

18-7169

SUPREME COURT OF THE UNITED STATES

No. _____

STEVE L. WRIGHT, JR.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Steve L. Wright, Jr. was convicted of fourteen federal offenses. The most severe portion of Mr. Wright's offenses occurred when he was a juvenile. Count 1, which charged conspiracy to distribute 50 grams or more of cocaine base and other controlled substances, began when Mr. Wright was a juvenile, but continued past his 18th birthday. Mr. Wright was also convicted of five firearm offenses, three of which occurred when Mr. Wright was a juvenile. The district court sentenced Mr. Wright to life imprisonment plus 110 years.

The Supreme Court subsequently held that sentencing a juvenile to life without parole violates the Eighth Amendment. Mr. Wright then filed a § 2255 motion asserting that because the conspiracy for which he was convicted began when he was a juvenile, and because 110 years is essentially a life without parole sentence, he is entitled to be resentenced. The Eighth Circuit held that Mr. Wright was seeking relief based on a non-retroactive procedural rule, and he was not entitled to relief because the conspiracy extended past his 18th birthday. The Eighth Circuit also declined to decide whether a term-of-years sentence can effectively be a life without parole sentence.

The questions raised by this petition are:

1. Whether, in imposing sentence for an ongoing offense, courts must consider juvenile conduct as a mitigating sentencing factor?
2. Whether, in imposing sentence for a juvenile, a term-of-years sentence that deprives the juvenile of any meaningful opportunity for release, would violate the Eighth Amendment?

PARTIES TO THE PROCEEDINGS

Those individuals who appeared in the criminal proceedings brought in the United States District Court for the Western District of Missouri by the United States of America are:

Steve L. Wright, Jr., Defendant

United States of America, Plaintiff

The following parties are currently before this Court:

Steve L. Wright, Jr., Petitioner

United States of America, Respondent

TABLE OF CONTENTS

Question Presented.....	1
Parties to the Proceedings.....	2
Table of Contents.....	3
Table of Authorities.....	4
Petition for Writ of Certiorari.....	5
Opinions Below.....	5
Jurisdiction.....	5
Constitutional Provision Involved.....	6
Introduction.....	6
Statement of the Case.....	10
Reasons for Granting Petition.....	13
I. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE QUESTION PRESENTED IS IMPORTANT AND SHOULD CONFIRM THAT A JUVENILE CONSPIRATOR CANNOT BE CONDEMNED TO DIE IN PRISON.....	15
II. THE COURTS BELOW ARE SPLIT ON WHETHER THE EIGHTH AMENDMENT'S PROHIBITION OF LIFE WITHOUT PAROLE SENTENCES ON JUVENILE OFFENDERS EXTENDS TO LENGTHY TERM-OF-YEARS SENTENCES..	22
Conclusion.....	26
Appendix	
Opinion of Eighth Circuit Court of Appeals.....	App. 1a

TABLE OF AUTHORITIES

Cases:

<u>Budder v. Addison</u> , 851 F.3d 1044 (10th Cir. 2017).....	24
<u>Bunch v. Smith</u> , 685 F.3d 546 (6th Cir. 2012).....	24
<u>Eddings v. Oklahoma</u> , 455 U.S. 104 (1982).....	15
<u>Graham v. Florida</u> , 560 U.S. 48 (2010).....	6,7,9-24
<u>Miller v. Alabama</u> , 567 U.S. 460 (2012).....	6-9,11,12,14,16-24
<u>Montgomery v. Louisiana</u> , 136 S. Ct. 718 (2016).6,8,14,18,19,21,22	
<u>Moore v. Biter</u> , 725 F.3d 1184 (9th Cir. 2013).....	24
<u>People v. Demirdjian</u> , 50 Cal. Rptr. 3d 184 (Ct. App. 2006)....	25
<u>Roper v. Simmons</u> , 543 U.S. 551 (2005).....	13,15,19,20,25
<u>Solem v. Helm</u> , 463 U.S. 277 (1983).....	23
<u>United States v. Rivera-Ruperto</u> , 852 F.3d 1 (1st Cir. 2017)...	24
<u>United States v. Wright</u> , 536 F.3d 819 (8th Cir. 2008).....	10
<u>Wright v. United States</u> , No. 13-1638 (8th Cir. Feb. 5, 2014)..	11
<u>Wright v. United States</u> , 902 F.3d 868 (8th Cir. 2018).12,17,18,24	

