

20-5981

No. _____

Supreme Court, U.S.
FILED

JUL 27 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Washington D.C. 20543

JAVIER GARZA

(Your Name)

— PETITIONER

vs.

STATE OF ILLINOIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF ILLINOIS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAVIER GARZA

(Your Name)

P.O. Box #1000 (MENARD C.C.)

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(City, State, Zip Code)

(Phone Number)

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**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

QUESTION(S) PRESENTED

1: WHETHER MANDATORY DE FACTO LIFE SENTENCES FOR JUVENILE DEFENDANTS AS IN PETITIONER'S CASE ARE DISPROPORTIONATE AND VIOLATE THE EIGHTH AMENDMENT, UNLESS THE TRIAL COURT CONSIDERS YOUTH AND IT'S ATTENDANT CHARACTERISTICS.

See MILLER V. ALABAMA AND MONTGOMERY V. LOUISIANA
(UNITED STATES CONSTITUTION AMENDMENT VIII)

2: WHETHER A CATEGORICAL BAN ON MANDATORY LIFE SENTENCES, NATURAL OR "DE FACTO" FOR JUVENILES SHOULD BE IMPOSED BECAUSE THEY ARE UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT REGARDLESS IF THE TRIAL COURT COMPLIES WITH "MILLER". (UNITED STATES CONSTITUTION, AMENDMENT VIII)

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:

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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 _____ 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☐ is unpublished.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 _____ to the petition and is

- ☐ reported at _____; 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☐ is unpublished.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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Appellate Court of Illinois First District court appears at Appendix A to the petition and is

- ☐ reported at _____; 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 _____.

☐ 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 1/23/2019.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: 3/25/2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 UNITED STATES CONSTITUTION AMENDMENT VIII -
CRUEL and UNUSUAL PUNISHMENT.

STATEMENT OF THE CASE

Javier Garza, Petitioner, was convicted of first-degree murder (720 ILCS 5/9-1(A)(1)(West 2012)), aggravated battery (720 ILCS 5/12-3.05(e)(1)(West 2012)), and three counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2)(West 2012) on 3/11/2015 before the Honorable Judge Linn after a bench trial.

Garza was sentenced to 51 years' imprisonment (45 years for murder, 5 years for the aggravated discharge of a weapon to run concurrently, and 6 years for the aggravated battery with a firearm to run consecutively.), the minimum sentence possible under Illinois law.

At the time of the offenses, Garza was 17 years old.

These are the central facts that provide the basis for the reasons for granting the petition, however any other facts that this Court may feel relevant for considering petitioner's claim could be found in the Appellate Court Order (Attached as Appendix A) or by referring to *People v. Garza*, 2018 IL App (1st) 1152041. In the interest of brevity petitioner will not rewrite them here.

REASONS FOR GRANTING THE PETITION

The first reason this Honorable Court should hear this petition is because Javier Garza, petitioner alleges that "Miller's" protections should extend to Mandatory 'de facto' life sentences for juvenile defendants because such sentences are disproportionate and violate the 8th Amendment of the United States Constitution. See, *Miller v. Alabama*, 567 U.S. 460 (2012); See also, *Montgomery v. Louisiana*, 577 U.S. 136 (2016).

This Court in *Miller v. Alabama* clearly held that imposition of mandatory life without parole sentences on youth under the age of 18 is a violation of the Eighth Amendment prohibition on "Cruel and unusual punishment." 567 U.S. 460, 489 (2012). To reach this holding This Court reasoned that juveniles are fundamentally different from adults in terms of their maturity, impetuosity, and ability to appreciate risks, and that these characteristics must be accounted for to reach a proportionate sentence. *Id.* at 477-79. "[I]n imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult." *Id.* at 477. This Court specifically noted the type of information that would be relevant to the decision to sentence a youth, for instance, the youth's chronological age and its "hallmark features," including "immaturity" and the "failure to appreciate risks and consequences," circumstances of the offense, including factors that may have played a role in the youth's participation in the offense, such as family or peer influence, as well as the youth's individual circumstances, such as his family and home environment, the youth's rehabilitative potential, and the youth's relative inability to meaningfully participate in the trial process. (emphasis added) *Id.* at 477-79.

