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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-685

TORRENCE LAWTON,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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

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INTRODUCTION

This case is before the Court on a petition for discretionary review based on express and direct conflict of decisions. References to the record will be to the appendix to this brief and will be indicated by the letter of the appendix followed by the page number. "Life without parole" will be abbreviated as LWOP throughout the brief. Unless otherwise indicated, all emphasis is supplied.

QUESTION PRESENTED

Do a juvenile's LWOP sentences imposed solely for a nonhomicide offense escape the Eighth Amendment prohibition on LWOP sentences for juveniles, so long as the juvenile is also receives a sentence of any length for a homicide offense?

STATEMENT OF THE CASE AND FACTS

In case number F87-9838B the state charged Torrence Lawton with first-degree murder, attempted first-degree murder, and robbery. (B.). The crimes were alleged to have happened on January 4th, 1987, when Mr. Lawton was sixteen years old. (B. 1-2). A jury found him guilty as charged on all three counts. (C 1). In a second case, F87-8000A, the state charged him with two counts of attempted first-degree murder and one count of possession of a firearm while engaged in a felony. (D.) In that case Mr. Lawton pleaded guilty as charged. (E. 1).

The trial court sentenced Mr. Lawton for both cases in a single proceeding. (F.) In case number F87-9838B the judge sentenced him to life imprisonment for murder and LWOP for attempted murder and robbery. (C. 3-5). Because the crimes occurred in 1987, Mr. Lawton would be eligible for parole on the murder count after twenty-five years. *See* § 775.082(1), Fla. Stat. (1987). In case number F87-8000A, the court sentenced Mr. Lawton to LWOP on both attempted murder counts and fifteen years on the firearm charge. (E. 3-5).

In 2011, Mr. Lawton filed a postconviction motion arguing that his LWOP sentences violated *Graham v. Florida*, 560 U.S. 48 (2010). *Graham* imposed a categorical ban on LWOP sentences for nonhomicide offenses committed by juveniles. The trial court denied Mr. Lawton's motion as to both cases, reasoning that because Mr. Lawton had been

convicted of homicide and he had been sentenced in both cases at the time, he fell into an exception to *Graham* for defendants who were sentenced for a homicide offense in addition to the nonhomicide crimes. (G. 6-7).

On appeal, the Third District held that there was indeed an exception to *Graham's* ban on LWOP for nonhomicide offenses. *Lawton v. State*, 109 So. 3d 825, 828-29 (Fla. 3d DCA 2013).[1] Where the juvenile committed a homicide, he could be sentenced to LWOP for a nonhomicide as well. *Id.* The court further held that it was irrelevant that Mr. Lawton had received a non-LWOP sentence on the homicide count. *Id.* at 829-30. The district court affirmed Mr. Lawton's three LWOP sentences in case F87-9838B. *Id.* at 830. As to, F87-8000A, however, the court held that the exception did not extend to nonhomicide LWOP sentences for nonhomicides committed in a separate episode merely because the homicide case and the nonhomicide case were sentenced on the same day. *Id.* at 828-29.

This Court subsequently granted Mr. Lawton's petition for discretionary review based on express and direct conflict with the opinions of other district courts.

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[1] The Third District's opinion is appended as Appendix A.

SUMMARY OF THE ARGUMENT

In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that the Eighth Amendment does not permit a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime. *Id.* at 53. The Third District, however, has created an exception to *Graham's* categorical rule: So long as a juvenile is convicted of homicide, he may be sentenced to LWOP for a nonhomicide – even if the homicide itself carries a non-LWOP sentence.

Graham does not authorize this exception. The language the Third District relies on is dicta. Moreover, the relevant passage was written in response to a state argument. It formed no part of the Court's holding, and the Court did not announce an exception to its categorical rule.

Even if the Court had intended to limit its holding, that limitation would not apply to Torrence Lawton. Mr. Lawton did not receive an LWOP sentence for his homicide offense. He was "sentenced to life without parole solely for a nonhomicide offense," in violation of the same language the Third District relies on to fashion its exception. *See Graham* at 63.

