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**

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

I. Whether *Miller v. Alabama*, 567 U.S. 460 (2012), applies to a juvenile who has agreed to a sentence of life without parole.

II. Whether *Miller* applies to discretionary sentences of life without parole imposed for juvenile offenses.

III. Whether an evidentiary hearing is required to assess whether juveniles sentenced before *Miller* are irreparably corrupt.

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## INTRODUCTION

Just 45 days shy of his eighteenth birthday, Larry Newton came to the Ball State campus looking to kill someone. The identity of his victim was not particularly important, and Newton and two friends soon happened upon Christopher Coyle, a nineteen-year-old Ball State student. Newton and his friends forced Coyle into an alley, and Newton shot Coyle—at point-blank range, in the back of the young man's head.

The State of Indiana brought a capital murder charge against Newton. To avoid the death penalty, Newton pleaded guilty and agreed to receive a sentence of life in prison without parole. The sentencing court accepted the sentence, finding it appropriate in light of Newton's age, the senselessness of his crime, and the failure of previous efforts to rehabilitate him.

Newton now argues that his sentence is unlawful. He asks the Court to hear his case and announce that the Eighth Amendment confers to juveniles a substantive right to be free from all life-without-parole sentences—whether or not they are discretionary—absent a specific finding of incorrigibility.

There is no justification for the Court to do so. Newton agreed to his sentence; this waives his right to challenge the sentence's lawfulness and is fatal to his case. Even if he could overcome this waiver, his case does not merit the Court's review: Newton vastly overstates the lower-court conflict over the significance of sentencing discretion, and his case does not squarely present the questions raised in his petition.

## STATEMENT OF THE CASE

1. The events leading to Larry Newton's murder of Christopher Coyle began about one day before the killing, on the night of Friday, September 23, 1994. Pet. App. 2a. A fellow member of Newton's gang attended a party on the Ball State campus, but he was kicked out of the party. *Id.* Newton was incensed, so much so that the following Saturday night he told another member of the gang that he "felt like killing somebody." PCR Ex. A: GP Tr. at 77–80. Newton initiated the plan: He obtained a gun from a fellow gang member, and a few hours later, early Sunday morning, he and two friends drove to the Ball State campus to find a random student on which to vent their displeasure. PCR Ex. A: GP Tr. at 52–101. Shortly thereafter, they came upon Coyle, who was walking alone. Pet. App. 3a. Newton forced Coyle into the car at gunpoint, demanded his money, and then forced Coyle to walk into an alley. PCR Ex. A: GP Tr. at 52–101. There Newton executed Coyle, firing a bullet into the back of Coyle's skull. PCR Ex. A: GP Tr. at 52–101.

Newton laughed and bragged about the murder afterwards, expressing a desire to "do that shit again" PCR Ex. A: GP Tr. at 82–91. After he was apprehended, he fully confessed his crimes to the police. PCR Ex. A: GP Tr. at 50–71; PCR Exs. 1, 2, 3.

2. The State charged Newton with murder and several other felonies, and it filed a request seeking the death penalty. PCR Ex. A: App. at 41–44, 46.

Newton was represented by two qualified death penalty defense attorneys, who also hired a mitigation specialist to assist them. PCR Ex. A: App. at 48, 52–53, 67, 70–77, 109.

Newton initially explored the possibility that he suffered from a mental disease or defect and was "mentally retarded" under Indiana law and therefore ineligible for the death penalty. Mental health examinations confirmed, however, that Newton is neither insane nor "mentally retarded" under Indiana law. PCR Ex. A: App. at 773–76; PCR Exs. R, S.

Newton's defense counsel then negotiated a plea agreement that would allow Newton to avoid execution: In exchange for the State's dismissal of its request for a death sentence, Newton pleaded guilty to the charges and agreed to receive a sentence of life in prison without parole ("LWOP"). PCR Ex. A: App. at 868–75; PCR Ex. A: GP Tr. at 4–5, 36–37; PCR Tr. Vol. I at 58.

