WHEN KIDS ARE SENTENCED TO DIE IN PRISON:

HOW THE MECKLENBURG COUNTY DISTRICT ATTORNEY CAN END DEATH BY INCARCERATION FOR KIDS

COLOR OF CHANGE

INTRODUCTION

Over the past thirteen years, the United States Supreme Court has revolutionized the manner in which juveniles must be sentenced. The Court has repeatedly recognized that children have a "lack of maturity and an underdeveloped sense of responsibility . . . are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure," and are "more capable of change" than adult offenders.[1] Because "children are constitutionally different from adults for purposes of sentencing,"[2] the Court has made clear that "a sentencing rule permissible for adults may not be so for children."[3] Accordingly, the Court has categorically prohibited sentencing juveniles to die in prison -- to life without parole (LWOP) -- for a non-homicide offense, or for a homicide offense unless the child is "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible."[4]

Because it is extremely difficult, if not impossible, to make an accurate determination at the time of sentencing that a child will be completely unable to rehabilitate in his or her lifetime, some state courts have categorically banned LWOP sentences for children.[5] Eighteen state legislatures, plus the District of Columbia, have abolished juvenile LWOP for children by statute, and, in most jurisdictions where the sentence continues to be authorized under law, it is rarely sought or imposed.[6] At this juncture, only a few outlier jurisdictions across the country continue to sentence children to die in prison. Moreover, there are no other Western nations that assign juveniles life without parole sentences, and the U.N. Convention on the Rights of the Child formally condemns the practice.[7]

Notwithstanding these unmistakable developments in state legislatures and courthouses across the nation, LWOP remains a possible sentence for children convicted of eligible crimes in North Carolina. Disturbingly, the Mecklenburg County District Attorney's Office has repeatedly sought LWOP against youthful defendants, even in cases with overwhelming mitigating evidence. This includes, to date, seeking LWOP for every defendant with a now-unconstitutional mandatory sentence who is entitled to be resentenced under the Supreme Court's decisions in Miller v. Alabama[8] and Montgomery v. Louisiana.[9]

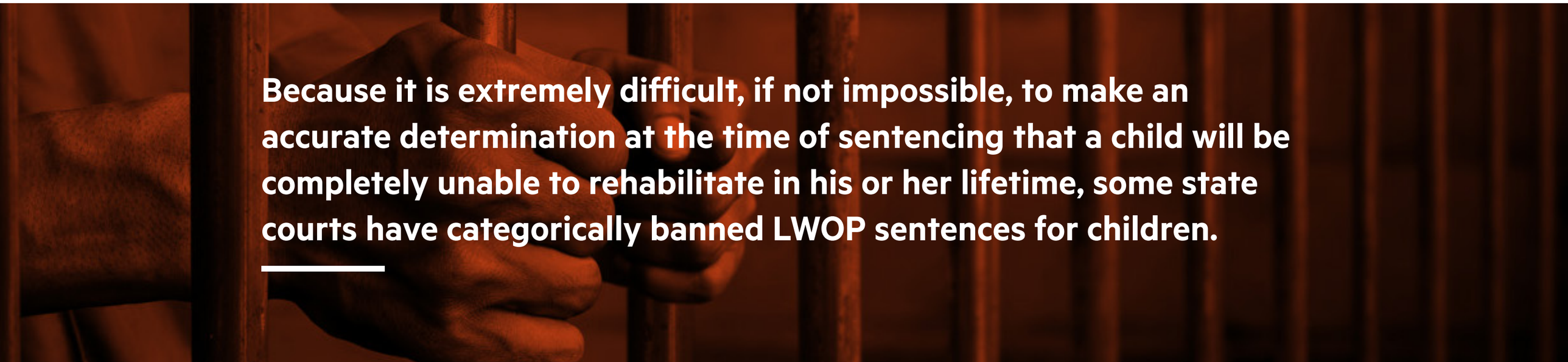
Despite the Supreme Court's clear directive that it would be "the rare juvenile offender" who may be eligible for LWOP,[10] the Mecklenburg County District Attorney's Office has sought the ultimate punishment in every one of these cases that has proceeded to resentencing. To date, there have been five such individuals resentenced in Mecklenburg County, and in each case prosecutors insisted on LWOP -- including most recently in April 2018 for Donovan Johnston, who was originally sentenced in 1996 to spend his life in prison for a crime he committed at the age of 15.

Notably, each of those five cases involved resentencing a young man of color. While North Carolina's use of LWOP against youthful offenders is overwhelmingly racially skewed -- approximately 91.5% of all LWOP sentences ever imposed in North Carolina were against children of color -- the Mecklenburg County District Attorney's Office's record of seeking LWOP sentences in 100% of eligible resentencing cases is even more shocking.[11]

But while North Carolina -- and notably Mecklenburg County -- has been an outlier in its aggressive approach to sentencing children to die in prison, recent developments signal much-needed change. On May 18, 2018, Resident Superior Court Judge Robert Bell rejected the District Attorney's request for LWOP in Johnston's case, and handed down a sentence that includes the possibility of parole.[12] Johnston is the third consecutive re-sentencing hearing in Mecklenburg Court where the court has rejected the prosecution's request for LWOP. In addition, the North Carolina Court of Appeals recently reversed LWOP sentences re-imposed against Montrez Williams and Harry James in Mecklenburg County. Both Williams and James had been resentenced following the Miller and Montgomery rulings, but in both cases, the appellate court reversed. As the Court of Appeals explained in Williams, LWOP may only be imposed when a child is "one of those rarest of juvenile offenders for whom rehabilitation is impossible and a worthless endeavor" -- an exceptional circumstance that had not been met.[13]

In addition to these developments in the courts, Mecklenburg County District Attorney Spencer Merriweather, who became the interim DA in November 2017 and is running unopposed in the November 2018 general election, has pointedly said he will examine these cases closely to make sure the office follows the law.[14]

These developments all make clear that the tide is changing on juvenile life without parole, both nationally and in Mecklenburg County courtrooms.



