TUNING THE MORAL COMPASS: THE EVOLVING STANDARDS OF SENTENCING JUVENILE CRIMINAL DEFENDANTS AS ADULTS

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I. INTRODUCTION

Youth cannot know how age thinks and feels. But old men are guilty if they forget what it was to be young.[1]

With introspection, most everyone can remember a foolish decision s/he had made as a child. Typically, these poor choices do not result in permanent consequences. Indeed, many people have likely been able to engage in lapses of judgment as a child and emerge without a blemish as an adult. However, such a circumstance is not the case for some youths with childhood backgrounds that are far more traumatic than most. Their impudent decisions can result in a lifetime of regret, and, in the circumstance of criminal offenses, a lifetime of incarceration. The United States Supreme Court has long recognized that juvenile criminal defendants "no matter how sophisticated, [are] unlikely to have any conception of what will confront him [or her] when he [or she] is made accessible only to the police."[2] Nevertheless, states such as Illinois have historically exposed juvenile criminal defendants to mandatory lifetime incarceration penalties[3] as well as terms of imprisonment with mandatory statutory incarceration enhancements.[4]

While the idea of treating juvenile criminal defendants with more leniency may be well-established, the resonance of such an ideal hasn't actualized into practical effect in many circumstances historically in Illinois. The United States Supreme Court may have noted long ago that a juvenile criminal defendant may be "unable to know how to protect his own interests

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1. J.K. ROWLING, HARRY POTTER AND THE ORDER OF THE PHOENIX 826 (2003).
2. Gallegos v. Colorado, 370 U.S. 49, 54 (1962).
3. 730 ILL. COMP. STAT. 5/5-8-1(a)(1)(a-b) (1997)(amended 2015).
4. 720 ILL. COMP. STAT. 5/18-2 (b). *See also*, 730 ILL. COMP. STAT. 5/5-4.5-105 (amending the mandatory statutory incarceration enhancement when applied to juvenile defendants).

or how to get the benefits of his constitutional rights."[5] However, in relatively recent history in Illinois, a 12 year-old defendant's confession after being interrogated for approximately four hours without an adult or juvenile officer was held to be knowingly and voluntarily made.[6] Still, it is never too late to admit errors in reasoning and adopt a more prudent practice for the future. Illinois has recently demonstrated such wisdom through the legislature and the trial and appellate courts.

II. BACKGROUND

Article I, Section 11 of the Illinois Constitution mandates that "all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship."[7] Commonly known as the Proportionate Penalties Clause, this directive has generated significant impact into the evolving standards of treatment and sentencing for criminal juvenile defendants in Illinois. In Illinois, there are standard ranges of imprisonment that a trial court may impose for a particular criminal offense – with the most severe sentencing ranges for Class M Felonies to the least severe sentencing ranges for Class C Misdemeanors.[8] Typically, a trial court is entitled to substantial deference in imposing a sentence within the prescribed statutory sentencing range because it has "the opportunity to weigh [sentencing] factors [such] as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age."[9] Nevertheless, several distinct criminal felonies within the State of Illinois have mandatory statutory incarceration enhancements.[10]

The United States Supreme Court has traditionally noted that prosecutorial discretion "is an integral feature of the criminal justice system,

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5 *Id.* at 54.

6 *In re* Potts, 58 Ill. App. 3d 550, 555, 374 N.E.2d 891, 895 (1 Dist. 1978).

7 ILL. CONST. 1970, art. I, § 11.

8 *See generally*, 730 ILL. COMP. STAT. 5/5-4.5-20 (Class M Felonies); 730 ILL. COMP. STAT. 5/5-4.5-25 (Class X Felonies); 730 ILL. COMP. STAT. 5/5-4.5-30 (Class 1 Felonies); 730 ILL. COMP. STAT. 5/5-4.5-35 (Class 2 Felonies); 730 ILL. COMP. STAT. 5/5-4.5-40 (Class 3 Felonies); 730 ILL. COMP. STAT. 5/5-4.5-45 (Class 4 Felonies); 730 ILL. COMP. STAT. 5/5-4.5-55 (Class A Misdemeanors); 730 ILL. COMP. STAT. 5/5-4.5-60 (Class B Misdemeanors); 730 ILL. COMP. STAT. 5/5-4.5-65 (Class C Misdemeanors).

