No. 12-2327

IN THE SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner-Appellant

vs.

DIMITRI BUFFER,

Respondent- Appellee

On Appeal from the Illinois Appellate Court,
First Judicial District, Docket No. 1-14-2931
There on Appeal from the Circuit, Court of Cook County,
Illinois, Case No. 09-CR-10493
The Honorable Judge Thaddeus Wilson, Presiding

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STATEMENT OF INTEREST

The *Amicus*, The John Marshall Law School's Pro Bono Program & Clinic, is a nonprofit organization that promotes, protects, and advocates for the rights of all in our community. Since 2013, the Clinic has engaged in the assistance and representation of prisoners while also participating in mediating Federal 1983 cases in both the Northern and Central Districts of Illinois. Amici curiae conducts research and its practice is in the area of civil liberties law generally, and the law pertaining to 42 U.S.C. §1983 of the 1871 Civil Rights Act in particular. Amici also have significant experience litigating major lawsuits under §1983. The Eighth Amendment was enacted to prohibit cruel and unusual punishment, to uphold the sentence imposed on Respondent will in essence violate his constitutional right to be free from cruel and unusual punishment.

In *People v. Buffer*, 2017 IL App. (1st) (142931), the appellate court correctly reversed the circuit court judgment that dismissed Respondent's *pro se* post-conviction petition. The appellate court decision is consistent with the recent precedent regarding juvenile sentencing. The most recent precedents protect young offender's interests by prohibiting life sentence or *de facto* life sentence of imprisonment without the possibility of parole. Juveniles are a special group of offenders due to their diminished culpability and heightened capacity for change and the Clinic has an interest in ensuring that this population is adequately protected. The *Amicus* writes to aid this court in understanding why the appellate court correctly reversed the trial court's decision in dismissing Respondent's *pro se* post-conviction petition regarding his sentencing. Moreover, this Court in *People v. Reyes*, 2016 IL 119271 (2016) held that imposing a sentence that "indisputably amounts" to lifetime imprisonment without parole for offenses committed in the same course of conduct is unconstitutional. *Id.* at ¶8.

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INTRODUCTION

Dimitri Buffer argued on appeal that his 50-year adult sentence, that was imposed when he was 16 years old, is unconstitutional under the United States Constitution and under the Illinois Constitution. The Appellate Court held that Respondent's sentencing violated the United States Constitution due to the Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012). This Honorable Court should affirm the decision of the appellate court for the following reasons.

First, reaffirming the decision of the appellate court is consistent with the Supreme Court decision in *Miller*. There the Court held that a mandatory life sentence without the opportunity for parole is violative of the Eighth Amendment because of the nature of juvenile offenders, and their lower culpability in comparison to adults who commit the same crime. *Id.* The Court focused on the youth's higher capability for rehabilitation. *Id.* Several other Illinois decisions have relied on *Miller* to support the contention that juveniles have diminished culpability and that juveniles have a higher capacity and ability to rehabilitate. Therefore, under *Miller*, Respondent's sentence of 50 years without the possibility of parole is violative under the United States Constitution.

Second, Respondent's 50-year sentence without any sentence credit is effectively a mandatory life sentence that is violative of his constitutional rights. The Court held in *People v. Reyes*, 2016 IL 119271, that a *de facto* life sentence for a juvenile is unconstitutional under the Eighth Amendment of the United States Constitution. A life sentence without the possibility of parole is the type of cruel and unusual punishment that the Eighth Amendment intended to prohibit. Therefore, this Honorable Court should

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affirm the appellate court decision and rule in favor of resentencing Dimitri Buffer's 50-year imprisonment.

ARGUMENT

I. THIS HONORABLE COURT SHOULD AFFIRM THE DECISION OF THE APPELLATE COURT BECAUSE RESPONDENT'S CURRENT 50-YEAR SENTENCE VIOLATES HIS CONSTITUTIONAL RIGHTS UNDER BOTH THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND PRECEDENT

A. Respondent must be resentenced in accordance with section 730 ILCS 5-4.5-105.

A petitioner who is eligible for resentencing may choose to be resentenced under either the operative sentencing law at the time his offense was committed or the law in effect at the time of his sentencing, whichever is more favorable. *People v. Hollins*, 280 N.E.2d 710, 712 (1972). This is so because mechanistic application of a sentencing law that would increase the punishment for a crime after the crime's conviction violates ex *post facto*. *Lynce v. Mathis*, 519 U.S. 433, 444 (1997) (opining that "the relevant inquiry is whether the change alters the definition of criminal conduct or increases the penalty by which a crime is punishable") (citations omitted); *Barger v. Peters*, 163 Ill. 357, 363 (1995) (reasoning that an Illinois law eliminating opportunities for inmates to increase good-conduct credit violated *ex post facto*).

Significantly, in *Barger*, our Illinois Supreme Court addressed the question of whether a state law eliminating the opportunity to increase good-conduct credit for previously eligible inmates constituted a change in the punishment associated with a crime or resulted in the infliction of greater punishment. *Id*. at 362. The court opined that the United States Supreme Court does not view punishment for *ex post facto* clause purposes "to mean simply the period of incarceration prescribed by a judge for a person

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convicted of a crime - that is, the sentence. Instead, the Court construes punishment to mean the *actual time* that such a person spends in prison." *Id*. at 362 (emphasis added). The *Barger* majority followed suit, adopting "a generous understanding of the term 'punishment." *Id*. at 363. In so doing, the court held that "any legislation curtailing the possibility of reducing actual prison time makes more onerous the consequence associated with a crime." *Id*. ("It is entirely inconsequential that capitalizing on the opportunity may depend on an inmate's success in staying out of trouble or attaining other goals.")

In this case, Respondent should be resentenced under section 5-4.5-105 of the Unified Code of Corrections sentencing statute. Application of a later statute would violate *ex post* facto and would render Respondent's life sentence unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012). *Lynce*, 519 U.S. at 444. Therefore, Respondent should be sentenced under section 5-4.5-105, and parole eligibility must accompany any new sentence of imprisonment – including accrual of the "good conduct credit." *Barger*, 163 Ill. at 363.

B. A 50-year sentence amounts to an unconstitutional *de facto* life sentence.

To sentence Respondent to a 50-year term of imprisonment would be a *de facto* life sentence. *People v. Reyes*, 2016 IL 119271 (2016). In *Reyes*, the Supreme Court held that imposing a sentence that "indisputably amounts" to lifetime imprisonment without parole for offenses committed in the same course of conduct is unconstitutional. *Id.* at ¶8. The Eighth Amendment states, "excessive bail shall not be required, nor excessive fines impose, nor cruel and unusual punishments inflict." *U.S. Const., amend. VIII*. In *Roper*, the Supreme Court established that the Eighth Amendment prohibition against cruel and

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unusual punishment has to be viewed through "the evolving standards of decency that mark the progress of a maturing society." *Roper v. Simmons*, 543 U.S. 551, 561 (2005). "A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile's life as would an actual mandatory sentence of life without parole. In either situation, the juvenile will die in prison." *Reyes*, 2016 IL 119271 at ¶ 9.

Respondent was placed into custody on May 12, 2009 and his projected discharge date is May 12, 2062. He entered custody at age 16 and would be discharged at age 62. In *Sanders*, the appellate court, in relying on the United States Sentencing Commission Preliminary Quarterly Data Report, stated, "a person held in a general prison population has a life expectancy of about 64 years." *People v. Sanders*, 2016 IL App (1st) 121732-B, ¶ 26. Further, for every year a person is locked in prison, consequently "he suffers a two-year decline in life expectancy." *Evelyn J. Patterson, The Dose-Response of Time Served in Prison on Mortality: New York State*, 1989-2003, 103 Am. J. of Pub. Health 523, 526 (2013). Therefore, Respondent would only have a few years of life outside of prison, if he lives that long. *Reyes* bars such a *de facto* life sentence. *Reyes*, 2016 IL 119271 at ¶ 12. The recently enacted statute that applies to Respondent's resentencing not only takes into account age and numerous other factor specific to youth, but it also allows the trial judge to decide whether to increase the sentence by adding on the mandatory firearm enhancement. *See* 730 ILCS 5/5-4.5-105. The trial judge should not impose the firearm enhancement in order to comply with the prohibition against *de facto* life sentences. However, if the appellate court decision is reversed, Respondent's sentence will nonetheless amount to a *de facto* life sentence should the Illinois Department of

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Corrections fail or refuse to apply good conduct credit towards Respondent's sentence or otherwise deny parole.

Therefore, a term of years upon resentencing that comports with *Miller* and *Reyes* should not hinge upon an expectation of eventual parole.

C. The mitigating factors set forth in 730 ILCS 5/5-4.5-105 and in *Miller* must be considered when resentencing Respondent.

Section 5/5-4.5-105 contains nine mitigating factors for determining the appropriate sentence for an individual under the age of eighteen and applies retroactively to juvenile offenders. *People v. Holman*, 2017 IL 120655, ¶ 45. These factors include the age, background, family and home environment, mental and emotional development, psychological damage, and maturity level of the minor. 730 ILCS 5/5-4.5-105. The above statutory factors mirror those set forth in *Miller v. Alabama*. 567 U.S. at 467. *Miller* applies retroactively to juvenile offenders serving sentences of life without parole. *Id. Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). The Supreme Court explained that, "*Miller* is retroactive because it necessarily carr[ies] a significant risk that a defendant –here, the vast majority of juvenile offenders—faces a punishment that the law cannot impose upon him." *Montgomery*, 136 S. Ct. at 734. *Miller* instructs that a court must consider his "youth, immaturity, and potential for rehabilitation" before sentencing a juvenile offender to a mandatory, un-survivable prison term. *Reyes*, 2016 IL 119271, ¶ 9. Thus, the factors set forth in section 5/5-4.5-105 apply retroactively to Respondent's case. *See Holman*, 2017 IL at ¶ 45 (reasoning that "because *Miller* is retroactive, all juveniles, whether they were sentenced after [section 5/5-4.5-105] became effective on January 1, 2016, or before that, should receive the same treatment at sentencing.")

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In *Miller*, the Court held that the Eighth Amendment prohibits a sentence for a juvenile offender that mandates life in prison without possibility of parole. *Miller*, 567 U.S. at 489. In light of this distinction between adult and juvenile offenders and the necessity for a court to apply mitigating factors for juvenile sentencing, the Court has explained, "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471. The trial court must take into account "(1) a child's diminished culpability and heightened capacity for change; (2) the fact that children lack maturity, they foster an underdeveloped sense of responsibility, are reckless, impulsive, and vulnerable to negative influences; and (3) that they lack control over their environment and the ability to extricate themselves from horrific, crime-producing circumstances." *See Montgomery*, 136 S. Ct. at 733; *Miller*, 567 U.S. at 471; *Graham v. Florida*, 560 U.S. 48, 68 (2010).

Prisoners must have the "opportunity to show their crime did not reflect irreparable corruption and, if it did not, their hope for some years of life outside prison walls must be restored." *Montgomery*, 136 S. Ct. at 736-7637. Juveniles possess a unique quality to rehabilitate and change their character. *Graham*, 560 U.S. at 68. However, by additionally, providing the opportunity for parole eligibility to juvenile prisoners "does not impose an onerous burden on the States, nor does it disturb the finality of state convictions." *Montgomery*, 136 S. Ct. at 736.

Finally, to the extent that the State contends that certain aggravating factors, e.g., "brutal or heinous," in this case raise the statutory ceiling, the Court is barred from increasing the range under *Apprendi v. New Jersey*, 530 U.S. 466, 466 (2000) (holding that the Constitution requires that any fact that increases the penalty for a crime beyond

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the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt). *Id*. Additionally, in accordance with *Miller* and its progeny, factors that might apply to Respondent's case are reserved for defendants who "at the time of the commission of the murder, had attained the age of 18." *See* 730 ILCS 5/5-8-1(c).

CONCLUSION

WHEREFORE, Amici, for all the above reasons, respectfully requests that this Honorable Court affirms the appellate court's ruling, remand the cause for resentencing in accordance with 750 ILCS 5/5-4.5-105 and for any other relief this Court deems just.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 8 pages.

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