IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	**SUPREME COURT CASE NO. 2020-0620**
Appellee,	)	
vs.	)	
GAVON N. RAMSAY,	)	**ON APPEAL FROM THE OHIO NINTH DISTRICT COURT OF APPEALS, CASE NO. 19CA0016-M**
Appellant.	)	

MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEE STATE OF OHIO

S. FORREST THOMPSON
Prosecuting Attorney
Medina County, Ohio

By: **VINCENT V. VIGLUICCI (#0084873)**
Assistant Prosecuting Attorney
Medina County Prosecutor's Office
60 Public Square, 3rd Floor
Medina, Ohio 44256
(330) 723-9536
(330) 723-9532 [Fax]

COUNSEL FOR APPELLEE STATE OF OHIO

CHARLYN BOHLAND (#0088080)
Assistant State Public Defender

STEPHEN P. HARDWICK (#0062932)
Assistant State Public Defender

Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394

COUNSEL FOR APPELLANT GAVON N. RAMSAY

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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This Honorable Court should decline jurisdiction for the following reasons:

1. While Ramsay's propositions of law raise constitutional questions, they do not raise *substantial* constitutional questions worthy of this Court's limited time and resources. First, Ramsay has waived these arguments because he did not raise them in the Ninth District below. With respect to the merits, no court has held that the Eighth Amendment or due process mandates review of a juvenile's life without parole sentence. In fact, it is well-established that there is no constitutional right to an appellate review of any criminal sentence. In *State v. Long* this Court held that Ohio's juvenile sentencing scheme did not violate *Miller v. Alabama* because the sentence of life without parole is discretionary for a juvenile convicted of aggravated murder. Ramsay offers a policy argument against R.C. 2953.08(D)(3) which would be more appropriately directed to the General Assembly.

2. This case is not of public or great general interest because this was the rare case that merited a sentence of life without parole. The public's only interest is in keeping Ramsay in prison where he is for the rest of his life. Ramsay received an abundance of procedural due process in this case. The trial court actually took the extraordinary action of conducting Ramsay's sentencing hearing like a trial or the mitigation phase of a capital case. Seven witnesses testified. Ramsay's trial counsel was allowed to cross-examine the State of Ohio's four witnesses and called three witnesses of his own. Ramsay simply disagrees with the trial court's sentence.

STATEMENT OF THE CASE

Appellant Gavon N. Ramsay ("Ramsay") was a mandatory transfer from the Medina County Juvenile Court to the Medina County Court of Common Pleas pursuant to Ohio Revised Code (R.C.) § 2152.12. On May 22, 2018, the Medina County Grand Jury indicted Ramsay as follows:

Count I – Aggravated Murder, a violation of R.C. 2903.01(A), an unclassified felony;
Count II – Aggravated Murder, a violation of R.C. 2903.01(B), an unclassified felony;
Count III – Aggravated Murder, a violation of R.C. 2903.01(B), an unclassified felony;
Count IV – Aggravated Murder, a violation of R.C. 2903.01(B), an unclassified felony;
Count V – Murder, a violation of R.C. 2903.02(A), an unclassified felony;

Count VI – Murder, a violation of R.C. 2903.02(B), an unclassified felony;
Count VII – Aggravated Burglary, a violation of R.C. 2911.11(A)(1), a felony of the first degree;
Count VIII – Kidnapping, a violation of R.C. 2905.01(B)(2), a felony of the first degree;
Count IX – Gross Abuse of a Corpse, a violation of R.C. 2927.01(B), a felony of the fifth degree.

Ramsay was arraigned on June 5, 2018 and entered a plea of not guilty. The Medina County Public Defender was appointed to represent Ramsay. On August 13, 2018, Ramsay filed three separate motions to suppress evidence. A suppression hearing was held on September 28, 2018 and October 1, 2018. On October 26, 2018, the trial court overruled all three of Ramsay's motions to suppress evidence.

On November 2, 2018, Ramsay changed his plea to no contest on all nine counts of the indictment. The trial court made a finding of guilty at that time and ordered a presentence investigation prior to sentencing. The trial court ordered Ramsay to undergo an aide in sentencing evaluation to be performed by the Akron Psycho-Diagnostic Clinic, with the results to be provided to the trial court on or before December 7, 2018. The trial court scheduled the matter for a sentencing hearing on January 3, 2019.

