

IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI

ALEXANDER JOHNATHON HYMES

PETITIONER

VERSUS

CAUSE NO. 13-117-PCT

STATE OF MISSISSIPPI

RESPONDENT

ORDER

This matter is before the Court on Petitioner Alexander Johnathon Hymes's Motion to Vacate Sentence, and related and supplemental motions. In essence, Hymes seeks parole eligibility from his 2008 sentence of life imprisonment for murder. The Court, having considered the pleadings, facts, and arguments from counsel for the State of Mississippi and for Hymes, and being fully advised in the premises, finds as follows:

1. On February 11, 2008, Hymes pled guilty to one count of simple murder in Pike County Circuit Court Cause Number 07-138-PKT. The charge arose out of a convenience store robbery committed by Hymes and his co-defendant, Eric Williams, during which Williams shot and killed a customer who entered the store during the robbery.

2. Hymes's guilty plea was supported by the following factual proffer, offered by the State at Hymes's change of plea and sentencing hearing:

. . . Eric Williams [Mr. Hymes's co-defendant] walked back to the cash register and pulled a gun out, point it and fired a round in the direction of the store clerk, Trish Minton.

. . . And at this time Mr. James Serigny entered the store and turned to his left, down an aisle. That as he turned and began to walk down the aisle, that this defendant, Alexander Hymes, walked out from the area where the clothing and caps were kept and where Trish Minton [the store clerk] was kneeling on the floor. That he was followed directly behind him by Eric Williams. *That Eric Williams then pulled a gun up, a pistol up, and Mr. Serigny turned around and was shot by Eric Williams.*

Sentencing Hearing Transcript p. 10 (emphasis added).

. . . As to Alexander Hymes, Your Honor, the State would proceed under what is known as the principal theory. The *State's evidence would show that Alexander - - I'm sorry - - does show that Eric Williams* [Hymes's co-defendant] *was in fact the triggerman in this case*. However, under the principal theory, which is in our Code as the accessory before the fact, states that anyone who aids, abets, assists, and encourages another during the commission of a crime is guilty of that crime as if he committed it in its entirety by himself.

And because of that, the State's evidence, the State believes, would show beyond a reasonable doubt that this defendant is guilty of the crime of murder.

Sentencing Hearing Transcript, p. 11 (emphasis added). Thus, the evidence showed that Hymes was convicted of murder under the transferred intent theory underlying the felony murder rule, because a homicide occurred during his active participation in a robbery, not because he killed anyone.

3. Hymes's co-defendant, Eric Williams, went to trial, charged with capital murder, conspiracy to commit capital murder, aggravated assault, and conspiracy to commit aggravated assault. Evidence at his trial – including Williams's own testimony and that of the store clerk – confirmed that Williams acted alone when he killed the victim, and that he did so spontaneously because he got nervous when the victim unexpectedly entered the store. Williams was convicted of capital murder, aggravated assault, and conspiracy to commit aggravated assault, but he was found not guilty of conspiracy to commit capital murder. Thus, the jury, after hearing the evidence, agreed, unanimously, that Williams shot and killed the victim, and that he did so alone, without Hymes's direction, agreement, planning, participation or knowledge. Williams's conviction was upheld on appeal to the Mississippi Supreme Court. *See Williams v. State*, 3 So.3d 105 (Miss. 2009).

4. Hymes was born March 13, 1989. He was approximately 17 years and 10 months old at the time of the offense, which occurred on January 27, 2007.

5. Following his guilty plea, Hymes was sentenced to life imprisonment in the custody of the Mississippi Department of Corrections pursuant to Miss. Code Ann. § 97-3-21. Pursuant to Miss. Code Ann. § 47-7-3, Hymes was and is ineligible for parole from his life sentence.

6. On May 17, 2013, Hymes, through counsel, filed a Motion to Vacate his sentence and to resentence him to life with the possibility of parole pursuant to *Graham v. Florida*, 130 S.Ct. 2011 (2010), and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

7. In *Miller*, the United States 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. The Court did not reach “Miller’s alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles,” but did state that “given all we have said . . . about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be *uncommon*.” (Emphasis added.) *See also id.* (citation omitted, emphasis added) (noting “. . . the great difficulty . . . of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption’”).

8. In *Graham*, the United States Supreme Court held that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.” *Graham*, 130 S.Ct. at 2029. The Court explained that “the limited

culpability of juvenile nonhomicide offenders . . . and the severity of life without parole sentences . . . lead to the conclusion that th[is] sentencing practice . . . is cruel and unusual.” *Id.* The Court’s reasoning explicitly relied on the observation “that, when compared to an adult murdered, *a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability .*” *Id.* at 2027 (emphasis added.)

9. In *Miller*, Justice Breyer acknowledged,

in the context of felony-murder cases, the question of intent is a complicated one. The felony-murder doctrine traditionally attributes death caused in the course of a felony to all participants who intended to commit the felony, regardless of whether they killed or intended to kill.

Miller, 132 S.Ct. at 2476 (Breyer, J., concurring) (citation omitted). However, Justice Breyer also made clear that:

[T]his type of ‘transferred intent’ is not sufficient to satisfy the intent to murder that could subject a juvenile to a sentence of life without parole. As an initial matter, [the United States Supreme] Court has made clear that this artificially constructed kind of intent does not count as intent for purposes of the Eighth Amendment. [Courts] do not rely on transferred intent in determining if an adult may receive the death penalty. Thus, the Constitution forbids imposing capital punishment upon an aider and abettor in a robbery, where that individual did not intend to kill and simply was ‘in the car by the side of the road . . ., waiting to help the robbers escape.’ *Enmund* [458 U.S. at 788]. *Cf. Tison* [481 U.S. at 157-58] (capital punishment permissible for aider and abettor where kidnapping led to death because he was ‘actively involved’ in every aspect of the kidnapping and his behavior showed ‘a reckless disregard for human life’). Given *Graham*, this holding applies to juvenile sentences of life without parole *a fortiori*. See [*Miller*, 132 S.Ct.] at 2466-2467. Indeed, even juveniles who meet the *Tison* standard of ‘reckless disregard’ may not be eligible for life without parole. Rather, *Graham* dictates a clear rule: *The only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who ‘kill or intend to kill.’* [130 S.Ct., at 2027].

Moreover, regardless of our law with respect to adults, there is no basis for imposing a sentence of life without parole upon a juvenile who did not himself kill or intend to kill. At base, the theory of transferring a defendant’s intent is premised on the idea that one engaged in a dangerous

felony should understand the risk that the victim of the felony could be killed, even by a confederate. *See* [2 W. LaFave, Substantive Criminal Law §§ 14.5(c) (2d ed. 2003)]. Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively. [*Miller*, 132 S.Ct.] at 2464-2465. Justice Frankfurter cautioned, 'Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a State's duty toward children.' *May v. Anderson*, [345 U.S. 528, 536 (1953)] (concurring opinion). To apply the doctrine of transferred intent ... where the juvenile did not kill, to sentence a juvenile to life without parole would involve such 'fallacious reasoning.' *Ibid.*"

Miller, 132 S.Ct. at 2476-77 (Breyer, J., concurring) (emphasis added).

10. On June 16, 2013, the Mississippi Supreme Court held that, Miss. Code Ann. §§ 97-3-21 and 47-7-3(1)(h), ". . . when read together, are tantamount to life without parole . . ." and thus that Mississippi's sentencing scheme for murder ". . . contravenes the dictates of *Miller* . . ." when applied to juveniles. *Parker v. State*, 119 So.3d 987, 997 (Miss. 2013). On July 18, 2013, the Mississippi Supreme Court held that "*Miller* created a new substantive rule which should be applied retroactively to cases on collateral review." *Jones v. State*, 122 So.3d 698, 703 (Miss. 2013).

11. Pursuant to the United States and Mississippi Supreme Court's decisions in *Miller*, *Graham*, *Parker*, and *Jones*, Hymes's mandatory sentence of life imprisonment without possibility of parole violates the Eighth Amendment to the United States Constitution. Accordingly, by written Order entered on June 30, 2014, this Court granted Hymes's motion to vacate his sentence.

12. Hymes also requested that he be resentenced to life imprisonment with eligibility for parole notwithstanding the provisions of Miss. Code Ann. § 47-7-3. *See Parker*, 119 So.3d at 999; *Jones*, 122 So.3d at 703. Among other things, Hymes argues that because he did not actually kill anyone or intend for the victim to be killed, he is not

one of those “uncommon” and “rare” juvenile homicide offenders who may constitutionally be sentenced to life without eligibility for parole, *see Miller*, 132 S.Ct. at 2469, and thus, he contends, no resentencing hearing is necessary and this Court should enter an Order resentencing him to life with the possibility of parole. *See Graham*, 130 S.Ct. at 2029 (holding that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.”)

13. Considering the evidence presented in this case, including specifically that Hymes did not kill or intend to kill the victim and was convicted based on the transferred intent theory underlying the felony murder rule, the Court finds that there is insufficient evidence before the Court that Hymes is one of those “uncommon” and “rare” juvenile homicide offenders who may be sentenced to life without eligibility for parole under the precedent of the United States and Mississippi Supreme Courts, and therefore, his request to impose a sentence of life *with* the possibility of parole must be and the same hereby is GRANTED.

IT IS THEREFORE ORDERED AND ADJUDGED that Petitioner Alexander Johnathon Hymes is hereby RESENTENCED to LIFE IMPRISONMENT WITH ELIGIBILITY FOR PAROLE NOTWITHSTANDING ANY PROVISIONS OF MISS. CODE ANN. § 47-7-3.

