, AFFIDAVIT & NOTICE OF HEARING FILED(NO DATE)(ORAL ARGUMENT REQUESTED) | CLBARB | 0.00 | 0.00 |
| 31 | 02/15/06 | MOTION TO FILE EXCEEDING 20 PGS FILED | CLBARB | 0.00 | 0.00 |
| 32 | 12/05/05 | ORDER FROM THE SUPREME COURT DATED 11-29-05 DENYING APPLICATION FOR LEAVE TO APPEAL | CLBARB | 0.00 | 0.00 |
| 33 | 12/05/05 | NOTICE OF RECEIPT OF RECORD ON APPEAL FROM THE MICHIGAN SUPREME COURT | CLCHERYL | 0.00 | 0.00 |
| 34 | 07/18/05 | OPINION FROM COURT OF APPEALS DATED 7/14/05 AFFIRMING FILED | CLTRACYD | 0.00 | 0.00 |
| 35 | 11/02/04 | MAACS STATEMENT OF SERVICE AND ORDER FOR PAYMENT OF COURT APPOINTED COUNSEL FILED | CLBARB | 0.00 | 0.00 |
| 36 | 07/19/04 | NOTICE OF TRANSMISSION TO THE COURT OF APPEALS | CLTRACYD | 0.00 | 0.00 |
| 37 | 07/19/04 | CONTENT OF TRANSMISSION TO THE COURT OF APPEALS | CLTRACYD | 0.00 | 0.00 |
| 38 | 07/12/04 | AMENDED JUDGMENT OF SENTENCE FILED (JUDGE LEIBER) (MDOC- CT.1-LIFE; CT.2- MIN. 2 YRS. MAX. 2 YRS. COMM. 4/30/03, & PAY \$60 CVR, \$120 SMC) | CLTRACYD | 0.00 | 0.00 |
| 39 | 03/11/04 | SATISFACTION OF JUDGMENT & CERTIFICATE OF MAILING FILED | CLTRACYD | 0.00 | 0.00 |
| 40 | 02/16/04 | NOTICE OF FILING OF TRANSCRIPT AND POS | CLTRACYD | 0.00 | 0.00 |
| 41 | 02/16/04 | TRANSCRIPT OF JURY TRIAL VOL. 7 OF 7 DATED 10/2/03 FILED (REPORTED BY: DALE LALKA) (2 PAGES COND.) | CLTRACYD | 0.00 | 0.00 |
| 42 | 02/16/04 | TRANSCRIPT OF JURY TRIAL VOL. 6 OF 7 DATED 10/1/03 FILED (REPORTED BY: DALE LALKA) (34 PAGES COND.) | CLTRACYD | 0.00 | 0.00 |
| 43 | 02/16/04 | TRANSCRIPT OF JURY TRIAL VOL. 5 OF 7 DATED 9/30/03 FILED (REPORTED BY: DALE LALKA) (26 PAGES COND.) | CLTRACYD | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
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| 44 | 02/16/04 | TRANSCRIPT OF JURY TRIAL VOL. 3 OF 7 DATED 9/26/03 FILED (REPORTED BY: DALE LALKA) (30 PAGES COND.) | CLTRACYD | 0.00 | 0.00 |
| 45 | 02/16/04 | TRANSCRIPT OF JURY TRIAL VOL. 2 OF 7 DATED 9/24/03 FILED (REPORTED BY: DALE LALKA) (33 PAGES, CONDENSED) | CLTRACYD | 0.00 | 0.00 |
| 46 | 02/16/04 | TRANSCRIPT OF JURY TRIAL VOL. 1 OR 7 DATED 9/23/03 FILED (REPORTED BY: DALE LALKA) (22 PAGES, CONDENSED) | CLTRACYD | 0.00 | 0.00 |
| 47 | 02/16/04 | TRANSCRIPT OF SENTENCE DATED 12/4/03 FILED (REPORTED BY: DALE LALKA) (3 PAGES COND.) | CLTRACYD | 0.00 | 0.00 |
| 48 | 02/05/04 | TRANSCRIPT OF JURY TRIAL , 9-29-03 FILED(TRANSCRIBED BY DENISE JAMBA)(102 PAGES, CONDENSED) | CLBARB | 0.00 | 0.00 |
| 49 | 02/05/04 | NOTICE OF FILING OF TRANSCRIPT AND POS | CLBARB | 0.00 | 0.00 |
| 50 | 01/27/04 | REQUEST FOR DOCUMENTS FROM WILLIAM A VANECK - ATTORNEY FILED (MAILED ENTIRE FILE & DOCKET ENTRIES 1-28-04) | CLCHERYL | 0.00 | 0.00 |
| 51 | 01/13/04 | STATEMENT OF SERVICES AND ORDER ALLOWING COMPENSATION | CLTRACYD | 0.00 | 0.00 |
| 52 | 01/12/04 | REPORTER'S CERTIFICATE OF ORDER FOR TRANSCRIPT | CLBARB | 0.00 | 0.00 |
| 53 | 01/08/04 | CLAIM OF APPEAL AND ORDER APPOINTING COUNSEL WILLIAM A. VAN ECK (Attorney) on behalf of DEMARIOL DONTAYE BOYKIN (DEFENDANT) | CLBARB | 0.00 | 0.00 |
| 54 | 12/26/03 | ORDER DIRECTING MDOC TO SWEEP PRISONER ACCOUNT FILED (\$180) | CLTRACYD | 0.00 | 0.00 |
| 55 | 12/16/03 | ORDER GRANTING APPOINTMENT OF APPELLATE COUNSEL FILED | CLBARB | 0.00 | 0.00 |
| 56 | 12/15/03 | NOTICE OF RIGHT TO APPEAL AND REQUEST FOR APPOINTMENT OF ATTORNEY FILED | CLBARB | 0.00 | 0.00 |
| 57 | 12/11/03 | REMOVAL OF ENTRY OF LEIN FILED | CLBARB | 0.00 | 0.00 |
| 58 | 12/10/03 | REMOVAL OF ENTRY FROM LEIN (COPY ONLY) FILED | CLBARB | 0.00 | 0.00 |
| 59 | 12/04/03 | STATE MINIMUM FELONY Receipt: 36179 Date: 02/04/2004 Receipt: 41163 Date: 03/10/2004 | CLJENNIB | 120.00 | 0.00 |
| 60 | 12/04/03 | VICTIM CVR FELONY STATE (54.00) Receipt: 36179 Date: 02/04/2004 Voided on 02/26/2004. Re-issued Check. Receipt: 41163 Date: 03/10/2004 | CLJENNIB | 54.00 | 0.00 |
| 61 | 12/04/03 | VICTIM CVR FELONY COURT (6.00) Receipt: 36179 Date: 02/04/2004 Voided on 02/26/2004. Re-issued Check. | CLJENNIB | 6.00 | 0.00 |
| 62 | 12/04/03 | WARRANT FOR REMOVAL OF PRISONER ISSUED | CLBARB | 0.00 | 0.00 |
| 63 | 12/04/03 | JUDGMENT OF SENTENCE FILED(JUDGE LEIBER) (MDOC-LIFE TERM ON CT. #1 & MIN. 15 YRS. & MAX. 15 YRS. ON CT. #2 COMM. 4-30-03, \$60 CVR, \$120 SMC) | CLBARB | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
|-----|----------|---|----------|-----------|------|
| 64 | 12/04/03 | HELD The following event: SENTENCE DATE scheduled for 12/04/2003 at 2:00 pm has been resulted as follows: Result: HELD | CCDEBRAB | 0.00 | 0.00 |
| 65 | 10/06/03 | ORDER FOR DNA SAMPLE FILED(SAMPLE TAKEN ON 10-2-03) | CLBARB | 0.00 | 0.00 |
| 66 | 10/02/03 | RECORD OF SEVENTH DAY JURY TRIAL FILED(GUILTY PLEA WAS RENDERED TO MURDER 1ST & POSS F/A COMM. FELONY) | CLBARB | 0.00 | 0.00 |
| 67 | 10/02/03 | VERDICT FORM FILED. ("GUILTY" MURDER 1 & "GUILTY" POSS F/A IN COMM. OF A FELONY) | CLBARB | 0.00 | 0.00 |
| 68 | 10/02/03 | ORDER FOR DNA SAMPLE FILED | CLTRACYD | 0.00 | 0.00 |
| 69 | 10/02/03 | SCHEDULED Event: SENTENCE DATE Date: 12/04/2003 Time: 2:00 pm Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: HELD | CCDEBRAB | 0.00 | 0.00 |
| 70 | 10/02/03 | HELD The following event: JURY TRIAL - CRIMINAL scheduled for 10/02/2003 at 8:30 am has been resulted as follows: Result: HELD. VERDICT RENDERED. JURORS FOUND DEF GUILTY OF MURDER 1ST DEGREE AND GUILTY OF POSS OF F/A IN COMMISSION OF FELONY CR-LALKA, APA-KONCKI | CCDEBRAB | 0.00 | 0.00 |
| 71 | 10/02/03 | SCHEDULED Event: JURY TRIAL - CRIMINAL Date: 10/02/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: HELD | CCDEBRAB | 0.00 | 0.00 |
| 72 | 10/02/03 | TRIAL CONTINUED The following event: JURY TRIAL - CRIMINAL scheduled for 10/01/2003 at 8:30 am has been resulted as follows: Result: TRIAL CONTINUED. CLOSING ARUGMENTS HEARD. JURORS INSTRUCTED. DELEBRATION BEGAN. ADJOURNED UNTIL 10/2/03 CR-LALKA, APA-KONCKI | CCDEBRAB | 0.00 | 0.00 |
| 73 | 09/30/03 | SCHEDULED Event: 6TH DAY OF JURY TRIAL - CRIMINAL Date: 10/01/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: TRIAL CONTINUED | CCDEBRAB | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
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| 74 | 09/30/03 | TRIAL CONTINUED The following event: JURY TRIAL - CRIMINAL scheduled for 09/30/2003 at 8:30 am has been resulted as follows: Result: TRIAL CONTINUED. WITNESSES SWORN, TESTIMONY HEARD, EXHIBITS PRESENTED. ADJOURNED UNTIL 10/1/03 AT 8:30AM CR-LALKA, APA-KONCKI | CCDEBRAB | 0.00 | 0.00 |
| 75 | 09/29/03 | SCHEDULED Event: 5TH DAY OF JURY TRIAL - CRIMINAL Date: 09/30/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: TRIAL CONTINUED | CCDEBRAB | 0.00 | 0.00 |
| 76 | 09/29/03 | TRIAL CONTINUED The following event: JURY TRIAL - CRIMINAL scheduled for 09/29/2003 at 8:30 am has been resulted as follows: Result: TRIAL CONTINUED. WITNESSES SWORN, TESTIMONY HEARD, EXHIBITS PRESENTED. ADJOURNED UNTIL 9/30/03 AT 8:30AM. CR-VANTIL, APA-KONCKI, ATTN-JOHNSON | CCDEBRAB | 0.00 | 0.00 |
| 77 | 09/26/03 | SCHEDULED Event: 4TH DAY OF JURY TRIAL - CRIMINAL Date: 09/29/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: TRIAL CONTINUED | CCDEBRAB | 0.00 | 0.00 |
| 78 | 09/26/03 | TRIAL CONTINUED The following event: JURY TRIAL - CRIMINAL scheduled for 09/26/2003 at 8:30 am has been resulted as follows: Result: TRIAL CONTINUED. WITNESSES SWORN, TESTIMONY HEARD. ADJOURNED UNTIL 9/29/03 CR-LALKA, APA-KONCKI | CCDEBRAB | 0.00 | 0.00 |
| 79 | 09/24/03 | SCHEDULED Event: 3RD DAY OF JURY TRIAL - CRIMINAL Date: 09/26/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: TRIAL CONTINUED | CCDEBRAB | 0.00 | 0.00 |
| 80 | 09/24/03 | TRIAL CONTINUED The following event: JURY TRIAL - CRIMINAL scheduled for 09/24/2003 at 8:30 am has been resulted as follows: Result: TRIAL CONTINUED. JURORS WERE SELECTED AND INSTRUCTED. OPENING ARGUMENTS HEARD. WITNESSES SWORN, TESTIMONY HEARD, EXHIBITS PRESENTED. ADJOURNED UNTIL FRIDAY 9/26/03 AT 8:30AM CR-LALKA, APA-KONCKI | CCDEBRAB | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
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| 81 | 09/23/03 | SCHEDULED Event: 2ND DAY OF JURY TRIAL - CRIMINAL Date: 09/24/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: TRIAL CONTINUED | CCDEBRAB | 0.00 | 0.00 |
| 82 | 09/23/03 | TRIAL CONTINUED The following event: JURY TRIAL - CRIMINAL scheduled for 09/23/2003 at 8:30 am has been resulted as follows: Result: TRIAL CONTINUED. JURY SELECTION BEGAN AND WILL RESUME ON 9/24/03 AT 8:30AM CR-LALKA, APA-KONCKI, ATTNY-JOHNSON | CCDEBRAB | 0.00 | 0.00 |
| 83 | 09/22/03 | SCHEDULED Event: JURY TRIAL - CRIMINAL Date: 09/23/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: TRIAL CONTINUED | CCDEBRAB | 0.00 | 0.00 |
| 84 | 09/22/03 | RESCHEDULED EVENT The following event: JURY TRIAL - CRIMINAL scheduled for 09/22/2003 at 8:30 am has been resulted as follows: Result: RESCHEDULED EVENT | CCDEBRAB | 0.00 | 0.00 |
| 85 | 07/17/03 | SCHEDULED Event: JURY TRIAL - CRIMINAL Date: 09/22/2003 Time: 8:30 am Judge: LEIBER, HONORABLE DENNIS Location: 17TH CIRCUIT COURT-COURTROOM #10D Result: RESCHEDULED EVENT | CCKAREN | 0.00 | 0.00 |
| 86 | 07/08/03 | PRELIMINARY EXAMINATION TRANSCRIPT DATED 5/14/03 FILED (RECORDED/TRANSCRIBED BY: KATHLEEN FARRUGIA) (71 PAGES) | CLTRACYD | 0.00 | 0.00 |
| 87 | 06/06/03 | DEMAND AND ORDER FOR PRELIMINARY EXAMINATION TRANSCRIPT(EXAM DATED 5-14-03) | CLBARB | 0.00 | 0.00 |
| 88 | 05/20/03 | PRE-TRIAL NOTICE LETTER FILED | CLTRACYD | 0.00 | 0.00 |
| 89 | 05/20/03 | REQUEST FOR DISCOVERY | CLTRACYD | 0.00 | 0.00 |
| 90 | 05/20/03 | AMENDED INFORMATION FILED | CLTRACYD | 0.00 | 0.00 |
| 91 | 05/15/03 | SPECIAL CONDITIONS OF BOND FILED Party Name: BOYKIN, DEMARIO DONTAYE Party Type: DEFENDANT 1) NO CONTACT: LEIN, Entry Date: 05/01/2003, Completion Date: 02/01/2004, Amended Date: ANY WITNESS IN CASE | CLBARB | 0.00 | 0.00 |
| 92 | 05/15/03 | WAIVER OF CIRCUIT COURT ARRAINGMENT ON INFORMATION FILED (NOT GUILTY) | CLBARB | 0.00 | 0.00 |

