



Ensuring excellence in juvenile defense and promoting justice for all children

July 12, 2012

Honorable Tani Cantil-Sakauye, Chief Justice
Associate Justices of the California Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

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Re: *People v. Caballero*, S190647 (argued May 31, 2012)
Court of Appeal Nos. B217709, B221833
Court of Appeal, Second Appellate District, Division Four
(Los Angeles County Sup. Ct. No. MA043902)

Supplemental Amicus Curiae Letter of Pacific Juvenile
Defender Center and Juvenile Law Center on Behalf of
Defendant and Appellant Rodrigo Caballero

RECEIVED

JUL 12 2012

Dear Chief Justice Cantil-Sakauye and Associate Justices of the California
Supreme Court:

CLERK SUPREME COURT

This letter is submitted in response to the Court's June 28, 2012 request for briefing on "the effect, if any, of *Miller v. Alabama* on this court's future decision in *People v. Caballero*." This letter sets forth the views of amici curiae Pacific Juvenile Defender Center and the Juvenile Law Center on behalf of defendant and appellant Rodrigo Caballero. Both organizations filed amicus curiae briefs in this case on behalf of defendant and appellant Rodrigo Caballero. Marsha Levick, of the Juvenile Law Center, participated in the May 31, 2012 oral argument to provide a national perspective on the issues in this case. We have conferred with appellant's counsel, Mr. Durchfort, and he supports the filing of this letter.

The short answer to the court's question is that *Miller* has no direct impact on this case, but it reaffirms the underlying reasoning of *Graham v. Florida* (2010) 560 U.S. ___ [130 S. Ct. 2011], which is the controlling case.

In *Miller v. Alabama* (June 25, 2012, No. 10-9646) ___ U.S. ___ [2012 U.S. Lexis 4873], the United State Supreme Court held that mandatory sentencing schemes requiring a sentence of life without parole for youth

who were under the age of 18 at the time of the crime violate the Eighth Amendment's prohibition on Cruel and Unusual Punishment. (*Miller, supra*, ___ U.S. at p. ___ [2012 U.S. Lexis 4873 at p. *35].) Unlike *Graham, Miller* and its companion case, *Jackson v. Hobbs* (June 25, 2012, No. 10-9647) ___ U.S. ___ [2012 U.S. Lexis 4873], involve homicides. Unlike *Graham*, both involve sentencing schemes in which youth convicted of certain offense *must* receive life without parole sentences. In deciding *Miller*, the high court looked both to the Eighth Amendment cases involving categorical distinctions, and to the Eighth Amendment cases requiring consideration of individual characteristics and details of the offense in sentencing. (*Miller, supra*, ___ U.S. at p. ___ [2012 U.S. Lexis 4873 at p. *3].) It concluded that the confluence of that line of cases leads to a conclusion that mandatory life without parole sentences constitute Cruel and Unusual Punishment. (*Id.*)

Quoting from *Graham, Miller* held that “A State is not required to guarantee eventual freedom,” but must provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” (*Miller, supra*, ___ U.S. at p. ___ [2012 U.S. Lexis 4873 at p. *35].) While this is the very language at issue in *Caballero*, it surfaced in *Miller* in a very different part of the process. Because *Miller* involved a mandatory sentencing scheme, that fact alone precluded a meaningful opportunity for release. From the very outset, the Eighth Amendment was violated. To decide *Miller*, the Court needed to go no further than that. *Miller* has nothing to say about de facto life sentences or the broader meaning of “some meaningful opportunity to obtain release.”

Miller may help with one point asserted by the Attorney General in *Caballero*. In discussing that the characteristics of youth are not crime specific, the *Miller* opinion observed that the reasoning of *Graham* implicates any life without parole case imposed on a juvenile, even as its categorical bar relates only to homicide offenses.” (*Miller, supra*, ___ U.S. at p. ___ [2012 U.S. Lexis 4873 at p. *4].) If it was not already clear, this should put to rest the Attorney General's argument made at the May 31, 2012 oral argument that attempted murder should be treated the same as homicide, so that *Graham* would not apply.

The *Miller* opinion also reiterates much of the language from earlier cases that supports the applicability of “some meaningful opportunity to obtain release” in *Caballero*. *Miller* is the Court's fourth case in less than seven

years to recognize that, because juveniles are less culpable and more susceptible to change, the criminal justice system requires special rules when they are tried as adults. It is the third case in that time span in which the Court has struck down extreme sentences for juveniles tried as adults.

In *Roper v. Simmons* (2005) 543 U.S. 551, the Court held that no one under the age of 18 at the time of the crime may receive the death penalty. Five years later, in 2010, the Court held in *Graham*, 560 U.S. ____ [130 S. Ct. 2011] that juveniles who commit non-homicide offenses may not receive life without the possibility of parole. In 2011, the Court held, in *J. D. B. v. North Carolina* (2011) 564 U.S. ____ [131 S. Ct. 2394] that age must be taken into account in determining whether *Miranda* rights must be given. And now, *Miller* has held that mandatory life without parole sentencing schemes for juveniles are unconstitutional.

A number of the points made in *Miller* and relying on *Graham* resonate in Rodrigo Caballero's case. The opinion reaffirmed that deciding a juvenile offender forever will be a danger to society would require a finding of incorrigibility at the outset that is inconsistent with youth. (*Miller, supra*, ____ U.S. at p. ____ [2012 U.S. Lexis 4873 at p. *23].) Also, the opinion decried mandatory sentencing because "it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example his inability to deal with police officers or prosecutors (including on a plea agreement), or his incapacity to assist his own attorneys." (*Miller, supra*, ____ U.S. at p. ____ [2012 U.S. Lexis 4873 at p. *32].)

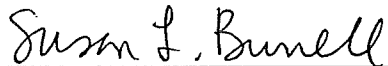
Rodrigo Caballero had more than his share of the "incompetencies associated with youth." He was a 16 year-old diagnosed schizophrenic who grew up speaking Spanish as his primary language. He had spent many months in custody as a legally incompetent juvenile just prior to the proceedings in this case – requiring a very high level of impairment. The people who worked with him while he was incompetent believed Rodrigo would be released after he finished his mental health treatment program, and were working on a re-entry plan. These facts were not considered by the court that committed Rodrigo to spend the rest of his life in prison. Further, Rodrigo was represented by an attorney who either did not recognize the incompetencies of youth, or lacked the skills to properly represent a young person with these characteristics. (See Brief of Amicus Curiae Pacific Juvenile Defender Center, pp. 13-14, fn 5.)

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This case calls for the court to determine whether sentencing Rodrigo Caballero to spend one hundred and ten years in prison constituted Cruel and Unusual Punishment. As *Graham* recognized, and *Miller* reiterated, a young person in this situation should have a reasonable opportunity to obtain release. That did not occur in this case.

For all of these reasons and for those presented in the briefs of amici curiae, we urge the court to reverse the judgment in this case and to remand it for further proceedings not inconsistent with the court's opinion.

Respectfully submitted this 12th day of July, 2012 at San Francisco, California.



Susan L. Burrell
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DECLARATION OF SERVICE BY MAIL

Re: People v. Rodrigo Caballero, S190647

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of San Francisco, State of California. My business address is 200 Pine Street, Suite 300, San Francisco, CA 94104. On July 12, 2012, I have caused to be served a true copy of the attached:

**SUPPLEMENTAL AMICUS CURIAE LETTER OF PACIFIC
JUVENILE DEFENDER CENTER AND JUVENILE LAW CENTER
ON BEHALF OF APPELLANT RODRIGO CABALLERO**

on each of the following, by placing same in an envelope(s) addressed as follows:

Kamala Harris
Attorney General of California
300 South Spring Street, Suite 1702
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John A. Clarke, Clerk of Court
Los Angeles County Superior Court
111 N. Hill Street
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Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice each envelope would be deposited with the United States Postal Service in San Francisco, California, on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 12, 2012 at San Francisco, California.



Robin Bishop, Declarant