No._____

IN THE SUPREME COURT OF THE UNITED STATES

LAWRENCE JACOBS, JR., *Petitioner*

v.

STATE OF LOUISIANA, *Respondent*

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been represented by appointed counsel and granted leave to proceed *in forma pauperis* in the Parish of Jefferson, Louisiana, the Louisiana Fifth Circuit Court of Appeals, and the Louisiana Supreme Court.

Petitioner's affidavit in support of this motion is attached hereto.

Respectfully submitted,

G. Ben Cohen*
Cecelia T. Kappel
**Counsel of record*
636 Baronne Street
New Orleans, Louisiana 70113
Telephone: (504) 529-5955
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AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Lawrence Jacobs, Jr., am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ Ø	$ N/A	$ Ø	$ N/A
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child Support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	$ Ø	$	$ Ø	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			$
			$
			$

4. How much cash do you and your spouse have? $_____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
N/A		$	$
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value _____

☐ Motor Vehicle #2
Year, make & model N/A
Value _____

☐ Other assets
Description N/A
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	$_____	$_____
N/A	$_____	$_____
_____	$_____	$_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
N/A	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ N/A	$_____
Utilities (electricity, heating fuel, water, sewer, and telephone)	$_____	$_____
Home maintenance (repairs and upkeep)	$_____	$_____
Food	$_____	$_____
Clothing	$_____	$_____
Laundry and dry-cleaning	$_____	$_____
Medical and dental expenses	$_____	$_____

	You	Your spouse
Transportation (not including motor vehicle payments)	$ N/A	$ NA
Recreation, entertainment, newspapers, magazines, etc.	$ N/A	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ N/A	$
Life	$ N/A	$
Health	$ N/A	$
Motor Vehicle	$ N/A	$
Other:	$ N/A	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify):	$ N/A	$
Installment payments		
Motor Vehicle	$ N/A	$
Credit card(s)	$ N/A	$
Department store(s)	$ N/A	$
Other:	$ N/A	$
Alimony, maintenance, and support paid to others	$ N/A	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ N/A	$
Other (specify):	$ N/A	$
Total monthly expenses:	$ N/A	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 1st, 2015

(Signature)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LAWRENCE JACOBS JR., PETITIONER,

V.

STATE OF LOUISIANA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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* Counsel of Record

QUESTIONS PRESENTED

Petitioner Lawrence Jacobs, 16 years old at the time of the offense, has been sentenced to two consecutive sentences of life without the possibility of parole for second degree felony murder, based on his role as a principal. In this Court's opinion in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the Court declined to address the question of whether a life sentence without the possibility of parole for a defendant under the age of 18 violated the Eighth Amendment, noting: "We do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles....". *Id.* at 2469. Justice Breyer concurred in judgment, but reasoned that, without a finding that the offender killed or intended to kill, the Eighth Amendment prohibited sentencing a child to life without parole regardless of whether the sentence was discretionary or mandatory. *Id.* at 2475 (Breyer, J., concurring).

Following *Miller*, nine states have abolished life without the possibility of parole for juveniles and thirteen states have abolished the punishment of life without the possibility of parole for the offense of second degree or felony murder, giving rise to the following questions:

I. **Does the Eighth Amendment prohibit sentencing a child to life without the possibility of parole?**

II. **Does the Eighth Amendment prohibit sentencing a child to life without the possibility of parole for a homicide offense which does not require the prosecution to prove that the child personally killed or intended to kill?**

III. **Does the Eighth Amendment prohibit sentencing Petitioner, aged 16 at the time of the offense, to two mandatory life sentences without the possibility of parole?**

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page. The petitioner is Lawrence Jacobs Jr., the petitioner, defendant and appellant in the courts below. The respondent is the State of Louisiana, the respondent, plaintiff and appellee in the courts below.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Lawrence Jacobs Jr., respectfully petitions for a writ of certiorari to the Louisiana Supreme Court.

OPINIONS BELOW

The state district court's denial of Mr. Jacobs' Motion to Strike Illegal Sentence on May 12, 2014, is attached as Pet. App. A. *State v. Jacobs*, No. 96-7161 (Order of the Twenty-Fourth Judicial District Court, May 12, 2014). The Louisiana Fifth Circuit Court of Appeal's opinion denying writs on June 30, 2014 is attached as Pet. App. B. *State v. Jacobs*, 14-KII-425 (La. App. 5 Cir. June 30, 2014). The opinion of the Louisiana Supreme Court denying writs on April 17, 2015, is attached as Pet. App. C. *State v. Jacobs*, 14-1622 (La. April 17, 2015), 2015 WL 1757949.

JURISDICTIONAL STATEMENT

The judgment and opinion of the Louisiana Fifth Circuit Court of Appeal was entered on June 30, 2014. Pet. App. 5a. The Louisiana Supreme Court denied review of that decision on April 17, 2015, with a written opinion. Pet. App. 7a. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment to the United States Constitution provides, in pertinent part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amend. VIII.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

STATEMENT OF THE CASE

A. Facts of the Case

Nelson Beaugh and his mother, Della Beaugh, were shot and killed in their home on October 31, 1996. *State v. Jacobs*, 99-1659 (La. 6/29/01), 789 So. 2d 1280, 1282. An investigation led to the issuance of an arrest warrant for 17-year-old Roy Bridgewater and Petitioner, Lawrence J. Jacobs, Jr., who was 16 years old at the time. *See Id.* Bridgewater was arrested at his residence with a number of the victim's possessions. *State v. Bridgewater*, 00-1529 (La. 1/15/02), 823 So. 2d 877, 887. He gave four inconsistent statements, and was ultimately convicted of first degree murder. *Id.* In one of Bridgewater's statements, he tried to shift blame for the murders to the younger Lawrence Jacobs. *See id.* at 886.

The police contacted Petitioner's father, Lawrence Jacobs Sr., who informed the police that his son had run away from home two months earlier, but that he would assist in locating him. *Jacobs*, 789 So. 2d at 1282. The lead detective told Mr. Jacobs Sr. that she believed that his son did not commit the murders and that it would help Lawrence Jr. if he would make a statement. *See State v. Jacobs*, 07-887 (La. App. 5 Cir. 5/24/11), 67 So. 3d 535, 583 *writ denied*, 11-1753 (La. 2/10/12), 80 So. 3d 468.

Thereafter, Mr. Jacobs Sr. discovered that his son had fled to Jackson, Mississippi, where they had relatives. *Jacobs*, 789 So. 2d at 1282. Mr. Jacobs Sr. picked his son up in Jackson, drove him back to Louisiana, and surrendered him to the police. *Id.* Accompanied by his father, Lawrence Jacobs, Jr. gave a full statement admitting to his involvement in the burglary of the Beaugh residence.

