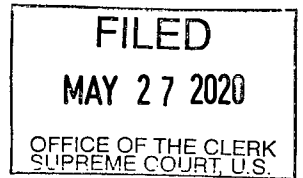


ORIGINAL

No. 19-8666



IN THE
SUPREME COURT OF THE UNITED STATES

LOUIS MAYES — PETITIONER
(Your Name)

vs.

JONATHAN LERO "et al." — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LOUIS MAYES
(Your Name)

480 Green Chapel Rd.
(Address)

Henning, TN 38041
(City, State, Zip Code)

731-738-5044
(Phone Number)

QUESTION(S) PRESENTED

Whether the Life Sentence In the State of Tennessee After July 1, 1995 Is equivalent to the mandatory life without parole sentence In the 2012 Miller v. Alabama case?

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:

JONATHAN LEBOW

JOHNNY FITZ

RELATED CASES

MAYES V. LEBOW, No. 2:14-cv-02470, U.S. District Court for the Western District of Tennessee. Judgment entered March 4, 2019.

MAYES V. LEBOW, No. 19-5435, U.S. Court of Appeals for the Sixth Circuit. Judgment entered March 27, 2020.

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STATUTES AND RULES

Tennessee Code Annotated 39-13-202(c).
Tennessee Code Annotated 40-35-211(1).
Tennessee Code Annotated 40-35-501(h)(1), (h)(2);
(i)(1), (i)(2); and (N).
Tennessee Code Annotated 41-21-236(b).

OTHER

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 E 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☒ is unpublished.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 D to the petition and is

☐ reported at Case No. 2:14-CV-02470; 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☐ is unpublished.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 C to the petition and is

☐ reported at Case No. W2014-01472-SC-R11-PC; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the State Appellate court appears at Appendix B to the petition and is

☐ reported at Case No. W2014-01472-CCA-R28-PC; 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 March 27, 2020.

☐ 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 1-16-2015.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The Eighth Amendment of the United States Constitution.
- Tennessee Code Annotated Section 40-35-211(1)
- Tennessee Code Annotated Section 40-35-501(h)(1), (h)(2); (i)(1), (i)(2); and (N).
- Tennessee Code Annotated Section 41-21-236(b),
are all lengthy statutes. They can be found
In detail at Appendix F.

STATEMENT OF THE CASE

The Petitioner was arrested as a Juvenile for First degree murder on August 9, 2003. The Petitioner was subsequently convicted of that First degree murder on August 16, 2007. The Petitioner was sentenced to a life sentence on August 16, 2007. The Petitioner timely filed a Petition for Post-conviction relief on April 27, 2010, and that Petition was denied on June 11, 2012. The Petitioner then filed a timely Petition for Federal Habeas relief on June 18, 2014. However, after learning of the decision reached in Miller v. Alabama, 567 U.S. at 479, 132 S.Ct. 2455 (2012), the Petitioner filed a motion to hold in abeyance his Federal Habeas Petition on June 18, 2014. The Petitioner subsequently filed a Petition to reopen his post-conviction on May 12, 2014. The post-conviction court subsequently denied the Petition to reopen on July 14, 2014, based on the fact that since Tennessee's Sentencing Scheme provides for Death, life without parole, and life, then Miller does not apply to Tennessee's Sentencing Scheme. The Petitioner next filed an application to the Court of Criminal Appeals on July 20, 2014. That

Application was denied September 26, 2014. The Petitioner next filed an application to the Tennessee Supreme Court November 17, 2014. That application was denied January 16, 2015. The Petitioner then filed a motion for leave with a motion to amend the original petition under 28 U.S.C. section 2254 for writ of Habeas Corpus by a person in state custody, along with a motion to lift the originally filed motion to hold in abeyance to the Federal District Court on March 17, 2015. The Federal District Court denied the Petitioner's Federal Habeas Petition along with his Miller Issue on March 4, 2019. The Petitioner then filed an application for a Certificate of Appealability (COA), as well as a motion to proceed in forma pauperis on appeal on May 15, 2019, to the Sixth Circuit Court of Appeals. On August 23, 2019, the Sixth Circuit Court of Appeals granted the Petitioner's COA application and his motion for pauper status. On September 2, 2019, the Petitioner filed his Brief to the Sixth Circuit Court of Appeals. On November 7, 2019, the Respondent responded, and on November 26, 2019, the Petitioner filed a Reply Brief. On March 27, 2020, the Sixth Circuit Court of Appeals affirmed the district court's judgment denying the Petitioner relief.

