

No. 19-6594

IN THE SUPREME COURT OF THE UNITED STATES

DAVID INGRAHAM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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JAN 22 2020
INMATE'S INITIALS

Supreme Court, U.S.
FILED

JAN 22 2020

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA THIRD DISTRICT COURT OF APPEALS

PETITION FOR REHEARING

ORIGINAL

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TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Petition for rehearing	1,3
Statement of Facts	3,10
Reasons Meriting Rehearing	11,12
Conclusion	12
Appendix	
Order Denying Certiorari	A
Opinion of the Florida Third District Court of Appeals	B
Motion For Leave To Amend & Accompanying Amended Petition.....	C

TABLE OF AUTHORITIES

<i>Atwell v. State</i> , 197 So.3d 1040 (Fla. 2016).....	2
<i>Falcon v. State</i> , 162 So.2d 954 (Fla. 2015).....	3
<i>Henry v. State</i> , 175 So.3d 675 (Fla. 2015).....	3
<i>Montgomery v. Louisiana</i> , 136 S.Ct. 718 (2016).....	11
<i>State v. Michel</i> , 257 So.3d 3 (Fla. 2018).....	2
<i>Trop v. Dulles</i> , 78 S.Ct. 590 (1958).....	11
<i>Virginia v. LeBlanc</i> , 137 S.Ct. 1726 (2017).....	1, 2 -11

State Statutes

775.082.....	3, 4
921.1401.....	4
921.1402.....	5
947.002.....	8
947.189.....	10

PETITION FOR REHEARING

Comes Now Petitioner, David Ingraham, *Pro se*, and prays this Court to grant rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the decisions of the State Court.

In support of this petition, Mr. Ingraham states the following.

On October 18th, 2019, Ingraham filed with this court a timely motion for leave to amend Petition for Writ of Certiorari and accompany amended Petition. The Amended Petition presented three question in the following order:

- (1). Does the decision of the Florida Supreme Court in overturning its previous decision deciding a Federal Constitutional question, violate the principals of due process and judicial integrity where it is obvious that said decision is based upon nothing more than a change in membership of the court and the belief that the previous decision was wrongly decided?

- (2). Does the decision of this Court in *Virginia v. LeBlanc*, 37 S.Ct. 1726 (2017), clarify that the Florida Supreme Court misapplied United States Supreme Court precedent in previously concluding Florida's parole system, as applied to juvenile offenders, violated the Eight Amendment. ?

(3) Does the Florida Supreme Court's reliance upon this Court's holding in *LeBlanc* permit the court to properly reconsider and settle, in accords with constitutional fairness and the principles of Stare Decisis, the issue of whether Florida's parole system violates petitioner's Eighth Amendment right?

The motion for leave to amend his petition has not been addressed and therefore, question one has not been considered. *See, Appendix C*

INTRODUCTION

The State Court decision has given rise to the re-emergence of two distinctly unequal meaningful opportunities for release for *Miller*-affected offenders. This disparate treatment, if this Court does not accept jurisdiction of this case, will result in Ingraham and other parole eligible juvenile offenders being deprived the right to equal protection of Federal law under the Equal protection clause of the Federal Constitution's Fourteenth Amendment. Precisely, the same protection to be free from cruel and unusual punishment and process in the meaningful opportunity for release as other *Miller*-affected offenders.

In a previous decision rendered by the Florida Supreme Court, the Court held, in *Atwell v. State*, 197 So.3d 1040 (2016), that Florida's parole system failed to comply with *Graham and Miller*. This decision was later receded from in *State v. Michel*, 257 So.3d 3 (Fla. 2018), based upon nothing more than a change in membership of the Court, disguised as an objectively unreasonable interpretation of this Court's holding in *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017).

The *Atwell Court* did not address the constitutional issues of whether it would result in a violation of equal protection of federal law for parole eligible juvenile offenders who have demonstrated *Miller's* central intuition, to receive arbitrary and disparate treatment of the same meaningful and realistic opportunity provided for release to *Miller* affected offenders sentenced to mandatory life, however, the decision did silently resolve any disparity in the opportunity provided between this category of juvenile offenders and the disproportional term of years served, by mandating that parole eligible juvenile offenders also receive a meaningful opportunity for release under Florida's new Juvenile sentence review statute.

Statement of Facts:

Shortly after this Court's decisions in *Graham* and *Miller*, the Florida legislature amended its sentencing statute to comply with this Court's Eighth Amendment juvenile sentencing jurisprudence, by enacting Chapter 2014-220, Laws of Florida., as codified in 775.082, 921.1401, and 921.1402, Florida Statute (2014).

