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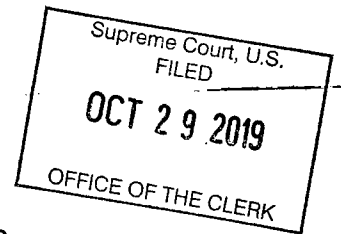
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

-of America -



Mr. Eric C. Burgie — PETITIONER
(Your Name)

vs.

State of Arkansas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Arkansas Supreme Court.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Eric C. Burgie, ADC #120956
(Your Name)

P.O. Box 910, E. A. B. U.
(Address)

Marrianna, Arkansas 72360
(City, State, Zip Code)

N/A.
(Phone Number)

Questions Presented

1) Mr. Burgie filed a section 1690-11(c) petition to correct an illegal sentence on the ground that life without parole sentence violates Miller v. Alabama, 567 U.S. 460 (2012) and Cruz v. U.S., civil action No. 11-cv-787, 2018 WL 1541989 (S.D. Conn. Mar. 29, 2018), because he was 18-year old at the time of the offense and Cruz applied Miller to an 18-year old. Mr. Burgie asks this court to answer whether or not the court was in error for not applying Miller?

2) The petitioner submitted a psychological evaluation report in his petition which indicated he was suffering from 'mental retardation' at the time of the offense. The petitioner states that recent developments in psychology and brain science offers conclusive evidence that 18-year olds brains are not fully developed. The petitioner asks this court to answer whether or not its decision in Miller would apply to Burgie as an 18-year old suffering from mental retardation, who because of under development of his brain had the mind of a person well under 18-years old?

3) Did Graham v. Florida, 560 U.S. 48 (2010), extend Gregg v. Georgia, and Roberts v. Louisiana's requirement that a person sentenced to death (i.e. to 'life without parole') must be allowed to present mitigating evidence?

4) Did Graham v. Florida, extend Apprendi v. New Jersey mandate that jury must find mental fitness to sentence defendant to life without parole?

5) Did Graham v. Florida and Edmund v. Florida, bar Burgles life without parole sentence for capital murder and aggravated robbery without a determination being made whether Burgle killed or intended to cause the death of Wright during the robbery?

LIST OF PARTIES

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

☐ 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:

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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 judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Garland county circuit court appears at Appendix 3 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 06/06/19.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: 08/01/2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Amendment VIII of U.S. Constitution: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

2) Arkansas code annotated § 16-90-111. correction or reduction of sentence. (see Appendix F.)

Statement of case

on or about July 7, 2000, 18-year old petitioner Eric C. Burgie and two other persons are alleged to have robbed and killed Jacob A. Wright inside Wright's residence. The felony information states "three men wearing masks," one with a shotgun and the other two had armed themselves with a knife and sword after entering Wright's residence demanding drugs and money. The victim died from a shotgun wound to the abdomen.

In 2001, Mr. Burgie was convicted by a jury of capital murder and the underlying felony, which was aggravated robbery. Some capital sentencing safeguards were used, however, Burgie was mandatorily sentenced to "life without parole" in like fashion to Kuntrell Jackson, see *Jackson v. Norris*, 2011 Ark. 49.

On October 19, 2018, the Petitioner filed a D.C.D. § 16-90-111(c)(a) petition to correct an illegal sentence in the trial court claiming that: (1) Mr. Burgie's mandatory sentence to "life without parole" violates this court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Cruz v. U.S.*, Civil Action No. 11-CV-787, 2018 WL 1541989 (S.C.H.) (D. Conn. Mar. 29, 2018), because he was 18-years old at the time of the offense and Cruz applied *Miller* to an 18-year old. In ground two, Burgie claimed he was convicted in violation of *Graham v. Florida*, 560 U.S. 48

(2010) and Miller v. Alabama, 567 U.S. 460 (2012), because the government failed to prove that Burgie killed or had intended to kill the robbery victim and because he was only a minor participant in the aggravated robbery underlying the robbery-murder of Jack Wright inside his residence. see Appendix E.

Furthermore, the petitioner submitted evidence of a psychological evaluation report which was ordered by the trial court and conducted at the state hospital in which the score result of Burgie's I.Q. test indicated he was suffering from mental retardation. The petitioner tried to secure counsel and a expert witness to testify and explain how his I.Q. test score of (68) - combined with his youthfulness (being that he was 18-years old) basically gave Burgie the mind comparable to the mind of a person well under 18-years old. In other words, Burgie was arguing that at the time this crime was committed because his I.Q. score of (68) suggested mental retardation and recent developments in neuro-brain science and adolescent behavioral and developmental research which conclusively proves that late adolescents such as Burgie brains are not fully developed at the age of 18-years old Burgie was in fact not functioning as an adult and that Cruz and this courts decisions strongly suggests that Miller and Graham applies under these circumstances. see Appendix H, and Appendix I & J.

