

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SJC No. DAR-
APPEALS COURT No. 2025-P-1264

COMMONWEALTH

V.

TYSON BENOIT

APPLICATION FOR DIRECT APPELLATE REVIEW

Respectfully Submitted,
Tyson Benoit
By His Attorney

October 31, 2025

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REQUEST AND REASONS FOR DIRECT APPELLATE REVIEW

The Appellant, Mr. Benoit, is living with a record that includes an unconstitutional sentence, which he finished serving, but intends to correct. The Commonwealth agrees that the sentence is unconstitutional. However, it does not agree that Mr. Benoit has the right to relief from having it on his record. Resolving the issue of the unconstitutional sentence has very meaningful consequences for Mr. Benoit, and would require nothing more than an administrative stroke of the pen from the Commonwealth.

To that end, Pursuant to Mass. R. App. P. 11, Mr. Benoit, requests Direct Appellate Review (“DAR”) to resolve questions of first impression in Massachusetts: 1) Whether a motion to correct an unconstitutional sentence, made pursuant to Mass. R. Crim. P. 30(a), is moot if the Defendant has wrapped the sentence and; 2) Whether a defendant is entitled to a constitutional sentence regardless of whether that sentence has wrapped.

On July 9, 2009, Mr. Benoit was issued a sentence of 18 to 20 years after pleading guilty to manslaughter. In accordance with *Commonwealth v. Perez*, 477 Mass. 677 (2017) (“*Perez I*”), the sentence is presumptively unconstitutional. To correct this error, Mr. Benoit must either be given a constitutional sentence or at the least a sentence that comports with *Perez*. To do this, the Court holds a *Perez/Miller* hearing where the burden is on the Commonwealth to rebut the presumption of constitutionality, or in other words, to prove that the initial sentence is constitutional.

On August 24, 2023, Mr. Benoit filed a motion pursuant to Mass. R. Crim. P. 30 to correct his sentence with Berkshire Superior Court. (RA/1179). In its opposition, the Commonwealth admitted that sentence Mr. Benoit served was unconstitutional but opposed on the grounds that the matter was moot because Mr. Benoit wrapped his sentence in January of

2023. (RA/ 1179 - 1251). The trial Court agreed and denied Mr. Benoit's motion on the basis of mootness.

At the hearing however, the trial Court acknowledged the importance of the question. The trial Court stated that this question may need the guidance of the Supreme Judicial Court ("SJC"). (RA/1171). This is exemplified by the fact that there is no caselaw directly on point cited by the Commonwealth, or the lower court. As such, this is a question that requires guidance from the SJC.

INTRODUCTION

In *Perez I*, this Court built upon years of federal and state precedent and correctly decided that juveniles are afforded several further Constitutional protections. First, in 2012, came *Miller v. Alabama* 132 S.Ct. 2455, 183 (2012) ("*Miller*"). *Miller* held that the imposition of a mandatory sentence of life without parole on individuals who were under the age of eighteen at the time they committed the murder is contrary to the prohibition on "cruel and unusual punishments" in the Eight Amendment.

After *Miller*, this Court issued a decision in *Diatchenko v. D.A.* 466 Mass. 655 (2013) ("*Diatchenko I*"). The Court stated that *Miller* was retroactive and that the imposition of a mandatory sentence of life without parole on individuals who were under the age of eighteen at the time they committed the murder is also contrary to the prohibition on "cruel and unusual punishments" in art. 26 of the Massachusetts Declaration of Rights. It also stated that the imposition of such a sentence on juvenile homicide offenders also violates art. 26 because it is an unconstitutionally disproportionate punishment when viewed in the context of the unique characteristics of juvenile offenders.

Diatchenko was followed by *Perez I*. In *Perez I*, the defendant's sentence required him to serve more time, before becoming parole eligible, than a juvenile defendant convicted of murder. *Perez* filed a motion for resentencing under Mass. R. Crim P. 30(a) in which he argued, that the aggregate sentence imposed violated the prohibition on cruel and unusual punishment under the Eight Amendment to the United States Constitution and art. 26 of the Massachusetts Declaration of Rights.

