

RESENTENCING JUVENILE HOMICIDE OFFENDERS

By Jim Shelson¹

Under *Miller v. Alabama*² and its progeny, discussed below, it is unconstitutional to impose a mandatory sentence of life without parole on individuals who were juveniles (*i.e.*, under 18-years of age) at the time they committed their crimes. After *Miller* and its progeny were decided, individuals across the United States who received mandatory sentences of life without parole had to be resentenced, which opened up expansive pro bono opportunities. This paper summarizes the basics of *Miller* and its progeny.

Miller v. Alabama

Miller v. Alabama involved two 14-year-old offenders, Evan Miller and Kuntrell Jackson, who were convicted of murder and sentenced to life imprisonment without the possibility of parole. *Id.* at 465-68. The sentencing authority did not have any discretion to impose a different punishment. *Id.* The issue before the United States Supreme Court (Court) was whether a mandatory sentence of life imprisonment without parole for those under the age of 18 at the time of their crimes was constitutional. The Court held that that such sentences are unconstitutional because they violate the Eighth Amendment's prohibition on cruel and unusual punishments. *Id.*

The Eighth Amendment, which prohibits cruel and unusual punishment, guarantees individuals the right not to be subject to excessive sanctions. *Id.* at 469. In *Roper v. Simmons*,³ the Court invalidated the death penalty for all juvenile offenders under the age of 18. *Id.* at 466. In *Graham v. Florida*,⁴ the Court held that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders. *Id.* at 466-67.

In *Miller*, the Court found that “*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing.” *Id.* at 471. Juveniles are less deserving of the most severe punishments because they have diminished culpability and greater prospects for reform. *Id.* *Graham* and *Roper* relied on three significant gaps between juveniles and adults. *Id.* First, children have a lack of maturity and an underdeveloped sense of responsibility. *Id.* Second, children are more vulnerable to negative influences and outside pressures, they have limited control over their own environment, and lack the ability to extricate themselves from horrific, crime-producing settings. *Id.* Third, a child's character is not as well formed as an adult's, his traits are “less fixed,” and his actions less likely to be evidence of irretrievable depravity. *Id.* The Court found that common sense, science, and social science established these differences between juveniles and adults.

Moreover, “*Roper* and *Graham* emphasized that the distinctive attributes of youth

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² 567 U.S. 460 (2012).

³ 543 U.S. 551 (2005).

⁴ 560 U.S. 48 (2010).

diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* Thus, “youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.” *Id.* at 473.

The mandatory sentencing schemes imposed on Miller and Jackson prevented the sentencer from taking account of the distinctive attributes of youth. *Id.* at 474. “By removing youth from the balance – by subjecting a juvenile to the same life-without-parole sentence applicable to an adult – these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham*’s (and also *Roper*’s) foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Id.*

The Court noted that *Graham* found that life without parole sentences imposed on juveniles is akin to the death penalty. *Id.* at 474-75. That finding made relevant the Court’s line of precedents “demanding individualized sentencing when imposing the death penalty.” *Id.* at 475. By their nature, mandatory penalties preclude a sentencer “from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 476. “So *Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State’s harshest penalties, a sentencer misses too much if he treats every child as an adult.” *Id.* at 477.

The Court therefore held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. *Id.* at 479.

Because the Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, the Court did not consider Jackson’s and Miller’s alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles. *Id.* at 479. “But given all we have said in *Roper*, *Graham*, and this decision about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’ Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 479-80.

In doing so, the sentencer must consider the following factors:

1. the juvenile’s age at the time of the crime and the hallmark characteristics of youth, including immaturity, impetuosity, and the failure to appreciate risks and consequences;
2. the family and home environment in which the juvenile was raised, and that juveniles generally have no control over their family and home environment;

3. the circumstances of the crime, including the nature and extent of the juvenile’s participation, and the way familial and peer pressures may have affected him;
4. whether the juvenile might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors or his incapacity to assist his own attorneys; and
5. the possibility of rehabilitation.

Id. at 477.

Montgomery v. Louisiana

In *Montgomery v. Louisiana*,⁵ the Court framed the issue as follows: “In the wake of *Miller*, the question has arisen whether its holding is retroactive to juvenile offenders whose convictions and sentences were final when *Miller* was decided.” *Id.* at 725.

The Court first determined that “when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.” *Id.* at 729. The Court next determined whether *Miller* announced a substantive rule of constitutional law. The Court held that it did.

The Court found that *Miller* “did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of ‘the distinctive attributes of youth.’ Even if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’ Because *Miller* determined that sentencing a child to life without parole is excessive for all but ‘the rare juvenile offender whose crime reflects irreparable corruption,’ it rendered life without parole an unconstitutional penalty for ‘a class of defendants because of their status’ – that is, juvenile offenders whose crimes reflect the transient immaturity of youth. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it ‘necessarily carr[ies] a significant risk that a defendant’ – here, the vast majority of juvenile offenders – ‘faces a punishment that the law cannot impose upon him.’” *Id.* at 734 (internal citations omitted).

The Court rejected Louisiana’s claim that *Miller* is procedural because it did not categorically bar sentences of life without parole. *Id.* “*Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham*. *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*. Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to

⁵ 136 S.Ct. 718 (2016).

life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. The only difference between *Roper* and *Graham*, on the one hand, and *Miller*, on the other hand, is that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.” *Id.*

The Court thus held “that *Miller* announced a substantive rule of constitutional law *Miller*’s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.” *Id.* at 736.

Jones v. Mississippi

Jones v. Mississippi is pending before the Court on a Petition for Writ of Certiorari to the Mississippi Court of Appeals. *Mathena v. Malvo* – the “D.C. sniper case” – was previously pending in the United States Supreme Court.

In February 2020, the Court dismissed Malvo’s appeal because the State of Virginia, where Malvo was serving his sentence, enacted a new law that made juveniles who were sentenced to life in prison eligible for parole after they had served 26 years.

In March 2020, the Court took up the question presented in *Malvo* when it granted the Petition for Writ of Certiorari in *Jones* – *i.e.*, 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.

Oral argument has occurred. A decision is pending.