No.

IN THE

Supreme Court of the United States

BRETT JONES,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Petition for a Writ of Certiorari to the Mississippi Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Brett Jones respectfully petitions this Court for a writ of certiorari to review the judgment of the Mississippi Court of Appeals in this case.

OPINIONS AND ORDERS BELOW

The order of the Circuit Court of Lee County, Mississippi reinstating petitioner's sentence of life without possibility of parole (Pet. App. 57a) and the court's oral statement of reasons for that order (Pet. App. 70a–76a) are unpublished. The opinion of the Mississippi Court of Appeals affirming the circuit court (Pet. App. 31a–56a), __ So. 3d __, 2017 WL 6387457 ((Miss. Ct. App. Dec. 14, 2017), is not yet published. The order of the Supreme Court of Mississippi granting certiorari (Pet. App. 30a) is unpublished. The order of the Supreme Court of Mississippi dismissing the writ over the dissent of four justices (Pet. App. 1a–29a) is unpublished.

JURISDICTION

The Supreme Court of Mississippi's order dismissing its previously granted writ of certiorari was issued on November 29, 2018. Justice Alito extended the time to file this petition to March 29, 2019. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the U.S. Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

INTRODUCTION

This case aligns perfectly with the Court's criteria for granting review. The question presented has produced a deep and acknowledged split among state supreme courts. The issue is nationally important: Without a requirement to *find* permanent incorrigibility before imposing life without parole, the command of *Miller* and *Montgomery* to restrict the sentence to rare, permanently incorrigible juveniles loses its force as a rule of law. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012). Moreover, this case provides an ideal vehicle to answer the question. Petitioner preserved the issue thoroughly, resulting in a reasoned decision and dissent in the appellate court, a grant of certiorari by the state supreme court, and dismissal of the writ over a four-justice dissent.

STATEMENT

1. Brett Jones turned fifteen in July of 2004. Pet. App. 11a. Some three weeks later, he killed his paternal grandfather, Bertis Jones, during an altercation about Brett's girlfriend. *Id.* Brett had come to stay with his grandparents in Mississippi approximately two months before to escape his mother and stepfather's troubled household in Florida. *Jones v. State*, 938 So. 2d 312, 313 (Miss. Ct. App. 2006); Pet. App. 10a, 38a.

On the morning of August 9, 2004, Brett and his grandfather argued after Bertis discovered Brett and his girlfriend, Michelle Austin, in Brett's bedroom. *Jones*, 938 So. 2d at 313. Later that day, Brett was using a knife to make a sandwich, and Bertis entered the kitchen. *Id.* at 314. Brett "sassed" Bertis, Bertis pushed Brett, and Brett pushed back. *Id.* Ber-

tis then swung at Brett, who "threw the knife forward." *Id.* Bertis continued to come at Brett, who grabbed another knife and stabbed Bertis again. *Id.* Brett stabbed Bertis eight times in total. *Id.* at 315.

Brett testified that he did so because he "was afraid" and "didn't know anything else to do because [Bertis] was so huge." *Id.* at 314. Brett explained that Bertis is "not really a big looking man until he gets in your face with his hands up and swinging at you, and then he turns into a giant. And you just feel like there's no way out, no way to get away from him." *Id.*

Brett was tried for murder in the Circuit Court of Lee County. The jury rejected Brett's assertion of self-defense, and found him guilty. *Id.* at 316. The circuit court sentenced Brett to life imprisonment without parole, the mandatory penalty for murder. *Jones v. State*, 122 So. 3d 698, 699, 700–01 (Miss. 2013).

2. Following this Court's opinion in *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court of Mississippi granted Brett's motion for post-conviction relief, vacated his mandatory life-without-parole sentence, and remanded for a new sentencing hearing. *Jones*, 122 So. 3d at 703. According to the state supreme court's instructions, the circuit court on remand was required to consider a set of "juvenile characteristics and circumstances"—sometimes referred to as the *Miller* factors—in deciding whether Brett should be sentenced to life with eligibility for parole or resentenced to life without eligibility for parole. *Id.* at 700, 703.

The circuit court held a resentencing hearing on February 6, 2015. Pet. App. 58a. The State "rested"

on the existing record and offered no new evidence. *Id.* at 9a. The defense, on the other hand, offered evidence through the testimony of six witnesses: Brett, his mother, his younger brother, his aunt, his paternal grandmother (the widow of Bertis Jones), and a corrections officer. *Id.* at 37a.

These witnesses testified that Brett's father was a violent alcoholic and that Brett's stepfather physically and verbally abused Brett, his mother, and his younger brother. *Id.* at 27a, 10a–12a. Brett's mother abused alcohol and suffered from depression, bipolar disorder, manic depressive disorder, and a self-injury disorder, all of which impacted her children. *Id.* at 10a–11a, 27a, 38a. Brett himself was diagnosed with a range of mental health conditions, including depression and psychosis, for which he took medication. *Id.* at 39a, 55a. And like his mother, Brett would engage in self-injury by cutting himself. *Id.* at 12a, 13a, 39a.

The corrections officer, Jerome Benton, testified about Brett's rehabilitation while incarcerated, stating that Brett expressed "remorse" and "regret[]" for his crime, and was a "good kid" who tried to "do the right thing" and "got along with everybody." *Id.* at 63a, 66a. According to Officer Benton, Brett sought out opportunities to work, "was a very good employee," earned his GED, and hoped to take college courses. *Id.* at 61a, 63a. And even though the prison was rife "with violence and gang violence," Brett "didn't participate in none of that." *Id.* at 69a. Over more than a decade in prison, Brett was "involved in only one significant disciplinary incident." *Id.* at 39a.

Brett also testified that in his first week in prison he began seeing a mental health professional and

learned to manage the mental health conditions that plagued his childhood. *Id.* at 14a.

3. On April 17, 2015, more than nine months before this Court decided *Montgomery v. Louisiana*, the circuit court resentenced Brett to life in prison without possibility of parole. *Id.* at 47a, 57a. The court did not find that Brett was permanently incorrigible, nor did it acknowledge that only permanently incorrigible juvenile homicide offenders may be sentenced to life without parole. *Id.* at 28a. In fact, it did not address Brett's capacity for rehabilitation at all. *Id.* Instead, the court viewed its task merely as assessing aggravating and mitigating circumstances. The court stated: "*Miller* requires that the sentencing authority consider both mitigating and the aggravating circumstances. And I would note that these are not really terms used in the *Miller* opinion, but I think they are an easy way for us to identify those considerations." *Id.* at 71a.

In explaining the sentence, the circuit court focused principally on the nature of the crime, noting that the jury rejected Brett's assertion of self-defense, that Brett had stabbed his grandfather eight times, and that Brett then moved the body and tried to clean up the blood. *Id.* at 72a.

The court made only passing reference to the fact that Brett was only fifteen at the time of the offense. *Id.* Moreover, the court's only direct reference to Brett's "maturity" came in the context of a discussion about Brett's relationship with his then-girlfriend, Michelle Austin. The court stated there was "evidence presented at the sentencing hearing" that indicated their "relationship was intimate and that at some time before the incident [Austin] thought she

was pregnant." *Id.* at 73a. The court then stated "that suspicion proved to be untrue," but opined that it "demonstrates that [Brett] had reached some degree of maturity in at least one area." *Id.*

4. Brett appealed his sentence to the Mississippi Court of Appeals, which rejected his argument that the court "must reverse because the sentencing judge did not make a specific 'finding' that he is irretrievably depraved, irreparably corrupt, or permanently incorrigible." *Id.* at 41a. According to the court: "The sentencing judge must consider the factors discussed in *Miller*, and the judge must 'apply [those] factors in a non-arbitrary fashion.' However, the sentencing judge is not required to make any specific 'finding of fact.'" *Id.* at 42a (quoting *Cook v. State*, 242 So. 3d 865, 873 (Miss. Ct. App. 2017)).[1]

Two judges dissented. Relying on this Court's decision in *Montgomery*, the dissent recognized "that 'sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption.'" Pet. App. at 53a (quoting *Montgomery*, 136 S. Ct. at 734). The dissenting judges therefore would have reversed and remanded because "the trial court failed to make a finding on the record as to whether [Brett] is among the rarest of juvenile offenders under *Miller* and *Montgomery*." *Id.* at 56a.

5. The Supreme Court of Mississippi granted certiorari. *Id.* at 1a. In that court, Brett continued to

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[1] In its prior decision in *Cook*, the court of appeals derided this Court's permanent incorrigibility standard, describing it as "more like a theological concept than a rule of law to be applied by an earthly judge." *Cook*, 242 So. 3d at 873.

assert that his sentence must be vacated because the circuit court made no finding of permanent incorrigibility. *Id*. at 18a–19a.

After the Supreme Court of Mississippi heard oral argument, five justices voted to dismiss the petition. *Id.* at 2a. Four justices dissented. The dissent recognized that the Supreme Court of Mississippi's recent decision in *Chandler v. State*, 242 So. 3d 65, 69 (Miss. 2018), foreclosed Brett's argument that the federal Eighth Amendment requires the sentencer to make a finding of permanent incorrigibility before sentencing a juvenile to life without parole. Pet App. 23a. Nonetheless, the dissent called for vacating the sentence and remanding with instructions that Brett be resentenced to life imprisonment with eligibility for parole. *Id.* at 29a. In light of Brett's youth, troubled childhood, the circumstances of the offense, and the evidence of his capacity for rehabilitation, the dissent concluded that "the record does not reflect [Brett's] permanent incorrigibility." *Id.* at 3a.

REASONS FOR GRANTING THE PETITION

This case perfectly fits the Court's criteria for granting review. There is a deep and acknowledged split of authority on whether the Eighth Amendment permits a juvenile to be sentenced to life without parole absent a finding that he is one of the rare, permanently incorrigible juveniles for whom such a sentence is permissible. Among state courts of last resort, the issue has resulted in at least ten majority opinions split six to four in favor of a required finding, and multiple dissents. Because this division results from differing interpretations of this Court's decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), only this Court can resolve the disagreement.

This case also provides an ideal vehicle to answer the question. Brett raised the issue on direct appeal, resulting in a reasoned decision and dissent in the Court of Appeals of Mississippi, a grant of certiorari by the Supreme Court of Mississippi, and dismissal of the writ over a four-justice dissent. The issue is outcome determinative because a ruling in Brett's favor would entitle him to a new sentencing hearing.

Moreover, the issue is nationally important: Without a requirement to find permanent incorrigibility before imposing life without parole, the command of *Miller* and *Montgomery* to restrict the sentence to rare, permanently incorrigible juveniles loses its force as a rule of law. In practical terms, sentencing authorities unconstrained by a finding requirement would be 'free to sentence a child whose crime reflects transient immaturity to life without parole,'" despite this Court's clear holding that this is impermissible. *Montgomery*, 136 S. Ct. at 735.

I. The Court Should Decide Whether The Eighth Amendment Requires A Sentencing Authority To Make A Finding That A Juvenile Homicide Offender Is Permanently Incorrigible Before Imposing A Sentence Of Life Without Parole.

A. The Question Divides State Supreme Courts.

State supreme courts are intractably divided on whether the Eighth Amendment requires a sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a life-

without-parole sentence.[2] The split is plain and acknowledged. *See People v. Skinner*, 917 N.W.2d 292, 322 (Mich. 2018) (McCormack, J., dissenting) (noting "the split of authority in state courts post-*Miller* on whether a court must make a specific 'finding' of irreparable corruption").[3]

1. The disagreement among courts arises from conflicting interpretations of this Court's decision in *Montgomery*. In *Montgomery*, this Court explained that its prior decision in *Miller v. Alabama* held that the Eighth Amendment bars life-without-parole sentences "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 136 S. Ct. at 733–34. Moreover, the Court charged sentencing authorities with "separat[ing] those juveniles who may be sentenced to life without parole from those who may not." *Id*. at 735. The majority of lower courts interpret these statements to mean that a sentencing authority must make a finding, whether written or oral, that a juvenile is one of the rare, permanently incorrigible juvenile offenders "who may be sentenced to life without parole." *Id*. Indeed, even the dissent in *Montgomery* stated that the majority opinion required sentencing authorities

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[2] The terms "permanent incorrigibility," "irreparable corruption," and "irretrievable depravity" are used synonymously in the state court decisions described below, as they are in this Court's jurisprudence. *See, e.g.*, *Montgomery v. Louisiana*, 136 S. Ct. 718, 726, 733–35 (2016); *Miller v. Alabama*, 567 U.S. 460, 471, 479–80 (2012); *Graham v. Florida*, 560 U.S. 48, 68, 76–77 (2010); *Roper v. Simmons*, 543 U.S. 551, 570, 573 (2005).

[3] *See also* Alice Reichman Hoesterey, *Confusion in Montgomery's Wake*, Appendix B: Irreparable Corruption Determination, 45 FORDHAM URB. L.J. 149, 190–93 (2017).

to "resolve" the question of incorrigibility. *Id.* at 744 (Scalia, J., dissenting). Trial courts resolve questions by making findings.

In rejecting Louisiana's view that the rule of *Miller* is purely procedural (and therefore non-retroactive), the *Montgomery* Court also addressed the State's argument that "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility." *Id.* The argument "[t]hat this finding is not required," the Court explained, would "speak[] only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee." *Id.* That argument therefore did not affect the substantive (and thus retroactive) nature of *Miller*'s holding. *Id.* As indicated below, a minority of courts rely on this dictum addressing Louisiana's characterization of *Miller* to conclude that sentencing authorities may impose a life-without-parole sentence on a juvenile without first determining that he or she is permanently incorrigible.

