

No. 115595

IN THE

SUPREME COURT OF ILLINOIS

)	
	)	Appeal from the
	)	Appellate Court of Illinois,
	)	First District,
PEOPLE OF THE STATE OF ILLINOIS,	)	Second Division,
	)	No. 1-11-2577
)	_____
Respondent-Appellant)	
	)	There Heard on Appeal
	)	from the Circuit Court
v.	)	of Cook County,
	)	Criminal Division,
	)	No. 91 CR 3548
ADOLFO DAVIS,)	_____
)	
Petitioner-Appellee	)	The Honorable
	)	Angela Munari Petrone,
	)	Judge Presiding.

BRIEF OF *AMICI CURIAE* AMERICAN CORRECTIONAL CHAPLAINS ASSOCIATION, CATHOLIC CONFERENCE OF ILLINOIS, COMMUNITY RENEWAL SOCIETY, JEWISH PRISONER SERVICES INTERNATIONAL, LUTHERAN ADVOCACY ILLINOIS, NORTHERN ILLINOIS CONFERENCE BOARD OF CHURCH AND SOCIETY, PRECIOUS BLOOD MINISTRY OF RECONCILIATION, ST. LEONARD'S MINISTRIES, TRINITY UNITED CHURCH OF CHRIST, AND UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS IN OPPOSITION TO THE PEOPLE OF THE STATE OF ILLINOIS'S APPEAL OF THE APPELLATE COURT'S JUDGMENT

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INTRODUCTION

Amici curiae represent faith-based organizations with membership from diverse backgrounds and perspectives.¹ Despite their diverse views, *amici* share the common and firm belief that the Supreme Court’s opinion in *Miller v. Alabama*, __U.S.__, 132 S.Ct. 2455 (2012), should be applied to Adolfo Davis’s case.

In *Miller v. Alabama*, the Court held that “the Eighth Amendment forbids a sentencing that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* at 2469. In the decision below in this case, the Appellate Court, First District, Second Division properly held that *Miller* constitutes a new rule that applies retroactively to cases like Davis’s, which are on collateral review.

Faith-based organizations have a special role to play in cases concerning the Eighth Amendment, which inevitably sound in questions of morality and decency. As the United States Supreme Court explained in *Atkins v. Virginia*, 536 U.S. 304 (2002), the views of religious groups about the morality of a particular punishment can provide evidence of a “broad[] social and professional consensus,” *id.* at 316 n. 21, concerning the ethical treatment of people convicted of crimes. Therefore, on behalf of faith-based organizations, we wish to emphasize several reasons why, apart from the fact that the legal standard for applying *Miller* retroactively has been met, applying *Miller* to cases on collateral review is the correct result.

¹ A full list of *amici*, with descriptions of each organization, is attached hereto as Exhibit A.

ARGUMENT

In *Miller v. Alabama*, the Court announced a rule designed to eliminate the “great . . . risk of disproportionate punishment” that results from sentences that mandate life without parole for children. 132 S.Ct. at 2469. The Court held that no child could receive the sentence of life without parole unless the sentencing judge had been permitted to consider mitigating factors such as age and capacity for rehabilitation. *Id.* Juvenile offenders serving mandatory life-without-parole sentences whose cases are on collateral review have therefore indisputably suffered from an unconstitutional sentence. To deny these children an individualized sentencing under the rule articulated in *Miller* merely because their sentences were final before the Court issued its opinion would result in a grave inequity and would condemn numerous individuals--at least 80 in Illinois-- to spend the rest of their lives in prison without regard to their special circumstances or rehabilitation. To avoid this injustice, this Court should apply *Miller* to cases on collateral review.

I. Mandatory Life Without Parole Sentences For Children Are At Odds With The Moral Values That Animate The Eighth Amendment.

As the Supreme Court has acknowledged, life without parole is an extraordinarily severe sentence. Life without parole “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.” *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010) (quoting *Naovarath v. State*, 105 Nev. 525, 526, 779 P. 2d 944 (1989)). To impose such a drastic sentence on a child, without taking “into account how children are different,” is beyond the scope of what can be countenanced in a moral society. *Miller*, 132 S.Ct. at 2469; *see also*

Graham, 120 S.Ct. 2026-2027 (“from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed”).

Indeed, the world’s faith based traditions consistently recognize values fundamental to a moral society that are at odds with a system that allows mandatory life without parole for juveniles. For example, the Unitarian faith recognizes “justice, equity, and compassion in human relationships” as one of its seven principles. See Unitarian Universalist Association of Congregations, “Our Unitarian Universalist Principles,” available at www.uua.org/beliefs/principles/index.shtml. Numerous religious texts also emphasize the importance of forgiveness and mercy. See, e.g., *Qu’ran* (Abdullah Yusuf Ali Edition, 1934), 7:199 (“[h]old to forgiveness, command what is right, But turn away from the ignorant.”); *Id.* at 7:156 (“My mercy embraceth all things.”); *Matthew* 5:7 (King James Bible) (“[b]lessed are the merciful, for they shall obtain mercy.”). And these texts also counsel that it is the most vulnerable members of society who are most in need of compassion. See, e.g., *Psalms* 82:3 (“Defend the poor and fatherless; do justice to the afflicted and needy.”); *Qur’an* 2:83 (“[T]reat with kindness your parents and kindred, and orphans and those in need.”). It is values like these that animate the Eighth Amendment’s bar on “cruel and unusual” punishment, and dictate against permitting mandatory life without parole sentences for juveniles.

An examination of three important differences between children and adults demonstrates why imposing mandatory life without parole on a child is contrary to the Eighth Amendment and the fundamental values that give it life. First, as the Supreme Court has observed, children are still maturing such that they may exhibit recklessness,

impulsivity and heedless risk-taking. *See Miller*, 132 S.Ct. at 2469. Second, children are typically far more impressionable than adults, making them more susceptible to negative influences and outside pressures. *Id.* Given these qualities, the mistakes of youth may never repeat in adulthood because as adults individuals have become more capable of thinking through the consequences of their actions and more adept at discerning which of their companions are providing models and advice worth following. It is unfair and premature to condemn a child to life in prison for mistakes made before this maturing process can occur.

Third, and relatedly, children have a particular capacity for rehabilitation and reform that is denied by the sentence of life without parole. During childhood, the malleability of a person's character is at its zenith. Therefore, a person who commits a crime as a child is particularly open to recognizing the error of his or her ways and to finding a means of redeeming him or herself. Sentencing a child to life without parole inappropriately assumes that such redemption is not possible. Moreover, by permanently separating a child from society, a life without parole sentence inappropriately impedes that child's ability fully to seek redemption through interaction with the society against which the child has transgressed. As the Supreme Court has explained "[b]y denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society." *Graham*, 130 S.Ct. at 2030.

A just society must be guided by the principle that people in similar situations must be treated equally. A child whose sentence became final before *Miller* is no less vulnerable to the circumstances giving rise to poor-decision making, and no less likely to redeem him or herself than a child whose sentence became final after the decision. It is

therefore inequitable, and cruel, to refuse to apply *Miller* retroactively to offenders whose cases are on collateral review, merely because of something as arbitrary as the procedural posture of their cases. *See People v. Williams*, 2012 IL App. (1st) 111145 ¶ 54 (“It would . . . be cruel and unusual to apply [the *Miller*] principle only to new cases. We therefore hold that the Court’s holding in *Miller* should be retroactively applied.”).

II. Adolfo Davis’s Own Rehabilitation in Prison Highlights Why Retroactive Application of *Miller* is Necessary.

Davis’s own case provides striking evidence of why *Miller* must be applied retroactively. The Supreme Court’s observations about the particular vulnerability of children, particularly poor and disadvantaged children, are vividly illustrated by the facts of Davis’s life. At the time of Davis’s offenses, he was barely fourteen years old. His mother abused drugs, and he had no relationship with his father. He was largely raised by his grandmother, who lacked the means to keep him properly fed and clothed. Mocked for his outdated clothes and weary with stress, Davis stopped attending school by the sixth grade. From as early as when he was eleven, there were recommendations that Davis should be placed out of the home and enrolled in a therapeutic day school. Those recommendations were ignored.

Davis turned to other children struggling in similar conditions. He joined a gang that made him feel welcome and for the first time, he believed he was part of a real family. At that time he also began to steal food and money to buy food. Davis’s life before his sentencing therefore shows the sort of difficult conditions that often plague the early lives of children who are sentenced to life without parole.

Davis’s life also demonstrates vividly youth offenders’ particular capacity for rehabilitation: By the time of his sentencing, just three years after his initial detention,

Davis was already described as a model detainee and student. Davis has continued to grow and change during the twenty-three years he has been in prison. He graduated from the eighth grade and earned his General Education Diploma. He has embraced faith and religion. For the past five years, he has maintained a mentor-mentee relationship with Father David Kelly, a priest who works with system-involved youth, and has worked through Father Kelly to counsel and deter at-risk children from criminal activity. He has also written poetry through which he hopes to reach children facing challenges similar to those he faced as a child; some of that poetry has been published in newsletters circulated in the Chicago Public Schools. His newest projects focus on painting as a means to communicate a different vision of what children need and deserve.

Davis has devoted work and personal time to reflecting on the impact of his participation on the victims of his crimes. He has clearly accepted responsibility for his conduct and developed emotionally. In other words, while Davis's life without parole sentence made good behavior and character improvement immaterial, he nonetheless followed the path of rehabilitation and reform that his sentence had assumed was foreclosed.

At his sentencing, Davis had no opportunity to present mitigating evidence regarding his youth, potential for rehabilitation, and other mitigating factors. He should not be denied this opportunity now, merely because his case became final before the Supreme Court recognized the gravity of this injustice.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Faith Based Organizations respectfully request that this Court uphold the decision below.