Statutes and Constitutional Provisions:

18 U.S.C. § 924(c).....	7,10
28 U.S.C. §1254(1).....	5
28 U.S.C. § 2255.....	7,11,17
Eighth Amendment to the United States Constitution.....	6

Other:

<u>The Youth Discount: Old Enough To Do The Crime, Too Young To Do The Time, Barry C. Feld</u> , 11 Ohio St. J. Crim. 107 (2013)....	8,20
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ON PETITION FOR A WRIT OF CERTIORARI
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Steve L. Wright, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Court of Appeals for the Eighth Circuit's opinion (Pet. App. 1a) is reported at 902 F.3d 868 (8th Cir. 2018).

JURISDICTION

The Court of Appeals entered its judgment on September 5, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

INTRODUCTION

In Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), the United States Supreme Court held that the cruel and unusual punishment clause of the Eighth Amendment "does not permit a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime." In Miller v. Alabama, 567 U.S. 460, 312 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Court extended Graham by holding that the Eighth Amendment also forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders. And finally, in Montgomery v. Louisiana, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), the Court confirmed that Miller and Graham created a new substantive rule of constitutional law, and must therefore be applied retroactively to cases on collateral review.

In Montgomery, the Court recognized that "[t]here are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish." 136 S. Ct. at 735. More specifically, the Court held that "Miller has

a procedural component." Id. at 734. "Miller requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." Id.

In this case, the petitioner, Steve L. Wright, Jr., was a juvenile when he began to participate in a conspiracy to distribute cocaine base and other controlled substances. Although majority of the conduct encompassed within the conspiracy charge occurred while Mr. Wright was a juvenile, the conspiracy continued past Mr. Wright's eighteenth birthday. Mr. Wright was also convicted of five firearm charges pursuant to 18 U.S.C. § 924(c). Three of those offenses occurred while Mr. Wright was a juvenile. The district court sentenced Mr. Wright to life imprisonment for the conspiracy charge, and a consecutive 110 years for the firearm charges.

After this Court's holdings in Miller and Graham, Mr. Wright filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, arguing that his sentence of life plus 110 years imprisonment violated the Eighth Amendment because a large portion of the conduct for which he was sentenced occurred when he was a juvenile.

This petition asks the Court to confirm that an individual who is convicted of an ongoing conspiracy offense, which began when he was a juvenile, may not be sentenced to life in prison without the possibility of parole. This Court has already confirmed that "life without parole [is] an unconstitutional penalty for a class of defendants because of their status - that is, juvenile offenders

whose crimes reflect the transient immaturity of youth." Montgomery, 136 S. Ct. at 734 (quotation omitted). The Court has also held that "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Miller, 567 U.S. at 461-62. To overlook the fact that Mr. Wright was indeed a juvenile at the time he began to allegedly participate in the charged conspiracy offense, would be to proceed as though he was not a child during a significant portion of his offense of conviction.

It has been said that "[t]he Court used age-as-a-proxy-for reduced culpability because no better, more reliable or accurate bases exist on which to assess culpability or individualized sentences." See, The Youth Discount: Old Enough To Do The Crime, Too Young To Do The Time, 11 Ohio St. J. Crim. L. 107, Barry C. Feld (2013). However, although the Court used a specific age to draw the line as to when an individual becomes more culpable, an ongoing offense must nevertheless require a sentencing court to consider a defendant's youth during the course of his offense of conviction. This is because "adolescents learn their way toward adult levels of responsibility gradually. This notion is also consistent with...long periods of diminished responsibility that incrementally approach adult standards in the late teens... [and with] less-than-adult punishments that gradually approach adult levels during the late teen years." Id. at 142, f.n 161 (citation omitted).

