

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2021

CHARLES DALTON SHOEMAKE

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent

CERTIFICATE OF SERVICE OF
PETITION FOR WRIT OF CERTIORARI

I, Stacy Ferraro, hereby certify that on the 10th day of November 2021, I deposited at the main post office at 401 East South Street, Jackson, Mississippi, the Petition for Writ of Certiorari for mailing, postage prepaid, to the Hon. Scott S. Harris, Clerk of the Supreme Court of the United States, and to Lynn Fitch Esq., Attorney General of Mississippi, and Ashley Lauren Sulser Esq., Assistant Attorney General, Post Office Box 220, Jackson, MS 39205, telephone number (601) 359-3680, counsel for the respondent herein. I further certify pursuant to Supreme Court Rule 29 that all parties required to be served have been served by this means.



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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Given his exemplary prison record and demonstrated rehabilitation, whether Charles Dalton Shoemake's life-with-parole sentence imposed for a crime he committed at the age of seventeen is disproportionate under the Eighth Amendment?

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PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner Charles Dalton Shoemake respectfully petitions this Court for a writ of certiorari to review the judgment of the Mississippi Court of Appeals in this case.

OPINION BELOW

The opinion of the Mississippi Court of Appeals Court (Pet. App. D) is reported at *Shoemake v. State*, 323 So. 3d 1093 (Miss. Ct. App. 2019). The order of the Supreme Court of Mississippi denying the petition for writ of certiorari is without published opinion. *Shoemake v. State*, 2019 Miss. LEXIS 553, 2019 WL 5884479 (Nov. 12, 2019) (Pet. App. E).

JURISDICTION

The trial court originally sentenced Dalton to life-without-parole in an unpublished order on March 28, 2014. (Pet. App. A). On the same date, the trial court issued an order on the *Miller v. Alabama* Factors. (Pet. App. B). Dalton filed a Petition for Post-Conviction Relief challenging his sentence. The judgment of the trial court denying post-conviction relief was entered on September 8, 2017. (Pet. App. C) The Mississippi Court of Appeals issued affirmed the sentence on November 12, 2019.

(Pet. App. D) Rehearing was denied on June 1, 2021. The Mississippi Supreme Court denied the petition for writ of certiorari on August 16, 2021. (Pet. App. E) This Petition is filed within 90 days of the latter event. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1257 on the ground that a right or privilege of the defendant which is claimed under the Constitution of the United States has been denied by the State of Mississippi.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States, which provides that:

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

STATEMENT OF THE CASE

On January 21, 2012, only six months shy of high-school graduation, summer, and the start of college, seventeen-year-old Dalton Shoemake made a terrible, impulsive, and most regrettable decision to participate in the murder of his former drug-dealer with his childhood best friend, Nicholas Walker, who was twenty-one years old. Because of the impulsive decisions made that one night in January 2012, Dalton will spend the rest of his life behind prison walls without any hope of release with an opportunity to redeem himself and rejoin the free-world as a productive member of society.

Dalton was a typical teenager. He went to school, did his homework, worked a part-time job, and played video games. (Pet. App. B. pp. 4-5 Tr. 767-768; Tr. 794, 853). The record developed in the sentencing court contains significant evidence of

Dalton's success in school. He took advanced classes and was well-liked by his teachers and peers. (Pet. App. B. 4-5, Tr. 767-768; Tr. 794, 853, 855). Like his peers, Dalton had already been accepted to several universities, and he planned to attend Mississippi State University in the fall. (Pet. App. B. 5, Tr. 767; Tr. 855-856).

In January 2014, Dalton pled guilty to participating in the murder of the victim with his childhood best friend. *See State v. Shoemake, Cause No. CR2012-577RCD*. Because Dalton was a juvenile at the time the crime was committed, the Circuit Court of Desoto County conducted a sentencing hearing pursuant to *Miller and Parker v. State*, 119 So. 3d 987 (Miss. 2013). At the hearing, the State called three witnesses, including Dr. W. Criss Lott. Both parties stipulated to Dr. Lott's qualifications and the sentencing court accepted Dr. Lott as an expert in the field of forensic psychology. (Tr. 46, 790). Dr. Lott testified that Dalton was an honors student who had taken several AP classes. (Tr. 49, 905). Dr. Lott noted that Dalton was "described as a very quiet, respectful, mild-mannered student by the teachers." (Tr. 49, 794). After conducting psychological testing on Dalton, Dr. Lott found no indication that Dalton had any problems "in terms of his mood, his thinking, his behavior." (Tr. 52, 797). Dr. Lott did note that Dalton had a history of social anxiety. (Tr. 52, 797). Dr. Lott concluded his direct testimony for the State by acknowledging that Dalton was a typical high school senior. (Tr. 53, 798).

In his defense, Dalton called seven witnesses: Dr. Fred Steinberg, George Loper (High School Principal), Alexis England (friend), Daren McDowell (friend),

Linda Sutton (friend), Nancy Foster (mother), and recalled Dr. Lott. Both parties stipulated to the qualifications of Dr. Steinberg and the court accepted him as an expert in the field of clinical and forensic psychology for children, adolescents, and adults. (Tr. 60, 805). Dr. Steinberg testified extensively about juvenile brain development and the neurobiological, neuropsychological, and behavioral research which shows adolescents are more impulsive than adults and have lesser capacity than adults to make good decisions. (Tr. 59-95, 804-840). Dr. Steinberg noted that Dalton had shown: “good academic and work productivity,” “prior positive community behavior” and a “positive home environment.” (Tr. 80-81, 825-826). Dr. Steinberg said that it was probable that Dalton could be rehabilitated. (Tr. 81, 826). Dr. Steinberg did not see any evidence of irreparable corruption. (Tr. 82, 827). Former Center Hill High School Principal George Loper testified that Dalton was a good student who completed the requirements for graduation in county jail. (Tr. 108, 853). Principal Loper noted Dalton received a composite score of 25 on the ACT and was accepted to Northwest Community College where he won the Presidential Scholarship, Louisiana State University, and Mississippi State University. (Tr. 109-110, 853-856). Dalton was awarded a scholarship package to Mississippi State. (*Id.*) Principal Loper added that Dalton had been awarded a certificate for citizenship and awards for academic excellence in geometry and biology for obtaining the highest grades in those classes. (Tr. 110, 855). It was Principal Loper’s opinion that the crime was not “normal behavior” for Dalton and that Dalton could be rehabilitated. (Tr. 112, 857). Friend Alexis England described

Dalton as “sweet,” “kind of shy,” and “very kind.” (Tr. 114, 859). Family Friend Darren McDowell described Dalton as “loving, kind, sweet,” and “a good kid” (Tr. 117-118, 862-863). Dalton’s mother Nancy Foster described Dalton as “caring child” who helped other inmates in the jail. (Tr. 124, 869). Nancy Foster also noted Dalton was “a hard worker” who has been working the whole time he was in jail. (Tr. 127, 872). Nearly all of the witnesses who testified said Dalton was capable of rehabilitation. (S. Order 5, Tr. 879). Dalton’s attorney presented the court with a letter from his employer James V. Gay from Frontier Ranch Supply stating Dalton was employed there from August 22, 2011, until January 20, 2012. (Tr. 129, 874). Dalton also presented a letter from the Desoto County Sheriff’s Office stating that Dalton had not received any rule violations and was not subject to any disciplinary investigations and had been working as a trusty in the laundry room since May 14, 2012. (Tr. 130, 875). At the end of the hearing, Dalton apologized to the victim’s family. (Tr. 150-151, 895-896).

On March 28, 2014, the circuit court issued a written Order sentencing Dalton to life in prison without eligibility for parole. (Pet. App. A & B. Tr. 764-774).

Despite the lack of any hope of ever rejoining society, Dalton has maintained an exceptional correctional record. Dalton has not received a single rule violation report the entire time he has been incarcerated. (Tr. 170-231). In, this Court noted that Henry Montgomery’s “evolution from a troubled, misguided youth to a model member of the prison community” was “was an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.” *Montgomery v. Louisiana*, 577

U.S. 190, 212-213 (2016); *See Skipper v. South Carolina*, 476 U.S. 1, 7-8 (1986) (Holding evidence of a defendant's disposition to make a well-behaved and peaceful adjustment to life in prison is relevant and mitigating). His childhood reputation for being respectful and well-mannered has continued behind prison walls.

After Dalton was sentenced, this Court decided *Montgomery v. Louisiana*, 577 U.S. 190 (2016). In light of the decision in *Montgomery v. Louisiana*, Dalton filed a Petition for Post-Conviction Relief seeking to have his life-without-parole sentence vacated, set-aside, or corrected in accordance with this Court's guidance on *Miller's* application in *Montgomery*. As part of the Petition for Post-Conviction Relief, Dalton attached additional evidence including his complete Mississippi Department of Corrections Records (Tr. 170-231), which show he has never received a rule violation report, as well as an affidavit from the State's expert Dr. Lott stating:

All the information I obtained from collateral sources, including Dalton's teachers, friends and employer indicated that Dalton was a very polite and respectful adolescent. This crime was the only violent act in Dalton's life history. Dalton's previous pattern of behavior indicated that he was a normal teenager who made good grades, had a part-time job and was accepted into three colleges. Although I cannot opine with certainty regarding Dalton's behavior post release, it is my opinion that Dalton has the intellectual capacity and family support for a successful reintegration into society if given the opportunity and appropriate support, and he does not appear to be one of those "rare" and "uncommon" juvenile offenders who are incapable of being rehabilitated and thus are irredeemably incorrigible.

(Tr. 311).

On September 8, 2017, the Circuit Court of Desoto County denied Dalton's motion. (Pet. App. C.) Dalton appealed to the Mississippi Court of Appeals and his

sentenced was affirmed on November 12, 2019 (Pet. App. D) On May 7, 2020 the Mississippi Court of Appeals stayed Dalton's Motion for Rehearing pending this Court's ruling in *Jones v. Mississippi*, 141 S. Ct. 1307 (2021). *Jones v. Mississippi* was decided on April 22, 2021. This Court held in *Jones* that juveniles can raise an as-applied proportionality challenge to a life-without-parole sentence. *Jones v. Mississippi*, 141 S. Ct. 1307, 1322-1323 (2021). The stay was lifted and rehearing was denied on June 1, 2021. Dalton filed a timely petition for writ of certiorari with the Mississippi Supreme Court which was denied on August 16, 2021. (Pet. App. E.)

REASONS FOR GRANTING THE WRIT

Dalton's sentence is grossly disproportionate in light of this Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005) *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and *Eddings v. Oklahoma*, 455 U.S. 104 (1982). This Court has recognized that:

Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, **no hope**. Maturity can lead to that considered reflection which is the foundation of remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual.

Graham v. Florida, 560 U.S. 48, 79 (2010) (emphasis added).

Despite the lack of any hope of ever rejoining society, Dalton has not received a single rule violation report during the 7 years he has been incarcerated. (Tr. 170-

231). Prior to entering Mississippi Department of Corrections custody, Dalton did not receive any rule violations, was not subject to any disciplinary investigations, and worked as a trusty in the laundry room in the Desoto County Jail. (Tr. 130, 875). Additionally, Dalton was a good student who completed the requirements for high school graduation in county jail. (Tr. 108, 853). Dalton's behavior since being incarcerated shows that he is on his way to being rehabilitated. Prison rule violations are precisely the kind of evidence that judges rely on in sentencing children to die in prison and that the Mississippi Court of Appeals relies on to affirm life-without-parole sentences. *See Cook v. State*, 242 So.3d 865, 875 (Miss. Ct. App.) (2017) (noting "the judge discussed Cook's numerous RVRs while incarcerated; *McGilberry v. State*, 292 So. 3d 199, 209 ¶45 (Miss. Ct. App. 2020) ("the judge found McGilberry's prison record revealed someone other than a model prisoner."); *Martin v. State*, 2020 Miss. App. Lexis 49, *17-18 ¶24, 2020 WL 772730 *6 ¶24 (Miss. Ct. App. Feb. 18, 2020) (in sentencing to life without parole, the judge noted Martin's prison record showing 28 rule violation reports for various infractions including possession of weapons and materials used to make weapons); *Ealy v. State*, 2019, Miss. App. Lexis 552, 2019 *12 ¶18, WL 5704145 *4, ¶18 ("in making this finding the court considered the extensive evidence of Ealy's violent and disrespectful behavior in prison.")).

At the sentencing, hearing Dalton expressed remorse and apologized to the victim's family:

Your Honor, I would just like to say that I'm sorry for what happened, that I would change everything if I could, not because of the

punishment that I'm receiving today but because of the pain that I've caused other people. I would like to apologize to Paul's family for what they've been through, especially his mom. I realize how much a mother loves her son, and I can't imagine how horrible this has been for her. If I could trade places with Paul, I would, but I can't. I won't ask for forgiveness because I couldn't forgive in their situation. I just want them to know that no matter what I will be punished and that I truly am sorry. I made a mistake. I'm going to spend the rest of my life trying to fix it and better myself in every way regardless of the decision made today. Thank you.

(Tr. 114-115, 895-896).

In an affidavit attached to the Post-Conviction Petition, the State's expert, Dr. W. Criss Lott, expressed the opinion that Dalton had the capacity to successfully reintegrate into society and that he did not appear to be one of the "rare" and "uncommon" juvenile offenders incapable of rehabilitation. (Tr. p. 311). Dalton's sentence is clearly disproportionate under the Eighth Amendment, and the Mississippi Court of Appeals erred in affirming Dalton's sentence of life-without-parole and the Mississippi Supreme Court erred in denying Dalton's petition for writ of certiorari.

