IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 20–0396
POLK COUNTY NO. PCCE084726

FERNANDO SANDOVAL,
Applicant / Appellant

vs.

STATE OF IOWA,
Respondent / Appellee

APPEAL FROM HARDIN COUNTY DISTRICT COURT

THE HONORABLE JOSEPH SEIDLIN, JUDGE

APPELLANT'S PROOF BRIEF AND REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF SERVICE AND FILING

I, Jessica Maffitt, hereby certify that on the 8th day of September, 2020, I served the attached Appellant's Proof Brief and Request for Oral Argument on the Court and each other party by electronic service or through mailing one copy thereof to the following party:

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ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.1101(3), this case would be appropriate for consideration by the Iowa Supreme Court as it involves a substantial issue of first impression and presents substantial questions of enunciating or changing legal principles.

STATEMENT OF THE CASE

This is an appeal from the December 16, 2019 Ruling on Motion to Dismiss Appellant's Application for Postconviction Relief and February 17, 2020 order denying Appellant's Motion to Amend, Enlarge, and Reconsider entered by the Honorable Judge Joseph Seidlin. (Ruling on Motion to Dismiss; Ruling on Motion to Amend, Enlarge, and Reconsider) (App. at_). Applicant/Appellant Fernando Sandoval filed an application for postconviction relief following his convictions for two counts of Murder in the First Degree in violation of Iowa Code § 707.1 and 707.2 and two counts of Attempted Murder, in violation of Iowa Code § 707.11. Sandoval was found guilty by jury verdict entered December 10, 2004. (Sentencing Order) (App. at_). On February 16, 2005, Sandoval was sentenced to life imprisonment without the possibility of parole in both murder charges and 25 years on both counts of attempted murder. *Id*. Sandoval filed an appeal

and the Iowa Court of Appeals affirmed the convictions on October 25, 2006. *State v. Sandoval*, No. 05-0426, 2006 WL 3018152 (Iowa Ct. App. Oct. 25, 2006).

Sandoval filed three prior applications for postconviction relief, each of which was denied. Sandoval appealed each of these denials. Procedendo issued on February 18, 2010 (PCCE056248); June 18, 2015 (PCCE071784); and July 10, 2018 (PCCE079547).

On June 27, 2019, Sandoval mailed a fourth application for postconviction relief. (Application for Postconviction Relief) (App. at_). It was received and docketed by the court on July 8, 2020. (Docket Entries) (App. at_). His application was denied on December 16, 2019. (Ruling on Motion to Dismiss) (App. at_). Sandoval timely filed a motion to amend, enlarge and reconsider, which was denied on February 17, 2020. (Ruling on Motion to Amend, Enlarge, and Reconsider) (App. at_). Sandoval appealed the denials of his application for postconviction relief and motion to amend, enlarge and reconsider on March 4, 2020. (Notice of Appeal) (App. at_).

STATEMENT OF THE FACTS

On January 24, 2004, Fernando Sandoval and his brother, Jorge Perez-Castillo, were at the Casa Vallarta bar drinking with a group of

friends. *State v. Sandoval*, 725 N.W.2d 658 (Table), No. 05-0426, 2006 WL 3018152 (Iowa Ct. App. Oct. 25, 2006). Christian Gonzales, who is Perez-Castillo and Sandoval's cousin, was part of this group. *Id*. Santos Bueso Jr., his father Santos Bueso Sr., and his uncle Manuel Ulloa were also at Casa Vallarta that night. *Id*. Fighting broke out between the two groups, which was defused by security guards. *Id*. Managers decided to close the bar. *Id*. As people began exiting the bar, another fight erupted between the two groups. *Id*. During the altercation, Bueso Jr., Bueso Sr., and Ulloa were shot. *Id*. Bueso Sr. and Ulloa died as a result of their injuries. *Id*.

Perez-Castillo and Sandoval left the scene in Perez-Castillo's truck. *Id*. Perez-Castillo drove, with Sandoval in the passenger seat. *Id*. The gun used in the shootings was inside the pickup truck. *Id*.

Officer David Viggers attempted to stop the truck, but the stop evolved into a high-speed chase. *Id*. During the pursuit, shots were fired. *Id.* One bullet struck the windshield of Officer Viggers's vehicle. *Id*. Police officers eventually disabled the truck. *Id*. A foot chase ensued, during which Perez-Castillo fired at officers and was shot in the leg. *Id*. Sandoval was also shot. (Minutes of Testimony at 7) (App. at_). Eventually, Perez-Castillo and Sandoval surrendered. *Sandoval*, 2006 WL 3018152.

Sandoval and Perez-Castillo were both arrested and charged with two counts of murder in the first degree based on the deaths of Bueso Sr. and Ulloa, one count of attempted murder based on the shooting of Bueso Jr., and one count of attempted murder based on the shots fired at Officer Viggers. *Id*. The matter proceeded to a joint trial in November 2004. *Id*.

On December 10, 2004, Sandoval was convicted of two counts of Murder in the First Degree in violation of Iowa Code § 707.1 and 707.2 and two counts of Attempted Murder, in violation of Iowa Code § 707.11. On February 16, 2005, Sandoval was sentenced to life imprisonment without the possibility of parole in both murder charges and 25 years on both counts of attempted murder. Sandoval filed an appeal and the Iowa Court of Appeals affirmed the convictions on October 25, 2006. *Sandoval*, 2006 WL 3018152.

Sandoval filed three prior applications for postconviction relief, each of which was denied. Sandoval appealed each of these denials. Procedendo issued on February 18, 2010 (PCCE056248); June 18, 2015 (PCCE071784); and July 10, 2018 (PCCE079547).

On June 27, 2019, Sandoval mailed a fourth application for postconviction relief. (Application for Postconviction Relief) (App. at_). It was received and docketed by the court on July 8, 2020. (Docket Entries) (App. at_). His application was denied on December 16, 2019. (Ruling on

Motion to Dismiss) (App. at_). Sandoval timely filed a motion to amend, enlarge and reconsider, which was denied on February 17, 2020. (Ruling on Motion to Amend, Enlarge, and Reconsider) (App. at_).

Sandoval timely appealed the denials of his application for postconviction relief and motion to amend, enlarge and reconsider on March 4, 2020. (Notice of Appeal) (App. at_).

ARGUMENT

I. THE COURT ERRED IN DISMISSING SANDOVAL'S APPLICATION AS UNTIMELY

A. Error Preservation

The issue was preserved because Sandoval resisted the State's motion to dismiss, which was granted by the court in the ruling on Sandoval's postconviction relief case. (Ruling on Motion to Dismiss) (App. at _).

B. Scope and Standard of Appellate Review

Iowa appellate courts "ordinarily review summary dispositions of PCR applications for correction of errors at law. *Linn v. State*, 929 N.W.2d 717, 729 (Iowa 2019) (citing *Moon v. State*, 911 N.W.2d 137, 142 (Iowa 2018); *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011)).

"However, [] review is de novo when the basis for postconviction relief implicates a constitutional violation. *Id* (citing *Moon*, 911 N.W.2d at 142; *Castro*, 795 N.W.2d at 792). "PCR applications alleging ineffective assistance of counsel raise a constitutional claim", as do those raising constitutional violations of due process and the right against cruel and unusual punishment. *Id* (citing *Castro*, 795 N.W.2d at 792). Accordingly, de novo review is appropriate in this case.