In other words, the maturity of a juvenile is an ongoing and

continuous event, and a juvenile will become more mature over a period of time. In the same token, a conspiracy is an ongoing and continuous event, and the portion committed during a defendant's juvenile years must be protected by Miller and Graham. Such a holding will protect the individual who commits the worst portion of his offense during his juvenile years, whose criminal conduct subsides after his eighteenth birthday.

This petition also asks the Court to confirm that Miller and Graham apply equally to a sentence for a term-of-years that is effectively a life without parole sentence.

STATEMENT OF THE CASE

On October 8, 2003, Steve L. Wright, Jr. was indicted in the United States District Court for the Western District of Missouri. On July 2, 2004, a superceding indictment was filed, charging Mr. Wright with seventeen federal offenses.

Trial began on August 1, 2006. On September 7, 2006, a jury convicted Mr. Wright of fourteen of the charged offenses, and acquitted him of the remaining three. A significant portion of the offenses occurred when Mr. Wright was a juvenile. As relevant to this petition, Count 1 charged conspiracy to distribute cocaine base and other substances, which encompassed conduct that occurred when Mr. Wright was a juvenile, and conduct that continued past his eighteenth birthday. Counts 4, 6, 9, 11 and 15, each charged firearm offenses under 18 U.S.C. § 924(c). Three of the firearm charges (4, 6, and 9), occurred before Mr. Wright's eighteenth birthday. Count 7 charged the offense of aiding and abetting the murder of a witness, which also occurred exclusively before Mr. Wright's eighteenth birthday.

At sentencing, the district court imposed concurrent terms of life imprisonment for Counts 1 and 7, to be followed by consecutive terms of 110 years imprisonment for the firearm charges. Mr. Wright's conviction and sentence were affirmed on direct appeal. United States v. Wright, 536 F.3d 819 (8th Cir. 2008).

In 2010, in Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), the Supreme Court held that the cruel and unusual punishment clause of the Eighth Amendment does not permit a

juvenile offender to be sentenced to life without parole for a nonhomicide crime. In 2012, in Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Court extended the holding in Graham by holding that the Eighth Amendment also forbids a sentencing scheme that mandates life in prison without parole for juvenile homicide offenders.

In June 2013, Mr. Wright filed an application for authorization to file a successive 28 U.S.C. § 2255 motion based on Graham and Miller. The Eighth Circuit Court of Appeals granted authorization for Mr. Wright to file the motion. Wright v. United States, No. 13-1638 (8th Cir. Feb. 5, 2014).

In the district court, the government conceded that Mr. Wright's mandatory life sentence for Count 7 violated the Eighth Amendment as construed in Miller because the underlying offense occurred when Mr. Wright was a juvenile. The district court vacated the life sentence, imposed a sentence of fifteen years on Count 7, and denied all other relief. Mr. Wright appealed to the Eighth Circuit, arguing (1) he should have been resentenced for Count 1 because the conspiracy began and charged conduct that occurred when Mr. Wright was a juvenile, (2) he should have been resentenced for Counts 4, 6, and 9, because each offense occurred exclusively while he was a juvenile, and the sentence of a consecutive 110 years was in effect a life without parole sentence, and (3) the district court erred in denying a comprehensive resentencing hearing because his entire sentence was tainted by Eighth Amendment violations, due to the fact that a significant

portion of the charged offenses occurred when Mr. Wright was a juvenile and transitioning into adulthood. The Eighth Circuit affirmed the decision of the district court and denied relief. Wright v. United States, 902 F.3d 868 (8th Cir. 2018).

In denying relief, the Eighth Circuit held that "Miller and Graham held only 'that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.'" Id. at 871 (quoting Miller, 567 U.S. at 479). The Eighth Circuit overlooked Miller's holding that Graham issued a "flat ban on life without parole...for non homicide crimes." 567 U.S. at 462. The Eighth Circuit also held that because the conspiracy charged in Count 1, a nonhomicide crime, encompassed conduct that occurred both before and after Mr. Wright's eighteenth birthday, Mr. Wright appeared to be raising "an argument for a non-retroactive procedural rule regulating the manner of determining culpability." Wright, 902 F.3d at 871. Finally, the Eighth Circuit declined to answer the "open question" of whether a lengthy term-of-years sentence imposed on a juvenile offender would violate the Eighth Amendment after Miller and Graham. Id. at 872.

