IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

JASON BRYANT, *Petitioner,* *v.* TONY C. PARKER, Commissioner, Tennessee Department of Correction, and KEVIN GENOVESE, Warden, Turney Center Industrial Complex, *Respondents*.	)	Civil Action No. _____

MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner Jason Bryant, by and through undersigned counsel, and pursuant to 28 U.S.C. § 2254(a), petitions this Court for:

(1) A writ of habeas corpus;

(2) A full evidentiary hearing on the claims presented herein;

(3) An order vacating his unconstitutional sentences of life without the possibility of parole; and

(4) An order directing the State of Tennessee to resentence Mr. Bryant in compliance with the framework established by the United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

As grounds for this petition, Mr. Bryant respectfully states as follows:

I. INTRODUCTION

1. This case involves a defendant who is serving three consecutive life sentences without the possibility of parole for crimes that he committed as an intellectually stunted fourteen-year-old child. Based on the factors set forth in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), subsequently held retroactive by the United States Supreme Court in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), all three of Mr. Bryant's sentences presumptively violate the Eighth Amendment's prohibition against cruel and unusual punishment. As a result, Mr. Bryant is constitutionally entitled to have his sentences reviewed under the framework established in *Miller*.

II. BACKGROUND AND PROCEDURAL HISTORY

2. In 1998, Mr. Bryant pleaded guilty to participating in the commission of felony offenses that resulted in the deaths of three people.[1] At the time of the offenses, Mr. Bryant was just a fourteen-year-old child. Despite his youth, the fact that he had the social IQ of an eleven-year-old, and his lack of any serious prior criminal history, Mr. Bryant was sentenced to three consecutive terms of life in prison without the possibility of parole. As a consequence, Mr. Bryant has the distinction of being the youngest person in the State of Tennessee—either before or since—to be condemned to die in prison.

[1] Under Tennessee law, felony-murder is a category of First Degree murder that requires "no culpable mental state . . . except the intent to commit the enumerated [felony] offenses or acts . . . ." *See* Tenn. Code Ann. § 39-13-202(a)(2); Tenn. Code Ann. § 39-13-202(b). Accordingly, Mr. Bryant's felony-murder convictions are frequently described as "First Degree murder" throughout his case record. Crucially, however, with respect to juveniles like Mr. Bryant, the Eighth Amendment draws a distinction between intentional murder and felony-murder. *See Graham v. Florida*, 560 U.S. 48, 74 (2010), *as modified* (July 6, 2010) ("for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole."); Emily C. Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of* Roper, Graham and J.D.B., 11 Conn. Pub. Int. L.J. 297 (2012). Accordingly, this petition refers to Mr. Bryant's offenses as "felony-murder" convictions instead.

3. In *Miller*, the U.S. Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 132 S. Ct. at 2469. Although *Miller* did not categorically forbid life in prison without the possibility of parole for juvenile offenders, it nonetheless made clear that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.* Accordingly, before imposing any sentence of life without the possibility of parole for a juvenile offender, *Miller* requires courts to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

4. On January 27, 2016, the Supreme Court ruled that "*Miller* announced a substantive rule that is retroactive in cases on collateral review." *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016), *as revised* (Jan. 27, 2016). Further, *Montgomery* established that whether the product of a mandatory sentencing scheme or a discretionary one, a sentence of life without the possibility of parole is unconstitutional "for all but the *rarest* of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* at 734 (emphasis added). In fact, "the majority opinion in *Montgomery* used the words 'rare' or 'rarest' six times in describing when a life-without-parole sentence would be appropriate after *Miller*." *People v. Hyatt*, No. 325741, 2016 WL 3941269 (Mich. Ct. App. July 21, 2016) (citing *Montgomery*, 136 S. Ct. at 726 (declaring life without parole to be disproportionate "for all but the rarest of children . . ."); at 733 (emphasizing that although "a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified[,]" a life-without-parole sentence will by and large be disproportionate); at 734 (". . . *Miller* determined that sentencing a child to

life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption") (citations and quotation marks omitted); (explaining that *Miller* declared a life-without-parole sentence to be unconstitutional "for all but the rarest of juvenile offenders"); ("[a]fter *Miller*, it will be the rare juvenile offender who can receive that same sentence"); and (". . . *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.")).

5. Based on the Supreme Court's holding in *Miller*—expanded further by its holding in *Montgomery*—a sentence of life without the possibility of parole is presumptively unconstitutional for juvenile offenders. *See, e.g., State v. Riley*, 315 Conn. 637, 655, 110 A.3d 1205, 1214 (2015) ("[*Miller*] suggests that the mitigating factors of youth establish, in effect, a presumption against imposing a life sentence without parole on a juvenile offender that must be overcome by evidence of unusual circumstances."), *cert. denied*, 136 S. Ct. 1361, 194 L. Ed. 2d 376 (2016); *Bear Cloud v. State*, 2014 WY 113, ¶ 34, 334 P.3d 132, 142 (Wyo. 2014) ("The juvenile who will likely die in prison is entitled to the Eighth Amendment's presumption 'that children are constitutionally different from adults for sentencing purposes,' and that they 'have diminished culpability and greater prospects for reform.'") (quoting *Miller*, 132 S. Ct. at 2458, 2464); *Casiano v. Comm'r of Correction*, 317 Conn. 52, 70, 115 A.3d 1031, 1042 (2015) ("*Miller*, in effect, set forth a presumption that a juvenile offender would not receive a life sentence without parole upon due consideration of the mitigating factors of youth . . . ."), *cert. denied sub nom. Semple v. Casiano*, 136 S. Ct. 1364, 194 L. Ed. 2d 376 (2016). Thus, all three of Mr. Bryant's life sentences are presumptively unconstitutional, as is the fact that they were each imposed consecutively. *Id.*

