NO. 94020-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

JAI'MAR SCOTT,

Respondent.

STATE'S ANSWER TO AMICUS CURIAE BRIEF OF THE ACLU OF WASHINGTON, ET AL.

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A. INTRODUCTION

By operation of RCW 9.94A.730, Scott's determinate sentence of 900 months is no longer in effect. Scott is currently eligible for release, and is thus serving an indeterminate sentence of 240 months to 900 months. This sentence does not violate the constitution. The United States Supreme Court has held that a meaningful opportunity for release, like that provided by RCW 9.94A.730, is a constitutionally adequate remedy for cases on collateral review. The legislature has complied with the dictates of the Miller v. Alabama[1] in enacting RCW 9.94A.730. Requiring resentencing hearings would be an unwarranted expenditure of enormous judicial resources.

B. ARGUMENT IN RESPONSE TO AMICI'S ARGUMENTS

1. SCOTT'S PETITION IS TIME-BARRED BECAUSE MILLER V. ALABAMA IS NOT MATERIAL TO THE SENTENCE SCOTT IS CURRENTLY SERVING: AN INDETERMINATE SENTENCE OF 240 MONTHS TO 900 MONTHS.

In arguing that Miller v. Alabama is material to Scott's sentence, amici focus exclusively on the sentence originally imposed by sentencing court. Amici ignores the fact that the

[1] 567 U.S. 460, 132 S. Ct .2455, 183 L. Ed. 2d 407 (2012).

900-month determinate sentence is no longer in effect, and has been replaced by operation of RCW 9.94A.730 with an indeterminate sentence of 240 months to 900 months. Amici does not argue, and cannot, that an indeterminate sentence of 240 months to 900 months for an egregious murder constitutes cruel and unusual punishment pursuant to Miller. For this reason, Scott's petition does not fall within the exception to the time-bar provided by RCW 10.73.100(6). Miller is not a significant change in the law that is material to the sentence that Scott is currently serving. Scott's petition is untimely.

2. MONTGOMERY V. LOUISIANA EXPLICITLY HELD THAT RESENTENCING OF ALL JUVENILE HOMICIDE OFFENDERS IS NOT REQUIRED BY THE EIGHTH AMENDMENT.

RAP 16.4(d) places restrictions on the granting of relief through a personal restraint petition. The rule provides that the appellate court will only grant relief "if other remedies which may be available to petitioner are inadequate." For example, in In re Pers. Restraint of McNeil, 181 Wn.2d 582, 585, 334 P.3d 548 (2014), petitioners were convicted of aggravated murder and sentenced to life without parole prior to Miller. While their PRPs were pending,

the legislature enacted the new legislative scheme that granted them a new sentencing hearing. Id. at 586. This Court held that the petitioners would not be granted relief because the new statute remedied the unlawfulness of the original sentences imposed, and provided the petitioners with an adequate remedy. Id. at 590. Significantly, this Court held "The Miller fix thus provides *some possibility that the petitioners could be released from prison* during their lifetimes." Id. at 591 (emphasis added).

The same is true in this case: Scott now has a meaningful opportunity for release. In Montgomery v. Louisiana, __ U.S. __, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016), the Court explicitly approved of a legislative remedy such as RCW 9.94A.730. The Court held that the states are not required to relitigate sentences where the juvenile offender received a life sentence. "A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." Id. Scott now has a meaningful opportunity for release, as constitutionally required. RCW 9.94A.730 is an adequate remedy and thus Scott is not entitled to relief pursuant to RAP 16.4.

3. THE LEGISLATURE GRANTED NEW SENTENCING HEARINGS TO JUVENILES CONVICTED OF AGGRAVATED MURDER ONLY BECAUSE THOSE OFFENDERS MAY NOT BE ELIGIBLE FOR RELEASE.

Amici argue that it "defies logic" to allow juvenile offenders convicted of aggravated murder to have resentencing hearings to comport with Miller, and to not provide resentencing hearings to offenders convicted of crimes other than aggravated murder. But the statutory scheme does not, in fact, defy logic. In regard to aggravated murder, the legislature preserved the sentencing courts' ability to impose life sentences in egregious cases by granting resentencing hearings in those cases. In regard to other crimes, the legislature provided a meaningful opportunity for release after 20 years, pursuant to RCW 9.94A.730, in lieu of resentencing hearings. This legislative scheme is rational, constitutional, and preserves scarce judicial resources.

