No. 18-1572

In the
Supreme Court of the United States

MATTHEW D. PRISET,
Petitioner
v.

PENNSYLVANIA,
Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

BRIEF IN OPPOSITION

RONALD EISENBERG
Chief Deputy Attorney General
(*Counsel of Record*)
JENNIFER SELBER
Executive Deputy Attorney General
Criminal Law Division
MICHELLE HENRY
First Deputy Attorney General
JOSH SHAPIRO
Attorney General

1600 Arch Street
Philadelphia, PA 19103
(267) 940-6676
reisenberg@attorneygeneral.gov

Questions Presented

Whether petitioner's claim – that *Miller v. Alabama* should be extended to apply to "mentally ill" adults – is barred by the *Teague* rule, the exhaustion rule, and the procedural default rule?

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Constitutional and Statutory Provisions Involved

The constitutional provision involved is the Eighth Amendment to the United States Constitution, which provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The statutory provisions involved are 28 U.S.C. § 2241(c)(5), 28 U.S.C. § 2254(b)(1), and 28 U.S.C. § 2254(d).

Section 2241(c)(5) provides:

> The writ of habeas corpus shall not extend to a prisoner unless … (5) He is in custody in violation of the Constitution or laws or treaties of the United States.

Section 2254(b)(1) provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –
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> > (A) the applicant has exhausted the remedies available in the courts of the State; or

> (B)(i) there is an absence of available State corrective process; or
>
> (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Section 2254(d) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Statement of the Case

The *pro se* petitioner, Matthew Priset, contends that the Eighth Amendment prohibits a mandatory sentence of life without parole for a criminal defendant convicted of intentional, first-degree murder under Pennsylvania's "guilty but mentally ill" statute. The petition should be denied because relief is barred on several grounds.

Pennsylvania is a "M'Naghten" state that provides an insanity defense in accordance with the common law. The Commonwealth has an additional provision for criminal defendants who cannot meet the M'Naghten test, and whose mental state does not prevent formation of the requisite *mens rea*, but who may be in need of mental health treatment in addition to any sentence they may receive.

Priset is such a person. Priset was the valedictorian of his high school class, attended Princeton University, and worked at J.P Morgan. After developing psychiatric symptoms, Priset went home to live with his parents. *Commonwealth v. Priset*, 2013 WL 11254791 at *1 (Pa. Super. 2013).

Some time later, Priset took offense with an acquaintance. Armed with a knife, he surreptitiously entered the man's home at night and stabbed him to death, through the heart. The victim's mother, hearing her son's distress, entered the room and tried to pull Priset away. Priset yelled that the victim was a sadist and threw the mother against the door of a closet. The mother picked up an unloaded gun in the

closet, but Priset grabbed it from her hands and fled the scene. *Id.*

After his arrest, Priset began laying the groundwork for an insanity defense. He claimed that the victim was a Satanist (rather than a sadist). He wrote to relatives to ask for their help with the defense, explaining that he could achieve an acquittal if he could show a lack of premeditation. He wrote to a friend, claiming that the victim has been "jamming into my soul," but that he was "glad that asshole is dead." *Id.* at *3. He also stopped taking his medication, achieving a temporary finding of incompetency. *Id.* at *5.

By the time of trial, however, Priset was "extremely lucid," and offered his insanity defense through witnesses other than himself. Certiorari Petition Appendix at 4a. The Commonwealth presented the testimony of Dr. Timothy Michals to rebut the insanity claim. Dr. Michals acknowledged that Priset had a history of mental illness, but dismissed the defense position that Priset had acted under a fixed delusion that the victim was "Satan incarnate" and that Priset had to kill Satan in self-defense. As Dr. Michals pointed out, Priset had never made any reference to this fixed delusion to any friends or family, either before the murder or immediately after it. In addition, had he truly been acting under the delusion that he was properly defending himself against the Devil, Priset would not have gone out of his way to dispose of the gun and to wash the victim's blood off his face; nor would he have interrupted police questioning on the ground that he

did not want to "incriminate" himself. 2013 WL 11254791, at *4, *6.

