Rel: August 18, 2023

Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-20-0654

Evan Miller

v.

State of Alabama

Appeal from Lawrence Circuit Court
(CC-06-68)

MINOR, Judge.

In this appeal, we consider Evan Miller's challenge to his resentencing to life imprisonment without the possibility of parole for his 2006 conviction for murder made capital because Miller, who was 14 years old at the time of the offense, committed it during the commission

of a first-degree arson, see § 13A-5-40(a)(9), Ala. Code 1975. After review and with the benefit of oral argument, we affirm.

FACTS AND PROCEDURAL HISTORY

On direct appeal in 2010, this Court summarized the evidence from Miller's 2006 trial:

> "[I]n July 2003, then 14-year-old Evan Miller and his 16-year-old codefendant, Colby Smith, robbed and savagely beat Miller's neighbor, Cole Cannon. After beating Cannon to the point that he could not get off the floor, Miller set Cannon's trailer on fire. Cannon's body was later discovered by firefighters, who were called to extinguish the fire.
>
> "Colby Smith testified that he became acquainted with Miller during high school and that they had known each other for approximately four or five months before the crime. On the evening of July 15, 2003, Smith was spending the night at Miller's trailer. Around midnight, Cannon came over complaining that he had burned his food and asking if they had something he could eat. Cannon appeared to have been drinking, and Smith smelled alcohol on his breath and noticed that he was 'staggering.' While Miller's mother was preparing some spaghetti for Cannon, Miller and Smith went over to Cannon's trailer to look for drugs, but they were unable to find any. The two, however, found and stole some of Cannon's baseball trading cards. Miller and Smith then returned to Miller's trailer.
>
> "When Cannon finished eating, he returned to his trailer. Miller and Smith then went back to Cannon's trailer intending to get Cannon intoxicated and to steal his money. Miller and Smith smoked a joint and played drinking games with Cannon until he passed out on the couch. While Cannon was unconscious, Miller stole Cannon's wallet and took it into

the bathroom where he split a little over $300 with Smith. While Miller was attempting to put the wallet back in Cannon's pocket, Cannon jumped up and grabbed Miller around the throat. Smith, who witnessed the altercation, grabbed a baseball bat and hit Cannon on the head. Miller then climbed onto Cannon and began hitting him in the face with his fists. Despite Cannon's pleas to stop, Miller picked up the bat, which Smith had dropped, and continued to attack Cannon by striking him with it repeatedly.

"Afterwards, Miller placed a sheet over Cannon's head and told him, 'I am God, I've come to take your life.' After Miller hit Cannon a final time with the bat, Miller and Smith returned to Miller's trailer. A few minutes later, however, Miller and Smith returned to Cannon's trailer and attempted to clean up the blood. Afterwards, Miller and Smith set several fires to cover up their crime. Initially, Smith used a lighter to start a fire on a couch in the back bedroom, while Miller set another fire on a different couch 'to cover up the evidence.' As they were leaving, Smith saw Cannon '[j]ust laying there.' Feeling sorry for Cannon, Smith placed a towel under his head in an attempt to stop the bleeding. Smith also turned on the faucet in the kitchen sink and stopped it up, hoping that the water would extinguish the fires. As they were leaving Cannon's trailer, Smith heard Cannon asking, 'Why are y'all doing this to me?' Approximately 10 minutes later, Smith returned to Cannon's trailer alone. He could hear Cannon coughing but 'smoke was coming out and [Miller was] coming behind [him,]' so he returned to the Miller's trailer.

"Firefighters, who were called to the trailer park to extinguish the fire at Cannon's trailer, noticed blood on the coffee table and blood spatters on the wall. This led the firefighters to the discovery of Cannon's body in the hallway leading to the back bedroom. Fire Marshal Richard Montgomery, who conducted the initial investigation, concentrated on the north bedroom where most of the damage from the fire occurred. The investigation was later turned

over to Investigator Tim Sandlin of the Sheriff's Department after Fire Marshal Montgomery indicated that the fire was 'obviously suspicious.' After talking with Cannon's family members, Investigator Sandlin became aware that certain items, including Cannon's wallet and some trading cards, were missing from the trailer. Cannon's wallet was eventually recovered from underneath the couch in his trailer, but his driver's license was missing. Investigator Sandlin also removed a baseball bat from underneath the couch.

"After this discovery, Investigator Sandlin went to Miller's trailer to speak with Miller and his mother, Susan. Susan gave Investigator Sandlin a box of trading cards, and Miller and his mother agreed to ride with him to the sheriff's office to give statements.

"At the sheriff's office, Investigator Sandlin obtained basic information from Miller and read him his rights from the juvenile Miranda form, which Miller and his mother both signed before Miller began recounting the events of the night of July 15 and the early morning of July 16. In his statement, Miller initially told Investigator Sandlin that on the evening of July 15, he was at his trailer watching a movie. Although he admitted that Cannon came over to their trailer, he denied going over to Cannon's trailer. Miller also claimed that he did not learn about the fire at Cannon's trailer until the fire department arrived the next morning. However, when Investigator Sandlin asked Miller to begin by describing the morning's events and work backwards to the previous evening, Miller became 'frustrated and agitated' and told Investigator Sandlin 'to forget all that, that that wasn't true.' Miller then requested that everyone except Investigator Sandlin leave the room. After Miller's mother and juvenile officers left the room, Miller gave Investigator Sandlin another statement, which Sandlin typed up for Miller to read and sign.

"In his second statement, Miller explained that, on the

evening of July 15, his family was getting ready to go to bed when Cannon came over to use the telephone. While Cannon was at his trailer, Miller went over to Cannon's trailer where he found some trading cards that 'looked like they were worth money.' When Cannon came back to the Millers' trailer around midnight to get something to eat, Miller went to Cannon's trailer to get the cards. Around 2:00 or 3:00 a.m., Miller and Smith returned to Cannon's trailer to drink beer. According to Miller, as the evening progressed, Cannon became so intoxicated that he had trouble standing and eventually fell down, hitting his nose and lip on the table. Miller stated that when he tried to assist Cannon, Cannon grabbed him by the throat. Miller said Smith pushed Cannon off of him just as Cannon grabbed a bat and hit Miller on the arm. Smith then grabbed the bat from Cannon and hit Cannon on the arm. Afterwards, Smith threw the bat down and Miller kicked it under the couch. Miller then punched Cannon several times in the face before seeing Cannon's wallet on the floor and taking about $300 in cash and a driver's license. After hearing Miller's mother knock on the front door and tell them that the police were on the way, Miller and Smith ran out the back door. As they were leaving, they could hear Cannon asking, 'Why did you do this to me?'

"Based on Miller's statement, Investigator Sandlin called Deputy Fire Marshal Lyndon Blaxton to let him know that he had 'additional information' on the fire. As a result, Deputy Blaxton, Investigator Sandlin, and other law-enforcement agents agreed to meet at Cannon's trailer on July 24, 2003, to conduct a full fire investigation. During the investigation, Deputy Blaxton noticed blood spatters on the wall, a table, a pillow, and a towel. Deputy Blaxton also identified four points of origin for the fires, including a large one in the south bedroom, which spread down the hallway; a second one on the bed, which had been completely consumed by fire; a third one on the couch; and a fourth one, which originated from a cushion that had been placed on the floor before being set on fire.

"Forensic pathologist Dr. Adam Craig performed the initial external examination on Cannon's body. Because he claimed there was no indication that Cannon's death had resulted from a crime, Dr. Craig did not perform a full autopsy, and he initially ruled that Cannon's death was an accident caused by the inhalation of smoke and soot. After further investigation, however, Investigator Sandlin requested that Cannon's body be exhumed so that a full autopsy could be performed. On August 1, 2003, Dr. Craig performed a full autopsy and discovered several injuries not caused by the fire, including a two-inch contusion to the left side of the forehead caused by blunt force and six rib fractures on both sides of the body. Dr. Craig was also able to determine from hemorrhaging that these injuries occurred before Cannon died. Toxicology analysis showed Cannon's blood-alcohol level to be .216. Based upon these findings, Dr. Craig reaffirmed his initial finding that the cause of Cannon's death was 'inhalation of products of combustion,' but added that 'multiple blunt force injuries and ethanol intoxication' were contributing factors that made it more difficult for Cannon to breathe in the fire or to escape from the burning trailer.

"Deputy Tim McWhorter of the Lawrence County Sheriff's Department testified that on July 31, 2003, and August 4, 2003, he transported Miller from the Tennessee Valley Detention Center to two different mental-health evaluations. Deputy McWhorter stated that although he engaged in 'small talk' with Miller, he did not interrogate him, talk about the murder investigation, threaten him, or offer Miller any benefit for making a statement. During their first trip, Miller asked Deputy McWhorter 'if he had previously told something that wasn't true but now wanted to go back and tell the truth, would he get in any trouble.' Miller also told Deputy McWhorter that he deserved 'to do some time in a correctional facility, that he was not innocent and he had been involved in the assault on Mr. Cole Cannon.' Similarly, during their August 4 trip, Miller told Deputy McWhorter that he

> 'had been really messed up' when Cannon died, because he had taken two Klonopin tablets and had drunk most of a fifth of whiskey. Miller stated that he and Smith went to Cannon's trailer after Cannon told them that he had some 'acid,' but when they got there, Cannon refused to discuss anything but music. When they attempted to leave, Cannon grabbed Miller by the neck. Miller then 'slammed Mr. Cannon really hard' because he was 'really pissed off.' Miller knew that the autopsy would have revealed marks and bruises because 'they had roughed him up pretty good.' Miller said that he could not remember everything, but 'the more he thought about it, the more it made him think he started the fire.' The following morning, Smith told Miller that Cannon had died in the fire.
>
> "Nancie Jones, the head of the DNA section of the Huntsville Regional Laboratory of the Alabama Department of Forensic Sciences, testified that she examined numerous items for the presence of DNA. Several items, including an aluminum bat, a towel, and a portion of a gold cushion tested positive for human blood, but Jones was unable to obtain usable DNA profiles from the blood on the bat or the towel. Jones was able to use the blood taken from the gold cushion to create a DNA profile, which was consistent with the DNA sample taken from Cannon during the autopsy. Jones was also able to exclude both Miller and Smith as sources for the DNA found on the cushion. The bloodstains from the wall in Cannon's trailer were also consistent with Cannon's DNA profile and inconsistent with Miller's and Smith's DNA profiles. Jones also found bloodstains consistent with Miller's DNA profile on an Old Navy brand t-shirt and on the underarm portion of a Hanes brand t-shirt. Jones could not exclude Cannon as a second source of blood on the Hanes t-shirt; however, the blood spatters on the shirt were consistent with someone being hit with an object rather than being shot with a gun."

Miller v. State, 63 So. 3d 676, 682-86 (Ala. Crim. App. 2010) (citations

and footnote omitted), rev'd, Miller v. Alabama, 567 U.S. 460 (2012).

In 2003, the State charged Miller as a juvenile with two counts of capital murder. In March 2004, the juvenile court granted the State's motion to transfer Miller's case for him to be prosecuted as an adult. This Court affirmed the transfer, as did the Alabama Supreme Court. See E.J.M. v. State, 928 So. 2d 1077 (Ala. Crim. App. 2004); Ex parte E.J.M., 928 So. 2d 1081 (Ala. 2005).

