

IN THE SUPREME COURT OF IOWA

STATE OF IOWA)	
)	
Plaintiff-Appellee,)	
)	
v.)	Supreme Court No. 18-0563
)	
JARROD DALE MAJORS,)	
)	
Defendant-Appellant.)	

APPEAL FROM THE IOWA DISTRICT COURT
FOR TAYLOR COUNTY
HONORABLE JOHN D. LLOYD, JUDGE

APPELLANT'S BRIEF AND ARGUMENT
AND REQUEST FOR ORAL ARGUMENT

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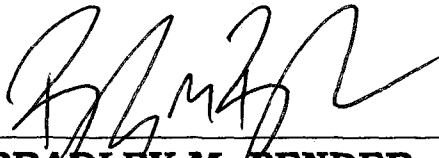
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CERTIFICATE OF SERVICE

On the 14th day of May, 2019, the undersigned certifies that a true copy of the forgoing instrument was served upon the Defendant-Appellant by placing on copy thereof in the United States mail, proper postage attached, addressed to Jarrod Dale Majors, No. 0808667, North Central Correctional Facility, 313 Lanedale, Rockwell City, IA 50579.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Under article I, section 17 of the Iowa Constitution, the portion of the statutory sentencing schema requiring a juvenile to serve seventy percent of the period of incarceration before parole eligibility may not be imposed without a prior determination by the district court that the minimum period of incarceration without parole is warranted under the factors previously identified by the Iowa Supreme Court. The district court concluded that the mandatory minimum sentence is warranted as part of Majors' sentence for the offense of Attempted Murder. Did the district court abuse its discretion in failing to follow this Court's prior mandate when it imposed the mandatory minimum sentence?

Authorities

State v. Thomas, 520 N.W.2d 311 (Iowa 1994)

State v. Majors, 897 N.W.2d 124 (Iowa 2017)

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State v. Roby, 897 N.W.2d 127 (Iowa 2017)

City of Okoboji v. Iowa Dist. Ct., 744 N.W.2d 327 (Iowa 2008)

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1. *Age and features of youthful behavior.*

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2. *Family and home environment.*

State v. Roby, 897 N.W.2d 127, 138 (Iowa 2017)

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II. The right to assistance of counsel under the Sixth Amendment to the United States Constitution and article I, section 10 of the Iowa Constitution is the right to “effective” assistance of counsel. Majors alleges that trial counsel was ineffective for failing to present expert testimony regarding the *Lyle* factors as mandated by the *Roby* Court. Was trial counsel ineffective?

Authorities

State v. Rodriguez, 804 N.W.2d 844 (Iowa 2011)

State v. Ross, 845 N.W.2d 692 (Iowa 2014)

State v. Clay, 824 N.W.2d 488 (Iowa 2012)

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Trial Counsel was Ineffective for Failing to Present Expert Witness at Juvenile Resentencing Hearing.

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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because issues raised involves whether the district court followed the mandate of this Court when it remanded for resentencing to consider the sentencing factors articulated in *State v. Roby*, 897 N.W.2d 127 (Iowa 2017). Furthermore, Majors is requesting this Court to determine whether trial counsel has a duty to present an expert witness to educate and explain to the district court the sentencing factors articulated by the *Roby* Court. As such, this case presents substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(c). This case also presents a fundamental issue of broad public importance that is requiring ultimate determination by the Supreme Court. Iowa R. App. R. 6.903(2)(d), 6.1101(2)(d).

STATEMENT OF THE CASE

Nature of Case. Defendant-Appellant Jarrod Dale Majors appeals from the resentencing on the offenses of Attempted Murder and Burglary in the Second Degree in violation of Iowa Code sections 707.11, 713.1, and 713.5 in

the Taylor County District Court following a remand from the Iowa Supreme Court. The Honorable John D. Lloyd presided over all relevant proceedings.

Prior District Court Proceedings. On July 2, 2002, Majors was charged by Trial Information with the followings offenses: (1) Burglary in the First Degree, a class B felony, in violation of Iowa Code section 713.3 (2001); (2) Attempted Murder, a class B felony, in violation of Iowa Code section 707.11 (2001); (3) Attempted Murder, a class B felony, in violation of Iowa Code section 707.11 (2001); (4) Assault While Participating in Felony, a class D felony, in violation of Iowa Code section 708.3 (2001); (5) Assault While Participating in Felony, a class D felony, in violation of Iowa Code section 708.3 (2001); (6) Assault While Participating in Felony, a class D felony, in violation of Iowa Code section 708.3(2001); (7) Going Armed with Intent, a class D felony, in violation of Iowa Code section 708.8 (2001); (8) Going Armed with Intent, a class D felony, in violation of Iowa Code section 708.8 (2001); (9) Going Armed with Intent, a class D felony, in violation of Iowa Code section 708.8 (2001); (10) Criminal Trespass, a

serious misdemeanor, in violation of Iowa Code section 716.7 (2001) and (11) Criminal Mischief, a serious misdemeanor, in violation of Iowa Code section 716.7 (2001). (Trial Information) (App. pp. 5-8). The State alleged that Majors was seventeen years old at that time of these offenses. (Trial Information) (App. pp. 5-8). Majors pled not guilty to the charges and waived his right to speedy trial. (Arraignment Order) (App. p. 9).

The day before the jury trial was scheduled to begin, Majors entered into a plea agreement with the State. (11/19/02 Calendar Entry) (App. p. 10). This Court has previously noted that the plea agreement was as follows: “Majors entered an *Alford* plea to one count of attempted murder and agreed not to appeal that plea. In exchange, the State agreed to dismiss the ten remaining charges upon the expiration of the appeal deadline.” *Majors v. State*, No. 12-1090, 2013 WL 2637599, at *2 (Iowa Ct. App. June 12, 2013).

A sentencing hearing commenced on January 22, 2003 and the court sentenced Majors to serve an indeterminate term of imprisonment not to exceed twenty-five years and

serve a mandatory minimum sentence of not less than 85% of the sentence before he is eligible for parole pursuant to section 902.12. (1/22/03 Judgment and Sentence) (App. pp. 11-12). After the court imposed its sentence, Majors orally notified the court of his intent to appeal the sentence. *See Majors*, 2013 WL 2637599, at *2. The State then asserted that it would prosecute the remaining ten counts against Majors pursuant to the plea agreement. *See id.* After discussing his intent to appeal the sentence with both his attorney and his mother off the record, Majors withdrew his notice of appeal. *See id.* In turn, the State asserted it would move to dismiss the remaining charges upon the expiration of the appeal period. *See id.*

On February 21, 2003, Majors filed a Notice of Appeal after having a telephone conversation with his attorney who advised him the State would initiate prosecution of the remaining counts of the Trial Information as the filing of the Notice of Appeal would violate the plea agreement. (2/21/03 Notice of Appeal) (App. p. 13). As a result, the State initiated prosecution on the remaining ten counts.

Majors' attorney withdrew from representation and the court appointed a new attorney to represent Majors on the remaining charges. (2/25/03 Calendar Entry) (App. p. 14). Majors then reached a plea agreement on the ten remaining charges on May 13, 2003. (5/13/03 Hrg. Tr. p. 2, Line 1 – p. 5, Line 7; 5/13/03 Calendar Entry) (App. p. 16). Majors agreed to plead guilty to the lesser included offense of Burglary in the Second Degree and also agreed to dismiss the appeal of his sentence for attempted murder. (5/13/03 Hrg. Tr. p. 2, Line 1 – p. 5, Line 7; 5/13/03 Calendar Entry) (App. p. 16). The sentence on the Burglary charge will be recommended to be served consecutive to the previously imposed sentence on the Attempted Murder charge. (5/13/03 Hrg. Tr. p. 2, Line 1 – p. 5, Line 7; 5/13/03 Calendar Entry) (App. p. 16). In exchange for Majors' plea, the State agreed to dismiss the nine remaining charges. (5/13/03 Hrg. Tr. p. 2, Line 1 – p. 5, Line 7; 5/13/05 Calendar Entry) (App. p. 16). Majors waived time for sentencing and requested immediate sentencing. (5/13/03 Judgment and Sentence) (App. pp. 17-18). The court sentenced Majors to an indeterminate term in prison not to

exceed ten years on the Burglary in the Second Degree charge to run consecutively to the twenty-five-year attempted-murder sentence. (5/13/03 Judgment and Sentence) (App. pp. 17-18).

On January 14, 2009, Majors filed a Motion to Void/Alter Plea Agreement which claimed that his attorney unduly influenced him to file an appeal of the attempted murder conviction and the sentence that resulted in the subsequent prosecution of the remaining charged. (Motion to Void/Alter Plea) (App. pp. 19-23). The district court treated the motion as a Motion in Arrest of Judgment and denied the motion as not timely filed. (Ruling on Defendant's Motion in Arrest of Judgment) (App. p. 24). Majors filed a Motion to Enlarge or Amend the court's ruling which requested the court to reconsider its decision. (Motion to Enlarge or Amend) (App. p. 25). The district denied the motion and concluded that the court's previously ruling in this matter stands. (Ruling on Defendant's Motion to Enlarge or Amend) (App. p. 29). Majors appealed the court's denial to the Iowa Supreme Court which

summarily affirmed the district court's ruling. (3/19/09 Notice of Appeal; 7/7/09 SCT Order) (App. pp. 30; 31).

