SUPREME COURT OF WISCONSIN

STATE OF WISCONSIN,	*	
	*	
Plaintiff-Respondent,	*	
	*	
v.	*	Appeal No. 2008AP001139
	*	
OMER NINHAM,	*	
	*	
Defendant-Appellant-Petitioner.	*	

On Appeal from the Wisconsin Court of Appeals, District 3

Brown County Circuit Court Case No. 99-CF-523
The Honorable J.D. McKay Presiding

PETITION FOR REVIEW

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STATEMENT OF THE ISSUES

I. How do the United States Supreme Court's decisions in ***Miller v. Alabama***, ***Montgomery v. Louisiana***, and ***Jones v. Mississippi*** apply to sentences of life without parole imposed on children in Wisconsin before those cases were decided?

The Court of Appeals determined that these decisions have no impact on cases in Wisconsin because they were imposed under a discretionary sentencing scheme. This Court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because the application of this change in the law to cases in Wisconsin presents a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of these issues will have statewide impact, and the Court of Appeals' decision conflicts with ***Miller***, ***Montgomery***, and ***Jones***.

II. Is the imposition of a life-without-parole sentence on Omer Ninham, an abused and neglected 14-year-old who has shown that he has the potential for rehabilitation, unconstitutionally disproportionate as applied to him?

The Court of Appeals did not address this question, despite the fact that it was explicitly left open by ***Jones*** and had been raised as part of claim II in petitioner's brief before that court. This Court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because whether Omer's sentence violates the substantive constitutional limits on

life without parole sentences for children presents a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of this issue will have statewide impact, and the Court of Appeals' decision upholding the sentence conflicts with ***Miller***, ***Montgomery***, and ***Jones***.

III. Does the sentencing court's failure to consider Omer's young age as mitigating require a new sentencing hearing?

The Court of Appeals found that the sentencing court gave sufficient consideration to Omer's youth. This Court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because whether the sentencing court's refusal to treat Omer's age and its attendant circumstances as mitigating requires a new sentencing hearing present a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of this issue will have statewide impact, and the Court of Appeals' decision conflicts with ***Miller***, ***Montgomery***, and ***Jones***.

IV. Can a post-conviction court make its own finding of irreparable corruption without conducting a resentencing hearing?

The Court of Appeals did not address this question even though it was raised as claim III in petitioner's brief before that court. This Court

should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because whether a post-conviction court can make a determination regarding the appropriate sentence without providing an opportunity for a hearing presents a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of this issue will have statewide impact, and the Court of Appeals' decision tacit approval of this finding conflicts with ***Miller***, ***Montgomery***, and ***Jones***.

STATEMENT OF CASE

Following a four-day trial in the Brown County Circuit Court in September 2000, Omer Ninham was convicted of first-degree intentional homicide for a tragic crime that took place when he was only 14 years old. (R. 69:764; R. 82:2.) On June 29, 2000, Omer was sentenced to life without the possibility of parole. (R. 70:23–29.)

Omer filed a motion for post-conviction relief on November 16, 2000 (R. 53), which was denied on March 5, 2001 (R. 58). Omer then appealed to the Court of Appeals, which affirmed Omer's conviction and the denial of his first post-conviction motion on December 4, 2001. ***State v. Ninham***, 2002 WI App 34, 250 Wis. 2d 354, 639 N.W.2d 802 (Wis. Ct. App. Dec. 4, 2001) (unpublished). This Court denied his petition for review on February

20, 2002. ***State v. Ninham***, 2002 WI 23, 250 Wis. 2d 558, 643 N.W.2d 95.

On October 18, 2007, Omer filed a post-conviction motion for sentencing relief, challenging the constitutionally of imposing life without parole on a fourteen-year-old child under the Eighth and Fourteenth Amendments and the United States Supreme Court's then-recent decision in ***Roper v. Simmons***, 543 U.S. 551 (2005). (R. 76.) The circuit court issued a decision and order denying Omer's motion on April 11, 2008. (R. 82.) On March 3, 2009, Court of Appeals affirmed. ***State v. Ninham***, 2009 WI App 64, 316 Wis. 2d 776, 767 N.W.2d 326. On September 13, 2010, this Court granted Omer's petition for review, ***State v. Ninham***, 2010 WI 125, 329 Wis. 2d 371, 791 N.W.2d 380, and, on May 20, 2011, it affirmed the decision of the Court of Appeals, ***State v. Ninham***, 2011 WI 33, 333 Wis. 2d 335, 797 N.W.2d 451. The United States Supreme Court denied Omer's petition for writ of certiorari on June 29, 2012. ***Ninham v. Wisconsin***, 133 S. Ct. 59, 183 L. Ed. 2d 711 (2012).

On June 25, 2012, the United States Supreme Court decided ***Miller v. Alabama***, 567 U.S. 460 (2012), which held that the sentencing court is required "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" before imposing a life without parole sentence on anyone under the

age of 18. ***Id.*** at 480. Omer filed a petition for post-conviction relief based on ***Miller*** on June 18, 2013. (R. 106). In that motion, he argued that his life-without-parole sentence was unconstitutional under the Eighth and Fourteenth Amendments, the Wisconsin Constitution, and Wisconsin law, and that the sentencing court refused to treat his youth and its attendant circumstances as mitigating as required by ***Miller***. (R. 106)

On January 25, 2016, the United States Supreme Court held in ***Montgomery v. Louisiana***, 577 U.S. 190 (2016), that ***Miller*** applies retroactively because it imposes substantive limits on the power of states to impose sentences of life without parole sentences on children. The Court held that "***Miller*** . . . bar[red] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." ***Id.*** at 209.

On October 7, 2016, the Brown County Circuit Court denied Omer's third postconviction petition. (R. 124). The court ruled that "Ninham is not entitled to resentencing under ***Miller*** because his life-without-parole sentence was discretionary, not mandatory." (R. 124:8.) The court went on to rule in the alternative that "the sentencing Court appropriately considered Ninham's youth and related characteristics when imposing this sentence." (R. 124:11.) Finally, the court noted that it would independently

reach the conclusion that life without parole was justified in this case. (R. 124:11.)