In March of 2015, the Florida Supreme Court, in an unanimous opinion, extended *Miller* retroactively and rejected parole consideration for those juvenile offenders sentenced, prior to the enactment of Chapter 2014-220, to mandatory life. The court held this category of offenders would receive a meaningful opportunity for release in accord with the new juvenile sentencing statutes. *Falcon v. State*, 162 So.2d 954 (Fla. 2015), and *Henry v. State*, 175 So.3d 675 (Fla. 2015).

In doing so, the Court created two separate and disparate meaningful opportunities for release for the same category of offenders.

Florida's Juvenile sentencing Statute

Pursuant to Fla. Stat. § 921.1401.(1), upon conviction or adjudication of guilt of an offense described in s. 775.082(1)(b), s. 775.082(3)(a)5., s. 775.082(3)(b)2., or s. 775.082(3)(c), the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

- (a) The nature and circumstances of the offense committed by the defendant.
- (b) The effect of the crime on the victim's family and on the community.
- (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- (d) The defendant's background, including his or her family, home, and community environment.
- (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

- (f) The extent of the defendant's participation in the offense.
- (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- (h) The nature and extent of the defendant's prior criminal history.
- (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- (j) The possibility of rehabilitating the defendant.

921.1402. Juvenile Sentencing Review

Under the sentencing framework of the juvenile sentencing review statute, any juvenile offender sentenced to a term of more than 25 years, is entitled to a review of his or her sentence after 25 years. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

- (a) Whether the juvenile offender demonstrates maturity and rehabilitation.
- (b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.
- (c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin

to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

(7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is

not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Florida's Parole Process

For *Miller*-affected offenders sentenced to life with parole eligibility, the considerations for release are based upon the same standard guidelines that became effective in September 1981.

Initial Interview

Under the current guidelines, an offender who has served a period of twenty five (25) years is afforded an Initial Interview. At this interview, even if the offender makes an overwhelming case that his crime does not reflect irreparable corruption and he is fit to reenter society, parole will not be considered. The purpose of this hearing is only to establish a Presumptive Parole Release Date (PPRD) and the Next Interview Date (NID) also termed Subsequent Interview.¹

After the parole examiner interviews the offender, writes a report and makes a recommendation, the commissioners determine the following:

- **Salient factor score:** (The indices of the offender's present and prior criminal behavior and related factors found by experience to be predictive in regard to parole outcome.)

¹

This interview determines if any changes should be made in the PPRD. The Commission can elect to make no change, to reduce, or extend the PPRD.

- **Matrix time range:** (The appropriate range of months found where the offender's salient factor score total intersects with the offender's severity of offense behavior.)
- **Aggravating and mitigating factors:** (Any fact or circumstance that increases or reduces the severity or culpability of a criminal act.)
- **Institutional conduct record and program participation:**

Using these guidelines, the commissioners calculate the number of months from the start of the sentence to establish the PPRD. The Commission's discretion to choose aggravating factors and the number of months to assign those factors is not limited by rule, standard, or guideline. "Primary weight must be given to the seriousness of the offender's present criminal offense and the offender's past criminal record." Fla. Stat. § 947.002 (2).... The factors used to establish the PPRD are the same factors a court would consider in imposing the initial sentence of a juvenile offender.

Based upon these factors and the substantial discretion afforded the commission, their final decision could result in a presumptive parole release date that far exceeds an offender's life expectancy, and unlike other juvenile homicide offenders who's sentences were reviewed under Florida's juvenile sentencing

statute, the term of years Ingraham will serve before being released is not modified but increased.

The meaningful opportunity for release provided by Florida's parole review process, assuming arguendo that one exists, does not afford an attorney, or require the commission to weigh the opinion of a mitigation expert as to whether an offender's age, immaturity, and psychological development at the time of the offense affected his behavior. Nor does it grant the offender a modification of his sentence, that does not exceed his life expectancy. And unlike other *Miller*-affected offenders, if a defendant demonstrates he is fit to reenter society, does not guarantee release, at an age where he can find self sustainable employment and become a productive citizen.

Although, Petitioner does have the benefit of receiving reconsideration of his PPRD during periodic parole interviews that are scheduled every five years. Assuming arguendo, the commission does grant parole, because of the substantial discretion of the commission in determining his PPRD and to deny parole, the offender, unlike other *Miller*-affected offenders, could serve after his initial interview an additional twenty (20) years or more before being released. By this time Petitioner will be well into his late sixties (60s).

According to Fla. Admin. Code R. 23-21.002(44). No inmate will be released without a "satisfactory release plan." This has two components: gainful employment and suitable housing. Id. The inmate must show he "will be suitably employed in

self sustaining employment or that he will not become a public charge." 947.18, Fla. Stat. (2018); Fla. Admin. Code R. 23-21.002 (44)(b).

