No. 20-6523

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JASON LAMONT BROOKS — PETITIONER
(Your Name)

vs.

SCOTT JORDAN, WARDEN LLCC — RESPONDENT(S)

ON PETITION FOR A WRITT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

JASON LAMONT BROOKS
(Your Name)

L.L.C.C.C., P.O. BOX 6[illegible]
(Address)

LAGRANGE, KENTUCKY 40031
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QUESTION(S) PRESENTED

1. Does the AEDPA time-bar apply to a "protected class of citizen's" claim for relief?

2. Does the ***Eighth Amendment*** prohibit a "de jure"/"de facto" LWOP sentence under ***Montgomery, Miller, Graham*** when a state intentionally refuses to grant a juvenile offender a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation?"

LIST OF PARTIES

[x] 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:

RELATED CASES

MONTGOMERY V. LOUISIANA, 136 S.Ct. 718 (2016)

Roper v. Simmons, 543 U.S. 551

Graham v. Florida, 560 U.S. 48

Miller v. Alabama, 132 S.Ct. 2455

Virginia v. LeBlanc, 137 S.Ct 1726 (2017)

Phon v. Commonwealth, 545 .S.W3d 290 (Ky.2018)

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CASES PAGE NUMBER

STATUTES AND RULES

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 A to the petition and is

[ ] reported at 2020 U.S.App.LEXIS 18078; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at 2019 U.S.Dist.LEXIS 21755; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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 2018 Ky.LEXIS 578; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the KENTUCKY APPEALS court appears at Appendix D to the petition and is

[ ] reported at 2018 Ky.App.Unpub.LEXIS 269; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 8, 2020.

[ ] 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: October 9, 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was Decemberr 5, 2018. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: 7-12-18, 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §2244

EIGHTH AMENDMENT OF U.S. CONSTITUTION

ARTICLE VI; SUPREMACY CLAUSE

Kentucky Revised Statute 635.020(4)

Kentucky Revised Statute 507.020

Kentucky Revised Statute 532.030(1)

Kentucky Revised Statute 640.030(2)

Kentucky Revised Statute 635.020(4)

Kentucky Revised Statute Chapter 439

STATEMENT OF CASE

Petitioner was juvenile when he entered into a guilty plea for the crime of Murder in 1998. The term agreed to was a life sentence without the benefit of parole for a minimum of twelve (12). After twelve (12) years, Brooks met with the parole Board in 2009, which denied him parole for another twelve (12) years **based solely on "severity of crime.**" Additionally, the board had foreknowledge Appellant was not the actual shooter. After the announcement of ***Montgomery v. Louisiana, 136 S.Ct 718 (2016)***, Appellant challenged his conviction based upon the state of Kentucky's failure to adhere to the Supremacy Clause in providing to a specific "protected class of citizen" (juvenile offender serving a de facto LWOP sentence) the meaningful opportunity to demonstrate rehabilitation and maturity due to state statutory law.

Petitioner bases his challenge upon the fact that this Court ignored the "evolving standard of decency" and his status as a "protective class of citizen" when erroneously applying the ***§2244*** statute of limitation bar against him, and its refusal to address the exceptional importance of whether a state violates the Supremacy Clause by its refusal to comply with SCOTUS mandate. Additionally, Petitioner challenges whether such a failure to comply with the newly announced law allows the federal courts to maintain jurisdiction over the subject matter. Brooks respectfully petitions for rehearing in light of the conflict with his status as

a "protective class of citizen" versus the AEDPA statute of limitations and the challenged state's inactions.

REASONS FOR GRANTING PETITION

"JUST FRUITS." The ideology propagated by state and federal legislators across the board adopted harsher sentencing policies and practices which made the United States of America the most incarcerated nation in the world. It was this Court that empowered the habeas courts to invoke the ***Eighth Amendment*** "evolving standard of decency" jurisprudence to upset punishments that were unconstitutional when imposed but "cruel and unusual" in a newly enlightened society. This Court recognized a child lacks maturity and has an under developed sense of responsibility leads to recklessness, impulsivity, and heedless risk-taking. They are more vulnerable to negative influences and outside peer pressure from peers and family. Their character is not well formed as an adult's with traits less fixed and actions less likely to be evidence of irretrievable depravity. See ***Roper, Graham, and Miller***. The evolution of this decency has been extended to juveniles to designate them as a "special class." Mr. Brooks only challenges Kentucky's obstreperousness in using this standard of decency when it comes to its juveniles.

ARGUMENT

1. Does the AEDPA time-bar apply to a "protected class of citizen's" claim for relief when the state fails to adhere to the Supremacy Clause of the U.S. Constitution?

Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court "has a duty to grant the relief that federal law requires." *Yates*, 484 U.S., at 218, 108 S. Ct. 534, 98 L. Ed. 2d 546. If a state collateral review court is open to a claim controlled by federal law, the state has a duty to grant relief that federal law requires. ***Yates, 484 US at 218***. Where state collateral review proceedings permit prisoners to challenge lawfulness of their confinement, state cannot refuse to [732] give retroactive effect to a substantive constitutional right that determines the outcome of that challenge. ***Montgomery v. Lousiana, 136 S.Ct. 718 (2016); Id. at 735-36***.

Hence, ***Miller, Roper, Graham, and Montgomery*** all dubbed juvenile offenders as a "protected class of citizen." Once *Miller* gave the states discretionary power on administering its newly announced constitutional law, then made retroactive in *Montgomery*, this Court automatically retains jurisdiction over the subject matter to ensure a state's compliance of which the **§2244** statute of

limitations cannot apply. See Montgomery, Id. at 727-28 (quoting ***Griffith v. Kentucky, 479 U.S. 314 (1987)*** when a constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by this Court; see also ***Virginia v. LeBlanc, 137 S.Ct. 1726 (2017)***). In *Montgomery* it cited:

"...court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the state's sovereign administration of their criminal justice systems. See Ford v. Wainwright, 477 US 399(1986) (We leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences).
Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, [***35] in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, *e.g.*, Wyo. Stat. Ann. §6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment. Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change."

