IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 26770

STATE OF SOUTH DAKOTA,
Plaintiff/Appellee,

vs.

SHAWN CAMERON SPRINGER,
Defendant/Appellant,

Appeal from the Circuit Court
Sixth Judicial Circuit
Pierre, South Dakota

The Honorable Kathleen F. Trandahl

BRIEF OF APPELLANT

Jamie L. Damon
Damon Law Office
PO Box 1115
Pierre, South Dakota 57501

Attorney for Defendant/Appellant

Thomas P. Maher
Stanley County State's Attorney
201 N. Euclid Ave. Ste. 1
Pierre, SD 57501

Marty J. Jackley
Attorney General of South Dakota
1302 E. Highway 14, #1
Pierre, South Dakota 57501

Ann C. Meyer
Assistant SD Attorney General
1302 E. Highway 14, #1
Pierre, SD 57501

Attorneys for Plaintiff/Appellee

Notice of Appeal filed July 29, 2013

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_____

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

Throughout this brief Defendant and Appellant Shawn Cameron Springer will be referred to as "Springer" or "Appellant." Plaintiff and Appellee will be referred to as the "State." References to the Transfer Hearing Transcripts will be "TH" followed by the appropriate page number. References to the Arraignment and Plea Transcripts will be "AT." References to the Sentencing Transcript will be designated as "ST." References to the Motion to Correct Sentence Transcript will be designated as "CST." The appropriate page will follow each reference. All references to the settled record will be denominated "SR," followed by either the page number from the Clerk's index or the designation used in that index.

JURISDICTIONAL STATEMENT

Defendant Shawn Cameron Springer respectfully appeals from the Order Denying his Motion to Correct Sentence which was entered on June 28, 2013. (SR 484). The scope of review is authorized under SDCL 23A-32-9. This appeal is properly before the Court pursuant to SDCL 23A-31-1 which states in part that "a court may correct an illegal sentence at any time . . . "[1].

REQUEST FOR ORAL ARGUMENT

Mr. Springer respectfully requests the privilege of appearing before this Court for oral argument in this appeal.

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[1] 23A-31-1 (Rule 35) Correction or reduction of sentence--Time permitted--Post-conviction remedies unimpaired

A court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided in this section for the reduction of sentence. A court may reduce a sentence:

(1) Within two years after the sentence is imposed;

(2) Within one hundred twenty days after receipt by the court of a remittitur issued upon affirmance of the judgment or dismissal of the appeal; or

(3) Within one hundred twenty days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction;

whichever is later. A court may also reduce a sentence upon revocation of probation or suspension of sentence as provided by law. The remedies provided by this section are not a substitute for nor do they affect any remedies incident to post-conviction proceedings.

STATEMENT OF THE ISSUES

I. WHETHER THE COURT ERRED IN DENYING APPELLANT'S MOTION TO CORRECT AN ILLEGAL SENTENCE

The trial court held that Appellant's Sentence was not illegal.

Most relevant authority:

Roper v. Simmons, 543 U.S. 551 (2005).
Graham v. Florida, 560 U.S. 2_ 130 S.Ct. 2011, 176L.Ed. 2d 825 (2010)
Miller v. Alabama, 567 U.S. 2_, 132 S. Ct. 2455, 183L.Ed. 407 (2012)

SDCL 22-19-1(2)
SDCL 23A-27-48

STATEMENT OF THE CASE

Shawn Cameron Springer was initially arrested as a juvenile for the January 26, 1996 kidnapping of Michael Hare, a Class 1 felony. Mr. Springer's date of birth is April 5, 1979. (TH. p. 604, 610). Springer was 16 years of age both at the time of the offense and at the time of his transfer hearing. *Id.* After a transfer hearing on March 25-27, 1996, Springer was charged by complaint as an adult in Stanley County, CR: 96-29.. *Id.* at 608.

Springer's juvenile co-defendant Paul Jensen was charged separately, tried by jury and convicted of murder and sentenced to mandatory life in prison without the possibility of parole. He was just granted a new sentencing hearing in his case. (*State v. Jensen*, Stanley County, CR: 96-49).

Springer's initial appearance was held on March 27, 1996. (TH. p. 609 - 622).

An indictment was filed on April 4, 1996 charging Mr. Springer with 13 counts with Count I, Murder in the First Degree, Class A felony, punishable by life in prison or death by lethal injection; or in the alternative, Count II, Aiding and Abetting Murder in the First Degree, with same punishment as Count 1; Count III, Felony Murder in the First Degree, Class A felony, punishable by death or life imprisonment; or in the alternative, Count IV, Aiding and Abetting Felony Murder in the First Degree, Class A felony, punishable by death or life in prison; Count V, Felony Murder in the First Degree, Class A felony, punishable by death or life in prison; or in the alternative, Count VI, Aiding and Abetting Felony Murder in the First Degree, Class A felony, punishable by death or life in prison; Count VII, Robbery in the First Degree, Class II felony, with a maximum punishment of 25 years in prison or a $25,000.00 fine or both; or in the alternative, Count VIII, Aiding and Abetting Robbery in the First Degree, a Class II felony, punishable by 25 years in prison and/or a $25,000.00 fine; Count IX, Grand Theft, Class IV felony, punishable by ten years in prison and/or a $10,000.00 fine; Count X, Possession of Stolen Motor Vehicle, Class IV felony punishable by five years in prison and/or a $5,000.00 fine; Count XI, Kidnapping, Class A felony, with the allegations of gross, permanent injury punishable by life in prison or death; or in the alternative, Count XII, Aiding and Abetting Kidnapping, Class A felony, with the allegations of gross, permanent injury, Class A felony, punishable by life in prison or death and Count XIII, Conspiracy to Commit First Degree Murder, Class 3 felony, with a maximum punishment of 15 years in prison and/or $15,000.00 fine. (SR. 8).

The Court advised the 16-year-old defendant of his constitutional rights, the

counts against him and the statutory maximum sentences. (TH. p. 609-622). Before a preliminary hearing could be held, Springer was indicted by Indictment with the same charges. (SR. 22).

On June 18, 1996 in open court, the State dismissed Count I of the Indictment, which took the death penalty off the table. (SR. 79).

A change of venue was granted and the jury trial had commenced in Selby, South Dakota. At trial, Springer was represented by court appointed counsel, Tim Rensch of Rapid City, Steve Smith of Chamberlain and Pamela Ireland of Kadoka. (AT. 3).

During voir dire, plea negotiations were ongoing. On August 12, 1996, four months after Mr. Springer turned 17, he entered into a plea agreement. (AT. p. 1-67). The plea agreement was stated on the record to include the following. Mr. Springer would plead to kidnapping in violation of SDCL § 22-19-1(2), a Class 1 felony and would provide a written factual basis. (AT. p. 3-4). (SR. 295-301). Mr. Springer was informed that his maximum sentence was up to life in prison. (AT. p. 4, 9). Springer was also informed that this was a different kidnapping charge from that in the Indictment in that this charge did not allege gross personal injury. (AT. p. 4). As part of the plea agreement, Springer agreed to cooperate and do further debriefings with law enforcement and testify if necessary. (AT. p. 4, 5). Both sides were free to recommend any sentence they felt was appropriate. *Id.*

The court ordered a presentence investigation pending sentencing. Sentencing was held on October 15, 1996. At sentencing, the State and the victim's family advocated for life in prison. (ST. p. 1-38).

The court sentenced Springer to 261 years, with credit for time served. (ST. p. 64).

STATEMENT OF FACTS

On August 12, 1996, four months after he turned seventeen, Shawn Cameron Springer, the defendant/appellant, pled guilty of kidnapping in violation of SDCL § 22-19-1(2), a Class 1 felony. (AT. p. 3-4). At the time of sentencing on October 15, 1996 , Mr. Springer had recently turned 17. (ST. p. 57).

Sentencing was held on October 15, 1996. During argument, Springer's attorneys were surprised by the disingenuousness of the States' argument. (ST. p. 38-39). His attorneys reminded the court that Springer testified on behalf of the State. (ST. p. 39). Springer argued through his attorneys that he did not intend for a murder to take place. (ST. p. 40). Springer's attorneys argued that he was the one who came up with the idea of robbing the cab, he was equally culpable in planning the robbery, but he accepted responsibility by pleading and testifying in Jensen's trial. His lawyers argued that he was clearly not the person who committed the final, fatal act. (ST. p. 44).

Springer's attorneys argued that many people do not receive parole in the discretionary system. (ST. p. 47). Springer's attorneys argued for a term of years with a certain number suspended on the condition that Springer obey all laws, to provide the court assurances that he would comply with and obey all of the rules imposed by the parole board. (ST. p. 46, 47).

Springer's attorneys argued that he was a person who will be able to give back to society, he was smart and was a person who never had real guidance. (ST. p. 48). Springer did not know his father and had only met him once, many years prior to the

commission of this offense. (ST. p. 49). Springer never had any role models or other positive peer pressure. (ST. p. 49).

Springer's attorneys argued that even if he received a 30-year sentence and no parole, he would spend one half of his life in prison. (ST. p. 50). Springer's attorneys pointed out that on August 12, 1996 when he entered into a plea agreement, that he stood up in court and gave an factual basis statement which later took a two-day deposition to fully develop. (ST. p. 51). Springer himself apologized to the victim's family. ST. p. 59).

The court in sentencing Springer stated that the overriding consideration was that the victim was dead. (ST. p. 63). The court acknowledged that Springer, at a minimum, had a part in planning the robbery. *Id.* Springer pled guilty and saved the time and expense of trial and saved the victim's family one trial to have to go through. *Id.* Springer testified against the codefendant. *Id.* Springer appeared to the court to be contrite. *Id.*

The court stated that it was imposing a sentence that "may be a life sentence but may not be." *Id.* The court stated that it believed in the possibility of rehabilitation. *Id.* The court sentenced Springer to 261 years in prison which translated into a flat time sentence of 132 years. (ST. p. 64). The court stated "So in effect this is a life sentence". *Id.* The court estimated that with Mr. Springer being a first-time offender he would be eligible for parole in approximately 33 years. *Id.* The court gave him credit for time served. *Id.*

While Springer ultimately pled and cooperated and testified against Jensen,

Jensen refused to cooperate and insisted on a jury trial. On October 4, 1996, a Stanley County jury found Paul Jensen guilty of the crimes of murder in the first degree, robbery in the first degree, aiding and abetting grand theft, possession of a stolen motor vehicle, kidnapping, and conspiracy to commit robbery in the first degree. (Stanley County CR 96-49). On November 26, 1996, Paul Jensen was sentenced to statutorily mandated sentences of life without parole on both the murder and kidnapping. Jensen was fourteen years old at the time of the offense and fifteen years old on the date of sentencing. *Id.*

Springer appeals from his sentence which is clearly a de facto life sentence.

ARGUMENT

I. WHETHER THE COURT ERRED IN DENYING APPELLANT'S MOTION TO CORRECT AN ILLEGAL SENTENCE

Springer argues that his sentence is a de facto life sentence. While it is not couched as "life without the possibility of parole", his sentencing scheme is under the old parole system. Even the sentencing court stated that he would not flat time until "132 years. This is beyond your lifetime. So, in effect, this is a life sentence." (ST. p. 64). SDCL 23A-27-48 (now repealed) governed inmate parole eligibility determinations for inmates sentenced before July 1, 1996. *State v. Semrad*, 2011 S.D. 7, ¶19. The *Semrad* Court held that parole eligibility "is not part of a defendant's sentence" and the statutes contemplate advisement only. *Id.* at ¶ 7, citing *Roden v. Solem*, 411 N.W.2d 421, 422.

Old system inmates are only entitled to discretionary parole, while new system

inmates are entitled to parole as a matter of right, in accordance with SDCL 24-15A-38. *Acevedo v. SD Board of Pardons and Paroles*, 2009 S.D. 45, ¶10.

The State contends that Springer is not eligible for a sentence modification because he does have the possibility of parole in 33 years. (CST p. 15-16).

During the past few years, there has been an evolution of cases regarding sentencing of juveniles. In 2005, the United States Supreme Court invalidated a death sentence for all juvenile offenders under the age of 18. *Roper v. Simmons,* 543 U.S. 551 (2005).

In 2010, the Unites States Supreme Court handed down its decision in *Graham v. Florida*, 560 U.S. 2_ 130 S.Ct. 2011, 176L.Ed. 2d 825 (2010) declaring sentences of life without parole for non-homicide offenses committed by juveniles unconstitutional.