The "Miller" decision is one in a line of multiple U.S. Supreme Court and Illinois Supreme Court cases issued over the past decade or more addressing the propriety of life without parole sentences or terminal sentences for juveniles. See, e.g., *Roper v. Simmons*, 543 U.S. 551 (2005) (juveniles cannot receive the death penalty for offenses committed while under the age of 18); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (juveniles cannot receive a life without parole sentence for a non-homicide offense).

In *People v. Davis*, the Illinois Supreme Court held that "Miller" applied retroactively to cases on collateral review. *Davis*, 2014 IL 115595, at ¶¶ 39, 42. This Court, The United States Supreme Court subsequently held, in *Montgomery v. Louisiana*, that "Miller" was a substantive constitutional rule that applied retroactively. 136 S.Ct. 718, 736 (2016).

The "Montgomery" Court further explained that, under "Miller," sentencing a child to life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 734 (quoting *Miller*, 567 U.S. at 479-80; quoting *Roper*, 543 U.S. at 573). Thus, life without parole was an unconstitutional penalty for those few juvenile offenders whose crimes reflect the transient immaturity of youth.

In *People v. Reyes*, decided just after the "Montgomery" decision, the Illinois Supreme Court held that sentencing a juvenile offender to a mandatory consecutive term-of-years that was the "functional

equivalent" of a life-without-parole sentence also violated the Eighth Amendment. 2016 IL 119271, ¶ 9.

In *People v. Holman*, that Court subsequently held that "Miller" applied to discretionary life without parole sentences. *Holman*, 2017 IL 120655. Thus, after *Holman*, where a juvenile was sentenced to a life sentence — whether mandatory, discretionary, natural, or "de facto" — and the sentencing court failed to properly consider youth and its attendant characteristics, in mitigation, in imposing the sentence, that sentence was unconstitutional. *People v. Buffer*, 2019 IL 122327, ¶ 27 (citing *Holman*, 2017 IL 120655, at ¶ 40).

More recently, the Illinois Supreme Court held in "*Buffer*," that a prison sentence of 40 or more years constituted a "de facto" life sentence that triggers "Miller" protections, such that when the sentencing court failed to adequately consider youth and its attendant characteristics, in imposing the sentence, ~~that sentence,~~ a new sentencing hearing was required. *Buffer*, 2019 IL 122327, ¶ 42. For youth with consecutive sentences, "de facto" life is measured by the aggregate of those sentences. *Reyes*, 2016 IL 119271, ¶¶ 8-9.

Additionally, the First District Appellate Court of Illinois in *People v. Peacock* held that a defendant's 80-year sentence was a "de facto" life sentence under "*Buffer*" where the defendant was eligible for day-for-day good time because, such sentence only resulted in the "mere possibility of release after 40 years," was "not guaranteed" as it was subject to the discretion of the Illinois Department of Corrections, and the

trial Court had "no control over the manner in which a defendant's good conduct credit is earned or lost." *People v. Peacock*, 2019 IL App(1st) 170308, ¶ 19; See also *People v. Thornton*, 2020 IL App(1st) 170677 (defendant's 70-year sentence for first degree murder, subject to good conduct credit, is a "de facto" life sentence for a 17-year-old).

Like a life-without-parole sentence, a "de facto" life sentence is particularly harsh for a juvenile because "it deprives the convict of the most basic liberties without giving hope for restoration..." and "[a] juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender." *Graham*, 560 U.S. at 70; *Miller*, 567 U.S. at 474-75. Thus, a court must provide "some meaningful opportunity for release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75; *Butter*, 2019 IL 122327, at ¶ 41.

Although petitioner was prosecuted as an adult, he/she was only 17 years old at the time of the incident that led to his conviction and sentence.

Under "*Miller*," "*Montgomery*," and "*Butter*," courts must consider the petitioner's youth and its "attendant characteristics," in mitigation, before sentencing a youth to a sentence of 40 or more years. *Miller*, 567 U.S. at 483; *Montgomery*, 136 S.Ct. 718, 734 (2016); *Butter*, 2019 IL 122327 at ¶¶ 26-27. Additionally, a "de facto" life sentence imposed on a child also violates the Eighth Amendment if the crime reflects "transient immaturity" as opposed to "irreparable corruption." *Miller*, 567 U.S. at 479.

