No. 13-1517

In the Supreme Court of the United States

JAMES GOINS,

Petitioner,

v.

ALAN J. LAZAROFF, WARDEN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

An Ohio state court convicted Petitioner James Goins of attempted aggravated murder and ten other felonies. The trial court imposed several consecutive fixed-term sentences totaling 84 years' imprisonment. Goins will have an opportunity to seek early release after he has served 42 years in prison.

The question presented is whether the state-court decision approving Goins's sentences was contrary to or an unreasonable application of clearly established Supreme Court precedent.

PARTIES TO THE PROCEEDING

The Petitioner is James Goins, an inmate at the Mansfield Correctional Institution.

The Respondent is Alan J. Lazaroff, Warden of the Mansfield Correctional Institution. Warden Lazaroff is substituted for Keith Smith. *See* Fed. R. Civ. P. 25(d).

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INTRODUCTION

In 2001, 16-year-old James Goins and an accomplice committed two violent home-invasion robberies. An Ohio jury convicted Goins on 11 felony counts, and the trial court imposed several fixed-term sentences. The court ordered all of the sentences to run consecutively, resulting in 84 total years of imprisonment. The state courts rejected his claim that the Eighth Amendment prohibits his sentences, and the federal courts below did likewise under the deferential standard of 28 U.S.C. § 2254(d)(1). For three principal reasons, no further review is warranted.

First, this case presents a poor vehicle for deciding the question Goins asks this Court to resolve. A recent amendment to Ohio sentencing law offers Goins an opportunity for early release after he has served half of his sentence. At that time, he will be 59 years old. Given the reasonable possibility that he may be released from prison in his lifetime, this case would not resolve the question posed by the Petition: whether *Graham v. Florida*, 560 U.S. 48 (2010), prohibits the imposition of consecutive fixed-term sentences on a juvenile when the aggregate sentence will keep the offender in prison for life.

Second, the decision below correctly determined that the Ohio Court of Appeals neither contradicted nor unreasonably applied this Court's clearly established precedent. By its plain terms, *Graham* applies only to the specific sentence of life imprisonment without the possibility of parole. Its analysis of legislative enactments and state practice likewise considered only life-without-parole sentences. And given that *Graham* gives no guidance to state courts on how to avoid, how to remedy, or even how to identify sentences that are the "practical equivalent" of

life without parole, it did not clearly establish that Goins's sentences are unconstitutional.

Third, this case does not implicate any division among the courts of appeals. Although the Ninth Circuit granted habeas relief to a juvenile serving consecutive fixed-term sentences exceeding 254 years, the prisoner in that case could not seek release until he had served more than 127 years. Because Goins has an opportunity for release after 42 years in prison, this case is materially different than the Ninth Circuit case. No other court of appeals has entertained a similar case.

Accordingly, the Court should deny the petition for a writ of certiorari.

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1-15) is not reported but is available at 556 F. App'x 434. The decision of the district court (Pet. App. 16-32) is not reported but is available at 2012 WL 3023306.

The Supreme Court of Ohio's order denying review on direct appeal is reported at 889 N.E.2d 1027. The opinion of the Ohio Seventh District Court of Appeals is not reported, but is available at 2008 WL 697370.

JURISDICTION

The judgment of the court of appeals was entered on February 18, 2014. On May 7, 2014, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including June 18, 2014, and the petition was filed on that date. The

jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Section 2254(d) of Title 28 of the United States Code, provides, in relevant part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

The Eighth Amendment to the United States Constitution provides that, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

COUNTERSTATEMENT

Following a jury trial in the Court of Common Pleas of Mahoning County, Ohio, James Goins was convicted of multiple felonies. Goins ultimately received seven 10-year felony sentences, one 8-year felony sentence, and two 3-year firearm sentences. The

trial court ordered all of the sentences to be served consecutively, for a total of 84 years' imprisonment. The Ohio courts affirmed his convictions and sentences. The federal district court denied habeas corpus relief, and the court of appeals affirmed.

