IN THE SUPREME COURT OF IOWA
Supreme Court No. No. 23-1122
Jefferson County No. FECR005143

STATE OF IOWA,
Plaintiff–Appellee,

vs.

WILLARD CHAIDEN MILLER,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JEFFERSON COUNTY
THE HONORABLE SHAWN SHOWERS, JUDGE

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **Whether the district court abused its discretion is sentencing Miller.**

II. **Whether the Iowa Constitution categorically prohibits sentencing a juvenile to a minimum term without an expert's testimony.**

III. **Whether the Iowa Constitution categorically prohibits minimum terms of incarceration.**

ROUTING STATEMENT

The State agrees retention is appropriate. Appellant's Br. 9. Only the Iowa Supreme Court can clarify whether expert testimony is only "normally" necessary or is categorically required under the Iowa Constitution. *See State v. Roby*, 897 N.W.2d 127, 145–48 (Iowa 2017); *State v. White*, 903 N.W.2d 331, 333–34 (Iowa 2017). And only that Court can decide to overrule *Roby*'s subdivision III(d) altogether. *State v. Eichler*, 83 N.W.2d 576, 578 (Iowa 1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves."). The case should be retained. Iowa Rs. App. P. 6.1101(2)(b), (f).

NATURE OF THE CASE

"[T]he taking of innocent life is considered the greatest universal wrong." *State v. Izzolena*, 609 N.W.2d 541, 550 (Iowa 2000). After Willard Noble Chaiden Miller pleaded guilty to premeditated first-degree murder, the district court ordered him to serve a life sentence with the possibility of parole after thirty-five years. Miller challenges his sentence and presents two categorical challenges to Iowa's juvenile sentencing practices.

STATEMENT OF THE FACTS

The factual basis in this record contained more than the limited and self-serving statements Miller provided at his guilty plea. *See* D0434 PleaTr. at 6:11–7:5; 8:22–10:4 (9/27/2023). The State offered and Miller

acknowledged the minutes of testimony supported his plea. D0434 at 6:11–7:5; 10:6–11:20. Collectively, they showed that sixteen-year-old Miller was performing poorly in Nohema Graber's Spanish class at Fairfield High School. D0018 Mins.of Test at 2–4 (11/12/2021); D0275 Sec.Attch.Kinsella at 2 (3/15/2023); D0275 Sec.Attch.Kedley at 4 (3/15/2023). He thought she treated him unfairly. *Id.* He thought a failing Spanish grade would interfere with his plans to study in Spain. D0275 Sec.Attch.Kedley at 3. So he decided to kill her. D0275 Sec.Attch.Kinsella at 2–3; D0275 Sec.Attch.Kedley at 3–4.

He planned the murder for at least two weeks. D0275 Sec.Attch.Kinsella at 3; D0275 Sec.Attch.Kedley at 3–5. He joked openly to classmates about his dislike of and desire to kill Graber. D0275 Sec.Attch.Kinsella at 2. And he enlisted one of his best friends, Jeremy Goodale, to assist him. D0275 Sec.Attch.Kinsella at 2–3.

The two coordinated via Snapchat and Instagram. D0275 Sec.Attch.Kedley at 5. They surveilled Graber, learning her routine. D0275 Sec.Attch.Kedley at 5, 6, 7. Every day she would leave Fairfield High School and go to walk at Chautauqua Park. They developed a plan to sneak up behind and strike Graber with a baseball bat, drag her body from the trail, and hide it. D0275 Sec.Attch.Kinsella at 4, 5, 6, 7.

Miller decided they would do it over a four-day weekend. D0275 Sec.Attch.Kinsella at 5. He and Goodale would not be in school and would have time to prepare. D0275 Sec.Attch.Kinsella at 5. On November 1, they executed Miller's plan.

After Miller, his mother, and Graber had a meeting that afternoon about Miller improving his performance and his grades in her class, Graber acted as she normally would. D0018 at 3, 15, 16. She left the school and went to Chautauqua Park to walk. Miller and Goodale were already there. Goodale acted as a lookout, and as Graber approached, he nodded to Miller to signal "it was all clear." D0275 Sec.Attch.Kinsella at 5.

Although Miller denied it when offering his plea, the minutes of testimony show he struck the first blow. D0434 at 9:3–11:20; *see also* D0275 Sec.Attch.Kinsella at 7. Graber was hit in the head multiple times with a baseball bat, but she was not dead. D0275 Sec.Attch.Kinsella at 5, 8. Goodale then struck her again and again after he heard her make gurgling sounds. D0275 Sec.Attch.Kinsella at 6, 7, 10. The two dragged Graber into a strip of woods and left her body. D0275 Sec.Attch.Kinsella at 7. Miller then took Graber's keys, got into her van, and he and Goodale moved it to a wooded area beyond a dead-end on Middle Glasgow Road—a spot police knew highschoolers often frequented. D0275 Sec.Attch.Kinsella at 7; D0018

at 9–12, 15–16. Although they planned to destroy her phone, they could not find it. D0275 Sec.Attch.Kinsella at 4, 7, 9. Instead, they took $75 cash from her wallet: Miller decided Goodale should get $40.00 for being recruited into Miller's plan. D0275 Sec.Attch.Kinsella at 9. The two went their separate ways.

Near midnight, they reconvened to dispose of Graber's body. Miller left a red wheelbarrow outside his house for Goodale to bring along. D0275 Sec.Attch.Kinsella at 7. Goodale brought it, a tarp, and a shovel to the park. D0275 Sec.Attch.Kinsella at 7. Miller was already there, using a flashlight to find and clean blood from the trail with disinfectant wipes; he also picked up leaves with blood on them. D0275 Sec.Attch.Kinsella at 7–8, 10. They then moved her body again. D0275 Sec.Attch.Kinsella at 8. When they realized they could not bury her because the ground was frozen, they put the tarp and then the wheelbarrow on her body. D0275 Sec.Attch.Kinsella at 8, 11; D0018 at 12. They left the park, and got drunk. D0275 Sec.Attch.Kinsella at 8.

In the days that followed, Miller told another student "I caught a body with a baseball bat." D0018 at 16. Goodale was even less discrete. He directly told others he had killed Graber. D0275 Sec.Attch.Kinsella at 11, 13; D0199 Sec.Attch. at 1 (8/2/2022); D0193 Sec.Attch. at 1–4 (6/15/2022). He

asked some for their help in burying her body. D0018 at 15; D0199 Sec.Attch. at 1. He boasted and his messages lacked remorse. D0199 Sec.Attch. at 2–5; D0193 Sec.Attch. 1–2 (discussing a picture of a partially obscured Goodale wearing a white hooded sweatshirt sleeve with a blood stain and the text "POV you're my Spanish teacher and this is the last thing you see"). People he messaged, including John Burnett and Ben Allen, went to police. D0018 at 15; D0193 Sec.Attch. at 1–2.

When police interviewed Miller, he initially denied any knowledge of Graber's murder. D0018 at 3–6. But when pressed, his story changed repeatedly, each version became more incriminating. *Compare* D0018 at 3–6 *with* 6–11. He was taken into custody. While Miller and Goodale were in detention, Miller "was telling [Goodale] to say there were eight (8) people from Ottumwa involved in Mrs. Graber's murder." D0275 Sec.Attch.Kinsella at 11. Miller told Goodale "he had made up a very convincing lie that would throw [police] off." *Id.*

JURISDICTIONAL STATEMENT

The State does not contest jurisdiction. *See State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020); Iowa Code § 814.6(1)(a)(3).

ARGUMENT

I. The district court did not abuse its discretion in sentencing Miller.

Preservation of Error

The State does not contest error preservation. A defendant may challenge sentencing errors on direct appeal absent an objection in the district court. *See State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010).

Standard of Review

The Iowa Supreme Court reviews sentencing procedure claims—including review of discretionary sentences for juvenile offenders—for an abuse of discretion. *See State v. Majors*, 940 N.W.2d 372, 385 (Iowa 2020); *State v. Crooks*, 911 N.W.2d 153, 173 (Iowa 2018); *see also State v. Roby*, 897 N.W.2d 127, 137 (Iowa 2017) ("When there is an appropriate sentencing procedure there is no constitutional violation. . . . [I]f the district court follows the sentencing procedure we have identified and a statute authorizes the sentence ultimately imposed, then our review is for abuse of discretion.").

