IN THE SUPREME COURT OF IOWA

MICHAEL T. GOODWIN, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUPREME COURT 18-0737
	)	
IOWA DISTRICT COURT FOR,	)	
DAVIS COUNTY,	)	
Defendant.	)	

CERTIORARI TO THE IOWA DISTRICT COURT
FOR DAVIS COUNTY,
HONORABLE JOEL D. YATES, JUDGE

PLAINTIFF'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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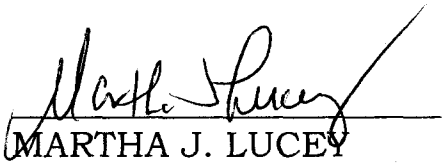
FINAL

CERTIFICATE OF SERVICE

On the 13th day of May, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Plaintiff by placing one copy thereof in the United States mail, proper postage attached, addressed to Michael Goodwin, Jr., #6277543, Iowa State Penitentiary, 2111 330th Avenue, PO Box 316, Fort Madison, IA 52627.

APPELLATE DEFENDER'S OFFICE



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If Goodwin was not constitutionally or statutorily entitled to counsel, the court had discretion to appoint counsel to assist him.

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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because an issue raised involves a substantial question of enunciating or changing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(f). Specifically, Goodwin requests this Court find he had a constitutional and statutory right to appointment of counsel to represent him on a motion to correct illegal sentence.[1] Additionally, Goodwin asserts that if he was not statutorily or constitutionally entitled to appointment of counsel, the district court had discretion to do so and abused its discretion by denying him court-appointed-counsel.

STATEMENT OF THE CASE

Nature of the Case: Plaintiff Michael Goodwin, Jr., seeks certiorari review of the Davis County district court ruling denying his motion for correction of an illegal sentence, appointment of counsel and an evidentiary hearing. Goodwin was convicted of murder in the second degree in violation of

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1 At the time of briefing, a similar issue was pending in Jefferson v. District Court for Scott Cty., #16-1544 (submitted orally on September 12, 2018).

Iowa Code section 707.3 (2015). Goodwin was sixteen years old at the time of the offense.

Course of Proceeding and Disposition Below: On January 25, 2016, Goodwin was charged with first degree murder in connection with the death of his father, Michael Goodwin, Sr. on or about December 11, 2015. (TI)(App. pp. 5-7). Goodwin was sixteen years old. (Written Arraign)(Conf.App. pp. 4-5).

On April 28, 2017, pursuant to a plea agreement, Goodwin entered a guilty plea to murder in the second degree. The plea agreement provided that Goodwin would plead guilty to the lesser-included-offense of second degree murder, he would be sentenced to be incarcerated for a term not to exceed fifty (50) years with a mandatory minimum sentence of twenty (20) years, and to pay restitution and court costs. (Plea Tr. p. 2L17-p. 3L22; Order re: Guilty Plea)(App. pp. 8-10). The plea agreement was not binding on the court. (Plea Tr. p. 11L9-p. 12L3).

On July 19, 2017, Goodwin was sentence to be incarcerated for period not to exceed fifty (50) years with a

twenty (20) year mandatory minimum sentence. (Sent. Tr. p. 56L4-p. 57L2; Judgment)(App. pp. 11-19). Goodwin was seventeen years old. (Written Arraign)(Conf.App. pp. 4-5). Goodwin did not file a direct appeal.

On October 30, 2017, Goodwin filed a motion for reconsideration of his sentence. (Reconsider Motion)(App. pp. 20-21). The order stated the district court "having reviewed its previous action concerning the Judgment Entry filed July 19, 2017, finds that the sentence imposed was proper and appropriate and the same should be sustained." The motion for reconsideration was denied.[2] (Ruling on Reconsider Motion)(App. pp. 22-23).

On March 28, 2018, Goodwin filed a motion to correct an illegal sentence. Goodwin asserted the district court failed to properly weigh the factors cited in State v. Roby, 897 N.W.2d 127 (Iowa 2017), and failed to consider any expert testimony in determining those factors, as well as other evidence and

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2 The Ruling on Motion for Reconsideration of Sentencing indicated the State resisted the application. (Ruling on Reconsider Motion)(App. pp. 22-23). The EDMS docket does not show a resistance filed by the State.

testimony that the defendant cannot be sentenced to any mandatory minimum sentence without violating the Iowa and United States constitutions. (Motion to Correct Illegal Sentence ¶ 3)(App. p. 24). Goodwin request appointment of counsel, an order for funds to hire an expert, and a full and fair hearing on his motion. (Motion to Correct Illegal Sentence)(App. p. 24). The State did not file a resistance. On April 12, 2018, the district court denied the motion in its entirety. (Ruling on Motion to Correct an Illegal Sentence)(App. pp. 25-26).

Goodwin filed a timely petition for writ of certiorari on April 27, 2018. (Petition)(App. pp. 27-29). On June 13, 2018, the Supreme Court granted the petition for writ of certiorari. (6/13/18 SCT Order)(App. pp. 36-38).

Facts: On December 11, 2016, Goodwin was at home after school when his father returned from seeing Goodwin's grandfather. Goodwin argued with his father. He went outside and shot his handgun to blow off steam. When he returned inside, the argument continued. In a sudden

impulse, Goodwin shot his father in the head two times. (Plea Tr. p. 19L2-p. 21L22).

ARGUMENT

I. THE DISTRICT COURT ERRED IN FAILING TO APPOINT COUNSEL TO REPRESENT GOODWIN REGARDING HIS MOTION FOR CORRECTION OF AN ILLEGAL SENTENCE.

Preservation of Error.

Goodwin filed a pro se motion to correct an illegal sentence, for appointment of counsel and an evidentiary hearing. The motion did not specify a basis for appointment of counsel other than stating he was indigent as defined in Iowa Code section 815.9. (Motion to Correct Illegal Sentence)(App. p. 24). The district court denied the motion in its entirety. (Ruling on Motion to Correct an Illegal Sentence)(App. pp. 25-26). Error was preserved by the motion and the court's ruling on it. Lamaster v. State, 821 N.W.2d 856, 862 (Iowa 2012)(quoting Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002))("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the

district court before we will decide them on appeal."). A constitutional right to counsel attaches immediately and even without request, and the right exists until waived. Hannan v. State, 732 N.W.2d 45, 52 (Iowa 2007). An indigent person is entitled to have counsel appointed to represent the defendant at every stage of a criminal proceeding. Iowa R. Crim. P. 2.28(1).

Additionally, Goodwin sought certiorari with this Court. Goodwin's petition included that the district court denied him appointment of counsel. (Petition)(App. pp. 27-29). The Supreme Court granted Goodwin's petition. (6/13/18 SCT Order)(App. pp. 36-38). State v. Ferry, No. 17-0249, 2018 WL 2727715, at *1 n.1 (Iowa Ct. App. June 6, 2018)(petition for writ of certiorari specifically mentioned the trial court's denial of appointment of counsel and supreme court granted request based upon the statement in support).

Standard of Review.

