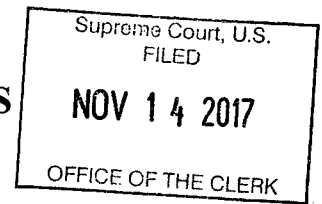


**ORIGINAL**

No. **17-6866**

IN THE

**SUPREME COURT OF THE UNITED STATES**



Alfred E. Means III, Pro se      PETITIONER

VS.

Barry Smith, Superintendent, et al.      RESPONDENT(S)

On Petitioner For Writ Of Certiorari

To The (Superior Court Of Pennsylvania)

PETITION FOR WRIT OF CERTIORARI

Alfred E. Means III, FE-0212  
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Houtzdale, PA 16698-1000

## **QUESTIONS PRESENTED**

### **I.**

Whether Petitioner's constitutional Amendment Rights 6, 8, and 14 were violated when lower court(s) refused to recognize Petitioner as a juvenile, in line with the Miller v. Alabama, 567 U.S. 460 (2012) court ruling establishing the unconstitutionality of sentencing juveniles to life without parole even though Petitioner was 19 years old at the time of the crimes charged against him.

### **II.**

Whether the Petitioner met the timeliness exception under 42 Pa.C.S. § 9545 (b)(1)(iii) where Petitioner asserted he was entitled to a resentencing as a result of the ruling and mandates handed down by the Miller court establishing it is now unconstitutional to sentence a juvenile to life without the possibility of parole and whether the lower court violated this Petitioner's 6th Amendment by knowingly misrepresenting the record claiming Petitioner was untimely thus violating his right to appellant due process.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINION BELOW**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Pennsylvania State Supreme Court appears at Appendix C to the petition and is unpublished.

## **JURISDICTION**

The date on which the highest state court decided my case was August 22, 2017. A copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Constitutional Amendment 6 - Due Process

Constitutional Amendment 8 - Cruel and Unusual Punishment

Constitutional Amendment 14 - Equal Protection

Article VI, U.S.C.A - Supremacy Clause

Pa.R.J.C.P. Rule 120 - Juvenile Definition

42 Pa.C.S. § 9545(b)(1)(iii)

42 Pa.C.S.A. § 9545(b)(2)

## STATEMENT OF THE CASE

The Present case arises from Petitioner's conviction of robbery/homicide and related charges resulting in the death of Mr. Joseph Rudd.

Petitioner was found guilty via bench trial by Judge Gary S. Glazer and ultimately sentenced to life plus thirty (30) to one hundred and twenty (120) years. After multiple appeals and attempts at relief, all to negative affect, the Petitioner comes before this Court seeking relief under the mandates set by the Miller court.

Petitioner filed a timely Post Conviction Relief Act ("PCRA") petition on or about March 22, 2016, in which the trial court Judge Gary S. Glazer, denied Petitioner's timely petition stating in part that Petitioner did not meet one of the specific standards of the PCRA rules on July 13, 2016.

On Appeal the Superior Court agreed with the trial court and affirmed the trial court's decision on March 16, 2017.

Petitioner filed for Allowance of Appeal to the Pennsylvania Supreme Court which was denied (Per Curiam) on August 22, 2017. This timely writ of certiorari follows.

## REASONS FOR GRANTING THE PETITION

1. To question one of whether Petitioner's constitutional Amendment Rights 6th, 8th, and 14th were violated when lower state court(s) refused to recognize Petitioner as a juvenile with the Miller court ruling establishing the unconstitutionality of sentencing juveniles to life without parole, even though petitioner was 19 years old at the time of the crimes charged against him. Petitioner asserts the following.

It has been well accepted now that it is unconstitutional to sentence a juvenile to life without parole. The question posed to this court now is what defines the state of juvenility? As this Petitioner was 19 years old at the time of the crimes charged against him he asserts that he fit well within the range of what a juvenile is defined as being.

The very definition of "*Juvenile*", is 1. *showing incomplete development*. 2. *of, relating to, or characteristic of children or young people...* (Merriam Webster Dictionary) This definition is in harmony with the accepted sciences that establish that the human brain continues to grow, develop and mature up until at least he

mid 20's. This sentiment has been established in **United States v. C.R.**, 792 F.Supp 2d. 343 (E.D.NY)(2011) *where Dr. Lawrence Steinberg, the lead scientest for the American Psychological Association, who assisted in preparing the amicus brief in Roper v. Simmons, (infra) and Graham v. Florida, 560 U.S. \_\_\_, 176 L.Ed 2d 825 (2010) was asked:*

Q. Are there neurobioligal changes occuring at 19 years old that might influence a persons decision making process?

A. Yes, because the regions of the brain that are important for things like impulse control and weighing risks and rewards those regions and systems of the brain are still developing after 19 and to the extent that those capabilities affect judgement and decision making ...

