

No. 20-7520

IN THE
SUPREME COURT OF THE UNITED STATES

SHANTE BRUCE RICE-PETITIONER

VS.

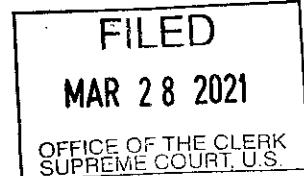
COMMONWEALTH OF PENNSYLVANIA-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL



QUESTIONS PRESENTED

- I. WHETHER THE PENNSYLVANIA SUPERIOR COURT'S DECISION THAT THE BAN ON MANDATORY SENTENCES OF LIFE WITHOUT PAROLE APPLIES TO ONLY THOSE DEFENDANTS WHO WERE UNDER THE AGE OF 18 AT THE TIME OF THEIR CRIMES WAS CONTRARY TO THE UNITED STATES SUPREME COURT'S DECISIONS IN Miller v. Alabama, 567 U.S. 460 (2012) AND Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996)?
- II. WHETHER THE SENTENCE OF LIFE WITHOUT PAROLE IMPOSED IN THIS CASE CONSTITUTES A VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES' CONSTITUTION?

LIST OF PARTIES

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

RELATED CASES

Commonwealth v. Shante Rice, No. CP-21-CR-3481-2012, Cumberland County Pennsylvania Court of Common Pleas. Judgment entered on December 16, 2014.

Commonwealth v. Shante Rice, No. 48 MDA 2016, Pennsylvania Superior Court. Judgment entered on May 2, 2017.

Commonwealth v. Shante Rice, No. 1111 MDA 2019, Pennsylvania Superior Court. Judgement entered on May 15, 2020.

Commonwealth v. Shante Rice, No. 377 MAL 2017, Pennsylvania Supreme Court. Petition for allowance of appeal denied November 22, 2017.

Commonwealth v. Shante Rice, No. 315 MAL 2020, Pennsylvania Supreme Court. Petition for allowance of appeal denied December 1, 2020.

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APPENDIX B-Opinion Pursuant to Pa.R.A.P. 1925, Cumberland County Court of Common Pleas, October 7, 2019.

APPENDIX C-Order denying Petition for Allowance of Appeal, Supreme Court of Pennsylvania, December 1, 2020.

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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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Cumberland County Court of Common Pleas appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the Supreme Court of Pennsylvania denied my Petition for Allowance of Appeal was December 1, 2020. A copy of the Order of the Supreme Court of Pennsylvania appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VIII:

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

United States Constitution, Amendment XIV:

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 its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On or about November 20, 2012, Mr. Rice was arrested and charged with Criminal Homicide, Conspiracy-Criminal Homicide, Robbery, Conspiracy-Robbery, Burglary, and Conspiracy-Burglary. On or about September 11, 2014, following a jury trial, Mr. Rice was found guilty of Criminal Homicide, Conspiracy-Criminal Homicide, Robbery, Conspiracy-Robbery, Burglary, and Conspiracy-Burglary. On or about December 16, 2014, Mr. Rice was sentenced to life imprisonment without parole. On or about September 28, 2018, Mr. Rice filed a *pro se* Motion for Post Conviction Collateral Relief. On or about December 10, 2018, Mr. Rice filed an Amended Petition for Post Conviction Collateral Relief. In his Amended Petition for Post Conviction Collateral Relief, Mr. Rice argued that his life without parole sentence violated this Court's decision in Miller v. Alabama, 567 U.S. 460 (2012). Mr. Rice was 19 years old at the time of the offenses charged.

Upon review, the Superior Court of Pennsylvania held that Mr. Rice was not entitled to relief because the ban on mandatory sentences of life without parole applies to only those defendants who were under the age of 18 at the time of their crimes. In addition, the Superior Court of Pennsylvania held that Mr. Rice waived any claim that his mandatory life without parole sentence violated the Equal Protection Clause of the United States' Constitution because the constitutional challenge could have been raised on direct appeal, but was not.

On or about December 1, 2020, the Supreme Court of Pennsylvania denied Mr. Rice's Petition for Allowance of Appeal.

REASONS FOR GRANTING THE PETITION

I. The Pennsylvania Superior Court's decision that the ban on mandatory sentences of life without parole applies to only those defendants who were under the age of 18 at the time of their crimes was contrary to this Court's decisions in Miller v. Alabama, 567 U.S. 460 (2012) and Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996).

In the present case, the Pennsylvania Superior Court held that the ban on mandatory sentences of life without parole applies to only those defendants who were under the age of 18 at the time of their crimes.

In Miller v. Alabama, this Court held that mandatory life without parole sentences for those under the age of 18 at the time of their crimes violate the Eighth Amendment's prohibition on cruel and unusual punishment. This Court held that the Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions" and that this right "flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." Id. at 2463. In Miller, this Court addressed two strands of precedent regarding proportionate punishment. Id. at 2463. The first strand involved categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. Id. at 2463. As examples, this Court noted that sentences imposing the death penalty for non-homicide crimes against individuals or imposing the death penalty on mentally retarded defendants violate the Eighth Amendment. Id. at 2463. The second strand of cases involved the prohibition of mandatory death penalty sentences without first requiring the sentencing authorities to consider the

characteristics of a defendant and the details of his offense before sentencing him to death. Id. at 2463.

