No.

IN THE SUPREME COURT OF THE UNITED STATES

COLBY MCCOGGLE, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is a criminal defendant denied due process when, upon having their sentence vacated, a court imposes a new mandatory sentence without affording notice or a hearing?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Colby McCoggle, respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida.

OPINION BELOW

The opinion of Fourth District Court of Appeal of Florida is reported as *McCoggle v. State*, 388 So. 3d 810 (Fla. 4th DCA 2024), and is reprinted in the Appendix (A1-7).

JURISDICTION

The order of the Florida Supreme Court denying a petition for a writ of certiorari is not officially reported, but may be found at *McCoggle v. State*, SC2024-1224, 2024 WL 4534065 (Fla. October 21, 2024), and is reproduced in the Appendix (A 8). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, Section 1, to the United States Constitution, in relevant part:

> [N]or 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.

STATEMENT OF THE CASE

Petitioner, Colby McCoggle, is currently sentenced to life imprisonment with parole eligibility after 25 years for first-degree murder and a consecutive term of 92.5

months' imprisonment for attempted robbery. *McCoggle v. State*, 388 So. 3d 810, 811 (Fla. 4th DCA 2024). These offenses were committed in 1994, when Petitioner was only 16-years-old. *Id*. He was initially sentenced in 1995 and has been incarcerated ever since. (R 19, 23, 48, 205).

I. The Post-Conviction Proceedings

In response to *Miller v. Alabama*, 567 U.S. 460, 465 (2012), and *Graham v. Florida*, 560 U.S. 48, 75 (2010), the Florida Legislature enacted a new sentencing framework. The framework was interpreted to apply retroactively by the Florida Supreme Court.

In 2015, Petitioner filed a motion for post-conviction relief pursuant to *Miller and Graham*. He asserted that he was entitled to be resentenced in accordance with Florida's juvenile sentencing framework. (R 18-36).

While the motion was pending, the Florida Supreme Court decided *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), which held that the imposition on a juvenile of a sentence of life with the possibility of parole was unconstitutional under *Miller*. The court reasoned that "Florida's existing parole system" did not provide for individualized consideration of a juvenile's status at the time of the offense and was "virtually indistinguishable from a sentence of life without parole." *Id*. at 1041.

In 2016, relying on *Atwell*, the Florida post-conviction court granted Petitioner's motion and ordered a new sentencing hearing. (R 48-49).

Several years went by before the post-conviction court addressed Petitioner's sentencing. In 2018, before a sentencing hearing was held, the Florida Supreme Court

retracted from *Atwell* and determined that a sentence for life with the possibility of parole under Florida's system was constitutional under *Miller*. *State v. Michel*, 257 So. 3d 3, 4 (Fla. 2018); *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018).

In 2021, the post-conviction court acknowledged "flip-flopping" precedent but agreed Petitioner was entitled to a sentencing hearing which was scheduled for October 21, 2021. (R 212, 254).

A sentencing hearing was not held that day. Instead, the post-conviction court held a status conference. (R 265-68). Petitioner was not present. The State of Florida objected because, "[R]esentencing would result to the exact same sentence because he's not eligible for relief… because he was sentenced with the opportunity for parole." (R 267). The prosecutor inquired if Petitioner still wished to proceed. Defense Counsel responded that Petitioner, "does wish to proceed with the resentencing" and that he "gets a full hearing, so I have to bring witnesses and such." (R 267). The court directed that a sentencing hearing be scheduled. (R 267).

A year later, a sentencing hearing was still pending, and the case was reassigned to another judge on June 8, 2022. (R 215). The new judge believed a resentencing would be "ministerial" and could be done "without the need to transport [Petitioner] at great expense." (R 220-21).

At a status hearing on August 10, 2022, the court stated that a sentencing hearing would be "kind of like a Kabuki Theater," (R 272, 279), because a judge would be "pretending," (R 272), to have discretion and it would be a waste of judicial

resources: "[W]hy have a hearing with witnesses when there's no need to. Certainly, my, my court time is, is stretched to say the least." (R 274).

II. The Written Resentencing Order

On May 18, 2023, without notice to Petitioner, the post-conviction court entered a written sentencing order. (A 9-10). The court determined, "[n]either resentencing nor Defendant's presence is required," because the resentencing is, "purely ministerial in nature," due to, "decisional caselaw developments," and, "the court has no discretion in sentencing." (A 9). The court determined, "the proper sentence that must be imposed at this time is life imprisonment with the possibility of parole after 25 years," pursuant to section 775.082, Florida Statutes (1992), which mandated life imprisonment with the possibility of parole after 25 years for a first-degree murder conviction. (A 9).

No sentencing hearing was ever held.

III. The State Court's Opinion

On appeal, Petitioner asserted that the post-conviction court deprived him of due process by failing to conduct a full sentencing hearing prior to the imposition of sentence. *McCoggle*, 388 So. 3d at 813.

In its opinion, the Fourth District acknowledged that after a sentence is vacated, the defendant is entitled to the "full panoply of due process rights" in a new sentencing proceeding. *Id*. at 813-14. It also recognized that if Petitioner "was entitled to a full de novo hearing as he argues, the deprivation of such a hearing would amount to fundamental error." *Id*. at 813.

However, the Fourth District held that, "where resentencing does not involve the consideration of any additional evidence, and where the trial court does not have any discretion in the new sentence it imposes, resentencing is a ministerial act." *Id*. at 814. The court reasoned that Petitioner's resentencing was "ministerial" due to the intervening change in the decisional law which rendered the original sentence constitutional and left "no option" but to impose the original mandatory sentence of life with parole. *Id*.

Therefore, the Fourth District held that Petitioner was "not entitled to a full de novo resentencing hearing." *Id*. The Fourth District concluded,

> Although appellant was entitled to resentencing after the trial court granted his rule 3.850 motion based upon *Atwell*, once *Michel* and *Franklin* were decided, appellant's original sentence was constitutional. At appellant's resentencing, not only did the trial court have no discretion, but neither the State nor appellant had any burden to establish any fact needed to complete resentencing. This sentencing was truly ministerial, and the trial court did not err in imposing the original sentence again without a full sentencing hearing.

Id. at 815.

Petitioner filed a timely notice to invoke the jurisdiction of the Florida Supreme Court. Review was declined on October 21, 2024. (A 8).

REASONS FOR GRANTING THE PETITION

THERE IS NO FUTILITY EXCEPTION TO DUE PROCESS. A CRIMINAL DEFENDANT HAS A STRONG LIBERTY INTEREST AND IS ENTITLED TO NOTICE AND A HEARING BEFORE THE STATE MAY IMPOSE A SENTENCE REGARDLESS OF THE AMOUNT OF JUDICIAL DISCRETION INVOLVED.

This case focuses on whether a defendant was afforded due process in the fundamental sense—notice and the opportunity to be heard— prior to the imposition

of a new mandatory sentence after a successful post-conviction challenge in which the sentence was vacated. The answer is no.

Petitioner was denied even minimal due process. The Florida post-conviction court sua sponte dispensed with a sentencing hearing—declining oral pronouncement of the sentence—and imposed sentence through a written order from chambers. The court's action was taken against Petitioner without any warning whatsoever. It was done without notice or hearing, and without giving Petitioner any opportunity to present evidence and argument that the imposition of the mandatory sentence was unconstitutional as applied to him.

The first time Petitioner learned he had been sentenced was when he was served with a copy of the sentence order in prison – after the imposition of sentence.

In all of this, Petitioner has been denied his due process of law.

I. Due process of law requires, at a minimum, adequate notice and a meaningful opportunity to be heard.

Over 150 years of this Court's precedent establish that the heart of procedural fairness lies in the intertwined rights to adequate notice and an opportunity to be heard in a meaningful way: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (quoting *Baldwin v. Hale*, 68 U.S. 223, 233 (1863)).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and

afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Notice and an opportunity to be heard are the "core" elements of due process guaranteed under the United States Constitution. *Lachance v. Erickson*, 522 U.S. 262, 266 (1998) ("The core of due process is the right to notice and a meaningful opportunity to be heard."); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard.").

There is "no doubt" that "at a minimum" the Due Process Clause requires "that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (quoting *Mullane*, 339 U.S. at 313.). The "'opportunity to be heard' ... 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest.'" *Id.* at 579 (citations omitted) (second alteration in original).

"It is equally fundamental" that the right to notice and a hearing "must be granted at a meaningful time and in a meaningful manner." *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (quoting *Fuentes*, 407 U.S. at 80).

II. A defendant has a protected liberty interest in "resentencing" which involved the imposition of a mandatory sentence.

The entitlement to due process prior to the imposition of a sentence is not de minimis or trivial. A criminal defendant has a significant liberty interest. *See Gardner v. Florida*, 430 U.S. 349, 358 (1977) ("[I]t is now clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process

Clause."). A person must be afforded due process before the state deprives him of the "freedom from bodily restraint and punishment." *Ingraham v. Wright*, 430 U.S. 651, 674 (1977).

Even after the sentencing process is completed, defendants continue to have a protected liberty interest in making sure that their sentences are administered against them fairly. *See, e.g.*, *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (probation revocation); *Wolff v. McDonnell*, 418 U.S. 539 (1974) (good time credits); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (parole revocation).

Here, when the Florida court granted resentencing it vacated the sentence and rendered the previous sentencing a nullity. In doing so, it triggered the sentencing process which is protected under the Due Process Clause.

Whether the Florida court calls the procedure "resentencing" instead of sentencing is of no consequence; it is unquestionably a proceeding at which a sentence is imposed because there was no sentence in existence.

If due process rights are constitutionally mandated before portions of an original sentence can be reinstated— such as in probation and parole revocation— then surely at least equal constitutional protections must be accorded when a new sentence is imposed.

III. Petitioner was deprived of due process.

Petitioner sought nothing more than a sentencing hearing at which he could object to the mandatory sentence and present evidence to prove an as-applied Eighth Amendment claim. But he never had the opportunity to speak against the mandatory

sentence on those grounds—his original sentencing hearing preceded this Court's decisions in *Graham* and *Miller*.

