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OLR BACKGROUNDER: STATE APPELLATE CASE ON SENTENCING JUVENILES CONVICTED OF MURDER

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You asked for a summary of the recent state Appellate Court case upholding the imposition of a 100-year sentence on a defendant convicted of murder and other serious crimes committed when a juvenile (*State v. Riley*, 140 Conn. App. 1 (2013)).

SUMMARY

In *State v. Riley*, the state Appellate Court, by a 2-1 margin, upheld the imposition of a 100-year sentence on a juvenile convicted of murder and other serious crimes. (Since the defendant would not be eligible for parole until he reached age 96, the sentence was deemed the equivalent of life without parole (LWOP).) In doing so, it rejected the defendant's argument that the imposition of such harsh sentences on juveniles constituted cruel and unusual punishment prohibited by the Eighth Amendment to the U.S. Constitution (*Riley* at 8). (For ease of reference, we will refer to those convicted of crimes committed before their 18th birthdays as "juveniles," although some, like the defendant, were no longer juveniles when their sentences were handed down).

While the defendant's appeal was pending, the U.S. Supreme Court ruled that sentencing laws that required all juveniles convicted of murder to be sentenced to LWOP violated the Eighth Amendment's Cruel and Unusual Punishments Clause (*Miller v. Alabama*, 132 S. Ct. 2455 (2012)). The Court did not categorically bar courts from imposing these sentences, but held that the Eighth Amendment required that, before

doing so, (1) the defendant be given the opportunity to present mitigating evidence, (2) sentencing courts be required to take such evidence into consideration, including evidence on how features associated with youth rendered juveniles different than adults; and (3) judges be authorized to impose lesser sentences.

The Appeals Court concluded that the sentencing procedure the court had followed in the defendant's case comported with *Miller's* constitutional requirements. Unlike the mandatory LWOP sentences at issue in that case, Connecticut law makes such sentencing decisions discretionary and expressly requires judges to (1) permit defendants to present mitigating evidence militating against the imposition such harsh sentences and (2) render individualized sentencing decisions.

Justice Borden dissented, contending that the majority had interpreted *Miller* too narrowly. In his view, the Supreme Court's 8th Amendment analysis applied to all LWOP sentences, not just those imposed under mandatory sentencing schemes. And it required sentencing courts to affirmatively take into account generally accepted scientific and sociological studies demonstrating that juveniles, when compared with adults, (1) lack maturity; (2) have underdeveloped senses of personal responsibility; (3) are particularly vulnerable to outside influences, including peer pressure; and (4) possess underdeveloped mental characters.

Justice Borden also asserted that juveniles sentenced to LWOP were constitutionally entitled to a "second look" hearing at some time in the future. This hearing would give them opportunities for sentence reductions based on evidence of acquired maturity and personal rehabilitation.

FACTS AND LOWER COURT PROCEEDINGS

The defendant, Ackeem Riley, was charged with (1) one count each of murder and conspiracy to commit murder and (2) two counts each of attempted murder and 1st degree assault with a firearm. The charges stemmed from his involvement in a gang-related drive-by shooting during which a spray of bullets was randomly fired into a group of youngsters gathered outside a house in Hartford. The shots killed a 13-year-old and seriously injured two others in the group. At the time of the shooting, the defendant was a juvenile.

Trial

Under a state law requiring juveniles charged with serious crimes to be tried as adults ([CGS 46b-127\(a\)](#)), the defendant's case was transferred to the adult criminal docket. He maintained his innocence throughout the court proceedings and did not testify. At the conclusion of the five-day trial, a jury found him guilty on all counts.

Sentencing

Prior to imposing sentence, the court held a sentencing hearing at which the prosecutor, the mothers of the two surviving victims, and defense counsel spoke. The prosecutor urged the court to sentence the defendant to a 120 year prison term because “he should never be on the streets again.” He argued that the likelihood of rehabilitation was undermined by the fact that the defendant was facing charges in connection with a second drive-by shooting that had occurred while he was awaiting sentencing in the present case.