On January 29, 2010, Majors filed a Petition to Void Plea which stated that his attorney unduly influenced him to file an appeal of his initial conviction and sentence of attempted murder. (Petition to Void Plea) (App. p. 32). The district court treated the petition as a Motion in Arrest of Judgment and denied the motion as not timely filed.¹ (Ruling on Defendant's Motion in Arrest of Judgment) (App. p. 39).

On May 9, 2014, Majors filed a Motion to Correct an Illegal Sentence which argued that, since he was a juvenile at

¹Majors also filed two postconviction relief applications since his original sentencing. In December 2004, Majors filed a pro se application for postconviction relief challenging the subject matter jurisdiction of the district court to impose judgment and sentence against him for acts he committed as a minor. *See Majors*, 2013 WL 2637599, at *3. The State moved for summary judgment which the district court granted. *See id.* Majors appealed but the Iowa Supreme Court dismissed the appeal as frivolous. *See id.* In April 2010, Majors filed a second application for postconviction relief which alleged that a competency hearing should have been held to determine whether he was able to understand the plea and sentencing proceedings. *See id.* The district court found the application for postconviction relief was time-barred by the applicable statute of limitations and did not reach the merits of Majors' argument. *See id.* The Iowa Court of Appeals affirmed the district court's decision. *See id.*

the time of the commission of the crimes, the imposition of the automatic mandatory minimum sentence constitutes an illegal sentence and he was entitled to an individualized resentencing hearing. (Motion to Correct an Illegal Sentence) (App. pp. 40-45).

A resentencing hearing was held on September 16, 2014. (9/16/14 Hrg. Tr. p. 1). At the outset of the hearing, the parties stipulated that based on the recent rulings of the Iowa Supreme Court, Majors' motion should be granted to the extent that the court's prior automatic imposition of the sentencing provision under section 902.12 constitutes an illegal sentence. (9/16/14 Tr. p. 3, Line 1 – p. 7, Line 20). As a result, the parties agreed that Majors was entitled to an individualized resentencing hearing but the parties did not stipulate to the appropriate sentences to be imposed. (9/16/14 Tr. p. 3, Line 1 – p. 7, Line 20). The court then heard and received evidence from the parties, a victim impact statement from the victim and the parties' recommendations as to what sentences should be imposed. (9/16/14 Tr. p. 7, Line 21 – p. 57, Line 22).

The court took Majors' resentencing under advisement and considered whether the mandatory minimum sentence pursuant to section 902.12 is the subject to his resentencing or if such mandatory sentence is unconstitutional under the Cruel and Unusual Punishment Clause of the Iowa Constitution. (Ruling on Defendant's Motion to Correct an Illegal Sentence p. 2) (App. p. 47). On September 26, 2014, the district court issued a Ruling which concluded that "[a]fter comprehensive consideration of all of the relevant factors, for the reasons set forth above, it is the conclusion of the court that the defendant is the exceptional case in which sentences providing for the maximum period of incarceration, including a mandatory minimum sentencing provision, are appropriate." (Ruling on Defendant's Motion to Correct an Illegal Sentence pp. 11-12) (App. pp. 56-57).

The court then issued a judgment entry which resentenced Majors in accordance with its Ruling on Majors' Motion to Correct an Illegal Sentence. (9/26/14 Judgment) (App. pp. 59-63). On the charge of Burglary in the Second Degree, the court ordered Majors to be sentenced to an

indeterminate term of sentence not to exceed ten years and pay a fine of \$1000 as well as the statutory surcharges and court costs. (9/26/14 Judgment) (App. pp. 59-63). The court suspended the imposition of the fine and surcharge. (9/26/14 Judgment) (App. pp. 59-63). On the charge of Attempted Murder, the court ordered Majors to be sentenced to an indeterminate term of imprisonment not to exceed twenty-five years and Majors must serve at least 70% of the maximum term of the sentence before he is eligible for parole. (9/26/14 Judgment) (App. pp. 59-63). The court also ordered that the sentence on each count shall be served consecutive to each other for a total term of incarceration not to exceed thirty-five years. (9/26/14 Judgment) (App. pp. 59-63). Majors filed a Notice of Appeal on October 2, 2014. (10/2/14 Notice of Appeal) (App. p. 64).

Prior Appellate Proceedings. On his previous appeal, Majors argued that the district court abused its discretion in imposing a sentence of incarceration without parole by failing to properly recognize and apply the relevant sentencing factors outlined in *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014). The

Court of Appeals affirmed Majors' sentence, finding the district court did not abuse its discretion in resentencing Majors:

The district court did provide an individualized sentencing hearing, imposed a sentence within the allowable statutory framework, and carefully considered the factors stated in *Null* and *Lyle* to the extent the record reflected information on each factor. We cannot say the sentences imposed were unreasonable or based upon untenable grounds. We find no abuse of discretion. We affirm.

State v. Majors, No. 14-1670, 2016 WL 3272074, at *6 (Iowa Ct. App. June 15, 2016) (footnote omitted).

Majors sought further review of the Iowa Court of Appeals' decision which the Supreme Court granted. *State v. Majors*, 897 N.W.2d 124 (Iowa 2017), *reh'g denied* (July 13, 2017). The Supreme Court vacated the Court of Appeals' decision and concluded that the district court abused its discretion by imposing a minimum period of incarceration without the eligibility of parole. *Id.* at 127. The Supreme Court further concluded that the sentencing transcript clearly reveals the district court misapplied the relevant factors identified and explained in *State v. Roby*, 897 N.W.2d 127 (Iowa 2017). *Id.* The Supreme Court also concluded that the

district court failed to consider some of the relevant factors and gave improper weight to factors beyond those described in *Roby*. *Id.* Accordingly, the Supreme Court reversed the sentence of the district court and remanded for resentencing consistent with the sentencing factors as explained in *Roby*. *Id.*

District Court's Resentencing Proceedings. Following remand from the Supreme Court, an attorney was appointed to represent Majors for the resentencing proceedings. (8/10/17 Order Appointing Counsel) (App. pp. 65-67). However, over the next five months, the district court appointed three additional attorneys following motions to withdraw filed by the respective attorneys. (11/27/17 Motion to Withdraw; 12/5/17 Order; 1/16/18 Motion to Withdraw; 1/25/18 Order; 1/27/18 Motion to Withdraw; 1/30/18 Order) (App. pp. 68; 69-70; 71-72; 73-74; 75-76; 77-78).

On January 30, 2018, the State filed a notice designating Dr. Theresa Clemons of North Central Correctional Facility as expert for the resentencing hearing. (Designation of Expert) (App. p. 79). Majors filed a Motion in Limine which sought to

exclude the State's expert from testifying at the resentencing hearing since the State failed to provide timely notification of the expert. (Motion in Limine) (App. pp. 80-81). The State resisted Majors' motion. (Resistance to Motion in Limine) (App. pp. 82-84). The district court denied Majors' motion without a hearing. (2/9/18 Order) (App. pp. 85-86).

A resentencing hearing commenced on March 5, 2018. (Resent. Hrg. Tr. p. 1; Order on Resentencing) (App. pp. 87-102). Following the hearing, the court concluded that, after considering the *Lyle* factors, the mandatory minimum sentence for adults convicted of attempted murder applies to Majors and that he should be subject to serve seventy percent of the sentence before he is eligible for parole. (Order on Resentencing) (App. pp. 87-102). Specifically, the court found the following: (1) Majors' age is not a mitigating factor; (2) Majors' family or household issues is not a mitigating factor; (3) the circumstances of the crime does not mitigate to favor a reduced penalty; (4) Majors' legal competency is not a mitigating factor; and (5) Majors' possibility of rehabilitation and the capacity for change would mitigate in Majors' favor,

albeit somewhat weakly in the district court's assessment. (Order on Resentencing) (App. pp. 87-102).

The court then issued a judgment entry which resentenced Majors in accordance with its Ruling on Resentencing. (4/2/18 Judgment) (App. pp. 103-107). On the charge of Burglary in the Second Degree, the court ordered Majors to be sentenced to an indeterminate term of sentence not to exceed ten years and pay a fine of \$1000 as well as the statutory surcharges and court costs. (4/2/18 Judgment) (App. pp. 103-107). The court suspended the imposition of the fine and surcharge. (4/2/18 Judgment) (App. pp. 103-107). On the charge of Attempted Murder, the court ordered Majors to be sentenced to an indeterminate term of imprisonment not to exceed twenty-five years and Majors must serve at least 70% of the maximum term of the sentence before he is eligible for parole. (4/2/18 Judgment) (App. pp. 103-107). The court also ordered that the sentence on each count shall be served consecutive to each other for a total term of incarceration not to exceed thirty-five years. (4/2/18 Judgment) (App. pp. 103-107). The court also ordered that the no-contact order with

the Peckhams be extended for a period of five years. (4/2/18 Judgment) (App. pp. 103-107).

