No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

Jquan Leearthur McInnis,
Petitioner,

v.

State of Minnesota,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether sentencing a juvenile to two consecutive homicide sentences of life-with-the possibility-of-release after thirty years, the functional equivalent of a natural life sentence, violates the Eighth Amendment when the juvenile was found redeemable after a hearing pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012).

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IN THE

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jquan Leearthur McInnis petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court.

OPINION BELOW

The opinion of the Minnesota Supreme Court, the highest state court to review the merits, is reported at *State v. McInnis*, 962 N.W.2d 874 (Minn. 2021), and attached as Appendix A. The trial court's *Miller* order is entitled "Sentencing Memorandum" and is attached as Appendix B. The trial court's oral ruling imposing consecutive sentences is attached as Appendix C.

JURISDICTION

The Minnesota Supreme Court issued its decision on August 11, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Eighth Amendment of the United States Constitution provides in relevant part: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

Petitioner's childhood

Petitioner's life has been a tragic one, marred by an undisputed history of prenatal drug and alcohol exposure, childhood trauma and neglect, and mental health issues. [App. B1-2]. Before he was born, Petitioner's mother had four children removed from her custody for neglect, endangerment, and maltreatment. [App. B3-4]. He was removed from his mother's custody at four months of age, though she continued to be a disruptive presence in his life. [App. B4].

Petitioner was placed with his maternal grandmother, which was no better. His grandparents used alcohol and drugs excessively, and neglected Petitioner's physical and emotional needs. He suffered chronic maltreatment; "[h]e went without food and literally was told to go outside and stay away from the home so the adults could party". [App. B4]. Unsurprisingly, Petitioner began experiencing emotion disturbances and negative behaviors. While he had access to some services, his grandmother "remained minimally involved in treatment," and did not follow through with recommendations, take him to appointments or ensure he took his medication. [App. B4].

By age 10 or 11, Petitioner turned to the streets. "The lack of family engagement with him was replaced by engagement with gang members, who provided him with food, clothing, and shelter, but also rewarded his antisocial behaviors and engaged him in their criminal lifestyle." [App. B4-5]. Despite recommendations for residential treatments, such placements did not happen and, as the trial court observed, remaining in his chaotic and neglectful home caused Petitioner to spiral out of control. [App. B5]. Juvenile court,

frequent police contacts, negative behavior, and drug and alcohol use followed. [App. B5].

Petitioner was 17 years old at the time of the events at issue in this case. [App. B1]. At that age, he was still undergoing brain development. Full brain maturity does not occur until at least the mid-20s, and males tend to mature at a slower rate than females. In particular, the prefrontal cortex, which controls impulsivity, insight, empathy, and weighing consequences is one of the last parts of the brain to develop. [App. B1]. Even at age 17, Petitioner's "insight and judgment [were] profoundly poor", he exhibited immature thinking, and he acted impulsively. [App. B2]. His "particular mental health conditions and susceptibility to peer influence, even subconsciously, made it likely that he had diminished cognitive control over his action and made him more impulsive that would be expected of someone his age." [App. B2]. While he was prescribed medications to help control impulsivity, he was not taking them at the time of the offense. [App. B2].

Facts of the offense

On October 9, 2016, Christopher Redden and his girlfriend were visiting family in Minneapolis. [App. A2]. Redden parked in the driveway of the home, with his car facing northwest and the alley behind it. [App. A2]. Redden, his infant son J.R., and another adult named Gustav Christianson, stayed outside. [App. A2]. J.R. was buckled in his car seat, which was facing backwards in the back seat. Christianson was sitting in the backseat next to J.R. [App. A2].

Around the same time, Petitioner was a passenger in Deandre Austin's car. Petitioner saw Christianson riding in Redden's car and asked Austin to pull over. [App. A2]. Petitioner was upset with Christianson because a few months earlier, Christianson had stolen money from him. [App. A2]. Petitioner exited Austin's car, cut through some residential yards, and approached Redden's vehicle. [App. A2]. Petitioner walked directly up to Christianson, who was sitting in the back seat with the car door open, and fired multiple shots from a semiautomatic 9 mm handgun, striking Christianson in his torso. [App. A2].

Petitioner turned and ran northbound back down the alley. [App. A2]. As he was leaving, he turned and fired a shot towards the back of the vehicle. [App. A2]. That last bullet entered the left side of the rear window and hit J.R. in the chest. Both Christianson and J.R. died from gunshot injuries. [App. A2].

Petitioner was arrested. After being interrogated for multiple hours, he told police that he committed the shootings. [App. A3]. Petitioner described the killings to police as: "Boom, I walked up on the car and I-I-I-hit 'em like four or five times – boom, and then when I, right before I ran off I threw one more through the window – bam – and then I ran off." [App. A3]. Petitioner told police he did not know an infant was in the car. [App. A3].

Charges and verdicts

Petitioner was indicted on two counts of first-degree premeditated murder. As required by Minnesota law, he was automatically certified as an adult. The State noticed its intent to seek a sentence of life without the possibility of release. [App. A3].

The trial court convicted Petitioner guilty of both counts. The court found that Petitioner premeditated and intentionally killed Christianson. The court also found that Petitioner did not intend to kill J.R., but was guilty under the doctrine of transferred intent, because he was still intending to kill Christianson at the time he fired the last shot that caused the child's death. [App. A3, 11].

The *Miller* hearing and sentencing

A two-day hearing was held pursuant to *Miller v. Alabama* to determine whether Petitioner ought to be sentenced to a life sentence without the possibility of release (LWOR). [App. A3, B1]. The trial court concluded that the State had not proven that Petitioner was irreparably corrupt or permanently incorrigible, and therefore a LWOR sentence was inappropriate. [App. A3, B8]. The court, however, imposed two consecutive sentences of life in prison with the possibility of release after 30 years, meaning that Petitioner will not become eligible for release until he is 77 years old. [App. A3, A10, C11-18].

Petitioner filed a direct appeal from the judgment of conviction to the Minnesota Supreme Court. Among other claims, Petitioner argued that consecutive sentences amounted to the functional equivalent of a life sentence in violation of the Eighth Amendment. [App. A10]. The Minnesota Supreme Court, having rejected the functional-equivalent argument in a previous case, affirmed Petitioner's sentence. [App. A11]. *See State v. Ali*, 895 N.W.2d 237, 246 (Minn. 2017).

Petitioner now seeks a writ of certiorari from this Court.

REASONS FOR GRANTING THE PETITION

The Eighth Amendment prohibits the infliction of cruel and unusual punishment. U.S. Const. amend. VIII. Children are "constitutionally different from adults in their level of culpability." *Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016). Because of their unique developmental characteristics, "juvenile offenders cannot with reliability be classified among the worst offenders." *Roper v. Simmons*, 543 U.S. 551, 569 (2005). Thus, sentencing a juvenile to life without parole violates the Eighth Amendment "for all but 'the rare juvenile offender whose crime reflects irreparable corruption.'" *Montgomery*, 577 U.S. at 209 (quoting *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012)).

Where, as here, a juvenile offender has been found redeemable, the Eighth Amendment requires a "meaningful opportunity to obtain release based on demonstrated rehabilitation and maturity." *Miller*, 567 U.S. at 479. There is no aggregate-sentence exception to that requirement. That is to say, there is no constitutionally significant distinction between a life sentence without the possibility of parole and consecutive sentences that, in the aggregate, do not allow for the possibility of parole until a juvenile reaches the age of 77. Both sentences deny the juvenile a realistic opportunity to obtain release within his lifetime.

The Minnesota Supreme Court affirmed Petitioner's sentence, relying on its previous decision that *Miller* does not apply to consecutive life sentences with the possibility of release after 30 years even if the sentence, in the aggregate, is the functional equivalent of life without the possibility of release. Such a decision for a redeemable juvenile cannot stand. It undermines the *Roper-Graham-Miller-Montgomery* caselaw,

reduces the Eighth Amendment's guarantees to a matter of semantics, and deepens the disagreement among courts around the country over whether the Eighth Amendment, as interpreted by *Miller* and *Montgomery*, allows a juvenile to be sentenced to an aggregate term-of-years sentence that is the functional equivalent of a life without the possibility of release. This Court's review is needed to resolve that conflict and reaffirm the essential principles underlying *Roper* and its progeny.

I. The Minnesota Supreme Court's decision undermines the integrity and reasoning of the line of decisions beginning with *Roper v. Simmons*.

Children are "constitutionally different from adults in their level of culpability." *Montgomery*, 577 U.S. at 213. This now firmly-established principle was first articulated in *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper*, this Court adopted a categorical ban on death sentences for juveniles premised on adolescent brain development research showing that in critical ways, juvenile offenders are less culpable than adult offenders. *Id.* at 569-70, 578. Juveniles have a "lack of maturity and an underdeveloped sense of responsibility" that "often result in impetuous and ill-considered actions and decisions", "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure", and a juvenile's character "is not as well formed as that of an adult" in the sense that juvenile personality traits are "less fixed" and their actions are less likely to be "evidence of irretrievably depraved character." *Id.* at 569-570. These differences mean that a juvenile's "irresponsible conduct is not as morally reprehensible as that of an adult" and that "a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570.

In *Graham v. Florida*, this Court reaffirmed *Roper* and banned life imprisonment without the possibility of parole for juvenile nonhomicide offenders. 560 U.S. 48, 68, 74 (2010). *Graham* recognized that "life without parole is 'the second most severe penalty permitted by law,'" and "an especially harsh punishment for a juvenile". *Id.* at 69, 70. The Court discussed the important penological justifications for sentencing, including retribution, deterrence, incapacitation, and rehabilitation, but concluded that none of these theories adequately justifies life imprisonment without the possibility of parole for juvenile nonhomicide offenders. *Id.* at 74.

Miller was decided two years later. In *Miller*, the Court struck down mandatory sentences of life imprisonment without the possibility of parole as excessive for juvenile homicide offenders. *Miller*, 567 U.S. at 489. The Court noted that "*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing" and "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller*, 567 U.S. at 471-72. The Court determined that the mandatory imposition of life imprisonment without the possibility of parole on juvenile offenders "prohibit[s] a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender," which "contravenes *Graham* 's (and also *Roper* 's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Id.* at 474.

Finally, in *Montgomery*, this Court held that *Miller* is a substantive ban on life imprisonment without the possibility of parole except for "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 577 U.S. at 209. *Montgomery* reaffirmed that "the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Id.* at 209 (quoting *Miller*, 567 U.S. at 472). In announcing a categorical ban against life-without-parole sentences for juvenile homicide defendants who are not irreparably corrupt, the Court highlighted:

> In light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, ... prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.

Id. at 213.[1]

This Eighth Amendment jurisprudence is clear: even if a court considers a child's age before sentencing him to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" *Miller* at 479.

The Minnesota Supreme Court's decision turns the principle underlying these cases on its head. The trial court determined, after a fully-litigated *Miller* hearing, that Petitioner was *not* one of the rarest of juvenile offenders who is permanently incorrigible.

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[1] Most recently, this Court held that a sentencer is not required to make a finding of permanent incorrigibility before imposing a life-without-parole sentence under a discretionary sentencing regime. *Jones v. Mississippi*, – U.S. – , 141 S.Ct. 1307, 1318-1319 (2021). *Jones* did not address the issue here: a juvenile sentenced to an aggregate sentence that is the functional equivalent of a life without the possibility of parole sentence after being found capable of rehabilitation.

On the contrary, Petitioner is a redeemable offender whose crimes reflect the transient immaturity of youth. The trial court also determined that Petitioner only intended to kill one person; the second homicide conviction was based entirely on transferred intent from the first homicide. Yet Petitioner received consecutive life-with-the-possibility-of-release-after-30-years sentences. He will not be eligible for parole until he is 77 years old. Imposing the functional equivalent of LWOR sentence on a juvenile who has been found not permanently incorrigible after a *Miller* hearing contravenes the *Roper* line of cases and is incompatible with the protections afforded by the Eighth Amendment.

II. Courts around the country are divided on the question of whether the Eighth Amendment applies only to the imposition of a LWOR sentence or whether it also prohibits lengthy aggregate sentences that constitute the functional equivalent of a life sentence.

The Minnesota Supreme Court's rejection of Petitioner's constitutional challenge to his sentence reflects the profound and deepening disagreement among the lower courts, federal and state alike, on the question of whether the Eighth Amendment and *Miller* apply to aggregate sentences. Federal courts of appeal in the Tenth, Ninth and Seventh circuits have applied either *Graham* or *Miller* to situations other than a formally labeled "life without possibility of release" sentence.[2] *See Budder v. Addison*, 851 F.3d 1047, 1060-1061 (10th Cir. 2017) (applying *Graham* and ruling that consecutive sentences of 131.75 years for non-homicide crimes violated the Eighth Amendment); *Moore v. Biter*, 725 F.3d 1184, 1194 (9th Cir. 2013) (applying *Graham* and ruling that

[2] This analysis includes both *Graham* and *Miller* cases that consider whether a lengthy sentence, especially an aggregated sentence, is the functional equivalent of a natural life sentence.

254-year sentence for nonhomicide crimes violated the Eighth Amendment); *McKinley v. Butler*, 809 F.3d 908, 911 (7th Cir. 2016) (applying *Miller* and finding that two consecutive sentences of 50 years violated Eighth Amendment).

In contrast, courts in the Eighth and Sixth circuits have declined to find that a lengthy aggregate sentence violates the Eighth Amendment. *See Ali v. Roy*, 950 F.3d 572, 576 (8th Cir. 2020) (holding that state court decision that three consecutive sentences resulting in 90 years before parole eligibility did not implicate *Miller* or violate the Eighth Amendment was not unreasonable); *Bunch v. Smith*, 685 F.3d 546, 547-551 (6th Cir. 2012) (ruling, under federal habeas corpus review, that 89-year sentence did not violate Eighth Amendment).

State courts are similarly divided. The supreme courts of Connecticut, Iowa, Ohio, Washington, Wyoming, Indiana, New Jersey, Florida, Nevada, and California have applied either *Graham* or *Miller* to aggregate sentences. *See Comm'r v. Casiano*, 115 A.3d 1031, 1043-1048 (Conn. 2015) (holding that an aggregate term of 100 years violated Eighth Amendment); *State v. Null*, 836 N.W.2d 41, 76 (Iowa 2013) (holding that aggregate term of 75 years violated state constitution based on *Graham* and *Miller* logic); *State v. Moore*, 76 N.E.3d 1127, 1146-1149 (Ohio 2016) (finding that an aggregate term of 77 years before parole eligibility for nonhomicide offense violated Eighth Amendment and *Graham*); *State v. Ramos*, 387 P.3d 650, 660 – 661 (Wash. 2017) (applying *Miller* to an 85- year aggregate sentence but finding no violation because juvenile had *Miller* hearing); *Bear Cloud v. State*, 334 P.3d 132, 141-145 (Wyo. 2014) (ruling that *Miller* applies to an aggregate term of 45 years before parole eligibility); *Brown v. State*, 10

N.E.3d 1, 6-8 (Ind. 2014) (holding that *Miller* applies to an aggregate 150-year sentence); *State v. Zuber*, 152 A.3d 197, 211-213 (N.J. 2017) (applying *Miller* to aggregate sentences); *Henry v. State*, 175 So.3d 675, 679 (Fla. 2015) (applying *Graham* and finding that aggregate term totaling 90 years violated Eighth Amendment); *State v. Boston*, 363 P.3d 453, 457-458 (Nev. 2016) (applying *Graham* and determining that aggregate term of one hundred years before parole eligibility violated Eighth Amendment); *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012) (same as to aggregate term of 110 years to life).

In contrast, the state supreme courts of South Carolina, Minnesota, Missouri, Colorado, Nebraska, and Virginia have refused to apply *Graham* or *Miller* to aggregate sentences that are the functional equivalent of natural life. *See State v. Slocumb*, 827 S.E.2d 148 (S.C. 2019) (holding that 80-year aggregate sentence for nonhomicide offenses did not implicate *Miller* and did not violate Eighth Amendment); *State v. Ali*, 895 N.W.2d 237, 246 (Minn. 2017) (holding that Eighth Amendment and *Miller* did not apply to consecutive life sentences with possibility of release after 30 years even if in the aggregate, sentence was functional equivalent of life without possibility of release); *State v. Nathan*, 522 S.W.3d 881, 891 (Mo. 2017) (holding that *Miller* does not apply to aggregate sentences even if sufficiently lengthy to be the functional equivalent of natural life); *Lucero v. People*, 394 P.3d 1128, 1133-1134 (Colo. 2017) (declining to apply *Graham* or *Miller* to consecutive term-of-years sentence imposed on juvenile); *State v. Castaneda*, 889 N.W.2d 87, 97 (Neb. 2017) (ruling that *Miller* did not apply to aggregate

sentence of more than one hundred years); *Vasquez v. Commonwealth*, 781 S.E.2d 920, 925 (Va. 2016) (ruling that *Graham* does not apply to aggregate sentences).

Minnesota law is a good example of why only this Court can resolve the persistent disagreement about the meaning of the Eighth Amendment and *Miller*. The Minnesota Supreme Court denied Petitioner's Eighth Amendment claim by relying on its previous decision in *State v. Ali*. The *Ali* court, in turn, held that *Miller* does not apply to consecutive life sentences with the possibility of release after 30 years even if the sentence, in the aggregate, was the functional equivalent of a LWOR sentence. 895 N.W.2d at 246. *Ali* discussed the varying significance that other courts assign to this Court's dictum in *O'Neil v. Vermont*, 144 U.S. 323 (1892), and noted that *O'Neil* was "the only explanation from the United States Supreme Court we have on the interplay between the Eighth Amendment and consecutive sentences." *Ali*, 895 N.W.2d at at 245, 246 n.6.[3] *Ali* declined extend *Miller* and *Montgomery* to consecutive sentences for multiple crimes expressly because this Court "has not held that the *Miller/Montgomery* rule applies to sentences other than life imprisonment without the possibility of parole and the issue of whether consecutive sentences should be viewed separately when

[3] *O'Neil* involved the question of consecutive sentences for liquor-law infractions and noted "The mere fact that cumulative punishments may be imposed for distinct offenses in the same prosecution is not material up on this question." 144 U.S. at 331. As the dissenting justice in *Ali* noted, however, the *O'Neil* dictum was in a case "decided some 113 years before the first of the Supreme Court's landmark rulings concerning Eighth Amendment limits on juvenile sentencing, runs headlong into the essence of *Miller* and *Montgomery*: that "children are constitutionally different from adults for purposes of sentencing" because of their "diminished culpability and greater prospects for reform." *Ali*, 895 N.W.2d at 253 (Chutich, J., dissenting) (citation omitted).

conducting a proportionality analysis under the Eighth Amendment remains an open question." *Ali*, 895 N.W.2d at 246.

This question needs answering, and courts around the country are waiting for this Court, as the final arbiter of federal constitutional issues, to do so. *Id.* at 246 ("we simply hold that absent further guidance from the Court, we will not extend the *Miller/Montgomery* rule" to consecutive sentences for multiple crimes); *Slocumb*, 827 S.E.2d at 306 (declining to extend *Graham* to *de facto* life sentences "without further input from the Supreme Court."); *Nathan*, 522 S.W.3d at 894 (declining to extend *Graham* and *Miller* into the "uncharted waters" of consecutive sentences amounting to the functional equivalent of life in prison without the possibility of parole); *Willbanks v. Dep't of Corrections*, 522 S.W.3d 328, 246 (Mo. 2017) (declining to extend *Graham* to consecutive sentences "[w]ithout direction from the Supreme Court").

The conflict in the lower courts, and uncertainty on the applicability and significance of the *O'Neil* dictum, are compelling reasons to issue the writ.

III. The Eighth Amendment's application to a functional life sentence for a redeemable juvenile is an important issue with broad implications to the criminal justice system, and this case is an ideal vehicle to consider the constitutional question.

The question of whether the Eighth Amendment permits a juvenile, whom a court has found to be not permanently incorrigible, to receive an aggregate sentence that is the functional equivalent of a life sentence is a critically important one. It is an issue of first impression for this Court, and one of constitutional magnitude, implicating a fundamental

liberty interest for a category of individuals held by the Court to be less culpable and less deserving of punishment.

Furthermore, this case is an ideal vehicle for resolving this question. There was an extensive and well-litigated *Miller* hearing below. The trial court issued detailed findings on Petitioner's childhood, the manner in which his immaturity and impulsivity contributed to his conduct in this case, and the reasons that he was capable of rehabilitation. Petitioner unambiguously objected to consecutive sentences on Eighth Amendment grounds in the trial court, and raised the issue in his direct appeal.

Importantly, the facts of the two homicides Petitioner committed are, at this stage, uncontested. Petitioner stipulated to the prosecutor's evidence, and the trial court made factual findings in its verdict that that while Petitioner premeditated and intended Christian's death, he did not premeditate or intend the infant's death. [App. A3, 11]. Thus, while it is true that Petitioner's aggregate sentence reflects the commission of more than one offense, the two homicide convictions and sentences are the product of a single criminal intent. This heightens the need for review by this Court. An aggregate sentence with only a remote possibility of parole based on a single criminal intent of a redeemable juvenile is fundamentally at odds with this Court's Eighth Amendment caselaw recognizing the characteristics of youth and the capacity for change and maturity.

The issue of whether the principle that children are "constitutionally different from adults in their level of culpability" and are "less deserving of the most severe punishments" applies equally to an aggregate sentence that prevents a redeemable juvenile from having any chance of parole during his natural life expectancy is of

paramount importance, both to individuals like Petitioner and to the broader administration of justice. The writ should issue.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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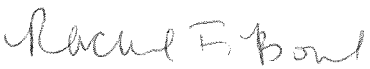

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