Omer filed a timely appeal to the Court of Appeals. On March 6, 2018, that court certified the case to this Court. ***State v. Ninham***, No. 2016AP2098 (Wis. Ct. App. Mar. 6, 2018). The court noted that "the issues of whether ***Miller*** applies to discretionary life sentences without parole and whether the sentences imposed in these cases satisfy the requirements of ***Miller*** and ***Montgomery*** are matters of considerable statewide importance and constitutional dimension, and they are likely to recur" and that "sentencing courts would benefit greatly from definitive guidance" from this Court. ***Id.*** at 10. On June 11, 2018, this Court denied the certification.

On January 25, 2022, following the United States Supreme Court's decision in ***Jones v. Mississippi***, 141 S. Ct. 1307, 1322 (2021), the Court of Appeals issued an opinion affirming the decision of the circuit court. ***State v. Ninham***, No. 2016AP2098 (Wis. Ct. App. Jan. 25, 2022). The court concluded that ***Jones*** foreclosed Omer's claims, and that "the sentencing court considered Ninham's youth and its attendant circumstances as mitigating factors." ***Id.*** at 3–4. On February 26, 2022, the Court of Appeals denied Omer's timely motion for reconsideration.

This petition follows.

STATEMENT OF THE FACTS

At age fourteen, Omer Ninham is the youngest person in the State of Wisconsin who has been sentenced to life imprisonment without the possibility of parole, and among a handful of the youngest children in the country to receive that sentence.[1]

The circuit court previously found it "undisputed that [Omer Ninham] had an extremely difficult and tumultuous childhood." (R. 82:1.) During nearly his entire life prior to his present incarceration, Omer experienced and witnessed chronic violence and instability as a result of his parents' extreme alcoholism. (R. 76:13.) Omer's parents struck each other as well as Omer and his siblings with closed fists and weapons. (R. 76:14.) The police were repeatedly called to the home by neighbors or sometimes the children themselves. (R. 76:14.) Omer's father was repeatedly incarcerated for domestic violence and went to prison for violating a restraining order initiated by Omer's mother. (R. 76:14.) Omer's older brothers were also physically and verbally abusive to him.

[1]Equal Justice Initiative, *Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison*, at 20, 32 (2007), https://eji.org/wp-content/uploads/2019/10/cruel-and-unusual.pdf; *see also* Equal Justice Initiative, *The Latest Data*, https://eji.org/reports/cruel-and-unusual/.

(R. 76:14.)

Apart from physical violence, Omer's parents provided no parental guidance or support, and their severe alcoholism contributed to their inability to ensure Omer consistently had shelter and other basic necessities. (R. 76:14.) Omer's family moved approximately twenty times during his childhood and at times were homeless. (R. 76:14.) Omer received his first toothbrush from youth shelter employees when he was fourteen. (R. 76:Ex. 1, ¶ 11.)

Omer tried to flee his violent and chaotic environment by repeatedly running away, as did two of his siblings. (R. 76:14.) Omer, who had a strong genetic predisposition for alcoholism, also used alcohol to alleviate his depression, chronic severe stress, and alienation. (R. 76:15.) He experimented with alcohol as early as the fifth grade, and was drinking excessively by the seventh grade, often alone and to the point of unconsciousness. (R. 76:15.) Brown County Human Services Mental Health Center diagnosed Omer's alcohol abuse disorder and suggested, but did not provide, treatment. (R. 76:15.)

At age fourteen, according to the circuit court's findings, Omer was with four other young teenagers when a bullying episode escalated into a tragic assault, resulting in the death of Zong Vang, a thirteen-year-old boy

whom Omer and another teen pushed or threw from a parking ramp. (R. 82:2–3.) Brown County Social Services subsequently referred Omer to the Oneida Boys Home because of his family background of abuse and neglect and because he was suffering suicidal thoughts. (R. 76:15.) Omer, who is Native American, made significant progress at the Boys Home, where he was exposed for the first time to positive role models and structure guided by Native American spirituality. However, six months after his arrival, his treatment and progress were cut short when he was arrested for this offense. (R. 76:15.)

Despite having no prior violent record, and based in part on statements made while in pre-trial detention that, for all their adolescent bluster and poor judgment, were unaccompanied by violent acts, Omer Ninham was sentenced to lifelong imprisonment with no possibility of parole. (R. 70:23–29.) Seven years later, at age twenty-three, Omer was examined by a clinical neuropsychologist who concluded that he no longer suffers from the severe behavioral dyscontrol that dominated his young teenage years, that he does not suffer from psychopathy or any serious psychiatric disorder, and that he has grown into a thoughtful young man whose prognosis for successful re-entry into the community, and absence of recidivism, is very good. (R. 76:24–25.)

ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW TO ADDRESS FOR THE FIRST TIME THE APPLICATION OF *MILLER*, *MONTGOMERY*, AND *JONES* TO JUVENILE SENTENCES IN WISCONSIN.

It has been more than ten years since this Court last addressed the issue of sentencing juveniles to life without parole. During that decade, there has been a major sea change in the law regarding such sentences, especially for the youngest children like Omer. ***See Miller v. Alabama***, 567 U.S. 460 (2012); ***Montgomery v. Louisiana***, 577 U.S. 190 (2016); ***see also Jones v. Mississippi***, 141 S. Ct. 1307, 1322 (2021) (recognizing that ***Miller*** and ***Montgomery*** have been enormously "consequential").

