

No. 18-1259

IN THE
Supreme Court of the United States

BRETT JONES,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

**BRIEF FOR *AMICUS CURIAE* MADGE JONES,
TONY JONES, MARTY JONES AND NICOLLE
OLSON IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI*¹

Amici are the victims of crime. Some are the family members of Bertis Jones, the victim in this case. Others² are individuals who have lost loved ones or who themselves have been victims of crimes committed by children. Some *Amici* have testified at the child's trial and/or sentencing hearings. All have been irreversibly affected by the crime, the trial, and the sentence imposed in their respective cases.

Similarities in their standing or in their past experiences, however, have not resulted in uniform positions on sentencing of youth in cases involving violence. The voices of victims and their family members are not monolithic, and victims are not always proponents of the harshest sentence for the offender. The voices of *Amici* are presented before the Court to show the important diversity of viewpoints held by victims and families who have experienced the devastating loss of a loved one to

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *Amici*, or their counsel, made a monetary contribution intended to fund its preparation or submission. The parties have consented to the submission of this *amicus* brief.

2. Azim Khamisa, Bill Pelke, Aqeela Sherrills, and Linda White, Brief of MAMA, et al. as *Amici Curiae* in support of Petitioner, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412) 2010 U.S. LEXIS 3881; Isa Nichols, Paul J. LaRuffa, Brief of Isa Nichols, et al. as *Amici Curiae* in support of Respondent, *Mathena v. Malvo*, 139 S. Ct. 1317 (2019) (No. 18-217) 2019 U.S. LEXIS 1905.

youth violence.³ Thus, pursuant to Supreme Court Rule 37.3, *Amici* respectfully submit this brief in support of Petitioner.

SUMMARY OF ARGUMENT

Amici embrace the rule set forth in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016): life without the possibility of parole (“life without parole”) is an unconstitutional penalty for youth offenders whose crimes reflect transient immaturity; only those incapable of positive change—those who are irreparably corrupt—may be sentenced to life without parole.⁴ *Amici* are of the view that the sentencer must make a determination of irreparable corruption prior to sentencing a child to life in prison without parole. *Amici* also believe the determination of irreparable corruption should be transparent. A finding, without an articulated basis, that a child is permanently incorrigible and beyond rehabilitation can lead some victims to feel confused about the judgment and unable to find closure.

3. The relevance of the views of a victim has been confirmed in all jurisdictions. The right of allowing victims to be heard at sentencing has been recognized by the federal government and all 50 states. *See, e.g.*, 18 U.S.C. § 3771(a)(4) (identifying the federal “right to be reasonably heard at any public proceeding . . . involving release, plea, sentencing, or any parole proceeding.”); Victoria Schwartz, Comment, *The Victims’ Rights Amendment*, 42 HARV. J. ON LEGIS. 525, 526 & n.13 (2005) (collecting citations of state laws).

4. *Amici* collectively submit this brief to offer guidance on resolving the particular question on which the Court has granted review. To be clear and forthright, however, many *Amici* maintain and wish to convey their personal view that no child is irreparably corrupt.

As victims of homicide crimes committed by youth, *Amici* implore the sentencing authority to consider the evidence and make a transparent determination that a child is irreparably corrupt before sentencing a child to die in prison.

ARGUMENT

I. Statements by Representative *Amici*

These *Amici* were all directly impacted by the crimes of children that resulted in death of another. Their stories, set forth below, exemplify their various views on sentences of life without parole and demonstrate their shared desire for justice and transparency. In particular, the statements illustrate how a specific finding of whether a child is irreparably corrupt, accompanied by a well-reasoned analysis that considers the child's capacity for rehabilitation and redemption, may address the concerns of families of the victims.

Madge Jones

As the victim's widow and Brett's grandmother, Madge Jones relived the grief and pain of losing her husband during the trial and sentencing of her grandson. Despite her unspeakable loss, Madge testified in her grandson's defense at his re-sentencing hearing, while other family members sat on the opposite side of the courtroom. One of those family members was her son, Michael, who no longer speaks to her because of her testimony. Her tragedy was public and her family was, and is, divided.