Defense counsel briefly addressed the court, indicating that his client had instructed him to make his presentation “short and sweet.” He asked the judge to use his wisdom in meting out an appropriate punishment and to take into account that the defendant (1) was a young man who had taken to the streets after having a fallout with his father, (2) had difficulty in school, and (3) had little or no prior involvement with the criminal justice system. He also informed the judge that the defendant had chosen not to testify or express remorse or sympathy because doing so would be inconsistent with his claim of innocence. The defendant presented no other mitigating evidence, such as how juveniles differ from adults.

The judge sentenced the defendant to a 100-year prison term. In explaining how he reached his decision, he indicated that he had no real sense of the defendant but had taken into account information contained in the court's presentence investigation report, including descriptions of his upbringing; family; education; and physical and mental health. The court characterized the report as showing that the defendant's life had been “pretty unremarkable” and containing nothing to excuse his commission of the senseless crimes.

The court also expressed its sympathy for the victims and their families, and noted that Hartford neighborhoods were terrorized by random shootings. Finally, it stated that it had considered the likelihood that the defendant could be rehabilitated and concluded that it was improbable.

No evidence was presented about, and the judge did not consider, scientific and sociological studies demonstrating how juveniles' immaturity and underdeveloped brains and characters made them less morally culpable than adults.

DEFENDANT'S APPEAL

The defendant appealed from the imposition of the LWOP sentence, arguing that it violated the Eighth Amendment's Cruel and Unusual Punishments Clause. There were no U.S. Supreme Court decisions squarely on point, but the defendant maintained that the reasoning the Court had applied in invalidating two other juvenile sentencing practices — *Roper v. Simmons*, 543 U.S. 551 (2005) (categorically prohibiting imposition of death sentences) and *Graham v. Florida*, (130 S. Ct. 2011 (2010) (categorically prohibiting LWOP sentences for nonhomicide crimes) — were equally applicable to the 100-year sentence he had received.

The state countered that *Graham* was not controlling because it did not (1) apply to homicide cases and (2) require sentencing courts to consider the defendant's age and development in all cases. He also maintained that a state court ruling had already approved the propriety of imposing LWOP sentences on juveniles convicted of murder (*State v. Allen*, 289 Conn. 550, 581-86 (2008)).

INTERVENING U.S. SUPREME COURT RULING

After the parties had submitted appellate briefs and presented oral argument, the U.S. Supreme Court ruled that statutes requiring courts to sentence all juveniles convicted of murder to LWOP violated the 8th Amendment's Cruel and Unusual Punishments Clause (*Miller v. Alabama*, 132 S. Ct. 2455 (2012)). Because *Miller* squarely addressed the issues raised in defendant's appeal, the court directed the parties to submit supplemental briefs on what effect, if any, that decision had on the propriety of the sentence imposed on the defendant.

DEFENDANT'S POST-MILLER CLAIMS

The defendant asserted that *Miller's* interpretation of the 8th Amendment required the court to rule in his favor. He reiterated the arguments he had made earlier — that the appropriate remedy for the constitutional violation was an order directing that (1) he be resentenced and given a hearing at which he could present as mitigating evidence the youthful deficiencies the Supreme Court had identified; (2) that the resentencing court be instructed to state on the record the factors it considered in making its decision; and (3) if he were resentenced to LWOP, the court be directed to explain why it believed such a severe sentence was warranted despite the defendant's presentation of mitigating evidence.

MAJORITY OPINION

By a 2-1 margin, the Appellate Court upheld the defendant's sentence. Justice Beach wrote the opinion, in which Justice Alvord joined. The justices indicated that they had focused their constitutional analysis on *Miller* and recognized that the decision was the latest in a line of juvenile sentencing cases that had significantly altered the legal landscape by allowing litigants to use brain and social science studies, in addition to “what every parent knows,” to establish that children are constitutionally different from adults for purposes of sentencing.

