

AUG 19 2020

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20-6089
No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Jermaine D. Hill — PETITIONER
(Your Name)

vs.

Catherine Bauman — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6th Circuit Court

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

PETITION FOR WRIT OF CERTIORARI

Jermaine D. Hill

(Your Name)

N6141 Industrial Park Drive

(Address)

Munising, Michigan 49862

(City, State, Zip Code)

(Phone Number)

ORIGINAL

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

In 2012 this Court ruled in *Miller v. Alabama* 567 U.S. that it is Unconstitutional to sentence a juvenile to life without the possibility of parole. In 2012 the state of Michigan did not agree that those who were juveniles pre-*Miller* should be given relief under *Miller* therefore decided not to uphold this Court decision. In 2016 this Court again revisited *Miller* decision in *Montgomery v. Louisiana* 136 S.Ct 718 where it made *Miller* retroactive to those who were juvenile's at the time of their offenses.

The question presented is whether a juvenile filing for his relief on January 23, 2016 is entitled to the 1 year statute of limitation and equitable tolling under *Montgomery v. Louisiana* and though he was prevented by the state of Michigan. Petitioner believes that he should be granted a *Miller* Hearing as he was under the exclusive jurisdiction of the juvenile court. (See Pet. APP. J)

QUESTION PRESENTED

In 1993 Petitioner was 16 years old and committed to the juvenile court until his 21 birthday for some juvenile enumerated offenses. (See Pet. APP. H) In 1995 Petitioner was 19 years of age and still a juvenile under the Historical Laws and Statutes of 1995 MCL 712A.2 (See Pet. APP. S) On November 24, 1995 Petitioner was bound over from 36th district court without a juvenile waiver being issued. (See Pet. APP. A) On December 4, 1995 Petitioner counselor waived Petitioner's juvenile dispositional hearing which acted as an adult Preliminary Hearing for the juvenile.

The question presented is whether a juvenile under the exclusive jurisdiction at the time of his offense should be entitled to a Miller Hearing under both *Miller v. Alabama* and *Montgomery v. Louisiana*. This Petitioner's 6th, 8th, and 14th Amendment of the United States Constitution has been violated as this Court has the ability to correct where injustice of the CONSTITUTION is not being upheld.

QUESTIONS PRESENTED

In 1995 this Petitioner was a juvenile under the exclusive jurisdiction of the juvenile court. Counsel was ineffective by waiving Petitioner as a juvenile into general court for a homicide and an attempted homicide. Petitioner was under the exclusive jurisdiction of the juvenile court after being committed at the age of 16 in 1993 for some enumerated crimes. After being committed Petitioner was kept under the child protection order and fell under the law of Michigan Court Rules 6.900 as stated: Rules Applicable To Juveniles Charged With Life Offenses Subject To The Jurisdiction Of District, Circuit And Recorder's Court. Petitioner was entitled to a mandatory juvenile hearing to determine whether he should be sentenced as a juvenile or an adult. Yet, Petitioner attorney was ineffective for waiving this vital hearing. Petitioner was later convicted of these offenses and now is serving an unconstitutional sentence to life without the possibility of parole. Since the time of both Miller and Montgomery Petitioner is now serving an Cruel and Unusual Punishment. Petitioner now seek justice from this Court by not allowing a constitutional issue to be denied. By counsel waiving Petitioner juvenile hearing this prevented Petitioner ability to allocate witness, or being waiver on lesser included offense, also Petitioner could have remained in juvenile court.

The question presented is whether a juvenile's mandatory life without parole sentence is invalid and may be challenged now because the ineffective assistance of trial counsel waived Petitioner juvenile dispositional hearing MCL 712A.4(4); whereas the best interest is for the juvenile. Counsel's duty was to protect and properly inform and instruct the juvenile. This process would also had preserved Petitioner jurisdiction issue, where Petitioner was under the child protection order MCR 6.900 before he was bound over improperly as an adult (See Pet. APP. A). Petitioner juvenile judge and legal guardian should have been notified. It took seventeen days later before juvenile judge was notified of Petitioner's arrest. (See Pet. APP. A)Clearly this was not only ineffective assistance of counsel see. *Strickland v. Washington* 466 U.S. 668 but a miscarriage of justice took place. Petitioner 6th and 14th Amendment has been violated.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jermaine D. Hill respectfully submits this petition for a writ of certiorari.

OPINIONS BELOW

The opinion of the Wayne County Circuit Court denying Petitioner's post-conviction motion for relief from judgment and reconsideration. (See Pet. APP. C) Petitioner has been filing for appeals throughout his stay in prison; People v. Hill 1998 Mich App. Lexis 1286 (April 3, 1998), People v. Hill 459 Mich 933 1998 Mich Lexis 3445 (Dec. 30, 1998), People v. Hill, 2018 Mich App. Lexis 859 (March 23, 2018) People v. Hill 503 Mich. 887 (Oct. 30, 2018), Hill v. Rewerts, 2020 U.S. Dist. Lexis 7440 (Jan. 16, 2020), Hill v. Bauman, 2020 U.S. App. Lexis 16417 (May 21, 2020).

In all of the above opinions Petitioner received denials.