Unfortunately, Madge feels her contribution was in vain. She senses her testimony was ignored or, at the very least, not meaningfully considered. She does not believe the Judge considered Brett's life, his young age, or the evidence of his maturation in prison. Madge thinks an abundance of evidence, including her own testimony, illustrated Brett's character, and that his crime reflected transient immaturity, rather than irreparable corruption. Madge feels her grandson was re-sentenced to life without parole as if that sentence were still mandatory under Mississippi law. To Madge, the judge did not make an individualized determination of Brett's youth and capacity for change, and certainly made no finding that Brett is the irreparably corrupt child who cannot change for the better, given that he has already demonstrated rehabilitation.

Madge is steadfast in her belief that Brett is not and never was irreparably corrupt. Madge describes a bright, kind-hearted boy who has always shown concern for others. Fifteen years after Brett's trial and five years after his resentencing hearing, her view of Brett remains unchanged. She recalls countless facts from the record that illustrated Brett's rehabilitation. For example, Brett completed his high school equivalency and takes college courses. Madge speaks to him weekly and believes he has an undeniable calling to prison ministry, fostered by his close relationship with the prison's minister, and he has grown spiritually and emotionally. She attests that even now, he can make a meal out of anything but is most eager to share it with others. She believes the sentence of life without parole was wrong.

Despite the tragic loss of her husband, Madge remains an advocate for her grandson. Madge seeks closure, but, for her, that requires a more fair and just system, which protects the fundamental rights of children and victims and requires determination of a child's capacity for rehabilitation.

Tony Jones

Tony Jones is Brett's father, and Bertis' son. Fifteen years after his son was first sentenced to life without parole, Tony still seeks closure and struggles to understand the basis for the sentence imposed. Tony does not believe there is such a thing as an irreparably corrupt child. But if there is such a thing, he says, it's certainly not Brett. "It just makes no sense that Brett could be called incorrigible," Tony exclaims, Brett was neither a bad seed nor a life-long criminal. Brett was a sharp student, a good kid with a generous heart. Tony explains, "[Brett] just wants to help people. I would buy him something from Walmart [as a child] and he would give it to the first kid that came up." That is the person Brett was and is.

Tony does not believe the Judge considered evidence of Brett's maturation or rehabilitation when he sentenced Brett to die in prison. Reflecting on the evidence, Tony recalled testimony from a correctional officer at Brett's prison, who testified Brett was a good kid who accomplished a lot in prison, including getting his GED. Tony confirms Brett is motivated to study and learn, and he has educated himself despite his situation. To Tony, Brett's accomplishments in prison and other evidence of his rehabilitation do not support a finding that his son is irreparably corrupt. Tony explains Brett has grown into

a “fine, upstanding man” who has a lot to offer society. “I can say that because I believe that he is, in my heart, I know that he is.”

Tony doesn’t understand how the Judge could sentence his son to life without parole without explaining why Brett was one of the rare children who is in fact permanently incorrigible. “Life without parole for a kid? I don’t know where that came from.” Tony explains the closest he can get to closure is to understand how and why Brett is one of the rare children who are incapable of positive change. “To punish a kid [like Brett] like that, there is something wrong with the system.”

Marty Jones

When Marty Jones’s older brother, Brett, was resentenced to life in prison without the possibility of parole, his heart dropped. “I was trying to be realistic,” Marty recalls, “but it really upset me.”

Marty was one of several witnesses who testified on Brett’s behalf at Brett’s resentencing hearing, but he believes “nothing [he] said really mattered” to the Judge. Marty felt the Judge decided how he would rule before Brett’s resentencing hearing even began, casting aside testimony from Marty, his family members, and the correctional officer.

Marty has struggled to understand the basis for Brett’s sentence. Reflecting on Brett’s sentence now, Marty says, “it makes no sense to me, he was still a kid.”

In particular, Marty believes that, before the Judge sentenced Brett to life without the possibility of parole, he should have made a “real, palpable decision” that Brett was irreparably corrupt. As a family member of the victim, Marty feels it was important for the Judge to consider his family’s views and testimonies. He believes this consideration and explanation is crucial to his ability to understand Brett’s sentence and to find closure. Marty wishes the Judge would have articulated the reasoning for Brett’s sentencing. Without a finding of irreparable corruption and a transparent, reasoned explanation of that finding, Marty and his family are left to make sense of Brett’s sentence on their own.

