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Delaware Circuit Court 2
Delaware County, Indiana

STATE OF INDIANA ) IN THE DELAWARE CIRCUIT COURT NO. 2
) SS:
COUNTY OF DELAWARE ) CAUSE NUMBER: 18D02-9102-CF-13

STATE OF INDIANA )
)
VS )
)
MATT STIDHAM )
)

**STATE OF INDIANA'S POST HEARING BRIEF IN SUPPORT OF ITS OBJECTION TO DEFENDANT'S PETITION FOR MODIFICATION OF SENTENCE**

COMES NOW, the State of Indiana by Eric M. Hoffman, Prosecuting Attorney within and for the 46th Judicial Circuit of Indiana, and files this Post Hearing Brief In Support of It's Objection to Defendant's Petition for Modification of Sentence, and would show the Court the following:

**FACTS**

All too often when a criminal defendant seeks a sentence modification, the actual facts of a case; the cold, hard, and brutal facts of what the defendant did to the victim are intentionally or inadvertently overlooked or glossed over. In order to avoid such a travesty of justice here, the facts of the case are these. On February 22, 1991, Bobbie and Joseph Meadows were riding in a vehicle with the Defendant when they heard the Defendant say he wanted to hit Daniel Barker in the head, knock him out, and rob him. Defendant's Exhibit B, TR 634, 670. The very next day, on February 23, 1991 the Defendant and

several of his friends, drove to the victim's apartment where they drank whiskey and played guitars. *Stidham v. State*, 637 N.E.2d 140, 142 (Ind. 1994). At some point, the Defendant and his friends began beating the victim. *Id.* The Defendant and his two confederates viciously beat the victim. Defendant's Exhibit B, TR at 897, 898. They hit him over the head and on the body with glass pop bottles, resulting in cuts to his skin. *Id.* at 899, 902. All three assailants kicked and punched the victim; attacking him like a pack of wild animals in a frenzy. *Id.* at 899. The Defendant then beat the victim with a club. *Id.* at 899.

After the beating, the Defendant and his accomplices robbed the victim of his prized possessions. *Id.* at 901. They loaded up the victim's music equipment, guitars, amplifier, and television into his van. *Id.* As if beating, clubbing, and robbing the victim was not enough, the Defendant and his accomplices grabbed the victim by both arms in an attempt to force him into his own van. *Id.* at 901. When the victim attempted to break free from the unlawful confinement, the Defendant and his confederates chased the victim down, beat him with a club, gagged him, and put him in the back of the van. *Id.* at 899, 901, 902, 903. While in the van, the victim was again beaten with the club and driven to his final resting place. *Id.* at 904.

On an isolated section of a country road, Daniel was drug out of the van. *Id.* at 904. The Defendant armed himself with a dagger and walked to the rear of the van. *Id.* at 904, 905. As the victim lay on the ground, he was moaning

in pain. *Id.* at 907. The Defendant ritualistically plunged the dagger into the victim's chest – over and over again while chanting: "Satan is with us", "We kill for Satan", "Die you bastard", "Kill the mother fucker". *Id.* 907, 908. The Defendant then drug the victim down to the river and dumped him into it. *Id.* at 908. A large piece of discarded machinery was placed on top of his body in an attempt to hide the body. *Id.*

An autopsy revealed that the victim was stabbed 47 times: 27 stab wounds to his chest, abdomen, and the front of his body; 15 stab wounds to his back; and 5 stab wounds to his arms. *Id.* at 771-772, 766. Daniel's heart was penetrated by a stab wound. *Id.* at 788. There were blunt force injuries found on almost every surface of his body including his head, chest, legs, and arms. *Id.* at 772, 789. There were multiple lacerations and bruises on the victim's head. *Id.* at 772. The victim had defensive wounds on his hands and arms that are consistent with having been inflicted while trying to block his assailant's blows. *Id.* at 778-779. Daniel's right arm had an "incised wound." *Id.* at 790. An incised wound is "made with a cutting motion" as opposed to a stab or jab with a blade. *Id.* Once the wounds were inflicted, it took Daniel Barker "minutes" to die. *Id.* at 788. Some of the wounds penetrated Daniel's lungs which would have made it difficult to breath. *Id.*

After the murder, the Defendant and his friends drove Daniel Barker's van loaded with Daniel's property to the home of Bobbie and Joseph Meadows. *Id.* at 677. While there, the Defendant was "excited" and bragged about

stabbing Daniel Barker in the heart. *Id.* at 638, 663, 676, 912. Joseph Meadows observed that the Defendant had a knife in his hand. *Id.* at 678. The Defendant and his confederates then fled to the State of Illinois. Along the way, the Defendant threw the club used to beat Daniel into a cornfield. *Id.* at 915.

On February 24, 1991, a police officer in Palos Heights Illinois, pulled over the victim's van. *Id.* at 361. The Defendant was driving the stolen van. *Id.* at 363. The Defendant told police officer "[w]e killed him". *Id.* at 371, 380. When the officer asked whom, the Defendant replied, "some queer." *Id.* at 371.

On May 13, 1993, the Petitioner was convicted of Count 1; Murder, a felony, Count 2; Robbery, a Class A Felony, Count 3: Criminal Confinement, a Class B Felony, Count 4; Battery, a Class C Felony, and Count 5; Auto Theft, a Class D Felony. On June 24, 1993, the Court sentenced the Petitioner to an aggregate sentence of one hundred forty-one (141) years. The Petitioner took a direct appeal to the Indiana Supreme Court, challenging his convictions and sentence. On July 14, 1994, the Supreme Court affirmed the trial court on all issues raised with the exception of the conviction for auto theft. *Stidham v. State,* 937 N.E.2d 140 (Ind. 1994). The Court held that the auto theft conviction should have merged with the robbery count. *Id.* at 144. Thus, the matter was remanded for the purpose of vacating the auto theft conviction. *Id.* Upon remand, the Defendant's sentence was adjusted by the trial court to an aggregate of 138 years.

On February 8, 2016, the Defendant filed a Petition for Post-Conviction Relief, alleging various constitutional issues regarding the sentence imposed by the trial court. On October 27, 2016, the Court held a hearing on the Petition. *See* State's Exhibit 3. On June 21, 2017, the court entered an order which found that the Defendant's Sentence was "excessive" and that the Petition for Post-Conviction Relief should be granted. Accordingly, the Court set the matter for re-sentencing. On March 15, 2018, the Court held a re-sentencing hearing. *See* State's Exhibit 4. At the end of the hearing, the court re-sentenced the Defendant by imposing a time-served sentence providing for the Defendant's immediate release, and the Court ordered him returned to the Department of Corrections to be processed for release. State's Exhibit 4, pp, 42-44. The State of Indiana orally moved to stay the court's order pending an appeal by the State. *Id.* at 46. The Court denied said motion. *Id.* On March 16, 2018, the State filed an Emergency Verified Motion for Stay of Re-Sentencing Order During Pending Appeal with the Indiana Court of Appeals. See 18A02-1701-PC-68. On the very same day, the Chief Judge of the Indiana Court of Appeals granted the Motion and ordered the trial court to stay all proceedings pending resolution of the State's appeal. *Id.* The Indiana Court of Appeals ultimately reversed the trial court's order on re-sentencing. *State v. Stidham,* 110 N.E.3d 410 (Ind. Ct. App. 2018) *trans. granted, opinion vacated by* 159 N.E.3d 571 (Ind. 2020) (*Stidham III*). On November 20, 2020, on transfer, the Indiana Supreme Court vacated the Court of Appeals decision

and *sua sponte* raised Indiana Appellate Rule 7(B) to reduce the Defendant's sentence by 50 years for a total aggregate sentence of eighty-eight (88) years. *State v. Stidham*, 157 N.E.3d 1185, 1198 (Ind. 2020).

On July 14, 2023, the Defendant, by counsel, filed a Petition to Modify Sentence. On July 14, 2023, the State of Indiana filed an Objection to the Petition. The Objection stated two reasons for the State's position. First, the State believed that the Petitioner needed consent from the Prosecuting Attorney to file such a Petition and no consent was obtained. Secondly, the State asserted that "assuming arguendo that the Defendant had the authority to file a Petition for Sentence Modification, given the nature and circumstances of the crimes for which the Defendant was convicted, the Defendant should never receive a modification of sentence." Accordingly, the Court entered an Order denying the Petition. On August 14, 2023, the Defendant filed a Motion to Correct Error. On October 29, 2023, the State filed the State's Consent to Hearing on Defendant's Petition for Modification of Sentence. The State's Consent withdrew any procedural argument that the Defendant is required to have the State's consent to file a Petition. However, the State reserved the right to object to the Petition at the evidentiary hearing. In the State's consent to a hearing, the State outlined its potential objections and evidence. On November 15, 2023, the Court granted the Defendant's Motion to Correct Error. On July 8, 2024 and August 9, 2024, the court held a hearing on the Defendant's Petition for Modification of Sentence.

