IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

YU QUN,
Defendant-Appellant.

Supreme Court No. 2015-SCC-0018-CRM

Superior Court No. 10-0154

OPINION

Cite as: 2016 MP 19

Decided December 29, 2016

Matthew C. Baisley, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

Stephen J. Nutting, Saipan, MP, for Defendant-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 Defendant-Appellant Yu Qun ("Yu Qun") appeals his sentence of twenty-five years for a drug trafficking conviction. He argues the mandatory minimum sentence of twenty-five years as set forth in 6 CMC § 2141(b)(1) is grossly disproportionate to the crime and therefore, violates the Cruel and Unusual Punishment Clause of the Eighth Amendment of the United States Constitution. For the reasons stated below, we AFFIRM the sentence.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Yu Qun was convicted of two counts of Trafficking of a Controlled Substance, in violation of 6 CMC § 2141(a)(1); one count of Conspiracy to Commit Trafficking of a Controlled Substance, in violation of 6 CMC § 303(a); three counts of Assault with a Dangerous Weapon, in violation of 6 CMC § 1204(a); two counts of Possession of a Controlled Substance, in violation of 6 CMC § 2142(a); one count of Obstruction of Justice, in violation of 6 CMC § 3302; and one count of Resisting Arrest, in violation of 6 CMC § 1434(a).

¶ 3 The facts underlying the convictions involve Yu Qun selling methamphetamine hydrochloride ("meth") to a cooperating source in an undercover operation. A local drug enforcement task force initiated two controlled buys from Yu Qun and his girlfriend. The first buy was a buy-walk operation in which Yu Qun sold $200 of meth to the cooperating source and was allowed to walk. The second buy was a buy-and-bust operation. There, Yu Qun sold approximately 2.5 grams of meth to the cooperating source for $295, and authorities moved in to arrest Yu Qun.

¶ 4 When officers attempted the arrest, Yu Qun fled the scene in a vehicle. While fleeing, he rammed into a police car, injuring an officer, and engaged in a high speed car chase swerving into other lanes and almost colliding with an oncoming traffic. During the chase, he unloaded a gun and threw the bullets and other items out of the car window. The police later recovered the items and determined them to be drugs, money, and other objects related to the trafficking and sale of illegal narcotics. After an approximately forty-minute car chase, Yu Qun crashed into a septic tank and fled into the jungle on foot, leaving his girlfriend and the cooperating source behind.[1] Yu Qun escaped authorities for three weeks, but was later apprehended near Cow Town in Marpi, an isolated part of Saipan.

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[1] Police searched Yu Qun's two residences and found drugs, drug paraphernalia, and 544 grams of a meth-like substance, which the lab analysis later revealed as sugar.

¶ 5 Based on the crimes, the egregiousness of Yu Qun's actions, and the danger he posed to the community, the trial court sentenced him to serve twenty-eight years in prison: twenty-five years each for the two counts of Trafficking of a Controlled Substance to run concurrently; ten years for the count of Conspiracy to Commit Trafficking of a Controlled Substance to run concurrently; three years each for the three counts of Assault with a Dangerous Weapon, six years to run concurrently and three years to run consecutively; three years each for the two counts of Illegal Possession of a Controlled Substance, all suspended and to run concurrently; one year for the count of Obstruction of Justice to run concurrently; and one year for the count of Resisting Arrest to run concurrently.

¶ 6 Yu Qun timely appeals his sentence term of twenty-five years set forth in 6 CMC § 2141 (b)(1).[2]

II. JURISDICTION

¶ 7 We have jurisdiction over Superior Court final judgments and orders. NMI CONST. art. IV, § 3.