The trial court held a sentencing hearing on January 3, 2019 in which seven witnesses testified. The trial court found that Counts I, II, III, IV, V, and VI were allied offenses of similar import, and the State of Ohio elected to have Ramsay sentenced on Count I. On Count I, Aggravated Murder, the trial court sentenced Ramsay to life in prison without the possibility of parole. On Count VII, Aggravated Burglary, the trial court sentenced Ramsay to a prison term of ten (10) years. On Count VIII, Kidnapping, the trial court sentenced Ramsay to a prison term of ten (10) years. On Count IX, Gross Abuse of a Corpse, the trial court sentenced Ramsay to a prison term of twelve (12) months. The trial court ordered all counts to run consecutively to each

other. Ramsay was given credit for 263 days served.

The trial court found that, pursuant to R.C. 2929.14(C)(4)(b), consecutive prison sentences were necessary to protect the public from future crime and to punish the Ramsay and that consecutive sentences were not disproportionate to the seriousness of Ramsay's conduct and to the danger Ramsay posed to the public. The trial court additionally found that at least two of the multiple offenses were committed as part of one or more courses of conduct, and found that the harm caused by two or more of the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflected the seriousness of Ramsay's conduct.

Ramsay filed his notice of appeal to the Ohio Ninth District Court of Appeals on February 13, 2019. On March 31, 2020, the Ninth District affirmed Ramsay's conviction and sentence in *State v. Ramsay*, 9th Dist. Medina No. 19CA0016-M, 2020-Ohio-1203. On May 15, 2020, Ramsay filed a notice of appeal to this Court along with a Memorandum in Support of Jurisdiction. The State of Ohio hereby responds in opposition to jurisdiction.

STATEMENT OF FACTS

Seven witnesses testified at Ramsay's sentencing hearing, four for the State of Ohio and three for the defense. Dr. Lynn Luna Jones testified that she is a board certified forensic psychologist and the chief psychologist at the Psycho-Diagnostic Clinic. (January 3, 2019 Sentencing Transcript ["Tr."] at 11-13.) Dr. Jones is frequently called upon by courts to evaluate individuals, performing almost 150 evaluations per year in the five counties the Clinic serves. (Tr. at 13.) Dr. Jones met with Ramsay in the Medina County Jail on November 13, 2018 for Ramsay's court-ordered evaluation. (Tr. at 13.) At that time Dr. Jones conducted a clinical interview and administered psychological testing. (Tr. at 14.) Dr. Jones spent 141 minutes with Ramsay for the

clinical interview and 39 minutes for the psychological testing. (Tr. at 14.)

Dr. Jones administered the Minnesota Multiphasic Personality Inventory, adolescent version restructured form, or MMPI-A, which is standard in the industry. (Tr. at 15-16.) The purpose of the test is to assess for different personality traits and psychological difficulties that the person may have. (Tr. at 15.) Dr. Jones spoke with Ramsay about his family and social history. (Tr. at 17.) Dr. Jones reviewed information provided to her by the Prosecutor's Office, reviewed records from Ramsay's school, and reviewed records from Ramsay's pediatrician and treating psychologist. (Tr. at 17.) On January 30, 2018, Ramsay's pediatrician noted that Ramsay was displaying some psychological difficulties and was worried that Ramsay might hurt someone. (Tr. at 18.) The pediatrician stated that Ramsay had "intrusive thoughts of violence." (Tr. at 18.)

Prior to January 30, 2018, Ramsay was not taking Zoloft. (Tr. at 19.) Ramsay told Dr. Jones that he had used using alcohol, marijuana, Concerta medication, LSD, and inhalants. (Tr. at 19.) Ramsay informed Dr. Jones that, during the period of late 2017 and January of 2018, he also drank alcohol daily, about a fifth of vodka or whatever he could get. (Tr. at 20.)

