

IN THE SUPREME COURT OF FLORIDA

CASE NO. 10-2198

LAZARO FLORES,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

Carlos J. Martinez
Public Defender
1320 N.W. 14th Street
Miami, Florida 33125
Telephone: (305) 545-1958

MANUEL ALVAREZ
FL Bar No. 0606197
Assistant Public Defender

Counsel for Petitioner

TABLE OF CONTENTS

	PAGE
INTRODUCTION.....	1
 ARGUMENT	
A DEFENDANT'S YOUTHFUL OFFENDER STATUS, BASED ON A NEW LAW VIOLATION, MUST NOT BE REVOKED UNLESS THE DEFENDANT HAS BEEN CONVICTED OF THE NEW OFFENSE.	2
CONCLUSION	7
CERTIFICATE OF SERVICE	8
CERTIFICATE OF FONT.....	8

TABLE OF CITATIONS

PAGE

CASES

<i>Graham v. Florida</i> , 130 S.Ct. 2011 (2010).....	4-5
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	3, 5-6
<i>Thompson v. Oklahoma</i> , 487 U.S. 815 (1988).....	3-4

IN THE SUPREME COURT OF FLORIDA

CASE NO. 10-2198

LAZARO FLORES,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

INTRODUCTION

Petitioner, Lazaro Flores, was the appellant in the district court of appeal and the defendant in the Circuit Court. Respondent, State of Florida, was the appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the symbol "R" designates the record on appeal; the symbol "T" refers to the transcript of the trial proceedings.

ARGUMENT

A DEFENDANT'S YOUTHFUL OFFENDER STATUS, BASED ON A NEW LAW VIOLATION, MUST NOT BE REVOKED UNLESS THE DEFENDANT HAS BEEN CONVICTED OF THE NEW OFFENSE.

Lazaro Flores, who was born on March 22, 1987, was nineteen (19) years old when he was sentenced under the Youthful Offender statute for the predicate offenses in this case. He later violated the probationary portion of his youthful offender sentence by allegedly selling a small amount of marijuana to an undercover police officer in exchange for forty dollars (\$40). When the trial court revoked his probation and imposed a life sentence, Mr. Flores was only twenty-one (21) years old.

In its answer brief, the State maintains that youthful offenders who violate the terms of their probation, or community control, by committing new law violations are no different than adult probationers, therefore, the standard of proof should be identical and they should suffer the same consequences.

In interpreting the Youthful Offender statute, this Court must read its provisions through the prism of the recent evolution in Eighth Amendment jurisprudence, which has decisively held that young criminal offenders must be treated differently from adults because *they are different*. As a result, many of the draconian punishment schemes that have been crafted by legislatures throughout the

country over the last thirty (30) years can no longer be imposed with a blind eye to the defendant's youth and immaturity at the time he, or she, committed a crime.

In *Roper v. Simmons*, 543 U.S. 551, 568 (2005), the United States Supreme Court established that because juveniles have lessened culpability they are less deserving of the most severe punishments. *Id.* at 569. To justify life without parole on the assumption that a juvenile offender forever will be a danger to society requires the sentencing court to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable. "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 573.

As compared to adults, juveniles have a " 'lack of maturity and an underdeveloped sense of responsibility' "; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed." *Id.*, at 569-570. Accordingly, "juvenile offenders cannot with reliability be classified among the worst offenders." *Id.*, at 569. A juvenile is not absolved of responsibility for his actions, but his transgression "is not as morally reprehensible as that of an adult." *Thompson v. Oklahoma*, 487 U.S. 815, 835(1988).

The Supreme Court ruled in *Graham v. Florida*, 130 S.Ct. 2011 (2010), that juvenile offenders cannot be sentenced to life without a meaningful and realistic opportunity for re-entry into society prior to the expiration of their sentence for non-homicide offenses. *Id.* at 2010. The Court explained:

The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. . . . Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.

Id. at 2032. *Graham* therefore held that a sentence that provides no “meaningful opportunity to obtain release” before the end of the term is unconstitutional. *Id.* at 2033. The Court added:

No recent data provide reason to reconsider the Court’s observations in *Roper* about the nature of juveniles. As petitioner’s amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. *See* Brief for American Medical Association et al. as *Amici Curiae* 16–24; Brief for American

Psychological Association et al. as *Amici Curiae* 22–27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U.S., at 570, 125 S.Ct. 1183. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.” *Ibid.*

Graham v. Florida, 130 S. Ct. at 2026-2027.

In the case *sub judice*, as a result of the allegation that Mr. Flores committed a non-violent offense by selling marijuana, for which he was never convicted, Mr. Flores will remain warehoused in prison for the rest of his life without the possibility of ever being released. While Mr. Flores was not a juvenile when he committed his predicate offenses, he was less than a year beyond that cutoff date and he was still a teenager. This is a factor that is worthy of consideration in determining whether the standard of proof for a violation of a youthful offender's probation, or community control, is higher than it is for an adult.

“There is more to interpretation in general than the discovery of the meaning attached by the author to his words. Even if, in a particular case, that meaning is discoverable with a high degree of certitude from external sources, the question

whether it has been adequately expressed remains.” RUPERT CROSS, STATUTORY INTERPRETATION 149 (1976). Beyond the “art” of “discovering and expounding” the authors’ meaning, the Court in *Roper, supra*, specifically reaffirmed the necessity of referring to the “evolving standards of decency that mark the progress of a maturing society” in interpreting the Eighth Amendment prohibition of cruel and unusual punishment. *Roper v. Simmons*, 543 U.S. at 1190.

Thus the statutory requirement that a youthful offender may be stripped of his youthful offender status only upon the commission of a *substantive* violation should be interpreted as requiring a higher standard of proof than is required of adult probationers. Hence, a defendant’s youthful offender status should only be revoked when the State has established that the defendant was convicted (by plea, or jury trial) for having committed a new criminal law violation, while the defendant was under supervision.

CONCLUSION

Based on the foregoing arguments and authorities cited, petitioner respectfully requests this Court to quash the decision of the Third District Court of Appeal and remand this case with instructions that the defendant's youthful offender status must not be revoked until and unless he is convicted of the new law violation.

Respectfully submitted,

Carlos J. Martinez
Public Defender
1320 N.W. 14th Street
Miami, Florida 33125
Telephone: (305) 545-1958

BY: _____
MANUEL ALVAREZ
Assistant Public Defender
FL Bar No. 0606197

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the Office of the Attorney General, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, on this 20th day of June, 2011.

BY: _____
MANUEL ALVAREZ

CERTIFICATION OF FONT

Undersigned counsel certifies that the font used in this brief is 14 point proportionately spaced Times Roman.

BY: _____
MANUEL ALVAREZ