In 2012, in ***Miller v. Alabama***, the United States Supreme Court held that "in homicide cases, we require [sentencers] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 567 U.S. at 480. The Court found that "[b]ecause juveniles have diminished culpability and greater prospects for reform, . . . 'they are less deserving of the most severe punishments.'" ***Id.*** at 471 (quoting ***Graham v. Florida***, 560 U.S. 48, 68 (2010)). The Court emphasized that was true even in homicide cases because "none of what it [has] said about children—about their distinctive

(and transitory) mental traits and environmental vulnerabilities—is crime-specific." ***Id.*** at 473. This was directly contrary to this Court's prior ruling rejecting the contention "that 14–year–olds who commit intentional homicide are categorically less deserving of life imprisonment without parole." ***State v. Ninham***, 2011 WI 33, ¶ 74, 333 Wis. 2d 335, 376, 797 N.W.2d 451, 472.

Subsequently, in ***Montgomery v. Louisiana***, the United States Supreme Court held that ***Miller*** is retroactive because it imposed substantive limits on the power of states to impose life-without-parole sentences on children. ***Montgomery***, 577 U.S. at 208. The Court explained that "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" ***Id.*** at 208 (quoting ***Miller***, 567 U.S. at 479). This followed from the fact that, in addition to striking down mandatory life-without-parole sentences for juveniles, ***Miller*** "bar[red] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." ***Montgomery***, 577 U.S. at 209.

In response to these decisions, nearly every state supreme court has issued at least one decision, in many cases multiple decisions, addressing

the implementation of these rulings in their respective states.[2] This includes several states that, like Wisconsin, had discretionary sentencing schemes prior to ***Miller***. *See, e.g.*, ***White v. Premo***, 443 P.3d 597 (Or. 2019); ***Carter v. State***, 192 A.3d 695 (Md. 2018); ***Windom v. State***, 398 P.3d 150 (Idaho 2017); ***Garcia v. State***, 903 N.W.2d 503 (N.D. 2017); ***Veal v. State***, 784 S.E.2d 403 (Ga. 2016); ***Malone v. State***, 131 Nev. 1316 (2015); ***Aiken v. Byars***, 765 S.E.2d 572 (S.C. 2014). There is a continuing need for similar guidance in Wisconsin, and this Court should grant review here to provide it.

In addition, since ***Miller***, over 2,000 people formerly sentenced to life without parole as children have been resentenced to lesser sentences

[2]It is not possible within the allowed space limitations to cite every state supreme court decision discussing the application of ***Miller***, but examples include: ***Ex parte Henderson***, 144 So. 3d 1262 (Ala. 2013); ***State v. Valencia***, 386 P.3d 392 (Ariz. 2016); ***People v. Cabeallero***, 282 P.3d 291 (Cal. 2012); ***People v. Gutierrez***, 290 P.3d 1171 (Cal. 2013); ***State v. Riley***, 110 A.3d 1205 (Conn. 2015); ***Horsley v. State***, 160 So. 3d 393 (Fla. 2015); ***People v. Holman***, 91 N.E.3d 849 (Ill. 2017); ***State v. Null***, 836 N.W.2d 41 (Iowa 2013); ***State v. Hart***, 404 S.W.3d 232 (Mo. 2013); ***State v. Castaneda***, 842 N.W.2d 740 (Neb. 2014); ***Petition of State***, 103 A.3d 227 (N.H. 2014); ***State v. Zuber***, 152 A.3d 197 (N.J. 2017); ***State v. Young***, 794 S.E.2d 274 (N.C. 2016); ***Commonwealth v. Batts***, 66 A.3d 286 (Pa. 2013); ***Garza v. State***, 435 S.W.3d 258 (Tex. Crim. App. 2014); ***Davis v. State***, 415 P.3d 666 (Wyo. 2018).

and over 800 have been released.[3] Nineteen states have banned life without parole for all children, making a total of 26 states and the District of Columbia that prohibit such sentences.[4]

With respect to 14-year-olds, the shift away from such sentences has been particularly dramatic. Twenty-nine states do not permit life without parole for 14-year-olds,[5] and another 15 have no kids that young serving

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[3]Campaign for the Fair Sentencing of Youth, *Sentencing Children to Life Without Parole: National Numbers*, https://cfsy.org/sentencing-children-to-life-without-parole-national-numbers/ (last visisted March 2, 2022).

[4]Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, and the District of Columbia prohibit life without parole for all kids. *See* Alaska Stat. § 12.55.125; Ark. Code § 5-4-104; Cal. Penal Code § 3051; Colo. Rev. Stat. § 17-22.5-104(d)(IV); Conn. Gen. Stat. §§ 54-91g, 54-125a; D.C. Code § 22-2104(a); Del. Code Ann. tit. 11, §§ 4209A, 4217(f); Haw. Rev. Stat. §§ 706-656, 706-657; Kan. Stat. Ann. § 21-6618; Ky. Rev. Stat. Ann. § 640.040; S.B. 494, 2021 Leg. (Md.); Nev. Rev. Stat. § 176.025; N.J. Stat. Ann. § 2C:11-3; N.Y. Penal Law § 70.00; N.D. Cent. Code §§ 12.1-32-13.1, 12.1-20-03; Ohio Rev. Code Ann. §§ 2907.02, 2929.02-.03, 2929.06-.07, 2971.03; Or. Rev. Stat. § 161.620; S.D. Codified Laws § 22-6-1; Tex. Penal Code § 12.31; Utah Code Ann. § 76-3-209; Vt. Stat. Ann. tit. 13, § 7045; Va. Code § 53.1-165.1; W. Va. Code § 61-11-23; Wyo. Stat. Ann. § 6-10-301; ***Washington v. Bassett***, 428 P.3d 343, 355 (Wash. 2018); ***State v. Sweet***, 879 N.W.2d 811, 839 (Iowa 2016); ***Diatchenko v. Dist. Attorney***, 1 N.E.3d 270, 284–85 (Mass. 2013).