III. STANDARD OF REVIEW

¶ 8 Yu Qun argues the mandatory minimum sentence of twenty-five years for drug trafficking offense as set forth in 6 CMC § 2141(b)(1) is grossly disproportionate to the crime, and therefore, violates the Cruel and Unusual Punishment Clause of the Eighth Amendment of the United States Constitution.[3] We review constitutional questions de novo. *Commonwealth v. Calvo*, 2014 MP 7 ¶ 14.[4]

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[2] Yu Qun's trial counsel failed to file an appeal. Yu Qun then petitioned for a writ of habeas corpus arguing ineffective assistance of counsel. On September 23, 2015, the habeas court granted the petition concluding the appropriate remedy was to permit filing an appeal and concluded its order served as a resentencing and judgment of conviction for the purposes of the appeal timeline.

[3] The Eighth Amendment of the United States Constitution is made applicable within the Northern Mariana Islands by Section 501(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Additionally, Article I, Section 4 (f)–(i) of the NMI Constitution mirrors the Eighth Amendment of the United States Constitution prohibiting cruel and unusual punishment. Accordingly, federal case law interpreting the Eighth Amendment is applicable to the Commonwealth. *See Commonwealth v. Minto*, 2011 MP 14 ¶ 22 (noting that when Commonwealth Constitution is analogous to the United States Constitution, federal case law interpreting the United States Constitution is applicable in the Commonwealth).

[4] We note that the Eighth Amendment challenge is raised for the first time on appeal. Generally, we do not entertain issues raised for the first time. However, the issue involves a question of law and not of fact, and therefore, we may entertain the appeal. *Ada v. Sablan*, 1 NMI 415, 426 n.12 (1990).

IV. DISCUSSION

¶ 9 The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend VIII. To determine whether a punishment is cruel and unusual, we must look to "'the evolving standards of decency that mark the progress of a maturing society.'" *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). We do so because what constitutes cruel and unusual punishment is not simply illustrative but involves a "moral judgment." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008). "The standard itself remains the same, but its applicability must change as the basic mores of society change." *Id.* (Burger, C.J., dissenting) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972)).

¶ 10 The Eighth Amendment, which includes the Cruel and Unusual Punishment Clause, forbids the imposition of "inherently barbaric punishments." *Graham v. Florida*, 560 U.S. 48, 59 (2010). The Clause calls attention to the indispensable duty of the government to respect human dignity even of those who are convicted with atrocious crimes. *Id*. The greater part of American jurisprudence on the Cruel and Unusual Punishment Clause, however, does not involve punishments that are barbaric, but rather those that are disproportionate to the crime. *Id.*

¶ 11 Justice requires that imposition of punishment be "graduated and proportioned" to the crime. *Weems v. United States*, 217 U.S. 349, 367 (1910). Indeed the constitutional protection of the Eighth Amendment does not necessitate strict proportionality between crime and punishment, but "forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in judgment) (quoting *Solem v. Helm*, 463 U.S. 277, 288, 303 (1983)).

¶ 12 United States Supreme Court decisions provide two general classifications where disproportionate sentences may violate the Eighth Amendment. First, under the narrow proportionality approach, sentences can be struck down if the length of the term-of-years is unconstitutionally excessive. *Solem*, 463 U.S. at 290; *Graham*, 560 U.S. at 59. Second, under the categorical approach, sentences may be deemed cruel and unusual based on the categorical restrictions concerning death penalty or juveniles. *See Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455, 2463–64 (2012). For example, imposing death penalty for non-homicide offenses, or on juvenile offenders or the intellectually disabled, has been held unconstitutional. *See e.g.*, *Kennedy*, 554 U.S. at 421 (holding that capital punishment for rape of a minor is unconstitutional); *Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (concluding that it is unconstitutional to impose capital punishment on intellectually disabled defendants); *Roper v. Simmons*, 543 U.S. 551, 575 (2002) (concluding that the imposition of capital punishment for juvenile offenders under eighteen violates the Eighth Amendment). Also, imposing life imprisonment or mandatory life-without-

parole sentences on juveniles has been held unconstitutional. *See Graham*, 560 U.S. at 82 ("The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide."); *Miller*, 132 S. Ct. at 2464 ("[M]andatory life-without-parole sentences for juveniles violate the Eighth Amendment.").

¶ 13 Yu Qun challenges his sentence under both classifications.

