

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

APPEALS COURT
2025-P-0742

SJC-DAR No. _____

COMMONWEALTH

v.

ALBERT VAZQUEZ

APPLICATION FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. A. P. 11, Albert Vazquez, the defendant-appellant, applies for direct appellate review of the Superior Court judgment that denied his motion to withdraw his guilty plea or to vacate his illegal sentence. His appeal is currently entered in the Appeals Court.¹

Mr. Vazquez’s appeal raises several questions of first impression that should be determined by this Court. These questions also concern the Constitution of the Commonwealth and affect other similarly situated defendants. The Appeals Court requested that the Committee for Public Counsel Services (CPCS) screen his case for appointment of counsel because his “case may present issues of first impression under *Commonwealth v. Perez I*, 477 Mass. 677 (2017), and *Commonwealth v. Mattis*, 493 Mass. 216 (2024).” This application presents an opportunity for the Court to address these novel issues of sentencing of juveniles and emerging adults. Determination of the following questions by this

¹ With his DAR application, Mr. Vazquez files a motion for leave to file late his application, which is filed beyond the 21-day filing period in rule 11.

Court is in the public interest:

Whether *Commonwealth v. Perez I, supra*, should be extended to 18-to-20-year-olds convicted of nonmurder offenses?

Whether *Perez's* holding applies to juveniles and emerging adults who were convicted of manslaughter?

Whether Mr. Vazquez's sentence of 18-20 years for manslaughter, an offense committed when he was 18 years old, was presumptively disproportionate and unconstitutional under *Perez I* and *Commonwealth v. Mattis, supra*, because his current parole eligibility is greater than for juveniles who committed first degree murder during the same time period?

In 2015, Mr. Vazquez, in an agreed upon recommendation, pled guilty to manslaughter, an offense committed when he was eighteen years old. He was sentenced to 18-20 years. Nearly ten years later, he filed a *pro se* motion to withdraw his guilty plea and to vacate an illegal sentence, asserting his sentence was illegal because his parole eligibility was greater than those in the *Mattis* cohort who commit first-degree murder. After a Superior Court motion judge denied his motion. Mr. Vazquez appealed and filed his *pro se* brief in the Appeals Court. Undersigned counsel was appointed to represent Mr. Vazquez in his appeal. She filed a brief on his behalf, which the Appeals Court substituted for the *pro se* brief.

In denying his motion to vacate his sentence, the motion judge held, “as a threshold matter, *Mattis* is not on all fours with the present case. Vazquez, albeit an emerging adult, was not convicted of first-degree murder.” The judge stated that *Perez* did not apply to him since he was not a juvenile at the time of the offense. The judge further stated that “even assuming arguendo the holding in *Perez I* is extended to emerging adults who commit nonmurder offenses, the time Vazquez

must serve before being parole eligible prior to parole eligibility for a first-degree murder conviction” because, based on when the manslaughter offense was committed, the next most severe penalty that was applicable on the date of the offense would be no parole eligibility until after having served between fifteen and twenty-five years. See *Mattis*, 493 Mass. at 237 (emerging adults who committed first-degree murder between August 12, 2012 and July 24, 2014, are parole eligible after serving between fifteen and twenty-five years). The motion judge also considered that Mr. Vazquez’s accrued good time credit reduced his sentence.

The judge also found Mr. Vazquez’s sentence did not violate the three-prong test in *Cepulonis v. Commonwealth*, 384 Mass. 495 (1981), even giving greater weight to his age. The judge said, “[t]he facts to which Mr. Vazquez pled guilty are more in line with the deliberate and premeditated murder of [the victim], rather than manslaughter.” The motion judge also found the plea judge took Mr. Vazquez’s age and intellectual and cognitive deficits into consideration in sentencing him, although the plea transcript does not reflect that finding. Under the second prong, the sentence was not disproportionate since the Commonwealth made a significant charge concession. Finally, relevant to the proportionality third prong, Mr. Vazquez did not identify other jurisdictions that impose less harsh penalties for manslaughter committed when the offender was an emerging adult. The judge concluded the sentence was not so disproportionate that it “shocks the conscience” and did not violate the state constitution’s article 26 proscription against cruel and unusual punishment.

Mr. Vazquez's case poses novel questions that affect sentencing of both juveniles and emerging adults: Whether the holding in *Perez* should be extended to emerging adults between ages 18 and 20 sentenced for a conviction of a nonmurder offense; and whether *Perez* applies to juveniles and emerging adults convicted of manslaughter. These questions have far-reaching implications for the administration of juvenile and emerging adult sentencing and affect other similarly situated defendants. The interests of justice require this Court's determination of these questions.

In addition, some lower court justices have extended *Perez* to emerging adults, despite the lack of this Court's ruling. Some lower court justices have similarly applied *Perez* to both juveniles and emerging adults convicted of manslaughter, despite the lack of a clear ruling. This Court should determine these questions to ensure the consistent administration of justice in the Commonwealth's courts.

Further support for his Application is set forth in the attached Memorandum of Law.

Respectfully submitted,
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By his attorney,

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Dated: March 26, 2026

CERTIFICATE OF SERVICE

I certify that on this day I electronically filed the Application for Direct Appellate Review and Memorandum of Law through the Court's e-filing system, which will deliver an electronic copy of the same to Catherine L. Semel, counsel for the Commonwealth.

/s/ Elizabeth Doherty
Elizabeth Doherty

Dated: March 26, 2026

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

APPEALS COURT
2025-P-0742

SJC-DAR No. _____

COMMONWEALTH

v.

ALBERT VAZQUEZ

**MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR DIRECT APPELLATE REVIEW**

I. PRIOR PROCEEDINGS

On December 20, 2012, an Essex County grand jury returned an indictment charging the defendant, Albert Vazquez, with one count of murder in violation of G. L. c. 265, § 1. After a plea colloquy on August 19, 2015, Mr. Vazquez pled guilty to manslaughter in an agreed upon recommendation. The plea judge accepted the joint recommendation and sentenced him to 18-20 years (Feeley, J.). A25-26.¹

On November 4, 2024, Mr. Vazquez filed a *pro se* motion to withdraw his guilty plea and to vacate an illegal sentence. On May 22, 2025, a Superior Court judge denied his motion without a hearing (Bloomer, J.). On June 17, 2025, Mr. Vazquez filed a notice of appeal. His appeal entered in the Appeals Court on the same day. A26-27.

On July 23, 2025, Mr. Vazquez filed his *pro se* brief in the Appeals Court. On

¹ An appendix to this memorandum is attached, *post*, and cited by page as “A_”.

September 2, 2025, the Appeals Court requested the Committee for Public Counsel Services to appoint counsel for screening purposes because his case may present “issues of first impression under *Commonwealth v. Perez*, 477 Mass. 677 (2017), and *Commonwealth v. Mattis*, 493 Mass. 216 (2024).” After screening, undersigned counsel entered her notice of appearance as appellate counsel. On February 25, 2026, counsel filed a brief and record appendix in the Appeals Court, which was substituted for the *pro se* brief.

II. FACTS RELEVANT TO THE APPEAL

On December 20, 2012, an Essex County grand jury indicted Albert Vazquez of one count of murder in violation of G. L. c. 265, § 1. R5. On December 23, 2014, a competency hearing was held. On February 6, 2015, a Superior Court judge found Mr. Vazquez competent to stand trial (Lu, J.). A26-27.

- *The plea hearing*

At a plea hearing on August 19, 2015, Mr. Vazquez pled guilty to the lesser included offense of manslaughter. Born on April 10, 1984, he was eighteen years old on September 9, 2012, the date of the charged offense. At the plea hearing, he answered that he had not attended school past the eleventh grade. He had been treated for bipolar disease. He had been prescribed medication for his mental health condition, but had not taken it for several years. He reported that his thinking was clear that day. A34-37. His attorney reported that he “had a history of functional illiteracy, significant deficits in cognitive, social, and emotional functioning, disorganization, and impulsivity, and intellectual functioning in the mildly mentally

retarded range.” A51.

The Commonwealth presented the following factual basis for the plea: On September 9, 2012, Mr. Vazquez and others confronted Martin Butt on a Lawrence street about Mr. Butt’s robbery of a heroin dealer. Mr. Vazquez shot Butt once in the head and once in the back. Butt died from his wounds. A44-45.

The plea judge accepted the plea to manslaughter and imposed a jointly recommended sentence of not less than 18 years and not more than 20 years in state prison on the conviction. A52-53. Mr. Vazquez received 1030 days of jail credit. A26. The plea judge did not inquire about Mr. Vazquez’s family or personal circumstances or his individual characteristics before imposing the sentence.

- *Mr. Vazquez’s motion to withdraw his plea or to vacate an illegal sentence*

In his *pro se* motion, Mr. Vazquez argued that because he was 18 years old at the time of the offense, he should have been sentenced as a juvenile² and under *Mattis, supra*, he was entitled to resentencing. He contended that he should receive a sentence of not more than 15-20 years, the sentence a juvenile convicted of first-degree murder would have received at the time Mr. Vazquez’s manslaughter offense was committed. A69-73.

Under his current sentence structure, Mr. Vazquez is not eligible for parole until he has served 18 years, the minimum term of his sentence. His 18-year parole eligibility period exceeds the parole eligibility period for juveniles sentenced to first

² Mr. Vazquez was not a juvenile. He was eighteen when he committed the charged offense and therefore was an “emerging adult”. See *Mattis*, 493 Mass. at 217 n.1 (“emerging adult” defined as someone who is eighteen, nineteen, or twenty years of age).

degree murder at the time that his manslaughter offense was committed.

- *The motion judge's denial of the motion to correct his sentence*

In denying the motion to correct the sentence,^{3,4} the motion judge stated, “as a threshold matter,” “*Mattis* is not on all fours with the present case” since “Vazquez, albeit an emerging adult, was not convicted of first- degree murder.” The judge recognized that *Perez I* held “where a juvenile is sentenced for a nonmurder offense or offenses and the aggregate time to be served prior to parole eligibility exceeds that applicable to a juvenile convicted of murder, the sentence cannot be reconciled with art. 26 unless after a hearing on the factors articulated in *Miller v. Alabama*, 567 U.S. 460, 477-478....(2012)...(*Miller* hearing), the judge makes a finding that the circumstances warrant treated the juvenile more harshly for parole purposes than a juvenile convicted of murder.” A87. The judge found that, “even if the holding of *Perez* was extended to emerging adults who commit nonmurder offenses, Mr. Vazquez would not have been eligible for parole until after having served 15 to 25 years, which is what he would have received if he had been

³ Although Mr. Vazquez’s *pro se* motion was partly titled as a motion to withdraw his guilty plea, it is more appropriately viewed as a motion for relief from an illegal or unconstitutional sentence under Mass. R. Crim. P. 30 (a). The record indicates that the parties viewed his motion as one to vacate an illegal sentence.

⁴ Rule 30 (a) states: Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts.

convicted of a first-degree murder committed on September 9, 2012.⁵ A88. Thus, the judge concluded, Mr. Vazquez’s sentence does not exceed the parole eligibility for a juvenile convicted of first-degree murder nor the parole eligibility for the *Mattis* cohort. The judge also found his parole eligibility does not support a claim of disproportionality under art. 26 of the Massachusetts Declaration of Rights because his parole eligibility with good time credits would be less than parole eligibility for a juvenile convicted of first-degree murder, noting his good time credit accrued over ten years would result in a reduction of approximately 4.93 years.⁶ A88-89.

The motion judge also considered that the plea judge took Mr. Vazquez’s age, cognitive deficits and learning disabilities into account imposing his sentence. He found that the circumstances of the offense to which Mr. Vazquez pled guilty were more indicative of murder than of manslaughter. A89-90. Therefore, he found no

⁵ “The version of G. L. c. 279, § 24, which the Legislature amended together with G. L. c. 265, § 2, in response to the decision in *Diatchenko*, went into effect on July 25, 2014, and now applies to those emerging adult offenders who committed murder in the first degree on or after that date. Those who committed their offense prior to July 25, 2014, are eligible for parole based on the next most severe penalty that was applicable on the date of the offense. Specifically, those who committed their offense between August 2, 2012, and July 24, 2014, are entitled to parole eligibility after serving between fifteen and twenty-five years in prison. See G. L. c. 279, § 24, as amended through St. 2012, c. 192, § 46.” *Mattis, supra* at 237. Mr. Vazquez, whose offense was committed on September 9, 2012, would fall into this group. See *Perez I, supra* at 682 n.10 (under *Diatchenko*, juvenile sentenced for murder in 2002 would be eligible for parole after fifteen years...we analogize [Perez’s] eligibility for parole to juvenile defendant convicted of murder in 2002).

