**No. 22-6431**

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

---

**PHILIP JOHNSON**, Petitioner,
-vs-

**PEOPLE OF THE STATE OF ILLINOIS**, Respondent.

---

On Petition For Writ Of Certiorari

To The Appellate Court Of Illinois

---

# REPLY BRIEF FOR PETITIONER

---

JAMES E. CHADD
State Appellate Defender

SANTIAGO A. DURANGO
Counsel of Record
Deputy Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rdDistrict@osad.state.il.us

COUNSEL FOR PETITIONER

*Of Counsel:*
Jay Wiegman
Assistant Defender

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**: **Page**

**Federal Cases:**



**State Cases:**

## REPLY BRIEF FOR PETITIONER

### I. This Court should grant review so as to resolve a split of authority regarding 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 *Miller v. Alabama*, 567 U.S. 460 (2012), this Court held 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." *Miller v. Alabama*, 567 U.S. 460, 477, 2468 (2012). In *Montgomery v. Louisiana*, 577 U.S. 190, 205 (2016), this Court held that *Miller's* prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review. *Montgomery v. Louisiana*, 577 U.S. 190, 205 (2016), as revised (Jan. 27, 2016). When Philip Johnson collaterally attacked his guilty plea and 110-year negotiated sentence, however, the Illinois Appellate Court, Third Judicial District, under direction by the Illinois Supreme Court, held that Johnson, who was 16 years old at the time of the offense and 17 years old at the time of his conviction, waived his Eighth Amendment claim by entering his negotiated guilty plea in 1996. *People v. Johnson*, 2021 IL App (3d) 180357, ¶ 10. In his petition for writ of *certiorari*, Johnson asked this Court to grant review to consider whether a minor who pled guilty long before *Miller* was decided can later bring a collateral Eighth Amendment challenge seeking re-sentencing in accord with *Miller* and its progeny.

The State of Illinois urges this Court to "deny review, just as it did last Term in *Jones v. Illinois*, No. 21-7676, on which the decision below rests." (BIO 13). The State

cites *People v. Jones*, 129 N.E.2d 1239, 1243 (Ill. 2019), in support of its assertion that a negotiated guilty plea entered into in Illinois legally waives the right to collaterally challenge one's sentence. (BIO 15). The State asserts that review by this Court is not necessary because the Illinois Supreme Court's decision in *Jones*, upon which the instant decision is based, is a fact-based application of state law and because, the State maintains, there is no split among the federal courts on this issue. (BIO 7, 15-16).

The Illinois Supreme Court's decision in *Jones* was not predicated solely on state law, however, but relied heavily on federal caselaw. In finding that a "knowing and voluntary guilty plea" - even one premised on the threat of an unconstitutional sentence - "waived any constitutional challenge based on subsequent changes in the applicable law" - even changes that have been held to apply retroactively - the *Jones* majority adopted a 2016 federal decision that likened a plea of guilty to a "bet on the future" in that "a classic guilty plea permits a defendant to gain a present benefit in return for the risk that he may have to forego future favorable legal developments." *Jones*, 2021 IL 126432, ¶26 (citing *Dingle v. Stevenson*, 840 F.3d 171, 175-76 (4th Cir. 2016)). Thus, the decision below, made in reliance upon *Jones*, cannot be said to be based strictly on state law, but instead rested on federal cases.

Moreover, relying upon cases like *Brady v. United States*, 397 U.S. 742 (1970), which did not involve a claim that the sentence actually imposed was substantively unconstitutional, the Jones majority incorrectly held that negotiated guilty pleas bar future challenges to the sentence. *Brady*, 397 U.S. at 750. This stands in stark contrast to this Court's holding in *Graham v. Florida*, 560 U.S. 48 (2010), in which this Court vacated an unconstitutional life sentence imposed in probation revocation proceedings following a guilty plea. *Graham*, 560 U.S. at 55. This Court should grant review

because the plea waiver doctrine adopted by Illinois in *People v. Jones*, 2021 IL 126432, should not be allowed to bar appeals from negotiated sentences when this Court determines that state law violates the Constitution.

Moreover, recent federal decisions illustrate that there is a split as to the issue of whether a defendant who pled guilty before the advent of *Miller* and its progeny is forever barred from challenging a sentence that this Court later holds unconstitutional. Most recently, and after this Court denied *certiorari* in *Jones v. Illinois*, No. 21-7676, the Ninth Circuit Court of Appeals stated: "a defendant cannot voluntarily and intelligently waive a constitutional right of which he is unaware." *Crespin v. Ryan*, 46 F.4th at 809 (citing *Iowa v. Tovar*, 541 U.S. 77, 81 (2004)). Philip Johnson could not possibly have known, at the time he entered his negotiated guilty plea, that a *de facto* life sentence imposed upon a juvenile, like him, would later be held unconstitutional. As a result, he should be entitled 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.

## 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.

In *Miller*, this Court stated that "'youth is more than a chronological fact.'" *Miller*, 567 U.S. at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). As a result, the sentencing judge must consider the juvenile's age "and its hallmark features" - immaturity, impetuosity, and failure to appreciate risks and consequences. *Id.* at 2468. Nonetheless, the State asserts that "this Court has considered and rejected the argument that *Miller* requires the record to show that 'the sentencer actually consider[ed] the defendant's youth" before it imposes life without parole on a juvenile homicide offender." (BIO at 10 (quoting *Jones v. Mississippi*, 141 S. Ct. 1307, 1319 (2021)). Jones, however, was sentenced after the Mississippi Supreme Court concluded that *Miller* applied retroactively on state collateral review; thus the judge in *Jones* presided over a new sentencing hearing where the sentencing judge could consider Jones's youth and exercise discretion in selecting an appropriate sentence. *Jones v. Mississippi*, 141 S. Ct. 1307, 1312–13 (2021). Given those facts, it is clear that the sentencer in *Jones* had before it more than just the defendant's age and a factual basis for the judgment.

Unlike the instant case, in which the State acknowledges that the trial court did not consider a presentence investigation report before sentencing petitioner (BIO 10), this Court in *Jones* held that an on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth because "the sentencer necessarily will consider the defendant's youth, especially if defense counsel advances

an argument based on the defendant's youth." *Jones*, 141 S. Ct. at 1319. In other words, *Jones* did not hold that a sentencer is not required to consider a minor defendant's youth and its characteristics in imposing sentence. Rather, this Court held that, faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant's youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor, and thus it was unnecessary to provide an on-the-record sentencing explanation with an "implicit finding" of permanent incorrigibility. *Jones*, 141 S. Ct. at 1319. Conversely, the instant trial court did not adequately consider Philip Johnson's youth and its attendant circumstances because the negotiated plea obviated the need to consider these factors. To avoid the erosion of *Miller* in Illinois and the other states, this Court should address this issue.

## CONCLUSION

For the foregoing reasons, petitioner, Philip Johnson, respectfully prays that a writ of *certiorari* issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

SANTIAGO A. DURANGO
Deputy Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rdDistrict@osad.state.il.us

COUNSEL FOR PETITIONER

*Of Counsel:*
Jay Wiegman
Assistant Appellate Defender