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THE SUPREME COURT AND JUVENILE SENTENCING

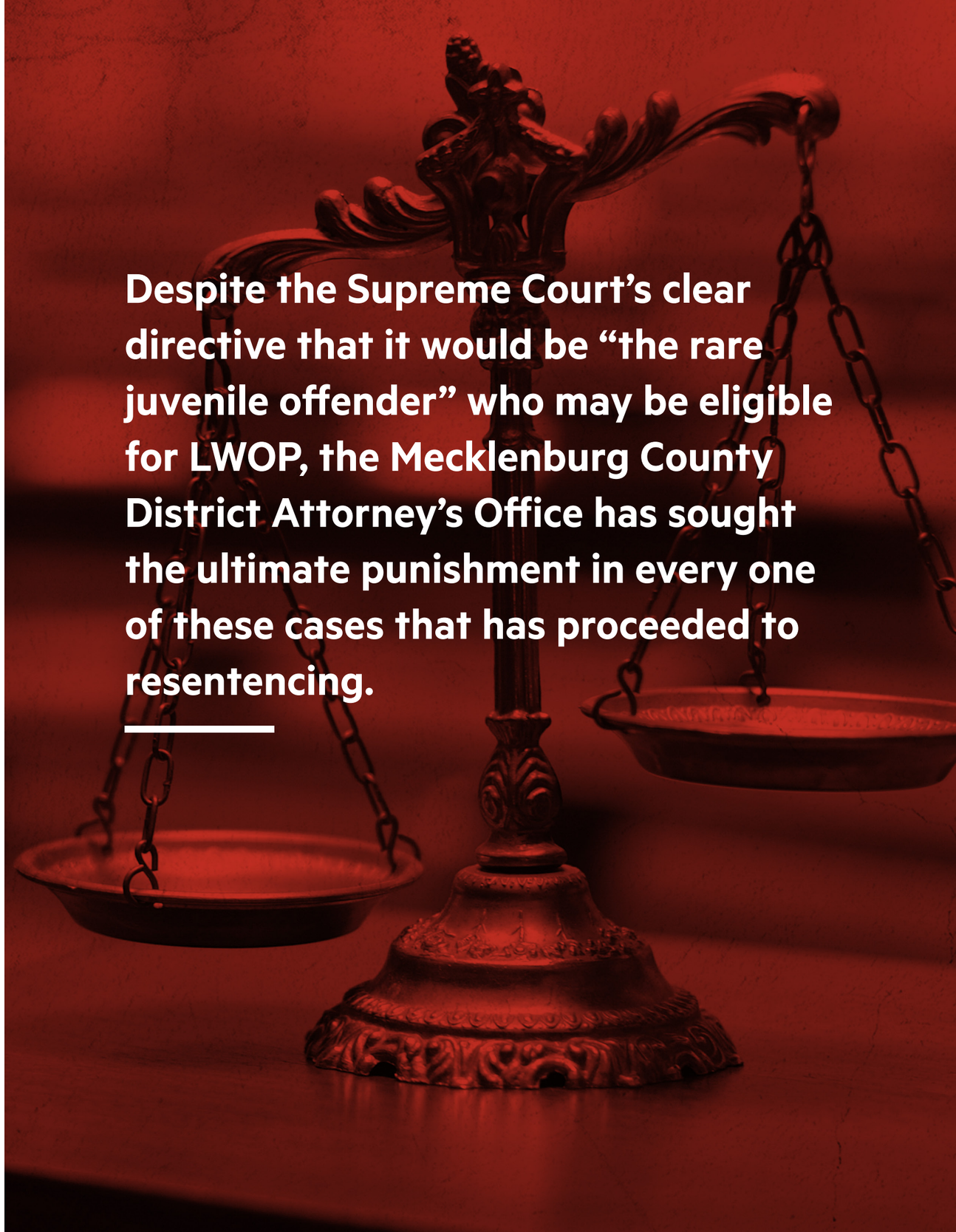
It has been more than a decade since the U.S. Supreme Court ruled that because of the clear-cut scientific differences between children and adults, the law must treat young people differently when it comes to sentencing.[15] The reason why has much to do with the adolescent brain: research shows that the prefrontal cortex, which regulates impulse and planning, does not fully develop until around age 25.[16] While young people may superficially understand the choices that they are making, they have less ability to control the impulse to act. A teenager's brain also processes risk differently, especially under peer pressure or in emotionally-charged situations.[17] In addition, many juvenile offenders have lives marked by exposure to horrific violence and abuse, and they are often unable cope with this trauma.[18]

It is no surprise, then, that the likelihood of criminal activity decreases as people age. Developmental research shows that juveniles often outgrow the type of reckless behavior that leads to criminal charges.[19] The young person's brain has elasticity and resilience -- even teenagers who commit the most serious offenses will not be the same person years or decades later.

In 2012, the Supreme Court embraced this scientific evidence and announced in Miller v. Alabama that mandatory LWOP sentences for juveniles violate the Eighth Amendment's prohibition on cruel and unusual punishment.[20] Adolescence is characterized by "rashness, proclivity for risk, and inability to assess consequences,"[21] the Court said, and judges must distinguish immaturity from "irreparable corruption" before assigning such a severe punishment.[22] As the Court has explained, the characteristics of youth -- evolving character, immaturity, susceptibility to peer or other external influences -- make it "difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile whose crime reflects irreparable corruption."[23]

Indeed, it is the "constitutionally different" nature of children, not their acts, that requires a sentence that contemplates the likelihood of rehabilitation and maturation,[24] and "even a heinous crime" is not sufficient to show a juvenile's "irretrievably depraved character."[25] In other words, under the Eighth Amendment, youthful status is not just a mitigating factor, but it is the dispositive consideration for "all but the rarest of children,"[26] and courts must consider more than the crime itself before finding that a child is irredeemable. Otherwise, prosecutors and judges could use the underlying crime to impose de facto mandatory life sentences, and exceptions to Miller would swallow the rule.

In 2016, the United States Supreme Court in Montgomery v. Louisiana clarified that the prohibition on mandatory life without parole sentences must be applied retroactively to juveniles previously sentenced to LWOP. Thus, individuals in North Carolina -- and elsewhere -- who had already been sentenced to LWOP as juveniles required new sentences.



NORTH CAROLINA'S POST-*MILLER* SENTENCING SCHEME

In the wake of the *Miller* decision, the North Carolina General Assembly enacted a new sentencing scheme for juveniles convicted of first-degree murder.[27] Previously, North Carolina law imposed mandatory LWOP for all juveniles convicted of first-degree murder. Under the new law, juveniles convicted of first-degree murder on the basis of "felony murder" -- where a homicide takes place during the commission of another crime, but was not premeditated or deliberated -- must be sentenced to life imprisonment with parole eligibility after 25 years.[28] For defendants convicted of first-degree murder as juveniles under a theory of premeditation or deliberation, prosecutors could seek either LWOP or a life sentence with the possibility of parole after 25 years.

