

18-8951

IN THE UNITED STATES SUPREME COURT

ORIGINAL

TERM 2019

NO. _____

Supreme Court of the United States
MAR 13 2010
OFFICE OF THE CLERK

TERRENCE PROCTOR

PETITIONER

V.

WENDY KELLEY, ~~et al.~~,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

TERRENCE PROCTOR #87410

VARNER SUPERMAX

320 HWY 388

GRADY, AR 71644-0600

QUESTIONS PRESENTED

1. Are consecutive, fixed term sentences for juveniles unconstitutional at the outset when they amount functional equivalent of life w/out parole?

Application of Graham

- (a) Was Graham v. Florida meant to be applied to aggregate sentence at outset that deprive juvenile the opportunity to demonstrate maturity and rehabilitation and one day reenter society?

Functional life Sentences for Juveniles

- (b) Whether cumulative sentences for juveniles should be viewed as one sentence when the aggregate nature of sentence exceeds the juvenile's life expectancy?

Proportionality

- (c) Whether requiring non-homicidal juveniles with aggregate sentences to serve more time than juveniles convicted of some crimes with homicide are inherent miscarriages of justice & disproportionate in violation of eighth amendment.
2. Does it violate the 8th Amendment when court undertakes goal of "ruining" juvenile's life at outset with no consideration of mitigation in evidence?

- (a). Was vindictive sentence abuse of discretion at outset?
- (b). Whether youths mitigation unconstitutionally not acknowledged?

LIST OF PARTIES

The Petitioner herein is Terrance Proctor, a prisoner in the Arkansas Department of Correction.

The Respondents are Wendy Kelley, Director of the Arkansas Department of Corrections and the State of Arkansas.

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DECISIONS BELOW

Citations & Rulings

Decisions of the Arkansas Supreme Court are unreported (No. CV – 18 -144) and are attached hereto as Appendix (A. I). Likewise, the decisions of the Lincoln county Arkansas Court (No. 40 CV – 17 – 79 – 5) is unreported and attached as Appendix (A. II).

JURISDICTION

The Judgment of the Arkansas Supreme Court opinion was delivered December 2018. No. CV – 18 – 144, Jurisdiction is conferred by 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Eighth Amendment to the United States Constitution which provides: No U.s. Citizen will be subjected to cruel and unusual punishment.

The Amendment is enforced by Article 2 § 11 of the Arkansas Constitution and Ark. Code Ann. § 16 – 12 – 101 et. Seq. and holdings by the U.S. Supreme Court in Graham v. Florida and Miller v. Alabama.

STATEMENT OF THE CASE

Terrence Proctor is serving a 240 sentence 11 robberies occurring in a ten day period when he was a child of 17 years old. The robberies ranged from armed to driving a getaway car. No one was killed in any of them, no serious injuries.

Proctor being told by his attorney a guilty plea to all charges and waiver of jury would mean the court would be lenient and run the charges concurrent pled guilty, remorsefully throwing himself on the mercy of the court.

However, despite attempts by Proctors mom, attorney and himself to present mitigations this court showed no mercy . . . stating he was "*going to ruin him*" giving him the ultimatum; 10 life sentences or 400 years? Eventually sentencing him to life and an aggregated 200 years for the charges (Commitment attached as Appendix C 1 -11). (Abstract from Transcript App. D.)

Pursuant to Graham v. Florida the life sentence was reduced to 40 consecutive years, leaving the Petitioner serving an aggregate sentence of 240 years. It is the unconstitutionality of a functional life sentence given to juvenile at the outset and unconstitutional vindictive sentencing from which this Petition for Writ of Certiorari arise.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution . . . the Arkansas Supreme Court has jurisdiction and jurisdiction if conferred by 28 U.S.C. § 1331.

REASON FOR GRANTING THE WRIT

A. CONFLICTS WITH DECISIONS OF OTHER COURTS

The holding of the courts below that Graham does not expound to cumulative sentences that result in juvenile remaining in prison their entire lives is directly contrary to holding in State v. Moore, 149 S.Ct. 3d 557 (S.Ct. 2016).

In People v. Caballero, 55 Cal. 4th 262 (2012) the California Supreme Court held that “sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that fall outside the juvenile offenders natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment.” Defendant in that case had 110 years for multiple attempted murders.

The Court noted:

“ Graham analysis does not focus on the precise sentence meted out. Instead, . . . it holds a state must provide a juvenile offender with some realistic opportunity to obtain release from prison during his/her expected lifetime.” Caballero, at 268.

ARGUMENT

The facts of this case are obvious. Terrance Proctor, when a 17 year old child started to hang out with older men and experiment with drugs having no male guidance at home.

