

No. SC93335

**IN THE
SUPREME COURT OF MISSOURI**

STATE OF MISSOURI ex rel. LONNIE LOCKHART,

Petitioner,

v.

JEFF NORMAN, in his capacity as WARDEN,
JEFFERSON CITY CORRECTIONAL FACILITY

Respondent.

**BRIEF OF *AMICUS CURIAE*
CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH
IN SUPPORT OF PETITIONER**

Filed with the consent of all parties

Jennifer Aronoff
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606
(312) 984-2010

Sean D. O'Brien, MoBar #30116
UMKC School of Law
500 E. 52nd Street
Kansas City, Missouri 64110
(816) 235-6152
Bar No. 30116

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... i

POINTS & AUTHORITIES ii

AUTHORITY TO FILE iii

INTEREST OF *AMICUS CURIAE*..... 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

**I. CHILDREN ARE CONSTITUTIONALLY DIFFERENT
FROM ADULTS AND REQUIRE INDIVIDUALIZED
SENTENCING CONSIDERATION** 3

**II. THE LIFE STORIES OF FORMERLY INCARCERATED
YOUTHS SHOW THAT YOUTHFUL OFFENDERS ARE
CAPABLE OF REHABILITATION** 6

A. Anthony Williams..... 6

B. Xavier McElrath-Bey..... 10

C. Sean Taylor 13

D. Charleston White 17

CONCLUSION..... 23

TABLE OF AUTHORITIES

Miller v. Alabama, 132 S. Ct. 2455 (2012) 1–6

Roper v. Simmons, 543 U.S. 551 (2005) 3

Graham v. Florida, 130 S. Ct. 2011 (2010) 3

State v. Hart, 404 S.W.3d 232 (Mo. banc 2013)..... 4

People v. Davis, 6 N.E.3d 709 (Ill. 2014) 5

State v. Ragland, 836 N.W.2d 107 (Iowa 2013) 5

POINTS AND AUTHORITIES

**I. CHILDREN ARE CONSTITUTIONALLY DIFFERENT
FROM ADULTS AND REQUIRE INDIVIDUALIZED SENTENCING
CONSIDERATION**

Miller v. Alabama, 132 S. Ct. 2455 (2012)

Graham v. Florida, 130 S. Ct. 2011 (2010)

State v. Hart, 404 S.W.3d 232 (Mo. banc 2013)

**II. THE LIFE STORIES OF FORMERLY INCARCERATED
YOUTHS SHOW THAT YOUTHFUL OFFENDERS ARE
CAPABLE OF REHABILITATION 6**

A. Anthony Williams..... 6

B. Xavier McElrath-Bey..... 10

C. Sean Taylor 13

D. Charleston White 17

Miller v. Alabama, 132 S. Ct. 2455 (2012)

AUTHORITY TO FILE

This brief is filed with the consent of all parties.

INTEREST OF *AMICUS CURIAE*

The Campaign for the Fair Sentencing of Youth is a national coalition and clearinghouse that coordinates, develops, and supports efforts to help create a society that respects the dignity and human rights of children through a justice system that operates with consideration of the child’s age. It submits this brief in support of petitioner Lonnie Lockhart to share the stories of formerly incarcerated youths who have been released from prison and are now productive citizens as adults. These real-life examples demonstrate the unique rehabilitative potential of youthful offenders. They embody the United States Supreme Court’s pronouncement that “children are constitutionally different from adults for purposes of sentencing” because of their “diminished culpability and greater prospects for reform.” *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). And they highlight the importance of giving all juveniles an individualized sentencing hearing that takes those factors into account.

Like Lonnie Lockhart and the petitioners in related cases,¹ the men in this brief were convicted of very serious crimes while still juveniles. They recognize that they could have easily spent their entire lives in prison. Instead, they matured, bettered themselves, and are now contributing members of society. Their stories of reform and redemption are not exceptions to the rule. Rather, there are many other inmates just like them who were incarcerated at a young age and who are capable of rehabilitation—no matter how immature, troubled, or violent they once may have been. Applying *Miller* retroactively will

¹ Jonathan Collier, SC92980; Gary Griffin, SC93324; and Ralph McElroy, SC93465.

allow those inmates to be sentenced accordingly, as individuals, taking into account their youth and potential for growth and change.

