[J-68-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, MCCAFFERY, STEVENS, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 38 EAP 2012
	:	
Appellee	:	Appeal from the Judgment of the
	:	Superior Court entered on 7/27/09 at
	:	No. 1386 EDA 2007 affirming the order
v.	:	entered on 5/8/07 in the Court of
	:	Common Pleas, Criminal Division of
	:	Philadelphia County at Nos. CP-51-CR-
	:	0203131-2000 and CP-51-CR-0203141-
IAN CUNNINGHAM,	:	2000
	:	
Appellant	:	ARGUED: September 12, 2012
	:	RESUBMITTED: August 13, 2013

OPINION

MR. JUSTICE SAYLOR **DECIDED: October 30, 2013**

This appeal involves a post-conviction challenge to the imposition of a mandatory sentence of life imprisonment, without the possibility of parole, for a murder committed by a juvenile. Specifically, we are asked to determine whether Milller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) -- which holds that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders," id. at ___, 132 S. Ct. at 2469 -- applies retroactively to Appellant's 2002 judgment of sentence, which became final in 2005.

In 1999, Appellant, his codefendant, and two accomplices robbed the occupants of a vehicle at gunpoint. In the course of the robbery, Appellant shot and killed the victim, Daniel Delarge, Jr. At the time, Appellant was seventeen years of age.

In 2002, Appellant was convicted of second-degree murder and related offenses. He received a mandatory sentence of life imprisonment without the possibility of parole, plus a term of imprisonment of 7½ to 15 years. See 18 Pa.C.S. §1102(b); 61 Pa.C.S. §6137.[1] On direct appeal, the Superior Court affirmed; this Court denied Appellant's petition for allowance of appeal; and Appellant did not seek discretionary review in the United States Supreme Court.

Appellant timely filed a post-conviction petition claiming, inter alia, that the life-without-parole sentence violated his rights under the Eighth Amendment to the United States Constitution, as extended to the States via the Fourteenth Amendment. As of the initial filing, Appellant relied primarily on Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183 (2005), which held that the Constitution precludes entry of a judgment of sentence of death for defendants under the age of eighteen at the time of their capital crime or crimes. See id. at 578, 125 S. Ct. at 1200. The post-conviction court denied the petition without an evidentiary hearing, and the Superior Court affirmed in a memorandum opinion, concluding that Roper had no bearing on life sentences. Appellant filed a petition for allowance of appeal, which was held in abeyance pending the disposition of a petition seeking discretionary review before this Court in Commonwealth v. Batts, 79 MAP 2009. The Batts case concerns a challenge to the

[1] Under the Juvenile Act, murder is excluded from the definition of delinquent acts generally adjudicated by juvenile courts. See 42 Pa.C.S. §§6302, 6322(a). Accordingly, murder prosecutions are commenced in adult criminal court, subject to the potential for transfer to juvenile court, upon an appropriate showing by a defendant. See id. §6322(a).

imposition of a mandatory life sentence for crimes committed by a minor asserted on direct appeal.

The United States Supreme Court issued the Miller decision in June 2012, rendering Pennsylvania's mandatory scheme of life imprisonment for first- and second-degree murder unconstitutional, as applied to offenders under the age of eighteen at the time of their crimes. Paralleling Batts and Cunningham in this Court, the federal review implemented by the High Court also encompassed one case in the direct-review chain, Miller v. Alabama, No. 10-9646, and another at a post-conviction stage, Jackson v. Hobbs, No. 10-9647. In a deeply divided opinion, the United States Supreme Court reversed the affirmance of the judgment of sentence and the affirmance of a denial of post-conviction relief, respectively, by state-level reviewing courts. See Miller, ___ U.S. at ___, 132 S. Ct. at 2475.

In its reasoning, the Miller majority initially explained that its decision turned on proportionality. The Supreme Court previously has found this concept to be central to the Eighth Amendment's prohibition against cruel and unusual punishment; further, the Court admonished that proportionality is to be assessed "less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society." Id. at ___, 132 S. Ct. at 2463 (citations and internal quotation marks omitted).

