

ARIZONA SUPREME COURT

THE STATE OF ARIZONA,

Respondent,

v.

GREGORY VALENCIA and JOEY
HEALER,

Petitioners.

No. CR-16-0156-PR

Court of Appeals Nos.
2 CA-CR 2015-0151-PR
2 CA-CR 2015-0182-PR
(Consolidated)

Pima County Superior Court Nos.
CR051447
CR48232

BRIEF OF AMICUS CURIAE ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF VALENCIA AND HEALER

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INTRODUCTION

Amicus Curiae Arizona Attorneys for Criminal Justice (AACJ) seeks leave from the Court to file this brief in support of Gregory Valencia and Joey Healer. This Court should deny the State's Petition for Review because the lower court correctly ruled defendants Valencia and Healer should be resentenced in its opinion dated March 28, 2016.

Under *Miller v. Alabama*¹ and *Montgomery v. Louisiana*,² trial courts can only sentence juvenile offenders to natural-life in the rare circumstance that the child cannot be reformed. The Court of Appeals correctly ruled that Arizona's sentencing scheme did not adequately account for the weight that should be given to youth. Accordingly, the lower court correctly ordered resentencing for Valencia and Healer, thereby allowing Valencia and Healer to be sentenced by a court that understood just how important youth is.

¹ 567 U.S. ___, 132 S.Ct. 2455 (2012).

² ___ U.S. ___, 136 S.Ct. 718 (2016).

INTEREST OF *AMICUS CURIAE*

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

Amicus offers this brief in support of Valencia and Healer because Arizona's sentencing scheme did not ensure youth was given the proper weight required by *Miller* and *Montgomery*. Simply, natural-life sentences were not preserved for the rare child incapable of reform, as required by *Miller* and *Montgomery*. Rather, natural-life sentences have been regularly imposed in over thirty percent of juvenile cases. To this extent, Arizona's scheme did not adequately protect the Eighth Amendment rights of youthful offenders.

ARGUMENT

PRIOR TO MILLER AND MONTGOMERY, ARIZONA’S SENTENCING SCHEME DID NOT ADEQUATELY VALUE YOUTH. FOREMOST, THERE WAS NO PRESUMPTIVE TERM UNDER ARIZONA’S FIRST-DEGREE MURDER SENTENCING SCHEME. THUS, EVEN IF A COURT GAVE WEIGHT TO YOUTH, THE COURT COULD NONETHELESS IMPOSE NATURAL-LIFE. SECOND, DATA BEARS THIS PROBLEM OUT. MORE THAN THIRTY PERCENT OF ELIGIBLE JUVENILE DEFENDANTS WERE SENTENCED TO NATURAL-LIFE—ENCOMPASSING FAR MORE THAN JUST THE RARE CHILD WHO CANNOT BE REFORMED.

The State presents two arguments in its Petition for Review. First, the State argues *Miller v. Alabama*³ and *Montgomery v. Louisiana*⁴ were not a significant change to Arizona’s first-degree murder juvenile sentencing scheme.⁵ Second, the State argues the trial courts already considered age.⁶

The second argument, however, is a premise to the first. In the course of its first argument, the State asserts, “Because a natural-life sentence for juvenile homicide offenders was not mandatory, and because the trial court was already

³ 567 U.S. ___, 132 S.Ct. 2455 (2012).

⁴ ___ U.S. ___, 136 S.Ct. 718 (2016).

⁵ Pet. Rev. ¶¶ 8-21.

⁶ *Id.* at ¶¶ 22-23.

required to consider mitigating factors, including age, *Miller* did not change Arizona law.”⁷

Thus, the State’s entire Petition hinges upon a single premise—that Arizona law required trial courts to adequately consider and weigh age and trial courts comported with this responsibility. This premise is incorrect.

