No. 19-91

In the Supreme Court of the United States

MICHELE BUCKNER, WARDEN,
SOUTH CENTRAL CORRECTIONAL CENTER,
Petitioner,
v.
ROBERT W. ALLEN
Respondent.

On Petition for Writ of Certiorari
to the Missouri Court of Appeals

Reply Brief

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QUESTION PRESENTED

The Eighth Amendment to the federal Constitution prohibits a State from inflicting cruel and unusual punishment. U.S. Const. amend. viii. This Court has interpreted the Eighth Amendment to prohibit a mandatory sentence of life in prison without parole for a juvenile offender convicted of a single homicide offense, *Miller v. Alabama*, 567 U.S. 460 (2012), and to prohibit any sentence of life in prison without parole for a juvenile offender convicted of a single nonhomicide offense, *Graham v. Florida*, 560 U.S. 48 (2010).

The juvenile offender in this case committed three offences at age 16—capital murder, first-degree murder, and armed criminal action. He received three consecutive sentences for his three crimes—a mandatory sentence of life in prison without parole for 50 years, a mandatory life sentence, and a discretionary life sentence, one of which renders him ineligible for parole for another three years.

The Missouri state appellate court granted him habeas relief.

The question presented is

Under the Eighth Amendment, may a State sentence a juvenile offender convicted of multiple crimes to multiple consecutive terms of years in prison under which the offender has aggregate parole eligibility after serving 53 years, including a mandatory term of imprisonment without parole for 50 years?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

REPLY BRIEF

This Court should review this case and clarify that the Eighth Amendment makes no juvenile offenders eligible for early parole beyond the limits of *Graham* and *Miller*.

Mr. Allen does not dispute that at least four deep lower-court conflicts have resulted from these decisions in the years since this Court visited this area. BIO 5-6. He admits that the issues have percolated so much that few juvenile offenders are left with sentences like his who would bring new challenges, threatening to render these splits of authority permanent, as prosecutors will decline to seek sentences treated as illegal in their jurisdictions. BIO 4. On the merits, he only offers a single sentence in defense of the decision to expand *Miller* to his sentence. BIO 6. Nor does he contest the general importance of these questions to crime victims, juvenile offenders, and the public. BIO 6. And he agrees that this Court's recent grant of certiorari in *Mathena v. Malvo*, No. 18-217 (argument set for Oct. 16, 2019), would not control this case. BIO 3 n.1.

Instead, Mr. Allen provides only two reasons why this Court should not review his case. First, he argues that this Court lacks jurisdiction under 28 U.S.C. § 1257(a) to review a state court grant of Eighth Amendment habeas relief of resentencing. BIO 2-3. And second, he argues that his case implicates none of the splits under *Graham* and *Miller* because he only purports to challenge one term of his three-term sentence. BIO 3-6.

Both of his arguments are incorrect.

I. This Court has jurisdiction to review a state court's grant of federal habeas relief.

First, this Court has jurisdiction under 28 U.S.C. § 1257(a) to review a state court's grant of habeas relief, especially when that judgment orders resentencing in purported reliance on the Eighth Amendment. Pet. 2.

Mr. Allen asserts that this Court lacks jurisdiction under 28 U.S.C. § 1257(a) to review the Missouri courts' grant of habeas relief to him on Eighth Amendment grounds. BIO 2-3. His sole reason for doing so is that he characterizes this habeas action as a criminal case at an interlocutory sentencing stage. *Ibid*.

But Mr. Allen's analogy to interlocutory direct appeals is inaccurate because this petition does not arise from a state criminal sentence on direct review; it arises from a state court judgment granting a writ of habeas corpus. "When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the judgment; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do." *Coleman v. Thompson*, 501 U.S. 722, 730 (1991). Here the judgment below is final because nothing remains to be done *in this habeas case*: the state court entered a final judgment for Mr. Allen ordering resentencing. And this Court's review will affect this habeas judgment because, if this Court reverses, it will reinstate the original sentence, rather than allowing the state court's judgment to stand vacating the prior sentence. App. 9a–10a.

This is why, rather than considering judgments arising from state habeas proceedings interlocutory, collateral, or otherwise non-final, this Court has long considered them final and reviewable when they grant or deny a writ of habeas corpus on federal grounds. *E.g.*, *Betts v. Brady*, 316 U.S. 455, 457-61 (1942), overruled on other grounds by *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Williams v. Kaiser*, 323 U.S. 471, 477 (1945); *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 66 (1928). Under Section 1257, this Court has the power to "review [a habeas] determination on the merits" when "the habeas corpus proceeding, independent of the criminal prosecution itself, ha[s] proceeded to a final judgment." *Ohio ex rel. Eaton v. Price*, 364 U.S. 263, 267 n.3 (1960) (Brennan, J.,). Resting on this established doctrine, this Court thus often reviews state-court judgments granting or denying habeas relief on federal grounds. *E.g.*, *Foster v. Chatman*, 136 S. Ct. 1737, 1745 (2016); *California v. Trombetta*, 467 U.S. 479, 483 (1984).

