

No. _____

IN THE
Supreme Court of the United States

TYRONE DESANTE MORANT,
Petitioner,
v.

BILL STANGE, SUPERINTENDENT,
SOUTHEAST CORRECTIONAL CENTER,
Respondent.

On Petition for a Writ of Certiorari
To the Supreme Court of Missouri

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Missouri's former first-degree murder statute, Section 565.020, RSMo, mandated a sentence of life without parole for any offender who committed the offense as a juvenile. Did this mandatory sentencing scheme skew the sentencing proceeding as to any non-homicide counts, by rendering the sentences on those counts immaterial, so as not to warrant the presentation of mitigating evidence, argument, or consideration of the defendant's individualized circumstances, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and thereby create a structural error warranting a new sentencing proceeding?

Section 558.047, RSMo 2016, intended to remedy violations of *Miller v. Alabama*, 567 U.S. 460 (2012), by granting the possibility of parole after twenty-five years to any offender who had received a mandatory sentence of life without parole for the crime of first-degree murder committed as a juvenile. But does this statute truly remedy the Eighth Amendment violation when a defendant can receive consecutive sentences for non-homicide offenses and thus delay any individualized consideration of the offender's circumstances and any opportunity for release until well into old age?

LIST OF PARTIES

Petitioner, Tyrone Desante Morant, appears through Rosemary E. Percival, Counsel of Record, Office of the State of Missouri Public Defender, 920 Main Street, Suite 500, Kansas City, Missouri 64105.

Respondent, Superintendent Bill Stange, appears by Andrew Bailey, Attorney General of Missouri, and Andrew J. Crane, Assistant Attorney General, P.O. Box 899, Jefferson City, MO 65102.

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PETITION FOR WRIT OF CERTIORARI

Tyrone Desante Morant respectfully petitions for a writ of certiorari to the Missouri Supreme Court. Petitioner requests that this Court review the order of the Missouri Supreme Court overruling Petitioner's motion to recall the mandate on the Petition for Writ of Habeas Corpus sought by Petitioner. In the Petition for Writ of Habeas Corpus, denied by the Missouri Supreme Court, Petitioner challenged his aggregate sentence of mandatory life without parole plus 120 years in prison for offenses occurring during the same incident when Petitioner was seventeen years of age.

OPINIONS BELOW

The Missouri Supreme Court's March 7, 2023, order overruling Petitioner's Motion to Recall the Mandate is not reported and is reproduced at Appendix A. The Missouri Supreme Court's July 19, 2016, order and mandate in *State ex rel. Morant v. Wallace*, No. SC93248, denying Petitioner's state habeas petition is not reported and is reproduced at Appendix B. The Missouri Supreme Court's Order sustaining Petition's state habeas petition in part is not reported and is reproduced at Appendix C.

JURISDICTION

The Missouri Supreme Court entered its order denying Petitioner's Motion to Recall the Mandate on March 7, 2023. Under 28 U.S.C. §2101(c) and Rule 13.1, the petition for certiorari is due on June 5, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a state criminal defendant's constitutional rights under the Sixth, Eighth and Fourteenth Amendments. The Sixth Amendment provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense."

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment provides in relevant part: "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."

This case also involves two Missouri statutes. Section 558.047.1(1), RSMo Cum. Supp. 2016 (effective 7/13/2016) provides: "Any person sentenced to a term of imprisonment without eligibility for parole before August 28, 2016, who was under eighteen years of age at the time of the commission of the offense or offenses, may submit to the parole board a petition for a review of his or her sentence, regardless of whether the case is final for purposes of appeal, after serving twenty-five years of incarceration on the sentence of life without parole."

Section 565.020.2, RSMo (1990) (now abrogated) provided: "Murder in the first degree is a class A felony, and the punishment shall be either death or imprisonment for life without eligibility for probation or parole..."

STATEMENT OF THE CASE

Petitioner was indicted with co-defendant Carlos Wade in St. Louis City with one count of murder in the first degree, two counts of assault in the first degree, and three counts of armed criminal action regarding a September 17, 1995, drive-by shooting. (Habeas Appx. 70-72). One man was hit and killed; two other people were shot at but not hit. (Habeas Appx. 325, 327). At the time, Petitioner was seventeen years old. (Habeas Appx. 70, 419).

