No.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT CHRISTOPHER JONES, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari

To The Supreme Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Robert Christopher Jones, a minor, faced a mandatory life without parole sentence for killing two people in 1999. In 2000, Robert, still a minor, avoided the mandatory life sentence by agreeing to plead guilty to one count of murder and other offenses as well, and to receive concurrent sentences, the longest of which was 50 years' imprisonment. Illinois law requires him to serve every day of that sentence.

Robert later brought a collateral challenge to his sentence after this Court invalidated life without parole sentences for minors convicted of homicide in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and the Illinois Supreme Court in *People v. Buffer*, 2019 IL 122327, held that a sentence longer than 40 years is a *de facto* life sentence that may only be imposed on a minor if the judge first considers his youth and the so-called *Miller* factors.

Both the Illinois Appellate Court and the Illinois Supreme Court held that Robert's pre-*Miller* guilty plea precluded his post-*Miller* challenge to his sentence. The Supreme Court went on to rule that, aside from Robert's plea, he suffered no Eighth Amendment violation because the plea judge exercised discretion in accepting the plea and imposing the *de facto* life sentence.

The presented for review are:

(1) Whether a pre-*Miller* guilty plea bars a post-*Miller* sentencing challenge under the Eighth Amendment.

(2) Whether the sentencing process mandated by *Miller* and *Jones* is satisfied where the judge accepts a negotiated plea agreement but fails to consider the attendant circumstances of youth.

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The petitioner, Robert Christopher Jones, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The order of the Supreme Court of Illinois denying Robert Jones' petition for rehearing is attached as Appendix A. The published opinion of the Illinois Supreme Court, including a dissenting opinion, is attached as Appendix B and is reported at 2021 IL 126432. The unpublished decision of the Illinois Appellate Court is attached as Appendix C, 2020 IL App (3d) 140573-UB.

JURISDICTION

On December 16, 2021, the Illinois Supreme Court issued its opinion affirming the order denying Robert Jones leave to file a successive post-conviction petition. A petition for rehearing was timely filed and was denied on January 24, 2022. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Eighth Amendment to the United States Constitution

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

Fourteenth Amendment to the United States Constitution

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Robert Christopher Jones, then 16 years old, was charged in October 1999 in La Salle County with several offenses, including the first degree murders of George and Rebecca Thorpe (CL1 C34-35). At that time, any person, including a minor, convicted of two or more murders in Illinois was subject to mandatory life without parole imprisonment. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1999). Having no defense to the charges (R58-61), and seeking to avoid the mandatory life sentence he otherwise would have received, Robert entered into a negotiated plea agreement in May 2000, when he was 17 years old, to one count each of first degree murder and residential burglary and two counts of armed robbery, in exchange for four concurrent sentences, the longest of which was 50 years' imprisonment for first degree murder (CL2 C433-34, R50-65). The parties waived a hearing in mitigation and aggravation as well as a pre-sentence investigation (R64). The judge accepted the plea and imposed the agreed sentences after being told Robert's age at the time of the offenses and that he had no criminal history (R62-65).

On April 28, 2014, Robert filed a *pro se* successive post-conviction petition challenging various aspects of his sentences based on this Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (CL3 C1-39). On May 14, 2014, he filed a motion asking leave to file his successive petition, alleging that *Miller* had not been decided when he pled guilty and that the pre-*Miller* sentencing scheme that applied at that time in Illinois was rendered unconstitutional by *Miller* (CL3 C42-43). On July 7, 2014, the judge who took his plea denied leave without explanation (CL3 C45). Robert appealed (CL3 C47).

The Illinois Appellate Court affirmed the denial of leave to file in an unpublished decision issued on October 13, 2016, holding that Robert waived his *Miller* claim by pleading guilty and that he had not received a life or *de facto* life sentence because he could complete his prison term by age 66. *People v. Jones*, 2016 IL App (3d) 140573-U. Robert petitioned the Illinois Supreme court for review. On March 25, 2020, the Illinois Supreme Court denied leave to appeal but entered a supervisory order directing the appellate court to vacate its judgment and to determine whether a different result was warranted based on the Eighth Amendment, *Miller v. Alabama*, and *People v. Buffer,* 2019 IL 122327 (holding that a sentence greater than 40 years in prison constituted a *de facto* life sentence that could not be imposed on a minor absent consideration of the minor's youth and its attendant characteristics). *People v. Jones*, No. 121579.