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| No. | Filed | Action | Operator | Fine/Cost | Due |
|------------------------|----------|---|----------|-----------|------|
| 93 | 05/15/03 | EXAM HELD, CRIMINAL PRE-TRIAL ORDER AND POS FILED | CLBARB | 0.00 | 0.00 |
| 94 | 05/15/03 | DEFENDANT IN JAIL AT THE TIME OF BIND OVER FILED | CLBARB | 0.00 | 0.00 |
| 95 | 05/15/03 | RETURN OF THE DISTRICT COURT OF KENT COUNTY FILED | CLBARB | 0.00 | 0.00 |
| 96 | 05/15/03 | ASSIGNED TO CO-DEFENDANT CASE The judge was changed from KOLENDA, HONORABLE DENNIS to LEIBER, HONORABLE DENNIS | CLBARB | 0.00 | 0.00 |
| Total: | | | | 180.00 | 0.00 |
| Totals By: INFORMATION | | | | 0.00 | 0.00 |
| STATE MINIMUM | | | | 120.00 | 0.00 |
| COSTS | | | | | |
| VICTIM CVR | | | | 60.00 | 0.00 |
| *** End of Report *** | | | | | |

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JUDGMENT

Original - Court; 1st copy - Cor. copy - Corrections (for return);
3rd copy - State Police; 4th copy - Defendant; 5th copy - Prosecutor

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| | | |
|---|---|-------------------------|
| STATE OF MICHIGAN 17TH JUDICIAL CIRCUIT KENT COUNTY | JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS AMENDED 7-12-04 SENTENCE TERM CT 2 | CASE NO. 03-04460-FC |
|---|---|-------------------------|

ORI MI - 410025J Court address: Kent County Courthouse 180 Ottawa NW, Grand Rapids, MI 49503 Court telephone number

| | | | | | |
|-------------------------------------|-----------------|--|------------------------|-----------------|----------------|
| THE PEOPLE OF THE STATE OF MICHIGAN | v | Defendant's name, address, and telephone no. DEMARIOL DONTAYE BOYKIN | | | |
| | | <table border="1"> <tr> <td>CTN 41 03 000930 02</td> <td>SID 2262082L</td> <td>DOB 4-19-85</td> </tr> </table> | CTN 41 03 000930 02 | SID 2262082L | DOB 4-19-85 |
| CTN 41 03 000930 02 | SID 2262082L | DOB 4-19-85 | | | |

| | | | |
|---|-------------------|---|---------------|
| Prosecuting attorney name William A. Forsyth | Bar no. P23770 | Defendant attorney name FRED JOHNSON | Bar no. P- |
|---|-------------------|---|---------------|

THE COURT FINDS:

1. The Defendant, was found guilty on 10-02-03 of the crime(s) as stated below:
Date

| Count | CONVICTED BY Plea* Court Jury | DISMISSED BY* | CRIME | CHARGE CODE(S) MCL citation/PACC Code |
|-------|----------------------------------|------------------|------------------------|--|
| 1 | | G | MURDER 1ST DEGREE | 750.316-C |
| 2 | | G | WEAPONS FELONY FIREARM | 750.227B-A |
| 3 | | G | SUPP 4 | 769.12 |
| | | | | |

*Plea: insert "G" for guilty plea; use "NC" for nolo contendere; use "MI" for guilty but mentally ill. *For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(20)(b).
The defendant's driver's license number is: _____
- ☐ 3. HIV testing and sex offender registration is completed.
- ☒ 4. The defendant has been fingerprinted according to MCL 28.243.

REC'D & FILED
JUDGE LEIBER
JUL 12 2004

IT IS ORDERED

- ☐ 5. Probation is revoked
6. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

| Count | SENTENCE DATE | MINIMUM Years Mos. Days | MAXIMUM Years Mos. | DATE SENTENCE BEGINS | JAIL CREDIT Mos. Days | OTHER INFORMATION |
|-------|------------------|----------------------------|-----------------------|-------------------------|--------------------------|-------------------|
| 1 | 12-4-03 | LIFE | LIFE | | | |
| 2 | 12-4-03 | 2 | 2 | 4-30-03 | | |
| | | | | | | |
| | | | | | | |

- ☒ 7. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☒ each other. ☐ case numbers _____
8. Defendant shall pay: ☐ restitution of \$ _____. ☒ \$60.00 for Crime Victim Rights Fund.
☒ state minimum costs of \$ 120
- ☐ 9. The concealed weapon board shall ☐ suspend for _____ days ☐ permanently revoke the concealed weapon license, permit number _____. Issued by _____ County.
10. Court recommendation:

12-4-03
Date Judge Dennis B Leiber Bar. no. 22889

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

2a

SENT MEMO

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

Case No: 03-04460-FC
HON. DENNIS B. LEIBER

DEMARIOL DONTAY BOYKIN,

Defendant.

PROSECUTING ATTORNEY'S OFFICE
Attorney for Plaintiff
82 Ionia Avenue, N.W.
Suite 450
Grand Rapids, MI 49503

CHARLES F. BOEKELOO (P34365)
Attorney for Defendant
96 Monroe Center, NW
Suite 205
Grand Rapids, MI 49503

DEFENDANT DEMARIOL BOYKIN'S SENTENCING MEMORANDUM

Defendant Demariol Dontay Boykin was convicted at a jury trial of Murder in the 1st Degree and Possession of a Firearm in the Commission of a Felony for an incident that occurred on January 29, 2003. He was 17 years of age at the time of the offense. He was sentenced to two years of imprisonment for the Felony-Firearm charge and Life in prison without the possibility of parole to start upon the completion of the Felony-Firearm sentence.

In light of the U.S. Supreme Court's decisions in Miller v Alabama, 567 US ___, 132 S Ct 2455 (2012) and Montgomery v Louisiana, ___ US ___, 136 S Ct 718 (2016), a resentencing has been ordered. As noted by this court, our Legislature anticipated these possible rulings and enacted MCL §769.25a, which deals with those cases (such as this) where the prosecutor elects not to pursue a sentence of Life without Parole. The statute sets a mandatory minimum sentencing range of 25-40 years and a mandatory maximum sentence of 60 years of imprisonment. Defendant

SEPT. MEMO

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specifically asserts that this statutory scheme violates the provisions of Miller, by removing the discretion from the sentencing judge, and is therefore, unconstitutional. The mandatory minimum range and the mandatory maximum still do not allow for a sufficient analysis by the sentencing judge of the factors that must be considered in a resentencing such as this.

Without waiving this assertion, the defendant submits the following memorandum to assist the court in sentencing within the statutory scheme, assuming this court is so inclined.

Demariol spent most of his childhood on the west side of Chicago with a caring mother and a mostly absent father due to multiple incarcerations in Michigan. He became involved in the drug culture in Chicago and acquired convictions for possession and sale of drugs at the ages of 14 and 15. His mother realized his downward path and arranged for him to move in with his father in July of 2000. He joined a family of half-siblings, but unfortunately, he found himself living in the heart of the gang environment in Grand Rapids. Even so, his only brush with law enforcement occurred in 2002 with a misdemeanor charge of "Frequenting an Illegal Business". Still, as so many of our youth have done, he acquired a gun "for protection" during his stay with his father. Sadly, only 5 months after he moved in with his father, his mother passed away from a brain aneurysm.

On the date of the shooting, the defendant's half-brother was involved in altercation with the victim. Apparently, the victim was more physically imposing than the Mr. Boylin's half-brother, so he retreated and called his other half-brother. He, in turn, called the defendant, and they all eventually got into a car with their father and

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JRNT MEMO

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drove to confront the victim for a "fair fight".

Whatever the circumstances, the defendant does not dispute that eventually all three brothers, with tacit approval from their father, began to assault the victim. In the heat of the encounter, the defendant pulled out his gun. The victim began to flee, but the defendant fired some shots at him and eventually hit him in the abdomen and the arm. The three of them then started kicking the victim on the ground. The defendant admits to attempting to shoot him again but the gun apparently jammed. The three brothers then left with their father.

The prosecutor attempts to utilize the scoring of sentencing guidelines for Murder in the Second Degree for comparison here. The analysis provided is inaccurate, as the "convictions" utilized to convict Mr. Boykin as a 4th Felony Offender were most likely all juvenile adjudications. They were all Illinois low severity felonies committed when the defendant was age 16 or younger. Therefore, the appropriate guideline sentencing range would have been 225-375 months, or 18.75 - 31.25 years. Fittingly, the mid-point of this range is 300 months, or exactly 25 years.

A review of Mr. Boykins' prison conduct history reveals a fair number of documented misconducts. He has incurred 16 incidents: 5 were for possession of alcohol (1 of which also included possession of rolling papers and a cell phone); 4 were for being out of place (2 of which were for playing chess); 1 was for possession of unknown blue pills; 1 possession of a gambling betting slip; 2 possession of homemade knives; 1 misuse of a phone PIN; 1 consensual sexual misconduct with another prisoner; and one incident involving possession of photographs of people wearing gang symbols, as well as drawings and a paper related

SENT MEMO

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to the gang symbols. There are no assaults, no issues of arguments or even disturbing the peace of any facility. To be sure, these incidents reflect improper behavior, but none of them identify the defendant as being likely to repeat violent behavior or to be an unlikely candidate for rehabilitation. This is true despite the fact that for most of his period of imprisonment, he has had little to no hope for eventual release.

Indeed, the Presentence Case Report prepared by the MDOC for this case includes the following: positive "does good work", "works well without direct supervision", "willing to do extra", "will help with extra work", "completes all tasks assigned", "great porter, willing to do more than asked", and "does what's asked of him". This consistent praise for his work habits and attitude are certainly indicative of the potential for success upon release from prison. Particularly noteworthy is his earning of his GED within 6 months of his entry to the MDOC, despite his 10th grade level of education at the time of sentencing.

Mr. Boykin has completed Phase I of substance abuse treatment offered by the prison system. As of September of this year, he was noting 7 months of sobriety from all substances (including alcohol). He currently works as the lead cook in the kitchen 7 days a week from 4:30 am to 12:30 pm. As is common, he has taken up reading as a hobby, but he has recently gone one step further. He is a member of a group known as "Shakespeare Behind Bars". Aside from simply reading the various plays, his group actually rehearses and puts on productions for the general population.

The Miller opinion provides guidance as to the factors to be considered in resentencing defendants who were juveniles at the time of

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SENT MEMO

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the offense. Age itself is a factor, especially as it relates to development of the brain. Immaturity, "impetuosity" or impulsivity, and failure to appreciate risks or consequences are some of the factors. In addition, the defendant's family or home environment-from which he cannot escape-is a major factor. In addition, the role his family or peer pressures played in the commission of the offense is significantly more important to consider with a juvenile defendant. The defendant's ability to help in his own defense is also illustrative. An example of this is the role he could have played in disproving the habitual offender conviction, which appears more significant now, than it might have at the time of sentencing.

Demariol Boykin was a 17 year-old man who had been involved in gang activity since he was 9. His environment was so bad that his mother sent him away to Michigan, despite the fact that she was the only solid base he could rely on in life. He moves to Grand Rapids and within 6 months, his mother suddenly dies. He is surrounded by siblings he doesn't know that well, but he recognizes the need to protect the family. There can be little doubt that family pressure played a role in this offense. Even his father played a role, driving him to the scene, knowing that at least assaults were likely.

His description of the offense in the original presentence report is illustrative. He remembers that "everything happened so fast, and I was so mad."

These are not indicators of someone who is incapable or even unlikely to become rehabilitated. He is not diminishing the severity of this offense. The victim and his family have suffered the ultimate loss. The quick escalation to violence was alarming. However, Mr.

TRNT MEMO

Boykin's record since his imprisonment should be reassuring. Despite the unlikelihood of his ever being released, he has not committed one violent act during his stay with the MDOC. He is currently housed in the lowest management level available to "lifers" in the MDOC: Level II.

Mr. Boykin is truly remorseful for his actions. He will obviously attend the resentencing, where the court will be able to assess this first-hand. A fair application of the statutory sentencing range would call for a sentence of 25 to 60 years in the Michigan Department of Corrections.

Letters of support from family members are included for the Court's review. It is particularly noteworthy that Mr. Boykin's major motivation at this time is to provide whatever support he can to his now 13 year-old daughter. It is hoped that he can be a positive influence in her life in the not too distant future.

Respectfully submitted,

Dated: October 20, 2016

CHARLES F. BOEKELOO, P.C.
Attorneys for Defendant

By:


Charles F. Boekeloo

MDOC RPT

PRESENTENCE CASE REPORT

| | | | |
|--|--|--|---------------------------|
| Number 474035 | Name Boykin, Demariol Dontay | Report Prepared by JACLYN M DEHAAN3908 | Date 08/16/2016 |
| Docket # 0304460-FC | Sentence Date 12/04/2003 | Judge Honorable DennisB.Leiber | |
| Offense(s) Homicide - Open Murder - Statutory Short Form (Hab Crim 4th Off.); Felony Firearm | | | |
| Type of Report Presentence Case Report | | | |

Your Honor,

Mr. Boykin was sentenced to 2 years prison for Felony Firearm and Life for Homicide-Open Murder on 12/4/03.

Since entering the prison system in 2003, Mr. Boykin has earned his fair share of misconducts and has spent a considerable amount of time in administrative segregation due to his behavior.

The following is a summary of Mr. Boykin's misconducts since his sentencing date:

3/11/04 Out of Place. No show for school.

5/5/05 Substance Abuse (Other Substances). Had 30 unknown blue pills with no medical authorization.

3/8/06 Gambling; Possession of Gambling Paraphernalia. Had a betting slip.

6/12/07 Possession of a Weapon; Destruction or Misuse of Property \$10 or More. Had 3 weapons hidden in a heater vent.

9/9/09 Sexual Misconduct. Sexual act with another prisoner.

10/25/13 Substance Abuse-Alcohol. Tested positive for alcohol.

2/21/14 Substance Abuse-Alcohol (Attempt). Had one gallon of fermenting orange liquid.

8/21/14 Destruction or Misuse of Property. Used another inmates phone PIN.

2/6/15 Unauthorized Occupation of Cell/Room.

4/10/15 Substance Abuse-Alcohol; Possession of Dangerous Contraband; Unauthorized Occupation of a Cell/Room. Had a cell phone, 3 bottles of "spud juice," rolling papers, and was not in his assigned cell.

6/12/15 Out of Place. Had no authorization to be in the courtyard playing chess.

9/24/15 Substance Abuse-Alcohol. Had 3 gallons of "spud juice" in his cell.

12/1/15 Out of Place. In an unauthorized unit of the prison.

12/12/15 Substance Abuse-Alcohol. Had 20 ounces of fermented liquid in a garbage can in his cell.

3/2/16 Contraband. Had photographs, drawings, and 1 paper containing gang signs and explaining the history

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MDOC RPT.

PRESENTENCE CASE REPORT

and allegiance of a Security Threat Group (STG or "gang").

3/2/16 Possession of a Weapon. During a strip search a 5 1/4 inch piece of steel that was sharpened to a point with a rubber handle was located hidden in his shoe. He admitted he carries it everyday for protection.

Mr. Boykin also earned some positive reports on his jobs which stated, "very good worker, good working attitude," "does good work," "works well without direct supervision," "willing to do extra," "will help with extra work," "completes all tasks assigned," "great porter, willing to do more than asked," and "does what's asked of him."

Mr. Boykin earned his GED on 5/3/04 but other than that has not completed any other schooling or treatment. Mr. Boykin does not have any medical documentation of note and is in good health according to the Michigan Department of Corrections.

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MDOC RPT.

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Michigan Department of Corrections
Deferral Report
RE: Prisoner BOYKIN, DEMARIOL DONTAYE A474035

WILSON, SANDRA A (Interviewer)

D 89 (Deferred, Commutation No Interest) 02/23/2015

Reasons:

Educational programming was recommended and:

Prisoner is high school graduate or has GED

Recommendation(s) has been made S.A. programming and:

The prisoner has completed the programs

SASSI Level 2: Possible substance abuse problem. Recommendation: Education.

Regarding 30-day notice:

Inmate agreed with receiving 30 days notice

Regarding criminal history, it is our belief the prisoner:

Accepts it as indicated

Regarding program involvement, it is our belief:

Has positive attitude about challenges ahead

Regarding the crime, it is our belief:

Prisoner accepts responsibility

Regarding the institutional adjustment, it is our belief the prisoner:

Accepts responsibility for misconduct

Regarding the prior post conviction sanctions, it is our belief the prisoner:

Accepts post conviction history as indicated

Regarding the victim, it is our belief the prisoner:

Expresses remorse

Accepts the need to refrain from contact

Review of the file discloses the following relevant information that the prisoner must be a

Truth in Sentencing Case

Pre-Screened by Jennifer Daogaru

Relevant documents reviewed by interviewer

Routine work assignments have been recommended and:

Prisoner is on waiting list

Recommendation for work assignment

11a

MDOC RPT

Michigan Department of Corrections

Deferral Report

RE: Prisoner BOYKIN, DEMARIOL DONTAYE A474035

Routine work assignments have been recommended and:

There is recommendation for vocational training/counseling/education

The assaultive crime:

Resulted in loss of life

Involved a dangerous weapon(s)

Arose in a multiple offender situation

Involved a family member or acquaintance

Involved the touching with or discharge of a weapon

The behavior reflected in the misconducts:

Involves substance abuse

This is a disciplinary time case

Shows that prisoner has received misconduct(s) since coming to MDOC or since last PBI.

The placement plan submitted by the offender in the PER:

Proposed placement acceptable; pending MDOC approval

The prisoner has a criminal history:

Of non violent misdemeanors

Includes drug/alcohol related crimes

The prisoner's prior post conviction corrections history includes:

Prior probation history

The prisoner's social history indicates:

The prisoner has maintained family support and/or has support system in the community

The prisoners institutional management suggests that the prisoner(s):

Has satisfactory block reports

The victim:

Asks for notification

Made impact statement at time of presentence investigation report

BELK, KEVIN R (Exec Vote)

D 89 (Deferred, Commutation No Interest) 02/27/2015

Reasons:

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MDOC RPT

Michigan Department of Corrections
Deferral Report

RE: Prisoner BOYKIN, DEMARIOL DONTAYE A474035

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MDOC RPT

Michigan Department of Corrections
Deferral Report
RE: Prisoner BOYKIN, DEMARIOL DONTAYE A474035

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Has satisfactory block reports

The victim:

Asks for notification

Made impact statement at time of presentence investigation report

14a

4101 w 21st place
Chicago, IL
60623
10/20/16

MDOC RPT

Your Honor:

I am writing you to urge leniency in the resentencing for my brother Demariol Boykin

I have known Demariol for 30 years he and I are both aware of the gravity of the crime he was convicted of, but it is hard for me and our family to wrap our heads around the crime. This is not the young man I grew up with and I'd like to give you a perspective that shows he is more than the sum of his actions on the day he committed the crime

Demariol has always been there for me and his family we have a very close and supportive family. He taught me how to roller skate, hop a fence, play basketball I was a little Tom boy I followed him around everywhere he went I followed. My brother was always respectful, kind and had a big heart he never bothered anyone he was always well like by his classmates and friends.

As Demariol got into his teens he needed to be with his father so his mom sent him to Michigan to live with his father because she feared he was going down the wrong path with so much bad influences and violence in the neighborhood on the westside of Chicago.

Our family has lost loved ones to violence so we sympathize and understand what the victims family has gone through we ask that you show leniency to my brother.

Tonyea Boykin

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SENT LTR

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To whom this may concern,

Hello, my name is Latasha Henderson and i am writing this letter in regards to Demario Boykin. He is my 1st cousin but i consider him to be my brother. My mother has custody of 2 of his sisters and 1 brother. We all grew up together and i always looked at him like my brother. He did something that was very wrong and i feel that he has served his time. He was a juvenile when this happen and it has been over 10 years since. He was very smart, funny, outgoing, and family oriented. I know that he is not a bad person and that he ended up in a bad situation that costed him many years in prison. I think life in prison without parol for a juvenile with no prior arrests was a bit harsh for him. Im not trying to make excuses for his behavior at all. I just know that my brother really is a good person with no bad intentions and myself, and the family miss him dearly. Especially his daughter. I am hoping that you can see that this sentence was a bit much and give him the opportunity to start his life over again. I know that he has learned from his mistakes and that if he is given the chance to come home that he will abide by the law and he will never set foot in jail again for doing anything. He has a lot of family out here that are waiting to help him get his life back on track. Its been so long since i have seen him because he was transferred to a prison that is to far for me to travel. I remember him being so young when this happened and now he is a grown man with a lot of remorse. When i talk to him on the phone i can hear it in his voice that he just wants another chance and im asking you your honor, Please give him another chance to show you that he has learned from his mistakes and that this will never happen again. I feel bad for the victims family in this situation also. They lost there family as well. Everybody has suffered, do we make him suffer for the rest of his life? i do feel like he has served his time. Both parties where doing something wrong and it costed somebody there life and i am truly compassionate and sorry about that. I know he was young and scared at the time and has had enough time to realize and understand that breaking the law and taking matters into your own hands will only get you put behind bars and i know he feels horrible about everything that happened. So i hope that you read this and see that maybe he does deserve a second chance

With kind regards,

Latasha Henderson

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1 STATE OF MICHIGAN
2 17th JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT
3
4
5 THE PEOPLE OF THE
6 STATE OF MICHIGAN,
7 vs. File No 03-04460-FC
8
9 DEMARIOL DONTAYE BOYKIN,
10 Defendant.
11
12 RESENTENCING HEARING
13 BEFORE THE HONORABLE DENNIS B. LEIBER, CIRCUIT JUDGE
14 GRAND RAPIDS, MICHIGAN - OCTOBER 28, 2016
15
16 APPEARANCES:
17 ON BEHALF OF THE PEOPLE:
18 MR. WILLIAM FORSYTH
19 Kent County Prosecuting Attorney's Office
20 82 Ionia Avenue, N.W., Suite 450
21 Grand Rapids, Michigan 49503
22 (616) 632-6710
23
24 ON BEHALF OF THE DEFENDANT:
25 MR. CHARLES F. BOEKELOO (P34365)
Attorney at Law
29 Pearl Street, N.W., Suite 145
Grand Rapids, Michigan 49503
(616) 454-6464

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| WITNESSES: | PAGE |
| (NONE) | |
| EXHIBITS: | |
| (NONE) | |

1 Grand Rapids, Michigan
2 October 28, 2016
3 * * * *
4 THE COURT: The Court has received letters in
5 this matter from a number of people and wanted to make
6 certain that copies were made so that the prosecution, the
7 defense, and the defendant can likewise have access to
8 them.
9 I'll wait until they're ready.
10 MR. BOEKELOO: Thank you, your Honor.
11 THE COURT: Very well.
12 This is case number 03-04460-FC in the matter of
13 the People of the State of Michigan versus Demariol Dontaye
14 Boykin. Mr. Boykin is before the Court with his Attorney,
15 Charles Boekeloo. The People are represented by the
16 Prosecutor of Kent County, William Forsyth.
17 This resentencing is mandated by the United
18 States Supreme Court decision in Miller v Alabama, made
19 subsequently applicable to the states and retroactive. For
20 this reason then, the Court will first hear from the
21 prosecution, defense counsel, representative of the
22 deceased, and the defendant before decision and sentence is
23 reached.
24 Mr. Forsyth.
25 MR. FORSYTH: Very briefly, your Honor. There's

1 really not much I can tell the Court, as the Court sat
2 through the trial in this matter, so you're well aware of
3 what the facts.
4 But for the decisions of Montgomery and Miller,
5 we wouldn't be here, and but for the fact that the
6 defendant was three months short of his eighteenth
7 birthday, we wouldn't be here either. He was far closer to
8 18 than he was 17, and Miller was addressing the issue,
9 quite frankly, of juveniles under the age of 18. The
10 concern being that when you get to 16 and 15 and even 14,
11 you're perhaps not as mature as you would be suddenly with
12 the arbitrary age of 18. But we're talking three months
13 here.
14 But having said that, under the factors of
15 Miller, it was our position that Mr. Boykin probably didn't
16 qualify for a mandatory life sentence, but having said
17 that, I think the facts of this case cry out for the fact
18 that he deserves the maximum the Court can give him, which
19 would be 40 years as a minimum and 60 years as a maximum.
20 As the Court was aware, Mr. Boykin shot
21 Mr. Broyles repeatedly from a distance -- only hit him
22 twice, but it wasn't for a lack of effort. And when
23 Mr. Broyles went to the ground, he went up to him, put the
24 gun to his head, and tried to shoot him in the head. The
25 only thing that prevented him from shooting him in the head

TR

1 was the fact the gun didn't discharge. They proceeded to
2 kick him in the head, called him a variety of names, and
3 when this was all over with, he fled the state.

