

No.

IN THE SUPREME COURT OF THE UNITED STATES

BUDRY MICHEL, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

CAREY HAUGHWOUT

Public Defender

Paul Edward Petillo

Assistant Public Defender

Counsel of Record

Office of the Public Defender

Fifteenth Judicial Circuit of Florida

421 Third Street

West Palm Beach, Florida 33401

(561)355-7600; (561) 624-6560

ppetillo@pd15.state.fl.us

appeals@pd15.state.fl.us

257 So.3d 3
Supreme Court of Florida.

STATE of Florida, Petitioner,

v.

Budry MICHEL, Respondent.

No. SC16-2187

|

[July 12, 2018]

Synopsis

Background: Movant sought postconviction relief after his convictions for first-degree premeditated murder and armed robbery, and sentence of life imprisonment with possibility of parole after 25 years, were affirmed on direct appeal, 727 So.2d 941. The Circuit Court, Seventeenth Judicial Circuit, Broward County, Barbara McCarthy, J., denied the motion. Movant appealed. The District Court of Appeal reversed and remanded for resentencing. State petitioned for further review, which petition was granted.

The Supreme Court, Polston, J., held that juvenile defendant's life sentence with possibility of parole after 25 years, imposed upon his conviction of first-degree premeditated murder, was not equivalent of life without possibility of parole and, thus, was not cruel and unusual punishment under Eighth Amendment.

District Court of Appeal's decision quashed.

Lewis, J., concurred in result.

Pariente, J., filed dissenting opinion in which Quince and Labarga, JJ., joined.

*4 Application for Review of the Decision of the District Court of Appeal – Certified Direct Conflict of Decisions, Fourth District - Case No. 4D13-1123 (Broward County).

Attorneys and Law Firms

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, Celia Terenzio, Bureau Chief, and Matthew Steven Ocksrider, Assistant Attorney General, West Palm Beach, Florida, for Petitioner

Carey Haughwout, Public Defender, and Paul Edward Petillo, Assistant Public Defender, Fifteenth Judicial Circuit, West Palm Beach, Florida, for Respondent

Paolo Annino, Florida State University College of Law, Tallahassee, Florida, and Roseanne Eckert, Florida International University College of Law, Miami, Florida, Amici Curiae Public Interest Law Center at the FSU College of Law and the Florida Juvenile Resentencing and Review Project at the FIU College of Law

Opinion

POLSTON, J.

We review the decision of the Fourth District Court of Appeal in *Michel v. State*, 204 So.3d 101 (Fla. 4th DCA 2016), in which the Fourth District certified that its decision conflicts with the decisions of the Fifth District Court of Appeal in *Stallings v. State*, 198 So.3d 1081 (Fla. 5th DCA 2016), and *Williams v. State*, 198 So.3d 1084 (Fla. 5th DCA 2016).¹ We quash the Fourth District's decision in *Michel* and approve the Fifth District's decisions in *Stallings* and *Williams* to the extent that they are consistent with this opinion.

¹ We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

As explained below, we hold that juvenile offenders' sentences of life with the possibility of parole after 25 years do not violate the Eighth Amendment of the United States Constitution as delineated by the United States Supreme Court in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and *Virginia v. LeBlanc*, — U.S. —, 137 S.Ct. 1726, 198 L.Ed.2d 186 (2017). Therefore, such juvenile offenders are not entitled to resentencing under section 921.1402, Florida Statutes.

BACKGROUND

Budry Michel was charged with first-degree murder, armed robbery, armed kidnapping, and attempted armed robbery in the shooting death of Lynette Grames and robbery of Adnan Shafi Dada. The crimes occurred in 1991 when Michel was sixteen years old. After a jury convicted him of first-degree premeditated murder and armed robbery, he was sentenced to life imprisonment with the possibility of parole after 25 years with a

concurrent sentence for the armed robbery that has since expired. The Fourth District affirmed Michel's judgment and sentence on direct appeal. See *Michel v. State*, 727 So.2d 941 (Fla. 4th DCA 1998).

After the United States Supreme Court issued its opinion in *Miller*, Michel filed a *5 motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. The motion asserted that he was sentenced to life in prison for a homicide and, because he was under eighteen at the time of the crime, he was entitled to relief under *Miller*. The State argued that *Miller* was inapplicable because Michel had the opportunity for release on parole. The trial court summarily denied the motion for the reasons stated in the State's response. On appeal, the Fourth District reversed, interpreting this Court's opinion in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016), to require resentencing even where the offender may later obtain parole. See *Michel*, 204 So.3d at 101.

ANALYSIS

The United States Supreme Court's Eighth Amendment precedent regarding juvenile sentencing requires a mechanism for providing juveniles with an opportunity for release based upon their individual circumstances, which is not a standard aimed at guaranteeing an outcome of release for all juveniles regardless of individual circumstances that might weigh against release.

Specifically, in *Graham*, 560 U.S. at 74, 130 S.Ct. 2011, the United States Supreme Court held that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.” Importantly, the United States Supreme Court continued by explaining the following:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore

the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 75, 130 S.Ct. 2011.

Then, in *Miller*, 567 U.S. 460, 132 S.Ct. 2455, the United States Supreme Court extended its categorical rule prohibiting life sentences without parole for juvenile offenders convicted of nonhomicide crimes to juvenile offenders convicted of homicide. The Court held that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* at 479, 132 S.Ct. 2455. It explained that “[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.” *Id.* at 477, 132 S.Ct. 2455. “[Y]outh matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.” *Id.* at 473, 132 S.Ct. 2455. And “[a]lthough [the United States Supreme Court did] not foreclose a sentencer's ability to make that judgment in homicide cases, [the Court did] require it to take into account how children are different, and how those differences counsel *6 against irrevocably sentencing them to a lifetime in prison.” *Id.* at 480, 132 S.Ct. 2455.

In *Atwell*, when attempting to apply the United States Supreme Court's decisions in *Graham* and *Miller*, a majority of this Court took issue with extended presumptive parole release dates that may occur under Florida's parole statute and held that “[p]arole is, simply put, ‘patently inconsistent with the legislative intent’ as to how to comply with *Graham* and *Miller*.” *Atwell*, 197 So.3d at 1049 (quoting *Horsley v. State*, 160 So.3d 393, 395 (Fla. 2015)).

However, the more recent decision of *LeBlanc*, 137 S.Ct. 1726, has clarified that the majority's holding does not properly apply United States Supreme Court precedent. We reject the dissent's assertion that we must adhere to our prior error in *Atwell* and willfully ignore the United States Supreme Court's clarification in *LeBlanc*. See *Rotem Realty, Inc. v. Act Realty Co.*, 911 So.2d 1181, 1188 (Fla. 2005) (“[S]tare decisis counsels us to follow our precedents unless there has been ‘a significant change in circumstances after the adoption of the legal rule, or ... an error in legal analysis.’ ” (emphasis added) (quoting *Dorsey v. State*, 868 So.2d 1192, 1199 (Fla. 2003))).

In *LeBlanc*, 137 S.Ct. at 1729, the United States Supreme Court reversed the Fourth Circuit Court of Appeals and held that a Virginia court's decision affirming a juvenile offender's sentence of life for a nonhomicide crime subject to the possibility of conditional geriatric release was not an unreasonable application of the Supreme Court's case law. The Virginia court had relied on *Angel v. Commonwealth*, 281 Va. 248, 704 S.E.2d 386 (2011), where the Virginia Supreme Court held that Virginia's geriatric release program complied with *Graham* “because it provided ‘the meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation required by the Eighth Amendment.’ ” *LeBlanc*, 137 S.Ct. at 1728 (quoting *Angel*, 704 S.E.2d at 402). “The [Virginia] statute establishing the program provides:”

Any person serving a sentence imposed upon a conviction for a felony offense ... (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition

the Parole Board for conditional release.

Id. (quoting Va. Code Ann. § 53.1-40.01 (2013)). Further, “[t]he regulations for conditional release under this statute provide that if the prisoner meets the qualifications for consideration contained in the statute, the factors used in the normal parole consideration process apply to conditional release decisions under this statute.” *Id.* (quoting *Angel*, 704 S.E.2d at 402).

As the United States Supreme Court explained in *LeBlanc*,

Graham did not decide that a geriatric release program like Virginia's failed to satisfy the Eighth Amendment because that question was not presented. And it was not objectively unreasonable for the state court to conclude that, because the geriatric release program employed normal parole factors, it satisfied *Graham*'s requirement that juveniles convicted of a nonhomicide crime have a meaningful opportunity to receive parole. The geriatric release program instructs Virginia's Parole Board to consider factors like the “individual's history ... and the individual's conduct ... during incarceration,” as well as the prisoner's “inter-personal relationships with staff and inmates” and “[c]hanges in attitude toward *7 self and others.” See 841 F.3d at 280–281 (Niemeyer, J., dissenting) (citing Virginia Parole Board Policy Manual 2–4 (Oct. 2006)). Consideration of these factors could allow the Parole Board to order a former juvenile offender's conditional release in light of his or her “demonstrated maturity and rehabilitation.” *Graham*, 560 U.S., at 75, 130 S.Ct. 2011.

Id. at 1728-29.

Similarly, here, Michel's sentence does not violate *Graham* or *Miller* because Michel was not sentenced to life without the possibility of parole. Michel is eligible for parole after serving 25 years of his sentence, which is certainly within his lifetime. The United States Supreme Court's precedent states that the “Eighth Amendment ... does not require the State to release [a juvenile] offender during his natural life.” *Graham*, 560 U.S. at 75, 130 S.Ct. 2011. It only requires states to provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* And Michel will receive a “meaningful opportunity” under Florida's parole system after serving

25 years in prison and then (if applicable) every 7 years thereafter. See §§ 947.16-.174, Fla. Stat.

Florida's statutorily required initial interview and subsequent reviews before the Florida Parole Commission include the type of individualized consideration discussed by the United States Supreme Court in *Miller*. For example, under section 947.174(3), Florida Statutes, the presumptive parole release date is reviewed every 7 years in light of information "including, but not limited to, current progress reports, psychological reports, and disciplinary reports." This information, including these individualized reports, would demonstrate maturity and rehabilitation as required by *Miller* and *Graham*. Moreover, there is no evidence in this record that Florida's preexisting statutory parole system (i) fails to provide Michel with a "meaningful opportunity to obtain release," *Graham*, 560 U.S. at 75, 130 S.Ct. 2011, or (ii) otherwise violates *Miller* and *Graham* when applied to juvenile offenders whose sentences include the possibility of parole after 25 years. And these parole decisions are subject to judicial review. See *Johnson v. Fla. Parole Comm'n*, 841 So.2d 615, 617 (Fla. 1st DCA 2003) (recognizing that the Parole Commission's final orders are reviewable in circuit court through an extraordinary writ petition); see also *Parole Comm'n v. Huckelbury*, 903 So.2d 977, 978 (Fla. 1st DCA 2005) (reviewing a circuit court's order on an inmate's petition challenging the suspension of a presumptive parole release date).

Accordingly, if a Virginia juvenile life sentence subject to possible conditional geriatric release after four decades of incarceration based upon the individualized considerations quoted above conforms to current case law from the United States Supreme Court, a Florida juvenile life sentence with the possibility of parole after 25 years does too. See also *Friedlander v. United States*, 542 Fed. Appx. 576, 577 (9th Cir. 2013) (holding *Miller* did not apply to juvenile offender's life sentence because "Friedlander was not sentenced to life without parole [as] Friedlander admits that he 'has seen the parole board approximately 8 time[s]' "); *Lewis v. State*, 428 S.W.3d 860, 863 (Tex. Crim. App. 2014) (holding that a juvenile's mandatory sentence of life with possibility of parole did not violate *Miller*, explaining that "[l]ife in prison with the possibility of parole leaves a route for juvenile offenders to prove that they have changed while also assessing a punishment that the Legislature has deemed appropriate"); *James v. United States*, 59 A.3d 1233, 1235

(D.C. 2013) (holding that *Graham* and *Miller* *8 did not apply to a Washington, D.C., juvenile offender's sentence of a mandatory minimum of 30 years to life with eligibility for parole after 30 years).²

2

The Iowa Supreme Court invalidated a juvenile offender's 50-year sentence with eligibility for parole after 35 years, but it "independently appl[ie]d article I, section 17 of the Iowa Constitution" to do so. *State v. Pearson*, 836 N.W.2d 88, 96 (Iowa 2013). This Court cannot find an independent basis in our Florida Constitution. See art. I, § 17, Fla. Const. ("The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.").