JURISDICTION

The Michigan courts (Appeals and Supreme) has denied Petitioner's appeals, April 3, 1998, December 30, 1998, April 5, & 21 2017, March 23, 2018, October 30, 2018 and Eastern District and 6th Circuit Appeals Jan. 16, 2020, May 21, 2020. This Court has jurisdiction under 28 U.S.C. sec. 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment VIII [1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV [1868]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 jurisdiction the equal protection of the laws.

The Historical Laws And Statutes

of 1995: MCL 712A.2a (3)

Continuing jurisdiction beyond maximum age; definitions.

(3) As used in this chapter, "child", "minor" or any other term signifying a person under the age of 18 applies to a person 18 years of age or older concerning whom proceedings are commenced in the juvenile division of the probate court pursuant to section 2 of this chapter and over whom the juvenile division has continuing jurisdiction pursuant to subsection (1).

The Historical Laws And Statutes

of 1995 MCL 712A.4(4)

Waiver of jurisdiction when child of 14 or older accused of felony.

(4) Upon a showing of probable cause under subsection (3), the court shall conduct a hearing to determine if the best interests of the juvenile and the public would be served by granting a waiver of jurisdiction to the court of general criminal jurisdiction. In making its determination, the court shall consider all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

The historical Laws And Statutes
of 1995: MCL 712A.6
Jurisdiction; adults.

The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A and chapter 10C of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082 and 600.1099b to 600.1099m, and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders must be incidental to the jurisdiction of the court over the juvenile or juveniles. under its jurisdiction.

MCL § 803.222

(C) "Juvenile" means a person within the jurisdiction of the family division of the circuit court under section 2(a) of chapter XIII of 1939 PA 288, MCL 712A.2, or within the jurisdiction of the circuit court under section 606 of the circuit court, or an institution operated as an agency of the county or the family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 18(1)(e) of chapter XIII of 1939 PA 288, MCL 712A.18, or under section 27a of chapter IV or section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 764.27 and 769.1

MCL 803.225. Commitment report; petition to conduct review hearing; combining annual report with review hearing.

(2) If the department or county juvenile agency, as applicable, believe that the juvenile has been rehabilitated and does not present a serious risk to public safety,

the department or county juvenile agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the continuing court has continuing jurisdiction over the juvenile, at any time before the juvenile becomes 21 years of age.

STATEMENT OF FACTS

That on March 29, 1993, Petitioner was 16 years old when he was apprehended for some arm robberies that took place March 25, 1993; he was sent to the Wayne County Youth Home. (See. Pet. APP.K) That on April 2, 1993 Petitioner had a preliminary hearing. On June 6, 1993 Petitioner was committed by Dalton A. Roberson as a juvenile until his 21st birthday under the Department of Social Services. (See. Pet. APP. H) That on February 6, 1995 Petitioner was before the Hon. Dalton A. Roberson for a release hearing. That on February 7, 1995 Petitioner was placed on supervised independent living until his 21st birthday under Spectrum Human Services. (See. Pet. APP.H) From February 7, 1995 to November 20, 1995 Petitioner was mandated to report to the DSS program on Dexter and Elmhurst in Detroit, Michigan; which consisted of schooling or job hunting. As well as on a tracking system where he had to sign three times a day with a tracking officer of juvenile court.

That on November 20, 1995 Petitioner was apprehended for 1st degree homicide, attempted homicide, robbery and felony fire arm. That on November 22, 1995 prosecutor filed for warrant. (See Pet. APP.A,B) That on November 24, 1995 Petitioner was arraigned on warrant by judge Jackson. That on December 4, 1995 Petitioner was taken in front of judge Waterstone. That on December 6, 1995 Petitioner juvenile judge was final notified and he was taken in front of juvenile judge Dalton A. Roberson for a juvenile waiver hearing.

That on January 26, 1996 Petitioner was taken in front of judge Helen E. Brown for Final-Co. That on October 1, 1996 Petitioner began jury trial in front of judge Helen Brown.

That on October 18, 1996 Petitioner was sentence to life without the possibility of parole and 25 to life for a homicide and attempted homicide. That on October 31, 1996 Petitioner was found in violation of his juvenile probation and was resentence for (3) arm robberies that he committed in 1993. (see Pet. APP.J,N)

SUMMARY OF ARGUMENT

"THIS IS A CASE OF FIRST IMPRESSION". The state of Michigan did not afford Petitioner a Miller Hearing under Miller v. Alabama and Montgomery v. Louisiana. Petitioner is serving a life sentence without the possibility of parole and he was a juvenile at the time of his offense. (See Pet. APP.H,5) In 1993 Petitioner was 16 years old and was committed to the juvenile court for some juvenile offense(s) until his 21st birthday. (See Pet. APP.J,K,M) In 1995 Petitioner was placed on juvenile probation under the Youthful Training Act (See. Pet. APP.J,K) On November 20th 1995 Petitioner was 19 years of age and was apprehended for a homicide and a attempted homicide, while still under the exclusive jurisdiction of the juvenile court. Petitioner was bounded over as an adult but once realized that Petitioner was still a juvenile under the exclusive jurisdiction of the juvenile court. (See Pet. APP. K) Petitioner was taken back in front of his juvenile judge Dalton A. Roberson (See Pet. APP. A) to request a waiver of Petitioner to be tried in general court under the Historical Statutes and Laws of 1995: MCL 712A.4 (4)

Petitioner counsel was ineffective for waiving this juvenile hearing that acted as the juvenile preliminary hearing as an adult. This also prevented Petitioner from preserving his jurisdictional claim, having the ability to allocute any witnesses, and prevented Petitioner from being waived on lesser included offense(s).