In its evolving-standards-of-decency evaluation, the Miller majority found two "strands of precedent" to be particularly pertinent. Id. The first of these involves the categorical prohibition of certain punishments for specified classes of offenders.[2] The

[2] See id. at ___, 132 S. Ct. at 2463 (citing Kennedy v. Louisiana, 554 U.S. 407, 128 S. Ct. 2641 (2008) (holding that imposing the death penalty for non-homicide crimes violates the Eighth Amendment); Atkins v. Virginia, 536 U.S. 304, 122 S. Ct. 2242 (2002) (banning the execution of mentally retarded individuals); Roper, 543 U.S. at 578, 125 S. Ct. at 1200; and Graham v. Florida, 560 U.S. 48, ___, 130 S. Ct. 2011, 2034 (continued…)

second requires individualized sentencing for defendants facing the death penalty,[3] and, by extension, other of the most serious penalties. See id. at ___, 132 S. Ct. at 2466.

Based on these lines of authority, the Miller majority announced that mandatory life-without-parole sentences, as applied to those under the age of eighteen, offend the Eighth Amendment by preventing sentencing authorities from considering juveniles' "diminished culpability and heightened capacity for change." Id. at ___, 132 S. Ct. at 2469; see also id. at ___, 132 S. Ct. at 2466 (opining that the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children"); id. at ___, 132 S. Ct. at 2467 (observing that "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it"). See generally Cara H. Drinan, Graham on the Ground, 87 WASH. L. REV. 51, 62 (2012) (observing that the line of decisions including Miller reflect what legal scholars have termed a developing "youth is different" jurisprudence). The majority also remarked that its decision requires only that a sentencing authority "follow a certain process" before imposing this harshest possible penalty on a juvenile offender – entailing consideration of the offender's youth and attendant characteristics. Miller, ___ U.S. at ___, 132 S. Ct. at 2471.[4]

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(2010) (holding that a life-without-parole sentence violates the Eighth Amendment, when imposed on a juvenile non-homicide offender)).

[3] See id. at ___, 132 S. Ct. at 2463-64 (citing Woodson v. North Carolina, 428 U.S. 280, 96 S. Ct. 2978 (1976) (plurality) (holding that a North Carolina statute requiring a mandatory death sentence for first-degree murder violated the Eighth Amendment), and Lockett v. Ohio, 438 U.S. 586, 98 S. Ct. 2954 (1978) (plurality) (invalidating an Ohio statute which limited the range of mitigation which could be considered by the sentencing authority in a capital proceeding)).

[4] The Miller decision subsumes three separate dissenting opinions supported, to various measures, by four Justices, demonstrating, at the very least, that the evolving norms discerned by the majority Justices are not universally shared. See, e.g., Miller, ___ U.S. (continued…)

Significantly, for present purposes, the Miller majority did not specifically address the question of whether its holding applies to judgments of sentence for prisoners, such as Appellant, which already were final as of the time of the Miller decision. As such, the opinion does not set out the principles governing the High Court's retroactivity jurisprudence.

Briefly, Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989) (plurality), delineated a general rule of non-retroactivity for new procedural, constitutional rules announced by the Court, WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING & ORIN S. KERR, 1 CRIM. PROC. §2.11(e) (3d ed. 2012) (relating that Teague has been described as establishing a "law at the time" principle),[5] subject to two narrow exceptions. This

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at ___, 132 S. Ct. at 2477 (Roberts, C.J., joined by Scalia, Thomas, and Alito, JJ., dissenting) ("Put simply, if a 17-year-old is convicted of deliberately murdering an innocent victim, it is not 'unusual' for the murderer to receive a mandatory sentence of life without parole. That reality should preclude finding that mandatory life imprisonment for juvenile killers violates the Eighth Amendment.").