⁶ The period of parole eligibility does not include good time credits. “Although [a] minimum sentence may be reduced for ‘good conduct credits,’ his parole eligibility date may not. *Perez I, supra*, focuses on the parole eligibility date at the time of sentencing, not future computation of “good time.” *Commonwealth v. Lutskov*, 480 Mass. 575, 584 n.7 (2018).

disparity between his 18–20-year sentence on the nonmurder conviction and the punishments prescribed for the commission of more serious crimes in the Commonwealth. Finally, he faulted Mr. Vazquez for failing to identify other jurisdictions that impose less harsh penalties for manslaughter committed when the offender was 18 years old. Therefore, the judge concluded that Mr. Vazquez’s sentence was not disproportionate and “does not, in this court’s view, violate art. 26’s proscription against cruel and unusual punishment.” A89-90.

III. ISSUES PRESENTED BY THIS APPEAL

1. Whether the holding of *Commonwealth v. Perez I*, should be extended to 18-to-20-year-olds who commit nonmurder offenses.
2. Whether *Perez I* applies to juveniles’ and emerging adults’ sentences for convictions of manslaughter.
3. Whether the defendant’s sentence of 18-20 years for manslaughter, a nonmurder offense committed when he was 18 years old, was presumptively disproportionate and unconstitutional under *Diatchenko I v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013), *Perez I, supra*, and *Mattis, supra*, because his parole eligibility is greater than for juveniles who committed first degree murder at the same time period.

These issues were adequately preserved for the Court’s review. The issues were raised in Mr. Vazquez’s *pro se* Motion to Withdraw his Guilty Plea and to Vacate his Illegal Sentence and were considered by the Superior Court motion judge in his denial of relief. A65,69-73. Although the *pro se* motion was partly titled as a

motion to withdraw a guilty plea, the motion judge decided the motion as a motion to vacate an illegal sentence. A85-90.

IV. ARGUMENT

THIS COURT SHOULD GRANT DIRECT APPELLATE REVIEW TO DETERMINE NOVEL QUESTIONS IN JUVENILE AND EMERGING ADULT SENTENCING LAW.

A. *This Court should grant direct appellate review on whether the holding in Perez I should extend to emerging adult nonmurder defendants.*

This Court's precedents from *Diatchenko* through *Perez* to *Mattis* show the legal evolution over more than a decade. This progression demonstrates this Court's commitment to providing heightened constitutional protections for juveniles and emerging adults in sentencing. *Perez I* and *Perez II* follow *Diatchenko*. *Mattis* follows and extends application of *Diatchenko*. Extension of *Perez I*, to the *Mattis* cohort of nonmurder defendants is the logical next step.

The holding in *Perez I* established a presumptive ceiling on parole ineligibility for juveniles convicted of nonmurder offenses. This holding should extend to emerging adults convicted of nonmurder offenses, given advancements in scientific research that confirm their similar developmental and neurobiological characteristics.

The reasoning trajectory from *Diatchenko* to *Perez* to *Mattis* demonstrates extending *Perez's* holding to emerging adults is a natural progression. Central to these cases is the "fundamental precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense" (citation and quotations omitted). *Mattis, supra* at 224, quoting *Diatchenko, supra* at 669.

"[B]ased on the fact findings here, we cannot distinguish in any way this case from

Diatchenko I on scientific grounds. *Mattis*, 493 Mass. at 241 (Kafker, J. concurring). For the same reasons that *Diatchenko* was extended to the *Mattis* cohort, *Perez I* should extend to emerging adult nonmurder defendants.

While not binding precedent, Superior Court decisions have persuasive value. That lower judges have extended the *Perez* holding to emerging adults convicted of nonmurder offenses indicates the need for clarity from this Court. The interests of justice require resolution of this issue to avoid disparate and arbitrary results and to ensure consistency in the lower courts. This Court should grant direct appellate review to resolve this question in juvenile and emerging adult sentencing law.

B. This Court should grant direct appellate review on whether Perez I applies to both juveniles and emerging adults convicted of manslaughter.

This case would allow the Court to clarify where *Perez I* drew the line for purposes of juvenile sentencing by clearly holding that *Perez* applies to juveniles convicted of manslaughter. This case also provides an opportunity for this Court to make clear that *Perez* applies to emerging adults convicted of manslaughter, given their characteristics and attributes similar to juveniles.

The holding in *Perez* should apply to juveniles and emerging adults convicted of manslaughter because manslaughter is a nonmurder offense. In *Perez*, this Court distinguished between juveniles sentenced for nonmurder offenses and juveniles convicted of murder. *Perez I*, 477 Mass. at 679. In the absence of extraordinary circumstances, this line must not be crossed to treat a juvenile convicted of a nonmurder offense, or multiple nonmurder offenses, more harshly than a juvenile convicted of murder. *Id.* at 685.

Manslaughter is a nonmurder offense. See *Commonwealth v. Carter*, 481 Mass. 352, 364 (2019) (manslaughter, a common-law crime not codified by statute, is nonmurder offense).⁷ Homicide is the killing of one human being by another and includes all the ways in which a human life is taken. *Commonwealth v. Ennis*, 398 Mass. 170, 179 (1986). “Homicide offenses” is an umbrella term that encompasses manslaughter. *Commonwealth v. Ridley*, 491 Mass. 321, 330 (2023) (involuntary manslaughter is an unlawful homicide). But not every homicide is a murder. *Commonwealth v. Braley*, 449 Mass. 316, 329 (2007). Manslaughter is not murder.

The crime of manslaughter is defined as an unlawful killing without malice. *Commonwealth v. Pina*, 481 Mass. 413, 422 (2019), citing *Commonwealth v. Webster*, 59 Mass. 295, 5 Cush. 295, 308 (1850). Malice is what distinguishes murder from manslaughter. *Commonwealth v. Pagan*, 471 Mass. 537, 546 (2015), (citation omitted). Without malice, an unlawful killing is not murder and can be no more than manslaughter. *Commonwealth v. Judge*, 420 Mass. 433, 437 (1995).

Under art. 26, ‘there is a line ‘between homicide and other serious violent offenses against the individual.’ ”*Perez*, 477 Mass. at 685, citing *Graham*, 560 U.S. at 69, quoting *Kennedy v. Louisiana*, 554 U.S. at 438. In *Diatchenko*, 466 Mass. at 659 n.8, this Court made clear that “[w]hen we use the term ‘juvenile’ offenders, we

⁷ General Laws c. 265, § 13, does not describe the crime; instead, it sets out only the punishment, while the elements of the crime are created as part of the common law. *Commonwealth v. Carter*, 474 Mass. 624, 631 n.11 (2016). The statute provides: “Whoever commits manslaughter shall, except as hereinafter provided, be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail or a house of correction for not more than two- and one-half years...”

are referring to defendants who were under the age of eighteen at the time they committed murder in the first degree.” In *Commonwealth v. Okoro*, 471 Mass. 51, 56 n.5 (2015), this Court said its ruling applied to “juvenile homicide offenders” who were defined as “a person who has been convicted of murder in the first or second degree and was under the age of eighteen at the time that he or she committed the murder.” See *id.* at 58 (sentencing juveniles convicted of second-degree murder to same penalty as juveniles convicted of first-degree murder not so disproportionate as to violate art. 26).

In *Perez*, this Court delineated the distinction for sentencing purposes between juveniles “sentenced for a nonmurder offense” and juveniles “convicted of murder.” 477 Mass. at 679. The opinion itself used language reiterating the murder/nonmurder distinction, see *id.* at 682-683, 685, but also quoted language from *Graham*, regarding “juvenile defendants who do not kill” and the “line between homicide and other serious violent offenses against the individual.” *Perez*, 477 Mass. at 685.

However, this Court has not always been linguistically precise. See, e.g., *Perez*, 477 Mass. at 683 (specific inquiry is whether requirement of proportionality bars imposition, on a juvenile defendant, of consecutive sentences for nonmurder offenses with parole eligibility date that exceeds that applicable to juveniles convicted of murder); *Commonwealth v. Sharma*, 488 Mass. 85, 92 (2021) (declining to set bright-line rule that aggregate sentence for juvenile convicted of second-degree murder and nonhomicide offenses is presumptively disproportionate if it

exceeds punishment for juvenile convicted of first-degree murder); *Commonwealth v. Perez II*, 480 Mass. 562, 571 (2018) (juvenile murderer used synonymously with juvenile homicide offender).

This Court's appellate review would clarify that *Perez* applies to emerging adults and juveniles convicted of manslaughter because manslaughter is a nonmurder offense. Such a holding would impact both juveniles and the *Mattis* cohort of emerging adults in two procedural contexts: those being sentenced following an adjudication or conviction for manslaughter and those being resentenced pursuant to Mass. R. Crim. P. 30 (a).

Guidance from this Court would ensure consistent administration of justice and avoid disparate and arbitrary results. Some Superior Court judges have applied *Perez* in juvenile and emerging adult manslaughter cases. A decision in this case would provide clarity and consistency for the bench, bar, and potentially dozens of individuals being sentenced or resentenced across the Commonwealth.

C. This Court should decide whether Mr. Vazquez's sentence is presumptively disproportionate and unconstitutional.

This Court should determine the legality of Mr. Vazquez's sentence if the *Perez* holding is extended to his case.

If the holding in *Perez I* is extended, Mr. Vazquez's sentence is presumptively disproportionate and unconstitutional because his parole ineligibility exceeds that of juveniles convicted of first-degree murder. When he was sentenced, he was not due the benefit of the changes in the law under *Perez I*, *Perez II*, and *Mattis*. He is currently ineligible for parole until he served eighteen years. If *Perez I* applies, a

parole eligibility period longer than 15 years cannot be imposed unless, after a *Miller/Perez* hearing, a sentencing judge determines extraordinary circumstances warrant.

Appellate review by this Court would also reinforce how parole eligibility is calculated. Here, the judge incorrectly concluded, “Had Vazquez been convicted of the first-degree murder of Mr. Butt, he would not be parole eligible until having served between fifteen and twenty years” and could be eligible for parole after serving *anywhere* between fifteen and twenty-five years and thus a parole eligibility date set at eighteen years was correct.

At the time of Mr. Vazquez’s offense, G. L. c. 279, § 24 set the punishment for first-degree murder as not less than 15 years nor more than 25 years. “[A]s used in § 24, ‘minimum term’ refers to the length of time imposed as the lower end of a sentence expressed as a range”. *Commonwealth v. Rossetti*, 489 Mass. 589, 595 (2022). “Where a sentencing statute provides that a defendant “shall be punished by imprisonment for not less than” a certain length of time, according to its plain language, the statute is providing the minimum term to which a judge may sentence the defendant if the judge chooses to sentence the defendant to incarceration in the first instance...[L]anguage such as this has always been interpreted in the same manner: the ‘not less than’ phrase denotes a minimum sentence. ... It is always the shortest sentence that can be imposed, the number of years that determines parole eligibility...This is the case whether it is a house of correction or a State prison sentence.” *Id.*, citing *Commonwealth v. Brown*, 431

Mass. 772, 777, 779 (2000). The language “*not more than*” a certain length of time creates the maximum term of incarceration that a sentencing judge may impose on a defendant and, therefore, “the maximum amount of time that the prisoner will serve in prison if he...is not granted parole.” *Brown*, 431 Mass. at 774 (citations omitted).

If *Perez* is extended to emerging adults, Mr. Vazquez would be parole eligible once he served the minimum term of fifteen years set forth in the version of G. L. c. 279, § 24 then in force. See *Sharma*, 488 Mass. at 87 (“Once an inmate has served the minimum term of his or her sentence, the inmate may be eligible for parole. See G.L. c. 127, § 133.”);⁸ *Brown*, 431 Mass. at 774 (minimum sentence serves as base for determining parole eligibility date).

Guidance from this Court would also reinforce that good time credits cannot be considered in calculating parole eligibility. *Lutskov*, 480 Mass. at 584 n.7. The issue is the parole eligibility date at the time of sentencing. “The presumption of unconstitutional disproportionality arises *at the time of sentencing*.” *Commonwealth v. Washington*, 97 Mass. App. Ct. 595, 601 (2020), citing *Lutskov*, *id.* (emphasis in original).

