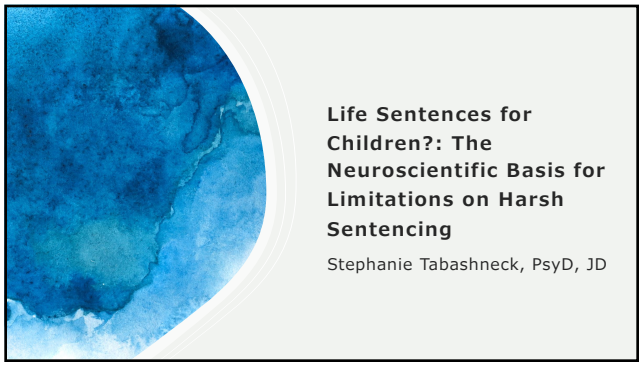

Life Sentences for Children?: The Neuroscientific Basis for Limitations on Harsh Sentencing

Stephanie Tabashneck, PsyD, JD

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Resources

1. Center for Law, Brain & Behavior at Massachusetts General Hospital (2022). White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers (2022). https://clbb.mgh.harvard.edu/white-paper-on-the-science - of-late-adolescence/
2. Francis X. Shen et al., Justice for Emerging Adults after Jones*:* The Rapidly Developing Use of Neuroscience to Extend Eighth Amendment *Miller* Protections to Defendants Ages 18 and Older, 97 N.Y.U. L. Rev. Online (2022)

2

A Brief History

3

Roper v. Simmons (2005) : Barred execution for juveniles as a class

- "scientific and sociological studies"
- "lack of maturity" "*impetuous and ill-considered actions* and *decisions*"
- "adolescents are overrepresented statistically in virtually every category of *reckless behavior*."

Graham v. Florida (2010): Barred life without parole for non-homicides for juveniles

- "developments 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.*
- greater possibility exists that a minor's character deficiencies will be reformed.

Miller v. Alabama (2012): Barred mandatory life without parole for juveniles for homicide

- "[A]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusions" "It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance" (citations omitted)
- "Numerous studies post-Graham indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency." (citations omitted)

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Miller Factors

(1) chronological age and immaturity, impetuosity, and the failure to appreciate risks and consequences
(2) the offender's family and home environment
(3) circumstances of the offense, including extent of participation in the criminal conduct and the impact of familial and peer pressures;
(5) effect of offender's youth on the criminal justice process, such as inability to comprehend a plea bargain
(6) the possibility of rehabilitation

5

Jones v. Mississippi (United States Supreme Court) (2021)

Life without parole sentence for juveniles only require consideration of youth as a mitigating factor

6

Jones v. Mississippi (2021)

No discussion of neuroscience or social science

7

Given the current unlikelihood of federal protections regarding LWOP for children, the battleground has shifted to the states

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9

Malvo v. State (Court of Appeals of Maryland) (August 2022)

The [Jones] Court did not have occasion to address a situation in which a sentencing court finds that a crime was the result of the offender's transient immaturity but nonetheless sentences the offender to life without parole. Although the Court's opinion in *Jones* focused almost exclusively on *Miller's* procedural component, it explicitly did "not disturb *Montgomery's* holding that *Miller* applies retroactively on collateral review[,]" a holding that was based on the *Montgomery* Court's conclusion that *Miller* announced a new substantive rule. In a footnote, the *Jones* Court quoted *Montgomery's* "key paragraph," which included the passage indicating that a court is not "free to sentence a child whose crime reflects transient immaturity to life without parole." quoting *Montgomery*. Because *Miller's* substantive holding, as articulated in *Montgomery*, remains good law, it follows that an offender deemed corrigible cannot constitutionally be sentenced to life without the possibility of parole.

