ARIZONA SUPREME COURT

STATE OF ARIZONA ex rel. RACHEL H. MITCHELL, Maricopa County Attorney Petitioner, vs. THE HONORABLE KATHERINE COOPER, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent Judge, LONNIE ALLEN BASSETT, Real Party in Interest.	No. CR-22-0227-PR No. 1 CA-SA 22-0152 Maricopa County Superior Court No. CR2004-005097 **STATE'S SUPPLEMENTAL BRIEF**

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I. INTRODUCTION

Miller v. Alabama, 567 U.S. 460, 483 (2012) "mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Jones v. Mississippi*, clarified that is all *Miller* requires. 141 S. Ct. 1307, 1311-21 (2021) (*Miller* "mandated 'only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence," and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) *only* made *Miller* retroactive and did *not* "add to *Miller*'s requirements.")

Bassett already received an individualized sentencing that complied with the Eighth Amendment's requirements, as set forth in *Miller* and *Jones*. *Miller* does not require a determination that a juvenile's crimes were the result of irreparable corruption as opposed to transient immaturity before sentencing a juvenile to natural life. *State v. Valencia*, 241 Ariz. 206, 210, ¶18 (2016). Nor does *Miller*, or *Valencia*, require a particular "weight," or dictate "adequate consideration," of a juvenile's youth and attendant characteristics. Nor does *Miller*, or *Valencia*, prescribe what, or how much, information must be presented when sentencing a juvenile offender. Therefore, Respondent Judge's findings that more is required—more weight, more consideration, more evidence—before Bassett can be constitutionally sentenced to natural life was an incorrect interpretation of the law, after *Jones* clarified *Miller*,

and an abuse of discretion.

This Court should clarify that *Miller*'s holding is narrow, that *Jones* abrogated *Valencia*'s holding, and consequently, that Respondent Judge erred in ordering an evidentiary hearing to which Bassett is not entitled. Particularly after *Jones*, this Court must clarify that a determination of irreparable corruption as opposed to transient immaturity before sentencing a juvenile to natural life is not required by the Eighth Amendment, so *Valencia*'s holding to the contrary has been implicitly overruled. Bassett received an individualized sentencing that complied with *Miller* and is not entitled to an evidentiary hearing pursuant to *Miller* or *Valencia* to present more evidence of his youth and attendant characteristics.

II. ARGUMENT

A. Bassett is not entitled to an evidentiary hearing or relief on his Rule 32.1(g) postconviction *Miller* claim because *Miller* is not a significant change in the law applicable to his case.

Rule 32.1(g) of the Arizona Rules of Criminal Procedure permits post-conviction relief if "[t]here has been a significant change in the law that if determined *to apply to defendant's case* would probably overturn the defendant's conviction or sentence." *See State v. Shrum*, 220 Ariz. 115, 118, ¶13 (2009) (emphasis added). In his 2017 petition for postconviction relief (PCR) Bassett argued that he was entitled to resentencing under *Miller*, *Montgomery*, and *Valencia*, pursuant to Rule 32.1 because there was no "determination as to whether his crimes

reflect irreparable corruption or whether his natural life prison sentence is excessive because his crime reflects transient immaturity." (App212.) Although Bassett acknowledged that *Miller* prohibited *mandatory* life sentences, he never argued that his natural life sentence was mandatory, likely because the 2013 postconviction court already expressly found it was not. (App182, 208-212.) Bassett is not entitled to an evidentiary hearing or relief on his postconviction *Miller* claim because his natural life sentence was not mandatory, and thus, *Miller*, as clarified by *Jones*, *does not apply* to his case.

Miller "held that the Cruel and Unusual Punishments Clause of the Eighth Amendment prohibits *mandatory* life-without parole sentences for murderers under 18, but the Court allowed *discretionary* life-without-parole sentences for those offenders." *Jones*, 141 S. Ct. at 1312 (emphasis in original). *Miller* prohibited "mandatory" or automatically imposed life without parole sentences for juveniles because they preclude consideration of a juvenile's "chronological age and its hallmark features." 567 U.S. at 477. *Jones* confirmed that the "key assumption in both *Miller* and *Montgomery* was that *discretionary* sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." 141 S. Ct. at 1318 (emphasis added).

Here, the record confirms beyond any doubt that Bassett's sentencer had

discretion and exercised that discretion in sentencing Bassett to natural life for Tapia's murder and to life with the possibility of parole after 25 years for Pedroza's murder. (App166-67.) Furthermore, it is undeniable that Bassett's sentencer considered information about his age and youth and its effect on his crimes as contemplated by *Miller* because Bassett's mitigation was presented through the lens of *Roper v. Simmons*, 543 U.S. 551 (2005), a case from which *Miller* "flows straightforwardly." *Miller*, 567 U.S at 483.