This Court stated that children are constitutionally different from adults for purposes of sentencing because juveniles have diminished culpability and greater prospects for reform. Id. at 2464. As such, this Court reasoned that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Id. at 2464. This Court stated that most fundamentally, precedent insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole and that mandatory life without parole sentences prevent the sentencer from taking account of these central considerations. Id. at 2465-66.

Based upon the foregoing, this Court held that in imposing a mandatory life without parole sentence, “a sentencer misses too much if he treats every child as an adult.” Id. at 2468. This Court stated that a mandatory life without parole sentence for a juvenile precludes consideration of his chronological age and its hallmark features-among them, immaturity, impetuosity, and failure to appreciate risks and consequences. Id. at 2468. This Court further stated that mandatory life without parole sentences prevent the sentencer from taking into account the family and home environment and disregards the possibility of rehabilitation even when the circumstances most suggest it. Id. at 2468. Finally, this Court stated that mandatory life without parole sentences neglect the circumstances of the homicide offense,

including the extent of participation in the conduct and the way familial and peer pressures may have affected the accused. Id. at 2468.

In Montgomery v. Louisiana, 136 S.Ct. 718, 733 (2016), this Court held that Miller v. Alabama applied retroactively to cases on collateral appeal. In addition, this Court held that Miller v. Alabama did not merely forbid mandatory life without parole sentences for juvenile offenders, but also established a categorical bar to life without parole sentences imposed on juvenile offenders whose crimes reflect the transient immaturity of youth, regardless of whether the sentence was mandatory or discretionary. Id. at 734. Finally, this Court clarified that the characteristics of youth, rather than age in itself, are determinative in assessing whether a life without parole sentence is disproportionate under the Eighth Amendment. Id. at 734.

The issue before this Court in the present case is whether Miller v. Alabama applies to Mr. Rice who was 19 years old at the time of the offense. Mr. Rice asserts that under Miller v. Alabama and Montgomery v. Louisiana, it is not merely the age of the individual at the time of the offense, but also the distinctive attributes of youth that render a life without parole sentence disproportionate and in violation of the Eighth Amendment. As such, the rule barring mandatory life without parole sentences for juveniles does not rest on the chronological age of juveniles, but instead on the characteristics and qualities that juveniles possess.

Other jurisdictions have held that Miller v. Alabama does not only apply to those defendants who were under the age of 18 at the time of the offense. In People v. House, 72 N.E.3d 357 (Ill. App. Ct. 2015), the defendant was 19 years old when he

participated in the kidnapping and murder of two people and was subsequently sentenced to two consecutive life without parole sentences. The appellate court vacated the mandatory life without parole sentences under Miller v. Alabama and ordered a new sentencing hearing in which the trial court had the ability to consider the relevant mitigating factors prior to imposing a sentence of such magnitude. House, 72 N.E.3d at 389. The court noted that although the defendant was not a juvenile at the time of his offense, his young age of 19 was a relevant consideration under the circumstances of the case. Id. at 384.

In Pennsylvania, the Superior Court has held that the right established in Miller v. Alabama applies only to those aged 17 or younger at the time of the offense. See Commonwealth v. Cintora, 69 A.3d 759 (Pa. Super. 2013) and Commonwealth v. Furgess, 149 A.3d 90 (Pa. Super. 2016). However, in Commonwealth v. Lee, 1891 WDA 2016, the appellant, who was 18 at the time of her offense, argued that the reasoning involved in the Miller v. Alabama decision applied to her case despite the express age limitation set forth in Miller v. Alabama. In a non-precedential decision, the Superior Court noted that appellant presented a compelling argument to reconsider Commonwealth v. Furgess and Commonwealth v. Cintora because “[i]t is hard to come away from an honest reading of Miller with the impression that the arbitrary age of maturity is essential to Miller’s rationale, despite its centrality to the specific holding in that case...” However, the Superior Court stated that it did not have the authority to overrule another panel of the Superior Court and affirmed the

lower court's dismissal of appellant's PCRA. The Superior Court also refused to consider appellant's equal protection argument as untimely under the PCRA statute.

The Superior Court subsequently granted *en banc* reargument in the Lee case and withdrew the Court's prior decision. Following reargument *en banc*, the Court held that Miller v. Alabama does not afford collateral relief to a petitioner who was over the age of 18 at the time of his or her offense and that the rationale the Miller v. Alabama Court applied to offenders who were age 14 at the time of their offenses cannot be applied to defendants over the age of 18 at the time of their offenses in order to satisfy the newly recognized constitutional right exception to the PCRA time-bar. Commonwealth v. Lee, 206 A.3d 1, 4 (Pa. Super. 2019). On or about October 16, 2019, the Pennsylvania Supreme Court denied a Petition for Allowance of Appeal in the Lee case.

