

No. 20-_____

In the Supreme Court of the United States

STATE OF LOUISIANA,
Petitioner

v.

AARON HAUSER,
Respondent.

**On Petition for Writ of Certiorari
to the Supreme Court of Louisiana**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A juvenile may be sentenced to life in prison without the possibility of parole if the juvenile’s “crimes reflect irreparable corruption.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 726 (2016); *Miller v. Alabama*, 567 U.S. 460, 479 (2012). Respondent Aaron Hauser committed a premeditated, double homicide when he was 17 years old. He was sentenced to life in prison without parole, and he has served more than 35 years of that sentence.

After an evidentiary hearing to consider whether to reform Hauser’s sentence and grant him the possibility of parole, the state trial court concluded that, based on the nature of Hauser’s crime, he was “one [of] the worst offenders” in one of “the worst cases.” It ordered Hauser to continue serving his life sentence without the possibility of parole.

The state appellate court reversed. Relying heavily on Hauser’s clean 35-year prison record, the appellate court concluded that, in light of *Montgomery* and *Miller*, the trial court erred by denying Hauser parole eligibility.

* * *

Does a sentencing court run afoul of *Montgomery* and *Miller* by weighing the heinous facts of a juvenile’s violent crime more heavily than any subsequent evidence of rehabilitation in prison when determining whether the juvenile’s “crimes reflect irreparable corruption”?

RELATED PROCEEDINGS

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State v. Hauser, 561 So. 2d 98 (La. 1990)

State ex rel. Hauser v. State, 2006-1507 (La. 3/9/07), 949 So. 2d 436

State ex rel. Hauser v. State, 1999-2506 (La. 2/11/00), 754 So. 2d 933

State v. Hauser, 13-391 (La. App. 3 Cir. 8/5/13) (unpublished opinion)

State ex rel. Hauser v. State, 2013-2028 (La. 7/31/14), 146 So. 3d 202

Hauser v. Cain, No. 14-CV-2654, 2015 WL 13229964 (W. D. La. Aug. 10, 2015)

Hauser v. Cain, No. 2:14-CV-2654, 2015 WL 13236830 (W. D. La. Dec. 4, 2015)

Hauser v. Cain, No. 14-CV-2654, 2016 WL 4703974 (W. D. La. July 18, 2016)

Hauser v. Cain, No. 14-CV-2654, 2016 WL 4703910 (W. D. La. July 28, 2016)

Hauser v. Cain, No. 2:14-CV-02654, 2016 WL 4703509 (W. D. La. Sept. 6, 2016)

State v. Hauser, 2019-341 (La. App. 3 Cir. 12/30/19), --- So.2d ---, 2019 WL 7491511

State v. Hauser, reh'g denied (Feb. 19, 2020),

State v. Hauser, 2020-00429 (La. 7/2/20), 297 So. 3d 730

State v. Hauser, 2020-00418 (La. 7/2/20), 297 So. 3d 764 (denying writ as moot)

State v. Hauser, 2020-00429 (La. 10/6/20), 302 So. 3d 514 (denying reconsideration)

TABLE OF CONTENTS

| | |
|---|----|
| TABLE OF AUTHORITIES | v |
| PETITION FOR A WRIT OF CERTIORARI | 1 |
| OPINIONS BELOW | 1 |
| JURISDICTIONAL STATEMENT | 1 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... | 1 |
| INTRODUCTION | 3 |
| STATEMENT OF THE CASE..... | 4 |
| REASONS FOR GRANTING THE PETITION..... | 13 |
| I. COURTS AROUND THE COUNTRY ARE SPLIT ABOUT HOW TO BALANCE EVIDENCE OF REHABILITATION AGAINST THE FACTS OF HEINOUS CRIMES DEMONSTRATING IRREPARABLE CORRUPTION. | 13 |
| A. This Court Has Not Required Sentencing Courts to Accord Greater Weight to Subsequent Evidence of Rehabilitation Than the Underlying Facts of a Crime Demonstrating Irreparable Corruption. | 13 |
| B. The Lower Courts in This Case Split About the Proper Weight to Accord to Subsequent Evidence of Rehabilitation, Reflecting the Confusion that Pervades the Country..... | 14 |
| II. THIS CASE PROVIDES AN EXCELLENT VEHICLE TO ADDRESS THE QUESTION PRESENTED..... | 18 |
| CONCLUSION..... | 18 |

