

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Robert Stringer, Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA, Respondents

On Petition for a Writ of Certiorari
to the Pennsylvania Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Robert Stringer, Petitioner
Inmate No. #GI-1592
c/o 175 Progress Drive
Waynesburg, Pa. 15370
PRO SE

QUESTION(S) PRESENTED FOR REVIEW

The questions presented are:

1. Does the doctrine of Stare Decisis require the state court to apply the portions of the Miller/Montgomery opinions necessary to the results to petitioner under the Eighth and/or Fourteenth Amendments to the United States Constitution?
2. Did this Honorable Court in Montgomery v. Louisiana, recognize a class identified as "a child whose crime reflects unfortunate yet transient immaturity" and is petitioner part of this class under the Equal Protection Clause?
3. Does age alone determine whether a person can receive the benefits of this Court's decisions in Miller/Montgomery under the Fourteenth Amendments Due Process and/or Equal Protection Clause?
4. Whether Due Process required the state court to give petitioner an opportunity to prove he was part of the class recognized in Miller/Montgomery?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Robert Stringer respectfully petitions for writ of certiorari to review the state court judgement below.

OPINIONS BELOW

The unpublished opinion of the Pennsylvania Supreme Court appears at Appendix A. to this petition.

The unpublished opinions of the Pennsylvania Superior Court appears at Appendix B. to this petition.

The unpublished opinion of the Allegheny County Court of Common Pleas (PCRA Court) appear at Appendix C. to this petition.

JURISDICTION

The Pennsylvania Supreme Court denied petitioner's Petition For Allowance of Appeal on January 30, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 et seq.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment of the United States Constitution provides in pertinent part:

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

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

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.

STATEMENT OF THE CASE

On March 7, 2016, Petitioner filed a pro se PCRA petition raising as applied Miller/Montgomery challenges to his mandatory life-without-parole sentence under the State and Federal Cruel and Unusual Punishment, Due Process, and Equal Protection Clauses as well as Article 7 of the Universal Declaration of Human Rights.

On March 15, 2016, the PCRA court issued its intent to dismiss the petition stating its sole reason for the dismissal was that because petitioner was "20 at the time of his offense" relief under Miller was not warranted and the court was without jurisdiction. The PCRA was subsequently dismissed on May 11, 2016 and petitioner filed a timely notice of appeal. See Appendix C.

Petitioner raised his Eighth Amendment and Equal Protection claims to the Pennsylvania Superior. The superior court on May 8, 2017, without addressing his specific claims affirmed the decision of the PCRA court. Petitioner filed an Application for Reconsideration/Reargument En Banc on May 25, 2017, which was denied on July 20, 2017. See Appendix B.

On August 21, 2017, Petitioner finally filed a Petition for Allowance of Appeal raising whether he was considered a child, minor, or juvenile under Pennsylvania Statutes, Constitution and/or the United States Supreme Court's decision in Miller/Montgomery, which dictates that he be granted relief via the State or Federal Equal Protection Clause, Whether the laws of the Commonwealth were so contradictory as to what age is considered an adult that it summarily denies certain equal protection rights, or challenges under the Constitution, and Was petitioner part of the same class recognized in Miller/Montgomery whose crime reflect "unfortunate yet transient immaturity".

The Pennsylvania Supreme Court declining to weigh in on the issues denied his Petition for Allowance of Appeal on January 30, 2018. See Appendix A.

Petitioner is a layman seeking a liberal construction of his petition in this matter.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT REVIEW TO INSURE THAT PENNSYLVANIA BEGAN TO EXERCISE ITS JURISDICTION OVER A FEDERAL QUESTION AND ADHERE TO NOT ONLY THE HOLDING OF THIS COURT BUT ALSO THE PORTIONS OF THE OPINION NECESSARY TO THE RESULT.

A. THE STATE COURT'S DECISION CONFLICTS WITH THIS COURT'S HOLDING IN MILLER V. ALABAMA AND MONTGOMERY V. LOUISIANA.

The state court found that Mr. Stringer's petition was not timely under the PCRA's newly-established constitutional right exception because the right established by Miller and held to apply retroactively by Montgomery was limited to those who were younger than 18 at the time of the offense that led to their conviction. This interpretation conflicts with Miller and Montgomery and fails to give proper weight to this Court's admonition that "[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to the result" that constitutes binding precedent. See *Seminole Tribe v. Florida*, 517 U.S. 44, 67 (1996).