CONCLUSION

We hold that juvenile offenders' sentences of life with the possibility of parole after 25 years under Florida's parole system do not violate "*Graham*'s requirement that juveniles ... have a meaningful opportunity to receive parole." *LeBlanc*, 137 S.Ct. at 1729. Therefore, such juvenile offenders are not entitled to resentencing under section 921.1402, Florida Statutes. Accordingly, we quash the Fourth District's decision in *Michel* and approve the Fifth District's decisions in *Stallings* and *Williams* to the extent that they are consistent with this opinion.

It is so ordered.

CANADY, C.J., and LAWSON, J., concur.

LEWIS, J., concurs in result.

PARIENTE, J., dissents with an opinion, in which QUINCE and LABARGA, JJ., concur.

PARIENTE, J., dissenting.

I dissent from the plurality's decision holding that Budry Michel is not entitled to relief from his life sentence. *Plurality op.* at 4–5. Michel, who was sixteen years old at the time of his crimes, was sentenced to a mandatory life sentence with the possibility of parole after twenty-

five years. See plurality *op.* at 4–5. Based on this Court's precedent in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016), Michel is entitled to resentencing. Instead, the plurality denies Michel relief, disregarding our precedent in *Atwell*, while offering no convincing reason for refusing to apply that case, which was decided a mere two years ago.

Because *Atwell* was granted resentencing by this Court, he is now entitled to a new sentencing hearing where his youth and other factors are required to be considered when determining the appropriate sentence. See § 921.1401, Fla. Stat. (2017). Additionally, at the hearing, the sentencing court would have the discretion to impose a term of years sentence as low as forty years' imprisonment. See § 775.082(1)(b)1., Fla. Stat. (2017). Moreover, and importantly, *Atwell* would be entitled to review of his sentence after twenty-five years' imprisonment. See § 921.1402(2)(a), Fla. Stat. (2017). *Atwell*'s sentence review hearing would be presided over by a trial judge, and would include his presence with an attorney, and the ability to present pertinent information to prove his entitlement to release based on maturity and rehabilitation. *Id.* § 921.1402 (5)–(6).

Michel, by contrast, will remain sentenced to life in prison, being entitled to review of his sentence after twenty-five years, at a hearing presided over by the parole commission. He will not have the right to be present, nor will he have the right to be represented by an attorney. The commission will also not be required *9 to consider the *Miller*³ factors, nor will Michel have any real opportunity to present evidence in his defense.⁴

³ *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

⁴ The question becomes whether there would ever come a point when Michel could claim that his sentence violates the Eighth Amendment. Michel is currently forty-three years of age. He has spent approximately twenty-five years—over half of his life—incarcerated. Under the reasoning of the plurality opinion, would Michel be entitled to file a postconviction motion challenging his sentence as unconstitutional if he is still incarcerated when he reaches the age of fifty, or sixty, or seventy, challenging the way the parole commission has reviewed his case without considering the factors deemed critical for Eighth Amendment purposes?

Consequently, Michel is left with the distinct possibility that he will spend the rest of his life in prison under a parole system that, as we painstakingly explained in *Atwell*, does not take into consideration any of the constitutionally required *Miller* factors when determining whether a juvenile offender should be released from prison. Because I strongly disagree with the plurality's decision to disregard this Court's well-reasoned opinion in *Atwell*, I dissent.⁵

⁵ I would strongly urge the Legislature to look at the implications of the plurality's decision to determine whether amendments are warranted to chapter 2014-220, sections 2-3, Laws of Florida. See §§ 921.1401, 921.1402, Fla. Stat. (2018).

Atwell—the Controlling Law

The plurality's decision throws this State's juvenile sentencing case law post-*Graham*⁶ and *Miller* into a state of chaos by refusing to apply this Court's opinion in *Atwell*, which appellate courts and the State have appropriately observed is the controlling law. While I recognize that this Court is required to construe the Florida Constitution's protection against cruel and unusual punishment in conformity with the United States Constitution, if the United States Supreme Court has not directly addressed the precise issue, this Court is not required to wait until it does so. See art. I, § 17, Fla. Const.; see also *Howell v. State*, 133 So.3d 511, 516 (Fla. 2014) (observing that this Court has, “prior to any directly applicable precedent from the United States Supreme Court as to the standard for an Eighth Amendment claim based on a challenge ... addressed [the issue.]”) (citing *Sims v. State*, 754 So.2d 657 (Fla. 2000)).

⁶ *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).

In *Atwell*, this Court faithfully adhered to the United States Supreme Court's opinions in *Graham* and *Miller*, explaining why, in Florida, a life with parole sentence is the equivalent of a life without parole sentence. *Atwell*, 197 So.3d at 1048. It is telling that the State did not seek certiorari review of the *Atwell* decision in an attempt to argue that this Court misconstrued the United States Supreme Court's Eighth Amendment jurisprudence.

Traditionally, while the United States Supreme Court has made categorical rules regarding the Eighth Amendment, it has left to the States the “task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.” *Atkins v. Virginia*, 536 U.S. 304, 317, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (alteration in original) (quoting *Ford v. Wainwright*, 477 U.S. 399, 416-17, 106 S.Ct. 2595, 91 L.Ed.2d 335 (2002)). In response to that task, the *Atwell* Court concluded that Florida's parole commission hearings fail to comport with the constitutional requirements of *Miller* and were therefore no longer a viable constitutional option for juvenile sentencing. *10 *Atwell*, 197 So.3d at 1049. When considering the appropriate remedy for *Miller* violations, this Court concluded that parole hearings were insufficient to comport with the requirements of *Miller*:

Applying chapter 2014-220, Laws of Florida, as a remedy is also faithful to *Miller*. This legislation was enacted in direct response to the Supreme Court's decisions in *Miller* and *Graham*, and it appears to be consistent with the principles articulated in those cases—that juveniles are different as a result of their “diminished culpability and heightened capacity for change”; that individualized consideration is required so that a juvenile's sentence is proportionate to the offense and the offender; and that most juveniles should be provided “some meaningful opportunity” for future release from incarceration if they can demonstrate maturity and rehabilitation. See *Miller*, 132 S.Ct. at 2469.

Horsley v. State, 160 So.3d 393, 406 (Fla. 2015). While the Legislature could have changed the parole system to be compliant with *Miller*, it chose a different route through its enactment of a comprehensive legislative scheme, tailored specifically to juvenile offenders.

Stare Decisis

By casting *Atwell* aside in favor of its new decision, the plurality also casts aside the principle of stare decisis. The principle of stare decisis “counsels [the Court] to follow [its] precedents unless there has been ‘a significant change in circumstances after the adoption of the legal rule, or ... an error in legal analysis.’ ” *Valdes v. State*, 3 So.3d 1067, 1076 (Fla. 2009) (quoting *Rotemi Realty, Inc. v. Act Realty Co.*, 911 So.2d 1181, 1188 (Fla. 2005)). Nowhere mentioned in the plurality opinion is the test utilized

by courts to determine when disregarding precedent is appropriate.

As the United States Supreme Court has explained, the principle of stare decisis “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). The plurality's holding today does exactly the opposite. For this reason, it cannot overcome the presumption in favor of stare decisis.

The presumption in favor of stare decisis can only be overcome upon consideration of the following factors:

- (1) Has the prior decision proved unworkable due to reliance on an impractical legal “fiction”? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

Valdes, 3 So.3d at 1077 (quoting *Strand v. Escambia Cty.*, 992 So.2d 150, 159 (Fla. 2008)).

As to the first factor, there is no indication that this Court's decision in *Atwell* has proved unworkable. Indeed, this Court and the district courts of appeal have relied on *Atwell* when deciding juvenile sentencing cases, and extended the holding in *Atwell* to other instances. See *Lecroy v. State*, 41 Fla. L. Weekly S621, 2016 WL 7212336 (Fla. Dec. 13, 2016); *Woods v. State*, 41 Fla. L. Weekly S621, 2016 WL 7217231 (Fla. Dec. 13, 2016); *Rembert v. State*, 41 Fla. L. Weekly S621, 2016 WL 7217265 (Fla. Dec. 13, 2016); *Wallace v. State*, 41 Fla. L. Weekly S621, 2016 WL 7217278 (Fla. Dec. 13, 2016). As the Third District Court of Appeal explained:

- *11 [W]e read *Atwell* to reject the notion that Florida's current parole scheme provides the individualized

consideration of a defendant's juvenile status required under *Miller*. See *Atwell*, 197 So.3d at 1042 (“The current parole process similarly fails to take into account the offender's juvenile status at the time of the offense, and effectively forces juvenile offenders to serve disproportionate sentences of the kind forbidden by *Miller*.”); see also *id.* at 1049 (“Parole is, simply put, patently inconsistent with the legislative intent as to how to comply with *Graham* and *Miller*.” (quotation omitted)). Since *Atwell*, and applying its holding, we have reversed trial court orders denying *Miller* postconviction claims even where, as in Reid's case, the presumptive parole release date was within the defendant's lifetime. See, e.g., *Carter v. State*, No. 3D16-1090, [215 So.3d 125, 127] 2017 WL 1018513, at *1 (Fla. 3d DCA Mar. 15, 2017) (“Notwithstanding the fact that he will be reevaluated for the possibility of parole in 2022, we conclude the defendant is correct and that he is entitled to resentencing under sections 775.082(3)(c) and 921.1401.”); *Miller v. State*, 208 So.3d 834, 835 n.1 (Fla. 3d DCA 2017) (“The State's contention that *Miller* was parole-eligible as early as twelve years after the commission of first-degree murder is irrelevant.”).

We do so here, too. We reverse the trial court's order denying Reid's motion for post-conviction relief and remand for a resentencing pursuant to section 921.1401.

Reid v. State, — So.3d —, —, 42 Fla. L. Weekly D1216, 2017 WL 2348615, at *3 (Fla. 3d DCA May 31, 2017) (footnote omitted).

Additionally, in a different case, the Third District applied this Court's holding in *Atwell* to conclude that “all juveniles are entitled to judicial review and resentencing in accordance with the new statutes.” *Miller v. State*, 208 So.3d 834, 834 (Fla. 3d DCA 2017). In reaching that conclusion, the Third District noted that “the State's contention that *Miller* was parole-eligible as early as twelve years after the commission of first-degree murder is irrelevant.” *Id.* at n.1. Though the State initially sought review of that decision in this Court, the State later voluntarily dismissed that review proceeding. See *State v. Miller*, No. SC17-325, 2018 WL 857476 (Fla. Feb. 14, 2018). Accordingly, it appears that neither this Court nor the district courts of appeal have found *Atwell* to be unworkable.

Turning to the second factor required to be considered when determining whether the presumption against stare decisis has been overcome, any contention that *Atwell* could be cast aside without serious injustice or creating instability in the law is belied by this Court and district courts of appeals' reliance on *Atwell* to grant juvenile offenders relief. As previously explained, this relief comes in the form of resentencing under chapter 2014-220, section 3, Laws of Florida, which allows those juvenile offenders to argue for a sentence as low as forty years' imprisonment with the opportunity of judicial review and consideration of the other *Miller* factors. For example, the plurality's decision is patently unfair to Michel. Michel, who was sixteen years old at the time of his crimes, was sentenced to a mandatory life sentence with the possibility of parole after twenty-five years. See plurality op. at 4–5. This is the exact same sentence that we held was unconstitutional when imposed upon sixteen-year-old Angelo Atwell. *Atwell*, 197 So.3d at 1041.

Additionally, because district courts have widely relied on this Court's opinion in *Atwell* for guidance, the plurality's decision *12 today creates a serious disruption in the law. Without a full majority with respect to the plurality's legal analysis, it is unclear which portions of the plurality opinion, namely the plurality's decision to disregard *Atwell*, constitute controlling law. As a result, district courts of appeal will be left guessing as to which juvenile defendants should be entitled to relief.