Garza was sentenced to 51 years on 5 / 7 / 15 without proper consideration of his youth as required by Miller. Although the trial court alleged to have considered Garza's participation in the offense, as well as his competency and history of mental health issues, the court did not consider Garza's relative inability to meaningfully participate in the trial process. (See Appellate Court Order at 925 Attached As Appendix A) Indeed, a "de facto" life sentence without parole "ignores that [Garza] might have been charged and convicted of a lesser offense if not for incompetencies associated with youth — for example, his inability to deal with police officers [] or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." Miller, 567 U.S. 460 (2012) at 477-78 (citing Graham, 560 U.S. at 78, 130 S.Ct., at 130 S.Ct., at 2032 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings")) (J.D.B. v. North Carolina, 564 U.S. 261, 269, 131 S.Ct. 2394, 2400-2401, 180 L.Ed. 2d 310 (2011) (discussing children's responses to interrogation)).

Moreover, the United States Sentencing Commission defines the cut off for a "de facto" life sentence at 470 months, or just shy of 40 years. See Life Sentences in the Federal System, The United States Sentencing Commission (Feb. 2015). As of September 2018, in the IDOC there were 1,594 people serving life-without-parole (LWOP) sentences, 152 people with sentences over 100 years, and 3,918 people serving sentences between 40-100 years. Prison Population on 9-30-18 Data Set IDOC.

Accordingly, in light of This Court's ruling in "Miller", Garza's 51 year sentence is unconstitutional under the Eighth Amendment of the U.S.

Constitution.

As a final point, in arguendo, if the trial court did consider all of the "Miller" factors when sentencing Javier Garza, such consideration — with all due respect to Judge Linn — would have been meaningless because due to the confluence of state laws Garza's 51 year "de facto" life sentence was the minimum allowed under state law. See Appellate Court Order ~~01-8125~~ attached as Appendix.

This Court in "Miller" went on to analyze what it called the "confluence" of state laws and reasoned that it was the impact of several laws acting together that caused concern because it was impossible to tell if the states "actually" intended to subject such offenders to those sentences or if it was just the fact that statutes in combination had the effect of life without parole for juvenile offenders. See Miller, 567 U.S. at 132 S.Ct. at 2473.

Javier Garza's sentence is a good candidate for the same reasoning: did the Illinois legislature actually intend for juveniles who are 1) transferred automatically to adult court by the charging decision of the State's Attorney, with no requirement for any protocol or reason, and with no judicial review; and are then 2) subject to adult sentences, including adult enhancements; to then be 3) subject to the truth in sentencing provisions that require (for a murder conviction) they must serve 100% of their sentence with no possibility of demonstrating maturity or rehabilitation?

Garza was 1) automatically transferred to adult court, 2) subject

to an adult sentence which included a mandatory 25 year gun enhancement, and a 6 year consecutive term for the aggravated battery with a firearm. Furthermore, due to Truth in Sentencing Garza's prison term will be served at 100%.

Thus, however one were to look at it, Garza's sentence is unconstitutional under the 8th Amendment of the United States Constitution.

The second reason This Court should hear this petition is to determine whether a Categorical Ban on Mandatory Life Sentences, Natural or "de facto" for Juveniles should be imposed, because they are unconstitutional under the Eighth Amendment regardless if the trial court complies with "Miller" (UNITED STATES CONSTITUTION, AMENDMENT VIII).

Garza alleges that a Categorical Ban on Mandatory Life Sentences, Natural or "de facto" for juveniles is necessary because without it, Courts are allowed to publish judicial opinions (as in the instant case) alleging that the trial court complied with "Miller" when the fact of the matter is state laws do not allow courts in Illinois to fashion a sentence for first degree murder (when committed with a firearm) that is under 45 years, and thus compliance with "Miller" is impossible. (See Appellate Court Order Attached as Appendix A (Where petitioner's minimum sentence was 51 years)). Moreover, since This Court's fascinating Summaries in its Miller, Roper, Graham, and Montgomery rulings the lower state courts look toward this court for guidance when dealing with overly harsh sentencing practices for juvenile offenders, and determining whether or not they are constitutional under the Eighth Amendment. In support of

this Garza refers The Court to a recent article published by the Prison Legal News which stated 'CUTTING THE U.S. PRISONER POPULATION by half' is the goal of the #cut50 and End Mass Incarceration movements, and of the criminal justice reform group JustLeadership USA, but that will not be possible for at least 75 years unless the issue of long sentences for violent offenses is addressed. Prison Legal News VOL.30 NO.10 October 2019 at pg. 46 attached as exhibit 1). That was the conclusion of "The Next Step: Ending Excessive Punishment for Violent Crimes," an April 2019 report by The Sentencing Project, a nonprofit research and advocacy organization.

