



U.S. Department of Justice

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March 10, 2020

Patricia S. Dodszuweit, Clerk
United States Court of Appeals
for the Third Circuit
U.S. Courthouse
601 Market Street, Room 21400
Philadelphia, PA 19106-1790

Re: *United States v. Grant*, No. 16-3820 (argued en banc February 20, 2019) — response to Grant’s 3/9/20 letter pursuant to Fed. R. App. P. 28(j)

Dear Ms. Dodszuweit:

Corey Grant cites *United States v. Briones*, 929 F.3d 1057 (9th Cir. 2019) (en banc), *cert. pending*, 19-720 (U.S.), but ignores *United States v. Sparks*, 941 F.3d 748 (5th Cir. 2019), *cert. denied*, 2020 WL 981919 (U.S. 2020).

Sparks emphasizes the Eighth Amendment does not foreclose even LWOP for a juvenile offender unless the sentencer’s hands are tied, 941 F.3d at 754, adding that “*Miller* has no relevance to sentences less than LWOP.” *Id.* Accordingly, neither sentences that allow for possible early release nor “term of years” sentences “implicate *Miller*.” *Id.* *Sparks* also specifically rejected the Panel’s opinion here as arbitrary and “not bound by law.” *Id.*

By contrast, *Briones* vacated a LWOP sentence because, according to the majority, there was no explicit discussion of whether *Briones* was irredeemable. 929 F.3d at 1066. But whether Grant’s horrific crimes reflect an irredeemable nature is not the issue. Scheduled for release no later than age 72, he is not serving a *de facto* LWOP life sentence, but a discretionary, term-of-years sentence imposed after repeated consideration of his age at the time of his murders. And Grant can seek compassionate release, yet another reason his sentence is constitutional.

Grant also cites *Cunio v. Brown*, 2020 WL 854180 (D. Or. Feb. 20, 2020),

and *People v. Turner*, 936 N.W.2d 827 (Mich. 2020). But the *Cunio* magistrate judge repeats the Panel's fundamental error, concluding release at a certain age (88) comes too late to be "meaningful." 2020 WL 854180 at *6. According to *Sparks*, however, that's "bizarre," given that *Miller* expressly endorsed lengthy, term-of-years sentences. 941 F.3d at 754. See *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) (defendant, age 70, entitled only to possible parole, not certain release at any age). Meanwhile, *Turner* simply says a court should do what Judge Linares actually did: Exercise discretion in assessing whether to resentence on all counts of conviction or just some.

Lastly, the Supreme Court just granted cert. in another discretionary juvenile LWOP case: *Jones v. Mississippi*, 18-1259 (U.S.).

Appellee certifies that this letter: (1) complies with Rule 28(j) by having only 333 words in its body; (2) was filed today with this Court through the Court's CM/ECF system; and (3) was served today on opposing counsel (Lawrence S. Lustberg, Esq.), through the Notice of Docketing Activity issued by that system.

Respectfully submitted,

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By: 
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cc: Lawrence S. Lustberg, Esq.