

No. 18-1259

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

REPLY FOR PETITIONER

JACOB HOWARD
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW
767 North Congress Street
Jackson, MS 39202

JEFFREY T. GREEN
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005

DAVID M. SHAPIRO
Counsel of Record
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 E. Chicago Ave.
Chicago, IL 60611
(312) 503-0711
david.shapiro@
law.northwestern.edu

Attorneys for Petitioner

TABLE OF CONTENTS

Table of Authoritiesii
Reply for Petitioner..... 1

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Mathena v. Malvo</i> , No. 18-217	3
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	2
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016).....	1, 2

REPLY FOR PETITIONER

Everything that matters at the petition stage has been conceded. Mississippi concedes the deep, acknowledged, and intractable 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. *See* Br. in Opp'n 4-5. Mississippi does not contest that the question was thoroughly preserved and examined below. Nor does Mississippi dispute that the issue is outcome determinative: a ruling in Petitioner's favor would entitle him to a new sentencing hearing. This case is the perfect candidate for *certiorari*. The Court should grant review.

Mississippi argues that this Court should not consider the question presented because *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) unambiguously rejected a finding requirement. Br. in Opp'n 4. But if that were true, state courts would not have diverged 6-4 on the question, a split Mississippi concedes. *See* Pet. 8-13; Br. in Opp'n 4-5. Nor would the federal courts of appeals for the fourth and ninth circuits have split on this issue. *See* Pet. 13-14. Moreover, Mississippi's argument ignores the fact that the state courts of last resort to recognize a finding requirement derive that rule directly from the Eighth Amendment and *Montgomery*—not from state procedural law. *See* Pet. 10-11.

Mississippi misreads *Montgomery*'s dictum about formal findings by taking it out of context. *Compare* Br. in Opp'n 4 *with* *Montgomery*, 136 S. Ct. at 735-36; Pet. 10. *Montgomery* states, repeatedly and

unambiguously, that permanent incorrigibility is the constitutional standard.¹ Thus, as the majority of state supreme courts to decide the issue have concluded, *Montgomery's* permanent incorrigibility standard requires a finding of permanent incorrigibility. Pet. 10-11. Indeed, Mississippi itself acknowledges “that life in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect ‘irreparable corruption,’” and thus concedes that “determining ‘irreparable corruption’ is possibly one way of testing [a] sentence’s proportionality and the constitutionality of the sentence.” Br. in Opp’n 8-9.²

The last sentence of Mississippi’s brief might be taken to suggest that the trial court in this case at least “consider[ed]” whether Petitioner’s crime reflected transient immaturity. *See* Br. in Opp’n 9. The trial court did no such thing. The court did not

¹ *See Montgomery*, 136 S. Ct. at 726 (“[*Miller*] explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect ‘irreparable corruption.’” (quoting *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012))); *id.* at 734 (“*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”); *id.* (“*Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.”); *id.* (“*Miller* determined that sentencing a child to life without parole is excessive for all but ‘the rare juvenile offender whose crime reflects irreparable corruption. . . .’” (quoting *Miller*, 567 U.S. at 479-80)).

² *See also* Br. in Opp’n 5 (acknowledging this Court’s instruction that “‘prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored’”) (quoting *Montgomery*, 136 S. Ct. at 736-37).

mention transient immaturity, any synonym, or any antonym (such as permanent incorrigibility, irreparable corruption, or irretrievable depravity). In fact, it did not address Petitioner's capacity for rehabilitation at all. Instead, the trial court—which imposed Petitioner's sentence more than nine months before this Court decided *Montgomery*—viewed its task as merely assessing aggravating and mitigating circumstances. Pet. App. 71a.

CONCLUSION

The petition for a writ of certiorari should be granted.³

³ In the alternative, the Court should hold this case pending its decision in *Mathena v. Malvo*, No. 18-217.

Respectfully submitted,

DAVID M. SHAPIRO

Counsel of Record

RODERICK & SOLANGE MACARTHUR JUSTICE CENTER

NORTHWESTERN PRITZKER SCHOOL OF LAW

375 E. Chicago Ave.

Chicago, IL 60611

(312) 503-0711

david.shapiro@law.northwestern.edu

JACOB HOWARD

RODERICK & SOLANGE MACARTHUR JUSTICE CENTER

UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

767 North Congress Street

Jackson, MS 39202

JEFFREY T. GREEN

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, DC 20005

JUNE 2019