I. AN OHIO JURY CONVICTED GOINS OF MULTIPLE FELONIES, AND HE WAS SENTENCED TO CONSECUTIVE FIXED-TERM SENTENCES TOTALING 84 YEARS IN PRISON

On January 29, 2001, James Goins and accomplice Chad Barnette engaged in two violent home-invasion robberies. *See State v. Goins*, No. 06-MA-131, 2008 WL 697370 (Ohio Ct. App. Mar. 10, 2008). The first involved William Sovak, an 84-year-old resident of Youngstown. Goins and Barnette attacked Sovak when he was picking up the newspaper outside his home. *Id.* at *1. They pushed him into his home, badly beat him, and shoved him to the ground repeatedly. *Id.* After pushing him down the basement stairs, they dragged his unconscious body into a basement storage room and locked him inside. *Id.* Sovak managed to survive. A family member later discovered him, and Sovak was treated for a punctured lung and several broken bones. *Id.*

Later that day, Goins and Barnette kicked in the door to Louis and Elizabeth Luchisan's home. *Id.* One of the assailants was carrying a sawed-off rifle, and Goins and Barnette told the Luchisans to give them money or else they would shoot. *Id.* One of them smashed a plate over the head of Mr. Luchisan, who was confined to a wheelchair. *Id.* They also struck Mrs. Luchisan with a telephone and threat-

ened to kill her. Goins and Barnette ultimately left with $187, a television, and Mr. Luchisan's car. *Id.*

When a Youngstown police officer later spotted the stolen car, he drew his firearm. *Id.* at *2. The car veered into a tree. *Id.* Goins fled on foot, but was soon apprehended. *Id.*

Because Goins was 16 years old at the time of the crimes, his case began in juvenile court. *Id.* After the court transferred him to adult court for criminal prosecution, a grand jury indicted Goins on one count of attempted aggravated murder, two counts of aggravated burglary, three counts of aggravated robbery, three counts of kidnapping, two counts of felonious assault, and one count of receiving stolen property. *Id.* Goins pleaded not guilty. *Id.* Following a jury trial, he was convicted on all counts except one felonious-assault count. *Id.* at *3. The court initially imposed consecutive fixed-term sentences totaling 85½ years in prison. *Id.*

Goins appealed his convictions and sentences. The Ohio Court of Appeals identified errors in his sentencing not relevant here and modified his prison sentences to total 74 years. *Id.*; *see also State v. Goins*, No. 02 CA 68, 2005 WL 704865 (Ohio Ct. App. Mar. 21, 2005). Both Goins and the State appealed to the Ohio Supreme Court. That court had recently determined that Ohio's sentencing scheme violated the Sixth (and Fourteenth) Amendment, as interpreted by *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *See State v. Foster*, 845 N.E.2d 470 (Ohio 2006). Accordingly, the Ohio Supreme Court remanded Goins's case for resentencing. *See In re Ohio*

Criminal Sentencing Statutes Cases, 847 N.E.2d 1174, 1176 (Ohio 2006).

On August 2, 2006, the trial court resentenced Goins. Some of his counts merged for sentencing, and the court ultimately imposed 10-year sentences for seven of his felonies, an 8-year sentence for his remaining felonious-assault count, and two 3-year sentences for using a firearm in the commission of his crimes against the Luchisans. *Goins*, 2008 WL 697370, at *3. The court ordered all of the sentences to run consecutively, and Goins's sentences added up to 84 years' imprisonment. *Id.*

Goins appealed to the Ohio Court of Appeals, where he argued that his sentences violated the Eighth Amendment because they were "effectively a life sentence without the possibility [o]f parole." *Id.* at *4. The court affirmed his sentences, *id.* at *7, and the Supreme Court of Ohio denied his petition for discretionary review. *State v. Goins*, 889 N.E.2d 1027 (Ohio 2008).

II. THE FEDERAL DISTRICT COURT DENIED GOINS'S HABEAS PETITION, AND THE SIXTH CIRCUIT AFFIRMED

In July 2009, Goins renewed his Eighth Amendment claim in this proceeding under 28 U.S.C. § 2254. Between the Ohio Court of Appeals' decision and the district court's disposition of Goins's habeas petition, two important legal developments occurred. First, this Court decided *Graham v. Florida*, 560 U.S. 48 (2010), which held that "for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without pa-

role." *Id.* at 74. Second, Ohio passed a law that increases the availability of early release for certain prisoners. *See* 2011 Am. Sub. H.B. No. 86 (eff. Sept. 30, 2011). The change will allow Goins to seek release after he has served 42 years of his sentence.