IT IS FURTHER ORDERED AND ADJUDGED that Hymes, who has been held both in the custody of the Mississippi Department of Corrections and the Pike County Jail since his initial arrest for this crime, shall be given credit against his sentence and parole eligibility for all time he has spent in state custody since his arrest.

IT IS FURTHER ORDERED AND ADJUDGED that the Circuit Clerk is hereby

directed to file a true and correct copy of this Order in the instant cause and in Pike County Cause No. 07-138-PKT, and to mail a certified copy of the same to Petitioner's counsel, the Pike County Public Defender's Office, the Pike County Jail, the Mississippi Department of Corrections, and the Pike County District Attorney's Office.

SO ORDERED AND ADJUDGED this the 3rd day
of November, 2015.


CIRCUIT JUDGE

Presented to the Court by:

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Attorney for Petitioner

IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

RICKY BELL

vs.

CAUSE NO. 2013-00155

STATE OF MISSISSIPPI

ORDER

This matter is before the Court on Petitioner Ricky Bell's Motion to Vacate Sentence and Motion to Impose a Sentence of Life *With* the Possibility of Parole or, in the Alternative, to Appoint Counsel for Resentencing. The Court has considered the motions and finds as follows:

1. On February 28, 2001, Ricky Bell pled guilty to one count of murder in cause number 2000-0111. Mr. Bell's guilty plea was supported by the following factual proffer, which was offered by the State at the change of plea and sentencing hearing:

Your Honor, [if this case were to go to trial] the State would show that ... [Ricky Bell] together with Clifton Carter planned a robbery of Leon Brown and called him to come and pick them up. That once they got in the car with Leon Brown, acting in concert each with the other, *Clifton Carter actually was the trigger man who shot and killed Leon Brown* while the two defendants were engaged in this, and he did so with malice aforethought.

Hr'ing Tr. 10:25-11:4 (emphasis added).

2. Mr. Bell's offense took place on June 21, 2000. Mr. Bell was born on February 25, 1984, and thus he was approximately 16 years and 4 months old at the time of the offense.

3. Mr. Bell was subsequently sentenced to life in the custody of the Mississippi Department of Corrections pursuant to Miss. Code Ann. § 97-3-21. Pursuant to Miss. Code Ann. § 47-7-3(1)(h), Mr. Bell was and is ineligible for parole from his life sentence.

4. On May 22, 2013, Mr. Bell filed a Motion to Vacate his sentence pursuant to *Miller v. Alabama*, ---U.S.---, 132 S.Ct. 2455 (2012). In *Miller*, the United States Supreme Court held that the "the Eighth Amendment forbids a sentencing scheme that mandates life in prison

without possibility of parole for juvenile offenders.” *Id.* at 2469. The Court did not reach “Miller’s alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles,” but did state that “given all we have said ... about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be *uncommon.*” *Id.* (emphasis added). *See also id.* (citation omitted, emphasis added) (noting “... the great difficulty ... of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption”).

5. This Court has jurisdiction over Mr. Bell’s request for post-conviction relief pursuant to Miss. Code Ann. § 99-39-1, *et seq.*

6. On June 6, 2013, the Mississippi Supreme Court held that, Miss. Code Ann. §§ 97-3-21 and 47-7-3(1)(h), “... when read together, are tantamount to life without parole ... ” and thus that Mississippi’s sentencing scheme for murder “... contravenes the dictates of *Miller* ... ” when applied to juveniles. *Parker v. State*, 119 So.3d 987, 997 (Miss. 2013).

7. On July 18, 2013, the Mississippi Supreme Court held that “*Miller* created a new substantive rule which should be applied retroactively to cases on collateral review.” *Jones v. State*, 122 So.3d 698, 703 (Miss. 2013).

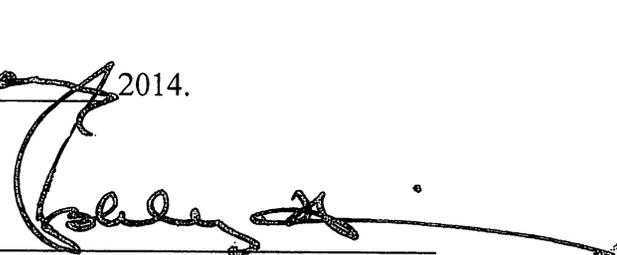
8. Pursuant to the United States and Mississippi Supreme Courts’ decisions in *Miller*, *Parker*, and *Jones*, Mr. Bell’s sentence violates the Eighth Amendment to the United States Constitution and must be vacated. Thus, his Motion to Vacate Sentence will be GRANTED.

9. Mr. Bell has also requested that he be resentenced to life imprisonment with eligibility for parole notwithstanding the provisions of Miss. Code Ann. § 47-7-3(1)(h). *See Parker*, 119 So.3d at 999; *Jones*, 122 So.3d at 703. Among other things, Mr. Bell argues that because he did not actually kill anyone, he is not one of those “uncommon” and “rare” juvenile homicide offenders who may be sentenced to life without eligibility for parole, *see Miller*, 132 S.Ct. at 2469, and thus that no re-sentencing hearing is necessary in this case.

10. There is no evidence before the Court that Mr. Bell is one of those “uncommon” and “rare” juvenile homicide offenders who may be sentenced to life without eligibility for parole and thus his Motion to Impose a Sentence of Life *With* the Possibility of Parole will also be GRANTED.

It is therefore ORDERED that Petitioner Ricky Bell’s sentence of life in the custody of the Mississippi Department of Corrections is VACATED and he is RE-SENTENCED to LIFE WITH ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. § 47-7-3(1)(h).

SO ORDERED, this the 18th day of February 2014.


CIRCUIT COURT JUDGE

FILED

FEB 18 2014

SHARON MCGADDEN
BY  D.C.

MB 120
PS 298-300

BA _____ D.C.

MISSISSIPPI DEPARTMENT OF CORRECTIONS
STATE OF MISSISSIPPI

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STATE OF MISSISSIPPI

IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI**CLIFTON CARTER**

vs.

CAUSE NO. 2013-0123**STATE OF MISSISSIPPI****ORDER**

This matter is before the Court on Petitioner Clifton Carter's Motion to Vacate Sentence and Impose a Sentence of Life *With* the Possibility of Parole. The Court has considered the motions and finds as follows:

1. On February 23, 2001, Clifton Carter pled guilty to one count of murder in the Circuit Court of Sunflower County, Mississippi cause number 2000-0111.
2. Mr. Carter's offense took place on June 21, 2000. Mr. Carter was born on March 12, 1984, and thus he was approximately 16 years and 3 months old at the time of the offense.
3. On February 23, 2001, Mr. Carter was sentenced to life imprisonment in the custody of the Mississippi Department of Corrections pursuant to Miss. Code Ann. § 97-3-21. Pursuant to Miss. Code. Ann. § 47-7-3(1)(h), Mr. Carter was and is ineligible for parole from his life sentence.
4. On May 2, 2013, Mr. Carter filed a Motion to Vacate his sentence pursuant to *Miller v. Alabama*, ---U.S.---, 132 S.Ct. 2455 (2012). In *Miller*, the United States Supreme Court held that the "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 2469. The Court did not reach "Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles," but did state that "given all we have said ... about children's diminished culpability and heightened capacity for change, we think appropriate occasions for

sentencing juveniles to this harshest possible penalty will be *uncommon*.” *Id.* (emphasis added). *See also id.* (citation omitted, emphasis added) (noting “... the great difficulty ... of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption”).

5. This Court has jurisdiction over Mr. Carter’s request for post-conviction relief pursuant to Miss. Code Ann. § 99-39-1, *et seq.*

6. On June 6, 2013, the Mississippi Supreme Court held that, Miss. Code Ann. §§ 97-3-21 and 47-7-3(1)(h), “... when read together, are tantamount to life without parole ... ” and thus that Mississippi’s sentencing scheme for murder “... contravenes the dictates of *Miller* ... ” when applied to juveniles. *Parker v. State*, 119 So.3d 987, 997 (Miss. 2013).

7. On July 18, 2013, the Mississippi Supreme Court held that “*Miller* created a new substantive rule which should be applied retroactively to cases on collateral review.” *Jones v. State*, 122 So.3d 698, 703 (Miss. 2013).

8. Pursuant to the United States and Mississippi Supreme Courts’ decisions in *Miller*, *Parker*, and *Jones*, Mr. Carter’s sentence violates the Eighth Amendment to the United States Constitution and must be vacated. Thus, his Motion to Vacate Sentence will be GRANTED.

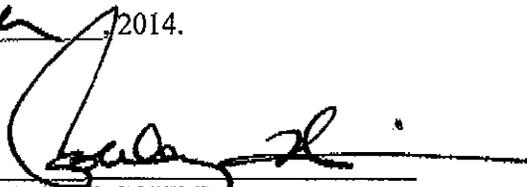
9. Mr. Carter has also requested that he be resentenced to life imprisonment with eligibility for parole notwithstanding the provisions of Miss. Code Ann. § 47-7-3(1)(h). *See Parker*, 119 So.3d at 999; *Jones*, 122 So.3d at 703. Among other things, Mr. Carter argues that because he did not actually kill anyone, he is not one of those “uncommon” and “rare” juvenile

homicide offenders who may be sentenced to life without eligibility for parole, *see Miller*, 132 S.Ct. at 2469, and thus that no re-sentencing hearing is necessary in this case.

10. There is no evidence before the Court that Mr. Carter is one of those "uncommon" and "rare" juvenile homicide offenders who may be sentenced to life without eligibility for parole and thus his Motion to Impose a Sentence of Life *With* the Possibility of Parole will also be GRANTED.

