

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 ILLINOIS SUPREME COURT

BRIEF IN OPPOSITION

PATRICIA SOUNG
Counsel of Record
CENTER FOR JUVENILE LAW
AND POLICY
LOYOLA LAW SCHOOL
919 Albany Street
Los Angeles, CA 91105
(213) 726-1000
soun gp@lls.edu

RACHEL STEINBACK
RUTH Z. BROWN
LOEVY & LOEVY
312 N. May Street, Suite 100
Chicago, IL 60607
(312) 243-5900

Attorneys for Respondent



QUESTION PRESENTED

The petition for a writ of certiorari fails to present an important federal question over which this Court has jurisdiction.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iii
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE.....	1
I. Addolfo Davis Receives a Mandatory Sentence of Juvenile Life Without Parole	1
II. The Illinois Supreme Court Deems <i>Miller v.</i> <i>Alabama</i> Retroactive Under Illinois Law and Grants Addolfo a Re-sentencing Hearing.....	2
REASONS FOR DENYING THE PETITION.....	4
I. This Court Lacks Jurisdiction to Review the Issue of State Law Presented By the Petition	4
II. Nonuniformity Among State Court Decisions Does Not Compel Intervention	6
CONCLUSION.....	8

TABLE OF CITED AUTHORITIES

Cases

<i>Cunningham v. Pennsylvania</i> , No. 13-1038, cert denied June 9, 2014	7
<i>Danforth v. Minnesota</i> , 552 U.S. 264 (2008).....	<i>passim</i>
<i>Diatchenko v. District Attorney for the Suffolk District</i> , 1 N.E.3d 270 (Mass. 2013)	6-7
<i>Ex parte Maxwell</i> , 424 S.W.3d 66 (Tex. Crim. App. 2014).....	7
<i>Johnson v. New Jersey</i> , 384 U.S. 719 (1966).....	5
<i>Jones v. State</i> , 122 So.3d 698 (Miss. 2013)	7
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983).....	4, 6
<i>Miller v. Alabama</i> , 567 U.S. ___, 132 S. Ct. 2445 (2012).....	<i>passim</i>
<i>Nebraska v. Mantich</i> , No. 13-1348, cert denied October 6, 2014.....	7
<i>People v. Clemons</i> , 2012 IL 107821 (Ill. 2012).....	5
<i>People v. Davis</i> , --- N.E.3d ---, 2014 IL 115595 (Ill. 2014)	<i>passim</i>
<i>People v. Davis</i> , 2012 IL App (1st) 112577-U	3, 8

<i>People v. Davis</i> , 388 Ill. App. 3d 869 (Ill. App. Ct. 2009)	2
<i>People v. Johnson</i> , 2013 IL App (5th) 110112	3, 8
<i>People v. Luciano</i> , 2013 IL App (2d) 110792	3, 8
<i>People v. Morfin</i> , 2012 IL App (1st) 103568.....	3, 8
<i>People v. Sharpe</i> , 839 N.E.2d 492 (Ill. 2005)	5
<i>People v. Williams</i> , 2012 IL App (1st) 111145.....	3, 8
<i>Schriro v. Summerlin</i> , 542 U.S. 348 (2004).....	3
<i>State v. Mantich</i> , 842 N.W.2d 716 (Neb. 2014).....	7
<i>State v. Mares</i> , 2014 WL 5034628 (Wyo. 2014).....	7
<i>State v. Ragland</i> , 836 N.W.2d 107 (Iowa 2013)	6
<i>Tate v. Louisiana</i> , No. 13-8915, <i>cert denied</i> , May 27, 2014	7
<i>Teague v. Lane</i> , 489 U.S. 288 (1989).....	3, 4, 5, 6
<i>Witman v. Pennsylvania</i> , No. 13-1264, <i>cert denied</i> June 23, 2014	7
Other Authorities	
730 ILCS 5/5-8-1(a)(1)(c)(ii).....	1

JURISDICTIONAL STATEMENT

States have broad authority to grant post-conviction relief to those in their custody to redress violations of federal constitutional law. *Danforth v. Minnesota*, 552 U.S. 264, 278-82 (2008). Exercising this authority, the Illinois Supreme Court applied this Court’s ruling in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2445 (2012), retroactively to Addolfo Davis’s case, vacating the mandatory life sentence imposed on him for a crime committed at the age of fourteen. *People v. Davis*, --- N.E.3d ---, 2014 IL 115595 (Ill. 2014). In so doing, the Illinois Supreme Court undertook an analysis that looked to federal guidance but was ultimately – and explicitly – “independent as a matter of Illinois law.” *Id.* at ¶40. As set forth in more detail below, this Court therefore has no jurisdiction to review the Illinois high court’s decision.

