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QUESTIONS PRESENTED

1. Does a sentence of life without possibility of parole violate the Eighth and Fourteenth Amendments when imposed on a seventeen year old who did not personally kill the homicide victim, did not personally engage in any act of physical violence toward the victim, and was not shown to have anticipated or intended anyone be killed? The essentially identical question is pending before this Court in *Jackson v. Hobbs* (No. 10-9647) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011).

2. Does imposition of a life without parole sentence on a seventeen year old convicted of homicide violate the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishments, when the extreme rarity of such sentences in practice reflects a national consensus regarding the reduced criminal culpability of young children? This question is pending before this court in *Miller v. Alabama* (No. 10-9646) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011) and *Jackson v. Hobbs* (No. 10-9647) *cert. grd.*, ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011).

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the California Court of Appeal included

the State of California and petitioner Michael Mauricio. There are no parties to the proceedings other than those named in the petition.

INTRODUCTION

Petitioner, Michael Mauricio, respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the California Court of Appeal, filed on November 28, 2011. Petitioner asks this Court to consider holding this case for disposition pending its decision in *Miller v. Alabama* (No. 10-9646) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011) and *Jackson v. Hobbs* (No. 10-9647) *cert. grd.*, ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011), and then granting certiorari, vacating the judgment of the California Court of Appeal, and remanding the case for further proceedings.

OPINION BELOW

The unpublished opinion of the California Court of Appeal, which is the subject of this petition, was filed on November 28, 2011 and is attached as Appendix (App.) A. The California Supreme Court's one-page order denying review is attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal to be reviewed was filed on November 28, 2011. The California Supreme Court denied discretionary review on February 29, 2012. This petition is filed within 90 days of that date under rule 13.1 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

The Eighth Amendment of the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Fourteenth Amendment provides: “No State shall . . . deprive any person of life, liberty, or property, without due process of law”

B. State Constitutional Provision

Section 17 of Article 1 of the California Constitution provides: “Cruel or unusual punishment may not be inflicted or excessive fines imposed.”

STATEMENT OF THE CASE

An information charged petitioner Michael Mauricio with four counts of murder (Pen. Code, §187, subd. (a); Counts I, II, III, IV). It alleged on all counts a principal personally and intentionally discharged a firearm, handgun, proximately causing great bodily injury and death (Pen. Code, §12022.53, subd. (b),(c),(d),(e)), the crime was committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(C)), the murder was intentional by means of discharging a firearm from a motor vehicle (Pen. Code, § 190.2, subd. (a)(21)), the defendant intentionally killed while an active participant in a criminal street gang (Pen. Code, § 190.2, subd. (a)(22)), and the offenses were a special circumstance (Pen. Code § 190.2, subd. (a)(3)). The information further alleged the defendant was a minor at least 14 or 16 years old at the time of the offense and the offense was done in association with a criminal street gang. (Welf. & Inst. Code, § 707, subd. (d)(1), (d)(2)(a), (d)(2)(c)(ii).) (I CT 68-71.)

Petitioner pled not guilty and denied the special allegations. (I CT 73.) Count I was dismissed. (Pen. Code, § 1385.) (I CT 116.) A jury found him

guilty on the remaining counts, the murder being first-degree, and made true findings on the special allegations. (I CT 137-39.)

The trial court sentenced petitioner to a total term of life without possibility of parole plus 75 years-to-life composed of the following: on all counts, life without possibility of parole plus 25 years-to-life for the Penal Code section 12022.53, subdivision (d),(e) enhancement, the sentences to run consecutively. Sentence was stayed on the gang enhancement and remaining firearm enhancements. (I CT 174-77; IV RT 2415-17.)

A notice of appeal was timely filed. (I CT 178.)

In the California Court of Appeal, petitioner, citing the Eighth and Fourteenth Amendments and Article 1, section 17 of the California Constitution argued his sentence constituted cruel and unusual punishment. The Court of Appeal found no constitutional error. Petitioner petitioned for review by the California Supreme Court. On February 29, 2012 that court denied review. (App. B.)

* * * *

REASONS FOR GRANTING THE WRIT

This Case, In Which A Cruel And Unusual Punishment Argument Was Presented And Rejected In The State Courts, Should Be Held For Disposition Pending This Court's Decision In *Miller v. Alabama* (No. 10-9646) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011) and *Jackson v. Hobbs* (No. 10-9647) *cert. grd.*, ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011)

In *Miller v. Alabama* (No. 10-9646) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011) and *Jackson v. Hobbs* (No. 10-9647) *cert. grd.*, ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011), this Court will be determining whether imposition of a life without parole sentence on a fourteen year old child convicted of homicide violates the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishments when the extreme rarity of such sentences in practice reflects a national consensus regarding the reduced criminal culpability of young children. In *Jackson, supra*, this court will address the additional question of whether a life without parole sentence violates the Eighth and Fourteenth Amendments when imposed on a fourteen year-old who did not personally kill the homicide victim, did not personally engage in any act of physical violence toward the victim, and was not shown to have anticipated or intended anyone be killed.

This case presents essentially the same questions as those presented in *Miller v. Alabama* (No. 10-9646) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011) and *Jackson v. Hobbs* (No. 10-9647) *cert. grd.*, ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011). It should be held pending a decision in those cases. This Court's disposition in those cases will be determinative of the legality of petitioner's sentence.

Here, although the crimes were violent, petitioner's role was minimal. He was not the direct perpetrator, not the shooter. He was with the group and drove the car. Also, he lacked a criminal record and as the trial court commented, appeared of good character, was polite and respectful. (IV RT 2412; Supp. CT 1.) He also was under the age of 18 at the time of committing the crimes and with fellow gang members, consequently influenced by the pressure of living up to the gang's rules of conduct. Although the nature of the crimes may have supported an indeterminate sentence, the trial court's punishment, life without possibility of parole, was too much and served no deterrent purpose. The case for retribution is not as strong for minors as it is for adults. Also, deterrence does not suffice to justify a life without possibility of parole sentence for juveniles. (*Graham v. Florida* (2010) ___ U.S. ___ [130 S.Ct 2011, 2028, 176 L.Ed.2d 825].) Further, petitioner should not be denied the presumption of diminished

culpability that has been held should apply to juvenile offenders. (*Roper v. Simmons* (2005) 543 U.S. 551, 569-70 [125 S.Ct. 1183, 161 L.Ed.2d 1].)

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari. In light of that request, petitioner asks this Court to consider holding this case for disposition pending its decision in *Miller v. Alabama* (No. 10-9646) *cert. grd.* ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011) and *Jackson v. Hobbs* (No. 10-9647) *cert. grd.*, ___ U.S. ___ [132 S.Ct. 548] (November 7, 2011), and then granting certiorari, vacating the judgment of the California Court of Appeal, and remanding the case for further proceedings in light of *Miller, supra*, and *Jackson, supra*.

Dated: _____

Respectfully submitted,

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