

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 2017

DEVONTE BROWN, *PETITIONER*

V.

STATE OF OHIO, *RESPONDENT*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Whether this Court's precedent requires a trial court's record to reflect specific consideration of irreparable corruption before sentencing the child to life in prison without the possibility of parole. U.S. CONST. amend. VIII; *Montgomery v. Louisiana*, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

**PARTIES TO THE PROCEEDING AND  
CORPORATE DISCLOSURE STATEMENT**

There are no parties to the proceeding other than those listed in the caption.

Under SUP. CT. R. 29.6, Petitioner states that no parties are corporations.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Devonte Brown asks this Court to issue a Writ of Certiorari to review the judgment of the Supreme Court of Ohio, entered on May 23, 2018, declining jurisdiction of his Lucas County, Sixth District, Court of Appeals case, affirming the life-without-parole sentence entered in his case.

### **OPINIONS BELOW**

On January 12, 2018, the Lucas County, Sixth District, Court of Appeals affirmed Devonte Brown's life-without-parole sentence. That opinion is available at *State v. Brown*, 2018 Ohio App. LEXIS 122 (Ohio Ct. App. Jan. 12, 2018). On May 23, 2018, the Supreme Court of Ohio declined jurisdiction of Devonte's case. That denial, which was issued without an opinion, can be found at *State v. Brown*, 152 Ohio St.3d 1482, 2018-Ohio-1990, 98 N.E.3d 295 (Ohio 2018).

### **JURISDICTIONAL STATEMENT**

On May 23, 2018, the Supreme Court of Ohio declined jurisdiction of Devonte Brown's jurisdictional appeal. Devonte now timely files this petition within 90 days of that decision. This Court's jurisdiction is invoked under 28 U.S.C. § 2101(c).

### **CONSTITUTIONAL PROVISION**

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

## STATEMENT OF THE CASE

“On August 10, 2015, [then 16-year-old Devonte Brown] invaded the victim’s home, stabbed her 17 times[;] killed her son[;] raped, kidnapped, and killed her daughter[;] and stole her vehicle. When later confronted by the police in the stolen vehicle, [Devonte] fled and crashed.” *Brown*, 2018 Ohio App. LEXIS at \*3.

On September 22, 2015, following a probable cause hearing, the Lucas County Juvenile Court transferred Devonte’s case to the Common Pleas Court for prosecution as an adult, pursuant to Ohio’s mandatory transfer statutes. *Id.* at \* 7. After transfer, Devonte was indicted on nine felony charges. *Id.* at \* 8.

On June 6, 2016, Devonte entered an *Alford* Plea to two counts of aggravated murder, attempted murder, rape, kidnapping, and failure to comply; the other counts were dismissed. *Id.* at \* 9. The trial court sentenced Devonte to 2 terms of life in prison without the possibility of parole, plus 20 years and 24 months. *Id.* at \* 17. Devonte filed a timely direct appeal to the Sixth District Court of Appeals to challenge the mandatory transfer of his case and the life-without-parole sentence.

The Sixth District affirmed Devonte’s sentence. *Brown*, 2018 Ohio App. LEXIS at \*1. After reviewing the record, the Sixth District determined that the trial court discussed and considered Devonte’s age and the gravity of the offenses prior to electing the sentence. *Id.* at \* 39-40. The Sixth District explained that “based on the statements made in open court, we find appellant’s youth as a mitigating factor was extensively argued, considered, balanced and weighed.” *Id.* at \* 48. The Sixth District

held that “the record supports a finding of irreparable corruption,” although the trial court did not make a finding regarding irreparable corruption. *Id.* at \* 52.

On February 26, 2018, Devonte filed a timely memorandum in support of jurisdiction to the Supreme Court of Ohio, asking that court to review the constitutionality of his sentence. On May 23, 2018, the Supreme Court of Ohio declined jurisdiction of Devonte’s case, without an opinion. This timely Petition for a Writ of Certiorari follows.

#### REASONS FOR GRANTING THE WRIT

Six months before Devonte’s sentencing hearing, this Court announced that *Miller v. Alabama* created a retroactive, substantive rule of law. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736, 193 L.Ed.2d 599 (2016), citing *Miller v. Alabama*, 567 U.S. 460, 472-473, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). In it, this Court drew a line: A life-without-parole sentence is unconstitutional if it is imposed on a child whose crime reflects unfortunate and transient immaturity, even if a trial court considers the child’s youth. *Montgomery* at 734. This Court explained the following:

*Miller*, then, did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penalogical justifications for life without parole collapse in light of the ‘distinctive attributes of youth.’ Even if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’ 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.’

(Internal citations omitted.) *Id.*



This Court did not set forth a specific procedure for sentencing children. But, the lack of a specific procedure does not diminish the constitutional rule established. Instead, this Court noted the careful balance it intended to strike as follows:

When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice system. Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. That *Miller* did not impose a formal factfinding requirement does not leave the States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment.

(Internal citations omitted). *Id.* at 735, citing *Ford v. Wainwright*, 477 U.S. 399, 416-417, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) (“[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.”).

*Montgomery* makes *Miller*'s substantive rule clear: a life-without-parole sentence is unconstitutional if it is imposed on a child whose crime reflects unfortunate and transient immaturity, even if a trial court considers the child's youth. *Montgomery* at 734. After *Montgomery*, a consideration of youth alone is not enough. For a reviewing court to evaluate the constitutionality of a child's sentence, the trial court's record must demonstrate not only a consideration of youth and its attendant circumstances, but a consideration of irreparable corruption and transient immaturity. *See Montgomery* at 734.

However, in this case, the trial court only considered “how and why youth generally weigh against imposing life without parole.” *Brown*, 2018 Ohio App. LEXIS

at \*39, 47 (“The court discussed how [Ohio Law] requires ‘the youth of a juvenile offender’ be separately considered ‘as a mitigating factor before imposing a life sentence without parole.’”). The trial court did not consider irreparable corruption or transient immaturity. In reviewing the sentence, the Sixth District recognized that the trial court did not mention irreparable corruption; yet, the appellate court sua sponte determined that “[t]he court explained its thoughts and reasons for imposing consecutive terms of life without parole, there implying the crimes at issue reflected irreparable corruption.” *Id.* at ¶ 52. “Although the [trial] court did not repeatedly say ‘irreparable corruption,’ the necessary factors were considered.” *Id.* at ¶ 53.

Considering the nature and gravity of offenses is an important part of every sentencing analysis, but it is not a substitute for determining if a child’s actions represent transient immaturity or irreparable corruption. *See Miller*, 567 U.S. at 473, 132 S.Ct. 2455, 183 L.Ed.2d 407 (explaining that juvenile vulnerabilities are not crime-specific); *Montgomery*, 136 S.Ct. at 727, 193 L.Ed.2d 599 (“States may not disregard a controlling, constitutional command in their own courts.”). Rather, this Court’s substantive rule is clear: a life-without-parole sentence is unconstitutional if the child’s actions reflect unfortunate and transient immaturity. *Montgomery* at 734. Additionally, the Sixth District’s justification of Devonte’s sentence conflicts with the constitutional rule. An insinuation that a child qualifies for the class of offenders eligible for a life-without-parole sentence is not enough. *See Brown* at ¶ 52. *Montgomery* would seem to require more: that the record must reflect that the trial

court considered the specific difference between irreparable corruption and transient immaturity before it sentenced the child. See *Montgomery* at 734.

As this Court noted, states can determine how best to implement *Miller*'s substantive rule. For instance, this Court noted that "[a] state may remedy a *Miller* violation by permitting juveniles homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery* at 736. That may very well be an option for Ohio's legislature to implement in the future. But, it does not change the trial court's current duty to ensure that a child's sentence is constitutionally compliant.

With a consideration of youth alone, Ohio's sentencing scheme is unconstitutional. See *id.* ("*Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole . . ."). In its decision affirming the life-without-parole sentence imposed in this case, the Sixth District explained that "Ohio's sentencing scheme does not run afoul of *Miller* 'because the sentence of life without parole is discretionary' when applied to a 'juvenile found guilty of aggravated murder.'" *Brown*, 2018 Ohio App. LEXIS at \*34, quoting *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, ¶ 19 (applying this Court's principles in *Miller* to the sentencing of children in Ohio and requiring a trial court to consider a child's youth). The Sixth District failed to recognize that more is required under *Montgomery*. And, in denying Devonte's appeal, the Supreme Court of Ohio declined the invitation to bring Ohio's sentencing considerations in line with this Court's precedent. As it currently stands, the sentencing scheme in Ohio must

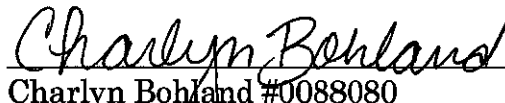
be remedied considering *Montgomery's* explanation that *Miller* banned life without parole for a certain class of offenders: children whose crimes reflect unfortunate and transient immaturity, and not irreparable corruption. *Montgomery* at 734.

#### CONCLUSION

This Court's decision in *Montgomery* defines the substantive right in *Miller* and requires more than a consideration of age—it requires consideration of irreparable corruption before sentencing a child to life without parole. *Montgomery*, 136 S.Ct. at 734, 736, 193 L.Ed.2d 599. Ohio law fails to acknowledge these important considerations. For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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