REASONS FOR GRANTING THE PETITION

This honorable court has Prohibited, Under the Eighth Amendment of the United States Constitution, the most severe punishments from being Imposed on Juvenile offenders.

1) Roper v. Simmons, 125 S.Ct. 1183 (2005) (Prohibiting the death penalty for Juvenile offenders); 2) Graham v. Florida, 130 S.Ct. 2011 (2010) (Prohibiting life without parole for Juvenile non-homicide offenders); 3) Miller v. Alabama, 132 S.Ct. 2455 (2012) (Prohibiting mandatory life without parole for Juvenile homicide offenders), and 4) Montgomery v. Louisiana, 136 S.Ct. 736 (2016) (holding that the 2012 Miller case applies retroactively on collateral review).

There is a conflict between several United States Court of Appeals dealing with the Juvenile cases from this honorable court. McKinley v. Butler, 809 F.3d 908 (Seventh Circuit); Moore, 725 F.3d 1187 (Ninth Circuit); and Budder v. Addison, 851 F.3d 1047 (Tenth Circuit), have all held in one way or another that the Eighth Amendment of the United States Constitution, dealing with the 2010 Graham case, and the 2012 Miller case, Prohibits a Term-of-years sentence

that would require Juvenile offenders to spend their entire lives behind Prison walls. United States v. Grant, 887 F.3d 131 (Third Circuit) specifically held that, "a Term-of-years sentence without parole that meets or exceeds the life expectancy of a Juvenile offender who is still capable of reform is inherently disproportionate and therefore violates the Eighth Amendment under both Miller and Graham." United States v. Jefferson, 816 F.3d 1016 (Eighth Circuit), and the Sixth Circuit in this very case - Please see appendix E - have held, the Juvenile cases from this honorable court does not apply to Term-of-years sentences. Therefore it is vital that this honorable Court review the Instant Petition for a writ of Certiorari to clear the conflict between the United States Court of Appeals up.

The Petitioner in the Instant case believes that his life sentence is equivalent to the mandatory life without parole sentence in the 2012 Miller case, and is therefore in violation of the Eighth Amendment of the United States Constitution.

In the state of Tennessee, a Juvenile offender convicted of first degree murder is sentenced to either life or life without

parole. see, Tennessee Code Annotated Section 39-13-202(c). - Please see appendix B.

Being that the Petitioner in this case was found guilty of First degree murder on August 16, 2007, he was sentenced to a life sentence. The applicable statute for life, in the state of Tennessee, after July 1, 1995 is Tennessee Code Annotated Section 40-35-501 (i)(1)(2). That applicable statute clearly states under (i)(1) that:

"There shall be "no release eligibility" for a person committing an offense, on or after July 1, 1995, that is enumerated in subdivision (i)(2). The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by Tennessee Code Annotated Section 41-21-236 or any other provision of law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%)." - Please see appendix F for this statute.

This in turn leads this honorable court to consider the intent of the Tennessee General Assembly when that statute was amended on July 1, 1995. To do so the Petitioner will show the prior statute that was amended. Pursuant to Tennessee Code

Annotated Section 40-35-501(h)(1) this section provides:

"Release eligibility" for each defendant receiving a sentence of Imprisonment of life for first degree murder shall occur after service of sixty percent (60%) of sixty (60) years less sentence credits earned and retained by the defendant, but in no event shall a defendant sentenced to Imprisonment for life be eligible for parole until the defendant has served a minimum of Twenty Five (25) calendar years of the sentence, notwithstanding the governor's power to reduce prison overcrowding pursuant to Tennessee code annotated Section 41-1-501, any sentence reduction credits authorized by Tennessee code annotated Section 41-21-236 or any other provision of law relating to sentence credits. a defendant receiving a sentence of Imprisonment for life for first degree murder shall be entitled to earn and retain sentence credits, but shall not operate to make the defendant eligible for release prior to the service of Twenty Five (25) full calendar years." - Please see appendix F for this statute.