SUMMARY OF ARGUMENT

In *Miller*, the Supreme Court reiterated the “significant gaps between juveniles and adults” that make them distinct for sentencing purposes. 132 S. Ct. at 2464. The stories of the men described in this brief help illustrate those gaps—in maturity, in judgment, in vulnerability to negative influences and outside pressures, and in “ability to extricate themselves from horrific, crime-producing settings.” *Id.* Yet as the Supreme Court has stressed, “a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievabl[e] deprav[ity].” *Id.* (internal citations and quotation marks omitted).

The men in this brief exemplify that. Anthony Williams, Xavier McElrath-Bey, Sean Taylor, and Charleston White were all imprisoned for serious crimes at a young age and are now forging positive, mature lives outside of prison. Their paths demonstrate why the Supreme Court has determined that children are constitutionally different and require individualized consideration at sentencing. *Miller*, 132 S. Ct. at 2475. Their stories are proof that children can be redeemed and that no child should be condemned to die in prison without the opportunity to present his or her evidence in mitigation.

ARGUMENT

I. CHILDREN ARE CONSTITUTIONALLY DIFFERENT FROM ADULTS AND REQUIRE INDIVIDUALIZED SENTENCING CONSIDERATION.

In *Miller*, the Supreme Court unequivocally held that the Eighth Amendment prohibits mandatory sentences of life imprisonment without parole for children who were under 18 years old at the time of the offense. *Miller*, 132 S. Ct. at 2475. The Court reasoned that children are constitutionally different from adults and therefore require individualized consideration of their youth and its accompanying mitigating factors at any sentencing where they face the possibility of life in prison without parole. *Id.* As support for this conclusion, the Court emphasized the features of youth articulated in *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005): (1) “a lack of maturity and an underdeveloped sense of responsibility” that often result in “impetuous and ill-considered actions and decisions”; (2) greater vulnerability or susceptibility to negative influences and outside pressures; and (3) a character “not as well formed as that of an adult,” such that “their actions are less likely to be ‘evidence of irretrievably depraved character’ than are the actions of adults.”

As a result of these distinguishing characteristics, youthful offenders are both less morally culpable for their actions and “more capable of change” than their adult counterparts. *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010). “From a moral standpoint, it would be misguided to equate the failings of a minor with that of an adult, for greater possibility exists that a minor’s character deficiencies will be reformed.” *Roper*, 543 U.S. at 570. Accordingly, the Supreme Court concluded that when sentencing youthful offenders, the sentencer must have the opportunity to consider all mitigating factors and

the flexibility to alter the sentence from the harshest possible sentence—life imprisonment without parole—to something less. *Miller*, 132 S. Ct. at 2469. “[Y]outh,” the Court held, “matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.” *Id.* at 2466.

This Court has already applied *Miller* to cases on direct review. *State v. Hart*, 404 S.W.3d 232 (Mo. banc 2013). It should also apply the decision retroactively, as the Supreme Court itself did. In *Miller*, the Court provided relief not just to petitioner Evan Miller, whose case was on direct review, but also to fellow petitioner Kuntrell Jackson. *Miller*, 132 S. Ct. at 2475. Jackson, a juvenile offender whose conviction had become final years beforehand, sought (and received) certiorari after the Arkansas Supreme Court affirmed the dismissal of his state habeas petition. *Id.* at 2461–62.

The nine state high courts that have since applied *Miller* retroactively have found this persuasive.² They have also concluded after further legal analysis that *Miller* announced a new substantive rule and is therefore retroactive because it “places a

² See *Aiken v. Byars*, --- S.E.2d ----, 2014 WL 5836918 at *2 (S.C. Nov. 12, 2014); *State v. Mares*, 335 P.3d 487, 507 (Wyo. 2014); *Petition of State*, --- A.3d ----, 2014 WL 4253359 at *6 (N.H. Aug. 29, 2014); *State v. Mantich*, 842 N.W.2d 716, 731 (Neb. 2014); *People v. Davis*, 6 N.E.3d 709, 722 (Ill. 2014), *Ex parte Maxwell*, 424 S.W.3d 66, 75 (Tex. Crim. App. 2014); *Diatchenko v. Dist. Atty for Suffolk Dist.*, 1 N.E.3d 270, 281–82 (Mass. 2013); *State v. Ragland*, 836 N.W.2d 107, 116 (Iowa 2013); *Jones v. State*, 122 So. 3d 698, 703 n.5 (Miss. 2013).

particular class of persons covered by [the statute mandating the sentence]—juveniles—constitutionally beyond the State’s power to punish with a particular category of punishment—*mandatory* sentences of natural life without parole.” *People v. Davis*, 6 N.E.3d 709, 722 (Ill. 2014) (citations omitted) (emphasis in original). That is, even though *Miller* mandates a new procedure that courts must follow before sentencing juveniles to life without parole, that process “is the result of a substantive change in the law that prohibits mandatory life-without-parole sentencing” for juveniles. *State v. Ragland*, 836 N.W.2d 107, 115 (Iowa 2013).