[5]In addition to the states cited in note 4 *supra*, Indiana prohibits life without parole sentences specifically for children aged 15 and younger. *See* Ind. Code § 35-50-2-3. Louisiana and New Mexico prohibit the sentence for

such a sentence.[6] At the time ***Miller*** was decided, there were 80 children serving sentences of life without parole for offenses at age 14 or younger.[7] Only three of those sentences, including Omer's, have not been reexamined since ***Miller***, and Omer is now one of only six 14-year-olds serving a sentence of life without parole.[8] Thus, in the decade since ***Miller***, Wisconsin has become an extreme outlier in the failure to address life without parole sentences for children. This Court should grant review to address the important questions regarding the constitutionality of the sentence in this case. The resolution of these questions will also have implications for other juveniles serving life without parole in Wisconsin.

Critically, these questions are not resolved by the Supreme Court's decision in ***Jones v. Mississippi***, 141 S. Ct. 1307 (2021), which addressed only procedural issues related to sentencing hearings after ***Miller***. Importantly, ***Miller*** had both a substantive and procedural component, ***Montgomery***, 577 U.S. at 209–11, but the petitioner in ***Jones*** raised only

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children aged 14 and younger. See La. Child Code Ann. art. 305; N.M. Stat. Ann. §§ 31-20A-2, 32A-2-3, -16.

[6] *See supra* note 1.

[7] *Id.*

[8] *Id.*

a procedural claim: that the sentencer at a ***Miller*** hearing must "make a separate factual finding that the defendant is permanently incorrigible." ***Jones***, 141 S. Ct. at 1311.

Although the Court declined to add "more ***procedural*** requirements" beyond the need for a discretionary sentencing hearing, ***id.*** at 1321 (emphasis added), the Court explicitly ***did not*** overrule ***Montgomery***'s holding that ***Miller*** placed ***substantive*** limitations on the power of states to sentencing children to life without parole. ***Id.*** ("Today's decision does not overrule ***Miller*** or ***Montgomery***. . . . [Rather, it] carefully follows both ***Miller*** and ***Montgomery***.").

The Court was also clear that they were not addressing the substantive claim that Brett Jones's sentence violated the Constitution, noting that "this case does not properly present—and thus we do not consider—any as-applied Eighth Amendment claim of disproportionality regarding Jones's sentence." ***Id.*** at 1322; *see also* ***id.*** at 1323 ("[O]ur holding today is far from the last word on whether Jones will receive relief from his sentence.").

Thus the proper application of ***Miller*** to cases in Wisconsin like this one, where life without parole was imposed prior to the sea change in juvenile sentencing that has occurred in the past decade, remains

unresolved and merits review by this Court.

This Court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because the application of this sea change in the law to cases in Wisconsin presents a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of these issues will have statewide impact, and the Court of Appeals' decision conflicts with ***Miller***, ***Montgomery***, and ***Jones***. The life without parole sentence in this case violates Omer's rights to due process and freedom from cruel and unusual punishment in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I §§ 6, 8 of the Wisconsin Constitution, and Wisconsin law.

II. THIS COURT SHOULD GRANT REVIEW TO ADDRESS WHETHER THE LIFE-WITHOUT-PAROLE SENTENCE IMPOSED ON OMER NINHAM IS UNCONSTITUTIONALLY DISPROPORTIONATE AS APPLIED TO HIM.

Life without parole is a disproportionate sentence as applied to Omer Ninham, an abused and neglected 14-year-old child who has shown that he is capable of rehabilitation. The Supreme Court has "explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" ***Montgomery v. Louisiana***, 577 U.S. 190, 195 (2016) (quoting ***Miller v.***

Alabama, 567 U.S. 460, 479–80 (2012)). As such, it is only the rare child who "exhibits such irretrievable depravity that rehabilitation is impossible . . . [for whom] life without parole is justified." ***Montgomery***, 577 U.S. at 208.

The Supreme Court recently reaffirmed that these principles can support an "as-applied Eighth Amendment claim of disproportionality regarding [appellant's] sentence." ***Jones v. Mississippi***, 141 S. Ct. 1307, 1322 (2021). Here, the evidence in the record—evidence that includes Omer's extremely young age, the alcohol-saturated environment in which he was raised, the abuse and neglect that he had experienced, the unplanned and peer-driven nature of the offense, and his substantial progress toward rehabilitation—shows that this "crime reflects 'unfortunate yet transient immaturity'" and not "'irreparable corruption,'" ***Montgomery***, 577 U.S. at 208 (quoting ***Miller***, 567 U.S. at 479–80), and therefore Omer's sentence is disproportionate.

In ***Miller***, the Supreme Court recognized that because "children[] [have] diminished culpability and heightened capacity for change," 567 U.S. at 479, the "chronological age of a minor is itself a relevant mitigating factor of great weight," ***id.*** at 476 (citations omitted). The Court found that the characteristics of all children—"transient rashness, proclivity for risk,

and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" ***Id.*** at 472 (citations omitted). These considerations apply with special force in this case because of Omer's extremely young age.

At age fourteen, Omer is one of a vanishingly small number of the youngest children sentenced to life imprisonment without parole, and the youngest person in Wisconsin ever to receive such a sentence.[9] Among teens, because of their earlier developmental stage, young adolescents have the least capacity to control their impulses, resist peer pressure, and evaluate risks and consequences.[10] Young adolescents also have the greatest capacity for change because they are at the beginning of one of

[9] *See supra* note 1.

