No. 18-1500

In the
Supreme Court of the United States

JONSHA BELL,
Petitioner,

v.

STATE OF MISSISSIPPI,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the Eighth Amendment, as set out in *Graham v. Florida*, 560 U.S. 48 (2010), forbid a State from imposing multiple, consecutive sentences of imprisonment on a juvenile habitual offender that has been convicted of multiple crimes?

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The trial court's pronouncement of Bell's sentence is unpublished. Pet. App. 43a. The opinion of the Court of Appeals of the State of Mississippi affirming Bell's sentence is also unpublished. Pet. App. 7a. Bell's fourth attempt for post-conviction relief, filed as an application for leave to file a motion for post-conviction relief, was denied by en banc order of the Mississippi Supreme Court and is also unpublished. Pet. App. 1a.

JURISDICTION

The petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257. He fails to do so.

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."

STATEMENT OF THE CASE

On the night of June 1, 1994, seventeen-year-old Jonsha Bell[1] and two accomplices kicked in the front door of a home where they robbed and ultimately kidnapped two of the residents. Pet. App. 9a. All three men were armed and wearing white masks. *Id*. Prior to entering the home, they cut the telephone lines so that

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[1] As shown on Bell's birth certificate, attached as Exhibit B to his Application for Leave to File Motion for Post-Conviction Relief, his date of birth is December 12, 1976.

their victims could not call for help. *Id.* at 10a. One of the robbers held a gun to the head of a three-year-old child who had been sleeping inside and threatened to kill her unless they received money and valuables. *Id.* at 9a-10a. One of the home's occupants turned over $352 in cash, a watch, and a necklace. *Id.* at 10a. When Bell was eventually arrested, officers found the watch on his person. *Id.* at 13a.

The robbers demanded to know the location of a Camaro automobile that was usually parked in front of the house. *Id.* at 10a. The homeowner told the men that the car belonged to her eldest son and both he and the car were at his house in nearby Clinton. *Id.* The robbers then forced two of the men, James Taylor and Michael Gross, at gunpoint to drive to the home. *Id.* Gross was locked in the trunk of the car and Taylor was forced to drive. *Id.* One of the assailants followed in a Ford Tempo. *Id.* The owner of the Tempo testified at trial that on the day of the robbery she had allowed three men, one being Bell, to use her car in exchange for crack cocaine. *Id.* at 12a.

The police were waiting for the group when they arrived in Clinton as the homeowner had called the police from her neighbor's house as soon as they left. *Id.* at 11a. As the chaos unfolded, Taylor fought with one of the assailants and Bell was shot in the leg. *Id.* When the police arrested the trio, Bell was found lying in the back of the Tempo holding one of the white masks. *Id.*

The jury found Bell guilty of one count of burglary, one count of armed robbery, and two counts of kidnapping. *Id.* at 28a. He was indicted and sentenced

as a habitual offender under Miss. Code Ann. § 99-19-81 because he had previously been convicted of possession of cocaine and two counts of business burglary.[2] *Id*. at 35a, 38a. At the time of the crimes at issue, Bell was actually on supervised probation. *Id*. at 31a. During sentencing, the trial judge noted that in addition to his two previous felony convictions, Bell "had been before the Youth Court" for auto theft, grand larceny, and possession of cocaine. *Id*. at 36a. Bell received forty (40) years for the armed robbery conviction, twenty-five (25) years for the burglary conviction, and thirty (30) years for each kidnapping conviction. *Id*. at 43a. The kidnapping sentences were to run concurrently with one another, but consecutive to the burglary and armed robbery convictions, which were also to run consecutively. *Id*. This equated to ninety-five (95) years in prison. Since Bell was sentenced as a habitual offender, he could never be eligible for parole or any type of early release. *Id*. at 46a-43a.