At sentencing, Bassett argued he "was a child at 16 years old when he committed the crimes," and did not possess the "impulse control of an adult," quoting extensively from *Roper*. Bassett presented information about his maturity, his remorse, and his potential for rehabilitation. Bassett asserted victim Pedroza was a negative influence on him. The court heard about Bassett's past conduct and contact with police. Bassett presented information about his mental health, including his psychiatric evaluation, PTSD diagnosis, and failed treatment plan just two years before the murders. The court considered all this information before finding a natural life sentence appropriate for Tapia's murder and a consecutive sentence of life with the possibility of parole after 25 years appropriate for Pedroza's murder. (App32-171.)

Bassett's discretionarily-imposed natural life sentence cannot be considered mandatory, as prohibited by *Miller*, simply because parole procedures were not

available at the time of his sentencing, especially when parole procedures clearly had no effect on his sentencing. Any conclusion otherwise would require this Court to exalt form over substance. More importantly, deciding that Bassett's sentences were mandatory under *Miller* would require this Court to rewrite history and ignore two realities: (1) the extensive record developed at Bassett's sentencing regarding Bassett's age and related characteristics (which informed the court's choice between two sentences); and (2) the common and widespread understanding—by the parties and courts, including this Court—of § 13-703 at the time Bassett was sentenced, *i.e.*, that the alternative life sentences in § 13-703 were natural life and life with the possibility of parole. *See State v. Wagner*, 194 Ariz. 310, 313 ¶11 (1999), *State v. Fell*, 210 Ariz. 554, 557, ¶11 (2005), and *State v. Cruz*, 218 Ariz. 149, 160, ¶42 (2008).

Although *Miller* listed Arizona in footnote 13, suggesting Arizona is one of the states where life without parole was mandatory—where sentences were imposed "without regard to age"—this footnote is *dicta* at best.[1] 567 U.S. at 486 n.13. A review of Arizona's sentencing scheme and the case law interpreting it clearly shows that sentences, including Bassett's, were not imposed "without regard to age." On

[1] Given that Arizona's statutory scheme was not the focus of *Miller*, nor even more than 1/29th of a single footnote, it is not only reasonable but appropriate for Arizona courts to reach a different conclusion after fully examining the issue and taking into account the subsequent 2014 parole-implementation statute.

the contrary, when Bassett was sentenced, his sentencer was statutorily required to consider his age as a mitigating factor and to "look at [his] level of maturity, judgment and involvement in the crime" as part of his young age. *State v. Greenway*, 170 Ariz. 155, 170 (1991); A.R.S. § 13-701(E)(1). This Court is not bound by *Miller*'s footnote, which is dicta, because neither the United States Supreme Court nor "any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State." *Johnson v. Fankell*, 520 U.S. 911, 916 (1997). That is, this Court's interpretation of § 13-703, as providing discretion in sentencing and viewing the alternative life sentences as natural life and life with the possibility of parole, is what controls, not *Miller*'s implication in footnote 13.

The availability of parole procedures is a different question from whether a sentencer has *discretion* under the sentencing provisions in Title 13. As set forth above, the focus in *Miller* was *discretionary* and individualized sentencing, which was clearly exercised at Bassett's sentencing. 567 U.S. at 465, 474-78. In fact, like *Jessup v. Shinn*, 31 4th 1262, 1267 (9th Cir. 2022), nothing in Bassett's case suggests "that the precise form of potential release at issue had any effect on the sentencing judge's exercise of discretion" and the court's choice between natural life and life. Bassett does not dispute that if he had been sentenced to life with the possibility of release or parole after 25 years for Tapia's murder, that sentence would have been

rendered parole-eligible due to § 13-716, a state statute implementing parole for such juvenile sentences. Indeed, Bassett cannot dispute that, because that is precisely what happened with his sentence of life with the possibility of parole after 25 years that was imposed for Pedroza's murder.

To the extent *State v. Wagner*, 253 Ariz. 201, ¶22 (App. 2022) found Wagner's natural life sentence mandatory pursuant to *Miller* because the sentencing court purportedly did not have discretion to sentence Wagner to a parole-eligible term after parole was unknowingly abolished, the State respectfully asserts that is an incorrect interpretation of *Miller*. *Wagner* is irreconcilable with not only decades of Arizona precedent, including the 2015 court of appeals' decision in *State v. Wagner*, 1 CA-CR 13-0606 PRPC, finding Wagner's natural life sentence was *not* mandatory, but also *Miller*'s narrow holding, as clarified by *Jones*, and the reasoning underlying *Miller*—that *discretionary* sentencing is key.

Thus, this Court should vacate Respondent Judge's findings and clarify that *Miller* was not a significant change in the law applicable to his case, under Arizona Rule of Criminal Procedure, Rule 32.1(g), because Arizona's sentencing scheme, and Bassett's natural life sentence, *was not mandatory*.

B. Respondent Judge's findings and Bassett's arguments cannot overcome the holding in *Jones v. Mississippi*.

Even assuming *Miller* applied to Bassett, he is not entitled to an evidentiary hearing after *Jones* because he already received the type of sentencing required by

Miller. Again, *Jones* held that *Miller* "mandated 'only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence." 141 S. Ct. at 1311, 1314, 1316, 1317 (quoting *Miller*, 567 U.S. at 483). Instead of acknowledging this narrow holding, Bassett attempts to graft *Montgomery*'s dictum onto it, arguing *Miller*'s "substantive holding" is "that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." (*See* PFR Response at 19 (quoting *Montgomery*, 136 S. Ct. at 738).) This is likely because, as Justice Thomas recognized in his *Jones*' concurrence, "[w]ithout more, the fact that *Miller* was now retroactive" does not help Bassett because he "already received the 'individualized' hearing *Miller* required." *Jones*, 141 S. Ct. at 1324 (Thomas, J., concurring). Bassett's postconviction *Miller* claim simply cannot survive *Miller*'s holding, as narrowly construed by *Jones*.

Additionally, despite Bassett's repeated protestations, that his sentencing hearing was deficient, that the court lacked critical information, and that his sentencer did not "adequately consider" his youth and attendant characteristics, Bassett fails to cite any authority for these assertions. (*See* PFR Response *generally*.) Nothing in *Miller* or Arizona law requires a particular "weight" or dictates "adequate consideration" of a juvenile's youth and attendant characteristics. Nor does *Miller* or Arizona law prescribe what, or how much, information must be

presented when sentencing a juvenile offender.[2]

In fact, *Jones* confirmed that unless the record affirmatively establishes otherwise, which it does not here, the sentencing court "will be deemed to have considered the relevant criteria, such as mitigating circumstances enumerated in the sentencing rules" and presented to the court. *Jones*, 141 S. Ct. at 1319-21. *Jones* also confirmed that "if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily will consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth." *Id*. at 1319. And *Jones* confirmed that *Miller* does not require a court make formal or specific findings, use magic words, or make an "on-the-record sentencing explanation." *Id*. at 1319-21.

C. *Valencia* is not tenable after *Jones.*

Jones, and *State v. Soto-Fong*, 250 Ariz. 1 (2020), which essentially foreshadowed *Jones*, compel a conclusion that this Court would not have created *Valencia* evidentiary hearings but for *Montgomery*'s now defunct, purported irreparable corruption requirement. *Valencia* found in "the aftermath of *Miller*, courts reached conflicting decisions," on whether its holding was procedural or

[2] Nothing in *Miller* or Arizona law requires a certain psychological evaluation or a specific evaluation of a juvenile's "actual psychological age and attendant characteristics associated with that age," as asserted by Bassett. (PFR Response at 21.)

substantive. 241 Ariz. at 209, at ¶13. *Valencia* concluded that "*Montgomery* resolved this conflict by clarifying that *Miller*" requires a sentencing court to "distinguish[] crimes that reflected 'irreparable corruption' rather than the 'transient immaturity of youth'" before imposing a natural life sentence on a juvenile convicted of first degree murder. *Id*. at 209, ¶¶14-15.

Valencia based its holding on "*Miller*, as clarified by *Montgomery*," and Justice Sotomayor's concurrence in *Tatum v. Arizona*, 137 S. Ct. 11, 12 (2016). *Id*. at ¶¶15-16. *Valencia* reasoned *Montgomery* refuted the State's argument "that *Miller* bars mandatory sentences of life without parole and thus requires only that the sentencing court consider the juvenile's age as a mitigating factor before imposing a natural life sentence—as occurred in each case here." *Id*. *Valencia* acknowledged but disagreed with the "vigorous dissent" in *Montgomery*, "which argued that the majority had effectively rewritten *Miller*." *Id*. at ¶14.

Contrary to *Valencia*, *Jones* found petitioner's argument, that *Montgomery* "described *Miller* as permitting life-without-parole sentences only for 'those whose crimes reflect permanent incorrigibility,' rather than 'transient immaturity,'" was "an incorrect interpretation of *Miller* and *Montgomery*." *Id*. at 1317 (quoting *Montgomery*, 577 U.S. at 209, 211). And in *Soto-Fong*, 250 Ariz. at 7, ¶¶19-24, decided just a few months before *Jones*, this Court changed its interpretation of *Miller* and *Montgomery*. *Soto-Fong* recognized "*Montgomery* muddied the Eighth

Amendment jurisprudential waters with its construction of *Miller*," citing Justice Scalia's dissent in *Montgomery*, 136 S. Ct. at 743, and found the "Supreme Court's Eighth Amendment jurisprudence concerning parole-ineligible life sentences for juveniles has left the nation's courts in a wake of confusion." *Id*. at ¶¶21, 24.

