

No.
IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD HOLMAN, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Supreme Court erred by holding that a sentencing hearing conducted in 1981 passed constitutional muster pursuant to *Miller v. Alabama*, where Mr. Holman was a juvenile with mental and intellectual disabilities, was convicted via accountability, and where trial counsel declined to present evidence in mitigation, where the State argued that but for Mr. Holman's youth, he would have been put to death, and where the trial court neither mentioned Mr. Holman's youth nor found any factors in mitigation.

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The petitioner, Richard Holman, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Supreme Court (Appendix A) is reported at 2017 IL 120655, and is published.

JURISDICTION

On September 21, 2017, the Illinois Supreme Court issued an opinion. No petition for rehearing was filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS INVOLVED

Eighth Amendment to the United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment to the United States Constitution

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RELEVANT STATUTORY PROVISIONS INVOLVED

730 ILL. COMP. STAT. 5/5-4.5-105 (2016)

(a) On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence:

(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;

(2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;

(3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(4) the person's potential for rehabilitation or evidence of rehabilitation, or both; family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(5) the circumstances of the offense;

(6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;

(7) whether the person was able to meaningfully participate in his or her defense;

(8) the person's prior juvenile or criminal history; and

(9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.

Ill. Rev. Stat., 1978, Ch. 38, § 1005-5-3.1(a)

(a) The following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:

(1) the defendant's criminal conduct neither caused nor threatened serious physical harm to another;

(2) the defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another;

(3) the defendant acted under a strong provocation;

(4) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(5) the defendant's criminal conduct was induced or facilitated by someone other than the defendant;

(6) the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;

(7) the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(8) the defendant's criminal conduct was the result of circumstances unlikely to recur;

(9) the character and attitudes of the defendant indicate that he is unlikely to commit another crime;

(10) the defendant is particularly likely to comply with the terms of a period of probation;

(11) the imprisonment of the defendant would entail excessive hardship to his dependents;

(12) the imprisonment of the defendant would endanger his or her medical condition.

STATEMENT OF THE CASE

Mr. Holman was 17 years old with intellectual disabilities and organic brain damage when he was sentenced to serve natural life in prison without the possibility of release. (R.C111) He has now been incarcerated for 38 years.¹ Mr. Holman was a teenager when he was found guilty of murder by accountability² for crimes he allegedly committed with his adult co-defendant, who was later put to death.³ (R.C1, 63, 68, 103; R.623,624,639) Three robberies and murders took place over the course of several days, and he was tried for each murder separately. Mr. Holman was sentenced to serve a 40-year term of imprisonment for the first murder, and in the second, he was sentenced to serve a 35-year term of imprisonment, with the sentences to be served consecutively. (R.C100) For the final conviction, the one at issue here, Mr. Holman received a

¹Mr. Davis has been in custody since September 5, 1979. See Illinois Department of Corrections Inmate page: <https://www.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx> (last visited on December 8, 2017).

²Mr. Holman maintained that he was involved in the fencing of stolen items but he was not present when the murders took place. (R.C100)

³Mr. Davis was put to death for the murder of Charles Biebel, one of the individuals killed as a result of the string of robberies allegedly committed by Mr. Davis and Mr. Holman, though charges against Mr. Holman for Mr. Beibel's murder were eventually dismissed by the State. *People v. Davis*, 95 Ill. 2d 1 (1983). Like Mr. Holman, Mr. Davis suffered from intellectual disabilities, and whether he was able to actually draft the confession that led to his death sentence was still disputed when he was put to death on May 17, 1995. See *Diverse Group Tries to Stop Illinois Inmates Execution*, New York Times, May 11, 1995 <http://www.nytimes.com/1995/05/11/us/diverse-group-tries-to-stop-illinois-inmate-s-execution.html> (discussing police officers and prosecutors opposed to putting Mr. Davis to death); *Why You Should Care about Girvies Davis*, Chicago Tribune, May 21, 2006, http://articles.chicagotribune.com/2006-05-21/news/0605210007_1_confessions-execution-illinois-death-row.

sentence of natural life with no possibility for release.

