No. 19-7799

In the

Supreme Court of the United States

DESMOND BAKER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The Florida Second District Court of Appeal

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Miller v. Alabama requires that "before imposing the harshest possible penalty for juveniles" on a juvenile homicide offender—life without parole—a court "must have the opportunity to consider mitigating circumstances," such as the circumstances surrounding the offense and the offender's youth. 567 U.S. 460, 489 (2012). The question presented is:

Whether a trial court may sentence a juvenile homicide offender to fifty years' imprisonment without post-sentencing review after conducting an individualized hearing to consider the mitigating circumstances of the offense and the offender's youth.

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BRIEF IN OPPOSITION

Respondent State of Florida respectfully submits this brief in opposition to the petition for a writ of certiorari filed by Desmond Baker.

STATEMENT

1. Petitioner's challenge to his sentence ostensibly flows from this Court's decisions in *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012).

In *Graham*, the Court held that "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." 560 U.S. at 82. Although "[a] State need not guarantee the offender eventual release, . . . if it imposes a sentence of life it must provide him or her with some realistic possibility to obtain release before the end of that term." *Id.*

Although *Graham*'s blanket prohibition on sentences of life without parole does not apply to juvenile *homicide* offenders, the Court held in *Miller* 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,'" even for homicide offenders. 567 U.S. at 465. *Miller* did not *prohibit* sentencing juvenile homicide offenders to life without parole; instead, the Court held that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles" (life without parole). *Id.* at 489.

2. Following *Graham* and *Miller*, Florida amended its sentencing scheme for juveniles to require that a juvenile homicide offender be afforded an individualized hearing at which his youth and other relevant factors must be considered before a term of life imprisonment may be imposed. As relevant here, a juvenile homicide offender may be sentenced to either life imprisonment or at least 40 years. § 775.082(1)(b)1., Fla. Stat. Before sentencing a juvenile homicide offender to life imprisonment, and consistent with *Miller*, a court must conduct an individualized sentencing hearing under Section 921.1401.

In addition to the individualized review required before sentencing, Florida law provides that a juvenile homicide offender "is entitled to a review of his or her sentence after 25 years"—unless "he or she has previously been convicted of" certain enumerated felony offenses arising out of criminal episodes separate from the homicide. § 921.1402(2)(a), Fla. Stat.

3. In 1999, when Petitioner Desmond Baker was 15 years old, he robbed and murdered Harry Bockman, a taxi driver. Pet. App. 33. Later that year, a jury convicted him of murder in the first degree. *Id.* Before he was sentenced, he pleaded guilty to unrelated felony charges of armed robbery and armed burglary and the trial court imposed sentences for those charges. *Id.* at 22-23. The trial court then adjudicated Petitioner guilty of the homicide offense and sentenced him to life without parole. *Id.* at 24.

After this Court decided *Miller*, Petitioner sought post-conviction relief, but the trial court denied relief.[1] Pet. App. 188. He appealed, and Florida's Second District Court of Appeal reversed, holding that he was entitled to resentencing under *Miller*. Pet. App. 33. As a result, the trial court held an evidentiary hearing under Section 921.1401(1), Fla. Stat., to determine whether a term of imprisonment for life or a term of years equal to life imprisonment was an appropriate sentence. *Id.* In so doing, the trial court conducted an individualized inquiry into the factors set forth in Section 921.1401(2), Fla. Stat., regarding the nature of the offense and Petitioner's youth. Pet. App. 35.

Upon considering those factors and issuing written findings on each, the trial court sentenced Petitioner to a term of imprisonment of 50 years. Pet. App. 35-40. And because Petitioner had previously been convicted of armed robbery and armed burglary based on separate criminal transactions, the trial court held that he was not eligible for sentence review after 25 years under Section 921.1402(2)(a), Fla. Stat. Pet. App. 39-40.

Petitioner appealed, arguing (among other things) that Sections 775.082(1)(b)1. and 921.1402 violate the Eighth and Fourteenth Amendments because, pursuant to those statutes, he was sentenced to what

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[1] The trial court at first denied his motion on the basis that *Miller* did not apply retroactively; the Second District Court of Appeal reversed—and this Court later confirmed in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) that *Miller* did, in fact, apply retroactively.

(in his view) constitutes a de facto life sentence without review or parole. Pet. App. 50, 59.

