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 Second Supplemental Brief, Petitioner Larry Newton asks the Court to hear his case notwithstanding its recent decision in *Jones v. Mississippi*, No. 18-1259 (U.S. Apr. 22, 2021). The Court should not do so. Because Newton agreed to his sentence pursuant to a plea deal, Indiana law bars him from challenging the sentence's lawfulness, and that state-law rule is independently sufficient to support the decision below. Furthermore, the Court's decision in *Jones* forecloses his claim in any event. The Court has now made clear that "a State's discretionary sentencing system is . . . constitutionally sufficient," *id.*, slip op. 5, and that is precisely the system Indiana has: If Newton had not entered a fixed-sentence plea agreement, the sentencer would have had discretion to impose a sentence of less than life without parole (LWOP). Even after Newton's agreement, the sentencing court had discretion to reject the agreement if it concluded an LWOP sentence was inappropriate. There is thus no reason to review the decision below.

First, as the State has pointed out previously, *see* Br. in Opp. 7–10, Newton is procedurally barred from obtaining relief, for Indiana law provides that when a defendant "received a benefit at the time he entered into the plea bargain, he could not later challenge the sentence as illegal." Pet. App. 13a. Because his sentence was imposed pursuant to a plea agreement into which he voluntarily entered—and from which he benefited, since "[a]t the time Newton entered into the plea agreement, Newton could have been sentenced to

death," Pet. App. 13a—this state-law rule precludes Newton from questioning the validity of his sentence.

The decision below can thus be justified by "a state law ground that is independent of the federal question and adequate to support the judgment," *Coleman v. Thompson*, 501 U.S. 722, 729 (1991), which means the Court's consideration of this case could not possibly affect its outcome. This at least complicates—if not bars—the Court's consideration of the issues Newton raises and is itself reason enough to decline review.

Second, even if the Petition at one time raised open questions, the Court's decision in *Jones* has decisively answered them. It is now clear that "a discretionary sentencing procedure suffices to ensure individualized consideration of a defendant's youth," *Jones*, slip op. 19, and there can be no doubt that Newton was afforded just such a procedure. Had he chosen to proceed to trial or open sentencing, Indiana law afforded Newton the right to seek a discretionary sentence of less than LWOP following a full evidentiary hearing. *See* Ind. Code § 35-50-2-3 (1994). By entering into a plea agreement that called for an LWOP sentence, Newton voluntarily waived this right. And even *after* Newton accepted the plea agreement, the sentencing court still had discretion to reject the agreement if it concluded that Newton's youth and other mitigating factors made an LWOP sentence inappropriate. See Pet. App. 27a. This is why the sentencing court held an evidentiary hearing where it received evidence on this question and issued a 21-page order setting forth its reasons for accepting the guilty plea and imposing the LWOP sentence. *See id.* at 27a–34a; PCR Ex. A: App. at 999–1019. *Jones* requires nothing more.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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Dated: April 28, 2021