The State alleged that Petitioner and co-defendant Carlos Wade acted together. (Habeas Appx. 70-72). Petitioner moved to sever his case from Wade's, but the motion was denied, and they were tried together. (A95, 105). The jury heard highly prejudicial evidence that Wade had previously shot at the homicide victim and one of the assault victims. (A95, A375, A379). Petitioner had no part in any prior shooting. (A375, A379).

The jury deliberated for approximately twelve hours before finding Petitioner and Wade guilty of the charged offenses. (Habeas Appx. 109, 124-126, 165-170, 174). At the time, the penalty for first degree murder was life in prison without the possibility of probation or parole (hereinafter "life without parole") or the death penalty. Section 565.020.2, RSMo (1990) (abrogated). But because the State had not sought the death penalty, life without parole was the only possible punishment on the murder count.

The court sentenced Wade and Petitioner on January 10, 1997, starting with Wade. (Habeas Appx. 411-12). The court agreed with Wade's attorney that the

mandatory sentence for first-degree murder—life without parole—rendered the sentences on the non-homicide counts moot:

Well, I agree with you, Counselor, *that it's mute [sic]*, life without eligibility for probation or parole renders the subsequent sentences, if not mute [sic], subject to question as to whether they would ever be served, which obviously they would not, given the only punishment under the law on a count of murder in the first degree where the State has waived the death penalty.

(Habeas Appx. 410). The court sentenced Wade to life without parole for the first-degree murder conviction, fifteen years in prison for each of the two counts of first-degree assault, and thirty years in prison for each of the three counts of armed criminal action. (Habeas Appx. 411-412). The court ordered all the sentences to run consecutively. (Habeas Appx. 411-412).

The court then sentenced Petitioner. (Habeas Appx. 416). The hearing was brief, its transcript a mere nine pages long. (Habeas Appx. 417-419). As to each count, the judge asked Petitioner whether any legal cause existed why he should not be sentenced. (Habeas Appx. 417-419). Petitioner's attorney presented no evidence, made no argument, did not request any specific number of years, and did not request concurrent sentencing. (Habeas Appx. 417-419). The court considered no evidence about Petitioner. (Habeas Appx. 417-419). It imposed the same sentences as it imposed on Wade, *i.e.*, an aggregate sentence of life without parole plus 120 years in prison. (Habeas Appx. 417-419).

Afterward, in questioning Petitioner as to whether he was indigent, the court revealed it did not even know Petitioner was a juvenile at the time of the crimes:

THE COURT: Mr. Morant, prior to your arrest for these charges, were you working?

THE DEFENDANT: No, sir.

THE COURT: And I believe you are a young man 20 or 21 years of age?

THE DEFENDANT: No, sir, I'm 18 years old.

THE COURT: 18?

THE DEFENDANT: Yes, sir.

(Habeas Appx. 419).

The Missouri Court of Appeals affirmed Petitioner's convictions and sentences.

State v. Morant, 962 S.W.2d 461 (Mo. App. E.D. 1998). Petitioner then filed a motion for post-conviction relief that was denied, and the denial was affirmed on appeal. *Morant v. State*, 19 S.W.3d 160 (Mo. App. E.D. 2000).

On June 25, 2012, this Court issued its decision in *Miller v. Alabama*, 567 U.S. 460 (2012). The Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders, without any consideration of whether this punishment was just and appropriate given the juvenile offender's age, development, and the circumstances of the offense. *Id.* at 466, 469. The Court's reasoning rested on the confluence of two lines of cases. *Id.* at 470. The first established that children are constitutionally different from adults for purposes of sentencing, and the second required "individualized" sentencing. *Id.* at 471, 475.

Petitioner filed a state habeas petition in the Missouri Supreme Court on March 22, 2013 in *State ex rel. Morant v. Wallace*, No. SC93248. Relying on *Miller*, he asserted he was entitled to relief from his unconstitutional aggregate sentence of life imprisonment without parole *and* 120 years in prison. He asserted that the Eighth Amendment violation infected the entire sentencing proceeding because, due to the mandatory sentence of life without parole, the court did not consider any mitigating evidence on the non-homicide counts. Petitioner also detailed the mitigating evidence that could have been presented had not the sentences on the non-homicide offenses been moot given the mandatory imposition of life without parole on the homicide count.

