REL: October 25, 2019

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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0288

Nathan Lee Boyd

v.

State of Alabama

Appeal from Lauderdale Circuit Court
(CC-99-175.80)

MINOR, Judge.

Nathan Lee Boyd was convicted of capital murder in 2000 for the 1999 killing of Joseph Danny Sledge during a first-degree robbery. See § 13A-5-40(a)(2), Ala. Code 1975. Boyd was sentenced to life imprisonment without the possibility of

parole. Because Boyd was 17 years old when he killed Sledge, he was granted a resentencing proceeding pursuant to Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016). At the conclusion of that proceeding, the circuit court again sentenced Boyd to life imprisonment without the possibility of parole. Boyd appeals. We affirm.

Facts and Procedural History

In this Court's unpublished memorandum affirming Boyd's original conviction and sentence on February 22, 2002, this Court provided the following factual background of Boyd's crime:[1]

> "On the morning of March 12, 1999, Bonnie Clemmons, an employee of The Galley, a restaurant in Florence, Alabama, found the owner-operator, Joseph Danny Sledge, dead in a pool of blood. He had been stabbed 23 times and, ultimately, the knife blade had broken off in his spine.

[1]This Court affirmed Boyd's original conviction by an unpublished memorandum. Boyd v. State (No. CR-00-1224), 854 So. 2d 1215 (Ala. Crim. App. 2002) (table). The Alabama Supreme Court denied certiorari review without an opinion. Ex parte Boyd (No. 1011331), 876 So. 2d 519 (Ala. 2002) (table). Those proceedings were filed using the name Nathaniel Lee Boyd.

We take judicial notice of the record in CR-00-1224. See, e.g., Nettles v. State, 731 So. 2d 626 (Ala. Crim. App. 1998).

"Testimony revealed that Boyd had worked for Sledge during the summer of 1998. On March 11, 1999, Boyd and his brother went to The Galley and ordered food. There was some discussion as to the fact that they had brought in beverages, which was against The Galley's policy, and Boyd and his brother took their food 'to go,' and left.

"On Friday, March 12, 1999, Donna Hawk, another employee of The Galley, took her niece to work with her. Sledge bought $20.50 worth of rolled pennies from Hawk's niece. Hawk wrote her name, address, and telephone number on the penny rolls. Sledge placed the penny rolls in a bucket under the register.

"Later that same evening, Boyd and his brother came back to the restaurant and ordered a glass of water. Boyd argued with a waitress about the price of water and left. The waitress left the restaurant around 8:00 p.m. This was the last time Sledge was seen alive.

"At around 9:10 p.m., Gary Bowlin was driving past The Galley and noticed a small red pick-up truck exiting the parking lot. The truck nearly collided with Bowlin, and, as Bowlin took measures to avoid hitting the truck, he saw the face of the passenger in the front seat and noticed that the passenger was taking off his shirt. At trial, Bowlin identified Boyd as the passenger.

"On Sunday, March 14, 1999, after receiving an anonymous tip, officers recovered a bank money bag, receipts, checks made out to The Galley, and a t-shirt floating in the water near Goose Shoals Bridge. On Monday, March 15, 1999, law enforcement received a phone call from Bowlin regarding the red pick-up truck that had nearly hit him when it was exiting the parking lot of The Galley. Also on that date, the Boyd brothers' parents went to the Sheriff's Department, concerned that their sons may have been involved in Sledge's murder. Officers,

accompanied by the Boyds' parents, went to the Boyd brothers' apartment, and found a red pick-up truck parked behind the apartment. The officers went to the door, knocked, and obtained consent from Boyd's brother to search the apartment and the truck. In the apartment, officers found the rolled coins with Hawk's name, address, and telephone number written on them. One of the investigators called Hawk, and she explained how Sledge had purchased the pennies from her niece. Boyd and his brother were arrested. Boyd had cuts and abrasions on his left hand.

"In custody at the Sheriff's Department, Boyd waived his Miranda [v. Arizona, 384 U.S. 436 (1966),] rights and agreed to make a statement. In his tape-recorded statement, Boyd implicated his brother. Boyd was then transported to the detention center, but, as he arrived, he expressed a desire to 'tell the truth.' (R. 681.) The officers escorted Boyd back to the Sheriff's Department. Boyd then gave a second tape-recorded statement. In his second statement, Boyd admitted that both he and his brother had participated in the murder and robbery of Sledge.

"DNA evidence from Boyd's t-shirt and his brother's shoe identically matched a blood sample from the victim. DNA evidence also revealed that the Boyd brothers' DNA was present in blood samples taken from a tan cap found at the scene of the crime. One of Boyd's acquaintances testified that Boyd had previously expressed a desire to rob and kill Sledge. Boyd impeached the witness by eliciting testimony that the acquaintance engaged in recreational drug use and that the acquaintance had given two inconsistent statements regarding Boyd's desire to kill someone.

"Boyd testified in his own defense. He testified that he and his brother went to The Galley on March 11, 1999, because they 'planned on robbing it' (R. 920), but did not follow through with the robbery

plans and left. He testified that, after a day of drinking, smoking marijuana, and planning, he and his brother returned to The Galley on March 12, 1999. Boyd ordered a glass of water, and the two left. Boyd and his brother drove around that night until they saw the waitress leave.

"Boyd testified that he hid beside a door and rushed in when he heard Sledge unlock it. Sledge 'took off backwards towards the kitchen area,' but Boyd grabbed and held Sledge while the brother came through the door. (R. 931.) The brother hit Sledge in the face and 'more or less put him on the ground.' (R. 931.) Boyd picked up Sledge by the back of his pants and carried him to the kitchen. Boyd held a B.B. gun, which resembled a pistol, on Sledge while Eric tied him up with a fan cord. Boyd testified that he and his brother became distracted by headlights in the window, and Sledge somehow managed to free his hands and grabbed a knife. Boyd testified that Sledge 'c[ame] up at [him] with the knife.' (R. 932). Boyd tried to get the knife away from Sledge while the brother kicked Sledge back down onto the floor. The brother took a knife from the counter and stabbed Sledge several times. Sledge continued to kick, and the brother then stabbed him in the legs and in the stomach. Boyd could not wrestle the knife from Sledge's hand, 'until he died.' (R. 933.) Boyd testified that

> "'[a]t one point in time he -- he just got strong -- I don't know -- I guess it was just a ... burst of adrenaline and [Sledge] pushed ... me and I fell back. It had kinda got a little slippery from all the blood, and when [Sledge] came over on top of me and the knife was on my chest, and about that time I heard a loud pop. And he just relaxed and went limp. And when that happened, I just stood up and threw him off of me.'

> "(R. 933-34.) Boyd testified that his brother then picked up a money bag, the bucket of change under the cash register, and Sledge's wallet, and the two left."