III. CLAIMS FOR RELIEF

6. As an individual who was sentenced to three consecutive terms of life in prison without the possibility of parole for crimes that he committed when he was just fourteen years old, Jason Bryant is indisputably within the category of juveniles serving life sentences to whom *Miller* applies retroactively. Thus, his sentences presumptively violate the Eighth Amendment's prohibition against cruel and unusual punishment. *Id.*

7. Mr. Bryant's trial court did not adhere to the *Miller* framework at sentencing. Nor did Mr. Bryant's trial court presume a life sentence without the possibility of parole—much less three consecutive life sentences without the possibility of parole—to be unconstitutional, as compelled by *Montgomery*. Both of these omissions are understandable, as neither the *Miller* framework nor *Montgomery*'s constitutional presumption against sentencing juveniles to life without the possibility of parole had been established at the time of Mr. Bryant's sentencing. "[T]ak[ing] into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison," however, Mr. Bryant's three consecutive life sentences violate the Eighth Amendment. *Miller*, 132 S. Ct. at 2469. He is entitled to have his life sentences vacated accordingly.

8. The State of Tennessee may address the presumed unconstitutionality of Mr. Bryant's sentences in one of the following three ways:

9. First, the State of Tennessee may simply grant Mr. Bryant a parole hearing. *Montgomery* specifically instructs that:

> A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. Allowing those offenders to be

> considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Montgomery, 136 S. Ct. at 736 (internal citation omitted).

10. Second, the State may opt to resentence Mr. Bryant to a defined term-of-years sentence that affords him "some meaningful opportunity to obtain release . . . ." *Miller*, 132 S. Ct. at 2469 (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010), *as modified* (July 6, 2010); *see also LeBlanc v. Mathena*, 841 F.3d 256, 267 (4th Cir. 2016), *as amended* (Nov. 10, 2016) (holding: "(1) that juvenile nonhomicide offenders sentenced to life imprisonment must have the 'opportunity to obtain release based on demonstrated maturity and rehabilitation,' (2) that this opportunity must be 'meaningful,' and (3) that the early release or parole system must take into account the lesser culpability of juvenile offenders") (citations omitted)). *Cf. Bear Cloud*, 334 P.3d at 142 ("A juvenile offender sentenced to a lengthy term-of-years sentence will not have a 'meaningful opportunity for release.' The United States Sentencing Commission recognizes this reality when it equates a sentence of 470 months (39.17 years) to a life sentence.") (citations omitted); *State v. Ronquillo*, 361 P.3d 779, 785 (Wash. 2015) (holding that a "sentence of 51.3 years is not a constitutional sentence"); *People v. Guzman*, No. B243895, 2014 WL 5392509, at *26 (Cal. Ct. App. Oct. 23, 2014), *review denied* (Jan. 28, 2015) ("Guzman was sentenced to 50 years to life. While certainly less than the 110 years to life that the juvenile offender was sentenced to in Caballero, there is no dispute that Guzman will not be eligible for parole until he is almost 70 years old. The bleak prospect of release at such a late time in life does not afford Guzman a 'meaningful opportunity to obtain release based on demonstrated maturity and

rehabilitation' and 'to demonstrate growth and maturity.'") (quoting *Graham*, 560 U.S. at 73–75).

11 Third, the State may opt to conduct a new sentencing hearing for Mr. Bryant that gives full and fair consideration both to the factors set forth in *Miller* and to the presumed unconstitutionality of a sentence of life without the possibility of parole established by *Montgomery*. *See, e.g.*, *State v. Null*, 836 N.W.2d 41, 74 (Iowa 2013); *State v. Simmons*, 99 So.3d 28, 28 (La. 2012) (per curiam); *State v. Fletcher*, 112 So.3d 1031, 1036 (La. Ct. App. 2013); *Bear Cloud*, 294 P.3d at 48.

IV. JURISDICTION AND VENUE

12. This Court has jurisdiction to hear this petition pursuant to 28 U.S.C. § 2244(b)(2)(A).

13. Venue is proper pursuant to 28 U.S.C.A. § 2241(d) ("Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application.").

