No. _____

In the Supreme Court of the United States

RASHAD TAYLOR,

Petitioner,

Versus

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SECOND DISTRICT COURT OF APPEAL

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Rashad Taylor was resentenced to a sentence of life imprisonment, with a minimum mandatory term of forty-years, under Miller[1] in 2017. Mr. Taylor received the minimum mandatory term of forty-years, which exposed him to the sentence of life imprisonment, because he is one of two defendants in the State of Florida who entered a plea of guilty when he was a juvenile. The questions presented are:

1. Does imposition of a mandatory sentence of forty years on a juvenile convicted of a homicide – a sentence imposed pursuant to a statutory scheme that categorically precludes consideration of the offender's juvenile characteristics and other mitigating circumstances – violate the Eighth and Fourteenth Amendments' prohibition on cruel and unusual punishments?
2. Does the imposition of an increased statutory mandatory minimum violate the Sixth, Eighth and Fourteenth Amendments, if the fact that increased the statutory mandatory minimum was found solely by a sentencing judge, rather than by a jury or admitted by a defendant?

[1] Miller v. Alabama, 132 S.Ct. 2455 (2012).

PARTIES TO THE PROCEEDING

All the parties to this proceeding are named in the caption.

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PETITION FOR WRIT OF CERTIORARI

Rashad Taylor respectfully petitions for a writ of certiorari to review the opinion of the Florida Second District Court of Appeal entered in this matter on September 13, 2019, affirming the judgment of the Thirteenth Judicial Circuit, in and for Hillsborough County, State of Florida.

OPINIONS BELOW

The opinion of the Florida Second District Court of Appeal is unpublished and appears at Taylor v. State, 287 So.3d 527 (Fla. 2d DCA 2019). It is attached as **Appendix A.**

The judgment of the Thirteenth Judicial Circuit, in and for Hillsborough County, State of Florida, is unpublished and is attached at **Appendix C.**

JURISDICTION

The court of appeals entered its order on September 13, 2019. Pursuant to Florida Rule of Appellate Procedure 9.330, a timely Motion for Rehearing and Rehearing en Banc was filed on September 30, 2019. Ultimately, the Florida Second District Court of Appeal denied the petition on December 5, 2019. The Florida Second District Court of Appeal's order rendered on September 13, 2019 was a per curiam affirmance, and lacked any written opinion, thereby forbidding discretionary review by the Florida Supreme Court due to lack of jurisdiction. Fla. Const. art. V, §3(b); Florida Rule of Appellate Procedure 9.030(a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves application of four separate constitutional and statutory provisions.

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall ... 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.

Florida Statute Section 775.082 provides, in relevant part:

> A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under section 782.04 of a capital felony...shall be punished by a term of imprisonment for life, if, after a sentencing hearing conducted by the court in accordance with section 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. 775.082(1)(b)(1).
>
> Alternatively:

A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under section 782.04 of a capital felony...shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with section 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to review of his or her sentence in accordance with section 921.1402(2)(c).

STATEMENT OF THE CASE

This case presents important constitutional questions regarding the imposition of mandatory sentences when a defendant has entered a plea agreement, rather than exercise his right to a jury trial. Although the question is important on its face, the importance of the question is multiplied by the fact that Florida Statute Section 775.082 is imposing mandatory sentences upon juveniles who exercised their right to enter a plea agreement. More specifically, Section 775.082 is allowing Florida judges to make factual findings that increase statutory mandatory minimums when these juveniles have not been found guilty of those facts by a jury or when these juveniles have not admitted those relevant facts. Mr. Taylor is only one of two defendants in the State of Florida who entered a guilty plea when he was a juvenile, facing a life sentence (without the possibility of death). However, Mr. Taylor is identical to all other juveniles who were exposed to the mandatory minimum sentencing scheme imposed by Florida Statute Section 775.082, which prevents Florida courts from considering his age and other mitigating circumstances which would call for a sentence less than forty-years.

A. Factual Background.

On March 15, 2006, when Mr. Taylor was seventeen years old, he was arrested and charged by Indictment with one count of Murder in the First Degree and one count of Attempted Robbery. As to count one, the Indictment specifically alleged that on February 9, 2006, Mr. Taylor, along with two other co-defendants, committed one count of Murder in the First Degree by feloniously killing Ronald Stem while engaged

in the perpetration, or in attempt to perpetrate the crime of Robbery with a Deadly Weapon. The Indictment further alleged that during the commission of count one, Mr. Taylor did discharge a firearm and death was inflicted upon Ronald Stem.

