

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Adam Titus,

Petitioner,

v.

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

Adam Titus faced a sentencing range of 35 years to 70 years imprisonment for a first-degree murder and armed robbery he was convicted of when he was 17 years old. The sentencing judge imposed discretionary consecutive terms of 38 years for first-degree murder and 18 years for armed robbery. The 18-year sentence for armed robbery was later vacated and merged with 38-year sentence for first-degree murder. The question presented is:

Does the discretionary imposition of a sentence functionally equivalent to a life sentence upon a child violate the Eighth and Fourteenth Amendments?

In further, does the exclusive Juvenile Jurisdiction Provision of the Juvenile Court Act violate the Eighth and Fourteenth Amendments, as it requires all 17-year-olds to be tried and sentenced as adults?

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The petitioner, Adam Titus, respectfully prays that a writ of certiorari be issued to review the judgment below.

Opinion Below

The unpublished decision of the Illinois Appellate Court, cited as *People v. Titus 2017 IL App (1st) 150334-U*, is attached as Appendix A.

The decision of the Illinois Supreme Court, cited as *People v. Titus, No. 122501*, is attached as Appendix B.

Jurisdiction

The Illinois Supreme Court issued an order denying leave to appeal on September 27, 2017. The order is attached as Appendix B. Jurisdiction of this court is invoked pursuant to 28 U.S.C. 1257 (A).

Constitutional and Statutory 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.*

Statutory Provisions Involved

705 ILCS 405/5-130 (IL 2012). *Excluded Jurisdiction.*

(1)(a) The definition of delinquent minor under section 5-120 of this article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with: (i) first-degree murder, (ii) aggravated criminal sexual assault, (iii) aggravated battery with a firearm where the minor personally discharged a firearm as defined in section 2-15.5 of the Criminal Code of 1961, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm.

730 ILCS 5/5-8-1 (IL 2012). *Sentence of Imprisonment for Felony.*

II. Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this section, according to the following limitations:

(1) for first-degree murder.

(1) a term shall be not less than 20 years and not more than 60 years, or

(d)(iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

730 ILCS 5/3-6-3(A)(IL 2012). *Rules and Regulations for Early Release*

(a)(2) The rules and regulations on early release shall provide, with respect to offenses listed in clause (ii)...of this paragraph (2) committed on or after June 19, 1998...the following:

(i) that a prisoner serving a term of imprisonment for first-degree murder...shall receive no good conduct credit and shall serve the entire sentence imposed by the court.

730 ILCS 5/5-5-3.1 (IL 2012). *Factors in Mitigation.*

(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 hardships to his dependents.
 - (12) The imprisonment of the defendant would endanger his or her medical condition.
 - (13) The defendant was mentally retarded as defined in section 5-1-3 of this code.
- (B) If the court, having due regard for the character of the offender, the nature and circumstances of the offense, and the public interest finds that a sentence of imprisonment is the most appropriate disposition of the offender, or where other provisions of this code mandate the imprisonment of the offender, the grounds listed in paragraph (A) of this subsection shall be considered as factors in mitigation of the term imposed.

Statement of the Case

This court held in *Miller v. Alabama*, 132 S.Ct. 2469 (2012) that Eighth and Fourteenth Amendments of the federal constitution prohibit the imposition of mandatory sentences of life imprisonment without the possibility of parole on children convicted of murder. The court affirmed that ruling and found the Miller holding should be applied retroactively to cases on collateral review in *Montgomery v. Louisiana*, 136 S.Ct. 718, 726, 732 (2016).

The issue of whether the federal constitution categorically bars the imposition of mandatory life sentences without parole upon children appears to have been affirmatively decided, the language used in both the Miller and Montgomery decisions invokes the conclusion that the court not only recognized that, at a minimum, sentencing judges must consider the mitigating characteristics of youth, including the higher likelihood of rehabilitation children have than adults, but that such considerations must be made before imposing discretionary life sentences without parole. *Miller* at 2466 – 67. *Montgomery* at 735 – 737. This case presents important constitutional questions left open by this court's opinions in *Miller* and *Montgomery*. Specifically, does the federal constitution categorically require that sentencing courts, in fashioning discretionary de facto life sentences without parole upon children accused of certain offenses, refer to the findings suggested by *Miller* and *Montgomery*? In other words, do the holdings in *Miller* and *Montgomery* apply to discretionary de facto life sentences imposed upon children?

