

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RANDY PARKER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE LOUISIANA COURT OF APPEAL FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the imposition of a mandatory life-without-parole sentence on an intellectually disabled person convicted of felony murder with a negligent *mens rea* violates the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishments.

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PETITION FOR A WRIT OF CERTIORARI

Randy Parker petitions this Court for a writ of certiorari to review the judgment of the Louisiana Court of Appeal for the First Circuit.

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal, *State v. Parker*, No. 2016-KA-1016 (La. Ct. App. 1 Cir. 2017), is unreported and is attached as Appendix A. The order of the Supreme Court of Louisiana denying a petition for a supervisory writ to review the judgment of the Louisiana Court of Appeal, *State v. Parker*, No. 2017-K-0509 (La. 2017), is unreported and is attached as Appendix B.

JURISDICTION

The Louisiana Court of Appeal for the First Circuit entered its judgment on February 17, 2017. The Supreme Court of Louisiana denied Mr. Parker's timely petition for a supervisory writ to review the judgment of the Louisiana Court of Appeal on December 15, 2017. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment to the United States Constitution provides:

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

The Fourteenth Amendment to the United States Constitution provides:

No State shall . . . 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.

This case involves the application of the Eighth and Fourteenth Amendments to three Louisiana statutes. Section 14:30.1 of the Louisiana Revised Statutes provides:

Second degree murder is the killing of a human being . . . [w]hen the offender is engaged in the perpetration or attempted perpetration of [enumerated felonies, including] cruelty to juveniles . . . , even though he has no intent to kill or to inflict great bodily harm

Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Section 14:93(A)(1) of the Louisiana Revised Statutes provides:

Cruelty to juveniles is . . . [t]he intentional or criminally negligent mistreatment or neglect by anyone seventeen years of age or older of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child.

Section 14:12 of the Louisiana Revised Statutes provides:

Criminal negligence exists when, although neither specific nor general intent is present, there is such disregard of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.

STATEMENT OF THE CASE

Randy Parker is a young man with an intellectual disability. At a bench trial, he was convicted of felony murder for the unintentional killing of a child in the course of criminally negligent maltreatment. That is, without intending to kill or seriously harm the child, Mr. Parker engaged in a form of discipline whose risk to the child represented “a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.” La. R.S. § 14:12.

Under Louisiana's uniquely severe sentencing scheme, Mr. Parker received a mandatory sentence of life imprisonment without the possibility of parole, despite the

fact that his cognitive impairment, by definition, prevents him from meeting the standards of adaptive functioning of a reasonable man.

A. The Trial Court Acquitted Randy Parker Of First-Degree Murder But Convicted Him Of Second-Degree Felony Murder Because He “Should Have Known” That His Attempts To Discipline A Child Would Result In Great Bodily Harm Or Death

D.S., a 23-month-old boy, died inside Randy Parker’s home on the evening of October 23, 2011. After his death, a grand jury indicted Mr. Parker, the boyfriend of D.S.’s mother, for first-degree murder. Although first-degree murder is punishable by death under Louisiana law, the state announced that it would not seek the death penalty after defense counsel provided the state with evidence of Mr. Parker’s intellectual disability.¹

At a bench trial, the state argued that Mr. Parker was guilty of first-degree murder on two different theories. On the first theory, Mr. Parker was guilty of first-degree murder under La. R.S. § 14:30(A)(5) because of his “specific intent to kill or to inflict great bodily harm upon a victim who [was] under the age of twelve years”² A.R. 573–75.³ On the second theory, Mr. Parker was guilty of murder under La. R.S. § 14:30(A)(1) because of his “specific intent to kill or inflict great bodily harm” during the commission of “cruelty to a juvenile.”⁴ A.R. 574. After explaining that cruelty to

¹ See *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that the Eighth Amendment prohibits imposition of the death penalty on a person with intellectual disability).

² Section 14:30(A)(5) defines first-degree murder as “the killing of a human being . . . [w]hen the offender has the specific intent to kill or to inflict great bodily harm upon a victim who is under the age of twelve or sixty-five years of age or older.” La. R.S. § 14:30(A)(5).