See Jacobs, 67 So. 2d at 572. This statement served as the State's primary evidence of guilt at trial. *See id.* at 569-70. Lawrence Jr. acknowledged his presence in the house and his participation in a burglary, and explained that he entered the house with an inoperable firearm, and that Mr. Bridgewater entered the house with a loaded gun. *See id.* at 552. According to the State's evidence, Petitioner made clear that he never intended to kill or injure Nelson and Della Beaugh; as he got into the passenger side of the victims' van, he heard the three or four shots fired. *See id.* at 570. He stated that Mr. Bridgewater admitted to shooting Nelson and Della Beaugh because they had seen his face.

The State's evidence at trial corroborated the statement, establishing that Mr. Jacobs' fingerprints were on the passenger's side of the victims' van. Items stolen from the house were located at Roy Bridgewater's residence. Ballistics evidence introduced at trial indicated that while it was impossible to tell whether more than one gun was fired, all of the bullets could have been fired from the same gun. *See id.* at 586. Jacobs was ultimately convicted of second degree murder and sentenced to two consecutive terms of life without parole. *See id.* at 594-95.

B. Procedural History

Petitioner's first trial resulted in a first degree murder conviction and a death sentence. The Louisiana Supreme Court set aside this conviction due to "blatant" errors in jury selection, though the court separately noted that there was significant evidence of race-based decision-making by the prosecutor in this case, a case that arose in the same courtroom, and with the same judge, as *Snyder v. Louisiana*, 552 U.S. 472 (2008). *Jacobs*, 789 So. 2d at 1283 n. 2. At the subsequent trial, where

Petitioner was prosecuted and convicted of second degree murder, race again appears to have played a deleterious role. *See State v. Jacobs*, 07-887 (La. App. 5 Cir. 5/12/09), 13 So. 3d 677, 694 *rev'd*, 09-1304 (La. 4/5/10), 32 So. 3d 227 (noting that the prosecutor's explanation for striking an African-American juror was "a sham and a pretext for discrimination.").

However, neither the prosecution's sartorial choices—to wear hanging noose neckties to a pre-trial hearing—nor the prosecutor's strikes of five of six African-American jurors from the venire, is the subject of this petition. *See, e.g.*, Jeffery Gettleman, *Prosecutors' Morbid Neckties Stir Criticism*, N.Y. TIMES, Jan. 5, 2003; *Jacobs*, 32 So. 3d at 688 (noting that the prosecution struck 5 of 6 African-American jurors and the sole Hispanic juror). Rather, the question before the Court is the constitutionality of Petitioner's two consecutive life sentences without the possibility of parole for second degree murder, under a theory which did not require the prosecution to prove that he actually killed or intended to kill. *See Jacobs*, 67 So. 3d at 554 (stating that "we find that he is a principal to the resulting crime, i.e., second degree murder, even if he did not fire the fatal shots").

Prior to trial, Petitioner challenged the constitutionality of a mandatory life without parole sentence without any individualized consideration of the circumstances of his youth, his brain development, and his immaturity. Counsel presented expert testimony that Mr. Jacobs had an IQ of 83, R. 2985, that he had brain dysfunction, R. 2988, and that even two years after the offense, "all of his responses were rather childlike, the kind of responses I would expect to get from

somebody several years younger than him." R. 2986. Defense counsel challenged the mandatory penalty scheme prior to trial under the federal constitution, arguing that Louisiana was

> particularly harsh way that it treats juvenile offenders, so harshly, we've alleged in these papers and I think we can prove up through this witness, that its unusual from a constitutional perspective.

R. 3119-20. Petitioner presented evidence indicating that the sentencing scheme in Louisiana was particularly harsh. R. 3122-23 (noting a number of jurisdictions at the time mandated some kind of individualized consideration of individualized factors including amenability to treatment, IQ, susceptibility to peer influence, and adolescent development at some stage of the proceeding); R. 3128 ("Louisiana allows for someone who's in Mr. Jacobs' position no individual consideration at the beginning and end because the only issue to address is probable cause. Once he gets into the system, at sentencing, if he is convicted of that offense, it is a mandatory life without parole. Your Honor couldn't consider whether or not he, any of the circumstances that we discussed previously would be relevant to his sentence and what you felt, based on all of that information, was an appropriate sentence for him. You would have to give him life without parole. So essentially from start to finish, there is no individualized consideration of Mr. Jacobs' particular situation."). The trial court denied the challenge.

At trial, Petitioner was prosecuted as a principal to second degree murder. The jury was instructed at trial that Mr. Jacobs was guilty of second-degree murder regardless of whether he committed the murder himself or intended the murder to be committed, based solely upon his participation and commission of the offense of

aggravated burglary. The State did not present any evidence at trial that Mr. Jacobs personally killed or intended to kill, nor did it present any evidence that Mr. Jacobs was the shooter. While the Louisiana Fifth Circuit Court of Appeal found that the evidence was "not conclusive" as to the identity of the shooter or shooters, the State's evidence was that Bridgewater committed the shooting while Mr. Jacobs had fled the house – and any argument to the contrary was at best speculation by the prosecutor. *See Jacobs*, 67 So. 3d at 594 ("[A]lthough defendant claims he was a 'non-shooting defendant,' the evidence presented in this case does not necessarily support this claim. At trial, the evidence was ***not conclusive*** as to the identity of the shooter or shooters.") (emphasis added). The jury was instructed on the law of principals, and was not required to find Mr. Jacobs had intended to kill, or actually killed, either victim. Mr. Jacobs was ultimately convicted and sentenced to two separate life sentences without the possibility of parole, to be served consecutively.

The Court of Appeal rejected Mr. Jacobs' challenge to the life sentence:

> In this case, defendant . . . argued that his youth and his lesser role in the offense made his sentences unconstitutionally excessive. On appeal, defendant again argues that he was a "non-shooting defendant" who was 16 years old at the time of the offense.
>
> A defendant's young age alone does not provide sufficient grounds to deviate downward from a mandatory life sentence. . . . we find that the sentences imposed were not unconstitutionally excessive and not grossly disproportionate to the severity of the offenses.

Jacobs, 67 So. 3d at 594-95. The court also rejected Petitioner's challenge to the constitutionality of a life sentence for a 16-year-old offender, and to the lack of individualized consideration prior to transfer of Mr. Jacobs to adult court. *Id.* at

595. The Louisiana Supreme Court denied writs. *State v. Jacobs*, 11-1753 (La. 2/10/12), 80 So. 3d 468.

On September 16, 2013, Mr. Jacobs filed a pro se Application for Post-Conviction Relief; additionally, through counsel, he filed a Motion to Strike Illegal Sentence based upon Mr. Jacobs' youth. The district court denied Mr. Jacobs' challenge to the sentence on May 12, 2014. *State v. Jacobs*, No. 96-7161 (Order of the District Court, May 12, 2014) (Pet. App. 1a). Mr. Jacobs timely sought writs to the Louisiana Fifth Circuit Court of Appeal, which were denied with written opinions on June 30, 2014. *State v. Jacobs*, 14-KII-425 (La. App. 5 Cir. 06/30/14) (Pet. App. 5a). The Louisiana Supreme Court denied review of both writs, separately, on April 17, 2015. *State v. Jacobs*, 14-1622 (La. April 17, 2015), 2015 WL 1757949 (Pet. App. 7a).

