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People v. Gutierrez; 324 P.3d 245 (Cal. 2014)

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People v. Gutierrez

324 P.3d 245 (Cal. 2014)

Opinion by Liu, J. with Cantil-Sakauye, C.J, Werdegar, Chin, and Kennard, JJ. Concurring.

OVERARCHING ISSUE

Whether a presumption in favor of life without possibility of parole for sixteen or seventeen year old juveniles who commit special circumstance murder violates the Eighth Amendment of the United States Constitution.¹

STATEMENT OF FACTS

Two cases involving a juvenile defendant who was sentenced to life without possibility of parole were consolidated for review.²

In the first case, a seventeen-year-old juvenile helped a co-defendant rob a supermarket and a bank located inside the store.³ Both the juvenile and the co-defendant were carrying handguns and threatened the tellers during the robbery.⁴ After leaving the store, the co-defendant crashed the get-away vehicle and both the juvenile and co-defendant fled on foot.⁵ As police officers giving chasing the co-defendant opened fire, shooting one officer twice; the officer later died of his wounds.⁶ The juvenile was found and apprehended without incident or injury.⁷

At trial the juvenile was convicted of first degree murder, second degree robbery, driving a stolen vehicle, killing of a peace officer special-circumstance allegation, and two firearm use felony-murder special-circumstance allegations.⁸

The trial court sentenced the juvenile to life without possibility of parole for murder plus twenty-four additional years for the remaining charges.⁹ The court of appeal reversed the peace-officer special-circumstance allegation on the basis that the evidence indicated the juvenile was neither around co-defendant nor encouraged co-defendant to open fire.¹⁰ The case was then remanded to consider whether sentencing the juvenile to life without parole was still appropriate.¹¹ The trial court examined the juvenile's age, his criminal history, and his actions on the day of the crime and

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1. People v. Gutierrez, 324 P.3d 245, 249 (Cal. 2014); (citing Cal. Penal Code § 190.5(b)(West 2012); citing Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012)).
 2. *Gutierrez*, 324 P.3d at 249.
 3. *Id.* at 250.
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Gutierrez*, 324 P.3d at 250.
 9. *Id.*
 10. *Id.* at 250-251.
 11. *Id.* at 251.

resentenced the juvenile to life without parole.¹² In justifying its refusal to “ ‘deviate from the statutory requirement of life without the possibility of parole’ ” the court explained that there was evidence that indicated the juvenile was nearby when the officer was shot along with the profound effect that the juvenile’s own actions had on the various victims.¹³

The juvenile again appealed, arguing that his sentence constituted cruel and unusual punishment and that the trial court’s refusal to impose “the lesser sentence of 25 years to life under section 190.5(b)” was an abuse of discretion.¹⁴ After the briefing of the second appeal was complete, the United States Supreme Court issued a decision in *Miller v. Alabama* where it held “that mandatory life without parole for juveniles who commit murder violates the Eighth Amendment.”¹⁵

Based on this new ruling, the juvenile then argued that the trial court exercised an unconstitutional presumption in favor of life without parole.¹⁶ The court of appeal vacated the juvenile’s sentence and remanded the case for resentencing.¹⁷ The court of appeal reasoned that while there was no mandatory sentence of life without parole here, section 190.5 subdivision (b) had been judicially construed to establish a presumption in favor of life without parole and that said presumption was “ ‘contrary to the spirit’ ” of the *Miller* decision.¹⁸

In the second case, a seventeen-year-old juvenile was convicted of first-degree murder with the special circumstance that the murder was committed during a rape or attempted rape.¹⁹ Early one morning after his uncle had left for work, the juvenile’s cousin heard someone open the uncle and aunt’s bedroom.²⁰ When the cousin went to investigate, he saw juvenile in the kitchen with a cut on his hand.²¹ The juvenile then left the home approximately five minutes later.²² Later that morning another relative discovered the aunt’s body laying facedown on the floor with a large knife in her back and twenty-eight stab wounds in various parts of her body.²³

The juvenile was admitted to the hospital for the wound to his hand and was examined by a sexual assault nurse.²⁴ The examination found blood on the juvenile’s penis, toes, and on the bottom of his feet.²⁵ Subsequent DNA testing linked the juvenile to the crime scene and the aunt, and the juvenile was found to a possible contributor to a mixture of nonsperm DNA found on the aunt’s perianal area, inner

12. *Id.*

13. *Id.*

14. *Gutierrez*, 324 P.3d at 252 (citing Cal. Penal Code § 190.5(b)(West 2012)).

