No.

IN THE

Supreme Court of the United States

JOEY M. CHANDLER,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

2. Whether Joey Chandler's life without parole sentence violates the Eighth Amendment because the sentencing judge failed to consider substantial, unrebutted evidence of his rehabilitation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Joey Montrell Chandler respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Mississippi in this case.

OPINIONS AND ORDERS BELOW

The order of the Circuit Court of Clay County, Mississippi reinstating petitioner's sentence of life without possibility of parole (Pet. App. 20a–27a) is unpublished. The opinion of the Supreme Court of Mississippi affirming the circuit court (Pet. App. 3a–19a) is published at 242 So. 3d 65 (Miss. 2018). The order of the Supreme Court of Mississippi denying rehearing (Pet. App. 1a–2a) is unpublished.

JURISDICTION

The Supreme Court of Mississippi's order denying rehearing was entered May 17, 2018. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the U.S. Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

INTRODUCTION

This case aligns perfectly with the Court's criteria for granting review. The first question presented—whether the Eighth Amendment requires a finding of permanent incorrigibility to sentence a juvenile homicide offender to life without parole—is the subject of a deep and acknowledged split among federal circuits and state courts of last resort. The Supreme Court of Mississippi resolved the question in a reasoned, published decision over a four-justice dissent. The question is both outcome-determinative for Joey Chandler and nationally important. The constitutional rule that courts may sentence only rare, permanently incorrigible juvenile homicide offenders to life without parole cannot be enforced without a requirement to *find* permanent incorrigibility before imposing this extraordinary penalty. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016).

This case illustrates that very point. Petitioner presented unrebutted evidence of his rehabilitation, evidence that the dissenting justices called "substantial." Pet. App. 14a. But the trial court—freed from a finding requirement—did not address this evidence in its order imposing a life without parole sentence. Instead, the court digressed about World War II and the unrelated murder of a federal judge's father.

In the alternative, the Court should grant review on a narrower question—whether the sentence in this case violates the Eighth Amendment because the sentencing court refused to consider the substantial, unrebutted evidence of petitioner's rehabilitation in determining whether to impose a life without parole sentence. Instead, the court elected to leave the con-

sideration of petitioner's rehabilitation to the "Executive Branch," which "has the ability to pardon and commute sentences in this State should it deem such action warranted." Pet. App. 26a–27a.

STATEMENT

1. When he was a student in high school, Joey Chandler learned his girlfriend was pregnant. Pet. App. 4a, 21a. He planned to "help pay for the expenses associated with [his] child" by selling marijuana. Pet. App. 24a.

One night, while Joey[1] was in a club, his cousin Emmitt Chandler broke into his car and stole as much as one pound of marijuana. Pet. App. 20a–21a. Joey told a friend that unless he—Joey—got the marijuana back, someone was going to kill him or his family. *Chandler v. State*, 946 So.2d 355, 357 (Miss. 2006). Joey knew who had broken into his car, and the next day, he borrowed a handgun from his uncle and confronted Emmitt. R. 34.[2] The confrontation ended in Emmitt's death: Joey shot him twice, killing him. *Id*. Joey was seventeen years old; Emmitt was nineteen. Pet. App. 21a.

Back home, shortly after the shooting, Joey told his father what he had done. Supp. Tr. 47. He begged his father to "get Momma and my little sister out of this country . . . because somebody is going to hurt

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[1] The petition refers to Mr. Chandler as "Joey" because others involved in the relevant events have the same last name.

[2] Herein, all references to "R." and "Supp. Tr." are to the record clerk's papers and record transcript on file with the Supreme Court of Mississippi, No. 2015-KA-01636-SCT.

them." Supp. Tr. 48. And he asked his father to take him to the police. *Id.*

In 2005, Joey was convicted of murder and sentenced to life in prison without the possibility of parole. Pet. App. 4a.

2. Following this Court's opinion in *Miller v. Alabama*, 567 U.S. 460 (2012), Joey moved to be resentenced to life with the possibility of parole. Pet. App. 4a. The Circuit Court of Clay County, Mississippi held a hearing on the matter in January 2015. *Id.*

At the hearing, the State called three witnesses. They testified to the pain Emmitt's murder had caused them, Supp. Tr. 9, 13, 18, and expressed the belief that resentencing Joey to life with the possibility of parole would be unjustly lenient. Supp. Tr. 10, 14, 19. For instance, one witnesses testified that "they need to torture [Joey] for the rest of his life . . . . You need to be tortured every day you wake up on earth; every day . . . . He needs to sit there and rot." Supp. Tr. 14–15.

Joey called four witnesses. Supp. Tr. 20, 35, 44, 56. Among other things, these witnesses testified to four principal points. First, Joey had availed himself of educational and rehabilitative programs while in prison. He completed anger-management counseling and drug counseling. Supp. Tr. 60. He earned his GED and completed college-level coursework in Bible studies. Supp. Tr. 60, 61. He earned certificates in construction-related trade skills, such as HVAC maintenance. Supp. Tr. 29, 61. And he finished 1200 of 1600 hours of work required for a certificate in automotive repair. Supp. Tr. 61–62.

Second, Joey's disciplinary record, spanning roughly a decade of incarceration, was nearly spotless. He had been written up only twice—both times for possessing a cell phone. Supp. Tr. 62. And he had not committed a single rule violation in the five years before the hearing. Supp. Tr. 28, 62.

Third, Joey had, with effort, avoided affiliation with prison gangs, Supp. Tr. 50;[3] developed a "great bond" with his son, Supp. Tr. 59; and recently married a woman from the community, Supp. Tr. 57.

Fourth, if paroled, Joey would have a job and a place to live waiting for him. Supp. Tr. 28.

In addition to live testimony, Joey filed ten letters of support from people who knew him. R. 19–29. One letter, from retired state trooper Tommy Coleman, stated: "I have known Joey for over 25 years. I do not condone the terrible crime that he committed but at the time Joey was influenced by peer pressure. I think given a second chance Joey could be an [asset] to the community." R. 23. Another stated: "Joey has put forth tremendous efforts to rehabilitate himself by taking classes and learning different skills and trades that can help him to excel if he gets a second chance at life. Joey has matured from 11 years ago and has a different mindset on life." R. 20.

3. In a ruling issued before this Court's decision in *Montgomery*, the circuit court reinstated Joey's

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[3] One witness testified that Joey had mentored a younger prisoner. Supp. Tr. 49–50. Unknown to Joey, this younger prisoner belonged to a prison gang. *Id.* When the gang targeted Joey for a beating, the younger prisoner intervened, saving Joey at risk to himself. *Id*. When the younger prisoner was released early, Joey's father gave him a job. *Id*.

sentence of life in prison without the possibility of parole. Pet. App. 27a. In justifying this sentence, the court did not mention the substantial evidence of Joey's capacity for rehabilitation.

Although Joey was seventeen years old at the time of the murder, the court considered him "very mature." Pet. App. 26a. According to the court, "[h]e was mature enough to father a child with his girlfriend and he was selling drugs to help pay for the expenses associated with said child." Pet. App. 24a. The court pointed out that another seventeen year old, Jack Lucas, once received a Congressional Medal of Honor for throwing himself atop a grenade to save his comrades during the Battle of Iwo Jima; "[n]o one," wrote the court, "would suggest that [Lucas's] selfless actions were a sign of immaturity." Pet. App. 23a n.4. In the same vein, the court noted that seventeen-year-olds could join the military, drive, obtain an abortion without parental permission, and receive a pilot's certificate. Pet. App. 23a.

The sentencing court noted that Joey was the shooter: he "planned the crime" and was the "sole actor." *Id*. The court opined that the crime was "no less heinous than the case of Napoleon Beazley," a seventeen year old who killed the father of former federal judge J. Michael Luttig, and that this Court "refused to stop Beazley's execution and his death sentence was carried out on May 28, 2002." Pet. App. 26a n.10. The court did not mention that this Court has since categorically barred the execution of juvenile offenders. *See Roper v. Simmons*, 543 U.S. 551 (2005).

The court observed that "[t]he United States Supreme Court . . . talks about rehabilitation and the defendant's prospects for future rehabilitation." Pet.

App. 26a. The court, however, did not make any findings about Joey's rehabilitation or his capacity for rehabilitation, nor did it mention Joey's educational achievements, disciplinary record, or ongoing relationship with his wife and son. Pet App. 14a. Instead, the court "note[d] that the Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted." Pet. App. 26a–27a.

The court entered an order reinstating Joey's sentence of life without the possibility of parole. Pet. App. 27a.

4. The Supreme Court of Mississippi, siting en banc, affirmed in a 5-4 decision.

On appeal, Joey argued that the circuit court had erred by "failing to make any findings concerning [his] capacity for rehabilitation." Pet. App. 10a. *See also* Petitioner's Miss. Sup. Ct. Br. 9 ("The court did not make any finding, or any mention, that Chandler was 'irreparably corrupt' and that a life without the possibility of parole sentence was justified.").