As to the juvenile life without parole claim, the Louisiana Supreme Court held that Petitioner was not entitled to application of the rule announced in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), even though his petition for writ of certiorari was pending at the time that *Miller* was decided, because his convictions "became final when the Supreme Court denied his pending petition for certiorari on October 1, 2012, without comment, less than four months after deciding *Miller*, and without giving him the benefit of *Miller*." *State v. Jacobs*, 14-1622 (La. April 17, 2015), 2015 WL 1757949 (Pet. App. 7a).

This petition timely follows.

REASONS FOR GRANTING THE WRIT

1. This case presents an opportunity for this Court to assess the evolving standards of decency as applied to sentences of life without parole imposed on juveniles. In 2012, when this Court decided *Miller*, this Court declined to reach the question of whether sentencing a juvenile to life without the possibility of parole was per se unconstitutional. Since *Miller* was decided in 2012:

- 9 states (West Virginia, Hawaii, Wyoming, Texas, Vermont, Nevada, Delaware, Connecticut and Massachusetts) have now abolished life without the possibility of parole for juveniles altogether;
- 2 states (Florida and California) now provide sentencing review for nearly all homicide offenses, including instances such as the felony murder at issue here; and
- 2 states (North Carolina and Pennsylvania) have now outright abolished life without the possibility of parole for second degree murder or felony murder.

In total, 13 jurisdictions that had life without parole for youths such as Petitioner at the time of *Miller*, have essentially abolished the punishment in the last three years. The direction of the change, and the speed of that change, is very significant here.

Rather than deciding whether *Miller v. Alabama* presents a substantive or procedural rule, or the jurisdictional question presented to the Court in *Montgomery v. Louisiana,* this case presents a clean vehicle to address the substantive question: whether the Eighth Amendment requires a categorical bar on life without parole for juveniles. Given the strong direction of legislative action against life without parole

for juveniles reflected in laws enacted after this Court's 2012 decision in *Miller*, this Court should address the issue now.

2. This case also presents the issue clearly identified by Justice Breyer in his concurring opinion in *Miller v. Alabama*, joined by Justice Sotomayor, where he noted the complicated context "of felony murder cases" and suggested that applying doctrine of "transferred intent" "where the juvenile did not kill" amounted to "fallacious reasoning." *Miller*, 132 S. Ct. at 2476 (Breyer, J. concurring).

3. The sentence imposed in this case is unconstitutional, and should not be left to stand. This Court has granted certiorari on the retroactive application of *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in *Montgomery v. Louisiana*, No. 14-280 (*pet. for cert. granted* March 23, 2015). At a minimum, this Court should hold this case in abeyance until it resolves *Montgomery*. Another alternative is to grant certiorari and vacate the ruling of the court below, which erroneously held that even though Petitioner's "convictions and sentences for second degree murder, became final when the Supreme Court denied his pending petition for certiorari on October 1, 2012, without comment, less than **four months *after*** deciding *Miller*," the rule of *Miller* did not apply to his case. *State v. Jacobs*, 14-1622 (La. April 17, 2015), 2015 WL 1757949 (Pet. App. 7a) (citing *State v. Tate*, 130 So. 3d 829 (2013)). *See, e.g.*, *Beard v. Banks*, 542 U.S. 406, 411 (2004) ("State convictions are final 'for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied.'").

I. SINCE *MILLER*, OUR NATION'S STANDARDS OF DECENCY HAVE CONTINUED EVOLVING IN FAVOR OF A PROHIBITION ON SENTENCING A CHILD DEFENDANT TO LIFE WITHOUT THE POSSIBILITY OF PAROLE

In 2012, this Court in *Miller* declined to address the question of whether a life sentence without the possibility of parole for a defendant under the age of 18 violates the Eighth Amendment, noting: "We do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles . . . ." *Id.* at 2469. The Court observed: "[G]iven all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty ***will be uncommon***." *Id.* (emphasis added).

Since this Court's opinion in *Miller*, a significant number of states have amended their law to ensure that juvenile offenders have an opportunity for release. Nine states (West Virginia,[1] Hawaii,[2] Wyoming,[3] Texas,[4] Vermont,[5] Delaware,[6]

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[1] In West Virginia, House Bill 4210 provided:.

A BILL to amend and reenact §61-2-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-2-14a of said code; to amend and reenact §62-3-15 of said code; to amend said code by adding thereto two new sections, designated §62-3-22 and §62-3-23; and to amend said code by adding thereto one new section, designated §62-12-13b, all relating to, the trying for crimes of juveniles as adults; prohibiting life sentences without parole as a penalty for juveniles convicted of murder of the first degree; prohibiting life sentences without parole as a penalty for juveniles convicted of kidnaping; stipulating that only people aged eighteen or older may be given life sentences without eligibility for parole; stating legislative findings relating to the diminished capacity of juveniles; specifying factors to be considered by courts when sentencing juveniles tried and convicted as adults; and requiring special parole considerations for juveniles tried and convicted as adults.

The West Virginia Code now provides: § 61-2-2. *Penalty for murder of first degree.* "Murder of the first degree shall be punished by confinement in the penitentiary a correctional facility for life, except that a juvenile convicted under this section shall be punished by a term of imprisonment of not less than fifteen years or for life. A juvenile imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of fifteen years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two, whichever is greater." In West Virginia, "Murder of the second degree shall be punished by a definite term of imprisonment in the penitentiary which is not less than ten nor more than forty years." W. Va. Code § 61-2-3.

[2] *See* Hawaii Fair Sentencing of Youth Act, House Bill 2116 C.D. 1. amending § 706-656, Hawaii Revised Statutes. Persons under the age of eighteen years at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment with the possibility of parole." SECTION 3. Section 706-657, Hawaii Revised Statutes, is amended to read as follows:

> 8706-657 Enhanced sentence for second degree murder. The court may sentence a person who was eighteen years of age or over at the time of the offense and who has been convicted of murder in the second degree to life imprisonment without –the possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity or that the person was previously convicted of degree or murder in the previously convicted in would constitute murder the offense of murder in the first second degree in this State or was another jurisdiction of an offense that in the first degree or murder in the second degree in this State.

Id.

[3] *See* Wyo. Stat. Ann. § 7-13-402(a) (LexisNexis 2013) ("On July 1, 2013, legislation enacted to amend Wyoming's sentencing scheme for juveniles convicted of first degree homicide became effective. The revised statutes provide, in part, that "a person convicted of murder in the first degree who was under the age of eighteen (18) years at the time of the offense shall be punished by life imprisonment," and that "[a] person sentenced to life imprisonment for an offense committed before the person reached the age of eighteen (18) years shall be eligible for parole after commutation of his sentence to a term of years or after having served twenty-five (25) years of incarceration." See Wyo. Stat. Ann. §§ 6-2-101(b); 6-10-301(c) (LexisNexis 2013). The amended statutes also provide that the Board of Parole may grant parole to a juvenile offender sentenced to life imprisonment. See Wyo. Stat. Ann. § 7-13-402(a) (LexisNexis 2013)." State v. Mares, 335 P.3d 487, 492-493 (Wyo. 2014).

[4] Tex. Penal Code § 12.31 now provides."[...] (1) life, if the individual committed the offense when younger than 18 years of age; or (2) life without parole, if the individual committed the offense when 18 years of age or older." *See* http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.12.htm.

[5] The Vermont legislature passed H.62, which was signed into law on May 14, 2015, which provided: "A court shall not sentence a person to life imprisonment without the possibility of parole if the person was under 18 years of age at the time of the commission of the offense." *See* http://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/H-0062/H-0062%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf

[6] Delaware Senate Bill 9 replaced mandatory JLWOP with a range of 25 years-to-life with the possibility of parole and imposed a responsibility of judicial review in every case (so there is always possibility of parole). *See* Title 11, § 4209A. (Punishment for first-degree murder committed by juvenile offenders.). Additionally, Section 3(A) of § 4209A provides that for any offender such as

Nevada,[7] Connecticut[8] and Massachusetts[9]) have abolished life without the possibility of parole for juveniles altogether. Two more states (Florida[10] and California[11]) now provide sentencing review for nearly all homicide offenses – and certainly for instances such as the felony murder at issue here. Two additional states (North Carolina[12] and Pennsylvania[13]) have outright abolished life without the possibility of parole for second degree murder or felony murder. In sum, thirteen

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petitioner prosecuted for second degree murder, shall be eligible for sentence modification after the offender has served 25 years.

[7] *See* http://www.leg.state.nv.us/Session/78th2015/Bills/AB/AB267_EN.pdf ("eliminates the imposition of a sentence of life without the possibility of parole upon a person convicted of certain crimes who was less than 18 years of age at the time the crime was committed, thereby making life imprisonment with the possibility of parole the maximum punishment that may be imposed upon a person convicted of any crime who was less than 18 years of age at the time the crime was committed.")

[8] *See* Connecticut S.B. No. 796, http://www.cga.ct.gov/2015/FC/2015SB-00796-R000904-FC.htm (passed May 27, 2015).

[9] *See Diatchenko v. D.A.*, 1 N.E. 270, 281 (Mass. 2013).

[10] Florida HB 7035 created sentencing reviews for most children in Florida – 2 for non-homicide offenses and 1 for homicide offenses "providing sentence review proceedings to be conducted after a specified period of time by the original sentencing court . . . ." Exceptions for recidivist juvenile offenders do not apply in this instance.

[11] California SB 9 (Effective 9/30/2012) Authorizes a prisoner sentenced to LWOP as a juvenile offender and who has already served 15 years to submit a petition for recall and resentencing. If recall is not granted, a subsequent petition may be made after serving 20 years and a final petition after 24 years. Exempts crimes involving torture and killing of law enforcement officers. *See also* SB 260 (Effective 9/16/2013) ("Provides new eligibility rules for juvenile offenders. Depending on the original sentence, requires parole review after 15, 20, and 25 years for offenders under 18 at time of crime. Requires parole board to meet with the inmate six years prior to the minimum eligibility parole release date to provide specified information such as recommendations on rehabilitative programs. ").

[12] N.C. Gen. Stat. § 15A-1340.19A. Section 15A-1340.19(B) provides that if the defendant was convicted of first-degree murder solely on the basis of the felony murder rule, his sentence shall be life imprisonment with parole." Id. ."If the sole basis for conviction [...] was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole." § 15A-1477.

[13] *See* 18 Pa. C.S.A. § 1102 ("A person who has been convicted after June 24, 2012 of a murder of the second degree [...] and who was under the age 18 at the time of the commission of the offense shall be sentenced as follows: [(1) 30 years to life if over 15 at time of offense; or (2) 20 years to life if under 15 at time of offense.").

of the jurisdictions that had life without the possibility of parole for juveniles like Petitioner have essentially abolished the punishment in the last three years.

In the Eighth Amendment analysis, it is not only the numbers, but the direction of the change, and the speed of that change that is so significant. *Atkins v. Virginia*, 536 U.S. 304, 315 (2002) ("It is not so much the number of these States that is significant, but the consistency of the direction of change."). Here, the number of states that have abolished juvenile life without parole sentences is more than twice the number that shifted from executing juveniles during the time from *Stanford* to *Roper v. Simmons*—and the shift happened in one quarter the amount of time.[14] A larger number of states currently prohibit life without parole for adolescents convicted of felony murder than prohibited the execution of juveniles at the time of *Roper*, or that prohibited the execution of intellectually disabled at the time of *Atkins*.[15]

Even at the time of *Miller v. Alabama*, seven states (Alaska, Colorado, Kansas Kentucky, Montana, New Mexico, New York) had already legislatively prohibited sentencing a juvenile to life imprisonment without the possibility of parole. Significantly, even in the majority of states that have juvenile life without parole on the books, the sentence is rarely, if ever, used. For instance Maine, New

---

[14] When this Court considered *Stanford* in 1989, twenty-two of the thirty-seven states with the death penalty allowed the execution of 16-year-old offenders and twenty-five of the thirty-seven death penalty states allowed the execution of 17-year-old offenders. *Stanford v. Kentucky*, 492 U.S. 361, 371 (1989). Sixteen years later, when this Court considered *Roper* in 2005, twenty states still permitted the execution of juveniles, but the practice itself was infrequent. *Roper v. Simmons*, 543 U.S. 551, 564 (2005).

[15] *See supra* note 14. When this Court considered *Atkins* in 2002, eighteen states had statutory provisions prohibiting the execution of an intellectually disabled individual. *Atkins v. Virginia*, 536 U.S. 304, 314-15 (2002).

Jersey, and the District of Columbia have no juveniles sentenced to life imprisonment without the possibility of parole; New Hampshire (3), North Dakota (1), Ohio (2), Utah (1) have fewer than three individuals sentenced to life imprisonment for offenses that occurred prior to age 18.[16]

Ultimately, Louisiana is one of a small handful of states that regularly sentences children to life without the possibility of parole—without any individualized consideration of the circumstances of their youth or any assessment of the child's involvement in the offense. The broad consensus of the nation has turned away from such cruel and unusual sentences.

II. A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE IS UNCONSTITUTIONAL WHEN IMPOSED UPON A CHILD CONVICTED OF FELONY MURDER WHO DID NOT KILL OR INTEND TO KILL

Lawrence Jacobs, 16 years old at the time of the offense, was convicted of second degree murder and sentenced to two consecutive and mandatory life sentences without the possibility of parole.

A. Two Arms of This Court's Precedent Demonstrate That A Life Sentence for A Child Who Does Not Kill or Intend to Kill is Unconstitutional

Two lines of this Court's precedent, reflecting concern with proportionate punishment, compel the conclusion that a life sentence for a child who did not kill or intend to kill is excessive. First, this Court's concern with harsh sentences for juveniles has recognized the unique characteristics and reduced culpability of

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[16] *See* Campaign for the Fair Sentencing of Youth, *How many people are serving in my state?*, http://fairsentencingofyouth.org/reports-and-research/how-many-people-are-serving-in-my-state/.

children. *See Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48, 58 (2010); and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Second, this Court's attention to the circumstances of the offense has resulted in decisions limiting the most severe punishment to the most culpable offenses. *See Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (holding capital punishment is impermissible for non-homicide crimes against individuals); *Graham*, *supra* (holding life sentence unconstitutional for juveniles convicted of non-homicide offenses); *Enmund v. Florida*, 458 U.S. 782 (1982) (barring death penalty for one who does not kill or intend to kill). In *Graham*, this Court synthesized these strands of jurisprudence to hold:

> [D]efendants 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. . . . Although an offense like robbery or rape is "a serious crime deserving serious punishment," those crimes differ from homicide crimes in a moral sense.
>
> It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability. The age of the offender and the nature of the crime each bear on the analysis.

Graham 560 U.S. at 69 (citing *Enmund* and *Kennedy supra*).

Petitioner's conviction for second degree murder depends upon the common law rule, adopted in Louisiana by statute, which extends liability for murder to a person who engages in a felony during which a person is killed, but does not kill or intend to kill. The underlying principle for this broad liability depends upon the notion that one who is engaged in a felony should perceive or anticipate the wide spectrum of harm that could result. *See, e.g.*, JOSHUA DRESSLER, UNDERSTANDING

CRIMINAL LAW 515 (Lexis Publishing 3d ed. 2001). Whatever validity of this expectation for adults, it is particularly questionable when applied to a child defendant. *See* Emily C. Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of Roper, Graham & J.D.B*, 11 Conn. Pub. Int. L.J. 297, 305-06 (2012) ("[T]o convict a defendant of felony murder, the court need not find that the defendant had actual malice; instead the intent to commit the underlying felony constitutes 'implied malice.' These theories rely on an assumption that an individual who takes part in a felony should understand and assume the risk that someone may get killed in the course of the felony. As discussed below, these rationales are highly questionable when applied to adolescents.").

B. Justice Breyer's Concurrence in *Miller v. Alabama* Supports the Conclusion that Life Without Possibility of Parole is Excessive for Children Convicted of Felony Murder

As Justice Breyer recognized in his concurrence in *Miller*, "[g]iven *Graham's* reasoning, the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim" because "where the juvenile neither kills nor intends to kill, both features [of youth and a lack of any intent to kill] emphasized in *Graham* as extenuating apply." *Miller*, 132 S. Ct. at 2475-76 (Breyer, J. concurring).

Justice Breyer acknowledged that "in the context of felony-murder cases, the question of intent is a complicated one." *Id.* at 2476. However, the opinion observed:

> "transferred intent" is not sufficient to satisfy the intent to murder that could subject a juvenile to a sentence of life without parole. As an initial matter, this Court has made clear that this artificially constructed kind of intent does not count as intent for purposes of the Eighth Amendment. We do not rely on transferred intent in

> determining if an adult may receive the death penalty. Thus, the Constitution forbids imposing capital punishment upon an aider and abettor in a robbery, where that individual did not intend to kill and simply was "in the car by the side of the road . . . , waiting to help the robbers escape." . . .
>
> Given *Graham*, this holding applies to juvenile sentences of life without parole a fortiori. See ante, at ___ - ___, 183 L. Ed. 2d, at 421-422. Indeed, even juveniles who meet the *Tison* standard of "reckless disregard" may not be eligible for life without parole. Rather, Graham dictates a clear rule: The only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who "kill or intend to kill." 560 U.S., at ___, 130 S. Ct. 2011, 176 L. Ed. 2d 825.
>
> Moreover, regardless of our law with respect to adults, there is no basis for imposing a sentence of life without parole upon a juvenile who did not himself kill or intend to kill. At base, the theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate. See 2 LaFave, supra, § 14.5(c). Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively. Ante, at ___ - ___, 183 L. Ed. 2d, at 418-419. Justice Frankfurter cautioned, "Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a State's duty toward children." May v. Anderson, 345 U.S. 528, 536, 73 S. Ct. 840, 97 L. Ed. 1221, 67 Ohio Law Abs. 468 (1953) (concurring opinion). To apply the doctrine of transferred intent here, where the juvenile did not kill, to sentence a juvenile to life without parole would involve such "fallacious reasoning."

Miller, 132 S. Ct. at 2476-77 (Breyer, J. concurring).

The concept of using "transferred intent" to impose a life sentence without parole on Lawrence Jacobs, a 16-year-old convicted as a principal to the murder committed by the older Roy Bridgewater is particularly "fallacious." Not only did Mr. Jacobs' lack of maturity and judgment diminish his culpability, but holding him responsible at the highest possible level for the unpredictable acts of an older but

still immature teenage co-defendant imposes a level of responsibility, and a degree of sophistication, unlikely to be maintained in the average adolescent. [17]

C. Louisiana Law Provides for Imposition of a Mandatory Life Sentence For Second Degree Murder Without Proof of Intent to Kill or Inflict Great Bodily Harm

Second degree felony murder in Louisiana requires no showing of any intent to kill. Lawrence Jacobs was prosecuted as a principal to second degree murder. La. R.S. § 14:30.1 provides, in pertinent part:

> Second degree murder is the killing of a human being . . . (2) when the offender is engaged in the perpetration or attempted perpetration of . . . an aggravated burglary . . . *even though he has no intent to kill or inflict great bodily harm.*

La. R.S. § 14:30.1 (A) (emphasis added). The statute provides: "Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence." La. R.S. § 14:30.1 (B).

Moreover, Lawrence Jacobs was prosecuted as a principal. Principals are defined under Louisiana law as follows:

> All persons concerned in the commission of a crime whether present or absent, and whether they directly commit the act constituting the

---

[17] It is relevant to note that the defense attempted to introduce evidence of Roy Bridgewater's mental status in Mr. Jacobs' trial, in order to demonstrate that Mr. Jacobs was unlikely to foresee the irrational conduct committed by Mr. Bridgewater. *See Jacobs*, 67 So. 3d at 576 ("In his eighth assignment of error, defendant contends that the trial court's exclusion of relevant evidence violated Lawrence Jacobs' right to due process and a fair trial. Specifically, defendant argues that the trial court deprived him of his due process rights by prohibiting him from introducing evidence of the State's arguments, at his co-defendant's trial, that his co-defendant, Roy Bridgewater, was the more culpable party. Defendant further contends that he was prejudiced by the trial court's refusal to allow the testimony of Dr. Fred Sautter regarding Bridgewater's mental disorders."). The appellate court upheld the trial judge's holding that Dr. Sautter's analysis of Bridgewater would be hearsay and irrelevant.

> offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals.

La. R.S. § 14:24. Since Mr. Jacobs was prosecuted as a principal to second-degree murder and the jury was instructed on that theory of guilt, his sentence of life without parole is unconstitutional under *Graham v. Florida.*

The Court of Appeal found that Lawrence Jacobs was convicted as a principal, not as the actual shooter:

> Because defendant knowingly participated in the execution of the crime, i.e. aggravated burglary, during which two people were killed, we find that he is a principal to the resulting crime, i.e. second degree murder, even if he did not fire the fatal shots.

Jacobs, 67 So. 3d at 554.

D. Sentencing Mr. Jacobs to Life Without Possibility of Parole is Excessive.

Together, *Roper*, *Graham*, *Kennedy*, *Enmund*, and *Miller* dictate that children convicted of felony murder, who neither kill nor possess the intent to kill, should be categorically prohibited from being sentenced to life without parole under the Eighth Amendment's ban on cruel and unusual punishment.

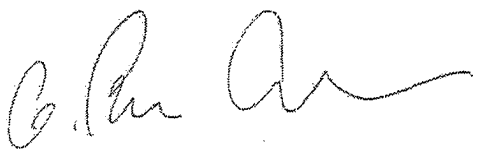
In *Roper*, this Court observed that even in the most serious murder cases, "juvenile offenders cannot with reliability be classified as among the worst offenders." 543 U.S. at 569. This is because, as compared to adults, teenagers like Mr. Jacobs "lack[ed] maturity and [had] an underdeveloped sense of responsibility" and were "more vulnerable or susceptible to negative influences and outside pressures," and their character "[was] not formed." *Id.* at 569-70. It is of considerable consternation that 16-year-old Lawrence Jacobs' most responsible

act—coming to the police station with his father and following his father's direction to take responsibility for what he had done—is the most significant piece of evidence the State has supporting a sentence that precludes Mr. Jacobs from ever walking out of prison again. Accordingly, and for all the reasons stated above, this Court should grant certiorari and declare that Lawrence Jacobs' sentence violates the Eighth Amendment.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,



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Dated: June 11, 2015

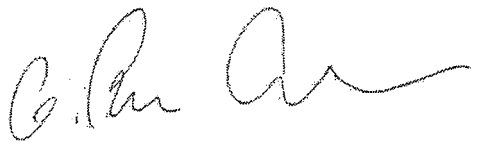
CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 11th day of June, 2015, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Terry Boudreaux
Assistant District Attorney
Jefferson Parish District Attorney's Office
200 Derbigny St, Gretna, LA 70053

Counsel for the State of Louisiana



G. Ben Cohen

APPENDICES

APPENDIX A	Twenty-Fourth Judicial District Court, Order denying motion to strike illegal sentence, *State v. Jacobs*, No. 96-7161 (24th J.D.C., May 12, 2014)
APPENDIX B	Louisiana Fifth Circuit Court of Appeal, Order denying writs, *State v. Jacobs*, 14-KII-425 (La. App. 5 Cir. June 30, 2014)
APPENDIX C	Louisiana Supreme Court, Opinion denying writs, *State v. Jacobs*, 14-1622 (La. 4/17/14), 2015 WL 1757949

TWENTY FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 96-7161 DIVISION "H"

STATE OF LOUISIANA

VERSUS

LAWRENCE JACOBS

FILED: May 12, 2014 JRG
DEPUTY CLERK

ORDER

This matter comes before this court on petitioner's:

- APPLICATION FOR POST-CONVICTION RELIEF, AND MOTION TO STRIKE ILLEGAL SENTENCES AND FOR AN INDIVIDUALIZED RE-SENTENCING HEARING, STAMPED AS FILED SEPTEMBER 16, 2013,
- STATE'S RESPONSE, STAMPED AS FILED JANUARY 30, 2014,
- LETTER TO COURT FROM STATE, STAMPED AS FILED FEBRUARY 25, 2014,
- DEFENSE COUNSEL'S REPLY TO STATE'S OPPOSITION TO DEFENSE MOTION TO STRIKE ILLEGAL SENETNCES AND FOR INDIVIDUALIZED RE-SENETNCING HEARING, STAMPED AS FILED MARCH 7, 2014, AND
- PRO SE RESPONSE, STAMPED AS FILEED MARCH 10, 2014,

On retrial following the Louisiana Supreme Court's reversal of first degree murder and death sentence, on August 25, 2006, the petitioner was convicted of 2 counts of LSA-R.S. 14:30.1, relative to second degree murder. On October 4, 2006, the court sentenced him on each count to life imprisonment at hard labor, to run consecutively. *State v. Jacobs*, 07-887, (La.App. 5 Cir. 5/12/09), 13 So.3d 677; *Judgment Reversed*, 2009-1304 (La. 4/5/10) 32 So.3d 227; *Rehearing Granted in Part*, 2009-1304 (La. 6/18/10) 37 So.3d 994, *On Remand*, 07-887 (La.App. 5 Cir. 5/24/11), 67 So.3d 535, *Writ Denied*, 2011-1753 (La. 2/10/12), 80 So.3d 468; *Certiorari Denied, Jacobs v. Louisiana, No. 11-10277*, 133 S.Ct. 139, 184 L.Ed.2d 67, 81 USLW 3162 (U.S.La. Oct 01, 2012).

Petitioner has filed an application for post-conviction relief asserting the following claims:

1. Court had no jurisdiction to try the case or to sentence petitioner, as the juvenile court never conducted a transfer hearing on the charge.
2. Ineffective assistance of counsel for counsel's failure to articulate a defense to the charged conduct, and admitted facts which constituted the offense, or in the alternative, denial of jury nullification instruction violated the 6th Amendment.
3. Ineffective assistance of trial and appellate counsel for failure to present historical evidence of racial discrimination.
4. Ineffective assistance of counsel for failure to challenge State's use of 1996 indictment.
5. Ineffective assistance of counsel for failure to object to State's use of "Rod" photographs.
6. Ineffective assistance of counsel for failing to litigate racial impact of exclusion of jurors from grand and petit jury venire.
7. Prosecution was conducted in bias manner.

Petitioner has also challenged the legality of his sentences, asserting the following claims:

1. In light of *Miller v. Alabama*, 132 S.Ct. 2455 (June 25, 2012), petitioner's mandatory life sentences are illegal because he was a juvenile at the time of the offense.
2. The sentencing sentence under *Graham v. Florida*, 130 S. Ct. 2011 (2010), as the life sentence imposed was without finding that petitioner killed or intended to kill.
3. The sentence on count #2 is invalid as petitioner was not indicted on that count.