In 2012 this Court has ruled that it is against the 8th Amendment to sentence a juvenile at the time of his/her offense to life without the possibility of parole without first, being given a Miller Hearing. In 2012 the state of Michigan disagreed with Miller v. Alabama applied to those juvenile's at the time of pre-Miller. (See Pet. APP.G) Therefore, they deemed all claims to be frivolous. Petitioner was clearly a juvenile at the time of his offense in 1995 (See Pet. APP.HH) and he should had been entitled to a Miller Hearing. In 2016 this Court ruled in Montgomery v. Louisiana that Miller was retroactive to those juvenile's pre-Miller. Petitioner then filed a Motion For Relief From Judgment seeking relief.

New scientific evidence has shown what society didn't know or understand upon the time of Petitioner's sentence and that is the development of the juvenile brains. In 1990 George H.W. Bush launched the "Decade of the Brain" initiative to "enhance public awareness of benefits to be derived from the brain research." (Project on the Decade of the Brain, Library of Congress) This is a legal question that has to be addressed amongst the lower courts. Whether those under the jurisdiction of the juvenile court should be afforded a Miller Hearing...

ARGUMENT

I. Did the State of Michigan violate Petitioner's Constitutional right by preventing him from filing claim under Miller v. Alabama in 2012 whereas it's cruel and unusual punishment to sentence a juvenile to life without the possibility of parole.

"THIS IS A CASE OF FIRST IMPRESSION" In 1993 Petitioner was 16 years old and was committed to the juvenile court until his 21st birthday for some juvenile offense(s). In 1995 Petitioner was 19 years old and still under the exclusive jurisdiction of the juvenile court until his 21st birthday when he committed a homicide and attempted homicide. Due to the fact that the juvenile court still had exclusive jurisdiction over Petitioner he had to be given a juvenile waiver hearing under the historical statutes and laws of 1995: MCL 712.2a, MCL 712A.4(4), 769.1 (3) in order to be tried in adult court.

Petitioner counsel was ineffective by waiving juvenile hearing. This process acted as a preliminary hearing for the juvenile and should never be waived. This also, prevented Petitioner from preserving his jurisdictional defect claim. Petitioner was under the Historical Statute and Laws of 1995: MCL 803.222 - 803.225, MCL 803.301 - 803.309, MCL 712A.1 - 712A.32, MCL 769.1 (See Pet. APP's II, S)

In 2012 this Court ruled that it is unconstitutional to sentence a juvenile to life without the possibility of parole without first being given a Miller Hearing. Inside of the state of Michigan the prosecutor Kym Worthy and attorney general Bill Shuttie did not agree that in 2012 Miller v. Alabama 567 US 649 should be retroactive to those juveniles who were already in prison before 2012. (See Pet. APP F)and therefore did not uphold Miller v. Alabama 567 US 649 until January 25, 2016 in Montgomery v. Louisiana 136 S.Ct 718 (See Pet. APP F) when this Court defined it to be Retroactive for those juveniles who were already sentence before 2012 Miller.

II. Petitioner is entitled to equitable tolling.

28 U.S.C. sec. 2244(d)(1)(A): The statue provides for tolling of the limitations period during the time in which "a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending" 28 U.S.C. sec. 2244(d)(2). And, under certain circumstances, the AEDPA limitations period may be tolled. Holland v. Florida, 560 U.S. 631 "[A] Petitioner is entitled to equitably tolling only if he shows (1) that he has been pursuing his rights diligently, which Petitioner has shown (See Pet. APP.I, R) and

(2) that some extraordinary circumstance stood in his way and prevented timely filing. ID. at 649 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418. Petitioner again has shown that he has been pursuing his rights after this Court ruled in *Miller v. Alabama* 567 US 649.

A Habeas Corpus Petitioner is entitled to equitable tolling only if two requirements are met. First, the Petitioner must establish "that he has been pursuing his rights diligently." *Holland*, 130 S.Ct. at 2562 And second, the Petitioner must show "that some extraordinary circumstance stood in his way and prevented timely filing. Petitioner has not only shown this but establish this; he has been diligently pursuing this legal issue(s) and doing the best the he could do while working pro se. Petitioner has written letters to attorneys, prosecutors, judges, Michigan Judicial Committee(s), and other legal organizations. (See Pet. APP. I, R)

28 U.S.C.S sec. 2253(C)(2) A certificate of appealability may issue under paragraph (1) only if the Petitioner has made a substantial showing of the denial of a constitutional right. *Miller-El v. Cockrell*, 537 U.S. 322.

