No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

M.C.,

Petitioner,

v.

STATE OF INDIANA

Respondent.

_____

On Petition for a Writ of Certiorari to the

Indiana Supreme Court

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QUESTIONS PRESENTED

1. Is a child imprisoned for delinquent acts "punished" within the meaning of the Eighth Amendment?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption to the case on the cover page.

RELATED CASES

There are not related proceedings to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner M.C respectfully petitions this Court for a writ of certiorari to review the judgment of the Indiana Court of Appeals in this case.

OPINION AND ORDER BELOW

The Indiana Court of Appeals' opinion (Pet. App. A, 1a-7a) is published at 134 N.E.3d 453 (Ind. Ct. App. 2019), *reh'g denied, transfer denied*. The Rush County Juvenile Court's order (Pet. App. B, 8a-11a) is unpublished.

JURISDICTION

The judgment of the Indiana Court of Appeals was entered on October 9, 2019, and transfer was denied by the Indiana Supreme Court on March 19, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the U.S. Constitution provides, in part, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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."

INTRODUCTION

In *In re Gault*, 387 U.S. 1, 36 (1967), this Court recognized the gravity of a juvenile prison commitment, stating:

> There is no material difference in this respect between adult and juvenile proceedings of the sort here involved. [] A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of liberty for years is comparable in seriousness to a felony prosecution.

"The boy is committed to an institution where he may be restrained of liberty for years." *Id*. at 27. It matters not what euphemistic title is given the facility, the child is placed "in an institution of confinement in which the child is incarcerated for a greater or lesser time." *Id*. And, with respect to Fifth Amendment protections against self-incrimination, *Gault* held that "juvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution, must be regarded as 'criminal[.]'" *Id*. at 49. "The Court in *Gault* was obviously persuaded that the State intended to *punish* its juvenile offenders, observing that in many States juvenile may be placed in 'adult penal institutions' for conduct that if committed by an adult would be a crime." *Allen v. Ill.*, 478 U.S. 364, 373 (1986).

Further, the *Gault* Court observed that "neither the *Fourteenth Amendment* nor the *Bill of Rights* is for adults alone." *Id*. at 13. However, the Indiana Court of Appeals disagreed in the context of the Eighth Amendment. *M.C. v. State,* 134 N.E.3d 453, 464 (Ind. Ct. App. 2019), *reh'g denied*, *trans. denied* ("Inasmuch as the juvenile court's dispositional order was not a penalty or punishment within the meaning of the Eighth Amendment . . . M.C.'s claim that awarding wardship to the DOC was cruel and unusual punishment . . . is unavailing.") When doing so, the

Indiana Court of Appeals relied heavily on an Illinois Supreme Court decision which held that because a "petition for adjudication of wardship [is] not a direct action by the state to inflict punishment, neither the proportionate penalties clause nor the cruel and unusual punishment clause apply[.]" *In re Rodney H.*, 223 Ill. 2d 510, 520-21, 861 N.E.2d 623, 630 (Ill. 2006). This case provides the opportunity for this Court to answer the important question of whether a juvenile prison commitment is a punishment as contemplated in the Eighth Amendment. More specifically, as applied in this case, can juveniles raise a claim that their incarceration is disproportionate when it can exceed the maximum possible sentence that adults receive for committing the same offenses.

This case provides the opportunity for this Court to answer the important question of whether a juvenile prison commitment is a punishment as meant by the Eighth Amendment. More specifically, the Court can and should answer the question whether juveniles can raise a claim that their incarceration is disproportionate when it can exceed the maximum possible sentence that adults receive for committing the same offenses. The question is particularly important because the Indiana Supreme Court recently ruled that a court appointed attorney can advocate *for* his client's imprisonment—regardless of whether his client consents to be imprisoned—and still provide effective representation. *A.M. v. State*, 134 N.E.3d 361 (Ind. 2019), *reh'g denied*, *cert. pending sub. nom. A.M. v. Indiana*, Docket No. 19-8804. Thus, the legal reality in Indiana is that children receive lawyers that can argue for their imprisonment, contrary to their desire for freedom, and that imprisonment is regarded as devoid of punishment despite the daily realities of that setting, As a result, children facing imprisonment in Indiana are

deprived of key fundamental protections of their liberty provided by the Bill of Rights.

