ATTACHMENT A

Serial: **221864**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2018-M-00530

JONSHA BELL ***Petitioner***

v.

STATE OF MISSISSIPPI ***Respondent***

EN BANC ORDER

Before the Court is Jonsha Bell's Application for Leave to File Motion for Post-Conviction Relief. Also before the Court are the State of Mississippi's Response in Opposition to Application for Leave to File Motion for Post-Conviction Relief, and Bell's Reply to State's Response in Opposition to Application for Leave to File Motion for Post-Conviction Relief.

In 1995, Bell was convicted of armed robbery, burglary, and two counts of kidnapping. Bell committed the offenses when he was seventeen years old. He was sentenced as a habitual offender to serve aggregate sentences totaling ninety-five years without the possibility of parole. In the instant petition, Bell asserts that his sentences are tantamount to an illegal, life-without-parole sentence for a juvenile, non-homicide offender. *See* ***Graham v. Florida***, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (Eighth Amendment prohibits imposition of life-without-parole sentences on juvenile, non-homicide offenders).

After due consideration, the Court finds that Bell's petition is without merit and should, therefore, be denied.

IT IS THEREFORE ORDERED that Jonsha Bell's Application for Leave to File Motion for Post-Conviction Relief is hereby denied.

SO ORDERED, this the 24th day of January, 2019.

JOSIAH D. COLEMAN, JUSTICE
FOR THE COURT

TO DENY: **WALLER, C.J., RANDOLPH, P.J., COLEMAN, MAXWELL, BEAM AND CHAMBERLIN, JJ.**

TO GRANT: **KITCHENS, P.J., KING AND ISHEE, JJ.**

KING, J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS, P.J., AND ISHEE, J.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2018-M-00530

JONSHA BELL

v.

STATE OF MISSISSIPPI

KING, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. Pursuant to the Eighth Amendment of the United States Constitution, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII; *see also* Miss. Const. art 3, § 28 ("Cruel or unusual punishment shall not be inflicted, nor excessive fines be imposed."). The United States Supreme Court, in ***Graham v. Florida***, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), held that the Eighth Amendment barred courts from sentencing juvenile nonhomicide offenders to life without parole. Because aggregate term-of-years sentences that leave a defendant without an opportunity to obtain release are the fundamental equivalent of life without parole, I disagree with the majority's order denying Jonsha Bell's petition for post-conviction relief.

¶2. Bell, in the aggregate, was sentenced to serve ninety-five years for crimes committed when he was just seventeen years old. I would find that Bell's sentences violate the Supreme Court's holding in ***Graham***, which mandated that "the State must . . . give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." ***Graham***, 560 U.S. at 75. The Supreme Court reasoned that "life without

parole is 'the second most severe penalty permitted by law.'" ***Id.*** at 71 (quoting ***Harmelin v. Michigan***, 501 U.S. 957, 1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991)). It shares characteristics with the death penalty that no other sentence shares. ***Id.*** As the Court stated, a life without parole sentence guarantees that a juvenile offender

> will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.

Id. at 79.[1]

¶3. The Supreme Court stated in ***Miller*** 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 474. The Court then restated the principles established in ***Roper v. Simmons***, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), and ***Graham*** that "children are constitutionally different from adults for sentencing purposes" due to their "lack of maturity" and

---

[1]*See also* ***State v. Moore***, 76 N.E.3d 1127, 1137–38 (Ohio 2016) ("Although the defendant in Graham was serving a life sentence, we conclude that the principles behind ***Graham*** apply equally to a juvenile nonhomicide offender sentenced to prison for a term of years that extends beyond the offender's life expectancy."); ***Bear Cloud v. State***, 334 P.3d 132, 142 (Wyo. 2014) ("Like the Indiana Supreme Court, we will 'focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.'"); ***State v. Null***, 836 N.W.2d 41, 72 (Iowa 2013) ("We conclude that ***Miller***'s principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under Miller."); ***People v. Caballero***, 282 P.3d 291, 295 (Cal. 2012) (citing ***Miller v. Alabama***, 567 U.S. 460, 132 S. Ct. 2455, 2458, 183 L. Ed. 2d 407 (2012)) ("***Miller*** therefore made it clear that ***Graham***'s 'flat ban' on life without parole sentences applies to all nonhomicide cases involving juvenile offenders, including the term-of-years sentence that amounts to the functional equivalent of a life without parole sentence imposed in this case.");

"underdeveloped sense of responsibility." ***Miller***, 567 U.S. at 471. The Court continued that "[a] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" ***Id.*** (quoting ***Roper***, 543 U.S. at 570).

¶4. The Supreme Court found that the Eighth Amendment prohibited States "from making the judgment at the outset that those offenders never will be fit to reenter society." ***Graham***, 560 U.S. at 75. Yet the State has done exactly that in Bell's case. Bell's sentences total ninety-five years, ensuring that Bell will never again reenter society. The aggregate sentences strip away all incentive for Bell to learn from and to atone for his mistakes. They deny Bell his right to obtain release based on demonstrated maturity and rehabilitation. Just as a life-without-parole sentence unlawfully denies a juvenile offender a meaningful opportunity to obtain release, so does an aggregate sentence amounting to the same.

¶5. Bell was convicted of nonhomicide crimes and was sentenced to serve an equivalent of life without parole. Because sentencing a juvenile to serve aggregate sentences that extend beyond the juvenile's natural life expectancy violates the Eighth Amendment and the Supreme Court's mandate in ***Graham*** that the State provide a meaningful opportunity for release for nonhomicide juvenile offenders, I disagree with this Court's order denying Bell's petition for post-conviction relief. I would reverse and remand Bell's case for resentencing.

KITCHENS, P.J., AND ISHEE, J., JOIN THIS SEPARATE WRITTEN STATEMENT.