The district court took both of these changes into account when it denied Goins's habeas petition. The court noted that *Graham* postdated the final state-court decision and that it was unsettled whether *Graham* could be considered "clearly established" for purposes of § 2254(d)(1). Pet. App. 27-28 (citing *Greene v. Fisher*, 132 S. Ct. 38, 44 & n.* (2011)). Nevertheless, the district court assumed without deciding that Goins could receive the benefit of *Graham*, because habeas relief was unwarranted in any event. Pet. App. 28. The district court noted that prior Sixth Circuit precedent established that *Graham* applies (in the § 2254(d)(1) context) only to the specific sentence of life imprisonment without the possibility of parole, rather than to consecutive fixed-term sentences that might last the offender's lifetime. Pet. App. 29-30 (citing *Bunch v. Smith*, 685 F.3d 546, 550 (6th Cir. 2012)). *Graham* therefore did not clearly establish that sentences like Goins's violate the Eighth Amendment. *Id.*

The district court also noted the change in Ohio's early-release law. Pet. App. 30-31. In supplemental briefs to the court, the Warden calculated that Goins could apply for early release after 42 years' imprisonment, whereas Goins calculated the time as 45 years. Pet. App. 30. Either way, the district court denied the petition on the ground that "Goins does

not face a sentence on the order of the one imposed in *Graham*." Pet. App. 31.

A panel of the Sixth Circuit unanimously affirmed in an unpublished opinion. *See* Pet. App. 1-15. Like the district court, the court of appeals also assumed without deciding that Goins could benefit from the new rule in *Graham*. *See* Pet. App. 7 n.1. In denying relief, the court articulated two grounds. First, it relied on *Bunch* to hold that "*Graham* did not clearly establish that consecutive, fixed-term sentences for juveniles who commit multiple non-homicide offenses are unconstitutional, even when they amount to the practical equivalent of life without parole." Pet. App. 10 (citing *Bunch*, 685 F.3d at 550). Second, it noted the change in Ohio sentencing law and the fact that Goins will have a "meaningful opportunity" for release within his lifetime. Pet. App. 13. Accordingly, the court denied habeas relief.

REASONS FOR DENYING THE WRIT

Goins renews his contention (Pet. 6-19) that the Ohio Court of Appeals contravened clearly established Eighth Amendment case law when it approved sentencing a juvenile to consecutive fixed-term sentences totaling 84 years for multiple offenses. The Sixth Circuit correctly rejected that contention, and its decision does not conflict with any decision of this Court or another circuit court of appeals. This case would also be an inadequate vehicle for considering the question presented in the Petition. No further review is warranted.

I. THIS CASE IS A POOR VEHICLE FOR CONSIDERING THE QUESTION PRESENTED

Three features of this case would hinder any effort to answer the question Goins asks this Court to resolve. First, the last state-court adjudication on the merits occurred before this Court's decision in *Graham*, and it is therefore not clear that *Graham* can be considered "clearly established" for § 2254(d)(1) purposes. Second, a recent change in Ohio law will offer Goins an opportunity for release after he has served 42 years in prison, which may be within his lifetime. Third, Goins was convicted of attempted aggravated murder, and this Court's precedents do not clearly establish that such a conviction counts as a "nonhomicide offense" under *Graham*.

A. As a threshold matter, Goins's claim is subject to the restrictions of 28 U.S.C. § 2254(d)(1). Although Goins seems to recognize that AEDPA's deferential standard applies (Pet. 8, 16), his Question Presented and some of his analysis speak in terms of independent constitutional analysis, rather than in terms of clearly established Supreme Court precedent. *E.g.*, Pet. i, 6. The Ohio Court of Appeals adjudicated Goins's claim on the merits. *See Goins*, 2008 WL 697370, at *4-6. That means he cannot prevail unless he shows that the adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

Accordingly, that *Graham* postdated the final state-court decision complicates the § 2254(d)(1)

analysis. First, to obtain relief Goins would need to show that *Graham* meets one of the exceptions to the general rule that federal courts may not apply a "new rule" of constitutional law to upset a state judgment on habeas review. *See Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality opinion). Second, he would need to show that *Graham* counts as "clearly established" for AEDPA purposes, even though it postdates the state-court adjudication.

As for *Teague*, the Sixth Circuit correctly observed that the Warden did not dispute below that Goins's claim meets one of the exceptions to *Teague*. *See* Pet. App. 7 n.1. The Warden therefore accepts that proposition for purposes of this case.