Petitioner's due process of law was violate when he was bound over as an adult and then seventeen days later was taken in front of his juvenile judge Dalton A. Roberson (See Pet. APP. A) Petitioner's 6th Amendment was also violated when his counselor waived his juvenile dispositional hearing under the Historical Statutes and Laws of 1995: MCL 712A.4(4) and also, prevented Petitioner from presenting his jurisdictional claim.

Petitioner has been trying to obtain his juvenile file(s), transcripts, waiver form and documents in order to show that he was a juvenile under the exclusive jurisdiction of juvenile court at the time of his offense(s). (See Pet. APP. H)

Petitioner motioned to obtain transcripts and documents. This would have been valuable in formation at the time because there was a list of names given to the chief judge of their perspective county's of all defendants who were subjected to the jurisdiction of that court and who must be sentence under Montgomery. (See Pet. APP. F) In *Kyles v. Whitley* 514 U.S. 419, *Giglo v. United States* 405 U.S. 1, and *Brady v. Maryland* 373 U.S. 83; anytime evidence or letters, etc that is being withheld it constitute as a violation of prosecutor's constitutional duty to disclose material evidence favorable to the defense. Petitioner has exhausted his state and federal remedies.

Unlike *Dobb v. United States* 545 U.S. 353, Petitioner was prevented by the State of Michigan from filing under *Miller v. Alabama* 567 U.S. 640 in 2012. (See Davis

v. Michigan 136 S.Ct. 1356, Carp v. Michigan 136 S.Ct 1355, People v. Eliason 300 Mich. App. Lexis 609) It wasn't until 2016 Montgomery v. Louisiana 136 S.Ct. 718 when this Court made Miller retroactive. In Petitioner's interpretation of Miller at the time of 2012 his would be deemed frivolous see Allen v. Stovall 156 F. Supp. 2d 791 and through letters that Petitioner have written to attorneys (See Pet. APP. I) and reading legal news articles he was advised to wait upon the retroactivity in Montgomery v. Louisiana. (See Pet. APP. I) In Dobb's situation the state didn't prevent him from filing his motion when the initial decision was made June 1, 1999 in Richardson v. United States 526 U.S. 813. On January 23, 2017 Petitioner signed and dated his motion for relief from judgment (See Pet. APP. C) and mailed it via unit counselor Mr. Fenn expedited legal mail form. (Mailbox rule Towns v. U.S. 190 F.3d 468)

III. Petitioner's Constitution, 6th, 8th, and 14th Amendment rights have been violated.

Petitioner was a juvenile under the exclusive jurisdiction of the juvenile court and is currently serving life without the possibility of parole which is an unconstitutional sentence under the 8th Amendment for those who were or who are juveniles. Jurists of reason would agree with Petitioner that he not only was a juvenile at the time of his offenses but that Miller and Montgomery should be extended to him. In Rhines 544 U.S. 277 A Petitioner must satisfy three requirements to justify a stay. First, the Petitioner must present good cause for his or her failure to exhaust secondly, the Petitioner must not be plainly meritless. Third, there must be no indication that Petitioner engaged in intentionally dilatory litigation tactics. (See Malvo v. Mathena 259 F. Supp. 3rd. 321.)

As stated in Montgomery "Unlike the rule the Court announces today. this limitation at least reflects a constitutional principle. Only when state courts have chosen to entertain a federal claim can the Supremacy Clause conceivable command a state court to apply federal law. As we explained last term, private have no "constitution...right to enforce federal laws against the States." Armstrong 575 U.S., at 135 S.Ct. 1378. Instead, the Constitution leaves the initial choice to entertain federal claims up to state courts, which are "tribunals over which the government of the Union has no adequate control, and which may be closed to any claim assert under a law of the United State". Osborn v. Bank of United States, 22 U.S. 738, Wheat. 738. States therefore have a modest path to lessen the burdens that today's decision will inflict on their courts. States can stop entertaining claims alleging that this Court's 8th Amendment decisions invalidated a sentence,

and leave federal habeas courts to shoulder the burden of adjudicating such claims in the first instance whatever the desirability of that choice, it is one the Constitution allows States to make. Not only does the Courts novel constitutional right lack any constitutional foundation; the reasoning the Court uses to construct this right lacks any logical stopping point. If as the court supposes, the Constitution bars courts from insisting that person remain in prison when their convictions or sentences are later deemed UNCONSTITUTIONAL, why can courts let stand by a judgment that wrongly decided any unconstitutional question?

Petitioner clearly is serving an unconstitutional sentence, he was under the exclusive jurisdiction of the juvenile court. The historical statute and laws of 1995: MCL712A.1 - 712A.32 (See Pet. App. K) The society has already deem Petitioner to be a juvenile and should had been treated as one.

Pre-dating Miller and Montgomery was sat upon the realm of developing science after 2012 the developing science has become facts that it is Unconstitutional to sentence a juvenile to life without parole without first giving him a Miller hearing. Petitioner was a juvenile at the time of his offense and any reasonable jurist would agree that the 8th amendment has been violated and Petitioner is serving a Cruel and Unusual sentence, also that Miller and Montgomery should be extended and afforded to Petitioner. That in Miller and Montgomery by Petitioner being a juvenile under the exclusive jurisdiction of the juvenile court (See Pet. app H) he should should be given a meaningful opportunity for rehabilitation and parole.

