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Case Number: SC-12-578
L.T. No. 5D 08-3779, 5D10-3021, 07-CF-3608

LEIGHDON HENRY
Petitioner,

v.

STATE OF FLORIDA
Respondent.

AMICUS BRIEF
IN SUPPORT OF PETITIONER

Angela C. Vigil
BAKER & MCKENZIE LLP
1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
Telephone: (305) 789-8900
Facsimile: (305) 789-8953

Counsel for Amici Curiae
Former Members of Judiciary, Former Prosecutors and Bar Leaders

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Statement of Interest

Amici are Floridians with experience representing, counseling, adjudicating, and sentencing juveniles in and related to the criminal justice system of Florida. They are former judges, former prosecutors, lawyers and leaders in our community. They unite in this amicus brief to share insights based on their experience working with the criminal justice system and juveniles in the hope that it assists this Court in its decision-making.

Kenneth B. Bell

Shareholder at Clark Partington Hart Larry Bond & Stackhouse
former Circuit Judge, First Judicial Circuit 1991 - 2002
former Florida Supreme Court Justice 2002-2006

Raoul G. Cantero

Partner at White & Case LLP
former Justice of the Florida Supreme Court 2002 - 2008

Gerald B. Cope, Jr.

Shareholder at Akerman Senterfitt LLP
former Judge, Third District Court of Appeal 1988 - 2010
former Chief Judge of the Third District Court of Appeal, 2005 - 2007

Henry M. Coxe, III

Partner at Bedell, Dittmar, Devault, Pillans & Coxe, P.A.
former attorney at the State Attorney's Office directing the felony divisions and special prosecution division (complex crimes)
former President of the Florida Bar
formerly served on the Florida Judicial Qualifications Commission
formerly served on the Florida Supreme Court Innocence Commission
former President of Florida State University 1994 - 2003

Janet E. Ferris

former General Counsel at Florida Department of Law Enforcement 1982 - 1988
former General Counsel at Florida Department of Juvenile Justice 1994 - 1999
former Circuit Judge, Second Judicial Circuit 1999 - 2009

John A. Frusciante

former Chief Judge of the Juvenile Division of the Seventeenth Judicial Circuit (Dependency & Delinquency)
former Circuit Judge, Seventeenth Judicial Circuit 1991 - 2010

Stephen Grimes

Partner Holland & Knight LLP
former Justice of the Florida Supreme Court 1987 - 1997
former Chief Justice of the Florida Supreme Court 1994 - 1996
former Judge, Second District Court of Appeals in Florida 1973 - 1987

Gerald Kogan

former Special Counsel to the Florida Legislature's Select Committee on Organized Crime and Law Enforcement
former Circuit Judge, Eleventh Judicial Circuit 1980 - 1984
former Administrative Judge of the Criminal Division 1984 - 1987
former Justice of the Florida Supreme Court 1987 - 1998

James R. McDonough

former Director of the Florida Office of Drug Control
former Secretary of the Florida Department of Corrections

Patsy Palmer

Attorney at D'Alemberte & Palmer, P.L.L.C.
served as Children's Policy Advisor to former Florida Governor Lawton Chiles
served as a volunteer or board member with several children's charities

Harry Shorstein

former State Attorney for the Fourth Judicial Circuit Court of Florida 1991 - 2008

Mark Robert Schlakman

Senior Program Director for the Center for the Advancement of Human Rights at Florida State University
former Special Counsel to Governor Lawton Chiles
former Special Advisor for Governor Jeb Bush
former Senior Advisor to White House Special Envoy for the Americas

Summary of the Argument

Juveniles are different from adults. Simply, they are not adults yet. It is important to consider these differences when sentencing juveniles in Florida's criminal justice system, especially in considering the issue of the number of years that constitutes a "life" sentence for a teen. Therefore, Amici urge this Court to reject a 90-year sentence for a child and offer support for this from scientific conclusions and their own observations of teens. In the case before this Court, the defendant committed a crime just two months after his 17th birthday causing a conviction and sentence that makes his current prison release date just after his 107th birthday. This is a life sentence by anyone's standard. Amici do not believe courts should excuse the behavior of delinquent juveniles, but rather limit the magnitude of the consequences of their behavior so that it is commensurate with their culpability. While this does not eliminate accountability by a juvenile for his actions, it may appropriately limit it.

Argument

Because science confirms that juveniles are different and the law has relied on this science, Amici urge this Court to rely on this principle in considering the question of whether 90 years -- equivalent to life without parole -- constitutes life without parole for a juvenile. Amici have significant concerns about the implications of such a sentence and urge this Court to reject the sentence of Mr.