In a joining concurrence, Justice Breyer, joined by Justice Sotomayor, took the position that the federal constitution requires a determination that the defendant "killed or intended to kill" the victim before the State may seek even discretionary imposition of a life-without-parole sentence. See Miller, ___ U.S. at ___, 132 S. Ct. at 2475-77 (Breyer, J., concurring). The opinion reflects a concern that strict application of felony-murder and transferred-intent theories may produce an untenable mismatch between culpability and punishment as applied to individuals under the age of eighteen. See id.

[5] There is no dispute in the present appeal that Miller embodies a new constitutional rule. See Teague 489 U.S. at 301, 109 S. Ct. at 1070 ("In general . . . a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government" or "was not dictated by precedent existing at the time the defendant's conviction became final" (emphasis in original)); see also Graham v. Collins, 506 U.S. 461, 467, 113 S. Ct. 892, 898 (1993) (explaining that "unless reasonable jurists hearing [a] petitioner's claim at the time his conviction became final 'would have felt compelled by existing precedent' to rule in his favor, we are barred from doing so now" (quoting Saffle v. Parks, 494 U.S. 484, 488, 110 S. Ct. 1257, 1260 (1990)). See generally LAFAVE, 1 CRIM. PROC. §2.11(e) ("Under a long line of Teague progeny, any reading of Supreme Court precedent that is more expansive than what (continued…)

construct was solidified by the majority decision in Penry v. Lynaugh, 492 U.S. 302, 329-30, 109 S. Ct. 2934, 2952-53 (1989). As relevant here, the exceptions extend to "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense," Penry, 492 U.S. at 330, 109 S. Ct. at 2953,[6] and "watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." Horn v. Banks, 536 U.S. 266, 271 n.5, 122 S. Ct. 2147, 2150 n .5 (2002) (quoting Saffle, 494 U.S. at 495, 110 S. Ct. at 1264 (internal quotations omitted)). More recently, in Schriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519 (2004), the High Court appears to have merged the first Teague exception with the principle that new substantive rules generally apply retroactively. See id. at 351-52 & n.4, 124 S. Ct. at 2522-23 & n.4. See generally Drinan, Graham on the Ground, 87 WASH. L. REV. at 66 (explaining that "the Court has shifted its terminology somewhat and has described new rules as 'substantive' when they 'alter[] the range of conduct or the class of persons that the law punishes,' rather than describing them as falling within the first of the two non-retroactivity exceptions." (footnotes omitted)).[7]

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was 'dictated' by that precedent – i.e., any reading beyond the narrowest reasonable reading of that precedent – can readily be viewed as a 'new rule.'" (footnote omitted)).

As developed below, however, the litigants differ concerning whether Miller's effect is substantive versus procedural.

[6] The first Teague exception also extends to new rules placing certain primary conduct beyond the State's power to punish at all. See Penry, 492 U.S. at 330, 109 S. Ct. at 2953.

[7] One effect of this merger is to solidify, and narrow, the range of matters which may be denominated as substantive. Such limitation may be salutary in terms of enhancing the accessibility and certainty of retroactivity doctrine, see generally Laudenberger v. Port Auth., 496 Pa. 52, 56, 436 A.2d 147, 150 (1981) (remarking, albeit in a different context, that the "attempt to devise a universal principle for determining whether a rule is inherently procedural or substantive in nature has met with little success in the history of (continued…)

After Miller's issuance, the litigants incorporated their assessments of the decision into their submissions, along with developed arguments concerning its prospective versus retroactive application. It is Appellant's position that the holding in Miller applies retroactively to prisoners, such as Appellant, serving mandatory life-without-parole sentences for crimes committed as juveniles, even where they have exhausted their direct appeal rights and are proceeding under the Post Conviction Relief Act, 42 Pa.C.S. §§9541-9546. According to Appellant, the United States Supreme Court unambiguously sanctioned retroactive application in Miller, since it reversed the order of a state appellate court affirming the dismissal of a post-conviction petition in the Jackson case. See Miller, ___ U.S. at ___, 132 S. Ct. at 2475. In this respect, Appellant invokes the admonishment that, "once a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated." Teague, 489 U.S. at 300, 109 S. Ct. at 1070; see also id. at 315-16, 109 S. Ct. at 1078 (indicating that "habeas corpus cannot be used as a vehicle to create new constitutional rules of criminal procedure unless those rules would be applied retroactively to all defendants on collateral review through one of the two exceptions we have articulated" (emphasis in original)).[8]

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our jurisprudence"). It seems problematic, to this author at least, to the degree that it excludes matters which otherwise appear to have a potent substantive dynamic (under the more conventional understanding of the word "substantive").