The facts that supported the Indictment were that Mr. Taylor, and three co-defendants, who were all under the age of eighteen, got together and planned rob someone on the University of South Florida college campus. Mr. Taylor and two co-defendants, Mr. Nelson and Mr. Rodriguez, exited the vehicle and proceeded towards an apartment complex where they ultimately came face-to-face with Mr. Stem. Mr. Stem had been leaving his fiancé's apartment and was on his way home when the encounter took place. The defendants attempted to rob Mr. Stem, but Mr. Stem responded that he did not have any money. In the heat of the moment, Mr. Stem was shot once in the chest and the three defendants ran away from the scene, before ever knowing what happened to Mr. Stem. Mr. Stem was later pronounced dead at the scene. Mr. Taylor's co-defendants pled guilty and in exchange for their pleas, it was anticipated that they were each going to testify that Mr. Taylor fired the deadly shot.

On August 13, 2007, Mr. Taylor entered a negotiated plea of guilty to the Florida trial court. Both on the record, and in the written plea agreement, Mr. Taylor acknowledged that he was entering the plea not because he was guilty, but because he felt at the time it was in his best interest to do so. The Honorable Judge Ronald Ficarrotta tendered Mr. Taylor's plea and the State cited a factual basis on the record, that is consistent with the factual summation above. Following its factual basis, the Honorable Ficarrotta stated, "I'll find sufficient factual basis and accept the plea. Mr.

Taylor, who do you have here with you today?" Mr. Taylor was not asked any other questions about the factual basis and/or whether he agreed to the facts as stated. As a result of the negotiated agreement, Mr. Taylor was sentenced to a mandatory sentence of "natural life" as to count one, First Degree Murder, and a term of thirty (30) years as to count two.

Several years later, following the Court's decision in Miller v. Alabama, 132 S.Ct. 2455 (2012), Mr. Taylor sought relief at the state trial court level. In 2014, the Florida Second District Court of Appeal held that Mr. Taylor was entitled to relief and remanded his case to the trial court with directions to conduct an individualized resentencing. See, Taylor v. State, 151 So.3d 1273 (Fla. 2d DCA 2014). The state trial court found Mr. Taylor was to be resentenced under Florida Statute Section 775.082(1)(B)(1). The court specifically found that ""[t]here is no doubt in this Court's mind, given the facts in this case, that this defendant did intentionally kill the decedent, Mr. Web, in this case. All right? Thank you. That's the law of the case. There will be no further argument on that issue." Following the presentation of countless lay witnesses and experts from around the country, who all said Mr. Taylor was the poster child for relief under Miller, the state court resentenced Mr. Taylor to life imprisonment with a forty-year mandatory minimum.

B. Procedural History and the State Court Ruling on Review.

After Mr. Taylor was granted a resentencing, trial counsel filed several motions relating to Florida Statute Section 775.082, which allowed the court to sentence defendants to mandatory sentences if certain facts were proven or

established. First, counsel filed a Motion to Sentence Mr. Taylor Pursuant to Florida Statute Section 775.082(1)(b)(2). Therein, Mr. Taylor argued that because he had entered a plea rather than proceed to trial, and he had never admitted to the facts necessary to enhance his sentence at the plea hearing, he could not be sentenced to a mandatory sentence of forty-years. Ultimately, after entertaining argument from the State, the trial court denied the motion and found that Mr. Taylor had been the person to kill the victim and therefore, he was to be sentenced under Florida Statute Section 775.082(1)(b)(1). This issue was addressed, once again, on the date of Mr. Taylor's actual resentencing. However, it was again denied in the State's favor and Mr. Taylor was sentenced with the mandatory sentence imposed.

Mr. Taylor also filed a Motion to Declare Florida Statute Section 775.082 Unconstitutional as a Violation of Due Process. Therein, Mr. Taylor argued that Florida Statute Section 775.082(1)(b)(1) unconstitutionally prohibited trial judges from making individualized sentencing determinations of juvenile offenders. Mr. Taylor's was ultimately denied on the day of his resentencing hearing.