PCR Claim #1

The court finds this claim procedurally barred from review. Under LSA-C.Cr.P. Art. 930.4(C), unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered. As the State points out in its response, this claim (and/or issues within the claim) was previously presented to and rejected by the appellate court and the Louisiana Supreme Court. The merits of the claim shall not be reviewed by this court.

PCR Claim #2

The petitioner has a Sixth Amendment right to effective counsel. Under the standard set out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and *State v. Washington*, 491 So.2d 1337 (La.1986), a conviction must be reversed if the defendant proves (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect. *State v. Legrand*, 2002-1462 (La.12/3/03), 864 So.2d 89.

To be successful in arguing ineffective assistance of counsel, a petitioner must prove deficient performance to the point that counsel is not functioning as counsel within the meaning of the Sixth Amendment. A petitioner must also prove actual prejudice to the point that the results of the trial cannot be trusted. Both prongs of the *Strickland* test must be established before relief will be granted.

There is a strong presumption that counsel's performance is within the wide range of effective representation. Effective counsel, however, does not mean errorless counsel and the reviewing court does not judge counsel's performance based on hindsight, but rather determines whether counsel was reasonably likely to render effective assistance. *State v. Soler*, 93-1042 (La.App. 5 Cir. 4/26/94), 636 So.2d 1069, 1075.

Mindful of controlling jurisprudence, the court now turns to the instant application and the petitioner's memorandum in support. The petitioner first argues that counsel failed to present a defense and admitted facts which constituted the offense.

As the State points out in its response, defense counsel's opening statements refute this claim, as counsel clearly presented her defense and trial strategy, instructing the jury that the proper verdict was manslaughter, and the defendant was merely a follower who was not to blame. The Supreme Court has emphatically directed that, "in evaluating the performance of counsel, strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-691, 104 S.Ct. 2052, 80 L.Ed.2d 674. Furthermore, the court does not find that counsel conceded elements of the defense, but rather presented the facts in a way most favorable to the defendant.

As to petitioner's claim regarding denial of jury nullification instruction, this claim was raised on appeal and rejected as having no merit, and is thus procedurally barred from review under LSA-C.Cr.P. Art. 930.4(C).

PCR Claim #3

Petitioner argues that trial and appellate counsel was ineffective for failure to present historical evidence of racial discrimination in jury selection in Jefferson Parish. In his application, petitioner argues, "If counsel had timely introduced the evidence it would have had a profound impact on both the trial court's assessment of the State's neutral explanations and the Court of Appeals' handling of the issue."

As the State points out in its response, the court reviewed and rejected the specific *Batson* claims pertaining to prospective jurors on direct appeal and found no error. The court finds petitioner's argument of historical discrimination speculative and conclusory. Petitioner fails to

prove that the appellate courts would have overturned the conviction. He fails to prove any prejudice, and fails to meet either prong of *Strickland.*

PCR Claim #4

Petitioner claims that counsel was ineffective for failure to quash or object to the State's use of the invalid 1996 indictment. As the State points out in its response, this claim is procedurally barred from review. Under LSA-C.Cr.P. Art. 930.4(C), unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.

Furthermore, this claim has no merit, as prosecution clearly amended the indictment on the record in open court, and in writing on May 13, 2005. Defense counsel later noted on the record that they were aware of the amended charges. The court finds any mistake inadvertent, and a "miswriting" as contemplated under LSA-C.Cr.P. art. 487(A). Petitioner fails to prove any deficiency in counsel's performance or prejudice resulting.

PCR Claim #5

Petitioner claims that counsel was ineffective for failure to object to the state's use of "rod" photographs at trial. The court finds this claim procedurally barred from review. Under LSA-C.Cr.P. Art. 930.4(C), unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered. As the State points out in its response, this claim (and/or issues within the claim) was previously presented to and rejected by the appellate court and the Louisiana Supreme Court. The petitioner cannot prove prejudice, as the appellate court previously rejected the underlying substantive claim.

PCR Claim #6

Petitioner claims that counsel was ineffective for failing to litigate the racial impact of the exclusion of jurors from the grand and petit jury venires. This claim is completely unsupported by any facts, evidence, or law. The court finds this claim speculative and conclusory. Petitioner fails to prove any deficiency in counsel's performance, or prejudice resulting. On the showing made, this claim is denied.

PCR Claim #7

Petitioner claims that the prosecution was bias, and that the, "prosecution of a 16 year old offender by a prosecutor wearing racist garb undermined the integrity of the proceedings," that "prosecution for the state made jarring facial expressions at petitioner," and that prosecution sought to have defense counsel removed for lack of certification to handle capital trials.

As to the "racist garb," the court finds no merit to this claim. The State points out in its response that an assistant district attorney wore a tie upon which was a noose, and another assistant wore a tie depicting a grim reaper. As the State points out, this matter was raised in a defense motion filed in December 2002, and the State briefed the claim in a memorandum filed in January 2003. The matters pertaining to this claim have been litigated and found to be without merit.

As to the prosecutor's facial expressions, petitioner includes no facts or evidence in support of this claim. There is nothing located in the court record to support this claim. The court finds petitioner's claim purely speculative and conclusory. On the showing made, this claim will be denied.

As to prosecution's attempt to have defense counsel removed, this claim is procedurally barred from review as it was raised and rejected on appeal. Under LSA-C.Cr.P. Art. 930.4(C), unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered. The merits of the claim shall not be reviewed by this court.

Illegal Sentences Claims #1 and #2

Petitioner requests that the court strike the illegal sentences and to re-sentence the defendant to LSA-R.S. 14:31, manslaughter, or alternatively to "strike the unconstitutional provision of the statute," based on *Miller v. Alabama*, 132 S.Ct. 2455 (June 25, 2012), and *Graham v. Florida*, 130 S. Ct. 2011 (2010).

Graham is inapplicable to this case, as it applies only to non-homicide cases, ruling that life sentences without parole for juveniles who commit crimes other than homicide are unconstitutional.

The court further finds that petitioner's claim under *Miller* must also be denied, as petitioner's conviction was already final at the time that *Miller* was decided. Under LSA-C.Cr.P. art 922,

> *A. Within fourteen days of rendition of the judgment of the supreme court or any appellate court, in term time or out, a party may apply to the appropriate court for a rehearing. The court may act upon the application at any time.*
>
> *B. A judgment rendered by the supreme court or other appellate court becomes final when the delay for applying for a rehearing has expired and no application therefor has been made.*
>
> *C. If an application for a rehearing has been made timely, a judgment of the appellate court becomes final when the application is denied.*
>
> *D. If an application for a writ of review is timely filed with the supreme court, the judgment of the appellate court from which the writ of review is sought becomes final when the supreme court denies the writ.*

Petitioner's conviction and sentence became final on February 10, 2012. The Louisiana Supreme Court has ruled that *Miller* does not apply retroactively in state cases on collateral review, as it merely sets forth a new rule of criminal constitutional procedure, which is neither substantive nor implicative of the fundamental fairness and accuracy of criminal proceedings. *State v. Tate*, 12-2763 (La, 11-5-13), 130 So.3d 829.