Following the remand, the appellate court again denied relief. In an unpublished decision issued on July 8, 2020, the court ruled that, although Robert received a *de facto* life sentence, he waived his *Miller* claim by pleading guilty. *People v. Jones*, 2020 IL App (3d) 140573-B. Robert again petitioned the Illinois Supreme Court for review, and that court granted leave to appeal on November 18, 2020. *People v. Jones,* No. 126432.

On December 16, 2021, the Illinois Supreme Court, with two Justices dissenting, affirmed the judgement of the appellate court that the circuit judge properly denied Robert leave to file his successive post-conviction petition. *People v. Jones*, 2021 IL 126432. The majority first agreed with the appellate court that Robert's guilty plea barred his later *Miller* challenge to his 50-year *de facto* life sentence. 2021 IL 126432, ¶¶ 14-26. The majority then decided, "[f]urthermore," that there was no *Miller*

violation because the plea judge exercised discretion in accepting the plea agreement and sentencing Robert to 50 years in prison. *Id.*, ¶¶ 27-28.

The dissent reasoned that "the *Miller* protections must be guaranteed to juvenile offenders who plead guilty as well as to those who insist that the State prove the charges beyond a reasonable doubt." 2021 IL 126432, ¶ 34 (Neville, J., joined by A. Burke, C.J., dissenting). In response to the alternative basis for the majority's decision, the dissent stated that the record did not show the plea judge considered "the mitigating circumstances attendant to petitioner's youth in exercising its discretion to approve the *de facto* life sentence." *Id.*, ¶ 66.

On January 24, 2022, the Supreme Court of Illinois entered an order denying Robert's petition for rehearing.

REASONS FOR GRANTING CERTIORARI

Facing a mandatory life without parole sentence for murdering two people in 1999 when he was 16 years old [730 ILCS 5/5-8-1(a)(1)(c)(ii) (1999)], Robert Jones entered into a fully-negotiated plea agreement in 2000 whereby he received concurrent sentences, the longest of which was 50 years' imprisonment for one count of first degree murder (CL2 C433-34, R50-65). Illinois law requires that Robert serve every day of that sentence. 730 ILCS 5/3-6-3(a)(2)(i) (1999). Twelve years after his plea, this Court held in *Miller v. Alabama*, 132 S. Ct. 2455, 2468 (2012), that life without parole sentences cannot be imposed on juveniles in accordance with the Eighth Amendment unless the judge first considers the juvenile's "chronological age and its hallmark features - among them, immaturity, impetuosity, and failure to appreciate risks and consequences." Mandatory life sentences preclude judges from considering such factors. 132 S. Ct. at 2467. This is especially problematic because "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.* at 2469.

In 2014, Robert brought a collateral challenge to his 50-year sentence based on *Miller*, arguing, *inter alia*, that the sentencing scheme in place at the time of his plea was rendered unconstitutional by *Miller* (CL3 C1-39, 42-43). While his collateral post-conviction challenge was still pending in the Illinois courts, the Illinois Supreme Court decided in *People v. Buffer*, 2019 IL 122327, that any sentence imposed on a juvenile greater than 40 years' imprisonment is a *de facto* life sentence that has to comply with the procedures and principles mandated by this Court in *Miller*. As a result, it is apparent that Robert is currently serving a *de facto* life sentence.

The Illinois Appellate Court ultimately held that Robert's challenge to his sentence was barred by his guilty plea. *People v. Jones*, 2020 IL App (3d) 140573-UB.

The Illinois Supreme Court agreed. *People v. Jones*, 2021 IL 126432, ¶¶ 14-26. The supreme court also ruled that there was no *Miller* violation because the plea judge exercised sufficient discretion when he accepted the plea agreement and imposed the *de facto* life sentence. *Id.*, ¶¶ 27-28.