Finally, turning to the third factor, even though the plurality fails to mention the test for when binding precedent can be disregarded, it is clear that it relies heavily on this factor as the basis for refusing to apply *Atwell*. The majority claims that a new case from the United States Supreme Court, *Virginia v. LeBlanc*, — U.S. —, 137 S.Ct. 1726, 198 L.Ed.2d 186 (2017), has so changed the legal landscape as to warrant the extreme injustice and instability that its decision today injects into our juvenile sentencing jurisprudence. As explained in the next section, the plurality's reliance on this factor to support its decision is unconvincing.

Misplaced Reliance on *LeBlanc*

The United States Supreme Court has not addressed the discrete issue before this Court—whether “relief under *Atwell* is dependent on the juvenile offender's

presumptive parole release date”—regardless of the plurality's assertion to the contrary. *Michel v. State*, 204 So.3d 101, 101 (Fla. 4th DCA 2016). The plurality asserts that the United States Supreme Court has, in fact, addressed this issue in *LeBlanc*, and this Court is required to conform our jurisprudence accordingly. The plurality claims that *LeBlanc* “clarified that the [Atwell] majority's holding does not properly apply United States Supreme Court precedent.” *Plurality op. at 6*. Using this overreliance on *LeBlanc* as a basis to adopt Justice Polston's dissent in *Atwell* is unconvincing.

As this Court has explained, only “Supreme Court pronouncement[s] [that are] *factually and legally* on point with the present case [will] automatically modify the law of Florida.” *Smallwood v. State*, 113 So.3d 724, 730 (Fla. 2013) (last alteration in original) (quoting *State v. Daniel*, 665 So.2d 1040, 1047 n.10 (Fla. 1995)). Indeed, when a case is “neither factually nor legally on point ... the conformity clause does not require Florida courts to apply [its] holding.” *Id.* A careful reading of *LeBlanc* reveals that the opinion does not stand for the proposition that any life sentence with parole will satisfy the Eighth Amendment.

The posture of *LeBlanc* was that the Virginia Supreme Court had analyzed its own, very different, geriatric release program, and concluded that it satisfied the Eighth Amendment. *LeBlanc*, 137 S.Ct. at 1727-28. The Fourth Circuit Court of Appeals disagreed, concluding that “the state trial court's ruling was an unreasonable application of *Graham*” and “Virginia's geriatric release program did not provide a meaningful opportunity for juvenile nonhomicide offenders to obtain release.” *Id. at 1728*. The United States Supreme Court held only that it “was not objectively unreasonable” for the Virginia Supreme Court to determine that Virginia's program did not violate the Eighth Amendment. *Id. at 1729*. The plurality uses this exceedingly narrow holding as a direct statement regarding United States Supreme Court precedent that *Miller* was never intended to apply to prisoners who are sentenced to life with the possibility of parole in the State of Florida. *Plurality op. at 6-7*.

However, there are two reasons why the plurality's reliance on *LeBlanc* is misplaced. First, the plurality fails to mention that the United States Supreme Court was considering only whether the Fourth Circuit *13 had improperly intruded on the authority of the Virginia

Supreme Court to conclude that its program satisfied the Eighth Amendment. As the *LeBlanc* court explained:

In order for a state court's decision to be an unreasonable application of this Court's case law, the ruling must be “objectively unreasonable, not merely wrong; even clear error will not suffice.” *Woods v. Donald*, — U.S. —, 135 S.Ct. 1372, 1376, 191 L.Ed.2d 464 (per curiam) (internal quotation marks omitted). In other words, a litigant must “show that the state court's ruling ... was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Ibid.* (internal quotation marks omitted). This is “meant to be” a difficult standard to meet. *Harrington v. Richter*, 562 U.S. 86, 102, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011).

Id. at 1728. Accordingly, even if the United States Supreme Court believed that the Virginia Supreme Court's decision was in error, this still would not have been enough to overturn the state court decision. Instead of looking at the *LeBlanc* decision in its proper context through the rigorous standard of review, the plurality uses the United States Supreme Court opinion to adopt the dissent written by Justice Polston in *Atwell*. See *Atwell*, 197 So.3d at 1050 (Polston, J., dissenting).

In fact, the United States Supreme Court's holding in *LeBlanc* made no mention of this Court's opinion in *Atwell*, nor was it considering a state statute similar to that at issue in this case. Despite the weight the plurality would give the opinion, *LeBlanc* has no precedential value in this instance and does not implicate this Court's requirement to construe our Eighth Amendment jurisprudence in conformance with the United States Supreme Court.

Second, a review of *LeBlanc* demonstrates that Virginia's geriatric release program is entirely different from Florida's parole system. Indeed, the program includes a consideration of many factors such as the “ ‘individual's history ... and the individual's conduct ... during incarceration,’ as well as the individual's ‘inter-personal relationships with staff and inmates.’ ” *LeBlanc*, 137 S.Ct. at 1729 (quoting *LeBlanc v. Mathena*, 841 F.3d 256, 280-81 (4th Cir. 2016) (Niemeyer, J., dissenting)). Consideration of these factors could lead to the individual's conditional release in light of his or her “demonstrated maturity and rehabilitation.” *Id.* (quoting *Graham*, 560 U.S. at 75, 130 S.Ct. 2011). Florida's parole system, as we

explained in *Atwell*, does not—with its primary concern being on the perceived dangerousness of the criminal defendant. Indeed, the Florida Commission on Offender Review's mission statement is “Ensuring public safety and providing victim assistance through the post prison release process.” *Fla. Comm'n on Offender Review 2016 Annual Report* (2016), <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201516.pdf>.

The other cases cited by the plurality in support of its position—*Friedlander v. United States*, 542 F. App'x 576 (9th Cir. 2013); *Lewis v. State*, 428 S.W.3d 860 (Tex. Crim. App. 2014); and *James v. United States*, 59 A.3d 1233 (D.C. 2013)—are likewise unhelpful for three reasons. See plurality op. at 7–8. First, and importantly, all of the opinions cited by the majority were decided before the United States Supreme Court issued its opinion in *Montgomery v. Louisiana*, — U.S. —, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), mandating that *Miller* requires “[a] hearing where ‘youth and its attendant characteristics’ are considered *14 as sentencing factors ... to separate those juveniles who may be sentenced to life without parole from those who may not.” *Id.* at 735. Such a hearing gives “effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.” *Id.* As the Supreme Court clarified in *Montgomery*, and contrary to the decisions cited by the plurality today, *Miller*

did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of “the distinctive attributes of youth.” [*Miller*], 132 S.Ct. at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects “‘unfortunate yet transient immaturity.’” 132 S.Ct. at 2469 (quoting *Roper v. Simmons*], 543 U.S. [551], at 573, 125 S.Ct. 1183 [161 L.Ed.2d 1 (2005)]). Because *Miller* determined that sentencing a child to life without parole is excessive for all but “‘the rare juvenile offender whose crime reflects irreparable corruption,’” 132 S.Ct. at 2469 (quoting *Roper, supra*, at 573, 125 S.Ct. 1183), it rendered life without parole an unconstitutional penalty for “a class of defendants because of their status”—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. *Penry v. Lynaugh*], 492 U.S. [302] at 330, 109 S.Ct. 2934 [106 L.Ed.2d 256 (1989)]]. As a result, *Miller* announced a substantive

rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it “‘necessarily carr[ies] a significant risk that a defendant’”—here, the vast majority of juvenile offenders—“‘faces a punishment that the law cannot impose upon him.’” *Schriro [v. Summerlin]*, 542 U.S. [348] at 352, 124 S.Ct. 2519 [159 L.Ed.2d 442 (2004)] (quoting *Bousley v. United States*, 523 U.S. 614, 620, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)).

Montgomery, 136 S.Ct. at 734.

Second, each decision adopts an unnecessarily narrow interpretation of *Miller*, which this Court chose not to incorporate into this State's jurisprudence. Indeed, we explained this in *Atwell*, stating that this Court's broader interpretation of *Miller* in that case was

consistent with this Court's precedent involving juvenile sentencing cases that has followed the spirit of the United States Supreme Court's recent juvenile sentencing jurisprudence, rather than an overly narrow interpretation. For example, this Court in *Henry v. State*, 175 So.3d 675 (Fla. 2015), recently rejected a similarly narrow reading as the one the State offers of *Miller* here, in concluding that the underlying premise of the Supreme Court's related decision in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), controlled over a reading that would have confined the scope of *Graham* to only sentences denominated as “life” imprisonment.

Atwell, 197 So.3d at 1041-42.

Finally, the three cases cited by the plurality are also unpersuasive because each is based on a distinct statutory scheme—the United States Code, the Texas Penal Code, and Washington D.C. criminal law, respectively. As explained in *James*, “under the D.C. code, the D.C.

Council and Executive Branch have already considered youth and its attendant factors, by limiting the minimum sentence to thirty years for [juvenile offenders] ... [and] [i]n this jurisdiction, sentencing is a joint exercise by the legislative, executive, and judicial branches.” *15 *James*, 59 A.3d at 1238. Following *Miller*, the Florida Legislature created a new and separate system of judicial review, specific to juveniles. See § 921.1402, Fla. Stat. (2017). Again, as this Court explained in *Atwell*, “[i]n *Horsley*, this Court held that the appropriate remedy for any juvenile offender whose sentence is unconstitutional under *Miller* is to apply chapter 2014-220, Laws of Florida—legislation enacted by the Florida Legislature in 2014 to bring Florida’s sentencing laws into compliance with the *Graham* and *Miller* decisions.” 197 So.3d at 1045 (citing *Horsley*, 160 So.3d at 409).

Florida’s Current Parole System Does Not Comport with *Miller*

Turning to the discrete issue before this Court, I would conclude that resentencing juvenile offenders pursuant to chapter 2014-220, section 2, regardless of whether they currently have a presumptive parole release date, is the constitutionally required solution because Florida’s current parole system affords juveniles no *meaningful* opportunity to demonstrate entitlement to release. In *Atwell*, this Court concluded that “Florida’s existing parole system, as set forth by statute, does not provide for individualized consideration of *Atwell*’s juvenile status at the time of the murder.” 197 So.3d at 1041. We further explained that Florida’s “current parole process ... fails to take into account the offender’s juvenile status at the time of the offense and effectively forces juvenile offenders to serve disproportionate sentences.” *Id.* at 1042.

This Court could not have been clearer in its conclusion that “[p]arole is, simply put, ‘patently inconsistent with the legislative intent’ as to how to comply with *Graham* and *Miller*.” *Id.* at 1049 (quoting *Horsley*, 160 So.3d at 395). As the *Atwell* Court noted, while the Legislature could have chosen “a parole-based approach” to comply with *Miller* and *Graham*, it chose instead to fashion a different remedy of resentencing under a new law, which explicitly considers the *Miller* factors. *Id.*

Specifically, Florida’s current parole system does not provide juvenile offenders an opportunity to demonstrate

that release is appropriate based on maturity and rehabilitation for several reasons. First, the Commission relies on static, unchanging factors, such as the crimes committed and previous offenses, when determining whether or not to grant an offender parole. See Fla. Admin. Code R. 23-21.007. Under *Graham*, however, a juvenile’s “meaningful opportunity to obtain release [must be] based on demonstrated maturity and rehabilitation.” *Graham*, 560 U.S. at 75, 130 S.Ct. 2011. Relying on static factors such as the offense committed ignores the focus on the “demonstrated maturity and rehabilitation” that *Graham* and *Miller* require. *Id.*

Second, an inmate seeking parole has no right to be present at the Commission meeting and has no right to an attorney. Although the hearing examiner sees the inmate prior to the hearing, the commissioners do not. Fla. Admin. Code R. 23-21.004(13); 23-21.001(6). Third, there is only a limited opportunity for supporters of the inmate to speak on the inmate’s behalf. Fla. Comm’n on Offender Review, *Release and Supervision Frequently Asked Questions*, <https://www.fcor.state.fl.us/mediaFactSheet.shtml> (last visited April 10, 2018) (“All speakers, in support, must share the allotted 10 minute time frame for speaking. All speakers, in opposition, must share the allotted 10 minute time frame for speaking.”). Finally, there is no right to appeal the Commission’s decision, absent filing a writ of mandamus. *Armour v. Fla. Parole Comm’n*, 963 So.2d 305, 307 (Fla. 1st DCA 2007).

