No. 20-1315

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,

Petitioner,

v.

AARON HAUSER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the appellate court err in examining all the mitigating and aggravating evidence introduced at the sentencing hearing and concluding that the trial court abused its discretion?

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INTRODUCTION

The State's Petition to this Court is untimely. Even if it were timely, the Petition should still be denied. Three months ago, the Louisiana Parole Board released Aaron Hauser. Nothing about this case warrants this Court granting review and raising questions about whether Aaron should be sent back to prison. The issues raised by the State's Question Presented are neither relevant to this case nor the subject of lower-court disagreement. The state court of appeal's ruling that Aaron should be eligible for parole stands under Louisiana law – independent from the court's application of federal law. Finally, the court of appeal correctly applied this Court's precedent, producing a fact-bound decision that provides no rule for this Court to review.

In 1984, Aaron Hauser accepted responsibility for the terrible crime he committed when he was 17 years old. Pet App. 004. He pleaded guilty and was sentenced to life in prison without the possibility of parole. Pet App. 004. During almost 38 years in prison, through remorse and hard work, Aaron transformed himself from a troubled 17-year-old into the responsible, trusted, and caring 55-year-old that he is today.

Even when he was serving a sentence with no hope of release, Aaron dedicated himself to self-improvement, taking college courses, learning trades, and working hard on the prison grounds. Pet App. 021-024. Almost 30 years ago, Aaron was classified as a "Class A Trusty," distinguishing himself as one of the most trusted and least supervised prisoners at the Louisiana State Penitentiary. Pet App. 023. During

the last 20 years of his incarceration, Aaron lived and worked at the state prison's K-9 Training Center, the lowest security housing area in the prison. Pet. App. 021. There are only 15 spots at the Training Center for the over 5,400 prisoners at the Louisiana State Penitentiary. Those that live and work in the K-9 Training Center, like Aaron did, are "carefully selected and highly trusted." Pet. App. 024.

Perhaps most extraordinary of all of Aaron's accomplishments is that during his 38 years in prison, he received only one disciplinary infraction (34 years ago), a feat that was characterized by a deputy warden at Aaron's parole hearing this year as "just unbelievable."

In ruling that Aaron was deserving of a parole eligible sentence, the Louisiana Third Circuit Court of Appeal carefully reviewed all of the aggravating and mitigating evidence presented to the trial court. Pet. App. 018. The court used no novel test nor announced any rule as to how to weigh the evidence before it. Instead, examining the evidence "as a whole," the court recognized what prison officials, the parole board, and those who know Aaron best have understood for years: Aaron is not, as Louisiana law puts it, the "worst offender" with the "worst case," and he deserves this opportunity for release. Pet. App 018. The decision of the lower court was a straightforward application of both state law and this Court's precedent to the extraordinary facts of this case. The Supreme Court of Louisiana denied the State's petition for review, and then refused to consider the State's prohibited application for rehearing. Pet. App. 001, 002-003.

Aaron cannot change what he did as a 17-year-old, but he has since become a person that the Louisiana Department of Corrections, two Louisiana courts and the Parole Board have deemed worthy not just of a chance at redemption but also of release.

This Court should deny certiorari.

STATEMENT

A. This Court's Precedent

A series of decisions from this Court have firmly cemented the understanding that teenagers have both diminished culpability and heightened capacity for rehabilitation. *Graham v. Florida*, 560 U.S. 48, 74 (2010); *Miller v. Alabama*, 567 U.S. 460, 471, 479 (2012). That understanding has led this Court to hold that the Constitution significantly limits life without parole sentences for teenagers – a punishment that "forswears altogether the rehabilitative ideal." *Graham*, 560 U.S. at 74; *Miller*, 567 U.S. at 473.

First, outlawing the death penalty for all juveniles, this Court in *Roper v. Simmons* explained that "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that *even a heinous crime* committed by a juvenile is evidence of irretrievably depraved character." 543 U.S. 551, 553 (2005) (emphasis added).

Relying on the distinctions laid out in *Roper*, this Court in *Graham* held that juveniles convicted of non-homicide offenses could not be sentenced to life in prison without the possibility of parole because their culpability was "twice diminished" – first by their

status as juveniles, and second by the commission of a non-homicide offense. 560 U.S. at 69.