4 And for those reasons, I think he more than
5 deserves every day the Court can give him, and we're asking
6 you give him the 40 to 60 years.

7 THE COURT: Thank you, very much.

8 Mr. Boekeloo.

9 MR. BOEKELOO: Thank you, your Honor.

10 Well, the law is the law. The law is that my
11 client was a juvenile at the time of the commission of this
12 offense, and as such recognizing the reasons for Miller,
13 that being more impetuous or impulsive, having -- being
14 more susceptible to being controlled by family and
15 atmosphere and in this case even gang activity, the law and
16 the court recognized that people of that age are more
17 susceptible to those kind of influences and recognize that
18 it's quite possibly that somebody of that age is more
19 likely to be rehabilitated and also shouldn't be held as
20 responsible as someone who is a full-fledged adult.
21 Consequently, we're back here.

22 Having said that, the Miller opinion also cites
23 the factors that really should be utilized in resentencing
24 individuals such as Mr. Boykin.

25 Albeit, the recitation of what took place here is

5

1 not disputed. There may be a dispute as how close the gun
2 was when it didn't go off, but beyond that, it's not
3 disputed. And for that, Mr. Boykin can be eternally sorry.

4 But, at this point, I believe the Court should
5 really look at the potential for rehabilitation that he has
6 shown. His life since then and clearly the fact that
7 despite believing he was going to be in prison for the rest
8 of his life, he has never committed a violent misconduct
9 while in prison. He does have misconducts, and for those
10 he had -- he did serve sanctions.

11 But we're really looking at the viability of
12 whether this individual could be rehabilitated, and I think
13 in that sense, the Court should take into account not only
14 what was done while he's in prison but also the opinions
15 expressed and what he's done positively while with the
16 Michigan Department of Corrections. And I think at that
17 point, we should give the discretion to the Michigan
18 Department of Corrections to determine whether he should be
19 paroled. They also will be able to take into account
20 whatever input the victims want to express.

21 But, at this point, I'd ask the Court to consider
22 sentencing at the lower end of the range, albeit, the
23 original -- provided though, I put at the beginning of my
24 memo about the constitutionality of the new statute -- and
25 sentence him to 25 to 60 years.

6

THE COURT: Thank you, very much. Is there a
2 representative of the victim of this offense present in the
3 courtroom wishing to be heard, Mr. Forsyth?

4 Sir, would you come forward and please be seated
5 to my left?

6 May I have your name, please?

7 MR. CROSS: Monte Cross.

8 THE COURT: Would you spell your first name,
9 please?

10 MR. CROSS: M-O-N-T-E.

11 THE COURT: And your last name is C-R-O-S-S?

12 MR. CROSS: C-R-O-S-S.

13 THE COURT: What relation are or were you to the
14 late Shawn Broyles?

15 MR. CROSS: He was my little brother, sir.

16 THE COURT: You shared the same mother?

17 MR. CROSS: Yes, sir.

18 THE COURT: Different fathers?

19 MR. CROSS: Yes, sir.

20 THE COURT: What would you like to say you think
21 I should know before sentence is passed?

22 MR. CROSS: Well, sir, first of all, I want to
23 let Demariol know that it's taken me 14 years to be able to
24 look him in the face and let him know that I don't hate
25 him. What I do hate is the fact that you and your lawyer

7

1 and your family, two of which your brothers, had the
2 audacity and the ability to murder my little brother in
3 cold blood, premeditated fashion. The fact remains they
4 were 17, almost 18. The most disheartening part of this is
5 the fact that you were there with your father, who I hold
6 more responsible than I do than you in all of this.

7 The argument that it's been cruel and unusual
8 punishment for you to receive -- in my opinion, a fair
9 consequence is life without the possibility of parole. And
10 the fact that you have lawyers who have never had a family
11 member brutally murdered advocating that you've been cruel
12 and unusually punished -- I hate it.

13 I hate the fact that on Mother's Day I have to go
14 into a public restaurant and see the man who also was
15 responsible for my brother's murder, your father, sitting
16 there enjoying Mother's Day with his significant other.

17 I'm going to tell you and the rest of the court,
18 cruel and unusual punishment is living the feelings that we
19 live with every single day since the moment you, your two
20 brothers, and your father premeditatedly murdered my little
21 brother.

22 I hate the fact that I've got to relive all of
23 this over 14 years later.

24 I hate the fact that your family members got a
25 second chance. Your two brothers who went down there and

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MR

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1 stomped on my brother as he laid there motionless, dying,
2 kicking, stomping repeatedly, got a second chance. I hate
3 it.
4 I hate the fact that I get to see your dad being
5 a funny man around town, a comedian, living his life to the
6 fullest extent. I hate it. Because like I said, I'm a
7 father, and I would never, ever put myself or my child in
8 the position that he put you and your two other brothers in
9 the day that you all took my brothers's life.
10 I'm here advocating, begging for Judge Leiber to
11 uphold the mandatory sentence of life without the
12 possibility of parole for you.
13 There's no coming back for us. We don't get to
14 get to get a second chance with Shawn. We don't get to see
15 him again. He doesn't get to have a baby like your brother
16 did. My mom will never be a grandmother for her son,
17 Shawn. We don't get a second chance, and I don't think you
18 deserve one either.
19 I don't hate you. In fact, I pray for you every
20 day, because I know I can't get forgiveness for my sins,
21 and I've never murdered anyone. But I know my sins are no
22 less than any of your sins even though you murdered my
23 brother. You're going to pay, whether it's in prison for
24 the rest of your life or when you meet our maker, but you
25 going to pay and so will your father and so will your two
9

1 brothers.
2 But I'm begging here, Judge Leiber, please, for
3 our family's sake and for the cruel and unusual punishment
4 that we live with day in and day out, every single day,
5 please uphold the consequence that you've already sentenced
6 this man. We already are faced with having to see his
7 brothers, his family, his father in the community.
8 And young man, that's cruel and unusual
9 punishment for all of us. I don't hate you. I'll continue
10 to pray for you, because I know flat out that I can't go
11 where I want to go in life holding the hatred that I had
12 for you up until the moment that I got to say what I just
13 said to you.
14 So please, Judge Leiber, I hope you have it in
15 your -- hold up your ability as a judge to uphold the
16 penalty of life without the possibility of parole.
17 Anything less than that would be cruel and unusual
18 punishment for myself and my family.
19 Thank you.
20 THE COURT: Mr. Cross, if you will just give me a
21 moment, first, I want to thank you for being here, and
22 there's nothing that I can add to what you've said, and I
23 appreciate the pain that you continue to suffer, especially
24 in light of the decision of the United States Supreme
25 Court. Perhaps someone will secure a transcript of your
10

1 remarks and send them to the majority of the United States
2 Supreme Court so they can understand the consequence of
3 their far-reaching decision in your case.
4 As the prosecution has pointed out, this crime
5 occurred 80 days short of the defendant's 18th birthday.
6 When I became judge, I took an oath to follow the law, not
7 to create it. And in situations of this, it strains and
8 breaks my heart to do what I'm mandated to do, and that is
9 to create a sentence within the law as given to me.
10 But I thank you for the living witness you
11 present and the forgiveness you've expressed. It
12 underscores truly what I've seen in others that forgiveness
13 is the gift we give ourselves. And in that regard, you're
14 nobility and your kindness is everlasting.
15 Thank you, and good luck to you.
16 MR. CROSS: Thank you, sir.
17 MR. FORSYTH: Your Honor, with the Court's
18 permission, one of the other brothers would like to speak.
19 THE COURT: I will permit it. This is an unusual
20 circumstance created not by this Court or any state court.
21 I think the consequence of this action should be given a
22 forum of address, as I've indicated previously. Yes, you
23 may.
24 MR. FORSYTH: Thank you, your Honor.
25 THE COURT: May I please have your name?
11

