No. 19-6092

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Jonothan E. Prather, Petitioner

v.

Superintendent Greene SCI, et al., Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Jonothan E. Prather
KL 8100
175 Progress Drive
Waynesburg, Pa 15370

QUESTION(S) PRESENTED

I - The lower courts and the respondents claim that the Petitioner's petition is untimely and should be dismissed as such.

II - The lower courts and the respondents claim that the newly recognized constitutional right set forth in Miller v. Alabama, 132 S.Ct. 2455 (2012), made retroactive by Montgomery v. Louisiana, 136 S.Ct. 718 (2016) are inapplicable to the Petitioner.

III - The lower courts and the respondent claim that Petitioner is not entitled to relief based on his age, violating his 8th Amendment Rights against Cruel and Unusual Punishment and Equal Protection Rights guaranteed by the 14th Amendment.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Robert Gilmore, Superintendent SCI Greene

The Attorney General of the State of Pennsylvania

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

Opinions Below

[X] For cases from **federal courts:**

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

[X] For cases from **state courts:**

The opinion of the Pennsylvania Supreme Court appears at Appendix C to the petition and is unpublished.

The opinion of the Pennsylvania Superior Court appears at Appendix D to the petition and is unpublished.

The opinion of the PCRA Court appears at Appendix E to the petition and is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 20, 2019.

[X] No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under **28 U.S.C. § 1254(1)**.

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 8th Amendment to the U.S. Consitution holds that: Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted.** (emphasis added)

The 14th Amendment to the U.S. Constitution holds that : All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws**. (emphasis added)

This Honorable Court held in **Miller v. Alabama, 132 S.Ct. 2455 (2012)**, that a juvenile could not be automatically sentenced to Life Without the Possibility of Parole, as these sentences were held to be a violation of the cruel and unusual punishment language of the 8th Amendment without first giving them a mitigation hearing (similar to a death penalty hearing) to determine whether they were truly deserving of a Life Without Parole sentence. Therefore setting forth a new Constitutional right in relation to murder sentencing proceedings. The 14th Amendment's Equal Protection Clause guarantees equal protection of the laws and that similarly situated individuals will be afforded the same opportunites.

STATEMENT OF THE CASE

The Petitioner was arrested and thereafter charged with First Degree Murder and other related offenses and he came to be represented by Brent Petrosky, Esq. and C. Eric Rutkowski, Esq. and the case was thereafter assigned to the courtroom of the Honorable Judge Stephen P.B. Minor of the Potter County Court of Common Pleas. Thereafter the Petitioner plead guilty to First Degree Murder and was sentenced to a term of Life Without the Possibility of Parole on March 26, 2012. The Petitioner filed no Direct Appeal. The Petitioner filed his first PCRA Petition on June 25, 2014 and was represented by Richard W. McCoy L.L.C. . The PCRA Petition was denied without a hearing due to exceeding the time allowance for filing a PCRA Petition on March 24, 2015. The Petitioner did not appeal the decision. Thereafter the Petitioner filed his second PCRA Petition on March 22, 2016 after the U.S. Supreme Court decision in **Montgomery v. Louisiana, 136 S.Ct. 718 (2016)**. No counsel was appointed to the Petitioner. The Court filed a Notice of Intent to Dismiss on March 28, 2016 stating the decision in **Montgomery** was not applicable to the Petitioner. Thereafter the Petition was denied without a hearing on April 19, 2016. The Petitioner filed his Notice of Appeal on May 16, 2016 to the Superior Court. The Court scheduled the Petitioner's appeal for submission on brief's without oral argument before Panel Number 3, Daily List Number 20, on January 3, 2017. On April 13, 2017 the Court's opinion affirmed the dismissal of the Petitioner's PCRA Petition. On April 20, 2017 the Petitioner submitted a Petition for Reconsideration En Banc. The Petition was denied June 19, 2017. The Petitioner filed his Petition for Allowance of Appeal to the Pennsylvania Supreme Court on November 20, 2017. The Petition was denied April 3, 2018. The Petitioner filed the instant **§ 2254** petition on April 15, 2018. The District Court denied the petition on January 17, 2019 as untimely. Petitioner filed for a Certificate of Appealability from the Third Circuit Court of Appeals on February 2, 2019. C.O.A. was denied by the Court on August 20, 2019. Petitioner did not file for rehearing. This current appeal follows.

REASONS FOR GRANTING THE PETITION

Ground One - The lower courts and the respondents claim that the Petitioner's petition is untimely and should be dismissed as such.

The Petitioner must respectfully disagree with this contention. The Lower Court's contend that the Petitioner had until April 25, 2013 for him to be within the statute of limitations for filing a **§ 2254** petition. The Petitioner must respectfully disagree with this contention as well, as the 2013 deadline is not applicable here. The Lower Court's are failing to take into consideration the new case-law that the Petitioner has raised in all of his petitions and the exceptions that each of them entail and continue to hold them as untimely. **Montgomery v. Louisiana** came down on January 25, 2016, and the Petitioner's instant PCRA petition was filed March 22, 2016, within the 60 days allowed pursuant to **42 Pa. C.S.A. § 9545 (b)(1)(iii)**. The courts contend that the Petitioner should have filed this instant petition sooner for it to be considered timely. However the Petitioner couldn't have done this, as **Miller** was not deemed to be retroactive in Pennsylvania until after **Montgomery** came down and Petitioner had to exhaust his claims in state court before seeking relief in the federal courts. So for the court to say that this petition needed to be filed sooner makes the burden placed on the Petitioner unreasonable as he could not have complied with the court's directive. In order for a petitioner to come under one of the statutory exceptions to the time bar under **42 Pa. C.S.A. § 9545 (b)(1)(i-iii)**, he must allege and prove that one of the exceptions applies. Petitioner has done this throughout the proceedings, there is not a petition that Petitioner has filed that doesn't address how the time bar exception applies to his current situation. The Courts contend that **Miller** and **Montgomery** do not apply to Petitioner because he was 19. However, assuming arguendo that **Miller**