It acknowledged the Supreme Court's identification of three significant gaps between juveniles and adults that reduce juveniles' moral culpability and increase their potential for reform: (1) their underdeveloped sense of responsibility that can result in recklessness, impulsivity, and heedless risk-taking; (2) their particular susceptibility to peer pressure and negative influences, which is exacerbated by their general inability to control their environment, and (3) because their character and attitudes are still developing, the reduced likelihood that their actions are evidence of irretrievable depravity.

The majority then summarized its interpretation of *Miller*: sentencing juveniles to LWOP was not categorically barred, but sentencers must follow a certain process — considering an offender's youth and attendant characteristics — before imposing this sentence (*Riley* at 5 (internal quotation marks omitted)).

The majority found it unclear whether a procedure giving the defendant the opportunity to present such evidence was sufficient or if *Miller* required sentencing courts to take the differences between youths

and adults into account in all cases. It chose the former interpretation, relying on what it considered to be the Supreme Court's primary concern — the unconstitutionality of mandatory sentencing schemes that did not permit defendants to present mitigating evidence showing that they should be given leniency or permit courts to make individualized decisions. The Appeals Court concluded that all that was constitutionally required was that defendants be given the opportunity to present mitigating evidence and that courts be permitted to consider it and have discretion to impose lesser sentence (*Riley* at 6).

The majority then turned to the sentencing procedure the defendant challenged in the instant case and found that it had satisfied these criteria. Defendant was given the opportunity to present mitigating evidence (although he chose not to offer anything more than counsel's brief statement to the court); the court had independently searched the presentence investigation report for such evidence; and, because the court's sentencing inquiry could have included consideration of defendant's age, maturity, and development, it did not find the defendant's age to be irrelevant. Finally, it noted that under state law, the sentencing court could have imposed a lesser sentence.

DISSENTING OPINION

Justice Borden dissented. He agreed with the defendant's contention that his 100-year sentence violated the Eighth Amendment. In Justice Borden's view, the majority had interpreted *Miller* too narrowly. He asserted that the Supreme Court ruling required sentencing courts to do more than simply give defendants the opportunity to present mitigating evidence. Rather, it required the court to affirmatively "take into account how children are different and how those differences counsel against sentencing them to lifetime in prison" (*Riley* at 18, quoting *Miller* at 2469). He also concluded that these considerations were required regardless of whether a state's sentencing scheme was mandatory or discretionary.

To support his broader interpretation of *Miller*, Justice Borden traced the line of juvenile sentencing cases immediately preceding it (those cases are *Roper v. Simmons*, 543 U.S. 551 (2005) (invalidating imposition of the death penalty on juveniles) and *Graham v. Florida*, 130 S. Ct. 2011 (2010) (invalidating imposition of LWOP sentences on juveniles convicted of nonhomicide crimes)). As in *Miller*, these cases depended heavily on the differences between juvenile and adult culpability.

He faulted the majority for failing to recognize four significant points the *Miller* Court made: (1) because children's diminished capacities make them different from adults for purposes of sentencing, they are less deserving of the most severe punishments; (2) children are more vulnerable to negative influences and outside pressures, have limited control over their own environments, and cannot extract themselves from horrific, crime-producing settings; (3) their characters are not as well formed as adults, personality traits less fixed, and actions less likely to be evidence of irretrievable depravity; and (4) sentencing courts cannot sentence juveniles to LWOP without having taken into account generally accepted scientific and sociological studies that demonstrate how they differ from adults (*id.* at 15-16).

In light of his interpretation of the Supreme Court's holding, Justice Borden contended that the majority should have granted defendant's resentencing request and directed the judge to take into consideration the evidence demonstrating how characteristics associated with immaturity and incomplete brain development make juveniles less culpable than adults. If, after considering this evidence, the court resentenced the defendant to LWOP, he asserted that the defendant was constitutionally entitled to a "second look" hearing at some future date and a potential sentence reduction based on proof of his acquired maturity and personal rehabilitation. (The majority declined to express a view on this issue because it had not been addressed in *Miller*.)

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