³ All citations to “A.R.” are to the appellate record before the Louisiana Court of Appeal.

⁴ Section 14:30(A)(1) defines first-degree murder as “the killing of a human being . . . [w]hen the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or

juveniles under La. R.S. § 14:93(A)(1) requires “intentional or criminally negligent” mistreatment or neglect of a child,⁵ A.R. 576, the state argued that Mr. Parker intentionally mistreated D.S. before his death.

As an alternative to its first-degree murder theory, the state argued that Mr. Parker was guilty of second-degree felony murder under La. R.S. § 14:30.1(A)(2).⁶ On this theory, the state explained, Mr. Parker was guilty of second-degree murder even if he “did not have the specific intent to kill or to inflict great bodily harm”; it would be enough to conclude that the child died “as a result of the cruelty to a juvenile, whether he had intent or not.” A.R. 577. Conceding that the court might conclude that Mr. Parker was guilty of cruelty to juveniles because of his criminally negligent mistreatment of a child, rather than any intentional mistreatment, the state correctly argued that Mr. Parker would be guilty of second-degree murder either way. The state emphasized that criminally negligent cruelty to juveniles does not require any criminal intent. “Whether he had intent or not, he’s still guilty of second-degree murder.”⁷ A.R. 577.

attempted perpetration of [enumerated felonies, including] cruelty to juveniles . . .” La. R.S. § 14:30(A)(1).

⁵ Section 14:93(A)(1) defines cruelty to juveniles as “[t]he intentional or criminally negligent mistreatment or neglect by anyone seventeen years of age or older of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child.” La. R.S. § 14:93(A)(1). “Criminal negligence exists when, although neither specific nor general intent is present, there is such disregard of others that the offender’s conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.” La. R.S. § 14:12.

⁶ Section 14:30.1(A)(2) defines second-degree murder as “the killing of a human being . . . [w]hen the offender is engaged in the perpetration or attempted perpetration of [enumerated felonies, including] cruelty to juveniles . . . , even though he has no intent to kill or to inflict great bodily harm.” La. R.S. § 14:30.1(A)(2).

⁷ *State v. Mayeux*, 498 So.2d 701, 703 (La. 1986) (“Negligent homicide specifically requires there be an absence of specific or general intent to commit a homicide.”).

The trial court acquitted Mr. Parker of first-degree murder,⁸ expressly rejecting the state’s theory that Mr. Parker intended to kill or inflict great bodily harm on the child:

The Court . . . cannot conclude that Randy Parker specifically intended to kill or inflict great bodily harm when he . . . attempted to discipline 23-month-old [D.S.] for not being potty trained. . . . The Court notes that Randy Parker was an active caregiver that night. He disciplined him. He cut his hair. He bathed him and fed him.

A.R. 615. Ultimately, the court concluded, “Randy Parker did not intend to kill [D.S].”

A.R. 615.

However, the court accepted the state’s alternative theory of liability. Finding that Mr. Parker caused the child’s death and “should have known” that his attempts to discipline the child would result in great bodily harm or death, the court convicted him of an unintentional second-degree murder on a felony murder theory.⁹ A.R. 615–16.

B. Without Any Discretion To Consider Randy Parker’s Intellectual Disability, The Trial Court Imposed A Mandatory Sentence Of Life Without Parole

After concluding that Mr. Parker was guilty of murder only because he “should have known” that his attempts to discipline D.S. would result in great bodily injury or death, A.R. 615–16, the trial court sentenced Mr. Parker to “life imprisonment at

⁸ Under Louisiana law, conviction of the responsive verdict of second-degree murder is an acquittal of first-degree murder. *State v. Langley*, 958 So.2d 1160, 1169–70 (La. 2007).

⁹ Under Louisiana law, because the prosecution pursued a charge of first-degree murder, rather than second-degree murder, the trial court did not have the option of convicting Mr. Parker of negligent homicide. La. C.Cr.P. art. 814(A)(1); *State v. Valentine*, 929 So.2d 779, 785 (La. Ct. App. 4 Cir. 2006) (“[N]egligent homicide is not a responsive verdict to first degree murder.”).

hard labor without the benefit of parole,” as required by Louisiana’s second-degree murder statute. A.R. 633.