## ARGUMENT

### A. Granting the Defendant's Petition for Modification of Sentence would be an abuse of discretion.

The facts and the law surrounding the sentence imposed in this case have been extensively litigated in the Indiana Supreme Court. See *Stidham v. State,* 608 N.E.2d 699 (Ind. 1993); *Stidham v. State,* 637 N.E.2d 140 (Ind. 1994) (hereafter referred to *Stidham II*); *State v. Stidham,* 110 N.E.3d 410 (Ind. Ct. App. 2018) *vacated by 157 N.E.3d 1185; State v. Stidham,* 157 N.E.3d 1185 (Ind. 2020) (hereafter referred to *Stidham III*).

On June 24, 1993, the trial court conducted a sentencing hearing. During said hearing, defense counsel presented a mountain of mitigation evidence. Defendant's Exhibit B, pp. 1168-1261. This evidence included the fact that the Defendant had no prior felony convictions. *Id.* at 1171. The Defendant was severely abused as a child. *Id.* at 1179. All of this abuse instilled anger in the Defendant. *Id.* at 1180. During pre-trial confinement, the Defendant worked on his education, passed his GED test, and worked on taking college courses. *Id.* at 1172. Additionally, the Defendant voluntarily participated in substance abuse counseling including attending AA and NA, substance abuse classes, volunteer counseling, and one-on-one counseling. *Id.* at 1173-74. During his pre-trial incarceration, he had no conduct reports or write-ups. *Id.* at 1175. In the Defendant's opinion, he was not the same person he was in 1991; he has changed and is not angry or hateful anymore. *Id.* at

1177. The Defendant testified that he had dealt with his anger issues. *Id.* at 1178.

During the sentencing hearing, defense counsel offered Defendant's Exhibit A, which consisted of a videotaped interview of the Defendant and two (2) of his brothers Andrew and Justin. *Id.* at 1181-1248. The videotaped interviews provided the court in graphic detail all of the abuse that was inflicted upon the Defendant and his brothers. *Id.* at 1186 – 1239. The trial court was obviously aware of all of these facts. Nevertheless, based upon the trial court's independent judgment, found that the aggravating circumstances outweighed the mitigating circumstances and imposed a 141 year sentence. *Id.* at 1277-1311; State's Exhibit 1.

In *Stidham II,* the Defendant argued on appeal, "that his sentence is unreasonable [and] takes the position that a one hundred forty-one (141) year sentence is disproportionate to the crime committed." The Defendant asserted that his sentence was "manifestly unreasonable." *Stidham III,* 157 N.E.3d at 1191; See also Defendant's B, Appellant's Brief 18S00-9301-CF-1146. At the time of the Defendant's direct appeal, the standard was as follows:

> (1) The reviewing court will not revise a sentence authorized by statute except where such sentence is manifestly unreasonable in light of the nature of the offense and the character of the offender.
>
> (2) A sentence is not manifestly unreasonable unless no reasonable person could find such sentence appropriate.

*Stidham III,* 157 N.E.3d 1192-1193. After considering mitigation evidence detailed above, including the fact that the Defendant was abused as a child, the Court held that the Defendant's sentence was not manifestly unreasonable.[1] *Stidham II,* 637 N.E.2d at 144. The Indiana Supreme Court affirmed the Petitioner's sentence. *Id.*

On February 8, 2016, the Defendant filed a Petition for Post-Conviction Relief, alleging various constitutional issues regarding the sentence imposed by the trial court. On October 27, 2016, the Court held a hearing on the Petition. *See* State's Exhibit 3. During the course of those proceedings, the Defendant presented additional mitigation evidence. *Id.* Specifically, the Defendant presented evidence from Ball State University Professor Delonda Hartman who worked with the Defendant during his incarceration. *Id.*, p. 6 - 10. The Defendant testified that during the course of his incarceration the Defendant has accumulated a lot of accomplishments. *Id.* at 12. Within the confines of the DOC, the Defendant is a full time firefighter. *Id.* He is one of only 11 in the United States that holds certain certifications. *Id.* He has taught a variety of different classes in firefighting. *Id.* at 13. He has held the rank of captain for over three (3) years. *Id.* On June 21, 2017, the court granted the Defendant's Petition for Post-Conviction Relief.

[1] Indeed, the Court considered all of the mitigating facts offered in the 1993 sentencing hearing given the Court's dissenting opinion where Justices Sullivan and DeBruler note the fact the Defendant was 17 at the time of the crime and the physical, sexual and emotional abuse suffered at the hands of his mother. *Stidham II,* 637 N.E.2d at 144.

On March 15, 2018, the court held a re-sentencing hearing. The Defendant presented the testimony of Cynthia Morris, the Defendant's aunt, has been in contact with the Defendant for the past 27 years. State's Exhibit 4, p. 6. Since being incarcerated, the Defendant has earned his GED, an associate's degree, a bachelor's degree, and he is the captain of the prison fire department. *Id.* at 7. Over the past 27 years, Morris has noticed that the Defendant is completely changed, his is not angry any more, and he changed his life completely. *Id.* She testified about the specific abuse he suffered as a child. *Id.* Morris also testified that she and her entire family support the Defendant and if released he has full time employment opportunities. *Id.* at 8, 10. The Defendant testified that he has continued with his education and training. *Id.* at 13. He has obtained firefighting certifications from Indiana Homeland Security and FEMA. *Id.* at 13. He acknowledged that he has changed over the years and that he is lucky to have been given opportunities while in prison. *Id.* at 16. At the end of the hearing, the court re-sentenced the Defendant by imposing a time-served sentence providing for the Defendant's immediate release, and the Court ordered him returned to the department of corrections to be processed for release. State's Exhibit 4, pp. 42-44. The Indiana Court of Appeals ultimately reversed the trial court's order on re-sentencing. *Stidham v. State,* 110N.E.3d 410 (Ind. Ct. App. 2018) *trans. granted opinion vacated* 159 N.E.3d 571 (Ind. 2020) (*Stidham III*).

In *Stidham III,* the Defendant's sentence was again reviewed in context of the Post-Conviction Relief appeal in 2020. *State v. Stidham,* 157 N.E.3d 1185 (2020). Our Supreme Court decided to "revisit our prior decision regarding the appropriateness of Stidham's sentence because of two major shifts in the law." *Id.* First, since the time of the Defendant's direct appeal, appellate sentence revisions shifted from the old rule of whether the sentence was manifestly unreasonable to the new standard of review embodied in Indiana Appellate Rule 7(B). *Id.* Under the new rule "[t]he Court may revise a sentence authorized by statute if after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *See* Ind. App. R. 7(B). Second, our state Supreme Court noted that since the time of the Defendant's sentence was imposed, the U.S. Supreme court began limiting when juveniles could be sentenced to the harshest punishments. *Id.*

Consequently, in *Stidham III,* the Indiana Supreme Court *sua sponte* conducted an Appellate Rule 7(B) review of the Defendant's sentence. A sentence review under Appellate Rule 7(B) is very deferential to the trial court's decision, and the reviewing court refrains from merely substituting their judgment for that of the trial court. *Golden v. State*, 862 N.E.2d 1212, 1218 (Ind. Ct. App. 2007). "A reviewing court must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give "due consideration" to that decision and because we understand and

recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The question under App. R. 7(B) analysis is "not whether another sentence is more appropriate" but rather "whether the sentence imposed is inappropriate." *Merriweather v. State,* 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Therefore, a reviewing court "modif[ies] a sentence only when we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B)." *Wilson v. State*, 157 N.E.3d 1163, 1181 (Ind. 2020). "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and [a] myriad [of] other factors that come to light in a given case.' " *Wilson v. State*, 157 N.E.3d 1163, 1181 (Ind. 2020).