2. Six state courts of last resort—the highest courts of Georgia, Wyoming, Oklahoma, Iowa, Illinois, and Pennsylvania—hold that the Eighth Amendment requires a finding of permanent incorrigibility before a juvenile may be sentenced to life without parole. *Veal v. State*, 784 S.E.2d 403, 412 (Ga. 2016) (stating that the sentencer must make a "distinct determination on the record that [a juvenile] is irreparably corrupt or permanently incorrigible, as necessary to put him in the narrow class of juvenile murderers for whom an LWOP sentence is proportional under the Eighth Amendment as interpreted in *Miller* as refined by *Montgomery*"); *Davis v. State*, 415 P.3d 666, 695 (Wyo. 2018) ("*Miller* and *Montgomery* require a sentencing court to make a

finding that . . . the juvenile offender's crime reflects irreparable corruption resulting in permanent incorrigibility, rather than transient immaturity."); *State v. Seats*, 865 N.W.2d 545, 558 (Iowa 2015) ("The question the court must answer at the time of sentencing is whether the juvenile is irreparably corrupt, beyond rehabilitation, and thus unfit ever to reenter society.");[4] *People v. Holman*, 91 N.E.3d 849, 863 (Ill. 2017) ("Under *Miller* and *Montgomery*, a juvenile may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation."); *Commonwealth v. Batts*, 163 A.3d 410, 435 (Pa. 2017) ("Under *Miller* and *Montgomery*, a sentencing court has no discretion to sentence a juvenile offender to life without parole unless it finds that the defendant is one of the 'rare' and 'uncommon' children possessing the above-stated characteristics, permitting its imposition."); *Luna v. State*, 387 P.3d 956, 963 n.11 (Okla. Crim. App. 2016) (stating that the fact-finder at sentencing may not impose a life-without-parole sentence on a juvenile "unless [it] find[s] be-

[4] *See also State v. Sweet*, 879 N.W.2d 811, 833 (Iowa 2016) ("In *Seats*, . . . we noted that if a life sentence without parole could ever be imposed on a juvenile offender, the burden [is] on the state to show that an individual offender manifested 'irreparable corruption.'"). In *Sweet*, the Supreme Court of Iowa additionally held that the Iowa Constitution categorically prohibits juvenile life without parole. *Id.* at 839.

yond a reasonable doubt that the defendant is irreparably corrupt and permanently incorrigible").[5]

2. On the other side of the split, four state supreme courts, including the Supreme Court of Mississippi, hold that the Eighth Amendment does *not* require a trial court to make a finding of permanent incorrigibility to sentence a juvenile to life without parole. *Chandler v. State*, 242 So. 3d 65, 69 (Miss. 2018) (citing *Montgomery*, 136 S. Ct. at 735) ("The *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility.");[6] *State v. Ramos*, 387 P.3d 650, 665 (Wash. 2017) ("[T]he Supreme Court has expressly acknowledged that '*Miller* did *not* require trial courts to make a finding of fact regarding a child's incorrigibility.'") (quoting *Montgomery*, 136 S. Ct. at 735);[7] *Johnson v. State*,

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[5] Two judges filed partial concurrences and dissents in *Luna*, opining that the majority opinion "wrongly expands upon the requirements of [*Montgomery*]," *Luna*, 387 P.3d at 963 (Lumpkin, J., concurring in part and dissenting in part), and that a jury need not "find beyond a reasonable doubt that Appellant is irreparably corrupt and permanently incorrigible." *Luna*, 387 P.3d at 965 (Hudson, J., concurring in part and dissenting in part).

[6] Four justices dissented in *Chandler*, concluding that "the trial court's resentencing of Chandler was insufficient as a matter of law" because the trial court "did not articulate that Chandler is among 'the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.'" *Chandler*, 242 So. 3d at 71, 73 (Waller, C.J., dissenting) (quoting *Montgomery*, 136 S. Ct. at 734).

[7] The Washington Supreme Court has since categorically barred juvenile life-without-parole sentences under its state constitution. *State v. Bassett*, 428 P.3d 343, 352 (Wash. 2018).

395 P.3d 1246, 1258 (Idaho 2017) ("*Montgomery* was careful . . . to note that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility.'") (quoting *Montgomery*, 136 S. Ct. at 735); *People v. Skinner*, 917 N.W.2d 292, 309 (Mich. 2018) ("Given that *Montgomery* expressly held that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility,' we likewise hold that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility."). *But see id.* at 307 (acknowledging "there is language in both *Miller* and *Montgomery* that at least arguably would suggest that a finding of irreparable corruption is required before a life-without-parole sentence can be imposed").

3. The Fourth and Ninth Circuits split on the same question, although both decisions are now subject to further review. In *United States v. Briones*, "[t]he gist of [the defendant's] appeal" included the argument that "the district court failed to make an explicit finding that Briones was 'incorrigible.'" 890 F.3d 811, 818 (9th Cir. 2018), *rehn'g en banc granted*, 915 F.3d 591 (9th Cir. 2019). The panel held that such a finding was not required. *Id.* at 819 (citing *Montgomery*, 136 S. Ct. at 735). Judge O'Scannlain, however, faulted the district court for imposing a life sentence "[w]ithout any evident ruling on th[e] question" of permanent incorrigibility. *Id.* at 822–23 (O'Scannlain, J., concurring in part and dissenting in part). Judge O'Scannlain opined that "[p]erhaps . . . the district court could have determined that . . . Briones is permanently incorrigible . . . [,] [b]ut the transcript does not indicate that the district court made such determination." *Id.* at 824. Judge O'Scannlain would have "remand[ed] for

the limited purpose of permitting the district court properly to perform the analysis required by *Miller* and *Montgomery*." *Id.* at 822.

In contrast with the Ninth Circuit, the Fourth Circuit held that "a sentencing judge . . . violates *Miller*'s rule any time it imposes a discretionary life-without-parole sentence on a juvenile homicide offender without first concluding that the offender's 'crimes reflect permanent incorrigibility,' as distinct from 'the transient immaturity of youth.'" *Malvo v. Mathena*, 893 F.3d 265, 274 (4th Cir. 2018), *cert. granted*, No. 18-217, 2019 WL 1231751 (U.S. Mar. 18, 2019); *see also id.* at 275 (stating that a "finding whether Malvo's crimes reflected irreparable corruption or permanent incorrigibility [is] a determination that is now a prerequisite to imposing a life-without-parole sentence on a juvenile homicide offender").

The question presented to this Court in *Malvo* does not directly implicate the Fourth Circuit's holding that the Eighth Amendment requires a sentencing court to find permanent incorrigibility before sentencing a juvenile to life without parole.[8] Nonetheless, because this Court's resolution of *Malvo* may further clarify the constitutional limitations on juvenile life-without-parole sentences, the Court may wish to hold this petition pending the disposition of *Malvo*.

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[8] As presented to this Court, *Malvo* concerns the retroactivity of *Montgomery*'s clarification that *Miller* extends to discretionary life-without-parole sentences. Petition for Writ of Certiorari, *Mathena v. Malvo*, No. 18-217 (U.S. Aug. 16, 2018), 2018 WL 3993386, at *i, *3, *11, *16–17. The Petitioner in *Malvo* disclaims any argument regarding the applicability of *Montgomery* to cases, like the instant case, that arise on direct review. *Id.* at *11.

B. This Case Is The Ideal Vehicle To Decide The Question.

1. The record in this case includes multiple reasoned opinions on the question presented, thoroughly disclosing the analyses of the jurists who considered this issue below. The court of appeals decided the question in a reasoned decision, over the dissent of two judges. The Supreme Court of Mississippi granted certiorari and heard oral argument, and then dismissed the petition over the dissent of four justices. In addition, the state supreme court considered the same question in depth in *Chandler*, splitting 5-4. *See supra* at 12 n.6.

Prior petitions for certiorari in *Chandler v. Mississippi*, *Cook v. Mississippi*, and *Davis v. Mississippi* presented the same question. Mississippi opposed certiorari on the ground that the petitioners failed to preserve the mandatory finding argument in the state proceedings,[9] and this Court declined review.[10]

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[9] Brief in Opposition to Petition for Writ of Certiorari at 8–9, *Chandler v. Mississippi*, No. 18-203, 2018 WL 6445982 (U.S. Dec. 3, 2018); Brief in Opposition to Petition for Writ of Certiorari at 5–7, *Cook v. Mississippi*, No. 18-98, 2018 WL 6445999 (U.S. Dec. 3, 2018); Brief in Opposition to Petition for Writ of Certiorari at 7–8, *Davis v. Mississippi*, No. 17-1343, 2018 WL 3019584 (U.S. June 13, 2018).

[10] *Chandler v. State*, 242 So. 3d 65 (Miss. 2018), *reh'g denied* (May 17, 2018), *cert. denied*, No. 18-203, 139 S. Ct. 790 (2019); *Cook v. State*, 242 So. 3d 865 (Miss. Ct. App. 2017), *reh'g denied* (Nov. 28, 2017), *cert. denied*, 237 So. 3d 1269 (Miss. 2018), *cert. denied*, No. 18-98, 139 S. Ct. 787 (2019); *Davis v. State*, 234 So. 3d 440 (Miss. Ct. App. 2017), *reh'g denied* (Oct. 10, 2017), *cert. denied*, 233 So. 3d 821 (Miss. 2018), *cert. denied*, 159 S. Ct. 58 (2018).

The record in this case precludes any such contention and creates a perfect vehicle to consider the issue.

2. This Court's resolution of the question would be profoundly consequential, and likely outcome-determinative, for Brett Jones. If this Court held that the Eighth Amendment requires a finding of permanent incorrigibility, Brett surely would be entitled to a remand for a new sentencing hearing. At such a hearing, it is unlikely that Brett would be found permanently incorrigible given his youth at the time of the crime, troubled childhood, and subsequent redemption while incarcerated. *See supra* at 4–5.[11] After all, four state supreme court justices concluded that "the record does not reflect [Brett's] permanent incorrigibility." *Id.* at 3a.

3. Finally, this case comes to the Court on direct review rather than collateral attack. Challenges to juvenile life-without-parole sentences often arise in state or federal habeas proceedings, encumbering consideration of the underlying question. This case arises on direct review of the trial court's resentencing order, cleanly framing the question presented.

C. The Question Is Important.

The issue this case raises is nationally important because meaningful enforcement of *Montgomery*'s command demands a required finding. *Montgomery* instructs sentencing authorities to limit life without

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[11] *See, e.g.*, *Montgomery*, 136 S. Ct. at 736 (stating that proof of a juvenile offender's "evolution from a troubled, misguided youth to a model member of the prison community" is "an example of one kind of evidence that prisoners might use to demonstrate rehabilitation").

parole to "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 136 S. Ct. at 734. That function necessarily requires a finding of permanent incorrigibility.

1. Findings are crucial to juvenile life-without-parole sentences just as they are crucial to death sentences. These are the only punishments that the Eighth Amendment limits to "a subclass of defendants convicted of murder." *See Tuilaepa v. California*, 512 U.S. 967, 972 (1994). Like capital punishment, juvenile life without parole calls for "a distinctive set of legal rules" because this Court "view[s] this ultimate penalty for juveniles as akin to the death penalty." *Miller*, 567 U.S. at 475.

In capital punishment cases, the Court has stated "that the trier of fact must convict the defendant of murder and *find* one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase." *Tuilaepa*, 512 U.S. at 971–72 (emphasis added).[12] The same logic applies to juvenile life-without-parole sentences: requiring a finding ensures that the punishment is restricted to the constitutionally eligible group. Without a finding that a given juvenile is irreparably corrupt, there remains "a grave risk" that corrigible juveniles will be sentenced to life without parole and thereby "held in violation of the Constitution." *Montgomery*, 136 S. Ct. at 736.

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[12] *See also Lowenfield v. Phelps*, 484 U.S. 231, 246 (1988) (holding that a death sentence satisfied the Eighth Amendment because the jury at the guilt phase "found" an aggravating factor); *Jurek v. Texas*, 428 U.S. 262, 273 (1976) (plurality opinion) (upholding Texas's capital murder law that "essentially requires that one of five aggravating circumstances be found before a defendant can be found guilty of capital murder . . .").

2. The finding is also critical to the function of appellate courts, which must determine whether a life-without-parole sentence "properly took account of [the defendant's] circumstances, was imposed as a result of bias, or was otherwise imposed in a 'freakish manner.'" *Campbell v. Ohio*, 138 S. Ct. 1059, 1060 (2018) (statement of Sotomayor, J., respecting the denial of certiorari) (footnote omitted). Whether an offender is permanently incorrigible is *the* central question in juvenile life-without-parole cases, and the sentencing authority must answer it for appellate review to be meaningful. When a trial court fails to answer the question of permanent incorrigibility, the correct approach is "remanding for an actual determination" of whether the defendant is potentially corrigible or irretrievably depraved. *Briones*, 890 F.3d at 826 (O'Scannlain, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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MARCH 2019

APPENDIX

APPENDIX A

Serial: 221459

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-CT-00899-SCT

[Filed Nov. 29, 2018]

BRETT JONES A/K/A BRETT A. JONES ***Appellant***

v.

STATE OF MISSISSIPPI ***Appellee***

EN BANC ORDER

The instant matter is before the Court, en banc, on the Court's own motion. The Petition for Certiorari filed by Brett Jones was granted by order of the Court signed on July 26, 2018. Upon further consideration, the Court finds that there is no need for further review and that the writ of certiorari should be dismissed, as authorized by Mississippi Rule of Appellate Procedure 17(f).

It is, therefore, ORDERED that the writ of certiorari is hereby dismissed.

SO ORDERED, this the 27 day of November, 2018.

/s Michael K. Randolph
MICHAEL K. RANDOLPH,
PRESIDING JUSTICE FOR THE COURT

TO DISMISS: RANDOLPH, P.J., COLEMAN, MAXWELL, BEAM AND CHAMBERLIN, JJ.

KITCHENS, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY WALLER, C.J., KING., AND ISHEE, JJ.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-CT-00899-SCT

[Filed Nov. 29, 2018]

BRETT JONES A/K/A BRETT A. JONES ***Appellant***

v.

STATE OF MISSISSIPPI ***Appellee***

1. Four justices of this Court granted the petition for writ of *certiorari* filed by Brett Jones to review the circuit court's denial of parole eligibility after a hearing pursuant to *Miller v. Alabama,* 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). This Court, *en banc,* heard oral argument on the petition. Citing *Montgomery v. Louisiana,* 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), Jones argues that he is not the rare, permanently incorrigible offender who, consistent with the Eighth Amendment, can be sentenced to a lifetime in prison. Now, five justices dismiss Jones's petition for *certiorari,* finding "no need for further review." Thus the majority, without deigning to provide any discussion of the arguments presented to this Court, waves aside the United States Supreme Court's decision in *Montgomery* and allows an unconstitutional sentence to stand.

2. When Brett Jones, now age twenty-nine, was fifteen years of age, he stabbed his grandfather to death. He was convicted of murder, and the Circuit Court of Lee County imposed a mandatory sentence of life imprisonment. *See* Miss. Code Ann. § 97-3-21 (Rev. 2006). By operation of Mississippi Code Section 47-7-3(1)(h) (Rev. 2011), Jones's life sentence rendered him ineligible for parole. After this Court ordered that Jones be resentenced after a hearing and consideration of the factors from *Miller,* the trial court

found that Jones should not be eligible for parole. The Court of Appeals affirmed his conviction and sentence. *Jones v. State,* 938 So. 2d 312 (Miss. Ct. App. 2006). In post-conviction relief proceedings, this Court ordered that Jones be resentenced after a hearing pursuant to *Miller* to determine his entitlement to parole eligibility.

3. The circuit court found that Jones was not entitled to parole eligibility. But after that decision, the United States Supreme Court decided *Montgomery,* which held that *"Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility" and that *"Miller* . . . does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.* at 734, 735.

4. Despite the fact that the circuit court was without the benefit of *Montgomery* when it resentenced Jones, the Court of Appeals affirmed Jones's without-parole sentence. This Court's dismissal of the petition for writ of *certiorari* means that the decision of the Court of Appeals will be Mississippi's final word on the constitutionality of Jones's sentence. Because the record does not reflect Jones's permanent incorrigibility, the circuit court's ruling was an abuse of discretion. Therefore, I would vacate his sentence and remand for resentencing to life imprisonment with eligibility for parole.