Moreover, in the petition it seems that Mr. Burgie is also claiming he was if anything one of the masked men brandishing a knife or sword in Wright's residence that can be taken as evidence Burgie was not contemplating taking life, or else he would have been the person with the shotgun that was used to shoot Mr. Wright. The petitioner cited Edmund v. Florida, 102 S. Ct. 3368 (1982) and Tison v. Arizona, 107 S. Ct. 1617 (1987), to support his claims in ground two, that he cannot be sentenced to "life" in Arkansas solely due to the felony-murder rule, and him merely tagging along on a "robbery" *id.*; see also, Miller v. Alabama, 567 U.S. 460 (2012) (concurring opinion of Justice Breyer & Sotomayor).

The trial court denied the 16-90-111 (a) petition as untimely and the order is attached as Appendix B.

Prior to Burgie filing his brief-in-chief, the petitioner filed a motion for rule on clerk which was treated by the Arkansas supreme court as a motion for extension of time to file the appeal brief see Appendix A. The court went on to address the merits of the appeal on June 6, 2019, in which the court denied the appeal and the motion is moot. see Appendix A. However, Justice Hart dissented, stating that the court lacked jurisdiction to decide the appeal. Justice Hart further stated that Burgie's claim had potential merit. *id.*

The petitioner filed a timely petition for rehearing which was denied on August 1, 2019, see Appendix C. The petitioner basically argued that because this court decision in Miller implicated two important strands of precedent reflecting the court concern with proportionate punishment, the psychological evaluation report $\pm$ IQ test score of (68), which clearly indicated Burgie was suffering from 'mental retardation' that he submitted to the trial court in his petition to support his Miller and Graham claims combined with the fact he was an late adolescent (18-years old at the time of the crime), Burgie believed and argued that recent developments in brain science and psychological adolescent development studies indicating that 18-year olds brains are not fully developed brings a compelling argument under Kennedy v. Louisiana, 128 S.Ct. 2641 (2008) and Atkins v. Virginia, 122 S.Ct. 2242 (2002), that Miller applies to 18-year olds suffering from mental retardation.

The petitioner was not allowed to present mitigation evidence such as the psychological evaluation report conducted prior to Burgie's trial. Such evidence had it been considered by the jury might have showed Burgie was mentally challenged - in violation of Roberts v. Louisiana, 431 U.S. 633 (1977); Gregg v. Georgia, 428 U.S. 123 (1976).

Moreover, many Arkansas capital murder defendants are denied counsel at the critical mitigation phase -

in cases where the government waives the death penalty. This is because 'life without parole' is the minimum sentence available after the waiver, and typically attorneys see no need to prepare or present mitigation. Nonetheless, Roberts and Gregg requires jurors to consider and weigh the individual attributes of the offender.^{id}

Reasons For Granting The Petition

This court should consider each question presented to more clearly define how the court's Miller v. Alabama, 567 U.S. 460 (2012) and Graham v. Florida, 560 U.S. 48 (2010), opinions apply to other capital safeguards in cases involving life without parole sentences.

I.

Graham v. Florida, 560 U.S. 48 (2010), extended the death penalty's capital case law precedents, i.e., 'capital sentencing requirements to imposition of "life" sentences in the state of Florida. see (Miller v. Alabama, 132 S. Ct. at 2458) (quoting Boyer v. Simmons, 125 S. Ct. 1183 (2005)). (Held that the 8th amendment bars capital punishment for children, and Graham concluded the amendment prohibits a sentence of life without parole for a juvenile convicted of a non-homicide offenses. Graham further likened life without parole for juveniles to the death penalty invoking a second line of cases. In those cases, the court has required sentencing authorities to consider the characteristics of a defendant and the details of his offense before sentencing him to death. see Woodson v. North Carolina, 96 S. Ct. 2928 (1976) (plurality opinion).

The petitioner Mr. Buzgic was sentenced under the same unconstitutional capital sentencing scheme that Huntrell Jackson was sentenced using. see Jackson

v. Hobbs,

Especially, when the death penalty is waived - when 'life without parole' is the mandatory minimum sentence available defense attorneys systematically and routinely fail to investigate a defendants background and fail to introduce 'mitigation' at the sentencing phase - because life without parole is the mandatory minimum - with or without mitigating evidence. This is the "flaw" that caused Burgie's I.Q. test score of (68) and other evidence supporting mental retardation to be excluded from the jury.