⁸ “Parole permits may be granted by the parole board to prisoners subject to its jurisdiction at such time as the board in each case may determine; provided, however, that no prisoner sentenced to the state prison shall be eligible for such permit until such prisoner shall have served the minimum term of sentence, pursuant to section twenty-four of chapter two hundred and seventy-nine, as such minimum term of sentence may be reduced by deductions allowed under section one hundred and twenty-nine D...”G. L. c. 127, § 133.

V. REASONS DIRECT REVIEW IS APPROPRIATE

Mr. Vazquez's case presents unresolved issues in juvenile and emerging adult sentencing. Massachusetts' lead in recognizing the constitutional rights of young offenders is reflected in the progression of juvenile and young adult sentencing cases. This case is the logical next step in that progression. Granting direct appellate review would give this Court an opportunity to extend the holding in *Perez I* to emerging adults and to clarify that *Perez* applies to juveniles and emerging adults convicted of manslaughter.

This Court's review would ensure that Mr. Vazquez and other similarly situated emerging adults receive punishment proportionate to the offense and the offender. The interests of justice require settlement of these issues to ensure consistency for the bench, bar and defendants.

Respectfully submitted,
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By his attorney,

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Dated: March 26, 2026

CERTIFICATION OF COMPLIANCE

As counsel for the defendant-appellant, I certify that the foregoing document complies with the rules of court that pertain to filing applications for direct appellate review, pursuant to Mass. R. A. P. 11. The document is produced in 12-point Century Schoolbook, a proportionally spaced font, and contains 1,889 words in the argument section, which complies R. A. P. 11 (b).

/s/ Elizabeth Doherty
ELIZABETH DOHERTY
Attorney for Albert Vazquez

Dated: March 26, 2026

APPENDIX
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1277CR01438 Commonwealth vs. Vazquez, Albert

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 12/20/2012
- DCM Track:
- C - Most Complex
- Initiating Action:
- MANSLAUGHTER c265 §13
- Status Date:
- 12/20/2012
- Case Judge:
-
- Next Event:
-

- All Information
- Party
- Charge
- Event
- Tickler
- Docket
- Disposition

Party Information

Commonwealth
- Prosecutor

Alias

Party Attorney

- Attorney
- Semel, Esq., Catherine Langevin
- Bar Code
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- Address
- Essex District Attorney
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- Phone Number
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[More Party Information](#)

Vazquez, Albert
- Defendant

Alias

Party Attorney

- Attorney
- Pro Se
- Bar Code
- PROPER
- Address
- Phone Number
-

[More Party Information](#)

Party Charge Information

- **Vazquez, Albert**
- - Defendant
- **Charge # 1:**
265/1-0 - Felony MURDER c265 §1
- Original Charge
- 265/1-0 MURDER c265 §1 (Felony)
- Indicted Charge

23

- o Amended Charge

Charge Disposition

Disposition

Disposition Date

08/19/2015

Guilty Plea - Agreed Upon (Lesser Offense)

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
01/15/2013 09:30 AM	Criminal 1 - K		Arraignment		Held as Scheduled
02/12/2013 09:30 AM	Criminal 1 - K		Pre-Trial Conference		Held as Scheduled
04/10/2013 09:30 AM	Criminal 1 - K		Status Review		Held as Scheduled
04/11/2013 09:30 AM	Criminal 1 - K		Pre-Trial Conference		Rescheduled
05/16/2013 09:30 AM	Criminal 1 - K		Hearing on Motion to Continue		Held as Scheduled
05/20/2013 09:30 AM	Criminal 1 - K		Pre-Trial Conference		Rescheduled
05/28/2013 09:30 AM	Criminal 1 - K		Pre-Trial Conference		Held as Scheduled
07/15/2013 09:30 AM	Criminal 1 - K		Hearing RE: Discovery Motion(s)		Held as Scheduled
09/20/2013 09:30 AM	Criminal 1 - K		Status Review		Held as Scheduled
09/27/2013 09:30 AM	Criminal 1 - K		Motion Hearing		Rescheduled
10/08/2013 09:30 AM	Criminal 1 - K		Non-Evidentiary Hearing to Dismiss		Rescheduled
11/20/2013 09:30 AM	Criminal 1 - K		Non-Evidentiary Hearing to Dismiss		Rescheduled
12/04/2013 09:30 AM	Criminal 1 - K		Non-Evidentiary Hearing to Dismiss		Held as Scheduled
02/13/2014 12:00 PM	Criminal 1 - K		Evidentiary Hearing on Suppression		Not Held
02/13/2014 12:00 PM	Criminal 2 - J		Evidentiary Hearing on Suppression		Rescheduled
03/18/2014 09:30 AM	Criminal 1 - K		Hearing on Competency		Rescheduled
03/27/2014 09:30 AM	Criminal 1 - K		Hearing on Competency		Rescheduled
04/10/2014 09:30 AM	Criminal 1 - K		Jury Trial		Rescheduled
04/24/2014 09:30 AM	Criminal 1 - K		Hearing on Competency		Rescheduled
05/08/2014 09:30 AM	Criminal 1 - K		Hearing on Competency		Rescheduled
06/13/2014 09:30 AM	Criminal 1 - K		Hearing on Motion to Continue		Held as Scheduled
06/18/2014 12:00 PM	Criminal 1 - K		Hearing on Competency		Rescheduled

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Date	Session	Location	Type	Event Judge	Result
09/18/2014 09:30 AM	Criminal 1 - K		Hearing		Held as Scheduled
09/18/2014 12:00 PM	Criminal 1 - K		Hearing on Competency		Rescheduled
10/16/2014 09:30 AM	Criminal 1 - K		Hearing		Rescheduled
11/21/2014 09:00 AM	Criminal 3 - 1		Hearing on Competency		Rescheduled
11/21/2014 09:30 AM	Criminal 1 - K		Hearing on Competency		Not Held
12/23/2014 09:00 AM	Criminal 3 - 1		Hearing on Competency		Not Held
12/23/2014 09:30 AM	Criminal 2 - J		Hearing on Competency		Held as Scheduled
01/23/2015 09:30 AM	Criminal 1 - K		Hearing on Competency		Rescheduled
02/13/2015 09:30 AM	Criminal 1 - K		Hearing for Change of Plea		Rescheduled
04/22/2015 09:30 AM	Criminal 1 - K		Non-Evidentiary Hearing on Suppression		Held as Scheduled
08/19/2015 09:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Plea Offer	Feeley, Hon. Timothy Q	Held as scheduled
08/19/2015 12:00 PM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Lu, Hon. John T	Not Held
08/19/2015 12:00 PM	Criminal (Lawrence)	LAWRENCE-3rd FL, CR 4 (SC)	Evidentiary Hearing on Suppression	Ames, Hon. Mary K	Not Held
09/24/2015 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Final Pre-Trial Conference	Lu, Hon. John T	Canceled
10/05/2015 09:30 AM	Criminal 1 - K		Jury Trial		Canceled

Tickers

Tickler	Start Date	Due Date	Days Due	Completed Date
Pre-Trial Hearing	01/15/2013	01/15/2013	0	08/19/2015
Final Pre-Trial Conference	01/15/2013	12/27/2013	346	08/19/2015
Case Disposition	01/15/2013	01/10/2014	360	08/19/2015





Docket Information


















Date	Docket	Docket Text	File Ref	Image Avail.
12/20/2012	Indictment returned			
01/15/2013	Def't arraigned before Court			
01/15/2013	Appearance of Commonwealth's Atty: Jennifer Kirshenbaum		2	
01/15/2013	Appearance of Def't's Atty: James E McCall		3	
01/15/2013	Def't waives reading of indictment			
01/15/2013	RE Offense 1: Plea of not guilty			

25

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/15/2013	Bail: Defendant held without bail (John T Lu, Justice) without prejudice	4	
01/15/2013	Assigned to track "C" see scheduling order		
01/15/2013	Tracking deadlines Active since return date		
01/15/2013	Case Tracking scheduling order (John T Lu, Justice) mailed 1/15/2013	5	
01/15/2013	Commonwealth files Request for Protective Order Regarding discovery filed and Allowed without objection without prejudice /2/12/13-See sealed document. (John T. Lu)	6	
02/14/2013	Deft & Commonwealth file agreed upon amendment to protective order.:Filed in court & ALLOWED, AS AN ORDER OF THE COURT.This document is to be filed under seal. (John T. Lu) 2/12/13.	7	
02/22/2013	This entry was entered in error--there is no #8--see 12-1437 -- Defendants motion to produce relevant discovery filed	8	
07/15/2013	This entry was entered in error--there is no #8--see 12-1437 -- Motion #8 allowed as amended on page 3 (Feeley, J)		
11/20/2013	Motion for Grand Jury Discovery or in the Alternative Motion to Dismiss and Motion to Join Co-Defendant's Memorandum Filed	9	
12/04/2013	After hearing motion to dismiss taken under advisement (Lu, J)		
12/04/2013	MOTION by Deft: Ex-Parte Motion for Funds-Expert.:Filed in court & ALLOWED, not to exceed \$2,500. (John t. Lu) 12/4/13.	10	
12/24/2013	MOTION (P#9) The motion to dismiss is denied. the motion for grand jury information is DENIED, without prejudice. the defendant is granted 14 days to file a supplementary affidavit. The Court's ruling on 2012-1437, paper #10 is incorporated by reference as if fully repeated here. (the court has stapled a copy of its ruling to this motion (John T Lu, Justice). Copies mailed		
01/15/2014	Defendant's MOTION to suppress statements.;Affidavit in support of motion to suppress statements.;Supplemental affidavit in support of deft.'s motion for Grand Jury Discovery.	11	
01/17/2014	Deft files Notice of Intent to Present Adjutant evidence and request for discovery.	12	
01/23/2014	MOTION by Deft: to reconsider so much of the Decision that denied teh motion to dismiss without a hearing.;Affidavit of counsel in support of motion.	13	
08/18/2014	Evaluation report filed by Dr. Russell G. Vasile, M.D. Sealed in envelope in case.	14	
12/23/2014	Hearing on competency held, matter taken under advisement (John lu, Justice)		
02/06/2015	FINDINGS of FACT RULINGS of LAW: On Defendant's competence to stand trial:The defendant, Albert Vasquez, is COMPETENT TO STAND TRIAL. THIS CASE IS TO BE SCHEDULED FOR TRIAL. (John T. Lu) 2/6/15. (John T Lu, Justice)	15	
04/22/2015	Event Result: The following event: Non-Evidentiary Hearing on Suppression scheduled for 04/22/2015 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared:		
04/22/2015	Endorsement on Motion to reconsider so much of the decision that denies the motion to dismiss without a hearing, (#13.0): Withdrawn in open court by defendant's counsel (Feeley, J)		
08/07/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 08/19/2015 12:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session Appeared:		

25

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/07/2015	Habeas Corpus for defendant issued to MCI - Framingham returnable for 08/19/2015 12:00 PM Evidentiary Hearing on Suppression.		
08/12/2015	Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 08/19/2015 12:00 PM Evidentiary Hearing on Suppression.		
08/17/2015	General correspondence regarding file. Here in Lawrence.		
08/19/2015	Defendant waives rights.	16	
08/19/2015	Finding on plea of guilty.	17	
08/19/2015	Defendant warned pursuant to alien status, G.L. c. 278, § 29D.		
08/19/2015	Defendant warned as to submission of DNA G.L. c. 22E, § 3		
08/19/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 08/19/2015 12:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session Appeared:		
08/19/2015	Event Result: The following event: Plea Offer scheduled for 08/19/2015 09:00 AM has been resulted as follows: Result: Held as scheduled Appeared:		
08/19/2015	Offense Disposition: Charge #1 MANSLAUGHTER c265 §13 265/13/A-0 Date: 08/19/2015 Method: Hearing on Plea Offer/Change Code: Guilty Plea - Agreed Upon (Lesser Offense) Judge: Feeley, Hon. Timothy Q		
08/19/2015	Defendant sentenced: Sentence Date: 08/19/2015 Judge: Feeley, Hon. Timothy Q Charge #: 1 MANSLAUGHTER c265 §13 State Prison Sentence State Prison Sentence-Not Less Than: 18 Years, 0 Months, 0 Days State Prison Sentence-Not More Than: 20 Years, 0 Months, 0 Days Served Primary Charge Committed to MCI - Cedar Junction (at Walpole) Credits 1030 Days Financials Docket Type Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00		
08/19/2015	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 08/19/2015 14:44:24	18	
08/19/2015	Event Result: The following event: Jury Trial scheduled for 10/05/2015 09:30 AM has been resulted as follows: Result: Canceled Reason: Plea Offered Appeared:		
11/04/2024	Defendant 's Motion to Waive Court Costs and Filing Fees	19	
11/04/2024	Defendant 's Motion to Proceed in Forma Pauperis. Affidavit filed in support	20	
11/04/2024	Defendant 's Motion to Appoint Counsel	21	
			