*16 By contrast, the new sentencing law affords juvenile offenders the opportunity to argue for a sentence of forty years with judicial review of their sentences at twenty-five years. See § 775.082(1)(b) 1., Fla. Stat. (2017). This judicial review includes a hearing, where the juvenile is “entitled to be represented by counsel.” § 921.1402(5), Fla. Stat. (2017). Additionally, a trial court will determine whether the juvenile is entitled to resentencing or early release. *Id.* § 921.1402(6). In making that determination, the trial court is required to consider all of the following individualized factors:

- (a) Whether the juvenile offender demonstrates maturity and rehabilitation.
- (b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

Id. § 921.1402(6). This process could not be more different from the current parole process.

Necessarily included in this Court's rejection of the parole system in *Atwell* was a rejection of the method used by Florida's parole system to determine a defendant's presumptive parole release date, which virtually guarantees that any sentence with the possibility of parole imposed for first-degree murder will be the practical equivalent of a life sentence. Indeed, when describing how presumptive parole release dates are determined in *Atwell*, this Court explained:

In most respects, a sentence of life with the possibility of parole for first-degree murder, based on the way Florida's parole process operates under the existing statutory scheme, actually resembles a mandatorily imposed life sentence without parole that is not "proportionate to the offense and the offender." *Horsley*, 160 So.3d at 406. Based on Florida's objective parole guidelines, an individual who was convicted of a capital offense under section 775.082, Florida Statutes (1990), as *Atwell* was, will have a presumptive parole release date of anywhere from 300 to 9,998 months in *17 the future. Fla. Admin. Code R. 23-21.009 (2014). Importantly, the statute requires "primary weight" in the consideration of parole to be given "to the seriousness of the offender's present offense"—here, the most serious offense of first-degree murder—"and the offender's past criminal record." § 947.002, Fla. Stat.

If an offender convicted of first-degree murder has a high salient score, that offender's range of months for the presumptive parole release date could span from hundreds of months to nearly ten thousand months. Fla. Admin. Code R. 23-21.009 (2014). This range of months, which encompasses hundreds of years, could be lawfully imposed without the Commission on Offender Review even considering mitigating circumstances. The Commission is only required to consider mitigating and aggravating circumstances if it wishes to impose a presumptive parole release date that falls outside the given range of months. Fla. Admin. Code R. 23-21.010 (2010). Further, the enumerated mitigating and aggravating circumstances in rule 23-21.010 of the Florida Administrative Code, even if utilized, do not have specific factors tailored to juveniles. In other words, they completely fail to account for *Miller*.

Using Florida's objective parole guidelines, then, a sentence for first-degree murder under the pre-1994 statute is virtually guaranteed to be just as lengthy as, or the "practical equivalent" of, a life sentence without the possibility of parole. Indeed, that is the case here, with *Atwell*'s presumptive parole release date having recently been set to 140 years in the future.

Id. at 1048.

This Court has held that a parolee may not rely on a presumptive parole release date, and there is no

constitutional liberty interest attached to a parole date. *Meola v. Dep't of Corr.*, 732 So.2d 1029, 1034 (Fla. 1998). As amici curiae, the Public Interest Law Center and Florida Juvenile Resentencing and Review Project explain:

The PPRD [presumptive parole release date] date “becomes binding upon the Commission in the sense that, once established, it is not to be changed except for reasons of institutional conduct, acquisition of new information not available at the time of the initial interview, or for good cause in exceptional circumstances.” *Florida Parole & Prob. Comm'n v. Paige*, 462 So.2d [817] at 819 [(Fla.1985)]; §§ 947.172(1), Fla. Stat. (2016).

However, the PPRD does not mean the inmate will be paroled on that date. “Prior to the arrival of this date, inmates are given a final interview and review in order to establish an effective release date after which the Commission must determine ‘whether or not to authorize the effective parole release date.’ ” *Id.* Thus, under Florida's parole system, the PPRD is merely a step towards the possibility of establishing an effective parole release date (EPRD).

A PPRD is neither a reliable metric, nor is it a legal standard; it is not a legal sentence under Florida's Criminal Punishment Code. A PPRD is merely one segment of the Commission's parole process; by definition, the PPRD is only “a tentative parole release date as determined by objective parole guidelines.” § 947.005(8), Fla. Stat.

Am. Br. of Pub. Int. L. Ctr. & Fla. Juv. Resent'g & Rev. Project at 8-9. Accordingly, it would be improper to base constitutional relief on such a fluid calculation.

Indeed, the conflict cases demonstrate this point clearly. As the Fifth District *18 explained in *Stallings v. State*, 198 So.3d 1081 (Fla. 5th DCA 2016):

In 1999, following a review, the Commission established Appellant's presumptive parole release date as December 11, 1999; however, that release date was suspended as a result of an “Extraordinary Review,” which discussed a number

of infractions accrued by Appellant during his incarceration. The Commission indicated that another review would be conducted in July 2004. We cannot determine from the record whether the Commission conducted a review in July 2004 and a new presumptive release date was ever calculated, or whether Appellant remains in limbo under the suspended 1999 release date.

Id. at 1082. Despite having a presumptive parole release date of 1999, Stallings was still incarcerated in 2016, almost two decades after his initial presumptive parole release date.

Additionally, with respect to the other conflict case, *Williams v. State*, 198 So.3d 1084 (Fla. 5th DCA 2016), even the Fifth District acknowledged:

What is certain is that, like Atwell, the statutory scheme Williams was sentenced under provided only for the death penalty or life with the possibility of parole after twenty-five years. § 775.082(1), Fla. Stat. (1988). The trial court was not able to consider factors that would have allowed it to individually tailor Williams' sentence based on his juvenile status. *See Miller*, 132 S.Ct. at 2469. As a result, if Williams' PPRD is calculated similarly to Atwell's, he will likely have no hope for release prior to his death, a consequence the United States Supreme Court has determined is unconstitutional. *See id.* (citing *Graham v. Florida*, 560 U.S. 48, 74-75, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)).

Id. at 1086. Both conflict cases recognize that it is highly unlikely that either juvenile offender would be released from prison during his lifetime. However, under the

plurality's reasoning today, even Stallings and Williams, whom the district courts acknowledge could potentially be entitled to resentencing pending the determination of a presumptive parole release date, would now not be entitled to resentencing, regardless of any presumptive parole release date.

CONCLUSION

For all of the reasons explained above and because our precedent compels such a result, I would conclude that a presumptive parole release date should not be considered when determining whether the constitution entitles a juvenile to resentencing. Specifically, I would not reject *Atwell* and would instead hold that *Atwell*, which faithfully interpreted the United States Supreme Court's decisions, requires that all juvenile offenders sentenced to life with the possibility of parole after twenty-five years

be resentenced pursuant to [section 921.1401](#) regardless of a presumptive parole release date, if one has been set. This result would not guarantee Michel any particular term of years sentence less than life but would require the sentencing court to consider all of the *Miller* factors when resentencing Michel and would allow the sentencing court the discretion to impose a forty-year sentence with an entitlement to judicial review, and all of those benefits previously explained, after twenty-five years from his initial sentencing.

Accordingly, I dissent.

[QUINCE](#) and [LABARGA, JJ.](#), concur.

All Citations

257 So.3d 3, 43 Fla. L. Weekly S298, 43 Fla. L. Weekly S551

Supreme Court of Florida

WEDNESDAY, OCTOBER 24, 2018

CASE NO.: SC16-2187

Lower Tribunal No(s):
4D13-1123; 061993CF019586A88810

STATE OF FLORIDA

vs.

BUDRY MICHEL

Petitioner(s)

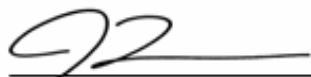
Respondent(s)

Respondent's Motion for Rehearing is hereby denied.

CANADY, C.J., and LEWIS, POLSTON, LABARGA, and LAWSON, JJ., concur.
PARIENTE and QUINCE, JJ., would grant.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



dl

Served:

CELIA TERENCE
PAUL EDWARD PETILLO
ROSEANNE ECKERT
PAOLO GIUSEPPE ANNINO
LUKE R. NAPODANO
MATTHEW STEVEN OCKSRIDER
HON. LONN WEISSBLUM, CLERK
HON. BARBARA ANNE MCCARTHY, JUDGE
HON. BRENDA D. FORMAN, CLERK

258 So.3d 1239
Supreme Court of Florida.

Arthur O'Derrell FRANKLIN, Petitioner,
v.
STATE of Florida, Respondent.

No. SC14-1442
|
November 8, 2018

Synopsis

Background: Defendant filed a petition for post-conviction relief. The Circuit Court, Duval County, [Tatiana Salvador](#), J., denied the petition. Defendant appealed. The District Court of Appeal, Ray, J., [141 So.3d 210](#), affirmed. Defendant petitioned for further review.

The Supreme Court held that concurrent sentences of 1,000 years in prison with parole eligibility did not violate the categorical rule of [Graham v. Florida](#), 560 U.S. 48, that any life sentence for a juvenile nonhomicide offender be accompanied by some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation before the end of the sentence and during the offender's natural life.

Affirmed.

***1240** Application for Review of the Decision of the District Court of Appeal – Direct Conflict of Decisions, First District - Case Nos. 1D13-2516, 1D13-2517, and 1D13-2518, (Duval County)

Attorneys and Law Firms

Andy Thomas, Public Defender, and [Glen P. Gifford](#), Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida, for Petitioner

[Pamela Jo Bondi](#), Attorney General, [Trisha Meggs Pate](#), Bureau Chief, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, Florida, for Respondent

Opinion

PER CURIAM.

At the age of 17, Arthur O'Derrell Franklin committed a series of brutal crimes against women. In each case, the female victim testified that Franklin violently attacked her, kidnapped her, drove her to a secluded area and brutally battered, raped, and robbed her while evidencing an extraordinary cruelty and a perverse enjoyment of the suffering he was inflicting. In one case, “the physician who performed the sexual assault battery exam testified that the victim suffered the worst injuries the physician had ever observed.” [Franklin v. State](#), [141 So.3d 210](#), [215 \(Fla. 1st DCA 2014\)](#) (Thomas, J., concurring). In each of three cases, Franklin was convicted of armed kidnapping, kidnapping, armed sexual battery, sexual battery, armed robbery, robbery, and aggravated assault, and was sentenced to three 1000-year concurrent sentences with parole. *Id.* at [213](#) (Thomas, J., concurring). The Parole Commission conducted Franklin's initial parole review and ten subsequent review hearings, and has calculated a presumptive parole release date of 2352. Following the United States Supreme Court's decisions in [Graham v. Florida](#), 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and [Miller v. Alabama](#), 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), Franklin filed a motion to vacate his sentences pursuant to [Florida Rule of Criminal Procedure 3.850](#), arguing that his sentences violate the Eighth Amendment to the United States Constitution as delineated in [Graham](#) and requesting resentencing. However, the trial court denied the motion, and the First District Court of Appeal affirmed on appeal. [Franklin](#), [141 So.3d at 211](#). We accepted discretionary review,¹ and for the reasons explained below we now approve the First District's decision and hold that Franklin's sentences with the possibility of parole do not violate [Graham](#), meaning that Franklin is not entitled to resentencing under chapter 2014-220, Laws of Florida.

¹ See art. V, § 3(b)(3), Fla. Const.

In [Graham](#), 560 U.S. at 75, 130 S.Ct. 2011, the Supreme Court held that the Eighth Amendment categorically forbids a sentence of life without parole for juvenile nonhomicide offenders, and required that any life sentence for a juvenile nonhomicide offender be accompanied by “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation” before the end

of the sentence *1241 and during the offender's natural life. Notably, the Court did not require that the State actually release a juvenile offender during his natural life or guarantee his eventual freedom, as “those who commit truly horrifying crimes as juveniles may turn out to be irredeemable” and “will remain behind bars for life.” *Id.*

Later in *Miller*, 567 U.S. at 479, 132 S.Ct. 2455, the United States Supreme Court extended the reasoning of *Graham* and created another Eighth Amendment rule prohibiting the imposition of a mandatory life sentence without the possibility of parole for juvenile homicide offenders. *Miller* did “not foreclose a sentencer's ability to [impose a life without parole sentence] in homicide cases,” but required the sentencer to first “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 480, 132 S.Ct. 2455.

