No. 20-7160

In the Supreme Court of the United States

EMMETT GARRISON, IV

Petitioner

v.

STATE OF LOUISIANA

Respondent

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

BRIEF IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether, in light of this Court's recent decision in *Jones v. Mississippi, infra,* this Court should grant certiorari to resolve the issue of whether the Louisiana Trial Court's manner of conducting the Petitioner's "Miller hearing" violated the Eighth Amendment.

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INTRODUCTION

Emmett Garrison IV, hereafter "Petitioner," seeks certiorari from this Court on the question of whether the Louisiana Trial Court violated *Miller v. Alabama, infra* and/or *Montgomery v. Louisiana, infra* in its handling of the Petitioner's "Miller hearing" to determine whether the Petitioner would be sentenced to life imprisonment with parole or life imprisonment without parole for the murder he committed at age seventeen. In so arguing, the Petitioner claims that the Louisiana Trial Court applied a "presumption" in favor of life imprisonment without parole that it required the Petitioner to "rebut." The Petitioner then asks this Court to impose a burden of proof on the State and a presumption against life imprisonment without parole.

The State first respectfully does not concede that this is an accurate characterization of the conduct of the "Miller hearing." However, and more importantly, the State submits that this Court's recent ruling in *Jones v. Mississippi, infra,* which recognized that *Miller* and *Montgomery* dictate only that a juvenile murderer cannot "automatically" be sentenced to life imprisonment without parole but rather that a state must afford the juvenile the opportunity to have the mitigating factor of youth and its attendant characteristics considered, forecloses this question. This Court in *Jones* recognized that all that is needed to comply with *Miller* and *Montgomery* is an opportunity to have the mitigating factor of youth and its attendant characteristics considered such that a life imprisonment without parole sentence is not "automatic" and that the states have wide discretion in fashioning means to

comply with *Miller* and *Montgomery*. Because the Louisiana Trial Court complied fully with *Miller* and *Montgomery* as interpreted by *Jones* and because in *Jones* this Court reiterated its proclamation that states have wide discretion in complying therewith, this Court should now deny certiorari.

STATEMENT OF THE CASE

On May 5, 2016, the Petitioner was indicted along with co-defendant Corey Flag for the Second Degree Murder of Bruce Lutcher, and on September 1, 2016, the Petitioner was charged in an amended indictment with the Second Degree Murder of Mr. Lutcher (Count One), Conspiracy to Commit Armed Robbery (Count Two), Attempted Armed Robbery with a Firearm of Franklin Diaz (Count Three), Attempted Armed Robbery with a Firearm of Fausto Alvarez (Count Five), Attempted Second Degree Murder of Fausto Alvarez (Count Six), Armed Robbery with a Firearm of Jose Galeas (Count Seven), Illegal Use of Weapons (Count Eight), and Illegal Use of Weapons (Count Ten). The Petitioner pled not guilty.

The State filed a notice of intent to introduce "other crimes" evidence, the Petitioner filed an opposition, and on January 23, 2017, the Louisiana Trial Court granted in part and denied in part the State's notice, finding a December 7, 2015 incident inadmissible but finding a December 22, 2015 incident admissible. The Petitioner proceeded to trial on September 5, 2017, and on September 8, 2017, the Petitioner was found guilty as charged on all counts.

Because the Petitioner was under eighteen years of age at the time of his crimes, special sentencing considerations were applicable, and as to the non-homicide crimes the State filed a memorandum to brief the Louisiana Trial Court on applicable law and jurisprudence. On September 14, 2017, the Louisiana Trial Court sentenced the Petitioner to 25 years imprisonment on Count Two, 30 years imprisonment on Count Three, 30 years imprisonment on Count Five, 50 years imprisonment on Count Six, 50 years imprisonment on Count Seven, 10 years imprisonment on Count Eight, and 2 years imprisonment on Count Ten, to be served consecutively and without parole for a total of 197 years imprisonment without benefits. The Petitioner filed a motion to reconsider sentence, which was denied.

Relative to the Second Degree Murder of Mr. Lutcher (Count One), the State timely filed in accordance with applicable law and jurisprudence a notice of intent to seek life imprisonment without parole. As such, the Louisiana Trial Court conducted a "Miller hearing" on October 3, 2018, and on December 3, 2018, the Louisiana Trial Court sentenced the Petitioner to life imprisonment without parole. The Petitioner filed a motion to reconsider sentence, which was denied.