The court below stated that the question whether Robert's pre-*Miller* guilty plea barred his post-*Miller* challenge to his sentence was one of first impression in Illinois. *Id.*, ¶ 14. The same is true here. This Court has not yet decided this issue. The issue, has, however, arisen in a handful of other jurisdictions and has resulted in a split of authority. Both logic and the interests of justice should entitle a person in Robert's position to a new, constitutional sentencing hearing in accordance with the *Miller* principles. Because this important question is likely to arise again, this Court can and should grant review in order to resolve this split of authority.

This Court could also take this opportunity to resolve a split of authority over whether *Miller* and its progeny are limited to mandatory *de jure* life sentences, or whether they apply to discretionary *de facto* life sentences as well. The majority of jurisdictions have found there is no substantive difference, for Eighth Amendment purposes, between the two. The majority position is sound because such harsh penalties should only be imposed after considering youth and its hallmark features.

Finally, this Court should grant review in order to address the discretion exercised by a judge in accepting a juvenile's plea agreement that includes a life sentence. The court below apparently believes that *any* discretion is sufficient under *Miller* and this Court's recent decision in *Jones v. Mississippi*, 141 S. Ct. 1307 (2021). That conclusion risks severe erosion of *Miller* and its progeny in Illinois and, likely, other states, and should therefore be addressed by this Court.

I. This Court should grant review so as to resolve a split of authority whether a minor who pled guilty long before *Miller* was decided can later bring a collateral Eighth Amendment challenge seeking re-sentencing in accordance with the principles announced in the *Miller-Jones* line of cases.

In *Malvo v. Mathena*, 893 F.3d 265 (4th Cir. 2018), *cert. granted*, 139 S. Ct. 1317 (2019). *cert. dismissed*, 140 S. Ct. 919 (2020), the 17-year-old defendant pled guilty before *Miller* was decided and negotiated a life without parole sentence in order to avoid the death penalty. He later sought habeas corpus relief in the form of a new sentencing hearing based on *Miller* and on this Court's holding in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), that *Miller* applies retroactively. The Fourth Circuit Court of Appeals remanded for re-sentencing, rejecting the argument that Malvo's plea waived his entitlement to sentencing relief. 893 F.3d at 275-77. The court reasoned that his conviction remained valid but his guilty plea neither explicitly nor implicitly waived his ability to challenge the constitutionality of his sentence based on this Court's intervening holdings. *Id.* at 277. Because *Miller* applies retroactively, Malvo was entitled to receive its benefit and the court was "bound to apply" it. *Id.*

Re-sentencing in accordance with *Miller* was also ordered in *Jackson v. Clarke*, 2014 WL 12789351, *8-9 (E.D. Va. 2014), in which the juvenile defendant pled guilty and received a mandatory life without parole sentence before this Court decided *Miller v. Alabama*. Noting the defendant was challenging the constitutionality of his sentence, not his plea or conviction, the court held his plea did not bar relief. Most decisions by the Illinois Appellate Court reached the same conclusion prior to the Illinois Supreme Court's decision in Robert's case. See *People v. Parker*, 2019 IL App (5th) 150192; *People v. Applewhite*, 2020 IL App (1st) 142330-B; *People v. Daniels*, 2020 IL App (1st) 171738; *People v. Johnson*, 2021 IL App (3d) 180357; *People v. Robinson*, 2021 IL App

(1st) 181653; *People v. Brown*, 2021 IL App (1st) 160060-U (unpublished order).

In *Newton v. State*, 83 N.E.2d 726 (Ind. 2017), the Court of Appeals of Indiana denied *Miller* re-sentencing to a juvenile who had pled guilty prior to *Miller* and had negotiated a life without parole sentence to avoid the death penalty. The court held the plea was knowing and voluntary and resulted in a benefit to Newton and therefore barred his collateral post-*Miller* challenge. Importantly, however, the plea judge in that case ordered a pre-sentence investigation and held a hearing in aggravation and mitigation during which he considered Newton's youth and prospects for rehabilitation before imposing the agreed sentence. *Newton* is therefore factually distinguishable from Robert's case.

The Illinois Supreme Court's decision in Robert's case is the only other case Robert has found in which a juvenile's pre-*Miller* guilty plea was held to have barred his post-*Miller* collateral challenge to his sentence. The court's reasoning was seriously flawed.