FACTS AND PROCEDURAL HISTORY

5. The Court of Appeals, in its opinion affirming Jones's conviction and sentence, set forth the facts adduced at the murder trial:

During August of 2004, Jones was living with his paternal grandparents, Bertis Jones and Madge Jones. Jones's girlfriend, Michelle Austin, had run away from home in the first week of August 2004. Austin was staying mostly at Jones's grandparents' home, as well as at an abandoned fish restaurant near the home. One August 9, 2004, Bertis Jones discovered Austin in Jones's bedroom and told her to get out of his house. Austin then ran to the fish restaurant. According to her testimony at trial, both Jones and his cousin, Jacob, later came and told her that Jones was "in big trouble" with his grandfather. Austin testified that she asked Jones, "What are you going to do? Kill him?" Austin testified that Jones did not respond to this question. Austin also testified that Jones "said that he was going to hurt his granddaddy."

Jones testified that at about 4 p.m., he went into the kitchen to make a sandwich, and he and the victim got into an argument. Jones "sassed" him, at which point the argument escalated. Jones testified that his grandfather got in his face, pointing and yelling at him. He testified that his grandfather had never done that before. He testified that his grandfather then pushed him, that he pushed him back, and his grandfather then swung at him. Jones testified that he had a steak knife in his hand from making a sandwich, and because he "didn't have anywhere to go between the comer and him," he "threw the knife forward," stabbing his grandfather. He testified that his grandfather backed up, looked at the wound,

and came at Jones again. Jones again stabbed him and tried to get past his grandfather. Jones testified that his grandfather grabbed him, they fought some more, and Jones then grabbed a filet knife. He stabbed his grandfather with this knife. Jones testified:

> I was stabbing him because I was afraid, I didn't know anything else to do because he was so huge. He's not really a big looking man until he gets in your face with his hands up and swinging at you, and then he turns into a giant. And you just feel like there's no way out, no way to get away from him.

After they "got outside," Jones testified that he knew his grandfather was going to die if he did not try to save him, so he tried to administer CPR. He then tried to carry his grandfather, who was not breathing at that point, into the house "[m]ostly to get him out of the yard." Jones then pulled the body into the laundry room and shut the door. Jones used a water hose to try and clean the blood off of his arms, and then threw his shirt in the garbage under the sink. He then attempted to cover up the blood spots in the carport by pulling his grandfather's car over them. Jones testified that he walked around the house and saw Robert "Frisco" Ruffner; at this point, Jones was covered in blood.

Ruffuer, who was living with and doing yard work for Thomas Lacastro, a neighbor at the time, testified that he had "heard an old man, you know, like holler out he was in pain," and about two or three minutes later, he saw Jones

walking toward him covered in blood. Ruffner testified that Jones was carrying a knife, trembling and saying, "Kill, kill." Ruffner then ran into the house and called 911.

Thomas Lacastro arrived while Ruffner was on the phone with the police, and Ruffner related to Lacastro what he had seen. Ruffner was hysterical at the time, and Lacastro did not, at first, believe him. Ruffner told Lacastro that Jones had killed his grandfather. Lacastro then saw Jones in the bushes and asked him to come over to his house. Lacastro testified that Jones was pale and "had some blood on him." Lacastro testified that he asked Jones, "Where's your grandfather?" Jones answered, "He's gone," and Lacastro responded, "No, he's not gone. His car is right there, Brett." Jones again tried to say that his grandfather had left, but Lacastro told him, "Brett, you're lying. You need to get out of my yard." At some point during the conversation, Jones told Lacastro that the blood was fake and that "it's a joke." Lacastro responded, "It's not a joke, son. This is not a joke. This is real."

Lacastro testified that Jones then went back toward the bushes, where he met a young lady. He testified that the two walked "up and down the bushes . . . [a]nd then . . . out toward the levee." Lacastro told Jones before he left that he had called the police. After Jones and the young lady left, Lacastro went over to the bushes where they had been "milling around" and saw an oil pan covered in blood. He then went into

the carport and saw more blood, but did not go any farther.

Jones testified that when he left the property, he was trying to go to Wal-Mart to meet his grandmother because he "wanted to tell her what happened." He and Austin ran through the woods to a convenience store, where a man asked them if they needed a ride. Jones testified that they got to a gas station in Nettleton, Mississippi, and were trying to get a ride to the Wal-Mart in Tupelo, Mississippi, when police apprehended them.

Jones and Austin gave the officers false names. Officer Gary Turner of Nettleton began a pat-down of Jones and found a pocketknife in his left pocket. Officer Turner asked whether it was the knife Jones "did it with," to which Jones responded, "No, I already got rid of it."

When Investigator Steve White went to investigate the home of Bertis Jones, he found Bertis Jones's body concealed in a utility room in the back of the carport. He found that someone had apparently used a car, an oil pan and a mat to conceal puddles of blood. Investigator White also found a bloodstained T-shirt in the carport, as well as more bloodstained clothing in the kitchen trash can. Officers also found a filet knife in the kitchen sink and a bent steak knife with blood on the tip of it. There were blood spatters on the walls.[1]

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[1] Lieutenant Scotty Reedy testified that he found a partially eaten sandwich on a table in the breakfast area off the kitchen.

> There were a total of eight stab wounds to the body of Bertis Jones. There were also abrasions consistent with the body's having been dragged, and cuts on the hand classified as "defensive posturing injuries." The cause of death was a stab wound to the chest.
>
> Jones was convicted of murder in the Circuit Court of Lee County and sentenced to life imprisonment in the custody of the MDOC.

Jones v. State, 938 So. 2d 312, 313-15 (Miss. Ct. App. 2006) *(Jones I).*

6. After his conviction was affirmed, Jones filed an application for leave to file a motion for post-conviction relief in the trial court, which this Court granted. *Jones v. State,* 122 So. 3d 698, 699 (Miss. 2013) *(Jones III).* The Circuit Court of Lee County denied the motion, and Jones appealed. *Id.* The Court of Appeals affirmed the denial of Jones's motion for post- conviction relief. *Jones v. State,* 122 So. 3d 725 (Miss. Ct. App. 2011) *(Jones II).* Jones petitioned this Court for a writ of *certiorari.*

7. On June 25, 2012, the United States Supreme Court decided *Miller,* holding that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders," that is, those who were younger than eighteen years of age at the time of the crime. *Miller,* 567 U.S. at 479. *Miller* "require[s] [the sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. This Court addressed *Miller* in *Parker v. State,* 119 So. 3d 987, 996 (Miss. 2013), recognizing that *"Miller* created a new rule with which this State

must comport." We determined that, although Mississippi's penalty for murder does not prohibit parole, the application of the parole statute effectively renders a life sentence "tantamount to life without parole." *Id.* at 997. Finding that Mississippi's sentencing and parole scheme contravened *Miller* by rendering Parker ineligible for parole without any consideration by the sentencer of his youth, we vacated the sentence and remanded the case for a new sentencing hearing after which the trial court was to consider the factors identified in *Miller* before resentencing Parker. *Id.* at 998. In *Jones III*, after holding that *Miller* applied retroactively to cases on collateral review, we vacated Jones's sentence and remanded for a new sentencing hearing and consideration of *Miller* consistent with *Parker*. *Jones III*, 122 So. 3d at 703.

8. Before the sentencing hearing, the circuit court appointed counsel for Jones and allowed him to retain an expert[2] and an investigator. Jones called five witnesses at the hearing: his grandmother, Lawanda Madge Jones; his younger brother, Marty Jones; his mother, Enette Wigginton; his cousin, Sharon Frost; and Jerome Benton, a fire and safety manager at the juvenile correctional facility where Jones had been incarcerated from the beginning of his life sentence until he was twenty-one years old. Jones testified as well. The State rested on the records of the trial and post-conviction proceedings.

9. The following witnesses testified on Jones's behalf. His grandmother, Lawanda Jones, was the

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[2] The order did not specify the type of expert Jones was permitted to retain. Jones's motion for appointment of an expert had not requested a certain kind of expert, but discussed the general importance of expert testimony in a *Miller* proceeding.

widow of the victim, Bertis Jones. She testified that, before Jones had moved in with them, he had resided with his mother and stepfather, Dan Alcott, in Florida. She testified that Jones's mother had mental health problems and sometimes left the children alone. She further testified that Alcott was physically abusive to Jones and his little brother. She testified that Jones came to live with them after saying that he could not take Alcott's beatings any more. She also testified that when Jones moved to Mississippi, he had stayed with his cousins in Pontotoc and Tupelo before moving in with his grandparents and that he had been living with his grandparents for less than two months on the day her husband was killed. During her earlier testimony at the post-conviction relief hearing, Lawanda Jones testified that Jones had unfettered access to guns and ammunition at his grandfather's house.

10. Marty Jones, the younger brother of Brett Jones, testified that they had lived with Alcott for about six or seven years. He verified that Alcott had abused the boys physically and verbally on a regular basis. He testified that Alcott "would get in your face and poke at your chest, poke you in the face, grab you by the arms, grab you by the neck, sling you around and have you sit down, things like that." At times, Alcott's abuse left marks or bruises, but nothing that needed medical attention. Jones, his mother, and his cousin testified that Alcott called Jones and Marty Jones "little motherfuckers" or "little assholes" instead of referring to them by name. Marty Jones and his mother testified that Jones had suffered more abuse at Alcott's hands than had the younger brother. Marty Jones described the brothers' relationship with Alcott as

"strained, fear, and stress." Marty Jones testified that their mother, Wigginton, suffered from high anxiety and heavy depression. He was aware that she had been diagnosed as bipolar, which caused her to experience extreme mood swings that negatively affected the children.

11. Wigginton testified that Jones was born on July 17, 1989, and that he had just turned fifteen years old a few weeks before killing his grandfather on August 9, 2004. She testified that she had separated from Jones's father, Anthony Martin Jones, when Jones was little. She described Anthony Jones as a violent alcoholic, which had prompted her to leave him. After the divorce, Anthony Jones saw his children sporadically, and subsequently he was imprisoned for a felony DUI conviction. Wigginton testified that, after Anthony Jones was released from prison, he continued to drink, but Brett Jones lived with him in Mississippi for one school year before returning to his mother's home.

12. Wigginton acknowledged that she had abused alcohol and had several mental disorders for which she was on Social Security disability, including panic disorder, anxiety, post-traumatic stress disorder, and bipolar disorder. She described panic attacks interspersed with months of depression. She testified that she previously had attempted suicide. Also, she testified that she had cut herself with razor blades as a way of distracting herself from her mental problems. Jones testified that he and his brother had noticed their mother's injuries from cutting. Both Jones and his grandmother testified that his mother was a drunkard.

13. According to Wigginton, she had married Alcott in 1999, and the family moved frequently, with the boys changing schools with each move. She corroborated the testimonies of Jones and his brother that Alcott had hit the children for minor infractions. She said that Alcott would yell in the boys' faces and shake them. Wigginton described Alcott as a hateful person, and she said she had felt unable to escape because she "had nowhere to go" and had neither money nor a vehicle. At one point, Jones had begged his mother not to make them stay with Alcott.

14. Jones returned to Mississippi in the summer of 2004 after a fight with Alcott. Jones testified that, after he had gotten home late one night, Alcott grabbed him by the throat and started to remove his own belt, intending to whip Jones. Jones testified that at that point he decided he was not going to tolerate Alcott's abuse any longer. He hit Alcott in the ear, which began to bleed. The police arrested Jones for domestic violence, and he was required to take an anger management course.

15. Jones testified that he had been prescribed medications for attention deficit hyperactivity disorder (ADHD) and depression, and later he was prescribed antipsychotic medication. Jones and his mother testified that he had stopped taking drugs "cold turkey" when he moved to Mississippi, which his mother knew was against medical advice. Jones testified that, like his mother, he had issues with cutting himself, beginning at age eleven or twelve. Marty Jones testified that he had been aware that his brother, Jones, cut his arms on occasion. Jones submitted no expert testimony about his mental health issues, medications, or the effects of stopping his medications abruptly. Jones's mother and

grandmother both testified that Jones is very intelligent, has a high IQ, and had been enrolled in gifted classes in school.

16. Witnesses also testified about Jones's relationship with his girlfriend, Michelle Austin. Jones testified that he had bonded with Austin because she also was from an abusive family. Jones testified that Austin, thinking she might be pregnant, ran away from home after convincing a friend to buy her a bus ticket from Florida to Mississippi to be with Jones. Marty Jones testified that Jones cut himself because of coercion by Austin. Marty Jones witnessed an argument between Jones and Austin in which she "basically was beating him down, screaming at him, calling him all sorts of worthless, and she basically . . . worded it like, 'if you love me, you'll do this,'" referring to self-harm. Jones said that Austin had pressured him to do harmful things to prove his love for her.

17. Jones and his cousin, Sharon Frost, testified that Jones had lived with her in Pontotoc, Mississippi, for a couple weeks in the summer of 2004 before moving to his grandparents' house. She testified that her child was one year older than Jones and that Jones always had called her "Aunt Sharon." She corroborated the testimony about Jones's tumultuous upbringing. She testified that she had witnessed fights between Alcott, Enette Wigginton, and the children. Frost said that, during his time with her family, Jones had behaved normally and seemed to enjoy spending time with the other children.

18. After his time with Frost, Jones moved to Lee County to live with his grandparents. Weeks later, Jones killed his grandfather. No evidence existed that Jones's grandparents ever abused or mistreated him. When Jones was asked whether he regretted killing

his grandfather, he responded, "of course." He testified that, immediately after he had killed his grandfather, he started freaking out, and tried his hardest to get to his grandmother at her job at a Wal-Mart in Tupelo so he could explain what had happened.

19. Benton testified that he was a fire and safety manager at Walnut Grove, the juvenile detention facility where Jones was incarcerated from the time that he was about sixteen years old until he turned twenty-one years old. Jones had worked for him doing janitorial tasks during this period. Benton said that Jones had been a good worker who got along with others and stayed out of trouble. Jones obtained his GED. Benton said that Jones had been "almost like my son." He said that he was in prison because of "an accident" and that he had done "something he regretted." To Benton, Jones had seemed normal and mature for his age, without mental health issues. Benton testified that Jones had no disciplinary issues during the time he knew him.

20. Jones testified that he had attempted suicide during his first week at Walnut Grove, but then he began seeing a "psych doctor" and learned to cope. He said that, in 2007 at Walnut Grove, he was written up for a disciplinary incident, a riot which had involved many inmates, in the zone in which he was housed. Since his transfer from the juvenile facility, Jones was written up for "a cussword, but no violence."

