IN THE SUPREME COURT OF IOWA
Supreme Court No. 18–0737

MICHAEL THOMAS GOODWIN,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR DAVIS COUNTY,
Defendant.

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

DEFENDANT'S BRIEF

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FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

Other Authorities

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. A motion to correct an illegal sentence must allege a substantive illegality, not just a procedural defect. Goodwin had an individualized sentencing hearing with expert testimony on the *Miller*/*Lyle* factors, as *Roby* required. Goodwin did not file a direct appeal. Now, Goodwin alleges that the court did not properly weigh those five factors. Can he raise this claim in a motion to correct an illegal sentence?

Authorities

Atkins v. Virginia, 536 U.S. 304 (2002)
Beard v. Banks, 542 U.S. 406 (2004)
Montgomery v. Louisiana, 136 S.Ct. 718 (2016)
O'Dell v. Netherland, 521 U.S. 151 (1997)
Sawyer v. Smith, 497 U.S. 227 (1990)
Schriro v. Summerlin, 542 U.S. 348 (2004)
French v. Iowa Dist. Ct., 546 N.W.2d 911 (Iowa 1996)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Bruegger, 773 N.W.2d 862 (Iowa 2009)
State v. Gordon, 732 N.W.2d 41 (Iowa 2007)
State v. Hoeck, 843 N.W.2d 67 (Iowa 2014)
State v. Iowa Dist. Ct. for Johnson County, 750 N.W.2d 531 (Iowa 2008)
State v. Lyle, 854 N.W.2d 379 (Iowa 2014)
State v. McCright, 569 N.W.2d 605 (Iowa 1997)
State v. Means, No. 11–0492, 2012 WL 3195975 (Iowa Ct. App. Aug. 8, 2012)
State v. Ragland, 836 N.W.2d 107 (Iowa 2013)
State v. Roby, 897 N.W.2d 127 (Iowa 2018)
State v. Sweet, 879 N.W.2d 811 (Iowa 2016)
State v. White, 903 N.W.2d 331 (Iowa 2017)
State v. Wilson, 294 N.W.2d 824 (Iowa 1980)
State v. Zarate, 908 N.W.2d 831 (Iowa 2018)
Tindell v. State, 629 N.W.2d 357 (Iowa 2001)
Veal v. State, 784 S.E.2d 403 (Ga. 2016)

Alice Reichman Hoesterey, *Confusion in* Montgomery's *Wake: State Responses, The Mandates of* Montgomery*, and Why a Complete Categorical Ban on Life Without Parole for Juveniles Is the Only Constitutional Option*, 45 FORDHAM URB. L.J. 149, 161–64 (2017)

II. If a motion to correct an illegal sentence raises a cognizable challenge to the actual substantive legality of the sentence, then the claimant has a right to counsel under Rule 2.28. If it does *not* raise such a challenge, does Article I, Section 10 provide a right to counsel?

Authorities

Atwood v. Vilsack, 725 N.W.2d 641 (Iowa 2006)
Hannan v. State, 732 N.W.2d 45 (Iowa 2007)
In re Johnson, 257 N.W.2d 47 (Iowa 1977)
Lenertz v. Mun. Court of the City of Davenport, 219 N.W.2d 513(Iowa 1974)
Ruiz v. State, 912 N.W.2d 435 (Iowa 2018)
Sorci v. Iowa Dist. Ct. for Polk County, 671 N.W.2d 482 (Iowa 2003)
State v. Cohrs, No. 14–2110, 2016 WL 146526 (Iowa Ct. App. Jan. 13, 2016)
State v. Iowa Dist. Ct. for Story County, 843 N.W.2d 76 (Iowa 2014)
State v. Trueblood, No. 13–0687, 2014 WL 636167 (Iowa Ct. App. Feb. 19, 2014)
State v. Wells, No. 16–0984, 2017 WL 3524733 (Iowa Ct. App. Aug. 16, 2017)
State v. Young, 863 N.W.2d 249 (Iowa 2015)
THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA 736 (W. Blair Lord rep., 1857)

III. For the first time on appeal, Goodwin alleges that the evidence was insufficient to overcome a presumption that he does not deserve a minimum sentence before parole eligibility for killing his father in cold blood. Does that allege a substantive illegality in the sentence? If it does, was a minimum sentence warranted?

Authorities

Coker v. Georgia, 433 U.S. 584 (1977)
Furman v. Georgia, 408 U.S. 238 (1972)
Graham v. Florida, 560 U.S. 48 (2010)
Miller v. Alabama, 567 U.S. 460 (2012)
United State v. Irey, 612 F.3d 1160 (11th Cir. 2010)
Lenertz v. Mun. Court of the City of Davenport, 219 N.W.2d 513 (Iowa 1974)
People v. Hyatt, 891 N.W.2d 549 (Mich. Ct. App. 2016)
Sorci v. Iowa Dist. Ct. for Polk County, 671 N.W.2d 482 (Iowa 2003)
State v. Bruegger, 773 N.W.2d 862 (Iowa 2009)
State v. Harrison, 914 N.W.2d 178 (Iowa 2018)
State v. Knight, 701 N.W.2d 83 (Iowa 2005)
State v. Lyle, 854 N.W.2d 379 (Iowa 2014)
State v. Null, 836 N.W.2d 41 (Iowa 2013)
State v. Oliver, 812 N.W.2d 636 (Iowa 2012)
State v. Propps, 897 N.W.2d 91 (Iowa 2017)
State v. Roby, 897 N.W.2d 127 (Iowa 2018)
State v. Seats, 865 N.W.2d 545 (Iowa 2015)
State v. Sweet, 879 N.W.2d 811 (Iowa 2016)
State v. White, 903 N.W.2d 331 (Iowa 2017)
State v. Wickes, 910 N.W.2d 554 (Iowa 2018)
State v. Zarate, 908 N.W.2d 831 (Iowa 2018)
Iowa Code §§ 707.3(2), 901.12(1)(a)
Iowa Code § 901.5(14)
Michael S. Moore, *The Moral Worth of Retribution*, in RESPONSIBILITY, CHARACTER, AND THE EMOTIONS: NEW ESSAYS IN MORAL PSYCHOLOGY 180–82 (1987)
Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983, 1003 (2004)

Paul Wagland & Kay Bussey, *Appreciating the Wrongfulness of Criminal Conduct: Implications for the Age of Criminal Responsibility*, 22 LEGAL & CRIMINOLOGICAL PSYCHOL. 130 (2015)

IV. At Goodwin's sentencing, after his expert witness explained why he should be sentenced to a minimum before parole eligibility, the court did not reiterate what the expert said. Instead, the court said it had "considered the factors as set forth in *State v. Roby*." Is that an abuse of discretion? If so, does that establish a substantive illegality or a procedural defect?

Authorities

State v. Ayers, 590 N.W.2d 25 (Iowa 1999)
State v. Boltz, 542 N.W.2d 9 (Iowa Ct. App. 1985)
State v. Hess, 533 N.W.2d 525 (Iowa 1995)
State v. Johnson, No. 14–1381, 2015 WL 6509543 (Iowa Ct. App. Oct. 28, 2015)
State v. Lathrop, 781 N.W.2d 288 (Iowa 2010)
State v. Lyle, 854 N.W.2d 379 (Iowa 2014)
State v. Means, No. 11–0492, 2012 WL 3195975 (Iowa Ct. App. Aug. 8, 2012)
State v. Null, 836 N.W.2d 41 (Iowa 2013)
State v. Roby, 897 N.W.2d 127 (Iowa 2018)
State v. Thacker, 862 N.W.2d 402 (Iowa 2015)
State v. Thompson, 856 N.W.2d 915 (Iowa 2014)
State v. Vance, No. 15–0070, 2015 WL 4936328 (Iowa Ct. App. Aug. 19, 2015)
State v. Victor, 310 N.W.2d 201 (Iowa 1981)
State v. White, 903 N.W.2d 331 (Iowa 2017)
State v. Wilson, 294 N.W.2d 824 (Iowa 1980)
Tindell v. State, 629 N.W.2d 357 (Iowa 2001)

ROUTING STATEMENT

Goodwin seeks retention on the issue of whether he was entitled to appointment of counsel when he filed a motion to correct an illegal sentence. *See* Def's Br. at 16. That question has now been answered. *See Jefferson v. Iowa District Court for Scott County*, No. 16–1544 (Iowa Apr. 12, 2019). But an antecedent question needs to be resolved. Goodwin was sentenced under *Roby* and the sentencing court found, based on expert evidence, that a 20-year minimum sentence before parole eligibility was warranted. Goodwin did not file a direct appeal. Does his re-invocation of *Roby* allege that his sentence is *illegal*? Or does it allege a procedural defect, rendering it *illegally imposed*?

In most of this Court's recent juvenile sentencing cases, this distinction would have been academic. Any *mandatory* minimum sentence imposed on a juvenile offender is unconstitutional, because "the absence of a sentencing procedure" creates substantive illegality insofar as it "deprives the district court of discretion in crafting a punishment that serves the best interests of the child and of society." *State v. Lyle*, 854 N.W.2d 379, 402 (Iowa 2014). Any such sentence imposed before *Lyle* was mandatory, and thus unconstitutional—and susceptible to a motion to correct an illegal sentence. *Id.* at 403–04.

After each *Lyle*/*Miller* resentencing, the resentencing court would enter a new final judgment of sentence, which the defendant could appeal as a matter of right. *See* Iowa Code § 814.6(1)(a). And, in that direct appeal, those defendants could challenge the application of *Lyle*/*Miller* factors at resentencing without the need to preserve error *and* without requiring this Court to determine whether such a claim alleged true illegality in the sentence, because error preservation rules already do not bar defendants from challenging defective sentencing procedures or abuses of sentencing discretion for the first time on direct appeal. *See*, *e.g.*, *State v. Lathrop*, 781 N.W.2d 288, 292–93 (Iowa 2010); *State v. Wilson*, 294 N.W.2d 824, 824–26 (Iowa 1980). As such, this Court was often able to review and resolve challenges to juvenile resentencings that applied *Lyle*/*Miller* without explaining whether it viewed those claims as challenges to an illegal sentence.