I. QUESTION PRESENTED: Given his exemplary prison record and demonstrated rehabilitation, whether Charles Dalton Shoemake's life-with-parole sentence imposed for a crime he committed at the age of seventeen is disproportionate under the Eighth Amendment?

This is a textbook case of disproportionate sentencing. All of the evidence in the record in Dalton's case demonstrates that he was a typical high-school teenager who made a terrible, impulsive decision one night that was completely out-of-character and clearly demonstrated Dalton's "objective immaturity, vulnerability,

and lack of true depravity,” which cannot justify a life-without-parole sentence. *Graham v. Florida*, 560 U.S. 48, 78 (2010), *as modified* (July 6, 2010). The primary rationale that underpins *Miller* is that youth is uniquely mitigating. “[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and development of a youthful defendant be duly considered’ in assessing his culpability.” *Miller*, 567 U.S. at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104 (1982)).

This Court’s recognition that life without parole for a juvenile is “akin to the death penalty,” and its reliance on a “line of ... precedents ... demanding individualized sentencing when imposing the death penalty,” establishes that, like adults facing a potential death sentence, juveniles facing a possible life-without-parole sentence should “have an opportunity to advance, and the judge or jury a chance to asses, *any* mitigating factors[.]” *Miller*, 567 U.S. at 475-476 (emphasis added). *See also id.* at 475 (“*Graham* [*v. Florida*’s] ‘[t]reat[ment] [of] juvenile life sentences as analogous to capital punishment’ ... makes relevant here a second line of our precedents, demanding individualized sentencing when imposing the death penalty.”); *id.* at 475 (citations omitted) (“*Graham* ... likened life without parole for juveniles to the death penalty itself, thereby evoking a second line of our precedents. In those cases, we have ... requir[ed] that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death.”).

In *Graham*, this Court explained that, “[while] [i]t is true that a death

sentence is “unique in its severity and irrevocability,” ... life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence. As one court observed in overturning a life without parole sentence for a juvenile defendant, this sentence ‘means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.’” *Graham*, 560 U.S. 48, 69-70 (2010) (citations omitted). This Court also emphasized that “[l]ife without parole is *an especially harsh punishment for a juvenile*. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.” *Id.* at 70 (emphasis added).

This Court’s precedent makes it clear that Dalton’s life-without-parole sentence is disproportionate under the Eighth Amendment. *In Graham*, this Court noted: “a sentence lacking any legitimate penological justification is by its nature disproportionate to the offense.” *Graham*, 560 U.S. at 71. It is now well-established 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 v. Alabama*, 567 U.S. 460, 472 (2012) (emphasis added). In his concurring opinion in *Graham*, Chief Justice Roberts acknowledged *Roper’s*¹ conclusion that “juveniles are generally less blameworthy than adults” and “an offender’s juvenile status can play a central role” in considering sentence proportionality. *Graham*, 560 U.S. at 86.

As part of this Eighth Amendment analysis, this Court has identified four primary penological justifications for punishment: retribution, deterrence, incapacitation, and rehabilitation. *Graham*, 560 U.S. at 71 (citing *Ewing v. California*, 538 U.S. 11, 25 (2003) (plurality opinion)). The Mississippi Supreme Court has also held that:

There are at least four generally recognized factors that any sentencing judge should consider in the exercise of discretionary sentencing of any defendant who stands before the court for imposition of sentence: (1) ***Rehabilitation***; (2) ***Retribution***; (3) Separation from society; and, (4) ***Deterrence***, both general and specific. The judge, in exercising individualized sentencing, and considering all information that the judge may have on the particular defendant, *should consider what sentence will hopefully have a rehabilitative effect* on the defendant.

Taggart v. State, 957 So. 2d 981, 994 (Miss. 2007). (Emphasis added).

This Court has held “that the penological justifications for life without parole *collapse* in light of ‘the distinctive attributes of youth.’” *Montgomery*, 577 U.S. at 208 (2016) (citation omitted). “Retribution is a legitimate reason to punish.” *Graham*, 560 U.S. at 71. But because “[t]he heart of the retribution rationale” relates to an

¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." *Miller*, 567 U.S. at 472 (citations and quotation marks omitted).

This Court recognized in *Roper v. Simmons* that "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Roper v. Simmons*, 543 U.S. 551, 571 (2005). "Nor can deterrence do the work in this context, because the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Miller*, 567 U.S. at 472 (citation omitted). Of course, rehabilitation can never justify a life-without-parole sentence for a child (or anyone else), because "[l]ife without parole 'forfeits altogether the rehabilitative ideal.'" *Id.* at 473.

Incapacitation is also a "legitimate reason for imprisonment, [but it] does not justify [a] life without parole sentence" for a child., even one convicted of a homicide offense. *Graham*, 560 U.S. at 72. "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible." *Id.* "The characteristics of juveniles make that judgment questionable." ² *Id.* at 72-73. As this Court has

² See also *Miller*, 567 U.S. at 471 ("[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" (citation omitted); *id.* ("[S]tudies show[] that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior.") (citations and quotation marks omitted); *id.* at 473 ("[I]ncorrigibility is inconsistent with youth.") (citations and quotation marks omitted); *id.* ("[A sentence of life without parole] reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change.") (citation omitted, emphasis added); *id.* at 479-480 (noting "the great difficulty . . . of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption'" (citation omitted, emphasis added)).

noted:

Even if the State's judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset. A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations, lest the Eighth Amendment's rule against disproportionate sentences be a nullity.

Graham v. Florida, 506 U.S. 48, 73 (2010).

Indeed, this Court has repeatedly recognized that “it is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Jones*, 141 S.Ct. at 1315 (citation omitted). In this case two experts, Dalton’s expert Dr. Steinberg and the State’s expert Dr. Lott, testified that Dalton could be rehabilitated. (Tr. 311, 850, 80-81, 825-826). In her opinion concurring in part and dissenting in part, Mississippi Court of Appeals Judge Westbrook reasoned:

While Chandler does not require sentencing courts to make a specific finding of permanent incorrigibility, a blind spot is presented in the case sub judice. The trial court here did not have the “clairvoyance to know if Shoemake [could], in fact, be rehabilitated,” but psychology experts would seem likely candidates for the task. After an in-depth evaluation and screening, the State’s expert, Dr. W. Criss Lott, expressly found that Shoemake does not belong to the “rare” and “uncommon” group of “irredeemably incorrigible” juveniles warranting the life-without-parole sentence (LWOP). Dr. Lott’s opinion was consistent with that of Shoemake’s expert, Dr. Steinberg.

Shoemake v. State, 323 So. 3d 1093, 1108 (¶ 54) (Miss. Ct. App. 2019).

In this case, Dr. Steinberg testified:

[W]hen you consider the particulars of this . . . specific case, you have an individual that has no previous criminal past. We have an individual who has no previous history of aggressive - physically aggressive behavior, an individual who has shown good academic and work productivity, an individual who has prior positive community behavior and has been viewed positively in the community. He does not have a history of conduct disorder, which is a psychiatric diagnosis given to children who habitually have s antisocial kind of traits. We don't call them antisocial personality disorders because you can't do that before the age of 18, but the typical juvenile a delinquent kind of kid that keeps getting into trouble. He has no history of being a menace to society prior to this event. And of course, you have the brain maturity mitigation factors, and because of all these things, I think the Court could consider the fact, based upon the research and the Defendant's social, familial and environmental circumstances, that he is . . . less culpable than typical adults, and because of these neurobiological and neuropsychological factors in adolescent brain development, his positive home environment, it's probable that he can be rehabilitated.

(Tr. 825-826).

In an affidavit attached to the Post-Conviction Petition, the State's expert Dr.

W. Criss Lott stated:

All the information I obtained from collateral sources, including Dalton's teachers, friends and employer indicated that Dalton was a very polite and respectful adolescent. This crime was the only violent act in Dalton's life history. Dalton's previous pattern of behavior indicated that he was a normal teenager who made good grades, had a part-time job and was accepted into three colleges. Although I cannot opine with certainty regarding Dalton's behavior post release, it is my opinion that Dalton has the intellectual capacity and family support for a successful reintegration into society if given the opportunity and appropriate support, and he does not appear to be one of those "rare" and "uncommon" juvenile offenders who are incapable of being rehabilitated and thus are irredeemably incorrigible.

(Tr. p. 311).

As Judge Westbrook pointed out in her opinion concurring in part and dissenting

in part: “[e]ven the State’s attorney recognized that the *possibility of rehabilitation weighed in Shoemake’s favor* during arguments” *Shoemake v. State*, 323 So. 3d at 1109 (¶ 57). The Mississippi Court of Appeals held: “[t]here is no Mississippi precedent for the proposition that the possibility of rehabilitation overrides the other *Miller* factors—or even that it is the preeminent factor.” *Shoemake v. State*, 323 So. 3d at 1194 (¶ 40). However, in this case, the opinions of both the State’s and the Defense’s experts and Dalton’s demonstrated rehabilitation make rehabilitation the dispositive factor because the other penological justifications fail.

It is clear that Dalton’s life-without parole sentence lacks any legitimate penological justification and thus is disproportionate to the offense. *Graham*, 560 U.S. at 72. Dalton’s sentence must be vacated and he must be resentenced to life with eligibility for parole. The existing evidence in the record is sufficient to sentence Dalton to life with the possibility of parole.

CONCLUSION

For the reasons set forth in connection with the Question Presented, Petitioner respectfully requests that a writ of certiorari issue to review the judgment of the Mississippi Court of Appeals and the Mississippi Supreme Court in this matter on this Question.

Respectfully submitted,



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WL 4052547

Appendix A

Unpublished Order, Sentencing of the Court, March 28, 2014

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI
FOR THE 17TH JUDICIAL DISTRICT

STATE OF MISSISSIPPI

vs.

CAUSE NUMBER CR2012-577RCD

COUNT(S) 2

CHARLES DALTON SHOEMAKE

SENTENCE OF THE COURT

The Defendant, CHARLES DALTON SHOEMAKE, on this date, came before the Court for sentencing pursuant to a (jury verdict) (revocation) (negotiated plea) (open plea) of guilty to the charge of MURDER in violation of Miss. Code Ann. § 97-3-19(1)(a).

The Defendant was represented by WILLIAM TRAVIS, who was present at all times with the Defendant.

The State of Mississippi was represented by LUKE WILLIAMSON, (Assistant) District Attorney.

The Circuit Court, therefore, adjudicates the Defendant guilty of the charge of MURDER in violation of Miss. Code Ann. § 97-3-19(1)(a).

IT IS THEREFORE ORDERED that for said offense the Defendant, CHARLES DALTON SHOEMAKE is hereby sentenced to a term of LIFE IMPRISONMENT in the Mississippi Department of Corrections. Further, this sentence is to be served subject to the terms of M.C.A. 47-7-3(1)(h) which, as it currently exists, does not allow for the possibility of parole. A separate Order evaluating the Miller v Alabama considerations is being filed contemporaneously with this sentence.

The Defendant is also ordered to:

Pay the following to the Clerk of this Court:

- a. Court Costs;
- b. Fine in the amount of \$ _____;
- c. Crime Victim Compensation Fund in the amount of \$ _____;
- d. Crime Lab Fee in the amount of \$ _____, made payable to _____

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DESOTO COUNTY, MISSISSIPPI

MAR 28 2014

DALE K. THOMPSON, CIRCUIT CLERK
BOOK 2014 ENTRY 32043

e. Transportation Costs to _____ County Sheriff's Department in the amount of \$_____;

f. Restitution in the amount of \$_____ ; made payable to _____

Restitution in the amount of \$_____ ; made payable to _____

g. All assessments are due and payable at the rate of \$_____ per month beginning _____ or as follows _____

e. And further _____

This sentence shall run (consecutively) (concurrently) with any charge the Defendant is currently serving.

Further the Defendant shall be given credit for 786 days served in custody awaiting trial on this charge, as by law required.

SO ORDERED this the 18 day of March, 2014.

ENTERED NUNC PRO TUNC this the 28 day of March, 2014.


CIRCUIT COURT JUDGE

412-75-2952
SOCIAL SECURITY NUMBER

DEFENDANT'S ADDRESS

PLACE OF BIRTH

DeSoto County Jail
3425 Industrial Drive
Hernando, MS 38632

February 8, 1994
DATE OF BIRTH

White
RACE

Male
SEX

Appendix B

Unpublished Order, Order on *Miller v. Alabama* Factors, March 28, 2014

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. CR 2012-0577 RCD

CHARLES DALTON SHOEMAKE

Defendant

ORDER ON MILLER v. ALABAMA FACTORS

This cause came on to be heard subsequent to the defendant's guilty plea to a charge of murder in the above styled and numbered cause. Pursuant to the United States Supreme Court decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) and its Mississippi progeny, *Parker v. State*, 119 So.3d 987 (Miss 2013), the Court did schedule a hearing to determine whether the mandatory sentence of life in the state penitentiary was to be served without parole as mandated by statute (as the parole statutes currently exist) or subject to parole "notwithstanding the provisions of M.C.A. 47-7-3(1)(h)" as contemplated by *Parker's* interpretation of *Miller*. The hearing was held before the Circuit Court of Desoto County, Mississippi on March 18, 2014. At the conclusion of the hearing, the Court announced that Shoemake's sentence would be, as required by law, a term of life imprisonment in the state penitentiary. The Court did take the matter under advisement to enter a separate written order evaluating the *Miller* factors and determining if Shoemake's sentence was to be subject to the current statutes which do not allow for parole or with parole "notwithstanding the provisions of M.C.A. 47-7-3(1)(h)"

A. Facts

On or about January 21, 2012, the defendant and co-defendant, Nicholas Walker, picked Paul Victor III up under the ruse of repaying a debt. However, unknown to the victim, Shoemake and Walker had previously discussed and planned his murder. They had made

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Adelle H. Morgan
CIRCUIT COURT CLERK
Book 2014 - entry 3204

preparations by gathering a gun and a short piece of extension cord to be used in the murder as well as a gas can for the purpose of disposing of the body. Shoemake and Walker picked up Victor in the subdivision in which both Shoemake and Victor lived, drove a short distance within the subdivision before Walker, the driver, pulled the car over. Walker commenced to strike Victor several times in the head with the butt of the gun while Shoemake strangled him from behind with the extension cord. The defendants then proceeded to Shelby Farms in Shelby County, Tennessee. Once at Shelby Farms the defendants set the body of Paul Victor III on fire and left the burning body in a wooded area off of a walking trail where it was eventually discovered. This synopsis of the facts has been taken directly from the plea hearing of Shoemake on January 14, 2014. Shoemake stated that he had no disagreements with the proof presented and admitted his guilt to the crime.