A sentence that conforms to the statute "is cloaked with a strong presumption in its favor . . ." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). This presumption continues to exist when reviewing a sentence imposing a minimum term of incarceration on a juvenile offender. *See*

Majors, 940 N.W.2d at 387. An abuse of discretion is found only if "the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable." *Id.* And more specifically, when reviewing a district court's sentence for a juvenile, the Iowa Supreme Court clarified an abuse of discretion may be found where

> a sentencing court fails to consider a relevant factor that should have received significant weight, gives significant weight to an improper or irrelevant factor, or considers only appropriate factors but nevertheless commits a clear error of judgment by arriving at a sentence that lies outside the limited range of choice dictated by the facts of the case.

Majors, 940 N.W.2d at 385, 387 (quoting *Roby*, 897 N.W.2d at 138).

When reviewing a lower court's sentence, our appellate courts "trust the sentencing courts to know, after applying the factors, when a mandatory minimum term of incarceration for juvenile offenders is warranted." *Id.* at 387. Its review is not to decide the sentence they would have imposed, but whether the court's sentence was unreasonable. *See Formaro*, 638 N.W.2d at 725. "[T]he choice of one particular sentencing option over another [does not] constitute[] error. Instead, it explains the discretionary nature of judging and the source of the respect afforded by the appellate process." *Id.* at 725.

Merits

After he admitted he was guilty of first-degree murder—one of Iowa's gravest crimes—Miller attacks the district court's sentence of life imprisonment with the possibility of parole after serving thirty-five years. He alleges the district court unlawfully presumed it should order a minimum prison term and that it misapplied the *Miller*/Lyle/*Roby* factors by treating them as aggravating factors. This Court should reject each argument and affirm.

A. The district court did not start with a presumption that a minimum term was necessary. Miller and the circumstances of his crime convinced the court one was.

Miller first alleges the district court "inappropriately started with the presumption that a minimum term would be issued in Miller's case." Appellant's Br. 18–20. The record paints a different picture.

The timing of the sentencing judge's comments defeats Miller's claim. It would be one thing had the judge opened this sentencing hearing announcing it believed a minimum sentence was necessary. It is quite another when it discusses the necessity of a minimum after the parties had been presented an opportunity to present information to the court, the court considered that information and the PSI, received victim impact statements, and reviewed the available sentencing options and the

applicable sentencing factors. At that point, the court received information rebutting a default presumption against a minimum sentence and it could conclude a minimum was warranted. "While there is a presumption against minimum terms of incarceration for juvenile offenders, we have expressly upheld, even commanded, their use if the court concludes that sentence is warranted after consideration of the factors." *Majors*, 940 N.W.2d 372, at 387.

That occurred here. Before the statements Miller challenges, the judge explained what it had reviewed when it started delivering its sentence:

> Mr. Miller, I've considered all the sentencing options provided for in Chapters 901, Chapters 902 and 907 of the Iowa Code, and my judgment relative to sentence is based on the 25 factors I'm required to consider for you under the Iowa Code for sentencing juveniles to First Degree Murder.
>
> Primarily, I'm looking at rehabilitation and protection from the community from further offenses like this by you and others. And in selecting a sentence for you, I've considered your age, and I'll go in depth with that, the contents in the presentence investigation, the plea agreement reached by the parties, and in sentencing you, since you were a juvenile when you committed this crime, the sentencing requires me to conduct a more thorough finding of sentencing pursuant to Iowa Code 902.1(2)(2).
>
> . . . .

> Mr. Miller, this is a lengthy record that I'm going to make, but I'm just going to go down the list here and tell you what I have to consider, not just from this case law, *State v. Roby* has been talked about; *State v. Lyle*. I think *State v. Majors* was one that was discussed by your attorney. The legislature codified these factors under 902.1(2)(2).

D0438 at 160:22–161:10; 162:1–6. The Court then walked step-by-step through each of Iowa Code sect 902.1(2)'s factors and explained its reasoning, applying the circumstances in the minutes of testimony, the plea hearing, and the sentencing hearing. D0438 at 162:7–170:21. The judge complied with what Iowa's statutes and caselaw required.

It is true the district court stated it "would not be doing my job if I didn't impose some sort of mandatory minimum," but context for that statement is key:

> And there was some discussion about a mandatory minimum. I am going to issue a mandatory minimum on this case. If I gave the Board of Parole the option to release you without a mandatory minimum, *it would be contrary to the public safety of the community you would reside in and to the residents of the community you reside in.*
>
> There was some discussion about there being an expert to impose a mandatory minimum. That normally would be a matter for expert testimony. *This is far from a normal case.* And to the extent the mandatory minimum is an issue, *I think the facts and circumstances of this case demand it,* and I would not be doing my job if I didn't impose some sort of mandatory minimum.

D0438 at 163:5–16 (emphasis added). The judge's statement was based on its review of Miller, Miller's crime, and the relevant sentencing criteria. *See* Iowa Code §§ 901.5, 902.1(2)(a)(2)(*c*), (*e*), (*h*). It was a frank discussion of the serious circumstances of Miller's crime. *See State v. Wilson*, No. 20-0965, 2021 WL 2708949, at *2–*3 (Iowa Ct. App. June 30, 2021) (rejecting claim court abdicated its discretion for a fixed sentencing policy, "While the court stated its reasonable lack of tolerance for gun violence, it also went on to address the individualized circumstances of Wilson's conduct and why those circumstances are troublesome and weighed in favor of imposing a prison sentence. The court fashioned its sentence to both the crime and individual and therefore did not abuse its discretion."). This was permissible and does not show the judge acted on an improper presumption of a minimum.

In the same vein, the judge's later statement "evil does not have a birthday" is also unobjectionable in its proper context. As it provided its final explanation for its discretionary sentence, the judge touched upon this Court's sentencing precedent to explain why it believed a minimum sentence was warranted:

> In the case your attorney cited earlier, *State v. Majors*, Justice Waterman wrote, "Our earlier opinions have been criticized for running the risk of making it difficult, if not impossible, for a sentencing

judge to ever impose any minimum term of incarceration. Yet, as we indicated in *Roby*, mandatory minimum sentences are permissible. While there is a presumption against minimum terms of incarceration for juvenile offenders, we have expressly held, even commanded their use, if the Court concludes that sentence is warranted after consideration of the factors."

And those factors are what I just went through, Mr. Miller, and based on recent Iowa precedent, I'm not allowed to consider a sentence of life in prison without the possibility of parole, which is permissible in most other jurisdictions.

Certainly, a high school junior who formulates a plan —or a high schooler that formulates a plan with his friend and murders his Spanish teacher is a dangerous person to the community.

The definition of malice is the intention or the desire to do evil, and evil does not have a birthday. This Court cannot overrule precedent. However, I will not gloss over the fact that you and Mr. Goodale cut Nohema Graber's precious life short. That will not be justice, regardless of your age, Mr. Miller.

The bedrock of our criminal justice testimony is deterrence and rehabilitation. And, ultimately, while acknowledging your youth and developing brain, I find that your intent and actions were sinister and evil. Those acts resulted in the intentional loss of human life in a brutal fashion. There's no excuse. There is not a systemic societal problem that explains or justifies your actions.

The Court finds, based on the nature and circumstances of this offense, along with the required 25 factors that I am to consider in sentencing a juvenile in the state of Iowa for Murder in the First Degree, that the defendant, Willard Nobel Chaiden

> Miller, should be sentenced to life with the possibility of parole after 35 years.
>
> This sentence is permissible under the Iowa law. The 35-year mandatory minimum is not cruel and unusual punishment for the defendant as it represents the appropriate time of incarceration for the defendant and Mr. Goodale's premeditated murder.

D0438 at 171:5–172:21. Again, the judge's explanation was tethered to the circumstances before it and relevant sentencing criteria. *See* Iowa Code §§ 902.1(2)(a)(2)(*b*), (*c*), (*e*), (*h*), (*j*), (*o*), (*p*); 901.5. This was proper. *See Goodwin*, 936 N.W.2d 634, 645 (Iowa 2019) ("Indeed, '[i]f the mandatory minimum period of incarceration is warranted,' we have commanded [our judges] to impose the sentence" and that "Our sentencing courts can and should consider the heinous nature of the crime in evaluating whether to impose a mandatory minimum sentence." (alteration in original)).

