

No. 18-203

In the Supreme Court of the United States

JOEY MONTRELL CHANDLER, aka
JOEY M. CHANDLER, aka JOEY CHANDLER,
Petitioner,
v.

MISSISSIPPI,
Respondent.

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

BRIEF IN OPPOSITION

JIM HOOD
Attorney General
State of Mississippi

SCOTT STUART
Counsel of Record
LISA L. BLOUNT
Special Assistant Attorneys General
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680
sstua@ago.state.ms.us
lblou@ago.state.ms.us

Counsel for Respondent

QUESTIONS PRESENTED

- I. 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.
- II. 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

QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS AND ORDERS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED ...	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	7
I.	
A. The petitioner's claim was not properly presented in the state court	8
B. The division of authority among the state courts does not warrant review	9
C. There is no deep split of authority in the federal courts	10
D. The Mississippi Supreme Court correctly interpreted and applied this Court's precedents	11
II.	
A. The trial court took into account and considered Chandler's youth and its attendant characteristics, including rehabilitation	13
CONCLUSION	15

TABLE OF AUTHORITIES**CASES**

<i>Adamcik v. State</i> , 408 P.3d 474 (Idaho 2017), <i>cert. denied</i> , 138 S.Ct.1607 (2018)	10
<i>Adams v. Robertson</i> , 520 U.S. 83 (1997)	9
<i>Chandler v. State</i> , 946 So.2d 355 (Miss. 2006)	1, 2, 3
<i>Chandler v. State</i> , 242 So.3d 65 (Miss. 2018), <i>reh'g denied</i> (May 17, 2018)	1, 12, 13
<i>Davis v. State</i> , 234 So.3d 440 (Miss. 2017), <i>cert. denied</i> , 159 S.Ct. 58 (2018)	10
<i>Howell v. Mississippi</i> , 543 U.S. 440 (2005)	9
<i>Johnson v. State</i> , 395 P.3d 1246 (Idaho), <i>cert. denied</i> , 138 S. Ct. 470 (2017)	10
<i>Malvo v. Mathena</i> , 893 F.3d 265 (4th Cir. 2018)	10, 11
<i>Miller v. Alabama</i> , 132 S. Ct. 2455 (2012)	<i>passim</i>
<i>Montgomery v. Louisiana</i> , — U.S. —, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016)	<i>passim</i>

<i>Parker v. State,</i> 119 So.3d (Miss. 2013)	6, 8, 9, 13
<i>People v. Holman,</i> 91 N.E. 3d (Ill. 2017), <i>cert. denied,</i> 138 S.Ct. 937 (2018)	10
<i>State v. Ramos,</i> 387 P. 3d 650 (Wash. 2017), <i>cert. denied,</i> 138 S.Ct. 467 (2017)	10
<i>United States v. Briones,</i> 890 F.3d 811 (9th Cir. 2018)	10
<i>Veal v. State,</i> 784 S.E.2d 403 (Ga. 2016), <i>cert. denied,</i> 139 S.Ct. 320 (2018)	10

CONSTITUTION AND STATUTES

U.S. Const. amend. VIII	<i>passim</i>
28 U.S.C. § 1257	1
Miss. Code Ann. § 97-3-19	2
Miss. Code Ann. § 97-3-21	2

OPINIONS AND ORDERS BELOW

The opinion of the Supreme Court of Mississippi affirming petitioner's life sentence and being petitioned for review is published at *Chandler v. State*, 242 So.3d 65 (Miss. 2018), *reh'g denied* (May 17, 2018). (Pet. App. 3a-19a). The order of the trial court pronouncing petitioner's life sentence is unpublished. (Pet. App. 20a-27a). The opinion of the Mississippi Supreme Court, affirming the petitioner's conviction and original sentence is published at *Chandler v. State*, 946 So.2d 355 (Miss. 2006).

JURISDICTION

The Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257. The judgment of the Mississippi Supreme Court denying rehearing was entered May 17, 2018.

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

1. *The crime.*

On August 17, 2003, Joey M. Chandler, being six months shy of his 18th birthday, shot and killed his 19-year old cousin Emmitt Chandler. Chandler's girlfriend was pregnant at the time of the shooting and, according to Chandler, he had been selling marijuana to help with the expenses. The night before the shooting his cousin Emmitt took a quarter of a pound of marijuana

from Chandler's car. The following day Chandler went to his uncle's house and took his .357 Magnum pistol without his knowledge. That evening, Chandler, Emmitt and four friends went in the woods where Chandler shot his cousin two times and killed him. Initially, Chandler told authorities that he pulled the trigger and shot Emmitt. Chandler's version of events changed at trial where he refused to admit that he pulled the trigger. Chandler testified that Emmitt was threatening him, and grabbed for the gun in Chandler's pants. A struggle for the gun ensued and the gun "started to go off." See *Chandler v. State*, 946 So.2d 355 (Miss. 2006). Witnesses to the shooting testified that at the time of the shooting, Chandler and the unarmed Emmitt were having a normal conversation with no arguing or loud talking and no struggle. *Id.* Witnesses saw Chandler pull the gun out of his pants and rub it on the side of Emmitt's head before firing three shots. Two of the shots hit Emmitt causing his death. Since the gun was a revolver, the gun's trigger had to be pulled three times. The pathologist testified the gunshot wounds were not from a contact wound, but from a near contact or distant gunshot wound. *Id.*

2. *Original proceedings.*

Following a jury trial, Chandler was convicted of murder under Mississippi Code Annotated section 97-3-19, and sentenced to life imprisonment, pursuant to Mississippi Code Annotated section 97-3-21. When the trial court originally sentenced Chandler to life imprisonment, Mississippi's statutory scheme mandated that Chandler's life sentence would be served without parole eligibility. The Supreme Court of

Mississippi affirmed this conviction and sentence in *Chandler v. State*, 946 So. 2d 355 (Miss. 2006).

3. *Resentencing.*

In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), this Court held that mandatory life sentences without parole for juveniles violate the Eighth Amendment to the United States Constitution. *Miller*, 132 S. Ct. at 2460. As a result, the Mississippi Supreme Court granted Chandler permission to seek resentencing in 2014.

The resentencing hearing was conducted in the Clay County Circuit Court in January, 2015. The state called three witnesses who testified to the emotional trauma suffered by Emmitt's family and the family's wish that Chandler receive a life sentence without parole. (Supp. Tr. 9-16)¹. Chandler called four witnesses and presented ten letters in support of his request to be resentenced to life with parole or less. (Supp. Tr. 21-67).

While *Miller* did not categorically prohibit the imposition of life without the possibility of parole, it did hold that, prior to sentencing a juvenile to life without parole, the sentencing authority must consider the offender's youth and its attendant characteristics. *Miller*, 132 S.Ct. at 2471. *Miller* suggested that sentencing authorities consider certain factors, including, but not limited to, the defendant's chronological age and its hallmark features, his family

¹ 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.

and home environment, the circumstances of the homicide offense (including the extent of the defendant's participation), his inabilities to deal with the legal system and assist counsel, and the possibility of rehabilitation. *Id.* at 2486.

After reviewing the testimony and evidence presented during the sentencing hearing, the trial transcript, the court file and the pre-sentence investigation, the judge considered the following factors, and in a detailed six-page order sentenced Chandler to life imprisonment under the current Mississippi law. (Pet. App. 20a-27a).

a. *Chronological Age and its Hallmark Features.*

The trial court noted that Chandler was six months shy of being eighteen years old when he murdered his cousin. The court did not discuss "transient" immaturity, but it did make a finding about Chandler's maturity, holding "There is nothing in this record before this Court [to] reflect that the Petitioner suffered from [a] lack of maturity when he killed Emmitt Chandler." (Pet. App. 23a). The court noted he was very mature. (Pet. App. 26a) "This was not a situation where you were very young, very immature -- where those situations existed." (Pet. App. 26a)

There was ample evidence in the record that Chandler was not an immature youth. Joe Chandler testified at the resentencing hearing about his son's maturity. Mr. Chandler was in the construction business. Prior to the shooting, his son was going to high school and working with him. Then his son started a side business as a photographer. (Supp. Tr. 46-47). According to Joe

Chandler, his son was working and managing his own money like an adult. (Supp. Tr. 55). Family friends Daryl and Donna Cheek testified to Chandler's trustworthiness and responsibility in his job. (Supp. Tr. 23-25).

b. Family and home environment. The trial court noted that in regard to family and home environment, testimony showed that Chandler came from a very loving, stable-home with an intact nuclear family. His parents taught him right from wrong and "brought him up in the church." There was no indication that Chandler had been abused or deprived as a child. Chandler had not previously been in any legal troubles. Chandler was not mentally retarded nor did he appear to have any type of mental impairment. (Pet. App. 26a).

c. Circumstances of the murder. The trial court noted in the sentencing order that Chandler was the shooter and sole actor in his cousin's murder. The court considered the crime heinous under the facts of the case. Testimony indicated Chandler and Emmitt were like brothers. The trial court noted that evidence at trial showed premeditation and planning on Chandler's part. Earlier the day of the shooting, Chandler went to his uncle's house and took a pistol without his uncle's knowledge. Chandler carried the pistol to the site of the shooting in the woods, hid it in his pants, used it to shoot Emmitt, and then threw it in a pond after fleeing the scene. The sentencing judge also noted that Chandler endangered the lives of the four others who were in the immediate vicinity when he shot and killed Emmitt. (Pet. App. 26a).

d. Inabilities to deal with the legal system and assist counsel. The trial judge noted that there was no indication that Chandler was unable to deal with the police or prosecutors or assist his attorneys in his defense. Chandler wanted to plead guilty to manslaughter but the prosecutor was unwilling to offer off such a deal. The trial court instructed the jury that it could convict Chandler of the lesser included offense of manslaughter. (Pet. App. 26a).

e. Possibility of rehabilitation. The trial court considered letters from various family members and friends submitted on behalf of Chandler asking the trial court to give Chandler a second chance because he had been rehabilitated or was capable of rehabilitation. Chandler presented testimony at the sentencing hearing related to his rehabilitation or capability thereof. The trial court noted in its order that this Court's discussion concerning rehabilitation and the defendant's prospects for future rehabilitation and also noted that the Executive Branch has the ability to pardon and commute sentences in Mississippi should it deem such action warranted. (Pet. App. 26a).

4. Appeal of the new life sentence to the Mississippi Supreme Court.

Chandler appealed his new sentence to the Mississippi Supreme Court requesting resentencing to life with parole. On appeal, he argued that the sentencing court failed to analyze all the factors identified in *Miller*, and adopted by the Mississippi Supreme Court in *Parker v. State*, 119 So.3d 987 (Miss. 2013). Chandler claimed the sentencing court applied the wrong legal standard, failed to consider some of the

Miller factors, ignored other factors and considered irrelevant information in sentencing him to life without parole. The Mississippi Supreme Court rejected Chandler's arguments and affirmed his sentence; four justices dissented. (Pet. App. 4a-19a). After being denied rehearing, Chandler's petition for writ of certiorari followed.

REASONS FOR DENYING THE PETITION

The petition before this court contains two issues. The first issue was not properly presented in the state court and addressed by the Mississippi Supreme Court. The petition is correct that there are state appellate courts that disagree on whether the Eighth Amendment requires a finding of permanent incorrigibility before imposing a life-without-parole sentence, but this Court has often and recently denied review of numerous petitions raising this question, and nothing warrants a change of course now. There is no deep split of authority in the federal courts on whether the Eighth Amendment permits a juvenile to be sentenced to life without parole absent a specific finding of permanent incorrigibility. This Court's prior decisions are controlling. The decision of the Mississippi Supreme Court is correct and consistent with prior opinions of this Court. Additionally, the petitioner's claims lack merit. Nothing in the record indicates that the trial court did not take into account or consider the evidence submitted at the sentencing hearing regarding rehabilitation. For these reasons, the State of Mississippi respectfully requests this Court to deny certiorari.

I.**A. The petitioner's claim was not properly presented in the state court.**

The petitioner, Chandler, argues the Eighth Amendment requires a sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without the possibility of parole. Chandler seeks certiorari from this Court, arguing that his life sentence is unconstitutional because the sentencing judge made no specific finding that he was permanently incorrigible. However, Chandler did not properly present this claim to the Supreme Court of Mississippi.

Chandler raised only one issue in his Brief of the Appellant. The thrust of Chandler's argument was that the sentencing court failed to comply with the legal standards and procedures mandated by *Miller v. Alabama* and *Parker v. Mississippi*. Chandler claimed the sentencer improperly applied some *Miller* factors, ignored other factors and considered irrelevant information in sentencing him to life.

In a supplemental brief to the Supreme Court of Mississippi, Chandler argued that *Miller v. Alabama*, as clarified by *Montgomery v. Louisiana*, creates a rebuttable presumption in favor of imposing a life sentence with the possibility of parole for juvenile homicide offenders. Chandler now argues that the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a life sentence without parole. Chandler did not ask the Mississippi Supreme Court to find that the trial court was in error because

it failed to make a finding of “permanently incorrigible.” In the majority opinion the Mississippi Supreme Court said “The *Montgomery* Court confirmed that *Miller* does not require the trial courts to make a finding of fact regarding a child’s incorrigibility” but that was all it said. The court did not really address the issue. The Court even stated “the issue on appeal is whether the trial court comported with the requirements of *Miller* and *Parker*. . .”

In dismissing a petition for writ of certiorari, this Court stated that it “has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim ‘was either addressed by or properly presented to, the state court that rendered the decision [it has] been asked to review.’” *Howell v. Mississippi*, 543 U.S. 440, 443 (2005) (quoting *Adams v. Robertson*, 520 U.S. 83, 86 (1997)). Chandler presented the question of whether the trial court failed to address all of the sentencing considerations mandated by *Miller* and *Parker* before sentencing him to life without parole and whether there is a presumption in favor of sentencing a juvenile to life with parole. However, Chandler did not clearly present the question of whether the trial court was required to make a finding of incorrigibility under the Eighth Amendment.

B. The division of authority among the state courts does not warrant review.

The petition is correct that some state appellate courts disagree on whether the Eighth Amendment prohibits life sentences for juvenile offenders without making a specific finding that the juvenile is

irreparably corrupt or permanently incorrigible. This Court has often and recently denied review of numerous petitions raising this question, and nothing warrants a change of course now. *Davis v. State*, 234 So.3d 440, (Miss. 2017), *cert. denied*, 159 S.Ct. 58 (2018); *Adamcik v. State*, 408 P.3d 474 (Idaho 2017), *cert. denied*, 138 S.Ct.1607 (2018); *Veal v. State*, 784 S.E.2d 403 (Ga. 2016), *cert. denied*, 139 S.Ct. 320, (2018); *People v. Holman*, 91 N.E. 3d 849 (Ill. 2017), *cert. denied*, 138 S.Ct. 937 (2018); *Johnson v. State*, 395 P.3d 1246 (Idaho), *cert. denied*, 138 S. Ct. 470 (2017); *State v. Ramos*, 387 P.3d 650 (Wash. 2017), *cert. denied*, 138 S.Ct. 467 (2017).

C. There is no deep split of authority in the federal courts.

Also, there is no deep split of authority in the federal courts on whether the Eighth Amendment permits a juvenile to be sentenced to life without parole absent a finding of permanent incorrigibility. Chandler references the Ninth and Fourth Circuits as being split on the issue. They are not. In upholding the defendant's life sentence in *United States v. Briones*, the Ninth Circuit held "Nothing in the *Miller* case suggests that the sentencing judge use any particular verbiage or recite any magic phrase. See *Montgomery*, 136 S.Ct. at 735 (noting that *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility)." *United States v. Briones*, 890 F.3d 811, 819 (9th Cir. 2018). Chandler cites to *Malvo v. Mathena* to say the Fourth Circuit holds that a finding of incorrigibility is required. *Malvo v. Mathena*, 893 F.3d 265, 274 (4th Cir. 2018). *Malvo* does not hold that the trial court make a specific finding of

incorrigibility. Malvo was a juvenile when convicted of capital murder. The jury could only sentence Malvo to death or life without parole. The jury was not allowed to consider the defendant's youth and attendant circumstances. After *Miller*, Malvo sought habeas relief. The U.S. Court of Appeals for the Fourth Circuit “[W]e affirm the district court’s order vacating Malvo’s four terms of life imprisonment without parole and remanding for resentencing to determine (1) whether Malvo 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” or (2) whether those crimes instead “reflect the transient immaturity of youth,” in which case he must receive a sentence short of life imprisonment without the possibility of parole. *Montgomery*, 136 S.Ct. at 734.” *Malvo*, 893 F.3d at 267. The Fourth Circuit did not hold that a specific finding of incorrigibility was required.

D. The Mississippi Supreme Court correctly interpreted and applied this Court’s precedents.

The Court should not grant the petition for certiorari because the Mississippi Supreme Court’s opinion is correct. The court correctly interpreted and applied this Court’s precedents found in *Miller* and *Montgomery*.

The Mississippi Supreme Court noted

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, 132 S.Ct. 2455. 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*, — U.S. —, 136 S.Ct. 718, 725, 193 L.Ed.2d 599 (2016) (citing *Miller*, 567 U.S. 460, 132 S.Ct. 2455).

Chandler, 242 So.3d at 69. *Miller* “does not categorically bar a penalty for a class of offenders or type of crime. . . .” *Id.* at 483, 132 S.Ct. 2455. “Instead, it mandates only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Id.* (emphasis added). In other words, *Miller* simply held that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment and that before such a sentence can be imposed on a juvenile, the sentencer must consider the mitigating qualities of youth.

Miller requires that 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, 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).

“The Montgomery Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child’s incorrigibility.” *Chandler*, *Id.* “Neither *Miller* nor *Parker* mandates that a trial court issue findings on each factor.” The Mississippi Supreme Court found the trial court certainly “considered” and “took into account” rehabilitation. “The trial court exceeded the minimum requirements of *Miller* and *Parker* by specifically identifying every *Miller* factor in its order.”.

The Mississippi Supreme Court correctly interpreted this Court’s prior opinions in holding the procedure at Chandler’s resentencing hearing met the requirements of both *Miller* and *Montgomery*.

II.

A. The trial court took into account and considered Chandler’s youth and its attendant characteristics, including rehabilitation.

In the alternative, Chandler claims the trial court failed to consider the evidence of his capacity for rehabilitation at all when deciding whether to impose a life without parole sentence. The evidence at the resentencing hearing included the testimony of Chandler’s father, wife, two family friends and several letters from family and friends asking the trial judge to show Chandler leniency because he had been rehabilitated. The evidence included testimony about Chandler’s success in completing various institutional programs since being incarcerated and Chandler’s lack

of disciplinary blemishes. The testimony and letters cast Chandler as a hard-working, mature and responsible young man at the time of the shooting. (Supp. Tr. 24, 25, 46, 47, 55; R. 24, 25, 19).

As evidenced by its sentencing order, the trial judge took into account and considered each factor identified in *Miller*, including the possibility of rehabilitation. Admittedly, the trial judge did not explain why consideration of Chandler's alleged rehabilitation did not persuade him to impose a sentence of less than life imprisonment. However, the court was not required to do so because neither *Miller* nor *Montgomery* mandate that a trial court issue findings on each *Miller* factor. This Court has not adopted a formal fact-finding requirement nor mandated any formal framework for sentencing. *Montgomery*, 136 S.Ct. at 735; *Miller*, 132 S.Ct. at 2471, 2475.

The sentencing judge is "required" 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 2455. The judge followed this mandate. The record makes clear that the sentencing judge listened to each argument and considered the supporting evidence. In the sentencing order, the judge made clear that he considered the entire court file, including the evidence submitted at the sentencing hearing prior to imposing the life sentence. Nothing in the record indicates that the trial court did not take into account or consider the evidence submitted at the sentencing hearing regarding rehabilitation. The trial judge appropriately considered Chandler's youth and its attendant circumstances, as required by *Miller* and *Montgomery*.

CONCLUSION

For the each of the above and foregoing reasons, Joey M. Chandler's petition for writ of certiorari should be denied.

Respectfully submitted,

JIM HOOD
Attorney General
State of Mississippi

SCOTT STUART
Counsel of Record
LISA L. BLOUNT
Special Assistant Attorneys General
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680
sstua@ago.state.ms.us
lblou@ago.state.ms.us

Counsel for Respondent