

Re-sentencing Juveniles Convicted of Homicide Post-*Miller*

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Adolescence

The social and behavioral sciences have long known that adolescence is a transitional period of life where cognitive abilities, emotions, judgment, impulse control and identity are still developing. Teenagers, by their very nature, are less mature, less able to assess risk, make good decisions, and control anger. Similarly, they are more susceptible to peer pressure and other external influences. These traits are particularly common among the troubled youth who become embroiled in our justice systems during adolescence. The abilities of these youths to survive adolescence with their life prospects intact are also often affected by learning disabilities, behavior disorders, mental illness, abuse, neglect, and trauma.

Moreover, recent advances in medical research reveal that the normal adolescent's brain is developing even into late adolescence. Utilizing the new technologies of brain imaging devices, scientists have found that those areas of the brain that regulate self-control, emotions, judgment, intelligence and identity (the frontal and temporal lobes and corpus callosum) do not stop developing until at least the age of eighteen. These findings contradict previously held beliefs that the brain was fully developed by fourteen. Such beliefs led some to the erroneous conclusion that teenagers were, therefore, fully responsible for their actions and not likely to benefit from rehabilitative interventions. However, we now know that because even their brains are not fully mature, they do not handle social pressure, instinctual urges, and other stressors the way adults do. This makes adolescents more prone than adults to immature, reckless and dangerous behavior.

Roper v Simmons found three fundamental differences between children and adults:

1. "A lack of maturity and underdeveloped sense of responsibility..... These qualities often result in impetuous and ill-considered actions and decisions."
2. Juveniles are more vulnerable or susceptible to negative influences and outside pressures including peer pressures. This is explained in part because by the prevailing circumstances juveniles have less control, or less experience with control, over their environment.
3. 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.

Thus “It is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.

And

“Culpability and blameworthiness is diminished to a substantial degree by reason of youth and immaturity.”

Roper, 543 US 551 (2005)

Preparation for a Miller Resentencing

- How many cases was he sentenced on?
- Were the sentences consecutive or concurrent?
- What is the law in your jurisdiction?
- What was the law at time of offense?
- How much gain time is he entitled to?
- How long has he been incarcerated?
- Get the actual sentencing order and transcript.
- How old was he at the time of the crime?
- Who is the judge?
- Who is the prosecutor?
- What does the victim’s family think now?
- What are the facts of the crime? What was the defendant’s role?
- What is the plan if he is discharged from prison?
- What is the defendant’s attitude now and has he reflected on what he did?
- Can/will the defendant testify? How prepared is he to do so?

- How fair was the plea?
- How good or bad was his attorney?
- Was he originally offered a plea (which he rejected because of his youth)?
- What are all of the mitigating factors that need to be presented to show why he did this, what life was like for him at the time, how kids are very different than adults, and how much he has changed?
- Use the language of the three cases (*Roper, Graham, Miller*) to your advantage.

The Team

- A lawyer who knows all about mitigation and how to present it. Usually a capital lawyer.
- A lawyer who knows about the many ways in which kids are different than adults and how this manifests itself.
- A mitigation specialist who can elicit often delicate information, who can understand the meaning of records, abuse, etc., who can talk to witnesses and who understands the clinical issues presented and the mitigation themes.
- An investigator – who can also talk to witnesses, help gather records.

Some differences between capital cases and these cases

There are a number of mitigators in the capital context that could hurt your chances of getting the defendant released.

- mental retardation
- mental illness
- very horribly abused, to the extent he is permanently damaged
- neuropsychological testing may reveal permanent deficits

Think about the consequences of presenting (or the state discovering) these things.

Preparing for the actual hearing

- Speak with client – many times
- Get releases signed by client
- Get school records, mental health records, hospital records... any and all records.
- Get all records from the prison system. Speak to people in the prison system who know and have worked with the defendant and have seen him change.
- List them as witnesses (that may take some work). Explain what the records mean and don't mean.
- Call an expert on prison life and records to explain circumstances and lack of future dangerousness is critical.
- Get copies of everything he has accomplished in prison (e.g. GED, honors, recognition)
- Speak to family members, friends, ministers, etc. who knew him then and who know him now and can speak about how he has changed.
- Have him evaluated by a child and adolescent psychiatrist/psychologist
 - Prenatal history
 - developmental history
 - family history
 - medical history
 - past psychiatric history
 - social history
 - Educational history
 - Drug and alcohol abuse (and the Whys)
 - possible intelligence testing
 - reports of behavior while incarcerated
- What is the reentry plan? Give actual details.
- Defendant testifying. Prepare him to speak to the court and to the victim's family. He understands now the full impact of what he did, how it hurt others, and he has great remorse. He is very different now than he was then.

- You need to explain that the person before the court now is not the kid who was here ___ years ago. (Need to explain why he did not take offered plea, the limits of his understanding at the time, his predisposition to defer to lawyers, co-defendants, how it was surreal to him)
- How and why has he changed over the years. He was sentenced to LWOP and yet he has done all of these positive things and behaved...
- He is now mature. Quote from *Roper, Graham, Miller*. "Maturity can lead to that considered reflection which is the foundation for remorse, renewal and rehabilitation."
- This is a person who, because he was a kid at the time, now understands his behavior and its consequences and is now in full control of his behavior. He is a very different person now. He is safe to be released. He has been punished for what he did. A person who has changed very much can make even a judge, prosecutor and victim's family support a release.
- Prepare a sentencing memorandum