

**IN THE SUPREME COURT OF ARIZONA**

STATE OF ARIZONA,

vs.

ANGELA RENE LEEMAN,

Arizona Supreme Court Case  
No. CR-18-0142-PR

Arizona Court of Appeals  
No. 2 CA-CR 2017-0419-PR

(Pima County Superior Court Case  
No. CR-042678)

**BRIEF OF *AMICI CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL  
JUSTICE AND PHILLIPS BLACK, INC.  
IN SUPPORT OF ANGELA LEEMAN**

John R. Mills, Esq.  
j.mills@phillipsblack.org  
Bar Number: 033127  
Phillips Black, Inc.  
836 Harrison Street  
San Francisco, CA 94107  
j.mills@phillipsblack.org  
(888) 532-0897

Mikel Steinfeld, Esq.  
steinfeldm@mail.maricopa.gov  
Bar Number: 024996  
Maricopa County Public Defender's Office  
620 W. Jackson Street, Suite 4015  
Phoenix, AZ 85003  
steinfeld@mail.maricopa.gov  
(602) 506-7711

Attorneys for *Amici Curiae* Arizona Attorneys for Criminal Justice and Phillips Black, Inc.

## TABLE OF CONTENTS

INTRODUCTION .....	1
INTEREST OF <i>AMICI CURIAE</i> .....	3
ARGUMENT .....	4
I.    STACKED CONSECUTIVE SENTENCES THAT IRREVERSIBLY CONSIGN A JUVENILE TO DIE IN PRISON FOR A NONHOMICIDE OFFENSE ARE UNCONSTITUTIONAL .....	4
A.    Under <i>Graham</i> , it is “cruel and unusual” to deny a juvenile nonhomicide offender an opportunity for parole during her lifetime .....	4
B. <i>Graham</i> fully applies to lengthy stacked consecutive sentences .....	6
1.    Lengthy, stacked consecutive sentences cannot be meaningfully distinguished from the punishments at issue in <i>Graham</i> and <i>Miller</i> .....	9
2.    The reasoning of <i>Graham</i> leaves no room for differential treatment of lengthy consecutive sentences .....	10
3.    Limiting <i>Graham</i> and <i>Miller</i> to formal life- without-parole sentences would make juvenile sentencing arbitrary .....	11
4.    Eighth Amendment review is not limited to sentence-by-sentence challenges .....	12
II.    AT A MINIMUM, <i>MILLER</i> MUST APPLY TO THE LENGTHY, STACKED CONSECUTIVE SENTENCES HERE .....	14
III. <i>KASIC</i> WAS WRONGLY DECIDED .....	15
CONCLUSION .....	16

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Bear Cloud v. State</i> , 334 P.3d 132 (Wyo. 2014).....	8
<i>Budder v. Addison</i> , 851 F.3d 1047 (10th Cir. 2017) .....	6
<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	<i>passim</i>
<i>Henry v. State</i> , 175 So. 3d 675 (Fla. 2015) .....	6
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	2, 4, 7
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016).....	3, 4, 7, 15
<i>Moore v. Biter</i> , 725 F.3d 1184 (9th Cir. 2013) .....	7
<i>State ex rel. Morgan v. State</i> , 217 So. 3d 266 (La. 2016) .....	9
<i>Near v. State of Minnesota ex rel. Olson</i> , 284 U.S. 697 (1931).....	11
<i>People v. Caballero</i> , 282 P.3d 291 (Cal. 2012).....	6, 10
<i>People v. Reyes</i> , 63 N.E.3d 884 (Ill. 2016).....	8
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	5
<i>State v. Berger</i> , 212 Ariz. 473, 134 P.3d 378 (Ariz. 2006) .....	13