In cases where prosecutors seek LWOP, defendants convicted of first-degree murder receive a sentencing hearing where they may present evidence of mitigating factors.[29] The statute lists eight mitigating factors and one catch-all factor.[30] The court must consider these mitigating factors "in determining whether, based upon all the circumstances of the offense and the particular circumstances of the defendant," the defendant should receive life with the possibility of parole instead of LWOP.[31]

In May 2018, the North Carolina Supreme Court held that such a sentencing decision for a juvenile defendant must be based on "an analysis of all the relevant facts and circumstances in light of the substantive standard in Miller."[32] The court repeated the Miller principles that "a lifetime in prison is a disproportionate sentence for all but the rarest of children,"[33] and that a determination must be made between "irreparable corruption [as opposed to] transient immaturity."[34] The court further held that trial judges "must comply with Miller's directive that [LWOP] . . . should be the exception, rather than the rule,"[35] and that juvenile LWOP sentences must be "exceedingly rare."[36]

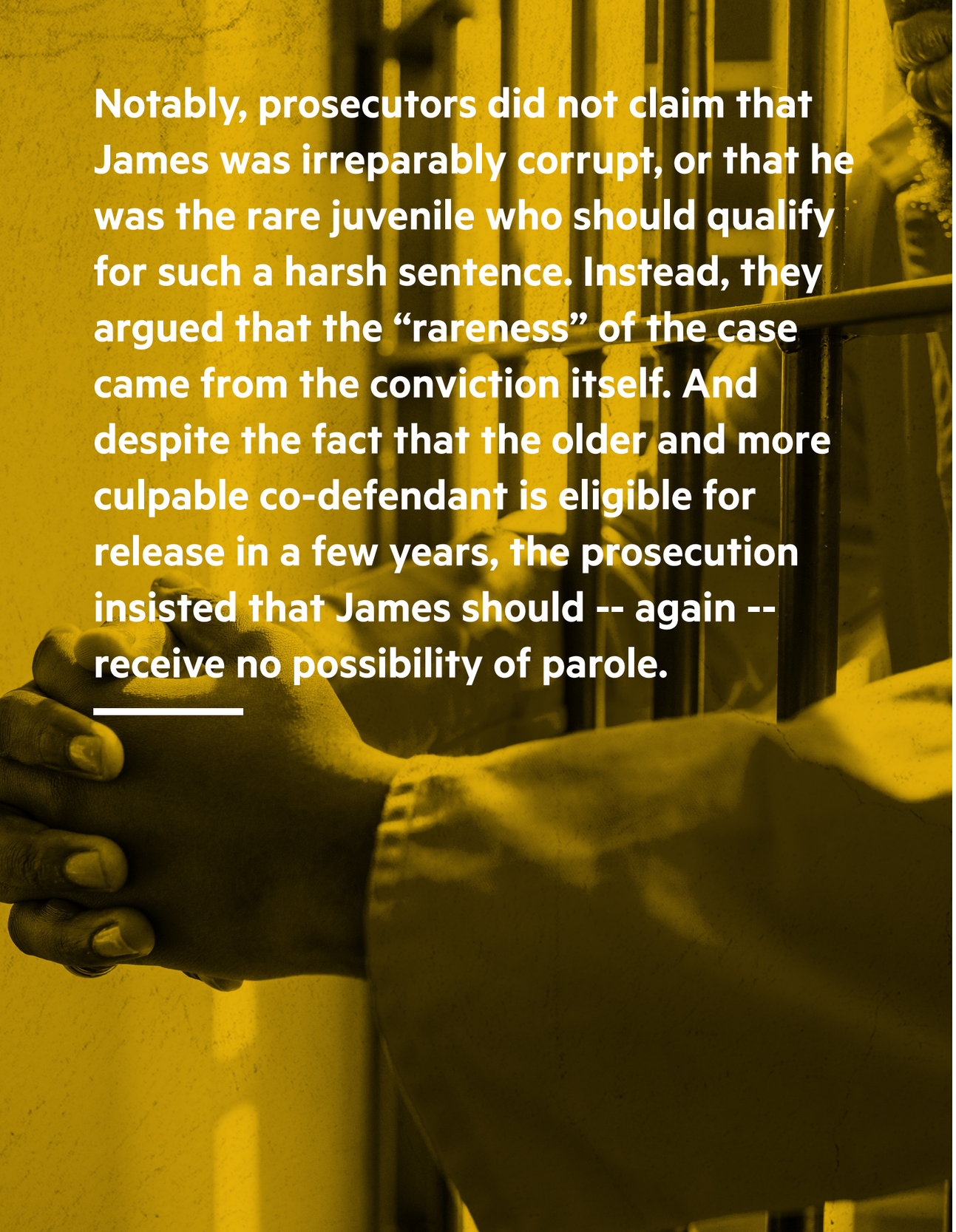
More recently, in reversing Mecklenburg County defendant Montrez Williams' LWOP sentence, the North Carolina Court of Appeals held that a court must make a "threshold determination" that an individual falls "within the class of offenders who are irreparably corrupt" before imposing LWOP.[37] Such a determination, the court said, requires a judge to find that a child is "one of those rarest of juvenile offenders for whom rehabilitation is impossible and a worthless endeavor."[38] Because the trial court found that the defendant's likelihood of rehabilitation was "uncertain," rather than "impossible," the appropriate sentence must include the possibility of parole.

THE MECKLENBURG COUNTY DISTRICT ATTORNEY'S OFFICE'S HANDLING OF RESENTENCINGS FOR JUVENILES

Despite the clear language from the Supreme Court that LWOP could only be imposed only on "the rare juvenile whose crime reflects irreparable corruption," the Mecklenburg District Attorney's Office has consistently sought to secure new LWOP sentences for eligible individuals. Indeed, between 2014 and 2018, in all five cases where a juvenile offender has required resentencing and the options were LWOP or life imprisonment with parole eligibility after 25 years, prosecutors in the Mecklenburg District Attorney's Office sought LWOP. In three of those cases, the judge presiding rejected the prosecution's arguments and imposed life with the possibility of parole sentences. Prosecutors successfully secured LWOP sentences for Harry James and Montrez Williams, although in both instances, those sentences were later overturned on appeal.

