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

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	**)**	
	)	
v.	**)**	**From Mecklenburg**
	)	
HARRY SHAROD JAMES	**)**	

****

REPLY BRIEF FOR THE STATE
(APPELLANT)

****

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.

Where statutory language is clear and unambiguous, the court should abstain from "statutory construction in favor of giving the words their plain and definite meaning." State v. Beck, 359 N.C. 611, 614, 614 S.E.2d 274, 277 (2005). In its review, the Court reads statutory provisions in context. Statutes which pertain to the same subject are interpreted "*in pari materia*," establishing one law, to ensure that each statutory provision is given full meaning and purpose. State v. Godbey, __ N.C. __, __ ,792 S.E.2d 820, 827 (2016). Only statutory language which is subject to two or more meanings is considered ambiguous. State v. Mastor, __ N.C. __, __,777 S.E.2d 516, 519 (2015). The language of N.C. Gen. Stat. § 15A-1340.19 et seq. is unambiguous. It is

only when there is ambiguity that legislative intent must be determined by the court. Beck, 359 N.C. at 614, 614 S.E.2d at 277.

The language of N.C. Gen. Stat. § 15A-1340.19 et seq. does not prescribe a presumption in favor of life without parole (LWOP). However, the Court of Appeals questions the use of **instead of** in N.C. Gen. Stat. § 15A-1340.19C(a). Yet, in so doing, the Court of Appeals does not find the use of **instead of** to be ambiguous stating,

> "instead of," considered alone, does not show there is a presumption in favor of life without parole . . . "instead of" is merely used to distinguish between sentencing options. This is consistent with N.C. Gen. Stat. § 15A-1340.19B(a)(2), which states, "the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in [N.C. Gen. Stat. §] 14-17, **or** a lesser sentence of life imprisonment with parole." N.C. Gen. Stat. § 15A-1340.19B(a)(2).

James, _ N.C. _, _,786 S.E.2d at 79. Therefore, to interpret the language "instead of" to mean that the legislature intended the statute to establish a presumption in favor or LWOP discounts the plain meaning of "instead of" which, as the Court of Appeal stated, "seem to indicate that 'instead of' is merely used to distinguish between sentencing options." Id. The language is unambiguous.

As the Court of Appeals expressed, N.C. Gen. Stat. § 15A-1340.19A et seq. fulfilled the requirements of Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407, (2012) . James, _ N.C. _, __, 786 S.E.2d at 79-80. Consequently, where the legislature has properly enacted the requirements of Miller, it is not the responsibility of a court to second guess the manner in which the legislature chose to embody Miller's requirements. "The duty of a court is to construe a statute as it is

written." Campbell v. First Baptist Church, 298 N.C. 476, 482, 259 S.E.2d 558, 563 (1979). There was no need for the Court to interpret legislative intent where the statute is clear and unambiguous. As such, the Court need not resort to judicial construction. State v. Davis, 364 N.C. 297, 302, 698 S.E.2d 65, 68 (2010).

However, where there is a necessity to make sense of an ambiguous statute by determining legislative intent, "it is the duty of the courts to give effect to the words actually used in a statute and not to delete words used or to insert words not used." State v. Watterson, 198 N.C. App. 500, 505-506, 679 S.E.2d 897, 900 (2009). That doesn't necessitate "that words be given their narrowest or most strained possible meaning. A criminal statute is still construed utilizing common sense and legislative intent." State v. Beck, 359 N.C. 611, 614, 614 S.E.2d 274, 277 (2005)(citations and quotations omitted). If the "literal" reading of statutory language will run afoul of the clear purpose of the Legislature, the reason and purpose of the law controls, while the strict interpretation will be disregarded.

The Court of Appeals is incorrect when it states that language it finds unambiguous, combined the requirement to present mitigating factors yet does not require the presentation of aggravating factors, establishes a presumption in favor of LWOP. Such an assumption requires the Court to read more into an unambiguous statute then what is actually there. Additionally, the fact that the statute does not require the State to present aggravating factors is not in opposition to Miller or Montgomery v. Louisiana, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

Miller established that LWOP was an unconstitutional penalty for "a class of defendants because of their status [as], juvenile offenders whose crimes reflect the transient immaturity of youth." Montgomery, 136 S. Ct. 718, at 724, 193 L. Ed. 2d 599, 609. When one seeks that status, he must provide evidence that he fits in that category of juvenile offenders. A sentence of LWOP is not unconstitutional for all juvenile defendants. A Miller sentencing hearing, as is established by N.C. Gen. Stat. § 15A-1340.19 et seq., "is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." Miller, 567 U.S., at ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407.

In North Carolina, when courts must consider mitigating and aggravating factors the State bears the burden of proving an aggravating factor exists, and the offender bears the burden of proving that a mitigating factor exists. See, N.C. Gen. Stat. § 15A-1340.16. If Miller allowed the State to present aggravating factors, such damaging factors would lessen the possibility that "sentencing juveniles to this harshest possible penalty will be uncommon[,]." Miller, 567 U.S. at , 183 L. Ed. 2d at 424. Since the court is not required to weigh mitigating circumstances against aggravating circumstances it ensures a greater likelihood that LWOP would be reserved for the **"rarest juvenile."** Montgomery, U.S. at , 193 L. Ed. 2d at 620. In Montgomery, the Court had another opportunity to require the State present aggravating factors. If in fact they thought that the mandate of Miller could be better achieved by requiring States to present aggravating factors at sentencing they were in a position to do so.

Defendant argues the legislature may have misinterpreted Miller because they did not have the benefit of Montgomery. He is incorrect. Montgomery confirmed that the rule articulated by Miller was substantive rather than procedural. Whether procedural or substantive Miller established the type of sentencing hearing to be held and what needed to be established in order for a defendant to receive LWP. Montomery did not change Miller's holding. As Montgomery stated "[t]here are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. . . . when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class." Montgomery, 136 S. Ct. at 735, 193 L. Ed. 2d at 620-21. Miller dictates such a procedure. As such the procedural requirements articulated by Miller were not altered when Montgomery confirmed that Miller represented a substantive rule.

Even assuming that the statute contains a presumption in favor of LWOP it is not unconstitutional. Miller did not find that a sentence of LWOP for a juvenile was unconstitutional. It simply required that before such a sentence is imposed, the court must consider "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." As the Court of Appeals stated, Montgomery affirmed, "Miller simply requires 'that sentencing courts consider a child's 'diminished culpability and heightened capacity for change' before condemning him or her to die in prison.' Montgomery, __ U.S. at __, 193 L. Ed. 2d 599, 610-11, 136 S. Ct.

718 (2016) (quoting Miller, 567 U.S. at __, 183 L. Ed. 2d at 424)." James, __ N.C. App. __, __, 786 S.E.2d 73, 79-80 (2016). The Court of Appeals also stated:

> A review of N.C. Gen. Stat. § 15A-1340.19A et seq. reveals the sentencing guidelines do just that. Instead of imposing a mandatory sentence of life without parole, the sentencing guidelines in N.C. Gen. Stat. § 15A-1340.19A et seq. require the sentencing court to hold a sentencing hearing during which the defendant may submit mitigating circumstances, including the defendant's "youth (and all that accompanies it)[,]" Miller, 567 U.S. at __, 183 L. Ed. 2d at 424, which the trial court must consider in determining whether to sentence defendant to life without parole or life with parole. As noted in our discussion of defendant's first issue, these sentencing guidelines seem to comply precisely with the requirements of Miller.

James, __ N.C. App. at __, 786 S.E.2d at 79-80 . "(I)t may very well be the uncommon case that a juvenile is sentenced to life without parole under N.C. Gen. Stat. § 15A-1340.19A et seq." Id. 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 5th day of June, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **Reply Brief** 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 5th day of June, 2017.

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