On June 25, 2012, the United States Supreme Court, in *Miller v. Alabama*, 567 U.S. 2, 132 S. Ct. 2455, 183L.Ed. 407 (2012), ruled that a sentencing scheme that mandates a sentence of life without parole for juvenile offenders is unconstitutional. *Miller* held that sentencing juveniles to mandatory life without parole absent any consideration of mitigating circumstances, constitutes cruel and unusual punishment in violation of the Eighth Amendment.

It is clear, in the wake of *Miller/Graham/Roper,* that for juvenile offenders, even those tried as adults, it is no longer constitutionally permissible to automatically impose a sentence of life without individualized sentencing. Although the *Miller* Court banned mandatory life without parole sentences for juvenile homicide offenders, it left open the possibility, in rare instances, of a constitutionally permissible imposition of a sentence of

life without parole – but only after careful examination of a number of factors relating to overall culpability and capacity for rehabilitation, including:

1. Chronological age and related immaturity, impetuosity, and failure to appreciate risks and consequences;
2. Family and home environment;
3. Circumstances of the homicide;
4. Incompetency associated with youth in dealing with law enforcement in the adult criminal justice system;
5. The possibility of rehabilitation. *Miller*, at 2468-69.

Based on the decisions in *Miller/Graham/Roper*, Springer filed a pro se motion to correct his sentence with the court.

Both *Miller* and *Graham* implicate two strands of precedence reflecting the Supreme Court's concern with proportional punishment. *Graham* adopted categorical bans on sentence and practices based on mismatches between the culpability of a class of offenders with the severity of the punishment. See, *Graham*, 560 U.S. at 2_ (Slip Opinion at 9-10).

Graham further likened life without parole for juveniles to the death penalty itself, thereby evoking a second line of precedence. In reaching its decision, the *Miller* Court merged the two lines of precedence from the *Graham* decision and relied upon neuroscience, developmental psychology, and common sense, concluding that children are "constitutionally different" from adults. Miller at 12-13.

In doing so, the Court extended precedence it had recently announced in *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L.Ed. 2_ _ 1 (2005) (invalidating death penalty for juvenile offenders under the age of 18) and Graham which invalidated life without parole sentences for juveniles convicted of non-homicide events.

The mandate of *Miller/Graham/Roper* is clear. What is somewhat less clear is the impact on juveniles, including Mr. Springer who was sentenced to 261 years with no assurance of parole, and whose convictions had become "final" prior to the Court's ruling in these cases.

The State argues that *Graham* and *Miller* do not apply since they deal with life sentences without the possibility of parole. (CST. p. 13-16).

However, the United States Supreme Court has made it very clear that various factors must be examined to determine sentences for juveniles. While *Graham/Miller/Roper* do not specifically address a 261-year sentence when parole is discretionary after 33 years, the opinions do discuss how rare life sentences should be when dealing with juvenile offenders due in part to proportionality. *Graham* held that sentences for juvenile offenders and adults are the same in name only. (*Miller* at 12 citing *Graham* at 20). The penalties are obviously more severe for juveniles.

In transferring Springer from juvenile to adult court the court found the following. on the record:

1. That Springer was born on April 5, 1979 and is sixteen (16) years old – both at time of the alleged offenses and at time of transfer;
2. That prosecutive merit existed in the murder of a person, and that the killing was aggressive, violent, premeditated and willful;
3. That no adults were involved in the crimes;
4. That Springer had a very lengthy prior juvenile record for serious offenses in Minnesota;
5. That Springer had history of deteriorating grades, attendance and conduct in school;
6. That juvenile court does not have adequate facilities to protect the public from future misconduct
7. That this is little likelihood of reasonable rehabilitation of Springer by use of services currently available to juvenile court;
8. That it is contrary to the best interests of the child and the public for this case to

be in adult court;

9. That Springer did not rebut the presumption that it is not in the best interests of the public to retain jurisdiction over a 16-year-old child who is charged with a Class A, B, 1 or 2 felony.

(TH. p. 604-608).

The *Miller* Court goes on at great length about how juveniles have diminished culpability and greater prospects for reform. *Miller,* 567 U.S., at _ (slip op., at 8). *Miller* cited *Graham* in stating that juveniles are "less deserving of the most severe punishments." *Graham*, 560 U.S., at _ (slip op., at 17).

Miller cited *Roper* for three factors regarding the gaps between adults and juveniles:

1. Lack of maturity and underdeveloped sense of responsibility;
2. Vulnerability to negative influences and outside pressures and limited control over their own environment and "lack the ability to extricate themselves from horrific, crime-producing settings"
3. Character is not "well formed" in children, traits are "less fixed" and actions less likely to be "evidence of irretrievable depravity. (*Roper*, 543 U.S.; at 569-70).

The ironic fact is no psychologists testified at Springer's transfer hearing. The court did not order a psychological evaluation as part of the presentence report. At sentencing the Court stated:

> You're under the old system of sentencing parole . . . 261 years translates to a flat time sentence of 132 years, which I believe is beyond your lifetime, so in effect this is a life sentence.
> But there is also a glimmer of hope down the road, because with your being a first-time offender, you would be eligible for parole, by my calculations, at the conclusion of 33 years. That gives you an opportunity to convince someone in the future that you can be trusted to be back out of prison. I think that the factors that you - - that I considered in mitigation of this sentence require you to have that opportunity at some point (ST. p. 64).

Since the sentencing court did not elucidate any "mitigation" factors on the record it is impossible to tell what the court did consider. The court did not have the benefit of a psychological report, because it never requested one. This language from the sentencing court demonstrates that the court seventeen (17) years ago did not appreciate the differences in brain development, and the other characteristics and gaps between juveniles and adults that our Supreme Court now recognizes and has affirmed in a series of cases.

The sentencing court had earlier ruled that Springer should be tried as an adult. Few of the court's findings at the transfer hearing or at sentencing show that the Court considered *Miller/Graham/Roper* standards such as: chronological age and related immaturity, impetuosity, and failure to appreciate risks and consequences; family and home environment; circumstances of the homicide; incompetency associated with youth in dealing with law enforcement in the adult criminal justice system; the possibility of rehabilitation.

The factors the court did consider weighed heavily against Springer. Specifically the court mentioned Springer's age and circumstances of the homicide. However, nothing about Springer was ever elucidated as a "mitigation" factor. *Miller* also considers the *Roper* gaps in child development as compared to an adult. Yet, at the transfer hearing and at sentencing, Springer's court did not consider any of these factors. The court had previously sat through a three-day transfer hearing, had access to the entire file and had a presentence report to consider.

The presentence report does not appear to consider any of these gaps. For instance, from reading the presentence report one finds out very little about Springer as a person. The presentence report is void of mention of his immaturity, impetuosity, failure to appreciate risks and consequences. Also absent from this report is any mention of incompetency associated with Springer dealing with law enforcement in adult court. The report fails to mention anything about rehabilitation prospects, Springer's underdeveloped sense of responsibility; his vulnerability to negative influences and outside pressures and limited control over his environment and "lack the ability to extricate himself from horrific, crime-producing settings". The presentence report does not mention how as a child, Springer's character was not "well formed", his traits were "less fixed" and his actions less likely to be "evidence of irretrievable depravity."

This was a high profile case due to the nature and circumstance of the crime. Both defendants' cases were moved outside of Stanley County. Even though Jensen had a different judge, the court would naturally look to make the sentences proportional and knowing that life without parole was statutorily mandated for Jensen, strive for proportionality. The sentencing court seemed to put little importance on Springer's cooperation efforts at Jensen's trial. The court stated, "my estimate of the State's case against Paul Jensen was that the state would have won it with or without Mr. Springer's testimony." (ST. p. 63).

This Court in *Bult v. Leapley,* 507 N.W.2d, 325 (SD 1993) held that a life sentence for kidnapping and sexual contact with a child under the age of 15 shocked the conscious and remanded for resentencing. In *Bult III,* (*State v. Bult*, 95 SDO 169, 529

N.W.2d 197 (SD 1995)), the sentencing court heard testimony from both a state and defense psychologist regarding sentencing. The *Bult III* Court remanded after finding that the sentencing court failed to individually evaluate the defendant in light of the required sentencing factors including rehabilitation.

Bult II held that sentences that shock the conscious violate the Eighth Amendment to the United States constitution and Article VI 23 of South Dakota's Constitution. (507 N.W.2d 325, 326 (S.D. 1993)). The test used in *Bult* was two-fold.[2] However, *Bult* was decided before the *Miller/Graham/Roper* cases. The US Supreme Court now mandates that sentencing courts take gaps between adults and children into consideration as well as a careful examination of a number of factors relating to overall culpability and capacity for rehabilitation.

Springer's sentencing judge failed to consider these factors and the gaps between adults and juveniles and instead made an off hand comment that maybe he could convince someone in the future that he could be let out of prison. Yet, Jensen now has the opportunity to be resentenced with all the information necessary for the court to individually evaluate him in light of sentencing factors propounded in the *Miller/Graham/Roper* Courts.

[2] "First, is the punishment so excessive or so cruel 'as to meet the disapproval and condemnation of the conscience and reason of men generally.' And second, whether the punishment is so excessive or so cruel as to shock the collective conscience of this court." *Bult* at 326 citing, *State v. Castaneira,*502 N.W.2d 112, 114-115 (S.D. 1993) quoting

CONCLUSION

The *Miller/Graham/Roper* Courts makes it clear that life sentences for juveniles are prohibited because they are disproportionately harsh on children. While the state may argue that Springer is not facing a life sentence, it is clear that under a discretionary standard, Springer could spend the rest of his life in prison.

Under the Eighth Amendment to the Constitution of the United States, children are now protected from disproportionate sentences if they receive life without the possibility of parole. Springer should be sentenced by a court that has the benefit of knowing and considering his characteristics, his overall culpability and his chances for rehabilitation.

By Springer's own admission during his presentence interview, he stated he expected to get about $100.00 during the robbery. It defies logic that someone who has a developed mind and can understand consequences, would steal a gun, call a cab driver, then go to the country to steal $100.00 if he actually understood the risks involved or appreciated the gravity of his actions.

Shawn Springer respectfully requests this Court to remand his case back to the sentencing court for a sentencing which actually considers the factors elucidated in *Miller/Graham/Roper* Courts.

State v. Gehrke, 491 N.W.2d 421, 423 (S.D. 1992).

Respectfully submitted this ____ day of _____, 2013.

_____
Jamie L. Damon
Attorney at Law
PO Box 1115
Pierre, South Dakota 57501
Tel: 605-224-6281
dlo@midconetwork.com

Attorney for Appellant/Defendant

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME, LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I hereby certify that this brief was prepared using Microsoft ® Word 2000, in Times New Roman font, 12 point, contains 3,970 words and 24,688 characters (with spaces), in proportional spacing. Type Volume Limitation is therefore in compliance with SDCL 15-26A-66(b).

_____
Jamie L. Damon

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing Appellant's Brief was made upon Appellee by mailing by first class mail, postage prepaid, two true and correct copies thereof to Appellee's attorneys of record at the post office address as shown, this ___ day of December, 2013:

Thomas P. Maher
Stanley County State's Attorney
201 N. Euclid Ave., Ste. 1
Pierre, SD 57501

Marty J. Jackley
Attorney General of South Dakota
1302 E. Highway 14, #1
Pierre, South Dakota 57501

Ann C. Meyer
Assistant SD Attorney General
1302 E. Highway 14, #1
Pierre, SD 57501

_____
Jamie L. Damon

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APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

THE HONORABLE KATHLEEN F. TRANDAHL
Circuit Court Judge

APPELLEE'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

Ann C. Meyer
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Jamie L. Damon
Damon Law Office
Post Office Box 1115
Pierre, SD 57501
Telephone: (605) 224-6281
E-mail: dlo@midconetwork.com

ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed July 29, 2013

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PRELIMINARY STATEMENT

Throughout this brief, State of South Dakota, Plaintiff and Appellee, will be referred to as "State." Shawn Cameron Springer, Defendant and Appellant, will be identified as "Defendant," or "Springer." All other individuals will be designated by name.