21. After the hearing, the circuit court judge took the matter under advisement and later reconvened to read his ruling into the record. The judge said he had "considered each and every factor that is identifiable in the *Miller* case and its progeny and those decisions which followed." Then, the court ruled as follows:

At an earlier time, the Court conducted a hearing and heard evidence offered by the defendant, Brett Jones, and the State of Mississippi bearing on those factors to be considered by the Court as identified by *Miller*. The ultimate question is whether or not, in consideration of those factors, the statutory sentence of life imprisonment, and by application of the parole provisions of the Code, [the sentence] is without parole and whether relief is appropriate to the facts and circumstances in this case.

The Court is cognizant of the fact that children are generally different; that consideration of the *Miller* factors and others relevant to the child's culpability might well counsel against irrevocably sentencing a minor to life in prison. All such factors must be considered on a case-by-case basis.

Miller requires that the sentencing authority consider both mitigating and the aggravating circumstances.

And I would note that these are not really terms used in the *Miller* opinion, but I think they are an easy way for us to identify those considerations.

This Court can hypothesize many scenarios that would warrant and be just to impose a sentence which would allow the defendant to be eligible for consideration for parole, notwithstanding the parole law considerations.

The obvious defense raised by the defendant was self-defense; that he acted to protect himself from what he believed to be an

imminent threat to his person likely to result in serious injury or death. He testified in detail concerning the circumstances of the killing.

On considering the facts as they determined them to be beyond a reasonable doubt, the jury returned a verdict of guilty of murder, thereby rejecting a defense of self-defense and manslaughter, a lesser-included offense. The jury plainly had as possible verdicts in the case, the verdict of not guilty, manslaughter, or murder.

The defendant, Brett Jones, was at the time 15 years of age at the time that he stabbed his grandfather to death. A fair consideration of the evidence indicates that the killing of Mr. Bert Jones was particularly brutal.

During the course of the murder, the defendant stabbed the victim eight times and was forced to resort to a second knife when the first knife broke when used in the act. The victim appears to have died outside the house, leaving a great amount of blood on the ground.

The defendant attempted to conceal his act by placing the body of the dead or dying Bert Jones in an enclosed part of the garage and attempting to wash away the blood on the ground with a water hose.

He and his female companion then left the scene of the murder and were apprehended by authorities later in Nettleton, approximately 20 miles or so away.

There is no evidence that indicates that anyone other than the defendant participated in the

killing of Bert Jones. Likewise, there is no evidence that the defendant acted under the pressure of any family or peer and no evidence of mistreatment or threat by Bert Jones, except the self-defense claim asserted and rejected by the jury.

As noted before, the defendant was 15 years of age at the time of the killing. At the sentencing hearing recently conducted, it was revealed that the female companion was a minor who had come from Florida in order to be with the defendant, and that they, the defendant and the minor female, concealed her presence by her remaining in an outbuilding near the home of the victim.

The killing apparently came about soon after Mr. Bert Jones found the girl in his home in the company of the defendant. The evidence presented at the sentencing hearing indicates that their relationship was intimate and that at some time before the incident she thought she was pregnant. That suspicion proved to be untrue, but demonstrates that the defendant had reached some degree of maturity in at least one area.

The defendant grew up in a troubled circumstance. His mother was gone frequently for extended periods. She had divorced the defendant's father and was living in Florida with her then husband and the defendant and his younger brother. The conditions in that home are unremarkable except for the apparent unsettled lifestyle and an incident in which the defendant and his stepfather had a confrontation resulting from defendant's

> failure to return home at the time set by the stepfather. The authorities were called, and the defendant was removed and required to enter a program of anger management.
>
> There is no evidence of brutal or inescapable home circumstances. In fact, the reason the defendant was in the home with Bert Jones was to provide him with a home away from the circumstances existing in Florida.
>
> In conclusion, the Court, having considered each of the *Miller* factors, finds that the defendant, Brett Jones, does not qualify as a minor convicted and sentenced to life imprisonment without possibility of parole consideration and entitled to be sentenced in such a manner as to make him eligible for parole consideration.

22. Brett Jones appealed, and the Court of Appeals affirmed. *Jones v. State,* 2017 WL 6387457, *7 (Miss. Ct. App. Dec. 14, 2017). The Court of Appeals found that the circuit judge had held the required *Miller* hearing. *Id.* The Court of Appeals found that, although the judge had not discussed each and every *Miller* factor, the judge expressly said he had considered each factor. *Id.* Further, the Court of Appeals found that thejudge's bench ruling sufficiently explained the reasons for his decision, that the decision was not arbitrary, and that the decision was supported by substantial evidence. *Id.*

23. Jones filed a petition for writ of *certiorari,* which this Court granted with oral argument. Jones argues that (1) he is not the rare, permanently incorrigible offender who must be sentenced to a lifetime in prison; (2) his sentence must be vacated

because the circuit court made no finding of permanent incorrigibility; and (3) his sentence must be vacated because the federal and state constitutions categorically bar the practice of sentencing children to die in prison. I would find that Jones is entitled to relief on his first issue.

DISCUSSION

24. *Miller* established that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." *Miller,* 567 U.S. at 479. This is because "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471. The Court relied on its precedent involving juvenile sentencing. *See Roper v. Simmons,* 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (banning capital punishment for juveniles under the age of eighteen); *Graham v. Florida,* 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (holding that life without parole violates the Eighth Amendment when imposed on juveniles in non-homicide cases). But, rather than imposing a categorical ban on sentences of life without parole for youthful offenders, the Court held that "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." *Miller,* 567 U.S. at 473. "An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* at 467 (quoting *Jackson v. Norris,* 378 S.W.3d 103, 109 (Ark. 2011) (Danielson, J., dissenting) (quoting *Graham,* 560 U.S. at 76). Therefore, "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Miller,* 567 U.S. at 474.

25. The Court cited three important differences between children and adults, discussed in *Roper* and *Graham,* that undergirded its holding: (1) "children have a '"lack of maturity and an under-developed sense of responsibility,"' leading to recklessness, impulsivity, and heedless risk-taking"; (2) "children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings"; and (3) "a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Id.* at 471 (quoting *Roper,* 543 U.S. at 569-70).

26. *Miller* held that, because youth is a central consideration, the sentencer must consider the defendant's "youth and attendant characteristics" before imposing a penalty. *Id.* at 483. To enable this endeavor, *Miller* set forth several factors that must be considered by the sentencer. First, the sentencer must consider the defendant's "chronological age and its hallmark features . . . immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477. The sentencer must consider the family and home environment surrounding the defendant "from which he cannot usually extricate himself-no matter how brutal or dysfunctional." *Id.* Also to be considered are the circumstances of the offense, including the extent of the defendant's participation in the conduct and how the defendant may have been affected by familial and peer pressure. *Id.* Another factor to be considered is whether the defendant might have been charged with a lesser offense but for "incompetencies

associated with youth-for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Id.* at 477-78. Finally, the sentencer must consider the possibility of rehabilitation. *Id.* at 478.

27. The sentencer must have the opportunity to consider mitigating circumstances. *Id.* at 479. *Miller* held that the sentencer in homicide cases must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. The Court concluded that "given all we have said . . . about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.* at 479. In *Parker,* this Court recognized that *Miller* requires that the trial court take into account and consider the *Miller* factors before sentencing. *Parker,* 119 So. 3d at 995, 998.

28. After the *Miller* hearing in this case and the circuit court's ruling that Jones's sentence would not include parole eligibility, the United States Supreme Court decided *Montgomery v. Louisiana. Montgomery* held that *Miller* had announced a new substantive constitutional rule that applied retroactively "to juvenile offenders whose convictions and sentences were final when *Miller* was decided." *Montgomery,* at 725, 532. *Montgomery* expressed that

> *Miller,* then, did more than require a 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 a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" Because *Miller* determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,'" it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"-that is, juvenile offenders whose crimes reflect the transient immaturity of youth. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it "'necessarily carr[ies] a significant risk that a defendant'"—here, the vast majority of juvenile offenders—"'faces a punishment that the law cannot impose upon him.'"

Montgomery, 136 S. Ct. at 734 (citations omitted). *Montgomery* held that *Miller*'s substantive holding was that "life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.* at 735. The Court emphasized that *"Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* at 734. *"Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." *Id.*

29. This Court addressed *Montgomery* in *Chandler v. State,* 242 So. 3d 65 (Miss. 2018), *cert. docketed,* No. 18-203 (U.S. Aug. 15, 2018). Joey Montrell Chandler, a juvenile at the time of his crime, appealed to this

Court from a sentence of life without parole imposed after a *Miller* hearing. *Id.* at 67. Chandler argued that the trial court's findings did not comport with *Miller* and *Parker*. *Id.* at 68. After reviewing the constitutional requirements for sentencing under *Miller,* a five-member majority of this Court rejected Chandler's arguments. *Id.* at 71. First, the Court recognized that *Montgomery* did not require a sentencer to make a fact finding that a juvenile was permanently incorrigible before imposing life without parole. *Id.* at 69. Second, the Court held that no rebuttable presumption exists in favor of parole eligibility for juvenile offenders. *Id.* And third, the Court held that "[n]either *Miller* nor *Parker* mandates that a trial court issue findings on each factor." *Id.* at 70. The Court also declined to apply heightened scrutiny to the trial court's *Miller* decision. *Id.* at 68. Ultimately, the Court found that the trial court had adhered to all constitutional requirements by conducting a hearing and sentencing Chandler after considering, although not issuing findings on, each *Miller* factor. *Id.* This Court also found that the trial court had not abused its discretion by imposing a sentence of life without parole. *Id.* at 70-71.

30. Jones argues that the circuit court's decision did not comport with *Miller* and *Montgomery* because that court did not make an express finding that Jones is one of the rare, permanently incorrigible juvenile offenders for whom life without parole is a proportionate sentence under the Eighth Amendment. As *Chandler* recognized, *Montgomery* did not interpret *Miller* to require a finding of fact on a particular juvenile's permanent incorrigibility. *Montgomery,* 136 S. Ct. at 735. *Montgomery* explained that in considering the concept of federalism, the

Supreme Court leaves it to the States to develop ways of implementing constitutional restrictions on criminal sentencing. *Id.* But, having said that, *Montgomery* did express the following: "[t]hat *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole." *Id.*

31. In light of the fact that a sentence of life without parole is disproportionate under the Eighth Amendment for a juvenile whose crime reflects transient immaturity, Mississippi should exercise its authority to impose a formal fact finding requirement for *Miller* decisions. For a juvenile offender, a sentence of life without parole is the harshest penalty allowed by law; consequently, the decision whether to impose that penalty is of the utmost seriousness. Judicial review of such a decision can be enhanced only by the presence of fact findings on each *Miller* factor and on the ultimate question of whether the juvenile's crime reflects transient immaturity or permanent incorrigibility. This Court's concern for child welfare has led it to impose strict fact finding requirements for child custody determinations. *Powell v. Ayars,* 792 So. 2d 240, 244 (Miss. 2001). No reason exists to eschew formal fact findings in the context of determining whether a juvenile offender will suffer the harshest penalty imposed by law for a crime committed as a child.

32. Notwithstanding that Mississippi, thus far, will not require express findings, no state may, consistent with the Eighth Amendment, sentence a juvenile to life without parole eligibility if the crime reflects transient immaturity rather than permanent incorrigibility. *Montgomery,* 136 S. Ct. at 734. Only

those rare youthful offenders who are permanently incorrigible may, consistent with the Eighth Amendment, receive a sentence of life without eligibility for parole. *Id.* The sentencer's ruling must be reviewed for abuse of discretion, keeping in mind the constitutional standards articulated in *Miller* and *Montgomery*. *Chandler,* 242 So. 2d at 70.

33. In this case, the circuit court judge made fact findings on the record regarding some of the *Miller* factors and said that he had considered all the *Miller* factors. Thus, from a purely procedural standpoint, the circuit court's ruling comported with *Chandler*'s holding that no express findings on the *Miller* factors or on permanent incorrigibility are required. But because *Montgomery* was decided after *Miller,* the circuit court did not have the benefit of the Supreme Court's holding in *Montgomery*. Therefore, the circuit court could not have known that *Montgomery* would interpret *Miller* to "dr[a]w a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." *Montgomery,* 136 S. Ct. at 734.

34. The evidence adduced in the circuit court fell short of establishing that Jones was one of those "rare children whose crimes reflect irreparable corruption." *Id.* Therefore, the sentence of life without parole was an abuse of discretion, albeit an unwitting one. Understandably, the circuit court lacked the benefit of the *Montgomery* holding in rendering its decision. Nonetheless, this Court is bound by that case's holding.

35. Jones committed the crime against his grandfather approximately one month after he had turned age fifteen. As the United States Supreme Court recognized in *Miller,* youth carries "hallmark

features" of immaturity, impetuosity, and failure to appreciate risks and consequences. *Miller,* 567 U.S. at 477. Jones's actions reflect such features at every tum. As the circuit court observed, the jury found that Jones had killed his grandfather with deliberate design. He stabbed his grandfather eight times, using a second knife when the first one broke. The primary evidence of deliberate design was provided by his girlfriend, Austin, who testified that, after Bertis Jones had discovered her in Jones's bedroom that morning, Jones told her he was in trouble with his grandfather. She asked if he was going to kill him, and he responded that he was going to hurt his grandfather. Notably, despite the guns and ammunition fully accessible to Jones in the house, he brought no weapon to the crime scene, but used what he found to be available against a close and helpful relative who had done him no harm. That a teenager in trouble for having been caught concealing his girlfriend at his grandparents' home would attempt to solve the problem by resorting to violence dramatically epitomizes immaturity, impetuosity, and failure to appreciate risks or consequences.

36. The circuit court also found that Jones's attempt to hide the body and conceal the blood weighed against him in the *Miller* analysis. But Jones's efforts to hide the body were altogether inept and ineffectual, evincing little or no pre-planning or calculation. The neighbor and his yard man observed a bloody boy immediately after the deadly incident and the yard man testified that the boy was trembling and muttering "kill, kill." Then, Jones decided to deal with the situation by traveling to Tupelo to explain what had happened to his grandmother so she did not have to discover it on her own. Jones's behavior in the

immediate aftermath of his tragic actions also demonstrated his fundamental immaturity.

37. Further, the undisputed evidence from multiple witnesses was that Jones's family and home environment were incredibly dysfunctional. His mother was mentally ill and abused alcohol; the harmful effects of her maladies were experienced by the children and evident even to the extended family. The emotional and physical abuse Jones suffered at the hands of his stepfather also was undisputed and corroborated by multiple witnesses. The circuit court recognized that Jones had a troubled background and an "unsettled lifestyle" but discounted that evidence because Jones had escaped the dysfunction in Florida by relocating to Mississippi. But Jones's short-lived escape from his dysfunctional and violent home environment did not negate the fact that he had been reared in it and was not far removed from it. The circuit court also found that Jones was under no peer pressure when he stabbed his grandfather. But Jones was under pressure-his girlfriend, also an adolescent with whom he had a volatile emotional relationship-was partially dependent upon him for shelter. The pair had discussed his killing or hurting Jones's grandfather as a solution to the housing problem. Again, Jones's response to this short-sighted situation showed immaturity, impetuosity, and a failure to appreciate risks or consequences. The same is true of Jones's having engaged in sexual relations with Austin; rather than demonstrating his maturity, as the circuit court thought, Jones's participation in this adult behavior before the age of majority reflected immaturity and an utter failure to consider the consequences of his actions. And Jones, both youthful and inexperienced with the justice system, gave an

interview to three police detectives without invoking his right to silence or his right to counsel and without a parent or guardian present, providing damning evidence to the State and diminishing his chances of a plea bargain.