Following the imposition of Mr. Taylor's life sentence, he appealed to the Florida Second District Court of Appeal. Mr. Taylor raised both issues in his appeal and argued that (1) Section 775.082 was unconstitutional as applied to all juveniles; and (2) the imposition of a forty-year mandatory sentence in his case was erroneous and conflicted with Supreme Court precedent. On September 13, 2019, the Florida Second District Court of Appeal entered an opinion, affirming the trial court's judgment and sentence. The appellate court refused to enter a written opinion and

explain why it was affirming. Mr. Taylor sought rehearing, rehearing *en banc* and requested a written opinion on September 30, 2019. However, on December 5, 2019, the court denied his motion which barred Mr. Taylor from seeking review by the Florida Supreme Court. This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THIS PETITION TO CONSIDER WHETHER THE IMPOSITION OF MANDATORY SENTENCES FOR JUVENILES CONFLICTS WITH THE COURT'S PREVIOUSLY STATED INTENTIONS IN ROPER V. SIMMONS, 543 U.S. 551 (2005), GRAHAM V. FLORIDA, 560 U.S. 48 (2010) AND MILLER V. ALABAMA, 567 U.S. 460 (2012)

Following the decision in Miller, the Florida Supreme Court outlined the appropriate remedy for juvenile sentences found to be unconstitutional in Horsley v. State, 160 So.3d 393 (Fla. 2015). Therein, the Florida Supreme Court held that the sentencing court should conduct a resentencing proceeding in conformance with chapter 2014-220, Laws of Florida, because "most juveniles should be provided 'some meaningful opportunity' for future release from incarceration if they can demonstrate maturity and rehabilitation." Id. at 406 (citing Miller, 132 S. Ct. at 2469). Florida Legislature passed two statutes to acknowledge the fact that juveniles are different and should not be sentenced as though they were fully-formed adults: Florida Statute Section 921.1401 and 775.082. Florida Statute Section 775.082 was designed to provide the court with specific guidelines for resentencing. Specifically:

> A person who **actually killed, intended to kill, or attempted to kill the victim** and who is convicted under section 782.04 of a capital felony...shall be punished by a term of imprisonment for life, if, after a sentencing hearing conducted by the court in accordance with section 921.1401, the court finds that life imprisonment is an appropriate

> sentence. If the court finds that life imprisonment is not an appropriate sentence, **such person shall be punished by a term of imprisonment of at least 40 years.**

Florida Statute, Section 775.082(1)(b)(1) (emphasis added). Alternatively:

> A person who **did not actually kill, intend to kill, or attempt to kill the victim** and who is convicted under section 782.04 of a capital felony...shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with section 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to review of his or her sentence in accordance with section 921.1402(2)(c).

Florida Statute, Section 775.082(1)(b)(2) (emphasis added). The difference between the two sections of 775.082 is that one (subsection (b)(1)) requires the court to sentence the defendant to a mandatory term of forty years in prison, while the other (subsection (b)(2)) carries no such mandatory minimum term. The statute requires Florida courts to make a written finding determining whether a defendant is eligible for a review hearing, and if so, what section of 775.082(1)(b) is to be applied:

> The court shall make a written finding as to whether a person is eligible for a sentence review hearing under section 921.1402(2) (a) or (c). Such finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

Florida Statute, Section 775.082(1)(b)(3) (2015).

Florida's imposition of mandatory minimum sentences for juvenile offenders, which requires zero consideration of mitigating circumstances or an individualized sentencing scheme, has created an entrenched conflict among the state courts and a conflict with this Court as applied to juvenile offenders.

A. The Decision Below Conflicts With The Intentions Surrounding The Sentencing of Juvenile Offenders.

In Roper v. Simmons, the Court held that persons under the age of eighteen could not be sentenced to death because juveniles are different than adults in significant ways. First, juveniles are less mature, less responsible, more impetuous and more reckless than adults. Roper, 543 U.S. at 569. Second, juveniles are more susceptible to peer influence and outside pressures than adults. Id. Third, the character of a juvenile is not as well formed as that of an adult. Id. at 570. The Court concluded: "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability." Id. at 572-73.

In Graham v. Florida, the Court observed that "[t]hese salient characteristics mean that '[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' Accordingly, 'juvenile offenders cannot with reliability be classified among the worst offenders.'" Id. (quoting Roper, 543 U.S. at 569, 573). The Court concluded that "[a] juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.'" Graham, 560 U.S. at 68 (quoting Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) (plurality opinion)).

The Graham Court recognized that because the personalities of adolescents are still developing and capable of change, a sentence that may be proportionate for an

adult may be constitutionally disproportionate when imposed on a juvenile offender, explaining:

> Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are actions of adults. Roper, 543 U.S. at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." Id.