Finally, this Court should reject Miller's passing suggestion that the judge's statements "shifted the burden to convince the court" to him to convince it a minimum term was not necessary. Appellant's Br. 20. The judge never stated Miller had a burden. Even in juvenile sentencings, this Court will not presume a district court misapplied the law—the defendant must show the court abused its discretion. *Crooks*, 911 N.W.2d 171. Miller has not done so, and that means this Court should affirm.

B. The district court correctly complied with its duties when it considered and applied Iowa Code section 902.1(2)(a)(2)'s criteria against the available information in the record.

Next, Miller alleges that the district court applied sentencing factors as aggravating instead of mitigating. Appellant's Br. 20–27. Much of his complaints are about the district court conducting its duties under Iowa Code section 902.1(2)(a)(2). That is not grounds for resentencing.

Because he was convicted of an "A" felony, the district court needed to consider more than just the *Miller*/*Lyle*/*Roby* factors. *See* Iowa Code § 902.1(2)(a)(2). Under section 902.1(2) the court needed to consider twenty-two factors against the available information in record. *Id.* This was within the legislature's prerogative to require. *See State v. Zarate*, 908 N.W.2d 831, 851 (Iowa 2018) ("[T]he legislature is entitled to deference when it expands the court's discretion in the juvenile sentencing realm" and explaining that resulting legislative enactment "serves as objective indicia of Iowa's standards regarding the challenged sentencing factors."). The constitutional *Miller*/*Lyle*/*Roby* factors are included within that calculus. *See* Iowa Code §§ 902.1(2)(q)–(u). Section 902.1(2) includes other factors a court may consider aggravating. While this Court's precedent holds the constitution-based factors must ordinarily be considered in a mitigating manner only, the extra factors within 902.1(2) need not be. *Zarate*, 908

N.W.2d at 854–55 ("For a sentencing court to adequately meet this goal, the relevant information in the sentencing calculation may include aggravating factors."); *see also Majors*, 940 N.W.2d at 389 (noting that district courts considering the third factor—the circumstances of the particular crime—"can and should consider the heinous nature of the crime in evaluating whether to impose a mandatory minimum sentence"); *State v. Deases*, No. 19-0562, 2020 WL 1049863, at *3–*5 (Iowa Ct. App. Mar. 4, 2020) ("We are left with a legal landscape that requires resentencing courts to treat the *Lyle* factors, including the circumstances of the crime and the prospect of rehabilitation, as mitigating, yet allows courts to treat the identical statutory factors as aggravating.").

Relying on his general status as a juvenile, Miller first questions the district court's findings he "knew what he was doing," had no previous "issues complying with the law," and was a "bright and intelligent man who committed an evil crime." Appellant's Br. 21–22; *see also* 165:9–166:4; 166:25–167:3. He views this as an indication the sentencing court did not treat the youth-based factors as mitigating. Helpfully, the district court's on-record discussion moved step by step through section 902.1(2)(a)(2)'s criteria.

Its statement, "You knew what you were doing" arose in the court's discussion of factor "(*i*)" which addresses the defendant's "capacity of the defendant to appreciate the criminality of the conduct." *See* D0438 at 165:9–21. Its statement "There's no indication [Miller] had any issues prior to November 2021 complying with the law or societal norms" was the court verbatim applying factor "(*j*)." *Compare* D0438 at 165:22–166:4 *with* Iowa Code § 902.1(2)(a)(2)(*j*). The same is true of the court's comments Miller was a "bright and intelligent young man" which arose during its application of factors "(*k*)" and "(*l*)." *See* D0438 at 166:5–167:3. All of it had a basis in the record. *See* D0310 PSI at 5–8 (6/29/2023). None of this was error.

When it ultimately applied the first *Miller*/*Lyle*/*Roby* factor "the chronological age of the defendant and the features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences" as factor "(*q*)," the judge found this was "generally a mitigating factor" and identified that his "impulsivity should reduce a small portion of a mandatory minimum time the Court would otherwise order on a 1st degree murder case . . . ." *See* D0438 at 168:17–169:18. The district court complied with its duty to apply the factor correctly.

Next, Miller attacks the court's observations that his crimes were "heinous," "cruel," and "painful." Appellants' Br. 23–24. Relying on *State v.*

Hajtic, No. 15-0404, 2015 WL 6508691 (Iowa Ct. App. Oct. 28, 2015) and *State v. Pearson*, 836 N.W.2d 88 (Iowa 2013), he urges the sentencing court could not consider the circumstances of his offense as aggravating. Not so: "Our sentencing courts can and should consider the heinous nature of the crime in evaluating whether to impose a mandatory minimum sentence." *Goodwin*, 936 N.W.2d at 647; *accord Majors*, 940 N.W.2d at 389; *Deases*, 2020 WL 1049863, at *4 (affirming sentence where district court considered the "incredibly horrific" nature of Deases's crime as "aggravating" where he sexually abused his victim's corpse after death, another defendant cut off the corpse's head, and Deases helped dispose of the head and remaining corpse). Again, the legislature directed our sentencing courts to consider the manner of the crime as one of its additional, aggravating factors. Iowa Code § 902.1(2)(a)(2)(*h*)(iii) (ordering court to consider "the severity of the offense" including "the heinous, brutal, cruel manner of the murder"). Here the district court was complying with this Court's and the legislature's directive in considering the "heinous" nature of his acts. *Hajtic* and *Pearson* do not speak to a district court's application of these statutory factors and do not assist Miller.

He also alleges the district court misapplied factor "(*t*)"—the "competencies associated with youth, including but not limited to the

defendant's inability to deal with peace officers or the prosecution or the defendant's incapacity to assist the defendant's attorney in the defendant's defense." Appellant's Br. 24–25. This is one of the *Miller*/*Lyle*/*Roby* factors integrated into the section 902.1(2). Miller asserts the district court incorrectly treated it as an aggravating factor. He is mistaken. A district court may conclude the *Miller*/*Lyle*/*Roby* factors are non-mitigating. *See Majors*, 940 N.W.2d at 387–390. While the sentencing court may not have found the factor mitigated against punishment, the judge did not state it was aggravating: "I do not find this to be a mitigating factor. You have been zealously represented by experienced and talented attorneys and have been able to present a very thorough defense."[1] D0438 at 170:4–11. It also highlighted that it found his lack of previous criminal history meant "he is a good candidate for rehabilitation." D0438 at 167:4–17. In passing, Miller suggests he "had never been involved in the criminal justice system before which means there were likely challenges involved with his defense"

[1] The record shows Miller's counsel were zealous. They sought transfer to juvenile court, filed two motions to suppress, obtained a change of venue, sought to close the proceedings to the public, and pursued two interlocutory appeals on his behalf prior to his guilty plea. *See* D0184 Order Denying Motion for Reverse Waiver (5/12/2022); D0254 Order Overruling Mtn.Supp (1/23/2023); D0290 Order Overruling Second Mtn.Supp. (3/31/2023); D0191 Order Granting Venue Change (5/31/2022); D0097 Order Re: Public Attendance (3/22/2022); D0101 Order Denying Disc.Rev. (4/7/2022); D0289 Order Denying Disc.Rev. (3/31/2023).

Appellant's Br. 24–25. This is speculation, Miller offers this Court no citation in the record to support it. His absence of proof means he has not shown the district court abused its discretion. *See generally State v. Wickes*, 910 N.W.2d 554, 572 (Iowa 2018) (restating appellate courts presume a sentence within statutory parameters is valid, and placing burden on the defendant to affirmatively show the sentencing court abused its discretion).