38. The circuit court made no specific findings on the possibility of eventual rehabilitation. Jones showed that he had obtained a GED while incarcerated at the juvenile detention facility. He performed janitorial services for Benton, who testified that Jones had become like a son to him during his time at Walnut Grove. Jones testified that he had only one disciplinary write-up during his incarceration. That write-up had been for a fight, or "riot," that had involved multiple prisoners. He testified that he preferred to keep to himself, and Benton corroborated his testimony. Benton also testified that Jones had not participated in gang activity. Thus Jones presented evidence indicating a potential for rehabilitation.

39. Having evaluated the facts of the crime and the testimony provided by Jones with the utmost care under the factors from *Miller* and faithfully having applied our standard of review to the circuit court's decision, I am constrained to conclude that, because Jones's criminal actions reflected transient immaturity, the Eighth Amendment prohibits a life without parole sentence. I am unable to say that Jones is the rare, permanently incorrigible offender upon whom a life-without-parole sentence constitutionally can be imposed. The federal constitution leaves us but one course of action: to reverse the judgment of the Court of Appeals, to reverse the decision of the Lee County Circuit Court, to vacate the sentence, and to remand for resentencing to life imprisonment with eligibility for parole notwithstanding the present

provisions of Mississippi Code Section 47-7-3(1)(h). *See Jones III*, 122 So. 3d at 703. This course is the only one that will satisfy the constitutional mandate articulated by the United States Supreme Court in the *Miller* and *Montgomery* decisions.

40. I am fully cognizant of the brutal, heinous, and tragic crime committed by Jones. My opinion that the Eighth Amendment to the United States Constitution prohibits a without- parole sentence for Jones in no way minimizes his despicable act. In every case involving *Miller* sentencing, the Court will be confronted with a homicide committed by an underage individual, a crime which, if committed by an adult, likely would foreclose the possibility of parole. Against that backdrop, which recurs frequently when the perpetrator is a minor, as here, we are bound to apply the directives of the United States Supreme Court in *Miller* and *Montgomery*. Accordingly, only those rare offenders whose crimes reflect permanent incorrigibility constitutionally can be sentenced to life without parole. *Montgomery,* 136 S. Ct. at 734. Because Jones does not fit within that category, Jones's sentence must be vacated, and he must be resentenced to life imprisonment with eligibility for parole.

WALLER, C.J., KING AND ISHEE, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT.

APPENDIX B

Serial: 220283

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-CT-00899-SCT

[Filed Aug. 2, 2018]

BRETT JONES A/K/A BRETT A. JONES — ***Appellant/Petitioner***

v.

STATE OF MISSISSIPPI — ***Appellee/Respondent***

ORDER

This matter is before the Court on the Petition for Certiorari filed by Brett Jones. The Court has considered the petition and finds that it should be granted.

IT IS THEREFORE ORDERED that the Petition for Certiorari filed by Brett Jones is granted.

SO ORDERED, this the 26th day of July, 2018.

/s William L. Waller, Jr.
WILLIAM L. WALLER, JR.,
CHIEF JUSTICE FOR THE COURT

TO GRANT: WALLER, C.J., KITCHENS, P.J., KING AND ISHEE, JJ.

TO DENY: RANDOLPH, P.J., COLEMAN, MAXWELL, BEAM AND CHAMBERLIN, JJ.

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2015-KA-00899-COA

BRETT JONES A/K/A BRETT A. JONES — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	04/17/2015
TRIAL JUDGE:	HON. THOMAS J. GARDNER III
COURT FROM WHICH APPEALED:	LEE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ROBERT B. MCDUFF JACOB WAYNE HOWARD
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL: BY: SCOTT STUART
DISTRICT ATTORNEY:	TRENT KELLY
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED – 12/14/2017
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

WILSON, J., FOR THE COURT:

¶1. Brett Jones previously was convicted for the murder of his grandfather and sentenced to life imprisonment. Following the United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2012), the circuit court held a hearing to determine whether Jones, who was fifteen years old when he killed his grandfather, was entitled to parole eligibility under *Miller*. Following that hearing, the circuit court found that Jones was not entitled to relief under *Miller*. Jones appeals the circuit court's ruling and alleges that his sentence is unconstitutional and that the circuit judge did not comply with the requirements of *Miller* and related case law. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

¶2. This Court's prior opinion affirming Jones's conviction and sentence on direct appeal discussed the facts of the murder:

> During August of 2004, Jones was living with his paternal grandparents, Bertis Jones and Madge Jones. Jones's girlfriend, Michelle Austin, had run away from home in the first week of August 2004. Austin was staying mostly at Jones's grandparents' home, as well as at an abandoned fish restaurant near the home. On August 9, 2004, Bertis Jones discovered Austin in Jones's bedroom and told her to get out of his house. Austin then ran to the fish restaurant. . . . Jones and his cousin, Jacob, later came and told her that Jones was "in big trouble" with his grandfather. Austin

testified that she asked Jones, "What are you going to do? Kill him?" Austin testified that Jones did not respond to this question. Austin also testified that Jones "said that he was going to hurt his granddaddy." Jones testified that at about 4 p.m., he went into the kitchen to make a sandwich, and he and the victim got into an argument. Jones "sassed" him, at which point the argument escalated. Jones testified that his grandfather got in his face, pointing and yelling at him. He testified that his grandfather had never done that before. He testified that his grandfather then pushed him, that he pushed him back, and his grandfather then swung at him. Jones testified that he had a steak knife in his hand from making a sandwich, and because he "didn't have anywhere to go between the corner and him," he "threw the knife forward," stabbing his grandfather. He testified that his grandfather backed up, looked at the wound, and came at Jones again. Jones again stabbed him and tried to get past his grandfather. Jones testified that his grandfather grabbed him, they fought some more, and Jones then grabbed a filet knife. He stabbed his grandfather with this knife. . . .

. . . .

[Jones claimed that he tried to save his grandfather by administering CPR but that his grandfather stopped breathing.] Jones then pulled the body into the laundry room and shut the door. Jones used a water hose to try and clean the blood off of his arms, and then threw his shirt in the garbage under the

sink. He then attempted to cover up the blood spots in the carport by pulling his grandfather's car over them. Jones testified that he walked around the house and saw Robert "Frisco" Ruffner; at this point, Jones was covered in blood.

Ruffner, who was living with and doing yard work for Thomas Lacastro, a neighbor at the time, testified that he had "heard an old man, you know, like holler out he was in pain," and about two or three minutes later, he saw Jones walking toward him covered in blood. Ruffner testified that Jones was carrying a knife, trembling and saying, "Kill, kill." Ruffner then ran into the house and called 911. Thomas Lacastro arrived while Ruffner was on the phone with the police, and Ruffner related to Lacastro what he had seen. Ruffner was hysterical at the time, and Lacastro did not, at first, believe him. Ruffner told Lacastro that Jones had killed his grandfather. Lacastro then saw Jones in the bushes and asked him to come over to his house. Lacastro testified that Jones was pale and "had some blood on him." Lacastro testified that he asked Jones, "Where's your grandfather?" Jones answered, "He's gone," and Lacastro responded, "No, he's not gone. His car is right there, Brett." Jones again tried to say that his grandfather had left, but Lacastro told him, "Brett, you're lying. You need to get out of my yard." At some point during the conversation, Jones told Lacastro that the blood was fake and that "it's a joke." Lacastro responded, "It's not a joke, son. This is not a joke. This is real." [Jones and Austin

then fled on foot.] Lacastro told Jones before he left that he had called the police. After Jones and [Austin] left, Lacastro went over to the bushes where they had been "milling around" and saw an oil pan covered in blood. He then went into the carport and saw more blood, but did not go any farther.

. . . .

Jones and Austin gave the officers false names [when they were apprehended that night]. Officer Gary Turner of Nettleton began a pat-down of Jones and found a pocketknife in his left pocket. Officer Turner asked whether it was the knife Jones "did it with," to which Jones responded, "No, I already got rid of it." When Investigator Steve White went to investigate the home of Bertis Jones, he found Bertis Jones's body concealed in a utility room in the back of the carport. He found that someone had apparently used a car, an oil pan and a mat to conceal puddles of blood. Investigator White also found a bloodstained T-shirt in the carport, as well as more bloodstained clothing in the kitchen trash can. Officers also found a filet knife in the kitchen sink and a bent steak knife with blood on the tip of it. There were blood spatters on the walls. There were a total of eight stab wounds to the body of Bertis Jones. There were also abrasions consistent with the body's having been dragged, and cuts on the hand classified as "defensive posturing injuries." The cause of death was a stab wound to the chest. Jones was convicted of murder in the Circuit Court

> of Lee County and sentenced to life imprisonment. . . .

Jones v. State, 938 So. 2d 312, 313-15 (¶¶2-11) (Miss. Ct. App. 2006) ("*Jones I*").

¶3. By statute, Jones's conviction of a violent offense rendered him ineligible for parole. *See* Miss. Code Ann. § 47-7-3(g) (Rev. 2004). This Court affirmed Jones's conviction and sentence on appeal, and in *Jones v. State*, 122 So. 3d 725 (Miss. Ct. App. 2011) ("*Jones II*"), this Court affirmed the denial of Jones's motion for post-conviction relief.

¶4 After this Court's decision in *Jones II*, the United States Supreme Court held in *Miller v. Alabama* that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479. The Court held that the sentencer must have the "discretion" to "consider mitigating circumstances" before a sentence of life without parole may be imposed in such a case. Id. at 489. And in *Parker v. State*, 119 So. 3d 987 (Miss. 2013), the Mississippi Supreme Court held that *Miller* applies to the sentencing and parole statutes applicable to deliberate-design murder in this State. *See id.* at 996-97 (¶¶21-23). Therefore, a juvenile offender previously convicted of murder and sentenced to life imprisonment is entitled to a hearing to determine whether he should be deemed eligible for parole based on the mitigating factors discussed in *Miller* and *Parker*. *See id.* at 998-99 (¶¶26-28). Accordingly, in *Jones v. State*, 122 So. 3d 698 (Miss. 2013) ("*Jones III*"), the Mississippi Supreme Court granted Jones postconviction relief on this issue and remanded the case "for a new

sentencing hearing to be conducted consistently with . . . *Parker* [and *Miller*]."

¶5. On remand, the circuit judge appointed counsel for Jones and authorized him to retain an investigator and an expert. The court then held a new sentencing hearing to permit Jones to introduce any evidence that he was entitled to parole eligibility under *Miller* and *Parker*. Jones testified at the hearing and called five additional witnesses: his mother (Enette), his grandmother (Madge), his younger brother (Marty), an aunt, and Jerome Benton, who worked at Walnut Grove Youth Correctional Facility and knew Jones for approximately five years while Jones was incarcerated at that facility. The testimony that Jones presented focused largely on his abusive stepfather (Dan)[1] and his mother's mental health issues.

¶6. Jones, Marty, and Enette all testified that Dan was physically and verbally abusive. Jones testified that the abuse started getting bad when he was about ten or eleven years old. Marty testified that Dan "would get in your face and poke at your chest, poke you in the face, grab you by the arms, grab you by the neck, sling you around and have you sit down, things like that." Sometimes Dan's abuse would leave marks or bruises. Jones and Enette also testified that Dan usually referred to Jones and Marty as "little motherfuckers" or "little assholes" rather than by their names.

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[1] Jones's mother and father, Tony Jones, separated when Jones was only two years old, and it does not appear that Tony Jones was much of a presence in Jones's life. Jones's mother married Dan in 1999, when Jones was nine or ten years old.

¶7. Dan did not hit his stepsons with a closed fist, and Marty testified that there were no "beatings, per se" or any injuries that required medical attention. However, Jones testified that if he talked back, Dan might "reach out and grab [him] by the throat or slam [him] up against the wall by [his] neck or . . . by the front of [his] shirt."

¶8. A fight between Jones and Dan in the summer of 2004 precipitated Jones's move back to Mississippi to live with his grandparents.[2] Dan, Enette, Jones, and Marty were living in Florida at the time. Jones testified that he came home late one night, and Dan grabbed him by the throat. Jones then swung at Dan and hit him in the ear. Dan's ear split open and began to bleed, and when the police came, they arrested Jones for domestic violence. As a result, Jones was required to take an anger management course. Jones then moved back to Lee County to live with his grandparents. Jones murdered his grandfather about two months later. There was no evidence that either of Jones's grandparents ever abused or mistreated him

¶9. Jones, Marty, and Enette also testified that Enette abused alcohol and had mental health issues during Jones's childhood. Enette testified that she had suffered from depression, bipolar disorder, manic depressive disorder, and a self-injury disorder. Madge testified that Enette would leave Jones and Marty alone and unattended when they were young. The family also moved frequently when Jones was young so that he had to change schools frequently.

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[2] Jones had lived with his grandparents during two prior school years.

¶10. Jones testified that he had taken medications for attention deficit hyperactivity disorder (ADHD), depression, and "some kind of psychosis." He also testified that he had issues with cutting himself. However, Jones did not introduce any medical records or offer the testimony of any mental health professional to corroborate his claimed mental health issues. Enette and Madge both testified that Jones was very intelligent, had a high IQ, and had been in gifted classes in school.

¶11. Jones testified that he had been involved in only one significant disciplinary incident while in prison, which involved a fight at Walnut Grove. Jones also testified that he "regret[s]" killing his grandfather.

¶12. Benton testified that Jones worked for him for about five years at Walnut Grove. Jones was approximately age sixteen to age twenty-one during that time. Benton testified that Jones was a good worker, got along with others, stayed out of trouble, and obtained his GED. Benton even said that Jones was "almost like [a] son" to him. Jones never told Benton why he was in prison but only "said he had an accident . . . and did something that he regretted." Benton testified that Jones seemed "normal" and even "mature" for his age and did not exhibit any mental health issues.

¶13. At the conclusion of the hearing, the judge took the matter under advisement. The judge reconvened the proceeding two months later to announce his decision. The judge found that Jones was not entitled to parole eligibility under *Miller*. The judge's on-the-record explanation for his ruling is discussed in more detail below. Because the judge

found that Jones was not entitled to relief under *Miller*, he remains ineligible for parole by statute. *See* Miss. Code Ann. § 47-7-3(1)(f) (Rev. 2015). Jones filed a timely notice of appeal.