The Lawrence County grand jury indicted Miller in January 2006 for two counts of capital murder: Count I charged Miller with murder made capital because Miller committed it during the commission of a first-degree robbery, see § 13A-5-40(a)(2), Ala. Code 1975, and Count II charged Miller with murder made capital because Miller committed it during the commission of a first- or second-degree arson, see § 13A-5-40(a)(9), Ala. Code 1975. In October 2006, a jury convicted Miller of capital murder under Count II (arson) and of the lesser offense of felony murder to the capital-murder charge in Count I. (Trial R. 1385.)[1] The

[1]"Trial C." refers to the clerk's record in Miller's direct appeal of his conviction and sentence; "Trial R." refers to the reporter's transcript in the direct appeal. See Rule 28(g), Ala. R. App. P. See also Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992) (noting that this Court may take judicial notice of its own records).

trial judge, finding those verdicts inconsistent, reinstructed the jury (Trial R. 1387-88), and the jury then found Miller guilty of capital murder under Count II. Under Roper v. Simmons, 543 U.S. 551 (2005), and the version of § 13A-5-39(1), Ala. Code 1975, then in effect,[2] the trial court sentenced Miller to the only sentence constitutionally available: life imprisonment without the possibility of parole.[3] (Trial R. 1396-99.) Miller

---

[2]When Miller committed the acts that led to his conviction, § 13A-5-39(1), Ala. Code 1975, defined a "capital offense" as "[a]n offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole according to the provision of this article." That statute was amended by Act No. 2016-360, Ala. Acts 2016, effective May 11, 2016, to define a "capital offense" as:

> "[a]n offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole, or in the case of a defendant who establishes that he or she was under the age of 18 years at the time of the capital offense, life imprisonment, or life imprisonment without parole, according to the provisions of this article."

(Emphasis added.)

[3]In 2003, § 13A-6-2(c), Ala. Code 1975, provided:

> "Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravating circumstances, as provided by Article 2 of Chapter 5 of this title, is death or life imprisonment without parole, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto."

moved for a new trial, arguing that his sentence constituted cruel and unusual punishment under the Eighth Amendment to the United States Constitution and that Alabama's mandatory sentencing scheme violated the Eighth and Fourteenth Amendments. (Trial C. 99.)

This Court affirmed Miller's conviction and sentence. Miller, 63 So. 3d 676. The United States Supreme Court granted Miller's petition for a writ of certiorari and, in a 5-4 decision, reversed this Court's judgment,

---

Section 13A-6-2(c) was amended effective May 11, 2016. As amended, that section provides:

> "Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravated circumstances by a person 18 years of age or older, as provided by Article 2 of Chapter 5 of this title, is death or life imprisonment without parole, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto. The punishment for murder or any offense committed under aggravated circumstances by a person under the age of 18 years, as provided by Article 2 of Chapter 5, is either life imprisonment without parole, or life, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto and the applicable Alabama Rules of Criminal Procedure.
>
> "If the defendant is sentenced to life on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole."

holding "that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller v. Alabama, 567 U.S. 460, 465 (2012). In response to Miller, the Alabama Supreme Court in Ex parte Henderson, 144 So. 3d 1262, 1283-84 (Ala. 2013), established a procedure providing courts with the option of a sentence of life in prison with the possibility of parole for those who were under the age of 18 when they committed their crimes. This Court remanded Miller's case to the Lawrence Circuit Court in 2013 for that court to resentence Miller under the Henderson procedure. Miller v. State, 148 So. 3d 78 (Ala. Crim. App. 2013).

After granting several continuances, the circuit court held a resentencing hearing over three days in March 2017. (R. 1-606.) The State called four witnesses: (1) Timothy Sandlin, who had been the primary case agent from the Lawrence County Sheriff's Office assigned to Miller's case; (2) Jodi Fuller, Cannon's daughter; (3) Sandy Cannon, Cannon's son; and (4) Candy Cheatham, Cannon's daughter. The State also offered into evidence letters from friends and relatives of Cannon and records from the St. Clair Correctional Facility showing disciplinary

infractions for which Miller had received sanctions.

Miller called ten witnesses: (1) his sister, Aubrey Goldstein; (2) Tiffani Adamson Aldridge, a child of Miller's foster parents; (3) Toby Robertson, the administrator of the Tennessee Valley Juvenile Detention Center where Miller had been incarcerated after his arrest; (4) Robin Adamson Brown, Aldridge's mother and Miller's foster mother; (5) Hope Berryman, a case manager with the Moulton Lawrence Counseling Center who had worked with Miller from February 2003 until just after his arrest in July 2003; (6) Patrick Hitt, a long-time friend of Miller; (7) Brad Black, an instructor with Gadsden State Community College who worked with Miller and other inmates at the St. Clair Correctional Facility; (8) Judge Tiffany Johnson Cole, an attorney and municipal court judge who had Miller speak to two public school assemblies; (9) David Wise; a former warden of St. Clair Correctional Facility; and (10) Dr. George Davis, a psychiatrist specializing in child and adolescent psychiatry. Miller also introduced hundreds of pages of documents, including records from the Department of Human Resources ("DHR"), records from law-enforcement agencies, court records, Miller's school records, and other documents.

Both parties filed post-hearing briefs. On April 27, 2021, the circuit court, with the consent of the parties, held a virtual hearing and resentenced Miller to life imprisonment without the possibility of parole. (R. 607-38.) Miller moved for a new trial on May 26, 2021, and filed a notice of appeal on June 3, 2021. (C. 179-91, 193-94.) See Rule 4(b)(1), Ala. R. App. P. The circuit court on June 26, 2021, entered a detailed written order applying the Henderson factors. (C. 205.) Two days later, the circuit court denied Miller's motion for a new trial. (C. 279.)

STANDARD OF REVIEW

We review a circuit court's decision to sentence a juvenile offender to life imprisonment without the possibility of parole for an abuse of discretion. Wilkerson v. State, 284 So. 3d 937, 956 (Ala. Crim. App. 2018) ("Because life imprisonment without the possibility of parole remains a sentencing option for juvenile offenders, … the standard of review to be applied is an abuse-of-discretion standard.").

DISCUSSION

Although the Henderson Court did not require written findings on a circuit court's decision to sentence a juvenile offender to life imprisonment without the possibility of parole, the circuit court issued

an extensive written order explaining its decision. Cf. Jones v. State, 355 So. 3d 361, 383-84 (Ala. Crim. App. 2021) (recognizing that written findings applying the Henderson factors are not required in every case). The circuit court judge likely felt compelled to do so, given the "ambiguous cloud" of uncertainty that the United States Supreme Court created in Miller and its later decision in Montgomery v. Louisiana, 577 U.S. 190 (2016)—and given that Miller's was "the [case] that launch'd a thousand"[4] requests for resentencing by juvenile offenders sentenced to life imprisonment without the possibility of parole.[5] Miller challenges

---

[4]Christopher Marlowe, The Tragical History of Doctor Faustus (1616) ("Was this the face that lauch'd a thousand ships").

[5]The circuit court, describing the Court's decisions as creating an "ambiguous cloud," stated:

> "Following Miller [v. Alabama, 567 U.S. 460 (2012)], there arose the predictable plethora of state court decisions interpreting and applying the holdings and implication of Miller, trying to understand the procedural and substantive obligations constitutionally required in sentencing juvenile homicide offenders. The number of state court resentencings in view of Miller dramatically increased after the Supreme Court issued Montgomery v. Louisiana, 577 U.S. 190 (2016) ….
>
> "Unfortunately, from the sentencers' perspectives, some of [the] language employed by the Court in Montgomery to explain how Miller announced a substantive change in the

the circuit court's order on many grounds. To be safe, we address each issue Miller raises on appeal, but we reiterate that a circuit court is not required in each case to issue a detailed order explaining its decision to sentence a juvenile offender to life imprisonment without the possibility of parole.

The circuit court summarized the evidence it considered regarding Miller's background and history before he murdered Cannon:

> "a. Mr. Miller's pre-crime life generally
>
> > "Evan James Miller was born [in] November … 1988, to his 31-year-old mother, Susan Jayne Bailey ('Susan'). The birth certificate listed 33-year-old David Wayne Miller ('David') as his father. By that time, David and Susan had been together around five years and had two older children together: John, born [in] August … 1984, and Aubrey, born [in] June … 1987. Even before [Miller] came into the family, Susan and David had already had at least four reports to DHR made against them, two involving physical abuse by David against John and Aubrey (then 9 months old), and two because of neglect. The family had already started a cycle of economic instability, having gone through two evictions (and they were evicted again shortly after [Miller's] birth). Over the course of the next 14 and one-half years, the family, including [Miller], would live lives of chaos and disruption, routinely interrupted by arrests of the parents (fourteen in

---

> law (thereby justifying retroactive application), led to uncertainties concerning the questions that must be answered on resentencing following Miller."

(C. 229-30.)

the available records) and the investigations of DHR spread over a four-county area (at least thirteen reports of neglect or abuse), a family seemingly always on the move, never settling down for long. The children would move at least thirteen times, to at least twelve different residences, and attend thirteen different schools. The family would live in at least five different cities or towns (Huntsville, Cullman, Decatur, Arab and Moulton) in four counties (Cullman, Lawrence, Madison and Marshall).

"The three children and Susan experienced regular fits of violence directed against them by David, an alcoholic and drug addict who fancied himself a disciplinarian of the worst sorts, the proverbial mean drunk. Slappings, whippings, beatings, with belts, belt buckles, fists, and feet were his modi operandi. On multiple occasions, [Miller] would report David's beating him and leaving bruises and marks, with [Miller's] self-reporting starting as early as age three, with at least five total instances reported before [Miller's] 11th birthday. These included being hit with a belt when he was age five, leaving bruises observed by DHR. Another belt beating of [Miller] was reported when [Miller] was eight years old. When [Miller] was nine, David hit him nine times on his head.

"Disturbingly, Aubrey would later recall that [Miller] had it better than John, with John getting the worst (she described some horrible beatings of John, some of which [Miller] witnessed at an impressionable age, one involving David throwing John into a wall and John's head 'through a door'). At least according to the records before the court, none of [Miller's] injuries at David's hands resulted in any trips to the emergency room or in any trips for acute medical attention.

"David and Susan often had violent encounters, most witnessed, at least audibly, by the children, leaving Susan and the children in a constant state of fear, when David was

home. Fortunately, because David was an over-the-road trucker, he was gone for long stretches at a time. David's violence ultimately culminated in his pointing a gun at the head of Susan. This, and the criminal charges that followed, led to his leaving the family to return to his native home in Indiana in 2000.

"As if David's violent, alcohol-and-drug-fueled rampages were not enough for the children to bear, Susan's persistent neglect, handicapped by a vicious addiction to multiple drugs, created a constant state of dangerous chaos. From one parent they had violence, from the other, abject neglect. Early on, even prior to the birth of [Miller], DHR was called to the home because of neglect; John, a young toddler, was found alone, wandering in the road. A similar report about [Miller] would be made a few years later.

"Once David and the intense storms that he brought with him left the family in 2000, Susan's impaired parenting skills were tested and found significantly wanting. On multiple occasions (and this occurred while David was around as well, as noted above), the family was evicted from their home. And on multiple occasions, utility services were disconnected, leaving the family without electricity and sometimes without water. Once, while David was still in the home, during one of these periods of electrical service disconnection, he had the very bad idea of using a charcoal grill in the house to provide heat. Without proper ventilation, the entire family was exposed to carbon monoxide poisoning. Fortunately, relief arrived before all passed out or any needed emergent medical care.