The "nature of the offense is found in the details and circumstances of the commission of the offense." *Townsend v. State*, 45 N.E.3d 821, 831 (Ind. Ct. App. 2015), *trans. denied*. *Harris v. State*, 163 N.E.3d 297 (Ind. Ct. App. 2020). In *Stidham III,* the Indiana Supreme Court reviewed the facts and circumstances of the case. The Supreme Court noted that:

> Stidham's crimes were horrific. A night that started as friends playing guitars together escalated through a series of crimes until the victim was brutally murdered. Stidham and two others severely beat the victim in his own home and stole some of his possessions. They gagged the victim and forced him into his van, with Stidham chasing down the victim when he tried to escape. The group then drove the victim's van, with the victim and his possessions inside, to a hidden riverbank where they violently stabbed the victim forty-seven times before callously throwing his body in the river.

*Stidham III,* 157 N.E.3d at 1195. The Supreme Court ultimately held that "the brutal nature of the offenses does not weigh in favor of finding Stidham's sentence inappropriate" under Indiana Appellate Rule 7(B). *Id.*

The Court also looked at the character of the offender. The character of the offender is found in what [is learned] of the offender's life and conduct." *Washington v. State*, 940 N.E.2d 1220, 1222 (Ind. Ct. App. 2011), *trans. denied*. A defendant's criminal history and willingness to continue committing crimes is relevant for analysis of character under App. R. 7(B). *Garcia v. State*, 47 N.E.3d 1249, 1251 (Ind. Ct. App. 2015), *trans. denied*. The Court looked to the U.S. Supreme Court decisions of *Roper, Graham, and Miller*. The Court considered the Defendant's delinquency adjudications, attempted escape, and the fact he joining a gang in prison. The Court also considered that he was 17 at the time he committed his crimes, his difficult childhood and youth and the fact he obtained a GED, he has enrolled in college, religious and substance abuse counseling, completed culinary arts program, received associates degree and bachelor's degree, he is certified firefighter for 15 years, and that he holds certain certifications and the rank of captain. *Stidham III*. Most importantly, the evidence in the record before the Indiana Supreme Court included the voluminous mitigation evidence admitted at the June 24, 1993 sentencing hearing, the mitigation evidence admitted at the October 27, 2016 PCR hearing, and the mitigation evidence offered at the March 15, 2018 PCR hearing.

After reviewing and considering all of the aforementioned facts as they relate to the character of the offender, the Supreme Court concluded "we find that the nature of Stidham's crimes and his character warrant a lengthy sentence short of the maximum. We conclude Stidham should receive the maximum terms at the time of his offenses for each individual crime." *Stidham III,* 157 N.E.3d at 1197. However, Court ordered some counts to run concurrent instead of consecutive. Consequently, the Supreme Court held "we revise Stidham's overall sentence from 138 years to 88 years." *Id.* at 1198. The appropriate sentence for the Defendant according to the Indiana Supreme Court is 88 years.

1. **Any further reduction below the 88 years specifically imposed by the Indiana Supreme Court's would be a reversible abuse of discretion.**

A trial court's decision to grant a modification of sentence is a matter of discretion. *Merkel v. State*, 160 N.E.3d 1139, 1141 (Ind. Ct. App. 2020). A trial court's decision regarding a petition for a modification of a sentence is reviewed on appeal for an abuse of discretion. *Id.* (citing *Gardiner v. State*, 928 N.E.2d 194, 196 (Ind. 2010)). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

**a. The Doctrine of Law of the Case precludes any further reduction of the Defendant's sentence by this Court.**

The doctrine of the law of the case is a tool by which courts decline to revisit legal issues already determined on appeal in the same case and on substantially the same facts. *Cutter v. State*, 725 N.E.2d 401, 405 (Ind. 2000)

(*citing Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817–18, 108 (1988); *State v. Lewis*, 543 N.E.2d 1116, 1118 (Ind. 1989)). The purpose of this doctrine is to promote finality and judicial economy. *See Christianson*, 486 U.S. at 815–16; *State v. Lewis*, 543 N.E.2d at 1118.

The Defendant's sentence has been considered by the original trial court and twice by the Indiana Supreme Court. The Defendant is asking the trial court to revisit the Defendant's sentence based upon substantially similar facts that were before the Indiana Supreme Court a mere four years ago. Virtually every single fact that the Defendant is basing his modification request on was before the Indiana Supreme Court when it held that 88 years was the appropriate sentence. Moreover, when the Indiana Supreme Court invoked Indiana Appellate Rule 7(B), the Court was essentially working with a clean slate. The Court could have very well agreed with the trial court's March 15, 2018 judgment that the Defendant should be immediately released. However, that is *not* what the Supreme Court held. Instead, the Court held that a sentence of 88 years is appropriate. We must be cognizant of what the Indiana Supreme Court said about this particular Defendant and his sentence: "we find that the nature of Stidham's crimes and his character warrant a ***lengthy*** sentence…" *Stidham III,* 157 N.E.3d at 1197. (emphasis added).

The law of the case doctrine holds that the appropriate sentence for this Defendant is 88 years as was determined by the Indiana Supreme Court a mere four (4) years ago. Any further reduction by the trial court is reversible as an

abuse of discretion. That is, any further reduction in sentence beyond what the Supreme Court has already deemed appropriate would be a decision that is clearly against the logic and effect of the facts and circumstances. The highest court in the State has already held that the just and appropriate sentence for this Defendant is 88 years.

**b. The Defendant's current sentence is in line and consistent with other similarly situated defendants.**

As far back as the late 1970's and early 1980's, the United States Supreme Court recognized the relevance of youth and the immaturity of the juvenile brain:

> The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly 'during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment' expected of adults.

*Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982) (footnotes omitted) (*quoting Bellotti v. Baird*, 443 U.S. 622, 635 (1979)). Accordingly, Indiana appellate Courts have a long history of revising sentences based in large part on the defendant's age at the time of the crime. *See Walton v. State,* 650 N.E.2d 1134 (Ind. 1995) (discussed below). The table below summaries the relevant sentence reductions ordered by Indiana Appellee courts in cases where the offender was a juvenile at the time of the offense.

| Case | Age at time Of the crime | Original Sentence | Reduced sentence | Date of Opinion | Court |
|---|---|---|---|---|---|
| *Huspon v. State* [2] | 17 | 160 years | No reduction | 11/6/1989 | Ind. |
| *Walton v. State* [3] | 17 | 120 years | 80 years | 5/30/1995 | Ind. |
| *Conley v. State* [4] | 17 | LWOP | No reduction | 7/31/2012 | Ind. |
| *Fuller v. State* [5] | 15 | 150 years | 85 years | 6/2/2014 | Ind. |
| *Brown v. State* [6] | 16 | 150 years | 80 years | 6/2/2014 | Ind. |
| *Taylor v. State* [7] | 17 | LWOP | 80 years | 12/5/2018 | Ind. |
| *Wilson v. State* [8] | 16 | 183 years | 100 years | 11/17/2020 | Ind. |
| ***State v. Stidham*** **[9]** | **17** | **138 years** | **88 years** | **11/17/2020** | **Ind.** |
| *Kerner v. State* [10] | 17 | 179 years | No reduction | 10/22/2021 | Ind. Ct. App. |
| *Anderson v. State* [11] | 17 | 100 years | 85 years | 1/25/2023 | Ind. Ct. App. |
| *Dent v. State* [12] | 15 | 100 years | No reduction | 2/2/2023 | Ind. Ct. App. |
| *Banks v. State* [13] | 16 | 220 years | 135 years | 2/16/2024 | Ind. Ct. App. |

Three of these defendants received no reduction of sentence whatsoever. As discussed earlier, the Defendant's sentence was already reduced by the Indiana Supreme Court to 88 years. The Defendant's revised sentence is clearly in line and consistent with all of the other like sentences that have been reduced. No further reduction of the Defendant's sentence is warranted.