The five-justice majority rejected this argument, concluding that *Miller* and *Montgomery* do not "require trial courts to make a finding of fact regarding a child's incorrigibility." Pet. App. 10a. The majority held that *Miller* does not "mandate[] that a trial court issue findings on each factor." *Id.* Per the majority, the circuit court "exceeded the minimum requirements of *Miller* . . . by specifically identifying every *Miller* factor in its order." *Id.*

The four dissenting justices would have held the trial court's resentencing "insufficient as a matter of law" under the Eighth Amendment. Pet. App. 16a–

17a. While the dissenting justices acknowledged that *Miller* initially did not "impose any specific factfinding requirement on lower courts," they argued that this Court's "recent clarification of *Miller* in *Montgomery*" dictated that "the trial court, at a minimum, should have addressed Chandler's capacity for rehabilitation and made an on-the-record finding that Chandler was one of the rare juvenile offenders whose crime reflected permanent incorrigibility before imposing what in effect is a life-without-parole sentence." Pet. App. 16a.

The dissent observed that the circuit court "failed to address the primary focus of *Miller v. Alabama*, Chandler's capacity for rehabilitation, and did not articulate that Chandler is among 'the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." Pet. App. 13a (quoting *Montgomery*, 136 S. Ct. at 734). The dissent also asserted that "[c]onsideration of the defendant's capacity for rehabilitation is a crucial step in the *Miller* analysis" because it speaks directly to whether the offender is "*permanently* incorrigible." Pet. App. at 13a, 15a. In support of its argument, the dissent explained that in *Montgomery*, this Court "found that the petitioner's evidence of 'his evolution from a troubled, misguided youth to a model member of the prison community' was 'relevant . . . as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.'" Pet. App. 14a (quoting *Montgomery*, 136 S. Ct. at 734 (alterations in original)). "Here," observed the dissent, "the record included substantial evidence of Chandler's rehabilitation in prison following his conviction . . . ." *Id.* Nonetheless, "the trial court's sentencing order does not mention any of this

evidence or its impact on the trial court's judgment." *Id.*

Justice King wrote a separate dissent, which Justice Kitchens joined, arguing that appellate courts should review juvenile life without parole sentences with "heightened scrutiny." Pet. App. 17a, 19a

5. Joey moved for rehearing, which the supreme court denied by a 5-4 vote. Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

This case perfectly fits the Court's criteria for granting review. There is a deep and acknowledged split of authority on whether the Eighth Amendment permits a juvenile to be sentenced to life without parole absent a finding that he is one of the rare, permanently incorrigible juveniles for whom such a sentence is permissible. The Ninth Circuit is split with the Fourth Circuit on this question, and among state courts of last resort, the issue has resulted in at least twelve majority opinions, split 7-5, and four dissents. Because the division of authority results from differing interpretations of this Court's decision in *Montgomery v. Louisiana,* 136 S. Ct. 718 (2016), only this Court can resolve the disagreement.

The Supreme Court of Mississippi decided the question in a published, reasoned opinion accompanied by a four-justice dissent. The issue is outcome-determinative because a ruling in Joey's favor would entitle him to a new sentencing hearing.

The Court should grant review and hold two other petitions that present the same question—whether the Eighth Amendment requires a permanent incor-

rigibility finding—pending disposition of this petition.[4] When the instant petition was filed, Mississippi had responded to one of the other petitions.[5] Mississippi did not dispute the importance of the question and relied instead on a series of vehicle arguments. None of the asserted vehicle concerns is present here.

Without an incorrigibility finding, there is no way to know if a sentencing authority determined that a particular juvenile is in fact among the "rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734. In practical terms, sentencing authorities unconstrained by a finding requirement would be "free to sentence a child whose crime reflects transient immaturity to life without parole." *Id*. at 735.

This case illustrates that very danger. The sentencing judge did not even mention the evidence of Joey's rehabilitation, evidence that the four dissenting state supreme court justices found "substantial." Pet. App. 14a. Instead, the judge justified Joey's life without parole sentence by opining that another seventeen year old demonstrated maturity by throwing himself on a grenade in 1945, and noting that, before *Roper*, a juvenile defendant was executed for a crime the judge compared to Joey's. Pet. App. 23a n.4, 26a n.10.

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[4] *See* Pet. for Writ of Cert., *Davis v. Mississippi*, No. 17-1343 (U.S. Mar. 23, 2018); Pet. for Writ of Cert., *Cook v. Mississippi*, No. 18-98 (U.S. July 20, 2018).

[5] Br. in Opp., *Davis v. Mississippi*, No. 17-1343 (U.S. June 26, 2016). Mississippi's response to the petition in *Cook* is currently due August 22, 2018.

In the alternative, the court should grant review on the narrower second question—whether the sentencing court's failure to even mention Joey's capacity for rehabilitation and his evidence on that issue renders the sentence invalid under the Eighth Amendment. As the dissenting justices noted, "the trial court's sentencing order does not mention any of this evidence or its impact on the trial court's judgment." Pet. App. 14a.

I. The Court Should Decide Whether Sentencing A Juvenile Offender To Life Without Parole Requires A Finding Of Permanent Incorrigibility.

A. The Question Divides The Federal Circuits And State Supreme Courts.

State supreme courts and federal circuits are intractably divided on whether the Eighth Amendment requires a sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

At least seven state courts of last resort hold that a finding is required, while five state courts of last resort reject such a requirement. *See infra* at pp. 13–19. The Fourth Circuit holds that a finding of permanent incorrigibility is required, *see Malvo v. Mathena*, 893 F.3d 265, 267 (4th Cir. 2018), while the Ninth Circuit holds just the opposite, *see United States v. Briones*, 890 F.3d 811, 819 (9th Cir. 2018).

The issue has also prompted at least four dissents by federal court of appeals judges and justices who sit on state courts of last resort. *See infra* at pp. 14–15, 19–20. And the split is acknowledged. *See People v. Skinner*, No. 152448, 2018 WL 3059768, at *25 (Mich.

June 20, 2018) (Markman, C.J., dissenting) (noting "the split of authority in state courts post-*Miller* on whether a court must make a specific 'finding' of irreparable corruption").[6]

1. The disagreement among courts arises from conflicting interpretations of this Court's decision in *Montgomery*.

In *Montgomery*, the Court held that the Eighth Amendment bars life without parole sentences "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 136 S. Ct. at 733–34. The Court charged sentencing authorities with the duty of "separat[ing] those juveniles who may be sentenced to life without parole from those who may not." *Id*. at 735. As explained below, the majority of lower courts interpret these statements to mean that the sentencing authority must make a finding, whether written or oral, that a juvenile is permanently incorrigible, and thus one of "those juveniles who may be sentenced to life without parole." *Id.*

In rejecting Louisiana's view that the rule of *Miller* is purely procedural (and therefore non-retroactive), the *Montgomery* Court also addressed the State's argument that "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility." *Id*. The argument "[t]hat this finding is not required," the Court explained, would "speak[] only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee." *Id.* That argument therefore did not affect the substantive

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[6] *See also* Alice Reichman Hoesterey, *Confusion in Montgomery's Wake*, Appendix B: Irreparable Corruption Determination, 45 FORDHAM URB. L.J. 149, 190–93 (2017).

(and thus retroactive) nature of *Miller*'s holding. *Id.* As discussed below, a minority of courts rely on this dictum addressing Louisiana's characterization of *Miller* to conclude that sentencing authorities may impose life without parole sentences on juveniles without finding permanent incorrigibility.

2. Seven state courts of last resort hold that the Eighth Amendment requires a finding of permanent incorrigibility before a juvenile may be sentenced to life without parole.

a. *Supreme Court of Georgia*: In *Veal v. State*, the trial court sentenced a defendant to life without parole during the interval between *Miller* and *Montgomery*. 784 S.E.2d 403, 410 (Ga. 2016). The Supreme Court of Georgia stated that it might have affirmed the trial court under *Miller*, "[b]ut then came *Montgomery*." *Id.* at 410. The court explained that under *Montgomery*'s "explication of *Miller*," the sentencer must "determine whether a particular defendant falls into th[e] almost-all juvenile murderer category for which [life without parole] sentences are banned." *Id.* at 411 (emphasis omitted) (citing *Montgomery*, 136 S. Ct. at 736). That is, the sentencer must make a "specific determination that [the defendant] is *irreparably corrupt*." *Id.* The supreme court remanded the case for a new sentencing because:

> [t]he trial court did not . . . make any sort of distinct determination on the record that Appellant is irreparably corrupt or permanently incorrigible, as necessary to put him in the narrow class of juvenile murderers for whom [a life without parole] sentence is proportional under the Eighth

> Amendment as interpreted in *Miller* as refined by *Montgomery*.

Id. at 412.

b. *Court of Criminal Appeals of Oklahoma*: Oklahoma's court of last resort for criminal cases requires a finding of permanent incorrigibility. *Luna v. State*, 387 P.3d 956 (Okla. Crim. App. 2016). In *Luna*, the court vacated a juvenile life without parole sentence and remanded the case "for resentencing to determine whether the crime reflects Luna's transient immaturity, or an irreparable corruption and permanent incorrigibility warranting the extreme sanction of life imprisonment without parole." *Id.* at 963. Indeed, the court held that the fact-finder at sentencing (which in Oklahoma is a jury) may not impose a life without parole sentence on a juvenile "unless [it] find[s] beyond a reasonable doubt that the defendant is irreparably corrupt and permanently incorrigible." *Id.* at 963 n.11. *See also Stevens v. State*, No. PC-2017-219, 2018 WL 2171002, at *7 (Okla. Crim. App. May 10, 2018) (citing *Luna*, 387 P.3d at 963 n.11) ("It is the State's burden to prove, beyond a reasonable doubt, that [a juvenile homicide offender] is irreparably corrupt and permanently incorrigible.").

