IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-0851

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NOAH RILEY CROOKS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MITCHELL COUNTY
THE HONORABLE GREGG R. ROSENBLADT, JUDGE
THE HONORABLE JAMES M. DREW, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal by defendant Noah Crooks from his conviction for murder in the second degree.

Course of Proceedings and Facts

The State accepts the defendant's statements of the course of proceedings and facts as adequate and essentially correct. Iowa R. App. P. 6.903(3). Additional facts will be discussed in the State's argument, below.

ARGUMENT

I. Iowa Code Section 232.45(7)(a) Permits the State to Prosecute a Thirteen-Year-Old as a Youthful Offender.

Preservation of Error

Crooks' motion challenging the State's motion to waive juvenile court jurisdiction so that Crooks could be prosecuted as a youthful offender, and the district court's ruling on Crooks' motion preserved this claim for review. Motion to Dismiss; Tr. (4/13/12) p. 5, line 25 –

p. 17, line 2; p. 18, line 25 – p. 18, line 25; Ruling on Motion to Dismiss (Statutory Basis); Conf. App. 12, 43-49, --. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004).

Scope of Review

The Court reviews the district court's interpretation of a statute for correction of errors at law. *State v. Johnson*, 770 N.W.2d 814, 819 (Iowa 2009).

Merits

Noah Crooks contends that the district court erred in waiving its jurisdiction so that he could be prosecuted in the district court as a youthful offender. He argues that Iowa Code section 232.45 does not permit a child of thirteen to be prosecuted as a youthful offender. His claim should be rejected. The clear language of section 232.45(7) permits the juvenile court to waive jurisdiction over a child "fifteen years of age or younger" so that the child can be prosecuted as a youthful offender. Further, to the extent that any ambiguity might exist in that section, the rules of statutory construction lead to the conclusion that the Iowa legislature intended that a child fifteen years of age or younger could be prosecuted as a youthful offender.

Crooks challenges the district court's interpretation of Iowa Code section 232.45. That section provided in pertinent part as follows.

> **232.45 Waiver hearing and waiver of jurisdiction**
>
> 1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney or the child may file a motion requesting the court to waive its jurisdiction over the child for the alleged commission of the public offense of for the purpose of prosecution of the child as an adult or a youthful offender. * * * *
>
> 2. The court shall hold a waiver hearing on all such motions.
>
> * * * *
>
> 6. At the conclusion of the waiver hearing the court may waive its jurisdiction over the child for the alleged commission of the public offense if all of the following apply:
>
> a. The child is fourteen years of age or older.
>
> b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.
>
> c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

7. *a*. At the conclusion of the waiver hearing and after considering the best interests of the child and the best interests of the community the court may, in order that the child may be prosecuted as a youthful offender, waive its jurisdiction over the child if all of the following apply:

(1) The child is fifteen years of age or younger

(2) The court determines … that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense under section 232.8, subsection 1, paragraph "c", notwithstanding the application of that paragraph to children aged sixteen or older.

(3) The court determines that the state has established that there are not reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday, if the juvenile court retains jurisdiction over the child and the child enters into a plea agreement, is a party to a consent decree, or is adjudicated o have committed the delinquent act.

b. The court shall retain jurisdiction over the child for the purpose of determining whether the child should be released from detention under section 232.23. * * * *

* * * *

9. In making the determination required by subsection 7, paragraph "a", subparagraph (3), the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

> d. The age of the child, the programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the district court after the child reaches the age of eighteen in the event the child is given youthful offender status.
>
> * * * *

Iowa Code section 232.45 (2011)[1].

The Court's starting point in statutory interpretation is to determine if the language has a plain and clear meaning within the context of the circumstances presented by the dispute. *McGill v. Fish*, 790 N.W.2d 113, 118 (Iowa 2010) (*citing State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006); *State v. Richardson*, 890 N.W.2d 609, 615-616 (Iowa 2017). If the language is unambiguous, the Court's inquiry stops there. *Richardson*, at 615-616. The Court applies the rules of statutory construction only when the statutory terms are ambiguous. *McGill*, 790 N.W.2d at 118.

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[1] That section was amended subsequent to Crooks' crime. It now provides that a child who is "fourteen years of age or older" may be waive to the district court for prosecution as an adult. A child who is " twelve through fifteen years of age" or a child who "is ten or eleven years of age and [who] has been charged with a public offense that would be classified as a class "A" felony if committed by an adult" can be waived to the district court for prosecution as a youthful offender. Iowa Code section 232.45(6), (7) (2015)

The Court determines whether a statute is ambiguous by reading the statute as a whole. *Richardson*, 890 N.W.2d at 616; *State v. DeSimone*, 839 N.W.2d 660, 666 (Iowa 2013). "'[T]he determination of whether a statute is ambiguous does not necessarily rest on close analysis of a handful of words or a phrase utilized by the legislature, but involves consideration of the language in context.'" *Richardson*, 890 N.W.2d at 616 (*quoting Rhoades*, 880 N.W.2d at 446).

An ambiguity in a statute can arise in two ways. First, it may arise from the meaning of particular words in the statute. *McGill*, 790 N.W.2d at 118. Second, it may arise from the general scope and meaning of a statute in its totality. *McGill*, 790 N.W.2d at 118. Ultimately, an ambiguity exists only if reasonable minds could differ on the meaning. *McGill*, 790 N.W.2d at 118; *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003).

Crooks contends that the age at which a child can be waived to the district court under section 232.45 (2011) is ambiguous. He reads that section in a manner that would apply the age limitation for waiver under subsection 6 ("fourteen years of age or older") to waiver under subsection 7 ("fifteen years of age or younger") and concludes

that a child under age fourteen cannot be waived to the district court. He asserts, therefore, that the district court erred in waiving Crooks, thirteen years old at the time of his crime, to the district court for prosecution as a youthful offender. He mis-reads the plain language of section 232.45.

The language of section 232.45 (2011) is unambiguous. Subsection 6 of that section permits the juvenile court to waive its jurisdiction over a juvenile so that the child can be prosecuted in the district court as an adult. Waiver for adult prosecution is limited to children fourteen years of age or older. Subsection 7 permits the juvenile court to waive its jurisdiction so that the child can be prosecuted in the district court as a youthful offender. This type of waiver is available for younger offenders -- it can be used for any child age fifteen or younger, with no lower age limit. Iowa Code section 232.45(6), (7); *and see State v. Iowa District Court for Black Hawk County*, 616 N.W.2d 575, 580 (Iowa 2000) (noting that for juveniles aged fourteen, the juvenile court can waive its jurisdictions so that the juveniles can be prosecuted either as adults or as youthful offenders; for juveniles fifteen or younger, the juvenile court can waive

jurisdiction so that the child can be prosecuted as a youthful offender).

The plain language of subsection 7 of section 232.45 would permit waiver of a child of thirteen for the purposes of prosecuting the child as a youthful offender. Therefore, the district court's waiver of Crooks was proper and should be upheld without engaging in statutory construction.

Alternatively, should the Court find some ambiguity in section 232.45, the rules of statutory construction also lead to the conclusion that subsection 7 of that section authorized the district court to waive Crooks to the district court for prosecution as a youthful offender.

The goal of statutory construction is to determine legislative intent." *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). The Court "look[s] to the object to be accomplished and the evils and mischiefs sought to be remedied in reaching a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it." *McGill*, 790 N.W.2d at 118.

The Court's starting point in construing a statute is the text of the statute itself. *McGill*, 790 N.W.2d at 118. The Court considers all parts of the statute together and does not give undue importance to

any single portion. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 15 (Iowa 2010). The Court reads related statutes together and attempts to harmonize them. *Root v. Toney*, 841 N.W.2d 83, 90 (Iowa 2013). The Court avoids "strained, impractical or absurd results." *Welp v. Iowa Dep't of Revenue*, (Iowa 1983).

The Court generally "presume[s] words used in a statute have their ordinary and commonly understood meaning." *McGill*, 790 N.W.2d at 119. However, the manifest intent of the legislature will prevail over the literal import of the words used." *Renda,* 784 N.W.2d at 15 (internal citations omitted). Additionally, the meaning of a statute may be "ascertained by reference to prior judicial decisions, similar statutes, the dictionary, or common generally accepted usage." *State v. Williams*, 315 N.W.2d 45, 49 (Iowa 1982).