[10] *See* Shulman et al., *The Dual Systems Model: Review, Reappraisal, and Reaffirmation,* 17 Dev. Cognitive Neuroscience 103, 106 (2016); B. Luna, *The Maturation of Cognitive Control and the Adolescent Brain*, in *From Attention to Goal-Directed Behavior* 249, 252–56 (F. Aboitiz & D. Cosmelli eds., 2009); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 Dev. Psycho. 1531, 1540 (2007); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May be Less Culpable than Adults*, 18 Behav. Sci. & Law 741, 756 (2000).

the most intense periods of rapid growth in their lifetime.[11]

In addition, as in ***Miller***, "if ever a pathological background might have contributed to a 14–year–old's commission of a crime, it is here." 567 U.S. at 478–79. Like the petitioner in ***Miller***, Omer was subjected to horrific physical abuse by his family, including being beaten with 2x4s, beer bottles, knives, and extension cords. (R. 45:Daniels Presentence Investigation, *hereinafter* "PSI," at 8; R.45:Padway Sentencing Memorandum, *hereinafter* "Memorandum," at 2.) Omer's parents were also severe alcoholics and, as a result, neglected him and "failed to supervise or guide his behavior, health, and educational development." (R. 45:Memorandum at 2–3; R. 76:Ex. 1, ¶ 11.) Due to his youthful inability to cope with all of this, Omer repeatedly attempted suicide. (R. 45:Memorandum at 4.) ***Miller*** held that "a sentencer needed to examine all these circumstances before concluding that life without any possibility of parole was the appropriate penalty." 567 U.S. at 479. The Court noted that these factors are particularly mitigating because children have "limited 'contro[l] over their own environment' and lack the ability to

[11]*See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 47, 54 (2008); L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neurosci. & Biobehav. Rev. 417, 428–29 (2000).

extricate themselves from horrific, crime-producing settings." ***Id.*** at 471 (quoting ***Roper v. Simmons***, 543 U.S. 551, 569 (2005)).

Research has shown that juveniles subjected to trauma, abuse, and neglect suffer from cognitive underdevelopment, immaturity, lack of responsibility, impulsiveness, and susceptibility to outside influences greater even than those suffered by normal teenagers.[12] In Omer's case, the presence of physical abuse, a chaotic and neglectful family life requiring removal from the home, and drug and alcohol abuse exacerbated the problems of adolescence in precisely the way that ***Miller*** held "counsel[s] against irrevocably sentencing [children] to a lifetime in prison." 567 U.S. at 480.

Furthermore, consideration of the "circumstances of the homicide offense," ***id.*** at 477, shows that while tragic, this crime bears many hallmarks of "unfortunate yet transient immaturity," ***id.*** at 479 (quoting ***Roper***, 543 U.S. at 573). It is significant that this offense was committed "when high on . . . alcohol." ***Id.*** at 2469; (R. 45:Memorandum at 1; *see also*

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[12]*See* Fox et al., *Trauma Changes Everything: Examining the Relationship Between Adverse Childhood Experiences and Serious, Violent, and Chronic Juvenile Offenders*, 46 Child Abuse & Neglect 1, 2 (2015); Nancy Kaser-Boyd, Ph.D., *Post-Traumatic Stress Disorders in Children and Adults: The Legal Relevance,* 20 W. St. U. L. Rev. 310, 325–27 (1993); *see also* (R: 76, Ex. 1, ¶ 20.).

R. 76: Ex. 1, ¶ 22 (noting the impact of alcoholism on Omer's brain function and behavior)). On the day of the offense, Omer had "consumed a 12-pack of beer, half a pint of brandy, and two 40-ounce bottles of Old English." (R. 45:Memorandum at 1.) After that, he blacked out and does not remember the rest of the evening. (R. 45:Memorandum at 1.)

The role that alcohol played in this case was also particularly mitigating in light of Omer's background. In addition to having a bilineal genetic predisposition to alcoholism inherited from his parents, and likely lacking an enzyme which inhibits alcohol metabolization, Omer was exposed to alcohol in utero, and excessive alcohol usage permeated his home. (R. 76:Ex. 1, ¶¶ 10, 17, 18, 22.) As a result of these factors and the stress of his chaotic homelife, Omer began abusing alcohol as young as age ten, "[drinking] every day, mostly alone, and usually to unconsciousness." (R. 45:PSI at 9; R. 45:Memorandum at 4; *see also* R. 76:Ex. 1, ¶ 17–22.)

In addition, it is significant that this crime was committed in the presence and with the encouragement of other teens. ***Miller*** recognized that "[n]umerous studies . . . indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency." 567 U.S. at 472 n.5. Indeed, extreme vulnerability to peer influence (especially when it is to do something bad) is a defining

characteristic of young adolescence, reflected in the fact that it is statistically aberrant for boys to refrain from minor criminal behavior during this period.[13]

Here, as this Court has already recognized, Ricky Crapeau played a leading role in initiating every aspect of the offense: Crapeau instigated the group's harassment of Vang because Crapeau "wanted to fight or see a fight," pointing out the victim and saying, "Let's mess with this kid," and it was Crapeau who "let go of Vang's feet and told Ninham to 'drop him.'" ***State v. Ninham***, 2011 WI 33, ¶¶ 9–15, 333 Wis. 2d 335, 797 N.W.2d 451. Three other teens also chased Vang with them and then egged them on as they swung him over the wall, one encouraging them to "Drop him." (R. 45: PSI at 3.) All of these facts make peer influence and its impacts on adolescent behavior unusually central to the circumstances of the offense in this case.

The State's case at trial also made clear that this was an impulsive, rather than pre-planned, offense, making the Supreme Court's recognition that one of the reasons children are "'less deserving of the most severe punishments'" is their "'lack of maturity and an underdeveloped sense of

[13] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at pp. 47–48; L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neurosci. & Biobehav. Rev. 417, 421 (2000).

responsibility,' leading to recklessness, impulsivity, and heedless risk-taking" particularly relevant. ***Miller***, 567 U.S. at 471 (quoting ***Graham***, 560 U.S. at 68, and ***Roper***, 543 U.S. at 569).

Critically, the evidence shows that young Omer has made substantial progress toward rehabilitation. ***Miller***, 567 U.S. at 478 (emphasizing importance of "the possibility of rehabilitation"). This factor is particularly important because it is only in the case of "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible" that "life without parole is justified." ***Montgomery***, 577 U.S. at 208.

In this respect, it is noteworthy that Omer had no history of violence prior to this incident. His juvenile record consisted largely of status offenses such as "Runaway," "Truancy," "Curfew," and "Underage Drinking" (R. 45:PSI at 6), which more reflect the chaos and instability of Omer's home life than hardened criminality. The remainder are primarily property offenses. (R. 45:PSI at 6.)

