>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN,
THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING, EVERYBODY.
WELCOME TO THE FLORIDA
SUPREME COURT.
FIRST CASE ON THE DOCKET THIS
MORNING IS FALCON VERSUS STATE
AND HORSLEY VERSUS STATE.
>> MAY IT PLEASE THE COURT,
KAREN GOTTLIEB.
THE QUESTION BEFORE THE COURT
TODAY IS ONE OF REMEDY.
WE SUBMIT THAT BECAUSE MILLER IS
RETROACTIVE AND BECAUSE
FUNDAMENTAL FAIRNESS REQUIRES
THAT ALL CHILDREN WITHIN ITS
PURVIEW BE GRANTED EQUAL
TREATMENT, THE NEWLY CRAFTED
STATUTE BY THE LEGISLATURE
POINTS THE WAY FOR THIS COURT IN
FORMULATING ITS MILLER REMEDY.
NOW, WE OF COURSE ARE AWARE THAT
THE STATUTE HAS AN EFFECTIVE
DATE OF JULY 1, 2014 AND
SPECIFIES THAT IT IS FOR
OFFENSES COMMITTED ON OR AFTER
THAT DATE.
AND THAT IS PERFECTLY CONSISTENT
WITH ARTICLE 10, SECTION 9 OF
THE FLORIDA CONSTITUTION, OUR
SAVING CLAUSE.
BUT THAT CANNOT UNDERMINE THIS
COURT'S INDEPENDENT, INHERENT
AUTHORITY AND INDEED SUPREME
OBLIGATION TO IMPLEMENT THE
MILLER 8TH AMENDMENT HOLDING OF
THE SUPREME COURT OF THE
UNITED STATES.

INDEED, UNDER OUR SEPARATION OF POWERS STRUCTURE, IT WOULD HAVE BEEN UNREASONABLE FOR THE LEGISLATURE TO DETERMINE WHETHER MILLER WAS RETROACTIVE, BUT IT IS THE ROLE OF THIS COURT TO MAKE THAT DETERMINATION.
BOTH PARTIES AGREE THAT THE STATUTE UNDER WHICH MISSFALCON WAS SENTENCED WAS UNCONSTITUTIONAL, IN VIOLATION OF MILLER, IN VIOLATION OF THE 8TH AMENDMENT.
BOTH PARTIES THUS AGREE THAT THERE MUST BE AN ALTERNATIVE REMEDY FOR MISSFALCON AND SIMILARLY SITUATED DEFENDANTS.
SO THE QUESTION BECOMES WHAT SHOULD THE REMEDY BE.
AND I THINK THE ULTIMATE ISSUE IS HOW CAN THIS COURT BEST VINDICATE THE RIGHTS VIA THE DECISION WHILE AT THE SAME TIME DOING AS LITTLE VIOLENCE AS POSSIBLE TO THE LEGISLATIVE INTENT.
>> YOU SEE THAT THIS COURT'S IN A BETTER POSITION TO FASHION A REMEDY BECAUSE OF THE PASSAGE OF THE STATUTE FROM THIS LEGISLATURE AS OF LAST SPRING.
>> ABSOLUTELY.
>> SO YOU ARE ACTUALLY -- RATHER THAN ADVOCATING FOR THE COURT TO COME UP WITH A STRUCTURE THAT WOULD HAVE INDIVIDUALIZED SENTENCING AND MAY EVEN GIVE YOUR CLIENT REVIEW EARLIER, YOUR -- AS I UNDERSTAND IT, YOUR POSITION ON BEHALF OF YOUR CLIENT IS IF WE'RE FAITHFUL AND SAY THE STATUTE IS WHAT SHOULD BE APPLIED AND WE HOLD IT RETROACTIVE, THAT THAT WOULD -- AS MISSFALCON WAS THE SHOOTER, WOULD MEAN SHE'D HAVE A 40-YEAR SENTENCE WITH A MINIMUM 40-YEAR SENTENCE WITH REVIEW AFTER 25 YEARS?
IS THAT THE PRACTICAL EFFECT IN

YOUR CASE?
>> WELL, THE JURY VERDICT AT PAGE 118 IN THE RECORD FOUND THAT SHE WAS NOT THE SHOOTER.
SO THAT WILL BE A QUESTION OF FACT AND LAW TO TAKE UP AT THE RESENTENCING.
BUT, IN ANY EVENT, I THINK THE INTEREST --
>> WHAT WOULD BE THE OPTIONS FOR HER?
IN OTHER WORDS, UNDER -- FIRST OF ALL, IT WOULD GO BACK -- I JUST WANT TO MAKE SURE HOW THE STATUTE WOULD WORK.
AGAIN, OUR FASHIONING OF A REMEDY CONSISTENT WITH THE STATUTE.
IT WOULD BE THAT SHE WOULD GET A NEW SENTENCING HEARING THAT WOULD BE INDIVIDUALIZED, BECAUSE RIGHT NOW HER SENTENCE IS WHAT?
>> IS MANDATORY LIFE WITHOUT PAROLE.
>> SO SHE WOULD -- AND SHE WAS HOW OLD AT THE TIME?
>> SHE WAS 15.
>> SHE WOULD HAVE AN INDIVIDUALIZED SENTENCING AND THE FACTORS THE JUDGE COULD CONSIDER OR WOULD CONSIDER WOULD BE THE INDIVIDUALIZED FACTORS THAT ARE SET FORTH IN THE STATUTE?
>> CORRECT.
>> WOULD THERE BE OTHER FACTORS? IS THAT AN EXCLUSIVE LIST OR IS IT -- CAN IT BE OTHER FACTORS THAT THE JUDGE CAN TAKE INTO CONSIDERATION?
>> I THINK 921.1401 IS RATHER BROAD AND ALL-ENCOMPASSING.
>> BECAUSE WE THINK OF DEATH CASES, MITIGATION CAN ALMOST BE ANYTHING.
SO YOU THINK IT'S BROAD ENOUGH THAT THAT IS -- WOULD COVER WHAT COULD BE ARGUED ON BEHALF OF YOUR CLIENT.
>> YES.