Citations to the transcripts of the March 25 through 27, 1996 juvenile transfer hearing (4 volumes), in Stanley County Juv. File No. 96-02, will be identified as "JTH." References to the transcripts in Stanley County Crim. File No. 96-29, which include the August 12, 1996 change of plea and arraignment hearing; the August 19 and 20, 1996 deposition of Shawn C. Springer; the October 15, 1996 sentencing proceeding; and the June 28, 2013 motion to correct sentence hearing, will be designated as "APT," "DEP," "SNT," and "CST," respectively. Citations to the settle record, in Stanley County Crim. File No. 96-29,

Defendant's brief, the presentence report, and exhibit will be identified as "CSR," "DB," "PSR," and "EX," respectively. All references will be followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

This case arises from Defendant's August 12, 1996 guilty plea to Kidnapping, in violation of SDCL 22-19-1(2). CSR 1-8, 14-22, 79, 295-99, 342-43, 377-78; APT 1-16; SNT 1-66; CST 1-20. Springer is challenging an Order Denying his Motion to Correct Illegal Sentence, which was filed on June 28, 2013, by the Honorable Kathleen F. Trandahl, Sixth Judicial Circuit, Stanley County. CSR 372-80, 484, 487. Defendant apparently has filed this appeal based upon SDCL §§ 23A-31-1 (1978 version) and 23A-32-9. DB 2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER JUDGE TRANDAHL PROPERLY REJECTED DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE?

The circuit court's decision was appropriate.

Miller v. Alabama, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)

Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)

Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)

People v. Lehmkuhl, 2013 WL 3584754 (Colo. App. June 20, 2013) (unpublished)

STATEMENT OF THE CASE

This matter involves the kidnapping of Michael Hare, who was a taxi cab driver in Pierre, South Dakota, and the events which resulted in his execution-style murder by handgun are detailed, in *State v. Jensen,* 1998 S.D. 52, ¶¶ 1-17, 579 N.W.2d 613-16. Defendant (date of birth 04/05/79) was sixteen years old at the time of his crime. CST 5; EX A. The Honorable Max A. Gors transferred Springer's juvenile case, in Stanley County Juv. File No. 96-02, to adult court after an extensive hearing on March 25 through 27, 1996. JTH 1-622. Defendant's juvenile co-defendant, Paul Dean Jensen, was charged separately, in Stanley County Crim File No. 96-49 and was transferred to adult court; Jenson was tried before a jury and received a mandatory sentence of life in prison for first degree murder; and his 2013 sentencing challenge based upon *Miller v. Alabama,* 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), is currently pending at the circuit court level.

On March 27, 1996, the Stanley County State's Attorney filed a Complaint, which charged Springer with: Count I--Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4 and 22-16-12; or in the alternative, Count II--Aiding and Abetting Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4, 22-16-12 and 22-3-3; Count III--Felony Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4,

22-16-12 and 22-30-1; or in the alternative, Count IV--Aiding and Abetting Felony Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4, 22-16-12, 22-3-3 and 22-30-1; Count V--Felony Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4, 22-16-12 and 22-19-1; or in the alternative, Count VI--Aiding and Abetting Felony Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4, 22-16-12, 22-19-1 and 22-3-3; Count VII--Robbery in the First Degree, Class 2 felony, in violation of SDCL §§ 22-30-1 and 22-30-6; or in the alternative, Count VIII--Aiding and Abetting Robbery in the First Degree, Class 2 felony, in violation of SDCL §§ 22-30-1, 22-30-6 and 22-3-3; Count IX--Grand Theft, Class 4 felony, in violation of SDCL §§ 22-30A-1 and 22-30A-17; Count X--Possession of a Stolen Motor Vehicle, Class 5 felony, in violation of SDCL 32-4-5; Count XI--Kidnapping, Class A felony, in violation of SDCL 22-19-1; or in the alternative, Count XII--Aiding and Abetting Kidnapping, Class A felony, in violation of SDCL §§ 22-19-1 and 22-3-3; and Count XIII--Conspiracy to Commit First Degree Robbery, Class 3 felony, in violation of SDCL §§ 22-30-1, 22-30-6 and 22-3-8. CSR 1-8.

The Honorable Max A. Gors appointed Timothy J. Rensch and Steven R. Smith to represent Defendant on March 28, 1996. CSR 11-12. On April 4, 1996, a Stanley County Grand Jury indicated Springer with the same crimes charged in the Complaint. CSR 14-22, 432-40.

Defendant's defense team filed a litany of pretrial motions, which included a June 17, 1996 Motion for Change of Venue and June 24, 1996 Motion to Require Availability of Psychological and Psychiatric Records. CSR 72-73, 101-02. On June 14, 1996, the Stanley County State's Attorney informed the court by letter, that the prosecution had decided not to seek the death penalty, in Defendant's case. CSR 33, 71, 79. This same prosecutor filed a Dismissal of Count I of the Indictment on June 18, 1996, which charged Springer with Murder in the First Degree, Class A felony, in violation of SDCL §§ 22-16-1(1), 22-16-4 and 22-16-12. CSR 79.

On June 26, 1996, Judge Gors filed an Order, which denied Defendant's Motion to Require Prosecution to Provide Notice of Psychiatric or Psychological Records. CSR 57, 106. This judge filed an Order on June 28, 1996, which changed the venue of Springer's criminal case from Stanley to Bennett County. CSR 137. On July 24, 1996, Judge Gors filed another Order, which changed venue of Defendant's file from Bennett to Walworth County, and scheduled it to begin on August 8, 1996. CSR 189. The court also appointed a third defense attorney, Pamela K. Ireland, to represent Springer on July 29, 1996. CSR 195.

On August 12, 1996, the Stanley County State's Attorney filed both a Complaint and an Information, which charged Defendant with Kidnapping, Class 1 felony, in violation of SDCL 22-19-1(2), because

Springer and his defense attorneys had reached a plea agreement with the prosecution. CSR 295-97; APT 1-16. Judge Gors conducted a change of plea and arraignment hearing on the same date. CSR 295-97; APT 1-16. During this proceeding, Springer knowingly, voluntarily and intelligently pled guilty to Kidnapping, Class 1 felony, in violation of SDCL 22-19-1(2) (1993 form), which carried a potential maximum sentence of life in prison without parole, a $25,000 fine and payment of restitution. CSR 298-99; DEP 1-196; JTH 1-622; APT 3-5, 8-9. Defendant also agreed to cooperate with law enforcement officials, and to testify at Jensen's trial, if necessary. CSR 298-99; APT 3-5.

On October 15, 1996, Judge Gors held a sentencing hearing. CSR 342-43, 377-78; JTH 1-622; SNT 1-66; PSR 1-9. After considering arguments from both parties and a number of mitigating factors, this judge required Springer to serve a term of years in the penitentiary, rather than a life sentence without parole. CSR 342-43, 377-78; JTH 1-622; SNT 62-66; PSR 1-9. The court also ordered that Defendant serve a prison sentence of 261 years; indicated that Springer's flat time penalty would be 132 years; pointed out that Defendant would be eligible for parole in 33 years; gave Springer credit for time served from the date of his arrest; and imposed restitution and the repayment of certain expenses. CSR 342-43, 377-78; SNT 62-66; PSR 1-9.

After Defendant's kidnapping conviction became final, the United States Supreme Court decided *Roper v. Simmons,* 543 U.S. 551, 555-79,

125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Graham v. Florida,* 560 U.S. 48, 52-82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); and *Miller,* 567 U.S. ___, 132 S.Ct. at 2457-75. CSR 342-43, 377-78; SNT 62-66; CST 1-20. On November 23, 2012, Defendant filed a pro se Motion To Correct An Illegal Sentence. CSR 372-80. The State filed a Resistance to Motion to Correct Sentence on December 14, 2012. CSR 381-447. On January 2, 2013, Springer filed pro se Objections of Resistance to Motion to Correct Sentence. CSR 454-55.

The Honorable Kathleen F. Trandahl conducted a Motion to Correct Sentence Hearing on June 28, 2013, and Defendant was represented by his court-appointed counsel, Jamie L. Damon, during this proceeding. CSR 375-76, 448-49, 451-52, 456-58; CST 1-20; EX A. This judge rejected Defendant's claims that he had received a de facto life sentence; determined that Springer had been given a term of 261 years in the penitentiary for kidnapping with the possibility of parole in 33 years, or within his natural life expectancy; and ruled that Defendant would become parole eligible on January 27, 2029, so his sentence was not illegal in this case. CST 17-20; EX A. The court also filed an Order Denying Defendant's Motion to Correct Illegal Sentence on June 28, 2013. CSR 484, 487. On July 29, 2013, Springer filed a Notice of Appeal. CSR 488. Additional procedural details will be presented where necessary.

STATEMENT OF FACTS

As previously noted, the facts which relate to the kidnapping, robbery and murder of Michael Hare, who was shot in the chest and both sides of the head on January 14, 1996, with a stolen weapon are summarized, in *Jensen,* 1998 S.D. 52 at ¶¶ 2-17, 579 N.W.2d at 614-16. To briefly recapitulate, Defendant and his co-defendant, Jensen (who was fourteen years old) kidnapped Hare and directed him to drive his taxi cab to a rural area near Ft. Pierre, so that they could steal his money and split it; Springer sat in the driver's side of Hare's cab and "pretended to be an innocent bystander," while Jensen robbed the victim and shot him three times; and Defendant drove the getaway vehicle until Hare's cab came to rest in a snow bank, during a police chase. *Id.* CSR 298-99; APT 11-13; SNT 11-65; CST 5-6, 17-20. As part of his plea bargain, Springer agreed to cooperate and testify against Jensen, who was convicted of first degree murder, first degree robbery, aiding and abetting grand theft, possession of a stolen motor vehicle, kidnapping and conspiracy to commit first degree robbery. CSR 298-99; APT 3-5, 11-13; SNT 11-65; CST 5-6, 17-20. Jensen was found guilty of first degree murder, in conjunction with his other crimes, and sentenced to life in prison. CSR 298-99; APT 3-5, 11-13; SNT 11-65; CST 5-6, 17-20.

On August 12, 1996, Judge Gors held a change of plea and arraignment hearing; explained Defendant's statutory and

constitutional rights; informed Springer that he was facing a possible maximum sentence of "life in prison plus a $25,000 fine" and restitution to the victim's family, because he had kidnapped Hare for the purpose of facilitating the commission of a robbery. CSR 298-99; DEP 3-196; JTH 8-622; APT 3-10. In addition, this judge made sure that Defendant understood the maximum penalty for his crime and that no one had forced him to plead guilty, or promised him any "special sentence," if he took advantage of a plea deal with the prosecution. CSR 298-99; DEP 3-196; JTH 8-622; APT 3-11. Judge Gors also confirmed that Defendant's guilty plea was knowing, voluntary and intelligent; and that Springer agreed with the written factual basis, which had been filed in Stanley County Crim. File No. 96-29. CSR 298-99; DEP 3-196; APT 11-16. The court further accepted Defendant's guilty plea; found Springer guilty of kidnapping; and ordered a presentence report. CSR 298-99; DEP 3-196; ATP 11-16; PSR 1-9.

On October 15, 1996, Judge Gors conducted a sentencing hearing and considered the individual sentencing factors in Defendant's case. CSR 342-43, 377-78; JTH 8-622; SNT 4-66; PSR 1-9. In addition, this judge took into account Defendant's young age; that Springer had never known his father and had poor role models; that Defendant was a first-time felon but had a history of problems in the juvenile justice system; that Springer was "smart" but had been untruthful during his August 19 and 20, 1996 deposition; that

Defendant was "contrite" about his criminal behavior, but that he had never tried to stop Jensen from killing the victim; and that the "possibility of rehabilitation" existed in Springer's situation. CSR 342-43, 377-78; JTH 8-622; DEP 3-196; SNT 4-66; PSR 1-9. *State v. Lemley,* 1996 S.D. 91, ¶¶ 9-17, 552 N.W.2d 409, 411-13; *State v. Pulfrey,* 1996 S.D. 54, ¶¶ 6-25, 548 N.W.2d 34-40; *State v. Henjum,* 1996 S.D. 7, ¶¶ 5-10, 542 N.W.2d 760, 762-63; *State v. Chase In Winter,* 534 N.W.2d 350, 354-55 (S.D. 1995). Judge Gors also listened to extensive arguments by both sides about the important sentencing concerns, which related to Defendant's criminal conduct; comments from both Springer and his mother; and input from the victim's family. CSR 342-43, 377-78; SNT 4-66; PSR 1-9. The court further imposed a penitentiary term of 261 years upon Defendant, "[b]ecause of all of these" mitigating factors; pointed out that Springer fell under the old system of parole, due to the fact that his crime had been committed prior to July 1, 1996; stated that Defendant would flat time 132 years and be eligible for parole "at the conclusion of 33 years"; and noted that Springer had "a glimmer of hope on down the road" for release from prison. CSR 142-43, 377-78; SNT 62-66; PSR 1-9.

