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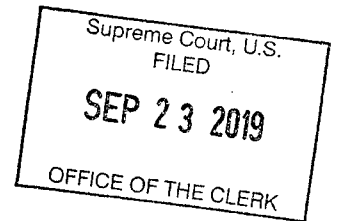
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS A. BIAS, Petitioner

Vs.

JIMMY MARTIN, WARDEN, Respondent



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

THOMAS A. BIAS #90463

NFCC EN-269

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SAYRE, OKLAHOMA 73662

QUESTIONS PRESENTED

IS THE STATE OF OKLAHOMA UNCONSTITUTIONALLY IMPOSING CONTINUED IMPRISONMENT ON JUVENILE'S SENTENCED TO LIFE, IN DISREGARD OF THE UNITED STATES SUPREME COURT MANDATORY LANGUAGE OF MILLER v. ALABAMA, 132 S.Ct. 2455, 567 U.S. 460, (2012), AND MONTGOMERY V. LOUISIANA, 136 S.Ct. 718, 84 USLW 4063 (2016).

DID THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ERROR BY NOT AFFIXING JURISDICTION TO A PROPER NEW SUBSTANTIVE CONSTITUTIONAL CLAIM OF A FUNDAMENTAL PROTECTION AND SAFEGUARD OF A JUVENILE, IN VIOLATION OF THE EIGHT AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

LIST OF PARTIES

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All parties appear here and on the caption of the cover page.

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Graham v. Florida, 130 S.Ct. 2011 (May17th, 2010).

In re Cline, 531 F.3d 1249, 1251 (10th Cir. 2008).

Martines v. State, 442 P. 3d 154 (May 2019).

Miller v. Alabama, 132 S.Ct. 2455, 567 U.S. 460, (2012).

Miller-El v. Cockrell, 537 U.S. 322, 337-38 (2003).

Montgomery v. Louisiana, 136 S.Ct. 718, 84 USLW 4063 (2016).

Roper v. Simmons, 125 S.Ct. 1183, 543 U.S. 551.

Torres v. Senkowski, 316 F.3d 147(2003).

Yates v. Aiken, 108 S.Ct. 534,484 U.S. at 218.

STATUTES

United States Constitution Article VI, cl.2.

United States Constitution Amendment VIII.

United States Constitution Amendment XIV.

Title 28, U.S.C.A §2244, Notes Of Decisions.

Title 28, United States Code §2244 (b)(2)(A)-(B).

Title 28, United States Code § 2244 (b)(3).

Title 28, United States Code, § 2253(c) (1) (A).

Title 28, United States Code § 2253 (c) (2).

Title 28, United States Code § 2253 (c)(3).

Supremacy Clause of the United States Constitution 28 U.S.C. 2254§ (d) (1).

Title 28 U.S.C. § 2255.

RULES

Rules of the Supreme Court of the United States, Rule 10 (a).

Federal Habeas Manual §7:38, Exceptions To The Teague Rule.

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 judgment below.

ORDER DENYING CERTIFICATE OF APPEALABILITY

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

The date on which the United States Court of Appeals decided my case,

July 8, 2019.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Oklahoma is violating Petitioners United States Constitution, Article VIII guarantee against “...cruel and unusual punishment...” by not providing a statutory “Meaningful opportunity” criteria for, a juvenile, sentenced to life to show maturity and rehabilitation and be returned to life outside of prison.

Oklahoma’s refusal to apply [New Substantial Constitutional Law], the clear mandate of the United States Supreme Court for juveniles sentenced to life is a direct violation of United States Constitution, Article XIV “...deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

In 1974, Thomas A. Bias was arrested, at the age of 17, certified to stand trial as an adult, convicted of first-degree murder and sentenced to death.

In 1977, on direct appeal the Oklahoma Court of Criminal Appeals (OCCA) affirmed the conviction, but modified the sentence to life imprisonment at hard labor. *See Bias v. State*, 561 P.2d 523, 538 (Okla. Crim. App. 1977). Mr. Bias filed other applications for post-conviction relief in state court, which were denied.

In 1991, Mr. Bias filed an application for a writ of habeas corpus under 28 U.S.C. §2254 in the District Court for the Northern District of Oklahoma. The district court denied the application, and the United States Court of Appeals for the Tenth Circuit affirmed. *Bias v. Cody*, No. 92-5190, 1993 WL 152654 (10th Cir. May 11, 1993).

[All the aforementioned proceedings being prior to the new constitutional precedent.]

In 2012, the U.S. Supreme Court held in **Miller v. Alabama, 567 U.S. 460, 479 that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” And in January 2016, the U.S. Supreme Court held that Miller announced a new rule of constitutional law to be applied retroactively on collateral review. **Montgomery v. Louisiana**, 136 S.Ct. 718, 734 (2016).*

On July 14, 2016, Petitioner filed Post-Conviction Relief Application to Creek County Court, challenging the execution scheme of his life sentence. State District

Court denied relief, and the OCCA affirmed, (*See Bias v. State* PC-2016-928 Nov. 30, 2016 *unpublished*).

On January 12, 2017, Mr. Bias filed a 2241 habeas corpus writ alerting the Court, initiating his claim under *Graham v. Florida*, 130 S.Ct. 2011 (May 17th, 2010); *Miller v. Alabama*, 132 S.Ct. 2455, 567 U.S. 460, (2012) and *Roper v. Simmons*, 125 S.Ct. 1183, 543 U.S. 551. This initial filing was under collateral review within 1 year of the retroactivity ruling of January 27, 2016 *Montgomery v. Louisiana*, 136 S.Ct. 718, 734 (2016). The United States District Court for the Northern District of Oklahoma ruled that Petitioner had not exhausted the administrative remedy of the administration of his sentence and dismissed the 2241 without prejudice. Case No. 17-CV-017-TCK-FHM, (Aug. 24, 2017).

September 7, 2017, Petitioner submitted Department of Corrections Administrative Procedure, Request To Staff raising the *Graham*, *Miller*, and *Roper* decisions. 'Request' was denied, Petitioner submitted Administrative Grievance to Warden. Grievance denied. Petitioner appealed to Agency Administrative Review Authority (ARA). ARA denied appeal and ruled that Petitioner had **'exhausted his remedy'**.

On November 2, 2017, Petitioner then refiled habeas 2241, asserting in Ground One; As a juvenile when my crime was committed, it is unconstitutional to keep me incarcerated in a system that does not afford a meaningful opportunity criteria by which I could be released. Oklahoma, at pg. 8 of their Motion to Dismiss, challenge

Ground One of the habeas petition. Oklahoma argues against my unconstitutional incarceration, by quoting that *Miller* states, “A State... must provide some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Miller v. Alabama*, 567 U.S. 460, 479, 132 S.Ct. 2455, 2469, 183L.Ed. 2d 407 (2012) quoting *Graham*, 560 U.S. at 75, 130 S.Ct. at 2030. and since Mr. Bias has been ‘considered’ for parole every three years since at least 2008, the petition should be dismissed.”

On September 28, 2018, in its Opinion and Order, the United States District Court for the Northern District of Oklahoma, at pg.7, “Because his Ground One claim appears to challenge the validity of his life sentence, the Court questions whether it lacks jurisdiction to address that claim given that Petitioner has previously filed a §2254 petition challenging the same judgment and sentence.” On page 9 of its *Opinion* (ibid) the Court quotes; “*Montgomery* held that *Miller* announced a substantive rule of constitutional law that states must apply on collateral review. *Montgomery*, 136 S.Ct. at 735.” The Court ruled that the Ground One claim (*Graham/Miller*) challenged the constitutional validity, rather than the execution, of Petitioner’s life sentence and must be adjudicated under §2254. The Court then construed the habeas petition as a ‘second and successive’ petition and dismissed the claim without prejudice “for lack of jurisdiction.” (Opinion and Order, Case No. 17-CV-607-JHP-FHM, Sept. 28, 2018).

On December 14, 2018, a timely Request for a Certificate of Appealability (COA) was filed.

On July 8, 2019, United States Court of Appeals for the Tenth Circuit denied (COA). That circuit court ruled; ‘With regard to Ground One, Mr. Bias previously filed a § 2254 application, which was adjudicated on the merits, and he did not obtain prior authorization from this court before filing his claim challenging the validity of his life sentence under *Miller*. See 28 U.S.C. § 2244 (b)(3). It is not debatable that the district court correctly dismissed Ground One as an unauthorized second or successive § 2254 claim. See *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (“A district court does not have jurisdiction to address the merits of a second or successive...28 U.S.C. § 2254 claim until this court has granted the required authorization.”) (Unpublished Case No. 18-5105). Appendix A.

REASON FOR GRANTING THE WRIT

First, this Petitioner directs the Court’s attention to *Carrao v. U.S.*, 152 F.3d 191, where Carrao’s 1995 challenge was ruled a “second or successive” petition. At #8, the court found that “We will certify a second or successive §2255 petition for filing in the district court *192 only if it contains; (2) a new rule of **constitutional** law that was previously unavailable and made retroactive to cases on collateral review.”; further stating that; “We construe the motion for leave to file a COA as a motion to file a successive petition;”. We also see in *Gonzales v. Thaler*, 132 S.Ct. 641 (2012), the specific requirement of a COA was found under 28 U.S.C §2253 (c) (3), that a substantial showing of a constitutional violation must be made.

Obviously, the *Miller/Montgomery* issue is not a frivolous claim, but a constitutional claim of magnitude that should warrant Federal intervention.

Jurisdiction does attach under both 28 U.S.C. § 2244 (b)(2)(A), '...that the claim relies on a new rule of constitutional law' *and* 28 U.S.C. §2253 (c)(2); see Federal Habeas Manual §7:38, Exceptions To The Application of Teague-New substantive rules; the second category of substantive rules, (1) rules that forbid a category of punishment for a class of individuals. See also *Gonzales v. Crosby*, 125 S.Ct. 2641, new substantial constitutional law *and Montgomery*, 136 S.Ct. at 135, 193 L.Ed. 2d 599 "[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". [As annotated under Notes Of Decisions cases U.S.C.A. 28 § 2244, the appellant court could have executed the Application for COA as an Application For A Second And Successive Petition because of the nature of the content of new constitutional-retroactive law especially in view of a untrained unlearned pro se applicant, see *Torres V. Senkowski*, 316 F.3d 147,(2003) @ #1]. That this Court should assume jurisdiction is founded in the **United States Constitution, Amendment XIV**, Section 1, "...nor deny to any person within its jurisdiction the equal protection of the laws." The State of Oklahoma is unconstitutional against juvenile offenders in violation of the **United States Constitution, Amendment VIII**, "...nor cruel and unusual punishment inflicted".

Even in *Martines v. State*, 2019 OK CR 7, 442 P.3d 154, the Oklahoma Court of Criminal Appeals, Honorable Presiding Judge Lewis, in dissenting opinion agrees;

“The Eighth Amendment, as interpreted in *Miller v. Alabama*, imposes substantive limitations on a State’s *permanent imprisonment of juvenile homicide offenders*.”(emphasis added). And, “That *Miller* logically dictates and clearly establishes enforceable limits on the State’s power to punish (juveniles) for life without a finding that ‘he’ was an irreparably corrupt or permanently incorrigible juvenile.” Mr. Bias, a prisoner with over 40 years of *Successful Program Participation*, proves that he lacks the ‘irreparably corrupt or permanently incorrigible juvenile characteristics’ as defined in *Miller/Montgomery*! Again, direct (constitutional) proof that ‘transient immaturity of youth’ is to be accredited to the past, not present, nor future. This Court found; “The opportunity for release will be afforded to those who demonstrate the truth of *Miller’s* central intuition -that children who commit even heinous crimes are capable of change.” *Montgomery v. Louisiana*, 136 S.Ct. 718 at 732. See also *Detwiler v. State*, 2019 OK CR 20, ___ P3d ___, Honorable Judge Lewis’ dissenting opinion at Decision; where Judge Lewis vehemently dissents again over the meaningful opportunity lacking in the OCCA adjudication of all these juvenile cases and discusses the mandatory considerations of the individual’s maturity psychopathy. Judge Lewis goes on to highlight the attitude of Oklahoma Courts by exclaiming; “today’s ‘independent’ interpretation of *Graham* ratifies a cruel and unusual punishment that the Eighth Amendment *categorically* forbids.” These most recent dissents, portray Oklahoma Courts’ disregard to the need for compliance and that only the minority of State Officials are willing to go against the grain to try to do the right thing!

Implementation of The Supremacy Clause of the United States Constitution
U.S.C.A. Const. Art. 6 Cl.2, in *Montgomery* at 731 note 25 “If a state may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own post-conviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court “has a duty to grant the relief that federal law requires.” *Yates*, 484 U.S., at 218, 108 S.Ct. 534. ‘Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to *732 give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.’” “... federal habeas courts are constitutionally required to supply a remedy because a sentence or conviction predicated upon an *unconstitutional law* is a legal nullity.” *Danforth v. Minnesota*, 552 U.S. 264, 290-291, 128 S.Ct. 1029, (2008). The Supreme Court’s procedural requirement for Oklahoma to determine Petitioners evolution, from a troubled misguided youth to a model member of the prison community, do carry the force and the effect of supremacy law.

Oklahoma has no statutory law or administrative policy that addresses any ‘**meaningful**’ opportunity of release for a juvenile sentenced to life. The factual proof is found in the United States Court of Appeals for the Tenth Circuit ruling that the Oklahoma Parole Board Policy; “...had no effect on the standard for fixing [Mr. Bias’]

initial date of 'eligibility' for parole, or for determining his 'suitability' for parole and setting his release date'. *Bias v. Redbird*, No.95-6358 (1996). According to the constitutional guarantees set forth in *Montgomery*, *ibid*, "In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption; and if it *737 did not, their hope for some years outside prison walls must be restored." And again, "A state...if it imposes a sentence of life it must provide him or her with some [realistic opportunity to obtain release before the end of that term],"emphasis added, *Graham v. Florida*, 130 S.Ct. 2011 (May17th, 2010).).

In *Miller/Montgomery*, this Court has invoked new and substantive constitutional understanding for states to have, determinant criteria to establish a meaningful opportunity for release, evaluating ability to change and mature into a responsible adult warranting release, or denying release for a juvenile sentenced to life. This understanding of the *Miller* precedent was instrumental in *BearCloud v. State*, (Wyo.) 334 P.3d 132 (2014), certiorari granted, where a total aggregate of time served by a juvenile sentenced to life was set at 25 years [also later expressed by this Court in *Montgomery* at 736].

The State of Oklahoma is unwilling to comply with clear Unites States Supreme Court precedence and the State Legislature has refused to change existing law within the State to come into compliance with U.S. Supreme Court precedence. This refusal is coupled with the habitual law unto itself succession approach of

Oklahoma State Courts only changing LIFE W/O Parole Cases to LIFE with the possibility of Parole. Oklahoma, without any legislative mandate. Oklahoma does not constitutionally afford Juvenile Defendants to a “*meaningful opportunity for release*”, as required by Constitutional Law under the VIII amendment as defined by this Court in *Montgomery, Miller and Graham*.

As stated in Mr. Bias’ COA, there is proof in favor of granting relief under the elements and issues of the Supreme Court mandate of *Miller* as can be seen in the extensive list of over 40 years of many positive, productive programs and educational successes that Mr. Bias has taken, proving his growth and maturity, not to mention his guidance and assistance in presenting rehabilitative courses to other inmates. Mr. Bias directly fits these structured elements and the *BearCloud (25 years)*, which are expressed in *Montgomery*, *ibid*. Under 28U.S.C. §2253 (c)(2), Mr. Bias “has made a substantial showing of the denial of a constitutional right”. To not recognize and apply the same rehabilitative necessity as was extended, by this Court, to Henry Montgomery, is to impose extreme mental and physical, cruel and unusual punishment denying Mr. Bias *equal protection* of the U.S. Supreme Court mandate for juvenile offenders.

Must Mr. Bias and other juvenile offenders in Oklahoma stay incarcerated till death, because of the lack of legal training or money to hire appropriate legal assistance?

When asserting their right to substantive change in Constitutional law, must a pro-se, untrained, prisoner be held to the highest standard of legal correctness while

it *continues to imprison*-by way of an administrative/procedural bar (AEDPA)-
under a constitutionally cruel and unusual and excessive punishment?

Mr. Bias is not skilled or trained in procedural technicalities. To plead inexperience of proper administrative requirements and procedures to this Court is verifiable in Petitioners historical filings. It is only by the assistance of inmate law clerks that the cases cited and structure of this brief is as submitted.

CONCLUSION

Petitioner is asking this Honorable Court, *as it has before*, to make exception to the AEDPA requirement and adjudicate this case as it deems necessary, because of the extreme constitutional issue at hand. Oklahoma's lack of any procedural requirement to determine 'the ability to demonstrate rehabilitation and obtain release' of Juvenile Offenders and ignoring Petitioners evolution from a troubled, misguided youth to a mature model member of the prison community, does not comply with the explicit retroactivity of *Miller/Montgomery*.

Mr. Bias has met the burden of proof, showing in the last 46 years by the great multitude of programs exhibiting his rehabilitated mature lifestyle, meeting any and all requirements to afford him a second chance outside the walls of prison.

Respectfully Submitted,


Thomas A. Bias