SJC-11693

COMMONWEALTH vs. SHELDON MATTIS.

Suffolk. February 6, 2023. - January 11, 2024.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Homicide. Constitutional Law, Sentence, Cruel and unusual punishment, Parole. Parole. Practice, Criminal, Sentence, Parole.

Indictments found and returned in the Superior Court Department on December 21, 2011.

Following review by this court, 484 Mass. 742 (2020), findings of fact and a ruling of law were issued by Robert L. Ullmann, J.

Ryan M. Schiff (Paul R. Rudof & Ruth Greenberg also present) for the defendant.

Cailin M. Campbell, Special Assistant District Attorney (John C. Verner, Assistant District Attorney, also present) for the Commonwealth.

The following submitted briefs for amici curiae:

Darina Shtrakhman, of California, Matt K. Nguyen, of the District of Columbia, & Adam Gershenson for Jeffrey Aaron & others.

Andrea Lewis Hartung, of Illinois, & Marsha L. Levick, of Pennsylvania, & Oren Nimni for the Sentencing Project & others.

Jonathan W. Blodgett, District Attorney for the Eastern District, & David F. O'Sullivan, Assistant District Attorney, for District Attorney for the Eastern District & another.

Jasmine Gonzales Rose, of Oregon, Duke K. McCall, III, & Douglas A. Hastings, of the District of Columbia, Robert S. Chang, of Washington, Caitlin Glass, Neda Khoshkhoo, & Katharine Naples-Mitchell for Boston University Center for Antiracist Research & others.

Kenneth J. Parsigian, Avery E. Borreliz, Erin M. Haley, & Martin W. Healy for Carol S. Ball & others.

Benjamin H. Keehn, Committee for Public Counsel Services, & John J. Barter for Committee for Public Counsel Services.

BUDD, C.J. When it comes to determining whether a punishment is constitutional under either the Eighth Amendment to the United States Constitution or art. 26 of the Massachusetts Declaration of Rights, youth matters. See, e.g., Miller v. Alabama, 567 U.S. 460 (2012); Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005); Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655 (2013) (Diatchenko I), S.C., 471 Mass. 12 (2015). In Miller, supra at 465, 476, the United States Supreme Court struck down mandatory life imprisonment without the possibility of parole for juveniles based in part on the "mitigating qualities of youth." Approximately one and one-half years later, this court went further than Miller and concluded that sentencing a juvenile to life without parole in any circumstance would violate art. 26. See Diatchenko I, supra at 669-670.

The defendant, Sheldon Mattis, was convicted of murder in the first degree, among other charges, and was sentenced to a

mandatory term of life in prison without the possibility of parole, see G. L. c. 265, § 2 (a). Commonwealth v. Watt, 484 Mass. 742, 754-756 (2020). On appeal, he challenged the constitutionality of his sentence as applied to him. He argued that because he was eighteen years old at the time of the murder, he is entitled to the same protection as juvenile offenders (i.e., those from fourteen to seventeen years of age) convicted of murder in the first degree, who receive a term of life with the possibility of parole. See G. L. c. 265, § 2 (b).

Here, we consider whether our holding in Diatchenko I should be extended to apply to emerging adults, that is, those who were eighteen, nineteen, and twenty years of age when they committed the crime.[1] Based on precedent and contemporary standards of decency[2] in the Commonwealth and elsewhere, we conclude that the answer is yes.[3]

---

[1] For the purposes of this opinion, "emerging adult" is defined as someone who is eighteen, nineteen, or twenty years of age. Although the record contains some references to individuals who are as old as twenty-four years of age as "emerging adults," the focus of the record and the Superior Court judge's factual findings, which guide our analysis today, are limited to offenders who are aged eighteen, nineteen, or twenty at the time of the crime.

[2] As discussed infra, our understanding of contemporary standards of decency is informed by the updated scientific record.

[3] We acknowledge the amicus briefs submitted by (1) twenty-three retired Massachusetts judges, Boston Bar Association, and Massachusetts Bar Association; (2) seventeen neuroscientists,

Background. 1. The homicide. The evidence presented in the defendant's trial is summarized in Watt, 484 Mass. at 744-745.[4] We provide a condensed version of events as the jury could have found them. On September 25, 2011, the defendant; his codefendant, Nyasani Watt; and another friend observed Kimoni Elliott standing outside a nearby convenience store. Id. at 744. The defendant approached Elliott on a bicycle and asked him where he was from. Elliott replied, "Everton." Id. The two then parted ways. Id.

Elliott met Jaivon Blake in a nearby parking lot while the defendant returned to Watt and said, "[B]e easy, because that's them kids." Watt, 484 Mass. at 744-745. A few minutes later, when Elliott and Blake were in view, the defendant handed Watt a gun and told Watt "to go handle that." Id. at 745. Watt rode toward Elliott and Blake on a bicycle and shot them from behind. Id. Elliott survived gunshot wounds to his neck and right arm,

---

psychologists, and criminal justice scholars; (3) Sentencing Project, Juvenile Law Center, and Roderick and Solange MacArthur Justice Center; (4) the Committee for Public Counsel Services; (5) Boston University Center for Antiracist Research, Fred T. Korematsu Center for Law and Equality, Center on Race, Inequality, and the Law, and Criminal Justice Institute at Harvard Law School; and (6) the district attorney for the Eastern district and the district attorney for the Plymouth district.

[4] The defendant and Watt were tried together, and their appeals were consolidated. The decision was published under Watt's name.

but Blake died from a single gunshot wound to the torso. Id. at 744.

2. Procedural history and development of the record. In 2013, the defendant and Watt were tried jointly and convicted of murder in the first degree on the theories of deliberate premeditation and extreme atrocity or cruelty, among other charges. Watt, who was seventeen at the time of the shooting, received a life sentence with the possibility of parole after fifteen years.[5] Watt, 484 Mass. at 745. See G. L. c. 265, § 2 (b). See also G. L. c. 127, § 133A; G. L. c. 279, § 24. The defendant, who had turned eighteen approximately eight months prior to the crime, received a life sentence without the possibility of parole. Watt, supra. See G. L. c. 265, § 2 (a). See also G. L. c. 127, § 133A. Each defendant filed a motion for a new trial. Among other things, the defendant argued that his mandatory sentence of life without parole violated art. 26's prohibition of cruel or unusual punishment because he was under twenty-two years of age when he committed the murder. A

[5] Sentencing in this case occurred after the United States Supreme Court's decision in Miller, but mere days before we issued our decision in Diatchenko I. Despite not yet having our guidance on how to sentence such juveniles in the absence of new legislation on the matter, the judge correctly sentenced Watt to the equivalent penalty for murder in the second degree -- the "next-most severe sentence under the sentencing statute" available at the time for a juvenile convicted of murder in the first degree. See Watt, 484 Mass. at 753.