**c. Deference to original trial court.**

Moreover, "[s]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). When reviewing sentences, Indiana

[2] *Huspon v. State,* 545 N.E.2d 1078 (Ind. 1989).
[3] *Walton v. State,* 650 N.E.2d 1134 (Ind. 1995).
[4] *Conley v. State,* 972 N.E.2d 864 (Ind. 2012).
[5] *Fuller v. State,* 9 N.E.3d 653 (Ind. 2014).
[6] *Brown v. State,* 10 N.E.3d 1 (Ind. 2014).
[7] *Taylor v. State,* 86 N.E.3d 157 (Ind. 2018).
[8] *Wilson v. State,* 157 N.E.3d 1163 (Ind. 2020).
[9] *State v. Stidham,* 157 N.E.3d 1185 (Ind. 2020).
[10] *Kerner v. State,* 178 N.E.3d 1215 (Ind. Ct. App. 2021).
[11] *Anderson v. State,* 22A-PC-1785 (Ind. Ct. App. January 25, 2023)(mem).
[12] *Dent v. State,* 22A-PC-1032 (Ind. Ct. App. February 2, 2023)(mem).
[13] *Banks v. State*, 228 N.E.3d 528 (Ind. Ct. App. 2024).

has long held that reviewing courts "should exercise deference to a trial court's sentencing decision … because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). Such deference to the trial court's judgment should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character). *Elliott v. State*, 152 N.E.3d 27, 39 (Ind. Ct. App. 2020). Indiana Supreme Court Justice Geoffrey Slaughter has gone so far as to say "[o]nce we conclude a challenged sentence was legal, I would stop there and not expend our limited resources substituting our collective view of what sentence is appropriate for that of the trial judge." *Faith v. State*, 131 N.E.3d 158, 160–61 (Ind. 2019) (Slaughter, J. dissenting).

In the case at bar, the original trial court heard the evidence and observed this Defendant's demeanor and behavior through not one, but two trials. The trial court observed the Defendant and his character for quite a bit of time. After doing so, the trial court concluded that 141 years was a just and appropriate sentence for this Defendant. The Indiana Supreme Court later held that the appropriate sentence is 88 years given the change in the legal landscape with regard to sentencing juveniles. Great deference should be afforded to original trial court's findings on the nature of the offense and

character of the offender. Consequently, this court should not substitute its judgment for that of the original trial court and more importantly, that of the Indiana Supreme Court. "No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved." *Williams v. United States*, 401 U.S. 667, 691 (1971) (Harlan, J, concurring).

**B. The evidence presented during the hearing does not support the granting of a petition for modification of sentence.**

The Defendant herein bears the burden of persuasion in the case at bar.

**1. The Defendant has shown no remorse or sorrow whatsoever.**

During the hearing on August 9, 2024, the State called the victim's sister-in-law Mary Barker. She testified that also present in the courtroom was the victim's sister and brother-in-law. Mrs. Barker testified she and her family oppose a modification of the Defendant's sentence. She testified that she and her family feel that way because the Defendant "killed our brother," the Defendant "need[s] to do [his] time," the Defendant "made that choice," and nothing the Defendant may have accomplished in prison "changes what [he] did." More significantly, Mrs. Barker said that this Defendant and his heinous crimes have "devastated our family."

The Defendant had a prime opportunity to show remorse, to show sorrow for murdering Daniel. He had the perfect opportunity to tell the

victim's surviving family anything he wanted. After all, it is the Defendant who is seeking early release for the violent, brutal, and grizzly murder of Daniel Barker. Common sense would tell us if the Defendant truly had remorse and sorrow he would have seized the opportunity and done so. However, he chose not to do so.

Remorse has been defined as a feeling, one that is aptly defined as "a gnawing distress arising from a sense of guilt for past wrongs." Merriam Webster's Online Dictionary, available at http://www.merriam-webster.com/dictionary/remorse (last visited on September 8, 2014). Because feelings cannot be directly observed, they must be deduced from a person's behavior. The Defendant has shown no remorse whatsoever for the violent, brutal, and grizzly slaying of Daniel Barker and the long term effects it has had on his surviving family. There has been no gnawing distress arising from the Defendant's actions or even an indication that he even cares that he took a human life. Instead, the Defendant took the time during the hearing on his petition for early release to do nothing but talk about himself in a narcissistic fashion. Not once during the hearing on the Petition for Modification, did the Defendant turn toward the victim's family and display even a modicum of remorse or sorrow.

**2. The Defendant has already received substantial time cuts and reductions to his sentence.**

In 2020 The Indiana Supreme Court reduced the Defendant's aggregate sentence by fifty (50) years.

To the extent the Defendant wants the Court to reward him for his good conduct in while in prison, Indiana law has already done that. The Defendant herein was sentenced in 1993. Courts must generally sentence a defendant under the statute in effect at the time of the commission of the offense. *Jacobs v. State*, 835 N.E.2d 485, 491 n.7 (Ind. 2005). The applicable law in 1993 provided that a person who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned Class I credit. I.C. § 35-50-6-4(a). A person assigned to Class I credit earns one (1) day of credit time for each day the person is imprisoned for a crime or awaiting trial or sentencing. I.C. § 35-50-6-3(a). Therefore, as he conceded at the hearing, the Defendant will only have to serve half of the 88-year sentence. "The purpose of the legislature in enacting 'good time' credit statutes was to encourage inmates of penal institutions to behave well while confined, to improve their morale, and thus to help the prison authorities to maintain order and control." *Jones v. State*, 847 N.E.2d 190, 201 (Ind. Ct. App. 2006).

> The legislature has also provided a second type of credit time which can be used to reduce an inmate's time in prison. A prisoner may earn credit time in addition to "good time" credit if he or she is in Class I for "good time" credit purposes; has "demonstrated a pattern consistent with rehabilitation"; and completes requirements for various types of diplomas or degrees.

*State v. Eckhardt*, 687 N.E.2d 374, 376 (Ind. Ct. App. 1997). "Although not specified in Indiana Code Section 35–50–6–3, our Supreme Court has defined credit time as 'a statutory reward for a lack of conduct that is in violation of institutional rules.'" *Jones v. State*, 847 N.E.2d 190, 201 (Ind. Ct. App. 2006)

(*quoting Boyd v. Broglin,* 519 N.E.2d 541, 542 (Ind. 1988)). The Defendant has already received statutory reductions in his sentence due to his educational and other endeavors while incarcerated. The Defendant conceded on cross-examination that he has received a one (1) year time cut for obtaining an associates degree, a two (2) year time cut for obtaining a bachelor's degree, a six (6) month time cut for completing a substance abuse program and a six (6) month time cut for completing vocational training program. The Defendant has already been rewarded for good behavior while in prison. He should not be rewarded yet again.

The Defendant is seeking to double or triple dip into the proverbial credit time bowl. In summary, the Defendant was originally sentenced to an aggregate sentence of 138 years. The Indiana Supreme court reduced that sentenced by 50 years for aggregate sentence of 88 years. The Defendant has obtained 4 years worth of time cuts for completed education and programming leaving an aggregate sentence of 84 years. Finally, given the "good time" sentencing regime, the Defendant will only be required to serve 50% of that 84 year sentence or approximately 42 years. To date, the Defendant has only served approximately 33 actual years in prison for the brutal slaying of Daniel Barker. He has not even served one year for each of the 47 stab wounds that were inflicted upon his victim. Any further reduction in sentence would depreciate the seriousness of the crime, would be duplicitous and unnecessary, and an insult to Daniel Barker and his family.

**3. The fact that the Defendant has behaved well and made various achievements while incarcerated does not mean that his sentence should be modified.**

A trial court is not required to grant a petitioner's modification request simply because the petitioner can cite positive achievements, improvements, and rehabilitative efforts made during his incarceration. *Newman v. State*, 177 N.E.3d 888, 891 (Ind. Ct. App. 2021), *trans. denied.*; *Huspon v. State*, No. 23A-CR-2752 (Ind. Ct. App. May 1, 2024) (mem). In *Catt v. State*, 749 N.E.2d 633, 643-44 (Ind. Ct. App. 2001) *trans denied,* the Indiana Court of Appeals affirmed the denial of Catt's petition for sentence modification even where Catt had participated in several rehabilitative programs, was employed in prison, and had made restitution. In *Banks v. State*, 847 N.E.2d 1050, 1053 (Ind. Ct. App. 2006) *trans denied,* the Indiana Court of appeals affirmed the denial of Banks' petition for sentence modification despite his contention that all the evidence in the record supported it. Evidence of a defendant's remorsefulness, his good conduct and rehabilitative efforts while incarcerated, and his employment opportunity if he were to be released did not inevitably lead to the conclusion that the trial court had abused its discretion in declining to modify Marshall's sentences. *Marshall v. State*, 563 N.E.2d 1341, 1343 (Ind. Ct. App. 1990)), *trans. denied.*