Applying principles discussed in *Graham* and *Miller*, a majority of this court held in *Atwell v. State*, 197 So.3d 1040, 1048-50 (Fla. 2016), that a juvenile homicide offender's life with parole sentence violated the Eighth Amendment based largely upon a presumptive parole release date set far beyond Atwell's life expectancy. The decision below, finding no Eighth Amendment violation, despite a presumptive parole release date set far beyond Franklin's life expectancy, clearly conflicts with *Atwell*.²

² The First District decided *Franklin* before we decided *Atwell*. However, we stayed *Franklin* pending resolution of several other cases.

However, instructed by a more recent United States Supreme Court decision, *Virginia v. LeBlanc*, — U.S. —, 137 S.Ct. 1726, 198 L.Ed.2d 186 (2017), we have since determined that the majority's analysis in *Atwell* improperly applied *Graham* and *Miller*. See *State v. Michel*, 257 So.3d 3, 6, 2018 WL 3613383 (Fla. July 12, 2018) (explaining that *LeBlanc* made clear that it was not an unreasonable application of *Graham* “to conclude that, because the [state's] geriatric release program employed normal parole factors, it satisfied *Graham's* requirement that juveniles convicted of a nonhomicide crime have a meaningful opportunity to receive parole”)(quoting *LeBlanc*, 137 S.Ct. at 1729)). As we held in *Michel*, involving a juvenile homicide offender sentenced to life with the possibility of parole after 25 years, Florida's statutory parole process fulfills *Graham's* requirement that juveniles be given a “meaningful opportunity” to be

considered for release during their natural life based upon “normal parole factors,” *LeBlanc*, 137 S.Ct. at 1729, as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review, *Michel*, 257 So.3d at 6 (citing §§ 947.16-.174, Fla. Stat.).

As in *Michel*, because Franklin's sentences include eligibility for parole there is no violation of the categorical rule announced in *Graham*. *Michel*, 43 Fla. L. Weekly at S299-300, 257 So.3d at —.

CONCLUSION

We approve the First District's decision in *Franklin* and hold that Franklin's 1000-year sentences with parole eligibility do not violate the categorical rule of *Graham*.

It is so ordered.

ANY MOTION FOR REHEARING OR CLARIFICATION MUST BE FILED WITHIN SEVEN DAYS. A RESPONSE TO THE MOTION FOR REHEARING/CLARIFICATION MAY BE *1242 FILED WITHIN FIVE DAYS AFTER THE FILING OF THE MOTION FOR REHEARING/CLARIFICATION. NOT FINAL UNTIL THIS TIME PERIOD EXPIRES TO FILE A REHEARING/CLARIFICATION MOTION AND, IF FILED, DETERMINED.

CANADY, C.J., and LEWIS, POLSTON, and LAWSON, JJ., concur.

PARIENTE, J., dissents with an opinion, in which QUINCE and LABARGA, JJ., concur.

PARIENTE, J., dissenting.

Arthur Franklin committed nonhomicide crimes at age 17 and received concurrent sentences of 1000 years. Now 51, he has spent his entire adult life in prison. Franklin has appeared before the Parole Commission 11 different times between 1987 and 2014. Yet, there is no indication that the Parole Commission has made the constitutionally required considerations regarding whether Franklin is entitled to release based on maturity and rehabilitation.

Most recently, when the trial court held a hearing to consider Franklin's motion for relief from his 1000-year sentences, Franklin was without counsel and no evidentiary hearing was held. At the very least, this case should be remanded to the trial court for an evidentiary hearing, where Franklin is represented by counsel, to determine whether the parole process, as applied to his case, provides Franklin the constitutionally required individualized consideration and a meaningful opportunity for release based on demonstrated maturity and rehabilitation. *Montgomery v. Louisiana*, — U.S. —, 136 S.Ct. 718, 734-36, 193 L.Ed.2d 599 (2016).

As the record stands, the earliest Franklin could be released from prison based on existing parole guidelines is 2352—369 years after his crimes. At his first parole review in 1987, the Parole Commission assessed 4400 months for the aggravating factors of his multiple offenses, giving Franklin a presumptive parole release date (PPRD) of 2350. The PPRD varied only a few years in his ten subsequent parole reviews. There is no indication that Franklin has even a chance of being released before the end of his natural life expectancy. Thus, Franklin has no “hope for some years of life outside prison walls.” *Id.* at 737.

Perhaps even more salient than the defendant in *Atwell*³ or the defendant in *Michel*,⁴ the operation of Florida's parole system in this case leaves Franklin with a sentence that is “guaranteed to be just as lengthy as, or the ‘practical equivalent of,’ a life sentence without the possibility of parole.” *Atwell*, 197 So.3d at 1048. This case highlights how, contrary to the majority's suggestion, Florida's current parole system affords juvenile offenders no *meaningful* opportunity for release. As I have previously explained:

In *Atwell*, this Court concluded that “Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder.” 197 So.3d at 1041. We further explained that Florida's “current parole process ... fails to take into account the offender's juvenile status at the time of the offense and effectively forces juvenile offenders to serve disproportionate sentences.” *Id.* at 1042.

This Court could not have been clearer in its conclusion that “[p]arole is, simply put, ‘patently inconsistent with the legislative intent’ as to how to comply with *1243 *Graham* [v. *Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010),] and *Miller* [v. *Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)].” *Id.* at 1049 (quoting *Horsley v. State*], 160 So.3d [393,] 395 [(Fla. 2015)]). As the *Atwell* Court noted, while the Legislature could have chosen “a parole-based approach” to comply with *Miller* and *Graham*, it chose instead to fashion a different remedy of resentencing under a new law, which explicitly considers the *Miller* factors. *Id.*

Specifically, Florida's current parole system does not provide juvenile offenders an opportunity to demonstrate that release is appropriate based on maturity and rehabilitation for several reasons. First, the Commission relies on static, unchanging factors, such as the crimes committed and previous offenses, when determining whether or not to grant an offender parole. See Fla. Admin. Code R. 23-21.007. Under *Graham*, however, a juvenile's “meaningful opportunity to obtain release [must be] based on demonstrated maturity and rehabilitation.” *Graham*, 560 U.S. at 75 [130 S.Ct. 2011]. Relying on static factors such as the offense committed ignores the focus on the “demonstrated maturity and rehabilitation” that *Graham* and *Miller* require. *Id.*

Second, an inmate seeking parole has no right to be present at the Commission meeting and has no right to an attorney. Although the hearing examiner sees the inmate prior to the hearing, the commissioners do not. Fla. Admin. Code R. 23-21.004(13); 23-21.001(6). Third, there is only a limited opportunity for supporters of the inmate to speak on the inmate's behalf. Fla. Comm'n on Offender Review, *Release and Supervision Frequently Asked Questions*, <https://www.fcor.state.fl.us/mediaFactSheet.shtml> (last visited April 10, 2018) (“All speakers, in support, must share the allotted 10 minute time frame for speaking. All speakers, in opposition, must share the allotted 10 minute time frame for speaking.”). Finally, there is no right to appeal the Commission's decision, absent filing a writ of mandamus. *Armour v. Fla. Parole Comm'n*, 963 So.2d 305, 307 (Fla. 1st DCA 2007).

Michel, 257 So.3d at 15 (Pariente, J., dissenting).

³ *Atwell v. State*, 197 So.3d 1040 (Fla. 2016).

⁴ *State v. Michel*, 257 So.3d 3 (Fla. July 12, 2018).

The majority again displaces this Court's precedent in *Atwell*, arguing that it has somehow been overruled by the United States Supreme Court's opinion in *Virginia v. LeBlanc*, — U.S. —, 137 S.Ct. 1726, 198 L.Ed.2d 186 (2017). I again reiterate why the majority's reliance on that decision is misplaced:

[T]here are two reasons why the plurality's reliance on *LeBlanc* is misplaced. First, the plurality fails to mention that the United States Supreme Court was considering only whether the Fourth Circuit had improperly intruded on the authority of the Virginia Supreme Court to conclude that its program satisfied the Eighth Amendment. As the *LeBlanc* court explained:

In order for a state court's decision to be an unreasonable application of this Court's case law, the ruling must be “objectively unreasonable, not merely wrong; even clear error will not suffice.” *Woods v. Donald*, 575 U.S. —, —, 135 S.Ct. 1372, 1376, 191 L.Ed.2d 464 (2015) (per curiam) (internal quotation marks omitted). In other words, a litigant must “show that the state court's ruling ... was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Ibid.* (internal quotation marks omitted). This is “meant to be” a difficult standard to meet. *1244 *Harrington v. Richter*, 562 U.S. 86, 102, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011).

Id. at 1728. Accordingly, even if the United States Supreme Court believed that the Virginia Supreme Court's decision was in error, this still would not have been enough to overturn the state court decision. Instead of looking at the *LeBlanc* decision in its proper context through the rigorous standard of review, the plurality uses the United States Supreme Court opinion to adopt the dissent written by Justice Polston in *Atwell*. See *Atwell*, 197 So.3d at 1050 (Polston, J., dissenting).

In fact, the United States Supreme Court's holding in *LeBlanc* made no mention of this Court's opinion in *Atwell*, nor was it considering a state statute similar to that at issue in this case. Despite the weight

the plurality would give the opinion, *LeBlanc* has no precedential value in this instance and does not implicate this Court's requirement to construe our Eighth Amendment jurisprudence in conformance with the United States Supreme Court.

Second, a review of *LeBlanc* demonstrates that Virginia's geriatric release program is entirely different from Florida's parole system. Indeed, the program includes a consideration of many factors such as the “ ‘individual's history ... and the individual's conduct ... during incarceration,’ as well as the individual's ‘inter-personal relationships with staff and inmates.’ ” *LeBlanc*, 137 S.Ct. at 1729 (quoting *LeBlanc v. Mathena*, 841 F.3d 256, 280-81 (4th Cir. 2016) (Niemeyer, J., dissenting)). Consideration of these factors could lead to the individual's conditional release in light of his or her “demonstrated maturity and rehabilitation.” *Id.* (quoting *Graham*, 560 U.S. at 75, 130 S.Ct. 2011). Florida's parole system, as we explained in *Atwell*, does not—with its primary concern being on the perceived dangerousness of the criminal defendant. Indeed, the Florida Commission on Offender Review's mission statement is “Ensuring public safety and providing victim assistance through the post prison release process.” Fla. Comm'n on Offender Review 2016 Annual Report (2016), <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201516.pdf>.

Michel, 257 So.3d at 15 (Pariente, J., dissenting).

Franklin is clearly entitled to relief pursuant to this Court's opinion in *Atwell*. His PPRD of 2352 is 222 years beyond *Atwell*'s PPRD, which we held unconstitutional. As this Court explained in *Atwell*:

A presumptive parole release date set decades beyond a natural lifespan is at odds with the Supreme Court's recent pronouncement in *Montgomery*. Although a State's remedy to *Miller* could include a system for paroling certain juvenile offenders “whose crimes reflected only transient immaturity—and who have since matured,” the parole system would nevertheless still have to afford juvenile offenders individualized consideration and an opportunity for release. *Montgomery*, — U.S. —, 136 S.Ct. 718, 736, 193 L.Ed.2d 599 (2016). Most importantly, “their hope for some years of life outside prison walls must be restored.” *Id.* at 737.

The United States Supreme Court concluded its *Miller* opinion by emphasizing that “*Graham, Roper* [v. *Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)], and [the Supreme Court's] individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *Miller*, 132 S.Ct. at 2475. Even a cursory examination of the statutes and administrative rules governing *1245 Florida's parole system demonstrates that a juvenile who committed a capital offense could be subject to one of the law's harshest penalties without the sentencer, or the Commission, ever considering mitigating circumstances.

Atwell, 197 So.3d at 1048-49.

Thus, I would conclude that Franklin's sentences clearly violate the United States Constitution. In doing so, I note that “[t]his result would not guarantee [Franklin] any particular term of years sentence ... but would require the

sentencing court to consider all of the *Miller* factors when resentencing [Franklin].” *Michel*, 43 Fla. L. Weekly at S304, — So.3d at — (Pariente, J., dissenting).

CONCLUSION

For these reasons, I would quash the First District Court of Appeal's decision in *Franklin v. State*, 141 So.3d 210, 215 (Fla. 1st DCA 2014), affirming Franklin's sentences, and remand for resentencing. At the very least, Franklin is entitled to an evidentiary hearing, with the representation of counsel, to determine whether the parole process will afford him a meaningful opportunity for release based on demonstrated maturity and rehabilitation, as the Eighth Amendment to the United States Constitution requires.