In this regard, to some degree, modern application of the Teague doctrine may be viewed, by some, as more an exercise in (perhaps necessary) line drawing than as a precise demarcation between rules which are innately substantive versus procedural in character, or as an effort to address the treatment of the vast range of rules having both attributes in varying degrees.

[8] Appellant also relies upon Tyler v. Cain, 533 U.S. 656, 121 S. Ct. 2478 (2001), as does the Commonwealth. While the majority opinion in Tyler contains numerous statements and explanations concerning retroactivity, it arose in the context of the limits (continued…)

Additionally, Appellant emphasizes that several of the decisions in the "strands of precedent" upon which the Miller majority relied are applied retroactively. See, e.g., In re Sparks, 657 F.3d 258, 262 (5th Cir. 2011) (observing that Atkins, Roper, and Graham each have been held by various courts to be retroactive). Furthermore, it is Appellant's position that Miller articulates a rule of substantive law, which, by its nature, is retroactive. See, e.g., Brief for Appellant at 24 ("The new rule announced in Miller is substantive, and therefore retroactive, because 'it alters . . . the class of persons that the law punishes.'" (quoting Schriro v. Summerlin, 542 U.S. at 353, 124 S. Ct. at 2519)). For the same reason, even if Teague's general rule of non-retroactivity were relevant in the first instance, Appellant asserts, the Miller rule meets the first exception to it.[9]

In response to Appellant's lead argument that the holding in Jackson compels retroactive application of Miller in collateral review settings, the Commonwealth observes that the Miller Court did not, in fact, reverse Jackson's judgment of sentence. Rather, the Commonwealth explains, the United States Supreme Court reversed only the judgments of the state appellate courts and remanded "for further proceedings not

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on successive habeas corpus petitions imposed by the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214 (the "AEDPA"). See Tyler, 533 U.S. at 660, 121 S. Ct. at 2481. Such enactment substantially curtails the justiciability of serial petitions, subject to a few exceptions, including for claims that "rel[y] on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. §2244(b)(2)(A) (emphasis added).

We find it unnecessary, for purposes of the present appeal, to decipher if, or to what extent, the High Court's statements concerning the effect of the AEDPA upon serial, federal habeas corpus claims impact upon the application of the judicially crafted Teague construct as applied in the setting of a state post-conviction petition.

[9] Notably, while Appellant alludes to the second Teague exception in discussing the jurisprudence of the United States Supreme Court, he does not advance any argument that such exception applies to the rule of law announced in Miller.

inconsistent with this opinion." Miller, ___ U.S. at ___, 132 S. Ct. at 2475. As such, the Commonwealth posits that the state could raise a Teague bar to the new rule in that case to prevent resentencing.[10] Moreover, the Commonwealth stresses that the Miller majority simply did not address retroactivity, and, thus, there simply is no dispositive ruling on the subject. See Brief for the Commonwealth at 14 (citing Goeke v. Branch, 514 U.S. 115, 117, 115 S. Ct. 1275, 1276 (1995) (explaining that "a court need not entertain the [Teague] defense if the State has not raised it.")).

Furthermore, the Commonwealth highlights: Miller was decided more than six years after Appellant's judgment of sentence became final and nearly three years after the Superior Court affirmed the denial of post-conviction relief; the Teague general rule is one of non-retroactivity; and the exceptions to that rule have been construed narrowly by the courts.