In *Brown v. State*, No. 24A-CR-325 (Ind. Ct. App. July 30, 2024)(mem), the defendant argued that the trial court abused its discretion when it denied his petition because "[d]uring thirty years of incarceration [he] has shown

growth in character, psychological health and well-being as well as not only collecting an extraordinary number of certificates, degrees and certifications but employing them to help others around him. However, the Court disagreed and held that the nature of Brown's crimes, and the fact that positive achievements and rehabilitative efforts do not require the trial court to grant a modification, we conclude that the trial court did not abuse its discretion in denying Brown's petition for sentence modification. *Id.* The Court of Appeals has said that "the mere fact that the process of rehabilitation, the purpose of incarceration, may have started, does not compel a reduction or other modification [of a defendant's] sentence." *Marshall v. State*, 563 N.E.2d 1341, 1343-44 (Ind. Ct. App. 1990) (upholding the denial of a sentence modification despite evidence of Marshall's remorsefulness, good conduct and rehabilitative efforts in prison, and employment opportunities if released), *trans. denied.*

Offenders who are in prison are expected to follow the rules, be good, and rehabilitate. As noted above, the Indiana General Assembly has already rewarded those who behave well in prison by granting inmates "good time." "Good time credit" is "the additional credit a prisoner receives for good behavior and educational attainment. *Roberts v. State*, 998 N.E.2d 743, 746 (Ind. Ct. App. 2013).

Moreover, when considering a petition for sentence modification, "[t]he heinousness of a person's crime alone can serve as the basis for denying a sentence reduction[.]" *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999); *Brown v. State*, No. 24A-CR-325 (Ind. Ct. App. July 30, 2024) (mem). In

*Huspon v. State*, No. 23A-CR-2752 (Ind. Ct. App. May 1, 2024) (mem) the court court appeared concerned that modification of Huspon's sentence would potentially depreciate the seriousness of his offenses. Huspon was convicted of murder, felony murder, robbery, and burglary after apparently targeting a victim that he had believed was gay. The court ultimately held that "[g]iven the nature of Huspon's crimes and the fact that positive achievements and rehabilitative efforts do not require the trial court to grant modification, we cannot say that the trial court abused its discretion in denying Huspon's modification petition." *Id.* The same is true in the case at bar. Given the facts and circumstances in this case, a modification of sentence would substantially depreciate the seriousness of his brutal and violent offenses.

**4. Defense witness James Garbarino lacks the necessary qualifications, is biased, and thus his views and opinions should be given little to no weight.**

In support of his Petition for Modification of Sentence, the Defendant called Dr. James Garbarino as an expert witness. Indiana law provides that the finder of fact "should evaluate this testimony as you would other evidence..." See Indiana Pattern Jury Instruction No. 12.2300. The standard for evaluating a witness's testimony is found in Indiana Pattern Criminal Instruction No. 13.1100, which provides as follows:

> In determining the value of a witness's testimony, some factors you may consider are:
>
> - the witness's ability and opportunity to observe;
> - the behavior of the witness while testifying;
> - any interest, bias or prejudice the witness may have;

- any relationship with people involved in the case;
- the reasonableness of the testimony considering the other evidence;
- your knowledge, common sense, and life experiences.

The record demonstrates that the Court should have serious concerns with Dr. Garbarino's qualifications to offer his opinions. First, a review of Garbarino's testimony shows us that we know very little about his background and qualifications. What we do know from the evidence is that he is not and has never been licensed to practice psychology. He holds no board certifications. Despite the fact that his report discusses the white and gray matter of the brain, brain cells, neurotransmitters, and chemicals in the brain, Garbarino is not a medical doctor, a radiologist, a psychiatrist, a neurologist, or a neurosurgeon. Rather, Garbarino holds a Ph.D. There is no evidence whatsoever in the record that Garbarino is qualified to discuss the white and gray matter of the brain, brain cells, neurotransmitters, and chemicals in the brain.

What was clear from the evidence in the record is that Garbarino is an academic and a professor who has spent 30 years consulting and testifying on behalf of the criminal defense bar. In over 30 years and over 300 cases, Garbarino has almost exclusively worked for the criminal defense bar.[14] Garbarino has made a substantial amount of money consulting and testifying for the defense bar, giving speeches and writing books. In this case, he was

[14] Garbarino conceded that over course of his 30-year career and over 300 criminal case consultations, he has only testified twice for a prosecutor.

paid $5,000 for his services. During Garbarino's testimony it became clear that Garbarino has substantial bias. Garbarino is an advocate for juvenile murderers. He conceded on cross-examination that an article published by the American Psychological Association, an association to which he so proudly belongs, was entitled "James Garbarino, an advocate for juvenile offenders." He also conceded that the same article described him as "an emissary to the criminal justice system on behalf of men who committed heinous crimes when they were young." During cross-examination, Garbarino reluctantly conceded that he is indeed an advocate. He is not a neutral expert fact finder. Far from it.

Garbarino has met with and befriended many imprisoned criminal defendants over the years. On one particular year, Garbarino received a birthday card from an inmate and he was quoted as saying "it was the best present I got." Garbarino conceded that in a 2015 public speech he said "most people don't have murderers in their lives. I have a lot of murderers in my life. They are in my head, they are in my heart." It is painfully obvious and apparent that Garbarino is an advocate for juvenile murderers and this particular Defendant. Garbarino conceded on cross-examination that he has recently been in contact with Court TV to be interviewed for an upcoming television program. He conceded that he asked defense counsel in the case at bar whether "it would serve [the Defendant's] interests" if the Defendant could be included in the program. A disinterested, unbiased expert witness would

not be concerned with what is in the Defendant's best interests. During cross-examination, it became clear that in Garbarino's mind, there is no room for disagreement with his opinions and conclusions. In fact, he refers to those who disagree with him as "barbarians." In a 2018 speech, he has gone so far as to refer to several Justices of the United States Supreme Court as "the barbaric four."

Garbarino's report, Defendant's Exhibit A, consists of twenty-seven (27) pages seemingly based solely on self-reporting from the Defendant, who has an obvious interest in the outcome of this case. Garbarino reviewed a questionnaire consisting of ten (10) yes or no questions completed by the Defendant, correspondence with the Defendant, an appellate opinion from this case,[15] and a one (1) hour interview with the Defendant conducted over the telephone. The interview was not recorded and although Garbarino took notes, he subsequently destroyed the notes before such time that they could be provided in discovery. No psychometric testing instruments such as the MMPI and or the Personality Assessment Inventory (PAI) were administered to the Defendant. He did not review police reports, any statements made by the Defendant at the time of his crimes, crime scene photos, witness statements, or transcripts of trial testimony. Most importantly, on cross-examination, Garbarino admitted that he had written his report *before* he ever even spoke to or interviewed the Defendant. Garbarino cherry picked self-serving

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[15] It is entirely unclear which of the several appellate opinions Garbarino reviewed or why he did so.

information that fit his preconceived narrative upon which to base his report and conclusions. He also admitted that he sent a draft the report to defense counsel for any "comments, corrections, and suggestions." He conceded that he did indeed receive "proposed changes in the report." Garbarino was unable to specifically remember or identify what exact "proposed changes" to the report he adopted. Garbarino is personally invested and has a substantial interest in the outcome of this case and it shines as bright as the sun. Therefore, given his lack of qualifications and apparent and substantial bias, his testimony and report should be given little to no weight.

Garabino's testimony and his report is heavily based on the holding and language of *Miller v. Alabama,* 460 U.S. 460 (2012) which prohibits *mandatory* life sentences without the possibility of parole for offenders who commit murder when they are juveniles.[16] For example, Garbarino rather boldly asserted that the Defendant is a "poster child for *Miller* resentencing.[17]" See Defendant's Exhibit A, pg. 25. However, *Miller* does not apply to the Defendant in this case or any other similarly situated offenders. The Defendant herein was sentenced to a term of years and not a life sentence. "A term of years sentence does not implicate *Miller*." *Wilson v. State*, 157 N.E.3d 1163, 1174

[16] To be clear, the Defendant herein did not receive a life sentence without the possibility of parole much less a mandatory life sentence without the possibility of parole.

[17] A *Miller* resentencing hearing refers to a resentencing hearing that is required because, given a jurisdiction's mandatory life sentencing regime, the original sentencing court was precluded from considering the offender's age. A *Miller* resentencing hearing allows a fresh hearing where the sentencing court can now consider the offender's age at the time of the crime. Contrary to Garbarino's bold assertion, this Defendant is not legally eligible for a *Miller* resentencing hearing.

