No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2008

TERRANCE JAMAR GRAHAM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the District Court of Appeal, First District, State of Florida

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Eighth Amendment's ban on cruel and unusual punishments prohibits the imprisonment of a juvenile for life without the possibility of parole as punishment for the juvenile's commission of a non-homicide.

LIST OF PARTIES IN PROCEEDING BELOW

1. Terrance Jamar Graham, Appellant

2. State of Florida, Appellee

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The opinion and judgment of the First District Court of Appeal of Florida (APP 1-22) is reported at *Graham v. State*, 982 So. 2d 43 (Fla. Dist. Ct. App. 2008). The First District Court of Appeal's order (APP 23) denying rehearing, clarification, and certification is unreported. The Supreme Court of Florida's order declining to accept jurisdiction (APP 107) is unreported.

JURISDICTION

The opinion and judgment of the First District Court of Appeal of Florida was entered on April 10, 2008. (APP 1.) The First District Court of Appeal denied Petitioner's timely motion for rehearing, clarification, and certification on May 16, 2008. (APP 23, 95-103.) The Supreme Court of Florida denied Petitioner's timely petition for review on August 22, 2008. (APP 105-107.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). Petitioner, who contemporaneously is filing a motion for leave to proceed *in forma pauperis*, is timely filing this petition for certiorari by U.S. Mail on November 20, 2008. *See* Sup. Ct. R. 13.1 & 29.2.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE[1]

At age sixteen, Petitioner was charged with armed burglary and attempted armed robbery. (APP 2.) Petitioner pled guilty. *Id.* This was Petitioner's first and only conviction of his life. The state trial court withheld adjudication and sentenced Petitioner to three years' probation. *Id.*

While he was still seventeen years old, the State alleged that Petitioner violated his probation. (APP 2, 17.) The State's most serious allegation was that Petitioner committed an armed home invasion robbery. (APP 2.) At the probation hearing, the State presented evidence that Petitioner held the victim at gunpoint, while his co-defendants robbed the home. *Id.* After his arrest, Petitioner was asked about similar robberies, and according to police officers, Petitioner admitted that he had been involved in two or three other robberies. *Id.* The state trial court found, by a preponderance of the evidence, that Petitioner had violated his probation. (APP 3.)

and sentenced him to life imprisonment without the possibility of parole. The trial court reasoned that the sentence was justified because it concluded that: (i) Petitioner had thrown away a great opportunity to do something with his life; (ii) nothing could be done to deter Petitioner from future criminal activity;

[1] Citations herein are to the single-volume 107-page appendix being submitted with this Petition. For example, "APP 1" refers to page 1 of the appendix.

(iii) Petitioner had decided to lead a criminal life; and (iv) the trial court needed to protect the community from Petitioner. (APP 3-4.)

After sentencing, Petitioner timely filed in the state trial court a motion and supporting memorandum of law under Rule 3.800(b) of the Florida Rules of Criminal Procedure. (APP 23-56.) This rule authorizes a defendant – before he prosecutes his direct appeal – to challenge in the trial court the legality of his sentence. Fla. R. Crim. P. 3.800(b). In the motion, Petitioner argued that "his sentence [was] in error and illegal under the Eighth Amendment of the U.S. Constitution" because "sentencing [Petitioner], a juvenile, to life in prison without parole for his first offense, a non-homicide, is cruel and unusual punishment." (APP 25.) The state trial court did not rule on Petitioner's motion within sixty days, and thus, it was deemed denied by operation of law. *See* Fla. R. Crim. P. 3.800(b)(2)(B).

On appeal before Florida's First District Court of Appeal, Petitioner argued that his life sentence without parole violated the Eighth Amendment's ban on cruel and unusual punishments. (APP 72-89.) In a twenty-two page opinion, the First District Court of Appeal thoroughly considered and rejected Petitioner's Eighth

Amendment argument.[2] (APP 1-22); *Graham v. State*, 982 So. 2d 43 (Fla. Dist. Ct. App. 2008). Petitioner moved for rehearing (APP 95), which was denied (APP 23). Petitioner then sought discretionary review in the Supreme Court of Florida (APP 105), which declined to accept jurisdiction (APP 107).

REASONS FOR GRANTING THE WRIT

This Court has recognized that the Eighth Amendment requires the States to treat juveniles differently than adults, at least in the context of the death penalty. *Roper v. Simmons*, 543 U.S. 551, 569-70, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); *Thompson v. Oklahoma*, 487 U.S. 815, 834-35, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988) (plurality opinion). This is so because, given the differences between juveniles and adults, juveniles have a greater claim to be forgiven for their criminal misbehavior. *Roper*, 543 U.S. at 569-70. This Court should review this case to determine whether this different treatment of juveniles should be applied outside of the context of the death penalty. Specifically, this Court should determine whether this different treatment is warranted where a juvenile is sentenced to life in prison for committing a non-homicide (which, in this case, was the juvenile's first and only conviction).

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[2]The First District Court of Appeal also considered whether Petitioner's sentence violated article I, section 17 of the Florida Constitution, a provision that, under Florida law, must be construed in conformity with the federal Eighth Amendment. (APP 4); *Graham v. State*, 982 So. 2d 43, 46 (Fla. Dist. Ct. App. 2008).

This Court, in particular, needs to review this case and address the question presented because – just as with the juvenile death penalty – virtually the entire international community has condemned this nation's practice of imprisoning juveniles for life without parole. In *Roper*, this Court relied heavily on international law to decide that the States could not constitutionally impose the death penalty on juvenile offenders. *Id.* at 575-79. As Justice Scalia noted in his *Roper* dissent, international standards prohibit imprisoning juveniles for life without parole. *Id.* at 623 (Scalia, J. dissent). According to a 2005 study, only fourteen nations, in theory, allow juveniles to be imprisoned for life without parole, and only three nations appear to do so in practice. Human Rights Watch/Amnesty Int'l, *The Rest of their Lives: Life Without Parole for Child Offenders in the United States* 105 (2005), *available at* http://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf (last visited November 19, 2008). Outside the United States, the total number of persons serving life without parole for juvenile crimes was approximately a dozen, according to the 2005 study. *Id.* at 106. By comparison, as of 2004, the United States had 2225 such persons. *Id.* at 35, 124.

Imprisoning juveniles for life without parole is also inconsistent with standards of a widely-accepted international treaty relied upon by this Court in *Roper*. 543 U.S. at 576. Article 37(a) of the United Nations Convention on the Rights of the Child ("CRC") prohibits not only sentencing juveniles to death, but

also sentencing juveniles to "life imprisonment without the possibility of release." United Nations Convention on Rights of Child, art. 37(a), November 20, 1989, U.N. Doc. A/44/736, 28 I.L.M. 1456, 1470. The United States signed the CRC, but it and Somalia are the only two countries in the world that have not ratified the CRC. Human Rights Watch/Amnesty Int'l, *supra*, at 99 & nn. 292-93. Of the 192 nations that have ratified the CRC, only three nations registered reservations to Article 37(a), and only one of these reservations, by Malaysia, arguably diminishes Article 37(a)'s ban on imprisoning juveniles for life without parole. *Id.* 99 & n. 291. Simply put, the world community has overwhelmingly concluded that it is inhumane to imprison juveniles for life without any possibility of release.

Roper also relied on the "national consensus" in deciding the constitutionality of the juvenile death penalty. 543 U.S. at 565-69. Unlike the international consensus against juvenile life imprisonment without parole, the "national consensus" on this issue is not transparent. According to a 2005 study, forty-two states appear – at least in theory – to allow juvenile life imprisonment without parole for a wide variety of crimes. Human Rights Watch/Amnesty Int'l, *supra*, at 25. In *Roper*, however, this Court supported its decision based in part on the fact that the "practice" of executing juvenile offenders was "infrequent," even in the States where such a practice was legally permitted. 543 U.S. at 564-65; *see also Kennedy v. Louisiana*, __ U.S. ___, 128 S. Ct. 2641, 2657, 171 L. Ed. 2d 525

(2008) (noting that statistics on the actual number of executions, rather than legislation, may be a measure of national consensus). Similarly, the sentence of life imprisonment without parole is infrequently imposed where, as here, the juvenile has not committed a homicide. Specifically, according to the 2005 study, only seven percent of the 2225 juvenile offenders in the United States serving life sentences without parole were convicted of non-homicides. Human Rights Watch/Amnesty Int'l, *supra*, at 25, 124.

Another reason to grant certiorari is that the state courts have not agreed with one another. Some state courts, on federal or state constitutional grounds, have prohibited the imprisonment of a juvenile offender for life without the possibility of parole, for both homicide and non-homicide crimes. *See People v. Miller*, 781 N.E.2d 300, 302-308 (Ill. 2002) (holding that life sentence without parole against fifteen-year-old juvenile who committed multiple murders would violate Illinois's constitution); *Naovarath v. State*, 779 P.2d 944, 945-49 (Nev. 1989) (finding that life sentence without parole imposed on thirteen-year-old juvenile convicted of murdering his molester violated U.S. and Nevada constitutions); *Workman v. Commonwealth*, 429 S.W.2d 374, 377-78 (Ky. Ct. App. 1968) (holding life sentence without parole imposed on fourteen-year-old defendants convicted of rape was cruel and unusual punishment under Kentucky constitution); *People v. Dillon*, 668 P.2d 697, 726-27 (Cal. 1983) (reducing life

sentence imposed on seventeen-year-old convicted of felony murder as being cruel and unusual punishment). Other state courts, however, have upheld imprisoning juveniles for life without parole, for homicide and non-homicide crimes. *See, e.g., State v. Jensen*, 579 N.W.2d 613 (S.D. 1998) (holding that life imprisonment without the possibility of parole for a fourteen-year-old convicted of murder was not cruel and unusual punishment); *State v. Walker*, 843 P.2d 203, 213 (Kan. 1992)(approving life sentence for fourteen-year-old convicted of two aggravated kidnappings and an aggravated arson); *People v. Launsburry*, 551 N.W.2d 460, 463-64 (Mich Ct. App. 1996) (holding life in prison without parole was not cruel and unusual punishment for juvenile convicted of murder).

In addition, granting certiorari is the humane thing to do. Imprisoning a juvenile for life is inhumane where the juvenile did not commit a homicide. As this Court recently recognized, there is a "fundamental, moral distinction between a murderer and a robber," because "while robbery is a serious crime deserving serious punishment, it is not like death in its severity and irrevocability." *Kennedy*, 128 S. Ct. at 2660 (internal quotations omitted). Despite this moral distinction, Petitioner's punishment for his non-homicide crimes is the same, severe punishment he would have received had he intentionally murdered someone.

Though at first blush life in prison may seem less cruel and inhumane than a death sentence, in reality it is not. Some have said that life imprisonment is the

"equivalent" of a death sentence. *See, e.g., Brennan v. State*, 754 So. 2d 1, 11 n. 15 (Fla. 1999) (Anstead, J., specially concurring). Sadly, some juveniles imprisoned for life have stated that they would prefer the death penalty because life without parole is just a slower form of death, a "death sentence by incarceration." Elizabeth Cepparulo, Article, *Roper v. Simmons: Unveiling Juvenile Purgatory: Is Life Really Better than Death?*, 16 Temp. Pol. & Civ. Rts. L. Rev. 225, 225 & n.1, 248-29 & n. 257 (Fall 2006) (internal quotations omitted). Indeed, juveniles imprisoned for life face a far crueler punishment than their adult counterparts for a variety of reasons, including their diminished capacity to cope with long-term confinement and the fact that they will be confined for a much longer time (sixty to seventy years if they live into their seventies or eighties). Human Rights Watch/Amnesty Int'l, *supra*, at 52-54.

Given all of the above, this Court should grant certiorari, consider this case on the merits, and answer the question presented. This Court, as the highest court in the nation, should determine whether the Eighth Amendment allows the States to impose a sentence – imprisonment of a juvenile for life without parole for a non-homicide – that has been universally condemned by the international community and that, in practice, the States infrequently impose.

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Respectfully submitted,

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