Hence, the court finds no illegality in petitioner's sentences, as the terms of petitioner's sentences are consistent with the mandatory life sentence statutorily set and legal at the time of petitioner's sentencing. Thus, petitioner's *Motion to Strike* will be denied.

Illegal Sentences Claim #3

Petitioner claims that the sentence as to count #2 is invalid. The court finds nothing invalid with count #2 of petitioner's sentence, as addressed above in PCR claim #4.

Accordingly,

IT IS ORDERED BY THE COURT that petitioner's application for post-conviction relief be and is hereby **DENIED**.

IT IS FURTHER ORDERED BY THE COURT that petitioner's *Motion to Strike Illegal Sentence and for Individualized Re-Sentencing Hearing* be and the same is hereby **DENIED.**

Gretna, Louisiana this 12th day of May 2014.

JUDGE

PLEASE SERVE:
PETITIONER: Lawrence Jacobs, DOC # not provided, Louisiana State Penitentiary, Angola, LA 70712

DEFENSE COUNSEL: Elizabeth Coe, 636 Baronne Street, New Orleans, LA 70113

PLEASE ELECTRONICALLY SERVE:
Terry Boudreux, District Attorney's Office, 200 Derbigny St., Gretna, LA 70053

A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON

APPENDIX A

Application For Writs

No. 14-KH-425

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

JUNE 11, 2014

Mary B. Legnon

Deputy Clerk

STATE OF LOUISIANA
VERSUS
LAWRENCE JACOBS

IN RE LAWRENCE JACOBS

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE GLENN B. ANSARDI, DIVISION "H", NUMBER 96-7161

Attorneys for Relator:

Elizabeth Coe
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(504) 558-9867

Attorneys for Respondent:

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Assistant District Attorney
200 Derbigny Street
Gretna, LA 70053
(504) 368-1020

WRIT DENIED

(SEE ATTACHED DISPOSITION)

Gretna, Louisiana, this 30th day of June, 2014.

STATE OF LOUISIANA	NO. 14-KH-425
VERSUS	FIFTH CIRCUIT
LAWRENCE JACOBS	COURT OF APPEAL
	STATE OF LOUISIANA

WRIT DENIED

Upon review, we find no error in the district court's May 12, 2014 ruling denying relator's "Motion to Strike Illegal Sentences and for an Individualized Re-Sentencing Hearing."

On the showing made, we find that relator has failed to meet his burden of supporting his claims that the district court erred in not applying the decisions set forth in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and *Miller v. Alabama*, --U.S.--, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), to his mandatory life sentences without parole.

In particular, we find that the district court did not err in finding that *Graham v. Florida* is not applicable to the underlying matter since relator was convicted of two counts of second degree murder. In *Graham*, 560 U.S. at 53, the Court specifically addressed the issue of whether the Constitution permitted a juvenile offender to be sentenced to life in prison without parole for a non-homicide crime.

Further, we find that the district court did not err in finding that relator's judgment on appeal became final when the Louisiana Supreme Court denied his writ application challenging this Court's May 24, 2011 decision. *See State v. Jacobs*, 11-1753 (La. 2/10/12), 80 So.3d 468. As such, the rule announced in *Miller* is not applicable to this case. Additionally, the Louisiana Supreme Court has recently ruled that *Miller* does not apply retroactively in state cases on collateral review. *State v. Tate*, 12-2763 (La. 11/5/13), 130 So.2d 829. Since the judgment on appeal became final on February 10, 2012, this case is not on direct review or in the direct review pipeline, but rather is before this Court on collateral review. *State v. Jones*, 13-2039 (La. 2/28/14), 134 So.3d 1164.

For the foregoing reasons, this writ application is denied.

Gretna, Louisiana, this 30th day of June, 2014.

JUDGE JUDE G. GRAVOIS

CHIEF JUDGE SUSAN M. CHEHARDY

JUDGE ROBERT M. MURPHY

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GRETNA
JUN 30 2014
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COURT OF APPEAL, FIFTH CIRCUIT

APPENDIX B

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2014-KP-1622

VS.

LAWRENCE JACOBS

IN RE: Jacobs, Lawrence; - Defendant; Applying For Supervisory and/or Remedial Writs, Parish of Jefferson, 24th Judicial District Court Div. H, No. 96-7161; to the Court of Appeal, Fifth Circuit, No. 14-KH-425;

April 17, 2015

Denied. See per curiam.

SJC

JLW

GGG

MRC

JDH

JOHNSON, C.J., would grant.

KNOLL, J., recused.

Supreme Court of Louisiana
April 17,2015

Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 14-KP-1622

APR 17 2015

STATE OF LOUISIANA

v.

LAWRENCE JACOBS

On Writ of Certiorari to the
Fifth Circuit Court of Appeal, Parish of Jefferson

SC

PER CURIAM:

Denied. For purposes of applying the new constitutional rule of Miller v. Alabama, 567 U.S. ____, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), in relator's case, the decision in State v. Jacobs, 07-0887 (La. App. 5 Cir. 5/24/11), 67 So.3d 535, writ denied 11-1753 (La. 2/10/12), 80 So.3d 468, affirming his convictions and sentences for second degree murder, became final when the Supreme Court denied his pending petition for certiorari on October 1, 2012, without comment, less than four months after deciding Miller, and without giving him the benefit of Miller. Jacobs v. Louisiana, ___ U.S. ____, 133 S.Ct. 139, 184 L.Ed.2d 67 (2012); see Caspari v. Bohlen, 510 U.S. 383, 390, 114 S.Ct. 948, 953, 127 L.Ed.2d 236 (1994) ("A state conviction and sentence become final for purposes of retroactivity when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied.") (citing Griffith v. Kentucky, 479 U.S. 314, 321, n.6, 107 S.Ct. 708, 712, 93 L.Ed.2d 649 (1987) (for purposes of applying new federal constitutional rules to cases in the direct review pipeline and not yet final, "[b]y 'final,' we mean a case in which a judgment of conviction has been rendered, the

Johnson, C.J., would grant.

APPENDIX C

availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied."). Relator's case was therefore no longer on direct review or subject to direct review when he filed his present application in 2013 raising a Miller claim. Relator's application is thus governed by this Court's decision in State v. Tate, 12-2763 (La. 11/5/13), 130 So.3d 829, cert. denied, Tate v. Louisiana, ___ U.S. ___, 134 S.Ct. 2663, 189 L.Ed.2d 214 (2014), which declined to give Miller retroactive effect to final sentences subject only to collateral attack. The district court therefore did not err in denying the application.

SUPREME COURT OF LOUISIANA

NO. 2014-KP-1622

STATE OF LOUISIANA

APR 17 2015

v.

LAWRENCE JACOBS

ON SUPERVISORY WRIT TO THE FIFTH CIRCUIT COURT OF APPEAL, PARISH OF JEFFERSON

JOHNSON, Chief Justice would grant.