

NO. 22-7180

**IN THE
SUPREME COURT OF THE UNITED STATES**

**TYSHON BOOKER,
Petitioner,**

v.

**STATE OF TENNESSEE,
Respondent.**

**ON PETITION FOR WRIT OF CERTIORARI
TO THE TENNESSEE COURT OF CRIMINAL APPEALS**

RESPONDENT’S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a state statute giving a judge discretion to transfer a juvenile from juvenile court to adult criminal court—where the juvenile will be charged by the grand jury, tried by a jury, and sentenced within statutory parameters—violates the jury-trial right as recognized in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny.

RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 15.2, the respondent supplements the list of proceedings provided by the petitioner under Supreme Court Rule 14.1(b)(iii) with the following matters:

Tyshon Booker v. State, No. E2017-00714-CCA-R10-CD (Tenn. Crim. App. May 26, 2017) (denying application for extraordinary appeal);

Tyshon Booker v. State, No. E2017-00714-SC-R10-CD (Tenn. July 6, 2017) (denying application for extraordinary appeal).

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OPINION BELOW

The opinion of the Tennessee Court of Criminal Appeals affirming Booker's conviction is unreported. (App. 3a–54a); *State v. Booker*, No. E2018-01439-CCA-R3-CD, 2020 WL 1697367 (Tenn. Crim. App. Apr. 8, 2020). The order of the Tennessee Supreme Court granting petitioner's application for permission to appeal in part as to a separate sentencing issue was issued on September 16, 2020. (App. 57a); *State v. Booker*, No. E2018-01439-SC-R11-CD (Tenn. Sept. 16, 2020). The Tennessee Supreme Court's opinion as to that sentencing issue was issued on November 18, 2022. (App. 59a-79a); *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022).

STATEMENT OF JURISDICTION

The Tennessee Supreme Court granted Booker's application for permission to appeal with respect to a separate sentencing issue, and it issued its opinion on November 18, 2022. (App. 59a-79a.) Justice Kavanaugh extended the time for filing until April 1, 2023. *Booker v. State*, No. 22-7180 (U.S. Feb. 7, 2023). Booker invokes this Court's jurisdiction under 28 U.S.C. § 1257(a). (Pet. 2.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed."

The Fourteenth Amendment to the United States Constitution provides in pertinent part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

Section 37-1-134 of the Tennessee Code Annotated provides for the transfer of a juvenile from juvenile court to adult criminal court:

(a) After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances, of this state, the court, before hearing the petition on the merits, may transfer the child

to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction.

...

(c) The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges.

Section 39-13-202(c) of the Tennessee Code Annotated (2018) provides: “A person convicted of first degree murder shall be punished by: (1) Death; (2) Imprisonment for life without possibility of parole; or (3) Imprisonment for life.”

STATEMENT OF THE CASE

In November 2015, when Tyshon Booker was 16 years old, he shot and killed G’Metrick Caldwell and then made off with his cell phone. After multiple hearings in juvenile court, the judge transferred Booker to adult criminal court, which terminated the jurisdiction of the juvenile court. At trial, a jury convicted Booker of two counts of first-degree felony murder and two counts of especially aggravated robbery. Booker was sentenced to life imprisonment.

Booker appealed, and the Tennessee Court of Criminal Appeals affirmed his conviction, rejecting his argument that the juvenile-transfer decision violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). (App. 23a–31a.) Booker then sought permission to appeal to the Tennessee Supreme Court, which granted limited review of a separate issue regarding the constitutionality of Tennessee’s automatic life imprisonment sentence for juvenile homicide offenders and held that this sentence violated the Eighth Amendment. But the court denied review of the *Apprendi* issue presented in this petition.

Booker now seeks a writ of certiorari to address the *Apprendi* issue decided by the Tennessee Court of Criminal Appeals.

The State of Tennessee has contemporaneously filed a conditional cross-petition to the Tennessee Supreme Court on its holding that Booker's life sentence violates the Eighth Amendment. If this Court grants Booker's petition for a writ of certiorari, it should also grant review to resolve the question presented in the State's cross-petition—a question that has bedeviled and split the lower courts for over a decade: do *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), apply to a prison sentence that permits a juvenile offender's release, but only after a lengthy period of incarceration? This case presents an ideal vehicle for resolving that critical Eighth Amendment question.

