

22-6134

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EUGENE RILEY, III,

Petitioner,

-VS-

THE PEOPLE OF THE STATE OF ILLINOIS,

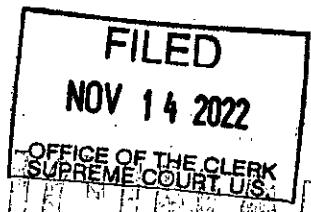
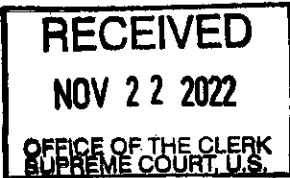
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

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PRO SE - PETITIONER



QUESTION PRESENTED

Did the State Court violate the U.S. Constitution when it imposed a 32 year sentence when it disregarded the mitigating factors laid out in *Miller v. Alabama*?

Is the 32 year sentence imposed on the Petitioner, who was 18 years old at the time the crime occurred, a de-facto life sentence, where he cannot receive any good time or opportunity for parole?

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PETITION FOR WRIT OF CERTIORARI TO
THE ILLINOIS SUPREME COURT

The Petitioner, Eugene Riley, III, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Illinois, denying his petition for leave to appeal on September 28, 2022.

OPINION BELOW

The opinion of the Supreme Court of Illinois, denying Petitioner's Petition for Leave to Appeal issued on September 28, 2022, and appears at Appendix A to this petition. It is reported at *People v. Riley*, IL 128540.

The opinion of the Illinois Appellate Court, affirming the Circuit Court's dismissal of Petitioner's pro se post-conviction petition was issued on April 15, 2022, and appears at Appendix B to this petition. It is unpublished at *People v. Riley*, 2022 IL App (1st) 192603.

JURISDICTION

The Supreme Court of Illinois denied his Petition for Leave to Appeal on September 28, 2022. A copy is attached at Appendix A.

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

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State or district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. 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 protections of laws.

Illinois Const. of 1970, art. I, § 11.

All penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

STATEMENT OF FACTS

After a 2011, jury trial, Defendant was convicted of first degree murder, predicated on mob action, for his role in the death of Derrion Albert. (C. 56; R. 696). Eugene was one of five individuals convicted in Derrion's death after separate trials. Defendant, who was 18 years old at the time of the offense and had no criminal background, was sentenced to 32 years in prison. (C. 56). Defendant's conviction and sentence were affirmed on direct appeal. *People v. Riley*, 2013 IL App (1st) 112464-U. Defendant's initial post-conviction petition was filed in 2014, and summarily dismissed, and affirmed on appeal after appellate counsel filed a motion to withdraw. (C. 176-80); *People v. Riley*, 2016 IL App (1st) 14231-U.

At trial, the jury heard evidence of a brawl that took place on September 24, 2009, involving an ongoing feud between Christian Fenger Academy high school students from Altgeld Gardens and the Roseland area, also known as "the Vill." Defendant was 18 years old at the time and had graduated from a different high school. (R. W-220, W-270). Defendant's mother, Sherry Smith, and brother, Vashion Bullock, lived in Altgeld Gardens and Vashion was a senior at Fenger. (R. W-219; W-224). On September 24, 2009, Vashion was sent home from school early after being suspended due to a verbal fight he had with a student from the Vill. (R. W-221, W-225). At the end of the regular school day, Defendant's mother asked him to pick up Vashion's friend and neighbor, Silvonus Shannon, from school. (R. W-221).

Defendant, Vashion, and a man named Carl got in Defendant's car and they drove to Fenger to pick up Silvonus. (R. W-226, W-251). Defendant saw Silvonus on 111th Street and picked him up. (R. W-265). Defendant then stopped the car at a nearby store so Silvonus could purchase a

cigarette. (R. W-266). Silvonus got back in the car, and they continued driving. (R. W-266).

The key evidence as to what followed was a cell phone video of a brawl between numerous teenagers that depicted Derrion being punched, kicked, stomped, and hit with boards by several different people. Witnesses for the State and the defense offered differing evidence as to the events surrounding the video.

Dominic Johnson, who was serving a sentence for residential burglary at the time of trial, was a 15 year old Fenger student at the time of the incident. (R. W-119-20, W-124). He left school with Deonte Johnson and "Little Carl" that afternoon. (R. W-126-27). Dominic testified that as they were walking, Vashion leaned out of the window of a passing car and told Little Carl "this ain't over." (R. W-128-29). The car crossed over the railroad tracks near the Agape Community Center and parked. (R. W-131). Vashion and Defendant, and the other passengers exited the vehicle. (R. W-131-33) Dominic testified that Vashion and Defendant and some others walked back across the tracks. (R. W-134). Vashion and Little Carl spoke to one another, and then Vashion took a swing at Little Carl and they began to fight. (R. W-134). Then the two larger groups from the Vill and Altgeld Gardens started fighting. (R. W-134-35). The fight moved to an area between the wall of the Agape Community Center and a parked car. (R. W-135).

