STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: February 7, 2023]

GAHLIL OLIVEIRA,[1]	:	
	:	
v.	:	**C.A. No. PM-2002-3654**
	:	
STATE OF RHODE ISLAND	:	

DECISION

PROCACCINI, J. Before this Court is Petitioner Gahlil Oliveira's (Petitioner) Application for Post-Conviction Relief (Application) challenging the cumulative duration of his consecutive sentences following his conviction on four counts: first-degree murder, assault with intent to commit murder, and two related conspiracy counts. Petitioner asks this Court to grant his Application and modify his consecutive sentences to be served concurrently, arguing that the cumulative sentence he received was unconstitutionally excessive, both on its face and as compared to similarly situated codefendants. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-1.

I

Facts and Travel

A

Trial and Sentencing

The facts underlying this case are set out in *State v. Oliveira*, 774 A.2d 893 (R.I. 2001). In sum, Petitioner and four codefendants were indicted on charges stemming from the December

[1] As noted by the Supreme Court in *State v. Oliveira*, 774 A.2d 893, 893 n.1 (R.I. 2001), the record contains various spellings of Petitioner Gahlil Oliveira's first name. This Decision adopts the spelling used by Petitioner in his handwritten letter to the Court. (Pet'r's Mem. of Law in Supp. of Appl. for Post-Conviction Relief (Pet'r's Mem.) Ex. D (Oliveira Letter) 6.)

18, 1995 murder of John Carpenter (Carpenter) and assault and attempted murder of Lorenzo Evans (Evans). *Oliveira*, 774 A.2d at 902. Petitioner and his codefendants had conspired to murder Carpenter and Evans in retaliation for the prior murder of one of their friends. (Pet'r's Mem. 7.) Trial testimony revealed that Carpenter died of multiple gunshot wounds to the head and body inflicted from three separate firearms, fired in front of multiple witnesses in broad daylight as Carpenter lay on the ground; and that Carpenter's assailants had shot at and chased Evans, who was able to flee the scene without physical injury. *Oliveira*, 774 A.2d at 900-01.

After a 1997 jury trial, all five defendants were convicted of the two conspiracy counts. *Id.* at 903. Additionally, Petitioner, Robert McKinney (McKinney), and Pedro Sanders (Sanders) were convicted of murder and assault. *Id.* Jason Ferrell (Ferrell) was convicted of assault but acquitted of the murder. *Id.* Jermaine Campbell (Campbell) was acquitted on both the assault and murder counts. *Id.* The defendants were sentenced on June 25, 1997 as follows:[2]

	Count 1: Murder	**Count 2: Conspiracy to Commit Murder**	**Count 3: Assault with Intent to Commit Murder**	**Count 4: Conspiracy to Commit Assault with Intent to Commit Murder**
Petitioner (P1-1996-1547A)	Life	10 years (consecutive to Count 1)	20 years (consecutive to Counts 1 & 2)	10 years (consecutive to Counts 1, 2 & 3)
Ferrell (P1-1996-1547B)	Acquitted	10 years	20 years (consecutive to Count 2)	10 years (consecutive to Counts 2 & 3)
Sanders (P1-1996-1547D)	Life	10 years, suspended with probation	20 years, suspended with probation	10 years, suspended with probation
		Counts 2, 3, & 4 consecutive to Count 1, but concurrent with each other		

[2] Facts pertaining to sentencing are taken from the trial transcript, specifically: (1) Petitioner (State's Mem. Objecting to Pet'r's Appl. (State's Mem.) Ex. 6 (Trial Tr.) 2651:1-12); (2) Jason Ferrell, *id.* at 2660:20-2661:7; (3) Pedro Sanders, *id.* at 2677:18-2678:16; (4) Robert McKinney, *id.* at 2671:12-2672:5; and (5) Jermaine Campbell, *id.* at 2687:21-2688:10.

	Count 1: Murder	Count 2: Conspiracy to Commit Murder	Count 3: Assault with Intent to Commit Murder	Count 4: Conspiracy to Commit Assault with Intent to Commit Murder
McKinney (P1-1996-1547C)	Life	10 years, suspended with probation	10 years (consecutive to Count 1)	10 years, suspended with probation (concurrent to Count 2)
Campbell (P1-1996-1547E)	Acquitted	10 years, 18 months to serve, remainder suspended with probation	Acquitted	10 years, suspended with probation (Concurrent with Count 2)

Petitioner was twenty-five years old when sentenced and twenty-three years old when he murdered John Carpenter. (State's Mem. Objecting to Pet'r's Appl. for Post-Conviction Relief (State's Mem.) Ex. 1A (Case Summ.) 1-2, 9.)