Majors filed a Notice of Appeal on April 11, 2018. (4/11/18 Notice of Appeal) (App. p. 108).

Background Facts. The Supreme Court has previously summarized the facts of the case as the following:

Jarrold Dale Majors committed a frightening crime in May 2002 when he was a seventeen-year-old high school senior. He lived in a quiet neighborhood with his family in a southern Iowa community and had grown obsessed with a woman who lived in a house across the street with her husband and two children. One evening in May 2002 when the neighbors were gone from their home, Majors decided to enter the home and wait for them to return. He wore a ski mask and gloves and attached a large knife to his waistband. He put duct tape on his wrist and carried a .22 caliber rifle with a plastic soda bottle taped to the barrel. He hid in the closet of the master bedroom and waited for the family to return. When the woman entered the bedroom, Majors emerged and attacked her. She fought him off, her husband quickly intervened, and Majors was subdued. Police promptly arrived. The family, including the children, were terrified, but no serious physical injuries were inflicted.

Majors told police he was paid \$100 to commit the crime as a prank. He later said he was hallucinating at the time and could not recall committing the crime due to drug use and lack of sleep for a prolonged period of time. He also believed the neighbors had planned to attack him. Majors

had no prior criminal record other than a single offense for possession of alcohol as a minor.

Majors, 897 N.W.2d at 125. Any additional pertinent facts will be discussed below.

ARGUMENT

I. Under article I, section 17 of the Iowa Constitution, the portion of the statutory sentencing schema requiring a juvenile to serve seventy percent of the period of incarceration before parole eligibility may not be imposed without a prior determination by the district court that the minimum period of incarceration without parole is warranted under the factors previously identified by the Iowa Supreme Court. The district court concluded that the mandatory minimum sentence is warranted as part of Majors' sentence for the offense of Attempted Murder. Did the district court abused its discretion in failing to follow this Court's prior mandate when it imposed the mandatory minimum sentence?

Preservation of Error. In general, matters not raised in the trial court will not be considered for the first time on appeal. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa 1994). The rule, however, is not ordinarily applicable to void, illegal, or procedurally defective sentences. *Id.* A defendant is not required to raise an alleged sentencing defect in the trial court in order to preserve a right to appeal on that ground. *Id.*

Therefore, error was preserved by timely raising the issue on appeal.

Standard of Review. This Court's review in this case, in which the district court reached a sentence within permissible statutory guidelines following an individualized resentencing hearing, is for an abuse of discretion. *State v. Majors*, 897 N.W.2d 124, 126-27 (Iowa 2017); *State v. Roby*, 897 N.W.2d 127, 138 (Iowa 2017). The Supreme Court in *Roby* recognized that the abuse of discretion standard requires further explanation in this context. *Roby*, 897, N.W.2d at 138. The special considerations involved in sentencing a juvenile offender to an adult sentence similarly mean that, "even under this deferential standard, an appellate court should view such a sentence as inherently suspect," and "cannot merely rubber-stamp the trial court's sentencing decision." *Id.* (quoting *People v. Hyatt*, 891 N.W.2d 549, 576 (Mich. Ct. App. 2016)).

The Supreme Court found instructive the following analysis from the United States Court of Appeals for the Eighth Circuit:

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.

Majors, 897 N.W.2d at 126-27 (quoting *United States v. Haack*, 403 F.3d 997, 1004 (8th Cir. 2005)). In sum, the Supreme Court concluded that while the review is for abuse of discretion, it is not forgiving of a deficiency in the constitutional right to a reasoned sentencing decision based on a proper hearing. *Id.* at 126; *Roby*, 897 N.W.2d at 138.

The District Court Abused its Discretion for Failing to Follow the Mandate from the Supreme Court. On his previous appeal, Majors argued that the district court abused its discretion in imposing a sentence of incarceration without parole by failing to properly recognize and apply the relevant sentencing factors outlined in *State v. Lyle*, 854 N.W.2d 378

(Iowa 2014).² The Supreme Court vacated the Court of Appeals' decision and concluded that the district court abused

² The *Lyle* Court provided the following parameters of the resentencing hearing to avoid any uncertainty on the role of the district court during resentencing:

Under article I, section 17 of the Iowa Constitution, the portion of the statutory sentencing schema requiring a juvenile to serve seventy percent of the period of incarceration before parole eligibility may not be imposed without a prior determination by the district court that the minimum period of incarceration without parole is warranted under the factors identified in *Miller* and further explained in *Null*. The factors to be used by the district court to make this determination on resentencing include: (1) the age of the offender and the features of youthful behavior, such as "immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the particular "family and home environment" that surround the youth; (3) the circumstances of the particular crime and all circumstances relating to youth that may have played a role in the commission of the crime; (4) the challenges for youthful offenders in navigating through the criminal process; and (5) the possibility of rehabilitation and the capacity for change.

Id. at 404 n.10 (citations omitted). These factors are to be considered as mitigating factors and cannot be used to justify a harsher sentence. *See id.* at 402 n.8.

its discretion by imposing a minimum period of incarceration without the eligibility of parole. *Id.* at 127. The Supreme Court further concluded that the sentencing transcript clearly reveals the district court misapplied the relevant factors identified and explained in *State v. Roby*, 897 N.W.2d 127 (Iowa 2017). *Id.* The Supreme Court also concluded that the district court failed to consider some of the relevant factors and gave improper weight to factors beyond those described in *Roby*. *Id.* Accordingly, the Supreme Court reversed the sentence of the district court and remanded for resentencing consistent with the sentencing factors as explained in *Roby*. *Id.*

“It is a fundamental rule of law that a trial court is required to honor and respect the rulings and mandates by appellate courts in a case.” *City of Okoboji v. Iowa Dist. Ct.*, 744 N.W.2d 327, 331 (Iowa 2008). “On remand, the trial court is limited strictly to the terms of the [remand] order. There is nothing for the trial court to do except conduct whatever proceedings are mandated and to make a determination thereon.” *State v. Johnson*, 298 N.W.2d 293, 294 (Iowa 1980).

“A mandate to the district court contained in a decision of this court becomes the law of the case on remand, and a district court that misconstrues or acts inconsistently with the mandate acts illegally by failing to apply the correct rule of law or exceeding its jurisdiction.” *City of Okoboji*, 744 N.W.2d at 330.

On remand, the jurisdiction of the case is returned to the district court for the purpose of doing the act authorized or directed by the appellate court in its opinion “and nothing else.” *Id.* at 331. If the district court proceeds contrary to the mandate, its decision is viewed as null and void. *Id.* Thus, the district court is only vested with jurisdiction on remand “to the extent conferred by the appellate court's opinion and mandate.” *Id.* (quoting 5 Am.Jur.2d Appellate Review § 784 (1995)). In this way, the question whether the district court has properly followed the mandate cannot only involve the proper construction of the mandate by the district court, but also the jurisdiction of the district court to act. *Id.* “The district court has no power but to obey the judgment of the appellate court.” *Id.* (citations omitted).

The first task of the district court, when presented with a mandate on remand, is to determine the precise action directed to be done by the appellate court. *Id.* In this case, there is no ambiguity what this Court ordered the district court to do on remand when it was to resentence Majors: “we reverse the sentence of the district court and remand for resentencing consistent with the sentencing factors as explained in *Roby*.” *Majors*, 897 N.W.2d at 127.

Majors contend that the district court failed to follow the mandate of the Supreme Court at his sentencing. Specifically, he contends that the district court failed to properly consider the sentencing factors as explained in *Roby*. In *Roby*, the defendant was convicted of sexual abuse in the second degree and was given a seventeen and half year mandatory minimum sentence on that charge. *Roby*, 897 N.W.2d at 134. *Roby* argued that the Iowa Constitution categorical prohibits all minimum term of incarceration without the possibility of parole when imposed on juveniles, and in the alternative, that the district court erred in its analysis of the *Lyle* factors. *Id.* at 137.

The Supreme Court rejected the categorical challenge and concluded the following:

We conclude article I, section 17 of the Iowa Constitution does not categorically prohibit the imposition of a minimum term of incarceration without the possibility of parole on a juvenile offender, *provided the court only imposes it after a complete and careful consideration of the relevant mitigating factors of youth*. We recognize the difficulties of individualized hearings, but decline at this time to hold our constitution requires abandonment of the practice. Instead, we take this opportunity to provide additional guidance to our courts, attorneys, and juveniles on the use of the factors and the content of a sentencing hearing. While we conclude the district court abused its discretion in this case, we are confident the additional direction provided by this case will lead to sentencing more consistent with our constitutional principles.