Dr. Jones reviewed a series of videos taken by Ramsay and read a notebook created by Ramsay. (Tr. at 21.) What stood out to Dr. Jones most was the videos depicting the apparently deceased victim undressed and Ramsay having her hand masturbate him. (Tr. at 22, 24.) Dr. Jones also recalled a picture or video of the victim lying on a couch with a plastic-gloved hand around her throat. (Tr. at 23-24.) Dr. Jones also recalled a picture or video of Ramsay's plastic-gloved hand inserting his finger into the victim's vagina. (Tr. at 24.) Ramsay stated that he used jelly for lubrication. (Tr. at 24-25.) Dr. Jones recalled video of the victim being dragged across the floor with her head in the closet and her legs spread showing her vagina and anus. (Tr. at 25.) Ms. Douglas' body was found in a small hallway closet. (Tr. at 25-26.) The body was covered with a

lot of clothes, coats, and shoes. (Tr. at 27.) Ramsay also took a wallet from Ms. Douglas' home that had approximately $40 in it. (Tr. at 33-34.)

The videos document that Ramsay was in Ms. Douglas' house for no less than two hours and one minute, from 2:09 a.m. to 4:10 a.m. (Tr. at 27.) Ramsay stated that he left the house when he did because his parents were about to be up for the day. (Tr. at 27-28.) Ramsay informed Dr. Jones that he had also participated in other acts of sexual deviancy. (Tr. at 28.) Ramsay stated that he had repeatedly met up with men he met through a dating app for the purpose of either having sex with them or robbing them. (Tr. at 28.) Ramsay also stated that on at least one occasion he assaulted a man to get him out of the car and indicated that he would routinely take men's cars to get away. (Tr. at 28.) At the time Ramsay was identified as suspect in this case, he was being investigated for a carjacking. (Tr. at 29.)

Ramsay wrote in his notebook: "I just want to fucking go off on someone and beat them until they're not breathing anymore. I honestly want to take someone's life. I want to know what it would feel like to stand over someone's dead body." (Tr. at 29, 32-33.) Ramsay wrote this on January 19, 2018, while not beginning his Zoloft prescription until January 31, 2018. (Tr. at 33.)

Ramsay told Dr. Jones that after the murder he was feeling normal and didn't think about the incident very much. (Tr. at 34.) During the investigation Ramsay told one of the detectives that, if he hadn't been stopped, he probably would have killed again. (Tr. at 35-36.) Dr. Jones' first diagnosis was conduct disorder, adolescent-onset type, with limited prosocial emotions, severe. (Tr. at 37.) With respect to the conduct disorder, Dr. Jones explained that Ramsay displays a repetitive and persistent pattern of behavior in which the basic rights of others and major age-appropriate societal norms or rules are violated. (Tr. at 39.) That includes aggression to people, destruction of property, deceitfulness, theft, serious violations of rules, and a lack of concern about

negative consequences of his actions. (Tr. at 39.) In addition, Dr. Jones found that Ramsay does not express his feelings or show emotions to others except in shallow or insincere ways and lacks empathy for others. (Tr. at 39.) Dr. Jones testified that, with this level of conduct disorder, recidivism is high and treatment needs to be very, very intense. (Tr. at 40.)

Dr. Jones' second diagnosis of Ramsay was sexual sadism disorder. (Tr. at 40.) This means that the person becomes sexually aroused by either the physical or psychological suffering of others and has acted on those urges with a nonconsenting person. (Tr. at 41.) Dr. Jones testified that recidivism rates are quite high for people with this level of sexual deviancy. (Tr. at 41.) Dr. Jones' third diagnosis of Ramsay was alcohol use disorder, severe. (Tr. at 41.) Dr. Jones explained that this means Ramsay has a problematic pattern of alcohol use, developing tolerance for alcohol, having cravings when he could not drink, spending a great deal of time involved in activities relating to alcohol use, having difficulty controlling alcohol use, and continuing to drink despite school, relationship, and financial problems. (Tr. at 41-42.)