STATEMENT OF THE CASE

I. Addolfo Davis Receives a Mandatory Sentence of Juvenile Life Without Parole.

In 1993, Addolfo Davis was tried as an adult and sentenced to die in prison for his participation in a crime committed shortly after his fourteenth birthday. *See People v. Davis*, --- N.E.3d ---, 2014 IL 115595, at ¶5 (Ill. 2014). Under the sentencing scheme in effect at the time, the trial court lacked discretion to impose any sentence other than life imprisonment without the possibility of parole. *See id.*; 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1992). Accordingly, the trial court could not, and did not, consider any mitigating factors at sentencing – neither Addolfo’s youth, nor his difficult background, nor his potential for rehabilitation, nor his lesser role in the offense.

Addolfo had been accused, along with two older

teens, of fatally shooting two people at an apartment on the South Side of Chicago. *People v. Davis*, 388 Ill. App. 3d 869, 871-72 (Ill. App. Ct. 2009). At trial, two witnesses testified that Addolfo had stood by the doorway of the apartment while his co-defendants forced their way into the living room where the shooting took place. *Id.* at 872. A third prosecution witness testified that all three defendants had fired weapons, but conceded that he dove immediately behind a couch when he heard gunfire. *Id.* That witness also gave a description of the gunmen that did not match Addolfo. *See* Trial Tr. March 3, 1993, I-229-30. Ultimately, neither testimony nor forensic evidence established that Addolfo had injured or shot anyone.

During its deliberations, the jury sent a note querying whether it was required to find Addolfo guilty if he was “legally responsible for the conduct of another who [pulled the trigger of the murder weapon]” or whether the State instead had to prove that Addolfo had himself pulled the trigger. *Davis*, 388 Ill. App. 3d at 873. The court responded “yes” to the first question and “no” to the second, and on March 8, 1993, Addolfo was convicted of first-degree murder, attempted first-degree murder, and home invasion.¹ *Id.*

II. The Illinois Supreme Court Deems *Miller v. Alabama* Retroactive Under Illinois Law and Grants Addolfo a Re-sentencing Hearing.

Addolfo litigated the constitutionality of his sentence for more than two decades. After this Court

¹ In addition to receiving a sentence of mandatory juvenile life without parole for the first-degree murder convictions, Addolfo was sentenced to 30 years for attempted murder and 30 years for home invasion, to be served concurrently. *Davis*, 2014 IL 115595, at ¶5.

recognized in *Miller* that the Eighth Amendment prohibits the mandatory imposition of life imprisonment for crimes committed as a juvenile, 132 S. Ct. at 2460, the Illinois Supreme Court held unanimously that *Miller* should be given retroactive effect in Addolfo's case and granted him a resentencing hearing. *See Davis*, 2014 IL 115595, at ¶43. In so holding, the Illinois Supreme Court adopted the views of five unanimous panels of the Illinois Appellate Court, reflecting the opinions of twenty-two state judges, that *Miller* applies retroactively in state post-conviction proceedings. *See People v. Davis*, 2012 IL App (1st) 112577-U; *People v. Williams*, 2012 IL App (1st) 111145; *People v. Morfin*, 2012 IL App (1st) 103568; *People v. Luciano*, 2013 IL App (2d) 110792; *People v. Johnson*, 2013 IL App (5th) 110112.