This science has been accepted and applied and would pass the "*Frye test*" **Frye v. United States**, 293 F. 1013 (1923) See also **General Electric Co. v. Joiner**, 522 U.S. 136, 142 (1997)

The age of 18 years old establishing adulthood is subjective and subjunctive. It holds no constitutionally accepted standards and thus become a violation of a persons particularly this Petitioner's sixth amendment right to due process, his 8th amendment protection against cruel and unusual punishment and his 14th amendment right to equal protection. This last constitutional violation i.e. the 14th is clear and bold as the science that has been accepted by the courts establishes that 25 or rather the "mid-20's" is closer to the end of juvenility. So

how then can an arbitrary age of 18 years old be decided when it leaves out a whole demographic of "Juveniles", who still have a whole eight (8) years of maturation to endure. *Gall v. United States*, 552 U.S. 38 (2007). *"There is no bold line demarcating at what age a person reaches full maturity."* *Id.* at 58 quoting *United States v. Gall*, 446 F.3d 884, 888 (2006) [citing National Institute of Health] Also see *Roper v. Simmons*, 543 U.S. 551, 574 (2005) when that court allowed, *"The qualities that distinguish juveniles from adults do not disappear when the individual turns 18 years old."*

At 18, 19, 20, 21 and beyond young people are going through some of the most trying times in their lives. Trying to develop a sense of self while their brains are constantly changing, while simultaneously dealing with peer pressure, sexuality, environmental barriers, drug experimentation, social responsibility, broken homes, sexual abuse, teen parenting and a plethora of other contributing factors which may cause compound injury to an already fragile and undeveloped mind.

To say that someone who is 19 years old is an adult when the accepted and applied science now tells us that without a doubt a 19 years old is a juvenile, arbitrarily separates him or her from a specific age demographic that they fall into, violating their 14th amendment right to equal protection. A sentiment established

in **Songster v. Beard**, 35 F.Supp.3d 657 (E.D.Pa.2014) **Id.** quoting **Hill v. Snyder**, 2013 U.S.Dist.LEXIS 12160 When they said, *"To hold other wise would allow the state to impose unconstitutional punishments on some persons but not others, an intolerable miscarriage of justice ..."* In more recent times **People v. House**, N.E.3d \_\_ 2015 Il App (1st) 110580 has stated, *" ... Rather we find the designation that after 18 an individual is a mature adult appears to be somewhat arbitrary ..."* **House** also goes on to state *"... Research in neurobiology and developmental psychology has shown that the brain dosen't finish developing until the mid-20's far later than previosly thought. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future oriented and more volitile in emotionally charged settings ..."* **Id.** at 94 citing Vincent Schialdi & Bruce Western *"why 21-year old offenders should be tried in family court wash.post. 10/2/15.*

Also in **Johnson v. Texas**, 509 U.S. 350 (1993)(capital case) the court established *" ... a jury is free to consider a 19 year old defendants youth when determining whether there was a probability that he would continue violent acts in the future and stating youth is more than a chronological fact. It is a time and condition of life when a person may be susceptible to influence and to psychological damage ... These qualities often result in impetuous and ill-*

*considered actions and decisions."* *Id* at 367 quoting *Eddings v. Oklahoma*, 455 U.S. 1-4, 115 (1982)

Consider the statement from Dr. Rubin C. Gur when he stated, *"the evidence is now strong that the brain does not cause or mature until the early twenties in those relevant parts that govern impulsivity, judgement, planning for the future, foresight of consequences and other characteristics that make people morally capable ... Indeed age 21 or 22 would be close to the biological age of maturity."* [science mag.org pg 596] Also the sentiments expressed by Dr. Jay N. Giedd MD echo this Petitioner's stance when he said, *"... of the neuro imaging findings that the pre frontal cortex ( a critical component of networks involved in judgement, decision making and impulse control) continues to mature into a person's mid-twenties has most prominently entered discourse affecting social, legislative judicial, parenting and educational realms."* [Encyclopedia on Early childhood Development]