In terms of the first Teague exception, the Commonwealth vigorously refutes Appellant's contention that Miller entirely forecloses any certain category of punishment for juvenile offenders. According to the Commonwealth, Miller, by its express terms, "bans nothing," but, rather, concerned only the manner of determining whether a particular sentence should be imposed. Brief for the Commonwealth at 16. In this regard, the Commonwealth quotes the Miller majority's own depiction of its ruling, as follows:

> Our decision does not categorically bar a penalty for a class of offenders or type of crime . . . Instead, it mandates only that a sentencer follow a certain process – considering an offender's youth and attendant characteristics – before imposing a particular penalty.

[10] As it turns out, the state did not do so in Jackson, but, rather, conceded retroactivity. See Jackson v. Norris, ___ S.W.3d ___, 2013 WL 1773087 (Ark. Apr. 25, 2013). Given this concession, the Arkansas Supreme Court did not perform a principled Teague analysis, which is our task here.

Miller, ___ U.S. at ___, 132 S. Ct. at 2471 (citations omitted; emphasis added); accord id. at ___, 132 S. Ct. at 2469 ("[W]e do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger."). In the Commonwealth's view, Appellant's assertion of a categorical bar is tantamount to an exercise in "word games," in its admixture of procedural and substantive aspects of schemes imposing mandatory life sentences for certain classes of murder. Brief for the Commonwealth at 18 n.8.

The Commonwealth also briefly addresses the second Teague exception for "watershed rules," stressing, in particular, the repeated admonitions of the High Court that such exception is tightly limited. See Brief for the Commonwealth at 14 (citing Whorton v. Bockting, 549 U.S. 406, 417-18, 127 S. Ct. 1173, 1181-82 (2007) (indicating that, "in the years since Teague, we have rejected every claim that a new rule satisfied the requirements for watershed status"), Schriro v. Summerlin, 542 U.S. at 352, 124 S. Ct. at 2523 (relating that "it is unlikely that any [watershed rule] ha[s] yet to emerge" (internal citations omitted)), and Beard v. Banks, 542 U.S. 406, 417, 124 S. Ct. 2504, 2513-14 (2004) ("[I]t should come as no surprise that we have yet to find a new rule that falls under the second Teague exception.")).

In terms of Appellant's argument that the retroactive application of cases from the two "strands of precedent" relied upon by the Miller majority compels Miller's own retrospective application, the Commonwealth regards the contention as "legally incoherent." Brief for the Commonwealth at 15; see also id. at 15-16 ("There is no 'strands of precedent' exception to Teague[.]"). As to cases within the first strand, the Commonwealth rests on its observation that it is the nature of the rules in issue as substantive rules that resulted in retroactive application, whereas, the Commonwealth maintains, the Miller rule is purely a procedural one. With regard to the second strand,

the Commonwealth highlights that various cases that require consideration of "the characteristics of a defendant and the details of his offense before sentencing him" are indeed subject to Teague. Id. at 16; accord LAFAVE, 7 CRIM. PROC. §28.6(e) ("Since Teague, the Court has rejected arguments that other procedural requirements for death sentences [should] be applied retroactively.").[11]

It is the Commonwealth's core position that Appellant's claim must be decided under the law as it stood at the time his conviction became final in 2005.

Both parties have presented post-submission communications, with Appellant furnishing copies of recent decisions finding Miller to be retroactive, see, e.g., State v. Ragland, 836 N.W.2d 107 (Iowa 2013); Jones v. State, ___ So. 3d ___, 2013 WL 3756564 (Miss. Jul. 18, 2013); People v. Williams, 982 N.E.2d 181 (Ill. App. Ct. 2012); People v. Morfin, 981 N.E.2d 1010 (Ill. App. Ct. 2012), and the Commonwealth pinpointing decisions finding Miller to be non-retroactive, see, e.g., In re Morgan, 713 F.3d 1365 (11th Cir. 2013); Chambers v. State, 831 N.W.2d 311 (Minn. 2013); Craig v. Cain, No. 12-30035, slip op., 2013 WL 69128; People v. Carp, 828 N.W.2d 685 (Mich.