The Second District Court of Appeal affirmed his sentence, specifically rejecting his argument that he was entitled to review after 25 years: Petitioner is "not entitled to review because previous to his original sentencing on the first-degree murder count, he had been convicted of armed robbery and armed burglary arising out of criminal episodes separate from the one involving the murder." *Baker v. State*, --- So. 3d ---, 2019 WL 3214083, at *1 (Fla. 2d DCA July 10, 2019) (citing § 921.1402(2)(a)(4), (5), Fla. Stat.). The court rejected his other arguments, including his arguments about Florida's sentencing scheme's constitutionality, "without discussion." *Id.* The Florida Supreme Court subsequently declined to exercise its discretionary jurisdiction. Pet. App. 1.

Petitioner now seeks this Court's review.

REASONS FOR DENYING THE PETITION

I. THIS CASE IS NOT AN APPROPRIATE VEHICLE FOR ADDRESSING ANY OF THE PURPORTED SPLITS IDENTIFIED IN THE PETITION.

Although Petitioner asserts that the lower courts are split on several issues, none of those issues is implicated here. As a result, because resolving those issues would not affect Petitioner's case, this case is not a good vehicle for addressing those issues.

First, Petitioner asserts that federal and state courts are split "concerning whether a term of year sentence that exceeds a juvenile's expected life time should be equated to a life sentence for the purposes

of deciding whether the term of year sentence violates the Eighth Amendment." Pet. 8. Whether or not a term-of-year sentence exceeding a juvenile's life expectancy is a life sentence for purposes of *Miller*, however, is irrelevant here. Even if it is considered a life sentence, *Miller* required only that before the trial court issue such a sentence that it hold an individualized hearing to consider mitigating circumstances in assessing whether his crime reflected "irreparable corruption." *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). Here, that is precisely what happened.

After considering "factors relevant to the offense and the defendant's youth and attendant circumstances," the trial court exercised its discretion under Section 775.082(1)(b)1. and sentenced Petitioner to 50 years. The factors that the trial court considered, and made express findings on, included:

(a) The nature and circumstances of the offense committed by the defendant.

The trial court found that Petitioner "planned and prepared for his armed confrontation of Bockman," and murdered him "without provocation and for monetary gain." Pet. App. 36. The court took "special note of the suffering endured by the victim"; "[w]ithout a doubt, [Petitioner] caused Harry Bockman to suffer a cruel, painful, and lingering death." Pet. App. 36, 37.

(b) The effect of the crime on the victim's family and on the community.

The trial court noted that the State Attorney "put forth no victim impact evidence, nor any evidence as

to the effect of the crime on the community." Pet. App. 37.

> (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

The trial court found that "[n]o credible evidence was presented to support the notion that [Petitioner] so lacked the age, maturity, intellectual capacity and emotional health as to mitigate his responsibility for his crime." Pet. App. 37-38.

> (d) The defendant's background, including his or her family, home, and community environment.

The trial court found that Petitioner "experienced lowered self-esteem as a child as a result of an unstable home environment and a lack of adequate supervision"; his parents lived separately; "he frequently resided with his grandmother and aunt," during which time he was "exposed to illegal drug use"; "his family and known friends were generally supportive of him"; he "associated with others in the community who encouraged his defiance of authority and engagement in illegal activities"; and "he would enter a supportive environment" upon release from prison." Pet. App. 38.

> (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

The trial court found that "[t]he available evidence in this case clearly establishes that the Defendant

appreciated the risks and consequences of his actions." Pet. App. 38. He had previously "committed several violent crimes," and "the robbery that led to the murder was not committed on an impulse but was the product of cool, reflective thought and detailed planning, preparation, and execution." Pet. App. 38.

(f) The extent of the defendant's participation in the offense.

The trial court found that there was "no doubt that the entire crime was initiated, planned, and executed by [Petitioner] himself and that there were no other active participants." Pet. App. 38.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

The trial court found that there was "no credible evidence that familial pressure or peer pressure had any significant effect [on Petitioner's] actions." Pet. App. 39.

(h) The nature and extent of the defendant's prior criminal history.

In the weeks leading up to the murder, Petitioner "had already committed several serious crimes, including armed robbery of another cab driver, armed burglary, and burglary of a dwelling." Pet. App. 39.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

The trial court found that Petitioner's age, "combined with his mental and emotional immaturity, clearly played a part in his decision to commit armed

robbery with a firearm," and the court expressly took that "into consideration as mitigation." Pet. App. 39.

