

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HENRY HILL, JEMAL TIPTON, DAMION  
TODD, BOBBY HINES, KEVIN BOYD,  
BOSIE SMITH, JENNIFER PRUITT,  
MATTHEW BENTLEY, KEITH MAXEY,  
GIOVANNI CASPER, JEAN CARLOS  
CINTRON, NICOLE DUPURE and  
DONTEZ TILLMAN,

Plaintiffs,

v.

CIVIL ACTION  
10-14568

RICK SNYDER, in his Official Capacity  
as Governor of the State of Michigan,  
DANIEL H. HEYNS, in his Official  
Capacity as Director, Michigan Department  
of Corrections, and TOMAS COMBS, in his  
Official Capacity as Chair, Michigan  
Parole Board, jointly and severally,

Defendants.

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MOTION HEARING  
BEFORE THE HONORABLE JOHN CORBETT O'MEARA  
United States District Judge  
Ann Arbor Federal Building and  
United States Courthouse  
200 East Liberty Street  
Ann Arbor, Michigan  
Thursday, September 20, 2012

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TO OBTAIN CERTIFIED TRANSCRIPT:  
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**I N D E X**

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<b>Exhibit No.</b>	<b>Offered</b>	<b>Received</b>
	(None offered)	

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Ann Arbor, Michigan

September 20, 2012

2:29 p.m.

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THE CLERK: Case number 10-14568, Hill versus Snyder.

THE COURT: Counsel please put your appearances on the record.

MS. LaBELLE: Good afternoon, your Honor. Deborah LaBelle, and with me, Ron Reosti and Dan Korobkin on behalf of the Plaintiffs.

THE COURT: Good afternoon to all of you.

MR. FROELICH: Good afternoon, your Honor. Assistant Attorney General, Joe Froelich, on behalf of the Defendants.

THE COURT: Good afternoon. Let me -- sit down for a minute. The first thing this Court I think has to decide in dealing with this is whether there is something more extensive in the way the way of equitable relief in directing the state, which is a party to this action, to do certain things with its parole system. And my first time making an effort to figure out where we go, I pretty much headed in the direction that I was going to at least try to see if we could fit it in to an equitable order to the state to do certain things, to make eligible for consideration for parole juveniles who had been -- well, persons who had been sentenced to life without parole who at the time of sentencing were juveniles.

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1           I'll announce in advance that I hardly got to any  
2 point where I was agreeing with myself about this, and I  
3 certainly don't know exactly where this should go, and that's  
4 why I'm happy we're -- you're here today to talk to me. But it  
5 could include, if we went this way, a requirement that the  
6 state provide the Court the names of prisoners who could  
7 conceivably be affected by this, maybe even some other  
8 information that doesn't seem to relate to people who got life  
9 without parole when they were juveniles, like what ages and  
10 what circumstances is there on life without parole who didn't  
11 get sentenced as a juvenile, and whether there should be  
12 reports.

13           Now, I suspect that Ms. LaBelle is speaking for Henry  
14 Hill, that you have some ideas that are not necessarily  
15 negative to what I just said, although you may have better  
16 ideas than I do, and I suspect the state is, to the extent it  
17 will express itself, is not interested in anything like that  
18 happening from this court.

19           But I would -- and we're not going to end up here  
20 with a complete understanding that will result in some kind of  
21 an order of the Court today, but I would appreciate, as we  
22 listen to Ms. LaBelle or Mr. Reosti, whoever is going to be  
23 speaking on that side, that you understand that, not  
24 necessarily right here today, where I would like to get your  
25 impressions of where we go. But if you think we go someplace

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1 in the direction of providing an order of some kind that  
2 directs the state to do certain things with great specificity,  
3 I would like to know how you think that should be done. If you  
4 don't, of course we need to do that or should do that. You can  
5 tell me that too.