First, the court relied on inapposite case law, including *Brady v. United States*, 397 U.S. 742 (1970), and *Dingle v. Stevenson*, 840 F.3d 171 (4th Cir. 2016). The most important distinction between those cases and Robert's case is that both Brady and Dingle sought to withdraw their guilty pleas based on later changes in the sentencing laws applicable to them. Accord, *Contreras v. Davis*, 2013 WL 6504654 (D. Va. 2013), *aff'd*, 597 Fed. Appx. 175 (4th Cir. 2015), *vacated and remanded on other grounds*, 136 S. Ct 1363 (2016); *Commonwealth v. Noonan*, 32 Mass. L. Rptr. 244 (Super. Ct. Mass.). See *Malvo*, 893 F.3d at 276 (emphasis in original):

> [I]n both *Brady* and *Dingle*, the defendants sought to use new sentencing case law to attack their convictions–their guilty pleas–without any claim that the sentences they actually received were unlawful. The question in both cases was thus whether to set aside the guilty-plea *convictions* when

> the *penalties that induced the pleas* were later found to be unconstitutional. In both cases that relief was denied, and the legality *vel non* of the avoided sentences was thus held not to cast doubt on the validity of the guilty plea. In this case, by distinction, Malvo seeks to challenge his *sentences,* not his guilty-plea *convictions*, on the ground that they were retroactively made unconstitutional under the rule announced in *Miller*. Thus, whereas the defendants in *Brady* and *Dingle* sought to use new sentencing law as a sword to attack the validity of their guilty pleas, here the Warden seeks to use Malvo's lawful guilty plea as a shield to insulate his allegedly unlawful life-without-parole sentences from judicial review. We conclude that *Brady* and *Dingle* do not provide [the Warden] with that shield.

As in *Malvo*, and in contrast to *Brady* and *Dingle*, Robert has challenged only his sentence, not his convictions, and seeks a new sentencing hearing in accordance with the Eighth Amendment and the principles announced in the *Miller-Jones* line of cases. The Illinois Supreme Court thus erred in relying on *Brady* and *Dingle* instead of *Malvo*.

Second, the decision of the court below is inconsistent with a host of other jurisdictions that have held that a guilty plea does not insulate an illegal or unconstitutional sentence against a later challenge. *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005); *United States v. Adkins*, 743 F.3d 176, 192-93 (7th Cir. 2014); *United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007); *United States v. Torres*, 828 F.3d 1113, 1125 (9th Cir. 2016); *Lee v. United States*, 2018 WL 4906327 (D. Ariz.); *Bell v. State*, 294 Ga. 5 (2013); *Bryant v. State*, 2022 WL 499796 (Ga.); *State v. Darby*, 2008 WL 2121748 (Super. Ct. N.J., App. Div.); *People v. Kilgore*, 199 A.D. 2d 1008, 608 N.Y.S.3d 12 (S. Ct. N.Y., App. Div. 1993). See also *United States v. Andis*, 333 F.3d 886, 891 (8th Cir. 2003) (knowing and voluntary plea waiver would not be enforced if it would result in miscarriage of justice); *United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016) (same).

Third, it is undisputed that when Robert pled guilty in 2000, neither he, his attorney, the prosecutor, nor the judge could have known that (a) the mandatory life sentence he faced but for his plea would he deemed unconstitutional as applied to juveniles such as Robert, or (b) the Illinois Supreme Court would later find that his 50-year sentence was a *de facto* life sentence that could not be imposed absent consideration of Robert's age and the attendant circumstances of youth. It was therefore unjust for the court below to conclude that Robert's plea waived his collateral post-*Miller* challenge to his sentence.

Fourth, it is ironic that, but for his plea, Robert would have received a life without parole sentence and likely would have received a new sentencing hearing long before today. The Illinois Supreme Court stated that "[i]t would be purely speculative . . . to conclude that petitioner was doomed to be convicted of the most serious charges against him at trial and sentenced to mandatory life without parole." 2021 IL 126432, ¶ 26. This Pollyanna-like view does not square with the record. The factual basis for Robert's plea included substantial circumstantial evidence and incriminating statements (R58-61). The only possible defense, insanity, was explored by plea counsel but found to be untenable following a psychiatric examination (C450-58).

