

No. 18- \_\_\_\_\_

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**In the**  
**Supreme Court of the United States**

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**SHAWN SADIK**  
*Petitioner*

v.

**COMMONWEALTH OF PENNSYLVANIA**  
*Respondent*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Juveniles and individuals with intellectual and developmental disabilities are understood to be less culpable than other defendants. Because of this diminished level of culpability, neither group is eligible for the death penalty. In *Miller v. Alabama*, this Court concluded that juveniles cannot be subject to mandatory life imprisonment without eligibility for parole sentences.

The Question Presented is:

Does the Eighth Amendment bar individuals with intellectual and developmental disabilities from receiving mandatory life imprisonment without parole sentences?

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## **PETITION FOR CERTIORARI**

Petitioner Shawn Sadik respectfully petitions this Court for a Writ of Certiorari to the Supreme Court of Pennsylvania.

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### **OPINIONS BELOW**

The Pennsylvania Supreme Court denied Petitioner's request for allocator without filing an opinion. (App. 13a). The opinion of the Superior Court of Pennsylvania affirming the denial of postconviction relief (App. 1a-12a) was an unpublished memorandum opinion. The opinion of the Allegheny County Court of Common Pleas was not published.

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### **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

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### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." United States Constitution, Amend. VIII.
2. "The board may parole subject to consideration of guidelines established under 42 Pa. C.S. § 2154.5 (relating to adoption of guidelines for parole) and may

release on parole any inmate to whom the power to parole is granted to the board by this chapter, except an inmate condemned to death or serving life imprisonment[.]” 61 Pa. C.S. § 6137(a)(1).

3. “Except as provided under section 1102.1 (relating to sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer), a person who has been convicted of a murder of the first degree or of murder of a law enforcement officer of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa. C.S. § 9711 (relating to sentencing procedure for murder of the first degree)” 18 Pa. C.S. § 1102.

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## **STATEMENT OF THE CASE**

### **A. Introduction**

This Court has not yet deemed mandatory LWOP sentences for individuals with an intellectual or developmental disability, (“IDD”), unconstitutional. Mr. Sadik’s claim for relief relies upon the line of cases that have determined that juveniles and people with an IDD are similarly situated when determining levels of culpability and severity of punishment. This special status has rendered those groups categorically ineligible for certain punishments. Since the Eighth Amendment does not permit juveniles to be sentenced to mandatory life without parole, it follows that people with intellectual and developmental disabilities are

similarly protected from that mandatory punishment. The Pennsylvania Superior Court rejected this argument.

Since *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016); deemed *Miller v. Alabama*, 567 US 460 (2012); retroactively applicable almost three years after the initial postconviction relief petition was filed, Mr. Sadik first raised this claim in his brief to the Superior Court of Pennsylvania.

## **B. Facts and Procedural History**

On July 14, 1993, Shawn Sadik was arrested and charged with Aggravated Assault, Recklessly Endangering Another Person, Criminal Conspiracy, Involuntary Deviate Sexual Intercourse, and Criminal Attempt, for involvement in the beating of M.M. On January 24, 1994, his co-defendant Stevenson Rose was arrested and charged with the same crimes. At the time of the assault, Mr. Sadik was approximately nine years younger than his co-defendant. Before the 1994 trial, Mr. Sadik filed a motion to suppress his confession. Mr. Sadik argued that his confession was invalid because his intellectual and developmental disability and the circumstances surrounding the interrogation rendered the confession constitutionally invalid. After a hearing on February 7, 1994, the trial judge denied the motion to suppress. Mr. Sadik was subsequently convicted of all counts after a jury trial and sentenced to 10-20 years of incarceration for Aggravated Assault and 5-10 years of incarceration for Criminal Conspiracy.

On September 17, 2007, M.M. passed away. Mr. Sadik was charged with Criminal Homicide on October 8, 2007. Mr. Sadik's co-defendant was convicted of Third-Degree Murder in a separate jury trial on October 13, 2010. After a jury trial that ended on October 25, 2010, Mr. Sadik was convicted of Murder of the First Degree and sentenced to life in prison without the possibility of parole.

After his conviction, Mr. Sadik timely filed post-sentencing motions that were denied by operation of law on June 15, 2011. Mr. Sadik appealed the Judgment of Sentence to the Superior Court of Pennsylvania on June 15, 2011. On February 3, 2012, the Superior Court affirmed the trial court's decision. The Pennsylvania Supreme Court denied his request for allowance of appeal on June 27, 2012. Mr. Sadik filed a Petition for a Writ of Certiorari that was denied by the United States Supreme Court on October 9, 2013. A timely post-conviction relief act petition was filed. After a hearing, the PCRA court denied relief. The Superior Court affirmed the order denying PCRA relief on December 20, 2017. Mr. Sadik timely filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania. In that petition, Mr. Sadik argued that the mandatory sentence of life imprisonment without parole was unconstitutional as applied to individuals with an intellectual and developmental disability. That petition was denied on June 13, 2018.

