

No. 10-9647

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2010

KUNTRELL JACKSON, Petitioner,

v.

STATE OF ARKANSAS, Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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June 13, 2011

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ARGUMENT

As laid out in detail in Kuntrell Jackson's petition, this Court should grant review in this case to address important constitutional questions left open by this Court's decisions in Roper v. Simmons, 543 U.S. 551 (2005), and Graham v. Florida, 130 S. Ct. 2011 (2010), regarding the imposition of a mandatory life-without-parole sentence on a fourteen-year-old child convicted of felony murder.

Arkansas does not contest any of the basic facts underlying Kuntrell's petition, including that Kuntrell was only fourteen-year-olds old at the time of the underlying offense and that he played only a minimal role as an accomplice in that offense. (Pet. Cert. 4–6.) Nor does Arkansas dispute the extreme rarity of these sentences; only seventy-three children Kuntrell's age or younger have been sentenced to life without parole in only eighteen states. (Pet. Cert. 3–4.) Finally, Arkansas does not challenge the fact that there are significant psychosocial, neurological, and legal differences between fourteen-year-olds and older teens and adults. (Pet. Cert. 11–18.)

Petitioner submits only one brief point in response to Respondent's Brief in Opposition, which relies heavily on the state court's decision not to try Kuntrell as a juvenile. This Court has repeatedly rejected the argument that the decision to transfer a child from juvenile court to adult criminal court is relevant to the propriety of imposing extreme sentences on children. This argument was made in Graham, and

this Court found that “the [transfer] provisions the State notes are, nonetheless, by themselves insufficient to address the constitutional concerns at issue.” 130 S. Ct. at 2031.

This Court has made clear that there are a number of other reasons for trying serious juvenile offenders as adults beyond subjecting them to the harshest possible adult punishments:

The length or conditions of confinement available in the juvenile system, for example, might be considered inappropriate for serious crimes or for some recidivists. Similarly, a state legislature might conclude that very dangerous individuals, whatever their age, should not be confined in the same facility with more vulnerable juvenile offenders.

Thompson v. Oklahoma, 487 U.S. 815, 850 (1988) (O’Connor, J. concurring); see also id. at 826 n.24 (Stevens, J. plurality op.) (finding existence of statutes permitting trial as an adult “tells us nothing about the judgment these States have made regarding the appropriate punishment for such youthful offenders.”); see also Graham, 130 S. Ct. at 2025.

None of the considerations cited by Respondent that went into the transfer decision could be considered by the trial judge at the time that he sentenced Kuntrell Jackson to life imprisonment without parole. Even if states may constitutionally decide to try children in adult criminal court, a fourteen-year-old’s young age is still constitutionally relevant to the ultimate sentence that is imposed.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant a writ of certiorari to the Arkansas Supreme Court.

Respectfully submitted,

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