As for AEDPA, the Court has not come to rest on whether habeas petitioners may rely on decisions "that came after the last state-court adjudication on the merits, but fell within one of the exceptions recognized in *Teague*." *Greene*, 132 S. Ct. at 44 n.*. If the Court were to grant review, the Warden would argue that Goins cannot benefit from *Graham*, given that "§ 2254(d)(1) requires federal courts to focus on what a state court knew and did, and to measure state-court decisions against this Court's precedents as of the time the state court renders its decision." *Id.* at 44 (internal quotation marks and alterations omitted); *cf. Cullen v. Pinholster*, 131 S. Ct. 1388, 1399 (2011). That unresolved threshold question alone makes this case a bad vehicle for review.

B. This case is also a poor vehicle to review the Question Presented because there is a reasonable possibility that Goins may be released from prison in his lifetime. Ohio law empowers sentencing courts to

reduce some offenders' terms of imprisonment through a procedure called "judicial release." *See* Ohio Rev. Code § 2929.20. After the trial court sentenced Goins, the Ohio General Assembly changed state law to increase the availability of judicial release. *See* 2011 Am. Sub. H.B. No. 86 (eff. Sept. 30, 2011). Goins is eligible to benefit from that change because "on or after April 7, 2009," he will be serving "one or more nonmandatory prison terms." Ohio Rev. Code § 2929.20(A)(1)(a). Although his firearm sentences were mandatory, all of his other sentences were imposed at the discretion of the trial court. *See* Ohio Rev. Code §§ 2929.13(F)(8), 2929.14(B)(1)(a)(ii).

Because Goins's "aggregated nonmandatory prison term or terms is more than ten years," he can move for judicial release on the *later* of two dates: (1) the halfway point of his stated prison term, or (2) five years after he has served all of his mandatory prison terms. Ohio Rev. Code § 2929.20(C)(5). The first date will occur 42 years after his imprisonment began, because he is serving an aggregate sentence of 84 years. The second date will occur 11 years after his imprisonment began, because he has two mandatory prison terms totaling 6 years. Because the halfway point of his stated prison term is the later of the two dates and because he was admitted to prison in March 2002, Goins will be eligible to apply for judicial release in 2044. He will be 59 years old.

Goins asks this Court to answer whether the Eighth Amendment prohibits "an aggregate prison term imposed on a juvenile for nonhomicide offenses that *does not permit release before 100 years of age*." Pet. i (emphasis added). This language does not de-

scribe Goins's sentences, because he may be released at 59 years of age. Given this reality, this case is a poor vehicle for considering Goins's question.

C. Finally, this case is a poor vehicle to consider the question presented because it contains the analytically prior question whether Goins's conviction for attempted aggravated murder counts as a "nonhomicide offense" under *Graham*. At several points, *Graham*'s language and analysis suggest that it does not. For example, *Graham* noted that this Court's earlier cases have "recognized that defendants who do not kill, *intend to kill, or foresee that life will be taken* are categorically less deserving of the most serious forms of punishment than are murderers." 560 U.S. at 69 (emphasis added). If that is the line between homicide and nonhomicide offenses, then Goins falls on the homicide side. Bolstering that view, the Court relied on a study that counted "only 109 juvenile offenders serving sentences of life without parole for nonhomicide offenses." *Id.* at 62-63 (citing P. Annino, D. Rasmussen, & C. Rice, Juvenile Life without Parole for Non–Homicide Offenses: Florida Compared to Nation 2 (Sept. 14, 2009)). The study defined "nonhomicide" *not* to include convictions for attempted murder. *See* Annino at 4. Finally, in evaluating the "global consensus" on the challenged sentence, the Court determined that Israel "does not appear to impose that sentence for nonhomicide crimes," noting that "all of the seven Israeli prisoners whom commentators have identified as serving life sentences for juvenile crimes were convicted of homicide *or attempted homicide*." *Graham*, 560 U.S. at 80-81 (emphasis added).

All of this evidence suggests that Goins's attempted aggravated murder conviction may not be a "nonhomicide offense" under *Graham*. From a legal perspective, it would be hard to say that this Court's precedents clearly establish otherwise. And from a prudential perspective, this difficult question makes this case a bad vehicle for review.

II. THE COURT OF APPEALS' DECISION WAS CORRECT

A. The court of appeals correctly concluded that clearly established Supreme Court precedent does not prohibit Goins's sentences, even counting *Graham* as clearly established. That is true for three primary reasons.