Dated: _____

Respectfully submitted,
Amici Curiae Faith-Based Organizations

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APPENDIX A -- AMICI CURIAE

American Correctional Chaplains Association:

The American Correctional Chaplain's Association ("ACCA"), an affiliate of the American Correctional Association, serves as a professional organization for pastoral care personnel in the corrections field. It provides a network for the sharing of information and resources amongst its members and with corrections administrators, and it formulates standards for chaplaincy and religious programming in correctional facilities. ACCA strongly believes that the accommodation of spiritual development and religious study in the prison context are exceptionally valuable aids to rehabilitation.

Catholic Conference of Illinois:

The Catholic Conference of Illinois (CCI) was created in 1969 to serve as the public policy voice of the Illinois bishops and lay Catholics. It interacts with the state legislature, the governor's office and all elements of state government to promote and defend the interests of the Church.

Community Renewal Society:

Community Renewal Society is a progressive, faith-based organization that works to eliminate race and class barriers. Founded in 1882, Community Renewal informs, organizes and trains both communities and individuals to advocate for social and economic justice. Community Renewal Society's mission since its founding has always reflected the spirit of the denomination that founded it, the Congregational Church (predecessor denomination to the United Church of Christ).

Jewish Prisoner Services International:

Jewish Prisoner Services International (JPSI) had its origins as an agency of B'nai B'rith International. It currently functions as an outreach program of Congregation Shaarei Teshuvah. Its purpose is to provide spiritual and advocacy services for Jewish prisoners, and assistance to their families, releases, probationers, and the like. JPSI works in partnership with various major Jewish organizations and social service agencies throughout the United States, Canada, Israel and elsewhere around the globe. JPSI's directors and volunteers come from all branches of Judaism. They include rabbis, lay leaders, educators, businessmen, attorneys, judges and other professionals. In addition, ex-offenders who have been recipients of JPSI services frequently join JPSI to help those who are currently dealing with the justice and corrections system.

Lutheran Advocacy Illinois:

The Lutheran Advocacy Illinois (LAI) is a ministry of Lutheran Social Services of Illinois and the three synods of the Evangelical Lutheran Church in America (ELCA) in Illinois. Its purpose is to educate its members about public policy issues and to mobilize them for effective action in the public sphere. LAI is founded upon the power of the Christian voice to drive change. To support that effort LAI releases Legislative updates and Advocacy Alerts to call attention to important issues, provides training and support for potential advocates, and orchestrates member gatherings in Springfield. In addition to

our mission of enabling advocates we also do our part to advocate on Christian's behalf in the State Capitol.

Northern Illinois Conference Board of Church and Society:

The Northern Illinois Conference of The United Methodist Church includes more than 370 churches and 30 missions—new faith communities that we hope will grow into new churches. The Conference's Board of Church and Society focuses on peacemaking in local communities and around the world.

Precious Blood Ministry of Reconciliation:

Precious Blood Ministry of Reconciliation (PBMR) is a faith-based community organization reaching out and accompanying those who are impacted by conflict or violence. It embraces a restorative philosophy - a spirituality of reconciliation. PBMR reaches out to and accompanies young people who are incarcerated in Cook County Juvenile Detention Center and tries to create an environment in the community where they find a sense of safety, belonging, and hospitality. It accomplishes this through mentoring, peacemaking circles, and accompaniment as they work to build a future.

St. Leonard's Ministries:

Founded in 1954, St. Leonard's Ministries provides comprehensive residential, case management, and employment services for those released from prison without the resources needed to rebuild their lives.

Trinity United Church of Christ:

Trinity United Church of Christ is a congregation of over 6000 members on the South side of Chicago that was born amid the turmoil of the Civil Rights movement as African Americans were rising from an oppressed under-class and asserting themselves as full citizens in America. That history is embedded in its theology as it believes that to be followers, and emulators of Jesus Christ, its priority must remain the uplift of "...the least of these [His] children." To that end, while it focuses on evangelism and bringing new followers to Christ, it is committed to social justice for all people.

Unitarian Universalist Association of Congregations:

The Unitarian Universalist Association (UUA) is a religious organization that combines two traditions: the Universalists, who organized in 1793, and the Unitarians, who organized in 1825. They consolidated into the UUA in 1961. Both groups trace their roots in North America to the early Massachusetts settlers and to the founders of the Republic. Overseas, their heritages reach back centuries to pioneers in England, Poland, and Transylvania. Each of the 1,041 congregations in the United States, Canada, and overseas are democratic in polity and operation; they govern themselves. They unite in the Association to provide services that individual congregations cannot provide for themselves. Each congregation is associated with one of the UUA's 19 districts. Unitarian Universalism is a liberal religion with Jewish-Christian roots. It has no creed. It affirms the worth of human beings, advocates freedom of belief and the search for

advancing truth, and tries to provide a warm, open, supportive community for people who believe that ethical living is the supreme witness of religion.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 7 pages.

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