14. There is an absence of available state corrective process as defined in 28 U.S.C. § 2254(b)(1)(B)(i). *See Grey v. Hoke*, 933 F.2d 117, 120 (2d Cir. 1991) ("For exhaustion purposes, 'a federal habeas court need not require that a federal claim be presented to a state court if it is clear that the state court would hold the claim procedurally barred.'" (quoting *Harris v. Reed*, 489 U.S. 255, 263 n. 9, 109 S. Ct. 1038,

1043 n. 9 (1989)).) Specifically, under Tennessee's Post-Conviction Procedure Act, Mr. Bryant was already time-barred from pursuing state post-conviction relief even before the U.S. Supreme Court's decision in *Miller v. Alabama*—decided on June 25, 2012—was held to be retroactive. *See* Tenn. Code Ann. § 40-30-117(a)(1) (allowing motions to reopen if the "claim in the motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required"); *id* § 40-30-102(b)(1) (requiring that "[t]he petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court *establishing a constitutional right* that was not recognized as existing at the time of trial," rather than within one year of the date that such a right *is declared retroactive*) (emphasis added).

15. Further, controlling authority from the Tennessee Court of Criminal Appeals reflects that state process would be ineffective to protect Mr. Bryant's rights within the meaning of 28 U.S.C. § 2254(b)(1)(B)(ii).[2] To trigger 28 U.S.C. § 2254's exhaustion requirement, a state remedy "must be a meaningful one in that the outcome is not preordained or otherwise futile." *Cruz v. Warden of Dwight Corr. Ctr.*, 907 F.2d 665, 668 (7th Cir. 1990). *See also Turner v. Bagley*, 401 F.3d 718, 724 (6th Cir. 2005) ("a habeas court should excuse exhaustion where further action in state court 'would be an exercise in futility.'") (quoting *Lucas*, 420 F.2d at 262). Tennessee's review of

[2] The Sixth Circuit has held that the existence of controlling state precedent that conflicts with a federal constitutional standard falls within 28 U.S.C. § 2254(b)'s exception to the state exhaustion requirement. *See Lucas v. People of State of Mich.*, 420 F.2d 259, 262 (6th Cir. 1970) ("We see no reason to believe that the Michigan Appellate Courts are prepared to depart from the import and effect of [their precedents]. It seems obvious that to require the appellees in the present case to exhaust their remedies in the State courts would be an exercise in futility. It appears more than probable that if this Court should relegate appellees to exhaustion of their State remedies, the appellate courts of Michigan would adhere to their previous interpretation of the State Constitution and appellees then would return to the federal courts for relief. Such a judicial runaround is not mandated by the statute [28 U.S.C. § 2254(b)] providing for exhaustion of State remedies. We agree with the District Court that under the circumstances of the case no effective State remedy exists. We proceed to dispose of the appeal on its merits.").

Miller/*Montgomery* claims does not satisfy this standard. *See Brown v. State*, No. W201500887CCAR3PC, 2016 WL 1562981, at *7, n.4 (Tenn. Crim. App. Apr. 15, 2016), *appeal denied* (Aug. 19, 2016) (ignoring the presumption of unconstitutionality regarding juvenile life sentences established by *Montgomery*, and embracing the holding that "so long as the sentencing court considers the juvenile offenders' age and immaturity it need not consider a specific set of factors," *contra Miller*, 132 S. Ct. at 2464 (requiring specific consideration of the facts that children: "[1] have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking," [2] "are more vulnerable to negative influences and outside pressures, including from their family and peers;" [3] "have limited control over their own environment," [4] "lack the ability to extricate themselves from horrific, crime-producing settings," and [5] that "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 irretrievable depravity.") (internal citations and quotation marks omitted)); *see also State v. Null*, 836 N.W.2d 41, 74 (Iowa 2013) ("If a district court believes a case presents an exception to th[e] generally applicable rule [against juvenile life in prison without the possibility of parole], the [trial] court should make findings discussing why the general rule does not apply.") (citations omitted); *Fletcher*, 112 So. 3d at 1036 (remanding for resentencing where "the trial judge considered some of the factors enumerated in *Miller*, but the review was not in depth."); *People v. Araujo*, No. B235844, 2013 WL 840995, at *5 (Cal. Ct. App. Mar. 7, 2013) (remanding for resentencing because "the record does not demonstrate the trial court gave meaningful consideration to the factors subsequently discussed in *Miller*"); *Simmons*, 99 So. 3d at 28 (per curiam) (remanding "for reconsideration after conducting a sentencing hearing in accord with the principles

enunciated in *Miller*," and requiring that "the reasons for reconsideration and sentencing [be stated] on the record."); *Bear Cloud v. State*, 2013 WY 18, ¶¶ 44-45, 294 P.3d 36, 47 (Wyo. 2013) (holding that "*Miller* does mandate that a meaningful review and consideration be afforded by the sentencing court," and vacating for "an individualized sentencing hearing that conforms to the dictates of *Miller*.").

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner Jason Bryant respectfully requests that this Court GRANT this petition, VACATE his unconstitutional sentences of life in prison without the possibility of parole, and ORDER the State of Tennessee to grant him an immediate parole hearing, resentence him to a term of imprisonment that affords him a meaningful opportunity for release, or afford him a new sentencing hearing under the framework set forth in *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2017, a copy of the foregoing was sent via USPS certified mail, postage prepaid, and/or by email to the following:

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