Contrary to *Valencia*, and consistent with *Jones*, *Soto-Fong* agreed with Justice Scalia's dissent in *Montgomery*, that "*Miller* did not enact a categorical ban" and that *Miller*'s holding was narrow—"merely mandat[ing] that trial courts '*follow a certain process*—considering an offender's youth and attendant characteristics—before imposing a particular penalty.'" *Id*. at ¶¶22, 23 (citing *Montgomery*, 136 S. Ct. at 743 (Scalia, J., dissenting) and quoting *Miller*, 567 U.S. at 483). Citing Justice Bolick's concurrence in *Valencia*, *Soto-Fong* further agreed with Justice Scalia's criticism of *Montgomery*'s "majority for its reliance on dicta from *Miller* to rewrite its holding." *Id*. (quoting *Valencia*, 241 Ariz. at 211 ¶26 (Bolick, J., concurring) ("Searching in vain to find such a substantive rule in *Miller*, the Court instead created one in *Montgomery*, reasoning that the unannounced rule that courts make a finding of 'irreparable corruption' before sentencing a juvenile offender to life imprisonment without parole was implicit in the earlier case.") (internal citation omitted)).

Although *Jones*, 141 S. Ct. at 1323, found that States could impose "additional sentencing limits" for juveniles, *Soto-Fong* demonstrates that Arizona did not. Although recognizing the *Montgomery* "majority concluded that *Miller* "bar[red]

life without parole ... for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility," *Soto-Fong* specifically agreed with Justice Scalia's dissent in *Montgomery*, which held that "*Miller*'s holding was narrow" and "merely mandated that trial courts 'follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty.'" 250 Ariz. at 7, ¶¶19-23 (quoting *Miller*, 567 U.S. at 483.) Neither Bassett, nor AJP Amicus, even cite *Soto-Fong*, much less dispute *Soto-Fong*'s agreement with Justice Scalia's dissent in *Montgomery* and its holding, consistent with *Jones*, that *Miller*'s holding was narrow.

Simply put, *Jones* and *Soto-Fong* abrogated *Valencia*, which was indisputably based on *Miller* as "clarified" by *Montgomery* and the *Tatum* concurrence. *Soto-Fong* rejected *Montgomery*'s majority, which was the basis for *Valencia*'s holding. *Jones* and *Soto-Fong* both affirmed the State's argument in *Valencia*, that *Miller* only requires a sentencing court consider a juvenile's age as mitigating before imposing a natural life sentence. *Valencia*, 241 Ariz. at 209, ¶16. That requirement is constitutionally sufficient because, as set forth above, Arizona's sentencing scheme was discretionary and required courts to not only consider age as a mitigating factor but to "look at [a] defendant's level of maturity, judgment and involvement in the crime" as part of their young age. *Greenway*, 170 Ariz. at 170 (citing *State v. Walton*, 159 Ariz. 571, 589 (1989); *State v. Gerlaugh*, 144 Ariz. 449, 461 (1985); *State v.*

Gillies, 142 Ariz. 564, 571 (1984)); A.R.S. § 13-701(E)(1). *See Jones*, 141 S. Ct. at 1313 (a "State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient.").

Finally, *Jones*'s clarification that *Miller* "mandat[ed] 'only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing' a life-without-parole sentence," applies equally in these postconviction proceedings and is not limited to resentencing proceedings. That is, *Miller*'s narrow holding *is the same* for a juvenile offender's initial sentencing, a resentencing, and postconviction proceedings. Because nothing in *Miller*'s holding, as narrowly construed by *Jones* and *Soto-Fong*, requires a trial court to consider or decide if the crime was a result of transient immaturity or irreparable corruption, neither must a postconviction court decide such on collateral review to determine if the juvenile's natural life sentence is constitutional. Therefore, *Valencia*'s holding that petitioners' natural life sentences were unconstitutional because they were imposed "without distinguishing crimes that reflected 'irreparable corruption' rather than the 'transient immaturity of youth,'" 241 Ariz. at 209-10, ¶¶15-18, clearly exceeds *Miller*'s narrow holding, and thus, is untenable after *Jones*.

III. CONCLUSION

This Court should clarify that *Jones* abrogated *Valencia*'s holding, that *Miller*'s holding is narrow, "mandat[ing] '*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 1314-16, 1321, and that Bassett already received the type of discretionary, individualized sentencing required by *Miller*. Accordingly, this Court should vacate Respondent Judge's ruling because Bassett is not entitled to a Rule 32 evidentiary hearing to present "more," or what Bassett and Respondent Judge deem "necessary" for "adequate consideration" of his youth and attendant characteristics, or to try and prove that his crimes were the result of transient immaturity as opposed to irreparable corruption.

Respectfully Submitted November 21, 2022.

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