15. *Id.* (citing *Miller*, 132 S. Ct. 2455, 2460 (2012)).

16. *Id.* at 252.

17. *Id.*

18. *Id.* (citing *Miller*, 132 S. Ct. at 2460).

19. *Id.* at 253.

20. *Gutierrez*, 324 P.3d at 253.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

thighs, and buttocks. When speaking with police, the juvenile stated that the aunt had stabbed both him and herself because she wanted him to have sex with her and that he then stabbed her in the back three times.²⁶

The juvenile was sentenced to life without parole plus one year for a personal use weapon enhancement.²⁷ In explaining why it chose life without parole instead of twenty-five years to life, the trial court stated it considered the horror and violence of the crime itself as well as the juvenile's behavior while in custody.²⁸ The juvenile appealed his conviction and sentence and after the *Miller* ruling the juvenile then filed a supplemental briefing arguing that his sentence was cruel and unusual punishment and that he should be resentenced without the "'presumed sentence' under section 190.5(b)."²⁹

The court of appeal held that the juvenile forfeited a cruel and unusual punishment appeal since he failed to object on that ground in the trial court.³⁰ In addition, the court of appeal stated that the *Miller* decision (that forbade mandatory life without parole sentences for juveniles) was inapplicable here since section 190.5 subdivision (b) gave trial courts discretion to impose a lesser sentence.³¹

ANALYSIS

With the goal of construing the statute to match the intent of the lawmakers, the court began by analyzing how the courts of appeal had interpreted section 190.5.³² For the past twenty years the courts of appeal have been interpreted section 190.5 subdivision (b) as having a presumption in favor of life without parole for juvenile offenders who were convicted of special circumstance.³³ The leading case, *People v. Guinn*, upheld a trial court's sentencing on the basis that the statute meant that "'16- or 17-year-olds who commit special circumstance murder *must* be sentenced to LWOP, *unless* the court, in its discretion, finds good reason to choose the less severe sentence of 25 years to life.'"³⁴

In examining the text of the statute, however, the court found that language was ambiguous in that it allowed two equally reasonable interpretations; one that mandated life without parole unless the lower sentence was appropriate and the other where there is no presumption and courts are free to select either sentence.³⁵ Examining the legislative history led to similar ambiguity; while the statute was

26. *Gutierrez*, 324 P.3d at 253.

27. *Id.*

28. *Id.* at 253-254.

29. *Id.* at 254 (citing *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012); citing Cal. Penal Code § 190.5(b) (West 2012)).

30. *Gutierrez*, 324 P.3d at 254.

31. *Id.* (citing *Miller*, 132 S. Ct. at 2460; citing Cal. Penal Code § 190.5(b)(West 2012)).

32. *Id.* at 255 (citing Cal. Penal Code § 190.5(b)(West 2012)).

33. *Gutierrez*, 324 P.3d at 255.

34. *Id.* (quoting 28 Cal. App. 4th 1130, 1141-1142 (1994) (emphasis in original)).

35. *Id.* at 255 (citing *Guinn*, 28 Cal. App. 4th at 1141-1142; citing Cal. Penal Code § 190.5(b)(West 2012)).

enacted to toughen sentences for juvenile offenders, it is unclear whether this toughening was to be accomplished by making life without parole the presumptive sentence or merely making it an option where it previously was not one.³⁶

Since neither the text nor history of the statute answered whether it was intended to create a presumption, the court turned to a constitutional analysis.³⁷ When faced with ambiguous statutes that raise serious constitutional concerns, the court applies the “ ‘cardinal principle’ of statutory interpretation” and attempts to interpret the statute in a way which removes any doubt concerning its constitutionality.³⁸

In *Miller*, the Court explained that while life without parole was still a possible sentence for juvenile offenders that such sentences would be uncommon and courts must first consider how children are different than adults.³⁹ This mandate cannot be reconciled with a presumption in favor of life without parole for some juveniles and raises serious constitutional questions.⁴⁰

The Attorney General argued that section 190.5 is not unconstitutional because California courts can still exercise discretion and impose the lesser sentence of twenty-five years to life; however, the California Supreme Court found that even with such discretion that the burden is still on the juvenile and such a burden can be dispositive by itself.⁴¹

Similarly the court found the Attorney General’s argument that California only amounted for a small percentage of juveniles who were sentenced to life without parole to be unpersuasive given that California’s judicial presumption accounted for approximately seventy percent of juvenile life without parole sentences among the fifteen states with nonmandatory sentencing laws.⁴² Lastly the Attorney General argued that Penal Code section 1170, subdivision (d)(2) eliminated constitutional concerns because it allowed a juvenile to petition for resentencing after fifteen years and then again after twenty years if the fifteen year petition is declined.⁴³

However, not only would the presumption under section 190.5 still be in effect, but a petition for resentencing does nothing to address the failure to follow the mandate under *Miller* that a court “consider how children are different . . . ’ before imposing a particular penalty.’ ”⁴⁴

Based on the serious constitutional concerns raised by having a presumptive sentence of life without parole for juveniles, and the fact that the statute is reasonably susceptible to two interpretations, the court held it would adopt the interpretation that

36. *Gutierrez*, 324 P.3d at 255.

37. *Id.* at 256-257.

38. *Id.* at 257-258 (quoting *DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575, (1988)).

39. *Gutierrez*, 324 P.3d at 259 (citing *Miller v. Alabama*, 132 S. Ct. 2455, 2459 (2012)).

40. *Gutierrez*, 324 P.3d at 259.

41. *Id.* at 263-264 (citing Cal. Penal Code § 190.5(b)(West 2012)).

42. *Gutierrez*, 324 P.3d at 264-265 (citing *Miller*, 132 S. Ct. at p. 2472; see Human Rights Watch JLWOP Rep.).

43. *Gutierrez*, 324 P.3d at 265-266.

44. *Id.* at 267 (citing Cal. Penal Code § 190.5(b); quoting *Miller*, 132 S. Ct. at p. 2471 (emphasis in original)).

leaves the least room for doubt and held that section 190.5 confers discretion to impose “either life without parole or a term of 25 years to life on a 16- or 17-year-old juvenile convicted of special circumstance murder, with no presumption in favor of life without parole.”⁴⁵

Defendants then argued that even without a presumption favoring life without parole section 190.5(b) was unconstitutional because it did not allow a court to consider the attributes of youth that were mandated by *Miller*.⁴⁶ The Court here, however, disagreed given that section 190.5(b) allows a sentencing court to consider aggravating and mitigating factors, including the defendant’s age and “ ‘any age-related matter . . . that might reasonably inform the choice of penalty.’ ”⁴⁷

These age related matters are inclusive of those previously mandated by the Court: a juvenile’s age and maturity, a juvenile’s family and home environment, the circumstances of the homicide, whether a lesser charge and conviction might have occurred if not for ineptness of youth, and any other evidence or information that has a bearing on the potential for rehabilitation.⁴⁸ As long as these facts are considered, life without parole can be a valid sentence for juveniles convicted of special circumstance murders.⁴⁹

Since the trial courts that sentenced both juveniles were acting under the law as it was at the time, the court here held that neither of the trial courts was adequately aware of their discretion to choose between the two sentences and as such both cases were remanded for resentencing.⁵⁰

LEGAL SIGNIFICANCE

This case represents a further movement away from our justice system’s traditional goal that of retribution, and a movement towards recognizing that juvenile defendants are categorical different from their adult counterparts. From the beginning, our laws and justice system has been geared towards punishing criminals for their crimes rather than rehabilitating the criminals themselves. This case, however, serves as a reminder to our court system that our true goal should be to determine which offenders are “irreparabl[y] corrupt” versus those who can change over time.⁵¹

Given that AB109 (Realignment) was adopted, at least in part, with the goal of switching our justice system from retribution to rehabilitation this message should not be surprising. However, much of AB109 was directed at how adult offenders are

45. *Gutierrez*, 324 P.3d at 267 (citing Cal. Penal Code § 190.5(b)(West 2012)).

46. *Gutierrez*, 324 P.3d at 267-268 (citing Cal. Penal Code § 190.5(b); citing *Miller*, 132 S. Ct. at p. 2459).

47. *Gutierrez*, 324 P.3d at 268 (citing Cal. Penal Code § 190.3; quoting *People v. Lucky*, 45 Cal. 3d 259, 271 (1988)).

48. *Gutierrez*, 324 P.3d at 268-269.

49. *Id.* at 269.

50. *Id.* at 270.

51. *Id.* at 261.

moved through the justice system whereas this case is completely directed at juvenile sentencing.

While this ruling will perhaps lessen the aggressive stance that the California courts have taken towards special circumstance murders carried out by juvenile offenders, it also sends a message that California is making a priority of saving the “children” that we can and that we are serious about our attempts to change the focus and goals of the justice system that arguably defines our country.⁵²

52. The author of this summary, Seth DuMouchel, is a Juris Doctor candidate, May 2015, at Western State College of Law.