

WHITE v. STATE

2021 OK CR 29

Case Number: [PC-2019-967](#)

Decided: 10/07/2021

STEVEN ANTONIO WHITE, Petitioner v. THE STATE OF OKLAHOMA, Respondent

Cite as: 2021 OK CR 29, ___ __

**OPINION DENYING SECOND APPLICATION
FOR POST-CONVICTION RELIEF****HUDSON, VICE PRESIDING JUDGE:**

¶1 Petitioner, Steven Antonio White, appeals to this Court from an order of the District Court of Tulsa County denying his second application for post-conviction relief in Case No. CF-1996-1140. In that case, Petitioner was charged with one count of Murder in the First Degree (Count 1) and two counts of Shooting With Intent to Kill (Counts 2--3). The State filed a Bill of Particulars to seek the death penalty for Count 1. Petitioner was convicted by a jury of all three counts and was sentenced in accordance with the jury's verdicts to life imprisonment without the possibility of parole for Count 1, and life imprisonment for each of Counts 2 and 3, with the sentences ordered to run consecutively. Petitioner appealed to this Court and his Judgment and Sentence was affirmed. *White v. State*, No. F-1998-792, slip op. (OkI.Cr. Jan. 11, 2000) (unpublished). Petitioner previously filed an original application for post-conviction relief that was denied by the District Court on October 15, 2013, and that was not appealed to this Court.

¶2 In his second application for post-conviction relief filed in the District Court, Petitioner argued his sentence of life without parole is unconstitutional and subject to collateral attack. Petitioner was a juvenile when he committed his offenses and now claims his life without parole sentence must be vacated unless he receives an individualized sentencing hearing consistent with the Eighth Amendment protection against cruel and unusual punishment. See *Montgomery v. Louisiana*, 577 U.S. 190 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012); see also *Stevens v. State*, [2018 OK CR 11, 422 P.3d 741](#); *Luna v. State*, [2016 OK CR 27, 387 P.3d 956](#).

¶3 The Honorable Dawn Moody, District Judge, denied Petitioner's second post-conviction relief application on grounds that the second stage proceedings conducted during Petitioner's capital murder trial included a sufficient presentation of evidence relevant to Petitioner's youth and its attendant circumstances to satisfy the burden called for by the Eighth Amendment under *Montgomery* and *Miller*. The District Court conducted a thorough evaluation of the evidence presented at Petitioner's trial and determined that any resentencing hearing would constitute an uncalled for redundancy.

¶4 In *Jones v. Mississippi*, 593 U.S. ___, 141 S. Ct. 1307 (2021), the United States Supreme Court clarified that *Miller* and *Montgomery* held the Eighth Amendment mandates "only that a sentencer follow a certain process--considering an offender's youth and attendant characteristics--before imposing' a life-without-parole sentence." *Id.* at 1316 (quoting *Miller*, 567 U.S. at 483). "[Y]outh matters in sentencing" and *Miller* and *Montgomery* prohibit mandatory life-without-parole sentences for defendants who commit homicide before the age of 18. *Jones*, 141 S. Ct. at 1314. The Court in *Jones* emphasized that *Miller* and *Montgomery* require **only** "that a sentencer must have discretion to consider youth before imposing a life-without-parole sentence, just as a capital sentencer must have discretion to consider other mitigating factors before imposing a death sentence." *Id.* at 1316. However, no separate finding of incorrigibility need be made before imposing a life-without-parole sentence. *Id.* at 1316, 1318-19.

¶5 In the sentencing context, youth and its attendant characteristics are sentencing factors akin to mitigating circumstances in the capital sentencing process, "not an eligibility criterion" or "a factual prerequisite to a life-without-parole sentence." *Id.* at 1315, 1316 n.3. This is why no separate factual findings are needed concerning a juvenile murder defendant's youth in the sentencing process. *Id.* at 1316. The sentencer must consider youth and its attendant characteristics in determining the appropriate punishment. *Id.* However, no separate findings or explanations by the sentencer are required concerning this sentencing factor to comply with the federal constitution. *Id.* at 1315, 1319-21.

¶6 *Jones* interprets *Miller*, and thus *Montgomery*, as holding that the Eighth Amendment permits a life-without-parole sentence for a defendant who committed a homicide when he or she was under 18, **only** if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment. See *id.* at 1322. "In a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Id.* at 1313. *Jones* specifically found that Oklahoma is one of fifteen States that use such a discretionary sentencing regime. *Id.* at 1318 n.5.

