

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,

Appellee,

-vs-

Jason L. Watkins,

Appellant

Case No.:

14-0454

On Appeal From the
Franklin County Court of Appeals,
Tenth Appellate District

Court of Appeals
Case No. 13AP-133; 13AP-134

MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT JASON L. WATKINS

Yeura R. Venters 0014879
Franklin County Public Defender

-and-

David L. Strait 0024103
Assistant Franklin County Public Defender
Counsel of Record
373 South High Street, 12th Floor
Columbus, Ohio 43215
Telephone: 614/525-8872
Facsimile: 614/461-6470
E-Mail: dlstrait@franklincountyohio.gov

Attorney for Appellant

Ronald J. O'Brien 0017245
Franklin County Prosecuting Attorney

-and-

Seth L. Gilbert 0072929
Assistant Franklin County Prosecuting Attorney
Counsel of Record
373 South High Street, 14th Floor
Columbus, Ohio 43215
Phone: 614/462-3555
Fax: 614/462-6103

Attorney for Appellee

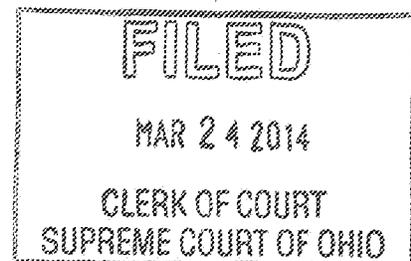


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**Explanation of Why This Case Presents a Substantial
Constitutional Question and Matters of Public or Great
General Interest**

This case presents a question of exceptional importance regarding the application of *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010) in determining what constitutes an illegal sentence under the United States Supreme Court's Eighth Amendment jurisprudence as it relates to children. In *Graham*, the Supreme Court held that sentencing a juvenile to life without parole for a non-homicide offense violated the Eighth Amendment's prohibition on cruel and unusual punishment because of the unique characteristics of youth that make children less culpable, in addition to the developmental differences between children and adults that make it more likely that a child can reform. The crux of the Court's holding was that, as a result of these qualities, any sentence for a non-homicide offense that provides no "meaningful opportunity to obtain release" before the end of the child's life is unconstitutional. *Id.* at 2033. Two years after its decision in *Graham*, the Court reiterated the importance of scientific and social science research that demonstrates fundamental differences between juveniles and adults and lessens a child's "moral culpability." *Miller v. Alabama*, 567 U.S. ____, 132 S. Ct. 2455, 2464-65 (2012)(quoting *Graham*, 560 U.S. at 69).

In *State v. Long*, ___ Ohio St.3d ____, 2014-Ohio-849, ___ N.E.3d __, ¶ 29 this Court recognized these fundamental differences between juveniles and adults, noting that that juveniles who commit criminal offenses are not as culpable for their acts as adults are and are more amenable to reform. In reversing a sentence of life without parole, the Court emphasized that "because of the severity of that penalty, and because youth and its attendant circumstances are strong mitigating factors, that sentence should rarely be imposed on juveniles."

Appellant Jason L. Watkins was sentenced to 67 years in prison, for non-homicide offenses he committed as a child. Pursuant to *Graham*, such lengthy sentences without the possibility of parole are not constitutional sentencing options for children—a group of

offenders who are fundamentally different from adults and categorically less deserving of the harshest forms of punishments. The trial court's sentence provides Watkins with no opportunity for release within his normal life expectancy. Under *Graham*, youth convicted of non-homicide offenses must be guaranteed a "meaningful opportunity to obtain release"—even if that opportunity does not actually result in release. 130 S. Ct. at 2030. Watkins was denied that opportunity when he was sentenced to a term of years that is the functional equivalent of a life sentence. Because this sentence denied Watkins any opportunity for release within his life expectancy, the sentence is unconstitutional under *Graham*.

STATEMENT OF THE CASE AND FACTS

On September 15, 2011, the Franklin County Juvenile Court issued an order transferring Defendant-Appellant Jason Watkins to the general division of the Franklin County Common Pleas Court for purposes of criminal prosecution. The Juvenile Court's order of transfer stated that Jason was sixteen years old at the time of the offenses.

On October 12, 2011, the Grand Jury returned a twenty-two count indictment charging Jason with rape and multiple counts of aggravated robbery, robbery, kidnapping, and gross sexual imposition. The case came on for hearing on November 26, 2012. During that hearing, Jason pleaded guilty to five counts of aggravated robbery, one count each of robbery, sexual battery, and gross sexual imposition. Three firearm specification counts applied as well. (Tr. 6) The court accepted the pleas, and continued the matter for sentencing. (Tr. 13)

On January 9, 2013—before sentencing—Jason, through trial counsel, filed a motion to withdraw his guilty plea. On January 11, 2013, the court held a sentencing hearing notwithstanding the pendency of the motion to withdraw the plea. The trial court noted that Jason had a juvenile court record that included “a conviction for robbery, which involved force and threat of force, and receiving stolen property. He also had a burglary, again, which is a serious offense. I think when he was 15, and other problems.

And then we came to these cases which started out as rape and robbery and so forth and they were bound over.” (Tr. 18) The prosecution urged that the court to “consider maximum and consecutive sentences in this case, certainly in order to punish the offender and protect the community. He has clearly shown he is going to continue committing very serious crimes with a lot of trauma to his victims if he remains out.” (Tr. 28)

Defense counsel conceded that Jason “needs to be punished” and that “was clear by the plea agreement that carried nine years of gun specification that we have to do day-for-day, plus additional time.” (Tr. 29) Counsel also raised the issue of Jason’s youth:

So the question this Court has to answer, I believe, is what is the appropriate amount of time to lock this gentleman up to accomplish those principles and purposes? I would suggest to the Court that he is only 16 years old and he was in the tenth grade when this happened and had not distinguished himself academically throughout his school career.

