IN THE SUPREME COURT OF IOWA
Supreme Court No. 15-0829

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KHASIF RASHEED WHITE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE JEFFREY D. FARRELL, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Because this case involves the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

Khasif Rasheed White appeals his sentence following an individualized resentencing hearing pursuant *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014). The Honorable Jeffrey D. Farrell presided.

Facts and Course of Proceedings

According to the minutes of testimony, on August 1, 2009, seventeen-year old Khasif White entered a Dahl's grocery store and picked up a bottle of alcohol. FECR230747 Minutes of Testimony p. 1; Conf. App. 3. He then proceeded to walk out of the store without

paying. FECR230747 Minutes of Testimony p. 1; Conf. App. 3. Employees chased and attempted to stop him, intending only to retrieve the stolen property. FECR230747 Minutes of Testimony p. 1; Conf. App. 3. White resisted and actively fought them, assaulting an employee. FECR230747 Minutes of Testimony p. 1; Conf. App. 3. Police responded promptly and White was taken into custody. FECR230747 Minutes of Testimony p. 1; Conf. App. 3. The State charged White with second-degree robbery pursuant to Iowa Code section 711.1 and 711.3 (2009) on September 11, 2009. FECR230747 Trial Information p. 1; Conf. App. 1.

On September 12, 2009, as proceedings for the August 1, 2009 incident were pending, White and friends entered a Burlington Coat Factory store in Des Moines, Iowa. FECR232323 Minutes of Testimony p. 1; Conf. App. 6. After arriving, White complied with employee requests to leave his backpack behind the counter. FECR232323 Minutes of Testimony p. 1; Conf. App. 6. However, as he walked around the store, employees observed as White concealed clothing on his person and then attempted to leave the store without paying. FECR232323 Minutes of Testimony p. 1; Conf. App. 6. As he did so, his friends were screaming and drawing attention to

themselves, so as to bolster White's chances of escape. FECR232323 Minutes of Testimony p. 1; Conf. App. 6. A store employee attempted to detain White, but he pushed and kneed the employee. FECR232323 Minutes of Testimony p. 1; Conf. App. 6. White and his friends left, yet White was tied to the scene by his forgotten backpack, which contained a detention slip bearing his name. FECR232323 Minutes of Testimony p. 1-2; Conf. App. 6-7. The employee identified White in a photographic lineup. FECR232323 Minutes of Testimony p. 2; Conf. App. 7. The State charged White with second-degree robbery by trial information on November 1, 2009. FECR232323 Trial Information p. 1; Conf. App. 5.

On February 20, 2010, White and two friends trailed Soe Khaing to his home after Khaing cashed a check and left a Dollar Mart store with $480 on his person. FECR235343 Minutes of Testimony p. 1; Conf. App. 11. As Khaing reached his residence, but prior to entering his apartment, he was punched and kicked by White who demanded "Where's the money?" FECR235343 Minutes of Testimony p. 1; Conf. App. 11. Khaing had never met the men before. FECR235343 Minutes of Testimony p. 1; Conf. App. 9. White's friend, Tarrice Ladell, held Khaing to the ground, as Khaing refused to

comply with their demands. FECR235343 Minutes of Testimony p. 1; Conf. App. 11. Khaing's friends within the apartment building responded to his cries, causing White, Ladell, and a third person to flee. FECR235343 Minutes of Testimony p. 1; Conf. App. 11. They were quickly apprehended by police. FECR235343 Minutes of Testimony p. 1-2; Conf. App. 11-12. Khaing suffered injuries as a result of White's attack. FECR235343 Minutes of Testimony p. 1-2; Conf. App. 11-12. On March 17, 2010, the State charged White by trial information with robbery in the first degree in violation of Iowa Code section 711.1 and 711.2 and burglary in the first degree in violation of Iowa Code section 713.1. FECR235343 Trial Information p. 1; Conf. App. 8.