<u>Docket</u>	<u>Date</u>	<u>Docket Text</u>	<u>File Ref</u>	<u>Nbr.</u>
	11/04/2024	Defendant's Motion for an Evidentiary Hearing		22
	11/04/2024	Defendant's Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence. Affidavit and Memorandum of Law filed in support	 	23
	11/14/2024	Endorsement on Motion to withdraw guilty plea, (#23.0): Other action taken Upon review, the Court orders the Commonwealth to file a written response within sixty (60) days.		
	01/13/2025	Commonwealth's Verified Opposition to the Defendant's Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence filed		24
	05/22/2025	Endorsement on Defendant's Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence, (#23.0): DENIED	 	
	05/22/2025	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA AND VACATE SENTENCE (Paper No. 23)		25
		ORDER For the above reasons, it is HEREBY ORDERED that Defendant's Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence (Paper No. 23) is DENIED.		
		William F. Bloomer, Associate Justice, Superior Court Dated: May 22, 2025 Judge: Bloomer, Hon. William F		
	05/22/2025	Endorsement on Defendant's Motion to Appoint Counsel, (#21.0): DENIED		
	05/22/2025	Endorsement on Defendant's Motion for an Evidentiary Hearing, (#22.0): DENIED	 	
	06/17/2025	Notice of appeal filed on Denial of Motion to Vacate Guilty Plea and Vacate Sentence		26
		Applies To: Vazquez, Albert (Defendant)		
	06/17/2025	Notice of assembly of record sent to Counsel		27
	06/17/2025	Notice to Clerk of the Appeals Court of Assembly of Record		28
	06/17/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	 	29
	06/17/2025	Attorney appearance On this date Jennifer Sara Kirshenbaum, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
	06/17/2025	Attorney appearance On this date Catherine Langevin Semel, Esq. added for Prosecutor Commonwealth		
	06/17/2025	Attorney appearance On this date James E McCall, Esq. dismissed/withdrawn as Private Counsel for Defendant		
	06/17/2025	Attorney appearance On this date Pro Se added for Defendant Albert Vazquez		

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Plea	02/06/2015	

VOLUME: I
PAGES: 27
EXHIBITS: None

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

COMMONWEALTH

v.

Docket No. 1277CR01438

ALBERT VAZQUEZ

* * * * *

TRANSCRIPT OF PLEA AND SENTENCING
BEFORE THE HONORABLE TIMOTHY Q. FEELEY

Salem, Massachusetts
Courtroom 1 - K
August 19, 2015

Proceedings recorded by Court Personnel
Transcript prepared by Michelle Costantino, CET, ACT

APPEARANCES:

For the Commonwealth:

JENNIFER SARA KIRSHENBAUM, ESQ.
Massachusetts Office of the Attorney General
1 Ashburton Place 19th Floor
Boston, MA 02108

For the Defendant:

JAMES E. MCCALL, ESQ.
James E. McCall Attorney at Law
107 Union Wharf
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P R O C E E D I N G S

(Proceedings commenced)

THE CLERK: Calling a case that actually was on Judge Ames' list in Lawrence, and that's Number 5, Number 5 on her list, Commonwealth v. Albert Vazquez, Docket 2012-1438, myself for the Commonwealth and Mr. McCall for the defendant.

ATTORNEY MCCALL: Good afternoon, Your Honor.

THE COURT: All right. Why don't --

ATTORNEY MCCALL: May we approach?

THE COURT: Okay. Yes, certainly.

(At sidebar)

ATTORNEY KIRSHENBAUM: This will be a plea to a manslaughter, 18 to 20 years committed.

THE COURT: Manslaughter?

ATTORNEY KIRSHENBAUM: 18 to 20.

THE COURT: It's just one count, right?

ATTORNEY KIRSHENBAUM: It's just one count.

THE COURT: Okay.

ATTORNEY KIRSHENBAUM: And so the Court's aware, just in terms of the sidebar, you know, Mr. Vazquez had some competency issues. He's been found competent, but -- we have every reason to believe he will make it fine through the colloquy, but just some things may need to be repeated.

ATTORNEY MCCALL: Yes.

1 THE COURT: English language is fine.

2 ATTORNEY MCCALL: English is fine, Your Honor. He has
3 some cognitive issues, learning disabilities. He was found
4 to be competent. I will put on the record I believe he's
5 competent.

6 THE COURT: Okay.

7 ATTORNEY MCCALL: And --

8 THE COURT: Let me just see if I've still got --

9 (Pause)

10 THE COURT: Usually with a crime like manslaughter, not
11 self-defining, I usually break out the elements a little
12 bit.

13 ATTORNEY KIRSHENBAUM: Okay.

14 THE COURT: But what is kind of the -- I know it's a
15 lesser included, but what's kind of the allegation?

16 ATTORNEY MCCALL: Probably excessive force, if we're
17 looking at manslaughter.

18 THE COURT: You know something? I don't know that I'm
19 -- that gets really complicated.

20 ATTORNEY KIRSHENBAUM: That gets a little complicated
21 on it, I think -- I mean --

22 THE COURT: Okay. I'll handle it, and I'll have you
23 state the recommendation on the record.

24 ATTORNEY KIRSHENBAUM: The other -- was there something
25 else we wanted to -- oh --

1 THE COURT: When do we want to do -- is the family on
2 board, or are they going to be critical of this or --

3 ATTORNEY KIRSHENBAUM: No, we've talked about
4 everything. They're understanding of it.

5 THE COURT: And who's going to talk?

6 ATTORNEY KIRSHENBAUM: It's going to be Mr. Butt's
7 sister, Allison, and his father, Martin, and it's really --
8 they're coming up together, and it's only Allison who's
9 reading a piece of paper.

10 THE COURT: Okay.

11 ATTORNEY KIRSHENBAUM: And I think -- it's actually I
12 think the same basic -- I think it's the same basic thing
13 she read during the Rivera trial.

14 THE COURT: Okay.

15 ATTORNEY KIRSHENBAUM: But the thing I did want to
16 mention is I believe Mr. Vazquez does not -- would not --
17 I'm not going to be reading Mr. Rivera's name. I think that
18 will cause a problem in terms of his acceptance of facts.
19 So the Court's aware I'm not mentioning anything about
20 Mr. Rivera. It's just a name --

21 ATTORNEY MCCALL: (Indiscernible) --

22 THE COURT: Okay. All right.

23 ATTORNEY KIRSHENBAUM: Thank you.

24 (Sidebar concluded)

25 THE COURT: Mr. McCall?

1 ATTORNEY MCCALL: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 And good afternoon, Ms. Kirshenbaum.

4 Mr. McCall, is your client prepared to offer a plea to
5 so much of the indictment that charges him with the crime of
6 manslaughter?

7 ATTORNEY MCCALL: He is, Your Honor.

8 THE COURT: You may inquire.

9 THE CLERK: Thank you, Your Honor.

10 Albert Vazquez, what say you on Indictment CR
11 2012-1438, Count Number 1, that alleges on the 9th day of
12 September in the Year of our Lord 2012, at Lawrence in the
13 County of Essex aforesaid, did assault and beat Martin Butt
14 with intent to murder him, and by such assault and beating
15 did kill and murder said Martin Butt? What do you now say,
16 sir, to so much of the indictment that alleges manslaughter:
17 Guilty or not guilty, sir?

18 THE DEFENDANT: Guilty.

19 THE CLERK: Raise your right hand, please.

20 (Defendant is sworn)

21 THE DEFENDANT: Yes.

22 THE COURT: Yes.

23 THE CLERK: Take the stand, please.

24 THE COURT: Mr. Doherty, he can be brought around,
25 please.

1 THE CLERK: And, Your Honor, since it is in Lawrence, I
2 only have a faxed copy of the indictment.

3 THE COURT: Thank you.

4 (Pause)

5 ATTORNEY MCCALL: May I approach also, Your Honor?

6 THE COURT: Please. If you'd accompany Mr. Vazquez.

7 THE COURT OFFICER: And, sir, you can have a seat in
8 that first chair, closest to the judge.

9 (Pause)

10 THE COURT: Mr. Vazquez, I'm going to ask you a whole
11 series of questions. If at any time you want to talk to
12 your attorney before answering or even if you want to stop
13 while you're answering a question to talk to your attorney,
14 all you have to do is tell me, and I'll give you an
15 opportunity to talk privately with him.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Please tell me your name in a
19 nice, loud, clear voice.

20 THE DEFENDANT: Albert Vazquez.

21 THE COURT: How old are you?

22 THE DEFENDANT: Twenty-one.

23 THE COURT: What's the highest level of school you
24 attended?

25 THE DEFENDANT: Eleventh grade.

1 THE COURT: In the last -- in the years since high
2 school, did you have any regular employment, trade,
3 occupation, or profession?

4 THE DEFENDANT: No.

5 THE COURT: To your knowledge, have you ever been
6 treated for a mental illness?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Tell me what condition or conditions
9 you believe you may have been treated for.

10 THE DEFENDANT: Bipolar.

11 THE COURT: Bipolar?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you ever receive any medication for
14 that?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you currently taking any medication for
17 that?

18 THE DEFENDANT: No.

19 THE COURT: All right. When did you last take
20 medication for bipolar?

21 THE DEFENDANT: A couple of years ago.

22 THE COURT: A couple years ago?

23 THE DEFENDANT: Yeah. In 2013.

24 THE COURT: Now, what I need to find out is how
25 you're thinking today, whether you're thinking clearly or

1 whether -- and whether you have the ability to make
2 important decisions in your own best interest.

3 So, at one point you were on medication for bipolar.
4 Now you're not. Does the absence of medication, the fact
5 that you're not taking medication today, does that cloud
6 your mind, confuse your thinking, or otherwise make it
7 difficult for you to think clearly?

8 THE DEFENDANT: No. I think clear.

9 THE COURT: Now, are you taking medications today for
10 any sort of ailment?

11 THE DEFENDANT: No.

12 THE COURT: Have you had drugs, legal or illegal, in
13 the last 24 hours?

14 THE DEFENDANT: No.

15 THE COURT: Any alcohol in the last 24 hours?

16 THE DEFENDANT: No.

17 THE COURT: Now, are you clear-headed today, that is --

18 THE DEFENDANT: Yes.

19 THE COURT: -- are you thinking clearly?

20 THE DEFENDANT: Yep.

21 THE COURT: All right. Now, I have a form here that's
22 entitled Waiver of Defendant's Rights. It appears to have
23 your signature on the third page.

24 Did you sign that earlier today?

25 THE DEFENDANT: Yep. I did, Your Honor.

1 THE COURT: Did you have an opportunity -- well, first
2 of all, did you read the English language version?

3 THE DEFENDANT: Yes.

4 THE COURT: And before you signed it, did you have an
5 opportunity to talk to your attorney about it?

6 THE DEFENDANT: Yes, I did, Your Honor.

7 THE COURT: Do you believe you understand its contents?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, I want to go over the indictment, and
10 I want to go over the offense to which you are offering your
11 plea of guilty. The grand jury returned an indictment
12 charging you with murder.

13 You have offered your plea today, not to that offense,
14 but to so much of the charge of murder that charges you with
15 the crime of manslaughter.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: And have you had an adequate opportunity to
19 talk to your attorney about what it is that the Commonwealth
20 would have to prove before you could be convicted of the
21 crime of manslaughter?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, the indictment, so much of it that you
24 are offering your plea to, alleges conduct that occurred or
25 is alleged to have occurred on September 9th, 2012 in

1 Lawrence. And you are charged with the crime of
2 manslaughter with respect to the death of Martin Butt on
3 that day, September 9th, 2012, in Lawrence.