According to testimony from Defendant and Vashion, they stopped the car because Vashion heard rocks hit the car, and they got out to inspect the car. (R. W-226-28, W-265-66). Then Vashion saw a group of Fenger students and approached Little Carl to discuss a prior incident between them. (R. W-228). Vashion testified that Little Carl pushed him and he defended himself. (R. W-228-29). He said he got rushed by a group of guys

and his brother was the only one there to protect him. (R. W-229-31). Vashion and defendant got stuck between a parked car and a cement wall in an alley by the Agape Community Center. (R. W-229-30, W-267). Defendant was struck in the head with a wooden board, after which he felt dizzy and scared and backed away. (R. W-107, W-267-69). Defendant and Vashion got away from the alley and somebody threw wooden boards that struck Vashion. (R. W-232, W-268). Defendant and Vashion picked up the boards. (R. W-284). Defendant saw a group that included Silvonus was kicking and stomping on Derrion, who was on the ground. (R. W-284). Defendant struck Derrion two times with the board, striking his head at least once. (R. W-286). Defendant acknowledged in his testimony that when he struck Derrion, he did not know where Vashion was and Derrion was not a threat. (R. W-291-92). Defendant subsequently saw Vashion get knocked unconscious by a brick thrown at him, and ran over to help him. (R. W-269). Vashion permanently lost vision in his left eye as a result of the injury. (R. W-231-33).

T-Awannda Piper worked at Agape Community Center and witnessed the fight through a window. (R. W-29-33). She called 9-1-1 when she saw a large group of students that looked ready to fight. (R. W-40-43). She saw Derrion get struck with a board by Eric Carson and fall to his knees. (R. W-42-43). Derrion tried to get back up and was punched by another individual, causing him to fall to the ground again. (R. W-44). Several other young men kicked him as he sat with his hands up in the air, and he fell back. (R. W-45-46). Then another person struck Derrion over the head with a board. (R. W-46). She went outside at that point and helped bring Derrion inside to wait for the ambulance. (R. W-46-49).

The State submitted a real time version of the video by a bystander, as well as a slowed down version of the video edited to include a yellow arrow pointing to defendant as he moved throughout the video. (St. Ex.

13, 15, 16). The video began with a chaotic scene of people fighting and also students with backpacks walking by the fight. The video showed several people hitting Vashion in an alley by the Agape Community Center, as he was struck between a parked car and a cement wall. Defendant was hitting people who were attacking Vashion. Eventually, Eric Carson hit Defendant over the head with a board. Defendant wobbled away to the middle of the street after being struck. Vashion managed to get out from behind the car and moved to the middle of the street.

Derrion was shown trying to throw a punch at a passing individual. Eric struck Derrion in the head with a board, and Darrion fell to the ground. As Derrion tried to get up, Deonte punched Derrion in the face and fell down again without protecting his fall. An individual then kicked Derrion in the chest.

the video recording then panned to the middle of the street where Vashion and Defendant were standing. Someone clammed a board against Vashions' face, and another individual threw a board which struck Vashion. Vashion and defendant then picked up those boards and waved them around to scare off the growing group from Vill. Silvonus and some others began kicking Derrion. Defendant came over and struck Derrion with the board a second time, but the video does not show where on his body he was hit. At that point, the Vill group chased off Defendant and Vashion. A group of people from Agape Community center came out, picked up Derrion, and took him inside. The video ended with the bystander operating the camera walking down 111th Street and noting that the fight was continuing down the street.

Defendant was arrested at 1:15 a.m. on Sunday, September 27, 2009, and participated in a videotaped interview at 3:57 a.m. (C. 7;R. W-86-88).

Assistant Medical Examiner Dr. Hillary McElligott performed an autopsy on Derrion on September 25, 2009. (R. W-176-83). The internal exam revealed a large bruise to the right side of Derrion's scalp, bleeding across the entire surface of his brain under the subarachnoid, and bruises on the bottom of his brain above his eyes. (R. W-186-88). Dr. McElligott concluded that Derrion's death was a homicide, and died of cerebral injuries that were caused by blunt head trauma. (R. W-209-11).

