

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

DAR No. _____

Appeals Court No. 2020-P-0550

COMMONWEALTH,

Appellee,

v.

SUNIL SHARMA,

Defendant-Appellant.

On Appeal from the Suffolk Superior Court

APPLICATION FOR DIRECT APPELLATE REVIEW

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Request for Direct Appellate Review

The appellate courts of the Commonwealth have not yet considered whether lengthy sentences for juvenile offenders convicted of murder in the second degree and other offenses are unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012), and *Diatchenko v. District Attorney for the Suffolk District*, 466 Mass. 655 (2013). As the Commonwealth notes, “[t]his case is unique among the Massachusetts cases that have addressed sentences for juvenile offenders in light of *Miller*.” Commonwealth’s Brief at 14 (commenting on Sharma’s guilty plea).

Defendant Sunil Sharma is a juvenile offender who was sentenced, after a guilty plea, to a twenty-two year minimum sentence (fifteen years to life for second-degree murder plus seven to ten years on-and-after for nonhomicide offenses). Sharma is appealing the denial of his first and only Rule 30 motion, in which he argued that he is entitled to resentencing because (1) his sentence is cruel, unusual, unconstitutionally disproportionate, and/or violates equal protection; (2) changes in constitutional law have reshaped the sentencing landscape in a manner that his sentencing judge could not have anticipated when

he exercised his discretion to sentence Sharma consecutively; and (3) newly-discovered evidence—scientific research about juvenile brain development and the cognitive characteristics of juveniles—that was not available at the time of Sharma’s sentencing in 1999 casts serious doubt on the justice of his sentencing.

In 2012, the Supreme Court concluded that “children are constitutionally different from adults for purposes of sentencing,’ irrespective of the specific crimes that they have committed.”

Diatchenko, 466 Mass. at 670, quoting *Miller*, 567 U.S. at 471. “[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Miller*, 567 U.S. at 472. Nothing about children’s “distinctive (and transitory) mental traits and environmental vulnerabilities [] is crime-specific.” *Id.* at 473. The Court therefore held that “a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders” violates the Eighth Amendment, 567 U.S. at 479, which requires that “punishment for crime should be graduated and proportioned to both the offender and the offense,” *id.* at 469 (quotation and citation omitted).

This Court applied *Miller* retroactively, *Diatchenko*, 466 Mass. at 661-67, and in doing so has fundamentally reevaluated sentencing for juvenile offenders: life without parole has been eliminated; first degree offenders with consecutive sentences or lengthy concurrent sentences are eligible for resentencing; and sentences for nonhomicide offenders with aggregate parole eligibility dates that are longer than the parole eligibility date for first degree murder are presumptively disproportionate under art. 26.¹

In short, following *Miller* and *Diatchenko*, this Court has always concluded that a juvenile sentenced before *Miller* to an aggregate sentence that is longer than fifteen years is eligible for a hearing on the

¹ *Commonwealth v. Perez*, 480 Mass. 562, 568 (2018) (citation omitted) (“*Perez II*”) (for juvenile offenders, *Diatchenko* converted first-degree life sentences into sentences for life with the possibility of parole after fifteen years); *Commonwealth v. Costa*, 472 Mass. 139 (2015) (first-degree offender with consecutive sentence eligible for resentencing); *Commonwealth v. Wiggins*, 477 Mass. 732, 747-48 & n.20 (2017) (first-degree juvenile offender with concurrent sentences for nonhomicide offenses that exceed fifteen years entitled to resentencing); *Commonwealth v. Perez*, 477 Mass. 677, 686 (2017) (“*Perez I*”) (aggregate sentences for nonhomicide juvenile offenders that are longer than the sentence permitted for first degree murder are presumptively disproportionate). *See also Commonwealth v. Lutskov*, 480 Mass. 575 (2018) (applying *Perez*); *Commonwealth v. Washington*, 97 Mass. App. Ct. 595 (2020) (same).

legality of that sentence or for resentencing. The Commonwealth suggests that Sharma should be the first juvenile offender with a minimum sentence longer than fifteen years to whom this jurisprudence does not apply. The Commonwealth conceded that had Sharma been convicted of first-degree murder, “he would now be entitled to resentencing on all of his convictions,” RAI/160,² but argues that because he is a second-degree offender with consecutive sentences, *Miller* and progeny simply do not apply. According to the Commonwealth, Sharma falls into a gap in the existing law because his charges are both more serious than nonhomicide offenses, Commonwealth’s Brief 19-20, *and* not serious enough to be compared to first-degree murder, Commonwealth’s Brief 20-23.

Treating Sharma worse than first-degree offenders raises precisely the proportionality and equal protection concerns that this Court foresaw in *Commonwealth v. Brown*, 466 Mass. 676 (2013). This Court warned that where “a juvenile convicted of the lesser crime of murder in the second degree [is] sentenced to a lengthier minimum term than the juvenile convicted of the more severe crime of murder in

² RA refers to the Record Appendix filed with the Appeals Court.

the first degree,” that could raise concerns about violations of both art. 26 and art. 1. *Brown*, 466 Mass. at 690.

To address those constitutional concerns and to ensure that a juvenile offender such as Sharma is not treated worse than a juvenile convicted of first-degree murder, Sharma asks this Court to extend *Miller* and progeny to reach juvenile offenders sentenced for more than fifteen years for second-degree murder and nonhomicide offenses. Because this Court has not yet applied *Miller* to this particular sentence structure, Sharma’s appeal squarely raises “questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court [and] questions of law concerning the Constitution of the Commonwealth,” Mass. R. A. P. 11(a), and he respectfully petitions for direct appellate review.

Statement of Prior Proceedings

Defendant Sunil Sharma pleaded guilty in 1999 to second-degree murder, two counts of armed assault with intent to murder, and one count of illegal possession of a firearm. Three other indictments were placed on file with his assent. He was sentenced to life with the possibility of parole for second degree murder; he received two seven-to-

ten year on-and-after sentences (to run concurrent with each other, but consecutive to the life sentence) for the assaults; and he was sentenced to one year to one year and one day for illegal possession of a firearm, to run concurrent with the sentence on the first assault charge. RAII/63-64.

