

Jones v. Mississippi, the Eighth Amendment, and Juvenile Life Without Parole

April 26, 2021

On April 22, 2021, the Supreme Court [decided](#) *Jones v. Mississippi*, holding that the [Eighth Amendment](#)'s ban on cruel and unusual punishments does not require a finding that a juvenile offender is permanently incorrigible before the juvenile may be sentenced to life in prison without the possibility of parole. This Sidebar provides a basic discussion of the Eighth Amendment jurisprudence related to juvenile life without parole sentencing, then outlines the majority opinion, concurrence, and dissent in *Jones*. A [previous Legal Sidebar](#) provided additional background on the issue of juvenile life without parole sentencing, outlined the relevant precedents that the Supreme Court considered in *Jones*, and discussed the legal arguments presented in the case.

The Eighth Amendment

The [Eighth Amendment](#) provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Supreme Court has interpreted the Eighth Amendment to impose a [categorical](#) ban on the use of certain forms of punishment. In addition, the Court has [held](#) that certain punishments that are permissible in some circumstances are nonetheless unconstitutional as applied to particular classes of defendants.

One class of offenders that has been the subject of considerable Eighth Amendment litigation is juvenile offenders. In the past decade and a half, the Supreme Court has issued several opinions outlining constitutional limitations on punishing juvenile offenders. First, in the 2005 case [Roper v. Simmons](#), the Court held that juvenile offenders may not constitutionally be sentenced to death. Five years later, in [Graham v. Florida](#), the Supreme Court held that juveniles may not be sentenced to life without parole for *non-homicide* offenses. In the 2012 case [Miller v. Alabama](#), the Supreme Court [held](#) that the Eighth Amendment forbids any sentencing scheme that *mandates* life without parole for juvenile offenders upon conviction for certain offenses; however, the Court [held](#) that sentencers who consider an offender's youth and attendant characteristics may impose *discretionary* juvenile life without parole sentences in homicide cases. Finally, in the 2016 case [Montgomery v. Louisiana](#), the Court [held](#) that *Miller*'s prohibition on mandatory life without parole sentences for juvenile offenders applied retroactively to convictions that were final before *Miller* was decided. Justice Kennedy, joined by five other Justices, [explained](#) that *Miller*

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had announced a new substantive rule by “bar[ring] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”

The *Jones* Case and the Supreme Court’s Decision

Jones v. Mississippi involved the Eighth Amendment claims of Brett Jones, who was sentenced to life without parole for a murder he committed at the age of [fifteen](#). Jones initially received a mandatory life without parole sentence, but later sought resentencing based on *Miller*. The state circuit court [resentenced Jones to life without parole](#). In doing so, the court did not find that Jones was permanently incorrigible or otherwise explicitly consider his capacity for rehabilitation. The court did, however, state that it had “considered each of the *Miller* factors” and discussed various mitigating and aggravating factors including the circumstances of the crime, Jones’s home environment, and his maturity level. Following unsuccessful state-court appeals, Jones filed a petition for a writ of certiorari in the U.S. Supreme Court, which was granted on March 9, 2020.

Before the Supreme Court, Jones [argued](#) that the Eighth Amendment, as interpreted in *Miller* and *Montgomery*, “prohibits sentencing juvenile homicide offenders to life without parole unless they are permanently incorrigible.” To comply with that prohibition, he [contended](#), “[w]hen a juvenile homicide offender asserts that he is not permanently incorrigible, . . . a court must resolve the question of corrigibility before it may impose a life-without-parole sentence.” The State of Mississippi [countered](#) that the Eighth Amendment “does not require a ‘finding’ of permanent incorrigibility,” but simply mandates “that sentencers consider youth and its attendant characteristics before sentencing a juvenile to life without parole.” Because Jones received individualized review of his sentence during his resentencing proceeding, the State [argued](#) that his sentence satisfied the requirements of *Miller* and *Montgomery*.