QUINCE and LABARGA, JJ., concur.

All Citations

258 So.3d 1239, 43 Fla. L. Weekly S556

204 So.3d 101 (Mem)
District Court of Appeal of Florida,
Fourth District.

Budry MICHEL, Appellant,

v.

STATE of Florida, Appellee.

No. 4D13-1123.

|

Nov. 9, 2016.

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; [Barbara McCarthy](#), Judge; L.T. Case No. 93-19586CF10A.

Attorneys and Law Firms

Carey Haughwout, Public Defender, and [Paul E. Petillo](#), Assistant Public Defender, West Palm Beach, for appellant.

[Pamela Jo Bondi](#), Attorney General, Tallahassee, and Matthew Steven Ocksrider, Assistant Attorney General, West Palm Beach, for appellee.

Opinion

PER CURIAM.

We reverse the order denying appellant's motion for postconviction relief and remand for resentencing pursuant to [Atwell v. State](#), 197 So.3d 1040 (Fla.2016). We also certify conflict with the Fifth District Court of Appeal. We respectfully disagree with [Stallings v. State](#), 198 So.3d 1081 (Fla. 5th DCA 2016), and [Williams v. State](#), 198 So.3d 1084 (Fla. 5th DCA 2016), to the extent that those decisions suggest that relief under *Atwell* is dependent on the defendant's presumptive parole release date.

Our reading of the Florida Supreme Court's decision in *Atwell* is that Florida's existing parole system does not provide the individualized sentencing consideration required by [Miller v. Alabama](#), — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). Thus, as in *Atwell*, appellant is entitled to be resentenced pursuant to the sentencing provisions enacted in Chapter 2014-220, Laws of Florida. *Atwell*, 197 So.3d at 1050.

Reversed and remanded for resentencing.

[CIKLIN](#), C.J., [WARNER](#) and [DAMOORGIAN](#), JJ., concur.

All Citations

204 So.3d 101 (Mem), 41 Fla. L. Weekly D2525

West's Florida Statutes Annotated

Title XLVII. Criminal Procedure and Corrections (Chapters 900-999) (Refs & Annos)

Chapter 921. Sentence (Refs & Annos)

West's F.S.A. § 921.1401

921.1401. Sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings

Effective: July 1, 2014

[Currentness](#)

- (1) Upon conviction or adjudication of guilt of an offense described in [s. 775.082\(1\)\(b\)](#), [s. 775.082\(3\)\(a\)](#) 5., [s. 775.082\(3\)\(b\)](#) 2., or [s. 775.082\(3\)\(c\)](#) which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.
- (2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:
- (a) The nature and circumstances of the offense committed by the defendant.
 - (b) The effect of the crime on the victim's family and on the community.
 - (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
 - (d) The defendant's background, including his or her family, home, and community environment.
 - (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
 - (f) The extent of the defendant's participation in the offense.
 - (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
 - (h) The nature and extent of the defendant's prior criminal history.
 - (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

(j) The possibility of rehabilitating the defendant.

Credits

Added by [Laws 2014, c. 2014-220, § 2, eff. July 1, 2014](#).

[Notes of Decisions \(50\)](#)

West's F. S. A. § 921.1401, FL ST § 921.1401

Current through the 2018 Second Regular Session of the 25th Legislature.

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

West's Florida Statutes Annotated

Title XLVII. Criminal Procedure and Corrections (Chapters 900-999) ([Refs & Annos](#))

Chapter 921. Sentence ([Refs & Annos](#))

This section has been updated. Click [here](#) for the updated version.

West's F.S.A. § 921.1402

921.1402. Review of sentences for persons convicted of
specified offenses committed while under the age of 18 years

Effective: July 1, 2014 to June 29, 2015

(1) For purposes of this section, the term “juvenile offender” means a person sentenced to imprisonment in the custody of the Department of Corrections for an offense committed on or after July 1, 2014, and committed before he or she attained 18 years of age.

(2)(a) A juvenile offender sentenced under [s. 775.082\(1\)\(b\)](#) 1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under [s. 775.082\(1\)\(b\)](#) 1.:

1. Murder;
2. Manslaughter;
3. Sexual battery;
4. Armed burglary;
5. Armed robbery;
6. Armed carjacking;
7. Home-invasion robbery;
8. Human trafficking for commercial sexual activity with a child under 18 years of age;
9. False imprisonment under [s. 787.02\(3\)\(a\)](#); or

10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b) 2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the juvenile offender is not resentenced at the initial review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

(3) The Department of Corrections shall notify a juvenile offender of his or her eligibility to request a sentence review hearing 18 months before the juvenile offender is entitled to a sentence review hearing under this section.

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(5) A juvenile offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

(6) Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(a) Whether the juvenile offender demonstrates maturity and rehabilitation.

(b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

- (d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.
- (e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.
- (f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.
- (g) Whether the juvenile offender has successfully obtained a general educational development certificate¹ or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.
- (h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.
- (i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.
- (7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Credits

Added by [Laws 2014, c. 2014-220, § 3, eff. July 1, 2014](#).

Footnotes

¹ Reviser's Note--2014: The term "general educational development certificate" was changed to "high school equivalency diploma" in existing Florida Statutes text in ch. 2014-20, pursuant to s. 38, ch. 2013-51.

West's F. S. A. § 921.1402, FL ST § 921.1402

Current through the 2018 Second Regular Session of the 25th Legislature.

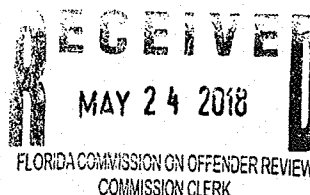


FLORIDA COMMISSION ON OFFENDER REVIEW

Memorandum

Minimum Mandatory

DATE: May 16, 2018
TO: THE COMMISSION
FROM: Kia Davis, Commission Investigator
OFFICE: Region I - Milton
RE: MICHEL, Budry B.; DC # 196454



INITIAL PAROLE INTERVIEW RATIONALE / BASIS FOR RECOMMENDATION

Interview Date: 05/15/2018			Location: Century Correctional Institution	
Sentence Date	Case # & Offense	County	Sentence Structure	Guidelines
0#	93-19586	Broward	Count I – LIFE, 25 Year MM, 1097 Days CTS	No
11/08/1996	Count I – First Degree Murder		Count II – Five and One Half Years, Three Year MM, 1097 Days CTS, Concurrent with Count I.	No
	Count II – Armed Robbery			

Circumstances for Case #93-19586CFA

According to the Postsentence Investigation, on 08/30/1991 two males approached a local food store in Oakland Park, Florida armed with handguns. They forced the clerk to open the register at gunpoint and removed \$250.00 from the register. The subject and co-defendant held the clerk hostage while he waited on two customers. The subjects began taking other merchandise from the store, placing it in a cardboard box. One of the males then exited the store to check the clerk's vehicle to use as a getaway vehicle. Upon learning the vehicle was a stick shift, the subjects decided to wait for a customer driving an automatic because neither could drive a stick shift. The next customer pulled into the drive at the store to order an item when one of the subject's tried to take her vehicle and then shot the victim in the head. The victim accelerated the vehicle through the parking lot, causing an accident. Both males fled the scene on foot. The victim was kept alive on life support machines until 11/09/1993 when she passed. The subject came forward voluntarily and provided a full confession. The subject admitted that he and his co-defendant committed the robbery together but his co-defendant fired the fatal bullet that took the victim's life.

Co-defendant Odis Cooper DC #899857 was convicted of Second Degree Murder, Armed Robbery and Attempted Armed Robbery and sentenced to 20 years. His sentence expired on 10/03/2003.

The subject has never been paroled.

The subject is currently assigned as a Library Clerk and has received mostly above satisfactory work ratings.

Since his initial incarceration, the subject has completed the following programs:

03/27/1997, Vital Issues Project
 08/07/2007, Carpentry Cabinet Maker
 05/08/2009, Reduce Criminal Thinking
 10/14/2014, ITA Program Train

The subject has received 13 processed disciplinary reports since his initial incarceration.

Rationale
MICHEL, Budry B.
DC #196454
Page 2 of 2

During the interview, the subject did not wish to make a statement to the Commission but advised that he expects to be released after being resentenced as a juvenile under new legislation.

This investigator recommends the subject be re-interviewed in two years and also recommends continued inmate program participation.

Completed by:

Kia Davis
Kia Davis, Commission Investigator

Reviewed by:

Tom Hamilton
Tom Hamilton, Regional Administrator

Date:

05/16/2018

Florida Commission on Offender Review



Initial Interview Worksheet

Inmate Name: MICHEL, Burdy B.

DC#: 196454

Prior Record: (List only Convictions) Include the Date, Offense, Disposition, and the Source

Click here to enter text.

Salient Factor Score: 1=0; 2=0; 3=0; 4=0; 5=0; 6=1 Total 1 or RCF ☐
(Select from the drop down menu)

Case # and Count (If pointing for Item 6): 93-19586 Count II: Armed Robbery

Offense Severity Level: Level 6 **Degree of Felony:** Capital Felony
(Select from the drop down menu) (Select from the drop down menu)

Case #, Count, and Offense: 93-19586 Count I: First Degree Murder

Matrix Time Range: YO 90 - 135 **Set at:** 135 **Youthful Offender:** Yes
(Select from the drop down menu) (Select from the drop down menu)

Aggravating Factors & Recommended Months: Include the Source, however, no source is required for Multiple Separate Offenses:

1. The facts of the offense show egregious circumstances which are not elements of the crimes charged in that the victim remained on life support for two years before passing, per PSI + 120 months
2. The inmate has amassed a record of unsatisfactory institutional conduct as evidenced by his processed disciplinary report record, which is a negative indicant of parole prognosis + 78 months

Total Months: 333

Florida Commission on Offender Review
4070 Esplanade Way, Tallahassee, FL

Computation Worksheet

I. Presumptive Parole Release Date Computation

- 1) Date of sentence on the beginning No. or
Active Presumptive Parole Release Date

11/8/1996

- 2) Less County Jail Time Credit:

1097

11/7/1993

- 3) Less Commission Credit:

0

11/7/1993

- 4) Time out on Supersedeas Bond:

0

From _____ To _____
 From _____ To _____

- 5) Time out on Parole:

0

From _____ To _____
 From _____ To _____
 From _____ To _____

- 6) Time out on MCR:

0

From _____ To _____
 From _____ To _____

- 7) Time out on Escape:

0

From _____ To _____
 From _____ To _____

- 8) Any other time out of Incarceration

- 9) Total of Lines 4 through 8:

0

(days)

(Add Line 9 total to DATE on Line 3 for TIME BEGINS)

11/7/1993

TIME BEGINS DATE

- 10) ENTER RECOMMENDED TOTAL TIME FOR INCARCERATION

O 333 C _____
 A _____ D _____
 B _____ E _____

333

(months)

- 11) RECOMMENDED PRESUMPTIVE PAROLE RELEASE DATE:

8/7/2021



PRESUMPTIVE PAROLE RELEASE DATE COMMISSION ACTION

Inmate Name: Michel, Budry DC #: 196454 Date of Interview: 05/15/2018
 Institution: Century Correctional Institution

I. COMMISSION INVESTIGATOR'S RECOMMENDATIONS:

A. Eligible for parole consideration: NO ☐ If no, state reason(s):

IF YES ☒, THEN:

B. Salient Factor Score: 1=0, 2=0, 3=0, 4=0, 5=0, 6=1, TOTAL 1 or RCF _____

C. Offense Severity: Level 6 Case No. 93-19586

D. Matrix Time Range: 90-135

Set at: 135 months

E. Aggravating/Mitigating Factors (Explain each with source):

1. The facts of the offense show egregious circumstances which are not elements of the crimes charged in that the victim remained on life support for two years before passing, per PSI + 120 months
2. The inmate has amassed a record of unsatisfactory institutional conduct as evidenced by his processed disciplinary report record, which is a negative indicant of parole prognosis + 78 months