He and other (adult) boys embarked on a 15 day rampage to acquire money for drugs. 11 robbers were committed and Petitioner who was told by his attorney that he would receive leniency from the court if he waived jury trial and pled guilty. Pleaded guilty, remorsefully throwing himself on the mercy of the court.

The court who had told defense attorney he "*wouldn't ruin Proctor*" (See Appendix E. I) . . . Turned on him saying, "*I say I'm not going to ruin him . . . I am . . . I'm going to ruin him . . . He was given the ultimatum by the court '10 life sentences or 400 years?*"

His lawyer asked If these could be concurrent terms? The court replied, "how, 400 years will have to be 10 – 40 year sentences,?"

This was done despite defense attorney attempting to offer mitigation factors that Petitioner had participated in programs for the mentally ill, youth . . . His mother offering mitigation there was no father in the home and little mercy. Even Petitioner himself apologizing and admitting to the wrong. (Appendix E. II).

However, unrelentingly the court told this child he was going to punish him.. He was going to use him to send a message to other drug addicts, that he wouldn't tolerate it. (Appendix E. I).

He proceeded to give this 17 year old child one life sentence and 10 – 20 year sentences consecutive amounting to life and 200 years and loss of all hope of even knowing what it would be like to be an adult in society . . . a free man.

This was done vindictively. Evidence by the fact the circumstances of these robberies entailed no one getting killed . . . or even serious injuries.

The punishment that was given to Proctor was cruel and unusual because it runs afoul to this Courts holdings in Graham v. Florida.

Whereas, no juvenile proceeding were taken against Proctor and he want bother illustration actions attempted before the Graham decision as the do not relate to action therein.

This is because after this Court decided Graham Proctor had hope . . . & accordingly, immediately filed a petition for writ of habeas corpus in Lincoln County Circuit Court . . . the life sentence was there after reduced to 40 years consecutive leaving the Petitioner serving 240 years amounting to a functional life w/out parole sentence.

Petitioner seeks relief on basis of cases like Graham v. Florida, 130 S.Ct. 2011 . . . Miller v. Alabama, 567 U.S. 460 (2012). Having his successive habeas corpus denied and that denial affirmed by the Ark. Supreme Court as to Graham application to a aggregate 240 year sentence for multiple offenses.

The Arkansas Supreme Court held that: "it was relevant that Proctor is not sentenced to life w/out the possibility of parole. . . that Graham "only applies to sentences of life without parole."

They rejected the argument that a cumulative 240 year sentence at outset was a sentence of life without parole by another name since the resulting injury would be the same.

Whereby, the denial of habeas relief was affirmed again by the Arkansas Supreme Court.

PROCTOR'S SENTENCES

To begin, we establish the potential prisoner term we are addressing in this case. Proctors sentence fails under Ark. Statute that requires him to serve one half of his time, with time off for good . . . even with all the good time he can receive under the statutes he still would not be eligible for release until after he has served 60 years. (Appendix F I). Proctor illustrates that statistic for life expectancy is 61.3 years of age for men similarly situated. Under current sentence he would be well over that age before ever being considered for release.

There is no dispute that his life expectancy falls well short of 87 years. A black man's life expectancy is 54.9 years according to the U.S. Dept. of Health and Human Services. National Vital Statistic Report Volume 52, Number 3, 25, 26 (2003).

Therefore, we must consider a minimum of 60 years in prison on sentence that extends beyond the life expectancy of the juvenile. We must ask if that sentence is unconstitutional when imposed on a non homicidal 17 year old offender.

PROPORTIONALITY REVIEW

The Eighth Amendment of the United States, states: "*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.*" A key component of the constitution's prohibition against cruel and unusual punishment is the "*precept of justice that punishment for crime should be graduated and proportioned to the offence.*" Weems v. United States, 217 U.S. 349 (1910).

"protection against disproportionate punishment is the central substance guarantee of the Eighth Amendment," Montgomery v. Louisiana, 136 S.Ct. 718 (2016).

There are two classifications of proportionality review. Are involving the length of term of years sentences given in a particular one and the other involving categorical restriction, in this case, we deal with a categorical restriction. Within that classification there are two subject one subject considers the nature of the offense. For example in Kennedy v. Louisiana, 554 U.S. 407 (2008). The United States Supreme Court held that capital punishment is impermissible for defendants who commit a non homicidal rape. The second subject considers the characteristics of the offender Atkins v. Virginia, 536 U.S. 304 (2002). They ruled that the Eighth Amendment prohibits the execution of a mentally retarded defendant.

In recent years, the United States Supreme Court has established categorical prohibitions of certain punishments for juveniles, pursuant to the Eighth Amendment. In Roper v. Simmons, 543 U.S. 551 (2005), the court prohibited imposition of the death penalty on defendants who committed their crime before the age of 18. In Graham, 560 U.S. at 48 the

court prohibited the imposition of life – without – parole for juvenile offenders who did not commit homicide; and in Miller, 567 U.S. 460, the court prohibited the mandatory imposition of life – without – parole sentences on offenders who had committed murder as juveniles.