This Petitioner asserts that any law or legislation that still holds a person to be an adult at the age of 18 years old is antiquated and violates a persons right to constitutional protections in light of todays science. There is nothing substantial or even insubstantial that seperated this Petitioner from the clear, pure definition of juvenility at the age of 19 years old, except public perception and subjective

argument. No science, no proof, no evidence has been provided to substantiate the belief that juvenility ends at the age of 18 years old. To continue to hold this belief has caused this Petitioner and those like him to suffer cruel and unusual punishment by being sentenced to die in prison, without having been given the chance to exhibit the growth and maturity that comes with the vicissitudes of adulthood. Thus causing him to suffer a violation of his 8th amendment protections, 14th amendment right to equal protection and a violation of his 6th amendment right to due process.

To compound this bald assertion that this Petitioner was an adult of 19 years old, Petitioner reminds this court that Petitioner was not examined to assess his mental capacity thus violating his 6th amendment right to due process. The Miller court mandated that before sentencing there should be a check list of things that should be considered Miller compiled a list of seven (7) issues or considerations that should be addressed before sentencing a juvenile. They list as follows:

1. The character and history of the juvenile offender and the specific circumstances of the crime;
2. The background and the emotional and mental development of the juvenile offender;
3. The offenders age and the characteristics that go along with it

including immaturity and the ability to appreciate risks;

4. The juvenile's family and home environment;
5. The circumstances of crime and the extent to which peer pressure and familial pressures may have factored into juveniles participation;
6. The juvenile's relative inability to deal with police and procedures or to assist his own attorney;
7. The offenders potential for rehabilitation...

This Petitioner was a 19 year old drug addicted father of three and alcoholic who was influenced by a 26 year old co-defendant. Suffering from the horrific and tragic loss of an uncle who killed himself and his son in a murder suicide, fighting drug abuse & trying to raise three children. All while experiencing low self esteem, suicidal tendencies, negative peer pressure from older influences, mounting pressure to provide in a one parent home, as well as other outside environmental issues were never taken into account. With all these things being on record, no one took the time out to pursue how these things affected this Petitioner's mental growth and overall emotional stability.

**Commonwealth v. Sourbeer**, 492 Pa. 17, 422 A.2d 116, 1980 Pa.LEXIS 495 states, "*when a defendant is charged with a crime which requires that a specific intent or mental state be established in order to constitute the crime or*

*degree of crime, you must take all evidence into consideration and determine therefrom if, at the time when the crime was committed, the defendant was suffering from abnormal mental or physical conditions however counsed, which prevented him from forming the specific intent essential to constitute the crime or degree of crime with which he is charged."* i.e. (mens rea) The drug use of this Petitioner was established during his trial as well as his alcoholism. In fact during his statement given to the police during interrogation Petitioner admits to have been drinking.

The question now becomes how much more damage occurs to the juvenile brain under heavy usage of drugs and alcohol and how much more do these factors contribute to the abnormality of an already underdeveloped brain. SAMHSA. Gov states, *"Alcohol can cause alteration in the structure and function of the developing brain which continues to mature into a persons mid-twenties and it may have consequences reaching far beyond adolescence."*

At 19 yrs old this Petitioner had a fill six (6) years of maturation left that the courts arbitrarily chose to ignore, even though all science prove that a juvenile is a juvenile until at least 25 years old. Considering this point Petitioner reminds the court of the language of the case **People v. Harmon**, 132 S.Ct (2013) when the court stated, *"... a judge must have the opportunity to look at all of the*

*circumstances involved before determining that life without the possibility of parole is the appropriate penalty." Also the Miller court establish while quoting Eddings v. Oklahoma, 455 U.S. 104 (1982), "Just as the chronological age of a minor is a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in assessing his culpability."*

None of these things were taken into account with the Petitioner and due to this, the true nature of this Petitioner's damages were ignored. For anyone to think that a young 19 year old African-American teenaged father of three, who was an addict and alcoholic living in the drug and crime infested inner city of America, will develop "normally", is simply naive to the true harms that exist in such an environment.

Due to the factors exposed throughout this writ this Petitioner asserts and maintains that he was a juvenile at the time of the crimes he was convicted of and as such should be afforded the relief afforded by the dictates of Miller. To hold otherwise puts this Petitioner in a continued state of injustice and a continued violation of his constitutional rights.

Assuming this court disagrees with Petitioner's argument that the age of 19

fits the definition of juvenility. The courts can not argue or disagree with the science stating the brain continues to develop into a persons mid-twenties.