The State’s foundation premise is flawed in two coordinated manners. First, while Arizona law required trial courts to consider mitigation, any consideration was legally meaningless because there is no presumptive term for first-degree murder; even if mitigation fully outweighed aggravation, the trial court could impose a natural-life sentence. Second, in practice, natural-life sentences have occurred too frequently in juvenile cases to reflect the weight *Miller* and *Montgomery* demand. This highlights the problems inherent with Arizona’s “no presumptive” approach as applied to juvenile offenders.

I. There is no presumptive term for first-degree murder. Thus, prior to *Miller* and *Montgomery*, nothing guided the imposition of natural-life sentences.

At its most basic level, *Miller* and *Montgomery* require trial courts to default in favor of life with parole for juvenile offenders convicted of murder. Arizona’s sentencing scheme, however, has long refused to provide any such default; there is no presumptive term for first-degree murder. Thus, a trial court can sentence

⁷ Pet. Rev. ¶ 17.

anyone to natural-life merely based upon conviction. This has been the case since at least 1994,⁸ when the statute read, in pertinent part:

A person guilty of first degree murder ... shall suffer death or imprisonment in the custody of the state department of corrections for life as determined and in accordance with the procedures provided in subsections B through G of this section. If the court imposes a life sentence, the court may order that the defendant not be released on any basis for the remainder of the defendant's natural-life. An order sentencing the defendant to natural-life is not subject to commutation or parole, work furlough or work release. If the court does not sentence the defendant to natural-life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the victim was fifteen or more years of age and thirty-five years if the victim was under fifteen years of age.⁹

This Court considered whether first-degree murder had a “presumptive” term under this statute in *State v. Fell*.¹⁰ While this Court had not previously addressed the precise question of whether the first-degree murder sentencing scheme had a presumptive, this Court had previously held that the verdict alone authorized either natural-life or life with the possibility of release.¹¹ In *Fell*, this Court affirmed that construction.¹²

⁸ Because parole was abolished in 1994, the bulk of juvenile life sentences that will be impacted by this Court's decision were imposed since then.

⁹ A.R.S. § 13-703(A) (1994).

¹⁰ 210 Ariz. 554, 115 P.3d 594 (2005).

¹¹ *Id.* at ¶ 11 (citing *State v. Ring*, 200 Ariz. 267, ¶ 42, 25 P.3d 1139, ¶ 42 (2001)).

¹² *Id.*.

Notably, “nothing in § 13-703 required that any specific fact be found before a natural-life sentence could be imposed.”¹³ Where other sentencing schemes required the trial court to impose a “presumptive” term unless other facts were established, the first-degree murder sentencing scheme was permissive and allowed the trial court to impose either natural-life or life-with-release merely by the product of conviction.¹⁴ Thus, neither natural-life nor life-with-release was a “presumptive” sentence for first-degree murder.¹⁵

Nothing in the statutory language distinguished youth until amendment in 2012,¹⁶ when the legislature established slightly different processes for juvenile offenders and adults.¹⁷ Nonetheless, the statute still provides no “presumptive” term for juvenile offenders.¹⁸ Now, “If the defendant was under eighteen years of age at the time of the commission of the offense ... the court shall determine whether to impose a sentence of life or natural-life.”¹⁹ Like the statute discussed in *Fell*, the current statute creates no presumption in favor of life-with-release. The

¹³ *Id.* at ¶ 12.

¹⁴ *Id.* at ¶ 14.

¹⁵ *Id.* at ¶¶ 13-14.

¹⁶ See generally 2012 Ariz. Leg. HB 2373 (available at http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2373&Session_Id=107&image.x=0&image.y=0).

¹⁷ See 2012 Ariz. Leg. HB 2373 Chaptered Version (available at http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/2r/laws/0207.htm&Session_ID=107).

¹⁸ See A.R.S. § 13-752(A) (2016).

