

NO. 18-8951

IN THE SUPREME COURT OF THE UNITED STATES

TERRANCE PROCTOR,

PETITIONER

V.

WENDY KELLEY

RESPONDENT

RECEIVED

SEP 20 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
SUPREME COURT

REPLY BRIEF TO BRIEF IN OPPOSITION FOR RESPONSENT WENDY
KELLEY.

TERRENCE PROCTOR
VSM
PO BOX 400
GRADY AR 71644

QUESTIONS PRESENTED

Whether the Eight Amendment Prohibits imposing an aggregate sentence that would in all probability amount to the rest of a juvenile's life in prison for a non-homicidal offense(s)?

Whether Proctors aggregate (Functional Life) sentence at the outset grossly disproportionate in Violation of the Eight Amendment given the circumstance existing at time of conviction?

Whether Proctor has demonstrated maturity, moral responsibility and rehabilitation during his incarceration?

RELATED PROCEEDINGS

Arkansas State Courts

- **PROCTOR v. STATE No. CR86-133** Ark Supreme Court Judgment Mar 16 1987
- **PROCTOR v. HOBBS No. CV14-768** Ark. Supreme Court Judgment Feb. 12, 2015
- **PROCTOR v. KELLEY No 40CV-19-66** Lincoln County Court Pending.

Federal Courts

- **PROCTOR v. LOCKHART No. 5:87-CV-426-HW** US District Court for the Eastern District of Arkansas Judgment entered September 26 1990
- **PROCTOR v. LOCKHART No. 90-2883 EA.** US Court of Appeals for the 8th Circuit Judgment Entered Dec, 31 1990.

Table of Contents

QUESTIONS PRESENTED	1
RELATED PROCEEDINGS	2
SUPPLEMENT APPENDIX	5
OPINION BELOW	6
JURISDICTION	6
CONSTITUTIONAL PROVISION INVOLVED	6
STATEMENT OF CASE	6
ARGUMENT	7
REHABILITATED	8
DEFACTO LIFE SENTENCE.....	11
DISPROPORTIONALITY	14
ACT 539 (ARKANSAS STATUTE).....	16
PROOF OF SERVICE	19
MAIL INSPECTOR	19

Cases

Finny v. Hulto.....	8
Finny v. Morcey	8
Graham v. Florida.....	6
Miller v Alabama 132 S.Ct 2455.....	6, 7, 12
People v. Calbollera SS Cal 4th 262 (2012).....	13
People v. Reyes 2013 ill 119971	14
Proctor v. Hobbs No. CV14-768.....	2
Proctor v. Kelley No 40CV-19-66	2
Proctor v. Lockhart No. 5:87-CV-426-HW	2
Proctor v. Lockhart No. 90-2883 EA	2
Proctor v. State No. CR86-133.....	2
Roper v. Simmons	6

Statutes

28 U.S.C.A. § 1257	6
Arkansas Code Annotated 16-93-621	16
Fair Sentencing for Minors Act”, (FSMA) Act 539 of 2017	16
United States Constitution 8 th Amendment.....	6, 8, 13, 15

SUPPLEMENT APPENDIX

- 1.) Transcript of Trial
- 2.) Letters to Parole Board
Petition for Declaratory Judgment
- 3.) GED and Educational Courses Info
- 4.) Commitment Orders Listing No Mitigators

OPINION BELOW

The Opinion of the Supreme Court is reported at 562 S.W.3d 837

JURISDICTION

The Jurisdiction of the Court is involved under 28 USC § 1257 (a) ... The petition was timely filed. This court has jurisdiction to review all of the claims made... no question raised rest on an adequate independent state ground.

CONSTITUTIONAL PROVISION INVOLVED

8th Amendment to US Constitution prohibition against cruel and unusual punishment as applied in Graham v. Florida, Miller v. Alabama, and Roper v. Simmons.

STATEMENT OF CASE

Petitioner Terrence Proctor is not a hardened criminal he has no extensive criminal history.

In fact all of his offenses prove to imprisonment occurred on June 22, 1982 or in the 18 day drug induced, adult influenced spree from October 26 1982 to November 12, 1982. The summer and fall of 1982 and attempt to allege otherwise is a farce.

