

No. 17-1511

IN THE
Supreme Court of the United States

LARRY W. NEWTON,
Petitioner,

v.

STATE OF INDIANA,
Respondent.

**On Petition for Writ of Certiorari to the
Court of Appeals of Indiana**

**SUPPLEMENTAL
BRIEF FOR RESPONDENT**

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SUPPLEMENTAL BRIEF FOR RESPONDENT

In his Supplemental Brief, Petitioner Larry Newton contends that this case can effectively serve as a substitute vehicle to decide the issues presented in *Mathena v. Malvo*, No. 18-217, which the Court has now dismissed. It cannot. The Supplemental Brief identifies two supposed favorable comparisons with *Malvo*, but they stand in irreconcilable tension with each other and fail to bear out in any event.

First, after quoting the question presented in *Malvo* (which focused on whether *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), expanded the applicability of *Miller v. Alabama*, 567 U.S. 460 (2012), when declaring *Miller* retroactive), the Supplemental Brief rephrases the issue as whether “at least prior to *Montgomery*, discretionary sentences of life without the possibility of parole for juvenile offenses could not violate the Eighth Amendment”—an issue Newton claims is “squarely presented” in his case. Supplemental Br. 1–2. As emphasized in the State’s Brief in Opposition, however, because Newton agreed to plead guilty with a fixed sentence of life without parole, this case is about neither mandatory *nor* discretionary sentences. Br. in Opp. 7. It simply does not present the question how state trial courts should address potential life sentences for juveniles in contested circumstances. Moreover, Newton’s plea waived the issue he now seeks to present to the Court, which constitutes adequate and independent state grounds for affirmance, and potentially bars the Court from addressing the issues presented in the Petition. *See id.* 8–10.

Second, in tension with his first point, Newton says his case is a good substitute for *Malvo* because “questions concerning retroactivity” both “were central to *Malvo*” and “are at the forefront” of his case. Supplemental Br. 2. But to the extent the Court took *Malvo* to address the proper boundaries of *Miller* in federal habeas after *Montgomery*, this case fails as a substitute: It is a *state* post-conviction review case, not a federal habeas case. The Indiana Court of Appeals in no way suggested its application of *Miller* turned on issues of federal retroactivity doctrine. Rather, it held that *Miller* was not applicable in the “narrow circumstance” where a juvenile defendant agrees to receive a life-without-parole sentence as part of a plea agreement. Pet. App. 25a–26a.

Finally, as the State explained in its Brief in Opposition, the questions Newton raises in his petition affect a very small number of juveniles given life-without-parole sentences prior to *Miller*—even fewer now that Virginia has provided the possibility of parole to juveniles sentenced to life. Br. in Opp. 10–15. Accordingly, Newton’s case does not present an “important question of federal law” justifying the Court’s review. U.S. Sup. Ct. R. 10.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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