Constitutional issues are reviewed de novo, but when there is no factual dispute, review is for correction of errors at law. In interpreting the Iowa Rules of Criminal Procedure, our

review is for correction of errors at law. State v. Young, 863 N.W.2d 249, 252 (Iowa 2015).

If the district court was not required to appoint counsel but had discretion to do so, review is for abuse of discretion. Cf. State v. Mulqueen, 188 N.W.2d 364-366 (Iowa 1971)(In PCR, an "attorney should have been appointed to represent movant. Such would have been beneficial to him, conducive to a just disposition of this case in the trial court, and most certainly helpful on this appeal."); Chartier v. State, 223 N.W.2d 255, 256 (Iowa 1974)(In PCR, legal assistance would have been beneficial to applicant; "[i]t could have been conducive to a more complete record in the trial court and perhaps would have avoided this appeal.").

Discussion.

Goodwin asserted he was indigent as defined in Iowa Code section 815.9. (Motion to Correct Illegal Sentence)(App. p. 24). See Iowa Code section 815.9(1) (2017) (establishing income levels and standard to apply). Goodwin also filed in the Supreme Court an application to proceed in forma pauperis.

In July 2018, Goodwin had approximately $84.64 in his prison account. He had no other assets. (In forma pauperis)(App. pp. 39-41). Goodwin's indigency is also demonstrated by the appointment of appellate counsel. (8/24/18 SCT Order; Order appointing AD)(App. pp. 45-47).

Goodwin was entitled to a court-appointed-attorney

A legal sentence is a final judgment. However, an illegal sentence is not a final judgment. When a sentence is illegal, there remains something to be done because the illegal sentence cannot be enforced. Cf. State v. Propps, 897 N.W.2d 91, 96 (Iowa 2017)("In criminal cases, as well as civil, the judgment is final for the purpose of appeal 'when it terminates the litigation between the parties on the merits' and 'leaves nothing to be done but to enforce by execution what has been determined.' "). The legislature provided the means to correct an illegal sentence at any time outside the appellate process. See 1976 Iowa Acts ch. 1245, §1301(codified at Iowa Code ch. 813 r. 23(5)(1979)) (the court may correct an illegal sentence at

any time)[3]; 1977 Acts ch. 153, § 73 (same); Iowa R. Crim. P. 2.24(5)(same). But see State v. Hoeck, 843 N.W.2d 67, 71 (Iowa 2014)(illegal sentence may be raised for the first time on direct appeal). In Veal, the Supreme Court held "an illegal sentence is a challenge to the underlying power of a court to impose a sentence and is not a postconviction relief action subject to the limitations in Iowa Code section 822.3." Veal v. State, 779 N.W.2d 63, 65 (Iowa 2010). A motion to correct illegal sentence is not a collateral attack.[4] It must be necessarily a part of the sentence.

Appointment of counsel was constitutionally required

"[T]here is no right more essential than the right to assistance of counsel." Lakeside v. Oregon, 435 U.S. 333, 341,

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3 1976 Iowa Acts 1245 provided the explanation: "AN ACT relating to a complete revision of the substantive criminal laws*, criminal procedure laws, and sentencing and post-conviction procedure laws of this state; providing rules of criminal procedure; providing classifications of public offenses and their consequent penalties; and providing penalties for violations of laws of the state to accord with the revised classifications. It was effective January 1, 1978.

4 "Typically a collateral attack is made against a point of procedure or another matter not necessarily apparent in the record, as opposed to a direct attack on the merits exclusively" Black's Law Dictionary (10th ed. 2014)(collateral attack).

98 S.Ct. 1091, 1096 (1978). The Iowa Supreme Court has recognized the importance of the right to counsel:

> Without a lawyer's aid, it is quite unlikely that an accused will be able to enjoy the advantages of the other enumerated rights. Without counsel, there is little chance for a fair battle between equally able adversaries. Counsel's most basic role is to ensure that the confrontation between opponents contemplated by our Constitution actually does take place.

Simmons v. Public Defender, 791 N.W.2d 69, 74-75 (Iowa 2010) (quoting James J. Tomkovicz, The Right to the Assistance of Counsel: A Reference Guide to the United States Constitution 128 (Jack Stark ed. 2002)).

A defendant in a criminal case is entitled to representation by counsel at all critical stages of the proceedings. U.S. Const. amends. VI, XIV; Iowa Const. art. I, § 10; State v. Hindman, 441 N.W.2d 770, 772 (Iowa 1989). See also Kirby v. Illinois, 406 U.S. 682, 688, 92 S.Ct. 1877, 1882 (1972); Mempa v. Rhay, 389 U.S. 128, 134, 88 S.Ct. 254, 257 (1967). "[I]f a person is indigent, the state has a constitutional obligation to provide an effective lawyer at state expense." Simmons v. Public Defender, 791 N.W.2d at 75. The Iowa Supreme Court has

recognized that the right to counsel extends to sentencing proceedings. State v. Alspach, 554 N.W.2d 882, 883 (Iowa 1996) (citing State v. Cole, 168 N.W.2d 37, 39 (Iowa 1969)). See also Gardner v. Florida, 430 U.S. 349, 358, 97 S.Ct. 1197, 1205 (1977) (citations omitted) (holding that sentencing procedures are a critical stage of the criminal proceeding and that an indigent defendant has the right to court-appointed counsel.). As demonstrated above, an action to correct an illegal sentence is necessarily a part of the sentence. Therefore, the constitutional right to counsel also exists for a motion for correction of illegal sentence because such proceeding is a "critical stage" of the criminal process. Hannan v. State, 732 N.W.2d 45, 52 (Iowa 2007).

Moreover, Goodwin specifically raised the claim that his sentence was unconstitutional; if a sentence is unconstitutional under the state or federal constitutions, it is illegal. State v. Bruegger, 773 N.W.2d 862, 871 (Iowa 2009). Thus, Goodwin's challenge is to his sentence itself. Accordingly, Goodwin's motion to correct an illegal sentence was "a phase of

sentencing" and therefore a critical stage at which Goodwin was entitled to counsel. State v. Alspach, 554 N.W.2d at 883.

The Court of Appeals has rejected the constitutional right to counsel for a motion to correct illegal sentence. See e.g. State v. Cohrs, No. 14-2110, 2016 WL 146526, at * 2-3 (Iowa Ct. App. Jan. 13, 2016)("Cohrs did not have a constitutional right to counsel for his motion to correct an illegal sentence."); State v. Wells, No. 16-0984, 2017 WL 3524733, at *2 (Iowa Ct. App. Aug. 16, 2017)(No reason to depart from holding in Cohrs.); State v. Ferry, No. 17-0249, 2018 WL 2727715, at *2 (Iowa Ct. App. June 6, 2018)("All of Ferry's arguments here are based upon the same constitutional and statutory provisions previously raised and discussed in *Cohrs* and *Wells*."); Jefferson v. District Court for Scott Cty., No. 16-1544, 2017 WL 6039999, at *2 (Iowa Ct. App. Dec. 6, 2017)("This procedure constitutes a collateral attack on the conviction that has been finalized long ago. In such a case, there is no constitutional requirement that counsel be provided."), application for further review granted (submitted orally on September 12, 2018). The

Court of Appeals relied on the decision in Fuhrmann. State v. Cohrs, 2016 WL 146526, at * 2 (citing Fuhrmann v. State, 433 N.W.2d 720, 722 (Iowa 1988)).