Ultimately, White reached a plea agreement with the State, whereby he would enter an *Alford*[1] plea to three counts of robbery in the second degree, resolving FECR230747, FECR232323, and FECR235343. The burglary in the first degree count of FECR235343

[1] *See North Carolina v. Alford*, 400 U.S. 25, 37 (1970) (holding "[a]n individual accused of [a] crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime"). When entering such a plea, "the defendant acknowledges the evidence strongly negates the defendant's claim of innocence and enters [a guilty] plea to avoid a harsher sentence." *State v. Knight*, 701 N.W.2d 83, 85 (Iowa 2005).

was to be dismissed, and both parties agreed to recommend concurrent sentences. FECR230747 6/7/2010 Order on "Alford" Plea p. 1-2; FECR232323 6/7/2010 Order on "Alford" Plea p. 1-2; FECR235343 6/7/2010 Order on "Alford" Plea p. 1-2; Conf. App. 13-18. The district court sentenced White on July 27, 2010, to serve a ten-year indeterminate sentence on each count pursuant to Iowa Code section 902.9 and 902.3. 7/27/2010 Sentencing Order p. 1-2; Conf. App. 19-20. Because White had been convicted of second-degree robbery, he was automatically subject to the 70% mandatory minimum incarceration provided for under Iowa Code section 902.12. *See* Iowa Code § 902.12; 7/27/2010 Sentencing Order p. 1; Conf. App. 19.

On September 22, 2014, White filed a motion to correct an illegal sentence, asserting that "there have been significant changes that would render the sentence imposed by the Court in this matter illegal," citing *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014). 9/22/2014 Motion to Correct Sentence p. 1; Conf. App. 22. The matter was set for resentencing hearing on April 30, 2015. Following the presentation of evidence, the district court found that the mitigation evidence White presented did not weigh in favor of removing the mandatory

minimum term of incarceration from his sentence. 4/30/2015 Hearing tr. p. 31 ln. 2-23; Conf. App. 47. The court issued a written supplemental ruling to the same effect on May 4, 2015. 5/4/2015 Written Ruling p. 1-4; Conf. App. 25-28. White filed a timely notice of appeal on May 11, 2015. 5/11/2015 Notice of Appeal. p. 1; Conf. App. 29.

ARGUMENT

I. The District Court did not Abuse its Discretion when it Resentenced White to Serve His Original Ten-Year Sentence with a 70% Mandatory Minimum.

Preservation of Error

A defendant's challenge to his sentence, including a challenge that the sentence was illegal, need not be preserved below to assert error on appeal. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994).

Standard of Review

Iowa courts review a district court's sentencing decision for abuse of discretion. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). The decision of the district court to impose a particular sentence is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of

inappropriate matters. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). An abuse of discretion will not be found unless the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable. *Id.*

Iowa courts review a challenge to the legality of a sentence for corrections of errors at law. *Ragland*, 836 N.W.2d at 113. Where the question turns on a constitutional challenge to the validity of the sentence, such as a district court's consideration of all the relevant *Miller/Lyle* factors, the appellate court's review of the matter is de novo. *Id.*; *see Lyle*, 854 N.W.2d at 382; *Miller v. Alabama*, 132 S.Ct.2455, 2468 (2012).

Merits

White contends that the district court abused its discretion in resentencing him to serve three concurrent ten-year sentences with a 70% mandatory minimum. Appellant's brief 14-21. White contends that (1) that the district court failed to consider the *Miller/Lyle* factors in a mitigating manner, and (2) that the district court's imposition of sentence, which included mandatory minimums, are unconstitutional as applied to him. Appellant's brief 14-17, 18-21. The district court fully considered the evidence presented at the

individualized resentencing hearing and concluded that the evidence did not weigh in favor of removing the mandatory minimum. The State will address the issues in turn.

A. The District Court Weighed the Mitigating Nature of the *Miller*/*Lyle* Factors, and Determined that a Mandatory Minimum Remained Appropriate.