Mr. Wright now seeks a writ of certiorari, asking this Court to answer two very important questions: (1) whether, in imposing sentence for an ongoing offense, courts must consider juvenile conduct as a mitigating sentencing factor; and (2) whether a lengthy term-of-years sentence would also violate the Eighth Amendment as construed in Graham and Miller.

REASONS FOR GRANTING PETITION

This Court has made it very clear that the cruel and unusual punishment clause of the Eighth Amendment "does not permit a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime." Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). Despite this clear command, petitioner Steve L. Wright, Jr. remains imprisoned under an unconstitutional life sentence that was imposed for a drug conspiracy offense that began when Mr. Wright was a juvenile. Although the conspiracy offense continued past Mr. Wright's eighteenth birthday, a significant portion of the most serious conduct occurred when Mr. Wright was a juvenile.

Mr. Wright should be afforded the protections of Graham because, as the Court has recognized, "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Roper v. Simmons, 543 U.S. 551, 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). For this reason, the Eighth Amendment's prohibition of cruel and unusual punishment requires that "punishment for crime should be graduated and proportioned to [the] offense." *Id.* at 560 (internal quotationmarks omitted).

This petition asks the Court to confirm that an individual who is convicted of an ongoing conspiracy offense, which began when he was a juvenile, may not be sentenced to life in prison without the possibility of parole. This Court has already confirmed that "life without parole [is] an unconstitutional penalty for a class

of defendants because of their status - that is, juvenile offenders whose crimes reflect the transient immaturity of youth." Montgomery v. Louisiana, 136 S. Ct. 718, 734, 193 L. Ed. 2d 599 (2016)(quotation omitted). The Court has also held that "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Miller v. Alabama, 567 U.S. 460, 461-62, 312 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). To overlook the fact that Mr. Wright was indeed a juvenile at the time he began to allegedly participate in the charged conspiracy offense, would be to proceed as though he was not a child during a significant portion of his offense of conviction.

The second reason that the Court should grant this petition is to cure a split in the circuit courts of appeals. Some circuits have held ~~that~~ Miller and Graham apply equally to defendants that have been sentenced to a significant term-of-years that in effect equate to a sentence of life without parole. Other circuits have refused to apply Miller and Graham unless a juvenile was specifically sentenced to life without parole.

The Court should grant this petition to resolve the split in the circuit courts on this very important question, and also to prohibit sentencing judges from circumventing Miller and Graham's holdings by sentencing a juvenile to a significant term-of-years that would in effect deprive the individual of an meaningful opportunity to be released in the future.

I. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE
QUESTION PRESENTED IS IMPORTANT AND SHOULD CONFIRM
THAT A JUVENILE CONSPIRATOR CANNOT BE CONDEMNED TO DIE IN PRISON

The Eighth Amendment to the United States Constitution provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In applying the Eighth Amendment's prohibition of cruel and unusual punishment, the Supreme Court has established a line of precedent that has instructed sentencing courts to treat juvenile offenders differently than adult offenders. This line of cases relies on the principal that "minors, especially in their earlier years, generally are less mature and responsible than adults." Eddings v. Oklahoma, 455 U.S. 104, 115-16, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982).

In Roper v. Simmons, the Court "established that because juveniles have lessened culpability they are less deserving of the most severe punishments." Graham v. Florida, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)(citing Roper, 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)). "As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characteristics are not as well formed." *Id.* (quotations omitted). "These salient characteristics mean that it is difficult for even expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime

reflects irreparable corruption." Id. "Accordingly, juvenile offenders cannot with reliability be classified among the worst offenders." Id. "A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as an adult." Id.