Prior to June 1, 2014, the mandatory sentence for a juvenile convicted of aggravated murder was life without the possibility of parole. Former RCW 9.94A.510; 9.94A.515; 10.95.030. Now, a juvenile convicted of aggravated murder receives an indeterminate sentence. RCW 10.95.030(3). The sentencing court sets a minimum term of at least 25 years and a maximum term of life. Id.

The offender becomes eligible for release only upon completion of the minimum term set by the sentencing court.

The release provisions of RCW 9.94A.730 do not apply to offenders convicted of aggravated murder. RCW 9.94A.730(1). The legislature elected not to make aggravated murder offenders automatically eligible for release after twenty years of incarceration. Instead, the legislature chose to give the sentencing court the power to set minimum terms much longer than 20 years. In fact, the sentencing court may still set a minimum term that constitutes a de facto life sentence for an offender convicted of aggravated murder. See In re McNeil, 181 Wn.2d at 589 (2014) (noting that a life sentence may be imposed on older juvenile offenders if "properly based on an individualized determination consistent with Miller). Such a sentence is constitutional for offenders whose "crime reflects irreparable corruption" rather than immaturity. Miller v. Alabama, 567 U.S. at 479-80 (quoting Roper v. Simmons, 543 U.S. 551, 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)).

In contrast, juvenile offenders convicted of other crimes are eligible for release after 20 years of incarceration pursuant to RCW 9.94A.730. Because each of these offenders has a meaningful

opportunity for parole after 20 years, the legislature recognized there was no need for resentencing hearings.

Requiring a new sentencing hearing for every juvenile offender currently incarcerated that was sentenced to more than 20 years prior to Miller would require enormous judicial resources. And indeed, there is no obvious limiting principle. By amici's logic, one could argue that *every* juvenile offender currently incarcerated is entitled to a "Miller hearing" regardless of the length of their sentence. This would be an unwarranted expansion of Miller, a usurpation of the legislature's role in enacting sentencing laws, and in direct contravention to the Supreme Court's clear directive in Montgomery that providing a meaningful opportunity for release is a constitutionally adequate remedy for cases on collateral review.

The legislative scheme enacted in the wake of Miller correctly allows offenders who committed crimes other than aggravated murder to be eligible for release after 20 years of incarceration, and correctly requires a Miller hearing before the court may impose a minimum term that is a de facto life sentence for offenders who committed aggravated murder. The legislative

scheme is a logical response to the constitutional requirements imposed by Miller. More is not required by the constitution.

DATED this 22nd day of August, 2017.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jeffrey Ellis, the attorney for the appellant, at jeffreyerwinellis@gmail.com, containing a copy of the State's Response to Amicus Curiae Brief, in State v. Jaimar Eli Scott, Cause No. 94020-7-I, in the Court of Appeals, Division I, for the State of Washington.

Today I directed electronic mail addressed to Robert S. Chang and Melissa Lee, the attorneys for the appellant, at changro@seattleu.edu, containing a copy of the State's Response to Amicus Curiae Brief, in State v. Jaimar Eli Scott, Cause No. 94020-7-I, in the Court of Appeals, Division I, for the State of Washington.

Today I directed electronic mail addressed to Shawn Larsen-Bright, the attorney for amici curiae at Larsen.bright.shawn@dorsey.com, containing a copy of the State's Response to Amicus Curiae Brief, in State v. Jaimar Eli Scott, Cause No. 94020-7-I, in the Court of Appeals, Division I, for the State of Washington.

Today I directed electronic mail addressed to Nancy Talner and Vanessa Hernandez, the attorneys for amici curiae at talner@aclu.org, containing a copy of the State's Response to Amicus Curiae Brief, in State v. Jaimar Eli Scott, Cause No. 94020-7-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 22nd day of August, 2017.

Name:
Done in Seattle, Washington

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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Comments:

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