C. Argument

"Summary judgment is appropriate if the record 'show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Linn v. State*, 929 N.W.2d 717, 730 (Iowa 2019) (citing Iowa R. Civ. P. 1.981(3); *Banwart v. 50th Street Sports, L.L.C.*, 910 N.W.2d 540, 544 (Iowa 2018)). "Courts are required to "examine the record to determine whether a material fact is in dispute" *Id* (citations omitted). "Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions." *Id* (citations omitted).

i. EQUAL PROTECTION AND DUE PROCESS REQUIRE POSTCONVICTION RELIEF BE AVAILABLE TO APPLICANT

The Iowa Constitution provides a right to counsel "[i]n all criminal prosecutions, and in cases involving the life, or liberty of an individual" Iowa Const. Art. I, § 10. "A corollary to the right to counsel, of course, is the right to effective assistance of counsel." *Allison v. State*, 914 N.W.2d 866, 889 (Iowa 2018) (citing *Strickland v. Washington*, 466 U.S. 668, 684–87 (1984); *State v. Dahl*, 874 N.W.2d 348, 352 (Iowa 2016)). "The constitutional right to effective assistance of counsel at a criminal trial is the bedrock of our system of justice." *Id* (citing *Strickland*, 466 U.S. at 685, 104 S.Ct. at 2063; *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)).

Courts have long recognized that constitutional guarantees of effective assistance of counsel are necessary for indigent defendants who cannot proceed effectively on a pro se basis. *Allison*, 914 N.W.2d at 874 (citations omitted). The United States Supreme Court in *Douglas*, *Powell* and *Gideon*, emphasized the importance of the constitutional rights of due process and equal protection in guaranteeing effective assistance of counsel to ensure a fair trial for indigent defendants. *Id* (citing *Douglas v. California*, 372 U.S. 353, 354–55 (1963); *Powell v. Alabama*, 287 U.S. 45 (1932); and *Gideon*, 372 U.S. 335).

Unlike the federal Constitution, the Iowa Constitutional explicitly "extends beyond criminal prosecutions to other cases involving life or

liberty." *Allison*, 914 N.W.2d at 871. Accordingly, the Iowa Constitution protects individuals whose liberty is threatened in civil cases, such as postconviction relief, not merely criminal defendants. *Id* at 871. Constitutional protection is necessary in postconviction relief cases because, just as in criminal prosecutions, an indigent individual "cannot be assured a fair trial unless counsel is provided for him." *Gideon*, 372 U.S. at 343.

In this case, Sandoval specifically raised the issue of ineffective assistance of trial counsel in his application for postconviction relief. However, by granting the State's motion for summary judgment, the court impermissibly denied Sandoval the opportunity to fully develop these claims and present evidence to support them. The failure of trial counsel to effectively assist Sandoval denied him a fair trial and also constitutes a new ground of fact which justifies tolling the statute of limitations under Iowa Code § 822.3.

Where a defendant has "an ineffective lawyer at trial and then an ineffective lawyer in a timely PCR proceeding [, t]he end result is that a potentially meritorious claim may not be raised within the three-year statute of limitations because of bungling lawyers." *Allison*, 914 N.W.2d at 889. Due process cannot allow this error to be compounded by a series of postconviction counsel who have failed to provide effective assistance in an

applicant's case. Otherwise, "the underlying constitutional entitlement to effective assistance of counsel at trial will be a nullity and lie unenforced." *Id* at 890.

Accordingly, the constitutional rights to counsel, to equal protection, and to due process require postconviction relief be available for people, like Sandoval, who have previously not received effective assistance of counsel. U.S. Constitution, Amend. 5, 6, 14; Iowa Constitution, Art. 1, §§ 6, 9, 10.

ii. THE STATUTE OF LIMITATIONS DOES NOT APPLY BECAUSE THERE IS A GROUND OF FACT THAT COULD NOT HAVE BEEN RAISED WITHIN THE APPLICABLE TIME PERIOD

Additionally, the Iowa Supreme Court has held, "[a]n application based on new evidence that could not have been discovered through reasonable diligence, however, is not subject to the three-year limitation." *Allison*, 914 N.W.2d at 888 (citing Iowa Code § 822.3). In order to waive the 3 year limitation under Iowa Code § 822.3, "An applicant need only allege that the newly discovered evidence or other error is relevant to the case and has the potential to provide a basis for reversal." *Id* (citing *Harrington v. State*, 659 N.W.2d 509, 521 (Iowa 2003)).

Under long-standing Iowa Supreme Court precedent, the "ground of fact" exception under § 822.3 "may include the ineffectiveness of trial counsel" because "[t]he errors of trial counsel have a direct impact on the validity of a criminal conviction." *Dible v. State*, 557 N.W.2d 881, 884 (Iowa 1996), *abrogated on other grounds by Harrington*, 659 N.W.2d 509, and *holding modified by Allison*, 914 N.W.2d 866.

"[A] postconviction-relief applicant relying on the ground-of-fact exception must show the ground of fact is relevant to the challenged conviction." *Harrington*, 659 N.W.2d at 521 (citing *Hogan v. State*, 454 N.W.2d 360, 361 (Iowa 1990)). The Iowa Supreme Court has made clear that "[b]y 'relevant' we mean the ground of fact must be of the type that has the potential to qualify as material evidence for purposes of a substantive claim under section 822.2." *Id*. The Court "specifically reject[ed] any requirement that an applicant must show the ground of fact would likely or probably have changed the outcome of the underlying criminal case in order to avoid a limitations defense." *Id*.

In this case, Sandoval specifically raised the issue of ineffective assistance of trial counsel in his application for postconviction relief. He further requested postconviction counsel be provided to help him investigate potential claims and present legal arguments regarding those claims to the

court. (Application for Postconviction Relief at 6) (App. at_). However, by granting the State's motion for summary judgment, the court impermissibly denied Sandoval the opportunity to fully develop these claims and present evidence in support of them. The failure of trial counsel to effectively assist Sandoval denied him a fair criminal trial and also constitutes a new ground of fact which justifies tolling the statute of limitations under Iowa Code § 822.3. Had Sandoval been given the opportunity to develop his claims, he would have presented evidence that his trial counsel's ineffectiveness effected the outcome of his criminal case; and accordingly, it constitutes material evidence for purposes section 822.2 and it also prevented him from complying with the statute of limitations under § 822.3. *See e.g. Dible*, 557 N.W.2d at 884. Accordingly, the district court should have denied the State's motion to dismiss to allowed Sandoval to develop his claims and proceed to a trial on the merits of his application for postconviction relief.

iii. THE STATUTE OF LIMITATIONS DOES NOT APPLY BECAUSE THERE IS A GROUND OF LAW THAT COULD NOT HAVE BEEN RAISED WITHIN THE APPLICABLE TIME PERIOD

Sandoval's application for postconviction relief is also excepted from the statute of limitations because of a change in law. *See* Iowa Code § 822.3.

As Iowa courts have long recognized, it is "necessary to allow for a review of a conviction if there has been a change in the law that would effect the validity of the conviction." *State v. Edman*, 444 N.W.2d 103, 106 (Iowa Ct. App. 1989). "Under those circumstances, it would be essential that the statute of limitations not bar the case." *Id*. As the Iowa Supreme Court has held, "a ground of law that had been clearly and repeatedly rejected by controlling precedent from the court with final decision-making authority is one that "could not have been raised" as that phrase is used in section 822.3." *Phuoc Thanh Nguyen v. State*, 829 N.W.2d 183, 188 (Iowa 2013).

In this case, Sandoval was convicted in 2005 and his appeal case concluded in 2006. In 2018, the Iowa Supreme Court decided *State v. Allison*, which held "where a PCR petition alleging ineffective assistance of trial counsel has been timely filed per section 822.3 and there is a successive PCR petition alleging postconviction counsel was ineffective in presenting the ineffective-assistance-of-trial-counsel claim, the timing of the filing of the second PCR petition relates back to the timing of the filing of the original PCR petition for purposes of Iowa Code section 822.3 if the successive PCR petition is filed promptly after the conclusion of the first PCR action." *Allison*, 914 N.W.2d at 891.