> (j) The possibility of rehabilitating the defendant.

The trial court found that "the actual possibility of rehabilitating [Petitioner] remain[ed] unclear" because the State Attorney did not introduce any evidence on that issue other than Petitioner's "17 disciplinary reports while in Department of Corrections custody," and because Petitioner's expert witness testified that while he "present[ed] good prospects for rehabilitation," she "strongly recommended that [Petitioner] receive counseling for his mental disabilities . . . before his release"; that "he be under some form of supervision after his release"; and she was "careful to indicate that [Petitioner] was not rehabilitated." Pet. App. 39.

See Section 921.1401(2). Thus, because the court conducted the hearing required by *Miller* before sentencing Petitioner, it could have constitutionally imposed a life sentence. *See* Pet. App. 36-39.

Whether Petitioner's 50-year sentence is a de facto life sentence or whether a de facto life sentence is equivalent to a de jure life sentence under *Miller* is therefore not at issue here: Even if the Court were to conclude that Petitioner received a life sentence for purposes of *Miller*, *Miller*'s requirement of individualized consideration of mitigating circumstances was fully satisfied here. 567 U.S. at 489.

Second, Petitioner contends that Florida courts have "split from other state courts on the narrower

issue concerning the constitutionality of mandatory de facto life sentences without parole or review imposed against juvenile offenders." Pet. 9. To that end, Petitioner identifies several cases in which state courts have held that *mandatory* de facto life sentences for juvenile homicide offenders violate *Miller*. *E.g.*, *People v. Reyes*, 63 N.E. 884 (Ill. 2016); *Bear Cloud v. State*, 334 P.3d 132 (Wyo. 2014); *Allen v. Norman*, 570 S.W.3d 601 (Mo. App. 2018). This issue, too, does not bear on this case for a simple reason: Petitioner did not receive a mandatory sentence.

Instead, as explained above, he received a 50-year sentence after the trial court considered the mitigating circumstances of his offense and his youth, and exercised its sentencing discretion under Florida law. That 50-year sentence exceeds the mandatory minimum of 40 years set forth in Section 775.082(1)(b)1. In other words, the constitutionality of mandatory de facto life sentences for juvenile homicide offenders is not presented here, as Petitioner's sentence was not mandatorily imposed—this case does not present a situation where the trial court would have imposed a sentence of less than 40 years but was statutorily constrained; instead, the trial court showed that it viewed a sentence of *greater* than 40 years to be appropriate by sentencing Petitioner to 50 years.

What is more, even if the Petition could plausibly be read to challenge Section 775.082(1)(b)1.'s mandatory minimum sentence of 40 years for juvenile homicide offenders, and even if Petitioner had standing to challenge that mandatory minimum even

though his sentence was greater than the minimum, he does not identify any case holding that mandatory minimum sentences of 40 years for juvenile homicide offenders are unconstitutional. In fact, he relies on a case holding the opposite. *E.g.,* Pet. 12 (citing *People v. Buffer*, 137 N.E.3d 763, 774 (Ill. 2019), as "holding prison sentence of 40 years or less imposed on a juvenile offender provides some meaningful opportunity to obtain release"). No split warranting review on the issue exists.

The Petition, moreover, should not be construed to raise such a challenge: Petitioner expressly argues that a *50-year* sentence is a de facto life sentence, not that the *40-year* statutory minimum is a de facto life sentence. *See* Pet 6, 12. And Petitioner does not have standing to challenge the mandatory minimum because his sentence exceeded that minimum. *See*, *e.g.*, *United States v. Ramos*, 695 F.3d 1035, 1048 (10th Cir. 2012); *United States v. Gray*, 577 F.3d 947, 950-51 (8th Cir. 2009); *United States v. Robinson*, 241 F.3d 115, 122 (1st Cir. 2001); *United States v. Johnson*, 886 F.2d 1120, 1122 (9th Cir. 1989).

In short, this case does not present either the question whether a term-of-years greater than a juvenile's life expectancy is a life sentence for purposes of *Miller* or the question whether mandatory de facto life sentences for juvenile homicide offenders are constitutional. Petitioner did not receive a mandatory sentence and, under *Miller*, because he is a homicide offender, he could have lawfully been sentenced to life imprisonment. Because this case does not present either of the issues on which

Petitioner contends the lower courts are split, the Court should not grant review to resolve those issues.