F. Time Begins: 11/07/1993 G. Months Recommended: 333 H. Recommended Presumptive Parole Release Date: 08/07/2021

II. COMMISSION ACTION:

- A. The Commission AFFIRMS the commission investigator's recommendation that you are NOT Eligible for consideration for parole. You will be scheduled for an initial interview _____.
- B. The Commission does NOT affirm the commission investigator's recommendation that you are not eligible for parole consideration and remands the case back to the field for an immediate presumptive parole release date interview and recommendation.
- C. The Commission AFFIRMS, without change, the commission investigator's recommended presumptive parole release date and thereby affirms any aggravating or mitigating factors found above in I.E.
- D. The Commission does NOT affirm the commission investigator's recommended presumptive parole release date and restructures the case as follows:

1. Salient Factor Score: 1=0, 2=0, 3=0, 4=0, 5=0, 6=1, TOTAL 1 or RCF _____

2. Offense Severity: Level 6 Degree: Capital Felony Offense: Ct. 1 First Degree Murder

Case No. 93-19586

3. Matrix Time Range: 90-135 (Youthful Offender)

Set at: 135 months

4. Aggravating/Mitigating Factors (Explain each with source):

1. The use of a weapon; to-wit: a hand gun. Per the Pre-Sentence Investigation. 60 months
2. Unsatisfactory institutional conduct as evidenced by the processed disciplinary reports. Per the Inmate DC Record. 156 months
3. In an attempt to conceal evidence, the firearm used was hidden behind a payphone or concealed behind a payphone. Per the Oakland Police Report. 60 months

5. Time Begins: 11/7/1993

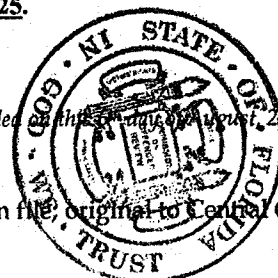
6. Months for Incarceration: 411 months

At the Commission meeting held on 7/26/2018, your Presumptive Parole Release Date was ESTABLISHED to be 2/7/2028. You will be reinterviewed for your subsequent interview during the month of March, 2025.

Certified by Gay Davis Commission Clerk, and mailed on 7/26/2018
 Number of visitors: 6

1 copy to inmate; 1 copy to institution file; original to Central Office file.

MH



FLORIDA COMMISSION ON OFFENDER REVIEW



Page 2
Michel, Budry
DC#196454

The Commission finds that your next interview date shall be within 7 years rather than within 2 years from your last interview based on your conviction/sentence for First Degree Murder and the Commission's finding that it is not reasonable to expect you will be granted parole during the following years. The basis for the finding is as follow:

1. Use of a weapon; to-wit: a handgun
2. Unsatisfactory institutional conduct
3. Unreasonable risk to others

***The Commission considered mitigation**

MH

ITEM 1: NUMBER OF ALL PRIOR CONVICTIONS	
• Four or more prior felony convictions at least two of which resulted in incarceration.	= Recidivist Criminal Factor
• Three or more prior convictions.	= 2 Points
• One or Two prior convictions.	= 1 Point
• No prior convictions.	= 0 Points
ITEM 2: NUMBER OF PRIOR INCARCERATIONS	
• Two or more prior incarcerations	= 2 Points
• One prior incarceration	= 1 Point
• No prior incarceration	= 0 Points
ITEM 3: TOTAL TIME IMPOSED IN YEARS	
• Two or more years served	= 2 Points
• Up to two years served	= 1 Point
• No time previously served	= 0 Points
ITEM 4: NUMBER OF PROBATION, PAROLE OR MCR REVOCATIONS	
• Two or more revocations	= 2 Points
• One revocation	= 1 Point
• No Revocations	= 0 Point
ITEM 5: NUMBER OF PRIOR ESCAPE OR ATTEMPTED ESCAPE CONVICTIONS	
• Two or more prior escape or attempted escape convictions	= 2 Points
• One prior escape or attempted escape conviction	= 1 Point
• No prior escape conviction	= 0 Points
ITEM 6: BURGLARY OR BREAKING AND ENTERING OR ROBBERY AS THE PRESENT OFFENSE OF CONVICTION	
• Present offense of conviction involves burglary or breaking and entering or robbery	= 1 Point
• Otherwise	= 0 Points

23.21.09 **Matrix Time Ranges.** (1) Calculate and total the Salient Factor Score. (2) Determine the degree of felony or misdemeanor of the Present Offense of conviction. (3) Locate the Matrix Time Range where the Salient Factor Score total intersects with the Severity of Offense Behavior. (4) If the totality of the circumstances of the Present Offense of Conviction warrants a decision outside the Matrix Time Range, or if there are indicators relative to the likelihood of favorable parole outcome which warrant a decision outside the Matrix Time Range, the appropriate aggravation or Mitigation factors must be stated in writing with individual particularity.

SEVERITY OF OFFENSE BEHAVIOR ¹	SALIENT FACTOR SCORE ²				RECIDIVIST CRIMINAL FACTOR
	(0-1)	(2-4)	(5-7)	(8-11)	
1. Misdemeanor (Cumulative Sentence of one or more Years)	≤ 8	8-12	12-16	16-22	24-32
2. Felony 3 ⁰ (Statutory Sentence-Maximum of 5 Years)	12-20	20-26	26-32	32-48	48-64
3. Felony 2 ⁰ (Statutory Sentence-Maximum of 15 Years)	20-26	26-32	32-48	48-64	90-120
4. Felony 1 ⁰ (Statutory Sentence-Maximum of 30 Years)	30-70	70-90	90-120	120-180	180-300
5. Felony 1 ⁰ and Life Felony (Statutory Sentence-Maximum --Life) ³	80-100	100-120	120-140	140-180	300-400
6. Capital Felony (Statutory Sentence-Life)	120-180	180-240	240-300	300-9998	400-9998

***Youthful Offender Matrix**

SEVERITY OF OFFENSE BEHAVIOR ¹	SALIENT FACTOR SCORE ²				RECIDIVIST CRIMINAL FACTOR
	(0-1)	(2-4)	(5-7)	(8-11)	
1. Misdemeanor (Cumulative Sentence of one or more Years)	≤ 6	6-9	9-12	12-16	24-32
2. Felony 3 ⁰ (Statutory Sentence-Maximum of 5 Years)	9-15	15-19	19-24	24-36	48-64
3. Felony 2 ⁰ (Statutory Sentence-Maximum of 15 Years)	15-19	19-24	24-36	36-48	90-120
4. Felony 1 ⁰ (Statutory Sentence-Maximum of 30 Years)	22-52	52-67	67-90	90-135	180-300
5. Felony 1 ⁰ and Life Felony (Statutory Sentence-Maximum --Life) ³	60-75	75-90	90-105	90-135	300-400
6. Capital Felony (Statutory Sentence-Life)	90-135	135-180	180-225	225-9998	400-9998

¹Length of sentence as well as salient factor score shall be considered when determining the presumptive parole release date.

²Matrix Time Ranges are reported in months.

³Murder II = 0 salient factor points, see 23-19.05 (VII) (1.)

Specific Authority: ss. 120.53, 947.165, 947.071, F.S. Law Implemented: s. 947.165, F.S. History: New 7-22-81

Inmate Initiated Review of Presumptive Parole Release Date

Budry Michel
DC# 196454
Century Correctional Institution
400 Tedder Road
Century, Florida 32535-3659
PPRD: Feb. 7, 2028

September 20, 2018

For the following reasons, Budry Michel, through counsel, requests that the Commission review his Presumptive Parole Release Date (PPRD). This request is filed under Florida Administrative Code Rule 23-21.012 and section 947.173, Florida Statutes.

Procedural Background

For first-degree murder committed in 1991 when he was 16 years old, Michel received the mandatory sentence of life imprisonment without the possibility of parole for 25 years.

On July 26, 2018, the Commission entered an order on Michel's initial interview. The Commission rejected the commission investigator's recommended PPRD of August 7, 2021. (And even this PPRD included 120 months for an aggravating factor unsupported by the evidence. The investigator believed that the victim was on life support for two years. But at the hearing, the Commission learned that the victim was on life support for two days, not two years.) The

Commission set his PPRD at February 7, 2028. The Commission set his subsequent interview for March, 2025.

The Commission found 276 months in aggravation. This included the automatic assessment of 60 months for use of a weapon (automatic because only a more brutal murder, like strangulation, would lack this factor), 156 months for “unsatisfactory institutional conduct” (according to the commission investigator, Michel had 13 disciplinary reports), and 60 months for attempting to conceal the firearm behind a payphone.

The Commission wrote in its order that “[m]itigation was considered,” but apparently the Commission found nothing that warranted “mitigation of severity of offense behavior[.]” Fla. Admin. Code. R. 23-21.010(5)(b)1. This notwithstanding that Michel was 16 years old at the time of the offense; that the jurors in his case wrote to the trial judge “asking if there is any lee-way within the sentencing guidelines which would benefit Budry Bobby Michel” (see the letter of juror George Pursglove admitted at the hearing); that Michel was a LifePath Group Project lead facilitator and mentor; that he was a DIRECT Program facilitator and gold medal graduate; that he was the leader of the Gavel Club; that he obtained his GED and was an inmate teaching assistant; that he has made contributions to the

Peyton Tuthill Foundation's Hearts of Hope Scholarship Program; that J. Winters,

Michel's carpentry supervisor at Hardee Correctional Institution wrote:

This letter of reference is in regard to inmate Michel B. Budry and his work conduct and participation here in our carpentry class program.

Inmate Budry has demonstrated to me many times during our 18 months working together that he is responsible and a very diligent worker. He has acquired the skills in building homes for Habitat for Humanity. He is trustworthy with all tools, followed instructions, and has illustrated on many occasions to be a hard worker. He also worked on our Toys for Tots program, a program designed to making toys for impoverished and needy children.

I am confident that inmate Budry will use the skills he's learned to seek employment to support himself, and it is my belief that he is rehabilitated and will do well once released.

And that R Williams, CO1, Education Security, and LGP Sponsor at Hardee Correctional Institution wrote:

As an education security officer and sponsor of The LifePath Group Project, which is on path to gain state wide expansion within the Department of Corrections. I am in a position to observe the inmates here making many changes in their lives. With regard to Michel Bobby Budry, I am confident of his rehabilitative turn around and growth that has taken place within his life.

He has accomplished in his education and accepts accountability for his actions that brought him here. Inmate Budry has used his life story to help mentor and facilitate to other inmates. He is a lead facilitator for the DIRECT program which is geared towards identifying, deterring and correcting criminal and irresponsible thinking errors.

Inmate Budry has my support, and it is my belief that he is rehabilitated and will do well once released.

Objection to PPRD

Michel objects to his PPRD because he has a “record of clearly exceptional program achievement” (Fla. Admin. Code. R. 23-21.010(5)(b)2.j.) that should be recognized and given weight. (In addition to what was outlined above, Michel provided the Commission with nearly 70 certificates of achievement.) Further, his PPRD, and the process by which it was determined, violates the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 17 of the Florida Constitution.

“The Eighth Amendment’s prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (quoting *Roper v. Simmon*, 543 U.S. 551, 560 (2005)). This right “flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense.” *Id.* (quotation marks omitted); *see also Graham v. Florida*, 560 U.S. 48, 59 (2010) (“The concept of proportionality is central to the Eighth Amendment.”); *Montgomery v. Louisiana*, 136 S. Ct. 718, 732–33 (2016) (“Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment[.]”).

Certain punishments are disproportionate when applied to juvenile offenders like Michel because “children are different” (Miller, 567 U.S. at 480) in three ways relevant to punishment:

- **Immaturity.** Children have a “lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 567 U.S. at 471.
- **Vulnerability.** Children are “more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.” *Id.* (citation and alterations omitted).
- **Reformability.** A child’s “character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.” *Id.* (citation and alterations omitted). “[O]nly a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior.” *Id.* (citation and alterations omitted).

The first two characteristics of children lessen their moral culpability and lead to the individualized sentencing requirement. The PPRD must likewise be individualized. This means the Commission must consider youth and its attendant

characteristics before selecting the PPRD. If the Commission doesn't do this, then there is "too great a risk of disproportionate punishment." *Id.* at 480.¹

Further, a sentencer—and now this Commission—may not treat every juvenile offender the same. The Commission must consider not only the "hallmark features" of youth, but also each child's "family and home environment ... from which he cannot usually extricate himself"; "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"; the child's "inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys"; and, finally, the child's "possibility of rehabilitation." *Id.* at 477-78.