A. Narrow Proportionality

¶ 14 The narrow proportionality principle has been a subject of tension and debate in the United States Supreme Court as to whether the Eighth Amendment truly encompasses a proportionality guarantee. In the leading Supreme Court case *Harmelin v. Michigan*, the controlling opinion concluded the Eighth Amendment contains a narrow proportionality principle that prohibits only "extreme sentences" that are "grossly disproportionate" to the crime, 501 U.S at 1000–01 (Kennedy, J., concurring in part and concurring in judgment), while the majority opinion, authored by Justice Scalia, concluded that it does not contain a proportionality principle at all. *Id.* at 965. The concurring justices in *Harmelin* noted "[the narrow proportionality principle's] precise contours are unclear" because the proportionality rule has been applied in only a handful of cases and sentences of dissimilar nature. *Id.* at 998. It also noted that there appeared to be an internal inconsistency within Supreme Court decisions in analyzing and applying the proportionality standard. *Id.* at 998 ("Our most recent pronouncement on the subject in *Solem*, furthermore, appeared to apply a different analysis than in *Rummel* and *Davis*."). Notwithstanding the inconsonance, the *Harmelin* Court examined its prior decisions and deduced four principles common to the application and confines of the narrow proportionality review.

¶ 15 First, establishing a term of sentence for a particular crime entails a "substantive penological judgment that, as a general matter, is 'properly within the province of legislatures, not courts.'" *Harmelin*, 501 U.S. at 998 (quoting *Rummel v. Estelle*, 445 U.S. 263, 275–76 (1980)). This is because assessing the characteristics and goals of criminal punishment involves "difficult and enduring questions respecting the sanctity of the individual, the nature of law, and the relation between law and the social order." *Id.* Nor is this a recently emerging theory. In 1958, the Court noted: "Whatever views may be entertained regarding severity of punishment, whether one believes in its efficacy or its futility, . . . these are peculiarly questions of legislative policy." *Gore v. United States*, 357 U.S. 386, 393 (1958). Accordingly, the Court noted great deference must be given to the decisions of the legislature. *Harmelin*, 501 U.S. at 999 (citing *Solem*, 463 U.S. at 290).

¶ 16 Second, the Eighth Amendment does not require "adoption of any one penological theory." *Harmelin*, 501 U.S. at 999. Acceptable penological schemes have been based on a wide variety of theories, including retribution,

deterrence, incapacitation, and rehabilitation. No one scheme is considered superior or more legitimate than the other. *Id.*

¶ 17 Third, "marked divergences both in underlying theories of sentencing and in the length of prescribed prison terms are the inevitable, often beneficial, result of the federal structure." *Id*. Each State has broad power to legislate its morality through criminal law, and the federal system acknowledges that authority. *Id.* (citing *McCleskey v. Zant*, 499 U.S. 467, 491 (1991)) ("Our federal system recognizes the independent power of a State to articulate societal norms through criminal law."). States may differ in their opinions as to penological assumptions. Accordingly, a State may have the harshest penalty for a particular offense when compared to other jurisdictions; however, that does not automatically make the penalty grossly disproportionate. *Id*. at 999–1000.

¶ 18 Fourth, proportionality review must be "informed by objective factors to the maximum possible extent." *Harmelin*, 501 U.S. at 1000 (internal quotation marks and citations omitted). One objective factor frequently discussed in United States Supreme Court decisions is a type of punishment imposed on a criminal defendant—the death penalty. The death penalty is different from other types of punishments, and thus, an "objective line" between capital punishment and length of term-of-years sentence can be drawn. *Id*. at 1000–01. In noting this, the Court recognized that it "lack[ed] clear objective standards to distinguish between sentences for different terms of years." *Id*. at 1001; *see also Solem*, 463 U.S. at 294 ("It is clear that a 25-year sentence generally is more severe than a 15-year sentence, but in most cases it would be difficult to decide that the former violates the Eighth Amendment while the latter does not."). For this reason, the Court noted that successful Eighth Amendment challenges to non-capital punishments are extremely rare. *Harmelin*, 501 U.S. at 1001.