<i>State v. Boston</i> , 363 P.3d 453 (Nev. 2015) .....	6
<i>State v. Kasic</i> , 228 Ariz. 228, 265 P.3d 410 (Ariz. Ct. App. 2011) .....	1, 12, 13
<i>State v. Moore</i> , 76 N.E.3d 1127 (Ohio 2016) .....	6, 7, 10, 11
<i>State v. Null</i> , 836 N.W.2d 41 (Iowa 2013) .....	8
<i>State v. Ramos</i> , 387 P.3d 650 (Wash. 2017) .....	8
<i>State v. Riley</i> , 110 A.3d 1205 (Conn. 2015) .....	8
<i>State v. Valencia</i> , 241 Ariz. 209, 386 P.3d 392 (Ariz. 2016) .....	15
<i>State v. Zuber</i> , 152 A.3d 197 (N.J. 2017) .....	6, 10
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958).....	12
<i>Zant v. Stephens</i> , 462 U.S. 862 (1983).....	12
<b>Other Authorities</b>	
Ariz. Rules of Criminal Procedure 31.15(b)(3) .....	4
Ariz. Rules of Criminal Procedure 32.9(c)(7) .....	4

## INTRODUCTION

Life imprisonment is life imprisonment, whatever its label.

That is the simple, incontrovertible fact that resolves this case in favor of petitioner Angela Leeman. In *Graham v. Florida*, the United States Supreme Court held “that for a juvenile offender who did not commit homicide,” the state must provide a “meaningful opportunity to obtain release.” 560 U.S. 48, 74-75 (2010). In other words, a juvenile may not receive a sentence guaranteeing that she will “die in prison . . . no matter what [s]he might do to demonstrate that the bad acts [s]he committed as a teenager are not representative of h[er] true character.” *Id.* at 79.

The question presented here is whether this Eighth Amendment protection hinges on whether a life sentence is the product of stacked consecutive sentences, rather than a sentence formally labelled “life without parole.” The answer is no. The rule in *Graham* is clear: A juvenile nonhomicide offender must receive “a meaningful opportunity for release.” *Id.* at 75. Stacked consecutive sentences that consign a juvenile to die in prison provide no more opportunity for release than a sentence labeled “life without parole.”

The courts below did not conclude otherwise. Instead, they found a prior ruling controlling: *State v. Kasic*, 228 Ariz. 228, 265 P.3d 410 (Ariz. Ct. App. 2011). However, *Kasic* was wrong the day it was decided, and that has become

increasingly clear over time. Numerous state supreme courts (*infra* at 6-7) have now recognized that the reasons the Court in *Graham* gave for invalidating formal life-without-parole sentences apply equally to lengthy consecutive prison terms that deny an opportunity for parole. Most fundamentally, juvenile offenders are “less culpable”: “[J]uveniles have a lack of maturity,” are “more vulnerable . . . to negative influences and outside pressures, including peer pressure,” “and their characters are not . . . well formed.” 560 U.S. at 68 (internal quotation marks omitted). Moreover, it is inordinately difficult for “expert psychologists,” much less sentencing courts, “to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* at 68 (internal quotation marks omitted). This is all true for *any* juvenile sentenced to spend his or her life in prison. The sentence’s label and mechanics—“life without parole” or lengthy aggregate consecutive terms with the same effect—are immaterial.

But if the Court is not convinced that *Graham* bars any juvenile from being sentenced to die in prison for a nonhomicide crime, it should consider another case: *Miller v. Alabama*, 567 U.S. 460 (2012). There, the Supreme Court established a similar rule for juveniles convicted of the uniquely heinous crime of homicide. Rather than categorically invalidating life without parole as a sentence for juvenile murderers, “*Miller* [held] that before sentencing a juvenile to life

without parole, the sentencing judge” must determine whether he is “the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (clarifying *Miller*).

While it would be odd not to apply *Graham* to Ms. Leeman’s case, it would be exceptionally bizarre to hold that she cannot benefit at least from *Miller*, a ruling providing a chance at parole for virtually all juvenile *murderers*. Whatever else can be said of the nonhomicide offenses at issue here, they do not rise to the level of culpability for murder. Because *Kasic* was decided before *Miller* and *Montgomery*, the court in *Kasic* had no opportunity to evaluate the Eighth Amendment principles at issue in light of those decisions. It is time for this Court to step in and overrule *Kasic*.

\*\*\*

The Constitution guarantees a meaningful chance for a juvenile nonhomicide offender to show that he or she is not the same person who broke the law as a teenager and to obtain release. Absent intervention by this Court, Ms. Leeman will not receive that opportunity. The Court must reverse.