In reaching those conclusions about a juvenile's reduced culpability, the Supreme Court relied on an increasingly settled body of research confirming the distinct emotional, psychological and neurological attributes of youth. The Court clarified in Graham that, since Roper, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." Graham, 560 U.S. at 68. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the "status of the offenders" is central to the question of whether a punishment is constitutional. Id. at 68-69.

In Miller v. Alabama, the Court expanded its juvenile sentencing jurisprudence, banning mandatory life-without-parole sentences for children convicted of homicide offenses. Reiterating that children are fundamentally different from adults, the Court held that, prior to imposing such a sentence on a juvenile offender, the sentence must take into account the juvenile's reduced blameworthiness. Miller, 132 S.Ct. at 2460. Justice Kagan, writing for the majority in Miller, was explicit in articulating the Court's rationale for its holding: the mandatory imposition of sentences of life without parole "prevents those meting out

punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." Id. (quoting Graham, 560 U.S. at 68, 74). The Court grounded its holding "not only on common sense...but on science and social science as well," id. at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted "that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" Id. at 2464-65 (quoting Graham, 560 U.S. at 68-69).

Importantly, in Miller, the Court found that none of what Graham "said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime specific." 132 S.Ct. at 2465. The Court instead emphasized "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. As a result, the Court held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders," id. at 2469, because "[s]uch mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." Id. at 2467.

In sum, the precedent of this Court has continuously evolved, but the underlying intentions as they relate to juvenile offenders has remained constant:

juveniles are different than adults. This precedent requires individualized, non-mandatory sentencing schemes for juveniles that take into account the particular facts of the case and the juveniles reduced capability. Florida's statutory scheme of imposing mandatory sentences for juvenile offenders who have committed homicide-related crimes conflicts with the clear ideations set out by the Court. Because Section 775.082(1)(b)(1) provides for a mandatory-minimum adult sentence of forty (40) years imprisonment for juvenile offenders with no consideration of the youth's reduced culpability and individual characteristics, that statute is constitutionally infirm as applied to juveniles and conflicts with this Court's established precedent.

B. The Decision Below Solidifies A Direct Conflict Among the State Courts of Last Resort Over Whether A Juvenile Homicide Offender May Receive a Mandatory Minimum Sentence Without Consideration For The Juvenile's Age and Mitigating Circumstances.

Ever since the decision announced in Miller, state courts have desperately been attempting to remedy prior decisions affecting juveniles. In doing so, a conflict has arisen about whether mandatory minimum sentences imposed against juvenile offenders is constitutional.

As identified by Mr. Taylor's case, Florida has taken the stance that mandatory minimum sentences are appropriate for juveniles and do not violate any constitutional rights because a mandatory minimum sentence does not mean that a juvenile will be locked up forever. See, St. Val v. State, 174 So.3d 447 (Fla. 4th DCA 2015). Florida is currently on the majority side of states, as most states who have considered the issue agree with that position. In addition to Florida, the courts in Pennsylvania, Delaware, South Carolina and Connecticut have similarly found that

mandatory minimums are applicable to juveniles. See, State v. Smith, 836 S.E.2d 348 (S.C. 2019) (finding that sentencing statute imposing mandatory minimum sentence of thirty years' imprisonment on those convicted of murder, regardless of whether the offender is a juvenile or an adult, does not violate Eighth Amendment or Miller); Burrell v. State, 207 A.3d 137 (Del. 2019) (finding that all Delaware statutes that call for mandatory minimum sentences are not unconstitutional, under Eighth Amendment's prohibition of cruel and unusual punishment when applied to juveniles); Com v. Lawrence, 99 A.3d 116 (Pa. Super. 2014) (finding that statute imposing mandatory minimum sentence of 35 years on a juvenile defendant convicted of murder did not violate Eighth Amendment prohibition on cruel and unusual punishment).

The conflict amongst the states appeared after Iowa declared that any and all mandatory minimum sentences are unconstitutional if applied to juvenile offenders. The Iowa Supreme Court came to this decision in State v. Lyle, 854 N.W.2d 378 (Iowa 2014) when it found that Miller is properly read to support an entirely new sentencing framework that reconsiders mandatory sentencing for **all children**. The court specifically found that:

> [I]f mandatory sentencing for the most serious crimes that impose the most serious punishment of life in prison without parole violates [the Iowa Constitution], so would mandatory sentences for less serious crimes imposing the less serious punishment of a minimum period of time in prison without parole ... The constitutional prohibition against cruel and unusual punishment does not protect all children if the constitutional infirmity identified in mandatory imprisonment for those juveniles who commit the most serious crimes is overlooked in mandatory imprisonment for those juveniles who commit less serious crimes. Miller is properly read to support a new sentencing framework

> that reconsiders mandatory sentencing for all children. Mandatory minimum sentencing results in cruel and unusual punishment due to the differences between children and adults. This rationale applies to all crimes, and no principled basis exists to cabin the protection only for the most serious crimes.