As a result of that, I don’t know that this Court should treat him as one would normally treat a normal adult in this situation, somebody who has lived through some things. And he did have a record, but again, a record in Juvenile Court is different from a record in adult court in that the punishments available and the things available to the Juvenile Court and the sanctions available to them to deal with the juveniles are quite different from the adult court and the things that the can learn from them.

So, Your Honor, given the posture of the case and the motion to withdraw the plea, I would simply ask the Court to keep in mind the age of this young man when these offenses were committed and the fact that even following the plea agreement, which we sought to withdraw, he would still do a minimum of nine years and probably more like 15 to 20 years. And I would suggest to the Court that that would be an appropriate amount of punishment for a young man of his age.

(Tr. 29-31)

The court imposed maximum ten year sentences on each aggravated robbery count and a maximum eight year sentence on the robbery count, and ordered that they be served consecutively to each other and to an additional nine years on the gun specifications, for an aggregate sentence of 67 years. The court ordered that a three year

term on the sexual battery count and an eighteen month term on the gross sexual imposition count be served concurrently. The sentence was journalized by judgment entry filed February 1, 2013.

On January 13, 2013, the court held a hearing on the motion to withdraw the guilty plea. Jason testified in support of the motion. He stated that he did not understand what he was pleading guilty to, and that his family and girl pressured him into pleading guilty. (Tr. 42, 57, 63) He stated he was factually guilty of some things, but not others. (Tr. 71)

By Journal Entry filed February 6, 2013, the court denied the motion to withdraw the guilty plea. Jason appealed to the Franklin County Court of Appeals. By Opinion rendered December 17, 2013, the Court of Appeals affirmed the conviction. This decision was journalized by judgment entry filed December 18, 2013. On December 23, 2013, counsel filed a motion for reconsideration with the County Court of Appeals. On February 6, 2014, the Court of Appeals rendered a decision and judgment denying reconsideration.

Jason now respectfully urges this Court to accept jurisdiction and, after briefing and argument, reverse the judgment of the court below.

ARGUMENT

Proposition of Law

A court must separately consider the youth of a juvenile offender as a mitigating factor before imposing a sentence that is the functional equivalent of life without parole. Further, the record must reflect that the court specifically considered the juvenile offender's youth as a mitigating factor at sentencing when a prison term that is the functional equivalent of life without parole is imposed. (*Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011. 176 L.Ed.2d 825 (2010); *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed. 407 (2012), and *State v. Long*, ___ Ohio St.3d ___, 2014-Ohio-849, ___ N.E.3d ___, followed.)

Introduction.

In a series of decisions over the past decade, the United States Supreme Court has expanded Eighth Amendment protections to children relied charged with serious crimes. *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) barred imposition of the death penalty for those under eighteen; *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2009) extended *Roper* and barred imposition of life without parole sentences on juveniles who commit non-homicide offenses; and *Miller v. Alabama*, 567 U.S. _____, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) banned imposition of mandatory life without parole sentences on juveniles in homicide cases.

In *State v. Long*, this Court applied *Roper*, *Graham*, and *Miller* to a case in which the juvenile defendant had been sentenced to life without the possibility of parole. The Court reversed this sentence, stating:

{¶ 29} The United States Supreme Court has indicated in *Roper*, *Graham*, and *Miller* that juveniles who commit criminal offenses are not as culpable for their acts as adults are and are more amenable to reform. We agreed with this sentiment in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. *Miller* did not go so far as to bar courts from imposing the sentence of life without the possibility of parole on a juvenile. Yet because of the severity of that penalty, and because youth and its attendant circumstances are strong mitigating factors, that sentence should rarely be imposed on juveniles. *Miller*, ___ U.S. ___, 132 S.Ct. at 2469, 183 L.Ed.2d 407. In this case, the trial court must consider Long's youth as mitigating before determining whether aggravating factors outweigh it.

This case presents a different constitutional issue: whether the Constitution permits the imposition of a lengthy sentence that is the functional equivalent of a life sentence. The following establishes that the Eighth Amendment to the United States Constitution prohibited the imposition of a 67 year sentence on Appellant Watkins. Nationally, the courts are split on this issue.

Compare *People v. Caballero*, 282 Cal.3d 291, 294 (Cal. 2012) (invalidating a sentence of 110 years to life as the “functional equivalent” of a life sentence) and *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013) (reaching a similar conclusion in a case involving a 52.5 year sentence) with

The Sentence Imposed On Appellant Is The Functional Equivalent of Life Without Parole for Non-Homicide Offenses And Violates The U.S. Supreme Court's Decisions In *Graham* And *Miller*.

In *Graham*, the United States Supreme Court held that “the Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” 130 S. Ct. at 2011. The Court's reasoning was grounded in developmental and scientific research that demonstrates that juveniles possess a greater capacity for rehabilitation, change and growth than do adults. Emphasizing these unique developmental characteristics, the Court held that juveniles who are convicted of non-homicide offenses require distinctive treatment under the Constitution. The Court found that a sentence for non-homicide offenses that provides the individual no meaningful opportunity to reenter society during his natural life is unconstitutional.

The 67 year sentence means that Watkins will likely be more than 80 years old when he completes his sentence. Authority shows that this will exceed his life expectancy. In *People v. Rainer*, Col. App. No. 10CA2414, 2013 WL 1490107 (April 13, 2013) the court held that an aggregate sentence of 112 years did not offer defendant an opportunity to obtain release before the end of his expected life span and, therefore, constituted the functional equivalent of a sentence of life without the possibility of parole and thereby violated the Eighth Amendment. The Court noted that “the record shows he

has a life expectancy of only between 63.8 years and 72 years, based on Center for Disease Control life expectancy tables.”

Interestingly, the United States Sentencing Commission defines a “life sentence” as 470 months (or just over 39 years) based on the average life expectancy of those serving federal prison sentences. See United States Sentencing Commission Final Quarterly Data Report Fiscal Year 2012, Appendix A-7,

http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2012_Quarter_Report_Final.pdf.