B. Miller v. Alabama

In 2012 the United States Supreme Court handed down the case of *Miller v. Alabama*, 132 S.Ct. 2455 (2012), along with its companion case, *Jackson v. Arkansas*, holding, in essence, that a sentencing scheme which requires a mandatory sentence of life without parole for minors is unconstitutional. The Court held that while a sentence of life without parole for a minor would be "uncommon", it was not precluded by the *Miller* ruling, but, rather, before handing down such a sentence, a court is required to consider factors which take into account the age of the defendant. These factors include:

1. Chronological age and its hallmark features (i.e. immaturity, impetuosity, failure to appreciate risks and consequences);
2. Family and home environment;
3. Circumstances of the offense (i.e. participation and pressure); and
4. Inabilities to deal with the legal system and to assist counsel.
5. Possibilities of Rehabilitation.

A determination must be made by the Court as to whether the action of the juvenile, applying the applicable factors, constitutes "transient immaturity" or "irreparable corruption". The Mississippi Supreme Court, in addressing the current parole statutes in the state, found that the Court, as a result of the *Miller* decision, had the option of a sentence of life imprisonment, subject to parole, "notwithstanding the provisions of M.C.A. 47-7-3(1)(h)" if warranted under the *Miller* decision. *Parker*, 119 So.3d at 999

C. Hearing

A sentencing hearing was held on March 18, 2014 for the specific purpose of addressing the *Miller* factors and its applicability to the case at hand. The State presented Memphis Lieutenant Kevin Helms and Dr. Chris Lott as witnesses as well as victim impact testimony from Pamela Victor, the mother of the victim.

Lt. Helms testified briefly as to the discovery of the burned body of Paul Victor as well as the nature of the crime. He also testified to Shoemake's attitude upon being interviewed which he described as being "nonchalant". He testified that Shoemake did not seem to care and denied any involvement in the crime.

Dr. Lott testified as to the competency exam he performed on Shoemake. His testimony included a recount of Shoemake's background including his home and school life. He testified that Shoemake came from a stable and secure home environment, that he was an honor student taking Advanced Placement classes, and that he had stable employment at a western supply store. Dr. Lott described Shoemake as being quiet, respectful and mild-mannered and that he presented as a typical high school senior. He testified that he administered tests, including an IQ test, and that Shoemake put forth good effort and his score was average, lower than expected but higher than a 12th grade level. Dr. Lott testified that Shoemake had a history of anxiety. Finally,

he testified that Shoemake was 17 years, 347 days old at the time of the crime and that there would be no significant difference in maturity in someone 18 days older or even a few months older.

The defense presented testimony from Dr. Fred Steinberg, George Loper, Alex England, Darrin McDowell, Linda Sutton, Nancy Foster, as well as recalling Dr. Chris Lott. Several letters and sets of records were entered into evidence by stipulation. Shoemake then gave an allocation to the court.

Dr. Steinberg was recognized as an expert in the field of clinical and forensic psychology of children. He testified generally about the maturity level of minors, their lesser ability to appreciate risks and consequences, lack of the maturity to control impulses, as well as their susceptibility to bow to peer pressure. Dr. Steinberg testified in substantial conformity with Dr. Lott as to Shoemake's upbringing and his family stability. He reiterated the finding of a history of anxiety disorder. He testified that it was an understandable act by a juvenile not to cooperate with the police. Dr. Steinberg further testified that the chances of rehabilitation were increased in juveniles as only a small percentage of adolescents continue risk after maturity. It was Dr. Steinberg's opinion that it was "probable" that Shoemake could be rehabilitated.

Dr. Lott was recalled by the defense. He identified several records of a Dr. Ali pertaining to treatment of Shoemake as well as medicine, pluooxetine, which Dr. Lott testified had apparently been prescribed by Dr. Ali. Dr. Lott testified that pluooxetine was an antidepressant that was also used to treat general anxiety disorder. As relates to rehabilitation, Dr. Lott did agree that Shoemake was "not a Ted Bundy".

George Loper testified as Shoemake's principal. He testified that Shoemake had graduated by taking his final exams while in jail. He indicated that Shoemake had made a 25 on

his ACT and that he was "college ready". Loper identified several certificates related to Shoemake's academics including college acceptance letters from Northwest Community College, Mississippi State University and Louisiana State University. Loper testified that this was not normal activity for Shoemake, that he had never seen any indication that Shoemake was susceptible to such behavior and that, if allowed back into society someday, Shoemake "could be O.K."

Alex England, Darrin McDowell and Linda Sutton all testified in a similar fashion. They all knew Shoemake; stated he was a normal, kind, sweet person with good family and friend support. They felt like he could be rehabilitated in the future. The defense's final witness was Nancy Foster, the defendant's mother who presented a photograph of Shoemake to the court and testified on his behalf. Finally, Shoemake gave an allocution in which he briefly apologized for his actions.

D. Application of the Miller Factors

1. Chronological Age and its hallmark features

At the time of the crime, Charles Dalton Shoemake was 17 years, 347 days old. Eighteen (18) days later, and the *Miller* factors would not apply. However, this Court, by law, cannot ignore the bright line that has been set by the appellate courts and, therefore, Shoemake qualifies for consideration under *Miller*. However, Shoemake's actual age is a consideration as that was his actual chronological age at the time of the crime. For the purposes of reference, it is noted that in *Miller* and its companion case, *Jackson*, the defendants were both fourteen (14) years old at the time of the crime in question.

Dr. Steinberg and Dr. Loft both gave generalized testimony about juveniles and their immaturity, impetuosity and their inability to fully appreciate risks and consequences. While

both agreed that the 18 days between the crime and Shoemake's eighteenth birthday would have made no significant difference in the maturity of Shoemake, they also both agreed that impulse control did not mature until the early to middle twenties. However, there was no evidence presented that Shoemake had ever had the slightest problem with impulse control prior to this event. As a matter of fact, according to Dr. Steinberg, Shoemake had no history of aggression.

Only a small amount of Dr. Steinberg's testimony was specific to Shoemake, and, other than referencing Shoemake's anxiety disorder, did not really address how these general findings about juveniles specifically related to Shoemake. Dr. Lott's testimony described Shoemake as a "typical high school senior" who was "quiet, respectful and mild-mannered". He was an honor student who attended Advanced Placement classes and held down steady part time employment. As referenced herein, there was nothing presented as relates to Shoemake's home or family environment that would contribute to any slowing of the maturity process. Unlike Miller and Jackson, Shoemake was not a troubled 14 year old. He was a well-adjusted, typical teenager who was just short of his eighteenth birthday. It is noted that in *Miller*, the defendant's "pathological background" was found to have contributed to his actions. No such "pathological background" exists in our case.

2. Family and home environment

By all accounts, Shoemake comes from a stable and caring family. Dr. Lott's testimony established a stable and secure family environment. Dr. Steinberg confirmed that he came from a good family and a good home and that he had never been in trouble. Dr. Steinberg testified that Shoemake's family was supportive and that they were responsible as a family unit whenever Shoemake might have issues, although there was no testimony as to what those issues might have been. Dr. Steinberg confirmed that Shoemake had a good and productive relationship with

his parents. The picture of a good and stable family and friend network was also confirmed by Linda Sutton. Further, there was no testimony of drug use or mental illness, other than testimony as to Shoemake's general anxiety disorder, which would affect his familial relationships.

For purposes of reference, the defendants in *Miller* and *Jackson* had not had the benefit of such stability. Miller had been in and out of foster care. His mother was a drug addict and alcoholic and he was abused by his step-father. He had attempted suicide on at least four occasions. Jackson's mother *and* grandmother had both shot individuals in the past. Shoemake comes from a loving, caring home. His family was responsive to any unnamed problems and he was raised as a "typical" teenager.

3. Circumstances of the offense (participation and pressure).

The crime before the court is clearly heinous. This was not a "heat of passion" killing. It was not an "accident". This was not a homicide that involved "diminished capacity" or even "intoxication" from alcohol or drug use. This was a planned and executed murder. Applying the evidence that is before the court, both Walker and Shoemake planned and participated equally in the murder. They both participated equally in the disposal of the body and the covering up of the crime. There is nothing before the court which would indicate that either defendant had a higher level of planning or participation than the other.

There is no evidence before this court that Shoemake somehow succumbed to some type of "peer pressure" or, for that matter, "pressure" of any type. There has been no evidence presented that Walker exercised or attempted to exercise any type of influence over Shoemake during this crime or otherwise. There has been no evidence presented that there was any history between the two which would lead this court to infer some type of "pressure" situation. At the time of the crime, Walker had just turned 21 and Shoemake was almost 18. Other than their

difference in ages, this court has no evidence of any pressure whatsoever that might have been put on Shoemake or that he might otherwise have been feeling.

In *Miller*, the crime occurred after a night of drinking and drug use. The victim was a neighbor who was participating in the evening revelry. After a dispute, Miller beat the neighbor and set his trailer on fire to cover up the crime. In *Jackson*, the murder occurred during a robbery. Jackson was initially outside but came in during the robbery. He did not shoot the victim, but was present in the store when the murder occurred. There was conflicting evidence as to whether Jackson threatened the victim or, rather, encouraged the gunman to cease. Both *Miller* and *Jackson* were described as "botched robberies". Our case is not a "botched robbery". It was a pre-planned murder.

4. Inabilities to deal with the legal system and assist counsel

There appear to be two parts of this analysis: First is the ability to deal with the legal system unassisted; second is the ability to assist counsel. As to the first prong, Lieutenant Helms testified that Shoemake did not admit any involvement in the murder during his initial interview. Shoemake did make apparently incriminating statements at an interview with the Olive Branch Police Department but, through counsel, had the incriminating portions of that interview suppressed. Prior to obtaining counsel, there is no evidence before this court indicating any inability of Shoemake to "deal with the legal system" or any incriminating evidence that has been presented against Shoemake that would be attributable to his age or its hallmark features.

Shoemake subsequently obtained counsel. There has been no evidence presented that would indicate or give the court any reason to infer that Shoemake has not been able to assist his counsel. Shoemake is a high school graduate who was an honor student taking Advanced

Placement classes with a solid ACT score and college acceptance letters from at least three institutions. These are attributes that are missing from a large number of defendants who are over 18 that appear before this court on a daily basis and who have no problem assisting their counsel in their defense. Further, the actions of counsel in representing Shoemake, and the results obtained from those actions, belie any argument that Shoemake was unable to assist counsel. Finally, a competency examination as contemplated by Uniform Circuit and County Court Rule 9.06, was performed and the court found Shoemake competent after a hearing.

5. Rehabilitation

Clearly, this court does not have the clairvoyance to know if Shoemake can, in fact, be rehabilitated. On the issue, Dr. Steinberg says that generally only a small percentage of adolescents continue risky behavior. He believes it is "probable" that Shoemake can be rehabilitated. Dr. Lott did not specifically state an opinion as to Shoemake's rehabilitation. However, as to possibility of recidivism, he did indicate that Shoemake is "not a Ted Bundy." George Loper felt that Shoemake "could be O.K." in society someday, and several friends stated they felt Shoemake could be rehabilitated. The State argues, using a statement made by Dr. Steinberg, that the fact that Shoemake has committed this crime is proof that he may commit the same crime again. Suffice to say, there a number of factors (the fact that the crime has been committed being only one of them) to be considered in addressing the issue of rehabilitation.

6. Additional considerations

The *Miller* case lists several comparisons that are pertinent to this analysis. *Miller* guides the court to consider the various comparisons in evaluating juveniles. They include comparing a fourteen (14) year old to a seventeen (17) year old. That is the exact situation we

have in the case at hand. Shoemake was almost 18 years old at the time of the crime, not a 14 year old.

Miller guides the court to consider the difference between a "shooter" and an "accomplice". Once again, *Miller* is directly on point. Shoemake was one of two principals in this murder. He was equally culpable both legally and under the facts of this case. He was not a culpable spectator. He was an equal participant.

Finally, they implore the court to consider whether the defendant came from a "stable" home or an "abusive" home. In our case, based upon the evidence presented, Shoemake could not have come from a more stable home. He did not suffer the shortcomings that some teenagers endure in our society. On the contrary, he was given every opportunity and, at least outwardly, had taken advantage of those opportunities in school, work and with family/friend relationships.

E. Conclusion

The court does not take lightly its obligation in weighing these factors and coming to a conclusion. This court accepts that the United States Supreme Court holding constitutes the law of the land and acknowledges the finding of that Court in *Miller* that the sentencing of a juvenile to life without parole will be "uncommon". However, both *Miller* and *Parker* acknowledge that there are circumstances where such a sentence is appropriate. Any argument that there should be a strict prohibition against such sentences must be made to the legislature or the appellate courts. Otherwise, this court is constrained to apply the law in this case as it currently exists.