White concedes that although the district court did consider each of the *Miller*/*Lyle* factors in sentencing him, "the district court often considered the noted factors as aggravating rather than mitigating," and urges that this constitutes reversible error. Appellant's brief 14-15. The State asserts that each *Miller*/*Lyle* factor was considered, and the district court's examination of the factors weighed in favor of the resentencing decision.

In *State v. Lyle*, the Iowa Supreme Court held that pursuant to Article I, Section 17 of the Iowa Constitution, a juvenile may not be sentenced to serve a "one-size-fits-all" statutorily mandated minimum term of incarceration, unless the court engages in an individualized sentencing proceeding and decides that a mandatory minimum term is warranted. *See Lyle*, 854 N.W.2d at 404 n.10. At this individualized hearing, a district court is to receive evidence from

the defendant and assess the evidence based upon five factors weighing on juvenile's culpability pursuant to *Miller v. Alabama*:

> The factors to be used by the district court to make this determination on resentencing include: (1) the age of the offender and the features of youthful behavior, such as "immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the particular "family and home environment" that surround the youth; (3) the circumstances of the particular crime and all circumstances related to youth that may have played a role in the commission of the crime; (4) the challenges for youthful offenders in navigating through the criminal process; and (5) the possibility of rehabilitation and the capacity to change.

Lyle, 854 N.W.2d 404 n.10. These factors may not be "used to justify a harsher sentence." *Id.* at 403 n. 8. The State acknowledges that *Lyle* precludes district courts applying the *Miller*/*Lyle* factors using those factors as a ground for aggravating the defendant's culpability for the offense. *See State v. Seats*, 865 N.W.2d 545, 557-58 (Iowa 2015); *Lyle*, 854 N.W.2d at 404 n.10, *see also State v. Davis*, No. 14-2156, 2016 WL 146528, at *5-6 (Iowa Ct. App. Jan. 13, 2016); *State v. Hajtic*, No. 15-0404, 2015 WL 6508691, at *2-3 (Iowa Ct. App. Oct. 28, 2015).

However, even under Iowa's newly developed juvenile-sentencing framework, a district court is required to exercise its discretion to determine a sentence based on what "is authorized by

law for the offense" and will, "provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5. The State would note that the Iowa Supreme Court has observed that discretion is the cornerstone of a sentencing decision:

> Judicial discretion imparts the power to act within legal parameters according to the dictates of a judge's own conscience, uncontrolled by the judgment of others. It is essential to judging because judicial decisions frequently are not colored in black and white. Instead, they deal in differing shades of gray and discretion is needed to give the necessary latitude to the decision-making process.

Formaro, 638 N.W.2d at 725. Even when resentencing a juvenile offender, a district court's failure to mention each and every piece of evidence a defendant presents in mitigation does not mean the district court did not consider that evidence, and is not reversible error. *See State v. Bullock*, No. 15-0077, 2016 WL 1130311, at *1, *3 (Iowa Ct. App. Mar. 23, 2016) (citing *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995)).

The district court in this case complied with "*Lyle*'s two-fold diktat," and noted that it had considered the available mitigating evidence under the *Miller*/*Lyle* framework, but simply found that the mitigating evidence White presented was insufficient to require

modification of his sentence. *Compare Hajtic*, 2015 WL 6508691, at *2 (finding that district court utilized evidence in aggravating way to impose harsher sentence).

First, White attacks the district court's consideration of the second factor, "the particular 'family and home environment' that surround the youth," asserting "the district court barely touched on the difficult circumstances of Khasif's childhood and did not indicate that his childhood was considered at all as a mitigating factor." Appellant's brief 15. This is flatly rebutted by the record.