This is a 'structural error' in Arkansas capital sentencing scheme, of the worst degree.

II.

In the petition to correct an illegal sentence that Burgie filed in the trial court on October 19, 2019, he tried to secure counsel and a expert witness to testify and explain how his I.Q. test score of (68), which indicated Burgie was suffering from mental retardation - combined with his youthfulness (being that Burgie was 17-years old) basically gave Burgie the mind comparable to the mind of a person well under 17-year old. see Appendix

The petitioner states that both a mentally

retarded person, and a child "lacks maturity," under-developed brains, lack adult comprehension. They are both prone to 'impulsive' and 'reckless' behavior - that is much less likely to be designed, planned, or intended to cause the death of another person. A truly mentally retarded adult often has less mental fitness than a very young child. And under this court decisions in Hennedy v. Louisiana, 554 U.S. 407 (2008) and Atkins v. Virginia, 536 U.S. 304 (2002), which gave rise to the Grubbs and Miller decisions the argument is compelling that application of Miller to an 18-year old suffering from mental retardation is appropriate under the 8th amendment because such a person would in fact would be functioning on the same intellectual level of a person well under 18-years old as indicated by Burgie's (68) I.Q. test score.

There is a split, almost a schism, among the circuit courts of appeal and district courts about whether a juvenile should be considered a person under age 18, or a person under age 21. This is even before possible mental fitness is added to the dilemma. This court should clearly define why the categorical bar against imposition of life without parole on juveniles - would not also apply to mentally retarded persons who was 18-years old at the time of their offenses occurring, such as Mr. Burgie

In Mr. Burgie's section 16-90-111(a) petition, he argued that his sentences for the capital murder and aggravated robbery violated Miller v. Alabama, 567 U.S. 460 (2012) and Cruz v. U.S., civil action No. 11-cv-787, 2018 WL 1541989 (SCH) (D. Conn. Mar. 29, 2018), because he was 18-years old at the time of the offense and Cruz applied Miller to an 18-year old. The petitioner asks this court to resolve the split in the federal court of appeals and district court on this very important issue affecting many prisoners in different states across the country. Although, this court has relied on for sentencing purposes, the age of 18 eighteen as the line between a juvenile and adult, majority of the state legislatures are amending their laws to change the adult age to 21 years old based off recent developments in psychology and neuro-brain science which shows fundamental differences in the minds of juveniles and adults, including conclusive evidence that the human brain is not fully developed until the age 25. So it seems as recognized in the Cruz decision that many states are changing their laws because society are is beginning to acknowledge late adolescents, those persons in the age range of 18 and 21 are more similar to children under 17 years of age than to adults based off the science which is conclusive. If this court decline to address this issue it will just be

delaying justice for a class or group of offenders most deserving of it and which the court will eventually have to deal with anyway. Also, the mental health issue has been largely overlooked by the courts and criminal justice system in the past and lies at the core of the problem with crime and getting children suffering from mental retardation help rather than trying to lock them up and throwing away the keys.

III.

The petitioner also challenged his "life" sentences under *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 567 U.S. 460 (2012), due to his minor participation in the Robbery-Murder of Jack A. Wright. The petitioner cited *Enmund v. Florida*, 102 S.Ct. 3368 (1982) and *Tison v. Arizona*, 107 S.Ct. 1176 (1987), arguing that Burgie cannot be convicted and sentenced for capital murder due to his mere presence or appearance at Wright's residence where one of his accomplices shot and killed Wright with a shotgun.

Enmund bars Arkansas from supplying or satisfying the intent to kill element via a Robbery-Murder rule, i.e., due to Arkansas transferred intent / accomplices statutes. In Burgie's petition he argued that his sentences violate *Graham* because the government failed to prove that Burgie killed or had intended to cause the death of Wright during the robbery. see *Miller v. Alabama*, 567 U.S. 460 (2012) (concurring opinion of Justice Breyer & Sotomayor).

The petitioner maintains *Graham* fully extended

capital case law to imposition of "true" life prison terms. This means Woodson, Gregg, and Roberts - all which requires the jury "must" be allowed to fix Jurgens' sentences after fair consideration to the individual attributes of the offender and mitigating circumstances. In conclusion, the petitioner prays that the court and its clerks give due consideration to these issues and set out to rectify it by granting discretionary review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Mr. Eric C. Zurgie.*_____

Date: *10/28/2019.*_____