This Court agreed stating that to comport with art. 26 juveniles must be afforded protections in the form of: 1) A presumption of error if the juvenile is sentenced, for a non-murder offense, to a term longer than he or she would have been sentenced for murder; and 2) the right to a *Perez/Miller* hearing where the Commonwealth is required to rebut the presumption, if they seek a longer sentence from the Court.

This Court stated that “[o]nly after the judge weighs these factors, applies them uniquely to the juvenile defendant and considers whether a punishment exceeding that applicable to a juvenile convicted of murder (at least with respect to parole eligibility) is appropriate in the circumstances, may such a sentence be imposed.” *Perez I* at 686.

In *Perez II* this Court exemplified how the analysis in the *Perez/Miller* hearing should be undertaken. *Commonwealth v. Perez*, 480 Mass. 562 (2018) (“*Perez II*”). At the *Perez/Miller* hearing, the Court must take into account three factors (herein “the *Perez* factors”): 1) the particular attributes of the juvenile, including “immaturity, impetuosity and failure to appreciate risks and consequences”; 2) “the family and home environment that surrounds [the juvenile] from which he cannot usually extricate himself” and; 3) the circumstances of the “... offense, including the extent of [the juvenile's] participation in the conduct and the way familial and peer pressures

may have affected him.” *Perez I* 477 Mass at 686, quoting *Miller v. Alabama* 367 U.S. 460,477 (2012) (“*Miller*”).

The SJC has emphasized that both the crime and the juvenile’s circumstances must be extraordinary to justify a longer parole eligibility period. *Commonwealth v. Perez* (“*Perez II*”), 480 Mass. 562, 569 (2018).

In this case, the Commonwealth, although admitting that the sentence is unconstitutional, seeks to maintain it on Mr. Benoit’s record without rebutting the presumption of unconstitutionality. (RA/1254, 1259). In essence, the Commonwealth seeks to maintain Mr. Benoit’s record, as is, without meeting its high burden.

The Commonwealth’s opposition is based on alleged mootness. (RA/1254-1259). Its position is that since Mr. Benoit wrapped his sentence in January 2023, there is no live controversy for this Court to adjudicate. By taking this position, the Commonwealth ignores several potential collateral consequences that Mr. Benoit will suffer because of the unconstitutional sentence. One example of a collateral consequence is the potential for future sentencing. Judges are given wide latitude when issuing sentences. As such, should Mr. Benoit be convicted of another crime, the sentencing court may take into account he was sentenced to 18-20 years and sentence him more harshly.

Further, he is entitled to a constitutional sentence and that entitlement arises at the time of sentencing. Accordingly, a juvenile sentence for a nonmurder offense that commands more time be served before parole eligibility than that required for a murder, without more, is presumptively disproportionate under art. 26. This presumption arises at the time of sentencing. *See Lutskov*, 480 Mass. at 584 n.7. *see also Commonwealth v. Washington*, 97 Mass. App. Ct. 595, 601 (2020)

To that end, Mr. Benoit, applies pursuant to Mass. R. A. P. 11 for direct appellate review of the order of the Berkshire Superior Court denying his motion to vacate his unconstitutional sentence pursuant to Mass. R. Crim. P. 30(a) and the law as stated under *Commonwealth v. Perez*, 477 Mass. 677 (2017).

Ultimately, there are two governing questions for this appeal: 1) Whether a motion to correct an unconstitutional sentence, made pursuant to Mass. R. Crim. P. 30(a), is moot, if the Defendant has wrapped that unconstitutional sentence? and 2) Whether a defendant is entitled to a constitutional sentence regardless of whether that sentence has wrapped or not?

Mr. Benoit's position is that the matter is not moot and that this is a novel issue which this Court can bring clarity too. In doing so, this Court can further develop the protections under Article 26 by ensuring that no child convicted of a crime can be sentenced incorrectly and is assured the safeguards of a *Perez/Miller* hearing as the recent case law has required.