TABLE OF AUTHORITIES

Cases

| | |
|--|--------|
| <i>Bracewell v. State</i> , No. CR-17-0014, 2020 WL 7382039 (Ala. Crim. App. Dec. 16, 2020) | 15 |
| <i>Commonwealth v. Lekka</i> , 210 A.3d 343 (2019)..... | 17 |
| <i>Hauser v. Cain</i> , No. 14-CV-2654, 2016 WL 4703974 (W. D. La. July 18, 2016), <i>report and recommendation adopted</i> , No. 2:14-CV-02654, 2016 WL 4703509 (W. D. La. Sept. 6, 2016) | 7 |
| <i>Hauser v. Cain</i> , No. 2:14-CV-2654, 2015 WL 13236830 (W. D. La. Dec. 4, 2015)..... | iv, 7 |
| <i>Jackson v. State</i> , 276 So. 3d 73, 76 (Fla. Dist. Ct. App. 2019), <i>review denied</i> , No. SC19-1456, 2019 WL 6249337 (Fla. Nov. 22, 2019) | 17 |
| <i>Jones v. Mississippi</i> , No. 18-1259..... | 15 |
| <i>Miller v. Alabama</i> , 567 U.S. 460 (2012) | passim |
| <i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016) | passim |
| <i>People v. Willover</i> , 203 Cal. Rptr. 3d 384 (2016) | 17 |
| <i>State ex rel. Hauser v. State</i> , 13-2028 (La. 7/31/14), 146 So.3d 202..... | 7 |
| <i>State v. Hauser</i> , 13-391 (La. App. 3 Cir. 8/5/13) (unpublished) | 6 |
| <i>State v. Hauser</i> , No. CR-1983-548 (unpublished) | 6 |
| <i>State v. Keefe</i> , 478 P.3d 830 (Mont. 2021) | 16 |

| | |
|--|--------|
| <i>State v. Montgomery</i> , 2013-1163 (La. 6/28/16), 194 So.3d 606 | 8 |
| <i>State v. Ramos</i> , 387 P.3d 650, 658 (2017), as amended (Feb. 22, 2017) | 15, 17 |
| <i>State v. Sims</i> , 818 S.E.2d 401 (2018) | 17 |
| <i>State v. Tate</i> , 12-2763 (La. 11/5/13), 130 So.3d 829, cert. denied | 6 |
| <i>Tate v. Louisiana</i> , 134 S. Ct. 2663 (2014) | 6 |
| <i>United States v. Briones</i> , 929 F.3d 1057 (9th Cir. 2019) | 16 |
| <i>Young v. State</i> , 294 So. 3d 1238 (Miss. Ct. App. 2020) | 15 |
| Statutes | |
| 28 U.S.C. § 1257(a) | 1 |
| 28 U.S.C. § 1631 | 7 |
| Louisiana Code of Criminal Procedure article 878.1 | 2 |
| Other Authorities | |
| Alice Reichman Hoesterey, <i>Juvenile (In)Justice: Confusion in Montgomery's Wake: State Responses, the Mandates of Montgomery, and Why a Complete Categorical Ban on Life Without Parole for Juveniles is the Only Constitutional Option</i> , 45 Fordham Urb. L. J. 149 (2017) | 15 |
| Backstrom, James C., <i>A Response to Christopher Berk's Article: Children, Development, and the Troubled Foundations of Miller v. Alabama</i> , 44 Law & Soc. Inquiry 777 (2019) | 15 |
| Berk, Christopher D., <i>Children, Development, and the Troubled Foundations of Miller v. Alabama</i> , 44 Law & Soc. Inquiry 752 (2019) | 14 |
| Berk, Christopher D., <i>Reply to Elizabeth Scott, Laurence Steinberg, David Tanenhaus, and James Backstrom</i> , 44 Law & Soc. Inquiry 787 (2019) | 15 |

| | |
|--|----|
| David Roper, <i>Lifers After Montgomery: More SCOTUS Guidance Is Necessary to Protect the Eighth Amendment Rights of Juveniles</i> , 79 Ohio St. L.J. 991, 1020 (2018) | 15 |
| Scott, Elizabeth, and Steinberg, Larry, <i>In Defense of Developmental Science in Juvenile Sentencing: A Response to Christopher Berk</i> , 44 Law & Soc. Inquiry 780 (2019) | 15 |

PETITION FOR A WRIT OF CERTIORARI

The State of Louisiana respectfully petitions for a writ of certiorari to review the judgment of the Louisiana Supreme Court.