On October 6, 2000, a jury found Boyd guilty of capital murder under § 13A-5-40(a)(2), Ala. Code 1975.[2] At the conclusion of the penalty phase, the jury unanimously recommended that Boyd be sentenced to life imprisonment without the possibility of parole. The circuit court followed that recommendation.[3]

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[2]At the time Boyd was convicted, § 13A-5-39(1), Ala. Code 1975, defined a "capital offense" as "[a]n offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole according to the provisions of this article." That statute was amended by Act No. 2016-360, Ala. Acts 2016, effective May 11, 2016, to read:

> "An offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole, or in the case of a defendant who establishes that he or she was under the age of 18 years at the time of the capital offense, life imprisonment, or life imprisonment without parole, according to the provisions of this article."

(Emphasis added.)

[3]At the time Boyd was sentenced, § 13A-6-2(c), Ala. Code 1975, provided:

> "Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravating circumstances, as provided by Article 2 of Chapter 5 of this title, is death or life imprisonment without parole, which punishment shall

This Court, as noted, affirmed Boyd's conviction and sentence. Boyd, 854 So. 2d 1215 (Ala. Crim. App. 2002) (table). The Alabama Supreme Court denied Boyd's petition for certiorari on September 13, 2002. Ex parte Boyd (No. 1011331), 876 So. 2d 519 (Ala. 2002) (table).

Boyd obtained the current resentencing proceeding through a petition he filed under Rule 32, Ala. R. Crim. P., in 2013.

> be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto."

Section 13A-6-2(c) was also amended effective May 11, 2016. As amended, that section provides:

> "Murder is a Class A felony; provided, that the punishment for murder or any offense committed under aggravated circumstances by a person 18 years of age or older, as provided by Article 2 of Chapter 5 of this title, is death or life imprisonment without parole, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto. The punishment for murder or any offense committed under aggravated circumstances by a person under the age of 18 years, as provided by Article 2 of Chapter 5, is either life imprisonment without parole, or life, which punishment shall be determined and fixed as provided by Article 2 of Chapter 5 of this title or any amendments thereto and the applicable Alabama Rules of Criminal Procedure.
>
> "If the defendant is sentenced to life on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole."

In that petition, his second Rule 32 petition, Boyd sought relief under Miller v. Alabama, 567 U.S. 460 (2012), in which the United States Supreme Court held that the Eighth Amendment to the United States Constitution forbids a mandatory sentence of life imprisonment without the possibility of parole for juvenile offenders. The circuit court granted Boyd's petition on January 6, 2014. This Court, however, reversed the circuit court's judgment based on this Court's holding in Williams v. State, 183 So. 3d 198 (Ala. Crim. App. 2014), that Miller did not apply retroactively. See State v. Boyd, 183 So. 3d 236 (Ala. Crim. App. 2014). Once the matter was remanded to the circuit court, that court granted Boyd's request to stay the petition while the Supreme Court of the United States considered the petition then pending in Montgomery v. Louisiana, 135 S. Ct. 1456 (2015). After the decision in Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016), in which the United States Supreme Court held that its decision in Miller applied retroactively, the circuit court again granted Boyd's petition for resentencing pursuant to Miller.

Over the next couple years, Boyd filed several motions

for expenses for investigation and for expert assistance, as well as motions related to discovery matters. The circuit court appears to have granted most of Boyd's motions. Before the resentencing hearing that was scheduled for September 6, 2018, Boyd and the State filed extensive briefs regarding their respective positions. At that hearing on September 6-7, 2018, both the State and Boyd presented testimony from several witnesses. The State offered 37 exhibits into evidence, and Boyd offered 27 exhibits into evidence.[4]

The circuit court, in a detailed order dated September 26, 2018, resentenced Boyd to life imprisonment without the possibility of parole.[5] (C. 326.) Boyd filed a timely notice of appeal.

I.

Boyd first argues that the decision to sentence a juvenile offender to life imprisonment without the possibility of parole should be made by a jury and not by the trial court.

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[4]Rather than summarize all the evidence here, we have included relevant descriptions of the evidence in our analysis of the issues.

[5]On October 25, 2018, Boyd filed a motion for reconsideration of his sentence (C. 341), which the circuit court denied on November 1, 2018 (C. 347).

(Boyd's brief, p. 22.) Boyd acknowledges that this Court in Wilkerson v. State, [CR-17-0082, Nov. 16, 2018] ___ So. 3d ___ (Ala. Crim. App. 2018), cert. denied (No. 1180332, April 12, 2019), ___ So. 3d ___ (Ala. 2019), cited with approval the holding of the Supreme Court of Michigan in People v. Skinner, 502 Mich. 89, 917 N.W.2d 292 (2018), that whether a juvenile convicted of capital murder should be sentenced to life imprisonment without the possibility of parole is not a factual finding that must be made by a jury. Rather, "whether a juvenile who has been convicted of capital murder should be sentenced to life imprisonment without the possibility of parole is ultimately a moral judgment, not a factual finding." Wilkerson, ___ So. 3d at ___ (citing Skinner, 502 Mich. at 117 n.11, 917 N.W.2d at 305 n.11). Wilkerson quotes the following passage from Skinner, which was, in turn, quoting from the decision of the United States Court of Appeals for the Sixth Circuit in United States v. Gabrion, 719 F.3d 511, 532-33 (6th Cir. 2013):

> "'"[T]erms [such as] consider, justify, [and] outweigh ... reflect a process of assigning weights to competing interests, and then determining, based upon some criterion, which of those interests predominates. The result is one of judgment, of shades of gray; like saying that Beethoven was a

> better composer than Brahms. Here, the judgment is moral--for the root of 'justify' is 'just.' ..." [United States v. Gabrion, 719 F.3d 511, 532-33 (6th Cir. 2013).] For the same reasons, a trial court's decision to impose life without parole after considering the mitigating and aggravating circumstances is not a factual finding, but a moral judgment.'"

Wilkerson, ___ So. 3d at ___. Boyd directly questions this quoted passage from Wilkerson, stating: "[T]here is extreme danger in entrusting moral judgments of such immense gravity as one which might imprison a child for the entirety of her/his life in the hands of a single inherently flawed human being; judge or not." (Boyd's brief, pp. 25-26.) In support of this assertion, Boyd cites actions by former Governor George Wallace and former Chief Justice Roy Moore. (Boyd's brief, pp. 27-29.) Boyd also questions "how out of touch" Judge Raymond Kethledge, who authored the opinion in Gabrion, supra,

> "would likely, himself, be with the average person living today in Boyd's community, where one seeking to discuss music in earnest would be much more likely to converse about whether Florida Georgia Line [a musical group] is really country music, whether Cardi B [a musical artist] only won album of the year because the rap albums released in 2018 were so weak, or how excited everyone is about the upcoming Tool [another musical group] record."

(Boyd's brief, p. 29.) Boyd concludes with an assertion that this

> "Court should mandate, if the decision to sentence a juvenile offender to life without the possibility of parole is a moral judgment, that moral judgment cannot be accurately made by a single judge and must, instead, be made by a jury made up of community members from the victimized community."

(Boyd's brief, pp. 30-31.)

Boyd did not make these arguments below. Thus, they are not properly before us. Ex parte Coulliette, 857 So. 2d 793, 794-95 (Ala. 2003). And even if these arguments were properly before us, they are policy-based arguments that should be directed to the legislature, not to this Court. See, e.g., Marsh v. Green, 782 So. 2d 223, 231 (Ala. 2000) ("These concerns deal with the wisdom of legislative policy rather than constitutional issues. Matters of policy are for the Legislature and, whether wise or unwise, legislative policies are of no concern to the courts. State ex rel. Wilkinson v. Murphy, 237 Ala. 332, 186 So. 487 (1939). In Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810 (1944), cert. dismissed, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945), this Court held that a court cannot hold a statute invalid because of its view that 'there are elements therein which are violative of natural justice or in conflict with the court's notions of natural, social, or political

rights of the citizen.' 246 Ala. at 9, 18 So.2d at 815.").

Here, the legislature has decided this issue adversely to Boyd's position. Section 13A-5-43(e), Ala. Code 1975, provides:

> "If the defendant is found guilty of a capital offense or offenses with which he or she is charged and the defendant establishes to the court by a preponderance of the evidence that he or she was under the age of 18 years at the time of the capital offense or offenses, the sentence shall be either life without the possibility of parole or, in the alternative, life, and the sentence shall be determined by the procedures set forth in the Alabama Rules of Criminal Procedure for judicially imposing sentences within the range set by statute without a jury, rather than as provided in Sections 13A-5-45 to 13A-5-53, inclusive. The judge shall consider all relevant mitigating circumstances.
>
> "If the defendant is sentenced to life on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole."

This subsection was added by Act No. 2016-360, Ala. Acts 2016. Section 3 of Act No. 2016-360 states:

> "This act shall apply to any person under the age of 18 years at the time an offense was committed who was sentenced to life without the possibility of parole under Section 13A-5-2, 13A-5-39, 13A-5-43, or 13A-6-2, Code of Alabama 1975, <u>whether the person is currently incarcerated or hereinafter convicted</u>."

(Emphasis added.) Thus, the legislature has decided that whether to sentence a juvenile to life imprisonment without

the possibility of parole is a decision to be made by a judge, not by a jury. Unless a constitutional or other legal problem exists with the legislature's decision, it is not this Court's job to second-guess that decision.[6]

Boyd is not entitled to relief on this issue.

II.

Boyd next challenges the circuit court's decision to resentence him to life imprisonment without the possibility of parole. (Boyd's brief, pp. 38-77.)

In Wilkerson, supra, this Court stated:

> "'Miller "mandates only that a sentencer follow a certain process--considering an offender's youth and attendant characteristics"--before "meting out" a sentence of life imprisonment without parole. Miller, 567 U.S. at 483, 132 S. Ct. at 2471. "[A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." Miller, 567 U.S. at 489, 132 S. Ct. at 2475.'

"[Click v. State, 215 So. 3d 1189, 1192 (Ala. Crim.

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[6]To the extent Boyd raises constitutional challenges to the legislature's decision that a judge, rather than a jury, is to decide whether to sentence a juvenile convicted of capital murder to life imprisonment without the possibility of parole, those challenges were not raised below. Thus, they are not properly before this Court. See Ex parte Coulliette, supra.

App. 2016).]

"... [T]he Alabama Supreme Court in Ex parte Henderson[, 144 So. 3d 1262 (Ala. 2013),] established the following factors courts must consider when deciding whether life in prison with the possibility of parole would be an appropriate sentence for a juvenile:

> "'(1) the juvenile's chronological age at the time of the offense and the hallmark features of youth, such as immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile's diminished culpability; (3) the circumstances of the offense; (4) the extent of the juvenile's participation in the crime; (5) the juvenile's family, home, and neighborhood environment; (6) the juvenile's emotional maturity and development; (7) whether familial and/or peer pressure affected the juvenile; (8) the juvenile's past exposure to violence; (9) the juvenile's drug and alcohol history; (10) the juvenile's ability to deal with the police; (11) the juvenile's capacity to assist his or her attorney; (12) the juvenile's mental-health history; (13) the juvenile's potential for rehabilitation; and (14) any other relevant factor related to the juvenile's youth.'

"144 So. 3d at 1284. See also Foye v. State, 153 So. 3d 854, 864 (Ala. Crim. App. 2013). It should be noted, however, that 'some of the factors may not apply to a particular juvenile's case and that some of the factors may overlap.' Ex parte Henderson, 144 So. 3d at 1284."

Wilkerson, ___ So. 3d at ___.

Here, the circuit court expressly considered and

addressed all 14 factors from Ex parte Henderson in reaching its decision. (C. 326-40.) Boyd contends the circuit court "'cherry-picked' evidence presented during the hearing (which in some cases, is utilized in opposing ways to itself in the sentencing order) to support its sentencing decision while completely ignoring other equally credible evidence." (Boyd's brief, p. 38.) Boyd also argues that the circuit court "misapprehended the import of certain Henderson factors and their relation to the purpose of the hearing." (Boyd's brief, pp. 38-39.) Boyd specifically challenges the circuit court's consideration of 13 of the 14 Henderson factors and its conclusion as to each of those factors.[7]

In reviewing the circuit court's sentencing determination after a hearing conducted pursuant to Miller and Montgomery, this Court applies an abuse-of-discretion standard of review. Wilkerson, ___ So. 3d at ___ ("Because life imprisonment without the possibility of parole remains a sentencing option for juvenile offenders, even in light of the Supreme Court's

[7]Boyd does not specifically challenge the circuit court's consideration of the 11th Henderson factor, i.e., "the juvenile's capacity to assist his or her attorney." 144 So. 3d at 1284.

decisions in Miller and Montgomery, the standard of review to be applied is an abuse-of-discretion standard."). Also, the circuit court's findings as to the evidence presented at the resentencing hearing, including its consideration and application of the Henderson factors, are presumed correct and are reviewed for an abuse of discretion. See, e.g., Smiley v. State, 52 So. 3d 565, 568 (Ala. 2010) ("'"When the evidence in a case is in conflict, the trier of fact has to resolve the conflicts in the testimony, and it is not within the province of the appellate court to reweigh the testimony and substitute its own judgment for that of the trier of fact."'" (quoting Ex parte R.E.C., 899 So. 2d 272, 279 (Ala. 2004), quoting in turn Delbridge v. Civil Serv. Bd. of Tuscaloosa, 481 So. 2d 911, 913 (Ala. Civ. App. 1985))).

A.