¶ 19 In determining whether the punishment is cruel and unusual under the narrow proportionality review, the analysis begins with a threshold question that compares the "gravity of the offense and the severity of the sentence." *Graham*, 560 U.S. at 60 (citing *Harmelin*, 501 U.S. at 1005). "[I]n the rare case in which this threshold comparison . . . leads to an inference of gross disproportionality[,] the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions." *Id.* (internal quotation marks and citations omitted). If the intra and inter-jurisdictional assessment confirms the initial finding of gross disproportionality, then the sentence will be deemed cruel and unusual. *Id*. However, if there is no inference of disproportionality, then the analysis is at its end. *See Harmelin*, 501 U.S. at 1005.

¶ 20 Yu Qun argues twenty-five years imprisonment is a grossly disproportionate punishment to the crime of trafficking meth. Additionally, he

asserts the sentencing scheme is unconstitutional because it fails to consider any mitigating and aggravating circumstances, such as the amount of meth.[5]

¶ 21 We determine that his constitutional claim fails for two reasons. First, Yu Qun does not properly raise his arguments on appeal. We have repeatedly held that a "party waives any issue it has not sufficiently developed." *Commonwealth v. Calvo*, 2014 MP 10 ¶ 8. While acknowledging that narrow proportionality review must begin with a threshold inquiry that compares the gravity of the offense and harshness of the penalty, Yu Qun fails to develop the appropriate legal analysis. He only asserts generally that the mandatory minimum sentence of twenty-five years is grossly disproportionate to the crime of drug trafficking, but does not explain why the length of imprisonment is unconstitutionally excessive compared to the gravity of the offense.[6]

¶ 22 Second, the threshold comparison of his crime and punishment does not lead to an inference of gross disproportionality. The facts in *Harmelin*, which are substantially similar to the case at bar, bolster this determination.

¶ 23 In *Harmelin*, the defendant was convicted of possession of more than 650 grams of cocaine. Pursuant to a Michigan statute, he received a mandatory sentence of life without parole. The defendant appealed arguing the sentence violated the Cruel and Unusual Punishment Clause of the Eighth Amendment. The Michigan Court of Appeal reversed the conviction on other grounds, but on petition for rehearing, the Court of Appeal vacated its prior decision and affirmed the sentence. The Michigan Supreme Court denied leave to appeal. On

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[5] In the context of the Eighth Amendment, the United States Supreme Court stated that individualized sentencing is not required in non-capital cases. *Harmelin*, 501 U.S. at 1006. Thus, we conclude Yu Qun has no constitutional guarantee of individualized sentencing under the Eighth Amendment. Further, we disagree with his argument that the trial court was deprived of discretion in imposing the mandatory minimum sentence of twenty-five years. In *Commonwealth v Diaz*, we held the theoretical minimum penalty under 6 CMC § 2141(b)(1) is not twenty-five years of incarceration but a nominal fine of $10,000. Here, the court had the option to impose a lesser sentence of a nominal fine instead of imprisonment. However, it chose to impose the prison term. It is clear from the record that the court was not deprived of discretion in sentencing Yu Qun. Additionally, Yu Qun's argument that the minimal amount of meth involved should warrant a shorter sentence is without merit. The United States Supreme Court rejected a similar argument. *Hutto v. Davis*, 454 U.S. 370, 373 n.2 (1983) (rejecting the lower court's implication that a lesser amount of illegal drugs should mandate a shorter prison sentence).