The trial court, sitting as fact finder, rejected the insanity claim, along with the alternative defense argument that Priset was guilty of no more than voluntary manslaughter. Instead the court found that Priset was capable of forming the specific intent to kill, and that he was therefore guilty of first degree murder but mentally ill.[1] *Id.* at *3-*4. Pennsylvania law provides that "[a] defendant found guilty but mentally ill … may have any sentence imposed on him which may lawfully be imposed on any defendant convicted of the same offense." 42 Pa. C.S. § 9727(a). While serving that sentence, the defendant must "be provided such treatment as is psychiatrically or psychologically indicated for his mental illness." § 9727(b)(1).

Before sentencing, a psychological evaluation concluded that Priset was not in need of any mental health treatment. Common pleas court docket at 9.[2] The court nonetheless recommended that mental

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[1] "A person who timely offers a defense of insanity in accordance with the Rules of Criminal Procedure may be found 'guilty but mentally ill' at trial if the trier of facts finds, beyond a reasonable doubt, that the person is guilty of an offense, was mentally ill at the time of the commission of the offense and was not legally insane at the time of the commission of the offense." Pennsylvania Crimes Code, 18 Pa. C.S. § 314(a).

[2] Available at https://ujsportal.pacourts.us/DocketSheets/CPReport.ashx?docketNumber=CP-59-CR00004052011&dnh=1RdBVizFueVwYCwh3RKXjw%3d%3d.

health services remain available, and imposed the mandatory sentence of life imprisonment without parole.[3] Priset also received a concurrent sentence for burglary, for breaking into the victim's home to kill him. 2013 WL 11254791, at *1.

Priset filed a direct appeal, represented by trial counsel and an outside law firm, K&L Gates. He argued that his delusion compelled him to murder the victim, and that the evidence was therefore legally insufficient to prove specific to kill. He also argued that his delusion did not *initially* compel him to murder the victim, that he entered the victim's house only to confront not kill him, and that he therefore could not be convicted of burglary, which requires the formation of an intent to commit a crime at the time of entry. *Id.* at *2, *8.

The Pennsylvania Superior Court rejected these claims. The court held that the evidence was sufficient to disprove Priset's contention that his mental state rendered him incapable of forming a specific intent to kill. The court explained that a finding of mental illness under § 314 of the Crimes Code is not sufficient to negate *mens rea*. Rather, § 314 acts as a sentencing provision to trigger treatment for convicted prisoners.

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[3] In Pennsylvania the legal sentence for first degree murder by an adult is either life or death. 18 Pa. C.S. § 1102(a). The Commonwealth did not seek a death sentence here. A defendant sentenced to life in prison is not automatically considered for parole, but may become eligible for consideration if the governor commutes the sentence. 61 Pa. C.S. § 6137(a)

2013 WL 11254791, at *3-*6. The Pennsylvania Supreme Court denied discretionary review of the Superior Court's decision in April 2014. Pennsylvania Supreme Docket at 1, 3.[4]

In 2015, Priset filed a petition in common pleas court under the state's Post-Conviction Relief Act, represented by new counsel. He raised three claims. First he argued that trial counsel was ineffective for electing not to seek suppression of an exculpatory statement to police in which Priset asserted that the victim was a Satanist. Cert. App. at 4a, 6a-7a. Second he argued that trial counsel was ineffective for not calling Priset's mother as a witness in addition to the numerous other witnesses, and hundreds of pages of records, that counsel did present to establish Priset's mental health history. Cert. App. at 5a, 7a-8a. Third he argued that trial counsel was ineffective for recommending that Priset present his insanity defense to a judge sitting as fact finder rather than to a jury. Cert. App. at 5a, 8a. The common pleas court denied these claims after an evidentiary hearing in 2016. Priset chose not to appeal that ruling in state court. Common pleas court docket at 13.

Instead, in February 2017, Priset filed a *pro se*, handwritten petition for federal habeas corpus relief in the United States District Court for the Middle District of Pennsylvania. Priset contended that a mandatory minimum sentence of life imprisonment,

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[4] Available at https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=759+MAL+2013&dnh=3wV%2b84xCVE4dooSJEoiXVw%3d%3d.

given his mental illness, constituted cruel and unusual punishment under the Eighth Amendment. Habeas Petition at 5. Doc. #1.[5] The District Court issued an order offering Priset the opportunity to refile a new petition with all possible claims, warning him that, if he did not do so, additional claims would be barred.[6] Priset responded that "I choose to have the court rule on my petition as filed." Notice of Election, Doc. #5. He also filed a separate statement indicating that he had funds, that he did not require *in forma pauperis* status, and that "I would like to stand by my Federal Writ of Habeas Corpus petition as filed." Request for Appointment, Doc. #7.

The District Court denied the habeas petition, and declined to issue a certificate of appealability, in May 2018. Cert. App. 9a-20a. Priset appealed to the United States Court of Appeals for the Third Circuit, which denied the request for a certificate of appealability by judgment order in November 2018. Cert. App. 23a. In January 2019, the Court of Appeals denied Priset's petition for rehearing. Cert. App. 26a.

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[5] The habeas filings and orders are available through PACER at *Priset v. Attorney General of PA*, No. 17-cv-336 (M.D. Pa.). Page citations to the habeas petition follow PACER's pagination of the document rather than the document's internal (and inconsistent) numbering.

[6] "Thus, you should carefully consider whether the current habeas petition raises all grounds for relief from your conviction. If you think it may not, you may want to withdraw it before the court considers it. The court will allow you to do this now without prejudice to your right, after you have given the petition more thought, to file another 2254 petition, subject to statutory limitations." Administrative Order With Notice Of Limitations On Filing Of Future Petitions Under 28 U.S.C. § 2254, at 3, Doc. #4.

Priset then filed this *pro se* petition for certiorari in paid booklet form. The Commonwealth waived its right to file a response to the petition. This Court directed the filing of a formal response.

Reasons for Denying the Writ

I. Petitioner's claim – that *Miller v. Alabama* should be extended to "mentally ill" adults – is barred.

The argument section of Priset's *pro se* certiorari petition is, in its entirety, 84 words long. While there is room for interpretation, his claim appears to be that the Eighth Amendment prohibits a mandatory minimum sentence of life without parole for a defendant who has been found guilty but mentally ill. Priset cites no case law or any other legal authority in his petition. His claim is fairly understood, however, as a request that this Court extend its prior ruling in *Miller v. Alabama*, 567 U.S. 460 (2012) (Eighth Amendment prohibits mandatory minimum sentence of life without parole for defendant who was under 18 at time of crime). That claim is barred.

A. The Teague *rule.*

This case comes to this Court on federal habeas review. This Court's precedent prohibits the creation of new rules in that context. *Teague v. Lane*, 489 U.S. 288 (1989); *Sawyer v. Smith*, 497 U.S. 227 (1990). Extension of the *Miller* holding to mentally ill adults

would clearly amount to a new rule. Priset's claim is therefore barred.

The exhaustion rule.

Section 2254(b)(1), 28 U.S.C., prohibits the grant of a state prisoner's federal habeas petition if the prisoner has not exhausted available remedies in state court. Priset never made an Eighth Amendment claim in state court, and he therefore did not properly exhaust state court remedies.

The District Court assumed that the cruel and unusual punishment issue was litigated in state court.[7] But that is incorrect. In fact, the phrase "cruel and unusual" appears nowhere in the Superior Court opinion. Nor does the word "eighth," or the word "amendment," or "federal," or "constitution" – nor do any synonyms of these words appear. The Superior Court addressed only the claims that Priset raised, and these claims were phrased entirely as state law issues: whether the evidence was sufficient to satisfy the elements of the state's murder and burglary statutes.[8] *See, e.g., Picard v. Connor*, 404 U.S. 270

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[7] "It appears that this issue was raised by Priset during direct review and affirmed by the Superior Court." Cert. App. 14a.

[8] *See, e.g., Commonwealth v. Priset,* 2013 WL 11254791 at *2 ("Did the Commonwealth fail to present sufficient evidence that Appellant acted with malice"?). Priset himself, in his habeas petition, acknowledged the nature of his arguments on direct appeal in state court. When asked to identify the grounds raised in the Superior and Supreme Court, he said "malice was not present." Habeas Petition at 2-3.

(1971) (federal basis of claim must be fairly presented in state court).

Because Priset did not exhaust his federal constitutional claim, relief is barred.

The procedural default rule.

A state prisoner cannot obtain federal habeas relief on a claim that he has defaulted under state rules of procedure. *See, e.g., Coleman v. Thompson*, 501 U.S. 722 (1991). Priset was represented by new counsel on state post-conviction review, and had the opportunity to raise his Eighth Amendment claim at that time, or at least to argue that trial counsel was ineffective for not raising it.

But Priset chose to raise other claims in post-conviction litigation in place of an Eighth Amendment challenge. Cert. App. at 3a-8a. Petitions under the Pennsylvania Post-Conviction Relief Act, as under the federal habeas act, must be filed within one year of final judgment. 42 Pa. C.S. § 9545(b). The claims Priset chose to raise were timely, but any other claim, such as his current Eighth Amendment claim, is prohibited by the statute and therefore defaulted for purposes of federal habeas review. *See, e.g., Glenn v. Wynder*, 743 F.3d 402, 409 (3rd Cir. 2014).

And even when the claims he did raise were denied, Priset chose not to appeal to the Superior Court. Priset explained that choice in his habeas petition, declaring that he considered himself to have exhausted his remedies, and that he had the right to

pursue further remedies in either state or federal court as he saw fit. Habeas Petition at 7. That is not the law. Priset was required by state law to appeal in order to preserve his post-conviction claims. *See, e.g., Commonwealth v. Barnes*, 151 A.3d 121, 124 (Pa. 2016) (claims waived if not properly raised before trial court and preserved at every stage of appeal).

Priset's claim is therefore procedurally defaulted, barring habeas review.

II. Petitioner's ancillary claim – that he lacked the required *mens rea* – is also barred.

As noted above, Priset's perfunctory petition for a writ of certiorari appears to raise an Eighth Amendment challenge to his sentence. Other language in the certiorari petition, however, and in the habeas petition, suggests that his actual claim may be the one he raised on direct review in state court: that, because of his mental illness, the evidence was insufficient to show that he was guilty of murder. But if that is in fact petitioner's claim here, it too is barred.

In the certiorari petition's statement of the case, at 2, Priset asserts that the state court's finding of guilty but mentally ill negates the *mens rea* required by Pennsylvania law for first degree murder. And in the habeas petition, at 6, he asserts that the murder conviction ignores his mental state.

Assuming this is the issue on which Priset seeks review, he has come to the wrong place. Priset

consistently asserted this claim in the state courts – but solely in terms of state law. Nothing in his prior arguments invoked any federal provision or precedent, and the state courts accordingly reviewed them only as a matter of statutory application. The federal writ of habeas corpus does not extend to state prisoners not held in custody in violation of the constitution or laws of the United States. 28 U.S.C. § 2241(c)(5).

But even if Priset had ever cast his sufficiency claim in terms of federal law, relief would still be barred by the habeas statute. Section 2254(d)(1) requires habeas courts to reject any claim that was adjudicated on the merits in state court unless the state court decision constituted an unreasonable application of this Court's clearly established federal law. Nothing in Priset's arguments, either here or in any other court, suggests that the state courts' resolution of the sufficiency claim was not only erroneous but entirely off the spectrum of any reasonable result. Relief is therefore unavailable.

Conclusion

For these reasons, the Commonwealth respectfully requests that this Court deny the petition for a writ of certiorari.

Respectfully submitted,

RONALD EISENBERG
Chief Deputy Attorney General
Special Litigation Section
(*Counsel of Record*)
JENNIFER SELBER
Executive Dep. Attorney General
Criminal Law Division
MICHELLE HENRY
First Deputy Attorney General
JOSH SHAPIRO
Attorney General
1600 Arch Street
Philadelphia, PA 19103
(267) 940-6676
reisenberg@attorneygeneral.gov