The Petitioner appealed, and on April 23, 2020, the Louisiana Fifth Circuit Court of Appeal affirmed his convictions and sentences. *State v. Garrison,* 19-62 (La. App. 5 Cir. 4/23/20), 297 So.3d 190. The Petitioner then sought writs with the Louisiana Supreme Court, and on September 23, 2020, the Louisiana Supreme Court denied writs. *State v. Garrison,* 20-547 (La. 9/23/20), 301 So.3d 1190. The Petitioner

now seeks certiorari with this Court, and this Court has requested a response from the State of Louisiana. The State of Louisiana's response now follows.

The facts of the Petitioner's crimes are contained in the Louisiana Fifth Circuit Court of Appeal's opinion in the Petitioner's direct appeal. See *State v. Garrison*, 19-62 (La. App. 5 Cir. 4/23/20), 297 So.3d 190.

REASONS FOR DENYING THE PETITION

This Court should deny the instant petition for certiorari because the question presented (i.e., of whether the Louisiana Trial Court's method of conducting the "Miller hearing" in this case violated the Eighth Amendment) is foreclosed by this Court's recent ruling in *Jones v. Mississippi,* 141 S.Ct. 1307 (2021).

The Petitioner claims that the Louisiana Trial Court in this case effectively applied a presumption in favor of life imprisonment without parole at his "Miller hearing" and required him to "rebut" that presumption. The Petitioner then asks this Court to impose a burden of proof on the State and a presumption against life imprisonment without parole. The State respectfully does not concede that this is an accurate reading of the transcript of the "Miller hearing."[1] The Petitioner does correctly point out a diversity among the states as to the conduct of "Miller hearings,"

[1] The Petitioner also notes that the Louisiana Fifth Circuit Court of Appeal, on direct appeal, found that the Petitioner "has failed to rebut the presumption of the constitutionality of his sentence." *State v. Garrison,* 19-62 (La. App. 5 Cir. 4/23/20), 297 So.3d 190, 212. The Respondent notes that while, as discussed infra, this is ultimately irrelevant, a sentence being presumed to be constitutional on appeal is not the same as a sentence being presumed to be constitutional in the sentencing court.

including a diversity on the issue of whether there is any sort of burden or presumption and the nature of that burden or presumption.

However, none of this warrants this Court granting certiorari, particularly in light of this Court's recent ruling in *Jones*. In *Miller v. Alabama,* 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), this Court held that a defendant convicted of a murder that he or she committed when he or she was under age eighteen cannot be subjected to a "mandatory" sentence of life imprisonment without parole, but rather the Trial Court must be able to consider the mitigating factor of youth and its attendant characteristics. This Court summed up its holding in *Miller* such that:

> We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders…[a]lthough we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.
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> *Miller*, 567 U.S. at 479-480 (citations omitted).

After this Court's ruling in *Miller* and again after this Court's later ruling in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) making *Miller* retroactive, the Louisiana Legislature passed numerous laws to come into compliance with this Court's rulings, enacting and later amending La. C.Cr.P. art. 878.1 to provide for the conduct of "Miller hearings" and La. R.S. 15:574.4(D)-(J) to govern parole eligibility for defendants who were under eighteen at the time of their crimes. See in particular Act No. 239 of 2013 and Act No. 277 of 2017. The Petitioner suggests that Louisiana law and jurisprudence are not altogether clear and are somewhat inconsistent as to who, if anyone, bears the burden of proof at a "Miller

hearing" or whether there even is a "burden" so to speak. However, this is a matter of state law for the Louisiana Courts and the Louisiana Legislature to develop, and this, as well as the diversity of states on this issue, is perfectly consistent with this Court's proclamation in *Montgomery* that *Miller* did not impose a formal factfinding requirement. *Montgomery*, 136 S.Ct. at 735.