Fuhrmann was an appeal from the dismissal of a petition for postconviction relief in which the district court did not rule on his request for application for counsel. Fuhrmann v. State, 433 N.W.2d 720, 721 (Iowa 1988). Fuhrmann Court stated:

> First, we detect no state or federal constitutional grounds for counsel in such a proceeding. It should be noted that applicant makes no such claim. Indeed the United States Supreme Court has clearly announced the right to appointed counsel for a convicted criminal extends only to the first appeal of right, not to a collateral appeal on a conviction that has long since become final upon the exhaustion of the appellate process. We would construe our own constitution likewise.

Fuhrmann v. State, 433 N.W.2d 720, 721 (Iowa 1988)(citing Pennsylvania v. Finley, 481 U.S. 551, 552, 107 S.Ct. 1990, 1991 (1987)). In Finley, the United States Supreme Court held that because Finley did not have a constitutional right to counsel for a discretionary appeal (postconviction proceedings), she did not have a constitutional right to the Anders procedure. Pennsylvania v. Finley, 481 U.S. 551, 557, 107 S.Ct. 1990,

1994 (1987)("Since respondent has no underlying constitutional right to appointed counsel in state postconviction proceedings, she has no constitutional right to insist on the *Anders* procedures which were designed solely to protect that underlying constitutional right.").[5] The Finley Court relied on previous cases which "establish[ed] that the right to appointed counsel extends to the first appeal of right, and no further." Therefore, the United States Supreme Court "rejected suggestions that [the Court] establish a right to counsel on discretionary appeals." Id. at 555, 107 S.Ct. at 1993. Thus, the federal constitutional right to appointment of counsel is determined by whether the action is a right or the action is only subject to the discretion of the court.

A motion filed in the district court to correct an illegal sentence is neither an appeal of right nor a discretionary appeal. Iowa Code 814.1(2017)(definitions of "appeal" and "discretionary review"). See also Black's Law Dictionary (10th ed. 2014)(appeal by right)("An appeal to a higher court from

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[5] Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

which permission need not be first obtained."). See also cf. Tully v. Scheu, 607 F.2d 31, 35 (3rd Cir. 1979)("The hearing on the motion is not an appeal but a continuation of the guilty plea-sentencing proceeding at the trial court level."). The Rules of Criminal Procedure provide a mechanism to seek correction by the district court. The district court does not have discretion to ignore the motion and must enter a ruling on the merits of the motion. Cf. State v. Ohnmacht, 342 N.W.2d 838, 842-843 (Iowa 1983)(correction of sentence is not subject to court's discretion. "Despite personal beliefs or good intentions, a sentencing court is bound to impose the sentence prescribed by statute."). *Compare* Iowa Code § 902.4 (2017)(the court *may* order the person to be returned to the court, at which time the court *may* review its previous action and reaffirm it or substitute for it any sentence permitted by law); Iowa Code § 903.2 (2017)(same).[6] See also Iowa Code § 4.1(30)(c)(2017)("The word "may" confers a power."); Iowa Code

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[6] Yet, if the district court granted a hearing on a motion for reconsideration of sentence, a defendant would be entitled to be represented by counsel.

§4.1(30)(a)(2017)("The word "shall" imposes a duty.").

Furhmann and Finley do not control the question whether Goodwin is constitutionally guaranteed counsel to challenge his illegal sentence.

A number of courts have recognized that post-judgment motions for correction or reduction of sentence constitute a "critical stage" of the criminal proceeding at which indigent defendants are constitutionally entitled to appointed counsel. These courts recognize that such post-judgment motions are not collateral to but rather a further stage of criminal sentencing. See e.g., Williams v. State, 10 So.3d 660, 661 (Fla. Dist. Ct. App. 2009)("A rule 3.800(b)(1) motion is part of the "trial and appeal process" and is a critical stage during which an indigent defendant is entitled to appointed counsel."); Tully v. Scheu, 607 F.2d 31, 35–36 (3rd Cir. 1979)("We perceive the New Jersey sentence reduction procedure to be "a critical stage of the criminal proceeding."); Commonwealth v. Dozier, 439 A.2d 1185, 1190 (Pa. Super. Ct. 1982)("Since sentencing is a critical stage of a criminal prosecution, appellant had a right to

be represented by counsel at the reconsideration hearing."). See also State v. Casiano, 922 A.2d 1065, 1072 n.15 (Conn. 2007) ("Although a motion to correct an illegal sentence may be brought at any time, the motion is not collateral to or separate from the underlying criminal action because it directly implicates the legality of the sentencing proceeding and is addressed to the sentencing court itself."); State v. Clements, 192 A.3d 686, 694 (Md. 2018)("Motions to correct an illegal sentence under Rule 4-345(a) are part of the underlying criminal proceedings.").

Goodwin filed the motion to correct an illegal sentence in his criminal case. It is on the criminal docket. See Davis County number FECR002428. The motion to correct illegal sentence is not a collateral civil proceeding separate from the criminal proceeding. Cf. State v. Clements, 192 A.3d at 693 ("a Rule 4-345(a) motion is not a civil proceeding separate from the criminal case."). A motion to correct an unconstitutional sentence is an extension of the original sentence and is necessarily a critical stage of the criminal prosecution.

Goodwin had a constitutional right to counsel as guaranteed by both the United States and Iowa Constitutions.

"[I]t is important to note that the mere fact the phrase "all criminal prosecutions" is used in both the Federal and Iowa Constitutions does not bind [the Iowa Supreme Court] to follow the prevailing federal constitutional interpretation." State v. Young, 863 N.W.2d 249, 257 (Iowa 2015). In addition, the Iowa constitutional provision is worded more broadly than the federal provision in that it confers a right to the assistance of counsel not only in "all criminal prosecutions" but also "in cases involving the life, or liberty of an individual ..." Iowa Const. art. I, § 10; U.S. Const. amend. VI. See also State v. Young, 863 N.W.2d 249, 257 (Iowa 2015)("Unlike its federal counterpart, the Iowa provision is double-breasted. It has an 'all criminal prosecutions' clause and a 'cases' clause involving the life or liberty of an individual."). This language of the Iowa Constitution "provid[es] broader protections than the United States Constitution." Id. at 279. Even if this Court concludes that a motion for correction of illegal sentence is collateral to

and not a part of the underlying criminal proceeding, such a motion, by its very nature, nevertheless implicates the life or liberty of the individual that is restricted by the purportedly illegal and void sentence. Accordingly, a right to counsel should have been afforded under Article I, section 10 of the Iowa Constitution, even if it is not afforded under the Sixth Amendment of the Federal Constitution. Consequently, the district court erred when it failed to appoint counsel to represent Goodwin on his motion for correction of an illegal sentence.

