ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case No. 13-1591
Appellee	:	
v.	:	On Appeal from the Summit County Court of Appeals Ninth Appellate District
ALEXANDER QUARTERMAN	:	
Appellant	:	C.A. Case No. 26400

MEMORANDUM IN SUPPORT OF JURISDICTION OF ALEXANDER QUARTERMAN

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EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Without question, the law recognizes that children are different from adults in a constitutional sense. *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *J.D.B. v. North Carolina*, __ U.S. __, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). The Supreme Court has set forth a directive that children be recognized as children, no matter the criminal stage or the constitutional context. This means that children now have a recognized liberty interest in the individualized treatment that the juvenile court provides, which cannot be circumvented in a manner that violates due process, equal protection, or the Eighth Amendment.

At issue in this case is whether Ohio's mandatory transfer scheme contained in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which forbids any consideration of the accused child's youthfulness as a mitigating factor and requires consideration of a child's age as an aggravating factor, can pass constitutional muster in light of these recent decisions, which rely heavily on developmental research, brain science, and long-held beliefs about what it means to be a child.

Alexander asks this Court to consider this important issue now, and hold that in light of recent United States Supreme Court and Ohio precedent, a child's youthfulness is a factor that cannot be ignored in a proceeding to determine whether a child will be retained in juvenile court, or will receive life-long consequences after being prosecuted as an adult. As such, Alexander asks this Court to accept jurisdiction and order briefing in his case.

STATEMENT OF THE CASE AND FACTS

Because Alexander Quarterman was 16 at the time he used a gun to rob a group of friends playing cards, the Summit County Juvenile Court was required to transfer the case to adult court. *State v. Quarterman*, 9th Dist. Summit No. 26400, 2013-Ohio-3606, ¶ 2. Alexander entered a guilty plea, was convicted of aggravated robbery with a firearm specification, and was sentenced to four years in prison. *Id.* Alexander will be released from prison when he is 20 years of age—within the time the juvenile court would have jurisdiction over him, had his case been eligible to be retained by the juvenile court. (*See* Offender Search Detail, available at http://www.drc.ohio.gov/OffenderSearch/details.aspx?id=A623309 (accessed Oct. 4, 2013).

Alexander appealed his conviction, asserting that Ohio's mandatory transfer scheme is unconstitutional because it prohibits the juvenile court from considering the mitigating factors of youth before transferring the case to adult court, in violation of due process, equal protection, and the prohibition against cruel and unusual punishment. The Ninth District affirmed his conviction, holding that Alexander waived his right to challenge the transfer of his case to adult court by pleading guilty. *Op.* at ¶ 3-8. This appeal timely follows.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Introduction

The decision below held that Alexander waived his right to raise the constitutionality of the mandatory transfer proceeding by pleading guilty. *Op.* at ¶ 3-6. It reasoned that "[a] defendant who enters a plea of guilty waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceeding * * *." *Op.* at ¶ 4. Alexander asserts that whether the transfer procedure is constitutional is a jurisdictional matter and asks this Court to accept review of this case.

PROPOSITION OF LAW I: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

The guarantees of the Due Process Clause apply to juveniles and adults alike. *In re Gault*, 387 U.S. 1, 30-31, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *In re Winship*, 397 U.S. 358, 362, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970). The applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971).

In 2012, this Court reasoned, "[t]he disposition of a child is so different from the sentencing of an adult that fundamental fairness to the child demands the unique expertise of a juvenile judge." *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 76, citing *In re D.H.* 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 59. In *C.P.*, this Court held that R.C. 2152.86's automatic, mandatory, life-long sex offender classification for juveniles who had been adjudicated of a sex offense as a Serious Youthful Offender (SYO) violated due process because it divested the juvenile court judge of the ability to "decide the appropriateness of any such penalty." *C.P.* at ¶ 78.

Revised Code sections 2152.10(A)(2)(b) and 2152.12(A)(1)(b) require a juvenile court to transfer a child's case to adult court for prosecution if the child is 16 or 17 and there is probable cause to support that the child has committed a category two offense with a firearm. Like R.C. 2152.86, R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) are unconstitutional because they prohibit the court from making any individualized determination of the appropriateness of the transfer of a particular child's case to adult court.

