

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

**JAMES COMER, a/k/a
JAMES B. COMER,
JAMES F. COMER, and
JAMES A COMER,**

Defendant-Petitioner.

Supreme Court of New Jersey
Docket No. 084509

Criminal Action

On Certification from the Superior
Court of New Jersey, Appellate
Division Docket No.: A-1230-18T2

Sat Below:

Hon. Jack M. Sabatino, P.J.A.D.
Hon. Thomas W. Sumners, J.A.D.
Hon. Richard J. Geiger, J.A.D.

**AMICUS CURIAE BRIEF ON BEHALF OF
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS - NEW JERSEY**

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae Association of Criminal Defense Lawyers of New Jersey ("ACDL-NJ") is a non-profit corporation organized under the laws of New Jersey to, among other purposes, "protect and insure by rule of law, those individual rights guaranteed by the New Jersey and United States Constitutions; to encourage cooperation among lawyers engaged in the furtherance of such objectives through educational programs and other assistance; and through such cooperation, education and assistance, to promote justice and the common good." Founded in 1985, ACDL-NJ has over 500 members across New Jersey. Throughout the years, ACDL-NJ has participated as *amicus curiae* in numerous cases before this Court, as detailed in the attached Certification of Aidan P. O'Connor.

PRELIMINARY STATEMENT

Over the past decade, juvenile sentencing issues have been at the forefront of many legal debates. Advances in science and psychology have established that juveniles who are convicted and sentenced in adult court should not necessarily face the same consequences as similarly situated adult defendants. Faced with these emerging scientific studies, the United States Supreme Court and this Court have placed constitutional limits on sentences that may be imposed on juvenile offenders.

The need for constitutional limits on juvenile sentencing is largely based on common sense: children do not have the same level

of culpability as adults - their brains are not fully formed, they are more susceptible to negative influences, and they do not fully appreciate the repercussions of their actions. In a line of watershed cases, the United States Supreme Court has directed sentencing courts to consider several important factors when sentencing juveniles, including: (1) the juvenile's age and immaturity; (2) family home environment; (3) circumstances of the offense, including the role the juvenile had in the offense and any influence of peer pressure; (4) the incapacities of youth that may have disadvantaged the juvenile in dealing with the justice system; and (5) the juvenile's potential for rehabilitation.

To pass constitutional muster, judges must meaningfully apply and consider these factors on a case-by-case basis when sentencing juvenile offenders. Fair consideration of these factors necessarily requires that our courts have broad discretion to depart from mandatory sentencing statutes when dealing with a juvenile offender. The sentencing statute at issue in the matter before this Court, N.J.S.A. 2C:11-3(b)(1), strips judges of any ability to meaningfully apply the juvenile sentencing factors mandated by the Supreme Court. Any statute that prevents a sentencing judge from considering and applying the factors above, in his or her sole discretion, must be deemed unconstitutional as applied to juveniles.

A judge's mere recitation of the juvenile sentencing factors means nothing when their hands are tied by a statute that requires a mandatory minimum sentence and a lengthy period of parole ineligibility. Even when judges are persuaded that a juvenile should receive the benefit of lenity, they are unable to depart from the statutorily mandated minimum sentence and period of parole ineligibility. A lengthy mandatory sentence without parole imposed on a juvenile does not accomplish what the United States Supreme Court and this Court have required: fair consideration of all scientifically proven factors that make juvenile offenders different than adults. For the reasons set forth below, ACDL-NJ respectfully submits that N.J.S.A. 2C:11-3(b)(1) must be declared unconstitutional as applied to juvenile offenders.

PROCEDURAL HISTORY & STATEMENT OF FACTS

ACDL-NJ relies upon the procedural history and statement of facts as set forth in the Defendant's plenary brief and petition for certification.

LEGAL ARGUMENT

POINT I

Standard of Review and Proportionality Framework

At the outset, this Court must review this constitutional challenge to N.J.S.A. 2C:11-3(b)(1) *de novo*. See State v. Galicia, 210 N.J. 364, 381 (2012) ("We consider legal and constitutional questions *de novo*."); see also State v. Gandhi, 201 N.J. 161, 176

(2010) (noting that legal conclusions of trial or intermediate appellate court in sentencing context are reviewed de novo). Thus, this Court owes no deference to the legal conclusions of the sentencing court or the appellate panel.