(Ind. 2020). "*Miller*'s enhanced protections do not currently apply to Wilson's 181-year term of years sentence. The sentence does not violate the Eighth Amendment because *Miller*, *Graham*, and *Montgomery* expressly indicate their holdings apply only to life-without-parole sentences." *Id.* at 1176. However, Garbarino refused to accept the clearly established legal precedent *Miller* does not apply to this Defendant or to any defendant in Indiana. This is yet another indicator of Garbarino's extreme bias.

Additionally, what is very telling about Garbarino's report and opinions is that he does not believe that he should look to or review the facts and circumstances of the Defendant's crime when rendering his opinions. This is contrary to well-established law. *Miller v. Alabama,* which Garbarino uses as the foundation upon which to formulate his theories and opinions, clearly holds in cases where defendants receive mandatory life sentences, that courts are to distinguish between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender ***whose crime*** reflects irreparable corruption." *Miller v. Alabama,* 460 U.S. 460, 479-80 (2012) (emphasis added). The United States Supreme Court could not be clearer. Life sentences should be given to juvenile offenders ***whose crime*** reflects irreparable corruption. When confronted with this reality on cross-examination, Garbarino arrogantly said that the United States Supreme Court was "wrong." Not only does *Miller* require courts to look to the facts of the offender's crime so too does Indiana law. Indiana Code § 35-38-1-7.1 provides

that a sentencing court should consider the facts and circumstances of the crime committed. Similarly, Indiana Appellate Rule 7(b) provides that appellate review of a sentence requires a review of the "*nature of the offense* and character of the offender." (emphasis added). The "nature of the offense is found in the details and circumstances of the commission of the offense." *Townsend v. State*, 45 N.E.3d 821, 831 (Ind. Ct. App. 2015), *trans. denied.*; *Harris v. State*, 163 N.E.3d 297 (Ind. Ct. App. 2020). "Analysis of the 'nature of the offense' requires us to look at the extent and depravity of the offense and focus less on comparing the facts at hand to other cases." *Crabtree v. State*, 152 N.E.3d 687, 704 (Ind. Ct. App. 2020). "The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation." *Pedigo v. State*, 146 N.E.3d 1002, 1015 (Ind. Ct. App. 2020). Consequently, Dr. Garbarino's opinion and suggestion that this court should not look to the facts and circumstances of the Defendant's crime could not be more wrong. Mark Twain once said an expert is "an ordinary fellow from another town." At best, James Garbarino is a very biased fellow from another town whose testimony should be given little to no weight.

Moreover, the word "child" is plastered all throughout Dr. Garbarino's report. The State has no doubt that the use of the word "child" by a professional witness and advocate for the Defendant was done intentionally in an attempt to portray the Defendant as sympathetic. However, when the Defendant murdered Daniel Barker he was not a child.

> The word child is associated with innocence and vulnerability. It brings to mind the mental image of an elementary school student needing support, compassion, and protection. The mental image that term evokes strikes an emotional cord, but it is a false image…The vast majority of those who [have committed murder as a juvenile] are not children, but rather are older teens on the cusp of legal adulthood. Use of the term children to refer to depraved juvenile murderers is not only inaccurate, but it is highly insensitive and cruel to the victims of their crimes.

*Amici Curiae* of the National Organization of Victims of Juvenile Murderers and Arizona Voice For Crime Victims Inc., *Jones v. Mississippi,* No 18-1259, pg. 27.

**5. Defense witness John Serwatka.**

In support of his Petition for Motion for Modification of Sentence, the Defendant called John Serwatka. Serwatka is currently serving a life without the possibility of parole sentence for committing two (2) murders. The court should put absolutely no weight whatsoever in a two time convicted killer serving a life sentence.

**C. Sentencing considerations from *Miller v. Alabama* do not apply to this defendant.**

The Defendant herein was sentenced to a term of years. The Indiana Supreme Court has definitively held that "[a] term of years sentence does not implicate *Miller*." *Wilson v. State*, 157 N.E.3d 1163, 1174 (Ind. 2020). The Court said:

> *Miller*'s enhanced protections do not currently apply to Wilson's 181-year term of years sentence. The sentence does not violate the Eighth Amendment because *Miller*, *Graham*, and *Montgomery* expressly indicate their holdings apply only to life-without-parole sentences.

*Id.* at 1176. Since our Supreme Court's holding in *Wilson*, Indiana courts have continued to hold that *Miller's* enhanced protections do not apply to a term of year term of years sentence. *Dent v. State,* 22A-PC-1032 (Ind. Ct. App. February 2, 2023)(mem); *Huspon v. State*, 22A-PC-2853 (October 18, 2023)(mem).

**D. The appropriate avenue of relief would be for the Defendant to apply for executive clemency.**

As noted above, the Indiana Supreme Court has already ruled that despite all of the very same circumstances that the Defendant wants this court to consider in support of his Petition for Modification of Sentence the appropriate sentence is 88 years. Given that holding, it would be an abuse of this court's discretion to grant a further reduction of sentence. Therefore, the only appropriate and remaining avenue of relief would be for the Defendant to seek clemency. The Defendant's own witness, Dr. Garbarino testified and included in his report that the Defendant is a candidate for executive clemency. Under Indiana law, a defendant may file a request for executive clemency with the Governor of the State of Indiana. See I.C. § 11-9-2-1. The exclusive power to grant clemency rests with the Governor. *See, e.g., Butler v. State,* 97 Ind. 373, 375–76 (1884). This power is given to the Governor in our state constitution. *See* Ind. Const., Art. 5, § 17 (*see also* Ind. Code §§ 11–9–2–1 through 4). Our state constitution vests discretion in the Governor as to matters of clemency. *See* Ind. Const., Art. 5, § 17 (providing that "The Governor

may grant reprieves, commutations, and pardons, after conviction ... subject to such regulations as may be provided by law."). *Trueblood v. State*, 790 N.E.2d 97, 97–98 (Ind. 2003). "There is no provision in the state constitution or statutes for judicial review of the Governor's decision concerning a clemency petition." *Trueblood v. State*, 790 N.E.2d 97, 98 (Ind. 2003). "Infringement by one branch of government on the powers of another is repugnant to the distribution of powers that our constitution establishes." *Id.*

Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing alleged miscarriages of justice where judicial process has been exhausted. *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993). The U.S. Supreme Court has called clemency the "fail safe" of the judicial system, since it empowers chief executives to correct alleged injustices on a case-by-case basis. *Id.* 415.

**E. The nature and circumstances of the Defendant's crime and the character of the Defendant do not support a modification of sentence.**

The essence of today's criminal justice system in Indiana is to distinguish dangerous, violent offenders from the rest and to provide for sentences that reflect all the pertinent circumstances. *Lane v. State*, 232 N.E.3d 119, 130 (Ind. 2024). The Defendant is a dangerous and violent offender.

**1. The nature and circumstances of the Defendant's crime.**

The State does not believe the Defendant to be a proper candidate for modification based on the "horrific" nature and circumstances of his crimes. The Indiana Supreme Court aptly described the Defendant's crimes as follows:

> Stidham's crimes were horrific. A night that started as friends playing guitars together escalated through a series of crimes until the victim was brutally murdered. Stidham and two others severely beat the victim in his own home and stole some of his possessions. They gagged the victim and forced him into his van, with Stidham chasing down the victim when he tried to escape. The group then drove the victim's van, with the victim and his possessions inside, to a hidden riverbank where they violently stabbed the victim forty-seven times before callously throwing his body in the river.

