No. 24-6402

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 FLORIDA DISTRICT COURT OF APPEAL, FOURTH DISTRICT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented is whether due process requires a court on resentencing to conduct an evidentiary hearing when the sentence to be imposed under the applicable statute is not discretionary, when the court has notified the parties that it believes the sentence to be imposed is mandatory, and when the court has given the parties the opportunity to brief and argue whether the court's reading of the statute is correct and whether the court should nevertheless hold an evidentiary hearing.

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STATEMENT OF THE CASE

In 1995, Petitioner Colby McCoggle was convicted as a juvenile of first-degree murder and sentenced to life in prison with the possibility of parole. He was also convicted of attempted robbery and for that crime received a consecutive sentence of 92.5 months in prison.

In 2015, McCoggle, through counsel, moved for postconviction relief pursuant to Rule 3.850, Fla. R. Crim. P. (R. 18-36). While this motion was pending, the Florida Supreme Court ruled that because the pre-2014 Florida parole system did not allow for individualized consideration of an offender's juvenile status, life with the possibility of parole was the practical equivalent of life without parole and therefore unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012). *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016) (R. 18-36). The postconviction court granted resentencing in an order dated August 15, 2016 (R. 48-49).

The parties prepared for resentencing by engaging in reciprocal discovery (R. 54-57, 189-197, 203). Defense counsel obtained orders granting funding for the appointment of a forensic social worker, investigator and mental health expert (R. 103-133, 135-138, 198-202).

On July 12, 2018, before the trial court had completed resentencing, the Florida Supreme Court ruled that *Atwell* was no longer good law in light of this Court's reasoning in *Virgina v. LeBlanc*, 582 U.S. 91 (2017). *State v. Michel*, 257 So. 3d 3 (Fla. 2018). The State then filed a memorandum in the postconviction court contending that McCoggle was no longer entitled to resentencing (R. 141-151). McCoggle responded that the order granting resentencing was final, that his right

against double jeopardy was violated without resentencing, and that the Florida Supreme Court's reliance on *LeBlanc* was misplaced (R. 163-176).

Subsequently, the state filed a sentencing memorandum conceding that McCoggle should be resentenced but asserting that resentencing should be pursuant to the statute in effect at the time of his offense which provided for a mandatory term of life imprisonment with the possibility of parole (R. 208, 210).

The postconviction court entered a "Case Management Order" and indicated that it needed to resentence McCoggle but believed it had no discretion in resentencing given the applicable law and could only sentence McCoggle again to life with the possibility of parole (R. 219-221). It asked the parties to state their positions on this belief at a scheduled hearing (R. 221). At that hearing, on August 10, 2022, McCoggle's counsel asked if she could submit a brief. The court agreed but warned that time would be an issue if there were to be a resentencing (R. 271-280). The court indicated that it would be willing to hold another hearing (R. 280).

Defense counsel never filed a brief. Over nine months later, on May 18, 2024, the postconviction entered a "Resentencing Order" in which it determined that it was required to sentence Mr. McCoggle to the mandatory term of life imprisonment with the possibility of parole called for by the controlling statute (R. 223-224). It entered the sentence, imposing the 25-year review under § 775.087, Fla. Stat., and notating that Mr. McCoggle was eligible for parole "NOW" (R. 226-228).

Mr. McCoggle appealed his sentence. The appellate court held that a full resentencing hearing was not necessary where the trial judge did not have discretion

in the sentence (Pet.Appx.6). The Florida Supreme Court denied Mr. McCoggle's petition seeking certiorari review (Pet.Appx.8).

REASONS FOR DENYING THE PETITION

I. This Case Presents a Fact-Specific Application of the Due Process Balancing Test in *Mathews v. Eldridge* and Does not Require the Resolution of Any Conflict Among the Lower Courts.

In his petition McCoggle identifies no reason, other than the belief that Florida courts decided his case wrongly, for this Court to exercise its certiorari jurisdiction. He identifies no conflict among federal courts of appeals and state supreme courts that would be resolved as a result of this case. That is not surprising given that "due process is flexible and calls for such procedural protection as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)(quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). This Court has directed the use of a circumstance-specific three-part balancing test to determine how much process is due in the particular case. These factors are:

> First, the private interest will be affected by the official action, second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of addition or substitute procedural safeguards; and finally, the Government interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail, as the question of how much is process due in a particular case.

Id. at 335. The result is that ""due process" unlike some legal rules is not a technical conception with a fixed content unrelated to time, place and circumstances." *Id*. at 334(quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)).

