No. 20-7592
CAPITAL CASE

In the SUPREME COURT of the UNITED STATES

ALAN EUGENE MILLER,

Petitioner,

v.

JEFFERSON S. DUNN, COMM'R, ALA DEP'T OF CORR., et.al.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

During the penalty-phase, the trial court instructed the jury that it had to unanimously find the existence of an aggravating factor to recommend a death sentence and that its sentencing recommendation was advisory. After the jury unanimously found the existence of an aggravating factor—that the murder of Alan Eugene Miller's coworkers was especially heinous, atrocious, or cruel when compared to other capital offenses—Miller became death eligible. It was only after the jury made that unanimous finding that it voted 10-2 to recommend the death penalty. The trial court then exercised its discretion to sentence Miller to death.

The questions presented are:

1. Was the jury accurately instructed that it had to unanimously find the existence of an aggravating factor to recommend a death sentence and that its sentencing recommendation was advisory as required by Caldwell v. Mississippi, 472 U.S. 320 (1985)?
2. Did the state court unreasonably apply Ring v. Arizona, 536 U.S. 584 (2002), in concluding that the trial judge could constitutionally

sentence Miller to death after the jury unanimously found the existence of an aggravating factor?

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STATEMENT OF THE CASE

This case began on August 5, 1999, when Alan Eugene Miller drove to his place of employment, entered the business, and shot and killed two of his coworkers, Lee Holdbrooks and Scott Yancey. Miller v. State, 913 So. 2d 1148, 1154 (Ala. Crim. App. 2004). Yancy was shot three times and found slumped underneath his desk while Holdbrooks was shot six times and found "lying face down in the hallway at the end of a blood 'crawl trail,' indicating that he had crawled 20-25 feet down the hall in an attempt to escape his assailant." Id. As Miller was leaving the business, another coworker arrived and asked Miller to put the gun down. Id. Miller refused and instructed the coworker to get out of his way, then walked to his truck and drove away. Id.

Shortly thereafter, Miller arrived at his former place of employment, walked inside to the sales counter, and called out for Terry Jarvis. Id. at 1155. When Jarvis walked out of his office, Miller fired several shots at him. A witness who saw Miller shoot Jarvis testified that, when Miller came around the sales counter, the witness fled the business and heard another gunshot moments later. Id. Jarvis was shot five times,

including a gunshot to the heart after he had already fallen to the floor. Id. at 1156.

A. State Court Proceedings

In 2000, Miller was convicted of capital murder committed by "one act or pursuant to one scheme or course of conduct." Ala. Code § 13A-5-40(a)(10) (1975). The trial then moved to the penalty phase. Because an aggravating circumstance was not included as an element of the offense, the jury needed to unanimously find beyond a reasonable doubt that one of the aggravating circumstances set forth in Section 13A-5-49 of the Code of Alabama existed before Miller could be eligible for the death penalty. See Ex parte State, 223 So. 3d 954, 967 (Ala. Crim. App. 2016) ("[T]he jury must make the finding that an aggravating circumstance necessary for imposition of the death penalty exists [in a non-overlap case] during the penalty phase of the trial."). The trial court instructed the jury that "the burden of proof is on the State of Alabama to convince each of you beyond a reasonable doubt as to the existence of any aggravating circumstance considered by you in determining what

punishment is to be recommended in the case." (Vol. 8 at 1433.)[1] The trial court made clear "that before you can even consider recommending the defendant's punishment to be death, each and every one of you must be convinced beyond a reasonable doubt based on the evidence that an aggravating circumstance exists." Id. Only one aggravating factor was presented to the jury—that the crime was "especially heinous, atrocious, or cruel compared to other capital offenses," Ala. Code § 13A-5-49(8) (1975)—and after the jury unanimously found that aggravating circumstance was present, the jury weighed it against other possible mitigating factors. The jury ultimately recommended a sentence of death by a vote of 10-2. The trial court agreed with the jury's recommendation and sentenced Miller to death. Miller, 913 So. 2d at 1151.

