**Roper/Graham/Miller+ Trilogy**

- *Graham v. Florida*, 560 U.S. 48 (2010): Cannot impose LWOP on juvenile non-homicide offenders because they must have a “meaningful opportunity for release.”
- *State v. Long*, 138 Ohio St.3d 478 (2014): Trial courts must consider the “mitigating qualities of youth” before sentencing a child to discretionary LWOP for aggravated murder.
Issues in Litigation


- What does “non-homicide” mean? Attempted murder? Complicity? Felony murder?
Basic theory behind the cases: Kids are different

- The part of the brain that controls judgment and risk assessment is literally not all there yet (completes in men around age 25).
- So kids more easily succumb to pressure from peers and adults.
- Kids don’t think about consequences as much.
- Ability to feel remorse reduced.
- And kids can change.
Practical Results

- Adults are more blameworthy than kids (adults deserve more punishment than kids).
- Trial judges can’t know if kids will change (future dangerousness/protection of society).
- LWOP for a kid is longer than LWOP for an adult, so LWOP punishes kids more for the same offense.
Morbidity Statistics

- Normal CDC tables are not helpful because prisoners do not live as long as the general public.
- Conflict Counsel of Colorado: Study of all deaths in Colorado prisons for a five-year period: 54% of all deaths occurred before age 55.
- US DOJ, deaths in state prisons from 2001-2011: 57% of all deaths occurred before age 55.
- Major caveat: Does not determine lifespan of inmates who entered prison as children.
Sources for mortality figures


Rough Ohio Numbers

- As of 2010-2011, DRC inmates admitted before age 18:
  - 86 had min. sentences of 20 years or longer.
  - 42 had min. sentences of 30 years or longer.
  - 18 had min. sentences of 40 years or longer.
  - 6 had min. sentences of 50 years or longer.
- Caveats:
  - Does not include kids admitted after age 18.
  - Does not include effects of House Bill 86.
  - Does not include potential SYO invocations.
- Less than 10 total sentenced to “LWOP.”
Problems with Ohio Statutes and Rules

- Ohio permits JLWOP for certain rape offenses.
- Ohio permits functional LWOP for all offenses.
- Ohio law has no sentencing standards that comply with *Miller* for juvenile homicide offenses.
- Ohio has no regular procedural mechanism for bringing challenges to non-death sentences based on new, retroactively applicable decisions of the United States Supreme Court. R.C. 2953.23.
- No standards for counsel and procedure in juvenile aggravated murder cases.
- Lack of programming for kids with LWOP in DRC.
Possible Solutions

- Automatic parole or judicial release eligibility with periodic review. (Last year, West Virginia enacted retroactive parole eligibility after 15 years.)
- Standards for counsel and for sentencing hearings in juvenile homicide cases.
- Move juvenile homicide LWOP back to capital aggravate murder only. *Miller* applies capital case law to juvenile non-capital cases.
- Remember, *Graham* requires a “meaningful opportunity for release,” not just a theoretical possibility of release on a child’s deathbed.
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