UNDER SEAL AND SUBJECT TO PUBLIC INSPECTION ONLY

BY ORDER OF A COURT OF THE APPELLATE DIVISION

NO. COA23-470 THIRTEEN-A DISTRICT

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

 )

 v. ) From Columbus County

 ) 16 CRS 1246-49

RILEY DAWSON CONNER )

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DEFENDANT-APPELLANT’S BRIEF

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DEFENDANT-APPELLANT’S BRIEF

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# ISSUE PRESENTED

1. Did the trial court violate the Eighth Amendment to the United States Constitution and Article I, § 27 of the North Carolina Constitution as applied to Riley by imposing consecutive sentences that deprive Riley of parole eligibility for a minimum of 37 years and a maximum of 39.4 years?

**STATEMENT OF THE CASE**

In March 2016, a juvenile court counselor filed petitions against Riley Conner charging him with murder, rape, sex offense, felonious breaking or entering, felonious larceny, and possession of stolen goods. (R pp 3-12) At the time, Riley was 15-years old. The petitions were heard in juvenile court on 8-9 December 2016. The court found no probable cause for the sex offense petition. However, the court found probable cause for the remaining petitions and transferred them to superior court. (R p. 13-16)

On 14 December 2016, a Columbus County grand jury indicted Riley for breaking or entering, larceny after breaking or entering, larceny of a motor vehicle, two counts of possession of stolen goods, first-degree rape, and murder. (R pp 18-22) On 18 February 2019, Riley pled guilty to first-degree murder based on premeditation and deliberation and first-degree rape in exchange for the dismissal of the remaining charges. (R pp 26-29) The Honorable Michael A. Stone then imposed consecutive sentences of 240 to 348 months for first-degree rape and life with the possibility of parole for first-degree murder. (R pp 32-35) Riley appealed.

In an opinion dated 31 December 2020, the Court of Appeals affirmed Riley’s sentences. However, one judge dissented. Riley then appealed to the Supreme Court of North Carolina based on the dissent. On 17 June 2022, the Supreme Court of North Carolina reversed the opinion issued by the Court of Appeals and remanded the case to superior court. *State v. Conner*, 381 N.C. 643 (2022).

The case was then heard for resentencing on 1 November 2022 before Judge Stone. At the conclusion of the hearing, Judge Stone imposed consecutive sentences of life in prison with the possibility of parole for first-degree murder and 144-233 months for first-degree rape. (R pp 148-51) Riley appealed. (R pp 152-53)

**STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW**

 Riley appeals under N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a).

**STATEMENT OF THE FACTS**

 On 1 November 2022, Riley’s case was heard for re-sentencing in Columbus County Superior Court. As part of the hearing, Riley’s attorney asked the court to run the sentences concurrently. (T p 7) He said, “We’re here, again, under the Eighth Amendment and Article I, Section 27 of the North Carolina Constitution based on what’s fair and not cruel and unusual punishment.” (T p 9) He stated that the trial court had previously found 19 mitigating factors at Riley’s original sentencing hearing. The attorney also said, “You recall his age, situation, his home life.” (T p 8) He stated that Riley suffered from epilepsy and started using marijuana at “age seven or eight, then alcohol, then drugs.” (T p 8) He also noted that Riley’s parents were incarcerated throughout Riley’s life. According to the defense attorney, “[A]ll those things led up to this day when he was only 15 years old.” (T p 8)

 The defense attorney also noted that Riley acknowledged wrongdoing early in the investigation. As the attorney explained, Riley “met with the SBI, before he had a lawyer, with his mother.” (T p 8) The attorney also noted that Riley “did stand before Your Honor and enter a plea.” (T p 9)

The prosecutor stated that because the trial court had determined that Riley was redeemable, the trial court was required by the Supreme Court’s decision in the case to grant Riley parole eligibility after 40 years. (T p 4) The prosecutor further stated that the court could still impose consecutive sentences and comply with the Supreme Court’s ruling. According to the prosecutor, the court could impose life with parole for first-degree murder and then the lowest mitigated sentenced of 144-233 months for the first-degree rape conviction. The prosecutor stated that the maximum sentence for the first-degree rape conviction would be reduced by 60 months as part of post-release supervision under N.C. Gen. Stat. § 15A-1354(b)(1), which would give Riley parole eligibility just under the 40-year threshold. (T p 5) Later, the cousin and mother of Felicia Porter, the victim in this case, made statements asking the court not to grant Riley release. (T pp 11-14)