The Alabama Court of Criminal Appeals affirmed Miller's conviction and sentence of death. Id. at 1171. The Alabama Supreme Court denied certiorari review on May 27, 2005, and this Court denied Miller's petition for writ of certiorari on January 9, 2006. Miller v. Alabama, 546 U.S. 1097 (2006). Miller subsequently filed for

1. "Vol." refers eighth volume of the record for the federal habeas proceedings.

postconviction relief under Rule 32 of the Alabama Rules of Criminal Procedure, which was denied in 2008. (Doc. 18, Vol. 28 at 1951-2107.) The Alabama Court of Criminal Appeals affirmed the trial court's decision. Miller v. State, 99 So. 3d 349, 426 (Ala. Crim. App. 2011). Miller's petition for writ of certiorari was ultimately denied by the Alabama Supreme Court in 2012. Id. at 351.

B. Federal Habeas Review

On January 23, 2013, Miller filed a timely petition for writ of habeas corpus raising claims, relevant here, challenging the constitutionality of his death sentence. (Doc. 1.) The district court entered a memorandum opinion and final judgment denying Miller's habeas petition on August 4, 2015. (Docs. 28-29.) Miller filed a motion to alter or amend judgment, as well as a motion to supplement the record with exhibits from the state-court Rule 32 proceedings. (Docs. 30, 32.) The district court subsequently sua sponte withdrew its memorandum opinion in light of the supplemental exhibits, stating it would "re-evaluate [Miller's] habeas action in its entirety and render a decision accordingly." (Doc. 34.) On March 29, 2017, the district court entered a memorandum opinion and final judgment denying Miller habeas corpus

relief. (Docs. 53-54; see also Miller v. Dunn, CV-2:13-00154-KOB, 2017 WL 1164811, at *74 (N.D. Ala. Mar. 29, 2017).)

On March 11, 2019, the Eleventh Circuit Court of Appeals granted Miller's motion for a certificate of appealability, relevant here, on two specific claims: whether his sentence violated the Sixth Amendment as interpreted by Ring v. Arizona, 536 U.S. 584 (2002); and, whether Miller's sentence violated the Eighth Amendment as interpreted by Caldwell v. Mississippi, 472 U.S. 320 (1985). The Court of Appeals affirmed, finding that the state appellate court "reasonably concluded that the jury did find the statutory aggravating circumstance necessary to make Mr. Miller death-eligible" and that "[t]he jury instructions here accurately described the jury's advisory role in Alabama's capital sentencing scheme." Miller v. Comm'r, Alabama Dep't of Corr., 826 F. App'x 743, 747–48, 750 (11th Cir. 2020).

Miller now challenges the Court of Appeals' decision. Yet the questions presented in this case rest on well-settled law and present no conflict for this Court to resolve. Moreover, the Eleventh Circuit Court of Appeals correctly determined that Miller's death sentence did not violate

his constitutional rights as interpreted under Ring or Caldwell. Thus, this Court should deny Miller's petition.

REASONS FOR DENYING THE PETITION

Miller was required to show under federal habeas review that the state court's decision "was contrary to, or involved the unreasonable application of clearly established federal law, as determined by [this Court]" or that the decision was "based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceedings" before he could receive relief for his challenges to the constitutionality of his death sentence. 28 U.S.C. § 2254(d)(1)-(2); see also Harrington v. Richter, 562 U.S. 86, 102 (2011). But, as required by Ring, the jury unanimously determined beyond a reasonable doubt that the murder of Yancy, Holdbrooks, and Jarvis was especially heinous, atrocious, and cruel; thus, making him eligible for the death penalty. Further, as required under Caldwell, the jury was properly instructed regarding its role as factfinder and sentencer under Alabama law. Specifically, the jury was instructed (1) that it had to determine beyond a reasonable doubt that the aggravating circumstance was proven before

it could even consider what sentence to recommend and (2) that its verdict to sentence Miller was a recommendation.

Accordingly, the petition fails to meet this Court's requirement that there be "compelling reasons" for granting certiorari. Sup. Ct. R. 10. The petition depends entirely on a misleading presentation of Alabama's former sentencing scheme and how it operated in this case. Miller is not the first petitioner to attempt this maneuver; indeed, he raised a similar Ring claim before this Court on direct appeal, and it was rejected. See Pet. 8 (citing Miller v. Alabama, 546 U.S. 1097 (2006)). The Court should reject Miller's latest petition too.