Furthermore, the aggravated robbery in 1982 in which shots were actually fired was done by an unnamed accomplice and that charge was nolle processed (as with complete honesty the Juvenile Terrence Proctor plead guilty to the other charges but not that one. And ^{them} issues should not be manipulated using that charge because in this country you are innocent of a crime until proven guilty

ARGUMENT

Petitioner as a Juvenile was given no benefit of mitigator, no consideration given to him being a youthful offender under influence of drugs and adult peer pressure. He was literally locked up, and the key thrown away. Respondents have emphasized that the sentences given to proctor, although the most severe now, were half of what was allowed by law at the time of Juvenile's conviction. However, what they evade is the fact Proctor was sentenced to serve the sentence consecutively (without possibility of Parole until time was served on all as one sentence.) making proctor's aggregate sentence more severe than the houses in terms of years for a single offense.

In **MILLER v. ALABAMA 132 S.Ct 2455** it was held: "Children are constitutionally different from adults for the purpose of sentencing, and because ~~the~~ juveniles have a diminished culpability and a greater prospect for reform.... They are much less deserving of the most severe punishment." 233 cases have this head note... But thus far no case has determined whether the same Juvenile victim of the same diminished culpability that was sentence to an aggregate term amounting to a functional life sentence instead of actual life without parole.... Who didn't have the (Benefit?) of being convicted of Homicide of Capital Offense like in Miller, Should be accorded the same rational and should be given a meaningful opportunity at freedom. In this lifetime like the Roper, Miller, and Graham Beneficiaries were.

Proctor is the Perfect case for the court to deliver that broad reaching opinion.

A.G.G.R.E.G.A.T.E: Formed by combining into a single whole or total (Blacks law Dictionary). So an aggregate sentence is literally and in essence ~~a~~ single

sentence. (In this case imposed at the same time at outset) with a single parole and release date. Here the mulplicity of Convictions loses relevance and the most significant thing becomes the amount of time a Juvenile is sentenced to, at outset and what amount he has to serve. And finally whether causing him to serve that amount (as a single sentence) violates the 8th Amendment to the United States Constitution. Surely in this case the Juvenile's Terrence Proctor's 200 years did.

As for Demonstrating moral responsibility and rehabilitation. No one is perfect and proctor does not claim there hasn't been ups and downs for a child forced to grow up in the negative environment of prison (particularly Arkansas Prisons in the 80's) It has a long history of violence and abuse against prisoners... like the years of murdering and burying prisoners in the cotton fields in the 60's and 70's (~~Brew Baker~~ ^{Brew Baker} ~~breathless~~ years) Cummins, overcrowding, stuffing in ~~box~~ car type cells on top of each other and feeding them "Grew" in the FINNY v. HULTO and FINNY v. MORDEY years ~~when~~ government intervention was necessary to regulate the system or the 80's where Sgt. Davis at the Tucker Maximum Security was indicted and convicted of Raping, Tying prisoners down and ramming night sticks in their rectum...allowing inmate Lewis and Harden to get keys and go in prisoner cells ~~and~~ ^{and} beat and rape them... this is the same prison unit and the same era that the Petitioner caught his only adult conviction. He pleaded guilty to that criminal charge 33 years ago. He doesn't ask for sympathy or make excuses for that charge... in fact; he served all of his time on those offenses.

REHABILITATED

But since then, and even now, the petition has made giant leaps in rehabilitation. His progress has been phenomenal

See Appendix 3: in 1992 he obtained his GE Diploma at a time when that was the only educational rehabilitation ADC had to offer... then when it was available at Varner unit in 2015 he obtain certificates by completing courses in “Stress Management”, “Thinking Errors”, and “Anger Management”.

Upon Transfer to the Cummins Unit in 2016 He became certified after completing courses in “Domestic Violence” and “Communication Skills”.

With the availability of the Securus Tablet in 2019 the Petitioner ~~has~~ completed 34 courses and or lessons to date they are:

74.4 hours 180 Lessons Completed

Courses are:

1. Michael G Santos: Strait a guide
2. PML: Path of freedom
3. Parenting while incarcerated
4. Thinking for the future CBT
5. ART Aggressive Replacement Therapy
6. Make Big Talk – Values and lessons
7. Make Big Talk – Time
8. Reflections and Recovery
9. Anger Management
10. Make Big Talk: People and Family
11. Make Big Talk: Digging Deeper
12. Elevate your future with elevator pitches
13. Make Big Talk Introduction
14. Button Line: Reason to hire the formerly incarcerated
15. Communication: what's the point

16. Make Big Talk: What if?
17. Great interviews and create Jobs for the formerly incarcerated
18. The Re-entry times.com: BOP Residential Drug Abuse Program
19. Knowing Consequences
20. Instruction into legal studies
21. Lasting consequences
22. The reentry times.com Educational program
23. Criminal process the basis
24. My money
25. Level 3 reading practice Martin Luther King Jr.
26. In the Court Room
27. Introduction to Peer tutoring
28. Elements of a good lesson
29. Giving good feed back
30. Peer tutoring: what to expect
31. Tutor Training
32. Tutor Training: working with students
33. Tutor Training: Working with English as a second language

All completed in 2019 Proctor scored 75% or better on all courses, earned certificates and is daily participating in reentry, rehabilitation programs. They attorneys for respondents have never met proctor... they oppose his release to society ^simply because they feel it's part of their job duties to do so.