Dr. Jones' fourth diagnosis of Ramsay was cannabis use disorder, severe. (Tr. at 42.) Many of the same characteristics for alcohol use disorder parallel cannabis use disorder. (Tr. at 42.) Dr. Jones' fifth diagnosis was stimulant use disorder, mild. (Tr. at 42.) That diagnosis was based on Ramsay's use of Concerta, which is a stimulant. (Tr. at 41.) Ramsay said that he developed a tolerance for this medication and used it in potentially hazardous situations like driving. (Tr. at 43.) Dr. Jones' sixth diagnosis was that Ramsay has a history of other specified depressive disorder. (Tr. at 43.) This diagnosis was to capture the depressive symptoms Ramsay displayed that did not meet the full criteria for a major depressive episode. (Tr. at 43.) Dr. Jones' seventh diagnosis of Ramsay was attention deficit/hyperactivity disorder. (Tr. at 43.) Dr. Jones noted that Ramsay has been diagnosed as more of the hyperactive-impulsive type. (Tr. at 43.)

Dr. Jones noted that the murder of Margaret Douglas and the assault on a gay man were not Ramsay's first incidents of violence. (Tr. at 44.) There were records from Ramsay's treating psychologist stating that when Ramsay was ten years old he had been chasing his siblings with knives and there were concerns at that point that he might harm himself or somebody else. (Tr. at 45.) Dr. Jones noted that Ramsay's aggressive behaviors have escalated significantly. (Tr. at 45.) Dr. Jones also noted that Ramsay does not appear to be motivated to change his behavior. (Tr. at 45.) Dr. Jones further noted that Ramsay is criminally sophisticated and knowingly engages in crimes, displaying a callous disregard for the harm he causes others. (Tr. at 46.)

Christine Ramsay, Ramsay's mother, testified for the defense at Ramsay's sentencing hearing. (Tr. at 108-146.) Christine testified that she blames Zoloft for her son's actions, but on cross-examination she admitted that her son did not start taking Zoloft until after January of 2018. (Tr. at 147.) Christine admitted that the journal in which Ramsay fantasized about standing over someone's body after taking their life was written prior to Ramsay taking Zoloft. (Tr. at 148.) Christine admitted that Ramsay was also drinking and using other drugs. (Tr. at 148.) Christine testified that she is not a doctor and testified that, outside of her intuition, she cannot isolate Zoloft as the sole cause of what her son did. (Tr. at 149.)

Christine testified that she took the book identified as State's Exhibit 2 to her son. (Tr. at 149.) Christine testified that several months later her defense team then hired Dr. Breggin, the author of that book, to write a report. (Tr. at 149.) Christine did not dispute the fact that when her son talked to Dr. Breggin, he indicated he had read Dr. Breggin's book. (Tr. at 150.) Christine testified that she believed the Zoloft changed her son, but she did not know if the fifth of liquor per day, the marijuana, the LSD, or the other illicit drugs he was taking changed him. (Tr. at 151.)

LAW AND ARGUMENT

RESPONSE TO APPELLANT' S PROPOSITION OF LAW I

R.C. 2953.08(D)(3) doesn't prohibit constitutional review of a child's life-without-parole sentence.

I. Standard of Review – R.C. 2953.08(D)(3)

This Court has held that "R.C. 2953.08 specifically and comprehensively defines the parameters and standards . . . for felony sentencing appeals." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶ 21. R.C. 2953.08(D)(3) provides that "[a] sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section." In *State v. Porterfield*, this Court noted: "R.C. 2953.08(D) is unambiguous. 'A sentence imposed for aggravated murder or murder pursuant to section 2929.02 to 2929.06 of the Revised Code is not subject to review under this section' clearly means what it says: such a sentence cannot be reviewed." 106 Ohio St.3d 5, 2005-Ohio-3095, ¶ 17.

II. Analysis

In Proposition of Law I, Ramsay argues that R.C. 2953.08 does not prohibit constitutional review of a juvenile's life without parole sentence and "there must be a path for Eighth Amendment review." First, Ramsay waived this argument because he did not raise it below. *See infra* Response to Proposition of Law II, Section III(A). With respect to the merits, R.C. 2953.08(D)(3) unambiguously precludes appellate review of the sentence imposed in a non-capital aggravated murder or murder case. Furthermore, no court has held that the Eighth Amendment or due process mandates review of a juvenile's life without parole sentence.