This Court should follow the example of these sister courts and conclude that *all* youthful offenders who have faced the possibility of life imprisonment without parole—including those like Lonnie Lockhart, who was sentenced before the Court’s decision in *Miller*—should be afforded the same opportunity to advance mitigating factors during sentencing.

As with the petitioners in *Miller*, Lonnie Lockhart’s sentencing judge was prohibited from considering either Lockhart’s young age at the time of his offense or any mitigating factors. This makes Lockhart’s sentence of mandatory life imprisonment without parole as unconstitutional as those discussed in *Miller* itself. If *Miller* is applied only prospectively, Lonnie Lockhart and the approximately 80 youthful offenders in Missouri who have been sentenced to mandatory life without parole will never have the opportunity to present mitigating factors to a sentencing judge to show they are not the rare

case that merits this extreme punishment.³ This is contrary to the Supreme Court’s pronouncements on juveniles generally and to *Miller* specifically.

II. THE LIFE STORIES OF FORMERLY INCARCERATED YOUTH SHOW THAT YOUTHFUL OFFENDERS ARE CAPABLE OF REHABILITATION.

A. Anthony Williams

Anthony Williams, 35, was released from a Missouri prison in July 2014 after serving 20 years of a mandatory juvenile life without parole sentence—following a circuit court judge’s decision to vacate his conviction and a compromise with prosecutors through which he was resentenced to time served. Williams, who has always maintained his innocence, is now crafting a stable life and using his past experiences with the justice system to inform his new job and future career path. But a little more than two decades prior, he was an eighth-grader facing a first-degree murder charge and a certainty his young mind could not comprehend: If convicted, he would be in prison for the rest of his life.

Williams’ legal odyssey began on New Year’s Eve 1993, when he and a few friends decided to go to a fundraiser for a drum and bugle corps at a St. Louis dance hall. At the

³ See *Miller*, 132 S. Ct. at 2469 (noting that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon,” particularly “because of the great difficulty . . . of distinguishing at [an] early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”) (internal quotation marks and citations omitted).

time, Williams was 14 and had no juvenile record, although he says he occasionally acted out in school. During the party, a fight broke out among the mostly teenage attendees. Williams ran up to watch, was accidentally hit, and ended up jumping in. After the fight broke up, the dance resumed. When it ended, the teens filtered outside to wait for rides home, and someone started shooting. Williams and most of the rest of those standing in front of the dance hall ran and ducked for cover. One of the ringleaders from the earlier fight was shot in the head and killed; he was also 14 years old.

Police later questioned Williams in the shooting, and his grandmother gave them permission to include him in a lineup, to prove he did not fire the shots. Afterward, Williams was told he had been identified as the shooter, although later evidence undercut that identification. He was arrested and tried as an adult for first-degree murder, a crime carrying a mandatory sentence of life without parole. At trial, his defense attorney promised in opening statements to call witnesses to impeach the identification, but he did not do so, and Williams was convicted. By his 16th birthday, Williams was an inmate in an adult prison, mixed in with what he calls “the hardest criminals we have in Missouri.”

When Williams thinks back to the moment the judge imposed his sentence, he remembers crying. “I cried harder probably than I ever cried in my life when he said it: life with no parole,” he says. Even so, he says, “[w]hen you’re that old, it’s very difficult to grasp the gravity of that situation. . . . I never, never, *never* believed, thought, comprehended, *understood* that I could be put in prison for the rest of my life at 14 years old. At 14, had they given me the opportunity to spend a year in juvenile [detention] as opposed to being certified [as an adult] and going to trial to prove my innocence, I would

have elected to go to trial, because I didn't understand that life without was life *without*. I understood nothing about the system. A month in jail was too long for me. Just by being a child, you are really handicapped by a lack of understanding . . . especially in a system that puts the onus upon the individual [to take responsibility for his case]." What he faced began to dawn on him only after several months in prison: After being disciplined for a violation, a case worker told him, "You might as well start to learn how to get along in here, because you're going to be here the rest of your life."