For guidance in its decision, the Illinois Supreme Court looked to the federal retroactivity analysis applicable to federal habeas corpus proceedings – barring retroactive application of a new constitutional rule unless it is a “substantive rule” or a “watershed rule of criminal procedure.” *See Davis*, 2014 IL 115595, at ¶¶35-37 (citing *Teague v. Lane*, 489 U.S. 288, 311-13 (1989) (plurality opinion); *Schiro v. Summerlin*, 542 U.S. 348, 351-52 (2004)). The court took pains to explain, however, that *Teague* in no way restricted its ability to grant Addolfo relief. *See Davis*, 2014 IL 115595, at ¶35 n.2 (explaining that “*Teague* . . . cannot be read as imposing a binding obligation on state courts” and ““was meant to apply only to federal courts considering habeas corpus petitions challenging state-court criminal convictions.””).

Ultimately, the Illinois Supreme Court reasoned that *Miller* announces a substantive rule that “mandates a sentencing range broader than that provided by statute for minors convicted of first degree murder who could otherwise receive only natural life imprisonment.” *Id.* at ¶56, quoting *People v. Morfin*, 2012 IL App (1st) 103568.

Put differently, the court reasoned that *Miller* is a substantive rule because it “places a particular class of persons covered by the statute—juveniles—constitutionally beyond the State’s power to punish with a particular category of punishment—mandatory sentences of natural life without parole.” *Id.* at ¶39. The Illinois high court also made clear that its decision was “independent as a matter of Illinois law.” *Id.* at ¶40.

REASONS FOR DENYING THE PETITION

I. This Court Lacks Jurisdiction to Review the Issue of State Law Presented By the Petition.

Out of “[r]espect for the independence of state courts,” the United States Supreme Court’s jurisdiction is strictly limited to review of federal questions. *See Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983). Disregarding this foundational principle, Petitioner asks this Court to review a state supreme court’s grant of relief pursuant to a state post-conviction statute to a prisoner convicted under state law. In support, Petitioner contends that in granting Addolfo relief, the Illinois Supreme Court misapplied the federal retroactivity analysis in *Teague*.

Petitioner is mistaken. The Illinois Supreme Court’s exercise of its own authority to retroactively apply newly-recognized constitutional rules to its own state’s criminal convictions implicates neither *Teague* nor the concerns of comity and federalism underpinning that decision. *See Danforth*, 552 U.S. at 278-82. The analysis in *Teague* sets forth “a standard limiting only the scope of federal habeas relief” and “does not in any way limit the authority of a state court” to grant relief to state prisoners in state post-conviction proceedings. *Id.* at 281, 282. Indeed, the *Teague* standard was specifically “fashioned to . . . minimize[e] federal intrusion into state criminal proceedings” in light of

“[f]ederalism and comity considerations . . . unique to federal habeas review” that are not implicated in state post-conviction proceedings. *Id.* at 280-81; *see also Teague*, 489 U.S. at 309-10. Notwithstanding *Teague*, state courts are “free to choose the degree of retroactivity or prospectivity which [they] believe appropriate to the particular rule under consideration, so long as [they] give federal constitutional rights at least as broad a scope as the United States Supreme Court requires.” *Danforth*, 552 U.S. at 276 (quotation omitted); *Johnson v. New Jersey*, 384 U.S. 719, 733 (1966).² The Illinois high court’s exercise of its authority to grant Addolfo state post-conviction relief pursuant to *Miller* was well within its purview, and the case therefore presents no federal question for this Court’s review.

Petitioner suggests that this Court has jurisdiction to review the Illinois Supreme Court’s decision because the court “expressly employ[ed] . . . the *Teague* non-retroactivity doctrine.” Pet. at 10. This Court, however, distinguishes in its jurisdictional analysis between decisions in which “the state court decided the case the way it did because it believed that federal law required it to do so” and those in which it chose “merely to rely on federal

² Although Illinois’s proportionate penalties clause has traditionally been read as coextensive with the cruel and unusual punishment clause, *see People v. Sharpe*, 839 N.E.2d 492, 514 (Ill. 2005), the Illinois Supreme Court has recently recognized that Illinois’s constitutional protections are broader than those afforded by the Eighth Amendment. *People v. Clemons*, 2012 IL 107821, at ¶40 (Ill. 2012) (“[W]hat is clear is that the limitation on penalties set forth in the second clause of article I, section 11, which focuses on the objective of rehabilitation, went beyond the framers’ understanding of the eighth amendment and is not synonymous with that provision”).

precedents as it would on the precedents of all other jurisdictions.” *Long*, 463 U.S. at 1041. In such a case, the state court “need only make clear by a plain statement . . . that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.” *Id.*

The Illinois Supreme Court’s decision falls squarely in the latter category. In the decision under review, the high court unequivocally issued the plain statement called for in *Long*, stating: “[O]ur analysis is independent as a matter of Illinois law.” *Davis*, 2014 IL 115595, at ¶40. The court also made clear its understanding that *Teague*’s federal retroactivity analysis did not restrict its ability to grant Addolfo relief. *See Davis*, 2014 IL 115595, at ¶35 n.2 (explaining in reliance on *Danforth* that “*Teague* . . . cannot be read as imposing a binding obligation on state courts” and “was meant to apply only to federal courts considering habeas corpus petitions challenging state-court criminal convictions.”). The mere fact that the Illinois Supreme Court contemplated *Teague* in its retroactivity analysis does not confer jurisdiction upon this Court, and the Illinois Supreme Court’s explicit statement that its analysis was independent divests this Court of the same.

II. Nonuniformity Among State Court Decisions Does Not Compel Intervention.

There is no merit to Petitioner’s contention that “[a] definitive answer from this Court . . . is necessary” in light of divergence by state courts in deciding whether to apply *Miller* retroactively to their own states’ convictions. Pet. at 9. First, the overwhelming majority of states to have considered the issue have agreed with Illinois that *Miller* should be given retroactive effect. *See State v. Ragland*, 836 N.W.2d 107, 115 (Iowa 2013); *Diatchenko v. District Attorney for the Suffolk District*, 1 N.E.3d 270, 281 (Mass.

2013); *Jones v. State*, 122 So.3d 698, 702 (Miss. 2013); *State v. Mantich*, 842 N.W.2d 716, 731 (Neb. 2014); *Ex parte Maxwell*, 424 S.W.3d 66 (Tex. Crim. App. 2014); *State v. Mares*, 2014 WL 5034628 (Wyo. 2014).

More importantly, however, any differences among states in granting post-conviction relief pursuant to *Miller* are a natural consequence of their sovereignty and not a cause for intervention from this Court. As this Court made clear in *Danforth*:

[The] interest in uniformity . . . does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees. The fundamental interest in federalism that allows individual States to define crimes, punishments, rules of evidence, and rules of criminal and civil procedure in a variety of different ways—so long as they do not violate the Federal Constitution—is not otherwise limited by any general, undefined federal interest in uniformity. . . . Nonuniformity is, in fact, an unavoidable reality in a federalist system of government.

Danforth, 552 U.S. at 280. Notwithstanding the non-uniformity among states in determining whether *Miller* should be applied retroactively, this Court has denied certiorari in each petition raising the question. See *Nebraska v. Mantich*, No. 13-1348, cert denied October 6, 2014; *Witman v. Pennsylvania*, No. 13-1264, cert denied June 23, 2014; *Cunningham v. Pennsylvania*, No. 13-1038, cert denied June 9, 2014; *Tate v. Louisiana*, No. 13-8915, cert denied May 27, 2014.

Certainly within Illinois, state courts are not divided: six reviewing courts have been unequivocal, unanimous,

and uniform in requiring resentencing hearings for all those in state custody who were sentenced in violation of *Miller*. See *People v. Davis*, --- N.E.3d ---, 2014 IL 115595 (Ill. 2014); *People v. Davis*, 2012 IL App (1st) 112577-U; *People v. Williams*, 2012 IL App (1st) 111145; *People v. Morfin*, 2012 IL App (1st) 103568; *People v. Luciano*, 2013 IL App (2d) 110792; *People v. Johnson*, 2013 IL App (5th) 110112. The Illinois Supreme Court's decision to provide a post-conviction remedy to children sentenced to mandatory life imprisonment in Illinois was within the state court's authority and outside this Court's jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

PATRICIA SOUNG
Counsel of Record
 Center for Juvenile Law
 and Policy
 Loyola Law School
 919 Albany Street
 Los Angeles, CA 91105
 (213) 726-1000
 soundp@lls.edu

RACHEL STEINBACK
 RUTH Z. BROWN
 Loevy & Loevy
 312 N. May Street
 Suite 100
 Chicago, IL 60607
 (312) 243-5900

OCTOBER 2014