Prior to Mr. Holman's sentencing in 1981, the trial court ordered a pre-sentence investigation report ("PSI). The first page of that report mistakenly showed that Mr. Holman was born on August 20, 1960,⁴ which would have made him 18 years old at the time of the murder. (R.C97)

According to the PSI, an October 9, 1975, psychological evaluation from the St. Clair County Home for Children in East St. Louis, Illinois, revealed that Mr. Holman "scored consistently in the mildly retarded range." (R.C113). Mr. Holman was admitted to a children's home as an in-patient from September 15 to November 2, 1976, where he was evaluated by a psychiatrist and tested by a psychologist. (R.C113) The diagnosis was mild mental retardation. (R.C113) According to the report: "Psychological testing showed that he had a rather high need for approval 'which sets him up as prey for peers of higher intelligence who can influence him to do bad deeds.'" (R.C113) The report also indicated that Mr. Holman "does not comprehend all that is going on around him, but will do whatever is asked of him, whether it is good or bad." (R.C113)

The psychiatrist report attached to the PSI indicated that Mr. Holman had trouble understanding questions posed to him by police officers and that he did not understand who had been murdered. (R.C108) He also commented that "My lawyer won't tell me either. They say I am stupid." (R.C108) The psychiatrist also determined that over the course of the interview, Mr. Holman's attitude was "a mixture of extreme apprehension with a sense of hopelessness, some depression, and maybe a touch of

⁴Mr. Holman's actual date of birth was August 20, 1961.

manipulativeness. He looked scared and trembled, was tearful, and actually cried several times.” (R.C108)

Prior to the PSI, in 1977 and 1978, a judge ordered Mr. Holman to be examined by a psychiatrist; that evaluation led to a six-month “hospitalization” at the Murray Children’s Center in Centralia, Illinois. (R.C108) At some point prior to his hospitalization, Mr. Holman had received a head injury from a fall from a two-story building in Rockford, Illinois (R.C109), and was seen by a psychiatrist in Rockford. (R.C108) That psychiatrist had tentatively diagnosed Mr. Holman’s IQ as borderline or dull normal. (R.C109)

According to another report, Mr. Holman’s verbal IQ was 73, borderline mentally retarded (R.C111) His performance IQ was 64, mildly retarded (R.C111) Further testing showed that there was “significant evidence” and a “high probability” of organic brain damage. (R.C111) In reaching this conclusion, the evaluator noted that Mr. Holman had difficulty relating time sequences of events and dates, “even pausing a considerable time to remember the year in which he was born.” (R.C111) Based on the testing, Mr. Holman had strong indications of neurological impairment. (R.C111)

Sentencing

At the sentencing hearing in 1981, defense counsel called no witnesses, submitted no exhibits, and failed to correct the mistake regarding Mr. Holman’s age in the PSI. (R.727) Neither defense counsel nor the State explicitly argued statutory factors in mitigation or aggravation.

At the hearing, the State argued that Mr. Holman should be sentenced to a term of natural life imprisonment, arguing that only “an accident of birth” kept him from the

death penalty because Mr. Holman was “too young when these offenses were committed to have qualified.” (R.736-37) Defense counsel did not ask for any specific term, but argued:

Your Honor, the question is, as I see it before this Court, is whether this Court should assess natural life to this very young man. *** I would strongly reject the suggestion of the State that this Court has no other alternative. *** I think that this Court has sentencing alternatives, and the Court ought to consider those. *** The question before this Court is whether this Court should remove this individual from society forever, or whether he should be given an opportunity to again participate in society. *** In line with that, Your Honor, I would ask this Court for some other alternative than that requested by the State and to give this young man an opportunity.