OPINIONS BELOW

The Louisiana Supreme Court’s decision denying petitioner’s application for a writ of review is published at 297 So. 3d 730 (La. 2020) and reprinted in the Appendix to the Petition (“Pet. App.”) at 2. Its decision denying the State’s application for reconsideration is published at 302 So. 3d 514 (La. 2020) and is reprinted at Pet. App. 1. The decision of the court of appeals is unpublished but reprinted at Pet. App. 4. The decision of the trial court is unpublished but reprinted at Pet. App. 30.

JURISDICTIONAL STATEMENT

The Louisiana Supreme Court denied discretionary review July 2, 2020, and denied rehearing October 6, 2020. This Court issued an order March 19, 2020, automatically extending the time to file any petition for a writ of certiorari to 150 days from the date of the lower court judgment, order denying discretion review, or order denying a timely petition for rehearing. This petition is accordingly due on March 5, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Louisiana Code of Criminal Procedure article 878.1 provides, in pertinent part:

B. (1) If an offender was indicted prior to August 1, 2017, for the crime of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense and a hearing was not held pursuant to this Article prior to August 1, 2017, to determine whether the offender's sentence should be imposed with or without parole eligibility, the district attorney may file a notice of intent to seek a sentence of life imprisonment without the possibility of parole within ninety days of August 1, 2017. If the district attorney timely files the notice of intent, a hearing shall be conducted to determine whether the sentence shall be imposed with or without parole eligibility. If the court determines that the sentence shall be imposed with parole eligibility, the offender shall be eligible for parole pursuant to R.S. 15:574.4(G). If the district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to R.S. 15:574.4(E) without the need of a judicial determination pursuant to the provisions of this Article. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole. . . .

C. At the hearing, the prosecution and defense shall be allowed to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender, the offender's level of family support, social history, and such other factors as the court may deem relevant. The admissibility of expert witness testimony in these matters shall be governed by Chapter 7 of the Code of Evidence.

D. The sole purpose of the hearing is to determine whether the sentence shall be imposed with or without parole eligibility. The court shall state for the record the considerations taken into account and the factual basis for its determination. Sentences imposed without parole eligibility and

determinations that an offender is not entitled to parole eligibility should normally be reserved for the worst offenders and the worst cases.

INTRODUCTION

When he was nearly 18 years old, Defendant Aaron Hauser bought rubber gloves, convinced his older friend to purchase firearms on his behalf, and murdered his stepmother and stepbrother. He was sentenced to life in prison without parole. He has now served more than 35 years of that sentence.

In recent decisions, this Court has explained that a juvenile may be sentenced to life in prison without the possibility of parole only if the juvenile’s “crimes reflect irreparable corruption.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 726 (2016); *Miller v. Alabama*, 567 U.S. 460, 479 (2012). In accordance with these decisions, the state trial court held a hearing and considered large quantities of evidence and numerous factors listed by this Court to determine whether Hauser’s crime reflected irreparable corruption. Despite Hauser’s excellent prison record, the state trial court concluded that the facts of Hauser’s crime made him “one of the worst offenders” in one of the worst cases. The court reaffirmed Hauser’s original life sentence without the possibility of parole.

The state appellate court reversed, relying heavily on Hauser’s decades of clean prison service. The court revised Hauser’s sentence and made him eligible for parole. In a 4-3 split, the Louisiana Supreme Court denied review.

This Court’s decisions in *Miller* and *Montgomery* do not require sentencing courts to accord greater weight to evidence of rehabilitation in prison than to evidence of irreparable corruption reflected in the heinous nature of the juvenile’s crimes. And

yet the state appellate court reversed the state trial court for exactly that reason. This disagreement is not limited to this case. State and federal courts around the country are sharply divided about how to determine whether a juvenile's crimes reflect irreparable corruption.

This case presents the Court with an excellent vehicle to resolve the split. Hauser's crimes were heinous, and his maturity level was advanced. But his 35 years of prison service have been exemplary. The question of how to resolve these competing factors is cleanly presented. The Court should grant the State's petition.

STATEMENT OF THE CASE

The Murders

On July 4, 1983, Aaron Hauser murdered his step-mother, Joan Hauser, and his step-brother, John Leidig, who was 17. At the time of the murder, Hauser, who was born October 13, 1965, "was 17 years, 8 months, and 21 days old, or just over 3 months shy of turning 18." Pet. App. 41.

In the weeks prior to killing Joan and John, Hauser planned a burglary of his estranged father's home with a 26-year-old friend—William Kinkade. Hauser believed he was forced to join the Navy because his father would not give him money to enroll in college—and he blamed his father after he was allegedly assaulted while serving in the Navy. Hauser wanted to "strike back at his father." Pet. App. 42. Since he was not old enough to buy a gun, he paid Kinkade to purchase three guns, including a .223 semi-automatic rifle. They also bought rubber surgical gloves.

On July 3, 1983, Defendant and Kinkade drove approximately seven hours

from his home in Kerrville, Texas, to his father's home in DeRidder, Louisiana. They parked approximately one mile from the house. Taking the guns, they walked through the woods in the early hours of July 4 and hid behind outbuildings and watched the house. Hauser observed his father leave, return once, and leave again. Carrying the .223 rifle, Hauser approached the home, leaving Kinkade behind. Upon reaching the door to the house, Hauser saw through a window his step-mother, Joan, standing in her bedroom.

He entered the house and proceeded to Joan's bedroom—where he shot her in the right cheek, just below her eye, and in her chest. It is unclear whether she saw him; Hauser says she did not, but Kinkade later testified that he heard a woman's screams coming from the house. Crime-scene photos show Joan lying on her back on the floor of her bedroom in a pool of blood.

After killing Joan, Hauser walked to his old bedroom where he found his stepbrother, John. He shot John twice with the .223 rifle—once in the right forearm and once in the head. Authorities found John's body covered with a blanket. Neither the blanket nor the pillow behind his head had any blood on it. “[B]ased on the amount of blood on the floor and John's position in the bed when police found him, the Defendant moved John's body after he had killed him.” Pet. App. 40. “It also appears that the defendant placed a spent shell casing in the palm of John's baseball glove.” Pet. App. 41.

Upon hearing the shots and screaming, Kinkade left the scene, ran two miles, and called the police to anonymously report the shooting. Meanwhile, Hauser looked

through the house for some of his things and, according to statements by his cellmates, drank Kool-Aid out of the refrigerator. When he could not find Kinkade, he took a car from the house, drove back to where they parked his truck, and returned to Kerrville, Texas, where he was arrested.

Initial Proceedings

After being extradited from Texas, Hauser was indicted on July 19, 1983, for the first-degree murders of Joan and her son, John—violations of Louisiana Revised Statutes 14:30. On April 24, 1984, the week before his trial was to begin, Hauser entered a voluntary guilty plea on both counts. The trial court sentenced Hauser to two concurrent life terms without benefit of parole, probation, or suspension of sentence.

Federal Habeas Proceedings

After this Court decided *Miller v. Alabama*, 567 U.S. 460 (2012), Hauser filed a “motion to correct illegal sentence.” He argued that, because he was a minor at the time that he committed his crimes, retroactive application of *Miller* invalidated his sentence. The state court denied the motion on March 22, 2013. *State v. Hauser*, No. CR-1983-548 (unpublished). The Third Circuit denied writs on August 5, 2013. *State v. Hauser*, 13-391 (La. App. 3 Cir. 8/5/13) (unpublished). The Louisiana Supreme Court’s denied his writ on July 31, 2014, relying on *State v. Tate*, 12-2763 (La. 11/5/13), 130 So.3d 829, *cert. denied*, *Tate v. Louisiana*, 134 S. Ct. 2663 (2014), in which the court held *Miller* was not retroactive. *State ex rel. Hauser v. State*, 13-2028 (La. 7/31/14), 146 So.3d 202.

On September 4, 2014, Hauser filed an application for a writ of habeas corpus in federal court, arguing that he was being imprisoned in violation of the Eighth Amendment. Upon recommendation of the magistrate judge, the district court transferred the successive petition to the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1631. *Hauser v. Cain*, No. 2:14-CV-2654, 2015 WL 13236830 (W. D. La. Dec. 4, 2015). The Fifth Circuit determined the petitioner's claims had made a sufficient showing of possible merit to warrant authorization of a second or successive petition and sent it back to the district court. *See Hauser v. Cain*, No. 14-CV-2654, 2016 WL 4703974 (W. D. La. July 18, 2016), *report and recommendation adopted*, No. 2:14-CV-02654, 2016 WL 4703509 (W. D. La. Sept. 6, 2016). During the pendency of these federal proceedings, this Court issued its decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). The federal district court remanded the case to the state trial court for resentencing in accord with *Miller* and *Montgomery*.

Hauser's *Miller/Montgomery* Hearing

On July 13, 2016, Hauser filed a "Pro Se Incorporate Motion and Memorandum to Correct Illegal Sentence" in state court. On September 19, 2017, the State filed a "Notice of Intent to Seek Sentence of Life Imprisonment Without Parole." The state court appointed counsel for Hauser and heard testimony and received documentary evidence for two full days. It allowed both sides to file supplemental documentary evidence and post-hearing memorandums.

The question for the state trial court was whether this Court’s decisions in *Miller* and *Montgomery* required Hauser to receive parole eligibility. The trial court closely considered the factors that this Court listed for consideration in those opinions. Pet. App. 38. The court observed that the Louisiana Supreme Court’s instruction that “[r]esentencing of a juvenile already serving a life sentence without parole should be conducted in the same manner as one convicted and sentenced post-*Miller*.¹

The trial court discussed the nature and circumstances of Hauser’s crime at length. It concluded that the two “murders were heinous, particularly grotesque, and completely senseless” and appeared “to have been committed with forethought, malice, and cruelty.” Pet. App. 41. It found this factor to weigh heavily in favor of the State.

It considered Hauser’s “chronological age and hallmark characteristics,” noting that Hauser was “just 3 months shy of turning 18.” Pet. App. 41. And it reviewed the expert testimony relative to brain development of adolescents presented by both the witnesses at trial and the *amici* briefs in *Miller*. It found the expert evidence militated in favor of Hauser. Regarding the hallmark characteristics of immaturity, impetuosity, and failure to appreciate risks and consequences, the Court found that Hauser had made numerous decisions before the murder, such as getting his GED and enlisting in the Navy, which did not appear to be “those of an immature juvenile.”

¹ Pet. App. 35 (citing *State v. Montgomery*, 2013-1163 (La. 6/28/16), 194 So.3d 606, 608).

Pet. App. 42. It found that the murders were not the result of impetuosity but were deliberate and calculated.

Regarding Hauser's participation in the murders, degree of criminal sophistication, and the effect of peer pressure, the Court found that, although a 26-year-old assisted Hauser in preparing to commit the crime, Hauser was the primary instigator and organizer of the crime, planning the events that led up to the murders, and the sole person who entered the victims' home and murdered them.

The trial court considered Hauser's background at the time of the crime, and it found that, "although [his] family life as a child may not have been perfect [his parents were divorced], and it is quite possible [he] felt neglected or even unloved by his father, [there was] no evidence of abuse or other such circumstances" that would mitigate the Defendant's crimes. Pet. App. 45. Additionally, the court found that he "was of normal intelligence, had no physical or mental issues, and had never suffered any physical trauma while growing up." Pet. App. 45. The court reviewed evidence of a sexual assault Hauser endured in his first weeks in the Navy.

Hauser testified that he did not believe he committed the murders because of the assault, but he opined that no 17-year-old who had suffered such an assault would have been thinking rationally. Although the court did not see a strong correlation between that event and the murders, it acknowledged that such an assault would have been traumatic for anyone of any age and could have impacted Hauser's mental state and contributed to the commission of the crimes. The trial court also noted that Hauser did not have a previous criminal record and only had one disciplinary

infraction while in prison, in 1987.

Regarding the “incompetencies associated with youth,” the Court again noted that Hauser was nearly 18 when he was arrested. Hauser never admitted to law enforcement that he committed the crimes. The trial court observed that Hauser had used a dangerous weapon in committing the murders—a .223 rifle—and that his conduct clearly created a risk of harm to more than one person.

The court reviewed the effect the crime had on the victim’s family and the community, noting that Hauser’s step-mother, Joan, was 48 at the time of her death and the mother to four children. Hauser’s step-brother, John, was 17, only a month younger than Defendant. The children of Joan and siblings of John’s father, as well as Hauser’s father, testified about Joan and John’s characters, “relived the painful details of how they learned of the murders,” and described the loss they suffered. Pet. App. 48. Hauser’s stepsister testified that the Fourth of July was no longer a time of celebration for this family but, instead, a constant reminder of their loss. None of these family members believed that Hauser deserved a chance for parole. The trial court also considered about twenty letters from other family members and members of the community, none of whom supported parole for Hauser.

Regarding remorse, acceptance of responsibility, and capacity to appreciate the criminality of his actions, the trial court primarily relied upon Hauser’s testimony. The court found that, although Hauser “expressed regret for his actions and the pain he had caused,” “it did not appear to be a heartfelt expression of remorse.” Pet. App. 49. His father and siblings were sitting in the front row, but “he made no emotional

connection of remorse to them during his testimony.” Pet. App. 49. It appeared to the court that “the same desire to commit these crimes as some form of striking back at his father was still evident all these years later.” Pet. App. 50.

The state trial court closely considered Hauser’s likelihood of committing future offenses, whether his conduct was the result of circumstances not likely to recur, whether he posed a threat to the safety of the public or an individual, and his potential for rehabilitation. The court fully reviewed Hauser’s prison records and noted that his risk assessment score was extremely low, that he was well respected and trusted among prison officials and prisoners, and that he worked in the minimal security K-9 Unit. It further noted that, beginning ten years after he was incarcerated, he participated in many training programs and courses of study, and that a couple in Texas had befriended him and had arranged housing for him there and believed he had several job prospects. The court found that the circumstances which lead to the commission of the crime were unlikely to recur and that he had conducted himself admirably while incarcerated. It noted, though, that it could not determine whether his record of good conduct and self-improvement in prison were true signs of rehabilitation or “simply learned behavior to survive and thrive inside the prison setting.”² Pet. App. 53. Nevertheless, it found that his conduct was “commendable and is certainly mitigating evidence in favor of parole eligibility.” Pet. App. 53.

² The state trial court’s consideration of this factor stemmed from the testimony of one of the psychological experts that “prison is a highly-structured environment wherein it behooves one to comply with the rules.” Pet. App. 55.

Finally, in accordance with this Court’s instructions, the trial weighed “the nature and circumstances of the crime, the extent of the Defendant’s planning and participation, and the impact on the victim’s family” against “the Defendant’s low risk assessment, lack of prior criminal history, and his exemplary record while incarcerated.” Pet. App. 54. It concluded that the murders were not the result of youthful impulsiveness or transient immaturity and that there was nothing in his background that excused the murders. It also concluded after considering all of the mitigating and aggravating evidence that this case represented “one [of] the worst offenders and the worst cases” and, thus, Hauser should not be eligible for parole. Pet. App. 55.

Hauser’s Successful Appeal

The Louisiana Third Circuit reversed the state district court and reformed Hauser’s sentence, granting parole eligibility. That court’s analysis trained almost exclusively on Hauser’s conduct *in prison*, and not on the crime Hauser committed. It found “that Defendant’s *prison record and evidence of rehabilitation* have demonstrated he is not irreparably corrupt.” Pet. App. 27 (emphasis added). Little attention was given to the circumstances of the crime or Hauser’s character at the time of the crime.

The State applied to the Louisiana Supreme Court for a supervisory writ. In a 4-3 decision, the Supreme Court denied the writ. Pet. App. 2-3. In dissent, Justice Crichton, joined by Justice Crain, noted that the trial and appellate courts made their determinations regarding the right to resentencing on different bases. In their view,

the lower courts “require[d] further guidance” regarding “the multiple issues presented and to address proper procedures and standards for sentencing hearings in juvenile homicide cases, as informed by *Miller* and *Montgomery*.” Pet. App. 2–3.

The State now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. COURTS AROUND THE COUNTRY ARE SPLIT ABOUT HOW TO BALANCE EVIDENCE OF REHABILITATION AGAINST THE FACTS OF HEINOUS CRIMES DEMONSTRATING IRREPARABLE CORRUPTION.

A. This Court Has Not Required Sentencing Courts to Accord Greater Weight to Subsequent Evidence of Rehabilitation Than the Underlying Facts of a Crime Demonstrating Irreparable Corruption.

The cases of *Miller* and *Montgomery* established a set of factors for sentencing courts to consider when determining whether to sentence a juvenile to life in prison without the possibility of parole. In neither of those cases did this Court require sentencing courts to accord greater weight to evidence of rehabilitation in prison than the evidence of irreparable corruption evident from the facts of the crime.

Miller mandated that, in addition to considering the facts and circumstances of the crime, “a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” 567 U.S. at 483. Those characteristics included immaturity, impetuosity, failure to appreciate risks and consequences, inability to deal with police and prosecutors and to work with his attorney, and susceptibility to peer pressure. *Id.* at 477–78. Another of those attendant characteristics or factors the Court suggested is a juvenile’s “capacity for change,” or potential for rehabilitation. *Id.* at 479.

The Court in *Montgomery* focused on whether the juvenile could show he was not “irreparably corrupt,” 136 S. Ct. at 726, 734, 735, 736, or “permanently incorrigible,” *id.* at 734, 743, 744. In *Montgomery*, the Court observed that “petitioner’s submissions [regarding his ‘evolution’ in prison] are relevant [] as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.” *Id.* at 736. However, it left open the question of how much weight post-conviction rehabilitation should be given as compared with the other factors set forth in *Miller*.

B. The Lower Courts in This Case Split About the Proper Weight to Accord to Subsequent Evidence of Rehabilitation, Reflecting the Confusion that Pervades the Country.

The divide between the post-conviction trial court and the appellate court in this case aptly illustrates the confusion overwhelming courts around the country about how to balance these competing factors. The trial court considered and weighed all the factors set forth in *Miller*, as they applied to Hauser at the time of the crime, as well as his record in prison since conviction. The appellate court did not discuss the elements of *Miller* or the four penological justifications for a sentence of life without parole, but solely relied, instead, on the evidence of Hauser’s rehabilitation in prison.

Louisiana courts are not alone in their confusion about how to apply the Court’s holdings in *Miller* and *Montgomery*.³ See, generally, David Roper, *Lifers After*

³ Legal commentators are also conflicted. See e.g. Berk, Christopher D., *Children, Development, and the Troubled Foundations of Miller v. Alabama*, 44 Law & Soc. Inquiry 752 (2019); Backstrom, James C., *A Response to Christopher Berk’s Article: Children, Development, and the Troubled Foundations of Miller v. Alabama*, 44 Law & Soc. Inquiry 777 (2019); Scott, Elizabeth, and Steinberg, Larry, *In*

Montgomery: More SCOTUS Guidance Is Necessary to Protect the Eighth Amendment

Rights of Juveniles, 79 Ohio St. L.J. 991, 1020 (2018) (“The disparate reaction of the states to Supreme Court jurisprudence has created a messy hodgepodge that threatens the very application of the Eighth Amendment to juvenile sentences.”); Alice Reichman Hoesterey, *Juvenile (In)Justice: Confusion in Montgomery’s Wake: State Responses, the Mandates of Montgomery, and Why a Complete Categorical Ban on Life Without Parole for Juveniles is the Only Constitutional Option*, 45 Fordham Urb. L. J. 149 (2017). And these issues often complicate the already difficult issues of weighing factors,⁴ presumptions, burdens of proof,⁵ and factual findings.⁶

At least two other courts have agreed with the Louisiana Third Circuit’s approach of affording greater weight to subsequent evidence of rehabilitation than to the underlying facts of a heinous crime suggesting irreparable corruption. In *State v. Keefe*, 478 P.3d 830 (Mont. 2021), on facts very similar to this case, the district court

Defense of Developmental Science in Juvenile Sentencing: A Response to Christopher Berk, 44 Law & Soc. Inquiry 780 (2019); Berk, Christopher D., *Reply to Elizabeth Scott, Laurence Steinberg, David Tanenhaus, and James Backstrom*, 44 Law & Soc. Inquiry 787 (2019).

⁴ See, e.g., *Bracewell v. State*, No. CR-17-0014, 2020 WL 7382039, at *6 (Ala. Crim. App. Dec. 16, 2020) (A juvenile’s age cannot be used as a fact in aggravation); *State v. Roby*, 897 N.W.2d 127, 145 (Iowa 2017) (Age is not a sliding scale that necessarily weighs against mitigation the closer the offender is to turning eighteen years old at the time of the crime.).

⁵ *Young v. State*, 294 So. 3d 1238, 1242 (Miss. Ct. App. 2020) (The burden rests with the juvenile offender to convince the sentencing authority that *Miller* considerations are sufficient to prohibit a sentence of life without parole.); *State v. Ramos*, 387 P.3d 650, 658 (2017), as amended (Feb. 22, 2017) (If the juvenile proves by a preponderance of the evidence that his or her crimes reflect transient immaturity, substantial and compelling reasons would necessarily justify an exceptional sentence below the standard range sentence because a standard range sentence would be unconstitutional.).

⁶ The question of whether a court must make a finding of permanent incorrigibility has been raised in *Jones v. Mississippi*, No. 18-1259, which is pending at this Court. A decision that such a finding is not required would impact the decision by the lower court in this case. Should the Court reach such a conclusion, it should grant the State’s writ, vacate the Third Circuit’s judgment, and remand the case for further consideration.

resentenced Keefe to life without parole. In its written explanation, it noted that “it believed it was ‘improper’ to consider whether Keefe had rehabilitated in prison.”⁷ 478 P.3d at 837. The Montana Supreme Court held that the *Miller* and *Montgomery* holdings “establish a presumption against life without parole sentences for juveniles unless they are ‘irreparably corrupt’ or ‘permanently incorrigible.’” *Id.* at 838. Because the sentencing court had concluded that Keefe was irreparably corrupt and permanently incorrigible without considering the unrebutted evidence of post-conviction progress towards rehabilitation, according to the Montana Supreme Court, the lower court had erred.⁸ *Id.*

Similar to the Montana Supreme Court and the Louisiana Third Circuit, the Ninth Circuit in *United States v. Briones* found that “[a] juvenile’s conduct after being convicted and incarcerated is a critical component of the resentencing court’s analysis.” 929 F.3d 1057, 1064, 1067 (9th Cir. 2019). According to the Ninth Circuit, “[i]f subsequent events effectively show that the defendant *has* changed or *is* capable of changing, LWOP is not an option.” *Id.*

Numerous state courts, on the other hand, appear to agree with the trial court’s analysis in this case. In *Jackson v. State*, 276 So. 3d 73, 76 (Fla. Dist. Ct. App. 2019), *review denied*, No. SC19-1456, 2019 WL 6249337 (Fla. Nov. 22, 2019), a Florida court determined that the defendant’s rehabilitation was only one of the many

⁷ There was sharp disagreement between the justices on the court as to whether the resentencing judge considered evidence of rehabilitation with the dissent determining that he considered the evidence but found Defendant’s claim of rehabilitation not credible.

⁸ Two dissenting justices on the Montana Supreme Court contended that *Miller* and *Montgomery* merely required an individualized resentencing where “youth and its attendant characteristics” were considered, and nothing more. *Id.* at 850 (McKinnon, J., concurring and dissenting).

factors that a sentencing court was to consider. In *Commonwealth v. Lekka*, 210 A.3d 343, 353 (2019), a Pennsylvania court held that the balancing of the factors, including evidence of good behavior in prison, is the sole province of the sentencing judge. In *People v. Willover*, 203 Cal. Rptr. 3d 384, 398 (2016), a California appellate court held that the sentencing decision involved an assessment of various factors and that the trial court had discretion to accord different weight to each factor and not be governed by the sheer number of factors on one side or the other. The court observed that the trial court's exercise of its sentencing discretion "requires '[a] quantitative and *qualitative* analysis' of multiple factors." *Id.*; see *State v. Sims*, 818 S.E.2d 401, 406 (2018) (Despite observing that the "defendant seemed to do somewhat better in prison in recent years," the court upheld the trial court's determination that the defendant should remain ineligible for the possibility of parole.).

And at least one court has held that consideration of a defendant's behavior in prison is not required *at all*. In *State v. Ramos*, the Supreme Court of Washington held that, "[w]hile a resentencing court may certainly exercise its discretion to consider evidence of subsequent rehabilitation where such evidence is relevant to the circumstances of the crime or the offender's culpability, . . . the court is [not] constitutionally required to consider such evidence in every case." 387 P.3d 650, 665 (2017), *as amended* (Feb. 22, 2017). It noted that *Miller* requires courts to consider the *capacity* for rehabilitation when making an initial sentencing decision about whether a juvenile should be subject to life without parole—but "evidence of *actual* demonstrated maturity and rehabilitation is generally considered later,

when it is time to determine whether a former juvenile offender who is up for parole should be given early release.” *Id.*

II. THIS CASE PROVIDES AN EXCELLENT VEHICLE TO ADDRESS THE QUESTION PRESENTED.

The Louisiana Third Circuit misread *Miller* and *Montgomery* and gave nearly *exclusive* consideration to Hauser’s behavior in prison when concluding that he is not “irreparably corrupt.” Hauser’s crime was calculated and heinous, especially in light of his age and maturity. But in prison, he has maintained a clean and productive record. The question of how to balance these competing considerations is cleanly presented for this Court’s consideration. Because there is a conflict among the States (and at least one federal circuit court) on this important issue, this Court should grant the State’s petition to resolve the split.

CONCLUSION

This Court should grant the State’s petition for a writ of certiorari.

Respectfully submitted,

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