

STATE OF MICHIGAN  
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

KEMO KNICOMBI PARKS,

Defendant-Appellant.

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SC: 162086  
COA: 346587  
LC: 17-040829-FC

AMICUS CURIAE BRIEF IN SUPPORT OF  
DEFENDANT-APPELLANT KEMO KNICOMBI PARKS



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Statement of Questions Presented

I. Do the failure to extend Miller protections to the entire class of adolescents violate late adolescents' constitutional guarantee of equal protection under the law and protection against cruel or unusual punishment, pursuant to Art 1 § 16, U.S. Eighth Const. Amend?

Amicus answers, "Yes."

II. Should mandatory life sentences for Michigan adolescents be categorically banned due to the problems with perdition, lower courts abuse of discretion, and because Michigan Appellate Courts and Supreme Court affirm violations of the Sixth Amendment that requires a sentencer to make additional findings beyond guilt before sentencing a juvenile offender to life without parole, pursuant to U.S. Sixth Const. Amend?

Amicus answers, "Yes."

Interest And Identity of Amicus Curiae

Amici James Martrice Brown, is a long standing member of the National Lifers of America, Inc., a statewide organization operating in Michigan correctional facilities since 1981. NLA, Inc., seeks to assist "education in criminal justice and formulation of positive solutions towards reform and release of incarcerated persons" (NLA, Inca., Bylaws, 2015, p. 1).

Amici Brown is currently serving a mandatory life imprisonment sentence as a defendant convicted of first degree felony-murder at the age of 18 years and 12 weeks old. Hence, Amici Brown, as a member of the late adolescent class of juvenile offenders, supports GRANTING People v Parks, particularly, pursuant to the proposition of extending the protections of Miller to the entire class of adolescents, based on the newly discovered scientific evidence that makes mandatory life sentences unconstitutional for the entire class of late adolescents according to Art 1, § 16 of the Michigan Constitution.

Prohibition against mandatory life for early adolescents--ten through thirteen, and middle adolescents--ages fourteen through seventeen--but not the late class of adolescents--ages eighteen through twenty (Cruz v. United States, CRIM. NO. 3:94CR112(AHN), Nov. 6, 2017, at 3)--violates Michigan's constitutional guarantee to Equal Protection Under the Law; and thus, renders mandatory life sentences without parole for some adolescents--cruel or unusual punishment--where the brain science that rendered the early and middle class of adolescents'

mandatory life imprisonment sentence without parole unconstitutional--now renders the mandatory life imprisonment sentence for late adolescents unconstitutional as well.

Parks, as a member of the late adolescent class of offenders is also generally more impulsive than adults, prone to risky and reckless behavior, motivated less by punishment and more by reward, less oriented to the future and more oriented to the present, and susceptible to the influence of others. Moreover, Parks is among the class of adolescents whose risk taking and reward seeking intensifies when they are in unsupervised groups of their peers. Cruz, at 3.

Since Michigan's constitution guarantees greater equal protection under the law and protection against cruel or unusual punishment, Amici Brown, asks this Court to categorically ban mandatory life sentences without the possibility of parole for the entire class of adolescents due to the problem of prediction being unreliable and inaccurate--even for adults, and therefore, amount to "random guesses," and become more pronounced when making predictions about "whether a juvenile is capable of rehabilitation (NOTE: Miller v. Alabama and the problem of prediction, 119 Colum. L. Rev. 1633, October, 2019, by Mary Marshall, p. 6). This Court is asked to provide the state of Michigan's adolescent-class the greater constitutional protections against cruel or unusual punishment to avert the "87% false-positive problem" that Roper and Graham avoided with its categorical bans (Marshall, 2019, p. 7).

I. Failure to extend Miller protections to the entire class of adolescents violates late adolescents' constitutional guarantee of equal protection under the law and protection against cruel or unusual punishment. Art 1 § 16, U.S. Eighth Const. Amend.

This Court should grant *People v Perks*, because extending the protections of Miller to the entire class of adolescents, based on the newly discovered scientific evidence guarantees equal protection under the law for all adolescents and prevent cruel or unusual punishment for all adolescents. Therefore, extending Miller protections makes mandatory life sentences unconstitutional for the entire class of adolescents according Art 1, § 16, of the Michigan Constitution.

Prohibition against mandatory life for the early and middle--but not the late class of adolescents--violates Michigan's constitutional guarantee to Equal Protection Under the Law. Mandatory life sentences without parole for some adolescents is now cruel or unusual punishment where the brain science that rendered the early and middle class of adolescents' mandatory life imprisonment sentence without parole unconstitutional--now renders the mandatory life imprisonment sentence for late adolescents unconstitutional as well.

Hence, the statute mandating life without the possibility of parole for late adolescents--MCL 750.316, is unconstitutional both categorically and as applied to late adolescents under Article 1, § 16, of Michigan 's 1963 Constitution and the Eighth Amendment to the United States Constitution.