Our case doesn't concern rape or homicide, so our focus is rightfully on Graham. The court did not address in Graham whether a term of years that extends beyond an offenders life expectancy – a functional life sentence – fall under Graham's categorical bar. It seems apparent it does.

Because notwithstanding Proctors significant non homicidal crimes. Such a sentence is exactly what a majority of the United States Supreme Court agreed was unconstitutional under Graham . . . However, despite the significance of the Graham claim raised by Proctor, the Court of Appeal Summarily dispensed it. Thus Proctor convicted as a juvenile, undisputedly rehabilitated after 37 years and many accomplishments¹; who physically harmed no one, will likely spend the rest of his days in prison, without the intervention of this court.

Graham

Graham held that sentences of life imprisonment without parole for juvenile non homicidal offenders were cruel and unusual in violation of the Eighth Amendment in light of three factors – the limited moral culpability of juvenile non homicidal offenders, the inadequacy of penological theory justifying the length of life – without – parole sentences for such offenders, and the severity of life – without – parole sentence. Graham at 74, 130 S. Ct. 2011.

¹ Proctor graduated high school, completed anger management, domestic violence, wrote 2 books and learned the law while incarcerated.

The court explained a juvenile that did not kill or intend to kill has "twice diminished moral culpability." Based on two factors: The nature of the crime and the juveniles age. Id. at 69.

As for the nature of the crime, the court found that "*although an offense like robbery or rape is 'a serious crime deserving serious punishment'*." ***Edmund v. Florida*** 458 U.S. 797. Those crime differ from homicide crimes in a moral sense "such that non homicide defendants "a categorically less deserving of the most serious forms of punishment than are murders."

Graham at 69.

Under the current practice in many courts the message is; Juveniles who committed double homicide, homicide robbery, homicide rape, ect. . . will have the life – without – parole for capital murder reduced as low as 40 years . . . while juveniles serving aggregated terms amounting to life without parole for non homicide robbery, rape or theft will never have a meaningful opportunity to re – enter society after rehabilitation. It punishes two robberies harsher than 2 murders, murder rape, and murder robbery (as most capital crimes involve multiple felonies) & the resulting incentive is to kill the victim. This is a grave oversight and miscarriage of justice that should be addressed immediately.

In addition, juveniles are less morally culpable then adults due to their youth and what comes with it. And the juvenile that commits multiple offenses in a 10 day spree as with Proctor are to viewed as less morally culpable then one who had the maturity to stop at a single offense.

[Roper and Graham] relied on three significant gaps between juveniles and adults. First, children have a “*a lack of maturity and an under developed sense of responsibility*” leading to recklessness, impulsivity, and needless risk – taking. Roper, 543 U.S. at 569, 125 S.Ct. 1183. Second, 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. And third, a child’s character is not as “*well formed*” and his actions less likely to be “*evidence of irretrievable depravity*, *id.*, at 570, 125 S.Ct. 1183.

The inherently diminished moral culpability and other characteristics of juvenile offenders mean that he recognized, legitimate goals of penal sanctions – retribution deterrence, incapacitation, and rehabilitation – do not – justify the imposition of the harshest penalties on juveniles who have committed non homicidal crimes.

Because of the characteristics of youth, a depraved crime committed by a juvenile may not be indicative of a irredeemable individual:

These silent characteristics mean that “*it is difficult even for a expert psychologist to differentiate between the juvenile offender who’s crime reflects irreparable corruption*” [Roper] at 573, 125 S.Ct. 1183. Accordingly, “Juvenile offenders cannot with reliability be classified amongst the worst offenders. *Id.*, at 569, 125 S.Ct. 1183. A juvenile is not absolved of responsibility for his actions, but his transgressions “*is not as morally reprehensible as that of an adult.*” Thompson v. Oklahoma, 108 S.Ct. 2687 (1988).

Roper and Graham emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest penalties on juvenile offenders even when they commit terrible crimes: Because “*the heart of the retribution rational*” relates to a offenders blame – worthiness. ‘*the case for retribution is not as strong with a minor as with an adult.*” Graham, 560 U.S. at [71] (quoting *Tison v. Arizona*, 481 U.S. 137 (1987)).

Nor can deterrence do the work in this context, because “the same characteristics that renders a juvenile less culpable than adults” – their immunity, recklessness, and impetuosity - make them less likely to consider potential punishment. Graham, 560 U.S. at [72].