"Susan, though described by her testifying children and by members of the foster family that would eventually be involved in the children's lives as 'loving,' 'a really intelligent woman' and genuinely desiring of doing the best for her children, was so impaired by severe drug and alcohol addictions, that her sincere sentiments never sufficiently

equipped her to provide even basic care. Aubrey testified that Susan's drug usage was something that her mother never tried to hide from the children, consuming cocaine on a regular basis in the open areas of their homes. Cocaine was not her only drug. Her addiction knew little discrimination and no regulation. She had multiple driving under the influence arrests and convictions during the years when she was an influencer and itinerant parent to [Miller].

"Notwithstanding all of this and DHR's seeming omnipresence in their lives, the children were never placed into foster care (for more than a day) until July 1999, when they went into the therapeutic foster care family led by the Adamsons. For seventeen to eighteen months, [Miller], in Aubrey's words, 'flourished' under the nurturing but strict structure of this devoutly Christian family. His grades (never great) and standardized testing rose dramatically. He became involved in church and church groups for young adolescent males, a sort of 'Christian Boy Scouts' group. It would be the happiest days of his life.

"Part of that happiness derived from his relationship with the Adamson family. The father, mother and their three children all bonded with the Miller children, in ways that the Adamsons would never bond with any other of their charges. Particularly, Tiffani, younger than [Miller] by fourteen months, became close to [Miller] (Aubrey said that he, the youngest in his family, felt very protective of Tiffani, maybe because he finally had the chance to act as a 'big' brother to someone).

"Tiffani and her mother testified that [Miller] 'matured throughout,' quickly but surely learning that negative consequences followed disrespectful or disobedient behavior. Tiffani remembers [Miller] as someone who always wanted to be seen as 'cool' with his peers, wearing nice clothes and shoes (a possible outgrowth of [Miller's] being teased—in Aubrey's words, 'bullied'—by other children before foster care because

> of his clothing, a product of poverty rather than fashion). Tiffani thought that [Miller] could be 'impulsive' but never violent.
>
> "This latter characterization differed substantially from a report, made roughly contemporaneous to the occurrence, made by Mrs. Adamson to a DHR worker that [Miller] once choked Tiffani and that he left a note that he wanted to kill Tiffani and 'make it painful for' her. Neither Tiffani nor her mother could recall the incident at the sentencing hearing,[6] but both accepted the truthfulness of the account. Dr. Davis stated that had such a report been made to him as a child psychiatrist, he would have recommended 'an emergency psych evaluation' of [Miller]. No testimony indicates that any emergency psychological interventions ensued from this incident.
>
> "Therapeutic foster care is never meant to be permanent but, according to DHR's statutory mandate, DHR is to rehabilitate the home and reunite the family divided by juvenile dependency intervention. In 2001, the children moved back in with Susan, taken away from the only real home that they had ever known. While David's violence may have been gone, Susan's threatening neglect was as bad as ever.
>
> "The drug abuse continued. On multiple occasions, Tiffani visited the home where [Miller] lived at the time of the murder. She found it always messy, inundated with 'strong odors' (assumedly, unpleasant). She states that it looked like there was a 'big party' going on over there. She even recalled that on at least one occasion, Susan offered her drugs, as though Susan's impaired sense of Southern hospitality

---

[6]The circuit court found this testimony "extremely incredible (i.e., as in lacking credibility)." (C. 245.) The court noted: "They both accepted the truth that it happened but repeatedly confessed no memory of it." (C. 245.)

demanded such an overture (Tiffani would have been no more than 13 years old at the time). Tiffani declined but was left with the firm impression that Susan was 'not ready' to have the Miller children, and the responsibilities that went along with raising and controlling a family.

"b. Department of Human Resources Interventions

"As noted above, DHR investigated various reports concerning the Miller family, starting prior to [Miller's] birth. The first involvement occurred in 1987, at the time of Aubrey's birth, upon the report of hospital officials. A second report to DHR involving neglect of John occurred in late 1987.

"After [Miller's] birth in 1988, at least nine separate reports of neglect of the Miller children by their parents were filed with DHR before more serious reports in September and October 1997 finally resulted in the 'official' opening of a case involving the family in December 1997. This ultimately resulted in the legal custody of all three children being vested in DHR in December 1998. Even under this supervision, reports of family instability (including multiple arrests of the parents on various misdemeanor charges), physical abuse by David and neglect continued to be made. This ultimately led to the July 17, 1999, vesting of physical custody of the children with DHR, and the therapeutic foster care placement of the children with the Adamsons referenced above.

"DHR returned physical custody to Susan in December 2000, followed by full legal custody being returned to Susan in June 2002. During DHR's involvement with the Miller family over four counties, there were at least nineteen documented child protective services reports from the year prior to [Miller's] birth until he was incarcerated on this charge.

"c. Mr. Miller's Mental Health and Substance Abuse History

"In his fourteen and one-half years before the fateful night that brings this matter before the court, [Miller] evidenced signs of mental illness and drug and alcohol abuse. As early as six years old, [Miller] reportedly tried to kill himself by attempting to place his head through a belt loop fashioned for an apparent hanging. Reportedly [Miller] tried at age seven to kill himself by taking an 'overdose' of vitamins. However, there is no written report regarding these events and no report of significant psychological intervention following these events, save a verbal report by Susan that [Miller] started counseling at age six.

"Regarding the significance of these 'attempts,' Dr. Davis states in [his report]:

> "'Both hanging and vitamin overdose can be potentially lethal, although it is not clear that [Miller] knew that or what he actually expected to happen given his young age. The likelihood and frequency of suicidal ideation and intent in the general population at age six and seven is quite rare, and actual attempts by potentially lethal means is even rarer.'

"Still, Dr. Davis making the apparent assumption that these were actual and intentional suicide attempts, without any written records or contemporaneous mental health interventions to corroborate the assumption, observed further:

> "'The suicide attempts indicate the extreme level of [Miller's] early childhood distress, the overwhelming failings of both parents, his expectation that the situation could not be changed and the continuous violent chaos of his household.'

"However undocumented the 'suicide' attempts at ages six and seven may have been, there is at least one suicide attempt that is detailed in medical records. The first, occurring when [Miller] was thirteen and fifteen months before a suicide attempt devolved into effectuated murder, was clearly intentional. [Miller] saved up a 'large quantity of pills and took an overdose.' [Dr. Davis's report, p. 10.] He was admitted to a hospital emergency room on April 5, 2002, as a result and then admitted to a psychiatric care center for follow-up, from which he was discharged thirty days later.

"As far as other mental health interventions in [Miller's] life prior to the murder, there is evidence of some treatment and therapy for some mental illnesses or near mental illnesses. For instance, the records indicate that when [Miller] was ten years old, he was prescribed Depakote, a mood stabilizer, by a psychiatrist. About a month later, that prescription was altered to Tenex for 'agitation and reactivity.' [Dr. Davis's report, p. 9.] Twenty-two months later, [Miller] was taking two prescribed medications, one a 'sedating antidepressant' and another for insomnia. Ten months later, another psychiatric visit showed that [Miller] was 'impulsive and irritable' with multiple 'psychosocial stressors.'

"The best evidence of [Miller's] drug and substance abuse reflects his activities in the months immediately preceding the murder. His usage increased dramatically, and some testimony indicated that he would be awake for 'days.'

"d. Mr. Miller's prior criminal activity

"[Miller's] criminal activity, prior to July 2003, 'took place in clusters at age nine and fourteen.' [Dr. Davis's report, p. 7.] Just before turning nine, [Miller] had a truancy charge resulting in an early warning from the Juvenile Court. About four months later, he had a charge of Criminal Mischief in the Second Degree, for which he was placed on probation.

> "In March 2003, a little over three months preceding the murder, [Miller] was arrested for Assault in the Third Degree, a charge involving an alleged choking incident of a classmate. That charge was dismissed. Nine days later, he faced a Harassment charge that was also dismissed. As Dr. Davis summarized, prior to the murder, '[[Miller] had] no substantial history of criminal violence, and really no recorded history of violence in the family with his siblings or parents, nor is there any pattern of aggression in the school setting.' [Dr. Davis's report, p. 7.] Most of the evidence the court received validated Dr, Davis's summary on this point, with the notable exception of the 'choking' incident while in foster care."

(C. 239-52 (footnotes and some citations omitted).)

The circuit court then summarized the evidence about Miller's life since his arrest:

> "[Miller] … was placed [in the Tennessee Valley Juvenile Detention Center] shortly following his arrest in July 2003, where he remained for two-and-one-half years. In August 2003, Robertson became administrator of [the Tennessee Valley Juvenile Detention Center]. According to Robertson, when [Miller] arrived, he 'was very angry … upset a lot.' However, during his time there, his behavior changed. 'He became very compliant … very good ... very polite.' Robertson, who served as administrator for nearly fourteen years since meeting [Miller], described [Miller] as a 'very smart student.'
>
> "As to Mr. Miller's time in [the Department of Corrections ('DOC')], the court heard from two DOC employees, one then current and one a former warden. Mr. Black testified that Mr. Miller was in the 'honor dorm' at his prison, had a 'good attitude, very positive.' He stated that Mr.

> Miller was respectful and 'well-respected' by guards and inmates alike.
>
> "Warden Wise testified that he did not know much about Mr. Miller because '[he] wasn't on my radar,' meaning that he did not have a record of causing so much trouble that it was brought to the Warden's attention. However, the Warden stated that disciplinary segregation 'should have been reserved for the most violent of the ones we needed removed from the facility setting because of true security and safety measures.'
>
> "St Clair's inmate records concerning Mr. Miller show that he was disciplined several times during his years in the facility, most for possession of contraband, most of these concerning possession of a cell phone or cell phone accessories. On at least four occasions, he received disciplinary segregation as his sanction, the longest of these being 90 days. None of the disciplinaries allege that Mr. Miller engaged in violent behavior toward others. However, the Warden testified that possession of cell phones is a serious infraction because it implicates the security of the facility."

(C. 264-65.) With that background, we turn to Miller's claims.

I. THE CIRCUIT COURT'S FINDINGS ABOUT MILLER'S LACK OF REMORSE

Miller first argues that "the sentencing court improperly punished [Miller] for exercising his constitutional rights." (Miller's brief, p. 21.) Miller asserts that the circuit court's sentencing decision was "in large part because [Miller] had exercised his right to appeal, which the court found inconsistent with remorse and rehabilitation." (Miller's brief, p.

22.) In support of that assertion, Miller cites this statement from the circuit court's order: "The remorseful stop looking out for themselves, throw themselves in humility at the feet of the society they harmed and all the individuals they hurt. They stop speaking as though they deserve mercy or second chances; they know and show that they know that they do not." (C. 271; see Miller's brief, pp. 24-25.) Miller asserts that "the only way [he] has sought a 'second chance' is by appealing his sentence." (Miller's brief, p. 25.) And he asserts that the circuit court "refus[ed] to consider evidence of rehabilitation because [Miller] appealed his earlier sentence." (Id.) He cites several authorities holding that a court may not punish a defendant for exercising his or her right to appeal. (Miller's brief, pp. 25-27.)