¹⁹ *Id.*

statute still “provides the superior court with the discretion to sentence an offender within a range—from life to natural-life—for non-capital first degree murder,” including juvenile offenders.²⁰

Without a presumptive term, there was nothing that actually required trial courts to give weight to age or any mitigating factors. While trial courts had to consider mitigation, the scheme did not adequately guide this consideration. Even where no aggravating factors existed and mitigation such as youth was present, a trial court could impose a sentence of natural-life.

Because the scheme provided no guidance to determine if or when a defendant became eligible for a natural-life sentence, there can be no presumption that a given court appropriately weighed mitigating factors. The lower court correctly balanced this issue when it ruled, “But the mere requirement that a sentencing court consider a juvenile defendant’s youth before imposing a natural-life sentence does not comply with the Supreme Court’s recent directive forbidding a natural-life sentence ‘for all but the rarest of juvenile offenders.’”²¹

Moreover, the fact that youth may have been given some weight does not mean youth was given the weight that is now constitutionally mandated. In *Miller*,

²⁰ See *Fell*, 210 Ariz. 554, ¶ 15, 115 P.3d 594, ¶ 15 (2005).

²¹ *State v. Valencia/Healer*, 239 Ariz. 255, ¶ 14, 370 P.3d 124, ¶ 14 (App. 2016) (citing *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718, 734 (2016)).

the Supreme Court noted just how rarely a natural-life sentence should be imposed in juvenile cases:

But given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so 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.”²²

Miller solidified just how much weight must be given to youth, a clarification that has been lacking in Arizona.

By focusing on the fact that Valencia and Healer received natural-life, as opposed to life-with-release, the State has focused on a distinction without a difference. Without any presumptive term, the sentencing scheme failed to enforce the primary goal of *Miller*—that youth be given heavy weight before a court sentences a juvenile to a life term without a meaningful opportunity for release.

The Supreme Court of Georgia reached this very conclusion just this year in *Veal v. State*.²³ The Georgia Supreme Court recognized that *Montgomery* fundamentally changed its understanding of *Miller*.²⁴ While *Miller* had a procedural component, *Montgomery* clarified that *Miller* prohibited natural-life

²² *Miller*, 132 S.Ct. at 2469 (internal citations omitted).

²³ 298 Ga. 691, 784 S.E.2d 403 (Ga. 2016).

²⁴ *See id.* at 700-01, 410-11.

sentences for the “vast majority” of child offenders.²⁵ A natural-life “sentence imposed on a juvenile who is not properly determined to be in the very small class of juveniles” identified in *Miller*, “is not just erroneous but contrary to law and, as a result, void.”²⁶ Moreover, “[t]he *Montgomery* majority’s characterization of *Miller* also undermines this Court’s cases indicating that trial courts have significant discretion in deciding whether juvenile murderers should” be sentenced to natural-life.²⁷

While the trial court in *Veal* had generally considered youth, the sentencing court had not made “any sort of distinct determination on the record that Appellant is irreparably corrupt or permanently incorrigible, as necessary to put him in the narrow class of juvenile murderers” that can be sentenced to natural-life.²⁸ Thus, the Court ordered a new sentencing.²⁹

The State’s current argument is premised upon the same errors the Georgia Supreme Court identified in its jurisprudence. Merely “considering” or weighing age does not mean the trial court understood the import of youth. And nothing in Arizona’s jurisprudence aligns with just how rarely natural-life should be imposed.

²⁵ *Id.* at 701, 411.

²⁶ *Id.* (quoting *Montgomery*, 136 S.Ct. at 731).

²⁷ *Id.* at 702, 411.

²⁸ *Id.* at 703, 412.

²⁹ *Id.*

Moreover, the abolition of parole further disrupted any actual balancing that would have occurred. Removing parole eliminated the primary motivation for reform—future release. The only form of release that remained was executive clemency, which judges know is exceedingly rare. Thus, any trial court’s consideration of a juvenile offender’s future reformation prospects was inherently limited by the fact that trial courts knew there was no motive to reform.