The dismissal of Sandoval's second and third applications for postconviction relief as time-barred demonstrates the impossibility of him bringing this claim prior to the decision in *Allison v. State*. (Motion to Dismiss at 1-2) (App. at _).

The change in law under *Allison* constitutes an exception to the three year statute of limitations on postconviction relief actions in this case. Accordingly, Sandoval's postconviction relief action should proceed to decision on the merits of his claims.

a. The Court Erred in Finding *Allison v. State* Inapplicable to Sandoval's Case

In 2018, the Iowa Supreme Court decided *Allison v. State*, which addressed "what happens when a PCR petitioner alleges that his criminal trial attorney was ineffective, further alleges that his attorney in his first PCR was ineffective, and now seeks to have the underlying claim – which the first PCR attorney was allegedly ineffective in presenting – heard on the merits outside the three-year time frame of section 822.3?" *Id* at 870. This is the fundamental question in cases, such as Sandoval's, where a "first PCR petition was 'timely filed [but] was never given a proper opportunity to be

heard because his counsel failed to perform essential duties." *Id* at 872; (Application for Postconviction Relief at 6) (App. at _).

The *Allison* court held "where a PCR petition alleging ineffective assistance of trial counsel has been timely filed per section 822.3 and there is a successive PCR petition alleging postconviction counsel was ineffective in presenting the ineffective-assistance-of-trial-counsel claim, the timing of the filing of the second PCR petition relates back to the timing of the filing of the original PCR petition for purposes of Iowa Code section 822.3 if the successive PCR petition is filed promptly after the conclusion of the first PCR action." *Id* at 891.

In other words, pursuant to *Allison*, in order to avoid dismissal based on the statute of limitations: "First, the original PCR petition alleging ineffective assistance of trial counsel had to be 'timely filed per section 822.3.' *Id*. at 891. Second, the successive PCR petition must allege 'postconviction counsel was ineffective in presenting the ineffective-assistance-of-trial-counsel claim.' *Id*. And third, the successive petition must be 'filed promptly after the conclusion of the first PCR action.' " *Polk v. State*, No. 18-0309, 2019 WL 3945964, at *2 (Iowa Ct. App. Aug. 21, 2019) (citing *Allison*, 914 N.W.2d at 891). Sandoval has met each of these elements. Accordingly, his claim should relate back to the original filing

date of his first postconviction relief application and be considered on its merits. *Allison*, 914 N.W.2d at 891.

Sandoval's case falls squarely under the exception to the statute of limitations in Iowa Code § 822.3. Sandoval filed a timely application for postconviction relief in 2007, within three years of procedendo issuing following his direct appeal. He properly alleged his first postconviction relief counsel was ineffective, and he filed a new application for postconviction relief at the first opportunity: within a year of the *Allison* decision.

b. Sandoval Qualifies for the Exception to the Statute of Limitations Because His Initial Postconviction Application Was Filed Timely

Sandoval's case falls under the *Allison* exception to the statute of limitations in Iowa Code § 822.3. Sandoval's first application for postconviction relief was filed timely. Sandoval was sentenced on February 16, 2005. *State v. Sandoval*, 725 N.W.2d 658 (Table), No. 05-0426, 2006 WL 3018152 (Iowa Ct. App. Oct. 25, 2006). The Iowa Supreme Court affirmed his conviction on October 25, 2006. *Id*. Sandoval filed his first application for postconviction relief on June 15, 2007, well within the three year statute of limitations. Iowa Code § 822.3, (Motion to Dismiss at 2)

(App. at _). Accordingly, Sandoval has met the first prong of the test in *Allison* for an exception to the statute of limitations under Iowa Code § 822.3 "for defendants who suffer from successive ineffective assistance". *Allison*, 914 N.W.2d at 890.

c. Sandoval Qualifies for the Exception to the Statute of Limitations Because His Initial Postconviction Counsel Was Ineffective in Presenting the Ineffective-Assistance-of-Trial-Counsel Claim

In his application for postconviction relief, Sandoval specifically raised the issue of ineffective assistance of trial counsel and further alleged his initial postconviction counsel was ineffective in assisting him in bringing those claims. Sandoval requested the court appoint postconviction counsel to help him investigate potential claims and present legal arguments regarding those claims to the court. (Application for Postconviction Relief at 6) (App. at_).

Where a defendant has "an ineffective lawyer at trial and then an ineffective lawyer in a timely PCR proceeding [, t]he end result is that a potentially meritorious claim may not be raised within the three-year statute of limitations because of bungling lawyers." *Id* at 889. Due process cannot allow this result. Iowa Const. Art 1, §9. Otherwise, "the underlying

constitutional entitlement to effective assistance of counsel at trial will be a nullity and lie unenforced." *Id* at 890.

This case is substantially similar to *Allison v. State*, where the postconviction court dismissed a case addressing ineffectiveness of trial and initial postconviction counsel on summary judgment based on the three year statute of limitation under § 822.3. 914 N.W.2d 866. In *Allison*, the court found "the proper manner to deal with the question is not to grant a motion to dismiss but to permit [the applicant] to develop the ineffectiveness issue." *Id* at 892. Accordingly, the Iowa Supreme Court remanded the postconviction case to the district court to develop the record regarding prior counsel's ineffectiveness. *Id* at 891. Likewise, Sandoval's case should be remanded to allow him to develop the record regarding his trial and initial postconviction counsel's ineffectiveness.

d. Sandoval Qualifies for the Exception to the Statute of Limitations Because He Filed His Application for Postconviction Relief Promptly

The court erred in denying Sandoval's application for postconviction relief on the basis that "Mr. Sandoval does not meet the exception set forth in *Allison*". (Ruling on Motion to Dismiss at 4) (App. at _). The court held that Sandoval could have raised these claims in his second or third

postconviction relief actions. *Id* at 4-5 (App. at _). However, Sandoval could not have raised his claims then because *Dible v. State* was controlling case law at that time. 557 N.W.2d at 884. Under *Dible*, ineffectiveness of post-conviction counsel could not constitute a ground to excuse filing a postconviction relief action outside of the three-year statute of limitations. *Id*.

As the Iowa Supreme Court has held, "a ground of law that had been clearly and repeatedly rejected by controlling precedent from the court with final decision-making authority is one that 'could not have been raised' as that phrase is used in section 822.3." *Phuoc Thanh Nguyen v. State*, 829 N.W.2d 183, 188 (Iowa 2013). *Dible* was not overruled until 2018 when *Allison v. State* was decided. 914 N.W.2d 866. Accordingly, Sandoval could not have previously raised his claim that the filing of his subsequent postconviction relief application should relate back to the filing of his first postconviction relief application based on effective assistance of his first postconviction counsel.

Furthermore, procedendo did not issue in Sandoval's first postconviction relief case until February 16, 2010, more than three years after procedendo in his direct appeal. (Motion to Dismiss at 1) (App. at _). Therefore, Sandoval was already outside the three year statute of limitations

by the time his first postconviction case became final. Accordingly, Sandoval did not have the opportunity to timely file a subsequent application for postconviction relief until *Dible* was overruled by *Allison* in 2018.

Allison ended the practice of rendering meaningless the constitutional right to effective counsel at trial "for defendants who suffer from successive ineffective assistance" by allowing a subsequent "PCR petition [to] relate[] back to the timing of the filing of the original PCR petition for purposes of Iowa Code section 822.3 if the successive PCR petition is filed promptly after the conclusion of the first PCR action." 914 N.W.2d at 890, 891.