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[2] The prosecutor, at the sentencing hearing, informed the judge of the severity of Bell's business burglary convictions:

> Your Honor, the State just needed to note for the record, that while two of the previous convictions involved business burglaries, those burglaries did involve the crashing–crash-and-dash type robberies wherein cars were crashed into pawn shops, and the primary items taken were guns. In one of those instances, the pawn shop owner was inside that business because of previous burglaries. There was gunfire exchanged between the parties, the defendant having been convicted of that crime, and a co-defendant, and the pawn shop owner was wounded in one of those incidents.

Bell's conviction and sentence were affirmed on direct appeal by the Mississippi Court of Appeals. *Id.* at 7a. Bell has since filed a total of four motions for post-conviction relief. *Id.* at 54a. The first three were denied or dismissed. *Id.* The fourth, which precipitated the present appeal, was an application to the Mississippi Supreme Court for leave to file for post-conviction collateral relief in the Hinds County Circuit Court. *Id.* at 1a. That, too, was denied by en banc order of the Mississippi Supreme Court.[3] *Id.*

REASONS FOR DENYING THE PETITION

I. The Decision Below Is Correct Because The Mississippi Supreme Court Properly Declined To Expand This Court's Eighth Amendment Precedent.

Graham v. Florida established that a juvenile defendant cannot be sentenced to a term of life imprisonment for committing a crime other than homicide. *Graham*, 560 U.S. at 82. Graham was convicted of armed burglary and attempted armed robbery. *Id.* at 57. He received a sentence of life in prison for the armed burglary and fifteen years for the attempted armed robbery. *Id.* Graham's life sentence allowed for no possibility of early release unless he was granted executive clemency. *Id.* This Court overturned his sentence of life imprisonment, holding: "The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not

[3] After reciting Bell's claim, the order simply stated: "After due consideration, the Court finds that Bell's petition is without merit and should, therefore, be denied." Pet. App. 2a.

commit homicide." *Id.* at 82. This conclusion was supported by research that showed the differences between juveniles and adults and how society is generally against sentencing juveniles to life as doing so is "exceedingly rare." *Id.* at 67.

But the opinion clearly stated that "[t]he instant case only concerns those juvenile offenders sentenced to life without parole solely for a nonhomicide offense." *Id.* at 63. "Nowhere did *Graham* address multiple term-of-years sentences imposed on multiple crimes that, by virtue of the accumulation, exceeded the criminal defendant's life expectancy." *Vasquez v. Commonwealth*, 291 Va. 232 (2016). Despite this, since *Graham*, jurisdictions have differed on exactly what constitutes a sentence of "life in prison" and whether *Graham* applies when a defendant is sentenced to lengthy consecutive prison terms for committing multiple crimes.

Bell's case presents an entirely different scenario than what occurred in *Graham*. When Bell was around the age of fifteen-years-old, he faced charges of auto theft, grand larceny, and possession of cocaine in youth court.[4] Pet. App. 36a. Less than three years later, he was convicted of two counts of business burglary and possession of cocaine, all before he was eighteen years old. *Id.* at 35a. Almost immediately thereafter he committed the crimes at issue. It is important to note that in a matter of a few years, Bell's criminal conduct escalated quite dramatically.

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[4] The final disposition of these charges in youth court is not contained in the record.

Instead of receiving a sentence of life imprisonment for one crime as Graham did, Bell received *four* sentences for his *four* convictions. These sentences totaled ninety-five (95) years. Since Bell was sentenced as a habitual offender, he is not eligible for parole or any type of early release. This obviously means that he will serve the remainder of his life in prison. This does not violate the Eighth Amendment of the United States Constitution because Bell did not receive a singular sentence of "life in prison" within the meaning of *Graham*. "At no point did the Supreme Court [in *Graham*] consider a juvenile offender sentenced to multiple fixed-term periods and whether such terms, in the aggregate, were equal to life without parole." *Willbanks v. Department of Corrections*, 522 S.W.3d 238, 243 (Mo. 2017).