Ramsay's reliance on *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010), for the proposition that juvenile life without parole cases are "analogous to capital punishment" is misplaced. This quotation from *Graham* is taken from Chief Justice Roberts' concurring opinion,

where the Chief Justice was actually making the exact *opposite* point of what Ramsay states. In his concurrence, Justice Roberts actually stated the following: "Treating juvenile life sentences as analogous to capital punishment is at odds with our longstanding view that 'the death penalty is different from other punishments in kind rather than degree.'" *Graham*, 560 U.S. at 89-90 (Roberts, C.J., concurring), quoting *Solem v. Helm*, 463 U.S. 277, 294, 103 S. Ct. 3001 (1983). In *Solem*, the United States Supreme Court noted:

> The easiest comparison, of course, is between capital punishment and noncapital punishment, for the death penalty is different from other punishments in kind rather than degree. For sentences of imprisonment, the problem is not so much one of ordering, but one of line-drawing. It is clear that a 25-year sentence generally is more severe than a 15-year sentence, but in most cases it would be difficult to decide that the former violates the Eighth Amendment while the latter does not.

463 U.S. at 294.

In *Miller v. Alabama*, "[t]he parties agree[d] that nearly 2,500 prisoners are presently serving life sentences without the possibility of parole for murders they committed before the age of 18." 567 U.S. 460, 493-94, 132 S. Ct. 2455 (2012) (Roberts, C.J., dissenting). While *Miller* ultimately held that mandatory life without parole for juvenile offenders violated the Eighth Amendment, Ramsay cites no case in which a juvenile's discretionary life without parole sentence was held to violate the Eighth Amendment. This is because none exist. Neither the United States Supreme Court nor this Court has held that even the death penalty constitutes cruel and unusual punishment, yet Ramsay would have this Court hold that appellate review is necessary because a discretionary life without parole sentence is cruel and unusual punishment.

In *State v. Long*, this Court held that "[a]s applied to a juvenile found guilty of aggravated murder under R.C. 2929.03(A), . . . Ohio's sentencing scheme does not fall afoul of *Miller*, because the sentence of life without parole is discretionary." 138 Ohio St.3d 478, 2014-Ohio-849, ¶ 19. In this case, the trial court exercised its discretion to sentence Ramsay to life without parole only

after carefully considering the facts of the case and all of the aggravating and mitigating factors. In fact, in this case the record demonstrates that the trial court took the extraordinary action of conducting Ramsay's sentencing like a trial or the mitigation phase of a capital case. Seven witnesses testified at Ramsay's sentencing hearing. Ramsay's trial counsel was permitted to cross-examine the State's four witnesses and Ramsay was permitted to call three witnesses of his own.

It is true that this Court and the Supreme Court of Ohio have noted that life without parole should rarely be imposed on juveniles, but this was the rare case that clearly merited a sentence of life without parole. As the trial court noted, Ramsay's crime was so heinous that it "was of a nature not previously seen in this community." The trial court summarized on the record the compelling report and testimony of psychologist Dr. Lynn Luna Jones:

> According to the report of the Psycho-Diagnostic Clinic and the testimony of Dr. Jones, the Defendant displays a repetitive and persistent pattern of behavior in which the basic rights of others and major age-appropriate societal norms or rules are violated. He has displayed aggression to people, destruction of property, deceitfulness and theft and serious violations of rules. He has a general lack of concern about the negative consequences of his actions and does not express his feelings or show emotions to others except in ways that seem shallow, insincere or superficial or when emotional expressions are used for gain. He also lacks empathy for others and is more concerned about the effects of his actions on himself rather than the effects on others.
>
> Further, it was determined that the Defendant appears to be sexually aroused from the physical and/or psychological suffering of others. He has acted on those sexual urges with a nonconsenting person. . . .
>
> It is noted that the Defendant's aggressive behaviors have escalated significantly over the past year and he has become preoccupied by violent fantasies, including researching serial killers. When arrested, he told the police he did not believe he would have been able to change on his own and agreed that he would likely kill more people. He went from mischief and theft from stores or cars to face-to-face robbery from grown men, burglary and murder. Overall, he is rebellious, particularly with regard to criminal thrill seeking, and he lacks remorse for his behavior. He is criminally sophisticated and knowingly engages in crimes. He displays a callous disregard for the harm he causes others. He does not appear to be motivated to change his behavior.