It is also important to note that under the Ohio criminal sentencing system a sentence of 67 years likely means that the defendant will serve a full 67 years. With the enactment of Am.Sub.S.B. No. 2, 146 Ohio Laws, Part IV, 7136, effective July 1, 1996 (“S.B. 2”), Ohio largely removed the release decision from the jurisdiction of a parole board. David Diroll, Executive Director of the Ohio Criminal Sentencing Commission summarized the effect of this change: “Most persons sent to prison serve the exact sentence imposed in open court.” Diroll, *Thoughts on Applying S.B. 2 to “Old Law” Inmates*, at

<http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/Publications/SB2.pdf>

While Ohio trial courts retain the jurisdiction to release prisoners, they do so rarely. Ohio Department of Corrections statistics show that judges statewide release only 17 percent of the exiting prisoners early. See Ohio Department of Corrections, 2013 Annual Report, “Inmate Releases FY 2013) page 26 of

<http://www.drc.ohio.gov/web/Reports/Annual/Annual%20Report%202013.pdf>.

Because Watkins will likely serve the full 67 year sentence, which will likely exceed his life expectancy, it is a virtual certainty that he

will die in prison. no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes. The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit.

Graham, 560 U.S. at 79.

The Court's prohibition in *Graham* is clear: the Eighth Amendment forbids States from "making the judgment at the outset that [juvenile non-homicide] offenders never will be fit to reenter society." *Graham* at 2030. Instead, States must give these offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 79. The 67 year sentence at issue here for non-homicide offenses is contrary to the holding in *Graham*, because it forecloses any meaningful opportunity to for Watkins to obtain release before the end of his natural life expectancies. To hold that such a sentence does not violate *Graham* because it was not formally labeled "life without parole," defies common sense and runs afoul of the Supreme Court's Eighth Amendment jurisprudence.

The United States Supreme Court has clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled. For example, in *Sumner v. Shuman*, 483 U.S. 66, 83, 107 S.Ct. 2716, 97 L.Ed.2d 5655 the Court noted that "there is no basis for distinguishing, for purposes of deterrence, between an inmate serving a life sentence without possibility of parole and a person serving several sentences of a number of years, *the total of which exceeds his normal life expectancy.*" emphasis added).

The categorical rule articulated in *Graham* concerns impact and outcomes—not labels. The outcome the Supreme Court sought to prohibit in *Graham*—a determination at the outset that a juvenile convicted of a non-homicide offense will have no meaningful opportunity for release—is exactly the outcome that will result in this case if Appellant’s current sentence stands. Upholding the sentence would allow any trial court to circumvent the categorical ban declared in *Graham* simply by choosing a term of years sentence—“70 years,” “90 years,” or “110 years ”without parole—instead of “life without parole.” Even in the case of brutal or cold-blooded offenses, a sentencing court should not be able to circumvent the Constitution’s categorical prohibition on juvenile life without parole sentences for non-homicide crimes by re-labeling the sentence as a specific term of years, however long. See *Graham*, 560 U.S. at 77-78 (citing *Roper*, 543 U.S. at 573).

Interestingly, *Graham* involved a de facto life sentence without parole. Graham received a sentence of “life imprisonment.” Because Florida, like Ohio, had eliminated its parole system by statute, this amounted to a de facto life sentence without parole.

The California Supreme Court has recognized that *Graham* must be applied without regard to labels if its mandate is to be followed faithfully. See, *People v. Caballero*, 282 Cal.3d 291, 294 (Cal. 2012) (invalidating a sentence of 110 years to life, as “*Miller*... made it clear that *Graham*’s ‘fiat ban’ on life without parole sentences applies to all nonhomicide cases involving juvenile offenders, including the term-of-years sentence that amounts to the functional equivalent of a life without parole sentence.”). In *Caballero*, the court emphasized that the term of years meted out to the defendant ensured that “he would have no opportunity to ‘demonstrate growth and maturity’ to try to

secure his release, in contravention of *Graham*'s dictate." *Id.* at 295 (citing *Graham*, 130 S. Ct. at 2029). The court further explained that "*Graham*'s analysis does not focus on the precise sentence meted out" and instead focuses on the fact that "a state must provide a juvenile offender 'with some realistic opportunity to obtain release' from prison during his or her expected lifetime." *Id.* (citing *Graham*, 130 S. Ct. at 2034).

In *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013) the Iowa Supreme Court applied the holdings of *Graham* and *Miller* to a case in which the defendant had received a 52.5 year sentence. The opinion sets forth sound reasons for applying the rule, and distinguishes contrary authority:

First, we note that *Miller* emphasizes that nothing said in *Roper*, *Graham*, or *Miller* is "crime-specific." *Miller*, 567 U.S. at —, 132 S.Ct. at 2465, 183 L.Ed.2d at 420. * * *

Second, we believe that while a minimum of 52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger *Miller*-type protections. Even if lesser sentences than life without parole might be less problematic, we do not regard the juvenile's potential future release in his or her late sixties after a half century of incarceration sufficient to escape the rationales of *Graham* or *Miller*. The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a "meaningful opportunity" to demonstrate the "maturity and rehabilitation" required to obtain release and reenter society as required by *Graham*, 560 U.S. at —, 130 S.Ct. at 2030, 176 L.Ed.2d at 845–46.