4 Do you understand that?

5 THE DEFENDANT: Yes, I do, Your Honor.

6 THE COURT: And, Ms. Kirshenbaum, the maximum term of
7 imprisonment for the offense of manslaughter?

8 ATTORNEY KIRSHENBAUM: Is 20 years.

9 THE COURT: Do you understand, Mr. Vazquez, that the
10 maximum term of imprisonment that can be imposed by any
11 court upon any defendant convicted of the crime of
12 manslaughter is 20 years in state prison?

13 Do you understand that?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: And the joint recommendation?

16 ATTORNEY KIRSHENBAUM: Is an 18 to 20 year committed
17 sentence.

18 THE COURT: Do you understand, Mr. Vazquez, if I accept
19 your plea today, that both the prosecutor and your attorney
20 will recommend to me that I impose a sentence upon you of
21 not less than 18 years, not more than 20 years, in state
22 prison?

23 Do you understand that?

24 THE DEFENDANT: Yes, I do, Your Honor.

25 THE COURT: All right. I will tell you now that I

1 will, in fact -- well, I will tell you -- the way I'll
2 phrase it is if for any reason I believe that is not the
3 right sentence in this case, I'll permit you to withdraw
4 your guilty plea.

5 Do you understand what I've said?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: All right. Now, I need to make sure that
8 you understand that by pleading guilty you give up certain
9 important rights that you and all defendants have when
10 charged with crimes of this sort.

11 First and foremost, you have a constitutional right to
12 a trial on the indicted charge of murder.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: That constitutional right to a trial means
16 that you could choose between having a trial before a jury
17 or a trial before a judge of this court.

18 If you chose to have a trial before a jury, you'd be
19 able to be involved. That is, you would be given a right to
20 participate along with your attorney in the selection of the
21 jury that would hear and decide the case.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Also, at trial, whether you chose a jury
25 trial or a judge trial, you have the right to be represented

1 by an attorney, as you are today, and have one appointed for
2 you if you couldn't afford one.

3 You would have the right to confront the accusers, that
4 is, the witnesses against you, and have your attorney
5 question them. You'd have the right to compel witnesses and
6 evidence to come to court on your behalf. And at trial,
7 you'd be presumed innocent unless and until you were proven
8 guilty beyond the reasonable doubt.

9 Do you understand that by offering your plea, if I
10 accept your plea today, you will have given up or waived
11 your right to have a trial and those rights that you would
12 at trial?

13 Do you understand that?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: Now, also, by offering your plea and
16 pleading guilty, you give up your privilege against
17 self-discrimination. Privilege, we all have it. It means
18 that the government can -- including me, not force or compel
19 you to give testimony against yourself, that is say
20 something through your own words that implicates you in a
21 criminal offense. You can't be forced to do that. You have
22 a right to remain silent.

23 But that's exactly what you're doing this afternoon.
24 Through your own words, you are admitting to having
25 committed the crime of manslaughter. So you're

1 incriminating yourself. You're implicating yourself with
2 your own words in the offense of manslaughter.

3 Do you understand that?

4 THE DEFENDANT: Yes, I do, Your Honor.

5 THE COURT: So you can't be forced to do that. So
6 you're giving up your privilege against self-incrimination.

7 Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: Now, if I accept your plea today, this case
10 will be over in this court. That means that if there are
11 any motions that your attorney didn't file in this case, or
12 any motions that he filed that the Court hasn't decided yet,
13 those motions will never be reached or decided because this
14 case will be over.

15 Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Now, if there are any motions brought by
18 your attorney that were decided against you in this case, or
19 any motions, whether brought by your attorney or the
20 Commonwealth, that were decided against you in this case,
21 under some circumstances, you might have the right to appeal
22 a decision against you to a higher court, to an appellate
23 court.

24 But if I accept your plea today, you'll have no
25 appellate rights with respect to any decision made by this

1 court before today.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Because, as I say, if I accept your plea
5 today, this case in this court will be over.

6 Do you understand that?

7 THE DEFENDANT: I do.

8 THE COURT: Now, has anyone forced you to plead guilty
9 today?

10 THE DEFENDANT: No.

11 THE COURT: Now, the prosecutor has promised to
12 recommend a certain sentence, and if I don't impose it, I'll
13 be giving you -- I promised to give you a right to withdraw
14 your guilty plea.

15 Other than those two promises, have any other promises
16 been made to induce you to plead guilty today?

17 THE DEFENDANT: No.

18 THE COURT: Have any threats been made to induce you to
19 plead guilty?

20 THE DEFENDANT: No.

21 THE COURT: Now, you've -- have you discussed this
22 matter fully with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: You should give great consideration to his
25 advice, but I need to make sure that you understand that the

1 decision to offer a plea of guilty in a criminal justice
2 system is so fundamental, so important in our criminal
3 justice system, that it's the defendant's decision.

4 It's not your attorney's decision. It's your decision
5 and your decision alone. You should give great
6 consideration to his advice, but you don't have to take it
7 because you get to make this decision.

8 Do you understand that?

9 THE DEFENDANT: Yes, I do, Your Honor.

10 THE COURT: Now I'm going to ask the prosecutor to
11 provide a brief summary of the evidence that the
12 Commonwealth will expect to present if this matter were to
13 proceed to trial, and then I'm going to ask you whether her
14 statements of fact about your conduct, whether they're
15 substantially correct. So you need to listen, please.

16 ATTORNEY KIRSHENBAUM: Thank you.

17 On September 9th of 2012, the Lawrence Police and
18 members of the State Police assigned to the District
19 Attorney's Office were dispatched to Union City in Lawrence
20 for a shooting.

21 Upon arrival, they found Martin Butt lying in the
22 street, suffering from a gunshot wound to the back of the
23 head and the back. He was taken to Lawrence General
24 Hospital and pronounced dead a short time after arrival.

25 Investigators began to canvass the area and spoke to

1 Mr. Butt's friends and family. Through investigation, they
2 learned that Mr. Butt and an associate had allegedly robbed
3 a heroin dealer a week prior to the shooting, and the dealer
4 had been looking for Mr. Butt for retaliation.

5 With the help of some of Mr. Butt's associates, this
6 heroin dealer had lured Mr. Butt down to Lawrence on the
7 morning of September 9th, 2012.

8 When Mr. Butt arrived in Lawrence, this defendant, who
9 was an associate of the heroin dealer as well as other
10 associates, confronted Mr. Butt on Union Street. The
11 defendant then took out a firearm and shot Mr. Butt once in
12 the back and once in the head.

13 Those are essentially the facts.

14 THE COURT: Mr. Vazquez, are the facts stated by the
15 prosecutor as the alleged conduct by you substantially
16 correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: I need to tell you, as I tell all
19 defendants who offer pleas in this courtroom, if you are not
20 a citizen of the United States, you are hereby advised that
21 the acceptance by this court of your plea of guilty will
22 have consequences of deportation, exclusion from the issues
23 of the United States, or denial of naturalization pursuant
24 to the laws of the United States.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I forgot to ask you earlier, Mr. Vazquez,
3 where were you born?

4 THE DEFENDANT: In Lowell, Mass. General Hospital.

5 THE COURT: Here in Massachusetts.

6 THE DEFENDANT: Yes.

7 THE COURT: I also need to tell you the conviction of
8 this offense by way of your guilty plea will require you to
9 provide a DNA sample for inclusion in a statewide DNA
10 database.

11 Do you understand that?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: Now, because of the expected sentence in
14 this case, I'm required by law to talk to you about a
15 particular statute here in the Commonwealth of Massachusetts
16 called the habitual offender statute.

17 This may or may not in the future have any application
18 to you, but the law requires me to explain it just so that
19 you know that there is a possible consequence of your guilty
20 plea today before I accept your plea.

21 Now, this habitual offender statute needs to be
22 explained to you because today you're going to receive, if I
23 accept your guilty plea, a sentence of more than three years
24 in state prison.

25 So, given that, if at some time in the future you are

1 convicted of a new, brand new, future felony offense of a
2 type designated in the habitual offender statute, after
3 earlier having been convicted of at least two prior
4 designated felony offenses that resulted in sentences and
5 commitments of not less than three years in prison, then for
6 the future felony conviction you would have to be sentenced
7 to imprisonment in state prison for the maximum term
8 provided by law for the felony offense. Your sentence could
9 not be reduced or suspended and you'd be ineligible for
10 probation, parole, work release, furlough, or deductions for
11 good credit -- good time credit.

12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, after everything we've discussed
15 today, do you still wish to plead guilty the reduced charge
16 of manslaughter pending in the indictment against you?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you wish to discuss anything with your
19 attorney before I accept your plea?

20 THE DEFENDANT: No.

21 THE COURT: All right. I hereby do accept your plea to
22 the offense of manslaughter. And I make the following
23 findings:

24 I find the defendant is fully competent to waive his
25 rights and plead guilty, he fully understands the rights

1 he's waiving and the consequences of his plea, and he's
2 pleading guilty freely, voluntarily, and intelligently.

3 I finally find there's a sufficient factual basis for
4 the plea to the offense on which the defendant now stands
5 convicted.

6 Mr. Vazquez, you may step down and return with your
7 attorney to the podium right there in the middle of the
8 courtroom.

9 (Pause)

10 THE COURT: Ms. Kirshenbaum.

11 ATTORNEY KIRSHENBAUM: Thank you, Your Honor. I'd just
12 say briefly, before Mr. Butt's sister and father approach,
13 that this is obviously a horrific and senseless crime, one
14 deserving of the most severe penalty.

15 Any reduction in sentencing that's been reached at this
16 point is as a result of extensive conversation with every
17 member of the investigative team as well as the family and
18 this defense counsel, and also in light of the merits of the
19 motion to suppress that's pending in the Court.

20 But Mr. Butt's sister, Allison Butt, as well as his
21 father, Martin Butt, would like to approach and allocute.

22 THE COURT: They may do so.

23 (Pause)

24 THE COURT: You may sit or stand at your choice,
25 whichever you're more comfortable. All right. Thank you.

1 And I'll ask you to identify yourself for the record,
2 please.

3 ALLISON BUTT: My name is Allison Butt.

4 THE COURT: And your relationship to Martin Butt?

5 ALLISON BUTT: I'm his sister.

6 THE COURT: Thank you. You may -- just speak in a
7 loud, clear voice so everyone can hear you, please.

8 ALLISON BUTT: Thank you.

9 My brother's name is Martin Angelo Butt. He was a son,
10 a brother, a grandson, a nephew, a cousin, a boyfriend, a
11 friend, and he was loved by so, so many people.

12 Marty had a whole life that consisted of so much more
13 than an addiction. That was such a small part of who he
14 was.

15 Losing Marty has destroyed our family. There isn't a
16 day that goes by that we don't wake up with a hole in our
17 hearts. Each day we realize all over again that we will
18 never see Marty again, a thought that is as painful now as
19 it was on September 9th, 2012.

20 We will never see Marty get married, or have children,
21 or grow old. We won't get to celebrate joyous occasions
22 with Marty ever again. My mother won't get to dance with
23 her only son at his wedding. Every morning, my father
24 drives to work in a truck full of his only son's tools, his
25 initials still printed on them. We face heart-wrenching

1 reminders of losing Marty on a daily basis.

2 We no longer get to celebrate birthdays with Marty.
3 Birthdays and holidays are now just a bittersweet reminder
4 of what our family was before this tragedy. We are often
5 kept awake at night wondering what Marty's last moments of
6 life were like, how terrified he must have been, and did he
7 feel any pain?

8 We wish desperately that there was something we could
9 have done to prevent that fear and pain from ever happening.
10 But we can't. All we can do is keep Marty's memory alive:
11 his handsome face, his contagious laugh, his ability to
12 light up a room with his smiles.

13 Marty is gone forever. Nothing will ever bring him
14 back. And that is a devastating reality that I don't think
15 we will ever come to terms with.

16 THE COURT: Thank you.

17 Do you wish to add anything to that?

18 MARTIN BUTT, SR.: No.

19 THE COURT: All right. You may step down. Thank you
20 very much.

21 (Pause)

22 THE COURT: Ms. Kirshenbaum.

23 ATTORNEY KIRSHENBAUM: With that, I'd just ask the
24 Court to adopt the agreed-upon 18 to 20 year committed
25 sentence.

1 THE COURT: Thank you.

2 Mr. McCall.

3 ATTORNEY MCCALL: Likewise, Your Honor. I would ask
4 the Court to adopt the agreed-upon sentence.

5 As Ms. Kirshenbaum, I think, has noted earlier, it's
6 one that was well thought out and discussed among many
7 people.