It is clear that the Tennessee courts concluded that when the Tennessee General Assembly amended the statute on July 1, 1993 it did two (2) things. 1) The Tennessee General Assembly wanted to decrease the amount of sentence reduction credits that could be earned, and 2) wanted to remove the ability to have release eligibility. - Please see appendix F.

Release Eligibility

The Tennessee Courts done this by looking at the statute and seeing that a release eligibility date simply, and merely, provides a date after which a defendant convicted of a felony is eligible for parole, see, Tennessee Code Annotated Section 40-35-501(N). Therefore it is clear that those convicted of first degree murder after July 1, 1995 pursuant to Tennessee Code Annotated Section 40-35-501(i)(1)(2) were not parole eligible. However, they could earn fifteen percent (15%) sentence reduction credits. Sentence reduction credits operate distinctly from eligibility for parole.

Sentence Reduction Credits

Sentence reduction credits actually reduce a

defendant's sentence such that his or her term of Imprisonment expires earlier than it would without the credits. Sentence reduction credits may also hasten a defendant's release eligibility. See, Tennessee Code Annotated Section 41-21-236(b).

Since it is clear that the life sentence in the state of Tennessee after July 1, 1995 allows no parole eligibility - this is proof that the life sentence and the life without parole sentence in the state of Tennessee after July 1, 1995 are practically identical. How? Both sentences exclude the possibility of parole. Taking the language as clear (according to the statute) and unambiguous under which the petitioner in this case was sentenced. The applicable statute for life without parole is Tennessee Code Annotated Section 40-35-501(h)(2) wherein it states:

"There shall be 'no release eligibility' for a defendant receiving a sentence of Imprisonment for life without the possibility of parole for first degree murder." - see, appendix F. The applicable statute for life after July 1, 1995 is Tennessee Code Annotated Section 40-35-501(i)(1)(2) wherein it states:

"There shall be 'no release eligibility' for a person committing an offense, on or after

July 1, 1993, that is enumerated in subdivision (i)(2). The person shall serve one hundred percent (100%) of the sentence imposed by the Court less sentence credits earned and retained. However, no sentence reduction credits authorized by Tennessee Code Annotated section 41-21-236 or any other provision of law, shall operate to reduce the sentence imposed by the Court by more than fifteen percent." - See, Appendix F.

It should be noted to this honorable Court that the State of Tennessee does not have indeterminate sentences for criminal offenses. Tennessee Code Annotated section 40-35-211(1) requires the imposition of a determinate sentence in all felony and misdemeanor cases. The determinate sentence for a life sentence in the State of Tennessee is sixty (60) years, as set forth in Tennessee Code Annotated

section 40-35-501(h)(1). - Please see Appendix F for these facts. Although the statute in Tennessee nominally distinguishes between life and life without parole, when it comes to sentencing juveniles convicted of first degree murder, there is effectively no difference between the two (2) sentences. Nowhere can the State of Tennessee or the Tennessee legislature point to the fact that those convicted of first degree murder and sentenced to life

Without parole can never be released. According to the applicable statute listed above: The only recognizable difference between the life without parole sentence and the life sentence in the state of Tennessee after July 1, 1995 is the fact that the life sentence can earn fifteen percent (15%) sentence reduction credits, and the life without parole sentence can not. The length of the sentence (60 years) is exactly the same. Therefore, both can be released and both will never have the possibility to be paroled. This is especially understandable when we see that the Tennessee legislature allows the life sentence to be flattened since after serving fifty one (51) years a person can be released. - Please see appendix F for these facts. Other state statutes make clear that those sentenced to life without parole shall never be released from prison, Tennessee statutes do not. Tennessee statutes only say that a determinate life without parole sentence can not be released on parole - "no release eligibility." Therefore there is no clear distinction that would separate life from life without parole in the state of Tennessee after July 1, 1995, making them truly discrete, individual punishments when applied to juveniles.