B

Appeal to the Rhode Island Supreme Court

All of the codefendants, excluding Campbell, appealed their convictions. *Oliveira*, 774 A.2d at 903. Our Supreme Court denied the appeals and upheld the convictions. *Id.* at 926. Only Ferrell challenged his sentence, arguing that a sentence of consecutive terms for the two conspiracy convictions amounted to double jeopardy. *Id.* at 920. The Supreme Court, however, declined to consider the constitutionality of Ferrell's sentence in the absence of a motion pursuant to Rule 35 of the Superior Court Rules of Criminal Procedure. *Id.*[3]

[3] At the time of the appeal, Rule 35 stated in pertinent part, "'[t]he court may correct a sentence imposed in an illegal manner and it may reduce any sentence within one hundred twenty (120) days after the sentence is imposed.'" *Oliveira*, 774 A.2d at 920 (quoting Super. R. Crim. P 35(a)).

C

Petitioner's Application for Post-Conviction Relief

On July 3, 2002, Petitioner filed his Application in the Superior Court. (Docket.) No activity occurred for several years, and the Court dismissed the Application on January 3, 2012 for lack of prosecution pursuant to G.L. 1956 § 9-8-5. *Id.* On February 8, 2022, this Court granted Petitioner's unopposed Motion to Vacate Default and requested briefing in support of the Application. (Feb. 8, 2022 Order.) In response, Petitioner submitted a memorandum of law advancing "a single claim . . . that the sentence he received after trial was excessive and unconstitutional, both for the shear [*sic*] number of years that he was ordered to serve, but also relative to the sentences meted out by the Court to his similarly situated co-defendants." (Pet'r's Mem. 2.)

In support, Petitioner describes his rehabilitative progress while incarcerated to demonstrate that he is no longer the "immature street kid who the State and Court correctly characterized as having contributed virtually nothing to the community and society." *Id.* at 9. Petitioner represents that he has: (1) completed dozens of programs and classes while incarcerated, *id.*; (2) worked as a law clerk, a porter, and in the laundry—jobs that he argues are reserved for inmates that have proven themselves "reliable, dependable, and trusted by the correctional officers," *id.* at 10; (3) served as one of only fifteen mentors for younger inmates through the prison Mentoring Program, *id.*; (4) participated in the prison-based horticulture program, Garden Time, whose Executive Director describes Petitioner as "dedicated, hard-working . . . appreciative, respectful[,] and kind" and whose "positive attitude makes an important contribution to the Garden Time class," *id.*; (5) accepted responsibility for his crimes with remorse and empathy as reflected in his own handwritten letter to the Court, *id.* at 11-12;

and, finally (6) been granted parole from his life sentence by a unanimous parole board, which wrote that Petitioner "takes responsibility for his crime, expresses appropriate remorse[,] and we observe on his institution record he has made significant positive strides in his education, programming, rehabilitation[,] and insight." *Id.* at 12-13. Petitioner argues that his progress and remorse demonstrate his complete rehabilitation, countering the sentencing justice's 1997 concerns that Petitioner would be a threat to public safety "at whatever age." *Id.* at 13.

In further support, Petitioner submits a fact sheet from the National Institute of Mental Health (NIMH), which notes that the human brain "does not finish developing and maturing until the mid- to late 20s" and that "the prefrontal cortex[] is one of the last brain regions to mature." (Pet'r's Mem. Ex. F (NIMH Fact Sheet) 1.) The fact sheet notes that "[t]his area is responsible for skills like planning, prioritizing, and controlling impulses" and that, "[b]ecause these skills are still developing, teens are more likely to engage in risky behaviors without considering the potential results of their decisions." *Id.* Petitioner notes that our state Legislature has acknowledged this growing body of science through its 2021 amendment of G.L. 1956 § 13-8-13, which now provides that "[a]ny person sentenced for any offense committed prior to his or her twenty-second birthday, other than a person serving life without parole, shall be eligible for parole review and a parole permit may be issued after the person has served no fewer than twenty (20) years' imprisonment[.]" Section 13-8-13(e).

In sum, Petitioner argues that the sentencing justice's primary motivation in crafting Petitioner's consecutive sentencing, as evidenced by the trial transcript, was that his heinous crime necessitated a punishment and that she did not believe he was capable of rehabilitation. (Pet'r's Mem. 7-8). In light of the records and letters Petitioner has submitted to this Court evidencing his rehabilitation and remorse, he argues that his lengthy consecutive sentence is no

longer necessary to achieve the sentencing justice's purposes, *id.* at 22 (citing *State v. McGranahan*, 415 A.2d 1298, 1304 (R.I. 1980)), and was otherwise unconstitutionally excessive in the absence of "'extraordinary aggravating circumstances.'" *Id.* at 17 (quoting *State v. Ballard*, 699 A.2d 14, 18 (R.I. 1997)). He further contends that his sentence was excessive as compared to his codefendants and unjustified given that they were tried and generally treated as a group, not individually, and the sentencing justice "did not state with any specificity her reasoning and rationale for giving [Petitioner] the stiffest and most severe sentence of the five." *Id.* at 20.