Sharma has been incarcerated since his original arrest in 1996. He was paroled from his life sentence on June 11, 2019, following his second parole hearing. RAII/6-9. The Board credited his testimony that he “has matured and . . . has been able to engage in additional programming” while incarcerated, and that contributing factors to his changed behavior included his “religious involvement, as well as being selective and respectful in regard to the people he interacts with.” RAII/8. Accordingly, the Parole Board formed “the unanimous opinion that Sunil Sharma is rehabilitated and, therefore, merits parole at this time,” releasing Sharma to his on-and-after sentences. RAII/9. Sharma is also subject to an immigration detainer and order of removal to India. RAII/67-68.

On October 31, 2019, Sharma filed his first and only Rule 30 motion. RAI/13-16. Sharma requested that the Superior Court vacate

his on-and-after sentences as unconstitutional and illegal, and resentence him concurrently on those charges. *Id.* Sharma also moved for a new sentencing hearing to determine whether his sentences should run concurrently, rather than consecutively, based on evidence about juvenile brain development, psychology and neuroscience, which was unavailable at his original sentencing. RAI/14-15. Sharma separately filed an Ex Parte Motion for Funds for an Expert in Support of Resentencing. Add. 34.

The Superior Court held no hearing on either motion. On November 20, 2019, the motion for funds was denied without prejudice, pending the “issue being joined on Paper 31 [the Rule 30 motion].” (Roach, J.) *Id.* On March 9, 2020, the Rule 30 motion was denied, by endorsement, “for all the reasons stated by the Commonwealth in its opposition filed 2/5/20. In particular, I agree with the Commonwealth that on this case the defendant’s sentences pursuant to his plea remain lawful under *Miller* and *Diatchenko*.” (Roach, J.) Add. 36-37.

Sharma filed his notice of appeal on March 30, 2020. The case was docketed in the Appeals Court on May 11, 2020. Sharma filed his opening brief on the merits on August 6, 2020. The Commonwealth filed

its opposition on October 8, 2020. Sharma filed his reply brief on November 2, 2020.

Statement of Facts

On April 16, 1996, Sharma entered the Rainbow Restaurant in Boston's Chinatown and shot repeatedly at two men. RAI/53-55. While both his targets were gravely injured, one of the bullets Sharma fired struck and killed Ky Ung Shin, an eighteen-year-old woman seated nearby. RAI/6-7. At the time of the homicide, Sharma was a member of a "crew" that extorted illegal gambling operations in Chinatown and his two intended targets were members of a rival crew. RAI/7. After the shooting, Sharma fled Massachusetts. RAI/55. He was arrested in July 1996 and promptly confessed to the murder. RAI/55-56.

At the time of Ms. Shin's murder, Sharma was a teenager whose "early developmental history was remarkable for significant attachment disruption and sadistic physical abuse." RAI/84 (Psychosocial Assessment). Born in India in August 1978 or 1979, Sharma's family attachments were limited: his mother left India for the United States in January 1981, leaving Sharma behind with his father and his two older siblings, a sister and a brother. RAI/15, RAI/84. Sharma's sister joined

their mother in the United States in 1984, while Sharma and his brother remained behind. RAI/15. Sharma's father was an alcoholic who placed Sharma and his brother in an informal boarding school or series of such schools. RAI/33. At one such school, Sharma was subjected to regular physical abuse: he was beaten by cable wires and had his head submerged in a bucket of water as a form of punishment; he was deliberately burned on at least one occasion; he lacked sufficient food and necessary medical care. RAI/71. After Sharma's father died in July 1989, Sharma and his brother were sent to the United States. *Id.*

Sharma struggled in the United States: he was barely acquainted with his mother and sister, who both worked hard to support the family and were therefore frequently absent from the home. RAI/71-2. He experienced race-based animus and violence in school. *Id.* In 1993, one year before he dropped out of a vocational high school, his math skills were assessed to be at a fourth-grade level, while his reading and language skills were at a third-grade level. RAI/88-89.

Instead of attending school, Sharma began to spend time in Chinatown with an acquaintance, eventually joining a "crew" that served as a surrogate family—he viewed his "leader" as a father figure

and found identity and security within the group. RAI/75. For his crew, Sharma worked as “security” or “muscle” at Chinatown gambling joints. RAI/73. He also began engaging in a range of criminal conduct, spending time in and out of DYS detention. RAI/74. In July 1995, Sharma was “viciously attacked” in a “racially motivated” stabbing. RAI/91. Contemporaneous records note that Sharma “was advised by the police to leave the area” based on “[n]umerous threats” towards his family, and that “[s]urviving near mortal wounds [Sharma] was incapacitated for several months.” *Id.* He then went AWOL from DYS supervision. *Id.*

Around April 1996, Sharma’s crew leader was arrested, and following the arrest, Sharma believed that another crew was attempting to encroach on his crew’s territory. RAI/75. Lacking mature problem-solving skills, Sharma decided to shoot two members of the other crew. *Id.* Sharma did not appreciate or think through the consequences of an armed assault, including the harm to his intended victims or the possibility that he might hurt an innocent bystander. *Id.*

After Sharma was arrested and incarcerated, he struggled to adjust to the prison environment and his institutional record was very

poor through approximately 2008. RAII/11. He received numerous disciplinary reports for fighting. *Id.* He stabbed or slashed other inmates twice, in 2000 and 2004, assaulted a fellow inmate in 2005, and fought with a corrections officer in 2008. *Id.*³

As the Parole Board recognized, Sharma’s trajectory for the last decade has been positive and he has demonstrated his rehabilitation. The Board noted that Sharma “has not had a violent disciplinary report in over 10 years.” RAII/7. Sharma has participated in numerous educational and rehabilitative programs; he has engaged in religious study and practice; he has established and maintained family relationships; and he has found employment. RAII/8. He has completed

³ This Court has acknowledged that “[i]n the case of juvenile homicide offenders, negative institutional behavior during the early years of their incarceration might . . . reflect, at least in part, the immaturity and recklessness characteristic of their age at the time.” *Deal v. Comm’r of Correction*, 478 Mass. 332, 343 n.13 (2017). Juvenile inmates enter prison as teenagers and are surrounded by older inmates. They often “feel they have to establish a sense of toughness and resiliency to secure their safety.” A. Nellis, *The Lives of Juvenile Lifers: Findings from a National Survey*, The Sentencing Project 21 (2012). Younger inmates in adult prison “tend to act out in their early period of incarceration,” but such “behavior dissipates as they age and grow accustomed to their environment.” *Id.*, citing R. Johnson, *Hard Time: Understanding and Reforming the Prison* (2d ed. 1996).

more than two dozen programs, including the Correctional Recovery Academy (CRA); after he completed CRA, he was invited to serve in its Graduate Support Program, where he remained as a peer mentor for nearly a year and a half. RAI/81, 142. In recent years, Sharma has continued to take leadership roles in prosocial programming and has endeavored to live by his religious values by behaving in a positive manner. RAI/81-82. In sum, Sharma has matured from a violent and impulsive adolescent to a thoughtful and responsible adult.