Now this is the same right that the Petitioner is requesting. Had Petitioner gotten convicted after 2012 under Michigan statutes and laws he would had to go through a Miller Hearing in order to be sentence to life without parole.

The remedy that Petitioner is seeking is to be given the same opportunity as his other juvenile counterparts which is a Miller Hearing. Petitioner hope that this Court considers the fact that Petitioners case is a case of "First Impression".

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted and the Michigan courts should be ordered to vacate Petitioner's conviction and resentence Petitioner. Petitioner is under a unconstitutional sentence.

SUMMARY OF ARGUMENT

"THIS IS A CASE OF FIST IMPORESSION", The state of Michigan did not afford Petitioner a Miller Hearing under *Miller v. Alabama* and *Montgomery v. Louisiana*. Petitioner is serving a life sentence without the parole. In 1993 Petitioner was 16 years old and was committed to the juvenile court for some juvenile offenses until his 21st birthday. (See Pet. APP. J) In February 1995 Petitioner was 18 years old when placed on juvenile probation under the Youthful Training Act MCL 712A.18 (See Pet. APP. K) On November 20th, 1995 Petitioner was 19 years old and was apprehended for a homicide and an attempted homicide, while still under the exclusive jurisdiction of the juvenile court. Petitioner was bound over as an adult but once realized that he was still a juvenile (See Pet. APP. A) which violated Petitioner 14th Amendment and becoming jurisdictional. Petitioner was taken back in front of his juvenile judge Dalton A. Roberson (See Pet. APP. A) to request proper waiver to general court. The Historical Laws and Statues of 1995: MCL 712A.4 (4)

In 2012 this Court has ruled that it is unconstitutional to sentence a juvenile at the time of his/her offense to life without the possibility of parole without first being given a Miller Hearing. In 2012 the state of Michigan disagreed with *Miller v. Alabama* being applied to those juveniles at the time of pre-Miller

Since the time of Miller and Montgomery science has proven that those juveniles who were 18 and 19 years old should be extended to those in Miller situation because of the brain science that has been evolving. (See *In re Lambert*, 2018 U.S. App. Lexis 25332, *People v. House*, 2015 IL App. (1st) 110580, *People v. Williams*, 291 IL App. 3d 1125, *Cruz v. United States*, 2018 U.S. Dist. Lexis 52924; also *Cruz v. United States*, transcripts with Dr. Laurence Steinberg (Sept. 13, 2017)

There are also other readings of support that agrees Miller and Montgomery should be extended to Petitioner. See 85 Fordham L. Rev 641, 88 Temp. L. Rev 769, *NRA of Am. v. Bureau of Alcohol*, 700 F.3d 185, *Essay: The Legal Construction of Adolescence*, 29 Hofstra L. Rev. 547, 68 Temp. L. Rev. 1897, 91 Nw. U. L. Rev 453, 55 U. Cin. L. Rev. 943, 82 J. Crim. L. & Criminology 360, and 37 Miss. C. L. Rev 264.

ARGUMENT

II. Petitioner is entitled to a Miller Hearing because Petitioner was a "juvenile" at the time of his offense, he is serving life without the possibility of parole which is an Unconstitutional sentence under the 8th Amendment entitling him to relief required in both Miller v. Alabama and Montgomery v. Louisiana.

"THIS IS A CASE OF FIRST IMPRESSION". In 1995 when Petitioner committed a homicide and an attempted homicide he was under the exclusive jurisdiction of the juvenile court. Before Petitioner was waived over to general court under the Historical Laws and statutes of 1995: MCL 712.4(4) Petitioner was entitled to a juvenile "dispositional" hearing where counsel ineffectively waived juvenile rights which prevented him from either remaining in juvenile court or being waived on lesser included offenses.

I. The Petitioner sentence is Unconstitutional and violates his 8th Amendment "Cruel and Unusual Punishment".

This Court has ruled in Miller v. Alabama 567 U.S. 649 that it is "Unconstitutional" to sentence a juvenile to life without the possibility of parole and in Montgomery v. Louisiana 136 S.Ct. 718

this Court has ruled that it is retroactive to those juveniles pre-Miller.

Petitioner was a juvenile at the time of his offense on November 10, 1995. (See Pet. APP. J, K) If the courts determines the sentence is invalid, the Court has authority to correct the sentence. See U.S. v. Lavoie, *supra*.

A. New Scientific Evidence supporting the development of the juveniles brain and function until age 21 years old.

Though Petitioner was 19 years old at the time of his offense he was under the exclusive jurisdiction of juvenile court under the Historical Laws and Statues of 1995 MCL 712A.2. (See Pet. App. H, J, K) The Supreme Court and The Transformation of Juvenile Sentencing package that was put together by Elizabeth Scott, Thomas Grisso and Laurence Steinberg on page 7: Development research on age differences in risk-taking is extensive and consistence. Many studies have found that adolescents and individuals in their early 20's are more likely than either children or somewhat older adults to engage in risky behavior; most form of risk-taking follow an inverted U shape curve with age, increasing between childhood and adolescence, peaking in either mid-or-late adolescence and declining thereafter. In recent years,

psychologists have theorized that the relationship between age and risk-taking is best understood by considering the contrasting developmental trajectories of sensation-seeking and impulse control. Sensation-seeking—the tendency to pursue novel, exciting and rewarding experiences—increases substantially around the time of puberty and remains high well into the early 20's, when it begins to decline.