On January 25, 2016, this Court issued its opinion in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), holding that *Miller* applied retroactively under *Teague v. Lane*, 489 U.S. 288 (1989). The Court emphasized that the *Miller* rule was not only procedural, but also substantive. *Montgomery*, 577 U.S. at 209. The procedure *Miller* prescribes is a hearing where “youth and its attendant characteristics” are considered. *Montgomery*, 577 U.S. at 210. “The hearing does not replace but rather gives effect to *Miller*’s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.” *Id.*

On March 15, 2016, the Missouri Supreme Court issued an order sustaining Petitioner’s habeas petition in part and declaring that Petitioner “shall be eligible to apply for parole after serving 25 years’ imprisonment on his sentence of life without parole unless it is otherwise brought into conformity with *Miller* and *Montgomery* by

action of the governor or enactment of necessary legislation.” (Appendix C). The Missouri Supreme Court otherwise denied Petitioner’s request for a new sentencing proceeding on the homicide and non-homicide counts. (Appendix C).

Petitioner filed a motion for rehearing, asserting that the relief granted was insufficient to remedy the Eighth Amendment violation that skewed his entire sentencing proceeding.

But on July 19, 2016, based on a newly enacted Missouri statute, the Missouri Supreme Court vacated its prior grant of partial relief, deemed the motion for rehearing moot, and denied the habeas petition. (Appendix B). The statute, intended to remedy *Miller* violations, provided:

1.(1) Any person sentenced to a term of imprisonment without eligibility for parole before August 28, 2016, who was under eighteen years of age at the time of the commission of the offense or offenses, may submit to the parole board a petition for a review of his or her sentence, regardless of whether the case is final for purposes of appeal, after serving twenty-five years of incarceration on the sentence of life without parole.

Section 558.047.1(1), RSMo Supp. 2016 (effective July 13, 2016).¹

After serving twenty-five years in the Missouri Department of Corrections, Petitioner requested a parole hearing. On October 6, 2020, the Missouri Department

¹On January 23, 2018, Petitioner filed a petition for writ of habeas corpus in the Missouri Supreme Court requesting that his first-degree murder conviction be vacated, which was denied. *State ex rel. Morant v. Lewis*, SC96919. After the denial, Petitioner filed a petition for writ of certiorari to this Court, asking this Court to review Petitioner’s sentence of life without parole on the grounds that an adversarial resentencing proceeding was required, Missouri’s parole hearings failed to provide juveniles serving life without parole with a meaningful and realistic opportunity for release, and the Sixth and Fourteenth Amendments required a jury to determine that a juvenile’s crimes reflect “irreparable corruption and were not the result of transient immaturity” before a sentence of life without parole could be imposed. *Tyrone D. Morant v. Jason Lewis, Supt., Southeast Corr. Center*, No. 18-6469. This Court denied the petition on January 7, 2019. *Id.*

of Corrections, Board of Probation and Parole, issued the following determination advising Petitioner he would be eligible for parole on his seventy-third birthday:²

RELATING TO RELEASE CONSIDERATION

You have been scheduled for a parole hearing 03/00/2051. . .

*****THIS DECISION IS NOT SUBJECT TO APPEAL.**

Based on your petition, you have been scheduled for a hearing pursuant to 558.047. Due to your consecutive sentence structure, which includes consecutive sentences for Murder First, ACA, Assault First, ACA, Assault First, and ACA, your minimum eligibility for release is 07/25/2051. You have been scheduled for a parole hearing 4 months prior to this date, based on the Board's hearing schedule. Per Court order, you will receive access to your parole file not less than 180 days prior to your hearing.

(Habeas Appx. 912).³ Thus, Petitioner's first opportunity for any individualized consideration of his youth and individualized characteristics will be at age seventy-three and without the right to counsel.

On December 12, 2022, Petitioner filed a "Motion to Recall the Mandate and Order of July 19, 2016, Vacate Petitioner's Sentences and Remand for a New Sentencing Proceeding" in the original state habeas case, *State ex rel. Morant v.*

² Petitioner's birthday is July 25, 1978. (Habeas Appx. 70, 419).