In addition, the only time in Omer's life when he lived in a structured, safe, supportive environment was when Omer was placed in the Oneida Group Home, and, while there, he thrived: he was exposed to Native American spiritual practices, did well in school, participated in

drug and alcohol treatment, and refrained from substance use or criminal behavior. (R. 45:Memorandum at 5.) Unfortunately, this intervention only took place after the present offense, but it was strong evidence of Omer's amenability to rehabilitation.

Omer's development since his incarceration also demonstrates the wisdom of ***Miller***'s warning that courts should be hesitant to impose life without parole on children "because of the great difficulty we noted in ***Roper*** and ***Graham*** of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" ***Miller***, 567 U.S. 479–80 (quoting ***Roper***, 543 U.S. at 573; ***Graham***, 560 U.S. at 68). Dr. Ralph Tarter of the University of Pittsburgh, a clinical neuropsychologist, examined Omer in May 2007, when Omer was twenty-three years old. (R. 76:Ex. 1, ¶¶ 6–8.) Dr. Tarter concluded that Omer had completed neurological maturation, that his behavioral self-control was therefore better than it was at the time of the crime, and that Omer exhibited no signs of psychopathy or serious psychiatric disorders. (R. 76:Ex. 1, ¶¶ 23, 26.) Dr. Tarter opined that Omer has grown into a thoughtful young man and expressed a high degree of confidence that, with appropriate support, Omer would make a successful

re-entry into the community, free from recidivism. (R. 76:Ex. 1, ¶¶ 25–27.)

Life without parole is the harshest penalty available under Wisconsin law, even for the most aggravated adult homicide offenders. But because of his young age, Omer will actually "serve more years and a greater percentage of his life in prison than an adult offender" with the same sentence, ***Graham***, 560 U.S. at 70, and thus, has in a very real sense received "a *greater* sentence than those adults will serve," ***Miller***, 567 U.S. at 477. Given the wealth of mitigating evidence in this case, imposing this harshest possible penalty on Omer is unconstitutionally disproportionate.

This Court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because whether Omer's sentence violates the substantive constitutional limits on life without parole sentences for children presents a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of this issue will have statewide impact, and the Court of Appeals' decision conflicts with ***Miller***, ***Montgomery***, and ***Jones***. The imposition of life without parole in this case violates Omer's rights to due process and freedom from cruel and unusual punishment under the Fifth, Eighth, and Fourteenth

Amendments to the United States Constitution, Article I §§ 6, 8 of the Wisconsin Constitution, and Wisconsin law.

III. THIS COURT SHOULD GRANT REVIEW TO ADDRESS WHETHER THE SENTENCING COURT'S FAILURE TO CONSIDER OMER'S AGE AS MITIGATING REQUIRES A NEW SENTENCING HEARING.

As the Supreme Court recently reaffirmed, the Constitution requires "that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence." ***Jones v. Mississippi***, 141 S. Ct. 1307, 1316 (2021). This mandates that a sentencer "'follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life without parole sentence," including the child's "diminished culpability and heightened capacity for change." ***Id.*** (quoting ***Miller v. Alabama***, 567 U.S. 460, 479 (2012)). Thus, the imposition of a life without parole sentence on a juvenile violates ***Miller*** and ***Jones*** if the sentencing court fails to consider youth ***as a mitigating factor***, even if the court has the discretion to impose a lesser sentence. *See* ***Jones***, 141 S. Ct. at 1320 n.7; ***Miller***, 567 U.S. at 476–78. That is precisely what happened here. This Court should grant review to make clear that a sentencer's failure to treat youth and its attendant circumstances as mitigating when imposing a life-without-parole sentence

on a child requires a new sentencing hearing.

Under ***Miller***, and as discussed in more detail above, Omer's extremely young age should have been a powerful mitigating factor. ***Miller***, 567 U.S. at 471–74. However, the sentencing court in this case explicitly did not consider the ways in which Omer's very young age significantly diminished his culpability. Instead, the court relied on an outdated and rejected conception of youth crime to reject the mitigating effect of his age. The sentencing court characterized Omer as a "frightening young man" and "a child of the street" who "knew what he was doing." (R. 70:24–25)[14]; *see also* ***State v. Belcher***, 342 Conn. 1, 23–25 (2022) (overturning juvenile's sentence because of "reliance on false and pernicious superpredator theory"). The judge's ostensible concession "for

[14]In reaching this conclusion, the sentencing court relied on a court-ordered pre-sentence report. (R. 45:PSI.) This report described Omer as "[a] new type of youth capable of casual killing who frightens society beyond words." (R: 45: PSI at 10.) This language echoed the now-discredited media hysteria that dominated public discourse in the years leading up to Omer's conviction in 2000. During that period, "[t]he fears of a juvenile crime wave . . . became embodied in the notion of [] 'juvenile superpredator[s]' . . . . characterized as ruthless sociopaths who lacked a moral conscience." Brief of Jeffrey Fagan et al. as Amici Curiae in Support of Petitioners, at 8, ***Jackson v. Hobbs***, Nos. 10-9647, 10-9646 (U.S. Jan. 17, 2012), 2012 WL 174240, at *8. New research has discredited this theory. ***Id.*** at 21. In fact, Professor DiIulio, the creator of the "superpredator" myth, has repudiated the idea and "expressed regret, acknowledging that the prediction was never fulfilled." ***Id.*** at 18–19.

the sake of discussion that Omer Ninham is a child, but he's a child beyond description to this Court" (R. 70:24), did exactly what ***Jones*** acknowledged that its precedents forbid, by refusing to consider Omer's youth ***as mitigating***. Indeed, at every point that the sentencing court mentioned Omer's age, it discounted any mitigating effect of Omer's youth.