However, "when there is an appropriate sentencing procedure there is no constitutional violation" and review of the sentence is for abuse of discretion—just like appellate review of any sentence within statutory limits. *See State v. Roby*, 897 N.W.2d 127, 137 (Iowa 2018). A challenge that alleges an abuse of sentencing discretion may still be raised for the first time on direct appeal. *See Lathrop*, 781 N.W.2d at

292–93; *Wilson*, 294 N.W.2d at 825. But a defendant cannot file a motion to correct an illegal sentence to raise a challenge alleging an abuse of sentencing discretion, because the purpose of the motion is "not to re-examine errors occurring at the trial or other proceedings prior to the imposition of the sentence." *See State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1968)); *accord Tindell v. State*, 629 N.W.2d 357, 360 (Iowa 2001) (quoting *Wilson*, 294 N.W.2d at 825) ("[A] defective sentencing procedure does not constitute an illegal sentence.").

That distinction is now critical—if this is not a claim that can be raised through a motion to correct an illegal sentence, then Goodwin was not entitled to appointed counsel. *Jefferson*, No. 16–1544, at *11 (quoting *Tindell*, 629 N.W.2d at 360). That new issue is of substantial importance, because "the motion to correct an illegal sentence has the potential to be abused." *See id.* This Court should prevent such abuse by distinguishing between allegations that a *Lyle*/*Miller* hearing was required and never occurred (which makes the sentence illegal) and allegations that errors crept into a *Lyle*/*Miller* hearing that *did* occur (which makes the sentence procedurally defective). Thus, the State joins the request for retention. *See* Iowa R. App. P. 6.1101(2)(c) & (f).

STATEMENT OF THE CASE

Nature of the Case

Michael Goodwin, Jr. killed his father, Michael Goodwin, Sr. He was charged with first-degree murder, but the parties negotiated a plea deal where Goodwin could plead guilty to second-degree murder, a special Class B felony, in violation of Iowa Code §§ 707.1 and 707.3; the parties agreed to recommend a 20-year minimum sentence before parole eligibility (instead of the 35-year minimum for adults, which the State agreed not to seek). *See* Iowa Code §§ 707.3(2), 902.12(1)(a) (2017); PleaTr. 2:13–4:2; PleaTr. 9:24–12:3; PleaTr. 15:20–18:2.

At sentencing, the State presented evidence about the facts of the murder and about Michael Sr. and Michael Jr.'s relationship. *See* Sent.Tr. 5:18–24:13. Goodwin testified. *See* Sent.Tr. 45:9–53:17. Goodwin also presented testimony from Dr. Stephen Hart, an expert on forensic psychology who focused on conducting risk assessments. Dr. Hart had interviewed Goodwin and had read depositions taken during the course of this prosecution, and he testified about findings on *Miller*/*Lyle* factors. *See* Sent.Tr. 29:13–40:8. The State elicited additional testimony from Dr. Hart, specifically aimed at satisfying *Roby*'s requirement of expert support for any minimum sentence.

See Sent.Tr. 5:21–6:3; Sent.Tr. 40:13–44:21. The sentencing court imposed a 50-year term of incarceration with a 20-year minimum before parole eligibility—just as Goodwin, the State, and Dr. Hart had all recommended, as contemplated by the plea agreement. *See* Sent.Tr. 44:10–21; Sent.Tr. 53:20–55:16. The sentencing court gave this explanation of its reasons for selecting this particular sentence:

> 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.

See Sent.Tr. 56:4–57:18; *see also* Sentencing Order (7/19/17) at 7; App. 11. The court informed Goodwin of his appeal rights, but Goodwin did not file any direct appeal. *See* Sent.Tr. 58:24–59:1.

Three months after he was sentenced, Goodwin filed a motion for reconsideration of sentence. *See* Motion for Reconsideration (10/30/17); App. 20. The court "reviewed its previous action" and

found "the sentence imposed was proper and appropriate," so it denied the motion to reconsider. *See* Ruling (10/31/17); App. 22.

Five months later, and less than a year after his original sentencing hearing that centered around *Roby*, Goodwin filed a motion to correct an illegal sentence that made this argument:

> The 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 determining those factors, as well as other evidence and testimony that the defendant cannot be sentenced to any mandatory-minimum sentence without violating both the Iowa and U.S. Constitutions.

Motion to Correct an Illegal Sentence (3/28/18); App. 24. Goodwin moved for appointment of counsel, allocation of funds to retain an expert witness, and a full hearing on the matter. *See id.*; App. 24. The district court denied Goodwin's motion in a ruling that stated: "After review of the Motion and applicable law, the Court finds no merit in said motion." *See* Ruling (4/12/18); App. 25.

Goodwin filed a petition for a writ of certiorari, which said this:

> The Petitioner, Michael Goodwin, **was a <u>juvenile</u>** at the time the commission, conviction, and sentencing of his case took place. However, neither Judge Yates, nor any other Judge, used the "five factors" listed in *State v. Roby*, 897 N.W.2d 127 (Iowa 2017); *accord State v. Zarate*, ___ N.W.2d ____, No. 15–2203 (Iowa 2018) (reversed after *Roby* due to lack of proper sentencing per the factors).

See Petition for Writ of Certiorari (4/27/18); App. 27.

The State resisted. *See* Resistance (5/11/18); App. 30. The Iowa Supreme Court granted the petition and it issued the writ, directing the parties to proceed with the certiorari action. *See* Order Granting Writ of Certiorari (6/13/18); App. 36; Writ of Certiorari (6/13/18); App. 34. Appellate counsel was appointed for Goodwin at his request. *See* Application for Appointment of Counsel (7/5/18); App. 39; Order (8/29/18); App. 48.

Goodwin now argues: **(1)** he was entitled to appointed counsel to litigate his motion to correct an illegal sentence, either by statute or by a constitutional provision, or else at the district court's discretion; **(2)** at Goodwin's original sentencing hearing, the State presented insufficient evidence to rebut the presumption against imposing a minimum sentence before parole eligibility; and **(3)** at that hearing, the court did not appropriately weigh the *Miller*/*Lyle*/*Roby* factors before imposing a minimum sentence before parole eligibility.

Course of Proceedings

Beyond the proceedings already described, the State generally accepts Goodwin's description of the relevant course of proceedings. *See* Iowa R. App. P. 6.903(3); Def's Br. at 17–20.

Facts

The facts are sparse because, as a result of the plea agreement, Goodwin pled guilty and the parties offered a joint recommendation at sentencing. *See* PleaTr. 9:24–12:3; Sent.Tr. 53:22–55:16. But there are more relevant facts than Goodwin provides. *See* Def's Br. at 20.

In December 2015, Goodwin was 16 years old and lived with his father, Michael Goodwin, Sr. ("Michael"). *See* Sent.Tr. 46:4–47:7.

On Saturday, December 13, 2015, Davis County Sheriff's Deputy Joshua O'Dell was brought onto an ongoing homicide investigation at Michael's residence. *See* Sent.Tr. 7:4–8:4. When he arrived, he saw Michael's corpse in a reclining chair, "basically reclined in that chair like he'd been laying down watching TV." *See* Sent.Tr. 8:8–15.

Michael had been shot twice in the head. *See* Sent.Tr. 8:20–22. Michael was fully clothed, the TV was still on, and there was no sign of any struggle or altercation preceding the shooting.

> He was reclined in the chair. . . . Looked like a drink sitting next to him. I believe there was a remote control possibly next to him, and his cell phone laying in his lap. Honestly, it looked like somebody that had been reclining in his chair watching television.

See Sent.Tr. 8:16–9:12. The drink was placed on a stand, and neither the drink nor the stand had been knocked over. *See* Sent.Tr. 9:13–16.

The last time anyone had seen Michael alive was the day before: Friday, December 12, 2015. *See* Sent.Tr. 9:17–23. Goodwin admitted to killing Michael. In his version, they had an argument, and Goodwin went outside to practice shooting with a handgun, to blow off steam. *See* PleaTr. 19:9–20:1. Goodwin said that when he came back inside, the argument continued—and then he shot his father in the head twice, from about "6 to 8 feet" away. *See* PleaTr. 20:2–21:22. Goodwin said he knew that shooting his father in the head would inflict harm. *See* PleaTr. 20:22–21:6.

On Friday night, Goodwin stayed at a female friend's house. *See* Sent.Tr. 9:24–10:11. She told Deputy O'Dell that Goodwin had been driving his grandfather's pickup truck, and had brought "his dog, some dog food, some clothing items, just various items like he was looking to spend a little bit of time away from his house." *See* Sent.Tr. 10:12–11:6. Goodwin also had two guns with him. *See* Sent.Tr. 11:7–13. Neither was the murder weapon, which was found "in the basement of [Goodwin's] grandfather's house up in some joists or rafters"—Goodwin had placed it there. Sent.Tr. 12:1–7. Goodwin's grandfather was in the hospital, but Goodwin still had access to his grandfather's house and pickup truck. *See* Sent.Tr. 10:15–25; Sent.Tr. 12:8–18.

Goodwin had told his friend that Michael was not home and that he was locked out of the house. *See* Sent.Tr. 11:14–22. Later, when investigators searched Goodwin's truck, they found "two sets of house keys." *See* Sent.Tr. 11:23–25. There was no evidence of any group participation in this crime or any peer pressure brought to bear on Goodwin that could have motivated him to kill his father. *See* Sent.Tr. 12:19–13:3. Deputy O'Dell testified that the investigation turned up "[n]o real solid reason" for Goodwin to kill his father—except that Goodwin was "upset" with his father for prohibiting him from going to a school dance that Saturday night. Sent.Tr. 13:4–23.

Rod Stevens was Michael's best friend, and knew Goodwin throughout Goodwin's entire lifetime. *See* Sent.Tr. 15:11–25. Stevens described Goodwin's childhood in positive terms. During Goodwin's childhood, Michael had been married to Goodwin's mother (Carol). *See* Sent.Tr. 15:21–16:21. Michael and Carol divorced when Goodwin was in elementary school. Carol got primary custody of Goodwin, but Goodwin wanted to live with Michael instead—so Michael got custody of Goodwin within six months of the divorce. *See* Sent.Tr. 16:22–18:13. Goodwin and Michael were "very close, and [Goodwin] seemed to enjoy being with his dad." *See* Sent.Tr. 17:20–18:7.