ARGUMENT

In *Graham v. Florida*, 560 U.S. 48 (2010), the United States Supreme Court decided, "whether the Constitution permits a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime." *Id.* at 53. The Court held that it does not. The Third District Court of Appeal, alone among Florida Courts, has held that a juvenile *may* be sentenced to "life in prison without parole for a nonhomicide crime," if he is also sentenced for homicide – even if he receives a non-LWOP sentence for the homicide offense. The Third District's decision violates *Graham*, the Eighth Amendment, and article I, section 17 of the Florida Constitution.[2]

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[2] Though Mr. Lawton's sentences violate the Eighth Amendment, he is also entitled to the greater protections the Florida Constitution guaranteed at the time of the offenses at issue here. In 1987, article I, section 17 forbade cruel *or* unusual punishments. Though the constitution was subsequently amended to conform to the Eighth Amendment's "cruel *and* unusual" standard, that amendment did not take effect until 2002. *See Adaway v. State*, 902 So. 2d 746, 747 n.17 (Fla. 2005). The change from "or" to "and" was "a radical change in state constitutional law" that "nullif[ied] a fundamental state right." *Armstrong v. Harris*, 773 So. 2d 7, 21 (Fla. 2000). This Court has notably relied on Florida's "cruel or unusual" standard in addressing categorical prohibitions on excessive punishments imposed on juveniles. *See Allen v. State*, 636 So. 2d 494 (Fla. 1994); *Brennan v. State*, 754 So. 2d 1 (Fla. 1999).

I. THE THIRD DISTRICT'S OPINION CREATED A CATEGORICAL BAN ON ALL LWOP SENTENCES FOR NONHOMICIDE OFFENSES COMMITTED BY A JUVENILE.

In *Graham* the Supreme Court established a "flat ban" on juvenile LWOP sentences for nonhomicide offenses. *See Miller v. Alabama*, 132 S.Ct. 2455, 2465 (2012). It rejected a case-by-case approach, instead relying on its prior decisions holding that the death penalty is categorically cruel and unusual for certain crimes or defendants. *Graham* at 61 (citing *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (death penalty disproportionate for nonhomicide crimes against individuals); *Coker v. Georgia*, 433 U.S. 584 (1977) (rape of an adult); *Roper v. Simmons*, 543 U.S. 551 (2005) (juveniles); *Atkins v. Virginia*, 536 U.S. 304 (2002) (the intellectually disabled). It drew a line based on both the offense and the offender: Juvenile *offenders* may not be sentenced to LWOP for nonhomicide *offenses*.

The Third District held that Mr. Lawton falls into an exception to *Graham's* rule. It concluded that the prohibition on juvenile LWOP does not extend to all nonhomicide offenses, holding instead that *Graham*'s categorical ban applies only to "nonhomicide *cases*." It relied on a short passage in *Graham* contrasting homicide and nonhomicide crimes, where in dicta the Court wrote

> Juvenile offenders who committed both homicide and nonhomicide crimes present a different situation for a sentencing judge than juvenile offenders who committed no homicide. It is difficult to say that a defendant who

> receives a life sentence on a nonhomicide offense but who was at the same time convicted of homicide is not in some sense being punished in part for the homicide when the judge makes the sentencing determination. The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.

Lawton 828-29 (quoting *Graham* at 63).

The other district courts have taken varying positions on the validity of this proposed exception. The First District has held that there is no such exception, whether or not the juvenile was sentenced to LWOP for the accompanying homicide. *See Jackson v.* State, 38 Fla. L. Weekly D1334 (Fla. 1st DCA June 8, 2013) (opinion on rehearing); *Johnson v. State*, 38 Fla. L. Weekly D953, 2013 WL 1809685 (Fla. 1st DCA April 30, 2013); *Akins v. State*, 104 So. 3d 1173, 1175 (Fla. 1st DCA 2012). The Fifth District followed the First in *Weiand v. State*, 129 So. 3d 434 (Fla. 5th DCA 2013), a case where the defendant, like Mr. Lawton, received a parole-eligible sentence for homicide. The Second District has found an exception to *Graham* where the defendant is sentenced to LWOP for both the homicide and the nonhomicide offenses. *Starks v. State*, 128 So. 3d 91 (Fla. 2d DCA 2013). It has recognized, however, that the exception depends on whether the defendant is sentenced to LWOP for homicide. *See Washington v. State*, 110 So. 3d 1, 2-3 (Fla. 2d DCA 2012), *rev. denied* 115 So. 3d 1002 (Fla. 2013). Only the

Third District has gone so far as to hold that *Graham* permits LWOP nonhomicide sentences where there is a *non*-LWOP homicide sentence.