This imbalance has been corrected, however, by *Miller* and A.R.S. § 13-716. *Miller* has clarified just how heavily youth should weigh and A.R.S. § 13-716 has created a parole mechanism for juvenile offenders and thereby returned the motive for reformation.

This new scheme is markedly different from the scheme that previously existed. Where the previous scheme provided no parole mechanism, the current scheme provides for parole and thereby incentivizes reform. Where the previous scheme merely required trial courts to “consider” mitigation, the current scheme recognizes just how important youth is. And where the previous scheme provided no “presumptive” term, the current scheme limits natural-life sentences for juvenile offenders to “the rare juvenile offender whose crime reflects irreparable corruption.”

II. In practice, Arizona courts have not imposed natural-life sentences in only the rare circumstances where a juvenile offender is incapable of reform.

The problems with Arizona’s “no presumptive” scheme are borne out in the actual sentences that have been imposed. While natural-life sentences are “disproportionate for the vast majority of juvenile offenders,”³⁰ Arizona courts have imposed natural-life sentences in more than thirty percent of juvenile convictions for first-degree murder. Thirty percent is a far cry from rare imposition of a natural-life sentences upon defendants “whose crimes reflect permanent incorrigibility.”³¹

Based upon data collected by the Justice Project,³² 109 juveniles are currently serving either natural-life or life with the possibility of release sentences. Thirty-five have been sentenced to natural-life—more than thirty-two percent of the cases.

Even if the State’s assertion is correct and the trial court considered age, the State’s conclusion does not follow. Consideration of age does not mean trial courts gave adequate weight to age. And the evidence bears this out.

Under *Miller* and *Montgomery*, natural-life sentences should be imposed only upon the rare offender who cannot be rehabilitated. As *Montgomery* noted,

³⁰ *Montgomery*, 136 S.Ct. at 736.

³¹ *Id.* at 734.

³² Attached as Appendix A.

“*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.”³³

It is unthinkable that a full thirty percent of Arizona’s juveniles convicted of first-degree murder are “those rare children whose crimes reflect irreparable corruption.” Instead, the statistics demonstrate just how problematic Arizona’s sentencing scheme was before *Miller*. And the State’s argument proves this point.

For both Valencia and Healer the State points to the existence of aggravating factors that could support a natural-life sentence.³⁴ But this misses the point of *Miller* and *Montgomery* and demonstrates the shortcoming of Arizona’s prior sentencing scheme. Even if trial courts gave weight to mitigation, the courts always did so in the manner consistent with the State’s argument—the courts weighed age as one mitigating factor against aggravating factors. Age did not carry the weight it now does and the focus was never on whether juveniles were incapable of reform.

The prototypical weighing the State proposes is precisely what the trial courts did before *Miller* and *Montgomery*; it is also precisely what *Miller* and *Montgomery* condemn. When there is a juvenile offender, the trial court must now weigh aggravating and mitigating factors with a specific question in mind: is this child the rare offender incapable of improvement?

³³ *Montgomery*, 136 S.Ct. at 734.

³⁴ Pet. Rev. ¶¶ 22-23.

The lack of such a guiding principle, and the lack of a presumptive term, is why an incredibly high percentage of child offenders have been sentenced to natural-life terms. The natural-life sentences do not reflect compliance with *Miller* and *Montgomery*; they reflect a scheme that did not value youth to the degree required by *Miller* and *Montgomery*.

CONCLUSION

The State's entire argument is grounded upon a flawed premise—that trial courts adequately considered age prior to *Miller* and *Montgomery*. This is simply untrue. Foremost, nothing in Arizona's sentencing scheme forced trial courts to default toward life with parole. There was no presumptive for first-degree murder. *Miller* and *Montgomery* changed that. Moreover, if trial courts were imposing natural-life sentences consistent with *Miller* and *Montgomery*, far less than thirty percent of young defendants would have been sentenced to natural-life.

