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IN THE SUPREME COURT OF FLORIDA,

ANGELO ATWELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC14-193
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	
________________________________	)	

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal, Fourth District, State of Florida

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STATEMENT OF THE CASE AND FACTS

The relevant facts are taken from the Fourth District's opinion. In 1992, petitioner, Angelo Atwell, was convicted of first degree murder and armed robbery. For the murder, he received a mandatory life sentence without the possibility of parole for 25 years; for the robbery, he received a life sentence.

In February 2013, petitioner moved to correct his mandatory life sentence on the ground that it constituted cruel and unusual punishment under *Miller v. Alabama*, 132 S.Ct. 2455 (2012). The trial court denied the motion, and petitioner appealed to the Fourth District Court of Appeal.

The Fourth District affirmed, holding that *Miller* applied only to "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Atwell v. State*, No. 13-1972 (Fla. 4th DCA Nov. 13, 2013) at page 2 (*quoting Miller*, 132 S.Ct. at 2469). Petitioner's timely filed motion for rehearing was denied on December 27, 2013. His notice to invoke the discretionary jurisdiction of this Court was filed January 24, 2014. This jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

This Court may review a decision that expressly construes a provision of the state or federal constitution. "For jurisdiction to exist, the district court's opinion must explain or amplify some identifiable constitutional provision in a way that is an evolutionary development in the law or that expresses doubt about some legal point." Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L.R. 431, 506 (2005) (footnote omitted).

The Fourth District Court of Appeal explained or amplified the Cruel and Unusual Punishments Clause of the Eighth Amendment to the United States Constitution when it held that *Miller v. Alabama*, 132 S.Ct. 2455 (2012), does not apply to a juvenile's mandatory life sentence without the possibility of parole for 25 years because *Miller* applied only to "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Atwell v. State*, No. 13-1972 (Fla. 4th DCA Nov. 13, 2013) at page 2 (*quoting Miller*, 132 S.Ct. at 2469). Accordingly, this Court has discretionary jurisdiction and should review the decision below.

Argument

The Decision of the Fourth District Court of Appeal Expressly Construes a Provision of the Federal Constitution

Under article V, section 3(b)(3) of the Florida Constitution, this Court may review a decision that expressly construes a provision of the state or federal constitution. "For jurisdiction to exist, the district court's opinion must explain or amplify some identifiable constitutional provision in a way that is an evolutionary development in the law or that expresses doubt about some legal point." Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L.R. 431, 506 (2005) (footnote omitted).

The Fourth District Court of Appeal explained or amplified the Cruel and Unusual Punishments Clause of the Eighth Amendment to the United States Constitution when it held that *Miller v. Alabama*, 132 S.Ct. 2455 (2012), does not apply to a juvenile's mandatory life sentence without the possibility of parole for 25 years because *Miller* applied only to "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Atwell v. State*, No. 13-1972 (Fla. 4th DCA Nov. 13, 2013) at page 2 (*quoting Miller*, 132 S.Ct. at 2469). But *Miller* also states that a mandatory sentencing scheme for juveniles "prevents those meting out punishment from considering a juvenile's lessened culpability and greater capacity for change, and runs afoul of our cases' requirement of

individualized sentencing for defendants facing the most serious penalties." 132 S.Ct. at 2460. Indeed Chief Justice Roberts made this point in his dissent:

> This process has no discernible end point—or at least none consistent with our Nation's legal traditions. *Roper* and *Graham* attempted to limit their reasoning to the circumstances they addressed—*Roper* to the death penalty, and *Graham* to nonhomicide crimes. Having cast aside those limits, the Court cannot now offer a credible substitute, and does not even try. After all, the Court tells us, "none of what [*Graham*] said about children ... is crime-specific." *Ante*, at 2465. The principle behind today's decision seems to be only that because juveniles are different from adults, they must be sentenced differently. *See ante*, at 2467 – 2469. **There is no clear reason that principle would not bar all mandatory sentences for juveniles, or any juvenile sentence as harsh as what a similarly situated adult would receive.** Unless confined, the only stopping point for the Court's analysis would be never permitting juvenile offenders to be tried as adults.

Miller, 132 S.Ct. at 2482 (Roberts, C.J., dissenting) (emphasis added).

Here, the trial court did not take into account how juveniles are different before imposing a *mandatory* life sentence without the possibility of parole for 25 years. Accordingly, petitioner's sentence violates the Cruel and Unusual Punishments Clause of the Eighth Amendment.

Because the decision below expressly construes a provision of the federal constitution, this Court should accept review.

CONCLUSION

Based on the foregoing arguments and authorities, this Court should accept jurisdiction.

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I certify that this jurisdictional brief has been electronically filed with the Court and a copy of it has been served to Celia Terenzio, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by email at CrimAppWPB@MyFloridaLegal.com this 3rd day of February, 2014.

/s/ Paul E. Petillo
Paul E. Petillo

CERTIFICATE OF FONT

I HEREBY CERTIFY the instant brief has been prepared with 14 point Times New Roman type, in compliance with a Fla. R. App. P. 9.210(a)(2).

/s/ Paul E. Petillo
Paul E. Petillo