Williams compares being sentenced as a juvenile to life without parole to being diagnosed with a terminal illness: Even though you're still alive, you know your life is essentially over. "As a child . . . going into prison, you can only imagine the regrets I had, and my regrets multiplied as the years went on, because my mind expanded," he says. "Not being able to go to high school, be married, own a car, have a driver's license, purchase liquor legally. . . . Life without [parole] that young, it's just hard, because you live with so many regrets. You have no [life] experience to draw from."

Even so, Williams remained hopeful he could find a way home someday. Early in his time in prison, Williams met a group of "jailhouse lawyers" who took him under their wing because he was so young. They gave him pep talks, telling him he had a lot of life in front of him and could not give up. The motivational words helped: Williams immersed himself in learning about the law, especially the law surrounding his case. He earned his GED and started working in the law library, helping other inmates with their cases. He pursued and exhausted a series of appeals based on ineffective assistance of counsel,

ending with the 2003 denial of his habeas petition in the Eighth Circuit.⁴ Following the Supreme Court's decision in *Miller*, he again sought legal assistance, and attorney Jennifer Bukowsky agreed to represent him. Together, they reinvestigated his case, gathered new evidence, and filed a successful state habeas petition, prompting a deal with prosecutors that freed him after two decades in prison.

After Williams was released, his attorney found him a place to stay in Columbia and hired him as a law clerk. Now, he puts his years of legal experience to work fielding her pro bono requests, reading and responding to letters, performing legal research, filing, transcribing, and handling other tasks that arise. He plans to enroll in college soon. He earned his driver's license and recently bought his first car, a 2000 Ford Explorer. He has a college-educated girlfriend. And he savors the little things about being free. For instance, he drives around in his car, even though his girlfriend has a nicer one, because he bought it himself—something he thought he might never have the opportunity to do.

“Even though I never gave up, I wasn't crazy enough to think that it was going to be an easy climb out of there,” Williams says. “I knew the chances that I would ever be free again were very remote. So . . . I'm living the dream. Just being able to curl up in bed at night with my girl, just doing that for me is special, because I was never supposed to do any of these things—I won't even say 'again.' I was never supposed to get the opportunity, period.” He is not only grateful for where he is today, but grateful to have been released at an age that allows him to adapt and make a life for himself. “I still have a chance,” he says. “I'm literally trying to be a success story.”

⁴ *Williams v. Bowersox*, 340 F.3d 667 (8th Cir. 2003).

B. Xavier McElrath-Bey

Xavier McElrath-Bey, 39, works as a youth justice advocate for the Campaign for the Fair Sentencing of Youth, where he coordinates ICAN, a national coalition of formerly incarcerated youth that advocates for fair sentencing. Before joining the Campaign, he worked as a clinical field interviewer at Northwestern University, gathering research data on the mental health needs and outcomes of formerly incarcerated youthful offenders. His current life would have been unimaginable to him when he was a 13-year-old facing a murder charge.

Born to an abusive, alcoholic father and a mother who struggled with mental health issues, McElrath-Bey grew up in the Back of the Yards neighborhood on the South Side of Chicago. His childhood home was filled with violence and short on food, clothing, and love. When McElrath-Bey was 6 years old, the Department of Children and Family Services (DCFS) placed him and his siblings in a foster home. McElrath-Bey's foster mother was both physically and emotionally abusive. After years of pleading, he and his siblings were returned to the care of their mother. Unfortunately, she was living with a new boyfriend who was also physically abusive.

In response to these living conditions, McElrath-Bey began acting out at an early age. He was first arrested for stealing when he was 9. At age 11, he joined a gang and was shot in the face by his best friend while they served as lookouts at the order of an older gang member. McElrath-Bey was in and out of Chicago's Juvenile Temporary Detention Center, where he found some relief in the consistency of three meals a day and his own bed. When not at the Juvenile Center, he spent more time on the street to avoid his home

life and committed crimes to provide for himself. He viewed the gang as his family: “I felt safer in the streets with my friends than in my own home. We all seemed to have similar family problems, and we forged a bond with each other.” McElrath-Bey now realizes how susceptible he was to the pressure and influence of the gang. “I realize that I was living under a false illusion of love and acceptance,” he says. “I had no idea where my life was heading, and to be honest, those thoughts never really crossed my mind.”

By the time he was 12, McElrath-Bey had accumulated 19 arrests and seven convictions for charges including armed robbery, aggravated battery, and unlawful use of weapons. At 13, he participated in the killing of a 14-year-old rival gang member. Although he did not physically kill the rival gang member, he helped lure him to an abandoned building where he was beaten to death. McElrath-Bey pleaded guilty and was convicted of first-degree murder. Although one of his co-defendants received a 40-year sentence, the judge saw potential for rehabilitation in McElrath-Bey and sentenced him to 25 years. McElrath-Bey now realizes that this prison sentence likely saved his life. “Maybe I would have changed,” he says, “but the greater possibility is that I would have stayed on the wrong path.”