In always seeking LWOP sentences in these cases, prosecutors fail to treat children differently from adults. Instead, they routinely focus on the facts of the crime to justify LWOP, directly contravening the Supreme Court's mandate that LWOP for juveniles cannot turn on the facts of the crime itself, no matter how "heinous"[39] or "gruesome."[40] Moreover, by always seeking a death-in-prison sentence, the Mecklenburg District Attorney's Office demonstrate a failure to seriously consider the individual's age, life history, traumatic experiences, vulnerabilities, and capacity for change.

Indeed, the stories of these children according to court documents illustrate the very concerns the Court expressed about sentencing children to die in prison and the many developmental issues facing young people: impulsive, reckless behavior; peer pressure; lack of guidance; immaturity; the effects of childhood trauma. From backgrounds of neglect, poverty, and abuse, the stories of these now-young men also demonstrate the Supreme Court's recognition of an individual's capacity for change and transformation.



Harry James was 16 years old in 2006 when an older friend persuaded him to help with a robbery.[41] During the robbery, James’s friend shot and killed the victim. The shooter took a plea deal and will be eligible for release in less than ten years.[42] James went to trial and received a sentence of LWOP.[43]

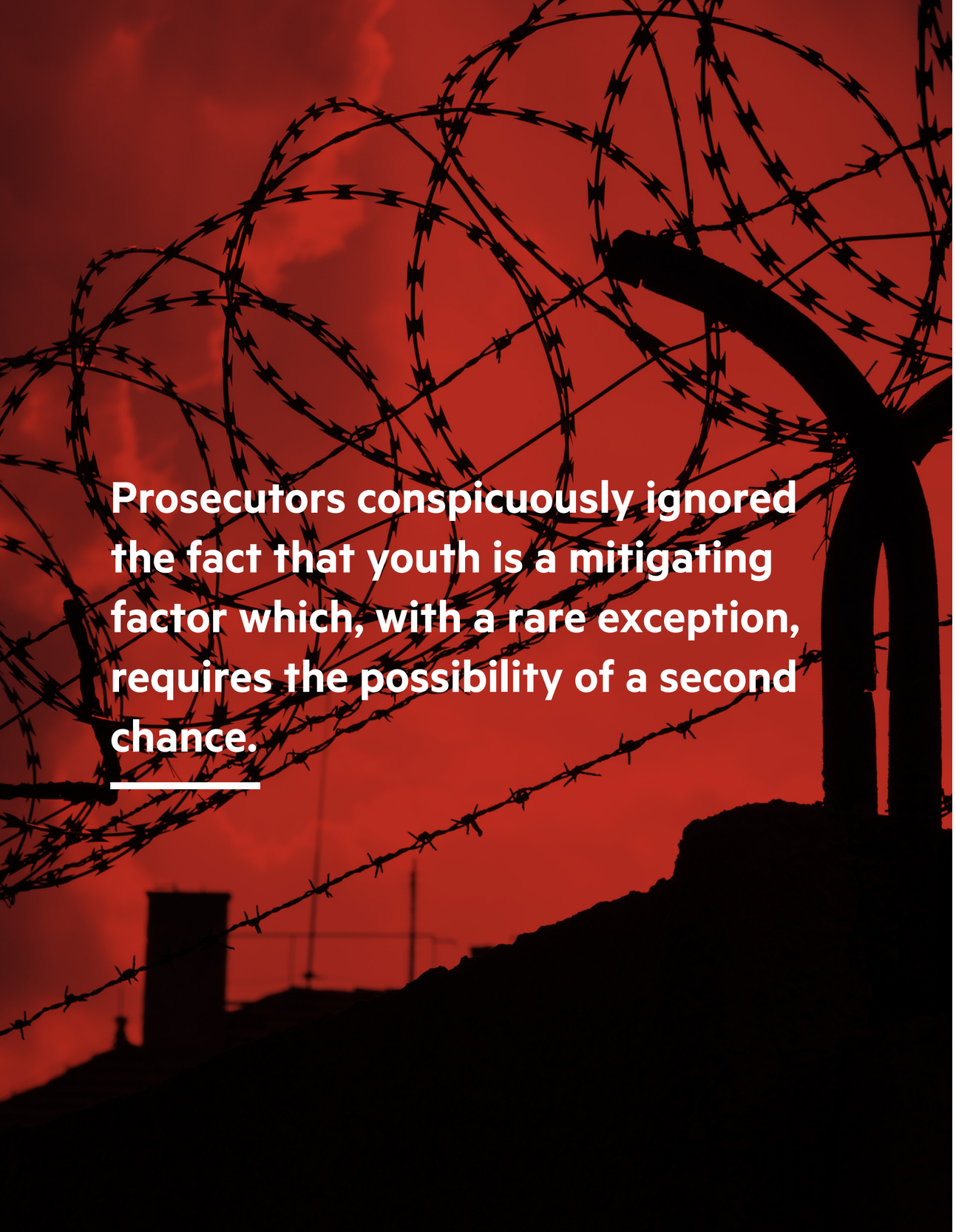
James was born into a home marked by domestic violence.[44] His parents, who eventually divorced, both physically abused James.[45] James’s mother remarried, but her new husband was so violent that nine-year old James once tried to protect his mother by confronting the man with a stick.[46]

James’s parents’ divorce created additional upheaval in James’s living situation.[47] He lived alternately with his parents, other relatives, his mother’s friend, and his tae kwon do instructor.[48] When James lived with his mother, they were at times in homeless shelters and motels.[49] During the periods of homelessness, he failed two grades in school.[50] By the time James was 16, he had lived in several different states and enrolled in 24 different schools.[51]

Around the age of 15, James was raped by an older man he had met while living on the street.[52] In another incident, two men sexually assaulted James -- and his own father later teased him about it.[53]

Remarkably, at James’s resentencing hearing in 2014, prosecutors argued that his “life was going fairly well. It wasn’t a great life; not everybody has a great life. But it was a decent one with his needs being addressed.”[54] Notably, prosecutors did not claim that James was irreparably corrupt, or that he was the rare juvenile who should qualify for such a harsh sentence. Instead, they argued that the “rareness” of the case came from the conviction itself.[55] And despite the fact that the older and more culpable co-defendant is eligible for release in a few years,[56] the prosecution insisted that James should -- again -- receive no possibility of parole. Judge Robert F. Johnson agreed with the prosecution’s recommendation and sentenced him to LWOP.