It is therefore ORDERED that Petitioner Clifford Carter's sentence of life in the custody of the Mississippi Department of Corrections is VACATED and he is RE-SENTENCED to LIFE WITH ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. § 47-7-3(1)(h).

SO ORDERED, this the 22 day of March 2014.


CIRCUIT COURT JUDGE

AGREED AS TO FORM *ONLY*


Carol L. White-Richard, Attorney for Petitioner Carter



Robert Evans, Assistant District Attorney

FILED
MAR 03 2014
SHARON W. PADDEN
BY  D.C.

3. In November of 2012, Mr. Thomas filed a *pro se* motion to vacate his sentence pursuant to *Miller v. Alabama*, ---U.S.---, 132 S.Ct. 2455 (2012). In *Miller*, the United States Supreme Court held that the “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* at 2469. The Court did not reach “Miller’s alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles,” but did state that “given all we have said ... about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be *uncommon*.” *Id.* (emphasis added). *See also id.* (citation omitted, emphasis added) (noting “... the great difficulty ... of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption”).

4. After Mr. Thomas filed his *pro se* motion, the Mississippi Supreme Court held “that *Miller* created a new, substantive rule which should be applied retroactively to cases on collateral review.” *Jones v. State*, 122 So.3d 698, 703 (Miss. 2013).

5. On January 14, 2014, the Mississippi Court of Appeals applied *Miller* retroactively in Mr. Thomas’ case, vacating his life sentence for capital murder and remanding the case for re-sentencing.

6. On remand, Mr. Thomas has requested that he be re-sentenced to life imprisonment with eligibility for parole notwithstanding the provisions of Miss. Code Ann. § 47-7-3(1)(f) & (h). Among other things, Mr. Thomas argues that because he did not actually kill or harm anyone, he is not one of those “uncommon” and “rare” juvenile homicide offenders who may be sentenced to life without eligibility for parole, *see Miller*, 132 S.Ct. at 2469, and thus that

no re-sentencing hearing is necessary in this case. Mr. Thomas has also requested that this Court run his life sentence for capital murder concurrently with his existing twenty-year sentence for aggravated assault so that his combined sentences will not deprive him of the “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation” required by the United States Supreme Court in *Miller*. *Id.* (citation omitted).

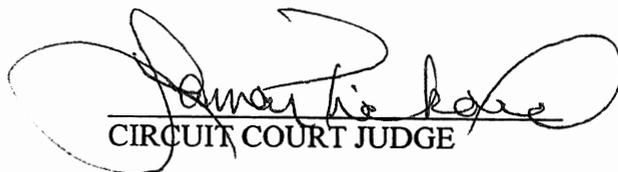
7. There is no evidence before the Court that Mr. Thomas is one of those “uncommon” and “rare” juvenile homicide offenders who may be sentenced to life without eligibility for parole and thus his request for a sentence of life in prison *with* eligibility for parole on the charge of Capital Murder will be GRANTED. Miss. Code Ann. §§ 47-7-3(1) (f) & (h), and any other provision of law that deprives him of parole eligibility on his life sentence for capital murder, are unconstitutional as applied to Mr. Thomas.

8. Mr. Thomas’ request for concurrent sentences will be DENIED, and thus his life sentence for Capital Murder will continue to run consecutively with his twenty-year sentence for Aggravated Assault. However, so that Mr. Thomas will have a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,” *Miller* requires that he be re-sentenced to twenty years in prison *with* eligibility for parole on the charge of Aggravated Assault. *Miller*, 132 S.Ct. at 2469 (citation omitted). The combined effect of Mr. Thomas’ life sentence for Capital Murder and consecutive twenty-year sentence for Aggravated Assault renders Miss. Code Ann. § 47-7-3(1)(h), and any other provision of law that deprives him of parole eligibility on his consecutive twenty-year sentence for Aggravated Assault, unconstitutional as applied to Mr. Thomas. In short, Mr. Thomas will be eligible for parole as if he were sentenced before Miss. Code Ann. § 47-7-3(1) was amended to eliminate parole for

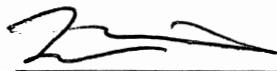
capital murder, *see* Miss. Code Ann. § 47-7-3(1)(f) (effective August 23, 1994), and violent crimes, *see* Miss. Code Ann. § 47-7-3(1)(h) (effective June 30, 1995).

9. It is therefore ORDERED that Petitioner Arthur Thomas is RE-SENTENCED to LIFE *WITH* ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. SECTIONS 47-7-3(1) (f) & (h), and any other provision of law that might deprive him of eligibility for parole, for the charge of Capital Murder in Count I of the indictment in cause number 15,051, and to TWENTY YEARS *WITH* ELIGIBILITY FOR PAROLE NOTWITHSTANDING MISS. CODE ANN. SECTION 47-7-3(1)(h), and any other provision of law that might deprive him of eligibility for parole, on the charge of Aggravated Assault in Count II of the indictment in cause number 15,051, said sentences to run CONSECUTIVELY.

SO ORDERED, this the ~~XXXX~~^{17th} ~~XXXX~~ day of March, 2014.


CIRCUIT COURT JUDGE

Agreed as to form:


Counsel for the State


Counsel for the Petitioner

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

JERRIAN DONALD HORNE

FILED

PETITIONER

VERSUS

OCT 30 2015

CAUSE NO. CI15-0038

STATE OF MISSISSIPPI

Forrest Adams
FORREST COUNTY CIRCUIT CLERK

RESPONDENT

ORDER

THIS CAUSE, having come before the Honorable Court on the Petitioner's Motion for Post-Conviction Relief, and the Court having considered said motion and the State's Response, does hereby find as follows, to-wit:

I.

The Petitioner, Jerrian Donald Horne was convicted of aggravated assault and capital murder on July 6, 1999. *Jerrian Donald Horne v. State of Mississippi*, 825 So.2d 627 (Miss. 2002). The Forrest County Circuit court sentenced the Petitioner to 20 years in the custody of the Mississippi Department of Corrections on the aggravated assault conviction and to life imprisonment without the benefit of parole on the capital murder conviction, said sentences to run consecutively. *Id.*

II.

Mr. Horne was 14 years old when he committed the crimes of aggravated assault and capital murder. Since the Petitioner was a minor at the time he committed these violent crimes, he filed a Motion to Vacate his life sentence and has asked the court to re-sentence him in compliance with the United State Supreme Court's ruling in *Miller v. Alabama*, 132 S.Ct 2455 (2012). In *Miller*, the U.S. Supreme Court held that "the *Eighth Amendment* forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offender." *Id.* at 2469. The Supreme Court then further noted that, "A State is not required to guarantee eventual freedom,' but must

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JERRIAN DONALD HORNE

provide ‘some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’” *Id.* (quoting *Graham v. Florida*, 130 S.Ct. 2011 (2009)). Furthermore, the Court stated that it did not reach “Miller’s alternative argument that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juveniles,” but did find that “given all we have said...about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty...of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’” *Id.*

III.

The Mississippi Supreme Court in *Jones v. State*, 122 So.3d 698, 703 (Miss. 2013), held that “*Miller* created a new, substantive rule which should be applied retroactively to cases on collateral review.”

IV.

On November 25, 2014, the Mississippi Supreme Court granted Mr. Horne leave to file his Motion to Vacate Sentence in the Circuit Court of Forrest County, Mississippi. The Petitioner filed said motion on March 13, 2015, asking the Circuit Court to vacate his life sentence for capital murder and his 20 year sentence for aggravated assault, and to re-sentence him in compliance with Supreme Court’s holding in *Miller v. Alabama*. Mr. Horne further asked the court to modify his original sentence to run his capital murder conviction concurrent with his conviction for aggravated assault, claiming that failure to do so would violate *Miller v. Alabama*.

V.

The Court finds that no evidence has been presented that Mr. Horne is one of those "uncommon" and "rare" juvenile homicide offenders who may be sentenced to life without eligibility for parole and thus his request for a sentence of life in prison *with* eligibility for parole on the charge of Capital Murder will be GRANTED. Miss. Code Ann. 47-7-3(1)(e) & (f), and any other provisions of law that deprive him of parole eligibility on his life sentence for capital murder, are unconstitutional as applied to Mr. Horne.

VI.

The Court finds Mr. Horne's request for concurrent sentences will be DENIED, and thus his life sentence for capital murder will continue to run *consecutively* with his twenty-year sentence for aggravated assault. However, so that Mr. Horne will have a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," *Miller* requires that he be re-sentenced on his aggravated assault conviction to 20 years *with the eligibility for parole*. *Miller* at 2469. The Court further finds that any provisions of law that would deprive the Petitioner of parole eligibility are declared unconstitutional in accordance with *Miller* as applied to Mr. Horne.

IT IS THEREFORE, ORDERED that Petitioner Jerrian Donald Horne is RE-SENTENCED to LIFE *WITH* ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. SECTIONS 47-7-3(1)(e) & (f), and any other provision of law that might deprive him of eligibility for parole, for the charge of Capital Murder in Count One of the Indictment in Cause number 97-20079, and to TWENTY YEARS *WITH* ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. SECTION 47-7-3(1)(f), and any other provision of law that might deprive him of eligibility for parole, for the charge of Aggravated Assault in Count Two of the Indictment in Cause Number 97-20079, said sentences to

run CONSECUTIVELY.

SO ORDERED, this the 26th day of Oct., 2015.

M. Pruster
Acting CIRCUIT COURT JUDGE

Agreed as to form:

[Signature]
Counsel for the State

R. Whisane
Counsel for the Petitioner

CERTIFIED A TRUE COPY
Forrest County, Mississippi
Lou E. [Signature] Clerk
This the 15 day of October 2015
BY: [Signature] D.C.



IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

FILED

JAN 15 2016

MARZELL BROWN,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent.

ZACK WALLACE, CIRCUIT CLERK

BY _____ D.C.

Civ. (PCR) Cause No. 15-CV-00603

Crim. Cause No. 98-1-499-02

ORDER AND JUDGMENT

This matter is before the Court on Petitioner Marzell Brown's Motion for Post-Conviction Relief. Mr. Brown, who was sixteen years old at the time of his offense, contends that his mandatory life without parole sentence for murder violates the United States Supreme Court's holding in *Miller v. Alabama*, --- U.S.---, 132 S. Ct. 2455 (2012), and therefore must be vacated. Mr. Brown further contends that re-sentencing him to life without parole would violate the reasoning and holding of *Miller*.

The Court has considered the motion and finds as follows:

1. This Court has jurisdiction over Mr. Brown's Motion for Post-Conviction Relief pursuant to Miss. Code Ann. § 99-39-7. On November 19, 2014, the Mississippi Supreme Court granted Mr. Brown leave to file his petition in this court.

2. Mr. Brown was convicted and sentenced to life in prison for the murder that he committed on November 11, 1997. Pursuant to Miss. Code Ann. § 47-7-3(1)(f), Mr. Brown is not eligible for parole from his life sentence.

3. Mr. Brown maintains that his sentence was imposed in violation of *Miller v. Alabama* and thus must be vacated. In *Miller*, the United States Supreme Court barred mandatory

life-without-parole sentences for juvenile offenders because, “[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.” 132 S. Ct. at 2469. The *Miller* Court did not reach the petitioners’ “argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles,” but did make clear that “given all we have said . . . about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be *uncommon*.” *Id.* (emphasis added). *See also id.* (citation omitted, emphasis added) (noting “the *great difficulty* . . . of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption’”).

4. The Mississippi Supreme Court has held that the state’s statutory sentencing scheme for murder mandates a sentence that is “tantamount to life without parole,” and thus “. . . contravenes the dictates of *Miller* . . .” when it is applied to juvenile offenders. *Parker v. State*, 119 So.3d 987, 997 (Miss. 2013). The Court has further held that “*Miller* created a new substantive rule which should be applied retroactively to cases on collateral review.” *Jones v. State*, 122 So.3d 698, 703 (Miss. 2013).

5. Pursuant to *Miller*, *Parker*, and *Jones*, Mr. Brown’s sentence violates the Eighth Amendment to the United States Constitution. Thus, his Petition for Post-Conviction Relief will be GRANTED.

6. Mr. Brown has also requested that he be re-sentenced to life imprisonment *with* eligibility for parole notwithstanding the provisions of Miss. Code Ann. § 47-7-3(1)(f). *See Parker*, 119 So.3d at 999. Among other things, Mr. Brown argues that because of the impulsive nature of his crime and as he was so young at the time of his crime, he is not one of those

“uncommon” and “rare” juvenile homicide offenders who may be sentenced to life without parole, *see id.* at 2469, rendering a re-sentencing unnecessary. Mr. Brown further contends that a comparison between the facts of his case and the facts of other Mississippi cases in which juvenile homicide offenders have been re-sentenced to life with parole demonstrates that he may not be re-sentenced to life without parole.

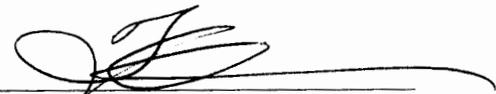
7. For the foregoing reasons Mr. Brown’s request for a sentence of life in prison *with* eligibility for parole will be GRANTED.

It is therefore ORDERED and ADJUDGED that:

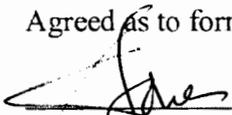
(1) Marzell Brown’s life-without-parole sentence for the charge of Murder in Criminal Cause Number 98-1-499-01 is VACATED.

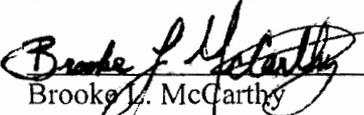
(2) Marzell Brown is RE-SENTENCED to LIFE *WITH* ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. SECTION 47-7-3(1)(f), AND ANY OTHER PROVISION OF LAW THAT MIGHT DEPRIVE HIM OF ELIGIBILITY FOR PAROLE, for the charge of Murder in Criminal Cause Number 98-1-499-

02. *This order shall be forwarded by the circuit clerk to MDOC - Records Dept. JB*
SO ORDERED, this the 13th day of Jan, 2016.


CIRCUIT COURT JUDGE

Agreed as to form:


Shannon Jones, Assistant District Attorney
Hinds County District Attorney’s Office
COUNSEL FOR THE STATE


Brooke L. McCarthy
Southern Poverty Law Center
COUNSEL FOR THE DEFENDANT

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, MISSISSIPPI

ANTSHAWN DAVIS

VERSUS

CAUSE NO. 13-CV-027(B)
(CONSOLIDATED)

STATE OF MISSISSIPPI

AGREED ORDER GRANTING PCCR RELIEF

THIS CAUSE, having come before the Court for evidentiary hearing, based upon two (2) petitions of Antshawn Davis seeking a grant of new trial and/or to amend the Court's previous sentencing order, and having the Petitioner appear with counsel and the State being represented by the District Attorney.

The Court was informed that Counsel for the State and for the Petitioner had agreed as to disposition of Cause No. 13-CV-027(B) and Cause No. 13-CV-070(B), and would agree to an order respecting those causes.

The Petitioner and the State agreed that the written motions and answer, including any and all attachments, would be all that is submitted and that no additional evidence would be presented regarding those issues. Thereafter, the Court questioned the Petitioner to determine that this was, in fact, his wish. The Court, having considered the agreement and Petitioner's request in this matter renders this Order.

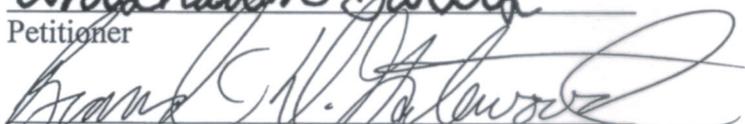
IT IS, THEREFORE ORDERED AND AJDUGED, that the sentencing order of May 24, 2010 in Cause No. 638-09 is amended to read as follows: "the Defendant is adjudicated guilty of the crime of Murder in violation of 97-3-19 Miss. Code Ann., and he is sentenced to life imprisonment with the Mississippi Department of Corrections, with the possibility of parole, notwithstanding the current parole statute as required by the Supreme Court of the United State's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and he is ordered to pay Court costs in the amount of \$309.00 and restitution in the amount of \$350.00." All other requirements of the order are unchanged.

This the 23rd day of September, 2014.


CIRCUIT JUDGE

AGREED AND APPROVED:


Petitioner


Attorney for Petitioner


Assistant District Attorney

2014 SEP 23 AM 8:26
CIRCUIT CLERK

FILED

**FILED FOR RECORD
IN THE CIRCUIT COURT
SCOTT COUNTY, MISSISSIPPI**

JUN 18 2015

IN THE CIRCUIT COURT OF SCOTT COUNTY, MISSISSIPPI

CHARLIE JONES

JOE RIGBY, CIRCUIT CLERK
1106 2846-848

Vs.

NO. 13-CV-158-SC-G

STATE OF MISSISSIPPI

ORDER

This cause came on for hearing on Motion to Vacate Sentence and Supplement to Motion to Vacate Sentence filed by Charlie Jones pursuant to the Mississippi Uniform Post Conviction Collateral Relief Act, § 99-39-1 Mississippi Code of 1972, *et seq.* and response thereto (State's Response to Supplement to Motion to Vacate Sentence filed by the District Attorney for the Eighth Circuit Court Judicial District), the Court having received testimony and other evidence finds as follows:

1. On October 10, 1995, Charlie Jones, Movant herein, pled guilty to two (2) counts of "non-capital" or simple murder, for which he was sentenced to two (2) concurrent life sentences. Pursuant to § 47-7-3(1)(h), Mr. Jones was and is ineligible for parole from his life sentences.

2. Charlie Jones was born on October 25, 1978, and his offense (the crime for which he was convicted) took place on July 29, 1995, and thus he was approximately 16 years and 9 months old at the time of the offense.

3. In *Miller vs. Alabama*, 132 S. Ct. 2455 (2012), the U.S. Supreme Court held that mandatory life-without-parole sentences for juveniles (persons under the age of eighteen (18) years at the time of the offense) violate the Eighth Amendment to the United States Constitution and that a sentence may impose life without parole on a juvenile homicide offender only in those "rare" instances when the sentencer determines,

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after considering the mitigating qualities of youth, that the juvenile's crime reflects "irreparable corruption."

The Court holds that the sentence of life in prison without the possibility of parole herein is vacated.

The Court now proceeds to a hearing on resentencing Movant. *Miller* prescribes a minimum of five (5) factors to be considered and addressed in determining whether a convict is irreparably corrupt:

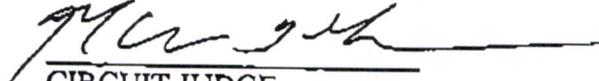
[1] [Petitioner's] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences[,] ... [2] the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional[,] ... [3] the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him[,] ... [4] that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys[,] ... [and] [5] the possibility of rehabilitation...

From the testimony and other evidence herein, the Court finds that on July 29, 1995 (the time of the offense) and October 10, 1995 (the date of the guilty pleas and convictions), Movant was inordinately immature and impetuous and failed to appreciate the risks and consequences of his actions; that the family and home environment in which he found himself did not provide direction for a juvenile; that the circumstances of the homicide offense or that he participated in a beating of the two (2) victims and was led and directed by an older participant; that he might have been convicted of a lesser offense (manslaughter) if not for the incompetencies associated with youth; and the Court further finds that Charlie Jones has already undergone substantial rehabilitation by gaining a maturity and an ability to appreciate risks and consequences that he did not have at age sixteen (16). Wherefore the Court finds that Charlie Jones is not irreparably corrupt.

The Court resents Charlie Jones in Count I to serve life imprisonment in the Mississippi Department of Corrections with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(h).

The Court resents Charlie Jones in Count II to serve life imprisonment in the Mississippi Department of Corrections with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(h) with this sentence to run concurrently with the sentencing upon Charlie Jones in Count I.

ORDERED AND ADJUDGED by the Circuit Court of Scott County, Mississippi, in open and regular session, this the 11th day of June, 2015.


CIRCUIT JUDGE

Prepared by:

Edmund J. Phillips, Jr.
Attorney at Law, MSB #4159
P.O. Box 178
Newton, MS 39345
Telephone: (601) 683-3387
Facsimile: (601) 683-3110
Email: ejjudge@yahoo.com

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY
THE STATE OF MISSISSIPPI

ERIC MOSLEY

VS

STATE OF MISSISSIPPI

*CAUSPS 12-CV-020(B)
13-CV-071(B)*

ORDER GRANTING PCCR RELIEF

THIS CAUSE, having come before the Court for evidentiary hearing based upon two (2) petitions of Eric Mosley seeking a grant of a new trial and/or to amend the Court's previous sentencing order and the Petitioner appeared with counsel and the State by the District Attorney. The Court was informed that Counsel for the State and Petitioner had agreed as to disposition of 13-CV-071(B) and would agree to an order respecting that cause. The Pro Se petition cause #12-CV-020(B) was then addressed. The Court asked the Petitioner to produced all evidence and argument he wished and was informed that he would submit the matter on the written motion and would offer no other evidence regarding those issues. The Court then questioned the Petitioner to determine that this was, in fact, his wish. The Court having considered the agreement and Petitioner's request to submit the Pro Se petition upon the current filings finds that the request in 13-CV-071 (B) should be granted and that the Court shall render a written opinion as to the merits of the Pro Se petition.

IT IS, THEREFORE ORDERED AND ADJUDGED, that the sentencing order of May 24, 2010 is amended to read , "the Defendant is adjudicated guilty of the crime of Murder in violation of 97-3-19 M.C.A. and is sentenced to life imprisonment with the Mississippi Department of Corrections, with the possibility of parole, notwithstanding the current parole statute as required by the United States Supreme Court's decision in Miller v. Alabama 132 S. Ct. 2455 (2012) and is ordered to pay Court costs of \$309.00 and restitution of \$350.00.". All other requirements of the order are unchanged. The claims and requests in the Pro Se petition 12-CV-020(B) shall be considered based upon the written filings and the Court shall enter a written order within a reasonable period of time.

This the 26th day of February, 2014.

[Signature]
CIRCUIT JUDGE

AGREED AND APPROVED:

OR
Will Boardman
Eric Mosley

Donna Sue Johnson
CIRCUIT CLERK

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

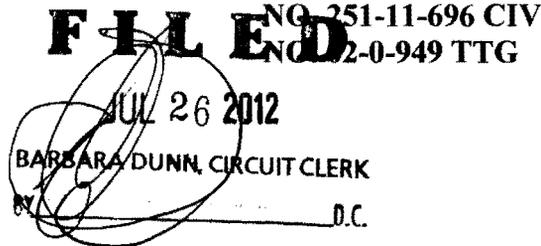
GARNER LEE BRISTER, JR.,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent.



AGREED ORDER
VACATING LIFE WITHOUT PAROLE SENTENCE
AND IMPOSING LIFE WITH ELIGIBILITY FOR PAROLE SENTENCE
PURSUANT TO MISS. CODE. ANN. § 47-7-3(1)

Pursuant to the United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), the sentence of life without parole previously imposed on Garner Lee Brister, Jr. ("Petitioner"), is hereby vacated, and he is re-sentenced to life with eligibility for parole such that, pursuant to the language of Miss. Code Ann. § 47-7-3(1), he will be eligible for parole after serving ten years in prison.

By Order dated July 6, 2011, the Mississippi Supreme Court granted Petitioner's *Application for Leave to File Motion to Vacate Sentence* and authorized Petitioner to file his motion in the trial court. Petitioner filed his *Motion to Vacate Sentence* in this Court on August 4, 2011.

Having reviewed Petitioner's submissions, the arguments advanced therein, and the Supreme Court's recent decision in *Miller*, this Court hereby GRANTS Petitioner's *Motion to Vacate Sentence*.

In *Miller*, the Supreme Court ruled that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” 132 S.Ct. at 2460. Petitioner was 16 years old at the time of the offense that led to his capital murder conviction and life without parole sentence. Petitioner’s 2004 life without parole sentence was mandatory pursuant to Miss. Code. Ann. § 97-3-21 (establishing death, life without parole and life with parole as sentencing options for a capital murder conviction) and Miss. Code. Ann. §§ 47-7-3(1)(f) & (h) (eliminating parole eligibility for anyone convicted of capital murder or any violent offense).¹ *Miller* renders Petitioner’s sentence unconstitutional. It is hereby VACATED.

This Court finds that, pursuant to *Miller*, Miss. Code. Ann. §§ 47-7-3(1)(f) & (h) are unconstitutional as applied to offenders who were under the age of 18 at the time of their offense and who stand convicted of capital murder. In order to comply with the Supreme Court’s mandate in *Miller*, a court must have the option of sentencing such juvenile offenders to not only life without parole, but also to life with eligibility for parole as provided in Miss. Code. Ann. § 47-7-3(1).

In *Miller*, the Supreme Court also held that “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles” and that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” 132 S.Ct. at 2469, 2475. This Court is familiar with Petitioner’s case and is aware that Petitioner was a minor participant in the

¹ The State did not seek a death sentence in Petitioner’s case. The United States Supreme Court has since barred the death penalty for offenders under the age of 18 at the time of their offense. *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

felony that resulted in the murder of the victim.² The post-conviction record, which is incorporated for purposes of this resentencing proceeding, includes a psychological evaluation of Petitioner; 22 affidavits signed by Petitioner's teachers, friends, family members, and trial counsel; an affidavit showing that Petitioner was the only juvenile offender in Mississippi who was a minor participant in a felony murder and was sentenced to life without parole; school records; prison records establishing that Petitioner has had no disciplinary infractions during his 10 years of incarceration; the absence of any prior arrests or convictions by Petitioner prior to this offense; Petitioner's employment records; medical records; housing records; and the arrest history of one of his co-defendants. Based on its review of the evidence and the relevant sentencing factors, including those outlined in *Miller*, this Court hereby sentences Petitioner to life with eligibility for parole such that he will be eligible for parole pursuant to Miss. Code Ann. § 47-7-3(1) after he has served no less than 10 years imprisonment.³ The State agrees and has no objection to the vacation of the herein sentence.

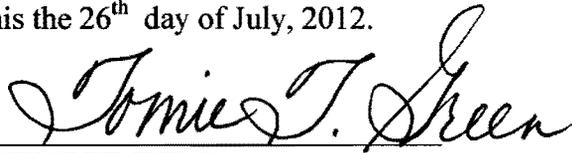
IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Garner Lee Brister, Jr.'s original sentence of Life, without parole is hereby VACATED.

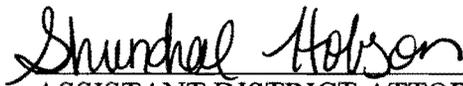
² The Court understands that as a result of Petitioner's relatively minor level of participation in the crime, he was offered a plea bargain where he could plead to the charge of manslaughter with a 15 year sentence and robbery with a 5 year sentence to run concurrent. Perhaps because of his youth and complete lack of experience with the criminal justice system (given that he had never been arrested or in trouble with the law prior to this offense), that deal was not accepted. In *Miller*, the Supreme Court recognized the difficulties encountered by youth in their relationships with counsel and other actors in the criminal justice system, and noted that a mandatory life without parole sentence for a juvenile offender "ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." 132 S.Ct. at 2468 (citations omitted). This weighs heavily in favor of a sentence where Petitioner is eligible for parole. Hopefully, the Parole Board will consider this fact as well as all other relevant factors in deciding when Petitioner should be paroled.

³ As mentioned previously, subsections (g) and (h) of Miss. Code Ann. § 47-7-3(1) are no longer constitutional under *Miller* for purposes of juvenile sentencing to life imprisonment for capital murder.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant is hereby resentenced to a term of Life, with the possibility of parole, in accordance with Section 47-7-3(1), Miss. Code Ann. (1972). Further, the circuit clerk shall file this order in the herein case and also in the original criminal case of conviction in Cause No. 02-0-696.

SO ORDERED AND ADJUDGED this the 26th day of July, 2012.


CIRCUIT JUDGE


ASSISTANT DISTRICT ATTORNEY


COUNSEL FOR PETITIONER

IN THE CIRCUIT COURT OF COAHOMA COUNTY, MISSISSIPPI

JAMARIO BRADY

PETITIONER

vs.