Consequently Petitioner challenges the arbitrary age of 18 years old demarcating juvenility is causing him an on going miscarriage of justice and a violation of his constitutional rights, and quotes the courts stance in *Obergefell*, 576 \_\_\_, 135 S.Ct. 192, L.Ed.2d 609 (2015) "... *The dynamic of the United States constitutional system is that individuals need not await legislative action before asserting a fundamental right... An individual can invoke a right to constitutional protections when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act.*"

This Petitioner has established throughout this writ that his constitutional rights are being violated. One of and the most important of these violations is his 14th Amendment right to equal protection. Separating this Petitioner and all others in his position from the state of juvenility is simply untenable. Social reform is perpetual and forward thinking and the time for change is always right now. The constitution was written for the social etiquette of it's time and since it is the highest law in our land, it must now reflect the social etiquette of our time. To hold on to antiquated subjective beliefs thwarts the growth and maturation of our society and as such we must interpret our most sacred social laws to mirror the

world we live in today. This sentiment was expressed in Obergefell when the courts stated *"In interpreting the equal protection clause, the U.S. Supreme Court has recognized that new insight and societal understandings reveal unjustified inequality within the United States most fundamental institutions that once passed unnoticed and unchallenged."*

This court may find itself in a unique and difficult position. However it is the purpose of this court to sort out and define those arduous questions, as *Chief justice Marshall opined in his exposition of Cohens v. Virginia, 6 wheat 264 (1821)*

*"... with whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise the jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid, but we cannot avoid them.*

Id. at 404 [U.S. v. Will, 449 U.S. 200 (1980)]

With the science now being strong and conclusive to support this Petitioner's claims, should there be any issue of what defines juvenility? The science says that juvenility last until at least 25 years old. This science has become a matter of fact and cannot be disputed. For someone to take part and leave some,

injuries to those included in the left ever portion. What legislation, what science, what proof does the court stand on to support its ideology that a person is an adult at 19 years old? A 19 year old cannot drink alcohol, cannot purchase certain firearms, cannot hold certain elected offices because people understand that a 19 year old child is an impressionable and incorrigible as any 15, 16, or 17 year old.

*Tyler v. Cain, 533 U.S. 566 (2001) states, "... the matter is one of logic. If case one holds that all men are mortal and case two holds that socrates is a man, we do not need case three to hold that socrates is a mortal. It is a matter of law."*

The same is for juvenility. If science tells us that juvenility lasts until 25 and Petitioner was 19, why do we need to discuss his juvenility? It is a matter of law. Especially when you consider that **Pursuant to Pennsylvania Rules of Juvenile Court Procedure Rule 120 definitions; a juvenile is defined as, "A person who has attained the age of (10) ten years of age and is not yet twenty one (21) years of age."**

By not adhering to their own definition of juvenility the lower courts of Pennsylvania have contrasted the language of the supremacy clause of the constitution of America. *Adkins v. Children's Hospital, 261 U.S. 525, 544, 43 S.Ct. 394, 24 A.L.R. 1238, "The supremacy of the constitution as law is thus declared without qualification. That supremacy is absolute... therefore, by the very*

*nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the Supreme law and reject the inferior statute whenever the two conflict..."*

This Petitioner believes he has proven overwhelmingly that the age of 19 years old necessitates that he be given relief under the mandates of Miller/Montgomery as that was his age at the time of the crimes he was convicted of. To hold otherwise violates his 14th Const. Amend. right to equal protection. [Chrisholm v. Georgia 2 U.S. (2 Dall.) 419, 1 L.Ed 440 (1793)], *"The rights of individuals and the justice due to them, are as dear and precious as those of states. Indeed the latter are founded upon the former; and the great end and object of them must be to secure and support the rights of individuals, or else vain is government."*

*"No state shall ... deny to any person within its jurisdiction the equal protection of the laws." [Fourteenth Amend, Sec.1]*

2. As to the second question; Whether the Petitioner met the timeliness exception under 42 Pa. C.S. § 9545(b)(1)(iii) where Petitioner asserted he was entitled to a resentencing hearing as a result of the ruling handed down by the

Miller court, Petitioner; establishes the following:

The claim that Petitioner is untimely is simply false and a bald assertion erroneously applied by the Pennsylvania Superior Court and Supreme Courts and can be readily refuted by the trial court's own record. Judge Gary S. Glazer dismissed Petitioner's P.C.R.A for "Lack of Merit," and actually acknowledges Petitioner's "timeliness," **see Appendix "B"** where Petitioner has provided trial courts dismissal Order.