9 People v. Stacey, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000).

10 *See*, 730 ILL. COMP. STAT. 5/5-8-1(a)(I)(d) (First Degree Murder); 720 ILL. COMP. STAT. 5/8-4(c) (B-D) (Attempted First Degree Murder); 720 ILL. COMP. STAT. 5/12-3.05(h) (1-3) (Aggravated Battery to a Child); 720 ILL. COMP. STAT. 5/9-1.2 (d) (2-4) (Intentional Homicide of an Unborn Child); 720 ILL. COMP. STAT. 5/19-6(c) (Home Invasion); 720 ILL. COMP. STAT. 5/11-1.30(d)(1) (Aggravated Criminal Sexual Assault); 720 ILL. COMP. STAT. 5/11-1.40(b)(1) (Predatory Criminal Sexual Assault of a Child); 720 ILL. COMP. STAT. 5/18-2(b) (Armed Robbery); 720 ILL. COMP. STAT. 5/18-4(b) (Aggravated Vehicular Hijacking); 720 ILL. COMP. STAT. 5/10-2(b) (Aggravated Kidnapping).

and is appropriate, so long as it is not based upon improper factors."[11] While a prosecutor's discretion is still subject to Constitutional limitations, a prosecutor is imbued with a wide latitude of decision making that allows him/her to elect to charge an offense with a harsher penalty even when there is an identical offense with a lesser penalty available for charging a criminal defendant.[12] The Illinois Supreme Court has repeatedly echoed such a policy that: "the State's Attorney has always enjoyed wide discretion in similar matters, including the right to decide whether to initiate any prosecution at all, to choose which of several charges shall be brought, to decide whether to charge a juvenile as an adult, and to manage the criminal litigation."[13] This prosecutorial discretion, in turn, naturally limits the sentencing power of a trial court – once a criminal defendant is convicted of an offense with a prescribed statutory sentencing range, the trial court must fashion its sentence within those confines. For, while "a trial court has broad discretionary powers when imposing a sentence,"[14] trial courts must adhere to sentencing schemes devised by their State, as "legislatures exercise their acknowledged power to fix punishments for crimes [and] necessarily limit the discretion of courts when imposing [a] sentence."[15] Thus, trial courts – while duly noted as the courts of original jurisdiction – are essentially rendered powerless to impose a sentence outside of the mandatory minimum and maximum ranges prescribed by the Legislature.

While this system of checks and balances is generally efficient, mandatory statutory incarceration enhancements can create punishments that are ineffective in achieving the goal of "restoring the offender to useful citizenship" for juvenile criminal defendants.[16] Recently, the United States Supreme Court has reconsidered its stance on whether particular types of mandatory sentences pertaining to juveniles are Constitutional, and the effect of its decisions in *Miller v. Alabama* and *Montgomery v. Louisiana* have influenced the sentencing rules of law for juvenile criminal defendants in Illinois.[17]

III. MILLER AND MONTGOMERY

In 2012, the United States Supreme Court established a historic rule of law pertaining to the sentencing of juvenile criminal defendants and

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11 United States v. Labonte, 520 U.S. 751, 762 (1997).
12 United States v. Batchelder, 442 U.S. 114, 119-20 (1979).
13 People v. Dunigan, 165 Ill. 2d 235, 250, 650 N.E.2d 1026, 1032-33 (1995); People ex rel. Carey v. Cousins, 77 Ill. 2d 531, 539, 397 N.E.2d 809, 813-14 (1979).
14 People v. Alexander, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1065 (2010).
15 People v. Taylor, 102 Ill. 2d 201, 208, 464 N.E.2d 1059, 1063 (1984).
16 ILL. CONST. 1970, art. I, § 11.
17 *See*, Miller v. Alabama, 567 U.S. 460 (2012); *See also*, Montgomery v. Louisiana, S. Ct. 718 (2016).