The circumstances in this case are unique. McCoggle happened to file his state postconviction petition a year before the Supreme Court decided in *Atwell* that its parole system made the sentence of his life with possibility of

parole unconstitutional under *Miller*. Two years later, the Florida Supreme Court reversed course, but by then the postconviction court had already ordered resentencing. Had the Florida Supreme Court receded from its earlier decision right after the order granting resentencing, then the state could have moved for rehearing or filed an appeal. Since the change in law did not occur until after the timeframe for these corrective measures, the postconviction order became final, and the court was required to resentence McCoggle. The court then notified the State and McCoggle that it believed that it had no discretion and thus did not need to hold an evidentiary hearing. The court not only held a hearing so that the parties could contest the issue but also allowed McCoggle to submit supplemental briefing. McCoggle delayed for months in doing so, and eventually the court imposed the mandatory sentence, as it indicated it would. This sequence of events is unusual and highly unlikely to repeat.

II. The Florida Postconviction Court Struck the Proper Balance Under *Mathews v. Eldridge*.

A. Due process did not require a full resentencing hearing in addition to the notice and opportunity provided by the resentencing court to explain why the mandatory sentence should not be imposed.

The hallmark of due process is the recognition that "a person in jeopardy of loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)(quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-172 (1951)). Due process does not necessarily require an evidentiary

hearing. *Mathews*, 424 U.S. at 349. Procedural due process may be tailored to give a meaningful opportunity to present a case based on the circumstances. *Id.*

The purpose of notice and opportunity in the sentencing process where the sentencing court has discretion, such as between imposing the death penalty or life imprisonment, is to facilitate the adversarial process. *Landford v. Idaho*, 500 U.S. 110, 127 (1991). The resentencing court, though, had no discretion in the penalty in this case because the death penalty could not be imposed on the juvenile offender; life imprisonment with parole was the mandatory sentence.

The court properly tailored the notice and opportunity to be heard in this case to the limited question of why it might not be bound to the mandatory language of the controlling statute, as well as to the recent decisions of the Florida Supreme Court allowing the imposition of a term of life imprisonment with parole on a juvenile offender. The resentencing court entered an order informing the parties that it believed that life imprisonment with parole was mandated by statute and precedent and held a hearing for discussion on the matter. It reiterated its position at the hearing on its order and agreed to allow defense counsel the opportunity to submit a brief in lieu of argument. The court extended to McCoggle, through counsel, an opportunity of more than nine months to submit a brief on the limited issue.

Due process is not fixed in what is required for adequate notice and opportunity to be heard. *FCC v. WJR, The Goodwill Station*, 337 U.S. 265, 275 (1949). Written submissions may satisfy due process. *Id.* at 276. For instance, when there are challenges to the factual premise or misapplication of a rule, oral presentation may

be in order, but it may not be warranted where there is no factual dispute. *See Goldberg v. Kelly*, 397 U.S. 254, 268 n. 15 (1970)(noting that the facts before the Court did not call for it to address whether written submissions would provide adequate due process where there is no dispute as to the applicability of the law to the facts).

Here, the resentencing court set and held a hearing to discuss whether it had to apply the mandatory language of the sentencing statute. McCoggle's asked to submit argument in written form, and the court allowed for additional time to do this.

The Eleventh Circuit has held that a court allowing parties to make written submissions on what the new sentence should be after convictions have been vacated on collateral review affords reasonable notice and the opportunity to be heard. *United States v. Thomason*, 940 F.3d 1166, 1171 (11th Cir. 2019)(relying on *United States v. Jules*, 995 F.3d 1239, 1245 (11th Cir. 2020)). The court in *Thomason* explained that the right to be present is triggered when the modification constitutes a critical stage where "his presence would contribute to the fairness of the procedure." *Id.* at 1172, quoting *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987).

McCoggle relies on *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) to posit that the futility of a proceeding does not dictate whether due process should be extended (Pet. 12). This Court in *Mullane* directed that notice must be of the character that it actually informs a party of how to accomplish a challenge. 339 U.S. at 315. The resentencing court clearly noticed McCoggle that it desired input on whether it had discretion in sentencing or was required to adhere to the language in the controlling statute. McCoggle, who was represented by counsel, failed to avail

himself of the opportunity to object even though he had months to do so and even though the court indicated that it would have a hearing on his brief.

Like the appellate court in this case, other courts have found that due process does not require a full resentencing hearing on collateral review when the trial court has no discretion in the sentencing decision. In *U.S. v. Peña*, 58 F.4th 613 (2d Cit. 2023), on the defendant's postconviction motion pursuant to 28 U.S.C. §2255, the government consented to the vacatur of three convictions. *Peña*, 58 F.4th at 617. However, the district court determined that a resentencing hearing was not required. *Id*. at 617. The circuit court held, "We also conclude that because resentencing would have resulted in the same sentence of mandatory life imprisonment to which he was originally sentenced, the district court did not abuse its discretion in declining to engage in such a strictly ministerial *de novo* resentencing." *Id*.at 615. It reasoned that a district court may properly deny *de novo* resentencing when the exercise would be an "empty formality." *Id*. at 623.