Two judges filed partial concurrences and dissents in *Luna*, disagreeing with the majority's holding that *Montgomery* requires a finding of permanent incorrigibility. Judge Lumpkin cited *Montgomery* and opined that the Court of Criminal Appeals "wrongly expands upon the requirements of [*Montgomery*]." *Luna*, 387 P.3d at 963 (Lumpkin, J., concurring in part and dissenting in part). Judge Hudson also concluded that *Montgomery* does not require a finding

that a defendant "is irreparably corrupt and permanently incorrigible." *Luna*, 387 P.3d at 965 (Hudson, J., concurring in part and dissenting in part).

c. *Supreme Court of Illinois*: The Supreme Court of Illinois holds that "[u]nder *Miller* and *Montgomery*, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *People v. Holman*, 91 N.E. 3d 849, 863 (Ill. 2017).

d. *Supreme Court of Wyoming*: The Supreme Court of Wyoming holds that before a life without parole sentence may be imposed, "*Miller* and *Montgomery* require a sentencing court to make a finding that . . . the juvenile offender's crime reflects irreparable corruption resulting in permanent incorrigibility, rather than transient immaturity." *Davis v. State*, 415 P.3d 666, 695 (Wyo. 2018). The sentencing court must make the finding "explicitly"—it is not enough to say, as did the sentencing court in *Davis*, that "[the offender] is 'one of those rare cases where the sentence previously imposed was appropriate.'" *Id.* [7]

e. *Supreme Court of Iowa*: In its pre-*Montgomery* decision in *State v. Seats*, the Supreme Court of Iowa

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[7] Even before *Montgomery*, the Supreme Court of Wyoming had held that the Eighth Amendment requires a finding of permanent incorrigibility. In *Sen v. State*, 301 P.3d 106, 127 (Wyo. 2013), the court held that to sentence a juvenile to life without parole, "the district court must set forth specific findings supporting a distinction between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'"

vacated a life without parole sentence. 865 N.W.2d 545, 555–56 (Iowa 2015). The supreme court stated that the trial court could impose life without parole again on remand only if it finds "the juvenile is irreparably corrupt, beyond rehabilitation, and thus unfit ever to reenter society." *Id.* at 558. The court later reiterated the need for such a finding in a post-*Montgomery* decision. *State v. Sweet*, 879 N.W.2d 811, 833 (Iowa 2016) ("In *Seats*, … we noted that if a life sentence without parole could ever be imposed on a juvenile offender, the burden was on the state to show that an individual offender manifested 'irreparable corruption.' . . . .[F]indings of such irreparable corruption should be 'rare and uncommon.'") (internal citations omitted).[8]

f. *Supreme Court of Florida*: In *Landrum v. State*, the Supreme Court of Florida ordered a new sentencing where the trial court's statement of reasons for a life without parole sentence demonstrated that it "did not consider whether the crime itself reflected 'transient immaturity' rather than 'irreparable corruption.'" 192 So. 3d 459, 468 (Fla. 2016). The supreme court held that "the Eighth Amendment requires that sentencing of juvenile offenders be individualized in order to separate the 'rare' juvenile offender whose crime reflects 'irreparable corruption,' from the juvenile offender whose crime reflects 'transient immaturity.'" *Id.* at 466 (citing *Montgomery*, 136 S. Ct. at 734).

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[8] In *Sweet*, the Supreme Court of Iowa also held that the Iowa Constitution categorically prohibits juvenile life without parole. 879 N.W.2d at 839.

g. *Supreme Court of Pennsylvania*: The Supreme Court of Pennsylvania requires a finding of permanent incorrigibility, although it is unclear whether the court derives the requirement from state procedural law or federal constitutional law. *See Commonwealth v. Batts*, 163 A.3d 410, 433, 435 (Pa. 2017). At one point, *Batts* states that *Montgomery* does not impose a formal fact-finding requirement:

> Although the *Montgomery* Court acknowledged that *Miller* contains no "formal fact-finding requirement" prior to a sentencing court imposing a sentence of life without the possibility of parole on a juvenile, the Court stated that this omission was purposeful so as to permit the States to sovereignly administer their criminal justice systems and establish a procedure for the proper implementation of *Miller*'s holding.

Id. at 433 (quoting *Montgomery*, 136 S. Ct. at 735).

On the other hand, a later portion of the decision states just the opposite—that this Court's jurisprudence requires a finding of permanent incorrigibility: "Under *Miller* and *Montgomery*, a sentencing court has no discretion to sentence a juvenile offender to life without parole unless it *finds* that the defendant is one of the 'rare' and 'uncommon' children possessing the above-stated characteristics, permitting its imposition." *Id.* at 435 (emphasis added) (citing *Montgomery*, 136 S. Ct. at 726, 734; *Miller*, 567 U.S. at 479; *Graham v. Florida*, 560 U.S. 48, 73 (2010); *Roper*, 543 U.S. at 572–73).

3. In addition to the Mississippi Supreme Court, four other state supreme courts hold that the Eighth Amendment does *not* require a trial court to make a

finding of permanent incorrigibility to sentence a juvenile to life without parole.

a. *Supreme Court of Arizona*: In *State v. Valencia*, two juveniles were sentenced to life in prison without the possibility of parole for homicides committed in the 1990s. 386 P.3d 392, 393 (Ariz. 2016). The Supreme Court of Arizona held that "the failure of the sentencing courts to expressly determine whether the juvenile defendants' crimes reflected 'irreparable corruption'" does not "entitle [them] to post-conviction relief." *Id.* at 395–96. The court derived that conclusion from *Montgomery*. *Id*. at 395–96 (quoting *Montgomery*, 136 S. Ct. at 736).

b. *Supreme Court of Washington*: The Supreme Court of Washington rejects the view that "the sentencing court must make an explicit finding that the juvenile's homicide offenses reflect irreparable corruption before imposing life without parole." *State v. Ramos*, 387 P.3d 650, 665 (Wash. 2017). The court found support for this conclusion in *Montgomery*: "[T]he Supreme Court has expressly acknowledged that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility.'" *Id*. at 665 (emphasis omitted) (quoting *Montgomer*y, 136 S. Ct. at 735).

c. *Supreme Court of Idaho*: The Supreme Court of Idaho also holds that a finding of permanent incorrigibility is not required. *Johnson v. State*, 395 P.3d 1246, 1258 (Idaho 2017). Relying on *Montgomery*, the supreme court found the argument that such a finding is required to be "without merit." *Id.*

d. *Supreme Court of Michigan*. The Supreme Court of Michigan rejects a fact-finding requirement based on *Montgomery*. *See Skinner,* 2018 WL

3059768, at *15. However, the court also characterized this Court's decisions on juvenile life without parole sentences as "not models of clarity" and acknowledged that "there is language in both *Miller* and *Montgomery* that at least arguably would suggest that a finding of irreparable corruption is required before a life-without-parole sentence can be imposed." *Id.* at *10, 14.

4. The Fourth and Ninth Circuits diverge on whether a finding of permanent incorrigibility is required. The Ninth Circuit rejected a finding requirement in *United States v. Briones*, where "[t]he gist of [the defendant's] appeal" included the argument that "the district court failed to make an explicit finding that Briones was 'incorrigible.'" 890 F.3d at 818. Relying on *Montgomery*, the Ninth Circuit stated that "[n]othing in the *Miller* case suggests that the sentencing judge use any particular verbiage or recite any magic phrase." *Id.* at 819 (citing *Montgomery*, 136 S. Ct. at 735).

Judge O'Scannlain concurred in part and dissented in part, faulting the district court for imposing a life sentence "[w]ithout any evident ruling on th[e] question" of permanent incorrigibility. *Id.* at 822–23 (O'Scannlain, J., concurring in part and dissenting in part). Judge O'Scannlain opined that "[p]erhaps … the district court could have determined that … Briones is permanently incorrigible … [,] [b]ut the transcript does not indicate that the district court made such determination." *Id.* at 824. Thus, Judge O'Scannlain would have "remand[ed] for the limited purpose of permitting the district court properly to perform the analysis required by *Miller* and *Montgomery*." *Id.* at 822.

The Fourth Circuit recently held that "a sentencing judge … violates *Miller*'s rule any time it imposes a discretionary life-without-parole sentence on a juvenile homicide offender without first concluding that the offender's 'crimes reflect permanent incorrigibility,' as distinct from 'the transient immaturity of youth.'" *Malvo*, 893 F.3d at 274. The court also held that a jury's finding of "future dangerousness and vileness," did not satisfy *Montgomery*'s requirements because the jury "was never charged with finding whether [the defendant's] crimes reflected irreparable corruption or permanent incorrigibility, a determination that is now a prerequisite to imposing a life-without-parole sentence on a juvenile homicide offender." *Id.* at 275. As a result, the court affirmed the district court's ruling granting a writ of habeas corpus, vacating a juvenile life sentence without the possibility of parole, and ordering the state trial court to hold a resentencing "to determine … whether [the defendant] qualifies as one of the rare juvenile offenders who may, consistent with the Eighth Amendment, be sentenced to life without the possibility of parole because his 'crimes reflect permanent incorrigibility.'" *Id.* at 267 (quoting *Montgomery*, 136 S. Ct. at 734).