To whatever extent that this may have been unclear before, this Court laid any doubts to rest in its recent ruling in *Jones v. Mississippi,* 141 S.Ct. 1307 (2021). This Court in *Jones* answered the squarely presented question of whether *Miller* imposed a formal factfinding requirement (which was already strongly foreshadowed as a negative in *Montgomery*) firmly and definitively in the negative, echoing *Montgomery* that "'*Miller* did not impose a formal factfinding requirement'" and that "'a finding of fact regarding a child's incorrigibility ... is not required.'" *Jones,* 141 S.Ct. at 1313 (Citing *Montgomery,* 577 U.S. at 211). This Court in *Jones* thus also dictated that states should be permitted diversity in how to implement this Court's mandate in *Miller*, which this Court in *Jones* interpreted such that "[i]n a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Jones,* 141 S.Ct. at 1313. More specifically, this Court in *Jones* rejected the argument that "*Miller* requires more than just a discretionary sentencing procedure" such that "the sentencer must also make a separate factual finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole," noting that "*Miller* and *Montgomery* squarely rejected such a

requirement" and instead required "'only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence," without any sort of formal factfinding requirement. *Jones,* 141 S.Ct. at 1314-1315 (Citing *Miller,* 567 U.S. at 483). This Court in *Jones* then proceeded to analyze and reject several arguments made by that petitioner as to why this Court should revisit that aspect of *Miller* and *Montgomery*.[2] This Court in *Jones* likewise rejected any argument that a sentencing court must alternatively at least provide an on the record sentencing explanation with an "implicit" finding of permanent incorrigibility.

That this Court in *Jones* expressly held that *Miller* and *Montgomery* require only a discretionary sentencing scheme which provides a Trial Court with the opportunity to consider the mitigating factor of youth and do not dictate a formal factfinding requirement is fatal to the Petitioner's position that this Court should grant certiorari to settle the issue of who bears the "burden" or who gets the benefit of a "presumption" at a "Miller hearing." If there is no formal factfinding requirement, then there is no requirement, at least as a matter of federal constitutional law, that there be any sort of "burden" in favor of a defendant or any sort of "presumption" against the State. Provided that the states afford the requisite

[2] Predicting this Court's ruling in *Jones,* Louisiana jurisprudence has observed that "[a]ll *Miller* requires is 'a hearing at which youth-related mitigating factors can be presented to the sentencer and considered in making a determination of whether the life sentence imposed upon a juvenile killer should be with or without parole eligibility.'" *State v. Allen*, 17-685 (La. App. 5 Cir. 5/16/18), 247 So.3d 179, 189 (Citing *State v. Jones*, 15-157 (La. App. 5 Cir. 9/23/15), 176 So.3d 713, 718).

discretionary sentencing scheme (which Louisiana unquestionably does), the states are free to experiment with the issue of whether there is a "burden" (or attendant presumption), who bears that burden, and what that burden is precisely.[3] Certainly, as this Court pointed out in *Jones,* a state is always free to offer "more" protections and sentencing limits for juveniles; this Court sets the "floor" of protections, not the "ceiling." The Louisiana Courts and the Louisiana Legislature are certainly free to create a "burden" in favor of the juvenile defendants if they elect to do so, but under *Jones* this Court's precedents do not require them to do so and do not dictate that the Louisiana Trial Court's handling of the Petitioner's "Miller hearing" in any way whatsoever violated the United States Constitution.

This does not in any way foreclose a defendant's ability to raise an "as applied" Eighth Amendment claim to his sentence. See *Jones,* 141 S.Ct. at 1322 (noting on this point that "this case does not properly present—and thus we do not consider—any as-applied Eighth Amendment claim of disproportionality regarding Jones's

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[3] Indeed, this Court acknowledged that diversity is permissible among sentencing judges as well:

> It is true that one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant's youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth. But the key point remains that, in a case involving a murderer under 18, a sentencer cannot avoid considering the defendant's youth if the sentencer has discretion to consider that mitigating factor.
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> *Jones,* 141 S.Ct. at 1319-1320 (footnote omitted).

sentence"). Indeed, an "as applied" Eighth Amendment claim may be the proper vehicle to argue *Miller* and *Montgomery's* proposition that "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects " 'unfortunate yet transient immaturity.'" *Montgomery,* 577 U.S. at 208 (Citing *Miller,* 132 S.Ct. at 2469). However, even if an "as applied" Eighth Amendment claim is properly presented herein (which the Respondent respectfully does not concede), there is no reason for this Court to grant certiorari on any sort of "as applied" Eighth Amendment claim to the Petitioner's sentence, as the lower courts are not in need of guidance on how to analyze an "as applied" Eighth Amendment claim and in particular because this Petitioner's crimes (not just the murder itself but also his associated violent crime spree) show that this Petitioner is entirely deserving of his sentence of life imprisonment without parole. See *State v. Garrison*, 19-62 (La. App. 5 Cir. 4/23/20), 297 So.3d 190 for a discussion of the facts of the Petitioner's violent crime spree. Indeed, while the Petitioner bemoans the State not introducing additional evidence at his "Miller hearing" beyond the record itself, the record speaks for itself as to the Petitioner's complete and utter disdain for the value of human life. In particular, the Respondent points to the timing of the crimes; the Petitioner committed a spree of extremely violent armed robberies (and an attempted murder) weeks after his involvement in the murder of Mr. Bruce Lutcher. The Petitioner's response to murdering another human being was thus not to feel deep remorse for his actions and swear off crime, but rather to double down on his life of violent crime