Issues of Law

1. As a matter of first impression, is a sentence for second-degree murder and consecutive nonhomicide offenses unconstitutionally disproportionate and/or does it violate equal protection where such a sentence results in a longer period of incarceration before parole eligibility for a second-degree offender than for a juvenile convicted of first-degree murder?
2. As a matter of first impression, should a juvenile second-degree offender whose original sentencing involved a discretionary choice to sentence consecutively be resentenced after *Miller* because changes in constitutional law have reshaped juvenile sentencing

in a manner that the sentencing judge could not have anticipated when he chose to impose a consecutive sentence?

3. Is resentencing required where there have been fundamental changes in the scientific consensus about juvenile brain development and the cognitive characteristics of adolescents, and such evidence—had it been available—would likely have been a real factor in the judge’s sentencing decision, such that its absence casts real doubt on the justice of the prior proceeding?

These issues were all raised in Sharma’s Rule 30 motion.

Argument

I. Sharma’s Consecutive Sentence Is Unconstitutionally Disproportionate and/or Violates Equal Protection

Sharma’s aggregate twenty-two year minimum sentence for a homicide and nonhomicide offenses is unconstitutionally disproportionate and violates his equal protection rights. As such, his consecutive sentences must be vacated.⁴

⁴ A defendant who pleads may still bring a constitutional challenge to his sentence: Rule 30(a) provides that a defendant may challenge an unconstitutional or unlawful sentence “at any time, as of right.” Mass. R. Crim. P. 30(a). *See, e.g., Commonwealth v. Cole*, 468 Mass. 294 (2014) (permitting constitutional challenge under Rule 30(a) after guilty plea).

After this Court applied *Miller* retroactively to cases on collateral review, *Diatchenko*, 466 Mass. at 661-66, “a sentencing statute prescribing life without the possibility of parole [for murder in the first degree] in effect became a statute prescribing, for juvenile offenders, life with the possibility of parole after fifteen years,” *Commonwealth v. Perez*, 480 Mass. 562, 568 (2018) (citation omitted) (“*Perez II*”).

This Court also warned immediately of the potential for proportionality or equal protection concerns if a second-degree offender were to end up worse off than a first-degree offender. *Brown*, 466 Mass. at 690. Sharma’s appeal raises, for the first time, the proportionality and equal protection problems that this Court foresaw in *Brown*. Sharma’s earliest parole eligibility date was twenty-two years after his crime of conviction, whereas a juvenile convicted of first-degree murder

Cf. Mass. R. Crim. P. 12 (enumerating rights waived by guilty plea). The Commonwealth suggests that this case is unique due to Sharma’s plea and that the fact of the plea precludes relief. *See* Commonwealth’s Brief at 14-17 (relying on irrelevant federal cases and a single Massachusetts case discussing Rule 29). *Cf.* Reply Brief at 7-9 (responding to these arguments). The plea is a proxy for what is unique about this case, because it is the mechanism by which Sharma obtained his sentence. His sentence structure is unique among post-*Miller* resentencing cases..

and sentenced at the same time as Sharma would have become parole eligible after fifteen years.⁵

Sharma's sentence is disproportionate compared both to juveniles convicted only of first-degree murder *and* those convicted of first-degree murder and non-homicide offenses. First-degree juvenile offenders are parole eligible after fifteen years, *Perez II*, 480 Mass. at 568, whereas first-degree offenders with consecutive or lengthy concurrent sentences are entitled to resentencing applying *Miller*, *Commonwealth v. Costa*, 472 Mass. 139 (2015) (resentencing for consecutive first-degree sentences); *Commonwealth v. Wiggins*, 477 Mass. 732, 747-48 & n.20 (2017) (resentencing for first-degree juvenile offender with concurrent nonhomicide sentences that exceed fifteen years). *See infra* Part II (discussing *Costa* and *Wiggins*).

This Court has also recognized that lengthy sentences for nonhomicide juvenile offenders raise proportionality concerns when compared to first-degree sentences: in *Commonwealth v. Perez*, 477

⁵ After *Diatchenko*, the legislature amended G.L. c. 279, § 24, to reset minimum sentences for juveniles convicted of first-degree murder. However, a juvenile sentenced for first-degree murder *before* these amendments became—following *Diatchenko*—parole eligible in fifteen years. *See Commonwealth v. Costa*, 472 Mass. 139, 140, 145 (2015).

Mass. 677, 686 (2017) (“*Perez I*”), this Court held that an “aggregate sentence for nonmurder offenses with parole eligibility exceeding that applicable to a juvenile defendant convicted of murder is presumptively disproportionate.” Where a sentence is “presumptively disproportionate,” a sentencing court must conduct a hearing applying *Miller* factors to assess whether “extraordinary circumstances warrant a sentence treating the juvenile defendant more harshly for parole purposes than a juvenile” convicted of first-degree homicide. *Id.*

This Court has declined to reconsider lengthy pre-*Miller* juvenile sentences only in cases involving statutorily-mandated fifteen-year minimum sentences, but in doing so, has treated first- and second-degree offenders equally. The Court has refused to resentence first-degree offenders serving only life sentences. *See Commonwealth v. Watt*, 484 Mass. 742, 754 (2020) (declining in first-degree case to revisit holding “that a mandatory life sentence with parole eligibility after fifteen years for a juvenile homicide offender . . . is constitutional” (citation omitted));⁶ *Diatchenko*, 466 Mass. at 674 (amending parole

⁶ *Watt* involved two defendants convicted of first-degree murder, a seventeen year old and an eighteen year old. 484 Mass. at 745. While

eligibility, but declining to order resentencing). This Court has likewise refused to resentence second-degree offenders sentenced to life with the possibility of parole after fifteen years. *See Commonwealth v. Lugo*, 482 Mass. 94, 96 (2019) (statutorily-mandated life with parole was constitutional); ⁷ *Commonwealth v. Okoro*, 471 Mass. 51, 55-62 (2015) (same). Neither *Lugo* nor *Okoro*, however, involved a second-degree offender whose sentence extended beyond fifteen years.