Lastly, Judge Trandahl held a motion to correct sentence hearing on June 28, 2013. CSR 372-447, 454-55, 484, 487; CST 1-20; EX A. This judge emphasized that she had reviewed Defendant's "file in its entirety"; that she had taken into consideration the United States

Supreme Court's recent decisions in *Roper, Graham* and *Miller;* and that *Graham* had held that a mandatory life sentence without parole for juvenile nonhomicide offenders "violates the Eighth Amendment prohibition on cruel and unusual punishment." CSR 372-447, 454-55, 484, 487; CST 17-20; EX A. Judge Trandahl also detailed that Defendant's "room for rehabilitation" was taken into consideration during his October 15, 1996 sentencing hearing, and "the fact that you were very young and that there was a lot of ability for you to move forward from that." CSR 372-447, 454-55, 484; 487; CST 19; EX A. The court also found that Defendant had "plea bargained and pled guilty" to kidnapping, which avoided a mandatory life sentence in the penitentiary without parole; that Springer had received a term of 261 years in prison, which gave him the chance for parole within his natural lifetime; that Defendant would become parole eligible on January 27, 2029 (or at the age 49); and that Springer's sentence was not illegal and "fell well within the statutory scheme" in place at the time of his crime. CSR 372-447, 454-55, 484, 487; APT 3-16; SNT 62-66; CST 19; PSR 1-9; EX A. Additional factual matters will be addressed where appropriate.

ARGUMENT

JUDGE TRANDAHL PROPERLY REJECTED DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE.

A. Background.

Defendant protests that Judge Trandahl made a mistake when she rejected his Motion to Correct Illegal Sentence. DB 8-16; CSR 372-447, 454-55, 484, 487; CST 3-20; EX A. In addition, Defendant contends that he was sentenced to 261 years in the penitentiary on October 15, 1996; that Springer will not flat time until 132 years have elapsed; that he only has the possibility of parole in 33 years based upon South Dakota's old discretionary parole system, "while new system inmates are entitled to parole as a matter of right" under SDCL 22-15A-38; and that his sentence for kidnapping constitutes "a de facto life sentence." DB 8-9, 11-14, 16; CSR 342-43, 377-78; SNT 3-66; PSR 1-9. Defendant also argues that the United States Supreme Court recently issued *Roper, Graham* and *Miller*, which were decided after his kidnapping conviction became final and "do not specifically address a 261-year sentence when parole is discretionary after 33 years," but discuss how rare life sentences should be when dealing with juvenile offenders; that this trilogy of cases requires that the "gaps [in development between] adults and children" must be taken into consideration at the sentencing stage; and that sentencing judges must examine individualized characteristics in both nonhomicide and

homicide juvenile cases. DB 9-16. Defendant further insist that his co-defendant, Jensen, who was convicted of murder, now has "the opportunity to be resentenced with all of the information necessary for the court to individually evaluate him in light of [the] sentencing factors propounded in *Miller/Graham/Roper,*" but that Springer has not been given any chance for "sentencing modification." DB 9, 15-16.

B. Standard of Review.

A defendant's motion to correct an illegal sentence does not permit a challenge to the underlying conviction but "is an attack on the sentence or the sentencing procedure." *State v. Kramer,* 2008 S.D. 73, ¶ 7, 754 N.W.2d 655, 657. "Sentences imposed in an *illegal manner* are within the relevant statutory limits[,] but are imposed in a way which violates a defendant's right to not have his sentence enhanced once [he] has left the judicial branch," and is within the jurisdiction of the State's executive branch. *State v. Thayer,* 2006 S.D. 40, ¶ 14, 713 N.W.2d 608, 613; *State v. Sieler,* 1996 S.D. 114, ¶ 6, 554 N.W.2d 477, 479 (citing SDCL 23A-31-1 (1978 form)). Illegal sentences are "essentially only those which exceed the relevant statutory maximum or violate double jeopardy or an ambiguous or internally contradictory." *Thayer,* 2006 S.D. 40 at ¶ 14, 713 N.W.2d at 613.

C. Analysis.

1. *Defendant's Illegal Sentencing Challenge is Unpersuasive.*

First, State counters that Defendant's sentence for kidnapping is appropriate in this case. At the time of Springer's crime, SDCL 23A-31-1 (1978 version) provided, in relevant part, that "[a] court may correct an illegal sentence at any time" and may correct a sentence imposed in an illegal manner within one-year after the sentence is imposed.[1] As reflected in Judge Trandahl's decision, Defendants attack upon his sentence for kidnapping is unfounded because a term of 261 years in prison, with parole eligibility in 33 years, is not illegal under SDCL 22-19-1(2); does not exceed the relevant statutory limits for his crime (Class 1 felony); and does not violate double jeopardy, or amount to an ambiguous or internally contradictory sanction. DB 8-16; CSR 295-99, 342-43, 377-447, 454-55, 484, 487; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9; EX A. *Kramer,* 2008 S.D. 73 at ¶¶ 6-8, 754 N.W.2d at 655-57; *Thayer,* 2006 S.D. 40 at ¶ 14, 713 N.W.2d at 613 (citing *Sieler,* 1996 S.D. 114 at ¶ 6, 554 N.W.2d at 479); *Pulfrey,* 1996 S.D. 54 at ¶¶ 6-25, 548 N.W.2d at 35-40; *Henjum,* 1996 S.D. 7 at ¶¶ 5-10, 542 N.W.2d at 762-63; *Chase In Winter,* 534 N.W.2d at 354-55. In addition, Springer received the benefit of a plea bargain and avoided a more serious penalty in this case. DB 8-16; CSR 1-8, 295-99, 342-43, 377-447, 454-55, 484, 487; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9;

[1] SDCL 23A-31-1 (2005 form) now provides that a two-year window exists for a sentence "imposed in an illegal manner."

EX A. *Coon v. Weber,* 2002 S.D. 48, ¶¶ 23-24, 644 N.W.2d 638, 647-48; *State v. Clegg,* 2001 S.D. 128, ¶ 2, 635 N.W.2d 578-79; *State v. Ekern,* 2001 S.D. 20, ¶¶ 1-3, 623 N.W.2d 448-49. The one-year limitation period detailed in SDCL 23A-31-1 (1978 form), also has long since expired and Defendant cannot show that his 1996 sentence was somehow imposed in any illegal manner. DB 8-16; CSR 295-99, 342-43, 377-447, 454-55, 484, 487; SNT 3-66; CST 17-20; PSR 1-9; EX A. *Thayer,* 2006 S.D. 40 at ¶ 14, 713 N.W.2d at 613 (citing *Sieler,* 1996 S.D. 114 at ¶ 6, 554 N.W.2d at 479).

2. Miller is Not Retroactive.

Second, State asserts that Judge Trandahl was right for the wrong reason when she denied Defendant's Motion to Correct Illegal Sentence because *Miller* should not be given retroactive effect under the three-prong test formulated in *Cowell v. Leapley,* 458 N.W.2d 514, 517 (S.D. 1990). DB 8-16; CSR 298-99, 342-43, 377-447, 454-55, 484, 487; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9; EX A. *In re Morgan,* 713 F.3d 1365, 1367-68 (11th Cir. 2013) (*Miller* is not retroactive under *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)); *Craig v. Cain,* 2013 WL 69128, at *1-2 (5th Cir. Jan. 4, 2013) (unpublished); *Contreras v. Davis,* 2013 WL 6504654, at *2-4 (E.D. Va. Dec. 11, 2013) (citing *Johnson v. Ponton,* 2013 WL 5663068, at *5 (E.D. Va. Oct. 16, 2013)); *Holland v. Hobbs,* 2013 WL 6332731, at *4-5 (E.D. Ark. Dec. 5, 2013); *Martin v. Symmes,* 2013 WL 5653447, at *14-17 (D.

Minn. Oct. 15, 2013); *Foster v. State,* 2014 WL 211236, at *2-4 (Ga. Jan. 21, 2014) (*Miller* gives sentencing court the discretion to impose life without parole upon juvenile homicide offenders, as long as youth and attendant characteristics are taken into account); *State v. Edwards,* 2014 WL 130986, at *2-3 (La. App. 2 Cir. Jan. 15, 2014) (citing *State v. Tate,* 2013 WL 5912118, at *2-12 (La. Nov. 15, 2013)); *State v. Piper,* 2014 S.D. 2, ¶ 13, (Jan. 8, 2014) (circuit court reached correct result for wrong reason); *State v. Garcia,* 2013 S.D. 46, ¶¶ 17-27, 834 N.W.2d 821, 823-26; *Chambers v. State,* 831 N.W.2d 311, 321-31 (Minn. 2013) (*Miller* is a procedural rule and not a watershed change in juvenile sentencing); *Comm. v. Cunningham,* 81 A.3d 1, 10-11 (Pa. 2013) (*Miller* does not prohibit a penalty for a class of offenders or for type of crime, as in *Roper* and *Graham*); *People v. Carp,* 828 N.W.2d 685, 704-22 (Mich. App. 2012); *Geter v. State,* 115 So.3d 375-85 (Fla. App. 3d Dist. 2012). *But see State v. Mantich,* 2014 WL 503134, at *4-12 (Neb. Feb. 7, 2014); *Toye v. State,* 2014 WL 228638, *2-6 (Fla. App. 2 Dist. Jan. 22, 2014); *State v. Ragland,* 836 N.W.2d 107, 113-17 (Iowa 2013); *Jones v. State,* 122 So.3d 678, 700-03 (Miss. 2013). In addition, Springer, who was convicted of a nonhomicide crime, cannot demonstrate that *Miller* should be given retroactive effect under the three-part test in *Cowell,* 458 N.W.2d at 517. *See also United States v. Orr,* 2013 WL 6478198, at *1-3 (W.D. N.C. Dec. 10, 2013) (citing *Bunch v. Smith,* 685 F.3d 546, 550-53 (6th Cir. 2013)); *Silva v. McDonald,* 891

F. Supp. 2d 1116, 1129-31 (C.D. Cal. 2012); *Atwell v. State,* 128 So.3d 167-69 (Fla. App. 4 Dist. Nov. 13, 2013); *People v. Lehmkuhl,* 2013 WL 3584754, at *1-4 (Colo. App. June 20, 2013) (unpublished); *People v. Lucero,* 2013 WL 1459477, at *1-4 (Colo. App. April 11, 2013) (unpublished). As in *Cowell*, 458 N.W.2d at 517, the Court pointed out that the criteria used in determining the prospective or retroactive application of a case "is a nonconstitutional State decision" and the substance of what is to be applied is a federal constitutional matter. *See also Garcia,* 2013 S.D. 46 at ¶¶ 14-27, 834 N.W.2d at 823-26 (South Dakota adheres to *Cowell* precedent in addressing retroactivity). That Court also found that this test includes: 1) the purpose of the decision; 2) reliance on the prior rule of law; and 3) the effect upon the administration of justice. *Cowell*, 458 N.W.2d at 517.

a. The purpose of the decision.

Applying the first *Cowell* factor, *Miller* should not be retroactively applied in Defendant's situation, which is similar to a post-conviction challenge under SDCL ch. 21-27, because this decision constitutes a new procedural rule, which only changes the method of imposing sentences for juvenile murder offenders, rather than a substantive change in the law. *Craig,* 2013 WL 69128, at *2; *Contreras,* 2013 WL 6504654, at *3-4; *Martin,* 2013 WL 5653447, at *14-17; *Foster,* 2014 WL 211236, at *3; *Tate,* 2013 WL 5912118, at *2-9; *Chambers,* 831 N.W.2d at 321-31; *Cunningham,* 81 A.3d at 10-11; *Carp,* 828 N.W.2d at

704-22; *Geter,* 115 So.3d at 376-85. In addition, *Miller* has no impact whatsoever on improving the accuracy of criminal trials, as required by *Cowell*, 458 N.W.2d at 517-18, and does not totally prohibit the imposition of a life sentence for a juvenile homicide offender, as long as mitigating circumstances are taken into account. *Foster,* 2014 WL 211236, at *3; *People v. Croft,* 2013 WL 6173805, at *3-5 (Ill. App. 1 Dist. Nov. 26, 2013) (*Miller* did not apply when defendant received a discretionary, rather than mandatory life sentence for murder); *Tate,* 2013 WL 5912118, at *2-9; *Garcia,* 2013 S.D. 46 at ¶ 18, 834 N.W.2d at 824; *Chambers,* 831 N.W.2d at 321-31; *Carp,* 828 N.W.2d at 704-22; *Geter,* 115 So.3d at 376-85; *Comm. v. Knox,* 50 A.3d 732, 745 (Pa. Super. Ct. 2012). This new approach in imposing punishment has no correlation to the criminal fact-finding process, to whether an accurate determination of guilt was reached, or to whether Springer is innocent or guilty and should not be given retroactive effect. *Garcia,* 2013 S.D. 46 at ¶ 18, 834 N.W.2d at 824; *Cowell,* 458 N.W.2d at 517-18. There also is a strong need for finality in criminal proceedings, and this new rule of criminal procedure should not undermine Defendant's kidnapping conviction, which became final many years ago. *Ramos v. Weber,* 2003 S.D. 111, ¶ 8, 116 N.W.2d 88, 91 (public policy is best served when litigation has finality); *Cowell,* 458 N.W.2d at 517-20; *Conatny v. Solem,* 422 N.W.2d 102, 104 (S.D. 1998).

b. Reliance upon prior rule of law.