8 Mr. Vazquez was 18 years old at the time of this
9 incident. From his early school years, Your Honor, he was
10 recognized as someone that had significant cognitive
11 limitations.

12 Just reading very briefly from a report in 2008,
13 Mr. Vazquez had a history of functional illiteracy,
14 significant deficits in cognitive, social, and emotional
15 functioning, disorganization, and impulsivity, and
16 intellectual functioning in the mildly mentally retarded
17 range.

18 And for all of these reasons, that the joint
19 recommendation to the Court was well thought out, and
20 everybody is aware of all the consequences, Your Honor, I'd
21 ask the Court to adopt the agreed-upon recommendation.

22 THE COURT: Mr. Vazquez, your attorney has spoken on
23 your behalf. And I will be -- now that I've heard from both
24 counsel and heard from the victim's family, I will be
25 imposing the jointly recommended sentence.

1 But before I actually do that, you have a right to
2 address the Court. You have a right to talk directly to me
3 if you wish. It's a right you have. It's not an
4 obligation. It's not a requirement. You need say nothing.
5 But if you wish to say anything before the sentence is
6 imposed, now is your opportunity to do so.

7 Do you wish to speak?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: I'm going to accept the joint
10 recommendation of the parties. And on so much of the
11 indictment that charges Mr. Vazquez with manslaughter, I
12 will impose a sentence of not less than 18, not more than 20
13 years, in state prison.

14 I will waive the indigent counsel fee. You were
15 appointed --

16 ATTORNEY MCCALL: Privately retained, Your Honor.

17 THE COURT: Private. Okay.

18 Then I will impose the victim-witness fee of \$90.

19 (The Court and clerk confer)

20 THE CLERK: May I impose sentence, Your Honor?

21 THE COURT: Please.

22 THE CLERK: Albert Vazquez, on Indictment Number
23 ESCR-2012-1438, Count Number 1, charging you with so much of
24 this indictment that alleges manslaughter, the Court having
25 accepted your plea of guilty, the Court finds you guilty and

1 orders that you be punished by imprisonment for a term not
2 less than 18 years, not more than 20 years, and that
3 sentence to be executed upon and within the prisons of the
4 Massachusetts Correctional Institution at Cedar Junction.

5 You stand committed in execution of that sentence.

6 The Court further orders the \$90 victim-witness fee.

7 And for the record, sir, you have 1,030 days credit.

8 Thank you.

9 ATTORNEY MCCALL: Thank you very much, Your Honor.

10 ATTORNEY KIRSHENBAUM: Thank you, Your Honor.

11 (Proceedings concluded)

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C E R T I F I C A T I O N

I, Michelle Costantino, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me, by the Office of Transcription Services, of the Essex County Superior Court proceedings in the above-entitled matter.

I further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



Michelle Costantino, CET-589

Date: October 10, 2024

Approved Court Transcriber

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Comm. v. Vazquez

1277CR01438

08-19-15

Essex, ss.

Superior Court
No. 1277CR01438

Commonwealth

v.

Albert Vazquez

MOTION TO WITHDRAW GUILTY PLEA AND TO VACATE
ILLEGAL SENTENCE

Now comes the defendant in the above-criminal matter pursuant to Mass. R. Crim. P. 30(a) and (b), moves this Honorable Court to withdraw his guilty plea and to vacate his illegal sentence, and that he is resentence in accordance with the provisions outlined in Commonwealth v. Mattis, 493 Mass. 216 (2024). The defendant, who was a juvenile at the time of his guilty plea, should not be held to the sentence handed out to him as an adult that he is currently serving time under. In accordance with Mattis, supra, the defendant seeks resentencing.

WHEREFORE, the defendant prays that this Court grants this motion and withdraw his guilty plea and vacate his illegal sentence.

Respectfully Submitted,

Dated:

Albert Vazquez, pro se
SBCC
1 Harvard Road
P.O. Box 8000
Shirley, Ma. 01464

Essex, ss.

Superior Court
No. 1277CR01438

Commonwealth

v.

Albert Vazquez

AFFIDAVIT OF ALBERT VAZQUEZ IN SUPPORT OF MOTION
TO WITHDRAW GUILTY PLEA AND TO VACATE ILLEGAL SENTENCE

I, Albert Vazquez, hereby depose and state the following to be true, that:

1. I am the defendant in the above-criminal matter.
2. When the incident occurred here, I was only 18 years old at the time. I was to be tried as an adult for manslaughter.
3. On January 11, 2024, the SJC handed down the decision in Commonwealth v. Mattis, 493 Mass. 216 (2024), and recognized that people my age up to 20 years of age are considered as "emerging adults." This ruling was applied retroactively, which made it applicable to me as well.
4. If I was considered under the "qualities of youth," I would not have been considered an adult at the time, nor sentenced as such at the time, but I was. My sentence, therefore, is illegal and I am entitled to resentencing under the Mattis ruling.
5. As a juvenile, I would not have been sentenced to 18 to 20 years. I would have received much less time, because I would have been amenable to be redeemed and not considered "irredeemable" as was the case here.
6. I believe that justice may not have been done, and that I am entitled to withdraw my guilty plea, and that my sentence that is illegal be vacated, and that I am resentenced in accordance with Mattis, supra.

Signed under the pains and penalties of perjury.

AFFIANT,

Albert Vazquez, pro se

Dated:

Commonwealth

v.

Albert Vazquez

MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO WITHDRAW GUILTY PLEA AND TO VACATE ILLEGAL SENTENCE

STANDARD OF REVIEW

"A postsentence motion to withdraw a plea is a request for postconviction relief. Postconviction motions to withdraw pleas are treated as motions for a new trial." Commonwealth v. DeMarco, 387 Mass. 481, 481-482 (1982), citing Commonwealth v. Huot, 380 Mass. 403, 406 (1980); Commonwealth v. Penrose, 363 Mass. 677, 681 (1973); Mass. R. Crim. P. 30(b) allows a judge to grant the defendant's motion only "if it appears that justice may not have been done." Moreover, a postsentence motion to withdraw a plea should only be granted by a judge if the defendant advances a credible reason which outweighs the risk of prejudice to the Commonwealth. DeMarco, supra, at 486. Judges, therefore, should rigorously apply the Mass. R. Crim. P. 30(b) standard, and allow defendants to withdraw their pleas after sentencing only "if it appears that justice may not have been done." Commonwealth v. Fanelli, 412 Mass.

497, 504 (1992), citing Commonwealth v. DeMarco, supra at 481-482.

"Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts." Mass. R. Crim. P. 30(a).

STATEMENT OF THE CASE

On September 9, 2012, the defendant was indicted out of the County of Essex by a grand jury for manslaughter, pursuant to G.L. c. 265, § 13. The defendant was eighteen years of age at the time of the incident. The defendant's motion to dismiss was denied on December 24, 2013. The defendant's motion for grand jury information was denied without prejudice on December 24, 2013. A hearing was held on the defendant's competency to stand trial on December 23, 2014. That motion was denied on February 6, 2015. On August 19, 2015, the defendant pled guilty to 18 to 20 years on the manslaughter indictment. He now seeks resentencing under the Mattis decision.

ARGUMENT

- I. THE DEFENDANT, WHO WAS A JUVENILE AT THE TIME OF THE INCIDENT, RECEIVED TOO MUCH TIME WHERE HIS SENTENCE WAS NOT MEASURED AS IF HE WAS A JUVENILE, AND HIS GUILTY PLEA SHOULD BE WITHDRAWN AND HIS ILLEGALE SENTENCE VACATED.

When it comes to determining whether a punishment is constitutional under either the Eighth Amendment to the United States Constitution or art. 26 of the Massachusetts Declaration of Rights, youth matters. Commonwealth v. Mattis, 493 Mass. 216, 216-217 (2024). In evaluating the constitutionality of a sentence, this court is guided by "[t]he fundamental imperative of art. 26 that criminal punishment be proportionate to the offender and the offense." Mattis, supra at 221, citing Diatchenko I, 466 Mass. at 671.

There are many problems with Mr. Vazquez's sentence and guilty plea. Based on Mattis, supra that is retroactive, the defendant was a juvenile at the time of the incident and subsequent indictment for manslaughter. He was not processed as a juvenile and went through the bindover process within juvenile court to see if he was redeemable or not. He was not measured on the mitigating qualities of youth.

The "mitigating qualities of youth" must be taken into consideration when it came to Mr. Vazquez sentencing here, which was not the case. See Mattis, 493 Mass. at 223, citing Johnson v. Texas, 509 U.S. 350, 367 (1993). Why it is im-

portant is because he has what is called "diminished culpability" as a juvenile. Looking at that aspect, one can only come to the conclusion that the penological justification here is inconsistent with a youthful offender in comparison to an adult. Accord Roper v. Simmons, 543 U.S. 551, 570-571 (2005)("[o]nce the diminished culpability of juveniles is recognized, it is evident that the penological justification for the death penalty apply to them with lesser force than to adults").

In Graham v. Florida, 560 U.S. 48, 76 (2010), the United States Supreme Court stated, that an "offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." This is not saying that the sentencing court failed to take this into account at the time. It couldn't because the law then did not apply, but it does now making Mr. Vazquez's sentence illegal under current law.

What was not done with this defendant then during his sentencing and should be done now to determine a much more lenient sentence, is that this court must now consider "mitigating qualities of youth" in formulating a sentence. In this case, a sentence that will come into the evolving standards of decency as applied to juveniles or emerging adults. What we know is that this defendant was immature, irresponsible,

impetuous, and reckless in his behavior, which would coincide with him being sentenced in proportion to his level of culpability. What is clear that "the brains of emerging adults are not fully mature." Mattis, 493 Mass. at 225 (emphasis added). Mr. Vazquez at the time of sentencing had the same core neurological characteristics as juveniles have. The defendant, at the time, was more similar to sixteen and seventeen year olds in the terms of impulse control. *Id.* What is also clear is that this defendant was prone to engage in risky behavior. *Id.* at 226. Peer influence is another factor that has to be considered in resentencing Mr. Vazquez. It is clear that Mr. Vazquez have greater capacity to change than older individuals makes his sentence illegal, because that factor was not considered here. He was treated as an irredeemable adult instead of an immature juvenile with diminished culpability.

He was not given that chance. Instead, he was sentenced to the maximum sentence of 20 years and no less than 18 years for said offense. However, if he was considered as a juvenile and considered as a youthful offender, he would have received less time than what he received currently as an adult. Moreover, if he was found guilty for murder as a youthful offender, he would have received a sentence no greater than 15-20 years. These factors were not considered then but must be considered now, post Mattis.

Since emerging adults require different treatment from older adults in the penological context, then it would be consistent with this proposition that Mr. Vazquez be permitted to withdraw his guilty plea and vacate his illegal sentence and to be resentenced in accordance with the evolving standards of decency as outlined in Commonwealth v. Mattis, 493 Mass. 216 (2024).

It is clear from this record that Mr. Vazquez raises a "credible reason" why justice may not have been done, Mass. R. Crim. P. 30(b), Commonwealth v. DeMarco, 387 Mass. 481, 481-482 (1982), and why his plea should be withdrawn and his sentence vacated, and to be resentenced because his sentence of 18-20 years as an adult without considering "mitigating factors" of youth warrants the relief he seeks herein. See, e.g., Commonwealth v. Selavaka, 469 Mass. 510, 513 (2014) (A defendant's expectation of finality is diminished when his or her sentence is illegal); Commonwealth v. Costa, 427 Mass. 139, 143 (2015) (rule 30[a] proper mechanism for judge to correct now unconstitutional life sentence); Commonwealth v. Sallop, 472 Mass. 568, 570 (2015) (judge not merely obligated to vacate illegal portion of sentence, but also permitted to restructure over-all sentence, provided new sentence does not violate double jeopardy).

CONCLUSION

For the reasons stated herein, Mr. Vazquez's guilty plea should be withdrawn, his sentence vacated, and that he is afforded resentencing in conformance with the provisions outlined in Commonwealth v. Mattis, 493 Mass. 216 (2024). In the interest of justice, this motion should be allowed.

Respectfully Submitted,

Dated:

Albert Vazquez, pro se
SBCC
1 Harvard Road
P.O. Box 8000
Shirley, Ma. 01464

CERTIFICATE OF SERVICE

I, Albert Vazquez, certify that I caused a true copy of the foregoing to be served upon, Paul F. Tucker, District Attorney, Ten Federal Street, Salem, Ma. 01970, by first class mail, postage prepaid.