This Court should grant certiorari.

STATEMENT OF THE CASE

1. On July 17, 2018, M.C. admitted to acts of delinquency that would have been a misdemeanors had he been an adult, and was placed on probation for a period of six months. (App. D, 23a—25a). Specifically, M.C. lied about his name when confronted by a police officer, and had drank an alcoholic beverage. (App. D, 23a).

2. On February 12, 2019, M.C. admitted to delinquent acts of theft, and possession of marijuana, both misdemeanors, had he been an adult, and was detained because he was found to be dangerous to himself and the community. (App. D, 37a, 42a—43a). Specifically, he walked out of a Pizza King restaurant with another child without paying for "a 16-inch pizza as well as two large Pepsi's," and a month later he possessed marijuana. (App. D, 37a).

3. On February 26, 2019, M.C. was committed for an indeterminate period of time to the "Indiana Department of Correction for housing in any correctional facility for children." (App. B, 8a—11a; App. D, 48a—49a).

4. M.C. appealed his commitment to prison arguing, *inter alia*, that his potential loss of liberty exceeded that which an adult could receive for the same conduct. *M.C. v. State*, 134 N.E.3d 453 (Ind. Ct. App. 2019). (App. A, 1a—7a). As a result, M.C. contended, his commitment was a disproportionate punishment which violated the Eighth Amendment of the United States Constitution, and denied him

equal protection of the laws, as provided for by the Fourteenth Amendment of the United States Constitution. *Id*. at 460-64. The Indiana Court of Appeals did not deny that M.C. could potentially be held by the DOC for a period of time longer than an adult would for the same conduct. Instead, the Court of Appeals focused on the character of juvenile disposition orders. It distinguished them from "sentences" for "crimes" in the analysis of his equal protection claims, and held that placement as a juvenile in the DOC is not a form of "punishment" which could implicate Eighth Amendment concerns. *Id*. at 461, 463-64.

> Inasmuch as the juvenile court's disposition order was not a penalty or punishment within the meaning of the Eighth Amendment to the United States Constitution, M.C.'s claim that awarding wardship to the DOC was cruel and unusual punishment and violation the proportionality provision of Article 1, Section 16 of the Indiana Constitution, is unavailing.

Id. at 464.

REASONS FOR GRANTING THE PETITION

I. Contrary to discussions of this Court, multiple jurisdictions have now held that the imprisonment of children for delinquent acts is not "punishment" and therefore not subject the Eighth Amendment.

As explained above, the Indiana Court of Appeals ruled that committing M.C. to the Indiana Department of Correction for an indeterminate period of time for his acts of delinquency was not a form of "punishment within the meaning of the Eighth Amendment." 134 N.E.3d at 464. The Court of Appeals' acknowledgement that Indiana's juvenile system is focused on rehabilitation, not punishment, is

nothing new. *See, J.C.C. v. State*, 897 N.E.2d 931, 935-36 (Ind. 2008). It is entirely new, however, to use the goals of rehabilitation to define away a child's right to challenge disproportionate imprisonment caused by Indiana's juvenile delinquency statutes.

In fact, the Court of Appeals has previously held on at least two other occasions that a juvenile court must have jurisdiction over certain acts because otherwise the acts of a child would go "unpunished." *D.P. v. State*, 136 N.E.2d 620, 624 (Ind. Ct. App. 2019) *vacated on transfer, D.P. v. State,* 2020 LEXIS 539 (Ind. June 30, 2020); *C.C. v. State*, 907 N.E.2d 556, 559 (Ind. Ct. App. 2009). In doing so, the Indiana Court of Appeals relied upon *In re Rodney H.*, 861 N.E.2d at 630, which held that because an adjudication for wardship to Illinois' Department of Correction is not a direct action to inflict punishment, the Cruel and Unusual Punishment Clause does not apply. Similarly, the Mississippi Supreme Court held that commitment of children to the "Columbia Training School until the age of twenty (20) years, 'or until the earlier further orders of the court[,]'" was not a form of penalty or punishment, and could not be challenged as a violation of the Eighth Amendment. *In re Wilder*, 347 So.2d 520, 522 (Miss. 1977).

Likewise, several federal circuits rejected claims that children were receiving disproportionate punishment pursuant to the now repealed Youth Corrections Act (YCA), 18 U.S.C. § 5010 (1958), which allowed for the confinement of children for up to four years for what would be misdemeanors had they been adults. *Cunningham v. United States,* 256 F.2d 467 (5th Cir. 1958); *Standley v. United States*, 318 F.2d

700 (9th Cir. 1963); *Rogers v. United States*, 326 F.2d 56 (10th Cir. 1963); *United States v. Dancis*, 406 F.2d 729 (2nd Cir. 1969) *cert. denied*, 394 U.S. 1019 (1969); *Lewis v. Attorney Gen. of United States,* 878 F.2d 714 (3rd Cir. 1989). [1] The most prominent of these decisions seems to be one authored by then—Judge Burger, for a panel of the D.C. Circuit: *Carter v. United States*, 306 F.2d 283 (D.C. Cir. 1962). In *Carter*, the D.C. Circuit explained that a child committed under the Youth Correction Act could be held longer than an adult because "the basic theory under of that Act is rehabilitative and in a sense this rehabilitation may be regarded as compromising the quid pro quo for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison." *Carter*, 306 F.2d at 285. In *McGann v. United States*, 440 F.2d 1065, 1066 (5th Cir. 1971), the Fifth Circuit rejected the claim that the child's commitment amounted to cruel and unusual punishment as not properly raised, but also affirmed the order of the District Judge, and appended it to their decision, which stated: "That a sentence is not invalid for the reason advanced . . . has been so repeatedly and uniformly held that the contention is 'entitled to be treated as legally frivolous.'"

None of the federal decisions expressly stated what Indiana and Illinois have now stated—that confinement of a juvenile for rehabilitation is not a form of punishment. But they all evaded analysis under the Eighth Amendment by focusing

[1] In *Dorszynski v. United States,* 418 U.S. 424 (1974), this Court discussed the rehabilitative aspects of the YCA, but that case did not involve a challenge to confinement pursuant to the YCA. Rather, *Dorszynski* presented a challenge to his exclusion from treatment under the YCA. Therefore, there was no analysis of whether confinement under the YCA was "punishment" within the meaning of the Eighth Amendment.

on the rehabilitative goals of the legislation. That is the consistent theme throughout the decisions which have rejected the Eighth Amendment consideration of juvenile prison commitments: rehabilitative *goals* of legislation obviate the need to consider the *reality* of confinement.

II. The legal and factual realities of juvenile imprisonment in Indiana make it clear that a commitment to the DOC is punishment, even for a child. Therefore, M.C. was wrongly denied a fundamental right to challenge his imprisonment on Eighth Amendment grounds.

As discussed above, the *Gault* Court viewed prosecution for a delinquent act and subsequent placement in a prison type institution, no matter what name it was given to soften its perception, as a form of punishment. *In re Gault*, 387 U.S. at 27, 36; *Allen*, 478 U.S. at 373. Just three years after *Gault*, *In re Winship*, 397 U.S. 358, 365 (1970), evaluated the application of the preponderance standard burden of proof in delinquency proceedings, which was justified by the lower court in part because "juvenile proceedings are designed **'not to punish,** but to save the child.'" (Emphasis added). In response, this Court reminded that "*Gault* expressly rejected this justification." *Id.* "[G]ood intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts[.]" *Id.* at 366-67. Nor should they be used to deny substantive constitutional rights such as those found in the Eighth Amendment.

Outside of the juvenile context, this Court has flatly held: "Confinement in a prison . . . is a form of punishment subject to scrutiny under Eighth Amendment standards." *Hutto v. Finney*, 437 U.S. 678, 685 (1978). And, Black's Law Dictionary

defines "punishment" in part as "confinement . . . assessed against a person who has violated the law." (11th ed. 2019). Further, the Eighth Amendment is not limited to criminal cases. "Some provisions of the Bill of Rights are expressly limited to criminal cases," but the "text of the Eighth Amendment includes no similar limitation." *Austin v. United States*, 509 U.S. 602, 608 (1993). In *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019), this Court held that the Excessive Fines Clause of the Eighth Amendment was applicable to the states through the Fourteenth Amendment as a safeguard that was fundamental to the scheme of ordered liberty. Moreover, even where the imposition of a fine also serves "remedial purposes" that does not mean that it is not at least in part a punishment. *Austin*, 509 U.S. at 610. Likewise, imprisonment for rehabilitative purposes should not mean that it is not at least in part a punishment. Both Indiana law and the facts on the ground confirm without doubt that confining a child in the Indiana DOC for a delinquent act is, at least in part, punishment.