The denial of an attorney during a critical stage can never be construed as harmless error. State v. Cooley, 608 N.W.2d 9, 17-18 (Iowa 2000). When the court denies a defendant the right to counsel, the matter must be reversed and remand with directions that the defendant be appointed counsel prior to the district court's consideration and resolution of the merits of the claim. State v. Alspach, 554 N.W.2d at 884.

Appointment of counsel was statutorily required

Iowa Code Chapter 815 provides a procedure to implement the constitutional right to counsel for indigent defendants in Iowa. Section 815.9 provides that an indigent defendant "is entitled to an attorney appointed by the court ..." Iowa Code § 815.9(1) (2017). Section 815.10(1) provides: "The court ... *shall appoint*" counsel "to represent an indigent person *at any stage of the criminal ... proceedings* ... in which the indigent person is entitled to legal assistance at public expense." Iowa Code § 815.10(1)(a) (2017) (emphasis added). Iowa Rule of Criminal Procedure 2.28(1), in turn, provides an expansive view of a defendant's right to court-appointed counsel:

Every defendant, who is an indigent person as defined in Iowa Code section 815.9, *is entitled to have counsel appointed* to represent the defendant *at every stage* of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation revocation hearings, *unless the defendant waives such appointment.*

Iowa R. Crim. P. 2.28(1) (emphasis added). The word "shall" as used in section 815.10 connotes an affirmative duty or obligation of the court to appoint counsel, not a discretionary decision. Iowa Code § 4.1(30)(a) (2017).

The statutory right to counsel exists on a motion for correction of illegal sentence because such motion is a stage of the "criminal ... proceedings." Iowa Code § 815.10; Iowa R. Crim. Pro. 2.28(1). See also cf. State v. Casiano, 922 A.2d at 1072 n.15 (motion to correct an illegal sentence is not collateral to or separate from the underlying criminal action); State v. Clements, 192 A.3d at 694 (motions to correct an illegal sentence are part of the underlying criminal proceedings."). The Iowa Supreme Court has also recognized that certain proceedings that are commenced after the entry of judgment may nevertheless constitute "a phase of sentencing" to which the right to counsel extends. State v. Alspach, 554 N.W.2d at 883 (citations omitted). Specifically, the Court has held that an indigent defendant is entitled to counsel at a restitution hearing that is instituted as part of the criminal case because it

is, in effect, part of the sentencing proceeding. Id. at 883-884. To make this determination, the Court relied on the "expansive" language of Iowa Rule of Criminal Procedure 2.28(1) and Iowa Code section 815.9(10) that an indigent person is entitled to court-appointed counsel "at every stage" of the criminal proceeding. Id. at 882-883.

Indeed, the motion to correct illegal sentence procedure is authorized by the Rules of Criminal Procedure and is inherently a criminal proceeding, even though such motion would be filed subsequent to judgment entry. Iowa R. Crim. P. 2.24(1), (5). Rule 2.24 contemplates and recognizes that, even after judgment entry, the sentencing court retains the inherent authority to correct a sentence that is illegal and void. State v. Ohnmacht, 342 N.W.2d at 843. Therefore, that procedural rule "constitutes a narrow exception to the general rule that, once a defendant's sentence has begun, the authority of the sentencing court to modify that sentence terminates." State v. Casiano, 922 A.2d at 1071. "The evident nexus between a motion to correct an illegal sentence and the original sentencing

hearing, coupled with the fact that a criminal defendant is constitutionally entitled to the assistance of counsel at that original sentencing hearing ... provides strong support" for the conclusion that a motion to correct illegal sentence is part of the underlying criminal proceeding rather than a collateral or separate proceeding. Id. at 1072.

Goodwin was entitled to have counsel appointed at state expense. He specifically requested counsel be appointed to assist him and he did not subsequently waive his right to a court-appointed-attorney.

If Goodwin was not constitutionally or statutorily entitled to counsel, the court had discretion to appoint counsel to assist him.

The district court had discretion to appoint counsel for Goodwin. The Supreme Court has previously held that the district court has discretion regarding appointment of counsel in postconviction relief actions. State v. Mulqueen, 188 N.W.2d 360, 364-366 (Iowa 1971). The Supreme Court held "that counsel should be appointed by the trial court when the circumstances of the particular case establish such

appointment would be beneficial to petitioner, conducive to a just disposition of the case in the trial court, and helpful on an appeal." Chartier v. State, 223 N.W.2d 255, 256 (Iowa 1974). The same analysis is appropriate in the present case.

Mulqueen recognized that there were circumstances where counsel was required to provide the petitioner with a fair opportunity for relief to be afforded. State v. Mulqueen, 188 N.W.2d at 365. The Court cited United States ex rel. Wissenfeld v. Wilkins, 281 F.2d 707 (2nd Cir. 1960) with approval. State v. Mulqueen, 188 N.W.2d at 365. The Second Circuit Court of Appeals stated:

> in certain circumstances the appointment of counsel to assist a prisoner in the presentation of his case is highly desirable. Where a petition for the writ presents a triable issue of fact the clear presentation of which requires an ability to organize factual data or to call witnesses and elicit testimony in a logical fashion it is much the better practice to assign counsel. As we have ourselves implicitly recognized, rarely will a prisoner have sufficient ability or training to recognize the facts which are important to his case or to present his side of the dispute in an orderly manner. 'Lack of (such) technical competence * * * should not strangle consideration of a valid constitutional claim.'
>
> Upon some occasions, when complex factual data must be developed in order to support the prisoner's position, the

assistance of counsel not only may be desirable but will be necessary if the prisoner's case is to be adequately presented. In such circumstances it may be reversible error for the district court to fail to appoint counsel to assist the applicant or to assure in other ways that the prisoner receives a fair and meaningful hearing.

United States ex rel. Wissenfeld v. Wilkins, 281 F.2d 707, 715 (2nd Cir. 1960)(other citations omitted).

Goodwin was sixteen at the time of the offense. At the time he filed the motion to correct illegal sentence, Goodwin was eighteen years old. (Written Arraign)(Conf.App. pp. 4-5). The issues involved in imposing sentence for an offender who was a juvenile at the time of the offense are complex. District court judges have experienced difficulties in applying this Court's case law. See e.g. State v. Null, 836 N.W.2d 41, 81 (Iowa 2013)(Mansfield, J., concurring in part, dissenting in part)("the majority tries to move into the practical world and explain "what the district court is required to do" to comply with *Miller*. However, I find the explanation unenlightening, and I fear our district courts will as well."); State v. Seats, 865 N.W.2d 545, 547 (Iowa 2015)("Because the district court did not have the

benefit of this decision when it sentenced the juvenile, we vacate the sentence and remand for resentencing."); State v. Roby, 897 N.W.2d 127, 144 (Iowa 2017)("Yet, as this case and others illustrate, difficulties in applying the factors are obvious." "[T]he difficulties in applying the factors are a call for clearer guidance to permit them to supply the required protection demanded by our constitution."); State v. White, 903 N.W.2d 331, 333 (Iowa 2017) ("We recently elaborated on the role of the district court in considering the eligibility of the juvenile offender for parole and how the primary factors relevant to the decision are to be considered at the sentencing hearing."); State v. Zarate, 908 N.W.2d 831, 855 (Iowa 2018)(District court abused its discretion by imposing a mandatory minimum sentence based on the sentencing judge's belief that there "should be [a] minimum period of time [for imprisonment] for somebody that takes the life of another individual, whether that person is a juvenile or an adult."). The motion which involved a complex constitutional issue warranted appointment of counsel to assist Goodwin.