On December 6, 2022, Petitioner filed a Supplemental Verified Application for Post-Conviction Relief requesting to supplement his Application with one additional issue; specifically that he received ineffective assistance of counsel from the Office of the Public Defender when it "negligently failed to file a Rule 35 Motion to Reduce Sentence within the statutorily-mandated time period after [Petitioner's] appeal was denied by the Rhode Island Supreme Court." *See* Suppl. Verified Appl. for Post-Conviction Relief (Suppl. Verified Appl.) 1; *see also* Suppl. Mem. of Law in Supp. of Appl. for Post-Conviction Relief (Pet'r's Suppl. Mem.).

II

Standard of Review

Post-conviction relief is a statutory remedy available to "[a]ny person who has been convicted of, or sentenced for, a crime . . . who claims . . . [t]hat the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state[.]" Section 10-9.1-1(a). The petitioner "bears the burden of proving, by a preponderance of the evidence, that he is entitled to postconviction relief." *Burke v. State*, 925 A.2d 890, 893 (R.I.

2007) (citing *Larngar v. Wall*, 918 A.2d 850, 855 (R.I. 2007)). Further, "[a]ny ground finally adjudicated or not so raised . . . may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief." Section 10-9.1-8.

III

Analysis

A

Res Judicata

"Section 10-9.1-8 provides a procedural bar not only to issues that have been raised and decided in a previous postconviction-relief proceeding, but also to 'the relitigation of any issue that *could have been litigated* in a prior proceeding, even if the particular issue was not raised.'" *Ferrell v. Wall,* 971 A.2d 615, 620 (R.I. 2009) (quoting *Ouimette v. State*, 785 A.2d 1132, 1138 (R.I. 2001)) (emphasis in original); *see also* § 10-9.1-8. Section 10-9.1-8 therefore codifies the doctrine of *res judicata*. *Taylor v. Wall,* 821 A.2d 685, 688 (R.I. 2003). Notwithstanding this prohibition, issues not previously raised may "be the basis for a subsequent application for post-conviction relief if the court finds it to be 'in the interest of justice.'" *Mattatall v. State*, 947 A.2d 896, 905 (R.I. 2008) (citing § 10-9.1-8).

Immediately upon sentencing, Petitioner was on notice that his sentences were imposed consecutively and that his codefendants arguably received dissimilar sentences. As noted by the Supreme Court when it addressed Ferrell's attempted appeal of his sentence, a Rule 35 motion was the available and appropriate mechanism to mount such a challenge. *Oliveira*, 774 A.2d at 920. Petitioner, therefore, could have disputed his sentence in a Rule 35 motion, particularly as it relates to any disparity in sentencing between codefendants and as to his claim that the

sentence is unconstitutionally excessive in the absence of "'extraordinary aggravating circumstances.'" (Pet'r's Mem. 17 (quoting *Ballard*, 699 A.2d at 18).) Nevertheless, the Court will address the merits of Petitioner's claims for three reasons.

First, Petitioner has asserted that his failure to file a timely Rule 35 motion was due to ineffective assistance of counsel. *See generally* Suppl. Verified Appl. As will be discussed, whether Petitioner's counsel was ineffective depends upon whether the failure to raise the Rule 35 motion prejudiced Petitioner; the issues are therefore intertwined. *See Price v. Wall*, 31 A.3d 995, 1000 (R.I. 2011) (having determined that the applicant's underlying claim of error "has no merit, it follows that applicant's counsel was not ineffective by failing to raise it").

Second, the Court also finds that it is "in the interest of justice" to address Petitioner's sentencing challenge in one narrow aspect. *See* § 10-9.1-8. This Court will address Petitioner's Application to the extent it argues that he has rehabilitated and proven himself to no longer be the unremorseful, and apparently irredeemable, individual who appeared before the sentencing justice in 1997. (Pet'r's Mem. 2.) This argument, in so far as it rests on the since-developed science and case law pertaining to the brain development and culpability of "emerging adults,"[4] was unknowable to Petitioner at the time of his prior appeal. *See Graham v. Florida*, 560 U.S. 48, 61 (2010) (stating "categorical challenge to term-of-years sentence" based on age of offender presented an issue not previously considered by the Court); *Commonwealth v. Robinson*, No. 1184CR11291, at 13 (Mass. Sup. Ct. filed July 20, 2022) (finding functional magnetic resonance imaging used to measure physiological changes in the brain only widely available in last twenty years); Clare Ryan, *The Law of Emerging Adults*, 97 WASH. U.L. REV. 1131, 1134 (2020)

[4] "Emerging adulthood, a term first coined by psychologists in the early 2000s, refers to the transitional period between approximately ages eighteen and twenty-five." Clare Ryan, *The Law of Emerging Adults*, 97 WASH. U. L. REV. 1131, 1134 (2020).