Fifth, Illinois and other jurisdictions have stated that pleading guilty reflects positively on a criminal defendant's prospects for rehabilitation. *United States v. Stockwell*, 472 F.2d 1186, 1187 (9th Cir. 1973); *United States v. Edwards*, 35 M.J. 351, 355 (C.M.A. 1992); *Hooten v. State*, 212 Ga. App. 770, 774 (1994); *People v. King*, 102 Ill. App. 3d 257, 260 (3d Dist. 1981); *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989); *State v. Brouwer*, 346 S.C. 375, 391 (2001) (Anderson, J., dissenting). By pleading guilty, Robert took responsibility for his actions, saved the prosecution and the court time and expense, and embarked on the road towards rehabilitation. It is both illogical

and unfair to penalize him by holding that his guilty plea insulated his unconstitutional sentence. The Illinois Supreme Court's decision also may have the unintended consequence of deterring future guilty pleas which are so important to our criminal justice system. In *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004), this Court recognized that guilty pleas are "indispensable in the operation of the modern justice system." Accord, *Blackledge v. Allison*, 431 U.S. 63, 71 (1977); *Santobello v. New York*, 404 U.S. 257, 260-61 (1971). Criminal defendants may be wary of entering into future guilty pleas if the court's decision in Robert's case is allowed to stand.

Finally, the decision of the court below flies in the face of this Court's frequent pronouncements that the Eighth Amendment must be "viewed through the evolving standards of decency that mark the progress of a maturing society." *E.g.*, *Miller v. Alabama*, 132 S. Ct. at 2463; *Estelle v. Gamble*, 429 U.S. 97, 102 (1976); *Trop v. Dulles*, 356 U.S. 86, 101 (1958). In *Hall v. Florida*, 134 S. Ct. 1986, 1992 (2014) (quoting *Weems v. United States*, 217 U.S. 349, 378 (1910)), the Court stated: "The Eighth Amendment 'is not fastened to the obsolete but may acquire meaning as public opinion becomes more enlightened by humane justice.'" The court below paid lip service to this ideal [2021 IL 126432, ¶ 16] but failed to follow it. In effect, the court below held that the evolving standards of decency as they apply to Robert and other similarly situated juveniles come to a dead halt when a guilty plea is entered. The court's decision hurts Robert and diminishes society as a whole.

Robert acknowledges that, after *certiorari* was dismissed in *Malvo v. Mathena*, this Court in *Jones v. Mississippi* abrogated that part of the *Malvo* decision that required a sentencing judge to find a juvenile permanently incorrigible before

sentencing him to a life without parole sentence. 141 S. Ct. at 1313-19. The present case, however, presents this Court with an opportunity to resolve an issue decided by the Fourth Circuit in *Malvo* over which there is now a split of authority - whether a juvenile's pre-*Miller* guilty plea automatically bars him from raising a post-*Miller* collateral challenge to his life without parole sentence. The Illinois Supreme Court answered that question in the affirmative in Robert's case. Its decision is not defensible. This important question will likely arise again in other jurisdictions; guidance is therefore needed from this Court.

Discretionary de facto versus mandatory de jure life sentences

In *Miller v. Alabama*, this Court held that a juvenile cannot receive a mandatory life without parole sentence unless the judge first considers the juvenile's youth and its attendant circumstances. Neither in *Miller* nor in any subsequent decision has this Court stated whether *Miller* and its progeny extend to discretionary *de facto* life without parole sentences - that is, sentences which are the functional equivalent of life without parole sentences. Robert received such a *de facto* life sentence of 50 years' imprisonment (CL2 C433-34). See *People v. Buffer*, 2019 IL 122327 (sentence that exceeds 40 years' imprisonment constitutes *de facto* life sentence requiring a *Miller* sentencing hearing). There currently exists a split among jurisdictions as to whether the *Miller-Jones* line of cases apply to discretionary *de facto* or only mandatory *de jure* life sentences. *People v. Lora*, 71 Misc. 3d 221, 226-27, 140 N.Y.S.3d 390, **4-5 (N.Y. S. Ct. 2021) (noting the split); *State v. Kelliher*, 273 N.C. App. 616, (2020), *review allowed*, 854 S.E.2d 586 (N.C. 2021) (same); *State v. Link*, 367 Or. 625, 627 (2021) (same). This Court can choose to resolve that split. (This Court would have decided

whether *Miller* is limited to mandatory life sentences had *certiorari* not been dismissed in *Malvo v. Mathena*.)