Over four decades ago, the Supreme Court held that the transfer from juvenile to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection

under the Due Process Clause of the Fourteenth Amendment. *Kent v. United States*, 383 U.S. 541, 546, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966) (finding that transfer is a "'critically important' action determining vitally important statutory rights of the juvenile"). *Kent* made clear that a transfer proceeding must provide due process protections commensurate with the critical nature of the proceedings, because "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony–without hearing, without effective assistance of counsel, without a statement of reasons." *Id.* at 554. The Court held that due process required a juvenile court to consider eight factors:

> 1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
>
> 2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
>
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
>
> 4. The prosecutive merit of the complaint, i. e., whether there is evidence upon which a Grand Jury may be expected to return an indictment * * *.
>
> 5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime * * *.
>
> 6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
>
> 7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
>
> 8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent at 566-567. These factors are absent from Ohio's mandatory transfer provisions, even though *Kent* held that to ensure that a youth's interests in juvenile status and freedom from

confinement are adequately protected, a "full investigation" is required before transfer to adult court. *Id.* at 553, fn.15.

Ohio's mandatory transfer provisions do not provide the meaningful transfer hearing that *Kent* requires. Specifically, R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) require only that the court determine the age of the child and whether probable cause supports that the child committed a category two offense with a gun. Under R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b), a juvenile court is prohibited from considering any of the information required in the first, third, and fifth through eighth factors set forth in *Kent*. *Id.* at 566-567. What remains is nothing more than a probable cause hearing. *See, e.g.*, *State v. Carnes*, 12th Dist. No. CA2001-02-018, 2002-Ohio-1311, ¶ 11 ("[T]he state only must establish 'probable cause to believe' that the juvenile has committed the charged act."), citing R.C. 2151.26(B); Juv.R. 30(A); Juv.R. 30(B). Because R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) forbid the court from conducting a meaningful review of all of the facts and circumstances necessary to making a finding of such tremendous consequence, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) cannot withstand constitutional scrutiny.

Without question, youth is a mitigating factor. *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2012); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1(2005). But, R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) not only forbid the juvenile court from considering the mitigating factors of youth before transferring the case to adult court, they improperly require the court to treat age as an aggravating, rather than a mitigating factor. *See Penry v. Johnson*, 532 U.S. 782, 787, 121 S.Ct. 1910, 150 L.Ed.2d 9(2001) (A mitigating factor cannot be "relevant

only as an aggravating factor."). Accordingly, Alexander asks this Court to accept review of this case.

PROPOSITION OF LAW II: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.

The United States Supreme Court has found that while children's constitutional rights are not "indistinguishable from those of adults * * * children generally are protected by the same constitutional guarantees against governmental deprivations as are adults." *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place and under like circumstances. Fourteenth Amendment to the United States Constitution; Ohio Constitution, Article 1, Section 2; *see also Sorrell v. Thevenir*, 69 Ohio St.3d 415, 424, 1994-Ohio-38, 633 N.E.2d 504 (finding that the Equal Protection clause of the Ohio Constitution has been interpreted to be essentially identical in scope to the analogous provision of the U.S. Constitution). In order to be constitutional, a law must be applicable to all persons under like circumstances and not subject individuals to an arbitrary exercise of power. *Conley v. Shearer*, 64 Ohio St.3d 284, 288-289, 1992-Ohio-133, 595 N.E.2d 862. In other words, the Equal Protection Clause prevents the state from treating differently or arbitrarily, persons who are in all relevant respects alike. *Park Corp. v. Brook Park*, 102 Ohio St.3d 166, 2004-Ohio-2237, 807 N.E.2d 913, ¶ 18.

A. Revised Code sections 2152.10 and 2152.12 create classes of similarly situated children who are treated differently, based solely upon their ages.

Children who were 14 or 15 at the time they committed a category two offense with a firearm are subject only to discretionary transfer if the court finds they are not amenable to rehabilitation in the juvenile system. R.C. 2152.10(B); R.C. 2152.12(A), (B). But, children who were 16 or 17 at the time of the same offense are subject to mandatory transfer and are not entitled to an amenability determination. R.C. 2152.10(A)(2)(b); R.C. 2152.12(A)(1)(b).