mandatory statutory incarceration sentences.[18] Specifically, a divided majority panel led by Justice Kagan[19] established that sentences of "mandatory life without parole for those under the age of 18 at the time of their crimes violate[d] the Eighth Amendment's prohibition on 'cruel and unusual punishments.'"[20] In *Miller*, two cases from the states of Arkansas and Alabama were consolidated for consideration before the United States Supreme Court.[21] In both cases, the respective 14-year-old criminal defendants were tried as adults, convicted of murder, and sentenced to a mandatory term of life imprisonment without the possibility of parole.[22] Based on the sentencing statutes in each state, the trial courts had no discretion "to impose a different punishment" other than a life sentence without the possibility of parole.[23] In examining the issue before them, Justice Kagan considered "two strands of precedent reflecting [societal] concern with proportionate punishment."[24] The first strand of precedent pertained to "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty."[25] Justice Kagan noted that "several of the cases in this group have specially focused on juvenile offenders, because of their lesser culpability."[26] In reviewing the precedential value of this first line of cases, Justice Kagan specifically culled three points of emphasis pertaining to the disposition of juvenile criminal defendants:

> First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. 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

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18 *See generally*, *Miller*, 567 U.S. 460.

19 Justices Kennedy, Ginsburg, Breyer, and Sotomayor joined. Justice Breyer filed a concurring opinion in which Justice Sotomayor joined. Chief Justice Roberts filed a dissenting opinion, with Justices Scalia, Thomas, and Alito joining. Justice Thomas filed a dissenting opinion, in which Justice Scalia joined. Justice Alito also filed a dissenting opinion, in which Justice Scalia joined.

20 *Miller*, 567 U.S. at 489.

21 *Id.* at 465.

22 *Id.* at 465-68.

23 *Id.* at 465.

24 *Id.* at 470.

25 Miller v. Alabama, 567 U.S. 460, 470 (2012).

26 *Id.; See generally*, Graham v. Florida, 560 U.S. 48 (2010), as modified (July 6, 2010) (the United States Supreme Court held that the Eighth Amendment prohibits the imposition of life without parole sentence on juvenile offender for a non-homicide offense); Roper v. Simmons, 543 U.S. 551 (2005) (the United States Supreme Court held that the Eighth and Fourteenth Amendments prohibit the execution of individuals who were under 18 years of age at the time of their capital crimes; abrogating Stanford v. Kentucky, 492 U.S. 361 (1989)).

> character is not as well formed as an adult's; his [or her] traits are less fixed and his [or her] actions less likely to be evidence of irretrievable depravity.[27]

Justice Kagan noted that the second strand of considered precedent pertained to the prohibition of mandatory sentences of capital punishment that precluded the sentencing authority from considering "the characteristics of a defendant and the details of his offense before sentencing him to death."[28] Justice Kagan highlighted the underlying policy of these cases, that "mandatory life without parole for a juvenile precludes consideration of his [or her] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences."[29] Accordingly, Justice Kagan held that "the confluence of these two lines of precedent led to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment."[30]

Justice Kagan also directly responded to the two arguments posited by the dissenting opinions in *Miller*; namely, (1) that the majority's holding would conflict with established precedent and (2) that the majority's holding did not respect the province of prosecutorial discretion in transferring a juvenile criminal defendant from a juvenile court setting to a criminal adult setting. As to the first dissenting argument, Justice Kagan acknowledged the holding of *Harmelin v. Michigan*, 501 U.S. 957 (1991), wherein a defendant was "sentenced to a mandatory life-without-parole term for possessing more than 650 grams of cocaine."[31] There, the United States Supreme Court upheld the sentence and deemed it "not otherwise cruel and unusual" simply because of its mandatory imposition.[32] Justice Kagan characterized the argument as "myopic" since the *Harmelin* decision did not focus on a juvenile criminal defendant.[33] As to the dissenting argument pertaining to prosecutorial discretion, Justice Kagan conceded that 29 States (at that time) had enacted statutes pertaining to mandatory life without parole sentences for juvenile criminal defendants.[34] However, "about half [of these States] place[d] at least

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27 Miller v. Alabama, 567 U.S. 460, 471 (2012) (internal quotations and brackets omitted).