* * *

We conclude that *Miller*'s principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under *Miller*. We recognize that some courts have viewed *Miller* more narrowly, holding that it applies only to mandatory sentences of life without parole. *See, e.g., People v. Sanchez*, No. B230260, 2013 WL 3209690, at *6 (Cal.Ct.App. June 25, 2013) (unpublished opinion) (holding *Miller* does not apply to a mandatory minimum prison term of fifty years, which stemmed from a homicide conviction); *People v. Perez*, 214 Cal.App.4th 49, 154 Cal.Rptr.3d 114, 120 (2013) (holding

Miller does not apply to a mandatory thirty-year minimum sentence for rape and committing a forcible lewd act); *James v. United States*, 59 A.3d 1233, 1236–38 (D.C.2013) (holding *Miller* does not apply to a thirty-year-to-life sentence for first-degree murder); *People v. Richards*, No. 4–11–1051, 2012 WL 7037330, at *5 (Ill.App.Ct. Nov. 26, 2012) (unpublished opinion). We think these cases seek to avoid the basic thrust of *Roper*, *Graham*, and *Miller* by refusing to recognize the underlying rationale of the Supreme Court is not crime specific. See *Miller*, 567 U.S. at —, 132 S.Ct. at 2465, 183 L.Ed.2d at 420 * * *

State v. Null, 836 N.W.2d at 71-73. See, also, *Commonwealth v. Brown*, 466 Mass. 676, 1 N.E.3d 259 (2013) at footnote 11:

We emphasize, however, that a constitutional sentencing scheme for juvenile homicide defendants must take account of the spirit of our holdings today here and in *Diatchenko*, and avoid imposing on juvenile defendants any term so lengthy that it could be seen as the functional equivalent of a life-without-parole sentence. See, e.g., *People v. Caballero*, 55 Cal.4th 262, 145 Cal.Rptr.3d 286, 282 P.3d 291, 295 (2012) (sentence to minimum prison term that exceeds juvenile defendant's natural life expectancy violates Eighth Amendment's bar against cruel and unusual punishment); *State v. Ragland*, 836 N.W.2d 107, 111, 121–122 (Iowa 2013) (*Miller* applies to juvenile sentences that are "functional equivalent" of life without parole, and sentence of life with parole eligibility only after sixty years was functional equivalent of life without parole); *State v. Null*, 836 N.W.2d 41, 45, 71 (Iowa 2013) (mandatory seventy-five-year sentence resulting from aggregation of two mandatory sentences that permitted parole eligibility only after fifty-two and one-half years for juvenile was "such a lengthy sentence" that it was "sufficient to trigger *Miller*-type protections").

Cf. *Bunch v. Smith*, 685 F.3d 546, 547 (6th Cir.2012), cert. denied, *Bunch v. Bobby*, — U.S. —, 133 S.Ct. 1996, 185 L.Ed.2d 865 (2013) holding that an aggregate 89 year sentence did not "clearly violate" federal law for habeas corpus analysis.

An Aggregate Sentence of 67 Years For Non-Homicide Offenses Is Unconstitutional Because It Provides No Meaningful Opportunity For Release.

Graham requires that States give juvenile defendants convicted of non-homicide offenses "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 130 S. Ct. at 2030. The Eighth Amendment "forbid[s] States from making the judgment at the outset that those offenders never will be fit to reenter society." *Id.* "Life in prison without the possibility of parole gives no chance for

fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Id.* at 2032. Watkins' 67 year sentence violates *Graham* because the sentence "forfeits altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability." *Graham*, 560 U.S. at 74. Watkins' sentence renders meaningless his capacity for change and rehabilitation.

For an opportunity for release to be "meaningful," as required by *Graham*, review must begin long before a juvenile reaches his geriatric years. The Supreme Court has noted, "[f]or most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence*..

Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 *Am. Psychologist* 1009, 1014(2003)). See also *Miller*, 132 S. Ct. at 2464 (explaining that "[i]n *Roper*, we cited studies showing that "[o]nly a relatively small proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior.").

Because most juveniles are likely to outgrow their antisocial and criminal behavior as they mature into adults, review of the juvenile's maturation and rehabilitation should begin relatively early in the juvenile's sentence, and the juvenile's progress should be

reviewed regularly. Early and regular review enables the reviewers to assess any changes in the juvenile's maturation, progress and performance.

Regular review also provides an opportunity to confirm that the juvenile is receiving vocational training, programming and treatment that foster rehabilitation. See, e.g., *Graham*, 560 U.S. at 73-74. (noting the importance of "rehabilitative opportunities or treatment" to "juvenile offenders, who are most in need of and receptive to rehabilitation"). A "meaningful opportunity for release" also requires that the reviewing body focus on the characteristics of the youth, including his or her lack of maturity at the time of the offense, not merely the circumstances of the offense.

Sentences That Are The Functional Equivalent Of Life Without Parole For Non-Homicide Offenses Are Unconstitutionally Disproportionate For Juveniles.

Proportionality is central to the Eighth Amendment. The Court has interpreted the Eighth Amendment's ban on cruel and unusual punishment to include punishments that are "grossly disproportionate" to the crime. See, e.g., *Graham v. Florida*, 560 U.S. at 59-60. In *Graham*, the Court instructed that "to determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society'"

Juveniles represent a special category of offenders for Eighth Amendment purposes. *Roper*, *Graham*, and *Miller* applied a proportionality test to youthful offenders that distinguishes children from adults, and that has concluded that children are categorically less culpable. Most recently, acknowledging the unique status of juveniles and reaffirming its recent holdings in *Roper* and *Graham*, the Court in *Miller* held that "children are constitutionally different from adults for purposes of sentencing," 132 S. Ct. at 2464, and therefore that the "imposition of a State's most severe penalties on juvenile

offenders cannot proceed as though they were not children." *Id.* at 2466. This view of the Eighth Amendment is grounded in a recognition of the unique characteristics of youth (a propensity for hasty decision-making and reckless behavior, susceptibility to peer pressure, and lack of control over one's own environment, *Graham*, 560 U.S. at 68 and the "more transitory" and "less fixed" nature of these characteristics as compared to adults. *Roper*, 543 U.S. at 570. When it comes to children, then, the Court now evaluates sentencing schemes by taking into account the developmental differences that characterize youth to achieve a more thoughtful and nuanced assessment of their appropriateness. Under *Graham*, life without parole sentences—or their functional equivalent—are unconstitutional for any juvenile convicted of a nonhomicide offense, and under *Miller* individualized sentencing is required before a sentencer can impose a juvenile life without parole sentence, even in a homicide case. Together, these decisions caution that before any severe adult penalty is imposed on a juvenile, the sentencer must consider the juvenile's age and the key characteristics associated with the juvenile's youth. Although trial counsel for Watkins raised the issue of his youth at sentencing, the record does not show the trial court considered it at all.

To the extent juvenile life without parole sentences are ever constitutional, *Miller* necessitates that they be imposed only in the most extreme circumstances. 132 S. Ct. at 2469 (noting that "appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon.") Even in homicide offenses, *Miller* suggests that, prior to imposing a life without parole sentence on a juvenile, the sentencer must consider factors such as the juvenile's "chronological age and its hallmark features"; the juvenile's "family and home environment"; the circumstances of the offense,

"including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"; the juvenile's incompetency in dealing with the adult criminal justice system; and " the possibility of rehabilitation." *Miller*, 132 S. Ct. at 2468.

CONCLUSION

For the foregoing reasons, Appellant Jason L. Watkins respectfully urges this Court to accept jurisdiction and reverse the judgment of the Franklin County Court of Appeals.

Respectfully submitted,

Yeura R. Venters 0014879
Franklin County Public Defender



BY: _____
DAVID L. STRAIT 0024103
373 South High Street, 12th Floor
Columbus, Ohio 43215
Telephone: 614/525-8872
Facsimile: 614/461-6470
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Memorandum in Support of Jurisdiction was served upon the following counsel by hand delivery, this 24th day of March 2014:

Seth I. Gilbert
Assistant Franklin County Prosecuting Attorney
373 South High Street, 14th Floor
Columbus, Ohio 43215

Attorney for Appellee



DAVID L. STRAIT 0024103
Attorney for Appellant

APPENDIX

Appendix Page No.

Court of Appeals Entry Denying Reconsideration, February 6, 2014.....A-1
Court of Appeals Decision Denying Reconsideration, February 6, 2014.....A-3
Court of Appeals Judgment Entry, December 17, 2013A-5
Court of Appeals Opinion, December 18, 2013A-7

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	On Appeal from the
	:	Franklin County Court of
Plaintiff-Appellee,	:	Appeals, Tenth Appellate
	:	District
vs.	:	
	:	Court of Appeals
Jason L. Watkins,	:	Case No. 13AP-133
	:	13AP-134
Defendant-Appellant.	:	

APPENDIX

Journal Entry, Court of Appeals of Ohio, Tenth Appellate District,
Denying Motion for Reconsideration, 13AP-133 and 13AP-134, filed
February 6, 2014 A-1

Memorandum Decision of the Court of Appeals of Ohio, Tenth
Appellate District, 13AP-133 and 13AP-134, filed February 4, 2014..... A-3

Judgment Entry, Court of Appeals of Ohio, Tenth Appellate District,
13AP-133 and 13AP-134, filed December 17, 2013 A-5

Decision, Court of Appeals of Ohio, Tenth Appellate District,
13AP-133 and 13AP-134, filed December 17, 2013 A-7

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :

Plaintiff-Appellee, :

v. :

Jason L. Watkins, :

Defendant-Appellant. :

Nos. 13AP-133

and

13AP-134

(C.P.C. No. 11CR-09-4927)

(REGULAR CALENDAR)

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on February 4, 2014, it is the order of this court that the application for reconsideration is denied.

KLATT, CONNOR and TYACK, JJ.

/S/JUDGE

Franklin County Ohio Court of Appeals Clerk of Courts - 2014 Feb 06 12:21 PM-13AP000133

Tenth District Court of Appeals

Date: 02-06-2014
Case Title: STATE OF OHIO -VS- JASON L WATKINS
Case Number: 13AP000133
Type: JOURNAL ENTRY

So Ordered



/s/ Judge William A. Klatt

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Nos. 13AP-133
	:	and
v.	:	13AP-134
	:	(C.P.C. No. 11CR-09-4927)
Jason L. Watkins,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on February 4, 2014

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

ON APPLICATION FOR RECONSIDERATION

KLATT, J.

{¶ 1} Defendant-appellant, Jason L. Watkins, has filed an application for reconsideration pursuant to App.R. 26(A), asking this court to reconsider its decision rendered on December 17, 2013. *State v. Watkins*, 10th Dist. No. 13AP-133, 2013-Ohio-5544. Plaintiff-appellee, the State of Ohio, filed a memorandum in opposition. For the following reasons, we deny appellant's application.

{¶ 2} When presented with an application for reconsideration, an appellate court must determine whether the application calls to the court's attention an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been. *State v. Wade*, 10th Dist. No.

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06AP-644, 2008-Ohio-1797, ¶ 2; *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 69. "An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court." *Columbus v. Dials*, 10th Dist. No. 04AP-1099, 2006-Ohio-227, ¶ 3, quoting *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996). "App.R. 26 provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law." *Id.*

{¶ 3} In relevant part, our decision concluded that the 67-year prison sentence imposed on appellant by the trial court did not violate the constitutional prohibitions against cruel and unusual punishment. *Watkins* at ¶ 14-20. In his application for reconsideration, however, appellant neither calls our attention to an obvious error in that decision nor raises an issue for consideration that was either not considered at all or was not fully considered when it should have been. It appears that appellant simply disagrees with our analysis of his cruel and unusual punishment claim. This is not grounds for reconsideration. Accordingly, we deny appellant's application for reconsideration.

Application for reconsideration denied.

CONNOR and TYACK, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Nos. 13AP-133
	:	and
v.	:	13AP-134
	:	(C.P.C. No. 11CR-09-4927)
Jason L. Watkins,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 17, 2013, appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgments of the Franklin County Court of Common Pleas are affirmed. Costs assessed against appellant.

KLATT, P.J., TYACK and CONNOR, JJ.

