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SUPREME COURT  
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SUPREME COURT  
STATE OF WASHINGTON  
1/10/2020  
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NO. 95578-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re Personal Restraint Petition of

SAID OMER ALLI,

Petitioner.

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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**A. SUMMARY OF SUPPLEMENTAL ARGUMENT**

State v. Houston-Sconiers<sup>1</sup> announced a new constitutional rule of criminal procedure — that the Eighth Amendment requires sentencing courts to consider the attributes of youth and to have discretion when sentencing juvenile offenders in adult court. Houston-Sconiers did not announce a substantive rule of law because it did not declare that any particular punishment is constitutionally disproportionate for juveniles, nor did it prohibit the imposition of any particular sentence. Ali’s argument — that Houston-Sconiers’ prohibition on *mandatory* sentences is a substantive rule — eliminates the distinction between substantive and procedural rules and is inconsistent with well-established precedent.

Furthermore, Houston-Sconiers was premised entirely on the Eighth Amendment and did not turn on any legislative intent or statutory construction. Because Houston-Sconiers announced a new constitutional rule of criminal procedure, it is not retroactive and does not authorize resentencing in final cases.

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<sup>1</sup> 188 Wn.2d 1, 391 P.3d 409 (2017).

**B. SUPPLEMENTAL ARGUMENT**

**1. HOUSTON-SCONIERS ANNOUNCED A NEW CONSTITUTIONAL RULE OF CRIMINAL PROCEDURE THAT DOES NOT APPLY RETROACTIVELY TO FINAL CASES.**

Relying on Miller v. Alabama<sup>2</sup> and Montgomery v. Louisiana,<sup>3</sup> Ali argues that Houston-Sconiers announced a substantive rule of law that applies retroactively to his long-final conviction. Ali mischaracterizes Miller's prohibition on mandatory sentences of life without parole for juvenile offenders as its substantive rule rather than its procedural component. From this flawed premise, Ali reasons that Houston-Sconiers' requirement of complete juvenile sentencing discretion must also be substantive. Ali obscures the well-established dichotomy between substance and procedure by oversimplifying the holdings of Miller and Montgomery.

Miller concluded that because of the special characteristics of youth, mandatory life sentences for juveniles “pos[e] too great a risk of disproportionate punishment,” and thus the Eighth Amendment requires individualized sentencing. Montgomery, 136 S. Ct. at 733 (quoting Miller, 567 U.S. at 479). But beyond this *procedural* requirement of

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<sup>2</sup> 567 U.S. 460, 471, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

<sup>3</sup> \_\_\_ U.S. \_\_\_, 136 S. Ct. 718, 728, 193 L. Ed. 2d 599 (2016).

individualized sentencing, Miller *substantively* held that life without parole is excessive for all but the rare juvenile whose crime reflects irreparable corruption, because the penological justifications for such a sentence are weakened in light of the distinct attributes of youth.

Montgomery, 136 S. Ct. at 734.

Thus, as Montgomery explained, Miller's holding has both substantive and procedural components. In order to pass constitutional muster, a sentencing scheme must ensure that those juveniles who cannot be sentenced to life without parole (the transiently immature) are separated from those juveniles who can be (the irreparably corrupt). The *substantive* holding of Miller is that life without parole is a constitutionally disproportionate sentence for juveniles whose crimes reflect transient immaturity. The *procedural* rule of Miller — discretionary sentencing — is the mechanism that ensures the sentencing authority will separate juveniles who are in the exempt class from those who are not.

In other words, a discretionary sentencing hearing is the process by which to effectuate the substantive rule that life without parole is an excessive sentence for juveniles whose crimes reflect transient immaturity. Montgomery, 136 S. Ct. at 735. A discretionary hearing is necessary to determine whether a particular juvenile exhibits the “diminished

culpability and heightened capacity for change” that makes life without parole an unconstitutional sentence. Miller, 567 U.S. at 471, 479.

Contrary to Ali’s interpretation, Montgomery unmistakably held that the rule announced in Miller was substantive for Teague v. Lane<sup>4</sup> purposes precisely because it barred imposition of life without parole on a particular class of juveniles: While a “procedural rule ‘regulate[s] only the *manner of determining* the defendant’s culpability,’” a substantive rule “prohibits ‘a certain category of punishment for a class of defendants because of their status or offense.’” Montgomery, 136 S. Ct. at 732 (alteration and emphasis in original) (quoting Schriro v. Summerlin, 542 U.S. 348, 353, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004)). Miller’s rule was substantive under that definition because it did not concern merely the procedure for imposing life without parole, but rested on a determination that such a sentence was, as a substantive matter, unconstitutional for a class of juvenile offenders — those whose crimes reflect “unfortunate yet transient immaturity.” Montgomery, 136 S. Ct. at 734.

