

**NOT FOR PUBLICATION
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STATE OF NEW JERSEY ,	:	SUPERIOR COURT OF NEW JERSEY
	:	
Plaintiffs	:	
	:	LAW DIVISION-ESSEX COUNTY
v.	:	INDICTMENT NO.: 03-01-0231
	:	
JAMES COMER,	:	
	:	
Defendant-Movant	:	OPINION
	:	
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Decided: May 8, 2014
By: Thomas R. Vena, J.S.C.

Oral argument was held before this court on May 8, 2015. The following attorneys and litigants appeared:

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I. PROCEDURAL HISTORY AND FACTS

This matter comes before the Court on Defendant James Comer's ("Defendant") Motion for Reduction of Sentence pursuant to New Jersey Court Rule 3:21-10(b)(5). On April 17th and April 18th, 2000, Defendant Comer and two accomplices, Ibn Ali Adams and Dexter Harrison, committed four armed robberies. During the second robbery, Adams shot and killed the robbery victim, George Paul, a thirty-five year old father of three children. Adams shot Mr. Paul in the back on 264 Park Avenue in Kearny, New Jersey. According to the testimony of Harrison, Adams shot Mr. Paul because Mr. Paul did not have any money. Defendant Harrison also testified that Defendant Comer did not draw his gun during the robbery of Mr. Paul. Following the murder, Defendants drove to Newark and proceeded to steal a car and continue on their robbery spree until they were finally apprehended at a gas station around 4:00 a.m. on April 18th.

Comer was born on January 10, 1983, and was seventeen years and three months old when he committed the crimes charged. He was waived as a juvenile from the Family Part to the Superior Court, Law Division to be tried as an adult. Comer was charged with (1) second-degree conspiracy to commit armed robbery, N.J.S.A. 2C:5-2; (2) first-degree felony murder, N.J.S.A. 2C:11-3(a)(3); (3) four counts of first-degree robbery, N.J.S.A. 2C:15-1; (4) six counts of third-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b); (5) four counts of possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and (6) third-degree theft, N.J.S.A. 2C:20-3(a). On December 19, 2003, after a two-week jury trial, Defendant Comer was found guilty of conspiracy, felony murder, four separate armed robberies, theft, and weapons offenses. On March 5, 2004, this Court sentenced Comer to seventy-five years imprisonment with a parole ineligibility period of sixty-eight years and three months. That sentence consisted of a thirty-year term of imprisonment without parole for felony murder, three consecutive fifteen-year terms with an

eighty-five percent parole disqualifier under the No Early Release Act (“NERA”), N.J.S.A. 2C:43-7.2, on the first-degree armed robbery offenses, and concurrent four-year terms on the weapons offenses.

At the sentencing, Defendant Comer’s counsel argued for mitigating factor number thirteen, which provides for a lesser sentence where “the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant,” N.J.S.A. 2C:44-1(b)(13). This Court considered the mitigating factor but found that “[n]othing in [Comer’s] conduct or [his] background mitigates the crimes for which he stands [..] convicted.”

On or around July 19, 2004, Defendant Comer filed a notice of appeal, claiming: (1) unduly suggestive photo identifications; (2) a mistrial should have been granted as a result of a statement made during the testimony of Harrison; (3) prosecutorial misconduct; (4) reversible error caused by the court's failure to question the jurors about the nature of the problem with a juror who purportedly was not participating in deliberations; (5) error in the manner the court handled jury questions; and (6) imposition of an excessive sentence. The Appellate Division confirmed Defendant Comer’s sentence. In upholding the sentence, the Appellate Division noted that there was no evidence that Comer had been influenced by his older accomplices. The Court found that the three defendants planned the robberies together and that the eldest defendant was only a few years older than Defendant Comer. The Supreme Court granted certification and affirmed Defendant Comer’s conviction. State v. Adams, 194 N.J. 186, 190 (2008).

On June 13, 2014, Defendant Comer filed this Motion to correct an illegal sentence.