/S/JUDGE_____

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Tenth District Court of Appeals

Date: 12-17-2013
Case Title: STATE OF OHIO -VS- JASON L WATKINS
Case Number: 13AP000133
Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge William A. Klatt

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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State of Ohio,	:	
Plaintiff-Appellee,	:	Nos. 13AP-133
v.	:	and
Jason L. Watkins,	:	13AP-134
Defendant-Appellant.	:	(C.P.C. No. 11CR-09-4927)
		(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 17, 2013

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEALS from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} In these two appeals, defendant-appellant, Jason L. Watkins, appeals from judgment entries of the Franklin County Court of Common Pleas denying his motion to withdraw guilty plea and imposing a 67-year prison sentence for his multiple convictions. For the following reasons, we affirm those judgments.

I. Factual and Procedural Background

{¶ 2} On October 12, 2011, after having been bound over from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, a Franklin County Grand Jury indicted appellant for six counts of aggravated robbery in violation of R.C. 2911.01, six counts of robbery in violation of R.C. 2911.02, six counts of

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kidnapping in violation of R.C. 2905.01, two counts of rape in violation of R.C. 2907.02, and two counts of gross sexual imposition in violation of R.C. 2907.05. These counts all contained a firearm specification pursuant to R.C. 2941.145. The counts arose out of four separate events that occurred in February 2011. The state alleged that appellant and another unidentified person robbed multiple individuals at gunpoint during these four events and that appellant, in two instances, also sexually assaulted certain victims. Appellant was 16 years old at the time of the offenses.

{¶ 3} Appellant initially entered a not guilty plea to the offenses. However, on the morning of his scheduled trial, appellant entered a guilty plea to five counts of aggravated robbery, and one count each of robbery, sexual battery, and gross sexual imposition as well as three firearm specifications. The trial court told appellant that as a result, he faced a maximum prison term of 73½ years. Appellant replied that he understood. The trial court accepted appellant's guilty plea, ordered the preparation of a presentence investigation, and scheduled a sentencing hearing. Appellant was 18 years old when he entered his guilty plea.

{¶ 4} Two days before his scheduled sentencing hearing, appellant filed a motion to withdraw his guilty plea. In the motion, he alleged that he entered his guilty plea as the result of pressure put on him by his family and that he did not accurately comprehend the consequences of his plea. Notwithstanding the motion, the trial court proceeded to sentence appellant to a total prison term of 67 years. The trial court subsequently held a hearing on appellant's motion. Appellant testified that although he was guilty of some of the counts he pled guilty to, he was not guilty of them all and so he did not want to plead guilty. (Tr. 47.) Appellant testified that he felt pressured into entering his guilty plea by family members who thought it was the right thing to do. (Tr. 57.) At the end of the hearing, the trial denied appellant's motion.

II. Appellant's Appeal

{¶ 5} Appellant appeals and assigns the following errors:

[1.] The trial court committed reversible error by denying Defendant-Appellant's presentence motion to withdraw his guilty plea.

[2.] The trial court imposed a cruel and unusual punishment in violation of the Eighth Amendment to the United States

Constitution by sentencing Appellant, who was sixteen years old at the time of the offense, to a prison term of sixty seven (67) years.

A. Appellant's Presentence Motion to Withdraw Guilty Plea

{¶ 6} Appellant argues in his first assignment of error that the trial court erred by denying his presentence motion to withdraw guilty plea. We disagree.

1. Standard of Review

{¶ 7} Crim.R. 32.1 provides for the filing of a presentence motion to withdraw guilty plea. As this court has noted many times, such motions should be "freely and liberally granted." *State v. Zimmerman*, 10th Dist. No. 09AP-866, 2010-Ohio-4087, ¶ 11, quoting *State v. Xie*, 62 Ohio St.3d 521, 527 (1992); *State v. Davis*, 10th Dist. No. 07AP-356, 2008-Ohio-107, ¶ 15. However, there is no absolute right to withdraw a plea, even before sentence is imposed. *Zimmerman* at ¶ 11. A defendant seeking to withdraw a guilty plea before sentence must establish a reasonable and legitimate basis for the withdrawal of the plea. *Id.* A trial court must hold a hearing to allow the defendant to make such a showing. *State v. West*, 10th Dist. No. 11AP-548, 2012-Ohio-2078, ¶ 15. The trial court's decision to grant or deny the presentence motion to withdraw is within the sound discretion of the trial court. *Id.*; *State v. Porter*, 10th Dist. No. 11AP-514, 2012-Ohio-940, ¶ 20. Although an abuse of discretion is typically defined as an unreasonable, arbitrary, or unconscionable decision, no court has the authority, within its discretion, to commit an error of law. *State v. Chandler*, 10th Dist. No. 13AP-452, 2013-Ohio-4671, ¶ 8, citing *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶ 70.

{¶ 8} In reviewing a trial court's decision on a presentence motion to withdraw guilty plea, this court weighs several nonexhaustive factors. These include: (1) whether the prosecution would be prejudiced if the plea were withdrawn; (2) whether the defendant was represented by highly competent counsel; (3) whether the defendant received a full Crim.R. 11 hearing prior to entering the plea; (4) whether there was a full hearing on the motion to withdraw; (5) whether the trial court gave full and fair consideration to the motion to withdraw; (6) whether the motion was filed within a reasonable time period; (7) whether the motion put forth specific reasons for the withdrawal; (8) whether the defendant understood the nature of the charges and the possible penalties; and (9) whether the defendant had a complete defense to the crime or perhaps was not guilty.

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State v. West, 10th Dist. No. 11AP-548, 2012-Ohio-2078, ¶ 16; *State v. Jones*, 10th Dist. No. 09AP-700, 2010-Ohio-903, ¶ 10, citing *State v. Fish*, 104 Ohio App.3d 236, 240 (1st Dist.1995). "Consideration of the factors is a balancing test, and no one factor is conclusive." *Zimmerman* at ¶ 13, citing *Fish* at 240.