Marty’s dismay is intensified by his developing relationship with Brett. During Brett’s first few years in prison, the two brothers often exchanged letters. “He mentioned he was taking college courses,” says Marty, “and our conversations became more intellectual.” The first time he visited his older brother in prison, he could tell Brett was not the same person he had been when he went to prison at fifteen. “He stood different, spoke clearer, and was more articulate,” Marty recalls, “I could tell he had grown.” Marty and Brett talk frequently, and Brett serves as an inspiration to Marty, in the ways Brett has bettered himself through education and self-study.

Marty believes judges should provide a reasoned, transparent determination that a child is permanently corrupt, i.e., incapable of positive change, before sentencing the child to life in prison without parole.

Nicolle Olson

“I was hit with all this shock,” says Nicolle Olson, reflecting on her grandmother, Barbara Olson’s death. “At first, I heard someone was in her house,” Nicolle recalls, “then I heard she had been killed.” Hours later Nicolle received more devastating news: her own thirteen-year-old son, Antonio Barbeau, had been arrested and charged with her grandmother’s murder.

On September 17, 2012, Antonio and his friend, who was also thirteen, went to Barbara’s house in Sheboygan Falls, Wisconsin. Shortly after their arrival, the two teens attacked Barbara, resulting in her death. Although Nicolle testified on Antonio’s behalf at his sentencing hearing, the Sheboygan County Circuit Court Judge was unmoved. The judge sentenced Antonio to life in prison with no parole eligibility until he serves thirty-six years—at which time three-quarters of his life will have been spent in prison.

The hearing was “rushed,” Nicolle explains, as she recalls leaving the courthouse with the impression the Judge simply “wanted the case to go away.” She further recalls being confused by the Judge’s decision, which left her to wonder if he had seriously considered Antonio’s age and immaturity, or simply sought to impose blind retribution. Despite her immense grief, Nicolle was certain Antonio could rehabilitate, mature, and eventually become a productive member of society. Whether the Judge considered any of that before sentencing Antonio, Nicolle will never know.

Given Antonio’s lengthy sentence and her firm belief that “kids are still forming into the people they

will eventually be,” Nicolle believes judges should be required to make a specific irreparable corruption finding before sentencing any child to life without the possibility of parole. “If judges are comfortable with giving [life without parole], I would hope they themselves would have a very clear understanding of why they are doing so, and they should be able to put that in writing,” says Nicolle. “Without it, I completely question the decision-making process.”

Nicolle believes a specific finding, followed by a reasoned, transparent discussion of that finding, can help mitigate victim’s anger and confusion, and provide closure and peace. In Antonio’s case, Nicolle would have liked for the Judge to have articulated his consideration of Antonio’s young age, potential maturation, and capacity to grow and rehabilitate before handing down his sentence. Such a consideration would have calmed Nicolle, and perhaps, even brought her some closure. “If the Judge had explained why he was giving such an extreme sentence, that would have made me feel heard and like I was being taken more seriously,” says Nicolle. Nicolle has seen growth firsthand in Antonio, who is earning a college degree and hopes to one day be an engineer. “There is comfort and healing in the knowledge that children can be radically different at a different age,” she says.

II. A Finding of Permanent Incurability, and a Reasoned, Transparent Explanation of the Basis for that Finding, Promote Closure and Perceived Fair Sentences

All *Amici* have lost loved ones or have been physically harmed by violence perpetrated by children. For many

families of murder victims, the grief and pain caused by the murder unfolds and recurs in a public arena over many years, as *Amici* and other victims' families often play an important role in the trial and sentencing of a child defendant. Some of these individuals, as was the case with many *Amici*, testify at the sentencing phase. Some testify in favor of life without parole, while others testify against it. Either way, their testimony is critical and pertinent to an evaluation of whether a judgment by a sentencer is perceived as honoring the wishes of the victims.

Amici recognize victims' families are not monolithic on the propriety of sentencing a youth to life without parole.⁵ These particular *Amici* do not believe a child should be eligible for life without parole, and some question whether any child can be found to be irreparably corrupt given children's inherent propensity for rehabilitation and developing maturation. Whatever their positions, however, victims and their families find closure in knowing the process used to sentence the child was fair, and they are united in a common desire for transparency, equitable implementation of the law, and reasoned, well-articulated decision-making.