Fourth and finally, Miller claims the judge made an "improper assessment" in concluding he failed to show remorse until sentencing, and that he had downplayed and failed to acknowledge his role in the murder. Appellant's Br. 25–26. Again, this was a factor the legislature specifically instructed the sentencing court to consider. Iowa Code § 902.1(2)(a)(2)(*f*). What is more, it is a sentencing consideration this Court has approved. *See, e.g.*, *State v. Knight*, 701 N.W.2d 83, 86–88 (Iowa 2005); *accord. State v. West Vangen*, 975 N.W.2d 344, 355–56. Given the district court's task in determining Miller's rehabilitative needs, it could consider his remorse or lack thereof because it was highly relevant: "A defendant's acceptance of responsibility for the offense, and a sincere demonstration of remorse, are proper considerations in sentencing. They constitute important steps toward rehabilitation." *Knight*, 701 N.W.2d at 88; *see also State v.*

Harrison, 914 N.W.2d 178, 204 (Iowa 2018) (citing *Knight* and highlighting Harrison's allocution as demonstrating his of lack of remorse). And it was supported by the record. Outside of the presence of officers during his November 4 interview, Miller lamented his situation but had little remorse. *See* D0403 Sent Exh.133 at 145:25–146:2; 147:10–14; 148:4–155:1; 193:9–12; 204:11–22 (7/6/2023).[2] Instead, he blamed innocent people for his crime. *See generally* D0403 at 157:22–192:14. Even after providing his plea, Miller's statements to the PSI author lacked credible remorse for anyone other than himself. *See* D0310 at 14 ("When asked how he feels emotionally on a daily basis, the defendant stated, 'confident and collected.'"), 15–16 ("At first, I felt I couldn't be guilty because I did not actually hit Mrs. Graber. I only touched Mrs. Graber one time with my foot while moving her. In looking back, I see I made the plan, and I brought the bat."). The Court could fairly conclude Miller had not displayed remorse until his allocution.

All of Miller's challenges to his sentence fail. This Court should affirm.

[2] The exhibit is a condensed version of the transcript of Miller's November 4, 2021 interview. The State's citations are to the individual transcript pages and not to the .pdf pagination.

II. This Court should reject Miller's categorical challenge—it should not expand *Roby* to prohibit any minimum term of incarceration without expert testimony.

Preservation of Error

The State cannot contest error preservation. *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009).

Standard of Review

The standard of review on a categorical constitutional challenge is de novo. *Zarate*, 908 N.W.2d at 840.

Merits

Assuming his challenges to his sentence fails, Miller asks then this Court to review a challenge to Iowa's sentencing practices. Cruel-and-unusual-punishment claims to a sentence come in two varieties: a categorical approach, seeking to invalidate a general sentencing practice, and a gross disproportionality comparison of a particular defendant's sentence with the seriousness of his crime. *See State v. Oliver*, 812 N.W.2d 636, 640 (Iowa 2012). Miller's claim is the former. He asks this Court "to extend its protections of youthful offenders and find it is cruel and unusual punishment to sentence a juvenile without expert testimony concerning their youthful characteristics before imposing a mandatory minimum" and what is more, "the State should be the party required to present" it. Appellant's Br. 30, 35, 41.

When addressing categorical challenges, this Court first reviews "objective indicia of society's standards, as expressed in legislative enactments and state practice to determine whether a national consensus for or against the sentencing practice at issue exists. *See, e.g.*, *Harrison*, 914 N.W.2d at 197. Next the Court examines its own precedents and its interpretation of the Iowa Constitution's "text, history, meaning, and purpose" to guide the Court's independent judgment on the constitutionality of the sentencing practice. *Id.* (quoting *Zarate*, 908 N.W.2d at 843). In doing so, the Court will also assess the culpability of the class of offender at issue, the severity of the punishment, and whether the sentencing practice furthers legitimate penological goals. *Id.* (quoting *State v. Lyle*, 854 N.W.2d 378, 386 (Iowa 2014)). Miller's challenge fails each inquiry.

A. There is no national consensus requiring expert testimony before a murderer can be sentenced to prison.

No national consensus favors requiring expert testimony before a district court may incarcerate. Even Miller recognizes he has no support outside of Iowa. Appellant's Br. 31–34 ("Miller recognizes that no other court has held there is a constitutional requirement for an expert to testify during a juvenile sentencing."). Other courts have found expert evidence

helpful, but not mandatory. *See Alexander v. State*, 333 So.3d 19, 25 (Miss. 2022) ("This Court has 'never held that expert testimony is required in a *Miller* hearing.'"); *Love v. State*, 848 S.E.2d 882, 889 (Ga. 2020) ("[N]othing in *Miller*, *Montgomery*, or *Veal v. State*, 784 S.E.2d 403 (Ga. 2016)] requires the use of an expert to aid a court in making a determination that a juvenile offender is irreparably corrupt."); *Davis v. State*, 415 P.3d 666, 684 (Wy. 2018) (expert testimony appropriate for juvenile sentencing in a "case-by-case basis"); *Commonwealth v. Batts*, 163 A.3d 410, 455–56 (Penn. 2017) *abrogated on other grounds by Jones v. Mississippi*, 593 U.S. 98 (2021) ("We decline, however, to go so far as to hold that expert testimony is constitutionally required to rebut the presumption against the imposition of a sentence of life without the possibility of parole."); *see also State v. Gore*, No. 56163-8-II, 2022 WL 6644457, at *4 (Wash. Ct. App. Oct. 11, 2022) (agreeing that "there is no blanket requirement that attorneys defending clients at *Miller* hearings hire and present the testimony of expert witnesses" but finding defense counsel ineffective for not doing so); *People v. Bell*, No. E063234, 2016 WL 6305386, at *8 (Cal. Ct. App. Oct. 17, 2016) ("In sum, then, under *Miller*, a juvenile can be sentenced to life without parole based solely on the

circumstances of the crime, even if there is some mitigating evidence, and even if there is no expert testimony.").

Like our sister states reaching these views, the United States Supreme Court would also reject Miller's claim. Three years ago, in *Jones v. Mississippi*, the Supreme Court reiterated that when a court is sentencing a juvenile offender to life without the possibility of parole, the Eighth Amendment did not command special factfinding regarding either the juvenile's permanent incorrigibility or the mitigating circumstances. *See Jones*, 593 U.S. at 108–113; *see also Montgomery v. Louisiana*, 577 U.S. 190, 211 (2016). Nor does the Eighth Amendment require the district court to explain why it selected a life without parole sentence. *See id.* at 114–118. Rather, the Eighth Amendment requires courts not to impose life without parole sentences automatically and provide the sentencer "discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment." *Id.* at 106, 118. If the Eighth Amendment does not require specific factfinding or explanation, it is unlikely it requires expert testimony.

Consistent with this, our legislature does not believe an expert is necessary to sentence a juvenile murderer, either. Already referenced in addressing Miller's challenge to his specific sentence, in *Miller* and *Lyle*'s

wake our legislature enacted Iowa Code section 902.1(2). This provision of the code creates a separate sentencing system for juveniles convicted of an "A" felony and contains twenty-two circumstance-based factors that a district court is to consider. Section 902.1(2) does not impose a requirement the court base its consideration of those factors on expert testimony. If an expert had "pertinent information" that could inform a sentencing decision, then parties could present that testimony if they wished to. But our legislature has not mandated it before a district court could issue a sentence. *See* Iowa Code § 901.5; Iowa R. Crim. P. 2.23(2)(d), (e) ("Before receiving victim statements, the trial court, in its discretion, may permit either side to present additional witnesses or evidence in support of its position."). In sum, no national consensus favors Miller's request.

B. When it consults its "independent judgment" this Court should conclude no compelling reason justifies turning *Roby*'s suggestion into a categorical rule.

Next, no persuasive reason compels this Court to exercise its "independent judgment" to grant Miller's request to reinterpret article I, section 17 and expand *Roby*'s holding. Appellant's Br. 36–39. When addressing its "independent judgment," this Court considers (1) its "controlling precedents and our interpretation of the Iowa Constitution's

text, history, meaning, and purpose to guide our own independent judgment on the constitutionality of the challenged sentence." *Harrison*, 914 N.W.2d at 199–200. It also assesses (2) the culpability of the class of offender at issue, (3) the severity of the punishment, and (4) whether the sentencing practice furthers legitimate penological goals. *Id.* (quoting *Lyle*, 854 N.W.2d at 386). Each of these criteria supports rejecting Miller's challenge.

First, nothing in the text of our constitution supports Miller's requested categorical rule. *See Goodwin*, 936 N.W.2d at 649 (McDonald, J., concurring) ("There is nothing in the text of the Iowa Constitution, as originally understood, that prohibits the imposition of a minimum sentence on a juvenile offender."). Nor is there compelling reason to expand Roby's 4-3 holding. Its foundation was wobbly on the day of its release.

Roby's discussion of experts was dicta that followed this Court's rejection of a categorical ban on minimums and its refusal to jettison the *Miller*/*Lyle*/*Roby* factors due to their practical difficulties. *See Roby*, 897 N.W.2d at 138–45. The language was within the opinion's factor-by-factor guidance that, when "[p]roperly applied," would "ensure the constitutional guarantee against cruel and unusual punishment is satisfied." *Roby*, 897 N.W.2d at 145. As this Court made clear, it was offering advice to district

courts how to avoid the "obvious" difficulties in applying the factors. *Id.* at 143–44; *see also State v. White*, 903 N.W.2d 331, 333 (Iowa 2017) (remanding based on *Roby* and highlighting the "important role of expert testimony when applying the relevant factors").

And its references to "expert" testimony were consistently qualified with language like "normally," "will be helpful," and "may be used":

- "The first factor is the 'age of the offender and the features of youthful behavior.' . . . This factor is *most meaningfully applied when based* on qualified professional assessments of the offender's decisional capacity. . . . Thus, minority status is the designated factor that supports the special sentencing consideration and expert evidence *may be used* to conclude any particular juvenile offender possessed features of maturity beyond his or her years. *This is not to say judges cannot and should not be alert to circumstances that might suggest the age of a particular offender might not support mitigation.* Yet, categorical age groups do not exist for children to justify using age alone as a factor against granting eligibility for parole." *Id.* at 145–46 (emphasis added).

- "The second factor is 'the particular 'family and home environment' that surround the youth.' . . . . As with the first factor, expert testimony *will best assess* how the family and home environment may have affected the functioning of the juvenile offender." *Id.* at 146 (emphasis added).

- "The third factor considers the circumstances of the crime. . . . Expert testimony *will be helpful* to understand the complexity behind the circumstances of a crime when influences such as peer pressure are

not immediately evident and will aid the court in applying the factor properly." *Id.* at 146. (emphasis added)

- "The fourth factor is the legal incompetency associated with youth. . . . The relevance of this factor ultimately relates to the general proposition that youthful offenders are less able to confront the legal process. Whether a particular youth would be more capable than most *would normally be a matter for expert testimony*." *Id.* at 146 (emphasis added).

- "The final factor is the possibility of rehabilitation and the capacity for change. . . . [J]udges 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.* at 147 (emphasis added).

- "[T]he 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.* (emphasis added).

This was not a command. This language presupposes some cases might not need an expert.

Perhaps this was because the opinion was deeply fractured and possessed no majority on its expert testimony references. Even its supporting voters had significant doubts about its reasoning. Chief Justice Cady's opinion was only joined by Justices Wiggins and Appel, which renders it a plurality opinion. *Roby*, 897 N.W.2d at 148. Justice Hecht

concurred in the ultimate "conclusion" that Roby's sentence needed to be vacated. But he filed a separate opinion advocating that the Iowa Constitution outright bars minimum prison terms for juvenile offenders, no matter the offense or circumstances. *Id.* at 149. He necessarily rejected the requirement of expert testimony because he believed no testimony could justify a minimum sentence. *Id.* Indeed, Hecht reiterated his "lack of confidence" in district courts' ability to apply the *Miller* factors altogether. *See id.*

Justice Appel also filed a concurrence joined by Justice Wiggins, who despite joining the plurality opinion, likewise felt the need to suggest the Court was inching toward Hecht's proposed categorical rule and expressed doubt about the viability of relying on experts' individualized predictions: "so far, psychopathy measures during adolescence that have been developed by experts have unacceptable false positive rates when used to make individualized predictions." *See id.* at 149–50. This means Justices Appel and Wiggins joined an opinion that suggested expert testimony would "normally" be necessary even though they doubted its validity. And on the opposite side of the vote was Justice Zager, joined by Justices Mansfield and Waterman. They dissented, in part criticizing the plurality's discussion of expert testimony. *Id.* at 150–161. From the foregoing it is

apparent the expert-testimony language Miller seizes on was at best adopted by three members of the *Roby* Court—and possibly only Cady. *See also Zarate*, 908 N.W.2d at 857 (Hecht, J., concurring specially joined by Wiggins, J.); 858–61 (Appel, J., concurring specially). In making his request even Miller expresses some doubts about the efficacy of experts: "If it is difficult for an expert to detect and comprehend youth factors fully, it stands to reason that a sentencing judge would have a difficult task identifying and understanding the youthful factors." Appellant's Br. 39–40 (citing *State v. Seats*, 856 N.W.2d 545, 560 (Iowa 2015) (Hecht, J., concurring specially)). This is not compelling. Thus, neither the Iowa Constitution nor this Court's own precedents support reinterpreting *Roby* to remove its limiting language or reinterpret Article I, Section 17 to create a new categorical sentencing rule.

Second, Miller is culpable. Aside from *Roby's* shortcomings, Miller's membership in the limited class of juvenile offender convicted of premeditated first-degree murder works heavily against his desire to expand *Roby's* reach. Youth diminishes his culpability, but he committed premeditated homicide, tried to hide it, and then tried to blame the innocent for it. *See* D0275 Sec.Attch.Kinsella at 2–13; *see also* D0403 Sent Exh.133 at 68:21–204:22. Notwithstanding their categorically diminished

status, the United States Supreme Court would uphold life *without* parole sentences for homicidal juveniles if they were not mandatory and were reached after an individualized hearing. *See Montgomery*, 577 U.S. at 195, 206–13 (quoting *Miller*, 567 U.S. at 479–80).

To be sure, children are constitutionally different for sentencing. *See, e.g.*, *Lyle*, 854 N.W.2d at 399; *Jones*, 593 U.S. at 109; *Miller*, 567 U.S. at 471. That is why Miller was not subject to a sentence of life without parole, received an individualized sentencing hearing, and a specialized sentencing decision where the district court considered twenty-factors before it rendered its decision. *See* Iowa Code §§ 902.1(2)(b)(2)(a)–(v); *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016); *accord Jones*, 593 U.S. at 109 ("Youth matters in sentencing. And because youth matters, *Miller* held that a sentencer must have discretion to consider youth before imposing a life-without-parole sentence, just as a capital sentencer must have discretion to consider other mitigating factors before imposing a death sentence."); *Miller*, 567 U.S. at 480 ("Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."). Because of his diminished culpability, he received a punishment categorically different

from those adults serve. *See Dorsey v. State*, 975 N.W.2d 356, 362–63 (Iowa 2022); Iowa Code § 902.1(1).

Third, Miller's punishment was properly severe. No one could fairly characterize his crime as "inane schoolyard conduct." *Compare Lyle*, 854 N.W.2d at 401 *with* D0275 Sec.Attch.Kinsella at 2–13. Planning, stalking, and participating in the killing of his unsuspecting Spanish teacher, then covering up the crime is not mere mischief. It does not take expert testimony on neuroscience to understand that the crime and its impact were far from ordinary. *See White*, 903 N.W.2d at 336–37 (Mansfield, J., dissenting) ("Criminal sentencing may be many things, but it isn't science."); *cf.* Appellant's Br. 35–36. No one need believe district court judges cannot reach a constitutional sentence without an expert's assistance after a consideration of the mitigating circumstances and each of section 902.1(2)'s twenty-plus factors. Iowa's judges' core duties include being

> regularly called upon to consider all kinds of terrible circumstances, including the heinous details of defendants' crimes. . . . [and] to balance those troubling details against all of the other evidence and arguments presented—mitigating or otherwise—as they determine what sentence will "provide maximum opportunity for the rehabilitation of the defendant" as well as "protection of the community from further offenses by the defendant and others."

Deases, 2020 WL 1049863, at *7 (May, J., concurring). This Court has stated a minimum sentence should be an "uncommon result." *Roby*, 897 N.W.2d at 147. In the context of a crime as dire as first-degree murder, it is one the Iowa Constitution permits. *See Goodwin*, 936 N.W.2d at 645, 647–48 (affirming twenty-year minimum term of incarceration for second-degree murder).