In fact, the Illinois courts interpreting *Montgomery* have gone both ways – that *Montgomery* does or does not apply to discretionary de facto life sentences. Further, the 7th Circuit Court of Appeals in *McKinley v. Butler*, 809 F.3d 908, 910 – 911 (7th Cir. 2016), applied *Miller* retroactively to a discretionary de facto life sentence. *McKinley* was decided just prior to *Montgomery* so there was no actual consideration of *Montgomery* by the 7th Circuit. However, the 7th Circuit noted that this court had, in light of *Miller*, vacated discretionary de facto life sentences in three cases: *Blackwell v. California*, U.S. S.Ct. 837 (2013); *Mauricio v. California*, U.S. 133 S.Ct. 524 (2013); and *Guillen v. California*, U.S. 133 S.Ct. 69 (2012).

Adam Titus was tried and convicted through accountability in 2005 of a first-degree murder and armed robbery that killed Charles Gordon. Titus was initially sentenced to a discretionary de facto life sentence of 38 years for murder with another 18 years for armed robbery to be served consecutively. Later, Titus' sentence was merged and ordered to be served concurrently. Titus' mandatory minimum was 35 years. Titus argues that his sentence was an unconstitutional de facto life sentence that should have been vacated and the cause remanded for a new sentencing hearing. Titus consistently argues and is currently facing a de facto life sentence in prison, which constitutes dying while incarcerated.

Adam Titus was only 17 years old at the time of the offense in this case and had zero prior violent convictions, though Titus had minor offenses in the past. Titus' background study showed that he went to school as a child, had a learning disability, moved around a lot, and got picked on by other children at school growing up. Titus, for the most part, stayed with his grandmother. Titus' mother testified that his grandmother helped her raise him. Titus expressed his sorrow to the Gordon family for Charles' death.

At Titus' jury trial, Nakeshia Banks offered the following testimony: On January 12, 2002, at 5:00 p.m., Titus came to her apartment with a man she did not know called "Meechie" (co-defendant Demetrius Phipps). Titus told Banks to order a pizza using a fake name to be delivered to the vacant apartment next door to Banks' apartment. Approximately ten minutes later, Banks and Jerrica left to go to the store. Charles Gordon had just arrived. Banks told Gordon that Titus would be back to pay for the pizza. Gordon then went upstairs to the vacant apartment. At the same time, Titus and Phipps came around from the other side of the apartment building and proceeded up the stairway. Gordon knocked on the apartment door and left after no one answered. Gordon walked past Titus in the middle of the stairway while descending. Titus approached Gordon from behind and struck him in the back of the head. Titus had something in his hand when he did this, but Banks could not tell what it was. Gordon fell to the bottom of the stairs. Phipps started beating Gordon. Titus soon joined. Banks screamed and told Titus and Phipps to stop but they continued. She then ran away in fear. Banks testified that she heard a gunshot but did not see the actual shooting. Gordon had been shot in the chest. He died the next day from the gunshot wound.

Police responding to the shooting saw three young black men near the scene of the crime. When the officers announced their presence, the three men ran. One of the three men was Titus. Officers saw Titus pull a firearm from his waistband and toss it to the ground as he ran away from them. The officers soon apprehended Titus and recovered the firearm shortly thereafter. The recovered firearm was found to be the same used to murder Charles Gordon. At the Harvey Police station, Titus confessed to being involved in the shooting.

In the videotaped statement, Titus offered the following: Titus admitted planning to rob a pizza delivery person with Demetrius Phipps. The plan was to take the delivery person's cash and run away. Titus gave the firearm to Phipps. When Charles Gordon arrived to deliver the pizza, Titus and Phipps ran around opposite sides of the apartment building. While Gordon descended the stairs, Phipps brandished the firearm to Gordon with the demand, "give me your stuff". Gordon then slipped on the stairs, falling to the ground. While on the ground, Phipps held the firearm to Gordon's head. Gordon replied that he did not have anything. Titus then went through Gordon's pockets and found a few dollar bills and some change. While rummaging through Gordon's pockets, Titus heard a gunshot. Although Titus was standing a couple of feet from Phipps, who had the firearm in his possession, Titus did not check to see whether Gordon had been shot after hearing the gunshot. Phipps and Titus then ran away, but met again later where Phipps returned the firearm to Titus and Titus gave Phipps the money he'd retrieved from Gordon's pocket. Once Phipps passed Titus the firearm, detectives arrived. Titus fled and tossed the firearm to the ground but was eventually caught.

Titus' defense did not put on any evidence during trial and the Court admonished Titus, concerning his right to testify. The jury found Titus guilty of first-degree murder and armed robbery. During sentencing, the trial court noted that Titus was a "young man who was 17 years old", but that was the extent of the trial court's considerations of Titus' youth. He was sentenced to consecutive terms of 38 and 18 years imprisonment.

On direct appeal, the Illinois Supreme Court consolidated Titus' case with LeRatio Smith's case and vacated his conviction and sentence for armed robbery, finding it to have merged with his sentence for murder after the trial court denied defense counsel's request for separate verdict forms for felony and intentional murder. *People v. Smith*, 233 Ill.2d 1, 28 (2009). Titus filed a post-conviction petition on December 14, 2009 that was summarily dismissed on February 22, 2009. The dismissal was affirmed on appeal. *People v. Titus*, 2011 IL App. (1st) 100900-U. Titus filed a successive post-conviction petition on March 6, 2012 and was denied leave to file. The denial was affirmed on appeal. *People v. Titus*, 2014 IL (1st) 141463-U.

On October 8, 2014, Titus filed a motion for leave to file the instant successive post-conviction petition. In this motion and petition, Titus argued, *inter alia*, that:

- (1) His 38-year life sentence is the functional equivalent of a life sentence and, therefore, is unconstitutional under *Miller v. Alabama*, 132 S.Ct. 2455 (2012) and *Graham v. Florida*, 560 U.S. 48 (2010).
- (2) Illinois' exclusive jurisdiction statute violates the federal and state constitutions.

On March 19, 2015, the Circuit Court denied Titus leave to file. On March 7, 2016, the Illinois Supreme Court issued a supervisory order allowing Titus to file a late Notice of Appeal. On appeal, Titus argued that the Circuit Court erred in denying him leave to file where his petition met the cause and prejudice test. The Appellate Court affirmed the denial of leave to file, finding that *Miller* only applied to mandatory sentences, that Titus' 38-year sentence was not a de facto life sentence, and that the exclusive jurisdiction statute was constitutional. *People v. Titus*, 2017 IL App. (1st) 150334-U. Titus filed a Petition for Leave to Appeal to the Illinois Supreme Court which was denied on September 27, 2017. *People v. Titus*, No. 122501 (Petition for Leave to Appeal denied 09/27/2017). (Appendix B.)

Reasons for Granting Certiorari

Adam Titus was convicted of first-degree murder and armed robbery and was subjected to a 35-year mandatory sentence minimum sentence when he was 17 years of age. Titus was initially sentenced to consecutive terms of 38 years for first-degree murder and 18 years for armed robbery, ultimately imposing a de facto life sentence, with no opportunity for an early release. On direct appeal, the court vacated his conviction and sentence for armed robbery, finding it to have merged with his sentence for murder and still considering it as a discretionary de facto life sentence.

The trial court read from the Presentence Investigation Report and stated, "While perhaps the defendant was not mature in his thoughts, he had been a part of the juvenile justice system enough to know what was good and what was not". The judge's main aim was at what Titus should have known from circulating through the juvenile system. In further defense, counsel argued in mitigation that Titus was a "young man, a special education student, with barely an

elementary school education” and that Titus lacked “maturity” and was a follower. The trial court also dismissed these arguments and went with the fact that Titus’ juvenile priors were enough to show that “he knew what was good and what was not”. The trial court also went with the fact that Titus supplied the gun to the shooter and that, by supplying the gun, he supplied the method of murder. This ended up becoming a focus of the trial judge.

As were the youth defendants in *Graham* and *Miller*, Titus was essentially sentenced to die in prison without consideration of the “mitigating qualities of youth” and whether these characteristics rendered a “life-without-parole” sentence disproportionate to him as a 17-year old child. *Miller v. Alabama*, 132 S.Ct. 2455, 2459 (2012); *Graham v. Florida*, 130 S.Ct. 2011, 2025 – 26 (2010). The Appellate Court stated that Titus’ 38-year sentence has not been established as a de facto life sentence. It also stated that there is no bright line rule as to how long a sentence must be to qualify as a de facto life sentence. *People v. Titus*, 2017 IL App. (1st) 150334-U, 91 12.

This Honorable Court should grant review for two reasons. First, this court should resolve the split among state and federal jurisdictions regarding whether term of years sentences that extend beyond a juvenile’s life expectancy are constitutionally equivalent to sentences of life imprisonment without parole. Second, this court should address an issue it did not specifically reach in *Miller* but that was more than hinted at in both *Miller* and *Montgomery v. Louisiana*, 577 U.S. 136 S.Ct. 718 (2016): whether the discretionary imposition of life sentences without parole upon children, or sentences equivalent thereto, violates the Eighth and Fourteenth Amendments when the sentencing court fails to make the findings that have been suggested in both *Miller* and *Montgomery*.

A. Lengthy terms of years sentences that a convicted child will die in prison should be treated the same as sentences of life without parole under the Eighth and Fourteenth Amendments...

This court stated that if a sentencing judge is considering imposing the “harshest possible penalty” to children – life in prison without parole – he is required “to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison. *Miller v. Alabama*, 132 S.Ct. at 2469. Sentencing judge needs to examine the mitigating characteristics of youth “before concluding that life without parole is the appropriate penalty”. Based on scientific studies showing that children are less culpable than adults and that they have more rehabilitative capacity, this court concluded that appropriate occasions for sentencing juveniles to life in prison without the possibility of parole will be uncommon.

It was also addressed in *Montgomery* that children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk taking. Children are also more vulnerable to negative influences and outside pressures, including from their family and peers. They have limited control over their own environment and lack the ability to extricate themselves from horrific, crime producing settings. Finally, a child’s character is not as well formed as an adult’s. Their traits are less fixed and actions less likely to be evidence of irretrievable depravity.

Further, a sentence of life without parole on a juvenile offender cannot take into account, and actually negates, the rehabilitative potential of a juvenile. *Montgomery*, 577 U.S. at 136 S.Ct. at 733; *Miller*, 567 U.S. at 132 S.Ct. at 2465. The failure of the Circuit Court here was to properly consider Titus' rehabilitative potential. The Circuit Court in this case, while giving a statement on its findings and in sentencing Titus to 38 years imprisonment, never made any such findings on how children were different or why Titus was no different than an adult deserving of a lifetime in prison.

One of this court's primary concerns in *Miller* was that state sentencing schemes must provide an opportunity to consider an offender's young age so that a child who has a chance of future restoration to useful citizenship is not resigned to total retribution. *Miller* 132 S.Ct. at 2468. In this case, the applicable sentencing scheme allowed for consideration of Titus' age at the time of sentencing but it did not require it. The statute establishing what factors must be considered in mitigation did not include consideration of the mitigating qualities of youth, nor the higher rehabilitative capacity possessed by children. It required no consideration of age at all, and applied with equal force to adults and children. 730 ILCS 5/5-3.1 (IL 2012).

In affirming Titus' sentence, the Illinois Appellate Court wrote that the trial court considered the characteristics and circumstances of his youth, including his age at the time of the offense and factors in mitigation. *People v. Titus* 2017 IL App. (1st) 150334-U at 91 11. The record itself shows, even though the judge was not explicitly precluded from considering youth and its attendant characteristics and could theoretically have considered them, he did not.