In the same way, this Court has long held that a "proceeding for a writ of prohibition is a distinct suit, and the judgment finally disposing of it is a final judgment." *Bandini Petroleum Co. v. Superior Court of State of Cal. in & for Los Angeles Cty.*, 284 U.S. 8, 14 (1931). This Court thus has jurisdiction to review the final grant or denial of a writ of prohibition even if the writ concerns the validity of proceedings in a separate criminal case. *Rescue Army v. Mun. Court of City of Los Angeles*, 331 U.S. 549, 567 (1947).

Plus, even when this Court reviews state criminal sentences on direct appeal, this Court has never adopted the novel jurisdictional assertion that this

Court lacks jurisdiction to review a state court vacating a sentence under the Eighth Amendment. And for good reason—it would insulate from review state judgments purporting to rely on the federal Constitution to undo state criminal sentences. Mr. Allen's position thus conflicts with this Court's prior precedent holding that Section 1257 allows this Court to step in and review just this kind of Eighth Amendment resentencing. For instance, in *Oregon v. Guzek*, 546 U.S. 517, 520-21 (2006), this Court explained that it had authority under Section 1257 to review and reverse state appellate judgments ordering resentencing under the Eighth Amendment on direct appeal. As this Court held, it has "jurisdiction to review state-court determinations that rest upon federal law," including a state appeals court's judgment that the Eighth Amendment requires resentencing a capital defendant. *Ibid.*

Mr. Allen also claims that this Court should decline review because it might be able to review his habeas judgment later if, in the separate criminal proceeding, the other state court resentences him to a lesser term in prison. But the possibility of direct review in that other case is remote and it does not affect the finality of this habeas judgment now. The habeas court's resolution of the "federal issue is conclusive" on the legality of the procedures and length of his original sentence. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 479-83 (1975).

II. Mr. Allen's punishment falls under the Eighth Amendment review appropriate for multiple sentences given for multiple crimes.

Second, Mr. Allen's case raises at least four questions that divide the courts of appeals after *Miller* and *Graham*. Pet. 18-30.

To try to avoid federal review of his receipt of Eighth Amendment habeas relief—and to divorce his case from the four splits on the meaning of *Miller* and *Graham*—Mr. Allen claims that he challenges only *one* of his prison terms (the mandatory term of life in prison with 50 years without parole eligibility), *not* his other terms (discretionary consecutive terms of years in prison adding three extra years of parole ineligibility). BIO 3-6. He asserts that because he has selectively pled how he challenges his sentence, this Court cannot analyze his sentence in full or in part under the Eighth Amendment analysis applying to juvenile offenders who committed multiple crimes and receive consecutive discretionary or mandatory sentences. *Ibid*. This tactic worked below: he persuaded the Missouri appellate court to ignore his other crimes and sentences, and treat his 50-year parole ineligibility term as a single offense with a single sentence. App. 2a, 4a–5a, 7a.

But Mr. Allen's attempt to manipulate this Court's analysis of his sentence cannot change the reality of his punishment. He committed multiple related crimes. Pet. 7-9. And, in a single sentencing that considered the whole of his criminal enterprise, he received multiple, consecutively imposed prison terms (some mandatory, some discretionary) that

together make up his total sentence and parole eligibility. App. 2a, 7a; Pet. 7-17. If anything, his refusal to dispute the remainder of his sentence should be fatal under the analysis applicable to consecutive sentences given for multiple offences. Pet. 10.

Simply put, as the state habeas trial court held, the Eighth Amendment does not prohibit sentencing juvenile offenders like Mr. Allen to multiple terms, corresponding to the number and severity of crimes, even if some sentences are mandatory and even if parole eligibility falls in old age, if at all. Pet. 10, 30-36. His sole argument to the contrary is a bare assertion that *Miller* should apply to sentences of terms of years or else its holding would be "evaded." BIO 6.

And only by defining his claim incorrectly and at an artificially narrow level of specificity (a single mandatory sentence of parole ineligibility for 50 years) can he try to remove his case from three of the four deep splits about *Graham* and *Miller*. BIO 5. But he does not dispute that the splits are real or that they involve multiple courts on each side, only whether his sentence implicates each of them. BIO 3-6; Pet. 18-27. In fact, he all but concedes that the courts are in fact recurrently divided by urging this Court to review some future case instead of his. BIO 4-5; Pet. 28-30.

Finally, as a policy matter, he suggests that he has already served 35 years, and so his sentence should no longer "matter." BIO 4. But this assertion ignores the important precedents at stake for future offenders, as well as the state interests in retribution, marginal

deterrence, and incapacitation of a brutal murderer. Pet. 33.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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