[11] See, e.g., Beard v. Banks, 542 U.S. at 419-20, 124 S. Ct. at 2515 (holding that an Eighth Amendment capital sentencing rule invalidating instructions that prevent some jurors from considering mitigating evidence was new and inapplicable on collateral review per Teague); Graham v. Collins, 506 U.S. at 463, 113 S. Ct. at 895 (declining to "decide whether the jury that sentenced [a prisoner] to death was able to give effect, consistent with the Eighth and Fourteenth Amendments, to mitigating evidence of [the prisoner's] youth, family background, and positive character traits," because doing so would require retrospective application of a new rule, contrary to Teague). See generally Craig v. Cain, No. 12-30035, slip op., 2013 WL 69128, at *2 (5th Cir. Jan. 4, 2013) (explaining that "the Supreme Court has denied retroactive application of prohibitions against weighing invalid aggravating circumstances in certain circumstances, imposition of a death sentence by a jury that has been led to believe responsibility for determining the appropriateness of a death sentence rests elsewhere, and capital-sentencing schemes that foreclose a jury from considering all mitigating evidence.").

Ct. App. 2012); Geter v. State, 115 So. 3d 375 (Fla. App. 2012). Our review of the legal issues presented is plenary.

As a threshold matter, we reiterate that Appellant's position that we are obliged to apply Miller retroactively is based solely upon retroactivity principles applied by the United States Supreme Court in conjunction with its development of federal constitutional doctrine. This limitation is significant, because the High Court has determined that Teague does not limit the authority of state courts to provide remedies for violations deemed non-retroactive under Teague. See Danforth v. Minnesota, 552 U.S. 264, 282, 128 S. Ct. 1029, 1042 (2008).

This Court, however, generally has looked to the Teague doctrine in determining retroactivity of new federal constitutional rulings. See, e.g., Commonwealth v. Hughes, 581 Pa. 274, 306-10, 865 A.2d 761, 780-82 (2004). Certainly, this practice is subject to potential refinement, since "the Teague rule of nonretroactivity was fashioned to achieve the goals of federal habeas while minimizing federal intrusion into state criminal proceedings." Danforth, 552 U.S. at 280, 128 S. Ct. at 1041. Accordingly, the Teague doctrine is not necessarily a natural model for retroactivity jurisprudence as applied at the state level. See, e.g., Commonwealth v. Bracey, 604 Pa. 459, 486, 986 A.2d 128, 144 (2009) (recognizing that "a more sophisticated analysis" may be required on state collateral review in some circumstances); see also supra note 7 (alluding to a few potential criticisms of Teague and its progeny).

Our present, default practice of proceeding no further than Teague requires as a matter of federal constitutional law is, in part, a function of the arguments which have been presented to us, where, as here, the litigants have not provided developed argumentation to assist in the fashioning of any broader retroactivity principles. Moreover, state judges who may be circumspect about evolving normative

pronouncements of five of nine Justices – which forcefully are rejected by four others – may be reluctant to apply those standards more broadly than is absolutely required. Cf. Commonwealth v. Sanchez, 614 Pa. 1, 70, 36 A.3d 24, 66 (2011) (reflecting a reluctance, in the absence of a common law policy or directive from the Pennsylvania General Assembly, to "go further than what is affirmatively commanded by the High Court" in the implementation of new federal constitutional doctrine).[12] Thus, litigants who may advocate broader retrospective extension of a new federal constitutional rule would do best to try to persuade this Court both that the new rule is resonate with Pennsylvanian norms and that there are good grounds to consider the adoption of broader retroactivity doctrine which would permit the rule's application at the collateral review stage. In the latter regard, the Court would benefit from recognition and treatment of the strong interest in finality inherent in an orderly criminal justice system,[13]