By the time Carol relinquished custody and Goodwin came back to live with Michael, Rod had grown concerned about Goodwin's "hostile and menacing" behavior, which continued to escalate.

> It was at this point that [Goodwin] began displaying a lot of pretty extreme behavioral problems directed at his mother, Carol. She was having an awfully hard time trying to handle him. While living with her, at various times [Goodwin] related to me and [Michael] some of the vicious things he had done to her. She had been physically assaulted by [Goodwin] as well. This is a matter of record as she filed charges I understand. He bragged also about doing malicious things to her boyfriend's property, such as shoving toothpicks in the ignition of his car . . . .
>
> [. . .]
>
> It was about this time that I began to get concerned about the level of the anger [Goodwin] had toward his Dad, [Michael], as well as myself and others. . . . I became more and more concerned as I observed [Goodwin's] behavior toward his father, which had become hostile and menacing. I had ideas that [Goodwin] might even try to kill his Dad, maybe like during his sleep. During three to four times per week that the three of us lunched at fast food restaurants, there were many incidents in which [Goodwin] would get mad and make comments to his Dad about his hatred for him. It was more than several times he had said very emphatically that he wished his Dad was dead.

See PSI (7/12/17) at 28–30; CApp. 33–35; Sent.Tr. 18:14–21:5. Michael tried to "set some ground rules down," but Goodwin became openly disobedient and belligerent. *See* Sent.Tr. 19:3–20:6; PSI (7/12/17) at 30–31; CApp. 35–36. Even so, Rod said that Michael's disciplining only included penalties and losses of privileges—not corporal punishment.

See Sent.Tr. 19:3–20:6; PSI (7/12/17) at 30–31; CApp. 35–36 ("Never once did [Michael] raise a hand to [Goodwin] or even raise his voice."); *see also* Sent.Tr. 42:10–43:3.

When the PSI interviewer asked Goodwin to name "the most significant reason for the trouble [he was] in," Goodwin replied: "Warned not to say self-defense but that's kind of how I explain it. Acted in self-defense. Argument gone wrong I guess." *See* PSI (7/12/7) at 9; CApp. 14. At sentencing, Goodwin agreed that he had wanted to live with his father, but then things "just started gradually getting worse and worse." *See* Sent.Tr. 47:4–11. He explained what he meant:

> A lot of it was, like, a lot of the whole being — like, staying at home kind of stuff. Like, mainly it was just me, my dad, and Rod, just all us getting together. I mean, other than the time at school, that was the only time I had, like, I could go see friends and stuff. Every now and then I could go see a couple friends, but not much other than that.

Sent.Tr. 47:8–18. Goodwin said the restrictions on friends and dating started when he and Michael started going to a new church, which did not believe in teenagers dating. *See* Sent.Tr. 47:19–48:17. Goodwin said that he and his father would "have arguments over just little stuff," and "there would be times where we got physical and we'd fight." *See* Sent.Tr. 48:18–49:6. Goodwin and his father both shared an aversion to government authority and police. *See* Sent.Tr. 49:15–50:1.

Goodwin's trial counsel tried to paint Goodwin's situation as deepening social isolation amid escalating conflicts with his father. *See* Sent.Tr. 50:2–10. But Goodwin could go see his grandfather, who had always spoiled him and who made him "less stressed." *See* Sent.Tr. 50:11–16; Sent.Tr. 52:16–53:2; *see also* Sent.Tr. 20:18–21:23. And Goodwin confirmed that he could still communicate with girls and be friends with girls—not only through electronic communications, but in-person during school and church activities, which led to some "under-the-rug kind of hidden stuff." *See* Sent.Tr. 51:3–22; *accord* PSI (7/12/17) at 6; CApp. 11 ("According to the defendant, he has fathered two children in the past but both resulted in miscarriages.").

Dr. Stephen Hart provided expert testimony to help determine the nature and extent of any mitigating impact of Goodwin's youth, including his chronological age and his emotional, intellectual, social, and neurological development. *See* Sent.Tr. 29:13–44:21. Dr. Hart reviewed deposition materials and conducted a personal interview with Goodwin. *See* Sent.Tr. 30:18–23. Dr. Hart said that Goodwin had told him that his father "became angry and abusive directly, . . . frequently yelling at him, and occasionally hitting him" and "even pointing handguns at him." *See* Sent.Tr. 32:3–33:14.

Dr. Hart said that, in terms of "general psychological functions," Goodwin was "a relatively normal or grossly normal adolescent male."

> Specifically, with respect to cognitive intellectual functions, he appears to have average intelligence and no major cognitive deficits. . . .
>
> His personality functions appeared to be grossly normal. In particular, I didn't notice any kind of marked personality traits that were of the type or of the severity that might indicate a serious personality disturbance or a burgeoning personality disorder.
>
> He clearly has had some problems over the years with anger and impulsive or reactive aggression. However, again, most of that, aside from the current offense, was not serious in nature or frequent. I would say relatively normal, perhaps above average, but not extreme for an adolescent male. His social or personal relationships are grossly normal. He had some good social skills. He is a relatively polite or pleasant young man, and he's had some positive peer relationships over the years, and even some intimate relationships, all of this despite the fact that he's had a restricted social life through the problems with his father.

See Sent.Tr. 33:15–35:18. Dr. Hart said that, based on Goodwin's characterization of his home environment, that would be "toxic in a sense of being something that [he] would have expected to have an adverse impact on any young person." *See* Sent.Tr. 36:8–23. But he acknowledged that all of his information about problems with that home environment came from his interview with Goodwin and from things Goodwin had told others—nobody else observed anything. *See* Sent.Tr. 42:10–43:3; *cf.* Sent.Tr. 19:3–20:6; PSI (7/12/17) at 30–31.

In terms of legal competency, Dr. Hart concluded that Goodwin was "a pretty normal adolescent male and did not have any significant problems with legal competency," either in the abstract or in relation to what occurred in this investigation and prosecution. *See* Sent.Tr. 36:24–37:12. On rehabilitation, Dr. Hart "would consider [Goodwin's] prospects for rehabilitation to be very good or excellent," and he said he could not identify "any risk factors that would be relevant in terms of elevating [Goodwin's] risk for violence in the future, either in the institution or in the community." *See* Sent.Tr. 37:13–39:8; *but see* PSI (7/12/17) at 10–11; CApp. 15–16 (explaining the Iowa Risk Revised tool for risk assessment and noting Goodwin "scored in the Moderate Risk category for future violence, and in the Low/Moderate category for future victimization"); PSI (7/12/17) at 37; CApp. 42 (Rod explaining that, if Goodwin were released before serving the maximum sentence, "I feel a lot of people's lives may be in danger"). On cross-examination, the State turned Dr. Hart's attention to the last remaning *Roby* factor and asked whether any of the circumstances of the crime amounted to mitigating factors. Dr. Hart said the only fact that would be relevant was that, according to Goodwin, this murder occurred "in the midst of a serious conflict" between him and his father. *See* Sent.Tr. 43:4–44:9.

Dr. Hart stated that he reviewed the opinion in *State v. Roby*, focusing on "the sections that had to do with the description of the criteria that ought to be considered." *See* Sent.Tr. 43:4–12.

> **STATE**: So the bottom line is you considered those five factors set out in *State v. Roby*, and after considering those factors, reviewing documents in this case, talking to the defendant, it's your opinion that the 20-year mandatory minimum is appropriate for a minimum sentence in this case?
>
> **DR. HART**: Yes. And just to follow up on your question, not only did I do my best to consider what was explicitly included as criteria in the *Roby* case and prior cases, I've always tried to go beyond that to look at related kinds of issues. So I tried to use that as a starting point, but I tried to be more broad or individualized or contextualized in the assessment and found nothing else that appeared to be relevant.

Sent.Tr. 44:10–21. Dr. Hart had already clarified that he was not considering "moral culpability" or interests in "general deterrence"; still, he found that a 20-year minimum before parole eligibility was appropriate "from a psychological perspective" that only considered "specific deterrence or rehabilitation or protection of public safety," and he specifically affirmed that "the minimum term of incarceration would adequately protect public safety." *See* Sent.Tr. 39:9–41:6.

The State recommended incarceration with a 20-year minimum, reduced from 35 years due to youth-related mitigation of culpability, as per the plea agreement. *See* Sent.Tr. 53:22–55:16.

The sentencing court imposed the sentence contemplated by that joint recommendation, and explained:

> 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.

See Sent.Tr. 56:4–57:18; *see also* Sentencing Order (7/19/17) at 7; App. 17. The court informed Goodwin of his appeal rights, but Goodwin did not file any direct appeal. *See* Sent.Tr. 58:24–59:1.

Additional facts will be discussed when relevant.

ARGUMENT

I. Goodwin's motion alleged procedural defects in his sentencing hearing. This is not the same as alleging that the sentence is illegal. As a result, Goodwin had no statutory right to appointed counsel.

Preservation of Error

The issue of whether Goodwin's motion raised allegations that required appointment of counsel under chapter 815 was necessarily considered and ruled upon by the district court when it denied the motion without granting Goodwin's request for appointed counsel. *See* Ruling (4/12/18); App. 25; Motion to Correct an Illegal Sentence (3/28/18); App. 24. Thus, error was preserved. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

Any ruling categorizing this claim or construing Rule 2.24(5)(a) is reviewed for corrections of errors at law. *See Jefferson*, No. 16–1544, at *6; *Bruegger*, 773 N.W.2d at 870–71.

Merits

Jefferson recognized a statutory right to appointed counsel on a motion to correct an illegal sentence, but it simultaneously recognized that "a defective sentencing procedure does not constitute an illegal sentence." *See Jefferson*, No. 16–1544, at *11 (quoting *Tindell*, 629

N.W.2d at 360). When a movant only alleges defects in sentencing procedures, "rule 2.28(1) does not require appointment of counsel because the motion is not a rule 2.28(1) motion." *See id.*

Goodwin's motion alleged that the sentencing court "failed to properly weigh the factors cited in [*Roby*], and failed to consider any expert testimony determining those factors" along with other facts that weighed against imposing a minimum before parole eligibility. *See* Motion (3/28/18); App. 24. He mentions "other evidence and testimony that [he] cannot be sentenced to any mandatory minimum sentence without violating both the Iowa and U.S. Constitutions"—but he only alleges a failure to properly weigh that evidence. *See id.*

Goodwin did not claim individualized sentencing never occurred when the court imposed a minimum sentence before parole eligibility. That claim would challenge an illegal sentence, because a minimum sentence before parole eligibility becomes substantively illegal if it is imposed on a juvenile offender without individualized sentencing. *See Lyle*, 854 N.W.2d at 402 (explaining that "the absence of a sentencing procedure" in mandatory sentencing creates substantive illegality in sentences because it "deprives the district court of discretion in crafting a punishment that serves the best interests of the child and of society").

