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## A Closer Look at a Child Offender: Illinois to Review All Juvenile Life Without Parole Sentences

Michelle Corda

Addolfo Davis was only 8-years-old when he committed his first crime.<sup>1</sup> Davis' participation in criminal activity continued throughout his youth, and at age 14, he participated in a double murder "that the courts viewed as so heinous that [as a child] he was sentenced to life [in prison] without the chance of parole."<sup>2</sup>

Davis' childhood in Chicago was not an easy one. His mother was addicted to drugs, so his overwhelmed and overworked grandmother did the best she could to fill that role.<sup>3</sup> However, Davis desired attention and a sense of family that he was unable to find at home.<sup>4</sup> It was these needs that led him to join the street gang that would ultimately lead to his involvement in the double homicide.<sup>5</sup>

The double homicide occurred in Chicago in 1990, a time when the gang wars over the drug trade was at an all-time high.<sup>6</sup> In addition to the gangs fighting each other, the government waged the "war on drugs," and the "fear of young 'super predators' [fueled] calls for harsh punishment for violent young offenders."<sup>7</sup> It was this mentality during sentencing that dictated that 14-year-old Davis had no rehabilitative potential and should be sentenced to die in prison.

Today, Davis is 37 and has spent the vast majority of his life in prison.<sup>8</sup> Davis, along with 2,500 other individuals across the country including roughly 80 in Illinois, are currently serving life without parole sentences for crimes they

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<sup>1</sup> Trymaine Lee, *Young and in prison, with no chance of parole*, MSNBC, available at <http://www.msnbc.com/msnbc/young-and-jail-no-chance-parole>.

<sup>2</sup> *Id.*

<sup>3</sup> Linda Paul, *Addolfo Davis' Story*, WBEZ91.5, Apr. 9, 2008, available at <http://www.wbez.org/story/news/local/addolfo-davis-story>.

<sup>4</sup> *Id.*

<sup>5</sup> Lee, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Linda Paul, *Should ban on mandatory life without parole encompass old juvie cases?*, WBEZ91.5 Jan. 15, 2014, available at <http://www.wbez.org/news/should-ban-mandatory-life-without-parole-encompass-old-juvie-cases-109516>.

committed as minors.<sup>9</sup> Jill Stevens, Davis' therapist, believes that "most people would feel like you [would] need to be a pretty heinous, remorseless person to be locked up for your entire life without a chance to go before a parole board . . ." <sup>10</sup> Stevens insists this is not the case with Davis.<sup>11</sup>

#### JUVENILE LIFE WITHOUT PAROLE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT

On June 25, 2012, the United States Supreme Court ruled in *Miller v. Alabama* that for offenders under the age of 18 at the time of the crime, mandatory life without parole sentences violates the Eighth Amendment's prohibition on cruel and unusual punishments.<sup>12</sup> The court reasoned that by removing age from the sentencing factors to consider and thus, subjecting a juvenile to the same life without parole sentence applicable to an adult offender, these mandatory laws "prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender."<sup>13</sup>

After the *Miller v. Alabama* decision, states and lower courts had to navigate the appropriate way to comply with the ruling.<sup>14</sup> Since then, only a few decided to apply the ruling retroactively.<sup>15</sup>

#### ILLINOIS TO REVIEW JUVENILE LIFE WITHOUT PAROLE SENTENCES RETROACTIVELY

The Illinois Supreme Court ruled in March 2014 that Davis will be offered the opportunity to go before a review board in order to assess whether he should be eligible for a new sentence.<sup>16</sup> The court's opinion applies retroactively to cases of inmates sentenced as minors to life with the possibility of parole,

<sup>9</sup> Lee, *supra* note 1; Marc Karlinsky, *Juvenile life sentence issue hits final stop*, CHICAGO DAILY LAW BULLETIN, Dec. 5, 2014, available at <http://www.chicagolawbulletin.com/Elements/pages/print.aspx?printpath=/Archives/2014/12/05/Juvenile-Life-Sentences-12-5-14&classname=tera.gn3article>.

<sup>10</sup> Claire Gordon, *After more than two decades in prison, a second chance*, AL JAZEERA AMERICA, Nov. 13, 2013, available at <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/11/13/sentenced-to-life-in-prison-as-child-dad-ol-fodavis-gets-second-chance.html>.

<sup>11</sup> *Id.*

<sup>12</sup> *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012).

<sup>13</sup> *Miller*, 132 S. Ct. at 2466.

<sup>14</sup> Lee, *supra* note 1.

<sup>15</sup> *Id.*

<sup>16</sup> *People v. Davis*, 6 N.E.3d 709, 714 (Ill. 2014).

even in homicide cases.<sup>17</sup> The decision opens the door for other inmates sentenced to juvenile life without parole to potentially live outside of prison.<sup>18</sup>

In December 2014, the United States Supreme Court declined the Cook County State's Attorney's Office request to review the Illinois Supreme Court retroactive application decision.<sup>19</sup> With nowhere else to appeal the decision, the Illinois ruling stands.<sup>20</sup>

It is estimated that the Illinois Supreme Court decision will affect approximately 80 individuals in Illinois serving mandatory juvenile life without parole sentences.<sup>21</sup> Courts will be able to open up these individuals' cases and "provide individual consideration in cases where judges had little, if any, say in sentencing."<sup>22</sup>

#### WHY ARE CHILDREN TREATED DIFFERENTLY?

Children do not possess the same reasoning abilities as adults. The United States Supreme Court *Miller* decision cited the 2010 case *Graham v. Florida* where it ruled that juvenile life without parole sentences for individuals who committed a crime less severe than homicide was unconstitutional.<sup>23</sup> The Court found that juveniles are categorically "less culpable" than adult criminals.<sup>24</sup> The ruling noted that juveniles lack the "well-formed" identities of adults, are susceptible to "immature and irresponsible behavior," and are vulnerable to "negative influences and outside pressures."<sup>25</sup>

In addition to lacking the reasoning abilities of adults, "young people [also] have an immense capacity to change and become rehabilitated," according to Shobha Mahadev, a lawyer for the Illinois Coalition for the Fair Sentencing of Children.<sup>26</sup> Elizabeth Clarke, President and Founder of the Juvenile Justice Initiative, echoes this sentiment, "any kind of cookie-cutter mandatory

<sup>17</sup> *Davis*, 6 N.E.3d at 720.

<sup>18</sup> *Id.*

<sup>19</sup> Karlinsky, *supra* note 9.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Miller*, 132 S. Ct. at 2467.

<sup>24</sup> *Id.* at 2465.

<sup>25</sup> *Id.* at 2475.

<sup>26</sup> Brian Slodysko, *Juvenile with life sentences eligible for new hearings, court rules*, CHICAGO SUN-TIMES, Mar. 20, 2014, available at [http://www.suntimes.com/26338222-761/juveniles-with-life-sentences-eligible-for-new-hearings-court-rules.html#.VE2qhtTF\\_fl](http://www.suntimes.com/26338222-761/juveniles-with-life-sentences-eligible-for-new-hearings-court-rules.html#.VE2qhtTF_fl).

sentencing scheme that does not take into account individual characteristics and an individual's potential for rehabilitation is just unfair."<sup>27</sup>

#### WHAT THIS MEANS FOR SOCIETY AND THE FAMILIES OF VICTIMS

Many believe that allowing reviews of juvenile life without parole sentences will benefit both society and the families of victims. One of the main goals of the prison system is to develop citizenship so you can have offenders reenter society.<sup>28</sup> The Davis decision allows for individuals who entered prison as children the opportunity to show that they are profoundly changed and can contribute to society.<sup>29</sup>

Jeanne Bishop, Public Defender and family member of three victims killed by a juvenile murderer, believes the ruling is beneficial to victims' families because it allows them to have "input into what the offender's sentence should be."<sup>30</sup> Families will have an opportunity to witness any rehabilitation in the offender from the time of the crime to the resentencing hearing, this will hopefully allow for additional closure.<sup>31</sup>

However, not all families of victims agree. Dora Larson, the mother of a young girl who was brutally raped and murdered and now an advocate for the National Organization of Victims of Juvenile Murderers, fears for the public's safety.<sup>32</sup> Larson believes that "some of these killers, they are wired wrong. [Some may, if released,] do it again, and that's what scares me so badly."<sup>33</sup> Marsha Norskog, whose daughter was murdered by a juvenile, is offended by

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<sup>27</sup> Interview with Elizabeth Clarke, President and Founder, JUVENILE JUSTICE INITIATIVE (October 28, 2014).

<sup>28</sup> *Id.*

<sup>29</sup> Jeanne Bishop, *Illinois Supreme Court Gets it Right on Juvenile Life Sentences: Now, the Legislature Ought to Act*, HUFFINGTON POST, Mar. 20, 2014, available at [http://www.huffingtonpost.com/jeanne-bishop/illinois-supreme-court-ge\\_b\\_5000254.html](http://www.huffingtonpost.com/jeanne-bishop/illinois-supreme-court-ge_b_5000254.html).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Chris Minor, *Quad City mom awaits Supreme Court ruling on life without parole issue for teen killers*, WQAD QUAD CITIES, June 18, 2012, available at <http://wqad.com/2012/06/18/quad-city-mom-awaits-supreme-court-ruling-on-life-without-parole-issue-for-teen-killers/>.

<sup>33</sup> *Id.*

the decision.<sup>34</sup> Norskog feels the ruling is “an insult to our judicial system to say that they deserve to be heard again . . . I think it’s a slap in the face.”<sup>35</sup>

### CONCLUSION

Allowing juvenile life without parole sentences’ to be reviewed will mitigate the Eighth Amendment issue.<sup>36</sup> The retroactive application in Illinois will allow the review boards an opportunity to adequately assess the offender and his rehabilitative progress, and to make an appropriate decision as to whether any changes in the length of the sentence are necessary.

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<sup>34</sup> Larry Yellen, *Illinois Supreme Court hears juvenile sentencing dispute*, FOX CHICAGO, Jan. 15, 2014 6, available at <http://www.myfoxchicago.com/story/24465236/illinois-supreme-court-hears-juvenile-sentencing-dispute>.

<sup>35</sup> *Id.*

<sup>36</sup> *Davis*, 6 N.E.3d at 715.