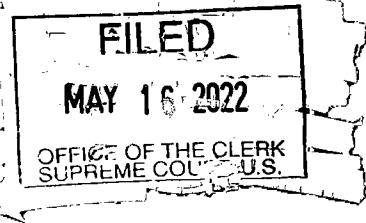


21-7977
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

JASON ALBERT HALDA - Petitioner

ORIGINAL

vs.

STATE OF WISCONSIN - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
WISCONSIN COURT OF APPEALS DISTRICT II

PETITION FOR WRIT OF CERTIORARI

JASON ALBERT HALDA

P.O. Box 925

Redgranite, WI 54307

Phone Number: N/A

QUESTION(S) PRESENTED

1. Is Jason Halda entitled to a resentencing because the judge imposed sentences long before the Court's rulings in *Miller* and *Montgomery*. Therefore, the sentencing judge could not be guided by those decisions?
2. Does Jason Halda's sentence involve the high probability of disproportionality because he was sentenced pre-dated this Court's decision in *Roper*, *Graham*, *Miller*, and *Montgomery* and never received a *Miller* compliant sentencing hearing?

LIST OF PARTIES

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

- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- State v. Jason A. Halda, No. 2017AP1299, Supreme Court of Wisconsin. Judgment entered on February 16, 2022
- State v. Jason A. Halda, No. 2017AP 1299, Wisconsin Court of Appeals District II. Judgment entered on October 20, 2021

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals at Appendix N/A to the petition and is

- reported at N/A; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

- reported at N/A; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

For cases from **state courts**:

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

- reported at N/A; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

The opinion of the Wisconsin Court of Appeals District II court appears at Appendix A to the petition and is reported at

- N/A; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Courts of Appeals decided my case was N/A.

- No petition for rehearing was timely filed in my case.
- A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.
- An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

For cases from **state courts**:

The date on which the United States Courts of Appeals decided my case was February 16, 2022.

A copy of that decision appears in Appendix C.

- A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix .
- An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

United States Constitution

Eighth Amendment to the U.S. Constitution

Wisconsin Statues

Wisconsin Statute § 974.06

Wisconsin Constitution

Wisconsin Constitution, Article I, Section 6

STATEMENT OF THE CASE

On January 27, 1999, a jury found Jason Albert Halda guilty of the first degree intentional homicide, as party to the crime, while armed with a dangerous weapon, of Manitowoc police officer Dale TenHaken. Judge Patrick Willis presided over the trial and sentenced Halda to life imprisonment without the possibility for parole.

Halda was 17-years-old when he shot officer TenHaken. Halda and three other teenagers were driving on a September night, drinking alcohol and engaged in reckless behavior, when they noticed a police car had turned around and began to follow them. Halda was already in trouble with the police at that time. He pulled into a parking lot, parked and turned off the lights. The teenagers sat in the car for a few seconds when the officer pulled in behind them.

One of the other teenagers would later tell a detective that he and Halda hid in the front seat and that Halda had stated, "I will kill the motherfucker before I go to prison." The officer approached the car and told Halda and the other boy to get out of the car. He asked Halda for his driver's license; Halda told him he did not have a license. The officer spoke into his shoulder microphone. One of the other teenagers testified that Halda then pulled out a gun and started shooting. Officer TenHaken was shot three times and died from the wounds he received.

Halda appealed his conviction. The single issue presented was whether the police stop of the car in which Halda was a passenger violated the Fourth Amendment. In a *per curiam* opinion filed on March 21, 2001, the court of appeals rejected Halda's argument and affirmed his conviction. The Wisconsin Supreme Court denied his petition for review on July 18, 2001.

In January of 2017, Halda filed a motion for postconviction relief pursuant to Wisconsin Statute § 974.06. He argued he should be resentenced in light of recent United States Supreme Court decisions which fundamentally changed the way courts must sentence juveniles. He argued

that pursuant to *Miller v. Alabama*, 576 U.S. 460, 132, S. Ct. 2455 (2012) and *Montgomery v. Louisiana*, __U.S. __ 136 S. Ct. 718 (2016), his sentence imposed for a homicide committed while a juvenile violates the Eighth Amendment of the United States Constitution and Article I, Section 6 of the Wisconsin Constitution, and thus is unconstitutional. In the alternative, he asked the court to modify his sentence to grant him parole eligibility after serving 20 years.

Judge Mark Rohrer denied the motion by oral decision on May 22, 2017. The court concluded that Halda was not entitled to resentencing on the ground that Judge Willis had complied with *Miller* and *Montgomery* when he sentenced Halda. The court did not address Halda's request for a sentence modification. The court subsequently entered a written order and Halda appealed.

After briefing, the court of appeals held Halda's case in abeyance pending the Wisconsin Supreme Court's decision whether to grant or deny review in another case, *State v. Jevon Jackson*, Case No. 2017AP712.

