Suffolk Journal of Trial and Appellate Advocacy

Volume 23 | Issue 1 Article 21

1-1-2018

Juvenile Law - Extension Denied: Massachusetts Supreme Judicial Court Rules Juvenile Sentences with the Eligibility for Parole Constitutional - Commonwealth v. Bright, 974 N.E.2D 1092 (Mass. 2012), Aff'd, No. 14-P-546, 2016 Mass. App. Unpub. Lexis 379 (Mass. App. Ct. 2016)

Dounia Chikhoune

JUVENILE LAW – EXTENSION DENIED: MASSACHUSETTS SUPREME JUDICIAL COURT RULES JUVENILE SENTENCES WITH THE ELIGIBILITY FOR PAROLE CONSTITUTIONAL – *COMMONWEALTH V. BRIGHT*, 974 N.E.2D 1092 (MASS. 2012), *AFF'D*, NO. 14-P-546, 2016 MASS. APP. UNPUB. LEXIS 379 (MASS. APP. CT. 2016).

The Eighth Amendment to the United States Constitution and Article XXVI of the Declaration of Rights of the Massachusetts Constitution protects individuals against cruel and unusual punishment.[1] In cases involving juveniles, courts have held that life sentences without the possibility of parole are unconstitutional.[2] In *Commonwealth v. Bright*,[3] the Massachusetts Supreme Judicial Court ("SJC") considered whether to extend this constitutional prohibition to include juvenile life sentences that are accompanied by the possibility of parole.[4] The Court held that juvenile life sentences which do provide for the possibility of parole do not violate the Eighth Amendment nor Article XXVI of the Declaration of Rights of the

---

[1] *See* U.S. CONST. amend. VIII (explaining protection from cruel and unusual protections) ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); *see also* MASS. CONST. pt.1, art. XXVI (prohibiting excessive bail or fines, and cruel punishments). Article XXVI states in full:

> No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments. No provision of the Constitution, however, shall be construed as prohibiting the imposition of the punishment of death. The general court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition of the punishment of death by the courts of law having jurisdiction of crimes subject to the punishment of death.

Id.

[2] *See, e.g.*, Diatchenko v. Dist. Attorney, 1 N.E.3d 270, 286 (Mass. 2013) (determining mandatory life sentence without possibility of parole for juveniles who commit murder is invalid); Miller v. Alabama, 567 U.S. 460, 490 (2012) (stating mandatory life sentence without parole for juvenile offenders violates Eighth Amendment); Graham v. Florida, 560 U.S. 48, 82 (2010) (holding juvenile life sentence without possibility of parole for non-homicide offenses violated Eighth Amendment); Roper v. Simmons, 543 U.S. 551, 578-79 (2005) (adopting categorical rule under Eighth Amendment prohibiting death penalty for juvenile offenders).

[3] *See Commonwealth v. Bright*, 974 N.E.2d 1092 (Mass. 2012), *aff'd*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. 2016).

[4] *See id.* at 2 (considering prohibition on all juvenile life sentences regardless of eligibility of parole).

Massachusetts Constitution, and affirmed the life sentence imposed on the juvenile defendant, Ahmad Bright ("Bright").[5]

On the night of March 18, 2006, Remel Ahart ("Ahart"), acting on behalf of Bright's older brother, Sherrod Bright ("Sherrod"), shot the victim, Corey Davis ("Davis"), for a fee.[6] Bright was armed and accompanied Ahart to the scene of the crime.[7] At the time, Bright was only sixteen years old.[8] A jury in the Massachusetts Supreme Superior Court convicted Bright of second-degree murder, assault by means of a dangerous weapon, and unlawful possession of a firearm.[9] The trial judge sentenced Bright "to a term of life on the murder conviction and to concurrent sentences of four and three years respectively on the remaining convictions."[10] Bright appealed both his convictions as well as the denial of his motion for a new trial.[11]

---

[5] *See id.* at 4-5 (denying categorically prohibition of life sentences for juveniles).