In 2000 when Omer was sentenced, over a decade before ***Miller*** was decided, the sentencing court did not consider, and arguably could not have considered, the ways in which the specific mitigating characteristics of youth impacted whether Omer was one of the "rarest of children, those whose crimes reflect 'irreparable corruption,'" ***Montgomery v. Louisiana***, 577 U.S. 190, 195 (2016) (quoting ***Miller***, 567 U.S. at 479–80), because the United States Supreme Court had not yet announced the factors that should guide that judgement. *See* ***McKinley v. Butler***, 809 F.3d 908, 914 (7th Cir. 2016) (vacating discretionary life-without-parole sentence and observing "***Miller*** . . . obviously had no bearing on the original sentence . . . since it hadn't been decided yet"); *see also* ***Adams v. Alabama***, 136 S. Ct. 1796, 1800 (2016) (Sotomayor, J., concurring) ("The last factfinders to consider petitioners' youth did so more than 10—and in most cases more than 20—years ago. . . . Those factfinders did not have the benefit of this Court's guidance regarding the 'diminished culpability of juveniles' and

the ways that 'penological justifications' apply to juveniles with 'lesser force than to adults.'" (quoting ***Roper v. Simmons***, 543 U.S. 551, 571 (2005)).

The ***Miller*** Court also held that a sentencer is required to take into account additional circumstances related to the child's youth, including: "brutal or dysfunctional" family circumstances "from which [a juvenile] cannot usually extricate himself"; the "circumstances of the homicide offense" including "the way familial and peer pressures may have affected him"; and the inability of youths "to deal with" police officers or . . . [their] own attorneys. 567 U.S. at 477–78. The sentencing court also did not treat these attendant characteristics of youth as mitigating when it sentenced Omer to life imprisonment without parole.

Instead, the court stated that it was "aware of Omer Ninham's background" but could not "allow that to become an excuse," and discounted the extraordinary trauma Omer had experienced by finding his background was not really "dysfunctional because it's an overused . . . word" and most families are "in some context dysfunctional." (R. 70:24–25.) Under ***Miller***, the evidence regarding Omer's childhood should have been especially mitigating because of Omer's "limited 'contro[l] over [his] own environment'" and the fact that he "lack[ed] the ability to

extricate [himself] from horrific, crime-producing settings," ***Miller***, 567 U.S. at 471 (quoting ***Roper***, 543 U.S. at 569), as evidenced by his repeated suicide attempts and efforts to run away. Yet, the court instead blamed Omer for his traumatic childhood and for "allow[ing] [his] dysfunction to drive [his] li[fe]." (R. 70:25.)

Likewise, the court also dismissed mitigation related to the "circumstances of the homicide offense," ***Miller***, 567 U.S. at 477, including that this offense, like that in ***Miller***, was committed "when high on . . . alcohol." ***Id.*** at 478. Omer, who had inherited a genetic predisposition to alcoholism, began abusing alcohol as young as age 10, and was severely impaired from it during the offense. (R. 76:Ex. 1, ¶¶ 17–18; R. 45:Memorandum at 1,4.) Rather than consider this evidence as mitigating, however, the sentencing court found that Omer "let" alcohol become "part of the problem." (R. 70:27.) Additionally, the sentencing court completely discounted "the way familial and peer pressures may have affected [Omer]," ***Miller*** 567 U.S. at 477, even though this offense was committed in a group with other teens and "[n]umerous studies . . . indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent deliquency," ***Id.*** at 472 n.5, by merely stating he "knew his relationship to his friends, his peers." (R. 70:25.)

Finally, ***Miller*** requires that before a child is sentenced to life without parole, the sentencer must consider "the possibility of rehabilitation." 567 U.S. at 478. Yet the sentencing court failed to consider the evidence most relevant to this assessment: Omer's lack of prior violence (R. 45:PSI at 6) and his amenability to treatment at the Oneida Boys Home (R. 45:Memorandum at 5). To the extent that the sentencing court considered Omer's potential for rehabilitation at all, it seemed to find that was capable of rehabilitation. It specifically noted its hopes that prison would rehabilitate Omer and the possibility of that happening, telling him, "The interruption that you caused in your own life back on that evening in September is going to force you to *change the direction of that life* under circumstances over which I had some control, but *you have the most control*. And *if you don't make that adjustment*, God help you." (R. 70:29–30 (emphasis added).) This would seem to indicate that the sentencing court was not convinced that Omer was "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible" which would be necessary for "life without parole [to be] justified." ***Montgomery***, 577 U.S. at 208.

The sentencing court here imposed a life without parole sentence on Omer without the benefit of ***Miller***'s guidance regarding the inherently

mitigating characteristics of youth. As a result, the court completely missed the significance of Omer's extremely young age and the aspects of his childhood that should have counseled against this sentence. The Court of Appeals' finding that "the sentencing court considered Ninham's youth and its attendant circumstances as mitigating factors when it sentenced him to life without parole" cannot be squared with either the sentencing decision itself or the dramatic sea change in the law since that decision was made. This Court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d), because whether the sentencing court's refusal to treat Omer's age and its attendant circumstances as mitigating requires a new sentencing hearing present a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this Court, the resolution of this issue will have statewide impact, and the Court of Appeals' decision conflicts with ***Miller***, ***Montgomery***, and ***Jones***. Because the sentencing court failed to comply with the requirements of these precedents, Omer's sentence violates his rights to due process and freedom from cruel and unusual punishment in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I §§ 6, 8 of the Wisconsin Constitution, and Wisconsin law.

IV. THIS COURT SHOULD GRANT REVIEW TO ADDRESS WHETHER A POST-CONVICTION COURT CAN DETERMINE THAT LIFE WITHOUT PAROLE IS APPROPRIATE WITHOUT CONDUCTING A RESENTENCING HEARING.

