

## Summary of Juvenile Life without Parole cases to be heard before MSC June 6

*(From release on court's website)*

Sixteen-year-old Cortez Davis was involved in a robbery that ended with the shooting death of the robbery victim. Davis's companion fired all of the five shots that killed the victim; witnesses testified that Davis was involved in the robbery aspect of the crime. A jury convicted Davis of first-degree felony murder, armed robbery, assault with intent to rob while armed, and felony-firearm. The trial judge held a hearing to determine if Davis should be sentenced as an adult or as a juvenile. She concluded that sentencing him as a juvenile would be dangerous for society, because he would be released from the juvenile system before he had sufficient time to be rehabilitated. But she also rejected the mandatory sentence of life without parole required for adult defendants, concluding that it would be cruel and unusual under the circumstances. "[I]n this instance when this young man was not the person who pulled the trigger, he was an aider and abettor in an armed robbery, he was convicted of first-degree murder by the jury . . . the only other option of then sentencing him as an adult and imposing a life sentence, mandatory life sentence, is cruel and unusual punishment, when everyone agrees that he is capable of rehabilitation." The trial judge sentenced Davis to a prison term of 10 to 40 years for felony murder in addition to lesser terms for the other convictions. But the Court of Appeals peremptorily reversed, and the trial judge then imposed the required term of life in prison without the possibility of parole. Davis's right to a direct appeal ended in 1994, and his conviction became final.

In 2010, the U.S. Supreme Court ruled in *Graham v Florida*, 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010), that the Eighth Amendment precluded sentencing juveniles to life in prison without parole for crimes less than homicide. The next year, Davis filed a motion for relief from judgment, claiming that *Graham* amounted to a retroactive change in the law and that he was entitled to resentencing. The trial court denied the motion, ruling that *Graham* applied only to non-homicide offenses.

Davis appealed this ruling to the Court of Appeals, which denied leave to appeal. In an order, the Court of Appeals explained that it agreed with the trial court that *Graham* did not apply to this case, where Davis was convicted of felony murder, "a homicide offense."

Davis then appealed to the Michigan Supreme Court. While his application for leave to appeal was under review, the U.S. Supreme Court issued its opinion in *Miller v Alabama*, 567 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012). In *Miller*, the Court held for the first time that the mandatory imposition of life without parole on juvenile homicide offenders violated the Eighth Amendment. Davis supplemented his application, arguing that *Miller* compelled relief.

The Michigan Supreme Court remanded Davis's case to the trial court for reconsideration of Davis's motion for relief from judgment and his claim of relief under *Miller*, including the question of whether *Miller* was retroactive and could apply to a

case, like Davis's, where the direct appeal had concluded and the conviction was final. Before the trial court acted, the Court of Appeals released its opinion in *People v Carp*, 298 Mich App 472 (2012), holding that *Miller* did not apply retroactively. But the trial court determined that *Carp* did not apply to this situation, and ruled that Davis should be resentenced under *Miller*.

The prosecutor appealed. In a peremptory order, the Court of Appeals reversed the trial court's decision to resentence Davis: "In *People v Carp*, . . . this Court held that *Miller* is not to be applied retroactively to those cases on collateral review. The *Carp* decision has precedential effect under the rule of stare decisis, and the circuit court is required to follow published decisions from this Court."

Davis appealed. Among other arguments, Davis contended that there is a categorical ban on life-without-parole sentences for juveniles who were convicted of felony murder but who were not the actual shooters. Davis noted that, in *Graham*, the United States Supreme Court recognized that "defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers . . . . It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability."

On November 6, 2013, the Michigan Supreme Court granted leave to appeal "limited to the issues: (1) whether the prohibition against 'cruel and unusual punishments' found in the Eighth Amendment to the United States Constitution, and/or the prohibition against 'cruel or unusual punishment' found in Const 1963, art 1, § 16, categorically bar the imposition of a life without parole sentence on a defendant under the age of 18 convicted of first-degree murder for having aided and abetted the commission of a felony murder; and (2) if such a categorical bar exists, whether it applies retroactively, under federal or state law, to cases that have become final after the expiration of the period for direct review. See *Teague v Lane*, 489 US 288; 109 S Ct 1060; 103 L Ed 2d 334 (1989); *People v Maxson*, 482 Mich 385 (2008)."