(R.738-40)

In response to defense counsel, the State argued that “it’s nice to say, well yeah, rehabilitate *** [but] [t]his young man has been given help at least from 1975 with his first involvement with the Court systems in the juvenile facilities.” (R.741) The State also commented that it would like to give Mr. Holman a “lethal dose of medicine” but was precluded from doing so due to an “accident at birth.” (R.741)

The court spoke briefly before imposing sentence:

The Court is ready to pronounce sentence. In this sentence, the Court has considered the factors enumerated in the Criminal Code as factors in mitigation and factors in aggravation. The Court does not find any factors in mitigation. There are many factors in aggravation. The Court has considered the evidence presented at the trial in this cause. The Court has considered the presentence investigation. The Court has considered the evidence presented at this hearing today and the arguments of counsel. And the Court believes that this Defendant cannot be rehabilitated and that it is important that society be protected from this Defendant.

It is, therefore, the sentence of this Court, and you are hereby sentenced, Mr. Holman, to the Department of Corrections for the rest of your natural life. Mittimus is to issue.

(R.742)

Subsequent proceedings

Mr. Holman's conviction was affirmed on direct appeal, and he did not raise a sentencing issue. *People v. Holman*, 115 Ill. App. 3d 60 (5th Dist. 1983). Mr. Holman subsequently filed numerous collateral attacks alleging a variety of issues, all of which were ultimately dismissed by the trial court. (R.C168-70, 173-77, 215, 348, 421; R.753)

On October 7, 2010, Mr. Holman filed a motion asking leave to file a successive post-conviction petition raising a sentencing issue. (R.C472) The appellate court affirmed the trial court's dismissal, and Mr. Holman appealed to the Illinois Supreme Court. The Illinois Supreme Court denied the petition for leave to appeal, but entered a supervisory order vacating the appellate court's decision and ordering it to reconsider the case in light of *People v. Davis*, 2014 IL 115595 (2014) (holding that *Miller v. Alabama*, was retroactive). See *People v. Holman*, 2012 IL App (5th) 100587-U; *People v. Holman*, 2016 IL App (5th) 100587-B, ¶¶ 33-34.

On remand, the appellate court held that Mr. Holman's sentencing hearing satisfied the mandates of *Miller v. Alabama*, 2016 IL App (5th) 100587-B at ¶¶ 1, 46 ("This appeal requires us to consider whether a natural-life sentence without the possibility of parole may be imposed on a defendant who was a minor at the time of the offense when the sentencing court had the discretion to impose a lesser sentence."). In reaching this holding, the appellate court recited the recent changes in juvenile law brought about by *Miller v. Alabama*, and noted that there were at least three different "conclusions" as to what constituted a *Miller* hearing. *Holman*, 2016 IL App (5th) 100587-B at ¶ 33. The appellate court briefly outlined the three theories on

resentencing post-*Miller*, ranging from those courts that held that sentencing courts must consider the *Miller*-factors, to courts that held a sentencing court need only consider “youth” without utilizing a specific set of factors. *Id.* at ¶ 34. The appellate court found that the last approach – which required nothing more from the sentencing court than it consider youth as a mitigating circumstance – was the approach most in line with *Montgomery* and *Miller*. The appellate court then held that the sentencing hearing in the present case was sufficient, even where the trial court explicitly found that there were no factors in mitigation, never acknowledged Mr. Holman’s age on the record, and never discussed any factor that dealt with youth and its attendant circumstances as defined by *Miller*. *Id.* at ¶ 42. The appellate court reasoned that even though the trial court found no factor existed in mitigation, it had necessarily considered “youth” because the trial court had reviewed the PSI, which contained information about Mr. Holman’s youth, and because defense counsel had made an argument that Mr. Holman’s youth should be considered. *Id.* However, youth was not a statutory factor in mitigation at the time of Mr. Holman’s sentencing. Ill. Rev. Stat., 1978, Ch. 38, § 1005-5-3.1(a) (1980).