Superior Court judge denied both motions, and the appeals from these denials were consolidated with the defendants' direct appeals. Watt, supra at 743-744.

We unanimously upheld the denial of both defendants' postconviction motions and affirmed all convictions. Watt, 484 Mass. at 765. However, we remanded the defendant's case[6] to the Superior Court for "development of the record with regard to research on brain development after the age of seventeen[, which] will allow us to come to an informed decision as to the constitutionality of sentencing young adults to life without the possibility of parole." Id. at 756.

A Superior Court judge, who had also been the trial judge, conducted three days of evidentiary hearings during which three expert witnesses -- neuroscientist Dr. Adriana Galván, forensic psychologist[7] Dr. Robert Kinscherff, and forensic psychologist Dr. Stephen Morse -- testified on the topic of adolescent neurological and psychological development after the age of seventeen.[8] The defendant also entered in the record the

---

[6] Because the art. 26 question did not apply to Watt, we remanded only the defendant's case to the Superior Court. Watt, 484 Mass. at 765.

[7] "[F]orensic psychology [i]s the use of psychological theories and methods and data to help the legal system resolve legal questions."

[8] The parties agree that all of the experts who submitted evidence in the record are duly qualified in the relevant fields

transcript of the testimony of a fourth expert witness, developmental psychologist Dr. Laurence Steinberg.[9] The

---

of neuroscience and forensic psychology, among other specialties, and are recognized as leaders in their respective professional fields.

Galván holds a Ph.D. in neuroscience and is a tenured professor of psychology at the University of California, Los Angeles (UCLA), as well as the director of UCLA's Developmental Neuroscience Lab. She has coauthored over one hundred book chapters and peer-reviewed studies, many of which have been published in leading journals in her field. She has received numerous honors and awards, including the Presidential Early Career Award for Scientists and Engineers as well as the Troland Award from the National Academy of Sciences.

Kinscherff holds both a juris doctor and a Ph.D. in clinical psychology. He is a professor in the doctoral psychology program at William James College. He has been qualified as an expert in forensic psychology numerous times and was formerly the Assistant Commissioner for Forensic Mental Health at the Department of Mental Health.

Morse holds both a juris doctor and a Ph.D. in psychology and social relations. He is a tenured professor of law and professor of psychology and law at the University of Pennsylvania. He has written numerous articles on neuroscience and the law, many of which have been published in leading journals on law and neuroscience. He has been qualified as an expert in at least twenty cases and was previously the Legal Director at the MacArthur Foundation's Law and Neuroscience Project.

Galván and Kinscherff testified on behalf of the defendant. Morse testified on behalf of the Commonwealth.

[9] Steinberg holds a Ph.D. in human development and family studies. He is a tenured professor at Temple University. Over the course of forty years, he has authored scores of studies that have been published in peer-reviewed journals, including top journals in his field. He has been qualified as an expert in developmental psychology approximately thirty times. His research was cited in two of the leading Supreme Court cases on the Eighth Amendment's ban on cruel and unusual punishment as

Commonwealth and the defendant also submitted voluminous exhibits, including numerous scientific studies on adolescence and neurobiological maturity.

The record was transmitted to us in May 2021 but did not include factual findings. In December 2021, we again remanded this case, along with the case underlying our decision in Commonwealth v. Robinson, 493 Mass. (2023), to the Superior Court for the development of factual findings based on the previously transmitted record.[10] Specifically, we requested findings regarding "whether the imposition of a mandatory sentence of life without the possibility of parole for . . . those convicted of murder in the first degree who were eighteen to twenty-one at the time of the crime, violates [art.] 26."

A different Superior Court judge issued factual findings in July 2022, concluding that the mandatory imposition of a sentence of life without parole for offenders who were eighteen,

---

applied to juveniles. See Miller, 567 U.S. at 471 (referencing Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 [2003]); Roper, 543 U.S. at 569-573 (same). Steinberg testified on behalf of the defendant in the case underlying our decision in Commonwealth v. Robinson, 493 Mass. (2023), a case raising a nearly identical sentencing claim. See note 10, infra.

[10] This case was paired with the one underlying Robinson, 493 Mass. , because, similarly to Mattis, Robinson asked this court to consider whether a sentence of life without parole is constitutional when applied to those who committed their crime while under twenty-one years of age.

nineteen, or twenty years old at the time they committed the crime is a violation of art. 26. In particular, the judge found that emerging adults are "less able to control their impulses" and that "their reactions in [emotionally arousing] situations are more similar to those of [sixteen and seventeen year olds] than they are to those [twenty-one to twenty-two] and older." The case and its entire evidentiary record subsequently were transmitted back to this court, where the defendant argued that it is unconstitutional to sentence an emerging adult to life without the possibility of parole in any circumstance, and the Commonwealth argued that such a sentence is constitutional if imposed after an individualized hearing.

Discussion. Adopted in 1780, art. 26 states: "No magistrate or court of law, shall . . . inflict cruel or unusual punishments." In evaluating the constitutionality of a sentence, this court is guided by "[t]he fundamental imperative of art. 26 that criminal punishment be proportionate to the offender and the offense." Diatchenko I, 466 Mass. at 671. A punishment is unconstitutional (i.e., cruel or unusual) if it is so disproportionate to the crime that it "shocks the conscience and offends fundamental notions of human dignity." Id. at 669, quoting Cepulonis v. Commonwealth, 384 Mass. 495, 497 (1981).[11]

[11] Similarly, the Eighth Amendment's prohibition on cruel and unusual punishment "flows from the basic 'precept of justice

1. Constitutional framework. To evaluate the proportionality of a mandatory life sentence imposed on a category of offenders (here, emerging adults), we look to precedent as well as what contemporary standards of decency, as defined by objective indicia, require. See Graham, 560 U.S. at 61, quoting Roper, 543 U.S. at 563-564 ("The Court first considers 'objective indicia of society's standards, as expressed in legislative enactments and state practice,' to determine whether there is a national consensus against the sentencing practice at issue. . . . [Then] guided by 'the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose,' . . . the Court must determine . . . whether the punishment in question violates the Constitution"); Roper, supra at 560-561.[12] As for

---

that punishment for crime should be graduated and proportioned' to both the offender and the offense." Miller, 567 U.S. at 469, quoting Roper, 543 U.S. at 560.