Two years later, this Court in *Miller*, relying on two lines of the Court's jurisprudence – one dealing with capital punishment and the other dealing with children – held that children cannot be subjected to mandatory sentences of life without parole. 567 U.S. at 465. This Court found 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*. at 472. In *Montgomery v. Louisiana*, this Court found *Miller*'s rule to be a substantive rule of constitutional law and therefore retroactive. 577 U.S. 190, 206 (2016).

Finally, just this year, while declining to require courts to make particular findings of fact prior to sentencing a juvenile to life without parole, this Court reaffirmed the holdings of *Miller* and *Montgomery*. *Jones v. Mississippi*, 141 S. Ct. 1307 (2021). This Court explained, "On the question of what *Miller* required, *Montgomery* was clear: 'A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not.'" *Id.* at 1318 (quoting *Montgomery*, 577 U.S. at 210).

B. Proceedings Below

Following this Court's ruling in *Montgomery*, Aaron Hauser's case was remanded to the state district court for resentencing. Pet. App. 010.

The district court held a resentencing hearing whose procedure was mandated by Louisiana Code of Criminal Procedure article 878.1. Pet. App. 010. At

that hearing, the district court declined to amend Aaron's life without parole sentence. Pet. App. 011. Aaron appealed to the Louisiana Third Circuit Court of Appeal. Pet. App. 011.

In a 43-page decision, the court of appeal painstakingly reviewed the evidence presented in the district court. Pet App. 004. It analyzed several post-*Miller* cases decided by Louisiana courts, in addition to this Court's Eighth Amendment decisions. Pet. App. 017-27. Considering the totality of all the evidence presented below, the requirements of both Louisiana Code of Criminal Procedure article 878.1 and this Court's precedent, and the differences between Aaron's case and others in the state, the court of appeal found that the district court had abused its discretion by denying Aaron eligibility for parole. Pet. App. 027. Quoting Louisiana law and referencing this Court's precedent, the court of appeal ruled that "the evidence presented at the hearing, taken as a whole, shows Defendant may not be the 'worst offender' with the 'worst case' who is irreparably corrupt." Pet. App. 018. The district court's ruling was accordingly reversed, and Aaron was resentenced to life imprisonment *with* the benefit of parole eligibility. Pet. App. 028.

Following the decision of the court of appeal, the State of Louisiana petitioned for an *en banc* rehearing of the case. The court of appeal denied the State's request for rehearing. Pet. App. 004.

The State next applied for a writ of certiorari, seeking review by the Louisiana Supreme Court. On July 2, 2020, the Louisiana Supreme Court denied discretionary review. Pet. App. 001.

Following the Louisiana Supreme Court's denial, the State, in its fifth filing advancing almost identical arguments, sought a rehearing, despite being explicitly prohibited from doing so by the Louisiana Supreme Court Rules. *See* La. Sup. Ct. R. IX § 6 ("An application for rehearing will not be considered when the court has merely granted or denied an application for a writ of certiorari . . . ."). In an unsurprising application of its own rule, the Louisiana Supreme Court, on October 6, 2020, refused to consider the State's application for rehearing, citing to that court's prohibition on rehearing in these circumstances. La. S. Ct. Rule IX, § 6; Pet. App. 001. Justice Weimer—who previously voted to grant review—concurred in the decision, explaining that "La. S. Ct. Rule IX, § 6 and La. C. Crim. Pro. Art 922(D)" did not allow the court to consider the State's request. Pet. App. 001.

The State's petition for a writ of certiorari was filed with this Court on March 5, 2021, 246 days following the Louisiana Supreme Court's denial of discretionary review.

REASONS FOR DENYING THE PETITION

I. The State's Petition for Certiorari Is Untimely.

The State of Louisiana's petition for writ of certiorari is untimely and must be denied. This Court's rules currently require that a petition for writ of certiorari be filed within 150 days of "entry of the order denying discretionary review." Order, 589 U.S. – (Mar. 19, 2020); Sup. Ct. R. 13.1. The Louisiana Supreme Court denied discretionary review on July 2,

2020, and the State did not file its petition for a writ of certiorari with this Court until 246 days later. Pet. App. 002.