But Goodwin only claimed that an abuse of discretion occurred at his individualized sentencing—and that cannot make his sentence *illegal*. *See*, *e.g.*, *Roby*, 897 N.W.2d at 137 ("[W]hen there is an appropriate sentencing procedure there is no constitutional violation").

This distinction makes sense because *Miller* and *Lyle* establish substantive rules, and "[a] conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void"—in other words, illegal. *See Montgomery v. Louisiana*, 136 S.Ct. 718, 731 (2016). In *Montgomery*, the U.S. Supreme Court held that *Miller* announced a new substantive rule of law, and that the hearing it requires "gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *See id.* at 734–35. When a court imposes an LWOP sentence for a juvenile offender without holding a *Miller* hearing, that sentence is not just procedurally defective—it is substantively illegal, because there remains a "significant risk" that any given juvenile offender "faces a punishment that the law cannot impose upon him." *See id.* at 734 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004)). Even though *Miller* outlined a new procedure, that was only a by-product of its substantive guarantee:

> To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence. Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural requirement necessary to implement a substantive guarantee with a rule that "regulate[s] only the *manner of determining* the defendant's culpability." *Schriro*, 542 U.S. at 353. There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. *See, e.g.*, *Atkins v. Virginia*, 536 U.S. 304, 317 (2002) . . . . Those procedural requirements do not, of course, transform substantive rules into procedural ones.
>
> The procedure *Miller* prescribes is no different. A hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.

Id. at 734–35. And the Court distinguished *Miller* from a series of death penalty cases that "altered the processes in which States must engage before sentencing a person to death." *See id.* at 735–36 (citing

Beard v. Banks, 542 U.S. 406, 408 (2004), *O'Dell v. Netherland*, 521 U.S. 151, 153 (1997), and *Sawyer v. Smith*, 497 U.S. 227, 229 (1990)). A sentence of capital punishment imposed in violation of those rules was procedurally defective, but not substantively illegal—even though those defects "may have had some effect on the likelihood that capital punishment would be imposed." *Id.* at 736. But *Miller* was different because it "rendered a certain penalty unconstitutionally excessive for a category of offenders"—it was substantive, and the total absence of safeguards established a substantive illegality in the sentence. *See id.*

Three years before *Montgomery*, the Iowa Supreme Court had articulated a similar view that *Miller* was primarily substantive:

> From a broad perspective, *Miller* does mandate a new procedure. Yet, the procedural rule for a hearing is the result of a substantive change in the law that prohibits mandatory life-without-parole sentencing. Thus, the case bars states from imposing a certain type of punishment on certain people.

See State v. Ragland, 836 N.W.2d 107, 115–17 (Iowa 2013). *Ragland* explained that both the mandatory LWOP sentence and the order that commuted it to a life sentence with parole eligibility after 60 years were substantively unconstitutional and illegal, because they were imposed "without the benefit of an individualized sentencing hearing," and so "*Miller* requires individualized resentencing." *See id.* at 117, 121–22.

The lesson of both *Ragland* and *Montgomery* is that *Miller*—and presumably *Lyle*—identified a substantive illegality in the mandatory imposition of sentences with parole ineligibility on juvenile offenders and prescribed individualized resentencing to remedy that illegality in any sentences imposed without an opportunity to show mitigation. *See Montgomery*, 136 S.Ct. at 734–36; *accord State v. Sweet*, 879 N.W.2d 811, 834 (Iowa 2016) ("We have regarded the constitutional holding in *Miller* as applied by this court under article I, section 17 as broadly substantive and not narrowly procedural, a view subsequently adopted . . . under the Eighth Amendment in *Montgomery*."). In both contexts, the lack of individualized sentencing *is* the substantive illegality.

Miller and *Montgomery* would require the sentencing court to determine that a juvenile offender is "irreparably corrupt" and among "the worst-of-the-worst juvenile murderers" before imposing LWOP, so failure to make that express factual finding can potentially establish a substantive illegality because that specific finding is "necessary to put [the defendant] in the narrow class of juvenile murderers for whom an LWOP sentence is proportional under the Eighth Amendment as interpreted in *Miller* as refined by *Montgomery*." *See Veal v. State*, 784 S.E.2d 403, 410–12 (Ga. 2016); *cf.* Alice Reichman Hoesterey,

Confusion in Montgomery's *Wake: State Responses, The Mandates of* Montgomery*, and Why a Complete Categorical Ban on Life Without Parole for Juveniles Is the Only Constitutional Option*, 45 FORDHAM URB. L.J. 149, 161–64 (2017). But *Lyle* differs from *Miller* in that juvenile offenders need not be "irretrievably corrupt" to receive non-LWOP minimum sentences before parole eligibility—instead, *Lyle* commanded Iowa courts to impose those minimums "if warranted." *See Lyle*, 854 N.W.2d at 404 & n.10. Certainly, *Roby* proclaimed that "the default rule in sentencing a juvenile is that they are not subject to minimum periods of incarceration." *See Roby*, 897 N.W.2d at 144–45. But setting the default to "not warranted" is not functionally equivalent to establishing a rule that a sentencing court must make a specific factual finding before imposing a minimum before parole eligiblity—other than finding the sentence *is warranted*, even after considering youth-related mitigating factors as outlined in *Roby* and other cases. *Lyle*, 854 N.W.2d at 404 n.10. No other threshold, metric, or finding has been identified for determinations made in *Lyle* hearings. *See State v. White*, 903 N.W.2d 331, 337 (Iowa 2017) (Mansfield, J. dissenting) ("Our court has extended *Miller* to all mandatory minimums but has yet to say what the substantive standard is.").

Thus, even if omitting the specific finding that enables imposition of an LWOP sentence would create a substantive illegality under *Miller*, such an illegality would be absent in any *Lyle* hearing where the court conducted an individualized sentencing hearing and then imposed a sentence that, in its view as explained on the record, was *warranted*. *See*, *e.g.*, *Roby*, 897 N.W.2d at 137 (quoting *Lyle*, 854 N.W.2d at 402) (noting that "it is the 'absence of a sentencing procedure' that offends article I, section 17," which means that "when there is an appropriate sentencing procedure there is no constitutional violation").

In *Zarate*, the Iowa Supreme Court vacated and remanded for resentencing when it found the district court "did not provide Zarate with the constitutionally required individualized sentencing process that he is entitled to receive"—it had imposed the minimum sentence before parole eligibility that it believed "should be the minimum period of time for somebody that takes the life of another individual, whether that person is a juvenile or an adult." *See State v. Zarate*, 908 N.W.2d 831, 839–40, 856 (Iowa 2018). That would qualify as a substantive illegality under *Lyle*, because it is a mandatory minimum imposed on a juvenile offender without individualized consideration—which let Zarate raise that claim for the first time in his reply brief.

Goodwin received an individualized sentencing hearing where the sentencing court heard expert evidence on all *Miller*/*Lyle* factors, and "considered the factors set forth in *State v. Roby*." *See* Sent.Tr. 75:13–18; *see also* Sent.Tr. 43:4–44:21. If he had not received that individualized sentencing hearing, his sentence would be illegal—and he could file a motion to correct an illegal sentence to demand one. But Goodwin's claim that the district court "failed to properly weigh the factors cited in *State v. Roby*" did not allege substantive illegality—it only alleged a defect in sentencing procedures, which cannot be challenged through a motion to correct an illegal sentence. *See* Motion (3/28/18); App. 24; *Jefferson*, No. 16–1544, at *11 (quoting *Tindell*, 629 N.W.2d at 360). Thus, "rule 2.28(1) does not require appointment of counsel because the motion is not a rule 2.28(1) motion." *Jefferson*, No. 16–1544, at *11. Goodwin can still allege a substantive illegality and request counsel if he raises a gross-disproportionality claim. *See id.*; *Bruegger*, 773 N.W.2d at 870–72. But that is different from the claim he *did* raise, which asked the court to examine and evaluate the adequacy of the procedures and findings at his sentencing hearing—and did not implicate the legality of the sentence itself. *See Tindell*, 629 N.W.2d at 360 (quoting *Wilson*, 629 N.W.2d at 825).

Because Goodwin's claim is not properly raised through a motion to correct an illegal sentence, the district court was correct to refuse to appoint counsel. *See Jefferson*, No. 16–1544, at *11; *accord State v. Means*, No. 11–0492, 2012 WL 3195975, at *3 (Iowa Ct. App. Aug. 8, 2012) ("Both of Means's claims—failure to articulate reasons for consecutive sentences and failure to provide opportunity for allocution—are claims that challenge *how* the sentence was imposed, not challenges to the actual sentence. Thus, they are claims of procedural errors and not claims of an illegal sentence.").

Furthermore, this Court should only consider those parts of Goodwin's claim on appeal that raise a cognizable challenge to an illegal sentence—not because they were decided below, but because they can be raised at any time. *See State v. Hoeck*, 843 N.W.2d 67, 71 (Iowa 2014); *State v. Gordon*, 732 N.W.2d 41, 44 (Iowa 2007). Any other claim is either unpreserved or ineligible for certiorari relief, because the district court would not have acted illegally in denying those claims on the grounds that they were outside the scope of a permissible motion to correct an illegal sentence. *See State v. Iowa Dist. Ct. for Johnson County*, 750 N.W.2d 531, 534 (Iowa 2008) (quoting *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996))

("[R]elief through certiorari proceedings is strictly limited to questions of jurisdiction or illegality of the challenged acts."); *State v. McCright*, 569 N.W.2d 605, 608 (Iowa 1997) ("Because the revocation portion of McCright's sentence was not an illegal sentence, any challenge to the sentence was subject to our error preservation rule."). The State will revisit this concept for Goodwin's substantive claims, after addressing Goodwin's remaining claim that asserts a right to appointed counsel.