Although the legislature may set more severe penalties for acts that it believes should have greater consequences, the differences in R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) are not based on acts of greater consequence, but simply on the child's age at the time of the offense. Under the rational basis test, if the age-based classification is not rationally related to the State's objective in making the classification, it will be found to be in violation of the Equal Protection Clause. *Massachusetts Bd. of Retirement v. Murgia,* 427 U.S. 307, 315, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976).

B. The age-based distinctions in R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) are not rationally related to the purpose of juvenile delinquency proceedings.

The differential treatment of children under R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) is not supported by empirical evidence, because current research and jurisprudence recognizes the differences between adults and children, not between older children and younger children who are all under the age of 18. Notwithstanding the lack of scientific support, R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) draw bright-line distinctions between children who were 16 or 17 and those who were 14 or 15 at the time of their offense.

The legislature may impose special burdens on defined classes in order to achieve permissible ends, but equal protection requires that the distinctions drawn are relevant to the

purpose for which the classification is made. *Rinaldi v. Yeager*, 384 U.S. 305, 309, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966) (holding that there must be some rationality in the nature of the classes singled out). There is no evidence to support the need for disparate treatment under R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b). And, the General Assembly gives no rationale for treating older children who have committed a category two offense with a gun differently from younger children who have committed the same offense. Therefore, R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b), which allow for similarly-situated children to receive disparate treatment without any rational basis whatsoever cannot withstand constitutional scrutiny. Accordingly, Alexander asks this Court to accept review of this case.

PROPOSITION OF LAW III: The mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates the prohibition against cruel and unusual punishments as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution.

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment. *Wilkerson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1878). The provision is applicable to the states through the Fourteenth Amendment. *Furman* v. *Georgia*, 408 U.S. 238, 239, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (per curiam). This right flows from the basic "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 2458, 183 L.Ed.2d 407 (2012), citing *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). To evaluate a law under the Eighth Amendment, a court must look "beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society.'" *Miller* at 2463. To make this determination, this Court must engage in a two-step analysis, first considering "whether there is a national consensus against" the practice at issue, and second, determining "whether the

punishment in question violates the Constitution." *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 29.

A. National Consensus

Appalled by the reality of children facing lengthy prison sentences and exposure to "hardened adult criminals," early juvenile justice reformers were "profoundly convinced that society's duty to the child could not be confined by the concept of justice alone." *In re Gault*, 387 U.S. 1, 16, 97 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Accordingly, state legislatures created juvenile courts to function as "civil" not "criminal" bodies. *Id.* at 17.

Juvenile courts continue to occupy a unique place in the legal system. *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919 874 N.E.2d 1177, ¶ 65. In Ohio, juvenile delinquency provisions are to be liberally interpreted to "protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefore a program of supervision, care, and rehabilitation." *State ex rel. Plain Dealer Publ'g Co. v. Geauga Cty. Court of Common Pleas, Juvenile Div.*, 90 Ohio St.3d 79, 83, 2000-Ohio-35, 734 N.E.2d 1214, citing R.C. 2151.01(B). Based on the fundamental purposes of juvenile court, "it is the law's policy 'to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.'" *Gault* at 24.

But, like most other states, Ohio law also allows for juveniles to be tried as adults under certain circumstances. R.C. 2152.10; R.C. 2152.12; Juv.R. 30. However, in the past decade, in response to current research, many states have turned away from prosecuting youth in adult courts. Specifically, since 2005, nearly half of the states have passed or considered legislation moving away from the "adultification" of youth. Neelum Arya, *Jailing Juveniles: The Dangers*

of Incarcerating Youth in Adult Jails in America 23-24 (November 2007).[1] Ohio, too, followed this trend. *See* Children's Law Center, Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System* 5 (2012).[2] Specifically, in 2011, Ohio allowed for certain youth whose cases are mandatorily transferred to the adult system to return to the juvenile justice system. *Id.*; R.C. 2152.121, Am.Sub.H.B No. 86.