#### **INTEREST OF AMICI CURIAE**

Arizona Attorneys for Criminal Justice (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. Phillips Black, Inc. is a nonprofit, public-interest law office dedicated to providing the highest quality of legal representation to prisoners in the United States sentenced to the severest penalties under law. AACJ and Phillips Black submit this *amicus* brief because the decision in *Kasic* severely undermines the constitutional rights guaranteed by *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).<sup>1</sup>

## ARGUMENT

### **I. STACKED CONSECUTIVE SENTENCES THAT IRREVERSIBLY CONSIGN A JUVENILE TO DIE IN PRISON FOR A NONHOMICIDE OFFENSE ARE UNCONSTITUTIONAL.**

#### **A. Under *Graham*, it is “cruel and unusual” to deny a juvenile nonhomicide offender an opportunity for parole during her lifetime.**

The Eighth Amendment prohibits “cruel and unusual punishments.” In *Graham*, the Supreme Court held that it is cruel and unusual to deny nonhomicide juvenile offenders a meaningful opportunity to obtain release. 560 U.S. at 74. That ruling renders Ms. Leeman’s sentence unconstitutional.

---

<sup>1</sup> Pursuant to Ariz. Rules of Criminal Procedure 31.15(b)(3) and 32.9(c)(7), *amici* note that Samuel Harbourt, an attorney at the law firm of Orrick, Herrington, & Sutcliffe LLP, contributed to the drafting of this brief. Orrick has no interest in the outcome of this case.

The Court in *Graham* gave several justifications for its rule: the less culpable nature of *juveniles* as a class of offenders; the less culpable nature of *nonhomicide* offenses; and the severity of a sentence of life in prison. “[C]ompared to adults,” the Court explained, “juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences . . . including peer pressure; and their characters are not as well formed.” 560 U.S. at 68 (internal quotation marks omitted). But the critical point for the Court was not simply that the vast majority of juvenile offenders are less culpable; it was also that it is inordinately difficult for even “expert psychologists,” much less sentencing courts, “to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* (internal quotation marks omitted).

The Court also stressed that life sentences are uniquely severe—especially for juveniles. Because juveniles cannot be sentenced to death, *see Roper v. Simmons*, 543 U.S. 551, 578 (2005), a life sentence is the “most severe penalty permitted by law”: “[I]t means denial of hope; . . . it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days.” *Graham*, 560 U.S. at 69-70 (internal quotation marks and brackets omitted). Moreover, “[l]ife without parole is an especially harsh

punishment for a juvenile” because “a juvenile offender will on average serve more years . . . of his life in prison than an adult offender.” *Id.* at 70.

These principles required a categorical rule forbidding life without parole for juvenile nonhomicide offenders. “[T]he State *must* . . . give” such offenders a “*meaningful opportunity* to obtain release based on demonstrated maturity and rehabilitation.” *Id.* at 75 (emphasis added).

Ms. Leeman committed nonhomicide offenses as a juvenile, yet she will not be given an opportunity to obtain release during her lifetime. Her sentence is therefore invalid pursuant to *Graham*.

**B. *Graham* fully applies to lengthy stacked consecutive sentences.**

It makes no difference if a prisoner’s life sentence is the product of multiple consecutive sentences, rather than a life-without-parole sentence for one offense. “Nowhere in the *Graham* decision does the Supreme Court . . . limit its holding to offenders who were convicted for a *single* nonhomicide offense.” *State v. Boston*, 363 P.3d 453, 457 (Nev. 2015).

Naturally, therefore, a number of courts, including five state supreme courts, have held that lengthy aggregate consecutive sentences violate *Graham* by failing to afford an opportunity for parole during the offender’s lifetime. *See State v. Zuber*, 152 A.3d 197, 201, 211-12 (N.J. 2017); *State v. Moore*, 76 N.E.3d 1127, 1143 (Ohio 2016); *Boston*, 363 P.3d at 458; *Henry v. State*, 175 So. 3d 675, 680

(Fla. 2015); *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012); *see also Budder v. Addison*, 851 F.3d 1047, 1059 (10th Cir. 2017); *Moore v. Biter*, 725 F.3d 1184, 1191-94 (9th Cir. 2013).<sup>2</sup>