Fourth, with or without an expert's assistance, a minimum term of incarceration for murder entered after an individualized hearing aligns with the relevant penological justifications. Those include rehabilitation, deterrence, incapacitation, and retribution. *See Zarate*, 908 N.W.2d at 847. Iowa's juvenile sentencing schema emphasizes rehabilitating and reforming children who commit terrible crimes, but that is not its only goal: "Despite our emphasis on rehabilitation, juvenile sentences may still aim to promote additional penological goals, including deterrence, retribution, and incapacitation." *State v. Harrison*, 914 N.W.2d 178, 201 (Iowa 2018); *accord Majors*, 940 N.W.2d at 391 (quoting *Goodwin*, 936 N.W.2d at 647); *see also Roby*, 897 N.W.2d at 147 (observing juveniles generally have an increased capacity to reform). While they are of diminished weight when sentencing a juvenile, the remaining interests have increased value here.

See Zarate, 908 N.W.2d at 854–55 (discussing why the remaining penological goals remain relevant).

A juvenile who premeditates and commits murder is a person whose actions demand punishment, a person who must be incapacitated, and a person whose swift punishment could deter would-be copycats. Even the *Roby* plurality recognized that incapacitation could be necessary. *Roby*, 897 N.W.2d at 142. Likewise, retribution is a legitimate penological goal that justifies strong sentences for juveniles who commit murder. *See Harrison*, 914 N.W.2d at 201–02; *Sweet*, 879 N.W.2d at 846 (Mansfield, J., dissenting) ("Society may want to punish a horrendous murder beyond the time necessary to rehabilitate the murderer."); *State v. Makuey*, No. 16-0162, 2017 WL 1735626, at *3 (Iowa Ct. App. May 3, 2017) ("Few, if any, criminal acts are more deserving of the maximum penalty that can be imposed than causing the death of another fellow human being."). Miller's intentional plotting, execution, and attempted cover-up of his Spanish teacher's murder makes the very case for his incapacitation until he is rehabilitated. Youth ought to mitigate the severity of a sentence, but it is not an excuse. *Lyle*, 854 N.W.2d at 398 (quoting *State v. Null*, 836 N.W.2d 41, 75 (Iowa 2013)). For Miller, it has mitigated his sentence. The district court facing these circumstances could have sentenced him to serve a

longer term. Unlike any adult who committed these acts, he has the hope of demonstrating his rehabilitation and of being paroled.

All of this is to say that this Court should reject Miller's claim. A categorical prohibition on minimum sentences without expert testimony lacks any national consensus or even the support of more than one of Iowa's justices who voted for *Roby*. No persuasive reason supports converting *Roby*'s suggestion into a command. Parties can elect to provide expert testimony. But it is not a prerequisite under Article I, Section 17. For first-degree murderers like Miller, a *Lyle* hearing grants sufficient relief to juveniles facing minimum sentences. It provides all parties involved an opportunity[3] to present information to the sentencing judge before it makes the discretionary decision to impose a minimum term of incarceration. When that court then enters a discretionary sentence for murder, based upon its application of more than twenty factors and retaining the discretion to consider a lower sentence, the sentence that results adheres to punishment's penological justifications *with or without* an expert's

[3] Although he filed a sentencing memorandum, and prepared sentencing exhibits, Miller presented no evidence at his sentencing. *See* D0438 at 117:7–10; D0372 Sent.Memo (7/6/2023); *see also* D0322–D0337 proposed sentencing exhibits (7/5/2023).

assistance. It is enough to ensure that the punishment is not cruel and unusual.

C. The *Roby* plurality's "guidance" should be disavowed.

Finally, this Court should take the opportunity to disavow subdivision III(D) of *Roby* altogether. *See Goodwin*, 936 N.W.2d at 645 n.4. The reasons are fourfold.

First, it bears repeating that the entirety of this portion of *Roby* was an advisory opinion, one the Court ordinarily would have abstained from rendering. *See, e.g.*, *Hartford-Carlile Sav. Bank v. Shivers*, 566 N.W.2d 877, 885 (Iowa 1997) ("This Court has repeatedly held that it neither has a duty nor the authority to render advisory opinions."). Second, it was erroneous. Nothing in the text of our constitution requires expert testimony to support a judge's determination that premeditated murder requires incarceration. *Roby*, 897 N.W.2d at 154 (Zager, J., dissenting) ("Ordering a sixteen- or seventeen-year-old who commits a rape, an armed robbery, or a murder to serve some amount of time before being eligible for parole is neither cruel nor unusual."). And *Roby's* discussion of expert testimony was highly reliant on a law review article discussing the utility of forensic mental health experts to support juvenile life-without-parole-sentencing. *See Roby*, 897 N.W.2d at 140, 144–47 (citing Elizabeth Scott et al., *Juvenile*

Sentencing Reform in a Constitutional Framework, 88 TEMP. L. REV. 675 (2016)). Aside from being written about a qualitatively different context than the minimum term at issue in the case, the plurality's reliance on it was further misplaced because science is both nuanced and cannot be confidently applied to any given individual.

Science is nuanced. It suggests juvenile decision-making capabilities are context dependent. Juveniles struggle with decisions that require snap judgments or decisions made with knowledge that their peers are watching—on the other hand, in situations without those pressures, older juveniles are functionally on par with adults:

> [T]he legal treatment of adolescents should at the very least be informed by the most accurate and timely scientific evidence on the nature and course of psychological development. On the basis of the present study, as well as previous research, it seems reasonable to distinguish between two very different decision-making contexts in this regard: those that allow for unhurried, logical reflection and those that do not. This distinction is also in keeping with our emerging understanding of adolescent brain maturation, which suggests that brain systems responsible for logical reasoning and basic information processing mature earlier than those that undergird more advanced executive functions and the coordination of affect and cognition necessary for psychosocial maturity.

Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged*

APA "Flip-Flop", 64 AM. PSYCHOLOGIST 583, 592, 586–87 (2009); *see also* LAURENCE STEINBERG, AGE OF OPPORTUNITY; LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE 91–92 (2015) ("Studies of people's intellectual capabilities and their ability to reason logically show that by the time they're sixteen, teenagers are just as good at those things as adults."). If not all juvenile decision-making is equal, then the same is true of their crimes. Treating a spontaneous brawl gone wrong and premeditated murder the same is a false equivalence.

And these neuroscience advances speak to general trends about juveniles, but less to any given individual. While it may be that juveniles, as a group, have some common neurological traits that mitigate, the studies "do not show that all individuals in the group perfectly reflect the trend." Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 146 (2009). "[W]hile all humans will pass through the same basic stages of structural maturation at more or less the same stages of life, the precise timing and manner in which they do so will vary." *Id.* at 146. Experts may be able to conduct personality testing on any given individual and engage in document review to assist in applying the *Miller*/*Lyle*/*Roby* factors. But no expert knows the exact

degree to which an individual can or cannot be rehabilitated. Even the article the *Roby* plurality relied on disclaimed experts' predictive abilities:

> Their opinions based on their assessments can be useful in juvenile LWOP sentencing cases, under conditions and within the limits described. However, clinicians cannot *directly* answer the general question of whether a juvenile is mature or immature, either psychologically or neurologically. In addition, FMH experts sometimes will not be able to state with confidence whether a juvenile is likely to reform.

Scott, 88 TEMP. L. REV. at 701; *accord* Maroney, 85 NOTRE DAME L. REV. at 146. Likewise, no expert can answer what an appropriate minimum sentence would be. Parties and sentencing courts should not be obligated to rely on them—and in the case of judges, bend judicial decision-making to their opinions or face reversal.

This leads to the third defect in subdivision III(D). As Justice Zager pointed out in his *Roby* dissent, the plurality created an unworkable standard. It made "it extraordinarily difficult to sentence a juvenile to any minimum term of imprisonment, regardless of the individual factors related to the person or any consideration of the crime he or she committed." 897 N.W.2d at 151, 155. Although *Roby* stated that expert testimony "normally" is helpful, it provided no guidance as to the exception to that default. It undesirably outsourced judicial decision making to a

"cottage industry" of mitigation experts who could not answer the critical question. *Id.*

The difficulties Zager expected came to pass. The court of appeals has struggled with whether a court can impose what it believes to be a necessary term of years sentence in the absence of an expert's testimony supporting the specific years selected. *See State v. Cruz*, No. 20-1625, 2021 WL 5106448, at *6–*7, *6 n.4 (Iowa Ct. App. Nov. 3, 2021) (observing expert testimony was "normally require[ed]" and that "Clearly, the court was not bound by the expert's opinion" but vacating sentence: "we note a sentencing court may not use only the seriousness of the crime as a factor to support a minimum sentence but must rely on expert testimony or some other reliable evidence"). That court appears to believe an expert is *always* necessary. *See State v. Henderson*, No. 15-2221, 2017 WL 4570430, at *1 (Iowa Ct. App. Oct. 11, 2017) ("Although the district court attempted to perform a *Lyle* resentencing hearing and reviewed each of the *Lyle* factors on the motion to correct an illegal sentence in this case, the evidence submitted on the factors was not sufficient under *Roby*. Here, there was no expert testimony on any of the *Lyle* factors to support the imposition of the mandatory-minimum sentence.") (citation omitted).