Id. at 401-02. The court further reasoned:

> [O]ur collective sense of humanity preserved in our constitutional prohibition against cruel and unusual punishment and stirred by what we all know about child development demands some assurance that imprisonment is actually appropriate and necessary. There is no other area of the law in which our law write off children based only on a category of conduct without considering all background facts and circumstances.

Id. at 401.

Although only one state has taken the firm stance that mandatory sentences cannot be applied to juveniles in conformance to Miller, this issue need percolate no further in the state courts. Its maturity and importance are amply demonstrated by the fact that numerous state courts have been forced to answer the question and in those answers has emerged a conflict. The use of mandatory sentences is a frequent and familiar tool across the United States. As a result, this issue will only continue to fester until there is an even larger divide amongst the state courts.

II. THE COURT SHOULD ALSO GRANT THIS PETITION TO CONSIDER WHETHER THE IMPOSITION OF A MANDATORY SENTENCE BY THE FLORIDA COURT BELOW CONFLICTS WITH THE COURT'S HOLDINGS IN ALLEYNE V. UNITED STATES, 570 U.S. 99 (2013) AND APPRENDI V. NEW JERSEY, 530 U.S. 466 (2000).

In Apprendi v. New Jersey, 530 U.S. 466 (2000), this Court decided a landmark opinion with regard to aggravating factors in crimes. The Court ultimately found that under the Sixth Amendment right to a jury trial, incorporated against the states

through the Fourteenth Amendment, judges could not enhance criminal sentences beyond statutory maxima based on facts other than those decided by the jury beyond a reasonable doubt. Id. The Court determined that when analyzing whether a fact is one that must be found by a jury beyond a reasonable doubt, the key consideration is whether the fact constitutes an "element" or "ingredient" of the charged offense. Id. at 483. More specifically, the Court found that a fact is by definition an "element" if it increases the punishment above what is otherwise legally prescribed. Id. at 483.

Later, in Alleyne v. United States, 133 S.Ct. 2151 (2013), the Court extended the Sixth Amendment principles in Apprendi to sentences which carry a mandatory minimum term of years, stating that "[f]acts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." Alleyne at 2158 (citing Apprendi, 530 US 466, 483 n.10).

Alleyne was charged with using or carrying a firearm in relation to a crime of violence, which carried a 5-year mandatory minimum sentence, that increased to a 7-year mandatory minimum if the firearm was brandished, and to a 10-year mandatory minimum if the firearm was discharged. Alleyne v. United States, 133 S. Ct. 2151, 2155 (2013). In convicting Alleyne, the jury form indicated that he had "[u]sed or carried a firearm during and in relation to a crime of violence," but not that the firearm was "[b]randished." Id. at 2156. When the presentence report recommended a 7-year sentence, Alleyne objected, arguing that the verdict form clearly indicated that the jury did not find brandishing beyond a reasonable doubt and that raising his

mandatory minimum sentence based on a sentencing judge's finding of brandishing would violate his Sixth Amendment right to a jury trial. Id.

The Court held that the principles declared in Apprendi applied "with equal force to facts increasing the mandatory minimum," since "a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed." Alleyne at 2160 (citing Apprendi, 530 US at 484). The Court further reasoned, "because the legally prescribed range is the penalty affixed to the crime...it follows that a fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offense." Id. "It is impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime," and "it is impossible to dispute that the facts increasing the legally prescribed floor aggravate the punishment," heightening the loss of liberty associated with the crime. Id.

In United States v. Butler, 572 Fed. Appx. 683 (11th Cir. 2014), the Eleventh Circuit Court of Appeal interpreted the holdings of Apprendi and Alleyne, and applied them to a case where the defendant entered a plea. The defendant in Butler entered an open plea to the court on two counts of his federal indictment: one count of conspiracy to commit an armed robbery and one count of brandishing a firearm during a crime of violence. Id. at 684. After the district court accepted the defendant's plea of guilty, the defendant was sentenced to three years as to count one and a seven-year mandatory minimum as to count three, the brandishing a firearm charge. Id. at 684.