[12] The dissent asserts that the "tripartite" test is the proper tool to analyze the constitutionality of the sentence here. Post at . See Commonwealth v. Jackson, 369 Mass. 904, 910-916 (1976). That test considers (1) the nature of the offense and the offender in light of the degree of harm to society, (2) the sentence imposed and penalties prescribed for more serious crimes in Massachusetts, and (3) a comparison between the sentence imposed with the penalties prescribed for the same offense in other jurisdictions. It traditionally has been used, both by this court and the Supreme Court, to assess whether a term-of-years sentence is grossly disproportionate to a given offense, considering all the circumstances of a

the latter, current scientific consensus regarding the characteristics of the class can help determine the contemporary standards of decency pertaining to that class. See Diatchenko I, 466 Mass. at 659-661, 669-671. See also Miller, 567 U.S. at 471-472 ("Our decisions rested not only on common sense . . . but on science and social science as well"); Graham, supra at 68; Roper, supra at 569-570; Commonwealth v. Okoro, 471 Mass.

---

particular case. Id. See, e.g., Commonwealth v. Sharma, 488 Mass. 85, 89-90 (2021); Commonwealth v. LaPlante, 482 Mass. 399, 403 (2019); Commonwealth v. Perez, 477 Mass. 677, 685-686 (2017), S.C., 480 Mass. 562 (2018); Opinions of the Justices, 378 Mass. 822, 824-825 (1979). See also Ewing v. California, 538 U.S. 11 (2003); Harmelin v. Michigan, 501 U.S. 957 (1991); Solem v. Helm, 463 U.S. 277 (1983).

Although the tripartite test incorporates elements of the approach we use today, it is of limited utility here. Its "threshold comparison between the severity of the penalty and the gravity of the crime does not advance the analysis" where neither the sentence's proportionality to the charged offense nor the existence of a more serious offense in the Commonwealth is being challenged. See Graham, 560 U.S. at 61. Rather, our cases show, and Supreme Court precedent affirms, that it is the "categorical" framework, which focuses on contemporary standards of decency, that applies here, where the task is to assess whether a sentence is disproportionate when applied to an entire category of offenders. See id. ("In cases turning on the characteristics of the offender, the Court has adopted categorical rules . . . [and] consider[ed] 'objective indicia of society's standards'"); Diatchenko I, 466 Mass. at 669 (contemporary standards of decency render imposition of life without parole sentence on particular category of offenders unconstitutionally disproportionate). See also, e.g., Roper, 543 U.S. at 560-563 (standards of decency dictate death penalty's unconstitutionality when imposed on those under eighteen); Atkins v. Virginia, 536 U.S. 304, 321 (2002) (standards of decency dictate death penalty's unconstitutionality when imposed on those with intellectual disabilities).

51, 60 (2015) ("the determination that youth are constitutionally distinct from adults for sentencing purposes has strong roots in recent developments in the fields of science and social science").

a. Precedent. In a series of cases responding to challenges to juvenile sentences, the Supreme Court has consistently opined that the "mitigating qualities of youth" must be taken into consideration when it comes to sentencing. Johnson v. Texas, 509 U.S. 350, 367 (1993). See, e.g., Jones v. Mississippi, 141 S. Ct. 1307, 1314 (2021), citing Miller, 567 U.S. at 476; Johnson, supra ("A sentencer in a capital case must be allowed to consider the mitigating qualities of youth in the course of its deliberations over the appropriate sentence"). For example, when striking down the death penalty for juveniles in Roper, the Court discussed the "relevance of youth as a mitigating factor" at length, concluding that "[o]nce 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, 543 U.S. at 570-571.

In Graham, 560 U.S. at 76, the Court noted that an "offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." The Court

concluded that it was unconstitutional to sentence juveniles who did not commit homicide to life without parole because they lack the maturity to be classified among the worst offenders deserving of the harshest punishments. The Court further noted that although "[m]aturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation . . . [a] young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual."[13] Id. at 79.

More recently in Miller, 567 U.S. at 476, in which the Court held that a judge must be able to consider "mitigating qualities of youth" in formulating a sentence, the Court reiterated that youth is not simply a "chronological fact" (citation omitted). Rather, "[i]t is a time of immaturity, irresponsibility, impetuousness[,] and recklessness. . . . It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. . . . And its signature qualities are all transient" (citations and quotations omitted). Id. As a result, the Court reasoned, the Eighth Amendment forbids a sentencing scheme that mandates life

[13] Although Graham's ban on life sentences without the possibility of parole for juveniles applied only to nonhomicide crimes, as the Miller Court pointed out, "none of what [Graham] said about children -- about their distinctive (and transitory) mental traits and environmental vulnerabilities -- is crime-specific." Miller, 567 U.S. at 473.

without parole for juvenile offenders because such a scheme precludes a consideration of youth and the circumstances and characteristics attendant to it. Id. at 479.

Approximately one and one-half years after Miller was decided, we considered whether sentencing a juvenile offender to life without the possibility of parole comported with art. 26. See Diatchenko I, 466 Mass. at 661. Ultimately, this court went further than Miller and concluded that because it is not possible to demonstrate that a juvenile offender is "irretrievably depraved," under the Massachusetts Declaration of Rights, such a sentence is cruel or unusual as imposed on a juvenile in any circumstance. Id. at 670-671.