When first incarcerated, McElrath-Bey maintained his gang affiliation and continued to get into fights. At age 18, McElrath-Bey assaulted a corrections officer during a prison riot and was put in solitary confinement for a year. There, he had time to reflect on his life and his choices away from the influence of the gang. “I finally had to face myself,” he says. “I thought about all the people I had hurt. I thought about the 14-year-old kid who died as a result of such destructiveness. I thought about his family and my family.

Eventually, I just broke down in tears. It was then, with my growing maturity, that I began to think about the deeper meaning of life. It was then I started to contemplate the morality of what had happened, and also how I was deceived by the illusions of gang life.”

When he got out of segregation, McElrath-Bey renounced membership in his gang and turned towards education. While in prison, he earned his associate’s degree and bachelor’s degree through a program with Roosevelt University. He maintained a 4.0 GPA and was inducted into the school’s honor society. He also worked as an academic office clerk to help other inmates obtain their GEDs. He decided to focus his future work on helping other troubled youth avoid the pitfalls he encountered. “I came to believe that I could be somebody in life once I was released,” he says.

McElrath-Bey earned his release from prison in October 2002, after serving approximately 13 years of his sentence. Soon after his release, he re-enrolled at Roosevelt University and earned his master’s degree in counseling and human services. He became an outreach worker for Ceasefire, a program aimed at reducing street violence. He also worked as a street intervention specialist for Catholic Charities, mentoring and providing assistance to at-risk youth and their families, and as a juvenile justice diversion program coordinator for Alternatives, Inc., where he mentored delinquent youth and coordinated with DCFS to help abused or neglected children find alternative living conditions.

In his current job, McElrath-Bey works with other formerly incarcerated youth and travels regularly to meet with stakeholders in the criminal justice community and discuss sentencing reform. He speaks about the developmental differences between adolescents and adults, using his own story as an example. The position has brought him back to his old

neighborhood, Back of the Yards, where he has an office in a nonprofit community center. Being there, he says, reminds him what he's fighting for: keeping kids with "such limited resources and opportunities" from ever having to stand in front of a judge and face criminal punishment, like he did. He keeps up with the children he worked with in his earlier jobs, and although some have struggled, McElrath-Bey still has hope that a better future awaits. "I know a lot of them, just like me, have a lot of room to grow and change," he says. McElrath-Bey finds his work fulfilling and meaningful. But his most important job is raising his 3-year-old daughter. "Coming home to my daughter every day gives me joy and purpose," he says.

McElrath-Bey emphasizes that although he is a living testament of the potential for positive change, he is in no way the exception. "I personally know many individuals who have gone through similar experiences and are now living positive and productive lives," he says. "Many of the juveniles I was incarcerated with, those who I grew up with in prison, are now free. They also have had a second chance at life after serving over a decade in prison, and they don't take their freedom for granted. Like me, they also vowed to try and help other kids from making the same mistakes we made."

C. Sean Taylor

Sean Taylor is 42 and works as a case manager, helping the formerly incarcerated transition back into society in the Denver area. In his job, he works to guide people on a path he too has navigated—a path he was not sure he would ever have the chance to travel. At age 17, Taylor was charged with first-degree murder after shooting into a rival gang

member's house, killing a fellow 17-year-old. He was subsequently tried, convicted, and sentenced to life in prison with the possibility of parole after 40 years.

Taylor was born in Springfield, Massachusetts, to a mother who had him at age 18 and his brother at age 17. Taylor's father, a heroin addict, was in and out of his life before being sent to prison when Sean was 6. Overwhelmed by the financial burden of raising two sons on her own, Taylor's mother sent Sean and his brother to live with an aunt in Denver until she could get on her feet enough to take care of the boys again. When Sean was 10, his mother joined her sons in Denver, but soon after arriving, she developed a crack addiction. She tried her best to work and raise her sons, but the drugs distracted her. The family struggled to pay rent on income from her low-wage jobs and was regularly evicted. Sean looked to the streets for role models. "I didn't have a lot of positive male role models in my life," he says. "Unfortunately, in my neighborhood, if you don't have a lot of positive male role models, negative male role models become your role model."