[12] Some majority rulings of the United States Supreme Court have espoused the position that "new rules" are not really "new rules" at all, but rather, lie in a sort of inert existence prior to the date of their announcement. See, e.g., Danforth, 552 U.S. at 271, 128 S. Ct. at 1035 ("As we have already explained, the source of a 'new rule' is the Constitution itself, not any judicial power to create new rules of law. Accordingly, the underlying right necessarily pre-exists our articulation of the new rule."). In our view, however, this sort of originalist philosophy is inconsistent with the "evolving standards" overlay which has been engrafted onto the Eighth Amendment, as reflected in Miller and its predecessors. Conceptually, we are unable to grasp that a specific right which has "evolved" from a source that did not originally contemplate that right -- albeit that the source may have allowed for later evolutionary expansion – rationally can be said to have pre-existed the evolutionary process which produced it. The reluctance to expand new rules announced under the High Court's evolving-standards jurisprudence into the state post-conviction context beyond what is required of this Court may also be explained, partly, in terms of this conceptual difference. Cf. generally Drinan, Graham on the Ground, 87 WASH. L. REV. at 64 (observing that "scholars historically have criticized the U.S. Supreme Court's opaque retroactivity doctrine" (footnote omitted)).

[13] See, e.g., Commonwealth v. Sam, 597 Pa. 523, 542, 952 A.2d 565, 576 (2008) ("There is absolutely no doubt that there is an enduring societal interest in the finality of criminal proceedings"); accord Calderon v. Thompson, 523 U.S. 538, 556, 118 S. Ct. 1489, 1501 (1998) ("Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out."); McCleskey v. Zant, 499 U.S. 467, (continued…)

as well as the social policy and concomitant limitations on the courts' jurisdiction and authority reflected in the Post Conviction Relief Act. Because the appellant in this matter has not set an appropriate stage for either pillar of such review, the Teague line of analysis remains the appropriate default litmus governing the present appeal.

Here, we find the application of this analysis to be fairly straightforward. Initially, we reject Appellant's position that the Miller Court's reversal of the state appellate court decision affirming the denial of post-conviction relief in the Jackson case compels the conclusion that Miller is retroactive. In the first instance, it is not clear that the issue was even placed before the Court, and, as the Commonwealth observes, the Supreme Court need not entertain questions of retroactive application where the government has not raised it. See Goeke, 514 U.S. at 117, 115 S. Ct. at 1276; cf. Carp, 828 N.W.2d at 713 ("In Jackson, because the State did not raise the issue of retroactivity, the necessary predicate for the Court to resolve the question of retroactivity was waived."). Whether the matter was waived or, as the Commonwealth contends, remained available to be asserted on remand is of no moment here, since the United States Supreme Court has made clear enough that Teague determinations are not inherently implicit in all new constitutional rulings implemented by that Court. But see Williams, 982 N.E.2d at 197 (deriving support for the holding that Miller's holding is retroactive from its disposition of the Jackson case); Morfin, 981 N.E.2d at 1023 (same). Rather, in the absence of a specific, principled retroactivity analysis by the United States Supreme Court (or a

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491, 111 S. Ct. 1454, 1468 (1991) ("One of the law's very objects is the finality of its judgments."); Witt v. State, 387 So. 2d 922, 929 (Fla. 1980) (opining that emergent, "evolutionary refinements" in criminal law "do not compel an abridgement of the finality of judgments," at the expense of stability, predictability, and manageability of the justice system).

functional equivalent), we do not believe that a Teague assessment by subordinate state courts is foreclosed.

We also agree with the Commonwealth that the first Teague exception does not apply to the Miller rule. Since, by its own terms, the Miller holding "does not categorically bar a penalty for a class of offenders," Miller, ___ U.S. at ___, 132 S. Ct. at 2471, (and because it does not place any conduct beyond the State's power to punish at all, see supra note 6), it is procedural and not substantive for purposes of Teague. Accord, e.g., Craig v. Cain, No. 12-30035, slip op., 2013 WL 69128, at *2 ("Miller does not satisfy the test . . . because it does not categorically bar all sentences of life imprisonment for juveniles; Miller bars only those sentences made mandatory by a sentencing scheme.").[14]