ANALYSIS

¶14. On appeal, Jones makes four arguments, one with two sub-arguments: (I) the circuit judge "failed to comply with the legal standards and procedure mandated by *Miller* . . . and *Parker*" because (A) the judge "failed to apply *Miller*'s presumption against imposing a life-without-parole sentence" and (B) "failed to consider each of the factors required by *Miller* and *Parker*"; (II) he had a constitutional right to a jury at his new sentencing hearing on remand; (III) he has a constitutional right to parole eligibility because he is not irretrievably depraved; and (IV) the United States Constitution and Mississippi Constitution categorically prohibit a sentence of life without parole in all cases in which the offender was under the age of eighteen at the time of the offense.

¶15. Jones's claims(I-A), (II), and (IV) require no new discussion in this case because this Court recently rejected identical claims in *Cook v. State*, No. 2016-CA-00687-COA, 2017 WL 3424877 (Miss. Ct. App. Aug. 8, 2017), *reh'g denied* (Nov. 28, 2017). *See id.* at *5 (¶25) (holding that neither *Miller* nor *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), establishes a "presumption" against a sentence of life without parole; and holding that Mississippi Supreme Court precedent "places the burden on the offender to persuade the judge that he is entitled to relief"); *id.* at *8-*9 (¶¶38-44) (holding that there is no constitutional or statutory right to a jury at a "*Miller* hearing"); *id.* at *9 (¶45) (holding that

neither the United States Constitution nor the Mississippi Constitution categorically prohibits a sentence of life without parole in the case of a juvenile convicted of murder).

¶16. Jones also argues that our appellate standard of review is "heightened scrutiny," as in a death penalty case. This Court also rejected this argument in *Cook*. *Id*. at *5 (¶23). We reaffirmed what we had "held on two prior occasions": "we review a circuit judge's sentencing decision under *Miller* only for an abuse of discretion." *Id*. (citing *Hudspeth v. State*, 179 So. 3d 1226, 1228 (¶12) (Miss. Ct. App. 2015); *Davis v. State*, 2016-CA-00638- COA, 2017 WL 2782015, at *2 (¶8) (Miss. Ct. App. June 27, 2017), *reh'g denied* (Oct. 10, 2017)). As we explained in *Cook*, we do not "conduct a de novo, appellate resentencing of the offender," nor will we "substitute our own collective view of an appropriate sentence for the considered judgment of the circuit judge, who listened to and observed the demeanor of the witnesses . . . and the offender himself, looked the offender in the eye, and imposed what he adjudged to be a just sentence." *Id*. at (¶24). "Rather, our standard of review is abuse of discretion. . . ." *Id*.

¶17. Jones also argues that this Court must reverse because the sentencing judge did not make a specific "finding" that he is irretrievably depraved, irreparably corrupt, or permanently incorrigible. However, this Court also addressed this issue in *Cook*, as did the United States Supreme Court in *Montgomery v. Louisiana*, *supra*. As this Court explained in *Cook*,

> [I]n *Montgomery*, the Court specifically stated that "*Miller* did not require trial courts to

> make a finding of fact regarding a child's incorrigibility" and that "*Miller* did not impose a formal factfinding requirement."

Cook, 2017 WL 342877, at *8 (¶39) (quoting *Montgomery*, 136 S. Ct. at 735). The sentencing judge must consider the factors discussed in *Miller*, and the judge must "apply [those] factors in a non-arbitrary fashion." *Id*. at *6 (¶27). However, the sentencing judge is not required to make any specific "finding of fact."[3]

¶18. We now address Jones's remaining arguments (I-B) that the circuit judge "failed to consider each of the factors required by *Miller* and *Parker*" and (III) that his sentence is unconstitutional because he is not irretrievably depraved. For the reasons that follow, we hold that the circuit judge complied with the holdings and requirements of *Miller*, Montgomery, and Parker and the mandate in *Jones III*. In addition, the judge's ultimate sentencing

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[3] *Accord, e.g.*, *Garcia v. State*, 903 N.W.2d 503, 512 (¶26) (N.D. 2017) ("*Miller* did not impose a formal factfinding requirement. . . . *Miller* 'mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty.'"); *Jones v. Commonwealth*, 795 S.E.2d 705, 709 n.3 (Va. 2017) ("*Montgomery* acknowledged that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility' and 'did not impose a formal factfinding requirement' on this mitigation issue."); *People v. Holman*, 58 N.E.3d 632, 642-43 (¶¶37-38) (Ill. App. Ct. 2016) (same), *aff'd*, 2017 WL 4173340 (Ill. Sept. 21, 2017); *Brown v. State*, No. W2015-00887-CCA-R3-PC, 2016 WL 1562981, at *7 (Tenn. Crim. App. Apr. 15, 2016) (unpublished op.) ("[*Montgomery*] reiterated that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility'"), appeal denied (Tenn. Aug. 19, 2016), cert. denied, 137 S. Ct. 1331 (2017).

decision was neither arbitrary nor an abuse of discretion.

¶19. In *Parker*, our Supreme Court made clear that "*Miller* does not prohibit sentences of life without parole for juvenile offenders. Rather, it 'requires the sentencing authority to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Parker*, 119 So. 3d at 995 (¶19) (quoting *Miller*, 567 U.S. at 480). As the *Parker* Court explained, *Miller* "identified several factors" that the judge should consider before in determining whether a sentence of life without parole is unconstitutional. *Id*. These include:

- the offender's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences";
- "the family and home environment that surrounds [the offender]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional";
- "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"
- whether the offender "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 (including on a plea agreement) or his incapacity to assist his own attorneys"; and

- "the possibility of rehabilitation."

Id. at 995-96 (¶19) (quoting *Miller*, 567 U.S. at 478). The *Miller* Court predicted that "appropriate occasions for sentencing juveniles" to life without parole would "be uncommon." *Miller*, 567 U.S. at 479. Subsequently, in *Montgomery*, the Supreme Court stated that this sentence would be "disproportionate . . . for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" *Montgomery*, 136 S. Ct. at 726 (quoting *Miller*, 567 U.S. at 479-80).

¶20. On remand in the present case, the circuit judge appointed counsel for Jones and authorized him to retain an investigator and an expert. The judge then held a new sentencing hearing at which Jones was permitted to introduce any evidence relevant to the factors discussed in *Miller*. The judge then considered whether Jones was entitled to parole eligibility under *Miller*. The judge began his ruling from the bench as follows:

> I'm going to read into the record a long dissertation about the facts and circumstances in this case, as much as anything to demonstrate that I have considered each and every factor that is identifiable in the *Miller* case and its progeny and those decisions which followed. When I've done that, then we will proceed with the imposition of sentence. . . .
>
> . . . .
>
> This cause is before the Court for resentencing in accord with the dictates of *Miller versus Alabama*,

> . . . [T]he Court conducted a hearing and heard evidence offered by [Jones] and the State . . . bearing on those factors to be considered by the Court as identified by *Miller*. The ultimate question is whether or not, in consideration of those factors, . . . relief is appropriate [on] the facts and circumstances in this case.
>
> . . . . The Court is cognizant of the fact that children are generally different; that consideration of the *Miller* factors and others relevant to the child's culpability might well counsel against irrevocably sentencing a minor to life in prison. All such factors must be considered on a case-by-case basis.
>
> *Miller* requires that the sentencing authority consider both mitigating and the aggravating circumstances. And I would note that these are not really terms used in the *Miller* opinion, but I think they are an easy way for us to identify those considerations.
>
> This Court can hypothesize many scenarios that would warrant and be just to impose a sentence which would allow the defendant to be eligible for consideration for parole, notwithstanding the parole law . . . .

¶21. The judge then discussed that the jury at Jones's trial was properly instructed on his defense of self-defense, the lesser-included offense of manslaughter, and the difference between murder and manslaughter; however, the jury returned a unanimous verdict finding Jones guilty of deliberate-

design murder.[4] The court discussed that a "fair consideration of the evidence" showed that Jones committed a "particularly brutal" murder. Jones "stabbed [his grandfather] eight times and was forced to resort to a second knife when the first knife broke while used in the act." Jones then "attempted to conceal" his crime by hiding his grandfather's body and trying to wash away a "great amount of blood" with a water hose.

¶22. The judge also found that there was no evidence that Jones was under any sort of family or peer pressure to commit the crime. The judge did find that Jones "grew up in a troubled circumstance," but he also found that there was "no evidence of brutal or inescapable home circumstances." As the judge stated, Jones's grandfather had "provide[d] him with a home away from" his troubled family environment in Florida. *See Miller*, 567 U.S. at 477 (stating that the sentencer should consider the juvenile defendant's "family and home environment . . . *from which he cannot usually extricate himself*" (emphasis added)).

¶23. The judge concluded by stating: "the Court, **having considered each of the *Miller* factors**, finds that the defendant, Brett Jones, does not qualify as a minor . . . entitled to be sentenced in such manner as to make him eligible for parole consideration."

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[4] The sentencing judge, who also presided over Jones's trial, took into account the testimony and evidence from Jones's trial. As discussed above, Jones's girlfriend testified at trial that earlier on the day of the murder, Jones did not respond when she asked him whether he was going to kill his grandfather, and Jones did say that "he was going to hurt his granddaddy." *Jones I*, 938 So. 2d at 313-14 (¶2).

¶24. The circuit judge in this case held the hearing required by *Miller*. The judge did not specifically discuss on the record each and every factor mentioned in the Miller opinion. However, the judge expressly stated that he had "considered each of the *Miller* factors." Neither the United States Supreme Court nor the Mississippi Supreme Court has held that reversal is required just because the sentencing judge omits some factors from his on-the-record discussion of the reasons for the sentence. The judge's bench ruling was sufficient to explain the reasons for the sentence. The judge recognized the correct legal standard ("the *Miller* factors"), his decision was not arbitrary, and his findings of fact are supported by substantial evidence. Therefore, the judgment of the circuit court is affirmed. *See Cook*, 2017 WL 3424877, at *5-*6 (¶¶23-24, 27).

CONCLUSION

¶25. The decision of the circuit court denying Jones's request for parole eligibility is affirmed.

¶26. **AFFIRMED.**

IRVING AND GRIFFIS, P.JJ., BARNES, CARLTON, FAIR, GREENLEE AND TINDELL, JJ., CONCUR. WESTBROOKS, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY LEE, C.J.

WESTBROOKS, J., CONCURRING IN PART AND DISSENTING IN PART:

¶27. I agree with the majority's finding that Jones was not entitled to be resentenced by a jury. The Mississippi Supreme Court has found that "a trial judge may impose the sentence enhancement once

the jury has found all of the facts necessary to satisfy the elements of the sentencing-enhancement statute." *Taylor v. State*, 137 So. 3d 283, 287 (¶14) (Miss. 2014). However, I am of the opinion that the trial court did not conduct a thorough on-the-record analysis to determine whether Jones was among the "very rarest of juvenile offenders who is irreparably corrupt, irretrievably broken, and incapable of rehabilitation," which I would find is required under *Miller*. Accordingly, I would reverse Jones's sentence of life without parole and remand to the trial court for resentencing. Therefore, I respectfully dissent.

¶28. Under *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), before a juvenile homicide offender is sentenced to life without the possibility of parole, the trial court must make a specific finding that the juvenile offender's actions reflect a transient immaturity or that the juvenile is irreparably corrupt, permanently incorrigible, and cannot be rehabilitated.[5]

¶29. Mississippi Code Annotated section 97-3-21 (Rev. 2006) requires a minimum of life in prison without parole regardless of an offender's age. However, in *Miller*, the United States Supreme Court held that the sentencing authority must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480. The factors that should be considered

[5] In the supplemental briefs submitted to this Court, both Jones and the State agree that *Montgomery* required an on-the-record hearing in which Jones could present proof that he was not irreparably corrupt and permanently incorrigible. The State, however, claims that the Court conducted a sufficient hearing.

include chronological age and its hallmark features, family and home environment, circumstances of the homicide offense, and the possibility of rehabilitation. *Id*.

¶30. Following the High Court's pronouncement in *Miller*, our state Supreme Court decided *Parker v. State*, 119 So. 3d 987 (Miss. 2013).[6] In *Parker*, a fifteen-year-old was convicted of the murder of his grandfather. *Parker*, 119 So. 3d at 988 (¶1). "He was sentenced to serve the remainder of his natural life in the custody of the Mississippi Department of Corrections." *Id*. (internal quotation marks omitted). Parker appealed his sentence, citing the High Court's ruling in *Miller*.

¶31. Our Supreme Court announced that **all** *Miller* factors must be considered before a trial court may sentence a juvenile homicide offender to life imprisonment. *See Parker*, 119 So. 3d at 996 (¶19) (citing *Miller*, 567 U.S. at 477-78). The Court also opined that the mandatory consideration of the *Miller* factors provided "the trial court with a stopgap mechanism to annul the application of" mandatory life in prison without the possibility of parole for juvenile homicide offenders. *Id*. at 999 (¶27). *Parker* did not foreclose the sentencer's ability to sentence the juvenile homicide offender to life in prison without the possibility of parole. However, *Parker* also made a point to acknowledge that "this . . . punishment disregards **the possibility of rehabilitation** even when the circumstances most

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[6] The trial court made no mention of *Parker v. State* in its resentencing order although the Mississippi Supreme Court specifically directed the court to resentence Jones in accordance with *Parker* and *Miller*.

suggest it." *Id*. at 996 (¶19) (emphasis added) (quoting *Miller*, 567 U.S. at 478).

¶32. Following *Parker*, this Court decided *Thomas v. State*, 130 So. 3d 157 (Miss. Ct. App. 2015). In *Thomas*, a seventeen-year-old was an accomplice to a store robbery. *Id*. at 158 (¶3). His partner shot and killed one of the store employees and wounded the other, while Thomas remained in the vehicle. *Id*. Thomas pled guilty to one count of capital murder and one count of aggravated assault, and was sentenced to life imprisonment without parole and a twenty year sentence for aggravated assault, to run consecutively. *Id*. We vacated Thomas's sentence and remanded his case for resentencing following an on-the-record consideration of the *Miller* factors. *Id*. at 159-60 (¶13). We also reiterated *Miller* and *Parker*'s finding that "[w]e do not foreclose a sentencer's ability" to sentence a juvenile homicide offender to life without the possibility of parole. *Id*.

¶33. More than a year after *Thomas*, we decided *Hudspeth v. State*, 179 So. 3d 1226 (Miss. Ct. App. 2015). Hudspeth, also a juvenile homicide offender, was sentenced to life in prison without parole. *Id*. at 1227 (¶3). Hudspeth filed a motion in the trial court to vacate his sentence following *Miller*. "The trial court granted the motion to vacate Hudspeth's sentence and held a hearing using the factors enunciated in *Miller* to determine whether the mandatory life sentence was to be served with or without parole." *Id*. at 1226-27 (¶2). The trial court considered the issue of rehabilitation on the record and enunciated its ruling after hearing testimony on that pertinent concern. *Id*. at 1228 (¶10). Nevertheless, "[t]he trial court resentenced

Hudspeth to life without the possibility of parole." *Id*. at 1227 (¶3).