(noting psychologists first coined the term "emerging adult" in the early 2000s); *id.* at 1140 (observing that "*[i]n the last decade*, neuroscience research has revealed that the human brain continues to develop well into the twenties") (emphasis added). *But see State v. Liebzeit*, 980 N.W.2d 488, ¶ 45 (Wis. Ct. App. 2022) (finding conclusions about brain development in emerging adults "'were already in existence and well reported since at least 1988").

Third, the State has not argued for dismissal on *res judicata* grounds. *See generally* State's Mem.; *see also McKinney v. State*, 843 A.2d 463, 466 (R.I. 2004) (addressing petitioner's Eighth Amendment argument because the state failed to raise *res judicata*).

B

Rule 35 Motion to Reduce Sentence

Before reaching the substance of Petitioner's claim, it is also necessary to address the State's argument that "[w]hile Petitioner postures his application as one of post-conviction relief claiming that his sentence was excessive in violation of his constitutional rights, in substance he is arguing a Rule 35 motion to reduce sentence." (State's Mem. 4.) Rule 35 of the Superior Court Rules of Criminal Procedure permits the trial justice to correct an illegal sentence in response to a defendant's motion filed within 120 days after the sentence is imposed. *See* Super. R. Crim. P. 35(a). The State argues that the 120-day limit is designed "to prevent the exact scenario presented here, that because [Petitioner] has been a purportedly model prisoner his sentence should be reduced." (State's Mem. 10.) To be sure, such "[i]nroads on the concept of finality tend to undermine confidence in the integrity of our procedures . . . [and the] increased volume of judicial work associated with the processing of collateral attacks inevitably impairs

and delays the orderly administration of justice." *United States v. Addonizio*, 442 U.S. 178, 184 n.11 (1979).[5]

The State argues that Petitioner's Application constructively seeks resentencing because, in Petitioner's view, the sentencing justice's expectation that Petitioner was incapable of rehabilitation has been proven incorrect. (State's Mem. 10.) As such, the State maintains that Petitioner's Application is a mere "plea for leniency" that should be deferred by this Court as "the sole prerogative of the parole board." (State's Mem. 10-13, 15) (citing *State v. Ruffner*, 5 A.3d 864, 867 (R.I. 2010)). The *Ruffner* Court determined that a trial justice did not abuse his discretion when he denied a timely Rule 35 motion and "reserve[d] for the parole board's consideration the defendant's rehabilitative efforts while incarcerated." *Ruffner*, 5 A.3d at 864. The Court did not, however, categorically foreclose consideration of constitutional challenges to sentencing raised in post-conviction relief applications. *See Ramirez v. State*, 89 A.3d 836, 840 (R.I. 2014) (permitting petitioner to at least present an ineffective assistance claim and a sentencing challenge despite noncompliance with Rule 35's 120-day limitation). The jurisdictional limitation imposed on the trial justice by Rule 35 has no bearing on the Court's

[5] The Court's invocation of this language should not be construed as supporting a myopic view that administrative concerns should foreclose consideration of an incarcerated individual's evidence or rehabilitation, remorse, and transformation when otherwise permitted by law. Nor should "finality" be viewed in only one carceral sense. Crime survivor Jeanne Bishop, who lost three family members to murder, has stated:

> "An alternative type of 'finality' exists; it is humane, hopeful, restorative and healing for the offender, the victim and society. It happens when the work of punishment, penitence, remorse and rehabilitation is complete, and a young offender can re-enter society. It happens the moment when he or she walks through the prison gate, into the world where he or she can do good, honoring the lost lives of victims and the value of all human life." Jeanne Bishop, *A Victims' Family Member on Juvenile Life Without Parole Sentences: "Brutal Finality" and Unfinished Souls*, 9 DEPAUL J. FOR SOC. JUST. 85, 92 (2015).

jurisdiction under the separate postconviction relief statute. *Compare State v. Letourneau*, 446 A.2d 746, 748 (R.I. 1982) ("[T]he 120-day time period set forth in Rule 35 is jurisdictional and may not be enlarged."), *with* § 10-9.1.1 ("*Any person* who has been convicted of, or sentenced for, a crime" may claim through a postconviction relied application that "the conviction or the sentence was in violation of the constitution") (emphasis added).