Based on these characteristics of juvenile offenders, the Court held in Graham that the Eighth Amendment "does not permit a juvenile offender to be sentenced to life without parole for a nonhomicide offense." Id. at 48. In Miller v. Alabama, the Court extended Graham by holding that the Eighth Amendment also forbids a sentencing scheme that mandates life without parole for juvenile homicide offenders. 567 U.S. 460, 312 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

In this case, Mr. Wright was convicted of fourteen federal offenses. For two of those offenses, the district court imposed sentences of life imprisonment (Counts 1 and 7). Mr. Wright was also convicted of five offenses under 18 U.S.C. § 924(c), for which the district court imposed a total sentence of 110 years, ordered to be served consecutively to the other life sentences (Counts 4, 6, 9, 11, and 15). For the remaining counts, the district court imposed various sentences, each ordered to run concurrently with the life sentences.

Count 1, which charged Mr. Wright with conspiracy to distribute 50 grams or more of cocaine base and other controlled substances, began and included conduct from when Mr. Wright was a juvenile. Count 7, which charged the offense of aiding and abetting the murder

of a witness, occurred exclusively during the period for which Mr. Wright was a juvenile. Finally, Counts 4, 6, and 9, which accounted for 60 of the 110 years imposed for the firearm offenses, also took place while Mr. Wright was a juvenile.

After this Court's rulings in Graham and Miller, Mr. Wright filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Mr. Wright argued that his sentences for Counts 1 and 7 must be vacated because the conduct charged in those counts occurred when he was a juvenile. Mr. Wright also argued that Counts 4, 6, and 9 should be vacated because the crimes took place when he was a juvenile, and the sentence of 110 years imprisonment was the indistinguishable equivalent of a life sentence without the possibility of parole.

The district agreed with Mr. Wright as to Count 7, and vacated the life sentence imposed in that count. However, the district court declined to vacate the life sentence for the conspiracy count because although the conspiracy began when Mr. Wright was a juvenile, it continued past his eighteenth birthday. Also, the district court declined to hold that the rulings in Miller and Graham could be extended to a term-of-years sentence that was in effect an actual life sentence without the possibility of parole. On appeal, the Eighth Circuit affirmed the decision of the district court. Wright v. United States, 902 F.3d 868 (8th Cir. 2018).

The opinion of the Eighth Circuit held that "Miller and Graham held only that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for

juvenile offenders.'" Wright, 902 F.3d at 871 (citing Miller, 567 U.S. at 479). The appeals court then noted that "the life sentence imposed for Count 1 was not mandated by statute." Id. And because the Sentencing Guidelines were advisory when Mr. Wright was sentenced in 2007, the Eighth Circuit held that Mr. Wright was seeking to invoke a "non-retroactive procedural rule regulating the manner of determining culpability." Id.

The Eighth Circuit's holding is erroneous and in direct conflict Graham, Miller, and Montgomery. To begin, this Court held that Graham issued a "flat ban on life without parole" for juveniles convicted of "nonhomicide crimes." Miller, 567 U.S. at 461. Count 1, a nonhomicide crime, charged a conspiracy to distribute cocaine base and other controlled substances. It is undisputed that Mr. Wright was a juvenile for a significant portion of the nonhomicide conspiracy offense. Therefore, the advisory nature of the guidelines is irrelevant due to the "flat ban on life without parole" for juveniles like Mr. Wright who were convicted of nonhomicide crimes. Only Miller addressed a mandatory sentencing scheme, and the Eighth Circuit erred in holding that Graham did so as well.

Next, the Eighth Circuit erred in holding that Mr. Wright was not entitled to relief because he was relying on a "non-retroactive procedural rule regulating the manner of determining culpability." Wright, 902 F.3d at 871. In Montgomery, this Court recognized that there are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls

within the category of persons whom the law may no longer punish." 136 S. Ct. at 735. More specifically, the Court held that "Miller has a procedural component." Id. at 734. "Miller requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." Id. "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, ...it rendered life without parole an unconstitutional penalty for a class of defendants because of their status - that is, juvenile offenders whose crimes reflect the transient immaturity of youth." Id.

Although Montgomery addressed the substantive nature and retroactivity of Miller, the same logic applies to Graham because a substantive rule "prohibits a certain category of punishment for a class of defendants because of their status or offense." Id. at 732. The category of punishment addressed by Graham was life without parole, and the class of defendants were individuals that committed a crime while only a juvenile.