B. The Question Is Important.

The issue this case raises is important because meaningful enforcement of *Montgomery*'s command demands a required finding. *Montgomery* instructs sentencing authorities to limit life without parole to "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 136 S. Ct. at 734. That function necessarily requires a finding of permanent incorrigibility. Indeed, even the dissent in *Montgomery* stated that the decision requires sentencing authorities to "resolve" the question of incorrigibility.

Id. at 744 (Scalia, J., dissenting). Trial courts resolve questions by making findings.

1. Findings are crucial to juvenile life without parole sentences just as they are crucial to death sentences. In the same way that an aggravator must be found to sentence a defendant to death, permanent incorrigibility must be found to sentence a juvenile to life without parole. These are the only punishments that the Eighth Amendment limits to "a subclass of defendants convicted of murder." *See Tuilaepa v. California*, 512 U.S. 967, 972 (1994). Like capital punishment, juvenile life without parole calls for "a distinctive set of legal rules" because this Court "view[s] this ultimate penalty for juveniles as akin to the death penalty." *Miller*, 567 U.S. at 475; *see also id.* at 481 ("[I]f . . . 'death is different,' children are different too.").

A required finding of permanent incorrigibility is necessary to limit the extraordinary punishment of juvenile life without parole to the eligible group of offenders. In capital punishment cases, the Court has stated "that the trier of fact must convict the defendant of murder and *find* one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase." *Tuilaepa*, 512 U.S. at 971–72 (1994) (emphasis added).[9] The same logic applies to juvenile life

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[9] *See also Lowenfield v. Phelps*, 484 U.S. 231, 246 (1988) (holding that a death sentence satisfied the Eighth Amendment because the jury at the guilt phase "found" an aggravating factor); *Jurek v. Texas*, 428 U.S. 262, 273 (1976) (plurality opinion) (upholding Texas capital murder law that "essentially requires that one of five aggravating circumstances be found before a defendant can be found guilty of capital murder . . .").

without parole sentences and requires a finding to ensure that the punishment is restricted to the eligible group. Without a finding that a given juvenile is irreparably corrupt, there remains "a grave risk" that corrigible juveniles will be sentenced to life without parole and thereby "held in violation of the Constitution." *Montgomery*, 136 S. Ct. at 736.

2. The finding is necessary for appellate review, as well. As Justice Sotomayor recently wrote, life without parole sentences—perhaps even for adults—may require an appellate court to determine whether a trial court's sentence "properly took account of [the defendant's] circumstances, was imposed as a result of bias, or was otherwise imposed in a 'freakish manner.'" *Campbell v. Ohio*, 138 S. Ct. 1059, 1060 (2018) (statement of Sotomayor, J., respecting the denial of certiorari) (footnote omitted). Whether an offender is permanently incorrigible is *the* central question in juvenile life without parole cases, and the sentencing authority must answer it for appellate review to be meaningful. The appellate court should not be left to guess the sentencing authority's thoughts on the decisive issue.

3. This case exemplifies the risk that courts may impose juvenile life without parole sentences in a "freakish manner," *id.*, when they dispense with the finding of permanent incorrigibility. While the trial court noted that "they" (*i.e.*, this Court) "talk about the defendant's maturity, his family background, whether he was the 'shooter' and other factors that they deem important in cases such as these," Pet. App. 25a, the court did not even mention what four dissenting state supreme court justices would later call "substantial evidence of Chandler's rehabilitation in prison following his conviction." Pet. App. 14a. That

evidence included Joey's educational attainments while in prison, the relationship he built with his son while incarcerated, the absence of any disciplinary violations over the past five years of his incarceration, and the testimony of a retired state trooper that "given a second chance Joey could be an [asset] to the community." R. 23; *see supra* at p. 5. Rather than considering this evidence, the trial court launched into written digressions about heroism in World War II and an unrelated case about the murder of a former federal judge's father, neither of which had anything to do with Joey Chandler. Pet. App. 23a n.4, 26a n.10.

By dispensing with the procedural requirement to find permanent incorrigibility, the trial court gutted the substance of the constitutional rule that only permanently incorrigible juvenile offenders can be sentenced to life without parole. The sentencing court thought that before sentencing Joey to life without parole, the Eighth Amendment required only that "a sentencing hearing must be held and the Court must consider certain factors." Pet. App. 23a. That purely procedural understanding of the Eighth Amendment's constraints contravenes "*Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Montgomery*, 136 S. Ct. at 735. After all, "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity." *Id*. at 736 (internal quotation marks omitted); *see also Tatum v. Arizona*, 137 S. Ct. 11, 12 (2016) (Sotomayor, J., concurring in the decision to grant, vacate, and remand).

4. Other recent Mississippi cases, two of them pending before this Court on petitions for certiorari, illustrate the irregularities that occur when courts impose life without parole sentences on juveniles but do not find permanent incorrigibility.

In *Cook v. Mississippi*, a single expert testified: W. Criss Lott, Ph.D., a forensic psychologist appointed by the trial court. Dr. Lott testified that Cook "did not appear to be one of those . . . rare offenders who couldn't be rehabilitated." Pet. for Writ of Cert. at 7, *Cook v. Mississippi*, No. 18-98 (U.S. filed July 23, 2018) [hereinafter *Cook* Pet.]; Tr. of the Proceedings at 192, *Mississippi v. Cook*, No. 2002-250 (Miss. Cir. Ct. June 19, 2014) [hereinafter *Cook* Tr.]. "[I]t's my opinion," he continued "that [Cook] does not represent one of those rare offenders who could not be rehabilitated." *Cook* Pet. 7; *Cook* Tr. 203. This Court consistently has recognized that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Graham*, 560 U.S. at 73 (quoting *Roper*, 543 U.S. at 573). The trial court, however, did not mention Dr. Lott's expert opinion when it sentenced Cook to life without parole. *Cook* Pet. 11. Nor did the court make a finding of permanent incorrigibility. *Cook* Pet. 7; App. to Pet. for Cert. at 27a–32a, *Cook v. Mississippi*, No. 18-98 (U.S. filed July 23, 2018) [hereinafter *Cook* Pet. App.].

The Mississippi Court of Appeals affirmed Cook's sentence, opining that, rather than requiring a sentencer to determine whether a juvenile is permanently incorrigible, *Miller* and *Montgomery* simply "identify some factors that the judge is supposed to consider in reaching a sentencing decision." *Cook* Pet.

App. 16a. Relying on *Montgomery*, the court of appeals concluded that "'*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility.'" *Cook* Pet. App. 22a (quoting *Montgomery*, 136 S. Ct. at 735). The court of appeals also derided the very concept of permanent incorrigibility as "a term that sounds more like a theological concept than a rule of law to be applied by an earthly judge." *Cook* Pet. App. 16a. The Supreme Court of Mississippi declined to review this decision. *Cook* Pet. App. 1a.

A Mississippi trial court also failed to consider corrigibility before sentencing Shawn Davis to life without parole. The court stated that Davis's crime suggested "depravity," but that such depravity was a common feature of his generation: "[A]s to the depravity of this murderous scheme, I could not help but despair an entire generation of our youth was possibly being raised without any vestige of human kindness whatsoever." Pet. for Writ of Cert. at 6, *Davis v. Mississippi*, No. 17-1343 (U.S. filed Mar. 23, 2018) [hereinafter *Davis* Pet.]; App. to Pet. for Writ of Cert. at 13a, *Davis v. Mississippi*, No. 17-1343 (U.S. filed Mar. 23, 2018) [hereinafter *Davis* Pet. App.]. It is difficult to reconcile the view that a crime reflected depravity typical of an "entire generation," with this Court's recognition that is only "the rarest of juvenile offenders, … whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734.

Davis's sentencing judge referred to him as a "wild animal" rather than a teenage boy and alluded to his upbringing in the "unseemly life of public housing." *Davis* Pet. 6; *Davis* Pet. App. 11a, 15a. The Court of Appeals of Mississippi's analysis of whether the trial court abused its discretion in sentencing Davis to life without parole consisted of a single paragraph that

merely summarized the crime. *Davis* Pet. 7–8; *Davis* Pet. App. 8a. The court of appeals affirmed the life without parole sentence, and the state supreme court denied review. *Davis* Pet. App. 5a, 1a.

These three cases underscore the importance of a finding requirement: Without one, the risk of substantive departures from the permanent incorrigibility standard becomes unacceptably high.

C. This Case Is An Excellent Vehicle To Decide The Question.

This case provides an excellent vehicle to decide whether the Eighth Amendment forbids juvenile life without parole sentences unaccompanied by a finding of permanent incorrigibility. None of the trial court's reasons for imposing a life without parole sentence resembles a finding of permanent incorrigibility, and there is substantial evidence that Joey is *not* permanently incorrigible. Mississippi's highest court decided the question adversely to Joey by a one-vote margin, the court published a reasoned opinion, and the four dissenters explained why they disagreed.

