

IN THE
Supreme Court of the United States

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

ADDOLFO DAVIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

REPLY BRIEF

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ARGUMENT

In its petition, the State of Illinois demonstrated that both the state high courts and the lower federal courts are deeply divided over whether *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), announced a new substantive rule which applies retroactively to a conviction that was final before *Miller* was decided and that as a result, a definitive answer from this Court on this important question is necessary. In his Brief in Opposition, respondent acknowledges the split among the lower courts, but claims that this Court lacks jurisdiction to review the issue in this case because the Illinois Supreme Court reached its conclusion that *Miller* is a substantive rule and therefore retroactively applicable as a matter of “independent” state law. (Br. Opp. at 1, 6) Specifically, respondent suggests that because this case involves “a state supreme court’s grant of relief pursuant to a state post-conviction statute to a prisoner convicted under state law” (Br. Opp. at 4), it does not raise a substantial question of federal law for this Court to review and that this Court therefore does not have jurisdiction. Respondent is mistaken.

Under the Illinois Post Conviction Hearing Act, the Illinois Supreme Court could grant respondent relief only if it found that “in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights *under the Constitution of the United States* or of the State of Illinois or both.” 725 ILCS 5/122-1(a)(1) (emphasis added). But the Illinois Supreme Court expressly rejected respondent’s challenge to his sentence under the Illinois Constitution. (App. 23a) Thus, it is clear that the court’s ruling was solely on federal constitutional grounds.

Moreover, respondent fails to acknowledge that the decision below was explicitly based upon the state court's interpretation of the eighth amendment. (App. 22a (“*Miller* holds that a mandatory life sentence for a juvenile violates the eighth amendment . . . [t]herefore, [respondent’s] sentence is invalid”). Thus, despite the Illinois Supreme Court’s declaration that its “analysis [was] independent as a matter of Illinois law” (App. 21a), it is clear that the court “decided the case the way it did because it believed that federal law required it to do so.” *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). More specifically, the Illinois Supreme Court held that when this Court decided *Miller*, it announced a substantive rule of constitutional law that automatically has substantive effect. Cf. *Schriro v. Summerlin*, 542 U.S. 348, 351-52 & n.4 (2004). As a result, the retroactivity question is a federal one that is properly before this Court. *Long*, 463 U.S. at 1040 (holding that the Court may review a State court decision whenever the ruling “fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion”). See also *Arkansas v. Sullivan*, 532 U.S. 769, 772 (2001) (holding that while a State court “‘is free as a matter of its own law to impose greater restrictions . . . than those this Court holds to be necessary upon federal constitutional standards,’ it ‘may not impose such greater restrictions as a matter of *federal constitutional* law when this Court specifically refrains from imposing them’”) (quoting *Oregon v. Hass*, 420 U.S. 714, 719 (1975) (emphasis in original)).

A similar analysis applies to the Illinois Supreme Court’s reliance on *Teague v. Lane*, 489 U.S. 288 (1989)

(plurality op.), and its progeny in this case. The Illinois Supreme Court long ago adopted the federal *Teague* analysis for determining whether a particular state or federal constitutional rule should apply retroactively. *People v. Flowers*, 561 N.E.2d 674, 682-83 (Ill. 1990)); *see also, e.g.*, App. 16a-22a; *People v. Morris*, 925 N.E.2d 1069, 1077-83 (Ill. 2010); *Lucien v. Briley*, 821 N.E.2d 1148, 1150-53 (Ill. 2004); *People v. De La Paz*, 791 N.E.2d 489, 494-97 (Ill. 2003). In other words, rather than developing state law independently, Illinois follows *Teague* and its progeny, making such state law so “interwoven with the federal law” (*Long*, 463 U.S. at 1040), that federal jurisdiction attaches.

Respondent relies primarily on *Danforth v. Minnesota*, 552 U.S. 264 (2008), in his attempt to characterize the question here as one of state, not federal, law. (Br. Opp. at 4-6) But *Danforth*’s reasoning actually supports the opposite conclusion. In *Danforth*, this Court explained that while a state “may grant its citizens broader protection than the Federal Constitution requires by enacting appropriate legislation or by judicial interpretation of its own Constitution, . . . it may not do so by judicial misconstruction of the [federal] law.” *Id.* at 288 (citing *Hass, Tarble’s Case*, 80 U.S. 397 (1872), and *Ableman v. Booth*, 62 U.S. 506 (1859)). *Danforth* further explained:

But the States that give broader retroactive effect to this Court’s new rules of criminal procedure do not do so by misconstruing the federal *Teague* standard. Rather, they have developed *state* law to govern retroactivity in state postconviction proceedings. *See, e.g., State v. Whitfield*, 107 S.W.3d 253, 268 (Mo. 2003)

(“[A]s a matter of state law, this Court chooses not to adopt the *Teague* analysis . . .”).

Id. at 288-89 (emphasis in original).

The very situation that *Danforth* warned against is present here. Rather than developing state law doctrines to evaluate questions of retroactivity in Illinois postconviction proceedings, the Illinois Supreme Court expressly has adopted, and regularly has applied, *Teague* and its progeny. Thus, despite the Illinois Supreme Court’s bare assertion in this case that its “analysis is independent as a matter of Illinois law” (App. 21a), there is simply no independent state law doctrine to support the Illinois Supreme Court’s holding that *Miller* announced a new substantive rule under the Eighth Amendment.

Moreover, as the State of Illinois explained in its petition for certiorari, in applying *Miller* retroactively here, the Illinois Supreme Court misconstrued federal law. *Cf. Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 100 (1983) (“Whatever freedom state courts may enjoy to limit the retroactive operation of their own interpretations of state law cannot extend to their interpretations of federal law.”) (citation omitted); *Sullivan*, 532 U.S. at 772 (state court cannot interpret federal constitutional provision more restrictively than this Court); *Hass*, 420 U.S. at 719-20 & n.4 (same). Thus, this Court’s significant interest in the uniform application of federal law compels review—especially where, as with the question of *Miller*’s retroactivity, a deep split exists. *Cf. Danforth*, 552 U.S. at 280-81.

As it is clear that no adequate and independent state ground exists for the Illinois Supreme Court's ruling in this case, the State of Illinois has properly invoked this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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