As for the second factor, Defendant tries to minimize the fact that he pled guilty to kidnapping on August 12, 1996; that Judge Gors ordered Springer to serve a term of 261 years in prison on October 15, 1996, which gave him the opportunity for parole in 33 years, or at the age of 49; and that *Miller's* individualized sentencing requirement is limited to situations involving juvenile homicide offenders, who have received a mandatory life sentence without parole. DB 8-16; CSR 1-8, 295-99, 342-43, 377-447, 454-55, 484, 487; APT 3-9; SNT 62-66; CST 17-20; PSR 1-9; EX A. *Foster,* 2014 WL 211236, at *3; *Edwards,* 2014 WL 130986, at *2-3 (*Miller* declined to prohibit mandatory life-without-parole sentences for juveniles except in murder cases) *Atwell,* 128 So.3d at 168-69; *Tate,* 2013 WL 5912118, at *2-12; *Chambers,* 831 N.W.2d at 321-31; *Gonzalez v. State,* 101 So.3d 886-88 (Fla. App. 3d Dist. 2012). In addition, Defendant's sentence was well within the sentencing parameters for the crime of kidnapping, Class 1 felony, in violation of SDCL 22-19-1(2), at the time of his criminal prosecution. DB 8-16; CSR 295-99, 342-43, 377-447, 454-55, 484, 487; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9; EX A. *Lemley,* 1996 S.D. 91 at ¶¶ 9-17, 552 N.W.2d at 411-13; *Chase In Winter,* 534 N.W.2d at 354-55; *State v. Castaneira,* 502 N.W.2d 112, 114-15 (S.D. 1993); *State v. St. Cloud,* 465 N.W.2d 177-78 (S.D. 1991). Springer also reaped the benefit of a plea deal and evaded more serious sanctions in this case. CSR 1-8, 79, 295-99, 342-43, 377-447, 454-55, 484, 487; APT 3-16; SNT 3-66; CST 17-

20; PSR 1-9; EX A. *Coon,* 2002 S.D. 48 at ¶¶ 23-24, 644 N.W.2d at 647-48; *Clegg,* 2001 S.D. 128 at ¶ 2, 635 N.W.2d at 579; *Ekern,* 2001 S.D. 20 at ¶¶ 1-3, 623 N.W.2d at 448-49; *Lemley,* 1996 S.D. 91 at ¶¶ 9-17, 552 N.W.2d at 411-13; *Chase In Winter,* 534 N.W.2d at 354-55.

c. The effect upon the administration of justice.

Applying the third factor, there is a compelling, legitimate and overriding interest in protecting the finality of convictions that are fundamentally and constitutionally sound at the time of sentencing and in harmony with the well-settled rule of law. *Ramos,* 2000 S.D. 111 at ¶ 8, 116 N.W.2d at 91; *Cowell,* 458 N.W.2d at 518 (an interest exists in leaving collateral litigation in a state of final repose and not subject to further judicial revision). In addition, retroactive application of *Miller* disrupts lawfully entered sentences (such as in Defendant's situation), and possible resentencing creates problems with judges who may no longer be available, stale memories and missing witnesses, lawyers who may no longer be accessible, more distress for victims' families and additional appellate proceedings. *Gonzalez,* 101 So.3d at 887-88; *Ramos,* 2000 S.D. 111 at ¶ 8, 616 N.W.2d at 91; *Lemley,* 1996 S.D. 91 at ¶ 15, 552 N.W.2d at 412-13; *Chase In Winter,* 534 N.W.2d at 354-55; *Castaneria,* 502 N.W.2d at 114-15; *Cowell,* 458 N.W.2d at 519. Judge Gors also presided over Defendant's March 25 through 27, 1996 juvenile transfer hearing; had ample information about Springer's background and personality traits; and balanced a number of "harsh

[and] lenient" factors in calculating Defendant's sentence. CSR 298-99, 342-43, 484, 487; JTH 8-622; SNT 4-66; CST 17-20; PSR 1-9; EX A. *Pulfrey,* 1996 S.D. 54 at ¶¶ 6-25, 548 N.W.2d at 35-40; *Henjum,* 1996 S.D. 7 at ¶¶ 5-10, 542 N.W.2d at 762-63; *Cowell,* 458 N.W.2d at 519 (citing *Solem v. Stumes,* 465 U.S. 638, 650, 104 S.Ct. 1338, 79 L.Ed.2d 571 (1984)).

3. Not Withstanding the Issue of Retroactivity, Roper, Graham and Miller Do Not Apply in Defendant's Case Because He Did Not Receive a De Facto Life Sentence Without the Possibility of Parole.

Third, State contends that Defendant's reliance upon *Roper, Graham* and *Miller* is misplaced despite any retroactivity analysis, because these decisions are factually distinguishable from Springer's case. DB 8-16; CSR 298-99, 342-42, 377-447, 454-55, 484, 487; JTH 8-622; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9; EX A. *United States v. James,* 59 A.3d 1233, 1235-39 (D.C. Cir. 2013); *Bunch,* 685 F.3d at 550-53; *Pratcher v. Grounds,* 2013 WL 5443047, at *37-39 (N.D. Cal. Sept. 30, 2013) (*Roper*, *Graham* and *Miller* did not support juvenile murder defendant's claims that his prison sentence of 50 years to life was grossly disproportionate) (unpublished); *Feliscian v. Lewis,* 2013 WL 5278931, at *12-14 (E.D. Cal. Sept. 18, 2013) (*Graham* covers only those juvenile offenders sentenced to life without parole for a nonhomicide crime); *Atwell,* 128 So.3d at 168-69 (*Miller* only applies to a mandatory sentence of life without parole in juvenile murder cases);

Lehmkuhl, 2013 WL 3584754, at *1-4; *Lucero,* 2013 WL 1459477, at *2-4 (aggregate sentence for nonhomicide crimes did not violate *Graham* when defendant would be eligible for parole at age fifty-seven) (unpublished); *Thomas v. State,* 78 So.3d 644, 646-47 (Fla. App. 1st Dist. 2012) (no de facto life sentence existed when juvenile offender would be released from prison in his late sixties); *State v. Kasic,* 265 P.3d 410, 413-16 (Ariz. Ct. App. 2011) (concurrent and consecutive prison terms totaling 139.75 years for a nonhomicide juvenile offender did not run afoul of *Graham*). *But see Ragland,* 836 N.W.2d at 120-22 (*Miller* applies retroactively to juvenile sentences that are the functional equivalent of life without parole); *State v. Pearson,* 836 N.W.2d 88, 94-98 (Iowa 2013); *State v. Null,* 836 N.W.2d 41, 50-77 (Iowa 2013) (juvenile's 75-year aggregate sentence and parole eligibility at 69 years and 4 months triggered *Miller*-type protections); *People v. Rainer,* 2013 WL 1490107, at *7-15 (Colo. App. April 11, 2013) (unpublished); *People v. Caballero,* 282 P.3d 291, 295 (Cal. 2013) (prison term exceeding juvenile's natural life expectancy was unconstitutional). Although *Roper* took into consideration many factors that make juveniles less culpable than adults, this decision only pertains to youngsters, who have actually been sentenced to death. *James,* 59 A.3d at 1235-36; *Pratcher,* 2013 WL 5443047, at *38 (*Roper* differentiated between juvenile death penalty cases and other non-death sentences); *Hudgins v. Cartledge*, 2012 WL 761673, at *4 (D.S.C. Mar. 8, 2012)

(unpublished) (*Roper* only applies when a death penalty is actually imposed) (unpublished); *McMillen v. Comm.,* 2007 WL 3406851, at *3-4 (Ky. App. Nov. 16, 2007). Springer, however, pled guilty to kidnapping and was not facing any death sentence, so *Roper* does not apply in his case. DB 8-16; CSR 1-8, 295-99, 342-43, 377-447, 454-55, 484, 487; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9; EX A. *James,* 59 A.3d at 1235-36; *Pratcher,* 2013 WL 5443047, at *37-38; *McMillen,* 2007 WL 3406851, at *3-4.

Moreover, *Graham* does not support Defendant's claims, because this decision prohibits sentencing juveniles, who have been convicted of nonhomicide crimes, to life in prison without the possibility of parole. *Orr,* 2013 WL 6478198, at *2-3; *James,* 59 A.3d at 1235-36; *Pratcher,* 2013 WL 5443047, at *39; *Silva,* 891 F. Supp. 2d at 1129-31; *Lehmkuhl,* 2013 WL 3584754, at *2-4; *Lucero,* 2013 WL 1459477, at *2-4; *Angel v. Comm.,* 704 S.E.2d 386, 401-02 (Va. 2011) (affirming juvenile's life sentence when state statutory scheme provided for conditional release at age 60 and after serving at least 10 years of imprisonment). In addition, a number of federal and state courts have struggled with the full impact of *Graham* and whether its ruling should be extended to term-of-years sentences, which might be the functional equivalent of life without parole, or whether it strictly applies to the imposition of a life sentence without parole upon a juvenile nonhomicide offender. *Goins v. Smith,* 2014 WL 594047, at *3-4 (6th

Cir. 2014); *Orr,* 2013 WL 6478198, at *2-3; (courts have differed over whether consecutive term-of-years sentences for juvenile nonhomicide offenders implicate *Graham*); *Feliscian,* 2013 WL 5278931, at *2-15; *Chappell v. McEwen,* 2013 WL 1870748, at *1-2 (C.D. Cal. May 3, 2013); *Ragland,* 836 N.W.2d at 120-21 (citing *Rainer,* 2013 WL 1490107, at *9-12) (discussing split in cases applying *Graham* decision); *State v. Brown,* 118 So.3d 332, 336-37 nn.3-4 (La. 2013) (listing *Graham* cases holding both ways); *Lehmkuhl,* 2013 WL 3584754, at *2-4; *Lucero,* 2013 WL 1459477, at *2-4; *Caballero,* 282 P.3d at 295 (striking juvenile defendant's life sentence when he would not become parole eligible for 110 years); *Adams v. State,* 2012 WL 3193932, at *2 (Fla. App. 1 Dist. 2012); *Thomas,* 78 So.3d at 646-47; *Kasic,* 265 P.3d at 413-16. Even taking this decisional split into account, Defendant ignores that he was facing a number of criminal charges before he decided to reap the benefit of a plea bargain on August 12, 1996; that Judge Gors held a sentencing hearing on October 15, 1996, and imposed a term of 261 years in prison with the possibility of parole; and that Judge Trandahl admitted Exhibit A, into evidence during the June 28, 2013 motion to correct sentence hearing, which reflects that Springer (dob 01/27/1979), will be parole eligible on January 27, 2029, or when he is 49 years old and within his natural life expectancy. DB 8-16; CSR 1-8, 295-99, 342-43, 377-447, 454-55, 484, 487; APT 2-13; SNT 62-66; CST 5, 17-19; PSR 1-9; EX A. *Goins,* 2014 WL 594047,

at *3-4; *Orr,* 2013 WL 6478198, at *2-3; *Feliscian,* 2013 WL 5278931, at *12-15 (*Graham* only concerns juvenile offenders sentenced to life without parole for nonhomicide crimes); *Silva,* 891 F. Supp. 2d at 1031; *Chappell,* 2013 WL 1870748, at *1-2; *Lehmkahl,* 2013 WL 3584754, at *2-4 (juvenile's sentences totaling 76 years to life did not constitute cruel and unusual punishment, when he became parole eligible at age 67); *Lucero,* 2013 WL 1459477, at *2-4; *People v. Perez,* 154 Cal. Rptr. 3d 114, 118-20 (Cal. App. 2013); *Walle v. State,* 99 So.3d 967, 970-73 (Fla. App. 2 Dist. 2012); *Thomas*, 78 So.3d at 645-47 (no de facto life sentence when juvenile would be released from prison in his sixties); *Coon,* 2002 S.D. 48 at ¶¶ 23-24, 644 N.W.2d at 647-48; *Lemley,* 1996 S.D. 91 at ¶¶ 9-17, 552 N.W.2d at 411-13 (two hundred year prison term for kidnapping, and concurrent fifteen-year sentence for aggravated assault, gave the defendant chance for parole at age 46). Defendant also forgets that he failed to provide any statistics, studies, court records, or other evidence, during the October 15, 1996 sentencing proceeding and June 28, 2013 motion to correct sentence hearing, which somehow established that South Dakota rarely grants parole to inmates under its old, discretionary parole system, or that this procedure is the equivalent of automatically denying parole eligibility for juvenile offenders, in Springer's situation. DB 8-9, 16; SNT 3-66; CST 3-20; EX A. *Feliscian,* 2013 WL 5278931, at *13-14 (juvenile petitioner failed to show that California's parole system was so

inadequate as to violate *Graham*, or denied him the opportunity for parole eligibility after 27 years, when he was in his forties); *Lucero,* 2013 WL 1459477, at *2-4 (defendant failed to present statistics or challenge the parole system before lower court); *Angel,* 704 S.E.2d at 401-02 (states are not required to guarantee juveniles release on parole); *State v. Holloway,* 482 N.W.2d 306, 310-11 (S.D. 1992) (waiver exists); *State v. Christians,* 381 N.W.2d 214, 217 (S.D. 1986).