*State v. Stidham,* 157 N.E.3d 1185, 1195 (Ind. 2020). Moreover, as laid out in the facts section above, it is self-evident that the Defendant has demonstrated that he is a depraved and ruthless killer who committed violent, atrocious, and heinous crimes. The Supreme Court went so far as to say [t]he brutal nature of the offenses does not weigh in favor of finding Stidham's sentence inappropriate. *State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020)

**2. The character of the Defendant.**

The Defendant's history of criminal behavior including runaway, theft, vandalism, escape, contempt, escape, escape, criminal mischief, burglary, theft, escape, and escape. The Defendant participated in an escape attempt from the Madison County Jail involving cutting a cell bar with a hack saw while awaiting trial in this case. Defendant's Exhibit B, TR 221; PSI pg. 8. The Defendant has a history of misconduct while incarcerated at the Department of Corrections as summarized below:

| Date | Conduct Report | Description |
|---|---|---|
| 3/29/91 | Attempting to Assault or harass another individual in the jail | Yelling profanity at correctional officer under his cell door. After being told to quit he told the officer to fuck off. Harassed the guard, told him to such my dick. |

| | | |
|---|---|---|
| 5/16/91 | Attempted escape from Madison County Jail | Attempted escape from Madison County Jail |
| 11/5/93 | Refusing to Obey an Order | Refused to take down curtain. |
| 10/21/97 | Smoking | Observed smoking. |
| 7/17/98 | Refusing to Obey an Order | Observed smoking. Threw cigarette into cell of another offender. |
| 10/16/07 | Unauthorized use or possession of electronic device | Shelf next to toilet in his cell had a false backing. Behind it was found 2 cell phones, one charger, a lighter and a bag of tobacco. |
| 6/9/09 | Disruptive, unruly, rowdy conduct | Kicking cell door yelling "fuck you, you fucking dick suckers, why don't you go and suck on a fat cock. I hope you die on your way home." |
| 7/29/14 | Unauthorized use or possession of electronic device | Using Facebook |

Moreover, by his own admission, the Defendant killed someone he considered a "queer." See Defendant's Exhibit B, TR. at 371; State's Exhibit 4, at 22. Given the Defendant's own admission, it could be said that the Defendant committed a hate crime. Hate crimes can have significant and wide-ranging psychological consequences, not only for their direct victims but for others of the group as well. Victims of hate crimes often experience a sense of victimization that goes beyond the initial crime, creating a heightened sense of vulnerability towards future victimization. In many ways, hate crime victimization can be reminder to victims of their marginalized status in society. Hate crimes are repugnant, reprehensible, and must be punished accordingly. It was Sir William Blackstone, the eighteenth-century British legal scholar, who said that "it is but reasonable that among crimes of different natures those should be most severely punished, which are the most destructive of the public safety and happiness." In recognition of the odious nature of these crimes and

their serious impact, it is entirely appropriate that they be treated differently. This Defendant's crimes are of the most destructive of the public safety and happiness.

The contrast between the character of Daniel Barker, the victim in this case, and that of the Defendant could not be more stark. Daniel was "kind of quiet, soft spoken…that wouldn't hurt anybody. He just wanted a friend." State's Exhibit 4, at 26. He loved music and playing the guitar. *Id.* at 26. He worked at the grocery store in Eaton. *Id.* Daniel's murder "nearly crushed his father." *Id.* at 27. He aptly noted that "nobody deserves to die like that. It was an inhuman act." *Id.* Nothing in the past two decades has lessened the pain of Daniel's murder. *Id.* In fact, during a 2018 hearing in the Post-Conviction Relief case, Daniel's brother was not "emotionally able to testify." *Id.* Daniel's sister-in-law was able to testify but when she did she said "I'm sitting here right now with my heart about to come out of my throat. It is just like reliving it all over again." *Id.* In this case, mercy to Defendant, in the form of a sentence reduction, is nothing but a cruel slap in the face to the memory of the innocent victim and his surviving family.

**F. Article I, § 18 does not provide a vehicle for relief: The historical rationales for punishment demand that he serve his full sentence.**

To the extent the Defendant were to suggest that Article I, § 18[18] of the Indiana Constitution supports his Petition for Modification of Sentence, such reliance is misplaced. It is well settled that:

> Article I, § 18 of the Indiana Constitution is an ***admonition to the legislative branch of the state government*** and is addressed to the public policy which the legislature must follow in formulating the penal code. It applies to the penal laws as a system to insure that these laws are framed upon the theory of reformation as well as the protection of society.

*Dillon v. State*, 454 N.E.2d 845, 852 (Ind. 1983) (emphasis added); See also *Henson v. State*, 707 N.E.2d 792, 796 (Ind. 1999); *Smith v. State*, 686 N.E.2d 1264, 1272 (Ind. 1997); *Fleenor v. State*, 514 N.E.2d 80, 90 (Ind. 1987); *Williams v. State*, 430 N.E.2d 759, 766 (Ind. 1982). Section 18 is "not a mandate upon the judiciary for determining the appropriateness of the sentence in a particular case." *Smith v. State*, 686 N.E.2d 1264, 1272 (Ind. 1997). Consequently, individual sentences are not reviewable under Article I, § 18. *Henson v. State,* 707 N.E.2d 792, 796 (Ind. 1999); *Ratliff v. State,* 693 N.E.2d 530, 542 (Ind. 1998); *Lowery v. Sate,* 478 N.E.2d 1214 (Ind. 1985).

In fact Indiana law clearly promotes "the traditional aims of punishment—retribution and deterrence." *Wallace v. State*, 905 N.E.2d 371, 381 (Ind. 2009). "There are other objectives including the need to protect the

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[18] Article I, § 18 of the Indiana Constitution provides that "[t]he penal code shall be founded on the principles of reformation, and not of vindictive justice."

community by sequestration of the offender, community condemnation of the offender, as well as deterrence." *Id.* (*citing Abercrombie v. State,* 441 N.E.2d 442, 444 (Ind.1982)). "[O]ne of the many goals of penal sentencing is its deterrent effect." *Beno v. State*, 581 N.E.2d 922, 924 (Ind. 1991). Additionally, incapacitation is legitimate reason for imprisonment. *Graham v. Florida*, 560 U.S. 48, 72 (2010), *as modified* (July 6, 2010).

The broad purposes of the criminal law are to make people do what society regards as desirable and prevent them from doing what society considers un desirable. 1 W. LaFave[19], Substantive Criminal Law § 1.5, pp. 44 (2018). Since criminal law is framed in terms of imposing punishment for bad conduct rather than of granting rewards for good conduct, the emphasis is more on the prevention of the undesirable than on the encouragement of the desirable. *Id.* How does the criminal law, with its threat of punishment to violators, operate to influence human conduct away from the undesirable and toward the desirable? *Id.* at § 1.5(a), pg. 45. There are a number of theories on punishment including, incapacitation, rehabilitation, deterrence, and retribution. *Id.* at 45-46; *Ewing v. California*, 538 U.S. 11, 25 (2003) (citing 1 W. LaFave & A. Scott, Substantive Criminal Law § 1.5, pp. 30-36 (1986).

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[19] Wayne R. LaFave has been a professor at the College of Law at the University of Illinois since 1961. He has written extensively in the area of criminal law and procedure. He has authored treatises on substantive criminal law, criminal law and procedure, six casebooks, two hornbooks, and four shorter student texts. These works have been quoted or cited by the U.S. Supreme Court in over a hundred and sixty cases, and in over seventeen thousand reported appellate opinions in all. He has also been cited in about thirteen thousand law review articles. 1 W. LaFave, Substantive Criminal Law p. v (2018).

Under deterrence, the punishment of prison for committing a crime is supposed to deter others from committing future crimes lest they suffer the same fate. *Id.* at § 1.5(a)(4), pg. 48. "Deterrent measures serve as a threat of negative repercussions to discourage people from engaging in certain behavior." *Wallace v. State*, 905 N.E.2d 371, 381 n. 12 (Ind. 2009).

Under the theory of incapacitation, society may protect itself from persons deemed dangerous because of their past criminal conduct by isolating these persons from society. *Id.* at § 1.5(a)(2), pg. 47. If the criminal is imprisoned he cannot commit further crimes against society. *Id.*

"Retribution is the oldest theory of punishment and the one which still commands considerable respect from the general public." *Id.* at § 1.5(a)(6). "When one commits a crime, it is important that he receive commensurate punishment in order to restore the peace of mind and repress the criminal tendencies of others." *Id.* at 52. In addition, it is claimed that retribution punishment is needed to maintain respect for the law and to suppress acts of private vengeance. *Id.* Retribution is "being seen by thinkers of all political persuasions as perhaps the strongest ground, after all, upon which to base a system of punishment." *Id.* It has been said that:

> The offender may justly be subjected to certain deprivations because he deserves it; and he deserves it because he has engaged in wrongful conduct – conduct that does or threatens injury and that is prohibited by law. The penalty is thus not just a means of crime prevention but a merited response to the actor's deed rectifying the balance in the Kantian sense and expressing moral reprobation of the actor for the wrong.