Miller asserts that he presented "extensive evidence of rehabilitation and remorse" including letters from prison staff stating that Miller "has matured" and "would be a productive member of society"; testimony from Black, an instructor at Gadsden State Community College, describing Miller as "kind hearted" and a "good worker" who would be "employable"; testimony from Warden Wise describing Miller as not being an inmate who did "really violent things" in prison "that

reflected the crime" that he was in prison for. (Miller's brief, p. 23 (citing C. 1243, 1246, 1248-49, 1262; R. 360, 363-67, 371-72, 429).) Miller also cites statements he made at his original sentencing and at his resentencing in which he apologized for his behavior. (Miller's brief, p. 23) Miller cites opinions from Judge Cole and Dr. Davis that Miller was remorseful. (Miller's brief, pp. 23-24.) Finally, Miller cites testimony from his foster mother, Brown, who testified that Miller had "never said a bad word concerning the victim's family even though he knows that they are adamant about him not getting out" and that "he can't change what he did," although "[h]e wishes he could." (Miller's brief, p. 24 (quoting R. 302).)

Miller's arguments misread the circuit court's sentencing order. Placed in context, the statement Miller cites from the court's order does not show that the circuit court "refused to consider" evidence of rehabilitation or that the court was punishing Miller for appealing his sentence:

> "Certainly, Mr. Miller's time in the Adamson home, in the juvenile detention facility and at the prison generally demonstrate the character traits of hard-work, initiative and intelligence that are essential to rehabilitation. But true rehabilitation must emanate from sincere remorse, a hitting bottom realization of the enormity of the wrong committed

and of the general and great disorder brought to an ordered society's ongoing struggle to define itself by the best of us, not the worst of us. While this court has heard from many that the defendant is 'remorseful,' it has not seen evidence of that in this court's close observation of the defendant's demeanor during the resentencing hearing and, more specifically, during the defendant's 'allocution' statement[7] at the close of the hearing, have not seen that in this case. The remorseful stop looking out for themselves, throw themselves in humility at the feet of the society they harmed and all the individuals they hurt. They stop speaking as though they deserve mercy or second chances; they know and show that they know that they do not.

"In short, this court finds that Mr. Miller has thrived in highly structured settings but that success, while commendable, is not evidence to give this court comfort that he would pursue a path of rehabilitation if free of constraints."

---

[7]Before the court pronounced sentence, Miller stated:

"Your dad Cole Cannon didn't deserve what happened to him. Your brother and father and husband didn't deserve to be murdered. You have a wonderful looking family, strong [b]ond. This whole case, this whole ordeal is not fair to any one of you. I'm sorry for taking a huge part of your family. I'm sorry for putting you all through this. But just saying that even for me isn't enough. Someone once said go and preach the gospel and necessary use words. I want [to] be more, I want to do more than just … apologize[;] to be truly sorry you have to make amends. And I want to live my apology out through my actions. Hopefully out of all of this somehow we can break the chain of pain and hatred and I can make amends to the family. And I am sorry once again for stealing that joy from your lives."

(R. 605-06.)

(C. 271-72 (emphasis added).) The circuit court clarified that its determination about remorse was based largely on its observation of Miller's demeanor—a determination that the circuit court had the discretion to make and to use in its sentencing decision. See, e.g., White v. State, 179 So. 3d 170, 233 (Ala. Crim. App. 2013) ("[T]he circuit court mentioned White's apparent lack of remorse when discussing why it had rejected the sentencing recommendation of the jury. Further, White's lack of remorse tended to undermine mitigation evidence …."); Hosch v. State, 155 So. 3d 1048, 1096 (Ala. Crim. App. 2013) (holding it was not error for a circuit court to mention, in sentencing a defendant to death, a "lack of remorse" by the defendant); cf. United States v. Johnson, 903 F.2d 1084, 1090 (7th Cir. 1990) ("It is well established that a sentencing judge may consider lack of remorse when imposing a sentence."); Pickens v. State, 767 N.E.2d 530, 534-35 (Ind. 2002) ("In determining that the defendant's remorse was insincere, the court acknowledged that the defendant had professed remorse. However, the court concluded that the proclaimed remorse was an attempt to avoid consequences rather than a true expression. We find the court's determination to be similar to a determination of credibility. See Herrera v. State, 679 N.E.2d 1322, 1327

(Ind. 1997). Without evidence of some impermissible consideration by the court, we accept its determination of credibility. We find no impermissible considerations and thus no error.").

In its order, the circuit court made several findings about "aspects of Mr. Miller's case that ameliorate any mitigation that may arise from the Henderson factors." (C. 272.) Those findings include:

> "The circumstances of the offense provide compelling evidence that Mr. Miller not only knew of the consequences of his choices but desired that they occurred. 'Cole, I am God, I've come to take your life' are some of the most chilling words this court has heard or read spoken by a real-life killer. And that killing intent continued when Mr. Miller returned to the trailer, heard Mr. Cannon fighting for his life in a trailer on fire, a fire set by Mr. Miller and Smith, and just walked away. This court is not convinced that the defendant, when he devised the plan to steal baseball cards and money, initially went to Mr. Cannon's trailer intending to cause his death, but once that murderous intent took hold, there was no impetuosity or recklessness or mere bad decision making. Mr. Miller's mind functioned perfectly well as it carried out his expressed intent to 'Take [Mr. Cannon's] life' as though he was the Omnipotent. He showed cunning, not clumsy rash thinking, when he concocted his plan to cover up his crime in the most certain and fearful way possible; destruction by fire. And he presented a very sly, intelligent way of dealing with the police when he devised lie after lie, lies he continued to maintain when he downplayed the truth of his role in Mr. Cannon's death speaking to a group of young people[8] at the expressed invite of a good-hearted soul."

---

[8]Judge Cole testified at the hearing about inviting Miller to speak to high school students in Macon County. (R. 377.) Cole testified that,

(C. 273-74 (emphasis added).) The circuit court has discretion to assess the credibility of a convicted defendant's statements of remorse. Although Miller disagrees with the circuit court's assessment, he has not shown that the circuit court abused its discretion in making that assessment. Miller also has not shown that the circuit court "refused to consider" any evidence that he offered such as evidence of rehabilitation. Indeed, the circuit court considered that evidence and expressly found it "commendable" that "Miller has thrived in highly structured settings." (C. 272.) The circuit court, however, did not think that Miller "would pursue a path of rehabilitation if free of constraints." (C. 272.)

Miller is due no relief.

II. VICTIM-IMPACT EVIDENCE

At the resentencing hearing, Cannon's three children made statements about how his death had impacted them. (R. 96-136.) Miller repeatedly objected to their testimony. The State also introduced, over

---

based on "his body language, his tone and just his interaction with the kids, I would definitely say that I felt like he was remorseful." (R. 381.) Cole also testified, however, that Miller described the crime as involving an "altercation," that Miller said he and Smith burned the trailer only after they thought Cannon was dead, and that Miller told the assembly that "he never intended for anybody to die." (R. 380, 388.)

Miller's objection, victim-impact letters from other family members and friends. (C. 521-31; R. 136-37.) Miller asserts that "[a]lthough testimony 'about the victim and about the impact of the murder on the victim's family' is generally admissible, Payne [v. Tennessee], 501 U.S. [808,] 827 [(1991)], the testimony here went well beyond that and crossed the line into the type of inflammatory and prejudicial characterizations of [Miller], the offense, and the appropriate sentence that courts have long prohibited." (Miller's brief, pp. 28-29.) And Miller contends that the circuit court "relied heavily on the improper victim-impact testimony that was introduced by the State." (Miller's brief, p. 34.)

> "In Booth v. Maryland, 482 U.S. 496, 502, 107 S. Ct. 2529, 96 L. Ed. 2d 440 (1987), the United States Supreme Court held that a defendant's Eighth Amendment rights were violated by the sentencing authority's consideration of any victim-impact evidence. In Payne v. Tennessee, 501 U.S. 808, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991), the United States Supreme Court partially overruled Booth to allow the sentencing authority to consider evidence of the effect of the victim's death upon family and friends. Payne, 501 U.S. at 830 n.2, 111 S. Ct. 2597 ('Our holding today is limited to the holdings of [Booth] ... that evidence and argument relating to the victim and the impact of the victim's death on the victim's family are inadmissible at a capital sentencing hearing.').
>
> "In Ex parte McWilliams, 640 So. 2d 1015 (Ala. 1993), this Court noted that Payne had only partially overruled Booth and that it had left intact the proscription against victim-impact statements containing 'characterizations or

> opinions of the defendant, the crime, or the appropriate punishment.' 640 So. 2d at 1017. The Court in McWilliams held that a trial court errs if it 'consider[s] the portions of the victim impact statements wherein the victim's family members offered their characterizations or opinions of the defendant, the crime, or the appropriate punishment.' Id."

Ex parte Washington, 106 So. 3d 441, 445 (Ala. 2011).

The State offers no argument that all the victim-impact evidence was admissible. The State instead argues that Miller is due no relief because "[t]he sentencing order never referenced any of the information contained in the victim impact letters" and because "[i]n the order denying Miller's request for a new trial, the judge stated that … 'the statements of which [Miller] so vigorously complains did not have any effect on the decision-making process in this particular case.' (C. 280.)" (State's brief, p. 45.) We agree with the State.

In Washington, the Alabama Supreme Court found plain error where the State presented inadmissible victim-impact evidence during the penalty phase of a capital-murder trial:

> "In this case, the victim's parents told the jury that Washington's crime was 'brutal, evil, terrible,' that Washington was 'someone without a conscience,' and that death was the appropriate punishment. The State concedes that it was error for the trial court to allow the victim's parents to testify in this manner. Despite this concession, the State contends that reversal is not required in this case

> because (1) there is no indication that the trial judge or the jury considered this testimony in determining Washington's sentence, and (2) because any error was harmless.
>
> 'The State argues that the trial court did not consider the victim-impact evidence, an argument we find to be without merit. The State's brief to this Court addresses only the trial judge's consideration of the evidence; it offers no argument or citation to the record tending to show that the jury did not consider this admittedly improper evidence. We note that it does not appear that the jury was given any instruction specifically addressing the victim-impact testimony.
>
> "Further, the State's assertion that the trial judge did not consider the parents' testimony is factually incorrect. At the sentencing hearing on remand, the State asked that the testimony of the victim's parents be adopted and made a part of the new presentence report in lieu of a formal written victim-impact statement. The trial judge stated in response: 'I have reviewed their testimony and will consider it as part of the presentence report.' (Emphasis added.) There is nothing in the record to indicate that the trial judge did not consider this testimony."

106 So. 3d at 446. The Court distinguished Ex parte McWilliams, 640 So. 2d 1015 (Ala. 1993), and Ex parte Land, 678 So. 2d 224 (Ala. 1996):

> "The State's reliance on McWilliams and Ex parte Land, 678 So. 2d 224 (Ala. 1996), is misplaced. In McWilliams, this Court remanded the case for the trial judge to state whether the judge did or did not consider victim-impact statements when deciding on a sentence. In the present case, the jury heard the victim-impact testimony at issue, and the trial judge stated that she would consider it. In Ex parte Land, this Court found no reversible error where the trial judge read letters from members of the victim's family and from members

> of the defendant's family, some of which expressed opinions as to the appropriate punishment. As in McWilliams, however, the letters were not read to a jury; they were read only by the judge and only 'out of a respect for the families and for the limited purpose of possibly establishing a mitigating factor ....' Land, 678 So. 2d at 237. In the present case, no such limitations are involved and the testimony of the victim's parents was presented to the jury."

Washington, 106 So. 3d at 446 n.2.