Petitioner permissibly attacks his sentence on the basis that he received constitutionally deficient assistance of counsel and that "the action taken by the sentencing judge was unconstitutional, or was based on 'misinformation of constitutional magnitude.'" *Addonizio*, 442 U.S. at 187. As stated above, Petitioner argues, at least in part, that consecutive sentencing of a youthful offender is unconstitutional in light of modern science and related law showing that "youthful offenders commit [serious offenses] before their brains are fully developed and have truly matured mentally and emotionally." (Pet'r's Mem. 14.) An attack on the constitutionality of a sentence, especially in the alleged absence of effective trial counsel, is squarely within the scope of the post-conviction relief statute. *See* § 10-9.1-1(1), (6).

C

Constitutionality of Petitioner's Sentence

"The Eighth Amendment provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' The provision is applicable to the States through the Fourteenth Amendment." *Roper v. Simmons*, 543 U.S. 551, 560 (2005). "By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons." *Id.* Article I, section 8 of the Rhode Island Constitution similarly prohibits "cruel punishments" and states that "all punishments ought to be proportioned to the offense." R.I. Const. art. I, § 8.

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Proportionality to the Crime

The U.S. Supreme Court has developed two strands of Eighth Amendment precedent; "[t]he first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case[, and t]he second comprises cases in which the Court implements [a] proportionality standard by certain categorical restrictions on the death penalty." *Graham*, 560 U.S. at 59. The Court has also recently extended its categorical restrictions to certain punishments of juveniles. *See, e.g.*, *id.* at 61-62, 82 (ruling life without parole for juvenile with nonhomicide conviction is unconstitutional); *Miller v. Alabama*, 567 U.S. 460 (2012) (invalidating *mandatory* life without parole for juvenile homicide offenders).

At least as it relates to challenges to the length of term-of-years sentences, the Rhode Island Supreme Court has held that "the Eighth Amendment's prohibition against cruel and unusual punishment and the provisions of article 1, section 8, of the Rhode Island Constitution are identical." *State v. Monteiro*, 924 A.2d 784, 795 (R.I. 2007). Our Supreme Court has not had occasion, however, to address the more recent Eighth Amendment jurisprudence dealing with categorical restrictions and requirements relating to juvenile penalties. *Cf. Page v. State*, 995 A.2d 934, 952 (R.I. 2010) (Flaherty, J. concurring in part) (acknowledging *Roper* and special considerations relating to juvenile offenders: "'When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.'") (quoting *Roper*, 543 U.S. at 573-74).

The U.S. Supreme Court's case law addressing categorical constitutional prohibitions, including those pertaining to juvenile sentencing, relies on reference to "'the evolving standards

of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." *Roper*, 543 U.S. at 561 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)). For example, in 2005, in light of changed "objective indicia of consensus," the *Roper* Court reconsidered and overturned its contrary 1989 holding that the Eighth Amendment did not prohibit the death penalty for individuals under age eighteen. *Id.* at 574-75. The Court further observed that:

> "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, '[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside.'" *Id.* at 570 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).

For the same reasons, the Court has also invalidated mandatory life sentences without parole for juveniles convicted of homicides. *See Miller*, 567 U.S. at 489 (requiring individualized sentencing decisions, considering youth and its attendant characteristics, before imposing life without parole).

In 2010, the Rhode Island Supreme Court upheld, on *de novo* review, a life sentence without parole for a twenty-year-old defendant in light of the "heinousness of the crime," "the blatant disregard for human life," and the defendant's "long history of violating the law," notwithstanding the mitigating fact of his age. *Page*, 995 A.2d at 950. Just three years prior, our Supreme Court had also determined that sentencing a juvenile first-time offender to consecutive life sentences was not unconstitutional given the "nature of the crime" of shooting an innocent bystander "and the state's public safety interest in preventing gang murders and indiscriminate

shootings in the streets of our cities and towns." *Monteiro*, 924 A.2d at 795. This case law is binding on this Court; therefore, the constitutional question presented by this Application is whether there has since developed an alternate consensus that consecutive sentencing of a twenty-five-year-old violent offender that serves to foreclose consideration of parole for thirty-two years, until the defendant is fifty-seven years old, is now broadly considered cruel and unusual in light of changed views as to the relative culpability and capacity for rehabilitation of such offenders.

While the Court commends Petitioner for his efforts and personal growth, it can find no such broad consensus that would serve to invalidate Petitioner's sentence as unconstitutional. *Accord People v. Watkins*, NO. 5-21-0132, 2022 WL 4180710, at *9 (Ill. App. Ct. Sept. 12, 2022) (holding forty-five year sentence for defendant who was twenty-one years old and eleven months at the time he committed a brutal beating and murder not cruel or disproportionate under the state constitution); *see also* Columbia University Justice Lab, Emerging Adult Justice Project October 2022 Newsletter[6] (reporting Massachusetts is only the eighth state to "consider" a proposal to raise the upper age limit of its juvenile justice system from eighteen to twenty-one); Alex A. Stamm, *Young Adults Are Different, Too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 TEX. L. REV. 72, 79-93 (2017) (presenting data on state-by-state sentencing and diversion programs for young adult offenders and noting that most apply to people ages eighteen to twenty-one with only some applying as broadly as age twenty-five).