Before deciding whether to accept the plea, the sentencing court held an evidentiary hearing at which it received evidence regarding the appropriateness of the LWOP sentence. PCR Ex. A: App. at 871; PCR Ex. A: Sent. Tr. at 6. That evidence included: (1) the presentence investigation report; (2) Newton's 80-page mitigation timeline; (3) Newton's neuropsychological report; (4) Newton's three mental health evaluations; (5) testimony from Newton's mother; (6) Newton's two statements to police; (7) statements to police by friends of Newton; (8) testimony from a detective re-

garding the gang to which Newton belonged; (9) testimony from a co-defendant/friend of Newton's; and (10) a letter written by Newton while incarcerated. PCR Ex. A: App. at 890–900, 906–85; PCR Ex. A: Sent. Tr. at 6–96; PCR Exs. R, S, 1, 2, 3. The court also heard argument from defense counsel before making its decision. PCR Ex. A: Sent. Tr. at 96–117.

The sentencing court issued a 21-page order setting forth its reasons for accepting the guilty plea and imposing the LWOP sentence. PCR Ex. A: App. at 999–1019. The sentencing court's order included findings related to Newton's "family strife" and troubled home life, his juvenile record and the services that had previously been provided to him but that had been "totally unsuccessful" at rehabilitating him, and Newton's lack of any significant mental health issues or significant intoxication on the night of the crime. PCR Ex. A: App. at 1003–05, 1011–15. The order also encompassed findings related to the murder, including that the killing "reflected a great degree of care and planning and [was] not spontaneous," that there was "no question" Newton was the principal in the shooting, that there was "no evidence" Newton "acted under anyone else's domination" but rather that he was the "leader," and that this was "not a killing done during the heat of battle or during any type of confrontation" but rather was a cold and deliberate execution. PCR Ex. A: App. at 1005–06, 1013–14.

Based on Newton's "total resistance to any type of authority," the sentencing court "[could] not conclude that rehabilitation is a strong possibility." PCR Ex. A: App. at 1015. The sentencing court reasoned that the

nature of the crime indicated that Newton was "a person filled with hate and a person who is genuinely evil and beyond rehabilitation." PCR Ex. A: App. at 1016. After discussing all these matters, the court pondered, "The issue still remains: Is life imprisonment without the possibility of parole an appropriate punishment?" PCR Ex. A: App. at 1017. The court concluded that this LWOP sentence was "the only appropriate penalty" for this "thrill killing" that was "unprovoked," "senseless," "savage," and committed by a person who had "demonstrated no regard for human life" and who "appear[ed] to have no conscience." PCR Ex. A: App. at 1017–18. "The risk that this Defendant would kill again is too great." PCR Ex. A: App. at 1018. The court imposed an LWOP sentence on the murder conviction and consecutive sentences of 45 years and 20 years, respectively, on convictions for Class A felony conspiracy to commit robbery and Class B felony confinement. PCR Ex. A: App. at 1006–07, 1018–19; PCR Ex. A: Sent. Tr. at 206–08, 227–28.

3. In 2002, Newton brought an unsuccessful state court petition for post-conviction relief. PCR Ex. A: App. at 1100, 1118–20; PCR Ex. B; PCR Ex. A: App. at 1121–31. And his belated appeal of that ruling was procedurally barred under Indiana's Post-Conviction Rules. *Newton v. State*, 894 N.E.2d 192, 192–93 (Ind. 2008).

In July 2013, Newton was granted permission to file a successive petition for post-conviction review to challenge his sentence under the Eighth Amendment. PCR App. Vol. II at 32–37, 45–56. The post-conviction trial court held an evidentiary hearing on the petition,

then issued detailed findings of fact and conclusions of law denying relief. PCR Tr. at 2–94; PCR App. Vol. III at 92–145.

The Indiana Court of Appeals affirmed, holding that Newton had waived the right to challenge his LWOP sentence by entering into a plea agreement specifying that he would receive such a sentence. *Newton v. State*, 83 N.E.3d 726, 732–34 (Ind. Ct. App. 2017). The Court of Appeals also rejected Newton's argument that his LWOP sentence violated *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). It held that *Miller* was not applicable in the "narrow circumstance" where a juvenile defendant agrees to receive an LWOP sentence as part of a plea agreement. 83 N.E.3d at 734–40.