James successfully appealed his sentence. The North Carolina Court of Appeals found that the trial court made “inadequate findings as to the presence or absence of mitigating factors to support its determination,” thereby “abus[ing] its discretion in sentencing [James] to life without parole.”[57] He will receive a new sentencing hearing in Mecklenburg County Superior Court, where, again, the Mecklenburg County District Attorney’s Office will decide whether to seek LWOP or a life sentence that allows for the possibility of parole.



Montrez Williams received a sentence of LWOP for the 2008 murders of two other teenagers. The crimes occured when Williams was 17. Access to Mr. Williams' case beyond initial news coverage has been strictly limited because the briefs and record have been removed from public view due to "a security concern related to testimony about the commission of the offenses." As a result, his case has not been fully profiled in this report. However, what is discernible from a recent opinion by the North Carolina Court of Appeals is that the prosecution could not establish that Williams was "incorrigible." In September 2018, the Court of Appeals vacated Williams's LWOP sentence, finding that the trial court had made an explicit determination that "'there is no certain prognosis' for [Williams's] potential for rehabilitation."[58]

The Court of Appeals explained that "this finding directly conflicts with the limitation of life in prison without parole to juvenile offenders who are 'irreparably corrupt' and 'permanently incorrigible.' . . . 'Permanent' means forever. 'Irreparable' means beyond improvement. In other words, the trial court should be satisfied that in 25 years, in 35 years, in 55 years—when the defendant may be in his seventies or eighties—he will likely still remain incorrigible or corrupt, just as he was as a teenager, so that even then parole is not appropriate."[59] Because the trial court had declared Williams's possibility for rehabilitation to be uncertain, Williams does not belong in the narrow class of individuals who may be given a LWOP sentence.

Cameron Blair was born to teenage parents -- his mother was 15 and his father 16 -- and they subsequently placed him up for adoption.[60] His educational history reveals the instability of his early life: he had attended at least 9 schools prior to the ninth grade.[61] He joined a gang when he was 11 years old,[62] killed a rival gang member at age 16, and was sentenced to LWOP in 2005.[63]

Despite the Supreme Court's admonition that the sentencing analysis should focus on the juvenile defendant's nature, the Mecklenburg County District Attorney's Office relied nearly exclusively on the details of the crime instead of Blair's background and characteristics when seeking an LWOP sentence.[64]

Prosecutors conspicuously ignored the fact that youth is a mitigating factor which, with a rare exception, requires the possibility of a second chance. They argued that as a teenager, Blair was not "materially different" from others his age. Instead, they asserted that Blair "has to do something to show that . . . his age was a particular mitigating circumstance."[65] Prosecutors disregarded scientific findings on immaturity and youth, commenting that there is not "any particular test for immaturity. We often say that people are immature, but that's not tied to their age . . . [t]here are immature 48-year-olds."[66]

Superior Court Judge Nathaniel Poovey rejected the prosecution's analysis. Judge Poovey referenced Blair's "extreme youth" several times in his decision to grant the possibility of parole.[67] Judge Poovey found that Blair "acted irrationally, unreasonably, and without logic -- as many 16 year olds do -- at the time of the offense." Furthermore, Blair, "as with many 16 year olds," could not completely appreciate the consequences of his actions.[68] And even though Blair's IQ was in the average range, Judge Poovey recognized that Blair, "like many 16 year olds, was not capable of full rational decision-making."[69]

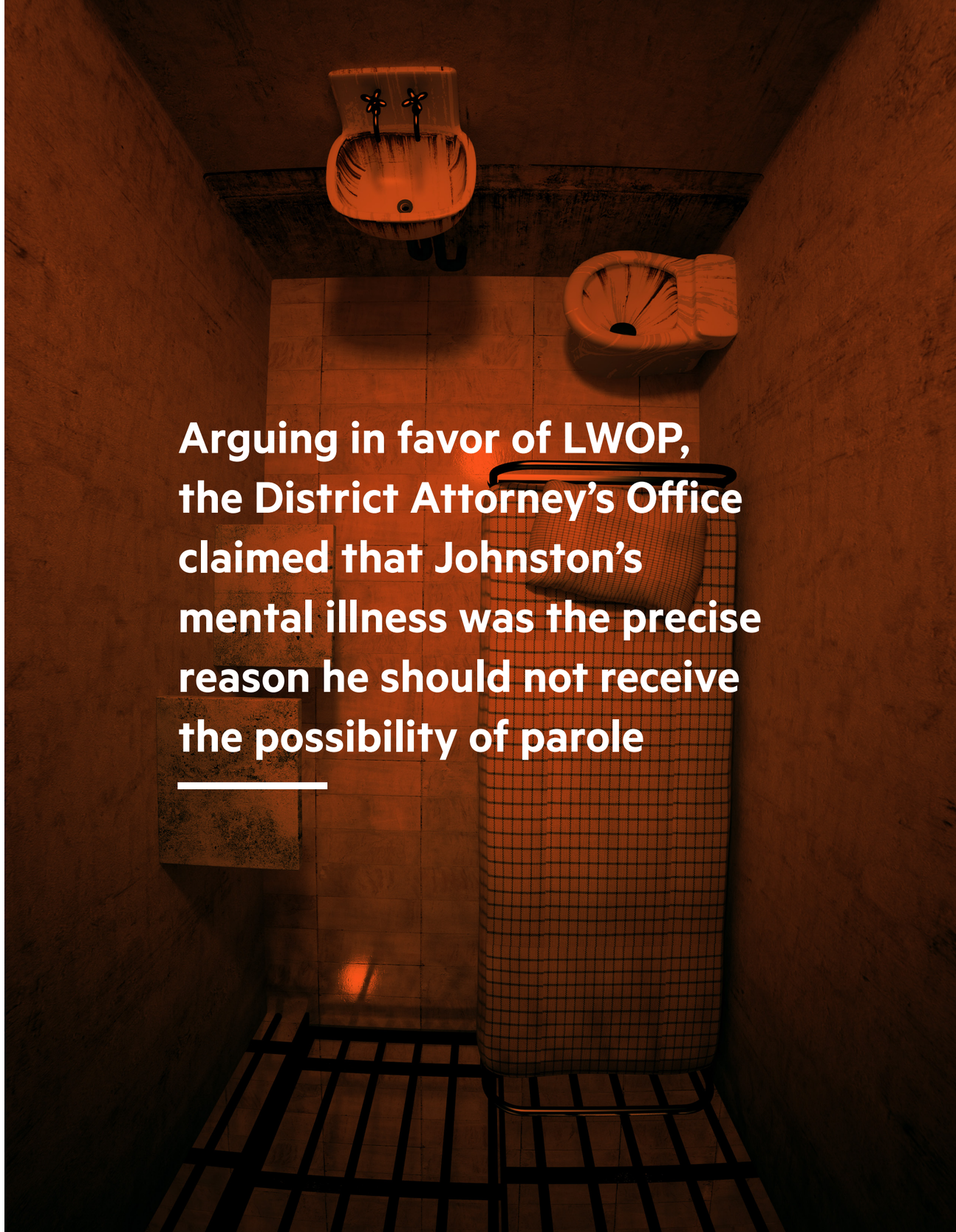
Judge Poovey also found that Blair's gang membership at such a young age placed him under extreme peer pressure. Blair was "substantially influenced" by fellow gang members, Judge Poovey wrote, and this influence "likely had a direct connection to the commission of the crime itself" -- apparently an act of retaliation for a previous gang confrontation.[70] Judge Poovey also acknowledged that Blair had benefited from the interventions he received while in prison, including over 2000 hours in education programs.[71] Based on his detailed findings, Judge Poovey resentenced Blair to life imprisonment with the possibility of parole after 25 years.