PRIOR PROCEEDINGS

On July 6, 2005, Defendant Tyson Benoit, a black man, was indicted by a Berkshire Grand Jury for the assault and murder of Anthony Hopkins, a white man, in violation of G.L. c. 256, §1. (RA/3).

Mr. Benoit was tried in January of 2007 and convicted of murder in the second-degree. However, he successfully appealed to this Court based on the argument the prosecutor improperly used preemptory challenges during jury selection to eliminate African-American jurors. *See Commonwealth v. Benoit*, 452 Mass. 212 (2008). As a result, his murder conviction was vacated on August 18, 2008. *Id.* However, he subsequently pled guilty to manslaughter.

At his sentencing hearing, held on July 9, 2009, Mr. Benoit requested a sentence of not less than 15 years and not more than 20 years. (RA/1205). The Commonwealth requested 19 to

20 years. (RA/1191). The sentencing guidelines recommended a sentence of not less than 9.5 and not more than 13 years. Regardless, the judge sentenced Mr. Benoit to a term of 18 to 20 years. (RA/11).

The version of G.L. c. 265 §2 in effect at the time of Mr. Benoit’s plea and subsequent sentencing stated that defendants convicted of murder in the first were eligible for parole after fifteen years (this was amended in 2014 to raise parole eligibility to 20, 25 or 30 years, depending on the theory of murder).

Mr. Benoit earned a significant amount of “good time” while serving his sentence to less than 18 years. He was denied parole but he ultimately wrapped his sentence in January, 2023.¹

On August 24, 2023, Mr. Benoit filed his motion for resentencing pursuant to Mass. R. Crim. P. 30(a). (RA/1179). Subsequently on November 8, 2023, the Commonwealth filed an opposition and the hearing to argue the motion was held on September 25, 2024. (RA/1251).

After the hearing, the trial court denied Mr. Benoit’s motion stating that the motion for resentencing was moot. (RA/1265). However, at the conclusion of the argument, when discussing the question of whether this issue was moot, the Court stated “I think it will probably need to go up further to get the SJC’s imprimatur on it...” (RA/1171).

On November 18, 2024, Mr. Benoit timely noticed his appeal and on September 30, 2025, this case was entered in the Appeals Court. (RA/12-13).

¹ Although the defendant’s minimum twenty-year sentence under G. L. c. 265, § 18C, may be reduced for “good conduct credits,” *Perez I*, supra, focuses on the parole eligibility date at the time of sentencing, not future computation of “good time.” Moreover, good conduct programs are controlled by the Department of Correction, not the sentencing judge. *Commonwealth v. Lutskov*, 480 Mass. 575, 584 n.7 (2018)

STATEMENT OF FACTS

The following facts are taken from the SJC decision of *Commonwealth v. Benoit* 452 Mass. 212 (2008), the trial transcripts, the sentencing hearing and the transcript from the hearing held to adjudicate the Mr. Benoit's Rule 30(a) motion.

The Offense:

On May 30, 2005, Tyson Benoit (a black male; approximately 5,4" tall and 135 lbs. at the time), (RA/909), and Anthony Hopkins (a white male; approximately 6,2" tall and 220 lbs. at the time) engaged in a racially charged fight the result of which, was the death of Hopkins. (RA/1010).

At about midnight on the night of May 29-30, 2005, Anthony Hopkins was walking home inebriated. (RA/517). He walked past a residence's front porch where Mr. Benoit was visiting with friends. (RA/509-510, 565-571).

Mr. Benoit and another younger male Brandon Johnson (RA/506, 516, 572), left the porch and followed Hopkin because Johnson wanted to do so (RA/839) or because Mr. Benoit himself announced a desire to "mess with him." (RA/512). The desire to engage with Hopkins was purportedly because a year prior there was an instance, in which the Mr. Benoit and his friends had a physical altercation with Hopkins and his friend Joe Alfonso, after being subjected to racial slurs by Hopkins. (RA/19-21).

Either Johnson alone or both Johnson and Mr. Benoit threw rocks toward Hopkins, trying to get his attention, as they walked. (Tr. 3/537-538, 518, 555). When Hopkins arrived at his home, he began either knocking or banging demanding entry. (RA/288-289). His mother and Jeff Sayers, her domestic partner opened the door. (RA/977-978, 984-985). They saw Hopkins on the

porch, facing Mr. Benoit who was standing in the yard, at the bottom of the front steps. (RA/990-991).

Hopkins flew off the porch and fought with the defendant. The fight occurred in “like seconds,” according to Hopkins’s mother, and happened so fast that it was “like almost not being able to see them move from one spot to another. It was just so fast.” (RA/982).

Hopkins swung at Mr. Benoit, cutting him on his face, which Mr. Benoit surmised came from “rings” or something else worn or wielded by Hopkins (RA/851). Hopkins also punched Mr. Benoit in his left eye, and this was when he opened the knife given him by Brandon and “poked” Hopkins. (RA/851-852). He believed that the poke was into Hopkins’s left arm. (RA/852). Hopkins nonetheless “got” the defendant on the ground. They fought on the ground and when Mr. Benoit started to get up, he did so while “swinging the knife at [Hopkins]” and “[t]hat's when [he] ran away.” (RA/843-854). He knew that he connected with Hopkins again with the knife, but did not know where, (RA/854-855), but he did not mean to kill Hopkins (Tr. 4/195, 119-120).

When the two men separated, Mr. Benoit fled down the street (RA/981), and Hopkins walked back to the porch and inside. (RA/992-994). Hopkins’s mother and Sayers noticed blood. (RA/994, 280). Hopkins had suffered a stab wound that “cut the subclavian artery” and as a result, he bled to death. (RA/280, 403).

Hopkins had been stabbed twice. The first wound was in the left side of the chest, about an inch long, and though also two to three inches deep, went into soft tissue and muscle only. (RA/393, 394, 404, 416-415). The second one, was the fatal wound. It was as much as three inches long and two to three inches deep, starting at the lower part of the neck. (RA/389, 403-404). Both wounds were said to be the result of “downward” slashes of a knife. (RA/389, 398,

404). The Commonwealth argued that “downward” slashes negated self-defense. On the other hand, the defense posited that the defendant had been bent over, (RA/272), and held and pummeled while he was not in an “upright” position (RA/417-418), contradicting the Commonwealth’s conclusion that downward slashes disproved self-defense. (RA/417-418, 425, 428).

Mr. Benoit returned to the porch and he looked frightened, he had blood on the heel of his shoe. Mr. Benoit was also nervous when speaking about it. One witness Bryan McCauley stated that Mr. Benoit was nervous when he returned to the house, because he thought he had injured the kid badly. (RA/504). Another witness, Kayla Wheeler, stated that Mr. Benoit, upon his return, looked scared because he “got into a fight and thinks he stabbed somebody.” (RA /599).

Trial No. 1:

Trial commenced on January 2, 2007. *Commonwealth v. Benoit* 452 Mass. 213, 214 (2008). Since the case involved the killing of a white man by a black man, individual *voir dire* was required. *Id.* Juror No. 47, at the time of her questioning was the only black juror remaining in the venire. *Id.* This juror had read about the case in the newspaper but stated she did not form any opinions and did not remember any details. *Id.* She also stated that she could be fair and open minded and decide based on the evidence she heard, as opposed to what she read or heard outside of court. *Id.* at 215-216. The judge found her to be indifferent.

However, the Commonwealth the Court to question Juror No. 47 further about her work as a teacher’s assistant at a “school for handicapped and learning disabilities[.]” *Id.* The prosecutor also insisted that Juror No. 47 be questioned about an earlier comment of how murder cases stress her out. at 415. The judge agreed and brought her back for questioning. *Id.*

After further questioning, the judge found her, again, to be indifferent. *Id.* Consequently, the Commonwealth used a preemptory challenge to have her excused. *Id.* Trial counsel objected on the grounds that she was the only black juror, but was overruled. *Id.*

The trial continued and on January 9, 2007, Mr. Benoit was found guilty of murder in the first. He timely appealed and on October 7, 2008, this Court set aside the verdict and remanded the case back to Superior Court for a new trial. (RA/9).

Guilty Plea and Sentencing Hearing:

On July 8, 2009, before Mr. Benoit was retried, he retracted his not-guilty plea and entered a plea of guilty to the charge of Manslaughter, G.L. c. 265, §13. Sentencing was deferred to July 9, 2009. (RA/11).

During the sentencing hearing, the Commonwealth requested a 19-to-20-year sentence, the maximum permitted for a conviction of manslaughter. (RA/11). In response, Mr. Benoit, requested a sentence of 15-to-20 years. (RA/1205). The sentencing guidelines in this case call for a sentence of 9-to-13.5 years. Mr. Benoit, accepting responsibility, requested a sentence that exceeded the sentencing guidelines. (RA/1205).

The Court considered Mr. Benoit's prior criminal history, his probation record, and his family history and a competency report from Dr. Haines. From these factors the Court concluded that Mr. Benoit "had absolutely no chance." (RA/1211). The Court was also concerned with the prospect of Mr. Benoit failing to rehabilitate and as such wanted to avoid being "faced with this situation again." (RA/1210-1212). With that in mind, the Court ordered a sentence of 18-to-20 years. (RA/1212). This sentence is presumptively unconstitutional and as such was in error. Mr. Benoit appealed his sentence to the Appellate Division of the Superior Court on March 19, 2010, which was denied. (RA/11-12).

Rule 30 Motion:

On August 24, 2023, Mr. Benoit filed a Rule 30(a) motion to have it corrected, which was also denied. (RA/12). At the hearing, the Court admitted that this was an interesting question and may need this Court's guidance to resolve. (RA/1171). Here, Mr. Benoit argued that the sentence he served was presumptively unconstitutional. He also argued that the burden was on the Commonwealth to prove that the crime and the characteristics of Mr. Benoit as a juvenile presented extraordinary circumstances justifying harsher treatment.

Mr. Benoit also argued that the matter is not moot. He took the position that the error attached at the time of sentencing. At the hearing, Mr. Benoit also cited to the decision *Commonwealth v. Ellsworth*, which is directly on point stating that if there is a question of resentencing, as there is here, the matter not moot even if the incorrect sentence has been served.

The Court, denied the motion, relying primarily on *Mackie v. Mitchell*, 103 Mass. App. Ct. 1105, 2023 WL 5561310 (Unreported). (RA/1267). *Mackie* however, is not on point. The Plaintiff in that matter filed a claim seeking injunctive relief while he was committed to the Massachusetts Treatment Center. The Court determined that, once he was released, injunctive relief was no longer a remedy it was permitted to grant. As such, the positioning is quite different.

Accordingly, Mr. Benoit seeks Direct Appellate Review as a pathway to correct his sentence.

ISSUES PRESENTED

1. Whether a motion, made pursuant to Mass. R. Crim. P. 30(a), to correct an unconstitutional sentence is moot because the Defendant has wrapped said sentence.
2. Whether a defendant is entitled to a constitutional sentence regardless of whether that sentence has wrapped or not?

LEGAL ARGUMENT

DAR is necessary to address this question of mootness because it is a question of first impression and one concerning the Constitution of the Commonwealth. Additionally, it is a question in which the lower court has indicated that guidance from the SJC may be required. (RA/1171).

At the trial court the Commonwealth conceded that the sentence Mr. Benoit served is unconstitutional but argued that, since he completed it, the matter was moot. Mr. Benoit rejects this position. The unconstitutional sentence may have severe collateral consequences. Further, if the Commonwealth seeks to uphold this sentence by rebutting the presumption of unconstitutionality it should afford Mr. Benoit a *Perez/Miller* hearing. If, at the hearing, the Commonwealth rebuts the presumption, which is unlikely, Mr. Benoit's sentence becomes lawful. If the Commonwealth fails, Mr. Benoit's sentence must be reduced and the record which includes his sentence must be corrected.