Boyd argues that "the trial court failed to appropriately consider, as a mitigating factor, Nathan Boyd's youth, immaturity, impetuosity, and clear inability to appreciate risks and consequences." (Boyd's brief, p. 39.) This argument is addressed to the first Henderson factor, i.e., "the juvenile's chronological age at the time of the offense and

the hallmark features of youth, such as immaturity, impetuosity, and failure to appreciate risks and consequences." 144 So. 3d at 1284.

Boyd first attacks the circuit court's observation that Boyd committed the crime less than 4 months before he turned 18 and that Boyd's "expert, clinical psychologist Dr. Robert D. Shaffer, acknowledged that [Boyd] would have been no more mature in four months on his 18th birthday." (C. 327.) According to Boyd, "[c]hronological age is not to be analyzed to determine whether it might be a mitigating factor. It is a mitigating factor and must be weighed in favor of a parolable sentence." (Boyd's brief, p. 40.) The circuit court's statements as to "chronological age," however, do not indicate that the circuit court refused to consider Boyd's age as a mitigating factor. Rather, they are merely statements of fact based on the evidence presented. This was not an abuse of discretion.

As for "immaturity, impetuosity, [and] failure to appreciate [the] risks and consequences associated with [Boyd's chronological age]," the circuit court stated:

> "The Court considered testimony submitted on behalf of [Boyd] in support of his claim of

> immaturity, impetuosity, and failure to appreciate risks and consequences. The defense presented testimony from [Boyd's] juvenile probation officer John Winston. The court finds that [Boyd] received counseling from Mr. Winston with a progressive increase in sanctions for behavioral issues and criminal conduct. Dr. Shaffer testified that the progressive sanctions were appropriate. [Boyd] was placed in the HIT ('High Intensity Treatment') Boot Camp Program just after his 16th birthday by the juvenile court. A year later, [Boyd] served 30 to 45 days at Mount Meigs, Department of Youth Services. [Boyd's] juvenile court history indicates that he was very familiar with the risks and consequences of illegal behavior.
>
> "[Boyd's] testimony at trial established that [Boyd] selected the time, place, and circumstances of how the crime would be committed. [Boyd] testified that he and his brother 'planned it out to the "T."' ... [Boyd] knew the victim. He had worked for him on two separate occasions. [Boyd] took steps to minimize the risks of being linked to the crime, wearing surgical gloves while committing the crime and disposed of evidence in two separate locations. ...
>
> "The Court finds that the evidence indicates that the crime was not a spur of the moment, impetuous, immature behavior of a 17-year-old who failed to appreciate that substantial penal penalties result from criminal behavior."

(C. 327-28.)

Boyd argues that the "plan" for the crime was "immature and ridiculous ... [and] stupid[]." (Boyd's brief, p. 41.) He cites testimony from Dr. Shaffer that Boyd was "in an arrested state of development" (R. 405) and evidence indicating that

Boyd did not do well in school and that he had low-to-average scores on standardized tests. Boyd's arguments in this regard, however, do not demonstrate that the circuit court abused its discretion. Rather, Boyd's arguments indicate that he thinks the circuit court should have weighed the evidence differently than it did. But mere disagreement with the circuit court's weighing of the evidence does not entitle Boyd to relief.

B.

Boyd next argues that "there is no question" as to the second Henderson factor--relating to a "juvenile's diminished culpability"--because "the Supreme Court of the United States says juvenile defendants have lessened culpability." (Boyd's brief, p. 43.) Boyd suggests that the circuit court thus had to find that Boyd had lessened culpability under this Henderson factor. We disagree.

The circuit court's order states the following as to this factor: "Henderson directs this Court to consider whether [Boyd] was less culpable, that is, blameworthy, as a result of his age." (C. 328.) This is a correct statement of the law. Henderson holds "that a sentencing hearing for a juvenile

convicted of a capital offense must now include consideration of ... the juvenile's diminished culpability." 144 So. 3d at 1284 (emphasis added).

Here, the circuit court permitted Boyd to present a wide range of evidence as to his "diminished culpability," and the circuit court considered that evidence. The circuit court recounted testimony from Dr. Shaffer that Boyd and his mother had both been abused by Boyd's father and that Boyd had a "heroic illusion to protect his mother." (C. 328.) The circuit court found that evidence unpersuasive, however, because "at the time of this offense, [Boyd] was living outside the home with his brother, Eric, away from the influence of his father" and "this crime was in no way related to any 'heroic illusion' of [Boyd's]." (C. 328-29.)

The circuit court also cited Boyd's testimony at his trial that he had robbed Sledge to get rent money for his brother Eric. The circuit court did not believe this testimony, however, based on Boyd's testimony that he and his brother split the proceeds of the robbery ($600) evenly and that Boyd used his portion to "'party' and buy alcohol." (C. 329.) The circuit court also stated it did not believe Boyd's

alleged motive to get rent money based on Boyd's "post-crime conduct." (C. 329.)

The circuit court cited Dr. Shaffer's testimony that Boyd was less mature than his chronological age at the time of the crime would indicate. The circuit court noted, however, that Dr. Shaffer described Boyd as intelligent (C. 330) and that "other witnesses testified that [Boyd] was a 'normal child' until he began using drugs in early adolescence." (C. 329.)

Finally, the circuit court cited testimony from Boyd's baseball and football coach, Ricky Putman; Boyd's mother, Beverly; Boyd's former principal, Tim Tubbs; and Boyd's aunt, Sherry Davenport. Putman "repeatedly talked with [Boyd] on the harmful nature of drugs" but said that Boyd was "'hard-headed.'" (C. 330.) Beverly "testified that her son chose to hang around with older boys with whom he should not have associated" and "that her abusive husband [Boyd's father] was afraid of [Boyd] so much so that they slept with their bedroom door locked." (C. 330.) Tubbs testified that Boyd was a "typical" student who "was capable academically, as well as athletically." (C. 330.) Tubbs "described [Boyd's] attitude as generally happy until he returned from a [Department of Youth

Services] commitment after which he described [Boyd] as 'more stoic." (C. 330.) The circuit court noted "that, although [Boyd] had quit high school, he had obtained a G.E.D. in 1998 before the commission of the crime." (C. 330.) Davenport described Boyd "as a 'normal' child who had capably held down several jobs." (C. 330.)

Based on "the entire record," the circuit court found that Boyd's "culpability was not substantially diminished by his age or family circumstances." (C. 330.) Although Boyd disagrees with that conclusion, he has not demonstrated that the circuit court abused its discretion in reaching that conclusion.

C.