In addition, if a statute is indeed ambiguous, the rule of lenity requires the Court to interpret criminal statutes strictly, with doubts resolved in favor of the defendant. *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011); *State v. Hagen*, 840 N.W.2d 140, 146 (Iowa 2013); *and see State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011) (explaining the rule of lenity). While juvenile delinquency proceedings are not criminal prosecutions, they serve as the alternative to criminal

prosecutions of children. *In re J.D.S* ., 436 N.W.2d 342, 344 (Iowa 1989). Therefore, the same rule of statutory interpretation applies. *In re R.V.*, 2013 WL 3872894, at *3 (Iowa Ct. App. July 24, 2013).

Here, the rules of statutory construction lead to the conclusion that the juvenile court properly waived its jurisdiction over Crooks so that he could be prosecuted as a youthful offender as the youthful offender provision can be used for any child aged fifteen or younger.

The primary goal of the juvenile delinquency provisions of Iowa Code chapter 232 is rehabilitation of young offenders, but they are also intended for the protection of society. Iowa Code § 232.1 (2011) (chapter 232 "shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state. When a child is removed from the control of the child's parents, the court shall secure for the child care as nearly as possible equivalent to that which should have been given by the parents.").

Reading chapter 232 as a whole, it is apparent that the legislature is attempting to address the very difficult task of rehabilitating children whose offenses range from very minor to

extremely serious, and whose mental and physical abilities are constantly changing as the children gain maturity and knowledge. *Cf. State v. Null*, 836 N.W.2d 41, 74 (Iowa 2013) (recognizing juveniles' lack of maturity, underdeveloped sense of responsibility, vulnerability to peer pressure, and the less fixed nature of juveniles' character). In order to meet those needs, the legislature has created a complicated system under which the juvenile and district courts have broad discretion and a wide spectrum of available dispositions. *See*, Iowa Code sections 232.45 (waiver of jurisdiction), 232.46 (consent decrees), 232.51 (disposition of child with mental illness or mental retardation), 232.52 (disposition of child found to have committed a delinquent act), 232.52A (disposition of juvenile offenders in need of drug or alcohol treatment), 232.53 (duration of dispositional orders), 232.54 (termination, modification, or vacation and substitution of dispositional orders), 907.3A (2011). In addition, juveniles sixteen and over who commit forcible felonies or other specified crimes, are initially excluded from the jurisdiction of the juvenile court. Iowa Code section 232.8(c) (2011).

In apparent recognition of the differences in maturity and amenability to rehabilitation among juveniles, the legislature permits

prosecution of older children as adults. While chapter 232 does not permit the youngest offenders to be prosecuted as adults, it does permit young offenders who commit serious offenses to be waived to adult court for prosecution as youthful offenders. *See*, Iowa Code section 232.45(7), 232.8(1)(c) (2011). In drafting chapter 232 in that way, the legislature recognizes that due to the short time before their eighteenth birthdays or due to the seriousness of their offenses, some young offenders cannot be rehabilitated before reaching the age of majority. For those offenders, the legislature has created a youthful offender program that allows the child to receive the benefits of the juvenile system while still a minor and then receive the benefits of the adult system, if necessary, when the child becomes an adult. The program also allows a middle course under which the court retains jurisdiction over the now-adult for a period of five years and supervises the offender on probation. *See*, Iowa Code sections 232.45, 907A.3[2] (2011).

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[2] **907.3A Youthful offender deferred sentence – youthful offender status.**

1. Notwithstanding section 907.3 but subject to any conditions of the waiver order, the trial court shall, upon a plea of guilty or a verdict of guilty, defer sentence of a youthful offender over whom the juvenile court has waived jurisdiction

pursuant to section 232.45, subsection 7, and place the juvenile on youthful offender status. The court shall transfer supervision of the youthful offender to the juvenile court for disposition in accordance with section 232.52. The court shall require supervision of the youthful offender in accordance with section 232.54, subsection 1, paragraph *"h"*, or subsection 2 of this section. Notwithstanding section 901.2, a presentence investigation shall not be ordered by the court subsequent to an entry of a plea of guilty or verdict of guilty or prior to deferral of sentence of a youthful offender under this section.

2. The court shall hold a hearing prior to a youthful offender's eighteenth birthday to determine whether the youthful offender shall continue on youthful offender status after the youthful offender's eighteenth birthday under the supervision of the court or be discharged. The court shall review the report of the juvenile court regarding the youthful offender and shall hear evidence by or on behalf of the youthful offender, by the county attorney, and by the person or agency to whom custody of the youthful offender was transferred. The court shall make its decision after considering the services available to the youthful offender, the evidence presented, the juvenile court's report, the interests of the youthful offender, and interests of the community.

3. Notwithstanding any provision of the Code which prescribes a mandatory minimum sentence for the offense committed by the youthful offender, following transfer of the youthful offender form the juvenile court back to the court having jurisdiction over the criminal proceedings involving the youthful offender, the court may continue the youthful offender deferred sentence or enter a sentence, which may be a suspended sentence. Notwithstanding anything in section 907.7 to the contrary, if the district court either continues the youthful offender deferred sentence or enters a sentence, suspends the sentence, and places the youthful offender on probation, the term of formal supervision shall commence upon entry of the order by the district court and may continue for a period not to exceed five years. If the district court enters a

The legislature's intent to maximize the flexibility of the judicial system to meet the needs of the child and of society is furthered by construing section 232.45 to permit a child under fourteen who commits a serious offense to be treated as a youthful offender. This allows the court to wait until the child reaches maturity to determine whether there is any need for the services of the adult correctional services, and permits the judicial system to retain jurisdiction over the offender if necessary. The legislature clearly intended that the judicial system would have that flexibility in cases such as Crooks', where a young offender commits a very serious crime and there are serious doubts about whether the child can be rehabilitated by age eighteen.

Further, a 2013 amendment to section 232.45(7) makes clear that the legislature intends to permit the juvenile court to waive offenders who are thirteen-years-old to the district court to be

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> sentence of confinement, and the youthful offender was previously placed in secure confinement by the juvenile court under the terms of the initial disposition order or any modification to the initial disposition order, the person shall receive credit for any time spend in secure confinement. During any period of probation imposed by the district court, a youthful offender who violates the terms of probation is subject to section 908.11.

Iowa Code section 907.3A (2011).

prosecuted as youthful offenders. *See* 2013 S.F. 288, Ch. 42 (85 G.A.). It now provides that the juvenile court can waive its jurisdiction over a child in order that the child may be prosecuted as a youthful offender if the child is "twelve through fifteen years of age or the child is ten or eleven years of age and has been charged with a public offense that would be classified as a class "A" felony if committed by an adult." Iowa Code section 233.45(7) (2015).

The explanation attached to the bill noted that under then-existing law, children fifteen or younger who commit certain felony offenses could be waived to the district court for purposes of prosecution as a youthful offender. It noted that,

> "[t]he bill redefines when a child may be considered for youthful offender prosecution and sentencing. The bill ***limits the use of the option*** to situations in which the child is 12 through 15 years of age and has committed offenses which would be less than a class "A" felony if committed by an adult. For offenses which would be classified as a class "A" felony, the bill permits children who are 10 or 11 years of age to also be prosecuted and sentenced as a youthful offender.

S.F. 288 Explanation (emphasis added).

The characterization of the bill as limiting the situations in which children could be prosecuted as youthful offenders is consistent with the State's position that the 2011 version of section 232.45(7) had no lower age limit. The legislature continues to permit

prosecution of children who are as young as ten years old for class "A" felonies. This supports the district court's determination that the 2011 version of section 232.45(7) permitted that court to waive thirteen-year-old Noah Crooks to the district court for prosecution as a youthful offender.

Crooks argues that the term "youthful offender" is ambiguous because no definition of that term is provided in chapter 232 and because that term was at one time used in the 1997 version of the statute creating peer review courts, Iowa Code section 602.6110(1) (1997). Those arguments are not persuasive.

First, as noted, section 232.45 identifies who qualifies as a youthful offender. Second, while the term youthful offender was used in section 602.6110(1) in 1997, chapter 232 did not include a youthful offender provision in the 1997 Code. *See* Iowa Code chapter 232 (1997). The youthful offender provisions were enacted in 1997, to create shared jurisdiction between the juvenile court and the district court for "youthful offenders." *See* Iowa Code sections 232.8, 232.45(6)(A) (Acts 1977) (77 G.A. Ch. 126). Section 602.6110 was amended in 1998 Acts to replace "youthful offender" with "juvenile", *see* 98 Iowa Acts, Ch. 110, section 77. That amendment rendered

irrelevant the usage given to the term "youthful offender" in the 1997 version of section 602.6110.

Even if section 602.6110 had remained relevant, subsection 2 of section 602.6110 expressly created jurisdiction of the peer review court over "certain youthful offenders" and specified that the subset of youthful offenders included were "those persons ten through seventeen years of age" who have committed misdemeanors and who satisfy other conditions. *See*, Iowa Code section 602.6110(2) (1997). While the statute applied only to misdemeanors, it set ten years of age as the floor for prosecution in peer review courts, indicating that "youthful offender" as used in that section included at least those as young as ten years old. Crooks would have fallen within the age parameters for a youthful offender under that section. In addition, because the statute applied only to "certain" youthful offenders, it is consistent with an interpretation of 'youthful offender" that would have no lower limit.

In any event, by the time Crooks murdered his mother in 2012, the term "youthful offender" had been eliminated from section 602.6110 and had become a term of art to describe a child over whom the juvenile court waived jurisdiction under section 232.45(7),

making the child eligible for an expanded range of dispositional options. *See*, Iowa Code sections 232.45(7), 907.3A (2011).

Crooks also points to the complicated rules in chapter 232 about when and where children may be detained, concluding that this shows that Iowa Code section 232.45(7) is ambiguous. *See*, Appellant's Brief at pp. 48-54. The fact that the juvenile delinquency provisions are complicated does not mean that any one of them is vague. The language of section 232.45(7) is clear: the juvenile court "may, in order that the child may be prosecuted as a youthful offender, waive its jurisdiction over the child." if the child is "fifteen years of age or younger." Thus, the term "youthful offender" as used in section 232.45(7) is self-defining and, by its terms, would permit waiver of a thirteen-year-old child for prosecution as a youthful offender.

Crooks' challenge to his sentence should be rejected. The plain language of section 232.45(7) permits the juvenile court to waive jurisdiction over a child "fifteen years of age or younger" so that the child can be prosecuted as a youthful offender. Further, to the extent that any ambiguity might exist in that section, the rules of statutory construction lead to the conclusion that the Iowa legislature intended

that a child fifteen years of age or younger could be prosecuted as a youthful offender. The district court properly waived jurisdiction over Crooks, a thirteen-year-old at the time he murdered his mother, so that he could be prosecuted in the district court as a youthful offender.

II. Iowa Code Section 232.45(7)(a) Does Not Violate Article I, Section 17 of the Iowa Constitution.

Preservation of Error

The State does not challenge preservation of this claim.

Scope of Review

The Court reviews *de novo* a claim that a sentence is cruel and unusual. *State v. Sweet*, 879 N.W.2d 811, 816 (Iowa 2016).

Merits

In his second challenge to his sentence, Crooks contends that the youthful offender waiver process, set out in Iowa Code sections 232.45(7)(a) and 907.3A, violates the prohibition against cruel and unusual punishment of Article I, section 17 of the Iowa Constitution. He asks this Court to impose a categorical bar to waiver of a child under the age of fourteen for punishment in adult court. His claim should be rejected as a waiver decision does not constitute

"punishment" and, even if it did, it would not be categorically cruel and unusual.

Article I, Section 17 of the Iowa Constitution prohibits the imposition of "cruel and unusual" punishment. *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009). Article I, section 17 "embraces a bedrock rule of law that punishment should fit the crime." *Bruegger*, 773 N.W.2d at 872; *State v. Lyle*, 854 N.W.2d 378, 384 (Iowa 2014), as amended (Sept. 30, 2014).

Cruel-and-unusual-punishment claims come in two varieties: a categorical approach, seeking to invalidate a general sentencing practice, and a gross disproportionality comparison of a particular defendant's sentence with the seriousness of his particular crime. *See State v. Oliver*, 812 N.W.2d 636, 640 (Iowa 2012) (*citing Graham v. Florida*, 560 U.S. 48, 60 (2010)). Traditionally, categorical challenges were limited to challenges to the death penalty. *Lyle*, 854 N.W.2d at 385.

However, recently, the United States Supreme Court has expanded the categorical challenges available to juvenile offenders. In *Roper*, the United States Supreme Court held that execution of juveniles offenders categorically violated the Eighth and Fourteenth

Amendments of the United States Constitution. *Roper v. Simmons*, 543 U.S. 551, 578 (2005). In *Graham*, the Court held that the Eighth Amendment categorically prohibits states from sentencing juveniles who did not commit homicide to life in prison without parole and required that states must provide a "realistic opportunity to obtain release before the end of" a life sentence. *Graham*, 560 U.S. 48, 74-75 (2010).

Underlying the Court's holdings in *Roper* and *Graham* was the Court's belief that due to lack of maturity a juvenile offense is less reprehensible than that of an adult. The Court recognized that juveniles' lack of maturity and underdeveloped sense of responsibility "often result in impetuous and ill-considered actions and decisions." It noted that juveniles are more susceptible than adults are to "negative influences and outside pressures" and "juveniles have less control, or less experience with control, over their own environment." It also noted that juveniles' personality and character traits are still forming, and are not as fixed as adults'. *Roper*, 543 U.S. at 569-570. Even expert psychologists, the Court found, have difficulty differentiating between the juvenile whose crime reflects transient immaturity and the rare juvenile offender whose crime reflects

irreparable corruption. *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68, 77.

Most recently, in *Miller*, the Supreme Court considered a categorical challenge to life sentences without the possibility of parole imposed on juvenile offenders who commit murder. The Court in *Miller* did not reach the categorical challenge, finding that its holding was sufficient to decide the cases before it. *Miller v. Alabama*, 567 U.S. at ––, 132 S.Ct.2455, 2469. However, the Court cautioned that "appropriate occasions for sentencing juveniles to this harshest possible penalty, [life in prison without the possibility of parole,] will be uncommon." *Id.* The court again noted the difficulty of determining which juveniles could be rehabilitated and found that judges or juries "must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles" and required them to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. *Miller*, __ U.S. at __, 132 S.Ct. at 2475.

Under the Iowa Constitution, this Court has expanded the available categorical challenges, interpreting Article I, section 17 of

the Iowa Constitution to categorically reject certain sentences for juvenile offenders. The Court has "primarily embraced the reasoning" of the *Roper-Graham-Miller* trilogy under the Iowa Constitution, but has "built upon it and extended its principles." *State v. Sweet*, 879 N.W.2d 811, 832 (Iowa 2016).

In *Pearson* and *Null*, the Court held that Article I, section 17 requires an individualized sentencing hearing before sentencing a juvenile offender to a lengthy mandatory minimum of sentence of imprisonment. *State v. Pearson*, 836 N.W.2d 88, 96 (Iowa 2013) (a mandatory minimum of thirty-five years requires an individualized sentencing hearing); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (A 52.5–year minimum prison term for a juvenile based on the aggregation of mandatory minimum sentences for second-degree murder and first-degree robbery requires an individualized sentencing hearing.).

In *Lyle*, the Court held that mandatory minimum sentences of imprisonment for youthful offenders are categorically unconstitutional under the cruel and unusual punishment clause in Article I, section 17 of the Iowa constitution. *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014). *Lyle* does not prohibit judges from

sentencing juveniles to prison for the length of time identified by the legislature for the crime committed, nor does it prohibit the legislature from imposing a minimum time that youthful offenders must serve in prison before being eligible for parole. It requires only that there be an individualized sentencing hearing. *Lyle*, 854 N.W.2d at 403.

In *Sweet*, the Court considered the special characteristics of youth and adopted a categorical rule that even juvenile offenders who commit murder may not be sentenced to life without the possibility of parole. *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016). Crooks asks this Court to "take the next logical step and define at what age a child may be subject to adult prosecution and punishment." He asks the Court to "adopt a categorical bar on imposing punishment upon a child under the age of fourteen in adult court." Appellant's Brief at p. 70.

Crooks contends that the waiver process under sections 232.45(7) and 907.3A amounts to "punishment" for purposes of the Iowa prohibition against cruel and unusual punishment. He further contends that waiver of a child under the age of fourteen for

prosecution as a youthful offender is categorically cruel and unusual. His claim should be rejected.

Crooks committed murder in March of 2012; he was thirteen years old. At that time, Iowa Code section 232.45 (7) provided that the juvenile court could, in its discretion, chose to waive a juvenile fifteen years or younger to the district court for prosecution as youthful offender.

The transfer process does not inflict confinement or impose a penalty. Instead, it simply changes the forum where punishment is determined. The Iowa youthful offender waiver procedures are applied at the pre-adjudicative stage of prosecution of a minor; the prohibition against cruel and unusual punishment is not triggered until after there has been an adjudication of guilt. *See*, *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (*citing Ingraham v. Wright*, 430 U.S. 651, 671–672, n. 40 (1977)) (*abrogated on other grounds by Graham v. Connor*, 490 U.S. 239, 244 (1989) ('[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law."); *and see Bell v. Wolfish*, 441 U.S. 520, 535, n. 16 (1979) ("Because

there had been no formal adjudication of guilt against Kivlin at the time he required medical care, the Eighth Amendment has no application."). Because there was no adjudication of delinquency or of guilt at the time the juvenile court transferred Crooks to the district court for prosecution as a youthful offender, the transfer was not "punishment." *See*, *People v. Patterson*, 25 N.E.3d 526, 550-552 (Ill. 2014) (statute mandating transfer to adult court is not punishment for purposes of 8th Amendment or analogous state constitutional provision); *State v. Mays*, 18 N.E.3d 850, 861 (2014) (mandatory transfer of juveniles to adult court did not violate the 8th Amendment as the transfer decision was not punishment); *State v. McKinney*, 46 N.E.3d 179, 187 (1st Dist. Ohio Ct. App. 2015) (mandatory bind-over from juvenile court to adult system is not "punishment" for the purpose of the Eighth Amendment); *State v. Jensen*, 385 P.3d 5, 9 (Idaho Ct. App. 2016) (statute requiring automatic waiver from juvenile court for prosecution as an adult for minors ages fourteen to eighteen who are charged with committing certain enumerated offense is not cruel and unusual under the 8th Amendment as waiver is not "punishment;"the 8th Amendment "only comes into play after a formal adjudication of guilt and therefore, does not apply [to a waiver

procedure]"); *People v. Salas*, 2011 IL App (1st) 091880, at 66, 961 N.E.2d 831, 846 ("[T]he automatic transfer statute at issue here does not impose any punishment on the juvenile defendant for the purposes of the Eighth Amendment; it only provides for the forum in which his guilt may be adjudicated.); *People v. Pacheco*, 2013 IL App (4th) 110409, *55, 991 N.E.2d 896, 907 (same); *State v. McKinney*, 2015 Ohio 4398, *30, 46 N.E.3d 179, 187 (Ohio App, 1st Dist. 2015) ("McKinney also maintains that subjecting certain 16 and 17 year olds to punishment in the adult system violates the Eighth Amendment's prohibition against the "'infliction of cruel and unusual punishments.'" But to implicate the Eighth Amendment's ban on cruel and unusual punishments, there must be a punishment. Mandatory bind over does not constitute punishment: it simply changes the forum where punishment is determined. [citations omitted] Because a mandatory bind over is not 'a penalty or confinement inflicted * * * pursuant to a sentence of the juvenile court,' it does not constitute cruel and unusual punishment.").

Crooks argues, however, that the waiver process is punishment because the decision to waive jurisdiction is a choice to move a child from the juvenile system, where rehabilitation is the primary

commitment, and to place a child in the adult system, where retribution and deterrence are the primary commitments. Crooks' argument is unpersuasive.

First, for a thirteen-year-old offender such as Crooks, waiver to adult court is not mandatory. The decision is left to the discretion of the juvenile court. The waiver decision requires the court to consider a large number of factors before determining whether "there are not reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday, if the juvenile court retains jurisdiction over the child." Iowa Code section 232.45(7), (9) (2011).

In addition, the decision to waive a child for prosecution as a youthful offender does not automatically subject the child to adult criminal sanctions. The child is given a deferred judgment and is treated the same as a child who is retained in the juvenile system until the child is eighteen years old. *See*, Iowa Code sections 907.3A(1), 232.50 (2011). Thus, Crooks' argument that waiver amounts to punishment because it removes the child from a system focused on rehabilitation to a system focused on deterrence and retribution ignores system the Iowa legislature has created for youthful offenders.

Any exposure to adult punishment is deferred until the youthful offender becomes an adult and is discretionary with the district court. Prior to the youthful offender's eighteenth birthday, a hearing is held to evaluate the child's progress. The court is required to consider "the services available to the youthful offender, the evidence presented, the juvenile court's report, the interests of the juvenile offender, and the interests of the community." The court can then discharge the child or order that the child be continued on youthful offender status after the child's eighteenth birthday. *See*, Iowa Code section 907.3A(2) (2011).

If the offender is not discharged, the district court can continue him on his deferred judgment or enter a suspended sentence and place the child on probation for a period not to exceed five years. Alternatively, the court can choose to impose a sentence of confinement. *See*, Iowa Code section 903A.3 (2011).

Thus, waiver of a child for prosecution as a youthful offender is not a decision to abandon efforts to rehabilitate the child and, instead, focus on retribution and deterrence. The youthful offender provisions are clearly aimed at rehabilitating the child, and simultaneously protecting society. The decision to waive for

prosecution as a youthful offender does not lead inevitably to imposition of "adult" punishment. Adult punishment would be imposed only when the child turns eighteen and only if the juvenile system has been unable to rehabilitate the child. Therefore, the waiver decision does not impose "punishment" for the purpose of Article I, section 17.

In addition, the cases cited by Crooks in support of his claim that the waiver decision imposed punishment are not persuasive. Both cases involved 5th Amendment challenges to the use of a juvenile's statement. Neither case considered whether a waiver proceeding was punishment for the purposes of the 8th Amendment. *See, R.H. v. State*, 777 P.2d 204, 209 (Alaska Ct. App. 1989); *Ramona R. v. Superior Court*, 37 Cal. 3d 802, 810-11, 693 P.2d 789 (1985);

Moreover, even if the waiver procedure were deemed to be punishment, that punishment would not be categorically cruel and unusual. In considering whether to adopt a categorical approach to the class of offenders or offenses under the cruel and unusual punishment clause of the Iowa Constitution, the Court applies the two-step process found in the cases of the United States Supreme Court. Applying this test, the Court looks to whether there is a

consensus, or at least an emerging consensus, to guide the court's consideration of the question. Second, it exercises its independent judgment to determine whether to follow a categorical approach. *State v. Sweet*, 879 N.W.2d 811, 835 (Iowa 2016).

Crooks has not established that there is a national consensus that youthful offender prosecutions are categorically cruel and unusual. Neither has he shown any reason why this Court should exercise its independent judgment to find the procedures cruel and unusual.

Initially, the State notes that Crooks is challenging only subsection 7 of Iowa Code section 232.45, which allows the juvenile court to waive jurisdiction over a child for prosecution as a youthful offender; he is not challenging subsection 6, which allows waiver for prosecution as an adult. In his analysis, however, Crooks equates the two types of waiver. The Court should reject that approach as the two types of waiver carry vastly different sentencing consequences.

Notably, the decision to waive a child to the district court for prosecution as a youthful offender does not result in a single punishment that is certain to be imposed in every case. Consequently, the usual parameters for evaluating whether a

punishment is cruel and unusual are not useful. At one end of the spectrum of possible dispositions, waiver can result in retention of the child in the juvenile system until age eighteen, (the child may even be allowed to remain in his home during that time), and then discharge. At the other end of the spectrum, a child can be moved from the juvenile system at age eighteen and given a sentence of a term of years to be served in the adult correctional system. In every case, there is a hearing as the child approaches age eighteen to determine whether to discharge the child, order a five-year period of probation, or incarcerate the youthful offender.

The decision whether to apply adult sanctions to a youthful offender is not made until the child is an adult, or on the precipice of adulthood. At that point, the concerns of *Miller* and *Sweet* no longer apply: the court is not faced with a young offender and forced to predict whether the child will remain dangerous into adulthood. Instead, the court is able to wait until the child approaches adulthood and has obtained the rehabilitative services available in the juvenile system and then determine whether efforts to rehabilitate have been effective.

Thus, the juvenile court was not required at the time of Crooks' waiver hearing to determine whether the thirteen-year-old who murdered his mother could be rehabilitated and safely released into society. The court was only required to determine whether it would be reasonable to believe that the juvenile system could rehabilitate Crooks by the time he turned 18 or whether he should be waived to the district court as a youthful offender so that the district court would have the option of keeping Crooks in the system past his 18th birthday if reasonably necessary for his rehabilitation.

In reaching its decision whether to transfer a juvenile to the district court for prosecution as a youthful offender, the juvenile court is required to consider a number of factors: the nature of the alleged delinquent act and the circumstances under which it was committed, the nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts, the age of the child, the programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the district court after the child reaches the age of eighteen in the event the child is

given youthful offender status. Iowa Code section 232.45(9) (2011). Consideration of those factors satisfied the requirements of Article I, section 17.

The youthful offender waiver statutes fully satisfy the concerns of the United States Supreme Court in *Graham*, *Roper*, and *Miller*, as well as the concerns underlying the Iowa Court's recent cruel and unusual punishment cases. In *Miller*, the majority opinion found that allowing judges discretion in transferring a juvenile to adult court would not satisfy *Miller*, but that Miller would be satisfied by allowing judges discretion at a post-trial sentencing hearing in adult court. The Court explained its conclusion as follows.

> Even when States give transfer-stage discretion to judges, it has limited utility. First, the decision maker typically will have only partial information at this early, pretrial stage about either the child or the circumstances of his offense. * * * * But by then, of course, the expert's testimony could not change the sentence; whatever she said in mitigation, the mandatory life-without-parole prison term would kick in. The key moment for the exercise of discretion is the transfer … [but] the judge often does not know then what she will learn, about the offender or the offense, over the course of the proceedings. Second and still more important, the question at transfer hearings may differ dramatically from the issue at a post-trial sentencing. Because many juvenile systems require that the offender be released at a particular age or after a certain number of years, transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without parole). In many States, for example, a child convicted in juvenile court must be released from custody by

> the age of 21. [citations omitted]. Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term with the possibility of parole or a lengthy term of years. It is easy to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate. For that reason, the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court—and so cannot satisfy the Eighth Amendment.

Miller, 567 U.S. at ___, 132 S. Ct. 2455, 2474–75. Iowa's youthful offender waiver statutes provide even more flexibility in selecting a youthful offender's sentence and defer that sentencing decision until the juvenile turns eighteen, thus providing the district court with much more predictive information than would be available immediately post-trial.

Likewise, the Iowa youthful offender procedures satisfy the concerns underlying this Court's recent decisions under Article I, Section 17. In *Sweet*, the court stated,

> sentencing courts should not be required to make speculative up-front decisions on juvenile offenders' prospects for rehabilitation because they lack adequate predictive information supporting such a decision. The parole board will be better able to discern whether the offender is irreparably corrupt after time has passed, after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available.

Sweet, 879 N.W.2d at 839. The Court concluded that, "juvenile offenders' prospects for rehabilitation augur forcefully against speculative, up-front determinations of opportunities for parole and leads inexorably to the categorical elimination of life-without-the-possibility-of-parole sentences for juvenile offenders." *Sweet*, 879 N.W.2d at 839. Under the Iowa youthful offender procedures, there is no "up-front" determination of punishment, that determination is deferred until the child has had time to mature and until the juvenile system has had time to attempt to rehabilitate the child. Consequently, those procedures satisfy the requirements of Article I, Section 17. *See*, *Sweet*, 879 N.W.2d at 840 (Cady, C.J. concurring) (the statute providing for sentences of life without parole for juvenile offenders "is unconstitutional only because it does not permit the sentencing court to retain jurisdiction to reconsider a sentencing decision that denies eligibility for parole once full brain development has occurred.").

The Iowa youthful offender waiver statute, Iowa Code section 232.45(7), works together with section 907.3A to permit the juvenile court to identify those offenders for whom rehabilitation is likely to require more time than is available in the juvenile system and

transfer those offenders to the district court. However, no "up-front" decisions are made about what will happen to those juveniles upon reaching age eighteen. Instead, the offenders are re-evaluated upon reaching the age of majority to determine whether they can be discharged or whether involvement with the department of adult corrections will be needed. Even if adult sanctions are imposed at that point, the district court has broad options to tailor the sentence to the offender and to the offense. The court can impose probation for five years, with any conditions deemed necessary, or impose an indeterminate term of incarceration. Iowa Code section 232.45(7) is not categorically cruel and unusual. *See*, *In Matter of J.G.*, 495 S.W.3d 354, 369 (Tex. App. 2016) (In making its decision to waive jurisdiction and transfer appellant's case to the district court, the juvenile court considered appellant's prior history with the juvenile justice system, the rehabilitative placements that were made, his lack of cooperation with those rehabilitative goals, and the escalation of his criminal conduct. We cannot conclude that, as applied to this case, waiver constitutes cruel and unusual punishment violating the Eighth Amendment."); *State v. Jensen*, 385 P.3d 5, 9-10 (Idaho Ct. App. 2016) (Even if the automatic waiver provision were punishment,

it would not be cruel and unusual. Although the determination of guilt in adult court does not require consideration of the youthful characteristics, the sentencing options available to the district court include adult sentencing measures, the options that would be available in the juvenile corrections system, or a blended sentence. Because the sentencing options permit the court to consider the child's youthful characteristics, they satisfy the 8th Amendment).

Crooks has not shown that Iowa Code sections 232.45(7) and 907.3A are categorically cruel and unusual. Consequently, his challenge to his sentence should be rejected.

III. The District Court Acted within Its Sentencing Authority in Sentencing Crooks to an Indeterminate Fifty-Year on His Conviction for Second-Degree Murder.

Preservation of Error

The State does not challenge error preservation. A defendant may challenge his sentence on appeal even in the absence of an objection in the district court. *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010).

Scope and Standard of Review

The Court reviews sentencing challenges for errors at law. *State v. Liddell*, 672 N.W.2d 805, 814 (Iowa 2003). "A sentence will not be

upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of impermissible factors." *Id.*

Merits

Finally, Crooks contends that the district court abused its discretion in imposing an indeterminate fifty-year sentence on his conviction for second-degree murder. He challenges the district court's sentencing decision on three grounds: that the court mistakenly believed that its sentencing options were limited to incarceration or street probation; that the district court failed to consider the *Miller* factors on the record; and, that the district court's reasons for its decision to incarcerate Crooks are not supported by the record. Crook's challenges to the district court's sentencing decision should be rejected.

The trial court's discretion in sentencing matters is broad. *State v. Zaruba*, 306 N.W.2d 772, 774 (Iowa 1981); *State v. Messer*, 306 N.W.2d 731, 732 (Iowa 1981). The decisions of the trial court are cloaked with a strong presumption in their favor, and there is a presumption that the discretion of the trial court was rightfully exercised. *State v. Hansen*, 344 N.W.2d 725, 730 (Iowa Ct. App.

1983) (*citing State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983)). To overcome this presumption of regularity requires an affirmative showing of abuse, and the burden of doing so rests upon the defendant. *Id.* That burden is a heavy one. *State v. Stanley*, 344 N.W.2d 564, 567-69 (Iowa Ct. App. 1983); *Zaruba*, 306 N.W.2d at 774.

An abuse of discretion is found only if the trial court's discretion "was exercised only on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Zaruba*, 306 N.W.2d at 774. "The trial court, within the limits of applicable statutes, [has] the discretion to select a sentencing combination that would 'provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.'" *Stanley*, 344 N.W.2d at 567 (internal quotation omitted).

When a sentencing court has discretion, it must exercise that discretion. *State v. Ayers*, 590 N.W.2d 25, 27 (Iowa 1999). Failure to do so requires the Court to vacate the sentence and remand for resentencing. *Id.*; *State v. Lee*, 561 N.W.2d 353, 354 (Iowa 1997) (holding that "[w]here a court fails to exercise the discretion granted

to it by law because it erroneously believes it has no discretion, a remand for resentencing is required"). However, the court need not give specific reasons for rejecting alternative sentences. *Stanley*, 344 N.W.2d at 569. In the case at bar, the defendant cannot demonstrate an abuse of discretion.

A. The District Court Did Not Abuse Its Discretion by Failing to Consider All Available Sentencing Options.

In his first challenge to his sentence, Crooks contends that the district court failed to consider all available sentencing options, incorrectly believing that it could impose only probation or incarceration. His challenge should be rejected as the district court was aware of the available options and reasonably chose incarceration.

To prevail on this challenge to his sentence, the record must affirmatively show how the district court abused its sentencing discretion. *State v. Vanover*, 559 N.W.2d 618, 635 (Iowa 1997); *State v. Ayers*, 590 N.W.2d 25, 29 (Iowa 1999). Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995). A defendant has an

affirmative duty to provide a record showing that the court abused its discretion. *Id.*

Where a defendant claims that the district court was unaware of its discretion to impose a particular sentence, the defendant has an affirmative duty to provide a record showing the district court was unaware of its discretion to impose a particular sentence and for that reason failed to exercise its discretion. *State v. Ayers*, 590 N.W.2d 25, 29-30; *State v. Russian*, 441 N.W.2d 374, 375 (Iowa 1989). In the absence of such a record, the Court will assume the district court was aware of its option to impose conditions of probation and declined to do so. *Russian*, 441 N.W.2d at 374-375. Crooks has not met his burden to show that the trial court failed to exercise its discretion.

Crooks was waived from the juvenile court to the district court for prosecution as a youthful offender, where he was convicted of second-degree murder. Judgment and Sentence; App. 19-21. Prior to Crooks' eighteenth birthday, he appeared before the district court for determination of his status upon reaching the age of majority, as required by Iowa Code section 907.3A (2011). Under that section, the district court had four sentencing options: (1) discharge Crooks from the court's jurisdiction; (2) impose a deferred judgment and place

Crooks on probation for a period not to exceed five years; (3) impose a suspended sentence and place Crooks on probation for a period not to exceed five years; or, (4) impose an indeterminate fifty-year sentence without a minimum sentence. *See*, Iowa Code sections 907.3A, 707.3 (2011); *Lyle*, 854 N.W.2d at 404 (mandatory minimum sentences imposed on a juvenile offender violates Article I, section 17 of the Iowa Constitution). The district court chose the last option.

Crooks points to isolated comments by the district court to make his claim that the district court did not seriously consider granting Crooks probation because the court was unaware that it could impose strict conditions on probation, including placement in a residential treatment facility. In outlining the sentencing options available to it, the court stated, "simply stated, I have two options at this point in time. One is some type of street probation and the other would be a term of incarceration…." Sent. Tr. p. 33, lines 16-18. Later, the court stated, "I've got probation on the one hand or I've got an indeterminate term not to exceed 50 years on the other hand." Sent. Tr. p. 34, lines 13-15. Based on those comments, Crooks concludes that the district court was unaware that it could place

Crooks on probation but could require that he reside in a residential correctional facility as a condition of probation.

The court's shorthand description of the options available to it does not establish that the court was unaware of the conditions that could be placed on probation. Considering the sentencing record as a whole, it is apparent that the district court was aware of its options and chose incarceration as the most appropriate disposition.

The court noted that Crooks had made the comment that he did not think he had any need for future services. Sent. Tr. p. 35, lines 22-25. The court also noted that the five-year limitation that would apply to an order for probation. Sent. Tr. p. 33, line 23 – p. 34, line 4. This shows that the court knew that it could require Crooks to participate in services as a condition of probation.

The court then went on to discuss its belief that Crooks had not been rehabilitated and that that there "is a lot of ground yet to cover" in rehabilitating Crooks. The district court's comments show that it was concerned with having sufficient time to rehabilitate Crooks so that he could be safely released into society. Sent. Tr. p. 35, line 9 – p. 37, line 10. The option for probation would strictly limit to five years the time available to rehabilitate Crooks. The district court

chose to impose a lengthy but indeterminate prison sentence so that Crooks would be released as soon as the department of corrections determined he could be released safely. The court did not chose to incarcerate Crooks because it was unaware that it could place significant conditions on his probation, but because it did not believe five years was long enough rehabilitate Crooks.

Crooks has not met his burden to show that the district court was unaware of its discretion to impose restrictive conditions of probation and for that reason failed to exercise its discretion. *Russian*, 441 N.W.2d at 374-375. (Russian alleged that the district court abused its discretion because it was unaware that under Iowa Code section 901.10, it could sentence defendant to a term less than the statutory mandatory minimum. The district court did not invoke or even mention section 901.10; thus, the Court could not tell from the record whether the sentencing court was aware it had discretion to apply section 901.10. In these circumstances, there was a presumption the court declined to apply section 901.10 and, thus, properly exercised its sentencing discretion.); *Ayers*, 590 N.W.2d at 28-29 (in the absence of a record affirmatively showing that the district court believed it lacked discretion to impose a particular

sentence, the Court will presume the district court properly exercised its discretion); *State v. Vanover*, 559 N.W.2d 618, 635 (Iowa 1997) (finding no abuse of discretion where the record did not affirmatively show that the district court was aware of its full sentencing options); *State v. Loyd*, 530 N.W.2d 708, 713-14 (Iowa 1995) (holding that generally sentencing court is not required to give its reasons for rejecting particular sentencing options). Crooks' challenge to his sentence should be rejected.

B. The District Court Did Not Abuse Its Discretion by Failing to Consider on the Record the *Miller* Factors as the Court Did Not Impose a Minimum Sentence.

Crooks also challenges his sentence on the ground that the district court failed to consider on the record the factors set out in *Miller v. Alabama*. This challenge, too, should be rejected. The Court was required to consider the *Miller* factors only in determining whether to impose a mandatory minimum sentence. Because it did not even consider that option, the court was not required to weigh the *Miller* factors into its sentencing decision.

In *Miller*, the United States Supreme Court held that the Eighth Amendment prohibits a mandatory sentence of life in prison without the possibility of parole for offenders who were under age eighteen at

the time of their crimes. *Miller v. Alabama*, 567 U.S. 460, ___, 132 S.Ct. 2455, 2469 (2012). *Miller* requires that, before imposing a life sentence without parole, the sentencing court must consider the juvenile's family and home environment, including whether there was childhood abuse, parental neglect, personal and family drug or alcohol abuse, prior exposure to violence, lack of parental supervision, lack of adequate education, and the juvenile's susceptibility to psychological or emotional damage. *Miller*, 567 U.S. at ___, 132 S.Ct. at 2464, 2468; *State v. Seats*, 865 N.W.2d 545, 556 (Iowa 2015).

In *Lyle*, the Iowa Supreme Court relied on the Iowa Constitution and extended the holding of *Miller* to require the district court to expressly consider and make on-the-record findings on the *Miller* factors before imposing any mandatory minimum sentence on a juvenile offender. *Lyle*, 854 N.W.2d at 396-398.

Crooks recognizes that no mandatory minimum sentence was imposed in his case, but argues that a mandatory minimum was an available option and, therefore, the district court was required to consider the *Miller* factors on the record. His claim should be rejected.

The district court was not required to consider the *Miller* factors because it expressly advised the parties that the State was not seeking a minimum sentence and the court was not considering that option. Sent. Tr. p. 34, lines 13-20. The court is required to give an on-the-record explanation only for the sentence it imposes; it is not required to explain its reasons for rejecting alternative sentences. *Stanley*, 344 N.W.2d at 569.