 At the conclusion of the hearing, the court re-adopted the findings of fact that it made at Riley’s original sentencing hearing. (T p 17) Those findings were the following:

1. Riley was fifteen years and six months old on the offense date;
2. Riley “exhibited numerous signs of developmental immaturity . . . . exacerbated by low levels of structure, supervision, and discipline;”
3. Riley’s father was incarcerated for most of defendant’s life and his mother struggled with substance abuse and incarceration and “has not been present for the vast majority of defendant’s life;”
4. Riley “has been passed to one family member to another for basic living and custodial purposes and never received any parental leadership, guidance, or structure;”
5. Riley “suffers from chronic frontal lobe epilepsy which went untreated for years causing daily seizures” which then caused “brain injury” and “chronic sleep deprivation;”
6. Riley was subjected “in his transient living conditions to criminal activity, violence, and rampant substance abuse,” with his own substance abuse starting “at approximately age nine;”
7. Riley’s “only role model was a negative role model, Brad Adams, an individual with a horrible criminal history and habitual felon. . . . defendant looked up to Brad Adams, who was ten years senior to [ ] defendant in age;”
8. Riley “had a limited ability to fully appreciate the risks and consequences of his conduct based upon the totality of his poor upbringing;”
9. Riley’s “I.Q. and educational levels appear at the low range of average to below average;”
10. Riley “is a record level I for sentencing purposes;”
11. Riley “was subjected to an overall environment of drugs and other criminal activity;”
12. Riley “would benefit from education, counseling, and substance abuse treatment while in confinement and incarceration;”
13. When Riley was four-years old, Riley “witnessed a drug raid at his home resulting in the arrest of his father and his uncle,” after which he “started to experience night terrors;”
14. When Riley was six-years old, he “was removed from his parents’ home due to the drug abuse in the home;”
15. Riley’s grandmother reported he “had always been affected by such nightmares and night terrors and that he would awaken three or four times a night with what is now purported to be seizures;” and
16. Riley “has recently demonstrated some increased maturity while being incarcerated, and [ ] he did agree to enter this plea [on 18 February 2019].”

(R pp 91-93)

The court also found the following three additional mitigating factors under N.C. Gen. Stat. § 15A-1340.16(e):

* (4) (“The defendant’s age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant’s culpability for the offense”)
* (11) (“Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer”)
* (15) (“The defendant has accepted responsibility for the defendant’s criminal conduct”).

(T p 19)

The court said it had reviewed the Supreme Court’s decisions in this case and *State v. Kelliher*, 381 N.C. 558 (2022). After, it imposed consecutive sentences of life with parole for first-degree murder and 144-233 months in prison for first-degree rape and set the sentences to run consecutively. (T p 17) The court then asked whether there were any issues the defense attorney wanted to raise. The defense attorney responded, “No, sir. But, again, under the Eighth Amendment and Article I, Section 27 of the state constitution, we would give notice of appeal.” (T p 18)

**ARGUMENT**

1. **The trial court violated the Eighth Amendment to the United States Constitution and Article I, § 27 of the North Carolina Constitution as applied to Riley by imposing consecutive sentences that deprive Riley of parole eligibility for a minimum of 37 years and a maximum of 39.4 years.**

This case should be remanded for resentencing because the trial court imposed consecutive sentences that violate the Eighth Amendment and Article I, § 27 of the North Carolina Constitution as applied to Riley. The combined sentences deprive Riley of parole eligibility for a minimum of 37 years. The sentences are unconstitutional as applied to Riley because the trial court found nineteen separate mitigating factors demonstrating that Riley was very young on the offense date, that he was neglected as a child and suffered significant damage to his frontal lobe, and that he admitted his guilt and accepted responsibility for his actions. The sentences also exceed national trends in court decisions and legislative enactments involving sentences for juveniles convicted of multiple offenses, including convictions for first-degree murder. Those trends involve granting parole eligibility to juvenile defendants convicted of multiple offenses after a range of fifteen to thirty years of imprisonment. In light of all of these factors, this Court should remand this case for a new sentencing hearing.