28 *Id.* at 470; *See generally*, Woodson v. North Carolina, 428 U.S. 280 (1976) (the United States Supreme Court held that the Eighth and Fourteenth Amendments prohibit a mandatory sentence of death for first-degree murder without individualized consideration of the defendant and the circumstances of the particular offense); Johnson v. Texas, 509 U.S. 350 (1993) (the United States Supreme Court held that a jury instruction pertaining to future dangerousness to society reflected a sufficient consideration for sentencing in a capital murder case); Eddings v. Oklahoma, 455 U.S. 104 (1982) (the United States Supreme Court vacated and remanded a sentence of death because trial court was required to consider mitigating circumstances before imposing a sentence).

29 Miller v. Alabama, 567 U.S. 460, 477 (2012).

30 *Id.* at 470.

31 Harmelin v. Michigan, 501 U.S. 957, 995 (1991).

32 *Id.*

33 *Miller*, 567 U.S. at 481.

34 *Id.* at *487*.

some juvenile homicide offenders in adult court automatically, with no apparent opportunity to seek transfer to juvenile court."[35] Justice Kagan reasoned that these situations drastically undermined the dissent's claim, as there could be no exercise of prosecutorial discretion for consideration of the characteristics of the juvenile criminal defendant in such circumstances.[36] Furthermore, several more states simply provided prosecutors with unbridled power to elect to transfer a juvenile criminal defendant into adult criminal court "with no statutory mechanism for judicial reevaluation" and a lack of clear "standards, protocols, or appropriate considerations for decision-making" for prosecutors.[37] Accordingly, Justice Kagan noted that the majority was not simply introspective in its ruling but rather, its decision was based upon established precedent.

Nevertheless, the fact that 29 States (including Illinois)[38] had enacted statutes pertaining to mandatory life without parole sentences for juvenile criminal defendants created an uneasy tension with the holding in *Miller*. The question now was whether the *Miller* holding could be retroactively applied to previously sentenced defendants serving mandatory life terms without parole for crimes they had committed under the age of 18. In just a few years, various courts established diametrically opposed precedent regarding whether the *Miller* holding should be retroactively applied.[39] In 2016, the United States Supreme Court in *Montgomery v. Louisiana*, affirmatively responded that the *Miller* holding should be retroactively applied to previously sentenced defendants who were under the age of 18 at the time of the commission of their criminal offenses.[40] In *Montgomery*, the defendant was 17 years old when he committed the murder of a deputy in 1963.[41] The trial court subsequently imposed a mandatory sentence of life imprisonment

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35 *Id.*

36 *Id.*

37 *Id.* at 497-98; *reference* U.S. DEP'T OF JUST., OFF. OF JUV. JUST. AND DELINQ. PREVENTION, Patrick Griffin, Sean Addie, Benjamin Adams & Kathy Firestine, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting,* JUV. OFFENDERS & VICTIMS: NAT'L REP. SERIES, Sept. 2011, at 1.

38 Previous version of 730 ILCS 5/5-8-1(a)(1)(a-b) (1997 ILL. P.A. 396 – Enacted August 15, 1997 – valid to July 27, 1998).

39 Montgomery v. Louisiana, 136 S. Ct. 718, 723 (2016), as revised (Jan. 27, 2016), comparing Martin v. Symmes, 782 F.3d 939, 943 (8th Cir. 2015) (*Miller* holding was not retroactively applicable); Johnson v. Ponton, 780 F.3d 219, 224–226 (4th Cir. 2015) (*Miller* holding was not retroactively applicable); Chambers v. State, 831 N.W.2d 311, 331 (Minn.2013) (*Miller* holding was not retroactively applicable); and State v. Tate, 130 So.3d 829, 841 (La. 2013) rehearing denied 2014 (*Miller* holding was not retroactively applicable), with Diatchenko v. District Attorney for Suffolk Dist., 1 N.E.3d 270, 278–282 (Mass. 2013) (*Miller* holding was retroactively applicable); Aiken v. Byars, 765 S.E.2d 572, 578 (S.C. 2014) (*Miller* holding was retroactively applicable); State v. Mares, 335 P.3d 487, 504–508 (Wy. 2014) (*Miller* holding was retroactively applicable); and People v. Davis, 2014 IL 115595, ¶ 41 (*Miller* holding was retroactively applicable).