1 MR. BROYLES: Michael Broyles.
2 THE COURT: And you are what relation to Shawn?
3 MR. BROYLES: His little brother.
4 THE COURT: Very well, Mr. Broyles. What is it
5 you'd like to say you think I should know?
6 MR. BROYLES: He needs to stay in prison for the
7 rest of his life. It's that simple.
8 THE COURT: Well, I can encourage you to express
9 this message to the United States Supreme Court and the
10 justices who made this resentencing possible. I think
11 sometimes analyzing a situation in a vacuum doesn't produce
12 justice, but it is the rule of law which I'm obliged to
13 follow.
14 MR. BROYLES: Yes. I understand that. I just
15 don't like that it just changed. You know, 14 years ago,
16 he was supposed to serve a life sentence. Now all of
17 sudden, the law change. I understand you got to do your
18 job, but still, like, come on, man, my brother is gone
19 forever. Everybody knows right from wrong. You.
20 Say 80 days before his 18th birthday. You grown
21 man at 16. That's how I was raised.
22 THE COURT: I can't argue with you.
23 MR. BROYLES: I understand. I don't know why I'm
24 here today. I was 13 at the time. I don't know if you
25 know that he was my older brother. He gone now, man. You
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1 got to stay. You got to stay.
 2 THE COURT: Thank you.
 3 MR. BROYLES: Yep.
 4 THE COURT: Now we'll give to the defendant the
 5 opportunity to be heard Mr. Boykin, is there anything you
 6 want to say about the original presentence report, the
 7 update, or any other material -- you can speak from there.
 8 THE DEFENDANT: First, to the victim family. An
 9 apology could never be enough for what I did. I live every
 10 day -- I live with the heartless and selfless act I
 11 committed that day. I'm truly sorry for what I did. Like,
 12 no words could ever come together for me to even try to put
 13 them together to express that. I did -- I did the worst of
 14 the worst. I'm truly sorry. Like, I never -- I never
 15 intended for none of that to happen.
 16 I mean, I'm sorry. I'm definitely sorry. I'm
 17 truly sorry. Not a day goes past when I don't think about
 18 what I did. You know, it eats me up every day, but I want
 19 you to know that's something I am working on. I have to
 20 live with that everyday. I am truly sorry. Every day I
 21 ask God, and I ask -- you know, I ask you all for
 22 forgiveness when I talk to him. I just hope and pray one
 23 day you all will forgive me.
 24 Judge, nothing really. I mean, I just -- I just
 25 want to say, you know, I'm just -- I'm falling on the mercy

13

1 of the court. Every day is a process of me rehabilitating
 2 here. I mean, if you can find it in your heart to give me
 3 the benefit of 25 years, I definitely be a productive
 4 member of the community. I try to keep the youth from
 5 following my path, which is a path of destruction, a path
 6 that they know what they doing when they pick that gun up.
 7 I mean, it's the worst thing you can do is take another
 8 life.
 9 Again, I'm just truly sorry, and I just hope you
 10 have mercy on me today.
 11 THE COURT: Are you ready to be sentenced at this
 12 time?
 13 THE DEFENDANT: Yes, sir.
 14 THE COURT: You may be seated. Me remarks will
 15 be lengthy.
 16 Under the dictate of the United States Supreme
 17 Court, this Court is now conducting a sentencing hearing.
 18 On December 4th, 2003, Demoriel Boykin, convicted of murder
 19 in the first degree and possession of a firearm in the
 20 commission of a felony as a fourth felony offender, was
 21 sentenced to 15 years in prison beginning April 30th, 2003.
 22 At the conclusion of which, the sentence imposed was life
 23 in prison without the possibility of parole. The facts of
 24 the case are these:
 25 The defendant was convicted by a jury for the

14

1 January 29th, 2003, slaying of Shawn Broyles. Demoriel
 2 Boykin was 17 years, 9 months, and 10 days old -- 80 days
 3 shy of his 18th birthday. The Court presided over the
 4 trial of this matter, and I made a complete review of the
 5 presentence report as presented to me, my sentencing notes
 6 the memoranda submitted, and also, a number of letters
 7 received from people advocating not only on behalf of
 8 Mr. Broyles, but also representatives of the family of the
 9 deceased.
 10 Among the most interesting of communications was
 11 a letter from Marvin Hamilton, the father of defendant, the
 12 father of two of the defendant's stepbrothers or half
 13 brothers for whom Mr. Cross has observed should have been
 14 charged. And the reason for that is not clear and not
 15 relevant to the defendant's sentence in this case.
 16 What facts were known to the Court, well, based
 17 on the transcript, the following is clear:
 18 On that date, Marvin Sandifer, the defendant's
 19 half-brother, had an argument with Shawn Broyles, who was
 20 18 years of age. The argument involved a debt of some \$50
 21 Fearing a disparity in size, Marvin Sandifer summoned
 22 Mr. Broyles, the defendant -- I'm sorry, Mr. Boykin, the
 23 defendant, and his co-defendant/half brother, Charles
 24 Sandifer, were driven to the scene by their father, Marvin
 25 Hamilton. A fight ensued -- three individuals against one.

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1 Mr. Boykin brought a pistol to a fist fight.
 2 In the ensuing fight, Shawn Broyles ran away, not
 3 possessing a weapon, only to be shot at a number of times.
 4 And various reports said five times or four times, but
 5 clearly, he received wounds not only to his chest but to
 6 his arm, and falling down in the snow was beat, kicked, and
 7 stomped by the defendant and his two, half brothers who,
 8 when the father called the boys to their vehicle so he
 9 could drive them away, left Mr. Broyles bleeding and dying.
 10 Mr. Broyles was taken to St. Mary's hospital where he died
 11 in the emergency room.
 12 Wounds have been variously described. Their
 13 location were contained in the presentence report. What
 14 the presentence report didn't mention because it had no
 15 access to the transcript at the time were other factors
 16 which have been brought to the Court's attention.
 17 Mr. Broyles was never armed during the
 18 confrontation. He never threatened Mr. Boykin in any way.
 19 He pleaded to his attackers to stop, as the Court of
 20 Appeals noticed in its unpublished decision, and they did
 21 not.
 22 And after Mr. Broyles had fallen facedown in the
 23 snow, witnesses at the trial testified that the defendant
 24 lifted Mr. Broyles up by his jacket hood, put the gun to
 25 his cheek, pulled the trigger, and the gun misfired. In

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fact, it is the statement the defendant gave to the police that was presented at trial. He admits trying to fire the gun still pressed against the victim's face before he and his accomplices resorted to repeatedly kicking him about his body and his head. While the victim suffered these blows, he was also being taunted and screamed -- demeaning expletives were being shouted.

Well, I sentenced as I have indicated, and one of the aspects of the requirement imposed on the Court is to determine a variety of factors articulated in this Miller v Alabama case. I'll not articulate all of them. They'll be incorporated by reference in the comments I'm making. Age and immaturity, his impetuosity, his family history, home environment and the like, all of them, all of them have been considered by the Court.

After the sentence was imposed as required by law, the Department of Corrections conducts a psychological evaluation of the individual. That psychological evaluation based on the interview of the defendant indicated that he was raised by both parents, initially it appears by his mother or predominantly by his mother, who never abused him, according to the defendant. He reported his childhood as being good, a family that was close and supportive. He was an average student in school, never had any special education classes, never suspended from school

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in any way. While never married, he was reported to have two children. Although, in subsequent communications to the Court, only one child has been identified, and in fact she wrote a letter to the Court which is contained in the file.

He never sold -- excuse me. Importantly, he never used elicit drugs. However, he sold elicit drugs as a means of income. The presentence investigation report indicated with regard to his circumstances that he dropped out in the eleventh grade -- in the tenth grade. He never had gainful, legal employment.

He had had some problem in Chicago living with his mother, which is why his mother and father suggested that he move from the environment in Chicago in which he was raised. The report seems to indicate that he moved in July of 2000, and his mother died some five months later from a brain aneurysm.

And yet, we see from a review of his criminal record that he returned to Chicago and received a conviction for possession of controlled substance, June of 2001. So the amount of supervision given or his desire to return to an environment of -- that had been chosen by his parents not to be optimum was apparently his own volitional choice.

Mentally, in the interview taken upon his

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admission, he was oriented to time, space, and environment. He has no mental defect; no hallucinations. He didn't present any evidence of any serious psychotic, cognitive, or affective problems that might suggest some explanation, though, not an excuse, for his murderous acts.

The clinical test concluded that he's likely to be defiant against authority, paranoid, and impulsive. And that was not an idle conclusion as we look at the defendant's prison record.

Since entering the prison some thirteen years ago, he's earned a number of misconducts, spent a considerable amount of time in administrative segregation due to his behavior. Numbers of these misconducts had to do with ingesting intoxicating substances or making intoxicating substances, having gambling paraphernalia, unauthorized use of -- I mean, unauthorized placement and the like.

But, I note that in 2007, he had three weapons hidden in a heater vent, and as late as March of this year during a strip search, a five and a quarter inch piece of steal sharpened to a point with a rubber handle was hidden in his shoe.

The totality of circumstances here leads the Court to draw certain conclusions, he was, as I say, of an age far older than the two defendants who were the subject

19

of the Supreme Court opinion.

The State of Michigan accords adulthood to those who are 17 years of age or older, the United States Supreme Court, seemingly without any explanation, developed a bright line of 18 years of age. The defendant certainly was of a mature age and cannot blame youth or immaturity as an excuse for this conduct.

This was an intentional act. It wasn't a provocation given over a short period of time. He was summoned to the scene, and his half brother was enlisted, and a ride was secured by his father. And he brought, again, I emphasize, the only weapon that was involved in this episode.

With regard to the family and home environment, we recognize his father was incarcerated in prison for a share of time which may explain why the -- he was raised predominately in his mother's home, but the family and home environment seem to be sufficient enough to provide for him at least by his own account until his mother suggested that he ought live elsewhere, out of the state in fact, and live with his father.