REASONS WHY THE PETITION SHOULD BE DENIED

The Court should deny the petition because the decision below was correct, and Booker has not identified a relevant split of authority for resolution by this Court.

I. *Apprendi* Does Not Bar Judicial Juvenile-Transfer Decisions.

In *Apprendi v. New Jersey*, this Court held that a judge’s finding by a preponderance of the evidence that the defendant acted “with a purpose to intimidate” “because of race” under New Jersey’s hate crime statute violated the Due Process Clause of the Fourteenth Amendment. 530 U.S. at 468–474. This Court reasoned that under the Due Process Clause “and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.” *Id.* at 476 (internal quotation marks omitted). This Court has applied this same reasoning to other situations where a statute allows a judge to independently find facts related to the underlying offense when that finding exposes a defendant to a higher penalty than would be permitted solely by the jury’s finding.¹

¹ See *Hurst v. Florida*, 577 U.S. 92, 97–99 (2016) (invalidating a state statute that allowed a judge to independently increase a defendant’s sentence to capital punishment after an “advisory jury” made a sentencing recommendation to the judge); *Alleyne v. United States*, 570 U.S. 99, 114–116 (2013) (invalidating a defendant’s sentence after a judge found by a preponderance of the evidence that the defendant was carrying a “brandished” firearm, a fact that increased the mandatory minimum sentence beyond that based on the jury’s findings); *S. Union Co. v. United States*, 567 U.S. 343, 348–352 (2012) (finding that the reasoning in *Apprendi* applied when the statutory penalty involved criminal fines rather than imprisonment); *Cunningham v. California*, 549 U.S. 270, 288–293 (2007) (holding that California’s statute permitting “upper term” sentencing only after judicial findings violated *Apprendi*); *United States v. Booker*, 543 U.S. 220, 230–237, 244 (2005) (holding that *Apprendi* applied to the Federal Sentencing Guidelines); *Blakely v. Washington*, 542 U.S. 296, 301–305 (2004) (invalidating a state statute allowing a judge to independently impose a sentence greater than the standard range provided by state statute); *Ring v. Arizona*, 536 U.S. 584, 597–609 (2002) (invalidating a statute that allowed a judge to independently increase a defendant’s sentence to capital punishment when a jury did not determine the presence of aggravating factors); see also *United States v. Haymond*, 139 S. Ct. 2369, 2378 (2019) (plurality opinion) (holding that a statute that required a period of confinement for a

But this Court has consistently clarified that the principles stemming from *Apprendi* do not require “that any fact that influences judicial discretion must be found by a jury.” *Alleyne*, 570 U.S. at 116; *see also Oregon v. Ice*, 555 U.S. 160, 168 (2009) (“The decision to impose sentences consecutively is not within the jury function that extends down centuries into the common law.” (internal citations removed)). Rather, the *Apprendi* cases are “rooted in the historic jury function—determining whether the prosecution has proved each element of an offense beyond a reasonable doubt.” *Ice*, 555 U.S. at 163; *see Haymond*, 139 S. Ct. at 2376 (plurality opinion) (“A judge’s authority to issue a sentence derives from, and is limited by, the jury’s factual findings of criminal conduct.”). And “the jury-trial right is best honored through a principled rationale that applies the rule of the *Apprendi* cases within the central sphere of their concern.” *Id.* at 172 (internal quotation marks omitted).

In keeping with these “necessary boundaries” to *Apprendi*’s rule, *Ice*, 555 U.S. at 172 (internal quotation marks omitted), the Court has never extended *Apprendi* to a statute, like the one at issue here, that merely involves a preliminary finding about what court should preside over a case, *cf. State v. Potts*, 374 P.3d 639, 653 (Kan. 2016) (“Since *Apprendi*, the Court has never indicated or hinted that *Apprendi* would apply to a factual determination made at a pretrial proceeding.”). As the Tennessee Court of Criminal Appeals held, that is exactly what a judicial juvenile-transfer decision entails: The decision is “dispositional, rather than adjudicatory,” as it does “not determine guilt or innocence” but “function[s] only to determine the most appropriate forum to address the conduct for which the juvenile defendant is charged.” (App. 30a.) And since this transfer decision is made before an indictment is returned, before the charges are submitted to

supervised release violation, which carried an enhanced mandatory minimum beyond what the original offense required, violated *Apprendi*).

a jury, and well before a judge imposes sentence, *see* Tenn. Code Ann. § 37-1-134(a), (c), it does not implicate the “historic jury function” of testing the prosecution’s case, *see Ice*, 555 U.S. at 163.