6 Having said all of that, maybe too much, are you  
7 going to argue, Ms. LaBelle?

8 MS. LaBELLE: Yes, your Honor, I am. If it please  
9 the Court, I won't spend too much time going over our -- the  
10 basics of our motion for summary judgment on the  
11 unconstitutionality of the parole statute. We filed this case  
12 two years ago arguing that mandatory life without parole for  
13 juveniles without consideration of their youthful status, and  
14 their attendant characteristics was unconstitutional under the  
15 Eighth Amendment. This Court allowed us to proceed and I guess  
16 we were prophetic because **Miller** says just that.

17 The state says that -- actually, I am a little  
18 baffled by the argument. They say despite saying in their  
19 response that **Miller v Alabama** requires the conclusion that  
20 Michigan's mandatory life without parole sentencing scheme is  
21 unconstitutional. They then argue that somehow these  
22 Plaintiffs or the youth -- the 361 youth incarcerated in  
23 Michigan are not entitled to the Supreme Court's law of the  
24 land, both because this court, even if it wanted to ignore  
25 Supreme Court law cannot, and the law applies of course to this

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1 pending case and ratifies exactly what the claim was and the  
2 retroactivity argument, we had briefed it in our response, your  
3 Honor.

4           It's clear that the Supreme Court found it  
5 appropriate to apply its ruling to Dontrell Jackson who's, like  
6 all of the -- most of the 361 Plaintiffs in Michigan have a  
7 final judgment as to their conviction and the court said no, we  
8 are going to apply it on collateral and to all similarly  
9 situated. So either because these plaintiffs are before this  
10 Court in a pending case and the law applies, or because of  
11 course it has to apply because it applied to Dontrell Jackson.

12           The other reasons we briefed in our pleadings is that  
13 it's also a substantive change in the law and to suggest that  
14 you can keep 361 people in prison until they die, when they  
15 were sentenced under a mandatory sentence that the Supreme  
16 Court said is cruel and unusual punishment, I think has no  
17 support in the law.

18           So I do think it has to apply --

19           THE COURT: Let me just stop you and say that there's  
20 some, if you've got this job, which I cannot complain and will  
21 not complain about, there are times when you must comply with  
22 orders of the Supreme Court, the Court of Appeals or plain  
23 dictates of the law that are inconsistent with what you would  
24 like to have happen. But I can't -- and I'm announcing this so  
25 the state can respond if it ever has to, and I'm by no means

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1 announcing that I have made -- come to a conclusion about what  
2 we should do, but I can't imagine a more unsatisfactory thing  
3 for someone sitting here to have to do than to keep people with  
4 no chance from going before a parole board -- it doesn't mean  
5 you can let them out -- after the Supreme Court has acted the  
6 way it is.

7 Now, let me say it again, because I don't want to get  
8 it confused. It may be that's what the law requires me to do,  
9 but it certainly will make me uncomfortable if it does.

10 MS. LaBELLE: I think that based on all of our  
11 pleadings that is not what the law requires you do. In fact  
12 maybe even -- I know it's not the law, but even checking  
13 Westlaw this morning, they already ruled that the parole  
14 statute is unconstitutional in light of **Miller V Jackson** --  
15 Michigan parole statute, and Defendants acknowledge that, and  
16 it must apply to all of those who are so situated.

17 I want to take a moment though, and we argued in our  
18 complaint that not only was the mandatory sentence  
19 unconstitutional, but this court should do what **Miller** said  
20 that they were not going to do and declare that a life without  
21 parole sentence in Michigan for any child sentenced under the  
22 age of 18 is categorically unconstitutional. We also asked for  
23 summary judgment on this point.

24 You know, we extensively briefed it, and Defendants  
25 do not disagree with the fact that **Miller** and **Graham** and **Roper**



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1 all make arguments that say that children are different than  
2 adults. Children are less culpable than adults, and that all  
3 the legitimate penological objectives for life without parole  
4 sentences simply cannot apply to children.