For the Superior Court and Supreme Court of Pennsylvania to uphold and maintain that Petitioner is untimely is a knowingly perpetrated farce and an attempt to deny this Petitioner his right to the Due Process rights of the 6th Amendment, causing a continued injury and violation of Petitioner's 14th Amendment right to Equal Protection and protections against cruel and unusual punishment under the 8th Amendment. Marbury v. Madison, 5 U.S. 137 1 cranch 137, 2 L.Ed 60 (1803) states, *"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection."*

Petitioner only seeks to have his injuries corrected and the Pennsylvania

lower courts have conspired to injure Petitioner further by denying him his right to Appellant Due Process.

This Petitioner is *pro se* and does not in any way feign to possess the adroitness of trained counsel. He does however seek the protections of equality by the government meant to protect him. If the Federal Government allows a state to dictate its own flagitious agendas standing outside of the constitution, then what recourse does the injured possess? This sentiment was expressed over a century ago in the case of, *Downes v. Bidwell* 182 U.S. 244 (1901) when the U.S. court stated in part, "... *It will be an evil day for American liberty if the theory of a government outside the supreme law of the land finds lodgement in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violations of the principles of the constitution.*"

Petitioner has provided documentation to support his stance and assertion. The lower courts provide erroneous language claiming that Petitioner's period for seeking discretionary review became void in 2004. The Pennsylvania Superior Court is simply wrong! The P.C.R.A. in question in which Petitioner sought relief under the mandates of *Miller* was filed on March 23, 2016 and received by the trial court on June 8, 2016. *Miller* was decided in 2012 but was not made retroactive until the ruling of *Montgomery v. Louisiana*, 136 S.Ct. 718, 744

(2016) Therefore this Petitioner's filing did indeed meet the 60 day timeliness requirement of **42 Pa.C.S.A. § 9545(b)(2)**. This was Petitioner's third P.C.R.A and trial court dismissed it for "Lack of merit" and not timeliness as both the Superior Court and Supreme Court of Pennsylvania erroneously assert. Petitioner has provided copies of both the Superior Court ruling and the Supreme Court's ruling as Exhibits "A", and "C".

To deny this Petitioner relief would be simply a miscarriage of justice and a continued violation of this Petitioner's appellant Due process rights. Inadvertent or otherwise the Pennsylvania lower courts were simply in error asserting that Petitioner was time barred and untimely. *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) states, " ... *the constitution divides authority between federal and state governments for the protection of individuals ...*" Also in *New York v. United States*, 505 U.S. 144 (1992) quoting *Gregory v. Ashcroft*, 501 U.S. at 458, "*a healthy balance of power between the states and the Federal Government will reduce the risk of tyranny and abuse from either front.*"

As stated previously petitioner is ***Pro se*** and does not possess the necessary training to navigate the language of the legal system. He at best has common intelligence and thus subject to the courts rendering of the laws and statutes provided throughout this writ. He does however continue to question the arbitrary

age of 18 ending juvenility as the age of juvenility may be different in different states and subject to case specific situations. Thus rendering the age of juvenility vague at best. **Winters v. People of New York**, 333 U.S. 507; 68 S.Ct 665 (1948) *"men of common intelligence cannot be required to guess at the meaning of penal enactment."*

In summation Petitioner believes he has established that the age of juvenility includes not only 18 but also the ages of 19, 20 & 21 years old as defined by Pennsylvania's own definition. As such Petitioner believes he should be entitled to relief under **Miller**. Also due to the numerous and substantial violations of Petitioner's rights to due process protections under the 6th Amendment and violations of his protections against cruel and unusual punishment under the 8th amendments and violations of equal protections under the 14th amendment Petitioner humbly requests release from custody as it has been established that, *"No man shall be taken, no man shall be disseised, without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."* **Proprietors of Charles River Bridge v. Proprietors of Warren Bridge** 36 U.S. 420 (1837)]

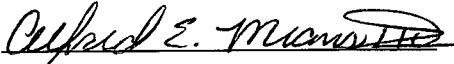
In considering this Petitioner's plea petitioner would remind this court of the

sentiment expressed by our former President Calvin Coolidge when he addressed the Massachusetts State Senate when he said, *"Men do not make laws. They do but discover them. Laws must be justified by something more than the will of the majority. They must rest on the eternal foundation of righteousness..."*

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

  
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