The fact Mr. Wright attained the age of 18 during the course of the conspiracy cannot preclude him from relief Graham or Miller affords because, as this Court has recognized, "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Roper v. Simmons, 543 U.S. 551, 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). Therefore, the Eighth Amendment's prohibition of cruel and unusual punishment requires that "punishment

for crime should be graduated and proportioned to [the] offense." Id. at 560 (internal quotation marks omitted). "Drawing the line at 18 years of age is subject, of course, to the objection always raised against categorical rules." Id. at 547.

It has been said that "[t]he Court used age-as-a-proxy-for reduced culpability because no better, more reliable or accurate bases exist on which to assess culpability or individualized sentences." See, The Youth Discount: Old Enough To Do The Crime, Too Young To Do The Time, 11 Ohio St. J. Crim. L. 107, 147, Barry C. Feld (2013). However, for a juvenile that commits an ongoing offense that continues past his 18th birthday, the portion of his conduct committed during his juvenile years must be afforded the protections of Graham and Miller. This is because "adolescents learn their way toward adult levels of responsibility gradually. This notion is consistent with...long periods of diminished responsibility that incrementally approach adult standards in the late teens...[and with] less-than-adult punishments that gradually approach adult levels during the late teen years." Id. at 142, f.n 161 (citation omitted).

Under Roper's graduated punishment instructions, the sentencing court should have been required to consider the overall conspiracy offense, applying lessened culpability for conduct committed during Mr. Wright's juvenile years, and gradually increasing culpability for conduct that continued past Mr. Wright's 18th birthday. This contention is also consistent with Miller's holding that "imposition of a State's most severe penalties on juvenile offenders cannot

proceed as though they were not children." 567 U.S. at 461-62. Under Miller's clear directive, the district court could not ignore the fact that Mr. Wright was a child when he allegedly began to participate in the conspiracy charged in Count 1.

"[W]hen the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class." Montgomery, 136 S. Ct. at 735. "A hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." Id. (citation omitted). "An offender's age is relevant to the Eighth Amendment; and criminal procedure laws that fail to take defendant's youthfulness into account at all would be flawed." Graham, 560 U.S. at 76.

For these reasons, the Eighth Circuit erred in failing to vacate the life sentence imposed against Mr. Wright for the nonhomicide crime of conspiracy to distribute cocaine base and other controlled substances. Because the Eighth Circuit "lacked power to proscribe the habeas petitioner's conduct, it could not constitutionally insist that he remain in jail." Montgomery, 136 S. Ct. at 731 (citation omitted). Therefore, Mr. Wright prays that this Court will grant his petition for certiorari, vacate the order below, and remand with instructions to vacate the unconstitutional life sentence imposed in Count 1 for a nonhomicide offense.

II. THE COURTS BELOW ARE SPLIT ON WHETHER THE EIGHT AMENDMENT'S PROHIBITION OF LIFE WITHOUT PAROLE SENTENCES ON JUVENILE OFFENDERS EXTENDS TO LENGTHY TERM-OF-YEARS SENTENCES

The question of whether the Eighth Amendment protections established by Graham, Miller, and Montgomery extend to juvenile offenders that were sentenced to lengthy term-of-years sentences is very important question, and this Court should grant Mr. Wright's petition to answer it and cure the divided opinions among the courts of appeals below. Careful review of this Court's precedent reveals that sentencing a juvenile to a lengthy term-of-years that deprives him of any meaningful opportunity to obtain future release does, in fact, violate the Eighth Amendment.

In Graham, the Court recognized that its "cases addressing the proportionality of sentences fall within two general classifications. The first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case." 560 U.S. at 59. "In the first classification the Court considers all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive." *Id.*

In analyzing the reasons that life without parole was unconstitutionally excessive for a juvenile offender, the Court noted:

[L]ife without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency--the remote possibility

of which does not mitigate the harshness of the sentence. As one court noted in overturning a life without parole sentence for a juvenile defendant, this sentence means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days.