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Holmes v. State (Supreme Court of Georgia) (2021)

In short, *Jones* clarified that although the Eighth Amendment requires that, before sentencing a juvenile murderer to LWOP, a trial court must hold a sentencing hearing where the defendant's age and characteristics of children are *considered*, neither *Miller* nor *Montgomery* requires a sentencer to say anything on the record about youth and its attendant characteristics before imposing an LWOP sentence. Therefore, to the extent that *Veal* suggested a requirement that sentencers provide explicit, on-the-record explanations regarding determinations of permanent incorrigibility and the characteristics of children, *Jones* has explained that we were mistaken.

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People v. Boykin (Supreme Court of Michigan) (September 2022)

. . . [T]here is no authority that imposes a higher standard of articulation regarding youth beyond our general requirement that a trial court must adequately explain its sentence on the record in order to facilitate appellate review.

Affirmed sentence of 40 – 60 years

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Commonwealth v. Felder (Supreme Court of Pennsylvania) (February 2022)

The procedural protections we embraced in *Batts II* — more specifically, a presumption against life-without-parole sentences and a requirement that to overcome this presumption the Commonwealth bears the burden of proving the impossibility of rehabilitation beyond a reasonable doubt — were not intended to enlarge any substantive rights of juvenile homicide offenders. Instead, we repeatedly stressed throughout our opinion that we believed those protections were constitutionally necessary "to effectuate the mandate of *Miller* and *Montgomery*" . . . However, *Jones* now instructs that, for purposes of the Eighth Amendment, "a State's discretionary sentencing system is ... constitutionally sufficient." *Jones*, 141 S.Ct. at 1313.

Upheld 50-year sentence

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Kitchen v. Whitmer (Eastern District of Michigan) (July 2022)

Jones dooms Kitchen's *Miller* claim. Whereas this Court previously inferred that Judge Kuhn did not consider the mitigating factors of youth because he never once mentioned them, *Jones* teaches that the proper inference is the opposite one. Because Kitchen's attorney expressly referred to Kitchen as "a young 17 year old man" at sentencing (ECF No. 55-1, PageID.394), Judge Kuhn was undoubtedly aware that Kitchen was under 18 when he offended. And nothing in Michigan's sentencing scheme deprived Judge Kuhn of discretion to consider Kitchen's youth. Thus, *Miller*'s procedural component was satisfied. *See Jones*, 141 S. Ct. at 1319 ("[I]f the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth[.]"); *Williams v. State*, 314 Kan. 466, 500 P.3d 1182, 1185 (2021) ("In *Jones*, the Court held that *Miller* does not require a sentencing court to explain on the record how it considered youth[.]").

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Washington State

15

In re Monschke (Supreme court of Washington) (2021)

Mandatory life without parole sentences unconstitutional for offenders younger than 21

16

In re Monschke (Supreme Court of Washington) (March 2021)

In the majority, concurrence, and dissent

"Brain" = nearly 2 dozen times

"Neuroscience" or "neurological" = 13 times

17

In re Monschke (Supreme Court of Washington) (March 2021)

Neuroscientists now know that all three of the **"general differences between juveniles under 18 and adults" recognized by *Roper* are present in people older than 18.** While not yet widely recognized by legislatures, we deem these objective scientific differences between 18- to 20-year-olds (covering the ages of the two petitioners in this case) on the one hand, and persons with fully developed brains on the other hand, to be constitutionally significant under article I, section 14 (citations omitted).

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In re Monschke (Supreme Court of Washington) (March 2021)

"The petitioners have shown that many youthful defendants older than 18 share the same developing brains and impulsive behavioral attributes as those under 18. Thus, we hold that these 19- and 20-year-old petitioners must qualify for some of the same constitutional protections as well."

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State v. Rogers (Supreme Court of Washington) (May 2021)

Court acted within its discretion in downward departure for first degree murder committed at age 16 with sentence of 106 months.

Our Supreme Court has explained that the Eighth Amendment requires that sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system, regardless of whether the juvenile is there following a decline hearing or not. To the extent our state statutes have been interpreted to bar such discretion with regard to juveniles, they are overruled. Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.

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State v. Miller (Court of Appeals of the State of Washington) (Slip opinion, March 2022)

[I]n taking into consideration of all the factors the parties have said, and the consideration that [] Miller, at the age of 16, committed a violent offense, having already committed a violent offense, has now set her life. Most young people's lives aren't set in stone by the time they are 17 years old. Yours is.