Id. at 148 (emphasis added). The Supreme Court analyzed each of the *Lyle* factors to provide a greater understanding of its role in juvenile sentencing. *Id.* at 146. The Court recognized that when the factors are properly applied, “the factors ensure that the constitutional guarantee against cruel and unusual punishment is satisfied.” *Id.*

In this case, this Court must consider whether the district court followed its mandate and imposed the mandatory

minimum sentence only after it properly considered the sentencing factors as explained in *Roby*. As such, this Court must review each factor to determine if the district court properly applied the *Lyle* factors as mandated by the *Roby* Court.

1. Age and features of youthful behavior. Majors contends that the district court failed to properly consider his age as a mitigating factor in this case. Majors argues that the district court's conclusion on this factor is inconsistent with the analysis and framework provided in *Roby*.

On the issue of age of the offender, the district court concluded that Majors' age is not a mitigating factor in light of the contemporaneous assessment and the current psychiatric testimony. (Order on Resentencing pp. 4-6) (App. pp. 90-92). The court noted that Majors was fifteen days short of his eighteenth birthday and "it is reasonable to assume that he would have been more mature than a 15 or 16 year old defendant and not appreciably less mature than if he had committed the crime two weeks later, at which point he would

have been treated as an adult without question.” (Order on Resentencing pp. 4-5) (App. pp. 90-91).

The district court erred when it emphasized that Majors was seventeen years old, was only fifteen days from being an adult, and it’s reasonable to assume he would have been more mature. “[T]he line between being a juvenile and an adult was drawn for cruel and unusual punishment purposes at eighteen years of age.” *State v. Seats*, 865 N.W.2d 545, 556–57 (Iowa 2015). The *Roby* Court specifically held that age is not a sliding scale that necessarily weighs against mitigation the closer the offender is to turning eighteen years old at the time of the crime. *Roby*, 897 N.W.2d at 145. “When the *Miller* Court referred to “chronological age” in identifying the need to distinguish the criminal sentencing of children from adults, it did not suggest that a seventeen-year-old child is more deserving of adult punishment than a sixteen-year-old child, or a fifteen-year-old child more deserving than a fourteen-year-old child.” *Id.*

The *Roby* Court noted that *Miller* referred to “chronological age” as a unit of age that distinguishes children

from adults and children within this “chronological age” have “signature qualities” of “immaturity, irresponsibility, impetuosity[,] and recklessness.” *Id.* at 145-46 (citation omitted). Thus, the Supreme Court in *Roby* concluded that “minority status is the designated factor that supports the special sentencing consideration and expert evidence may be used to conclude any particular juvenile offender possessed features of maturity beyond his or her years.” *Id.* at 146.

The *Roby* Court further noted that the “age of the offender and the features of youthful offender” is the basis for the core constitutional protection extended to juvenile offenders. *Id.* at 145. The features of age that give rise to this protection include “immaturity, impetuosity, and [a] failure to appreciate risks and consequences.” *Id.* (citation omitted). The *Roby* Court recognized that this factor draws upon the features expected to be exhibited by youthful offenders that support mitigation and allows for the introduction of evidence at the sentencing hearing to show the offender had more or less maturity, deliberation of thought, and appreciation of risk-taking than normally exhibited by juveniles. *Id.*

As such, this Court has noted that “the fact ... a defendant is nearing the age of eighteen does not undermine the teachings of *Miller*.” *Id.* at 557. Current science demonstrates that the human brain continues to develop into the early twenties. See Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 647 (2016) (noting “developmental changes ... continue into the early twenties”); see also *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013). “The research clarifies that substantial psychological maturation takes place in middle and late adolescence and even into early adulthood.” Elizabeth S. Scott & Lawrence Steinberg, *Rethinking Juvenile Justice* 60 (2008). Thus, Scott and Steinberg emphasize that “adolescents, even at age sixteen and seventeen, are immature in their psychosocial and emotional development, and this likely affects their decisions about involvement in crime in ways that distinguish them from adults.” *Id.* at 131. As such, these features of youth do not magically disappear at age seventeen or eighteen for that matter. *State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016).

“While older teenagers may show greater intellectual development, that is not the same as the maturity of judgment necessary for imposing adult culpability.” *Id.* Therefore, applying this framework, the district court erred in emphasizing that Majors was seventeen years old, was only fifteen days from being an adult, and it’s reasonable to assume he would have been more mature.

Furthermore, the district court erroneously relied on State’s expert Dr. Theresa Clemmons, whom testified that she found nothing about Majors’ age at the time of the offense that mitigated against a mandatory sentence. (Order on Resentencing p. 5) (App. p. 91). Majors contends evidence submitted at the resentencing hearing did not show that he had more maturity, deliberation of thought, and appreciation of risk-taking than normally exhibited by juveniles.

Majors acknowledges that the *Roby* Court recognized that the “age” factor is most meaningfully applied when based on qualified professional assessments of the offender's decisional capacity. *Roby*, 897 N.W.2d at 145. To support this recognition, the *Roby* Court cited Elizabeth Scott et al.,

Juvenile Sentencing Reform in a Constitutional Framework, 88 Temp. L. Rev. 675, 696-97 (2016) which described the use of “validated assessment methods,” review of “the youth's facility under real-life conditions,” and an expert's “developmental and clinical knowledge and experience to integrate [the] information”. *Id.*

Scott stated that a juvenile's age and immaturity, impetuosity, and compromised capacity to consider future consequences are all characteristics of an adolescent's decisional capacity. Scott, 88 Temp. L. Rev. at 696-97. Scott elaborated that experts must use validated assessment methods under optimal test conditions in order to assessed an adolescent's decisional capacity. *Id.* at 696. Scott stated that “[s]everal validated tools are available to assess cognitive and behavioral capacities for various aspects of decision making” and these tests typically are “standardized and offer norms that allow for comparison of the youth's performance to youth of specific ages.” *Id.* Scott further stated that to examine a youth's facility under real-life conditions, an expert should do a comprehensive review of records of the youth's past behavior

in various situations and the expert must thoroughly interview family members, teachers, and peers who have observed the youth's functioning. *See id.* at 696-97. Finally, Scott stated that the expert utilize their developmental and clinical knowledge and experience to characterize the degree to which the youth's decisional abilities may depart from adolescent norms. *See id.* at 697.

In this case, Dr. Clemmons did not base her "opinion" regarding whether Majors' age was a mitigating factor on "validated assessment methods," review of "the youth's facility under real-life conditions," and an expert's "developmental and clinical knowledge and experience to integrate [the] information". Dr. Clemmons testified that she primarily works with adults in the Department of Corrections and the only juveniles that she works with are those that are within the Department of Corrections. (Resent. Tr. p. 97, Line 6 – p. 98, Line 3). She stated that she frequently has previously testified at Chapter 229A civil commitment hearings. (Resent. Tr. p. 97, Line 6 – p. 98, Line 3). Dr. Clemmons stated that this is the first time she testified at a juvenile resentencing hearing.

(Resent. Tr. p. 97, Line 6 – p. 98, Line 3). Furthermore, Dr. Clemmons did not administer any psychological test nor utilized any “validated assessment methods” described by Scott during her assessment of Majors. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23).

Dr. Clemmons’ clinical knowledge and experience fails to demonstrate that she has the necessary expertise to make qualified professional assessments of Majors’ decisional capacity as required by *Roby*, which cautioned that the factors not be applied solely through the lens of the background or culture of the person charged with the responsibility to apply them. *Roby*, N.W.2d at 147. *Roby* Court specifically stated that “[p]erceptions applicable to adult behavior cannot normally be used to draw conclusions from juvenile behavior.”

Id. Such a situation occurred here with Dr. Clemmons.

The following answer best illustrate Dr. Clemmons’ lack of understanding regarding juvenile behavior:

I would say more so minimally mitigate it. Looking at the overall youthful offender, the idea of a youthful offender is the idea of brain maturing and whether brains mature enough to make good decisions, whether you have good control of your

emotions, good control other impulsivity, have good development of your frontal lobe specifically, and the idea of that is that over time your brain does develop, it matures.

But looking at his age, from 17 years and 50 weeks to 18 years is a very small change. It's not a switch. It's not on an 18th birthday you flip a switch and the brain is fully mature. It actually takes much longer than the 18th birthday to reach the full maturity, and some people say your brain is ever changing during your lifetime, and we have no mark for full brain maturity.

So looking at kind of those ideas, there would have been minimal brain change or brain growth or brain development within those two weeks. So it wouldn't have necessarily changed his ability to make decisions, his ability to control emotions better or worse, his ability to have impulse control, that sort of thing.

(Resent. Tr. p. 83, Lines 3-23). She further clarified that the development that Majors would have had in the two weeks until he reached age eighteen would have been minimal and thus his age has, at most, a minimal mitigating value.

(Resent. Tr. p. 83, Line 24 – p. 84, Line 21).

As previously mentioned, the fact that Majors would turn eighteen just two weeks after the commission of the crime is immaterial to the crucial question whether Majors possessed features of maturity beyond his years. Majors' age at the time

of the commission of the crime does not undermine the recognized failures of juveniles to appreciate risks and consequences and their tendency to make immature and impetuous decisions. See *Roby*, 897 N.W.2d at 147. Dr. Clemmons failure to recognize this distinction undermines her conclusions regarding whether Majors' age and feature of youthful offender is a mitigating factor in this case.

But the most troubling with Dr. Clemmons testimony is that she did not review any reports from neighbors, school, or parents regarding the behavior Majors' was exhibiting at around the time of the incident. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23). She testified that, as part of her assessment of Majors, did not interview anyone except for Majors' current counselor at his correctional facility. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23). Dr. Clemmons admitted that she did not review the report when Majors was allegedly sexually assaulted by a correctional officer at Anamosa State Penitentiary. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23). Nor did she review the transcripts involved in this case and did not know that Majors apologized to the victims when he was

originally sentenced in 2003 and during the original resentencing in 2014. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23).

Roby Court recognized that applying the *Lyle* factors could have unique challenges on resentencing given the years that have passed since the commission of the crime. *Roby*, 897 N.W.2d at 145. Despite the potential difficulties, the *Roby* Court concluded the following:

Objective indicia of a juvenile's relevant characteristics may be difficult or impossible to obtain ten or twenty years later. *However, the factors do not lose relevance.* There are baseline “average developmental characteristics of youth of the age that the prisoner was when he or she committed the offense,” which the parties can then use as evidence of the juvenile's conduct after the offense to show the juvenile “conformed to or departed from developmental norms.” Scott, 88 Temp. L. Rev. at 702. *Additionally, while objective indicia may be elusive, it may still be available in the form of contemporaneous medical records or school and disciplinary reports. Id. Interviews of relevant individuals' recollection, as opposed to their current perception, may also be helpful. See id.*

Id. (emphasis added). In this case, the information remained elusive and no such records or interviews were conducted or reviewed by Dr. Clemmons nor presented to the district court.

Therefore, after carefully reviewing the record, this Court should conclude that Dr. Clemmons failed to render a qualified professional assessment of Majors' decisional capacity as mandated by *Roby*.

Moreover, the record before the district court demonstrated that Majors' age and features of youthful offender is a mitigating factor in this case as outlined by the *Roby* Court. Majors was psychiatry assessed in July 2002 at the Iowa Medical and Classification Center which was shortly after his arrest. (Exhibit #23) (Conf. App. pp. 82-162). A review of the 2012 DOC documents reveals that psychiatric assessment resulted in Majors being treated for a psychiatric illness. (Exhibit #23 p. 1) (Conf. App. p. 82). It was noted that Majors had issues of getting along with others. (Exhibit #23 p. 43) (Conf. App. p. 124). But most alarming was that Majors had been hearing voices multiple times each week for the past three to four years prior the incident. (Exhibit #23) (Conf. App. pp. 82-162). Furthermore, it was noted that Majors has been depressed and anxious since the third grade. (Exhibit #23 p. 43) (Conf. App. p. 124). In fact, Majors told the DOC

during his psychiatric assessment that he wanted to kill himself in the seventh grade but he never followed through. (Exhibit #23 p. 43) (Conf. App. p. 124).

The DOC psychiatric assessment noted that Majors reported that he would constantly hear people laugh and talk about him while he was in public. (Exhibit #23 p. 43) (Conf. App. p. 124). In fact, Majors stated that these voices told him to commit this crime to scare his neighbor. (Exhibit #23 p. 43) (Conf. App. p. 124). There are multiple notations in the DOC documents that Majors also stated that he does not remember the incident and blamed it on a blackout that is associated when people made fun of him. (Exhibit #23) (Conf. App. pp. 82-162). Also, there is a notation that this incident was associated with a seizure by Majors. (Exhibit #23 p. 5) (Conf. App. p. 86). In addition, Majors noted that he was having difficulty sleeping prior to this incident, where he would be constantly thinking about the other people making fun of him and teasing him. (Exhibit #23 p. 43) (Conf. App. p. 124). There are further multiple notations that Majors cried frequently when discussing the harassment he faced from

other people. (Exhibit #23) (Conf. App. pp. 82-162). Majors also would be nervous and shaky during this time. (Exhibit #23 p. 43) (Conf. App. p. 124). Majors was found to be low average intelligence with a I.Q. in the range of 81 to 89. (Exhibit #23 p. 43) (Conf. App. p. 124). Majors was also found to have below average academic abilities. (Exhibit #23 p. 43) (Conf. App. p. 124). There were multiple notations that Majors had limited insight and impaired judgment, did not cope well with stress, and was emotionally immature. (Exhibit #23) (Conf. App. pp. 82-162). The DOC diagnosed Majors shortly after this incident with having a Mixed Personality Disorder with Antisocial, Paranoid and possibly Mild Schizotypal features. (Exhibit #23 p. 43) (Conf. App. p. 124).

The record before the district court supports a finding that Majors had less maturity, less deliberation of thought, and less appreciation of risk taking than normally exhibited by juveniles. The district court failed to recognize and properly consider Majors' age and the feature of youthful offender as mandated by *Roby*. Instead of giving Majors the presumption that his age and features of youthful offender is a mitigating

factor as stated by *Roby*, the district court applied this factor through the lens of adult behavior which cannot be used to draw conclusions from juvenile behavior. See *Roby*, 897 N.W.2d at 147. Consequently, this district court erred in finding that Majors' age and features of youthful offender is not a mitigating factor.

2. Family and home environment. Majors contends that the district court failed to properly consider his family and home life as a mitigating factor in this case. Majors argues that the district court's conclusion on this factor is inconsistent with the analysis and framework provided in *Roby*.

The *Roby* Court emphasized that the "family and home environment factor" seeks to identify any familial dependency and negative influences of family circumstances that can be ingrained on children. *Roby*, 897 N.W.2d at 146. "This factor does not rely on general perceptions, but specific measures of the degree of functioning." *Id.* Furthermore, the *Roby* Court observed that this factor is not limited to extremely brutal or

dysfunctional home environments, but considers the impact of all circumstances and all income and social backgrounds. *Id.*

As with the first factor, the *Roby* Court noted that expert testimony will best assess how the family and home environment may have affected the functioning of the juvenile offender. *Id.* (citing Scott, 88 Temp. L. Rev. at 698). Scott noted that an expert can identify autonomy or dependency as a general characteristic for the youth using psychometric measures of those abilities. Scott, 88 Temp. L. Rev. at 698. Scott further explained that an expert can use “social maturity scales” to assess the youth’s degree of independence and self-direction in everyday functioning according to age norms. *Id.* In addition, Scott explained interviews with family members and inspection of school and clinical records for a youth provide other evidence of self-directed and autonomous functioning in everyday life. *Id.* In this case, Dr. Clemmons did not interview any family members nor she inspected any school reports for Majors. (Resent. Tr. p. 76, Line 7 – p. 116, Line 23). Furthermore, Dr. Clemmons never testified to using any “social maturity scales” as described by Scott to assess

Majors' autonomy or dependency. (Resent. Tr. p. 76, Line 7 – p. 116, Line 23).

Moreover, this Court has previously elaborated that, in examining the “family and home environment,” the court shall consider any information regarding childhood abuse, parental neglect, personal and family drug or alcohol abuse, prior exposure to violence, lack of parental supervision, lack of an adequate education, and the juvenile's susceptibility to psychological or emotional damage. *Seats*, 865 N.W.2d at 556. The sentencing judge should consider these family and home environment vulnerabilities together with the juvenile's lack of maturity, underdeveloped sense of responsibility, vulnerability to peer pressure as mitigating, not aggravating factors. *Id.*

The district court did not properly consider that “home and family environment” factor under the analysis and framework articulated by this Court. The district court concluded that this factor does not mitigate Majors' conduct in this case. (Order on Resentencing pp. 6-7) (App. pp. 92-93). The court specifically noted that no one points to any home

environment facts that influenced Majors' behavior and Dr. Clemmons did not identify any family or household issues that could have mitigated the offense. (Order on Resentencing pp. 6-7) (App. pp. 92-93). However, the district court's conclusion is not supported by the record.

The record reveals that Majors failed to complete his high school education. (PSI; Exhibit #23) (Conf. App. pp. 4-14; 82-162). In fact, there are multiple notations that Majors had trouble getting along with others in school since the third grade. (Exhibit #23) (Conf. App. pp. 82-162). Apparently, the children in Majors' school learned that his family sold chickens for a living and would make fun of him and called him names for several years. (Exhibit #23 p. 43) (Conf. App. p. 124). Majors reported that it got worse as the years went on in school and he had to go to alternate school at age fifteen. (Exhibit #23) (Conf. App. pp. 82-162). There were also notations that Majors was having conduct problems during school and had difficulty getting along with his teachers. (Exhibit #23 p. 6) (Conf. App. p. 87).

