

>> THE COURT WILL NOW MOVE TO
THE SECOND CASE ON TODAY'S
DOCKET, PEDROZA V. STATE.

>> YOUR HONORS, BENJAMIN
EISENBERG ON BEHALF OF THE
PETITIONER, LINDA PEDROZA.
I RESERVE FOUR MINUTES OF MY
TIME FOR REBUTTAL.

THE ISSUE IN THIS CASE IS
WHETHER A JUVENILE HOMICIDE
OFFENDER'S 40-YEAR SENTENCE THAT
LACKS A REVIEW MECHANISM
VIOLATES THE EIGHTH AMENDMENT.
JUST TWO YEARS AGO THIS COURT
CONFRONTED THE SAME ISSUE.
AND PURSUANT TO CHAPTER 2014220
WHERE HE HAD BEEN SENTENCED FOR
SECOND-DEGREE MURDER TO 40
YEARS, MS. PEDROZA ASKS THAT
LIKE DEFENDANTS BE TREATED
SIMILARLY.

THE UNITED STATES HAS
ESTABLISHED THAT JUVENILES ARE
DIFFERENT FROM ADULTS IN WAYS
THAT AFFECT THE APPROPRIATENESS
OF THEIR PUNISHMENT--

>> LET ME ASK YOU THIS, WOULD
YOU AGREE THAT THIS SENTENCE WAS
LAWFULLY IMPOSED UNDER FLORIDA'S
CRIMINAL PUNISHMENT CODE?

>> UNDER FLORIDA'S CRIMINAL
PUNISHMENT, TECHNICALLY, YES.

>> IT'S A LEGAL SENTENCE.

>> IT IS A LEGAL SENTENCE TO THE
DEGREE THAT IF SHE WAS AN
ADULT--

>> NO, UNDER FLORIDA CRIMINAL
PUNISHMENT CODE, IT'S A LEGAL
SENTENCE UNDER FLORIDA STATUTES.

>> UNDER FLORIDA STATUTES,
YES--

>> WOULD YOU AGREE THE ONLY WAY
JUDICIARY COULD SET ASIDE THAT
SENTENCE IS IF THERE IS A
CONSTITUTIONAL VIOLATION?

>> YES, YOUR HONOR.

>> OKAY.

AND ONE POSSIBLE VIOLATION MIGHT
BE AN ARGUMENT THAT AS APPLIED
TO MS. PEDROZA, THE STATUTES ARE

UNCONSTITUTIONAL FOR VARIOUS REASONS BECAUSE OF HER AGE, BUT THAT'S NOT AN ARGUMENT THAT'S BEING MADE.

>> WELL, THE ARGUMENT THAT'S--

>> IT'S NOT AN AS-APPLIED CHALLENGE, EIGHTH AMENDMENT CHALLENGE.

>> WELL, IT IS AN EIGHTH AMENDMENT CHALLENGE TO THE DEGREE THAT A SENTENCE THAT LACKS JUDICIAL REVIEW OR REVIEW MECHANISM VIOLATES THE EIGHTH AMENDMENT.

AND SO THAT'S EXACTLY WHAT THIS COURT HELD IN HENRY, KELSEY, JOHNSON AND, BY EXTENSION--

>> NO-- OKAY.

I READ HENRY AS SAYING THAT A DE FACTO LIFE SENTENCE, THE SAME CATEGORICAL RULE APPLIES TO A DE FACTO LIFE SENTENCE AS IT DOES TO AN ACTUAL LIFE SENTENCE.

>> WELL, I UNDERSTAND THAT THAT IS YOUR READING.

THAT HAS BEEN EXPRESSED IN CERTAIN DISSENTS.

HOWEVER, HENRY IS NOT TO BE REVIEWED IN ISOLATION.

TO KELSEY AND JOHNSON AND OTHER DECISIONS AS WELL, THIS COURT HAS REPEATEDLY EXPLAINED WHAT IT MEANT IN HENRY.

AND I WILL POINT OUT IN HENRY, THE CONSTITUTIONAL-- IS IMPLICATED WITH JUVENILE NON-HOMICIDE SENTENCE DOES NOT AFFORD ANY OPPORTUNITY TO OBTAIN RELEASE BASE ON DEMONSTRATED--

>> WOULD YOU AGREE THAT THERE'S NO MILLER VIOLATION?

>> NO, I WOULD NOT AGREE BECAUSE--

>> MILLER IS A CATEGORICAL RULE THAT SAYS YOU CAN'T IMPOSE A MANDATORY LIFE SENTENCE FOR A HOMICIDE OFFENSE.

THIS IS A HOMICIDE OFFENSE, AND IT WASN'T A MANDATORY LIFE SENTENCE.

HOW'S THERE A MILLER VIOLATION?
>> WELL, IT'S NOT A MILLER VIOLATION IN THE SPECIFIC DEGREE THAT IS WHAT MILLER HELD.

HOWEVER, MILLER SAID THESE SAME PRINCIPLES ABOUT CHILDREN, THEIR TRANSIENT IMMATURITY, THEIR CAPACITY FOR CHANGE THAT THEY RECOGNIZE IN GRAHAM APPLY EQUALLY TO HOMICIDE OFFENDERS. AND THIS COURT HELD THAT, YES, EVEN THOUGH MILLER APPLIED FOR A MANDATORY LIFE SENTENCE, THERE IT APPLIED-- THE REASON BEING THAT THE DEFENDANT IN THAT CASE WAS NOT PROVIDED A MEANINGFUL OPPORTUNITY FOR EARLY RELEASE AND THAT TRIAL COURT HAD IMPOSED A LIFE SENTENCE WITHOUT CONSIDERING HER YOUTH AND ITS ATTENDANT CIRCUMSTANCES.

THE FACT OF THE MATTER IS MILLER ESTABLISHED MORE THAN JUST A PROCEDURAL REQUIREMENT. THAT WAS WHAT THE UNITED STATES SUPREME COURT EXPLAINED IN MONTGOMERY.

IN FACT, THE UNITED STATES SUPREME COURT SAID IN MONTGOMERY THAT THE HOLDING OF MILLER WAS BASICALLY THE REASONS FOR SENTENCING COLLAPSE IN LIGHT OF A JUVENILE OFFENDER'S SENTENCE. AND OVERALL, THE UNITED STATES SUPREME COURT'S JURISPRUDENCE IN THIS LINE OF CASE LAW--

>> IS IT, SO YOUR ARGUMENT IS THAT THE 30-YEAR SENTENCE ON THE LESSER OFFENSE WOULD BE ILLEGAL UNDER MILLER.

IT'S A MILLER VIOLATION.

>> WELL, I WOULD SAY THAT, YES, IT IS--

>> YOU DIDN'T RAISE THAT CLAIM. WHY DIDN'T YOU ARGUE-- I MEAN, IF THAT'S YOUR ARGUMENT THAT ANY JUVENILE SENTENCE OF ANY LENGTH--

>> WELL, NOT-- CORRECTION. I'M NOT SAYING THAT ANY JUVENILE

SENTENCE OF ANY LENGTH IS
UNCONSTITUTIONAL.

WHAT I AM SAYING IS THAT WE LOOK
TO THE LEGISLATURE, WHAT THEY
ADOPTED IN CHAPTER 2014220 IS A
GUIDE.

WE'RE NOT GOING TO SECOND GUESS
THE LEGISLATURE'S DECISION FOR
CHOOSING THOSE LINES OF
DEMARCATIION.