As soon as Sandoval was allowed to file a new application relating back to his first application for postconviction relief, he did so. Sandoval filed his postconviction relief action within a year of the Iowa Supreme Court's decision in *Allison*. Filing within one year of the decision in *Allison* constitutes prompt filing within a reasonable time frame given that Sandoval is incarcerated, is acting pro se, and is not fluent in English. Due to the change in law announced by *Allison*, Sandoval filed his application for postconviction relief at his earliest opportunity. Accordingly, he meets the prompt filing requirement of *Allison v. State*. 914 N.W.2d 891.

e. Sandoval Qualifies for the Exception to the Statute of Limitations Because He Filed His Application for Postconviction Prior to the Enactment of Iowa Code § 822.3

On June 27, 2019, Sandoval mailed a fourth application for postconviction relief. (Application for Postconviction Relief at 4-5) (App. at _). It was received and docketed by the court on July 8, 2020. (Docket Entries) (App. at _).

Under federal law, a filing is "deemed timely filed when an inmate deposits the notice in the prison mail system prior to the expiration of the filing deadline." *Moore v. United States*, 173 F.3d 1131, 1135 (8th Cir. 1999) (citations omitted). The prison mailbox rule recognizes and accommodates the difficulty inmates have in getting mail delivered timely by their institutions, despite the inmate doing everything in his or her power to timely mail documents.

Although Iowa does not have a statutory prison mailbox rule, Iowa law does recognize that timely mailed documents should be considered filed on the date the individual submitted the filing, not the date of receipt:

> In *Kraft* this court held that if notification of filing with original notice attached thereto is in proper form and is timely mailed prior to the running of the statute of limitations and is eventually received and receipted for by the defendant, then the time of service insofar as the statute of limitations is concerned, will be the date of the filing of the notification with the

> Commissioner of Public Safety and not the date of receipt by the defendant.

Matney v. Currier, 203 N.W.2d 589, 592 (Iowa 1973).

In cases, such as Sandoval's, where access to legal claims may depend on the timely filing of court documents, a prisoner's due process rights are implicated. In this case, Sandoval took all measures available to him to file his application for postconviction relief prior to July 1, 2019 by providing it to prison authorities on June 27, 2019. If the State agents operating the prison delayed providing his mail to the United States postal service, then due process prevents Sandoval's claims from being foreclosed by such State action. Iowa Const. Art. 1, § 9. Accordingly, Sandoval's application for postconviction relief must be treated as filed prior to the enactment of SF589, which sought to overrule the relation back doctrine of *Allison v. State*.

II. SANDOVAL IS SUBJECT TO AN ILLEGAL SENTENCE BECAUSE HIS SENTENCE IS GROSSLY DISPROPORTIONAL, CONSIDERING THE INDIVIDUAL CIRCUMSTANCES OF THIS CASE

a. Error Preservation

This issue was not properly preserved at the district court level. However, that does not prohibit appellate review. In this case, because "the

claim is that the sentence itself is inherently illegal, whether based on constitution or statute, we believe the claim may be brought at any time." *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009). "An illegal sentence is void, which permits an appellate court to correct it on appeal without the necessity for the defendant to preserve error by making a proper objection in the district court" *State v. Parker*, 747 N.W.2d 196, 212 (Iowa 2008) (citing *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000)). Accordingly, "the ordinary rules of issue preservation do not apply" and "a constitutional challenge to an illegal sentence, even one brought *after* the initial brief has been filed" can be considered by the Iowa appellate courts. *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014), *as amended* (Sept. 30, 2014).

Alternatively, if the court finds this issue has not been sufficiently developed for appellate review, the court should "remand this case to the district court to allow [both parties] to fully develop and argue [Appellant's] claims". *State v. Hoeck*, 843 N.W.2d 67, 72 (Iowa 2014); *State v. Lyle*, 854 N.W.2d 378, 383 (Iowa 2014), *as amended* (Sept. 30, 2014).

b. Scope and Standard of Appellate Review

Constitutional claims to the legality of a sentence are reviewed de novo. *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009).

c. Argument

Sandoval is challenging the legality of his sentence for the charge of murder in the first degree on the basis that it violates the prohibition against cruel and unusual punishment found in Article I, § 17 of the Iowa Constitution and the 8th Amendment of the U.S. Constitution. ("Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted." Iowa Const. Art. I, § 17; "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. 8th Amend.). The prohibition against cruel and unusual punishment "embraces a bedrock rule of law that punishment should fit the crime. This basic concept stands for the proposition that even guilty people are entitled to protection from overreaching punishment meted out by the state." *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009).

"[U]nder both the State and Federal Constitutions, a defendant is allowed to challenge his sentence by "emphasizing the specific facts of the case." *State v. Oliver*, 812 N.W.2d 636, 648–49 (Iowa 2012). Such a challenge was previously known as an "as-applied challenge" but is now considered a "gross proportionality challenge to [the] particular defendant's sentence." *Id* at 640.

The Iowa Supreme Court has held that it "will apply the general principles as outlined by the United States Supreme Court for addressing a cruel-and-unusual-punishment challenge under the Iowa Constitution." *Bruegger*, 773 N.W.2d at 883 (Iowa 2009) (citations omitted). However, Iowa courts "do not necessarily apply the federal standards in the same way as the United States Supreme Court." *Id.* In contrasting the two standards, the Iowa Supreme Court has held that "review of criminal sentences for 'gross disproportionality' under the Iowa Constitution should not be a 'toothless' review and adopt[ed] a more stringent review than would be available under the Federal Constitution." *Id.*

In analyzing whether a sentence is grossly disproportionate, "a court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions. *Solem v. Helm*, 463 U.S. 277, 292 (1983). Iowa courts apply the same test under Article 1 § 17 of the Iowa Constitution, but with a more stringent standard of review. *See e.g. State v. Oliver*, 812 N.W.2d at 648; *State v. Bruegger*, 773 N.W.2d at 883.

i. SANDOVAL'S SENTENCE WAS GROSSLY DISPROPORTIONATE DUE TO THE GRAVITY OF THE OFFENSE AND THE HARSHNESS OF THE SENTENCE

The first step of the three-part *Solem* test "involves a balancing of the gravity of the crime against the severity of the sentence." *Oliver*, 812 N.W.2d at 647. In *State v. Bruegger*, the Iowa Supreme Court found "an unusual combination of features [could] converge to generate a high risk of potential gross disproportionality". 773 N.W.2d at 884. In *Breugger*, "[e]ach of these factors, standing alone, has the potential of introducing a degree of disproportionality into a sentence, but the convergence of these three factors presents a substantial risk that the sentence could be grossly disproportionate as applied." *Id*.

In *Breugger*, the court identified the following factors as converging to generate a high risk of disproportionality: "a broadly framed crime, the permissible use of preteen juvenile adjudications as prior convictions to enhance the crime, and a dramatic sentence enhancement for repeat offenders." *Id*.

Likewise, Sandoval's case has similar factors, which have the potential to increase the risk of gross disproportionality, and taken together, present a substantial risk of gross disproportionality. First, Sandoval was 19 years old at the time of the offense, an age at which "the regions of the brain

and systems associated with impulse control, the calibration of risk and reward, and the regulation of emotions undergo maturation." *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013).

Furthermore, Sandoval was charged with aiding and abetting murders committed by his brother. In *State v. Roby*, the Iowa Supreme Court explained that "attention must be given to the juvenile offender's actual role and the role of various types of external pressure. Thus, this factor is particularly important in cases of group participation in a crime." 897 N.W.2d 127, 146 (Iowa 2017).