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State v. Miller (Court of Appeals of the State of Washington) (Slip opinion, March 2022)

Held, the sentencing court failed to meaningfully consider Ms. Miller's youth, environmental, family circumstances at the sentencing hearing which resulted in actual and substantial prejudice to Ms. Miller. She is entitled to resentencing.

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State v. Anderson (Supreme Court of Washington) (September 2022)

. . . and murders were planned in advance." 2 Tr. at 58. The trial court "found beyond a reasonable doubt that [Anderson] killed Ms. McMullen after having an opportunity to deliberate and make a decision to shoot and kill the women after Mr. Bateman was killed." *Id.* Unlike the defendants in *Miller* and *Ramos*, who "committed horrific crimes after having been confronted by a victim," "[n]o one confronted Mr. Austin or Mr. Anderson. They planned and initiated this attack. There was nothing impetuous about it." 2 Tr. at 59

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State v. Anderson (Supreme Court of Washington) (September 2022)

Ultimately, the resentencing court determined that—"[o]ther than the comments today from Mr. Anderson and his family"—Anderson presented "no evidence ... that supports the assertion that Mr. Anderson acted impetuously, was immature, or didn't understand the consequences of his actions at the time" of these murders. *Id.* To the contrary, the resentencing court determined the "facts of this case demonstrate [Anderson's] actions were calculated and premeditated, and that he fully understood the consequences of his actions."

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State v. Anderson (Supreme Court of Washington) (September 2022)

And the court reasoned that Anderson clearly "understood the consequences of his actions because he discussed [those consequences] in letters" sent before Anderson was ever charged with these murders. 2 Tr. at 60. "That shows knowledge of consequences and complete lack of remorse." 2 Tr. at 61. In sum, based on an individualized inquiry the resentencing court determined the "facts of this case demonstrate that [Anderson's] actions were calculated and premeditated, and that he fully understood the consequences of his actions."

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State v. Anderson (Supreme Court of Washington) (September 2022)

Second, the resentencing court determined Anderson had not shown that immaturity was a factor in his commission of these murders. The court noted that Anderson was 17 ½ years old and living in his own apartment "with control over his environment" when he committed these crimes. *Id*. "He set up the crime producing setting in this case rather than being victimized by it."

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State v. Anderson (Supreme Court of Washington) (September 2022)

...[A] juvenile offender must show that their immaturity, impetuosity, or failure to appreciate risks and consequences—characteristics of youth that suggest a juvenile offender may be less culpable than an adult offender—contributed to the commission of their crime.

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State v. Anderson (Supreme Court of Washington) (September 2022)

Affirmed 61-year sentence

Held that Washington State's Constitution's prohibition on cruel punishment does not preclude a de facto LWOP sentence for a juvenile offender if the crimes did not reflect mitigating qualities of youth.

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State v. Anderson (Supreme Court of Washington) (September 2022)

Dissent:

Even if I could join the majority's repudiation of our recent constitutional jurisprudence, I could not join it in affirming the trial court's resentencing decision here. The resentencing judge abused her discretion by failing to meaningfully consider how juveniles are different from adults, by failing to meaningfully consider how those differences applied to Tonelli Anderson, by failing to consider whether Anderson's case was one of the few where a life without parole sentence is constitutionally permissible, by failing to give meaningful weight to the significant evidence that Tonelli Anderson had rehabilitated himself while in prison, and by improperly allocating the burden of proof to him at resentencing. For all these reasons, I respectfully dissent.

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State v. Anderson (Supreme Court of Washington) (September 2022)

Dissent:

. .. [T]he majority rewrites our jurisprudence to profoundly limit the protection we have found our state constitution gives to children without showing that those decisions should be overruled.

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Summary

States have interpreted *Jones* differently

States are often misapplying neuroscience and behavioral science research

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Contact Information

StephanieTabashneck@gmail.com

www.StephanieTabashneck.com

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