> The Defendant displays deviant sexual behavior. He views pornography with some violent content. His journal reflects fantasies of raping others, and he acted on these sadistic sexual urges at the time of the offense charged. His behavior of meeting up with men for the purpose of having sex then taunting them, hurting them and/or robbing them appears to be consistent with the same sadistic tendencies.

(Tr. at 205-08.)

It would be difficult to imagine a more disturbing set of facts and psychological report than what the trial court was presented with in this case. It would also be difficult to imagine a more compelling case for Ramsay being the rare juvenile offender demonstrating irreparable corruption.

With respect to the crime itself, Dr. Jones found the following:

> [Ramsay] confessed to entering [Ms. Douglas'] residence, killing her, and disposing of her body in the closet. He indicated he had thought about this type of act before. He said he does not commit crimes like breaking into cars to steal things, but rather for the 'rush.' He reported he knows it is wrong but it makes him feel 'alive.' Gavon said he can portray whatever personality he wants to people in public, but he struggles when he is alone with his thoughts. He indicated he did not believe he would have been able to change on his own and agreed that he would likely [have] killed more people.

(State's Exhibit 1, Report of Dr. Lynn Luna Jones dated December 6, 2018, p. 13.)

Even without R.C. 2953.08(D)(3), under R.C. 2953.08(G)(2) an appellate court could not vacate or modify Ramsay's sentence unless it determined by clear and convincing evidence that (1) the record did not support the trial court's findings under relevant statutes or (2) the sentence was otherwise contrary to law. *Marcum*, 2016-Ohio-1002, ¶ 1. Based on all of the foregoing, the record clearly supported the trial court's findings. Ramsay's sentence also was not contrary to law because it was within the statutory range, and this Court has long held that "[a]s a general rule, a sentence that falls within the terms of valid statute cannot amount to a cruel and unusual punishment." *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68, 69, 203 N.E.2d 334.

Therefore, Ramsay's Proposition of Law I is without merit and this Court should decline jurisdiction on this ground.

RESPONSE TO APPELLANT' S PROPOSITION OF LAW II

R.C. 2953.08(D)(3) is unconstitutional on its face and as applied to children sentenced to die in prison.

I. Standard of Review

This Court has long held that "[a]n enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 128 N.E.2d 59, paragraph one of the syllabus. *See also State v. Thompkins* (1996), 75 Ohio St.3d 558, 560, 664 N.E.2d 926.

II. Right to Appellate Review of a Criminal Sentence

This Court has held that there is no constitutional right to an appellate review of a criminal sentence. *State v. Smith* (1997), 80 Ohio St.3d 89, 97, 684 N.E.2d 668. The United States Supreme Court has also held that "[t]here is no federal constitutional right to state appellate review of state criminal convictions." *Estelle v. Dorrough* (1975), 420 U.S. 534, 536, 95 S. Ct. 1173. "The right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance." *State ex rel. Bryant v. Akron Metro. Park Dist.* (1930), 281 U.S. 74, 80, 50 S. Ct. 228. Moreover, "the state has a wide discretion in respect to establishing its systems of courts and distributing their jurisdiction." *Id.* at 81. The United States Supreme Court has set out the rationale for this as follows:

> The defendant needs an attorney on appeal not as a shield to protect him against being 'haled into court' by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for, while no one would agree that the State may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the State need not provide any appeal at all.

Ross v. Moffitt (1974), 417 U.S. 600, 610-11, 94 S. Ct. 2437.

III. Analysis

In Proposition of Law II, Ramsay argues that R.C. 2953.08(D)(3) is unconstitutional on its face and as applied to juveniles sentenced to life without parole.