Similarly, incapacitation could not support the life – without – parole sentence in Graham; Deciding that a “*juvenile offender will forever be a danger to society*” would require “*making a judgment that he is incorrigible*” – but incorrigibility is inconsistent with youth. 560 at [73] [Quoting *Workman v. Commonwealth*, 429 S.W. 2d 374 (Ky App. 1968)] and for the same reason, rehabilitation could not justify that sentence. Life without parole forswears altogether the rehabilitative ideal 560 U. S. (74) it reflects an irrevocable judgment about (an offender’s value and place in society, at odds with a child’s capacity to change.

The security of life without parole sentences also plays a essential role when determining if cumulative sentences that exceed the life-span of the juvenile are to be considered equal to life without parole. Graham explained that life without parole sentences are harsher when imposed on juveniles than when they are imposed on older defendants.”

Life without parole is especially harsher punishment for a juvenile offender who will on average serve more years and a greater percentage of his life in prison than adult offenders. A 16 year old and a 75 year old each sentenced to life without parole receives some punishment in name only . . . this reality cannot be ignored.

Graham at 70 – 71, 130 S.Ct. 2011.

The imposition of the most severe penalties on juveniles is contrary to what the court intended . . . a life without parole sentence by the nickname of “400 years” or “240 years” is just as severe with imposed on the juvenile and result in same outcome. Above we see Graham was more concerned about severity and the effect on the life of the juvenile, non homicide offender than the name or multiplicity of sentences given.

Likewise, the court described in **Miller**, 567 U.S. at 461 as **Graham** (and Ropers) foundational principle: That imposition of the state’s most severe penalties on juvenile offenders cannot proceed as though they were not children.

The most important attribute of the juvenile offender is the potential for change. **Graham** relates the difficulty in determining whether the commission of a crime is the result of immunity or irredeemable corruption. And so **Graham** protects juveniles categorically from a final determination while they are still children that they are irreparably corrupt and undeserving of a chance to re – enter society. *“it remains true from a moral stand – point it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minors character deficiencies will be reformed”* 560 U.S. at 68.

Although this court recognized a offender convicted as a juvenile can ultimately spend a lifetime in jail, the offender has to be given at some point, a chance to prove himself worthy of reentering society, a sentence must not "deny the juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations lest the Eighth Amendment's rule against disproportionate sentences be a nullity. *Id.* at 73. Graham mandated, "*the Eighth Amendment does not foreclose the possibility that a homicide offender who committed crimes before adulthood will remain behind bars for life. It does prohibit states from making the judgment at the outset that those offenders will never be fit to reenter society.*"

With Proctor there is ample evidence in the record that a decision was made at the outset he'll never be where the court ranted the ultimatum "10 life sentences or 400 years!" and although vindictiveness and a desire to punish played a bigger role than any legitimate penal interest in issuing a sentence proportionate to the juvenile's crimes the results are that Proctor will not be given a chance to demonstrate rehabilitation and maturity and be released in his lifetime.

The court in Graham did not establish a limit to how long a juvenile can remain imprisoned before getting the chance to demonstrate maturity and rehabilitation. But it is clear that this Court intended more than simply to allow juveniles – turned – nonagenarians the opportunity to breath their last breaths as free people. The intent was not to allow offenders to leave prison and die but to live part of their lives as rehabilitated, productive members of

society. The court in *Montgomery*, a case that involved a defendant that had been convicted of murder as a juvenile:

In light of what this court has said in *Roper*, *Graham*, and *Miller* about – how children are constitutionally different from adults in their level of culpability . . . prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption, and if not their hope for some years of life outside prison walls must be restored.

Montgomery 136 S.Ct. at 73.

It does not take an entire life time for a juvenile offender to earn a chance to demonstrate that he is not irredeemable² . . . it shouldn't take that long to be given that opportunity.

Pursuant to this Court's guidance in *Graham* . The Eighth Amendment prohibits the imposition of a sentence that denies a juvenile. Some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Term of Years

The Arkansas Supreme Court argues that *Graham* only applies to juvenile offenders sentenced to life – imprisonment without the possibility of parole for a non-homicide offense.

The parole board for the State of Arkansas agrees that Proctor is rehabilitated and has approved him for clemency trice . . . and in the words of Arkansas Supreme Court Justice

² Proctor completed anger management, thinking errors, domestic violence course, obtaining his high school diploma within the 1st decade if incarceration. He has written two novels yet he's been incarcerated 37 years.

Josephine Linker Hart who wrote concurring opinion disagreeing with the majority . . . ; "The goal of rehabilitation is not served by a defacto life sentence because society will never benefit by a man who never leaves prison.

The parole process is the proper vehicle for determining whether a convicted person is ready to re-enter society. Justice requires us to do more than simply throw away the key."

However, Proctor will not be eligible for parole in his expected lifetime . . . being approved by the clemency board has been in vain as the governor has denied it both times . . . Clemency is seldom granted therefore not a option to satisfy a meaningful opportunity to demonstrate maturity and rehabilitation and be released to re-enter society.