II. Goodwin's claims about a constitutional right to appointed counsel are unpreserved and meritless.

Preservation of Error

Goodwin's motion did not mention any constitutional basis for any claimed right to counsel. *See* Motion (3/28/18); App. 24. That means error is not preserved for such arguments. Goodwin argues that raising the issue in his petition for a writ of certiorari effectively preserved error. *See* Def's Br. at 21–22 (citing Petition for Writ of Certiorari (4/27/18); App. 27). But even in certiorari actions, Iowa appellate courts "begin with the principle, based upon considerations of fairness, that this court is not ordinarily a clearinghouse for claims which were not raised in the district court." *Sorci v. Iowa Dist. Ct. for Polk County*, 671 N.W.2d 482, 489 (Iowa 2003); *Lenertz v. Mun. Court of the City of Davenport*, 219 N.W.2d 513, 515 (Iowa 1974)

("The rule is well established that in certiorari actions we will not review questions not presented to the so-called inferior tribunal."). Even in such actions, Iowa appellate courts "will only consider issues for which error has been preserved." *See Sorci*, 671 N.W.2d at 490.

Goodwin also argues that error was inherently preserved because "[a] constitutional right to counsel attaches immediately and even without request, and the right exists until waived." *See* Def's Br. at 21 (citing *Hannan v. State*, 732 N.W.2d 45, 52 (Iowa 2007)). But that applies in the pendency of the original criminal case—and in that context, *Jefferson* supplies a statutory right to appointed counsel. *See Jefferson*, No. 16–1544, at *7–12. If Goodwin's claim was properly raised in a motion to correct an illegal sentence, then he would have a statutory right to counsel and it would be unnecessary to reach any constitutional issue. *See id.* at *12 (citing *State v. Iowa Dist. Ct. for Story County*, 843 N.W.2d 76, 85 (Iowa 2014)). Thus, Goodwin's constitutional claims only matter if his original motion was not part of the criminal prosecution—which leaves his argument that his claim "implicates the life or liberty of the individual that is restricted by the purportedly illegal and void sentence" under Article I, Section 10 of the Iowa Constitution. *See* Def's Br. at 35. Because the definition of

"cases involving life or liberty" in Article I, Section 10 is not yet clear, it is fair to require movants like Goodwin to apprise the district court of that basis for their request for counsel—and it is unfair to ambush the district court with arguments about that provision on appeal that were not raised below. *See Hernandez Ruiz v. State*, 912 N.W.2d 435, 440–41 (Iowa 2018) (noting appellate court had discretion to address Article I, Section 10 claim because it "was preserved below" when the PCR application referenced both constitutions as basis for the claim of ineffective assistance of counsel, and when "[t]he district court cited both the Sixth Amendment and article I, section 10 in its ruling"); *cf. State v. Cohrs*, No. 14–2110, 2016 WL 146526, at *3 (Iowa Ct. App. Jan. 13, 2016) (declining to explore argument that Article I, Section 10 grants broader right to counsel than the Sixth Amendment because it was not elaborated on, and "[w]e do not interpret a provision of our state constitution differently than the United States Constitution on a mere citation of the applicable state constitution provision")

In any event, this claim need not be reached because the motion and the challenge below "are not properly described as a challenge to the legality of his sentence." *See State v. Trueblood*, No. 13–0687, 2014 WL 636167, at *2 (Iowa Ct. App. Feb. 19, 2014).

Standard of Review

Rulings on the scope of Article I, Section 10 where there is no factual dispute would be reviewed for correction of errors at law. *See State v. Young*, 863 N.W.2d 249, 252 (Iowa 2015).

Merits

The "cases involving life or liberty" clause in Article I, Section 10 was specifically added as a response to the Fugitive Slave Act, "for the purpose of providing that instead of the fugitive slave having the trial by jury where his labor may be done, he shall have his trial here; . . . that any slave in the territory of this state shall have the right to assert his freedom, and cannot be remanded back into slavery." *See* THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA 736 (W. Blair Lord rep., 1857) [hereinafter THE DEBATES]. Because that was the stated intent of this clause, debates over this language focused on the rights of a person accused of being a fugitive slave. *See id.* at 737; *Hernandez Ruiz*, 912 N.W.2d at 442 n.5 (reiterating that "[t]he 'cases' language of article I, section 10 was added in reaction against the Fugitive Slave Act as amended by Congress in 1850"). Similarly, opposition to the inclusion of this language did not touch upon any other issue; instead, it focused on the constitutionality and

wisdom of refusing to remit a fugitive slave in defiance of federal law. *See* THE DEBATES at 654. This was about slavery, "contradistinguished from criminal law, and disconnected from any proceedings in the enforcement of the criminal law of the State." *Id.* at 653.

Moreover, the framers of the Iowa Constitution viewed the right to trial by jury—not the right to counsel—as the component of Article I, Section 10 that would grant meaningful protections. *See id.* at 738 ("We are a sovereign State that will allow me the right of a jury trial when the value of a sixpence is brought into controversy; and yet when I am put upon trial for my liberty, . . . I am deprived of that right."); *id.* at 739 ("I say that every man sought to be reclaimed as a fugitive slave has a right to a trial by jury"). The right to a jury trial was critical in the context of the Fugitive Slave Act because of the nature of the summary "ex parte" recapture proceedings that it authorized. *See In re Johnson*, 257 N.W.2d 47, 53–54 (Iowa 1977) (McCormick, J., concurring specially) (citing THE DEBATES at 102, 651–54, 736–38). This counsels against construing the "cases involving life or liberty" language to create any sort of broad/freestanding right to counsel in contexts where the accused has *already* been afforded his or her right to trial by jury, and a "criminal prosecution" has already concluded.

The Iowa Supreme Court has already held Article I, Section 10 is inapplicable to "an individual facing potential civil commitment pursuant to Iowa's [sexually violent predator] statute" because, in the absence of something analogous to a quasi-criminal action brought under the Fugitive Slave Act that could trigger the applicability of the cases-involving-life-or-liberty clause, "this provision only applies to criminal proceedings." *Atwood v. Vilsack*, 725 N.W.2d 641, 650–51 (Iowa 2006). Goodwin, much like the plaintiffs in *Atwood*, faces a deprivation of liberty following conviction and sentencing—and if the involuntary commitment proceeding in *Atwood* was outside the scope of Article I, Section 10, then punitive imprisonment following valid conviction and sentencing must be outside of its scope as well. *See id.*

Accordingly, the "cases involving life and liberty" language of Article I, Section 10 does not create a constitutional right to counsel that attaches upon filing a motion to correct an illegal sentence. *See State v. Wells*, No. 16–0984, 2017 WL 3524733, at *2 (Iowa Ct. App. Aug. 16, 2017) ("[T]he 'cases' language in article I, section 10 has not been extended to confer a state constitutional right to counsel for motions to correct an illegal sentence, and we decline to do so here."). Goodwin cannot use Article I, Section 10 as a fallback position.

III. At Goodwin's individualized sentencing hearing, the evidence that demonstrated Goodwin's culpability for murdering his father overcame *Roby*'s presumption against imposing a minimum before parole eligibility.

Preservation of Error

This is not the same challenge Goodwin raised below, which alleged a failure to weigh *Miller*/*Lyle* factors and failure to consider expert evidence at sentencing, as required by *Roby*. *See* Motion (3/28/18); App. 24. Unlike that motion, Division II of his brief attempts to prove that evidence presented at the sentencing hearing was not sufficient to overcome a generalized presumption against minimum sentences before parole eligibility for juvenile offenders. *See* Def's Br. at 46–62. Error is not preserved for this specific claim.

Goodwin frames this as a challenge to an illegal sentence, which may be raised at any time. *See* Def's Br. at 46. But Goodwin argues this was an abuse of sentencing discretion. *See* Def's Br. at 46, 62. If this were a gross-disproportionality challenge or a categorical challenge alleging cruel and unusual punishment, then Goodwin would be right that error need not be preserved. *See*, *e.g.*, *State v. Oliver*, 812 N.W.2d 636, 639 (Iowa 2012). But Division II of Goodwin's brief never claims any unconstitutionality—it only alleges an abuse of *discretion*, which only exists in choosing among constitutionally permissible sentences.

See Def's Br. at 60–62; *see also Roby*, 897 N.W.2d at 137 (quoting *State v. Seats*, 865 N.W.2d 545, 553 (Iowa 2015)) ("[I]f the district court follows the sentencing procedure we have identified and a statute authorizes the sentence ultimately imposed, then our review is for abuse of discretion; we ask whether there is 'evidence [that] supports the sentence.'"); *accord Seats*, 865 N.W.2d at 585 n.14 (Mansfield, J., dissenting) (distinguishing between these two types of challenges). Indeed, *Roby* discussed the applicable abuse-of-discretion standard by giving examples of situations where a court might have the power to impose a certain sentence (so it could not be substantively illegal), but might still abuse its discretion in reaching the decision to impose it:

> A discretionary sentencing ruling, similarly, may be [an abuse of discretion] if 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 by arriving at a sentence that lies outside the limited range of choice dictated by the facts of the case.

Roby, 897 N.W.2d at 138 (quoting *People v. Hyatt*, 891 N.W.2d 549, 576 (Mich. Ct. App. 2016)). Those procedural sentencing errors do not establish substantive illegality, which means Goodwin's present claim that alleges an abuse of sentencing discretion does not actually target a substantive illegality in his sentence that he can correct at any time.

Because error was not preserved and because this is not a challenge to an illegal sentence that can be raised at any time, Goodwin cannot raise it for the first time in this certiorari action that challenges denial of his motion to correct an illegal sentence. *See Sorci*, 671 N.W.2d at 489–90; *Lenertz*, 219 N.W.2d at 515.

Standard of Review

Because Goodwin alleges an abuse of sentencing discretion in deciding on this sentence, review would be for abuse of discretion. *See White*, 903 N.W.2d at 333; *Roby*, 897 N.W.2d at 137–38.

