NO. 514PA11-2 **TWENTY-SIXTH DISTRICT**

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	**)**	
	)	**From Mecklenburg County**
v.	**)**	**No. COA15-684**
	)	**06 CRS 222499-599**
HARRY SHAROD JAMES	**)**	

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NEW BRIEF FOR THE STATE (APPELLANT)

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NEW BRIEF FOR THE STATE
(APPELLANT)

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ISSUE PRESENTED

Whether the Court of Appeals erred by holding N.C. Gen. Stat. § 15A-1340.19A et seq. created a presumption in favor of life without parole.

STATEMENT OF THE CASE

On 10 June 2010, the jury found Defendant guilty of first-degree murder on the basis of malice, premeditation and deliberation, and under the felony murder rule; the jury also found Defendant guilty of robbery with a dangerous weapon. Honorable Robert F. Johnson, Superior Court Judge, presided at the Criminal Session of Superior Court, Mecklenburg County, sentenced defendant to life imprisonment without parole for the murder conviction and to a concurrent sentence of sixty-four to eighty-six months imprisonment for the

robbery conviction.

After briefing by the parties and oral argument, Defendant's conviction and sentence were affirmed by the Court of Appeals on 18 October 2011. (R pp. 16-20) Defendant filed a PDR. In the interim, Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) was decided. To ensure compliance with Miller, N.C. Gen. Stat. § 15A-1340.19A et seq. was enacted. On 23 August 2012, this Court allowed Defendant's PDR and ordered the case remanded for resentencing pursuant to N.C. Gen. Stat. § 15A-1340.19A et seq.

On 5 December 2014, a resentencing hearing was held in which Judge Johnson presided. On 12 December 2014, at the conclusion of the resentencing hearing, Judge Johnson sentenced Defendant to life without parole. Defendant gave oral notice of appeal.

After briefing by Defendant and the State, oral argument was heard in the Court of Appeals on 11 November 2015. In an opinion authored by Judge McCullough with Judge Bryant and Judge Geer concurring, the Court of Appeals affirmed that N.C. Gen. Stat. § 15A-1340.19A et seq. was constitutional and in compliance with Miller. However, the Court also held that the trial court's order, although extensive in detailing evidence elicited at the sentencing hearing and facts of the offense, did not make clear whether any of the findings were mitigating or not. The case was reversed and remanded in part to the trial court

for further sentencing proceedings. State v. James, __ N.C. App. __, __, 786 S.E.2d 73, 78-79 (2016).

On 3 June 2016, Defendant filed a PDR in this Court challenging the Court of Appeals' above-noted holding as to the constitutionality of N.C. Gen. Stat. § 15A-1340.19A et seq. On 16 March 2017, Defendant's PDR was granted. The State also requested the consideration of an additional issue pursuant to N.C. R. App. P. 15(d), which was also granted.

STATEMENT OF THE FACTS

Defendant was about five years old when his mother and father divorced. Aiysah, his younger sister, was four. (Tpp 41, 54). During the marriage, there was abuse between the mother and father that was witnessed by both Defendant and Aiysah. (Tpp 43, 59). However, the parent's abuse was never directed towards their children. (Tp 59). After the divorce, Defendant and his sister lived back and forth between their mother and father, although Defendant mainly lived with his Mother. (Tpp 55, 69). Because of his mother's financial situation and the hostile relationship between the parents, Defendant's living arrangements were unstable. He moved around often and on one occasion lived in a shelter. (Tpp 44, 66). Defendant often ran away from home. This resulted in his mother having to file missing person reports. One of the times when Defendant ran away, he was sexually assaulted by two boys. (Tp 218).

Defendant's mother made sure he attended church regularly. Sheila Stuckey, a friend of Mrs. James, testified that she knew defendant until he was about 13 years old. She would see him at bible study during the week and at Sunday service. (Tpp 64-65). When Defendant was around 12 or 13 he became a member of a gang "the Bloods." (Tpp 66, 69, 290). Mrs. James sought help for her son through church and other extracurricular activities such as Black Belt USA, hoping to provide positive male role models in his life and support beyond their relationship. (Tpp 73, 76, 82, 264).