Because the life-without-parole sentence was mandatory, the court did not consider Mr. Parker’s intellectual disability, or anything else about his background, before sending him to prison for the rest of his life. The court did not even order a pre-sentence report. As the court explained, “I don’t believe that I need a pre-sentence report for a sentence that the court has no discretion.” A.R. 617.

C. The Court Of Appeal Rejected Mr. Parker’s Eighth Amendment Challenge To His Mandatory Life-Without-Parole Sentence

On direct appeal, Mr. Parker argued that his sentence violated the Eighth Amendment. Citing this Court’s decisions in *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Miller v. Alabama*, 567 U.S. 460 (2012), he argued that the imposition of “an automatic sentence of life imprisonment upon [a defendant with an intellectual disability convicted on a negligence theory] serves no legitimate penological purpose, being wildly disproportionate to the defendant’s moral culpability and manifestly unlikely to deter other intellectually disabled defendants from failing to meet the standards of an ordinary, reasonable person.”

The Court of Appeal rejected Mr. Parker’s argument and affirmed his sentence.¹⁰ App. A at 23–28. After adopting the trial court’s finding that Mr. Parker “had an intellectual disability,” App. A at 23 n.5, the Court of Appeal rejected his

¹⁰ The Court of Appeal addressed Mr. Parker’s Eighth Amendment claim in the context of an ineffective-assistance-of-counsel claim under the Sixth Amendment. *See infra* at Pages 21–22.

Eighth Amendment claim on the assumption that he was “intellectually disabled,” App. A at 24, emphasizing that Mr. Parker “should have known” that his attempts to discipline the child would result in traumatic injury or death. App. A at 24.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT REVIEW TO DECIDE WHETHER THE EIGHTH AMENDMENT PERMITS THE IMPOSITION OF A MANDATORY LIFE-WITHOUT-PAROLE SENTENCE ON AN INTELLECTUALLY DISABLED PERSON CONVICTED OF FELONY MURDER WITH A NEGLIGENT MENS REA

“The Eighth Amendment’s prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). This right “flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense.” *Id.* (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)) (internal quotation marks omitted). And this precept “draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

There are four reasons the Court should now decide whether those evolving standards protect a person with intellectual disability from receiving a mandatory life-without-parole sentence for committing felony murder with a negligent *mens rea*. First, the decision of the Louisiana Court of Appeal conflicts with important Eighth Amendment principles established by this Court in *Atkins v. Virginia*, 536 U.S. 304 (2002), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012),

and *Tison v. Arizona*, 481 U.S. 137 (1987). Second, those principles apply with special force to people like Mr. Parker, who committed felony murder with a negligent *mens rea*. Third, there is a national consensus against the sentence imposed on Mr. Parker. Louisiana is the only jurisdiction in the country that allows a mandatory life-without-parole sentence for a felony murder committed with a negligent *mens rea*, and this case involves Louisiana’s imposition of that sentence on a person with an intellectual disability. Finally, this case is a good vehicle to decide the question presented.

A. The Decision Of The Louisiana Court Of Appeal Conflicts With Important Eighth Amendment Principles Established By This Court In *Atkins*, *Graham*, *Miller*, And *Tison*

The decision of the Louisiana Court of Appeal conflicts with four well-established Eighth Amendment principles, all of which flow from the foundational “precept of justice that punishment for crime should be graduated and proportioned” to both the offender and the offense. *Weems v. United States*, 217 U.S. 349, 367 (1910); *see also Miller v. Alabama*, 567 U.S. 460, 469 (2012).

First, a person with an intellectual disability is “categorically less culpable” than the average person who commits a crime. *Atkins v. Virginia*, 536 U.S. 304, 315 (2002) (holding that the Eighth Amendment prohibits the execution of people with intellectual disabilities). “Because of their disabilities in areas of reasoning, judgment, and control of their impulses,” the Court explained, people with intellectual disabilities “do not act with the level of moral culpability that characterizes the most serious adult criminal conduct.” *Id.* at 306. “By definition,” the Court continued, people with intellectual disabilities “have diminished capacities to

understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” *Id.* at 318.