DEFACTO LIFE SENTENCE

In august, 2017 Proctor filed a State Habeas Corpus petition arguing the 240 years sentence he is serving violated Graham (Record at 3-29) He claimed that because he wouldn't be eligible for parole until after he's 80 years old it would amount to a defacto life sentence.

The Petition also claimed the sentence was grossly disproportionate to his crimes. (This is discussed in next section). The state Court rejected the claim that aggregate ~~sometimes~~ sentences run afoul to Graham and dismissed.

ProctorAppealed to the Arkansas Supreme Court who affirmed. Citing that because Proctor has a parole eligibility date its ~~contrary~~ ^{contrary} to the holding in Graham which prohibits the sentencing of juveniles to life "without the possibility of parole for non-homicide offences"

It reasoned that Proctors 240 Year sentence was the result of multiple convictions any one of which standing alone would not amount to a defacto life sentence.

That court further stated the argument that Proctors ineligibility for Parole until after he's 80 being functionally life without parole based on his Race, gender and medical condition (that may have arisen after incarceration) is not unworkable. And issues of disproportionately (although challenged by Proctor) was not addressed by trial court, therefore not preserved.

What that court ignored was the fact that the multiple nature of a sentence is not central to nor does it negate the unconstitutionality of the sentence offering to the holdings in Miller, Roper and Graham.

Of note herein, in the fact that all Proctors Juvenile Convictions was given in one trial and resulted in one controlling sentence. The Central questions is whether or not that sentence amounts to life without the possibility of parole in the foregoing Supreme Court decisions in Roper, Miller and Graham... the decisions gave relief to some prisoners who were serving Death penalties for multiple homicides... some who were serving life for multiple robberies or rape... the relief given did not consist of an automatic key to freedom,,, but a reduction of the sentences allowing a meaningful opportunity to make parole in this life time after demonstrating worthiness through rehabilitation... no matter what the crimes or amount thereof... as on court noted:

“While Graham’s flat ban on life without parole was for non-homicidal crimes, nothing that graham said about children is crime specific. Thus the reasoning implicates any life without parole sentence for a Juvenile, even as its categorical bar relates only to Non-homicide offenses” **MILLER V. ALABAMA 132 S.CT 2455.**

So the question is obviously not how many convictions there were as ~~the~~ reasoning is not crime specific the question would instead be whether or not the resulting aggregate sentence (that was giving in one trial as a juvenile) amounts to Life in prison without the possibility of parole from the outset for a child?

To explore this question lets first use a hypothetical extreme scenario: a Juvenile is given 500 years in 25 years aggregate terms which he must serve 250 years before the possibility of parole... could we concede then that the aggregate sentence is contractually life without the possibility of parole? That he would not live 250 years?

Proctor contends herein that that extreme situation is in all actuality no different from his own... to illustrate this fact he would like to give **No**

consideration to the fact of medical problems (through extensive) that he acquired while incarcerated

Let's look at life span instead

The 2019 world almanac on page 179 lists the life expectancy of a Black Male age 17 at 61.5 years old.

Now lest not even give consideration to race (although this plays a major role in life expectancy)... it lists the life expectancy of any male that age... just 64.2 years (source: National Center for Health Statistics) this is an average, and some will live past that age... But the point we must look at is when a court hands down a sentence where in all likelihood exceeds the juveniles life span before the possibility of parole... we must concede that in all likelihood that court has sentence that juvenile to life without parole and thus violated the holdings in Graham.

Likewise, in **PEOPLE v. CALBOLLERA SS CAL 4TH 262 (2012)** the California court held that, "Sentencing a Juvenile offender for a non homicide offense to a term of years with a parole eligibility date that falls outside the Juvenile offenders natural life expectancy constitutes cruel and unusual punishment in violation of the 8th amendment". Defendant in that case had 110 years for multiple attempted murders.