Henry. In recent cases, the U.S. Supreme Court has set expectations for Florida and all other states to treat juveniles individually when holding them accountable for criminal acts. Where the U.S. Supreme Court has required that all states "must provide a meaningful review based on rehabilitation and maturity," Florida must find a way to provide that meaningful review. Rather than the affirmation of a 90-year sentence that denies any meaningful opportunity for release, Florida must allow some periodic review to determine rehabilitation and maturity. Because this Court is uniquely empowered to help our state adhere to the U.S. Supreme Court's expectation, Amici urge the Court to take that challenge. Amici do not advocate a generic solution for every juvenile under 18, but rather, encourage the appropriate institutions to devise a solution for the individualized sentencing of juveniles that science, scholarship and our land's highest court support and demand. The first step in that pursuit is for this Court to reject the *de facto* life sentence in this case.

A. Amici's experience with juveniles confirms the scientific finding that juveniles are different from adults in significant ways that this Court must consider in determining what constitutes a life sentence for juveniles.

Scientific research on the development of juveniles teaches us that juveniles lack the judgment and developmental maturity of their adult counterparts emotionally, psychologically and physiologically. Science substantiates what Amici have experienced both within and outside the legal system: that juveniles are not equipped to make all significant decisions. Their brains have not yet

developed to a point that they can process information and consider consequences in the same fashion as adults. Juveniles make more impulsive decisions, often engage in behaviors that most adults would avoid, and are more affected by peer pressure than most adults. These differences from adults must be considered in sentencing juveniles.

A juvenile's judgment is limited compared to that of an adult. Rates of impulsivity are high during adolescence and early adulthood and decline later. See Laurence Steinberg *et al.*, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Dev. Psychol.* 1764, 1774-76 (2008). Because teenagers often have less experience with stressful situations, they may have a diminished capacity to respond to such situations. Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Perspective on Juvenile Justice*, P 9-32, 2000 (Thomas Grisso and Robert G. Schwartz, eds). Adolescents struggle in stressful situations because they often erroneously believe they only have one choice: "In situations where adults see several choices, adolescents may believe they have only one option. Sometimes a young person can generate alternative possibilities and weigh them in a rational decision making process, but typically an inflexible either-or mentality prevails especially under stress." See Marty Beyer, *Recognizing the Child in the Delinquent*, 7 *Ky. Child. Rts. J.* 16, 17

(1999) (citation omitted); *see also* Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 26, 27 (2000).

These findings are consistent with neuroscientific research showing that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive, social, and emotional information do not fully mature until early adulthood. Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 46-60 (2008).

Scientists confirm what Amici know from life experience. Juveniles are less likely to perceive the long-term consequences of their decisions. As juveniles mature, so do their self-management skills, long-term planning, judgment, and decision-making skills, regulation of emotion, and evaluation of risk and reward. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1011-12 (2003). But before that maturing is complete, juveniles lack those skills, fail to regulate their emotions well, and often misdiagnose the potential risks and rewards of their decisions. This concept of developmental maturity should weigh in a court's consideration of the culpability of a defendant who committed an act when he was under 18 without apparent consideration or care for its consequences. Where an adult is accountable for ignoring known or obvious consequences, a teen is less able to recognize those

consequences. While this does not eliminate accountability by a juvenile for his actions, it may appropriately limit it.

As if the physical, emotional, and psychological developmental delay is not significant enough, a young person's responses to stress heighten their inability to consider a range of options. See He Len Chung & Laurence Steinberg, *Relations Between Neighborhood Factors, Parenting Behaviors, Peer Deviance, and Delinquency Among Serious Juvenile Offenders*, 42 Dev. Psychol. 319, 328-29 (2006). This inability to choose well is intensified by the effects of peer pressure on juveniles. *Id.*

Teens who have endured violence or deprivation in childhood are often even less well equipped than others their own age to make good choices in the face of stress. Exposure to violence causes significant disruptions of the basic cognitive, emotional, and brain functioning that are essential for optimal development and leaves children traumatized. *Defending Childhood, A Report of the Attorney General's Task Force on Children Exposed to Violence*, 2012, <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (last visited 3-5-2013).

When their trauma goes unrecognized and untreated, these children are at significantly greater risk than their peers for aggressive, disruptive behaviors. *Id.* This may give more insight into the actions of an apparently thoughtless teen who commits a violent and dangerous act.

B. The same principles of child development which persuaded the United States Supreme Court to reconsider sentencing of juveniles to life with no parole, should prevent this Court from affirming a 90-year sentence for a juvenile.

The U.S. Supreme Court has established a blueprint for states to review and, if necessary, rebuild their frameworks for holding juveniles under age 18 accountable for their criminal behavior. *Graham v Florida*, 560 U.S. 1, 130 S. Ct. 2011 (2010)(ruled juvenile life without parole sentences unconstitutional for crimes excluding murder); *Roper v. Simmons*, 543 U.S. 551 (2005) (holding it unconstitutional to impose capital punishment for crimes committed while under the age of 18); *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012) (holding that mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders committing homicide, extending beyond *Graham v. Florida*).