Miller and *Montgomery* changed the landscape of juvenile sentencing in Arizona. The lower court correctly recognized this and took the steps necessary to fix it. Because the lower court correctly ruled, this Court should decline jurisdiction.

RESPECTFULLY SUBMITTED this 15th day of July, 2016

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APPENDIX A

Natural Life Sentences

| | Name | Case Number | County |
|----|------------------------------|--------------------|---------------|
| 1 | Zachary S. Eggers | CR2003-01056 | Cochise |
| 2 | Richard A. Rojas | CR99-12663 | Maricopa |
| 3 | Lonnie A. Bassett | CR2004-050970 | Maricopa |
| 4 | Gerardo O. Maciel | CR2008-006720001 | Maricopa |
| 5 | Joseph L. Conley | CR2004-035015 | Maricopa |
| 6 | Bobby J. Tatum | CR94-05821 | Maricopa |
| 7 | Eulandas J. Flowers | CR94-05821 | Maricopa |
| 8 | William F. Najar | CR98-093181 & 80 | Maricopa |
| 9 | Cedric Rue Jr. | CR-98-93180 | Maricopa |
| 10 | Jose L. Bosquez | CR2010-013094001D | Maricopa |
| 11 | Thomas J. Odom | CR2010-121445001 | Maricopa |
| 12 | Scott Deshaw | CR94-11397 | Maricopa |
| 13 | Charles Vincent Wagner Jr. | CR9492394 | Maricopa |
| 14 | Christopher McLeod | CR1996-090611 | Maricopa |
| 15 | Michael P. Jessup | CR199891417 | Maricopa |
| 16 | Bobby Purcell | CR1998-08705 | Maricopa |
| 17 | Joshua Aston | CR2004-0064740 | Maricopa |
| 18 | Barry Bjorgo | CR95-021007 | Pinal |
| 19 | John B. Pierce | CR2006-0132690 | Maricopa |
| 20 | James Eli Davolt | CR98-1243 | Mohave |
| 21 | Jermaine/Sherman L. Rutledge | CR97-05555 | Maricopa |
| 22 | Tonatihu Aguilar | CR2002 006143 | Maricopa |
| 23 | Joey Healer | CR-0048232 | Pima |
| 24 | Roy J. Salinas | CR1999093040 | Maricopa |
| 25 | Felipe Petrone-Cabanas | CR1999-004790 | Maricopa |
| 26 | Freddy R. Crespin | CR95-021006 | Pinal |

| | | | |
|----|---------------------|-----------------------|----------|
| 27 | Jonathan A. Arias | CR1999-012663 | Maricopa |
| 28 | Jose L. Bustos | CR2005-005248 | Maricopa |
| 29 | Sean D. Holman | CR2004-0055 | Navajo |
| 30 | Aaron Chambers | CR60975 | Pima |
| 31 | Ralph D. Cruz Jr. | CR20002693/CR20002954 | Pima |
| 32 | Gregory N, Valencia | CR-51447 | Pima |
| 33 | Jack Jewitt | CR-0044112 | Pima |
| 34 | Ignacio Valencia | CR-9308455 | Maricopa |
| 35 | Robert Roper | CR0052077 | Pima |