As in Land, only the judge—not a jury—heard the challenged victim-impact evidence. And the circuit court expressly stated that the evidence "did not have any effect on the decision-making process in this particular case."[9] (C. 280.) Miller is due no relief.

---

[9]In his reply brief, Miller cites the circuit court's comments during its hearing pronouncing the sentence:

> "Ms. Cheatham, I want to thank you and your sister and your brother for your victim impact statements that I believe were legally authorized …. As I will relate in a moment, I have gone over your testimony and everybody's testimony multiple times."

(Miller's reply brief, pp. 21-23 (citing R. 617-18).) Miller also cites the circuit court's order referencing Miller's "evil" character and the court's statements that "our children can be our threats." (Miller's brief, p. 24 (citing C. 275).) Miller asserts that these statements "echo" Cheatham's statements about "evil" coming in the form of a 14-year-old. (Miller's reply brief, p. 23.) Miller cites R. 131 and R. 133 in support of this assertion. (Miller's reply brief, p. 23; Miller's brief, p. 30.) At R. 131, Cheatham testified about Miller's counsel, who Cheatham described as engaging in "propaganda, lies, … unethical practices," and "[v]ictim

III. PROPORTIONALITY

Miller argues that "[l]ife [imprisonment] without parole is a disproportionate sentence as applied to Evan Miller, an abused and neglected 14-year-old child who has shown that he is capable of rehabilitation." (Miller's brief, p. 36.) Miller cites the statements in Montgomery v. Louisiana, 577 U.S. 190, 195, 208 (2016), "that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption'" (quoting Miller, 567 U.S. at 479-80) and that "a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." (Miller's brief, pp. 36-37.) Miller asserts that "the evidence presented at the resentencing hearing overwhelmingly showed that this crime was one of transient immaturity and that [Miller] is capable of rehabilitation." (Miller's brief, p. 37.)

---

blaming," and taking "advantage of liberal justices who entertain them." At R. 133, Cheatham testified that "[e]vil can come in the form of a fourteen year old as it clearly has here." (R. 133.)

Miller's argument is unpersuasive. First, as noted, the circuit court expressly disavowed any reliance on the testimony about which Miller complained. Cf. McWilliams, supra. Second, the circuit court's use of "evil" to describe Miller's or his crime is not so unique that the circuit court necessarily derived it from the challenged victim-impact evidence.

In Wynn v. State, 354 So. 3d 1007, 1038 (Ala. Crim. App. 2012), cert. denied (Ala. Nov. 19, 2021), cert. denied, ___ U.S. ___, 142 S. Ct. 2756, 213 L. Ed. 2d 1000 (2022) this Court stated:

> "[W]e reiterate that there is a substantive limit on sentences of life imprisonment without the possibility of parole for juvenile capital offenders under the Eighth Amendment. We also adhere to our statement in Bracewell [v. State, 329 So. 3d 29 (Ala. Crim. App. 2019),] that the central question for a trial court in determining the appropriate sentence for a juvenile capital offender—life imprisonment or life imprisonment without the possibility of parole—'is whether the juvenile and his or her crimes "reflect the transient immaturity of youth" or reflect such "'"irreparable corruption"'" and "irretrievable depravity that rehabilitation is impossible."' 329 So. 3d at 35 (quoting Montgomery, 577 U.S. at 208, 136 S. Ct. 718 (citations omitted))."

This Court in Wynn also discussed Jones v. Mississippi, 539 U.S. ___, 141 S. Ct. 1307, 1322 (2021) in which

> "the United States Supreme Court clarified its holdings in Miller and Montgomery. Brett Jones was convicted of murdering his grandfather, and he had received a mandatory sentence of life imprisonment without the possibility of parole. He was 15 years old at the time of the crime. After Jones received postconviction relief from his mandatory sentence, a new sentencing hearing was held at which the trial court considered Jones's youth and had discretion in selecting the appropriate sentence, and the trial court again sentenced Jones to life imprisonment without the possibility of parole. Jones argued on appeal 'that a sentencer's discretion to impose a sentence less than life without parole does not alone satisfy Miller' because to give effect to the holding in Montgomery that Miller substantively limited

sentences of life imprisonment without the possibility of parole for juvenile offenders, a sentencer must make a finding, either explicitly or implicitly, that a juvenile is permanently incorrigible. The United States Supreme Court rejected Jones's argument that a finding of permanent incorrigibility is constitutionally required, instead holding that, '[i]n a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient.' 539 U.S. at ___, 141 S. Ct. at 1313 (emphasis added).

> "'Under our precedents, this Court's more limited role is to safeguard the limits imposed by the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Court's precedents require a discretionary sentencing procedure in a case of this kind. The resentencing in Jones's case complied with those precedents because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of Jones's youth.'

"Jones, 539 U.S. at ___, 141 S. Ct. at 1322 (emphasis added).

"The Court noted that both Miller and Montgomery 'squarely rejected' the idea that a factual finding of permanent incorrigibility was required. 539 U.S. at ___, 141 S. Ct. at 1314. The Court then explained its holdings in Miller and Montgomery:

> "'Miller repeatedly described youth as a sentencing factor akin to a mitigating circumstance. And Miller in turn required a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases such as Woodson v. North Carolina,

428 U.S. 280, 303-305, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (1976) (plurality opinion), Lockett v. Ohio, 438 U.S. 586, 597-609, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978) (plurality opinion), and Eddings v. Oklahoma, 455 U.S. 104, 113-115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982). Those capital cases require sentencers to consider relevant mitigating circumstances when deciding whether to impose the death penalty. And those cases afford sentencers wide discretion in determining "the weight to be given relevant mitigating evidence." Id., at 114-115 [102 S. Ct. 869]. But those cases do not require the sentencer to make any particular factual finding regarding those mitigating circumstances.

"'... [T]he Miller Court mandated "only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence. Id., at 483 [132 S. Ct. 2455]. In that process, the sentencer will consider the murderer's "diminished culpability and heightened capacity for change." Id., at 479 [132 S. Ct. 2455]. That sentencing procedure ensures that the sentencer affords individualized "consideration" to, among other things, the defendant's "chronological age and its hallmark features." Id., at 477 [132 S. Ct. 2455].

"'....

"'In short, Miller followed the Court's many death penalty cases and required that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence. Miller did not require the sentencer to make a separate finding of permanent

> incorrigibility before imposing such a sentence. And Montgomery did not purport to add to Miller's requirements.
>
> "'....
>
> "'To break it down further: Miller required a discretionary sentencing procedure. The Court stated that a mandatory life-without-parole sentence for an offender under 18 "poses too great a risk of disproportionate punishment." 567 U. S. at 479, 132 S. Ct. 2455. Despite the procedural function of Miller's rule, Montgomery held that the Miller rule was substantive for retroactivity purposes and therefore applied retroactively on collateral review. 577 U.S. at 206, 212, 136 S. Ct. 718. But in making the rule retroactive, the Montgomery Court unsurprisingly declined to impose new requirements not already imposed by Miller ....
>
> "'The key assumption of both Miller and Montgomery was that discretionary sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age. If the Miller or Montgomery Court wanted to require sentencers to also make a factual finding of permanent incorrigibility, the Court easily could have said so—and surely would have said so. ...'

"539 U.S. at ___, 141 S. Ct. at 1315-18.

"The Court expressly declined to overrule 'Montgomery's holding that Miller applies retroactively on collateral review [because b]y now, most offenders who could seek collateral

> review as a result of Montgomery have done so and, if eligible, have received new discretionary sentences under Miller.' Jones, 539 U.S. at ___ n.4, 141 S. Ct. at 1317 n.4. However, the Court effectively rejected Montgomery's finding that Miller announced a new substantive rule of constitutional law. The Court recognized that it had employed a unique approach in determining in Montgomery that Miller created a new substantive rule, an approach that was 'in tension with the Court's retroactivity precedents that both pre-date and post-date Montgomery,' and the Court specifically pointed out that 'those retroactivity precedents—and not Montgomery—must guide the determination of whether rules other than Miller are substantive. 539 U.S. at ___ n.4, 141 S. Ct. at 1317 n.4. More importantly, the Court pointed out no less than 11 times in its opinion that Miller requires only a discretionary sentencing process for juvenile offenders. As Justice Thomas noted in his opinion concurring in the judgment, the Court '[o]verrule[d] Montgomery in substance but not in name.' Jones, 539 U.S. at ___, 141 S. Ct. at 1327 (Thomas, J., concurring in the judgment)."

Wynn, 354 So. 3d at 1020-22. On rehearing in Wynn, this Court also stated:

> "The statement in our original opinion and our reference to Justice Thomas's opinion concurring in the judgment in Jones was not meant to suggest that Jones had overruled the holdings in Miller or Montgomery. Rather, it was simply an acknowledgment, as the Court in Jones acknowledged, that Montgomery's application of Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), to reach the conclusion that Miller was a substantive rule for retroactivity purposes was 'in tension with' its other precedent applying Teague. Jones, 539 U.S. at ___ n.4, 141 S. Ct. at 1317 n.4. Indeed, the Court in Jones, as we recognized, specifically noted that Montgomery's application of Teague was such an outlier that it could not properly be used to determine

'whether rules other than Miller are substantive.' Id. Jones did not overrule the holdings in Miller or Montgomery, and we did not—and do not—interpret it as doing so. Rather, Jones made it clear exactly what those holdings were: Miller held 'that a State may not impose a mandatory life-without-parole sentence on a murderer under 18,' 539 U.S. at ___, 141 S. Ct. at 1321, and '"that a sentencer [must] follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence,' 539 U.S. at ___, 141 S. Ct. at 1316 (quoting Miller, 567 U.S. at 483, 132 S. Ct. 2455), and Montgomery held that 'the Miller rule was substantive for retroactivity purposes and therefore applied retroactively on collateral review.' 539 U.S. at ___, 141 S. Ct. at 1317.

"Second, this Court did not hold that there is no substantive limit under the Eighth Amendment to sentencing a juvenile capital offender to life imprisonment without the possibility of parole. Rather, we simply recognized that irreparable corruption is not, as Wynn asserts, the dispositive factor as to whether a life-without-parole sentence violates the Eighth Amendment. In holding that a sentencer need not make a factual finding, either explicitly or implicitly, that a juvenile is irreparably corrupt before imposing a sentence of life imprisonment without the possibility of parole, the Court in Jones specifically rejected the argument that Miller and Montgomery deemed irreparable corruption an 'eligibility criterion' for such a sentence, such as the lack of intellectual disability is an eligibility criterion for a sentence of death. 539 U.S. at ___, 141 S. Ct. at 1315. In other words, a juvenile capital offender does not have to be found to be irreparably corrupt for a sentence of life imprisonment without the possibility of parole to comply with Miller and Montgomery. Rather, such a sentence complies with Miller and Montgomery, the Jones Court held, if it 'was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [the juvenile's] youth.' Jones, 539 U.S. at ___, 141 S. Ct. at 1322.