Appointment of counsel would also have assisted the district court in recognizing the errors from the sentencing proceedings. Counsel would have had the ability to provide the district court a more detailed analysis of Iowa's juvenile sentencing jurisprudence. If counsel had been appointed, this appeal might have been avoided in its entirety. Additionally, counsel would have been able to assist Goodwin in presenting arguments to demonstrate why the district court failed to provide him with the constitutionally required individualized sentencing process he was entitled to receive. State v. Zarate, 908 N.W.2d at 856. Lastly, counsel could develop the factual evidence and argument to prove it is time for categorical rejection of mandatory minimums for juveniles. State v. Roby, 897 N.W.2d at 143 ("in our independent judgment article I, section 17 does not *yet* require abolition of the practice.")(emphasis added); Id. at 142-143 (delayed maturation is a consequences of incarcerating juvenile offenders; "and is likely made worse by apparent Iowa Department of Corrections policy leaving them ineligible for rehabilitative treatment until

they near their discharge date."); State v. Zarate, 908 N.W.2d at 857 (Hecht, concurring specially)("I believe a mandatory minimum term of incarceration for a juvenile offender is categorically prohibited by article I, section 17 of the Iowa Constitution."); Id. at 860 (Appel, J. concurring specially)("Instead of imposing mandatory minimums through an unreliable judicial guess, the constitutionally sound approach is to abolish mandatory minimum sentences on children and allow the parole board to make periodic judgments as to whether a child offender has demonstrated maturity and rehabilitation based on an observable track record."); Id. at 861 n.6 (Appel, J. concurring specially)("some authorities suggest that if the state is to provide juvenile offenders with a meaningful opportunity for reform, the offender must be incarcerated in "a correctional setting that promotes healthy psychological development.").

The district court abused its discretion by denying Goodwin appointed counsel.

II. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO REBUT THE PRESUMPTION GOODWIN SHOULD NOT BE SUBJECT TO A MANDATORY MINIMUM SENTENCE.

Preservation of Error.

"A defendant may challenge his sentence as inherently illegal because it violates the Iowa or Federal Constitutions at any time." State v. Null, 836 N.W.2d 41, 48 (Iowa 2013)(citing State v. Bruegger, 773 N.W.2d 862, 872 (Iowa 2009)).

Standard of Review.

The Court reviews sentences that are within the statutory limits for an abuse of discretion, though this standard "is not forgiving of a deficiency in the constitutional right to a reasoned sentencing decision based on a proper hearing." State v. Roby, 897 N.W.2d 127, 138 (Iowa 2017).

Discussion.

"The linchpin of the constitutional protection provided to juveniles is individualized sentencing." State v. Roby, 897 N.W.2d at 143. The Iowa Supreme Court endorsed the five

factors identified in Miller v. Alabama as guideposts for the courts to follow. Id. at 144.

> (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 relating 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 for change.

State v. Lyle, 854 N.W.2d 378, 404 n.10 (Iowa 2014) (other citations omitted).

This Court recognized the difficulty in determining if a juvenile offender should be eligible for parole. State v. Roby, 897 N.W.2d at 147.

> First, the five factors identify the primary reasons most juvenile offenders should not be sentenced without parole eligibility. A sentence of incarceration without parole eligibility will be an uncommon result. Second, the factors must not normally be used to impose a minimum sentence of incarceration without parole unless expert evidence supports the use of the factors to reach such a result. Third, the factors cannot be applied detached from the evidence from which they were created and must not be applied solely through the lens of the background or culture of the judge charged with the responsibility to apply them.

Id. Thus, the presumption for any sentencing judge is that juveniles should be sentenced without a minimum mandatory sentence. See e.g. State v. Seats, 865 N.W.2d 545, 555 (Iowa 2015)(the presumption is life in prison with the possibility of parole for murder unless the other factors require a different sentence.). The State can rebut the presumption that juvenile offenders should not have restrictions on parole eligibility. Id. To rebut the presumption of parole eligibility, "the relevant information in the sentencing calculation may include aggravating factors." State v. Zarate, 908 N.W.2d 831, 855 (Iowa 2018).

The State called two witnesses, Deputy O'Dell and Rod Stevens, at the sentencing hearing. O'Dell provided information regarding his role in the investigation into Goodwin's father's death. O'Dell found Goodwin, Sr. in a reclining chair. He looked as though he was reclined watching television which was still on. He had been shot twice in the head. (Sent. Tr. p. 8L8-22, p. 9L4-16). Goodwin, Sr. had last been seen alive sometime in the afternoon on Friday December

11, 2015. (Sent. Tr. p. 9L17-23). That Friday night, Goodwin had stayed at his friend's home. He told her his dad was not home and he was locked out. He drove his grandfather's truck and brought his dog, dog food, some clothing and two guns. (Sent. Tr. p. 9L24-p. 11L25).[7]

O'Dell testified law enforcement found the weapon which was used to shot Goodwin, Sr. in the rafters in the basement of Goodwin's grandfather's home. (Sent. Tr. p. 12L1-11). The investigation revealed that Goodwin acted alone. (Sent. Tr. p. 12L19-p. 13L3). Law enforcement did not determine a solid reason for the crime. There was some possibility that Goodwin had been upset about not being allowed to attend a dance. (Sent. Tr. p. 13L4-23).

The State's second witness was Rod Stevens. Goodwin, Sr. was Stevens' best friend. He knew Goodwin his entire life. (Sent. Tr. p. 15L11-15). Stevens' opined that Goodwin's childhood was good. At some point, Goodwin's parents divorced. Stevens was not sure how old Goodwin was at the

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[7] Goodwin's grandfather was in the hospital.

time of the divorce. (Sent. Tr. p. 16L15-p. 17L6). Goodwin initially lived with his mother. Goodwin wanted to live with his father. Custody was changed at some point and Goodwin lived with his father. Goodwin's mother voluntarily relinquished her parental rights. (Sent. Tr. p. 17L15-p. 18L13, L20-p. 19L2).