I cannot say or point to anything that would suggest that his early childhood was brutal or dysfunctional, and he was able to extricate himself from that home environment with his mother and to the relatively

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1 recent embrace of his father's influence.
 2 The circumstances of this crime are indeed
 3 horrendous, and there's no justification or excuse for this
 4 premeditated torture and killing of Mr. Broyles.
 5 There was nothing to suggest here anything other
 6 than this was a cold, calculated, premeditated killing of
 7 an innocent human being who represented no threat to
 8 Mr. Boykin, who simply joined in this pack of assailants to
 9 vindicate his brother's honor over a \$50 debt, and for
 10 that, confinement is indicated.
 11 We give to the prosecution the deference
 12 necessary because of his position in this regard to
 13 determine which case is to contest and which case is to
 14 permit the possibility of parole.
 15 In this case, the Court now is given the mandate
 16 to determine what the appropriate sentence will be.
 17 Based on everything presented to me, confinement
 18 is necessary for punishment, for the protection of this
 19 community, and the hope of Mr. Boykin's rehabilitation in a
 20 more controlled environment.
 21 It is, therefore, the sentence of this Court for
 22 the offense of possession of a firearm in the commission of
 23 a felony as fourth-felony offender that he be committed to
 24 the Michigan Department of Corrections at the State Prison
 25 for Southern Michigan of Jackson and there to be housed in

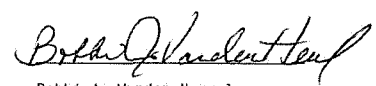
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1 an institution of its choosing for a period of 15 years.
 2 That sentence begins as of April 30th, 2003, and he is to
 3 receive credit for all time served to the present date.
 4 At the conclusion of that sentence, he is to
 5 begin sentence for the murder, which now is a finite term
 6 of not more than 60 nor less than 40 years. \$60 is
 7 assessed under the former Crime Victim Rights Fund, as well
 8 as state costs.
 9 You have a constitutional right to appellate
 10 review of this conviction. If you're financially unable to
 11 provide a lawyer to perfect the appeal, complete the form
 12 the clerk hands you and return it to me within that time.
 13 We are in recess.
 14 MR. BOEKELOO: Your Honor, may I speak to the
 15 initial sentence? My understanding his sentence had been
 16 corrected to 2 years from 15 and had been that since the --
 17 or throughout the appellate process -- not 15 years.
 18 THE COURT: There was a previous appeal where the
 19 15 was reduced to 2?
 20 MR. BOEKELOO: There was a corrected sentence.
 21 In fact, I can provide it. I didn't expect this to come
 22 up, but --
 23 THE COURT: Well, let me just say this. It was
 24 not addressed in the majority of the pleadings with which
 25 we are here today.

22

MR. FORSYTH: No. No.
 2 THE COURT: If there is an issue, I'll be happy
 3 to address it. I can correct it as a clerical error. I
 4 believe that the sentence would be 15, unless I'm --
 5 MR. FORSYTH: It would but I think the reason it
 6 was corrected is the basis of the Supp 4, if you will, the
 7 prior convictions. I think they happened when he was a
 8 juvenile in Chicago. So he wasn't an adult when he was
 9 convicted of the prior felonies, but we'll check on it.
 10 THE COURT: I'll verify that. If that be
 11 necessary, then I will inform my clerk accordingly.
 12 Nonetheless, the sentence of 40 to 60 years is
 13 consecutive to the felony firearm sentence.
 14 MR. BOEKELOO: Thank you, your Honor.
 15 (At approximately 3:12 p.m., proceedings concluded)
 16 -o0o-

23

1 STATE OF MICHIGAN)
 2) SS
 3 COUNTY OF KENT)
 4
 5 I, Bobbi Jo Vanden Heuvel, do hereby certify that I
 6 reported the proceedings had in the aforementioned cause,
 7 and that the preceding pages represent a true and correct
 8 transcript of the proceedings had in said cause on said
 9 date.
 10
 11 February 23, 2017 
 12 Date Bobbi Jo Vanden Heuvel
 13 CSR # 5219
 14 Official Court Reporter
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|--|--|---------------------------------------|
| STATE OF MICHIGAN 17TH JUDICIAL CIRCUIT KENT COUNTY | AMENDED JUDGMENT OF RE-SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS | CASE NO. 03-04460-FC |
|--|--|---------------------------------------|

ORI Court address: Court telephone number
 MI - 410025J Kent County Courthouse 180 Ottawa NW, Grand Rapids, MI 49503 616-632-5480
 Police Report No.

| | |
|--|--------------------------|
| THE PEOPLE OF THE STATE OF MICHIGAN | |
| Prosecuting attorney's name William A. Forsyth | Bar no. P23770 |

v

| | | |
|--|------------------------|--------------------------|
| Defendant name, address, and telephone no. | | |
| DEMARIOL DONTAYE BOYKIN | | |
| CTN/TCN 41 03 000930 02 | SID 2262082L | DOB 04/19/1985 |
| Defendant's attorney name CHARLES BOEKELOO | | Bar no. |

1. The defendant was found guilty on 10/02/2003 of the crime(s) stated below.
 Date

| Count | CONVICTED BY Plea* Court Jury | DISMISSED BY* | CRIME | CHARGE CODE(S) MCL citation/PACC Code |
|-------|----------------------------------|------------------|---|--|
| 1 | | G | HOMICIDE - OPEN MURDER - STATUTORY SHORT FORM | 750.316-C C |
| 2 | | G | WEAPONS FELONY FIREARM | 750.227B-A C |
| | | | | |
| | | | | |

*For Plea: insert "G" for guilty plea; "NC" for nolo contendere; or "MI" for guilty but mentally ill. *For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
☐ 3. HIV testing and sex offender registration is completed. Defendant's driver's license number
☒ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- ☐ 6. Probation is revoked
 7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
 8. Defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

| Count | RE- SENTENCE DATE | MINIMUM Years Mos. Days | MAXIMUM Years Mos. | DATE SENTENCE BEGINS | JAIL CREDIT Mos. Days | OTHER INFORMATION |
|-------|-------------------------|----------------------------|-----------------------|-------------------------|--------------------------|--|
| 1 | 10/28/2016 | 40 | 60 | | | REC'D & FILED OCT 28 2016 |
| 2 | 10/28/2016 | 2 | | 04/30/2003 | | |
| | | | | | | |

- ☒ 9. Sentence(s) to be served consecutively to (if this item is not checked, the sentence is concurrent.)
☐ each other. ☒ COUNT 1 CONSECUTIVE TO COUNT 2

10. Defendant shall pay:

| State Minimum | Crime Victim | Restitution | DNA Assess. | Court Costs | Attorney Fees | Fine | Other Costs | Total |
|---------------|--------------|-------------|-------------|-------------|---------------|------|-------------|-------|
| \$120.00 | \$60.00 | \$ | \$ | \$ | \$0.00 | \$ | \$ | \$ |

The due date for payment is Date of Sentence. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- ☐ 11. The concealed weapon board shall ☐ suspend for ___ days ☐ permanently revoke the concealed weapon license, permit number ___, Issued by ___ County.
☐ 12. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.
☐ 13. Court recommendation:

10/28/2016 RE-SENTENCE
 Date


 Judge HONORABLE DENNIS LEIBER Bar. no. P22889

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)


 Deputy court clerk

JRL2634 PG0054

23a

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARIOL DONTAYE BOYKIN,

Defendant-Appellant.

UNPUBLISHED

March 20, 2018

No. 335862

Kent Circuit Court

LC No. 03-004460-FC

Before: MARKEY, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of 40 to 60 years' imprisonment imposed by the trial court upon resentencing for his conviction of first-degree murder, MCL 750.316(1). We affirm.

I. FACTS

In 2003, when defendant was 17 years old, he shot and killed Shawn Broyles, who was 18 years old. This Court, previously reviewing this case, summarized the facts as follows:

The victim, Shawn Broyles, and defendant's brother Marvin were engaged in a fist-fight. Broyles' two friends were present, but did not think the fight was serious enough to merit their involvement. Defendant, his father, and defendant's brother Charles were present. Neither defendant's father nor Charles thought the fight was serious enough to merit their intervention either. At no time did Broyles attack or threaten to attack defendant. In fact, Broyles had already begun running from the scene of the altercation when defendant started shooting at him.

Second, defendant had time in which to consider his actions. Broyles pleaded with defendant to "Come on, stop," presumably after he saw the gun in defendant's hand. Defendant, however, did not stop. Broyles turned and ran from defendant. Defendant raised his gun and fired three to four shots at Broyles. Broyles fell after being shot twice. One witness testified that defendant lifted Broyles up by his jacket hood, put the gun to his cheek, and pulled the trigger, but the gun did not fire. The gun, found by Broyles' cousin, was determined to be jammed. After attempting to shoot Broyles again, defendant and his two brothers kicked Broyles as he lay dying on the sidewalk. Defendant's brother Marvin

testified that defendant said he shot Broyles because Broyles had jumped him a few years before. [*People v Boykin*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2005 (Docket No 253244).]

Defendant was convicted after a jury trial of first-degree murder, MCL 750.316(1), possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b, and as a fourth-offense habitual offender, MCL 769.12. Defendant was sentenced to life imprisonment without possibility of parole for the murder conviction, and to two years for the felony firearm conviction. This Court affirmed defendant's convictions.¹

Thereafter, defendant pursued a number of post-conviction measures to overturn his conviction and sentence. In 2016, a writ of habeas corpus was issued for resentencing pursuant to the United States Supreme Court decisions in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), which held that mandatorily sentencing a juvenile to life without the possibility of parole was unconstitutional, and *Montgomery v Louisiana*, 577 US __; 136 S Ct 718; 193 L Ed 2d 599 (2016), which applied *Miller* retroactively. *People v Hyatt*, 316 Mich App 368, 383; 891 NW2d 549 (2016). Because defendant's conviction of first-degree murder received a mandatory life sentence without possibility of parole, defendant was entitled to resentencing under *Miller* and *Montgomery*, as well as Michigan's legislative response to *Miller*, MCL 769.25a.

At resentencing in this case, the prosecutor did not seek a life sentence for defendant, but instead suggested a sentence of 40 to 60 years for the first-degree murder conviction. Defense counsel asked the trial court to consider a sentence of 25 to 60 years. The trial court sentenced defendant to 40 to 60 years' imprisonment, stating at the resentencing hearing, in part:

Well, I sentenced as I have indicated, and one of the aspects of the requirement imposed on the Court is to determine a variety of factors articulated in this *Miller v Alabama* case. I'll not articulate all of them. They'll be incorporated by reference in the comments I'm making. Age and maturity, his impetuosity, his family history, home environment and the like, all of them, all of them have been considered by the Court.