Graham applies equally to juvenile non-homicidal offender sentenced to prison for a term of years that extends beyond the offender's life expectancy.

This Court in Graham cited the lessened moral culpability of juvenile offenders, the severity of the sentence, and the inapplicability of penological justifications for life sentences for juveniles as reasons for declaring life sentences for juvenile's non-homicidal offenders unconstitutional under the Eighth Amendment. Those same factors apply to a term of years prison sentence that exceeds the juvenile offenders expected life span.

As the court stated in Miller . . . "children are different and 'our history is replete with laws and judicial recognition that children cannot simply be viewed as miniature adults.'" (quoting Eddings v. Oklahoma, 455 U.S. 104.).

The protections illustrated by this Court flow from the juveniles status, the question that must be considered is whether, under Graham, there is a consequential distinction between the life sentence imposed in Graham and the sentence imposed in this case, which extends beyond Proctor's life expectancy.

Did the trial Court sentence Proctor to life in prison? Undoubtedly that was the aim, as reflected in the statement "*I say I'm not going to ruin him, I am, I'm going to ruin him.*" The fact that Proctor could survive his current sentence is not outside the realm of possibility . . . he will become eligible in his late 80's . . . Still Proctor would be very old and well beyond his life expectations before he had the first chance for parole.

As discussed in Graham, under a life – without – parole sentence a juvenile "*will on average serve more years and a greater percentage of his life in prison than a adult offender.*" Graham, 560 S.Ct. 70.

The same mathematical reality – that a person who begins serving a life sentence as a juvenile. Serves a greater number of years and greater percentage of his/her life in prison than a person who steal serving his sentence as a adult extends to multi-decade sentences that out span a juveniles life expectancy. The practical reality is that juveniles sentenced to terms extending beyond their life expectancy are serving the lengthiest sentences – in terms of the number of years to serve in prison – that a state can impose.

In Sumner v. Shuman, 483 U.S. 66 (1987) this Court compared sentences of life without parole terms extending beyond the offenders life expectancy in addressing Nevada statute that

imposed a mandatory death sentence on a prisoner who committed murder in prison while serving a life – without – parole sentence. The court responded to the argument that the death penalty was a necessary deterrent to a person serving a life – without – parole sentence: “*close consideration of the deterrence argument also points up the fact that there is no basis for distinguishing, for purposes of deterrence, between a inmate serving a life sentence without the possibility of parole and a person serving several sentences of a number of years, the total of which exceeds his normal life expectancy.*” Id. The court recognized that a person serving a term – of – years extending beyond his life expectancy is in as hopeless a situation as a person serving life without parole.

Deterrence is also insufficient to justify the practice of imposing a sentence on a juvenile that extends past his life expectancy. Graham held that “*deterrence does not suffice to justify*” a life sentence: “*because juvenile’s lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill – considered actions and decisions.*” Johnson v. Texas, 113 S.Ct. 2658 (1993) they are one less likely to take a possible punishment into consideration when making decisions.

The penological goal of incapacitation falls short as a justification for term – of – year’s sentence that extends beyond a juvenile’s expected lifespan because of the inability to determine whether a juvenile offender is incorrigible and necessitates being separated from society for what will be the remainder of the juvenile’s life time. “*To justify life without parole on the assumption that the juvenile offender will be a danger to society forever requires a*

sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable.” Id. at 72, 130 S.Ct. 2011.

Finally, as far as rehabilitation is concerned, like a life without parole sentence, a term – of – year’s sentence that extends beyond the juvenile’s life expectancy “forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the state makes an irrevocable judgment about that person’s value and place in society. This judgment is not appropriate in light of juvenile non-homicide offender’s capacity for change and limited moral culpability. Id. at 74, 130 S.Ct. 2011.

The Sentence imposed on Proctor (240 years) is a functional life sentence. We see no significant difference between a sentence of life without parole imprisonment and a term – of – year’s prison sentence that would extend beyond the defendant’s expected life span before the possibility of parole. This Court in Graham was not barring a terminology – *“life without parole – but rather punishment that removes the juvenile from society without a punishment that removes the juvenile from society without a meaningful chance to demonstrate rehabilitation and obtain release. The state may not impose a sentence at outset it’s harshest sentences on a person with twice diminished moral culpability.*

It makes little sense that a juvenile sentence to prison for life without parole would get a chance under Graham, to prove his/her rehabilitation and be released but a juvenile sentenced to a functional life term would not. Could a court that imposed an unconstitutional life – without – parole sentence on a juvenile offender correct Eighth Amendment deficiencies upon

remand by resentencing the defendant to a term of years where the parole date would be outside the life expectancy of the defendant? *Certainly not.*

So apparently this Court was more focused on juveniles having meaningful opportunity for rehabilitation than manner of sentence imposed.