During the defendant's sentencing hearing and again on appeal, the defendant challenged the district court's imposition of the seven-year mandatory minimum sentence because the issue of "brandishing a firearm" was never presented to a jury. Id. at 686. The Eleventh Circuit disagreed with the defendant's argument and determined that the district court did not err in sentencing the defendant to the mandatory minimum sentence because the defendant **admitted the fact** necessary to impose the mandatory minimum sentence. Id. (emphasis added). The court made this decision by relying on Apprendi, Alleyne, and United States v. Booker, 543 U.S. 220 (2005).

The Florida appellate court's decision in Mr. Taylor's case conflicts with the Court's decisions in Apprendi, Alleyne, Booker and the Eleventh Circuit's opinion in Butler, supra. Mr. Taylor waived his right to a jury trial at the age of seventeen years old and entered a guilty plea because it was in his best interest to do so. During the plea colloquy, Mr. Taylor was never asked, nor did he offer, that he was guilty of actually killing the victim in his case. Without a finding that a defendant actually killed, intended to kill or attempted to kill, Florida Statute Section 775.082(1)(b) requires a defendant be sentenced under the guidelines and not be subjected to a mandatory minimum sentence of forty (40) years. Under the cited precedent, because Mr. Taylor entered a plea instead of proceeding to trial, the only way that Mr. Taylor would qualify for the forty (40) year mandatory sentence would be if he admitted the fact necessary to impose the mandatory minimum sentence. (See, Butler, Booker). Yet, Mr. Taylor never made such admission and the mandatory sentence was still

imposed. The sentence was imposed after the trial court judge responsible for Mr. Taylor's resentencing independently decided that the facts in the record supported a finding that he actually killed the victim.

III. THE COURT SHOULD ALSO GRANT THIS PETITION BECAUSE INTENTIONS IDENTIFIED IN GRAHAM, MILLER, APPRENDI AND ALLEYNE CONFLICT WHEN APPLYING THEM TO JUVENILE DEFENDANTS

Under Graham and Miller, juveniles are to be treated differently and courts are to consider mitigating factors, including the juveniles age, when they are determining the ultimate sentence. Yet, under Apprendi and Alleyne, so long as an "element" is proven beyond a reasonable doubt or admitted by a defendant (or juvenile), the court is forced to abandon any consideration of any mitigating factors. The intentions identified in these decisions conflict when the principles are being applied to juveniles. Mr. Taylor is the perfect example of this conflict.

Mr. Taylor should not have been sentenced under the mandatory sentence provisions of Florida Statute Section 775.082(1)(b)(1) because it conflicts with the intent stated by the Court in Miller and Graham, but also because he did not satisfy the requirements laid out by this Court in Apprendi and Alleyne. The Florida court's decision represents the worst possible situation for a defendant who entered a plea and reveals layers of constitutional violations.

This case presents an opportunity of clarification before other juvenile defendants become faced with similar circumstances as Mr. Taylor. This case presents a clear Sixth Amendment issue that this Court has the ability to interpret and correct. The proceedings in both the trial court and appellate court centered

solely upon the question of whether (1) a juvenile could receive a mandatory minimum sentence when that type of sentence rejects a court's ability to consider the juvenile's age and mitigating circumstances before entering said sentence; and (2) whether the mandatory minimum was appropriately imposed in a case where Mr. Taylor entered a plea and did not admit to the facts necessary to impose the mandatory sentence.

Although Mr. Taylor is only one of two juveniles in the State of Florida who entered a plea of guilty in exchange for a life sentence, that is not to say that juveniles in the future will not act similarly. Florida Statute Section 775.082 will continue to impose sentences that directly conflict with the Court's clear intentions in its precedent about juveniles, as well as violate defendants' Sixth Amendment rights. The only way to ensure that this type of error does not continue to infect our justice system is to pronounce a consistent and clear intent about mandatory minimum sentences as it relates to juveniles that all courts shall follow. Specifically, this Court should take this opportunity to consider how its decisions in Graham, Miller, Alleyne and Apprendi fit together, in order to ensure that all juvenile defendants are guaranteed their constitutional rights.

CONCLUSION

For the reasons stated above, Mr. Taylor respectfully submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Rashad Taylor, Petitioner

Date: March 4, 2020

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