I. The state court's decision was an unreasonable interpretation of Miller because it failed to adhere to U.S. Supreme Court precedent that requires courts to give full effect to the substantive basis and governing principles of law of its decisions.

In affirming the PCRA Court's denial of Mr. Stringer's PCRA petition, the state court's limited Miller's holding to apply to individuals who were younger than 18 at the time of their offenses. See Appendix B pg. 5. The state courts simply stated that it "rejected the argument that offenders over the age of eighteen may be considered "juveniles" under Miller." The state courts found that it lacked jurisdiction under the PCRA because

Mr. Stringer was seeking an extension of the right [established in Miller], based upon the the underlying reasoning contained within this Court's opinion.

The state court's interpretation of Miller and its refusal to take into account "the underlying reasoning contained within this Court's opinion" contravenes this Court's own mandate on how its holdings are to be applied.

"We adhere in this case, however not to mere obiter dicta, but to the well-established rationale upon which the Court the results of its earlier decisions. When an opinion issues for the Court, its not only the result **but also those portions of the opinion necessary to that result by which we are bound.**"

Seminole Tribe, 517 U.S. at 67 (emphasis added)(citing Burnha, v. Superior Court of Cal. County of Marin, 495 U.S. 604,613 (1990)(exclusive basis of a judgement is not dicta). Stare decisis requires adherence "not only to the holding of [the Supreme Court's] prior cases, but also to their explications of the governing rules of law." See County of Allegheny v. ACLU, Greater Pittsburgh Chapter, 492 U.S. 573,668 (1989)(Kennedy, J. concurring and dissenting).

Thus, in constructing the right established in Miller, courts must adhere to "the well-established rationale upon which" Miller's result was based. Seminole Tribe, 517 U.S. 66-67. The state court's was not required to "extend" Miller based on its "underlying reasoning." Rather, Miller's underlying reasoning is an integral part of the right established. Adhering to the principles and analyses (i.e. the "underlying reasoning") that formed the basis of Miller's decision and is therefore not an extension of Miller, but an application that is required by this Court's explication on how to construe its decisions.

II. The constitutional right established by Miller prohibits mandatory life without parole sentences for individuals with diminished culpability.

In *Miller*, this Court merged two strands of Eighth Amendment sentencing jurisprudence to establish a categorical bar to mandatory sentences of life without parole offenses committed by juveniles. *Miller*, 132 S.Ct. at 2469. Under its Eighth Amendment proportionality precedent, this Court has forbidden certain punishments from being imposed on categories of individuals with diminished culpability. See e.g. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (holding life without parole sentences for juveniles convicted of non-homicide offenses unconstitutional); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding capital punishment for juveniles unconstitutional); *Roper v. Simmons*, 534 U.S. 551 (2005) (holding capital punishment for individuals with intellectual disability unconstitutional)

Prior to *Miller*, this Court also proscribed the mandatory imposition of death sentences, instead requiring that offenders receive an individualized sentencing procedure that accounts for "the characteristics of a defendant and the details of his offense" prior to the imposition of a death sentence. *Miller*, 132 S.Ct. at 2464; See e.g. *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Lockett v. Ohio*, 438 U.S. 586 (1978).

Under the first line of analysis, the penological justifications for the harshest punishments collapse when imposed on certain categories of offenders with diminished culpability. In *Miller*, the Court reiterated and emphasized that "youth is more than a chronological fact." *Id.* at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). Youth is marked by developmental characteristics of "immaturity, irresponsibility, impetuosity, and recklessness," and is a "condition of life when a person may be most susceptible to influence and psychological damage." *Miller* 132, S.Ct. at 2467 (internal citations and punctuation omitted). These "characteristics of youth, and the way they weaken rationales for punishment, can render a life-without parole

sentence disproportionate" because "most fundamentally...youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. Id. at 2465-66.