Jhalmar Medina was sentenced to LWOP for the shooting death of another teenager. Medina was 16 years old at the time of the 2003 crime. Medina came to the U.S. from El Salvador when he was five years old in a "traumatic experience which included car rides, train trips, walking, and running."[72] He had significant and undiagnosed mental health problems, including post-traumatic stress disorder.[73] Notwithstanding these obstacles, while in prison, he took a number of educational courses and volunteered for a program that benefits local schools and charities.[74]

At his resentencing hearing in December 2016, prosecutors asked that Medina again be sentenced to LWOP. They argued that by allowing the possibility of parole, the court would be "tak[ing] a gamble" on a defendant whose prior trauma had caused him to be "especially different."[75] Instead of seeing Medina's mental health issues as mitigation, and a basis for compassion and treatment, prosecutors used Medina's trauma to argue that he was irredeemable.

The Mecklenburg District Attorney's Office also asked the court to ignore Medina's young age -- an argument that contravenes the Supreme Court's admonition to take youth into account -- asserting that there was no evidence of any deficiencies or impairments that would distinguish Medina from another teenager.[76]

Superior Court Judge Nathaniel Poovey denied the prosecution's request, finding that Medina had accepted responsibility for his actions and had a "good prognosis" for a successful adulthood.[77] Judge Poovey pointed out that at the time of his offense, Medina had no support system and "was basically without any adult supervision whatsoever."[78] Notably, the court found that Medina had been "extremely influenced" by peer pressure; for example, his friends had even talked him out of accepting a plea agreement.[79] But the structure of prison gave Medina a second chance, and Judge Poovey noted that Medina had "thrived" under its rehabilitative programs.[80] He studied light construction, horticulture, furniture, and upholstery.[81] He also joined a program to benefit community schools and charities.[82] Based on his detailed findings, Judge Poovey resentenced Medina to life with the possibility of parole after 25 years.



Donovan Johnston received an LWOP sentence at 15 years old for the 1995 murder of Dennis Clark.[83] Johnston had been physically, emotionally, and verbally abused from a young age.[84] He exhibited psychological problems, including "impulsive and destructive" behaviors.[85] Johnston's mother developed multiple sclerosis when he was very young, and soon was too ill to supervise him.[86] By the time he was 10 years old, he had been shot and began carrying a gun.[87] His older cousin became his mentor and recruited him into the drug business when Johnston was 12 years old.[88]

Not long after the offense, a psychologist who evaluated Johnston reported concerns about his mental stability and recommended further evaluation.[89] The psychologist said that Johnston was in a "deteriorating mental state" with "paranoid-like symptoms" and "possible auditory hallucinations."[90] Despite receiving the psychologist's report, Johnston's appointed attorney did not seek to have his client further evaluated or treated.[91]

The prosecution originally offered Johnston a plea to second-degree murder, which Johnston refused against the advice of his attorney.[92] Johnston's attorney subsequently tried to withdraw from the case before trial, claiming that, among other things, conversations with his client were difficult because Johnston believed "people could see and hear them as they talked."[93]

After Johnston was convicted of first-degree murder, he received a full evaluation from Dr. Faye Sultan, a forensic psychologist.[94] Dr. Sultan concluded that Johnston was severely mentally ill at the time of his offense, and that his mental illness prevented him from assessing his behavior or its consequences. Eventually, Johnston received a diagnosis of schizophrenia and began a treatment plan that dramatically remediated his psychotic symptoms.[95]

At Johnston's resentencing hearing in April 2018, Dr. Moira Artigues, a forensic psychiatrist, noted Johnston's "rational, reasonable, and calm" demeanor and said that he had "a very good response to medication."[96] Dr. Artigues also explained that Johnston was in a "residual" phase of his illness, where both his age and his treatment plan greatly improved his symptoms.[97]

Arguing in favor of LWOP, the District Attorney's Office claimed that Johnston's mental illness was the precise reason he should not receive the possibility of parole: "[T]he question for this Court in my estimation is, can the Court trust [Johnston] . . . to faithfully take take his medication every day as prescribed for the rest of his life?"[98] The prosecution added that "[Johnston] may have grown out of immaturity associated with his teenage years, but he has not grown out of and will not grow out of mental illness."[99] In making this argument, the prosecution took a statutory mitigating factor that should favor parole eligibility,[100] and instead used it to argue that Johnston should die in prison.

The prosecution raised an additional, and deeply troubling, argument to the court in Johnston's case, one that revealed the massive shortcomings in North Carolina's prison and parole system. Arguing against a sentence that involved parole eligibility, the prosecution warned the court that, due to a federal court ruling, the State was under orders to "fix" its parole system, which to date had failed to provide any meaningful opportunity for parole.[101] "I would like to point out to the Court that the district court judge ordered the state to fix that," the prosecution argued. "[The Attorney General's Office has] come up with a plan that goes into effect this summer that will change the way our parole system works for juvenile offenders who are granted parole so that . . . if a court says they're parole eligible, they actually have a shot at getting parole. . . . So I wanted to alert the Court that things are changing and that there's no way to predict [Johnston's] chances of getting parole should this Court order a life with parole sentence."[102]

In his order rejecting LWOP and granting Johnston the possibility of parole, Senior Resident Superior Court Judge Robert Bell reiterated the Miller principle that "[c]hildren are constitutionally different from adults in that they lack maturity and have an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. They are more vulnerable to negative influences and outside pressures." Judge Bell added that "[i]n [Johnston's] case these characteristic[s] were magnified and compounded by his mental illness."