The life Sentence In The State Of Tennessee After July 1, 1995 Is Equivalent To The Mandatory Life Without Parole Sentence In The 2012 Miller Case

The life sentence in the state of Tennessee after July 1, 1995 that the Petitioner is serving in this case allows no parole eligibility and it requires him to serve a mandatory term-of-years that meet and or exceed his life expectancy. The sentence requires him to serve fifty one (51) calendar years in confinement before he would be eligible for a possible release, and after serving fifty one (51) years in confinement the Petitioner in this case would be a sixty eight (68) year old institutionalized senile old man. Also, that's only if the Petitioner receives the fifteen percent (15%) sentence reduction credits. If he does not receive the fifteen percent (15%) sentence reduction credits then he would be released after he has served sixty (60) calendar years - which would make him a seventy seven (77) year old institutionalized senile old man. Data from the Centers for Disease Control and Prevention show that the life expectancy for black men in the United States - like the Petitioner in this case - is seventy one point eight (71.8) years in 2010. See, R. 47-4.

CDC Data Brief, PID 994, 996.) and Data from the Department of Justice show that state prisoners age Fifty Five (55) to Sixty Four (64) had death rates fifty six percent (56%) higher than the general population from 2001 to 2004. Citing * 283 Christopher J. Mumola, Bureau of Justice Statistics, No. NCJ 216340, Medical Causes of Death in State Prisons, 2001 to 2004 (January 2007).

Thus, it is clear from these two (2) Data reports that the Petitioner in this case would more than likely die in prison before he has served fifty one (51) years or sixty (60) years. Not to mention, prison causes deterioration to the human body. So if the Petitioner in this case lives to be released after fifty one (51) years when he is sixty eight (68) years old, or after sixty (60) years when he is seventy seven (77) years old - he would be a institutionalized senile old man. Knowing nothing but prison his entire life. Therefore, the life sentence in Tennessee after July 1, 1995, that allows no parole eligibility, for a mandatory term of years that meet and or exceed the Petitioner's life expectancy that the Petitioner is serving in this case is in violation of Miller's "Meaningful opportunity to obtain release" mandate. See, Miller, 567 U.S. at 479, 132 S.Ct. 2455.

The Petitioner In this case believes to achieve such meaningful opportunity to obtain release, the Petitioner suggest that when the Tennessee Sentencing Courts impose a sentence of life after July 1, 1995 upon a Juvenile homicide offender, the trial Court should sentence the Juvenile offender to Tennessee Code Annotated Section 40-35-501 (h)(1) so the Juvenile offender can have parole eligibility after Twenty Five (25) calendar years. It should be noted to this honorable Court that those prisoners who have shown an inability to reform will be denied parole eligibility and will continue to serve their life sentences. The opportunity to be released on parole after Twenty Five (25) calendar years will be afforded to those Juvenile offenders who demonstrate the truth of Miller's central Intuition - that children who commit even heinous crimes are capable of change.

The life sentence in Tennessee after July 1, 1995 that the Petitioner is serving in this case is equivalent to the mandatory life without parole sentence in the 2012 Miller case. How? 1) Both sentences are mandatory; 2) Both sentences are life sentences; 3) Both sentences allow no parole eligibility; and 4) Both sentences condemn

Juvenile offenders to die in prison.

Question: How does the life sentence in Tennessee after July 1, 1995 condemn the Petitioner in this case to die in prison?

Answer: The life sentence in Tennessee after July 1, 1995 allows no parole eligibility, and it requires the Petitioner to serve a mandatory term of years that meet and or exceed his life expectancy. The Petitioner in this case is being condemned to die in prison for a crime that happened during transient immaturity when he was a kid. To be honest, the life sentence in Tennessee

after July 1, 1995 is actually torture. The Petitioner in this case will spend his entire life behind prison walls waiting to reach fifty one (51) years or sixty (60) years.

However, the data supports the fact that the Petitioner in this case would more than likely die in prison before serving fifty one (51) years or sixty (60) years, and if he lives to be released after fifty one (51) years or sixty (60) years - he would be a institutionalized senile old man. Knowing nothing but prison his entire life. That is how the life sentence in Tennessee after July 1, 1995 condemns the petitioner, in this case, to die in prison.

The Petitioner in this case believes that his life sentence is equivalent to the mandatory

life without parole sentence in the 2012 Miller case. Therefore it is up to this honorable court to grant this petition for a writ of certiorari to settle the conflict between the United States Court of Appeals. The Petitioner sincerely prays that this honorable court grant this petition so the conflict between the United States Court of Appeals can be addressed. If not, the Petitioner in this case would be condemned to die in prison. Him and the other 184 Juvenile offenders in Tennessee would be condemned to die in prison.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Louis Mayes

Date: May 27th, 2020