CAUSE NO. 14-CI-15-0033-CEW

STATE OF MISSISSIPPI

RESPONDENT

ORDER GRANTING PETITION FOR POST-CONVICTION RELIEF

THIS CAUSE comes before the court on Petition for Post-Conviction Relief dated May 26, 2015, and Supplement to Petition for Post-Conviction Relief likewise dated May 26, 2015, and the court being fully advised in the premises does hereby find, order, and re-sentence the above named defendant as follows:

1. During the March, 2006, term of this court, the above named defendant, JAMARIO BRADY, (hereinafter "Brady" or "the defendant"), along with four others, was indicted, tried, and convicted on a charge of murder in cause no. 2006-0065 before this court. The murder occurred August 11, 2006. As a result of such conviction and in accordance with Mississippi law, the defendant was sentenced to serve a term of life imprisonment. "Every person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the State Penitentiary." *See* Miss. Code Ann. §97-3-21, *effective* August 11, 2006.

2. At the time of the Brady's conviction, the applicable parole laws of the State of Mississippi effectively denied the defendant eligibility for parole. "Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections ... for the term of his or her natural life, ... may be released on parole as hereinafter provided, except that: (g) No person

shall be eligible for parole who is convicted ... after June 30, 1995, except that a first offender convicted of a nonviolent crime after January 1, 2000, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph ... For purposes of this paragraph, "nonviolent crime" means a felony other than *homicide* ...". See Miss. Code Ann. §47-7-3, effective August 11, 2006. As such, at the time the defendant was sentenced to life in prison, such sentence was effectively a *mandatory* life sentence.

3. According to the records before the court, the defendant was born July 2, 1991, and thus was 15 years, 40 days, of age at the time of the offense. This is significant in that the United States Supreme Court in the case of Miller v. Alabama, 132 S. Ct. 2455 (2012), held that *mandatory* life sentences without the possibility of parole for individuals under the age of eighteen years at the time of their crimes violates the Eighth Amendment prohibition against cruel and unusual punishment. Id. at 2469. In coming to their conclusion, the Court referenced what it termed as "three significant gaps between juveniles and adults ... [f]irst. ... a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking ... [s]econd, children 'are more vulnerable ... to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings ... [a]nd third, 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 irretreivabl[e] deprav[ity].'" Id. at 2464. As a result, the Court described those juvenile offenders deserving of mandatory life-time sentences, that is life sentences with no possibility of parole, as "[o]nly a relatively small proportion of adolescents", Id. at 2464. The

Court went on to opine, “we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon,” and that such juvenile offenders whose crime reflects “irreparable corruption” will be “rare.” Id. at 2469 (citing Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), and Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed.2d 825 (2010)). As such, the Miller Court set forth various factors to be considered in the sentencing of a juvenile defendant for a capital offense. Those factors are:

- a. The chronological age of the defendant and its hallmark features - among them, immaturity, impetuosity, and failure to appreciate risks and consequences;
- b. The family and home environment of the defendant - a circumstance which most juvenile defendants cannot usually extricate themselves, no matter how brutal or dysfunctional;
- c. The circumstances of the homicide offense, including the extent of the defendant’s participation in the conduct and the way familial and peer pressures may have affected him.
- d. The fact, if applicable, that the defendant might have been charged and convicted of a lesser offense if not for incompetencies associated with youth, for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.
- e. The features that distinguish juveniles from adults that also put them at a significant disadvantage in criminal proceedings, *i.e.* children’s responses to interrogation.
- f. The possibility of rehabilitation.

4. In the case of Parker v. State, 119 So. 3d 987 (Miss. 2013), reh’g denied (Sept. 5, 2013), the Mississippi Supreme Court discussed the Miller case and its impact upon the sentencing structure for juveniles convicted of capital crimes in Mississippi. While the court found

that juveniles may not be subject to what this court will describe as *automatic* mandatory life sentences, such a sentence remains available so long as the sentencing court gives serious and proper consideration to the Miller factors:

After consideration of all circumstances required by Miller, the trial court may sentence Parker, despite his age, to "life imprisonment." See Miller, 132 S. Ct. at 2469 ("[W]e do not foreclose a sentencer's ability to make that judgment in homicide cases...."). However, if the trial court should determine, after consideration of all circumstances set forth in Miller, that Parker should be eligible for parole, the court shall enter a sentence of "life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(h)." This allows the trial courts of this State to comport with the requirements established by the United States Supreme Court.

Parker, at 999. (Internal citations omitted). Thus, the issue before the court is whether Brady, who was just over 15 years of age at the time of the crime, is one of those rare and uncommon juvenile offenders who will forever be a danger to society, permanently and irrevocably incorrigible. Miller, at 2465.

5. In considering the Miller factors as set out above, the court finds as follows:

a. The chronological age of the defendant and its hallmark features - among them, immaturity, impetuosity, and failure to appreciate risks and consequences:

As stated, at the time of the crime, Brady was not long over 15 years of age. This factor, without discussing further the "features" which accompany such a young age, weighs in favor of granting the relief requested;

b. The family and home environment of the defendant - a circumstance which most juvenile defendants cannot usually extricate themselves, no matter how brutal or dysfunctional:

Little evidence was presented regarding the defendant's home environment. This factor will remain neutral.

c. The circumstances of the homicide offense, including the extent of the defendant's participation in the conduct and the way familial and peer pressures may have affected him:

The court well remembers the facts as adduced at the trial of this matter. Prior to the killing, the defendant was in the company of several others, all of whom were over the age of 18. The information relayed to this group was that the deceased had somehow abused¹ the mother of one of their number. Acting in a "group" mentality, Brady accompanied his fellow assailants to the location of the subsequent attack and joined with them in such attack. Certainly peer pressure played a significant role in the Brady's participation in this crime.

The circumstances of the homicide involved these five assailants kicking and stomping the deceased. In opposition to the petition, the State correctly points out that it was Brady that carried and struck the deceased with a golf club. While such is true that this defendant wielded and struck the deceased with a golf club, the proof was undisputed that none of the strikes with the golf club inflicted fatal injuries. Death occurred as a result of the kicks and blows to the chest of the deceased which fractured a rib, punctured a lung, and caused blood to accumulate in the deceased's lungs. The deceased ultimately drowned in his own blood. Realizing that decisions such as are required here are most often decisions between bad alternatives, this factor weighs in

¹This reference is not intended as a judgment of the veracity of such claim or as any justification of the assault upon the deceased, but merely to impart what appeared to be the spark that led to the subsequent attack.

favor of granting the relief requested;

d. The fact, if applicable, that the defendant might have been charged and convicted of a lesser offense if not for incompetencies associated with youth, for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

The court granted an instruction on manslaughter. The court does not recall if such instruction was requested by the defendant(s) or given *sue sponie* by the court. But, having granted the same, the court was of the opinion that a reasonable jury might return a verdict of manslaughter rather than murder. It was the jury's decision to make and this court does not question the jury's ultimate finding. This is mentioned simply to point out that a verdict of manslaughter was at least one possible alternative verdict.

The court is unaware of any "incompetencies" of youth that worked significantly to the detriment of the defendant. The court is of the opinion that Brady, along with each of the other defendants in this case, were adequately and competently represented by counsel. To a small extent, this factor weighs in favor of granting the relief requested;

e. The features that distinguish juveniles from adults that also put them at a significant disadvantage in criminal proceedings, *i.e.* children's responses to interrogation.

No evidence was presented as to this factor. As such, this factor is neutral;

f. The possibility of rehabilitation.

This court is of the opinion that due to the young age and relatively short period of time that this defendant has been incarcerated, compared to the length of time for which he will most likely remain incarcerated no matter what this court might rule, any guess as to the defendant's

chances of successful rehabilitation would be just that – a guess. As such, at this point in time, this factor is neutral.

6. In addition to the Miller factors discussed above, the court has also reviewed the criminal history of the defendant *vis-a-vis* his involvement with the Coahoma County Youth Court. Brady's first involvement with the criminal authorities was in November, 2005, when he was just 14 years of age. While his involvement with the youth court thereafter continued on a fairly regular basis, the infractions involved were relatively minor and not what one might consider as excessively violent and/or dangerous. The court found nothing in the youth court records that would suggest that Brady will forever be a danger to society or permanently incorrigible.

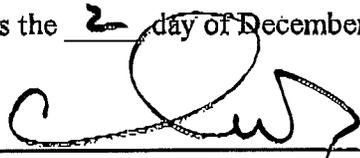
7. The court has also received and reviewed numerous Rule Violation Reports from the Mississippi Department of Corrections. The reports are plentiful. Brady has not been a model prisoner. However, the reports do not contain any additional felony charges, nor do they contain reports of significant violence. Given the circumstances and the youthful age of Brady, the reports do not contain anything particularly shocking to the court.

8. It would appear to this court, based upon the criteria espoused by the U.S. Supreme Court and by which this court is bound, that Brady is not that rare and uncommon juvenile that is deserving of a sentence of life with no possibility for parole. Certainly, this court cannot say when or even if Brady will be granted parole – that is for the officials with the Mississippi Department of Corrections and the Parole Board. It is they that will be in the best position to assess whether Brady has advanced sufficiently to be considered for parole. But again, according to the criteria under which this court must act, this court finds that Brady is entitled to at least be considered for

parole by those in authority to grant the same.

IT IS THEREFORE ORDERED and ADJUDGED that the Petition for Post-Conviction Relief filed herein for and on behalf of the above defendant is **GRANTED**. This court will enter an Order re-sentencing the defendant to life in prison, but with eligibility for parole.

SO ORDERED and ADJUDGED this the 2 day of December, 2015.



CIRCUIT JUDGE

COAHOMA COUNTY MS
CIRCUIT CLERK
2015 DEC -2 PM 1:52

FILED

IN THE CIRCUIT COURT OF COAHOMA COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

vs.