This Court's resolution of the question would be outcome-determinative. If the Court held that the Eighth Amendment requires a finding of permanent incorrigibility, Joey surely would be entitled to a new sentencing hearing.

In its Brief in Opposition in *Davis*, Mississippi does not dispute the importance of the question. The State advances four vehicle-based arguments, which fail for the reasons stated in Mr. Davis's reply. Reply Br. at 1–11, *Davis v. Mississippi*, No. 17-1343 (U.S. filed June 26, 2018). Here, the same arguments do not even get off the ground.

First, Mississippi asserts in *Davis* that the petitioner did not present the issue properly in the state courts. Br. in Opposition at 7, *Davis v. Mississippi*, No. 17-1343 (U.S. filed June 13, 2018) [hereinafter *Davis* BIO]. It is beyond dispute that Joey pressed the argument that a finding of permanent incorrigibility or irreparable corruption is required. *See* Petitioner's Miss. Sup. Ct. Br. 9 ("[W]hat is glaring absent from the court's opinion is any discussion on the final *Miller* factor, 'the possibility of rehabilitation.' The court did not make any finding, or any mention, that Chandler was 'irreparably corrupt' and that a life without the possibility of parole sentence was justified."). And the state supreme court expressly ruled on the argument. *See* Pet. App. 10a ("The *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility.").

Second, Mississippi argues that *Davis* is a poor vehicle because the state supreme court did not issue a written decision on whether a trial court must find permanent incorrigibility. *Davis* BIO 8. Here, the state supreme court did just that. Pet. App. 10a.

Third, Mississippi contends in *Davis* that the petition presents a question of state law rather than federal law. *Davis* BIO 9–10. That contention is incorrect—as shown above, the divergence of authority results directly from conflicting interpretations of this Court's decisions in *Miller* and *Montgomery*. *See supra* pp. 13–19. In any case, after Mr. Davis filed his petition, the Fourth and Ninth Circuits split, *see supra* pp. 19–20, eliminating any doubt that the question whether a finding is required arises under federal law. And here, both the majority and the dissent derived their conflicting views on whether a finding is

required from this Court's decisions in *Miller* and *Montgomery*. *Compare* Pet. App. 10a (majority opinion) ("The *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility.") *with* Pet. App. 15a (dissent) ("In light of the Supreme Court's recent clarification of *Miller* in *Montgomery*, the trial court, at a minimum, should have addressed Chandler's capacity for rehabilitation and made an on-the-record finding that Chandler was one of the rare juvenile offenders whose crime reflected permanent incorrigibility. . ."). *See also* Pet. App. 17a (dissent) ("[T]he trial court failed to address the primary focus of *Miller v. Alabama*."); Pet. App. 13a (dissent) ("Consideration of the defendant's capacity for rehabilitation is a crucial step in the *Miller* analysis.").

Fourth, Mississippi asserts that the Court should deny review in *Davis* because the trial court made a finding of permanent incorrigibility without using those particular words. *Davis* BIO 10. Mississippi therefore contends that *Davis* does not present a split of authority on the required finding question. *Id.* That argument could have no force here because none of the trial court's findings bear any resemblance to a finding of permanent incorrigibility. Pet. App. 13a, 16a. The Mississippi Supreme Court did not conclude otherwise. Instead, the court relied on *Montgomery*'s fact-finding dictum to conclude "that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility." Pet. App. 10a (citing *Montgomery*, 136 S. Ct. at 735). Moreover, both the majority and dissenting opinions of the Mississippi Supreme Court noted that the sentencing court made no such finding. Pet. App. 10a, 16a–17a.

II. The Court Should Reverse The Sentence Because The Trial Court Did Not Consider Petitioner's Capacity For Rehabilitation.

In the alternative, there is also a narrower reason to reverse the sentence. The trial court failed to consider the evidence of Joey's capacity for rehabilitation at all when deciding whether to impose a life without parole sentence. Instead, the court elected to leave the consideration of petitioner's rehabilitation to the "Executive Branch," which "has the ability to pardon and commute sentences in this State should it deem such action warranted." Pet. App. 26a–27a.

In *Montgomery*, the Court stated that the petitioner's "evolution from a troubled, misguided youth to a model member of the prison community" serves as "an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." 136 S. Ct. at 736. Joey produced that exact sort of evidence. As the four dissenting justices explained:

> Here, the record included substantial evidence of Chandler's rehabilitation in prison following his conviction, including the testimony of Chandler's wife, father, and two family friends, as well as numerous letters submitted on his behalf by other family members, friends, and members of the community. Chandler presented evidence that he would have a job and a place to live waiting for him if he was released from prison. Likewise, Chandler showed that his decade of imprisonment was virtually without disciplinary blemish and that he excelled in job training programs offered at the prison.

Pet. App. 14a.

The trial court ignored this evidence. *See id.* ("[T]he trial court's sentencing order does not mention any of this evidence or its impact on the trial court's judgment.").

Instead of considering how the evidence of Joey's capacity for reform should impact the court's sentencing decision, the trial court simply noted in two sentences that as far as "rehabilitation" is concerned, the executive branch could "grant a pardon" or "commute" a life without parole sentence "should it deem such action warranted." Pet. App. 26a–27a. For the state supreme court, those statements sufficed to address the evidence of Joey's capacity for rehabilitation. Pet. App. 10a.

This Court, however, has expressly rejected the notion that the possibility of commutation should have any bearing on a sentencing authority's decision to impose a life without parole sentence on a juvenile. Indeed, in explaining the extraordinary severity of life without parole sentences, this Court found that such a sentence "deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence." *Graham*, 560 U.S. at 69–70. Thus, the remote possibility of executive clemency did not free the trial court to sentence Joey Chandler to life without parole while ignoring his evidence of rehabilitation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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AUGUST 2018

APPENDIX

APPENDIX A

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

[filed May 17, 2018]

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May 17, 2018

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 17th day of May, 2018.

Supreme Court Case # 2015-KA-01636-SCT
Trial Court Case # 8491

Joey Montrell Chandler a/k/a Joey M. Chandler a/k/a Joey Chandler v. State of Mississippi

Current Location:
MDOC# 109052
P.O. Box 1057
Parchman, MS 38738

The Motion for Rehearing filed by the Appellant is denied. Waller, C.J., Kitchens, P.J., King and Ishee, JJ., would grant.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be

returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.courts.ms.gov under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.

APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI
NO. 2015-KA-01636-SCT

JOEY MONTRELL CHANDLER
a/k/a JOEY M. CHANDLER
a/k/a JOEY CHANDLER
v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	10/09/2015
TRIAL JUDGE:	HON. JAMES T. KITCHENS JR.
TRIAL COURT ATTORNEYS:	CARRIE A. JOURDAN KATIE NICOLE MOULDS SCOTT WINSTON COLOM
COURT FROM WHICH APPEALED:	CLAY COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF THE STATE PUBLIC DEFENDER BY: ERIN ELIZABETH BRIGGS GEORGE T. HOLMES
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LISA L. BLOUNT
DISTRICT ATTORNEY:	SCOTT WINSTON COLOM
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED – 03/08/2018
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. In 2005, Joey Montrell Chandler was convicted for the murder of his cousin Emmitt Chandler and sentenced to life in prison under Mississippi Code Section 97-3-21 (2005). The Court affirmed his conviction and sentence on appeal. *Chandler v. State*, 946 So. 2d 355, 356, 366 (¶¶ 1, 54) (Miss. 2006). In 2015, Chandler received a new sentencing hearing for his murder conviction in light of the United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012). Following the hearing, the circuit court sentenced Chandler to life in prison. Chandler appeals, requesting that he be resentenced because the trial court failed to analyze all the factors identified in *Miller* and adopted in our subsequent decision in *Parker v. State*, 119 So. 3d 987 (Miss. 2013).

FACTS AND PROCEDURAL HISTORY

¶2. In 2014, Chandler filed a petition with the Court claiming that he was entitled to resentencing in light of the United States Supreme Court's decision in *Miller*. We granted Chandler permission to file a motion to set aside his sentence in light of *Miller*. On January 8, 2015, the trial court held a hearing on the matter in which it allowed Chandler to present evidence in support of his motion.

¶3. On October 9, 2015, the trial court entered a detailed, six-page order. The trial court recounted what the evidence showed at Chandler's trial. Chandler had been selling because his girlfriend was pregnant and he needed to earn money to help pay for expenses. Chandler observed his cousin Emmitt

exiting Chandler's vehicle with Chandler's marijuana. The next day, Chandler armed himself and confronted Emmitt. Chandler shot Emmitt two times with a pistol and the wounds were lethal. Chandler disposed of the murder weapon by throwing it in a pond.

¶4. At the time of the murder, Chandler was seventeen years, six months, and thirteen days old. Upon resentencing, the trial court found that Chandler's actions on the day of the murder showed premeditation, planning, and an attempt to dispose of the murder weapon. Noting that the victim was not armed, the trial court described the murder as "heinous" under the facts of the case.