Children are distinct from adults in at least three constitutionally-significant ways, and as Mr. Stringer alleged in the state courts, each of these factors identified in Miller as being constitutionally relevant for sentencing purposes applies to him. First, children are less mature and possess an underdeveloped sense of responsibility, "leading to recklessness, impulsivity, and heedless risk-taking." Id. (citing Roper, 543 U.S. at 569). Children are also more vulnerable to negative peer and familial influences and "lack the ability to extricate themselves from horrific, crime-producing settings." Id. Third, a child's character is not well-formed as an adult's and children have greater "capacity for change." Id. at 2454 (citing Graham, 560 U.S. at 74).

These "distinctive attributes of youth" diminish the penological justifications for life without parole sentences. Miller, 132 S.Ct. at 2465. Characteristics of youth such as "immaturity, recklessness, and impetuosity" render an offender less culpable and less blameworthy, thereby weakening the retributive value of a life without parole sentence. Id. (quoting Graham, 540 U.S. at 72). Deterrence is likewise not served by life without sentences because these same characteristics of youth "make them less likely to consider potential punishment." Id. In light of a child's greater capacity for change, incapacitation is insufficient to justify life without parole because such a sentence "would require making a judgment that [a child] is incorrigible," which is inconsistent with youth. Id. (internal quotations omitted). For the same reason, life without parole conflicts with a rehabilitation rationale because it "forswears altogether the rehabilitative ideal" and is "at odds with a child's capacity for change." Id. (internal

quotations omitted).

As in *Roper* and *Graham*, this Court's reasoning with respect to youth was not merely based on "common sense," but was substantially bolstered by and dependent upon "science and social science." *Miller*, 132 S.Ct. at 2464. Significantly for purposes of the case sub judice, the Court in *Graham* cited approvingly to an amicus curiae brief submitted by the American Psychological Association that describes how areas of the brain involved in impulse control and risk evaluation continue developing through late adolescence and into early adulthood at age 22. *Graham*, 560 U.S. at 68 (Citing Brief for the American Psychological Association, et al. as Amicus Curiae at 22-27). This Court should note that this amicus brief can be accessed at: http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs/07_08_08_7412_PetitionerAmCur4HealthOrgs.authcheckdam.pdf.

Under the second line of proportionality analysis, *Miller* invoked the similarities between sentences of death and life without parole to find the mandatory life without parole sentencing scheme unconstitutional. Both penalties involve "[i]mprisoning an offender until he dies," altering "the remainder of his life 'by a forfeiture that is irrevocable'." *Miller*, 132 S.Ct. at 2466 (quoting *Graham*, 560 U.S. at 69). Life without parole sentences are especially harsh when imposed on children because children will spend a greater portion of their lives in prison than adult offenders. *Id.* A life without parole sentence "imposed on a teenage, as compared with an older person, is therefore 'the same...in name only'." *Id.* at 2467 (emphasis added)(quoting *Graham*, 560 U.S. at 70). Thus, *Miller* found that the mandatory life without parole sentencing scheme "poses too great a risk of disproportionate punishment" because it precludes the sentencer from considering an individual's age and characteristics of youth. *Miller*, 132 S.Ct. at 2469. Subjecting a

child to mandatory life without parole:

precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors...or his incapacity to assist his own attorneys.

Miller, 132 S.Ct. at 2468. Again, each of these factors are constitutionally required to be considered by a sentencer and each applies to Mr. Stringer. When imposing the harshest available sentences, the sentencer must have the ability to assess mitigating factors to ensure that these sentences are "reserved only for the most culpable defendants committing the most serious offenses." *Id.* at 2467. Especially relevant are the "mitigating qualities of youth." *Id.*

Following Miller, the Supreme Court of Pennsylvania rules that Miller did not apply retroactively to cases on collateral appeal in *Commonwealth v. Cunningham*, 81 A.3d 1 (2013). This Court addressed this issue in *Montgomery*, holding that Miller applies retroactively. *Montgomery*, 136 S.Ct. at 733. Like in Miller, the petitioner in *Montgomery* was challenging a sentence imposed for an offense committed when the petitioner was younger than 18 years old. *Montgomery*, 136 S.Ct. at 725. *Montgomery* reiterated Miller's prohibition on mandatory life without parole sentences for juvenile offenders, emphasizing that penological justification for life without parole collapse in light of "the distinctive attributes of **youth**." *Montgomery*, 136 S.Ct. at 734 (quoting Miller, 132 S.Ct. at 2465)(emphasis added).

