

No. 17-1511

IN THE
Supreme Court of the United States

LARRY W. NEWTON, PETITIONER,

v.

STATE OF INDIANA, RESPONDENT.

On Petition For A Writ Of Certiorari To The
Court Of Appeals Of Indiana

**SUPPLEMENTAL BRIEF
FOR PETITIONER**

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SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8, Petitioner Larry Newton files this supplemental brief related to *Jones v. Mississippi*, No. 18-1259, slip op. (U.S. Apr. 22, 2021). In *Jones*, the Court held that neither a formal nor implied factfinding is required before imposing a sentence of life without the possibility of parole. *Id.* at 2.

The Court in *Jones*, however, made clear that the proceedings like the ones at issue here would be flawed. The Court noted its expectation that sentencers would have at least one opportunity to exercise discretion “under *Miller* [*v. Alabama*, 567 U.S. 460 (2012)].” *Id.* at 12 n.4. The Court reiterated what *Miller* and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) required: “A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate out those juveniles who may be sentenced to life without parole from those who may not.” *Jones*, at 12 (quoting *Montgomery*, 577 U.S. at 210).

Mr. Newton’s 1995 sentencing court only had discretion to accept or reject the plea he negotiated to avoid a sentence of death. Pet. App. 68a (“There is no [sentencing] discretion for the court to exercise”); Pet. at 8 (“the sentencing court merely had the discretion to accept or reject a binding plea agreement requiring JLWOP. That modicum of discretion led the court below to conclude that this Court’s protections in *Miller* were met.”). Thus, “*as a matter of law*,” Mr. Newton’s sentencing Court was unable “to consider relevant

mitigating circumstances.” *Jones*, at 16 n.7. But even if the *de minimis* discretion the sentencing court is “both constitutionally necessary and constitutionally sufficient” for post-*Miller* sentences, Mr. Newton he has never been sentenced “under *Miller*.”

For these reasons, his case still implicates the question not fully resolved by *Jones*: “Whether an evidentiary hearing is required to assess whether juveniles sentenced before *Miller*”¹ Pet. at i. There is a split of authority on that question, and it has profound implications for persons serving the harshest sentence any juvenile may face. *Id.* at 15–20. This Court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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¹ *Jones* does resolve part of this question: what findings are required at a post-*Miller* hearing. *See Jones*, at 2.