> "However, that does not mean that a sentence that complies with Miller and Montgomery does not violate the Eighth Amendment, which 'proscribes grossly disproportionate sentences.' Solem v. Helm, 463 U.S. 277, 288, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983). Although the Court in Jones declined to address 'any as-applied Eighth Amendment claim of disproportionality regarding Jones's sentence' because that issue had not been raised, by holding that a sentencer did not have to find that a juvenile capital offender was irreparably corrupt before imposing a sentence of life imprisonment without the possibility of parole, the Court made it clear that irreparable corruption is not the determining factor of the constitutionality of a sentence. Jones, 539 U.S. at ___, 141 S. Ct. at 1322. Rather, as with any proportionality challenge to a sentence, a court faced with a proportionality challenge to a sentence of life imprisonment without the possibility of parole imposed on a juvenile capital offender must consider 'all the circumstances of the case to determine whether the sentence is unconstitutionally excessive,' Graham v. Florida, 560 U.S. 48, 59, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), because '[n]o single criterion can identify when a sentence is so grossly disproportionate that it violates the Eighth Amendment.' Solem, 463 U.S. at 290 n.17, 103 S. Ct. 3001."

Wynn, 354 So. 3d at 1036-37 (opinion on reh'g).

Miller argues that "the evidence presented at the resentencing hearing overwhelmingly showed that this crime was one of transient immaturity and that [Miller] is capable of rehabilitation." (Miller's brief, p. 37.) Miller then reiterates some of the evidence he presented at the hearing:

— Testimony from Dr. Davis about the characteristics of a 14-year-old including that a 14-year-old is at the "very beginning" of the process of frontal-lobe development (R. 453) and that a young adolescent has the greatest capacity for change (R. 460-62);

— Testimony from Dr. Davis that Miller suffered from abuse and neglect as a young child, which impaired his development, making him less mature than the average 14-year-old (C. 770, R. 520-21, 541);

— Evidence indicating that Miller's father, David Miller, was an alcoholic and drug addict who physically abused Miller, his siblings, and his mother (C. 412-13);

— Evidence indicating that Miller's mother, Susan Miller, was an alcoholic and drug addict who never provided "even basic care" to Miller and his siblings (C. 415) and who used drugs and alcohol in front of and with her children (R. 192-96, 237-39);

— Evidence indicating that Miller began using drugs and alcohol at a young age and attempted suicide multiple times (C. 767-68, 774; R. 197-99);

— Testimony from Aubrey Goldstein that drug use was rampant and drugs were readily available to children in the Country Living Trailer Park where Miller lived (R. 195);

— Dr. Davis's opinion that Miller was less mature than the average 14-year-old and that his history made him more susceptible to addiction to drugs and alcohol (R. 520, 523, 541);

— Evidence indicating that Miller had used alcohol and taken Klonopin, methamphetamine, and alcohol on the day of the crime (Miller's brief, p. 42);

— The circuit court's statement that it did not think Miller went to Cannon's trailer at first with the intent to kill him (C. 273) and, Miller says, evidence indicating that Miller became violent only

after Cannon "started choking" him (Miller's brief, p. 42 (citing Trial R. 984);

— Miller's "limited decision-making capacity in these circumstances due to his developmental status was also further compounded by his intoxication, lack of sleep, and the presence of [Smith]" (Miller's brief, p. 43);

— The "complete lack of any documented pattern of violence either before or after this offense" (Miller's brief, p. 43);

— Dr. Davis's opinion that since the crime, Miller's "development … has been marked by a gradual but substantial growth in maturity, an absence of aggressive incidents, and a surprising degree of intellectual versatility. … [Miller] appears to have developed past his juvenile traits and liabilities, and it is clear that he is not what he initially appeared to be at fourteen" (C. 775);

— Testimony from Robertson that, while at the juvenile detention center, Miller became someone who earned special privileges by good behavior and encouraged others to comply with the rules (R. 256-63);

— Testimony from former Warden Wise that, although Miller's prison record was not perfect, it did not show "anything of a violent nature or an immediate threat to safety and security" (R. 403);

— Prison records showing that Miller has had no disciplinaries for violent behavior and no disciplinaries since 2013 (C. 534-80);

— Miller's efforts to improve himself, including earning a GED and certificates in several courses (C. 1250-58);

— Evidence from supervisors and security personnel at the prison indicating that Miller is a "hard worker" who takes initiative to get tasks done and who is "kind-hearted" (R. 360, 363, 366, 369);

— Evidence indicating that Miller had been given positions of trust

within the prison, including working in the maintenance department and the welding division and residing in the "honor dorm," reserved for a small number who have greater responsibilities and chances to participate in programs (R. 301, 360-62, 408-13); and

— Evidence indicating that Miller "has tried to give back to the community by speaking to young people about the dangers of the behavior he engaged in as a teenager" (Miller's brief, pp. 47-48 (citing C. 1245; R. 377-87)).

Miller asserts that "[t]he evidence clearly demonstrated that [he] is not beyond rehabilitation." (Miller's brief, p. 48.) Thus, he argues that, as applied to him, the sentence of life imprisonment without the possibility of parole is unconstitutionally disproportionate under the Eighth and Fourteenth Amendments to the United States Constitution, the Alabama Constitution, and Alabama law. (Miller's brief, p. 48.)

The circuit court thoroughly addressed this claim. The court first quoted Rule 26.8, Ala. R. Crim. P.:

> "'The sentence imposed in each case should call for the least restrictive sanction that is consistent with the protection of the public and the gravity of the crime. In determining the sentence, the court should evaluate the crime and its consequences, as well as the background and record of the defendant and give serious consideration to the goal of sentencing equality and the need to avoid unwarranted disparities.
>
> "'Judges should be sensitive to the impact their sentences have on all components of the criminal justice

> system and should consider alternatives to long-term institutional confinement or incarceration in cases involving offenders whom the court deems to pose no serious danger to society.'"

(C. 266.) The circuit court then stated:

> "[T]he Miller decision requires that this court first determine what constitutionally permitted sentencing outcomes are available here. Thus, it must first decide if a life without possibility of parole sentence is unconstitutionally disproportionate in violation of the Eighth Amendment's prohibition against cruel and unusual sentences. If, using the analysis mandated by Henderson, this court concludes that such a sentence is unconstitutionally disproportionate, then the court's analysis is resolved because only one constitutionally acceptable sentence remains; life in prison with the possibility of parole. On the other hand, if, using the analysis mandated by Henderson, this court establishes that such a life without possibility of parole sentence is not unconstitutionally disproportionate, and, thus, may be imposed upon Mr. Miller without doing offense to the Eighth Amendment's prohibitions, then it must determine the appropriate sentence under Rule 26.8, where the inquiry becomes, 'What is the "least restrictive sanction that is consistent with the protection of the public and the gravity of the crime"' and whether Mr. Miller poses 'no serious danger to society.'"

(C. 266-67.)

Addressing Miller's claim that a sentence of life imprisonment without the possibility of parole would be unconstitutional as applied to him, the court found:

"On July 16, 2003, [Miller] committed a heinous act, worthy of the strongest possible condemnation in civilized society. In both its nature as realized and the intention that birthed it, the murderous act of the defendant was, to adopt the State's characterization, 'predatory and depraved.' If [Miller] [had been] three and one-half years older when he raised a bat and beat a helpless man to the point of death and then coldly lit the fuse that ruthlessly extinguished his life one anguished, suffocated breath at a time, there can be little doubt that a jury of this state would have been entirely justified in imposing the ultimate penalty. If he had been eighteen when he filled the confused, frightened ears of his abandoned victim with the ghastly words 'I am God, I have come to take your life,' as he crushed the bat one last time into his defenseless victim's body—if he [had been] eighteen when he indifferently walked away, leaving his victim to die in a home engulfed in flame, as the victim filled his ears with the haunting words, 'Why are you doing this to me?,' a sentence of life without parole would have appeared most merciful. Most significantly to these proceedings, however, [Miller] was not yet eighteen when he deliberately undertook this course and thus the dilemma of what is the constitutionally acceptable response of the criminal justice system is presented and far less certain.

"In resolving the initial sentencing inquiry here, the court must consider the Mr. Miller's chronological age at the time of the offense and the hallmark features of youth, such as immaturity, impetuosity, and failure to appreciate risks and consequence. In this case, Mr. Miller was 14 years and 256 days old at the time of the offense. This court strongly considers this age and the presumed inherent deficits to decision-making, (1) in consideration of whether a life without parole sentence is constitutionally disproportionate to be applied to Mr. Miller in this particular case and (2) in mitigation of the 'least restrictive sanction that is consistent with the protection of the public and the gravity of the crime' and in analyzing whether Mr. Miller poses 'no serious danger

to society.'

"On a related, overlapping factor, the court considers Mr. Miller's youth as a factor in mitigation because, if the presumed science is correct and the limitations on critical thinking and analysis are as impaired and undeveloped as stated generally for someone of that age by Dr. Davis, then there is diminished culpability.

"Further, this court has considered Mr. Miller's past exposure to violence, his use of drugs generally at that time, his mental health history, all in mitigation. These factors strongly work in mitigation of the sentence required.

"However, as to all of these factors the strength of the mitigation is lessened by the lack of evidence of any causal connection between these possible or even likely mental deficits and the choices and events that bring this matter back to this court. What may be scientifically true in a generic sense does not correlate to the crime here and the crime is the catalyst necessitating this resentencing.

"This court is not sentencing Mr. Miller because Mr. Miller suffered some physical abuse at the hands of his father; even a cursory examination of capital caselaw or juvenile dependency caselaw yield to the inevitable conclusion that that which Mr. Miller suffered is on the lower end of the spectrum of that seen by too many victims of persistent abuse characterized by multiple medical interventions with long-standing or permanent injuries, scarring that they carry for the rest of their lives. [Miller] was not even the worst abused in his household; he had it better than [his brother] John. If Mr. Miller's physical abuse was 'horrific' to borrow his lawyer's adjective, then this court can only wonder, from the vast vocabulary in this English language, what word they would use to describe the abuse so prevalently discussed in the reported criminal cases.

"Mr. Miller's mental health history does appear derivative of extreme exposure to neglect but fortunately his suicide attempts were unsuccessful and hardly persistent, as is seen in the severely depressed, but this sentencing is not necessary because Mr. Miller suffered from a mental defect or disease. The record is abundantly clear that such was not the catalyst for those acts that brings this court to this occasion where Mr. Miller's future is at stake.

"Certainly, Mr. Miller's time in the Adamson home, in the juvenile detention facility and at the prison generally demonstrate the character traits of hard-work, initiative and intelligence that are essential to rehabilitation. But true rehabilitation must emanate from sincere remorse, a hitting bottom realization of the enormity of the wrong committed and of the general and great disorder brought to an ordered society's ongoing struggle to define itself by the best of us, not the worst of us. While this court has heard from many that [Miller] is 'remorseful,' it has not seen evidence of that in this court's close observation of [Miller's] demeanor during the resentencing hearing and, more specifically, during [Miller's] 'allocution' statement at the close of the hearing, have not seen that in this case. The remorseful stop looking out for themselves, throw themselves in humility at the feet of the society they harmed and all the individuals they hurt. They stop speaking as though they deserve mercy or second chances; they know and show that they know that they do not.

"In short, this court finds that Mr. Miller has thrived in highly structured settings but that success, while commendable, is not evidence to give this court comfort that he would pursue a path of rehabilitation if free of constraints.

"Turning to aspects of Mr. Miller's case that ameliorate any mitigation that may arise from the Henderson factors, the court finds the following:

"1. Mr. Miller was the principal aggressor that brought

upon the death of Mr. Cannon. Had he not made the decisions that night, Mr. Cannon would still be alive. Those decisions include:

"(a) The initial planning and scheming of the drinking game to lessen or eliminate Mr. Cannon's resistance to the plotted theft.

"(b) The continued beating with a bat of Mr. Cannon when he was helpless and posing no threat to [Miller].