None of Bell's individual sentences amount to a life sentence. Bell received forty (40) years for the armed robbery conviction, twenty-five (25) years for the burglary conviction, and thirty (30) years for each kidnapping conviction. All were ordered to run consecutively except for the two kidnaping convictions, which were to run concurrently to each other. Each sentence was within the statutory guidelines and "[j]udges have long been understood to have discretion to select whether the sentences they impose will run concurrently or consecutively[.]" *Setser v. U.S.*, 566 U.S. 231, 236 (2012).

Bell argues that because Graham received two sentences for two separate crimes, the holding of *Graham* does in fact apply to him. But Graham's fifteen year sentence for attempted armed robbery was

never discussed in depth and played no role in the analysis or opinion of this Court. The focus was solely on Graham's singular sentence to life in prison.

Bell also argues that because this Court's categorical Eighth Amendment rules in *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Roper v. Simmons*, 543 U.S. 551 (2005), do not depend on the number of crimes committed, neither should *Graham's* categorical prohibition. But *Atkins* and *Roper* dealt with the death penalty, not a life sentence, and as this Court has recognized many times before, "death is different." *Harmelin v. Michigan*, 501 U.S. 957, 994 (1991). Bell argues that *Graham* created a "categorical prohibition of death-in-prison sentences for juvenile nonhomicide offenders," but this is not so. Pet. Br. at 14. *Graham* very clearly said that States were not required to "guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime" and that there is no requirement that the State release an offender during his natural life. *Graham*, 560 U.S. at 75.

If Bell's argument is accepted, there would be many instances where judges could no longer sentence juvenile offenders (much less habitual offenders) to the maximum sentence for their crimes and (in many cases) could no longer run those sentences consecutively. This is one reason why many of the state's highest courts have chosen not expand the holding of *Graham*. "[B]ecause each sentence is a separate punishment for a separate offense, the proper question on review is whether a sentence is constitutionally disproportionate to the offense for which it was imposed." *Lucero v. People*, 394 P.3d 1128,

1133 (Colo. 2017). Bell's sentences were not disproportionate to the crimes he committed and Bell does not argue such.

"The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." *Graham*, 560 U.S. at 67. It is only logical that juvenile offenders who commit multiple crimes would be sentenced more harshly than those who commit one crime. As Pennsylvania's Superior Court has recognized, any other approach would afford these offenders a "volume discount." *Commonwealth v. Foust*, 180 A.3d 416, 434 (Pa. Super. 2018).

"Warning of 'frequent and disruptive reassessments of [the Supreme Court's] Eighth Amendment precedents,' the Supreme Court has not looked positively upon lower courts issuing various rulings without precedence from the Supreme Court." *Willbanks*, 522 S.W.3d at 246. Lower Courts, "absent guidance from the Supreme Court, should not arbitrarily *pick* the point at which multiple aggregated sentences may become the functional equivalent of life without parole." *Id*. at 245 (emphasis in original). "[T]he duty to follow binding precedent is fixed upon case-specific holdings, not general expression in an opinion that exceed the scope of a specific holding." *Vasquez*, 291 Va. at 242.

The following excerpt from this Court's opinion in *Arkansas v. Sullivan*, 532 U.S. 769, 772 (2001), is applicable here:

> The Arkansas Supreme Court's alternative holding, that it may interpret the United States Constitution to provide greater protection than this Court's own federal constitutional precedents provide, is foreclosed by *Oregon v. Hass*, 420 U.S. 714, 95 S. Ct. 1215, 43 L.Ed.2d 570 (1975). There, we observed that the Oregon Supreme Court's statement that it could "'interpret the Fourth Amendment more restrictively than interpreted by the United States Supreme Court'" was "not the law and surely must be an inadvertent error." *Id.*, at 719 n. 4, 95 S.Ct. 1215. We reiterated in *Hass* that while "a State is free as a matter of its own law to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards," it "may not impose such greater restrictions as a matter of federal constitutional law when this Court specifically refrains from imposing them." *Id.*, at 719, 95 S.Ct. 1215.

Mississippi is following the binding precedent set out in *Graham* and has properly chosen to not expand it.

II. The Division Of Authority Among The States As To Whether and How To Expand *Graham* Does Not Warrant This Court's Review.

This Court has had many opportunities to grant certiorari and decide this exact issue but has declined to so. *See, e.g.* , *People v. Rainer*, 394 P.3d 1141, 1143 (Colo. 2017), *cert. denied*, 138 S. Ct. 641 (2018); *Lucero*, 394 P.3d at 1130, *cert. denied*, 138 S. Ct. 641 (2018);

Willbanks, 522 S.W.3d at 240, *cert. denied*, 138 S. Ct. 304 (2017); *Vasquez*, 781 S.E.3d at 922-23, *cert. denied*, 137 S. Ct. 568 (2016); *Henry v. State*, 175 So.3d 675, 676 (Fla. 2015), *cert. denied*, 136 S. Ct. 1455 (2016); *see also, e.g.*, *Budder v. Addison*, 851 F.3d 1047, 1049-50 (10th Cir.), *cert. denied*, 138 S. Ct. 475 (2017); *Bunch v. Smith*, 685 F.3d 546, 547-48 (6th Cir. 2012), *cert. denied*, 569 U.S. 947 (2013). Other than identify how some lower courts have expanded *Graham's* holding to include petitioners guilty of multiple crimes, Bell has not explained why this division necessitates this Court's involvement.

Many State legislatures have already adopted, or are in the process of adopting, legislation to appropriately address the sentencing of juvenile offenders. Each State can determine how best to address this issue within the confines of this Court's Eighth Amendment precedent. "[I]t is for the states, in the first instance, to explore the means and mechanisms for complying with the Eighth Amendment." *State v. Slocumb*, 827 S.E.2d 148, 313 (S.C. 2019) (citing *Graham*, 560 U.S. at 75). But since *Graham* does not technically apply to those facing multiple consecutive sentences for multiple crimes, Mississippi and other States that have adopted this position are not violating the prohibition against cruel and unusual punishment. So, respectfully, there is no reason for this Court to intervene.

III. Even If The Question Presented Warrants Review, This Case Would Be A Poor Vehicle For Addressing It.

If this Court does decide that it needs to address the appropriateness of expanding *Graham* and determine how long is too long for juveniles to be imprisoned, Bell's case should not be the catalyst. Bell's lengthy criminal history, increased severity of criminal activity over a short amount of time, and status as a habitual offender are additional factors that would complicate the issue. There is a distinction between juveniles who have little to no criminal history and those, like Bell, who faced multiple felonies prior to their 18th birthday. "The number of crimes, their seriousness, and the opportunity for the juvenile to reflect before each bad decision also makes it less likely that the aggregate sentence is constitutionally disproportionate even after taking youth and attendant characteristics into accounts." *Carter v. State*, 192 A.3d 695, 731 (Md. 2018).

Bell argues that the trial court's estimation that his remaining life expectancy was forty years gives this Court more reason to grant certiorari. But this Court denied certiorari in *People v. Rainer,* and a lower court had determined Rainer's life expectancy. *Rainer*, 394 P.3d at 1143. So this fact should not be persuasive.

IV. The Question Presented Is Not Important In The Sense That It Should Be Addressed By This Court.

Bell argues that if he is unsuccessful in this petition, *Graham* is essentially nullified. But this is not true, as *Graham* is a much more narrow opinion than Bell suggests. He also claims that prosecutors and judges can avoid *Graham* by the way they indict and sentence juveniles. But there is no evidence that they will.

In 2013, Louisiana adopted the position that Respondent takes here, that *Graham* does not apply to aggregate sentences for multiple convictions. *State v. Brown*, 118 So. 3d 332, 341-42 (La. 2013). But in 2016, the Louisiana Supreme Court overturned a sentence of ninety-nine years in prison for the singular conviction of armed robbery, holding that it violated *Graham*. *State ex rel. Morgan v. State*, 217 So. 3d 266, 276 (La. 2016). This case directly contradicts Bell's assertion that States are incapable of both upholding *Graham* and taking the position of Respondent here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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