Boyd argues that "the trial court failed to appropriately consider, as a mitigating factor, the circumstances of the offense." (Boyd's brief, p. 45.) The circuit court stated the following as to this, the third Henderson factor:

> "The court finds that this was a particularly gruesome crime. The court considered the testimony of Richard Richey, the lead case investigator. Numerous exhibits from the trial were offered by the State at this hearing and received into evidence. Among the exhibits received were photographs depicting the numerous stab wounds on the victim's body; a photograph of the blade of the knife that

> broke off in the victim's back; items of clothing and shoes of [Boyd's] with [the] victim's blood; the autopsy report which documented the 24 stab wounds and 4 incised wounds on the victim; a diagram of the crime scene prepared by the Alabama Department of Forensic Sciences, the adult and juvenile Miranda [v. Arizona, 384 U.S. 436 (1966),] warnings given to [Boyd], and two audio statements given by [Boyd] which were presented at the hearing and considered by the court.
>
> "In his first statement, [Boyd] claimed that his brother Eric was the sole murderer of the victim and that [Boyd] had an alibi to account for his presence elsewhere. In his second statement, [Boyd] claimed he participated in the robbery but not the murder. [Boyd] also testified at his trial and his testimony has been reviewed.
>
> "At the original sentencing hearing, the trial judge (Hon. Mike Jones) considered the circumstances of the offense and weighed them against other robbery-murder cases. Judge Jones found that the circumstances of this case were 'especially heinous, atrocious, or cruel.' ... This court concurs with the conclusion of the original sentencing court in this regard."

(C. 330-31.)

Boyd concedes that his murder of Sledge was "terrible," but he contends that it was "nearly indistinguishable from any number of other robbery-murders which have occurred over the course of human history." (Boyd's brief, pp. 45-47.) He cites three out-of-state examples of "'more' terrible" murders.

Boyd has not shown the circuit court abused its

discretion regarding this Henderson factor.

D.

Boyd argues that the circuit "court failed to appropriately consider, as a mitigating factor, the extent of Nathan Boyd's participation in the offense." This argument is addressed to the fourth Henderson factor, 144 So. 3d at 1284.

The circuit court noted that Boyd's defense counsel at his original sentencing proceeding had argued that Boyd's participation in the crime was relatively minor. The circuit court then quoted the following from the original sentencing order:

> "'Secondly, [Boyd] urges the court to consider that [Boyd] was an accomplice in the capital offense committed by another person and his participation was relatively minor. This court does not find that assertion justified by the evidence. Joseph Danny Sledge was physically attacked by [Boyd]. While Mr. Sledge was stabbed in the legs, [Boyd] prevented him from escaping or fighting back. While Mr. Sledge was stabbed in the face, [Boyd] prevented him from avoiding the injuries. While Mr. Sledge was stabbed repeatedly in the side and the back, [Boyd] prevented Mr. Sledge from doing anything which would prevent or ameliorate this vicious attack. This court finds the defendant's participation in this offense was by no means minor.' (Sentencing order, 6-7, emphasis in original)."

(C. 332.) The circuit court then concluded: "Nothing presented at this hearing suggested the trial court was in error in this

finding." (C. 332.)

Boyd argues that, "although he was the primary aggressor in the robbery and although he played an undeniably large part in the murder, when the robbery went south, Boyd was not the primary aggressor in Sledge's murder." (Boyd's brief, p. 47.) He argues that the circuit court should have weighed this Henderson factor "in favor[] of the imposition of a parolable sentence." (Boyd's brief, p. 47.)

Again, Boyd merely disagrees with the circuit court's weighing of the evidence presented. That disagreement does not demonstrate that the circuit court abused its discretion.

E.

Boyd argues that the circuit "failed to appropriately consider, as a mitigating factor, Nathan Boyd's abusive family and home environment." (Boyd's brief, p. 48.) This argument is addressed to the fifth Henderson factor: "the juvenile's family, home, and neighborhood environment" 144 So. 3d at 1284.

Boyd cites the following:

-- Boyd's father, Charles, testified at the original sentencing hearing that when Boyd was a child he would whip him with a belt and try to leave "blue

marks" (Trial R. 1169[8]);

-- Once Boyd reached the age of 8 to 10 years old, Charles stopped spanking Boyd and started beating him "like a man" (R. 383);

-- Beverly Boyd testified that Charles first hit Boyd when Boyd was only a year old (R. 249);

-- Beverly testified that when Boyd was three years old, Charles hit Boyd with a piece of steel "rebar" because Boyd "was throwing rocks in the lake" near their house (R. 247);

-- Beverly testified that when she tried to get Boyd and Eric away from Charles after Charles hit Boyd with the rebar, "he got in the car and he come after me and he tried to run me down" (R. 248);

-- Beverly testified that Charles started beating her when they were dating (R. 242), that he once struck her in the chin with a glass (R. 245), that he had shot at her when he was drunk (R. 245-46), that he got into a "shooting fight" with one of the neighbors who had stolen Beverly's dog (R. 246), and that he had punched and slapped her on several occasions and had given her a black eye (R. 248);

-- Beverly testified that Charles's first wife said he had "abused [her] a lot" including "[getting] some scissors and cut[ing] [her] blouse off ... one night" (R. 260), and Beverly said she knew that Charles had abused his other spouses (R. 239);

-- Beverly testified that Boyd once pointed a gun at Charles and told him to stop beating Beverly (R. 252);

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[8]"Trial R." refers to the reporter's transcript in the direct appeal in CR-00-1224. See Rule 28(g), Ala. R. App. P.

-- Beverly testified that when Boyd was nine or ten, Charles hit Boyd on Boyd's stomach with a steel belt buckle; the buckle had "a little tong" that stuck out and "stuck in [Boyd's] belly" (R. 251);

-- Boyd's aunt, Sherry Davenport, testified that while Boyd was living with his grandparents, Charles "came over there to the house raising hell and chased Nathan around the house. Took a 2-by-4, tried to catch him and the neighbor next door is the one that she saw him running him around and Nathan crawled up under the house" (R. 301);

-- Beverly and Davenport both testified that Charles had at some point referred to Boyd as "it" and made him eat off the floor, like "a dog" (R. 251, 305);

-- Davenport testified that Charles locked Boyd out of the house without a coat during a "deep, deep snow" in 1994 and that Beverly called her to go get Boyd because he was in the woods for "at least an hour or two" (R. 294-96);

-- Department of Human Resources ("DHR") records indicated that on August 20, 1994, Boyd went to school with a "busted lip" after he and Charles "got into it" because Boyd had "joined a gang at school" and that Charles's use of alcohol was "problematic"; the records indicated that the family agreed to seek counseling and declined DHR services (C. 526);

-- Victoria Weatherby, a DHR case worker who worked with Boyd, testified that she wrote in a report dated August 20, 1994, that "due to [Boyd's] age and size it does not appear that he's at risk of severe harm" (R. 193);

-- DHR records indicated that on January 7, 1995, DHR received information that Boyd had attempted suicide "because of the way his father treated him" and that Boyd "had a bruise on his left eye which reportedly resulted from [Charles] hitting him in an attempt to

> take the gun away from him"[9] (C. 517); the records indicate that "arrangements had been made for [Boyd] to be admitted to Decatur General West" hospital; subsequently, DHR learned that Boyd was not taken to that hospital, however, because the family "wanted to wait to get a second opinion" and they did not want Boyd "to have to stay in Decatur" (C. 517-18); the records indicate that Boyd was to see a "Dr. Standard" who had been recommended by James Megar, a counselor whom Boyd had gone to see a few months before (C. 519-20).