On April 22, 2021, the United States Supreme Court decided *Jones v. Mississippi* and on August 11, 2021, the Wisconsin Supreme Court denied the petition for review in *State v. Jevon Jackson*.

The court of appeals subsequently ordered supplemental briefs to discuss the impact of *Jones v. Mississippi* on Halda's case. Following the filing of those briefs, on October 20, 2021, the court of appeals affirmed the trial court's decision in an order for summary disposition, perceiving no constitutional violation requiring resentencing.

Halda then filed a petition for review in the Wisconsin Supreme Court. The Court subsequently denied his petition for review on February 16, 2022.

REASONS FOR GRANTING THE PETITION

This case presents the opportunity for this Court to develop and harmonize the law regarding the sentencing of juvenile offenders in an important area; the disproportionality of a life-without-parole sentence imposed on a juvenile in the absence of a *Miller*-compliant proceeding.

I. This Court should grant review and hold that Jason Halda must receive a Miller-compliant sentencing proceeding.

This case comes before the Court on the heels of *Jones v. Mississippi*. Brett Jones was convicted of the murder of his grandfather. Jones, 141 S. Ct. at 1312. Although he was only 15 years old at the time of the murder, Jones was sentenced to life-without-parole. *Id.* at 1312. Under Mississippi law at that time, murder carried a mandatory sentence of life-without-parole. *Id.* In the wake of *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455 (2012), Jones sought relief from his sentence and the State Supreme Court ordered a new sentencing hearing. *Id.* at 1312-1313.

At his resentencing hearing, Jones presented evidence of his childhood experiences, circumstances of the crime, and his maturation and progress in prison. *Id.* at 1339 (dissenting opinion). The sentencing court acknowledged it had the discretion to impose a sentence other than life-without-parole pursuant to *Miller*. Nevertheless, the court again sentenced Jones to life-without-parole. *Id.* at 1313.

Jones appealed and his case ultimately reached the United States Supreme Court. Having been granted a resentencing hearing, his argument was necessarily narrow, focusing on the resentencing court's decision. Jones argued that a sentence is required to make a specific factual finding that the defendant is permanently incorrigible before imposing such a sentence, or at a minimum provide an on-the-record sentencing explaining with an implicit finding that the

defendant is permanently incorrigible. *Id.* at 1311. Because the sentencing court had not made such a specific or implicit finding in his case, Jones argued he was entitled to relief.

The Supreme Court upheld Jones' sentence. *Id.* at 1311. Analogizing a life-without-parole sentence to the death penalty, the Court held that the sentence is not required to make any specific finding of fact, including a finding that the offender is irreparably corrupt or incapable of redemption. *Id.* at 1316. Noting that the sentencing court in Jones' case had the discretion to impose a sentence other than life-without-parole, the Court said that "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Id.* at 1313.

As the facts in Jones plainly demonstrates, Jones received the procedural relief that Halda has thus far been denied: a *Miller*-compliant hearing.

Like Jason Halda and Brett Jones, Evan Miller was a juvenile when he committed homicide. In Alabama, homicide carried a mandatory life-without-parole sentence. Miller challenged his sentence as unconstitutional, and the United States Supreme Court agreed, holding that a mandatory life-without-parole sentence for a juvenile is unconstitutional. *Miller*, 132 S. Ct. at 2460. Building on its decisions in *Roper v. Simmons* and *Gram v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010), the Court concluded that given all it had said in previous decisions about "children's diminished culpability and heightened capacity for change," the "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Miller*, 132 S. Ct. at 2469. Children, the Court said, are categorically and constitutionally different from adults. These differences stem from the juvenile's lack of maturity, underdeveloped sense of responsibility, recklessness, impulsivity, "heedless risk-taking," vulnerability to negative influence and outside pressures, and their less "well-formed" and "less fixed" character. *Id.* at 2458. The distinctive attributes of youth, the Court said, "diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. *Id.* Accordingly, the Court

said, a “sentencing court was required to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 2469.

Four years after *Miller*, the Court decided *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) and held that *Miller* has retroactive effect. The Court explained that the *Miller* rule is retroactive because of the significant risk that the vast majority of juvenile offenders with a life-without-parole sentence are not irreparably corrupt. “*Miller’s* conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raised a grave risk that many are being held in violation of the Constitution.” *Id.* at 736.

It was in light of *Miller* and *Montgomery* that the Mississippi State Supreme Court ordered a new sentencing proceeding in *Jones*. And while the sentencing court was not prohibited from imposing a life-without-parole sentence, it was required to consider the constitutional mitigation of *Jones’* youth. To that end, the court did hear *Miller*-relevant evidence and argument before it again imposed a life-without-parole sentence.

Jason Halda has not yet received the relief that the Mississippi State Supreme Court granted Brett Jones: a hearing that complies with *Miller*. Halda was sentenced in 1999, over a decade before the Court decided *Miller*, and well before *Roper v. Simmons* and *Graham v. Florida*. The sentencing judge in his case could not have predicted the sea change that those decisions brought to juvenile sentencing, even in the most terrible and severe criminal cases. That opportunity for a *Miller*-compliant sentencing proceeding is all that Halda now seeks.