5 **Miller** went even further and said that **Graham's**  
6 reasoning implicates any life without parole sentence imposed  
7 on a juvenile, and it's not crime specific, it's child  
8 specific. This court can, and we think should, determine that  
9 the harshest punishment available in Michigan to anyone who  
10 commits a crime as an adult, a first degree murder crime,  
11 cannot be applied to children in the same way as adults. And I  
12 don't mean just that the process shouldn't be the same, but if  
13 you apply a life without parole sentence on a child, what  
14 you're saying then is the whole reasoning that children are, as  
15 a class, less culpable than adults, children are, as a class,  
16 categorically different than adults, you're ignoring those two  
17 concepts. And you're ignoring the even more important concept,  
18 which is the Court says no one, no psychologist, no soothsayer,  
19 no judge can stand and look at a child and say I know who you  
20 will be when you mature. No one can do it, and to impose a  
21 life without parole sentence does exactly that and says I know  
22 you're irredeemable now.

23 THE COURT: I know what you're saying and I think I  
24 spoke into what you're saying a few moments ago, but certainly  
25 one of the positions that the state can take, and one of the

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1 positions that might have some appeal in moving this in some  
2 direction, although not in the direction as far as you'd like  
3 it to go, is that simply the parole board, the system has got  
4 to be modified to the extent that it will not exclude people  
5 from the parole process, that it will include juveniles  
6 sentenced to life without parole, like any other person that  
7 doesn't have them without parole. And I guess the point of  
8 view could be that maybe that could be done, but nothing  
9 further right now.

10 MS. LaBELLE: I think that's true, your Honor. I  
11 think that once you strike down the parole statute as  
12 unconstitutional, everyone in Michigan who was sentenced as a  
13 child to life without parole gets converted to a parolable life  
14 sentence. There's no statute -- there's no penal statute that  
15 allows the sentence of life without possibility of parole. The  
16 only thing that does this is this parole statute, which now  
17 both parties agree is unconstitutional.

18 So now we have 361 youth who are parole eligible,  
19 which sort of brings me to my third point, and that is that  
20 they are all entitled to a meaningful and realistic opportunity  
21 for release, but the parole statute which is defined for  
22 adults, does two things that right now prohibit that meaningful  
23 and realistic opportunity for release.

24 One, they have a judicial veto, which essentially can  
25 convert a child's parolable life sentence into life without

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1 parole without consideration of maturation, rehabilitation or  
2 child status. The section just says successor judge, and it  
3 has been applied many times, your Honor, and more often on  
4 youth who were serving second degree than adults. And what  
5 happens is they say we object. We just object. We think they  
6 should all get life without parole and judges, successor judges  
7 have to give no reason, don't have to take anything into  
8 consideration.

9 That provision needs to be enjoined, or the  
10 department needs to come up with a mechanism for a parole board  
11 that takes into consideration the fact that these are youth and  
12 that the Supreme Court says they have to have a meaningful and  
13 realistic opportunity for release, taking their youth and their  
14 maturation and their rehabilitation into consideration.

15 The current parole statute doesn't require any of  
16 that. They don't have to take youth into consideration. They  
17 don't have to look at maturation. They have, as Defendants  
18 argue, full discretion to deny parole for any reason or no  
19 reason and we have no appellate abilities. The only people who  
20 can appeal is the prosecutor and the victim's family.

21 So currently, the parole system doesn't -- in order  
22 for it to be meaningful and realistic, there has to be, for the  
23 361, a mechanism in which they're reviewed consistent with  
24 their youthful status and the Supreme Court.