"(c) The planning and execution of the arson to cover-up the crime, even though he knew that Mr. Cannon was alive and probably helpless to extricate himself from the fire.

"(d) The refusal to render aid to the victim once the fire was fully engaged and his refusing and interfering with Smith's remorseful efforts to save Mr. Cannon.

"2. The circumstances of the offense provide compelling evidence that Mr. Miller not only knew of the consequences of his choices but desired that they occurred. 'Cole, I am God, I've come to take your life' are some of the most chilling words this court has heard or read spoken by a real-life killer. And that killing intent continued when Mr. Miller returned to the trailer, heard Mr. Cannon fighting for his life in a trailer on fire, a fire set by Mr. Miller and Smith, and just walked away. This court is not convinced that [Miller], when he devised the plan to steal baseball cards and money, initially went to Mr. Cannon's trailer intending to cause his death, but once that murderous intent took hold, there was no impetuosity or recklessness or mere bad decision making. Mr. Miller's mind functioned perfectly well as it carried out his expressed intent to 'take [Mr. Cannon's] life' as though he was the Omnipotent. He showed cunning, not clumsy rash thinking, when he concocted his plan to cover up his crime in the most certain and fearful way possible: destruction by fire. And he presented a very sly, intelligent way of dealing with the police

when he devised lie after lie, lies he continued to maintain when he downplayed the truth of his role in Mr. Cannon's death speaking to a group of young people at the expressed invite of a good-hearted soul.

"These circumstances easily overcome any mitigation caused by the mere fact of his chronological age or his challenging upbringing or his suffering some physical and mental abuse.

"There is no evidence that his age lessened his ability to deal with police. Indeed, he demonstrated a sharp way of communicating with authorities on multiple occasions, beginning with absolute denial of his role and changing it to a mitigation of his role.

"Undergirded by the imprimatur of the United States Supreme court, [Miller] argues that his age and what is, per the evolving understanding in the field of adolescent neuroscience, a less-developed sense of restraint, coupled with his extremely challenging upbringing, mitigates the sentence, fair and just, due in the wake of his actions. He contends that the ultimate punishment of life in the penitentiary without any possibility of parole, essentially a death sentence of a different but no less definite type to that that may have applied if he had lived three and one-half years later, is unconstitutionally disproportionate.

"However, this was not a simple case of Mr. Miller acting immaturely or irresponsibly or impetuously or recklessly. These types of actions may indeed be transient, and often, if not always, are. They are functions of the unprepared, untutored, uninhibited mind meeting the unfortunate, unexpected and unprotected moment, where decisions are neither deliberate nor sober nor sound. Even adults in the chronological sense make such decisions, acting immaturely or irresponsibly or impetuously or recklessly. Immature, 'juvenile,' irresponsible criminal choices and actions are

hardly the exclusive product of the minds of children.

"But as certainly as adults can act criminally with the immaturity and impetuosity of a child, so can children act criminally with the cold, cruel intent of a hardened adult. We would like to think otherwise, to envision our children as innocents, in need of our collective protection, vulnerable to the plots and schemes of evil men, not the plotter, schemer or doer of evil. It is not merely disheartening, but disquieting, even frightening, to think that our children can be our threats. Yet, that is the reality of the world in which we live and, while some bemoan and blame a perceived breakdown of our social structures in the most recent years, years in which we have supposedly 'evolved our standards of decency,' the truth is that these harrowing realities have been our shared plight for decades, perhaps centuries.

"As the court observed concerning [Miller's] contentions regarding his upbringing, such could be made in numerous other cases, irrespective of the age of the offender. While a society that fails to fend off the injustices suffered by [Miller] may reap what it has sown by its failures, that society should not lose its ability to condemn in the strongest terms the contemptable, even though perhaps predictable, violent choices of those forgotten by its failures, even if the choosers are still children in the chronological sense.

"The sentencing outcome here is not easily derived, nor should it be. A violent, terrifyingly unnecessary death. A life of a 14-year-old boy in the balance. To speak of the enormity of the wrong—as a just notion of law must—and of the enormity of the loss of a child's life, thrown away in the dark hole of prison—as a civilized notion of law requires—in the same sentence, in the same pronouncement, one wonders if it can be credibly done.

"[Miller] did not walk into the victim's trailer that night immune from suffering a life without parole sentence, no

> matter his choices or actions, though that is the natural inference arising from his contentions before the court. There is nothing about his particular actions that naturally derive from his age or his circumstances, save that the poverty from which he could not escape placed him in the time and place that provided the troubled backdrop of his vicious crime.
>
> "BASED ON ALL OF THE FOREGOING and all law applicable to this case, and all facts as this court finds to exist by a preponderance of the credible evidence, this court first finds that a life without the possibility of parole sentence is not constitutionally disproportionate to the crime or his circumstances and may be imposed by this court. Further, applying all of the law and the mandates of the constitutions of the United States and the State, the statutes of this State and the Rules of Criminal Procedure, it is this court's reluctant but necessary conclusion that the only just sentence, after giving due to consideration to Mr. Miller's age at the time of the offense and all the limitations that his life circumstances may have created, is that he be sentenced to spend his life in the custody of the Alabama Department of Corrections, without the benefit of parole. Such a sentence is the 'least restrictive sanction that is consistent with the protection of the public and the gravity of the crime.' Further, based upon a preponderance of the evidence, this court cannot conclude that [Miller] poses no serious threat to society, if released."

(C. 267-78.)

This Court has held that the decision to sentence a juvenile to life imprisonment without the possibility of parole "'is ultimately a moral judgment.'" Boyd v. State, 306 So. 3d 907, 915 (Ala. Crim. App. 2019) (quoting Wilkerson v. State, 284 So. 3d 937, 955 (Ala. Crim. App. 2018),

citing People v. Skinner, 502 Mich. 89, 117 n. 11, 917 N.W.2d 292, 305 n.11 (2018)). In Jones, the United States Supreme Court emphasized that sentencing courts have wide discretion in assigning weight to the facts and circumstances of each case:

> "It is true that one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant's youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth. But the key point remains that, in a case involving a murderer under 18, a sentencer cannot avoid considering the defendant's youth if the sentencer has discretion to consider that mitigating factor."

Jones, 539 U.S. at ___, 141 S. Ct. at 1319-20. In footnote 7 at the end of that paragraph, the Court emphasized that a potential violation of the Eighth Amendment could arise when a sentencing court expressly refuses as a matter of law to consider evidence of mitigating circumstances:

> "This Court's death penalty cases recognize a potential Eighth Amendment claim if the sentencer expressly refuses as a matter of law to consider relevant mitigating circumstances. See Eddings v. Oklahoma, 455 U.S. 104, 114-115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982). By analogy here, if a sentencer considering life without parole for a murderer who was under 18 expressly refuses as a matter of law to consider the defendant's youth (as opposed to, for example, deeming the

> defendant's youth to be outweighed by other factors or deeming the defendant's youth to be an insufficient reason to support a lesser sentence under the facts of the case), then the defendant might be able to raise an Eighth Amendment claim under the Court's precedents. In any event, we need not explore that possibility because the record here does not reflect that the sentencing judge refused as a matter of law to consider Jones's youth."

539 U.S. at ___ n.7, 141 S. Ct. at 1320 n.7 (second emphasis added).

Miller has not shown that the circuit court abused its discretion in making the "moral judgment" to sentence Miller to life in prison without the possibility of parole. Miller has not shown that the circuit court abused its discretion in its application of the Henderson factors or that the court erred in its conclusion that a sentence of life imprisonment without the possibility of parole was not constitutionally disproportionate. And, as the above shows, the circuit court did not "expressly refuse[] as a matter of law to consider relevant mitigating circumstances." Jones, 539 U.S. at ___ n.7, 141 S. Ct. at 1320 n.7. The circuit court considered the evidence Miller offered, but the court did not agree with Miller's characterization of the evidence or find the evidence persuasive in support of Miller's contention that he should be sentenced to life in prison with the possibility of parole. Although Miller disagrees with the circuit court, that disagreement does not show he is due relief.

Jones, 539 U.S. ___ n.7, 141 S. Ct. at 1320 n.7. See also Boyd, 306 So. 3d at 929 ("The circuit court was not required to agree with Boyd's characterization of the evidence, and Boyd has not demonstrated the circuit court abused its discretion in not doing so.").

IV. MILLER'S CLAIM THAT THE CIRCUIT COURT IMPROPERLY REQUIRED A "CAUSAL NEXUS" BETWEEN THE EVIDENCE HE OFFERED IN MITIGATION AND THE OFFENSE

Miller argues that the circuit "court imposed a requirement that [Miller's] youth and other mitigating circumstances have a causal connection to the offense in order to support a sentence of life with parole." (Miller's brief, p. 49.) He quotes this part of the court's order:

> "However, as to all of these factors the strength of the mitigation is lessened by the lack of evidence of any causal connection between these possible or even likely mental deficits and the choices and events that bring this matter back to this court. What may be scientifically true in a generic sense does not correlate to the crime here and the crime is the catalyst necessitating this resentencing."

(C. 269.) He also cites the circuit court's statements that it was "not sentencing Mr. Miller because Mr. Miller suffered some physical abuse at the hands of his father" (C. 270) and that Miller's mental-health history "was not the catalyst for [the crime]" (C. 270-71.) Miller argues that those statements show "the trial court's refusal to consider

mitigating circumstances because [Miller] had not shown a causal connection between the mitigation and the offense." (Miller's brief, p. 51.)

The cases Miller cites in support of his argument in this section—decisions such as Tennard v. Dretke, 542 U.S. 274 (2004), and Smith v. Texas, 543 U.S. 37 (2004)—do not apply because in those cases, the trial courts refused to consider the evidence offered in mitigation. Cf. Woolf v. State, 220 So. 3d 338, 390-92 (Ala. Crim. App. 2014) (recognizing, in a capital case, that while a circuit court must consider all evidence the defendant offers as mitigating, the court need not find that evidence mitigating or assign to that evidence the weight the defendant thinks it should). Miller has not shown that the circuit court refused to consider—for any reason—any of the mitigating evidence he offered. The court considered Miller's age to be a mitigating circumstance. (C. 268.) The court also considered Dr. Davis's testimony summarizing scientific articles about juvenile brains and "diminished culpability." (C. 269.) The circuit court found mitigating several factors such as Miller's exposure to violence as a child, his use of drugs, and his mental-health history. (C. 269.)

Although the circuit court considered all the evidence Miller offered

as mitigating, the court did not have to assign that evidence the weight that Miller wanted. Jones, 539 U.S. at ___ n.7, 141 S. Ct. at 1320 n.7; Boyd, 306 So. 3d at 929. The portions of the order that Miller cites above show that the circuit court assigned less weight to certain evidence Miller offered. Indeed, the circuit court assigned less weight to factors such as Miller's youth based on the court's finding that Miller was the "principal aggressor." (C. 272.) The court also noted that the crime was not impulsive or the product of youthful impetuosity, and the court found particularly damning Miller's statements to Cannon, "I am God. I've come to take your life." (C. 272-73.)

Miller is due no relief on this claim.

V. CLAIM THAT MILLER'S SENTENCE DOES NOT COMPLY WITH MILLER, HENDERSON, OR STATE AND FEDERAL LAW

In this part of his brief, Miller challenges the circuit court's sentencing decision because, he says, it does not comply with Miller or accurately apply the Henderson factors. He asserts: "[I]n sentencing [Miller] to life without parole (C. 266-78), the sentencing court did not properly consider the Miller and Henderson factors as they apply in this case, rendered clearly erroneous findings of fact, and erroneously excluded relevant evidence from consideration. (Miller's brief, p. 53.)