On April 22, 2021, a majority of the Supreme Court rejected Jones’s challenge to his sentence and affirmed the decision of the state court. Justice Kavanaugh authored the [majority opinion](#), which Chief Justice Roberts and Justices Alito, Gorsuch, and Barrett joined. The majority held that “a separate factual finding of permanent incorrigibility is not required” before a juvenile may be sentenced to life without parole. Rather, a state sentencing scheme that gives the sentencer discretion whether to impose a life without parole sentence for a juvenile homicide offender “is both constitutionally necessary and constitutionally sufficient.” In reaching its conclusion, the majority opinion repeatedly cited *Miller* and *Montgomery*, relying in particular on statements in *Montgomery* that “*Miller* did not impose a formal factfinding requirement” and that “a finding of fact regarding a child’s incorrigibility . . . is not required.”

Each of the separate opinions addressed the question of whether the Court’s decision was consistent with stare decisis, and in particular the 2016 *Montgomery* decision. Justice Thomas [concurred](#) in the judgment but argued that the majority opinion had “[o]verrule[d] *Montgomery* in substance but not in name” by purporting to follow *Montgomery* but holding that “Jones is not entitled to a determination whether he falls within a constitutionally protected category of offenders.” Justice Thomas argued that the Court should instead expressly overrule *Montgomery* because that decision is “irreconcilable with *Miller* . . . and the Constitution” and “demonstrably erroneous.”

Justice Sotomayor, joined by Justices Breyer and Kagan, filed a [dissent](#) arguing that the majority’s decision was inconsistent with the Court’s prior decisions in *Miller* and *Montgomery*. Quoting from those decisions, Justice Sotomayor asserted:

Sentencing discretion is “necessary to separate those juveniles who may be sentenced to life without parole from those who may not,” . . . but it is far from sufficient. A sentencer must actually “make th[e] judgment” that the juvenile in question is one of those rare children for whom [life without parole] is a constitutionally permissible sentence.

The dissent further argued that the majority opinion was inconsistent with the way the Court construed *Miller* in *Montgomery*. Justice Sotomayor objected that “*Montgomery*’s interpretation of *Miller* is binding

precedent, just as *Miller* itself is,” and that the majority provided no justification for any departure from precedent. Notwithstanding those concerns, the dissent asserted that “[f]or present purposes, sentencers should hold this Court to its word: *Miller* and *Montgomery* are still good law.”

While acknowledging the dissenters’ view “that we are unduly narrowing *Miller* and *Montgomery*,” the majority responded that its decision “carefully follows both *Miller* and *Montgomery*” and “does not overrule” those cases, and asserted that “we, by contrast, think that the dissent would unduly broaden those decisions.”

Considerations for Congress

Jones involved a challenge to a state sentencing proceeding, and the Supreme Court’s decision in this case did not articulate any new Eighth Amendment protections. Thus, it is not clear that the Supreme Court’s decision in *Jones* will directly affect the small number of [federal inmates](#) currently serving juvenile life without parole sentences. However, Congress could pass legislation to alter juvenile life without parole sentencing under federal law. (While Supreme Court decisions articulating substantive constitutional rights [bind the states](#) as well as the federal government, Congress [lacks the constitutional authority](#) to alter state criminal law, which is traditionally considered an area of state and local concern.)

Any legislation Congress might enact would be subject to the constitutional limits articulated in *Miller*, *Montgomery*, and any other applicable cases. Thus, Congress could place additional limits on juvenile life without parole sentencing, but could not narrow the scope of Eighth Amendment protections announced by the Supreme Court. For example, Congress could enact legislation requiring federal courts to make certain explicit findings before imposing a juvenile life without parole sentence or otherwise limiting the availability of such sentences under federal law. Congress could also expand resentencing options for federal offenders serving juvenile life without parole sentences. For example, a proposal from the 116th Congress entitled the [Next Step Act of 2019](#) would have allowed courts to reduce the sentence of a federal juvenile offender tried as an adult if the offender had served at least 20 years in prison and the court found that (1) the offender did not pose a safety risk and (2) the interests of justice warranted a sentence modification. Similarly, the [Second Look Act of 2019](#) would have allowed federal inmates sentenced to more than ten years in prison to petition for sentence reductions. The Second Look Act would not have limited such petitions to juvenile offenders, but would have directed courts to consider factors including “the diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, if the defendant was a juvenile at the time of the offense.”

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