¶34. On appeal, we found that the trial court did not abuse its discretion in sentencing Hudspeth to life without parole, because the trial court analyzed the *Miller* factors and failed to find compelling mitigating factors. *Id* at 1228 (¶12) . However, the U.S. Supreme Court recently opined that "*Miller* did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole." *Montgomery*, 136 S. Ct. at 734.

¶35. This Court was also faced with the application of the *Miller* factors in *Cook v. State*, 2016-CA-00687-COA, 2017 WL 3424877, at *4 (¶19) (Miss. Ct. App. Aug. 8, 2017). The trial judge in *Cook* not only appointed new counsel but also appointed Dr. Criss Lott to conduct a mental evaluation of Cook. *Id*. Like the investigator in *Hudspeth*, Dr. Lott offered testimony after his evaluation of Cook, with particular attention to the *Miller* factors. *Id*.

¶36. So even with the application of *Cook* in this case, the sentence should be reversed, because the trial judge abused his discretion in not conducting a thorough and an adequate *Miller* analysis regarding the "possibility of rehabilitation." *See Cook*, 2017 WL 3424877, at *8 (¶35).

¶37. The majority notes that the sentencing judge is required to consider the factors discussed in *Miller* and to "apply those factors in a non-arbitrary fashion." Maj. Op. at (¶17) (citing *Cook*, 2017 WL 342877, at *6 (¶27)). However, the majority also states that "the judge did not specifically discuss on the record each and every factor mentioned in the *Miller* opinion." Maj. Op. at (¶24). As a result, I

would find that the judge's *Miller* analysis omitted a crucial determination regarding whether Jones could be rehabilitated.[7] Thus, I would find that the omission does not comply with *Miller*.

¶38. The majority further notes that in *Cook*, this Court held that "[i]n *Montgomery*, the Court specifically stated that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility' and that *Miller* did not impose a formal factfinding requirement." Maj. Op. at (¶17) (quoting *Cook*, 2017 WL 3424877, at *8 (¶39) (quoting *Montgomery*, 136 S. Ct. at 735)). Although the majority notes that *Miller* did not impose a formal factfinding requirement, *Miller* does not discourage it either. The entire purpose of conducting a proper *Miller* analysis is to determine whether a juvenile defendant represents the rare[8] juvenile offender who exhibits such irretrievable depravity and permanent incorrigibility that rehabilitation is impossible and life without parole is justified.

¶39. The U.S. Supreme Court went a step further in requiring a thorough *Miller* analysis in *Montgomery*. There, a juvenile homicide offender was seventeen years old when he killed a deputy sheriff in Louisiana. *Montgomery*, 136 S. Ct. at 725. He was sentenced to life in prison without the possibility of parole. *Id*. After the High Court announced *Miller*,

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[7] Judicial prudence dictates that if courts treat matters regarding civil parental custody of juveniles with such caution, then courts should also be as thorough when evaluating state custody juvenile offenders who face life without the possibility of parole.

[8] I am of the opinion that the terms "rare" and "rarest" refer to the "exclusive" group of juvenile offender who are irretrievably depraved and permanently incorrigible.

Montgomery appealed his sentence to Louisiana's lower courts. *Id*. at 726. However, his motion was denied. Before Montgomery could appeal to the Louisiana Supreme Court, the court held that *Miller* did not apply retroactively. *Id*. As a result, the Louisiana Supreme Court denied Montgomery's supervisory writ. *Id*.

¶40. Montgomery appealed to the U.S. Supreme Court, which held that "sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption." *Montgomery*, 136 S. Ct. at 734. The High Court expanded *Miller*'s reach in *Montgomery* by finding "life without parole [to be] an unconstitutional penalty for a class of defendants because of their status . . . [as] juvenile offenders whose crimes reflect the transient immaturity of youth." *Id*. (quotation marks omitted).

¶41. Further, in *Montgomery*, the U.S. Supreme Court announced that *Miller* established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id*. The High Court explained that "[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 if the child's crime reflects unfortunate, yet transient immaturity." *Id*. at 734 (quoting *Miller*, 567 U.S. at 479). Therefore, *Miller* announced a substantive rule of constitutional law, curtailing the imposition of mandatory life sentences without the possibility of parole for minors without specific findings of fact.

¶42. Following *Montgomery*'s clarification of *Miller*, state appellate courts have recognized that a juvenile

homicide offender may not be sentenced to life without parole unless a sentencer first makes a properly informed finding that he is irreparably corrupt. *See Veal v. State*, 784 S.E. 2d 403, 412 (Ga. 2016); *Luna v. State*, 387 P.3d 956, 963 (Okla. Crim. App. 2016); *Landrum v. State*, 192 So. 3d 459, 469 (Fla. 2016). Therefore, a necessary prerequisite for imposing a life-without-parole sentence on a juvenile is a specific finding that the juvenile is irreparably corrupt. The sentencer must make a finding whether a particular child is "the rare juvenile offender who exhibits such irretrievably depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S. Ct. at 733.

¶43. In *Tatum v. Arizona*, 137 S. Ct. 11 (2016), the U.S. Supreme Court *granted* writs of certiorari, *vacated* judgments, and *remanded* (GVR) a number of cases for further consideration following *Montgomery*'s clarification of *Miller*.[9] Though the Court voted to GVR several cases, it did not issue a written explanation of how state courts should adjudicate juvenile-homicide-offender cases. Justice Sotomayor concurred in *Tatum*, where she discussed the failure of sentencing judges to address the question Miller and Montgomery require, "[that] a sentencer . . . ask . . . whether the petitioner was among the very rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Tatum*, 137 S. Ct. at 12 (Sotomayor, J., concurring in the decision to grant, vacate, and remand) (quotation

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[9] In our order for supplemental briefing, we asked the parties to address what authoritative precedential value a GVR has, or is it advisory, in light of *Montgomery*. Both parties agree that the GVRs are nonbinding. We agree that it is merely advisory and our analysis need not go any further.

marks omitted) (citing *Montgomery*, 136 S. Ct. at 734).

¶44. While the court took into account most mitigating and aggravating circumstances, the trial judge still failed to analyze on the record whether Jones was among the very "rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id*. In *Tatum*, 137 S. Ct. at 12, Justice Sotomayor wrote the following:

> Children are constitutionally different from adults for purposes of sentencing in light of their lack of maturity and under-developed sense of responsibility, their susceptibility to negative influences and outside pressure, and their less well-formed character traits. Failing to consider these constitutionally significant differences . . . poses too great a risk of disproportionate punishment.

(Internal citations and quotations marks omitted).

¶45. At Jones's resentencing hearing, the trial court found that Jones's actions of being intimate with his girlfriend and getting her pregnant evinced a degree of maturity "at least in one area." Jones brought forth testimony that he was on antidepressants as well as other medications for ADHD and psychosis. However, in assessing Jones's level of maturity, the court failed to address Jones's mental health and whether sufficient evidence was presented relative thereto. The court discussed the manner in which Jones murdered his grandfather and Jones's attempt to conceal his grandfather's death. The court held that there was no evidence that Jones was abused by his grandfather or pressured by a family member or peer to harm his

grandfather. The court found no mitigating factors of Jones's childhood that prohibited a life-without-parole sentence.

¶46. However, during the resentencing hearing, the trial judge noted Jones's abusive childhood. Several witnesses testified on Jones's behalf, including his paternal grandmother, the wife of the victim. Jones presented a number of mitigating factors to substantiate his assertion that he should be sentenced as a juvenile.[10] The trial court heard the testimony and found that it was not compelling enough to sentence Jones to less than life imprisonment without parole.

¶47. I find the trial court failed to make a finding on the record as to whether Jones is among the *rarest* of juvenile offenders under *Miller* and *Montgomery*. Therefore, I would find that before a juvenile homicide offender may be sentenced to life in prison without the possibility of parole, a sentencing authority must make specific on-the-record findings of fact that illustrate that he is among the very rarest of juvenile offenders who are irreparably corrupt, irretrievably broken, and incapable of rehabilitation.

¶48. For the above reasons, I would reverse and remand to the trial court for resentencing.

LEE, C.J., JOINS THIS OPINION.

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[10] Jones raised his mental health as a mitigating factor but presented no medical or prescription records or expert testimony to substantiate the same.

APPENDIX D

IN THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

[filed Apr. 20, 2015]

STATE OF MISSISSIPPI

VS. **CAUSE NO. CR 04-833(G)(L)**

BRETT JONES **DEFENDANT**

RESENTENCING ORDER

This matter is before this Court for resentencing in accord with the opinion and order of remand in *Brett Jones v. State of Mississippi*, 122 So. 3d 698 (Miss. 2013.)

The Court having conducted an evidentiary hearing and considered those factors in *Jones* and *Miller*, as to whether or not defendant is entitled to the benefit of the leniency provided, is of the opinion that the facts and circumstances of the murder, and those factors bearing on such indicate that defendant is not so entitled. This Court dictated into the record at the time of resentencing those findings supporting such denial.

It is therefore the order of this Court that the defendant, Brett Jones, serve a term of life imprisonment in the custody of the Mississippi Department of Corrections in a facility designated by that department.

ORDERED AND ADJUDGED on this 17th day of April, 2015.

s/ Thomas J. Gardner, III
THOMAS J. GARDNER, III
CIRCUIT JUDGE

APPENDIX E

IN THE CIRCUIT COURT OF
LEE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI — PLAINTIFF

VERSUS — CAUSE NO. CR04-833

BRETT JONES — DEFENDANT

Transcript Of The Proceedings Had And Done In The Re-Sentencing In The Above-Styled And Numbered Cause, Before the Honorable Thomas J. Gardner III, Circuit Judge, First Judicial District Of Mississippi, In The Lee County Courthouse On The 6th Day Of February, 2015

APPEARANCES:

Present and representing the State of Mississippi:

HONORABLE RICHARD D. BOWEN
HONORABLE JOHN D. WEDDLE
Assistant District Attorney
Post Office Box 212
Corinth, Mississippi 38834

Present and representing the Defendant:

HONORABLE THOMAS HENRY FREELAND IV
Freeland & Freeland
Post Office Box 269
Oxford, Mississippi 38655

* * *

[87] JEROME BENTON, having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FREELAND:

Q. State your name, please.

A. Jerome Benton

Q. And what's your business or profession?

A. I 'm fire and safety manager at the prison in Walnut Grove, Mississippi.

Q. What kind of facility is Walnut Grove?

A. It's a men's correctional facility.

Q. It's a what?

A. Man, men's correctional facility.

Q. Is it a juvenile unit?

A. It was. It now has changed to a man, adults.

Q. And when did it change?

A. About a year ago.

Q. About a year. And do you know an individual named Brett Jones?

A. Yes, sir.

Q. And how do you know him?

A. I know him because he worked for me when he was [88] incarcerated there at Walnut Grove.

Q. So when it was a juvenile unit, he was an inmate there?

A. Yes, sir.

Q. And the whole time he was an inmate as a juvenile, he would have been in Walnut Grove?

A. Yes, sir.

Q. So did he come up to Walnut Grove in 2004 or soon after the incident we're here about?

A. I 'm thinking so, yes, sir.

Q. Or 2005 possibly?

A. Um-hmm.

Q. Okay. When did you meet him?

A. I met him about 2006, I say.

Q. All right. How did you come to meet him?

A. I -- I was the shift captain, and I got promoted to a unit manager.

Q. What is a unit manager?

A. Unit manager is a person that keeps over a unit, one unit, that serves a unit, that takes care, overseer over it.

Q. All right. And so you met him because you were promoted to unit manager?

A. Yes, sir.

Q. How did you happen to meet him?

A. Well, he kept on bugging me, asking me could he work for me. And I told him, *Go on and get out of my face,* you know.

Q. Okay. Was it like a joking relationship?

[89] A. It was a joking relationship, and he was a character. He was a real nice kid. And I put him off for a while, and then finally I hired him.

Q. And you say he was a nice kid. Could you explain?

A. Well, he got along with everybody. He was enjoyable. He was talkable. You know, we didn't have no trouble out of him or nothing.

Q. Was that consistent the whole time you knew him at Walnut Grove?

A. That was consistent, very consistent.

Q. And how much were you around him during this time down there?

A. Just about every day I worked.

Q. And were -- juveniles down there, what age would they be moved out of Walnut Grove?

A. At 21.

Q. Twenty-one. So he came there at 15. You met him about 16.

A. Yes, sir.

Q. And were around him daily until he was 21?

A. Till he left there.

Q. All right. And you say he wanted a job with you. What would the job have consisted of?

A. My job was sanitation. He wanted to help clean up and wax floors and stuff like that.

Q. And did he?

A. Mop them and clean up.

Q. And did he?

[90] A. Yes, sir.

Q. What kind of employee was he?

A. He was a very good employee. Every time I looked up, he was standing there waiting on a job to do.

Q. And did he do them?

A. He did them very well.

Q. What did he call you?

A. Sir?

Q. What did he call you?

A. He called me Pops.

Q. He called you Pops?

A. Yes, sir.

Q. Does he still?

A. He still do.

Q. Okay. Describe your relationship with him as describe your relationship. I'm not going to tell you what kind. I just want to hear what you say.

A. Okay. My relationship with him was -- well, it was just like he was almost like my son. He asked questions. When he needed something, he came to me. He was enjoyable, talkable. We talked about

things, life, the Bible, just all around kid.

Q. Did he seem knowledgeable about the Bible?

A. Yes, sir.

Q. And talk about his work relationship with you.

A. Well, work relationship, whatever I needed him to do, he was there to do it.

Q. How did he relate to the other inmates?

A. He got along with them real fine. I don't think [91] he had trouble with nobody.

Q. Explain more about that.

A. Well, he talked to them, got along with them. They acted like they were brothers and stuff. You know, just an all-around kid as far as –

Q. And he had been there how long when you came to know him? About a year?

A. About a year.

Q. And to what extent was the way you described consistently how he was from that year forward?

A. Beg your pardon?

Q. Is this how he was the whole time you knew him?

A. Yes, sir. Yes, sir.

Q. Okay. Were you aware of any discipline issues?

A. No, I wasn't.

Q. All right. Would you have been if there had been?

A. Oh, yes, sir, I would have.

Q. Okay. As unit manager -- okay. I understand you were essentially supervising him as an employee. As unit manager, did you have other dealings with him?

A. As a unit manager?

Q. Um-hmm.

A. As far as, you know, if he had a problem, a

personal problem or something, he would come in and sit down and we would talk about it. That was most of the --

Q. Were you aware of his school progress?

A. Yes, sir.

Q. And tell me about that.

[92] A. He got his GED there at the prison, as far as I can tell you that.

