

## **APPENDIX**

**APPENDIX A**

Serial: 216381

**IN THE SUPREME COURT OF MISSISSIPPI**

No. 2016-CT-00638-SCT

[Filed Jan. 11, 2018]

**SHAWN LABARRON**                    *Appellant/Petitioner*  
**DAVIS A/K/A SHAWN DAVIS**  
**A/K/A SHAWN L. DAVIS A/K/A**  
**SHAWN LABARREN DAVIS**  
**A/K/A SHAWN LABARUM DAVIS**

*v.*

**STATE OF MISSISSIPPI**        *Appellee/Respondent*

**ORDER**

This matter is before the Court on the Petition for Certiorari filed by Shawn Labarron Davis. The Court has considered the petition and finds that it should be denied.

IT IS THEREFORE ORDERED that the Petition for Certiorari filed by Shawn Labarron Davis is denied.

SO ORDERED, this 2 day of January, 2018.

[Illegible]

ROBERT P. CHAMBERLIN, JUSTICE  
FOR THE COURT

TO DENY: RANDOLPH, P.J., COLEMAN,  
MAXWELL, BEAM AND CHAMBERLIN, JJ.

TO GRANT: WALLER, C.J., KITCHENS, P.J., AND  
KING., J.

NOT PARTICIPATING: ISHEE, J.

**APPENDIX B**

**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
*Office of the Clerk*

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October 10, 2017

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 10th day of October, 2017.

Court of Appeals Case # 2016-CA-00638-COA Trial  
Court Case # 2013-00108 (3)

Shawn Labarron Davis a/k/a Shawn Davis a/k/a  
Shawn L. Davis a/k/a Shawn Labarren Davis a/k/a  
Shawn Labarum Davis v. State of Mississippi

The motion for rehearing is denied. Griffis, P.J.,  
would grant.

**\* NOTICE TO CHANCERY/CIRCUIT/COUNTY**  
**COURT CLERKS \***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

**Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at [www.courts.ms.gov](http://www.courts.ms.gov) under the Quick**

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**Links/Supreme Court/Decision for the date of  
the decision or the Quick Links/Court of  
Appeals/Decision for the date of the decision.**

**APPENDIX C**

**IN THE COURT OF APPEALS OF THE STATE  
OF MISSISSIPPI  
NO. 2016-CA-00638-COA**

**SHAWN LABARRON DAVIS                      APPELLANT  
A/K/A SHAWN DAVIS A/K/A  
SHAWN L. DAVIS A/K/A SHAWN  
LABARREN DAVIS A/K/A SHAWN  
LABARUM DAVIS**

**v.**

**STATE OF MISSISSIPPI                      APPELLEE**

DATE OF JUDGMENT:	04/15/2016
TRIAL JUDGE:	HON. DALE HARKEY
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: ERIN ELIZABETH BRIGGS
ATTORNEY FOR APPELLEE:	OFFICE OF ATTORNEY GENERAL: BY: KATY TAYLOR GERBER
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	SENTENCED APPELLANT TO LIFE IN PRISON AFTER CONSIDERATION OF <i>MILLER</i> FACTORS
DISPOSITION:	AFFIRMED - 06/27/2017
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE LEE, C.J., ISHEE AND GREENLEE,  
J.J. GREENLEE, J., FOR THE COURT:**

¶1. In 2004, Shawn Davis was sentenced to life in prison without eligibility for parole after entering a guilty plea for a murder he participated in committing when he was sixteen years old. Mississippi law does not provide the possibility of parole for those convicted of murder under Mississippi Code Annotated section 97-3-19(1)(a) (Rev. 2014). In 2012, the United States Supreme Court held that juveniles could not be mandatorily denied the possibility of parole when sentenced to life. *Miller v. Alabama*, 567 U.S. 460 (2012). Accordingly, post-*Miller*, Davis was granted a new sentencing hearing. After a consideration of the nonexhaustive *Miller* factors, the court again sentenced Davis to life without excepting him from the parole prohibition. Davis appeals. Finding no abuse of discretion, we affirm.