White presented testimony from his mother indicating that his father was not a stable factor in his life, and when present was abusive. 4/30/2015 Hearing tr. p. 11 ln. 17-20, p. 14 ln. 1-p.15 ln. 10; Conf. App. 33, 36-37. She also testified that observing his father's abusive conduct had a profound effect on White. 4/30/2015 Hearing tr. p. 11 ln. 17-20, p. 14 ln. 1-p.15 ln. 10; Conf. App. 33, 36-37. The district court explicitly stated at the resentencing hearing that it had considered White's "family and home environment" and the court acknowledged that youth do not react positively to observing a father figure commit harmful, criminal acts. 4/30/2015 Hearing tr. p. 27 ln. 7-16; Conf. App. 43. The district court again referred to White's home

life in its written supplement to the oral resentencing, indicating that the court gave full consideration to the evidence White had presented. 5/4/2015 Written Ruling p. 3; Conf. App. 27. There is no indication from the district court's statements or written ruling that this factor was used in an aggravating manner. 4/30/2015 Hearing tr. p. 27 ln. 7-16; 5/4/2015 Written Ruling p. 3-4; Conf. App. 43, 27-28.

Next, White takes issue with the district court's consideration of the third factor, "the circumstances of the particular crime and all circumstances related to youth that may have played a role in the commission of the crime," stating that the court "clearly only considered the circumstances of the crime as an aggravating factor, rather than a mitigating factor." Appellant's brief 16. The district court discussed this factor, observing

> those three offenses, I think, need to be considered more seriously than the instance where there's just the one. . . . I think the failure to appreciate risk and consequences go down as there are additional offenses. If you commit one and you do it again and then you do it again, I think as you repeated offenses, the appreciation of the risk and consequences becomes greater through the additional offenses.

4/30/2015 Resentencing Hearing p. 28 ln. 18-p. 29 ln. 4; Conf. App. 44-45. The district court's written ruling also touched on this factor in its written ruling:

> The robberies in these three cases are not the product of schoolyard conduct, but was the result of three robberies occurring on separate dates with third being the most serious offense. A single act may show immaturity and impetuosity, but defendant should have appreciated the risk and consequences of his behavior as he committed additional offenses.

5/4/2015 Written Ruling p. 3; Conf. App. 27.

The State respectfully disagrees with White's position. The district court's observations were consistent with human experience, even that of juveniles expressing "immaturity, impetuosity, and failure to appreciate risks and consequences." *Lyle*, 854 N.W.2d at 404 n.10. White repeatedly engaged in the use of force to complete thefts; that is, to say, robbery. He robbed a business on August 1, 2009, and was arrested on the scene. FECR230747 Minutes of Testimony p. 1; Conf. App. 3. He robbed another business little more than a month later on September 12, 2009. FECR232323 Minutes of Testimony p. 1-2; Conf. App. 6-7. As these prior cases were still pending, on February 20, 2010, White and friends shadowed and assaulted a stranger at the front door of his home, demanding money. FECR235343 Minutes of Testimony p. 1-2; Conf. App. 11-12. With each arrest, White had increased experience with law enforcement and the consequences that follow criminal activity. There is no

question that this factor could not be used in an aggravating manner, but here, it had limited mitigation value.

White faults the sentencing court for considering the repetitive nature of his offenses not weighing in favor of a more lenient sentence, however the nature of the defendant's offenses is a basic factor that must be considered in sentencing any defendant. Iowa Code § 907.5. Under White's argument, the sentencing court would be required to completely disregard his recurring pattern of criminal conduct. A juvenile is "categorically less culpable than the average criminal," yet a defendant—even a juvenile defendant—who was swiftly identified and prosecuted following each of his criminal acts would have a better appreciation for the risks inherent in criminal conduct than a first time offender. *See Bruegger*, 773 N.W.2d at 876 (quoting *Roper v. Simmons*, 543 U.S. 551, 567 (2005)). The district court's discussion does not indicate that the court solely considered the facts and circumstances of White's crimes as aggravating his criminal culpability. The factor simply did not weigh in favor of a more mitigating sentence.