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## **REASONS FOR GRANTING THE PETITION**

**This court should grant certiorari because the question of whether a person with an intellectual and developmental disability is ineligible for a**

**mandatory sentence of life imprisonment without parole after *Miller v. Alabama* is one of national importance that has not been decided by this Court.**

People with intellectual and developmental disabilities are understood to generally be less culpable for criminal offenses. *Atkins v. Virginia*, 536 U.S. 304 (2002). Because of this lower level of culpability, this Court has determined that individuals with significant intellectual and developmental disabilities, (“IDD”), are categorically ineligible for the death penalty. Although Mr. Sadik’s case does not involve capital punishment, it raises the question of whether the Eighth Amendment permits someone with an IDD to receive a mandatory sentence of life imprisonment without the possibility of parole (“LWOP”).

Under 18 Pa. C.S. § 1102, all persons convicted of first-degree murder must be sentenced to a term of life in prison. The Parole Code specifically bars inmates sentenced to life in prison from being eligible for parole. 61 Pa. C.S. § 6137(a)(1). Pennsylvania is one of only ten states to eliminate parole for all defendants who are sentenced to life in prison. Ashley Nellis, Ph.D., “*Still Life: America’s Increasing Use of Life and Long-Term Sentences*,” The Sentencing Project, May 3, 2017; at 34.<sup>1</sup>

In *Roper v. Simmons*, 543 US 551 (2005); this Court determined that certain qualities that render individuals with a significant IDD ineligible for the death penalty also exempt juveniles from that punishment. Five years later, this Court concluded that those same qualities left juveniles ineligible for life without parole sentences in non-homicide cases. *Graham v. Florida*, 560 US 48 (2010). Finally, this

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<sup>1</sup> Retrieved from <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/> (last accessed 9/11/2018)

Court deemed juveniles categorically ineligible for mandatory LWOP sentences in *Miller v. Alabama*, 567 US 460 (2012). Since the mitigating qualities juveniles possess are largely similar to the mitigating qualities individuals with IDD have, the *Miller* reasoning should compel the result that individuals with an IDD cannot be subjected to mandatory sentences of life without parole.

The United States Constitution protects individuals from any punishment that is cruel and unusual. U.S. Const., amend. VIII. The prohibition against cruel and unusual punishments bars sentences that are excessive and disproportionate when considering the offense and the characteristics of the offender. *Miller*, 567 U.S. at 470. A sentence is disproportionate if there are “mismatches between the culpability of a class of offenders and the severity of a penalty.” *Id.* at 471. A mandatory sentence of life without parole is generally accepted to be harsh and is reserved for the most serious offenses and the most incorrigible offenders. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016), as revised (Jan. 27, 2016). Although this Court has recognized the difference in culpability between a person with an IDD and a person who does not have that disability, Pennsylvania’s sentencing and parole statutes do not. Someone with an IDD will receive the same mandatory LWOP sentence as someone who does not have that disability. This cannot be reconciled with the proportionality standards this Court has set. This also cannot be reconciled with the conclusion that juveniles and people with an IDD are similarly situated for Eighth Amendment purposes.

As noted above, mandatory LWOP sentences only exist in ten states. Of those ten states, only nine permit people with an IDD to receive a mandatory LWOP

sentence.<sup>2</sup> Since only nine states permit people with an IDD to receive mandatory LWOP sentences, such punishment can reasonably be called unusual because it is inconsistent with the current national consensus. Since LWOP sentences only came into broad use in the mid to late 20<sup>th</sup> century and was virtually unheard of at the time the Constitution was written<sup>3</sup>, it is an unusual sentence even when “unusual” is defined as inconsistent with “long use.”<sup>4</sup>

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## CONCLUSION

Since juveniles and people with an IDD are similarly situated for Eighth Amendment analysis, it follows that measures that restrict the mandatory imposition of a punishment for one group will apply to the other. Although the vast majority of states do not permit mandatory LWOP sentences for people with IDD, the question of whether such a punishment violates the Constitution’s cruel and unusual punishment provisions is unanswered.

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<sup>2</sup> In 1994, Indiana enacted a statute that excluded individual with IDD from the mandatory LWOP provisions. IC § 35-50-2-9 (2018).

<sup>3</sup> Nick Bonham, *Mandatory Life Without Parole Sentences for the Intellectually Disabled: A Violation of the Eighth Amendment*, 12 Cardozo Pub. L. Pol'y & Ethics J. 737, 739, 743-745 (2013-2014)

<sup>4</sup> John F. Stinneford, *The Original Meaning of “Unusual”: The Eighth Amendment as a Bar to Cruel Innovation*, 102 Nw.U. L. Rev. 1739, 1766 (2008)

For these reasons, Mr. Sadik respectfully requests that this Honorable Court grant this petition for a writ of certiorari.

DATED: September 11, 2018

Respectfully submitted,

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