40 Montgomery v. Louisiana, S. Ct. 718, 732 (2016), as revised (Jan. 27, 2016).

41 *Id.* at 723.

without parole.[42] After the *Miller* decision, the *Montgomery* defendant sought to vacate his sentence *via* federal collateral review, claiming that the *Miller* holding retroactively applied to any defendant sentenced under a State statute that had established mandatory life imprisonment sentences without parole for juvenile offenders at the time of the offense.[43] Despite a stipulation by the respective litigant parties that the United States Supreme Court had proper jurisdiction to adjudicate the *Montgomery* defendant's claim, the *Montgomery* court first considered the scope of jurisdiction for the *Miller* holding.[44] Writing for the Majority,[45] Justice Kennedy established the framework for retroactivity in cases on federal collateral review:

> Under *Teague*, a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. *Teague* recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." Although *Teague* describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as ... not subject to the bar." Second, courts must give retroactive effect to new "watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding."[46]

Justice Kennedy then reasoned that the holding in *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.'"[47] Additionally, "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.'"[48] Accordingly, Justice Kennedy determined that *Miller* "rendered life without parole an unconstitutional penalty for 'a class of

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42 *Id*.
43 *Id.*
44 *Id.* at 727.
45 Chief Justice Roberts and Justices Kagan, Ginsburg, Breyer, and Sotomayor joined. Justice Scalia filed a dissenting opinion, with Justices Thomas and Alito joining. Justice Thomas also filed a dissenting opinion.
46 *Montgomery*, 136 S. Ct. at 728 (internal citations omitted) (referencing Teague v. Lane, 489 U.S. 288 (1989)).
47 *Id*. at 734.
48 *Id.*

defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth."[49] Therefore, the *Miller* holding retroactively applied to the *Montgomery* defendant because it created a new substantive rule of law.[50] In anticipation of the ramifications of this decision, Justice Kennedy provided guidance to State courts: "a State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."[51] The majority concluded with a salient policy regarding the standards of decency in the treatment of juvenile criminal defendants: "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored."[52] Despite the scathing dissents, particularly from Justice Scalia (who flippantly characterized the majority opinion as "devious" and "utterly impossible nonsense"),[53] the *Montgomery* opinion established a new horizon for juvenile criminal defendants. It is in this new legal landscape where hope was restored to one of my own clients.

IV. FROM WASHINGTON, D.C. TO MURPHYSBORO, ILLINOIS

In 2014, two years before *Montgomery* was decided, the Illinois Supreme Court adopted the stance that *Miller* should retroactively apply to Illinois' own previously enacted statute that required the mandatory imposition of lifetime incarceration without parole for a juvenile criminal defendant.[54] At the time, there was a substantial contingent of courts that rejected the Illinois Supreme Court's position that *Miller* applied retroactively to respective State statutes.[55] However, in a unanimous decision,[56] Justice Freeman took specific note of Justice Kagan's emphasis on the impulsive, vulnerable, and transient cognitive abilities of juvenile criminal offenders in its analysis.[57] Ultimately, the Illinois Supreme Court agreed with the evolving standard of treatment for juvenile criminal offenders and held that *Miller* created a new substantive rule for criminal law – that juvenile criminal defendants could not be sentenced to life without

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49. *Id.*
50. *Id*. at 736.
51. *Id*.
52. *Id*. at 736-37.
53. *Id*. at 744 (Scalia, J., dissenting opinion).
54. People v. Davis, 2014 IL 115595, ¶ 43.
55. *See* cases cited *supra* note 41.
56. *Davis*, 2014 IL 115595, ¶ 1. (Chief Justice Garman and Justices Thomas, Kilbride, Karmeier, Burke, and Theis concurred in the judgment and opinion).
57. *Id.* ¶ 19.

