

No. 17-6231

IN THE
Supreme Court of the United States

DAVID D. DOVE,

PETITIONER,

v.

STATE OF LOUISIANA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA COURT OF APPEAL, FOURTH CIRCUIT

SUPPLEMENTAL BRIEF TO
PETITION FOR CERTIORARI

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SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8, Petitioner David Dove files this short Supplemental Brief, addressing the legislative and prosecutorial response in Louisiana to this Court's decisions in *Miller v. Alabama*, 567 U.S. 460, 479 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718, 726 (2016). The Petition for Certiorari was filed October 3, 2017. No response has yet been filed by the State of Louisiana.

The Juvenile Law Center and the Louisiana Center for Children's Rights filed an Amicus Brief in support of Petitioner, identifying the persistent use of life without the possibility of parole sentences for children convicted of first- and second-degree murder in Louisiana. See *Dove v. Louisiana*, 17-6231, *Brief Of Juvenile Law Center And The Louisiana Center For Children's Rights As Amici Curiae In Support Of Petitioner* (filed 11/02/17).

A prosecutor's decision to seek the harshest possible sentence has tremendous significance, nearly guaranteeing the child defendant will die in prison. Judges in Louisiana seem to abdicate the decision of whether to sentence a juvenile to life without parole to prosecutors; in contested sentencing hearings, the percentage of defendants who receive LWOP is over sixty-two percent (62%).

The Louisiana legislature required prosecutors to provide notice within ninety days of August 1, 2017, of the State's intent to seek life without parole sentences for individuals indicted prior to August 1, 2017, and under the age of eighteen at the time of the offense. In response, prosecutors in Orleans Parish sought LWOP in fifty percent of the cases. As was the case with petitioner David

Dove, there is no objective evidence indicating who is more culpable or why a defendant is facing LWOP. As the *Brief of Amici* indicates, “88% of children sentenced to life without parole since *Miller* were convicted of second degree murder, which is not the “worst” crime in the penal code.” *Brief of Amici*, at 7. There appears to be little effort to identify the worst of the worst offenders in assessing which children should receive life without parole sentences. Indeed, Orleans Parish District Attorney (the Respondent in this case) is quoted in news media observing:

‘We’re basically guessing on these cases,’ Cannizzaro said in an interview Friday afternoon. ‘I think this is an unfair call for the district attorney.’

Julia O’Donoghue, *Louisiana DA’s See to Block Parole for Juveniles Serving Life for Murder*, The Times Picayune, November 4, 2017 (attached). To the extent there is any explanation at all, in Orleans Parish the decision is based “objections from the victims’ families, survivors of the crime or concerns from former prosecutors who tried the cases.” *Id.* This was hardly what the Court conceived of when it held in *Miller*, that the Eighth Amendment required “individualized sentencing for defendants facing the most serious penalties.” *Miller*. Ultimately acknowledging the difficulty, the article indicates that “Orleans Parish District Attorney Leon Cannizzarro said he would have preferred if the Legislature had not involved prosecutors in the decision about whether the juvenile lifers should have access to parole.” *Id.*

As the head of the District Attorneys' Association has indicated, the circumstance under which Louisiana operates is constitutionally questionable.

Pete Adams, executive director of the Louisiana District Attorneys Association, doesn't dispute that Louisiana is probably headed back to court. He said the Supreme Court will have to add more clarity to the term 'worst of the worst' in regards to juvenile lifers.

'Eventually, the U.S. Supreme Court will say what's acceptable and what's not,' Adams said. 'If the U.S. Supreme Court says no one can get life without parole or who can't get it, we will abide by that.'

Id.

Given that respondent has been quoted in the media observing that it is essentially beyond the ken of courts and prosecutors to decide which defendants are most culpable, that the criteria used – if at all -- is essentially the views of the family members of the victim, and that the head of the District Attorney's Association has indicated that further review is going to be necessary, it would be important to, at the least, call for a response from respondent, and ultimately to grant certiorari to provide this review.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 7th day of November, 2017, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying supplemental brief was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

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