In an "abundance of caution," the Indiana Court of Appeals also held that the sentencing court imposed the LWOP sentence in accord with *Miller*, observing that the sentencing court accepted the LWOP sentence only after explicitly finding that Newton was not susceptible to rehabilitation. *Id.* at 740–45. The sentencing court's determination "ensured" that Newton did "not fit within the 'vast majority of juvenile offenders' for whom a sentence of LWOP is disproportionate" and thus his sentence was "not unconstitutional under the Eighth Amendment." *Id.* at 745. The Indiana Supreme Court denied Newton's request for discretionary review.

## REASONS TO DENY THE PETITION

### I. Newton Waived His Right to Challenge His LWOP Sentence by Agreeing to It

Newton's petition simply ignores the key fact that fatally undermines his case: The LWOP sentence he now challenges was imposed pursuant to a plea agreement *he voluntarily entered*. Under Indiana law, this means he has waived his right to challenge the sentence. *See, e.g.*, *Jones v. Virginia*, 136 S. Ct. 1358 (2016) (Thomas, J., concurring) (reminding the lower court that when reconsidering the case in light of *Montgomery* it should consider, among other things, whether the juvenile "forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief)"). In light of this obstacle, even if the Court were inclined to address the questions Newton raises, his case is an inappropriate vehicle to do so: Newton's plea agreement would at least severely complicate the inquiry, and it could bar Newton's challenge entirely.

Newton's petition focuses on the distinction between mandatory and discretionary juvenile LWOP sentences, and it argues that the Court should take this case to announce that even discretionary juvenile LWOP sentences can still run afoul of the Eighth Amendment. But Newton's case involves neither a mandatory LWOP sentence nor a discretionary one. Rather, Newton's sentence was the product of a negotiated agreement into which he voluntarily entered and for which he received an important benefit: the State's agreement to dismiss its request for the death

penalty, a sentence that was permissible under the law at the time.

As a result of his plea agreement, Newton has waived his right to challenge his sentence. *See Newton v. State*, 83 N.E.3d 726, 732–34 (Ind. Ct. App. 2017). Under Indiana law, a defendant who enters a fixed-sentence plea agreement in which he receives a benefit in exchange for his receipt of a specific sentence waives the right to challenge the validity of that sentence. *See, e.g., Sholes v. State*, 878 N.E.2d 1232, 1235 (Ind. 2008) (applying this principle to an LWOP sentence); *Stites v. State*, 829 N.E.2d 527, 529 (Ind. 2005) (applying this principle to a sentence that was illegal at the time of the plea).

Newton has identified no legal basis preventing this state waiver rule from being enforced in his case. And under the Court's precedents there is no federal-law reason to supplant this state-law rule here. The Court has long held that it "will not take up a question of federal law presented in a case if the decision of the state court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (internal citation, quotation marks, and brackets omitted). The Court first developed this rule "in cases on direct review from state courts," and it "applies with equal force whether the state-law ground is substantive or procedural." *Id.*

Because the Indiana waiver rule is "firmly established and regularly followed," *id.* at 376, it is clearly "adequate" to support the judgment against Newton.

And because, under *Miller* and *Montgomery*, the sentence to which Newton agreed is not one that the Constitution places beyond the State's power to impose, the waiver rule is independent as well: Notably, both *Miller* and *Montgomery* explicitly declined to hold that all juvenile LWOP sentences are *per se* unconstitutional. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016); *Miller v. Alabama*, 567 U.S. 460, 479–80, 483 (2012).

Moreover, Indiana courts are not unique in assessing the benefit of a plea agreement under the law as it existed at the time of the agreement. *Fowler v. State*, 977 N.E.2d 464, 467 (Ind. Ct. App. 2012), *aff'd on reh'g*, 981 N.E.2d 623 (Ind. Ct. App. 2013), *trans. denied*. Indeed, this Court has itself expressly held as much: "[A] voluntary plea of guilty intelligently made *in light of the then applicable law* does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise," not even when that faulty premise is constitutional eligibility for a death sentence. *Brady v. United States*, 397 U.S. 742, 757 (1970) (emphasis added) (holding that a guilty plea entered to avoid a potential death sentence was not rendered invalid when this Court had subsequently held unconstitutional the statute that had rendered the defendant eligible for death).

Indeed, in circumstances virtually identical to this case, in *Jones v. Commonwealth*, after this Court had remanded the case for reconsideration in light of *Montgomery,* the Virginia Supreme Court held that a plea agreement foreclosed a challenge to a juvenile LWOP sentence. *See* 795 S.E.2d 705, 713–15 (Va.

2017). The prisoner later filed a petition for a writ of certiorari, which this Court denied. *See Jones v. Virginia*, No. 16-1337, 138 S. Ct. 81, (Oct. 2, 2017).

Having voluntarily accepted the benefit of an LWOP sentence, Newton is now procedurally foreclosed from challenging the validity of that sentence. Nothing in *Miller* or *Montgomery* suggests that a juvenile represented by competent counsel cannot concede by means of a plea agreement that his crimes were not the result of transient immaturity and that he is a juvenile for whom LWOP is appropriate. Newton has failed to grapple with this difficulty, and there is no reason for the Court to do so.

## II. Newton Vastly Overstates the Disagreement among Lower Courts over the Significance of Discretion for Juvenile LWOP Sentences

Even beyond the waiver caused by Newton's plea agreement, there is no reason for the Court to address the principal question posed in his petition: whether a sentencing court's discretion to impose or not to impose a juvenile LWOP sentence is sufficient to satisfy the Eighth Amendment. Pet. i. Newton claims that the "states are split over" this question, *id.* at 7, but he greatly exaggerates the disagreement among the lower courts. *Montgomery* clarified the meaning of *Miller*, and Newton has failed to identify a single post-*Montgomery* decision holding that a discretionary juvenile LWOP sentence is *per se* constitutional. Moreover, going forward, the risk that any juvenile will receive an LWOP sentence without first being found in-

corrigible is remote. The issues on which Newton focuses are therefore hardly "important question[s] of federal law." U.S. Sup. Ct. R. 10.

1. Half the cases Newton cites to establish the alleged lower-court conflict preceded the Court's 2016 decision in *Montgomery* and are therefore irrelevant for the purpose of identifying a *current* conflict among the lower courts. *See State v. Houston*, 353 P. 3d 55 (Utah 2015); *State v. Williams*, 862 N.W. 2d 701 (Minn. 2015); *Castillo v. McDaniel*, No. 62188, 2015 WL 667917 (Nev. Feb. 12, 2015); *State v. Redman*, No. 13–0225, 2014 WL 1272553 (W. Va. 2014); *Conley v. State*, 972 N.E.2d 864, 879 (Ind. 2012). *Montgomery* explained that an LWOP sentence "violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 479 (2012)). It said that a discretionary sentencing procedure is the necessary mechanism for a prisoner to "show that he belongs to the protected class," not the controlling factor itself. There is no reason to think courts in these jurisdictions will contravene *Montgomery* when next reviewing a juvenile LWOP sentence.

Several of the remaining cases that Newton cites do not involve juvenile LWOP sentences at all. For example, Newton cites *State v. Roy*, No. 0503015173, 2017 Del. Super. LEXIS 124 (Del. Mar. 13, 2017), *affirmed by* 2018 Del. LEXIS 56 (Del. Feb. 6, 2018), but that decision is an unpublished trial court order dismissing a third post-conviction petition as procedurally barred because *Miller* is inapplicable to a 35-year

sentence with five years suspended. Newton also cites *Bell v. State*, 522 S.W.3d 788 (Ark. 2017), but that decision addressed only the denial of a motion to correct a facially illegal sentence; in that unique context, the decision relied on the non-mandatory nature of the sentence to find it was not facially illegal, a holding that is perfectly consistent with *Montgomery*. *See id.* at 788–89 & n.1, *cert. denied*, 138 S. Ct. 1545 (2018).

All but one of the other cases Newton cites are similarly inapposite. *See State v. Nathan*, 522 S.W.3d 881 (Mo. 2017) (rejecting claim that consecutive sentences on murder and other non-homicide offense convictions were the functional equivalent of a life without parole sentence and thus *per se* unconstitutional under *Miller*); *State v. Charles*, 892 N.W.2d 915 (S.D. 2017), *cert. denied*, 138 S. Ct. 407 (2017) (holding that a discretionary term-of-years sentence allowing for the possibility of parole at age 60 was not categorically unconstitutional under *Miller*).

