JUVENILE JUSTICE

Why the United States Supreme Court Should Make Miller v. Alabama Retroactive

By
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Finally, after two earlier refusals [1] to revisit its 2012 landmark decision in *Miller v. Alabama,*[2] and much legal uncertainty, the United States Supreme Court has agreed to address the question of Miller's retroactive application .

In the upcoming case of *Toca v. Louisiana,* [3] which the Court has agreed to consider, the Supreme Court will have the opportunity to move juvenile justice practice in America one step closer to compliance with international norms. For those who have toiled endlessly and championed the cause of a fair and balanced juvenile justice system, relief may be on the horizon.

A Decade of Struggle

Over the past decade, the United States Supreme Court has handed down what many have called landmark rulings in several cases involving juvenile offenders. In 2005 the Court issued the first, in a series of recent decisions that have literally sent shockwaves throughout the American juvenile justice system. In the case of *Roper v. Simmons,* [4] the Court held that it was a violation of the Eighth Amendment of the United States Constitution to impose a death sentence on a juvenile offender. That decision was followed in 2010, when the nation's highest Court ruled in *Graham v. Florida* [5] that it was a violation of the Eighth Amendment to impose a sentence of life without the possibility of parole on juvenile offenders convicted of non-homicide offenses. A subsequent third ruling occurring June 25, 2012 in the case of *Miller v. Alabama* brought about a monumental shift in the sentencing of juvenile offenders **(those arrested before their eighteenth birthday)** to mandatory life without the possibility of parole (JLWOP).

While the action by the Supreme Court in the *Miller* case did in fact wipe out existing laws in some 28 states, it also left wide open for interpretation the issue of *Miller's* retroactive application.

According to a June 2014 Policy Brief **Slow To Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole,** [6] issued by the Washington DC based Sentencing Project, only 13 of the 28 states affected by the *Miller* decision have passed compliance laws. The remaining 15 have yet to act.

While Some States Have Already Taken Legislative Action to Comply With the Miller Decision, Others Have Shown Nothing Short of Deliberate Defiance of the Supreme Court's Ruling.

As it stands today, at least sixteen states: Alaska, California, Colorado, Delaware, Hawaii, Kansas, Kentucky, Massachusetts, Montana, New Mexico, North Carolina, Oregon, Texas, Utah, West Virginia and Wyoming plus the District of Columbia, have taken some form of action to ban the sentencing of juveniles to life without the possibility of parole and now align with the overwhelming international consensus: **no other country sentences people to die in prison for crimes committed as juveniles.** Four other states – Maine, New Jersey, New York, and Vermont do not ban life without parole sentences, but show little inclination to ever use the sentence. [7] In addition to independent state legislative action, a number of state courts across the country have issued a mixed bag of decisions on the issue of *Miller's* retroactivity.

The Retroactive Application of Miller

In Massachusetts, a state with some of the toughest juvenile sentencing laws in the country, the Massachusetts Supreme Judicial Court held in the case of *Diatchenko v. District Attorney for the Suffolk District* [8] that it was a violation of the state constitution to sentence juveniles under the age of 18 to life without the possibility of parole. The Massachusetts court went a step further than most in its ruling by stating that **"there must be a meaningful opportunity for parole"** based on **"demonstrated maturity and rehabilitation."** To date, the ever so conservative Massachusetts State Parole Board has granted conditional releases [9] to at least seven juvenile offenders, a few of whom had already served in excess of thirty years on their sentences. The decision by the Massachusetts Supreme Judicial Court will affect some 64 state prisoners currently serving JLWOP sentences.

The Massachusetts decision was quickly followed by the Illinois Supreme Court. In a March 2014 ruling, [10] the Illinois court held that the *Miller* decision is to be applied retroactively. The Illinois court decision will have an impact on approximately 100 prisoners who are currently serving JLWOP sentences.

State courts in several other jurisdictions including Iowa, Mississippi, Nebraska, and Texas have likewise ruled in favor of *Miller's* retroactive application. The retroactive issue of *Miller* remains unresolved before State Supreme Courts in Alabama, Colorado, and Florida.