I. Whether a motion to correct an unconstitutional sentence, made pursuant to Mass. R. Crim. P. 30(a), is moot, if the Defendant has wrapped that unconstitutional sentence.

A. Mr. Benoit's sentence is, as the Commonwealth conceded in its opposition, Presumptively Unconstitutional.

Mr. Benoit was 17 years of age, a juvenile, at the time of the governing offense-manslaughter. (RA/11). The Court sentenced Mr. Benoit to 18-to-20 years (Agostini, J.). (RA/11). As a result, Mr. Benoit was sentenced to a term harsher than if he had been convicted of and sentenced for murder in the first. Thus, the sentence the Court ordered Mr. Benoit to serve is presumptively unlawful. *Perez I* at 679.

Under *Perez I*, a sentence requiring a juvenile convicted of a nonmurder offense to serve more time before attaining parole eligibility than a juvenile convicted of murder is presumptively disproportionate pursuant to Article 26 of the Massachusetts Declaration of Rights. *Perez I* at 679, 682 Fn. 10 citing to *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass 655, 667 (2013). See also *Commonwealth v. Lutskov*, 480 Mass. 575, 582 (2018) (“[A] juvenile defendant's aggregate sentence for nonmurder offenses with parole eligibility exceeding that applicable to a juvenile defendant convicted of murder is presumptively disproportionate.”).

The unconstitutionality of the sentence is not in dispute. (RA/1254, 1259).

- B. If granted a *Perez/Miller* hearing the Commonwealth will not be able to rebut the presumption of unconstitutionality and Mr. Benoit will be entitled to resentencing.

At all times, the Commonwealth bears the burden to prove that under the *Perez* factors that Mr. Benoit’s sentence is not unconstitutional. In this case, any attempt by the Commonwealth to prove that Mr. Benoit was deserving of a harsher sentence will fail.

The *Perez* factors are: 1) The nature of the offense and the offender in light of the degree of harm to society; 2) analyze the sentence imposed and punishments prescribed for the commission of more serious crimes in the Commonwealth and; 3) conduct a comparison of the challenged penalty with the penalties prescribed for the same offense in other jurisdictions.

The first factor, “nature of the offense,” weighs against a sentence where the minimum time to serve is greater than 15 years. “[A] juvenile defendant's aggregate sentence for nonmurder offenses with parole eligibility exceeding that applicable to a juvenile defendant convicted of murder is presumptively disproportionate.” *Commonwealth v. Lutskov*, 480 Mass. 575, 582 (2018). With respect to sentencing, “[t]here is a line between homicide and other serious violent offenses against the individual.... In the absence of extraordinary

circumstances...this line must not be crossed to treat a juvenile convicted of nonmurder offense, or multiple nonmurder offenses, more harshly than a juvenile convicted of murder.” *Perez* at 685 (quotations and citations omitted).

Mr. Benoit was convicted of manslaughter– a non-murder offense. Manslaughter is distinguished from murder by malice. Malice requires proof of either 1) intent to kill the victim; 2) intent to cause grievous bodily harm to the victim; or 3) commission of an act that, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood of death. *Commonwealth v. Riley*, 467 Mass. 799, 821-822 (2014).

In this case the fact pattern delineated above shows a distinct lack of malice. Mr. Hopkins was killed because Mr. Benoit and him engaged in a fight and Mr. Benoit stabbed him, absent an intent to kill. “[T]he crime is voluntary manslaughter, not murder, if malice is negated by reasonable provocation or sudden combat (or at least by a reasonable doubt whether those conditions were absent).” *Commonwealth v. Boucher*, 403 Mass. 659, 663 (1989). *Commonwealth v. Little*, 431 Mass. 782, 790-791 (2000).