Second, the severity of a life-without-parole sentence, like the severity of a death sentence, is constitutionally distinct from all other criminal penalties. *Graham v. Florida*, 560 U.S. 48, 69–70 (2010) (holding that the Eighth Amendment prohibits life-without-parole sentences for children convicted of non-homicide offenses). In *Graham*, the Court emphasized the diminished capacity of juvenile offenders and the severity of life-without-parole sentences. *Id.* at 69–70. Describing life without parole as “the second most severe punishment permitted by law,” the Court compared the punishment to the death penalty: “[t]he State does not execute the offender,” the Court explained, “but the sentence alters the life by a forfeiture that is irrevocable,” and “[i]t deprives the convict of the most basic liberties without giving hope of restoration” *Id.* at 69–70. [W]hatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days.” *Id.* at 70 (quoting *Naovarath v. State*, 779 P.2d 944 (Nev. 1989)).

Third, a mandatory life-without-parole sentence is constitutionally suspect when imposed on a person who is categorically less culpable than an average person, as the mandatory sentence precludes consideration of the person’s diminished culpability. *Miller v. Alabama*, 567 U.S. 460, 476 (2012). In *Miller*, the Court extended *Graham* by holding that the Eighth Amendment forbids imposition of a mandatory life-without-parole sentence on a child convicted of homicide. 567 U.S. at 489.

Repeating *Graham*'s conclusions that children are constitutionally distinct from adults for purposes of sentencing, *id.* at 471, and life-without-parole sentences, like death sentences, are constitutionally distinct from all other penalties, *id.* at 475, the Court emphasized that mandatory life-without-parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics attendant to it." *Id.* at 476.

Fourth, a criminal defendant's *mens rea* is a critical facet of constitutionally graduated and proportioned punishment. *Tison v. Arizona*, 481 U.S. 137, 156 (1987). Describing as "[d]eeply ingrained" the idea that "more purposeful" criminal conduct warrants "more severe[]" punishment, the Court in *Tison* limited the reach of the most severe punishment to intentional murders or those where the defendant "knowingly engag[ed] in criminal activities known to carry a grave risk of death." *Id.* at 157.

Notwithstanding these principles, the Court of Appeal rejected Mr. Parker's Eighth Amendment claim, concluding "the district court had no reason to deviate downward from the mandatory sentence of life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence." App. A at 24–25.

B. The Imposition Of A Mandatory Life-Without-Parole Sentence On An Intellectually Disabled Person Who Acts With A Negligent *Mens Rea* Serves No Legitimate Penological Purpose

In the world of intellectually disabled people sentenced to mandatory life without parole, the principles of *Atkins*, *Graham*, *Miller* and *Tison* apply with special force to those who commit felony murder with a negligent *mens rea*. In a felony

murder context, liability rests upon the transfer of intent from the underlying felony to the homicide. *Miller*, 567 U.S. at 491–92 (Breyer, J., concurring). Whatever concerns may exist with attributing full moral culpability to juveniles who commit felony murder, *see id.*, attributing such culpability to an intellectually disabled person whose underlying felony requires only a negligent *mens rea* is constitutionally intolerable.

Criminal negligence is an objective standard that asks whether a person’s conduct “amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.” La. R.S. § 14:12. And by definition, a person with intellectual disability will frequently fall below that standard; one of the three criterion for intellectual disability is the existence of “[d]eficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for . . . social responsibility.” APA, Diagnostic and Statistical Manual of Mental Disorders 33 (5th ed. 2013).