The decisions adopting a homicide-case exception uniformly rely on the same half-paragraph of dicta[3] quoted by the Third District in Mr. Lawton's case. *See Starks* at 93; *Washington* at 3; *Lawton* 828-29.[4] Their reliance on this language is misplaced. *Graham* did not decide the question of whether a juvenile can be sentenced to LWOP for homicide offenses. The half-paragraph, moreover, is part of a larger discussion of empirical data; the Court was not qualifying or even describing its holding. And even if the passage did create an exception to *Graham* for juveniles sentenced for contemporaneous homicides, Mr. Lawton's non-LWOP homicide would not trigger it.

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[3] See Argument I, *infra*. The fact that this passage is dicta is uncontroversial. Even courts employing it to find an exception agree. *See Starks*, 92-93 (exception "noted" "in dicta"); *Washington* at 3 n.1

[4] The same is true of the small number of cases from other jurisdictions to address the issue. In each instance, the court relies on this language without further analysis. *See Arredondo v. State*, 406 S.W.3d 300,305 (Tex. Crim. App. 2013); *People v. Bagsby*, 2011 WL 4360100, 4(Cal. Ct. App. Sept. 20, 2011) (unpublished opinion); *Twyman v. State*, 26 A.3d 215, 1 (Del. July 25, 2011) (unpublished disposition); *People v. Cabanillas*, 2011 WL 1143230, 28 (Cal. Ct. App. Mar. 30, 2011) (unpublished opinion). None of the opinions acknowledges the context in which the passage appears.

II. GRAHAM DID NOT HOLD THAT A JUVENILE COULD BE SENTENCED TO LWOP FOR HOMICIDE

Graham could not and did not decide whether a juvenile could be sentenced to LWOP for a homicide offense, much less a "homicide case." Terrance Graham committed no homicide, and the question presented to and decided by the Court was whether the Eighth Amendment, "prohibits the imprisonment of a juvenile for life without the possibility of parole as punishment for the juvenile's commission of a non-homicide." Petition for Writ of Certiorari at i. After *Graham*, the constitutionality of LWOP for homicide offenses remained an open question. When Evan Miller and Kuntrell Jackson petitioned for certiorari, both argued that LWOP was unconstitutional for 14-year-olds convicted of homicide offenses. *See* Petition for Writ of Certiorari at i, *Miller v. Alabama*, 132 S.Ct. 2455 (2012) (No. 10-9646); Petition for Writ of Certiorari at i, *Jackson v. Hobbs*, 132 S.Ct. 2455 (2012) (No. 10-9647). Jackson also argued that his LWOP sentence violated the Eighth Amendment because he was an accomplice to the homicide, not the triggerman.

Even after *Miller*, the constitutionality of LWOP sentences for homicide offenses remains unresolved. In *Miller* the court held that *mandatory* LWOP sentences for juvenile homicide offenses are unconstitutional. It then stated: "Because that holding is sufficient to

decide these cases, **we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles**, or at least for those 14 and younger." 132 S.Ct. at 2469.

The Supreme Court still has not determined whether there is a homicide *offense* exception to the bar on juvenile LWOP sentences. It certainly has not held that there is a broader homicide *case* exception.

III. THE PASSAGE ON WHICH THE THIRD DISTRICT RELIES DOES NOT CREATE AN EXCEPTION TO THE BAN ON LWOP FOR NONHOMICIDE OFFENSES

The half-paragraph of dicta seen as the source of the exception was the answer to an argument, not a limitation of the Court's holding. *See Johnson* at 3. The Supreme Court decided *Graham* through a multi-part analysis. One of the factors it examined was the relative infrequency of juvenile LWOP sentences for nonhomicide offenses, even though such sentences were legally permissible in most states. *See Graham*, 62-64. The Court relied in part on a study contrasting Florida with other states:

> Here, an examination of actual sentencing practices in jurisdictions where the sentence in question is permitted by statute discloses a consensus against its use. Although these statutory schemes contain no explicit