Furthermore, *Miller* does not apply in Defendant's case, because the prosecution dismissed first degree murder charges against him on June 18, 1996; Springer was charged with kidnapping on August 12, 1996; and he pled guilty to this nonhomicide crime on the same date. DB 8-16; CSR 14-22, 79, 295-97, 342-43, 377-78, 430, 432-40; APT 3-16; SNT 3-66; CST 3-20; PSR 1-9; EX A. *James,* 59 A.3d at 1237-39; *Pratcher,* 2013 WL 5443047, at *39; *Chappell,* 2013 WL 1870748, at *1-2; *Comm. v. Brown,* 2013 WL 6726849, at *6-7 (Mass. Dec. 24, 2013) (the holding in *Miller* was narrow and cabined specifically to the need for discretion in imposing a "particular penalty" of life without parole upon juvenile homicide offenders). *Atwell,* 128 So.3d at 168-69. While *Miller* requires sentencing judges to take a juvenile murder offender's age and mitigating characteristics into consideration before imposing a discretionary life-without-parole penalty, Defendant was convicted of a nonhomicide crime; Springer did not receive a life sentence for kidnapping; and Defendant was given a term of 261 years in prison

which means that he has the chance for parole on January 27, 2029, or at the age of 49 and well-within his natural lifetime. DB 8-16; CSR 14-22, 79, 295-97, 342-43, 377-78, 430, 432-40; APT 3-16; CST 3-20; SNT 3-66; PSR 1-9; EX A. *James,* 59 A.3d at 1237-39; *Pratcher,* 2013 WL 5443047, at *39; *Chappell,* 2013 WL 1870748, at *1-2 (no violation of *Miller* existed when petitioner was given a sentence of 50 years to life and not a mandatory term of life without parole); *Silva,* 891 F. Supp. at 1129-30; *Brown,* 2013 WL 6726849, at *6-7; *Perez,* 154 Cal. Rptr. 3d at 119 (there is a bright line between life without parole and long sentences with parole eligibility within a prisoner's life expectancy). *But see Pearson,* 836 N.W.2d at 95-98 (citing *Null,* 836 N.W.2d at 74) (consecutive terms totaling 35 years imprisonment without possibility of parole violated the core teachings of *Miller*). Defendant's claims that he unfairly received a "de facto life sentence" for kidnapping, but that his co-defendant, Jensen, who was convicted of first degree murder, "now has the opportunity to be resentenced" with all of his individual sentencing qualities as "propounded in the *Miller/Graham/Roper*" decisions, are flawed because the United States Supreme Court, in *Miller* did not invalidate all mandatory life sentences for juvenile offenders, and Judge Gors took into consideration a number of factors, during Springer's October 15, 1996 sentencing hearing, as required under South Dakota law.[2] DB 8, 15-16; CSR 342-43, 377-78, 484,

[2] SDCL 23A-27-1, which applies to sentencing hearings for juveniles

487; SNT 3-66; CST 3-20; PSR 1-9; EX A. *Foster,* 2014 WL 211236, at *3 (discretionary life sentences for juvenile murder offenders did not contravene *Miller*); *Brown,* 2013 WL 6726849, at *6-7 (imposition of life sentences for juvenile offenders are not prohibited under *Miller*, as long as mitigating circumstances are taken into account); *Croft,* 2013 WL 6173805, at *3-5; *Pulfrey,* 1996 S.D. 54 at ¶¶ 6-28, 548 N.W.2d at 35-40; *Henjum,* 1996 S.D. 7 at ¶¶ 5-10, 542 N.W.2d at 762-63. *But see Comm. v. Diatchenko*, 2013 WL 6726856, at *1-11 (Mass. Dec. 24, 2013) (discretionary imposition of life without parole upon juvenile defendant violated state constitutional prohibition against cruel or unusual punishment); *Ragland,* 836 N.W.2d at 121-22 (*Miller's* individualized factors apply to juvenile sentences that are the functional equivalent of life sentences without parole); *Pearson,* 836 N.W.2d at 95-98 (juvenile's sentence of at least 35 years in prison for multiple crimes required resentencing under *Roper/Graham/Miller* trilogy). It also bears noting that if the *Miller* Court "had in fact held that all mandatory life sentences for juveniles, or all mandatory sentences of any length violated the Eighth Amendment," then Chief Justice Roberts' dissent would not have criticized the majority for creating a principle that could "in the future justify prohibiting all mandatory sentences for juveniles." *Brown,* 2013 WL 6726849, at *6 n.8 (citing *Miller,* 132 S.Ct. at 2482 (Roberts, C.J., dissenting)).

"convicted as an adult of a Class A or Class B felony" became effective on July 1, 2013.

4. *The Sentencing Court Properly Took into Account Defendant's Young Age and Other Mitigating Factors.*

Finally, Judge Gors gave Defendant the benefit of an individualized sentencing evaluation on October 15, 1996, as described in *Miller*, and took into consideration Springer's young age and a number of mitigating factors. DB 8-16; CSR 298-99, 342-43, 377-447, 454-55, 484, 487; DEP 3-196; JTH 604-08; APT 3-16; SNT 4-66; CST 17-20; PSR 1-9; EX A. *Lehmkuhl*, 2013 WL 3584754, at *4; *State v. Paulson,* 2012 WL 5363109, at *7 (Ariz. App. Div. 2 Oct. 31, 2012) (unpublished); *State v. Anderson,* 2005 S.D. 22, ¶ 24, 693 N.W.2d 675, 682; *State v. Bonner,* 1998 S.D. 30, ¶ 11, 577 N.W.2d 575, 578 (reviewing courts do not micromanage sentences); *Pulfrey,* 1996 S.D. 54 at ¶¶ 6-28, 548 N.W.2d at 38-40; *Henjum,* 1996 S.D. 7 at ¶¶ 5-14, 542 N.W.2d at 762-63; *Chase In Winter,* 534 N.W.2d at 354-55. In addition, this judge listened to extensive arguments from both parties about Defendant's "very young" age, poor likelihood of rehabilitation and remorse for his criminal behavior; the fact that Springer had taken advantage of a favorable plea bargain with the State on August 12, 1996, and avoided a mandatory life sentence for his part in the kidnapping, robbery and murder of Michael Hare; the problems in Defendant's family background and his escalating conflicts with the juvenile justice system; the impact of Springer's intelligence, and his propensity to manipulate and to tell lies; the devastating impact of

Defendant's criminal conduct upon the victim's family; and the need to protect society from his illegal activities. CSR 298-99, 342-43, 377-78; DEP 3-196; JTH 604-08; APT 3-16; SNT 3-66; CST 17-20; PSR 1-9; EX A. *State v. Henderson,* 2013 WL 4873077, at *21 (Ala. Sept. 3, 2013) (citing *Knox,* 50 A.3d at 745); *Lemley,* 1996 S.D. 91 at ¶ 15, 552 N.W.2d at 411-13; *Pulfrey,* 1996 S.D. 54 at ¶¶ 6-28, 548 N.W.2d at 38-40; *Henjum,* 1996 S.D. 7 at ¶¶ 5-14, 542 N.W.2d at 762-63; *Chase In Winter,* 534 N.W.2d at 354-55; *Castaneria,* 502 N.W.2d at 114-15. Judge Gors also took into account the Defendant's remarks about his crime and the fact that the victim had lost his life and "can't ever come back"; that Defendant had testified against his co-defendant, Jensen, as part of his plea deal and that the prosecution's case could have been won "with or without [Springer's] testimony"; that a prison term of 261 years was appropriate in Defendant's case, which translated to a "flat time sentence of 132 years"; and that Springer would be "eligible for parole at the conclusion of 33 years," which gave him the chance to "convince someone in the future that you can be trusted to be back out of prison." CSR 342-43, 377-78; JTH 604-08; APT 3-16; SNT 58-66; CST 17-20; PSR 1-9; EX A. *Henderson,* 2013 WL 4873077, at *21 (citing *Knox,* 50 A.3d at 745); *Lemley,* 1996 S.D. 91 at ¶ 15, 552 N.W.2d at 411-13; *Chase In Winter,* 534 N.W.2d at 354-55; *Castaneira,* 502 N.W.2d at 114-15. Springer further forgets that providing conflicting testimony from psychologists, or other mental health experts, for both

sides is not required at sentencing, or in presentence reports. DB 14-15; CSR 342-43, 377-78; SNT 62-66; CST 17-20; PSR 1-9; EX A. *State v. Beckley*, 2007 S.D. 122, ¶¶ 31-40, 742 N.W.2d 841, 850-53 (Gilbertson, C.J., concurring in part and dissenting in part). As such, no relief is warranted on this record.

CONCLUSION

Based upon the foregoing arguments and authorities, State respectfully requests that Springer's kidnapping conviction be affirmed and his sentence upheld.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

Ann C. Meyer
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12 point type. Appellee's Brief contains 7,232 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this _____ day of March, 2014.

_____
Ann C. Meyer
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this _____ day of March, 2014, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Shawn Cameron Springer* was served via electronic mail upon Jamie L. Damon at dlo@midconetwork.com.

_____
Ann C. Meyer
Assistant Attorney General

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 26770

STATE OF SOUTH DAKOTA,
Plaintiff/Appellee,

Vs.

SHAWN CAMERON SPRINGER,
Defendant/Appellant,

Appeal From the Circuit Court
Sixth Judicial Circuit
Pierre, South Dakota

The Honorable Kathleen F. Trandahl
Circuit Court Judge

REPLY BRIEF OF APPELLANT

Jamie L. Damon
Damon Law Office
PO Box 1115
Pierre, South Dakota 57501

Attorney for Defendant/Appellant

Thomas P. Maher
Stanley County State's Attorney
201 N. Euclid Ave. Ste. 1
Pierre, South Dakota 57501

Marty J. Jackley
Attorney General of South Dakota
1302 E. Highway 14, #1
Pierre, South Dakota 57501

Ann C. Meyer
Assistant SD Attorney General
1302 E. Highway 14, #1
Pierre, South Dakota 57501

Attorneys for Plaintiff/Appellee

Notice of Appeal filed July 29, 2013

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APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

Throughout this brief, the Appellant, Shawn Springer, will be referred to as "Springer." Plaintiff and Appellee, State of South Dakota will be referred to as the "State." References to the Transfer Hearing Transcripts will be "TH" followed by the appropriate page number. References to the Arraignment and Plea Transcripts will be "AT." References to the Sentencing Transcript will be designated as "ST." References to the Motion to Correct Sentence Transcript will be designated as "CST." The appropriate page will follow each reference. All references to the settled record will be denominated "SR," followed by either the page number from the Clerk's index or the designation used in that index. Cites to Appellee's Brief will be by the designation "APB" followed by the page number.

STATEMENT OF THE ISSUES

Springer adopts the Statement of Issues originally set forth in the Appellant's Brief.

STATEMENT OF FACTS

Springer adopts the Statement of Facts set forth in the Appellant's Brief.

ARGUMENT

I. *Defendant's Illegal Sentencing Challenge is Persuasive*

The State contends that Defendants "sentence for kidnapping…. to a term of 261 years in prison, with parole eligibility in 33 years is not illegal under SDCL 22-19-1(2) [and it] does not exceed the relevant statutory limits for his crime (Class 1 felony)" (APB 14). The State's position is incorrect based on the latest case law. Springer's sentence was not illegal at the time of sentencing on January 26, 1996. However, in light of trilogy cases of *Miller/Graham/Roper,* a sentence of 261 years for a juvenile is an illegal sentence today.

