

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.

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**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  
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## TABLE OF CONTENTS

Docket Entries.....	1a1 - 1a8
12/04/2003      Judgment of Sentence.....	2a
10/20/2016      Defendant's Sentencing Memorandum.....	3a - 16a
10/28/2016      Resentencing Transcript.....	17a - 22a
10/28/2016      Amended Judgment of Resentence.....	23a
03/20/2018      Michigan Court of Appeals Opinions.....	24a - 31a

Judge: LEIBER, HONORABLE  
DENNISCase No. 03-04460-FC  
Ticket No.  
CTN: 41 03 000930 02

THE STATE OF MICHIGAN

-vs-

BOYKIN, DEMARIE 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: 2262082LBy: KONCKI, KELLEE A  
By: KARFONTA, F. RANDALL  
113 N MAIN  
P.O. BOX 565  
LELAND, MI 49654Plate#:  
Make:  
Year: Accident: No  
Type:  
Venue:  
Location: 61ST

AGENT, SW COOK CO CIR CT	SUPWIT	Bond: Type:	Set: Posted:
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		
HORNBACKER, 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		
MCCAULEB, 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

1a

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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)

Comm Svc (Hr)

REMARKS:

Expires:

RE-SENTENCE.

CR VANDENHEUVEL, APA FORSYTH, ATTY

BOEKELOO

Ct.2 Sentence Suspended Credit

Jail (Days)

Fines

Costs

Restitution

Probation (Mo)

Comm Svc (Hr)

REMARKS:

Expires:

SEE CT 1

Ct.3 Sentence Suspended Credit

Jail (Days)

Fines

Costs

Restitution

Probation (Mo)

Comm Svc (Hr)

REMARKS:

Expires:

No.	Filed	Action	Operator	Fine/Cost	Due
1	11/22/16	CLAIM OF APPEAL & ORDER APPOINTING COUNSEL F. RANDALL KARFONTA (Attorney) on behalf of DEMARIO L DONTAYE BOYKIN (Defendant)	CLACACCOUNT	0.00	0.00
2	11/17/16	NOTICE OF RIGHT TO APPEAL & REQUEST FOR APPOINTMENT OF ATTORNEY	CLACACCOUNT	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)	CLACACCOUNT	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)	CLACACCOUNT	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 DEMARIO BOYKIN'S SENTENCING MEMORANDUM	CLACACCOUNT	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

191

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Register of Actions

Page: 3

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	NLGREENB	0.00	0.00
		Result: HELD			
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

1a2

No.	Filed	Action	Operator	Fine/Cost	Due
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 TRAIL 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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143

No.	Filed	Action	Operator	Fine/Cost	Due
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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104

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 ARGUMENTS HEARD. JURORS INSTRUCTED. DELIBERATION 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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195

No.	Filed	Action	Operator	Fine/Cost	Due
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

196

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No.	Filed	Action	Operator	Fine/Cost	Due
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 STATE MINIMUM COSTS VICTIM CVR	0.00 120.00 60.00	0.00 0.00 0.00
		*** End of Report ***			

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1a8

# JUDGMENT

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

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		Defendant's name, address, and telephone no. DEMARIOL DONTAYE BOYKIN			
Prosecuting attorney name William A. Forsyth		Defendant attorney name FRED JOHNSON			
Bar no. P23770		Bar no. P-			
THE COURT FINDS: 1. The Defendant, was found guilty on <u>10-02-03</u> 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).

REC'D & FILED  
JUDGE LEIBER

The defendant's driver's license number is: \_\_\_\_\_

3. HIV testing and sex offender registration is completed.

JUL 12 2004

4. The defendant has been fingerprinted according to MCL 28.243.

## IT IS ORDERED

5. Probation is revoked

17TH JUDICIAL CIRCUIT

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

Judge Dennis B Leiber

22889

Date

Bar. no.

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

MCL 765.15(2); MCL 769.16a; MCL 775.22, MCL 780.766  
MCR 6.427(A)

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*SECRET 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 1<sup>st</sup> 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. 14/00*

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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

# TRNT MENO

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 4<sup>th</sup> 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

*SECRET MEMO*

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 10<sup>th</sup> 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

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.

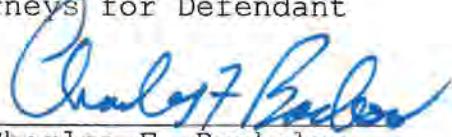
Letters of support from family members are included for the Court's review. It is particularly noteworthy that Mr. Boykin's major motivation at this time is to provide whatever support he can to his now 13 year-old daughter. It is hoped that he can be a positive influence in her life in the not too distant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

Respectfully submitted,

Dated: October 20, 2016

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

By:

  
Charles F. Boekeloo

## 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 Dennis B. 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.*

Michigan Department of Corrections  
Deferral Report  
RE: Prisoner BOYKIN, DEMARIE 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, DEMARIE 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:**

MDOC RPT

Michigan Department of Corrections

Deferral Report

RE: Prisoner BOYKIN, DEMARIO DONTAYE A474035

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MDOC RPT

Michigan Department of Corrections

Deferral Report

RE: Prisoner BOYKIN, DEMARIOL DONTAYE A474035

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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

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

MOOC 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 liked 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 victim's family has gone through we ask that you show leniency to my brother.