¶5. The trial court's order included a discussion of *Miller* and our subsequent cases applying *Miller*, including *Parker* and *Jones v. State*, 122 So. 3d 698 (Miss. 2013). The trial court's order verified that it had reviewed the transcripts of the case, the court file, and Chandler's presentence investigation report. After carefully reviewing the evidence in the case and the matters presented in the resentencing hearing, the trial court found that Chandler should be sentenced to life in prison for the murder of his cousin Emmitt.

STANDARD OF REVIEW

¶6. The Court has yet to review a trial court's sentencing decision under *Miller*. Chandler argues that the Court should review the trial court's decision with the same "heightened scrutiny" that applies in death-penalty cases, because a sentence of life without parole is the harshest punishment that can be imposed on a juvenile offender. *See Bennett v. State*, 990 So. 2d 155, 158 (Miss. 2008) ("The

standard of review of convictions for capital murder and sentences of death is 'heightened scrutiny.'"). Accordingly, Chandler contends that all doubts as to the appropriateness of the trial court's decision must be resolved in his favor. In contrast, the State argues that the trial court's imposition of a criminal sentence is reviewed for an abuse of discretion. *See Hampton v. State*, 148 So. 3d 992, 999 (Miss. 2014).

¶7. Heightened scrutiny is reserved for death-penalty cases due to the unique and irreversible nature of that punishment. The Court has no reasonable basis to raise its standard of review for a sentence in a noncapital case simply because it involves a juvenile offender. Accordingly, we hold that there are two applicable standards of review in a *Miller* case. First, whether the trial court applied the correct legal standard is a question of law subject to *de novo* review. *Smothers v. State*, 741 So. 2d 205, 206 (Miss. 1999). If the trial court applied the proper legal standard, its sentencing decision is reviewed for an abuse of discretion. *Hampton*, 148 So. 3d at 999.

DISCUSSION

¶8. Chandler argues that the trial court failed to address all of the sentencing considerations mandated by *Miller* and *Parker*. Thus, the issue on appeal is whether the trial court comported with the requirements of *Miller* and *Parker* when resentencing Chandler to life in prison for a murder which he had committed when he was seventeen years old. In short, we hold that the trial court comported by applying the correct legal standard because it afforded Chandler a hearing and sentenced Chandler after considering and taking into account each factor identified in *Miller* and adopted

in *Parker*. Moreover, we cannot say that the trial court's decision to sentence Chandler to life was an abuse of discretion.

¶9. *Miller* and *Parker* require the trial court to "take into account" and "consider" the factors identified in *Miller* before sentencing. *Miller*, 567 U.S. at 480; *Parker*, 119 So. 3d at 995, 998 (¶¶ 19, 26). Contrary to Chandler's assertions, nothing in *Miller* or *Parker* requires trial courts to issue findings on each factor or limits trial courts to considerations strictly personal to the juvenile offender. As evidenced by the trial court's order, it took into account and considered every factor, comporting with *Miller* and *Parker*. The trial court recognized in its order that "before a life sentence may be imposed for a homicide, a sentencing hearing must be held and the [trial c]ourt must consider certain factors."

¶10. In *Miller*, the Supreme Court of the United States concluded that mandatory life sentences without parole for juvenile homicide offenders violate the Eighth Amendment's prohibition on cruel and unusual punishments. *Miller*, 567 U.S. at 469-70. The *Miller* Court held "that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016) (citing *Miller*, 567 U.S. 460).

¶11. The *Miller* Court stopped short of establishing a specific procedure for lower courts to follow when sentencing juvenile homicide offenders; rather, the *Miller* Court observed several important features of youth that would be relevant to the sentencing

decision. In *Parker*, we held that the factors identified by the *Miller* Court must be considered by the sentencing authority. *Parker*, 119 So. 3d at 995–96 (¶ 19). We explained:

> *Miller* does not prohibit sentences of life without parole for juvenile offenders. Rather, it "require[s] [the sentencing authority] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S. Ct. at 2469.

Parker, 119 So. 3d 995 (¶ 19) (emphasis added).

¶12. Juvenile offender Lester Lavon Parker Jr. had been convicted and sentenced and had filed his notice of appeal before *Miller* was decided by the Supreme Court. *Id*. at 989, 996 (¶¶ 1, 20). We granted Parker's request to "remand for a sentencing hearing with the opportunity to present mitigating evidence." *Id*. at 998 (¶ 26). Accordingly, we vacated Parker's sentence and remanded for a "hearing where the trial court, as the sentencing authority, is required to consider the *Miller* factors before determining sentence." *Id*.

¶13. We held that "[a]fter consideration of all circumstances required by *Miller*, the trial court may sentence *Parker*, despite his age, to 'life imprisonment.'" *Id*. at 999 (¶ 28). "However, if the trial court should determine, after consideration of all circumstances set forth in *Miller*, that Parker should be eligible for parole, the court shall enter a sentence of 'life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47–7–3(1)(h).'" *Id*. We affirmed Parker's conviction but vacated his sentence

and "remand[ed] [the] case to the Circuit Court of Copiah County for a hearing to determine whether he should be sentenced to 'life imprisonment' or 'life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47–7–3(1)(h).'" *Id*. at 1000 (¶ 29).

¶14. In *Jones*, we explained: "*Miller* explicitly prohibits states from imposing a mandatory sentence of life without parole on juveniles. Thus, *Miller* rendered our present sentencing scheme unconstitutional if, and only if, the sentencing authority fails to take into account characteristics and circumstances unique to juveniles." *Jones*, 122 So. 3d at 702 (¶ 12). Recently, the Supreme Court wrote in regard to what *Miller* requires:

> *Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. The [*Miller*] Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of children's diminished culpability and heightened capacity for change, *Miller* made clear that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.

Montgomery, 136 S. Ct. at 733-34 (quotations and citations omitted) (emphasis added).

¶15. The Supreme Court also addressed what *Miller* does not require. See *Montgomery*, 136 S. Ct. at 735. The *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility. *Id.* Moreover, after reviewing *Miller* and *Montgomery*, we discern that no rebuttable presumption exists in favor of parole eligibility for juvenile homicide offenders. Rather, *Miller* explicitly foreclosed imposition of a mandatory sentence of life without parole on juvenile offenders. *Jones*, 122 So. 3d at 702.

¶16. Chandler places the trial court in error for failing to make any findings concerning Chandler's capacity for rehabilitation. Neither *Miller* nor *Parker* mandates that a trial court issue findings on each factor. Regardless, the trial court certainly "considered" and "took into account" rehabilitation. See *Parker*, 119 So. 3d at 995 (¶ 19) (citing *Miller* 567 U.S. at 477-78)). The trial court exceeded the minimum requirements of *Miller* and *Parker* by specifically identifying every *Miller* factor in its order.

¶17. As to the rehabilitation factor, the trial court found: "The United States Supreme Court also talks about rehabilitation and the defendant's prospects for future rehabilitation. Th[e trial court] notes that the Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted."

¶18. The trial court also considered several letters from various family members submitted on behalf of Chandler and other individuals urging the trial court for leniency because Chandler had been rehabilitated or was capable of rehabilitation. Chandler presented

testimony at the sentencing hearing related to Chandler's rehabilitation or capability thereof. Nothing in the record indicates that the trial court did not take into account or consider such evidence. Indeed, the trial court's order ensured that it considered the entire court file, including the evidence submitted by Chandler in support of the possibility of rehabilitation.

¶19. Chandler argues that the trial court considered irrelevant information in resentencing Chandler. We do not read *Miller* or *Parker* as requiring the sentencing courts to limit their analysis to facts and circumstances strictly personal to the juvenile offender. While it is true that each juvenile offender must afforded an individualized sentencing hearing before imposing a life sentence, *Parker*, 119 So. 3d at 996 (¶ 20), the sentencing court is to "take into account how children are different." *Miller*, 567 U.S. at 480.

¶20. *Miller* and *Parker* do not prohibit the trial court from considering aspects of youth that it considers relevant for purposes of sentencing. The *Miller* Court wrote that "[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features–among them, immaturity, impetuosity, and failure to appreciate risks and consequences." The trial court's considerations of Chandler's chronological age and its hallmark features by examples of youth of the same age was not an abuse of discretion.

¶21. Here, after consideration of all the *Miller* factors, the trial court had the authority to sentence Chandler to life in prison or life in prison with eligibility for parole notwithstanding present

provisions of the applicable parole statute. Thus, the trial court acted within its authority by sentencing Chandler to life in prison "under current Mississippi law."

CONCLUSION

¶22. The trial court did not *automatically* resentence Chandler to life in prison or perceive a legislative mandate that Chandler must be sentenced to life in prison without parole in violation of *Miller*. As required by *Miller* and our subsequent decision in *Parker*, the trial court held a hearing and, after considering all that was presented as well as the entire court file, sentenced Chandler to life in prison. The trial court took into account the characteristics and circumstances unique to juveniles. *Jones*, 122 So. 3d at 702 (¶ 12). Although the trial court had the authority to sentence Chandler to life in prison with the possibility of parole, it chose to sentence Chandler to life in prison, which was also within its authority. *Parker*, 119 So. 3d at 1000 (¶ 29). Because the trial court satisfied its obligation under *Miller* and *Parker*, and we cannot say the trial court abused its discretion in sentencing Chandler to life in prison, we affirm.