I. The jury was properly instructed about its role regarding Miller's sentencing.

There is no dispute that the trial court's charge accurately instructed the jury of its role under Alabama law. See Pet. 16. Yet Miller argues the trial court's instruction violated Caldwell v. Mississippi, 472 U.S. 320 (1985), because the jury was not instructed that their decision finding a statutory aggravating circumstance "could dictate whether [he] could be sentenced to death or not." Pet. 16. First, this is not the same claim raised below. In the Eleventh Circuit Court of Appeals, Miller argued that the trial court's instructions violated Caldwell because it

essentially instructed the jury that its factual determination of whether the aggravating circumstance existed was "simply a step" within the jury's decision to recommend the death sentence and was not binding on the trial court. Stated differently, Miller argued in the Court of Appeals that the jury was not properly instructed of its advisory role; however, Miller now argues that the jury was not properly instructed of the ramifications (i.e., that Miller became death eligible) of its findings that an aggravating circumstance applied. Regardless, the trial court's instructions, read in context, accurately described the jury's role.

During the penalty-phase, the trial court instructed the jury:

> The fact that I instruct you on such aggravating circumstance or define it for you does not mean that such an aggravating circumstance exits. Whether any aggravating circumstance which I instruct you or define for you has been proven beyond a reasonable doubt based upon the evidence in this matter is for you, the jury, alone to decide.

(See Vol. 8 at 1431-32; see also id. at 1439 ("It is your sole responsibility to determine what the facts are and recommend the punishment in this case.").) The trial court explained that it was the State's burden to prove to the jury the aggravating circumstance beyond a reasonable doubt and that, before the jury could "even consider recommending [Miller's]

punishment," the jury was required to unanimously find beyond a reasonable doubt that the aggravating circumstance existed and then consider any applicable mitigating circumstances. (Vol. 8 at 1433, 1435; see also Vol 8. At 1428 (instructing the jury that it was the "sole and exclusive triers or judges of the facts").)

Thus, not only was the jury properly instructed about its penalty-phase verdict, but it was also clearly instructed that the jury (rather than the jury) was the sole factfinder and that it had to determine beyond a reasonable doubt that the aggravating circumstance was proven before it could even consider what sentence it recommended. As such, the Eleventh Circuit Court of Appeals correctly determined that Miller did not establish claim warranting relief under federal habeas review; therefore, his petition should be denied.

Unlike the trial court's jury instructions, Miller's presentation of the decisions from the Third and Eighth Circuit's is misleading. In Driscoll v. Delo, 71 F.3d 701 (8th Cir. 1995), the prosecutor repeatedly and misleadingly minimized the jury's role, even declaring that "juries do not sentence people to death in Missouri." Id. at 711. The statements were misleading because in Missouri, the "judge could not have sentenced

Driscoll to death absent the jury's recommendations to do so." Id. at 713. Thus, the "technical accuracy" of the prosecutor's statements did not diminish the fact that the "statements impermissibly misled the jury to minimize its role in the sentencing process under Missouri law." Id. Here, on the other hand, the judge (not a prosecutor) instructed the jury accurately (not misleading) about its role in Alabama's sentencing process.

Miller's other case, Riley v. Taylor, 277 F.3d 261 (3d Cir. 2001), is similarly distinguishable. There, as in Caldwell, a prosecutor—not the trial court—made a statement to the jury about "automatic appellate review" that "was misleading as to the scope of appellate review. As was explained in Caldwell, jurors may not understand the limited nature of appellate review, which affords substantial deference to a jury's determination that death is the appropriate sentence." Id. at 296. Again, the Alabama trial court did not mislead the jury about its role in Miller's case. Miller's strained attempt to manufacture a circuit split fails.

II. The jury unanimously found beyond a reasonable doubt the murders committed were especially heinous, atrocious, and cruel.

Miller also argues that the jury's penalty-phase verdict conflicts with this Court's decisions in Ring and Hurst v. Florida, 577 U.S. 92 (2016). (Pet. 20.) His argument is twofold: first, he contends it is unreasonable to infer the jury's finding of an aggravating circumstances is unanimous; and second, the Eleventh Circuit erroneously determined that the Hurst decision was inapplicable. Neither claim warrants relief.