In finding that Miller announced a substantive rule of constitutional law and therefore

applies retroactively, the Montgomery Court emphasized that Miller also established a categorical bar to life without parole sentences imposed on "juvenile offenders whose crimes reflect the transient immaturity of youth," regardless of whether the sentence was mandatory or discretionary. Montgomery, 136 S.Ct. at 734.

Montgomery clarified that while age is a relevant consideration, it is not determinative in assessing whether a life without parole sentence is disproportionate under the Eighth Amendment, because "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" Id. (quoting Miller, 132 S.Ct. at 2469).

In affirming the PCRA Court's denial of Mr. Stringer's PCRA petition, the state courts limited Miller's holding only to individuals who were younger than 18 at the time of their offense. The state courts characterized Mr. Stringer's petition and arguments as overstating Miller and seeking an extension of the right [established in Miller], based upon the underlying reasoning contained within this Court's opinion.

The state courts recognized, Miller and Montgomery established a categorical prohibition on mandatory life without parole sentences for individuals who were younger than 18 at the time of their offense. However, "the well-established rationale upon which this Court based the results" of Miller and Montgomery dictate that individuals with categorically-diminished culpability due to their youth, experiences of childhood abuse, and a combination thereof also may not be subject to mandatory life without parole sentences. Seminole Tribe. 517 U.S. at 66-67. To give effect to Miller, the right established in Miller and held to apply retroactively in Montgomery must be construed to incorporate "those portions of the opinion necessary to [the] result." Id. at 67.

Montgomery is instructive in determining which portions of Miller were "necessary" to the result. Montgomery explicitly recognized that Miller's applicability is broader than the narrow holding articulated by the state courts. Miller did not merely establish that mandatory life without parole sentences imposed on offenders younger than 18 are disproportionate under the Eighth Amendment, but also that a life without parole sentence imposed on "a child whose crime reflects unfortunate yet transient immaturity" is disproportionate regardless of whether it was imposed pursuant to a mandatory or discretionary sentencing scheme. Montgomery, 136 S.Ct. at 734 (internal quotations omitted). This holding was derived from Miller's reasoning and the principles recognized and relied upon throughout the opinion. Id. at 732. Montgomery recognized that "[t]he 'foundation stone' for Miller's analysis was this Court's line of precedent holding certain punishments disproportionate when applied to juveniles." Id.

As in Miller, the Montgomery Court focused primarily on the characteristics of youth—rather than age in itself—that render children different from adults for sentencing purposes, including "recklessness, impulsivity, and heedless risk-taking," vulnerability to "negative influences and outside pressures" and inability to control their environment or "extricate themselves from horrific, crime-producing settings;" and underdeveloped character traits that have greater potential to change. Id. at 733 (quoting Miller, 132 S.Ct. at 2464.). Diminished culpability on the basis of these characteristics of youth vitiate the penological rationales for imposing a life without parole sentence. id. at 733. Montgomery emphatically states that a life without parole sentence, whether imposed in a mandatory or discretionary setting, may not be imposed when an individual possesses these distinctive attributes of youth:

Miller, then, did more than require sentencer to consider a juvenile offender's

youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth. Even if a court considers a child's age before sentencing him or her to as lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity.

Montgomery, 136 S.Ct. at 734 (internal citations and quotations omitted). The touchstone of Miller, then, is not merely the age of individual at the time of the offense, but the "distinctive attributes of youth" that render a life without parole sentence disproportionate. Miller's categorical rule barring mandatory life without parole sentences for juveniles does not rest on the chronological age of juveniles, but instead on the characteristics and qualities that juveniles almost invariably possess and that renders life without parole a disproportionate sentence. Thus, while the chronological fact of age is relevant, the "characteristics of youth, and the way they weaken rationales for punishment," are the determinative factors in assessing whether individualized sentencing is required and a life without parole sentence violates the Eighth Amendment. Miller, 132 S.Ct. at 2465-66.