It is hard to imagine many realistic situations where the factors would weigh more heavily against a defendant than they do in the case at hand. In *Miller*, the majority (in responding to a concern of the dissent) notes that a case by case analysis would allow the sentencing court to consider various situations that were listed as areas of concern by the dissent.

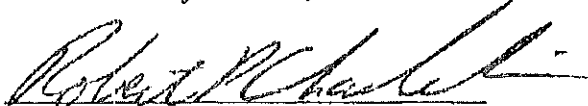
Those specific scenarios include the deliberate murder of an innocent victim by a seventeen (17) year old as well as seventeen (17) year olds who commit the "most heinous" offenses. Both scenarios exist in the case at hand. Nothing compelling, under the *Miller* factors, has been presented in mitigation other than the defendant's age and the generalized hallmark features of a juvenile.

Defense counsel basically argues that Shoemake is a young man who made a "mistake" (although acknowledging it to be, in essence, a terrible and tragic mistake) who can be "rehabilitated". However, even the expert witnesses testimony was equivocal at best as to the possibility of rehabilitation. Dr. Steinberg felt rehabilitation was "probable" although acknowledging that one's past behavior is an indicator of future behavior. Dr. Lott's statement that Shoemake is "not a Ted Bundy" merely moves him from comparison to one of history's most heinous serial killers. Further, the main supporting evidence set forth for a claim of rehabilitation in the future (Shoemake's intelligence, his stable and supportive family, etc) are the very elements of proof that weigh so heavily against him under the other *Miller* factors.

F. Holding

The court has previously handed down a sentence of life imprisonment in this cause from the bench on March 18, 2014. Pursuant to the findings hereinabove, said life sentence is to be served subject to the terms of M.C.A. 47-7-3 (1)(h) which, as it currently exists, does not allow for the possibility of parole. This Order shall be filed contemporaneously with the written sentencing order in this cause.

SO ORDERED AND ADJUDGED this the 28th day of March, 2014.


ROBERT P. CHAMBERLIN
CIRCUIT COURT JUDGE

Appendix C

Unpublished Order, Order Denying Motion, September 8, 2017

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI

CHARLES DALTON SHOEMAKE

PETITIONER

VS.

CAUSE NO. 17-cv-00045CWD

STATE OF MISSISSIPPI

RESPONDENT

ORDER DENYING MOTION

This cause is before the Court on a "Motion for Post-Conviction Relief to Vacate, Set Aside, or Correct Sentence" previously filed by the Petitioner, Charles Dalton Shoemake ("Shoemake"), by and through counsel¹. The Court will treat Shoemake's motion as a motion filed under the Mississippi Uniform Post-Conviction Collateral Relief Act [Miss. Code Ann. §§ 99-39-1, et seq.].

Shoemake, along with a co-defendant, was originally indicted in June of 2012 in CR2012-577GCD for conspiracy and capital murder. In March of 2013, the grand jury returned an amended superseding indictment charging Shoemake with conspiracy, deliberate design murder, and kidnaping. On January 14, 2014, Shoemake entered an open plea of guilty to murder (non-capital). After a hearing on March 18, 2014, Judge Robert P. Chamberlin² sentenced Shoemake to life in prison without the possibility of parole and entered an order on March 28, 2014, setting forth the factors from *Miller v. Alabama*, 132 S.Ct. 2455, 2450 (2012).

In his motion, Shoemake first argued his sentence is unconstitutional under *Miller v. Alabama* and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), as revised (Jan. 27, 2016), because Judge Chamberlin did not find that Shoemake is an "irreparably corrupt" juvenile

¹ Shoemake is being represented by the Office of Capital Defense Counsel.

² Judge Chamberlin was elected to serve in the Mississippi Supreme Court and is now serving in that capacity. This case was assigned to the undersigned.

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DALE K. THOMPSON, CIRCUIT CLERK

homicide offender who may be condemned to die in prison. He asserted the Supreme Court's recent decision in *Montgomery v. Louisiana* clarified *Miller's* holding and application.

Second he argued, if the Court agrees with him on the first point, that a re-sentencing hearing is not required for this Court to re-sentence Dalton to life with the possibility of parole.

Alternatively, Shoemake argued his sentence must be vacated and he must be re-sentenced to life with eligibility for parole, because the practice of sentencing children to die in prison violates the eighth amendment to the United States Constitution and Article 3 of the Mississippi Constitution.

This Court ordered the State to respond to Shoemake's petition on March 24, 2017. In their response filed April 5, 2017, the State argued that 1) Shoemake was sentenced properly under the applicable law; and 2) furthermore, the Petitioner's requested relief (a categorical ban on juvenile life without parole sentences) is beyond this Court's ability to grant and is not required by any applicable precedent.

Shoemake filed a reply to the State's response on April 12, 2017.

The question for this Court is whether Judge Chamberlin failed to meet the requirements in *Miller* and *Montgomery* by not using the magic phrases "transient immaturity" or "irreparable corruption" in his ruling sentencing Shoemake to life in prison without the possibility of parole. Although Judge Chamberlin did not use the magic phrases in the written order, Shoemake's attorney argued using the words "irreparable corruption" at the hearing.

The Court finds that the Supreme Court in *Montgomery* did not expand the Court's holding in *Miller*. At issue in *Montgomery* was whether *Miller* should be applied retroactively. *Montgomery*, 136 S.Ct. at 725. The Mississippi Supreme Court in *Jones v. State*, 122 So.3d 698, 703 (¶ 18) (Miss. 2013) had already ruled that *Miller* applied retroactively to cases on collateral

review. The Supreme Court of Mississippi has given trial judges the decision of *Parker v. State*, 119 So.3d 987, 995-99 (¶¶ 18-28) (Miss. 2013) to use as guidance in conducting *Miller* hearings. Judge Chamberlin followed the requirements of *Parker* and *Miller*, and for this reason, this Court should not conduct a *de novo* review of his decision.

Further, this Court will decline to make a categorical finding that a life without parole sentence for a juvenile is always unconstitutional. The United States Supreme Court has declined to announce such a categorical rule. *Miller*, 132 S.Ct. at 2463. The appellate courts have declined to do so as well. The Mississippi legislature has passed no law to such end. None of these great institutions has made such a categorical finding and each is certainly able to do so without invitation from this Court.

For the reasons stated, after reviewing the pleadings in this case and the criminal case at issue, CR2012-577GCD, pursuant to Mississippi Code Annotated section 99-39-19, the Court will not re-sentence Shoemake to life with the possibility of parole, nor make a categorical finding that a life without parole sentence for a juvenile is unconstitutional. The Court finds that the issues before the Court are purely legal issues and no evidentiary hearing is necessary.

Accordingly, it is hereby

ORDERED the Motion for Post-Conviction Relief to Vacate, Set Aside, or Correct Sentence filed by Charles Dalton Shoemake is **DENIED**; and, that the Clerk of this Court is directed to mail certified copies of this Order to Charles Dalton Shoemake, by and through his counsel of record, and the District Attorney.

SO ORDERED this the 8 day of September, 2017.


CELESTE E. WILSON
CIRCUIT COURT JUDGE

Appendix D

Opinion of the Mississippi Court of Appeals,
Shoemaker v. State, 323 So. 3d 1093 (Miss. Ct. App. 2019)



User Name: Stacy Ferraro

Date and Time: Sunday, November 7, 2021 9:26:00 AM CST

Job Number: 157207404

Document (1)

1. *Shoemaker v. State*, 323 So. 3d 1093

Client/Matter: -None-

Search Terms: charles shoemaker v Mississippi

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
Court: State Courts > Mississippi

Caution

As of: November 7, 2021 3:26 PM Z

Shoemaker v. State

Court of Appeals of Mississippi

November 12, 2019, Decided

NO. 2017-CA-01364-COA

Reporter

323 So. 3d 1093 *; 2019 Miss. App. LEXIS 553 **; 2019 WL 5884479

CHARLES DALTON SHOEMAKE, APPELLANT v.
STATE OF MISSISSIPPI, APPELLEE

Case Summary

Subsequent History: Rehearing granted by, En banc
Shoemaker v. State, 2020 Miss. App. LEXIS 208 (Miss.
Ct. App., May 12, 2020)

Rehearing denied by, En banc Shoemaker v. State, 2021
Miss. App. LEXIS 242 (Miss. Ct. App., June 1, 2021)

Writ of certiorari denied Shoemaker v. State, 2021 Miss.
LEXIS 222 (Miss., Aug. 19, 2021)

Prior History: [**1] COURT FROM WHICH APPEALED:
DESOTO COUNTY CIRCUIT COURT. DATE OF
JUDGMENT: 09/08/2017, TRIAL JUDGE: HON.
CELESTE EMBREY WILSON.

Disposition: AFFIRME.

Core Terms

trial court, sentencing, rehabilitation, factors, post-conviction, juvenile, incorrigible, legal standard, murder, juvenile offender, irreparable, corruption, reflects, parole, permanently, asserts, offender, sentencing hearing, immaturity, vacated, circumstances, psychology, transient, homicide, uncommon, stable, guilty plea, friends, courts, categorical

Overview

HOLDINGS: [1]-In sentencing the juvenile to life without parole (LWOP) after he pleaded guilty to murder in violation of Miss. Code Ann. § 97-3-19(1)(a) (Rev. 2006), the trial court applied the correct legal standard, and therefore the juvenile was properly denied postconviction relief, because it observed in its sentencing order that under Miller it had to determine whether the juvenile's action, applying the applicable factors, constituted transient immaturity or irreparable corruption; [2]-The trial court did not abuse its discretion by concluding that the juvenile should be sentenced to LWOP because the record showed that he was 18 days short of his 18th birthday when he committed the crime, he came from a stable and caring family, the case involved a planned murder, and the juvenile participated equally in the murder, disposing of the body, and covering up the crime.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Conclusions of Law

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions for Postconviction Relief

HN1 [img alt="document icon"] De Novo Review, Conclusions of Law

When reviewing a circuit court's denial or dismissal of a post-conviction relief motion, an appellate court will reverse the judgment of the circuit court only if its factual findings are clearly erroneous; however, the appellate court reviews the circuit court's legal conclusions under a de novo standard of review.

Criminal Law & Procedure > ... > Appeals > Standards of Review > Abuse of Discretion

Criminal Law & Procedure > Juvenile Offenders > Sentencing

Criminal Law & Procedure > ... > Appeals > Standards of Review > De Novo Review

HN2 [img alt="document icon"] Standards of Review, Abuse of Discretion

The Mississippi Supreme Court held in *Chandler v. State* that there are two applicable standards of review in a Miller case. First, whether the trial court applied the correct legal standard is a question of law subject to de novo review. Second, if the trial court applied the proper legal standard, its sentencing decision is reviewed for abuse of discretion.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

HN3 [img alt="document icon"] Sentencing, Age & Term Limits

Post-Montgomery, the Mississippi Supreme Court addressed the applicable legal standard for a Miller sentencing hearing in *Chandler*. Quoting Montgomery's summary of Miller, the Chandler court recognized that under this U.S. Supreme Court precedent, a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing. Following this observation, the Mississippi Supreme Court held that the sentencing authority in *Chandler* applied the correct legal standard because it afforded the defendant a hearing and sentenced the defendant after considering and taking into account each factor identified in Miller and adopted in Parker. The supreme court also expressly held that the Montgomery Court confirmed that Miller does not require trial courts to make a finding of fact regarding a child's incorrigibility.

Criminal Law & Procedure > Juvenile Offenders > Sentencing > Age & Term Limits

HN4 [img alt="document icon"] Sentencing, Age & Term Limits

The U.S. Supreme Court observed that Miller determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, as compared to the juvenile offender whose crimes reflect the transient immaturity of youth.

Criminal Law & Procedure > Juvenile Offenders > Sentencing > Age & Term Limits

HN5 [img alt="document icon"] Sentencing, Age & Term Limits

The U.S. Supreme Court in *Miller* found that sentencing a juvenile to life without parole will be uncommon, but in both *Miller* and *Parker* the courts acknowledge that there are circumstances where such a sentence is appropriate.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

[HN6\[1\]](#) Sentencing, Age & Term Limits

In *Miller*, the U.S. Supreme Court did not establish a specific procedure for the lower courts to follow when sentencing juvenile homicide offenders, but the U.S. Supreme Court did identify a number of factors it found to be relevant in the sentencing decision, as follows: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

[HN7\[1\]](#) Sentencing, Age & Term Limits

In *Parker*, the Mississippi Supreme Court held that the five factors identified by the *Miller* Court must be considered by the sentencing authority in determining whether a juvenile homicide offender may be sentenced to life without parole.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

[HN8\[1\]](#) Sentencing, Age & Term Limits

There is no Mississippi precedent for the proposition that the possibility of rehabilitation overrides the other *Miller* factors—or even that it is the preeminent factor. Rather, it is one of the five *Miller* factors a trial court must consider in determining whether to sentence a juvenile offender to life without parole.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

[HN9\[1\]](#) Sentencing, Age & Term Limits

In both *Miller* and *Parker*, the U.S. Supreme Court and the Mississippi Supreme Court, respectively, both consider rehabilitation as one of several factors to apply in determining whether life without parole should be imposed on a juvenile offender. In neither case is the potential for rehabilitation dispositive, or even given more weight in the sentencing analysis.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

[HN10\[1\]](#) Sentencing, Age & Term Limits

Focusing on whether an offender is "permanently incorrigible" does not comport with the U.S. Supreme Court's recognition in both *Miller* and *Montgomery* that the proper focus is whether life without parole may be appropriate for juvenile homicide offenders whose crime reflects irreparable corruption. That determination requires an analysis of all the *Miller* factors.