II. DISCUSSION

a. Characterization of Comer's Sentence

Before the Court addresses the parties' arguments, it must first determine how to characterize Defendant Comer's sentence. Defendant Comer argues that he is serving a de facto life sentence. He contends that it is de facto because he will only be eligible for parole on his eighty-sixth birthday, more than two decades past his life expectancy. The State essentially concedes the fact that Defendant Comer will most likely die in prison, but refuses to characterize his sentence as de facto life without parole. Rather, the State accurately characterizes it as an aggregate term of seventy-five years with a parole ineligibility period of sixty-eight years and three months. The Court agrees with Defendant Comer that his sentence amounts to de facto life without parole and should be characterized as such. In doing so, the Court is in no way implicating that his sentence was mandatory or unconstitutional. The State argues that the determination of what is de facto is particularly difficult because it requires a Court to draw the line on when an individual's life will end. The Court finds this argument to be unavailing. The Court is confident that with the help of actuarial charts and demographic data, the courts will be able to determine an individual's life expectancy with limited difficulty.

b. Reduction of Sentence Standard

Defendant Comer seeks to have his sentence reduced pursuant to R. 3:21-10(b), which provides that a "motion may be filed and an order may be entered at any time" to "correct a sentence not authorized by law." A sentence is "illegal" where it "is inconsistent with the requirements of the controlling sentencing statute or constitutional principles." State v. Veney, 327 N.J. Super. 458, 462 (App. Div. 2000).

Defendant Comer argues that his sentence constitutes cruel and unusual punishment under the State and Federal Constitutions.

c. **Graham v. Florida and Miller v. Alabama**

Defendant relies primarily on two United States Supreme Court cases to support his position that his sentence is unconstitutional: Graham v. Florida, 560 U.S. ____, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) and Miller v. Alabama, 567 U.S. ____, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

Both cases involved juveniles sentenced to life without parole. The issue before the Court was whether those sentences violated the Eighth Amendment of the United States Constitution. The Eighth Amendment made applicable to the states by the Fourteenth Amendment provides that: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” U.S. Const. amend. VIII. New Jersey’s counterpart to the Eighth Amendment similarly states “cruel and unusual punishment shall not be inflicted.” N.J. Const. art. I, ¶ 12.

In Graham the juvenile defendant was charged as an adult for a nonhomicide crime and received the maximum sentence of life imprisonment without parole. The Supreme Court held that States were banned from imposing life sentences without parole on juveniles who committed nonhomicide crimes. The Court began its analysis by discussing the concept of proportionality in relation to Eighth Amendment challenges. The Court recognized that the foundation of the Eighth Amendment’s ban on cruel and unusual punishment is based in the “precept of justice that punishment for crime should be graduated and proportioned to the offense.” Weems v. United States, 217 U.S. 349, 367, 3 S. Ct. 544, 54 L. Ed. 793 (1910). The Court went on to identify two classes of cases that specifically address the proportionality of sentences. “In the first classification

the Court considers all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive.” Graham, supra, 560 U.S. at 59. “The second classification of cases has used categorical rules to define Eighth Amendment standards. The previous cases in this classification involved the death penalty.” Id. at 60. The Court determined that this matter involved the second classification of cases requiring a categorical ban of defendant Graham’s term-of-years sentence. The Court found that a categorical rule was appropriate in this case because the sentence in Graham was similar to a death sentence in that it “alters the offender’s life by a forfeiture that is irrevocable [and] deprives the convict of most basic liberties without giving hope to restoration.” Id. at 70. In support of its decision, the Court in Graham focused on the overwhelming data that shows that juveniles have lessened culpability as compared to adults. The Court said, “[d]evelopments 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.” Id., at 68. The Court noted that juveniles’ underdeveloped sense of responsibility makes it “extremely difficult for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crimes reflect irreparable corruption.” Id. (quoting Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed. 2d 1 (2005)). Ultimately, the Court held that Graham’s sentence violated the Eighth Amendment because it guaranteed that the offender would die in prison without any meaningful opportunity to demonstrate that he is capable of change. The Court made sure to note that its decision did not require a state to “guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime” but rather to “give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Id. at 75