Fourth and finally, stare decisis is not a bar to disavowing this portion of *Roby*. *See State v. Lee*, ___ N.W.3d ___, 2024 WL 2096203 (Iowa May 10, 2024) ("We do not overturn our precedents lightly and will not do so absent a showing the prior decision was clearly erroneous." (quoting *Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 83 (Iowa 2022)). That standard is met here. Although ordinarily a strong caution against overruling precedent, stare decisis is at its weakest when it addresses the constitution. *Goodwin*, 936 N.W.2d at 649 (McDonald, J., concurring specially) (quoting *Gamble v. United States*, 587 U.S. 678, 718–19 (2019) (Thomas, J., concurring)). *Roby*'s subdivision III(D) is erroneous. Its challenged language was advisory dicta, its logical shortcomings are apparent, and it has invited clear difficulties for parties and lower courts. Stare decisis does not require adhering to it to "ensure the constitutional guarantee against cruel and unusual punishment is satisfied." *Roby*, 897 N.W.2d at 145–47; *see Goodwin*, 936 N.W.2d at 649 (McDonald, J., concurring specially).

Whether the Supreme Court retains this case or hears it on further review, it should clarify *Roby*'s statements "expert testimony will be helpful" or "normally" needed was advice, not command. Or it should jettison the opinion's "guidance" within division III(D) altogether. It has no

basis in Iowa's constitutional text and has created an unworkable standard in which a district court judge cannot act in one their core functions absent paid experts' testimony to uphold it. Either outcome is just. In the case of juvenile first-degree murder, a *Lyle* hearing is sufficient. The parties can present pertinent information to the sentencing judge before it applies Iowa Code section 902.1(2) to issue the discretionary incarceration it believes the circumstances warrant. That punishment—made after individualized consideration and categorically less than an adult would face—is not cruel and is not unusual.

III. This Court should follow its precedent and reject Miller's request for a categorical ban on minimum sentences.

Preservation of Error and Waiver

Again, the State cannot contest error preservation. *Bruegger*, 773 N.W.2d at 872.

Standard of Review

The standard of review on this categorical constitutional challenge is de novo. *Zarate*, 908 N.W.2d at 840; *Sweet*, 879 N.W.2d at 816.

Merits

In his final sentencing challenge, Miller argues *any* minimum period of incarceration violates the Iowa Constitution. Appellant's Br. 60–65. Miller again presents a categorical challenge to a sentencing practice and

asks this Court to embrace a total ban to sentencing juveniles to minimum terms of incarceration—even those like him, convicted of first-degree murder. This claims fares worse than his last. This Court should reject it as well.

Again, when addressing a categorical challenge this Court considers whether there a national consensus for or against a practice exists and whether its independent judgment guides its view of the sentencing practice's constitutionality. *See, e.g.*, *State v. Harrison*, 914 N.W.2d 178, 197 (Iowa 2018). Miller's claim fails both inquiries.

A. The national consensus is unsurprising: murderers should receive minimum terms of incarceration.

Answering the national consensus inquiry is straightforward, it is against Miller. Indeed, Miller's request asks this Court "to fully address and accept his argument" notwithstanding the lack of a consensus to "becom[e] a leader in ending mandatory minimums for juvenile offenders and advancing the juvenile sentencing model under the Iowa Constitution." Appellant's Br. 62. But the Iowa Supreme Court has already resolved this question against Miller in *Zarate*. *See Zarate*, 908 N.W.2d at 844 n.2, 844 n.3, 845 n.4; *see also* Kallee Spooner & Michael S. Vaugh, *Sentencing Juvenile Offenders: A 50-State Survey*, 5 VA. J. CRIM. L. 130, 146–50 (2017) (setting out that thirty-nine states currently have minimum terms of

incarceration for juveniles convicted of homicide offense). Indeed, the landscape reflects a consensus against immediate parole eligibility for juveniles convicted of homicide. Many states authorize minimum sentences of incarceration for juveniles who commit homicide, including similar sentences to the one Miller received:

> • Arkansas: Ark. Code Ann. § 16-93-621 (2017) (juvenile offenders eligible for parole after 30 years for capital murder and after 25 years for first-degree murder)
>
> • Connecticut: *State v. Rivera*, 172 A.3d 260, 275 (Conn. App. Ct. 2017) ("We, therefore, conclude that the mandatory minimum sentence of twenty-five years of incarceration imposed on a juvenile homicide offender does not violate article first, §§ 8 and 9, of the Connecticut constitution.")
>
> • Delaware: Del. Code Ann. tit. 11, § 4209A (West Supp. 2016) (twenty-five-year minimum mandatory sentence for first degree murder)
>
> • Florida: *State v. Michel*, 257 So. 3d 3, 4, 8 (Fla. 2018) (a statute requiring a twenty-five-year mandatory minimum sentence for first-degree murder does not violate the Eighth Amendment)
>
> • Louisiana: La. Rev. Stat. Ann. § 15:574.4 E (1) (a) (West Supp. 2017) (parole eligibility for juvenile convicted of first or second degree murder after thirty-five years)
>
> • Massachusetts: Mass. Ann. Laws c. 279, § 24 (West) (district court required to sentence juvenile convicted of first-degree murder to a minimum term of not less than twenty nor more than thirty years prior to parole eligibility)

• Minnesota: *State v. Vang*, 847 N.W.2d 248, 262–63 (Minn. 2014) ("Because appellant is eligible for release after 30 years, his mandatory life sentence for first-degree murder does not constitute cruel and unusual punishment under the Eighth Amendment and the principles of Miller.")

• Nebraska: Neb. Rev. Stat. § 28–105.02 (2016) (authorizing mandatory minimum sentence of forty years of incarceration for juvenile convicted of murder)

• Nevada: Nev. Rev. Stat. Ann. §§ 176.025, 200.030 213.12135 (2015) (juvenile convicted of first-degree murder subject to sentence of life with parole after twenty years)

• North Carolina: N.C. Gen. Stat. Ann. § 15A-1340.19A (2012) (juvenile convicted of first-degree murder are sentenced to life imprisonment with parole after serving a twenty-five year minimum prior to parole eligibility)

• Ohio: Ohio Rev. Code Ann. § 2967.132 (West) (creating tiered system of homicide offenses and making defendants parole eligible for parole after first serving eighteen, twenty-five, or thirty years based on the tier; excepting "aggravated homicide offenses" from this scheme)

• Pennsylvania: 18 Pa. Cons. Stat. Ann. § 1102.1 (a) (1) and (2) (West 2015) (first-degree murder, if committed when defendant was fifteen or older, subject to life without parole or incarceration for minimum of thirty-five years; if committed when defendant was younger than fifteen years of age, subject to life without parole or incarceration for minimum of twenty-five years)

• Virginia: Va. Code Ann. § 53.1-165.1(E) (West) (making all juvenile offenders serving sentences

> eligible for parole after serving twenty years of such sentence)
>
> • Washington: Wash. Rev. Code Ann. § 9.94A.730 (1) (West Cum. Supp. 2017) (any person convicted of crimes committed before eighteenth birthday, eligible for sentence review for early release after serving twenty years)
>
> • Wyoming: Wyo. Stat. Ann. § 6-10-301 (West) (juvenile sentenced to life imprisonment generally eligible for parole after serving twenty-five years)

This national consensus is persuasive and should not be surprising given the grave nature of the crime.

Iowa is part of it. Our legislature's creation of Iowa Code section 902.1(2) conveys Iowans' collective belief sentencing courts should have greater discretion in sentencing juveniles—as well as demonstrating compliance with the post-*Miller* sentencing caselaw. *See Zarate*, 908 N.W.2d at 845–46; *Lyle*, 854 N.W.2d at 388 ("Moreover, "[l]egislative judgments can be 'the most reliable objective indicators of community standards for purposes of determining whether a punishment is cruel and unusual.'"); *see also* Iowa Code § 901.5(13) (authorizing district court sentencing a juvenile convicted of a crime other than an "A" felony to suspend the sentence in whole or in part or in the alternative defer judgment or sentence). Our legislature has shown that Iowans' wish to

provide a sentencing court with a broad palette of sentencing options for a juvenile offender—including minimum terms of incarceration.