While Houston-Sconiers adopted Miller’s reasoning to hold that juvenile offenders must be treated differently under the Eighth Amendment, its rule (unlike Miller’s) is procedural only — a sentencing

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<sup>4</sup> 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989).

court must consider the attributes of youth and have discretion when sentencing juvenile offenders in adult court. In stark contrast to Miller's substantive ban on life sentences for transiently immature juveniles, Houston-Sconiers does not identify or describe a constitutionally disproportionate sentence for juveniles nor does it place any punishment outside the power of the State to impose.

By asserting that the mandatory nature of a sentence renders it substantively disproportionate for juveniles under the Eighth Amendment, Ali obscures the distinction between substance and procedure. Attempting to draw directly from Miller and its preceding cases, Ali argues that “the penological justifications for imposing *adult mandatory sentencing regimes* on juveniles collapse[s] in light of the distinct attributes of youth.” Supp. Brf. of Pet. at 10, 14 (emphasis added). But Miller concluded that the penological goals of sentencing did not justify a *life without parole sentence* for most juveniles, and that discretionary sentencing is required to protect those juveniles for whom it is unwarranted. In contrast, Houston-Sconiers' requirement of sentencing discretion is not tethered to any constitutionally disproportionate punishment. It is well-established that a sentence that is not constitutionally disproportionate under the Eighth Amendment does not “becom[e] so simply because it is

‘mandatory.’” Harmelin v. Michigan, 501 U.S. 957, 995, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991).

The United States Supreme Court has consistently held that new rules that regulate sentencing procedures to enforce the substantive guarantees of the Eighth Amendment are procedural only. Welch v. United States, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1257, 1264, 194 L. Ed. 2d 387 (2016) (citing e.g., Beard v. Banks, 542 U.S. 406, 408, 416-17, 124 S. Ct. 2504, 159 L. Ed. 2d 494 (2004); Sawyer v. Smith, 497 U.S. 227, 233, 241-42, 110 S. Ct. 2822, 111 L. Ed. 2d 193 (1990)). Houston-Sconiers announced a new sentencing procedure designed to effectuate the substantive guarantee of the Eighth Amendment — proportionality. Unlike Miller, it did not place any punishment beyond the State’s power to impose, “regardless of the procedures followed.” Penry v. Lynaugh, 492 U.S. 302, 329, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989). Under Teague, Houston-Sconiers is a procedural rule that does not apply retroactively to long-final cases such as Ali’s.

**2. HOUSTON-SCONIERS WAS NOT A CASE ABOUT STATUTORY CONSTRUCTION AND LEGISLATIVE INTENT.**

When a statute is construed by the state’s highest court, the construction is deemed to be what the statute has meant since its

enactment, and there is no question of retroactivity. In re Pers. Restraint of Colbert, 186 Wn.2d 614, 620, 380 P.3d 504 (2016) (citing State v. Moen, 129 Wn.2d 535, 538, 919 P.2d 69 (1996)). But the Teague analysis determines the retroactivity of new constitutional rules. 489 U.S. at 310.

The holding in Houston-Sconiers was a constitutional one — the Eighth Amendment compels the consideration of youth and discretionary sentencing of juveniles despite legislative intent and despite express language to the contrary. The court declared that “to the extent our state statutes have been interpreted to bar such discretion with regard to juveniles, *they are overruled.*” Houston-Sconiers, 188 Wn.2d at 21 (emphasis added). Houston-Sconiers did not turn on the interpretation or reinterpretation of any statutory language or legislative intent. See In re Pers. Restraint of Meippen, 193 Wn.2d 310, 324, 440 P.3d 978 (2019) (“There is no question that the rule in Houston-Sconiers is a rule of constitutional law. The entire case was premised on the dictates of the Eighth Amendment.”) (Wiggins, J., dissenting).

Indeed, the court itself clearly understood its holding to be a constitutional one. See Houston-Sconiers, 188 Wn.2d at 18, n.3 (responding to the concurrence’s criticism that the constitutional question should be avoided and the case decided on the basis of statutory construction). And later, in State v. Gilbert, the court again characterized

its holding in Houston-Sconiers as granting sentencing courts “discretion to consider downward sentences for juvenile offenders *regardless* of any sentencing provision to the contrary.” 193 Wn.2d 169, 175, 438 P.3d 133 (2019) (emphasis added).

Houston-Sconiers announced a new constitutional rule; it was not a holding on legislative intent. The retroactivity of Houston-Sconiers is thus determined by Teague. This Court should reject Ali’s argument that Houston-Sconiers was a case about statutory interpretation or reinterpretation.

C. **CONCLUSION**

The State respectfully asks this Court to conclude that Houston-Sconiers announced a new procedural rule that does not apply retroactively and does not authorize Ali’s untimely request for resentencing.

DATED this 10th day of December, 2019.

Respectfully submitted,

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