Only one of the cases Newton cites, *Jones v. Commonwealth*, 795 S.E.2d 705, 707–10 (Va. 2017), squarely involved a post-*Montgomery* challenge to a juvenile LWOP sentence. But that decision did not announce a categorical rule that all discretionary juvenile LWOP sentences are *ipso facto* constitutional: It held only that because the sentence challenged in that case, like Newton's sentence, was imposed pursuant to a voluntary plea agreement, the defendant was "never denied [his] constitutionally required opportunity" to present evidence of his constitutional ineligibility for a juvenile LWOP sentence. *Id.* at 714.

Thus, outside the context of a plea agreement, Petitioner has not identified a single post-*Montgomery* decision holding that all discretionary juvenile LWOP sentences are constitutional.

The Indiana Court of Appeals expressly limited its holding regarding *Miller*'s applicability to the "narrow circumstances" where the juvenile defendant "agrees to serve LWOP pursuant to a plea agreement." *Newton v. State*, 83 N.E.3d 726, 739 (Ind. Ct. App. 2017). Newton has not come close to identifying any split of authority within this plea agreement context.

2. Moreover, even if there were some minor disagreement among the lower courts, Newton's case would still not warrant the exercise of the Court's certiorari jurisdiction. The "narrow circumstances" of Newton's case—wherein a juvenile defendant enters a plea agreement calling for an LWOP sentence—are exceedingly unlikely to arise again. Following the Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), that juvenile death sentences are unconstitutional, juveniles no longer have anything to gain by agreeing to an LWOP sentence.

In Indiana, the Indiana Court of Appeals' decision has few consequences beyond Newton's case: Only three other juvenile offenders are serving LWOP sentences in Indiana, and only one of them agreed to that sentence in a plea agreement. Prior to *Montgomery*, the Indiana Supreme Court affirmed the juvenile LWOP sentence of one of these offenders—a nearly-eighteen-year-old juvenile who brutally murdered his

ten-year old brother and discarded the body in a nearby woods—because it was imposed pursuant to a discretionary scheme that allowed for individualized consideration of the juvenile's youth and circumstances, an understanding of *Miller* shared by many courts at the time. *Conley v. State*, 972 N.E.2d 864, 875–79 (Ind. 2012).

Only one juvenile has received an LWOP sentence in Indiana since *Montgomery* was decided, and in that case the Indiana Supreme Court avoided the Eighth Amendment issue by using its independent authority to reduce the sentence to a term of years, relying heavily on *Miller* to explain its reasons for doing so. *See Taylor v. State*, 86 N.E.3d 157, 164–67 & n.1 (Ind. 2017), *cert pending*, No. 18-81. After *Conley*, the Indiana Supreme Court has also relied on *Miller* when exercising its state constitutional power to reduce discretionary term-of-years sentences imposed upon juveniles. *Brown v. State*, 10 N.E.3d 1, 6–8 (Ind. 2014); *Fuller v. State*, 9 N.E.3d 653, 657–59 (Ind. 2014). The Indiana Supreme Court cannot, therefore, be said to have adopted a final position rejecting the applicability of *Miller* to discretionary sentencing schemes such as Indiana's, nor has it demonstrated any disagreement with the ethos of *Miller*.

The Indiana Supreme Court is thus rarely confronted with juvenile LWOP sentences, and it has not yet revisited the issue since *Montgomery*. Given the infrequency with which the issue arises, as well as the absence of an Indiana Supreme Court decision applying this Court's most recent decision, there is no reason for this Court to hear Newton's case.

As for other States, a decision in Newton's case would affect only the small universe of offenders (1) who entered plea agreements for juvenile LWOP sentences, all of which would be prior to the 2005 *Roper* decision, and (2) who reside in states that have not provided any mechanism for juvenile offenders either to become parole-eligible or to obtain a new review of their life sentences—a mechanism many states have in fact adopted. *See, e.g.*, Ark. Code Ann. §§ 5-4-104, 5-10-102; Cal. Penal Code § 3051; Conn. Gen. Stat. § 54-125a(f); Fla. Stat. § 921.1402(2)(a); Mo. Rev. Stat. § 558.047; Neb. Rev. Stat. § 28-105.02; Wyo. Stat. Ann. § 6-10-301(c).