“Life” Sentences

| | Name | Case Number | County |
|----|--------------------------|--------------------|---------------|
| 1 | Joseph Cassa | CR95020035 | Pinal |
| 2 | Loren Hooks | CR1999-006371 | Maricopa |
| 3 | William Hawkins | CR2002-016956 | Maricopa |
| 4 | Ronnie Roy Vera | CR51483 | Pima |
| 5 | Deon Powell | CR2007-0300030 | Maricopa |
| 6 | Gregory Stewart | CR2003-0050580 | Maricopa |
| 7 | Derrick Morris | CR2002-013178 | Maricopa |
| 8 | Benjamin Cannon | CR2008-031252 | Maricopa |
| 9 | Cecilia Vega | CR20100130940 | Maricopa |
| 10 | Veronica Torres | CR0047395 | Pima |
| 11 | Tiffanie Imel | CR67215 | Pima |
| 12 | Jose C. Cruz | CR2005-0092 | Pima |
| 13 | Abraham Penaloza-Serrano | CR2006-012786001 | Maricopa |
| 14 | Thomas Nouan | CR97-93519 | Maricopa |
| 15 | Brandon Roberts | CR20120067090 | Maricopa |
| 16 | Cherity Cox | CR0047395 | Pima |
| 17 | Dante I. Solomon | CR20111095002 | Pima |
| 18 | Rogelio Martinez | CR9704420 | Maricopa |
| 19 | Pedro Corona | CR2001-007949 | Maricopa |
| 20 | Latasha Hopper | CR0056915 | Pima |
| 21 | Terrill Lee | CR2004-005123 | Maricopa |
| 22 | Hector Espinoza-Beltran | CR96-93885 | Maricopa |
| 23 | Joseph Celaya | CR6059 | Pima |
| 24 | Luis A. Bautista | CR005875 | Maricopa |
| 25 | Otto Hutchinson | CR2008-006370 | Maricopa |
| 26 | Jesus E. Jara | CR2005-005248 | Maricopa |

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|----|------------------------|--------------------|----------|
| 27 | Daniel Bueno | CR20081240430 | Maricopa |
| 28 | Jumar K. Stewart | CR2003005069001 | Maricopa |
| 29 | Joshua Marshall | CR1998-093180 | Maricopa |
| 30 | John Edward Lofton Jr. | CR87-09127 | Maricopa |
| 31 | Isaac Stephen Valle | CR1995-010873 | Maricopa |
| 32 | Arrow Lappe | CR980842 | Yavapai |
| 33 | Felix D. Vasquez | CR2008-031252001 | Maricopa |
| 34 | Jesse Houser | CR 2000-01112 | Yuma |
| 35 | Todd Hoke | CR200701017 | Pinal |
| 36 | Eric Clark | CR20000538 | Coconino |
| 37 | Edgar Contreras | CR2002-004635 | Maricopa |
| 38 | Samuel Viramontes | CR67074 | Pima |
| 39 | Israel C. Legliu | CR2007902600 2D | Maricopa |
| 40 | Rafael M. Hernandez | CR-0046126 | Pima |
| 41 | David Zorawski | CR-9492307 | Maricopa |
| 42 | William B. Harper | CR-9408146 | La Paz |
| 43 | Eron Corrales | CR-9410090 | Maricopa |
| 44 | Chan Noy | CR-9593330 | Maricopa |
| 45 | Sarath Say | CR-009690191 | Maricopa |
| 46 | Kurt B. Williams | CR-199714978 | Maricopa |
| 47 | Mance E. Day | CR-2005005972004D | Maricopa |
| 48 | Eddie McDonald | CR-2001003936 | Maricopa |
| 49 | Anthony M. Mendez | CR-2000003761 | Maricopa |
| 50 | Shaunnell J. Bayert | CR-2000017628 | Maricopa |
| 51 | Mario L. Pete | CR-2005010018001D; | Maricopa |
| 52 | Lamark A. Richardson | CR-2003005169001D | Maricopa |
| 53 | Corey A. Green | CR-2003005043001D; | Maricopa |
| 54 | Christopher Reyes | CR-2004008225002D | Maricopa |