Merits

Roby stated that "the default rule in sentencing a juvenile is that they are not subject to minimum periods of incarceration." *See Roby*, 897 N.W.2d at 144 (citing *State v. Null*, 836 N.W.2d 41, 74 (Iowa 2013)). That was supported by a citation to *Null*, which said that "the district court must recognize that because 'children are constitutionally different from adults,' they ordinarily cannot be held to the same standard of culpability as adults in criminal sentencing." *See Null*, 836 N.W.2d at 74 (quoting *Miller*, 567 U.S. at 470–72). But Goodwin was not held to an adult level of culpability—he received a much more lenient sentence than an adult offender would receive.

See Sentencing Order (7/19/17) at 2; App. 12 (citing Iowa Code § 901.5(14) and imposing a 20-year minimum before parole eligibility); *see also* Iowa Code §§ 707.3(2), 901.12(1)(a) (providing that adults convicted of second-degree murder serve 35 years of 50-year term before parole eligibility). *Roby* departed from precedent in describing a "default rule" against *any* minimum before parole eligibility, rather than a presumption against imposing the same punishment that an adult offender would receive—no such "default rule" exists in *Lyle* or in any other juvenile sentencing case that pre-dated *Roby*. *See*, *e.g.*, *Lyle*, 854 N.W.2d at 403 ("Some juveniles will deserve mandatory minimum imprisonment, but others may not."); *id.* at 403–04 (directing Iowa district courts, on resentencing, to "sentence those juvenile offenders to the maximum sentence if warranted" and noting individualized resentencing will remedy the unconstitutionality that it found in mandatory minimum sentencing "[e]ven if the resentencing does not alter the sentence for most juveniles, or any juvenile"); *id.* at 404 n.10 (explaining procedure "[t]o avoid any uncertainty about the parameters of the resentencing hearing and the role of the district court on resentencing," and directing courts to determine whether a minimum "is warranted" or "is not warranted," with no default rule).

Even if there were some basis for a default rule, "[t]here is no question that juveniles who commit vicious murders deserve severe punishment." *See Seats*, 865 N.W.2d at 558. Goodwin is one of those juveniles who committed a vicious murder and deserves punishment. There was no need to find "irreparable corruption," because Goodwin was not sentenced to LWOP or given sentences amounting to LWOP. *See Null*, 836 N.W.2d at 65–66 (quoting *Miller*, 567 U.S. at 476, 479) (noting that "irreparable corruption" was the uncommon finding that would warrant imposing "this harshest possible penalty," which was "reserved only for the most culpable [juveniles] committing the most serious offenses"); *cf. Roby*, 897 N.W.2d at 157 (Zager, J., dissenting) ("Notably, the concept of 'irreparable corruption' originated in *Roper* in the context of capital punishment and continued with life-without-parole sentences at issue in *Miller*. It really has no bearing on cases where the juvenile offender will be released after a period of years."). All that needed to be shown was that this 20-year minimum before parole eligibility was "warranted." *See Lyle*, 854 N.W.2d at 404 & n.10. That finding was made at an individualized sentencing and supported with expert evidence, and the court "considered the factors set forth in *State v. Roby*" in making that determination. *See* Sent.Tr. 57:7–18.

Goodwin complains that "Dr Hart's agreement that twenty-year minimum was appropriate only considered the protection of society," and he asserts that "[t]he United States Supreme Court has rejected incapacitation as a justification for punishment." Def's Br. at 60–61. That is false—it rejected incapacitation as a justification for mandatory LWOP sentences for juvenile murderers, and for LWOP sentences for juveniles convicted of non-homicide offenses. *See Miller*, 567 U.S. at 472–73; *Graham v. Florida*, 560 U.S. 48, 72–73 (2010). But Goodwin was not sentenced to LWOP or to aggregate sentences that resemble it, which means that using incapacitation as a rationale for this sentence does not "require 'mak[ing] a judgment that [he] is incorrigible.'" *See Miller*, 567 U.S. at 472–73 (quoting *Graham*, 560 U.S. at 72–73). And all courts recognize that incapacitation is still a valid penological goal, outside of the context of LWOP sentences for juvenile offenders. *See Graham*, 560 U.S. at 72 ("Recidivism is a serious risk to public safety, and so incapacitation is an important goal."); *Zarate*, 908 N.W.2d at 855 (noting that "juvenile offenders may still require incapacitation to prevent recidivism"); *Roby*, 897 N.W.2d at 142 (recognizing validity of incapacitation rationales for minimum before parole eligibility if juvenile's individualized sentencing shows a need for incapacitation).

"Nothing that the [U.S.] Supreme Court has said in these cases" or that the Iowa Supreme Court has said in its subsequent line of cases "suggests trial courts are not to consider protecting public safety in appropriate cases through imposition of significant prison terms." *See Null*, 836 N.W.2d at 75. A cold-blooded murderer is always dangerous, and neither experts nor sentencing courts should pretend otherwise.

Goodwin points out that *Roby* states that "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," and that "any such conclusion would normally need to be supported by expert testimony." *See* Def's Br. at 61–62 (quoting *Roby*, 897 N.W.2d at 147). That was not what the sentencing court needed to find, nor what it *did* find. Instead, it found some youth-related mitigation of culpability, which specifically forecloses the possibility that it determined that Goodwin was "not amenable to reform." *See Roby*, 897 N.W.2d at 147. When it found that 4/7ths of the otherwise-mandatory minimum prison term before parole eligibility should be imposed, it necessarily determined that Goodwin's youth mitigated his culpability in ways that warranted waiving 3/7ths of the minimum sentence that an adult would receive.

And the conclusion that Goodwin's sentence should be calibrated at that precise numerical quantity *was* supported by expert evidence—from Goodwin's expert, who specifically explained that he analyzed the *Roby* factors (among other things) and concluded that imposing a 20-year minimum before parole eligibility would be appropriate, in the interest of public safety. *See* Sent.Tr. 39:9–41:6; Sent.Tr. 43:9–21. That, alone, proves this specific minimum sentence was "warranted."

Dr. Hart testified that Goodwin had potential for rehabilitation and had no great need for specific deterrence, but should serve this 20-year minimum sentence for public safety reasons that gave rise to an incapacitation rationale. *See* Sent.Tr. 37:13–41:6. Punishment also serves an additional penological goal that Dr. Hart specifically declined to formulate any opinion about: retribution. *See* Sent.Tr. 39:9–41:6 (Dr. Hart noting that "moral culpability" is "completely outside [his] area of expertise"). There is no such thing as a moral culpability expert—the need for retributive punishment must be assessed by the court, in light of the legislature's assessment of the relative severity and gravity of the crime, as expressed through the generally applicable penalties that it prescribed for adult offenders. *See*, *e.g.*, *State v. Wickes*, 910 N.W.2d 554, 574 (Iowa 2018) (quoting *Bruegger*, 773 N.W.2d at 873)

(noting that "legislative judgments are generally regarded as the most reliable objective indicators of community standards for purposes of determining whether punishment is cruel and unusual"). And although retribution carries *less* weight in sentencing juvenile offenders, it still carries *some* weight and may be invoked as a reason for punishment. *See Zarate*, 908 N.W.2d at 855 (noting that some juvenile offenders "may require a longer sentence due to their culpability"); *see also State v. Propps*, 897 N.W.2d 91, 102 (Iowa 2017) (quoting *Lyle*, 854 N.W.2d at 398) ("Harm to a victim is not lessened because of the young age of an offender, and '[t]he constitutional analysis is not about excusing juvenile behavior, but imposing punishment in a way that is consistent with our understanding of humanity today.'"). Thus, even if Dr. Hart's testimony was not enough to show this minimum before parole eligibility was warranted, the availability of facts about "the nature of the offense committed by [Goodwin] and the harm to the victim" would establish the need for retributive punishment and support the sentencing court's decision to impose that minimum. *See* Sent.Tr. 57:7–12; *see also Zarate*, 908 N.W.2d at 855 (explaining that "the relevant information in the sentencing calculation may include aggravating factors" to establish the need for a minimum sentence).

Here, the same facts that established a need for incapacitation also demonstrated the profound demand for retributive punishment: Goodwin killed his father in cold blood. At most, there was some sort of verbal argument in progress when Goodwin shot and killed Michael. *See* PleaTr. 20:2–21:22. But the physical evidence suggested that was not actually true. Michael's cell phone was in his lap, which meant that he was killed while he was laying down (and did not fall into that pose after being shot while standing). The TV was on, the remote control was within Michael's reach, and his drink had not been knocked over—which suggested there had been no argument and no struggle. *See* Sent.Tr. 8:8–9:12 ("Honestly, it looked like somebody that had been reclining in his chair watching television."). Moreover, Goodwin had repeatedly "made the comments that he hated his dad and wished he was dead" when he was "upset with little trivial things." *See* Sent.Tr. 20:7–17; *accord* PSI (7/12/17) at 30; CApp. 35. Although Goodwin attempts to frame this as an impulsive act that should not define him, other facts showed that it was a deeply expressive act that confirmed the darkest suspicions about Goodwin's extreme dangerousness. *See* Sent.Tr. 22:12–23:3; PSI (7/12/17) at 30, 33–34; CApp. 35–39. Such a serious crime that causes severe harm is a clarion call for retribution:

> Because the punishment should fit the crime, the more serious the criminal conduct is the greater the need for retribution and the longer the sentence should be. The seriousness of a crime varies directly with the harm it causes or threatens. It follows that the greater the harm the more serious the crime, and the longer the sentence should be for the punishment to fit the crime.

United State v. Irey, 612 F.3d 1160, 1206 (11th Cir. 2010); *cf. Graham*, 560 U.S. at 71 ("Society is entitled to impose severe sanctions on a juvenile nonhomicide offender to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense"). Even the Iowa Supreme Court has found harsh retributive punishment "is not grossly disproportionate to the seriousness of the offense" when a juvenile offender participates in a murder "given the fatal harm [he] helped enact on the life of another." *See State v. Harrison*, 914 N.W.2d 178, 204 (Iowa 2018). Goodwin killed his father without justification; his serious crime inflicted severe harm and warrants this punishment.