## **Summary**

On May 31, 2006, 15-year-old Raymond Carp helped his 22-year-old half-brother, Brandon Gorecki, murder May Ann McNeely. Evidence showed that Carp threw a mug at McNeely, handed Gorecki a knife when he asked for one, and pulled the window blinds closed while Gorecki stabbed McNeely to death. Afterwards, Gorecki stole items from McNeely's home.

Carp was arrested and tried as an adult. He was convicted of first-degree murder, armed robbery, and larceny, and sentenced to mandatory life in prison without parole for the murder conviction. Carp appealed his convictions, but the Court of Appeals affirmed in 2008, and the Supreme Court denied leave to appeal in 2009.

Carp then filed a motion for relief from judgment in 2010. The Court of Appeals initially denied leave to appeal, but then granted leave to appeal in 2012 after the U.S. Supreme

Court issued its opinion in *Miller v Alabama*, 567 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012). The *Miller* Court held, for the first time, that mandatory life without parole for juvenile homicide offenders violated the Eighth Amendment. A sentencing court must take into account “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,” the *Miller* Court held. “[A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest of possible penalties for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment’s ban on cruel and unusual punishment.”

In Carp’s case, the Michigan Court of Appeals started with the dispositive question of whether *Miller* would apply retroactively to those cases where the defendant’s direct appeal had already concluded. Because Carp’s appeal ended in 2009, and his conviction was finalized at that time, he could only obtain relief under *Miller* if that case applied retroactively. The Court of Appeals considered first whether *Miller* was retroactive under federal law, applying the test set forth in *Teague v Lane*, 489 US 288; 109 S Ct 1060; 103 L Ed 2d 334 (1989). The panel held that *Miller* established a new rule that was procedural in nature; under *Teague*, unless such a rule is a “watershed” rule of criminal procedure, it does not apply retroactively. The U.S. Supreme Court explained in *Whorton v Bockting*, 549 US 406; 127 S Ct 1173; 167 L Ed 2d 1 (2007): “In order to qualify as watershed, a new rule must meet two requirements. First, the rule must be necessary to prevent an impermissibly large risk of an inaccurate conviction. Second, the rule must alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding.” Neither of these requirements was met in this case, the Court of Appeals held. *Miller* was not retroactive under federal law.

The Court of Appeals also held that *Miller* was not retroactive under state law, applying the test set forth in *People v Maxson*, 482 Mich 385 (2008). *Maxson* directs courts to consider three factors when determining if a new rule of criminal procedure is retroactive: (1) the purpose of the new rule; (2) the general reliance on the old rule; and (3) the effect of retroactive application of the new rule on the administration of justice. *Miller* was not concerned with the determination of guilt or innocence, and did not affect the integrity of the fact-finding process; the panel held that, under *Maxson*, the first factor weighed against retroactive application. While the second factor may be favorable to defendants, some of whom might receive sentencing relief, the Court of Appeals concluded that it was not dispositive. In assessing the third factor, the Court of Appeals noted that, although retroactive application of *Miller* could result in a number of juveniles sentenced to non-parolable life in prison receiving relief, the effect of the appeals would have a negative effect on the state’s limited judicial resources. “Particularly when viewed in conjunction with our determination under federal law, we find that under Michigan law *Miller* is not subject to retroactive application to cases on collateral review.”

Although it held that Carp was not entitled to any relief, the Court of Appeals concluded its opinion by providing guidance for trial courts as to other cases currently in process or

on remand following direct appellate review. “When sentencing a juvenile, defined now as an individual below 18 years of age for a homicide offense, the sentencing court must, at the time of sentencing, evaluate and review those characteristics of youth and the circumstances of the offense as delineated in *Miller* and this opinion in determining whether following the imposition of a life sentence the juvenile is to be deemed eligible or not eligible for parole. We further hold that the Parole Board must respect the sentencing court’s decision by also providing a meaningful determination and review when parole eligibility arises.”

