In *Jones v. Mississippi* [2] the Supreme Court will decide whether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is “permanently incorrigible” before imposing a sentence of life without parole.


In 2004 Brett Jones, at age 15, killed his grandfather. He was sentenced to life in prison without parole. After *Miller* was decided a trial court resentenced him to life in prison without parole. The Mississippi Court of Appeals affirmed noting that the trial court didn’t discuss “each and every *Miller* factor, [but] the judge expressly said he had considered each factor.” This Mississippi Supreme Court, without an opinion and over a dissent, didn’t review the Mississippi Court of Appeals decision.

Jones points out that the trial court did not find that he was “permanently incorrigible, nor did it acknowledge that only permanently incorrigible juvenile homicide offenders may be sentenced to life without parole.”

The disagreement in this case over whether the sentencing authority must make a finding of “permanently incorrigible” comes down to a dispute over different language in the Supreme Court’s *Montgomery* opinion.

Jones argues the sentencing authority must make a finding pointing to language in *Montgomery* stating that the sentencing authority must “separate those juveniles who may be sentenced to life without parole from those who may not.” Jones also argues “even the dissent in *Montgomery* stated that the majority opinion required sentencing authorities to ‘resolve’ the question of incorrigibility.”

Mississippi claims that the following language in *Montgomery* makes clear the sentencing authority doesn’t have to make a finding of permanent incorrigibility. “Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. *That this finding is not required,* however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee.”

Jones argues the above language is dictum, meaning not essential to the Court’s holding in the case. According to Jones: “The argument ‘[t]hat this finding is not required,’ the [Supreme] Court explained, would ‘speak[] only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee.’ That argument therefore did not affect the substantive (and thus retroactive) nature of *Miller*’s holding.”
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