25 THE COURT: I understand what you're saying, and I

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1 think that one of the things that occurred to me is a problem  
2 that you just identified, that you can say all the right things  
3 and they're eligible for being considered for parole, but if  
4 they're not applying standards and considerations for youth and  
5 maturation and everything else, maybe there's no way any of  
6 them are going to do that. That's why it would seem to me,  
7 under that kind of a scenario, it would be better if the Court  
8 or at least someone could know what they -- what was applied to  
9 others, not the juvenile life without parole, but others  
10 similarly situated, and if it was clear at that point that  
11 people who were juveniles when they committed the crime and  
12 were convicted and were sentenced to life without parole, have  
13 perhaps some constitutional protection that needs to be  
14 asserted.

15 MS. LaBELLE: I think that your Honor's correct. I  
16 think there are two things we can do. One, we would ask the  
17 Court of course to enjoin the facial of the issues of the veto  
18 that prohibit meaningful opportunity for release, but also we  
19 do have all that information. We've been doing discovery in  
20 this case. We certainly can provide or the parties can provide  
21 both what has happened with regard to, you know, all the ages  
22 of the 361, their ages, their sentence, how long they've been  
23 in. Many have been in a very long time, your Honor and, you  
24 know, the eldest is in his 70s right now and he went in at 15,  
25 so what constitutes a meaningful opportunity for release for

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1 him as he approaches the parole board.

2 We also know how the parole board in the last  
3 whatever time period the Court thinks is relevant, but  
4 certainly the last five years, how it has handled parole  
5 hearings for youth who had a parolable life, and we know  
6 specifically what has happened to every one of those youth,  
7 both the judicial vetoes on them as well as their denial of  
8 parole or their, you know, not even consideration for parole.  
9 So we have that information.

10 THE COURT: You say we have?

11 MS. LaBELLE: The Plaintiffs have that information  
12 through discovery.

13 THE COURT: The Plaintiffs. And I assume that, a  
14 fortiori, the state's got the information too?

15 MS. LaBELLE: Correct. We received it --

16 THE COURT: But they may not have it in the same  
17 statistical form, although my question would be we want to get  
18 that information, we get it from you, which the state might say  
19 has a slant to it, could be possible, or get it from the state,  
20 which also may have a slant. That's not a question we need to  
21 answer right here, but it is a question.

22 MS. LaBELLE: I would note, Judge, for the Court's  
23 benefit, Ms. Nelson and I have certainly been able to sit down  
24 in the past and agree on what is a neutral presentation of  
25 factual data for the Court.

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1 THE COURT: Okay.

2 MS. LaBELLE: And your Honor, so I think we presented  
3 all that and I think that Plaintiffs are entitled to summary  
4 judgment on both of their claims and -- all three of their  
5 claims and request that the Court issue a judgment in our favor  
6 at this time.

7 THE COURT: Thank you, Ms. LaBelle.

8 MR. FROELICH: Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 MR. FROELICH: Joe Froelich on behalf of the  
11 Defendants. Your Honor, you started out by saying we need to  
12 talk about what we should do after the holding in **Miller**. But  
13 we didn't talk about what the holding in **Miller** is. And the  
14 holding in **Miller** is simple. It's straightforward, and it's  
15 narrow, and it's you can't sentence a juvenile convicted of  
16 murder to a mandatory sentence of life without parole. And if  
17 you want to sentence a juvenile convicted of murder to life  
18 without parole, you have to consider youth as an attribute at  
19 the time of sentencing, and that's it. That's the holding of  
20 **Miller**. It's not a mandate to reform Michigan's parole system  
21 and it's not a mandate to reform the way that all juveniles  
22 convicted of homicide are sentenced.

23 THE COURT: What you are saying, Mr. Froelich, is  
24 syllogistically sound, I think and is therefore logically  
25 unassailable, at least as far as you've taken it. But that

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1 doesn't really -- it may be that that is the strict sense of  
2 what has happened and all you can get out of it. I'm not  
3 saying I believe that, but it might be. But it also might be  
4 not very much of a manifest, not very much of a sense of  
5 awareness about where the law is going here, and just because  
6 they've only got to, oh, the 20-yard line doesn't mean that  
7 they shouldn't get all the way down the field, and it doesn't  
8 mean they aren't going to get all the way.