Moreover, this Court requires states to consider relevant medical or scientific principles in applying Eighth Amendment limitations on disproportionate punishment. A bright-line rule precluding consideration of youth and other factors related to diminished culpability for those even marginally older than 17 is out of step with current medical and scientific consensus on adolescent development and other areas of Pennsylvania law, which recognize that 18 is an age during which the social and neurological development relevant to this Court's holdings in Miller and Montgomery is ongoing. See *Emerging Adulthood: A theory of Development From the Late Teens Through the Twenties*, Jeffrey Jensen Arnett, 55 *Am. Psychologist* 469,476 (200)(noting that "[t]he cover of every issues of the Journal of Research on Adolescence, the flagship journal of the Society for

Research on Adolescence, proclaims that adolescence is defined as 'the second decade of life.'"; (Immaturity of Judgement in Adolescence: Why Adolescents May Be Less Culpable Than Adults, Elizabeth Cauffman, Ph.D. and Laurence Steinberg, Ph.D., 18 Behav.Sci.& L. 741,742 (2000) (note: Both of the academic articles cited were cited in the Brief for the American Psychological Association, et al. that this Court cited with approval in Roper.)

In *Moore v. Texas*, 137 S.Ct. 1039 (2017), this Court evaluated the weight to be given to the scientific principles relied upon in its prohibition on death sentences for the intellectually disabled-another class of offenders with categorically diminished culpability. Permitting states to disregard current medical standards in the Eighth Amendment context would render the prohibition on sentencing those with intellectual disabilities to death a "nullity, and the Eighth Amendment's protections of human dignity would not become a reality." *Id.* at 1053 (quoting *Hall v. Florida*, 132 S.Ct. 1986,1999 (2014)).

Furthermore, this Court found persuasive the fact that Texas used more medically appropriate standards for diagnosing and defining intellectual disability in context outside the death penalty. *Id.* at 1052. In support of its ruling, this Court reasoned: "Texas cannot satisfactorily explain why it applies current medical standards for diagnosing intellectual disability in other contexts, yet clings to superseded standards when an individual's life is at stake." *Id.* Justice Kennedy's frame work wherein the Court defined intellectual disability applies with equal force to the scientific community's role in establishing the frame work for defining who is an adolescent:

It is the Court's duty to interpret the Constitution, but need not do so in isolation. The legal determination of intellectual disability is distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework. *Atkins* itself points to the diagnostic criteria employed by psychiatric professionals. And the professional community's teachings are of particular help

in this case, where no alternative definition of intellectual disability is presented and where this Court and the States have placed substantive reliance on the expertise of the medical profession.

Hall, 134 S.Ct. at 2000. It is undisputed in the scientific community that 18 is still considered a time of ongoing childhood development where the same factors identified by the Miller Court may be sufficiently present to justify a lesser sentence. In fact, Dr. Steinberg in Roper pointed out that "the bright-line cut-off of the age of 18 does not accurately reflect the realities of brain development. The scientific community has confirmed that "the part of the brain dealing with impulsive control and reasoning does not fully develop until the age of 21".

III. CONFLICTING LAWS ON WHAT AGE IS CONSIDERED AN ADULT.

Similar to the unconstitutional standards at issue in Moore, other areas of Pennsylvania law indicate that some individuals over the age of 17 remain children or juveniles. In Pennsylvania the definition of a "child" in the chapter on "Juvenile Matter" of the Judiciary and Judicial Procedure title of the Pennsylvania Consolidated Statutes includes individuals who are: 1) under the age of 18 years; 2) under the age of 21 years and who has committed an act of delinquency prior to reaching 18; 3) under the age of 21 and who are adjudicated dependent prior to reaching 18. 42 Pa.C.S. §6302.

Moreover, Pennsylvania has conflicting statutes and court opinions on what age is considered an adult. See Black's Law Dictionary Fourth Pocket Edition pgs. 427 and 486 (pg. 427 defines Juvenile as "a person who has not reached the age at which one should be treated as an adult by the criminal justice system."; pg. 286 defines Minor as "a person who has not reached full legal age; a child or juvenile.")