Criminal Law & Procedure > Juvenile
Offenders > Sentencing

[HN11](#) Juvenile Offenders, Sentencing

The assertion that a juvenile defendant has a constitutional right to be resentenced by a jury has been repeatedly rejected by the Court of Appeals of Mississippi.

Criminal Law & Procedure > Juvenile
Offenders > Sentencing > Age & Term Limits

Criminal Law & Procedure > Criminal
Offenses > Homicide, Manslaughter & Murder

[HN12](#) Sentencing, Age & Term Limits

In *Miller* the U.S. Supreme Court recognized that life without parole may be appropriate for juvenile homicide offenders whose crime reflects irreparable corruption. Similarly, in *Montgomery* the Supreme Court observed that *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption as compared to the offender whose crimes reflect the transient immaturity of youth. Whether an offender's crime reflects "irreparable corruption" vs. "the transient immaturity of youth" encompasses an analysis of all the *Miller* factors.

Criminal Law & Procedure > Juvenile
Offenders > Sentencing > Age & Term Limits

[HN13](#) Sentencing, Age & Term Limits

The *Montgomery* Court has confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility.

Criminal Law & Procedure > Appeals > Standards of
Review > De Novo Review

[HN14](#) Standards of Review, De Novo Review

Constitutional issues are reviewed de novo.

Criminal Law & Procedure > Juvenile
Offenders > Sentencing > Age & Term Limits

Criminal Law & Procedure > Sentencing > Cruel &
Unusual Punishment

[HN15](#) Sentencing, Age & Term Limits

In *Miller*, the U.S. Supreme Court held that the Eighth Amendment prohibits mandatory life without parole (LWOP) sentences for juvenile homicide offenders. The Supreme Court recognized, however, that its decision does not foreclose a sentencer's ability to make that judgment in homicide cases, so long as the sentencer takes into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. In *Montgomery*, the U.S. Supreme Court again recognized that a LWOP sentence remained available in the "uncommon" case where it was found justified.

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Age & Term Limits

Criminal Law & Procedure > Juvenile

Offenders > Sentencing > Sentencing Alternatives

Criminal Law & Procedure > Criminal

Offenses > Homicide, Manslaughter &

Murder > Murder

Criminal Law & Procedure > Preliminary

Proceedings > Entry of Pleas > Guilty Pleas

HN10 Sentencing, Age & Term Limits

In *Jones*, the Mississippi Supreme Court found that *Miller* rendered the present sentencing scheme unconstitutional if, and only if, the sentencing authority fails to take into account characteristics and circumstances unique to juveniles. In *Parker*, the Mississippi Supreme Court recognized that *Miller* does not prohibit sentences of life-without-parole for juvenile offenders. The Court of Appeals of Mississippi has also recognized that a juvenile homicide offender does not have an absolute constitutional right to be considered for parole. In accordance with this precedent, the court likewise declines to hold that a juvenile who has pleaded guilty to murder has an absolute constitutional right to be considered for parole.

Counsel: FOR APPELLANT: STACY L. FERRARO,
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FOR APPELLEE: OFFICE OF THE ATTORNEY
GENERAL, BY: ALICIA MARIE AINSWORTH.

Judges: CARLTON, P.J. BARNES, C.J., J. WILSON,
P.J., GREENLEE, TINDELL, LAWRENCE, McCARTY
AND C. WILSON, JJ., CONCUR. McDONALD, J.,
CONCURS IN PART AND DISSENTS IN PART
WITHOUT SEPARATE WRITTEN OPINION.
WESTBROOKS, J., CONCURS IN PART AND
DISSENTS IN PART WITH SEPARATE WRITTEN

OPINION, JOINED BY McDONALD, J.; LAWRENCE
AND McCARTY, JJ., JOIN IN PART. WESTBROOKS,
J., CONCURRING IN PART AND DISSENTING IN
PART. McDONALD, J., JOINS THIS OPINION.
LAWRENCE AND McCARTY, JJ., JOIN THIS OPINION
IN PART.

Opinion by: CARLTON

Opinion

[*1095] NATURE OF THE CASE: CIVIL - POST-
CONVICTION RELIEF

EN BANC.

CARLTON, P.J., FOR THE COURT:

P1. In January 2012 Charles Dalton Shoemake and his friend Nicholas Walker murdered Paul Victor III. Shoemake was seventeen years and 347 days old at the time. In January 2014 Shoemake pleaded guilty to murder in violation of *Mississippi Code Annotated section 97-3-19(1)(a)* (Rev. 2006). On March 18, 2014, the DeSoto County Circuit Court held a sentencing hearing pursuant to *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and *Parker v. State*, 119 So. 3d 987 (Miss. 2013). On March 28, 2014, the **[**2]** trial court¹ issued its written order sentencing Shoemake to life imprisonment without eligibility for parole (LWOP).

P2. After Shoemake was sentenced, the United States Supreme Court decided *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016). On March 16, 2017, Shoemake filed a motion for post-conviction relief

¹We refer to the court issuing Shoemake's sentence as the "trial court."

(PCR) asserting that his sentence should be vacated, set aside, or corrected under the Supreme Court's guidance on *Miller's* application in *Montgomery*. The post-conviction court² requested the State to file a response, which it did, and Shoemake filed a reply. The post-conviction court denied Shoemake's PCR motion.

[*1096] P3. Shoemake appeals, asserting that his LWOP sentence should be vacated because it is disproportionate as a matter of law; should be vacated and remanded for resentencing because the trial court did not make a finding that he is "permanently incorrigible," which Shoemake asserts is required under *Miller* as clarified by *Montgomery*, and should be vacated because sentencing a juvenile offender to LWOP violates the Eighth Amendment of the United States Constitution and Article 3, Section 28 of the Mississippi Constitution. Finding no error, we affirm the trial court's denial Shoemake's PCR motion.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

P4. The record reflects that on January 21, 2012, under a ruse that Shoemake and Walker [**3] were going to repay a debt owed to Victor,³ Shoemake and Walker contacted Victor to arrange to pick him up in Olive Branch, Mississippi in a subdivision where both Victor and Shoemake lived.⁴ Before contacting Victor, the

record reflects that Shoemake and Walker planned to kill Victor. They prepared to kill him by gathering a gun and a short piece of an extension cord, as well as a can of gas to use in disposing of the body.

P5. With Walker driving, Shoemake and Walker picked up Victor. Walker drove a short distance and then pulled the car over. The record reflects that Walker then struck Victor several times in the head with the butt of a gun while Shoemake, who was in the backseat of the car on the passenger side, strangled Victor from behind with the extension cord. Shoemake and Walker then drove to Shelby Farms in Shelby County, Tennessee. There, they dragged the body to a wooded area off of a walking trail and set Victor's body on fire. Shoemake and Walker left the burning body in the wooded area where it was eventually discovered.

P6. Shoemake was originally indicted for conspiracy to commit murder and for capital murder. In March 2013, Shoemake's indictment was amended to charge [**4] him with conspiracy to commit murder; murder under Mississippi Code Annotated section 97-3-19(1)(a); and kidnapping. On January 14, 2014, pursuant to a plea agreement, Shoemake pleaded guilty to murder, with the conspiracy and kidnapping charges to be remanded.⁵ At Shoemake's plea hearing the trial court accepted Shoemake's guilty plea on the murder charge, finding that the State set forth a sufficient factual basis upon which to base the guilty plea and that Shoemake's

² To distinguish this court from the original sentencing court we refer to this court as the "post-conviction court."

³ According to police reports in the record, Walker told police that earlier in the day he and Shoemake had purchased drugs from Victor and paid for the drugs with counterfeit money.

⁴ At Shoemake's January 2014 plea hearing, the State summarized its proof on the murder charge against Shoemake. This synopsis of the facts is based upon this Court's own review of the record as well as the factual

summary provided by the State at Shoemake's plea hearing. At that hearing Shoemake stated that he had no disagreement with the State's summary of the proof it had against him, and he admitted his guilt to the murder charge against him.

⁵ *Rush v. State*, 748 So. 2d 1024, 1027 (¶10) (Miss., 1999) ("If a plea bargain allows a defendant facing multiple charges to plead to one charge in exchange for having the other charges dismissed or remanded, the remanded charges are barred from further prosecution.").

guilty plea was freely and voluntarily given.

P7. Shoemake's sentencing hearing was held on March 18, 2014. Because Shoemake was under the age of eighteen at the time he committed the crime, the trial court conducted his sentencing hearing in light of *Miller* and *Parker*.

[*1097] P8. Two witnesses testified for the State: Memphis Lieutenant Kevin Helms and Dr. Chris Lott. Victor's mother also gave victim-impact testimony. Lieutenant Helms testified briefly about the discovery of Victor's burned body and his initial interview with Shoemake.⁶ He testified that Shoemake denied any involvement in the crime and that during the interview Shoemake was "nonchalant" and that it appeared that he "didn't care."

P9. Dr. Lott was admitted as an expert in the field of forensic psychology. He [**5] testified about the competency exam he performed on Shoemake. Dr. Lott recounted Shoemake's background, including Shoemake's home and school life. He testified that Shoemake came from a "stable and secure [home] environment" and that Shoemake had described his relationship with his mother and father "very positively." Dr. Lott also testified that Shoemake was an honor student, he had taken several Advanced Placement classes, "[he] was poised to attend college and doing quite well," and he had a part-time job working at a western supply store for about a year prior to his arrest. Dr. Lott described Shoemake as being quiet, respectful,

and mild-mannered and that "he presented as a typical high school senior." Dr. Lott testified that he administered a number of tests to Shoemake, including an abbreviated IQ test, an achievement test, and a personality test. According to Dr. Lott, Shoemake put forth good effort, and his scores were average. His IQ score was lower than expected, but higher than an eleventh-grade level. Dr. Lott also testified that Shoemake had a history of anxiety. Dr. Lott testified that Shoemake was seventeen years and 347 days old at the time of the crime and that there [**6] would be no significant difference in maturity in someone eighteen days older or even a few months older.

P10. The defense presented testimony from Dr. Fred Steinberg and re-called Dr. Lott. Other witnesses who testified for the defense included Shoemake's high school principal, George Loper, a number of Shoemake's friends or family friends, and Shoemake's mother, Nancy Foster. Shoemake was also given the opportunity to address the court at the end of the sentencing hearing.

P11. Dr. Steinberg was admitted as an expert in the field of clinical and forensic psychology of children. He testified generally about the maturity level of minors, their "lesser ability" to appreciate risks and consequences of their actions, lack of the maturity to control impulses, and susceptibility to succumb to peer pressure. Dr. Steinberg's testimony about Shoemake's upbringing and his family stability was similar to Dr. Lott's testimony on these issues, and Dr. Steinberg also reiterated that Shoemake had a history of anxiety disorder. He testified that it was an understandable act by a juvenile not to cooperate with the police. Dr. Steinberg opined, "[I]t's probable that [Shoemake] can be rehabilitated . [**7] . . . I think there is rehabilitation potential down the road."

P12. The defense re-called Dr. Lott. He identified

⁶DVDs containing the video-taped police interviews of Shoemake and Walker that were conducted on January 22 and 23, 2012, were admitted into evidence at Walker and Shoemake's April 2, 2013 competency hearing before Judge Chamberlain. Judge Chamberlain also conducted Shoemake's sentencing hearing. The DVDs are part of the appellate record.

several records from a Dr. Ali who treated Shoemake and, according to the records, had apparently prescribed pluooxetine for Shoemake. Dr. Lott testified that pluooxetine was an antidepressant that was also used to treat general anxiety [*1098] disorder. When questioned about whether Shoemake should possibly be allowed back into society, Dr. Lott testified, "In my opinion, [Shoemake] is not a Ted Bundy. . . . He does not have that personality profile that would suggest to me that he would not be amenable to treatment."

P13. The defense's next witness was George Loper, Shoemake's principal. He testified that Shoemake had graduated by taking his final exams while in jail, that Shoemake made a 25 on the ACT test, and that Shoemake was "college ready." Loper identified Shoemake's acceptance letters from Northwest Community College, Mississippi State University, and Louisiana State University. Loper also testified that he did not think that the circumstances surrounding Shoemake's involvement in Victor's death were normal for Shoemake, and he further testified that allowing Shoemake back [**8] into society some day "could be okay."

P14. The defense's next three witnesses were Alex England, Shoemake's long-time friend; Darrin McDowell, Shoemake's mother's best friend who had known Shoemake all his life; and Linda Sutton, a family friend who had known Shoemake and his family since Shoemake was three or four years old. These witnesses provided similar testimonies that Shoemake was a normal, sweet, kind person with good support from his family and friends and that Shoemake belongs back in society some day. The defense's final witness was Nancy Foster, Shoemake's mother, who testified on his behalf. Finally, Shoemake gave an allocation in which he briefly apologized for his actions.

P15. The trial court issued its written order sentencing

Shoemake to LWOP on March 28, 2014.⁷ In that order, the trial court set out its obligations under *Miller* and *Parker* and then it assessed each of the five *Miller* factors, as well as additional considerations described in *Miller* that the court found pertinent to its analysis. These considerations included comparing a fourteen-year-old to a seventeen-year-old, a "shooter" to an "accomplice," and a child from a "stable" home to a child from an "abusive" [**9] or "chaotic" home. *Miller*, 567 U.S. at 477. After assessing these factors and considerations in light of the record before it and the testimony and evidence presented at the sentencing hearing, the trial court found that "[i]t is hard to imagine many realistic situations where the factors would weigh more heavily against a defendant than they do in the case at hand." The trial court sentenced Shoemake to LWOP.