* 1. **Standard of review.**

Constitutional questions are reviewed *de novo*. *The Piedmont Triad Reg’l Water Auth. v. Sumner Hills, Inc.*, 353 N.C. 343, 348 (2001). Under *de novo* review, the reviewing court considers the matter anew. *Sutton v. N.C. Dep’t of Labor*, 132 N.C. App. 387, 389 (1999).

* 1. **Riley’s circumstances involved severe neglect and damage to his frontal lobe, but also personal accountability.**

Defendants in criminal cases are protected against cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. The prohibition against cruel and unusual punishment stems from the basic precept of justice that punishment for a crime should be graduated and proportioned to both the offender and the offense. *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (*quoting Roper v. Simmons*, 543 U.S. 551, 560 (2005)). When a defendant raises an as-applied challenge under the Eighth Amendment, “the Court considers all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive.” *Graham v. Florida*, 560 U.S. 48, 59 (2010). Further, “[a]n as-applied challenge asserts that a law, which is otherwise constitutional and enforceable, may be unconstitutional in its application to a particular challenger on a particular set of facts.” *Singleton v. N.C. HHS*, 284 N.C. App. 104, 115 (2022). *See also Britt v. State*, 363 N.C. 546, 550 (2009) (upholding an as-applied challenge to the felon in possession of a firearm statute because the plaintiff was nonviolent and had “responsibly, safely, and legally owned and used firearms for seventeen years . . . .”).

Here, the trial court imposed consecutive sentences of life with the possibility of parole after 25 years for first-degree murder and 144-233 months in prison for first-degree rape, with the maximum sentenced reduced to 173 months by operation of law. These sentences prevent Riley from being considered for parole for a minimum of 37 years and a maximum of 39.4 years. Based on all the circumstances in this case, the sentences violate the Eighth Amendment as applied to Riley. The offenses were unquestionably troubling. Riley was convicted of raping and killing his aunt. These crimes and the pain Riley caused are “irrevocable.” *State v. Kelliher*, 381 N.C. 558, 597 (2022). However, the crimes that Riley committed are not the only factors that are relevant to determine whether his sentence is unconstitutional.

“A defendant’s particular circumstances are relevant to an as-applied Eighth Amendment claim and could render a sentence unconstitutional.” *United States v. Young*, 766 F.3d 621, 626 (6th Cir. 2014). At re-sentencing, the trial court re-adopted the sixteen mitigating factors that it found at Riley’s original sentencing hearing in 2019. (T p 17) It also found three additional mitigating factors: (1) Riley’s age or immaturity at the time of the offense significantly reduced his culpability, (2) he voluntarily acknowledged wrongdoing at an early stage of the criminal process, and (3) he accepted responsibility for his conduct. (R p 147) In total, the court found nineteen separate mitigating factors in Riley’s case. Broadly, these mitigating factors encompassed three areas of Riley’s life that warrant a lesser sentence.

First, Riley was very young on the offense date for this case. When he committed the rape and murder, Riley was only 15-years old. Over a decade ago, the United States Supreme Court concluded that “children are constitutionally different from adults for purposes of sentencing.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012). However, this principle was not new. In 1982, the Court held that the “chronological age of a minor” was a “mitigating factor of great weight . . . .” *Eddings v. Oklahoma*, 455 U.S. 104, 115 n.11 (1982). According to the Court, while “crimes committed by youths may be just as harmful to victims[,] . . . they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults.” *Id*. at 115 n.11.

A few years later, the Court observed that adolescents are “much more apt to be motivated by mere emotion or peer pressure than is an adult.” *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). More recently, the Court reiterated that adolescents “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *J.D.B. v. North Carolina*, 564 U.S. 261, 262 (2011). Our Supreme Court has agreed with these principles, asserting that “‘less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult.’” *State v. Young*, 369 N.C. 118, 120-21 (2016) (*quoting Thompson*, 487 U.S. at 835).

In our own law, the age of 15 is recognized as being very young for prosecution in adult court. For decades, the age of 16 was the point where our state drew the line between juvenile court and adult court. That is, it wasn’t until 2019 that 16- and 17-year-olds were finally included in juvenile court. *See* 2017 N.C. Sess. Laws Ch. 57 (S 257). Even now, the State can transfer 16- and 17-year-olds to adult court if it obtains an indictment for a Class A-G felony. N.C. Gen. Stat. § 7B-2200.5. However, the State can only transfer charges against 13- to 15-year-olds after a discretionary transfer hearing and a finding of probable cause if the offense charged is anything other than a Class A felony. N.C. Gen. Stat. § 7B-2200.