¶23. **AFFIRMED.**

RANDOLPH, P.J., MAXWELL, BEAM AND CHAMBERLIN, JJ., CONCUR. WALLER, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J., KING AND ISHEE, JJ. KING, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J.

WALLER, CHIEF JUSTICE, DISSENTING:

¶24. Believing that the trial court failed to address the primary focus of *Miller v. Alabama*,[1] Chandler's capacity for rehabilitation, and did not articulate that Chandler is among "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility," I respectfully dissent. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734, 193 L. Ed. 2d 599 (2016).

¶25. Chandler's capacity for rehabilitation simply was not addressed by the trial court. The majority concludes that the trial court adequately considered the issue of rehabilitation when it reasoned that "the Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted." (Maj. Op. at ¶ 17). However, this single statement is not responsive to the issue of rehabilitation. In *Parker v. State*, 119 So. 3d 987, 992 (Miss. 2013), this Court specifically rejected the State's argument that the possibility of conditional release at age sixty-five offered juvenile defendants a meaningful opportunity for release in compliance with *Miller*. Similarly, the possibility of receiving a pardon or commuted sentence at some unspecified future date is in no way relevant to the consideration of Chandler's capacity for rehabilitation under *Miller*.

¶26. Consideration of the defendant's capacity for rehabilitation is a crucial step in the *Miller* analysis, because a life-without-parole sentence "reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for

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[1] *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

change." *Miller*, 567 U.S. at 473 (quoting *Graham v. Florida*, 560 U.S. 48, 74, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)). Indeed, the *Miller* Court stressed that the imposition of this sentence would be "uncommon" due to "children's diminished culpability and heightened capacity for change." *Id.* at 479. More recently, in *Montgomery*, the Supreme Court underscored the importance of considering a juvenile's capacity for rehabilitation when it recognized that "*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734 (emphasis added). The *Montgomery* Court also found that the petitioner's evidence of "his evolution from a troubled, misguided youth to a model member of the prison community" was "relevant . . . as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." *Id.* at 736. Here, the record included substantial evidence of Chandler's rehabilitation in prison following his conviction, including the testimony of Chandler's wife, father, and two family friends, as well as numerous letters submitted on his behalf by other family members, friends, and members of the community. Chandler presented evidence that he would have a job and a place to live waiting for him if he was released from prison. Likewise, Chandler showed that his decade of imprisonment was virtually without disciplinary blemish and that he excelled in job training programs offered at the prison. However, the trial court's sentencing order does not mention any of this evidence or its impact on the trial court's judgment.

¶27. Other courts have recognized that additional procedural safeguards are necessary to implement

Miller effectively, especially in light of the Supreme Court's more recent decision in *Montgomery*. For example, in *Veal v. State*, 784 S.E.2d 403, 411 (Ga. 2017), the Georgia Supreme Court held that trial courts in *Miller* cases must make a "distinct determination *on the record* that [the defendant] is irreparably corrupt or *permanently* incorrigible, as necessary to put him in the narrow class of juvenile murderers for whom [a life-without- parole] sentence is proportional under the Eighth Amendment as interpreted in *Miller* as refined by *Montgomery*." (Emphasis added.) In so holding, the *Veal* Court found that "[t]he *Montgomery* majority's characterization of *Miller* . . . undermines this Court's cases indicating that trial courts have significant discretion in deciding whether juvenile murderers should serve life sentences with or without the possibility of parole." *Id*. at 411. Similarly, in *Commonwealth v. Batts*, 163 A.3d 410, 415 (Pa. 2017), the Pennsylvania Supreme Court acknowledged that, in light of *Montgomery*'s clarification of *Miller*, "procedural safeguards are required to ensure that life-without-parole sentences are meted out only to 'the rarest juvenile offenders' whose crimes reflect 'permanent incorrigibility,' 'irreparable corruption' and irretrievable depravity[.]'" The *Batts* Court held that, "in the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation, a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose." *Id*. at 435. And even before *Montgomery* was decided, the Supreme Court of Wyoming held that *Miller* required the trial court to "set forth specific findings supporting a

distinction between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Sen v. State*, 301 P.3d 106, 127 (Wyo. 2013).

¶28. The United States Supreme Court is careful to limit any procedural component of its substantive holdings "to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *Montgomery*, 136 S. Ct. at 735. As such, it is true that *Miller* did not impose any specific factfinding requirement on lower courts. "However, "[t]hat *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id*. To be clear, *Miller* established that a life-without-parole sentence is an unconstitutionally disproportionate punishment for juvenile homicide offenders whose crimes reflect transient immaturity and can be imposed only on those children whose crimes reflect permanent incorrigibility. *Id*. The United States Supreme Court left to the States the task of ensuring that their sentencing procedures satisfy this holding, and to do this, our trial courts must apply the facts of each particular case to the substantive law.

¶29. In light of the Supreme Court's recent clarification of *Miller* in *Montgomery*, the trial court, at a minimum, should have addressed Chandler's capacity for rehabilitation and made an on-the-record finding that Chandler was one of the rare juvenile offenders whose crime reflected permanent incorrigibility before imposing what in effect is a life-without-parole sentence. Because I believe that the

trial court's resentencing of Chandler was insufficient as a matter of law, I respectfully dissent.

KITCHENS, P.J., KING AND ISHEE, JJ., JOIN THIS OPINION.

KING, JUSTICE, DISSENTING:

¶30. Because imposing a life sentence without possibility of parole on a juvenile offender is the harshest punishment permitted by law and is akin to capital punishment, I respectfully dissent with the majority's holding that the appropriate standard of review in this case is abuse of discretion. In addition, I join Chief Justice Waller's opinion that the trial court failed to address the *Miller v. Alabama* factors.[2]

¶31. The severe nature of capital-punishment cases necessitates a heightened-scrutiny standard of review. *Batiste v. State*, 184 So. 3d 290, 292 (Miss. 2016). The United States Supreme Court also has recognized the severity of sentencing a juvenile offender to life in prison without the possibility of parole and has likened juvenile life-without-parole sentences to capital punishment:

> [L]ife without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive

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[2] *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

> clemency—the remote possibility of which does not mitigate the harshness of the sentence. As one court observed in overturning a life without parole sentence for a juvenile defendant, this sentence "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days."

Graham v. Florida, 560 U.S. 48, 69–70, 130 S. Ct. 2011, 2027, 176 L. Ed. 2d 825 (2010), *as modified* (July 6, 2010) (internal citations omitted); *see also* Natalie Pifer, *Is Life the Same As Death?: Implications of Graham v. Florida, Roper v. Simmons, and Atkins v. Virginia on Life Without Parole Sentences for Juvenile and Mentally Retarded Offenders*, 43 Loy. L. Rev. 1495, 1531 (2010) ("Both execution and life without parole sentences permanently remove an individual from society by placing that person in a prison to await his or her death. . . .").

¶32. Imposition of a life-without-parole sentence for a juvenile is the "harshest possible penalty" and is permissible only for "the rarest of juvenile offenders." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733-34, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016). In fact, the Supreme Court has held mandatory life sentences for juveniles to be unconstitutional. *Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012). "Because juveniles have diminished culpability and greater prospects for reform, . . . 'they are less deserving of the most severe

punishments.'" *Id*. (quoting *Graham*, 560 U.S. at 60-61. Even when juveniles commit terrible crimes, the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences." *Id*. at 472.

¶33. Therefore, I believe that sentencing a juvenile who is "'more vulnerable . . . to negative influences and outside pressures,' including from their family and peers," to die in prison necessitates the same heightened standard as capital punishment. *Graham*, 560 U.S. at 68 (quoting *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)); *see also People v. Hyatt*, 891 N.W. 2d 549, 577 (Mich. App. 2016) ("[T]he imposition of a life-without-parole sentence on a juvenile requires a heightened degree of scrutiny regarding whether a life-without-parole sentence is proportionate to a particular juvenile offender, and even under this deferential standard, an appellate court should view such a sentence as inherently suspect.")). A heightened standard of review would serve only to ensure that solely the rarest and most deserving of juveniles would be sentenced to such a severe punishment.

¶34. Accordingly, because sentencing a juvenile to die in prison is the harshest possible penalty available by law and should be imposed only in the rarest cases, I dissent and would find that a trial court's decision to sentence a juvenile to life without parole should be reviewed with the same heightened scrutiny that applies in capital-punishment cases.

KITCHENS, P.J., JOINS THIS OPINION.

APPENDIX C

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSISSIPPI

IN VACATION TERM, 2015

[filed Oct. 9, 2015]

JOEY MONTRELL CHANDLER

VS. CAUSE NUMBER 08491

STATE OF MISSISSIPPI

ORDER

This matter is before the Court on the Petitioner's request to be re-sentenced pursuant to *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). The Petitioner, Joey Chandler, has properly sought permission from the Mississippi Supreme Court to file this request and his request is subject to this Court's jurisdiction. The Court conducted a hearing on this matter on January 8, 2015 and gave the Petitioner and the Respondent an opportunity to present witnesses to support their respective positions. The Court has also reviewed the transcripts of this case, the court file, and reviewed the Petitioner's pre-sentence investigation.