and **Montgomery** do apply to Petitioner, then the PCRA Petition was timely filed and it would have statutorily tolled AEDPA's statute of limitations under **28 U.S.C. § 2244 (d)(2)**. Which would have made the instant **§ 2254** petition timely. In regards to the courts presumption that the rationale behind **Miller** and **Montgomery** do not apply to Petitioner and therefore make his PCRA and **§ 2254** petitions untimely, the court's have truthfully misapplied a U.S. Supreme Court mandate for how it's holdings are to be applied. "We adhere in this case, however, not to mere obiter dicta, but rather to the *well established rationale* upon which the Court based the results of its earlier decisions. When an opinion issues for the Court, it is not only the result *but also those portions of the opinion necessary to that result* by which we are bound." **Seminole Tribe v. Florida, 517 U.S. 44, 67 (1996)** (emphasis added) (citing **Burnham v. Superior Court of Cal. County of Marin, 495 U.S. 604, 613 (1990)**) (exclusive basis of a judgment is not dicta). Stare decisis requires adherence "not only to the holdings of [the Supreme Court's] prior cases, but also to their explications of the governing rules of law." **County of Allegheny v. ACLU, Greater Pittsburgh Chapter, 492 U.S. 573, 668 (1989)** (Kennedy, J. concurring and dissenting).

The principle that lower courts are bound to apply not only the holdings of a Supreme Court decision, but also the legal rules and reasoning of the decision, is a foundational element of our judicial system. Court's must respect "prior decisions of this Court and the legal rules contained in those decisions." **Tincher v. Omega Flex Inc., 104 A.3d 328, 336 (Pa. 2014)**. "[O]ur system of precedent or stare decisis is thus based on adherence to both the reasoning and result of a case, and not simply the result alone." **Planned Parenthood v. Casey, 947 F.2d 682, 692 (3rd Cir. 1991)** (aff'd in part, rev'd in part on other grounds). "Lower courts are oblitgated to follow both

the narrow holding of the Supreme Court as well as the rule applied by the Court in reaching it's holding," including "the reasoning, analysis, and legal rules applied in reaching it's result." **Rodriguez v. National City Bank, 277 F.R.D. 148, 154 (E.D. Pa. 2011).**

Therefore, the lower courts did not follow the U.S. Supreme Court mandate in using the entirety of the opinion, instead using the specific part that involved individuals under the age of 18. Which unfairly prejudiced the Petitioner in his ability to completely and fairly challenge his conviction and denied him the ability to assert a newly recognized constitutional right that is applicable to him. The court in doing so, also mistakenly denied the PCRA petition Petitioner filed as untimely when it met all of the requirements that were stated in the statutory exceptions under **§ 9545 (b)(1)(i-iii)** and **(b)(2)**. The Petitioner contends that this mistake on the courts part should not hinder his ability to challenge his conviction with the **§ 2254** petition that was filed, as it was a properly filed PCRA and timely filed **§ 2254** petition that was tolled by the properly filed PCRA. Furthermore the Court questions the Petitioners due diligence in filing and raising these claims in a timely manner. The Petitioner respectfully disagrees with this contention most of all. As soon as the Petitioner became aware of **Miller** in 2014, he attempted to raise the issue and was told that his PCRA petition was untimely because he could not raise any one of the three exceptions to the time-bar. So he chose not to waste the court's time in pursuing an appeal of that decision and instead waited until a new case came down using the same rationale that applied to him in the first place and properly filed a timely PCRA petition. Which the court chose to deny as inapplicable saying that the decision in **Montgomery** did not apply to him as he was above the age of 18, which the Petitioner has proven does not preclude him from

receiving relief. After the Petitioner was denied in the PCRA court, he completely exhausted the issue in the Superior Court and Pa Supreme Court, so that he could file a **§ 2254** petition. Which the Petitioner did, twelve days after he was denied by the Pa Supreme Court, therefore making this instant petition timley and also demonstrating due diligence on the part of the Petitioner.

Ground Two - The lower courts and the respondents claim that the newly recognized constitutional right set forth in Miller v. Alabama, 132 S.Ct. 2455 (2012), made retroactive by Montgomery v. Louisiana, 136 S.Ct. 718 (2016) is inapplicable to the Petitioner.

The Petitioner must respectfully disagree with this contention. In **Com v. Batts, 163 A.3d 410 (Pa. 2017)** ("Batts II"), the Supreme Court of Pennsylvania followed **Seminole Tribe's** mandates on adhering to not only the holding, but the necessary rationale of prior U.S. Supreme Court decisions. At Qu'eed Batts' re-sentencing proceeding following the vacatur of his mandatory life without parole sentence under **Miller**, the trial court again imposed a life sentence. **Batts II, 163 A.3d at 415**. In pronouncing a life without parole sentence, the trial court relied on the expert testimony of the Commonwealth's psychiatrist who opined that "Batts' personality was likely fully formed and fixed at the age of fourteen" and that "'research dealing with adolescent behavioral and brain development' is inconclusive." **Id. at 438**. Because the expert's testimony was "in direct opposition to the legal conclusion announced by the High Court and the facts (scientific studies) underlying it," the Supreme Court of Pennsylvania found that the testimony was not merely entitled to less weight, but did not even constitute competent evidence to support the imposition of a life without parole sentence. **Id. at 438-39** (citing **Seminole Tribe, 517 U.S. at 67**).

Seminole Tribe, Batts II, and the cases cited above require that the *right* established in **Miller** must include not only a narrow *holding* of that case but also the rationale that the Court used to reach its holding. This reading is also supported by the text of the PCRA's newly recognized constitutional right timeliness exception, which reads "the *right* asserted is a constitutional *right* that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in the section and has been *held* by that court to apply retroactively." **42 Pa. C.S.A. § 9545 (b)(1)(iii)** (emphasis added). The plain language of the statute draws a distinction between a "right" and a "holding." If the legislature intended for a consitutional "right" to be reducible to a holding alone, it presumably would not have used the word "held" later within the same subsection of the PCRA's timeliness exceptions.

In interpreting an analogous standard for determining whether federal habeas petitions properly invoke a new consitutional rule and may therefore be considered on the merits, the Court of Appeals for the First Circuit found that the words "rule" and "right" were broader than the word "holding" and that the legislature did not intend for the terms to be synonymous: "Congress presumably used these broader terms because it recognizes that the Supreme Court guides lower courts not just with technical holdings but with general rules that are logically inherent in those holdings, thereby insuring less arbitrariness and more consistency in our law." **Moore v. United States, 871 F.3d 72, 82 (1st Cir. 2017)**. The United States District Court for Connecticut held in **Cruz v. United States, 3:11-CV-00787-JCH, 56 (D. Conn. March 29, 2018)**, that the rationale of **Miller** and **Montgomery** can extend to individuals above the age of 18. The Court in **Cruz** had this to say about the **Miller**

rationale being applied to an 18 year old:

> "Cruz asks the court to apply the new rule in **Miller** to his case, arguing that the national consensus disfavors applying mandatory life imprisonment without parole to 18-year-olds and that the science indicates that the same indicia of youth that made mandatory life imprisonment without parole unconstitutional for those under the age of 18 in **Miller** also applies to 18-year-olds.
>
> Before the court addresses the evidence of national consensus and scientific consensus, it first considers a preliminary argument raised by the Government. The Government argues that the court is prevented from applying **Miller** to an 18-year-old because it must follow the Supreme Court's binding precedents. See Post-Hr'g Mem. in Opp. at 6-8. It goes without saying that the court agrees that it is bound by Supreme Court precedent. However, it does not consider application of **Miller** to an 18-year-old to be contrary to Supreme Court (or Second Circuit) precedent. As noted previously, **Miller** states, "We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" **Miller, 567 U.S. at 465**.
>
> The court does not infer by negative implication that the **Miller** Court also held that mandatory life without parole is necessarily constitutional as long as it is applied to those over the age of 18. The **Miller** opinion contains no statement to that effect. Indeed, the Government recognizes that, "The Miller Court did not say anything about exceptions for

adolescents, young adults, or anyone else unless younger than 18." Post-Hr'g Mem. in Opp. at 8. Nothing in **Miller** then states or even suggests that courts are prevented from finding that the Eighth Amendment prohibits mandatory life without parole for those over the age of 18. Doing so would rely on and apply the rule in **Miller** to a different set of facts not contemplated by the case, but it would not be contrary to that precedent.

Such a reading of **Miller** is consistent with the Supreme Court's traditional "reluctance to decide constitutional questions unnecessarily." See **Bowen v. United States, 422 U.S. 916, 920, 95 S. Ct. 2569, 45 L. Ed. 2d 641 (1975)**. In **Miller**, it was unnecessary for the Court to address the constitutionality of mandatory life imprisonment for those over the age of 18 because both defendants in **Miller** were 14 years old. See **Miller, 567 U.S. at 465**. Therefore, the question of whether mandatory life imprisonment without parole is constitutional for an 18-year-old was not before the Court in **Miller**, and it would be contrary to the Court's general practice to opine on the question unnecessarily.

The Government argues nonetheless that **Miller** drew a bright line at 18 years old, which prevents this court from applying the rule in Miller to an 18-year-old. See Post-Hr'g Mem. in Opp. at 8; see also **Roper v. Simmons, 543 U.S. 551, 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)** (recognizing that the line may be over- and under-inclusive, but stating nonetheless that "a line must be drawn"). However, in so arguing, the Government fails to recognize that there are different kinds of lines. By

way of illustration, in **Thompson v. Oklahoma, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988)**, the Supreme Court held that the death penalty was unconstitutional for offenders under the age of 16. **Id. at 838**. It was not until **Stanford v. Kentucky, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989), rev'd b y Roper, 543 U.S. at 574**, however, that the Supreme Court held that the Eighth Amendment did not prohibit the execution of offenders ages 16 to 18. **Id. at 380**. In **Stanford**, the Court did not say that the ruling it set forth was found in the **Thompson** holding. Indeed, **Stanford** was not redundant of **Thompson** because the line drawn in **Thompson** looked only in the direction of offenders under the age of 16 and found them to be protected by the Eighth Amendment. **Thompson's** line did not simultaneously apply in the other (i.e. older) direction to prohibit the Eighth Amendment from protecting those over the age of 16. In contrast, **Stanford's** line did.

This distinction between the type of line drawn in **Thompson** and the type of line drawn in **Stanford** is reflected in the difference in the Supreme Court's treatment of these two cases in **Roper v. Simmons**. In deciding that the death penalty was unconstitutional as applied to offenders under the age of 18, the **Roper** Court considered itself to be overturning **Stanford**, but not **Thompson**. Compare **Roper, 543 U.S. at 574** ("**Stanford v. Kentucky** should be deemed no longer controlling on this issue."); with **id**. ("In the intervening years the **Thompson** plurality's conclusion that offenders under 16 may not be executed has not been

challenged. The logic of **Thompson** extends to those who are under 18."). If the Government's argument that the line drawn in **Miller** prevents this court from applying its rule to an 18-year-old were correct, the same logic applied to the line drawn in **Thompson** would have required **Roper** to overturn **Thompson** rather than relying on and endorsing it. The language in **Roper**, however, makes clear that the court endorsed, rather than overturned, **Thompson**. See **Roper, 543 U.S. at 574**.

In drawing the line at 18, then, **Roper**, **Graham**, and **Miller** drew lines similar to that in **Thompson**, protecting offenders that fall under the line while remaining silent as to offenders that fall above the line. In the case of mandatory life imprisonment without parole, no Supreme Court precedent draws a line analogous to that in **Stanford**. Therefore, while this court recognizes that it is undoubtedly bound by Supreme Court precedent, it identifies no Supreme Court precedent that would preclude it from applying the rule in **Miller** to an 18-year-old defendant.

The Government also points in its Memorandum to a number of cases in which courts, faced with the question of applying Miller to defendants ages 18 or over, declined to do so. See Post-Hr'g Mem. in Opp. at 8-9, 10 n.1 (citing, inter alia, **United States v. Marshall, 736 F.3d 492, 498 (6th Cir. 2013); Cruz v. Muniz, No. 2:16-CV-00498, 2017 U.S. Dist. LEXIS 120142, 2017 WL 3226023, at *6 (E.D. Cal. July 31, 2017); Martinez v. Pfister, No. 16-CV-2886, 2017 U.S. Dist. LEXIS 7354, 2017 WL 219515, at *5 (N.D. Ill. Jan. 19, 2017); Meas v. Lizarraga,**

No. 15-CV-4368, 2016 U.S. Dist. LEXIS 184672, 2016 WL 8451467, at *14 (C.D. Cal. Dec. 14, 2016); Bronson v. Gen. Assembly of State of Pa., No. 3:16-CV-00472, 2017 U.S. Dist. LEXIS 111465, 2017 WL 3431918, at *5 (M.D. Pa. July 17, 2017); White v. Delbalso, No. 17-CV-443, 2017 U.S. Dist. LEXIS 24804, 2017 WL 939020, at *2 (E.D. Pa. Feb. 21, 2017)). The Government argues that this court should do the same.

In response, Cruz offers a number of reasons for distinguishing those cases from his, including that some of the cases cited by the Government did not involve mandatory life without parole, some involved defendants over the age of 21, and all but one did not involve expert testimony. See Post-Hr'g Reply in Supp. at 6-7. While the court is cautious in disagreeing with these other courts, it agrees with Cruz that very few of the courts that declined to apply **Miller** to 18-year-olds had before them a record of scientific evidence comparable to the one that this court now has before it. As to the few courts that did consider scientific evidence on adolescent brain development and nonetheless declined to apply **Miller**, this court respectfully acknowledges those decisions to the extent that they constitute persuasive authority, but recognizes its duty to decide this case on the law and record now before this court.

The court now turns to the evidence presented by Cruz and the standard of cruel and unusual punishment under the Eighth Amendment. The Eighth Amendment's prohibition of cruel and unusual punishment

requires that "punishment for crime should be graduated and proportioned to [the] offense." **Roper, 543 U.S. at 560** (internal quotation marks omitted). This proportionality principle requires the court to evaluate "'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." **Id. at 561** (quoting **Trop v. Dulles, 356 U.S. 86, 100-01, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958)**). In its prior Ruling, the court traced the development of Eighth Amendment jurisprudence as applied to juveniles. See Ruling re: Mot. for Hr'g at 5-19. Rather than repeat its lengthy discussion of that history, the court incorporates herein the relevant discussion and focuses here on comparing the evidence relied on in **Roper** and the additional evidence presented to the court by Cruz.

In 2005, the **Roper** Court held the death penalty unconstitutional for persons under the age of 18 and, in drawing that line, stated: Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality in **Thompson** drew the line at 16. In the intervening years the **Thompson** plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of **Thompson** extends to those who are under 18. The age of 18 is the

point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest. **Roper, 543 U.S. at 574**. The **Roper** Court relied on national consensus and the diminished penological justification resulting from the hallmark characteristics of youth. See **id. at 567, 572-73**. In **Roper**, the defendant was 17 years and 5 months old at the time of the murder. **Id. at 556, 618**.

In 2010, the Supreme Court in **Graham v. Florida** extended the reasoning in **Roper** to find that life imprisonment without parole is unconstitutional for juveniie nonhomicide offenders. See **Graham v. Florida, 560 U.S. 48, 74, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)**. Like the **Roper** Court, the **Graham** Court again considered national consensus and the fact that the characteristics of juveniles undercut the penological rationales that justified life without parole sentences for nonhomicide offenses. See **id. at 62-67, 71-74**. In **Graham**, the defendant was 16 at the time of the crime. See **id. at 53**. Thus, the **Graham** Court did not need to reconsider the line drawn at age 18 in **Roper**, but rather adopted that line without further analysis, quoting directly from **Roper**. See **id. at 74-75** ("Because '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,' those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime." (quoting **Roper, 543 U.S. at 574**)).

In 2012, as noted earlier in this Ruling, the Supreme Court in **Miller**

further extended **Graham** to hold that mandatory life imprisonment without parole is unconstitutional for juvenile offenders, including those convicted of homicide. See **Miller, 567 U.S. at 465**. The defendants in **Miller** were 14 years old at the time of the crime, and the **Miller** Court, like the **Graham** Court, adopted the line drawn in **Roper** at age 18 without considering whether the line should be moved or providing any analysis to support that line. See **id. at 465** ("We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'").

Because Cruz was 18 years and 20 weeks old at the time of the murders in this case, this court is now presented with a set of facts the Supreme Court has not yet had need to consider whether the new rule in **Miller** can be applied to an 18-year-old. In considering this question, the court looks to the same factors considered by the Supreme Court in **Roper**, **Graham**, and **Miller**-national consensus and developments in the scientific evidence on the hallmark characteristics of youth. The court notes that it need only decide whether the rule in **Miller** applies to an 18-year-old. On the facts of this case, it need not decide whether **Miller** also applies to a 19-year-old or a 20-year-old, as Cruz was 18 years old at the time of his crime. Although Cruz asks the court to draw the line at 21, the court declines to go any further than is necessary to decide Cruz's Petition." **Cruz, 2018 U.S. Dist. Lexis 37- 47**.

Therefore the Petitioner has shown that he is entitled to relief and that **Miller**

and **Montgomery** do apply to him, contrary to what the lower courts and the respondents have said.

Ground Three - The lower courts and the respondent claim that Petitioner is not entitled to relief based on his age, violating his 8th Amendment Rights against Cruel and Unusual Punishment and Equal Protection Rights guaranteed by the 14th Amendment.

The Petitioner must respectfully disagree with this contention. If the Court contends than an individual becomes an adult at the age of 18, then why was legislation enacted saying that "children" who are adjudicated delinquent or dependent prior to age 18 possess characteristics justifying their continued recognition as children under the law until the age of 21? (**42 Pa. C.S.A. § 6302**). What difference is there between a 19 year old who was adjudicated delinquent or dependent before their 18th birthday and a 19 year old that was not? Does that distinction give an individual some sort of special status or allow them to be held to different standards? If the courts view an individual in this context as a child until the age of 21, then why are all individuals not viewed as children or juveniles until the age of 21?

Pursuant to **1 Pa. C.S.A. § 1991**, under Definitions, an Adult is stated to be "an individual 21 years of age or over." Pursuant to **18 Pa. C.S.A. § 6308**, a person commits a summary offense if he being less than 21 years of age attempts to purchase, purchases, consumes, possesses or knowingly and intentionally transports any liquor or malt or brewed beverages. Pursuant to **18 Pa. C.S.A. § 6109(b)**, an individual who is 21 years of age or older may apply to a sheriff for a liscence to carry a firearm concealed on or about his person or in a vehicle within this commonwealth. With laws

like these and many more, including, but not limited to, an individual not being able to sign over power of attorney until the age of 21, not being able to rent a car until the age of 25, or even not being able to enjoy oneself at a casino until the age of 21. The Court is mistakenly using outdated medical research to base it's conclusions on. There is now more up to date and more reliable research to show that the age of 18 should not be held as the age of adulthood. It should be considered what it is, adolescence, and the research shows that adolescents should not be held to the standard of an adult.

Society says that you become an adult at the age of 18, however there are still restrictions on your choices, the same as before you turn 18. Isn't the whole idea of turning 18 and becoming an adult, being able to live your life the way you would like without age restrictions? However, that is not the way that our courts and legislatures view things. They know from not only science and social science, but from common sense and personal experience that those in their late teens and early twenties are still highly immature and irrational. So they put the age restrictions on the things that are likely to cause the most problems as a safety precaution. Furthermore, Dr. Steinberg (the individual who wrote the articles that the Court based their decisions in **Roper, Graham, Miller,** and **Montgomery** on) testified at **Cruz's** hearing on whether the holding of those decisions were applicable to him had this to say: "Thus, in sum, Dr. Steinberg testified that he is 'absolutely confident' that development is still ongoing in late adolescence. See id. at 62. In 2003, Dr. Steinberg co-wrote an article, the central point of which was that adolescents were more impetuous, were more susceptible to peer pressure, and had less fully formed personalities than adults. See id. at 22; see also Laurence Steinberg & Elizabeth Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,

58 Am. Psychol. 1009 (2003). Although the article focused on people younger than 18, Dr. Steinberg testified that, if he were to write the article today, with the developments in scientific knowledge about late adolescence, he would say 'the same things are true about people who are younger than 21.' Steinberg Tr. at 22." **Cruz at 2018 U.S. Dist. Lexis 65- 66**. So if the age of adulthood is 18 then everything should follow suit, but if the true age of adulthood is 21, then shouldn't the courts and legislatures make the necessary changes to ensure that we are all protected equally under the law?

Equal Protection under the **14th Amendment**, requires that "all persons similarly situated to be treated alike." **City of Cleburn v. Cleburn Living Ctr., 473 U.S. 432, 439 (1985)** (citing **Plyler v. Doe, 457 U.S. 202, 216 (1982)**); See also **Reed v. Reed, 404 U.S. 71, 76 (1971); Royster v. Guano Co. v. Virginia, 253 U.S. 412, 415 (1920); Melrose Inc. v. City of Pittsburgh, 613 F.3d 380, 394 (3rd Cir. 2010); Com v. Bullock, 913 A.2d 2007, 215 (Pa. 2006); Com v. Albert, 758 A.2d 1149, 1151 (Pa. 2000)**. (The essence of..... equal protection under the law is that like persons in like circumstances will be treated similarly.") As a result of the U.S. Supreme Court's decisions in **Miller** and **Montgomery**, those 18 and up recognized as children under Pennsylvania law are subject to unequal treatment compared to younger children without a rational basis. As discussed supra, the social and neuro-science undergirding the Court's holdings, along with the determination of the Pennsylvania Legislature in it's definition of "juvenile/child" elsewhere in the state statutory code, are unambiguous in recognizing that those from 18 to atleast 21 possess attributes of youth that render them less culpable. For a 17 year old to obtain relief in the form of an opportunity to present mitigating evidence justifying a lesser sentence under the **Miller** and **Montgomery** decisions, while a 19 year olds youth,

developmental characteristics, and home and social circumstances cannot even be considered does not have a rational basis. This consitutes a violation of the Equal Protection Clause of the **14th Amendment**.

Even assuming arguendo that **Miller** and **Montgomery** do not and cannot apply to 19 year olds, that distinction supports rather than refutes the Petitioner's Equal Protection claim. In order to state a claim under the Equal Protection Clause a Petitioner must show that he was treated differently than other similarly situated individuals. The Petitioner has done this. He has shown that individuals, i.e. other adolescents, are being allowed the chance to have a resentencing hearing for all of the mitigating evidence to be brought forward to see if they are truly deserving of a life without parole sentence. While the Petitioner is denied this ability and is told that he has to spend the rest of his life in prison, no matter what he does to better himself or show that the crime he has committed is not the defining moment of his life. An individual who commits a homicide above the age of 18 should be afforded the same opportunity as the individual who was below the age of 18 and all those who have been turned away from receiving the relief the Constitution affords them should be brought back before the court to have this mistake remedied. The Commonwealth has not even deigned to proffer a rational basis for the differential treatment it seeks to impose on similarly situated defendants who, in some cases, may be only days apart in age. The lower courts have not even addressed this claim. While the defendant who is convicted of committing a homicide while 17 years and 364 days old will be provided the benefit of **Miller** and **Montgomery** and permitted the opportunity to present mitigation evidence in support of a sentence of less than life without parole, the defendant who is 18 years and 1 day old will be condemned to die in prison, despite

a mountain of persuasive mitigation evidence supporting a lesser sentence. Such arbitrary distictions make a mockery of the Constitution and turn criminal prosecutions and sentencing into a game of chance.

Particularly in the case sub judice, the fact that the Petitioner was 19 years old at the time of the offense is of no merit. The U.S. Supreme Court validated the social science findings that should have allowed all of those that fit the criteria a chance at relief. Which pursuant to **Seminole Tribe v. Florida, 517 U.S. 44, 67 (1996)**, courts have to take into consideration not only the result but the rationale that the Court used to make that determination. Which further strengthens the Petitioner's argument that **Miller** and **Montgomery** are applicable to the Petitioner. Therefore it should be considered absurd to leave the "categorical age limit" at 18 and deny the Petitioner the ability to have a mitigation hearing allowing him to show the evidence that this was a crime of immaturity and the Petitioner is not incorrigible. Especially when there is overwhelming evidence proving that the true age of adulthood is not 18, contrary to popular belief. The fact that the age limit has not been raised already, should be considered a miscarriage of justice in and of itself. The State of Illinois, Connecticut, and California have already enacted or begun the process of enacting legislation that raises the "chronological age limit" from 18 to atleast 21, based on arguments identical to the Petitioner's. Which should give credence to the Petitioner's argument and help it become recognized and applicable.

Where individualized sentencing is required under the 8th Amendment, the sentencer is required to attach significance to "the character and record of the individual offender" as a mitigating factor. **Miller, 132 S.Ct. 2467** (quoting **Woodson v. North Carolina, 428 U.S. 280 (1976)** (plurality opinion)); see also **Lockett v.**

Ohio, 438 U.S. 586 (1978). **Miller** held that Life Without Parole sentences are unconsitutional when imposed on defendants who are categorically less culpable on account of their youth when imposed pursuant to a mandatory sentencing shceme. The purpose of consitutionally-mandated individualized sentencing is to give effect to "the fundamental respect for humanity underlying the 8th Amendment" by treating all persons convicted of a particular offense as "uniquely individual human beings." **Woodson, 428 U.S. at 304**. The sentence imposed "should be direcly related to the personal culpability of the defendant." **Penry v. Lynaugh, 492 U.S. 302 (1989)**. Thus is it essential that "full consideration" is given to mitigating evidence to ensure the sentence is the product of a "reasoned moral response to the defendant's background, character, and crime." **Id**. (quoting **Franklin v. Lynaugh, 487 U.S. 163 (1988)**).

The most noteworthy features of adolescent brain development relate to changes occuring within the brain's frontal lobes - in particular the prefrontal cortex - and in the connections between the prefrontal cortex and other brain structures. These areas and interconnections are critical to "executive" functions such as planning, motivation, judgment, and decision making, including the evaluation of future consequences, the weighing of risk and reward, the perception and control of emotions,and the processing and inhibition of impulses. Four related changes in these brain systems during adolescence merit special attention.

First, early adolescence (especially the period immediately after puberty) coincides with major changes in the "incentive processing system" of the brain involving neurotransmitters like dopamine. "Reward-related regions of the brain and their neurocircuitry undergo particularly marked developmental changes during adolescence." These pubertal changes are seen in other species and "have been

linked to changes in reward-directed activity" among adolescents, especially the willingness to engage in risky behaviors and socially motivated behaviors. The observed spike in risk-taking, reward-seeking, and peer-influenced behaviors among adolescents correlates with this normal aspect of adolescent brain development.

Second, during childhood and early adolescence the brain undergoes substantial synaptic "pruning" - the pairing away of unused synapses - leading to more efficient neural connections. During adolescence, this pruning is more characteristic of the prefrontal cortex than other brain regions, consistent with the observation that adolescence is a time of marked improvement in executive functions.

Third, the adolescent brain undergoes myelination, the process through which neural pathways are insulated with a white fatty tissue called myelin. That insulation "speeds.... nerual signal transmissions," making "communication between different parts of the brain faster and more reliable." "Myelination is ongoing well into late adolescence and early adulthood." And this "improved connectivity within the prefrontal cortex is important for higher order functions subserved by multiple prefrontal areas, including many aspects of executive function, such as response inhibition, planning ahead, weighing risks and rewards, and the simultaneous consideration of multiple sources of information."

Fourth, "well into late adolescence" there is "an increase in connections not only among cortical areas but between cortical and subcortical regions" that are "facilitated by the increased connectivity between regions important in the processing of emotional and social information and regions important in cognitive control processes." This development pattern is consistent with adults' superior ability to make mature judgments about risk and reward, and to exercise cognitive control

over their emotional impulses, especially in circumstances that adolescents would react to as socially charged. (citing Brief for the American Psychological Association submitted as Amicus Curiae for Evan Miller v. State of Alabama and Kuntrell Jackson v. Ray Hobbs).

However, in the case sub judice, Petitioner was diagnosed with Multiple Sclerosis in December of 2006 at the age of 15, by Dr. Michael Lloyd at Primary Childrens Hospital in Salt Lake City, Utah. Now while not much about this neurological disorder is understood, one of the things that is known is the major effect it has on the brain and central nervous system.

Upon Petitioner's diagnosis, it was found that he had 15 lesions in his brain, the biggest being 14 milimeters. A lesion is formed when the fatty tissue or myelin around the nerves in the brain is destroyed. The cause of this destruction is the body sending out it's antibodies to combat the M.S., which unfortunately looks like the nerves in the brain. So in essence, the body inevitably ends up harming itself while in the process of trying to protect itself. The effects of these lesions are quite significant, they inhibit the speed of the neural signal transmissions and make the communication between different parts of the brain slower and more unreliable. Basically impeding the natural developmental process that every teenager goes through and both neurological and social scientists say needs to happen in order for an individual to gain the alility to function properly in society.

The Petitioner has been on medication for M.S. since January of 2007 and for the first year after the diagnosis had to spend a weekend every 3 months for 4 hours a day hooked up to an I.V. being pumped full of steroids to try to shock the M.S. into remission. The medication is supposed to keep the M.S. in remission and

prevent new lesions from forming. The problem is, as there is no cure for M.S., the medication will only slow the progression. The more lesions that form, the worse the M.S. gets and in turn causes more and more problems. The Petitioner has not always been able to get his medication though, from losing insurance coverage, to not having a doctor able to fill the prescription needed. Petitioner had been off of his medication for almost 2 years prior to being arrested for the offense he is currently serving time for. So Petitioner's M.S. has progressed more than it should have, due to this lack of medication.

How then, can someone who was diagnosed with such a dibilitating neurological disorder during one of the most developmentally critical ages of a persons life not fit the criteria of **Miller** and **Montgomery**? Isn't this one of the extenuating circumstances that **Miller** brought up saying "the development of an individual can be delayed beyond the age of 18"?

Evidence of childhood abuse and its effects on a youthful defendant is "particularly relevant" to mitigation. **Miller, 132 S.Ct. at 2467** (quoting **Eddings, 455 U.S. at 115**). An abusive childhood deprives a person "of the care, concern, and personal attention that children deserve." **Eddings, 455 U.S. at 115**. "It requires no citation of authority to assert that children who are abused in their youth generally face extraordinary problems developing into responsible productive citizens." **Santasky v. Kramer, 455 U.S. 745 (1982)** (Rhenquist, J., dissenting); See also **Buchillon v. Collins, 907 F.2d 589 (5th Cir. 1990)** (taking judicial notice that a turbulent and abusive childhood increases the probability of social maladjustment or antisocial behavior). **Outten v. Kearney, 464 F.3d 401 (3rd Cir. 2006)** ("comprehensive understaning of [defenant's] abusive relationship with his father or other aspects of

his troubled childhood" is crucial to setencer's duty to consider mitigating evidence).

Particularly in the case sub judice, Petitioner not only suffered abuse at home as a child at the hands of his father, but in the neighborhood he grew up in as well. Like Antonio House, Petitioner grew up in a gang controlled environment, where even wearing the wrong colors could result in retaliation. After being subjected to multiple instances of this retaliation, including being jumped by multiple gang members at the same time. Petitioner joined a faction of the Bloods gang at age 14, in hopes that he would be afforded some measure of protection from the other gangs in the neighborhood. However, by making this decision, Petitioner became ingrained with the gangs values and ideologies, which are extremely contrary to society's. Not only was Petitioner made to change the way he thought, but he was subjected to more of the same violence that he was trying to prevent by joining the gang in the first place. Where in one particular instance Petitioner's girlfriend was shot after an altercation with rival Sureno's gang members at Valley Fair Mall in West Valley, Utah. While being on the receiving end of violence is traumatic in and of itself. The same can be said for being ordered by older member's or "O.G.'s" to subject others to violence in order to prove your loyalty to the gang or face the consequences. Unfortunately the only way to move up in the gang is through violence, and every member desires this higher status, so they do what is required of them to obtain that status. One thing that will not be tolerated is "snitching" or informing authorities about anything that goes on relating to gang activities.

Which brings Petitioner's case to the forefront. The reasoning behind the killing of Samuel Miller was not justifiable by society's standards at any level. However, society's standards are not the issue here, nor should they be considered completely

controlling when dealing with this case. Petitioner was involved in multiple crimes with Mr. Miller before his death. From the purchase and selling of firearms and drugs to burglary. However, it came to Petitioner's attention that Mr. Miller was going to "snitch" on him about their activies. Whether this was the truth or not, consequently will never be known. What was known, was that Petitioner could not allow that to happen. Too many people Petitioner was close to would face jail time if anything was said. So Petitioner did the thing he believed to be the only thing to do, take matters in to his own hands.

Petitioner took Mr. Miller to a remote area along with his two co-defendants in order to accomplish what he set out to. Throughout this course of events, Petitioner was having trouble gaining the audacity to really go through with the actions he had in mind. Petitioner pointed the gun at Mr. Miller twice and could not bring himself to pull the trigger and actually put the gun down and had talked himself out of going through with it. Until one of his co-defendant's said he "needed to hurry up and get this over with, we have other things to do." Only after this encouragement was Petitioner able to pull the trigger ending Mr. Miller's life. Had it not been for the encouraging, the likelihood that Petitioner would have pulled the trigger would have been non-existent. Shouldn't circumstances like that be taken into consideration before imposing such a severe sentence? Weren't similar circumstances the basis for the psychological studies the U.S. Supreme Court used in it's decisions?

The U.S. Supreme Court decision in **Roper v. Simmons, Graham v. Florida, Miller v, Alabama,** and **Montgomery v. Louisiana**, all agree that peer pressure is a major deciding factor when it comes to adolescents committing crimes. "In some contexts adolescents might make choices in response to direct peer pressure, as

when they are coerced to take risks that they might otherwise avoid. More indirectly, adolescents' desire for peer approval, and consquent fear of rejection, affects their choices even without direct coercion. The increased salience of peers in adolescence likely makes approval-seeking especially important in group situations. Adolescents are thus more likely than adults to engage in antisocial behavior in order to conform to peer expectations or achieve respect and status among their peers. Not suprisingly adolescent crime is significantly correlated with exposure to delinquent peers, and adolescents are far more likely than adults to commit crimes in groups. No matter the crime, if a teenager is the offender, he is usually not committing the crime alone. Indeed, most adolescent decisions to break the law take place on a social stage where the immediate pressure of peers is the real motive. A necessary condition for an adolescent to stay law-abiding is the ability to deflect or resist peer-pressure, a social skill that is not fully developed in adolescents." (quoting A.P.A.'s brief for Miller v. Alabama, Jackson v. Hobbs, at 18-19).

The Petitioner's history of drug and alcohol abuse should be considered a significant mitigating factor as well. Not only was Petitioner intoxicated at the time the offense was committed, but had spent a number of years prior indulging in these substances. Most of the crimes Petitioner was charged with were drug related or drugs played a significant part in why the crime was committed in the first place. When Petitioner was 17 years old he was arrested at Fashion Place Mall in Murray, Utah for stealing clothes from one of the stores. When the police found a crystal meth pipe in his pocket and asked why he had it. Petitioner told police that he had been using crystal meth for the last 2 years and that was why he was stealing the clothes. To sell them on the street and then take the money earned to go and buy more crystal meth.

After Petitioner had moved from Utah to Pennsylvania, within 4 months he was arrested again. Only 30 days before his 18th birthday on August 3, 2010 the Petitioner was charged with the theft of his aunt's riding lawn mower, which he had planned to sell in order to obtain crystal meth once again. Even the burglary of Mick's diner in Port Alleghany,Pa, in April of 2011, was the result of Petitioner's desire for crystal meth. Almost everything that the Petitioner did revolved around him being able to obtain crystal meth.

Now while these crimes are substantial and show a pattern of criminal behavior. There were other factors at play that should help to keep Petitioner from being viewed as incorrigible. The fact that Petitioner had severe drug addiction that ruined his thought process should be considered substantial mitigation evidence. This does not excuse Petitioner's actions in any way, however, it should bring to light as to how something so drastic could happen.

The Court should GRANT Certiorari because Supreme Court rule **10 (c)** states: a state court or a United States court of appeals has decided an important question of federal law (i.e. **Illinois v. House, 2015 Ill. App. 1-11-0580 (2015) Dec. 25 2015**; **Cruz v. United States, 11-cv-787 (D. Conn. March 29, 2018)**) that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. The Petitioner contends that reasonable jurists would agree, and have agreed that his **§ 2254** petition does state a valid claim of the denial of a constitutional right in that not only have other states like California enacted legislation to raise the age limit based on **Miller**. But that other federal courts have ruled in favor of the Petitioner's claims that **Miller** and **Montgomery** do apply to the Petitioner and should afford him an

opportunity at relief from his life without parole sentence. Therefore since the Petitioner has proven that **Miller** and **Montgomery** are applicable to him as a 19 year old it therefore makes his PCRA a "properly filed" petition which tolled the statute of limitations for his **§ 2254** petition and makes the untimely argument moot. Further the Petitioner has shown that he is being denied his **8th** and **14th Amendment** rights guaranteed by the Constitution, in that he has been denied a remedy for his life without parole sentence when there are similarly situated individuals being treated differently than him. Not only with the individuals who are under the age of 18, but the individuals who are above the age of 18 that are receiving relief in other jurisdictions based on the Petitioner's argument. Therefore, the Petitioner should be afforded this same opportunity at relief and be given a resentencing hearing.

CONCLUSION

The U.S. Supreme Court held in **Williams v. Taylor, 529 U.S. 362 (2000)**, that a **§2254** petition will only be granted if the adjudication of Petitioner's claims resulted in a decision that was contrary to or an unreasonable application of clearly established federal law. The Court also held in **Roper v. Simmons, 543 U.S. 551 (2005)**, that like those individuals in **Atkins v. Virginia, 536 U.S. 304 (2002)**, those society views as juveniles are categorically less culpable. Expounding on that decision, the Court held in **Miller v. Alabama, 132 S.Ct. 2455 (2012)**, and **Montgomery v. Louisiana, 136 S.Ct. 718 (2016)** (holding **Miller** retroactive) that those viewed as juveniles could no be automatically sentence to life without parole.

In each of these cases, including others, the Court has allowed the American Psychological Association to file an Amicus Curiae Brief in support of Petitioner's claims. In these Brief's the APA uses sociological studies showing that an individuals development does not stop at 18 and that with this lack of development these individuals are less culpable when it concerns punishment for offenses.

The fact that the Court validated a social science finding that Petitioner is a part of, and the lower courts willingly chose not to apply it to him, is contrary to and an unreasonable application of clearly established federal law. The Equal Protection Clause of the 14th Amendment commands that no state shall "deny to any person within it's jurisdiction the equal protection of the laws." **Cleburn, 473 U.S. at 439**. Since Petitioner is being treated differently than individuals in the same social science finding, he is being denied the Equal Protection rights guaranteed by the 14th Amendment. Therefore, Petitioner prays that this Honorable Court will come to agree with his reasoning and GRANT him a Constitutional remedy in compliance with

Miller and **Montgomery**, based on the application of **Cruz v. United States, 3:11-CV-00787-JCH, 56 (D. Conn. March 29, 2018)**, GRANTING him the ability to be resentenced with a mitigation hearing pursuant to the protection created in **Miller** and **Montgomery**, to decide if he is truly deserving of a life without parole sentence, or any other relief to which the Court holds Petitioner entitled to.

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Respectfully Submitted,

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