[6] *See* Commonwealth v. Bright, 974 N.E.2d 1092, 1097 (Mass. 2012) (describing the case "as an 'alleged contract killing by one drug dealer of another.'"). James Miller, a key witness, described the circumstances surrounding the crime recounting that Bright and Ahart believed Davis, the victim, stole $15,000 from Sherrod, and Sherrod wanted Davis killed. *Id.* at 1098. Sherrod allegedly offered Ahart and Bright money to kill Davis. *Id.* Ahart, Miller, and Bright saw Davis's car and, having already obtained a 9 millimeter semi-automatic pistol, fired multiple shots into the vehicle from the passenger side, striking Davis multiple times. *See* Brief for the Commonwealth at 7, *Bright*, 974 N.E.2d at 10972 (Mass. 2012), *aff'd*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. 2016), 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015) (explaining circumstances of shooting). Davis's cousin, Troy Davis, who was driving the vehicle, tried to escape at which point he opened his door and saw Bright in a "firing stance" pointing his gun directly at him. *Id.* Ahart then fired more shots when he and Bright fled the scene. *Id.* Davis was transported to Massachusetts General Hospital and shortly thereafter died from the gunshot wounds. *Id.*

[7] *See Bright*, 974 N.E.2d at 1097 (stating defendant claimed errors by trial judge). Bright emphasized to the court that although he was with Ahart, it was never alleged that he shot the victim. Brief for the Commonwealth at 3-4, Commonwealth v. Bright, 974 N.E.2d 1092 (Mass. 2012), *aff'd*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. 2016), 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015) (stating Bright's argument).

[8] *See Bright*, 974 N.E.2d at 1097 (explaining Bright's young age); *see also* Petition for Writ of Certiorari at 2, Commonwealth v. Bright, 974 N.E.2d 1092 (Mass. 2012), *aff'd*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. 2016), 2016 WL 6407545 (U.S. Oct. 28, 2016) (No. 16-579), (discussing how holding violates Eighth Amendment) ("This case is a perfect example of why such a sentencing regime is inconsistent with the Court's reasoning in *Miller* and violates the Eighth Amendment."). "This case concerns the constitutionality of a mandatory sentencing regime under which a child who participated in a shooting that was committed by a co-defendant was automatically sentenced to spend the rest of his life in prison unless a future parole board grants discretionary early release." *Id.*

[9] *See* Commonwealth v. Bright, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, at *1 (Mass. App. Ct. Apr. 4, 2016) (listing Bright's charges).

[10] *See id.* (providing background on Bright's sentencing).

[11] *See Bright*, 974 N.E.2d at 1099 (discussing defendant's argument that jury considered extraneous and prejudicial information during deliberation). "The jury heard conflicting testimony about Bright's participation in Davis's death." Petition for a Writ of Certiorari at 5, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (No. 16-579), 2016 WL 6407545 (U.S. Oct. 28, 2016) (highlighting Bright's involvement in feud between adult drug dealers). James Miller, the initial

On direct appellate review, the SJC affirmed Bright's murder conviction and his conviction for unlawful possession of a firearm, but vacated the assault with a dangerous weapon conviction.[12] The case was "remanded for entry of a judgment of simple assault".[13] Bright proceeded by filing a motion for resentencing pursuant to Rule 30(a) of the Massachusetts Rules of Criminal Procedure, but the judge denied the motion.[14] On appeal, the Massachusetts Appeals Court affirmed the trial judge's order, denying the motion for resentencing.[15]

The Eighth Amendment to the United States Constitution has been interpreted to prohibit life sentences without the possibility of parole for juvenile homicide offenders.[16] The fundamental principle of article XXVI of the Declaration of Rights of the Massachusetts Constitution dictates that

---

murder suspect, "was arrested after fleeing to Virginia but, after cooperating with police and testifying against Bright and Ahart, was not charged for the murder." *Id.* at 5-6. Miller was also the only witness who placed Bright at the crime scene. *Id.* Troy Davis testified that a second unidentified individual was at the scene and pointed a gun at him but did not fire it. *Id.* at 5.

[12] *See Bright*, 974 N.E.2d at 1097-98 (outlining appellate history).

[13] *See id.* at 1098 (describing defendant's charges). The revolver from the crime scene was never discharged, though it appeared an attempt to discharge was made. *Id.* at 1098 n.4. The SJC reduced Bright's conviction of assault by means of a dangerous weapon to simple assault as a matter of law because the original charge was "not a lesser-included offense of the charge of armed assault with intent to murder." *See* Brief for the Commonwealth at 4-5, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015) (detailing prior proceedings).