³ Petitioner challenged the Missouri Board of Probation and Parole's determination of his parole eligibility, but on February 22, 2021, Petitioner's *pro se* petition for declaratory judgment was denied on the basis that Section 558.047 only applied to the homicide sentence and not to any related non-homicide offenses. *Morant v. Missouri Board of Probation and Parole*, Cole County Case 20AC-CC00488, Judgment, p. 4 (citing *Jones v. Missouri Department of Corrections*, 588 S.W.3d 203, 208 (Mo. App. W.D. 2019) ("[N]othing within Section 558.047 expunges sentences for other crimes committed by the juvenile, and nothing within Section 558.047 supersedes established parole guidelines and/or authorizes the parole board to ignore these guidelines.")).

Wallace, SC93248. Missouri case law permits the Missouri Supreme Court to reacquire jurisdiction by means of a motion to recall the mandate in order to remedy a deprivation of the federal constitutional rights of a criminal defendant. *State v. Thompson*, 659 S.W.2d 766, 768 (Mo. banc 1983); *State v. Whitfield*, 107 S.W.3d 253, 265 (Mo. banc 2003). Petitioner asserted that the Eighth Amendment violation in his case infected the entire sentencing proceeding, resulting in structural error, and Missouri's remedy had not cured the violation where he was not given a new sentencing and he would not have his first parole hearing until he was seventy-three years old.

The Missouri Supreme Court overruled the motion to recall the mandate on March 7, 2023. (Appendix A). The present petition for writ of certiorari is now before this Court for discretionary review.

REASONS FOR GRANTING THE WRIT

The Missouri Supreme Court's order denying Petitioner's motion to recall the mandate conflicts with this Court's jurisprudence regarding the Eighth Amendment, due process, and the right to counsel. Missouri has attempted to remedy violations of *Miller v. Alabama*, 567 U.S. 460 (2012), through Section 558.047.1(1), RSMo, which allows a defendant who was convicted of first-degree murder for acts committed as a juvenile, to be eligible for parole after serving twenty-five years in prison. But the remedy is inadequate. Missouri's former first-degree murder statute, mandating a sentence of life without parole for these juvenile offenders, created a

structural error that affected the entire sentencing process. Because a juvenile's sentence for murder in the first degree was mandatory life without parole, the presentation of mitigating evidence or argument in favor of lower sentences or concurrent sentencing on any non-homicide counts was pointless, or "moot," as the sentencing court here said. Thus, the mandatory nature of the homicide sentence skewed the sentencing process as to the non-homicide counts, creating too great a risk that the punishment imposed on the non-homicide counts was not graduated and proportioned to both the offender and the offense as the Eighth Amendment demands. An offender who was a juvenile at the time of the crimes should not be relegated to prison until old age based on sentences the court considered "moot" and to which the court gave no individualized consideration.

Section 558.047, RSMo 2016, intended to remedy violations of *Miller v. Alabama*, 567 U.S. 460 (2012), by granting the possibility of parole after twenty-five years to any offender who had received a mandatory sentence of life without parole for the crime of first-degree murder committed as a juvenile:

- 1.(1) Any person sentenced to a term of imprisonment without eligibility for parole before August 28, 2016, who was under eighteen years of age at the time of the commission of the offense or offenses, may submit to the parole board a petition for a review of his or her sentence, regardless of whether the case is final for purposes of appeal, after serving twenty-five years of incarceration on the sentence of life without parole.

But the statute has failed to remedy the *Miller* violation for offenders like Petitioner who were sentenced for first degree murder *and* non-homicide counts.

The defect in the case at bar, the unconstitutional mandatory life without parole sentencing scheme, deprived Petitioner of basic protections at the sentencing hearing because the fact that the defendant would never be paroled rendered the non-homicide sentences meaningless. Thus, the court heard no evidence or argument for lower sentences on the non-homicide counts or for concurrent sentencing. The court did not consider Petitioner's individual circumstances or his youth and its attendant characteristics. The mandatory sentence of life without parole skewed the entire sentencing proceeding and interfered with Petitioner's right to counsel and to individualized sentencing, resulting in structural error.

