RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE
Sep 01, 2016, 1:15 pm
RECEIVED ELECTRONICALLY

No. 92454-6

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOEL RAMOS,

Petitioner.

FILED
SEP 16 2016
WASHINGTON STATE
SUPREME COURT

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR YAKIMA COUNTY

AMICI CURIAE BRIEF OF JUVENILE LAW CENTER AND TEAMCHILD IN SUPPORT OF PETITIONER, JOEL RAMOS.

Marsha Levick
PA Bar # 22535
Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Tel: (215) 625-0551
Fax: (215) 625-2808
mlevick@jlc.org

George Yeannakis, WSBA# 5481
TeamChild
1225 South Weller Street
Suite 420
Seattle, WA 98144
Tel: (206) 322-2444
Fax: (206) 381-1742
George.yeannakis@teamchild.org

Counsel for *Amici Curiae*

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

IDENTITY AND INTEREST OF AMICUS CURIAE 1

INTRODUCTION 2

STATEMENT OF THE CASE 3

ARGUMENT 4

I. Graham And Miller Affirm The United States Supreme Court's Recognition That Children Are Categorically Less Deserving Of The Harshest Forms Of Punishment 4

II. Prior To Imposing A Harsh Adult Sentence On A Juvenile Offender, A Sentencer Must Consider The Youth's Age And Age-Related Characteristics 7

CONCLUSION 14

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Graham v. Florida,
560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) .... *passim*

Miller v. Alabama,
__ U.S. __, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) .... *passim*

Roper v. Simmons,
543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) .... *passim*

Sumner v. Shuman,
483 U.S. 66, 107 S. Ct. 2716, 97 L. Ed. 2d 56 (1987) 8

State Cases

State v. Law,
154 Wn.2d 85, 110 P.3d 717 (2005) 8

State v. Lyle,
854 N.W.2d 378 (Iowa 2014) 11

State v. Ragland,
836 N.W.2d 107 (Iowa 2013) 8

State Statutes

RCW 9.94A.589 .... 7, 8

Other Authorities

Martin Guggenheim, *Graham v. Florida and a Juvenile's Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457 (2012) 9, 12

IDENTITY AND INTEREST OF AMICUS CURIAE

The identity and interest of *amici curiae* are set forth in the accompanying Motion for Leave to File an *Amicus Curiae* Brief.

INTRODUCTION

In *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that the mandatory imposition of sentences of life without the possibility of parole on juvenile offenders convicted of homicide is unconstitutional. The Court required that before a juvenile homicide offender can receive a sentence that offers no "meaningful opportunity to obtain release," *id.* at 2469 (quoting *Graham*, 560 U.S. 48, 75 (2010)), the sentencing court must have discretion in sentencing and must consider the defendant's youth and its accompanying characteristics.

Appellant Joel Ramos was sentenced to 85 years in prison for crimes he committed as a juvenile. The sentencing statute created a presumption in favor of this life-equivalent sentence and prevented the sentencer from considering Appellant's age or age-related factors as required by *Miller*. This Court should clarify that sentencers must have the ability to consider how a juvenile offender's age and age-related characteristics counsel against sentencing young offenders as if they were merely miniature adults.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case as set forth by Petitioner Joel Ramos.

ARGUMENT

I. *Graham* And *Miller* Affirm The United States Supreme Court's Recognition That Children Are Categorically Less Deserving Of The Harshest Forms Of Punishment

In *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), and *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the U.S. Supreme Court recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments.[1] Relying on *Roper*, the U.S. Supreme Court in *Graham* cited three essential characteristics which distinguish youth from adults for culpability purposes: "[a]s compared to adults, juveniles have a 'lack of maturity and an underdeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well formed.'" 560 U.S. at 68 (citing *Roper*, 543 U.S. at 569-70). *Graham* found that "[t]hese salient characteristics mean that '[i]t is difficult even for expert psychologists to differentiate between

---

[1] *Roper* held that imposing the death penalty on juvenile offenders violates the Eighth Amendment, 543 U.S. at 578; *Graham* held that life without parole sentences for juveniles convicted of nonhomicide offenses violate the Eighth Amendment, 560 U.S. at 82; and *Miller* held that mandatory life without parole sentences imposed on juveniles convicted of homicide offenses violate the Eighth Amendment, 132 S. Ct. at 2469.

the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' Accordingly, 'juvenile offenders cannot with reliability be classified among the worst offenders.'" *Id.* (citation omitted) (quoting *Roper*, 543 U.S. at 569, 573). The Court concluded that "[a] juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.'" *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988) (plurality opinion)). The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for release was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

> Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S. at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.*

Id. The Court's holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow.

In reaching these conclusions about a juvenile's reduced culpability, the U.S. Supreme Court has relied upon an increasingly settled body of research confirming the distinct emotional, psychological and neurological attributes of youth. The Court clarified in *Graham* that, since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *Graham*, 560 U.S. at 68. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the "status of the offenders" is central to the question of whether a punishment is constitutional. *Id.* at 68-69.

The U.S. Supreme Court in *Miller* expanded its juvenile sentencing jurisprudence, banning mandatory life without parole sentences for children convicted of homicide offenses. Reiterating that children are fundamentally different from adults, the Court held that a sentencing scheme that mandates life without parole for juvenile offenders violates the Eighth Amendment and that the sentencer must take into account the juvenile's "lessened culpability," "greater 'capacity for change,'" and

individual characteristics before imposing this harshest available sentence. *Miller*, 132 S. Ct. at 2460 (quoting *Graham*, 560 U.S. at 68, 74). The Court noted "that those [scientific] findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 2464-65 (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. at 570. Importantly, in *Miller*, the Court found that none of what *Graham* "said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." 132 S. Ct. at 2465. The Court instead emphasized "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.*

II. Prior To Imposing A Harsh Adult Sentence On A Juvenile Offender, A Sentencer Must Consider The Youth's Age And Age-Related Characteristics

Washington's Sentencing Reform Act (SRA), chapter 9.94A RCW, requires the sentencing judge to presume that a harsh, adult sentence was the appropriate sentence for Appellant. According to the SRA, a standard range sentence presumptively applies unless the court

finds substantial and compelling reasons to depart from it. *State v. Law*, 154 Wn.2d 85, 94, 110 P.3d 717 (2005) ("Generally, a trial court must impose a sentence within the standard range."). The SRA also creates a presumption that multiple sentences will be served consecutively. *See* RCW 9.94A.589. As a result, Mr. Ramos received an 85-year sentence that is the functional equivalent of a life sentence.[2] These presumptions are inconsistent with *Miller*'s requirement for individualized sentencing that treats youth as a mitigating factor.

Because children are categorically less culpable than adults, imposing a mandatory or presumptive adult sentence on a juvenile offender creates a substantial risk that the punishment will be disproportionate. *See, e.g., Miller*, 132 S. Ct. at 2469 ("By making youth

[2] The Supreme Court's Eighth Amendment jurisprudence has clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled. For example, the U.S. Supreme Court took this commonsense and equitable approach in *Sumner v. Shuman*, 483 U.S. 66, 107 S. Ct. 2716, 97 L. Ed. 2d 56 (1987), where it noted that "there is no basis for distinguishing, for purposes of deterrence, between an inmate serving a life sentence without possibility of parole and a person serving several sentences of a number of years, the total of which exceeds his normal life expectancy." 483 U.S. at 83. Labels and semantics should not enable courts to escape the clear mandate that juveniles must receive an appropriate sentencing hearing before they can be deprived of meaningful opportunity for release from prison. As the Iowa Supreme Court noted, in vacating mandatory 60-year sentences for juvenile homicide offenders pursuant to *Miller* and *Graham*, "it is important that the spirit of the law not be lost in the application of the law." *State v. Ragland*, 836 N.W.2d 107, 121 (Iowa 2013).

(and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment."). As Professor Martin Guggenheim has observed,

> [a] state sentencing statute that requires, regardless of the defendant's age, that a certain sentence be imposed based on the conviction violates a juvenile's substantive right to be sentenced based on the juvenile's culpability. When the only inquiry made by the sentencing court is to consult the legislature's mandatory punishment for the crime, without any further inquiry into whether the punishment is appropriate for a juvenile, for no other reason than it is appropriate for an adult, the Constitution requires more.

Martin Guggenheim, *Graham v. Florida and a Juvenile's Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 490-91 (2012) (citing *Graham*, 560 U.S. at 88 (Roberts, C.J., concurring) ("[J]uvenile offenders are *generally*—though not necessarily in every case—less morally culpable than adults who commit the same crimes."). *See also Miller*, 132 S. Ct. at 2468 ("*Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult."). When sentencing a child, a sentencer must take into account the child's "diminished culpability and greater prospects for reform." *Id.* at 2464. As Chief Justice Roberts remarked, concurring in *Graham*, "[o]ur system

depends upon sentencing judges applying their reasoned judgment to each case that comes before them." 560 U.S. at 96 (Roberts, C.J., concurring).

Mr. Ramos received a presumptive 85-year sentence, which is the functional equivalent of life in prison. However, this analysis applies even when juvenile offenders are facing less severe adult sentences for less severe offenses. *See, e.g., Miller*, 132 S. Ct at 2465 ("[N]one of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific."). As the Iowa Supreme Court noted in striking down mandatory minimum sentences for juvenile offenders under their state Constitution:

> [I]f mandatory sentencing for the most serious crimes that impose the most serious punishment of life in prison without parole violates [the Iowa Constitution], so would mandatory sentences for less serious crimes imposing the less serious punishment of a minimum period of time in prison without parole. . . . The constitutional prohibition against cruel and unusual punishment does not protect all children if the constitutional infirmity identified in mandatory imprisonment for those juveniles who commit the most serious crimes is overlooked in mandatory imprisonment for those juveniles who commit less serious crimes. *Miller* is properly read to support a new sentencing framework that reconsiders mandatory sentencing for all children. Mandatory minimum sentencing results in cruel and unusual punishment due to the differences between children and adults. This

> rationale applies to all crimes, and no principled basis exists to cabin the protection only for the most serious crimes.

State v. Lyle, 854 N.W.2d 378, 401-02 (Iowa 2014), *reh'g denied* (Sept. 30, 2014), *as amended* (Sept. 30, 2014). The Iowa court further noted:

> [O]ur collective sense of humanity preserved in our constitutional prohibition against cruel and unusual punishment and stirred by what we all know about child development demands some assurance that imprisonment is actually appropriate and necessary. There is no other area of the law in which our laws write off children based only on a category of conduct without considering all background facts and circumstances.

Id. at 401.

When a juvenile offender is facing a sentence crafted with adult offenders in mind, a judge therefore must have the opportunity to assess the juvenile's individual level of culpability, considering not only the juvenile's level of involvement in the crime, but also how the juvenile's age and development may have influenced his actions or involvement. The sentencer should consider, at a minimum, the factors the U.S. Supreme Court found relevant in *Miller*, including the juvenile's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences;" "the family and home environment that surrounds him;" "the circumstances of the [ ] offense,

including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;" the "incompetencies associated with youth" in dealing with the adult criminal justice system; and "the possibility of rehabilitation [ ] when the circumstances most suggest it." 132 S. Ct. at 2468. And, when facing a sentence that is the functional equivalent of life imprisonment, the sentencer must consider "how those differences counsel against" this harsh adult sentence. *See id.* at 2469.

Accordingly, this Court should clarify that mandatory and presumptive sentences should not be imposed on juvenile offenders without first considering how a youth's age and age-related characteristics counsel against such a sentence. As the Court in *Graham* noted, "[a]n offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham,* 560 U.S. at 76.[3] A mandatory or presumptive sentence that does not allow the sentencer to account for the

---

[3] The U.S. Supreme Court's jurisprudence, of course, "does not rule out the possibility that juveniles and adults may receive identical sentences but merely requires consideration of the differences between juveniles and adults prior to sentencing." Guggenheim, 47 HARV. C.R.-C.L. L. REV. at 499. "What is impermissible . . . however, is a legislature's choice to impose an automatic sentence on children that is the same sentence it imposes on adults for the same crime." *Id.* at 489.

juvenile's individual level of culpability—including his actions, intent and expectations—is counter to the Court's reasoning in *Roper*, *Graham,* and *Miller*.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court hold that Appellant's eight-five-year sentence violates the dictates of *Miller v. Alabama*, vacate the sentence, and remand for resentencing.

Respectfully Submitted,

/s/Marsha L. Levick

Marsha Levick
PA Bar # 22535
Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Tel: (215) 625-0551
Fax: (215) 625-2808
mlevick@jlc.org

/s/George Yeannakis

George Yeannakis, WSBA# 5481
TeamChild
1225 South Weller Street
Suite 420
Seattle, WA 98144
Tel: (206) 322-2444
Fax: (206) 381-1742
george.yeannakis@teamchild.org

Dated: September 2, 2016

OFFICE RECEPTIONIST, CLERK

From:	Tiffany Faith <tfaith@jlc.org>
Sent:	Thursday, September 01, 2016 1:14 PM
To:	OFFICE RECEPTIONIST, CLERK
Cc:	wapofficemail@washapp.org; scpaappeals@spokanecounty.org; Suzanne Elliott; Amanda
Subject:	State v. Ramos, No. 92454-6
Attachments:	2016.9.2 Motion for Leave to File - FINAL.PDF; 2016.9.2 Ramos Amicus Brief - FINAL.PDF
Importance:	High

Email
Supreme Court of Washington
Attn: Clerk's Office
PO Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

RE: ***State v. Ramos*, No. 92454-6**
Motion for Leave to File Amicus Brief
Amici Curiae Brief of Juvenile Law Center and TeamChild

To the Clerk:

Attached for filing on behalf of Marsha L. Levick PA Bar# 22535 and George Yeannakis, WSBA# 5481 is the Motion for Leave to File Amicus Brief and the Amici Curiae Brief of Juvenile Law Center and TeamChild in Support of Petitioner. Having received prior consent, all parties have been served via email attachment.

Thank you for your time and attention to this matter.

Sincerely,

Tiffany Faith | Litigation Paralegal
Juvenile Law Center
The Philadelphia Building
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
215-625-0551 x 104
215-625-2808 (fax)
tfaith@jlc.org
www.jlc.org
Juvenile Law Center

Follow us on Twitter and Facebook:
@JuvLaw1975 | www.facebook.com/juvenilelawcenter