> prohibition on sentences of life without parole for juvenile nonhomicide offenders, those sentences are most infrequent. According to a recent study, nationwide there are only 109 juvenile offenders serving sentences of life without parole for nonhomicide offenses. See P. Annino, D. Rasmussen, & C. Rice, *Juvenile Life without Parole for Non–Homicide Offenses: Florida Compared to Nation* 2 (Sept. 14, 2009) (hereinafter Annino).[5]

Id., 62-63. The State objected to the use of the Annino Study, arguing it was underinclusive:

> The Annino Study incorrectly excludes a substantial number of juveniles (approximately 73) who are serving life sentences without parole for non-homicides simply because these juveniles—*in addition to these non-homicide offenses*—are also serving separate sentences for other crimes in which death or intent to kill occurred.... Each was sentenced to life without parole for a non-homicide offense; the fact that they are also serving sentences on other charges does not alter this fact.

Brief of Respondent at 34, 2009 WL 2954 (emphasis in the original) (internal citation and footnote omitted). It made this argument, "not to limit the possible application of a categorical rule, but to counter the perception that life sentences for nonhomicides were rare and thereby 'unusual' under the Eighth Amendment." *Johnson* at *2.

The Supreme Court rejected this argument, explaining:

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[5] Available at: http://ssrn.com/abstract=1490079 (last visited April 30, 2014).

> The State contends that this study's tally is inaccurate because it does not count juvenile offenders who were convicted of both a homicide and a nonhomicide offense, even when the offender received a life without parole sentence for the nonhomicide. See Brief for Respondent 34; Tr. of Oral Arg. in *Sullivan v. Florida*, O. T. 2009, No. 08–7621, pp. 28–31. This distinction is unpersuasive. Juvenile offenders who committed both homicide and nonhomicide crimes present a different situation for a sentencing judge than juvenile offenders who committed no homicide. It is difficult to say that a defendant who receives a life sentence on a nonhomicide offense but who was at the same time convicted of homicide is not in some sense being punished in part for the homicide when the judge makes the sentencing determination. The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.

Graham at 63. The Court went on to reject other complaints about the Annino Study, such as a lack of peer review, and proceeded to rely on it. *Id.* at 63-65.

As the First District explained in *Johnson*, "Thus, the Court distinguished the State's empirical point and thereafter placed reliance on the Annino Study (which it completed on its own) to further its legal analysis of whether a national consensus against life without parole for nonhomicides had been established." Nothing in the Supreme Court's language purported to do anything else but address the Annino Study. Nowhere does the opinion suggest that its discussion of one study relevant to one factor of its analysis was intended to qualify its answer to "whether the Constitution permits a juvenile offender to be sentenced to life in

prison without parole for a nonhomicide crime." 560 U.S. at 53. "Read in context, the passage from Graham … explains the adoption of, but does not purport to qualify, what the Graham opinion itself calls a categorical rule." *Akins*, 104 So. 3d at 1175 n.2.

Johnson's analysis of the Supreme Court's discussion may bring an unusual degree of insight to the question. It proceeds from the purpose of Florida's argument ("not to limit the possible application of a categorical rule") and the purpose of the Court's response. The person making that argument on behalf of the State of Florida was then-Solicitor General Scott Makar. Judge Makar concurred in the *Johnson* opinion.

IV. EVEN IF *GRAHAM* CREATED A HOMICIDE-CASE EXCEPTION, IT WOULD NOT APPLY TO MR. LAWTON, WHO RECEIVED A PAROLE-ELIGIBLE HOMICIDE SENTENCE

If the Supreme Court's comments on the Annino Study created a homicide-case exception, it would only apply to juveniles sentenced to LWOP for the homicide. The Third District acknowledged that the Court was responding to a state argument. *Lawton* at 828. It did not, however, consider which argument the Court was responding to. The State complained that the Annino Study excluded some juveniles who were serving

LWOP for nonhomicides because they were also sentenced for homicide offenses. This excluded population consisted of juveniles who were serving LWOP sentences on the homicide counts. In qualifying its numbers for juveniles sentenced to LWOP for robbery, burglary, battery, and carjacking, the authors explained: "There may be other individuals in the country with JLWOP sentences for these crimes that are not included in this study because they also have a JLWOP sentence for homicide." Annino at 6 n.20. In consequence, when the Court disposed of the state's argument, it wrote: "The instant case concerns only those juvenile offenders **sentenced to life without parole solely for a nonhomicide offense**."