parole and any State statute that was previously enacted would be void *ab initio*.[58]

In turn, the Illinois Legislature also recognized the sound policy of the United States Supreme Court pertaining to the treatment of juvenile criminal defendants and enacted a statute with far-reaching consequences.[59] The Illinois Legislature enacted a statute (entitled *Sentencing of individuals under the age of 18 at the time of the commission of an offense*) which empowered trial courts to exercise discretion in whether to impose previously required mandatory statutory incarceration enhancements.[60] For years, even a first time juvenile criminal defendant who was convicted as an adult would typically face the draconian severity of a mandatory 15 to 25 year incarceration enhancement for certain criminal offenses in Illinois.[61] Illinois trial courts were powerless to impose anything less than a minimum sentence of 21 years for an Armed Robbery with a Firearm offense (even if there was no physical harm resulting from the offense and the firearm was not operable or unloaded).[62] With the enactment of this new statute, Illinois trial courts could finally use their discretion to consider the aspects of youthful offenders that Justice Kagan had emphatically noted in *Miller*. In fact, trial courts were now required to use their discretion, as the statute mandated them to evaluate the following factors:

> (1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;
> (2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;
> (3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;
> (4) the person's potential for rehabilitation or evidence of rehabilitation, or both;
> (5) the circumstances of the offense;
> (6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;
> (7) whether the person was able to meaningfully participate in his or her defense;
> (8) the person's prior juvenile or criminal history; and

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58 *Id*. at ¶ 41.
59 730 ILL. COMP. STAT. 5/5-4.5-105 (2017).
60 730 ILL. COMP. STAT. 5/5-4.5-105(b) (2017).
61 *See* sources cited *supra* note 10.
62 720 ILL. COMP. STAT. 5/18-2(b) (2000).

> (9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.[63]

Such a statute clearly showed an evolution in the treatment of juvenile criminal defendants in Illinois – as once they were encumbered with minimum mandatory sentence enhancements[64] and now they were subjected to minimum mandatory consideration by trial courts.[65]

While the overarching influence of *Miller* had reached the State of Illinois, it specifically impacted a client of my own in Jackson County. On December 9, 2013, Dontriel Barnes (just 17 years old at the time) recklessly decided to rob a gas station in Murphysboro, Illinois with an unloaded revolver.[66] His choice not only reflected the foolish behavior of youth (as Dontriel took several "selfies" on his cell phone depicting himself holding the firearm)[67] but also the impulsivity of youth (as Dontriel committed the offense after an unusually high accumulation of snow was on the ground). Despite the overwhelming evidence against Dontriel (including footprints in the snow easily leading the way for police to arrest him), Dontriel elected to proceed to trial after he was charged as an adult and I was appointed to represent him as his Assistant Public Defender. The reality for Dontriel was that there was minimal room for negotiation in his case because he was faced with a minimum 21 year sentence in the Illinois Department of Corrections based on the mandatory 15 year sentence enhancement in effect at the time of his offense.[68] He took his chances at a jury trial but no amount of luck or zealous advocacy could change the result and Dontriel was inevitably convicted of Armed Robbery with a Firearm.[69] Subsequently, Judge Ralph Bloodworth[70] had little discretion to exercise at the Sentencing Hearing and ultimately sentenced Dontriel to 22 years of incarceration within the Illinois Department of Corrections in 2014.[71]

While I was aware of the *Miller* holding, I honestly didn't believe that an appeal to the Fifth Appellate District of Illinois would be effective. After all, *Miller* was based on the constitutionality of mandatory life incarceration sentences without parole – a far cry from the mandatory 15-year sentencing

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63 730 ILL. COMP. STAT. 5/5-4.5-105 (a)(1-9) (2017).

64 *See* sources cited *supra* note 10.

65 730 ILL. COMP. STAT 5/5-4.5-105 (a)(1-9) (2017).

66 People v. Barnes, 2018 IL App (5th) 140378, ¶ 3.

67 *Id*.

68 720 ILL. COMP. STAT. 5/18-2(b) (2000) (Armed Robbery).