At least two Pennsylvania court's have determined that the age of adulthood is 21. See

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Commonwealth v. Grainer, 479 Pa at 372 n.7 ("Since appellant is not 21 years of age...he is still a child."); Marino v. Marino, 411 Pa.Super 424,432 (1991) ("a person reaches the age of majority, and is necessarily emancipated by an act of law, when that person arrives at the age of 21.")

Pennsylvania's statutory law and Constitution determines that juveniles and minors are not adults. See 1 Pa.C.S. §1991 (Defining Adult as "an individual 21 years of age or older." and Minor as "an individual under the age of 21."); The Schedule to the Constitution's Judiciary Article 16 (iii) under Juvenile Matters ("...minors eighteen to twenty years of age.");

This Honorable Court even noted in Miller that most states hold juveniles until the age of 21 in juvenile court. Id. That the state of Pennsylvania has enacted legislation recognizing children are adjudicated delinquent or dependent (as Mr. Stringer was) prior to age 21 possess characteristic justifying their continued recognition as a child under the law is consonant with Roper, Graham, and Miller, and the social and neuroscience that formed the foundation of their holdings. Combined with Miller's application of precedent prohibiting the harshest punishments for individuals with categorically diminished culpability and precedent prohibiting mandatory sentencing for the harshest punishments, the scientific underpinnings of Miller render Mr. Stringer's mandatory life without parole sentence unconstitutional due to 1) his age and characteristics of youth; 2) his experiences of extreme childhood physical, psychological, and sexual abuse; and 3) the combination of his age, characteristics of youth, and experiences of extreme childhood physical, psychological, and sexual abuse. Such a holding is not only consistent with the reasoning of Miller but is compelled by it for the simple fact that a child is a child, as confirmed by common sense, science, and the holdings of this Court.

This Court should note that chronological age sets the boundaries for determining whether an individual is eligible to drive, vote, marry, buy and drink alcohol, buy and smoke tobacco, be drafted, watch certain movies, and hold certain political offices. None of these age based privileges and responsibilities ignore chronological age in favor of mental age. Petitioner asks this Court what age is considered an adult since under the law he is basically in a state between a juvenile and adult. Had someone been caught giving petitioner alcohol they would have been charged with corruption of a minors. Petitioner cannot be a juvenile, minor, and adult at the same time, taking in consideration that juvenile, minor, and child are all interchangeable and part of the same class.

IV. The questions presented are of substantial public importance and require a prompt and definitive resolution.

This Court should grant review to address questions of substantial public importance that require prompt and definitive resolution.

Mr. Stringer's claims are based on this Court's decisions interpreting the Eighth Amendment to the U.S. Constitution, one of the most fundamental safeguards of human dignity and societal decency. See e.g. *Trop v. Dulles*, 356 U.S. 86,101 (1958); *Estelle v. Gamble*, 429 U.S. 97,102 (1976). Ensuring that Mr. Stringer's criminal sentence does not violate the Eighth Amendment's prohibition on cruel and unusual punishment implicates not only Mr. Stringer's right to be free from such punishments, but the public interest in ensuring that those condemned to die in prison by Pennsylvania are not punished disproportionately. Eighth Amendment protections against excessive punishments are a "basic precept of justice.". *Roper*, 543 U.S. at 560 (internal quotations omitted); See also *Weems v. United States*, 217 U.S. 349,367 (1910); *Graham*, 560 U.S. at 59.

The nature of Mr. Stringer's sentence also renders questions presented of substantial public importance. Life without parole sentences are similar to death sentences in that both sentences condemn a person to die in state custody and require a "forfeiture that is irrevocable." Miller, 132 S.Ct. at 2466 (quoting Graham, 560 U.S. at 69). It is precisely this similarity to the death penalty that led this Court to impose limitations on when an individual may be sentenced to life without parole in Graham and Miller. Graham, 560 U.S. at 60; Miller, 132 S.Ct. at 2468. Like the death penalty, the states's imposition of a sentence that requires an individual to die in prison is a "truly awesome responsibility" and should not be treated trivially. McGautha v. California, 402 U.S. 183,208 (1971); See also Caldwell v. Mississippi, 472 U.S. 320, 329 (1985); Commonwealth v. Laird, 988 A.2d 618,639 (Pa.S.Ct.2010).