The second case Defendant Comer relies upon is Miller v. Alabama. Miller involved the petitions of two juvenile defendants convicted of homicide crimes who were sentenced to mandatory sentences of life in prison without the possibility of parole. Both of the petitioners were fourteen years old when they committed the crimes. The first petitioner, Kendrall Jackson, robbed a video store with two other boys. While the boys were in route to the store, Jackson discovered that one of the boys was carrying a sawed-off shotgun. When they got to the store, Jackson initially waited outside but eventually went in the store to find one of the boys pointing the shotgun at the clerk and demanding money. The store clerk refused to comply with the boy's demands and the boy shot and killed her. The prosecutor charged Jackson as an adult with the crime of capital felony murder. The jury found Jackson guilty. The crime of capital felony murder in Arkansas carries a mandatory sentence of life without parole. The second petitioner, Evan Miller, and his friend went over to a neighbor's house to smoke marijuana and play video games. The neighbor fell asleep and Miller attempted to steal the neighbor's wallet out of his pocket. The neighbor awoke and grabbed Miller by the throat. Miller's friend proceeded to hit Miller with a baseball bat. Once released from the neighbor's grasp, Miller took the bat and repeatedly hit the neighbor with it. At one point, Miller took a sheet and placed it over the neighbor's head and said, "I am God, I've come to take your life" and delivered one last blow. Miller and his friend left the neighbor's house but returned later in the night to cover up their crime by setting fire to the house. The neighbor died from his injuries and smoke inhalation. Miller was convicted of murder in the course of arson, which carries a mandatory minimum punishment of life without parole in Alabama. The United States Supreme Court reversed the petitioners' sentences and held that "mandatory life without parole for those under the age of eighteen at the time of their crimes

violates the Eighth Amendment's prohibition on 'cruel and unusual punishment.'" Miller, supra, 415.

The Supreme Court in Miller began its analysis in the same way it did in Graham. It discussed the two strands of precedent of the Court regarding proportionate punishment. The first strand "prohibited mandatory imposition of capital punishment, requiring sentencing authorities to consider the characteristics of a defendant and the details of his offense before sentencing him to death." Miller, supra, 132 S. Ct. at 2458. This is referred to as individualized sentencing. The second strand of precedent "has adopted categorical bans on sentencing based on mismatches between the culpability of a class of offenders and the severity of the penalty." Id.

The Court addressed the first strand by comparing juvenile life sentences to capital punishment. It referenced precedent that specifically required sentencers to consider mitigating factors before imposing the death penalty. See Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed. 2d 944 (1976). The Court found that mandatory life sentences without parole for juvenile homicide offenders precluded a sentencer from "taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." Miller, supra, 132 S. Ct. 2467. It held that like in capital punishment cases, a sentencer must consider how children are different before imposing a sentence that would result in a juvenile growing old and dying in prison. The Court indicated that the factors a sentencer should consider include (1) the youth's "chronological age and related immaturity, impetuosity, and failure to appreciate risks and consequences;" (2) the youth's "family and home environment that surrounds him;" (3) "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;" (4) "the incompetencies associated with youth- for

example, his inability to deal with police officers or prosecutors (including on plea agreement) or his incapacity to assist his own attorneys;” and (5) “the possibility of rehabilitation.” Id. at 2465.

The Court then addressed the second strand by discussing how the logic underlying its categorical ban in Graham supports its holding in Miller. The Court also focused on the science and social science relied on in Graham that shows that children have diminished culpability. It discussed how the transitory mental traits and environmental vulnerabilities of children are not crime specific- meaning that juveniles have the same lessened culpability when committing homicide and nonhomicide crimes. Id. at 2458. The Court found that “youth matters in determining the appropriateness of a lifetime without the possibility of parole.” Id. at 2465. It stated “an offender’s age is relevant to the Eighth Amendment,” and so “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” Id. at 2466 (quoting Graham, supra, 560 U.S. at 76). The Court then went on to articulate how the mandatory nature of petitioners’ sentences prevent a judge or jury from considering the central consideration of the defendant’s youth which “contravenes [...] [the] foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” Id. at 2458.

The Court ultimately held that both strands of precedent support the Court’s conclusion that the mandatory sentencing scheme in Miller violates the Eighth Amendment. The Court made sure to emphasize that its decision in Miller did not foreclose a sentencer’s ability to sentence a juvenile to life without parole in homicide cases. The Court specifically refused to impose “a categorical bar on life without parole for juveniles” but went on to say that its decisions in Graham and Miller would make “occasion for sentencing juveniles to this harshest possible penalty [...] uncommon.” Id. at 2481. The Court reasoned, “[a]lthough we do not foreclose a sentencer’s ability to make that

judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id.

d. Parties’ Arguments

Defendant Comer repeatedly indicates in his papers that Graham requires a categorical ban of all juvenile life without parole sentences, regardless of the crime. Defendant Comer specifically asserts that Graham renders his sentence unconstitutional. That is simply not true. The facts in Graham and the case at hand are factually inapposite in that they involve two different types of crime- nonhomicide and homicide. Graham only created a categorical ban on juvenile life without parole sentences for **non-homicide** crimes. Since Defendant Comer committed a homicide crime, Graham’s ultimate holding has little to no bearing on the analysis of the constitutionality of Defendant Comer’s sentence. That being said, the Court’s analysis of lengthy juvenile sentences in Graham did provide the foundation for the Court’s subsequent decision in Miller, wherein the Court articulated a new rule of procedure which is applicable to Defendant Comer.

Defendant Comer also argues that his sentence violates Graham because Graham prohibits sentencing a juvenile “who did not kill or intend to kill” to a life sentence without parole. The Court finds this argument to be unpersuasive because it mischaracterizes the holding in Graham. Graham did discuss the issue of intent, but it did so in the context of nonhomicide crimes. The Supreme Court found that a “juvenile offender who did not kill or intend to kill has a twice diminished moral culpability” and that this diminished culpability prohibits courts from sentencing juveniles convicted of nonhomicide crimes to life without parole. Graham, supra, 560 U.S. at 69. Defendant Comer would have this Court extend the holding in Graham to find that any life sentence imposed on a juvenile who is convicted of felony murder based on “transferred intent” violates the Constitution. The Court refuses to adopt such a broad interpretation of Graham.

Furthermore, our jurisprudence does not prohibit such sentences. The Supreme Court in Miller specifically dealt with the issue of felony murder and sentencing in petitioner Jackson's case. Like Defendant Comer, Jackson neither pulled the trigger nor intended to kill the victim. If the Supreme Court did not consider felony murder to be a homicide crime, it could have easily disposed of Jackson's petition by articulating that Jackson's sentence was unconstitutional per Graham, i.e. any sentence that imposes a sentence on a juvenile of life in prison without parole for a nonhomicide offense is unconstitutional. However, the Supreme Court in Miller did not dispose of Jackson's petition in that manner. By not disposing of Jackson's petition pursuant to Graham, the Supreme Court fully recognized that felony murder is a homicide offense that may subject the juvenile offender to life in prison without the possibility of parole. This Court recognizes that the issue of intent in felony murder is a complicated one and that perhaps juveniles who are guilty of that offense may be less deserving of the second most severe penalty permitted by law of life in prison without parole. But that issue is not before the Court today and neither Miller nor Graham prohibit sentencing a juvenile convicted of felony murder to life in prison without parole.

The Court fails to see how Graham implicates the sentence imposed on Defendant Comer at all. Miller, on the other hand, does apply but not in the manner proposed by Defendant Comer. Defendant Comer asserts that the principles of Miller forbid this Court from sentencing Defendant Comer to de facto life without parole. This Court disagrees. All that Miller indicates is that Defendant Comer's **sentencing** was constitutionally deficient because this Court did not carefully consider the mitigating factors of youth before imposing his sentence. The actual **sentence** of de facto life without parole for juveniles convicted of homicide crimes is constitutional under the State and Federal Constitutions even after the Court's decision in Miller. The Court in Miller made it clear that its decision does not "foreclose a sentencer's ability to make that judgment in

homicide cases.” Miller, supra, 132 S. Ct. at 2469. The transcript of Defendant Comer’s sentencing shows that this Court did not consider all of the factors articulated in Miller when it imposed the sentence. However, it was not required to do so under the sentencing scheme in place at the time in New Jersey.

The Court will not engage in analysis of whether Defendant Comer’s Motion is barred under Rule 3:22-5, The Law of the Case Doctrine, or Stare Decisis. For sake of brevity, the Court refers the parties to Defendant’s reply brief, pages 3-6, wherein counsel correctly applies the law to find that Defendant Comer’s Motion is properly before the Court today. The Court adopts those arguments and finds that Defendant Comer’s Motion is not barred under Rule 3:22-5, The Law of the Case Doctrine, or Stare Decisis.

e. Retroactivity of Miller

Defendant Comer argues he is entitled to retroactive relief under the rule announced in Miller. He contends that Miller may be applied retroactively under federal and state law. The threshold inquiry of a retroactivity analysis is whether the decision created a “new rule” of law. State v. Afanador, 151 N.J. 41, 57 (1997). If the rule “does not involve a ‘departure from existing law,’ the retroactivity question never arises.” Id. New Jersey follows the federal standard to determine when a rule is “new” for purposes of retroactivity. See State v. Gaitan, 209 N.J. 339 (2012). The applicable federal standard is called the “Teague” standard after the Supreme Court case that first articulated the standard, Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989). Pursuant to Teague, a rule is new if it “breaks new ground” and is one whose “result was not dictated by precedent existing at the time the defendant’s conviction became final.” Id. at 349. A rule is not dictated by precedent if it is “susceptible to debate among reasonable minds.” Butler v. McKellar, 494 U.S. 407, 415, 110 S. Ct. 1212, 1217, 108 L. Ed. 2d 347, 356

(1990). Evidence of debate among reasonable minds includes disagreement among federal courts or among Supreme Court justices. See Beard v. Banks, 542 U.S. 406, 124 S. Ct. 2504, 159 L. Ed. 2d 494 (2004). However, evidence of debate is not dispositive that the rule is “new.” See Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000).

The Court finds that Miller articulated a “new rule” because it breaks new procedural ground and has been the subject of much debate in the federal courts. Miller breaks new ground because it requires the states to follow a new process before sentencing a juvenile convicted of a homicide crime. That process requires a sentencer to consider the mitigating factors of youth and how they affect the culpability of the accused. Furthermore, the issue of Miller’s retroactivity has certainly been an issue of debate in the federal courts. For example, the Fifth and the Eleventh Circuits have expressly stated that Miller is not retroactive. See, e.g., In re Morgan, 713 F. 3d 1365 (11th Cir. 2013); Craig v. Cain, No. 12-30035, 2013 U.S. App. LEXIS 431 (5th Cir. La. Jan. 4, 2013). While the Federal District Courts in Michigan and New York have held that Miller is retroactive. See, e.g., Hill v. Snyder, No. 00-0000, 2013 U.S. Dist. LEXIS 12160 (E.D. Mich. Jan 30, 2013); Alejandro v. United States, No. 00-0000, 2013 U.S. Dist. LEXIS 123966 (S.D.N.Y. Aug. 21, 2013). Since Miller breaks new ground and has been susceptible to debate, it constitutes a “new rule” pursuant to Teague.

Defendant Comer argues Miller created a substantive rule, and therefore, is retroactive under federal law. This Court has determined that the rule in Miller is procedural. It is well settled that procedural rules which “only regulate the manner of determining the defendant’s culpability” are generally not given retroactive effect under federal law because, in most cases, their absence “merely raise[s] the possibility” of a false conviction or improper sentence.” Schriro v. Summerlin, 542 U.S. 348, 352, 124 S.Ct. 2519, 2523, 159 L.Ed.2d 442, 448-49 (2004). Miller

created a new procedural rule that regulates what the Court is required to consider when weighing the culpability of the accused. Therefore, Miller is not retroactive under federal law.

Under New Jersey law, the presumption against retroactivity is significantly easier to overcome than is the federal one. See State v. Purnell, 161 N.J. 44, 59 (1999). Defendant Comer focuses on three categories of “new rules” recognized in New Jersey. The first category consists of rules that “‘overcome an aspect of the criminal trial that substantially impairs its truth-finding function’ and which raise ‘serious questions about the accuracy of guilty verdicts in past trials.’” State v. Burnstein 85 N.J. 394, 406-07 (1981). This category is given “complete retroactive effect” regardless of the burden the new rule may have on the administration of justice. Id. at 407. The second category consists of rules that are “designed to enhance the reliability of the fact finding process but the old rule did not ‘substantially’ impair the accuracy of that process.” Id. at 408. When a rule falls within this category, the courts must weigh the extent to which the old rule undermined the fact-finding process versus “the countervailing State reliance on the old rule and the disruptive effect that retroactivity would have on the administration of justice.” Id. The last category involves rules that are tailored to “solely deter illegal police misconduct.” Id. This last category is “virtually never given retroactive effect” and clearly does not implicate Miller. Id.

Defendant Comer contends that Miller falls within the first and second categories. The Court disagrees. Miller simply had no effect on the truth or fact finding function of the criminal trial or on the accuracy of verdicts. The law requires the fact finder to determine whether the accused committed the crimes for which he is charged. Nothing about Miller changed that. The rule in Miller only comes into effect at the sentencing stage, after the fact finder has determined the guilt or innocence of the accused. Furthermore, the mitigating factor of youthfulness speaks to the culpability of the offender, not to his guilt or innocence. This Court finds that Miller has no

bearing on the truth or fact finding function of the criminal trial, and therefore, does not fall within either the first or second category.

The State argues that Miller cannot be applied retroactively in New Jersey but articulates a different method to determine a rule's retroactivity. The State contends that there are three factors to consider to determine whether a new rule is to be applied retroactively in New Jersey:

(1) the purpose of the rule and whether it would be furthered by retroactive application, (2) the degree of reliance placed on the old rule by those who administered it, and (3) the effect a retroactive application would have on the administration of justice.

[State v. Afanador, 151 N.J. 41, 58 (1997), citing State v. Nash, 64 N.J. 464, 471 (1974)]

Although those three factors have received detailed attention in retroactivity law, New Jersey cases also indicate that the retroactivity determination often turns more generally on “the court’s view of what is just and consonant with public policy in the particular situation presented.” Id.

When analyzing Miller pursuant to these factors, the Court finds that Miller is retroactive under New Jersey law. The purpose of Miller is to provide proportionate punishment for juveniles by requiring sentencers to consider the mitigating factors of youth when sentencing. The Supreme Court in Miller stated that its decision would make sentencing a juvenile to life without parole “uncommon.” Therefore, the purpose of Miller would certainly be furthered in jurisdictions that sentenced juveniles to life without parole, or its equivalent, for homicide crimes. The next question is whether the second factor, past reliance, outweighs the first factor. The old sentencing scheme in New Jersey did not require the sentencer to consider the mitigating factors of youth. That being said, New Jersey currently does not have a single juvenile serving a mandatory life without parole sentence according to available Department of Correction data. New Jersey does not keep statistics regarding individuals serving de facto juvenile life without parole sentences. Defendant Comer, nevertheless, has estimated that there are currently seventeen individuals in New Jersey serving

mandatory minimum sentences in excess of forty five years that may qualify for re-sentencing under Miller. This shows that a majority of the sentences imposed on juvenile homicide offenders in New Jersey under the old scheme are constitutional and that past reliance on the old sentencing scheme does not present an impetus to applying Miller's new sentencing requirement. Miller simply ensures that juveniles will continue to be sentenced proportionately in New Jersey. As for the last factor, the retroactive application would have little to no effect on the administration of justice in New Jersey. Even if the Courts are required to resentence those estimated seventeen individuals serving de facto juvenile life without parole sentences in New Jersey, that can hardly be considered an overwhelming burden on the administration of justice.

II. CONCLUSION

For the foregoing reasons, Defendant Comer is entitled to a re-sentencing in accordance with the procedures mandated by Miller.