The court further noted that Graham's analysis "holds a state must provide a juvenile with some realistic opportunity to obtain release from prison during his expected lifetime" Cabollero, at 268

Whereas, 'there is no question of the 240 years given to Proctor as a Juvenile being unconstitutional and running afoul to the holdings in Graham. There is

equally no question that the standard of Graham is applied regardless of whether juvenile received multiple sentences. Terrance Graham robbed a restaurant at closing, hit the manager in the back of his head with a metal box (requiring stitches), was charged with armed burglary and assault... he was sentenced to 3 years probation after pleading guilty... less than 6 months after his release from Jail, he was involved in an armed home invasion, Robbery. Later that evening he attempted another home invasion and the accomplice was shot. Graham later admitted to police that he had been involved in 2 other robberies before that night.

So there is no doubt that Graham still applies despite multiple convictions.

DISPROPORTIONALITY

Proctor received his convictions ~~unquestionably~~ when some courts was giving no consideration of a Juvenile 16 or 17 years old youth status and the difference between children and adults.... Proctor as a 17 year old child was sentenced in one such court (sup app 4) also (Supp app 1)

Respondents attempt to ignore the reality of whether sentences run multiple sentences concurrent or consecutive plays a vital role in whether that sentence is disproportionate

That argument that any one sentence was not excessive or a violation of Graham standards. However it was stated bent in PEOPLE v. REYES 2013 ILL 119971

A Mandatory term of years sentence that cannot be served in one lifetime has the same effect on a juvenile Defendants life as would a mandatory sentence of life without the possibility of parole. In either situation, the juvenile will die in prison... miller makes it clear that a juvenile may not be sentenced to a mandatory,

unsurvivable prison term without first considering mitigation his youth, immaturity and potential for rehabilitation.

Accordingly, we hold that sentencing a Juvenile offender to a mandatory term of years that is the functional equivalent to life without the possibility of parole constitutes cruel and unusual punishment in violation of the 8th Amendment.

Whereby, consecutive nature of aggregate sentence makes this sentence disproportionate... the fact that no consideration was given to Proctor's youth or mitigating circumstances ~~or~~^{Prior} to imposing it makes it run afoul to miller and Graham.

In addition, where Proctor properly presented the issue of disproportionality before the trial court, who without cause or explanation, declined to address it... and Proctor appealed issue to state high court... his issue was indeed properly preserved, but impeded from state exhaustion by state actor and is properly before this court.

ACT 539
(ARKANSAS STATUTE)

The Arkansas State Legislature passed the “Fair Sentencing for Minors Act”, HEREAFTER (FSMA) Act 539 in 2017 which states in pertinent section:

Section 13 Arkansas Statute § 16-93-621

“A person who is a minor at the time of committing an offense “Before” on or after the effective date of this act.”

(a)(1) a minor who was convicted and sentenced to the department of correction for an offense committed before he or she was (18) years of age and in which the death of one time person “did not” occur is eligible for release no later than after “Twenty” (20) years of incarceration including any sentencing enhancement, and including all instance in which “Multiple Sentences are to be served consecutively” concurrently, unless by law the is eligible for earlier parole release.”

The act went into law on March 20th 2017... more than 2 years ago. Proctor has not been scheduled for a parole hearing despite letters and pleadings to the Parole Board, (See Supp App 2) despite the obvious intended retroactivity of the act. Respondent contend the act does not apply to Proctor.

Act 539 cited Graham as its ~~guiding~~^{FOUNDING} authority. However Graham and Miller are retroactive. If it is indeed a Fair sentencing for Minors act it would have to take into account the minor Terrence Proctor in 1982 and not just the minors that came after him...

The relevance of this is that the respondents allude in their response that Arkansas Law makes juvenile Non-Homicide offenders eligible for parole no more than 20 years of incarceration. (Act 539)

They further state this is a poor vehicle for review simply because of its enactment, alleging the questions will not “reoccur” under Arkansas law... this is not the case because as long as you bind men that by the laws of the lord should be free they will continue to pursue justice until their last days... there are many in Arkansas (and elsewhere) suffering from the fact their life sentence are de facto (given in increments) but life nevertheless as juveniles.

These men have watched murderers be taken off death row and sentenced to life under Rapes, (even Mass murderers)... then watch those same murderers rapists etc... life sentences be reduced to 40 years (setting them free) under Miller... still these men convicted as Juveniles suffer in confinement after nearly four decades.... Men who never killed anyone! Convicted as Juveniles yet denied the benefits of the Application of Graham.

Proctor is the Perfect vehicle to address this (See sub app 1 (transcript)

Somewhere inside the man Terrence Proctor is a 17 year old bewildered Juvenile given the ultimatum “10 Life sentences or 400 years?” by a court that took back the promise not to “ruin” him and vindictively swore; “I’m going to ruin him, to set an example to others.”