This Court's rules permit the 150-day limit to run, in the alternative, from the denial of a timely filed application for rehearing or the denial of an untimely application for rehearing that the lower court nonetheless entertained. S. Ct. R. 13.3. However, neither circumstance exists in this case because the State's application for rehearing in the Louisiana Supreme Court was barred by that court's rules, and, as the court itself made clear, that rule prohibited the court from entertaining the State's application. Pet. App. 002. The State's petition for a writ of certiorari in this Court is untimely and should therefore be denied.

Under state law, the Louisiana Supreme Court's judgment became final on July 2, 2020, when the Louisiana Supreme Court denied the state's writ seeking discretionary review. La. C. Crim. Pro. art. 922(D) ("If an application for a writ of review is timely filed with the supreme court, the judgment of the appellate court from which the writ of review is sought becomes final when the supreme court denies the writ."); *see also State v. Revish*, -- So. 3d --, 2020 WL 6146107 (La. Oct. 20, 2020) (rejecting the idea that the date of finality follows the expiration of the time to file for rehearing noting that the "court could not have considered" an application for rehearing following a writ denial.)[1] From that point forward, Louisiana law

[1] The Louisiana Supreme Court has emphasized that Rule IX, § 6 is dispositive in determining finality of a judgment. *See State v. Grady*, 315 So. 3d 216 (La. May 4, 2021) (Weimer, C.J.,

did not permit the State to receive any further review of the court of appeal's decision.

The Louisiana Supreme Court will not consider applications for rehearing "when the court has merely granted or denied an application for writ of certiorari." La. S. Ct. R. IX, § 6.[2] Because no application for rehearing is permitted at all in the Louisiana Supreme Court after denial of discretionary review, the State' application for rehearing in this case cannot be considered "timely." S. Ct. R. 13.3.

Nor was the State's application for rehearing "entertained" by the Louisiana Supreme Court. To the contrary, adhering to its own rule, the Louisiana Supreme Court announced on October 6, 2020 that it did not—because it could not—consider the State's application for rehearing in this case. Pet. App. 001. Justice Weimer, concurring in the judgment explained: "I am constrained by La. S.Ct. Rule IX, § 6

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concurring) ("I am constrained by La. S.Ct. Rule IX, § 6 and La. C.Cr.P. art. 922(D) to not consider this request for reconsideration."); *State v. Davis*, 295 So. 3d 396 (La. 2020) (Johnson, C.J., concurring) ("Post-conviction counsel filed this application four days after the two year deadline had expired. . . . Counsel argued that his client's conviction was not final (and therefore the two years had not begun to run) until the time for seeking rehearing in this Court had expired. Counsel was incorrect. There is no right to rehearing from the denial of an application for a writ of certiorari to this court on direct review. . . . Convictions are final when we deny the writ application."). *See also* La. C. Crim. Pro. art. 922.

[2] The Louisiana Supreme Court reaffirms its stance on this rule dozens of times per year by issuing pro-forma orders refusing consideration. *See, e.g.*, *News Release #017*, Louisiana Supreme Court (Apr. 27, 2021), https://www.lasc.org/Actions?p=2021-017 (last visited July 7, 2021); *News Release #09*, Louisiana Supreme Court (Mar. 9, 2021) https://www.lasc.org/Actions?p=2021-009 (last visited July 7, 2021).

and La. C.Cr.P. art. 922(D) to not consider this request for reconsideration." Pet. App. 001. Thus, the Louisiana Supreme Court's October 6, 2020 order did not "entertain[] an untimely petition for rehearing or sua sponte consider[] rehearing," S. Ct. R. 13.3, nor did it, contrary to the State's characterization, "den[y] rehearing." Pet. 1.

It is true that the Louisiana Supreme Court has, on very rare occasions and in spite of that court's own rule, granted an application for rehearing after mere denial of a writ application. *See Dynamic Constructors, LLC v. Plaquemines Par. Gov't*, 180 So. 3d 1284 (La. Dec. 7, 2015) (Crichton, J., concurring) (noting that the instances where exceptions to the rule have been made are "rare"). But that fact has no significance here, because the court in this case (as in the vast majority of cases) made clear that *this* application for rehearing was not considered. What is more, under this Court's own Rule 13.3, a state court's sporadic willingness to deviate from a rule barring rehearing does not categorically render every future disallowed application for rehearing "timely" for purposes of starting the 150-day clock.[3] Rather, an

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[3] The United States Court of Appeals for the Fifth Circuit has held that applications for rehearing after denial of a writ application in the Louisiana Supreme Court should be considered when determining finality of convictions for the purposes of calculating the time to file federal habeas petitions. *Wilson v. Cain*, 564 F.3d 702, 706 (5th Cir. 2009). First, that decision was not in the context of the Supreme Court Rules, but in the context of the federal habeas statute. To apply that ruling in this context would explicitly contravene state law, *see* La. C. Crim. Pro. art. 922(D), the Louisiana Supreme Court's own rules, and that court's interpretation of its rules and state law, which

untimely application for rehearing has no effect on the Rule 13.3 filing period unless the untimely application for rehearing was actively *entertained* by the state court.[4]

The State had until November 30, 2020, to file its petition in this Court. The State was aware of this deadline, as made evident by their request for an extension of time to file the petition in this case. *Louisiana v. Hauser*, LASC 2020-K-00429, Application for an Extension of Time to File a Petition for a Writ of Certiorari to the Louisiana Third Circuit Court of Appeals, at 5 (acknowledging that November 30, 2020 was the deadline, counting from the July 2, 2020 denial of writs by the Louisiana Supreme Court).

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should be dispositive when determining whether a *state court* conviction is final. Second, unlike this Court's Rule 13.3, the statute being interpreted in *Wilson*, 28 U.S.C. § 2244(d), does not account for the possibility that a state court makes an exception to its own rules regarding applications for rehearing. As this Court has noted, the meaning of finality, including "[f]or the purpose of seeking review by this Court," is highly dependent on context. *See Clay v. United States*, 537 U.S. 522, 527 (2003).

[4] This Court recently granted, vacated and remanded two cases in which the defendants sought rehearing in contravention of the Louisiana Supreme Court's rule and then based their time to file in this Court on the date of the state court's decision on the rehearing application. In Jermaine Ruffin's case, while he had no right to seek review, the Louisiana Supreme Court *did* review his case. *See State v. Ruffen,* 2020 WL 615069 (La. Jan. 22, 2020). Because the Louisiana Supreme Court actually entertained Mr. Ruffin's case, he was able to take advantage of the time period for filing outlined in Rule 13.3. *Ruffin v. Louisiana*, 141 S. Ct. 223 (2020). In *Victor v. Louisiana*, this Court allowed Mr. Victor to obtain the benefit of this Court's ruling in *Ramos* despite his *pro se* petition being untimely filed. 140 S. Ct. 2715 (2020). The State of Louisiana does not merit the same latitude in this case.

This Court did not grant the State an extension but the State nonetheless failed to file its petition by the appropriate deadline. Instead, the State's petition for writ of certiorari was filed well outside the 150-day period permitted by this Court.

In order to grant certiorari in this case, this Court would have to find that the rules of the Louisiana Supreme Court do not mean what they say. The State should not be permitted to grant itself an extension by filing prohibited pleadings in state court. The State's petition is untimely and must be denied.

II. The Petition Manufactures a Controversy Not Implicated by the Decision Below.

The State's Petition manufactures a fictitious legal controversy out of a narrow, fact-bound decision. The State claims that "the lower courts in this case are split about the proper weight to accord subsequent evidence of rehabilitation" and that the court below "solely relied . . . on the evidence of Hauser's rehabilitation in prison." Pet. 14. These statements are belied by the actual decision below, which, far from offering any broad gloss on the applicable legal standard, simply found that that the evidence "taken as a whole" favored a parole eligible sentence. Pet. App. 024. Not only does the decision below fail to implicate the issue the State raises, but that issue is, in any event, not the subject of any "confusion" in the lower courts. Pet. 14.

a. The decision below does not implicate the State's Question Presented.

The court of appeal said nothing to suggest that it understood *Miller* and *Montgomery* as requiring some factors to be privileged over others in the sentencing analysis; nor did it more generally comment on how sentencing courts should weigh evidence of rehabilitation. Instead, the court examined the particular, extraordinary facts of this case and reached a narrow, fact-bound ruling on the basis of those facts.

The State claims that "[t]he Louisiana Third Circuit misread *Miller* and *Montgomery* and gave nearly *exclusive* consideration to Hauser's behavior in prison." Pet. 18. There is no basis for such an assertion. In reality, the court repeatedly noted the significance of the offense,[5] and recounted at length the testimony and opposition from surviving family members and the community. After engaging in this fact-dependent, totality-of-the-circumstances analysis, the court of appeal concluded that the district court was not justified in declining to amend Aaron's life without parole sentence. Pet. App. 027 ("Based on our review of the record, and in light of *Miller* and *Montgomery*, we conclude that the trial court abused its discretion in denying Defendant's motion to correct his illegal sentence.").

The court of appeal also relied on the Louisiana state law requirement that "sentences imposed [on juveniles] without parole eligibility . . . be reserved for

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[5] *See, e.g.*, **Error! Bookmark not defined.**Pet. App. 027 ("None of this evidence excuses or condones Defendant's crimes."); Pet. App. 028 ("We note that our decision should not be interpreted as minimizing the seriousness of the horrendous crimes committed by Defendant.").

the worst offenders and the worst cases." La. C. Crim. Pro. art. 878.1(D). The state law supported the court of appeal's finding that "the evidence presented at the hearing, taken as a whole, shows Defendant may not be the 'worst offender' with the 'worst case' who is irreparably corrupt." Pet. App. 018. Irrespective of this Court's view on the court of appeal's supposed weighting of evidence under federal law, the court of appeal would have likely reached the same conclusion under Louisiana law.

That the court of appeal's result in this case differed from that of the trial court does not reflect a "confusion that pervades the country." Pet. 14. Instead, it reflects the kind of disagreement anticipated by this Court. As Justice Kavanaugh has explained, "It is true that one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant's youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth." *Jones v. Mississippi*, 141 S. Ct. at 1319. These disagreements are inevitable and do not implicate a dispute this Court needs to resolve.

In reality, the State objects not to any rule announced by the court of appeal, but rather to the result that it reached in this particular case. Because the court of appeal said nothing about the proper weight to give evidence of subsequent rehabilitation, this case does not present the question the State proposes, much less provide a suitable vehicle for

resolving that question. At bottom, the State merely takes issue with the court of appeal's application of a "properly stated rule of law" to the particular facts of this case. S. Ct. R. 10. Such a dispute does not warrant this Court's review.

b. There is no split among the lower courts on how to consider evidence of rehabilitation.

Even if the court of appeal's decision had implicated the State's Question Presented, that issue would not be worthy of this Court's review. There is no split among lower courts about how to consider evidence of rehabilitation in connection with juvenile life-without-parole sentences. Instead, there is consensus among the lower courts that rehabilitation is one of many relevant factors to be considered at resentencing.

Only three of the cases the State cites as evidence of its alleged split were decided by a federal court of appeals or state court of last resort, and none even hint at the existence of a split on the question presented, much less acknowledge a conflict of authority. In all three of those cases, the reviewing court held that evidence of subsequent rehabilitation should count as one factor among others to be considered at a *Miller*/*Montgomery* sentencing hearing. *United States v. Briones*, 929 F.3d 1057, 1067 (9th Cir. 2019) (en banc) (the district court erred by failing to consider the defendant's post-offense conduct), *vacated and remanded*, -- S. Ct. --, 2021 WL 1725145 (2021); *State v. Keefe*, 478 P.3d 830, 838 (Mont. 2021) (the trial court erred when it considered at sentencing *negative* post-offense conduct but "chose

to disregard" post-offense evidence of rehabilitation); *State v. Ramos*, 387 P.3d 650, 665 (Wash. 2017) (noting that "a resentencing court may certainly exercise its discretion to consider evidence of subsequent rehabilitation where such evidence is relevant to the circumstances of the crime or of the offender's culpability" but cautioning that such consideration is not required "in every case," because such a rule might require a sentence court to consider "that the person has *not* demonstrated subsequent rehabilitation" as a basis for refusing to impose a lower sentence).[6] Nor do any other of the state's cited cases reveal any conflict on this issue. *Jackson v. State*, 276 So. 3d 73, 76 (Fla. Dist. Ct. App. 2019), *review denied*, No. SC19-1456, 2019 WL 6249337 (Fla. Nov. 22, 2019) ("the defendant's rehabilitation" is "one of the many factors that the court is to consider in a [*Miller*] sentencing hearing"); *Commonwealth v. Lekka*, 210 A.3d 343, 351–53 (Pa. Super. Ct. 2019) (finding that the trial court appropriately considered evidence of rehabilitation as one of many factors);[7]

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[6] The Supreme Court of Washington later said that at a *Miller/Montgomery* resentencing, "resentencing courts *must* consider the measure of rehabilitation that has occurred since a youth was originally sentenced to life without parole." *State v. Delbosque*, 456 P.3d 806, 815 (Wash. 2020) (emphasis added). Further, the Washington Supreme Court abolished juvenile life without parole the year after *Ramos*. *See State v. Bassett*, 428 P.3d 343, 355 (Wash. 2018).