| | | | |
|----|----------------------|-------------------|----------|
| 55 | Rafael Rios Jr | CR-2004005074003D | Maricopa |
| 56 | Anthony J. Chacon | CR-2004038943001S | Maricopa |
| 57 | Stephen R. Landis | CR-2004022636003D | Maricopa |
| 58 | Terrance M. Daniels | CR-2004035018001S | Maricopa |
| 59 | Chrystian D. Hickman | CR-2004005156001D | Maricopa |
| 60 | Richard R. Enos | CR-2005107872002D | Maricopa |
| 61 | Jose N. Espinoza | CR-2006005182001D | Maricopa |
| 62 | Arturo M. Rodriguez | CR-2006170696002S | Maricopa |
| 63 | Darius Agboghidi | CR-2004135085002D | Maricopa |
| 64 | David B. Otero | CR-2007005086001D | Maricopa |
| 65 | Todd M. Lee | CR-2008030208001D | Maricopa |
| 66 | Martin J. Molina | CR-2009005023001D | Maricopa |
| 67 | Jose P. Quintero | CR-2008031287001D | Maricopa |
| 68 | Sylvester V. Carpio | CR-2007009026003D | Maricopa |
| 69 | Arkeem D. Coleman | CR-2009005080001D | Maricopa |
| 70 | David S. Paulson | CR-200801125 | Maricopa |
| 71 | Marco K. Randles | CR-2011149985001D | Maricopa |
| 72 | Theodore R. Ramos | CR-201100580 | Cochise |
| 73 | Sammy AJR Terrazas | CR-20131170-001 | Pima |
| 74 | Brandon Lopez | CR-2012125141002 | Maricopa |

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**MOTION FOR LEAVE TO FILE
AN AMICUS CURIAE BRIEF**

Amicus curiae Arizona Attorneys for Criminal Justice (AACJ) moves this Court for leave to file the accompanying lodged *amicus curiae* brief. This motion is made pursuant to AZ ST SPEC ACT Rule 2(b). Applicants have read the briefs filed before the Court of Appeals and the Petition for Review filed before this Court.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ offers this brief in support of Gregory Valencia and Joey Healer because the issue presented touches the core of AACJ's mission to protect individual rights guaranteed by the federal and state Constitutions and to resist all efforts to curtail such rights. Specifically, the opinion below properly enforced the Eighth Amendment rights of Valencia and Healer to be free from cruel and unusual punishment, as interpreted by *Miller v. Alabama*, 132 S.Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). The opinion correctly evaluated the changes to Arizona law implemented by *Miller* and *Montgomery* and rightly ordered resentencing.

Accordingly, AACJ moves this Court to grant this motion and file the *amicus curiae* brief that is lodged with this Court.

RESPECTFULLY SUBMITTED this 15th day of July, 2016.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By /s/ Mikel Steinfeld

MIKEL STEINFELD

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ARIZONA SUPREME COURT

THE STATE OF ARIZONA,

Respondent,

v.

GREGORY VALENCIA and JOEY
HEALER,

Petitioners.

No. CR-16-0156-PR

Court of Appeals Nos.
2 CA-CR 2015-0151-PR
2 CA-CR 2015-0182-PR
(Consolidated)

Pima County Superior Court Nos.
CR051447
CR48232

**CERTIFICATE OF SERVICE:
ARIZONA ATTORNEYS FOR
CRIMINAL JUSTICE MOTION
FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF**

ONE COPY of Motion for Leave to File Amicus Curiae Brief was mailed this 15th day of July, 2016, to JACOB LINES, Pima County Attorney's Office, 32 N. Stone, 14th Floor, Tucson, AZ 85701. A courtesy copy has been provided by electronic mail.

ONE COPY of Motion for Leave to File Amicus Curiae Brief was mailed this 15th day of July, 2016, to DAVID EUCHNER, Pima County Public Defender's Office, 33 N. Stone Ave., 21st Floor, Tucson, AZ 85701 (counsel for Healer). A courtesy copy has been provided by electronic mail.

ONE COPY of Motion for Leave to File Amicus Curiae Brief was mailed this 15th day of July, 2016, to ALEX HEVERI, Pima County Legal Defender's Office, 32 N. Stone Ave., 8th Floor, Tucson, AZ 85701 (counsel for Valencia). A courtesy copy has been provided by electronic mail.

RESPECTFULLY SUBMITTED this 15th day of July, 2016.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

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ARIZONA SUPREME COURT

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CR48232

**CERTIFICATE OF
COMPLIANCE:
BRIEF OF AMICUS CURIAE
ARIZONA ATTORNEYS FOR
CRIMINAL JUSTICE**

The Brief of *Amicus Curiae* Arizona Attorneys for Criminal Justice in Support of Gregory Valencia and Joey Healer is double-spaced, uses a 14-point Times New Roman proportionately-spaced typeface, and contains 2,632 words, according to the processing system used to prepare this brief.

RESPECTFULLY SUBMITTED this 15th day of July, 2016.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By /s/ Mikel Steinfeld
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ARIZONA SUPREME COURT

THE STATE OF ARIZONA,

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GREGORY VALENCIA and JOEY
HEALER,

Petitioners.

No. CR-16-0156-PR

Court of Appeals Nos.
2 CA-CR 2015-0151-PR
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(Consolidated)

Pima County Superior Court Nos.
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**CERTIFICATE OF SERVICE:
BRIEF OF AMICUS CURIAE
ARIZONA ATTORNEYS FOR
CRIMINAL JUSTICE**

ONE COPY of Brief of Amicus Curiae Arizona Attorneys for Criminal Justice was mailed this 15th day of July, 2016, to JACOB LINES, Pima County Attorney's Office, 32 N. Stone, 14th Floor, Tucson, AZ 85701. A courtesy copy has been provided by electronic mail.

ONE COPY of Brief of Amicus Curiae Arizona Attorneys for Criminal Justice was mailed this 15th day of July, 2016, to DAVID EUCHNER, Pima

County Public Defender's Office, 33 N. Stone Ave., 21st Floor, Tucson, AZ 85701
(counsel for Healer). A courtesy copy has been provided by electronic mail.

ONE COPY of Brief of Amicus Curiae Arizona Attorneys for Criminal Justice was mailed this 15th day of July, 2016, to ALEX HEVERI, Pima County Legal Defender's Office, 32 N. Stone Ave., 8th Floor, Tucson, AZ 85701 (counsel for Valencia). A courtesy copy has been provided by electronic mail.

RESPECTFULLY SUBMITTED this 15th day of July, 2016.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By /s/ Mikel Steinfeld
MIKEL STEINFELD

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-16-0156-PR
 Respondent,)
) Court of Appeals
 v.) Division Two
) Nos. 2 CA-CR 15-0151 PRPC
 GREGORY NIDEZ VALENCIA JR.,) 2 CA-CR 15-0182 PRPC
) (Consolidated)
 Petitioner.)
 _____) Pima County
) Superior Court
 STATE OF ARIZONA,) Nos. CR051447
) CR48232
 Respondent,)
)
 v.)
)
 JOEY LEE HEALER,)
)
 Petitioner.)
 _____) **FILED 7/18/2016**
)

O R D E R

A "Motion for Leave to File an Amicus Curiae Brief" (Amicus Arizona Attorneys for Criminal Justice) and the Brief of Amicus Curiae were filed on July 15, 2016.

IT IS ORDERED granting the "Motion for Leave to File an Amicus Curiae Brief." The brief shall be filed as of July 15, 2016.

DATED this 18th day of July, 2016.

_____/s/
Janet Johnson
Clerk of the Court

TO:

Jacob R Lines

Alex D Heveri

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Lewis - Administrative Office

David J Euchner

Joey Lee Healer, ADOC 117900, Arizona State Prison,
Lewis - Administrative Office

Joseph T Maziarz

David Simpson

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Florence - Eyman Complex-SMU #1 Unit

Michael Paul Jessup, ADOC 144960, Arizona State Prison,
Florence - Central Unit

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Lewis - Buckley Unit

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Tucson - Cimarron Unit

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Bobby Jerry Tatum, ADOC 124754, Arizona State Prison,
Yuma - Cheyenne Unit

Mikel Steinfeld

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