Facts

The Petitioner was indicted, tried and subsequently convicted in Clay County Circuit Court cause number 8491 for the August 17, 2003, murder of his Cousin Emmitt Chandler. *Chandler v. State*, 946 So. 2d 355 (Miss. 2007). The night before Emmitt Chandler was murdered Petitioner had as much as

one pound of marijuana in his car at the Club Hollywood to sell. Petitioner was selling marijuana because his girlfriend was pregnant and he needed to earn money to help pay for expenses. *Id.* at 357. Petitioner testified that as he exited Club Hollywood that night he observed Emmitt exiting Petitioner's car with his marijuana. *Id.* The next day, August 17, 2003 the Petitioner armed himself and confronted Emmitt. The evidence at trial indicated that the Petitioner shot Emmitt two times with a .357 magnum pistol and that both wounds were lethal. *Id.* at 358.

The Petitioner in this case was born on February 4, 1986 and the murder occurred on August 17, 2003. That means he was 17 years, 6 months and 13 days old when he committed the murder in question. Emmitt Chandler, the victim was murdered thirteen days shy of his twentieth birthday. The Petitioner was convicted of murder on January 14, 2005. His conviction and sentence was affirmed by the Mississippi Supreme Court in *Chandler v. State*, 946 So. 2d 355 (Miss. 2007).

Issue

Is the Petitioner entitled to a re-sentencing pursuant to *Miller v. Alabama*?

Law

Miller had not been decided at the time the Petitioner was convicted. The relevant statute that controlled Chandler's conviction for murder can be found at Miss. Code Ann. § 97-3- 21 which provides in relevant part, "Every person who shall be convicted of murder shall be sentenced by the court to

imprisonment for life in the State Penitentiary." From this sentence Chandler now seeks relief.

The Mississippi Supreme Court has addressed this issue on at least two prior occasions. In *Parker v. State*, 119 So.3d 987 (Miss. 2013), a fifteen year old boy was convicted of murdering his grandfather with a shotgun. He was sentenced to life in prison as required by Miss. Code Ann. § 97-3-21 (Rev. 2006). The Mississippi Supreme Court affirmed Parker's conviction and remanded the case back to the trial court for a sentencing hearing that would comport with the dictates of *Miller*, *supra*. *Parker*, 119 So.3d at 999.

In *Jones v. State*, 122 So.3d 698 (Miss.2013), the Mississippi Supreme Court remanded the Appellant's case back to the trial court for a sentencing hearing pursuant to *Miller*. Jones was 15 years old when he stabbed his grandfather to death. He was tried and convicted of murder and sentenced to life in prison. *Jones*, 122 So.3d at 699. His sentence was affirmed on appeal by the Mississippi Court of Appeals. 938 So.2d 312 (Miss.Ct.App. 2006). Jones sought a new sentencing and was denied the relief he sought in the trial court. *Id*. at 700. Ultimately, the Mississippi Supreme Court affirmed his guilt but remanded the case back to the trial court for a sentencing hearing that would meet the dictates of *Miller*, *supra*. *Jones*, 122 So.3d at 703.

As is noted by the United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and by the Mississippi Supreme Court in *Parker*, *supra*, and *Jones*, *supra*, a life sentence is not

foreclosed in this case. The *Miller* Court held that automatic life sentences for juveniles violated our Constitution's evolving standards of decency. *Miller*, 132 S. Ct. 2455. Thus, before a life sentence may be imposed for a homicide, a sentencing hearing must be held and the Court must consider certain factors.

Analysis

In the case *sub judice* the Petitioner committed this homicide when he was approximately six months shy of his eighteenth birthday. At seventeen a person can join the United States Military with his parents' consent.[1] The United States Supreme Court has held that a seventeen year old female may be able to obtain an abortion without her parents' consent.[2] A seventeen year old may receive a private pilot's certificate from the Federal Aviation Administration and a sixteen year old may solo an aircraft during flight training.[3] Additionally, most, if not all States, allow seventeen year olds to drive a motor vehicle. There is nothing in the record before this Court to reflect that the Petitioner suffered from a lack of maturity when he killed Emmitt Chandler.[4] He was

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[1] 10 U.S.C. 505

[2] *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).

[3] United States Department of Transportation, Federal Aviation Administration, Advisory Circular No. 61-135A.

[4] One could argue that Petitioner's actions at the age of seventeen is a per se sign of immaturity. However, seventeen year old Jack Lucas, a United States Marine, was awarded the Congressional Medal of Honor for throwing his body upon a Japanese grenade six days after his seventeenth birthday and saving his platoon members at Iwo Jima. Lucas survived the grenade blast and suffered the rest of his life from the shrapnel left in his body. No

selling marijuana at a night club in Clay County the night before he murdered Emmitt Chandler. He was mature enough to father a child with his girlfriend and he was selling drugs to help pay for the expenses associated with said child.

The evidence adduced at trial indicated that he borrowed a .357 magnum pistol from his Uncle and shot his cousin, Emmitt Chandler, twice with the pistol. Both wounds would have been fatal. The Petitioner disposed of the murder weapon by throwing it in a pond. The Petitioner's actions on August 17, 2003, the day of the murder, show premeditation and planning and an attempt to dispose of the murder weapon.

The Court instructed the jury on charges less than murder and the jury was instructed that the State must show that the homicide of Emmitt Chandler was not done in necessary self- defense. The jury rejected the lesser included offenses and found that the Petitioner did not act in necessary self-defense. Thus, Petitioner was convicted of murder.[5]

The Court also considers the victim's testimony in this case. Mississippi has enacted a Constitutional provision giving victims of crime the opportunity to

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one would suggest that his selfless actions were a sign of immaturity.

[5] Chandler was not indicted for capital murder which carried a possible death sentence in 2003, e.g., murder during the course of an armed robbery. However, under the facts of the case, it appears that he might have been so charged since his motive to regain his marijuana from Emmitt Chandler might have been supported by the evidence adduced at trial.

address the court on sentencing matters.[6] This is not inconsistent with precedent set forth by the United States Supreme Court[7] and by the Congress of the United States of America.[8] There also seems to be an evolving standard of decency afforded to victims in the United States of America.[9] Emmitt Chandler's family is forever deprived of the companionship and love and interaction with him. [redacted]

[Alteration by district court in official order.]

The *Miller* Court does not set forth a checklist if you will for sentencing someone who was seventeen years old and six months when he committed a murder. However, they talk about the defendant's maturity, his family background, whether he was the "shooter" and other factors that they deem important in cases such as these.

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[6] See Miss. Constitution of 1890, Article 3, § 26A and Miss. Code Annotated §§ 99-43-1 et. seq.

[7] See *Payne v. Tennessee*, 501 U.S. 808 (1991).

[8] 18 U.S.C. § 3771.

[9] See Article 3, Sections 15-23-60 through 15-23-84 of the Code of Alabama 1975; Article 1, Section 24 of the Alaska Constitution; Section 13-4401 through Section 13-4441 of the Arizona Revised Statutes; Marsy's Law, California. The following States have also enacted constitutional or statutory protections for victims of crime: Colorado; Connecticut; Delaware; District of Columbia; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oregon; Oklahoma; Pennsylvania, Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; Washington; West Virginia; Wisconsin; Wyoming.

The Court notes in the case *sub judice* that the Petitioner was the sole actor in this murder. He was very mature and the evidence shows that he planned this crime and that he shot his cousin twice with a revolver and that both shots would have been fatal. He comes from an intact nuclear family and there was no evidence that indicated he had been abused or deprived as a child. He is not mentally retarded nor does he appear to have any types of mental impairments. Moreover, there were others in the immediate vicinity when he murdered his cousin and he also endangered their lives when he shot Emmitt Chandler. The victim in the case at bar was not armed and the murder of his cousin was heinous under the facts of this case.[10] The murderer and victim were not random strangers. Some indicated that they were like brothers. Moreover, the Petitioner did not refuse a plea agreement. In fact, he wanted to plead to manslaughter but the State of Mississippi was unwilling to offer such a deal in this case. The United States Supreme Court also talks about rehabilitation and the defendant's prospects for future rehabilitation. This Court notes that the Executive Branch has the ability to pardon and commute

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[10] This murder is no less heinous than the case of Napoleon Beazley. Beazley, at age 17, shot and killed John Luttig during a failed attempt to rob Luttig of his Mercedes automobile. Beazley shot Luttig twice with a pistol but failed to make off with Luttig's vehicle. Beazley was tried and sentenced to death in Texas. Luttig's Son, Michael Luttig, a judge on the 4th United States Circuit Court of Appeals spoke at the sentencing of the co-defendants. The United States Supreme Court refused to stop Beazley's execution and his death sentence was carried out on May 28, 2002.

sentences in this State should it deem such action warranted. After carefully reviewing the evidence in this case and the matters presented in the re-sentencing hearing, the Court finds that the Petitioner should be sentenced to LIFE IN PRISON under current Mississippi law for the murder of his Cousin, Emmitt Chandler.

SO ORDERED, THIS THE 9TH DAY OF OCTOBER, 2015.

/s/ James T. Kitchens, Jr.
JAMES T. KITCHENS, JR.
CIRCUIT JUDGE