Central to each of the foregoing cases is the "fundamental precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense" (citation and quotations omitted). Id. at 669. Until now, we have declined to consider extending Diatchenko I to offenders eighteen years of age and older. See Watt, 484 Mass. at 755-756, and cases cited. However, we also recognized that "researchers continue to study the age range at which most individuals reach adult neurobiological maturity . . . and that such research may relate to the constitutionality of sentences of life without parole for individuals other than juveniles" (citation and quotation omitted). Id. The judge's findings in

this case, described more fully infra, confirm that the brains of emerging adults are similar to those of juveniles.

b. Contemporary standards of decency. An assessment of a punishment's proportionality occurs "in light of contemporary standards of decency which mark the progress of society." Diatchenko I, 466 Mass. at 669, quoting Good v. Commissioner of Correction, 417 Mass. 329, 335 (1994). See Okoro, 471 Mass. at 61 (proportionality of punishment is determined based on "the evolving standards of decency that mark the progress of a maturing society" [citation omitted]). Here, we consider the updated research on the brains of emerging adults, as well as the way emerging adults are treated in the Commonwealth and elsewhere, to determine whether a sentence of life without the possibility of parole is proportionate and thus constitutional when imposed upon that class of offenders.

i. Science and social science. As mentioned supra, where modern scientific consensus regarding a particular class exists, it can be useful in determining the contemporary standards of decency as they relate to that class. See Miller, 567 U.S. at 471-472; Okoro, 471 Mass. at 59-60.

Advancements in scientific research have confirmed what many know well through experience: the brains of emerging adults are not fully mature. Specifically, the scientific record strongly supports the contention that emerging adults

have the same core neurological characteristics as juveniles have. As the Superior Court judge noted, "Today, neuroscientists and behavioral psychologists know significantly more about the structure and function of the brains of [eighteen] through [twenty year olds] than they did [twenty] years ago . . . ." This is the result of years of targeted research and greater access to relatively new and sophisticated brain imaging techniques, such as structural magnetic resonance imaging (sMRI) and functional magnetic resonance imaging (fMRI).[14] From the detailed evidence produced in the record, the judge made four core findings of fact regarding the science of emerging adult brains: emerging adults (1) have a lack of impulse control similar to sixteen and seventeen year olds in emotionally arousing situations,[15] (2) are more prone to risk taking in pursuit of rewards than those under eighteen years and those over twenty-one years, (3) are more susceptible to peer

---

[14] sMRIs allow researchers to examine the brain's anatomical structures at particular moments in time; fMRIs allow researchers to examine the brain's activation and responses to stimuli and environmental context. As Galván testified, MRIs, particularly sMRIs, have allowed researchers "to see [a] fine grain view of the brain that other technologies would not allow."

[15] This also is referred to as being under "hot cognition." The experts testified that under "cold cognition," which is the absence of emotionally arousing circumstances, the emerging adult brain functions much more similarly to the older adult brain than to the adolescent brain.

influence than individuals over twenty-one years, and (4) have a greater capacity for change than older individuals due to the plasticity of their brains. The driving forces behind these behavioral differences are the anatomical and physiological differences between the brains of emerging and older adults. See Steinberg, A Social Neuroscience Perspective on Adolescent Risk-Taking, 28 Developmental Rev. 78, 82-84, 85-89 (2008). These structural and functional differences make emerging adults, like juveniles, "particularly vulnerable to risk-taking that can lead to poor outcomes."

We discuss each of the judge's four core factual findings in turn.

A. Impulse control. The judge found that in terms of impulse control, emerging adults are more similar to sixteen and seventeen year old juveniles than to older adults. That is, they are less able to control their impulses in emotionally arousing situations. This finding is well supported by the record.

Emerging adults still are experiencing the effects of "the sharp increase during puberty of certain hormones," lack a fully developed prefrontal cortex, which is "the part of the brain that most clearly regulates impulses," and lack fully developed connections "between the prefrontal cortex and other parts of the brain . . . that most clearly respond[] to rewards and

reward-related decision making." All four experts agreed that compared to older adults, emerging adults are more impulsive, more concerned with their immediate circumstances, and less able to envision future consequences. Galván explained that at least part of this distinction between emerging and older adults can be traced to differences in brain structure between the groups. "[T]he prefrontal cortex is the home for these abilities that we might say are what makes us adults . . . the ability to reason, the ability to think about how your actions today will have implications for the future." As the brain matures, it "undergoes a process called pruning and [eliminates]" synapses and neurons that are not needed. Advancements in sMRI data have allowed researchers "to measure this cortical thickness and thinning and the process continues through [eighteen], [nineteen], [twenty] years old."

All of the other experts, including the Commonwealth's expert, agreed that the prefrontal cortex, an area of the brain associated with controlling impulses, is among the last brain regions to develop, and continues developing until the early to mid-twenties. See Icenogle et al., Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample, 43 Law & Hum. Behav. 69, 70 (2019); Sowell & others, In Vivo Evidence for Post-Adolescent Brain

Maturation in Frontal and Striatal Regions, 2 Nature Neurosci. 859, 860-861 (1999); Steinberg et al., Around the World, Adolescence Is a Time of Heightened Sensation Seeking and Immature Self-Regulation, Developmental Sci., vol. 21, Mar. 2018, at 1-4, 15-17.

B. Risk taking in pursuit of reward. The judge found that "[a]s a group, [individuals eighteen through twenty years of age] in the United States and other countries are more prone to 'sensation seeking,' which includes risk-taking in pursuit of rewards, than are individuals under age [eighteen] and over age [twenty-one]." This finding similarly is well supported by the record.

All of the experts agreed that emerging adults are more likely than children or older adults to engage in risky behavior and that risky behaviors tend to peak in late adolescence to early adulthood and then decline, with some experts asserting that this behavior plateaus around twenty-two years of age. Galván explained that fMRI studies evaluating the brain have shown that in individuals at least seventeen years of age, and up to twenty-one years of age, there is greater activity in the nucleus accumbens, a part of the brain associated with sensation seeking, than in older adults. Additionally, fMRI studies have shown that the ventral striatum, a part of the brain that correlates with risk-taking behaviors, also is more active among

late adolescents and early adults than it is in older adults. This research tracks numerous real-world behaviors. Emerging adults are overrepresented in multiple types of risky behavior, such as risky sexual behavior and risky driving behavior, in addition to risky criminal behavior. See Roper, 543 U.S. at 569, quoting Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339 (1992) ("It has been noted that 'adolescents are overrepresented statistically in virtually every category of reckless behavior'").