Furthermore, the United States Supreme court has all but abolished life – without – parole sentences even for those juveniles who commit homicide:

Miller did not go so far as to bar courts from imposing the sentence of life without the possibility of parole on a juvenile. Yet because of the severity of that penalty, and because youth and its attendant circumstances are strong mitigation factors, that sentence should rarely be imposed on juveniles.

State v. Long, 138 Ohio St. 3d 478; Miller, 567 U.S. at 479.

As this Court recognized in Montgomery, before Miller, every juvenile convicted of a homicide offense could be sentence to life – without – parole. After Miller, it will be the rare juvenile who can receive the same sentence.” Montgomery, 136 S.Ct. at 734. Graham cannot stand for the proposition that juveniles who do not commit homicide must serve longer terms in prison than the vast majority of juveniles who commit murder. Who, because of Miller, are all but assured the opportunity to demonstrate maturity and rehabilitation at some point in their sentence and be released.

Under his current sentence, Proctor will probably die in prison after a entire adult life time of suffering the pains of incarceration; if he by some outside chance survived, he would

be 87 years old . . . his period of incarceration would likely be near the longest ever served in Arkansas. That would be the case despite the fact he didn't commit the ultimate crime of murder and was not a fully formed adult when he committed his non-homicide crimes. The imposition of the state's most severe penalties on juvenile offenders cannot proceed as if they were not children." Miller at 474.

Because Proctor was a child when he committed his crimes, he must be treated differently pursuant to our interpretation of this Court in Graham. The key principle in Graham seemed to be that the commission of a non-homicide offense in childhood should not preclude the offender from the opportunity to someday demonstrate that he is worthy to reenter society. The constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A state need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him with some realistic opportunity to obtain release before the end of that term." Graham, 560 U.S. at 82.

Graham decreed that the fact defendant in that case would have no opportunity to obtain release, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes. It seems this Court envisioned that any non-homicide juvenile offender would gain an opportunity sooner than 3 quarters a century in prison. Graham is less concerned about how many years a offender served in long term than it is about the offender having a opportunity to seek release while it is still meaningful.

We can determine that pursuant to Graham a sentence that result in a juvenile offender being 87 years old before he could obtain release for the first time based on demonstrated

maturity and rehabilitation does not provide a meaningful opportunity to reenter society and is therefore unconstitutional under the Eighth Amendment.

Multiple Offenses

The state also argues that Graham does not extend to juveniles sentenced to lengthy prison terms consisting of multiple consecutive fixed – term sentences for non – homicide offenses. The state argues that Graham Court simply held the Eighth Amendment forbids the sentence of life imprisonment without parole for juvenile offenders who commit a single non-homicide offense. *We beg the differ.*

We note that defendant Graham had committed multiple offenses. When Graham was 16 years old he and a accomplice entered a restaurant at closing time with the intent to rob it; the accomplice hit the restaurant manager in the back of the head with a metal box, causes a head injury that required stitches. Graham was charged as an adult with armed burglary with assault or batter, a first degree felony carrying a maximum penalty of 15 years imprisonment. He plead guilty to both charges under a plea agreement. The trial court withheld adjudication of guilt and sentenced Graham to three years probation, the first year of which he had to spend in the county jail. Less than six months after his release from jail, Graham was involved in armed home – invasion robbery. Later that same evening, he and his accomplices attempted another home invasion, and an accomplice was shot. Graham latter admitted to police that he had been involved in two other robberies before that night. Id. at 54-55, 130 S.Ct. 2011.

The trial court found Graham had violated his probation by committing a home – invasion robbery, by possessing a firearm, and by associating with persons engaged in criminal activity. Id. at 55, 130 S.Ct.2011.

Citing an escalating pattern of criminal conduct and a desire to protect the community, the trial court sentence Graham to the maximum sentence on each of the two original charges – life and the first charge and 15 years on the second. Id. at 57, 130 S.Ct. 2011.

The Supreme Court acknowledged that Graham committed serious crimes early on in his period of supervised release. “*posed an immediate risk and needed to be separated from society.*” And in full recognition of the multiple crimes that Graham committed, the court concluded however, that “it does not follow that he would be a risk to society for the rest of his life.”

Meaning, the nature or the number of crimes he committed was less important than who he was at the time he committed them: A juvenile whose age, coupled with his commission of non-homicide crimes, left him with “*limited moral culpability*” such that he could not be condemned at the outset to a lifetime in imprisonment without any hope of release. Id. at 74, 130 S.Ct. 2011.

This court created a “*clean line . . . necessary to prevent the possibility that the life without parole sentences will be imposed on juvenile non-homicide offenders who are not sufficiently culpable to merit that punishment.*”

Graham enunciated “a categorical rule that gives all juvenile non-homicide offenders a chance to demonstrate maturity and reform.” Id. at 79, 130 S.Ct. 2011. It did not limit that holding to juveniles who were sentenced for only one offense.