Stevens spent considerable time with Goodwin, Sr. and Goodwin. (Sent. Tr. p. 19L14-19). Stevens testified that Goodwin was never disciplined by either parent. (Sent. Tr. p. 19L3-20). In the year before he died, Goodwin, Sr. had started setting ground rules. Goodwin did not respond well to authority. Goodwin became upset over trivial things and told his father he hated him and wished he was dead. (Sent. Tr. p. 19L21-p. 20L17). Goodwin's grandfather allowed him to get his way on anything he wanted. Stevens testified that he saw a text message to Goodwin from his grandfather that said "Bubba, whatever you do, don't let your dad know I gave you those two guns." (Sent. Tr. p. 20L18-p. 21L23). Stevens encouraged Goodwin, Sr. to keep his guns locked up because he was concerned Goodwin would shoot his dad. (Sent. Tr. p.

22L12-p. 23L8). Steven denied Goodwin, Sr. had a temper. (Sent. Tr. p. 23L15-p. 24L7).

The defense called two witnesses, Dr. Hart and Goodwin. Dr. Hart was a professor of clinical and forensic psychology. (Sent. Tr. p. 29L13-p. 30L6). Hart had been recognized as an expert in risk assessment. (Sent. Tr. p. 30L12-14). Hart reviewed the materials in the case and personally interviewed Goodwin. (Tr. p. 30L15-23).

Hart testified of his findings regarding Goodwin's childhood:

> Michael's childhood was rather disturbed or disrupted. Early on, from his description and the description of others, there were times when the family was relatively normal or that he had a relatively normal childhood. He was described as being happy but also being able to go out and play outside the home and play with friends and so forth.
>
> But later on, there was some serious problems due to his father's alcohol abuse and anger and his general abusiveness, psychological and physical abusiveness -- and this led to some very serious marital discord between the parents over a long period of time, many years, and that included frequent arguments in the house, yelling and screaming or shouting, and also physical abusiveness between the parents, some of which was witnessed by -- directly by Michael.

His mother was quite fearful, in part, because Mr. Goodwin, Sr. was a large man, and eventually she separated and moved away, essentially just leaving Michael Jr. in the custody of Michael Sr. -- and I'm going to use the term advisedly -- abandoning him or leaving him there and basically cutting off contact with him.

(Sent. Tr. p. 31L6-p. 32L2, p. 41L7-p. 42L9). Goodwin, Sr. had periods of sobriety. He attended church and established stronger friendships. (Sent. Tr. p. 32L3-12).

However, he also seemed to become, in some ways, more angry and also somewhat more extreme or entrenched in his attitudes. And, in particular, there's very extensive descriptions of his prepper beliefs and behavior. He was one of the people that believed there was a strong need to prepare for an imminent catastrophe, and he stockpiled food and weapons and other supplies and met regularly with people who shared his prepper beliefs, withdrew from many other members of society or restricted his social contact. He put cameras around the family home.

He restricted Michael Jr. from having contact with people outside the home. For example, he wasn't allowed to socialize with friends outside of school or go out in the evenings.

He spoke a lot about his prepper beliefs and also more general suspicious or cynical and antiauthority attitudes, including antigovernment and antipolice attitudes. He was focused on firearms use and taught Michael Jr. to use firearms and made him responsible as far as part of their care and maintenance in the family home.

But he also, towards Michael Jr., became angry and abusive directly, often yelling at him, or frequently yelling at him, and

occasionally hitting him. And on a few occasions was described by Michael Jr. as beating him and even pointing handguns at him. And Michael Jr. also became concerned that this abusive behavior was increasing in severity over time. He actually mentioned this to some other people, but did not report it to police.

(Sent. Tr. p. 32L13-p. 33L14, p. 42L10-p. 43L3).[8]

Hart assessed Goodwin's cognitive and intellectual functions. His general psychological function is "relatively normal or grossly normal adolescent male." He appears to have average intelligence and no major cognitive deficits. Hart did not identify any personality traits that indicate a serious personality disturbance or a burgeoning personality disorder. Goodwin clearly had some problems over the years with anger and impulse or reactive aggression. Hart classified it as perhaps above average but not extreme for an adolescent male. Despite the restrictive social life, Goodwin had some positive peer relationship and had good social skills. Goodwin is

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8 Prepper is defined as "[a] person who believes a catastrophic disaster or emergency is likely to occur in the future and makes active preparations for it, typically by stockpiling food, ammunition, and other supplies." https://en.oxforddictionaries.com/definition/prepper See also https://www.superprepper.com/the-meaning-of-prepping-what-is-a-prepper/

somewhat suspicious of people, but is primarily pro social. Goodwin had not had any serious or frequent antisocial conduct in the community prior to the current offense. He had no serious behavioral problems in school or any institutional infractions while in custody. (Sent. Tr. p. 33L15-p. 35L13).

Dr. Hart opined Goodwin was relatively normal with respect to his social age or maturity and responsibility. Hart attributed his impulsive or reactive aggression as being related to his adverse child-rearing experiences or other situational factors as opposed to some kind of developmental problem. (Tr. p. 35L23-p. 36L7).

Dr. Hart opined regarding Goodwin's family relationships and home environment:

*** Based on the descriptions that I gave previously, I would have characterized his home environment and his family relationships as seriously disturbed. This was not a good home environment. If I can summarize this in a different way, it was quite poisonous in a sense -- or toxic in a sense of being something that I would have expected to have an adverse impact on any young person.

Certainly being stuck alone with his father, he was, in some ways, almost a captive in an environment that was extremely negative and focused on anger and aggression and violence and

guns. And he was directly exposed to this to the point where he was physically abused by his father and had guns pointed at him. This was just, I think by anybody's definition, a bad home environment.

(Tr. p. 36L8-23). Dr. Hart opined that Goodwin was a pretty normal adolescent male and did not have any significant problems with legal capacity. (Sent. Tr. p. 36L24-p. 37L12)

Dr. Hart opined regarding Goodwin's prospects for rehabilitation:

In this particular case, I would consider his prospects for rehabilitation to be very good or excellent.

And, again, this is somewhat unusual for me. It's not common for me to say this -- reach this kind of opinion, but when I look through, I saw a number of strengths in Michael Jr.'s development and in his psychological and social functioning, and I didn't see many areas of weakness. In fact, the only area of weakness that I could see was actually his child-rearing experiences and his relationship with his father.

In terms of his areas of good functioning or strengths, I've already said his cognitive intellectual functions, his personality functions, his social relationships, his social attitudes and orientation were all normal. And it appears that there's every reason to expect that he will continue to develop normally in those areas and mature into a normal or healthy adult male.

Those strengths also had some pretty important implications from a rehabilitative perspective. One of them is he likely could be able to understand and abide by institutional rules and regulations. So I don't see any reason at this point in time

to expect that he will have significant problems adjusting to incarceration.

In fact, he seems to accept that he is looking at a rather lengthy period of incarceration and has come to terms with that, unlike many of the people that I would evaluate, does not seem to have held much bitterness about that or blames others for it.

And, then, also I think in terms of his psychological functioning, his basic social skills, his ability to attach to other people and to interact with them appropriately, his [intact] intellectual skills means he should be able to participate in and also, importantly, benefit from a wide range of rehabilitative activities.