Each expert discussed the so-called "age-crime curve," which is a widely recognized phenomenon illustrating that criminal behavior crests at some point from late adolescence to early adulthood before significantly declining. Put succinctly, as with those under eighteen years of age, "late adolescence[16]

---

[16] All the experts referred to individuals from eighteen to twenty years of age as "late adolescents." We refer to this age group as "emerging adults." We do not agree with the dissent that this appellation indicates that we improperly are veering into the Legislature's lane. As the Supreme Court noted when it declared the death penalty unconstitutional for juveniles, line drawing is a necessary task when considering categorical bans on unconstitutional sentences. Roper, 543 U.S. at 574 ("Drawing the line at [eighteen] years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns [eighteen]. By the same token, some under [eighteen] have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn").

is a period in human development of increased risk taking, greater reactivity to high stress or highly emotionally arousing events and certain kinds of cognitive biases that, for example, lead them [(i.e., juveniles and emerging adults)] to not appraise a risk and apply it to themselves in the same way that an adult would." See Galván et al., Earlier Development of the Accumbens Relative to Orbitalfrontal Cortex Might Underlie Risk-Taking Behaviors in Adolescents, 26 J. Neurosci. 6885, 6885-6892 (2006); Hawes et al., Modulation of Reward-Related Neural Activation on Sensation Seeking across Development, 283 NeuroImage 763, 763-771 (2017); Rudolph et al., At Risk of Being Risky: The Relationship Between "Brain Age" under Emotional States and Risk Preference, Developmental Cognitive Neurosci., vol. 24, 2017, at 93-106; Steinberg et al., Around the World, Adolescence Is a Time of Heightened Sensation Seeking and Immature Self-Regulation, supra at 1-4, 15-17.

C. Peer influence. The judge also found that emerging adults "are more susceptible to peer influence" than older adults and that the presence of peers makes emerging adults "more likely to engage in risky behavior." All four experts agreed that current research supports this conclusion.

Steinberg's research in particular focuses on the ways in which the presence of peers affects decision-making and risk taking among different age groups. In his work, he has found

that "even if the peers aren't explicitly encouraging anything, the mere presence of peers increases the likelihood that adolescents[17] will engage in [risky] behavior." Although the presence of peers may influence behavior at any age, "peer influence is a much more serein [sic] and powerful factor during adolescence[18] than it is during adulthood." See Breiner et al., Combined Effects of Peer Presence, Social Cues, and Rewards on Cognitive Control in Adolescents, 60 Developmental Psychobiology 292, 292-302 (2018); Galván, Adolescent Brain Development and Contextual Influences: A Decade in Review, 31 J. Res. on Adolescence 843, 852-853 (2021); Silva et al., Peers Increase Late Adolescents' Exploratory Behavior and Sensitivity to Positive and Negative Feedback, 26 J. Res. on Adolescence 696, 696-705 (2015).

D. Capacity for change. Finally, the judge found that emerging adults "have greater capacity to change than older individuals because of the plasticity of the brain during these years." This finding is well supported by the record.

"[P]lasticity refers to the ability [to] change in response to the environment."[19] Although the brain has its greatest

---

[17] See note 16, supra.

[18] See note 16, supra.

[19] Galván explained that plasticity primarily occurs in the hippocampus, which is "a small brain region in the deep layers

plasticity in the early months of life, as Galván explained, "[t]he second wave [of plasticity] is during adolescence."[20] In contrast, "adult capacity for change is diminished because" the fully mature brain is much less malleable. Although the brain continues to change throughout one's lifespan, Steinberg testified that brain maturation is largely complete by as early as twenty-two years of age, and possibly up to twenty-five years of age. The Commonwealth's expert agreed that "[m]ost adolescents[21] even those who commit serious crimes will age out of offending and will not become career criminals." See Roper, 543 U.S. at 570, quoting Johnson, 509 U.S. at 368, and 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 signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside"). See also Cauffman et al., A Developmental Perspective on Adolescent Risk-Taking and Criminal Behavior, c. 6 in The Handbook of Criminological Theory (2015);

---

of the brain that has mostly been studied in the context of learning because plasticity or any plasticity-based changes are because we've learned something new."

[20] See note 16, supra.

[21] See note 16, supra.

Galván, Insights about Adolescent Behavior, Plasticity, and Policy from Neuroscience Research, 83 Neuron 262, 264 (2014).

The evidence outlined supra provides a scientifically informed view of emerging adults' culpability and factors into our analysis whether contemporary standards of decency permit sentencing that cohort to life without the possibility of parole.

ii. Treatment of emerging adults in the Commonwealth and elsewhere. To determine our contemporary standards of decency, in addition to referring to our own State statutes, see Good, 417 Mass. at 335, we may look to other policies and programs in the Commonwealth, our precedent, other States' statutes, as well as other States' judicial rulings, and even international statutes and decisions, among other sources, see Okoro, 471 Mass. at 61 (we commonly look to "judicial opinions and legislative actions at the State, Federal, and international levels," which "help to inform our understanding of what art. 26 protects" [citation omitted]). See also Thompson v. Oklahoma, 487 U.S. 815, 821-831 (1988) (looking to State statutes and death penalty juries to divine contemporary standards of decency, and noting consistency with practices of other nations); Enmund v. Florida, 458 U.S. 782, 788 (1982) (looking to "historical development of the punishment at issue, legislative judgments, international opinion, and the sentencing

decisions juries have made"); Coker v. Georgia, 433 U.S. 584, 596 (1977) ("important to look to the sentencing decisions that juries have made in the course of assessing whether capital punishment is an appropriate penalty"). As discussed infra, a combination of statutes passed here and elsewhere, as well as recent decisions in Washington and Michigan, indicate that our contemporary standards of decency do not support imposing life without parole sentences on emerging adults.

To begin, the Legislature has determined that emerging adults require different treatment from older adults, specifically in the penological context. For example, the Department of Youth Services (department) statutorily is authorized to maintain custody of young people adjudicated as youthful offenders up to twenty-one years of age. See Commonwealth v. Terrell, 486 Mass. 596, 599-600, 603 (2021); G. L. c. 119, § 58. This sentencing scheme also permits the imposition of "dual" sentences for youthful offenders, requiring them to remain in the department's custody until they are twenty-one years of age before beginning their "adult sentence" at a house of correction. G. L. c. 119, § 58 (b).