First, *Graham* applies by its terms only to sentences denominated "life without parole." From the decision's opening sentence, the Court narrowly defined the question before it as "whether the Constitution permits a juvenile offender to be sentenced to *life in prison without parole* for a nonhomicide crime." *Graham*, 560 U.S. at 52-53 (emphasis added). The Court articulated its holding this way: "This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids *the* sentence of life without parole." *Id.* at 74 (emphasis added). By using a definite article, the Court indicated that it was describing the specific sentence of life without parole. Over and over again, the decision reinforced this narrow scope. *See, e.g.*, *id.* at 63 ("The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense."); *id.* at 82 ("The Constitution prohibits the imposition of a life with-

out parole sentence on a juvenile offender who did not commit homicide."). This single-minded focus shows that *Graham* dealt with only the specific sentence of life imprisonment without parole.

There is good reason to take the Court at its word that *Graham* was limited. Perhaps presaging claims like Goins's, the Court admitted that "[c]ategorical rules tend to be imperfect," *id.* at 75, yet nevertheless chose to draw one. When Justice Alito asserted that "[n]othing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole," *id.* at 124 (Alito, J., dissenting), the majority chose not to rebut him. And two years later, the Court characterized *Graham* as having "*held* . . . that *life without parole* violates the Eighth Amendment when imposed on juvenile nonhomicide offenders." *Miller v. Alabama*, 132 S. Ct. 2455, 2461 (2012) (emphasis added). All of this underscores that *Graham*'s rule regarding life-without-parole sentences was clear and categorical.

Second, this focus on life-without-parole sentences was also central to the Court's reasoning. *Graham* involved a categorical challenge to a class of punishments. In cases involving that sort of challenge, the Court looks to "objective indicia of society's standards, as expressed in legislative enactments and state practice" to help answer whether a sentencing practice is cruel and unusual. *Roper v. Simmons*, 543 U.S. 551, 563 (2005). When *Graham* counted States that permitted and imposed the challenged sentence, it included only the specific sentence of life without parole. *Graham*, 560 U.S. at 62-63; *see also id.* Appendix Part I. Notably for this

case, the Court did not even count Ohio among the 11 States that imposed *Graham* sentences. *Id.* at 64. The Court's analysis therefore did not include prisoners like Goins, serving consecutive fixed-term sentences.

Third, the difference between life-without-parole sentences and consecutive fixed-term sentences is not merely a matter of nomenclature. The sentences differ in ways that materially affect the constitutional analysis. In fact, Goins's proposed standard would present administrability problems at the beginning, middle, and end of juveniles' sentences.

At the front end, judges would struggle to avoid sentences that fail Goins's proposed standard. State courts can readily identify a life-without-parole sentence, but they face a daunting task in trying to recognize when consecutive fixed-term sentences add up to the "practical equivalent of life without parole." Pet. 7. Knowing whether such sentences meet the latter standard requires state courts to hit a moving target. Start with determining the offender's life expectancy. That actuarial calculus involves race, sex, medical history, and other variables. Add to that the possibility that imprisonment may decrease life expectancy and that future medical advances may increase it. Even if a state court could make an educated guess on all of that, it would still need to determine what length sentence would allow a "meaningful opportunity to obtain release." *Graham*, 560 U.S. at 75. Furthermore, Goins does not explain where *Graham* identifies what aspect of his sentences violates the Eighth Amendment. Would the analysis change if, instead of receiving consecutive fixed-

term sentences adding up to 84 years, Goins received a single sentence of 84 years? Or if he received the same 10 sentences, but they ran concurrently? Or if he committed the same string of crimes on separate days instead of the same day? That litany of questions is not answered by *Graham*, proving that it did not clearly establish that sentences like Goins's are unconstitutional.

In the middle, state courts under Goins's standard would find no guidance when trying to impose additional sentence on a juvenile who committed additional crimes in prison. Suppose a juvenile has been sentenced to a long prison term that nevertheless passes Goins's proposed standard. Now imagine that, while still a juvenile, the prisoner commits further crimes in prison. *Graham* offers not one word of help to a state court trying to sentence the prisoner for these offenses. Adding to his sentence may run afoul of Goins's reading of the Eighth Amendment. But failing to add to his sentence would frustrate the State's reasonable effort to impose additional punishment for additional crimes. The same would be true for a juvenile who commits crimes in multiple jurisdictions, each of which wishes to impose punishment. Given that it is not "so obvious" that *Graham*'s narrow, categorical rule "applies to [this] set of facts that there could be no 'fairminded disagreement' on the question," *White v. Woodall*, No. 12-794, slip op. at 11 (U.S. Apr. 23, 2014), Goins cannot obtain relief.