Two Florida courts have discussed the situation where a juvenile is sentenced to LWOP for a nonhomicide in conjunction with a non-LWOP homicide sentence. Both concluded there was no exception to *Graham*. In *Akins* the defendant was sentenced to LWOP for attempted murder but 27 years for second-degree murder.[6] 104 So. 3d at 1173. The trial court denied Akin's *Graham* motion because of the homicide conviction. The First District reversed. It explained: "Although appellant also committed a homicide, he was sentenced for the

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[6] Akins originally pleaded guilty and was sentenced to concurrent 27-year terms. The attempted murder count was subsequently vacated. On remand Akins was tried and sentenced to LWOP on that count. *Id.*

homicide, not to life without parole, but to twenty-seven years in prison. The life sentence appellant received was solely for the attempt, a nonhomicide offense."[7] *Id.* at 1175.

In *Washington* the juvenile defendant was sentenced to LWOP for each of two counts of first-degree felony murder and two counts of kidnapping. The Second District reversed the murder counts for the trial court to determine whether the LWOP sentences were disproportionate. 110 So. 3d at 1-2. Regarding the LWOP kidnapping sentences, it wrote:

> [T]he Supreme Court indicated that a life sentence without possibility of parole for a nonhomicide offense could be constitutional if it accompanied an **authorized sentence of life without possibility of parole for a homicide offense**.
>
> Thus, the constitutionality of Mr. Washington's two life sentences without parole for the kidnappings probably hinges on whether the trial court, on remand, imposes life without parole for felony murders. Accordingly, we reverse these sentences and remand with instructions for the trial court to resentence for these offenses after it determines the appropriate sentences for the felony murders.

Id. at 3 (internal citation omitted).

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[7] As discussed above, the court ultimately rejected the idea that the *Graham* dicta created any exception to the categorical bar on LWOP for nonhomicide offenses committed by juveniles. *Id.* at 1175 n.2.

The Third District's decision in this case cannot be reconciled with *Akins* and *Washington*. The court held that "nothing in *Graham* requires that the sentence on the homicide equal or exceed the sentence on the nonhomicide offense in order for the sentences to be lawful." 109 So. 3d 830. *Akins* and *Washington* concluded that *Graham does* require that the homicide sentence be LWOP before a nonhomicide LWOP sentence can be constitutional. Yet the Third District found no conflict with those decisions, distinguishing them in footnotes. *Id.* n.5 and 6.

The Third District's treatment of *Akins* and *Washington* undermines its holding that any homicide conviction authorizes an LWOP sentence for a nonhomicide, regardless of the sentence. The court did not take issue with the First and Second Districts' determination that Akins' and Washington's LWOP nonhomicide sentences could not stand if not accompanied by an LWOP homicide sentence. Instead it attempted to distinguish those cases based on the facts that Mr. Lawton received a (parole-eligible) life sentence for homicide, and that the non-LWOP sentence was mandatory.

The Third District found, "the *Akins* case distinguishable because here the defendant received two life sentences." *Id.* n.5. The court's point appears to be that a parole-eligible life sentence for homicide can authorize an LWOP sentence for a nonhomicide offense, even though a term of years homicide sentence cannot. This distinction draws the line in the wrong

place and is incompatible with *Graham*. *Graham* turns entirely on the categorical difference between the two different kinds of life sentences.

The Third District also observed that the trial court could not legally sentence Mr. Lawton to LWOP for homicide and, "This statutory anomaly—and the resulting fact that life without parole eligibility for twenty-five years represented the only sentence the court could impose for the homicide — distinguishes the instant case from" *Akins* and *Washington*. This distinction does nothing to harmonize *Akins* and *Washington* with the Third District's actual holding.[8] Moreover, the real distinction is that the judiciary determined that Akin should receive a non-LWOP sentence for homicide, while it was the legislature that made that determination in Mr. Lawton's case. *Graham* and the Eighth Amendment govern the actions of all the State's branches.