The federal government’s amicus brief in *Jones* appears to support Halda’s argument for relief. In arguing to the Court that *Montgomery* did not require a specific finding of fact by the sentencing court, the government wrote about a “*Miller*-compliant process,” noting the distinction between requiring a specific finding of fact and a particular process that comports with *Miller*. (United States amicus brief at 23).

II. This Court should grant review because of the unacceptable risk Jason Halda's sentence is disproportionate and therefore unconstitutional under the United States Constitution.

The court of appeals ruled in its order for summary disposition that "while Halda's sentence is severe, it is not disproportionately so given the circumstances of the case." (App. A at 22). The supreme court of Wisconsin upheld this and denied his petition for review. This Court should grant review because Halda's case presents a constitutional claim of disproportionality in two respects. First, an interjurisdictional comparison of Halda's sentence to a sentence imposed in a mandatory life-without-parole jurisdiction such as Louisiana or Alabama shows his sentence is disproportionate. And second, the sentencing court's failure to consider youth and its attendant characteristics in his case shows his sentence is disproportionate.

Beginning with the interjurisdictional comparison, the Supreme Court in *Jones* has drawn a distinction between mandatory life-without-parole sentences and discretionary life-without-parole sentences imposed before *Miller*. If the Supreme Court's pronouncement that a discretionary sentencing scheme is both necessary and sufficient applies to people like Halda who were sentenced pre-*Miller*, and who thus far have not received a *Miller*-compliant sentencing proceeding, there is an unacceptable risk that his sentence and others are disproportionate and thus unconstitutional. If Halda is denied a resentencing hearing on the ground that the court exercised its discretion, just as it would in a mine run case, disproportionate punishment is the likely outcome.

To explain, the court sentenced Halda in 1999, well before *Roper* and its progeny were decided. In 1999, a court would consider the offender's age, but not in the context that the Supreme Court now requires. At the time of Halda's sentencing, the court would not have had the benefit of

the Supreme Court's mandate to consider the constitutional mitigation of youth and its attendant characteristics.

This means that if this Court denies Halda the relief that Jones received – a *Miller*-compliant resentencing – the result will be disproportionality between mandatory life-without-parole sentence and discretionary life-without-parole sentences imposed before *Jones*. Offenders like Jones, in *mandatory* life-without-parole states, will be resentenced and give the opportunity for the sentencing court to consider whether they are permanently incorrigible. By contrast, Halda has been denied a *Miller*-compliant hearing thus far by virtue of the fact that the court had the discretion to grant him a parole date even though the court did not exercise that discretion within the context of *Roper*, *Graham*, *Miller* and *Montgomery*. Such a disparate procedure presents the unacceptable risk that Halda is condemned to die in prison even though no court has considered whether he is permanently incorrigible or whether his crime was due to transient immaturity.

A review of the sentencing court's comments in this case reveals that the court did not impose a sentence that is proportionate to both the offender and the offense. Indeed, unless the court could see into the future, it would have been nearly impossible for the court to properly impose a proportionate sentence in this case.¹

¹ The prosecutor certainly did not approach this sentencing with a consideration of the mitigation of youth. He began his sentencing argument by asking rhetorically what reasons there were for *not* imposing a life-without-parole sentence. Nor did the judge beyond a cursory remark of Halda's youth. In fact, he took inspiration from sentencing guidelines from states that have the death penalty and considered the aggravating factors that might warrant consideration of the ultimate punishment in his decision in sentencing Halda to life-without-parole, a sentence which "share some characteristics with death sentences that are shared by no other sentences." (*Miller*, 560 U.S., at 69, 130 S. Ct., at 2027). The sentencing judge clearly presumed that capital punishment guidelines held greater weight than the consideration of the mitigation of youth while sentencing Halda.

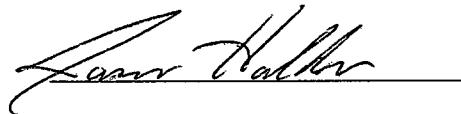
While the court fully considered the aggravating factors of the extremely serious crime, it utterly failed to consider such mitigating factors as peer influence, substance abuse, heedless risk-taking, inability to control emotions and actions in a charged atmosphere, and immaturity. And while the court stated it would consider Halda's rehabilitative needs, it altogether failed to do so. The court made no mention of the possibility for reform or redemption for this young person. Instead, the court focused on Halda's apparent lack of remorse, a complicated emotion well beyond the capacity of teenagers, an emotion that develops with time as a person ages.

The Court in *Jones* noted that the issue of disproportionality was not before it. *Jones*, 141 S. Ct. at 1322. Jason Halda submits his sentence is indeed disproportionate and respectfully asks this Court grant review to remedy that disproportionality.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jason Albert Halda".

Date: May 16, 2022

JASON ALBERT HALDA

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