AND ALSO I WOULD JUST LIKE TO
POINT OUT THAT THE UNITED STATES
SUPREME COURT HAS SAID THE
CLEAREST AND MOST RELIABLE
OBJECTIVE EVIDENCE OF
CONTEMPORARY VALUES IS ENACTED
BY THE COUNTRY'S LEGISLATION.
SO I JUST WANT TO GO BACK TO
GRAHAM FOR A SECOND.

WHEN GRAHAM REVERSED, IT DIDN'T
JUST SAY, OH, A LIFE SENTENCE IS
UNCONSTITUTIONAL AND, THEREFORE,
SOME TERM OF YEARS.

WHAT THE UNITED STATES SUPREME
COURT SAID IS THAT THE
DEFENDANT, TERENCE GRAHAM, HAD
BEEN GIVEN SOME OPPORTUNITY FOR
EARLY RELEASE.

AND THEY WERE GOING TO LEAVE IT
TO THE STATES TO DETERMINE THE
MEANS AND MECHANISM FOR
COMPLIANCE.

AND THAT'S WHAT OUR LEGISLATURE
DID.

SO THE LEGISLATION--

>> WAIT A SECOND.

I THOUGHT THAT THE LEGISLATURE
SAID THAT IT WAS PROSPECTIVE
ONLY.

>> THE LEGISLATURE DID SAY IT
WAS PROSPECTIVE ONLY.

>> OKAY.

>> BUT THIS COURT IN COORSLY
STATED THIS EXPRESSES THE
LEGISLATURE'S INTENT OF WHAT A
MEANINGFUL OPPORTUNITY FOR EARLY
RELEASE BASED ON MATURATION AND
REHABILITATION MEANS.

I JUST WANT TO SAY IN GRAHAM
WHICH, AGAIN, MOSTLY APPLIES TO

MILLER BECAUSE MILLER STATES EVERYTHING THAT IS SAID ABOUT THE CHARACTERISTICS OF JUVENILES, INCLUDING THEIR CAPACITY FOR CHANGE, IMMATURITY AND VULNERABILITY APPLIES EQUALLY.

BUT WHEN THEY SPOKE ABOUT MATURATION IN GRAHAM, THEY DIDN'T SAY, OH, JUST ANY OPPORTUNITY FOR RELEASE. THEY TALKED ABOUT WHAT THEY CALLED THE REHABILITATIVE IDEAL, AND THEY TALKED ABOUT HAVING A JUVENILE REJOIN SOCIETY, HAVING-- THEY SHOULD NOT BE DEPRIVED OF THE OPPORTUNITY TO ACHIEVE SELF-RECOGNITION AND HUMAN WORTH AND POTENTIAL. THEY TALKED ABOUT JUVENILES BEING ABLE TO GO TO SCHOOL, TAKE VOCATIONAL SKILLS, GAIN RIGHTS. BASICALLY WHEN THEY GET OUT IT'S NOT WHEN THEY GET OUT SOMETIME WHEN THEY'RE 60 WHEN THEY'RE PRESUMED TO BE RETIRED AND THEY JUST SAY, OH, NOW YOU HAVE YOUR OPPORTUNITY.

THEY'RE SUPPOSED TO HAVE, IF THEY'VE MATURED AND BEEN REHABILITATED, THEY'RE SUPPOSED TO GET THEIR SECOND CHANCE.

THE IDEA HERE IS THE PROBLEM THAT GRAHAM, MILLER, MONTGOMERY IS THAT THE JUSTIFICATIONS FOR A SENTENCE COLLAPSE WHEN A JUVENILE HAS SERVED A LENGTHY TERM OF SENTENCE AND THEY HAVE BECOME MATURE AND REHABILITATED. AND THAT'S WHAT ARE OUR LEGISLATURE DETERMINED.

THE THING IS WITH JUVENILES IT'S NOT MERELY THE FACT THAT THEY'RE YOUNG AND THEY'RE IMPULSIVE, IT'S THE FACT THAT-- IT'S MORE THAN WHAT PARENTS KNOW.

THE BRAIN SCIENCE SHOWS THE FRONTAL LOBE IS NOT FULLY DEVELOPED, AND SO THEIR PERSONALITY TRAITS ARE NOT FULLY

INGRAINED.

BASICALLY, IT LESSENS THEIR
CULPABILITY.

SO WE HAVE A LESSON HERE, WE
HAVE THE ADULTS AND BELOW THAT
ARE JUVENILE HOMICIDE OFFENDERS
LIKE PEDROZA, AND BELOW THAT ARE
JUVENILE NON-HOMICIDE OFFENDERS
LIKE MR. HENRY.

SO THE LEGISLATURE HAS
DETERMINED WHAT IS THE
MEANINGFUL OPPORTUNITY FOR
RELEASE, AND THAT'S WHAT I THINK
NEEDS TO BE DONE, AND THAT IS
WHAT THIS COURT HAS DONE.

>> PRIOR OCCASION.

I WILL POINT OUT IN HENRY,
KELSEY AND JOHNSON, THIS
COURT-- IT HAS TO BE VIEWED IN
CONTEXT.

AT THAT TIME THERE HAD BEEN
MULTIPLE DECISIONS FROM DISTRICT
COURTS OF APPEALS TRYING TO
DETERMINE HOW THEY CAN APPLY
GRAHAM.

BECAUSE IT SEEMS OBVIOUSLY
UNREASONABLE, THERE WERE
SITUATIONS LIKE IN THE FOURTH
DISTRICT COURT OF APPEAL WHERE
THEY HAD AFFIRMED MR. ROSARIO'S
OFFENSES WHICH WAS OVER 200
YEARS WITHOUT REVIEW.

EVEN STILL, THERE WERE MULTIPLE
COURTS OF APPEAL THAT WERE
HOLDING THAT GRAHAM ONLY APPLIED
TO LIFE SENTENCES.

THE FIRST AND THE THIRD DCA WERE
ATTEMPTING TO APPLY BY A
CASE-BY-CASE BASIS.

EVEN STILL, THE COURTS WERE
RUNNING INTO THIS PROBLEM OF HOW
EXACTLY DO WE DETERMINE WHAT IS
A MEANINGFUL OPPORTUNITY TO
REVIEW.

HOW DO WE DETERMINE WHAT A,
QUOTE, DE FACTO LIFE SENTENCE
IS.

BUT AS WE'VE SEEN FROM THIS
POINT, THE QUESTION OF WHETHER
OR NOT THE SENTENCE IS DE FACTO

LIFE IS NOT THE QUESTION.
THIS COURT HAS REPEATEDLY SAID
IN KELSEY AND IN JOHNSON WE HAVE
DECLINED TO REQUIRE THAT SUCH
SENTENCES MUST BE DE FACTO TO
APPLY.

>> WOULD IT BE UNCONSTITUTIONAL
UNDER THE EIGHTH AMENDMENT AS
INTERPRETED IN MILLER IF THE
LEGISLATURE IN ITS LEGISLATION
HAD CALLED FOR THE JUDICIAL
REVIEW AFTER, LET'S CALL IT 30
YEARS?

>> I BELIEVE-- I THINK
MILLER-- OR GRAHAM HAD
INSTRUCTED THE LEGISLATURE TO
DETERMINE WHAT IS MEANFUL--

>> I'M NOT TALKING ABOUT GRAHAM
BECAUSE THIS IS NOT A GRAHAM
CASE.

>> WELL, I-- OKAY.
I WOULD SAY IN THAT CASE IT
WOULD BE CONSTITUTIONAL BECAUSE,
ULTIMATELY, THAT IS THE
LEGISLATURE'S DETERMINATION.

>> RIGHT.

OKAY.

WHAT ABOUT IF IT'S 35?

>> THEN I WOULD STILL SAY IT,
BECAUSE AS LONG AS THAT'S WHAT
THEY DETERMINE IS MEANINGFUL AND
IT'S NOT--

>> WHAT ABOUT IF IT'S 40?

>> WELL, THEN THAT BECOMES MORE
QUESTIONABLE.

>> WHY?

TELL ME WHY.

>> WELL, AS WE IMPINGE UPON, AS
WE INCH CLOSER TO WHAT WE
CONSIDER TO BE LIFE EXPECTANCY,
THE ABILITY FOR THE DEFENDANT TO
REJOIN SOCIETY--

>> SO IS THAT REALLY THE ISSUE,
IS THAT THIS IS JUST CLOSER TO
WHAT THE LIFE EXPECTANCY
TABLES-- I KNOW THERE'S SOME
ARGUMENT AMONG THE PARTIES ABOUT
WHAT IT IS USING SOME FEDERAL
STUDIES THAT HAVE BEEN DONE, IS
THAT REALLY ALL WE'RE TALKING

ABOUT?

>> WELL, NO.

WE'RE TALKING ABOUT
DETERMINATION OF WHAT IS A
MEANINGFUL OPPORTUNITY FOR
RELIEF BASED ON MATURATION AND
REHABILITATION.

>> WHY IS 35 DIFFERENT THAN 40?
TELL ME.

>> WELL, THAT'S THE POINT RAISED
IN KELSEY THOUGH, OR THE COURT
MADE IN KELSEY.

WE DON'T WANT TO SECOND GUESS
WHAT THE--

>> I UNDERSTAND.

MY HYPOTHETICAL TO YOU IS ASSUME
THE LEGISLATURE HAS PASSED A LAW
IDENTICAL TO THE JUDICIAL REVIEW
STATUTE WHICH PUTS IT AT 40
YEARS.

>> BECAUSE THEN I THINK THAT IS,
AS THE UNITED STATES SUPREME
COURT SAYS, DECLARES THE MOST
RELIABLE, OBJECTIVE EVIDENCE OF
CONTEMPORARY VALUES OF
LEGISLATION ENACTED BY THE
COUNTRY'S LEGISLATION.

>> SO YOU THINK IT WOULD BE FINE
CONSTITUTIONALLY UNDER MILLER IF
THE LEGISLATURE HAD SET THE
JUDICIAL REVIEW AT 40 YEARS FOR
THOSE WHO HAVE COMMITTED
HOMICIDE.

>> I THINK IT'S VERY SIMILAR.
IN MY REPLY BRIEF, I DISCUSS
PEOPLE V. BUFFER, AND I THINK
THAT'S KIND OF THE SAME ARGUMENT
THERE IS, BASICALLY, YOU HAVE TO
LOOK TO SOMETHING.

THE PROBLEM IS THAT THE COURTS
ARE ILL-FITTED TO MAKE A
DETERMINATION OF WHAT IS
MEANINGFUL.

>> BUT YOU THINK IT WOULD BE
CONSTITUTIONAL IF THE
LEGISLATURE HAD MADE THAT CALL.

>> I'M GOING TO GO THE SAME WAY
THAT, I'M GOING TO GO THE SAME
WAY THAT BRYAN GOWDY DID IN THE
ORAL ARGUMENT WHICH IS BASICALLY

PROBABLY, BUT THAT'S NOT WHAT
HAPPENED HERE.

AND SO I THINK THAT--

>> YEAH, BUT THAT'S NOT THE
QUESTION I'M ASKING.

I'M ASKING YOU RIGHT HERE IN
THIS PARTICULAR CASE, IN A
MILLER CASE, WOULD IT BE
CONSTITUTIONAL IF THE
LEGISLATURE PASSED A LAW
IDENTICAL TO WHAT IT DID SETTING
THE JUDICIAL REVIEW FOR THOSE
WHO COMMITTED HOMICIDES AT 40
YEARS?

>> IF THE LEGISLATURE HAD MADE
THAT DETERMINATION, I WOULD SAY
YES, MOST LIKELY.

>> OKAY.

SO I'M HAVING TROUBLE
UNDERSTANDING IF THAT IS MOST
LIKELY CONSTITUTIONAL, WHY A
SENTENCE THAT DOES EXACTLY THE
SAME THING, IN FACT LESS BECAUSE
WITH GAINED TIME IT'S ACTUALLY
LESS THAN THE 40 YEARS, WOULD
SOMEHOW VIOLATE THOSE SAME
CONCEPTS UNDER MILLER.

>> BECAUSE THE LEGISLATURE HAS
DETERMINED WHAT A MEANINGFUL
OPPORTUNITY FOR EARLY RELEASE
IS--

>> SO IT'S ONLY BECAUSE THE
LEGISLATURE HAS PASSED A LAW
THAT'S PROSPECTIVE, THAT CAUSES
US TO THEN-- THAT SETS THE
CONSTITUTIONAL BAR?

SO AS I UNDERSTAND IT, THE
EIGHTH AMENDMENT DEPENDS ON WHAT
EACH STATE'S LEGISLATURE
DECIDES?

>> WELL, IT DEPENDS-- THE
LEGISLATURE DEPENDS ON, FLOWS
FROM THE BASIC PRECEPT OF
JUSTICE THAT PUNISHMENT FOR
CRIME SHOULD BE GRADUATED IN
PROPORTION TO BOTH THE OFFENDER
AND THE OFFENSE.

SO YOU HAVE TO LOOK AT,
BASICALLY, IT'S A
PROPORTIONALITY ANALYSIS, AND

THIS IS WHERE OUR LEGISLATURE--
>> WELL, I UNDERSTAND THAT.
THOSE ARE CATEGORICAL THING EVEN
THOUGH IT'S PROPORTIONATE.

IF IT'S CATEGORICALLY OKAY TO DO
IT IN 40 YEARS, WHY DOES A
SENTENCE OF LESS THAN 40
YEARS-- WHICH IS ESSENTIALLY
WHAT THIS IS WITH GAINED TIME--
VIOLATE THAT?

>> WELL, BECAUSE GRAHAM LEFT IT
TO THE--

>> IT'S NOT A GRAHAM CASE.

>> I KNOW, BUT MILLER APPLIED
THE SAME ANALYSIS FROM GRAHAM.
IT WAS AN EXTENSION--

>> NO, BUT IT DIDN'T.
BECAUSE MILLER AUTHORIZES,
UNLIKE GRAHAM, LIFE SENTENCES,
DOES IT NOT?

>> IT DOES ONLY FOR THE RARE
JUVENILE THAT SHOWS THAT HE'S
INCORRIGIBLE OR IRREDEEMABLY
CORRUPT WHICH IS GOING TO BE--

>> LIKE ONES THAT STRANGLE THEIR
MOTHERS?

IS THAT ONE OF THE RARE CASES?

>> NO.

BECAUSE EVEN IF YOU LOOK AT EVAN
MILLER, HE DID A TERRIBLE ACT.
EVAN MILLER WAS HIGH ON DRUGS,
WENT TO A PERSON'S HOUSE, BEAT
THEM WITH A BAT, DECLARED
HIMSELF TO BE GOD AND LIT THE
PERSON'S HOUSE ON FIRE OR THEIR
CAR AT LEAST WITH THE PERSON
INSIDE.

THAT WAS A HORRENDOUS ACT.

>> RIGHT.

AND WHAT THE SUPREME COURT SAID
IS FOR THOSE SORTS, LIFE IS
OKAY.

>> NO, THEY DIDN'T.

THEY SAID HIS ACT SHOWS
POTENTIAL TRANSIENT IMMATUREITY,
AND THAT'S WHY THE PERSON, EVAN
MILLER, WAS ENTITLED TO
RESENTENCING.

THEY SAY THE SAME THING WITH
MONTGOMERY--

>> AND ALLOWING FOR LIFE SENTENCE WHEREAS IN GRAHAM THAT IS NOT-- IF IT WAS SHORT OF LIFE, GRAHAM WOULD NOT PERMIT THAT, CORRECT?

>> IF IT WAS SHORT OF LIFE, NO.

>> I'M HAVING TROUBLE UNDERSTANDING HOW IF LIFE IS OKAY IN THE MILLER CONTEXT, HOW SIGNIFICANTLY LESS THAN LIFE, WHICH IS WHAT THIS IS, IS NOT OKAY.

>> THE PROBLEM IN MILLER WAS THAT YOU HAVE COURTS MAKING A DECISION AT THE OUTSET THAT A JUVENILE IS IRREDEEMABLY CORRUPT AND INCAPABLE OF-- THAT'S A DIFFICULT DECISION EVEN FOR EXPERTS TO MAKE.

IT'S ONE-- THAT'S WHAT THEY SAID, AND THAT'S WHY IT'S ONLY FOR EXCEEDINGLY RARE-- THEY DIDN'T INTEND IN MILLER LIFE WITHOUT PAROLE, ONLY FOR THOSE IRREDEEMABLY CORRUPT.

EVEN THE LEGISLATURE IN OUR STATE IS NOT GOING TO FOCUS ON THE FACT OF LIFE, ETC., ETC. WE'RE GOING TO FOCUS ON WHAT POINT DOES A JUVENILE, DO WE BELIEVE THAT THEIR PERSONALITY'S GOING TO BE CRYSTALLIZED AND WE CAN MAKE A DETERMINATION--

>> I'M STILL HAVING TROUBLE UNDERSTANDING HOW OUR LEGISLATURE'S DETERMINATION OF A PROSPECTIVE SENTENCE IN ORDER TO DEAL WITH GRAHAM AND MILLER SOMEHOW SETS THE CONSTITUTIONAL BAR FOR HOW WE ARE TO DO CASES THAT AREN'T GOVERNED BY THAT VERY STATUTE.

>> THAT IS WHAT-- I THINK AT THE END TO THE DAY THIS IS WHAT THAT COURT HAS STATED IN BOTH KELSEY AND GRAHAM--

>> IT JUST SEEMS ODD TO ME THAT IF ILLINOIS DECIDES TO HAVE JUDICIAL REVIEW AT 40, BUT INDIANA IS 25, THAT SOMEHOW

THE--

>> JUSTICE LUCK, I KNOW YOU'RE GOING TO SAY THIS ISN'T A GRAHAM CASE, BUT AGAIN, THIS IS WHAT THE UNITED STATES SUPREME COURT ENVISIONED WHEN THEY SAID WE LEAVE IT TO THE STATES IN THE FIRST INSTANCE TO DETERMINE THE MEANS AND MECHANISMS OF COMPLIANCE.

>> LET ME ASK YOU ABOUT MONTGOMERY.

THERE THE U.S. SUPREME COURT SAID THE EIGHTH AMENDMENT REQUIRES IT, AND A JUVENILE WHO'S NOT IRREPARABLY CORRUPT, A HOMICIDE OFFENDER, HAS TO BE AFFORDED HOPE FOR SOME YEARS OF LIFE OUTSIDE PRISON WALLS. THAT'S WHAT THE EIGHTH AMENDMENT REQUIRES, THAT'S CORRECT?

>> WELL, A MEANINGFUL OPPORTUNITY FOR EARLY RELEASE--

>> YOU'RE GOING BACK TO GRAHAM. I'M TALKING ABOUT MONTGOMERY. MONTGOMERY'S TALKING ABOUT WHAT THE EIGHTH AMENDMENT REQUIRES FOR A HOMICIDE VICTIM.

A HOMICIDE-- JUVENILE HOMICIDE OFFENDER WHO'S NOT IRREPARABLY CORRUPT.

AND IT SAID THEY HAVE TO HAVE SOME HOPE FOR SOME YEARS OUTSIDE OF PRISON WALLS.

>> BUT I DON'T THINK IT'S JUST MERELY A SENTENCE THAT'S LENGTHY AND THAT THEY HAVE NO OPPORTUNITY TO EVER DEMONSTRATE THEIR MATURATION AND REHABILITATION.

I KNOW THE PROBLEMS THAT WE HAVE, THE LEGISLATURE'S BETTER EQUIPPED TO DETERMINE WHAT IS MEANINGFUL, YOU KNOW?

WE'VE RAN INTO A PROBLEM, AND THIS IS DEMONSTRATED IN HENRY IF YOU LOOK AT THE FIFTH DCA'S HENRY DECISION.

IF WE FOCUS ON A DE FACTO LIFE ANALYSIS RATHER THAN WHAT THE

LEGISLATURE HAS DETERMINED, THEN YOU RUN INTO ALL KINDS OF PROBLEMS, THE FIRST OF WHICH IS THAT DE FACTO LIFE ANALYSIS IF YOU RELY ON TABLES, HALF THE PEOPLE WON'T MAKE IT THERE. THEN YOU'RE GOING TO HAVE TO HAVE DETERMINATIONS ON SHOULD WE RELY ON RACE AND GENDER AND ISSUES SUCH AS THAT, OR CAN YOU TAKE THE FACT OF PRISON LIFE. BECAUSE THE UNITED STATES SUPREME COURT HAS SAID ANY SENTENCE FOR A JUVENILE, AND THIS COURT SAYS IT'S QUALITATIVELY DIFFERENT BECAUSE THEY'RE GOING IN AT SUCH A YOUNG AGE AND SERVING SUCH A LONG SENTENCE.

THERE'S SO MANY QUESTIONS, AND WE DON'T HAVE A PAROLE SYSTEM-- ALTHOUGH WE DO HAVE THIS NEW STATUTE.

SO YOU HAVE THESE DETERMINATIONS WHICH, QUITE FRANKLY, TRIAL COURTS AND APPELLATE COURTS ARE NOT EQUIPPED TO MAKE, AND THAT'S WHY I'M SAYING TO LOOK AT THE STATUTES FOR GUIDANCE.

I'M GOING TO RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THE COURT, MATTHEW OCKSRIDER ON BEHALF OF THE STATE.

THIS CASE IS ABOUT WHAT IT IS NOT.

THE PETITIONER HERE NEGOTIATED FOR A 40-YEAR SENTENCE AS A PART OF A PLEA FOR THE MURDER OF HER MOTHER THAT SHE COMMITTED WHEN SHE WAS 17 YEARS OLD.

BECAUSE THE SENTENCE WAS NOT A MANDATORY LIFE WITHOUT PAROLE SENTENCE, THE CATEGORICAL RULE FROM MILLER IS NOT IMPLICATED HERE.

NO DECISION FROM THIS COURT COMPELS HER SENTENCING PURSUANT

TO CHAPTER 2014220 BECAUSE THE PETITIONER MUST FIRST DEMONSTRATE A VIOLATION OF THAT RULE BEFORE BEING ABLE TO BE RESENTENCED UNDER THAT STATUTORY SCHEME.

>> DO YOU DISAGREE WITH MY READING OF HENRY WHICH IS THAT IT SAYS THAT IT IS-- A CATEGORICAL RULE IS SAYING THAT YOU CAN'T HAVE THE FUNCTIONAL EQUIVALENT OF A LIFE SENTENCE UNDER THE EIGHTH AMENDMENT FOR A JUVENILE HOMICIDE OFFENDER?

DO YOU AGREE WITH THAT?

>> I AGREE WITH THAT INTERPRETATION OF HENRY.

>> OKAY.

AND YOU'RE NOT ASKING US TO RECEDE FROM THAT OR ANYTHING.

>> WE'RE ASKING THAT, AGAIN, THIS IS A MILLER CASE.

THIS IS-- WE WOULD LIKE THE CATEGORICAL RULE FOR--

>> THE QUESTION IS WHETHER IT'S A HENRY CASE.

>> I DON'T-- WE KNOW IT'S NOT--

>> IT'S NOT A MILLER CASE, BECAUSE IT'S NOT A LIFE SENTENCE.

>> I DON'T BELIEVE HENRY'S IMPLICATED HERE BECAUSE THAT INVOLVED A 90-YEAR SENTENCE WHICH ASSURED, POTENTIALLY, THE PETITIONER--

>> IF YOU'RE GOING TO HAVE A CATEGORICAL RULE THAT A DE FACTO LIFE SENTENCE, TERMINOLOGY USED IN HENRY, IS AN EIGHTH AMENDMENT VIOLATION FOR A JUVENILE HOMICIDE OFFENDER, THEN IF IT'S GOING TO BE A CATEGORICAL RULE, AT SOME POINT WE HAVE TO SAY WHAT THAT IS SO THAT IT CAN BE APPLIED AS A CATEGORICAL RULE IN ALL CASES, WOULD YOU AGREE WITH THAT?

>> I AGREE WITH THAT.

>> OKAY.

>> BUT WE--

>> AND SO HOW, I MEAN, YOU SORT OF DON'T EVEN TRY TO MAKE THE ARGUMENT ABOUT WHETHER A 40-YEAR SENTENCE IS OR ISN'T, I MEAN, SOME OF THE AMICUS DID PRESENT LIFE EXPECTANCY TABLES AND ARGUMENTS, BUT HOW ARE WE SUPPOSED TO DO THAT?

>> IN THIS SPECIFIC CASE, RELEASE WILL OCCUR IN HER 50s, SO WE THINK THAT CLEARLY DOESN'T CONSTITUTE A DE FACTO LIFE SENTENCE OR A SENTENCE THAT DOESN'T, AS MONTGOMERY AND MILLER REQUIRE SOME RELEASE OR SOME HOPE FOR RELEASE DURING HER NATURAL LIFETIME.

THAT'S CLEARLY DURING HER NATURAL LIFETIME.

>> WHAT IF IT'S NOT?

WHAT IF THE UNDISPUTED EVIDENCE THAT'S PRESENTED TO THE TRIAL COURT IS THAT FOR A FEMALE WHO SPENDS EVERY DAY OF HER LIFE IN JAIL FROM THE TIME THAT SHE'S 17 ON, HER LIFE EXPECTANCY IS PROBABLY UP TO ABOUT 45 YEARS. WHAT IF THAT WERE THE UNDISPUTED EVIDENCE BEFORE THE COURT?

>> I THINK IF THAT WERE THE UNDISPUTED EVIDENCE, THE VIRGINIA STATUTE THAT WAS FOUND TO NOT BE SO VIOLATIVE OF GRAHAM-- AND I UNDERSTAND THIS ISN'T A GRAHAM CASE-- WOULD HAVE BEEN FOUND TO BE UNCONSTITUTIONAL, AND IT WASN'T.

>> WELL, THAT'S AN INTERESTING CONTEXT, BECAUSE IT COMES UP IN THE EDIPA CONTEXT.

I DON'T KNOW THAT THAT'S A DIRECT APPLICATION HERE. BECAUSE SIMPLY, THE CONTEXT IN WHICH IT COMES UP IS VERY, VERY DIFFERENT.

I THINK YOUR BETTER ARGUMENT IS AT LEAST IN FRANKLIN WE HELD THAT A 203023 RELEASE DATE IS SUFFICIENT AND MEETS THE

REQUIREMENTS OF--

>> IT DOES, BECAUSE THERE IS THE POTENTIAL FOR RELEASE, AND THAT WAS IN YOUR SENTENCES WHERE RELEASE WAS IN--

>> I GUESS MY QUESTION IS ARE WE SETTING OURSELVES UP FOR A CONSTITUTIONAL RULE WHERE A TRIAL COURT IN EACH CASE HAS TO MAKE A DETERMINATION OF WHETHER THE SENTENCE IS DE FACTO LIFE OR NOT DE FACTO LIFE.

IN OTHER WORDS, APPLYING HENRY, AS JUSTICE LAWSON SAID, SETTING THE DATE AND LEAVING IT TO THE TRIAL COURT TO DECIDE WHETHER IT IS DE FACTO OR NOT, IF THAT'S THE CONSTITUTIONAL CUTOFF.

>> IF THE COURT CONTINUES TO ADHERE TO A CATEGORICAL RULE THAT EXTENDS MILLER PAST STRICTLY A LIFE WITHOUT PAROLE SENTENCE, THEN THERE'S THE POTENTIAL FOR THAT.

BUT I WILL SUGGEST--

>> IS THAT WHAT THE STATE'S ADVOCATING FOR?

>> THE-- FOR LIFE, FOR DE FACTO LIFE SENTENCE?

CASE-BY-CASE DETERMINATIONS?

WE WOULD PREFER A CASE-BY-CASE DETERMINATION.

>> SO THE STATE WANTS EVERY TRIAL JUDGE TO BE ABLE TO HAVE A DECISION OF WHAT THE LIFE EXPECTANCY IS FOR A PARTICULAR--

>> WE PREFER CATEGORICAL TO BE APPLIED CATEGORICAL.

FORTY YEARS IS OKAY.

WHAT ABOUT 45?

>> WE WOULD THINK 60-65.

>> IF YOU HAVE A CATEGORICAL RULE, I WOULD THINK IT WOULD HAVE TO AT LEAST TAKE CARE OF MOST EIGHTH AMENDMENT VIOLATIONS.

CORRECT?

>> CORRECT.

>> YOU WOULD HAVE TO LOOK AT VARIOUS POPULATIONS, I WOULD

THINK, IF THE LIFE EXPECTANCY OF A FEMALE THAT HAS BEEN INCARCERATED SINCE SHE WAS A JUVENILE, THERE ARE DIFFERENT POPULATIONS, THAT IS THE WAY THEY LOOK AT THE LIFE EXPECTANCY.

YOU WOULD HAVE TO SET IT SO THAT MOST PEOPLE WOULD GET RELIEF. CORRECT?

>> THAT IS CORRECT OTHERWISE IT WOULD BE APPLIED ANALYSES AND THAT IS NOT WHAT IS REQUESTED HERE.

THE LEGISLATURE GETS TO SET WHAT IN UNCONSTITUTIONAL SENTENCES.

>> YES.

VAST MAJORITY OF PEOPLE, OR EVEN THE MAJORITY OF PEOPLE WOULD LIVE A LIFE OF 55 OR 55 OR 60 YEARS.

IN MY PARTICULAR CASE, I AM NEVER GOING TO REACH THAT FOR ANY NUMBER OF REASONS.

THAT SENTENCE TO ME IS A LIFE SENTENCE.

WHY IS THAT CLAIM NOT A VIABLE CLAIM?

>> WELL, WE THINK -- FIRST OF ALL, THAT THAT CLEARLY IS NOT THE RULE.

HENRY EXTENDS MILLER TO THE FACT OF SENTENCES.

>> ASSUME WE ARE.

>> THAT IS A FACTOR PERHAPS A TRIAL COURT WOULD HAVE TO CONSIDER OR GRAPPLE WITH AT THAT TIME.

AS WE KNOW RIGHT NOW THE ONLY CATEGORY OF RULE IS A LIFE WITHOUT SENTENCE.

>> YOU MENTIONED 60-65.

WHAT EVIDENCE ARE WHAT EVIDENCE ARE YOU BASING?

A LOT HAVE DONE THIS DIFFERENT. SOME OF THE CASE LAW FROM OTHER STATES HAVE DONE THIS.

WHAT ARE YOU RELYING ON OTHER THAN YOUR INTUITION?

>> THE SUPREME COURT NOT FINDING

THAT THAT IS A CLEAR OR
UNREASONABLE INTERPRETATION OF
THE RULE RATHER THAN ACTUARIAL.
THAT IS THE ONLY THING YOU'RE
BASING THAT OFF OF?

>> SOME OF THE ACTUARIAL TABLES,
I WOULD HAVE TO LOOK AT THE
BREEZE, BUT DO SUGGEST THAT THAT
IS WHERE THE DE FACTO LIFE MIGHT
BEGIN.

OF COURSE, THERE ARE ARGUMENTS
ON EACH SIDE ABOUT WHAT PRISON
DOES TO YOUR LIFE SPAN WHETHER
IT EXTENDED OR DOES NOT
EXTEND IT.

>> WOULD YOU AGREE THAT THERE
WOULD BE DIFFERENCES IN TERMS OF
LIFE EXPECTANCY VERSUS MEN AND
WOMEN IN PRISON?

>> THAT'S BEEN PRESENTED TO THE
COURT, YES.

>> WOULD YOU AGREE THAT
POTENTIALLY, WOMEN HAVE, THAT
THERE IS A, I DON'T KNOW IF
THERE WAS A RECORD EVIDENCE OF
THIS, BUT WOMEN THAT DO NOT HAVE
CHILDREN, HAVE A HIGHER
EXPECTANCY FOR BREAST CANCER.

>> THAT WAS NOT PRESENTED.

>> THIS WAS A NEGOTIATED PLEA.
THERE WAS NO RECORD DEVELOPED ON
THAT HERE.

NO RECORD DEVELOPED ON THAT
POINT.

THE CATEGORICAL RULE ANNOUNCED
IN MILLER WAS NOT IMPLICATED I A
40 YEAR PLEA FOR HOMICIDE OF
FENCE.

THE FOURTH DISTRICT LOOKED AT
THE PRECEDENTS FROM THIS COURT
TO DETERMINE THAT NO CLEAR
GUIDANCE HAD EMERGED.

VIOLATING THAT RULE FOR MILLER.
BECAUSE THAT WAS THE CASE, IT
WAS BOUND TO APPLY TO THAT RULE
HERE AND FOUND THAT A FORTY-YEAR
SENTENCE WAS CONSTITUTIONAL.

>> THE COMMISSION HAS DETERMINED
THAT A 3.9 YEAR SOMETHING
SENTENCES AN EQUIVALENT LIFE

SENTENCE IN FEDERAL PRISON BASED
ON THEIR ANALYSIS OF OFFENDERS.
WOULD THAT BE SOMETHING THAT WE
COULD LOOK AT? SAYING THAT IT IS
MORE THAN THAT NUMBER?

YOU REALLY ARE NOT GIVING
ANYBODY A MEANINGFUL HOPE OF
LIFE OUTSIDE THE PRISON WALLS.
>> HALF THE PEOPLE WILL OUTLIVE
THAT METRICS.

THOSE SORTS OF METRICS ARE.
I DON'T KNOW I WOULD GO SO FAR
TO CONCEDE THAT THAT WOULD
CONSTITUTE A DE FACTO LIFE
SENTENCE GIVEN THAT THERE IS A
CHANCE THAT THIS PARTICULAR
PETITIONER WOULD OUTLIVE THAT.

>> IF WE ARE GOING TO DO WHAT
YOU SUGGEST AND HAVE A
CATEGORICAL RULE, WE HAVE TO FIX
SOMETHING IN ORDER TO APPLY IT
CATEGORICAL IN ALL CASES.

>> THE ONE ANNOUNCED IN MILLER
BASED ON ARTICLE ONE SECTION 17.
WE ARE ASKING YOU TO ASSUME.

>> I THINK THAT IT SHOULD BE
BEYOND 40 YEARS DESPITE THAT
EVIDENCE.

I THINK IT WOULD COME AS A
SURPRISE TO MANY PEOPLE THAT
LIFE EXPECTANCY IN'S AND 50s.
I DO NOT THINK SOCIETY IS
WILLING TO RECOGNIZE SOMETHING
THAT VIOLATES THE EIGHTH
AMENDMENT OR SOMETHING
UNCONSTITUTIONAL.

>> COULD IT BE A FACT THAT THE
COURT CONSIDERS?

>> YOU ARE RIGHT.

NO FACTUAL DEVELOPMENT OF ANY OF
THIS.

WE'VE JUST HAD SOME STUFF THAT
HAS BEEN PRESENTED TO US.

WHY NOT -- ISN'T IT AN ELEGANT
WAY TO LET THE LEGISLATURE MAKE
THAT CALL.

FIFTEEN YEARS AND IN SOME CASES
20 AND OTHERS.

TWENTY-FIVE AND OTHERS.

>> YOU KNOW WHAT, THAT SOUNDS

LIKE A ROUND NUMBER.
WHY IS THAT NOT AN ELEGANT
WAY TO DEAL WITH THIS ISSUE.
>> OBVIOUSLY, THE LEGISLATURE
CAN CHANGE IT.
PERMITTING THE LEGISLATURE TO
FIX THAT TIME.
IN FIVE YEARS THEY COULD
INCREASE IT BECAUSE OF CERTAIN
FACTORS.
MAYBE NOT EVEN RELATE IT TO
EXPECTANCY.
>> ABSOLUTELY.
BASED ON EVIDENCE AND
EXPERIENCE, THEY MIGHT CHANGE
IT.
IF IT IS 30 YEARS, THAT IS
CONSTITUTIONAL.
CONCEDED THAT 40 WOULD EVEN BE
CONSTITUTIONAL.
WHY NOT LET THE LEGISLATURE MAKE
THOSE CALLS.
EVERY FEW YEARS, LESS AND LESS
OF THESE CASES.
>> THEY DID FIX IT IN CERTAIN
INSTANCES.
THEY CRAFTED 2014 FOR TWO CORE
TAGORE RULES.
IT DID NOT CONSIDER WHAT CAME IN
HENRY BECAUSE HENRY CAME AFTER
THAT.
GIVEN THAT --
>> I AM PRETTY FAMILIAR WITH THE
LEGISLATION.
NON-HOMICIDE TO HOMICIDE CASES.
DOES THAT COVER JUST ABOUT
EVERYTHING?
>> I DO NOT BELIEVE THAT IT
GOVERNS EVERY FELONY COMMITTED
BY A JUVENILE OFFENDER.
HOMICIDE OFFENSES UNDER 780-8204
AND CERTAIN FELONIES PUNISHABLE
BY LIFE BECAUSE THAT IS THE
CATEGORICAL RULE ANNOUNCING
GRANTS.
THOSE ARE PDL'S ARE LIFE
FELONIES OR SOMETHING OF THAT
SORT.
IT DID NOT CONSIDER STACKING
MULTIPLE FELONY DEGREE FELONIES.

>> EVERYTHING ELSE IS 1ST[∞]
FELONIES CAPPED AT 30, 20 AND
15.

IT IS NOT GOING TO BE
IMPLICATED.

>> CORRECT.

IT WOULD NOT PERMIT
RESENTENCING.

IF WE ARE GOING TO GO BY WHAT
THE LEGISLATURE SAID IN THE 30
YEAR EXCEEDS THE REVIEW.

, WITH THAT DEMONSTRATION, THAT
BEGS THE QUESTION THEN WHETHER
THAT WOULD REMAIN
CONSTITUTIONAL.

WE BELIEVE THAT IT WOULD.

>> 1ST[∞] FELONIES THAT DO NOT
FALL WITHIN THE LEGISLATURE'S
REMEDY.

>> EXACTLY RIGHT.

OUR READING OF PETITIONER'S
ARGUMENT DOES NOT DEFINE IT TO
THE FELONIES ENUMERATED IN 921,
IT IS BROAD.

WHICH IS WHY IT IS CURIOUS,
FIRST-DEGREE FELONY THAT SHE
ALSO PLEADED GUILTY TO IN THIS
CASE WAS NOT CHALLENGED BECAUSE
IT WAS A NERDY YEAR SENTENCE.

WE WILL TRUST THE LEGISLATURE TO
FIX THE DATE IN WHICH SOMETHING
BECOMES UNCONSTITUTIONAL.

THE REMEDY WOULD NOT EXIST.

THAT IS WHY THINK USING A REMEDY
FOR A CATEGORICAL RULE IS
DANGEROUS IN ORDER TO DETERMINE
WHETHER IT IS VIOLATED IN THE
FIRST PLACE.

I THINK IT IS BETTER OFF TO
SIMPLY APPLY THE RULE AS IT
STANDS.

IF IT IS A LIFE SENTENCE WITHOUT
THE POSSIBILITY OF PAROLE, THEN
IT REMAINS A CONSTITUTIONAL
SENTENCE.

AND I THINK THE READING OF
KELSEY THAT HAS BEEN ADVANCED
AROUND THE DISTRICT COURT OF
APPEAL AND HERE IT IGNORES THE
FACT THAT THE QUESTION AND

KELSEY, KELSEY ITSELF LIMITED ITS APPLICATION TO JUVENILES WHOSE SENTENCES WERE FOUND TO BE ILLEGAL.

THIS COURT PERMITTED THOSE JUVENILES TO BE SENTENCED CONSISTENTLY WITH OTHER JUVENILES WHOSE SENTENCES WERE FOUND ILLEGAL.

IT DID NOT ANNOUNCE A RULE THAT ALL JUVENILES IN THE STATE ARE ENTITLED TO A RESENTENCING UNDER 201414 TO 20.

THAT HAS BEEN REINTERPRETED AND THERE IS LANGUAGE AND JOHNSON AND LEE THAT SUGGESTED THAT AS THE CASE AS WELL.

OUR READING OF KELSEY IS VERY NARROW.

FIRST THE FINDING OF LEGALITY. WE THINK THAT THAT CASE JUST DOES NOT APPLY HERE SINCE THIS IS AN ORIGINAL SENTENCE OF 40 YEARS.

>> YOU HAVE MENTIONED SEVERAL TIMES THAT THIS IS A NEGOTIATED PLEA, BUT YOU'VE NOT MADE ANY ARGUMENT ABOUT HOW THAT SHOULD AFFECT HOW WE LOOK AT IT.

DO YOU THINK IT SHOULD.

>> WE THINK THAT IT DOES AFFECT IT.

AT LEAST JUSTICE THOMAS BRINGS IT UP IN THE CONCURRING DECISION IN ADAMS VERSUS ALABAMA.

THE STATE COURT IN LIGHT OF MONTGOMERY VERSUS LOUISIANA THAT APPLIED MILLER RETROACTIVELY.

IN THAT CONCURRING OPINION, JUSTICE THOMAS DID OPINE THAT IT WOULD PREVENT THE STATE FROM RAISING A CLAIM THAT IT WAS WAIVED BY VIRTUE OF A PLEA OR INDEPENDENT ADEQUATE STATE GROUNDS OR SOME OTHER THING LIKE THAT.

>> IF THE DEFENDANT HERE HAD ENTERED A PLEA OF FIRST-DEGREE MURDER WITH THE ONLY SENTENCE BEING LIFE, WITH THAT SOMEHOW

TRUMP THE EIGHTH AMENDMENT
VIOLATION?

>> PROBABLY NOT IN THAT
INSTANCE.

AN IMPORTANT FACT TO CONSIDER IN
THIS CASE.

>> THE ONLY WAY IT WAS ADDRESSED
IN THIS CASE, IN THIS THIS CASE,
HER AGE WAS BRIEFLY DISCUSSED
BETWEEN PAGES 16 AND 17.

>> BUT THE RIGHT WAS NOT
DISCUSSED.

>> IT DID NOT EXIST AT THAT
POINT.

>> IN OTHER WORDS, GOING
FORWARD, MAYBE SOMEBODY COULD
WAIVE THAT, IF THEY KNEW ABOUT
IT.

>> ABSOLUTELY.

>> YOU AGREE IT IS A PRETTY
TOUGH ROAD FOR YOU TO HOE GOING
BACKWARDS.

>> YES.

AN INTERESTING POINT TO MAKE
THAT IT WAS A PLEA.

IT WAS DESIGNED TO AVOID A LIFE
WITHOUT PAROLE SENTENCE.

THE WHOLE PURPOSE OF TAKING THAT
PLEA, DEATH WAS ON THE TABLE.

>> THE LIFE SENTENCES WITHOUT
PAROLE ARE NOT PER SE AND
PERMISSIBLE.

PERMISSIBLE WITHOUT CERTAIN
FINDINGS ABOUT WHETHER THE
DEFENDANT IS INCAPABLE OF BEING
REFORMED OR WHETHER THE RAGE WAS
TAKEN INTO ACCOUNT.

IF THE POLICE SORT OF TAKES THAT
OFF THE TABLE AND PREVENTS THE
COURT FROM CONSIDERING ALL OF
THAT, WHY SHOULDN'T THAT BE
RELEVANT?

>> THAT SHOULD BE RELEVANT IN
THOSE INSTANCES.

THAT IS AN EXCELLENT POINT.
IT PERMITS IT AND MONTGOMERY
SEEMS TO EXTEND IT TO THE TRULY
INCREDIBLE OR IRREPARABLY OR
IRREPARABLY INCORRIGIBLE
DEFENDANTS.

MILLER DOES NOT PREVENT WHICH IS THE CASE HERE.

IT MIGHT BE A TOUGH ROAD TO TRAVEL HERE, BUT WE DO THINK HER PLEA SHOULD COME INTO SOME CONSIDERATION WHEN DETERMINING WHETHER THE SENTENCES UNCONSTITUTIONAL.

>> YOU MENTIONED THAT KELSEY WAS A RESENTENCING CASE.

THE ISSUE IS WHETHER GIVEN THE GRAHAM VIOLATION THAT A NONHOMICIDE OF FENCE HAD LIFE WITHOUT PAROLE THAT THIS DEFENDANT SHOULD GET THE SAME REMEDY THAT OTHER DEFENDANTS GET.

