

# Pennsylvania court upholds life terms for crimes committed by juveniles

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30 December 2013

The Pennsylvania Supreme Court has ruled that more than 400 individuals who committed crimes while juveniles must spend the rest of their life in jail despite the 2012 US Supreme Court ruling that declared such practices to be against the US Constitution ban on cruel and unusual punishment.

The Pennsylvania ruling was handed down on October 30 and involved the case of *Ian Cunningham v. Pennsylvania*. Cunningham was 17 at the time when he and several others attempted to rob the occupants of a vehicle at gunpoint. In the midst of the robbery, a fight or scuffle broke out and one occupant, Daniel Delarge, Jr., was shot and killed. In 2002, Cunningham was convicted of second-degree murder and related charges, receiving a mandatory sentence of life imprisonment without the possibility of parole, plus another term of imprisonment of seven-and-a-half to 15 years.

Along with having the highest incarceration rate on the planet, the United States is the only country in the world that condemns juveniles to serve their entire lives in prison—known with the acronym JLWOP, juvenile lifers without parole. Pennsylvania has the most, with over 400 individuals languishing in prisons for crimes they committed while children.

In 2012, the Supreme Court ruled in the case *Miller v. Alabama* that juveniles serving mandatory life without parole sentences violated the Eighth Amendment's cruel and unusual punishment clause. It was a 5 to 4 decision, with Justice Elena Kagan writing the majority opinion stating: "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequence. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter

how brutal or dysfunctional."

Twenty-nine states had statutes that mandatorily sentenced juveniles to life without parole, such as in homicide cases, but all were struck down with this ruling. This decision, however, only mandates that judges consider that the accused is a child rather than an adult.

The scope of this ruling went further than *Graham v. Florida* (2010), which had prohibited juveniles from being sentenced to life without parole, excluding those convicted of homicide; and *Roper v. Simmons* which declared it unconstitutional to impose capital punishment for crimes committed by individuals under the age of 18, citing the Eighth and Fourteenth Amendments.

Almost 2,600 inmates nationwide are serving life without parole for crimes committed when they were juveniles. Pennsylvania and several other states have declared that the *Miller v. Alabama* ruling does not apply retroactively for inmates already serving JLWOP.

After the *Miller* ruling, Cunningham tried to argue that it applied retroactively, emphasizing "that several of the decisions in the 'strands of precedent' upon which the *Miller* majority relied are applied retroactively" and that *Miller* "articulates a rule of substantive law, which, by its nature, is retroactive." The precedents are the cases *Atkins*, *Roper*, and *Graham*, which many courts have found apply retroactively.

Ultimately, the Pennsylvania Supreme Court argued that the "*Miller* majority simply did not address retroactivity, and, thus, there simply is no dispositive ruling on the subject" and that the cases in which retroactivity was applied were "substantive rules ... whereas, the Commonwealth maintains, the *Miller* rule is purely a procedural one." Put differently, all 440 who

were sentenced as juveniles to serve life imprisonment without parole have no recourse to use the Pennsylvania justice system as a way to reduce their sentence and potentially once again become free.

According to the University of San Francisco School of Law, there were 444 juveniles in Pennsylvania serving JLWOP at the time of the *Miller* ruling, including 18 who were just 13 or 14 years old when they allegedly committed their crime. Michigan has the second largest number with 346, followed by Florida and California, with 266 and 250 respectively. Florida has 15 individuals serving LWOP who were 13 or 14 when they allegedly committed their crimes.

A 2012 report by the Sentencing Project, entitled “The Lives of Juvenile Lifers,” shows that most juvenile lifers, 79 percent, were the victims of violence in their homes or witnessed home violence and more than half, 54 percent, reported witnessing weekly violence in their neighborhood. The same survey found that nearly half, 46 percent, of all JLWOPers experienced physical abuse and that over 77 percent of girls reported having been sexually abused.

In the dissenting opinion, by Justice Max Baer and joined by Justices Debra Todd and Seamus McCaffery, the minority wrote that the changes made by *Miller* are substantive and therefore should apply retroactively. Justice Baer said that he based the decision in recognition of the US Supreme Court’s explicit belief that “children are constitutionally different”.

In fact, children are not only constitutionally different, but also physically and mentally less developed than adults. Defense attorney Robert Buttner, who was appealing for his client’s resentencing on a different technicality, said that he is “troubled by the court’s ruling in the *Cunningham* case... The US Supreme Court ruling was based on the premise that [a] juvenile’s mind is not fully developed, therefore a judge must be given latitude to consider each juvenile’s situation, including background, upbringing and likelihood of being rehabilitated, in deciding whether to sentence a juvenile to life.”

In Iowa, Mississippi, Illinois, and Louisiana, judges have ruled that the Supreme Court decision does apply retroactively. An attorney with the Defender’s Association, Bradley Bridge, has called the Pennsylvania Supreme Court’s ruling “exceedingly unfair,” since it violates a basic postulate of justice,

equal treatment for all defendants.

In the past, states originally held views that stipulated firm differences in maturity between adults and juveniles and thus offered divergent sentencing guidelines between them. But this eventually transformed into its opposite, starting in the 1980s and 1990s when states started to chip away at the juvenile justice system.

Such states, including Pennsylvania, mandated in some cases that juveniles be put on trial as adults, regardless of age, the context of the crime, or the atmosphere in which the youths had lived. According to the Department of Justice, between 1992 and 1995, for instance, 48 states increased penalties for juveniles convicted of violent crimes.



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