

University of Michigan Journal of Law Reform Caveat

Volume 48 | Issue 1

2014

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Recommended Citation

W. P. Conlon, Comment, *Miller v. Alabama: Something Unconstitutional Now Was Equally Unconstitutional Then*, 48 U. MICH. J. L. REFORM CAVEAT 20 (2014).

Available at: http://repository.law.umich.edu/mjlr_caveat/vol48/iss1/3

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CAVEAT

MILLER V. ALABAMA: SOMETHING UNCONSTITUTIONAL NOW WAS EQUALLY UNCONSTITUTIONAL THEN

W. Patrick Conlon*

INTRODUCTION

In June 2012, the United States Supreme Court found mandatory life-without-parole sentences against juvenile offenders unconstitutional in *Miller v. Alabama*.¹ The Court determined that because children possess “immaturity, impetuosity, and [fail] to appreciate risks and consequences,” they are fundamentally different than adults.² Although *Miller* invalidated every juvenile mandatory life-without-parole (JMLWOP) statute across the United States, there is no clear indication regarding whether *Miller* retroactively applies to juveniles sentenced to mandatory life-without-parole before the Court’s ruling.³ As a result, states are split on whether to apply *Miller* retroactively.⁴

Fifteen states have yet to decide whether *Miller* applies retroactively, while several other states have either (1) declined to give *Miller* a retroactive effect or (2) passed legislation that does not apply *Miller* retroactively or provide for resentencing for JMLWOP.⁵ This Comment evaluates why the States should apply *Miller* retroactively.

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1. 132 S. Ct. 2455 (2012).

2. *Id.* at 2468–70.

3. *See id.* at 2471.

4. *See* THE SENTENCING PROJECT, *Slow to Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole 1* (2014), *available at* http://sentencingproject.org/doc/publications/jj_State_Responses_to_Miller.pdf.

5. *Id.* at 2.

I. CURRENT STATE OF JMLWOP LAWS

The Supreme Court has recognized that fundamental differences between juveniles and adults warrant different sentencing guidelines for each.⁶ In *Roper v. Simmons*, the Supreme Court found that juvenile death penalty sentences are an unconstitutional violation of the Eighth Amendment.⁷ The Court reasoned that:

[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, [. . .] a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. [. . .] Second [,] [. . .] juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. [. . .] Third, the character of a juvenile is not as well formed as that of an adult.⁸

Based on these three fundamental differences, the Supreme Court categorically distinguished juvenile from adults,⁹ demonstrating the Court's willingness to provide different sentencing guidelines for juveniles and adults.

The Supreme Court further distinguished juveniles from adults in *Graham v. Florida*.¹⁰ In *Graham*, the Court acknowledged that life-without-parole is “[t]he second most severe penalty permitted by law,”¹¹ and held that JMLWOP sentences for non-homicide offenses were an unconstitutional violation of the Eighth Amendment.¹² The Court reasoned that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature

6. *Roper v. Simmons*, 543 U.S. 551 (2005).

7. *Id.*

8. *Id.* at 569–70 (internal quotations omitted).

9. *Id.*

10. *Graham v. Florida*, 130 S. Ct. 2011, 2027 (2011).

11. *Id.*

12. *Id.*

through late adolescence.”¹³ Furthermore, the Court recognized that “[j]uveniles are more capable of change than adults, and [juvenile] actions are less likely to be evidence of irretrievably depraved character than are the actions of adults.”¹⁴ By again categorically banning certain sentences only for juveniles, the Court established that the offender’s age bears on the analysis.¹⁵ Thus, *Roper* and *Graham* provided a strong foundation for the *Miller* Court to conclude that because “sentencers must be able to consider the mitigating qualities of youth,” JMLWOP sentences are unconstitutional.¹⁶

A. *Miller v. Alabama*

In *Miller*, the Court tried two cases, both of which involved fourteen-year-old boys who were convicted of murder and statutorily given mandatory life-without-parole sentences.¹⁷

The first case involved Kuntrell Jackson, a young teenager who accompanied two boys to a video store to commit a robbery.¹⁸ On the way to the store, Jackson learned that one of the other boys was carrying a shotgun.¹⁹ Jackson stayed outside during most of the robbery; however, when he entered the store, one of the other boys shot and killed the store clerk.²⁰ The Arkansas trial court convicted fourteen-year-old Jackson of murder and sentenced him to mandatory life-without-parole.²¹