THE ISSUE WAS NOT THIS BROAD THING.

THE SAME IS TRUE OF JOHNSON. CORRECT?

>> JOHNSON HAS THIS THREE-STEP RULE AND IT USES KELSEY.

>> LEE IS A PLURALITY OPINION.

>> FLOWING NATURALLY FROM KELSEY.

WE DON'T THINK THAT THOSE CASES CONTROL WHATSOEVER HERE.

NEITHER DID THE FOURTH DISTRICT.

THE DISTRICT COURTS OF APPEAL

HAVE BEEN MISAPPLYING KELSEY.

MUST BE READ IN CONTEXT OF THE OVERALL ISSUE IN THAT CASE WHICH WAS A PROPER REMEDY FOR A VIOLATION.

>> LET ME ASK YOU A QUESTION.

>> TALKING ABOUT THIS BEING A PLEA.

THERE IS A CODEFENDANT IN THIS CASE.

>> THAT IS CORRECT.

>> MR. RIGHT.

WAS HE A JUVENILE?

>> HE WAS AN ADULT.

>> I UNDERSTAND THAT MISS PEDROZA INSTIGATED THE MURDER.

THE ACTUAL FACTS, MR. WRIGHT WAS JUST AS GUILTY.

>> THAT IS TRUE.

>> A NEGOTIATED PLEA.

>> HE HAD TO TESTIFY AGAINST
HER.
>> YES, YOUR HONOR.
>> HE RECEIVED A 25 YEAR
SENTENCE?
>> TWENTY.
>> 20 YEAR SENTENCE.
HE ADDRESS THAT.
16, 1717 OF THAT COLLOQUY.
>> SHE DOES WAIVE.
>> ABSOLUTELY.
THEY DISCUSSED THAT DIRECTLY.
THE PROSECUTOR MADE IT CLEAR
THAT SHE UNDERSTOOD WHY SHE WAS
RECEIVING A HARSHER SENTENCE.
PART OF THAT WAS HE DID NOT KILL
HIS OWN MOTHER.
SHE KILLED HER MOTHER HERE.
SHE IS NOT PROVIDING TESTIMONY.
PROVIDING TESTIMONY TO HELP
PROSECUTE IN THIS CASE.
THAT WAS DISCUSSED AT THE PLEA
COLLOQUY.
I SEE MY TIME IS ABOUT TO
EXPIRE.
WE WOULD ASK THAT THE COURT
APPROVE THE DECISION HERE.
THANK YOU.
>> JUST ON THAT LAST POINT.
TALK ABOUT PROPORTIONALITY BEING
WAIVED.
MS. PEDROZA WAS SENTENCED PRIOR.
AT THAT POINT THERE WAS NOT AN
UNDERSTANDING OF A DIFFERENCE
BETWEEN CHILDREN AND ADULTS
PURPOSE OF SENTENCING.
OUR WHOLE DISCUSSION ABOUT WHAT
IS A DE FACTO LIFE SENTENCE,
WILL 39 YEARS BE ENOUGH.
THAT UNDERSCORES THE PROBLEM OF
FOCUSING.
>> TO DO THAT IN CIVIL COURT ALL
THE TIME WHEN IT COMES TO
ASSESSING DAMAGES FOR FUTURE
RECOVERY, FUTURE MEDICAL
SENTENCES.
WE PRESENT EVIDENCE TO JURIES
AND WE MAKE CALLS ALL THE TIME.
>> THAT IS MONEY AND THIS IS
LIFE.

>> SURE.
OF COURSE.
WITHIN THE CAPACITY OF A TRIAL
COURT TO MAKE THOSE DECISIONS.
IS IT NOT.
>> NOT CAPABLE OF TAKING
EVIDENCE IN DECIDING WHAT A DE
FACTO OF LIFE IS FOR AN
INDIVIDUAL?
>> YOU HAD ASKED MY OPPONENT
ABOUT, YOU KNOW YOU'LL HAVE HAVE
SOMEONE THAT POTENTIALLY HAS
HEALTH PROBLEMS.
SOMEONE THAT COULD POTENTIALLY
GET PRESS CANCER.
USUALLY, A JUVENILE WILL NOT
HAVE THAT AT THE TIME OF THE
SENTENCING.
THEY MAY DEVELOP IT LATER ON.
THAT IS WHY WE NEED TO HAVE
REVIEW.
IT IS NOT AN ARGUMENT BECAUSE
THEY PROBABLY WILL NOT DEVELOP
THAT INTO A LATER TIME.
AS THEY SAY IN THE BREEZE, ALL
KINDS OF EVIDENCE ALL OVER THE
PLACE ABOUT WHAT IS DE FACTO
LIFE.
WHAT IS MEANINGFUL EVEN AFTER
YOU DETERMINE WHAT SOMEONE'S
LIFE EXPECTANCY IS.
>> THE LEGISLATURE IS MAKING
THOSE SAME CALLS BASED ON THE
SAME INFORMATION.
YOU MENTIONED YOUR PONY UP.
WHAT IF THEY CHANGE TO 40 YEARS
TOMORROW.
LIKELY CONSTITUTIONAL.
BASED ON EVIDENCE OF LIFE
EXPECTANCY.
>> IF IT WERE JUSTICE LOSSES
SITUATION, 39 YEARS, NINE YEARS,
I WOULD NOT CONCEDE.
AS IT GOES UP.
>> I JUST OFFERED YOU A
HYPOTHETICAL.
BESIDES 40 YEARS, THE
APPROPRIATE
MEANINGFUL REVIEW.
>> I THINK THAT THAT IS WHAT IS

IMPORTANT.

>> WHY IS THAT? DOING THINGS ON
A CATEGORICAL BASIS.

BETTER THAN AN INDIVIDUAL
ASSESSMENT BY EACH TRIAL JUDGE.

>> BECAUSE IT IS AN INDIVIDUAL
ASSESSMENT AT THE BEGINNING OF
SENTENCING.

A TIME WHEN THE JUVENILE IS NOT
FULLY DEVELOPED.

YOU NEED TO EVALUATE THEM AT A
LATER TIME.

THAT IS WHAT THE LEGISLATURE
DETERMINED.

TRIAL COURT, THERE ARE NO
REVIEW.

OTHER THAN WHAT THE LEGISLATURE
HAS CREATED.

WE HAVE THIS REVIEW OPINION.

I DO WANT TO RESPECTFULLY
DISAGREE WITH JUSTICE LAWSON ON
HIS INTERPRETATION OF HENRY.
INCLUDING MOST RECENTLY IN
MORRIS.

EVEN CONCEDED THAT, THAT APPEARS
TO BE WHAT HENRY, KELSEY AND
JOHN STATED.

SPECIFICALLY THIS.

COMMITTING --

>> YOU ARE IN OVERTIME NOW.

>> IN THOSE CASES, THEY
SPECIFICALLY SAID THE TERM OF
THE SENTENCE OR THE SPECIFIC
SENTENCE THAT IMPLICATES THE
EIGHTH AMENDMENT IS THE
OPPORTUNITY AFFORDED TO THE
JUVENILE OFFENDER.

THAT IS WHAT REQUIRES AN
INDIVIDUALIZED SENTENCING AND AN
OPPORTUNITY FOR REVIEW.

>> THANK YOU.

>> THANK YOU BOTH FOR YOUR
ARGUMENTS.

THE COURT WILL NOW STAND IN
RECESS FOR ABOUT 10 MINUTES.