Petitioner was already deemed by society to have been a juvenile and was under the juvenile exclusive jurisdiction at the time of his offense. Furthermore, the scientific advances that have shaped our society's improved understanding of the human brain would have been unfathomable to those considering these issues in 1983. In 1990, President George H.W. Bush launched the "Decade of the Brain" initiative to "enhance public awareness of benefits to be derived from the brain research".

In the years since *Roper*, research has constantly shown that such development actually continues beyond the age of 18. Indeed, the line drawn by the U.S. Supreme Court no longer fully reflects the state of the science on adolescent development. While there were findings that pointed to this conclusion prior to 2005, a wide body of research has since provided us with an expanded understanding of behavioral and psychological tendencies of 18 to 21 years old. Findings demonstrate that 18 to 21 year olds have a diminished capacity to understand the consequences of their actions and control their behavior in ways similar to youth under 18. Additionally, research suggests that late adolescents, like juveniles, are more prone to risk-taking and that they act more impulsively than older adults in ways that likely influence their criminal conduct. According to one of the studies conducted by Dr. Laurence Steinberg, a leading adolescent development expert, 18 to 21 years olds are not fully mature enough to anticipate future consequences. (Also see, *Luis Noel Cruz v. United States of America* September 13, 2017 in front of the Honorable Janet C. Hall)

Petitioner points out how other states have accepted 18 and 19 year olds as juvenile and have extended *Miller* hearings to these kind of juveniles. Petitioner was already established as a juvenile at the time of his offense (See Pet. APP. J) Science has proven that the Petitioner should be entitled to a *Miller* hearing.

For example, in 1984, the U.S. Congress passed the National Minimum Drinking Age Act, which incentivized states to set their legal age for alcohol purchases at age 21. (23 U.S.C. sec. 158 (1984)). Since then, five states (California, Hawaii, New Jersey, Maine, and Oregon) have also raised the legal age to purchase cigarettes to age 21. In addition to restrictions on purchases, many car rental companies have

set minimum rental ages at 20 or 21, with higher rental fees for individuals under age 25.

IN the context of child-serving agencies, both the child welfare and education systems in states across the country now extend their services to individuals through age 21, recognizing that youth do not reach levels of adult independence and responsibility at age 18. (The same as Petitioner being 19 years old but still under the care and exclusive jurisdiction of the juvenile court)(See Pet. APP. H,K) In fact, 25 states have extended foster care or state-funded transitional services to late adolescents through the Fostering Connections to Success and Increasing Adoptions.

By contrast, numerous fMRI studies show relatively greater activity during adolescence than in childhood or adulthood in a brain system that is located mainly in the ventral striatum and ventromedial prefrontal cortex. This system that is known to have an important role in the processing of emotional and social information and in the valuation and prediction of reward and punishment. According to what has been referred to as a "dual systems model," the heightened responsiveness of this social-emotional, incentive-processing systems is thought to overwhelm or at the very least, tax the capacities of the self-regulatory system, compromising adolescent's abilities to temper strong positive and negative emotions and inclining them towards sensation-seeking, risk-taking and impulse antisocial acts. Although it is less well developed a growing literature on the development of the "social brain," which was presented to the Court in Miller, provides evidence of functional changes that are consistent with heightened attention to the opinions of others, which may be linked to adolescent's greater susceptibility to peer influence, one of the hallmark characteristics of this age group that was highlighted by the Court in the sentencing opinions.

Petitioner, argues the fact that he spent from the age of 16 to 18 1/2 in a boys training school for juveniles. (See Pet. APP. H) amongst his peers and that his mental development was that of a juvenile, which is why he remained under the jurisdiction of the juvenile court until a later age. (See. Pet. APP. H)

Petitioner, has shown since his incarceration that he can be amenable to treatment, repairable and that he can grow out of an adolescent mind and behavior. Since been incarcerated for over 24 years Petitioner has only had (6) major misconduct tickets. So since from the age of 19 years old Petitioner has grown from the adolescent state while maturing in the prison system. Petitioner has

accomplished educational programs, job ready skills, custodial maintenance, horticulture, landscaping, dog training skills, he has served on the Warden forum committee, continue to keep a prison work assignment and is currently working as a housing unit porter.

The remedy that Petitioner is seeking is to be given the same opportunity as his other juvenile counterparts which is a Miller Hearing. Petitioner hope that this Court considers the fact that Petitioner's case is a case of "First Impression".

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted and the Michigan courts should be ordered to vacate Petitioner's conviction and resentence Petitioner. Petitioner is under a unconstitutional sentence.