Kerton Washington, a church member, was one of the people who tried to provide that support. In talking to Defendant, he became concerned when Defendant stated when he went downtown sometimes he would jump in and out of people's cars when they stopped. (Tpp 73, 77). There were other members of the church who counseled and engaged Defendant. (Tpp 76-77). Abdullah Sihlangu, an instructor with Black Belt USA, also tried to help. He talked with Mrs. James about Defendant and developed a plan to help him. (Tpp 82-88). In 2005, Mrs. James stated that she also tried to get Defendant help through counseling or treatment, but he refused to participate. (Tpp 265-267).

Another person that tried to help Defendant was Curtis Jenkins. "Defendant became acquainted with the victim, Curtis Laquan Jenkins, through a church sponsored group, 'Becoming a Man' ('BAM'), where Jenkins served as

defendant's mentor. Defendant, 16 years old at the time, took his 21-year-old friend, Adrian Morene,[his codefendant] to a BAM event where he introduced Morene to Jenkins." (R. p. 16). Mr. Jenkins was later robbed and murdered by the pair.

The only evidence of physical abuse Defendant was subjected to by his parents occurred on or about 18 November 2002. On that date, Defendant and his mother had a confrontation over some spilled sugar. "She asked Defendant to clean it up, he balled up his fist, called her names, and refused to clean up the sugar. At this point in time Defendant had been battling with his mother for about two months, Agnes James [Defendant's mother] admitted to grabbing his collar, wrestling with him, falling to the floor and causing a scratch on Defendant's neck." (Tpp 254-255). Defendant insisted on returning to his father. Upon seeing the scratch on Defendant's neck, Mr. James took Defendant to the emergency room, alleging Defendant was assaulted by his mother. (Tp 260). The matter was investigated by Mecklenburg County Department of Social Services (DSS). DSS determined that this was not an assault or abuse. It was found to be "inappropriate discipline." DSS determined that there was no need for on-going service. (Tpp 252-253).

In 2005, Defendant attempted to harm his mother by putting Clorox in her salad dressing. (Tpp 260, 270-271). He also threatened to kill his mother by

slicing her throat from behind. (Tp 279). On 13 March 2005, a juvenile petition was filed. (Tpp 265 -268). After this incident, Mrs. James sought to find placement for Defendant outside of her home. (Tpp 213-215).

Dr. Robert Custrini, a clinical psychologist, had previously worked with Defendant in 2005 for four months. (Tp 305). He sought to interview Defendant in preparation for the sentencing hearing. However, Defendant refused to talk to Dr. Custrini about the facts and circumstances of his case. (Tp 335). As a result, Dr. Custrini was unable to learn anything about Defendant's thought processes or mental state at the time of the murder. Dr. Custrini did provide testimony pertaining to adolescent brain development compared to adults. (Tpp 301-322). He indicated that people develop at different rates. Therefore, there is not a set age of maturation completion. (Tp 314). He testified that "we do not yet possess the ability to reliably distinguish between the offenses that are a function of mature development and those that are a reflection of true sociopathy." (Tp 334). He agreed that Defendant's behavior could be sociopathy, or it could be regular adolescent development. (Tp 323).

ARGUMENT

THE NORTH CAROLINA COURT OF APPEALS ERRED IN FINDING THAT N.C. Gen. Stat. § 15A-1340.19A ET SEQ. LANGUAGE GIVES RISE TO A MANDATORY PRESUMPTION IN FAVOR OF LIFE WITHOUT PAROLE.

Contrary to the State's contention, Defendant argued that the N.C. Gen.

Stat. § 15A-1340.19A et seq. (the Act) created an unconstitutional presumption in favor of life without parole (LWOP). In rejecting the State's contention, the Court of Appeals held that the Act creates a presumption in favor of LWOP stating that:

> the General Assembly's use of "instead of" in N.C. Gen. Stat. § 15A-1340.19C(a), as opposed to "or," becomes clear when considered in light of the fact that the sentencing guidelines require the court to consider only mitigating factors. Because the statutes only provide for mitigation from life without parole to life with parole and not the other way around, it seems the General Assembly has designated life without parole as the default sentence, or the starting point for the court's sentencing analysis. Thus, to the extent that starting the sentencing analysis with life without parole creates a presumption, we agree with defendant there is a presumption.

State v. James, __ N.C. App. ___, __,786 S.E.2d 73, 78-79 (2016). The Court of Appeals erred in this determination.

Standard of Review:

The issue before the Court is one of statutory construction, which is subject to de novo review.

Statutory Construction:

Statutory construction begins with the language of the statute. The inquiry ceases where the statutory language is unambiguous with regard to the particular dispute in the case and the statutory scheme is coherent and consistent. Kingdomware Techs., Inc. v. United States, 136 S. Ct. 1969, 1976,

195 L. Ed. 2d 334, 344 (2016). Where there is ambiguity, discerning the intent of the legislator is a fundamental rule of statutory construction. State v. Jones, 359 N.C. 832, 835, 616 S.E.2d 496, 498 (2005). The interpretation of our General Assembly's intent should be construed to embody the full meaning of Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012). The words of a statute cannot be interpreted in isolation. They must be read in "context and with a view to their place in the overall statutory scheme." Sturgeon v. Frost, 136 S. Ct. 1061, 1070, 194 L. Ed. 2d 108 (2016) (internal citations and quotation marks omitted). The legislative intent "must be found from the language of the act, its legislative history and the circumstances surrounding its adoption which throw light upon **the evil sought to be remedied**." State v. Oliver, 343 N.C. 202, 212, 470 S.E.2d 16, 22 (1996) (citation and quotation omitted) (emphasis added). "A timeworn textual canon is confirmed by the structure and internal logic of the statutory scheme." Lockhart v. United States, 136 S. Ct. 958, 962, 194 L. Ed. 2d 48, 54 (2016). N.C. Gen. Stat. § 15A- 1340.19A et seq. should be interpreted to give effect to the complete Act, so that no part will be superfluous, void, or insignificant. Corley v. United States, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009). Unambiguous provisions of the statute must be interpreted and reconciled in order to give effect to the overall purposes of the legislative act.

Miller v. Alabama

"In response to Miller our General Assembly, enacted N.C. Gen. Stat. §§ 15A-1340.19A to -1340.19D 'to amend the state sentencing laws to comply with the United States Supreme Court decision in Miller v. Alabama' (the "Act") on 12 July 2012. See 2012 N.C. Sess. Laws 148 (eff. 12 July 2012)". James, __ NC __, __, 786 S.E.2d at 76. N.C. Gen. Stat. § 15A-1340.19A et seq. was enacted to comply with Miller. As such, any interpretation of the statue must hold that point paramount.

Miller articulated a substantive rule of constitutional law. Montgomery v. Louisiana, 136 S. Ct. 718, 729-730, 193 L. Ed. 2d 599, 615 (2016). A substantive rule which sought to individualize sentencing for juveniles convicted of first-degree murder and facing a mandatory sentence of LWOP. As a result, such a juvenile can no longer be sentenced to LWOP, unless a sentencing hearing is held and the requisite findings established. As such, Miller places mandatory LWOP for juveniles "beyond a state's power to impose." Id.

At the juvenile's sentencing hearing the trial court considers the factors articulated by Miller, the facts of the crime, and the individual circumstances of the juvenile. N.C. Gen. Stat. § 15A-1340.19C. It is only after considering these factors that a trial court may find a defendant's crimes do not reflect an unfortunate yet transient immaturity, but rather irreparable corruption which

can result in LWOP. Montgomery at 735, 193 L. Ed. 2d at 619. Without such a hearing, a sentence of LWOP for a juvenile would be unlawful. Where no such hearing is held, the juvenile defendant can only be sentenced to life with parole (LWP).

The State, however, may rectify any possible Miller violation by allowing "juvenile homicide offenders to be considered for parole, rather than by resentencing them," to LWOP. Id. at 736, 193 L. Ed. 2d at 622. Miller certainly didn't create a presumption in favor of LWOP but rather one of LWP that can only be changed with the requisite hearing. As such, it seems clear that in conformity with Miller, the only presumption with which a juvenile defendant can enter the sentencing hearing is one of LWP. Miller held that LWOP should be reserved for the rarest of juvenile offenders. Therefore, to juxtapose a sentencing presumption of LWOP on every juvenile convicted of murder that comes before a North Carolina sentencing court would be injurious to Miller's intent, and counter to the General Assembly's articulated intent to enforce Miller. Such an interpretation would have the opposite effect of relieving the evil Miller sought to remedy. Oliver, 343 N.C. at 212, 470 S.E.2d at 22. Nothing in the statute or the legislative history which supports a presumption of LWOP.

The Court of Appeals held that the above statutes of the Act created a presumption in favor of LWOP, stating:

> Yet, the reason for the General Assembly's use of "instead of" in N.C. Gen. Stat. § 15A-1340.19C(a), as opposed to "or," becomes clear when considered in light of the fact that the sentencing guidelines require the court to consider only mitigating factors. Because the statutes only provide for mitigation from life without parole to life with parole and not the other way around, it seems the General Assembly has designated life without parole as the default sentence, or the starting point for the court's sentencing analysis. Thus, to the extent that starting the sentencing analysis with life without parole creates a presumption, we agree with defendant there is a presumption.

James, ___ N.C. at ___,786 S.E.2d at 79. The relevant statutes read as follows:

> N.C. Gen. Stat. § 15A-1340.19C. Sentencing; assignment for resentencing
>
> > (a) The court shall consider any mitigating factors in determining whether, based upon all the circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole **instead of** life imprisonment without parole. The order adjudging the sentence shall include findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.
>
> N.C. Gen. Stat. § 15A-1340.19B. Penalty determination
>
> > (a) In determining a sentence under this Part, the court shall do one of the following:
> >
> > (2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, **or** a lesser sentence of life imprisonment with parole.

The Court of Appeals finds ambiguity between the use of "to life

imprisonment **instead of** life imprisonment without parole," in N.C. Gen. Stat. § 15A-1340.19C(a) and the use of "life imprisonment without parole, ... **or** a lesser sentence of life imprisonment with parole," when coupled with "the sentencing guidelines requir[ing] the court to **consider only mitigating factors**." James, ___ N.C. at ___,786 S.E.2d at 79 (emphasis added). Yet that is not all the sentencing court is asked to consider. Consistent will Miller, the sentencing court is also instructed to consider the "circumstances of the offense and the particular circumstances of the defendant." N.C. Gen. Stat. § 15A-1340.19C(a).

The Court does not take into account that N.C. Gen. Stat. § 15A-1340.19(B)(a)(2) plainly cast the sentencing choice between LWOP and LWP in the disjunctive. Id. (where the defendant is convicted of other than felony murder "then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole."). Even if the language in the two above-cited statutory provisions gives rise to a patent ambiguity, under North Carolina law this Court is obliged to interpret them as non-contradictory. See Brown v. Brown, 353 N.C. 220, 226, 539 S.E.2d 621, 625 (2000) (courts presume that the General Assembly would not contradict itself in the same statute).

The first indication of the General Assembly intent is stated plainly in the Act's title, "to comply with the ... decision in Miller." See S.L. 2012-148 (emphasis supplied). It is inconceivable that the General Assembly would enact legislation intended to comport with the mandates of Miller, which by its very terms offends them. See Brown, 353 N.C. at 224, 539 S.E.2d at 623 (noting that "[a]lthough the title of an act cannot control when the text is clear, the title is an indication of legislative intent." (citations omitted))

Secondly, the intent of the North Carolina General Assembly is plainly set forth in language of N.C. Gen. Stat. § 15A-1340.19A et seq., which directs the court to find the absence or presence of mitigating factors of youth, while also considering the circumstances surrounding the crime and the particular circumstances of the defendant.

Additionally, the absence of aggravating factors does not create a presumption in favor of LWOP. Defendant claimed that the absence of statutory aggravating factors makes manifest that the Act creates a presumption in favor of LWOP because mitigating factors are only considered to lessen a sentence. Miller does not require any findings in aggravation before a court could sentence a juvenile to LWOP. The Miller Court was unquestionably aware of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and its

progeny. Indeed, if the Miller Court thought aggravating factors were necessary to insure constitutional compliance they could have easily made it a requirement. By choosing not to do so, it seems clear they did deem it necessary.

The statute is unambiguous and the Court of Appeals finding of a presumption in favor of LWOP should not be affirmed.

CONCLUSION

For the foregoing reasons N.C. Gen. Stat. § 15A-1340.19A et seq. does not create a presumption of favor of LWOP. Therefore, the Court of Appeals finding that the Act does create a presumption in favor of LWOP should not be affirmed by this Court

Electronically submitted this the 17th day of April, 2017.

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CERTIFICATE OF COMPLIANCE WITH RULE 28 (j)(2)

Undersigned counsel certifies that the State's Brief is in compliance with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure in that it is printed in thirteen-point Century Schoolbook font and the body of the brief, including footnotes and citations, contains no more than 8,750 words as indicated by Word Perfect, the program used to prepare the brief.

This the 17th day of April, 2017.

Electronically Submitted
Sandra Wallace-Smith
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing NEW BRIEF FOR THE STATE upon the DEFENDANT by electronically mailing the same in PDF format to his counsel of record, using the following electronic address:

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This the 17th day of April, 2017.

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