Because most offenders come from poverty stricken families, the meaningful opportunity provided for *Miller*-affected offenders under this process ensures they will be considered for parole at an age that will make it difficult if not virtually impossible to find self sustainable employment and not be a public charge.

In this case, Petitioner received his initial parole interview on October 30, 2019, after he had served a period of thirty (30) years. His initial interview was initially schedule for 2014, at which time he would have served a period of twenty five (25) years but, according to the Commission on Offender review, was rescheduled, because of an internal policy change, for October 2019. The notice provided to petitioner did not reference the citation of the new policy.

After conducting the initial interview, despite overwhelmingly demonstrating he had matured, rehabilitated himself and was fit to reenter society, the parole examiner recommend a PPRD of 2080. The Commission modified the recommendation and set Ingraham's PPRD for 2078. His next interview is schedule for 2026. At this time he will have served a period of thirty-seven (37) years imprisonment. A term of years that is disproportionate to the terms of years served by *Miller*-affected offender's provided a meaningful opportunity for release under Florida's juvenile sentence review statute.

REASONS MERITING REHEARING

The Florida Supreme Court's objectively unreasonable interpretation of this Court's holding in *Virginia v LeBlanc*, 137 S.Ct. 1726 (2017), has given rise to the re-emergence of Constitutional violations of equal protection of Federal law and the Eight Amendment... If this court does not grant rehearing to answer questions one or two of his amended petitioner for Writ Certiorari, Petitioner and many other parole eligible juvenile offenders will be deprived, under Federal law, of the same meaningful and realistic opportunity for release provided to *Miller* affected offenders who were sentence to a more onerous sentence of mandatory life, and will be forced to serve in violation of his right to equal protection under the Fourteenth Amendment, a disproportionate sentence in violation of the Eight Amendment.

In *Trop v. Dulles*, 78 S.Ct. 590 (1958), this Court held that, "punishment is in violation of the Eight Amendment if, the evolving standards of decency that mark the progress of a maturing society soundly reject it, or it is grossly disproportionate.

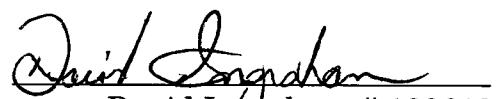
The obvious disparity in the opportunity for release provided between this category of juvenile offender's and the resulting disproportionate terms of years required to be served has no legitimate State interest, is inconsistent with this Court's holdings in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) and *Miller*, and is the type of action that would be surely rejected by the evolving standards of decency... Today's society is consistently rejecting disparity in criminal sentencing.

For this reason, this Court should answer question two of his amended petition and summarily reverse the State Court's decision and/or reverse with instruction that it conduct an independent constitutional analysis of Florida's parole system that takes into account the arbitrary and disparate treatment in the meaningful opportunity for release provided to this category of juvenile offenders and whether the disparate treatment and obvious disproportionate terms of years required to be served between this category of offenders would be rejected by the evolving standards of decency that mark the progress of a maturing society.

CONCLUSION

For the reasons stated, this Court should grant Rehearing of its judgment entered on January 13th, 2020, and issue a Writ of Certiorari to reconsider this case and hold the Florida Supreme Court accountable for failing to properly uphold and apply the law of this Court and ultimately, reverse the decision of the Third District Court of Appeals.

Respectfully Submitted



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CERTIFICATE OF GOOD FAITH

COMES NOW, David Ingraham, and makes certificate that his petition for rehearing is presented to this court in good faith pursuant to Rule 44. Mr. Ingraham further states the following:

This Court entered its judgment denying petitioner's petition for a Writ of Certiorari on January 13th, 2020. Petitioner believes that he presents this Court with an adequate ground to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay. Furthermore, petitioner believes that based upon the Equal protection clause of the Federal Constitution's Fourteenth Amendment and the prohibition against cruel and unusual punishment, he is entitled to relief which had been unjustly denied him. He avers that, if this court declines to grant Certiorari review, the State Court's decision, will result in the re-emergence two distinctly unequal meaningful opportunities for release for *Miller*-affected offenders. That being, Parole eligible juvenile offenders, who have demonstrated *Miller*'s central intuition, receiving disparate treatment in the procedural process and meaningful opportunity provided for release to other *Miller* affected offenders sentenced to a more onerous sentence of mandatory life and afforded a review of their sentence under Florida's new juvenile sentence review statute, consequently, forcing parole eligible juvenile offenders to serve a longer term of years that is grossly disproportionate to the term of years served by other *Miller* affected offenders.

The issue raised concerns a substantial ground not previously presented.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 22nd, day of January, 2020.