Second, Riley suffered significantly during his childhood. At the center of his life was neglect. As our Supreme Court explained, Riley’s childhood was “challenging, chaotic, and marked by tremendous instability.” (R p 78) Riley’s parents struggled with drug addiction and were largely absent from his life due to drug use or imprisonment. Riley’s parents missed most of his birthdays and he was picked on at school because his classmates knew that his parents abused drugs. At one point when Riley was seven years-old, he ran next to his mother’s car yelling “I hate you” as she drove away and left him behind. (R p 80) Riley also lived in an area that his aunt Kim Gore referred to as the “pits of hell” because of drug use and prostitution. (R p 79)

Riley also suffered from mesial temporal sclerosis and epilepsy, both of which caused significant damage to his frontal lobe. At school, he was neglected, as well. He failed tests, was held back a grade, attended an alternative school, and was ultimately expelled from school altogether when he was in sixth grade. At that point, he was supposed to be home-schooled by his grandmother, but was instead left on his own. (R pp 82-84)

Riley’s life from childhood through the offense date was pervaded by a total lack of structure and chronic instability. Indeed, Riley experienced several Adverse Childhood Experiences (“ACEs”) and he experienced them intensely. ACEs are a list of “ten traumatic experiences that are commonly associated with toxic stress.” Eduardo Ferrer, *Transformation Through Accommodation: Reforming Juvenile Justice by Recognizing And Responding to Trauma*, 53 Am. Crim. L. Rev. 549, 564 (2015). Viewing Riley’s life with an understanding of childhood trauma, Riley experienced at least four ACEs: (1) physical neglect, (2) emotional neglect, (3) household substance abuse, and (4) a family member who was incarcerated. While most adolescents naturally act impulsively and have a lessened ability to self-regulate, teenagers who have experienced toxic stress as a result of ACEs “may have even more difficulty controlling their impulses than the average adolescent because the traumatized youth acts instinctually, and prioritizes survival over higher-order executive functioning.” *Id*. at 573. These factors were all the more harmful to Riley given the damage to his frontal lobe.

Third, Riley accepted responsibility for his crimes. Accepting responsibility is “important.” *State v. Warren*, 708 N.E.2d 288, 295 (Ohio Ct. App. 1998). One of the purposes of the mitigating factor for accepting responsibility is to “allow a sentencing judge to recognize that the earlier one admits responsibility, the better one’s chance of rehabilitation.” *State v. Brown*, 314 N.C. 588, 595 (1985). In this case, Riley gave three statements to investigators. In his final statement, which he made 18 days after his aunt’s body was found, he admitted that he raped and killed her. (R pp 89-90) Later, in superior court, he pled guilty to first-degree rape and first-degree murder. (R pp 26-29) “Acceptance of responsibility is the beginning of rehabilitation.” *McKune v. Lile*, 536 U.S. 24, 47 (2002). In this case, Riley took a critical step toward rehabilitation when he accepted responsibility during the investigation and then later when he pled guilty to the charges.

Long-held case law “underscore[s] the essential principle that, under the Eighth Amendment, the State must respect the human attributes even of those who have committed serious crimes.” *Graham v. Florida*, 560 U.S. 48, 59 (2010). That is, “the punishment should fit the offender and not merely the crime.” *Pepper v. United States*, 562 U.S. 476, 488 (2011) (*quoting Williams v. New York*, 337 U.S. 241, 247 (1949)). Here, the “human attributes” of Riley show that he endured an unimaginable childhood, suffered significant damage to his frontal lobe, and was very young on the offense date. He also confessed to his crimes and admitted his guilt to a judge, demonstrating that he has the ability to be rehabilitated. All of these factors demonstrate that sentences barring parole eligibility for a minimum of 37 years violate the Eighth Amendment as applied to Riley.