Furthermore, Mr. Stringer's claims implicate equal protection concerns. The foundation of equal protection is that "all persons similarly situated to be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432,439 (1985)(citing Plyler v. Doe, 457 U.S. 202,216 (1982)); See also Reed v. Reed, 404 U.S. 71,76 (1971); Royster v. Guano Co. v. Virginia, 253 U.S. 412,415 (1920); Melrose, Inc. v. City of Pittsburgh, 613 F.3d 380,394 (3d Cir.2010); Commonwealth v. Bullock, 913 A.2d 207,215 (Pa.S.Ct.2006); Commonwealth v. Albert, 758 A.2d 1149,1151 (Pa.S.Ct.2000)("The essence of...equal protection under the law in like circumstances will be treated similarly.")

Equal protection under the law is, like the Eighth Amendment's prohibition on cruel and unusual punishments, a hallmark of a fair and civilized society. Ensuring that United States citizens are treated equally is therefore of great public importance and should be a basis for granting Mr. Stringer's petition.

B. The questions presented involve the constitutionality of Pennsylvania's sentencing statute for first-degree murder

This Court should grant review as it was explained in *Ex parte Siebold*, 100 U.S. 371 (188) and cited approvingly in *Montgomery* that since "petitioners attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that 'if this position is well taken it affects the foundation of the whole proceedings.'" *Montgomery*, Id. This Court further reiterated that "where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge." *Montgomery* Id.

Mr. Stringer's PCRA petition and the questions presented for review herein present an "as-applied" challenge to Pennsylvania's sentencing law for first degree murder, which proscribes the penalty for first degree murder as either death or life imprisonment. 18 Pa.C.S. §1102(a)(1). As discussed *supra*, §1102(a)(1) fails to provide for any individualized sentencing considerations that would have enabled the sentencer to consider Mr. Stringer's age, characteristics of youth, experiences of extreme childhood physical, psychological, and sexual abuse and propensity for rehabilitation, among other factors. Thus, the mandatory sentencing provision "pose[s] too great a risk of disproportionate punishment" and violates the Eighth Amendment to the U.S. Constitution. *Miller*, 132 S.Ct. at 2469.

Even if this Court refuses to apply the right established in *Miller* to Mr. Stringer's case, his sentence would still be unconstitutional as a violation of the Equal Protection Clauses of the U.S. Constitution. See *City of Cleburne*, 473 U.S. at 439. As a result of the *Miller* and *Montgomery* decisions, 20 year olds recognized as children under

Pennsylvania law and the scientific community are subject to unequal treatment compared to younger children under Pennsylvania's sentencing law without a rationale basis. To restrict the protections afforded under Miller solely on the basis of age is "to violate the central meaning of the equal protection clause," and to deny Mr. Stringer the fundamental freedom of liberty on so unsupportable basis as age is "so directly subversive of the principle of equality at the heart of the fourteenth amendment." See *Obergefell v. Hodges*, 576 U.S. ____ (2015) (citing *Loving v. Virginia*, 388 U.S. 1,12)

That an individual who is still could be still classified as a minor and not an adult, but identical in all other respects, must receive an individual sentencing procedure while Mr. Stringer continues to serve a sentence condemning him to die in prison- a sentence imposed without consideration of his characteristics of youth, family, and home environment, circumstances surrounding the offense, or his remarkable growth over the past 14 years-is the height of irrationality and arbitrariness.

The state court found that Mr. Stringer's equal protection claim was foreclosed by its ruling in *Commonwealth v. Cintora*, 69 A.3d 759, where the court rejected as untimely the claims that "it would be a violation of equal protection for the courts to treat [petitioners] or anyone else with an immature brain, as adults," and that "life without parole terms for adults in homicide cases" is a violation of equal protection principles. *Cintora*, 69 A.3d. at 764. However, *Cintora*, was decided prior to this Court's decision in *Montgomery* holding Miller to apply retroactively. Prior to *Montgomery*, Pennsylvania courts did not apply Miller retroactively and therefore did not make distinctions between those under 18 and those, like Mr. Stringer, with identical characteristics of youth and diminished culpability aged 18 or older at the time their offense for convictions became final prior to Miller. This distinction, however, is the

basis for Mr. Stringer's equal protection claims and therefore could not have been brought prior to Montgomery's determination that Miller applies retroactively.