In this case, the juvenile court judge did not independently increase the statutory maximum of for any offense by making the initial transfer decision, as Booker was ultimately convicted by a jury of first-degree felony murder and was sentenced accordingly to life imprisonment within the appropriate statutory range. *See* Tenn. Code Ann. § 39-13-202(c) (2018). The Tennessee Court of Criminal Appeals properly held that the transfer decision therefore did not violate *Apprendi*.

II. Booker Has Not Identified a Relevant Split of Authority for Resolution by this Court.

The lower court’s holding is in keeping with the decisions of other courts, which have consistently found that juvenile-transfer decisions do not “infringe[] on the province of the jury.” *Blakely*, 542 U.S. at 308. The federal circuit courts that have considered the question have found that judicial juvenile-transfer decisions are constitutional. *United States v. Miguel*, 338 F.3d 995, 1004 (9th Cir. 2003); *see also Gonzales v. Tafoya*, 515 F.3d 1097, 1102, 1111–1117 (10th Cir. 2008), *cert. denied*, 555 U.S. 890 (2008) (considering a system that permitted enhanced penalties but did not involve transfer to adult court). State supreme courts have consistently reached the same conclusion.² *Caldwell v. Commonwealth*, 133 S.W.3d 445, 453 (Ky. 2004), *overruled on*

² Other lower courts have held the same in States that, like Tennessee, have transfer statutes or similar proceedings, *see, e.g., State v. Kalmakoff*, 122 P.3d 224, 227–228 (Alaska Ct. App. 2005) (waiver of juvenile jurisdiction); *People v. Beltran*, 765 N.E.2d 1071, 1075–1076 (Ill. App. Ct. 2002) (transfer); *Villalon v. State*, 956 N.E.2d 697, 702–03 (Ind. Ct. App. 2011) (juvenile court waives jurisdiction); *In re J.C.P.*, 716 N.W.2d 664, 666–669 (Minn. Ct. App. 2006) (transfer); *State v. Childress*, 280 P.3d 1144, 1145–1148 (Wash. Ct. App. 2012) (juvenile court declines jurisdiction), and in States that use different procedures before treating a juvenile as an adult, *see, e.g., State v. Rodriguez*, 71 P.3d 919, 926–27 (Ariz. Ct. App. 2003) (certification to proceed as an adult); *Kirkland v. State*, 67 So.3d 1147, 1149–1150 (Fla. Dist. Ct. App. 2011) (prosecutorial decision).

other grounds by *Hall v. Commonwealth*, 551 S.W.3d 7 (Ky. 2018); *State v. Andrews*, 329 S.W.3d 369, 371–376 (Mo. 2010), *cert. denied*, 564 U.S. 1042 (2011); *State v. Rice*, 737 S.E.2d 485, 487 (S.C. 2013); *see also In re M.I.*, 989 N.E.2d 173, 188–192 (Ill. 2013) (rejecting an *Apprendi* challenge to a statute that involves a designation permitting adult sentencing but not transfer to a different court); *State v. Jones*, 47 P.3d 783, 794–798 (Kan. 2002), *cert. denied*, 537 U.S. 980 (2002) (same); *State v. Ruby B.*, 243 P.3d 726, 730–739 (N.M. 2010), *cert. denied*, 563 U.S. 940 (2011) (same).