Many courts have similarly resolved this issue when applying *Miller v. Alabama*, 567 U.S. 460 (2012), *Graham*'s successor case. In *Miller*, along with *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), which clarified *Miller*, the Supreme Court extended *Graham*, which was limited to nonhomicide offenses, to homicide crimes. As in *Graham*, the Court emphasized the diminished culpability of the vast majority of juvenile offenders. *Miller*, 567 U.S. at 473-74; *Montgomery*, 136 S. Ct. at 726. But the Court did not go as far in *Miller* as in *Graham*. Rather than holding that the Eighth Amendment categorically bars life without parole for all homicide offenders, the Court concluded that it at least "requires that before sentencing a juvenile to life without parole, the sentencing judge" determine whether that juvenile is "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S. Ct. at 733. Thus, virtually all juvenile offenders are, as a class, ineligible for life-without-parole sentences.

---

<sup>2</sup> Courts have treated sentences similar in length to Ms. Leeman's as life sentences. *See Moore*, 76 N.E.3d at 1143-47 (collecting state supreme cases involving aggregate sentences of, among others, 45, 52.5, and 60 years).

Accordingly, the same threshold question arises under *Miller* and *Graham*: whether a sentence constitutes life without parole. Addressing this question in cases involving *Miller*, many courts have held that lengthy consecutive sentences qualify as life without parole. *See, e.g., State v. Ramos*, 387 P.3d 650, 660-61 (Wash. 2017); *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016); *State v. Riley*, 110 A.3d 1205, 1207 & n.2 (Conn. 2015); *Bear Cloud v. State*, 334 P.3d 132, 144 (Wyo. 2014); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013). These applications of *Graham* and *Miller* are unsurprising for several reasons:

- Lengthy, stacked consecutive sentences cannot be meaningfully distinguished from the punishments at issue in *Graham* and *Miller*;
- The reasoning of *Graham* leaves no room for differential treatment of lengthy, consecutive sentences;
- Limiting *Graham* and *Miller* to formal life-without-parole sentences would make sentencing highly arbitrary; and
- Eighth Amendment review is not limited to sentence-by-sentence challenges.

Amici address each in turn:

**1. Lengthy, stacked consecutive sentences cannot be meaningfully distinguished from the punishments at issue in *Graham and Miller*.**

There are only two conceivable bases for distinguishing between a formal life-without-parole sentence and stacked consecutive sentences that result in lifetime incarceration: (i) the label (a term of years rather than “life”) and (ii) the number of counts of conviction (multiple instead of one). Neither makes a difference under *Graham and Miller*.

First, a lengthy term of years sentence for a single offense must constitute life without parole under *Graham*. See, e.g., *State ex rel. Morgan v. State*, 217 So. 3d 266, 275 (La. 2016) (“99 years is an effective life sentence.”). Otherwise, a state could completely circumvent *Graham* by changing all of its formal life-without-parole sentences to, for example, “200 year” sentences.

Second, it makes no difference whether a life sentence is imposed based on one or multiple offenses. In *Graham* itself, the defendant was convicted of two offenses and sentenced to life on one offense (burglary) and fifteen years on another (attempted armed robbery). 560 U.S. at 57. The Court unequivocally held that the Eighth Amendment “d[id] not permit” *Graham*’s sentence and that the state had to provide him a “chance . . . to later demonstrate that he is fit to rejoin society.” 560 U.S. at 79. It nowhere suggested that the state could escape this

mandate by resentencing Graham to a lengthy term on the first count (*e.g.* forty years) while maintaining the fifteen-year sentence on the other count, thereby preventing Graham from actually receiving a chance at parole. In short, *Graham* was decided “[i]n full recognition of the multiple crimes that Graham committed.” *Moore*, 76 N.E.3d at 1141-42.

**2. The reasoning of *Graham* leaves no room for differential treatment of lengthy consecutive sentences.**

“*Graham*’s analysis does not focus on the precise sentence meted out,” so long as the effect is to deny an opportunity for release. *Caballero*, 282 P.3d at 295. As explained above, *Graham* recognized that it is almost always too difficult to determine “that the juvenile is incorrigible” “at the outset” of a prison term, before the “offender [has] a chance to demonstrate growth and maturity” as an adult. 560 U.S. at 72-73. Thus, “even for experts, it is difficult at an early age to differentiate between the immature offender who may reform and the juvenile who is irreparably corrupt. It is even harder for a judge to make that determination at the moment the juvenile offender appears for sentencing.” *Zuber*, 152 A.3d at 214 (citation omitted). Merely because a juvenile has been convicted of multiple counts does not make it any easier to determine at the time of sentencing that the juvenile is irredeemably corrupt.