Furthermore, the equal protection claims presented in Cintora are distinct from Mr. Stringer's claim. Mr. Stringer does not argue the basis for his equal protection claim lies purely in age and neuroscientific developments. Cintora, Id. at 764. Rather, Mr. Stringer's claim is based on the class identified in Montgomery as "a child whose crime reflects unfortunate yet transient immaturity." Montgomery, 136 S.Ct. at 734 (internal citations omitted). Mr. Stringer, as argued in his state court proceedings, was a child under Pennsylvania law, statutes, and Constitution at the time of the events that led to his conviction. Yet, the state court draws a distinction without a rationale basis between children like Mr. Stringer and children who were under the age of 18 who are similarly situated.

I. Due Process required the state to provide Mr. Stringer with an opportunity to fairly present his claims.

This Court in Montgomery pointed out that "There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. Id. (citing Mackey v. United States, 401 U.S. 667,693 n.7) The only available remedy for Mr. Stringer to pursue was a PCRA under Pennsylvania law, however, the state refused to give Mr. Stringer that opportunity decided to ignore the portion's of Miller and Montgomery necessary to the result and claim it was without jurisdiction to reach the merits of his claims.

This Court in Obergefell, make key points regarding the right to review: 1) that "new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged"; 2) "When new

insights reveal discord between the Constitution's central protection and a received legal stricture, a claim to liberty must be addressed."; 3) "Thus, when the rights of persons are violated, 'the constitution requires redress by the courts,' not withstanding the more general value of democratic decisionmaking" and that 4) "The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act." (citations omitted)

The legal stricture handed down by this Court is the basis for Mr. Stringer's claims he asserted but Pennsylvania continues to close its courts and deny Mr. Stringer a fair hearing or decision on the merits of his claims. He should have been given the opportunity to show how he was part of the protected class.

Central to American jurisprudence is the concept that the violation of any right has a remedy in law. When a state is alleged to have violated a protected right, it is necessary for some remedy to be available. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162-63 (1803)

Indeed, the drafters of the Fourteenth Amendment were keenly focused on the need for federal oversight. When the Reconstruction Congress convened in 1865, many Southern governments were beginning to reconstruct systems of slavery de facto through the passage of Black Codes. Such protection was requisite to protection of federal claims, as many southern states had already displayed their willingness to withhold and manipulate habeas in order to suppress blacks and continue slavery. See Amar, 101 Yale L.J. at 1228; William E. Nelson, *The Fourteenth Amendment* 40-45 (1916).

The state court has suppressed Mr. Stringer from receiving judicial review of federal

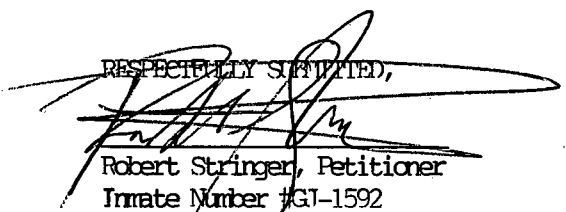
claims he sought to present under the color of law in its attempt to side step the law and this Court's exhaustive opinions to the contrary. Effectively, obliterating his right to judicial review under the United States Constitution.

CONCLUSION

Stare decisis-in English, the idea that today's court should stand by yesterday's decision-is a foundation stone of the rule of law. *Kimble v. Marvel Entertainment*, 135 S.Ct. 2401 (2015)(Kagan, J., joined by the late Honorable Scalia, Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.). If this Honorable Court does not grant review Mr. Stringer will die in prison at the hands of a state system that is not only contradictory as to the age of adulthood but suppresses pro se litigant's like Mr. Stringer who asks for a fair consideration by the justice system as mandated by the Constitution. A state who ignores the pronouncements by this Honorable Court. Will this Court grant review and uphold Mr. Stringer's rights under Constitution by giving him judicial review or stand by silent to the abuses of the state?

WHEREFORE, for reasons outlined above, in the state court proceedings, petitioner respectfully request that the petition for writ of certiorari be granted.

RESPECTFULLY SUBMITTED,



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Dated: March 29th, 2018