[7] *Lekka* follows the consensus approach to evidence of rehabilitation but the case is not actually on point. There, the defendant was resentenced to a term of years, not to life without parole, and the appellate court was interpreting Pennsylvania state sentencing law, not *Miller/Montgomery*. *Lekka*, 210 A.3d at 350 ("[I]n cases such as this where the Commonwealth does

People v. Willover, 203 Cal. Rptr. 3d 384, 398 (Cal. Ct. App. 2016) (approving the resentencing court's consideration of rehabilitation as one factor among many); *State v. Sims*, 818 S.E. 2d 401, 412–13 (N.C. Ct. App. 2018) (same).

In short, the court below engaged in the same analysis that every other court in the country has used. Nothing in its opinion warrants this Court's review.

III. The Court of Appeals Properly Applied this Court's Precedent to the Particular Facts of this Case.

In concluding that the trial court abused its discretion by denying Aaron parole eligibility, the court of appeal correctly stated and applied the rules of law articulated by this Court in *Miller* and *Montgomery*. It also applied an analysis that fully comports with this Court's subsequent decision in *Jones v. Mississippi*. The court of appeal announced no novel rule, nor did it depart from this Court's precedent.

The court of appeal conducted a straightforward, uncontroversial application of this Court's precedent. The court described *Miller* as requiring "a sentencing court to 'follow a certain process-considering an offender's youth and attendant characteristics before imposing a particular penalty.'" Pet. App. 014 (citing *Miller*, 567 U.S. at 483).

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not seek to impose a life-without-parole sentence upon resentencing, the sentencing court should apply the traditional sentencing considerations of Section 9721(b) of the Sentencing Code, 42 Pa.C.S. § 9721(b), when fashioning its sentence.").

Likewise, the court stated that *Montgomery* "prescribed a hearing to consider 'youth and its attendant characteristics' as sentencing factors." Pet. App. 014 (citing *Montgomery*, 593 U.S. at 735). And, in summarizing the rule distilled from *Miller*, *Montgomery* and the Louisiana Supreme Court's ruling on remand from *Montgomery*, the court of appeal explained, "those cases instruct a court to consider the circumstances of each particular case and determine whether those circumstances shows a [life-without-parole] sentence is unconstitutionally disproportionate to the crimes committed as a juvenile." Pet. App. 018; *see also State v. Montgomery*, 194 So. 3d 606 (La. 2016). This distillation of *Miller*, *Montgomery*, and Louisiana precedent requires nothing different than the cases themselves do. The court of appeal's formulation of what this Court requires is accurate, uncontroversial, and presents no rule for this Court to review.

Nor does this Court's holding in *Jones v. Mississippi*, cast any doubt on the court of appeal's decision. *Jones* merely held that "*Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence." *Jones*, 141 S. Ct. at 1316. That is precisely what the court of appeal already understood *Miller* to require. Pet. App. 017 ("We find that neither *Miller/Montgomery* nor *Montgomery II* require a court considering parole eligibility to make factual findings of transient immaturity or irreparable corruption."). Indeed, no court at any point in Aaron's case has ever required a finding of permanent incorrigibility or a factual finding of any kind. Because the court of appeal held in Aaron's case that

no factual findings were required at resentencing, this Court's identical decision in *Jones* would not have impacted the lower court's analysis nor changed the outcome of this case.

The court of appeal did nothing novel here: it created no rule, test, or, as the state suggests, instructions for how to weigh the relevant evidence. The court of appeal correctly determined that, based on the evidence taken as a whole, Aaron deserved the opportunity for parole. That determination is bolstered by the fact that the Louisiana Parole Board released Aaron on parole at the first opportunity and by the positive contributions Aaron is making to society as a free, working man for the first time in his adult life.

The court of appeal's decision in this case was uncontroversial, fact-bound, and entirely consistent with this Court's precedent. There is no good reason to disturb its ruling.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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