Public polling also reflects that the national consensus is changing. For example, in January 2007, Zogby International and the National Council on Crime and Delinquency (NCCD) found that the public supports rehabilitation for juveniles, not prosecution or incarceration in the adult system. Barry Krisberg and Susan Marchionna, *Attitudes of US Voters Toward Youth Crime and the Justice System*, Focus: Views from the National Council on Crime and Delinquency, February 2007.[3] This trend reflects that there is no longer a consensus for the adultification of juvenile offenders. The mandatory transfer provisions violate evolving standards of decency and indicates that these types of laws can no longer withstand constitutional scrutiny.

B. Independent Review

The "judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question, * * * [and] whether the challenged sentencing practice serves legitimate

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[1]Available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf (accessed Oct. 6, 2013).
[2]Available at http://www.childrenslawky.org/wp-content/uploads/2012/07/Falling-Through-The-Cracks-A-New-Look-at-Ohio-Youth-in-the-Adult-Criminal-Justice-System-May-2012.pdf (accessed Oct. 6, 2013).
[3]Available at http://www.nccdglobal.org/sites/default/files/publication_pdf/focus-voters-and-youth.pdf (accessed Oct. 6, 2013).

penological goals." *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729 at ¶ 38, citing *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 2026, 176 L.Ed.2d 825 (2010).

1. Culpability of Offenders

"Ohio has developed a system for juveniles that assumes that children are not as culpable for their acts as adults." *C.P.* at ¶ 39. In *Miller*, the Court recognized that children are different from adults in three ways. First, "children have a 'lack of maturity and an underdeveloped sense of responsibility' leading to recklessness, impulsivity, and heedless risk-taking." *Miller* at 2464, quoting *Roper* at 569. Second, children "'are more vulnerable * * * to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller* at 2464. And third, the Court recognized that child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Id.*, citing *Roper* at 570.

Importantly, in *Roper, Graham*, and *Miller*, age is always a mitigating factor. The Court's holding in *Miller* turned on the mandatory nature of the sentencing practice at issue. The Court noted that the mandatory scheme prevented the sentencer from considering the unique characteristics of youth. *Id.* The Court recognized that the law provided the court no opportunity to assess whether the mandatory sentencing practice provided proportionate punishment for a specific offender on a case-by-case basis, because the court was required to impose the penalty as though the offender was not a child. *Id.*

The problem with the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) is that age is an aggravating, not a mitigating factor. Specifically, if a court finds that a child was 16 or 17 when he committed a qualifying charged offense, the case must be

transferred to adult court, without any further consideration of the unique characteristics of the child's age or the circumstances surrounding the offense. *Id.* As a consequence of the transfer, if the child is convicted, he faces the life-long consequences of an adult conviction, even though "juvenile offenders are more capable of change than adult offenders." *C.P.* at ¶ 41.

2. Nature of the Offenses

For Alexander, the mandatory nature of his transfer hinged on his age (R.C. 2152.12(A)(1)(b)) and the fact that he allegedly used a firearm when committing the offense (R.C. 2152.12(A)(1)(b)(ii) and R.C. 2152.12 (A)(2)(b)). But, under Ohio's mandatory transfer scheme, the juvenile court is precluded from considering the mitigating nature of a child's age and its "hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller* at 2468. This system prevents court from "taking into account the family and home environment that surrounds [the child]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional." *Id.*

3. Severity of Punishment

The Supreme Court has explained how the fundamental differences between adult and juvenile offenders beg for greater protection of juveniles when it comes to the penalties associated with that youth's actions. *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988). The age-based restrictions that control when a child may lawfully vote, drive, sit on a jury, marry without parental consent, and purchase tobacco and alcohol illustrate the value lawmakers place on taking into consideration the mental capacity of a child to handle these responsibilities. *Id.* The reasons why juveniles are not trusted with the privileges and responsibilities of adults also reinforces the belief that their irresponsible conduct is not as morally reprehensible as that of an adult. *Roper* at 561-562, citing *Thompson* at 835.