In *Graham* and *Miller*, this court intimated that sentences of life without parole should be treated the same as term of years sentences exceeding the child offender's life expectancy (a.k.a – de facto life sentences) for purposes of the Eighth Amendment. This court explained that life sentences without parole pose “too great a risk of disproportionate punishment” because they fail to provide “a meaningful opportunity for release based on demonstrated maturity and rehabilitation. *Graham*, 130 S.Ct. at 2030. The denial of any opportunity to demonstrate rehabilitation occurs regardless of whether the judge imposes a natural life sentence without parole or a de facto life sentence without parole. Both categories of sentence set expiration of the sentence beyond the life expectancy of the child and provide no opportunity for early release, ensuring the child will die in prison. Federal and state courts are, however, split on whether *Graham* and *Miller* apply to term of years sentences that are functionally equivalent to life sentences without parole.

The 9th Circuit Court of Appeals has found, for instance, that a 254-year sentence was “materially indistinguishable from a life sentence without parole” for purposes of the Eighth Amendment. *Moore v. Biter*, 725 F.3d 1184, 1191 (9th Cir. 2013). The 6th Circuit Court of Appeals has found, however, that an 89-year aggregate sentence did not implicate *Graham* because it was not a “life” sentence. *Bunch v. Smith*, 685 F.3d 546, 551 (6th Cir. 2012). Like the federal courts that have addressed this issue, state courts have also come to different conclusions about whether de facto life sentences without parole are constitutionally equivalent to natural life sentences without parole.

Several states, including California, Iowa, Wyoming, and Florida, have treated de facto life sentences identical to life without parole sentences for purposes of the Eighth Amendment - see *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012) (“we conclude that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside of the juvenile offender’s natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment”); see also *State v. Ragland*, 836 N.W.2d 107, 121 (Iowa 2013) (“The unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole”); *Bear Cloud v. State (Bear Cloud III)*, 334 P.3d 132, 144 (Wyo. 2014) (“Graham and Miller must be applied to the entire sentencing package, when the sentence is life without parole, or when aggregate sentences result in the functional equivalent of life without parole”); *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014) (“equating a 150-year sentence to life without parole”); *Grindine v. State of Florida*, 2013 WL 1239504, 3 (Fla. 2013) (“finding that Graham applied to a 70-year prison sentence without parole”).

Other states, such as Illinois, Louisiana, and Arkansas, have found, however, that discretionary terms-of-years sentences likely to exceed the convicted child’s life expectancy fall outside of the purview of *Graham* and *Miller*, and thus the Eighth Amendment. *People v. Patterson*, 2014 IL 115102 ¶ 108. Although lengthy, the defendant’s 36-year sentence is not comparable to either the death penalty or life in prison without parole. See also *State v. Brown*, 110 So.3d 332, 338 (La. 2013) (“Defendant’s 89-year aggregate sentence may end up being the functional equivalent of life without parole, but Graham only applies if a state imposes a sentence of life”); also *Hobbs v. Turner*, 431 S.W.3d 283, 289 (Ark. 2014) (finding *Miller* inapplicable to defendant’s 55-year sentence because he “was not subjected as a juvenile homicide offender to a mandatory life-without-parole sentence”).

Life without parole sentences should not be treated differently than de facto life sentences. In *Graham*, it stated that death sentences are constitutionally equivalent to sentences of life without parole because both categories of sentence alter the offender’s life by a forfeiture that is irrevocable. *Graham*, 130 S.Ct. at 2027. The same is true of de facto life sentences without parole. They deprive the offender of the most basic liberties without giving hope of restoration and, therefore, mean that “good behavior and character improvement are immaterial. The imposition of such sentences erases any doubt that the convicted child will remain in prison for the rest of his days”. This court should grant review to clarify whether the Eighth Amendment treats de facto life sentences without parole the same as natural life sentences without parole.

B. The discretionary imposition of life without parole sentences, or their equivalent, upon children violates the Eighth and Fourteenth Amendments.

Assuming as some jurisdictions have recognized that a term of years sentence functionally equivalent to life without parole implicates *Graham* and *Miller*, there would still exist an unresolved question about whether the discretionary imposition of such sentences violates the Eighth Amendment. While that question was raised by the petitioners in *Miller*, this Honorable Court decided *Miller* without specifically reaching it. *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012). Because the “transient qualities of juveniles” makes it nearly impossible to

determine at the time of sentencing that a child will pose a threat to society for his or her entire life, a sentencing scheme that allows sentencing children to life in prison with no opportunity for parole appears to violate the Eighth Amendment. In *Graham*, this court wrote, “to justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentence to make a judgment that the juvenile is incurable. The characteristics of juveniles make that judgment questionable”. *Graham*, 130 S.Ct. at 2029.