Many of Miller's arguments overlap with his arguments in other parts of his brief.

A.

Miller asserts that the circuit court found "that the crime negates [Miller's] youth" and "ignore[d] [Miller's] lack of maturity and emotional development." (Miller's brief, p. 54.) At root, Miller simply disagrees with the circuit court's weighing of the evidence. He continues to assert, for example, that the circuit court "failed to consider" evidence such as, he says, "undisputed evidence of [Miller's] lack of maturity and emotional development." (Miller's brief, p. 55.) That evidence includes testimony at the sentencing hearing from Berryman that Miller was "less mature" than other 14-year-olds (R. 328) and was very impulsive (R. 326) and similar testimony from Dr. Davis (R. 528). Miller also cites evidence from his trial from Dr. John Goff, who evaluated Miller at age 17 and testified that Miller seemed "younger than his stated age in terms of behavior and his physical appearance" and was "impulsive" (Trial R. 1151, 1188) and from a report from Dr. Brent Willis, who evaluated Miller at age 14, in which Dr. Willis stated that Miller had "serious problems with impulse control" (Miller's brief, p. 56 (quoting Record in CR-03-0915, C. 55).

As stated above, Miller has not shown that the circuit court refused to consider evidence. In its sentencing order, the court stated that it "strongly consider[ed]" Miller's "chronological age at the time of the offense and the hallmark features of youth, such as immaturity, impetuosity, and failure to appreciate risks and consequences." (C. 268.) But the circuit court did not assign the weight to that evidence that Miller believes it should have. Miller's disagreement with the circuit court's weighing of the evidence gives him no right to relief. Jones, supra; Boyd, supra.

B.

Miller challenges the circuit court's findings about "the circumstances of the offense" and that "Miller was the principal aggressor that brought upon the death of Mr. Cannon." (Miller's brief, p. 57 (citing C. 272-73).) Miller argues that the circuit court's findings were clearly erroneous.

Miller asserts that "there is no evidence in the record" to support the court's findings that Miller was responsible for the "initial planning and scheming of the drinking game" or for the "planning and execution of the arson to cover-up the crime." (Miller's brief, p. 57 (citing C. 272).)

Without saying who planned it, Smith testified that he and Miller started playing a drinking game with Cannon where they pretended to drink while Cannon continued to drink. (C. 458.) Once Cannon passed out, Miller took Cannon's wallet and then took Smith to the bathroom and split the money with him. (C. 459.)

When Miller tried to put the wallet back in Cannon's pocket, Cannon grabbed Miller by the throat. (C. 459-60.) Smith then struck Cannon with a baseball bat but then dropped the bat. (C. 460.) Miller then got on top of Cannon and repeatedly struck him with his fists while Cannon was telling Miller to stop. (C. 460.) Miller got the baseball bat "and started hitting him everywhere" while Cannon tried to crawl away. (C. 460.) Miller then put a sheet over Cannon's head and stated, "Cole, I am God, I've come to take your life." (C. 461.) This testimony directly supports the circuit court's finding that Miller was the "principal aggressor."

As for the circuit court's finding that Miller was responsible for the "planning and execution of the arson to cover-up the crime," Smith testified that Miller "lit the couch and said we had to do it to cover up the evidence." (C. 465.) Although Smith testified that he started a fire in the

back bedroom (C. 463), given the totality of the evidence about Miller's behavior, the circuit court did not clearly err in finding that Miller was responsible for the planning and execution of the plan of the arson and that Miller came up with the "drinking game" to incapacitate Cannon.

The rest of Miller's arguments in the part of his brief are merely disagreements with the circuit court's weighing of the evidence. (Miller's brief, pp. 58-60.) Miller has not shown that the circuit court erred. See Jones, 539 U.S. ___ n. 7; Boyd, 306 So. 3d at 929.

C.

Miller asserts that "[t]he sentencing court's finding that [Miller] has not shown rehabilitation and remorse is clearly erroneous." (Miller's brief, p. 61.) In Part I, we addressed many arguments Miller reiterates here, and we do not restate that discussion here.

Miller asserts that the circuit court "imposed an impossible standard of proof concerning a child's potential for rehabilitation," because, although the circuit court acknowledged that Miller had "thrived in highly structured settings," it was not convinced that he would do so "if free of constraints." (Miller's brief, p. 62 (quoting C. 271-72.) Miller writes that, because he has been "incarcerated since he was

14, [he] has not had the ability to be 'free of constraints' since the offense and could never meet the court's standard." (Miller's brief, p. 62.) Miller overstates the circuit court's finding—it did not "impose an impossible standard" that Miller could meet only by offering evidence of his behavior while free of constraints. Instead, the circuit court made a judgment based on the evidence before it, and it was not convinced that Miller would "thrive[] … if free of constraints." (C. 272.) The record, which Miller presents in a positive light, includes evidence indicating that Miller, while in foster care, "grabbed [Tiffani Aldridge] by the throat and attempted to choke her" and then wrote a note stating that he wanted to kill her in a painful way (R. 241) and that he lied and blamed his misbehavior on other people (R. 243). As noted above, Warden Wise testified that Miller did not have disciplinaries for violence, but he did have repeated violations. (R. 404, 414.) The circuit court did not have to accept Miller's rendition of the evidence, and the record supports its findings. Miller is due no relief.

D.

Miller asserts, echoing his argument addressed in Part IV of this opinion, that the circuit court erred in "finding that there was no causal nexus between [Miller's] youth and background and the offense." (Miller's brief, p. 63.) Miller asserts that "there was ample evidence that the offense was causally related to [Miller's] youth and that this offense would not have occurred but for the environment [Miller] was in at the time and which, because of his age, he could not escape." (Miller's brief, pp. 63-64.) Among other things, Miller cites statements from Dr. Davis's 2017 evaluation of Miller that, when Miller killed Cannon, "[t]he supervision of his single mother was at its lowest point, the household was a chaos of people and events, and [Miller] was using multiple drugs heavily and simultaneously," all of which, Dr. Davis opined, "culminated in the context of that particular night and situation to produce an act of remarkably poor judgment and terrible impulse control." (C. 773, 775.)

The record shows that the circuit court considered Miller's youth and background mitigating but did not assign that evidence the weight Miller contends it should have. Miller has not shown that he is due relief.

E.

Miller asserts that the circuit court clearly erred in its "findings regarding [Miller's] ability to deal with police and assist his attorney."[10] (Miller's brief, p. 65.) The circuit court found that "[t]here is no evidence his age lessened his ability to deal with police" and that he dealt with them in a "sharp," "very sly, intelligent way" because he told "lie after lie." (C. 273-74.) Miller contends, however, that his lying did not reflect "cunning" but was "consistent with his young age and background" including evidence from Miller's sister that their parents taught them "to lie to authorities." (Miller's brief, p. 66 (quoting R. 165).) Among other things, Miller cites an opinion from Dr. Goff that he did not think Miller "knew about his right to remain silent in the context of an interrogation." (Trial R. 1166.) Miller also asserts that his "inability to deal with police and with counsel is in stark contrast to [Smith] who was able to secure a plea deal and a life with parole sentence." (Miller's brief, p. 67.)

The circuit court had the discretion to reject Miller's rendition of the evidence, and the record supports the circuit court's findings. Miller

[10]The circuit court did not make a specific finding about Miller's ability to deal with his attorney.

is due no relief.

F.

Miller concludes this section by asserting that "[a]ny credible assessment of the Miller and Henderson factors in this case establishes that [he] is not one of those rare 'irreparable' offenders, and therefore his 'hope for some years of life outside prison walls must be restored.'" (Miller's brief, pp. 67-68 (quoting Montgomery, 577 U.S. at 737).) We disagree. The circuit court did not abuse its discretion in its application of Miller and Henderson.

VI. MILLER'S CLAIM THAT HIS SENTENCE IS "CRUEL AND UNUSUAL"

Miller asserts that his sentence violates the Eighth Amendment and state and federal law. He begins this part of his brief by asserting that he "is one of only three 14-year-olds nationwide who have been condemned to die in prison since the Supreme Court's decision in Miller." (Miller's brief, p. 68.) He reiterates that the United States Supreme Court has often recognized that there are "significant differences between children and adults." (Miller's brief, p. 69.) Miller asserts that the Constitution categorically prohibits a life-imprisonment-without-the-possibility-of-parole sentence for an offender who committed his or her

crime as a 14-year-old. (Miller's brief, pp. 71-72.) He asserts that "39 states and the District of Columbia have rejected the practice of sentencing 14-year-olds to life without parole." (Miller's brief, p. 72.) And he asserts "that sentencing 14-year-olds to life without parole violates 'our society's evolving standards of decency.'" (Miller's brief, p. 73 (quoting Roper, 543 U.S. at 563).)

Miller's claim lacks merit. Jones reiterates what the Supreme Court said in Miller's own case—the Constitution does not categorically bar sentencing a juvenile to life without the possibility of parole:

> "To be sure, Miller also cited Roper and Graham. 567 U.S. at 471-475, 132 S. Ct. 2455. Roper barred capital punishment for offenders under 18. And Graham barred life without parole for offenders under 18 who committed non-homicide offenses. But Miller did not cite those cases to require a finding of permanent incorrigibility or to impose a categorical bar against life without parole for murderers under 18. We know that because Miller said so: 'Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in Roper or Graham.' 567 U.S. at 483, 132 S. Ct. 2455."

Jones, 539 U.S. at ___, 141 S. Ct. at 1316 (emphasis added).

The Alabama Legislature has authorized the sentence that the circuit court imposed on Miller. § 13A-5-43(e), Ala. Code 1975. See Boyd, 306 So. 3d at 916. And the Alabama Supreme Court and this Court have

repeatedly affirmed judgments in which judges used the process like the circuit court used in Miller's case. See, e.g., Henderson, 144 So. 3d 1262; Wynn, 354 So. 3d 1007; Boyd, 306 So. 3d 907; Thrasher v. State, 295 So. 3d 118 (Ala. Crim. App. 2019); and Wilkerson, 284 So. 3d 937.

Miller has no right to relief on this claim.

VII. MILLER'S CLAIM THAT HIS SENTENCE IS DISPROPORTIONATE WHEN COMPARED TO OTHER CASES

Miller contends that his "life-without-parole sentence is disproportionate when compared to sentences imposed in other similar cases both in Alabama and across the country." (Miller's brief, p. 74.) He cites examples from Alabama and from other jurisdictions. (Miller's brief, pp. 74-76.) But many other resentencing procedures have led to life-imprisonment-without-parole sentences for juvenile offenders. See, e.g., Wynn, 354 So. 3d 1007; Boyd, 306 So. 3d 907; Thrasher, 295 So. 3d 118; and Wilkerson, 284 So. 3d 937. As the Supreme Court recognized in Jones, "Some sentencers may decide that a defendant's youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth." 539 U.S. at ___, 141 S. Ct. at 1319.

We have reviewed Miller's challenge to his sentence, and it lacks

merit. Miller's sentence is not disproportionate when compared to other cases.

CONCLUSION

The judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, McCool,* and Cole, JJ., concur.

*Although Judge McCool did not attend oral argument in this case, he has listened to an audio recording of that oral argument.