The appellate court noted that it was not possible to determine how much weight the trial court gave to Mr. Holman’s status as a juvenile. *Id.* at ¶ 43. The appellate court concluded, however, that since the trial court knew that Mr. Holman was a juvenile, “we *presume* the court takes into account mitigating evidence that is before it.” *Id.* (emphasis added) In affirming the trial court’s sentence, the appellate court stated: “The [trial] court expressly found that the defendant had no rehabilitative potential. In the face of all this aggravating evidence, this finding does not indicate,

without more, that the court failed to consider the mitigating evidence before it.” *Id.* at ¶ 46.

Mr. Holman subsequently filed a petition for leave to appeal to the Illinois Supreme Court, raising only two issues: what factors must be considered by the trial court in order for a sentencing hearing to be constitutional in light of *Miller* and whether Mr. Holman received an adequate sentencing hearing pursuant to *Miller*. The Illinois Supreme Court granted Mr. Holman’s petition on September 28, 2016.

The Illinois Supreme Court held that *Miller* applied to Mr. Holman, and that in assessing whether Mr. Holman received an adequate sentencing hearing, courts should review the record in light of the factors enumerated in *Miller*. *Holman*, 2017 IL 120655, at ¶ 44. The *Holman* court further reasoned that any inquiry is “backwards-looking.” *Id.* at ¶ 47. In order to determine whether Mr. Holman received an adequate *Miller* hearing, the Illinois Supreme Court reasoned that it should “look at the cold record to determine if the trial court considered such evidence [of youth and its attendant circumstances] at the defendant’s original sentencing hearing.” *Id.*

In holding that Mr. Holman had received an adequate sentencing hearing, the Illinois Supreme Court highlighted several facts from the sentencing hearing. First, the *Holman* court noted that the trial court was aware of Mr. Holman’s age,⁵ “and the prosecutor and the defendant’s attorney both highlighted his age in their arguments.” *Id.* at ¶ 48. The court stated that while the PSI and other reports provided some information about Mr. Holman, none of them “depict[ed] him as immature, impetuous,

⁵While defense counsel and the State made general arguments about Mr. Holman’s age, no one on the record corrected the PSI regarding Mr. Holman’s age.

or unaware of risks.” *Id.* The court also found it persuasive that while his father and stepfather were both dead and his mother did not wish to offer evidence of mitigation on her son’s behalf, Mr. Holman “reportedly maintained a close relationship with his mother and siblings.” *Id.* Further, according to the court, while Mr. Holman was convicted via accountability and there was some dispute as to who actually murdered the victim, “both [defendants] were intimately involved with the offense.” *Id.*

The Illinois Supreme Court also emphasized that Mr. Holman had a chance to present evidence related to the *Miller* factors at his 1981 sentencing hearing, but chose not to do so. *Id.* at ¶ 49. To illustrate this point, the court noted that while the “PSI alerted the trial court to the defendant’s susceptibility to peer pressure, as well as his low intelligence and possible brain damage from a head injury, [] there was nothing presented at trial or sentencing to indicate that the defendant was incompetent or could not communicat[e] with police officers or prosecutors or assist his own attorney.” *Id.* at ¶ 48. Finally, defense counsel declined to offer any evidence in mitigation, and “in short, the defendant had every opportunity to present evidence to show that his criminal conduct was the product of immaturity and not incorrigibility.” *Id.* at ¶ 49. “Thus, the trial court had no evidence to consider on any of the statutory factors in mitigation, but some evidence related to [the] *Miller* factors. On the other side of the scale, the trial court had significant evidence to consider on the statutory factors in aggravation.” *Id.* at ¶ 50. Based on this evidence, the Illinois Supreme Court reasoned that the trial court “concluded that the defendant’s conduct placed him beyond rehabilitation,” and as a result, the court held that Mr. Holman’s sentence was constitutional pursuant to *Miller*. *Id.*

REASON FOR GRANTING CERTIORARI

I. This Court should grant review to consider whether the Illinois Supreme Court erred by holding that a sentencing hearing conducted in 1981 passed constitutional muster pursuant to *Miller v. Alabama*, where Mr. Holman was a juvenile with mental and intellectual disabilities, was convicted via accountability, and where trial counsel declined to present evidence in mitigation, where the State argued that but for Mr. Holman's youth, he would have been put to death, and where the trial court neither mentioned Mr. Holman's youth nor found any factors in mitigation.