A Juvenile that was given no benefit of mitigating circumstances which should have been enough for a reversal decades ago but was never properly adjudicated so the vindictive sentence has stood 37 years.

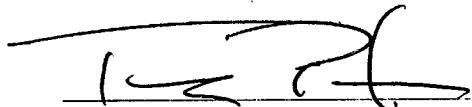
The 55 year old man wonders when is enough punishment enough? We pray that it is now. That comes forward and beseeches the US Supreme Court to continue evolving the standard of decency established in Roper, Graham & Miller and correct the injustice that binds him to prison until he reaches the (unlikely) age

of 87 for the non homicide offense captured in a drugged delinquent 10 day spree 37 years ago.

We pray that the U.S. Supreme Court releases Proctor from the Bindings of injustice that gave the child no hope of rehabilitation or freedom in this lifetime... Bindings that were loosened a little with ropes, and a little more with Graham, more with Miller. Now we are inspired that this court may finally allow Terrence Proctor to know something he has never known. What it feels like to be a free man.

I swear under penalty of perjury the foregoing is true and correct to the best of my knowledge understanding and belief.

This 11th day of September 2019



Terrance Proctor

Varner Unit

PO Box 400

Grady AR. 71644

Edovo Transcript
 AR DOC Varner Unit
 June 20, 2019 – August 29, 2019

Courses Completed	Hours of Education	Lessons Completed
34	74.82	180

Terrance Proctor – Completed Course work

Course	Hours Spent
Anger Management	2.27
ART Aggressive Replacement Therapy	1.83
Button Line: Reason to hire the formerly incarcerated	0.88
Communication: what's the point	0.73
Criminal process the basis	0.08
Domestic Violence	8.14
Elements of a good lesson	0.02
Elevate your future with elevator pitches	0.92
Giving good feed back	0.02
Great interviews and create Jobs for the formerly incarcerated	0.57
In the Court Room	0.03
Instruction into legal studies	0.17
Introduction to Peer tutoring	0.02
Knowing Consequences	0.2
Lasting consequences	0.14
Level 3 reading practice Martin Luther King Jr.	0.05
Make Big Talk – Time	1.57
Make Big Talk – Values and lessons	1.58
Make Big Talk Introduction	0.9
Make Big Talk: Digging Deeper	1.18
Make Big Talk: People and Family	1.22
Make Big Talk: What if?	0.69
Michael G Santos: Strait a guide	27.1
My money	0.05
Parenting while incarcerated	6.28
Peer tutoring: what to expect	0.01
PML: Path of freedom	10.46

Edovo Transcript
AR DOC Varner Unit
June 20, 2019 – August 29, 2019

Reflections and Recovery	1.5
The reentry times.com Educational program	0.1
The Re-entry times.com: BOP Residential Drug Abuse Program	0.29
Thinking for the future CBT	5.78
Tutor Training	0.01
Tutor Training: Working with English as a second language	0.01
Tutor Training: working with students	0.01
Total	74.81

Note: I have nearly completed several more courses by (1) one lesson on each will not upload. I am extremely impressed with these programs it is unfortunate and disheartening staff will not give me the awards of certificates. I plan to implement these when I am released. I am grateful for the opportunity.

Terrance.

**ARKANSAS DEPARTMENT OF CORRECTION
MENTAL HEALTH SERVICES**

RESPONSE FORM

To: Proctor, Terrance ADC#: 087410 Bks.#: CB 2/261
From: Pierce, Annette E, Mental Health Services
Date: 08/11/2016

Your Request for Interview Form was received on: 08/08/2016

Your name has been placed on the waiting list for the appropriate group. This facility has no program assignments - please enter program name. You will be notified when a place becomes available.

 You will be scheduled to review your mental health file.

Mental Health Services in regard to your request is not indicated.

You are to contact the following in regard to your request:

You are to contact the following in regard to your request:

Classification

Records **Security**

Other

Classification

100 Records

Security

■ Other

NOTES

Your request was received in Mental Health regarding all completed classes. Below you will find the classes you have completed through mental health:

Thinking Errors

Domestic Violence

Communication Skills

Stress Management

CC: MENTAL HEALTH FILE

Arkansas High School Diploma

8/14/88

has demonstrated the prescribed competencies necessary to fulfill the requirements of the American Council on Education for issuance of a high school diploma. The Recipient has successfully completed the General Education Development Test in the areas of



is awarded in compliance with the regulations of the State Board of Education
Given on the 4th Day of May A.D. 1992



Director, Vocational and Technical
Education Division

Chairman of the State Board of
Elementary Education

ADD 69