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SUMMARY OF ARGUMENT

In 1995 this 19 year old Petitioner was under the exclusive jurisdiction of the In 1993 Petitioner was 16 years old and was committed to the juvenile court by judge Dalton A. Roberson (See Pet. App. J, K) In 1995 Petitioner was 19 years old and still under the exclusive jurisdiction of the juvenile court until his 21st birthday. (See Pet. App. H, O) On November 20, 1995 Petitioner was apprehended for a homicide and a attempted homicide. When taken to the police station Petitioner legal guardian or juvenile judge was not contacted. Petitioner was held for two days without any notification to his legal guardians or juvenile judge. (See Pet. App. A, B) Prosecutor never issued a warrant under MCR 6.900 (6.907). On November 22, 1995 a warrant was finally issued and signed by judge Castello (See Pet. APP. B, L) On November 24, Petitioner was bound over into adult court without juvenile judge consent or knowledge. Seventeen days later it was realized and Petitioner was sent before juvenile judge in juvenile court for a waiver hearing into adult court; which had already improperly taken place on the 24th of November. (See. Pet. APP. A, J, K,) Petitioner counsel was ineffective by waiving this hearing where miscarriage of justice had taking place. Counsel should never had waived this hearing. Petitioner juvenile waiver hearing under the Historical Statutes of 1995 MCL 712A.4(4) allows for Petitioner to allocate any witnesses, to determine the best interest of the juvenile and public whether juvenile should be charged in adult court or not. At this hearing Petitioner had the ability to preserve his jurisdictional defect claim. Counsel fell below the lines of effectiveness. Strickland v. Washington 466 US 668.

ARGUMENT

Petitioner is entitled to Relief From Judgment because both Juvenile Court and Circuit Court judge was in error of "juvenile" rights under the Historical Laws and Statutes of 1995: MCL 712A.4(4), MCL 769.1 and MCR 6.900 by not conducting a Dispositional Hearing, to see if the best interest of the juvenile and public to keep juvenile in the juvenile court or to waive jurisdiction to general court.

In 1995 when Petitioner was 19 years old he was apprehended for a homicide and an attempted homicide. Petitioner was entitled to a juvenile dispositional hearing to see if the best interest of the juvenile was to keep him inside juvenile court or to waiver jurisdiction (MCL 712A.4(4)(a-f)), also at that time Petitioner had opportunity to allocute any witnesses and to have charges reduced to lesser included offenses before bounding over. Much like suggested in *Miller v. Alabama* 567 U.S. 649 it is to see if the juvenile can be redeemable so a (6) stage criteria is given.

A. Jurisdiction

Petitioner's counsel was ineffective by advising Petitioner to waive this juvenile hearing; stating that they had already bound you over, therefore this hearing is acting only as a formality. Petitioner was in fact given a bound hearing and bound over as an adult before he was taken in front of juvenile judge Dalton A. Roberson (See Pet. APP. A) who had exclusive jurisdiction over Petitioner under the Historical Statutes and Laws of 1995: MCL 712A.2a, MCL 712A.18d, MCL 769.1 After Petitioner was already bound over as an adult seventeen days later then he was scheduled for a juvenile hearing in front of his juvenile judge. This violated Petitioner's 14th amendment and the historical laws and statutes of 1995 MCR 6.907(A), MCL 712A.2c, MCL 712A.4,3, MCL 712A.11(1)(2). Making Petitioners argument and claim jurisdictional in nature (jurisdictional defect).

When Petitioner was waived by the district court before sending him in front of his juvenile judge as required MCR 6.907. The general court lacked both subject-matter and personal jurisdiction due to the Government's failure to accord due process in the juvenile criminal matter, that fell within the "automatic waiver procedure" under MCL 600.606. The due process failure implicates not only a constitutional concern, but a jurisdictional question as well. The unconstitutionality of the government failures in question have been sufficiently determined by both the United States and Michigan Supreme Courts, that being, its constitutional duties and requirements.

B. Relevant Facts and Legal Analysis

The fifth, Sixth, Eight and Fourteenth Amendments to the United States Constitution (and Michigan constitution counterparts) guarantee due process of law, fair trials, protections against cruel and/or unusual punishment and those protections are applicable to the States. Basic to any criminal trial, proceedings and sentence (punishment), for a juvenile offender whether or not an automatic waiver is involved, the carefully prescribed (mandated) due process procedures must be accorded to the juvenile offender and strictly complied with by the government without exception.

The primary subject of the habeas corpus action in this case, involves the government's failure to accord due process in the juvenile criminal matter, that fell within the "automatic waiver procedure" under MCL 600.606, and its jurisdictional implications for non-compliance.

Jurisdictional challenges may be brought at any time, see U.S. v. Cotton, 535 US 625, 632 (202). See also Virgin Islands v. Williams, 892 F2d 305, 309 (3rd Cir. 1989), citing Bender v. Williamsport Area Sch Dist., 475 US 534, 541 (1986).

Although, the Automatic Waiver Rule appears to negate the requirement of taking the child (juvenile) offender to the family division of probate court that rule does not relieve the prosecutor of the "Arraignment on complaint and warrant and Preliminary Examination" within 24 hours of arrest (or authorization of the Complaint and Warrant by the prosecuting attorney), see MCR 6.907(A)(1) and (2).