The United States Supreme Court in *Graham v. Florida*, declared sentences of life without parole for non-homicide offenses committed by juveniles unconstitutional because it is cruel and unusual punishment. *Graham v. Florida*, 560 U.S. 2_; 130 S.Ct. 2011, 176 L.Ed. 2d 825 (2010). Springer was not convicted of a homicide offense nor did he plead to a homicide offense. Springer is convicted of kidnapping. By today's standards, life in prison for a juvenile, for a non-homicide offense, like kidnapping, is unconstitutional. Springer received a life sentence. Assigning a term of years nearly triple the lifespan of an average person is a de facto life sentence. Today, a juvenile would not

receive a sentence of 261 years, because life for a non-homicide offense is unconstitutional.

The State further contends, "Springer received the benefit of a plea bargain and avoided a more serious penalty in this case" (APB 14). The more serious offense Appellee is referring to, is a life sentence without the possibility of parole. Springer accepted responsibility and pled to his crimes. If he had not, he would have had a trial very similar to his co-defendant Paul Jensen. A trial would likely have ended the same way Paul Jensen's trial ended: a conviction, with a sentence of life in prison, and now a new sentencing.

The State contends that Springer received a benefit by accepting responsibility and pleading guilty. Had Springer not accepted responsibility he would likely have received a sentence of life and today the Court would grant him a new sentencing hearing. Whether Springer received a life sentence or a sentence of 261 years is only a matter of semantics. He is serving a life sentence, which is unconstitutional by today's standards in light of *Miller/Graham/Roper.*

The State argues the "one-year limitation period detailed in SDCL 23A-31-1 (1978 form), also has long since expired." Springer does not challenge this deadline has passed, but rather looks to the retroactivity in order to be granted a new sentencing hearing.

II. *Retroactivity*

Springer acknowledges that *Miller* is not directly on point. However, when read together, the overall purpose of *Miller*, *Graham*, and *Roper* is to protect juveniles from facing the harshest penalties and allows retroactivity to correct the sentences of the

juveniles who are currently serving such sentences. These three landmark juvenile cases discuss how rare life sentences should be when dealing with juvenile offenders and this trilogy of cases requires that the gaps in development between adults and children must be taken into consideration at the sentencing stage. Therefore retroactivity should be considered in Springer's case in the interest of justice.

Using the *Cowell* standard, the Court must consider: 1) the purpose of the decision; 2) the reliance on the prior rule of law; and 3) the effect upon the administration of justice. *Cowell v. Leapley* 458 N.W.2d 514, 517. It is Springer's position that using these criteria, a decision to apply retroactivity does exist.

a. *The purpose of the decision*

In applying the first *Cowell* factor, *Miller* should be retroactively applied in Springer's situation. *Miller* is far more than just a procedural rule. The spirit of *Miller* obligates us to look the bigger picture. At the heart of *Miller* is the ideal that juveniles are inherently different than adults and deserve greater protections from our court system's harshest punishments.

b. *Reliance on the prior rule of law*

Springer does not minimize that he pled guilty to kidnapping. In fact, if he had not pled guilty he likely would have received a life sentence and today would be granted a new sentencing hearing, because said sentence is undoubtedly unconstitutional.

Although Springer's sentence was "well within the sentencing parameters for the crime of kidnapping at the time of his criminal prosecution" (APB 19), it is no longer today. At the time of sentencing, the maximum penalty was life without the possibility of

parole. Today such a sentence is clearly unconstitutional. A sentence of 261 years is a de facto life sentence and today should be unconstitutional in light of the trilogy cases.

c. *Effect upon the administration of justice*

In applying the third factor, the State believes "there is a compelling, legitimate and overriding interest in protecting the finality of convictions that are fundamentally and constitutionally sound at the time of sentencing and in harmony with the well-settled rule of law" (APB 20). Springer wholeheartedly disagrees. First of all, it does not matter that the sentence was constitutional at the time when by today's standards it is cruel and unusual punishment. Second of all, Springer believes there is a compelling, legitimate and overriding interest in protecting the ideals of *Miller/Graham/Roper* by protecting juveniles from the harshest penalties and giving them a chance at rehabilitation.

III. *Springer Received a De Facto Life Sentence and therefore Roper, Graham and Miller Apply in Defendant's Case.*

A criminal sentence that is significantly disproportionate to the crime for which the defendant was convicted violates the Eighth Amendment's prohibition of cruel and unusual punishment. *Pratcher v. Grounds*, 2013 WL 5443047 (N.D. Cal. Sept. 30, 2013) (citing *Solem v. Helm*, 463 U.S. 277, 303 (1983)).

In *Graham,* 130 S. Ct. at 2022-23, the Supreme Court, for the first time, considered a categorical challenge to a term-of-years sentence and determined that sentencing juvenile offenders to life without the possibility of parole for a non-homicide crime is unconstitutional. The Court noted that a sentence of life without the possibility of parole is the "second most severe sentence permitted by law, particularly for juveniles who can expect to live, and serve, longer than adults." *Id.* At 2027-28.

In *State v. Pearson*, 836 N.W.2d 88 (Iowa 2013), the Court emphasized that because "children are constitutionally different from adults', they ordinarily cannot be held to the same standards of culpability as adults in criminal sentencing. *Pearson* at 95 (quoting *Miller*). In addition, " 'juveniles are more capable of change than are adults' and that as a result, their actions are less likely to be evidence of 'irretrievably depraved character.' " *Id.* (quoting *Graham*).

A number of federal and state courts continue to struggle with the full impact of *Graham* regarding whether or not its rulings should be extended from strictly life sentences to include term of years sentences which can be the functional equivalent of life without parole. *Goins v. Smith*, 2014 WL 594047, at *3-4 (6th Cir. 2014). An early split in authority has emerged among other courts over the question of whether *Graham* applies to long sentences that are less than life without parole.

In *People v. Caballero*, the California Supreme Court held a 110-year-to-life sentence contravened the mandate of *Graham* that requires a " 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.' " *People v. Caballero,* 55 Cal. 4th 262, 145 Cal. Rptr. 3d 286, 282 P.3d 291, 296 (Cal. 2012) (quoting Graham, 560 U.S. 2, 130 S. Ct. at 2030, 176 L. Ed. 2d at 845-46). The court found the bar on life-without-parole sentences under *Graham* included sentences for a term of years that amounted "to the functional equivalent of a life without parole sentence." *Id.* At 295. In *People v. Rainer*, a Colorado court held a sentence for a term of years that does not offer the possibility of parole until after life expectancy also violates the mandate in *Graham* for a meaningful opportunity to obtain release. *People v. Rainer,* 2013 COA 51, 2013 WL 1490107, (Colo. App. 2013).

It is clearly established that a grossly disproportional principle applies to sentences for terms of years as well as to the death penalty, however, the precise contours of that principle are unclear and are applicable only in the exceedingly rare and extreme case. *Pratcher* at 117 (*citing Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003); *quoting Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991)).

The State is correct in recognizing that Springer's case is factually distinguishable from *Roper*, *Graham* and *Miller.* However, the cases that the State cites in order to make this point are even less on point.

Springer is not facing a death sentence, but that does not mean that *Roper* does not apply at all. Springer did not receive a mandatory life sentence but that does not mean that *Miller* does not apply. And although *Graham* is about life sentencing for juvenile offenders, it specifically prohibits a sentence of life without the possibility of parole for non-homicide offenders. Springer does have the possibility of parole in 2029. However, his possibility of parole is discretionary and not a guarantee. This should not mean that *Graham* does not apply. The trilogy cases of *Miller/Graham/Roper*, should be considered together when a juvenile is facing any kind of sentence that looks like a life sentence. These landmark cases stand for the ideals that juveniles are less deserving of the harshest punishments. The spirit of the law should not be lost in the application of the law. *State v. Ragland*, 836 N.W.2d 107, at 121.

Pratcher, is a California case where a juvenile who was sentenced to a fifty years to life in prison. He brought a habeas claim to have the sentence overturned on the grounds of the Eighth Amendments prohibition of cruel and unusual punishment.

Pratcher v. Grounds, 2013 WL 5443047, at 15 (N.D. Cal. Sept. 30, 2013). This case must be distinguished from Springer's. In *Pratcher*, the defendant could reach the end of his sentence at fifty years. Springer will not flat time for 132 years, which is far beyond anyone's lifetime.

The State cites *Thomas v. State*, 78 So.3d 644, 646-47 (Fla. App. 1st Dist. 2012) In *Thomas,* a de facto life sentence did not exist when a juvenile offender would be released from prison in his late sixties. Yet for Springer, he has received a de facto life sentence. He is not guaranteed to be released from prison. He is not even eligible for his first parole hearing until he is fifty years old.

The Springer court stated that it was imposing a sentence that "may be a life sentence but may not be." (ST. p. 63). The court stated that it believed in the possibility of rehabilitation. *Id.* The court sentenced Springer to 261 years in prison which translated into a flat time sentence of 132 years. (ST. p. 64). The court stated, "So in effect this is a life sentence". *Id.*

In *People v. Caballero*, 282 P.d 291, 295 (Cal. 2013) the defendant's prison term exceeded the juvenile's natural life expectancy and was therefore unconstitutional because of the Eighth Amendments prohibition against cruel and unusual punishment. Springer will not flat time for 132 years. His full sentence is 261 years. This sentence is clearly beyond Springer's natural life expectancy and is unconstitutional.

In *State v. Lemley*, a 200-year prison term for kidnapping and a concurrent fifteen-year sentence for aggravated assault did not shock the conscience of this Court because defendant had the chance for parole at age 46. *State v. Lemley*, 1996 SD 91, 552

N.W.2d. However, there is an important distinction between *Lemley* and Springer's case. *Lemley* was not a juvenile at the time he committed his crimes.

Perhaps most on point is the case of *State v. Ragland*, where the Iowa Supreme Court discusses whether *Miller*'s "mandates apply not only to mandatory life sentences without parole, but also to the practical equivalent of life-without-parole sentences" *Ragland* at 119. In *Ragland*, the defendant needed to serve sixty years of his sentence before he could be considered for parole and while "this sentence is not a life term, Ragland will not be eligible for parole until he is seventy-eight years old. Under standard mortality tables, his life expectancy is 78.6 years. Ragland argues his sentence is the functional equivalent of life without parole. The State responds that the dictates of *Miller* do not apply because Ragland has a chance of becoming eligible for parole during his natural lifetime under the commuted sentence." *Id.* At 119-20. The Iowa Supreme Court unanimously affirmed Ragland be granted a new sentence holding:

> "the rationale of *Miller,* as well as *Graham,* reveals that the unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole. Oftentimes, it is important that the spirit of the law not be lost in the application of the law. This is one such time. The spirit of the constitutional mandates of *Miller* and *Graham* instruct that much more is at stake in the sentencing of juveniles than merely making sure that parole is possible. In light of our increased understanding of the decision making of youths, the sentencing process must be tailored to account in a meaningful way for the attributes of juveniles that are distinct from adult conduct. At the core of all of this also lies the profound sense of what a person loses by beginning to serve a lifetime of incarceration as a youth. In the end, a government system that resolves disputes could hardly call itself a system of justice with a rule that demands individualized sentencing considerations common to all youths apply only to those youths facing a sentence of life without parole and not to those youths facing a sentence of life with no parole until age seventy-eight. Accordingly, we hold *Miller* applies to sentences that are the functional equivalent of life without parole. The commuted sentence in this case is the functional equivalent of a life sentence without parole" *Id. At 121-22.*

Springer's situation is very similar to that of *Ragland.* Although *Ragland* is not precedent for this Court, there is no direct precedent in South Dakota for a term of years sentence that is essential the same as a life sentence. Therefore, *Ragland* is persuasive and that Court's holding should be strongly considered. *Miller* applies to sentences like Springer's that are the functional equivalent of life without parole.

IV. *The Sentencing Court Did Not Take Enough of an Account Regarding Defendant's Young Age and Other Mitigating Factors to Warrant a Life Sentence.*

While *Miller* still allows sentencing courts the discretion to impose life without parole upon juvenile offenders, it is only applicable for homicide offenses and is only appropriate when the court takes certain youth and attendant characteristics into account and the judge examines individualized characteristics of the defendant.

Springer is not facing a homicide offense and therefore a life sentence is not appropriate. The state believes that Judge Gors did consider Springer's young age as a mitigating factor (APB 29). It is impossible to tell what mitigating factors the court considered since it did not elucidate any "mitigation" factors on the record.

Springer's sentencing court stated:

> You're under the old system of sentencing parole . . . 261 years translates to a flat time sentence of 132 years, which I believe is beyond your lifetime, so in effect this is a life sentence.
> But there is also a glimmer of hope down the road, because with your being a first-time offender, you would be eligible for parole, by my calculations, at the conclusion of 33 years. That gives you an opportunity to convince someone in the future that you can be trusted to be back out of prison. I think that the factors that you - - that I considered in mitigation of this sentence require you to have that opportunity at some point (ST. p. 64).

However, because the time of Springer's sentencing happened earlier in time than the *Graham*, *Miller*, and *Roper* decisions, it is impossible to say if enough weight was placed on Springer's young age. In order for a life sentence to even be considered, the sentencing judge must take into consideration various factors and make the determination on an individual basis in light of *Miller*, *Graham* and *Roper*.

The State believes that Springer has received an advantage of a favorable bargain "and avoided a mandatory life sentence for his part in the kidnapping, robbery and murder of Michael Hare" (APB 29). This is ludicrous. If Springer had not taken the plea bargain he would certainly be eligible for a new sentencing hearing today. It is not to Springer's advantage to serve a sentence of 261 years for kidnapping after he pled while his co-defendant is granted a new sentencing hearing after being convicted at trial.

CONCLUSION

The *Miller/Graham/Roper* Courts make it clear that life sentences for juveniles are prohibited because they are disproportionately harsh on children. Children are fundamentally different from adults and should be treated as such during sentencing. The state may argue that Springer is not facing a life sentence, but it is clear that under a discretionary parole standard, Springer could easily spend the rest of his life in prison. This kind of a sentence is in direct conflict with the spirit of these landmark trilogy cases.

The Eighth Amendment's prohibition of cruel and unusual punishment protects children from disproportionate sentences when sentenced to spend their natural life in prison. It is irrelevant that Springer received a term of years rather than a life sentence. What is clear here, is that Springer is facing spending his entire life in prison based on a now unconstitutional sentence. Springer should be sentenced by a court that has the

benefit of knowing today's standard of juvenile sentencing guidelines. In addition, Springer should receive the benefit of having the court consider his character, his overall culpability, and his chances for rehabilitation.

Shawn Springer respectfully requests this Court to remand his case back to the sentencing court for a sentencing which actually considers the factors elucidated in *Miller/Graham/Roper* Courts.

REQUEST FOR ORAL ARGUMENT

Mr. Springer respectfully requests the privilege of appearing before this Court for oral argument in this appeal.

Respectfully submitted this _____ day of April, 2014.

DAMON LAW OFFICE

Jamie L. Damon
Attorney at Law
PO Box 1115
Pierre, South Dakota 57501
Tel: 605-224-6281
dlo@midconetwork.com

Attorney for Appellant/Defendant

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Reply Brief is within the limitation provided for in SDCL §15-26A-66(b) using Times New Roman font, 12 point type.
2. I certify that Appellant's Brief contains 3,288 words and 20,329 characters (with spaces).
3. I certify that the word processing software used to prepare this brief is Microsoft Word 2000.

Dated this _____ day of April, 2014.

_____
Jamie L. Damon
Attorney for Shawn Springer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this _____ day of April, 2014, two true and correct copies of Appellant's Reply Brief in the matter of *State of South Dakota v. Shawn Cameron Springer* were served upon Appellee's attorneys of record via electronic email upon the following:

Thomas P. Maher
Stanley County State's Attorney
201 N. Euclid Ave., Ste. 1
Pierre, SD 57501
tpm.maherlaw@midconetwork.com

Marty J. Jackley
Attorney General of South Dakota
1302 E. Highway 14, #1
Pierre, South Dakota 57501
atgservice@state.sd.us

Ann C. Meyer
Assistant SD Attorney General
1302 E. Highway 14, #1
Pierre, South Dakota 57501
atgservice@state.sd.us

_____
Jamie L. Damon
Attorney for Shawn Springer

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 26770

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

SHAWN CAMERON SPRINGER,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
STANLEY COUNTY, SOUTH DAKOTA

THE HONORABLE KATHLEEN F. TRANDAHL
Circuit Court Judge

APPELLEE'S SUPPLEMENTAL BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

Ann C. Meyer
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us
ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Jamie L. Damon
Attorney at Law
P.O. Box 1115
Pierre, SD 57501-1115
Telephone: (605) 224-6281
E-mail: dlo@midconetwork.com

ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed July 29, 2013

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STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

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SHAWN CAMERON SPRINGER,

Defendant and Appellant.

ARGUMENT

The State files this supplemental brief, with new authority, pursuant to SDCL 15-26A-73. The State does so for the purposes of notifying this Court and opposing counsel of relevant authority by the Alabama Court of Criminal Appeals that was not available in time to have been included in the State's initial brief, which was filed on March 11, 2014. The Defendant's Judgment of Conviction, in Stanley County Crim. File No. 96-29, was filed on October 155, 1996. Recently, the Alabama Court of Criminal Appeals decided *Williams v. State,* 2014 WL 1392828, at *1-20 (Apr. 4, 2014) (unpublished), which relates to the retroactivity of *Miller v. Alabama,* ____ U.S. ____, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), in the post-conviction context. The State has also attached a copy of *Williams,* 2014 WL 1392828, at *1-20, to its brief for this Court's ease of reference. *See* Exhibit A.

Recently, the Alabama Court of Criminal Appeals found, in *Williams,* 2014 WL 1392828, at *2-20, that *Miller,* ____ U.S. ____, 132 S.Ct. at 2455, 183 L.Ed.2d at 407, is procedural and only mandates that a sentencer follow a certain process when imposing a penalty upon a juvenile homicide offender; that this decision is not retroactive as a substantive rule to cases on collateral review; and that it does not involve a watershed rule of criminal procedure, which falls within the exception to the general prohibition against retroactivity of new rules. *Id.* (citing *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)). The decision in *Williams,* 2014 WL 1392828, at *2-20, also provides an excellent summary of a number of recent federal and state cases in this area of the law. Thus, this Court should reject Defendant's request for retroactive sentencing relief.

CONCLUSION

Based upon the arguments and authorities contained in the State's initial brief and the authorities cited in this supplemental brief, the State respectfully requests that this Court deny Defendant's request for retroactive sentencing relief in this matter.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ A*nn C. Meyer*
Ann C. Meyer
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12 point type. Appellee's Supplemental Brief contains 385 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this 7th day of May, 2014.

/s/ *Ann C. Meyer*
Ann C. Meyer
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of May, 2014, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Shawn Cameron Springer* was served by electronic mail on Jamie L. Damon at dlo@midconetwork.com.

/s/ *Ann C. Meyer*
Ann C. Meyer
Assistant Attorney General

IN THE SUPREME COURT
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MARTY J. JACKLEY
ATTORNEY GENERAL

Ann C. Meyer
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Jamie L. Damon
Damon Law Office
Post Office Box 1115
Pierre, SD 57501
Telephone: (605) 224-6281
E-mail: dlo@midconetwork.com

ATTORNEY FOR DEFENDANT
AND APPELLANT

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ARGUMENT

The State files this supplemental brief, with new authority, pursuant to SDCL 15-26A-73. The State does so for the purposes of notifying this Court and opposing counsel of relevant authority by the South Dakota Supreme Court that was not available in time to have been included with the State's initial brief, which was filed on March 11, 2014. The Defendant's Judgment of Conviction, in Stanley County Crim. File No. 96-29, was filed on October 15, 1996. Recently, this Court decided *Siers v. Weber,* 2014 S.D. 51, ¶¶ 27-36 (S.D. July 23, 2014) (*see* Exhibit A) and adopted the retroactivity analysis, in *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), rather than the retroactivity test, which was previously set forth in *State v. Garcia,* 2013 S.D. 46, ¶¶ 14-27, 834 N.W.2d 821, 823-26 and *Cowell v. Leapley,* 458 N.W.2d 514, 517-19 (S.D. 1990). In addition, the *Siers*

Court, 2014 S.D. 51 at ¶¶ 27, 36, reasoned that by applying the *Teague* test for retroactivity, it can better address concerns for finality, consistency, and uniformity than previously was the case, in *Garcia,* 2013 S.D. 46 at ¶¶ 14-27, 834 N.W.2d at 823-26 and *Cowell,* 458 N.W.2d at 517-19, which were predicated upon *Linkletter v. Walker,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965). It also found that a new rule is applied to convictions that have become final only when: (1) the rule announced is substantive, placing "certain kinds of primary individual conduct beyond the power of the State's to proscribe"; or (2) when the rule is a "watershed rule of criminal procedure." *Siers,* 2014 S.D. 51 at ¶¶ 27, 36 (citing *Danforth v. Minnesota,* 552 U.S. 264, 266, 128 S.Ct. 1029, 1032, 169 L.Ed.2d 859 (2008)).

Given this standard, State points out that it argued in its initial brief, which was filed on March 11, 2014, that the Honorable Kathleen F. Trandahl was right for the wrong reason, when she denied Defendant's Motion to Correct Illegal Sentence, because *Miller v. Alabama,* 567 U.S. ____, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) should not be given retroactive effect under the three-prong test formulated in *Cowell,* 458 N.W.2d at 518-19. *See also State v. Piper,* 2014 S.D. 2, ¶ 13, 842 N.W.2d 338, 344 (trial court may be right for the wrong reason). Should this Court decide to apply the *Teague* test, as articulated in *Siers*, 2014 S.D. 51 at ¶¶ 27-36, the result in Springer's case would be the same.

Moreover, State asserts that Defendant was sentenced to a term of 261 years in prison for kidnapping on October 15, 1996, and that the United States Supreme Court's decision, in *Miller,* 567 U.S. ____, 132 S.Ct. 2455, was not announced until June 25, 2012, or many years after Springer's case became final. In addition, the new rule of criminal procedure identified in *Miller* is not a substantive requirement because this decision does not constitute a categorical ban, or total prohibition, on the imposition of a life sentence without parole upon a juvenile homicide offender, as long as this youngster's age and accompanying characteristics are taken into consideration. *Siers,* 2014 S.D. 51 at ¶¶ 27, 36; *Williams v. State,* 2014 WL 1392828, at *4-15 (Ala. Crim. App. Apr. 4, 2014) (unpublished) (citing *Chambers v. State,* 831 N.W.2d 311, 327 (Minn. 2013)); *People v. Carp,* 828 N.W.2d 685, 707-22 (Mich. App. 2012). Put differently, *Miller* did not substantively alter the punishment that a juvenile murder offender may ultimately save for this type of crime (which would be the situation with a new substantive rule under *Teague*), but instead revised the manner in which sentences should be formulated, by taking into account a juvenile's status and relevant background factors. *Williams,* 2014 WL 1392828, *13-15 (citing *Chambers,* 831 N.W.2d at 327); *Carp,* 828 N.W.2d at 704-22. The *Miller* decision also falls within the category of a new rule of criminal procedure in Defendant's case, because it is a departure from existing precedent in South Dakota and elsewhere, but it did not

narrow the scope of any criminal statute, or remove any particular conduct or persons from the State's power to punish. *Siers,* 2014 S.D. 51 at ¶¶ 27-30, 36; *Williams,* 2014 WL 1392828, at *10 (citing *Chambers,* 831 N.W.2d at 328).

Furthermore, the new rule of criminal procedure in *Miller* does not rise to the level of a watershed rule under *Teague*, which is a rare exception that would justify giving this decision retroactive effect to cases on collateral review, because the United States Supreme Court has never found that any new rule meets this criteria, except for *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (guarantee of counsel for defendant's in criminal trials), which pre-dated the *Teague* decision by decades. *Siers,* 2014 S.D. 51 at ¶¶ 27, 36; *Williams,* 2014 WL 1392828, at *15-16 (citing *Whorton v. Blockting,* 549 U.S. 406, 417-18, 127 S.Ct. 1173, 167 L.Ed.2d 1 (2007)). *Miller* also should not be used as a mechanism for the continuing reexamination of convictions, which have become final. *Siers,* 2014 S.D. 51 at ¶¶ 36-37. Springer, therefore, cannot show that *Miller* should be given retroactive application in his circumstances.

CONCLUSION

Finally, this Court should reject Defendant's Request to Correct Illegal Sentence in its entirety.

Respectfully submitted,

MARTY J. JACKLEY
ATTORNEY GENERAL

Ann C. Meyer
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

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Dated this 29th day of July, 2014.

Ann C. Meyer
Assistant Attorney General

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The undersigned hereby certifies that on this 29th day of July, 2014, a true and correct copy of Appellee's Supplemental Brief in the matter of *State of South Dakota v. Shawn Cameron Springer* was served via electronic mail upon Jamie L. Damon at dlo@midconetwork.com.

Ann C. Meyer
Assistant Attorney General