So, for example, if he has the ability to take anything from psychological counseling through to vocational types of programs, he should be able to benefit from any of those things incarceration.

And the final thing was that I couldn't see any risk factors that would be relevant in terms of elevating his risk for violence in the future, either in the institution or in the community. So at this point in time, for the foreseeable future, I don't see any reason to believe that he poses any kind of elevated risk for violence.

(Sent. Tr. p. 37L13-p. 39L8).

Dr. Hart was questioned whether he found a fifty-year sentence with a twenty-year mandatory minimum sentence to be appropriate. Hart answered solely from a psychological perspective. Hart testified:

*** clearly I can address issues related to such things as specific deterrence or rehabilitation or protection of public safety.

I recognize that many other aspects of sentencing are completely outside my area of expertise and are properly areas for others to deal with. So, you know, for example, things like his moral culpability and so forth, and for general deterrence. But from a psychological perspective, based on Michael's history and his current functioning, I don't see any reason that he would require lengthy incarceration or assessment or treatment or other forms of rehabilitation for specific deterrence or for rehabilitation.

I would consider incarceration to be unnecessary for those things, and, I suppose, possibly counterproductive for them. But certainly I think there's no reason that I would see to indicate that a lengthy term of incarceration is something that would help in this case, and I would consider a minimum period of incarceration to be appropriate.

(Sent. Tr. p. 39L9-p. 40L6). On cross-examination, Hart

testified:

Q. I want to follow up on that last opinion you gave to the Court concerning the minimum amount of time the defendant has agreed to do in this case. Based on your evaluation of the documents in this case and after talking to the defendant, did I understand you to say you would agree, based on your evaluation, the 20-year minimum would be appropriate, and one of those reasons could be for protection of society?

A. That's correct. That is -- if I can reframe that. I don't see that any longer period of incarceration would be helpful or necessary to give further protection to public safety. So I think the minimum term of incarceration would adequately protect public safety. Is that clearer?

Q. I think so. So you're saying the agreed-upon years, 20 years minimum, you're saying, in your opinion, would be appropriate in this case?

A. Yes. I think that would completely satisfy me in terms of protection of public safety.

(Sent. Tr. p. 40L15-p. 41L6, p. 44L10-21).

Goodwin testified at the sentencing hearing. He did not remember exactly when his parents divorced but believed he was ten or eleven years old. He thought he wanted to live with his father. He thought was the best thing for him. (Sent. Tr. p. 46L20-p. 47L7). Things at home gradually got worse. Goodwin was generally not allowed to spend time with friends. He mainly spent time with his father and Stevens. Once they started attending church at Ottumwa Baptist Temple he was no longer allowed to date because the church did not believe in teenage dating. Goodwin was unhappy and isolated. (Sent. Tr. p. 47L8-p. 48L15, p. 50L2-10, p. 51L3-22). Goodwin's father became more verbally abusive. (Sent. Tr. p. 48L18-23). Goodwin's grandfather was his escape from his father. (Sent.

Tr. p. 48L24-p. 49L3, p. 50L11-20, p. 51L23-p. 53L2, p. 53L8-14).

Goodwin testified that at times his father was physically abusive. There were times when arguments became physical and they would fight. (Sent. Tr. p. 49L4-6). Goodwin, Sr. owned guns. He taught Goodwin how to shoot. Goodwin agreed that "[i]n a sense" his father was a "prepper." (Sent Tr. p. 49L7-18). Goodwin, Sr. really did not believe in government authority and police. He taught Goodwin to avoid them as much as he could, but be nice to them. Goodwin testified, "But, like most the conflicts I had, neither one of us were really too nice with them." He clarified it was Goodwin, Sr.'s conflicts with police. (Sent. Tr. p. 49L20-p. 50L1).

The evidence presented at sentencing demonstrates that Goodwin was not the "rare juvenile offender whose crime reflects irreparable corruption." State v. Null, 836 N.W.2d 41, 66 (Iowa 2013)(citing Roper v. Simmons, 543 U.S. 551, 573, 125 S.Ct. 1183, 1197 (2005)). Dr. Hart's agreement that twenty-year minimum was appropriate only considered the

protection of society. (Sent. Tr. p. 39L9-p. 41L6). The United States Supreme Court has rejected incapacitation as a justification for punishment based upon the Roper Courts doubt that sentencers can "make judgment the juvenile is incorrigible" when it is difficult for expert psychologists to make such a determination. State v. Null, 836 N.W.2d at 63 (citing Graham v. Florida, 560 U.S. 48, 73 130 S.Ct. 2011, 2029 (2010)).

The Iowa legislature determined that incapacitation is a statutory penological goal for a second degree murder sentence. Iowa Code § 707.3 (2015)(Class B felony with maximum sentence to be incarceration not to exceed 50 years); Iowa Code § 702.11(1)(2015)(murder is a forcible felony); Iowa Code § 707.3 (forcible felony sentence may not be deferred or suspended). However, the imposition of a minimum sentence for the purpose of incapacitation beyond the initially prison sentence is improper for a juvenile offender. See State v. Pearson, 836 N.W.2d 88, 97 (Iowa 2013)("rehabilitation is an

important factor and to predict that a juvenile cannot be rehabilitated is very difficult."). As this Court said in Roby:

> judges cannot necessarily use the seriousness of a criminal act, such as murder, to conclude the juvenile falls within the minority of juveniles who will be future offenders or are not amenable to reform. Again, any such conclusion would normally need to be supported by expert testimony.

State v. Roby, 897 N.W.2d at 147.

Hart opined, from a psychological perspective, Goodwin would not "require lengthy incarceration or assessment or treatment or other forms of rehabilitation for specific deterrence or for rehabilitation." Incarceration was not necessary for rehabilitation or specific deterrence, in fact, is was "possibility counterproductive." (Sent. Tr. p. 39L9-p. 40L6). Further, Hart concluded Goodwin did not pose any kind of elevated risk for violence. (Sent. Tr. p. 37L13-p. 39L8).

The State did not present sufficient evidence to rebut the presumption that Goodwin, a juvenile offender, should not have restrictions on his parole eligibility. The district court abused its discretion by ordering Goodwin serve a twenty-year

minimum sentence prior to being eligible for parole. This portion of the sentence must be vacated.

III. THE DISTRICT COURT FAILED TO APPROPRIATELY WEIGH THE CONSTITUTIONALLY REQUIRED FACTORS IN SENTENCING A JUVENILE OFFENDER AS OUTLINED IN *NULL, LYLE,* AND *ROBY.*

Preservation of Error.

"A defendant may challenge his sentence as inherently illegal because it violates the Iowa or Federal Constitutions at any time." State v. Null, 836 N.W.2d 41, 48 (Iowa 2013)(citing State v. Bruegger, 773 N.W.2d 862, 872 (Iowa 2009)).

Standard of Review.

The Court reviews sentences that are within the statutory limits for an abuse of discretion, though this standard "is not forgiving of a deficiency in the constitutional right to a reasoned sentencing decision based on a proper hearing." State v. Roby, 897 N.W.2d 127, 138 (Iowa 2017).