The third characteristic of children—their greater prospects for reform—requires that they be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. 50; *Miller*, 567 U.S. at 479. They "must be given the opportunity to show their crime did not

¹ Michel recognizes that he fell under the Youthful Offender Matrix. But that only reduced his PPRD by 45 months (180–135=45, in the case of a salient factor score of 1), a reduction that can be easily nullified by adding months to aggravation. Moreover, while the Youthful Offender Matrix distinguishes juvenile offenders from adult offenders (to a modest extent, and one easy to nullify), it treats all juvenile offenders the same, which violates the requirement that juvenile offenders' sentences be individualized.

reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.” *Montgomery*, 136 S. Ct. at 736-37. “The opportunity for release will be afforded to those who demonstrate the truth of *Miller’s* central intuition—that children who commit even heinous crimes are capable of change.” *Id.* at 736.

As Justice Polston wrote for the plurality in Michel’s supreme court case:

[The Eighth Amendment] only **requires states to provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”** *Id.* And Michel will receive a “meaningful opportunity” under Florida’s parole system after serving 25 years in prison and then (if applicable) every 7 years thereafter. See §§ 947.16-.174, Fla. Stat.

Florida’s statutorily required initial interview and subsequent reviews before the Florida Parole Commission include the type of individualized consideration discussed by the United States Supreme Court in *Miller*. For example, under section 947.174(3), Florida Statutes, the presumptive parole release date is reviewed every 7 years in light of information “including, but not limited to, current progress reports, psychological reports, and disciplinary reports.” This information, including these individualized reports, would **demonstrate maturity and rehabilitation as required by *Miller* and *Graham*.**

State v. Michel, 43 Fla. L. Weekly S298 (Fla. July 12, 2018) (emphasis added).

The Commission did not consider whether Michel “demonstrate[d] maturity and rehabilitation as required by *Miller* and *Graham*.” *Id.* Michel’s parole hearing was no different than any other parole hearing. The Commission gave no weight or effect to his exceptional program achievement. Instead, the Commission’s order

merely contains the pro forma statement: “The Commission considered mitigation.”

The Commission did not consider Michel’s diminished culpability due to youth and immaturity and it did not consider whether he has shown maturity and rehabilitation. Unless the Commission does so, it will be violating both the Cruel and Unusual Punishments Clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. *See Brown v. Precythe*, No. 2:17-CV-04082-NKL, 2017 WL 4980872 (W.D. Mo. Oct. 31, 2017) (denying motion to dismiss federal lawsuit against members of Missouri’s parole board; lawsuit alleged that board members were violating the Eighth and Fourteenth Amendment rights of juvenile offenders by depriving them of a meaningful opportunity to demonstrate maturity and rehabilitation as required by *Graham*, *Miller*, and *Montgomery*).

The Commission should recalculate Michel’s PPRD by considering his diminished culpability due to youth and immaturity and by considering whether he has shown maturity and rehabilitation as evidenced by his exceptional program performance.

Respectfully submitted by,

CAREY HAUGHWOUT
Public Defender
Fifteenth Judicial Circuit



Paul Edward Petillo
Assistant Public Defender
421 Third Street
West Palm Beach, Florida 33401
(561) 355-7600
Florida Bar No. 508438
ppetillo@pd15.state.fl.us

cc (by email):

Rana Wallace
General Counsel
Florida Commission on Offender Review
RanaWallace@fcor.state.fl.us

FLORIDA COMMISSION ON OFFENDER REVIEW



REVIEW REQUEST COMMISSION ACTION

Inmate Name: Michel, Budry DC #: 196454 Date of Review Request: 9/20/2018
Institution: Century C.I. ESTABLISHED Presumptive Parole Release Date: 2/7/2028

COMMISSION ACTION:

At the Commission meeting held on 10/31/2018, the Commission granted administrative review to your recent appeal pursuant to Section 947.173, Florida Statutes. Having reviewed the issue(s) raised in your appeal, the Commission finds no reason to modify your assigned PPRD.

Your PPRD will remain at 2/7/2028, and you will be re-interviewed for your Subsequent interview during the month of 3/2025.



MH

Certified and mailed by Sany Davis, Commission Clerk, this 12th day of November 2018
Visitors: 9

1 copy to inmate; 1 copy to institution file; original to Central Office file.

**FLORIDA COMMISSION ON OFFENDER
REVIEW PAROLE RELEASE DECISIONS
FISCAL YEARS 2012-2018**

Fiscal Year	Parole Eligible	Parole Release Decisions	Parole Granted	Percentage Release Decisions Granted	Percentage Eligible Granted
2017-18 ¹	4275	1499	14	0.93%	0.33%
2016-17 ²	4438	1242	21	1.69%	0.47%
2015-16 ³	4545	1237	24	1.94%	0.53%
2014-15 ⁴	4561	1300	25	1.92%	0.55%
2013-14 ⁵	4626	1437	23	1.60%	0.50%
2012-13 ⁶	5107	1782	22	1.23%	0.43%

¹ Fla. Commission on Offender Review 2018 Annual Report 6, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf>

² Fla. Commission on Offender Review 2017 Annual Report 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202017%20for%20web.pdf>

³ Fla. Commission on Offender Review 2016 Annual Report 8, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201516.pdf>

⁴ Fla. Commission on Offender Review 2015 Annual Report 8, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201415.pdf>

⁵ Fla. Commission on Offender Review 2014 Annual Report 6, 8, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201314.pdf>

⁶ Fla. Commission on Offender Review 2013 Annual Report 8, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201213.pdf>

**LIST OF INMATES RESENTENCED UNDER ATWELL
AND RELEASED, OR SOON TO BE RELEASED**

	Name	County	Case No.	Offense Date	DOC No.	Release Date
1	BARTH, CLIFFORD	ESCAMBIA	9100606	1/26/1991	216317	9/14/2017
2	GONZALEZ, ENRIQUE LIONEL	MIAMI-DADE	8840832B	11/21/1988	186274	4/19/2017
3	COATES, TYRONE	MIAMI-DADE	9130032A	7/18/1991	192711	8/25/2017
4	CLARINGTON, JERMAINE	MIAMI-DADE	9000354C	12/30/1989	192304	2/22/2018
5	HILTON, PERRY TEE	MIAMI-DADE	8421439	8/11/1984	096132	11/16/2017
6	MCMILLAN, WILLIE L	MIAMI-DADE	7610125	10/13/1976	059094	3/23/2018
7	REDDICK, ANGELO MAURICE	MIAMI-DADE	8712283	9/19/1986	184389	7/12/2017
8	COURTNEY, BRANDON PHILLIP	MIAMI-DADE	7604179B	9/1/1974	874784	10/26/2017
9	RIMPEL, ALLAN	MIAMI-DADE	9038716	9/6/1990	191195	11/1/2017
10	GRANT, ALAN RUDOLPH	MIAMI-DADE	8226401	9/23/1982	087912	4/11/2017
11	MILLER, RICARDO	MIAMI-DADE	7208754	4/16/1972	038649	4/11/2018
12	GONZALEZ, TITO	MIAMI-DADE	8411547	4/29/1984	099087	7/17/2017
13	MURRAY, HERBERT	MIAMI-DADE	7813136C	8/21/1978	067530	4/7/2017
14	TERRILL, CHRISTOPHER	MIAMI-DADE	9217844	5/3/1992	195060	12/22/2017
15	STIDHUM, JAMES RICKY	MIAMI-DADE	8222073D	9/6/1982	90384	4/20/2018
16	SHEPHERD, TINA KAY	MIAMI-DADE	8216103	6/29/1982	160407	11/7/2017
17	THOMAS, LESTER	MIAMI-DADE	8023444	10/7/1980	080877	12/22/2017
18	RIBAS, URBANO	MANATEE	8201196	10/8/1982	093472	5/11/2017
19	EVERETT, STEVEN L	MANATEE	7400468	7/11/1974	046717	4/12/2017
20	WORTHAM, DANIEL	MANATEE	9001844	7/3/1990	582950	10/20/2017
21	BRAXTON, CHARLES	MANATEE	8601920	11/28/1985	107687	7/7/2017
22	JOHNSON, ADRIAN LENARD	HILLSBOROUGH	8904764	3/17/1989	117404	6/14/2020
23	BEFORT, MARK R	HILLSBOROUGH	7905526	7/4/1979	072657	7/20/2017
24	IRVING, DEAN SWANSON	BAY	8201173	3/19/1981	092278	4/11/2018
25	CROOKS, DEMOND	BAY	9302523	12/15/1993	961761	1/22/2018
26	LEONARD, CARLOS	PALM BEACH	9204775	3/25/1992	896909	3/8/2017
27	THURMOND, KEVIN	PALM BEACH	8906616	5/5/1998	187400	2/6/2017
28	DOBARD, ANTHONY	PALM BEACH	8206935	1/7/1982	0953393	9/6/2017

29	BROWN, RUBEN	PALM BEACH	9204063	3/27/1992	780560	5/4/2017
30	LECROY, CLEO	PALM BEACH	104528	1/4/1981	104528	10/22/2018
31	STEPHENS, BARRY	BROWARD	8808481A	3/31/1988	186984	6/27/2018
32	CREAMER, DENNIS M	BREVARD	43686	5/30/1968	023801	6/27/2017
33	LAMB, WILBURN AARON	BREVARD	8600394	1/20/1986	106546	7/13/2018
34	ROBERSON, EUGENE	BREVARD	9100072A	12/10/1990	711333	12/12/2017
35	BISSONETTE, ROY I	BREVARD	7300440	5/12/1973	039295	7/3/2017
36	KENNEDY, BRIAN PATRICK	BREVARD	9100072	12/10/1990	704395	5/9/2017
37	ADAMS, RONNIE G	GLADES	7600025	7/6/1976	056056	2/16/2017
38	BRUNSON, THORNTON EMERY	DUVAL	9009095	5/19/1990	121312	6/18/2018
39	EDWARDS, EUGENE	DUVAL	9311766B	10/21/1993	123739	6/20/2018
40	THOMAS, CALVIN W	DUVAL	609501	6/9/1960	000984	4/24/2017
41	COOPER, ANTHONY JEROME.	DUVAL	7800349	2/2/1978	065615	2/21/2017
42	DIXON, ANTHONY A	DUVAL	7501613	6/4/1975	049671	5/9/2018
43	KELLY, CHRIS	PASCO	8902393	7/29/1989	118965	12/8/2019
44	HINKEL, SHAWN	PASCO	8300717	1/21/1983	089850	3/2/2018
45	SMITH, BENNY EUGENE	PINELLAS	8006738	8/2/1980	078908	11/14/2017
46	BELLOMY, TONY	PINELLAS	8510529	8/5/1985	100677	10/9/2017
47	CLARK, CHANTAY CELESTE	PINELLAS	9215418	8/15/1992	272025	11/3/2017
48	HARRIS, SYLVESTER A	PINELLAS	7505907	4/3/1975	054563	9/22/2017
49	DAVIS, HENRY M	PINELLAS	7223700	1/26/1972	033944	12/19/2017
50	STAPLES, BEAU	PINELLAS	265159	4/10/1989	265159	2/24/2019
51	FLEMMING, LIONEL	PINELLAS	842319	1/24/1984	095533	2/16/2018
52	ILLIG, LEON	PINELLAS	105411	1/1/1986	105411	10/24/2016
53	BLOCKER, TROY	PINELLAS	8714776	10/30/1987	115114	10/13/2016
54	BRYANT, DWIGHT	PINELLAS	15352	9/30/1964	015352	8/16/2018
55	DUNBAR, MICHAEL	PINELLAS	6415223	9/30/1965	015228	7/13/2018
56	JOHNSON, ROY L	ALACHUA	7109405	10/5/1970	029350	2/1/2018
57	DIXON, CHARLEY L.	BAKER	7000173	4/12/1970	027515	6/8/2018
58	LEISSA, RICHARD W	ORANGE	7502220	1/6/1975	049956	3/30/2017
59	SILVA, JAIME H	ORANGE	9212802	11/16/1992	371145	8/25/2016
60	WALLACE, GEORGE	PALM BEACH	8804700	3/11/1988	187487	7/7/2020