Cases ruling that the *Miller* principles apply only to mandatory life without parole sentences include the following: *United States v. Grant*, 9 F.4th 186 (3d Cir. 2021); *Bunch v. Smith*, 685 F.3d 546 (6th Cir. 2012); *Demirdjian v. Gipson,* 832 F.3d 1060 (9th Cir. 2016); *Hobbs v. Turner*, 2014 Ark. 19 (2014); *Lucero v. People*, 394 P.3d 1128 (Colo. 2017); *Veal v. State*, 303 Ga. 18 (2018); *Wilson v. State*, 157 N.E.3d 1163 (Ind. 2020); *State v. Gulley*, 2022 WL 628172 (Kan.); *State v. Brown*, 118 So. 3d 332 (La. 2013); *Mason v. State*, 235 So. 3d 129 (Miss. 2017); *Garcia v. State*, 2017 N.D. 263 (2017); *State v. Miller*, 433 S.C. 613 (2021); *Hampton v. State*, 2021 WL 274561 (Tenn.); *Vasquez v. Commonwealth*, 291 Va. 232 (2016).

Cases ruling that the *Miller* principles apply to both life without parole and *de facto* life sentences include the following: *McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016); *People v. Franklin*, 63 Cal. 4th 261 (2016); *Casiano v. Commissioner of Correction*, 317 Conn. 52 (2015); *Henry v. State*, 175 So. 3d 675 (Fla. 2015); *People v. Reyes*, 2016 IL 119271; *State v. Null*, 836 N.W.2d 41 (Iowa 2013); *Commonwealth v. Brown*, 466 Mass. 676 (2013); *State ex rel. Carr. v. Wallace*, 527 S.W.2d 55 (Mo. 2017); *State v. Zuber*, 227 N.J. 422 (2017); *Ira v. Janecka*, 419 P.3d 161 (N.M. 2018); *People v. Lora*, 71 Misc. 3d 221, 140 N.Y.S.3d 390 (N.Y. 2021); *State v. Kelliher*, 273 N.C. App. 616 (2020), *review allowed,* 854 S.E.2d 586 (2021); *State v. Link*, 367 Or. 625 (2021); *Commonwealth v. Clary*, 226 A.3d 571 (Pa. 2020); *In the Matter of Ali*, 196 Wash. 2d 260 (2020); *Bear Cloud v. State*, 334 P.3d 132 (Wyo. 2014).

Jurisdictions finding that *Miller* applies to discretionary *de facto* life sentences tend to differ regarding the number of years that render a sentence the functional

equivalent of a life without parole sentence. Nonetheless, these decisions honor the spirit and intent of the *Miller-Jones* line of cases. As noted by one jurist, if *de facto* life sentences may be imposed without consideration of the *Miller* factors, "a sentencer [can] circumvent the Eighth Amendment prohibition against cruel and unusual punishment simply by expressing the sentence in the form of a lengthy term of numerical years rather than labeling it for what it is: a life sentence without parole." *State v. Gulley*, 2022 WL 628172, *17 (Kan.) (Standridge, J., dissenting). See also *Miller v. Alabama*, 132 S. Ct. at 2469 (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010) (while not required to guarantee eventual freedom to juvenile, states must provide "'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation'"); *People v. Holman*, 2017 IL 120655, ¶ 38 (*Miller* contains language broader than its core holding, and none of what was said in *Miller* is specific to only mandatory life sentences).

The debate over *de jure* and *de facto* life sentences was not at issue in Robert's case because Illinois law equates *de facto* life sentences with mandatory life without parole sentences. But there is no reason that juvenile offenders should be treated differently in this regard depending on the jurisdiction in which they are prosecuted. Robert's case therefore presents this Court with the opportunity to resolve the split among jurisdictions in this country.

II. This Court should grant review so as to decide whether the Eighth Amendment, as construed in the *Miller-Jones* line of cases, is satisfied where, pre-*Miller*, a plea judge agrees to impose a *de facto* life sentence bargained for by the parties where neither the judge nor the parties could have known what constituted a *de facto* life sentence and where the judge was aware of the minor's age but did not consider the attendant circumstances of youth discussed in the *Miller-Jones* line of cases.