Discussion.

"Article 1, section 17 of the Iowa Constitution does not categorically prohibit the imposition of a minimum term of

incarceration without the possibility of parole on a juvenile offender, provided the court only imposes it after a complete and careful consideration of the relevant mitigating factors of youth." State v. Roby, 897 N.W.2d at 148. "The lynchpin of the constitutional protection provided to juveniles is individualized sentencing." Id. at 143.

The five factors to be considered by the Court set forth in Lyle are:

> (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 relating 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 for change.

State v. Lyle, 854 N.W.2d 378, 404 n.10 (Iowa 2014) (other citations omitted). See also State v. Null, 836 N.W.2d at 74-75 (discussing factors); State v. Roby, 897 N.W.2d at 145-147 (same).

In Roby, the Court sought to provide clearer guidance to permit the district court to provide the constitutional

protections to juvenile offenders. State v. Roby, 897 N.W.2d at 144. The Court stated:

> First, the factors generally serve to mitigate punishment, not aggravate punishment. Second, juvenile sentencing hearings are not entirely adversarial. The goal is to craft a "punishment that serves the best interests of the child and of society." Third, the default rule in sentencing a juvenile is that they are not subject to minimum periods of incarceration.

Id. at 144.

> ...the factors used to apply the constitutional principle at stake in this decision will best serve their purpose if sentencing courts remain committed to several key observations. First, the five factors identify the primary reasons most juvenile offenders should not be sentenced without parole eligibility. A sentence of incarceration without parole eligibility will be an uncommon result. Second, the factors must not normally be used to impose a minimum sentence of incarceration without parole unless expert evidence supports the use of the factors to reach such a result. Third, the factors cannot be applied detached from the evidence from which they were created and must not be applied solely through the lens of the background or culture of the judge charged with the responsibility to apply them. Perceptions applicable to adult behavior cannot normally be used to draw conclusions from juvenile behavior.

Id. at 147.

After receiving evidence at the sentencing hearing, the district court failed to provide any meaningful fact finding which demonstrated it had appropriately weighed the relevant

factors. In explaining the reasons for the imposition of a twenty-year minimum mandatory sentence, the court stated:

> Mr. Goodwin, I've selected this particular sentence for you after considering your age, specifically your age at the time the crime was committed, the nature of the offense committed by you and the harm to the victim, the plea agreement reached by the attorneys in this case, the contents of the PSI, and specifically the recommendation of the PSI.
>
> I've also considered what the witnesses have testified to here today. I have also considered the factors set forth in *State v. Roby*. I've also considered your need for rehabilitation and your potential for rehabilitation. And, finally, I've considered the necessity for protecting the community from further offenses by you and others.

(Sent. Tr. p. 57L7-18). A section of the form sentencing order had a box to mark if the defendant was a juvenile offender and the district court found the sentence was not cruel and unusual based on the Lyle factors. However, the box was not marked. (Judgment p. 7)(App. p. 17).

The parties' plea agreement did not eliminate the district court's discretion regarding the imposition of a mandatory minimum sentence. (Plea Tr. p. 11L24-p. 12L3). When a sentencing court has discretion, it must exercise that discretion. State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999).

Because the district court had discretion to determine the sentencing to comport with the constitutionally required individualized sentencing process, the court could not rely solely on the plea agreement.

In Null, the Court concluded that Article I, section 17 required "that a district court *recognize and apply* the core teachings of *Roper, Graham,* and *Miller* in making sentencing decisions for long prison terms involving juveniles." State v. Null, 836 N.W.2d at 74 (citing Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005), Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011 (2010), and Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012))(emphasis added). The Court instructed the district court to make findings discussing the sentence. State v. Null, 836 N.W.2d at 74-75 ("If a district court believes a case presents an exception to this generally applicable rule, the district court should make findings discussing why the general rule does not apply."). See also State v. White, 903 N.W.2d 331, 334 (Iowa 2017)("We recognize the district court in this case did not have the benefit of *Roby* at the time of the

resentencing hearing. Had the decision been available, we are confident the district court would have followed a more rigorous and careful analysis of the relevant sentencing factors."). But see State v. Null, 836 N.W.2d at 82 n.13 (Mansfield, J., concurring in part, dissenting in part)("My colleagues do not say that a district court must make specific findings on each of the *Miller* factors.").

A district court's statement it "considered" the factors listed in Iowa Code section 907.5 and the *Null-Lyle-Roby* factors provides absolutely no rationale for the ultimate sentence chosen. "Consider" means

to think about carefully: such as

a: to think of especially with regard to taking some action
// is *considering* you for the job
// *considered* moving to the city

b: to take into account
// The defendant's age must be *considered.*

https://www.merriam-webster.com/dictionary/consider

(emphasis in original). The district court must be aware of the relevant factors and give thought to each. However, to

"consider" the listed factors does not mean the same thing as "weighing" the relevant factors to reach a reasoned conclusion. "Weigh" means "to consider carefully especially by balancing opposing factors or aspects in order to reach a choice or conclusion: EVALUATE

// *weighing* her options"

https://www.merriam-webster.com/dictionary/weigh

(emphasis in original). The district court is to consider the factors, but the weighing of the factors and other relevant information shapes the eventual basis for the court's exercise of discretion. When the district court only states it considered the *Null-Lyle-Roby* factors, the appellate court has no information regarding how the factors were weighed or how they justify the result reached in order to understand or evaluate the discretionary sentence.

""[I]f a sentencing court fails to consider a relevant factor that should have received significant weight, gives significant weight to an improper or irrelevant factor, or considers only appropriate factors but nevertheless commits a clear error of

judgment" a discretionary sentencing ruling may be an abuse of discretion." State v. Zarate, 908 N.W.2d 831, 856 (Iowa 2018). If the district court fails to make findings there is no feasible means for appellate review. See State v. Thompson, 856 N.W.2d 915, 919 (Iowa 2014)(Most importantly, reasons for sentencing requirement "affords our appellate courts the opportunity to review the discretion of the sentencing court."). The district court failed to make any findings to support the "uncommon" minimum sentence. Goodwin must be granted a new sentencing hearing where he will be provided the constitutionally required individualized sentencing process.

CONCLUSION

Michael Goodwin, Jr. respectfully requests this Court vacate the twenty-year minimum sentence and remand to the district court for entry of an amended sentence order. Alternatively, Goodwin respectfully requests this Court vacate his sentence and remand to the district court for resentencing. If this Court determines the original sentence should remain in effect on this record, Goodwin respectfully request this Court

remand to the district court for appointment of counsel and a hearing on his motion to correct an illegal sentence.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $5.53 , and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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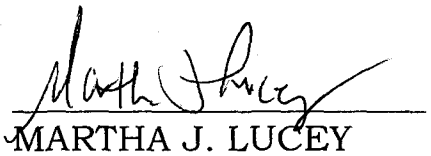

Dated: 5/9/15

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