CAUSE NO. 2006-0065

JAMARIO BRADY a/k/a MARIO a/k/a TURTLE

DEFENDANT

**ORDER VACATING ORIGINAL SENTENCE AND
RE-SENTENCING DEFENDANT TO LIFE WITH ELIGIBILITY FOR PAROLE**

THIS CAUSE came before the court on Petition for Post-Conviction relief on behalf of the above named defendant. Such Petition was spawned by the U. S. Supreme Court case of Miller v. Alabama, 132 S. Ct. 2455 (2012), wherein the Court found that *mandatory* life sentences without the possibility of parole for individuals under the age of eighteen years at the time of their crimes violates the Eighth Amendment prohibition against cruel and unusual punishment. Id. at 2469. At the time of the crime herein the defendant was 15 years of age. When dealing with minors that have committed capital crimes, the Court set out various factors to be considered when determining the sentence to be imposed. The Mississippi Supreme Court discussed the Miller case and the factors to be considered in the case of Parker v. State, 119 So. 3d 987 (Miss. 2013), reh'g denied (Sept. 5, 2013).

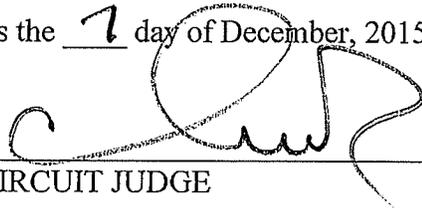
This court has now considered such factors, discussing them at detail in the Order Granting Post-Conviction Relief heretofore entered in civil cause no. 14-CI-15-0033-CEW, and determined that the defendant's sentence should be revised and amended to the extent that the defendant should be sentenced to life in prison *with eligibility for parole*.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

1. The original sentence of the defendant is hereby set aside and vacated.

2. In lieu thereof, the defendant is hereby sentenced to serve a term of life in prison in an institution under the supervision and control of the Mississippi Department of Corrections, provided however that notwithstanding the provisions of Mississippi law to the contrary, and consistent with the cases of Miller v. Alabama, 132 S. Ct. 2455 (2012) and Parker v. State, 119 So. 3d 987 (Miss. 2013), reh'g denied (Sept. 5, 2013), such life sentence shall be served with eligibility for parole.

SO ORDERED and ADJUDGED this the 7 day of December, 2015.



CIRCUIT JUDGE

FILED
2015 DEC -7 AM 11:49
CIRCUIT CLERK
COAHOMA COUNTY MS

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

SKILAH ANDERSON,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

FILED

DEC 18 2015

BARBARA DUNN, CIRCUIT CLERK

CAUSE NO. 15-CV-00543

BY _____ D.C.

AGREED ORDER

Pursuant to the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the sentence of life without parole previously imposed on Skilah Anderson ("Petitioner"), is hereby vacated, and he is re-sentenced to life *with* eligibility for parole notwithstanding the provisions of Miss. Code Ann. § 47-7-3(1)(e) & (f), and any other statutory provision that might deny him eligibility for parole.

Petitioner's case was before this Court on remand from the United States District Court for the Southern District of Mississippi after the federal court held that Petitioner received ineffective assistance of counsel at the sentence stage of his trial, as it pertained to his armed robbery charge. Along with resentencing Petitioner for the armed robbery, this Court resentenced Petitioner on the capital murder count pursuant to his motion for post-conviction relief pending on the Supreme Court based on *Miller*. Thus, on July 31, 2014, this Court considered the very issue presented in this Motion for Post-Conviction Relief, and resentenced Petitioner "to term of life, with possibility of parole after hearing, run concurrent with count 2. Resentenced pursuant to *Miller v. Alabama*, U.S. Supreme Ct. 2012." See *State v. Anderson*, 02-0-948-01 (Hinds Cty. Cir. Ct. July 31, 2014), Amended Order at 1.

By Order dated November 19, 2014, the Mississippi Supreme Court vacated this Court's Order resentencing Petitioner since his post-conviction relief was still pending in the Mississippi Supreme Court. Subsequently, Petitioner's *Application for Leave to File Motion to Vacate Sentence* was granted. See *Anderson v. State*, 2013-M-00807 (Miss. Nov. 19, 2015), Order at 2.

Having reviewed Petitioner's submissions, the arguments advanced therein, and the United States Supreme Court's recent decision in *Miller*, this Court hereby GRANTS Petitioner's *Motion to Vacate Sentence*.

In *Miller*, the Supreme Court ruled that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" 132 S. Ct. at 2460. Petitioner was seventeen (17) years old at the time of the offense that led to his capital murder conviction and mandatory life without parole sentence. Furthermore, this Court finds that, pursuant to *Miller*, Miss. Code Ann. §§ 47-7-3(1)(f) & (h) are unconstitutional as applied to offenders who were under the age of 18 at the time of their offense and who stand convicted of capital murder. In order to comply with the Supreme Court's mandate in *Miller*, "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles" and that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." 132 S. Ct. at 2469, 2475. Based on its review of the evidence and the relevant sentencing factors, including those outlined in *Miller*, this Court hereby sentences Petitioner to life *with* eligibility for parole. That State agrees and has no objection to the vacation of the herein sentence.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Skilah Anderson's original sentence of Life without parole is hereby VACATED.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant is resentenced to a term of life *with* possibility of parole to run concurrent to Count 2 pursuant to *Miller v. Alabama* notwithstanding the provisions of Miss. Code Ann. § 47-7-3(1)(e) & (f), and any other statutory provision that might deny him eligibility for parole.

SO ORDERED AND ADJUDGED, this the 17th day of Dec., 2015.



CIRCUIT JUDGE



Brooke L. McCarthy
SOUTHERN POVERTY LAW CENTER
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601-948-8885 (fax)
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shannon.jones@co.hinds.ms.us
COUNSEL FOR RESPONDENT

IN THE CIRCUIT COURT OF COPIAH COUNTY, MISSISSIPPI**STATE OF MISSISSIPPI****PLAINTIFF****VS.****SUPREME COURT CASE NO. 2011-KA-01158-SCT
COPIAH COUNTY TRIAL COURT NO. 2011-035CR****LESTER LAVON PARKER, JR.****DEFENDANT****AGREED ORDER VACATING LIFE WITHOUT PAROLE SENTENCE
AND IMPOSING LIFE WITH ELIGIBILITY FOR PAROLE SENTENCE
PURSUANT TO MISSISSIPPI CODE: SECTION 47-7-3(1)**

Pursuant to a Mandate, of the Supreme Court of Mississippi, dated September 13, 2013, wherein a sentence of life in the custody of the Mississippi Department of Corrections, in the above styled and numbered cause, was vacated; this cause was remanded to the Circuit Court of Copiah County for a re-sentencing hearing consistent with the United States Supreme Court and this Supreme Court's opinion.

In proceedings held in the Circuit Court of Copiah County, Mississippi, this date, November 5, 2013, the Court vacates the sentence of the Petitioner which is dated July 7, 2011; and reads in part, "for the remainder of his 'natural life' in the custody of the Mississippi Department of Corrections"; and he is hereby re-sentenced to life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(h).

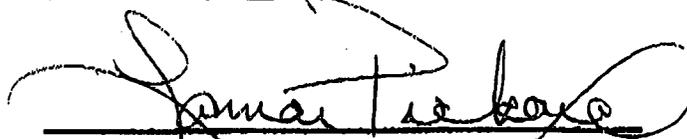
This Court further finds that the United States Supreme Court, in *Miller v. Alabama*, 567 U.S. ____, 132 S. Ct. 2455, 2460, 183 L. Ed. 2d 407 (2012); U.S. Const. amend. VIII, held that a mandatory sentence of life without the eligibility of parole for a minor was a violation of the Eight Amendment's prohibition of "cruel and unusual punishment". The Court found that "children are Constitutionally different from adults for purposes of sentencing" and the Court further held, "that the Eight Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." The Supreme Court of Mississippi found that, "*Miller* created a new rule with which this State must comport.", therefore, *Miller* applies here.

This Court finds that Lester Lavon Parker, was fifteen years of age at the time of

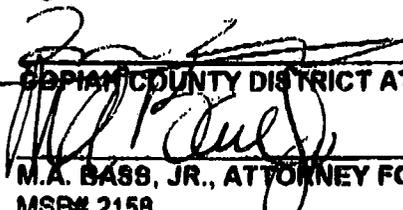
time of his conviction for murder. He was sentenced under Section 97-3-21, of the Mississippi Code of 1972, which states that, "every person who shall be convicted of murder shall be sentenced by the court to *imprisonment for life* in the State Penitentiary " Therefore this Court finds that, pursuant to *Miller*, and the Supreme Court of Mississippi, Mississippi Code Section 47-7-3(1)(f) &(h), is unconstitutional as it applies to offenders who were under the age of 18 at the time of their offense. To comport with the Supreme Court's decision in *Miller*, this Court is required to consider: the individual, the factors of youth, and the nature of the homicide in determining whether to order a sentence that includes the possibility of parole. This Court, finding that Section 47-7-3(1)(f)(h), of the Mississippi Code of 1972, Annotated, is unconstitutional as to minors, hereby sentences the Petitioner, Lester Lavon Parker, Jr., to life with the eligibility for parole upon the terms, conditions, and procedures of the Mississippi Department of Corrections.

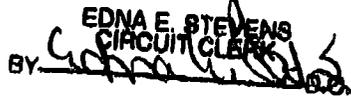
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that the original sentence of Lester Lavon Parker, Jr., dated July 20, 2011, is hereby vacated and he is re-sentenced to life imprisonment with the eligibility for parole notwithstanding the present provisions of Section 47-7-3(1)(h) of the Mississippi Code of 1972, as annotated.