It is “no provincial or transient notion” that a criminal act requires a guilty mind as well as a guilty act. *Morrisette v. United States*, 342 U.S. 246, 250 (1952). In general, the criminal law requires “first, a vicious will; and secondly, an unlawful act consequent upon such vicious will.” 4 William Blackstone, Commentaries on the Laws of England 21. In the case of negligence, however, the “vicious will” is not express; it is implied from a person’s “failure to advert to a risk that one had a fair chance to perceive,” even without a “conscious choice to produce or unreasonably to risk harm.” Larry Alexander, “Reconsidering the Relationship Among Voluntary Acts, Strict

Liability, and Negligence in Criminal Law,” 7 Social Philosophy & Policy 84 (1990). This tenuous connection between negligence and “vicious will” has led some to argue that negligent behavior is not criminal. *E.g.*, Jerome Hall, “Negligent Behavior Should Be Excluded from Penal Liability,” 63 Colum. L. Rev. 632 (1963). And when negligent behavior is punished as criminal, the tenuous connection between negligence and “vicious will” typically results in less severe punishment. *Compare* La. R.S. § 14:30 (maximum punishment for intentional first-degree murder is death), *with* La. R.S. § 14:32 (maximum punishment for negligent homicide is five years in prison).¹¹

From a penological perspective, the punishment of negligent behavior is supposed to encourage potential offenders to act with the care of a reasonable person, *United States v. Balint*, 258 U.S. 250, 252–53 (1922), and to impose retribution by ensuring that any person who fails to act with such care gets his “just desserts,” *Atkins*, 536 U.S. at 319–20. When the person who behaves negligently has an intellectual disability, the imposition of a mandatory life-without-parole sentence fails to measurably contribute to either of these goals. Such a punishment will not measurably deter a person with intellectual disability from failing to act with a level of care their disability precludes, nor will their exemption from such punishment reduce the deterrent effect for a person who is cognitively sound. *Id.* And given the

¹¹ See also, *e.g.*, United States Sentencing Guideline 2Q1.3, cmt. n.3 (“The specific offense characteristics in this section assume knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.”); John L. Davis, “The Development of Negligence as a Basis for Liability in Criminal Homicide Cases,” 26 Ky. L. J. 209, 229 (1938) (“The more difficult cases, those where there is little culpability, can be taken care of by light sentences.”).

reduced culpability of an intellectually disabled person for an act of criminal negligence, the imposition of a mandatory life-without-parole sentence is nothing more than “the purposeless and needless imposition of pain and suffering.” *Enmund v. Florida*, 458 U.S. 782, 798 (1982).

Our law is supposed to punish people “for what they do, not who they are.” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (Roberts, J.). Although the deficiencies of a person with intellectual disability “do not warrant an exemption from criminal sanctions, . . . they do diminish their personal culpability.” *Atkins*, 536 U.S. at 318.¹² By imposing a mandatory term of life imprisonment upon an intellectually disabled person for his failure to behave as an ordinary, cognitively sound person, we turn these principles on their heads.

C. There Is A National Consensus Against Mandatory Life-Without-Parole Sentences For Intellectually Disabled People Convicted Of Felony Murder With A Negligent *Mens Rea*

When considering whether a punishment is consistent with “the evolving standards of decency that mark the progress of a maturing society,” *Trop v. Dulles*, 356 U.S. 86, 101 (1958), “[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures,” *Graham*, 560 U.S. at 62.

¹² In jurisdictions with a common law history similar to our own, courts have struggled with the concept of attributing criminal liability to the intellectually disabled based upon objective standards that measure their conduct against that of an ordinary person. *R v Thomas* (2015) NSWSC 537 (Austl.) (“[T]he accused’s intellectual capacity is so far removed from that of the vast majority of people in the community that it strikes me as patently unfair to require him and his actions to be judged by standards that he could never hope to emulate.”), available at <https://www.caselaw.nsw.gov.au/decision/554c0706e4b0fc828c99705c>.

The legislation enacted by our country’s legislatures demonstrates a clear national consensus against the sentence Mr. Parker received in this case. Although nearly every jurisdiction in the United States allows conviction for murder on a felony murder theory,¹³ only twelve of them impose a mandatory life-without-parole sentence for that crime.¹⁴ And of those twelve jurisdictions that impose a mandatory life-without-parole sentence for felony murder, only Louisiana requires such a sentence for a person who committed the underlying felony with a negligent *mens rea*.¹⁵

¹³ *But see* HRS §§ 707-701, 707-701.5 (Hawaii) (no felony murder); KRS § 507.020 (Kentucky) (no felony murder).

