



**JOHNSON v. ELLIOTT**

2021 OK CR 31

Case Number: PR-2018-1203

Decided: 10/08/2021

**JESSE ALLEN JOHNSON, Petitioner v. HONORABLE RAY C. ELLIOTT, JUDGE OF THE  
DISTRICT COURT, THE STATE OF OKLAHOMA**



Cite as: 2021 OK CR 31, \_\_ \_\_

**ORDER DENYING APPLICATION FOR  
EXTRAORDINARY RELIEF AND REMANDING  
MATTER TO DISTRICT COURT**

¶1 This case is before us on remand from the United States Supreme Court, vacating our decision in *Johnson v. Elliott*, 2019 OK CR 9, 457 P.3d 1089, and directing further consideration in light of *Jones v. Mississippi*, 141 S.Ct. 1307 (2021). In 2018, Petitioner sought and was granted post-conviction relief from this Court because he was a minor at the time he committed the homicide and had been sentenced to life without parole.<sup>1</sup> We remanded for a sentencing hearing at which his youth at the time of the crime could be considered. He failed to request jury sentencing within the applicable statutory timeframe, and so Judge Elliott denied Petitioner's request for jury resentencing as he found Petitioner waived his right to sentencing by a jury when he entered his blind plea of guilty in 2006.

¶2 Petitioner then sought and was granted extraordinary relief from this Court and we remanded the matter to the district court in *Johnson v. Elliott*, 2019 OK CR 9, 457 P.3d 1089 (holding a defendant is entitled to jury resentencing unless affirmatively waived under the Sixth Amendment). That decision was based upon *Stevens v. State*, 2018 OK CR 11, ¶ 34, 422 P.3d 741, 750 ("The Sixth Amendment demands that the trial necessary to impose life without parole on a juvenile homicide offender must be a trial by jury, unless a jury is affirmatively waived."). The State of Oklahoma sought and was granted review by the United States Supreme Court, which in *Oklahoma v. Johnson*, \_\_ S.Ct. \_\_, 209 L.Ed.2d 727 (2021), vacated our previous order entered in this matter and remanded the case to this Court for consideration in light of the decision in *Jones*.

¶3 Back before this Court now is Petitioner's application for an extraordinary writ seeking to prohibit Judge Elliott from resentencing him without empaneling a jury pursuant to 22 O.S.2011, § 929.2.<sup>2</sup> Because *Jones v. Mississippi* established that the Sixth Amendment does not require jury sentencing in such cases, and because Petitioner has not complied with statutory requirements for entitlement to jury sentencing, we affirm the decision of the trial court.

¶4 For a writ of prohibition, Petitioner must establish that "(1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy." Rule 10.6(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021). Our holding in *Stevens* was based upon the majority's reading of *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). The United States Supreme Court has since clarified its *Miller* and *Montgomery* holdings in the very recent case of *Jones*, clearly establishing that the Sixth Amendment does not require that any sentence of life without parole on a juvenile offender be done by a jury.

**DECISION**

¶5 We find the Honorable Ray C. Elliott's holding is not an abuse of discretion and is authorized by law. As a result, Petitioner has failed to meet his burden for an extraordinary writ. The trial court's denial of Petitioner's request for jury resentencing based upon waiver is **AFFIRMED**, and the matter is **REMANDED** to the trial court for resentencing.

¶6 **IT IS SO ORDERED.**

¶7 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 8th day of October, 2021.

**/S/SCOTT ROWLAND, Presiding Judge**

**/S/ROBERT HUDSON, Vice Presiding Judge**

**/S/GARY L. LUMPKIN, Judge**

**/S/DAVID B. LEWIS, Judge**

**CIR**

ATTEST:

/s/John D. Hadden

Clerk

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**LEWIS, JUDGE, CONCURS IN RESULT:**

¶1 I concur in denying the writ. *Jones v. Mississippi* at least implicitly rejected this Court's conclusions, in *Stevens v. State*, 2018 OK CR 11, 422 P.3d 741, that: (1) "[t]he Sixth Amendment demands that the trial necessary to impose life without parole on a juvenile homicide offender must be a trial by jury, unless a jury is affirmatively waived;" <sup>1</sup> and (2) in such a trial, the State must "prove, beyond a reasonable doubt, that the defendant is irreparably corrupt and permanently incorrigible." <sup>2</sup> Nonetheless, those requirements gave real teeth to *Miller's* promise of "a certain process" considering "youth and attendant characteristics" before imposing a life-without-parole sentence. *Miller v. Alabama*, 567 U.S. 460, 483.

¶2 Trial courts (sitting with juries, where properly demanded) can still take seriously the constitutional requirement of a *hearing*, by allowing a full array of evidence and argument about how youth and attendant characteristics should inform the decision between life imprisonment and life without parole. Though *Jones* rejected a factual finding of permanent incorrigibility as a condition precedent to life without parole, the Supreme Court's analogy of *Jones's* "hearing" requirement to a capital sentencing proceeding suggests to me that the court or jury should *not* impose life without parole on a juvenile *unless* it finds that the aggravating circumstances outweigh any mitigating circumstances, including youth and its attendant characteristics.

¶3 Without these guardrails on the discretionary sentencing allowed by *Jones*, courts and juries could fail to meaningfully distinguish those rare incorrigible juveniles who deserve life without parole from others who do not.

**FOOTNOTES**

<sup>1</sup> See *Johnson v. State*, PC-2017-755 (Okl.Cr. May 22, 2018) (not for publication).

<sup>2</sup> Petitioner, age seventeen, entered a blind plea of guilty on November 29, 2006, to First Degree Murder in Oklahoma County District Court Case No. CF-2005-5714. He was sentenced to life imprisonment without the possibility of parole. Petitioner's certiorari appeal was denied by this Court in a Summary Opinion issued October 3, 2007, Appeal No. C-2007-83.

**LEWIS, JUDGE, CONCURS IN RESULT:**

<sup>1</sup> *Stevens*, 2018 OK CR 11, ¶ 34, 422 P.3d at 750 (*citing Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)).

2 *Stevens*, 2018 OK CR 11, ¶ 35, 422 P.3d at 750 (citing *Luna v. State*, 2016 OK CR 27, ¶ 21 n.11, 387 P.3d 956, 963 n.11; and *Ring v. Arizona*, 536 U.S. 584 (2002)). See in this regard, *Jones*, 141 S.Ct. at 1316 n.3 (citing *Ring* and *Apprendi*)("If permanent incorrigibility were a factual prerequisite to a life-without-parole sentence, this Court's Sixth Amendment precedents might require that a jury, not a judge, make such a finding").

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| <u>2018 OK CR 11, 422 P.3d 741.</u> | <u>STEVENS v. STATE</u>   | Discussed at Length |
| <u>2019 OK CR 9, 457 P.3d 1089.</u> | <u>JOHNSON v. ELLIOTT</u> | Discussed at Length |

#### Title 22. Criminal Procedure

| Cite                | Name   | Level |
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| <u>22 O.S. 929.</u> | <u>Remanding Case for Vacation of Sentence-Nonjury Sentencing Proceeding-<br/>Construction</u> | Cited |