[14] *See Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, at *1 (Mass. App. Ct. Apr. 4, 2016) (summarizing history of procedure). Bright filed the motion in light of the Supreme Court's decision in *Miller v. Alabama*, but Justice Billings denied it without a hearing. Brief for the Commonwealth at 5, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015) (explaining denial of motion). Bright argues that when he was sentenced his age, maturity, and other factors were not considered. *Id.* at 22. *See also* MASS. R. CRIM. P. 30(a) (noting post-conviction relief) Massachusetts Rules of Criminal Procedure Rule 30 (a) states in full:

> (a) Unlawful Restraint. Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts.

Id.

[15] *See Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, at *5 (stating Appeals Court's affirmation of lower court's decision to deny motion).

[16] *See* Miller v. Alabama, 567 U.S. 460, 461 (2012) (involving multiple cases with fourteen-year-olds sentenced to life without parole). One of the cases discussed in *Miller*, was about a fourteen-year-old, Jackson, who was outside of a video store when his co-conspirators shot and killed the store clerk. *Id.* Another case discussed, Miller, a juvenile, who along with a friend, killed his neighbor by beating him and setting fire to his trailer. *Id.*

"criminal punishment be proportionate to the offender and the offense."[17] The United States Supreme Court and Massachusetts Courts have heard and decided several cases centered on juvenile sentencing.[18]

In *Roper v. Simmons*, the Supreme Court held that the Eighth Amendment bars the death penalty for offenders who were under the age of eighteen when their crimes were committed.[19] "The result of the *Roper* decision was to leave intact a life-without-parole sentence for a juvenile homicide offender, thereby implicitly endorsing the constitutionality of such a sentence."[20] Later, in *Graham v. Florida*, the Supreme Court held that the Eighth Amendment prohibits a life sentence without the possibility of parole for a juvenile offender who did not commit homicide.[21] "Thus, its reasoning implicates any life-without-parole sentence for a juvenile, even as its categorical bar relates only to nonhomicide offenses." [22] For sentencing

---

[17] *See* Diatchenko v. Dist. Attorney, 1 N.E.3d 270, 284 (Mass. 2013) (rendering when justifications for sentencing adults are applied to juveniles it is suspect).

[18] *See, e.g.*, Miller v. Alabama, 567 U.S. 460, 489 (2012) (stating that mandatory sentence of life without parole for juvenile offenders violates Eighth Amendment); Graham v. Florida, 560 U.S. 48, 82 (2010) (holding sentences of life without parole for non-homicide offenses by juveniles violate Eighth Amendment); Roper v. Simmons, 543 U.S. 551, 578 (2005) (adopting categorical rule under Eighth Amendment prohibiting death penalty for juvenile offenders); Commonwealth v. Okoro, 26 N.E.3d 1092, 1101 (Mass. 2015) (holding mandatory life sentence with parole eligibility after fifteen years for juvenile homicide offender constitutional); Diatchenko v. Dist. Attorney, 1 N.E.3d 270, 276 (Mass. 2013) (concluding mandatory life without parole unconstitutional as applied to juveniles who committed murder).

[19] *See Roper*, 543 U.S. at 578-79 (describing "innovative principles" embodied in Constitution including preservation of human dignity); "As the Court explained in *Atkins*, the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. The right flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Id.* at 560 (alteration in original) (quoting Atkins, 536 U.S. 304, 311 (2002). "Focusing on how 'contemporary standards of decency' had changed since *Stanford v. Kentucky*, the decision relied heavily on the prohibition of death sentences for the mentally retarded in *Atkins v. Virginia*." Sara E. Fiorillo, Note, *Mitigating After Miller: Legislative Considerations and Remedies for the Future of Juvenile Sentencing*, 93 B.U.L. REV. 2095, 2103 (2013). "Roper marked a huge victory for juvenile justice advocates not only because of its ban of the juvenile death penalty, but also because of the abundance of language acknowledging that children must be treated differently from adults." *Id.*

[20] *See Diatchenko*, 1 N.E.3d at 279 (Mass. 2013) ("[T]he Court affirmed the judgment of the Missouri Supreme Court, which had vacated the defendant's death sentence and imposed a life-without-parole sentence.").

[21] *See Graham*, 560 U.S. at 74 (rejecting State's justification that life imprisonment without parole is rehabilitative for juvenile offenders). "Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Id.* at 68 (quoting *Roper*, 543 U.S., at 570). The Court made comparisons to a death sentence, "pointing out that the sentence's severity is magnified for the juvenile offender, who will serve a longer term and for 'a greater percentage of his life' than an adult." Sara E. Fiorillo, *supra* note 19, at 2104 (analyzing *Graham* Court's opinion).

[22] *See Miller*, 567 U.S. at 461 (involving cases of fourteen-year-olds sentenced to life without parole). "Although we do not foreclose a sentencer's ability to make that judgment in homicide

purposes, *Roper* and *Graham* establish that minors are constitutionally distinct from adults.[23] In *Miller v. Alabama*, the Supreme Court held that when a State seeks to impose life in prison without parole on a juvenile homicide offender, there must be an individualized hearing to assess whether the punishment is appropriate under the circumstances.[24]

The Massachusetts SJC found that any life-without-parole sentence for juveniles, whether mandatory or discretionary, violates article XXVI.[25] After considering expert evidence on the brain development, the court determined juvenile offenders should be afforded the opportunity to at least be considered for parole.[26] In contrast, *Commonwealth v. Brown* permits imposition of mandatory life sentences on juveniles so long as they are made

---

cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480.

[23] *See id.* at 471 (stating decisions rested not only on what "any parent knows" but on science). "Because juveniles have diminished culpability and greater prospects for reform, we explained, 'they are less deserving of the most severe punishments.'" *Id.* (quoting *Graham*, 560 U.S. at 68). "As 'any parent knows,' and 'developments in psychology and brain science continue to show,' there are 'fundamental differences between juvenile and adult minds.'" Petition for a Writ of Certiorari at 10, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579) 2016 WL 6407545 (U.S. Oct. 28, 2016) (quoting *Miller*, 567 U.S. at 470).

[24] *See Miller*, 567 U.S. at 480 (requiring consideration of how children are different from adults). "Instead, it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* at 483. "In the years preceding *Miller*, the Supreme Court shifted from a view that seemed to mirror the tough-on-crime approach taken by the federal government as well as state legislatures." Sara E. Fiorillo, *supra* note 19, at 2102 (summarizing timeline of Supreme Court outlook on punishments).

[25] *See Diatchenko*, 1 N.E.3d at 284-85 (discussing remedy to address statutory provisions). "'[T]he power to grant parole, being fundamentally related to the execution of a prisoner's sentence, lies exclusively within the province of the executive branch.'" Petition for a Writ of Certiorari at 17, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2016 WL 6407545 (U.S. Oct. 28, 2016) (quoting *Diatchenko*, 27 N.E. 3d 349, 369 (Mass. 2015)).

[26] *See Diatchenko*, 1 N.E.3d at 277 (differentiating juveniles from adult offenders). "Simply put, because the brain of juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved." *Id.* at 284. *See also* Thompson v. Oklahoma, 487 U.S. 815, 837 (1988) ("The likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent."). "The Massachusetts Parole Board is, like most boards, part of the executive branch-the branch responsible for prosecuting defendants and pursuing lengthy prison sentences." Petition for a Writ of Certiorari at 17, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016). (No. 16-579), 2016 WL 6407545 (U.S. Oct. 28, 2016). Prisoners sentenced to life sentences as juveniles in many states must typically wait years, even decades, before becoming eligible for a first parole board review, let alone actual release. ACLU, *False Hope - How Parole Systems Fail Youth Serving Extreme Sentences* 32-33 (Nov. 29, 2016), *available at* https://www.aclu.org/report/report-false-hope-how-parole-systems-fail-youth-serving-extreme-sentences.

eligible for parole.[27] "*Diatchenko* and *Brown*, which both involved juvenile homicide offenders convicted of murder in the first degree, left in place the mandatory life sentence imposed by the murder sentencing statute, G.L. c. 265, §2[28], but declared invalid, as applied to the two defendants and similarly situated juvenile homicide offenders, the portion of that statute that rendered persons convicted of murder in the first degree ineligible for parole."[29] Finally in *Commonwealth v. Okoro*, the court held that a mandatory life sentence, with parole eligibility after fifteen years for a juvenile homicide offender convicted of murder in the second degree, did not violate the Eighth Amendment or article XXVI of the Declaration of Rights of the Massachusetts Constitution.[30]

---

[27] *See Brown*, 1 N.E.3d at 268 (concluding judge's application of Mass. Ann. Laws ch. 265, §2 (LexisNexis 2017) was correct). The modern parole system "suffers from four defects that prevent it from resolving the constitutional violation created by the imposition of mandatory life sentences on juveniles: (1) the infrequency and limited value of parole board reviews; (2) the manner in which parole boards exercise their sweeping discretion; (3) the absence of transparency surrounding parole board decisions; and (4) the politicization and lack of expertise that pervade modern parole boards." Brief for Amici Curiae Citizens for Juvenile Justice, Committee for Public Counsel Services, Lawyers' Committee for Civil Rights and Economic Justice, Massachusetts Association of Criminal Defense Lawyers, National Association of Criminal Defense Lawyers, National Juvenile Defender Center, and National Juvenile Justice Network in Support of Petitioner at 8-9, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016). (No. 16-579), 2016 WL 7041861 (U.S. Nov. 28, 2016).

[28] *See* Mass. Gen. Laws ch. 265, §2 (defining penalty for murder). The statute states in full:

> a) Except as provided in subsection (b), any person who is found guilty of murder in the first degree shall be punished by imprisonment in the state prison for life and shall not be eligible for parole pursuant to section 133A of chapter 127.
> (b) Any person who is found guilty of murder in the first degree who committed the offense on or after the person's fourteenth birthday and before the person's eighteenth birthday shall be punished by imprisonment in the state prison for life and shall be eligible for parole after the term of years fixed by the court pursuant to section 24 of chapter 279.
> (c) Any person who is found guilty of murder in the second degree shall be punished by imprisonment in the state prison for life and shall be eligible for parole after the term of years fixed by the court pursuant to section 24 of chapter 279.
> (d) Any person whose sentence for murder is commuted by the governor and council pursuant to section 152 of chapter 127 shall thereafter be subject to the laws governing parole.

Id.

[29] *See* Commonwealth v. Okoro, 26 N.E.3d 1092, 1098 (Mass. 2015) (permitting parole board to consider individualized characteristics of juveniles convicted of first degree murder).

[30] *See id.* at 1101. In *Bright*, the Commonwealth argued the court was bound by *Okoro*'s decision which held that "'we do not read *Miller* as a whole to indicate that the proportionality principle at the core of the Eighth Amendment would bar a mandatory sentence of life with parole eligibility after fifteen years for a juvenile convicted of murder in the second degree.'" Brief for the Commonwealth at 20, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016). (No. 14-P-546), 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015).

In *Commonwealth v. Bright*, the Massachusetts Appeals Court reasoned that the argument for extending the prohibition against sentencing juveniles to life with the possibility of parole, required reading the evidence in a view that favored the defendant.[31] The Appeals Court relied on prior cases that "state unambiguously that the unconstitutional aspect of a sentence that does not allow the possibility of parole is its irrevocability."[32] Unlike this case where the defendant was attempting to reduce the severity of specific crime, *Miller* and *Okoro* were based on the undesirability of deeming juveniles incorrigible due to their young age.[33] The Appeals Court concluded that Bright's arguments of trying to expand preceding interpretations of the State and Federal Constitutions were "properly addressed" to those decisions the court is bound to follow.[34]

In *Roper* and *Graham*, the Supreme Court identified three significant characteristics that differentiate juveniles from adult offenders for purposes of Eighth Amendment analysis.[35] First, children demonstrate "'a lack of maturity and an underdeveloped sense of responsibility'", leading juveniles to act with greater recklessness, impulsivity, and heedless risk-taking.[36] Second, children are more vulnerable to negative influences and

---

[31] *See Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, 4 (Mass. App. Ct. Apr. 4, 2016). The Commonwealth argued that although Bright did not fire the shots that killed Davis, "the evidence at trial supported his conviction for the more serious crime of joint venture in the first degree based on deliberate premeditation." Brief for the Commonwealth at 47, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379, 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015).

[32] *See Bright*, 2016 Mass. App. Unpub. LEXIS 379 at 4. The Commonwealth recognized that the irrevocability of life sentences without the possibility of parole meant sentences that "impermissibly provide no opportunity to assess or to take into account a child's capacity to be reformed in deciding when (or if) he should be released from prison." Respondent's Brief in Opposition at 7, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), (Mass. App. Ct. Feb. 20, 2017).

[33] *See Bright*, 2016 Mass. App. Unpub. LEXIS 379 at 4 (articulating rational underlying both cases' decisions). Bright contended that the Eighth Amendment prohibits juveniles who are convicted as joint venturers from being given the same sentence as juveniles who are convicted as principals. Respondent's Brief in Opposition at 7-8, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2017 WL 604578 (Mass. App. Ct. Feb. 20, 2017). Massachusetts's law defines joint venturer as "one who aids, commands, counsels, or encourages commission of a crime while sharing with the principal the mental state required for the crime." *Id.* at 3-4 (citing Commonwealth v. Semedo, 921 N.E.2d 57, 65 (2010))

[34] *See Bright*, 2016 Mass. App. Unpub. LEXIS 379 at 5 (citing Commonwealth v. Dube, 796 N.E. 2d 859 (Mass. App. Ct. 2003)). "The Commonwealth argues this Court should delay review to afford more opportunities for States to experiment with 'differing approaches to juvenile sentencing.'" Reply Brief for the Petitioner at 4, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2017 WL 782833 (U.S. Feb. 28, 2017).

[35] *See Miller*, 567 U.S. at 471 (highlighting that cases concerning juvenile sentencing were based not only on what 'any parent knows' but on science).

[36] *See Roper*, 543 U.S. at 569 (recognizing juveniles propensity for risk taking distinguishes minors from adults for sentencing purposes) (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993));

outside pressures, including pressure from their family and peers; they have limited control over their own environment; and they lack the ability to extricate themselves from crime-producing settings.[37] Finally, a child's character is not as "well formed" as that of an adult; a child's traits are "less fixed" therefore his or her actions are less likely to be evidence of irretrievable depravity.[38]

"After being convicted of second-degree murder as a joint venturer, Bright was never afforded any consideration of his age, the nature of his involvement in the crime," or any other factors before he received an automatic life sentence with possibility of parole.[39] Bright was sixteen years old at the time of the crime and had no previous criminal record.[40] Bright "excelled academically and athletically", and had a promising future ahead of him.[41] However, the trial judge was barred from considering these

---

see also Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982) (determining Eddings turbulent family history, abuse, and severe emotional disturbance was relevant mitigating evidence).

[37] *See Roper*, 543 U.S. at 569 (acknowledging inability of juveniles to remove themselves from criminal environments) (citing Eddings, 455 U.S. at 115). "This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment." *Id.* (citing Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)).

[38] *See id.* at 570 (recognizing increased difficulty of determining whether juveniles are incorrigible criminals). "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.*

[39] *See* Petition for Writ of Certiorari at 2, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2016 WL 6407545 (U.S. Oct. 28, 2016) ("This case is a perfect example of why such a sentencing regime is inconsistent. . .." with *Miller*'s reasoning). At a young age, Bright was abandoned by his father. *Id.* at 4. Bright's father "suffered from substance abuse and physical disabilities". *Id.* Bright's family lacked financial resources and at one point, Bright shared a room with his mother at his grandmother's house. *Id.* The Commonwealth argued that Bright was not legally entitled to an individualized sentencing determination. Brief for the Commonwealth at 22, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015).

[40] *See* Petition for Writ of Certiorari, *supra* note 39, at 2. Bright was a "16-year-old boy when he got caught up in a feud between adult drug dealers. . ." *Id.* at 2. *See* Brief of the Sentencing Project as Amicus Curiae in Support of Petitioner at 9-10, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2016 WL 6819719 (Nov. 15, 2016) (noting thousands of children are serving mandatory life sentences). In 2016, one hundred and forty two people were serving life sentences with the possibility of parole as the result of crimes they committed as children. *Id.* at 10. Of those serving life sentences for crimes committed as children, more than ninety percent received mandatory sentences without a judge considering any individual factors. *Id.* at 9 n.3 (citing Massachusetts Department of Corrections data obtained by The Sentencing Project).

[41] *See* Petition for Writ of Certiorari, *supra* note 39, at 4-5. Bright earned full scholarships to attend Cambridge Friends School and Buckingham, Browne & Nichols School, two elite private schools in Cambridge, Massachusetts. *Id.* at 4. Bright earned his highest grades during the semester before his arrest. *Id.*

potentially mitigating factors because Massachusetts law mandated a life sentence for second-degree murder.[42] Thus, Bright received the same draconian sentence as more culpable individuals, like repeat offenders convicted of second- degree murder.[43] *Miller* held that individualized sentencing is necessary and that judges must have the opportunity to bear in mind factors such as the child's "age and its hallmark features - among them, immaturity, impetuosity, and failure to appreciate risks and consequences" and "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him."[44]

This court's decision leaves parole as the only mechanism for the individualized sentencing that *Miller* requires.[45] "A parole board's

---

[42] *See id.* at 36. "The judge said, '[T]his is a sentencing which, on one level, there isn't much for the Judge to say. By law, the sentence for murder in the second degree is life in prison, with eligibility for parole after 15 years.'" *Id.* at 7. The court concluded that "it did not have the authority, whether by statute or under SJC precedent, to deviate from the punishment that the state legislature had established for second-degree murder convictions." Respondent's Brief in Opposition at 4, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2017 WL 604578 (Mass. App. Ct. Feb. 20, 2017).

[43] *See* Petition for Writ of Certiorari, *supra* note 39, at 14. ". . .[A]s a result of judicial percolation and legislative developments since *Miller*, *every child* convicted of certain offenses in states such as Massachusetts, Texas, and Minnesota must rely on the discretionary whims of the executive branch for any hope of future release, [citation omitted] while *no child* convicted of any crime in states such as Montana, Washington, or Iowa can receive the same sentence absent court's individualized determination that the sentence is proportionate." Reply Brief for the Petitioner at 5, Bright, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2017 WL 782833 (U.S. Feb. 28, 2017).

[44] *See Miller*, 567 U.S. at 477 (declaring "a sentencer misses too much if he treats every child as an adult"); *see also* Brief of the Sentencing Project as Amicus Curiae in Support of Petitioner, *supra* note 40, at 11-12 (acknowledging many children serving life sentences were exposed to violence). "When children are exposed to violence, but do not receive the interventions they need to deal with these experiences, they are at grave risk of engaging in violent acts themselves." *Id.* at 12. (citing Cathy Spatz Widom, *Child Abuse, Neglect, And Violent Criminal Behavior*, 27 Criminology 251-71 (1989)). Many children serving mandatory life sentences "suffered from difficult family histories", "lacked supportive two-parent households", and "fell in with the wrong crowd." *Id.* In fact, many like Bright, "were convicted via felony murder, joint venture, or other forms of liability that did not require that these children themselves have taken a life." *Id.* at 13; *see also* Sara E. Fiorillo, Note, *Mitigating After Miller: Legislative Considerations and Remedies For the Future of Juvenile Sentencing*, 93 B.U.L. REV. 2095, 2127 (2013) (addressing problems with adopting individualized sentencing approaches). Individualized approaches to sentencing requires substantial resources. *Id.* However, it "will address the constitutional problem immediately and prevent costs from later challenges down the road." *Id.*

[45] *See* Petition for Writ of Certiorari, *supra* note 39, at 14-15. The Commonwealth argued that the parole board is required to consider the Miller factors and the SJC established procedural protections in the parole process for juvenile homicide offenders "to ensure the opportunity for release through parole is meaningful." Brief for the Commonwealth at 33, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016). (No. 14-P-546), 2015 WL 5223642 (Mass. App. Ct. Aug. 26, 2015). "Mr. Bright's petition presents vitally important questions affecting thousands of individuals sentenced for crimes committed during childhood:

discretionary and unchallengeable parole decision, through which an offender has 'no expectation of release,' cannot possibly serve the Eighth Amendment safeguard function that is necessary to ameliorate the risk of disproportionate sentencing identified in *Miller*."[46] If the court in *Bright* had determined that the availability of discretionary parole was not adequate, it could have saved years of efforts and resources the Commonwealth will face revising juvenile sentencing laws in light of the Eighth Amendment.[47]

---

whether States can mandate that every child convicted of homicide (even those convicted as joint venturers) be imprisoned for life with the mere possibility that a future parole board may grant discretionary early release." Reply Brief for the Petitioner at 2, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016). (No. 16-579), 2017 WL 782833 (U.S. Feb. 28, 2017). "'What in the middle decades of the 20th century was a meaningful process in which parole boards seriously considered individual claims of rehabilitation has become in most cases a meaningless ritual in which the form is preserved but parole is rarely granted.'" *Supra* Note 39 at 19-20 (quoting Sharon Dolovich, *Creating the Permanent Prisoner, in Life Without Parole: America's New Death Penalty?* 96, 110-11 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2012)(Dolovich)). Parole boards are "highly susceptible to political pressure" unlike judges who are "neutral decisionmakers bound to safeguard the constitutional rights of children who come before them." *Id.* at 17. *See also* Sarah French Russell & Tracy L. Denholtz, Symposium Article, *Procedures for Proportionate Sentences: The Next Wave of Eighth Amendment Noncapital Litigation*, 48 CONN. L. REV. 1121, 1132-33 (2016) (outlining "second look" procedures). "Simply making a juvenile eligible for parole under an existing state parole system may not comply with the Eighth Amendment's 'second look' requirement." *Id.* at 1131. Many States' parole systems do not ensure meaningful hearings for juvenile offenders by "strictly limiting the involvements of the prisoner's lawyer, not permitting prisoners to appear before the decision makers, and denying the prisoner the right to see and rebut significant information relied upon by the parole board." *Id.* at 1132.

[46] *See* Petition for Writ of Certiorari, *supra* note 39, at 24. "Whether the Eighth Amendment prohibits States from imposing mandatory life sentences of children, with only the hypothetical opportunity for discretionary parole decades in the future, is a question only this Court, and not state legislatures, can answer." Reply Brief for the Petitioner at 4-5, Bright, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016). (No. 16-579), 2017 WL 782833 (U.S. Feb. 28, 2017). "Disregarding state-court decisions that expressly interpret this Court's precedents as having 'no bearing' on whether review is appropriate simply because their holdings are styled as state-law holdings, shrinks the universe of sources of conflict and needlessly forestalls this Court's review of vital questions of juvenile justice." *Id.* *See* Brief of the Sentencing Project as Amicus Curiae in Support of Petitioner, *supra* note 40, at 18-24 (describing how possibility of parole cannot remedy the unconstitutionality that mandatory life sentences inflict). "Life-sentenced children, even when eligible for parole, may be denied parole – may spend their entire lives in prison – for reasons having nothing to do with their own culpability or rehabilitation. That injustice is possible only because of mandatory sentences authorizing life, like the one [Bright] received." *Id.* at 23-24.

[47] *See* Petition for Writ of Certiorari, *supra* note 39, at 32. The results of states experimenting with parole for decades is that "[p]arole decisions made by an arm of the very branch of government responsible for prosecuting juvenile offenders, and release rates that shift with political winds and do nothing to ensure 'all but the rarest of children' are spared from serving life sentences." Reply Brief for the Petitioner at 5, *Bright*, No. 14-P-546, 2016 Mass. App. Unpub. LEXIS 379 (Mass. App. Ct. Apr. 4, 2016) (No. 16-579), 2017 WL 782833 (U.S. Feb. 28, 2017) (quoting Montgomery v. Louisiana, 136 S. Ct. 718, 726 (2016). *See also* Sarah French Russell and Tracy L. Denholtz, Symposium Article, *Procedures for Proportionate Sentences: The Next Wave of Eighth Amendment Noncapital Litigation*, 48 CONN. L. REV. 1121, 1124 (2016) (discussing how lower

In *Commonwealth v. Bright*, the Massachusetts SJC decided the Eighth Amendment prohibition against sentencing a juvenile to life imprisonment without possibility of parole does not extend to a life sentence that does provide eligibility for parole. The court held that juveniles who are sentenced to life with possibility of parole does not violate the Eighth Amendment or Article XXVI of the Declaration of Rights of the Massachusetts Constitution. The court further concluded it was bound by precedential decisions and stated it was up to those courts to seek expansion.

Dounia Chikhoune

state courts across the United States have reformed procedures to ensure proportionate sentences for juveniles). "In providing a 'second look' for juveniles, some states are simply using existing parole systems, whereas other states have reformed their parole practices for juveniles or created special mechanisms for sentencing review through the courts." *Id.* "In the past several years, parole boards in some states have started holding hearings, and many juvenile offenders have been sentenced or resentenced under *Miller*." *Id.*