Further, in 2018, as part of a set of sweeping reforms, the Legislature authorized the Department of Correction and county houses of correction to "establish young adult correctional units." These units provide "targeted interventions, age

appropriate programming and a greater degree of individual attention" for individuals in custody "ages [eighteen] to [twenty-four]." G. L. c. 127, § 48B (a). Notably, the Legislature also formed the Task Force on Emerging Adults in the Criminal Justice System (task force), which released a report in 2020 concluding that emerging adults "are a unique population that requires developmentally-tailored programming and services."[22] Emerging Adults in the Massachusetts Criminal Justice System: Report of the Task Force on Emerging Adults in the Criminal Justice System (Feb. 26, 2020), 2020 Senate Doc. No. 2840, at 6. See St. 2018, c. 69, § 221.

Massachusetts is not alone in recognizing that emerging adult offenders require different treatment from older adult offenders. For example, the District of Columbia now provides a

[22] Noting that the dual sentencing scheme for youthful offenders under G. L. c. 119, § 58, applies only to juveniles, and that the task force's recommendations for emerging adults do not include offenders convicted of murder in the first degree, Justice Lowy's dissent concludes that neither demonstrates contemporary standards of decency here in the Commonwealth. Post at . See G. L. c. 119, § 74; Emerging Adults in the Massachusetts Criminal Justice System: Report of the Task Force on Emerging Adults in the Criminal Justice System (Feb. 26, 2020), 2020 Senate Doc. No. 2840, at 10. To the contrary, both examples demonstrate that the Legislature and other community members recognize that emerging adult offenders benefit from being treated differently from older adult offenders. Cf. Thompson v. Oklahoma, 487 U.S. 815, 823 (1988) (distinct treatment of younger juveniles compared to older juveniles "in criminal sanctions and rehabilitation" is evidence of contemporary standards of decency [citation omitted]).

chance at sentence reduction for people who were under twenty-five years old when they committed a crime. D.C. Code § 24-403.03. In 2019, Illinois enacted a law allowing parole review at ten or twenty years into a sentence for most crimes, exclusive of sentences to life without parole, if the individual was under twenty-one years old at the time of the offense. 730 Ill. Comp. Stat. 5/5-4.5-115. Effective January 1, 2024, Illinois also ended life without parole for most individuals under twenty-one years old, allowing review after they serve forty years. Ill. Pub. L. No. 102-1128, § 5 (2022). California has extended youth offender parole eligibility to individuals who committed offenses before twenty-five years of age. Cal. Penal Code § 3051. Similarly, in 2021, Colorado expanded specialized program eligibility, usually reserved for juveniles, to adults who were under twenty-one when they committed a felony. Colo. House Bill No. 21-1209 (2021) (enacted). In Wyoming, "youthful offender" programs were revised to offer reduced and alternative sentencing for those under thirty years old. Wyo. Stat. Ann. §§ 7-13-1002, 7-13-1003.

Legislation outside of the penological context is also instructive in ascertaining contemporary standards of decency. In Thompson, 487 U.S. at 838, the Supreme Court determined that the death penalty was unconstitutional when imposed on a fifteen year old offender based, in part, on then-current nonpenological

State statutes that treated younger juveniles differently from those closer to age eighteen. Among other things, the Court noted that "in all but one State a [fifteen]-year-old may not drive without parental consent, and in all but four States a [fifteen]-year-old may not marry without parental consent" (footnote omitted). See id. at 824-825.

Similarly, Massachusetts, like most States, distinguishes emerging adults from older adults on a range of issues, granting rights and imposing responsibilities in a graduated manner. For example, one must be eighteen years of age to enter binding and enforceable contracts, to sit on a jury, to purchase lottery tickets, and to drive a common carrier motor vehicle.[23] See G. L. c. 231, § 85O; G. L. c. 234A, § 4; G. L. c. 10, § 29; G. L. c. 159A, § 9. However, one must be twenty-one years of age to purchase and sell alcoholic beverages, to purchase tobacco products, to obtain a license to carry a handgun, to be a police officer, and to gamble. See G. L. c. 138, § 34; G. L. c. 270, § 6; G. L. c. 140, § 131 (d) (iv); G. L. c. 31, § 58; G. L. c. 22C, § 10; G. L. c. 23K, §§ 25 (h), 43. These statutes reflect the commonly held view that emerging adults generally

[23] Moreover, young adults who have reached eighteen years of age may "continue to be considered 'minors'" for purposes of parental support. Eccleston v. Bankosky, 438 Mass. 428, 429 (2003), quoting Stolk v. Stolk, 31 Mass. App. Ct. 903, 904-905 (1991). See G. L. c. 208, § 28.

are not equipped to assume all the responsibilities of adulthood, especially with respect to high risk activities. Cf. Thompson, 487 U.S. at 824-825.

We are not the first State Supreme Court to appreciate the distinct ways in which our laws bear on emerging adults. Recently, the high courts in Washington and Michigan prohibited the mandatory imposition of life without the possibility of parole for those who are from eighteen to twenty years of age, and for those who are eighteen years of age, respectively. In Matter of the Personal Restraint of Monschke, 197 Wash. 2d 305 (2021), the Supreme Court of Washington considered evolving standards of decency, updated brain science, and precedent to conclude that mandatory sentences of life without parole violate the Washington Constitution when meted out to those under twenty-one when they committed the crime. See id. at 325-326.

One year later, the Supreme Court of Michigan looked at the issue as it pertained to eighteen year old offenders. The court reasoned that because "the Eighth Amendment dictates that youth matters in sentencing," and because brain science has demonstrated that eighteen year old individuals possess the same attributes of youth as do juveniles, mandatorily subjecting an eighteen year old defendant to life in prison is "unusually excessive imprisonment and thus a disproportionate sentence that constitutes 'cruel or unusual punishment' under [the Michigan

Constitution]." People v. Parks, 510 Mich. 225, 234, 255 (2022).[24]

Twenty-two States and the District of Columbia do not mandate life without parole in any circumstance.[25] Of the remaining twenty-eight States, only twelve (including Massachusetts) mandate life without parole.[26] Moreover, the

---

[24] However, both the Washington and Michigan courts determined that a sentence of life without the possibility of parole could be imposed on young adult offenders after an individualized sentencing hearing to consider the offender's youth. See Parks, 510 Mich. at 240-241; Matter of the Personal Restraint of Monschke, 197 Wash. 2d at 327-328.