A question affecting such a small number of individuals—and a question that the Indiana Supreme Court has not reconsidered in light of this Court's most recent statement on the subject—is simply not an "important question of federal law" that merits the Court's review. U.S. Sup. Ct. R. 10.

## III. Newton's Case Does Not Squarely Present the Questions Raised in His Petition

Finally, even if the Court were inclined to address the questions presented in Newton's petition, his case is an ineffective vehicle for doing so. The decision of the Indiana Court of Appeals did not address these issues. And a decision in Newton's favor—that even discretionary juvenile LWOP sentences are subject to Eighth Amendment scrutiny—would fail to change the outcome of his case, for Newton's plea agreement would nevertheless bar relief. If these questions need

to be resolved, they are better addressed where no plea agreement complicates the analysis.

1. The decision below does not purport to answer broad questions about the applicability of *Miller* to discretionary juvenile LWOP sentences in general. Instead, it discusses the distinction between mandatory and discretionary LWOP sentences in the narrow context of Newton's claim, made throughout the state-court proceedings, that his sentence became mandatory once the sentencing court accepted the plea agreement and was therefore *per se* unconstitutional under *Miller*. *See Newton v. State*, 83 N.E.3d 726, 738–40 (Ind. Ct. App. 2017). The Indiana Court of Appeals held only that a sentence imposed pursuant to a plea agreement is not a "mandatory" sentence categorically prohibited by *Miller*. *Id.* at 739–40. In doing so, the court did not draw any general distinction between mandatory and discretionary sentences.

The Court of Appeals also did not rest its decision solely on the conclusion that Newton's LWOP sentence was not mandatory. In an "abundance of caution," the Court went on to review whether the sentencing court had made a sufficient analysis of the appropriateness of an LWOP sentence for this particular juvenile. *Newton*, 83 N.E.3d at 740–45. Thus, the sentence would remain valid even if the Court were to agree with Newton that discretionary juvenile LWOP sentences are not always constitutional.

2. The Indiana Court of Appeals not only declined to announce a categorical rule for discretionary juvenile LWOP sentences, but it also did not opine on the

second question presented in Newton's petition, whether the Eighth Amendment requires a dedicated evidentiary hearing to determine whether a juvenile is sufficiently incorrigible to justify an LWOP sentence. Pet. i. The absence of any discussion of this question below makes Newton's case an inappropriate vehicle for considering the question. *Cf. United States v. Bestfoods*, 524 U.S. 51, 72–73 (1998) (declining to entertain an issue on which the courts below did not focus).

The Indiana Court of Appeals found it unnecessary to decide whether a sentencing court must always make an incorrigibility finding before imposing a juvenile LWOP sentence because the sentencing court "did in fact explicitly make those determinations here." *Newton*, 83 N.E.3d at 743. Newton's sentence was thus "safeguarded against any possibility it violated the Eighth Amendment." *Id.* Consequently, the petition to transfer Newton filed in the Indiana Supreme Court did not squarely present the incorrigibility issue or ask the Court to address it. Transfer Pet. 2, 5–18.

Indeed, even if the Court were to adopt Newton's position on the necessity of an incorrigibility finding, such a holding would not change the outcome of his case: The sentencing court below *did* make a finding of incorrigibility. For example, the sentencing court said that it "cannot conclude that rehabilitation is a strong possibility here in your case." PCR Ex. A: App. at 1015; PCR Ex. A: Sent. Tr. at 222. When considering the circumstances of the murder and Newton's role in it, the sentencing court concluded, "[i]t seems

to the Court it takes a person filled with hate, and a person who is genuinely evil, and in my opinion, Mr. Newton, beyond rehabilitation." PCR Ex. A: App. at 1016; PCR Ex. A: Sent. Tr. at 224–25. And when discussing the ultimate inquiry "as to whether or not life imprisonment without the possibility of parole [is] an appropriate punishment," it found that Newton had "demonstrated no regard for human life" and that "the risk that [Newton] would kill again is too great." PCR Ex. A: App. at 1017–18; PCR Ex. A: Sent. Tr. at 226–27.