This Court in *Miller* stated that "youth matters in determining the

appropriateness of a lifetime of incarceration without possibility of parole." 132 S. Ct. at 2465. The Court also stated that "'youth is more than a chronological fact.'" *Id.* at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). The sentencing judge thus must consider the juvenile's age "and its hallmark features" - immaturity, impetuosity, and failure to appreciate risks and consequences. *Id.* at 2468. As a result, mandatory life sentences are prohibited, *Id.* at 2469, and "a sentencer [must] follow a certain process - considering an offender's youth and attendant characteristics - before imposing a particular penalty," *Id.* at 2471. Your Honors in *Jones v. Mississippi* repeatedly reaffirmed the principle that a sentencer must consider a juvenile's youth and attendant characteristics before imposing a life without parole sentence. 141 S. Ct. at 1311, 1314, 1316. Your Honors quoted a similar passage from *Montgomery v. Louisiana*, 577 U.S. 190, 210 (2016): "A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Jones*, 141 S. Ct. at 1317-18. Indeed, the Court expressed confidence that this discretionary sentencing procedure mandated by *Miller* has made, and will continue to make, the imposition of life without parole sentences on juveniles relatively rare. 141 S. Ct. at 1322.

The Illinois Supreme Court's secondary ruling - that the plea judge exercised adequate discretion in accepting Robert's plea agreement and imposing the agreed 50-year sentence - marks a severe departure from the principles announced in *Miller* and reaffirmed in *Jones v. Mississippi*. In response to his question, the plea judge was informed during the plea hearing that Robert was 16 years old at the time of his offenses (R61). He was also advised that Robert may have had prior informal station

house adjustments but no convictions or adjudications (R63). But that was all the judge knew about Robert because, as in most cases in which the judge is presented with a fully-negotiated plea agreement, the parties waived a pre-sentence investigation and a hearing in mitigation and aggravation (R64). As a result, the judge exercised very little discretion, and had absolutely no knowledge about the hallmark features of youth as they related to Robert. Contrast *Newton v. State*, 83 N.E.2d 726 (Ind. 2017), where the plea judge ordered a pre-sentence investigation and held a hearing in aggravation and mitigation during which he considered Newton's youth and prospects for rehabilitation before imposing the agreed sentence.

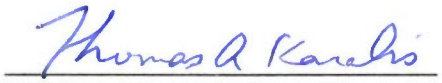
The judge in Robert's case plainly did not follow the "certain process" adopted by this Court in *Miller* and reaffirmed by this Court in *Jones*. Moreover, the phrase "*de facto* life sentence" was not even part of the legal lexicon when Robert pled guilty and was sentenced in 2000. The plea judge thus could not have known that he was imposing the functional equivalent of a life sentence or that there was any constitutional infirmity in the imposition of such a sentence. Indeed, the judge probably believed Robert was receiving a huge break because, but for the plea, Robert had to receive a life without parole sentence, and the judge likewise could not have known in 2000 that there was anything wrong with such a sentence. Compare *Commonwealth v. Coster*, 472 Mass. 139, 144 (2015) ("We cannot know that the judge would have imposed consecutive [life without parole] sentences [on the juvenile defendant] had he known ... about the constitutional differences that separate juvenile offenders from adults" that were recognized in *Miller* years after Coster was sentenced).

The import of the lower court's decision is that a *de facto* life sentence may be imposed on a juvenile as long as the judge exercises *some* discretion, even if he does not consider the minor's youth or its hallmark features. This decision is contrary to the *Miller-Jones* line of cases and would mark a return to pre-*Miller* days when judges were not "require[d] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S. Ct. at 2469. The decision in Robert's case thus sets a dangerous precedent and adversely impacts juveniles in Illinois. This Court should grant review so as to protect juveniles in Illinois and to ensure that the misguided decision of the Illinois Supreme Court does not convince other states to deviate from the teachings of *Miller* and its progeny.

CONCLUSION

For the foregoing reasons, petitioner, Robert Christopher Jones, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court.

Respectfully submitted,



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