C. The District Court Was Well within Its Sentencing Discretion in Choosing to Incarcerate Crooks.

Finally, Crooks contends that the district court's decision to impose an indeterminate fifty-year sentence of incarceration, with no mandatory minimum, was an abuse of discretion because, he contends, the reasons the court gave for incarcerating Crooks were not supported by the record. His claim should be rejected as the record amply supports the district court's decision to impose an indeterminate sentence of incarceration.

The Court reviews the district court's sentencing discretion for abuse of discretion if the sentence is within the statutory limits. In applying the abuse of discretion standard to sentencing decisions, the court consider the societal goals of rehabilitation of the offender and the protection of the community from further offenses, it also

considers "'the host of factors that weigh on the often arduous task of sentencing a criminal offender," including the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform.'" *State v. Seats*, 865 N.W.2d 545, 552-553 (Iowa 2015) (*quoting State v. Formaro*, 638 N.W.2d 720, 724–25 (Iowa 2002) (citations omitted)).

As the Court pointed out in *Sweet*,

> Application of these goals and factors to an individual case, of course, will not always lead to the same sentence. Yet, this does not mean the choice of one particular sentencing option over another constitutes error. Instead, it explains the discretionary nature of judging and the source of the respect afforded by the appellate process.
>
> Judicial discretion imparts the power to act within legal parameters according to the dictates of a judge's own conscience, uncontrolled by the judgment of others. It is essential to judging because judicial decisions frequently are not colored in black and white. Instead, they deal in differing shades of gray, and discretion is needed to give the necessary latitude to the decision-making process. This inherent latitude in the process properly limits our review. Thus, our task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds.

Id. (*quoting Formaro*, 638 N.W.2d at 724–25 (citations omitted)). In other words, a district court does not abuse its discretion if the evidence supports the sentence. *Seats*, 865 N.W.2d at 553 (*citing State v. Valin*, 724 N.W.2d 440, 445 (Iowa 2006)).

The State offered a number of exhibits at Crooks' sentencing hearing. Among them was a report of an examination by Dr. Michael Taylor that was prepared in May of 2012 for use at Crooks' dispositional hearing. In that report, Dr. Taylor found that Crooks suffered from no psychiatric illness and that "the prospects of rehabilitating Noah Crooks prior to his eighteenth birthday are nil." Exh. 1 (108); Conf. App. 168. He found that Crooks "appears to not be capable of experiencing guilt and/or remorse. He is not capable of considering the impact that his actions might have on others – except himself." Exh. 1 (Exh. 108); Conf. App. 168.

Significantly, Dr. Taylor opined that

> It is highly probable, however, that Noah [Crooks] will become more skilled at "saying the right things" to cover up his severe psychopathology until he is no longer in a secure facility. His diminutive statute will assist him further in covering up the extent of his psychopathology and further threat to public safety.

Exh. 1 (Exh. 108); Conf. App. 168.

Similarly, Psychologist Anna Salter, Ph.D. concluded that Crooks lacked a conscience, had a total lack of empathy, and showed extreme callousness and concluded that no treatment program had a reasonable ability to rehabilitate Crooks before his eighteenth birthday. Dr. Salter was "pessimistic about the chance that any

treatment program can claim to successfully treat these traits even with a much longer frame of time. I believe his prognosis is grave. These are stable traits that are not likely to change on their own and treatment has been typically ineffective in treating them." Exh. 6 (15); Conf. App. 286-287.

Dr. Terry Augspurger, M.D. conducted psychiatric evaluations of Crooks on July 13, 2013, shortly after he was admitted to the state training school, and again on April 1, 2016, in preparation for his sentencing hearing. In his initial evaluation of Crooks, Dr. Augspurger diagnosed Crooks with a conduct disorder, childhood onset. He noted that Crooks had a history of tricholtillomania (compulsive hair pulling) and attention deficit hyperactivity disorder, but that Crooks was not then showing symptoms of either syndrome. Dr. Augspurger opined that Crooks was developing an antisocial personality disorder based on his 'fairly longstanding and well ingrained collection of psychopathic characteristics" and stated that he did not expect that pattern to change. He noted a long pattern of conduct disorder behavior beginning at least when Crooks was five years old. Those behaviors included burning down his grandmother's house due to fire setting, destruction of property, use of weapons,

repeated cruelty to animals, threatening and assaulting others, He did not diagnose that disorder at that time because "the accepted convention" is not to make that diagnosis before a patient is eighteen years old. Exh. 3 (13) at pp. 1-3; Conf. App. 173-175.

In his final evaluation of Crooks, Dr. Augspurger noted that Crooks had not presented any behaviour problems or caused any concerns with his behavior; Crooks had been "good … and quiet and cooperative on a daily basis." Dr. Augspurger stated that Crooks had met with psychologist Louis Wright on a regular basis, had been cooperative with interviews, compliant with assignments, and had made "steady progress [toward] reaching his goals on a regular basis." Mr. Wright did not document any antisocial or psychopathic comments or behaviors during Crooks' stay at the training school. He also noted that adolescent MMPI psychological testing had been done "recently" and "did not elicit any evidence for psychopathology." Exh. 3 (13) at p. 4; Conf. App. 176. Dr. Augspurger stated that the only point of concern raised by Crooks' counselor was that Crooks had intermittent brief temper flare ups when things did not go his way, but that Crooks had always been able to rein in his anger and avoid substantial consequences. The doctor noted that Crooks "tends to be

rather self-centered and shows little concern for others but he is bright enough to understand how he should relate to others and strives to do so." Exh. 3 (13) at p. 5; Conf. App. 177.

In an interview on February 26, 2016, Crooks – in contrast to his previous interview – expressed remorse for killing his mother, admitted that he misses her, and wished he had not killed her. Crooks denied any thoughts, plans, or intention for future homicide. Exh. 3 (13) at p. 5; Conf. App. 177.

Dr. Augspurger concluded that Crooks did not have a diagnosable mental disorder at the time of his final evaluation. Crooks did not demonstrate any significant symptoms of attention deficit hyperactivity disorder or trichotillomania in the three year he had been at the training school. Crooks had not demonstrated any ongoing conduct disorder symptoms to support a diagnosis of conduct disorder, and had not displayed evidence of the behavior required for a diagnosis of conduct disorder as he had not demonstrated any active symptoms in the previous twelve months; neither could the doctor conclude that Crooks was developing a conduct disorder. While he recognized that it was possible that Crooks had been covering up his psychopathic thinking, the doctor

did not believe that was likely. He was hopeful that Crooks had made real changes and his conduct order had resolved itself. Nonetheless, the doctor concluded that "I have no ability to predict the future and cannot offer assurances one way or the other." Exh. 3 (13) at pp. 4-6; Conf. App. 176-178.

A youthful offender report prepared by Juvenile Court Officer Scott Jensen on April 15, 2016 stated that, while Crooks had grown and matured in his time at the state training school, he had not given any explanation for killing his mother other than that "I thought we would be better off without her" and "I didn't think of the consequences." During one therapy session, Noah Crooks' father asked about the counseling sessions involving therapy about why Noah killed his mother. Noah responded, that it was not one of his top priorities to work on that issue. Crooks also stated that he had no need to participate in the Violence Intervention Program at the state training school because he was not violent. When reminded that he was at the training school because he had killed his mother, Crooks responded, "other than that." The report also noted that Crooks had minimized his actions and the impact of his actions on his mother's

family and friends. The juvenile court officer expressed concern about community safety. Exh. 2 (14); Conf. App. 169-171.

Progress notes prepared by Youth Counselor Jesse Behrends while Crooks was at the state training school noted that by January of 2016, Crooks had "begun to breech [sic] the subject of his motivation to commit the crime that led to his placement" at the state training school and Behrends was "hopeful" that Crooks would continue to confront his past behaviors. Exh. 5 (11) at 68; Conf. App. 263-264. Overall, Behrends' prognosis for Noah was "guarded to good." *Id*. at 72; Conf. App. 267.

Those evaluations of Crooks supported the district court's conclusion that a five-year probation period was not sufficient to rehabilitate Crooks so that he could be released into society safely.