The holding in Graham thus applies to all juveniles who did not commit homicide...

Proctor fits that description.

Consistency With Other States

Some states have already decided Graham applies to multiple, cumulative sentences that are the functional equivalent to life – without – parole. They’ve thereby decided, applying the Eighth Amendment protections of Graham and Miller, that there’s no distinction between sentences of life imprisonment without parole and sentences that extend beyond a juveniles life expectancy.

In People v. Cabollero, 55 cal. 4th. 262 (2012) the California Supreme Court held that “*sentencing a juvenile offender for a non-homicidal offense to a term of years with a parole date that falls outside the juveniles natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment.*” The defendant in that case had been convicted of multiple counts of attempted murder and would become eligible for parole only after serving 110 years. The court stated that Graham’s analysis does not focus on the precise sentence meted out. Instead, it holds that a state must provide a juvenile offender with some realistic opportunity to obtain release from prison during his/her expected life – time.

Cabollero at 268.

In Henry v. State, 175 S.O. 3d 675 (Fla. 2d s) the Florida – Supreme Court declared unconstitutional a term – of – years sentence imposed on a non-homicidal offender. The defendant in Henry had been sentenced to a aggregate sentence of 90 years, with mandatory prison time until he reached the age of 95. The court declared that sentence unconstitutional pursuant to Graham the court pointed out the specific term or terminology of the sentence is not determinative as to whether the sentence violates the Eight Amendment.

"Thus, we believe that the Graham court had no intention of limiting its new categorical rule to sentences denominated under the exclusive term of 'life in prison': instead, we have determined that Graham applies to ensure that juvenile non-homicide offenders will not be sentenced to a term of imprisonment that does not afford them meaningful opportunities of early release based on a demonstrated maturity and rehabilitation." Henry at 679-680.

Similarly, the Wyoming Supreme Court has held that lengthy aggregate sentences for closely related crimes whose practice effect is that the juvenile offender will spend his lifetime in prison triggers the 8th Amendment protections set forth by the United States Supreme Court in Miller. Bear Cloud v. State, 2014 WY 334 P. 3d 132 . . . The defendant in Bear Cloud had been convicted of murder and aggravated burglary and sentenced to a term of 45 years. The Court concluded:

"The United States Supreme Court's Eighth Amendment jurisprudence requires that the process be followed before we make the judgment that juvenile 'offenders never will be fit to reenter society' Graham, 56 U.S. 75. That process must be

applied to the entire sentencing package, when the sentence is life without parole, or when aggregate sentences result in the functional equivalent of life without parole."

In the words of the court in People v. Reyes, 2013 Ill. 119971.

"A mandatory term of year's sentence that cannot be served in one lifetime has the same protection effect on a juvenile defendant's life as would a mandatory sentence of life without 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 in mitigation his youth, immaturity and potential for rehabilitation. Accordingly, we hold that sentencing of juvenile offenders to a mandatory term of years that is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the 8th Amendment."

We agree.

However, contrary to this sentiment there are other courts as the court in Proctor's petition that hold the Graham standards does not apply to multiple sentences that are not life without the possibility of parole.

Although that argument doesn't make much sense when your aim is protecting the juvenile from the event of life imprisonment without a chance at rehabilitation, still . . . the

nation is divided on the subject and the courts call for the United States Supreme Court to speak.

