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IN THE COURT OF APPEALS OF GEORGIA
IN THE INTEREST OF R.T.,)
A CHILD.) CASE NO. A05A1584

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GEORGIA COURT OF APPEALS

SUPPLEMENTAL BRIEF OF APPELLANT

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COMES NOW R.T. (Robert Tavormina), appellant in the above-styled matter, by and through his undersigned attorney of record, and files his Supplemental Brief of Appellant as follows:

ARGUMENT AND TABLE OF AUTHORITIES

The Juvenile Court erred by entering an Order of Transfer to Superior Court, rather than retaining jurisdiction of the matter for final disposition, thus denying R.T. the due process guarantee of fundamental fairness and equal protection as provided by the Fourteenth Amendment to the United States Constitution and Article I, Section I, Paragraphs I and II of the 1983 Georgia Constitution.

On March 1, 2005, just ten days before the Order of Transfer to Superior Court, which is the subject of this appeal, was entered on March 11, 2005, the United States Supreme Court held in Roper v. Simmons, 543 U.S. , 125 S.Ct. 1183 (2005), that executing individuals who were under the age of eighteen at the time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments to the United States Constitution.

While the matter before this Honorable Court is not a capital case in which the death penalty is being sought, it is respectfully submitted that many of the findings by the United States

Supreme Court in Roper v. Simmons are relevant to the issues before this Court in this instant appeal.

The Supreme Court stated, "Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders." Roper v. Simmons, 125 S.Ct. at 1195.

"First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, '[a] lack of maturity and underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.'" Id., at 1195, quoting Johnson v. Texas, 509 U.S. 350, 367 (1993).

The Court continued, noting, "'Even the normal 16-year-old customarily lacks the maturity of an adult.'" Id., at 1195, quoting Eddinss v. Oklahoma, 455 U.S. 104, 115 - 116 (1982). Moreover, "'adolescents are overrepresented statistically in virtually every category of reckless behavior.'" Id., at 1195, quoting, Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Review 339 (1992).

The Supreme Court continued, "In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent." Id., at 1195.

The Supreme Court found that "[t]he second area of differences is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." Roper v. Simmons, 125 S.Ct. at 1195. The Court stated, "[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and psychological damage." Id., 125 S.Ct. at 1195, quoting Eddinss, 455 U.S. at 115. "This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment." Id., 125 S.Ct. at 1195, citing Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003).

"The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory." Id., 125 S.Ct. at 1195, citing E. Erikson, *Identity: Youth and Crisis* (1968).

As such, "[t]he susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'" Id., 125 S.Ct. at 1195, quoting Thompson v. Oklahoma, 487 U.S. 815, 835 (1988).

Moreover, "[t]heir own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape neg-

ative influences in their whole environment." Roper v. Simmons, 125 S.Ct. at 1195, citing Stanford v. Kentucky, 492 U.S. 361, 395 (1989) (Brennan, J. dissenting).

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." [Citation omitted] "For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small portion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood."

Roper v. Simmons, 125 S.Ct. at 1195-1196.

The Juvenile Court found in the case sub iudice, "The interests of the public and the community are compelling. The facts are

shocking and severe. Because of the heinous nature of the offenses, the community's interest in treating the child as an adult outweighs his interest in remaining in the juvenile system." (R-44-45). Since R.T. has been accused of Aggravated Child Molestation and Child Molestation, the very nature of those crimes, particularly since they are crimes against children, would make them not only "shocking and severe," but also show a "heinous nature."

However, assuming, in arguendo, that the allegations made by the very troubled T.T. about something that is alleged to have occurred in July of 1993 are true, the allegations are a far cry from capital murder, which was being considered when the Supreme Court found that "even a heinous crime committed by a juvenile is [not] evidence of irretrievably depraved character."

Similarly, assuming, in arguendo, that the allegations are true, R.T., who is now twenty-eight years of age, has no criminal record, has completed high school and college, married and become a parent, and is now serving his country in the armed forces. Based upon R.T.'s educational and military history since the time of the alleged acts, along with the lack of any criminal history, there is nothing to demonstrate that he is not amenable to treatment through the juvenile system. Moreover, there is nothing in the psychological evaluation to indicate R.T. is a pedophile or displayed any signs of impulsivity or cognitive distortions. (R-41). This certainly demonstrates that "[f]rom a moral standpoint it would be

misguided to equate the failings of a minor with those of an adult for a greater possibility exists that a minor's character deficiencies will be reformed."

Based upon the above three general differences between adults and juveniles, the Supreme Court held, "Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults." Roper v. Simmons, 125 S.Ct. at 1196. The Court continued, "We have held there are two distinct social purposes served by the death penalty: "retribution and deterrence of capital crimes by prospective offenders." " Id., at 1196, quoting Atkins v. Virginia, 536 U.S. 304, 319 (2002), quoting Gregg v. Georgia, 428 U.S. 153, 183 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)

While the death penalty, of course, is not at issue in the case sub judice, certainly prosecuting the matter in superior court, as opposed to juvenile court, is based on the purpose that retribution can be better achieved in superior court. The State argued, "If Appellant's argument is rejected and if convicted as charged in Superior Court, he would be amenable to control and supervision by that court for up to thirty years." (Brief of Appellee, p. 10). While R.T. faces a possible total sentence of one hundred (100) years in Superior Court,^{3, 4} even if it were only thirty years as erroneously argued by the State, this is definitely

in stark contrast to being put under a juvenile court order' of no more than two years (which under certain conditions could have been extended for two years). O.C.G.A. § 15-11-70 (formerly O.C.G.A. § 15-11-41(a) (1993)).

In considering the Juvenile Court's reasons for its ruling and the State's arguments, the following statement by the United States Supreme Court should be kept in mind: "Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor, as with an adult." Roper v. Simmons, 125 S.Ct. at 1196.

After noting that "it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles," the Supreme Court held that "the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." Id., at 1196.

Except for the incidents for which R.T. was hailed into juvenile court at age twenty-seven, assuming, in arguendo, that such allegations are true, R.T. has lived an exemplary life. It is thus questionable whether for this one time of aberrant behavior when he was still a juvenile, that prosecuting him as an adult, with the possibility of being punished as an adult, could have any deterrent effect on R.T.

The Supreme Court stated,
The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of a true depravity should require a sentence less than death.

Roper v. Simmons, 125 S.Ct. at 1197.

Again, understanding that the case sub judice is not a death penalty case, it must be noted that the Juvenile Court found that "the seriousness of the offenses demands a high level of supervision. The interests of the public and the community are compelling. The facts are shocking and severe. Because of the heinous nature of the offenses, the community's interest in treating the child as an adult outweighs his interest in remaining in the juvenile system."

* (R-44-45).

The Juvenile Court further stated, "Should [R.T.] be convicted of the offenses, the supervision to which he is subject should be proportional to the severity of the offenses committed. . . . The community would suffer should he be adjudicated delinquent of such

heinous crimes, and not be subject to any supervision. Furthermore, should [R.T.] be found to have committed the crimes alleged, he would be in need of intensive rehabilitation." (R-44-45).

It is respectfully submitted that the Juvenile Court's ruling shows that the nature of the crime controlled the decision, without any regard to R.T.'s objective immaturity, vulnerability, and lack of a true depravity in July of 1993. Similarly, the ruling fails to recognize that any character deficiencies have been reformed.

Moreover, since R.T. has never been in trouble before and has never been charged with any crimes, other than the current allegations, and there are no allegations of any similar conduct during the twelve years since the allegations of 1993, this opinion of the Juvenile Court is just as questionable as its finding that "the seriousness of the offenses demands a high level of supervision."

The Supreme Court stated, "It is difficult even for expert psychologist to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Roper v. Simmons, 125 S.Ct. at 1197, citing Steinberg & Scott, 58 'Am. Psychologist at 1014-1016.

However, in the case sub iudice, the Juvenile Court had before it the exemplary life R.T. had lived for the past twelve years, since the time of the allegations against him. Thus, assuming, in arguendo, that those allegations are true, the Juvenile Court did

not need a psychologist to attempt to determine if the crimes reflect unfortunate yet transient immaturity, or the rare juvenile offender whose crime reflects irreparable corruption, as the past twelve years have proven any crimes reflect unfortunate yet transient immaturity.

Interestingly, the Juvenile Court also stated, "The Court also notes that if [R.T.] had been charged under the law at the time of the offenses, he would still have been subject to criminal prosecution for his conduct in Superior Court." (R-44-45). However, while the matter could have been transferred to Superior Court, if the petition were brought near the time of the alleged offenses, it is respectfully submitted that transfer would have been very unlikely. If the allegations had been made within a year of the alleged acts, such would have occurred during R.T.'s senior year at Benedictine Military School or within two months of his graduation. It is respectfully submitted that as R.T. did not have a criminal record at that time and had no previous experience with the juvenile system there would probably have never been a motion to transfer to superior court by the State. This would also be the case if the allegations were made within two or even three years of the alleged acts (as R.T. would not have reached his twentieth birthday).

While the United States Supreme Court took great lengths in Roper v. Simmons to examine the differences between juveniles and adults due to the lack of maturity and underdeveloped sense of

responsibility of juveniles and recognized that the qualities of youth are transient, which usually cease with maturity, such that only a relatively small portion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood, the State and the Juvenile Court appear to have only considered the nature of the alleged offenses and the appropriate punishment for those offenses, without really considering the character of the individual accused of the offenses.

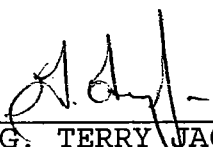
CONCLUSION

Appellant respectfully prays that this Court for the reasons set out above, and in the Brief of Appellant and Reply Brief of Appellant, reverse the court below as to each error presented as to the grant of the State's motion to transfer to superior court.

RESPECTFULLY SUBMITTED, this 15th day of July, 2005.

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CERTIFICATE OF SERVICE

I hereby certify I have this day served SPENCER LAWTON, JR., District Attorney, or his representative, at the Chatham County Courthouse, 133 Montgomery Street, Savannah, Georgia, 31401, with a true and correct copy of the within and foregoing Supplemental Brief of Appellant by:

_____ depositing a copy in the U.S. Mail in a properly addressed envelope with adequate postage affixed thereto to insure delivery:

_____ via telecopier; or

by hand delivery.

This the 15th day of July, 2005.

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