In the second case, Evan Miller and a friend beat Evan’s neighbor and set fire to a trailer while the neighbor was inside.²² The neighbor died and Miller was convicted of murder. He received a statutorily-mandated life-without-parole sentence.²³

In response to these JMLWOP sentences, the Supreme Court took the opportunity to further explain why these harsh sentences are unconstitutional, noting that “[i]n neither case did the sentencing authority have any discretion to impose a different

13. *Id.* at 2026.
 14. *Id.* (internal quotations omitted).
 15. *Id.* at 2027.
 16. *Miller*, 132 S. Ct. at 2459.
 17. *Id.* at 2457.
 18. *Id.* at 2461.
 19. *Id.*
 20. *Id.*
 21. *Id.*
 22. *Id.* at 2462.
 23. *Id.* at 2463.

punishment.”²⁴ Rather, “State law mandated that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate.”²⁵ Thus, the state statutes provided no alternative punishment upon conviction.

By holding that juvenile mandatory life-without-parole sentences are unconstitutional, the *Miller* Court recognized the fundamental differences between juveniles and adults. The Court reasoned any JMLWOP sentence contravened “*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.”²⁶ Accordingly, the Court held that:

[m]andatory life-without-parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he 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 (including on a plea agreement) or his incapacity to assist his own attorneys.²⁷

Thus, JMLWOP sentences violate the Eighth Amendment’s prohibition on cruel and unusual punishments because they prevent jurors and judges from considering a juvenile’s lessened culpability and capacity for change, and instead determine the juvenile remain in prison regardless of that individuals’ rehabilitation.²⁸

24. *Id.* at 2460

25. *Id.*

26. *Id.* at 2483.

27. *Id.* at 2468.

28. *Id.* at 2460.

B. Current Retroactivity

Currently, an estimated 2,500 juveniles in the United States are serving JMLWOP sentences.²⁹ Most of these inmates, depending on their state's position regarding *Miller's* retroactivity, await the possibility of receiving resentencing hearings and reentering society.

While some states are undecided on *Miller's* retroactive effect, Illinois, Iowa, Massachusetts, Mississippi, Nebraska, and Texas apply *Miller* retroactively.³⁰ Conversely, Supreme Courts in Louisiana, Minnesota, and Pennsylvania have ruled that *Miller* only applies to future cases and therefore has no retroactive effect.³¹ Furthermore, of the thirteen states that have passed post-*Miller* legislation, only Delaware, North Carolina, Washington, and Wyoming allow retroactive resentencing for the JMLWOP population. Although some states are undecided, this Comment argues that *Miller* should apply retroactively.

With respect to retroactivity, the Supreme Court held in *Teague v. Lane*³² that constitutional rules of criminal procedure do not apply to cases rendered final before the new rules were announced.³³ However, the Court also held that new rules may apply retroactively if the rules require observance of "procedures that are implicit in the concept of ordered liberty."³⁴ The Court further established that this exception pertains to "watershed rules of criminal procedure" and "new procedures without which the likelihood of an accurate conviction is seriously diminished."³⁵ Although the Court later held in *Danforth v. Minnesota*³⁶ that state courts do not need to use *Teague's* analysis, several states have nevertheless adopted the *Teague* framework.³⁷

The next section argues that *Teague's* exception to new constitutional rules of criminal procedure should encapsulate the

29. THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA 11 (2013), available at http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf.

30. See *supra* note 5, at 3.

31. *Id.*

32. 489 U.S. 288 (1989).

33. *Id.* at 290.

34. *Id.*

35. *Id.* at 311, 330.

36. 552 U.S. 264, 281 (2008).

37. See *Johnson v. State*, 904 So.2d 400, 414 (Fla. 2005) (Cantero, J., concurring) ("[M]ost states have adopted the *Teague* standard, at least when determining the retroactivity of constitutional decisions of the United States Supreme Court.").

Court's holding in *Miller*.