Accordingly, for a juvenile convicted of a non-murder offense such as Mr. Benoit, an 18-to-20-year sentence is presumptively disproportionate as the sentence imposed on Mr. Benoit resulted in a parole ineligibility period more severe than a sentence imposed on a juvenile convicted of murder. *Perez I*, 477 Mass. at 681-683, 686 (the defendant's sentence for nonhomicide offenses, which exceeded the sentence for a juvenile convicted of murder, was presumptively disproportionate under art. 26. (the defendant's aggregate sentence for nonmurder crimes required him to serve twenty-seven and one-half years before being eligible for parole.)) To issue such a sentence, Mr. Benoit should have been afforded the benefit of a *Perez* hearing. He was not.

C. As a result of having the unconstitutional sentence on his record, Mr. Benoit may suffer Collateral Consequences, as such it is not moot.

1. Resentencing itself is a sufficient collateral consequence to prevent a matter from becoming moot.

Mr. Benoit must either be resentenced to a lesser sentence or afforded a *Perez/Miller* hearing. This potential for resentencing is a sufficient personal stake that prevents this matter from being rendered moot. *Ellsworth v. Commonwealth*, 485 Mass. 29, 30 (2020) (“*Ellsworth*”).

In *Ellsworth*, the defendant entered an Alford plea on all charges against her except for one (disorderly conduct) which she agreed that there were sufficient facts for a guilty finding. *Ellsworth* at 30-31. The Commonwealth requested guilty findings on all charges and a guilty finding of disorderly conduct with a 90-day sentence in the house of correction to run consecutively. *Id.* The Defendant requested continuances without a finding and immediate dismissals, and participation in three community corrections programs. *Ellsworth* at 32.

The court sentenced *Ellsworth* to thirty days in the HOC and continued without a finding all charges with immediate dismissal. Following the entry, on May 21, 2018 the Commonwealth filed a motion asking the judge to revise or revoke the continuances without a finding. *Ellsworth* at 32. The motion was denied, the Commonwealth appealed. *Id.*

The appeal was taken up by this Court via DAR. The Defendant argued that the matter was moot, because the sentence was served. However, the Commonwealth contended that the case was not moot because, if the sentences are found to be illegal, the defendant may be subject to resentencing. This Court agreed that resentencing alone is sufficient collateral consequence to keep a controversy live. *Id.*

Ellsworth is directly on point to the controversy at hand and should apply in this matter. Since Mr. Benoit would be subject to resentencing, a sufficient collateral consequence, the matter is not moot.

2. That Mr. Benoit's incorrect unconstitutional sentence will likely be considered in future sentencing discussions is a Collateral Consequence.

Any item of significance that may impact sentencing is sufficient to prevent a controversy from being rendered moot. G. L. c. 276, § 85 and Mass. R. Crim. P. 28(d)(1), which expressly provide that probation shall give a sentencing judge an account of a defendant's prior record of criminal dispositions. The judge has considerable latitude within the framework of the statute to determine the appropriate individualized sentence. *See Commonwealth v. Goodwin*, 414 Mass. 88, 90 (1993). *citing Commonwealth v. Celeste*, 358 Mass. 307, 309-310, (1970); *Commonwealth v. Ferguson*, 30 Mass.App.Ct. 580, (1991). This latitude gives the judge leave to "consider hearsay, defendant's behavior, family life, employment, and various other factors." *Id.*

This latitude also includes leave to consider probation revocations. *Commonwealth v. Lally*, 55 Mass. App. Ct. 602 (2002). *Commonwealth v. Christian*, 46 Mass.App.Ct. 477, 479 (1999). If Mr. Benoit is charged and convicted with another crime, he may face collateral consequences with respect to future sentencing. This is a sufficient continuing personal stake making this a live controversy. *Commonwealth v. Argueta*, 73 Mass.App.Ct. 564, 565-566 (2009) (The Court determined that a case was not moot even if the charges were dismissed because under federal sentencing law a continuance without a finding, entered as a result of an admission to facts sufficient to warrant a finding of guilt under Massachusetts law, is counted as a sentence for purposes of calculating criminal history points in sentencing.).