In short, this Court has not—since *Miller*—declined to grant resentencing or an opportunity to seek resentencing to any juvenile sentenced before *Miller* to a sentence longer than fifteen years. A second-degree juvenile offender should not be worse off than all other offenders, and in particular, than all first-degree offenders. This Court should extend *Perez* to hold that *any* aggregate sentence that causes a

both defendants were also convicted of nonhomicide offenses, they were sentenced concurrently on those offenses and the concurrent sentences did not exceed fifteen years. *See* Commonwealth’s Brief at 16, *Commonwealth v. Watt* (SJC-11693).

⁷ *Lugo* was convicted of second-degree murder and several nonhomicide offenses and sentenced to life with parole after 15 years. 482 Mass. at 95 & n.1; *see also* Commonwealth’s Brief at 3-4, *Commonwealth v. Lugo* (SJC-12546) (describing *Lugo*’s concurrent sentences for nonhomicide offenses, none of which was longer than fifteen years).

juvenile convicted of a lesser crime than first-degree murder to be eligible for parole *after* a juvenile convicted of first-degree murder is presumptively disproportionate.⁸

II. Sharma Must Be Resentenced Because Changes in Constitutional Law Have Reshaped the Sentencing Landscape in a Manner that His Sentencing Judge Could Not Have Anticipated When that Judge Exercised His Discretion to Sentence Consecutively

A judge who sentenced a juvenile before 2012 could not have predicted *Miller* and the sweeping changes in juvenile sentencing it produced. *See Costa*, 472 Mass. at 144. This Court has therefore repeatedly concluded that where the sentence received by a first-degree juvenile homicide offender before *Miller* involved the exercise of judicial discretion—that is, where the sentence involved either a consecutive component or a concurrent component that exceeded fifteen years—that

⁸ In his opening brief, Sharma argues in the alternative that his sentence is disproportionate (rather than presumptively disproportionate) applying the traditional tripartite analysis for proportionality in *Cepulonis v. Commonwealth*, 384 Mass. 495, 497-98 (1981), “supplemented with the greater weight given to a juvenile defendant’s age,” *Perez I*, 477 Mass. at 684. Brief at 34-48; *see also* 31-34. Sharma is not elaborating on this fact-specific argument in this petition, but if DAR were allowed, would continue to press it as a second method to establish that his sentence is disproportionate.

juvenile is eligible for resentencing. This Court should now extend that holding to second-degree offenders, such as Sharma.

First, in *Costa*, this Court concluded that a defendant with two consecutive life sentences was entitled to resentencing because his trial judge did not know “about the constitutional differences that separate juvenile offenders from adults,” and the judge “exercise[d] discretion in deciding to impose consecutive rather than concurrent sentences.”

Costa, 472 Mass. at 144, 145. Resentencing under *Costa* requires “consideration of the *Miller* factors—among them, the ‘possibility of rehabilitation’—as well as an assessment of the defendant’s postsentencing conduct.” *Commonwealth v. LaPlante*, 482 Mass. 399, 404 (2019) (citation omitted).

Applying *Costa*, this Court likewise ordered resentencing in *Wiggins*, where a juvenile defendant had been sentenced for first-degree murder and had received multiple concurrent sentences—all longer than fifteen years—for home invasion and robbery while masked. 477 Mass. at 747-48 & n.20. Although the juvenile’s first-degree murder sentence was no longer illegal in that it had already been “revised” to permit parole, this Court concluded that the defendant remained

eligible for resentencing on his concurrent sentences. *Id.* “[T]he original sentencing judge could not have foreseen our decisions in *Diatchenko* and *Brown*,” and thus the implications of the judge’s discretionary sentencing choices would not have been clear at sentencing. *Id.* at 748.

Sharma’s sentence presents the same fundamental notice and fairness concerns as *Costa* and *Wiggins*. There is, of course, a difference between discretionary sentencing choices for first- and second-degree offenders pre-*Miller*: for first-degree offenders, discretionary choices “could be regarded as ‘somewhat symbolic’” given their life sentences. *See Costa*, 472 Mass. at 144. However, choices made for second-degree offenders, while not symbolic at the time of sentencing, were nonetheless being made by judges who lacked critical information. Like the *Costa* judge, Sharma’s judge did not know “about the constitutional differences that separate juvenile offenders from adults.” *Costa*, 472 Mass. at 144. He also could not have anticipated that Sharma’s parole eligibility date would be longer than the parole eligibility date for a first-degree offender.

Second-degree murder is a lesser offense: “[t]he purpose of our murder statute . . . is *to gradate punishment* and to categorize murder

as murder in the first or second degree.” *Commonwealth v. Matchett*, 386 Mass. 492, 502 (1982) (emphasis added). In 1999, none of the parties involved in Sharma’s sentencing could have known how Sharma’s sentence would ultimately compare to juvenile first-degree sentences. The judge therefore had no opportunity to gradate punishment to reflect Sharma’s relative culpability.

Thus, just as in *Costa* and *Wiggins*, Sharma’s sentencing judge exercised his discretion without fundamental information that would have informed his decision-making. As such, this Court should conclude that *Costa* and *Wiggins* apply to second-degree offenders whose sentences involve judicial exercise of discretion, and that Sharma is therefore eligible for resentencing.

III. Sharma’s Consecutive Sentences Constitute Cruel or Unusual Punishment in Light of New Scientific Evidence Concerning the Cognitive Characteristics of Adolescents

Sharma should be granted a new sentencing hearing because developments in the study of the juvenile brain have dramatically changed the understanding of juvenile criminality and culpability.⁹

⁹ This evidence is set forth in detail with citations to the record in Sharma’s opening Brief at 48-53, and the Commonwealth “accepts,

Sharma was sentenced in 1999, at a time when the prevailing narrative about juvenile crime was that the country should expect an upcoming “bloodbath” from remorseless juvenile superpredators. Scientific research has shown the fallacy of this “superpredator myth,” and using new technologies, scientists have discovered that adolescent brains are further from full adult development than previously believed.

A defendant seeking a new sentencing hearing based on newly-discovered evidence must establish first, that the evidence was unknown to him or his defense counsel and not reasonably discoverable at the time of sentencing; and second, that the newly-discovered evidence “would probably have been a real factor” in the outcome, and its absence therefore “casts real doubt on the justice” of the prior proceeding. *See Commonwealth v. Epps*, 474 Mass. 743, 763-64 (2016) (quotation and citation omitted).¹⁰ The new scientific consensus that

arguendo, the defendant’s exposition of the scientific advances,” Commonwealth’s Brief at 26.

¹⁰ A plea is no barrier to a Rule 30(b) motion. *See Commonwealth v. Talbot*, 444 Mass. 586, 593 (2005) (“We treat the defendant’s motion for resentencing . . . as a motion for postconviction relief under Mass. R. Crim. P. 30(b).”); *Commonwealth v. Camacho*, 483 Mass. 645, 648 (2019) (“A motion to withdraw a guilty plea is treated as a motion for a new trial pursuant to Mass. R. Crim. P. 30(b).” (citation omitted)).

has emerged based on research that post-dates Sharma's sentencing raises serious questions about whether Sharma's sentencing would have been the same had the sentencing judge been presented with the evidence that forms the current understanding of juvenile culpability. As such, this Court should order a new sentencing hearing at which Sharma can present relevant evidence regarding juvenile brain development that was not available or discoverable at his first sentencing.

Statement of Reasons Why Direct Appellate Review Is Appropriate

This Court should allow direct appellate review because the appellate courts of the Commonwealth have not yet addressed the proportionality or equal protection implications of *Miller*, *Diatchenko*, and progeny for juvenile second-degree homicide offenders with consecutive sentences. Treating second-degree offenders worse than first-degree offenders would raise serious proportionality and equal protection concerns. *Brown*, 466 Mass. at 690.

The post-*Miller* case law suggests that *any* juvenile offender who is sentenced for more than fifteen years (or longer than the minimum parole eligibility period for first-degree murder) must get the benefit of

Miller. This is consistent with *Miller*'s overarching mandate that punishment be "graduated and proportioned to both the offender and the offense." 567 U.S. at 469 (quotation and citation omitted).

In the *Costa* line of cases, the Court remanded directly for resentencing applying *Miller*. The *Perez* line of cases addressing presumptive disproportionality for nonhomicide offenses likewise uses the *Miller* factors to cabin judicial decision-making, by requiring a hearing at which the Commonwealth—applying the *Miller* factors—can seek to overcome the presumption. Thus, regardless of the formal analysis—whether it is fundamental fairness and notice as in *Costa* or proportionality as in *Perez*—juvenile offenders with sentences longer than fifteen years get the benefit of *Miller*.

The right to a hearing applying *Miller* does not, of course, guarantee a different sentence. For instance, in *LaPlante*, the juvenile offender was eligible for and received a resentencing hearing, but the resentencing judge reimposed the original sentence, and this Court upheld that decision. *LaPlante*, 482 Mass. at 402, 407. But obtaining a hearing guarantees a proceeding at which a juvenile's sentence is considered in light of *Miller*.

This resentencing jurisprudence has never been applied to a second-degree juvenile offender with a consecutive sentence. *Miller*, however, applies “irrespective of the specific crimes.” *Diatchenko*, 466 Mass. at 670. Indeed, Chief Justice Roberts highlighted *Miller*’s breadth when he complained that “[t]he principle behind today’s decision seems to be only that because juveniles are different from adults, they must be sentenced differently.” *Miller*, 567 U.S. at 501 (Roberts, C.J., dissenting).

In the only post-*Miller* cases concerning second-degree juvenile offenders, this Court has treated second-degree offenders the same as first-degree offenders and—for individuals with statutorily-mandated minimum sentences of fifteen years—refused to require individualized resentencing. *Okoro* and *Lugo* both involved juvenile second-degree defendants sentenced to life with the possibility of parole after fifteen years; neither had concurrent or consecutive sentences that stretched beyond fifteen years. *See Okoro*, 471 Mass. at 52; *Lugo*, 482 Mass. at 95. This Court rejected their arguments that juvenile second-degree offenders were entitled to individualized resentencing, concluding that fifteen-year minimum sentences remain constitutional for second-

degree offenders, just as they are for first-degree offenders. *See Lugo*, 482 Mass. at 96 (rejecting individualized sentencing for second-degree juvenile offender); *Okoro*, 471 Mass. at 63 (same); *Diatchenko*, 466 Mass. at 674 (first-degree offender ineligible for resentencing on life sentence with parole eligibility at fifteen years). *See also Watt*, 484 Mass. at 754 (rejecting individualized sentencing for first-degree juvenile offender). This case does not relitigate the issues raised in *Okoro* and *Lugo*, because Sharma is not seeking individualized resentencing below the fifteen-year threshold set in *Diatchenko*. Sharma is seeking the opportunity to have his twenty-two year minimum sentence reconsidered in light of *Miller*.

Thus, to date, this Court has treated second-degree juvenile offenders no worse than similarly-situated first-degree juvenile offenders. Adopting the Commonwealth's arguments would make this case the first to treat a second-degree juvenile offender worse after *Miller* than a first-degree offender. This Court has acknowledged both the need to extend the constitutional protections of *Miller* to second-degree juveniles and the risks of failing to do so. In *Okoro*, this Court extended to second-degree juvenile offenders the same due process

rights and procedural protections at parole hearings that first-degree offenders received following *Miller*, because such protections are equally necessary to second-degree offenders if they are to have a “meaningful opportunity to obtain release.” *See Okoro*, 471 Mass. at 62-63. And in *Brown*, the Court warned of possible proportionality and equal protection problems. Applying the lesson of *Okoro*, and heeding the warning of *Brown*, this Court should review Sharma’s case and explicitly extend the protections of *Miller* to juveniles second-degree offenders with consecutive sentences, thereby providing necessary guidance to lower courts about how to analyze sentencing and resentencing issues for juvenile second-degree offenders.

Conclusion

Because Sharma’s appeal raises novel questions of law and constitutional questions, and for all the reasons set forth above, he respectfully petitions for direct appellate review.

Respectfully submitted,
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By his attorneys,

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Addendum

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- Indictment
- Case Status:
- Open
- File Date
- 11/25/1996
- DCM Track:
- I - Inventory
- Initiating Action:
- MURDER c265 §1
- Status Date:
- 11/25/1996
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Charge](#) [Event](#) [Docket](#) [Disposition](#)

Docket Information


Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/17/1996	Case opened to issue docket# to grand jury		
11/25/1996	Indictment returned	1	Image
11/25/1996	Motion by Commonwealth for arrest warrant to issue; filed & allowed (Carol S Ball, Justice)	2	
11/25/1996	Warrant on indictment issued via WMS #39364 (Keeler - A-1)		
11/25/1996	Notice & copy of indictment & entry on docket sent to Sheriff.		
11/25/1996	Notice & copy of indictment sent to Chief Justice & Atty Gen.		
12/18/1996	Brought into Court on a Special mittimus from Boston Municipal Court.		
12/18/1996	Deft arraigned before Court		
12/18/1996	All Indictments read. Defendant stands mute.		
12/18/1996	RE offense 1: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	RE offense 2: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	RE offense 3: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	RE offense 4: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	RE offense 5: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	RE offense 6: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	RE offense 7: Plea of not guilty entered on behalf of the defendant.		
12/18/1996	Order of notice of finding of murder indictment read and filed.	3	
12/18/1996	Mittimus without bail issued without prejudice.		
12/18/1996	Continued until 01/28/97 for pre-trial conference.		
12/18/1996	Deft files Motion for funds to hire an investigator.	4	
12/18/1996	Motion (P#4) allowed up to \$1,000.		
12/18/1996	Deft files Motion for funds to obtain birth records from India.	5	
12/18/1996	Motion (P#5) allowed up to \$1,000.		
12/18/1996	Deft files Motion for funds to Hire expert in OB-GYN issues.	6	
12/18/1996	Motion (P#6) allowed up to \$2,000.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/18/1996	Warrant cancelled via WMS. Wilson, AC/M-M. Cass, ADA-D. Cullinan, Court Reporter- N. Zalkind, Attorney.		
01/28/1997	Defendant not in Court.		
01/28/1997	Continued until 02/07/97 for pre-trial conference. Wilson, AC/M- R. Powers, ADA-T. Meany, Court Reporter- N. Zalkind, Attorney.		
02/21/1997	Defendant not in court. 3/21/97 to complete discovery. 4/15/97 to file motions.		
02/21/1997	Pre-trial conference report, filed. Wilson, AC/M - J. Burke, ADA - N. King, Court Reporter - J. Bernstein, Attorney	7	
03/03/1997	Brought into Court - hearing re: motion to dismiss continues. Further hearing continued one day. M. Wrighton, Court Reporter.		
03/04/1997	Brought into Court hearing continues re: motion to dismiss, after hearing motion to dismiss (Paper 17) taken under advisement. Botsford, J. - J. Burke, ADA - M. Wrighton, Court Reporter - I. Bernstein, Attorney. Brief to be filed by March 12, 1998.		
04/11/1997	Deft files Motion for discovery	8	
04/11/1997	Deft files Motion for exculpatory evidence.	9	
04/11/1997	Deft files Motion for materials regarding out-of-court identification procedures	10	
04/11/1997	Deft files Motion for preservation of physical evidence.	11	
04/11/1997	Deft files Motion for criminal records of witnesses.	12	
04/30/1997	Defendant not in Court.		
04/30/1997	Deft files: Motion for funds to travel to India. Wilson, AC/M - J. Burke, ADA - D. Pratt, Court Reporter - I. Bernstein, Attorney	13	
04/30/1997	Defendant not in Court.		
04/30/1997	Motion (P#13) denied as endorsed. Ball, J. - D. McLean, Court Reporter - I. Bernstein, Attorney		
06/09/1997	Memorandum of agreement regarding discovery filed.	14	
09/30/1997	Commonwealth files motion to advance and continuance.	15	
09/30/1997	Motion (P#15) allowed. Wilson, AC/M - J. Burke, ADA - P. Pietrella, Court Reporter		
10/24/1997	Commonwealth files motion to advance and continue.	16	
03/02/1998	Brought into Court - Interpreter sworn.		
03/02/1998	Deft files motion to dismiss - hearing before Court, Botsford,J. Further hearing continued one day. Botsford,J. - J. Burke, ADA - M. Wrighton, Court Reporter - I. Bernstein, Attorney.	17	
03/12/1998	Commonwealth files supplement to Commonwealth's opposition to the defendant's motion to dismiss.	18	
03/30/1998	Deft files ex parte motion for additional funds for OB/GYN expert.	19	
03/30/1998	Motion (P#19) denied as follows: the fee permitted of up to \$2,000. was adequate and reasonable. Botsford, J		
04/02/1998	Memorandum of decision and order on defendant's motion to dismiss by the court.	20	
04/02/1998	Motion (P#20) denied. Botsford, J.		
07/02/1998	Defendant not in Court.		
07/02/1998	Continued until 9/15/98 for hearing re: trial date. Borenstein, J. - J. Burke, ADA - D. McLean, Court Reporter		
09/15/1998	Case received in session with a motion and trial date of 10/26/98.		
04/16/1999	Deft files: Motion for funds to have a ballistics expert	21	
04/16/1999	Deft files: Motion for funds to obtain transcripts of age hearings.	22	
04/16/1999	Motion (P#21) allowed. Donovan, RAJ		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/16/1999	Motion (P#22) allowed, however the trial of this case will not be continued to await the transcript. Donovan, RAJ		
04/28/1999	Brought into court.		
04/28/1999	Deft files waiver of rights plea form.	23	
04/28/1999	Deft warned per Chapter 278, section 29D.		
04/28/1999	RE offense 1: Guilty plea to lessr offns (as much as charges Murder in the Second Degree)		
04/28/1999	RE offense 2: Guilty plea		
04/28/1999	RE offense 3: Guilty plea		
04/28/1999	RE offense 4: Filed (guilty plea)		
04/28/1999	RE offense 5: Filed (guilty plea)		
04/28/1999	RE offense 6: Guilty plea		
04/28/1999	RE offense 7: Filed (guilty plea)		
04/28/1999	Commonwealth moves for sentencing.		
04/28/1999	Sentence imposed: as to offense 001 - Life - MCI Cedar Junction.		
04/28/1999	Sentence imposed: as to offense 002 - MCI Cedar Junction - Max. 10 years - Min. - 7 years -from and after offense 001.		
04/28/1999	Sentence imposed: as to offense 003 - MCI Cedar Junction - Max. 10 years - Min, 7 years - from and after offense 001 and concurrent with offense 002.		
04/29/1999	Sentence imposed: as to offense 006 - MCI cedar Junction - Max. 1 year and one day - Min. 1 year - concurrent with offense 002.		
04/29/1999	Notified of right of appeal under Rule 64		
04/29/1999	Deft read DNA notice.		
04/29/1999	Sentence credit given as per 279:33A: 1,022 days.		
04/29/1999	Victim-witness fee assessed: \$60.00 - Volterra, J. - J. Burke, ADA - N. Zalkind, Atty. - D. Cullinan, CR		
05/03/1999	Deft files: Pro-Se Appeals from sentence to Massachusetts Correctional Institution Cedar Junction. (Volterra, J. & Mulligan, C.J. and S. Stillwell, CPO notified 5/4/99).	24	
05/28/1999	Victim-witness fee paid as assessed in the sum of \$60.00		
07/01/1999	Deft files: Motion for additional funds for investigation. (Volterra, J. notified with copy)	25	
07/26/1999	Motion (P#25) allowed as endorsed thereon 7/21/99. Volterra, J. (Zalkind, Atty notified)		
05/16/2000	Attested copy of Order received from the Appellate Division dismissing the sentence appeal, filed. (McDaniel, O'Neill & Quinlan, JJ.)	26	
11/22/2002	Deft files motion for funds to transcribe plea colloquy and affidavit of counsel. (Volterra, J. was original Justice)	27	
11/22/2002	Deft files notice of limited appearance of counsel. (Spurlock, RAJ notified incl w/docket sheets 12/3/02)	28	
12/05/2002	Motion (P#27) allowed. (Spurlock, RAJ)		
09/26/2015	Warrant CKA alias created for party #1 Alias Name: Sunil Sharma		
08/10/2017	Defendant 's EX PARTE Motion for expert with affidavit in support thereof. Filed. (Copy of motion with docket sent to Roach, RAJ)	29	
08/10/2017	Defendant 's EX PARTE Motion for funds for medical records with affidavit in support thereof. Filed. (Copy of motion with docket sent to Roach, RAJ)	30	
08/11/2017	Endorsement on Motion for funds , (#30.0): ALLOWED at CPCS rates for the reasons stated (Copy and Notice Sent to N Zalkind, ATTY)		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/11/2017	Endorsement on Motion for funds , (#29.0): ALLOWED for the reasons stated		Image
08/14/2017	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Norman S Zalkind, Esq.		
11/04/2019	Defendant 's Motion for Relief from Unlawful Confinement, to Vacate Sentence, and for Resentencing, with Memorandum of Law, Affidavits, Record Appendix and Addendum in Support of (Notice sent to Roach-RAJ with copy of Motion and Docket Sheets)	31	Image
11/04/2019	Defendant 's EX PARTE Motion for Funds for Expert in Support of Resentencing, with Affidavit (Notice sent to Roach-RAJ with copy of Motion and Docket Sheets)	32	Image
11/12/2019	Endorsement on Defendant 's Motion for Relief from Unlawful Confinement, to Vacate Sentence, and for Resentencing, (#31.0): Other action taken "Commonwealth to respond to this motion within 90 days, by no later than February 10, 2020" Copy of endorsement to D. Russcol, Attorney and C. Campbell, ADA) Judge: Roach, Christine M		Image
11/20/2019	Endorsement on Defendant 's EX PARTE Motion for Funds for Expert in Support of Resentencing, (#32.0): DENIED "Following review, motion denied without prejudice, pending issue being joined on P#31" (Copy to D. Russcol, Attorney)		Image
11/25/2019	Order of Notice returned to court: UNSERVED Endorsement on Deft's Motion For Relief From Unlawful Confinement. (P#31) Other Action Taken		
11/25/2019	Attorney appearance On this date Kathleen Marie McCarthy, Esq. dismissed/withdrawn as Private Counsel for Defendant Sunil Sharma		
11/25/2019	Attorney appearance On this date Emma Marion Quinn-Judge, Esq. added as Private Counsel for Defendant Sunil Sharma		
11/25/2019	Defendant Emma Marion Quinn-Judge, Esq.'s Notice of Appearance (filed)	33	Image
11/25/2019	Attorney appearance On this date David Andrew Russcol, Esq. added as Private Counsel for Defendant Sunil Sharma		
11/25/2019	Defendant David Andrew Russcol, Esq.'s Notice of Appearance (filed)	34	Image
12/04/2019	Attorney appearance On this date Paul B Linn, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
12/04/2019	Commonwealth Paul B Linn, Esq.'s Notice of appearance of counsel filed	35	Image
02/06/2020	Opposition to paper #31.0 Defendant's Motion for Relief from Unlawful Confinement filed by Commonwealth Copy of opposition with docket sheets sent to Roach, RAJ	36	Image
03/09/2020	Endorsement on Defendant 's Motion for Relief from Unlawful Confinement, to Vacate Sentence, and for Resentencing, (#31.0): DENIED "Following review, motion denied, for all the reasons stated by the Commonweealth in it's opposition filed 2/5/20. In particular, I agree with the Commonwealth that on this case the defendant's sentences pursuant to his plea remain lawful under Miller and Diatchenko." (Copy to E. Quinn-Judge and D. Russcol, Attorneys and C. Campbell, ADA		Image
03/09/2020	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Emma Marion Quinn-Judge, Esq. Attorney: David Andrew Russcol, Esq. Prosecutor: Commonwealth		
04/15/2020	Notice of appeal filed by defendant docketed March 9, 2020 denying his motion for relief pursuant to Massachusetts Rule of Criminal Procedure 30	37	Image
05/11/2020	Notice of assembly of record sent to Counsel Applies To: Quinn-Judge, Esq., Emma Marion (Attorney) on behalf of Sharma, Sunil (Defendant); Russcol, Esq., David Andrew (Attorney) on behalf of Sharma, Sunil (Defendant); Campbell, Esq., Cailin (Attorney) on behalf of Commonwealth (Prosecutor)		Image
05/11/2020	Notice to Clerk J. Stanton of the Appeals Court of Assembly of Record		Image
05/11/2020	Appeal: Statement of the Case on Appeal (Cover Sheet).	38	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/13/2020	<p>Notice of Entry of appeal received from the Appeals Court COMMONWEALTH OF MASSACHUSETTS</p> <p>APPEALS COURT CLERK'S OFFICE</p> <p>Dated: May 12, 2020</p> <p>RE: No. 2020-P-0550 Lower Court No: 9684CR11199</p> <p>COMMONWEALTH vs. SUNIL SHARMA</p> <p>NOTICE OF ENTRY OF APPEAL</p> <p>On May 11, 2020, the above-referenced case was entered on the docket of the Appeals Court.</p> <p>Very truly yours, Joseph Stanton, Clerk</p> <p>To: Cailin M. Campbell, A.D.A., Emma Marion Quinn-Judge, Esquire, David Andrew Russcol, Esquire, Suffolk Superior Court Dept. RECEIVED ELECTRONICALLY</p>	39	
05/13/2020	<p>Notice of Entry of appeal received from the Appeals Court COMMONWEALTH OF MASSACHUSETTS</p> <p>APPEALS COURT CLERK'S OFFICE</p> <p>Dated: May 12, 2020</p> <p>RE: No. 2020-P-0550 Lower Court No: 9684CR11199</p> <p>COMMONWEALTH vs. SUNIL SHARMA</p> <p>NOTICE OF ENTRY OF APPEAL</p> <p>In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on May 11, 2020.</p> <p>IMPORTANT INFORMATION FROM THE APPEALS COURT</p> <p>ELECTRONIC NOTICE TO TRIAL COURTS. The Appeals Court is conducting a pilot program to provide electronic notification to the trial courts. Please contact Assistant Clerk Paul Tuttle for more details about participating in this program. His phone number is 617-723-1522, and his email address is paul.tuttle@jud.state.ma.us.</p> <p>Very truly yours, Joseph Stanton, Clerk RECEIVED ELECTRONICALLY</p>	40	Image