Likewise, the recommendations of the prosecutor and the department of correctional services supported the court's sentencing decision. The prosecutor recommended that the district court to impose an indeterminate sentence of fifty years, but did not ask that a minimum sentence be imposed. Sent. Tr. p. 15, lines 3-12. The presentence investigation reporter recommended that Crooks be incarcerated. PSI at p. 10; Conf. App. 163.

The victim impact statements made by Crooks' family members also supported the district court's decision to incarcerate Crooks. Noah Crooks' father William Crooks, his uncle Jason Brown, and his maternal grandparents Michael Wentworth and Beverly Brahm each gave victim impact statements in which they requested incarceration. Sent. Tr. p. 22, line 5 – p. 25, line 1 (Jason Brown); p. 25, line 10 – p. 26, line 4 (Michael Wentworth); p. 26, line 11 – p. 27, line 1 (Beverly Brahm); p. 27, line 11 – p. 31, line 1 (William Crooks).

Michael Wentworth expressed his opinion that the "world will not be safe if he is released, and he may not be either." Sent. Tr. p. 25, lines 21-22. Ms. Brahm stated that from the time Crooks was a child until the day of sentencing, she had never seen Crooks display empathy. Before Noah's crime, she stated, she had kept her other grandchildren and her dog away from Crooks because she was afraid he would hurt them. While she believed Crooks had matured while at the state training school, she was not convinced that either society or Crooks would be safe if he were released from custody. Sent. Tr. p. 26, line 11 – p. 27, line 1.

Similarly, Crooks' father stated that he had visited Noah while he was at the state training school, but that Noah never talked about

his mother and never showed remorse over killing her. Sent. Tr. p. 28, lines 23-25, p. 30, lines 1-17.

In explaining the reasons for the sentence it imposed, the district court noted that Crooks had done "some good things" while at the state training school, but concluded that there was still reason for concern. The court noted that

> the common theme throughout the documents that have been submitted, and even the comments made here today, is that there has been a surprising lack of an emotional response from Noah, something showing appropriate remorse, empathy, which is understanding the feelings of the other people who have been affected by your actions.

The court noted Crooks' youth and that the court treats young people differently, but also noted that it was "very apparent" that Crooks just did not want to "deal with" what he had done and that, therefore, discharge was not an appropriate disposition of his case. Sent. Tr. p. 32, line 5 – p. 33, line 15.

The court then turned to the choice it was required to make between continuing Crooks on youthful offender status, with probationary supervision for five years, or incarcerating Crooks. The court chose to incarcerate Crooks for an indeterminate fifty-year term, but chose not to impose a minimum sentence. Judgment and Sentence; App. 19-21. In explaining its decision, the court stated:

I have reviewed all of the documents that have been submitted. I have considered the comments of counsel made here this morning. And I do want to note, first of all, that Noah has clearly done some good things while he's been at the State Training School, and that we should all feel good about. And I want to tell you, perhaps as an aside, I'm particularly glad to hear you say that you've got a relationship with Jesus Christ, and I will add to that that I hope you're being sincere about that because I don't know; but if that is true, that is going to help you a great deal.

There's been some - - and I - - it's very understandable. We can't ignore the past here today. But everyone needs to understand that my view in a situation dealing with a youthful offender is that my primary focus is on more recent events rather than the past, but definitely the past is relevant.

So notwithstanding the positive strides that Noah has made, there are reasons for concern. And the common theme throughout the documents that have been submitted, and even comments made here today, is that there has been a surprising lack of an emotional response from Noah, something showing appropriate remorse, empathy, which is understanding the feelings of the other people who have been affected by your actions. And I recognize that you are a young person, and there's a reason we treat young people differently. It's because sometimes emotionally they aren't developed enough to may respond in the appropriate way; but it is - - it is very apparent to me, in reviewing the evidence, that for one reason or another, Noah, you just don't want to deal with this, with what you've done; and at some point in time you're going to have to, but it doesn't appear to me that that's happened yet. You've got some ground yet to cover and I think that there's work left to be done so I don't believe that a straight discharge at this time is appropriate.

****

At this point I do not see sufficient evidence to convince me that Noah has been rehabilitated. The nature and

circumstances of this offense, coupled with the lack of emotion, remorse, and empathy, indicates that there is a lot of ground to cover. There have been some recent expressions of remorse and attempts to show empathy, and I hope that those are sincere, but the fact that they are so recent causes me to wonder. And, Noah, going forward you'll have the opportunity to prove to everybody that you mean what you say. You've heard the saying "actions speak louder than words," and I suspect that's what your family is waiting for, and I know that's what the rest of us will be looking for as well.

I'm also concerned, when we talk about the appropriateness of street probation, that you have made the comment that you really don't think you have any need for future services. You made a comment, when asked whether you perhaps would want to return to the Training School to speak some day after you've been rehabilitated, you didn't really think so or you hoped not, I think were your words. You changed your answer after you were pressed on it a little bit, but those comments are concerning to me, that you still don't have full appreciation for what you've done and the legitimacy of everyone's concerns.

I am hopeful, but I'm not yet convinced, that it is safe for you to be free despite your young age. The lack of an appropriate emotional response, the lack of empathy, the lack of something that even approaches an adequate explanation for why this happened could be an indication that you just don't care. We just don't know yet. That's the point, we don't know. And I don't believe it's appropriate to release you on probation until we can be confident that that isn't the situation, but rather that you do care and that we don't have to worry about something like this happening down the road. And, in short, we need more time so that we can be confident in that determination.

So I do believe that the imposition of a sentence with incarceration is appropriate, and to that end it is necessary that I enter conviction.

Sent. Tr. p. 32, line 5 – p. 37, line 10.

The district court acted within its broad sentencing discretion in imposing an indeterminate fifty-year sentence with no mandatory minimum. Given the extreme nature of Crooks' crime, his history of disturbing and violent acts from the time he was four or five years of age, and the opinions of psychiatrists Michael Taylor and Terry Augspurger and of psychologist Anna Salter that Crooks was not suffering from a mental illness and that his personality traits were stable and very unlikely to change, the district court acted reasonably in taking a cautious approach to sentencing Crooks. While there was evidence suggesting that Crooks' behavior disorder might have resolved itself, no professional was willing to predict that Crooks had been rehabilitated and the observations that underlay optimism that Crooks might have been rehabilitated were made in the structured setting of the state training school. The district court could have chosen to discharge Crooks or continue his status as a youthful offender and order supervision for a period of five years. However, given the uncertainty about Crooks' prognosis, the district court reasonably chose to incarcerate Crooks, while giving the department of corrections the ability to parole Crooks as soon as the department

was persuaded that it was safe to do so. That sentencing decision was reasonable and should be upheld on appeal.

Crooks contends that the district court "improperly speculated Crooks had shown no remorse for causing his mother's death" and that the court's belief is not supported by the record. Appellant's Brief at p. 101. However, the district court did not find that Crooks had shown no remorse. It noted that Crooks had failed to express appropriate emotion, remorse, and empathy throughout much of his time at the state training school. That conclusion is supported by the reports of training school and juvenile court personnel. The court also specifically noted that Crooks had recently shown remorse and empathy, but that those expressions were recent and the court doubted their sincerity. Again, the court's concerns about the sincerity of Crooks' expressions of remorse and empathy are supported by the reports of Juvenile Court Officer Scott Jensen, Dr. Michael Taylor, Dr. Anna Salter, and Dr. Terry Auspurger, Youth Counselor Supervisor Carl Kruger, and Treatment Program Administrator Lynn Allbee, s*ee* Exhs. 1 (108), 2 (14), 3 (13), 4 (12), 5 (11), 6 (15); Conf. App. 164-168; 169-171; 172-194; 195-232; 233-270; 271-288, and by the statements of Crooks' family members.

The district court acted well within its sentencing discretion in imposing an indeterminate fifty-year term of incarceration, with immediate eligibility for parole. The court's sentencing decision should not be disturbed on appeal.

CONCLUSION

The Court should affirm Noah Riley Crooks' conviction and sentence for murder in the second degree.

REQUEST FOR NONORAL SUBMISSION

Oral argument is unlikely to assist the Court in deciding the issue raised on appeal. Therefore, the State waives oral argument. However, in the event that appellant is granted oral argument, counsel for appellee desires to be heard in oral argument, as well.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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