Because Alexander's case was required to be transferred to adult court, he is serving an adult sentence in adult prison. But, adult prisons are ill-equipped to handle juveniles and the life-long effects of an adult conviction are onerous. For example, a recent study addressed the conditions youth face when sentenced to adult prison, and found that youth in adult prisons are at a greater risk of physical and sexual assault, a significantly increased risk of suicide, are often unable to access appropriate education services, and have increased placement in isolation. Children's Law Center, Inc., *Falling Through the Cracks* at 2.

4. **Penological Justifications**

Although Alexander's case was transferred to adult court, the fact that it originated in juvenile court is still relevant. In juvenile court, children are treated differently. For example, the purpose clause for juvenile dispositions in R.C. 2152.01(A) includes "provid[ing] for the care, protection, and mental and physical development of children * * *." But, the purpose clause for adult sentencing provides no such provision. R.C. 2929.11(A).

Additionally, in *C.P.*, the Court noted that "retribution, deterrence, incapacitation, and rehabilitation" are legitimate goals of penal sanctions. *C.P.* at ¶ 50, citing *Graham* at 2028. However, at "the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *C.P.* at ¶ 51, citing *Tison v. Arizona*, 481 U.S. 137, 149, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987). Further, the Court noted that "retribution does not justify imposing the same serious penalty on a less culpable defendant. *Id.* citing *Roper* at 571, *Graham* at 2028 ("'Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult.'").

Both the juvenile and adult systems provide for incapacitation and protecting the public, and both systems can serve these aims. R.C. 2152.01(A); R.C. 2929.11(A). Further, deterrence is not a proper justification for punishing a juvenile offender, where the likelihood that a teenage offender has made the type of cost-benefit analysis that attaches the weight to the possibility of the penalty is so remote as to be virtually nonexistent. *Id.* at 572. And, research shows that youth whose cases are transferred to adult court are 34 percent more likely to recidivate than youth with similar offenses whose cases remain in juvenile court. *Falling through the Cracks* at 1. But, under Ohio's mandatory transfer statutes, the juvenile court is prohibited from considering whether the aims of juvenile court could appropriately address the particular facts and circumstances of each case.

C. The juvenile court judge is uniquely qualified to determine whether to retain or transfer jurisdiction.

Requiring an amenability determination in every case in which a child may be transferred, would make the law constitutional. It would allow the court to maintain its involvement as parens patriae. Under the parens patriae theory, the juvenile court judge, during any court proceeding including amenability, must care for the child standing before the court—a child whom the law presumes cannot care for himself.

A juvenile court judge is uniquely qualified to assess the strengths and weaknesses of the juvenile system in light of the particular child and facts of the case, in order to determine whether the child deserves the chance to benefit from the rehabilitative efforts of the juvenile justice system, and whether the juvenile justice system is equipped to deal with the child successfully. *See In re D.H.* 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 59. It is within judge's responsibility alone, as parens patriae, to determine whether the child is amenable to care or

rehabilitation within the juvenile system, or whether the safety of the community may require that the child be subject to adult sanctions. *See* R.C. 2152.12(B), (D), and (E).

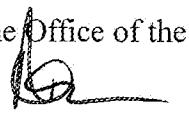
Under these circumstances and in light of *Miller*, *Graham*, and *Roper,* this Court must find that R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b) violate the prohibition against cruel and unusual punishments as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution. Accordingly, Alexander asks this Court to accept review of this case.

CONCLUSION

For the reasons argued above, Alexander Quarterman respectfully requests that this Court accept jurisdiction of this appeal.

Respectfully submitted,

The Office of the Ohio Public Defender



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CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of the foregoing **Memorandum in Support of Jurisdiction of Alexander Quarterman** was served by ordinary U.S. Mail, postage-prepaid, this 7th day of October, 2013, to Richard Kasay, Assistant Summit County Prosecutor, Summit County Prosecutor's Office, 53 University Avenue, 7th Floor, Safety Building, Akron, Ohio 44308.