Moreover, the uncontroverted evidence is that the primary actor in the murders in this case was Sandoval's codefendant, Jose Perez-Castillo. Given Sandoval's young age at the time of the offense and the fact that he was not the principal actor, the court should have considered the mitigating factor of "vulnerability to peer pressure", which is characteristic of teenagers. *State v. Seats*, 865 N.W.2d 545, 556 (Iowa 2015), *holding modified on other grounds by State v. Roby*, 897 N.W.2d 127 (Iowa 2017).

Under Iowa law, "the culpability of the offender, including his intent or motive in committing a crime, may be considered in determining the proportionality of the penalty to the offense." *Bruegger*, 773 N.W.2d at 875 (citing *Solem*, 463 U.S. at 293). This is consistent with Eighth Amendment

jurisprudence, which recognizes, "American criminal law has long considered a defendant's intention-and therefore his moral guilt-to be critical to 'the degree of [his] criminal culpability' ". *Enmund v. Fla*., 458 U.S. 782, 800 (1982).

Finally, murder in the 1st degree carries a life sentence, which is grossly disproportionate as applied to a teenager because of the potential for rehabilitation of teenage offenders. When a teenager is sentenced to a lengthy sentence, designed for an adult offender, "an appellate court should view such a sentence as inherently suspect," and "cannot merely rubber-stamp the trial court's sentencing decision." *Roby*, 897 N.W.2d at 138.

a. Sandoval's Sentence Is Grossly Disproportionate Due to His Young Age and Incomplete Brain Development at the Time of the Offense

Sandoval was 19 years old at the time of the offense in this case. Although he was over the age of majority for many purposes, his brain was still developing, as recognized by an increasing body of scientific literature and by courts across the country. *See e.g. Null*, 836 N.W.2d at 55. Sandoval's youth and stage of brain development both decrease his "moral culpability" and increase the likelihood of rehabilitation as his neurological development occurs. *Miller v. Alabama*, 567 U.S. 460 (2012). For instance,

"[t]he aggravating circumstances of a crime that suggest an adult offender is depraved may only reveal a juvenile offender to be wildly immature and impetuous." *Roby*, 897 N.W.2d at 146. Accordingly, "judges cannot necessarily use the seriousness of a criminal act, such as murder, to conclude the juvenile falls within the minority of juveniles who will be future offenders or are not amenable to reform." *Id* at 147. "[A]ny such conclusion would normally need to be supported by expert testimony." *Id*. Sandoval's young age at the time of the offense weighs heavily in favor of a finding that his sentence is grossly disproportionate.

A scientific and legal consensus has emerged over the last fifteen years which explicitly recognizes that juvenile offenders differ from mature adult offenders in both their developmental characteristics and vulnerabilities. It is well established, since the United States Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), and more recently in *Florida v. Graham*, 560 U.S. 48 (2010) that adolescents have "a lack of maturity and an underdeveloped sense of responsibility," and their personalities are "not well formed." *Graham*, 560 U.S. 48 at 68 (quoting *Roper*, 543 U.S. at 569-70). More specifically, "through adolescence and into early adulthood, the regions of the brain and systems associated with impulse control, the calibration of risk and reward, and the regulation of

emotions undergo maturation." *Null*, 836 N.W.2d at 55. As research continues, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham*, 560 U.S. at 68. "We reasoned that those findings — of 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.' " *Miller*, 567 U.S. 460.

The Iowa Supreme Court has recognized this brain development continues into the early twenties:

> As the body of psychosocial studies grows, so too does the understanding of the implications of adolescence. For instance, the human brain continues to mature *into the early twenties*. Much of this development occurs in the frontal lobes, specifically, in the prefrontal cortex, which is central to "executive functions," such as reasoning, abstract thinking, planning, the anticipation of consequences, and impulse control. Recent studies show that through adolescence and into early adulthood, the regions of the brain and systems associated with impulse control, the calibration of risk and reward, and the regulation of emotions undergo maturation. In short, "[t]he research clarifies that substantial psychological maturation takes place in middle and late adolescence and *even into early adulthood*."

Null, 836 N.W.2d at 55 (citations omitted) (emphasis added).

Researchers carefully studied the pace and severity of these neurological changes and discovered that they continue into a person's early

twenties. "Adolescence, Brain Development and Legal Culpability," ABA Juvenile Justice Center Newsletter, January 2004, at 2 (available at: http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf).

They also discovered that the frontal lobe of the brain "undergoes far more change during adolescence than at any other stage of life" and that the frontal lobe is "the last part of the brain" to mature. *Id.* This discovery is significant because although adolescents may appear capable in other areas of life, they cannot reason as well as adults: "maturation, particularly in the frontal lobes, has been shown to correlate with measures of cognitive functioning." *Id.* The frontal lobe, which is most associated with impulse control, risk assessment, and moral reasoning, is "one of the last brain regions to mature." Brief of Amici Curai AMA et. al., *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633) at 16. The structural maturation of "individual brain regions and their connecting pathways is a condition *sine qua non* for the successful development of cognitive . . . functions." *Id* (quoting Tomas Paus et al., "Structural Maturation of Neural Pathways in Children and Adolescents: In Vivo Study," 283 Sci 1908 (1999)).

Reckless behavior, including delinquent behavior, is such a common occurrence among adolescents that is has been described as "virtually a

normative characteristic of adolescent development." Jeffrey Arnett, "Reckless Behavior in Adolescence: A Developmental Perspective," 12 *Developmental Rev*. 339, at 344, 350-51 (noting that at least 50% of adolescents report participation in unprotected sex, illegal drug use, drunk driving, or some form of minor criminal activity).

As the Iowa Supreme Court has held, "the science presented above suggests that juveniles as a general matter should have diminished culpability for criminal activities." *Null*, 836 N.W.2d at 56. Accordingly, teenage offenders "deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults." *Null*, 836 N.W.2d at 60.

Sandoval was nineteen years old at the time of the offense. Accordingly, his brain had not fully developed, and he lacked the culpability that a mature adult would have in his circumstances. Sandoval's lesser level of culpability weighs in favor of a finding of gross disproportionality in his sentencing.

b. Sandoval's Life Sentence Is Grossly Disproportionate Due to His Young Age at the Time of the Offense

The imposition of a mandatory minimum sentence for a teenage offender is inherently grossly disproportionate. As the Iowa Supreme Court

has recognized, "all mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional under the cruel and unusual punishment clause in article I, section 17 of our constitution. Mandatory minimum sentences for juveniles are simply too punitive for what we know about juveniles." *Lyle*, 854 N.W.2d at 400.

The Iowa Supreme Court has recognized that "the denial of even the opportunity to apply for parole for a portion or the entirety of the applicable period of incarceration renders the sentence harsher." *Lyle*, 854 N.W.2d at 399. In the case of teenage offenders, such harsh sentencing is grossly disproportionate because "reform can come easier for juveniles without the need to impose harsh measures. Sometimes a youthful offender merely needs time to grow." *Lyle*, 854 N.W.2d at 400.

The same reasoning applies to teenage offenders who have reached the age of majority. "The features of youth identified in *Roper* and *Graham* simply do not magically disappear at age seventeen—or eighteen for that matter." *State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016) (citations omitted). Accordingly, "the fact ... a defendant is nearing [or has reached] the age of eighteen does not undermine the teachings of *Miller*." *Id*. Teenagers of any age are still developing cognitively, so an eighteen or

nineteen-year-old is no more culpable or less capable of reform than a seventeen-year-old. *See id*.

Sandoval's young age at the time of the offense weighs against each of the traditional rationales for criminal sanctions. For instance, "attempting to mete out a given punishment to a juvenile for retributive purposes irrespective of an individualized analysis of the juvenile's categorically diminished culpability is an irrational exercise." *Lyle*, 854 N.W.2d at 399.

The goal of deterrence is also less effective in the case of teenage offenders:

> The United States Supreme Court has opined "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Roper*, 543 U.S. at 571, 125 S.Ct. at 1196, 161 L.Ed.2d at 23. Punishment simply plays out differently with juveniles. Even in the context of capital punishment, the Court has sagaciously recognized that "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." *Thompson*, 487 U.S. at 837, 108 S.Ct. at 2700, 101 L.Ed.2d at 720.

Lyle, 854 N.W.2d at 399 (*emphasis* in original).

It is also ineffectual:

> [T]he science establishes that for most youth, the qualities are transient. That is to say, they will age out. A small proportion, however, will not, and will catapult into a career of crime unless incarcerated. *Id.* at 53 (estimating that only about five percent of young offenders will persist in criminal activity into adulthood).

Null, 836 N.W.2d at 55 (citations omitted).

If only about five percent of teenage offenders will continue to commit crimes as they grow and mature, deterrence is unnecessary and ineffectual in the vast majority of such cases. Therefore, imposing life sentences or mandatory minimum sentences upon teenage offenders is grossly disproportionate to the degree that it constitutes cruel and unusual punishment.

In contrast to retribution and deterrence, "[r]ehabilitation and incapacitation *can* justify criminally punishing juveniles, but mandatory minimums do not further these objectives in a way that adequately protects the rights of juveniles within the context of the constitutional protection from the imposition of cruel and unusual punishment for a juvenile." *Lyle*, 854 N.W.2d at 399. With regard to incapacitation, "[a]fter the juvenile's transient impetuosity ebbs and the juvenile matures and reforms, the incapacitation objective can no longer seriously be served, and the statutorily mandated delay of or ineligibility for parole becomes "nothing more than the purposeless and needless imposition of pain and suffering." *Id* (citing *Coker*, 433 U.S. at 592). Such purposeless suffering is the ultimate example of cruel and unusual punishment.

With regard to rehabilitation, "[i]f the undeveloped thought processes of juveniles are not properly considered, the rehabilitative objective can be inhibited by mandatory minimum sentences. After all, mandatory minimum sentences foreswear (though admittedly not altogether) the rehabilitative ideal." *Lyle*, 854 N.W.2d at 400. This is even more true in cases, such as Sandoval's, where the defendant is sentenced to life imprisonment because there is no possibility of release or return to the community following rehabilitation. Furthermore, Sandoval's age at the time of his offense also affects the determination of his potential for rehabilitation because youth into their early twenties may have committed such a crime due to temporary changing mental processes, rather than pervasive traits of personality (as in an adult).

The weakened justification for the penalogical goal of rehabilitation with respect to teenagers applies even in cases involving serious felonies, such as Sandoval's. As the Iowa Supreme Court has recognized:

> delinquency is normally transient, and most juveniles will grow out of it by the time brain development is complete. Additionally, juveniles are normally more malleable to change and reform in response to available treatment. *The seriousness of the crime does not alter these propositions.*

State v. Roby, 897 N.W.2d 127, 147 (Iowa 2017) (citations omitted) (emphasis added).

Sandoval was a teenager at the time of the offense. Given our increasing understanding of adolescent brain development, it is clear that Sandoval's culpability is far less than that of an adult. Accordingly, sentencing him to life imprisonment under an adult standard is grossly disproportionate. Furthermore, the traditional rationales for punishment do not apply to teenage offenders. "Even if the punishment has some connection to a valid penological goal, it must be shown that the punishment is not grossly disproportionate in light of the justification offered." *Lyle*, 854 N.W.2d at 399–400 (citing *Graham*, 560 U.S. at 72). When the punishment cannot be justified based on valid penological goals, it is grossly disproportionate to the crime.

The traditional justifications for criminal punishment are inapplicable or are less compelling in Sandoval's case due to his young age at the time of the offense. Because the punishment lacks any connection to a valid penological goal, it is grossly disproportionate in light of the justification offered. *See e.g. Lyle*, 854 N.W.2d at 399–400; *Graham*, 560 U.S. at 72.

c. The Court Should Have Provided Sandoval With an Individualized Sentencing Hearing and Considered Mitigating Factors, Including "Vulnerability to Peer Pressure", Which Is Characteristic of Teenagers

Under Iowa law, "the default rule in sentencing a juvenile is that they are not subject to minimum periods of incarceration." *Roby*, 897 N.W.2d at 144 (citations omitted). This default should likewise apply to teenagers who have reached the age of majority because their brains are also still developing. *See e.g. Null*, 836 N.W.2d at 55. In order to overcome this presumption, courts must conduct individualized sentencing hearings to assess the teenage defendant's personal circumstances. *Miller v. Alabama*, 567 U.S. 460, 478 (2012). The Iowa Supreme Court adopted and clarified these factors in a series of cases. *See e.g. State v. Lyle*, 854 N.W.2d 378, 403 (Iowa 2014), *as amended* (Sept. 30, 2014); *State v. Ragland*, 836 N.W.2d 107, 115 (Iowa 2013); *Roby*, 897 N.W.2d at 145-147.

The first factor is the "age of the offender and the features of youthful behavior." *Roby*, 897 N.W.2d at 145 (citations omitted). As the Iowa Supreme Court has recognized, "the time when a seventeen-year-old could seriously be considered to have adult-like culpability has passed." *State v. Lyle*, 854 N.W.2d 378, 398 (Iowa 2014), *as amended* (Sept. 30, 2014) (citations omitted). Likewise, a growing scientific consensus shows that teenage brains are still developing and so teenagers who have reached the

age of majority are also less culpable than adults. In considering this factor, courts must remember that "age is not a sliding scale that necessarily weighs against mitigation the closer the offender is to turning eighteen years old at the time of the crime." *Roby*, 897 N.W.2d at 145. Rather, this factor "allows for the introduction of evidence at the sentencing hearing to show the offender had more or less maturity, deliberation of thought, and appreciation of risk-taking than normally exhibited by juveniles." *Id* (citations omitted). In this case no such evidence was considered, thus undermining any contention that Sandoval's sentence is not grossly disproportionate, given his age.

The second factor is also best addressed with expert testimony to "assess how the family and home environment may have affected the functioning of the juvenile offender." *Id* at 146 (citations omitted). As with the first factor, no such evidence was considered, thus undermining confidence in a finding that Sandoval's sentence is not grossly disproportionate, given his age.

"The third factor considers the circumstances of the crime. *Roby*, 897 N.W.2d at 146 (citations omitted). Compellingly, "the circumstances of the crime do not necessarily weigh against mitigation when the crime caused grave harm or involved especially brutal circumstances." *Id*. Instead,

"[w]ithin these circumstances, attention must be given to the juvenile offender's actual role and the role of various types of external pressure. Thus, this factor is particularly important in cases of group participation in a crime." *Id.* In this case, Sandoval's older brother was his codefendant. This indicates a strong degree of peer pressure. Moreover, Sandoval at most abetted codefendant Perez-Catillo's murder. He is not alleged to have instigated the conflict, produced a weapon, or fired any fatal shots. *Sandoval*, 2006 WL 3018152. These circumstances demonstrate that Sandoval has a lesser degree of culpability, which suggests a finding that his sentence is grossly disproportionate. *Bruegger*, 773 N.W.2d at 875 (citing *Solem*, 463 U.S. at 293) (stating "the culpability of the offender, including his intent or motive in committing a crime, may be considered in determining the proportionality of the penalty to the offense."). This is consistent with Eighth Amendment jurisprudence, which recognizes, "American criminal law has long considered a defendant's intention-and therefore his moral guilt-to be critical to 'the degree of [his] criminal culpability' ". *Enmund*, 458 U.S. at 800.