and commit three subsequent extremely violent armed robberies (and an attempted murder), with all three victims being fired upon and with one victim (the attempted murder victim, Mr. Fausto Alvarez) being now permanently confined to a wheelchair. The Petitioner was also, approximately one month after his involvement in Mr. Bruce Lutcher's murder, involved in a shootout with a rival which left an innocent fifteen year old girl, Shamarie Joseph, dead.[4] The Petitioner's complete and utter disdain for the value of human life is self-evident.[5]

The Respondent further notes, as this Court pointed out in *Jones,* that *Miller* and *Montgomery* have "done their jobs." This Court pointed out that *Miller's* mandate of a discretionary sentencing scheme has indeed done the job of making life imprisonment without parole for juveniles "relatively rare," as *Miller* predicted. *Jones,* 141 S.Ct. at 1322. Nevertheless, this Court maintained that "in *Miller* and *Montgomery*, the Court unequivocally stated that [a finding of permanent

[4] The Petitioner may have had a claim of self-defense in that particular case given that his rival fired first. Regrettably, even if the Petitioner would not have had a claim of self-defense in that case, because his rival's bullet killed the fifteen year old girl the Petitioner could not have been charged in her death because of a quirk in Louisiana law which has now thankfully been fixed. See generally *State v. Garner*, 115 So.2d 855 (La. 1959); Act No. 105 of 2020.

[5] The Petitioner also claims that the Louisiana Trial Court turned a mitigating factor into an aggravating factor, referencing the Petitioner's "pulsating environment of violence." The Respondent submits that a reading of the transcript of the "Miller hearing" does not bear out the conclusion that the Louisiana Trial Court turned a mitigating factor into an aggravating factor, but in any event as this Court found in *Jones* there is simply no formal factfinding requirement in *Miller* nor is there any sort of informal, "implicit" factfinding requirement in *Miller*. If anything, the transcript of the Petitioner's "Miller hearing" shows, as this Court acknowledged in *Jones,* that different judges can weigh sentencing factors differently and that such a difference in no way violates *Miller*.

incorrigibility] is not required. And we will not now rewrite those decisions to impose a requirement that the Court twice rejected." *Jones,* 141 S.Ct. at 1322. In light of this Court's ruling in *Jones* that *Miller* and *Montgomery* only require a discretionary sentencing scheme with an opportunity to consider the mitigating factor of youth and do not dictate a formal factfinding requirement, it is simply immaterial from a federal constitutional standpoint that states have taken divergent approaches as a matter of state law as to how to best implement this Court's mandate in *Miller* and *Montgomery*. Indeed, the divergent approaches taken by the states are merely a function of this Court's longstanding practice, echoed in *Montgomery* and again in *Jones*, that "when 'a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems.'" *Jones,* 141 S.Ct. at 1321. This Court further explained in *Jones* that:

> Because *Montgomery* directs us to "avoid intruding more than necessary" upon the States, ibid., and because a discretionary sentencing procedure suffices to ensure individualized consideration of a defendant's youth, we should not now add still more procedural requirements.
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> *Jones,* 141 S.Ct. at 1321.

This Court in *Jones* then concluded that "[t]he Court's precedents require a discretionary sentencing procedure in a case of this kind" and that "[t]he resentencing in Jones's case complied with those precedents because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of Jones's youth." *Jones,* 141 S.Ct. at 1322. The same is true in the Petitioner's case.

Therefore, this Court's recent ruling in *Jones* dictates that there is simply no issue of federal constitutional law that this Court need now address, and this Court accordingly should deny certiorari.

CONCLUSION

For the foregoing reasons and any other reasons apparent to this Court, the State of Louisiana respectfully submits that the petition for a writ of certiorari should be denied.

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