While the violent crime rate has plummeted by half since hitting its peak in the early 1990's, the number of people imprisoned for violent crimes has grown, the report notes, peaking at 740,000 in 2009 - nearly half of the 1.6 million people then held in State and Federal prisons. It has declined by just three percent since then.

The reason behind this overcrowding was 'Overly harsh sentencing,' the report concluded, despite evidence that excessive penalties are counterproductive because they keep older prisoners behind bars who pose little physical threat; they divert funding from better public safety investments; and they have almost no deterrent effect as the best proven deterrent to crime is likelihood of arrest, not the possibility of serving a lengthy sentence if arrested.

The annual cost of holding so many people in prison is at least \$182 billion, the Prison Policy Initiative estimates, which is why formerly "tough on crime" lawmakers have begun warming to the idea of sentencing reform. But the tide is slow to turn.

Furthermore, "Shortening sentences and releasing people from prison is perceived as politically risky," noted New York defense attorney Kathrina Szymborski.

There is Consensus that the main drivers of mass incarceration have been the "war on drugs" and a concurrent war against reasonable sentences, along with a mistaken belief that a greater likelihood of receiving a long prison sentence is a ~~slight~~ deterrent to crime despite a low probability of arrest.

As a result, by 2016 a quarter of the prisoners incarcerated for violent offenses were serving life sentences. Due to this huge population of lifers, "Scaling back the most excessive penalties is key to ending mass incarceration," The Sentencing Project report notes. Recent reforms for the punishment of violent crimes fall into three main categories:

- Legislative action, such as a move by California lawmakers to limit the felony murder rule to those who participated in the murder or intended to kill;
- Executive action, such as an offer by Philadelphia's District Attorney of below-guidelines resentencing for people sentenced to life without parole (LWOP) as juveniles; and
- Judicial action, such as a ruling by Iowa's Supreme Court that all mandatory sentences for juveniles are unconstitutional.

LWOP became popular as an alternative to the death penalty, especially after this Court — The U.S. Supreme Court — banned capital punishment for juvenile offenders in its 2005 ruling in *Roper v. Simmons*. Three subsequent Supreme Court decisions curtailed LWOP for juvenile offenders, by limiting life — eligible crimes to homicide, in *Graham v. Florida* (2010), striking down mandatory LWOP for juveniles in *Miller v. Alabama* (2012); and extending the ban on LWOP retroactively in *Montgomery v. Louisiana* (2016).

A juvenile offender may still be sentenced to LWOP, This Court has held, so long as the sentence is not mandatory but instead based on the individual facts of the case. Still, that left around 50,000 prisoners serving LWOP in 2016 - over four times the number with life without parole sentences in 1992.

Although objectives for reform Sentencing Reform include Reforming and Implementing Parole, Sentencing for adult offenders, and encouraging policy makers to end unjust punishment, the Sentencing Project suggests — and Garza agrees — that real reform first needs to address excessive sentences for juveniles before moving on to these other objectives for real change. See Prison Legal News Vol. 30 No. 10 "Dedicated to Protecting Human Rights" October 2019 at pg. 40 Attached as Exhibit 1).

Garza was 17-years-old at the time of the offense and arrest. He is not scheduled to be released until he is approximately 68-years-old. Garza's sentence by all accounts is excessive and "de facto" life. The only difference between Garza's sentence and mandatory life without parole sentence is in name only. In arguendo, if Garza were to survive his prison term he'd be a 68-year-old man who spent practically his whole life in prison. Garza's sentence is both excessive and in violation of the 8th Amendment which forbids Governments from imposing "Cruel and Unusual Punishments" because the trial court did not consider all of the "youth" factors set forth in "Miller". See Appellate Court order at ¶ 25 Attached AS Appendix A) (The Court did not consider Garza's relative inability to meaningfully participate in the trial process). See also, Graham v. Florida (2010).