**FACTS AND PROCEEDINGS BELOW**

¶2. In 2002, sixteen-year-old Shawn Davis, Anthony Booker, and seventeen-year-old Mary Scarborough plotted to rob Dorian Johnson, Scarborough's fifty-something-year-old former boyfriend.<sup>1</sup> Johnson had allegedly been stalking Scarborough. While planning the robbery, Davis suggested that they should kill Johnson as well. Davis called Johnson and arranged for Johnson to pick Davis up and take them to a park to smoke

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<sup>1</sup> These facts are taken from the transcript of Davis's plea hearing, the transcript of Scarborough's trial and subsequent appeal in *Scarborough v. State*, 956 So. 2d 382 (Miss. Ct. App. 2007), and the transcript of Davis's post-conviction *Miller* hearing. At Scarborough's trial, Davis testified that it was his idea to kill (in addition to rob) Johnson, and that he did most of the kicking and beating, and all of the slashing.

marijuana. Scarborough and Booker also drove to the park. Booker and Davis dragged Johnson out of his car at knifepoint, and beat and kicked Johnson.

¶3. When Johnson fell unconscious, they put him in the back of Johnson's jeep and drove him to an alligator pit. On the way, Johnson revived and Davis began beating him again. The pit was closed, so they drove to another location and pulled Johnson out of the vehicle and under a fence before resuming kicking and beating him. Davis then took the knife and repeatedly slashed Johnson's face, neck, and head. After Johnson stopped moving, they searched and robbed Johnson's body before leaving the scene. According to the autopsy testimony, Johnson likely died several hours later due to a combination of blood loss, brain swelling, and internal damage to vital organs. He had over thirty stab wounds.

¶4. Davis pleaded guilty to simple murder under Mississippi Code Annotated section 97-3-19(1)(a) and was sentenced to life in prison.<sup>2</sup> Mississippi's statutory parole scheme prohibits parole eligibility for those convicted of murder, effectively making Davis's sentence life without the possibility of parole. Miss. Code Ann. § 47-7-3 (Rev. 2012).

¶5. In 2012, the United States Supreme Court held that mandatory life sentences for juveniles violates the Eighth Amendment of the United States Constitution. *Miller*, 567 U.S. at 465. The court did not categorically ban the imposition of life without

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<sup>2</sup> The plea reduced Davis's charge from capital murder, which would have included the death penalty as a sentencing option. Several months after the entry of Davis's plea, the United States Supreme Court held that juveniles could not be sentenced to death. *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

the possibility of parole, but instead held that, prior to sentencing a juvenile to life without parole, the sentencing authority must consider “the characteristics of youth,” including nonexhaustive factors such as the defendant’s chronological age, his family and home environment, the circumstances of the homicide offense (including the extent of the defendant’s participation), and the possibility of rehabilitation. *Id.*

¶6. The Mississippi Supreme Court acknowledged *Miller* in *Parker v. State*, 119 So. 3d 987 (Miss. 2013), noting that, prior to sentencing a juvenile to life without the possibility of parole, *Miller* requires “the sentencing authority to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 995 (¶19) (quoting *Miller*, 567 U.S. at 480). If, after considering the *Miller* factors, the trial court concludes that a defendant should receive life with the possibility of parole, then “the court shall enter a sentence of ‘life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(h).” *Parker*, 119 So. 3d at 999 (¶28).

¶7. At the resentencing hearing, the court heard testimony from several of Davis’s family members, who testified that he was raised in a dysfunctional household with a mother who abused drugs and alcohol.

## DISCUSSION

¶8. *Miller* applies retroactively to cases on collateral review. *Jones v. State*, 122 So. 3d 698, 703 (¶18) (Miss. 2013). Our standard of review for a trial court’s imposition of a sentence is abuse of



discretion. *Hudspeth v. State*, 179 So. 3d 1226, 1228 (¶12) (Miss. Ct. App. 2015).

¶9. We do not find the trial court abused its discretion in applying the *Miller* sentencing factors to conclude that Davis should be sentenced to life without the possibility of parole. The circumstances of this case are not meaningfully distinguishable from those of *Hudspeth*, in which this Court affirmed the trial court's imposition of a life sentence without parole after consideration of the *Miller* factors. *Id.* In particular, the circumstances of the crime and Davis's level of participation are not in his favor. It was Davis's premeditated idea to kill the victim in addition to robbing him, and it was Davis who slashed the victim more than thirty times with a knife. No evidence was presented that Davis "succumbed to any peer pressure in committing the crime." *Id.* at (¶9).

¶10. Davis also argues that Mississippi should treat life sentences without parole for juveniles as unconstitutional, and that a jury, rather than a judge, should determine a *Miller* sentence. Our state Supreme Court post-*Miller* has treated life without parole as a sentencing option and the trial judge as an appropriate sentencing authority. *Parker*, 119 So. 3d at 998 (¶26) ("We . . . remand for hearing where the trial court, as the sentencing authority, is required to consider the *Miller* factors before determining sentence."). These issues are therefore without merit.

### CONCLUSION

¶11. Davis was appropriately granted a resentencing hearing for the sentencing authority to consider the characteristics of youth in compliance with *Miller*. The trial court considered the *Miller*

factors, and we do not find that it abused its discretion in sentencing Davis to life without an exception from the parole prohibition.

**¶12. THE JUDGMENT OF THE JACKSON COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO JACKSON COUNTY.**

**LEE, C.J., IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, CARLTON AND FAIR, JJ., CONCUR. WILSON, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. WESTBROOKS, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION.**



[123] THE COURT: The hearing, testimony from approximately six witnesses, family members of the defendant and an individual who was familiar with the defendant from church, attendance at church when he was a youngster, I've reviewed all the exhibits and heard the arguments of counsel and reviewed the relevant provisions of [124] law that would impact upon the Court's decision in sentencing. I reviewed transcripts of the defendant's plea hearing back in 2004, transcripts of the defendant's trial testimony in the trial of a co-defendant, Mary Scarborough, who was also charged with the commission of capital murder and tried for that offense and convicted. The defendant, Mr. Davis, testified for the State at that trial. I also reviewed school records that were submitted by the State and also a psychological evaluation that had been performed when Mr. Davis was 13 years old and at that time detained in Youth Court for criminal violations, I think burglaries and some other offenses at the time.

From the testimony derived at the hearing from live witnesses, there is no doubt that the defendant had a difficult and dysfunctional family life. He was born to a single mother, who was described as being an alcoholic and a drug user. He was exposed at an early age to I believe the unseemly life of public housing. Other family members testified the defendant's mother moved constantly, that she was mean to him and generally neglected his needs. For a short period of time he had resided with an uncle, who apparently through structure, discipline and stability improved his grades for a short period of time in his early life. [125] Several witnesses testified that he was a good child, a good kid when he attended church for

a year or two and was active in the youth programs. In the psychological evaluation performed in 2000, the defendant, when he was 13 years old, disclosed little of that information though that had been testified to and outlined by family members at the hearing. At the time at 13 when he was in Youth Court, he resided with his mother and stepfather, both of whom were employed and although they did have, he described, self-reported, difficult relationships with each of them. He also self-reported a history of having been expelled for bringing a knife to school on one occasion and several suspensions, one of which was for threatening a teacher. The intellectual testing that was performed at that time indicated that he was of average intelligence, although he had poor performance in spelling and math, but it also -- psychological testing indicated trouble in conduct disorders. Apparently stemming from a tumultuous family life, the defendant was described as moody, angry, defiant, antisocial and hostile. As expected of a youth at 13 years of age, he had impulse control issues according to the psychologist and on occasion short-sightedness regarding consideration of consequences to his conduct. The school [126] transcripts reflect up until the 10th grade that he had passing grades and average, if not a little bit above average, grades in his scholastic courses, but in the 10th grade I believe he quit high school and was on his own from that point forward.

Records of his incarceration since 2004 with the Mississippi Department of Corrections in regard to their rules violations indicated that Mr. Davis had on at least three occasions his cell was searched and homemade knives were removed from his possession. Other rules violations indicated that he was

disciplined for fighting on several occasions, disciplined for inappropriate sexual conduct. The record presented to the Court is devoid of any – that any evidence that the defendant availed himself of the numerous programs or other resources available to incarcerated individuals, GED programs, drug, alcohol, nothing was presented to the Court. The record fully -- well, except for some but it was pretty much meager.

The record fully supports the defendant's complicity in the crime for which he was convicted. At his plea hearing the State had, as I said, reduced the charge to murder and the defendant explicitly recounted his involvement in the planning and carrying out of the robbery and the brutal murder of this individual victim, [127] Mr. Dorian Johnson. At your testimony during the trial of your co-defendant, Ms. Mary Scarborough, as to the depravity of this murderous scheme, I could not help but despair an entire generation of our youth was possibly being raised without any vestige of human kindness whatsoever. Mr. Johnson, your victim, had retired after 20 years in the Navy. He began working as an instructor at Keesler Air Force Base and was employed there until he suffered a stroke that rendered him just about totally disabled and paralyzed on his right side. He was married. He and his wife, Ms. Georgianna Johnson, raised two children and she was working as a librarian with the Jackson - George County Regional Library System at the time of his death. Whatever his relationship, Mr. Johnson's relationship, was with your co-defendant, Ms. Mary Scarborough, the both of you devised a scheme to lure him to a rendezvous, rob him of his belongings and kill him. That scheme was developed, according to your

testimony, weeks before the event. You enlisted the help of two other juveniles to help you in the plan, one to help you kill him and one to drive one of the getaway vehicles. That's the testimony the Court recalls during the course of the trial. Once the plan was set in motion, he appeared at the rendezvous. You [128] and a Mr. Booker, Anthony Booker, overpowered him and began beating him without mercy in the back of a vehicle. Your plan had included tossing him to the alligators at the Bator farm out on east Highway 90. I'm not sure what would have come of that plan but nevertheless, you encountered a locked gate and that had to be abandoned. At some point during the attack his sister, a Ms. Cheryl Goolsby, living in Baltimore, Maryland received a phone call from his cell phone. This was during the time that you and Mr. Booker and who ever else was involved were beating him in the vehicle on the way to and from the animal farm. She was able to hear on the phone voices of strangers, a female, evidently Ms. Scarborough, two males and also the males cursing at someone to put their head down and cursing about having gotten blood on their pants. This being a cell phone call, however prompted, I don't know if Mr. Johnson was able to use his phone to do it or it was just providence that intervened, but his sister in Baltimore, Maryland knew something horrible was happening to her brother. She quite naturally called her sister-in-law, Ms. Johnson, Georgianna, down here in Jackson County, and there began I believe it must have just been an agonizing wait and search on their part to find out what happened to Mr. Johnson. You beat Mr. [129] Johnson to death. At one point you testified that from the back seat or from the floor board he reached up and was able to with his good hand, his only good hand, grab your chain and break it and you beat him more. You

beat him; you kicked him; you stomped on him; you broke six of his ribs. You beat him so hard his brain bled, swollen. You viciously stabbed and sliced him with a knife across the face, neck, ears, as if he had been attacked by a wild animal and perhaps he had been. The photographs were chilling. His brain hemorrhaged from the beatings and he slowly bled to death alone in the woods, where you had left him to die. After you stole his cell phone, his car and a debit card, all of which netted you exactly nothing, you and your friends went to the beach in Harrison County and engaged in foot races. All that time the family was searching for him frantically, couldn't find him. It took him hours to die.

Through the entire criminal proceedings in this case, Mr. Davis, your plea hearing, your trial testimony and even the hearing – the resentencing hearing we conducted last year, I have not seen or observed one shred of remorse on your part for the part you played in this crime. At the trial of Mary Scarborough you sought, in my opinion at the time and it was [130] confirmed by the transcript, rereading that years later, that you sought to minimize her involvement in this, claiming contrary, directly contrary to your plea testimony, that the murder of Mr. Johnson was all your idea and you hadn't discussed it with anyone, seeking to provide her some measure of defense I suppose to the charges that she was ultimately convicted of. I see no remorse here because I don't believe you have any.

The nature of this offense, pitiless, prolonged agony of the victim, the family, caused as a result of your planning convinces me that your release into society through parole would constitute a danger to



the public in general and especially to vulnerable citizens in particular.

You will please stand at this time. For these reasons, it's the sentence of this Court that you be remanded to the custody of the Mississippi Department of Corrections to serve a sentence of life. Remand you to custody. That is the sentence of the Court. Your request to be sentenced to life with the possibility of parole is denied.

(PROCEEDINGS CONCLUDED.)