Graham, 560 U.S. at 69-70. (quotations omitted). Graham also noted that a term-of-years sentence can be constitutionally disproportionate if "it did not give the defendant the possibility of parole." *Id.* at 70. (citing Solem v. Helm, 463 U.S. 277, 297, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983)).

A sentence of a lengthy term-of-years, such as Mr. Wright's sentence of 110 years imprisonment, is in effect a life without parole sentence as it shares all of the aforementioned characteristics described by the Court in Graham. Under such a sentence, Mr. Wright would be required to serve 89 years in prison before being eligible for release. Mr. Wright would have to live until the age of 108 before he would have any hope for being released under a sentence of 110 years imprisonment. His sentence for a lengthy term-of-years is therefore, in effect, a sentence of life in prison without the possibility of parole. Such a sentence runs afoul of this Court's instruction that a sentencing court must provide a juvenile offender with "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75.

Some of the federal courts of appeals have appropriately applied the holding in Graham and Miller to juvenile offenders that were sentenced to lengthy term-of-years sentences that would exceed the

offender's life expectancy. For example, in Moore v. Biter, the Ninth Circuit held that "we cannot ignore the reality that a seventeen year old sentenced to life without parole and a seventeen year old sentenced to 254 years with no possibility of parole, have effectively received the same sentence. Both sentences deny the juvenile the chance to return to society. Graham thus applies to both sentences." 725 F.3d 1184, 1192 (9th Cir. 2013); see also, Budder v. Addison, 851 F.3d 1047 (10th Cir. 2017)(applying Graham to a lengthy term-of-years sentence).

On the other hand, several courts of appeals have declined to apply the holdings in Graham and Miller to lengthy term-of-years sentences. Wright, 902 F.3d at 872; see also, Bunch v. Smith, 685 F.3d 546, 547 (6th Cir. 2012)(declining to apply Graham to a term-of-years sentence); United States v. Rivera-Ruperto, 852 F.3d 1 (1st Cir. 2017)(declining to apply Graham and Miller to term-of-years sentence)(J. Torruella dissenting)(cert filed June 27, 2018).

This Court has already held that a juvenile offender may not be condemned to die in prison. Such a directive would clearly include a prohibition against sentencing a juvenile offender to such a lengthy prison term for a number of years that would deprive him of any opportunity for release. If this Court declined to clarify that Graham and Miller apply equally to lengthy term-of-years sentences, those holdings would immediately lose their teeth. Lower courts would be able to circumvent those holdings by opting to sentence a juvenile offender to hundreds of years in prison rather


than imposing a sentence that is titled as a life without parole sentence. For example, in one case, after a court of appeals overturned an invalid life without parole sentence imposed on a fifteen year old juvenile, the trial judge in People v. Demirdjian simply resentenced him to two consecutive life sentences. 50 Cal. Rptr. 3d 184, 188-89 (Ct. App. 2006)(noting that while California law prohibits sentencing juveniles under sixteen to life without parole, the court dismissed the juvenile's reliance on Roper v. Simmons and emphasized the clear difference between death and lesser sentences). This Court should intervene to eliminate the underhanded sentencing practices that the lower courts may attempt to employ as a result of this Court's silence on the issue.

For these reasons, Mr. Wright prays that the Court will grant his petition, vacate the order below, and remand with instructions to resentence Mr. Wright appropriately as a juvenile offender.

CONCLUSION

The Supreme Court has required sentencing courts "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Miller, 567 U.S. at 480. The Court has also counseled that "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Id. at 474. Despite this clear command, Mr. Wright remains imprisoned under an unconstitutional life sentence for a conspiracy conviction that began when Mr. Wright was a child. He also remains incarcerated under an unconstitutionally excessive sentence of 110 years that will deprive him of any meaningful opportunity to obtain release in the future. For these reasons, and all of the aforementioned reasons above, Mr. Wright prays that this Court will grant his petition for a writ of certiorari, vacate the order below, and remand with instructions to vacate his unconstitutional sentences, and provide him with a meaningful opportunity to be released in the future in accordance with Graham, Miller, and Montgomery.

Respectfully submitted,


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