Tonyea Boykin

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15cc

5507 LTR

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  
8 vs. File No 03-04460-FC  
9  
10 DEMARIOL DONTAYE BOYKIN,  
11 Defendant.  
12  
13 RESENTENCING HEARING  
14 BEFORE THE HONORABLE DENNIS B. LEIBER, CIRCUIT JUDGE  
15 GRAND RAPIDS, MICHIGAN - OCTOBER 28, 2016

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 ON BEHALF OF THE DEFENDANT:

24 MR. CHARLES F. BOEKELOO (P34365)  
25 Attorney at Law  
26 29 Pearl Street, N.W., Suite 145  
27 Grand Rapids, Michigan 49503  
28 (616) 454-6464

1

3

4 TABLE OF CONTENTS

5  
6 WITNESSES: PAGE  
7  
8 (NONE)

9  
10  
11  
12  
13 EXHIBITS:  
14  
15  
16 (NONE)  
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25

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

2

4

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.

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

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

May I have your name, please?

MR. CROSS: Monte Cross.

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

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

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

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

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

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

THE COURT: You shared the same mother?

MR. CROSS: Yes, sir.

THE COURT: Different fathers?

MR. CROSS: Yes, sir.

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

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

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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

8

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 brother'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

12

<p>1 got to stay. You got to stay.</p> <p>2 THE COURT: Thank you.</p> <p>3 MR. BROYLES: Yep.</p> <p>4 THE COURT: Now we'll give to the defendant the</p> <p>5 opportunity to be heard Mr. Boykin, is there anything you</p> <p>6 want to say about the original presentence report, the</p> <p>7 update, or any other material -- you can speak from there.</p> <p>8 THE DEFENDANT: First, to the victim family. An</p> <p>9 apology could never be enough for what I did. I live every</p> <p>10 day -- I live with the heartless and selfless act I</p> <p>11 committed that day. I'm truly sorry for what I did. Like,</p> <p>12 no words could ever come together for me to even try to put</p> <p>13 them together to express that. I did -- I did the worst of</p> <p>14 the worst. I'm truly sorry. Like, I never -- I never</p> <p>15 intended for none of that to happen.</p> <p>16 I mean, I'm sorry. I'm definitely sorry. I'm</p> <p>17 truly sorry. Not a day goes past when I don't think about</p> <p>18 what I did. You know, it eats me up every day, but I want</p> <p>19 you to know that's something I am working on. I have to</p> <p>20 live with that everyday. I am truly sorry. Every day I</p> <p>21 ask God, and I ask -- you know, I ask you all for</p> <p>22 forgiveness when I talk to him. I just hope and pray one</p> <p>23 day you all will forgive me.</p> <p>24 Judge, nothing really. I mean, I just -- I just</p> <p>25 want to say, you know, I'm just -- I'm falling on the mercy</p>	<p>1 January 29th, 2003, slaying of Shawn Broyles. Demoriol</p> <p>2 Boykin was 17 years, 9 months, and 10 days old -- 80 days</p> <p>3 shy of his 18th birthday. The Court presided over the</p> <p>4 trial of this matter, and I made a complete review of the</p> <p>5 presentence report as presented to me, my sentencing notes</p> <p>6 the memoranda submitted, and also, a number of letters</p> <p>7 received from people advocating not only on behalf of</p> <p>8 Mr. Broyles, but also representatives of the family of the</p> <p>9 deceased.</p> <p>10 Among the most interesting of communications was</p> <p>11 a letter from Marvin Hamilton, the father of defendant, the</p> <p>12 father of two of the defendant's stepbrothers or half</p> <p>13 brothers for whom Mr. Cross has observed should have been</p> <p>14 charged. And the reason for that is not clear and not</p> <p>15 relevant to the defendant's sentence in this case.</p> <p>16 What facts were known to the Court, well, based</p> <p>17 on the transcript, the following is clear:</p> <p>18 On that date, Marvin Sandifer, the defendant's</p> <p>19 half-brother, had an argument with Shawn Broyles, who was</p> <p>20 18 years of age. The argument involved a debt of some \$50.</p> <p>21 Fearing a disparity in size, Marvin Sandifer summoned</p> <p>22 Mr. Broyles, the defendant -- I'm sorry, Mr. Boykin, the</p> <p>23 defendant, and his co-defendant/half brother, Charles</p> <p>24 Sandifer, were driven to the scene by their father, Marvin</p> <p>25 Hamilton. A fight ensued -- three individuals against one.</p>
<p>13</p> <p>1 of the court. Every day is a process of me rehabilitating</p> <p>2 here. I mean, if you can find it in your heart to give me</p> <p>3 the benefit of 25 years, I definitely be a productive</p> <p>4 member of the community. I try to keep the youth from</p> <p>5 following my path, which is a path of destruction, a path</p> <p>6 that they know what they doing when they pick that gun up.</p> <p>7 I mean, it's the worst thing you can do is take another</p> <p>8 life.</p> <p>9 Again, I'm just truly sorry, and I just hope you</p> <p>10 have mercy on me today.</p>	<p>15</p> <p>1 Mr. Boykin brought a pistol to a fist fight.</p> <p>2 In the ensuing fight, Shawn Broyles ran away, not</p> <p>3 possessing a weapon, only to be shot at a number of times.</p> <p>4 And various reports said five times or four times, but</p> <p>5 clearly, he received wounds not only to his chest but to</p> <p>6 his arm, and falling down in the snow was beat, kicked, and</p> <p>7 stomped by the defendant and his two, half brothers who,</p> <p>8 when the father called the boys to their vehicle so he</p> <p>9 could drive them away, left Mr. Broyles bleeding and dying.</p> <p>10 Mr. Broyles was taken to St. Mary's hospital where he died</p> <p>11 in the emergency room.</p>
<p>11 THE COURT: Are you ready to be sentenced at this</p> <p>12 time?</p> <p>13 THE DEFENDANT: Yes, sir.</p> <p>14 THE COURT: You may be seated. Me remarks will</p> <p>15 be lengthy.</p> <p>16 Under the dictate of the United States Supreme</p> <p>17 Court, this Court is now conducting a sentencing hearing.</p> <p>18 On December 4th, 2003, Demoriol Boykin, convicted of murder</p> <p>19 in the first degree and possession of a firearm in the</p> <p>20 commission of a felony as a fourth felony offender, was</p> <p>21 sentenced to 15 years in prison beginning April 30th, 2003.</p> <p>22 At the conclusion of which, the sentence imposed was life</p> <p>23 in prison without the possibility of parole. The facts of</p> <p>24 the case are these:</p> <p>25 The defendant was convicted by a jury for the</p>	<p>12</p> <p>12 Wounds have been variously described. Their</p> <p>13 location were contained in the presentence report. What</p> <p>14 the presentence report didn't mention because it had no</p> <p>15 access to the transcript at the time were other factors</p> <p>16 which have been brought to the Court's attention.</p> <p>17 Mr. Broyles was never armed during the</p> <p>18 confrontation. He never threatened Mr. Boykin in any way.</p> <p>19 He pleaded to his attackers to stop, as the Court of</p> <p>20 Appeals noticed in its unpublished decision, and they did</p> <p>21 not.</p> <p>22 And after Mr. Broyles had fallen facedown in the</p> <p>23 snow, witnesses at the trial testified that the defendant</p> <p>24 lifted Mr. Broyles up by his jacket hood, put the gun to</p> <p>25 his cheek, pulled the trigger, and the gun misfired. In</p>