This Court made clear in *Miller v. Alabama*, 567 U.S. 460 (2012), that a trial court must consider youth and its attendant circumstances before sentencing a juvenile to a sentence of life without parole (natural life). Both this Court in *Montgomery v. Louisiana*, 136 U.S. Ct. 718 (2016), and the Illinois Supreme Court in *People v. Davis*, 2014 IL 115595, found that *Miller's* holding is retroactive and applies to defendants like Mr. Holman, who may have been sentenced to natural life in the past, sometimes decades before *Miller* was decided. Thus, the natural question becomes – how does a reviewing court determine whether a sentencing hearing like Mr. Holman's, which occurred in 1981, more than three decades before either *Miller* or the science supporting *Miller* existed, comport with the requirements of *Miller*.

Much like other states across the country, Illinois responded to *Miller* by adopting a series of factors that courts should consider when sentencing a juvenile. 730 ILL COMP. STAT. 5/5-4.5-105 (eff. Jan. 1, 2016). For those juveniles who were sentenced before the new sentencing guidelines take effect, the Illinois Supreme Court held that reviewing courts should look to the *Miller* factors in determining whether a juvenile received a hearing pre-*Miller* that passes constitutional muster. *Holman*, 2017 IL 120655, ¶¶ 44-47. This review, according to the Illinois Supreme Court, is “backwards-

looking” based on a “cold record.” *Id.* at ¶ 47.

Mr. Holman does not challenge the Illinois Supreme Court’s adoption of the *Miller* factors or argue that the review should not be “backwards-looking,” but rather, he challenges the actual application of those factors to this cold record. In the instant case, *Miller*’s requirements have been ignored. Rather than resentencing Mr. Holman for a crime that took place 38 years ago using the guidelines set forth by this Court in *Miller* and directly adopted by the Illinois Supreme Court, it instead relied on Mr. Holman’s previous sentencing hearing, finding that it was constitutional. Primarily, the *Holman* court relied on two theories to affirm Mr. Holman’s pre-*Miller* sentencing hearing. First, it relied on a lack of evidence related to the mitigating factor of youth – without acknowledging how counsel should have known to present what did not yet exist in the law. Second, the court relied on the evidence presented related to factors in aggravation without reviewing that evidence through the mandatory lens of youth and its attendant circumstances.

But a review of the sentencing hearing shows that nothing beyond Mr. Holman’s age was ever mentioned as anything more than a reason why the State could not seek the death penalty. Since this sentencing hearing occurred, more than three decades before *Miller*, can we realistically believe that the trial court was able to somehow presciently determine that Mr. Holman’s youth and its characteristics were factors in mitigation, especially where the trial court never even mentioned Mr. Holman’s age in stating its reasoning? Nothing in the current record suggests that this trial court made such a prescient determination. Moreover, this pre-*Miller* hearing cannot take the place of a *Miller* sentencing hearing because the trial court failed to adequately

consider youth and its attendant circumstances and because it established a presumption in favor of natural life rather than a presumption against it.

As more records like Mr. Holman appear before reviewing courts, more and more judges will be called upon to determine from a cold record whether a judge, sometimes decades in the past, issued a decision that complied with *Miller*. Is mere conjecture based on inferences drawn from decades old records sufficient, or does *Miller* require more? Guidance is needed from this Court to determine what constitutes an adequate consideration of youth based on a cold record created decades ago.