The fourth factor focuses on the "general proposition that youthful offenders are less able to confront the legal process." *Roby*, 897 N.W.2d 147. "It mitigates against punishment because juveniles are generally less

capable of navigating through the criminal process than adult offenders." *Id* at 146. In this case, Sandoval was at a particular disadvantage in navigating the legal process because, in addition to his young age, he had immigrated to the United States only days before the offense, was completely ignorant of American culture and norms, and he did not speak any English. This factor also weighs in favor of finding Sandoval's sentence was grossly disproportionate.

Finally, he fifth factor courts must consider in individualized sentencing hearings for teenagers is "the possibility of rehabilitation and the capacity for change." *Id* at 147 (citations omitted). In considering this factor, "judges cannot necessarily use the seriousness of a criminal act, such as murder, to conclude the juvenile falls within the minority of juveniles who will be future offenders or are not amenable to reform. Again, any such conclusion would normally need to be supported by expert testimony. *Id* (citations omitted). Rather, courts must consider that "delinquency is normally transient, and most juveniles will grow out of it by the time brain development is complete" *Id* (citations omitted). A finding to the contrary "would normally need to be supported by expert testimony." *Id*. In this case, no such evidence was presented, further undermining any contention that Sandoval's sentence is not grossly disproportionate, given his age.

Under a proper analysis of the factors for teenage offenders, these "factors identify the primary reasons most juvenile offenders should not be sentenced without parole eligibility." *Id.* Accordingly, failure to conduct individualized sentencing denied Sandoval adequate consideration of his personal circumstances as a teenage defendant, and increased his risk of being subject to a grossly disproportionate sentence. Additionally "the factors must not normally be used to impose a minimum sentence of incarceration without parole unless expert evidence supports the use of the factors to reach such a result." *Id*. The lack of expert witness further increased Sandoval's risk of being subject to a grossly disproportionate sentence. Accordingly, Sandoval's case should be remanded for consideration of individualized sentencing factors for teenage defendants.

ii. Sandoval's Sentence Compared to Sentences Imposed on Other Criminal Defendants in the Same Jurisdiction

The second step of the *Solem* test requires the court to compare Sandoval's sentence to the sentences imposed on other criminal defendants in the same jurisdiction. *Solem*, 463 U.S. at 292. In this case, because of Sandoval's young age at the time of the offense, the most appropriate comparison is with other youthful offenders. Under Iowa law, given "the

special considerations involved in sentencing a juvenile offender to an adult sentence [. . .] an appellate court should view such a sentence as inherently suspect,' and 'cannot merely rubber-stamp the trial court's sentencing decision.' " *Roby*, at 138.

Accordingly, the Iowa Supreme Court has considered treatment of youthful offenders in a variety of circumstances and held:

> the fact ... a defendant is nearing the age of eighteen does not undermine the teachings of *Miller*." *Seats*, 865 N.W.2d at 557. The features of youth identified in *Roper* and *Graham* simply do not magically disappear at age seventeen—or eighteen for that matter. *See* Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 60 (2008) ("[S]ubstantial psychological maturation takes place in middle and late adolescence and even into early adulthood."); *see also Null*, 836 N.W.2d at 55 ("[T]he human brain continues to mature into the early twenties."). While older teenagers may show greater intellectual development, that is not the same as the maturity of judgment necessary for imposing adult culpability. As Steinberg asks rhetorically, "If adolescents are so smart, why do they do such stupid things?" Steinberg at 69. We thus do not find chronological age is a reliable factor that can be applied by the district court to identify those uncommon juveniles that may merit life without the possibility of parole.

State v. Sweet, 879 N.W.2d 811, 838 (Iowa 2016).

The Iowa Supreme Court has recognized the science and law are still in flux regarding treatment of teenage offenders, but acknowledges "[i]n many ways, we are still understanding how brain science can make our juvenile justice system better." *Roby*, 897 N.W.2d at 141. The Court has also

repeatedly recognized "an emerging consensus in neuroscience has revealed the human brain is not fully developed until the early to mid-twenties." *Sweet*, 879 N.W.2d at 837 (citing *Roper*, 543 U.S. at 568–74; *also citing* Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* 71 (2014)).

Moreover, the prohibition on cruel and unusual punishment in Iowa, and federally, "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *State v. Sweet*, 879 N.W.2d 811, 818 (Iowa 2016); *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Accordingly, the time is ripe for reconsideration of treatment of teenage defendants who have reached the age of majority, especially considering that teenagers' "diminished culpability means [punishment] risks being excessive." *Roby*, 897 N.W.2d at 142.

Iowa has also recognized that youth under the age of twenty-one require protection in a variety of areas. For instance, "[i]n Iowa, youth under age twenty-one are not permitted access to alcohol, Iowa Code § 123.47, or to engage in pari-mutuel betting, *id.* § 99D.11(7)." *State v. Null*, 836 N.W.2d at 53. People are held criminally liable for permitting youth under the age of 21 to gamble (Iowa Code § 725.19(2)); purchase alcohol (Iowa Code § 123.47(1)); or possess a firearm (Iowa Code § 724.22(1)). Clearly, the State

of Iowa has acknowledged youth between the ages of eighteen and twenty-one are different than adults, and require additional legal protections. Likewise, youth under the age of twenty-one should be given the protection of individualized sentencing, taking their youth and still developing brains into account.

As the Iowa Supreme Court has recognized, "[t]he features of youth identified in *Roper* and *Graham* simply do not magically disappear at age seventeen—or eighteen for that matter." *Sweet*, 879 N.W.2d at 838 (citations omitted). Accordingly, the scientific basis for treating juvenile sentencing differently than adult sentencing applies equally to sentencing of teenagers who have reached the age of majority, like Sandoval. Therefore, comparison to sentencing cases for juvenile teenagers provides the appropriate comparison in this case.

In *State v. Sweet*, the Iowa Supreme Court "adopt[ed] a categorical rule that juvenile offenders may not be sentenced to life without the possibility of parole under article I, section 17 of the Iowa Constitution." 879 N.W.2d at 839. There is a scientific consensus that the particular characteristics of developing brains continue into a person's early twenties. *Id* at 838. This incomplete mental development is the reason juveniles can not be subject to life imprisonment or mandatory minimum sentences

without the possibility of parole under the Iowa Constitution, Article I, § 17. *Id*; *Lyle*, 854 N.W.2d at 398. Accordingly, the Court should likewise find that Sandoval's life and mandatory minimum sentences violate Article I, § 17 of the Iowa Constitution because they "are simply too punitive for what we know about juveniles" and teenage offenders. *State v. Lyle*, 854 N.W.2d at 400.

iii. Sandoval's Sentence Compared to Sentences in Other Jurisdictions

Under the third step of the *Solem* test, courts must compare Sandoval's sentence to those imposed under similar circumstances in other jurisdictions. *Solem*, 463 U.S. at 292. There is a growing national trend to recognize that youth are different. In *Roper v. Simmons*, the U.S. Supreme Court held that capital punishment of juveniles is a violation of due process and of their rights against cruel and unusual punishment. 543 U.S. 551, 568 (2005). In *Miller v. Alabama*, the U.S. Supreme Court held that mandatory life without parole sentences for juveniles also violates the 8th Amendment. 567 U.S. 460 (2012).