CLERK'S NOTICE		DOCKET NUMBER 9684CR11199	Trial Court of Massachusetts The Superior Court 
CASE NAME: Commonwealth vs. Sunil Sharma		Maura A. Hennigan, Clerk of Court	
TO: Emma Marion Quinn-Judge, Esq. Zalkind Duncan & Bernstein LLP 65A Atlantic Ave Boston, MA 02110		COURT NAME & ADDRESS Suffolk County Superior Court - Criminal Suffolk County Courthouse, 14th Floor Three Pemberton Square Boston, MA 02108	
<p>You are hereby notified that on 03/09/2020 the following entry was made on the above referenced docket:</p> <p>Endorsement on Defendant 's Motion for Relief from Unlawful Confinement, to Vacate Sentence, and for Resentencing, (#31.0): DENIED</p> <p>"Following review, motion denied, for all the reasons stated by the Commonwealth in it's opposition filed 2/5/20. In particular, I agree with the Commonwealth that on this case the defendant's sentences pursuant to his plea remain lawful under Miller and Diatcchenko."</p> <p>(Copy to E. Quinn-Judge and D. Russcol, Attorneys and C. Campbell, ADA</p>			
DATE ISSUED 03/09/2020	ASSOCIATE JUSTICE/ ASSISTANT CLERK Christine M Roach		SESSION PHONE#

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Following renewed motion denied in all of the reasons stated by the Commonwealth in its Opposition filed 2/15/2020. In particular, I agree with the Commonwealth that on the facts of this case the Defendant's sentences pursuant to his plea remain lawful under Miller and Diatchenko. 3/9/2020

SUFFOLK, ss. COMMONWEALTH OF MASSACHUSETTS
2019 KR-4 Fil 12: C7 SUFFOLK SUPERIOR COURT
CRIMINAL NO. 96-11199

COMMONWEALTH
v.
SUNIL SHARMA

Commonwealth to respond to this motion within 90 days, by no later than February 10, 2020. *[Signature]*
Respect, J.
11/12/2019

DEFENDANT'S MOTION FOR RELIEF FROM UNLAWFUL CONFINEMENT, TO VACATE SENTENCES, AND FOR RESENTENCING

The Defendant, Sunil Sharma, hereby moves this Honorable Court, pursuant to Mass. R. Crim. P. 30, to vacate the sentences imposed on Counts 2, 3, and 6 as unconstitutional and illegal, and resentence him on those charges, and also, based on now judicially acceptable evidence on juvenile brain development, psychology and neuroscience, which was unavailable at his original sentencing, to order a new sentencing hearing to determine whether his sentences should run concurrently, rather than consecutively, or other similar sentencing relief provided. As grounds for this motion, the Defendant states as follows:

1. Mr. Sharma was sentenced to life with the possibility of parole on his second-degree murder conviction and to seven to ten years from and after on certain other charges, the remainder being placed on file. Earlier this year, Mr. Sharma was granted parole from his life sentence and is currently serving his consecutive sentence in state prison. He committed the homicide and armed assault when he was only 16 years old. Mr. Sharma pleaded guilty to the charges against him on April 28, 1999 in Suffolk Superior Court (Volterra, J.).
2. The imposition of consecutive sentences on Mr. Sharma violated the prohibition against cruel or unusual punishment, proportionality principles, equal protection, and due process principles under the Fifth, Eighth and Fourteenth Amendments and Articles 1, 10, 12 and 26 as

Certificate of Compliance

I, Emma Quinn-Judge, hereby certify that this brief complies with the rules of court that pertain to the filing of applications for direct appellate review, including, but not limited to: Rule 11(b) (Contents of application; form) and Rule 20(a) (form and length of applications for direct appellate review). I further certify that this brief complies with Rule 11(b)(5)'s length limit in that it was prepared in 14-point Century font using Microsoft Word for Mac Version 16.42 and, according to Microsoft's wordcount tool, the argument section contains 1,956 words.

/s/ Emma Quinn-Judge
Emma Quinn-Judge

Certificate of Service

I, Emma Quinn-Judge, hereby certify that I will cause the above brief to be served on all counsel in this case through the Massachusetts e-filing system and by email.

/s/ Emma Quinn-Judge
Emma Quinn-Judge