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

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

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

17

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

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

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

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

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

19

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

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

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

18 And yet, we see from a review of his criminal  
 19 record that he returned to Chicago and received a  
 20 conviction for possession of controlled substance, June of  
 21 2001. So the amount of supervision given or his desire to  
 22 return to an environment of -- that had been chosen by his  
 23 parents not to be optimum was apparently his own volitional  
 24 choice.

25 Mentally, in the interview taken upon his

18

1 of the Supreme Court opinion.

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

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

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

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

20

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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23

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

1 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)

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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*  
 Bobbi Jo Vanden Heuvel  
 CSR # 5219  
 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  
 MI - 410025J Kent County Courthouse 180 Ottawa NW, Grand Rapids, MI 49503 Court telephone number 616-632-5480  
 Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	v	Defendant name, address, and telephone no.  DEMARIOL DONTAYE BOYKIN		
Prosecuting attorney's name William A. Forsyth	Bar no. P23770	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. \_\_\_\_\_  
 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			<i>REC'D &amp; FILED</i>
2	10/28/2016	2			04/30/2003		
							<i>ULT 28 2016</i>

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)

*Lisa Gibson*  
Deputy court clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARIOL DONTAYE BOYKIN,

Defendant-Appellant.

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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.<sup>1</sup>

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

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<sup>1</sup> *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 control[] 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.<sup>2</sup>

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).

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<sup>2</sup> 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,<sup>3</sup> 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

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<sup>3</sup> 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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARIOL DONTAYE BOYKIN,

Defendant-Appellant.

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UNPUBLISHED

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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).<sup>1</sup> In this case, the sentencing judge was either unwilling or unable to do so.<sup>2</sup> 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.<sup>3</sup> A judge's personal disagreement with a United States Supreme

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<sup>1</sup> *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.

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

<sup>3</sup> 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 18<sup>th</sup> 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