Judge Bell also pointed to Johnston's age at the time of the shooting, as well as a childhood plagued by neglect, violence, and psychiatric illness, stating, "these are the brutal and dysfunctional realities Miller refers to."[103] Judge Bell described the improvements Johnston had made since receiving treatment, as well as Johnston's work experience and education during incarceration.[104]

In always seeking LWOP sentences in these cases, prosecutors fail to treat children differently from adults.

CONCLUSION

The United States Supreme Court has said that the criminal justice system must treat kids like kids. And in the wake of the Supreme Court's decisions in Miller and Montgomery, states and prosecutors across the country have rightly moved away from seeking life without parole sentences for juveniles. This movement away from sentencing children to die in prison recognizes, as the Court directs, "that children who commit even heinous crimes are capable of change." Yet the cases described above illustrate that the Mecklenburg District Attorney's Office has been out of step with the Supreme Court's clear directives about sentencing juveniles, constitutional principles, medical science, and the jurisdictions around the country that have been responsive to the contemporary understanding of children and criminal culpability.

Fortunately, this practice is receiving greater scrutiny in North Carolina and change is in progress. The North Carolina judiciary -- from the Mecklenburg Superior Court judges to the Supreme Court of North Carolina -- has made it clear that such a sentence must be exceedingly rare and imposed only in the "rarest" of cases.[105] Indeed, the rarity of such a sentence -- not just whether a court should impose it but also whether a prosecutor should seek it -- should be self-evident. Arguing that a young person is, in fact, irredeemable, and that rehabilitation is not only "impossible" but also "a worthless endeavor,"[106] is an extraordinary position to take. It is also a nearly impossible argument to make with any degree of certainty. For these reasons, District Attorney Merriweather and other prosecutors across the state should commit never to seek a death-in-prison sentence for any person who was under 18 years old when the crime took place.

Prosecutors unwilling to abandon this practice must nonetheless align their offices with the dictates of the U.S. Supreme Court and North Carolina appellate courts, including "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."[107] This means, for example, that the Mecklenburg County District Attorney's Office must stop arguing that the crime itself justifies an LWOP sentence (as they argued in James and Medina, for example); that mental illness is not a mitigating factor (as they argued in Johnston, for example); and that youth is not, itself, a mitigating factor (as they argued in Blair, for example). Prosecutors must instead reorient their understanding of youthful mitigating attributes, which include, but are not limited to, lack of maturity and underdeveloped sense of responsibility, vulnerability to negative influences and outside pressures, limited control over their environment, and capacity for change.[108]

It is readily apparent that the Mecklenburg County District Attorney's Office has, to date, done a poor job evaluating what it means for a young person to considered a "worthless endeavor." The opportunity to turn the page on this disturbing practice of sentencing a young person to die in prison for something they did as a teenager is here and now.

ENDNOTES

1 Graham v. Florida, 560 U.S. 48, 68 (2010) (quoting Roper v. Simmons, 543 U.S. 551, 569-70 (2005)).
2 Miller v. Alabama, 567 U.S. 460, 471 (2012).
3 Id. at 481.
4 Roper, 543 U.S. at 568 (prohibiting the death sentence for juveniles); Graham, 560 U.S. at 74 (prohibiting life without parole for juveniles convicted of a non-homicide offense); Montgomery v. Louisiana, 136 S. Ct. 718 (2016) (prohibiting life without parole for juveniles convicted of a homicide unless the child is one of the "rare" individuals who demonstrates "irretrievable depravity" and for whom "rehabilitation is impossible").
5 See Diatchenko v. District Attorney for Suffolk Dist., 1 N.E.3d 270, 284 (Mass. 2013); State v. Sweet, 879 N.W.2d 811, 838-39 (Iowa 2016); State v. Bassett, 198 Wash.App. 714, 743-45 (Wash. Ct. App. 2017), review granted, No. 94556-0 (Wash. Oct. 4, 2017).
6 See Juvenile Sentencing Project at Quinnipiac University School of Law and the Vital Projects Fund, Juvenile Life Without Parole Sentences in the United States, November 2017 snapshot, available at https://www.juvenilelwop.org/wp-content/uploads/November%202017%20Snapshot%20of%20JLWOP%20Sentences%2011.20.17.pdf.
7 See U.N. Convention on the Rights of the Child, GA Res. 44/25, annex, 171, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).
8 567 U.S. 460, 471 (2012).
9 136 S. Ct. 718 (2016).
10 Id. See also Tatum v. Arizona, No. 15–8850 (U.S. October 31, 2016) (Sotomayor, J., concurring in the decision to grant, vacate, and remand) at *2 ("Miller and Montgomery require a sentencer to ask [] whether the petitioner was among the very rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.")
11 North Carolina data provided by Ben Finholt for NCPLS under a grant from the Vital Projects Fund, on file with Color of Change. North Carolina's numbers are worse than the national average. See, e.g., The Sentencing Project, The Lives of Juvenile Lifers: Findings from a National Survey (2012) (finding that juveniles sentenced to life without parole are 97 percent male and 60 percent black, based on a survey of more than 1,500 prisoners who were sentenced to prison terms of life without parole when they were between the ages 13 to 17), available at http://sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf.
12 Order Regarding Resentencing Pursuant to Miller v. Alabama at 2, State v. Johnston, No. 95CRS78299 (N.C. Sup. Ct. May 18, 2018).
13 State v. Williams, ____ N.C. App. ___, No. 16-178 (2018).
14 Candidate Forum of April 30, 2018, on file with Color of Change.
15 See Roper, 543 U.S. at 568 (prohibiting the death sentence for juveniles).
16 See, e.g., Sara B. Johnson et al., Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy,
45 J. Adolescent Health 3, 216-21 (2010), available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/; see also Fair Punishment Project, Juvenile Life Without Parole in Wayne County: Time to Join the Growing National Consensus? 5-6 (2016), available at http://fairpunishment.org/wp-content/uploads/2016/07/FPP-WayneCountyReport-Final.pdf
17 See Bonnie Halpern-Fischer & Elizabeth Cauffman, Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults, 22 J Applied Dev. Psychol. 257, 265-268 (2001).
18 See The Sentencing Project, Juvenile Life Without Parole: An Overview 3 (2017), available at https://www.sentencingproject.org/wp-content/uploads/2015/12/Juvenile-Life-Without-Parole.pdf.
19 See Laurence Steinberg & Elizabeth Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 AM. Psychol. 1009, 1012, 1014-15 (2003).
20 Miller, 567 U.S. at 479.
21 Id. at 472.
22 Id. at 480.
23 Graham, 560 U.S. at 68 (quoting Roper, 543 at 573).
24 See supra notes 15-18 and accompanying text.
25 Miller, 567 at 490 (internal quotation marks omitted); see also Adams v. Alabama, 136 S. Ct. 1796, 1800 (2016) (Sotomayor, J., concurring) (citing the "Court's repeated exhortation that the gruesomeness of a crime is not sufficient to demonstrate that a juvenile offender is beyond redemption").

26 Montgomery, 136 S. Ct. at 726. See also Graham, 560 U.S. at 75 ("What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation . . . Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives."); Montgomery, 136 S. Ct. at 736 ("Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of Miller's central intuition—that children who commit even heinous crimes are capable of change.").
27 2012 N.C. Sess. Laws Ch. 148 (S. 635), codified at N.C.G.S. §§ 15A-1340.19A et seq.
28 N.C.G.S. § 15A-1340.19B(a)(1).
29 § 15A-1340.19B(a)(2) and (c).
30 § 15A-1340.19B(c).
31 § 15A-1340.19C(a) (emphasis added).
32 State v. James, ___ N.C. ___, 18, No. 514PA11-2 (2018), available at https://appellate.nccourts.org/opinions/?c=1&pdf=36980.
33 Id. at 24.
34 Id. at 26.
35 Id.
36 Id. at 31.
37 State v. Williams, ____ N.C. App. ___, No. 16-178 (2018), available at https://appellate.nccourts.org/opinions/?c=2&pdf=34502.
38 Id. (emphasis added).
39 Roper, 543 U.S. at 570.
40 Adams, 136 S. Ct. at 1800 (Sotomayor, J., concurring).
41 Defendant-Appellant's New Brief at 7-8, State v. James, No. 514PA11-2 (N.C. Ct. App. May 17, 2017).
42 See Adrien T. Morene, NC Dep't. of Pub. Safety Offender Pub. Info., available at http://webapps6.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=1213797&searchLastName=Morene&listurl=pagelistoffendersearchresults&listpage=1 (last visited March 14, 2018).
43 Defendant-Appellant's New Brief, supra note 41, at 8.
44 Id. at 5.
45 Id. at 6.
46 Id.
47 Id. at 5.
48 Id.
49 Id.
50 Id. at 9.
51 See Resentencing Order at 5, 9, State v. James, No. 06CRS222499 (N.C. Super. Ct. Dec. 12, 2014).
52 Id.
53 Id.
54 Transcript of Closing Argument at 412, State v. James, No. 514PA11-2 (N.C. Ct. App. May 17, 2017).
55 Id. at 424-25.
56 See id. at 436.
57 State v. James, __ N.C. App. __, __ 786 S.E.2d 73, 84 (2016).
58 State v. Williams, ____ N.C. App. ___, No. 16-178 (2018).
59 Id. (quoting State v. Sims, ____N.C. App. ____, No. 17-45 (2018 WL 3732800)).
60 Order Pursuant to N.C.G.S. § 15A-1340.19B, State v. Blair, Nos. 03CRS248566-67, 03CRS14736 (N.C. Super. Ct. Dec. 22, 2016).
61 Transcript Excerpt at 34, State v. Blair, Nos. 03CRS248566-67, 03CRS14736 (N.C. Super. Ct. Dec. 22, 2016).
62 Order, State v. Blair, supra note 60.
63 State v. Blair, 631 S.E.2d 237 (Table), 2006 WL 1826165 at *1 (N.C. Ct. App. 2006).
64 Transcript Excerpt, supra note 61, at 20-22.
65 Id. at 8.
66 Id. at 9.
67 Order, State v. Blair, supra note 60.
68 Id.

69 Id.
70 Id.
71 Id.; Transcript Excerpt, supra note 61, at 34.
72 Order Pursuant to N.C.G.S. § 15A-1340.19B, State v. Medina, Nos. 03CRS211828-29 (N.C. Super. Ct. Dec. 14, 2016).
73 Id.
74 Id.
75 Transcript Excerpt at 13, State v. Medina, Nos. 03CRS211828-29 (N.C. Super. Ct. Dec. 14, 2016).
76 See, e.g., id. at 15 (claiming there was "no evidence of a psychological deficit or impulse control that is especially different than any other sixteen-and-a-half year old").
77 Order, State v. Medina, supra note 72.
78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
83 Brief for Petitioner at 6, Johnston v. Stamey, No. 01-CV-363 (W.D.N.C. Oct. 18, 2001) (Doc. 9).
84 Id. at 11.
85 Id.
86 Transcript at 7, 12, 16, State v. Johnston, No. 95CRS78299 (N.C. Sup. Ct. Apr. 20, 2018).
87 Order Regarding Resentencing Pursuant to Miller v. Alabama at 2, State v. Johnston, No. 95CRS78299 (N.C. Sup. Ct. May 18, 2018).
88 Transcript, supra note 86, at 7, 9.
89 Id. at 6-7.
90 Id.
91 Id. at 7.
92 Order, State v. Johnston, supra note 87, at 1.
93 Id. at 8.
94 Brief for Petitioner, supra note 82, at 9-10.
95 Transcript, supra note 85, at 62; Order, State v. Johnston, supra note 82, at 3.
96 Transcript, supra note 85, at 62.
97 Id. at 66.
98 Id. at 90.
99 Id. at 92.
100 See N.C.G.S. § 15A-1340.19B(c).
101 Transcript, supra note 86, at 92-93; Hayden v. Keller, 134 F. Supp. 3d 1000, 1009-1011 (W.D.N.C. 2015).
102 Transcript, supra note 86, at 93.
103 Order, State v. Johnston, supra note 86, at 5.
104 Id. at 3.
105 State v. Williams, ____ N.C. App. ___, No. 16-178 (2018).
106 Id.
107 Miller, 132 S. Ct. at 2465 (emphasis added).
108 Id. at 2464.