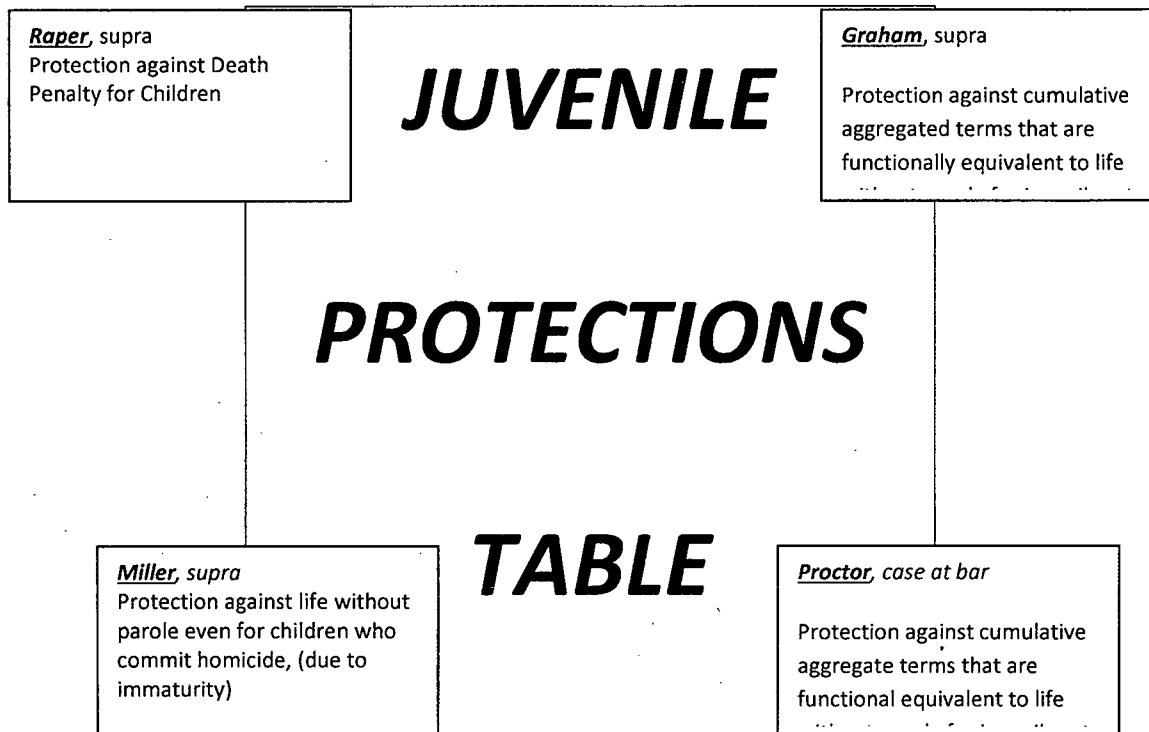
The states that are on the other side of the table on this issue contend the United States Supreme Court did nothing in Graham to indicate it applied to multiple sentences given to children.

In Bunch v. Smith, 685 F. 3d 546 (6th Cir. 2012) the court concluded that both cases involved juveniles who committed non-homicidal offenses. Bunch involved “consecutive fixed – term – sentence – the longest of which is 10 years, for committing multiple non-homicide offenses. The court said that Graham made it clear it concerns only those juvenile offenders sentenced to life without parole sole for non-homicide offenses.”

The court concluded by saying “ ‘ if the United States Supreme Court has more in mind, it will have to say what it is” quoting Henry v. State, 82 So. 3d 1084 (Fla. App. 2012).

However, there are still hundreds (maybe thousands) of people who received sentences as juveniles that amounts to the rest of their days behind bars without the possibility of parole. All because the states are split on the applicability of Graham and whether cumulative aggregated sentences, that are the functional equivalent to life without parole in prison, involves the protection of the Eighth Amendment prohibition against cruel and unusual punishment.

Whereby, we invite the U.S. Supreme Court to erect Proctor as the forth leg of the table that juvenile protections stands on. So that not one child will be condemned to spend all of their days imprisoned without at least one chance for rehabilitation, reform and parole.



Vindictive Sentence

The Petitioner herein also asks the Court the question of whether his non-homicide sentence . . . originally life and 200 years . . . was unconstitutionally vindictive where the court made the statements: "*I'm not saying I'm I'm not going to ruin him. I am, I'm going to ruin him*" . . . and gave the ultimatum "*10 life sentences or 400 years?*"

The court continued to state that Petitioner would be used "*to send a message to drug addicts that I won't tolerate it.*"

And where court refused to accept the mitigation give by Petitioners mother of the child troubled youth.

Where court refused to accept mitigation offered by council that Petitioner had been part of a mental treatment participant.

Where child plead guilty, apologized and admitted fault and waived jury throwing himself on mercy of court. Admitting to drug use and was in turn sentences to life and 200 years.

Court abused the discretion invested by judicial system and abused this child in a intentional act to "ruin" the non-homicidal child's life . . . whether or not he succeeded 37 years ago depends on this Court today, and how they apply the Eighth Amendment to the United States Constitution.

Conclusion

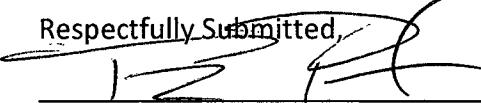
Graham is one of the most momentous decisions in American juvenile law. Given its significance, the stated intentions of the judge in Proctors case, the defacto life sentence of 240 years imposed.

The fact that Miller made the opportunity for release from prison in their lifetime mandatory for every homicide offenders convicted as juveniles.

It would not be evenhanded justice to continue to require juvenile convicted of multiple crimes to serve functional life without parole sentences for non-homicidal offenses.

Whereby, we ask the Court to decide these issues and grant Certiorari.

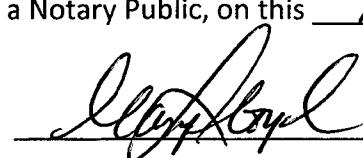
Respectfully Submitted,



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State of Arkansas)
)
)
County of Lincoln)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 12 day of
March, 2019.



Notary Public

My Commission Expires: 03-16-2025