MILLER AND YOUNG ADULTS: FIGHTING FOR INCLUSION

CLIFFORD L. POWERS[∞]

In this article, Clifford L. Powers investigates the repercussions of the 2012 Supreme Court ruling Miller v. Alabama *for young adult defendants who were aged 18-25 at the time of their convictions, seeking resentencing proceedings. Powers draws on his own experience of fighting his sentence while incarcerated, while discussing the development of state and Supreme Court case law in this area and the ways in which he and others similarly situated are looking to* Miller *and its progeny to fight for an additional look at their sentencing proceedings.*

In 2012, the Supreme Court of the United States issued a landmark decision, prohibiting mandatory life sentences without the possibility of parole for juveniles convicted of any crime.

The case was *Miller v. Alabama*,[1] named for the lead petitioner, Evan Miller, who was tried as an adult and given such a mandatory sentence after being convicted of killing his neighbor when he was 14 years old. Under Alabama law, as in many states at the time, this was the only possible sentence he could receive, regardless of any mitigating factors.[2] *Miller v. Alabama* changed this, but only to a small extent – after consideration of certain characteristics inherent to youth, a juvenile can still be sentenced to this harshest of penalties.[3] These characteristics have been dubbed the "Miller factors".[4]

This new perspective on juvenile sentencing was embraced surprisingly quickly by some states. In 2014, the Illinois Supreme Court held the protection afforded under *Miller* to be retroactive,[5] and numerous other states did the same. In 2016, the U.S. Supreme Court followed suit by announcing a new rule to make this the law of the land.[6] That same year, the Illinois legislature even went so far as to codify the *Miller* factors.[7] Fortunately, this was not the only aspect of this reform that states took into their own hands.

Later petitioners seeking to benefit from the expansion of rights in *Miller* raised two questions: (1) should this protection apply to discretionary, as well as mandatory, life sentences; and for that matter, (2) what actually constitutes a "life sentence"? Since the point of the *Miller* ruling was to give all but the most

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[∞] Clifford L. Powers has been a jailhouse lawyer and legal advocate for over 15 years. He is currently serving a life sentence in the Illinois Department of Corrections.

[1] Miller v. Alabama*,* 567 U.S. 460 (2012).

[2] *Id*. at 465-67 (outlining Alabama's mandatory life sentence scheme for homicide offenses).

[3] *Id*. at 489.

[4] *See, e.g.,* People v. Harris, 120 N.E.3d 900, 909-10 (Ill. 2018) (citing People v. Holman, 91 N.E.3d 849, 898-904 (Ill. 2017) (defining factors to be considered when sentencing a juvenile in the wake of *Miller*)).

[5] People v. Davis, 6 N.E.3d 709, 722 (Ill. 2014).

[6] Montgomery v. Louisiana, 577 U.S. 190, 212 (2016) (holding that *Miller* announced a new substantive rule that must be applied retroactively).

[7] 730 ILL. COMP. STAT. ANN. § 5/5-4.5-105 (West 2016).

irredeemable children a chance at release,[8] these were valid inquiries. Iowa was one of the first states to resolve these issues in favor of those suffering such lengthy sentences, holding that the *Miller* factors must be considered before imposing any life sentence on a juvenile defendant, whether mandatory or discretionary, actual or de facto.[9] Illinois, guided by this decision, followed close behind,[10] although it wasn't until 2019 that the state supreme court defined a life sentence for a juvenile as anything over 40 years.[11]

Parallel to this struggle for a more nuanced sentencing practice for juveniles has been a push to extend those protections to young adults, those of us who were 18-25 at the time the crime occurred. In Illinois, the first sign that this might be possible came in 2015, when the state supreme court held that an as-applied, youth-based, constitutional challenge to a sentencing statute could be raised on collateral, rather than appellate, review.[12] This decision signaled what, for me and many other jailhouse lawyers, would become a central focus for years to come. Those who had otherwise exhausted their appeals could once again challenge the legality of their sentences.

Miller and its progeny are grounded in the Eighth Amendment prohibition against "cruel and unusual punishment."[13] Even though the U.S. Supreme Court limited the ruling to those under 18,[14] many young adults, including myself, have challenged the statutes under which we were sentenced as violative of the Eighth Amendment, as well as Article I, Section 11 of the Illinois Constitution.[15] The Illinois Supreme Court's response to this argument has been mixed. While it has shown an openness to extending "*Miller*-type" protections to young adults,[16] it has wholly rejected the Eighth Amendment claim, citing the fact that *Miller* drew a clear line at age 18.[17] Yet the possibility of a youth-based claim under the Illinois Constitution has been left open.[18]

Shortly after *People v. Thompson*[19] was decided, Antonio House became the first young adult in Illinois to have their sentence vacated in light of *Miller*.[20] I was at Stateville Correctional Center with House at that time, in the middle of post-

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[8] *Miller*, 567 U.S. at 479-80.
[9] State v. Null, 836 N.W.2d 41 (Iowa Ct. App. 2013) (holding a de facto life sentence of 52.5 years imposed on a juvenile lengthy enough to trigger *Miller*-type protections).
[10] *See, e.g.,* People v. Allen, 2013 IL App 102884-U (Ill. App. Ct. 2013) (relying on *Null v. State* for the proposition that a lengthy period of imprisonment may be sufficient to trigger Miller-type protections even if not technically a life-without-parole sentence); People v. Sanders, 2016 IL App 121732-B (Ill. App. Ct. 2016) (*same*); People v. Reyes, 63 N.E.3d 884, 888 (Ill. 2016) (holding that *Miller* applies to de facto life sentences); People v. Holman, 91 N.E.3d 849, 901.
[11] People v. Buffer, 137 N.E.3d 763, 770-71, 774 (Ill. 2019).
[12] People v. Thompson, 43 N.E.3d 984, 993 (Ill. 2015).
[13] U.S. CONST., amend. VIII.
[14] *Miller*, 567 U.S. at 465, 479.
[15] ILL. CONST. art. I, § 11 ("All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.").
[16] *See, e.g., Harris*, 120 N.E.3d 900, 910-11.
[17] *Id*. at 913.
[18] *Id*. at 910-11; *see also* People v. Zumot, 2021 IL App (1st) 191743, *6 (Ill. App. Ct. 2021) (noting that the IL Supreme Court has "opened the door" to *Miller*-type claims by juvenile offenders).
[19] People v. Thompson, 43 N.E.3d 984 (Ill. 2015).
[20] People v. House, 72 N.E.3d 357 (Ill. App. Ct. 2015), *vacated by supervisory order*.

conviction proceedings, and became committed to researching how to raise the same claim for myself and others. The good thing was that we had an extensive network within the prison, and it wasn't long before all of the latest scientific reports and articles were circulating. The problem was that very little of it focused on our age group. It would be a few years still before the focus would broaden; scientific studies in the areas of behavior and cognitive development supporting greater protections for young adults has really only become established in the last couple of years.

This lack of legal and scientific support impeded our progress quite a bit. Most petitioners were attempting to raise their *Miller*-type claim in a successive post-conviction petition, which requires a showing of cause for not raising the claim sooner and how you were prejudiced by the alleged violation.[21] Most courts just were not accepting what was being offered. In 2018, three cases came before the Illinois Supreme Court on the issue, including *House*, and although all three were remanded, the one opinion that was issued did shift momentum.[22] The Court explained in *People v. Harris* that if an as-applied constitutional claim is raised, the reviewing court may not make a ruling without first allowing the evidentiary record to be developed.[23] This means that the petitioner must be given an opportunity to present to the court evidence regarding their life history, development, and rehabilitative potential. Further, because *Miller* does not apply directly to a person 18 years old or older, the petitioner must establish how *Miller* applies to them in particular, through the developing science on the psychological development of young adults.[24]

We now knew what we needed to do to get into court, but without readily available resources, it was not that easy. Courts were still resistant, and few petitioners were being granted leave to file a petition. The early petitions I drafted for men were denied, and I encouraged others to wait a bit before pursuing the claim. I know that this is almost always a risky thing to do, but I felt that it was necessary to let the law and science develop a bit more, and I took my own advice, too. It was a gamble, but one I felt was worth taking.

Another momentum shift came the following year with the short-lived success of a federal prisoner named Luis Noel Cruz. Cruz challenged his four consecutive life sentences, relying on *Miller*, and the federal District Court of Connecticut granted him relief, reducing his sentence to 35 years.[25] His success was largely due to the testimony of Laurence Steinberg, a leading expert in child and young adult psychological development, and one of those who had informed the Court in *Miller v. Alabama* and *Graham v. Florida*.[26] Steinberg explained that research showed that young adults were more akin developmentally to children than to fully developed adults and advocated for extending *Miller*-type protections to individuals as old as

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[21] 725 ILL. COMP. STAT. ANN. § 5/122-1(f) (West 2019).
[22] The three cases were People v. Williams, 107 N.E.3d 254 (Ill. App. Ct. 2018), People v. Harris, 70 NE.3d 718 (Ill. App. Ct. 2016), and People v. House, 72 N.E.3d 357. The only opinion issued was in *People v. Harris*, 120 N.E.3d 900; the other two cases were vacated by supervisory order.
[23] *Harris*, 120 N.E.3d 900, 909.
[24] *Id*. at 910.
[25] Cruz v. United States, 2018 WL 1541898 (D.Conn. 2018).
[26] *See Miller*, 567 U.S. at 472 n.5.

21.[27] The influence of this decision was starting to show in some appellate court opinions in Illinois and, along with *Harris*, was turning the tide.

After I read the *Cruz* decision, I reached out to the attorney of record and was able to obtain the hearing transcript containing Steinberg's testimony and the post-hearing motion for relief filed in the case. I was also fortunate enough to be provided with all of the exhibits that had been presented to the court, showing the growing consensus for change across the country. With that, I had not only a blueprint for raising and arguing a successful claim, but also a stack of more and better supporting documents than I ever would have been able to gather on my own.

With this in hand, and a better understanding of the claim, plus the changing attitude of the state courts, I felt it was time to begin filing again. I spread the word that I had these documents and offered copies to anyone who was filing the claim themselves or helping others to draft petitions. I also drafted an amended petition in my own case and used that as a model for the successive petitions I was assisting others to file. The only other element that had to be dealt with was the requirement of showing how the science applied to the individual and their circumstances specifically. It wasn't, and isn't, enough that it applies to young adults in general.

Luckily, by the end of 2019, there were enough appellate court opinions out that we were able to glean some dos and don'ts. The scientific research essentially focused on the same characteristics of youth elucidated in *Miller* and previous rulings.[28] Our task was then to demonstrate how those characteristics were present in our own lives and how they influenced our criminal conduct. The best way to do this is, of course, to hire an expert to do an evaluation, if you can afford one.[29]

I have had a lot of success in obtaining leave from the court to file a successive petition on this issue by simply providing affidavits from the petitioner and their family members that touch on many of the *Miller* factors, as applied to the individual petitioners. Due to the procedural rules for post-conviction petitions here in Illinois, the *Harris* decision and its insistence on evidentiary development have become powerful tools in at least reaching the hearing stage.[30]

At this point, far more people are granted leave to file their claims than are denied, which is a good thing, but they are still not being granted relief.[31] The Illinois Supreme Court has yet to fully weigh in. When it does, I expect a positive, but limited, ruling, particularly in light of recent action by the Illinois and U.S. Supreme Courts.[32] Either way, we have a lot of fighting left to do, both in court and in the legislature, and my work will continue on this issue and many others.

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[27] *Cruz*, 2018 WL 1541898, Trans. R. at 22, 64.

[28] *See, e.g.,* Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

[29] Serendipitously, we became aware of a local expert, James Garbarino, who has generously given his time to help myself and others.

[30] Just recently, I was able to use this to help someone advance to the hearing stage, despite his being 24 at the time the crime occurred.

[31] The one known exception is *People v. Jones*, 2021 IL App. (1st) 180996 (Ill. App. Ct. 2021) (holding that defendant's 50 year sentence violated the Eighth Amendment and remanding for resentencing).

[32] Jones v. Mississippi, 141 S.Ct. 1307 (2021) (signaling a reconsideration of the reach of *Miller*); *see also,* People v. Dorsey, 2021 IL 123010 (Ill. 2021) (questioning previous ruling concerning *Miller*, in light of *Jones*).