Prior sentence length may also be a factor when considering a future sentence. *See Blake v. Massachusetts Parole Bd.* 396 Mass. 701, 703 (1976) (this Court by comparison, to improper parole denial, determined that sentence may be a significant influence on later encounters).

3. The trial Court erred when it determined that Mr. Benoit's motion was moot.

The trial court's denial of Mr. Benoit's motion, concluding that "[t]here are no collateral consequences on the defendant." (RA/ 1267). The Court based this conclusion on the fact that Mr. Benoit was not entitled to have his parole eligibility changed from 18 to 15 years. The Court then concluded that Mr. Benoit's situation is one "where a court can order no further effective relief." As explained *supra* this is incorrect.

Further, the law cited by the trial Court is not on point. The trial court relied heavily on *Mackie v. Mitchell*, 103 Mass.App.Ct. 1105 (2023). In that case the "plaintiff [...] was confined to the Massachusetts Treatment Center ("MTC") from July 24, 2018 until March 23, 2022. Prior to his release from the MTC, the Plaintiff filed a complaint in Superior Court against the Governor and other State officials, asserting that the conditions of confinement violated various State and Federal constitutional provisions, statutes and regulations." The Plaintiff sought injunctive and declaratory relief.

The claims were dismissed by the trial court and the Plaintiff appealed. While the appeal was pending, the Plaintiff was released. As a result, the Appeals Court found that his claims seeking injunctive and declaratory relief were moot. *Mackie v. Mitchell*, 103 Mass.App.Ct. 1105 (2023)(Unreported decision).

The nature of the relief sought in *Mackie* is markedly different than the *Perez/Miller* hearing and likely chance for resentencing that Mr. Benoit seeks. In *Mackie*, the Plaintiff sought equitable relief against Commonwealth and its officers. Equitable relief to his conditions of

confinement is something they could no longer provide after his release, as equitable relief in the form of a declaratory judgment, injunction or restraint is no longer applicable. While in *Mackie* they had no effective relief, in this case the court can order that Mr. Benoit be given a *Perez/Miller* hearing and determine the correct sentence to put on his record.

II. The Current State of the Law, is unclear the lower court to state, at the hearing, that we may need guidance from the SJC.

As demonstrated above, the case law cited by the lower court supports the conclusion that Mr. Benoit's Rule 30 motion is moot. This matter, provides the SJC with an opportunity to definitively determine if an unconstitutional sentence on a person's record, is moot, by examining whether Mr. Benoit may suffer collateral consequences from the unconstitutional sentence on his record.

This is reinforced by the fact that the trial court explicitly stated, at the close of the hearing that this was an "interesting question" that "...will probably need to go up further to get the SJC's imprimatur on it[.]" (RA/1171).

STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

As explained in detail above, direct appellate review is appropriate in this case for the following reasons:

1. To decide, as a matter of first impression that has not been addressed by the Superior Court or the Appeals Court: May having an unconstitutional sentence on Mr. Benoit's record force him to suffer collateral consequences;
2. Whether a defendant is entitled to a constitutional sentence regardless of whether that sentence has wrapped or not?

Respectfully submitted
Tyson Benoit
By his Attorney

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CERTIFICATION OF COMPLIANCE PURSUANT TO MASS. R. APP. P. 16(k)

I hereby certify that the foregoing brief complies with all rules of court pertaining to the filing of briefs, including, but not limited to, the requirements of Rules 11, 16, 18, 20, and 21 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 11(a) because the Argument section contains 1931 words in 12-point Times New Roman font.

CERTIFICATE OF SERVICE

I, Chetan Tiwari, certify that a true copy of the foregoing was served upon the Berkshire County District Attorney's Office on October 31, 2025 via email to Attorneys Patrick Sadlon at patrick.sadlon@state.ma.us and Lori Levinson Lori.Levinson@mass.gov.

/s/ Chetan Tiwari
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