A. Ramsay waived these arguments because he did not raise them in the Ninth District Court of Appeals

Ramsay did not question the constitutionality of R.C. 2953.08(D)(3) or question its application to juveniles in the Ninth District Court of Appeals. Therefore, Ramsay waived this argument. *State v. Awan* (1986), 22 Ohio St.3d 120, 122, 122 fn. 1, 489 N.E.2d 277, citing *Wellston v. Morgan* (1898), 59 Ohio St. 147, 162, 52 N.E. 127; *Columbus v. Rogers* (1975), 41 Ohio St.2d 161, 162, 324 N.E.2d 563. It is well-established that "[c]onstitutional rights may be lost as finally as any others by a failure to assert them at the proper time." *Id.*, quoting *State v. Childs* (1968), 14 Ohio St.2d 56, 62, 236 N.E.2d 545.

Ramsay's argument is also barred by *res judicata*. "Under the doctrine of *res judicata*, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant . . . on an appeal from that judgment." *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 17, quoting *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus. As Ramsay acknowledges in his Memorandum, the State of Ohio raised R.C. 2953.08(D)(3) in its response brief, and the constitutionality of that statute could have been raised in a reply brief.

B. The Eighth Amendment and Article I, Section 9 of the Ohio Constitution do not confer a right to appellate review of a sentence of life without parole

Neither the Eighth Amendment nor Article I, Section 9 of the Ohio Constitution confer any right to appellate review a life without parole sentence. The Eighth Amendment, which applies to

the States through the Fourteenth Amendment, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This Court has noted that "[t]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." *State v. Weitbrecht* (1999), 86 Ohio St.3d 368, 371-72, 715 N.E.2d 167, quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S. Ct. 2680 (1991) (Kennedy, J., concurring). In *Woodson v. North Carolina*, the United States Supreme Court held that, in capital cases, the Eighth Amendment "requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." 428 U.S. 280, 304, 96 S. Ct. 2978 (1976). The Court explained its rationale by distinguishing the death penalty from a prison sentence:

> [T]he penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Id. at 305.

The death penalty is simply qualitatively different and demands a scrutiny that lesser sentences, including life without parole, do not. The United States Supreme Court has upheld the constitutionality of life without parole sentences even as applied to non-violent crimes such as drug possession. *See Harmelin*, 501 U.S. at 990. This Court has held, for example, that maximum consecutive sentences totaling 134 years for a series of home invasion robberies resulting in non-serious injuries was not cruel and unusual punishment. *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, ¶ 23.

Ramsay argues that R.C. 2953.08(D)(3) is unfair and that striking it down would create a "minimal" fiscal and administrative burden. Ramsay makes a policy argument which would be more appropriately directed to the General Assembly. This is a Court of law, not of policy. It is axiomatic that all laws passed by the General Assembly enjoy a strong presumption of constitutionality. *See Defenbacher* and *Thompkins, supra.* It is also axiomatic that this Court "will not reach constitutional issues unless absolutely necessary." *Capital Care Network of Toledo v. Ohio Dep't of Health*, 153 Ohio St.3d 362, 2018-Ohio-440, ¶ 31. In the area of criminal justice in particular, "reviewing courts should grant substantial deference to the broad authority that legislatures possess in determining the types and limits of punishments for crimes." *Weitbrecht*, 86 Ohio St.3d at 373-74, citing *Solem*, 463 U.S. at 290 and *Harmelin*, 501 U.S. at 999.

Therefore, Ramsay's Proposition of Law II is without merit and this Court should decline jurisdiction on this ground.

CONCLUSION

For all of the foregoing reasons, the State of Ohio respectfully requests that the Court decline jurisdiction over Appellant Gavon N. Ramsay's discretionary appeal.

Respectfully submitted,

S. FORREST THOMPSON
Prosecuting Attorney
Medina County, Ohio

By: */s/ Vincent V. Vigluicci*
VINCENT V. VIGLUICCI (#0084873)
Assistant Prosecuting Attorney
Medina County Prosecutor's Office
60 Public Square, 3rd Floor
Medina, Ohio 44256
(330) 723-9536
(330) 723-9532 [Fax]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Jurisdiction of the State of Ohio was sent via regular U.S. mail to Charlyn Bohland and Stephen P. Hardwick, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, on this 4th day of June, 2020.

/s/ Vincent V. Vigluicci
VINCENT V. VIGLUICCI (#0084873)
Assistant Prosecuting Attorney