[6] Available at https://myemail.constantcontact.com/Emerging-Adult-Justice-Project-October-2022-Newsletter.html?soid=1130425768648&aid=TbdN87GTJyQ.

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Proportionality to Codefendants

Petitioner also argues that "the sentence [Petitioner] received was excessive relative to the sentences received by his co-defendants, specifically that he is the only one who received consecutive time to serve." (Pet'r's Mem. 19.) "A manifestly excessive sentence is a sentence disparate from sentences generally imposed for similar offenses when the heavy sentence imposed is without justification." *State v. Ouimette*, 479 A.2d 702, 704 (R.I. 1984). "The defendant bears the burden of proving that the sentence violates this standard." *State v. Gordon*, 539 A.2d 528, 530 (R.I. 1988).

The trial record belies Petitioner's contention that he was the only defendant to receive consecutive sentences. Jason Ferrell received identical consecutive sentences on Counts 2 through 4 as Petitioner. *See supra*, Table at 2-3. Robert McKinney, the individual who shot John Carpenter alongside Petitioner, also received ten years to serve on Count 3 to run consecutively with his life sentence for Count 1. *Id.* Although Petitioner was sentenced to twenty years on Count 3 compared to McKinney's ten years, the trial justice noted that this was not Petitioner's first violent offense (State's Mem. Ex. 6 (Trial Tr.) 2645:14-18); that McKinney had no other history of violent crimes, *id.* at 2667:25-2668:2; and that McKinney was the product of tragic childhood circumstances. *Id.* at 2662:23-2663:17. As such, the trial justice concluded that McKinney presented "somewhat different circumstances than [his] codefendants [Petitioner] and Ferrell." *Id.* at 2670:7-11. "[E]very sentencing presents different and potentially unique circumstances" and the trial justice identified "important distinctions" justifying McKinney's lesser sentence for Count 3. *State v. Morris*, 863 A.2d 1284, 1288 (R.I. 2004). In

any event, Petitioner's argument relies on his belief "he is the only one who received consecutive time to serve," which is factually incorrect.

Petitioner also contends, without explanation, that Pedro Sanders is one of his "most-similarly situated co-defendants." (Pet'r's Mem. 15.) To the contrary, the trial justice identified two key distinctions justifying Sanders' lesser sentence. First, although Sanders drove the vehicle that carried John Carpenter's shooters, he did not pull the trigger himself. (State's Mem. Ex. 6 (Trial Tr.) 2677:2-3.) Second, she further distinguished Sanders from Petitioner on the basis that Sanders "[did] not bring the kind of record of involvement in criminal activity that his codefendants have." *Id.* at 2677:10-12. Having failed to satisfy his burden of showing that his sentence was manifestly excessive as compared to his codefendants, Petitioner's claimed Eighth Amendment violation must be denied.

D

Ineffective Assistance of Counsel

Turning to Petitioner's supplemental claim of ineffective assistance of counsel, "[t]he law in Rhode Island is well settled that this Court will pattern its evaluations of the ineffective assistance of counsel claims under the requirements of *Strickland v. Washington*, 466 U.S. 668 (1984)." *Brennan v. Vose*, 764 A.2d 168, 171 (R.I. 2001). The *Strickland* standard consists of two prongs: (1) Petitioner must overcome the rebuttable presumption of his counsel's competence by demonstrating that "counsel's performance . . . [fell] below an objective standard of reasonableness considering all the circumstances"; and (2) "that the deficient performance was so prejudicial to the defense and the errors were so serious as to amount to a deprivation of the applicant's right to a fair trial." *Barros v. State*, 180 A.3d 823, 829 (R.I. 2018) (internal quotations and citations omitted).

Petitioner fails to satisfy both *Strickland* requirements. As to the first, he argues only that "[c]ounsel for the defendant had an affirmative obligation to file [a Rule 35] motion, or at the very least, to discuss with his client the strategy and implications of either filing, or not filing, the motion," and that "[b]y failing to file that motion counsel provided substandard legal representation." (Pet'r's Suppl. Mem. 3-4.) Our Supreme Court has previously rejected this argument, stating that the mere failure to file a Rule 35 motion is not constitutionally deficient representation *per se*. *Burke*, 925 A.2d at 893. As to the second *Strickland* prong, having determined *supra* that Petitioner's sentence was not unconstitutional, Petitioner suffered no prejudice from his counsel's failure to file a Rule 35 motion, and his ineffective assistance claim must fail. *Price*, 31 A.3d at 1000 (where underlying constitutional claim of error was meritless, trial counsel was not ineffective in failing to raise it).

E

The Rehabilitative Ideal & Second Look Sentencing

Although the Court is constrained by the law to hold that Petitioner's sentence is constitutional, it nevertheless emphasizes two important observations. First, in over twenty years, this Court has rarely—if ever—been presented with an application for post-conviction relief demonstrating the level of genuine rehabilitation and remorse apparent from Petitioner's Application. Petitioner's crime was heinous, as he acknowledges, and this Court emphasizes the irreversible and multi-generational harm Petitioner caused when he took John Carpenter's life. Petitioner deservedly received a life sentence in retribution for that crime, and he has been paroled from that sentence after "tak[ing] responsibility . . . , express[ing] appropriate remorse[,] and . . . ma[king] significant positive strides in his education, programming, rehabilitation[,] and insight." (Pet'r's Mem. App. E (Inmate Parole Information) 2.)

At issue today are the additional consecutive sentences Petitioner is currently serving on the remaining Counts. As the State observed, since Petitioner was originally sentenced, the relevant sentencing statute in Rhode Island has become even more punitive; and were he to be sentenced under the amended statute for the same crimes, Petitioner would face mandatory consecutive life sentences for which he would not have been eligible for parole until 2035. *See* State's Mem. 9 (citing G.L. 1956 § 13-8-13). Increased use of mandatory minimums, consecutive sentencing, and life without parole is the prerogative of the Legislature. "[I]n recognizing the authority of the Legislature to determine the appropriate punishment for a given crime, this Court has refused 'to substitute our will for that of a body democratically elected by the citizens of this state and to overplay our proper role in the theater of Rhode Island government.'" *Monteiro*, 924 A.2d at 794 (quoting *State v. Feliciano*, 901 A.2d 631, 648 (R.I. 2006)).

Jurists and commentators have noted, however, that the ascendence of such practices since the 1970s is indicative of an abandonment of the "rehabilitative ideal." *See, e.g.*, *Mistretta v. United States*, 488 U.S. 361, 365 (1989) (discussing history of federal sentencing and observing that "[r]ehabilitation as a sound penological theory came to be questioned and, in any event, was regarded by some as an unattainable goal for most cases"); FRANCIS A. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL 7-10 (1981) (explaining decline of the rehabilitative ideal in the 1970s). At least one historian has posited that:

> "When juvenile court's doors were finally opened to black youth in more than minimal numbers after the middle of the twentieth century, the juvenile court began to turn away from rehabilitation and toward punishment as its focus. In fact, the increase in disproportionate minority contact with juvenile court overlaps with the decline of the rehabilitative ideal and the rise of a more punitive juvenile court." Kevin Lapp, *Young Adults & Criminal Jurisdiction*, 56 AM. CRIM. L. REV. 357, 386 (2019) (citing GEOFF

K. WARD, THE BLACK CHILD-SAVERS: RACIAL DEMOCRACY AND JUVENILE JUSTICE 4 (2012)).

The relevance of this history to Petitioner's Application implicates the Court's second observation; that the U.S. Supreme Court's recent jurisprudence dealing with juvenile offenders and other legislative efforts nationwide to recognize and reward prisoner rehabilitation demonstrate a reemphasis of the rehabilitative ideal in our society. The U.S. Supreme Court has referenced the value of a prisoner's "chance for fulfillment outside prison walls, . . . chance for reconciliation with society, [and] hope" and observed that "[m]aturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation." *See Graham*, 560 U.S. at 79; *see also* Chad Flanders, *The Supreme Court and the Rehabilitative Ideal*, 49 GA. L. REV. 383, 430 (2015) (concluding "*Graham* has, if only by the centrality of the concept of rehabilitation in its holding, put rehabilitation back on the agenda"). Beyond the discussion of juveniles in *Graham*, many states have prioritized rehabilitation through the enactment of laws and implementation of programs for "emerging adults" utilizing intervention models focused on rehabilitation, training, and reintroduction. *See generally* Stamm, *supra*, at 79-99.

For all individuals with long-term sentences, such as Petitioner, the American Law Institute's latest iteration of the *Model Penal Code: Sentencing* now recommends states adopt a judicial post-sentencing mechanism to allow for sentence modification when warranted by "the prisoner's advanced age, physical or mental infirmity, exigent family circumstances, or *other compelling reasons*[.]" MODEL PENAL CODE: SENTENCING § 11.03(1) (prepublication draft 2022). Similarly, the American Bar Association has adopted two resolutions advocating for this type of judicial resentencing review, commonly referred to as "second-look sentencing." *See*

American Bar Association, Resolution 502 (adopted 2022)[7] (calling for second look resentencing hearings after ten years of incarceration); American Bar Association, Resolution 604 (adopted 2022)[8] (advocating for reduced mass incarceration, in part through adoption of second look laws).