[25] In those twenty-two States and the District of Columbia, the highest penalties are imposed only on discretionary bases. See Alaska Stat. § 12.55.125; D.C. Code § 22-2104; Ga. Code Ann. § 16-5-1; Idaho Code Ann. §§ 18-4004, 19-2515; 720 Ill. Comp. Stat. 5/9-1; Ind. Code §§ 35-50-2-3, 35-50-2-9; Ky. Rev. Stat. Ann. § 532.030; Me. Rev. Stat. tit. 17-A, § 1603; Md. Code Ann., Crim. Law §§ 2-201, 2-203; Mont. Code Ann. § 45-5-102(2); Nev. Rev. Stat. § 200.030(4)(a)-(b); N.M. Stat. Ann. § 31-18-13; N.Y. Penal Law §§ 60.06, 70.00(5); N.D. Cent. Code § 12.1-32-01; Ohio Rev. Code Ann. §§ 2929.02, 2929.04; Okla. Stat. tit. 21, § 701.9; Or. Rev. Stat. § 163.107; R.I. Gen. Laws §§ 11-23-2, 12-19.2-1 to 12-19.2-5; S.C. Code Ann. § 16-3-20; Tenn. Code Ann. § 39-13-204; Utah Code Ann. § 76-5-203; Wis. Stat. § 973.014(1g)(c)-(2); Wyo. Stat. Ann. § 6-2-101.

[26] See G. L. c. 265, § 2 (a) ("any person who is found guilty of murder in the first degree shall be punished by imprisonment in the state prison for life and shall not be eligible for parole pursuant to [G. L. c. 127, § 133A"); Colo. Rev. Stat. § 18-1.3-401(1)(a)(V)(F), (4)(a)(I)-(II) ("A person . . . shall be punished by life imprisonment" without possibility of parole); Del. Code Ann. tit. 11, § 4209 ("Any person who is convicted of first-degree murder for an offense that was committed after the person had reached [his or her] eighteenth birthday shall be punished by . . . imprisonment for the remainder of the person's natural life without benefit of probation or parole or any other reduction"); Haw. Rev. Stat.

statutes in at least two of those States provide an opportunity to avoid the mandatory nature of the sentence.[27] Twelve States mandate life without parole as an alternative to a discretionary death sentence,[28] and five States only mandate life without

---

§ 706-656 ("Persons eighteen years of age or over at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without the possibility of parole"); Iowa Code § 902.1 (on conviction of murder in first degree, "the court shall . . . commit the defendant . . . for the rest of the defendant's life . . . [and the defendant] shall not be released on parole unless the governor commutes the sentence to a term of years"); Mich. Comp. Laws § 750.316 (any person "who commits . . . first degree murder . . . shall be punished by imprisonment for life without eligibility for parole"); Minn. Stat. § 609.106 ("the court shall sentence a person to life imprisonment without possibility of release . . . [if] the person is convicted of first-degree murder"); N.H. Rev. Stat. Ann. § 630:1-a(III) ("A person convicted of a murder in the first degree shall be sentenced to life imprisonment and shall not be eligible for parole at any time"); 18 Pa. Cons. Stat. § 1102 ("a person who has been convicted of a murder of the first degree . . . shall be sentenced to . . . a term of life imprisonment"); Va. Code Ann. § 18.2-10(a) ("Any person who was [eighteen] years of age or older at the time of the offense and who is sentenced to imprisonment for life upon conviction of a Class 1 felony shall not be eligible for . . . parole"); Wash. Rev. Code § 10.95.030 (any person "convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole"); W. Va. Code § 61-2-2 ("Murder of the first degree shall be punished by confinement in the penitentiary for life").

[27] Iowa allows its Governor to commute the sentence to a term of years. Iowa Code § 902.2. Hawaii obligates the parole board to submit an application to its Governor to commute the sentence to one permitting parole after twenty years. Haw. Rev. Stat. § 706-656.

[28] See Ala. Code § 13a-6-2(c); Ariz. Rev. Stat. Ann. §§ 13-751(A), 13-1105(D); Ark. Code Ann. § 5-10-101(c); Fla. Stat. § 775.082; Kan. Stat. Ann. § 21-6617 (for capital murder); La.

parole if aggravating circumstances exist.[29] Massachusetts is one of only ten States that currently require eighteen through twenty year old individuals who are convicted of murder in the first degree to be sentenced to life without parole.

We also may consider where other nations stand in this analysis. See Okoro, 471 Mass. at 61. See also Graham, 560 U.S. at 80 ("The judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment," but "[t]he Court has looked beyond our Nation's borders for support for its independent conclusion that a particular punishment is cruel and unusual"). The United Kingdom has banned life without parole for any offender under twenty-one years of age at the time of the offense. Sentencing Act 2020, c. 17, § 322, sch. 21, par. 2 (U.K.). And in 2022, the Supreme Court of Canada unanimously ruled that life without parole sentences were unconstitutional for all offenders, regardless of age. R. v. Bissonnette, 2022 SCC 23. The foregoing examples suggest that the "evolving standards of decency that mark the progress of a maturing society" referenced

---

Rev. Stat. Ann. § 14:30(C); Miss. Code Ann. §§ 47-7-3(1)(d), 97-3-21; Mo. Rev. Stat. § 565.020; Neb. Rev. Stat. § 28-105; N.C. Gen. Stat. § 14-17; S.D. Codified Laws § 22-6-1; Tex. Penal Code Ann. § 12.31.

[29] See Cal. Penal Code § 190.2; Conn. Gen. Stat. §§ 53a-35a(1)(B), 53a-54b; N.J. Stat. Ann. § 2C:11-3; Va. Code Ann. §§ 18.2-10, 18.2-31; Vt. Stat. Ann. tit. 13, § 2303.

in Miller, 567 U.S. at 469, trend away from life without parole for emerging adults (citation omitted).

2. Life without parole for emerging adults violates art. 26. Our comprehensive review informs us that Supreme Court precedent, as well as our own, dictates that youthful characteristics must be considered in sentencing, that the brains of emerging adults are not fully developed and are more similar to those of juveniles than older adults, and that our contemporary standards of decency in the Commonwealth and elsewhere disfavor imposing the Commonwealth's harshest sentence on this cohort. Consequently, we conclude that a sentence of life without the possibility of parole for emerging adult offenders violates art. 26.[30] See Diatchenko I, 466 Mass. at 670.

3. Remedy. Because we have determined that it is unconstitutional to sentence emerging adults to life without the possibility of parole, we invalidate those provisions of our

[30] The contemporary standards of decency that govern our decision today do not suggest a societal consensus that those aged twenty-one and above should be treated differently from older adults. Thus, while we acknowledge that the scientific record in this case suggests that the unique attributes of youth may persist in young adults older than twenty-one, our art. 26 proportionality analysis does not rely on science alone. See Libby v. Commissioner of Correction, 385 Mass. 421, 435 (1982), quoting District Attorney for the Suffolk Dist. v. Watson, 381 Mass. 648, 661-662 (1980) ("Article 26, like the Eighth Amendment, bars punishments which are 'unacceptable under contemporary moral standards'").

criminal code that deny the possibility of parole to this cohort. General Laws c. 265, § 2, which was amended after Diatchenko I was decided, sets forth the penalty for murder in the first degree, distinguishing between the penalties for adults and juveniles:

> "(a) Except as provided in subsection (b), any person who is found guilty of murder in the first degree shall be punished by imprisonment in the [S]tate prison for life and shall not be eligible for parole pursuant to [G. L. c. 127, § 133A].
>
> "(b) Any person who is found guilty of murder in the first degree who committed the offense on or after the person's fourteenth birthday and before the person's eighteenth birthday shall be punished by imprisonment in the [S]tate prison for life and shall be eligible for parole after the term of years fixed by the court pursuant to [G. L. c. 279, § 24]."

Although we hold that it is unconstitutional to sentence individuals from eighteen to twenty years of age to life without the possibility of parole, we must "as far as possible, . . . hold the remainder [of the statute] to be constitutional and valid, if the parts are capable of separation and are not so entwined that the Legislature could not have intended that the part otherwise valid should take effect without the invalid part." Diatchenko I, 466 Mass. at 672, quoting Boston Gas Co. v. Department of Pub. Utils., 387 Mass. 531, 540 (1982). See G. L. c. 4, § 6, Eleventh ("The provisions of any statute shall be deemed severable, and if any part of any statute shall be adjudged unconstitutional or invalid, such judgment shall not

affect other valid parts thereof").[31] Here, because emerging adults do not fit within the exception described in G. L. c. 265, § 2 (b), we must invalidate that portion of G. L. c. 265, § 2 (a), that denies parole eligibility to those from eighteen to twenty years old. See Diatchenko I, supra at 673. Likewise, we also must invalidate that portion of the parole statute, G. L. c. 127, § 133A, that denies parole to those from eighteen to twenty years of age.[32]

Because the Legislature does not currently provide a parole eligibility scheme for this category of offenders, we look to the next-most severe sentence under the sentencing scheme to determine the floor of parole eligibility. See Watt, 484 Mass. at 753-754, citing Diatchenko I, 466 Mass. at 672-673. For emerging adults convicted of murder in the first degree on or

---

[31] Notably, the Legislature specifically provides for the severability of G. L. c. 265, § 2. See St. 1982, c. 554, § 7 ("If any of the provisions of [G. L. c. 265, § 2,] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared severable").

[32] General Laws c. 127, § 133A, states in relevant part:

> "Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, . . . except prisoners serving a life sentence for murder in the first degree who had attained the age of [eighteen] years at the time of the murder . . . shall be eligible for parole at the expiration of the minimum term fixed by the court under [G. L. c. 279, § 24]."

after today's decision, that means applying G. L. c. 279, § 24, as amended through St. 2014, c. 189, § 6, which sets parole eligibility for juvenile offenders who have committed murder in the first degree:

> "In the case of a sentence of life imprisonment for murder in the first degree committed by a [juvenile], the court shall fix a minimum term of not less than [twenty] years nor more than [thirty] years; provided, however, that in the case of a sentence of life imprisonment for murder in the first degree with extreme atrocity or cruelty committed by a [juvenile], the court shall fix a minimum term of [thirty] years; and provided further, that in the case of a sentence of life imprisonment for murder in the first degree with deliberately premeditated malice aforethought committed by a [juvenile], the court shall fix a minimum term of not less than [twenty-five] years nor more than [thirty] years."

However, the defendant in this case was sentenced to life without the possibility of parole pursuant to G. L. c. 265, § 2 (a), prior to the enactment of the aforementioned legislative changes in 2014, post-Diatchenko I. Therefore, this defendant and other emerging adults sentenced to life without the possibility of parole prior to July 25, 2014, may only be resentenced to the constitutionally permissible penalty available at that time -- life with the possibility of parole after fifteen years. See Commonwealth v. Costa, 472 Mass. 139, 146 (2015) (resentencing limited to available statutory penalty in effect at time of conviction).

By providing an opportunity for parole, we do not diminish the severity of the crime of murder in the first degree because

it was committed by an emerging adult. Likewise, our decision today "should not be construed" to suggest that emerging adults receiving the benefit of resentencing under today's holding "should be paroled once they have served a statutorily designated portion of their sentences." Diatchenko I, 466 Mass. at 674. However, as we stated in Diatchenko I, we must recognize the "unique characteristics" of emerging adults that render them "constitutionally different" from adults for purposes of sentencing. Id., citing Miller, 567 U.S. at 471. As such, they must be granted a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" before the Massachusetts parole board, who will "evaluate the circumstances surrounding the commission of the crime, including the age of the offender, together with all relevant information pertaining to the offender's character and actions during the intervening years since conviction." Diatchenko I, supra, quoting Graham, 560 U.S. at 75.

Conclusion. We remand this matter to the Superior Court for resentencing consistent with this opinion.

So ordered.