IN THE SUPREME COURT OF FLORIDA

LAISHA L. LANDRUM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-1071

ON DISCRETIONARY REVIEW OF THE DECISION OF
THE SECOND DISTRICT COURT OF APPEAL, FLORIDA

ANSWER BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of Case and Statement of Facts presented by Petitioner for purposes of this appeal, with the following additions, corrections and/or clarifications, or as otherwise argued herein:

Petitioner was charged with and convicted of second degree murder arising from the beating death of her rival in the affections of a boyfriend. Landrum and her co-defendant beat the victim in the head and throughout her entire body with various heavy and/or sharp objects, striking at least 34 blows before discarding her in a dumpster and leaving her to die. The jury convicted Landrum of second degree murder with a weapon, a first degree felony, enhanced to a life felony based on her use of a weapon in commission of the offense.

On direct appeal, a three judge panel of the Second District Court of Appeal affirmed Petitioner's life sentence. Landrum v. State, 163 So. 3d 1261, 1261 (Fla. 2d DCA 2015) review granted, No. SC15-1071, 2015 WL 3937380 (Fla. June 18, 2015). The decision relied on the Second District's precedent in Starks v. State, 128 So. 3d 91 (Fla. 2d DCA 2013), disapproved of on other grounds, Lawton v. State, ---So. 3d ---- 2015 WL 1565725 (Fla. 2015).

The Second District Court of Appeal then certified the following question to this Court as one of great public

importance:

> BECAUSE THERE IS NO PAROLE FROM A LIFE SENTENCE IN FLORIDA, DOES MILLER V. ALABAMA, --- U.S. ----, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), REQUIRE THE APPLICATION OF THE PROCEDURES OUTLINED IN SECTIONS 775.082, 921.1401, and 921.1402, FLORIDA STATUTES (2014), TO JUVENILES CONVICTED OF SECOND-DEGREE MURDER AND SENTENCED TO A NON-MANDATORY SENTENCE OF LIFE IN PRISON BEFORE THE EFFECTIVE DATE OF CHAPTER 2014-220, LAWS OF FLORIDA?

SUMMARY OF THE ARGUMENT

The District Courts of Appeal correctly concluded that Petitioner is not entitled to relief under Miller v. Alabama because the life sentence imposed by the trial court was discretionary, not mandatory. By its express terms, the Miller decision does not provide for review of a sentence in a homicide case which grants the trial court the discretion to impose a lesser sentence than life in prison. Having framed its decision in terms of a mandatory life sentence, the Miller Court offers no basis upon which to apply the protections of newly enacted section 775.082, 921.1401, and 921.1402, Florida Statutes (2014).

The trial court sentenced Petitioner to a nonmandatory term of life in prison. Petitioner challenged the sentence under Rule 3.800(a), as an illegal sentence.[1] The Second District correctly concluded that no authority existed under Miller to review that sentence under Florida's newly enacted juvenile sentencing laws. The certified question must be answered in the negative.

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[1] The State questions whether relief under Rule 3.800(a) would have even been appropriate had the Second District decided to strike Landrum's sentence in contravention of its precedent in Starks. Rule 3.800(a) permits a defendant to challenge "a narrow class of cases in which the sentence imposed can be described as truly 'illegal' as a matter of law. . .." Judge v. State, 596 So. 2d 73, 77 (Fla. 2d DCA 1992) (en banc), review denied, 613 So. 2d 5 (Fla. 1992). Given that Miller does not prohibit the life sentence imposed in this case, it is not an illegal sentence and, therefore, not cognizable under Rule 3.800.

ARGUMENT

DOES MILLER V. ALABAMA, 132 S.CT. 2455 (2012), REQUIRE THE APPLICATION OF THE PROCEDURES OUTLINED IN SECTIONS 775.082, 921.1401, AND 921.1402, FLORIDA STATUTES (2014), TO JUVENILES CONVICTED OF MURDER AND SENTENCED TO A NONMANDATORY LIFE SENTENCE? (Certified Question As Restated By Respondent)

In Miller v. Alabama, the Supreme Court ruled that sentencing a juvenile to a mandatory life sentence, without the possibility of parole, constituted cruel and unusual punishment under the Eighth Amendment. Miller, 132 S. Ct. 2455, 2469. Miller does not stand for the proposition that a life sentence may never be imposed against a juvenile. The decision made clear that it was not abolishing life sentences as a punishment for a homicide committed by a juvenile. see also Graham v. Florida, 560 U.S. 48, 82, 130 S. Ct. 2011, 2034, 176 L. Ed. 2d 825 (2010), as modified (July 6, 2010)("A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."). With appropriate procedural safeguards in place to allow for an individualized sentencing hearing and to permit subsequent consideration of a defendant's maturation, a mandatory life sentence may still be imposed.

Accepting that a life sentence may be imposed under Miller, the question presented in this case is whether those procedural safeguards associated with such a sentence must apply when the sentence is discretionary, as well as when it is mandatory. By Miller's plain terms, the question should be answered in the negative.

The certified question in this case arises from application of the second District Court of Appeal's 2013 decision in Starks v. State. Landrum, 163 So. 3d at 1261. Starks, like Landrum, was convicted of second degree murder, a first degree felony, and received an enhanced sentenced under section 775.087, Florida Statutes (2000), based on his use of a firearm in commission of the murder. Starks challenged his sentence in a post-conviction proceeding. The Second District rejected Stark's post-conviction attack on his sentence, concluding that "because the statute under which Starks was sentenced did not ***mandate*** a life sentence but provided the trial court with a choice of a life sentence or a sentence of a term of years, Starks was not sentenced under a sentencing scheme condemned in Miller." Starks, 128 So. 3d at 92.

While continuing to follow its reasoning in Starks that Miller is inapplicable to a "nonmandatory life sentence imposed pursuant to a statute that provided the trial court with discretion to impose a life sentence rather than mandating such

a sentence," the Second District now questions whether "Miller appl[ies] to all life without parole sentences imposed upon juveniles. . . regardless of whether the life sentence was imposed pursuant to a mandatory or discretionary sentencing statute." Lindsey v. State, 168 So. 3d 267, 271 (Fla. 2d DCA 2015). Thus, the Second District has certified the question presently before the Court. Landrum, 163 So. 3d at 1261.

As set forth in its certified question, the Second District seeks to determine:

> 1) whether Sections 775.082, 921.1401, and 921.1402, Florida Statutes (2014) are applicable to a nonmandatory life sentence imposed in a second degree murder case; and
>
> 2) whether Sections 775.082, 921.1401, and 921.1402, Florida Statutes (2014), apply retroactively to review a nonmandatory life sentence imposed in a second degree murder case.

As stated by the Second District, the question presented is:

> BECAUSE THERE IS NO PAROLE FROM A LIFE SENTENCE IN FLORIDA, DOES MILLER V. ALABAMA, --- U.S. ----, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), REQUIRE THE APPLICATION OF THE PROCEDURES OUTLINED IN SECTIONS 775.082, 921.1401, and 921.1402, FLORIDA STATUTES (2014), TO JUVENILES CONVICTED OF SECOND-DEGREE MURDER AND SENTENCED TO A NON-MANDATORY SENTENCE OF LIFE IN PRISON BEFORE THE EFFECTIVE DATE OF CHAPTER 2014-220, LAWS OF FLORIDA?

Having reviewed Graham and Miller's central tenets, this Court's precedent and the Florida Legislative response to Graham and Miller represented by Chapter 2014-220, the Respondent concludes that Miller's plain language provides a basis for the decision reached by the Second District in this case.

In Miller, the Court held that a mandatory life-without-parole sentence for juvenile homicide offenders constitutes cruel and unusual punishment. Miller v. Alabama, --- U.S. ----, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). The mandatory character of the life sentence is central to the decision in Miller. From its first words, the opinion makes clear that the question before it is the Constitutionality of a mandatory life sentence. The opinion begins:

> "The two 14-year-old offenders in these cases were convicted of murder and sentenced to life imprisonment without the possibility of parole. ***In neither case did the sentencing authority have any discretion to impose a different punishment. State law mandated*** that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life with the possibility of parole) more appropriate. . . .We therefore hold that **mandatory life** without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments."

Miller, 132 S. Ct. at 2460(emphasis added). Thus, from the

outset, Miller concerned itself with the question framed by the facts before it- the Constitutionality of mandatory life sentences in homicide cases. The Court's conclusion, likewise, anchors the decision to its procedural posture:

> ***By requiring*** that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, ***the mandatory sentencing schemes before us*** violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

Miller v. Alabama, 132 S. Ct. at 2475.

State courts are bound to follow U.S. Supreme Court precedent in matters pertaining to the interpretation of Constitutional rights. Miami Home Milk Producers Ass'n v. Milk Control Bd., 169 So. 541, 544 (Fla. 1936). ("[W]e are of course bound by the decisions of that eminent tribunal construing the meaning and effect of acts of Congress and those provisions of the national Constitution which restrict the powers of the states."). So, too, must lower federal courts be guided by the Supreme Court's pronouncements on matters of Constitutional interpretation. Hutto v. Davis, 454 U.S. 370, 375, 102 S.Ct. 703, 70 L.Ed.2d 556 (1982)("[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.").

"Florida's Constitution expressly mandates that this Court apply the United States Supreme Court's decisions on the cruel and unusual punishment clause of the United States Constitution to any decision [] render[ed] on the meaning of Florida's cruel and unusual punishment constitutional provision." Schwab v. State, 973 So. 2d 427, 431 (Fla. 2007)(Anstead, J., dissenting). Article I, section 17 of the Florida Constitution provides:

> The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, **shall be construed in conformity with decisions of the United States Supreme Court** which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.

Fla. Const. art. I, § 17 (emphasis added).

The Miller decision's plain language directs the scope of its intended relief. The mandatory nature of a life sentence is the lynch pin upon which the decision rests. Given Miller's express language, the Second District decision concluded that a murder conviction, which did not result in a mandatory life sentence, did not fall under Miller's protections. This conclusion is consistent with the relief accorded under that decision. On its face, Miller does not apply to a discretionary life sentence. While subsequent decisions from the Court may extend Miller's holding, absent a U.S. Supreme Court decision broadening the limiting language relied on in Miller, the

certified question must be answered in the negative.

Despite Miller's limiting language, Petitioner argues that the decision should be extended beyond the scope of its plain ruling to apply to any life sentence, whether mandatory or discretionary. This argument relies on the evolution of the Supreme Court's treatment of juvenile defendants, as well as the question of proportionality. While Respondent acknowledges that Miller's analysis relied heavily on the Court's prior reasoning in Graham, two key distinctions between the decisions must be considered in comparing those cases.

A foundation for the Graham decision was the fact that the juvenile in question did not commit a homicide. The procedural history of Graham's case reflects that the State charged him with armed burglary with assault or battery, a first-degree felony punishable by "a term of years not exceeding life" and attempted armed robbery, which carried a maximum 15 years' sentence. §§ 810.02(2)(a), Fla. Stat. (2003); 812.13(2)(b), Fla. Stat. (2003).

The Graham Court declared that "[t]he Constitution prohibit[ed] the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." Graham v. Florida, 560 U.S. 48, 82, 130 S. Ct. 2011, 2034, 176 L. Ed. 2d 825 (2010), as modified (July 6, 2010). With reference to its findings in Roper, the Supreme Court relied on the immature

capriciousness of youth to determine that "juveniles have lessened culpability [and] are less deserving of the most severe punishments. Graham v. Florida, 560 U.S. 48, 68, 130 S. Ct. 2011, 2026, 176 L. Ed. 2d 825 (2010), as modified (July 6, 2010) citing Roper v. Simmons, 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

Graham is distinguishable because it entirely prohibited a life in prison sentence when the juvenile did not commit a murder. While considering criminal conduct in light of youthful impetuousness, this decision recognizes the vast distinction between immature juvenile conduct which ends in death and that which does not. Further, the question of a mandatory sentence was not before the Court in Graham. Given that the offense in Graham was a non-homicide offense, the Court was not faced with a mandatory sentencing statute is made in consideration of a discretionary life sentence.

In contrast, Miller is distinguishable for the severity of the offense and the mandatory character of the sentencing statute. Criminal statutes punish capitol murder by imposing a mandatory life sentence. The Miller Court's rejection of a "mandatory" sentence, as it relates to juveniles, reflects its conclusion that such a life sentence is unlawful because it is compulsory. This factor, being integral to the Miller's Court's reasoning, cannot be culled from the decision as a whole without

direction from the Supreme Court itself.

A logical argument may well exist that the protections which the Court afforded in Roper, Graham and Miller may be extended to any life sentence imposed against a juvenile when the sentence is not based on the factors set forth in section 921.1401 and when no subsequent review is available under conditions such as those set forth in section 921.1402. Yet, at this point, U.S. Supreme Court precedent provides no basis for such a ruling by a state court.

The Petitioner participated in the cruel murder of a fellow teenager- a romantic rival. She beat her and participated in throwing her still-living body in a dumpster; leaving her to die. Because premeditation could not be established, the trial court was not constrained to impose a life sentence. Having heard the evidence, and having decided the question of premeditation in her favor, the trial court, nevertheless, sentenced her to a discretionary life sentence. Petitioner's having been tried as an adult, the trial court had the discretion to impose "[a]ny sentence imposing adult sanctions" and it would be "presumed appropriate." §985.565(4), Fla. Stat. (2004). The nonmandatory character of the life sentence imposed in this case is a relevant basis upon which to distinguish Miller and avoid application of sections 775.082, 921.1401, and 921.1402, Florida Statutes (2014).

Without entitlement to relief under Miller, the question of retroactivity must also be answered in the negative. Earlier this year, this Court firmly established that Chapter 2014-220's provisions are applicable and apply retroactively to all juvenile offenders whose sentences are unconstitutional under Miller and Graham. Horsley v. State, 160 So. 3d 393 (Fla. 2015)("the appropriate remedy is to apply chapter 2014-220, Laws of Florida, to all juvenile offenders whose sentences are unconstitutional under Miller."); Henry v. State, No. SC12-578, 2015 WL 1239696, at 1, 5 (Fla. Mar. 19, 2015)("Because we have determined that Henry's sentence is unconstitutional under Graham, we conclude that Henry should be resentenced in light of the new juvenile sentencing legislation enacted by the Florida Legislature in 2014, ch.2014-220."); Falcon v. State, 162 So. 3d 954, 964 (Fla. 2015)("we hold that the United States Supreme Court's decision in Miller applies retroactively to any juvenile offender seeking to challenge the constitutionality of his or her sentence pursuant to Miller through collateral review.")

Should this Court decide to extend Miller's reasoning to nonmandatory, as well as mandatory life sentences, no matter what degree of murder those sentences arose from, the State, acknowledges that recent precedent from this Court would lead to the new sentencing statutes being applied retroactively. Notwithstanding that this Court has rejected the State's

position, urged in Henry and Gridine, that a term of years sentence satisfies Miller, the State, respectfully, maintains that such a sentence is consistent with the rulings in Miller and Graham. Florida law permits a trial court to lawfully impose a discretionary sentence under the previously existing sentencing statutes for second degree murder - a term of years up to life. Such a sentence being imposed creates no need for the pre-sentencing or post-resentencing reviews put in place under the new juvenile sentencing statutes. Thus, the State continues to contend that the new juvenile sentencing statutes should not apply retroactively. Finally, given the State's argument on the scope of Miller, the issue of retroactivity is moot. Relief under the newly enacted statutes is unavailable to Petitioner.

CONCLUSION

Respondent respectfully requests that the certified question should be answered in the negative and Petitioner=s conviction and sentence be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida Court's eFiling Portal U.S. mail to Maureen Surber, Assistant Public Defender, Office of the Public Defender, this ___ day of October, 2015.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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