The jury found Defendant guilty of felony murder predicated on mob action. (C. 56, R. X-93).

At sentencing, the defense argued in mitigation that Defendant had no criminal background, and despite a difficult childhood he was employed and had strong family support. (R. Z-18-20). The defense argued that Defendant used poor judgment, but that he was a good young man, trying to protect his brother, who went too far in the heat of the moment. (R. Z-20-21).

Defendant spoke in allocution and apologized to his family and Derrion's family. (R. Z-21-22). He said he never meant for anybody to lose their life, and said, "I was a teenager with an immature mind. Didn't know the consequences of my actions." (R. Z-21). He said he hoped to be mature and take responsibility and ask forgiveness. (R. Z-21). The trial court observed that the video went viral and had been seen all over the country, including by the President of the United States. The court noted that Defendant did not have a criminal history, but stated that the sentence must reflect the seriousness of the offense. (R. Z-23). However, the court never acknowledged Defendant's age and prospect for rehabilitation. The court sentenced Defendant to 32 years in prison. (R. Z-25).

This petition follows.

REASONS FOR GRANTING THE WRIT

- I. THIS COURT SHOULD GRANT THIS WRIT TO DETERMINE IF THE STATE COURT'S SENTENCE OF 32 YEARS IS A DE-FACTO LIFE SENTENCE, IMPOSED FOR AN OFFENSE COMMITTED WHEN HE WAS 18 YEARS OLD, AND THE COURT NEVER CONSIDERED MITIGATING FACTORS, NOR MILLER FACTORS, VIOLATING THE PROPORTIONATE PENALTIES CLAUSE

The Petitioner was 18 years old when the offense occurred. In 2011, the trial court imposed a 32 year sentence for the felony murder predicated on mob action. However, the Court never considered Petitioner's age, or lack of criminal history (mitigating factors), nor did the Court consider any of the Miller factors as Miller was yet to be decided.

In 2012, this Court decided the landmark case, *Miller v. Alabama*, 567 U.S. 460 (2012), which held it was unconstitutional to impose a life sentence to juveniles. This Court acknowledged that "children are constitutionally different from adults for purposes of sentencing because juveniles have diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at 471.

The emerging science on an adolescent's brain doesn't become fully developed until their mid-20's. Adolescent brains are immature—an immaturity that extends into early adulthood. This includes the frontal lobes which plays a crucial role in making good decisions, controlling impulses, focusing attention for planning, and managing emotions. Science now understands that the process of maturity involves three components of brain function: gray matter, white matter connections and neurotransmitters. All three components are compromised in an individual under the age of 25. See "Scientific Rationale To Extend The Graham/Roper/Miller Protections Upward From 18 to 25" by James Garbarino, Ph.D.

Illinois Courts applied the reasoning of Miller to a person over 18 years of age in *People v. House*, 2015 IL App (1st) 110580. Here, the Illinois Appellate Court issued a new decision, analyzing the recent changes in neuroscience and community standards and finding that a life sentence for a 19 year old violates the constitution. The following year, this Court further reinforced the Miller decision, that, expanding the ruling retroactively and applicable to sentences other than mandatory life sentences, what is referred to as a de-facto life sentences. *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

With the emerging science pertaining to adolescent brain, the Illinois legislature enacted a "Youthful Parole Bill" which provides that offenders under the age of 21 be afforded an opportunity for release based upon the fact that they were under the age of 21 at the time of the commission of their alleged offenses. See 730 ILCS 5/5-4.5-110 (West 2020). Illinois acknowledged that youthful offenders—such as the Petitioner—should be afforded an opportunity to submit evidence of youth and its attendant characteristics as provided for in *Roper v. Simmons*, 543 U.S. 551 (2005).

With the case at bar, Petitioner was sentenced to 32 years that which he must serve 100% of said sentence, without an opportunity for parole or early release for good behavior. 730 ILCS 5/3-6-3 (West 2021). In fact, the sentencing court never considered Petitioner's youth, or lack of criminal history.

These changes in the law transpired after Petitioner was sentenced. The sentencing judge even commented, "I don't know where this sort of wild aggressive behavior comes from." (R. Z-24). He further stated. "When you are 18, 19, 20, you make bad decisions, but we hope the

conscience will speak loudly enough to speak to us in the most critical of moment." (R. Z-25). Clearly, the sentencing judge was unaware of the psychology and brain science of the adolescent brain. This science, as this Court acknowledged in **Miller** and its **prodigy**, would have helped the sentencing judge to understand the Petitioner's actions, as they were connected to the "hallmark features of youth." **Miller**, 567 U.S. at 477.