*Perks*, as an 18-year-old late adolescent, exhibit the same "distinctive attributes of youth" as younger children, including

lessened culpability and increased capacity for change, Miller, 567 US at 472; therefore, imposing the harshest possible sentence of mandatory life without parole on an 18-year-old adolescent is disproportionately serve.



II. Mandatory life sentences for Michigan's adolescent should be categorically banned due to the problems with prediction, lower courts abuse of discretion, and because Michigan Appellate Courts and Supreme Court affirm violations of the Sixth Amendment that requires a sentencer to make additional findings beyond guilt before sentencing a juvenile offender to life without parole. U.S. Sixth Const. Amend.

Michigan's constitution guarantees greater equal protection under the law and protection against cruel or unusual punishment; therefore, Amici Brown, asks this Court to categorically ban mandatory life sentences without the possibility of parole for the entire class of adolescents due to the problem of prediction. Predictions are unreliable and inaccurate--even for adults, and therefore, amount to "random guesses," and become more pronounced when making predictions about "whether a juvenile is capable of rehabilitation (NOTE: Miller v. Alabama and the problem of prediction, 119 Colum. L. Rev. 1633, October, 2019, by Mery Marshall, p. 6). Hence, this Court is asked to provide Michigan's adolescent-class its greater constitutional protections against cruel or unusual punishment to avert the "87% false-positive problem" that Roper and Graham avoided with its categorical bans (Marshall, 2019, p. 7).

Miller "implies that an irreparably corrupt juvenile is one who is incapable of rehabilitation and bound to continue to be a threat to society" (Marshall, 2019, p. 3), but "youth's mitigating effect is found in the fact that it is temporary;" therefore, prediction is difficult, and therefore, imperative that this Court render a categorical ban of mandatory life sentences without the possibility of parole for adolescents; particularly, since "determining which juveniles are truly

irreparably corrupt runs an unacceptable risk of sentencing an undeserving juvenile to death or life without parole." That is, juveniles who "might be deserving of this punishment is outweighed by the risk of false positives" (Marshall, 2019, p. 7).

The growing ban of juvenile life without parole sentences is premised on the impossibility of telling which juveniles are permanently incorrigible. "Since Miller in 2012, sixteen states and the District of Columbia have banned life without parole sentences for juveniles, bringing the total to twenty-one states," with another five states that "have no one currently serving a juvenile life without parole sentence" (Marshall, 2019, p. 9).

In 2021, states like Washington have extended Miller protections to late adolescents age 18-21, while other states like South Dakota's legislature have banned life sentences for late adolescents through early adults--ages 18-25. Although the U.S. Supreme Court looks to the enactments of state legislatures, it is not the number that is significant, but the consistency of the direction of change (Marshall, 2019, p. 9). Hence, this Amici asks this Court to join in the national trend of extending its constitutional protections to the entire class of adolescents and categorically banning their mandatory life sentences without the possibility of parole.

By protecting the entire class of adolescents and banning their mandatory life sentences, trial courts would avoid the tendencies to abuse their discretion by treating mitigating

factors as aggravating factors to justify a sentence of life without parole, as Chief Justice McCormack, observed in her dissent in *People v. Masalmani*, 943 N.W.2d 359. In *Masalmani*, Chief Justice McCormack observed that the trial court heard expert testimony on adolescent brain development and lay witness testimony of behavior while incarcerated and family background, and still sentenced Masalmani--a 17-year-old middle-adolescent-- to mandatory life without parole.

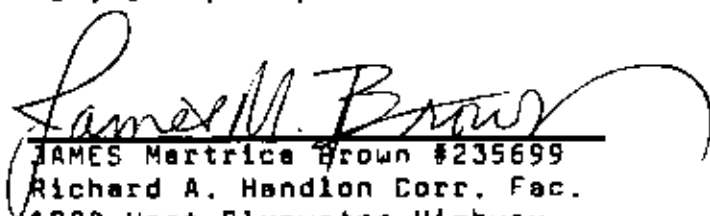
Since Michigan's lower courts tend to disregard some and/or all Miller mitigating factors, and the lower court decisions like *Masalmani* are affirmed by the Michigan Court of Appeals and Michigan Supreme Court because abuse of discretion is a deferential standard (p. 6), this Court should ban mandatory life sentences for adolescents because *Skinner* allows for LWOP sentences that violate the Eighth Amendment. (*Skinner*, 502 Mich, at 148). Therefore, categorically banning mandatory life sentences in favor of a term of years, makes adolescent offenders eligible under the Michigan Parole Board jurisdiction, to receive rehabilitative, re-entry, and/ or professional treatment while in prison that she or he do not have access to as a lifer.

Summary and Relief

Wherefore, amicus respectfully requests for the foregoing reasons, that this Honorable Court hold that all members of the adolescent class are to be equally protected from cruel or unusual punishment according to Art 1 § 16 of the Michigan Constitution.

Respectfully Submitted,

NLA, Inc., Chapter 1030 member



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