

No. 19-6006

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

NICHOLAS RAMON WILKERSON,

Petitioner,

v.

STATE OF ALABAMA,

Respondent,

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

REPLY BRIEF FOR PETITIONER

J.D. Lloyd

Counsel of Record

The Law Office of J.D. Lloyd
One Highland Place
2151 Highland Ave., S.
Suite 310
Birmingham, AL 35205
Office: (205) 538-3340
JDLloyd@JDLloydLaw.com

Robert Matthews

The Law Office of J.D. Lloyd
One Highland Place
2151 Highland Ave., S.
Suite 310
Birmingham, AL 35205
Office: (205) 538-3340
Bob@JDLloydLaw.com

REPLY BRIEF FOR PETITIONER

This Court should hold Mr. Wilkerson’s petition pending this Court’s decision in *Jones v. Mississippi*, as Mr. Wilkerson’s petition presents the same constitutional question regarding whether the Eighth Amendment requires a factual finding before a juvenile homicide offender can be sentenced to life without parole.

On March 9, 2020, this Court granted the petition for certiorari in *Jones v. Mississippi*, 18-1259. The sole question presented in *Jones* is “[w]hether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.” Although phrased differently, Mr. Wilkerson’s petition for writ of certiorari asks this same fundamental question. As his case is currently pending on direct appeal, a favorable decision in *Jones* will have a direct impact on Mr. Wilkerson’s case.

In the wake of *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), a persistent split of authority has emerged among both the state and federal lower courts over whether a factual finding of incorrigibility is required before a juvenile homicide offender may be sentenced to life without parole. Alabama has held that the Eighth Amendment does not require such a finding. *Wilkerson v. State*, 284 So. 3d 937, 955 (Ala. Crim. App. 2018). Alabama has adopted the position put forth by the Michigan Supreme Court that the decision is a moral question rather than a factual question. *Id.* (citing *People v. Skinner*, 917 N.W. 292, 305 (Mich. 2018)).

Although Alabama attempts to reposition Mr. Wilkerson’s petition as requesting a jury trial, that attempt misses the heart of Mr. Wilkerson’s petition: whether a factual finding is required before the Eighth Amendment authorized sentencing Mr.

Wilkerson to life without parole. Mr. Wilkerson's arguments regarding the Sixth Amendment's right to trial by jury in his petition merely explained the collateral effects of why this Court needed to address whether a factual finding is necessary.

This Court has clearly determined that the question presented by Mr. Wilkerson to be of sufficient importance to grant a similar petition presenting the same question. As a result, this Court should hold Mr. Wilkerson's petition pending the result of *Jones*.

CONCLUSION

For these reasons, this Court should hold Mr. Wilkerson's petition for a writ of certiorari pending a decision in *Jones v. Mississippi*.

Respectfully submitted on this the 12th day of May, 2020.

/s J.D. Lloyd
J.D. LLOYD
Counsel of Record
The Law Office of J.D. Lloyd
One Highland Place
2151 Highland Ave., S.
Suite 310
Office: (205) 538-3340
JDLloyd@JDLloydLaw.com

/s Robert Matthews
Robert Matthews
The Law Office of J.D. Lloyd
One Highland Place
2151 Highland Ave., S.
Suite 310
Office: (205) 538-3340
Bob@JDLloydLaw.com