A. Miller v. Alabama and Montgomery v. Louisiana require more than the mere mention of youth prior to imposing a natural life sentence.

Children are constitutionally different from adults. *Montgomery*, 136 S.Ct. at 736-37 (“[T]his Court has said in *Roper*, *Graham*, and *Miller* [that] children are constitutionally different from adults in their level of culpability.”). Thus, a sentence of life without parole violates the Eighth Amendment’s prohibition on cruel and unusual punishment if the trial court imposes that sentence without considering the defendant’s youth and the attendant mitigating factors mandated by *Miller*.

For a sentencing hearing to be constitutionally sound, at the time of sentencing, the sentencer must follow a process set forth in *Miller*:

Our decision does not categorically bar a penalty for a class of offenders or type of crime – as, for example, we did in *Roper* or *Graham*. Instead, it mandates only that a sentencer follow a certain process – considering an offender’s youth and attendant characteristics – before imposing a particular penalty.

Miller, 567 U.S. at 483. In requiring this process, this Court stated, “our decision flows straightforwardly from our precedents: specifically, the principle of *Roper*, *Graham*,

and our individualized sentencing cases that youth matters for purposes of meting out the law's most serious punishments.” *Id.* This procedure is necessary in order to ensure that only the “rare and uncommon” juvenile would face a natural life sentence. Any sentence – even ones handed down decades ago – must still comply with this process before allowing a juvenile to serve a natural life sentence.

B. The Illinois Supreme Court Erred in Finding that Mr. Holman’s Pre-*Miller* sentencing hearing complied with *Miller*.

In Mr. Holman’s case, the trial court did not consider youth. In fact, at no point at the sentencing hearing did the trial court acknowledge that Mr. Holman was a juvenile, let alone indicate that his youth was a mitigating factor. Even the reviewing courts pointed to only a mention of age by the parties, not any consideration of youth or its attendant circumstances by the trial court. Compare *Holman*, 2016 IL App (5th) 100587-B at ¶ 42 (noting that the trial court was aware of Mr. Holman’s age based upon the PSI and defense counsel’s arguments); *Holman*, 2017 IL 120655, ¶ 48 (The trial court knew the defendant was 17 at the time of the offense, and the prosecutor and the defendant’s attorney both highlighted his age in their arguments.) with *Tatum v. Arizona*, 137 S.Ct. 11, 12 (2016) (Sotomayor, J., concurring) (mem.) (“The sentencing judge found that [the juvenile’s] age at the time of his offence ... qualified as a statutory mitigating factor [but] minimized the relevance of [the juvenile’s] troubled childhood”).

Despite this “knowledge,” nothing in the record suggests that the trial court considered youth as anything other than a chronological fact. In fact, the Illinois Supreme Court’s assertion that the parties made an argument about age highlights the problem. The State’s argument was nothing more than an insinuation that natural life

was the appropriate choice because death was not available due to “the accident” of Mr. Holman’s age.

The record here contradicts any suggestion that anyone at the sentencing hearing – the trial court, the State, or defense – operated from the premise that the presumption at sentencing should be against natural life. Defense counsel made a vague plea for mercy without suggesting a sentence, and the State argued that Mr. Holman’s age was all that kept him from death. Neither of these arguments indicate that anyone at Mr. Holman’s sentencing hearing believed that only the rarest juvenile should serve natural life.