P16. The United States Supreme Court decided *Montgomery* in January 2016. On March 16, 2017, Shoemake filed a PCR motion, asserting that his LWOP sentence should be vacated, set aside, or corrected because in light of the Supreme Court's "clarification" regarding the application of *Miller* in *Montgomery*, the trial court applied the wrong legal standard by not making a finding that he was "irreparably corrupt." Alternatively, Shoemake asserted that the post-conviction court should adopt a categorical ban on LWOP sentences as unconstitutional under the *Eighth Amendment of United States Constitution* and Article 3, Section 28 of the Mississippi Constitution. Shoemake further asserted that the post-conviction court should vacate his sentence on this basis.

P17. Shoemake attached to his PCR motion his MDOC

⁷ To avoid repetition, the Court will address the details relating to the trial court's sentencing order when it discusses the *Miller* factors below.

records that reflected that Shoemake had never received a rule-violation report while incarcerated. **[**10]** Also attached to Shoemake's PCR motion was an affidavit from Dr. Lott, the State's expert **[*1099]** who testified at Shoemake's sentencing hearing. The record reflects that Dr. Lott provided his affidavit at the request of defense counsel to explain his testimony at the sentencing hearing where he said: "In my opinion, [Shoemake] is not Ted Bundy." He stated in his affidavit that "Ted Bundy was a malicious sociopath or psychopath" and that Shoemake had not exhibited any of the traits associated with these personality disorders. Lott's affidavit also provides:

All the information I obtained from collateral sources, including [Shoemake's] teachers, friends, and employer indicated that [Shoemake] was a very polite and respectful adolescent. This crime was the only violent act in [Shoemake's] life history. [Shoemake's] previous pattern of behavior indicated that he was a normal teenager who made good grades, had a part-time job, and was accepted into three colleges. Although I cannot opine with certainty regarding [Shoemake's] behavior post release, it is my opinion that [Shoemake] has the intellectual capacity and family support for a successful reintegration into society if given the opportunity **[**11]** and appropriate support, and he does not appear to be one of those "rare" and "uncommon" juvenile offenders who are incapable of being rehabilitated and thus are irredeemably incorrigible.

P18. The post-conviction court requested the State to file a response to Shoemake's PCR motion, which it did, and Shoemake filed a reply. Based upon its review of the pleadings in the case before it and the contents of the criminal case, Cause No. CR2012-577GCD, the post-conviction court denied Shoemake's PCR motion without an evidentiary hearing. The post-conviction

court found that the issues before it were "purely legal," thus an evidentiary hearing was not necessary. Regarding the first issue Shoemake raised, the post-conviction court found that the trial court had applied the correct legal standard in sentencing Shoemake to LWOP. The post-conviction court also addressed Shoemake's alternative request for it to impose a categorical ban on LWOP sentences. The post-conviction court declined to do so, observing that neither the United States Supreme Court, the Mississippi appellate courts, nor the Mississippi Legislature, had made such a categorical finding. Shoemake appeals.

STANDARD OF REVIEW

P19. **[**12]** HN1 **[†]** "When reviewing a circuit court's denial or dismissal of a PCR motion, we will reverse the judgment of the circuit court only if its factual findings are clearly erroneous; however, we review the circuit court's legal conclusions under a de novo standard of review." Berry v. State, 230 So. 3d 360, 362 (¶3) (Miss. Ct. App. 2017) (internal quotation marks omitted).⁸ Specifically with respect to the issues in this case, HN2 **[†]** the Mississippi Supreme Court held in Chandler v. State, 242 So. 3d 65, 68 (¶7) (Miss. 2018), that "there are two applicable standards of review in a *Miller* case. First, whether the trial court applied the correct legal standard is a question of law subject to de novo review." Second, "[i]f the trial court applied the proper legal standard, its sentencing decision is reviewed for abuse of discretion." *Id.*

⁸ Shoemake's PCR motion was timely filed, having been filed within three years from entry of the trial court's written order sentencing Shoemake to LWOP on March 28, 2014. Miss. Code Ann. § 99-39-5(2) (Rev. 2015); see also Temple v. State, 671 So. 2d 58, 59 (Miss. 1996).

DISCUSSION

I. The Validity of Shoemake's LWOP Sentence

P20. Shoemake asserts that the Supreme Court "clarified" *Miller* in *Montgomery* [*1100] when it observed that "[b]ecause *Miller* determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crime reflects irreparable corruption, . . .'" *Montgomery*, 136 S. Ct. at 734 (quoting *Miller*, 567 U.S. at 479-80) (internal quotation mark omitted), *Miller* "rendered life without parole an unconstitutional penalty for . . . juvenile offenders whose [*13] crimes reflect the transient immaturity of youth." *Montgomery*, 136 S. Ct. at 734. Relying on this language from *Miller*, as quoted by the Supreme Court in *Montgomery*, Shoemake asserts that "[b]ased on all of the evidence in the record, there is no question that [he] is not the rare juvenile offender whose crime reflects irreparable corruption. Therefore, [his] sentence is disproportionate as a matter of law and must be vacated."

P21. In short, Shoemake contends that both the trial court and the post-conviction court applied the wrong legal standard in sentencing Shoemake to LWOP and that the post-conviction court applied the wrong legal standard in denying his PCR motion.

P22. Shoemake also asserts that the trial court incorrectly applied *Miller*, as follows:

Despite the existence—and extent—of [the] evidence on the record demonstrating that [he] was a typical high school senior who acted out-of-character one tragic evening when he committed an awful and impulsive crime for which he later admitted his guilt and sincere remorse, and quickly began to make every effort to rehabilitate himself, the [trial] court incorrectly applied *Miller* and

sentenced [him] to life in prison without the possibility of parole.

P23. In accordance [*14] with applicable precedent, we utilize a de novo standard of review in examining Shoemake's contention that the trial court applied the wrong legal standard in sentencing him to LWOP and his contention that the post-conviction court applied the wrong legal standard in denying his PCR petition. *See Chandler*, 242 So. 3d at 68 (¶7). We review Shoemake's contention that the trial court incorrectly applied *Miller* for abuse of discretion. *Id.*

P24. As addressed below, we find that the trial court did not apply the wrong legal standard in sentencing him to LWOP, and we find that the post-conviction court did not apply the wrong legal standard in denying his PCR motion. In sum, the correct legal standard was applied and in accordance with Mississippi law. We further find that the trial court did not "misapply" *Miller*. On the contrary, the trial court satisfied its obligations under *Miller* and *Parker* by considering the five factors identified by *Miller*, as well as other considerations noted in *Miller*, including comparisons between "the [seventeen]-year-old and the [fourteen]-year-old, the shooter and the accomplice, [and] the child from a stable household and the child from a chaotic and abusive one." *Miller*, 567 U.S. at 477. Taking all these considerations [*15] into account, the trial court chose to sentence Shoemake to LWOP. We find no abuse of discretion in this decision, nor do we find any error in the post-conviction court's refusal to vacate Shoemake's sentence based on Shoemake's assertion that the trial court misapplied the *Miller* factors in reaching its sentencing decision.

A. Applicable Legal Standard

P25. *HN3* [↑] Post-*Montgomery*, the Mississippi

Supreme Court addressed the applicable legal standard for a *Miller* sentencing hearing in *Chandler*, 242 So. 3d at 68 (§10). Quoting *Montgomery's* summary of *Miller*, the *Chandler* court recognized that under this U.S. Supreme Court precedent, "a [*1101] juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." *Chandler*, 242 So. 3d at 68 (§10) (quoting *Montgomery*, 136 S. Ct. at 725 (citing *Miller*)). Following this observation, the Mississippi Supreme Court held that the sentencing authority in *Chandler* "appl[ie]d the correct legal standard because it afforded [the defendant] a hearing and sentenced [the defendant] after considering and taking into account each factor identified in *Miller* and adopted in *Parker*. *Id.* at 68 (§8). The supreme court also expressly [*16] held that "[t]he *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility." *Id.* at 69 (§15).

P26. The trial court in this case applied the correct legal standard. Shoemake's sentencing hearing was held on March 18, 2014. Both the State and the defense presented witnesses and evidence relating to the *Miller* factors. The court's sentencing order issued shortly thereafter reflects that in accordance with *Miller* and *Parker*, the trial court considered and took into account each of the *Miller* factors and other *Miller* considerations based on the testimony and evidence presented at the hearing.

P27. Indeed, the trial court expressly observed in its sentencing order that under *Miller* it must determine whether the action of the juvenile, applying the applicable factors, constitutes "transient immaturity" or "irreparable corruption." *Miller*, 768 U.S. at 479-80. This is essentially the same test that Shoemake asserts was "clarified" in *Montgomery* when *HNA* [T] the U.S.

Supreme Court observed that "*Miller* determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crime reflects irreparable corruption,' [*17] *Miller*, 567 U.S. [at 479-80] . . . [as compared to the juvenile offender] whose crimes reflect the transient immaturity of youth." *Montgomery*, 136 S. Ct. at 734.

P28. The trial court acknowledged that *HNA* [T] the Supreme Court in *Miller* found that sentencing a juvenile to LWOP will be "uncommon," *Miller*, 567 U.S. at 479, but the trial court also observed that in "both *Miller* and *Parker* [the courts] acknowledge that there are circumstances where such a sentence is appropriate." *Miller*, 567 U.S. at 480; *Parker*, 119 So. 3d at (§28). The trial court found that Shoemake's case was such a case and sentenced Shoemake to LWOP.

P29. As we address below, the trial court explained the basis for its decision in detail. Although the trial court did not expressly state in its conclusion that Shoemake's "crime reflect[ed] irreparable corruption," under Mississippi Supreme Court precedent, the trial court was not required to frame its conclusion in those precise terms. *Chandler*, 242 So. 3d at 69 (§15). Moreover, it is plain from the trial court's discussion of *Miller* in its sentencing order that the trial court understood that this was the task before it, and it used the *Miller* factors and other considerations from *Miller* in making this assessment. In short, we find that the trial court applied the correct legal standard.

P30. We [*18] likewise find no error in the post-conviction court's denial of Shoemake's PCR motion based on its determination that the trial court used the correct legal standard and "followed the requirements of *Parker* and *Miller*" when it sentenced Shoemake. The post-conviction court found that the U.S. Supreme Court in *Montgomery* did not "expand" its holding [*1102] in *Miller* but rather addressed the issue before it: whether

Miller should be applied retroactively. *Montgomery*, 136 S. Ct. at 725. As to this issue, which the *Montgomery* Court decided in the affirmative, the post-conviction court observed that the Mississippi Supreme Court had already reached the same conclusion. See *Jones v. State*, 122 So. 3d 698, 703 (¶18) (Miss. 2013) ("We are of the opinion that *Miller* created a new, substantive rule which should be applied retroactively to cases on collateral review."). In any event, *Miller's* retroactive application is not at issue in this case. Shoemake pleaded guilty to murder and was sentenced in 2014—two years after *Miller* was decided.

B. Application of the *Miller* Factors

P31. As noted above, we review the trial court's application of *Miller*, as accepted by the post-conviction court, for abuse of discretion. *HNA* [¶] In *Miller*, the U.S. Supreme Court did not establish a specific procedure [**19] for the lower courts to follow when sentencing juvenile homicide offenders, but the U.S. Supreme Court did identify a number of factors it found to be relevant in the sentencing decision, as follows:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea

agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Miller, 567 U.S. at 477-78 (citations omitted). *HNA* [¶] In *Parker*, the [**20] Mississippi Supreme Court held that the five factors identified by the *Miller* Court must be considered by the sentencing authority in determining whether a juvenile homicide offender may be sentenced to LWOP. *Parker*, 119 So. 3d at 995-96 (¶¶19), 998 (¶26); see *Chandler*, 242 So. 3d at 68-69 (¶¶11-12).

P32. The record and the trial court's order in this case show that it took into account and considered each of the *Miller* factors, thus complying with *Miller* and *Parker*. We address each of these factors in turn, below, as well as the additional *Miller* considerations that the trial court took into account. We find that based upon our review of the record and the applicable precedent, the trial court did not abuse its discretion in concluding that Shoemake should be sentenced to LWOP in this case.

1. Shoemake's Chronological Age and Its Hallmark Features

P33. The trial court found that Shoemake was seventeen years and 347 days old when he committed the crime—just eighteen days short of his eighteenth birthday when the *Miller* factors would not apply. The trial court recognized that, nevertheless, it was still required to apply the *Miller* factors, but the trial court did acknowledge that Shoemake's actual age was a consideration. For comparison purposes, the trial court noted that [**21] in *Miller* and its companion case, *Jackson v. Hobbs*, 565 U.S. 1013, 132 S. Ct. 548, 181 L. Ed. 2d 395, both defendants were fourteen years old at the time of the crime in [**1103] question. *Miller*, 567 U.S. at 465, 467. The trial court recognized that both Dr.

Steinberg and Dr. Lott had testified, generally, about juveniles and their immaturity, impetuosity, and their inability to fully appreciate risks and consequences. The trial court further recognized, however, that only a small amount of Dr. Steinberg's testimony was specific to Shoemake, and, other than referencing Shoemake's anxiety disorder, Dr. Steinberg did not really address how these general findings about juveniles specifically related to Shoemake.