[6] For instance, in assessing the gravity of offense, courts have reviewed certain factors including the circumstances of the crime, *Enmund v. Florida*, 458 U.S. 782, 797–801 (1982); seriousness of the crime, *Coker v. Georgia*, 433 U.S. 584, 597–98 (1977); nature of the crime, *Robinson v. California*, 370 U.S. 660, 666–67 (1962); or the moral guilt of a defendant, *Enmund*, 458 U.S. at 800. Yu Qun fails to address any of these factors.

certiorari, the United States Supreme Court affirmed the sentence. In assessing the gravity of the offense, the Supreme Court noted that the crime "falls in a different category from the relatively minor, nonviolent crime at issue in *Solem*." *Harmelin*, 501 U.S. at 1002. It stated, "Possession, use, and distribution of illegal drugs represent 'one of the greatest problems affecting the health and welfare of our population.'" *Id.* (quoting *Treasury Emps. v. Von Raab*, 489 U.S. 656, 668 (1989)). Further, the Court flatly rejected the defendant's assertion that the crime was nonviolent and victimless. *Id*. Instead, the Court stated that the crime "threatened to cause grave harm to society" because:

> (1) A drug user may commit crime because of drug-induced changes in physiological functions, cognitive ability, and mood; (2) A drug user may commit crime in order to obtain money to buy drugs; and (3) A violent crime may occur as part of the drug business or culture.

Id. at 1002–03 (citing Goldstein, Drugs and Violent Crime, in Pathways to Criminal Violence 16, 24–36 (N. Weiner & M. Wolfgang eds. 1989)). Noting that there is a direct relationship between illegal drugs and crimes of violence, the Supreme Court concluded that the "Michigan Legislature could with reason conclude that the threat posed to the individual and society by possession of this large an amount of cocaine—in terms of violence, crime, and social displacement—is momentous enough to warrant the deterrence and retribution of a life sentence without parole." *Id.* at 1003.

¶ 24 The use of illegal drugs, including meth, is an epidemic in the Commonwealth of the Northern Mariana Islands. PL 11-24, § 1. The Commonwealth Legislature's findings under Public Law 7-42 echoed the sentiments of the *Harmelin* Court, that drug abuse, especially of meth, threatens the safety and welfare of our community. PL 7-42, §§ 2–3. Further, the Legislature found the potential harm and violence against law enforcement officers grave, and determined implementing a stronger rule of law necessary. *Id.*

¶ 25 Seven years after Public Law 7-42 became effective, the Legislature increased the mandatory minimum sentence for the manufacture, delivery, or possession (with intent to manufacture, deliver or dispense) of meth from five years to twenty-five years, finding that it "[became] necessary to impose severe penalties on those, who, without conscience, would so prey on our society as to threaten its very survival." PL 11-24, §§ 1–3. Thus, like the *Harmelin* Court, we determine that the Commonwealth Legislature could, with reason, conclude that the threat posed to the people of the CNMI by meth is significant enough to mandate the deterrence and retribution of a twenty-five years sentence without parole. We find that such penological judgment is within the province of the Legislature and does not constitute cruel and unusual sentencing scheme prohibited by the Eighth Amendment.

¶ 26 Additionally, given the circumstances of the case at bar, we conclude that the punishment is not grossly disproportionate to the gravity of offense. Yu Qun's actions involved a greater degree of criminal culpability than one without intentional wrongdoing. *See Enmund*, 458 U.S. at 800 (stating that defendant's moral guilt is critical in assessing the degree of criminal culpability). Not only did Yu Qun deliver drugs, but he also resisted arrest, obstructed justice, and endangered the public while in flight. The factual record supports the trial court's finding that the twenty-five year sentence is not unreasonable in view of Yu Qun's egregious acts and the danger he presented to the community.

¶ 27 Indeed, the United States Supreme Court has identified a term-of-years sentence as grossly disproportionate in only one case. *See Solem*, 463 U.S. at 303. In *Solem*, a life without parole sentence for a defendant who committed a nonviolent felony of uttering a "no account" check for $100, was held unconstitutional. *Id*. The Court concluded the defendant's sentence was grossly disproportionate because his crime was nonviolent, "one of the most passive felonies a person could commit," *id.* at 296 (internal quotation marks and citations omitted), while the penalty was "the most severe" non-capital sentence. *Id.* at 297.[7]

¶ 28 The crime and sentence in *Solem* are clearly distinguishable from Yu Qun's. The crime of drug trafficking is not a passive felony, and twenty-five years is not the most severe non-capital sentence. Though we recognize that the term of imprisonment mandated by the statute is harsh, Yu Qun's sentence did not exceed constitutional bounds established by the United States Supreme Court decisions. *See e.g., Hutto v. Davis*, 454 U.S. 370 (1983) (concluding sentence of 40 years and a fine of $20,000 for possession and distribution of nine ounces of marijuana did not violate the Eighth Amendment); *Ewing v. California*, 538 U.S. 11 (2003) (rejecting an Eighth Amendment challenge to a twenty-five years to life sentence for theft of golf clubs under the California recidivist sentencing scheme).