Carp appealed. On November 6, 2013, the Michigan Supreme Court granted leave to appeal, limited to the question “whether *Miller v Alabama*, 567 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), applies retroactively under federal law, per *Teague v Lane*, 489 US 288; 109 S Ct 1060; 103 L Ed 2d 334 (1989), and/or retroactively under state law, per *People v Maxson*, 482 Mich 385 (2008), to cases that have become final after the expiration of the period for direct review.”

### **Summary**

In March 2010, 15-year-old Dakotah Eliason shot and killed his grandfather. After the shooting, Eliason said that he had been contemplating homicide or suicide, and that he shot his grandfather out of “sadness” and “pent up anger,” but that he was not angry with his grandfather, but was instead angry with his parents. The police officers who interviewed Eliason remarked on his composure immediately after the shooting and his apparent lack of remorse. At trial, witnesses testified that Eliason had a friend who had recently committed suicide as well as a cousin who was killed in a car accident. Eliason’s pet dog had also recently died. Eliason was an honor-roll student who had no prior behavioral problems.

Eliason was convicted by a jury of first-degree premeditated murder and felony firearm. His attorney objected that mandatory life sentences for juveniles were unconstitutional, but the trial court disagreed, and sentenced Eliason to life in prison without the possibility of parole for the murder conviction.

In the Court of Appeals, Eliason raised issues concerning the conduct of his trial and his sentence. The Court of Appeals remanded the case to the trial court for a hearing to determine whether Eliason received ineffective representation from his attorney. The trial court ruled that Eliason was not entitled to a new trial, and the case returned to the Court of Appeals. In a published opinion, the Court of Appeals affirmed Eliason’s convictions, but ruled that he was entitled to resentencing.

The Court of Appeals focused on two recent rulings, *Miller v Alabama*, 567 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and *People v Carp*, 298 Mich App 472 (2012). In *Miller*, the United States Supreme Court held for the first time that the mandatory imposition of life without parole on juvenile homicide offenders violated the Eighth Amendment. In *Carp*, the Court of Appeals advised trial courts that the remedy for a *Miller* violation would be a remand to the trial court for consideration of whether a juvenile defendant should be eligible for parole after the imposition of the mandatory life sentence that follows a conviction for first-degree murder.

The appeals panel agreed that Eliason was entitled to be resentenced under *Miller*. A two-judge majority agreed with the advice that the *Carp* panel offered to trial courts, and ruled that “the only discretion afforded to the trial court in light of our first-degree murder statutes and *Miller* is whether to impose a penalty of life imprisonment without the possibility of parole or life imprisonment with the possibility of parole.” In fact, noted the majority, Eliason could receive the very same sentence on remand. *Miller* did not foreclose a trial court’s ability to sentence a juvenile in a homicide case to life without parole, so long as the sentence takes into account “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” The majority vacated Eliason’s sentence of life in prison without the possibility of parole, and remanded the case to the trial court “for an individualized sentence within the strictures of *Miller*.”

The dissenting judge agreed with the majority that Eliason was entitled to be resentenced, but disagreed with the restrictions placed on the sentencing court by the majority. The Michigan Constitution “forbids the trial court from resentencing Dakotah to imprisonment for life without the possibility of parole,” the dissenting judge concluded. Moreover, “because Michigan’s parole guidelines do not take into account Dakotah’s youth at the time he committed the crime,” the dissenting judge believed that “both the U.S. and Michigan Constitutions mandate that the trial court consider sentencing Dakotah to a term of years that affords him a realistic opportunity for release.”

Eliason appealed. On November 6, 2013, the Michigan Supreme Court granted leave to appeal, “limited to the issues: (1) whether the Court of Appeals correctly applied *Miller v Alabama*, 567 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), to Michigan’s sentencing scheme for first-degree murder; (2) whether that sentencing scheme amounts to cruel or unusual punishment under Const 1963, art 1, § 16 as applied to defendants under the age of 18; and (3) what remedy is required for defendants whose sentences have been found invalid under *Miller* or Const 1963, art 1, § 16.”