B. This Court has already exercised its independent judgment and concluded minimum terms of incarceration do not violate Iowa's Constitution.

Once more, this Court's second step is to consult its "independent judgment" and examine the Iowa Constitution's cruel and unusual punishment clause to determine for itself "if the sentencing options at issue violate the cruel and unusual punishment clause in light of its text, meaning, purpose, and history." *Zarate*, 908 N.W.2d at 846. As well as his culpability, the severity of the punishment, and whether the sentence forwards penological goals.

The Iowa Constitution's text lends no support for Miller's claim. Iowa's pre-*Null-Ragland-Pearson* constitutional history provides scant support either. *See generally Null*, 836 N.W.2d at 52 (noting that at time of the founding and for the next century "juveniles, if they were tried at all, were tried in adult courts"). Iowa courts for more than a century imposed the death penalty for murderers, even juvenile ones.[4] *See State v. Kelley*,

[4] First-degree murder was punished with death, second degree murder with a term of years sentence no less than ten years up to life imprisonment. Compare Iowa Code § 4193 (1860) *with* Iowa Code § 690.3 (1962). This Court upheld these sentences for juvenile murderers. *See State v. Rinehart*, 125 N.W.2d 242, 246–47 (Iowa 1963) (affirming life sentence

115 N.W.2d 184, 190–91 (Iowa 1962) (rejecting juvenile murderer's request to reduce his sentence form death to life imprisonment); *accord* Iowa Code §§ 4192, 4888, 4890 (1860) (first degree murder punished with death by hanging, with exception only for the insane and pregnant).

Turning to the present, *Lyle* made clear district courts could sentence juveniles to minimum terms, even long ones, so long as the decision was not statutorily mandated. *See Lyle*, 854 N.W.2d at 401. The post-*Lyle* precedent is unavailing for Miller's request. The Iowa Supreme Court has already examined *this issue* and concluded a minimum period of years prior to parole eligibility does not violate Iowa's constitutional guarantees against cruel and unusual punishment:

> As we stated in *Lyle*, the categorical ban on mandatory minimums for juvenile offenders does not "prohibit the legislature from imposing a minimum time that youthful offenders must serve in prison before being eligible for parole." We reiterated this again in *Roby*, holding there was no national or

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for fifteen-year-old second-degree murderer: "It is true that for a boy of fifteen a sentence for life seems a long time; but we must remember that as judge, jury and executioner he imposed a sentence to eternity upon Maxine Hemmingsen. The Old Testament doctrine of 'an eye for an eye and a tooth for a tooth' without doubt seems harsh to the criminal, who prefers the modern trend toward rehabilitation and 'the humanities'. But the loser of the eye, or the tooth, may well have a different viewpoint; and so should those who have not yet lost any eyes, or teeth, or their lives, when they consider the purpose of law enforcement and the punishment of transgressors.") *overruled on other grounds by State v. Craig*, 562 N.W.2d 633 (Iowa 1997).

> local consensus against imposing a minimum prison sentence on youthful offenders before they can become parole eligible, and "in our independent judgment article I, section 17 does not yet require abolition of the practice." Rather, our cruel and unusual punishment clause simply requires an individualized sentencing process instead of a one-size-fits-all sentencing scheme before the mandatory prison sentences can be applied. Iowa Code section 902.1(2) meets this requirement because it instructs sentencing courts to employ an individualized review of each juvenile offender's situation—including a consideration of the factors mandated in *Miller*, *Lyle*, and *Seats*—then allows the sentencing court to form a unique sentence with regards to parole eligibility for each juvenile offender.

Zarate, 908 N.W.2d at 846 (citations omitted); *see also Roby*, 897 N.W.2d at 143. What is more, it has concluded Iowa Code section 902.1's sentencing scheme—including a minimum term of incarceration—serves legitimate penological goals:

> Iowa Code section 902.1(2)(a)(2)-(3) aligns with our statements about penological goals in *Roby* by allowing sentencing courts to subject juvenile offenders convicted of first-degree murder to a term of imprisonment before becoming parole eligible that considers the nature of the crime as one of many factors in the sentencing process. Requiring a sentencing court to sentence a juvenile offender convicted of first-degree murder to a definite term of years as Zarate requests, as opposed to life imprisonment with the possibility of parole, would hinder the sentencing court's ability to protect society from offenders who show signs of recidivism that may require incapacitation until a parole board determines the offender's rehabilitation.

Zarate, 908 N.W.2d at 847. Like *Zarate*, Miller committed murder. His crime is highly culpable and entitled to strong punishment, such as a minimum term.

The remaining portion of this second inquiry does not favor Miller either. He understandably focuses on his rehabilitation as a penological goal, but already discussed, others remain. *See Zarate*, 908 N.W.2d at 847. Society's retribution interest is entitled to weight here. *See Rinehart*, 125 N.W.2d at 247. Miller was convicted of the gravest of crimes. The deliberate nature of his criminal thinking supported the district court's decision to incapacitate him to protect society. *See Roby*, 897 N.W.2d at 142 ("[I]t may be appropriate retribution to incarcerate a juvenile for a short time without the possibility of parole. Additionally, a sentencing judge could properly conclude a short term of guaranteed incarceration is necessary to protect the public."). Deterrence may be of limited weight when sentencing a juvenile. *See Zarate*, 908 N.W.2d at 844. But given the nature of Miller's actions, some juveniles who learn that premeditated murder results in a significant minimum term might think twice before killing over trivial slights such as a failing grade. In designing section 902.1(2) the legislature reasonably believed some would-be juvenile offenders *could* be deterred by the threat of a minimum period of incarceration before parole eligibility.

Iowa law currently allows its sentencing courts broad sentencing discretion in sentencing a juvenile, even one like Miller. This Court should not constrain that discretion by declaring the statute and the sentencing practice unconstitutional.

In sum, none of the steps in the constitutional analysis favor Miller. This Court has considered and rejected his claim. Its reasoning already closes the door on this fallback attempt to relitigate the question.

For his part, Miller assumes district courts "often select arbitrary numbers" when making minimum incarceration decisions and suggests the "best option for sentencing juvenile offenders is to allow the Department of Corrections and parole board decide if and when the defendant has satisfied the prerequisite for relief." Appellant's Br. 63–64. He submits this is the "best choice" because juveniles serving long sentences keep maturing as they receive training and treatment. Appellant's Br. 64. This Court need not accept his dim view of our sentencing courts. *See Lyle*, 854 N.W.2d at 404 ("On remand, judges will do what they have taken an oath to do. They will apply the law fairly and impartially, without fear. They will sentence those juveniles offenders to the maximum sentence if warranted and to a lesser sentence providing for parole if warranted."). His policy proposal is

better directed to the legislature rather than in this constitutional attack before this Court.

As the Iowa Supreme Court has reiterated since *Lyle*, the Iowa Constitution does not prohibit minimum sentences. *Lyle*, 854 N.W.2d at 403; *Zarate*, 908 N.W.2d at 846; *Roby*, 897 N.W.2d at 143. Its precedent only commands an individualized sentencing hearing and no "one-size-fits-all" punishment. *Zarate*, 908 N.W.2d at 846. Miller received this. *See generally* D0438. Absent a national consensus in favor of his position, no compelling reason for this Court to exercise its "independent judgment" and further given this Court's precedent already rejecting this very claim, the outcome is clear. This Court should reject Miller's categorical challenge to minimum sentences of incarceration.

CONCLUSION

The State asks this Court to affirm Miller's sentence in its entirety.

REQUEST FOR NONORAL SUBMISSION

The State believes the parties' briefs are enough to resolve the appeal. If the Court orders argument, the State would be heard.

Respectfully submitted,

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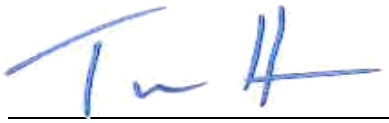

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CERTIFICATE OF COMPLIANCE

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