Structural error is a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself" and warrants automatic reversal. *Neder v. United States*, 527 U.S. 1, 8 (1999) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). Structural errors deprive criminal defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence ... and no criminal punishment may be regarded as fundamentally fair." *Neder*, 527 U.S. at 8-9 (quoting *Rose v. Clark*, 478 U.S. 570, 577-578 (1986)). When an error is constitutional in nature and implicates a "structural right," the error affects substantial rights and "undermine[s] the fairness of a criminal proceeding as a whole." *United States v. Davila*, 569 U.S. 597, 611 (2013).

Due to the mandatory life without parole sentence, Petitioner's counsel failed to present any evidence or argument on behalf of Petitioner at the sentencing

proceeding. (Habeas Appx. 417-419, 916-919). A defendant has the right to counsel at sentencing. *Mempa v. Rhay*, 389 U.S. 128 (1967); U.S. Const., Amend. VI. “Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel’s assistance.” *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (citing *United States v. Cronic*, 466 U.S. 648, 659, and n.25 (1984)). The denial of the right to counsel at sentencing results in structural error. See *United States v. Yamashiro*, 788 F.3d 1231, 1236 (9th Cir. 2015) (The absence of counsel during a portion of the allocution phase of the sentencing proceeding resulted in structural error, affecting the defendant’s substantial rights and the fairness of the proceeding.). The denial of the right to counsel of choice has also been held to constitute structural error, where “[i]n light of [the] myriad aspects of representation, the erroneous denial of counsel bears directly on the “framework within which the trial proceeds.”” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (quoting *Fulminate, supra*, 499 U.S. at 310); see also *McCoy v. Louisiana*, 138 S.Ct. 1500, 1511-1512 (2018) (Counsel’s admission of defendant’s guilt, over defendant’s objection, was incompatible with defendant’s Sixth Amendment-secured autonomy, and “error was structural.”). In Petitioner’s case, the unconstitutional mandatory life without parole sentencing scheme affected his counsel’s decisions and strategy at the sentencing proceeding and interfered with his representation, thereby directly effecting the framework within which the sentencing proceeded. (Habeas Appx. 417-419, 916-919).

One of the premises underlying the *Miller* decision is precedent requiring “individualized sentencing.” *Miller*, 567 U.S. at 470 (citing *Woodson v. North Carolina*, 428 U.S. 280 (1976) (requiring a sentencing authority to consider the characteristics of a defendant and the details of his offense before sentencing him to death)). *Miller*’s focus was on requiring the sentencing judge, before sentencing a juvenile to a lifetime of imprisonment, “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Miller*, 567 U.S. at 480. The Court characterized this as an “individualized consideration” and stated that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Miller*, 567 U.S. at 479-480.

The mandatory sentence of life without parole interfered with Petitioner’s right to individualized sentencing. Given that Petitioner would be sentenced to life without parole on the homicide count, the court did not request evidence or argument about the proper sentences on the non-homicide counts. Rather, the entirety of the sentencing hearing was the court questioning Petitioner, as to each count, as to whether any legal cause existed why he should not be sentenced. (Habeas Appx. 417-419). But the sentencer in a case “has a duty to impose a sentence on a case-by-case basis.” *State v. Willbanks*, 522 S.W.3d 238, 243 (Mo. banc 2017) (citing *State v. Collins*, 290 S.W.3d 736, 746 (Mo. App. E.D. 2009)); Section 557.036, RSMo. “Highly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and

characteristics.” *Pepper v. United States*, 562 U.S. 476, 488, (2011) (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)). “Permitting sentencing courts to consider the widest possible breadth of information about a defendant “ensures that the punishment will suit not merely the offense but the individual defendant.”” *Id.* (quoting *Wasman v. United States*, 468 U.S. 559, 564 (1984)).

An undeniable goal of the legal system is to arrive at the truth. *United States v. Havens*, 446 U.S. 620, 626 (1980). A procedure that frustrates “the discovery of truth in a court of law impedes as well the doing of justice.” *Hawkins v. United States*, 358 U.S. 74, 81 (1958) (Stewart, J., concurring). The need for truth-finding and accuracy extends to sentencing. *See, e.g., Townsend v. Burke*, 334 U.S. 736, 741 (1948). But the court cannot arrive at the truth—or, in the sentencing context, the fair and just sentence—without consideration of the individual characteristics of the defendant.