*Graham* also emphasized that a life sentence is, in practice, far harsher for juveniles than for adult offenders because “a juvenile offender will on average serve more years and a greater percentage of his life in prison.” 560 U.S. at 70. That “same mathematical reality,” like *Graham*’s reasoning more broadly, applies just as forcefully to a juvenile serving a lengthy term of years for multiple counts. *Moore*, 76 N.E.3d at 1138.

**3. Limiting *Graham* and *Miller* to formal life-without-parole sentences would make juvenile sentencing highly arbitrary.**

Failing to apply *Graham* to lengthy stacked consecutive sentences would result in untenable arbitrariness. Some of the most culpable offenders would receive an opportunity for release during their lifetimes, whereas offenders who have committed far less severe acts could end up spending their entire lives in prison because the sentences added up to a term beyond the offender’s life expectancy. To illustrate, someone convicted of one count of heinous torture would have a chance at parole (as would all but the rare juvenile who commits murder, under *Miller*), whereas someone sentenced to consecutive maximum or aggravated sentences on three to four class 2 or 3 felonies would die in prison.

The Constitution must not be construed to create such formalistic, arbitrary results. “[I]n passing upon constitutional questions, the court has regard to substance and not to mere matters of form.” *Near v. State of Minnesota ex rel. Olson*, 284 U.S. 697, 708 (1931). Indeed, the Supreme Court has repeatedly stated

that the Eighth Amendment must be interpreted to avoid “a pattern of arbitrary . . . sentencing.” *Zant v. Stephens*, 462 U.S. 862, 876-77 (1983) (internal quotation marks omitted); *see also, e.g., Trop v. Dulles*, 356 U.S. 86, 95 (1958).

**4. Eighth Amendment review is not limited to sentence-by-sentence challenges.**

The Eighth Amendment permits categorical challenges to a cumulative sentence for multiple counts under *Graham* or *Miller*; it does not limit defendants to separate sentence-by-sentence challenges. To demonstrate why that is so, it is necessary to consider the availability of two distinct types of Eighth Amendment arguments: categorical and proportionality challenges. The court’s ruling in *Kasic* illustrates this distinction. There, the petitioner raised, and the court separately addressed, each type of challenge: *first*, a “categorical” challenge, *i.e.*, an argument that “*Graham* . . . categorically bar[s] the sentences imposed in this case”; *second*, a “proportionality” challenge, *i.e.*, an argument that the sentence was “grossly disproportionate” in light of “the gravity of the offenses.” 228 Ariz. at 233 ¶¶ 20-24, 265 P.3d at 415.

The former class of challenge argues that a particular “sentencing practice itself” is categorically forbidden for certain types of conduct and/or certain classes of offenders. *Graham*, 560 U.S. at 60-61. Examples of such “categorical rules” established by the Supreme Court include the prohibitions on the death penalty for juveniles, the intellectually disabled, and nonhomicide offenders. *Id.* Another is

the categorical rule recognized in *Graham* itself. *Id.* at 79. When it comes to these categorical rules, the facts of a specific case are irrelevant. *Id.* at 60-61. For example, a state could not put to death a juvenile on the grounds that his or her particular crime was extremely heinous, thus making the punishment proportional to the offense, in spite of the offender’s youth. “Categorical” means just that: The punishment is barred under *any* circumstances for the particular class of offenders, independent of any other context.

The second type of challenge—the proportionality challenge—is, by contrast, entirely context-dependent. Rather than claiming that a punishment is barred no matter the facts of any specific case, a proportionality challenge maintains that, “consider[ing] all of the circumstances of the [specific] case,” the sentence is “unconstitutionally excessive.” *Id.* at 59. *Kasic* recognized that, “[a]s a general rule,” this proportionality inquiry is sentence-specific. 228 Ariz. at 233 ¶ 24, 265 P.3d at 415. *See also State v. Berger*, 212 Ariz. 473, 479 ¶ 28, 134 P.3d 378, 384 (Ariz. 2006) (same).