* 1. **The sentences Riley received are an outlier as compared to sentences that are now permitted in other jurisdictions.**

In addition to these individual factors, the sentences imposed in this case are not consistent with national trends in sentencing juveniles convicted of first-degree murder. Indeed, recent reforms in other jurisdictions demonstrate *why* the sentences in this case are cruel and unusual as applied to Riley. In *People v. Reyes*, 63 N.E.3d 884 (Ill. 2016), for example, the Supreme Court of Illinois vacated a mandatory minimum aggregate sentence of 97 years’ imprisonment for a 16-year-old convicted of one count of first-degree murder and two counts of attempted murder. The Court held that the combined sentences constituted a de facto LWOP sentence and remanded the case for re-sentencing. The Court also explained that a 32-year mandatory minimum sentence under recently-enacted statutes in Illinois would be permissible. *Id*. at 889. Similarly, in *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022), the Supreme Court of Tennessee struck down a 51-year minimum sentence for a 16-year-old convicted of felony murder and aggravated robbery. As part of its opinion, the Court granted the defendant parole eligibility after 25 to 36 years in prison. *Id*. at 53. Compared to the permissible sentences in *Reyes* and *Booker*, the minimum sentence Riley received is five years higher that the sentence in *Reyes* and over twelve years higher than the minimum sentence in *Booker*.

Legislatures around the country have also enacted reforms in juvenile sentencing and have actually gone further than cases like *Reyes* and *Booker*. Indeed, the majority of legislatures that have enacted sentencing reforms for juveniles convicted of multiple crimes have set parole eligibility much earlier than Riley’s. *See* *State v. Fletcher*, No. A-11802, 2023 Alas. App. LEXIS 55, \*21 (Alaska Ct. App. May 12, 2023) (observing that “the vast majority” of legislatures that have addressed this issue require a juvenile to serve “no more than 20-30 years before becoming eligible for parole”); *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013) (observing that many of the new statutes have allowed parole eligibility for juveniles sentenced for homicide offenses to begin after “fifteen or twenty-five years of incarceration”).

Over the past ten years, the following states enacted legislation imposing limits on sentences for juveniles convicted of multiple offenses, including first-degree murder:

* In 2014, West Virginia enacted a law providing for parole eligibility after 15 years for juvenile defendants convicted of “one or more offenses.” W. Va. Code § 61-11-23(b) (2014).
* In 2019, Oregon passed a law granting parole eligibility to juvenile defendants after 15 years for “an offense or offenses” committed when the defendant was under 18. Or. Rev. Stat. § 144.397(1)(a) (2019).
* In 2020, Virginia established parole eligibility after twenty years for defendants under eighteen convicted of “a single felony offense or multiple felony offenses.” Va. Code Ann. § 53.1-165.1(e) (2020).
* In 2021, Ohio enacted a similar law granting parole eligibility for juvenile defendants. Depending on the circumstances of the case, juvenile defendants convicted of one or more homicide offenses are eligible for parole after either 25 or 30 years. Ohio Rev. Code Ann. § 2967.132(c)(2) and (c)(3) (2021).
* In 2022, Illinois established parole eligibility for juveniles under 21 convicted of first-degree murder after serving 20 years of the defendant’s “sentence or sentences.” 730 Ill. Comp. Stat. 5/5-4.5-115(b) (2022).
* In 2023, New Mexico enacted a law granting parole eligibility after 25 years for juveniles convicted of multiple first-degree murder convictions and 15 years for concurrent or consecutive sentences for other convictions. N.M. Stat. Ann. § 31-21-10.2(a) (2023).
* In 2023, Minnesota passed a law permitting juveniles convicted of multiple crimes to be eligible for parole after 15 years for offenses that do not involve separate victims, 20 years for offenses with separate victims, and 30 years if the trial judge imposed three or more consecutive life sentences. S.F. 2909, 93rd Leg. (Minn. 2023); Minn. Stat. § 244.05(4b).

In Eighth Amendment cases, it is not so much the “number” of States that have enacted reform that is significant, but “the consistency of the direction of change.” *Atkins v. Virginia*, 536 U.S. 304, 315 (2002). A change of direction is all the more significant if it favors those accused of crimes given “the well-known fact that anticrime legislation is far more popular than legislation providing protections for persons guilty of violent crime . . . .” *Id*. Here, the combined sentences depriving Riley of parole eligibility for a minimum of 37 years and a maximum of 39.4 years significantly exceed the sentences that are now authorized under emerging legislation and case law in many other states. Put another way, these trends provide an additional indication that the sentences the court imposed in this case are excessive and violate the Eighth Amendment as applied to Riley.