¶7 In the present case, Petitioner was sentenced to life without parole under a discretionary sentencing system that was constitutionally sufficient. See *Jones*, 141 S. Ct. at 1313, 1318 n.5. Petitioner's life-without-parole sentence complied with the Eighth Amendment "because the sentence was not mandatory and the [sentencer] had discretion to impose a lesser punishment in light of [Petitioner's] youth." *Id.* at 1322. The jury in this case considered a plethora of evidence at Petitioner's capital murder trial relating to his youth and its attendant circumstances; other mitigating circumstances relating to Petitioner's background and family history; testimony from experts concerning Petitioner's psychological development as an adolescent, mental illness and prospects for future dangerousness; and, of course, evidence concerning the nature of Petitioner's crimes. The life-without-parole sentence imposed in this case was made only after Petitioner's jury considered these various sentencing factors. The sentencing phase of Petitioner's capital murder trial unquestionably provided him with the individualized sentencing proceeding required by the Eighth Amendment as interpreted in *Miller*, *Montgomery* and *Jones*. Petitioner's claim on post-conviction is therefore denied.

* * * * *

¶8 In *Luna* and *Stevens*, this Court attempted to interpret and comply with the dictates of *Montgomery* and *Miller*. After *Jones*, it is clear that *Luna* and *Stevens* exceeded the requirements of the Eighth Amendment for sentencing juvenile murder defendants. We therefore expressly overrule both *Luna v. State*, [2016 OK CR 27, 387 P.3d 956](#), and *Stevens v. State*, [2018 OK CR 11, 422 P.3d 741](#), to the extent these decisions are inconsistent with *Jones*. To comply with *Jones* in future cases, we set forth the following requirements going forward for all cases involving juvenile murder defendants when the sentence of life without parole is sought by the State. If and until such time as the Legislature addresses this matter, the bench and bar should follow the procedures outlined herein.

1. Notice and Discovery

¶9 The notice and discovery provisions previously mandated by this Court for proceedings in which the State is seeking a life-without-parole sentence for juvenile murder defendants shall remain in full force and effect with one modification. The prosecutor's notice shall now recite simply that: "The State is seeking the punishment of life without the possibility of parole against the Defendant for the offense of Murder in the First Degree, pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016) and *Jones v. Mississippi*, 593 U.S. ___, 141 S. Ct. 1307 (2021)."

¶10 Overlaying this modification into our prior holding from *Stevens*, we mandate the following notice and discovery requirements *in toto*:

In all future trials where the State intends to seek a sentence of life without the possibility of parole for an offender who committed his or her offense under the age of eighteen (18) years of age the State shall give notice of this fact by stating at the bottom of the Information in bold type: **["The State is seeking the punishment of life without the possibility of parole against the Defendant for the offense of Murder in the First Degree, pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016) and *Jones v. Mississippi*, 593 U.S. ___, 141 S. Ct. 1307 (2021)."]** Both parties shall be afforded full discovery on this issue in accordance with established discovery law. 22 O.S.2011, § 2001 *et seq.* The assigned trial judge has the authority under our Discovery Code to issue any orders necessary to accomplish this task.

Stevens, 2018 OK CR 11, ¶ 33, 422 P.3d at 749-750 (alteration in original as stated above).

¶11 These notice and discovery requirements shall apply regardless of whether the defendant's case is ultimately tried to a jury, to the bench without a jury or whether the defendant enters a blind plea of guilty or no contest.

2. Bifurcated Jury Trials

¶12 Unless a jury is affirmatively waived, juvenile murder defendants facing a sentence of life without parole must continue to receive a bifurcated sentencing proceeding before a jury as previously authorized. See *Stevens*, 2018 OK CR 11, ¶ 34, 422 P.3d at 750. This is consistent with the holding in *Jones* that *Miller*, and thus the Eighth Amendment, requires "a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases[.]" *Jones*, 141 S. Ct. at 1315. *Jones* too emphasized that:

On the question of what *Miller* required, *Montgomery* was clear: "A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not."

Jones, 141 S. Ct. at 1317-18 (quoting *Montgomery*, 577 U.S. at 210).

¶13 We therefore reaffirm that, unless a jury is affirmatively waived:

The defendant's trial shall be bifurcated and the issue of the defendant's guilt shall be separately determined from the enhancement of his or her sentence. *Cf. Mitchell v. State*, 2011 OK CR 26, ¶ 119, 270 P.3d 160, 186[, *overruled on other grounds, Nicholson v. State*, 2018 OK CR 10, 421 P.3d 890] (contrasting sentencing procedure where State seeks to enhance sentence); 22 O.S.2011, § 860.1 (statutory procedure for sentencing). The prohibition against the introduction of evidence in either aggravation or mitigation set forth in *Malone v. State*, 2002 OK CR 34, 58 P.3d 208, shall not be applicable to the sentencing proceeding in this type of case. Therefore, each party shall be afforded the opportunity to present evidence in support of its position as to punishment in the second stage of the trial.

Stevens, 2018 OK CR 11, ¶ 34, 422 P.3d at 750.

¶14 The State may continue to present relevant evidence in this context supportive of its position that the life-without-parole sentence is appropriate. *Id.*, 2018 OK CR 11, ¶ 35, 422 P.3d at 750. As we held in *Stevens*:

Generally, this will include, but not be limited to, evidence concerning the defendant's: (1) sophistication and maturity; (2) capability of distinguishing right from wrong; (3) family and home environments; (4) emotional attitude; (5) pattern of living; (6) record and past history, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and (7) the likelihood of the defendant's rehabilitation during adulthood.

Id.

¶15 "[T]he defendant must be permitted to introduce relevant evidence concerning the defendant's youth and its attendant circumstances." *Id.*, 2018 OK CR 11, ¶ 36, 422 P.3d at 750. As we held in *Stevens*:

Generally, this will include, but not be limited to, evidence concerning the defendant's: "(1) chronological age and its hallmark features--among them, immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the incompetencies associated with youth--for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys; and (3) whether the circumstances suggest possibility of rehabilitation." *Luna*, 2016 OK CR 27, ¶ 20, 387 P.3d at 962 (quotations and citation omitted).

Id.

¶16 Consistent with *Jones*, the District Courts of this State are directed to use the modified version of the OUJI-CR (2d) 4-87B instruction as set forth in "Appendix A" attached to this opinion. We further hold that the OUJI-CR (2d) 4-87C and OUJI-CR (2d) 4-87C-1 instructions along with the OUJI-CR (2d) 4-87D verdict form are all hereby stricken and shall not be used going forward. The verdict form set forth in "Appendix B" attached to this opinion shall be used in all future first degree murder cases involving juvenile life-without-parole sentencing. In light of *Jones*, the State no longer has the burden under the federal constitution of proving a juvenile defendant is irreparably corrupt and permanently incorrigible beyond a reasonable doubt. *Jones* makes clear that such is neither an eligibility factor nor a factual predicate to a life-without-parole sentence but, instead, is a mere sentencing factor. *Jones*, 141 S. Ct. at 1316-21. The sentencer is also no longer required to make specific factual findings in this regard or to otherwise provide any on-the-record sentencing explanation beyond the actual sentence recommended or imposed. *Id.*

3. Non-Jury Sentencing--Bench Trials

¶17 In cases tried to the bench without a jury, the State may seek a life-without-parole sentence against a juvenile murder defendant using the same bifurcated sentencing procedures prescribed for cases being tried to juries. The notice and discovery provisions discussed above shall apply. The prohibition against the introduction of evidence in either aggravation or mitigation set forth in *Malone v. State*, 2002 OK CR 34, 58 P.3d 208, shall not apply and each party shall be afforded the opportunity to present

evidence in support of its position as to punishment in the second stage of the bench trial. As with jury trials, "the defendant must be permitted to introduce relevant evidence concerning the defendant's youth and its attendant characteristics." *Stevens*, 2018 OK CR 11, ¶ 36, 422 P.3d at 750. Likewise, the State may present evidence in aggravation supporting its view that a life-without-parole sentence is appropriate.

¶18 Consistent with *Jones*, the trial court shall consider, in determining the proper sentence, the defendant's youth and youth-related characteristics, as well as any other aggravating and mitigating circumstances, along with the nature of the crime committed. The trial court is not required to make specific findings concerning incorrigibility or provide an on-the-record sentencing explanation. However, the trial court should acknowledge in its ruling the discretion it has to impose a sentence less than life without parole pursuant to *Miller*, *Montgomery* and *Jones* based on the youth-related sentencing factors at issue in the case.

4. Non-Jury Sentencing--Blind Pleas

¶19 In cases where a jury trial is waived because a juvenile murder defendant enters a blind plea of guilty or no contest, the same notice, discovery and bifurcated sentencing procedures prescribed for bench trials shall apply when the State seeks a sentence of life without parole.

5. Resentencing

¶20 Finally, in those cases warranting resentencing because, for whatever reason, the sentencer did not consider a juvenile murderer's youth, *Jones* makes clear that *Miller* and *Montgomery* **do not** demand jury resentencing. *Jones*, 141 S. Ct. at 1316 n.3. Our previous holdings to the contrary are hereby expressly overruled. See *Johnson v. Elliott*, 2019 OK CR 9, ¶ 10, 457 P.3d 1089, 1091, *certiorari granted and judgment vacated by Oklahoma v. Johnson*, 2021 WL 1725141 (U.S. May 3, 2021); *Stevens*, 2018 OK CR 11, ¶ 34, 422 P.3d at 750. The Sixth Amendment requirement of right to jury trial is not applicable in these cases. Whether a juvenile murder defendant is entitled to jury resentencing is governed solely by Oklahoma law, specifically, 22 O.S.2011, §§ 812.1 and 929.

¶21 The notice, discovery and bifurcated sentencing procedures discussed above shall apply to resentencing proceedings of this type whether tried to a jury or to the bench without a jury. As we held in *Stevens*:

The procedure for resentencing . . . is slightly different. Since Petitioner's . . . conviction remain[s] valid, the trial court need only conduct a new sentencing hearing[.] 22 O.S.2011, § 929(A). If the State does not agree to the modification of Petitioner's sentence then it shall file a notice pleading with the language set out [above]. The trial court shall schedule the matter for resentencing in accordance with both § 812.1 and § 929 of Title 22, and enter any orders which are necessary for the timely completion of discovery.

The trial court shall conduct resentencing pursuant to 22 O.S.2011, § 929[.] Each party shall be afforded the opportunity to present evidence concerning, but not limited to, the factors set out above. The sentencer can consider the prior evidence documenting Petitioner's youthfulness, mental capacity, maturity, and likelihood of rehabilitation contained in the District Court file together with any additional evidence presented pursuant to *Miller* and *Montgomery*. See 22 O.S.2011, § 929 (providing that "all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing shall be admissible in [a] new sentencing proceeding.").

Stevens, 2018 OK CR 11, ¶¶ 38-39, 422 P.3d at 750-51 (alteration in original).

¶22 As we held in *Stevens*, a defendant may solely appeal from the resentencer's determination of his or her sentence and may not challenge his or her conviction. *Id.*, 2018 OK CR 11, ¶ 40, 422 P.3d at 751 (citing 22 O.S.2011, §§ 1051, 1066; Rule 1.2(A)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018)).

¶23 In the present case, the sentencing phase of Petitioner's capital murder trial provided him with the individualized sentencing proceeding required by the Eighth Amendment as interpreted in *Miller*, *Montgomery* and *Jones*. We therefore deny post-conviction relief.

DECISION

¶24 Petitioner's post-conviction appeal is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY THE HONORABLE DAWN MOODY, DISTRICT JUDGE

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NO RESPONSE FROM THE STATE

OPINION BY: HUDSON, V.P.J.
ROWLAND, P.J.: CONCUR
LUMPKIN, J.: CONCUR
LEWIS, J.: CONCUR IN PART/DISSENT IN PART

"APPENDIX A"
(Revised OUJI-CR 4-87B)

By your verdict in the first part of this trial you have already found the defendant guilty of the crime of murder in the first degree. You must now determine the proper punishment.

Under the law of the State of Oklahoma, every person found guilty of murder in the first degree shall be punished by imprisonment for life without the possibility of parole, or imprisonment for life with the possibility of parole.

You are further instructed that [Defendant] was a juvenile when this crime was committed. The law regards juvenile offenders generally as having lesser moral culpability and greater capacity for change than adult offenders. An offender's youth matters in determining the appropriateness of the sentence in this case.

You are therefore instructed to consider, in determining the proper sentence, the defendant's youth and youth-related characteristics, as well as any other aggravating and mitigating circumstances, along with the nature of the crime committed.

"APPENDIX B"

VERDICT FORM

LIFE WITHOUT PAROLE PROCEEDINGS----JUVENILE OFFENDER

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR _____ COUNTY

THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
JOHN DOE,) Case No. _____
)
Defendant.)
)

VERDICT (SECOND STAGE)

COUNT 1--MURDER IN THE FIRST DEGREE

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

Guilty of the crime of Murder in the First Degree and fix punishment at _____.

FOREPERSON

LEWIS, JUDGE, CONCURS IN PART AND DISSENTS IN PART:

¶1 I agree that this Petitioner was not deprived of an individualized sentencing hearing where youth and its attendant characteristics were considered along with the nature of the crime. *Stevens v. State*, 2018 OK CR 11, ¶ 26, 422 P.3d 741, 748. Petitioner's capital sentencing trial satisfied these requirements. No relief is warranted.

¶2 However, nothing in *Jones v. Mississippi* requires dismantling the substantive protections established in *Luna* and *Stevens* for juvenile homicide defendants facing life without parole. The majority never fully supported the effort to enforce *Miller* and *Montgomery* in this way; and today it takes a long-awaited opportunity to turn back the clock.

¶3 *Jones* did not overrule *Miller's* holding that life without parole is a cruel and unusual punishment for a juvenile whose crime reflects the transient immaturity of youth; it simply clarified that the Eighth Amendment does not require a finding of permanent incorrigibility as a condition precedent to the sentence.

¶4 *Jones* does say that a discretionary sentencing where youth is "considered" is constitutionally sufficient. We fashioned such a mechanism in *Luna* and *Stevens*, which required the State to show beyond a reasonable doubt that the juvenile was permanently incorrigible. This framework promised a high degree of reliability in proportioning a life without parole sentence to both the crime and the offender under all of the circumstances.

¶5 *Jones* can be read to mean *Luna* and *Stevens* went too far in requiring a finding of incorrigibility, but it hardly follows that the Constitution allows a wholly arbitrary discretion in imposing life without parole on juveniles. As we recognized in *Luna*, the Eighth Amendment requires that sentencing judges and juries in such cases be "fully aware of the constitutional 'line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.'" *Luna*, 2016

OK CR 27, ¶ 21, 387 P.3d at 963 (quoting *Montgomery*, 577 U.S. at 208-09).

¶6 Nothing in *Jones* erased that line. We remain obligated to see that it is not crossed. The Eighth Amendment still demands *meaningful* consideration of youth and its attendant characteristics at sentencing. To this end, the sentencer's discretion should be meaningfully *guided* by instructions that no juvenile can be sentenced to life without parole unless the aggravating circumstances outweigh any mitigating circumstances, including youth and its attendant characteristics. And trial courts must continue to carefully weigh arguments to the sentencing judge or jury that a crime reflects the transient immaturity of youth; or on the other hand, permanent incorrigibility.

¶7 Without formal recognition of this constitutionally bounded space in sentencing-stage argument, and instructions that clearly limit the sentencer's discretion by ensuring an *informed awareness* of substantive constitutional constraints, the sentencing procedure promulgated today will fail to meaningfully distinguish those rare incorrigible juveniles who deserve life without parole from others who do not.

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name	Level
Oklahoma Court of Criminal Appeals Cases	
Cite	Name
2002 OK CR 34, 58 P.3d 208.	MALONE v. STATE
2011 OK CR 26, 270 P.3d 160.	MITCHELL v. STATE
2016 OK CR 27, 387 P.3d 956.	LUNA v. STATE
2018 OK CR 10, 421 P.3d 890.	NICHOLSON v. STATE
2018 OK CR 11, 422 P.3d 741.	STEVENS v. STATE
2019 OK CR 9, 457 P.3d 1089.	JOHNSON v. ELLIOTT
Title 22. Criminal Procedure	
Cite	Name
22 O.S. 812.1.	Time Limit to Begin Trial
22 O.S. 860.1.	Second or Subsequent Offense - Trial Procedures
22 O.S. 929.	Remanding Case for Vacation of Sentence-Nonjury Sentencing Proceeding-Construction
22 O.S. 1051.	Right of Appeal - Review - Corrective Jurisdiction - Procedure - Scope of Review on Certiorari
22 O.S. 2001.	Short Title