Constitutional challenges to sentencing statutes are analyzed using the "proportionality review" framework established under existing Eighth Amendment jurisprudence. See, e.g., State v. Loftin, 157 N.J. 253, 266-74 (1999). In that regard, this Court has made clear that although the proportionality test is generally the same under both the Federal and State Constitutions, it has a duty "to undertake a separate analysis under the cruel and unusual punishment clause of the New Jersey Constitution." State v. Ramseur, 106 N.J. 123, 169 (1987). This separate analysis is necessary because our State Constitution "affords greater protections . . . than does the [E]ighth [A]mendment of the federal constitution." State v. Gerald, 113 N.J. 40, 76 (1988).

In applying the proportionality test, the Court first considers "'objective indicia of society's standards, as expressed in legislative enactments and state practice,' to determine whether there is a national consensus against the sentencing practice at issue." Graham v. Florida, 560 U.S. 48, 61 (2010) (quoting Roper v. Simmons, 542 U.S. 551, 572 (2005)). Next,

guided by "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth

Amendment's text, history, meaning, and purpose," the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution.

[Ibid. (citations omitted).]

The penological justifications for sentencing (generally: retribution, deterrence, incapacitation, and rehabilitation) are also relevant to the proportionality analysis. Id. at 71. Certainly, deterrence and rehabilitation are relevant to juvenile offenders. As observed by the United States Supreme Court in Roper, however, "[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, **the case for retribution is not as strong with a minor as with an adult.**" 543 U.S. at 571 (emphasis added). Mandatory periods of parole ineligibility fall under the "retribution" and "deterrence" justifications for sentencing, which are not nearly as relevant to juveniles as they are for adult offenders. See State v. Corriero, 357 N.J. Super. 214, 218 (App. Div. 2003) (recognizing that the objective of a parole disqualifier is penal or retributive in nature).

POINT II

N.J.S.A. 2C:11-3(b) (1) is Unconstitutional as Applied to Juvenile Offenders, Because Sentencing Judges Do Not Have Discretion to Meaningfully Apply the Miller Factors.

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment, which is incorporated

against the states through the Fourteenth Amendment. State v. Zuber, 227 N.J. 422, 437 (2017); U.S. Const. amend. VIII; see also N.J. Const. art. I, ¶ 12 (New Jersey's constitutional prohibition on cruel and unusual punishment). Our understanding of juvenile and adolescent behavioral science has progressed greatly in recent years, due in large part to the evolution of scientific and psychological studies of youthful offenders. While sentencing statutes that mandate minimum sentences without parole may be constitutionally permissible for adults, the same is not true as applied to juveniles.

A. Eighth Amendment as Applied to Juveniles

Over the last fifteen years the United States Supreme Court has addressed how the Eighth Amendment applies to lengthy sentences imposed on juveniles in a series of cases in which juveniles were waived up, convicted, and sentenced as adults. These landmark decisions were based on advances in psychology and brain science that showed fundamental differences between juvenile and adult minds. In that regard,

. . . 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 through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults.

[Graham v. Florida, 560 U.S. 48, 68 (2010)
(internal citations omitted).]

Central to the Court's analysis were three substantial differences between juveniles and adults that led the Court to conclude that the irresponsible conduct of juveniles is not as morally reprehensible as that of an adult.

Juveniles exhibit a lack of maturity and an undeveloped sense of responsibility. As a result, juveniles are more likely to take "impetuous and ill-considered actions" and "engage in reckless behavior." Roper v. Simmons, 543 U.S. 551, 569 (2005); see also Zuber, 227 N.J. at 439; In re C.K., 233 N.J. 44, 48 (2018) ("The record in this case reveals what is commonly known about juveniles—that their emotional, mental, and judgmental capacities are still developing and that their immaturity makes them more susceptible to act impulsively and rashly without consideration of the long-term consequences of their conduct."). "The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." Ibid. Indeed, it is far more difficult for juveniles to escape negative influences in their environment. Ibid. "The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." Ibid. In other words, there is a greater chance for reform and rehabilitation as a

juvenile matures, because a juvenile's mind is still developing. Based on these principles and the Eighth Amendment, the Supreme Court in 2005 held capital punishment unconstitutional for juveniles. Roper, 543 U.S. 551.

Then, in 2010, the Supreme Court, relying on the principles articulated in Roper, held that the Eighth Amendment prohibits life sentences without parole for juveniles convicted of non-homicide offenses. Graham, 560 U.S. 48 (2010). In concluding that a life-without-parole sentence for juveniles is unconstitutional, "[t]he Court found that none of the traditional goals of sentencing provide an 'adequate justification' for life without parole for a juvenile." Id. at 71. In discussing the holding in Graham, this Court held that "[t]he State must . . . 'give [juvenile] defendants . . . some **meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.**'" Zuber, 227 N.J. at 443 (citations omitted) (emphasis added).

Two years later in 2012, the United States Supreme Court held that the Eighth Amendment forbids a mandatory sentence of life without parole for juveniles who commit murder. Miller v. Alabama, 567 U.S. 460 (2012). Miller relied on the principles set out in Roper and Graham that, "children are constitutionally different from adults for purposes of sentencing" and "have diminished culpability and greater prospects for reform." Id. at 471. This

Court has noted that Miller, “. . . outlined five factors (“the Miller factors”), which are particularly instructive for sentencing Judges”:

Mandatory life without parole for a juvenile

(1) precludes consideration of his chronological age and its hallmark features—among them, **immaturity, impetuosity, and failure to appreciate risks and consequences.**

(2) **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.

(3) **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.

(4) 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.**

(5) And finally, this **mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.**

[Zuber, 227 N.J. at 445 (emphasis added).]

Then, in 2016, the United States Supreme Court held that its holding in Miller applied retroactively. Montgomery v. Louisiana, 136 S. Ct. 718 (2016).

A year later this Court was faced with a question not addressed by the United States Supreme Court: Whether the Miller

factors must be considered when a juvenile is sentenced to a lengthy term of years which amounts to the practical equivalent of a life sentence without parole. This Court, relying on the Graham/Miller line of cases, the Eighth Amendment, and Article I, Paragraph 12 of the New Jersey Constitution, held that Miller “applies with equal strength to a sentence that is the practical equivalent of life without parole. . . . The label alone cannot control; we decline to elevate form over substance.” Zuber, 227 N.J. at 446-47. Indeed, this Court correctly held that “the force and logic of Miller's concerns apply broadly: to cases in which a defendant commits multiple offenses during a single criminal episode; to cases in which a defendant commits multiple offenses on different occasions; and to homicide and non-homicide cases.” Id. at 448.

The reasoning behind Miller, Graham, and Zuber couldn't be clearer: scientific studies have established that juvenile offenders must be assessed differently than adult offenders and, accordingly, sentencing judges must consider the mitigating features of youth when imposing a sentence. The scientific and psychological justifications behind these landmark decisions apply with equal force to the sentencing arguments raised by petitioner. The thirty-year mandatory minimum sentence without parole required under N.J.S.A. 2C:11-3(b)(1) is unconstitutional as applied to juveniles, because sentencing judges are divested of their

discretion to meaningfully apply the Miller factors.¹ A holding to the contrary would “elevate form over substance” and would lead to a mechanistic, empty application of Miller in juvenile homicide cases.

To pass constitutional muster, sentencing statutes must permit courts to exercise full discretion, and assess juvenile offenders on a case-by-case basis considering the Miller factors. A mandatory minimum sentence imposed on a juvenile – even in homicide cases – undermines the rationale behind the Graham/Miller line of cases, and this Court’s holding in Zuber. Any sentence that fails to provide an opportunity for release at a meaningful point in a juvenile’s life triggers Eighth Amendment protections – regardless of whether it is labeled life without parole, or a mandatory term of years without parole.

Because N.J.S.A. 2C:11-3(b)(1) precludes sentencing judges from engaging in a meaningful analysis of the Miller factors, it violates the prohibition on cruel and unusual punishment as applied

¹ ACDL-NJ does not contend that a sentencing court should never have discretion to impose a thirty-year period of parole ineligibility on certain juvenile offenders, if there is a basis to do so after consideration of the Miller factors. Rather, it submits that sentencing statutes that divest judges of discretion to meaningfully apply the Miller factors to a juvenile’s sentence are unconstitutional under the Eighth Amendment, Article I paragraph 12 of the New Jersey Constitution, and this Court’s holding in Zuber.

to juveniles under the Eighth Amendment and Article I, paragraph 12 of the New Jersey Constitution.

B. Our Societal Views on Juvenile Sentencing Have Rapidly Evolved in Favor of Lenity

As the petitioner correctly contends, society as a whole has come to recognize the stark differences between a juvenile's criminal culpability compared to that of an adult. Many state legislatures, including our own, are seeking to comply with the Eighth Amendment by enacting legislation to prohibit or substantially curtail mandatory sentences for juvenile offenders. See, e.g., Cal. S.B. 394, Reg. Sess. (2017) (maximum permissible juvenile term without parole eligibility is 25 years); Wyo. H.B. 23, 62nd Leg., Gen. Sess. (2013) (same); W. Va. H.B. 4210, 81 Leg., 2d Sess. (2014) (15 years). These laws seek to comply with the Supreme Court's holdings in Graham, 560 U.S. 48 (2010) and Miller, 567 U.S. 460 (2012). Three States and the District of Columbia have also passed laws permitting a juvenile offender to petition for parole or a reduction of sentence. See Fla. Chapter 2014-20 (2014) (now codified at FLA. STAT. ANN. § 921.1402 (2015)) (juvenile offender may petition for parole or reduction of sentence after 25-year term); D.C. CODE ANN § 24-403.03 (2019) (15 years); N.D. CENT. CODE ANN. 12.1-32-13.1 (2017) (20 years); WASH. REV. CODE § 9.94A.730 (2014) (20 years). The New Jersey Legislature recently reintroduced legislation to permit similar provisions for

juvenile offenders. See N.J. A3091, 219th Leg. (2020) (proposing to allow juvenile offenders to move for resentencing after 10 years in custody and requiring courts to conduct an evidentiary hearing).

In addition, a number of State Supreme Courts have relied on their State Constitutions to declare juvenile mandatory minimum sentences and parole disqualifiers unconstitutional. Notably, the provisions in the other State Constitutions regarding cruel and unusual punishment were identical to Article I, paragraph 12 of the New Jersey Constitution. The common thread between all of these cases is the need to allow sentencing judges to exercise independent discretion when considering the Miller factors to impose a fair sentence on a juvenile offender.

For example, in State v. Lyle, 854 N.W.2d 378 (Iowa 2014), the Supreme Court of Iowa held that any mandatory minimum sentence imposed on a juvenile was unconstitutional under its state constitution. In reaching that conclusion, the Court eloquently stated:

On remand, judges will do what they have taken an oath to do. They will apply the law fairly and impartially, without fear. They will sentence those juvenile offenders to the maximum sentence if warranted and to a lesser sentence providing for parole if warranted.

Accordingly, article I, section 17 of the Iowa Constitution forbids a mandatory minimum sentencing schema for juvenile offenders that deprives the district court of the discretion to consider youth and its attendant circumstances as a mitigating factor and to

impose a lighter punishment by eliminating the minimum period of incarceration without parole.

[Id. at 404 (emphasis added).]

Similarly, in State v. Houston-Sconiers, 391 P.3d 409 (Wa. 2017), the Washington Supreme Court held that courts imposing sentences on juvenile offenders must have discretion to impose any sentence below the applicable range and without imposing statutory sentencing enhancements, including mandatory minimum sentences. In so holding, the Court held that:

sentencing courts must have **complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant**, even in the adult criminal justice system. . . . **To the extent our state statutes have been interpreted to bar such discretion with regard to juveniles, they are overruled. Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.**

[Id. at 420 (emphasis added).]

In light of these newly enacted laws and state court decisions, legal scholars throughout the United States have thoroughly researched and opined on the dire need for complete judicial discretion in the juvenile sentencing context. See, e.g., Martin Guggenheim, Graham v. Florida and a Juvenile's Right to Age-Appropriate Sentencing, 47 Harv. C.R.-C.L. L. Rev. 457, 490 (2012) (arguing that juveniles may not be sentenced to automatic

terms of imprisonment established by legislatures as mandatory for adults); Rachael Frumin Eisenberg, Comment, As Though They Are Children: Replacing Mandatory Minimums with Individualized Sentencing Determinations for Juveniles in Pennsylvania Criminal Court After Miller v. Alabama, 86 Temp. L. Rev. 215 (2013) (arguing that Pennsylvania's use of adult mandatory minimums for juveniles was unconstitutional post- Miller); Cara H. Drinan, The Miller Revolution, 101 Iowa L. Rev. 1787, 1820 (2016) ("The sentencing process and discretion called for by the Miller Court are simply incompatible with a mandatory sentencing scheme – whether it is a mandatory sentence of life without parole or a mandatory sentence of 35 years.").

We, as a society, have come to recognize and appreciate the substantial differences between juvenile and adult offenders. Any sentencing statute that prevents a court from exercising its full and independent discretion, based upon its consideration of the Miller factors, does not comport with the Eighth Amendment or Article I, paragraph 12 of the New Jersey Constitution and must be held unconstitutional as applied to juveniles.

CONCLUSION

For the reasons set forth above, and based on the authorities cited, ACDL-NJ urges this court to hold that under the Eighth Amendment and Article I, paragraph 12 of the New Jersey Constitution, N.J.S.A. 2C:11-3(b)(1) is unconstitutional as

applied to juveniles, because it prevents judges from exercising the sentencing discretion required by Miller and Zuber.

Respectfully Submitted,

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