Furthermore, in Commonwealth v. Cintora, the Superior Court affirmed the dismissal of the appellant's PCRA as untimely because the petition did not fall into any of the timeliness exceptions enumerated in 42 Pa.C.S.A. §9545(b). Id. at 764. Likewise, in Commonwealth v. Furgess, the Superior Court held that the appellant failed to meet the timeliness requirement of the PCRA because a contention that a newly recognized constitutional right should be extended to others does not render a petition seeking such an expansion of the right timely pursuant to 42 Pa.C.S.A. §9545(b). Id. at 94. Finally, in Commonwealth v. Lee, 206 A.3d 1 (Pa. Super. 2019), the Superior Court held that the appellant failed to plead or prove that she met the new constitutional right exception to the timeliness requirements of the PCRA

pursuant to 42 Pa.C.S.A. §9545(b) and subsequently affirmed the PCRA court's order that it had no jurisdiction to address its merits. Id. at 11.

The present case is distinguishable from Commonwealth v. Lee, Commonwealth v. Cintora, and Commonwealth v. Furgess because Mr. Rice's PCRA was timely filed and does not seek to invoke any of the timeliness exceptions contained in 42 Pa.C.S.A. §9545(b). As such, Mr. Rice argued that the Superior Court's prior holdings regarding Miller v. Alabama were inapplicable to his case.

Finally, Mr. Rice submits that the Pennsylvania Superior Court's interpretation of the right established in Miller v. Alabama fails to consider the rationale upon which this Court based its decision in Miller v. Alabama. See Seminole Tribe of Florida v. Florida, 517 U.S. 44, 67 (1996). In regard to how its holdings are to be applied, this Court stated:

We adhere in this case, however, not to mere *obiter dicta*, but rather to the well-established rationale upon which the Court based the results of its earlier decisions. When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound.

Id. at 67. *Stare decisis* requires adherence "not only to the holdings of [the Supreme Court's] prior cases, but also to their explications of the governing rules of law." County of Allegheny v. ACLU, Greater Pittsburgh Chapter, 492 U.S. 573, 668 (1989).

By applying the "well-established rationale" standard of Seminole Tribe, Miller v. Alabama established that mandatory life without parole sentences may not be imposed on a categorically less culpable class of offenders. Accordingly, Mr. Rice

maintains that his life without parole sentence is a violation of the Equal Protection Clause pursuant to this Court's holding in Miller v. Alabama.

II. The sentence of life without parole imposed in this case constitutes a violation of the equal protection clause of the United States' Constitution.

In the present case, the Pennsylvania Superior Court held that Mr. Rice waived his claim that his sentence of life without parole constitutes a violation of the equal protection clause of the United States' Constitution.

Equal protection under the United States' Constitution assures that all similarly situated persons are treated alike. As a result of this Court's decision in Miller v. Alabama, 18 year old's that are recognized as children under Pennsylvania law are subject to unequal treatment compared to younger children without a rational basis. For a 17 year old to obtain relief in the form of an opportunity to present mitigating evidence justifying a lesser sentence under Miller v. Alabama while an 18 year old's youth, developmental characteristics, and home and social circumstances cannot even be considered does not have a rational basis. Under current Pennsylvania law, a defendant who is convicted of committing a homicide while 17 years and 364 days old would be provided the opportunity to present mitigation evidence in support of a sentence of less than life without parole, while a defendant who is 18 years and 1 day old will be condemned to die in prison despite the possible existence of persuasive mitigation evidence. Such an arbitrary distinction permits the continued imposition of disproportionate sentences that violate the Fourteenth Amendment and fails to ensure that like persons in like circumstances will be treated similarly.

Finally, Mr. Rice submits that his equal protection claim implicates the legality of his sentence and, as such, a challenge to the legality of a sentence cannot be waived. Commonwealth v. Eisenberg, 98 A.3d 1268, 1275 (Pa. 2014). In Commonwealth v. Lawrence, 99 A.3d 116, 124 (Pa. Super. 2014), the Superior Court held that claims pertaining to equal protection seek protection from legislatures, not judges, and that such arguments fall into the category of a sentencing issue that presents a legal question rather than a claim that the sentence is illegal. In the present case, Mr. Rice's equal protection claim was premised upon an argument that the Pennsylvania Superior Court had incorrectly interpreted and applied the United States Supreme Court's decision in Miller v. Alabama. Mr. Rice was not seeking protection from legislatures; rather, Mr. Rice was requesting the Pennsylvania Superior Court to reconsider its prior decisions that the ban on mandatory sentences of life without parole applies to only those defendants who were under the age of 18 at the time of their crimes. As such, Mr. Rice submits that the Pennsylvania Superior Court erred in holding that Mr. Rice had waived his claim that his sentence of life without parole constituted a violation of the Equal Protection Clause of the United States' Constitution.

CONCLUSION

For the foregoing reasons, Mr. Rice respectfully requests that this Court issue a writ of certiorari to review the judgment of the Pennsylvania Superior Court.

Respectfully Submitted,



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