Dissatisfaction with the Miller Decision Reared its Ugly Head First in Iowa, Then in Other Jurisdictions

The first signs of dissatisfaction with the *Miller* decision came not from another court, but rather from a politician. Within weeks of the Supreme Court's decision, Iowa's Governor Terry Branstad commuted the life without parole sentences of 38 Iowa prisoners who fell under the *Miller* decision. The Governor's action mandated that each of those who received a commutation would have to serve at least 60 years before becoming eligible for any consideration by the Iowa parole board. Governor Brandt's issuance of a commutation and subsequent imposition of a 60 year parole requirement was perceived by many as a overly ambitious attempt to circumvent the Supreme Court's ruling in *Miller*.

Until Such Time When This Form of Draconian Sentencing is Completely Eliminated, we Cannot Move Ourselves Forward and Away from Darker Days When we Allowed the Execution of Sixteen year-olds.

Governor Branstad's attempts at circumvention were negated when an Iowa District Court Judge and then the Iowa State Supreme Court ruled that his unilateral action mounted to cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Article 1, Section 17 of the Iowa Constitution.[11]

In the two years since the Supreme Court's holding in *Miller,* there has been a great deal of uncertainty regarding its application. Some state Courts, including courts in Louisiana, Minnesota, and Pennsylvania, states with a significant number of prisoners serving JLWOP sentences, have held that *Miller* does not apply retroactively. Others like Florida and Michigan have also attempted to thwart the intent of the United State Supreme Court in *Miller* by re-sentencing juvenile serving life without parole terms excessively. Those re-sentenced have received terms ranging from 70 to 90 years in Florida, and 25 to 60 years in the state of Michigan.

Given the ever growing uncertainty surrounding the issue of the retroactive application of *Miller*, there is every reason to expect that the case of *Toca v. Louisiana,* now before the Supreme Court, will generate significant national interest. That case will also present the ideal opportunity for our nation's highest Court to more fully articulate its earlier mandate as expressed in *Miller.*

Applying *Miller* retroactively in all jurisdictions will give hope to those sentenced to life without parole for crimes they committed before their eighteenth birthday. When there is hope, there is also room for rehabilitation, no matter the seriousness of the original transgression. Declaring *Miller* retroactive will also provide an opportunity for those so sentenced to appear before a parole board at some point. There, they will have an opportunity to present their case for eventual release. That opportunity does not guarantee that parole will be granted. It will also be up to the individual state policy makers to set whatever reasonable time frames they chose for parole eligibility purposes, be it 15, 20, 25 or 30 years.

Whatever decision the Supreme Court makes, there will be one certainty; It will again place the issue of the American Juvenile Justice System, and the harsh reality of its severity in sentencing juveniles to life in prison without the possibility of parole (JLWOP), right where it belongs; back in the spotlight of public discussion and debate.

Until such time when this outdated form of draconian sentencing is completely eliminated, we cannot move ourselves forward as a compassionate society, and away from those darker days when we allowed the state sponsored execution of children as young as 14 years-of age.

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1. *Louisiana v. Tate* (Docket No 13-8915) cert. denied on May 27, 2014 and Cunningham v. Pennsylvania (Docket No 13-1038), cert. denied on June 9, 2014
2. *Miller v. Alabama* 132 S. Ct. 2455 (2012)
3. *Toca v. Louisiana* 2014 – 6381LA
4. *Roper v. Simmons* 543 U.S. 551 (2005)
5. *Graham v. Florida* 130 S. Ct. 2011 (2010)
6. Joshua Rovner, *Slow to Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole*, Page 2. – The Sentencing Project, Washington, DC, June 2014. www.sentencingproject.org
7. Id.
8. *Diatchenko v. District Attorney for the Suffolk District,* 466 Mass 655 (2013).
9. Conditional release conditions include successfully completion of a program that includes at least one year in a lower security (minimum or pre-release) state correctional facility
10. *People v. Davis*, 2014 IL 115595 (ILL 2014)
11. *State v. Ragland,* 836 N. W. 2d 107 (Iowa 2013)