P34. The trial court found instead that Dr. Steinberg testified that Shoemake was quiet, respectful, and mild-mannered, as well as an honor student who attended Advanced Placement classes and held down steady, part-time employment. The trial court further found that there was no evidence presented that Shoemake had even the slightest problem with impulse control before the event in question, and Shoemake had no history of aggression. In concluding its discussion of this factor, the trial court found that unlike the defendants in *Miller* and *Jackson*, [**22] Shoemake was not a troubled fourteen year old. He was a well-adjusted, seemingly typical teenager who was just short of his eighteenth birthday.

2. Shoemake's Family and Home Environment

P35. With respect to Shoemake's home and family environment, the trial court found that "by all accounts, Shoemake comes from a stable and caring family." In particular, the trial court found that Shoemake had a good relationship with his parents and that he had no history of drug use or mental illness other than general anxiety. Comparing Shoemake's family life to the defendants in *Miller* and *Jackson*, the trial court here observed that Miller had been in and out of foster care, his mother had been a drug addict and alcoholic, and his step-father abused him. *Miller*, 567 U.S. at 467. Further, Miller had attempted suicide on at least four

occasions, and Jackson's mother and grandmother had both shot individuals in the past. *Id.* at 467, 478. The trial court here found that Shoemake comes from a loving and caring home while the defendants in *Miller* and *Jackson* did not have the benefit of such stability.

3. The Circumstances of the Offense (Participation and Peer Pressure)

P36. Addressing the circumstances surrounding Victor's murder, the trial [**23] court found that Shoemake's actions were "clearly heinous"—recognizing that this case concerns "a planned and executed murder" and not a situation involving heat-of-passion, diminished capacity, or an accident. The trial court further found no evidence that Shoemake succumbed to any peer pressure from Walker or pressure of any type in participating in the murder. Rather, Shoemake participated equally in the murder, as well as in the disposing of the body and covering up of the crime. Comparing these circumstances to *Miller*, the trial court observed that the crime in *Miller* occurred after a night of drinking and drug use in which the victim had participated. *Miller*, 567 U.S. at 468. The trial court also found that Shoemake's crime was premeditated murder and not the "botched robbery turn[ed] into a killing" that occurred in both Miller's and Jackson's cases. *Id.* at 473.

4. Shoemake's Ability to Deal with the Legal System and Assist His Counsel.

P37. Regarding Shoemake's ability to navigate the legal system, the trial court [**1104] found that there was no evidence presented that reflected that Shoemake, prior to obtaining counsel, was unable to "deal with the legal system"; nor was any evidence presented that Shoemake, once he [**24] obtained counsel, lacked the ability to assist his lawyer. The trial court reiterated that

Shoemake was an honor student taking Advanced Placement classes with a solid ACT score and acceptance letters from at least three colleges. The trial court further found that Shoemake was competent to testify after a competency hearing.

5. The Possibility of Rehabilitation

P38. Shoemake asserts that "most detrimental to the trial court's order . . . is the court's complete failure to assess arguably the most important of the *Miller* factors—[his] capacity for rehabilitation." We find no merit in this assertion. The trial court addressed the rehabilitation factor as follows:

Clearly this court does not have the clairvoyance to know if Shoemake can, in fact, be rehabilitated. On the issue, Dr. Steinberg says that generally only a small percentage of adolescents continue risky behavior. He believes it is "probable" that Shoemake can be rehabilitated. Dr. Lott did not specifically state an opinion as to Shoemake's rehabilitation. However, as to possibility of recidivism, he did indicate that Shoemake is "not a Ted Bundy." George Loper felt that Shoemake "could be okay" in society someday, and several [**25] friends stated [that] they felt Shoemake could be rehabilitated. . . . Suffice to say, there are a number of factors (the fact that the crime has been committed being only one of them) to be considered in addressing the issue of rehabilitation.

P39. The trial court also addressed the rehabilitation factor in the conclusion of its sentencing order, as follows:

Defense counsel basically argues that Shoemake is a young man who made a "mistake" (although acknowledging it to be, in essence, a terrible and

tragic mistake) who can be "rehabilitated." However, even the expert witnesses' testimony was equivocal at best as to the possibility of rehabilitation. Dr. Steinberg felt rehabilitation was "probable" although acknowledging that one's past behavior is an indicator of future behavior. . . . Further, the main supporting evidence set forth for a claim of rehabilitation in the future (Shoemake's intelligence, his stable and supportive family, etc.) are the very elements of proof that weigh so heavily against him under the other *Miller* factors.

P40. We find that the record reflects that the trial court considered the rehabilitation factor along with the other four factors it was obligated to [**26] consider under *Miller* and *Parker*. *Chandler*, 242 So. 3d at 68 (¶8). *HNA* [T] There is no Mississippi precedent for the proposition that the possibility of rehabilitation overrides the other *Miller* factors—or even that it is the preeminent factor. Rather, it is one of the five *Miller* factors a trial court must consider in determining whether to sentence a juvenile offender to LWOP. *Parker*, 119 So. 3d at 995-96 (¶19), 998 (¶20).

6. Additional Factors under *Miller*

P41. The trial court also observed that the U.S. Supreme Court in *Miller* listed several comparisons that are relevant in Shoemake's case, including comparisons between "the [seventeen]-year-old and the [fourteen]-year-old, the shooter and the accomplice, [and] the child from a stable household and the child from a chaotic and abusive one." *Miller*, 567 U.S. at 477. The trial court found that the results from each comparison were directly on point in analyzing Shoemake's case: [**1105] Shoemake was nearly eighteen years old when the crime was committed; he was one of two principals in Victor's murder (not a spectator); and, "based on the evidence presented, Shoemake could not have come

from a more stable home." In short, the trial court found that "[i]t is hard to imagine many realistic situations where the factors would weigh more heavily against a defendant that [**27] they do in the case at hand." Following this analysis, the trial court sentenced Shoemake to LWOP.

P42. We find no abuse of discretion in the trial court's assessment. Indeed, the trial court had the opportunity to observe Shoemake's demeanor and behavior during the sentencing hearing, as well as during Shoemake's competency hearing and plea hearing that also took place before that court. The trial court did not automatically sentence Shoemake to life in prison without parole, but instead assessed each of the five *Miller* factors and other considerations observed by the *Miller* Court before it imposed this sentence. As addressed above, the evidence and testimony presented at the sentencing hearing showed that Shoemake was an intelligent, well-adjusted seventeen-year-old high school senior with a supportive and stable family and network of friends who nonetheless committed a brutal, premeditated murder and covered it up.

P43. Although the dissent asserts that "[t]o ignore an expert finding regarding Shoemake's incorrigibility completely frustrates the intent of *Miller*," we do not find that this is the case. We recognize that the record reflects that Shoemake presented evidence asserting [**28] that there exists the possibility that he may be rehabilitated. This evidence was considered by the trial court. As we addressed above, however, the analysis does not turn solely upon this factor. *HNS* [†] In both *Miller* and *Parker*, the U.S. Supreme Court and the Mississippi Supreme Court, respectively, both consider rehabilitation as one of several factors to apply in determining whether LWOP should be imposed on a juvenile offender. *Miller*, 567 U.S. at 477-78; *Parker*, 119 So. 3d at 995-96 (¶19), 998 (¶26). In neither case is the

potential for rehabilitation dispositive, or even given more weight in the sentencing analysis. Further, as we discuss in more detail below, *HNS* [†] focusing on whether an offender is "permanently incorrigible" does not comport with the U.S. Supreme Court's recognition in both *Miller* and *Montgomery* that the proper focus is whether LWOP may be appropriate for juvenile homicide offenders "whose crime reflects irreparable corruption." *Miller*, 567 U.S. at 479-80 (emphasis added); see *Montgomery*, 136 S. Ct. at 734. That determination, we find, requires an analysis of all the *Miller* factors. *Miller*, 567 U.S. at 479-80; *Parker*, 119 So. 3d at 995-96 (¶19), 998 (¶26). In short, we find that the trial court satisfied its obligation under *Miller* and *Parker* and thus we cannot say it abused its discretion in sentencing Shoemake to LWOP. *Chandler*, 242 So. 3d at 70-71 (¶22).

P44. We also find no error in the post-conviction [**29] court's determination that, having found that the trial court applied the correct legal standard, it was not obligated to conduct a de novo review with respect to the *Miller* factors. As the post-conviction court observed in its order, the issues raised by Shoemake in his PCR motion were "purely legal" issues that did not require an evidentiary hearing. We agree. Although the evidence attached to Shoemake's PCR motion provided additional support for the "possibility of rehabilitation" *Miller* factor, that factor is just one of five *Miller* factors. This evidence does not change the legal standard that the trial court was obligated to consider in [**1106] determining whether Shoemake's actions justified imposition of a LWOP sentence.

II. Permanent Incorrigibility⁹

⁹ Shoemake also asserts in a footnote in his brief that the Court must vacate his sentence because it was imposed by a

P45. Shoemake asserts that his sentence should be vacated and remanded for resentencing because the trial court did not make a finding that he is permanently incorrigible, which Shoemake asserts is required under *Miller*, as "clarified" by *Montgomery*. Because this contention also [**30] involves the legal standard applicable in a *Miller* determination, we review this issue de novo. *Chandler*, 242 So. 3d at 68 (¶7). We reject this contention for the following reasons.

P46. First, Shoemake's focus on whether the offender is "permanently incorrigible" or "irreparably corrupt" is misdirected. *HN13* [¶1] In *Miller* the Supreme Court recognized that LWOP may be appropriate for juvenile homicide offenders "whose crime reflects irreparable corruption." *Miller*, 567 U.S. at 479-80 (emphasis

added). Similarly, in *Montgomery* the Supreme Court observed that "*Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption . . . [as compared to the offender] whose crimes reflect the transient immaturity of youth." *Montgomery*, 136 S. Ct. at 734 (emphasis added) (internal citation and quotation marks omitted). Whether an offender's crime reflects "irreparable corruption" vs. "the transient immaturity of youth" encompasses an analysis of all the *Miller* factors. *Miller*, 567 U.S. at 479-80; *Parker*, 119 So. 3d at 995-96 (¶¶19), 998 (¶26). The trial court in Shoemake's case expressly recognized this principle in its sentencing order when it stated that it must determine whether the action of the juvenile, applying the applicable factors, constitutes "transient [**31] immaturity" or "irreparable corruption." *Miller*, 567 U.S. at 479-80. As we held above, the trial court used and applied the correct legal standard.

judge, in violation of his constitutional right to have a jury consider the *Miller* factors at his sentencing hearing. *HN13* [¶1] The assertion that a juvenile defendant has a constitutional right to be resentenced by a jury has been repeatedly rejected by this Court, and we find no basis for a contrary holding with respect to the initial (and only) sentencing in this case. *Cook v. State*, 242 So. 3d 865, 878 (¶40) (Miss. Ct. App. 2017) ("Unless the United States Supreme Court's opinions in *Miller* and *Montgomery* do not mean what they specifically say—that a judge may sentence the offender to LWOP—Cook does not have a constitutional right to be resentenced by a jury."), cert. denied, 237 So. 3d 1269 (Miss. 2018), cert. denied, 139 S. Ct. 787, 202 L. Ed. 2d 568 (U.S. Jan. 7, 2019), *McGilberry v. State*, No. 2017-KA-00716-COA, 2019 Miss. App. LEXIS 21, 2019 WL 192345, at *4 (¶13) (Miss. Ct. App. Jan. 15, 2019), cert. granted, 276 So. 3d 659 (Miss. Aug. 29, 2019), *Wharton v. State*, No. 2017-CA-00441-COA, 2018 Miss. App. LEXIS 490, 2018 WL 4708220, at *6 (¶21) (Miss. Ct. App. Oct. 2, 2018), cert. granted, 272 So. 3d 131 (Miss. June 27, 2019), *Jones v. State*, No. 2015-KA-00899-COA, 285 So. 3d 626, 2017 Miss. App. LEXIS 604, 2017 WL 6387457, at *4 (¶15) (Miss. Ct. App. Dec. 14, 2017), cert. granted, 250 So. 3d 1269 (Miss. Aug. 2, 2018), cert. dismissed, 2015-CT-00899-SCT, 2018 Miss. LEXIS 463 (Nov. 27, 2018), cert. pending, No. 18-1259 (U.S. March 29, 2019).

P47. Second, to the extent Shoemake argues that his sentence must be vacated because the trial court did not expressly find that he was "permanently incorrigible," we find that there is no such requirement under Mississippi law. In *Chandler*, the Mississippi Supreme Court expressly held that *HN13* [¶1] "[t]he *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility." *Chandler*, 242 So. 3d at 69 (¶15); see *Wharton*, 2018 Miss. App. LEXIS 490, [**1107] 2018 WL 4708220, at *3 (¶11) (citing cases). This contention is without merit.

III. Categorical Ban on Sentencing Juveniles to LWOP

P48. Shoemake asks this Court to impose a categorical ban on sentencing juveniles to LWOP because such a practice constitutes cruel and unusual punishment in violation of the *Eighth Amendment of United States*

Constitution¹⁰ and Article 3, Section 28 of the Mississippi Constitution.¹¹ HN14 [¶] "Constitutional issues are reviewed de novo." Jenkins v. State, 102 So. 3d 1063, 1065 (¶7) (Miss. 2012).

P49. The United States Supreme Court, the Mississippi Supreme Court, and this Court have all declined to recognize such a categorical ban, and we see no basis for distinguishing those cases here. HN15 [¶] In Miller, 567 U.S. at 479, the U.S. Supreme Court held that the Eighth Amendment prohibits mandatory LWOP sentences for juvenile homicide offenders. The [**32] Supreme Court recognized, however, that its decision did not "foreclose a sentencer's ability to make that judgment in homicide cases, [so long as the sentencer takes] . . . into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 480. In Montgomery, 136 S. Ct. at 733, the U.S. Supreme Court again recognized that a LWOP sentence remained available in the "uncommon" case where it was found justified.