The *Graham* Court found that a sentence “lacking any legitimate penological justification is by its nature disproportionate to the offense” and therefore unconstitutional. 130 S. Ct. at 2027. The Court concluded that no penological justification warrants a sentence of life without parole as applied to juveniles convicted of non-homicide crime. This is because “[l]ife is over for the victim of the murderer,” but for the victim of even a very serious nonhomicide crime, “life . . . is not over and normally is not beyond repair.” *Id.* at 2028, citing *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

In *Roper*, the Court noted that “the same characteristics that render juveniles less culpable than adults suggest ... that juveniles will be less susceptible to deterrence.” 543 U.S. at _____. Therefore, juveniles are less likely to take a possible punishment into consideration when making decisions. *Graham*, 130 S. Ct. at 2028-2029. Because juveniles would not likely be deterred by the fear of a sentence of life without parole, this penological goal did not justify the sentence.

Significantly, the *Graham* Court concluded that a sentence of life without parole cannot be justified by the goal of rehabilitation. The penalty defies the idea that a sentence is rehabilitative. By denying a defendant the right to reenter the community, the State makes an irrevocable judgment about that person’s value and place in society. *Id.* at 2030. Amici agree with the *Graham* Court's conclusion that, during a lengthy adult sentence, juveniles lack an incentive to try to improve their character or skills. Indeed, many juveniles sentenced to spend the rest of their lives in prison commit suicide, or attempt to commit suicide. See Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole on Juveniles*, 33 Wake Forest L. Rev. 681, 712, nn.141-47 (1998).

Of particular importance to this Court should be the question of an appropriate relationship between retribution -- meaning punishment or vengeance - - and the age and developmental level of an offender. Is there room for vengeance in sentencing a teen under 18 to a term of decades? The *Graham* Court concluded

that retribution does not justify the imposition of life without parole sentences for juveniles. The U.S. Supreme Court echoed *Roper's* assessment that “the case for retribution is not as strong with a minor as with an adult.” *Id.* at 2028 (citing *Roper*, 543 U.S. at 571). The *Roper* Court rejected severe retributive punishment in light of juvenile immaturity and capacity to change. The *Graham* Court recognized that these same considerations applied to “imposing the second most severe penalty on the less culpable juvenile.” *Id.* Amici's experience with juveniles in the system is consistent with the United States Supreme Court findings that there is less justification for retribution if the offender is less accountable for his actions. A court should punish a defendant who has ill-intentioned or criminally negligent consideration of the impact of their actions. In the same way, a court is less well-reasoned in punishing an adolescent who lacks the ability to meaningfully consider the effect of his actions.

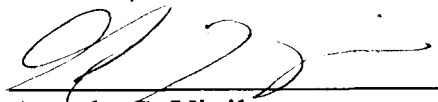
To secure "a meaningful review based on rehabilitation and maturity" as *Graham* requires, this Court should support a mechanism that provides periodic review of defendants whose crime was committed below the age of 18 to determine whether they have matured and been rehabilitated. 130 S. Ct. at 2030. This is the only way to secure the "meaningful opportunity for release" the U.S. Supreme Court has demanded. *Id.* It is also the only way to embrace the accepted scientific principle that children under the age of 18 are not yet developed in many

ways - especially in their brain and judgment. This lack of developmental accountability should correlate to their legal accountability for even their most serious behaviors and mandate a process that considers for their future their ability to develop into rehabilitated, well-behaved adult citizens.

Conclusion

Amici respectfully urge this Court to consider these well-established principles of experience, science, and policy in determining what period of years is a reasonable sentence for juveniles who commit significant and violent crimes in Florida. Amici urge the Court to consider a juvenile's age in evaluating whether 90 years constitutes, and in actuality is, a life sentence for a juvenile contrary to the Supreme Court precedent in *Roper v. Simmons*, 543 U.S. 551 (2005), *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012) and *Graham v. Florida*, 130 S. Ct. 2011(2010).

Respectfully submitted,



for Angela C. Vigil

BAKER & MCKENZIE LLP
1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
Telephone: (305) 789-8900
Facsimile: (305) 789-8953
Primary: angela.vigil@bakermckenzie.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

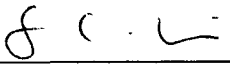
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mailed and U.S. Mail this 11th day of March 2013 to:

Pamela J. Bondi, Esquire
Attorney General, State of Florida
Office of the Attorney General
The Capital PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6674
pam.bondi@myfloridalegal.com

Kellie A. Nielan, Esquire
Assistant Attorney General, State of Florida
444 Seabreeze Boulevard, Suite 500
Daytona Beach, Florida 32118
Telephone: (386) 238-4990
Fax: (386) 238-4997
crimappdab@myfloridalegal.com

Peter D. Webster, Esquire
Carlton Fields, P.A.
P.O. Box 190
Tallahassee, Florida 32302-0190
Telephone: (850) 224-1585
Fax: (850) 222-0398
pwebster@carltonfields.com

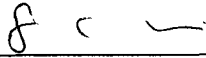
David L. Luck, Esquire
Carlton Fields, P.A.
4200 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 530-0050
Fax: (305) 530-0055
dluck@carltonfields.com



Angela C. Vigil
Florida Bar No. 0038627

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition is printed in Times New Roman 14-point font in compliance with the requirements of the Florida Rules of Appellate Procedure.



Angela C. Vigil