* * *

For the reasons set out above, the actual issue presented in this case is whether a 50-year sentence without post-sentencing review, imposed on a juvenile homicide offender after the trial court conducted a *Miller* hearing and exercised its sentencing discretion under Florida law, violates the Eighth Amendment. The lower courts are not split on that issue. Even if they were, this case is not a good candidate for review. The issue has not been fully ventilated in the lower courts. Neither the trial court nor the Second District Court of Appeal discussed Petitioner's constitutional arguments. Indeed, the Second District expressly rejected those arguments "without discussion," Pet. App. 3, and the Florida Supreme Court declined to exercise discretionary review. This Court should have the benefit of at least one considered lower court opinion on the issue raised before weighing in, particularly where no other courts have addressed the issue.

II. THE DECISION BELOW WAS CORRECT.

Review is also unwarranted because the decision below was correct. Under *Miller*, a juvenile homicide offender may be sentenced to life without parole so long as the sentencing court holds an individualized hearing at which the mitigating circumstances of the offense and the defendant's youth are considered, and his crime reflects irreparable corruption. 567 U.S. at 489. Here, the trial court held such a hearing and made express findings as to each of the statutory

mitigating factors set forth in Section 921.1401(2). As a result, the trial court was empowered under *Miller* and Florida law to sentence Petitioner to life imprisonment. Thus, even if the Court were to conclude that Petitioner's 50-year sentence is a de facto life sentence for *Miller*'s purposes, that sentence is consistent with *Miller*.

Petitioner also advances several arguments relating to Section 921.1402(2)(a), which provides that a juvenile homicide offender is entitled to a sentence review after 25 years, unless he had previously been convicted of an enumerated felony committed separately from his homicide offense. Pet. 11-15. Because Petitioner was convicted of two such enumerated felonies before he was sentenced for the homicide, he is not entitled to review after 25 years. Pet. App. 2-3.

Petitioner's arguments relating to Section 921.1402(2)(a)'s 25-year-sentence-review are misplaced, and the fact that he is not entitled to a 25-year review under Florida law is consistent with *Miller* and *Graham*. [2]

Graham requires that a juvenile *nonhomicide* offender be afforded a meaningful opportunity for release. 560 U.S. at 82. By contrast, *Miller* expressly contemplates that a juvenile *homicide* offender may constitutionally be sentenced to life without parole as long as he receives individualized consideration of

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[2] The issue of Section 921.1402(2)(a)'s constitutionality is also not worthy of this Court's review because Petitioner does not even attempt to identify a split among the lower courts on that issue.

mitigating circumstances. 567 U.S. at 479, 480 (explaining that "we do not foreclose a sentencer's ability" to sentence a juvenile to life without parole "in homicide cases"). Nothing in *Miller* or *Graham* requires any post-sentence review for juvenile homicide offenders.

Put differently, *Graham*'s requirement of providing an opportunity to demonstrate maturity and rehabilitation, long after being sentenced, does not apply to juvenile homicide offenders when that offender may be lawfully sentenced to life without parole. And *Miller*'s prohibition on mandatory life sentences for juveniles requires an individualized opportunity to consider mitigating circumstances *at the time of sentencing*, not after the juvenile is sentenced. 567 U.S. at 489 (holding that "a judge or jury must have the opportunity to consider mitigating circumstances *before* imposing the harshest possible penalty for juveniles" (emphasis added)). Nothing in either *Graham* or *Miller*, therefore, requires that Petitioner, as a juvenile homicide offender, be afforded an opportunity for judicial review of his sentence *after* being sentenced.

All of this is to say that although Petitioner repeatedly contends that he is constitutionally entitled to sentencing review despite Section 921.1402(2)(a), nothing in *Miller*, *Graham*, or any of the decisions he relies on supports that argument. Juvenile nonhomicide offenders are entitled to some meaningful opportunity for release under *Graham*, while juvenile homicide offenders like Petitioner are entitled only to the individualized consideration of mitigating circumstances before imposition of a

sentence of life imprisonment under *Miller*. 567 U.S. at 489. Petitioner, a juvenile homicide offender, undisputedly received such individualized consideration and, in any event, was not sentenced to life imprisonment. That the decision below was correct supplies another reason to deny the petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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April 29, 2020