At age 15, Taylor joined the Bloods. Before, he had been a class clown. But after joining the gang, he lost interest in school and eventually stopped going. Instead, he sold crack to make money. As a Blood, he was also regularly in conflict with the local Crips, and after losing some fights he decided to get a gun to intimidate his rivals. Taylor says he never planned to shoot anyone, but three days after his 17th birthday, he was riding with three older gang members when the driver confronted a Crip outside of the car. Taylor told the driver to get back in and said he would shoot into the Crip house instead. He fired one shot toward what he thought was empty space. Later, on the 10 o'clock news, he found out that someone in the house had been killed. Taylor was in disbelief. A sense of dread

descended on him. He thought of how his mother would feel if he had been the victim instead. Police soon arrived at his mother's house and told her she should advise Sean to turn himself in. The next morning, she picked him up and took him to the police station.

Taylor was sentenced to life in prison, with 40 calendar years before he was eligible for parole. At first, he remained in the gang. But after about a year in prison, he began to question what he was doing. He realized he was continuing the same behavior that landed him in prison and resolved to change his life. He started studying Islam and dedicated himself to his new faith. One day, he invited his former gang friends to the gym to tell them he was leaving the gang. "I said, whatever the consequence may be, let's get it over with, but I'm ready to dedicate myself to something positive."

In prison, Taylor earned his GED and planned on taking college classes. When the program that eliminated those classes was eliminated, Taylor pursued education on his own, reading voraciously. He was invited to become an adult basic education tutor and ended up teaching both regular and English as a Second Language students, as he'd learned enough Spanish to communicate with them. He also worked in a variety of other jobs: As a library technician, as a janitor, in the prison garment factory, and even for the state DMV call center, where trained prisoners answered first-level calls from people who needed replacement licenses. "I started to feel like, there's no reason why my life had to be unfulfilled, just because I was in prison," Taylor says. He thought about what he wanted to do and decided he wanted to help kids get out of gangs. So, he began mentoring younger prisoners. He also helped mediate conflicts between different gangs and groups in prison.

After more than 15 years in prison, and with support from his assistant warden, Taylor sought relief from Colorado's recently formed Juvenile Clemency Board. In early 2011, two years after filing his petition, he was called to the sergeant's office. The sergeant spun his computer monitor around and showed Taylor the screen: The governor had commuted his sentence, and he would be eligible for parole in six months. Taylor felt like he was dreaming, then snapped back to reality when another inmate in the office at the time grabbed him and said, "Man, you're going home!"

Upon his release from prison, Taylor went to a halfway house. At first, he "felt like an alien," living among residents who had been in prison five to six years at most. When his cousin handed him an iPhone, he didn't know how to get it to work. He would stand out on the porch and marvel at the trees, "[b]ecause there are no trees in the prison yard." He was amazed that for the first time in two decades, no one was stopping him from coming to the door, opening it, and walking outside. A woman he'd known since he was 10 years old got back in touch with him after his brother posted about his release on Facebook; they have now been married two years.

Taylor's first post-prison job was at a recycling facility, where he broke down and sorted old electronics for \$10 an hour. He then earned his certification as a personal trainer and began doing that independently to earn money. Now, he works as a senior case manager, mentor, fitness trainer, and gang outreach specialist at the Second Chance Center, a nonprofit that works to integrate previously incarcerated men and women back into the community. Taylor helps teach job and basic life skills classes, as well as restorative justice, and he also provides group and one-on-one mentoring. Being able to do

such work, he says, means everything to him. “I feel like I’m serving a better purpose . . . by doing that work out here as opposed to in prison,” he says. “If I can do that gang outreach or intervention work out here, then maybe I can stop a young man who’s the same age as me when I got locked up from picking up a gun. That’s the fulfillment, to be able to say we might actually have saved some young man’s life, not only from getting shot to death, but from throwing his life away.”

Taylor is thankful for the chance to live a life defined by more than his lowest moment. And he believes others convicted as juveniles should also have the opportunity, because he knows firsthand how those who grow up in prison can mature. “The possibilities [for redemption] are endless, because we were kids,” he says. “We do some extremely stupid things as kids. Some of them, unfortunately, have a tendency to be deadly. But does that mean that that person can’t change? A kid who didn’t have any good role models and followed the bad people in life? There’s always going to be some positive thing that comes along to help you become a better person, and all you have to do is latch onto it. That’s what I did. I started to look at everything good I wanted to be, and I said, ‘What’s going to help me do that?’”