Q. And so he got it on schedule, his GED?

A. Yes, sir.

Q. Is that what they have to offer to complete high school at Walnut Grove?

A. GED. And he was talking about getting -- taking some college courses there, but I don't know whether he got into them. But at the time, they were trying to get him situated where they could get college courses, and he was going to enroll in them.

Q. Okay. So they were working on getting them, and he may not have had them available, but he wanted to.

A. Yes, sir.

Q. All right. Anything to add else about your relationship with him or his behavior?

A. Brett was a like I said, a good kid, you know. He tried to do what was the right thing, you know, and I think he did do the right thing. He got along with everybody. He did he got along with the other employees that I worked with. They got him to do things. Like, the warden got him to paint some garbage cans for him because he was a good artist and stuff like that. And they talked with him. Anywhere he went to, they got along with him. All employees there got along with him real fine.

Q. Was that a usual behavior out of the inmates?

A. Yes, sir.

Q. Or was it unusual? Was he unusually behaved?

[93] A. He was behaved real good.

Q. Okay.

MR. FREELAND: Court indulge me for a moment?

(BRIEF PAUSE.)

BY MR. FREELAND:

Q. To what extent was he an exceptional inmate as far as behavior goes and ability to get along?

A. Real smart.

Q. You've had some health issues recently?

A. Yes, sir.

Q. And only just now felt strong enough to come up here to testify?

A. Yes, sir.

MR. FREELAND: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. BOWEN: Yes, Your Honor.

CROSS-EXAMINATION BY MR. BOWEN:

Q. Mr. Benton, I'm Richard Bowen. I'm an assistant district attorney. I want to ask you just a few questions. Before I do, though, how are you feeling right now?

A. I feel pretty good.

Q. All right. Because earlier it was indicated to us you might have suffered a light stroke or something; is that correct?

A. Yes, sir.

[94] Q. Have you had any of those recently, other episodes?

A. Yes, sir, I've had some.

Q. Could I ask you how many and how often?

A. Well, I've had -- this is the second stroke I've had, and I had a heart attack.

Q. When was this, Mr. Benton?

A. It's been five years ago.

Q. All right. But recently, besides this morning, have you had any episodes?

A. No, sir.

Q. All right. As a result -- but have you had -- is this a result of do you know what it's a result of? High blood pressure or --

A. High blood pressure and diabetes.

Q. Diabetes.

A. Diabetes.

Q. Does this condition affect your memory in any way, Mr. Benton?

A. No, sir.

Q. All right. Everything you are testifying to now you're sure of, that your recollection is good?

A. Yes, sir.

Q. All right. Now, I'm a little confused. You're fire and safety director or manager?

A. Now I moved up to fire and safety manager recently.

Q. All right. Is that pretty much -- are you in charge of maintenance and things like that?

[95] A. Fire and safety and maintenance and health and stuff like that.

Q. You made the statement that Brett, as far as you knew about him, was a good kid. Do you know what he was convicted of?

A. No, sir, not -- not then when I met him, no, sir.

Q. Did you ever talk to him -- did he ever talk to you about what he did?

A. No, sir. No, sir.

Q. He never expressed to you any kind of remorse or tried to explain to you what got him where he was?

A. Yes, he did.

Q. All right. He was -- did he tell you that he was responsible for that?

A. No.

Q. He did not express to you that he killed, in fact, was convicted of murdering someone and was responsible for that, accepted responsibility for that?

A. That's right.

Q. He did?

A. Well, he kind of said he had an accident, you know, and did something that he regretted he done.

Q. He said it was an accident. Is that what he told you? Is that what he told you?

A. Well, he said he regretted something he done.

Q. All right. Now, Mr. Freeland asked you a question about two or three times to try to clarify this, but did you tell us that his behavior, which you said was [96] good when you knew him, was usual for the inmates that you had contact with? Did I understand you right, that you don't really have a lot of problems with the inmates you had contact with, do you?

A. I have some. Some, yes. We have inmates that behave real bad, yes.

Q. But not many. And his was usual behavior. Isn't that what you said?

A. Yes.

Q. All right. You didn't have any out-of-the-way problems with him is what you're saying?

A. No, sir.

Q. All right. Now, Mr. Freeland has also told the Court in opening statement that he had some disciplinary or had a disciplinary action lodged against him, and you said you weren't aware of that?

A. I wasn't aware of it.

Q. All right. So you wouldn't have been aware if he had had discipline problems with other personnel at the facility, would you?

A. No, sir, not no, I wouldn't.

Q. Okay. You also told us that he seemed to be normal, intelligent, and level headed; is that right?

A. Yes, sir.

Q. Okay. You wouldn't say, then, that -- well, what would you say? How would you describe him? Would you say that Brett is mature, was mature at the time you knew him, which was about 16 -- 15 or 16 years old?

A. I would say he was a 15 or 16-year-old kid, you [97] know, smart boy. I would say just a normal 15, 16-year-old kid.

Q. But you wouldn't call immature, acting like a 10 or 12-year-old or something like that, would you? Would you say he was responsible, he was always there, ready to work?

A. Yes, sir. Right, um- hmm.

Q. So he was mature for his age?

A. Mature, that's right.

Q. All right. He wasn't given to any kind of rash actions. I mean, he didn't do anything outrageous on the job or anything that made you call him down or

anything like that, did he?

A. He would do stuff to make people laugh and stuff. But as far as anything to get on him, no, never have.

Q. He never acted rashly or didn't -- with any extraordinary or outrageous behavior. You didn't see anything like that?

A. Well, every now and then he might get out of hand, but it was just being a kid, you know.

Q. He didn't act depressed, did he?

A. No.

Q. You said he liked to make people laugh?

A. Right, um- hmm.

Q. Is that right? So he wasn't moody or didn't act like to you he was suffering from any kind of mental problems or anything, did he?

A. No, sir.

[98] MR. BOWEN: No further questions, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION BY MR. FREELAND:

Q. There are some issues with gang violence at Walnut Grove or were when it was a juvenile facility, was there not?

A. That's right.

MR. BOWEN: Your Honor, I 'm going to object to this. It's improper --

THE COURT: Hold on just a minute. Speak up, Counsel.

MR. FREELAND: I asked if there were some issues with violence and juvenile violence at Walnut Grove when it was a juvenile institution. And the reason I'm asking is, the comparison and in the discussion

about how Brett's behavior compared to other inmates. And I'm trying -just laying a predicate for where I was going with that.

MR. BOWEN: And, Your Honor, my objection is it is improper redirect. Nothing was touched on direct examination about this, and I didn't touch on anything on cross-examination.

MR. FREELAND: Comparing him to other inmates certainly came up on cross, Your Honor.

THE COURT: The objection will be overruled. You may answer the question.

[99] BY MR. FREELAND:

Q. Do you remember the question or should I --

A. Ask the question, sir.

Q. When Walnut Grove was a juvenile facility, there were issues with violence and gang violence in there with inmates that were juveniles in the facility, was there not?

A. That's right, it was.

Q. And to what extent was Brett a part of that or participant in that?

A. He didn't participate in none of that.

MR. FREELAND: All right. No further questions, Your Honor. May this witness--

THE COURT: All right. Mr. Benton, you'll be excused. You'll be free to go or stay in the courtroom if you wish. But I understand you drove a good way to get here, so if you want to go home, do that. All right. Thank you.

* * *

[135] THE COURT: Not at this juncture. Let [136] me—I'm going to read into the record a long dissertation about the facts and circumstances in this case, as much as anything to demonstrate that I have considered each and every factor that is identifiable in the *Miller* case and its progeny and those decisions which followed. When I've done that, then we will proceed with the imposition of sentence, and I'll call on you then.

MS. FREELAND: Thank you, Your Honor.

THE COURT: Anything further? This cause is before the Court for resentencing in accord with the dictates of *Miller versus Alabama.*

At an earlier time, the Court conducted a hearing and heard evidence offered by the defendant, Brett Jones, and the State of Mississippi bearing on those factors to be considered by the Court as identified by *Miller*. The ultimate question is whether or not, in consideration of those factors, the statutory sentence of life imprisonment, and by application of the parole provisions of the Code, is without parole and whether or not relief is appropriate to the facts and circumstances in this case.

This Court is of the opinion that the Court, and not a jury, is the sentencing authority required to consider and apply the [137] *Miller* factors. Section 97-3-21 of the Mississippi Code provides no authority for a jury to participate in the fixing of the penalty on conviction of murder.

The Court is cognizant of the fact that children are generally different; that consideration of the *Miller* factors and others relevant to the child's culpability

might well counsel against irrevocably sentencing a minor to life in prison. All such factors must be considered on a case-by-case basis.

Miller requires that the sentencing authority consider both mitigating and the aggravating circumstances.

And I would note that these are not really terms used in the *Miller* opinion, but I think they are an easy way for us to identify those considerations.

This Court can hypothesize many scenarios that would warrant and be just to impose a sentence which would allow the defendant to be eligible for consideration for parole, notwithstanding the parole law considerations.

The obvious defense raised by the defendant was self-defense; that he acted to protect himself from what he believed to be an imminent threat to his person likely to result in serious injury or death. He testified in detail concerning the circumstances of the killing. [138] The jury was properly instructed concerning the elements of the crime of murder, the burden of proof being on the State, and the necessity of the State proving each element beyond a reasonable doubt.

In addition, the jury was instructed concerning the lesser-included offense of manslaughter and the distinction between murder and manslaughter and the requirement that the jury was to find the defendant not guilty unless the State had proved each element of the charge beyond a reasonable doubt, including the obligation of the State to prove beyond a reasonable doubt that the defendant did not act in self-defense.

On considering the facts as they determined them to be beyond a reasonable doubt, the jury returned a verdict of guilty of murder, thereby rejecting the defense of self-defense and manslaughter, a lesser-included offense. The jury plainly had as possible verdicts in the case, the verdict of not guilty, manslaughter, or murder.

The defendant, Brett Jones, was at the time 15 years of age at the time that he stabbed his grandfather to death. A fair consideration of the evidence indicates that the killing of Mr. Bert Jones was particularly brutal.

During the course of the murder, the [139] defendant stabbed the victim eight times and was forced to resort to a second knife when the first knife broke while used in the act. The victim appears to have died outside the house, leaving a great amount of blood on the ground.

The defendant attempted to conceal his act by placing the body of the dead or dying Bert Jones in an enclosed part of the garage and attempting to wash away the blood on the ground with a water hose.

He and his female companion then left the scene of the murder and were apprehended by authorities later in Nettleton, approximately 20 miles or so away.

There is no evidence that indicates that anyone other than the defendant participated in the killing of Bert Jones. Likewise, there is no evidence that the defendant acted under the pressure of any family or peer and no evidence of mistreatment or threat by Bert Jones, except the self-defense claim asserted and rejected by the jury.

As noted before, the defendant was 15 years of age at the time of the killing. At the sentencing hearing recently conducted, it was revealed that the female companion was a minor who had come from Florida in order to be with the defendant, and that they, the defendant and the minor female, concealed her presence by her [140] remaining in an outbuilding near the home of the victim.

The killing apparently came about soon after Mr. Bert Jones found the girl in his home in the company of the defendant. The evidence presented at the sentencing hearing indicates that their relationship was intimate and that at some time before the incident she thought she was pregnant. That suspicion proved to be untrue, but demonstrates that the defendant had reached some degree of maturity in at least one area.

The defendant grew up in a troubled circumstance. His mother was gone frequently for extended periods. She had divorced the defendant's father and was living in Florida with her then husband and the defendant and his younger brother. The conditions in that home are unremarkable except for the apparent unsettled lifestyle and an incident in which the defendant and his stepfather had a confrontation resulting from defendant's failure to return home at the time set by the stepfather. The authorities were called, and the defendant was removed and required to enter a program of anger management.

There is no evidence of brutal or inescapable home circumstances. In fact, the reason the defendant was in the home with Bert [141] Jones was to provide him with a home away from the circumstances existing in Florida.

In conclusion, the Court, having considered each of the *Miller* factors, finds that the defendant, Brett Jones, does not qualify as a minor convicted and sentenced to life imprisonment without possibility of parole consideration and entitled to be sentenced in such manner as to make him eligible for parole consideration.

I shall stop here and allow you, Counsel and Mr. Jones, to make any statement you wish. You may go to the podium. All right, sir.

THE DEFENDANT: I really don't—I wasn't prepared to make any type of statement here. The only thing that I could really think to say is I'm not the same person I was when I was 15. There is a lot of—there is a lot of people who would say there is two sides to every story. I'm not trying to argue either side. I got found guilty.

I grew up in a troubled situation. I was put in prison. That's a pretty big punishment, especially one to grow up with. Despite it all and despite what might happen to me today in this courtroom, I've become a pretty decent person in life. And I've pretty much taken every avenue that I could possibly take in prison to rehabilitate myself.

[142] I don't believe that there is an officer in any prison or jail prison that could ever have anything negative to say about me as far as the person I am today as compared to who I was when I was 15. This hearing, to my knowledge, was to see whether I was worthy to be given parole, any chance of freedom one day. Minors do have the ability to change their mentality as they get older. This isn't to retry the case of whether I'm guilty or not guilty. The jury did find me guilty.

But all I can do is throw myself at the mercy of the Court and in front of the Holy Spirit, that I'm a completely different person today. I've done everything to show that. I don't get in trouble. I completely—I took anger management in prison. I've taken trades, got my GED, stayed in touch with my family.

They would like to see me have a chance. My little brother is about to have a baby. I would like—this isn't my—this isn't my environment.

If you decide to send me back without the possibility of parole, I will still do exactly what I've been doing for ten years. But all I can do is ask you with some type of honor, like, please give me just one chance to show the world, man, like, I can be somebody. I've done [143] everything I could over the past ten years to be somebody where I was at, given my limitations.

I will be a law-abiding citizen. There is nothing about me that's a negative person at all any more. I have no vices with anybody. I have no vices, period, besides just wanting to try to be somebody in the world. I want to have a family like everybody else.

I can't change what was already done. I can just try to show what I—you know, I have become—I've become a grown man. I'm almost 26 years old. And thank you for—thank you for taking me into consideration, Judge Gardner. You've been with me for a long, long time, and I really appreciate it, sir.

THE COURT: All right, sir. Thank you.

Counsel, do you have anything further?

MS. FREELAND: No, Your Honor.

THE COURT: It is the sentence of this Court that the defendant, Brett Jones, serve a term of life imprisonment in the custody of the Mississippi Department of Corrections.

Mr. Jones is committed to the custody of the sheriff of Lee County to await transportation to a facility designated by the Department of Corrections. He will be in the custody of the sheriff to await transportation.

Ms. Freeland, you may—if you want to talk to him or visit with the family, that's [144] fine. We can arrange that. All right?

MS. FREELAND: Should we arrange for that in a separate room, Your Honor?

THE COURT: I'm sorry?

MS. FREELAND: Should we arrange for that in a separate room, Your Honor?

THE COURT: Will—if you will, take care of that circumstance.

We'll make arrangements.

(END OF PROCEEDING.)