In Ring, this Court held that the Sixth Amendment requires that a jury must find any aggravating circumstance that is necessary to imposition of the death penalty. 536 U.S. at 609. Fourteen years later in Hurst, this Court applied the principles of Ring and found Florida's capital-sentencing scheme unconstitutional because trial judges, rather than juries, were tasked with independently finding the existence of aggravating circumstances. 577 U.S. at 103. In Alabama's capital-sentencing scheme, a unanimous jury, rather than the judge, is required to find an aggravating circumstance beyond a reasonable doubt before the defendant is eligible to receive the death penalty. See Ex parte Bohannon, 222 So. 3d 525, 532 (Ala. 2016) (holding that Alabama's

capital-sentencing scheme did not violate the Sixth Amendment as interpreted by Ring and Hurst because a jury along determines by a unanimous verdict whether an aggravating circumstance exists beyond a reasonable doubt to make a defendant death eligible). If the jury determines that no aggravating circumstance exists, then jury "shall return an advisory verdict recommending to the trial court that the penalty be life imprisonment without parole." Ala. Code § 13A-5-46(e)(1). But, when the jury determines an aggravating circumstance exists, it can either determine that the aggravating circumstances do not outweigh the mitigating circumstances and return an advisory verdict of life without parole, or the jury can determine that aggravating circumstances outweigh the mitigating circumstances and recommend death. Ala. Code § 13A-5-45(f). Though the trial court may reject the jury's advisory verdict, it cannot sentence a defendant to death unless at least one aggravating circumstance was proven, a determination that must first be made by the jury. Ala. Code §§ 13A-5-47; 13A-5-45(f); see also Ex parte Waldrop, 859 So. 2d 1181, 1187-88 (Ala. 2002) (finding that Alabama's capital-sentencing scheme is compliant with Ring because the jury makes the initial, critical finding of aggravating circumstances). Moreover, as

recognized by both Alabama appellate courts and the Eleventh Circuit, the Ring decision neither "forbids the use of an aggravating circumstance implicit in the jury's verdict," nor does it "foreclose the ability of the trial judge to find the aggravating circumstances outweigh the mitigating circumstances." Lee v. Comm., Ala. Dept. of Corrs., 726 F. 3d 1172 (11th Cir. 2013); see also Bohannon, 222 So. 3d at 532.

Here, the jury's unanimous finding of the existence of the aggravating circumstance that the capital offense was heinous, atrocious, and cruel, which made Miller death eligible, was implicit in the jury's 10-2 death recommendation. Indeed, the jury was instructed that whether an aggravating circumstance was established was for "the jury alone[] to decide," that if unconvinced that it was established, the jury was required to recommend life imprisonment without parole, and that before it "even consider[ed] recommending [Miller's] punishment be death, each and every [juror] must be convinced beyond a reasonable doubt upon the evidence that an aggravating circumstance exists." (Vol. 8 at 1431-33.)

Without addressing the specific instructions given to the jury in the case, Miller asserts that it was unreasonable to infer that the jury made a unanimous decision when it determined an aggravating circumstance

existed. But this general argument goes against the well-settled presumption that jurors follow their instructions. See e.g., Evans v. Michigan, 568 U.S. 313, 328 (2013) (quoting Blueford v. Arkansas, 566 U.S. 599, 606 (2012)) ("[A] jury is presumed to follow its instructions."). Miller has offered no specific argument indicating why the jury in his case was not entitled to that general presumption other than restate its 10-2 recommendation to impose the death penalty.[2] Contrary to his assertion, the jury's 10-2 vote recommending death does not indicate that the jury's decision that the aggravating circumstance was anything but unanimous.

Next, he argues that Alabama's capital-sentencing scheme is the same as that found unconstitutional in Hurst; and that, based on the Hurst decision, Alabama's statute should be declared unconstitutional. Miller's direct appeal, however, became final approximately ten years before Hurst was decided. See Miller v. Alabama, 546 U.S. 1097 (2006). But, as the Court of Appeals recognized, the Hurst decision has not been made retroactive on collateral review; and thus, the decision is not

2. Miller argues that it is "unreasonable to infer that the jury . . . unanimously found a predicate for the [death] penalty [when] two jurors refused to recommend." (Pet. 3.)

appliable here. Miller, 826 F. App'x at 749 (citing McKinney v. Arizona, 140 S. Ct. 702, 708 (2020) ("Ring and Hurst do not apply retroactively on collateral review.")). Moreover, though Florida and Alabama both allowed judicial override in capital sentences, the scheme found unconstitutional in Hurst is materially different because, unlike Florida's scheme, Alabama law requires the jury (rather than the judge) to find the existence of the aggravating circumstance that makes the defendant death eligible. Thus, this Court should deny Miller's petition for writ of certiorari.

CONCLUSION

For the reasons set forth above, this Court should deny Miller's petition for writ of certiorari.

Respectfully submitted,

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