Moreover, the Illinois Supreme Court has refused to adopt a categorical ban on life sentences for juveniles. *People v. Holman*, 2017 IL 120655 (2017) at 451. The Court has refused to even comment on the constitutionality of such sentences. *Holman, Id.* (stating specifically "Whether or not such sentences are constitutional is a question for judges, and for the justices of the United States Supreme Court have so far declared that they may be, provided the trial court complies with 'Miller.'")

Finally, it should be noted that Illinois law with respect to trying and sentencing juveniles has fundamentally shifted in recent years (See, 705 ILCS 405/5-130 (West 2016) (reducing the number of offenses requiring the automatic transfer of juveniles to adult court, and raising the automatic transfer age to 16 years old); 730 ILCS 5/5-4.5-105 (West 2016) (giving judges discretion to refuse to apply formerly-mandatory firearm enhancements on juvenile offenders in adult court, and requiring the consideration of a number of mitigating factors related to youth at sentencing) 730 ILCS 5/5-4.5-110(b) (West 2019) (establishing, effective June 1, 2019, that persons under 21 who commit first degree murder are eligible for parole after serving 20 years of their sentence); *People v. Aitkens*, 2016 IL App (1st) 133578, 9138 ("While [recent provisions that changed the way juveniles are tried and sentenced in Illinois] do not apply retroactively, they are indicative of a changing moral compass in our society when it comes to trying and sentencing juveniles as adults."); thus the moral compass of our society has so shifted regarding the treatment of juveniles in our criminal justice system. This not only holds true in Illinois but also across the nation in light of the

forementioned rulings of reform discussed in this argument rendering now the appropriate time for Garza to raise an as-applied challenge to his sentence under the 8th Amendment of the United States Constitution, and for This Court to determine whether a categorical ban on Mandatory Life Sentences, Natural or De Facto should be imposed because they are unconstitutional under the 8th Amendment regardless if the trial court complies with "Miller." (UNITED STATES CONSTITUTION, AMENDMENT VIII).

In arguendo even if the trial court did appropriately consider the "Miller" factors fashioning a sentence in accordance with "Miller" is impossible because of the "Confluence" of Illinois State laws subjects Garza to a 51-year minimum "de facto" life sentence. This is true especially when considering the 25 year firearm enhancement that was added to Garza's sentence for murder. In fact, recently the Illinois legislator amended 730 ILCS 5/5-4.5-105 to include 730 ILCS 5/5-4.5-105(b) which makes the firearm enhancement provision discretionary as it would apply to Garza. However, pursuant to *People v. Hunter*, 2017 IL 121306, which was decided during the pendency of this appeal, 730 ILCS 5/5-4.5-105(b) does not apply retroactively to sentences issued before the law came into effect. *Hunter*, 2017 IL 121306, at ¶48. (See Also Appellate Court Order at ¶¶ 38, 39 Attached as Appendix A.)

Perhaps Illinois Courts respectively speaking could use some guidance from This Court in the spirit "Miller," "Roper," "Graham," and especially "Montgomery" in that 'Criminal procedure laws that fail to take defendant's youthfulness into account at all would be flawed.'

Miller, 567 U.S. at , 132 S.Ct. at 2466 (quoting Graham, 560 U.S. at 75).

In a fascinating summary, This Court has held that:

"Miller *** established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth. [Citation.] *** Miller *** rendered life without parole an unconstitutional penalty for a class of defendants because of their status — that is, juvenile offenders whose crimes reflect the transient immaturity of youth. [Citation.] ***

*** Miller's conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution." (Internal quotation marks omitted.) *Montgomery v. Louisiana*, 577 U.S. , 136 S. Ct. 718, 734-36, 193 L. Ed. 2d 599 (2016).

Therefore, "Miller announced a substantive rule of Constitutional law." *Id.* at , 136 S.Ct. at 736.

Indeed, due to the "confluence" of state laws many juvenile offenders whose crimes reflect the transient immaturity of youth are being held in violation of the U.S. Constitution, because the "confluence" of state laws does not allow the Court to fashion a sentence in accordance with "Miller." Garza, is an example of one such youth and for these foregoing reasons petitioner respectfully requests that This Court hear his case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Javier Garza

Date: July 24, 2020