A. As a matter of law, children committed to the Indian DOC are treated substantially similar to adults imprisoned for criminal offenses.

Under Indiana law, a child such as M.C. can be committed to the DOC only for committing a delinquent act that would be a criminal offense had they been an adult. Ind. Code §§ 31-37-1-2 & 31-37-19-6.[2] When a child commits an act that

[2] If a child has only committed a "status offense," which in Indiana is a delinquent act that is not an offense if committed by an adult (e.g. curfew violation, truancy, leaving home without permission, habitual disobedience), then the child can cannot be committed to the DOC, nor can they be ordered to a detention center. Ind. Code §§ 31-37-2-1 & 31-37-19-1.

would be a criminal offense, "the legislature vested both the juvenile court and the criminal court with 'original exclusive jurisdiction[.]'" *Twyman v. State*, 459 N.E.2d 705, 708 (Ind. 1984). A DOC commitment is the most serious dispositional alternative that a court can impose upon a delinquent child. *E.L. v. State,* 783 N.E.2d 360, 366 (Ind. Ct. App. 2003). A child can be committed to the DOC as young as twelve years old, or ten years old if they are found to have committed an act that would be murder, and can be confined until they turn twenty-one years old. Ind. Code §§ 31-37-19-7 & 11-13-6-4. At the age of seventeen, a child committed for a delinquent act may be transferred to an adult prison if the child is incorrigible or their physical safety or the safety of others is threatened by being held at the juvenile DOC facility, and there is no other reasonable alternative. Ind. Code § 11-10-2-10.

Even though delinquent children are housed in the DOC facilities primarily focused on juveniles who have committed delinquent acts, they are housed alongside children convicted of crimes, and some adults who have been convicted of crimes, but who received what is commonly referred to as "alternative sentencing" under Indiana Code chapter 31-30-4. This includes both those who committed crimes before reaching the age of eighteen, but were excluded from juvenile court jurisdiction pursuant to Indiana Code section 31-30-1-4, and those who were "waived" to adult court by the juvenile court under Indiana Code chapter 31-30-3. Both persons who have reached the age of eighteen before sentencing, or who attain the age of eighteen while in custody of the DOC can be held along-side the children

who are as young as ten. *See*, Ind. Code § 31-30-4-2. Placement in the juvenile facility for these persons who have been convicted of crimes can continue until the objectives of the sentences have been met. Ind. Code § 31-30-4-5.

If a child flees a DOC commitment, they face a new delinquency petition for escape, a level 5 felony had he been and adult, because wardship to the department of a correction is a form of "lawful detention" under Indiana law. *T.D. v. State*, 896 N.E.2d 547, 550 (Ind. Ct. App. 2008) (*on reh'g*); Ind. Code § 35-44-3-5(a). A level 5 felony charge, combined with the reality that a child who flees from a DOC facility has been adjudicated for prior acts, subjects a child to possible prosecution in criminal court, and a potential prison sentence of up to eight years. *See*, Ind. Code § 31-30-3-2 (Providing for the waiver of jurisdiction from the juvenile court to an adult court with criminal jurisdiction of a child charged with a felony "that is part of a repetitive pattern of delinquent acts, even though less serious.")

The *M.C.* court relied upon statutory requirements that the DOC provide recreation, education, counseling, health care, and qualified staff as support for its conclusion that confinement in the DOC is not a form of punishment. *M.C.,* 134 N.E.3d at 463 (citing I.C. § 31-37-19-21). However, the statute relied upon applies to "confinement in a juvenile detention facility," which is separate and distinct from DOC facilities. *See*, Ind. Code 31-31-8-2. Nevertheless, provision of some recreation time, education, counseling, health care, and qualified staff do not render confinement in a prison devoid of punishment—otherwise placement in adult prisons would often be non-punitive and outside the reach of the Eighth Amendment.