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[8] In fact, Akins' judge found himself in an analogous position. When Judge Sheffield sentenced Akin, he too was not free to sentence the defendant to LWOP for homicide. Akin had already been sentenced to 27 years on that count, and the judge had no authority disturb that sentence. Instead, he sentenced Akin to LWOP "solely for a nonhomicide offense."

V. THE THIRD DISTRICT'S REASONING IS INCONSISTENT WITH ITS RECOGNITION THAT ATTEMPTED MURDER IS A NONHOMICIDE OFFENSE.

The Third District's reasoning conflicts with its own conclusion that attempted murder is a nonhomicide offense. Like every other district court save the Fifth, the court treated attempted murder as a nonhomicide offense. *See* 109 So. 3d at 826-27; *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010); *McCullum v. State*, 60 So. 3d 502 (Fla. 2d DCA 2011); *Cunningham v. State*, 74 So. 3d 568 (Fla. 4th DCA 2011) *rev'd on other grounds*, 2014 WL 289808 (Fla. Jan 24, 2014) (unpublished disposition). This Court has since agreed. *See Treacy v. Lamberti*, 38 Fla. L. Weekly S703 (Fla. 2013) (finding that *Graham* forbade an LWOP sentence for a juvenile charged with attempted homicide).

The Third District's "homicide case" analysis boils down to this:

1. In *Graham* the state argued that the Annino Study was inaccurate because it excluded cases in which the defendant was sentenced to LWOP for a nonhomicide but was also convicted of a homicide offense.

2. The Supreme Court responded that this did not undermine the Annino Study's data showing that LWOP for nonhomicide offenses is rare.

3. In doing so, the Court created an exception to its categorical ban where the LWOP sentence was excluded from the Annino Study's count – cases where the juvenile was also sentenced for a "homicide offense."

109 So. 2d at 828-29.

What the Third District overlooks is that attempted homicides are among the cases excluded from the Annino Study's tally. Annino at 3 ("'Non-homicide' does not include any convictions for attempted homicides …"). If the Supreme Court's discussion of the Annino Study created an exception to the categorical ban on LWOP sentences for nonhomicide offense, that exception would apply to juvenile convicted of attempted homicide. The Third District, however, correctly concluded that attempted homicides are not excluded from *Graham*.

VI. THE THIRD DISTRICT'S HOMICIDE-CASE EXCEPTION IS INCOMPATIBLE WITH AN EIGHTH AMENDMENT CATEGORICAL BAR.

Graham was the first case in which the Supreme Court adopted a categorical ban on a sentence other than death. *See* 560 U.S. at 60-61. In *Graham* the Court treated juvenile LWOP sentences as "analogous to capital punishment." *See Miller*, 132 S.Ct. at 2467 (quoting *Graham* at 90 (Roberts, C.J., concurring in the judgment)). *Graham's* categorical ban must be enforced just as the categorical bans on death sentences are – categorically.

The Supreme Court has held that the Eighth Amendment categorically bars a death sentence for nonhomicide offenses against individuals. *See Kennedy v. Louisiana*, 554 U.S 407 (2008); *Coker v. Georgia*, 433 U.S. 584 (1977). In *Coker*,

the Court held that a defendant could not be sentenced to death for the rape of an adult. In *Buford v. State*, 403 So. 2d 943 (Fla. 1981), this Court applied *Coker* to a defendant sentenced to death on two counts: first-degree murder and capital sexual battery. The Court concluded that *Coker* compelled it to hold that the death sentence for the sexual battery violated the Eighth Amendment. *Id.* at 951. It observed that this result was "academic" for Buford since it affirmed his death sentence for murder. *Id.* at 951. Nevertheless, the Court vacated the death sentence for sexual battery and ordered that Buford be resentenced to life imprisonment with the opportunity for parole after twenty-five years. *Id.* at 954.

There is no principled reason to treat *Graham's* categorical ban any differently from *Coker's*. Just as *Coker* precluded a death sentence for the crime of rape, *Graham* precludes an LWOP sentence for a juvenile convicted of a nonhomicide crime.

CONCLUSION

For the foregoing reasons, the Court should remand with directions to vacate the LWOP sentences for a nonhomicide offense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's e-filing portal to counsel for the Respondent, Nicole Hiciano, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, on May 1, 2014.

/s/Andrew Stanton
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CERTIFICATE OF COMPLIANCE

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

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