Like mandatory life sentences, discretionary life sentences without parole deny children any “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”. *Id* at 2030; *Miller*, 132 S.Ct. at 2469. If a child’s age is only considered during a post-trial sentencing hearing, before imposition of a life sentence without parole, the child has no opportunity to demonstrate maturity and rehabilitation. Without such an opportunity, any consideration of the mitigating qualities of youth is essentially meaningless. In *Titus*’ case, he was incarcerated awaiting trial in 2002. Due to numerous continuances, he did not go to trial until 2005. It was stated in trial that *Titus* was not the shooter and was found guilty of accountability. In other words, he was not a child for which a de facto life sentence without parole would be appropriate. As these courts stated in *Miller*, in discussing mandatory juvenile sentencing schemes, the sentencing hearing should be where “youth and its attendant characteristics” are considered as sentencing factors necessary to separate those children who may be sentenced to life without parole from those who may not. *Miller*, 132 S.Ct. at 2460 (“The hearing does not replace but rather gives effect to *Miller*’s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity”); *Montgomery*, 136 S.Ct. at 735 (“There should be no difference in the type of sentencing hearing, or the required findings, between one subjecting a child to mandatory life without parole or one in which a judge has the discretion to impose such a sentence. Of course, simply allowing for the possibility of parole after a certain number of years could solve the problem”).

Notable, In *Miller*, and as elaborated upon in *Montgomery*, the court found that sentencing a juvenile to life without parole is “excessive for all but the rare juvenile offender whose crime reflects irreparable corruption”. *Miller*, 567 U.S. at 132 S.Ct. at 2469. Quoted in *Montgomery*, 136 S.Ct. at 734 (“A sentencing judge must consider ‘youth and its attendant characteristics’ so that juveniles being sentences to life without parole can be differentiated from those who may not”). Again, the Circuit Court here made no such finding that *Titus* was “irreparably corrupt”. Instead, *Titus* should not have been sentenced to a functional equivalent of a de facto life sentence.

As with the other issues presented in this petition, state courts have come down on both sides of this issue. The Supreme Judicial Court of Massachusetts found, for example, that “the discretionary imposition of a sentence of life in prison without the possibility of parole on juveniles who are under the age of eighteen when they commit murder in the first degree violates the prohibition against ‘cruel and unusual punishment’”. *Diatchenko v. District Attorney for Suffolk Dist.*, N.E.3d 270, 284 – 85 (Mass. 2013). *Diatchenko* explained that “the unconstitutionality of this punishment arises not from the imposition of a sentence of life in prison, but from the absolute denial of any possibility of parole”. *Diatchenko*, 1 N.E.3d at 285. In *Bear Cloud v. State (Bear Cloud III)*, 334 P.3d at 37, the Supreme Court of Wyoming found,

moreover, that the child offender's 43-year aggregate sentence was unconstitutional where it was functionally equivalent to life in prison without parole.

In *Bear Cloud*, the court imposed a sentence of 20 to 25 years for an aggravated burglary conviction to be served consecutively to a life in prison “according to law” for the murder conviction following Mr. Bear Cloud’s guilty plea. *Bear Cloud v. State*, 334 P.3d 132, ¶ 4. Because of legislative changes to the sentencing scheme, following this court’s remand for reconsideration under *Miller*, Mr. Bear Cloud, while still serving the life sentence “according to law”, became eligible for parole after 25 years. *Bear Cloud v. State*, 334 P.3d 132, ¶ 7. On appeal, the Wyoming Supreme Court again found that, because the combined effect of the mandatory and discretionary sentences precluded the possibility of parole during the child’s expected lifetime, the de facto life sentence violated the Eighth Amendment. *Id.* 334 P.3d ¶ 35 – 37. The focus of the respective courts in *Diatchenko* and *Bear Cloud* on the opportunity for parole is consistent with this court’s reasoning in *Graham* and *Miller*, establishing the Eighth Amendment requires an opportunity for release based on “demonstrated maturity and rehabilitation”. *Graham*, 130 S.Ct. at 2030; *Miller*, 132 S.Ct. at 2469.