As to the second Teague exception, as we have previously noted, Appellant has not developed his arguments in such terms. We will say that, given the high importance attached by the Miller majority to the new rule which it discerned, it seems possible that some Justices of the United States Supreme Court may find the rule to be of the watershed variety. Accord Williams, 982 N.E.2d at 197 (holding that Miller's holding

[14] See also Moran, 713 F.3d at 1367-68 (finding Miller to be non-substantive because it regulates only the manner of determining the degree of a defendant's culpability); Chambers, 831 N.W. at 329 (reasoning that the Miller rule is procedural, inter alia, because it "does not eliminate the power of the State to impose the punishment of life imprisonment without the possibility of release upon a juvenile offender who has committed a homicide offense."); Geter, 115 So. 3d at 377 ("Clearly and unequivocally, the Supreme Court distinguished between the substantive determinations of a categorical bar prohibiting a 'penalty for a class of offenders or type of crime,' as in Roper and Graham, and the procedural determination in Miller that merely requires consideration of mitigating factors of youth in the sentencing process." (quoting Miller, ___ U.S. at ___, 132 S. Ct. at 2471)). See generally LAFAVE, 7 CRIM. PROC. §28.6(e) ("Miller, unlike other rules applied retroactively under Teague, was primarily a procedural, not a substantive decision."). But see Jones, ___ So.3d at ___, 2013 WL 3756564, at *5 (finding the Miller rule to be substantive in character); Morfin, 981 N.E.2d at 1022 (same).

qualifies as a watershed rule of criminal procedure under the second Teague exception). We doubt, however, that a majority of the Justices would broaden the exception beyond the exceedingly narrow (or, essentially, class-of-one) parameters reflected in the line of decisions referenced by the Commonwealth. Accord Chambers, 831 N.W.2d at 311 (concluding that Miller does not establish a watershed rule because it focuses exclusively on sentencing and does not alter bedrock procedural elements essential to fairness of a proceeding); Craig v. Cain, No. 12-30035, 2013 WL 69128, at *2 (depicting Miller as "an outgrowth of the Court's prior decisions that pertain to individualized-sentencing determinations," rather than a watershed rule broadly impacting fundamental fairness and accuracy in the proceedings). According to the Court, the exception is limited to "sweeping" changes on the order of Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963) (holding that all indigent defendants charged with felonies are entitled to appointed counsel); modifications of a less broad-scale nature, while they may be very important, simply do not require retroactive application, under the second Teague exception. Whorton v. Bockting, 549 U.S. at 421, 127 S. Ct. at 1183-84 (citations omitted).

All Justices of this Court and the United States Supreme Court share the sentiment that "[d]etermining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy." Miller, ___ U.S. at ___, 132 S. Ct. at 2477 (Roberts, C.J., dissenting, joined by Scalia, Thomas, and Alito, JJ.). Our role in establishing social policy in the arena is a limited one, however. Here, applying settled principles of appellate review, nothing in Appellant's arguments persuades us that Miller's proscription of the imposition of mandatory life-without-parole sentences upon offenders under the age of eighteen at the time their crimes were committed must be extended to those whose judgments of

sentence were final as of the time of Miller's announcement. See generally Geter, 115 So. 3d at 377 ("Clearly and unequivocally, the Supreme Court distinguished between the substantive determinations of a categorical bar prohibiting a 'penalty for a class of offenders or type of crime,' as in Roper and Graham, and the procedural determination in Miller that merely requires consideration of mitigating factors of youth in the sentencing process." (quoting Miller, ___ U.S. at ___, 132 S. Ct. at 2471)). See generally LAFAVE, 1 CRIM. PROC. §2.11(e) ("Teague has made new rulings very rarely applicable retroactively on habeas review[.]").

The order of the Superior Court is affirmed.

Mr. Chief Justice Castille and Messrs. Justice Eakin and Stevens join the opinion.

Mr. Chief Justice Castille files a concurring opinion.

Mr. Justice Baer files a dissenting opinion in which Madame Justice Todd and Mr. Justice McCaffery join.