

JUVENILE JUSTICE

Seeking to Avoid the Real Possibility of a Favorable U.S. Supreme Court Ruling in *Toca v. Louisiana* District Attorney's Office Quickly Makes a Deal

By
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The Key Issue in the Toca Case Involved the Retroactive Application of *Miller v. Alabama*.

It is indeed somewhat of a rare occurrence when a prosecutor, especially one who for many years, had adamantly opposed any earlier deals, moves to moot a case that the United States Supreme Court has agreed to hear.

That is exactly what has just happened in the case of *Toca V. Louisiana*¹. The issue in *Toca* involves the retroactive application of the Supreme Court's earlier decision in *Miller v. Alabama*². In *Miller*, the Court ruled that it was unconstitutional to sentence juvenile offenders to mandatory life without the possibility of parole sentences. The *Miller* decision also mandated individualized sentencing hearings for juvenile offenders so charged.

George Toca, who was arrested in 1984 and convicted of second degree murder in 1985, had been given an automatic life without parole sentence, presented a very good argument for retroactivity. At the time of the crime Toca was 17 years old. In addition, family members of the victim Eric Batiste, had long maintained that another man, and not George Toca, had shot and killed their loved one. The Batiste family members were also strong advocates on Toca's behalf.

What makes the *Toca* case so important is that the outcome, had the case been successfully argued, would have affected no less than 1,600 other prisoners nationwide who were sentenced to life without parole for crimes they committed before their eighteenth birthday.

This Case Clearly Illustrates just how far Prosecutors are willing to go to maintain the legal status quo and Circumvent Corrective Justice.

Almost immediately following the U.S. Supreme Court's December 12, 2014 order agreeing to hear *Toca's* case, a decision that made national news, *Toca* and his lawyers were approached by Orleans Parish District Attorney Leon Cannizzaro. Mr. Cannizzaro wanted to make a deal. There can be little question that the Orleans Parish District Attorney knew that there was a very good possibility that he could loose in front of a Supreme Court that had already demonstrated that it was willing to lean toward a more even handed approach in dealing with juvenile offenders

The D.A.'s offer to George Toca went something like this: If Toca would plead guilty to a much lesser charge of armed robbery (Toca was initially charged with accidentally shooting and killing his best friend during an alleged attempted carjacking) he would immediately be released from Louisiana's infamous Angola State Prison. It was a deal that no Angola convict, facing the very real possibility of dying in prison, could afford to refuse. Toca accepted the offer and on January 29, 2015 walked out of Angola prison a free man.

How Could He Not Walk Out of Prison After 30 Years?

Just about everyone, including Toca's original attorney Emily Maw, who now serves as the Director of the New Orleans based Innocence Project agrees that George was put in a tough spot. Ms. Maw summed up her feelings by stating: "*The system did not work for George Toca – it utterly failed him for 31 years, ruined his life, and ultimately forced him to plead guilty to a crime he didn't commit in order to get out of prison.*"

Attorney Maw is not alone in her belief that her client did what he had to do to gain his freedom. Marsha Levick, deputy director and chief counsel at Philadelphia's Juvenile Law Center, a pro-active juvenile justice advocacy group when commenting on *Toca's* decision noted: "*I don't think anybody who has been waiting for the retroactivity issue to be ruled upon would in any way question the decision that George Toca made. How could he not walk out of prison after 30 years?*"

It would be completely impossible to conduct jury trials for all criminal defendants in America

For those still awaiting Supreme Court action on the issue of the retroactive application of the *Miller* decision, all is not lost. At the present time there are at least five cases – three in Louisiana, two in Michigan that have been sent to the U.S. Supreme Court for review. The earliest any of those cases could be looked at, would be during the next term of the Court.

It is not at all uncommon practice for prosecutors to make deals with criminal defendants. Statistically speaking, almost 95% of all those charged with a criminal offense in America enter into some sort of plea bargaining in exchange for lesser criminal charges, and less severe sentences. Most eagerly agree to enter a plea of guilty rather than run the risk of being found guilty at a jury trial. Those who opt for a trial by jury and loose, run the risk of a much more severe prison sentence. There are a number of reasons behind the well established practice of

plea bargaining: First, it saves the state a significant amount of money and resources. Second, it affords criminal defendants an opportunity to avoid more lengthy prison sentences and third, it saves the courts and the entire criminal justice system from collapsing in on itself. Factually, it would be completely impossible to conduct jury trials for all criminal defendants facing charges in America.

Of the 2.2 million Americans now in prison – well over 2 million are there as a result of plea bargains dictated by the government prosecutors, who effectively dictate the sentence as well.

The dilemma that George Toca faced was not unlike the one that tens of thousands of criminal defendants face every day in American courtrooms. According to the United States Department of Justice, at least 12,409,000 people are charged each year with a criminal offense in this country. In state courts upwards of 95 percent of all criminal defendants eventually agree to enter a guilty plea. The remaining 5 percent who opt for a “**trial with a jury of their peers**”, face extremely harsh prison sentences if they are convicted, and most are. In 2013, 97 percent of all federal criminal cases were resolved through plea bargains, and fewer than 3 percent went to trial. In his 2014 book “**Why Innocent People Plead Guilty**,” United States District Court Judge Jed S. Rakoff (SDNY) notes that of the 2.2 million Americans now in prison – well over 2 million are there as a result of plea bargains dictated by the government’s prosecutors, who effectively dictate the sentence as well.³

In the case of George Toca’s issue of retroactive application of the *Miller* decision before the Court, there can be little doubt but that the Orleans Parish, Louisiana prosecutor’s office was under considerable pressure from any number of internal and external sources. It is safe to say that no state Attorney General representing a jurisdiction in which retroactivity had not as yet been determined, wanted Toca’s case to proceed. It was in their best interest, not the best interest of

justice, to see the matter quickly resolved before the Justices of the United States Supreme Court could complete their review. If one is narrow minded, one might mistakenly believe that the prosecutor did the right thing and saved the day, so-to-speak, for his counterparts across the country who feared the consequences of a favorable ruling by the Justices. That is hardly the case.

Once they leave office, a substantial number of former state and federal prosecutors go on to seek election to a higher office. Louisiana prosecutors are no exception. Taking into account what elections in this country sometimes entail, it could prove very difficult indeed for a former prosecutor to be elected to higher public office if it could be said that he or she was responsible for pursuing a legal matter that resulted in such an enormously important unfavorable ruling to so significant a state entity by the nation’s highest Court. Thus it may follow that some prosecutors may act not for public good, but for their own.

This was all that I could do

A somewhat conflicted George Toca is struggling to readjust to a society he left 31 years ago. Several weeks after his release from Angola, while visiting the folks at the New Orleans Office of the Innocence Project, he had this to say: “*When my lawyer came to me and said, “You can sign this agreement and leave,” I was devastated, but I knew I had to sign it, - “If I didn’t, I knew I was gonna die in Angola.”* George also offered this apology to those he left behind to fight the issue another day. “*I know that they was really relying on my case to get the retroactivity of the Miller case resolved,” “I’m sorry that I let them down. This was all I could do.”*”

1. Toca v. Louisiana 2014 – 6381 LA
2. Miller v. Alabama 132 S. Ct. 2455 (2012)
3. Why Innocent People Plead Guilty –NY, Rakoff, J. (2014)