In determining whether the federal constitution requires categorical bars on certain punishments for particular classes of people, this court has historically considered whether legislative enactments and actual sentencing practices show a national consensus against the sentence for the class in question. *Miller*, 132 S.Ct. at 2459. While a majority of states have declined to recognize a categorical bar on life without parole sentences for children: *People v. Carp*, 852 N.W.2d 801, 841 – 44 (Mich. 2014); *Conley v. State*, 972 N.E.2d 864, 877 – 80 (Ind. 2012); *Commonwealth v. Batts*, 66 A.3d 286, 297 – 300 (Penn. 2013); *ex parte Henderson*, 144 So.3d 1262, 1266 – 84 (Ala. 2013); *State v. Ninham*, 797 N.W.2d 451, 44 – 86 (Wis. 2011); *State v. Long*, 8 N.E.3d 890, 20 – 29 (Ohio 2014); *Bun v. State*, 769 S.E.2d 381, 383 – 85 (Ga. 2015); *State v. Mantich*, 842 N.W.2d 716, 730 (Neb. 2014); simply counting the number of states on each side of an issue can present a distorted view. Such an analysis overlooks how many judges have been asked to impose discretionary sentences equivalent to life without parole and how many times prosecutors have exercised their discretion to refrain from seeking such sentences. For this reason, this court has recognized that consensus is not dispositive. *Kennedy v. Louisiana*, 128 S.Ct. 2641, 2642 (2008). Indeed, this court “prohibited life-without-parole terms for juveniles committing nonhomicide offenses” in *Graham*, “even though 39 jurisdictions permitted that sentence”. *Miller*, 132 S.Ct. at 2471.

Interestingly, several states that have upheld the constitutionality of discretionary life sentences without parole for children have remanded cases for resentencing anyway where the original sentence did not specifically consider whether the absence of a parole period was proportionate to the particular offender. *People v. Guitierrez*, 324 P.3d 243, 269 (Cal. 2014). (Remanding for compliance with *Miller* after imposition of a discretionary life sentence without parole); *Parker v. State*, 119 So.3d 987, 999 (Miss. 2013) (Upholding the constitutionality of a discretionary life sentence with the possibility of parole but remanding “for a hearing to determine whether defendant should be sentenced to ‘life imprisonment’ or life imprisonment with eligibility for parole”); *State v. Long*, 8 N.E.3d 890, 20 – 29 (Ohio 2014) (Upholding the constitutionality of discretionary life sentences, but remanding for consideration of youth as a mitigating factor). The outcomes in cases such as *Guitierrez*, *Parker*, and *Long* show that even

states that have upheld the constitutionality of discretionary life sentences without parole for children are uncomfortable with them. In light of such cases, the absence of case law finding discretionary life sentences without parole unconstitutional does not necessarily support the presence of a consensus. Until this court resolves the question of whether the Federal Constitution prohibits sentencing schemes that allow for the discretionary imposition of life sentences with no opportunity for parole. Illinois courts will continue sentencing children like Titus to spend their adult lives in prison.

Allowing the imposition of discretionary life sentences without parole encourages “mismatches” between the culpability of a class of offenders and the severity of a penalty “because they permit the permanent detention of children, such as Titus, who simple are not the ‘rare juvenile offender’ incapable of rehabilitation. *Miller*, 132 S.Ct. at 2463, 2469. Titus had minor juvenile offenses and the behavior then does not make Titus the “incorrigible” child who is deserving of a life sentence, whether mandatory or discretionary, in prison. This court should grant review to ensure that children like Titus have an opportunity to prove rehabilitative and societal value. In further, many courts look to scientific studies concerning life expectancy while many others reject the idea. Review on this court may help resolve the conflicts among relevant scientific studies on life expectancy of youth in determining whether they will survive a lengthy prison term.

For the foregoing reasons, petitioner Adam Titus respectfully prays that a Writ of Certiorari issue to review the judgment of the Illinois Supreme Court.

Respectfully submitted,
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APPENDIX