Even if Goodwin were fully rehabilitated today and posed no further danger to the community, incarcerating him as punishment for murdering his father in cold blood would not be "purposeless and needless imposition of pain and suffering." *See Zarate*, 908 N.W.2d at 858, 859 (Appel, J., concurring specially) (quoting *Lyle*, 854 N.W.2d at 400) (quoting *Coker v. Georgia*, 433 U.S. 584, 592 (1977))). There

is a retributive aspect to punishment that can only be considered by the sentencing court, and not by the parole board. *See, e.g.*, *Sweet*, 879 N.W.2d at 846 (Mansfield, J., dissenting) ("Society may want to punish a horrendous murder beyond the time necessary to rehabilitate the murderer. Parole, however, means the release of the offender occurs as soon as he or she is able and willing to be a law-abiding citizen."). Individualized sentencing of juvenile offenders may demonstrate that certain offenders "require a longer sentence due to their culpability." *See Zarate*, 908 N.W.2d at 855. That retribution is not optional—sentencing courts have an affirmative obligation to impose a fitting punishment that reflects the severity of the crime and is tailored to the individualized culpability of the offender, because it is *deserved*.

> Retributivism is a very straightforward theory of punishment: We are justified in punishing because and only because offenders deserve it. . . . Such justification gives society more than merely a right to punish culpable offenders. It does this, making it not unfair to punish them, but retributivism justifies more than this. For a retributivist, the moral culpability of the offender also gives society the *duty* to punish. . . . [W]e have an obligation to set up institutions so that retribution is achieved.

Michael S. Moore, *The Moral Worth of Retribution*, in RESPONSIBILITY, CHARACTER, AND THE EMOTIONS: NEW ESSAYS IN MORAL PSYCHOLOGY 180–82 (1987); *cf. generally* Paul Butler, *Much Respect: Toward a*

Hip-Hop Theory of Punishment, 56 STAN. L. REV. 983, 1003 (2004) ("When one harms another, justice requires that she be harmed in return. Retributivists believe than punishment communicates respect for the criminal by recognizing him as a moral agent and respect for the victim by avenging his harm."). Retribution is not about achieving policy goals, but the retributive functions of our criminal justice system serve an important role. Our criminal courts are the only institution that *can* exact retributive punishment for heinous crime—and so they *must*.

> The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they 'deserve,' then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

Furman v. Georgia, 408 U.S. 238, 308 (1972) (Stewart, J., concurring). Nothing in Iowa's juvenile sentencing jurisprudence prohibits Iowa's sentencing courts from fulfilling that important role, nor should it. *See Lyle*, 854 N.W.2d at 398 (explaining that "justice requires us to consider the culpability of the offender in addition to the harm the offender caused," and 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").

It is not cruel or unusual to punish Goodwin for this murder, even considering that his brain will continue to develop until age 25. Young children, long before adolescence, understand that murder is abominable and must be punished. *See* Paul Wagland & Kay Bussey, *Appreciating the Wrongfulness of Criminal Conduct: Implications for the Age of Criminal Responsibility*, 22 LEGAL & CRIMINOLOGICAL PSYCHOL. 130 (2015) (finding that 8-year-olds "provided evidence that they were comparable to older children and adults in terms of their understanding of the wrongfulness of criminal behaviour and the ability to distinguish it from mischievous behavior"). This is not just academic—Michael's sister (Tara Wright) gave an impact statement that referenced Goodwin's young cousins, who were struggling to deal with Goodwin's crime *because* they understood that murder is evil.

> The impact of what you did has affected my girls as well. When they asked me, "Who killed Uncle Michael," I told them, "The police thought Junior did it." Anger hit [H] like a ton of bricks. She did not understand how or why you could do that. [P] and [C] cried and said, "Maybe it's not him." I left it at that until the hearing where you pled to Second Degree Murder.
>
> Telling [C], she cried like a baby. This opened the wound that her Uncle Michael is still gone. She was so sad that you would be gone forever, too. [P] kept asking me, "Are you sure?" Holding them in my arms as they kept asking me why you did this horrific crime. I've had these little girls in therapy, as they just don't understand how this could have happened.

Sent.Tr. 26:19–27:16. Contrast that with Goodwin's statements, and it becomes clear that severe punishment was warranted—Goodwin never exhibited any remorse whatsoever, and still refuses to acknowledge the nature of the harm he inflicted. *See* PSI (7/12/17) at 9; CApp. 14 (noting that, when asked who was affected by his actions, Goodwin answered: "Myself… and then supposed family on my dad's side but they never really was family."); *see also Harrison*, 914 N.W.2d at 204 (quoting *State v. Knight*, 701 N.W.2d 83, 88 (Iowa 2005)) (explaining that "a defendant's lack of remorse is highly pertinent to evaluating his need for rehabilitation and his likelihood of reoffending").

Finally, note that Goodwin emphasizes Dr. Hart's testimony that he was "primarily pro social," that he "did not pose any kind of elevated risk for violence," and "had not had any serious or frequent antisocial conduct in the community prior to the current offense." *See* Def's Br. at 54, 62 (citing Sent.Tr. 33:15–39:8). But Goodwin already murdered his father in cold blood over a minor dispute. That act is independently sufficient to demonstrate an elevated risk of violent, antisocial conduct, and it does not matter whether Goodwin presents more or less risk than some hypothetical average murderer. Dr. Hart may be able to accept this murder as a baseline, but the court cannot.

See Irey, 612 F.3d at 1203 (reversing impermissibly lenient sentence where the sentencing court remarked "other than the acts of Mr. Irey, there's no indication that he has engaged in any other sort of criminal conduct or conduct representing poor character," and countering that "the judge's reasoning is like saying that other than the fact he had an 'illness' that made him want to kill young women, Ted Bundy was a pretty nice guy and a valuable member of his community," and was "also like saying that but for his taste for human flesh and how he satisfied it, Jeffrey Dahmer was not so bad"); *accord State v. Wickes*, 910 N.W.2d 554, 573 (Iowa 2018) (rejecting a cruel-and-unusual-punishment challenge that "overlooks the gravity of his offense").

Whatever "default rule" must be overcome before the court may impose a minimum sentence before parole eligibility that equates to 4/7ths of what an adult offender would receive, the evidence before the sentencing court was more than enough to overcome it. Without considering Goodwin's actual culpability, Goodwin's expert witness found this minimum before parole eligibility was warranted because of public safety concerns, and incapacitation is a valid rationale in juvenile sentencing. *See Roby*, 897 N.W.2d at 142; Sent.Tr. 43:9–21. Goodwin's culpability establishes no lesser punishment would suffice.

IV. The sentencing court did not abuse its discretion by stating that it considered the *Roby* factors and adopting the recommendation of the expert witness who testified about how they applied to Goodwin.

Preservation of Error

This *is* the challenge that Goodwin's motion raised below. *See* Def's Br. at 63–70; Motion (3/28/18); App. 24. But it still does not allege a substantive illegality in Goodwin's sentence—it only alleges a procedural defect. Goodwin compares this to the problem that arises when a court does not give reasons for imposing consecutive sentences and leaves "no feasible means for appellate review." *See* Def's Br. at 70 (citing *State v. Thompson*, 856 N.W.2d 915, 919 (Iowa 2014)). But the absence of reviewable findings does not make the sentence itself illegal or unconstitutional—a defendant cannot attack consecutive sentences decades after the fact on those grounds. *See, e.g.*, *State v. Ayers*, 590 N.W.2d 25, 28 (Iowa 1999) (noting "the court's failure to exercise its discretion" is only "a defective sentencing procedure" under *Wilson*, 294 N.W.2d at 825); *Means*, 2012 WL 3195975, at *3 (holding that a motion that raised a claim alleging "failure to articulate reasons for consecutive sentences" only raised "claims of procedural errors and not claims of an illegal sentence"); *State v. Vance*, No. 15–0070, 2015 WL 4936328, at *1 (Iowa Ct. App. Aug. 19, 2015).

Goodwin is correct that "[t]he lynchpin of the constitutional protection provided to juveniles is individualized sentencing." *See* Def's Br. at 64 (quoting *Roby*, 897 N.W.2d at 143). Goodwin had an individualized sentencing hearing. Any procedural error at that sentencing could be challenged on direct appeal—but a motion to correct an illegal sentence requires a substantive illegality, which does not include any failure to consider specific factors or failure to explain reasons for the sentence. *See*, *e.g.*, *State v. Johnson*, No. 14–1381, 2015 WL 6509543, at *3 (Iowa Ct. App. Oct. 28, 2015) ("With regard to Johnson's other claims—namely, that the sentencing court did not consider certain factors and should not have imposed consecutive sentences—they cannot now be addressed. These claims are procedural in nature, and Johnson cannot raise these alleged errors through a challenge to an illegal sentence."). Juvenile offenders who received mandatory sentences before *Lyle* without individualized sentencing can allege substantive illegality, but Goodwin cannot—he received an individualized sentencing hearing, and his sentence was tailored to his unique level of culpability. "Article I, section 17 only prohibits the one-size-fits-all mandatory sentencing for juveniles"—and it does not prohibit the sentence that Goodwin received. *Lyle*, 854 N.W.2d at 403.

Standard of Review

Because Goodwin alleges an error in exercising discretion in pronouncing the sentence, review would be for abuse of discretion. *See White*, 903 N.W.2d at 333; *Roby*, 897 N.W.2d at 137–38.

Merits

Goodwin argues "the district court failed to provide any meaningful fact finding which demonstrated it had appropriately weighed the relevant factors." *See* Def's Br. at 65–66. But *Roby* did not create a requirement that sentencing courts pronounce specific factual findings on the record—instead, it required "a complete and careful consideration of the relevant mitigating factors of youth." *See Roby*, 897 N.W.2d at 148; *see also Null*, 836 N.W.2d at 82 & n.13 (Mansfield, J., concurring in part and dissenting in part) (noting the majority opinion "do[es] not say that a district court must make specific findings on each of the *Miller* factors," which is something "no published opinion in any other jurisdiction has held").

Roby suggests that the fact-finding in juvenile sentencing on mitigating factors is the purview of experts, not judges. *See Roby*, 897 N.W.2d at 146 ("[E]xpert testimony will best assess how the family and home environment may have affected the functioning of the

juvenile offender."); *see also id.* ("Expert testimony will be helpful to understand the complexity behind the circumstances of a crime when influences such as peer pressure are not immediately evident and will aid the court in applying the factor properly."); *id.* at 147 (stating that any conclusion about an offender's potential for rehabilitation "would normally need to be supported by expert testimony"). And in *White*, sentencing courts were reminded that "[t]he same scientific evidence responsible for revealing the constitutional infirmity of mandatory minimum sentencing statutes for juveniles must continue to inform judges in performing their difficult job of applying the relevant factors to decide if juveniles should be ineligible for parole for a minimum period of their incarceration." *See White*, 903 N.W.2d at 333. Also, sentencing courts have been admonished not to disagree with those expert witnesses, lest they draw conclusions that are "not grounded in science but rather based on generalized attitudes of criminal behavior that may or may not be correct as applied to juveniles." *Id.* at 333–34; *Roby*, 897 N.W.2d at 147–48 (warning that "[p]erceptions applicable to adult behavior cannot normally be used to draw conclusions from juvenile behavior," and judges may not "draw such conclusions from the circumstances of the crime without expert testimony").

After *Roby* and *White*, sentencing courts in Iowa would be right to consider outsourcing their analysis of the *Miller*/*Lyle* factors to an expert witness and committing to adopting that expert's assessments. After all, conclusions about appropriate sentences and evaluations of the defendant's blameworthiness cannot be made without support from expert testimony, and presumably cannot contradict whatever testimony is given by the sole expert witness (and there is likely only a single expert when the sentencing hearing is "not entirely adversarial," like Goodwin's sentencing was). *See Roby*, 897 N.W.2d at 144; *accord White*, 903 N.W.2d at 333–34 (vacating a resentencing order because the resentencing court drew "critical conclusions" that informed its sentencing decision, but "were not grounded in science"). Surely it would solve the problems identified in *Roby* and *White* for an expert to interview the defendant, review case materials, and then analyze all five *Miller*/*Lyle* factors on the record during the sentencing hearing. After that, there is nothing left for the judge to do—any deviation from the expert's analysis would abuse the court's "discretion" under *Roby*, so the only task remaining is to adopt the expert's recommendation as to the sentence and repeat (or simply incorporate) the expert's findings on each of the *Miller*/*Lyle* factors in the pronouncement of sentence.

The description in the preceding paragraph is plausible because *Roby* and *White* effectively deprive sentencing courts of any latitude to wield sentencing discretion in analyzing the *Miller*/*Lyle* factors—if an expert witness does not specifically endorse the potential applicability of a generally accepted fact or principle within this context or through the lens of contemporary research on juvenile development, then that ordinarily non-controversial fact or principle cannot be referenced in any explanation of the sentencing decision. *See*, *e.g.*, *Roby*, 897 N.W.2d at 148 (rebuking the district court for citing "evidence that the crime was not the result of peer pressure" and proclaiming that "a sentencing judge cannot normally draw such conclusions from the circumstances of the crime without expert testimony"); *id.* at 156 (Zager, J., dissenting) ("The majority takes away the district court's ability to make an informed decision based on its own observations and perceptions."). After *Roby* and *White*, it is difficult to find a role for sentencing courts to play in assessing *Miller*/*Lyle* factors during juvenile sentencing—they either accept the expert's conclusions, or they are reversed for abusing their discretion by failing to accept the expert testimony that "must" inform any application of those factors. *See White*, 903 N.W.2d at 333.

Here, any error in the sentencing court's application of *Roby* and the *Miller*/*Lyle* factors would have been confined to the court's inner thoughts—it cannot have impacted the sentencing decision because the court adopted Dr. Hart's recommendation. Dr. Hart was Goodwin's expert witness, and he provided the court with an analysis of the *Miller*/*Lyle* factors that Goodwin does not criticize (except for his argument that any reliance on incapacitation rationales is error, which is incorrect for the reasons already discussed). *See* Sent.Tr. 35:23–41:6; Sent.Tr. 43:4–44:21. Based on that expert analysis of the *Miller*/*Lyle* factors, the sentencing court adopted his recommendation. It confirmed that it "considered the factors set forth in *State v. Roby*" and reached the same result. *See* Sent.Tr. 57:7–18.[1] Dr. Hart's analysis comported with *Roby*, so Goodwin cannot establish that the court abused its discretion by adopting his recommendation in its totality.

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[1] Goodwin points out that "[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," and "the box was not marked." *See* Def's Br. at 66 (citing Sentencing Order (7/19/17) at 7; App. 17). That is true, but the sentencing court explained that it had considered the factors set forth in *State v. Roby*"—and whenever there is a difference between the oral pronouncement of sentence and the written sentencing order, the version in the oral pronouncement controls. *See State v. Hess*, 533 N.W.2d 525, 528 (Iowa 1995).

In review of exercises of sentencing discretion to impose sentences within statutory/constitutional boundaries, "the failure to acknowledge a particular sentencing circumstance does not mean it was not considered" and sentencing courts do not have any obligation to "specifically acknowledge each claim of mitigation urged by a defendant." *See State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1985). The record here contains Dr. Hart's expert testimony on all five of the *Miller/Lyle* factors, and the court's statement that it "considered the factors set forth in *State v. Roby*" was sufficient to demonstrate that its discretion was, in fact, exercised. *See* Sent.Tr. 57:7–18. That kind of "terse and succinct statement" is sufficient because "the reasons for the exercise of discretion are obvious in light of the statement and the record before the court." *See State v. Thacker*, 862 N.W.2d 402, 408 (Iowa 2015) (citing *State v. Victor*, 310 N.W.2d 201, 205 (Iowa 1981)); *accord Boltz*, 542 N.W.2d at 11 (noting, if the reasons given are terse, "the entire sentencing colloquy forms an adequate basis for us to review the sentencing court's exercise of discretion."). The court was correct to rely on Dr. Hart's analysis of the *Miller/Lyle* factors and on his recommendation, which was for the same sentence that it imposed. Goodwin cannot establish that doing so was an abuse of discretion.

Even if this was an abuse of discretion, Goodwin cannot prevail because it would only establish a procedural defect. Goodwin received an individualized sentencing hearing, and the sentence imposed was both authorized by statute and within constitutional limitations. Any claims alleging an abuse of sentencing discretion are allegations of procedural defects that needed to be raised during his direct appeal; they do not allege a substantive illegality in the sentence, and they cannot be raised or reviewed on this appeal from a motion to correct an illegal sentence. *See Tindell*, 629 N.W.2d at 359–60; *Wilson*, 294 N.W.2d at 824–26; *cf. Lathrop*, 781 N.W.2d at 294 ("This case is distinguishable from cases that concern sentences that are within the court's statutory and constitutional authority but were procedurally flawed or imposed in an illegal manner."). Thus, this claim must fail.

CONCLUSION

The State must remark on two additional matters that are not directly responsive to any specific argument that Goodwin makes.

First, none of Goodwin's arguments on appeal are raising a gross-disproportionality challenge to his sentence. If he had, it would be inequitable and unfair to consider such a challenge in this appeal. The State made a record to comply with *Roby* at a sentencing hearing that had taken on a decidedly non-adversarial character, as a result of the plea agreement. *See* PleaTr. 2:18–3:22; PleaTr. 9:20–11:23. There is more to the story than was presented at this sentencing hearing, and it would be unfair to consider any gross-disproportionality challenge in the first instance without giving the State an opportunity to create a record that includes facts that would be relevant to that inquiry. *See Bruegger*, 773 N.W.2d at 885–86 (remanding for further proceedings specifically because "the State has not had an opportunity to show in an evidentiary hearing that under all the facts and circumstances, a sentence under section 901A.2(3) is not cruel and unusual as applied to Bruegger," and noting "the State may wish to develop evidence regarding . . . any other potential factors that tend to aggravate the gravity of the offense and magnify the consequences").

Second, if this Court concludes that Goodwin is entitled to any remedy whatsoever, the State requests that this Court vacate the plea and the entire plea agreement and restore the parties to the positions they were in, before the State made charging concessions in reliance on Goodwin's stated assent to the joint sentencing recommendation. *See*, *e.g.*, *State v. Ceretti*, 871 N.W.2d 88, 97–98 (Iowa 2015); *Noble v. Iowa Dist. Ct. for Muscatine County*, 919 N.W.2d 625, 633–34 (Iowa Ct. App. 2018). The State bargained for a joint recommendation of twenty years before Goodwin would be eligible for parole—and, in exchange, it accepted that the parole board would assess Goodwin's fitness for release as though he only committed second-degree murder. But if Goodwin cannot be rendered temporarily ineligible for parole, the State must attempt to convict him of first-degree murder. This is the only way to ensure the true gravity of the offense is reflected in the sentence imposed and in facts made known to the parole board. The parole board does not seek retribution in making its decisions, and this Court does not want it to start. *See* Iowa Code § 906.4; *Bonilla v. Iowa Bd. of Parole*, No. 18–0477 (status: submitted). But it does consider dangerousness—and if Goodwin is eligible before 2035, the State must prove up the true nature of the danger he presents.

This Court generally refuses to tolerate the unfairness that results whenever a defendant "seeks to transform what was a favorable plea bargain in the district court to an even better deal on appeal." *See Ceretti*, 871 N.W.2d at 97 (quoting *State v. Walker*, 610 N.W.2d 524, 526 (Iowa 2000)); *see also Noble*, 919 N.W.2d at 633–34. This is not retailiation for the appeal; rather, this is the State insisting on its right to expect performance and to re-evaluate charging concessions if the defendant reneges—even if the way Goodwin has chosen to renege is to attack the legality of his sentence, which was thought to be legal. *See State v. Howell*, 290 N.W.2d 355, 358 (Iowa 1980) (rejecting claim that State was estopped from seeking more punitive sentence after the agreed-upon sentence was invalidated as illegal, because "[t]here is no hint of deception," and "the presiding judge, the prosecutor, and Howell's own counsel honestly misapprehended the power of the trial court" in believing it had the power to impose the original sentence).

If this Court grants any relief and deprives the State of the agreed-upon minimum sentence that it bargained for, it should vacate the plea agreement entirely. Defendants like Goodwin should not be "motivated to enter plea agreements quietly . . . and then appeal them to obtain a more lenient sentence." *See Ceretti*, 871 N.W.2d at 97–98.

With that said, the State would prefer to keep the agreement that the parties originally reached, in which Goodwin serves 20 years before parole eligibility with a maximum 50-year indeterminate term. Therefore, the State respectfully requests that this Court affirm the district court's ruling that dismissed Goodwin's motion.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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