In cases in which a child is sentenced to life without parole, the aforementioned principles may only be satisfied if the sentencing authority determines the child is irreparably corrupt (*i.e.*, beyond rehabilitation and redemption). *See Montgomery*, 136 S. Ct. at 734–35. *Amici* posit that the substantive right set forth in *Miller*

5. *See* Brief of Isa Nichols, et al. as *Amici Curiae* in support of Respondent, *Mathena v. Malvo*, 139 S. Ct. 1317 (2019) (No. 18-217) 2019 U.S. LEXIS 1905.

and *Montgomery* should be safeguarded with procedures that ensure only the rare juvenile offender whose crime reflects irreparable corruption is sentenced to life without parole. To *Amici*, this requires consideration of the evidence presented, a specific finding of fact with respect to whether the child is irreparably corrupt, and a transparent explanation of how and why the court reached the “uncommon” conclusion that the “harshest possible penalty” is permissible. *Miller*, 567 U.S. at 479.

Transparency is fundamental to our judicial system as a whole. A “core First Amendment principle” of our legal system is “open trials and transparency of the judiciary.” *Adams v. City of New York*, 993 F. Supp. 2d 306, 317 (E.D.N.Y. 2014). “There is a rich tradition of openness and transparency in the conduct of all judicial proceedings.” *Id.*; *New York Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012) (“[T]he First Amendment guarantees a qualified right of access not only to criminal but also to civil trials and to their related proceedings and records.”) (citations omitted)).

The goal of transparency extends to the criminal justice system. *See Norval Morris, Towards Principled Sentencing*, 37 Md. L. Rev. 267 (1977) (“Principled sentencing lies at the heart of an effective criminal justice system. It is obvious that sentencing involves a heavy responsibility and raises issues of difficulty; it thus requires reasons given, critical public consideration of those reasons, critical appellate review of those reasons: in short, a system of precedent leading to principled justice under law.”). Indeed, a core objective of the federal sentencing guidelines is transparency in sentencing, reflecting such characteristics as certainty, predictability,

and objectivity. The Sentencing Reform Act, 18 U.S.C. §§ 3551 *et seq.*, “sought to increase transparency, uniformity, and proportionality in sentencing.” *Dorsey v. United States*, 567 U.S. 260, 265 (2012). Section 3553(c) instructs that a district court, “at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence.” *Id.* § 3553(c). Nothing less should be required when finding that a child is incapable of rehabilitation and sentencing a child to life in prison without the possibility of parole.

Removing the opacity behind the sentencing process fosters the victims’ understanding, provides them with confidence that their participation in the process was meaningfully considered, and addresses their concerns about fairness. On the other hand, a sentencing process that is silent on the ultimate determination of permanent incorrigibility not only undermines the substantive right set forth in *Miller* and *Montgomery*,⁶ it also confounds and distresses the grieving families of victims. Indeed, some *Amici* have expressed feelings of confusion and misunderstanding with regard to the sentences of life in prison without parole in their respective cases. Hearing the sentence, but not knowing whether the judge considered the evidence of the defendant’s ability to reform, or whether the judge made a determination that the defendant was, in fact, permanently incorrigible,

6. *See Montgomery*, 136 S. Ct. at 734 (“Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, it rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.”) (internal quotations and citations omitted).

has left some *Amici* desperate to understand what went wrong.

Closure for *Amici* and other victims' families, regardless of their positions on life without parole, results from a court's reasoned, transparent explanation of its specific finding of irreparable corruption and acknowledgement of victims' views and testimonies from the sentencing authority. *Amici* posit that a determination of whether the child defendant is incapable of positive change, and a transparent analysis of the basis for that determination, strikes an appropriate balance between promoting those rights guaranteed by the Constitution and providing the victims' families with an opportunity to understand the basis for the sentence and, thus, to obtain closure to the extent possible.

CONCLUSION

For the foregoing reasons, *Amici* respectfully assert that a court must make a finding of irreparable corruption before sentencing any child to life in prison without parole, and support such finding with a clear and detailed explanation.

Respectfully submitted,

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