There are also multiple notations that Majors was being physically abused by his father. (Exhibit #23) (Conf. App. pp. 82-162). In addition, Majors had surgery for scoliosis during his sixth-grade year which had a profound effect on him. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23; Exhibit #23) (Conf. App. pp. 82-162). Majors admitted that the surgery prevented him from playing sports which resulted in him feeling isolated. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23; Exhibit #23) (Conf. App. pp. 82-162). There are multiple notations in the DOC documents that Majors was being a “loner” who did not associate with other inmates at the facility. (Exhibit #23) (Conf. App. pp. 82-162).

The DOC documents also showed that Majors reported using alcohol and marijuana around the time of the incident. (Exhibit #23) (Conf. App. pp. 82-162). The PSI also described a significant alcohol and drug problem for Majors at the time of this incident. Majors reported he has been drinking alcohol since the age of thirteen and normally drank three to four times a week prior to the incident in this matter. (PSI p. 6) (Conf. App. p. 9). In addition, the PSI noted that Majors used

methamphetamine, acid, marijuana, speed and ecstasy. (PSI p. 7) (Conf. App. p. 10). In fact, Majors noted that he used methamphetamine every day until the day of his arrest without any sleep and he was experiencing blackouts and hallucinations while he was in jail awaiting trial in this matter. (PSI p. 7) (Conf. App. p. 10). Moreover, just prior to this incident, Majors reported that he suffered a four-wheeler accident which caused him to be knocked unconscious and had a swollen and bleeding head. (PSI p. 7) (Conf. App. p. 10). He told the investigator that he does not remember much what happened in May 2002 and he just went crazy after the incident. (PSI p. 7) (Conf. App. p. 10).

None of this information was recognized or considered by the court as mitigating factors. Further, one of the circumstances the sentencing judge needs to consider is whether substance abuse played a role in the juvenile's commission of the crime. *Seats*, 865 N.W.2d at 556. However, the court failed to take into account how substance abuse played a role in Majors' commission of the crime.

The district court's brevity in considering Majors' home and family environment was error. The district court failed to recognize and properly consider Majors' home and family environment as mandated by *Roby*. Instead of giving Majors the presumption that his home and family environment is a mitigating factor as stated by *Roby*, the district court applied this factor through the lens of adult behavior which cannot be used to draw conclusions from juvenile behavior. *See Roby*, 897 N.W.2d at 147. Consequently, this Court should conclude that the district court abused its discretion in failing to properly consider Majors' family and home environment.

3. *Circumstances of the crime.* Majors contends that the district court failed to properly consider circumstances of the crime as a mitigating factor in this case. Majors argues that the district court's conclusion on this factor is inconsistent with the analysis and framework provided in *Roby*.

The *Roby* Court noted that third factor considers the circumstances of the crime. *Roby*, 897 N.W.2d at 146. The Court noted that within these circumstances, "attention must

be given to the juvenile offender's actual role and the role of various types of external pressure.” *Id.* Thus, this factor is particularly important in cases of group participation in a crime. *Id.* The *Roby* Court again emphasized that 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.* (citing Scott, 88 Temp. L. Rev. at 698). However, the *Roby* Court cautioned that the prominence of peer pressure in the analysis of this factor does not mean the factor cannot support mitigation for crimes committed alone. *See id.*

“Likewise, the circumstances of the crime do not necessarily weigh against mitigation when the crime caused grave harm or involved especially brutal circumstances.” *Id.* The *Roby* Court noted that the special analysis for juveniles is not “crime-specific.” *Id.* As such, the *Roby* Court concluded that mitigation normally is warranted in all crimes. *Id.* “The aggravating circumstances of a crime that suggest an adult

offender is depraved may only reveal a juvenile offender to be wildly immature and impetuous.” *Id.*

In this case, the district court concluded that this factor does not mitigate in favor of a reduced penalty for Majors. (Order on Resentencing pp. 7-8) (App. pp. 93-94). The court noted that this was a sole act by Majors and there is no indication that he was seeking favor for any peer group. (Order on Resentencing pp. 7-8) (App. pp. 93-94). Furthermore, the district court highlighted Dr. Clemmons’ testimony which found no indications that any outside influences Majors in the planning and execution of the crime. (Order on Resentencing pp. 7-8) (App. pp. 93-94). The court also noted that Dr. Clemmons testified that the deliberate nature of the crime was supportive of a finding that Majors was acting for himself and not impulsively or at the behest of others. (Order on Resentencing pp. 7-8) (App. pp. 93-94).

The district court did not properly consider that “home and family environment” factor under the analysis and framework articulated by this Court. The fact that this was a solo act by Majors does not mean that this factor cannot be a

mitigating factor. See Roby, 897 N.W.2d at 146. Scott explained that “peer influence can play a more subtle role in adolescent behavior, as when teenagers engage in behavior that they think will win peer approval (“showing off,” for example), or simply encourage one another through group interaction.” Scott, 88 Temp. L. Rev. at 698.

Nate Butcher who was the deputy sheriff at the time of the incident testified at the resentencing hearing. (Resent. Tr. p. 17, Line 8 – p. 28, Line 25). He testified that Majors told the police following the incident that his friends dared him to do it and offered him a hundred dollars to do it. (Resent. Tr. p. 17, Line 8 – p. 8, Line 25). The DOC psychiatric assessment noted that Majors reported that he would constantly hear people laugh and talk about him while he was in public. (Exhibit #23 p. 43) (Conf. App. p. 124). In fact, Majors stated that these voices told him to commit this crime to scare his neighbor. (Exhibit #23 p. 43) (Conf. App. p. 124). There are multiple notations in the DOC documents that Majors also stated that he does not remember the incident and blamed it on a blackout that is associated when people made fun of him.

(Exhibit #23) (Conf. App. pp. 82-162). Furthermore, Dr. Clemmons acknowledged that this crime could have been impulsive and was put together by Majors in a short period of time prior to him committing it. (Resent. Tr. p. 116, Line 24 – p. 125, Line 23).

None of this information was recognized or considered by the court as mitigating factor. The district court failed to recognize and properly consider the circumstance of the crime as mandated by *Roby*. “The role of peer pressure in juvenile crime does not make the absence of peer pressure an aggravating circumstance.” *Roby*, 897 N.W.2d at 148. As such, the district court failed to properly consider this factor as mitigating as stated by *Roby*. Consequently, this Court should conclude that the district court abused its discretion in failing to properly consider the circumstance of the crime.

4. Legal Competency. Majors contends that the district court failed to properly consider his legal competency as a mitigating factor in this case. Majors argues that the district court’s conclusion on this factor is inconsistent with the analysis and framework provided in *Roby*.

The *Roby* Court stated that the fourth factor is the legal incompetency associated with youth. *Roby*, 897 N.W.2d at 146. This factor “mitigates against punishment because juveniles are generally less capable of navigating through the criminal process than adult offenders.” *Id.* (citing Scott, 88 Temp. L. Rev. at 699). “Thus, the same shortsightedness of thought tied to juvenile behavior in the commission of a crime can also surface in their subsequent dealings in the legal process.” *Id.* The *Roby* Court recognized that these juvenile deficiencies can play out in general competency to stand trial or relate more specifically to cognitive or other incapacities to withstand police interrogation. *See id.* at 146-47. “The relevance of this factor ultimately relates to the general proposition that youthful offenders are less able to confront the legal process.” *Id.* at 147. As with the other factors, the *Roby* Court acknowledged that whether a particular youth would be more capable than most would normally be a matter for expert testimony. *Id.*

The district court did not properly consider the legal competency factor under the analysis and framework

articulated by this Court. The district court concluded that this factor does not mitigate Majors' punishment. (Order on Resentencing pp. 8-10) (App. pp. 94-96). The court again fixated on Majors' age and the fact he was nearing age eighteen when he committed the offense. (Order on Resentencing p. 9) (App. p. 95). The district court highlighted a few instances which it believed demonstrated Majors "understanding of the legal system that belies any disability due to his age." (Order on Resentencing p. 9) (App. p. 95). These instances included Majors claiming he was suicidal to get out jail, sought an evaluation to aid his case, sought help from other inmates to appear more incompetent, and "tried out various lies" in an effort to avoid culpability. (Order on Resentencing pp. 9-10) (App. p. 95).

However, the district court mischaracterizes this evidence and seems to ignore that Majors was diagnosed and being treated for psychiatric illness when these things were observed. (Exhibit #23) (Conf. App. pp. 82-162). As previously mentioned, Majors was psychiatry assessed in July 2002 at the Iowa Medical and Classification Center which was shortly

after his arrest. (Exhibit #23) (Conf. App. pp. 82-162). A review of the 2012 DOC documents reveals that psychiatric assessment resulted in Majors being treated for a psychiatric illness. (Exhibit #23 p. 1) (Conf. App. pp. 82-162). It was noted that Majors had issues of getting along with others. (Exhibit #23 p. 43) (Conf. App. p. 124). But most alarming was that Majors had been hearing voices multiple times each week for the past three to four years prior to the incident. (Exhibit #23) (Conf. App. pp. 82-162). Furthermore, it was noted that Majors has been depressed and anxious since the third grade. (Exhibit #23 p. 43) (Conf. App. p. 124). In fact, Majors told the DOC during his psychiatric assessment that he wanted to kill himself in the seventh grade but he never followed through. (Exhibit #23 p. 43) (Conf. App. p. 124). There also multiple notations that Majors wanted to kill himself while at the county jail shortly after his arrest in this matter. (Exhibit #23) (Conf. App. p. 86).

The DOC psychiatric assessment noted that Majors reported that he would constantly hear people laugh and talk about him while he was in public. (Exhibit #23 p. 43) (Conf.

App. p. 124). In fact, Majors stated that these voices told him to commit this crime to scare his neighbor. (Exhibit #23 p. 43) (Conf. App. p. 124). There are multiple notations in the DOC documents that Majors also stated that he does not remember the incident and blamed it on a blackout that is associated when people made fun of him. (Exhibit #23) (Conf. App. pp. 82-162). Also, there is a notation that this incident was associated with a seizure by Majors. (Exhibit #23 p. 5) (Conf. App. p. 86). In addition, Majors noted that he was having difficulty sleeping prior to this this incident, where he would be constantly thinking about the other people making fun of him and teasing him. (Exhibit #23 p. 43) (Conf. App. p. 124). There are further multiple notations that Majors cried frequently when discussing the harassment he faced from other people. (Exhibit #23) (Conf. App. pp. 82-162). Majors also would be nervous and shaky during this time. (Exhibit #23 p. 43) (Conf. App. p. 124).

Majors was found to be low average intelligence with a I.Q. in the range of 81 to 89. (Exhibit #23 p. 43) (Conf. App. p. 124). Majors was also found to have below average academic

abilities. (Exhibit #23 p. 43) (Conf. App. p. 124). There were multiple notations that Majors had limited insight and impaired judgment, did not cope well with stress, and was emotionally immature. (Exhibit #23) (Conf. App. pp. 82-162). The DOC diagnosed Majors shortly after this incident with having a Mixed Personality Disorder with Antisocial, Paranoid and possibly Mild Schizotypal features. (Exhibit #23 p. 43) (Conf. App. p. 124). Furthermore, Dr. Clemmons acknowledged that someone like Majors being sentenced to serve a lengthy prison sentence may feel a sense of hopelessness. (Resent. Tr. p. 116, Lines 3-6).

Even though DOC determined Majors was able to understand the nature and quality of the behavior in which was allegedly involved, the aforementioned record clearly shows that, at the time of this incident, Majors was an immature youth with below average intelligence and below average academic abilities with a diagnosed psychiatric illness.

The United States Supreme Court has recognized that there are significant challenges facing youthful offenders when they navigate through the criminal process:

the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than adults to work effectively with their lawyers to aid in their defense. Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense. These factors are likely to impair the quality of a juvenile defendant's representation. A categorical rule avoids the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable to deserve life without parole for a non-homicide.

Graham v. Florida, 560 U.S. 48, 78-79 (2010), as modified (July 6, 2010) (citations omitted). The circumstances pointed out by the district court can be seen as being attributed to poor decisions made by a juvenile and is evidence of legal incompetency that is normally associated with youth. The fact that Majors had no previous contacts with the criminal justice system would indicate that he was no savvy with such things and would be a significant mitigating circumstance here, but the court ignored how the incompetency of youth affected Majors.

The district court failed to recognize and properly consider the legal competency as mandated by *Roby*. The actions exhibited by Majors following his arrest clearly demonstrates his legal incompetency and shortsightedness in his decision making. See *Roby*, 897 N.W.2d at 146-47; Scott, 88 Temp. L. Rev. at 699. As such, the district court failed to properly consider this factor as mitigating as stated by *Roby*. Consequently, this Court should conclude that the district court abused its discretion in failing to properly consider Majors' legal competency.

5. *Rehabilitation.* Majors contends that the district court failed to properly consider his possibility for rehabilitation and his capacity for change as a mitigating factor in this case. Majors argues that the district court's conclusion on this factor is inconsistent with the analysis and framework provided in *Roby*.

The *Roby* Court noted that the final factor is the possibility of rehabilitation and the capacity for change. *Roby*, 897 N.W.2d at 147. "This factor supports mitigation for most juvenile offenders because delinquency is normally transient,

and most juveniles will grow out of it by the time brain development is complete.” *Id.* (citing Scott, 88 Temp. L. Rev. at 700). Additionally, the *Roby* Court recognized that “juveniles are normally more malleable to change and reform in response to available treatment.” *Id.* The seriousness of the crime does not alter these propositions. *Id.* Thus, according to the *Roby* Court, “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.” *Id.* As with the other factors, any such conclusion would normally need to be supported by expert testimony. *Id.*

Furthermore, this Court has recognized that a greater capacity for change and rehabilitation complemented the juvenile's diminished culpability. *See Lyle*, 854 N.W.2d at 394. The Court observed that the “character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Id.* (citation omitted). “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for

greater possibility exists that a minor's character deficiencies will be reformed.” *Id.* (citation omitted). “Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.” *Id.* (citation omitted). “It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* (citation omitted).

Accordingly, this Court in *Lyle* stated the following regarding rehabilitation:

Rehabilitation and incapacitation can justify criminally punishing juveniles, but mandatory minimums do not further these objectives in a way that adequately protects the rights of juveniles within the context of the constitutional protection from the imposition of cruel and unusual punishment for a juvenile. As much as youthful immaturity has sharpened our understanding to use care in the imposition of punishment of juveniles, it also reveals an equal understanding that reform can come easier for juveniles without the need to impose harsh measures. Sometimes a youthful offender merely needs time to grow. As

with the lack of maturity in youth, this too is something most parents know.

The greater likelihood of reform for juveniles also substantially undermines an incapacitation rationale. The juvenile justice jurisprudence of the United States Supreme Court—like our own—is beginning to regard the incapacitation rationale with a healthy skepticism. A close reading of *Graham* demonstrates the Supreme Court views the incapacitation rationale even more limitedly: the Court recognized Florida needed to incapacitate the youthful offender to the extent he “posed an immediate risk” of “escalating [his] pattern of criminal conduct.”

Given the juvenile's greater capacity for growth and reform, it is likely a juvenile can rehabilitate faster if given the appropriate opportunity. “Because ‘incurability is inconsistent with youth,’ care should be taken to avoid ‘an irrevocable judgment about [an offender's] value and place in society.’” After the juvenile's transient impetuosity ebbs and the juvenile matures and reforms, the incapacitation objective can no longer seriously be served, and the statutorily mandated delay of parole becomes “nothing more than the purposeless and needless imposition of pain and suffering.”

If the undeveloped thought processes of juveniles are not properly considered, the rehabilitative objective can be inhibited by mandatory minimum sentences. After all, mandatory minimum sentences foreswear (though admittedly not altogether) the rehabilitative ideal. Juvenile offenders who are placed in prison at a formative time in their growth and formation [] can be exposed to a life that can increase the likelihood of recidivism.

Id. at 399-400. Accordingly, rehabilitation is an important factor and to predict that a juvenile cannot be rehabilitated is very difficult.

In this case, the district court did not properly consider the legal competency factor under the analysis and framework articulated by this Court. The district court found that this factor would mitigate in Majors' favor, "albeit somewhat weekly in the court's assessment." (Order on Resentencing pp. 10-11) (App. pp. 96-97). The court did note that Dr. Clemmons' testimony regarding Majors' lack of empathy be significant. (Order on Resentencing pp. 10-11) (App. pp. 96-97). A review of the district court's ruling shows the flawed analysis.

Dr. Clemmons testified that the only programming that Majors has received while in the department of corrections was the GED program. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23). In fact, Majors has been waitlisted and not yet received any victim impact programming which would help him to understand empathy. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23). The district court failed to recognize that Majors has not been given a meaningful opportunity for rehabilitation and

that continued incarceration is exposing Majors to a life that can increase the likelihood of recidivism, which is evidence by his report of violations. In addition, the district court failed to recognize that Dr. Clemmons did not review the transcripts involved in this case and did not know that Majors apologized to the victims when he was originally sentenced in 2003 and during the original resentencing in 2014. (Resent. Tr. p. 96, Line 9 – p. 116, Line 23).

Furthermore, Dr. Clemmons acknowledged that someone like Majors being sentenced to serve a lengthy prison sense may feel a sense of hopelessness. (Resent. Tr. p. 116, Lines 3-6). But she acknowledged that since the time the *Lyle* decision was rendered, Majors has shown maturity and he has not had any major disciplinary issues since that time. (Resent. Tr. p. 114, Line 18 – p. 115, Line 5). Dr. Clemmons testified that Majors has shown a capacity to change since 2014 given that he now feels he has an opportunity to get out of prison. (Resent. Tr. p. 116, Line 24 – p. 125, Line 23).

