No. 18-81

IN THE
Supreme Court of the United States

CARLTEZ TAYLOR,
Petitioner,
v.

STATE OF INDIANA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Indiana

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state appellate court's revision of a juvenile's initial life-without-parole sentence to a term of 80 years, where neither sentence was mandatory and where the initial sentencing court and appellate court adhered to the dictates of *Miller v. Alabama*, 567 U.S. 460, 480 (2012), violates the Eighth Amendment.

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INTRODUCTION

Two and a half months shy of his eighteenth birthday, Carltez Taylor orchestrated the murder of 17-year-old Javion Wilson. Taylor lured Javion into a trap and shot the defenseless young man in the back as he ran for his life. Taylor now stands convicted of murder and conspiracy to commit murder. At sentencing, the Indiana trial court considered Taylor's proffered mitigation evidence, but found that Taylor is irreparably corrupt, that the mitigating qualities of youth do not apply to Taylor's conduct, that he lacks a conscience, that he is unrepentant and, if given another opportunity, that he "would do exactly the same thing to another unwary victim." Tr. Vol. III 27–28. The trial court imposed a life-without-parole (LWOP) sentence. But the Indiana Supreme Court, pursuant to its authority under state law, and in light of the factors discussed in *Miller v. Alabama*, 567 U.S. 460 (2012), revised Taylor's sentence to a term of 80 years.

Taylor asks the Court to hear his case and hold that his 80-year sentence is effectively an LWOP sentence that is unconstitutional under *Miller*. The Court should not do so. Even if *Miller* squarely applied here, Taylor has received all of the consideration required under *Miller* two times over. And the Court recently rejected a petition in a case effectively raising the same issue. *See Veal v. Georgia*, No. 17-1510. Accordingly, the Court should deny Taylor's petition.

STATEMENT OF THE CASE

1. Danilyn Grossman returned home for the 2015 Thanksgiving weekend on a weekend pass from her juvenile detention center. Tr. Vol. V 156–57; Tr. Vol. VI 238, 242, 247–48. She spent the day after Thanksgiving with a female friend she had met at the detention center, and that night Danilyn invited Armonie Howard, another juvenile from the center, over to her home. Tr. Vol. V 156; Tr. Vol. VI 242, 248. Armonie soon arrived with a friend Danilyn had not yet met: Carltez Taylor. Tr. Vol. VI 244, 248–49.

After encountering the group in the hallway, Danilyn's mother told the two boys to leave; all four walked out the main door of the home, and, after smoking outside, snuck back into the house and went down to the basement. Tr. Vol. V 160; Tr. Vol. VII 2–6. Austin Jenkins later joined the four in the basement, bringing with him a 9mm Lugar pistol. Tr. Vol. VI 211–12, 226, 243; Tr. Vol. VII 5–7. Austin handed the gun to Armonie, who then passed it along to Taylor. Tr. Vol. VII 6–7. Taylor secured the gun in the waistband of his pants. Tr. Vol. VII 7.

Danilyn had earlier texted Javion Wilson, whom she had been thinking about dating, and invited him to come over. Tr. Vol. V 157–58; Tr. Vol. VI 243; Tr. Vol. VII 8. When Taylor, Armonie, and Austin discovered that Danilyn was going to meet Javion, Taylor told her that Javion was a "bitch" and "wasn't shit." Tr. Vol. VII 9–10. Taylor and Armonie discussed "bitching" Javion or "punking him out," and Taylor told Danilyn that if she did not get Javion to come

over, then he and Armonie would beat *her* up. Tr. Vol. VI 245; Tr. Vol. VII 10–12, 46. Danilyn complied, and she succeeded in luring Javion over to her house after assuring him that no one was with her and that she was not trying to set him up. Tr. Vol. VII 12; Tr. Vol. VII 89–90; Ex. 125.

Javion brought along his nephew, Trequinn Starks, and just after midnight the two boys met Danilyn on the sidewalk across the street from her house. Tr. Vol. V 115–16, 118; Tr. Vol. VII 13–15; Ex. 1–2. After the three had been talking for about 10 to 15 minutes, Taylor left Danilyn's house and began walking toward the three teenagers. Tr. Vol. V 122–26; Tr. Vol. VI 94-102, 122–123; Tr. Vol. VII 17-19; Ex. 69-79, 81. When he was about five to ten feet away from the group, he pointed his gun at Javion and began shooting. Tr. Vol. V 125, 145, 147, 217, 233; Tr. Vol. VI 217, 220–223; Tr. Vol. VII 20; Ex. 34–38. The group immediately scattered, and as Javion ran away Taylor fired a bullet into the boy's back. Tr. Vol. 124–27, 217; Tr. Vol. VI 189–90, 203; Tr. Vol. VII 20–21. Taylor ran past Javion's fallen body saying "CTK bitch" ("CTK" stood for "Cream Team Killers," and Javion and his friends were known as the "Cream Team"). Tr. Vol. V 128–30, 132–33, 135; Tr. Vol. VII 22–23.