¹⁴ *See* Ala. Code §§ 13A-6-2(a)(3), 13A-6-2(c) (Alabama); CRS §§ 18-3-102(1)(b), 18-1.3-401(1)(a)(V)(1), 18-1.3-401(4)(a) (Colorado); Fla. Stat. §§ 782.04(1)(a)(2), 775.082(1)(a) (Florida); Iowa Code §§ 707.2(1), 707.2(2), 902.1(1) (Iowa); La. R.S. §§ 14:30.1(A)(2), 14:30.1(B) (Louisiana); MCLS § 750.316(1)(b) (Michigan); Minn. Stat. §§ 609.185(a), 609.106(2) (Minnesota); RRS §§ 28-303, 28-105(1) (Nebraska); N.C. Gen. Stat. § 14-17 (North Carolina); 18 Pa. C.S. §§ 2502(b), 2502(d), 1102.1(c) (Pennsylvania); S.D. Codified Laws §§ 22-16-4(2), 22-16-12, 22-6-1(1) (South Dakota); 18 U.S.C. §§ 1111(a), (b) (United States).

¹⁵ Of the other eleven jurisdictions, ten impose mandatory LWOP for felony murder when the underlying felony is the strict liability offense of statutory rape. *See, e.g.*, CRS § 18-3-402(1)(e) (Colorado); MCLS § 750.520b(1)(a) (Michigan); N.C. Gen. Stat. § 14-27.24(a) (North Carolina); *but see* 18 Pa. C.S. §§ 2502(d), 3121(a), 3122 (no statutory rape). *See generally* Elizabeth Nevins-Saunders, “Incomprehensible Crimes: Defendants With Mental Retardation Charged With Statutory Rape,” 85 N.Y.U. L. Rev. 1067 (2010) (discussing the crime of statutory rape and arguing that its theoretical foundations collapse when applied to people with intellectual disabilities).

For jurisdictions where some form of child abuse is an underlying felony, the required *mens rea* is higher than negligence. *See, e.g.*, Ala. Code §§ 26-15-3.1, 26-15-3 (aggravated child abuse requires “willful[] maltreat[ment]”); Fla. Stat. § 827.03(a) (aggravated child abuse occurs when a person “[c]ommits aggravated battery on a child”; “[w]illfully tortures, maliciously punishes, or willfully and unlawfully cages a child”; or “[k]nowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child”); Fla. Stat. § 784.045(1)(A)(1) (aggravated battery occurs when a person, in committing battery, “[i]ntentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement . . .”); MCLS § 750.136b(2) (“A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child.”).

In jurisdictions that allow conviction for negligent homicide, the maximum sentence is thirty years,¹⁶ and the typical statutory maximum falls between one and ten years.¹⁷ Even Louisiana permits a maximum sentence of only five years for negligent homicide, La. R.S. § 14:32(C)(1), unless the homicide involves the negligent mistreatment of a child. In the latter case—a case like Mr. Parker’s—Louisiana provides a conviction for second-degree felony murder, La. R.S. § 14:30.1(A)(2); La. R.S. § 14:93(A)(1), which in turn requires mandatory life without parole, La. R.S. § 14:30.1(B).

D. This Case Is A Good Vehicle To Decide Whether The Eighth Amendment Allows A Mandatory Life-Without-Parole Sentence For An Intellectually Disabled Person Who Commits Felony Murder With A Negligent *Mens Rea*

This case is a good vehicle to decide whether the Eighth Amendment protects a person with intellectual disability from receiving a mandatory life-without-parole sentence for committing felony murder with a negligent *mens rea*.