¶ 29 Because the threshold inquiry does not lead to an inference of gross disproportionality, we conclude that Yu Qun's sentence does not violate the Cruel and Unusual Punishment Clause under the narrow proportionality review.

B. Categorical Approach

¶ 30 To determine whether there has been a violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment under the categorical

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[7] Following *Solem*, the United States Supreme Court has consistently denied proportionality challenges to prison sentences. *See e.g., Harmelin*, 501 U.S. at 1009 (concluding no Eighth Amendment violation on life without parole sentence for possession of cocaine); *Ewing*, 538 U.S. at 30 (rejecting an Eighth Amendment challenge to a twenty-five years to life sentence for the theft of golf clubs under the California recidivist sentencing scheme).

approach, we first consider the "'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." *Graham*, 560 U.S. at 61 (quoting *Roper*, 543 U.S. at 563). 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 in the exercise of its own independent judgment whether the punishment in question violates the Constitution." *Id.* (quoting *Kennedy*, 554 U.S. at 421). Under this inquiry, we consider the fault of the offender in view of the offense and characteristics and whether the sentencing practice at issue serves "legitimate penological goals." *Id.* at 67.

¶ 31 Here, we need not examine Yu Qun's sentence under the categorical approach because it does not fall within the ambit of sentencing practice that requires constitutional proportionality. The United States Supreme Court has only applied the categorical rule in sentences involving death penalty, juveniles, or intellectually disabled, but not in the length of term-of-years sentence as here. *E.g.*, *Miller*, 132 S. Ct. at 2460 (holding that mandatory life-sentence-without-parole for juveniles is unconstitutional); *Graham*, 560 U.S. at 82 (holding life sentence for juveniles with non-homicide offenses violates the Eighth Amendment); *Kennedy*, 554 U.S. at 421 (concluding capital punishment for raping a minor violates the Eighth Amendment); *Atkins*, 536 U.S. at 321 (concluding imposing the death penalty on a defendant with an intellectual disability violates the Eighth Amendment); *Enmund*, 458 U.S. at 798 (concluding that death penalty for criminal defendant who did not kill or did not have an intent to kill violates the Eighth Amendment).[8]

¶ 32 When sentences do not fall within those few specific ambits, courts have declined to apply the categorical rule. For example, in *United States v. Shill*, the defendant was convicted of online enticement of a female minor to engage in sexual activity. 740 F.3d 1347, 1349 (9th Cir. 2014). He challenged his sentence of mandatory ten years of imprisonment as cruel and unusual. The Ninth Circuit declined to apply the categorical approach because it was not the "type of sentencing practice that requires categorical rules to ensure constitutional proportionality. [The defendant] is not a juvenile, and his ten year mandatory minimum sentence is in no way akin to the death penalty." *Id.* at 1357. Here, as in *Shill*, a categorical challenge is not apt because Yu Qun is not a juvenile and a twenty-five years prison sentence is not akin to the death

[8] The categorical challenge has been extended in its application from the death penalty to life without parole in juvenile cases, in part, because the United States Supreme Court has concluded that life without parole sentences "share some characteristics with death sentences that are shared by no other sentences." *Graham*, 560 U.S. at 69.

penalty. Accordingly, Yu Qun's Eighth Amendment challenge under the categorical approach fails.

IV. CONCLUSION

¶ 33 For the foregoing reasons, we AFFIRM the sentence.

SO ORDERED this 29th day of December, 2016.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice