

STATE OF MICHIGAN
IN THE SUPREME COURT

CASE NO. 157738

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff/Appellee,

v

DEMARIOL BOYKIN,

Defendant/Appellant.

MI COA #335862

Kent Cty. Circuit Ct.
#03-04460-FC

CORRECTED
DEFENDANT/APPELLANT'S REPLY BRIEF

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I. DOES JUVENILE LIFER RESENTENCING TO 40 - 60 YEARS FAIL WHEN IT IGNORES THE MANDATE THAT FOR SENTENCING PURPOSES CHILDREN ARE DEVELOPMENTALLY DIFFERENT THAN ADULTS?

Essentially, the prosecutor argues that it is okay, perhaps even required, to consider the *Miller* type science factors, but that simply it is too much of a burden to require the judge to voice and give notice of their decision. That idea is squarely contradicted by the outlandish resentencing in this case.

“Juvenile offenders ‘cannot with reliability be classified among the worst offenders’ for several reasons. *Id.*, at 569. First, ‘as any parent knows,’ and as scientific and sociological studies have confirmed, juveniles are less mature and responsible than adults, which ‘often result[s] in impetuous and ill-considered actions and decisions.’ *Ibid.* (internal quotation marks omitted). Second, juveniles are ‘more vulnerable or susceptible to negative influences and outside pressures’ and ‘have less control . . . over their own environment.’ *Ibid.* Finally, ‘the character of a juvenile’ is ‘more transitory’ than that of an adult. *Id.*, at 570. ‘[A]s individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.’ *Jones v Mississippi*, 593 US ____ (2021), Sotomayor, J., dissenting, pg. 2-3.

As here, *People v Wines*, 323 Mich App 343 (Mich Ct App 2018) states, “The prosecution offers no legal or precedential support to conclude that the attributes of youth, such as those described in *Miller*, should be considered only when the sentence of life without parole is sought, footnoting *State v Null*, 836 NW2d 41, 71 (Iowa, 2013):

“Certainly the notions that juveniles have less-developed judgment, that juveniles are more susceptible to peer pressure, and that juveniles’ characters are not fully formed applies to this and any other case involving a juvenile defendant. Thus, the notions in *Roper*, *Graham*, and *Miller* that ‘children are different’ and that they are categorically less culpable than adult offenders apply as fully in this case as in any other.”

Death. The prosecutor opines this 40-year minimum and can be sustained here as Demariol Boykin is in good health (Appellee Brief, pg. 20). Beyond denial, *Wines* states:

“... a 40-year minimum sentence prevents parole consideration until that defendant is 57 years old. And because release at a first parole date is by no means assured, an inmate life expectancy is statistically low, the 40-year minimum sentence virtually ensures that the defendant will not be released until he or she is geriatric, while the 25-year minimum sentence would allow a defendant to be released at an age when reentry into broader society is likely.”

The prosecution suggests the status quo; a disaster:

“Sentencers will not ‘necessarily . . . consider the defendant’s youth,’ *ante*, at 15, and they certainly will not necessarily conduct *Miller*’s essential inquiry. If sentencing discretion is all that is required, far too many juvenile offenders will be sentence to die in prison.²

²The harm from these sentences will not fall equally. The racial disparities in juvenile LWOP sentencing are stark: 70 percent of all youths sentenced to LWOP are children of color. See Tipping Point 10; see also Brief for Juvenile Law Center et al. as *Amici Curiae* 21 (reporting that ‘[i]n the years before *Graham* and *Miller*, courts sentenced Black juvenile offenders to life imprisonment without parole ten times more often than white offenders’); Mills, Dorn, & Hritz, *Juvenile Life Without Parole in Law and Practice: Chronicling the Rapid Change Underway*, 65 *Am. U.L. Rev.* 535, 579-580 (2016) (‘Non-whites are overrepresented among the JLWOP population in ways perhaps unseen in any other aspect of our criminal justice system’). The trend has worsened since *Miller v Alabama*, 567 US 460 (2012): 72 percent of children sentenced to LWOP after *Miller* were Black, compared to 61 percent of children sentenced before *Miller*. Tipping Point 10.

Jones v Mississippi, 593 US _____ (2021), Sotomayor, J., dissenting, pg. 12.

What we need is a sentencing judge who understands that permanent incorrigibility is the dispositive rule and determines whether the defendant fits within that rule. *Id* at 7.

Defendant incorporates by reference, as if more fully restated herein, the points and authorities stated in Defendant's Application for Leave to Appeal herein, in the Supplemental Brief filed in *People v Tate*, No. 158695, and in *Amicus* Brief filed in support of the defense here and in *Tate*.

CONCLUSION

Following the science is necessary. Resentencing before a new judge is required.

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