IN THE SUPREME COURT OF FLORIDA

LAISHA L. LANDRUM, :

Petitioner, :

vs. : Case No. SC15-1071

STATE OF FLORIDA, :

Respondent. :

_____ :

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

REPLY BRIEF OF PETITIONER ON THE MERITS

HOWARD L. "REX" DIMMIG, II
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STATEMENT OF THE CASE AND FACTS

The Petitioner relies on the Statement of the Case and Facts in her Initial Brief.

ARGUMENT
ISSUE I

BECAUSE THERE IS NO PAROLE FROM A LIFE SENTENCE IN FLORIDA, 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 SECOND-DEGREE MURDER AND SENTENCED TO A NON-MANDATORY SENTENCE OF LIFE IN PRISON BEFORETHE EFFECTIVE DATE OF CHAPTER 2014-220, LAWS OF FLORIDA?

The Respondent argues Miller v. Alabama, 132 S.Ct. 2455 (2012) is inapplicable to Ms. Landrum because Miller is only triggered when the juvenile receives a mandatory life without the possibility of parole sentence, and Ms. Landrum received a discretionary life without the possibility of parole sentence. But the Respondent acknowledges Ms. Landrum's argument that Miller should be applied to her may be a logical argument. See Respondent's Brief, p. 12. Specifically, the Respondent acknowledges a logical argument may well exist that the protections of Roper, Graham, and Miller may be extended to a juvenile when the sentence is not based on the factors set forth in section 921.1401 and where no subsequent review is available under section 921.1402.

However, the Respondent maintains there is no U.S. Supreme Court authority to support such a ruling from a state court. The

Petitioner respectfully disagrees. This Court does not require supreme court precedent or authority on this exact issue to rule Ms. Landrum should be resentenced. The United States Constitution and the Florida Constitution provide a mechanism for such a ruling. Moreover, the U.S. Supreme Court authorizes such a ruling when the sentence is grossly disproportionate. Solem v. Helm, 463 U.S. 277 (1983).

Both the Eighth Amendment to the United States Constitution and article I, section 17 of the Florida Constitution forbid "cruel and unusual punishment." Ms. Landrum's life without parole sentence is unconstitutional because it is grossly disproportionate to the sentences of juveniles who committed a more serious crime but who will benefit from Miller and the new legislation. The latter juveniles will automatically obtain a new individualized sentencing hearing and most will be entitled to eventual judicial reviews encompassing mitigation or possible release from their sentences. Ms. Landrum has received the "harshest penalty" possible for a juvenile even though she was convicted of a less serious crime than those who will benefit from Miller and Horsley v. State, 160 So. 3d 393 (Fla. 2015).

Florida precedent also provides authority for this Court to extend Miller and the new legislation to Ms. Landrum. In Florida, a prison sentence can constitute cruel and unusual punishment

solely because of its length if it is grossly disproportionate to the crime. See Andrews v. State, 82 So. 3d 979, 984 (Fla. 1st DCA 2011)(the "Florida Supreme Court has held that in order for a prison sentence to constitute cruel and unusual punishment solely because of its length, the sentence must be grossly disproportionate to the crime." (citing Adaway v. State, 902 So. 2d 746, 750 (Fla. 2005)). Non-death-penalty proportionality review is necessary in order to determine whether a sentence may be stricken as "grossly disproportionate" to the crime. A sentence can be held to be grossly disproportionate and therefore unconstitutional when a court finds the following three factors to be satisfied:

> First, a court must consider the "gravity of the offense and the harshness of the penalty." [Solem, 463 U.S. at 292] Second, a court may examine "the sentences imposed on other criminals in the same jurisdiction." Id. Third, a court may examine "the sentence imposed for the commission of the same crime in other jurisdictions." Id.

Wiley v. State, 125 So. 3d 235, 240 (Fla. 4th DCA 2013)(quoting Andrews, 82 So. 3d at 984.) Notably, "[i]n applying this test, the Supreme Court has indicated that '[i]f more serious crimes are subject to the same penalty, or to less serious penalties, that is some indication that the punishment at issue may be excessive.'" Peters v. State, 128 So. 3d 832 (Fla. 4th DCA 2013)(quoting Solem, 463 U.S. at 291).

Ms. Landrum's life without the possibility of parole sentence is unconstitutional because it satisfies the Andrews test and is grossly disproportionate. This Court should extend the ruling of Miller to include her discretionary life without parole sentence and should apply the benefits of Horsley and the new legislation to her. Ms. Landrum should be entitled to an individualized sentencing hearing where the trial court will consider all the factors included in section 921.1401, especially the factors focusing on her youth and ability to be rehabilitated. Ms. Landrum should also be entitled to an eventual judicial review of her sentence under section 921.1402.

The United States and Florida Constitutions, as well as United States Supreme Court and Florida precedent, provide a basis for this Court to extend Miller to Ms. Landrum. Ms. Landrum respectfully requests this Court answer the certified question in the affirmative, quash the decision of the Second District, and remand for resentencing in light of Horsley.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 2nd day of November, 2015.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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