D. Charleston White

Charleston White grew up in suburban Ft. Worth, Texas, in what he describes as “a typical, traditional, single-parent African-American middle-class home.” But without a positive male role model—his father was mostly absent, his grandfather had gone to prison on drug charges, and his uncles were in and out of jail—he and his older brother drifted toward criminality. At age 14, White was charged with murder. At age 17, his brother was,

too. Following a stint in juvenile prison that he credits with saving his life, White is now two semesters away from a college degree and sharing his story of reform across Texas. His brother remains in prison.

A curious, ambitious child, White was seriously injured in an accident at age 5. From a body cast, he willed himself to learn how to walk again, but he later suffered another injury; after nine painful surgeries, his right eye was removed. Because of his medical issues, White never really got to attend school and socialize normally. In addition, he was small. Longing for connection, he compensated by becoming “a bully with a little man complex.” He began to notice the attention that drew from his older cousins and their friends, who would send him to “beat up the kids that nobody could beat up.”

White’s mother raised herself from difficult beginnings and teenage motherhood to a financially secure job at General Motors. She tried to instill good morals in her sons. But she often worked evenings, leaving Charleston and his brother at home, susceptible to the negative influences around them. “I watched every man in my family go to prison,” White says. “My friends’ dads, my friends’ brothers, all these men in my community. And no one ever came back and told me anything bad about it. It brainwashed me to believe that going to prison was what made you a man. . . . Even though my mother was saying, ‘If you don’t go to school, you have to work.’ My mother could say what she wanted, but I found my identity in the streets.”

At age 12, White learned how to sell drugs, and by the time he was 14 he was running away from home, stealing cars, snatching purses, and breaking into houses. But as a small, articulate, innocent-looking kid, he was able to escape serious consequences. Just

before his 14th birthday, he received a year of probation for shooting at two men who hurled a racial slur at him and a friend in a restaurant parking lot. A couple of months later, he was involved in another shooting incident at a teen club, as well as a car accident. His mother begged the juvenile court to send him away, but he was released to return to school for the new year. Two weeks later, he was back in jail, this time for murder.

The day of the crime, White and a friend broke into the home of his girlfriend's father, a police officer, and stole his gun and bulletproof vest. They did not intend to kill anyone, he says, and were only seeking a rush. Later in the day, White and three friends went to the mall to try to run out of Foot Locker with some Starter jackets and hats. White and two other boys went into the store and stole the jackets, while the fourth boy waited in his car. A Foot Locker employee pursued them into the parking lot. As the boys hopped into the car and tried to back out, a man working on his car nearby noticed what was going on and dove onto the boys' car to try to stop it. A confrontation ensued, during which White gave the gun to another boy and told him to shoot the man. The boys drove back to White's old neighborhood, where White bragged about what they had done. Later, the shooting was on the news; police swarmed the neighborhood and placed White under arrest. "Your mamma's gonna be real proud of you now, Mr. White," the officer said.

At the time of the crime, White says, "[n]o consequences even crossed our mind. Getting caught never even registered. When they put those handcuffs on me and [the officer] said, 'You're being charged with murder,' it was like a ton of bricks fell on me." It took him years to fully appreciate what he had done. "There's something inside that tells me I will never be able to pay my debt to the victim's soul," he says.

White was sentenced to 12 years and sent to the Giddings State Home and School, a facility for youths ages 12 to almost 21. The men in his life had already prepared him for prison, but even four years seemed like a lifetime to a 14-year-old. At first, White acted out and found father figures in the older gang members around him. Although he hadn't previously considered joining a gang, he embraced the lifestyle and worked to become a leader. "It was an image I thought I wanted through what I was exposed to," he explains. "I was ready to go to the pen; my brother and uncles were in there, and [I thought,] when I get home, I'm gonna be a man." Shortly before his 18th birthday, the state recommended White be transferred to adult prison. But four staff members who worked in his dormitory saw past his hardened facade, recognizing that the leadership skills White had displayed only negatively could also be used for good. They told the judge that despite White's record, he had the potential to be somebody and change for the better, if only they had more time with him. Based on that, the judge went against the state's recommendation and allowed White to remain in the youth home. "They saved my life," he says. "I was 18 and began to look at life differently."

Over the next three years, with the help of supportive staff members, White transformed. He earned his GED. Toward the end of his time at the home, he regularly went to speak at colleges, high schools, and middle schools. At age 21, he was released. "I left with a moral compass, and without a 'poor me' attitude," he says. "I no longer saw myself as a victim. I saw not only how my actions affected me, but how they affected other people. I can honestly say all the things they taught [us] equipped us for our journey into manhood."