Javion died moments before the police arrived; the bullet travelled from the back of his torso through his body, fracturing the right seventh rib, lacerating the middle lobe of the right lung, and tearing the aorta and main pulmonary artery before exiting his body. Tr. Tr. Vol. V 131, 214, Vol. VI 186–203, Vol. VII 98;

Ex. 132–150. Javion and Taylor were both 17; Taylor would turn 18 less than three months later. Tr. Vol. VII 98, 179.

Danilyn and Taylor fled into Danilyn's home. Tr. Vol. V 128–29; Tr. Vol. VII 21–23. Just inside, Taylor grabbed Danilyn and put the barrel of the pistol—still hot from being fired—up to Danilyn's head and threatened, "Bitch if you say anything I'll kill you." Tr. Vol. VI 245; Tr. Vol. VII 21–23, 46, 55–57, 103. The two were eventually arrested, and while they were in custody Taylor remarked that he should have killed Danilyn when he had the chance. Tr. Vol. VI 245–47.

2. The State charged Taylor with murder, attempted murder, and conspiracy to commit murder, and it alleged that Taylor was eligible for a sentencing enhancement for using a firearm to commit the underlying offenses. App. Vol. II 2, 7, 24, 50, 52, Tr. Vol. II 27–31. The jury found Taylor guilty of murder and conspiracy to commit murder and eligible for the firearm sentencing enhancement. App. Vol. II 15–16, 143–146; Tr. Vol. VII 161.

During the penalty phase, the State sought an LWOP sentence, arguing that Taylor was eligible for a sentence of life in prison because he committed the murder by lying in wait. App. Vol. II 17, 147–148; Tr. Vol. VII 161. Taylor presented testimony from the minister of his family's church, an uncle that helped raise Taylor, a family friend, and Taylor's grandmother. Tr. Vol. VII 180–201. Following the presenta-

tion of evidence, the jury returned a verdict recommending a sentence of life without parole. App. Vol. II 17, 183.

At the sentencing hearing, the trial court recognized that Taylor was seventeen years, nine months, and sixteen days old at the time of the crime. Tr. Vol. III 23–24. It considered Taylor's proffered mitigation—which largely focused on his upbringing—in addition to the substantial history of juvenile delinquency Taylor had accumulated by the time of the murder: Taylor had been adjudicated a delinquent for criminal trespass, battery resulting in bodily injury, theft of a firearm, dangerous possession of a firearm, and carrying a handgun without a license. Tr. Vol. III 24–25; Conf. App. Vol. II 190.

In addition, the trial court observed that other charges —relating to discharge of a firearm and violent gang activity—were pending against Taylor at the time of the offense and that prior efforts to rehabilitate Taylor had been unsuccessful. Tr. Vol. III 24–25; Conf. App. Vol. II 190. It also noted that Taylor had dropped out of school, had no employment history, had been deemed a high recidivism risk by an IRAS-CST test (a multidisciplinary assessment widely used to estimate the likelihood of recidivism, *see, e.g.*, *Malenchik v. State*, 928 N.E.2d 564, 568–75 (Ind. 2010)), and had committed the murder approximately eighteen days after being released from the Department of Correction. Tr. Vol. III 25; Conf. App. Vol. II 187–188.

The trial court also acknowledged the nature of the crime, observing that Taylor (1) murdered Javion, another juvenile, in the presence of two other juveniles; (2) shot Javion, who was unarmed, as he was running away; (3) organized Javion's murder by acquiring a murder weapon, "photographing it in advance of the deed, [and] coercing the victim's girlfriend to assist in setting the trap"; and (4) committed the murder by lying in wait. Tr. Vol. III 21–26.

Finally, the trial court considered "the mitigating qualities of youth, and how one might expect that a child, who[se] lack of maturity . . . would prevent him from appreciating the risks and consequences of his actions," but concluded that "those qualities of youth are not applicable to this particular defendant." Tr. Vol. III 23–24. It found that Taylor appreciated the risks and consequences of his actions, and it described the murder as a "calculated killing that took some extraordinary effort, will and thought to perform[,] all of which is inconsistent with the qualities of youth." Tr. Vol. III 25. And it found that Taylor's "CTK bitches" remark to have been made in a "manner fitting some of our most hardened in this society." Tr. Vol. III 27.

In sum, the trial court found that Taylor's "criminal history and his behavior before, during and after he shot the victim, is indicative of one who lacks conscience, who is unrepentant and who, if given another opportunity, would do exactly the same thing to another unwary victim." Tr. Vol. III 28. The trial court concluded that Taylor's "actions belie his true nature, and that nature reflects irreparable corruption." Tr.

Vol. III 27. It imposed a sentence of life without parole, with an additional consecutive 15-year sentence for the firearm enhancement on the murder conviction and a concurrent term of thirty-five years for the conspiracy conviction. App. Vol. II 18–19, 203; Tr. Vol. III 12–28.

3. Taylor appealed his convictions and sentence to the Indiana Supreme Court. App. Vol. II 208–213. As relevant here, he claimed that his LWOP sentence was unconstitutional under both the Eighth Amendment and the Indiana Constitution. He also urged the court to revise his sentence in light of his juvenile status pursuant to its discretionary authority under Indiana Appellate Rule 7(B), which grants the Indiana Supreme Court the power to "revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

The Indiana Supreme Court granted Taylor's request, using its power under Rule 7(B) to revise his sentence to a term of 80 years' imprisonment. It held that "Taylor's LWOP sentence was lawful," *Taylor v. State*, App. 14a, but that it would nevertheless use its discretionary authority under Rule 7(B) to reduce Taylor's sentence to an aggregate term of 80 years' imprisonment, *id.* at 19a. The court "consider[s] many factors in weighing 7(B) revisions," *id.* at 16a—many of which overlap with the factors differentiating juveniles from adults identified in *Miller v. Alabama*, 567 U.S. 460 (2012)—and concluded that they "do not war-

rant making [Taylor] Indiana's fifth juvenile sentenced to a guaranteed death in prison." *Taylor*, App. 19a.

Taylor petitioned for rehearing, arguing that his revised 80-year sentence was a *de facto* life sentence unconstitutional under the Eighth Amendment and *Miller*. The Indiana Supreme Court denied his rehearing petition without opinion.

REASONS TO DENY THE PETITION

I. Taylor's Sentence Is Constitutional Even If *Miller* Applies

Taylor asks the Court to take his case to decide when, if ever, a term-of-years sentence for a juvenile must be subjected to the requirement 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.'" *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 480 (2012)). Taylor's sentence, however, is constitutional *even if Miller* applies, so his case is a poor vehicle for answering this question.

1. When a juvenile is convicted of murder, *Miller* does not categorically bar imposing a sentence foreclosing "meaningful opportunity to obtain release." Pet. 14. *Miller* held only that "*mandatory* life without parole for juveniles violates the Eighth Amendment." *Miller*, 567 U.S. at 487 (emphasis added). A sentencer may yet "make th[e] judgment in homicide cases" that

a "juvenile offender['s] . . . crime reflects irreparable corruption," *id.* at 479–80, so long as the "sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty," *id.* at 483. Such characteristics include the individual's specific chronological age, the mitigating characteristics of youth, the family and home environment, and the particular circumstances of the murder, including the extent of the individual's participation in the crime. *Id.* at 476–79 & n.8

Both the trial court and the Indiana Supreme Court considered all of the pertinent circumstances and made the requisite findings that *Miller* said the Constitution requires.

2. After the jury recommended an LWOP sentence notwithstanding all of Taylor's evidence and arguments that youth and upbringing mitigated his crimes, the trial court conducted a *separate* sentencing hearing to determine whether it should, in fact, impose an LWOP sentence. Tr. Vol. VII 180–201. Before adopting the jury's recommendation, the court engaged in an extensive analysis that encompassed precisely the factors *Miller* identifies. It particular, it specifically considered "the mitigating qualities of youth, and how one might expect that a child, who[se] lack of maturity because of youth, would prevent him from appreciating the risks and consequences of his actions." Tr. Vol. III 24.

By the guidance of these factors, however, the trial court determined that Taylor's "criminal history and

his behavior before, during and after he shot the victim, is indicative of one who lacks consci[ence], who is unrepentant and who, if given another opportunity, would do exactly the same thing to another unwary victim." Tr. Vol. III 27. It aptly explained its astonishment that Taylor "could, at seventeen, coerce, threaten, control or convince others, to assist in executing a careful and well thought out plan to end the life of another, especially having only been released from juvenile custody eighteen days prior." Tr. Vol. III 26.

Continuing, the trial court found that Taylor appreciated the risks and consequences of his actions, particularly because the murder was a "calculated killing that took some extraordinary effort, will and thought to perform all of which is inconsistent with the qualities of youth." *Id.* The trial court expressly concluded that "those qualities of youth are not applicable to this particular defendant," finding that Taylor's conduct reflects "irreparable corruption." Tr. Vol. III 24, 27. *See Miller*, 567 U.S. at 479–80 (acknowledging that LWOP may be appropriate for "the rare juvenile offender whose crime reflects irreparable corruption").

3. Taylor then received yet *another* evaluation of his sentence before the Indiana Supreme Court under Indiana Appellate Rule 7(B). Rule 7(B) review turns on the court's "sense of the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

Under that standard—which overlaps with the *Miller* standard—the Indiana Supreme Court rejected LWOP for Taylor and instead imposed an 80-year-sentence. It explicitly considered evidence of Taylor's age and upbringing, the mitigating characteristics of youth, the nature of the offense, and the orchestrating role that Taylor played in the murder. *Taylor v. State*, App. 16a–20a. The Indiana Supreme Court observed that "[j]uveniles are less culpable than adults and are therefore less deserving of the most severe punishments." *Id.* at App. 16a (internal quotation marks and citation omitted); *cf. Miller*, 567 U.S. at 471 ("Because juveniles have diminished culpability and greater prospects for reform . . . they are less deserving of the most severe punishments." (internal quotation marks and citation omitted)). And it noted that Taylor "grew up fatherless . . . [a]nd the neighborhood he'd always known as home had changed, with rising gang activity and alcohol and drug abuse." *Taylor*, App. 17a. These factors—which mirror those discussed in *Miller*, *see Taylor*, App. 16a–17a (quoting language from *Miller* three times)—did "not absolve him of responsibility for his heinous and senseless crimes," *id.* at 17a.

Yet the Indiana Supreme Court concluded that these factors did mean "that Taylor's character and the nature of his offense—grievous as it was—do not warrant making him Indiana's fifth juvenile sentenced to a guaranteed death in prison," *id.* at 19a. The court compared Taylor's case with previous cases where it exercised its power to reduce an LWOP sentence to a term of years. *Id.* at 18a–19a. And it noted that "only four other juveniles in the State of Indiana

have ever received such a sentence," three of which did not challenge the appropriateness of their sentences under Appellate Rule 7(B). *Id.* at 15a. In light of these precedents, as well as Taylor's mitigation evidence, the court "revise[d] his sentence to an aggregate eighty years." *Id.* at 19a.

Taylor thus received the evaluation *Miller* requires twice over. His revised eighty-year sentence does not run afoul of the Eighth Amendment, regardless whether it is a *de facto* life sentence.

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The Court decides questions only "in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial. Resolution here of the . . . [question presented] can await a day when the issue is posed less abstractly." *The Monrosa v. Carbon Black, Inc.*, 359 U.S. 180, 184 (1959). For this reason, the Court often denies certiorari "[i]f the resolution of a clear conflict is irrelevant to the ultimate outcome of the case." E. Gressman, et al., Supreme Court Practice 263 (9th ed. 2007) (noting that the Court denied certiorari in *Sommerville v. United States*, 376 U.S. 909 (1964), because "[i]t was evident that the resolution of the conflict would not change the result reached below").

This is precisely the situation here, as a determination that *Miller* applies to some term-of-years sen-

tences would have no practical consequences on remand. The Court therefore should not use Taylor's case to decide that question.

II. The Court Recently Declined to Consider Precisely the Same Issue Taylor Raises Here

Not only does Taylor's case present the term-of-years question ineffectively, but less than two weeks ago the Court declined to take up precisely the same issue in *Veal v. Georgia*, No. 17-1510, *cert denied* October 9, 2018. Nothing in Taylor's case makes it more worthy of the Court's review. Indeed, for the reasons given above, Taylor's case is a far *worse* vehicle for determining when, if ever, term-of-years sentences count as LWOP sentences for the purposes applying the requirement the Court articulated in *Miller*. If the Court is interested in answering this question at all, it should await a case where the answer will have an impact.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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Dated: October 19, 2018