2. The Trial Court Did Not Abuse its Discretion by Denying Appellant's Motion

{¶ 9} The trial court held a full hearing on appellant's motion. At the end of that hearing, the trial court denied appellant's motion, concluding that appellant merely changed his mind, which is not a reasonable basis for withdrawing a guilty plea. (Tr. 109.) *Porter* at 30; *State v. Jones*, 7th Dist. No. 09 MA 50, 2011-Ohio-2903, ¶ 20; *State v. Prince*, 3d Dist. No. 2-12-07, 2012-Ohio-4111, ¶ 22.¹ In reaching that conclusion, the trial court expressly addressed a number of the above factors. The court noted that appellant's sole reason for seeking withdrawal was that he entered his guilty plea because of pressure put on him by his family. The court discounted that claim, however, because appellant did not present testimony to support that claim from any family members, despite the fact that some family members were present at the hearing. The court also noted that it fully complied with the requirements of Crim.R. 11 when it accepted appellant's guilty plea and that appellant entered his guilty plea knowingly, voluntarily, and intelligently, with full knowledge of the nature of the charges and the possible penalties. The court also noted that appellant waited five or six weeks before he filed his motion to withdraw his guilty plea. The trial court also pointed out that appellant did not maintain his innocence throughout the proceedings—a factor the trial court felt was "critical." He admitted to committing certain offenses but denied others. The trial court concluded that this meant he did not have a complete defense to the offenses. The trial court also took into consideration the presence of DNA evidence linking appellant to the offenses, including some offenses to which appellant did not admit.

{¶ 10} Appellant argues that the trial court abused its discretion in denying his motion. Specifically, appellant argues that the trial court did not give enough weight to his claim that his family pressured him into entering his plea and that pursuant to *State v.*

¹ Obviously, every motion to withdraw a plea necessarily involves a change of heart. However, absent additional legally sufficient justification, a mere change of heart is insufficient to warrant withdrawal. See *State v. Vaughn*, 8th Dist. No. 87245, 2006-Ohio-6577, ¶ 11.

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Cuthbertson, 139 Ohio App.3d 895, 899-900 (7th Dist.2000), a "comparison of the interests and potential prejudice to the respective parties" weighs heavily in his favor. We reject both of appellant's arguments.

{¶ 11} First, the trial court is in the best position to evaluate both the motivation of the defendant in pleading guilty and the credibility and weight to be given to the reasons offered for seeking withdrawal of the plea. *Prince* at ¶ 27. Thus, the weight or significance that a trial court gives to any particular reason is within the discretion of the trial court. Here, appellant testified that his family pressured him into entering his guilty plea. The trial court, however, discounted appellant's claims of pressure because no family members substantiated appellant's claim and appellant's testimony lacked credibility. The trial court noted that appellant's family members were present at the hearing and could have testified. The trial court did not abuse its discretion by taking this fact into consideration and rejecting appellant's claim of pressure.

{¶ 12} Second, appellant's reliance on *Cuthbertson* is not persuasive, as it is factually distinguishable from this matter. There, the appellate court reversed a trial court decision to deny a presentence motion to withdraw guilty plea. It did so after its consideration of the required factors and, in large part, on the lack of prejudice to the state. *Id.* at 899-900. As that same court noted in a subsequent decision, however, lack of prejudice does not mandate withdrawal, but is one factor a trial court must consider in making its decision. *State v. Moore*, 7th Dist. No. 12 MA 8, 2013-Ohio-1435, ¶ 85. The defendant in *Cuthbertson* had other factors which that court concluded weighed in favor of granting withdrawal: justifications for the withdrawal, a question of counsel's effectiveness, a claim of innocence, and a timely filed motion. *State v. Leasure*, 7th Dist. No. 01-BA-42, 2002-Ohio-5019, ¶ 42 (distinguishing *Cuthbertson* on its facts). Thus, *Cuthbertson* is simply a case in which an appellate court considered the required factors and found the trial court decision to be an abuse of discretion. Because the facts of that case are markedly different than the present facts, any reliance on *Cuthbertson* is not persuasive. *Leasure* at ¶ 43 (situation in "sharp contrast" to *Cuthbertson*, where defendant did not provide substantiated reason for withdrawal other than change of heart).

{¶ 13} We conclude that the trial court did not abuse its discretion by denying appellant's motion to withdraw. The trial court held a full hearing on appellant's motion and fairly considered the motion. The trial court expressly addressed a majority of the factors that we consider in reviewing an appeal of a presentence motion to withdraw guilty plea. We cannot say that any of these factors weigh in appellant's favor. In addition, we note that there was some indication of prejudice to the state because one of its witnesses lives out of state. It also appears that appellant was represented by experienced defense counsel and appellant has not alleged that his attorney was ineffective. Thus, the trial court did not abuse its discretion by concluding that appellant's desire to withdraw his guilty plea was no more than a change of heart, which is not a legitimate basis to grant a motion to withdraw. *Jones* at ¶ 20, 30 ("When none of the * * * factors weigh heavily in the defendant's favor regarding the presentence withdrawal of a guilty plea, a strong inference arises that the plea is being withdrawn merely because of a change of heart about entering the plea."). Accordingly, we overrule appellant's first assignment of error.

B. Appellant's Prison Sentence does not Amount to Cruel and Unusual Punishment

{¶ 14} Appellant argues in his second assignment of error that the trial court's imposition of a 67-year prison sentence was cruel and unusual punishment. We disagree.

{¶ 15} The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." That amendment applies to the states pursuant to the Fourteenth Amendment. *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, ¶ 12 (2008), citing *Robinson v. California*, 370 U.S. 660 (1962). Ohio Constitution, Article I, Section 9, sets forth the same restriction: "Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted."

{¶ 16} The bulk of Eighth Amendment jurisprudence concerns whether punishment is disproportionate to the crime. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, ¶ 25. Central to that prohibition against cruel and unusual punishment is the "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Id.*, quoting *Weems v. United States*, 217 U.S. 349, 367 (1910).