Whether or not Petitioner's sentence is, in fact, unconstitutional is not at issue because Petitioner has never had the chance to make his objection and prove this claim. The Florida courts, despite granting him a new sentencing, denied him a hearing that would give him that opportunity.

As Justice Barrett suggested at oral argument in *Jones v. Mississippi*, an as-applied Eighth Amendment claim is "the primary protection" from unconstitutional punishment. Transcript of Oral Argument at 35, *Jones v. Mississippi*, 593 U.S. 98 (2021).

But without the ability to prove the facts necessary to support an as-applied claim, a defendant has no way to effectively make such a claim and build a record in support of constitutional relief.

The Florida courts decided that there was no reason to have a hearing—impliedly deciding that there were no meritorious arguments to be made against the mandatory sentence. The Florida courts completely ignored the fact that a defendant in a similar position to Petitioner was afforded a hearing and successfully proved that parole was not in compliance with this Court's precedent. *See State v. Cogdell*, 27 Fla. L. Weekly Supp. 690a (Fla. 4th Cir. Ct. 2019). That defendant is now a free man. Petitioner remains behind bars, deprived of even the basic opportunity to raise his objection. This is the very definition of arbitrary decision-making.

It is arbitrary and unreasonable for a court to take actions that would dispose of a party's claim without giving the party notice and an opportunity to be heard. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542-45 (1985) (notice and opportunity to respond required before termination of public employee); *Fuentes*, 407 U.S. at 96 (state prejudgment replevin statutes violated due process to the extent they did not allow an opportunity to be heard before household goods were seized); *Bell v. Burson*, 402 U.S. 535, 542 (1971) (state must provide prior hearing before depriving an individual of driver's license and vehicle registration); *Goldberg v. Kelly*, 397 U.S. 254, 260-66 (1970) (due process requires that welfare recipients receive an evidentiary hearing before termination of welfare benefits); *Sniadach v. Family Fin. Corp.*, 395 US. 337, 341-42 (1969) (state prejudgment wage garnishment procedure that deprived the individual of wages until resolution of the underlying litigation without prior notice or an opportunity to be heard violated due process).

It deprived Petitioner of any chance to prove that the mandatory sentence was unconstitutional as applied to him and effectively foreclosed him from pursuing a change in existing law. This chance is potentially worth Petitioner's liberty. A chance the Florida courts had no right to take from him.

IV. This Court should accept review to make it clear that there is no futility exception to due process.

Procedural fairness requires that a fair and proper procedure be followed before a government agency makes a final decision that negatively impacts a person's existing interests. The entitlement to due process of law is not contingent upon the

outcome of the hearing. Rather, due process is concerned with the procedures used by a decision maker, rather than the actual outcome reached.

The precise nature of the due process protection depends, of course, upon the nature of the interest involved and the nature of the proceeding. *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971). "These essential constitutional promises may not be eroded." *Hamdi*, 542 U.S. at 533.

It cannot be disputed that the right to liberty is a significant and important interest that should be afforded great constitutional protections.

The right to a meaningful hearing has been recognized as a "minimum" or "fundamental" right so often and in so many diverse contexts—many involving protected interests much less important than the liberty interest at stake here upon sentencing. *See, e.g.*, *Perry v. Sindermann*, 408 U.S. 593 (1972) (right to a hearing before teaching contract may be terminated); *Bell*, 402 U.S. at 535 (right to a hearing before driver's license may be suspended); *Parham v. J.R.*, 442 U.S. 584 (1972) (right to a hearing before there may be a civil commitment of a child).

The cost to the state to assure each defendant a sentencing hearing would not be great. In most cases, it could be expected that the hearing would involve little more than an opportunity for the defendant to raise a constitutional challenge or for allocution.

A hearing has the benefit of preserving the appearance as well as the reality of fair, considered treatment of defendants. *See Morrissey*, 408 U.S. at 499 (Douglas, J., dissenting in part) (citation omitted):

> The rule of law is important in the stability of society . . . 'Notice and opportunity for hearing appropriate to the nature of the case,' . . . are the rudiments of due process which restore faith that our society is run for the many, not the few, and that fair dealing rather than caprice will govern the affairs of men.

Nevertheless, the Florida district court's opinion holds that Petitioner is not entitled to due process because of the mandatory nature of the sentence to be imposed.

This completely overlooks that the entitlement to due process of law is not contingent upon the outcome, it is concerned with the procedures followed before a state court makes a final decision.

It leads to arbitrary and capricious decision-making, with the state court making a determination that there are no relevant objections to a mandatory sentence—before any such objections can be made.

As the Court explained in *Lankford*, "[n]otice of issues to be resolved by the adversary process is a fundamental characteristic of fair procedure." *Lankford v. Idaho*, 500 U.S. 110, 126 (1991).

Fundamental constitutional protections must not be eroded by the backdoor application of a futility exception. "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 315.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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