* 1. **The sentences also violate Article I, § 27 of the North Carolina Constitution as applied to Riley.**

In addition to finding that the sentences violate the 8th Amendment, this Court should also find that the sentences separately violate N.C. Const. art. I, § 27 as applied to Riley. “It is fundamental that state courts be left free and unfettered . . . in interpreting their state constitutions.” *Minnesota v. Nat’l Tea Co.*, 309 U.S. 551 (1940). There are four reasons to grant relief separately under our state constitution.

First, the federal constitution “sets the floor, not the ceiling” for the protection of rights. *Florida v. Powell*, 559 U.S. 50, 71 (2010) (*quoting Rigterink v. State*, 2 So. 3d 221, 241 (2009)). That is, it has long been recognized that a State may “adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.” *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980). Our own Supreme Court has done just that, holding that protections under the state constitution must be given a “liberal interpretation in favor of its citizens . . . .” *Corum v. Univ. of N.C.*, 330 N.C. 761, 783 (1992). The Court further observed that the “obligation to protect the fundamental rights of individuals is as old as the State.” *Id*.

Second, the text of our state constitution is more expansive than the text of the Eighth Amendment. As explained by our Supreme Court in Riley’s case, Article I, § 27 – “on its face” – offers more protection against extreme punishments than the Eighth Amendment because it uses the disjunctive “or” instead of the conjunctive “and.” *State v. Conner*, 381 N.C. 643, 667 (2022). Because of this textual difference, N.C. Const. art. I, § 27 offers protections that are “distinct from” and “broader than” the protections under Eighth Amendment. *State v. Kelliher*, 381 N.C. 558, 579 (2022).

Third, the North Carolina Constitution includes an “expressed commitment to nurturing the potential of all our state’s children.” *Kelliher*, 381 N.C. at 586. Article I, § 15 guarantees the right to education, while article IX, § 1 states that “schools, libraries, and the means of education shall forever be encouraged.” This constitutional commitment to “education generally, and educational opportunity in particular” reflects the understanding that “our collective citizenry” is better off when all children are given the opportunity to realize their potential. *Id*. (*quoting Hart v. State*, 368 N.C. 122, 138 (2015)).

Fourth, our constitution also contains a commitment to reforming prisoners. *See* N.C. Const. Art. XI, § 2 (stating that “[t]he object of punishments” is “not only to satisfy justice, but also to reform the offender and thus prevent crime . . . .”). A sentence that “disavows the goal of reform” for a juvenile defendant is “cruel.” *Kelliher*, 381 N.C. at 586.

For all the reasons described above, the sentences imposed in this case violate Article I, § 27 of the North Carolina Constitution as applied to Riley. When Article I, § 27 is construed liberally in favor of Riley and with the understanding that it provides broader protection than the Eighth Amendment and includes commitments to fostering the potential of children and reforming prisoners, denying parole eligibility for a minimum of 37 years is unconstitutional as applied to Riley. Given the circumstances of this case, the sentences are too long. Riley had an exceptionally difficult childhood defined by neglect. He suffered significant damage to his frontal lobe, the part of the brain that regulates emotions. And he committed his crimes when he was only 15-years old. Nevertheless, he confessed to investigators and later pled guilty. Based on the specific circumstances of this case, this Court should reverse Riley’s sentences and remand this case for re-sentencing.

**CONCLUSION**

For the foregoing reasons, this Court should remand this case for a new sentencing hearing.

Respectfully submitted, this the 14th day of June, 2023.

 (Electronically Submitted)

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**CERTIFICATE OF COMPLIANCE WITH RULE 28(j)**

I hereby certify that this brief is in compliance with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure in that it is printed in thirteen-point Century Schoolbook font and the body of the brief, including footnotes, citations, and PowerPoint slides included in the arguments, contains no more than 8,750 words as indicated by Microsoft Word, the program used to prepare the brief.

This the 14th day of June, 2023.

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**CERTIFICATE O****F SERVICE**

I certify that a copy of the foregoing brief has been served upon Ms. Kimberly N. Callahan, Special Deputy Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602, by emailing a copy of the brief to the following email address: kcallahan@ncdoj.gov.

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