Because the sentencing court effectively found Newton incorrigible, any determination this Court might make regarding the necessity of such a finding would be merely declaratory. For that reason, Newton's petition is simply not the case to address this issue.

3. Finally, Newton asks the Court to declare that the Eighth Amendment requires courts to give juveniles an opportunity to show that they are ineligible for LWOP sentences. Whether or not the Court agrees with this proposition, there is no reason for the Court to make such an announcement here: Indiana courts *already* give juveniles an opportunity to present evidence regarding their suitability for an LWOP sentence. In fact, Newton himself received opportunities to do so both before and after *Miller* was decided.

Of course, by entering into a fixed-sentence plea agreement, Newton voluntarily waived the right to present such evidence to which he otherwise would

have been entitled under Indiana law. Even still, before deciding whether to accept the plea agreement, the sentencing court held an evidentiary hearing at which it received extensive evidence from both parties regarding Newton's background and character, a primary purpose of which was to assess whether an LWOP sentence would be an appropriate.

This evidence included:

- The pre-sentence investigation report;
- Newton's 80-page mitigation timeline, which detailed every aspect of his life from birth to the murder, including extensive discussion of his troubled home life and the numerous rehabilitative services he previously received in the juvenile system;
- Newton's extensive juvenile record;
- Testimony from Newton's mother, which also addressed Newton's home life;
- The report from his neuropsychological examination;
- Reports from three competency/intellectual functioning examinations;
- Statements Newton gave to police following the murder;
- A letter Newton wrote while incarcerated;
- And evidence regarding the killing and Newton's role in it.

In other words, the trial court heard and considered all of the relevant evidence, including evidence

pertaining to Newton's age and maturity, his family and home environment, the circumstances of the murder, and the rehabilitative efforts that already had been attempted. *See Miller v. Alabama*, 567 U.S. 460, 477–78 (2012); *see also Newton*, 83 N.E.3d at 743 ("Thus, in determining whether to accept the sentence of LWOP as punishment for Newton, the trial court underwent the very considerations the U.S. Supreme Court prescribed seventeen years later in *Miller* and twenty years later in *Montgomery*.").

Not only did Newton receive an opportunity to demonstrate his ineligibility for a juvenile LWOP in the original sentencing court, but he also received a *second* opportunity with the state post-conviction hearing held in 2016, *after* this Court issued its decision in *Montgomery*. Indiana's post-conviction procedure may be used to raise claims that a "sentence was in violation of the Constitution of the United States." Ind. Post-Conviction Rule 1(1)(a). In the post-conviction hearings held to evaluate these claims, the court "may receive affidavits, depositions, oral testimony, or other evidence" in support of the claims. Ind. Post-Conviction Rule 1(5). Tellingly, Newton did not introduce any evidence at that hearing relevant to his background or circumstances that he claimed could have been but was not presented at the original sentencing hearing, opting instead to proffer evidence of his participation in a prison Shakespeare program (which the trial court properly excluded as irrelevant). *Newton*, 83 N.E.3d at 743-44 & n.12.

Newton is therefore wrong to claim that "Indiana has denied juveniles serving [LWOP] sentences imposed before *Miller* an opportunity to present evidence that they are ineligible for their sentence." Pet. 17. Newton himself had not one, but two opportunities to present this evidence. Whether or not the Eighth Amendment requires such an opportunity, Newton's case does not effectively present the question.

***

The questions Newton raises in his petition affect—at most—a very small number of juveniles given LWOP sentences prior to *Miller*. Even if the Court were inclined to address these questions, Newton's case is not an appropriate vehicle for doing so. By entering a plea agreement providing for an LWOP sentence, he has waived his right to challenge the sentence, which at least complicates—if not bars—the Court's consideration. In addition, the decision below did not directly address these questions, and the questions' resolution would not change the result of Newton's case.

## CONCLUSION

The Petition should be denied.

Respectfully submitted,

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Dated: August 3, 2018