More importantly, the "prosecuting attorney" must make good faith effort to notify the parent of the juvenile of the arraignment. MCR 6.907(A). As the record reveals Petitioner was a juvenile (still under tracking) when taken into custody for the instant offense on November 20, 1995. (See Pet. APP. B, A) Although Petitioner was 19 years of age, he was still under juvenile supervision and care). See Pet. APP.

On October 1, 1988 the Michigan Legislature created and passed a bill and package which dealt with a new hybrid cases. The new law gave the prosecutor(s) much greater discretion in deciding whether to charge a juvenile as an adult. A prosecutor could proceed with an "automatic", "traditional", or a "permissive" waiver, by authorizing an complaint and warrant against a juvenile 15 or 16 years of age or those under it's jurisdiction who is accused of any one of nine enumerated felonies punishable by life imprisonment.

In addition to the new legislation, the Michigan Supreme Court has promulgated a set of proposed rules and has directed that the courts are "urged and encouraged" to use the proposed rules as guidelines until they were withdrawn or adopted by

the court.

Since the prosecutor has been given much greater discretion under the new legislation, there will be wide variations in charging policies from county to county. For example, the Wayne County Prosecutor would screen first and second-degree murder cases for consideration for a warrant. For the other counties, prosecutors may use the automatic waiver provisions in all cases involving the enumerated felonies. Defense counsel will therefore have to become familiar with local policy and practice. **WAIVER DISPOSITION HEARING:** The new legislation has not substantially altered the dispositional phase of a "permissive", "traditional" and "automatic" waiver hearing. The prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by waiver. MCR 5.950(B)(2)(b). While a waiver disposition is analogous to criminal sentencing, it is still a much more extensive evidentiary hearing, including a limited right of confrontation.

In MCL 712A.4(4), modifies Schumacher somewhat, and permits the juvenile court to give waiver criterion whatever weight is "appropriate to the circumstances." Nonetheless, there is still the presumption against waiver which the prosecutor must overcome by a preponderance of the evidence, and the primary inquiry of the waiver dispositional hearing continues to be whether the juvenile is amenable to treatment as a juvenile. Schumacher and Dunbar remain the leading Michigan cases.

Not only has the age of juvenile court jurisdiction has been extended from 19 to 21 MCL 712A.2a; the juvenile court can retain jurisdiction over a juvenile committed as a state ward and placed in a juvenile. Despite massive prison construction, the adult correctional system is more crowded than ever. (See Pet. This means a few, if any educational or vocational services are possible. Rather than preparing prisoners for future release, corrections officials are consumed with problems of overcrowding. Programs that do exist are "end-loaded", that is, are not available to a prisoner until near the end of his/her sentence. In the meantime, prisoners are simply warehoused. So on the other hand, the juvenile justice system will continue to be focused on rehabilitation from entry through release. In addition to the services that already exist, the Department of Social Services planned new programs pursuant to this bill legislation had passed. Including long-term, physically secure residential facilities. Since the juvenile system has or will develop programs with a greater likelihood for rehabilitation in secure settings, the community and the juvenile will be better served by keeping the juvenile system in order to effectively conduct either a dispositional hearing in

adult court after an automatic, traditional or permissive waiver hearing in juvenile or family court.

At the time of Petitioner's offense these Michigan Statutes and Laws all applied to him. The Historical laws of 1995.

C. Ineffective assistance of Trial Counsel

Petitioner also contends that he was not afforded effective assistance of trial counsel on the grounds that (1) his trial counsel failed to object to any jurisdictional error; (2) counsel failed to object to the prosecution's conduct; (3) counsel failed to conduct a proper investigation and present exculpatory witnesses; (4) failed to investigate the background of the prosecution's witness and (5) failed to properly instruct Petitioner on waiving this vital juvenile hearing.

With respect to claims of ineffective assistance of counsel. Petitioner bears the burden of overcoming the strong presumption of effective assistance of counsel and must show that counsel's performance fell below an objective standard of reasonableness and deprived him/her of a fair trial. *People v. Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995)

To establish that trial counsel was ineffective, a defendant must show a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. In addition, a defendant's counsel cannot be deemed ineffective for failing to make a futile motion. *People v. Fike*, 228 Mich App 178, *People v. Jordan*, 275 Mich App 659.

In Petitioner's case there is a jurisdictional defect that took place by not notifying his juvenile judge Dalton A. Roberson until nineteen days later to properly get waiver of the juvenile under MCL 712A.4(4).

D. Ineffective Assistance of Appellate Counsel

Petitioner's final contention is that he was deprived of effective appellate counsel for failing to raise all of the above purported errors and for failing to raise the issue of ineffective assistance of trial counsel. The test for ineffective assistance of appellate counsel is the same as that applicable to a claim of ineffective assistance of trial counsel. *People v. Pratt*, 254 Mich App 425. Thus, defendant must show that appellate counsel's decisions fell below an objective standard of reasonableness and prejudiced his appeal. In addition, the representation of appellate counsel cannot be deemed ineffective for failing to raise indisputable issues since an attorney is not required to make meritless arguments. *People v. Riley (After remand)*, 468 Mich 135.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted and the Michigan courts should be ordered to vacate Petitioner's conviction and release Petitioner or grant him a juvenile disposition hearing, this Court should grant the petition for writ of certiorari.

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