But an argument under *Graham* is a categorical challenge, not a proportionality challenge. So the “general rule” for Eighth Amendment *proportionality* review—the rule on which the Court relied in *Kasic* and *Berger*—is inapposite. In this case, an argument addressed to the Court is that the Eighth Amendment *categorically* forbids imposition of stacked consecutive sentences on a

juvenile nonhomicide offender where those sentences will block any opportunity for parole during the offender's lifetime. It would make no sense to address this argument by concluding that consecutive sentences may not be reviewed in the aggregate under the Eighth Amendment in any way whatsoever. That is the same as saying litigants are barred entirely from arguing that consecutive sentences can be subject to categorical Eighth Amendment rules. Nothing in law or logic remotely suggests this limitation.

**II. AT A MINIMUM, *MILLER* MUST APPLY TO THE LENGTHY, STACKED CONSECUTIVE SENTENCES HERE.**

For the foregoing reasons, there is no good reason not to apply *Graham* in this case. But it would be truly bizarre to hold that consecutive sentences fall entirely outside the scope of the constitutional rules in both *Graham* and *Miller*. After all, *Miller*'s rule was tailored to homicide offenses, the worst of the worst. Whatever one may think of Ms. Leeman's conduct, it does not rise to the level of homicide in culpability, victim impact, or any other relevant sense. *See Graham*, 560 U.S. at 69. Thus, at a minimum, Ms. Leeman should receive the same relief to which murderers are now entitled under *Miller*.

“*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge” make a finding whether he is “the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified.” *Montgomery*, 136 S. Ct. at 733. And as the Arizona

Supreme Court has recognized, “even 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.” *State v. Valencia*, 241 Ariz. 209 ¶16, 386 P.3d 392, 395 (Ariz. 2016) (internal quotation marks omitted). For the reasons stated by petitioner’s brief, the requisite review under *Miller* did not take place at Ms. Leeman’s sentencing, and she is, at a minimum, entitled to the same relief as any juvenile homicide offender. Petition 10-11.

### **III. KASIC WAS WRONGLY DECIDED.**

It is time for this Court to declare what has become increasingly apparent in the years following the *Graham* decision: *Kasic* was wrong. *Kasic* was decided in 2011, on the heels of *Graham*. At that time, the court of appeals did not have the benefit of the body of state and federal case law cited above (*supra* at 6-8). Nor did it have the benefit of the Supreme Court’s extension and clarification of *Graham* in *Miller* and *Montgomery*. It simply makes no sense, especially in the wake of *Miller* and *Montgomery*, not to apply *Graham* to stacked consecutive sentences imposed for nonhomicide conduct. To do so, the Court would have to conclude that murderers are entitled to greater constitutional protections at sentencing than many nonhomicide offenders, like Ms. Leeman, whose sentences ensure they will spend the rest of their lives in prison without either a finding of

irretrievable depravity or any meaningful opportunity for release. *Supra* § II. *Kasic* provides no reasoning or analysis that could justify this result.

\*\*\*

Ms. Leeman, now 42 years old, seeks to demonstrate she does not deserve to spend the remainder of her life in prison. Under *Graham* and *Miller*, the sentencing court must hear her out.

### CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court reverse.

/s/John R. Mills

John R. Mills, Esq.  
j.mills@phillipsblack.org  
Bar Number: 033127  
Phillips Black, Inc.  
836 Harrison Street  
San Francisco, CA 94107  
j.mills@phillipsblack.org  
(888) 532-0897

/s/Mikel Steinfeld

Mikel Steinfeld, Esq.  
steinfeldm@mail.maricopa.gov  
Bar Number: 024996  
Maricopa County Public Defender's Office  
620 W. Jackson Street, Suite 4015  
Phoenix, AZ 85003  
steinfeld@mail.maricopa.gov  
(602) 506-7711

Attorneys for *Amici Curiae* Arizona Attorneys for Criminal Justice and Phillips Black, Inc.

Dated: June 28, 2018 (electronically filed)