P50. HN16 [¶] In Jones, 122 So. 3d at 702 (¶12), the Mississippi Supreme Court found that "Miller rendered our present sentencing scheme unconstitutional if, and only if, the sentencing authority fails to take into account characteristics and circumstances unique to juveniles." In Parker, 119 So. 3d at 995 (¶19), the Mississippi Supreme Court recognized that "Miller does not prohibit sentences of life[-]without[-]parole for juvenile offenders." This Court has also recognized that a juvenile homicide offender does not have "an absolute

constitutional right to be considered for parole." Cook, 242 So. 3d at 878 (¶45); Jones, 2017 Miss. App. LEXIS 684, 2017 WL 6387457, at *4 (¶15). In accordance with this precedent, we likewise decline to hold that a juvenile who has pleaded guilty to murder has "an absolute constitutional right to be considered for parole," Cook, 242 So. 3d at 877-78 (¶45), and we find no error in the post-conviction [**33] court likewise refusing to do so.

P51. AFFIRMED.

BARNES, C.J., J. WILSON, P.J., GREENLEE, TINDELL, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR. McDONALD, J., CONCURS IN PART AND DISSENTS IN PART WITHOUT SEPARATE WRITTEN OPINION. WESTBROOKS, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY McDONALD, J.; LAWRENCE AND McCARTY, JJ., JOIN IN PART.

Concur by: WESTBROOKS (In Part)

Dissent by: WESTBROOKS (In Part)

Dissent

WESTBROOKS, J., CONCURRING IN PART AND DISSENTING IN PART:

P52. The majority finds that the trial court considered the factors in accordance with Miller v. Alabama, 567 U.S. 460, 477-78, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and Parker v. State, 119 So. 3d 987, 995-96 (¶12), 998 (¶26) (Miss. 2013). While this is [**1108] true, I am of the opinion that the trial court's analysis of the factors failed to give sufficient consideration to the opinions of the forensic psychology experts regarding whether Shoemake is permanently incorrigible. Therefore, I respectfully dissent in part.

¹⁰ U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

¹¹ Miss. Const. art. 3, § 28 ("Cruel or unusual punishment shall not be inflicted.").

P53. At the time of his offense, Shoemake was a seventeen-year-old high school student on the brink of graduation. With an ACT score of 25, Shoemake had been accepted into several institutions of higher learning and was deemed "college ready" by his high school principal. Both psychology experts interviewed various collateral sources, including Shoemake's **[**34]** family, friends, teachers, counselor, and employer. Shoemake was described as polite and respectful with loving and supportive parents. He was a "typical" teenager as the trial court pointed out in its order. Throughout high school, Shoemake maintained good grades and held down a part time job. Even facing his current legal troubles, Shoemake continued his educational pursuits and still managed to graduate from high school by completing his exams while in custody. Shoemake pled guilty to the crime and showed contrition. By taking responsibility for his actions, Shoemake has exhibited some level of maturity. Prior to the current case, Shoemake had no record of involvement with law enforcement or history of behavior issues and has not been cited for any infractions while in MDOC's custody.

P54. The majority cites the Mississippi Supreme Court's ruling in *Chandler v. State*, 242 So. 3d 65, 69 (**[¶15]**) (*Miss.* 2018), which interpreted *Montgomery* not to require that sentencing courts make a finding of permanent incorrigibility. Quoting Chief Justice Waller's dissent, I would agree that "[c]onsideration of the defendant's capacity for rehabilitation is a crucial step in the *Miller* analysis, because a life without parole sentence reflects an irrevocable **[**35]** judgement about [an offender's] value and place in society, at odds with a child's capacity for change." *Id.* at 71 (**[¶26]**) (quoting *Miller*, 567 U.S. at 473) (internal quotation marks omitted). While *Chandler* does not require sentencing courts to make a specific finding of permanent incorrigibility, a blind spot is presented in the case sub judice. The trial court here did not have the

"clairvoyance to know if Shoemake [could], in fact, be rehabilitated," but psychology experts would seem likely candidates for the task. After an in-depth evaluation and screening, the State's expert, Dr. W. Criss Lott, expressly found that Shoemake does not belong to the "rare" and "uncommon" group of "irredeemably incorrigible" juveniles warranting the life-without-parole sentence (LWOP). Dr. Lott's opinion was consistent with that of Shoemake's expert, Dr. Steinberg.

P55. When discussing *Miller*, the Supreme Court of the United States

recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of children's diminished culpability and heightened capacity for change, *Miller* made clear that appropriate occasions **[**36]** for sentencing juveniles to this harshest possible penalty will be uncommon.

Montgomery v. Louisiana, 136 S. Ct. 718, 733-34, 193 L. Ed. 2d 599 (2016) (emphasis added) (internal quotation marks omitted).

P56. In *Montgomery*, the U.S. Supreme Court provides an analysis of *Miller's* independent procedural and substantive components, explaining that "[t]he [*Miller*] hearing does not replace but rather gives effect to *Miller's* substantive holding that life without parole is an excessive sentence **[*1109]** for children whose crimes reflect transient immaturity." *Id.* at 735. Shoemake, in the opinion of both psychology experts, is one of those children.

P57. In its sentencing order, the trial court referenced Dr. Lott's testimony that Shoemake is "not a Ted Bundy," stating that Dr. Lott's statement only "moves [Shoemake] from comparison to one of history's most

heinous serial killers," rightfully giving it little regard as a basis for a positive rehabilitative outlook. At the request of Shoemake's appellate counsel, Dr. Lott, the State's expert, submitted a supplemental affidavit to further clarify his "Ted Bundy" comparison. In his subsequent affidavit, Dr. Lott explained that Shoemake "*does not appear to be one of those 'rare' and 'uncommon' juvenile offenders who are incapable of being [**37] rehabilitated and thus are irredeemably incorrigible.*" Dr. Lott also testified as a forensic psychology expert in Cook v. State, 242 So. 3d 888, 871-72 (¶¶18-19) (Miss. Ct. App. 2017), and wavered over whether Cook was one of the "rare" offenders contemplated by *Miller*. However, with regard to Shoemake, Dr. Lott is notably more absolute that "successful reintegration into society" is likely to occur given Shoemake's "intellectual capacity" and "family support." Shoemake's expert, Dr. Steinberg, echoed Dr. Lott and stated that Shoemake's rehabilitation was "probable." Even the State's attorney recognized that the *possibility of rehabilitation weighed in Shoemake's favor* during arguments before this Court:

The Court: Does the State have any examples of the rare case or what would be considered the rare juvenile that's incapable of rehabilitation.

State's Attorney: Your Honor, not at this time. I think we are taking it on a case by case basis, just, just as y'all are.

The Court: And you don't believe that Mr. Dalton Shoemake would apply?

State's Attorney: [to the Court] I think that the possibility of rehabilitation may fall in his [Dalton Shoemake's] favor but I don't think that it weighs heavily . . .

The Court: You're conceding that the possibility of rehabilitation [**35] falls in his favor?

State's Attorney: I would say that it weighs slightly in his favor. I'm not conceding that it's in his favor.

But I would say that the trial court found that it cuts against him.

The trial court's decision to turn a deaf ear to both experts and its own advocate makes little sense and does not comport with the intent of *Miller* or *Montgomery*.

P58. Admittedly, the U.S. Supreme Court did not establish a specific procedure for the application of *Miller*, and the current Mississippi precedent does not require sentencing courts to make an on-the-record finding of permanent incorrigibility. In *Montgomery*, the U.S. Supreme Court explained its intentional and

careful [limit to] the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems. . . . "We leave to the States the task of developing appropriate ways to enforce the constitutional restriction upon their execution of sentences[.]" Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue.

Montgomery, 136 S. Ct. at 735 (quoting *Ford v. Wainwright*, 477 U.S. 399, 416-17, 106 S. Ct. 2595, 91 L. Ed. 2d 335 (1986)). Although *Miller* and its progeny [**39] have not "impose[d] a formal fact finding requirement," [**1110] States are not "free to sentence a child whose crime reflects transient immaturity to life without parole [LWOP]." *Id.* "[S]entencer[s] must have the 'discretion' to 'consider mitigating circumstances' before a sentence of [LWOP] may be imposed." *Cook*, 242 So. 3d at 870 (¶9) (quoting *Miller*, 132 S. Ct. at 2475). The Mississippi Court of Appeals went on to say that the decision in *Montgomery* "clarified or expanded" *Miller's* holding: "[A] sentence of LWOP is valid only for 'those rare children whose crimes reflect irreparable

corruption." *Cook*, 242 So. 3d at 870 (¶9) (quoting *Montgomery*, 136 S. Ct. at 734).

P59. A brief look at Mississippi's appellate history with *Miller* reveals that a procedural implementation of *Miller* was never a task the Mississippi Supreme Court sought to undertake. Instead, consistent with the U.S. Supreme Court in *Miller* and *Montgomery*, the Mississippi Supreme Court addressed the *Miller* mandate with a "minimal amount of instruction and intrusion into legislative prerogative" *Parker v. State*, 119 So. 3d 987, 998 (¶25) (Miss. 2013). The Mississippi Supreme Court expressly called its decision in *Parker* a "stopgap measure" to provide trial courts with some measure of guidance until such time as the Mississippi Legislature reviewed the applicable statutes and implemented [**40] necessary changes consistent with *Miller*. *Id.*

P60. Six sessions post *Parker*, the Mississippi Legislature has yet to "ameliorate [the Court's] temporary but required solution," *id.*, and as a consequence, lawmakers' inactions have engendered the current stream of litigation over inconsistencies in the application of *Miller* in Mississippi courts and the resultant impact on judicial efficiency. Without clear legislation or standards for differentiating the "rare" and "uncommon" juvenile offenders from those who have succumbed to "transient immaturity" but are capable of rehabilitation, it is nearly impossible to ensure effective and uniform adherence to the "substantive guarantee" set forth by *Miller*. *Montgomery*, 136 S. Ct. at 735.

P61. Here, the Court's majority disregards the opinion of the State's own respected and longstanding psychology expert, Dr. Lott, with little regard or deference afforded to his findings. Without conflict, Dr. Lott and Shoemake's psychology expert, Dr. Steinburg, opined that despite the crime Shoemake committed, he is not permanently incorrigible. The trial court determined Dr. Lott was a

qualified expert, and the trial court accepted his opinion regarding Shoemake's competency to stand trial but [**41] not with regard to Shoemake's rehabilitative capacity—perhaps the most significant and telling factor of the *Miller* analysis.

P62. Contrary to the majority's assertion, *Miller*'s purpose is not simply to consider factors. During oral argument before this Court, the State explained how the U.S. Supreme Court in "*Montgomery* stated multiple times that it's got to be the rare and uncommon juvenile offender who is irreparably corrupt or permanently incorrigible. But that's what these factors determine" I would agree. The factors serve as a means to an end—granting juvenile offenders, like Shoemake, "the opportunity to show [their] crime did not reflect irreparable corruption" *Id.* at 734. Absent irreparable corruption, these individuals are not granted their freedom by any stretch, but they are eligible for "some meaningful opportunity to obtain release based on *demonstrated maturity and rehabilitation*["]." *Miller*, 132 S. Ct. at 2469 (emphasis added). To ignore an expert finding regarding Shoemake's incorrigibility [**111] completely frustrates the intent of *Miller* and was an abuse of discretion.

P63. Yes—the trial court performed an analysis under the relevant factors, but its ruling was contrary to the finding of the [**42] defendant's and State's respective experts: that Shoemake is not permanently incorrigible or incapable of rehabilitation. Therefore, I would find that the trial court's consideration of the *Miller* factors in the case at bar was contradictory to the purpose and focus of *Miller* and *Montgomery*. I dissent in part with the majority's opinion and would find error in the trial court's sentence of LWOP and the subsequent denial of Shoemake's motion for post-conviction relief.

McDONALD, J., JOINS THIS OPINION. LAWRENCE AND McCARTY, JJ., JOIN THIS OPINION IN PART.

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Appendix E

Decision without published opinion Mississippi Supreme Court

Shoemake v. State, 2021 Lexis 222, 323 So. 3d 1292 (Miss. 2021), WL 4052547

Shoemake v. State

Supreme Court of Mississippi

August 19, 2021, Decided

2017-CT-01364-SCT

Reporter

2021 Miss. LEXIS 222 *; 322 So. 3d 1292; 2021 WL 4052547

Charles Dalton Shoemake v. State of Mississippi

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: [*1] DeSoto Circuit Court; LC Case #: 17-cv-00045CWD; Ruling Date: 09/08/2017; Ruling Judge: Celeste Wilson.

Shoemake v. State, 2019 Miss. App. LEXIS 553, 2019 WL 5884479 (Miss. Ct. App., Nov. 12, 2019)

Judges: To Deny: Randolph. C.J., Coleman, Maxwell, Beam and Griffis JJ. To Grant: Kitchens and King, P.JJ., and Ishee, J. Chamberlin, J., Not Participating.

Opinion

MISSISSIPPI COURT REPORTER, BUREAU OF RECORDS AND CLERK OF SUPREME COURT, CLERK OF SUPREME COURT, JUDGE

EN BANC

Charles Dalton Shoemake's Petition for Certiorari is denied. To Deny: Randolph. C.J., Coleman, Maxwell, Beam and Griffis, JJ. To Grant: Kitchens and King, P.JJ., and Ishee, J. Chamberlin, J., Not Participating. Order entered 8/16/21.