In his brief, Boyd also states:

> "On September 18, 1995, suspicious of why Boyd might be consistently running away from his home, John Winston (Boyd's juvenile probation officer) called DHR to ask about the Department's past involvement with the family, but due to confidentiality reasons, DHR refused to give him any information. (R. 84-85; C. 522.) On May 29, 1996, then again in September of 1996 (C. 526), DHR received calls from a concerned citizen, informing

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[9]At the penalty phase of Boyd's original trial, Charles testified regarding this incident:

> "Q. Did you ever hit [Boyd] in the face or ever hit him in the head or anything at any time during any of this?
>
> "[Charles]. I fractured [his] cheekbone. He was laying on the bed with a .38 pistol stuck to his head, and I got close enough that I jumped him and pushed the gun back away and his mother jumped him and was laying on the gun. And I was scared it was gonna go off. And the kid was bigger than I was. I'm not stronger than he is and that's the only way I knew to get it out."

(Trial R. 1169.)

them than Boyd had run away from home again, that there was more going on in Boyd household than 'meets the eye,' and that Boyd was being abused regularly by his father. (C. 523.) Despite having provided no helpful information to John Winston, DHR informed the caller that the Department had no 'reason to get involved with the family' at the time and suggested the caller contact John Winston. (C. 523.) On February 24, 1997, DHR received another call, informing the Department that Boyd had, recently, attempted suicide again. (C. 525.) DHR's notes from the call state these 'issues [were] addressed with the family long ago' and that intervention was not warranted. (C. 525.) On November 23, 1998, DHR received another call about Boyd, after which the Department called Beverly, who informed the worker that Boyd had run away from home fifteen (15) times, was using drugs, and was homeless, living in a vehicle. (C. 527.) Beverly also informed DHR that, although Boyd was prescribed medication for mental illnesses, Charles was taking it from him and throwing it away. (C. 527.) Beverly asked the worker about a local battered women's shelter. (C. 527.) DHR determined this did not warrant opening the Boyd family to services. (C. 527.) On March 7, 1999, DHR received a call from a family acquaintance who reported that Charles had been abusing Beverly and, when Boyd stepped in to put a stop to it, Charles called the police and listed Boyd as 'runaway.' (C. 528.) This report acknowledges that DHR was aware that Charles had, in the past, shot at Boyd. (C. 511.) In fact, the worker on the case at that time wrote the following in her report:

> "'[Charles] provokes [Boyd] into altercation by pushing and shoving [Beverly] around when [Boyd] attempted to intervene [Charles] attempted to kick [Boyd] between the legs and began punching and hitting that quickly stopped, pulled out the phones and drove away in the only

> working car with the cell phone, which he used to call police to have son arrested for assault. [Beverly] shared about [Charles's] previous provocation with [Boyd]; if son left [the home] to avoid fight [Charles] would call and have [Boyd] listed as a runaway--Describe that [Charles] shot at [Boyd] one time then declared him a runaway.'
>
> "(C. 512.) DHR closed the call as 'no issues of abuse or neglect.' (C. 528.) On March 22, 1999, DHR received a call about 'allegations,' which the call taker could not be bothered to even list. (C. 529.) The call taker determined these 'allegations' were received previously and refused a further assessment. (C. 529.) Finally, in June of 1999, DHR received its last transmission regarding Boyd when Boyd's murder trial attorneys requested Boyd's DHR record. (C. 529.)"

(Boyd's brief, pp. 53-55.)

Boyd characterizes DHR's actions as an "abject failure to intervene,"[10] and he strongly disagrees with the circuit court's assessment of this Henderson factor. But Boyd's characterization of much of the above evidence is, at best, an interpretation of the evidence in a light most favorable to his case. At worst, much of his characterization and

[10]As noted below in Part II.L., the circuit court specifically rejected Boyd's argument "that there had been a 'systemic failure' in the community to appropriately treat [Boyd]." (C. 339.) In making this determination, the circuit court specifically mentioned evidence regarding DHR's interactions with Boyd. (C. 339.)

description of the evidence is misleading and based on selective omissions of the evidence he cites. For example, the report he cites at page 525 of the record for the assertion that "DHR's notes from the call state these 'issues [were] addressed with the family long ago' and that intervention was not warranted" omits the following from that same report:

> "[Boyd] is reportedly going to be sent to boot camp. [Boyd] reportedly attempted suicide a month or so ago and is receiving services from RCMH[11]. .... It seems apparent from this, and past contacts, this caller is concerned that [Boyd] not be made to go to boot camp per JPO intervention."

(C. 525.)

The circuit court appears to have considered all the evidence Boyd and the State presented regarding this Henderson factor. The circuit court specifically noted the evidence of physical abuse and Boyd's attempts to commit suicide. The circuit court cited, however, Boyd's "loving mother" and his aunt, "grandparents who loved him and provided a source of support to him by providing him with a place to live, as well as a car." (C. 332.) The court also cited the efforts of the

[11]As noted in the circuit court's order, evidence indicated that Boyd received treatment at "Riverbend Center for Mental Health." (C. 337.)

juvenile probation officer who "attempted to guide him in the right direction" and "a special coach in his life who sincerely wanted him to succeed." (C. 332.) The circuit court cited the availability of counselors, a church, and a pastor "who was actively involved rendering encouragement [and] advice." (C. 332.) The court described the DHR workers as seeking "to act in the best interest of [Boyd]," and the court noted that although "child protection procedures have improved in the last twenty years, there is nothing in the record to suggest that this horrific crime ... could have been foreseen or prevented by anyone other than [Boyd] himself." (C. 333.)

Boyd has not demonstrated that the circuit court abused its discretion as to its consideration of this Henderson factor.

F.

Boyd asserts that the circuit "court failed to appropriately consider, as a mitigating factor, Nathan Boyd's stunted emotional maturity and development." (Boyd's brief, p. 56.) The circuit court, in its consideration of this, the sixth Henderson factor, considered the conflicting testimony from Boyd's trial attorney, Tim Case, against the testimony of

Boyd's expert, Dr. Shaffer. As with the other Henderson factors above, Boyd merely disagrees with the circuit court's conclusion based on the evidence presented. This disagreement does not demonstrate that the circuit court abused its discretion.

G.

Boyd argues that the circuit "court failed to appropriately consider, as a mitigating factor, the family pressure under which Nathan Boyd was operating at the time of the offense." (Boyd's brief, p. 57.) Boyd cites, for example, the evidence of abuse from Charles, the fact that Boyd was living with Eric at the time of the crime and that Eric allegedly needed rent money, and testimony indicating that Boyd had "developed an identity as the heroic protector of his family." (Boyd's brief, pp. 57-58.)

