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In the Courts: Sentencing Juvenile Offenders

By Hsin-Hsin Lee

Society generally perceives juvenile gang activities as “bad choices” on the part of the youth, and the youth are often punished as such in the juvenile justice systems. In fact, anti-gang initiatives such as California’s Street Terrorism Enforcement and Prevention Act attaches significant sentence enhancements that are applied without consideration of the offender’s age. However, as the courts began to recognize cognitive differences in children and adults, there is a potential future trend for U.S. courts to perceive youth involvement in gangs as a form of labor trafficking as opposed to bad decision-making on the part of the youth that deserves to be punished. This change will drastically alter juvenile court sentencing as juvenile gang members are perceived as “victims” instead of “perpetrators.” This view follows the judicial trend to sentence juveniles differently than adults because they are not fully emotionally developed, and as evidenced by the holdings in *Graham v. Florida*, *Miller v. Alabama*, *People v. Gutierrez*, *People v. Cabellero*, and *People v. Com*, it is readily apparent that juveniles involved in gangs require a different approach to sentencing.

In 2010, the U.S. Supreme Court recognized that mandatorily sentencing juveniles to life without parole is a violation of the “cruel and unusual punishment” clause of the Eight Amendment. In *Graham v. Florida*, the Court stated that juveniles must be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” The Court reasoned that a life-without-parole sentence imposed on youth who have committed non-homicide crimes is unconstitutional because it “improperly denies the juvenile offender a chance to demonstrate growth and maturity.” This holding acknowledged that juvenile offenders differ from their adult counterparts as juveniles are more likely to be “rehabilitated”; and further placed a ban that prohibits the state from sentencing a juvenile non-homicide offender to life without parole. Nonetheless, the state retains the option to sentence juvenile offenders to life with a possibility of parole.

In 2012, the Supreme Court reinforced the *Graham* decision in *Miller v. Alabama* by holding that states cannot impose mandatory life without parole sentences on juveniles. The *Miller* decision is important because of its focus on physiological and developmental differences that set juvenile offenders apart from adults. The *Miller* court recognized that children lack the life experience necessary to properly balance risk and reward, and are therefore more likely than adults to engage in high-risk behavior for short-term gains. In *Miller*, the Court summarized the factors that make juvenile offenders less culpable than adults as: (1) they are less able to assess risk; (2) they are more susceptible to outside influences; and (3) they do not have a fully-developed character.

These three concerns opined in *Miller* are very apt when applied to gang settings. Author and gang expert Dan Korem states that the most common explanation for youths’ choices to join dangerous street gangs is the failure of family and similar support mechanisms, which he calls the “missing protector factor.” Societal changes like rising divorce rates, increasing numbers of mothers in the workforce, and the failure of public

schools to properly educate youths “have posed challenges particularly for poor families, and also for racial and ethnic minorities.” Given this background, the gang context magnifies juveniles’ inability to accurately assess the riskiness of their behavior because the promise of acceptance as a gang member may cause juveniles to lower their moral standards. Secondly, the gang context magnifies the effects of juveniles’ susceptibility to negative influences. The *Miller* court noted that juveniles are highly susceptible to negative influences from their peers and family, similar to how joining a gang brings juveniles into an environment in which peers are more likely to be engaging in delinquent behaviors. Lastly, the *Miller* court noted that juvenile acts are less likely to be predictive of the offender’s future conduct, which remains true in gang settings as juveniles are often willing to terminate their gang participation for other types of peer groups.

In *People v. Caballero*, a juvenile defendant was convicted of three counts of willful, deliberate, and premeditated attempt of murder and inflicted great bodily injury upon one victim for the benefit of a criminal street gang. The Supreme Court of California concluded that a one hundred-year-to-life sentence imposed on a juvenile who was not convicted of a homicide contravenes *Graham*’s mandate against cruel and unusual punishment under the Eighth Amendment. The *Caballero* court reiterated that the state is not required to “guarantee eventual freedom to a juvenile convicted of a non-homicide offense.” Additionally, the *Caballero* court observed that *Miller* had extended *Graham*’s reasoning that juvenile homicide offenders should be given the opportunity to be rehabilitated, but refrained from extending *Graham*’s categorical ban on life without parole from non-homicide offenders to homicide offenders.

In *People v. Gutierrez*, the California Supreme Court held that juveniles who have been convicted of special circumstance murder could each be sentenced to receive a life sentence. The *Gutierrez* court outlined five factors from the *Miller* decision for a sentencing court in juvenile homicide cases: (1) a juvenile offender’s chronological age and his or her hallmark features; (2) the family and home environment that surrounds the juvenile; (3) the circumstances of the homicide offense; (4) whether the offender might have been charged and convicted of a lesser offense if not for incapacities associated with youth; and (5) the possibility of rehabilitation. Nonetheless, the court shall still evaluate whether each of the juveniles can be determined, at the time of sentencing, to be “irreparably corrupt beyond redemption, and thus unfit ever to reenter society, notwithstanding the ‘diminished culpability and greater prospects for reform’ that ordinarily distinguish juveniles from adults.” In sum, the *Gutierrez* court once again confirms that environmental and circumstantial factors must be considered when the sentence involves a minor. Consequently, courts are required to consider underlying reasons, such as the “missing protector factor,” for a juvenile’s gang involvement in evaluating the juvenile offender’s culpability.

In *Commonwealth v. Batts*, the Supreme Court of Pennsylvania recognized *Miller*’s holding that the imposition of a mandatory life-without-parole sentence on a minor offender was unconstitutional. The defendant admitted that he was inducted into a gang and he shot the victims because he thought it was the instruction of senior gang members. He also admitted that he was promoted to a higher ranking within the gang after the murder. The *Batts* court acknowledged that the U.S. Supreme Court did not

entirely foreclose the imposition of a life-without-parole sentence on a juvenile offender but quoted the *Miller* majority in stating that the occasion for such punishment would be “uncommon,” accounting for “how children are different, and how those differences counsel against irrevocably sentencing them to a life in prison.” The Pennsylvania court ultimately decided that the remedy for a constitutional violation was to remand for a new sentencing hearing at which the trial court could consider the factors detailed in *Miller v. Alabama*. In weighing these factors, the trial court retains the discretion to impose a life sentence either with or without parole. Ultimately, the *Batts* decision is instructive in demonstrating that although the courts have not completely banned life without parole as a sentencing option from juvenile homicide cases, the courts are vigilant in ensuring that all environmental and circumstantial factors are considered before a minor is barred from ever reentering society.

Since the U.S. Supreme Court’s recognition that youths and adults have physiological and developmental differences, an even greater emphasis is placed on the “possibility of rehabilitation” when the sentencing involves a minor. The repeatedly-outlined *Miller* sentencing factors is a primary example of how the courts would weigh the “missing protector factor” in evaluating a juvenile gang member’s culpability and possibility of redemption in a crime. Although recent cases have not made a statement on how juvenile gang membership affects sentencing, the courts have repeatedly emphasized sentencing factors that account for a juvenile offender’s environmental and circumstantial background. Nonetheless, *Graham* and *Miller*’s clarification that eventual freedom is not guaranteed for juvenile offenders illustrates that the court has not yet made the full shift to view the juvenile gang offenders as victims of labor trafficking. In spite of the state courts’ current stance, the fact that the Supreme Court has recognized that juvenile offenders are less culpable than adults is a hopeful sign that the courts will gradually perceive a minor’s involvement in gangs as labor trafficking rather than the minor’s bad decision-making skills.

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