In Petitioner’s case, the requirements of *Miller* were not met, where no individualized consideration was given to Petitioner, and Petitioner was not afforded a discretionary sentencing procedure. Rather, the court sentenced Petitioner to the harshest possible penalty with the belief that Petitioner was “20 or 21 years old” and while believing that the sentences on the non-homicide counts were “moot.” (Habeas Appx. 417-419). *See Townsend*, 334 U.S. at 741 (due process is violated when a defendant lacking counsel is sentenced based on untrue assumptions); *Crespin v. Ryan*, 46 F.4th 803, 811 (9th Cir. 2022) (*Miller* requirements were not met at sentencing proceeding where judge made clear that it did not matter what testimony

was presented on defendant's behalf, the only sentencing option was life without parole).

Petitioner had family members present at his sentencing, who could have provided ample mitigating evidence. (Habeas Appx. 916). Petitioner was born to a fourteen-year-old mother and a fifteen-year-old father. (Habeas Appx. 916). Because his parents were children, Petitioner was raised by elderly grandparents. (Habeas Appx. 916-17). Petitioner had a learning disability and struggled in school, but started to do better once he changed school districts in the fifth grade. (Habeas Appx. 917). Petitioner helped his grandfather with projects around the house and had hoped one day to join the construction and home remodeling/repair business. (Habeas Appx. 917). When Petitioner was fifteen, his grandmother died, affecting Petitioner badly since she had been like a mother to him. (Habeas Appx. 917).

Petitioner lived in a neighborhood in decline, with gangs, crime, violence, and guns. (Habeas Appx. 917). It was a high stress environment where Petitioner did not feel safe and was on guard at all times. (Habeas Appx. 917). Petitioner was friendly but had few close friends. (Habeas Appx. 918). His best friend was killed just before Petitioner was arrested on the underlying charges. (Habeas Appx. 917). Drugs were constantly present, and Petitioner saw family members and friends abuse alcohol and drugs. (Habeas Appx. 917). Petitioner began smoking marijuana and was suspended from school for doing so. (Habeas Appx. 917).

Petitioner had no prior felony convictions. (Habeas Appx. 917). The prosecution had offered him a sentence of fifteen years in prison if he pled guilty and

agreed to testify against his co-defendant. (Habeas Appx. 917). But Petitioner maintained his innocence and rejected the plea offer. (Habeas Appx. 917). He has expressed sorrow for the death of the victim who lost his life. (Habeas Appx. 918).

The State's case against Petitioner was not strong. It was based on questionable eyewitness testimony and a highly suggestive identification process. (Habeas Appx. 465). The jury deliberated twelve hours before finding Petitioner guilty. (Habeas Appx. 109, 124-126, 165-170, 174).

Without having heard any of this mitigating evidence, and knowing that the sentences on the non-homicide counts were "moot" in light of the fact that Petitioner would never be paroled, the court imposed the harshest sentences possible on the non-homicide counts, and imposed all the sentences to run consecutively. (Habeas Appx. 417-419). Now, the Missouri Department of Corrections has determined that Petitioner is not parole-eligible until he turns seventy-three years of age. (Habeas Appx. 912). It will not consider any *Miller* factors until that time. (Habeas Appx. 912). Thus, Section 558.047, as applied to Petitioner, conflicts with the mandates of *Miller* and *Montgomery*, which require a meaningful sentencing hearing to give effect to the *Miller* factors. To truly remedy the constitutional violations that occurred at Petitioner's sentencing, a new sentencing hearing is required.

In conclusion, the constitutional violations that occurred in Petitioner's case have not been remedied by permitting him to seek parole on the murder count after twenty-five years. The unconstitutional mandatory sentence of life without parole created structural error affecting the entire sentencing proceeding and the sentencing

determinations on each of the non-homicide counts. By the court's imposition of consecutive sentences for the related non-homicide counts, Petitioner was disqualified—until he reaches age seventy-three—from receiving a parole hearing, the only other means for him to present mitigating evidence regarding his individual circumstances.

The Missouri Supreme Court's denial of Petitioner's claim thus should be overturned. This Court's discretionary intervention is necessary to cure the constitutional violations in Petitioner's case.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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