II. STATES SHOULD APPLY *Miller* RETROACTIVELY

Each state should apply *Miller* retroactively pursuant to *Teague* because *Miller*'s holding significantly reformed criminal procedure and affected the lives of inmates currently serving JMLWOP sentences. Inmates currently serving juvenile mandatory life-without-parole sentences could not have constitutionally received such sentences today under *Miller*.³⁸ Now, *Miller* requires that trial courts consider "how children are different [from adults], and how these differences counsel against irrevocably sentencing them to a lifetime in prison."³⁹ The individuals currently serving JMLWOPs were not guaranteed these considerations during their trials. *Miller*'s new rules would have drastically impacted their sentences. Therefore, States should apply *Miller* retroactively to give these juveniles a proper evaluation of their sentencing in light of the additional considerations that *Miller* now requires.

In addition to changing criminal procedure, *Miller* substantially reformed the law in holding that "mandatory life-without-parole sentences for juveniles are cruel and unusual violations of the Eighth Amendment."⁴⁰ Just because an inmate's JMLWOP sentence was rendered before *Miller* does not mean that the JMLWOP sentence was any less unconstitutional. Imposing life-without-parole sentences on juveniles "cannot be justified by the goal of rehabilitation"⁴¹ because inmates serving life-without-parole sentences "are often denied access to vocational training and other rehabilitative services that are available to others."⁴² In denying juveniles basic rehabilitative services and a chance to reenter the community as a rehabilitated citizen, states make "irrevocable judgment[s] about that person's value and place in society."⁴³ Applying *Miller*'s holding retroactively will help provide convicted juveniles an opportunity for rehabilitation and assimilation back into society.

Furthermore, judges who imposed JMLWOP sentences before

38. See *Miller*, 132 S. Ct. at 2460 (holding that JMLWOP sentences are unconstitutional.).

39. *Id.* at 2469.

40. *Id.* at 2464.

41. *Graham v. Florida*, 130 S. Ct. 2011, 2029–30.

42. *Id.* at 2030.

43. *Id.*

Miller were unable to consider the soundness of such sentences. Rather, these judges were forced to abide by statutorily prescribed rules. Applying *Miller* retroactively, will provide judges with the opportunity to reassess the sentences of those 2,500 individuals serving JMLWOPs. This is a relatively manageable number that will never increase now that *Miller* applies to all future cases. Thus, judges will not be overly burdened by only having to reevaluate *prior* JMLWOP sentences. Regardless, these sentences should be reconsidered because many juveniles are serving what is now deemed an unconstitutional sentence. Since it would now be unconstitutional for these individuals to receive JMLWOP sentences, it is unlikely that their convictions before *Miller* are accurate. Furthermore, because *Miller* created a watershed rule of criminal procedure, *Teague* requires that states apply *Miller* retroactively.

CONCLUSION

One of the core functions of departments of corrections is to maintain “programs to enhance the success of offenders’ reentry into society.”⁴⁴ Regardless of these programs’ efficacy to rehabilitate convicted individuals, the purpose of rehabilitation programs will not be fulfilled for individuals given JMLWOP sentences. For example, a now fifty-year-old individual who committed a crime at age fourteen and has since matured into a completely different person through the department of corrections’ rehabilitative programs will have no opportunity to reenter and contribute to society in a State that declines to apply *Miller* retroactively. Accordingly, it is difficult to understand what incentive these juveniles would have to rehabilitate when they know that there is zero possibility they will get to leave prison and reenter society because of a sentence they received as an undeveloped juvenile. Therefore, when *Miller* is given a retroactive effect, the purpose of rehabilitation is entirely unfulfilled.

The 2,500 inmates in the U.S. currently serving JMLWOP were automatically sentenced upon a finding of guilt, regardless of their age. If *Miller* only applies to future offenses, those 2,500 individuals will never have a chance to reduce their sentence, irrespective of their good behavior in prison. By requiring

44. *Agency Overview*, ILL. DEP’T OF CORR. (Sept. 8, 2013), <http://www2.illinois.gov/idoc/aboutus/Pages/IDOCOverview.aspx>.

consideration of a juvenile's age and the hallmark features of that age, applying *Miller* retroactively would grant those 2,500 individuals a chance to have now unconstitutional statutorily-imposed sentences reexamined. Moreover, states should apply *Miller* retroactively to incentivize inmates to rehabilitate themselves with the hope that they may receive a chance to reenter society.