Dated:

Albert Vazquez, pro se

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 1277CR01438

COMMONWEALTH

v.

ALBERT VAZQUEZ

**COMMONWEALTH'S VERIFIED OPPOSITION TO
THE DEFENDANT'S "MOTION TO WITHDRAW GUILTY PLEA
AND TO VACATE ILLEGAL SENTENCE"**

The defendant, Albert Vazquez, pled guilty in 2015 to manslaughter, as a lesser included offense, after having shot to death the victim, Martin Butt. Consistent with the joint recommendation of the parties, Vazquez was sentenced to 18 to 20 years in prison.

Records indicate that the defendant (d.o.b. 4/10/1994) was 18 years old when he committed this offense on September 9, 2012. He now claims that his sentence is illegal under the recent decision in Commonwealth v. Mattis, 493 Mass. 216 (2024), and that he should be permitted to withdraw his plea. In Mattis, the Supreme Judicial Court held that life without parole sentences were unconstitutional for 18-to-20-year-old youthful offenders convicted of first-degree murder. Because this defendant was neither convicted of first-degree murder nor sentenced to more than he could have been had he been sentenced for

first degree murder under Mattis, his claims should be rejected and his Rule 30 motion should be denied.

BRIEF STATEMENT OF THE CASE AND FACTS¹

On December 20, 2012, the defendant, Albert Vazquez, was indicted for murder in the September 9, 2012, shooting death of Martin Butt (No. 1277CR01438). A co-defendant, Jose Rivera, was also indicted for murder on that date (No. 1277CR01437).² Vazquez, who was the shooter, as described infra, ultimately entered a guilty plea to the lesser offense of manslaughter on August 19, 2015 (Feeley, J., presiding).

At the plea hearing, the circumstances of the offense were described by the prosecutor and acknowledged under oath by the defendant as follows:

On September 9th of 2012, the Lawrence Police and members of the State Police assigned to the District Attorney's Office were dispatched to Union City in Lawrence for a shooting.

Upon arrival, they found Martin Butt lying in the street, suffering from a gunshot wound to the back of the head and the back. He was taken

¹ Provided with this filing is the defendant's change of plea transcript dated August 19, 2015 ("P.Tr."), which the defendant did not provide. The defendant's "Memorandum of Law in Support of Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence" is cited as ("Memo").

² On November 4, 2014, following a jury trial, Rivera was convicted of the lesser offense of second-degree murder (No. 1277CR01437). He was sentenced to a parolable life term with a 20-year minimum sentence. Id.

to Lawrence General Hospital and pronounced dead a short time after arrival.

Investigators began to canvass the area and spoke to Mr. Butt's friends and family. Through investigation, they learned that Mr. Butt and an associate had allegedly robbed a heroin dealer a week prior to the shooting, and the dealer had been looking for Mr. Butt for retaliation.

With the help of some of Mr. Butt's associates, this heroin dealer had lured Mr. Butt down to Lawrence on the morning of September 9th, 2012.

When Mr. Butt arrived in Lawrence, this defendant, who was an associate of the heroin dealer as well as other associates, confronted Mr. Butt on Union Street. The defendant then took out a firearm and shot Mr. Butt once in the back and once in the head.

(P.Tr. 16-17).

In support of the lesser plea and the jointly recommended sentence of 18 to 20 years in state prison, defense counsel highlighted that the defendant was 18 years old when he committed this crime and had a documented history of "functional illiteracy, significant deficits in cognitive, social, and emotional functioning, disorganization, and impulsivity, and intellectual functioning the mildly mentally retarded range" (P.Tr. 23). The judge subsequently accepted the plea and imposed the agreed-upon sentence of 18 to 20 years in state prison, with credit for 1030 days previously served (P.Tr. 24-25).

On November 4, 2024, following the release of the Supreme Judicial Court's decision in Commonwealth v.

Mattis, 493 Mass. 216, (2024), the defendant filed a "Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence" premised on the fact that he was 18 years old when he committed this crime and asserting that his sentence was illegal in the wake of Mattis.³ On November 14, 2024, the Court (MaCarthy-Neyman, J.) ordered the Commonwealth to file a response within 60 days, which the Commonwealth timely does.

ARGUMENT

INTRO: STANDARDS FOR REVIEWING THE DEFENDANT'S CLAIM

Motions for new trial are granted only in "extraordinary circumstances," Commonwealth v. Comita, 441 Mass. 86, 93 (2004), upon a showing that "justice may not have been done." Mass. R. Crim. P. 30(b); see Commonwealth v. Moore, 408 Mass. 117, 125 (1990). The motion is "addressed to the sound discretion of the judge." Id. at 125 (internal citations omitted).

The Court "may decide a Rule 30(b) motion based solely on the affidavits [and] may discredit untrustworthy affidavits," Commonwealth v. Lopez, 426 Mass. 657, 663 (1998), even if nothing on the record directly disputes them, Commonwealth v. Rzepphiewski, 431 Mass. 48, 55

³ The defendant simultaneously filed several related motions, including a motion for an evidentiary hearing, and motion for the appointment of counsel.

(2000). See Mass. R. Crim. P. 30(c)(3). "[T]he judge need only proceed to evidentiary hearing where a substantial issue is raised by the motion or affidavits and is supported by a substantial evidentiary showing." Lopez, 426 Mass. at 663 (internal citations omitted); see also Commonwealth v. Pingaro, 44 Mass. App. Ct. 41, 48 (1997). This strict standard promotes finality and judicial efficiency, reserving the expenditure of limited public resources for cases that "truly warrant[] revisitation of a final criminal judgment in the interests of justice." Lopez, 426 Mass. at 663.

I. THE RECENT MATTIS DECISION PROVIDES NO GROUNDS FOR THE DEFENDANT TO WITHDRAW HIS GUILTY PLEA OR OBTAIN RESENTENCING

In Commonwealth v. Mattis, 493 Mass. 216 (2024), the Supreme Judicial Court extended the rule of Diatchenko,⁴ which concerned juveniles, and held it was unconstitutional for defendants convicted of first degree murder who were aged 18 to 20 (so-called "emerging adults") at the time they committed the murder to be sentenced to nonparolable life terms. The ruling applies retroactively, with permissible minimum terms depending upon the "next most severe penalty that was applicable on the date of the

⁴ Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655 (2018), S.C., 471 Mass. 12 (2015).

offense." Id. at 237. Where this murder was committed on September 9, 2012, the defendant, had he been convicted of first degree murder, would have been entitled, under Mattis, "to parole eligibility after serving between fifteen and twenty-five years in prison. See G.L. c. 279, G. L. c. 279, § 24, as amended through St. 2012, c. 192, § 46."⁵ Id. at 237.

The sentence the defendant received for his manslaughter conviction is neither incorrect nor illegal in consideration of the Mattis decision. First, Mattis is not directly applicable to him; rather, it governs the permissible sentence for 18-to-20-year-old defendants convicted of first degree murder. Second, the holding in Mattis does not in any way suggest that the defendant's sentence is improper or unlawful. His 18-year minimum term for manslaughter is seven years less than the maximum 25-year minimum term that could be imposed under Mattis had he been convicted of first-degree murder. As such, there can be no claim of disproportionality, even assuming that the "proportionality" type analysis instituted in Perez with regard to juvenile offenders might be extended to 18-to-20-

⁵ The defendant incorrectly asserts in his memorandum, p. 5, without citation, that had he been convicted of first-degree murder, under Mattis, "he would have received a sentence no greater than 15-20 years."

year-old offenders. See Commonwealth v. Perez, 477 Mass. 677, 686 (2017) (holding that juveniles convicted of nonmurder offenses in the wake of Diatchenko could not be sentenced to an aggregate time to be served prior to parole eligibility greater than a juvenile convicted of murder could be sentenced, absent a hearing pursuant to Miller v. Alabama, 567 U.S. 460, 477-478 (2012); at such hearing, the judge would determine whether "extraordinary circumstances warrant a sentence treating the juvenile defendant more harshly for parole purposes than a juvenile convicted of murder").⁶

Third, and finally, the defendant, has produced no evidence to support his assertion that he would have been sentenced to less time if the sentencing judge had been aware of the subsequent ruling in Mattis. The defendant did not provide a transcript of his plea colloquy in connection with this motion, although he asserts, "[h]e was treated as an irredeemable adult instead of an immature juvenile with diminished culpability" with regard to this plea and sentence. See Memo 4-5. "In a motion for a new trial, the burden is on the defendant to prove facts that are 'neither agreed upon nor apparent on the face of the

⁶ The Commonwealth is aware of no cases, as yet, extending the Perez ruling to Mattis defendants, but acknowledges that such outcome is likely when the issue arises.

record.'" Commonwealth v. Comita, 441 Mass. 86, 93 (2004), quoting Commonwealth v. Bernier, 359 Mass. 13, 15 (1971); see also Rasheed v. Commonwealth, 440 Mass. 1027, 1027 (2003) (pro se litigants are held to the same standard as those represented by counsel). Although it was the defendant's burden to produce this transcript, in the interest of having all pertinent information before the Court, the Commonwealth obtained a copy of the transcript and has provided it here. It establishes that the defendant's age of 18 at the time of this offense, and characteristics of youth particularly documented as to him, such as impulsivity and deficits in his cognitive functioning, were aired by defense counsel at sentencing and thus fully before the Court for its consideration (P.Tr. 23). In addition, the fact that a lesser plea and sentence to a term of years were jointly recommended and imposed suggests that the sentence imposed was considered fair and just by the defendant and his counsel. He was, by no stretch of the imagination, viewed as an "irredeemable adult" (Memo. 5) by the terms of this plea bargain, which reduced what was, at that time, a potentially nonparolable life sentence, to a term of years commensurate with his lesser manslaughter plea.

II. NO EVIDENTIARY HEARING IS WARRANTED

The defendant's motion may be properly denied without an evidentiary hearing. The decision whether to decide a motion for new trial on the basis of affidavits or to hear oral testimony is left to the sound discretion of the trial judge. Commonwealth v. Morgan, 453 Mass. 54, 64 (2009).

"If the theory of the motion, as presented by the papers, is not credible or persuasive, holding an evidentiary to have the witnesses repeat the same evidence (and be subject to the prosecutor's cross-examination further highlighting the weaknesses in that evidence) will accomplish nothing." Commonwealth v. Goodreau, 442 Mass. 341, 348-349 (2004).

Here, where no substantial issue has been raised as to any of the claims advanced by the defendant, no evidentiary hearing is warranted.

CONCLUSION

For the reasons set forth herein, the defendant's motion should be denied. Because no factual dispute has arisen that would benefit from airing at an evidentiary hearing, denial is appropriate on the pleadings, pursuant to Mass. R. Crim. P. 30(c)(3).

FOR THE COMMONWEALTH:

PAUL F. TUCKER
DISTRICT ATTORNEY
FOR THE EASTERN DISTRICT

/s/ Catherine Langevin Semel
CATHERINE LANGEVIN SEMEL
ASSISTANT DISTRICT ATTORNEY
FOR THE EASTERN DISTRICT
Ten Federal Street
Salem, Massachusetts 01970
(978) 745-6610 ext. 5014
BBO # 639596

Dated: January 13, 2025

VERIFICATION

I, Catherine Langevin Semel, hereby verify under the penalties of perjury that the information contained in this opposition is true to the best of my knowledge and belief and based on my review of the pertinent records.

/s/ Catherine Langevin Semel
Catherine Langevin Semel
Assistant District Attorney

Dated: January 13, 2025

CERTIFICATE OF SERVICE

I hereby certify under the penalties of perjury that on January 13, 2025, I caused a copy of the within opposition and its attachments to be served by first-class mail, postage prepaid, on Albert Vazquez, SBCC, 1 Harvard Road, P.O. Box 8000, Shirley, MA 01464.

/s/ Catherine Langevin Semel
Catherine Langevin Semel
Assistant District Attorney

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 1277CR01438

COMMONWEALTH

vs.

ALBERT VAZQUEZ

**MEMORANDUM OF DECISION AND ORDER ON
DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA
AND VACATE SENTENCE (Paper No. 23)**

On August 19, 2015, defendant Albert Vazquez ("Vazquez") pled guilty to manslaughter in connection with the shooting death of Martin Butt.