In denying relief in this case, the circuit court stated that, if Omer were entitled to resentencing, "the Court would be obligated to assess the same factors considered by the Court at Ninham's sentencing in 2000—and . . . the only conceivable conclusion is that sentencing Ninham to life in prison without parole for Vang's murder is just as warranted in 2016 as it was in 2000." (R. 124:11.) The circuit court, however, was not in a position to make that judgement without first providing Omer the opportunity for a new sentencing hearing. This Court should grant review to make clear that a determination that life without parole is appropriate for a child can ***only*** occur after a post-***Miller*** opportunity to present evidence on the relevant factors.

The circuit court appears to have misunderstood its obligations under the law as it clearly would be required to do more than simply "to assess the same factors" that the pre-***Miller*** sentencer considered. The substantial evidence of Omer's rehabilitation during his 20 plus years of incarceration, for example, would be an important consideration at a new sentencing hearing. In ***Montgomery***, the petitioner "discussed in his

submissions to this Court his evolution from a troubled, misguided youth to a model member of the prison community." ***Montgomery v. Louisiana***, 577 U.S. 190, 212–13 (2016). The Court wrote that those "submissions are relevant . . . as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." ***Id.*** at 213. Such evidence is particularly relevant because it allows a petitioner the opportunity to "demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change." ***Id.*** at 212. Omer requested the opportunity to present precisely this type of evidence (R. 134:10–11; *see also* R. 133:32), but the court's denial of a resentencing hearing precluded him from doing so. By refusing to grant Omer a full resentencing hearing, the circuit court prevented him from having any opportunity to demonstrate some of the most crucial evidence he could present, that of his growth as a person in the decades since his offense.[15] *See, e.g.*, ***State v. Comer***, 266 A.3d 374, 398–400 (2022) (holding that all juveniles may petition court for sentence review after 20 years and judges

[15]In fact, among the states that have outlawed juvenile life without parole sentences in light of ***Miller***, at least two have done so largely because of the impossibility of making a finding of irreparable corruption while the defendant is still a juvenile. ***State v. Sweet***, 879 N.W.2d 811, 839 (Iowa 2016); ***Diatchenko v. Dist. Attorney for Suffolk Dist.***, 1 N.E.3d 270, 284 (2013).

are to consider factors "that could not be fully considered decades earlier, like . . . whether he has matured or been rehabilitated").

Additionally, as discussed above, the original sentencing court sentenced Omer to life without parole long before the Supreme Court's instructions in ***Miller*** and ***Montgomery*** regarding the diminished culpability of children and their heightened capacity for change and therefore "did not have the benefit of [the Supreme] Court's guidance" on these critical factors. ***Adams v. Alabama***, 136 S. Ct. 1796, 1800 (2016) (Sotamayor, J., concurring); *see also* ***McKinley v. Butler***, 809 F.3d 908, 914 (7th Cir. 2016); ***People v. McKinley***, 2020 IL App (1st) 191907, ¶¶ 73–76.

Moreover, Omer's attorneys at the original sentencing also did not have the benefit of the Supreme Court's recent case law and the growing understanding of adolescent brain development. Thus, there is no guarantee that all evidence bearing on "transient immaturity" and "irreparable corruption" was introduced at Omer's original sentencing hearing since it was not known at the time that these were critical factors for the court to consider. The circuit court's assumption that it would simply "assess the same factors" considered by the original sentencing court was erroneous, and precluded the court from being able "to consider

whether petitioner['s] sentence[] comport[s] with the exacting limits the Eighth Amendment imposes on sentencing a juvenile offender to life without parole." ***Adams***, 136 S. Ct. at 1799 (Sotomayor, J., concurring). Given that the failure to consider relevant evidence bearing on Omer's sentence creates a "grave risk" of allowing an illegal sentence, ***Montgomery***, 577 U.S. at 212, the circuit court's assumption in this regard does not comport with Constitutional requirements.

The circuit court here refused to grant Omer an opportunity for a resentencing hearing based on an apparent misunderstanding of the considerations that would be involved in such a hearing under the law. This court should grant review pursuant to Wisconsin Statute § 809.62(1r)(a), (c), & (d) because whether a post-conviction court can determination that life without parole is the appropriate sentence for a child without providing any opportunity for an evidentiary hearing presents a real and significant question of constitutional law and calls for the application of a new doctrine that has not previously been addressed by this court, the resolution of this issue will have statewide impact, and the decision below conflicts with ***Miller***, ***Montgomery***, and ***Jones***. Denying Omer any opportunity for resentencing on this erroneous basis violates his rights to due process, a reliable sentence, and freedom from

cruel and unusual punishment under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I §§ 6, 8 of the Wisconsin Constitution, and Wisconsin law.

CONCLUSION

For these reasons, Omer Ninham asks that this Court grant this petition for review, vacate his life-without-parole sentence, and remand with instructions to impose a parole-eligible sentence or, alternatively, conduct a full resentencing hearing in accordance with ***Miller***.

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March 18, 2022

FORM AND LENGTH CERTIFICATION

I hereby certify that this petition conforms to the rules contained in §§ 809.19(8)(b), (bm) and 809.62(4) for a petition for review produced with a proportional serif font. The length of this petition is 7,937 words.

ADAM STEVENSON

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I certify that, on March 18, 2022, I served a copy of the foregoing document, by placing it in first-class mail, postage prepaid to:

Donald V. Latorraca
Assistant Attorney General
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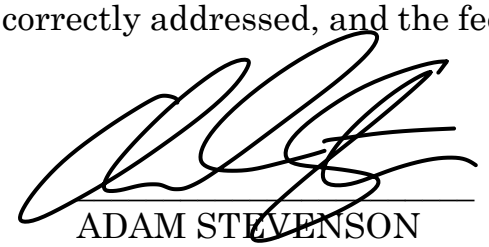
ADAM STEVENSON

CERTIFICATE OF MAILING

I hereby certify that this petition, including appendix, was delivered to a third-party commercial carrier to overnight delivery to the Clerk of the Wisconsin Supreme Court on March 17, 2022. I further certify that the petition, including the appendix, was correctly addressed, and the fee for delivery was paid.



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