There is no conflict regarding *Apprendi* and judicial juvenile-transfer decisions that requires this Court’s resolution. Booker attempts to muddy the waters by relying on a lone decision by the Supreme Judicial Court of Massachusetts. *Commonwealth v. Quincy Q.*, 753 N.E.2d 781, 787 (Mass. 2001), *overruled on other grounds by Commonwealth v. King*, 834 N.E.2d 1175, 1201 n.28 (Mass. 2005). But *Quincy Q.* is irrelevant here, as it did not involve a juvenile-transfer statute like Tennessee’s, that calls for a pre-trial, jurisdictional decision to transfer a juvenile from juvenile court to adult criminal court.³ *See* Tenn. Code Ann. § 37-1-134. Rather, *Quincy Q.* analyzes Massachusetts’s “youthful offender statute,” which “increase[s] the punishment for juveniles convicted of certain offenses beyond the statutory maximum *otherwise permitted for juveniles*” upon the showing of certain elements. *Quincy Q.*, 753 N.E.2d at 789 (emphasis added). The

³ In fact, the Supreme Judicial Court of Massachusetts later held that Massachusetts’s juvenile-transfer statute was still effective for certain offenders, and it discussed the judicial findings the transfer statute required. *Commonwealth v. Mogelinski*, 1 N.E.3d 237, 242–243 (Mass. 2013) (“At the transfer hearing, a Juvenile Court judge considers whether there is probable cause to believe that the individual committed the charged offense and, if so, whether the individual should be discharged or whether the public interest requires that the case be transferred and the individual be tried as an adult.”). Despite discussing *Quincy Q.*’s *Apprendi* holding, *id.* at 250, the court never suggested that *Apprendi* bars the judicial-transfer decision, *id.* at 251 (“The greater protections of a transfer hearing afforded one over the age of eighteen are appropriate when the consequences for past conduct may entail prosecution as an adult, a safeguard that is not necessary when an individual is still within the jurisdiction of the Juvenile Court.”).

youthful-offender designation does not, as does a juvenile-transfer statute, provide that a juvenile offender should be prosecuted in a different court. Instead, the juvenile remains in juvenile court but is afforded fewer protections, including enhanced adult penalties.⁴ *Mogelinski*, 1 N.E.3d at 242.

Quincy Q. therefore has little bearing on whether *Apprendi* applies to a juvenile-transfer decision, and it does not disrupt the overwhelming precedent consistently holding that judicial juvenile-transfer decisions are constitutional. *See Andrews*, 329 S.W.3d at 372 & 375 n.4 (noting that *Quincy Q.* is readily distinguishable from Missouri’s system, which involves transfer to a court of general jurisdiction). That leaves *Booker* with little more than a couple of dissenting opinions and a handful of law review articles—hardly the sort of split of authority that justifies this Court’s review.

Booker also points to the variety of rationales courts have provided for why judicial juvenile-transfer decisions do not violate the Constitution. This too is immaterial. Just because there are multiple rationales supporting courts’ unanimous conclusions that judicial juvenile-transfer decisions are constitutional does not mean these rationales are conflicting. As the Tenth Circuit summarized, some courts have observed that a judicial juvenile-transfer decision is jurisdictional; some have “relied upon the [due process] differences between the juvenile and adult criminal justice systems”; and others have “distinguished judicial findings supporting the adult prosecution of a juvenile from the findings traditionally made by juries.” *Gonzales*, 515 F.3d at

⁴ *Booker* misreads the statute when he suggests that it permits the Commonwealth to proceed directly in “criminal court” (Pet. 11), by which he presumably means the same court that would try an adult. The youthful-offender proceedings remain in juvenile court, albeit with fewer protections. Mass. Gen. Laws ch. 119, §§ 54, 58; *Mogelinski*, 1 N.E.3d at 242; *Commonwealth v. Dale D.*, 730 N.E.2d 278, 280–281 (Mass. 2000).

1111–1112. Each is a compelling reason for rejecting Booker’s argument, and the various rationales are not mutually exclusive.

Accordingly, this Court should deny certiorari, as there is no conflict for this Court to resolve. But should the Court grant the petition, it should also grant review of the State of Tennessee’s cross-petition, which is filed contemporaneously with this brief in opposition and which presents the Court with the opportunity to resolve a substantial Eighth Amendment issue that cries out for guidance from this Court: Whether *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), should be extended to term-of-years prison sentences that permit a juvenile offender’s release after a lengthy period of incarceration.

CONCLUSION

The petition for a writ of certiorari should be denied.

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