First, the Court of Appeal adopted the trial court’s finding that “the defendant had an intellectual disability” and then rejected Mr. Parker’s Eighth Amendment claim on the assumption that he “was intellectually disabled,” App. A at 24–25, emphasizing that it was sufficient that Mr. Parker “should have known” that his

¹⁶ See 17-A M.R.S. §§ 203(1)(A), 1252(2)(A) (Maine) (causing the death of another human being “with criminal negligence” is a Class A crime, punishable by a term of imprisonment “not to exceed 30 years”); Fla. Stat. §§ 782.07(3), 775.082(3)(b)(1) (Florida) (causing the death of a child with “culpable negligence” is a first-degree felony, punishable “by a term of imprisonment not exceeding 30 years”).

¹⁷ See, e.g., Ala. Code §§ 13A-6-4(c), 13A-5-7(a)(1) (Alabama) (one year); A.C.A. §§ 5-10-105(b)(2), 5-4-401(b)(1) (Arkansas) (one year); 11 Del. C. §§ 631, 4205(b)(4) (Delaware) (eight years); NY CLS Penal §§ 125.10, 70.00(2)(e) (New York) (four years); ORS §§ 163.145, 161.605 (Oregon) (ten years).

attempts to discipline a child would result in traumatic injury or death. App. A at 24–25.

Second, the Court of Appeal addressed the Eighth Amendment claim on the merits, with its rejection of Mr. Parker’s ineffective-assistance-of-counsel claim turning on its rejection of his Eighth Amendment claim. The Court of Appeal first observed that state law “ordinarily” prevents a defendant from challenging his sentence on direct appeal if he did not first ask the trial court to reconsider its sentence. App. A at 21. In this case, however, the Court of Appeal addressed Mr. Parker’s “excessive sentence argument, even without a motion to reconsider sentence, to address his claim of ineffective assistance of counsel.” App. A at 21. Based on its rejection of Mr. Parker’s Eighth Amendment claim, the Court of Appeal concluded that Mr. Parker’s IAC claim failed because he did not show prejudice. *See Strickland v. Washington*, 466 U.S. 668 (1984).

Third, life in prison is especially harsh for people with intellectual disabilities, who are more susceptible to physical, emotional, sexual, and financial exploitation by fellow inmates and even prison staff.¹⁸ If Mr. Parker is correct when he argues the punishment inflicted upon him represents the purposeless and needless imposition of pain and suffering, the Court should end that needless suffering now.

¹⁸ See generally Orville R. Endicott, Persons With Intellectual Disabilities Who Are Incarcerated For Criminal Offences: A Literature Review (March 1991), <http://www.csc-scc.gc.ca/research/r14e-eng.shtml#EXPERIENCE>; Human Rights Watch, “I Needed Help, Instead I Was Punished”: Abuse and Neglect of Prisoners with Disabilities in Australia (February 6, 2018), <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>; The Arc & American Association on Intellectual and Development Disabilities, Position Statement, Criminal Justice System (2014) (explaining that “[i]ndividuals with I/DD are subject to abuse exploitation when incarcerated and denied . . . appropriate habilitation programs that would address their intellectual disability”).

Finally, Mr. Parker will not be able to challenge his sentence in any future proceeding. In Louisiana, sentencing challenges are wholly unavailable during state post-conviction litigation,¹⁹ litigation in which the intellectually disabled Mr. Parker will have no right to counsel.²⁰ As for federal habeas, Mr. Parker will not be able to obtain relief from his sentence because this Court has not yet “clearly established” that his sentence violates federal law. 28 U.S.C. § 2254(d)(1).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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¹⁹ La. C. Cr. P. art. 930.3; *State ex rel. Melinie v. State*, 665 So.2d 1172, 1172 (La. 1996) (per curiam) (“La. Code Crim. Proc. art. 930.3, which sets out the exclusive grounds for granting post-conviction relief, provides no basis for review of claims of excessiveness or other sentencing error post-conviction.”); *State v. Thomas*, 19 So.3d 466, 466 (La. 2009) (“relator’s claims that the court imposed an excessive sentence and that he received ineffective assistance of counsel at sentencing are not cognizable on collateral review”).

²⁰ *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) (no constitutional right); La. C.Cr.P. art. 930.7 (no statutory right).