On November 4, 2024, Vazquez filed a Motion to Withdraw Guilty Plea and Vacate Illegal Sentence (Paper No. 23) ("Motion"). Vazquez, who represents himself, seeks to withdraw his guilty plea on the grounds that his sentence was illegal under *Commonwealth v. Mattis*, 493 Mass. 216 (2024). The Commonwealth opposes. After thorough consideration of the submissions, the Motion is **DENIED**.

RELEVANT PROCEDURAL HISTORY

The following is the relevant procedural history of this matter, which is taken from the docket entries, court papers, and the transcript of Vazquez's change of plea hearing.

On December 20, 2012, the Grand Jury returned an indictment against Vazquez charging him with the murder of Martin Butts in violation of G.L. c. 265, § 1. Vazquez was arraigned on the indictment on January 15, 2013, and attorney James E. McCall appeared on his behalf. Following the denial of Vazquez's motion to dismiss, the Commonwealth and Vazquez reached an agreement wherein Vazquez would plead guilty to so much of the indictment as alleges

manslaughter and the parties would jointly recommend a sentence of incarceration of eighteen to twenty years.

On August 19, 2015, after a thorough colloquy conducted by this court (Feeley, J.), Vazquez pled guilty to the lesser-included-offense of manslaughter. During the change of plea colloquy, the defendant admitted he shot Mr. Butts once in the back of the head and once in the back on September 9, 2012, causing Mr. Butt's death. Vazquez was eighteen years old at the time of the offense. Judge Feeley accepted the joint recommendation of counsel and sentenced Vazquez to eighteen to twenty years' imprisonment.

On November 4, 2024, Vazquez filed the present Motion. On November 14, 2024, this court (McCarthy-Neyman, J.) ordered the Commonwealth to file a written opposition within sixty days. On January 13, 2025, the Commonwealth filed a verified opposition to the defendant's motion.¹

DISCUSSION

"A defendant who wishes to withdraw a guilty plea may file a motion for a new trial under Mass. R. Crim. P. 30[(b)]." *Commonwealth v. McCulloch*, 450 Mass. 483, 488 n.7 (2008) (citation omitted). Under Rule 30(b), "[t]he trial judge . . . may grant a new trial at any time if it appears that justice may not have been done." Mass. R. Crim. P. 30(b).

A motion for new trial is granted "only in extraordinary circumstances." *Commonwealth v. Comita*, 441 Mass. 86, 93 (2004). "Judges are to apply the standard set out in Mass. R. Crim. P. 30 (b) rigorously, and should only grant a postsentence motion to withdraw a plea if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth.' . . . 'This strict standard for postconviction motions promotes judicial

¹ The Commonwealth provided the court with a transcript of the change of plea hearing before Judge Feeley, who is now retired.

efficiency and finality by discouraging a defendant from entering a guilty plea to test the weight of potential punishment ... only to seek to withdraw the plea later when adverse consequences appear.” *Commonwealth v. Lopez*, 96 Mass. App. Ct. 34, 38 (2019) (quotations and citations omitted). With these general principles in mind, the court will address the merits of the Motion.

Vazquez argues he should be allowed to withdraw his guilty plea because his sentence is illegal. Because he was an “emerging adult” at the time of the offense, he requests that this court resentence him in accordance with *Commonwealth v. Mattis*, 493 Mass. 216 (2024).²

In *Miller v. Alabama*, the United States Supreme Court concluded that a sentencing scheme requiring mandatory life-without-parole sentences for those under the age of eighteen violates the cruel and unusual punishment clause of the Eight Amendment to the United States Constitution. 567 U.S. 460, 479-480 (2012). Less than two years later, the Supreme Judicial Court (“SJC”) held that a sentence of life without the possibility of parole for juvenile offenders in any circumstance violates art. 26 of the Massachusetts Declaration of Rights. *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 669-670 (2013) (*Diatchenko I*). On the heels of *Diatchenko I*, the legislature amended G.L. c. 265, § 2 to require the imposition of sentences of life with the possibility of parole for those aged fourteen, but less than eighteen, convicted of first-degree murder.

Most recently in *Mattis*, the SJC held that mandatory sentences of life without the possibility of parole were unconstitutional for eighteen-to-twenty-year-old “emerging adults” convicted of first-degree murder. 493 Mass. 216, 217-218 (2024). In reaching this conclusion, the SJC considered past legal precedent and “contemporary standards of decency.” *Id.* at 221. *Mattis* applies retroactively. *Id.* at 237.

² In his Motion, Vazquez claims he was a juvenile at the time of the offense. He was, however, eighteen years old which, under *Mattis*, placed him the category of “emerging adult.”

As a threshold matter, *Mattis* is not on all fours with the present case. Vazquez, albeit an emerging adult, was not convicted of first-degree murder. Vazquez nevertheless argues that resentencing under *Mattis* for the crime of manslaughter is required because of the “mitigating qualities of [his] youth” and the need for criminal punishment to be proportionate to the offender and the offense.

“The touchstone of art. 26’s proscription against cruel or unusual punishment ... remains proportionality.” *Commonwealth v. Perez*, 477 Mass. 677, 683 (2017), citing *Diatchenko I*, 466 Mass. at 669.³ “The essence of proportionality is that ‘punishment for crime should be graduated and proportioned to both the offender and the offense[.]’” *Perez*, 477 Mass. at 683 (citations omitted). In *Perez*, the SJC concluded, “where a juvenile is sentenced for a nonmurder offense or offenses and the aggregate time to be served prior to parole eligibility exceeds that applicable to a juvenile convicted of murder, the sentence cannot be reconciled with art. 26 unless, after hearing on the factors articulated in *Miller v. Alabama*, 567 U.S. 460, 477-478, 132 S. Ct. 2455, 183 L. Ed 2d (2012) (Miller hearing), the judge makes a finding that the circumstances warrant treating the juvenile more harshly for parole purposes than a juvenile convicted of murder.” 477 Mass. at 679. The Court in *Perez* ultimately determined that consecutive sentences requiring the juvenile defendant to serve an aggregate sentence of thirty-two and one-half years for convictions on nonmurder offenses – with parole eligibility exceeding that available to a juvenile defendant convicted of murder – were presumptively disproportionate under art. 26. *Id.* at 685-

³ It is somewhat unclear whether Vazquez argues a violation of the Eighth Amendment to the United States Constitution or art. 12 of the Massachusetts Declaration of Rights, or both. The court’s analysis turns on the state constitutional provision, which the Supreme Judicial Court has “interpreted more broadly than the Supreme Court has interpreted the Eighth Amendment.” *Commonwealth v. Perez*, 477 Mass. 677, 679 (2017).

686. The SJC consequently vacated the denial of Perez's motion for new trial and remanded the case to the Superior Court for a Miller hearing, if necessary, for resentencing. *Id.* at 688.⁴

Here, even assuming *arguendo* the holding of *Perez* is extended to embrace emerging adults who commit nonmurder offenses, the time Vazquez must serve before being parole eligible does not exceed the time he would have had to serve prior to parole eligibility for a first-degree murder conviction. See *Perez*, 477 Mass. at 682. After *Mattis*, emerging adults convicted of first-degree murder prior to July 25, 2014 "are eligible for parole based on the next most severe penalty that was applicable on the date of the offense." *Mattis*, 493 Mass. at 237. Had Vazquez been convicted of the first-degree murder of Mr. Butt, he would not be parole eligible until after having served between fifteen and twenty-five years. See *Id.* (emerging adults who committed offense of first-degree murder between August 2, 2012, and July 24, 2014, are parole eligible after serving between fifteen and twenty-five years).

A comparison of Vazquez's parole eligibility dates for manslaughter and first-degree murder do not support a claim of disproportional punishment under art. 26 of the Massachusetts Declaration of Rights. As an emerging adult under *Mattis*, Vazquez's parole eligibility date for murder in the first degree would be August 18, 2030. He would not be eligible for good time credit and would face supervision for life upon his release from incarceration. Vazquez's current parole eligibility date for the manslaughter conviction is August 17, 2033. However, Vazquez is eligible for good time credit of fifteen days per month which, if earned over the past ten years,

⁴ Generally, a Miller hearing involves consideration of a number of factors to determine whether extraordinary circumstances justify a sentence treating a juvenile defendant convicted of nonmurder offense(s) more harshly for parole purposes than a juvenile convicted of murder. *Commonwealth v. Perez*, 477 Mass. 677, 686 (2017). Given this court's denial of the defendant's motion for new trial, a Miller hearing is not required in this case. Vazquez's motion for an evidentiary hearing therefore is **DENIED.**

would result in a reduction of approximately 4.93 years. He is not subject to lifetime supervision upon release from incarceration.⁵

Finally, the record before the court does not compel the conclusion that Vazquez's sentence violates art. 26 under the three-prong test set forth in *Cepulonis v. Commonwealth*, 384 Mass. 495 (1981), taking into consideration the greater weight given Vazquez's age. Under the first prong, the facts to which Vazquez pled guilty are more in line with the deliberate and premeditated murder of Mr. Butt, rather than manslaughter. Vazquez admitted to an execution-style killing, shooting Mr. Butt in the back of the head and in the back. His attorney informed the court that Vazquez had "some cognitive issues, learning disabilities." Tr. at *1-4.⁶ Counsel informed Judge Feeley that the defendant was found competent, but he also directed the court's attention to Vazquez's age at the time of the offense as well as Vazquez's history of "functional illiteracy, significant deficits in cognitive, social, and emotional functioning, disorganization, and impulsivity, and intellectual functioning in the mildly mentally retarded range." Tr. at *1-23. Thus, "the nature of the offense and the offender in light of the degree of harm to society," *Perez*, 477 Mass. at 684, was explored at Vazquez's change of plea hearing. Vazquez was not, as he contends, sentenced as an "irredeemable adult" rather than an immature juvenile.

Under the second prong of the proportionality calculus, it is important not to overlook the significant charge concession made by the Commonwealth in the circumstances of this case. As an adult at the time of the offense, Vazquez faced the possibility of a sentence of life-without-parole for a first-degree murder conviction. Juveniles faced a fixed "minimum term of not less

⁵ In its memorandum, the Commonwealth compares the low end of Vazquez's sentence on his manslaughter conviction (eighteen years) to the high end of the sentence had Vazquez been convicted of first-degree murder as an emerging adult (twenty-five years). Such a comparison is not necessarily useful as it does not address the parole eligibility dates for these offenses, which is determined by the low end of the sentencing range.

⁶ Citations to the transcript of the plea and sentencing hearing are "Tr. at *[page number]."

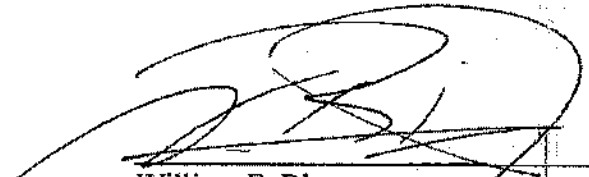
than [twenty] years nor more than [thirty] years", at that time for such an offense. See G.L. c. 279, § 24. Vazquez received a sentence of eighteen to twenty years' incarceration on the nonmurder manslaughter conviction. Thus, there is no disparity "between the sentence imposed [on Vazquez] and punishments prescribed for the commission of more serious crimes in the Commonwealth." *Cepulonis*, 384 Mass. at 498.

With respect to the third and final prong, Vazquez does not direct this court's attention to other jurisdictions that impose less harsh penalties for the crime of manslaughter when the offender was eighteen years old at the time of the offense. *Id.* at 497-498. See Conn. Gen. Stat. Ann. § 53a-35a (manslaughter in first degree with firearm by adult offender punishable by term not less than five years nor more than forty years, without regard to relative youth of adult offender); 11 R.I. Gen. Laws Ann. § 11-23-3 (manslaughter by adult offender punishable by imprisonment not exceeding thirty years, without regard to relative youth of adult offender).

Ultimately, the court does not conclude Vazquez's sentence is "so disproportionate to the crime that it 'shocks the conscience.'" *Diatchenko I*, 466 Mass. at 669. His sentence of eighteen to twenty years' incarceration for the killing of Mr. Butt does not, in this court's view, violate art. 26's proscription against cruel and unusual punishment.

ORDER

For the above reasons, it is **HEREBY ORDERED** that Defendant's Motion to Withdraw Guilty Plea and to Vacate Illegal Sentence (Paper No. 23) is **DENIED**.



William F. Bloomer
Associate Justice, Superior Court
Dated: May 22, 2025