New scientific understanding help explain the Petitioner's conduct. his recklessness, susceptibility to the influence of peers, and the failure to appreciate the risks of participating in a mob action, were not the moral failings of someone who did not listen to his conscience, but "the signature qualities" of youth that **Miller** described as "all transient". *Id.* at 476. Because of the transience of those features, and thus, a young person's unique capacity for change, as compared to a fully formed adult, a judge may not make "an irrevocable judgment about an offender's value and place in society" as the judge did here when imposing a 32 year prison sentence, without first accounting for Petitioner's reduced moral culpability.

Petitioner's 32 year de-facto life sentence violates the constitution. To satisfy the constitution, a sentence as long as 32 years, with no opportunity for parole or reduced sentence for good behavior, should only be imposed on an 18 year old after the Court specifically considers "the characteristics of youth that this Court held in **Miller**, known as **Miller** factors:

- (1) The juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences;
- (2) The defendant's family and home environment;

- (3) The defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him;
- (4) The defendant's incompetence, including his inability to deal with police officers or prosecutors, and his incapacity to assist his own attorneys; and
- (5) The defendant's prospect for rehabilitation.

All five of the Miller factors were present with the case at bar. His behavior reflected immature impulsiveness due to his brain development. It was the result of immaturity that caused him to not make a good decision and manage his emotions. Petitioner and his brother were attacked by the victim and the mob that was with the victim. It wasn't premeditated, pre-planned, but the result of impulsiveness between a large group of adolescents. A fight that broke out in which a young man lost his life. Despite the fact Petitioner didn't start the fight, nor did he cause the fatal blow to the victim, he has expressed his sincere remorse and regret for his actions that day. Imposing a 32 year sentence on an 18 year old, with the sentencing court failing to acknowledge mitigating factors, along with the Miller factors, amounts to cruel and unusual punishment.

The Eighth Amendment's forbidding cruel and unusual punishment is made applicable to the states via the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660 (1962), prohibits the states from imposing "cruel and unusual punishments." U.S. Const., amends. VIII, XIV. Further, the Illinois Constitution affords broader protections than the Eighth Amendment. Independent of the Eighth Amendment, the proportionate penalties clause of the Illinois Constitution states, in part: "All penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." IL. Const. of 1970, art. I, § 11.

Even if the Court properly considered any of the Miller factors, the 32 year sentence only comports with the constitutions if the Petitioner's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable correction beyond the possibility of rehabilitation. Yet, Petitioner's pro se post-conviction petition negates the idea that he was incapable of rehabilitation, where he showed that he has completed numerous educational and training courses, including advanced basic adult education, master craftsmanship, drug education and Bible study. He has maintained employment within the department of corrections and received a letter of commendation from the warden for volunteer efforts during a local flooding event.

In sum, Petitioner had a *prima facie* showing that the trial court erred when it deprived him leave to file his pro se successive post-conviction petition. He should have been allowed to file his petition to develop a factual record in support of his, as-applied Miller claim that his brain development at age 18 was similar to that of a juvenile, and therefore, the 32 year sentence imposed without consideration of his youth and potential for rehabilitation violated the proportionate penalties clause in both, the U.S. Constitution and the Illinois Constitution.

Because the sentencing court failed to consider the Miller factors when imposing the 32 year prison sentence, and the Illinois Appellate Court at the Supreme Court of Illinois failed to enforce clearly established law, this Court must grant certiorari.

II. THE DECISION OF THE CIRCUIT COURT, STATE APPELLATE COURT, AND THE SUPREME COURT OF ILLINOIS IS IN CONFLICT WITH THIS COURT

In the closely analogous case of *Miller v. Alabama*, 567 U.S. 460 (2012), this Court held it was unconstitutional to impose a life sentence to juveniles. This Court acknowledged that "children are constitutionally different than adults. Further, this Court requires the sentencing court to consider five grounds when imposing a sentence to a youthful offender: (1) immaturity, impetuosity, less capacity to consider future consequences, and related characteristics that impair juveniles' ability to make decisions; (2) family and home environment from which a child cannot extricate himself; (3) circumstances of the offense, including the role the youth played and the influence of peer pressure; (4) impaired legal competency; and (5) the youth's potential for rehabilitation. However, the state court never considered any of these factors.

This case illustrate the fact that the Illinois Courts are out of step with this Court. Certiorari should be granted to correct this error.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Illinois Courts.

Respectfully submitted,

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