69 *Barnes*, 2018 IL App (5th) 140378, ¶ 3.

70 Ralph Bloodworth currently presides as an Associate Judge in Jackson County (within the First Judicial Circuit Court of Illinois). He received his *Juris Doctorate* Degree from the Southern Illinois University School of Law in 2000 and he was first appointed in 2012.

71 *Barnes*, 2018 IL App (5th) 140378, ¶ 14.

enhancement imposed in Dontriel's case. Nevertheless, I filed the appeal and during the years the case lingered in the ethereal plane of appellate procedure, the Illinois Legislature enacted the statute entitled *Sentencing of individuals under the age of 18 at the time of the commission of an offense* in 2016.[72] Still, while the Illinois Supreme Court adopted a retroactive application of the *Miller* holding,[73] it seemed unlikely that this newly enacted statute could somehow affect Dontriel's case while it was pending on appeal. That likelihood became even more diminished when the Illinois Supreme Court ruled in a unanimous decision[74] that the new sentencing statute was prospective rather than retroactive.[75]

However, in 2018, the impossible became possible when, in a unanimous decision, Justice Goldenhersh[76] ruled that the mandatory 15 year sentencing enhancement imposed in Dontriel's case violated the Proportionate Penalties Clause of the Illinois Constitution.[77] Despite acknowledging that "every statute carries a strong presumption of constitutionality,"[78] Justice Goldenhersh recognized Justice Kagan's emphasis in *Miller* that "juveniles have diminished culpability and greater prospects for reform."[79] Justice Goldenhersh then took note of *Miller's* influence on Illinois jurisprudence. Specifically, he examined the policy considerations from the First Appellate District of Illinois in *People v. Aikens*, 2016 IL App (1st) 133578.[80] In *Aikens*, "the juvenile defendant was convicted of several counts of attempted first degree murder of a peace officer, attempted first degree murder, aggravated discharge of a firearm, and aggravated unlawful use of a weapon after the defendant fired multiple shots at an unmarked police car."[81] Eventually, the defendant was sentenced to 40 years imprisonment in the Illinois Department of Corrections – "20 years in prison for the attempted murder convictions, plus an additional mandatory 20-year enhancement for personally discharging a firearm."[82] The First Appellate District, in relying on *Miller*, remanded the *Aikens* defendant's case for resentencing by ruling that the mandatory 20 year sentencing enhancement violated the Proportionate Penalties Clause of the Illinois

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[72] 730 ILL. COMP. STAT. 5/5-4.5-105 (2017).
[73] People v. Davis, 2014 IL 115595, ¶ 43.
[74] Justice Theis delivered the judgment of the court, with opinion, with Chief Justice Karmeier and Justices Freeman, Thomas, Kilbride, Garman, and Burke concurring in the judgment and opinion.
[75] *People v. Hunter*, 2017 IL 121306, ¶¶ 54-56.
[76] Justice Goldenhersh wrote the unanimous decision, with Justices Chapman and Cates concurring in the judgment and opinion.
[77] People v. Barnes, 2018 IL App (5th) 140378, ¶ 29.
[78] *Id.* at 19 (citing to *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005)).
[79] *Id.* at 22.
[80] *Barnes*, 2018 IL App (5th) 140378 ¶ 24 (referencing *People v. Aikens*, 2016 IL App (1st) 133578).
[81] *Id.* (citing *Aikens*, 2016 IL App (1st) 133578 ¶¶ 1-5).
[82] *Id.* (citing *Aikens*, 2016 IL App (1st) 133578 ¶ 1).

Constitution.[83] It reasoned that the *Aikens* defendant was not only young but lacked a prior criminal history and possessed substantial rehabilitative potential.[84] Similarly, Justice Goldenhersh considered Dontriel's characteristics: 17 years old at the time of the offense, a lack of criminal history, no physical harm resulting from the offense, rehabilitative potential, and a clear expression of remorse.[85] Accordingly, Justice Goldenhersh vacated Dontriel's sentence and remanded his case for resentencing, noting: "we find our decision is consistent with the evolving standards for juvenile offenders in this state as evidenced by the recent changes that have been made in the manner in which juveniles are tried and sentenced."[86] While Justice Goldenhersh acknowledged that the new sentencing statute did not apply retroactively, the provisions of the statute were "indicative of a changing moral compass in our society when it comes to trying and sentencing juveniles as adults."[87]

And so, somehow, someway, Dontriel returned from the Illinois Department of Corrections to the Jackson County Jail for a Resentencing Hearing in 2019 – almost 6 years from the time when he committed the offense in late 2013. Now that Judge Bloodworth was not bound by the mandatory imposition of the 15 year sentencing enhancement, Dontriel was only subject to a sentencing range of 6-30 years of incarceration within the Illinois Department of Corrections.[88] Still, the question remained as to whether his sentence would actually be reduced to such an extent that he could be released on the date of his hearing.

It was not an exaggeration to say that the future of Dontriel's life hung in the balance. The stakes were high and the Resentencing Hearing was imminent but I have come to know that, just as youth can demonstrate impulsivity and foolishness without direction, youth can also radiate a type of eager passion that is brilliant and endearing. To that end, I didn't hesitate to use this case as an opportunity to mentor two of my most trusted students: Slater Felzien[89] and Najla Hasic.[90] The Illinois Supreme Court has long recognized the value of utilizing the talents of precocious law students under the supervision of an attorney.[91] Dontriel's case took the policy and holding directly from Washington D.C. and brought it all the way to Murphysboro,

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83 *Id*. (citing *Aikens*, 2016 IL App (1st) 133578 ¶¶ 1, 37).

84 *Id.* (citing *Aikens*, 2016 IL App (1st) 133578 ¶ 1).

85 *Id.* ¶ 25.

86 *Id.* ¶¶ 27, 29.

87 *Id.* ¶ 27.

88 *See* 730 ILL. COMP. STAT. 5/5-4.5-25 (2020) in conjunction with 720 ILL. COMP. STAT. 5/18-2 (2000).

89 Slater Felzien is a Graduate of the 2019 Class for Southern Illinois University School of Law.

90 Najla Hasic is currently a third-year law student attending Southern Illinois University School of Law and will be a member of its 2020 Graduating Class.

91 *See* ILL. S. CT. RULE 711.

Illinois. I could think of no better way to teach the practice of law than by allowing my students to experience it firsthand. Consequently, I provided my students with a thorough overview of the case, introduced them to Dontriel as well as the witnesses that would testify at his Resentencing Hearing, and I reviewed the factors of the newly enacted sentencing statute.[92] Together, we zealously advocated for Dontriel – many witnesses were called to testify on his behalf and many tears were shed during the hours of his hearing. At its conclusion, Judge Bloodworth imposed the new sentence: time considered served. Dontriel was a free man. To see Dontriel's reaction and to share this moment with my students was truly a remarkable moment in my legal career. The confluence of the concepts from the classroom and the knowledge from the textbooks merged into the wisdom of practice for my students; and, for my client, it was the first day of his life to be lived outside of prison bars in years.

V. CONCLUSION

The concept of treating juvenile criminal defendants differently than adult criminal defendants is not a novel one. Long ago, the United States Supreme Court noted that "a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police."[93] However, while the concept of treating juvenile criminal defendants differently is not new, it has not always seamlessly translated into practice. Far too often, zealous legislators or eager prosecutors focus on the criminal act without considering the criminal defendant. In doing so, defendants are oftentimes subjected to disproportionate penalties and trial courts are rendered powerless to meaningfully effectuate change because they are bound by mandatory sentencing enhancements. In a system of checks and balances, affording trial courts with discretion to consider the nature of each case and the character of each juvenile criminal defendant is vital for the efficient administration of justice. The recent development of both statutory and case precedential law in Illinois evinces "an evolving standard of moral decency"[94] that continues to tune the compass that directs our society towards the highest virtues established in the Constitution.

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[92] 730 ILL. COMP. STAT. 5/5-4.5-105 (a) (1-9) (2017).

[93] *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

[94] *People v. Barnes*, 2018 IL App (5th) 140378, ¶ 29.