Miller left open a vessel by which the states can choose to grant relief. When Kentucky refused to implement any policy change, the either/or scenario of resentencing to reconsideration of parole hearings with *Miller* guidelines leaves open any challenge which is held retroactive upon *Montgomery*. Petitioner request this Court review the question of exceptional importance regarding **whether *§2244* applies to a "protected class/citizen" to pursue the underlying right/privilege challenged deeming that the case that this Court and the Respondents rely**

upon does not address a specific class' plight. See ***Dodd v. U.S., 545 U.S. 353, 358 (2005***).

As a protected class of citizen, there are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. See *Mackey*, 401 U.S., at 692, n. 7, 91 S. Ct. 1160, 28 L. Ed. 2d 404 (opinion of [**621] Harlan, J.) ("Some rules may have both procedural and substantive ramifications, as I have used those terms here"). For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that [***32] he belongs to the protected class. See, *e.g.*, *Atkins* v. *Virginia*, 536 U.S. 304, 317, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (requiring a procedure to determine whether a particular individual with an intellectual disability "fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus" that execution is impermissible). Those procedural requirements do not, of course, transform substantive rules into procedural ones. The procedure *Miller* prescribes is no different. A hearing where "youth and its

attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. 567 U.S., at ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (slip op., at 1). The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity. ***Id at Montgomery, 734-735***.

In essence, if this ruling is allowed to stand, it propagates the extinguishment of rights provided to a "protected class" of citizen. It proposes that a constitutionally provided protection to a protected class only extends to the point that a statute of limitations allows although violations of the protection may persist. In this instant, Petitioner challenges the fact that until this present day, Kentucky has not followed the ***Supremacy Clause under the U.S. Constitution*** by its failure to refuse youthful/juvenile offenders a meaningful opportunity to demonstrate rehabilitation or maturity for release.

2. Does the *Eighth Amendment* prohibit a "de jure"/"de facto" LWOP sentence under *Montgomery, Miller, Graham* when a state intentionally refuses to grant a juvenile offender a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation

This Court need to answer a question of exceptional importance as to prove once and for all that at no point has either the Kentucky Courts of Justice or the parole board accepted *Miller/Montgomery*. See ***Phon v. Com., 545 S.W.3d 290-***

291, (Ky.2018) (citing that it is not required to make any specific fact-finding before imposing LWOP to juveniles). This is mutiny, unconscionable, and barbaric deeming that it still refuses to consider the *Miller/Montgomery* factors despite SCOTUS mandate under a statutory ruse of honoring the evolving standard of decency.

Based upon the statutory construct of **KRS 635.020(4)**, the Kentucky Courts of Justice ARE mandated to consider a juvenile as an adult when certain criterion is met without any thought to immaturity, impetuosity, and even incorrigibility prior to levying the maximum sentence allowable (life). Hence, **KRS 507.020; KRS 532.030(1); 640.030(2) and 635.020(4)** mandates that the juvenile meeting these prongs is automatically subjected to sentencing as an adult if convicted under the underlying charge. Furthermore, under the current parole board administrative guidelines or those used in the appellant's case, the board was and is not mandated to consider the *Miller* factors prior to deferring a juvenile offender. Hence, the makes his sentence a ***de facto*** life sentence without such *Miller* factor consideration, and Brooks is eligible for a serve out due to Kentucky's refusal to conform to human decency. See ***Belcher, 917 S.W.2d 84 (Ky.App.1996)***. Based on the unchangeable factors that the board deferred Brooks in 2009, the appellant asks this Court to explain where it can gather from the record that the board considered

Miller factors, and if by chance it did not, how can ever show or be considered rehabilitated if it never has to?

In boxing, it's the age old adage of, "**watch the left, watch the left**...," then the guy hits you with a right. ***In Montgomery v. Louisiana, 136 S.Ct. at 742***, it stated:

"So for the five decades Montgomery has spent in prison, not one of this Court's precedents called into question the legality of his sentence—until the People's "standards of decency," as perceived by five Justices, "evolved" yet again in *Miller*."

In ***Brooks v. Commonwealth, 2018 Ky.App.Unpub.LEXIS 269 at [*7]*** it states:

"In other words, the Board would be within its legal rights to deny Brooks parole at his purported next hearing in 2021 and continue denying him parole for the remainder of his natural life, despite any "meaningful changes" he may or may not make. Brooks bargained for a life sentence and whether he remains in prison for the rest of his life or is eventually given his freedom by the Board will be purely at the Board's discretion."

CONCLUSION

This evinces that Kentucky's standard of decency has not evolved. As long as **KRS Chapter 439** does not conform to those *Miller* standards and of its progenies allowing for youthful/juvenile offender a meaningful opportunity to demonstrate maturation or rehabilitation for release, then no juvenile offender

stands a chance when coming before a Kentucky Parole Board panel. Additionally, as of late, no juvenile offender received the *Miller* benefit of a doubt allowing for a meaningful opportunity for parole.

This would be in the same vein of prohibiting a protected class of citizen (LGBTQ) the right to marry or procure same privileges as non-LGBTQ couples when they fail to petition a court within a year contravening the continual and absolute right established. See ***U.S. v. Windsor, 570 U.S. 744 (2013)***. Or, in contravention of the ***15th Amendment***, a person whom did not immediately apply for the right to vote within a year is precluded from doing so?

The Petition for writ of certiorari should be granted.

Respectfully Submitted,

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DATE: