

No. 20-7160

IN THE
SUPREME COURT OF THE UNITED STATES

EMMETT GARRISON, IV, AKA “LIL EMMETT”,

Petitioner,

Versus

STATE OF LOUISIANA,

Respondent.

Petitioner’s Reply to State of Louisiana’s Response to Petition for a Writ of
Certiorari to the Louisiana Fifth Circuit Court of Appeal

PETITIONER’S REPLY TO STATE OF LOUISIANA’S OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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Rekker, Roderik, et al, Moving in and out of Poverty: The Within-Individual Association between Socioeconomic Status and Juvenile Delinquency, PLoS One, 2015; 10(11): e0136461 – p. 8

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REPLY FOR PETITIONER

In the wake of this Court's decision in *Jones v. Mississippi*, 141 S.Ct. 1307 (2021), the question presented in Emmett Garrison's petition is more critical than ever. The State of Louisiana, in its Opposition to Mr. Garrison's Petition, hit the nail on the head of the issue here: this Court's role is in setting the "floor" of the Constitution's Eighth Amendment protections in sentencing juveniles to life without parole. The State noted, "as this Court pointed out in *Jones*, a state is always free to offer 'more' protections and sentencing limits for juveniles; this Court sets the 'floor' of protections, not the 'ceiling.'" Opposition of the State of Louisiana, p. 8. In this case, the sentencing court imposed a standard which falls well below the "floor" established by this Court in *Miller v. Alabama* when it held Mr. Garrison's evidence to a burden of proving that he deserved life with the possibility of parole.

Because the State did not concede that the trial court held Mr. Garrison to a burden of proving that he deserved life with parole, Mr. Garrison now re-submits the Appendix in this case to include an additional transcript, containing the first part of the *Miller* hearing in a supplemental appendix to this Court. This, together with the ruling of the sentencing court in Appendix B, establishes three crucial assertions by Mr. Garrison: 1.) that the defense put forth expert witness testimony concluding that Mr. Garrison could not be deemed the worst of the worst, 2.) the State put forth no evidence beyond the trial court record, and 3.) the trial court's assessment of the evidence under these circumstances shows that it held Mr. Garrison to a burden of proving that he deserved the lesser punishment of life with parole.

And while the State did not concede that the trial court held Mr. Garrison to such a burden, the State did not push back with any countervailing argument. Mr. Garrison maintains that the transcript of the hearing and the sentencing court's language establishes that the court began its analysis from a starting point of life without parole, and it required Mr. Garrison to persuade the court that a lesser sentence was appropriate. From the position of the sentencing court, Mr. Garrison's life-without-parole sentence was going to be automatic, unless he could prove that he deserved otherwise. This analysis is incorrect under *Miller*, and juvenile sentencing courts in the United States would benefit from this Court's clarification that such an approach undermines the Eighth Amendment's protections.

The question presented by this case asks this Court to set the floor of this Eighth Amendment protection—that a juvenile life-without-parole sentence not be automatic—by finding that a sentencing court does not have the discretion to impose a presumption in favor of life without parole at a juvenile sentencing hearing. A sentencing court which imposes a presumption in favor of life without parole necessarily violates *Miller's* holding that the Eighth Amendment prohibits the automatic imposition of life without parole. *Miller v. Alabama*, 567 U.S. 460, 489 (2012).

The State of Louisiana argues that Petitioner's argument is foreclosed because of this Court's holding in *Jones* that *Miller* requires “only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence. . .” *Jones*, 141 S.Ct. at 1314-1315,

citing Miller, 567 U.S. at 483. Opposition of the State of Louisiana, p. 7. The State says that because this process was followed in Mr. Garrison’s sentencing, the matter is closed. This process was followed to the extent that Mr. Garrison received a sentencing hearing, but to the extent that the sentencing court is required to consider Mr. Garrison’s youth and its attendant characteristics, this process was completely inverted. If a sentencing court has the discretion to impose a presumption in favor of life without parole means it could “consider” the offender’s youth in ways that either ignore or run counter to the body of law and science grounding *Miller*’s holding. And that is exactly what happened in this case. Mr. Garrison’s Original Petition offers a detailed account of the sentencing court’s evaluation of Mr. Garrison’s youth as being **aggravating** in nature—in other words, the trial court considered the circumstances of Mr. Garrison’s youth as **supporting** a sentence of life without parole. *See* Original Petition pp. 16-18. This reasoning cannot be squared with this Court’s pronouncements in *Miller* as to how the Eighth Amendment protects juvenile offenders facing life without parole, and it points to a gap in the law in the wake of *Jones*.

The *Jones* decision discounts speculation that there could be any daylight between a court’s discretion to consider youth and its actual consideration of youth. *Jones*, 141 S.Ct. at 1319. But this kind of *pro forma*, meaningless “consideration” happens regularly in trial courts, and as the transcript in this case shows, not only can a court’s “consideration” of youth be meaningless, the circumstances of his youth can be turned into aggravating factors against him. Here, where the court dismissed

Mr. Garrison’s juvenile records, which contained evidence of the neglect and abuse of his childhood, it could be said that the trial court “considered” Mr. Garrison’s youth. Indeed, the court could—and did—consider factors surrounding Mr. Garrison’s youth **as reasons supporting the harshest possible penalty**. *See* Original Petition, pp. 17-18. The establishment of a presumption in favor of life with parole—or a pronouncement that a sentencer may not impose a presumption in favor of life without parole—would protect the Eighth Amendment rights of Mr. Garrison and other juvenile offenders across the country.

Mr. Garrison’s case suggests that there remains a gap which calls for this Court to establish the “floor” of a juvenile’s Eighth Amendment rights at sentencing. This Court in *Jones* maintains that the *Miller* decision’s admonition that it is the “rare” juvenile who should be sentenced to life without parole was a prediction based on mathematical statistics. But the *Miller* decision focuses in great detail upon the differences in general between juvenile and adult mental development, and how what we know about each speaks to an offender’s culpability. The *Miller* decision did not establish that life without parole or life with parole are simply two equally valid sentences for juvenile homicide offenders. A fair reading of *Miller* shows that the mitigating factors of youth fundamentally shift the standard for evaluating a juvenile offender’s culpability. *Miller* at 471-480. *Jones*’s holding that *Miller* requires only a certain process—considering an offender’s youth and attendant characteristics—cannot be read to mean that *Miller* mandates that a sentencing court merely needs to hold a sentencing hearing. Such a reading allows for the sentencer to “consider”

youth and its attendant circumstances as aggravating forces rather than mitigating ones—as the sentencing court did here—reversing the substance of the Eighth Amendment’s protection completely. Mr. Garrison respectfully asserts that granting certiorari in this case will close this gap and preserve the substance of the Eighth Amendment’s protection for juvenile offenders facing life without parole sentences.

Finally, the State of Louisiana goes into some detail as to Mr. Garrison’s other crimes, yet it neglects to mention that Mr. Garrison was sentenced to those crimes, consecutively, adding up to a term of imprisonment of 197 years, exceeding his expected lifespan several times over. Supp. R. 11. He was found guilty of and punished for those crimes, and the question here is whether the sentence of life without parole was an appropriate sentence for his participation as a principal in a second degree murder. In other words: whether his culpability in that crime is sufficient to justify the harshest punishment available. Without some further guidance, the sentencer is free to lump the crimes together as it (and the State) did here, sentencing him multiple times over, rather than evaluate his culpability—by considering his youth as well as the fact that he was not the shooter—in sentencing him on the murder.

Juvenile offenders in the justice system are the most under-resourced class of persons to face the state’s power to convict and punish them.¹ They come, as Mr.

¹ See Rekker, Roderik, et al, Moving in and out of Poverty: The Within-Individual Association between Socioeconomic Status and Juvenile Delinquency, PLoS One, 2015; 10(11): e0136461 (“Socioeconomic status is one of the most well-documented correlates of juvenile delinquency.”), *citing* Bjerk D (2007) Measuring the relationship between youth criminal participation and household economic resources; Ellis L, McDonald JN (2000) Crime, delinquency, and social status: A reconsideration. *J Offender Rehabil* 32(3):23–

Garrison did, from families and communities which are entrenched in violence, poverty, and addiction.² All they have are their constitutional rights, and the floor of those rights are established by this Court. Mr. Garrison respectfully requests that this Court grant his petition.

In the alternative, Mr. Garrison requests that this Court summarily reverse his sentence of life without parole on grounds that this sentence violates the Eighth Amendment under an as-applied analysis because the evidence presented at the trial court does not support the harshest possible penalty in this case.

CONCLUSION

Mr. Garrison respectfully requests that the petition for a writ of certiorari be granted.

Respectfully Submitted:

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52; and *J Quant Criminol* 23(1):23–39, and Jarjoura GR, Triplett RA, Brinker GP (2002) Growing up poor: Examining the link between persistent childhood poverty and delinquency. *J Quant Criminol* 18(2):159–187.

² See Jarjoura GR, Triplett RA, Brinker GP (2002) Growing up poor: Examining the link between persistent childhood poverty and delinquency, *J Quant Criminol* 18(2):159–187.