These "rulings of the United States Supreme Court create a floor, but not a ceiling," for interpreting constitutional protections, such as the prohibition against cruel and unusual punishment. *Sweet*, 879 N.W.2d at

832. States are currently in a process of deciding what level of protection to provide youth who commit crimes. *See e.g. Diatchenko v. District Attorney*, 466 Mass. 655, 1 N.E.3d 270, 276 (2013) (banning life without parole sentences for juveniles); *Bun v. State*, 296 Ga. 549, 769 S.E.2d 381, 383–84 (2015), *disapproved on other grounds by Veal v. State*, 298 Ga. 691, 784 S.E.2d 403, 411–12 (2016) (upholding life without parole sentences for juveniles); *Conley v. State*, 972 N.E.2d 864, 879–80 (Ind.2012) (banning life without parole sentences for juveniles); *State v. Houston*, 353 P.3d 55, 76–77 (Utah 2015) (banning life without parole sentences for juveniles). Even within other jurisdictions, courts are vigorously debating what protections to provide juvenile offenders with strong dissenting opinions. *Sweet*, 879 N.W.2d at 836 (citations omitted).

Although states are still debating, the trend toward more individualized sentencing for youthful offenders is growing. In the three years after *Miller* was decided, "nine states have abolished life-without-the-possibility-of-parole sentences for juveniles, thereby establishing a clear direction toward abolition of the life-in-prison death penalty for juveniles." *Sweet*, 879 N.W.2d at 835 (citations omitted). Furthermore, "since *Miller*, the number of juveniles actually sentenced to life without the possibility of parole has dramatically decreased [so that] thirteen additional states [have]

functionally barred the practice." *Id* at 835 (citation omitted). In 2016, the Iowa Supreme Court held that "evidence of consensus on the general proposition that 'youth are different' is not subject to dispute." *Sweet*, 879 N.W.2d at 836.

Although Iowa courts give respectful consideration to decisions in other jurisdictions, they will not delay justice waiting for a national consensus. As the Iowa Supreme Court has stated recently:

> We also recognize that we would abdicate our duty to interpret the Iowa Constitution if we relied exclusively on the presence or absence of a national consensus regarding a certain punishment. Iowans have generally enjoyed a greater degree of liberty and equality because we do not rely on a national consensus regarding fundamental rights without also examining any new understanding.

State v. Lyle, 854 N.W.2d 378, 387 (Iowa 2014), *as amended* (Sept. 30, 2014).

Iowa is at the forefront in recognizing the importance of the unique characteristics of youth in the sentencing context. Iowa was one of the first states to categorically prohibit imposition of life without parole for juvenile offenders. *Sweet*, 879 N.W.2d at 839. This is consistent with Iowa's tradition of leading the way in protecting individual liberties, even those of criminal defendants and convicted criminals. The Iowa Supreme Court has repeatedly held, "United States Supreme Court cases are entitled to respectful

consideration" however, "we may apply the standard more stringently than federal case law." *State v. Pals*, 805 N.W.2d 767, 771-72 (Iowa 2011). "In other words, although this court cannot interpret the Iowa Constitution to provide less protection than that provided by the United States Constitution, the court is free to interpret our constitution as providing greater protection for our citizens' constitutional rights." *State v. Cline*, 617 N.W.2d 277, 285 (Iowa 2000) *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001).

Because the Iowa Supreme Court uses an independent analysis to provide greater protections to its citizens, Iowa Constitutional law has "been a crucial font of equality, civil rights, and civil liberties from the incipience of our republic." *State v. Baldon*, 829 N.W.2d 785, 791 (Iowa 2013). Iowa has a particularly impressive history of providing greater protections under the Iowa Constitution than the federal government provides under the United States Constitution:

> In the first reported case of the Supreme Court of the Territory of Iowa, *In re Ralph*, 1 Morris 1 (Iowa 1839), we refused to treat a human being as property to enforce a contract for slavery and held our laws must extend equal protection to persons of all races and conditions. 1 Morris at 9. This decision was seventeen years before the United States Supreme Court infamously decided *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1856), which upheld the rights of a slave owner to treat a person as property. Similarly, in *Clark v. Board of Directors*, 24 Iowa 266 (1868), and *Coger v. North West.*

> *Union Packet Co.*, 37 Iowa 145 (1873), we struck blows to the concept of segregation long before the United States Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).
>
> . . . . .
>
> In each of those instances, our state approached a fork in the road toward fulfillment of our constitution's ideals

Varnum v. Brien, 763 N.W.2d 862, 877 (Iowa 2009).

The Iowa Supreme Court has also demonstrated its commitment to parting from United States Supreme Court analysis of similar provisions when justice requires greater protection of criminal defendants. *See e.g. State v. Cline*, 617 N.W.2d at 293; *State v. Ochoa*, 792 N.W.2d 260, 291 (Iowa 2010); *State v. Pals*, 805 N.W.2d at 771-72, *State v. Short*, 851 N.W.2d 474, 489 (Iowa 2014). For instance, in *State v. Cline*, the Iowa Supreme Court refused to follow the United States Supreme Court's approval of a good faith exception to suppression in illegal search cases because it would be "incompatible with the Iowa Constitution." 617 N.W.2d at 292-93. In *State v. Ochoa*, the Iowa Supreme Court refused to allow warrantless, suspicionless searches of parolee's motel rooms, because such searches would violate the guarantees of Article 1, Section 8 of the Iowa Constitution, even though such a search was allowed under the 4th Amendment of the U.S. Constitution. 792 N.W.2d 260, 292 (Iowa 2010). In *State v. Short*, the Iowa Supreme Court declined to follow the U.S. Supreme

Court in weakening the warrant requirement in search and seizure cases. 851 N.W.2d at 506.

Iowa courts have continued this tradition of zealously protecting individual rights in the context of juvenile sentencing. In *State v. Sweet*, the Court adopted a categorical rule that juveniles could not be subject to sentences of life without the possibility of parole. 879 N.W.2d at 839. In *State v. Lyle*, the court held that mandatory minimum sentences were not constitutional as applied to juveniles. 854 N.W.2d at 381. Although most other jurisdictions have not provided such protections at this time, the Iowa courts are leading the country in examining new understandings of fundamental rights and providing "a greater degree of liberty and equality." *State v. Lyle*, 854 N.W.2d at 386.

As with juvenile sentencing generally, Iowa courts should examine the growing body of scientific evidence showing that "the human brain continues to mature into the early twenties". *Null*, 836 N.W.2d at 55. Accordingly, the Court should apply the same protections, such as the prohibition on life sentencing, to teenage offenders who have reached the age of majority, such as Sandoval, as provided to juvenile offenders. The court should also require the same individualized sentencing standards be applied to Sandoval's case as to juvenile cases because these same youthful

characteristics "of 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.' " *Miller*, 567 U.S. 460.

CONCLUSION

The Court should reverse the trial court's decision and remand for a new criminal trial.

Alternatively, the Court should vacate the sentence imposed by the trial court for Sandoval's convictions. The Court should remand this case for resentencing and order that the sentencing court consider the *Miller* mitigating factors in resentencing Sandoval.

Alternatively, the Court should remand to the postconviction trial court to allow further development of the record and a new postconviction trial.

ATTORNEY'S REQUEST FOR ORAL ARGUMENT

The Appellant requests the opportunity to present oral argument in this appeal.

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost incurred by Benzoni Law Office, P.L.C., for printing the attached Appellant's Brief was $6.60.

ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(l) or (2) because it contains 10,749 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(l).

2. This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(l)(e) and the type-style requirements of Iowa R. App. P. 6.903(l)(f) because it has been prepared in a proportionally spaced typeface using WordPerfect X3 in Times New Roman 14 point font.

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