The district court failed to recognize and properly consider rehabilitation as mandated by *Roby*. The district

court should have considered rehabilitation as a factor in sentencing. As such, the district court failed to properly consider this factor as mitigating as stated by *Roby*. Consequently, this Court should conclude that the district court abused its discretion in failing to properly consider Majors' possibility for rehabilitation and his capacity for change as a mitigating factor in this case.

6. The District Court's Abuse of Discretion. As outlined above, Majors argue that the district court failed to remain committed to the several key observations outlined by the *Roby* Court. The district court failed to recognize that the five factors identify the primary reasons most juvenile offenders, like Majors, should not be sentenced without parole eligibility. *Roby*, 897 N.W.2d at 147. The district court likewise failed to recognize that a "sentence of incarceration without parole eligibility will be an uncommon result." *Id.* Furthermore, the district court's reliance on Dr. Clemmons' testimony given that her clinical knowledge and experience fails to demonstrate that she has the necessary expertise to

make qualified professional assessments of Majors as mandated by *Roby*. *See id.*

But most importantly, both the district court and Dr. Clemmons analyzed each of these factors through the lens associated with adult behavior which “cannot normally be used to draw conclusions from juvenile behavior.” *Id.* Consequently, this Court should conclude the district court abused its discretion by imposing a sentence of incarceration without parole eligibility. *See id.* at 148.

The evidence presented at the resentencing hearing could not, as a matter of law, support the imposition of incarceration without an opportunity for parole under the five factors that must be observed at sentencing to ensure that the punishment does not violate article I, section 17 of the Iowa Constitution. The evidence presented by the State did not amount “to a case of psychopathy [by Majors] demonstrating, among other things, resistance to change and a stunting of the ordinary maturation process.” *See id.* at 150 (Appel, J., specially concurring). District court applied the factors, but not in the manner required to protect Majors from cruel and

unusual punishment. As such, this Court should vacate Majors' sentence and remand the case for resentencing under the proper analysis as outlined by this Court in *Roby*.

II. The right to assistance of counsel under the Sixth Amendment to the United States Constitution and article I, section 10 of the Iowa Constitution is the right to “effective” assistance of counsel. Majors alleges that trial counsel was ineffective for failing to present expert testimony regarding the *Lyle* factors as mandated by the *Roby* Court. Was trial counsel ineffective?

Preservation of Error. Majors alleges that trial counsel was ineffective for failing to present expert testimony educating and explaining to the district court the *Lyle* sentencing factors as they applied to Majors. Because Majors is claiming trial counsel was ineffective, this provides an exception to normal error preservation requirements. *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). Therefore, the issue is proper before this Court.

Standard of Review. Ineffective assistance of counsel claims are grounded in the Sixth Amendment. *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012). This Court reviews ineffective assistance of counsel claims de novo. *Id.*

Applicable Law on Ineffective Assistance of Counsel.

“The right to assistance of counsel under the Sixth Amendment to the United States Constitution and article I, section 10 of the Iowa Constitution is the right to ‘effective’ assistance of counsel.” *State v. Fountain*, 786 N.W.2d 260, 265 (Iowa 2010). To establish an ineffective-assistance-of-counsel claim, a defendant must show that “(1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice.” *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). This Court can resolve ineffective-assistance-of-counsel claims under either prong of the analysis. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003).

The first prong requires the defendant to show a deficiency in counsel's performance. *State v. Ross*, 845 N.W.2d 692, 698 (Iowa 2014). Under this prong, the presumption is the attorney competently performed his or her duties. *Id.* The defendant “rebutts this presumption by showing a preponderance of the evidence demonstrates counsel failed to perform an essential duty.” *Id.* (quoting *State v. Clay*, 824 N.W.2d 488, 495 (Iowa 2012)). Counsel breaches

an essential duty when counsel makes such serious errors that counsel is not functioning as the advocate the Sixth Amendment guarantees. *Id.* “[W]e require more than a showing that trial strategy backfired or that another attorney would have prepared and tried the case somewhat differently.” *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). Trial counsel has no duty to raise an issue that lacks merit. See *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011).

To establish prejudice in the context of an ineffective-assistance-of-counsel claim, a defendant must show a reasonable probability that the result of the trial would have been different. *King v. State*, 797 N.W.2d 565, 574 (Iowa 2011). The likelihood of a different result must be substantial, not just conceivable. *Id.* at 572. A defendant must show the probability of a different result is sufficient to undermine confidence in the outcome. *Clay*, 824 N.W.2d at 496. This standard requires this Court to consider the totality of the evidence, identify what factual findings would have been affected, and determine if the error was pervasive or isolated and trivial. *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010).

Although ordinarily preserved for postconviction relief, this Court will consider the merits of such a claim on direct appeal if the record is adequate. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). Preserving ineffective assistance of counsel claims that can be resolved on direct appeal wastes time and resources. *Id.* If the record on appeal establishes both elements of an ineffective assistance claim and an evidentiary hearing would not alter this conclusion, the Court will reverse the defendant's conviction and remand for a new trial. *State v. Allison*, 576 N.W.2d 371, 374 (Iowa 1998). This Court should conclude that the record is adequate to address the issues.

Trial Counsel was Ineffective for Failing to Present Expert Witness at Juvenile Resentencing Hearing. Majors asserts that his trial attorney rendered ineffective assistance of counsel by failing to present expert testimony educating and explaining to the district court the *Lyle* sentencing factors as they applied to Majors. At the outset of the resentencing hearing, Majors' trial counsel informed the court that Majors was willing to waive his ability to seek an independent

psychiatric evaluation. (Resent. Tr. p. 4, Line 1 – p. 16, Line 25). The sole reason given why Majors was waiving this evaluation was because Majors did not want any further delay in his resentencing. (Resent. Tr. p. 4, Line 1 – p. 16, Line 25). The record demonstrates that several attorneys filed appearances and withdrew prior to the resentencing hearing, which delayed the scheduling of the hearing. (Resent. Tr. p. 4, Line 1 – p. 16, Line 25). Even when the district court gave Majors' trial counsel an opportunity to leave the record open and allow such evaluation to be submitted after the hearing, Majors' trial counsel declined such offer and indicated that they waived any ability to obtain an independent evaluation. (Resent. Tr. p. 4, Line 1 – p. 16, Line 25). Majors' trial counsel recommendation to waive an independent psychiatric evaluation was a breach of an essential duty which prejudiced Majors.

In Majors' prior appeal, the Supreme Court also concluded that the district court failed to consider some of the relevant factors and gave improper weight to factors beyond those described in *Roby*. *Majors*, 897 N.W.2d at 127.

Accordingly, the Supreme Court reversed the sentence of the district court and remanded for resentencing consistent with the sentencing factors as explained in *Roby*. *Id.* In *Roby*, the Supreme Court repeatedly emphasized that expert testimony would be necessary to explain and to provide guidance to the district on each of the sentencing factors outlined by the Court. *Roby*, 897 N.W.2d at 145-148.

In this case, Majors' counsel failed to present an expert witness to rebut Dr. Clemmons' testimony and conclusions she made regarding Majors. Her testimony was left uncontroverted despite the cross-examination by Majors' trial counsel. As such, an expert witness for Majors was necessary in this case. If Majors' attorney had sought to provide the testimony of an expert, the evidence would have been admitted by the district court. Furthermore, Dr. Clemmons' testimony revealed that an expert witness for Majors was necessary given her clinical knowledge and experience, as outlined in Division I, fails to demonstrate that she has the necessary expertise to make qualified professional assessments of Majors as mandated by *Roby*. Under these circumstances, Majors'

attorney had a duty to be aware of the duty to put on expert testimony to educate the court on each of the sentencing factors.

Majors' asserts that he was prejudiced by his attorney's errors and omissions. As outlined in Division I, both the district court and Dr. Clemmons analyzed each of these factors through the lens associated with adult behavior which "cannot normally be used to draw conclusions from juvenile behavior." *Roby*, 897 N.W.2d at 147. Furthermore, the evidence presented at the resentencing hearing could not, as a matter of law, support the imposition of incarceration without an opportunity for parole under the five factors that must be observed at sentencing to ensure that the punishment does not violate article I, section 17 of the Iowa Constitution. If Majors' attorney had offered expert testimony to properly educate the district court about sentencing factors as mandated by the *Roby* Court, the outcome of the resentencing hearing would likely have been different. Accordingly, Majors' sentence should be vacated and his case remanded for a new resentencing hearing before a different district court judge.

CONCLUSION

For all of the reasons discussed in the Divisions above, Majors respectfully requests the Court vacate his vacate Majors' sentences and remand this case for resentencing, and grant him the relief that he has requested in each Division.

REQUEST FOR ORAL ARGUMENT

Counsel for Defendant-Appellant Jarrod Dale Majors request to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true costs of producing the necessary copies of the foregoing Brief and Argument was \$6.47, and that amount has been paid in full by the Office of the Appellate Defender.

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