Nonetheless, White struggled with his new freedom. “I came home with everything I needed to be successful, but I lacked [experience].” Although he had matured emotionally, he was in many practical ways still 14. He did not know how to ride the bus. He had never had a real job. He did not want to return to a negative environment, but he fell back into hanging out with old friends, in his old neighborhood. He began selling drugs again. But he never forgot what he learned at Giddings, and worked to find his way back. In 2009, he enrolled in community college and finished his first semester with a 3.3 GPA. He later transferred to Texas Wesleyan University, where he is now two semesters away from a bachelor’s degree in criminal justice. White also founded his own nonprofit organization, Hyped About HYPE (Helping Young People Excel), for which he has so far recruited 19 other men who were also convicted of murder as juveniles. Group members travel throughout Texas and beyond to speak to children and teenagers, as well as law enforcement officials and others in the criminal justice community. HYPE also works with ex-offenders after they leave prison, including by helping them sign up for college.

Today, at age 37, White’s main focus is advocating for children and the type of juvenile justice system that gave him a second chance, even after he had committed a senseless crime. “To say a child can’t change at 15 . . . I never met a cold-blooded kid in [the juvenile] facility,” White says. “As bad as we thought we were and thought we acted, we still cried, we were still immature.”

“There’s not just my story,” he says. “There are so many stories. I want to share my message, with 19 other guys behind me, saying, ‘We know what we did, and we understand we have an obligation now to help prevent this from happening again.’ If we like to pride

ourselves on being a Christian nation, at some point we as a society have to stand behind the word redemption, because it's possible and I'm a living testament to it.”

* * * * *

As the Supreme Court held in *Miller*, youthful offenders who are faced with the possibility of life imprisonment without parole should be afforded the opportunity to advance mitigating factors to lessen their sentences because children are both morally less culpable for their actions and more capable of change than their adult counterparts. *Miller*, 132 S. Ct. at 2475. A mandatory life imprisonment without parole sentence ignores the special capacity of youth to mature and develop, as the life stories of Anthony Williams, Xavier McElrath-Bey, Sean Taylor, and Charleston White demonstrate. Their journeys make clear that the actions of other immature, reckless youthful offenders should not necessarily consign them to a lifetime of incarceration. The traits that often lead to such behavior are the very mitigating factors the Supreme Court has identified in explaining the behavior of youthful offenders.

All youthful offenders, regardless of when they were sentenced, should be afforded the same opportunity to present mitigating factors that take into account the distinctive characteristics of youth to alter their sentences from the harshest possible to something less. As the men above attest, they did not change overnight. In some cases it took years before they outgrew their immaturity and took control of their own lives. A mandatory sentence of life without parole—a mandate that a child eventually die in prison—destroys both the child's and society's ability to benefit from that growth and rehabilitation.

CONCLUSION

For the foregoing reasons, the Campaign for the Fair Sentencing of Youth respectfully requests that this Court apply *Miller* retroactively, to petitioner Lonnie Lockhart and all others similarly situated.

Dated: November 26, 2014

Respectfully Submitted,

/s/Jennifer Aronoff

Jennifer Aronoff, Ill. Bar #6312278
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606
(312) 984-2010

/s/ Sean D. O'Brien

Sean D. O'Brien, MoBar #30116
UMKC School of Law
500 E. 52nd Street
Kansas City, Missouri 64110
(816) 235-6152
Bar No. 30116

*Attorneys for Amicus Curiae
Campaign for the Fair Sentencing of Youth*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief of *Amicus Curiae* Campaign for the Fair Sentencing of Youth was served upon the parties by e-mail through this Court's eFiling system this 26th day of November, 2014, at the following addresses:

Stephen D. Hawke
Assistant Attorney General
stephen.hawke@ago.mo.gov
P.O. Box 899
Jefferson City, MO 65102

Mae C. Quinn
Professor of Law
mquinn@wulaw.wustl.edu

Kathryn Lee Pierce
Professor of Law
kpierce@wulaw.wustl.edu

Washington University Civil Justice Clinic
Juvenile Rights and Re-Entry Project
Campus Box 1120
One Brookings Drive
St. Louis, MO 63130
(314) 935-7238

/s/ Sean D. O'Brien
Sean D. O'Brien

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief of Amicus Curiae Campaign for the Fair Sentencing of Youth is in compliance with Rule 84.06(b) in that it contains 7,061 words, 589 lines of text in 13-point type, as determined by Microsoft Word 2010 software.

/s/ Sean D. O'Brien

Sean D. O'Brien