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#403695

COURT OF APPEALS
DANIEL M. HOROWITZ
2013 AUG 21 AM 9:
SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	
STATE OF OHIO		C.A. No. 26400
Appellee		
v.		APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
ALEXANDER QUARTERMAN		
Appellant		CASE No. CR 12 02 0303

DECISION AND JOURNAL ENTRY

Dated: August 21, 2013

HENSAL, Judge.

{¶1} Alexander Quarterman appeals a judgment of the Summit County Common Pleas Court convicting him of aggravated robbery. For the following reasons, this Court affirms.

I.

{¶2} A group of friends were playing cards when Mr. Quarterman robbed them at gunpoint. The victims filed criminal complaints against him in juvenile court, alleging that he was delinquent for committing acts that constitute aggravated robbery. Because of the nature of the offenses, the juvenile court was required by statute to transfer the case to adult court. The Grand Jury subsequently indicted Mr. Quarterman for three counts of aggravated robbery, each with a firearm specification. Pursuant to a plea agreement, Mr. Quarterman pled guilty to one count of aggravated robbery and the associated firearm specification. The trial court sentenced him to four years imprisonment. Mr. Quarterman has appealed, assigning four errors.

II.

ASSIGNMENT OF ERROR I

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED ALEXANDER QUARTERMAN'S CASE TO ADULT COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) ARE UNCONSTITUTIONAL IN VIOLATION OF A CHILD'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR II

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED ALEXANDER QUARTERMAN'S CASE TO ADULT COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) VIOLATE A CHILD'S RIGHT TO EQUAL PROTECTION AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 2 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR III

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED ALEXANDER QUARTERMAN'S CASE TO ADULT COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) VIOLATE THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENTS AS GUARANTEED BY THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUION AND ARTICLE 1, SECTION 9 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR IV

ALEXANDER QUARTERMAN WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO OBJECT TO HIS CASE BEING TRANSFERRED TO ADULT COURT WHEN THE TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) ARE UNCONSTITUTIONAL.

{¶3} In his first three assignments of error, Mr. Quarterman argues that the statutory provisions that required the juvenile court to transfer his case to adult court violate his right to due process, equal protection, and to be free from cruel and unusual punishment. This Court

need not address the merits of his arguments, however, because Mr. Quarterman waived them by pleading guilty.

{¶4} The Ohio Supreme Court has held that "a defendant who * * * voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel 'may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶ 78, quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). This Court has explained that "[a] defendant who enters a plea of guilty waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings, although [he] may contest the constitutionality of the plea itself." *State v. Atkinson*, 9th Dist. Medina No. 05CA0079-M, 2006-Ohio-5806, ¶ 21, quoting *State v. McQueeney*, 148 Ohio App.3d 606, 2002-Ohio-3731, ¶ 13 (12th Dist.).

{¶5} Whether the Revised Code's mandatory bind-over provisions are constitutional does not implicate the common pleas court's jurisdiction. Under Sections 2151.23(H) and 2152.12(I), the common pleas court's general division has jurisdiction over any case that is transferred to it from the juvenile court, regardless of whether it is a mandatory bind-over under Section 2152.12(A) or a discretionary bind-over under Section 2152.12(B). R.C. 2151.23(H); 2151.12(I). *State v. Wilson*, 73 Ohio St.3d 40, 44 (1995)

{¶6} In his appellate brief, Mr. Quarterman does not argue that his plea was not knowing, intelligent, or voluntary. Rather, he argues that the juvenile court should not have transferred his case to adult court. By pleading guilty to aggravated robbery, however, he waived his right to challenge the constitutionality of the mandatory transfer provisions, which involved an earlier stage of the proceeding. *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-

5283, ¶ 105 (explaining that defendant's "guilty plea waived any complaint as to claims of constitutional violations not related to the entry of the guilty plea.").

{¶7} In his fourth assignment of error, Mr. Quarterman argues that his trial counsel was ineffective for not objecting to the constitutionality of his transfer to adult court. This Court has held that "[a] guilty plea waives the right to appeal issues of ineffective assistance of counsel, unless the ineffective assistance of counsel caused the guilty plea to be involuntary." *State v. Carroll*, 9th Dist. Lorain No. 06CA009037, 2007-Ohio-3298, ¶ 5. In his brief, Mr. Quarterman has not argued that his lawyer's allegedly deficient performance caused the entry of his guilty plea to be less than knowing, intelligent, and voluntary. *State v. Dallas*, 9th Dist. Wayne No. 06CA0033, 2007-Ohio-1214, ¶ 4. We, therefore, conclude that he has also waived his ineffective assistance of counsel claim.

{¶8} By pleading guilty to the charge of aggravated robbery, Mr. Quarterman waived his right to appeal the constitutionality of the mandatory transfer provisions and his lawyer's failure to object to their application. Mr. Quarterman's assignments of error are overruled.

III.

{¶9} Mr. Quarterman waived his arguments regarding the constitutionality of Revised Code Section 2152.10(A)(2)(b) and 2152.12(A)(1)(b). The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

BELFANCE, P. J.
CONCURRING IN JUDGMENT ONLY.

{¶10} I concur in the majority's judgment. With respect to Mr. Quarterman's fourth assignment of error, in light of the limited argument made on appeal, I agree that it is properly overruled.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶11} I agree with the majority that Quarterman's conviction must be affirmed albeit on a different basis.

{¶12} In regard to his first three assignments of error challenging the constitutionality of the mandatory bindover provisions, I would conclude that he has not properly preserved those issues for appeal. This Court has recognized:

> "Failure to raise at the trial level the issue of the constitutionality of a statute or its application, which is apparent at the time of the trial, constitutes a waiver of such issue * * * and therefore need not be heard for the first time on appeal." *State v. Pitts*, 9th Dist. Summit No. 20976, 2002-Ohio-6291, ¶ 106, quoting *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus. *See also State v. Jefferson*, 9th Dist. Summit No. 20156, 2001 WL 276343 (Mar. 21, 2001) (holding that defendant's failure to raise the constitutionality of a statute at the trial court level waived such issue on appeal).

State v. Moore, 9th Dist. Summit No. 21182, 2003-Ohio-244, ¶ 14. Accordingly, I would decline to address those assignments of error except as necessary to address the fourth assignment of error.

{¶13} In regard to his fourth assignment of error, I would overrule it as Quarterman failed to demonstrate prejudice. This Court uses a two-step process as set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to determine whether a defendant's right to the effective assistance of counsel has been violated.

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id.

{¶14} To demonstrate prejudice, "the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph three of the syllabus. "An error by counsel, even if professionally unreasonable, does not warrant setting aside the

judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691.

{¶15} This Court has previously discounted a constitutional challenge to the statutory mandatory bindover provisions. We concluded that, where the defendant has not claimed that the right to an amenability hearing constitutes a fundamental right, the legislative purposes of societal protection and crime reduction present a rational basis for the legislation. *State v. Collins*, 9th Dist. Lorain No. 97CA006845, 1998 WL 289390 (June 3, 1998). Moreover, other appellate courts have concluded that the mandatory bindover provisions are constitutional based on all the arguments Quarterman has raised here. *See, e.g., State v. Smith*, 8th Dist. Cuyahoga No. 76692, 2001 WL 1134871 (Sept. 18, 2001); *State v. Wilson*, 8th Dist. Cuyahoga No. 72165, 1998 WL 842060 (Dec. 3, 1998); *State v. Kelly*, 3d Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998); *State v. Lee*; 11th Dist. Lake No. 97-L-091, 1998 WL 637583 (Sept. 11, 1998); and *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998).

{¶16} Here, although Quarterman argued that he had a due process right to an amenability hearing, he did not couch his argument in terms of a substantive right to such hearing. He similarly made no such argument with regard to equal protection. Moreover, in regard to his cruel and unusual punishment argument, he cites no authority for application of the Eighth Amendment proscription to matters that do not constitute punishment. Mandatory bindover does not equate to punishment any more than the mere prosecution of an adult in the common pleas court constitutes punishment. Accordingly, Quarterman has not demonstrated that defense counsel's failure to challenge the constitutionality of the mandatory bindover provision resulted in prejudice in that the result of the proceedings would have been different.

APPEARANCES:

AMANDA J. POWELL, Assistant State Public Defender, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.