B. The prison-like realities of Indiana's DOC facilities for children.

The Indiana DOC has allowed camera crews into these facilities, so there is not need to speculate about at least some of the realities in those facilities.[3] From these films, we know that these facilities bear the hallmarks of modern American prisons: fences topped with razor wire; buildings with exposed concrete block walls; steel doors powered and operated from a command center; steel-framed bunk beds; plastic furniture; guards in uniform carrying pepper spray and handcuffs; children wearing common clothing that identifies them as the confined population; prison I.D. numbers; routine searches; banks of monitored pay phones; and the use of isolation cells to restrain the children when necessary.

From the comments made by children during the documentaries, we also know that many of the psychological stigmas of prison attach to these institutions. One child referred to kids from the sexual treatment unit as "chomos,"[4] and explained to the camera that they do not get a full portion of food in the dinning-hall because of who they are.[5] Further, a child, when asked by an instructor what

[3] See, e.g., natgeotv.com, "Prison Documentaries, Pendleton Juvenile Correctional Facility," (Aug. 28, 2017) (found at https://youtube.com, last checked May 26, 2020); *See, also* https://www.indystar.com/picture-gallery/news/2016/08/04/detained-a-day-at-the-logansport-juvenile-correctional-facility/88179318/ (last checked May 26, 2020).

[4] "'Chomo' is prison slang for a child-molester and, inmates and officers claim, they are at the absolute bottom of the implied prison hierarchy." Hollie McKay, Pedophiles in prison: The hell that would have awaited Epstein if he'd stayed behind bars, https://www.foxnews.com/us/jeffrey-epstein-pedophiles-prison-hell (last checked May, 26, 2020).

[5] Nat geo documentary, *supra* note 3.

he was "giving up to be here," immediately responded: "my childhood . . . my teenage years . . . my life." The instructor seeking a better answer shifted the question to another child, who answered he was giving up: "opportunity, freedom, and self-respect."[6]

The Review Panel on Prison Rape of the Department of Justice noted in its "Report on Sexual Victimization in Juvenile Correctional Facilities," 2010, that the DOC facility where M.C. was housed is "difficult on first impression to distinguish [] from an adult facility—residents wore orange jumpsuits and the atmosphere had a heavy corrections emphasis." *Id.* at 17. The Review Panel was at this facility because in the Bureau of Justice Statistics Special Report on Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09,[7] it was found that "36.2% of the youth at Pendleton reported sexual victimization, with 18.1% reporting staff sexual misconduct with force and 16.8% reporting staff sexual misconduct without force."

We also know that these facilities have experienced some of the darker realities associated with prisons. In *Nelson v. Heyne*, 491 F.2d 352, 356-58 (7th Cir. 1974), it was found that the prison guards at the Indiana Boys School were imposing cruel and unusual punishment upon the children by routinely beating them and having them tranquilized. In addition to affirming the finding of cruel and unusual punishment, the Seventh Circuit called into question the rehabilitative aspects of the facility: "The record shows very little individual treatment

[6] Nat geo documentary, *supra* note 3.

[7] https://bjs.gov/content/pub/pdf/svjfry09.pdf (last checked May 26, 2020).

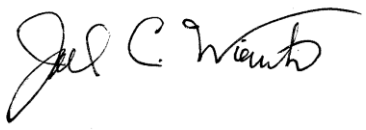
programmed, much less implemented, at the School; and it is unclear exactly how much time is spent in individualized counseling." *Id*. at 360.

Despite the legal reality that children such as M.C. are committed to prison facilities in response to their acts that were criminal offense, but for the young age of the actor, and despite the punitive daily reality of the facilities, the Indiana Court of Appeals merely looked to *the goals* of Indiana's juvenile code to conclude that such commitments were not punishment within the meaning of the Eighth Amendment. This is the same rationalization that *Gault* and *Winship* expressly rejected. However, now Illinois, Indiana, and several federal jurisdictions have applied this reality defying analysis, even going as far as claiming that arguments to the contrary are frivolous. Now is the time for this Court to accept the issue, and decide whether children can at least challenge their imprisonment under the Eighth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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