SO ORDERED, this the 2nd day of ~~November~~ ^{DECEMBER}, 2013.


CIRCUIT COURT JUDGE

Agree as to form and content:


 COPIAH COUNTY DISTRICT ATTORNEY'S OFFICE
 M.A. BASS, JR., ATTORNEY FOR DEFENDANT
 MSB# 2158
 Attorney at Law
 113 Downing Street
 Post Office Box 712
 Hazlehurst, Mississippi 39083-0712

FILED
DEC 02 2013
 EDNA E. STEVENS
 CIRCUIT CLERK
 BY 

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NUMBER 98-4-074-01 WAG

TERUN MOORE

A/K/A:

SSNO: 425-37-1458

B/M DOB: 4/ 9/80

ORDER

THIS DAY into open court came the District Attorney for the Seventh Circuit Court District of Mississippi, and came also the Defendant in his own proper person and represented by counsel, having been duly arraigned upon the charge in the indictment at a former day or term of this Court and duly entered a plea of Not Guilty thereto.

Now comes the Defendant in his own proper person, represented by counsel, and withdraws the plea of Not Guilty to the charge heretofore entered, and enters a plea of Guilty to the charge of CAPITAL MURDER 97-3-19(2)(E) the Court having first duly advised the Defendant of all of the Defendant's legal and constitutional rights on the premises, and the Defendant having freely, voluntarily and intelligently waived said rights in the premises; the Court having further advised the Defendant of the consequences of such a plea of guilty, and thereafter the Defendant upon direct questioning having admitted that he is guilty of the crime to which he has pleaded guilty;

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant, TERUN MOORE for such his crime of CAPITAL MURDER 97-3-19(2)(E) to which he has freely and voluntarily entered a plea of guilty, be and he is hereby sentenced to serve a term of LIFE in the custody of the Mississippi Department of Corrections

and further;

LIFE TO SERVE,
PREVIOUS SENTENCE ON 6-19-01 IS VACATED. DEFENDANT SHALL
RECEIVE LIFE IMPRISONMENT WITH ELIGIBILITY FOR PAROLE
NOTWITHSTANDING THE PRESENT PROVISIONS OF MISS. CODE SECTION
47-7-3 PURSUANT TO PARKER V. STATE OF MISS, 119 SO.2D 987.

Any probation time is pursuant to Mississippi Code Section 47-7-35 (1972), as amended, upon release from confinement.

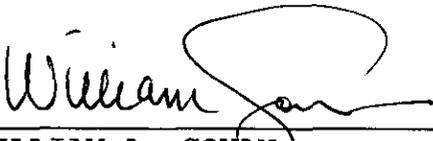
Any suspended time not under probation contained in this order is suspended for a period of at least 5 years, conditioned upon defendant's good behavior and the provisions of Mississippi Code Section 47-7-35 (1972) except reporting requirements, and is subject to revocation for that period.

Unless otherwise specified herein, this sentence is to run consecutive to any other sentences imposed upon this defendant by any Court; and to pay all costs of Court, assessments, and taxes, except as relieved by law for indigents.

The Court further finds that the defendant in this cause shall compensate Hinds County in the amount of \$.00 for expenses of appointed counsel.

The defendant is indigent.

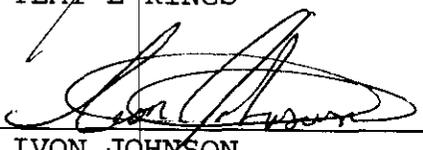
ORDERED AND ADJUDGED, this the 14TH day of NOVEMBER, 2014



WILLIAM A. GOWAN



YEMI L. KINGS
, Attorney for Defendant



IVON JOHNSON
, Assistant District Attorney

STATE OF MISSISSIPPI

PRISONER COMMITMENT NOTICE

COUNTY OF HINDS

FIRST DISTRICT

CAUSE NO. 98-4-074-01 WAG

TO THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS

You are hereby notified that at the NOVEMBER term 2014, of the Circuit Court, Judge WILLIAM A. GOWAN presiding, the following named person was tried, convicted and sentenced to a term in the state penitentiary

I. PRISONER'S NAME TERUN MOORE ARREST # 98-62452 JPD
ALIAS COUNTRY OF CITIZENSHIP
ALIEN/IMMIGRATION NO
SS# 425-37-1458 DOB 4-9-80 RACE B SEX M PLACE OF BIRTH
LAST KNOWN RESIDENCE 928 WATKINS PLACE JACKSON MS FBI NO

II. CRIME CAPITAL MURDER 97-3-19(2)(E)
DESCRIPTION OF CRIME: See Attached Indictment
PREV. SENT ON 6/19/01 IS VACATED; DEF. SHALL RECEIVE LIFE W/ POSSIBILITY OF PAROLE NOTWITHSTANDING THE PRESENT PROVISIONS OF MISS CODE 47-7-3 PER PARKER V. STATE 119 S0.2D 987.

III. DATE OF SENTENCE 11-14-14 LENGTH OF SENTENCE LIFE
SUSPENDED
TO SERVE LIFE
PROBATION
CONCURRENT TO
CONSECUTIVE TO
HABITUAL N/A REVOCATION N/A RID SHOCK N
ALCOHOL/DRUG TREATMENT

IV. FINE \$.00 COURT COSTS \$.00 RESTITUTION \$.00 INDIGENT Y
CONDITIONS OF PAYMENT:

V. DISPOSITION DATE 11-14-14 DISPOSITION TYPE JV G - JURY VERDICT GUILTY

RELEASED ON BOND TO
TO
TO
CONFINED IN JAIL TO
TO
TO

PRESENTLY HOUSED IN JAIL

Handwritten signature of Barbara Dunn, Circuit Clerk

BARBARA DUNN, CIRCUIT CLERK

11-14-14
DATE

** PLEASE COMPLETE ALL INFORMATION AND INCLUDE A COPY OF THE JUDGMENT, INDICTMENT, APPEAL, BOND, OR WAIVER **

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

FILED

STATE OF MISSISSIPPI

SEP 22 2015

VS.

BARBARA DUNN, CIRCUIT CLERK
BY _____ D.C.

CAUSE NO. 97-1-025-01
97-1-025-02

WILLIE JAMES HOLMES

AGREED ORDER AND JUDGMENT

This matter, having come before the Court on remand for resentencing from the Mississippi Supreme Court in cause number 2013-M-00599, and the Court, following a hearing and being otherwise fully advised in the premise, finds as follows:

On February 11, 1997, Willie James Holmes was indicted by a Hinds County Grand Jury on one count of conspiracy and one count of murder. Mr. Holmes was under the age of eighteen (18) at the time of the crimes, which occurred on August 21, 1996. On February 10, 2000, Mr. Holmes was convicted by a jury on both counts and was sentenced by the Honorable W. Swan Yerger as follows: twenty (20) years to serve in the custody of the Mississippi Department of Corrections for the conspiracy conviction in count 1 and a term of life in prison for the murder conviction in count 2. The two sentences were ordered to run concurrently. Under Mississippi law, Mr. Holmes was not previously eligible for parole.

On July 29, 2014, the Mississippi Supreme Court vacated Mr. Holmes's sentence in the above-styled cause of action pursuant to the intervening decision of the United States Supreme Court, *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012), which held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." This case was remanded to the trial court for a new sentencing hearing in

accordance with *Miller*, 132 S. Ct. 2445 (2012) and *Parker v. State*, 119 So.3d 987 (Miss. 2013).

The Court allowed the parties to brief this issue and conducted a hearing on the matter. During the hearing, a factual recitation of the case and a brief personal history of Mr. Holmes were presented. It was further brought to the attention of the Court that the victim's family did not oppose resentencing Mr. Holmes to a term of life in prison with the eligibility of parole. Therefore, having considered the age of Mr. Holmes at the time of the offense, his involvement in the crime, his background, as well as the agreement of the parties and wishes of the victim's family, the Court finds that the agreed, *ore tenus* motion of the parties to resentence Mr. Holmes to a term of life in prison with the eligibility of parole should be GRANTED.

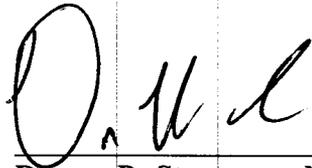
IT IS THEREFORE ORDERED AND ADJUDGED that in Hinds County cause number 97-1-025-01, for the offense of conspiracy to commit murder, Willie James Holmes is hereby resentedenced to a term of twenty (20) years to serve in the custody of the Mississippi Department of Corrections.

IT IS FURTHER ORDERED AND ADJUDGED that in Hinds County cause number 97-1-025-02, for the offense of murder, Willie James Holmes is hereby sentenced to serve a term of LIFE IN PRISON in the Mississippi Department of Corrections WITH ELIGIBILITY FOR PAROLE NOTWITHSTANDING THE PROVISIONS OF MISS. CODE ANN. SECTIONS 47-7-3(1) (e), (f), & (g)(i), AND ANY OTHER PROVISION OF LAW THAT MIGHT DEPRIVE HIM OF ELIGIBILITY OF PAROLE.

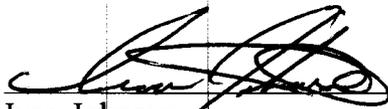
IT IS FURTHER ORDERED AND ADJUDGED that the sentences in cause numbers 97-1-025-01 and 97-1-025-02 shall run concurrently.

SO ORDERED, this the 21 day of 2015, 2015.


CIRCUIT COURT JUDGE



Damon R. Stevenson, MSB # 102945
Counsel for Defendant



Ivon Johnson
Assistant District Attorney