The Illinois Supreme Court’s decision, likewise, relies on presumptions. Primarily, the Illinois Supreme Court reviewed the sentencing hearing through the lens of modern jurisprudence, imputing to the trial court and to the parties knowledge of the law and science that was simply not available to them at the time. The Illinois Supreme Court, for example, states that nothing in the record indicated Mr. Holman “was incompetent and could not communicate with police officers or prosecutors or assist his own attorney.” *Holman*, 2017 IL 120655, ¶ 48. First, the Illinois Supreme Court’s finding is wrong. The record does indicate – in the PSI no less – that Mr. Holman had trouble communicating with both police and counsel, and he often struggled to comprehend what was happening around him. (R.C108, 113) According to the PSI, Mr. Holman explained to the psychiatrist that the detective he spoke with “seemed mad at him and hit him” when Mr. Holman “didn’t understand most of the questions.” (R.C108) He did not understand what he was charged with, and stated: “My lawyer won’t tell me ...They say I am stupid.” (R.C108) So, the record more than speaks

to Mr. Holman's limited ability to understand police or help in his defense; the Illinois Supreme Court chose to ignore these statements in order to affirm his natural life sentence.

But even assuming the record was silent, had Mr. Holman been sentenced today, it might have been appropriate to impute the trial court with the knowledge that children often have trouble communicating with police or attorneys, based on this Court's findings. *JDB v. North Carolina*, 564 U.S. 261, 281 (2011) ("To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody — and thus to ignore the very real differences between children and adults — would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.). In such a hearing today, the lack of evidence regarding Mr. Holman's inability to communicate with police or counsel might show that no evidence existed. But to make this presumption about a 1981 sentencing hearing more than thirty years before this Court's decision in *JDB* is to go too far.

Similarly, the *Holman* court also relied on defense counsel's failure to put on evidence regarding Mr. Holman's youth and circumstances. *Id.* at ¶ 49. Such reliance here is questionable at best given that defense counsel admitted that he had not spoken to Mr. Holman since the trial. (R.733) We cannot operate under a fiction that trial counsel's failure to present evidence of Mr. Holman's youth as mitigation was strategic, where he admitted not even talking to his client.

But in any event, the necessity of presenting that evidence did not exist at the time of Mr. Holman's 1981 sentencing hearing. This Court acknowledged that science has continued to evolve to support the idea that children are different than their adult

counterparts, and as a result, they are less culpable than adults. Compare *Roper v. Simmons*, 543 U.S. 551, 569-70 (2003) (citing to psychological studies from 1968, 1992, and 2003) with *Miller*, 560 U.S. 460, note 5 (“The evidence presented to us in these cases indicates that the science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger.”). This Court’s own jurisprudence relies on scientific data that simply did not exist, for the most part, at the time Mr. Holman was sentenced.

Consider that *JDB*, *Roper*, *Graham* and *Miller* cited to *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982), for the proposition that age has long been considered more than a chronological fact. *JDB*, 564 U.S. at 272; *Graham*, 560 U.S. 48, 91 (2011); *Miller*, 560 U.S. at 476. In other words, this Court determined in 1982 that youth was more than a chronological fact, so when *JDB*, *Roper*, *Graham*, and *Miller* found that youth was more than a chronological fact, it should not come as a surprise to anyone. But consider that this Court’s statement that youth was more than a chronological fact occurred *after* Mr. Holman’s sentencing hearing. *Eddings* did not exist when Mr. Holman was sentenced.

Any modern jurist would recognize this fundamental fact, yet the trial court sentencing Mr. Holman to natural life did so not only in a pre-*Miller* era, but before this Court’s basic finding in *Eddings* that youth was more than a chronological fact. To insist, as both the Illinois Appellate Court and Supreme Court did in this case, that Mr. Holman received an adequate sentencing hearing is to rely on a presumption about the understanding of youth and its circumstances that simply did not exist at the time. To do so in order to find a pre-*Miller* sentencing hearing constitutional is to ignore both

the direct mandate and the reasoning in *Miller*.

Moreover, as Justice Sotomayor made clear in her concurrence in *Tatum v. Arizona*, more than a mere recitation of the age of the individual is needed:

It is clear after *Montgomery* that the Eighth Amendment requires more than mere consideration of a juvenile offender's age before the imposition of a sentence of life without parole. It requires that a sentencer decide whether the juvenile offender before it is a child "whose crimes reflect transient immaturity" or is one of "those rare children whose crimes reflect irreparable corruption" for whom a life without parole sentence may be appropriate.