At the back end, judges trying to remedy sentences that fail Goins's standard also would find no guidance in *Graham*. Terrance Graham had received a

life-without-parole sentence for a single charge. *Graham*, 560 U.S. at 57. The remedy for the constitutional violation in his case therefore was clear—vacating that single sentence and resentencing. But Goins's case is different. He received seven 10-year sentences for various felonies, one 8-year sentence for felonious assault, and two 3-year sentences for his use of a firearm. *Goins*, 2008 WL 697370, at *3. The fact that Goins was sentenced for several crimes instead of a single crime, added to the fact that he did not receive the specific sentence challenged in *Graham*, leaves him twice removed from the holding in that case. "Given the lack of holdings from this Court regarding" how state courts should analyze or remedy Goins's sentences, "it cannot be said that the state court" contradicted or unreasonably applied clearly established law. *Carey v. Musladin*, 549 U.S. 70, 77 (2006).

Nor is it clearly established that courts should treat consecutive fixed-term sentences as equivalent to life-without-parole sentences. Indeed, the Court has already concluded that this proposition is *not* clearly established. In *Lockyer v. Andrade*, 538 U.S. 63 (2003), a California prisoner who was 37 years old when sentenced sought habeas relief from his two consecutive prison terms of 25 years to life. *Id.* at 70; *see id.* at 79 (Souter, J., dissenting) (noting Andrade's age). The prisoner pressed, and the dissent agreed, that his sentence was the "practical equivalen[t]" of a life-without-parole sentence. *Id.* at 79 (Souter, J., dissenting). But the Court rejected the argument, concluding that a state-court decision treating such sentences differently "was not contrary to, or an unreasonable application of, our clearly established

law." *Id.* at 74 n.1 (opinion of the Court). *Lockyer* shows that it was not clearly established before *Graham* that courts should treat consecutive fixed-term sentences as equivalent to life-without-parole sentences, and nothing in *Graham* changes that.

AEDPA's requirement that a rule must be "clearly established" before it can be the basis for habeas relief is premised on the idea that state-court judgments should not be upset unless they run afoul of this Court's concrete guidance. Given that nothing in *Graham*'s categorical framing, its narrow analysis, or its expected consequences gives state courts any direction for how to treat consecutive fixed-term sentences, *Graham* does not clearly establish that Goins's sentences violate the Eighth Amendment. At a minimum, the Ohio Court of Appeals did not contradict or unreasonably apply *Graham* in concluding otherwise. Because Goins did not receive the specific sentence of life-without-parole—and because he has an opportunity for release at age 59—the Sixth Circuit properly denied habeas relief.

B. For his part, Goins makes much of the fact that it was the "expressed intention of the trial court judge" that he spend the rest of his life in prison. Pet. 8; *see* Pet. 8-10, 13-17. This argument contains two flaws: one factual, one legal. On the facts, Ohio's system of judicial release creates a reasonable possibility that Goins may not spend the rest of his life in prison. On the law, the Court has never held that a sentencing judge's subjective intent is relevant to the Eighth Amendment analysis. Because Goins cannot point to precedent clearly establishing that

comments like these make a constitutional difference, he cannot rely on them to obtain relief.

Goins also cannot expand *Graham*'s scope by pointing to its discussion of the characteristics of juveniles and the purposes of punishment. *See* 560 U.S. at 67-75. In his view (Pet. 12-13, 15-18), some of *Graham*'s statements about juvenile culpability and the penological justifications of life-without-parole sentences apply with equal force to juveniles sentenced to consecutive fixed-term sentences. To be sure, *Graham* occasionally uses expansive language. But even in direct-review cases this Court has warned against reading broad language in isolation. Take, for example, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), where the Court held that the Constitution prohibits the death penalty for the rape of a child. *Id.* at 421. Decades earlier, the Court had held that the Eighth Amendment prohibits capital sentences for the rape of an adult. *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (plurality opinion). Although some passages from that decision were "susceptible of a reading that would prohibit making child rape a capital offense," reading those passages "[i]n context" showed that "*Coker*'s holding was narrower than some of its language read in isolation." *Kennedy*, 554 U.S. at 428. That applies with even greater force in an AEDPA case like this, where a prisoner must establish his right to habeas relief with reference to the Court's holdings, not its dicta. *See Williams v. Taylor*, 529 U.S. 362, 412 (2000).

III. THIS CASE DOES NOT IMPLICATE ANY DISAGREEMENT AMONG THE COURTS OF APPEALS

Goins incorrectly contends (Pet. 3, 6-8) that the decision in this case conflicts with a decision of the Ninth Circuit. *See Moore v. Biter*, 725 F.3d 1184 (9th Cir. 2013). In *Moore*, the Ninth Circuit granted relief under § 2254(d)(1) to a juvenile who received consecutive fixed-term sentences exceeding 254 years' imprisonment for multiple nonhomicide convictions arising out of four sexual assaults over a five-week period. Moore could first seek parole after serving 127 years and 2 months of his sentence. *Id.* at 1186-87. The Ninth Circuit held that Moore's sentence was "materially indistinguishable" from that in *Graham*. *Id.* at 1186. The court rejected the argument that *Graham* clearly established a rule only for sentences denominated "life without parole." *Id.* at 1192. Instead, it held that *Graham* prohibited sentencing a juvenile to any sentence that denies a "meaningful opportunity" for release within the offender's lifetime. *Id.* at 1194; *see id.* at 1191-92. It therefore granted habeas relief.

That decision does not conflict with the decision below, because Goins has a meaningful opportunity for release within his lifetime. As noted above, he will be eligible to apply for judicial release when he is 59 years old. In light of that fact, Goins cannot establish that his case would have come out differently in the Ninth Circuit (or any other court of appeals). Although the Ninth Circuit granted habeas relief when faced with sentences totaling 254 years with an opportunity for release after 127 years, nothing in

that court's opinion makes clear that it would have done the same if faced with sentences totaling 84 years with an opportunity for release after 42 years. The best evidence of that is the Ninth Circuit's opinion itself. The opinion disclaimed any conflict with the Sixth Circuit's decision in *Bunch*, describing the sentence in that case as "an 89–year aggregate sentence that provided for some possibility of parole." *Moore*, 725 F.3d at 1194 n.6. The court seems to have been referring to the possibility that Bunch was eligible to apply for early release at age 95. *See Bunch*, 685 F.3d at 551 n.1. If the Ninth Circuit would not have granted relief to a juvenile whose first opportunity to apply for release will be at age 95, then it surely would not have granted relief in this case. In short, even if the Sixth and Ninth Circuits might come to differing conclusions in some cases, this is not one of them.

Goins also brings three other cases (Pet. 7-8, 10-11) to the Court's attention. *See United States v. Walton*, 537 F. App'x 430 (5th Cir. 2013) (per curiam); *Thomas v. Pennsylvania*, Civ. No. 10-4537, 2012 WL 6678686 (E.D. Pa. Dec. 21, 2012); *California v. Mendez*, 188 Cal. App. 4th 47 (Cal. Ct. App. 2010). Goins does not expressly allege that they conflict with the decision below, and that is for good reason. None of the cases establishes a conflict worthy of this Court's attention. First, *Walton* arose on direct review (and plain-error review), not under AEDPA, and therefore cannot establish a conflict with the decision below. 537 F. App'x at 432, 436-37. *Walton* also does not state the law of the Fifth Circuit because the court did not designate the opinion for publication. *See id.* at 431 n.*. What is more, the

Fifth Circuit *denied* relief, so its decision cannot conflict with the decision below. If anything, the Fifth Circuit's decision on direct review hurts rather than helps Goins's argument for certiorari, because *Walton* would have come out differently if the error claimed in that case had been clearly established by this Court's precedents. *See Musladin*, 549 U.S. at 76 (When "lower courts have diverged widely in their treatment of" a constitutional claim, that "[r]eflect[s] the lack of guidance from this Court" and the absence of clearly established law.).

Second, as a district court decision, *Thomas* cannot establish a conflict worthy of review. District court decisions do not create binding precedent, even upon the same judge in later cases, *see Camreta v. Greene*, 131 S. Ct. 2020, 2033 n.7 (2011), and Goins identifies no court of appeals decision that transforms *Thomas* into circuit law.

Third, *Mendez* also does not establish a split, because it arose on direct review. Unburdened by AEDPA's restrictions, the court in *Mendez* was simply engaged in a different analysis than the court below.

CONCLUSION

For these reasons, the Court should deny the petition for certiorari.

Respectfully submitted,

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