II. DISCUSSION

On appeal, defendant first contends that the trial court did not properly apply the factors discussed in *Miller* when resentencing defendant, and that defendant's new sentence therefore does not comply with the constitutional mandate that juveniles be treated differently than adults when sentenced. We disagree.

We review a sentence imposed by the trial court for an abuse of discretion. *Hyatt*, 316 Mich App at 423. "The limit on the judicial discretion to be exercised when imposing penalties

¹ *People v Boykin*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2005 (Docket No 253244).

is that the punishment should be proportionate to the offender and the offense. . . . Hence, appellate review of the sentence imposed is for abuse of discretion, to determine whether the sentence violates the principle of proportionality, ‘which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.’ ” *Id.*, citing *People v Milbourn*, 435 Mich 630, 636, 651-652; 461 NW2d 1 (1990).

In *Miller*, the United States Supreme Court held that mandatory, life-without-parole sentences for juvenile offenders were unconstitutional because the youthfulness of the offender was not considered, resulting in the risk of disproportionate punishment. *Miller*, 567 US at 465, 479. In *Miller*, “[t]he Court emphasized that the unique characteristics of youth warranted treating juveniles differently from adults for purposes of sentencing.” *Hyatt*, 316 Mich App at 379. The *Miller* Court outlined three gaps that exist between juveniles and adults:

First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited contro[l] over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. 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]. [*Miller*, 567 US at 471 (quotation marks and citations omitted).]

In response to *Miller*, Michigan enacted 2014 PA 22, which, in relevant part, added MCL 769.25. *Hyatt*, 316 Mich App at 384. Under this statute, if upon resentencing the prosecutor declines to move for the reinstatement of a defendant’s sentence of life without parole, and if the trial court decides not to sentence the defendant to life without parole, then the defendant must be sentenced to “a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall not be less than 25 years or more than 40 years.” See MCL 769.25(4) and (9).

In this case, the prosecutor did not move for the reinstatement of defendant’s prior life-without-parole sentence. At the resentencing hearing, the trial court stated that it was aware of *Miller* and that it was considering all of the *Miller* factors, including, but not limited to, age, maturity, impetuosity, family history, and home environment. The trial court thereafter sentenced defendant to a term of years, choosing not to impose a sentence of life without parole. See MCL 769.25(4) and (9).

Defendant argues that the trial court failed to properly consider the directive of *Miller* that juveniles should be considered differently during sentencing. The decision in *Miller*, however, applies only to juveniles sentenced to life without parole. *Miller*, 567 US at 465. Here, the trial court did not sentence defendant to life without parole, but instead sentenced defendant to a term

of years in compliance with MCL 769.25. The trial court, therefore, was not compelled to consider the *Miller* factors.²

Moreover, because defendant's sentence of 40 to 60 years' imprisonment was within the statutorily mandated range requiring 25 to 40 years for the minimum term and 60 years for the maximum term, the sentence is presumptively proportionate. See *People v Williams*, 189 Mich App 400, 404; 473 NW2d 727 (1991) (holding that a legislatively mandated sentence is presumptively proportionate and valid). Considering the totality of the circumstances, defendant's sentence was proportionate to the seriousness of the offense—first-degree murder—and the offender, who was almost 18 years old at the time of the crime and who acted with extreme brutality by executing another teenager with virtually no provocation. We conclude that the trial court did not abuse its discretion in imposing a sentence of 40 to 60 years' imprisonment for defendant's conviction of first-degree murder.

Defendant next briefly contends that MCL 769.25(9) is unconstitutional because it imposes a mandatory minimum sentence upon a juvenile convicted of murder without requiring a trial court to consider the factors of *Miller*, which defendant argues therefore violates the Eighth Amendment. Again, we disagree.

The federal constitution prohibits "cruel and unusual" punishment, US Const, Am VIII, (while the Michigan constitution prohibits "cruel or unusual" punishment, Const 1963, art 1, § 16). See *People v Nunez*, 242 Mich App 610, 618 n 2; 619 NW2d 550 (2000). In *Miller*, the United States Supreme Court considered an Eighth Amendment challenge to mandatory life-without-parole sentences for juvenile offenders in homicide cases, and concluded that "given all we have said in *Roper* [*v Simmons*, 543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005)], *Graham* [*v Florida*, 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010)], and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Miller*, 567 US at 479. The *Miller* Court, focused upon this "harshest possible penalty," held that a sentencing scheme that mandates life-without-parole sentences for juvenile offenders violates the Eighth Amendment's prohibition against cruel and unusual punishment because it carries too great a risk of disproportionate sentencing. See *People v Garay*, 320 Mich App 29, 44; 903 NW2d 883 (2017).

² Though not mandated by *Miller*, the trial court actually did consider the *Miller* factors when resentencing defendant. The trial court stated that it was considering all the *Miller* factors and specifically mentioned its consideration of defendant's psychological evaluations, defendant's childhood, and his misconducts while in prison involving intoxicating substances and weapons. Evaluating these factors, the trial court determined that defendant's youth and immaturity were not an excuse for his conduct, and that "[t]here was nothing to suggest here anything other than this was a cold, calculated, premeditated killing of an innocent human being who represented no threat to [defendant]."

In response to *Miller*, our Legislature enacted MCL 769.25, pursuant to which defendant in this case was resentenced to a term of years, not to life without possibility of parole. Defendant points to no authority to support his contention that *Miller* requires consideration of its factors in cases where a juvenile is being sentenced to some term other than life without parole,³ nor does defendant provide support for his theory that any statute that permits sentencing a juvenile without consideration of the *Miller* factors violates the Eighth Amendment. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.” *People v Bosca*, 310 Mich App 1, 16; 871 NW2d 307 (2015) (citation omitted).

Affirmed.

/s/ Jane E. Markey
/s/ Michael F. Gadola

³ Moreover, we again note that the trial court in this case did, in fact, consider the *Miller* factors when sentencing defendant, apparently believing that it was obligated to do so.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARIOL DONTAYE BOYKIN,

Defendant-Appellant.

UNPUBLISHED

March 20, 2018

No. 335862

Kent Circuit Court

LC No. 03-004460-FC

Before: MARKEY, P.J., and SHAPIRO and GADOLA, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent. In *People v Wines*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 336550); slip op at 4, we held that when sentencing a person who was less than 18 years old at the time of the crime, the court should balance the factors set out in *People v Snow*, 386 Mich App 586; 194 NW2d 314 (1972), and in that context, consider the attributes of youth such as those articulated by the Supreme Court in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012).¹ In this case, the sentencing judge was either unwilling or unable to do so.² Accordingly, I would vacate defendant's sentence and remand for sentencing before a different judge.

At the sentencing, the judge had no opportunity to consider *Wines* as it had not yet been decided, but he repeatedly expressed strong disagreement with the decision in *Miller*, which he understood to be controlling.³ A judge's personal disagreement with a United States Supreme

¹ *Snow* held that in imposing sentence, the court should "balance" the following objectives: "(1) reformation of the offender, (2) protection of society, (3) punishment of the offender, and (4) deterrence of others from committing like offenses." *Id.* at 592 (citation omitted). The process of properly balancing these objectives in the case of a minor defendant necessitates consideration of the distinctive attributes of youth.

² Although *Wines* had not yet been decided, the trial court discussed *Miller* and viewed it as controlling.

³ As we held in *Wines*, *Miller's* constitutional holding is only applicable when a defendant can be sentenced to life without parole. *Wines*, ___ Mich App at ___; slip op at 4.

Court's decision is neither unusual nor improper. But in this case, the judge did not merely note his disagreement; rather, he seemed to advocate a campaign to get the Supreme Court to reverse itself. In speaking with the victim's family, he referenced "the pain you continue to suffer, especially in light of the decision of the U.S. Supreme Court." He went on to encourage the victim's family to get a transcript of the resentencing and "send it to the majority of the United States Supreme Court so they can understand the consequences of their far-reaching decision" After another family member spoke, the judge reiterated his advice stating, "I can encourage you to express this message to the United States Supreme Court and the justices who made this resentencing possible." Finally, he stated that "it strains and breaks my heart to do what I'm mandated to do."

The judge's unwillingness to consider the attributes of youth in sentencing defendant was more explicitly demonstrated after the victim's brother expressed his view that "[y]ou [are] a grown man at 16. That's how I was raised." The trial court responded to this statement by saying, "I can't argue with you." A family member of the victim has every right to express his view to the trial court and he has no obligation to surrender his views on punishment in deference to an appellate court. The trial court is so obligated, however. The judge's explicit agreement with the view that a 16 year old is a "grown man" leaves little doubt that he either did not understand *Miller* or was unwilling to follow it.

Further, on several occasions, the trial court noted that defendant was only 80 days short of his 18th birthday when the crime occurred, and suggested that his proximity to that birthday lessened the need to consider the attributes of youth. This is plainly wrong. *Miller* defines a bright line at age 18, which we adopted in *Wines*. The judge repeated this view twice more during sentencing, stating that the defendant was "far older" than the defendants in *Miller*. Perhaps, most compelling was the trial court's conclusion that "[t]he defendant was certainly of a mature age and cannot blame youth or immaturity . . . for this conduct." The trial court's conclusion that at age 17, the "defendant was certainly of a mature age" is *completely* contrary to *Miller* in which the Supreme Court opined:

[Minors] are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, they are less deserving of the most severe punishments. Those cases relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an undeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited control over their environment and lack the ability to extricate themselves from horrific, crime-producing settings. 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]. [*Miller*, 567 US at 471 (quotation marks and citations omitted).

My colleagues point out that the sentencing judge stated that he would apply *Miller* despite his disagreements with it. His other statements, however, palpably demonstrate that he

was either unable or unwilling to do so. Accordingly, I would vacate defendant's sentence and remand for resentencing before a different judge.

/s/ Douglas B. Shapiro