*Id.* at 52-53. The Defendant herein is serving an 88 year sentence because he deserves it. His 88 year sentence is a merited response to his wicked act of killing Daniel Barker. Retribution is a legitimate reason to punish... Society is entitled to impose severe sanctions on a juvenile nonhomicide offender to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense. *Graham v. Florida*, 560 U.S. 48, 71 (2010), *as modified* (July 6, 2010). "There are other objectives including the need to protect the community by sequestration of the offender, community condemnation of the offender, as well as deterrence." *Wallace v. State*, 905 N.E.2d 371, 381 (Ind. 2009) (citing *Abercrombie v. State,* 441 N.E.2d 442, 444 (Ind.1982)).

The facts of the Defendant's crimes are violent, heinous, and disturbing. Should the Defendant be granted early release it all but trashes the fundamental purposes of the criminal law and punishment. Granting early release for this Defendant would have no deterrent effect whatsoever on someone who would want to premeditatedly beat, rob, and kill a vulnerable victim. More importantly, the Defendant would not be incapacitated. He would be free to commit additional crimes and victimize others in society. As noted elsewhere in this brief, the State believes that based on the premeditated heinous nature of these crimes, if faced with a similar set of circumstances in the future the Defendant would behave in a similar manner and reoffend. The public needs protected from Matt Stidham. Finally, early release is not

commensurate with the Defendant's vicious crime thus peace of mind has not been restored and the criminal tendencies of others are not repressed. Quite the contrary. Early release shows the world that you can premeditatedly beat, rob, and stab someone 47 times and then be rewarded with early release back into society.

### G. Risk to the community, truth in sentencing, and finality of judgment.

#### 1. Risk the Defendant will commit another crime.

Defense expert Dr. Garbarino conceded on cross-examination that he cannot predict the future. He cannot predict whether the Defendant would re-offend if he were to be released. Nevertheless, on cross-examination Garbarino admitted that he knows a psychologist named Robert Zagar who has developed what Garbarino believes is the most effective assessment algorithm for predicting future violent behavior. This assessment algorithm consists of a three and a half hour battery of psychological tests. According to Garbarino, this battery of tests is "90 something percent accurate." Garbarino devoted an entire appendix in his book 2015 book *Listening to Killers* to the Zagar battery of tests. Garbarino conceded on cross-examination that he has said "we've actually used it in some of these cases to document this person is now safe." It is entirely unclear who Garbarino refers to when he said "we've actually used it…" By his own admission, Garbarino is not licensed to administer and interpret psychometric instruments and tests. Nevertheless, despite that Garbarino has previously used this battery of tests on offenders like the

Defendant, the battery of tests were not used on the Defendant in the case at bar. If he has used this test on other offenders "to document that this person is now safe" as he proclaimed, why didn't he use it on Matt Stidham? Was he concerned with what the results may show?

Nevertheless, world-renowned psychologists such as Albert Ellis [20], Walter Michel [21], and B.F. Skinner [22] have said "[T]he best predictor of future behavior is past behavior." One of the people to explore this idea in depth was the American psychologist Paul Meehl.[23] He wrote, "…behavior science research itself shows that, by and large, the best way to predict anybody's behavior is his behavior in the past…" Turning to the Defendant in the case at bar, the original trial court found "a significant risk exists that the Defendant would commit other crimes." See State's Exhibit 1. The Defendant's violent and depraved behavior is the best predictor of his future behavior should he be allowed to return to the streets of a free society. The

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[20] Albert Ellis was an American psychologist and psychotherapist who founded rational emotive behavior therapy. He held MA and PhD degrees in clinical psychology from Columbia University, and was certified by the American Board of Professional Psychology.

[21] Walter Mischel was an Austrian-born American psychologist specializing in personality theory and social psychology. He was the Robert Johnston Niven Professor of Humane Letters in the Department of Psychology at Columbia University.

[22] BF Skinner was an American psychologist, behaviorist, inventor, and social philosopher. He was the Edgar Pierce Professor of Psychology at Harvard University from 1958 until his retirement in 1974. Skinner was a prolific author, publishing 21 books and 180 articles. Skinner, is considered to be one of the pioneers of modern behaviorism. A June 2002 survey listed Skinner as the most influential psychologist of the 20th century. The review of General Psychology listed Skinner as one of "[t]he 100 most eminent psychologists of the 20th century."

[23] Paul Meehl was an American clinical psychologist. He was the Hathaway and Regents' Professor of Psychology at the University of Minnesota, and past president of the American Psychological Association. A *Review of General Psychology* survey, published in 2002, ranked Meehl as the 74th most cited psychologist of the 20th century.

State believes that if confronted with a similar set of circumstances, the Defendant would re-offend. This is a risk that the innocent members of society like Daniel Barker cannot take. The Defendant's heinous actions have proven that he cannot function outside the walls of the controlled environment of the Department of Corrections. During the Defendant's testimony, the Defendant acknowledged in his own experience, "time after time we see people who are given another chance and they screw up." This is about the only point of agreement between the State and the Defendant. Given the fact that the Defendant is a violent and brutal killer, the people of Delaware County should not have to accept the risk that this Defendant may "screw up."

**2. There must be truth in sentencing.**

In recent years, courts, legal scholars, and commentators often have discussed the lack of finality in the criminal justice system. Absent extraordinary circumstances, once a lawful sentence is imposed, the offender should complete their sentence. This is especially true of crimes of violence. Anything less would be an insult to the innocent victims of the crime and to the justice system as a whole. Justice demands and victims deserve finality of judgment and truth in sentencing. This is clearly reflected in the General Assembly's purpose of the Indiana Criminal Code. Indiana Code § 35-32-1-1(9) provides that "[t]his title shall be construed in accordance with its general purposes to…make the lengths of sentences served by offenders more certain for victims…" The law favors finality because litigation, at some point, must

end the parties can move on with their lives. Victims or their surviving family should not have to repeatedly relive horrific, brutal, and tragic events simply because the offender desires an early release from prison. Additionally, without truth in sentencing, victims and others who are unhappy with a system void of truth in sentencing which results in a lenient soft on crime system may take the law into their own hands – something that cannot happen in a civilized society. Without a certain end to litigation, the judicial system could come to a standstill, those parties with vast resources could postpone a final judgment and thwart justice, and society could lose faith in the justice system. As former U.S. Supreme Court Justice Powell once said:

> At some point the law must convey to those in custody that a wrong has been committed, that consequent punishment has been imposed, that one should no longer look back with the view to resurrecting every imaginable basis for further litigation but rather should look forward to rehabilitation and to becoming a constructive citizen.

*Schneckloth v. Bustamonte*, 412 U.S. 218, 262 (1973) (Powell, J. concurrence). The idea of giving criminals "a second chance has been tried in many ways and at enormous cost to those victimized by them. The only thing I know that works is putting criminals behind bars and keeping them there." Thomas Sowell, American economist and social philosopher Senior Fellow at Hoover Institution, Stanford University, letter to Mayor of New York City, Edward Koch, September 27, 1995.

The State's argument at the Defendant's 1993 sentencing hearing rings as true now as it did then. The Defendant is institutionalized and he has

learned how to come to come into court and say the right words. Defendant's Exhibit B, TR at 1273. The Defendant's Pre-Sentence Investigation report used the following words to describe the Defendant: defiant, anti-authority, hostile, incorrigible, violent, brutal, savage and homicidal. *Id.* at 1274. As former Prosecuting Attorney Richard W. Reed told the sentencing Court, "I do not wish to live in a society that has Matt Stidham walking the streets." *Id.* at 1275.

## CONCLUSION

For all of the aforementioned reasons, the court should deny the Defendant's Petition for Modification of sentence.

WHEREFORE, the State of Indiana respectfully objects to any modification or reduction of the Defendant's sentence and requests the court deny the Petition for Sentence Modification and for all other relief just and proper in the premises.

Respectfully submitted,

Eric M. Hoffman # 24232-18
Prosecuting Attorney
46th Judicial Circuit of Indiana

3100 S. Tillotson Suite 270
Muncie, IN 47302
765-747-7801

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing has been served on the following counsel of record, **Joel Wieneke**, via electronic service through the Indiana E-filing system, if available, and if not, then via electronic mail, facsimile, U.S. Mail, postage prepaid, or by placing a copy of the same in the appropriate mail receptacle in the Delaware County Justice Center on or before the date of filing herein.

/s/