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Proportionality review falls within two general classifications: the first involves "challenges to the length of term-of-years sentences given all the circumstances in a particular case." *In re C.P.* at ¶ 26. The second, which until recently was applied only in capital cases, involves "cases in which the Court implements the proportionality standard by certain categorical restrictions." *Graham v. Florida*, 560 U.S. 48, 59 (2010).

{¶ 17} In *Graham*, the United States Supreme Court held that the Eighth Amendment to the United States Constitution categorically prohibits sentencing a juvenile to a term of life imprisonment without the possibility of parole for non-homicide offenses. *Id.* at 75. Here, appellant received prison terms which, when served consecutively, add up to a 67 years in prison. Thus, *Graham* does not specifically apply to appellant's case because he did not receive a life sentence without the possibility of parole for his convictions. See *State v. Bokeno*, 12th Dist. No. CA2011-03-044, 2012-Ohio-4218, ¶ 29 (rejecting *Graham* argument because defendant received life sentence with possibility of parole). Even so, as the state notes, appellant will be eligible for judicial release after serving one-half of his prison term: 33½ years. R.C. 2929.20(C)(5). The *Graham* court noted that "[a] State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." *Id.* at 82. The state has provided appellant with an opportunity to obtain release before the end of his stated prison term. See *Goins v. Smith*, N.D. Ohio No. 4:09-CV-1551 (July 24, 2012) (noting judicial release statute which allows defendant in Ohio to markedly improve his ability to pursue release).

{¶ 18} Appellant argues, however, that other courts have equated lengthy terms of imprisonment such as the one appellant received in this case as the "functional equivalent of a life sentence" that is prohibited by *Graham*. See e.g., *People v. Rainer*, Col.App. No. 10CA2414 (Apr. 11, 2013), ¶ 60-79. We reject that argument for two reasons. First, no court in Ohio has accepted this expansive view of the *Graham* case and, in fact, two federal courts in this state have rejected it. *Bunch v. Smith*, 685 F.3d 546, 552 (6th Cir.2012) (rejecting argument but noting split in authority); *Goins*. Second, the *Graham* court categorically prohibited the imposition of a life sentence without the possibility of parole imposed on a juvenile for a non-homicide offense. The

category of punishments prohibited is clear and easy to identify. The court did not include non-lifetime but otherwise lengthy sentences and indeed, it would be hard to arrive at a categorical prohibition against such a wide range of possible sentences that could, arguably, constitute a "functional equivalent of a life sentence." *Bunch* at 552-53, citing *Henry v. State*, 82 So.3d 1084, 1089 (Fla.App.2012) (quoting *Henry*, which stated, " '[i]f the Supreme Court has more in mind, it will have to say what that is.' ").

{¶ 19} Additionally, we note that the Supreme Court of Ohio analyzes cruel and unusual disproportionality claims² arising from lengthy aggregate terms of consecutive sentences based on the individual sentences imposed on each count and not the "cumulative impact of multiple sentences imposed consecutively." *Hairston* at ¶ 20.³ "Where none of the individual sentences imposed on an offender are grossly disproportionate to their respective offenses, an aggregate prison term resulting from consecutive imposition of those sentences does not constitute cruel and unusual punishment." *Id.*; *State v. Flagg*, 8th Dist. No. 95958, 2011-Ohio-5386, ¶ 15. Appellant does not argue that any of his individual prison sentences were outside of the statutory sentencing guidelines, that the trial court improperly ordered those sentences served consecutively, or that any of the individual sentences amount to cruel and unusual punishment for his offenses. Instead, appellant argues just that the aggregate amount of those sentences is cruel and unusual punishment. This argument is insufficient to demonstrate a cruel and unusual punishment violation. *Hairston* at ¶ 23 (because individual sentences do not amount to cruel and unusual punishment, total aggregate term likewise fails); *State v. Anderson*, 4th Dist. No. 10CA44, 2012-Ohio-3245, ¶ 47.

² Specifically, challenges to the length of sentences given all the circumstances in a particular case. In *re C.P.* at ¶ 26. The Eighth Amendment does not require strict proportionality between crime and sentence but forbids only extreme sentences that are grossly disproportionate to the crime. *State v. Warren*, 168 Ohio App.3d 288, 2006-Ohio-4104, ¶ 29 (8th Dist.), citing *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991). The Supreme Court of Ohio has stated that, "[c]ases in which cruel and unusual punishments have been found are limited to those involving sanctions which under the circumstances would be considered shocking to any reasonable person," " and furthermore that " 'the penalty must be so greatly disproportionate to the offense as to shock the sense of justice of the community.'" *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, ¶ 14, citing *State v. Weitbrecht*, 86 Ohio St.3d 368, 371 (1999).

³ We recognize that the *Graham* decision was based on a categorical Eighth Amendment challenge and not a disproportionality term of years challenge as in *Hairston*. See *In re C.P.* at ¶ 26 (recognizing distinct types of challenges). We highlight *Hairston*, however, to point out the Supreme Court of Ohio's focus on individual sentences for Eighth Amendment purposes and not simply the total aggregate sentence.

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Lastly, there is nothing shocking about an individual receiving such a lengthy prison sentence because he pled guilty to a number of offenses, including five separate aggravated robberies involving a firearm as well as other conduct involving sexual behavior with certain of his victims. The more crimes an individual commits, the more likely it is that the ultimate prison sentence will indeed be a lengthy one. *See State v. Carse*, 10th Dist. No. 09AP-932, 2010-Ohio-4513, ¶ 74 (noting that the severity of sentence resulted in part from the number of crimes committed).

{¶ 20} In conclusion, the total prison sentence appellant received in this matter does not violate the constitutional prohibitions against cruel and unusual punishments. Accordingly, we overrule appellant's second assignment of error.

III. Conclusion

{¶ 21} Having overruled appellant's two assignments of error, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

TYACK and CONNOR, JJ., concur.