Federal and state lawmakers are already making efforts to put these recommendations into practice. Had Petitioner been sentenced in some of these other jurisdictions, his Application for relief could be considered. For example, California Assembly Bill 2942, passed in 2018, allows district attorneys to initiate resentencing. *See* 2018 Cal. Legis. Serv. ch. 1001 (A.B. 2942) (current version at § 1172.1(a)(1) (West 2022)). In 2020, Washington state enacted Senate Bill 6164, modeled after California's law. *See* Felony Resentencing—Prosecutorial Discretion, 2020 Wash. Sess. Laws ch. 203, § 2 (codified at Wash. Rev. Code Ann. § 36.27.130 (West 2020)). In 2021, Washington, D.C. mayor Muriel Bowser signed into law the District's Second Look Amendment Act, which allows a person who committed a crime before the age of twenty-five, and who has served a minimum of fifteen years in prison, to apply to the D.C. Superior Court to have their sentence reviewed. *See* Omnibus Public Safety and Justice Amendment Act of 2020, D.C. Law 23-274 § 1203 (codified at D.C. Code § 24-403.04 (2021)).[9]

Although Rhode Island has not enacted second-look sentencing, our Legislature has pursued other reforms that demonstrate reestablishment of the rehabilitative ideal. For example, "[p]rior to May 2008, Rhode Island had one of the most conservative state sentence reduction

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[7] Available at https://www.americanbar.org/news/reporter_resources/annual-meeting-2022/house-of-delegates-resolutions/502/.

[8] Available at https://www.americanbar.org/news/reporter_resources/annual-meeting-2022/house-of-delegates-resolutions/604/.

[9] For additional information on efforts in other jurisdictions, see The Sentencing Project's report titled *A Second Look at Injustice*, available at https://www.sentencingproject.org/reports/a-second-look-at-injustice/. Although not ultimately enacted, Senator Cory Booker proposed a federal Second Look Act in 2019. *See* S. 2146, 116th Cong. (2019).

formulas in the country." R.I. Dept. of Corrections, *FY 2019 Annual Population Report* 17 (Sept. 2019).[10] In 2012, however, Rhode Island enacted amended "Time Off for Good Behavior" legislation. *See* G.L. 1956 §§ 42-56-24, 42-56-26 (as modified P.L. 2012, ch. 152, § 1, effective July 1, 2012). The Department of Corrections has since observed "across the board reductions in percent of time served" and that "recent recidivism studies do not show any increase in return rates for offenders." *FY 2019 Annual Population Report*, *supra*, at 17. As noted above, the Rhode Island Legislature also recently amended § 13-8-13 to permit parole review eligibility after twenty years imprisonment for anyone sentenced for any offense committed prior to his or her twenty-second birthday, other than a person serving life without parole. Section 13-8-13(e).

The Court recites these legislative efforts because "the 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989)). The Court observes that society seems to be rediscovering the value of the rehabilitative ideal—especially as it relates to our young people—an ideal embodied by Petitioner in this Application. In light of controlling constitutional law, however, it is impossible for this Court to hold that this legislation demonstrates a national consensus of the unconstitutionality of continued incarceration of an otherwise rehabilitated individual. *See Graham*, 560 U.S. at 71 (recognizing additional legitimate goals beyond rehabilitation of "retribution, deterrence, [and] incapacitation").

This Court is reminded of the sage observation of Chief Justice Earl Warren that "[i]t is the spirit and not the form of the law that keeps justice alive." Earl Warren, *Law and the Future*

[10] Available at https://doc.ri.gov/sites/g/files/xkgbur681/files/docs/FY19-Annual-Population-Report.pdf.

9 (1955). If Rhode Island had legislation permitting a "second look" or review of Petitioner's sentence, as embraced by the Model Penal Code and the American Bar Association, this Court would have no hesitation in reconsidering Petitioner's sentence imposed over twenty-five years ago.

IV

Conclusion

For the reasons stated above, this Court finds that Petitioner has failed to meet his burden of establishing by a preponderance of the evidence that post-conviction relief is warranted. Accordingly, Petitioner's Application is regrettably denied.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Gahlil Oliveira v. State of Rhode Island**
CASE NO:	**PM-2002-3654**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 7, 2023**
JUSTICE/MAGISTRATE:	**Procaccini, J.**
ATTORNEYS:	
For Plaintiff:	**Glenn Sparr, Esq.**
For Defendant:	**Judy Davis, Esq.**