9           Now, I can't predict, any more than you can, exactly  
10 where that's going to end up, but I think we need to think  
11 about when they get the right case what they're going to do.  
12 And anyway, maybe it's -- if there is some kind of legal sport  
13 out there, maybe it's the way people at least doing my job  
14 should be thinking, that if you can find a hook in there that  
15 allows you to make something right that you think is wrong,  
16 maybe -- and I'm not -- you are doing a great job and  
17 Ms. Nelson has, and as Ms. LaBelle just said that she's worked  
18 well with Ms. Nelson on this. I -- certainly compared to other  
19 people who have been on the payroll of the Attorney General or  
20 whatever, and have showed up here, and I don't mean this as any  
21 particular criticism, but you have been reasonable, and  
22 intelligent and logical, and I'm -- I want you to keep on doing  
23 that and we'll see where we go with this.

24           MR. FROELICH: Thank you, your Honor. I appreciate  
25 the compliment. And I understand what you're saying, and I

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1 hope to explain to you where I think this goes in the future.  
2 I think that the holding of **Miller** only requires, going  
3 forward, that juveniles convicted of murder cannot be sentenced  
4 to life without parole and that they still could potentially be  
5 sentenced to life without parole, but that their youthful  
6 status has to be considered at the time of sentencing, and the  
7 language of **Miller** supports that.

8 Now, a separate question is whether the holding of  
9 **Miller** applies retroactively, and that's been briefed quite a  
10 bit. **Miller** left the question open, and I guess the thing that  
11 I would like to say is that the state courts are taking up this  
12 issue. The Michigan Supreme Court has remanded the case to the  
13 Wayne Circuit Court directing the Wayne Circuit Court to  
14 determine the issue of retroactivity. The Michigan Court of  
15 Appeals has granted application for leave to appeal on an  
16 expedited basis. It's considered several questions regarding  
17 **Miller**, one of which is whether it applies retroactively.

18 So the state courts are about to deal with this  
19 issue, and any decision that the state courts issue will be  
20 binding on the state courts. And you indicated, you know, if  
21 you're hesitant to make a decision, the state courts are going  
22 to do it for you. And I think that principals of federalism  
23 and comity support the conclusion that they should be the ones  
24 in the first instance to make that decision.

25 THE COURT: I agree with all of that, that they



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1 should be, but I will not state with assurance that I have  
2 confidence that when they make that decision, it will be the  
3 right one, from the point of view of our federal constitution.

4 MR. FROELICH: I can appreciate what you're saying,  
5 your Honor, but at the same time, the state courts are required  
6 to apply federal law.

7 But moving forward, some of the other arguments about  
8 retroactivity, first of all, the Plaintiffs in this case are  
9 not similarly situated to the appellants in **Miller**. This is a  
10 1983 case. The two appellants in **Miller** were on direct review  
11 from state court and a state habeas petition, and of course the  
12 decision applies to them because they're the parties to the  
13 case. The Court has to decide the controversy that's before  
14 it. This is a procedural rule about sentencing.

15 The Court said in **Miller**, our decision does not  
16 categorically bar a penalty for a class of offenders or a type  
17 of crime, as we did in **Roper** or **Graham**. Instead, it mandates  
18 only that a sentence will follow a certain process, considering  
19 an offender's youth and attendant characteristics, before  
20 imposing a particular penalty. That's procedure. And in the  
21 past, the United States Supreme Court has declined to apply  
22 procedural decisions like this on a retroactive basis.

23 For example, when the Supreme Court came down with  
24 the rule that aggravating circumstances have to be presented to  
25 a jury in imposing the death penalty. That was not applied

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1 retroactively. Another decision that ruled that any fact  
2 increasing a penalty of sentencing, other than a prior  
3 conviction, has to be submitted to a jury and proven beyond a  
4 reasonable doubt. That wasn't applied retroactively.

5 THE COURT: Mr. Froelich, I understand what you're  
6 saying. As usual, it's logical, but what is going on with  
7 **Miller** and this whole area of the law with the Supreme Court  
8 and elsewhere, at least as much as you can tell from this  
9 distance, would appear to be that those who are so inclined on  
10 the Supreme Court, are attempting to get others to move over in  
11 a certain direction on these things. And when they say in the  
12 **Miller** decision that this only goes this far and it doesn't go  
13 any farther and it's limited to this, you have got to imagine,  
14 even hope, that they had to put that language in there to get  
15 all the votes they needed in conference, and the next time  
16 around, they think maybe they can do better. Who knows? I  
17 just -- it's a little bit different from the situation that you  
18 are positing that's procedural.

19 MR. FROELICH: And I understand, your Honor, and I  
20 appreciate your position. But even as a group, let's just  
21 assume it is retroactive, okay, and then it applies to all the  
22 Plaintiffs in this case and that now their sentences of life  
23 without parole are sentences of life with the possibility of  
24 parole.

25 If you look at what **Miller** says and what the

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1 Plaintiffs are asking for, **Miller** does not compel the relief  
2 that they're asking for. The relief that they're asking for is  
3 much broader than what **Miller** talked about. **Miller** only says if  
4 you sentence a juvenile to life without parole, you have to  
5 consider youth as a characteristic. It doesn't say that  
6 anytime a juvenile is convicted of homicide, no matter what the  
7 sentence is, whether it's a term of years, life with the  
8 possibility of parole, that youth has to be considered as a  
9 characteristic. It says only that if a juvenile murderer is  
10 sentenced to life without parole, youth has to be considered as  
11 a characteristic. And they're asking you to order these  
12 mitigation hearings where they're afforded an opportunity to  
13 present it, and it's not what the case requires.

14           If any of these individuals, if the state courts  
15 decided that they didn't want to seek a sentence of life  
16 without parole from one of these individuals, which would be  
17 permissible under **Miller**, then they would be entitled to a  
18 mitigation hearing where youth would be considered as a factor.  
19 They're sentenced to a term of years or to life with parole,  
20 **Miller** doesn't require anything in terms of characteristics  
21 being submitted to the sentencer.

22           Furthermore --

23           THE COURT: It's my fault and not yours, but you have  
24 exceeded what we hoped would be limits, and keep that in mind.

25           MR. FROELICH: Okay.

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1 THE COURT: Come to a conclusion.

2 MR. FROELICH: I would just like to make one other  
3 point that they're asking for with the parole statute. They  
4 rely on really two sentences in **Graham** about this meaningful  
5 opportunity for release that's realistic. But if you read  
6 **Graham**, it says the state must give Defendants some meaningful  
7 opportunity to obtain release, based on maturity and  
8 rehabilitation. The next sentence is, it is for the state in  
9 the first instance to explore the means and mechanism for  
10 compliance.

11 This doesn't create a new liberty interest in parole  
12 that didn't exist before, and it doesn't create some other  
13 substantive or procedural constitutional interest that didn't  
14 exist before. What this language means is that juveniles, who  
15 are sentenced to life for murder, have to be given an  
16 opportunity for parole consistent with already existing  
17 constitutional standards. It doesn't create anything new.  
18 It's one sentence. It says some meaningful opportunity to  
19 obtain release on demonstrated maturity and rehabilitation.  
20 Well, what else is parole about other than demonstrating  
21 maturity and rehabilitation regardless of how old you are?  
22 That's exactly what every prisoner who goes before the parole  
23 board has to demonstrate and that's the standard.

24 So your Honor, **Miller** just does not support the broad  
25 relief the Plaintiffs are asking for, and as far as it being a

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1 categorical ban on sentences of life without parole for  
2 juvenile homicide, I mean clearly it is. Over and over again  
3 they say that it's possible to sentence a juvenile murderer to  
4 life without parole, and it's based on the exact arguments that  
5 the Plaintiffs present here. There's nothing new being  
6 presented here that wasn't presented in the Supreme Court. The  
7 Supreme Court considered the exact arguments being presented  
8 here and they declined to impose a categorical ban on juvenile  
9 murder life without parole sentences.