This argument is directed to the seventh factor listed in Henderson: "whether familial and/or peer pressure affected the juvenile." Henderson, 144 So. 3d at 1284. The circuit court's order shows that it considered the evidence Boyd presented. As indicated above, another portion of the circuit court's order indicates that it did not find Boyd's "rent-money" explanation

credible. In the portion of its order addressing the seventh Henderson factor, the circuit court cited "evidence that [Boyd] had joined a gang ... [which] caused strife in the family." (C. 334.) And the court recounted some of DHR's involvement with the family. (C. 334.) The court concluded "that any familial or peer pressure experienced by [Boyd] was not a motivating factor in his involvement in the robbery/murder of the victim." (C. 334.)

Boyd has not demonstrated that the circuit court abused its discretion as to this Henderson factor.

H.

Boyd argues that the circuit "court failed to appropriately consider, as a mitigating factor, Nathan Boyd's nearly incessant exposure to violence throughout his young life." (Boyd's brief, p. 59.) This argument is directed to the eighth factor listed in Henderson: "the juvenile's past exposure to violence." Henderson, 144 So. 3d at 1284.

The circuit court's order reflects that it "considered evidence regarding [Boyd's] past exposure to violence," and the circuit court found "that he was exposed to violence in his home at the hands of his father, including evidence of

physical abuse and verbal abuse by the father." (C. 335.) Also, the circuit court noted the evidence indicating that Charles had "fired a weapon at a neighbor during a dispute and ... had fired a weapon at both [Boyd] and [Beverly]." (C. 335.)

The circuit court also cited Dr. Shaffer's testimony that the violence from Charles had taught Boyd to "bully" and to "settle scores" through violence. But the circuit court found that the murder of Sledge, "an extremely brutal and violent act, was in no way related to any 'score settling.'" (C. 335.) The circuit court cited an evaluation from Dr. Jerry Gragg, performed seven months after the murder, in which Dr. Gragg concluded that Boyd's behaviors "prior to, during, and following the alleged offense" indicated "that his behaviors were purposeful and goal-directed and in the service of monetary gain." (C. 335.) The circuit court found "that the murder was motivated by" those "goal-directed behaviors." (C. 335.)

Boyd contends that the circuit court "fail[ed] to recognize that Boyd's incessant past exposure to violence played an undeniable role in ensuring he reacted to what he

saw as an impediment (Sledge's resisting the robbery) to reaching his goal." (Boyd's brief, pp. 60-61.) Boyd has not demonstrated, however, that the circuit court abused its discretion in its consideration of the evidence and how it related to this Henderson factor.

I.

Boyd contends that the circuit "court failed to appropriately consider, as a mitigating factor, the extent to which Nathan Boyd's substance abuse stunted his development and drove his actions." (Boyd's brief, p. 61.) This argument is directed to the ninth factor listed in Henderson: "the juvenile's drug and alcohol history." Henderson, 144 So. 3d at 1284.

Boyd presented extensive evidence that he began using alcohol and drugs at a young age.[12] Evidence from several witnesses indicated that once Boyd began using drugs, he changed from being caring and helpful to being distant and aloof. Dr. Gragg diagnosed Boyd with "Marijuana Dependence"

[12]Evidence indicated that Boyd drank alcohol at a young age and that at age 13 he began smoking marijuana (R. 400.) Further, Boyd began taking "Maxx Alert" brand pills that contained ephedrine and began using cocaine, heroin, and prescription pain medications. (C. 513.)

and "Alcohol Abuse." (C. 337.) Boyd asserts that his extensive drug use exacerbated what he describes as his psychological and emotional underdevelopment. He contends that the circuit court should have concluded that this Henderson factor was a mitigating factor.

The circuit court's order reflects that it considered evidence of his "use and abuse of drugs and alcohol." (C. 335.) The court noted that the evidence was disputed as to whether Boyd was using drugs or alcohol at the time of the murder. The circuit court resolved that dispute in the evidence against Boyd, concluding that he "was not impaired at the time of the" murder. (C. 336.) The circuit court noted, however, that "the pursuit of drug and alcohol money may have been a motivating factor in the crime." (C. 336.)

Boyd has not demonstrated that the circuit court abused its discretion in evaluating this Henderson factor.

J.

Boyd argues that the circuit "court failed to appropriately consider, as a mitigating factor, Nathan Boyd's twisted view of the role of law enforcement in the prosecution of crimes against persons." (Boyd's brief, p. 64.) This

argument is directed to the 10th factor listed in Henderson: "the juvenile's ability to deal with the police." Henderson, 144 So. 3d at 1284.

As to this factor, the circuit court stated in its order:

> "The Court considered evidence of [Boyd's] interaction with the police at the time of his arrest and the fact that [Boyd's] juvenile record[13] had made him acquainted with a number of law-enforcement officials. The recordings of his two statements made to the police do not demonstrate a frightened, intimated child.
>
> "There was evidence that [Boyd] had been a police informant regarding drug activity and that he had participated in a 'DARE Program'[14] conducted by law enforcement. The court finds that [Boyd's] youth did not disadvantage him as he dealt with law enforcement in this case."

(C. 336-337.)

Boyd "take[s] extreme issue with this reasoning." He argues:

"[B]eing forced, as a young child to sit through

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[13]Boyd's juvenile record is discussed below in Part II.M. Stated briefly, that record included delinquency proceedings on the offenses of first-degree theft, theft of a gun, receiving stolen property, and forgery. Boyd had been sent to boot camp and to a juvenile facility at Mt. Meigs. (R. 100-10.)

[14]Testimony indicated that the "DARE Program" was a "drug resistance program that was done for ... fourth, fifth, [and] sixth graders in school." (R. 38.)

> periodic mandatory D.A.R.E. programs at one's public elementary and/or middle school no more prepares that person for adult-level adversarial dealings, during a murder investigation, with law enforcement personnel than would sitting through a few 'Bill Nye the Science Guy' programs qualify a person to have a meaningful and mutually educational discussion about astrophysics with a member of the International Space Station, and to claim otherwise is disingenuous."

(Boyd's brief, pp. 64-65.) Even if we were to assume there is merit to Boyd's argument, the circuit court's order indicates it did not rely solely on evidence of Boyd's participation in the "DARE Program" in reaching its conclusion. Boyd has not demonstrated that the circuit court abused its discretion in relying on that evidence.

Boyd's remaining arguments on this issue are that his experiences--particularly with his father, with DHR, and with a sheriff's deputy--"must have [made him] incredibly confused about the role of law enforcement in assisting those in need of protection and in prosecuting law violators." (Boyd's brief, p. 65.) He asserts "it is not difficult to imagine that Boyd must have believed law enforcement was statistic-oriented toward protecting their own interests and nothing more." (Boyd's brief, pp. 65-66.) Again, Boyd merely disagrees with the circuit court's conclusion in this regard; he has not

demonstrated that the circuit court abused its discretion.

K.

Boyd argues that the circuit "court failed to appropriately consider, as a mitigating factor, Nathan Boyd's extensive history of untreated mental illness." (Boyd's brief, p. 67.) This argument is directed to the following Henderson factor: "the juvenile's mental-health history." Henderson, 144 So. 3d at 1284.

The circuit court stated the following as to this factor:

> "The court considered evidence of [Boyd's] mental-health history, including his participation in counseling with Dr. James Megar and other counselors, including Dr. Amanda Mumford, a board-certified psychiatrist. The evidence also indicated that [Boyd] received treatment at Decatur West Hospital and Riverbend Center for Mental Health.
>
> "When Dr. Gragg reviewed [Boyd's] mental-health records, he found diagnoses of 'Adjustment Disorder with Mixed Disturbances of Emotional and Conduct, Conduct Disorder, Marijuana Dependence, and Alcohol Abuse.' He noted that mental-health services had 'mostly been the result of behavioral problems and intra-family conflicts.' (Dr. Gragg, Forensic Evaluation, p. 7.)
>
> "By late October 1999, [Boyd] was diagnosed with 'Dysthymia, (RO) Post Traumatic Stress Disorder, and Attention Deficit Hyperactivity Disorder (by history).' Dr. Gragg found that
>
> > "'... there does not appear to be any reason to suspect that his behaviors during

> the time period in question were a result of psychiatric symptomatology. It does not appear that he was acting as an individual out of touch with reality, responding to command hallucinations, or in accord with a delusional thought system. Statements made in the current interview seem to indicate that his behaviors with respect to the alleged offense were purposeful and goal-directed. His account of the events leading up to, during, and following the alleged offense seem to suggest and (sic) understanding on his part of the criminality of the behaviors of which he stands accused.'
>
> "(Dr. Gragg, Forensic Evaluation, pp. 7-8.)
>
> "[Boyd's] mental-health history was considered as a mitigating factor at the original sentencing hearing. (Sentencing Order, pp. 7-8.) [Boyd] was evaluated by his own expert, Dr. Shaffer. Dr. Shaffer diagnosed [Boyd] with PTSD and depression. This diagnosis was made in 2018. Dr. Shaffer acknowledged that PTSD could have been caused by [Boyd's] involvement in the crime itself or traumatic events he has witnessed while in prison. Witness Selwin Jones testified that [Boyd] related to him that he had seen murders while in prison.
>
> "The court finds that [Boyd] did not have a diagnosis of a major thought disorder or any severe mental illness at the time of the crime. The court finds that his mental-health history was not an overriding factor in impacting his actions and involvement in the murder of the victim."

(C. 337-38.)

In support of his argument, Boyd cites three suicide attempts, the last of which resulted in a stay of more than a

week at Decatur West Hospital. He recounts much of the evidence referenced in the circuit court's order and states his disagreement with the circuit court's conclusions as to this issue. Again, however, the circuit court's conclusions in this regard were supported by evidence, and Boyd has not shown that the circuit court abused its discretion.

L.

Boyd argues that the circuit "court failed to appropriately consider, as a mitigating factor, Doctor Robert Shaffer's expert opinion that, if given access to appropriate medications and counseling, Nathan Boyd is absolutely capable of rehabilitation." (Boyd's brief, p. 70.) This argument is addressed to the 13th Henderson factor: "the juvenile's potential for rehabilitation." 144 So. 3d at 1284.

The circuit court stated the following as to this factor:

> "The court considered evidence as to [Boyd's] present potential for rehabilitation. The court finds that his potential for rehabilitation is bleak. In addition to the evidence of failed efforts to rehabilitate [Boyd] prior to this crime, the court considered evidence from [Boyd's] expert, who testified that even now, at age 37, he exhibits lack of impulse control and has poor insight. The expert testified that the release of [Boyd] into society could pose a risk to others."

(C. 339.)

Boyd disagrees with this conclusion. He cites other opinion testimony from Dr. Shaffer that Boyd contends shows "that Boyd can be rehabilitated." (Boyd's brief, p. 71.) Boyd blames the failure of prior rehabilitation efforts on his father, who "neither allowed Boyd to take the prescribed medications, nor to regularly attend the recommend counseling sessions," and who "refused to allow [Boyd] to take advantage of [community resources that were offered to Boyd]." (Boyd's brief, p. 72.)

In another section of its order, the circuit court addressed the failure of past rehabilitation efforts that had been directed toward Boyd.[15] The court found Boyd's argument "that there had been a 'systemic failure' in the community to appropriately treat [Boyd]" was "without merit." (C. 339.) The circuit court cited evidence of "many rehabilitation efforts that were attempted by various service providers in the community, including his school, his church, the Juvenile Probation Office, DHR, and counselors." (C. 339.) The circuit

[15]The circuit court addressed this evidence as a part of its consideration of "any other relevant factor related to the juvenile's youth," the 14th factor identified in Henderson, supra.

court found that "[t]he various service providers who interacted with [Boyd] were ready, willing, and able to provide him with rehabilitation. He chose not to accept rehabilitation." (C. 339.)

Boyd's different conclusion based on his own interpretation of the evidence does not demonstrate that the circuit court abused its discretion. The record supports the circuit court's conclusion in this regard.

M.

Boyd's final argument is that the circuit "court erred in considering Nathan Boyd's juvenile court record to be an aggravating factor." (Boyd's brief, p. 73.) The circuit court expressly mentioned Boyd's juvenile court record in its consideration of the 14th Henderson factor, i.e., "any other relevant factor related to the juvenile's youth." 144 So. 3d at 1284. As to Boyd's juvenile court record, the circuit court stated:

> "[Boyd's] extensive juvenile delinquency record cannot be ignored. The State introduced the court juvenile record through the testimony of the clerk of the court. Those records reflect that [Boyd] had 16 involvements with the juvenile court beginning at age 14 with the last involvement (which did not result in an adjudication) just six days before the murder. Those charges ranged from [child in need of

> supervision] ungovernable to delinquencies based on burglary and to theft of a gun."

(C. 340.)

First, Boyd's characterization of the circuit court's order as treating this history as "an aggravating factor" is wrong. There is no indication that the circuit court treated this evidence as "an aggravating factor." Rather, it stated that the evidence "cannot be ignored."

Second, Boyd's arguments as to this issue are, again, merely a disagreement with the circuit court's conclusions regarding the evidence of Boyd's juvenile record. The circuit court was not required to agree with Boyd's characterization of the evidence, and Boyd has not demonstrated the circuit court abused its discretion in not doing so.

Conclusion

The judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.