137 S.Ct. 11, 13 (2016) (Sotomayor, J., concurring) (mem.) (quoting *Montgomery*, 136 S.Ct. at 734). Remand for a new sentencing hearing is required when "[t]here is no indication that, when the factfinders considered petitioners' youth, they even asked the question *Miller* required them not only to answer, but to answer correctly: whether petitioners' crimes reflected 'transient immaturity or 'irreparable corruption.'" *Adams v. Alabama*, 136 S.Ct. 1796, 1800 (2016).

In Mr. Holman's case, the reviewing courts have consistently justified the trial court's failure to consider youth by looking to the facts of his crime. But bad facts cannot justify the failure to consider youth because it is the lens of youth that determines whether any juvenile, regardless of his crime, is the rare, incorrigible youth. Sure, Mr. Holman's crimes were bad. An individual is not eligible for natural life unless a serious crime has been committed. But so too were the crimes of the children in *Miller*, *Roper*, *Graham*, *Montgomery*, and the companion cases that accompany them. Kuntrell Jackson, like Mr. Holman, was convicted of murder via accountability that took place because of a robbery. *Miller*, 567 U.S. at 465-66. Evan Miller took part in beating a man before setting the victim's home on fire, where the

victim eventually died of smoke inhalation – again, over a robbery. *Id.* at 467-68. Consider the case of *Purcell v. Arizona*, which this Court recently remanded for a new *Miller* hearing. *Tatum*, 137 S.Ct. at 14. The 16-year-old gang member was found guilty of two counts of murder, nine counts of attempted murder, and various other charges, all because he thought someone flashed a rival gang member's sign. *Id.* Yet even those crimes do not, without more, mean that he was the rare juvenile who could not be rehabilitated as he matured.

Similarly, Mr. Holman was convicted of taking part in three murders, but those murders were committed with an adult co-defendant, and Mr. Holman was found guilty by accountability. And Mr. Holman, aside from the normal infirmities associated with youth, was diagnosed with mild mental retardation and organic brain damage. One psychologist had opined that because of Mr. Holman's youth and intellectual functioning, he had an almost pathological need to follow others. If someone convicted by accountability is less culpable than the triggerman, and a juvenile is less culpable than an adult, Mr. Holman's intellectual disabilities and brain damage make him thrice less culpable than his adult counterpart. Yet he was sentenced to natural life.

It is easy enough in theory to point to the probation officer's 1981 statement⁶ that Mr. Holman would not be susceptible to rehabilitation and to the trial court's finding that Mr. Holman could not be rehabilitated at the sentencing hearing – again in 1981 – to conclude that Mr. Holman was incorrigible. But to do so and thereby

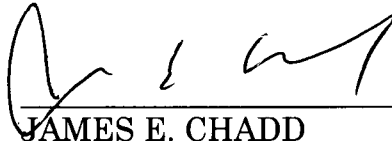
⁶The probationer officer's report also misstates the number of murders Mr. Holman was charged with, conflating the multiple theories of murder (three) charged by the State with the actual number of victims (one). How much this affected the officer's report is unclear, but it is just another reason to mistrust his conclusions.

conclude that Mr. Holman's sentencing hearing is constitutional is to ignore the pervasive taint that clouds a case when no one knew to consider youth and its attendant circumstances as a mitigating factor. Would the probation officer, with all that we know today, have reached the same conclusion? Would the trial court have reached the same conclusion if it had considered youth as more than just a chronological number? The Illinois Supreme Court seems confident that the trial court's mere knowledge of youth is sufficient to allow Mr. Holman to die in prison. But *Miller* requires more. And so should this Court. Therefore, Mr. Holman respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, petitioner, Richard Holman, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court.

Respectfully submitted,



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