10 So your Honor, in terms of what we should do, I think  
11 it's -- we agree insofar as going forward the statute  
12 preventing juvenile homicide offenders from receiving parole is  
13 unconstitutional.

14 With regard to whether it applies to these  
15 Plaintiffs, we disagree. And with regard to whether this broad  
16 sweeping relief in terms of sentencing and parole eligibility  
17 and what needs to happen, we disagree, because we don't think  
18 the case requires it. Thank you, your Honor.

19 THE COURT: I know what your position is and I  
20 understand that's what you think. I think you've --

21 MR. FROELICH: I'm done, your Honor. Thank you for  
22 your time.

23 THE COURT: Thank you. Ms. LaBelle, I don't know, I  
24 mean we could all sit here and talk about this all afternoon.  
25 Only you and Mr. Froelich and maybe Reosti can come to a final

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1 intelligent conclusion as to where you'd like us to be. If you  
2 have something you absolutely you think need to say, you can  
3 say it, but I mean this is something we're, at least in my  
4 chambers, we're going to be living with and so are you, as this  
5 develops. It's not going to end here today.

6 MS. LaBELLE: Your Honor, if I may make just two  
7 quick points, and maybe I'm belaboring it. I'm sure the Court  
8 is aware of it. I mean last year we came here and we were  
9 arguing that **Roper** and **Graham** requires certain conclusions and  
10 Defendants were arguing no, that only applies to nonhomicide  
11 people. **Miller** doesn't limit us. **Miller** just takes us further  
12 down the road and affirms what we were arguing to begin with.  
13 And the language of **Graham** and **Roper** now, and now **Miller**, do  
14 require meaningful opportunity for release. It's for release.  
15 It's not parole. The mechanism that the state has now simply  
16 doesn't provide that.

17 So -- and I'm just going to make one more pitch for  
18 my categorical decision. I think that Defendants argue that  
19 the **Miller** court had before it all of what we presented to this  
20 court, which I don't think is true, both because the -- it is  
21 very clear now that 39 states have either not imposed this  
22 sentence or imposed it once over the last five years. And what  
23 **Miller** says is that the numbers of people who are getting this  
24 sentence is unilluminating because it all comes from six  
25 mandatory states.

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1 Michigan is just really out there right now and they  
2 are trapped in this. And so, you know, I think that the  
3 message of **Roper**, **Graham**, **Miller** and the concurrence in **Miller**  
4 is that no other country does this and we have to stop doing it  
5 too. Thank you, your Honor.

6 THE COURT: Thank you, Ms. LaBelle. The matter is  
7 under advisement. We'll try to get hold of this and give you  
8 something to think about and probably have one side or another  
9 object to before long. I just want to say, and I won't spend a  
10 lot of time doing it, but this is one of those things that  
11 comes up, as a matter of law, and presents issues which need to  
12 be taken seriously and need to be attended to by lawyers who  
13 are both good lawyers and serious and have some sense of what  
14 this -- what this country is all about and what we're doing.  
15 And I think we've had that and I think we've had it on the  
16 state's side, too. I think they participated in this whole  
17 process and in a reasonable and admirable way. All of you  
18 have. And I at least thank you for it and I hope we can come  
19 back with something that makes sense.

20 MS. LaBELLE: Thank you, your Honor.

21 MR. FROELICH: Thank you, your Honor.

22 (Proceedings concluded 3:03 p.m.)

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**C E R T I F I C A T I O N**

I, Andrea E. Wabeke, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth. I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/Andrea E. Wabeke

October 3, 2012

Official Court Reporter  
RMR, CRR, CSR

Date

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