The Sixth Circuit articulated that the facts of the case dictate whether resentencing or correction of a sentence is more appropriate after the court has vacated a conviction. *United States v. Augustin*, 16 F.4th 227, 232 (6th Cir. 2021). It explained that resentencing is more appropriate when the court must exercise significant discretion. *Id*. at 233. *See also United States v. Nolley*, 27 F.3d 80, 81-82 (4th Cir. 1994)(holding that resentencing did not require the presence of counsel where the sentencing court was limited to adhering to the appellate court mandate); *Golden v. Newsome*, 755 F.2d 1478, 1483 n. 9 (11th Cir. 1985)(noting that where the

precise sentence for a particular offense is mandatorily fixed by statute with no discretion to be exercised by the court the absence of counsel at sentencing could not possibly prejudice the defendant).

In a situation more akin to this case, the district court in *Fatir v. Tomas*, 106 F.Supp.2d 572 (D. Del. 2000) determined that the state supreme court did not act contrarily to this Court's holdings when it concluded that after the death sentence was vacated a resentencing hearing was not required where the mandatory sentence for first-degree murder was life imprisonment without parole. *Fatir*, 106 F.Supp.2d at 585. It pointed out that the only possibility for the defendant at a hearing would be to argue that there were discretionary exceptions or that the statute was unconstitutional but that the sentencing court was not at liberty to make such determinations since the state supreme court had recently rejected such possibilities. *Id*.

The resentencing court was likewise bound to impose the constitutional mandatory sentence. The applicable sentencing statute did not allow for discretion. The resentencing court was also bound to follow the precedent of the Florida Supreme Court holding that life imprisonment with the possibility of parole after 25 years was not unconstitutional. *See State v. Lott*, 286 So. 2d 565, 566 (Fla. 1973)(observing that the circuit court is bound to follow controlling precedent from the highest court).

Moreover, Florida Supreme Court opinions support the resentencing court's approach. The Florida Supreme Court in *Anderson v. State*, 267 So. 2d 8 (Fla. 1972), at a time when the death penalty was eliminated from the statute prescribing the

penalty for murder in the first degree because of the decision in *Furman v. Georgia*, 408 U.S. 238 (1972), noted, "[t]he only sentence which could now be imposed upon conviction of the crime of murder in the first degree is life imprisonment." *Anderson*, 267 So. 2d at 9. It observed, "[t]he Court has no discretion." *Id*. The court vacated the defendants' death sentences and ordered the imposition of life sentences without returning the defendants to the trial court. *Id*. at 10. *See also Huckaby v. State*, 343 So. 2d 29, 34 (Fla. 1977)("The sentence of death is vacated, however, and this case is remanded to the circuit court with directions to enter a sentence of life imprisonment on the sixth count.").

McCoggle asserts that the resentencing court ignored *State v. Cogdell*, 27 Fla. L. Weekly Supp. 690a (Fla. 4th Cir. Ct. 2019). That circuit court case, however, is not binding precedent and did not address the issue presented in this case. In *Cogdell,* the state appealed the denial of the motion to rescind the order for resentencing, and the defendant moved to dismiss the appeal. While the appeal was pending, the postconviction court held a full resentencing hearing and then entered the resentencing decision after the appeal was dismissed. The circuit court never directly addressed the mandatory nature of the sentence or what resentencing should entail.

B. McCoggle did not avail himself of all the opportunities the trial court gave him to be heard on whether the court had discretion in sentencing.

McCoggle, through his legal representation, presented written argument in response to the state's initial memorandum contending that the sentence to be imposed was mandatory. He also presented oral argument at the hearing the court held on its case management order. At this hearing, McCoggle, asked the court for

opportunity to submit briefing on whether the mandatory sentence violated the Eighth Amendment. The court granted McCoggle this opportunity and said that it would hold another hearing after it received the briefs. McCoggle did not submit a brief for nine months. McCoggle, through counsel, did not take advantage of the due process afforded him within the many months he had to do so.

McCoggle claims he was prevented from making a claim that life imprisonment with the possibility of parole after 25 years as applied to him violates the Eighth Amendment (Pet. 9), but he waived the claim by not responding after the trial court gave him ample opportunity to submit briefing. *See Trushin v. State*, 425 So. 2d 1126, 1129-30 (Fla. 1982)(holding that the constitutional application of a statute to a particular set of facts is a matter that must be raised in the trial court).

In any event, he could not have argued at a resentencing hearing that the parole review as applied to him was constitutionally inadequate. He had yet to receive the designated parole review, and, therefore, had no experience in the parole review system to challenge as deficient.

CONCLUSION

Based on the foregoing, Mr. McCoggle's petition for writ of certiorari should be denied.

Respectfully submitted,

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