Similarly, White takes issue with the district court's consideration of the fifth *Miller/Lyle* factor, the defendant's

possibility for rehabilitation and capacity for change. Appellant's brief 17-18. The district court correctly considered White's conduct while in prison, observing that

> Good behavior reinforces the very point of the *Lyle* decision, that is, that juveniles are immature and are sometimes led into making acts for which they do not appreciate the consequences. If a defendant shows rehabilitation and a capacity for change in prison, the court may consider recognizing that good behavior and give the defendant an opportunity to rejoin to society through an earlier parole than would have been available with the mandatory minimum sentence.

5/4/2015 Written Ruling p. 3; Conf. App. 27; *see Lyle*, 854 N.W.2d at 404 n.10 (requiring district courts resentencing juveniles to consider evidence of their potential rehabilitation and potential to change); *State v. Hopkins*, 860 N.W.2d 550, 554-55 (Iowa 2015) (holding that during resentencing, "Postconviction rehabilitation efforts are included among the other appropriate factors under section 907.5(1)(g) for courts to consider in imposing sentence"); *Davis*, 2016 WL 146528, at *5-6; Iowa Code § 907.5(1)(g).

At the resentencing hearing, the district court remarked that it wanted to believe that White's rehabilitation was possible, but found that on record presented, the matter remained an open question. 4/30/2015 Hearing tr. p. 30 ln. 8-p. 31 ln. 1; Conf. App. 46-47. This

conclusion was not unreasonable, even defense counsel and White himself acknowledged that he had significant difficulties adapting to prison life. 4/30/2015 Hearing tr. p. 20 ln. 3-16, p. 25 ln. 2-21; Conf. App. 39, 42. White had been incarcerated for more than four years at the time of the hearing, yet his rehabilitation was questionable. He continued to have difficulties complying with prison regulations, verified by a department of corrections report. 4/6/2015 Corrections Report p. 1-2; Conf. App. 23-24. The report indicated that within the last year White had incurred three new major violation reports, including assaulting another offender on November 12, 2014. 4/6/2015 Corrections Report p. 1-2; Conf. App. 23-24.

The State submits that the particular facts and circumstances of White's crime and rehabilitative progress in prison did not militate towards removing the mandatory minimum. The district court's observations in its statements and written ruling simply indicate that the court did not find that application of the *Miller*/*Lyle* factors weighed in favor of ejecting the mandatory minimum component of White's sentence. *See State v. Hayes*, No. 14-1599, 2015 WL 4642506, at *1-2 (Iowa Ct. App. Aug. 5, 2015); *State v. Giles*, No. 15-0021, 2015 WL 9450810, at *1-2 (Iowa Ct. App. Dec. 23, 2015)

(affirming district court's resentencing defendant to serve mandatory minimum, finding district court "discharged its duty to utilize 'an individualized consideration' under the *Lyle* standards and reasonably exercised its discretion in resentencing Giles"). The court did not abuse its discretion in resentencing White.

B. White's Sentence is not Cruel and Unusual as Applied to Him under *State v. Lyle*.

Finally, White contends that his new sentence following the individualized resentencing hearing is cruel and unusual punishment as applied to him, arguing that "Mandatory minimums become far more punitive in application to the juvenile than to the adult." Appellant's brief 18. This issue has been conclusively litigated by Iowa's appellate courts.

The Iowa Supreme Court has made clear that when resentencing a defendant, so long as the district court utilizes constitutional procedural protections provided for by an individualized sentencing hearing—one in which the *Miller*/*Lyle* factors and a sentencing option other than mandatory imprisonment are considered—there is no constitutional prohibition against a district court imposing a statutorily authorized mandatory minimum

sentence. *See Lyle*, 854 N.W.2d at 403-04. As the *Lyle* court observed:

> In order to address the issue raised in this appeal, the district court shall conduct a hearing in the presence of the defendant and decide, after considering all the relevant factors and facts of the case, whether or not the seventy percent mandatory minimum period of incarceration without parole is warranted as a term of sentencing in the case. If the mandatory minimum sentence is not warranted, the district court shall resentence the defendant by imposing a condition that the defendant be eligible for parole. *If the mandatory minimum period of incarceration is warranted, the district court shall impose the sentence provided for under the statute, as previously imposed.*

Id. at 404 n.10 (emphasis added). Each of those protections were utilized in this case. White was permitted to present evidence and argument explaining and mitigating his conduct as a juvenile. *See* 4/30/2015 Hearing tr. p. 8 ln. 7–p. 26 ln. 4. The district court applied all five *Miller*/*Lyle* factors and concluded White's proffered mitigation evidence and application of the *Miller*/*Lyle* factors to said evidence and found that the mandatory minimum sentence was indeed warranted. 4/30/2015 Hearing tr. p. 26 ln. 6-p. 31 ln. 23; Conf. App. 43-47.

Additionally, White asserts that in considering the cruel and unusual nature of his sentence, "we must take into consideration the

crimes that were committed. . . . [T]he law has changed and if [White] were to be charged with these crimes today, he would be facing misdemeanors for two of the robberies, rather than class C felonies." Appellant's brief 20. White is partially correct. Indeed, after White was charged, the Iowa legislature amended the code to create a new offense, aggravated theft. *See* Iowa Code § 714.3A. However, this advent has no effect on the district court's analysis for resentencing. It was a matter of prosecutorial discretion to maintain a prosecution for robbery in the second degree. *See State v. Caskey*, 539 N.W.2d 176, 177-78 (Iowa 1995) (rejecting claim that defendant's conduct did not merit prosecution for neglect of dependent under Iowa Code § 726.3 (1993) and instead should have been for lesser crime of child endangerment under Iowa Code § 726.6). Section 714.3A's adoption had no effect on pending prosecutions for robbery in the second degree: "The adoption of one statute does not implicitly repeal another statute whenever a defendant's conduct might violate both. It is not enough to show that the two statutes produce differing results when applied to the same factual situation." *State v. Perry*, 440 N.W.2d 389, 391 (Iowa 1989). White was not entitled to any form of relief, nor would the district court's analysis of his crimes on

resentencing change. *See generally Ross v. State*, No. 11-0880, 2012 WL 1439434, at *1-2 (Iowa Ct. App. Apr. 25, 2012) (postconviction applicant convicted of second degree robbery could not benefit from adoption of section 714.3A).

White's sentence is not cruel and unusual punishment as applied to him. Respectfully, this Court should affirm.

II. The District Court had Statutory Authority to Sentence White to Serve a Mandatory Minimum Sentence.

Preservation of Error

This issue was not presented to the district court, however whether a sentence is void or unconstitutional sentence is a challenge to an illegal sentence, and such claims may be raised at any time. *Lyle*, 854 N.W.2d at 382; *Bruegger*, 773 N.W.2d at 872.

Standard of Review

Iowa courts review a challenge to the legality of a sentence for corrections of errors at law. *Ragland*, 836 N.W.2d at 113. Where the question turns on a constitutional challenge to the validity of the sentence, the court is to review the matter de novo. *Id.*

Merits

Finally, White contends that since his original sentencing, the Iowa Supreme Court "ruled that statutory minimums imposed on

juveniles are unconstitutional," pointing to *Lyle* and *State v. Louisell*, 865 N.W.2d 590 (Iowa 2015). Appellant's brief 22-23. In White's view, *Lyle* rendered Iowa Code section 902.12—which provides for the imposition of a 70 percent mandatory minimum—unconstitutional, and thus the "district court was without statutory authority at the re-sentencing hearing held on May 4, 2015 to impose any mandatory minimum sentence and as such, it is an illegal sentence." Appellant's brief 23-24. Respectfully, White's argument misapprehends the holding in *Lyle* and as a result, misstates the current state of Iowa law on juvenile sentencing.

As set forth above, the Iowa Supreme Court in *Lyle* did not rule that Iowa Code section 902.12 was flatly unconstitutional nor did the court hold that mandatory minimum sentences for non-homicide offenses impermissible. To be clear, the court did state that "

> we hold a mandatory minimum sentencing schema, like the one contained in section 902.12, violates article I, section 17 of the Iowa Constitution when applied in cases involving conduct committed by youthful offenders. We agree categorical rules can be imperfect, "but one is necessary here." We must comply with the spirit of *Miller*, *Null*, and *Pearson*, and to do so requires us to conclude their reasoning applies to even a short sentence that deprives the district court of discretion in crafting a punishment that serves the best interests of the child and of society.

Lyle, 854 N.W.2d at 402 (citation omitted). Yet, the court quickly qualified this "categorical" statement:

> It is important to be mindful that the holding in *this case does not prohibit judges from sentencing juveniles to prison for the length of time identified by the legislature for the crime committed, nor does it prohibit the legislature from imposing a minimum time that youthful offenders must serve in prison before being eligible for parole*. Article I, section 17 only prohibits the one-size-fits-all mandatory sentencing for juveniles. Our constitution demands that we do better for youthful offenders—all youthful offenders, not just those who commit the most serious crimes. Some juveniles will deserve mandatory minimum imprisonment, but others may not.

Id. at 403 (emphasis added). The court further clarified,

> we reiterate that the specific constitutional challenge raised on appeal and addressed in this opinion concerns the statutory imposition of a minimum period of incarceration without parole equal to seventy percent of the mandatory sentence. The holding in this case does not address the mandatory sentence of incarceration imposed under the statutory sentencing schema or any other issues relating to the sentencing schema. Under article I, section 17 of the Iowa Constitution, the portion of the statutory sentencing schema requiring a juvenile to serve seventy percent of the period of incarceration before parole eligibility may not be imposed without a prior determination by the district court that the minimum period of incarceration without parole is warranted under the factors identified in *Miller* and further explained in *Null*.
>
> . . .
>
> [On remand,] the district court *shall conduct a hearing in the presence of the defendant and decide, after considering all the relevant factors and facts of the case,*

> *whether or not the seventy percent mandatory minimum period of incarceration without parole is warranted as a term of sentencing in the case*. If the mandatory minimum sentence is not warranted, the district court shall resentence the defendant by imposing a condition that the defendant be eligible for parole. *If the mandatory minimum period of incarceration is warranted, the district court shall impose the sentence provided for under the statute, as previously imposed*.

Id. at 404 n.10 (emphasis added). This language makes clear that district courts remain authorized to sentence a juvenile defendant guilty of a non-homicide offense to a serve a mandatory minimum prior to being eligible for parole, *so long as* the district court complies with the Article I, Section 17's procedural protections of an individualized sentencing hearing and the court considers a sentencing option other than mandatory incarceration and bases its final resentencing decision upon application of all five *Miller*/*Lyle* factors. *Id.* White is simply mistaken when he asserts that "there is no statutory provision to sentence [him] to a mandatory minimum prison term . . . so it falls back to [] an indeterminate term of up to ten years under Iowa Code § 902.3 and 902.9." Appellant's brief 24. Because the district court had both statutory authority and case law precedent authorizing it to impose a mandatory minimum sentence

when it resentenced White, his claim to the contrary fails and, respectfully, this Court should affirm.

CONCLUSION

The district court did not abuse its discretion in resentencing White. The mitigation evidence White presented did not weigh in favor of eliminating the mandatory minimum from his new sentence. Additionally, because the district court complied with the requisite constitutional procedural protections by holding an individualized sentencing hearing, the court retained statutory authority to impose a mandatory minimum sentence pursuant to Iowa Code section 902.12. Respectfully, this Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State would request that this case be submitted nonorally. In the State's view, the parties' briefing is sufficient to address the relevant issues, and supplemental argument would not be of use to the Court. If the Court were to hear argument in this case, the State requests to be heard.

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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