



Third Circuit Invalidates *De Facto* Life Sentences for “Non-Incorrigible” Juvenile Offenders

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Since the Supreme Court has held that the [Eighth Amendment](#) constrains the ability to impose sentences involving lifetime imprisonment on juvenile offenders, state and federal courts have grappled with the scope and applicability of these limitations. This issue frequently has arisen when a juvenile offender’s sentence is not labeled as imprisonment for a term of life without the possibility of parole, but effectively covers the entirety of the offender’s remaining lifespan. The U.S. Court of Appeals for the Third Circuit (Third Circuit) recently ruled in *United States v. Grant* that the [Eighth Amendment](#) prohibits “de facto” life without parole (LWOP) sentences for a non-incorrigible juvenile offender (i.e., a juvenile who retains the possibility of rehabilitation). The Third Circuit went further to recognize a rebuttable presumption that non-incorrigible juvenile offenders “[should be afforded an opportunity for release before the national age of retirement.](#)” As such, federal sentencing courts in the Third Circuit will be required to consider, in addition to statutorily prescribed sentencing factors, the defendant’s life expectancy and the national age of retirement before sentencing a non-incorrigible juvenile offender to a prison term that meets or exceeds the offender’s expected mortality without the possibility of parole. This decision adds to the lower courts’ split as to the circumstances where lengthy sentences for juvenile offenders run afoul of the Eighth Amendment.

The [Eighth Amendment](#) bars the use of excessive penal sanctions by the federal government; a requirement made applicable to the states through the [Fourteenth Amendment](#). In a series of cases, the U.S. Supreme Court has established categorical rules prohibiting certain punishments for juveniles on the grounds that such sanctions run afoul of the Eighth Amendment’s prohibition on cruel and unusual punishment. These prohibitions include the [death penalty in *Roper v. Simmons*](#), at least de jure LWOP for [non-homicide crimes in *Graham v. Florida*](#), and [mandatory LWOP for homicide offenses in *Miller v. Alabama*](#). In each decision, the Court relied on what it characterized as an established and evolving

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national consensus that juveniles' quantifiable behavioral and cognitive limitations diminish the moral culpability of juvenile offenders and consequently, impact their appropriate punishment.

Graham and *Miller* in particular have prompted lower courts to more carefully consider the imposition of lengthy criminal sentences for juvenile offenders. In *Graham*, the Court held that the imposition of de jure LWOP sentences for juvenile offenders of non-homicide crimes constituted cruel and unusual punishment. The *Graham* Court noted that LWOP sentences contradict the notion of rehabilitation when applied to a population “[who are most in need of and receptive to rehabilitation.](#)”

Most recently, in *Miller*, a divided Supreme Court found that the imposition of a *mandatory* LWOP sentence on a juvenile offender convicted of a homicide offense is unconstitutional, as it would be inappropriate to apply such sentences to those juveniles whose behavior was not “[incorrigible](#)” and who retained the possibility of rehabilitation. *Miller* dictates that lower courts must consider “[how children are different, and how those differences counsel against irrevocably sentencing to a lifetime in prison.](#)” As such, sentencing judges must consider mitigating factors such as family dynamic, the circumstances of the juvenile's offenses, and the likelihood of rehabilitation. While the *Miller* decision was limited to mandatory LWOP sentences for juveniles convicted of homicide offenses, questions remain as to the applicability of the *Miller* rationale to other forms of sentencing.

Lower federal courts ([along with numerous state courts](#)) have grappled with the scope and applicability of *Graham* and *Miller* when applied to de facto life sentences for juvenile offenders. To date, the Supreme Court has declined to grant certiorari to review judicial opinions (sometimes arising within the same judicial circuit) that seek to apply *Graham* and *Miller* to juvenile offenders who receive non-mandatory sentences that effectively or plainly constitute LWOP. Some courts have taken an expansive reading of these cases to prohibit de facto life without parole sentences for juvenile offenders, at least when such offenders are not found to be incorrigible, while others have taken a more narrow reading. For example, the [Sixth Circuit](#) held that an 89-year sentence given to a juvenile, non-homicide offender did “not violate clearly established federal law.” The court held that *Graham* and *Miller* were inapplicable because neither case “[establish\[ed\] that consecutive, fixed-term sentences for juveniles who have committed multiple non-homicide offenses are unconstitutional when they amount to the practical equivalent of life without parole.](#)” Similarly, courts in the [Seventh](#), [Eighth](#), and [Tenth](#) Circuits declined to extend *Miller* to grant habeas review of non-mandatory de jure or arguably de facto LWOP sentences imposed on juvenile offenders (though another Tenth Circuit panel subsequently [expressed skepticism](#) as to aspects of the court's earlier ruling, and the Seventh Circuit later appeared to [narrow the scope](#) of this ruling).

Conversely, some courts have used a broader reading of *Graham* and *Miller*. Courts in the [Seventh](#), [Ninth](#) and [Tenth](#) Circuits had relied on and arguably expanded upon the holding of *Miller* to invalidate lengthy terms of imprisonment (100, 254 and 155 years respectively). For example, in *Budder v. Addison*, the Tenth Circuit granted federal habeas relief when it struck down a 155-year sentence (three life-with-parole sentences plus 20 years) imposed on a juvenile non-homicide offender. As the sentences were to run consecutively, the juvenile would have to serve 131.75 years before becoming eligible for parole, thus denying him a realistic opportunity to obtain release. The court reasoned that *Graham* created a categorical rule that the Eighth Amendment is violated when a juvenile receives “[any sentence that would deny a juvenile non-homicide offender a realistic opportunity to obtain release, regardless of the label a state places on that sentence.](#)”

Another approach, taken by some state courts, has been to construe Supreme Court rulings relating to LWOP as applying to a de facto or de jure LWOP sentence imposed for a particular offense, but not to situations where a juvenile offender's aggregate sentence for [multiple offenses](#) extends beyond his life expectancy. Complicating matters further, some reviewing courts, when assessing whether a lengthy sentence imposed upon a juvenile offender is constitutionally permissible, have assessed the prospect of “geriatric release” from incarceration differently. In some cases, for instance, a [reviewing court](#) has deemed the potential release of a juvenile offender only upon reaching an advanced age as insufficient to

satisfy the standards of *Graham*, whereas [other courts](#) have found that the possibility of parole upon reaching an advanced age might be permissible, at least when the offender would be expected to live a number of years following release.

The Third Circuit's decision in *Grant* is one of the most recent rulings addressing *Miller* and *Graham*'s applicability as they pertain to the sentencing of juvenile offenders. The appellate court concluded that considerations related to a juvenile's diminished culpability should not only apply to "de jure" LWOP sentences, but also to the imposition of "de facto" LWOP. *Grant* involved the review of a 65-year sentence without parole imposed upon a juvenile offender who had not been found to be incorrigible by the sentencing court and who had been convicted of several offenses including conspiracy, racketeering, drug trafficking, and firearm violations. The defendant, who was sixteen years old when he committed the criminal offenses, challenged his sentence, arguing that it amounted to a de facto life sentence. The circuit court agreed. Analyzing the Supreme Court's decisions in *Roper*, *Graham*, and *Miller*, the Third Circuit concluded that there is no constitutionally meaningful difference between a de jure LWOP sentence and a de facto one. The same penological concerns regarding maturity and culpability exist. Moreover, both forms of LWOP deny non-incorrigible juvenile offenders the opportunity to be rehabilitated and/or to atone for their mistakes and to prove that they are worthy of being given an opportunity to reintegrate into and contribute to society. As such, the circuit court found that *Grant*'s sentence violated the Eighth Amendment.

The appellate court went further and established a framework for federal courts within the circuit to apply when sentencing non-incorrigible juvenile offenders. Generally when a defendant is convicted of a federal offense, a sentencing judge must consider the statutory sentencing factors under 18 U.S.C. §3553(a) when it considers the appropriate length of imprisonment to order. Such factors include "[the nature and circumstances of the offense and the history and characteristics of the defendant](#)," providing adequate deterrence, and "[protect\[ing\] the public from future crimes of the defendant](#)." In addition to these factors, the Third Circuit articulated two new factors: the juvenile defendant's life expectancy and whether there exists a meaningful opportunity for release. The *Grant* court held that sentencing courts must conduct an individualized evidentiary hearing to determine the juvenile defendant's life expectancy. In [determining the offender's life expectancy](#), courts may start with actuarial tables but should also consider other external factors such as medical history, genetics, and other pertinent expert testimony. Once the court determines the juvenile's life expectancy, next the sentencing judge must craft a sentence which affords a meaningful opportunity for release from incarceration. The Third Circuit declined to establish a bright-line age for when a juvenile is still able to have a meaningful reentry into society. Instead, it decided that a [national "retirement age"](#) should be the outer parameter. As such, the court established a rebuttable presumption that non-incorrigible juvenile offenders should "[be afforded an opportunity for release at some point before the age of retirement](#)." The Third Circuit continued, however, that sentencing judges retain discretion to impose a different sentence in [exceptional cases](#) after weighing the other statutorily based sentencing factors, the defendant's life expectancy, and whether there was a meaningful opportunity for release. The Third Circuit also concluded that the defendant's [sentencing package](#) argument was not properly preserved as it was not raised with the lower court. One member of the panel dissented from this portion of the majority opinion, while agreeing with the majority's conclusions concerning the constitutionality of de facto LWOP and factors that should be considered by the lower court during resentencing.

The future implications of this decision remain unclear. The Supreme Court had previously declined to resolve the circuit split on whether de facto LWOP for juvenile offenders was categorically unconstitutional. Following *Grant*, it would appear that sentencing judges in the Third Circuit will be required to consider additional sentencing factors when crafting sentences for juvenile offenders. Persons already sentenced for offenses committed as juveniles to de facto LWOP within the Third Circuit may be eligible for resentencing based on the reasoning of [Supreme Court precedent](#) concerning *Miller*'s retroactive application to LWOP sentences of juvenile offenders. While Congress may not statutorily

overturn the *Grant* court's ruling regarding the unconstitutionality of de facto LWOP for non-incorrigible juvenile offenders, in the event that lawmakers agree with the decision and wish to provide uniformity throughout the judicial circuits, legislation could be considered that would statutorily limit the availability of LWOP for juvenile offenders.