>> OKAY.
AND THEN IF THE JUDGE -- WHAT ARE THE JUDGE'S OPTIONS THEN ONCE THE JUDGE HEARS ALL OF THAT?
WHAT ARE THE OPTIONS FOR SOMEONE?
DOES HE OR SHE HAVE TO MAKE A FINDING WHETHER SHE IS THE SHOOTER OR NOT?
>> YES.
WELL, WHICH SUBSECTION IS GOING TO APPLY, YES.
>> SO THE SUBSECTION -- SO MAYBE I SHOULD ASK, IF THE PERSON, THE DEFENDANT, IS THE SHOOTER, THEN THE JUDGE'S DISCRETION IS LIMITED UNDER THE PROSPECTIVE LEGISLATIVE SCHEME TO A 40-YEAR MINIMUM SENTENCE.
>> CORRECT.
>> OKAY.
THE ONLY -- ONLY THOSE JUVENILES THAT HAD BOTH -- ARE THE SHOOTER AND HAD A PRIOR SPECIFIED VIOLENT FELONY WOULD HAVE -- WOULD NOT HAVE THE ABILITY TO HAVE THEIR SENTENCE REVIEWED.
IS THAT CORRECT?
>> CORRECT.
>> AND THERE'S NOT ANY INDICATION THAT MISSFALCON HAD A PRIOR -- WOULD FIT INTO THAT.
>> SHE HAS HAD NO PRIOR CONVICTION.
>> SO THE ISSUE AS TO WHAT HER SENTENCE WOULD BE IS NOT REALLY BEFORE US.
YOU'RE JUST ASKING THAT WE WOULD ADOPT A REMEDY CONSISTENT WITH THE LEGISLATIVE STRUCTURE, UNDERSTANDING THAT THEY DID NOT MAKE IT RETROACTIVE AND MAY NOT HAVE DONE IT FOR CONSTITUTIONAL REASONS.
AND THEN MAYBE ENACTING A RULE THAT WOULD FOLLOW THE STATUTE SO THE JUDGE WOULD HAVE SPECIFIC GUIDELINES AS TO HOW TO CONDUCT AN INDIVIDUALIZED SENTENCING

HEARING?
>> I THINK THAT WOULD COMPLY WITH MILLER, YES.
>> IT'S BEEN SUGGESTED IN BRIEFS THAT WE COULD JUST APPLY THE STATUTE, THAT THERE'S GOING TO BE A RESENTENCING, AND SINCE THERE'S A RESENTENCING, WHY WOULDN'T THE STATUTE APPLY?
>> THAT'S CERTAINLY ONE WAY THAT THE COURT COULD ADDRESS THE STATUTE.
>> I MEAN, THE ONLY ISSUE THERE IS AS I UNDERSTAND IT, THE STATUTE SAYS FOR CRIMES THAT OCCURRED AFTER JULY 1, 2014.
>> THE STATUTE DOES SPECIFY, BUT I WOULD POINT OUT THAT THE STATUTE IS CONSISTENT WITH THE CONSTITUTIONAL SAVINGS CLAUSE, BUT IF WE CONSIDER WHAT ARTICLE 10, SECTION 9 IS INTENDED TO ACCOMPLISH, IT'S INTENDED TO ACCOMPLISH THAT AN INDIVIDUAL IS PROSECUTED AND SENTENCED UNDER THE STATUTE IN EFFECT AT THE TIME OF THE COMMISSION OF THE CRIME.
AND OF COURSE THIS COURT HAS THE ROLE OF INTERPRETING THE CONSTITUTION, INCLUDING THE FLORIDA CONSTITUTION, AND IN THIS SITUATION ARTICLE 10, SECTION 9 CAN'T APPLY BECAUSE THE STATUTE IN EFFECT AT THE TIME OF THE OFFENSE PROVIDED FOR MANDATORY LIFE WITHOUT PAROLE.
IT'S THAT STATUTE THAT IS UNCONSTITUTIONAL.
SO WE CAN'T RETURN TO THE STATUTE IN EFFECT AT THE TIME AND ACCORDINGLY WE'RE REQUESTING THAT THE COURT LOOK TO THE NEW STATUTE, WHICH IS VERY CLEARLY THE LEGISLATIVE INTENT.
>> WELL, WHY WOULDN'T WE LOOK AT THE STATUTE THAT WAS IN EFFECT PRIOR TO THIS STATUTE?
I BELIEVE THAT STATUTE PROVIDED FOR LIFE WITH A 50-YEAR MINIMUM?

>> THE 1993 STATUTE?
>> I THINK THERE WAS A STATUTE IN BETWEEN, WASN'T THERE?
THERE WAS ONE -- THE STATUTE THAT PROVIDED FOR A 25-YEAR MINIMUM MANDATORY.
THEN WE WENT TO A STATUTE, I THOUGHT, THAT PROVIDED FOR 50-YEAR MANDATORY MINIMUM.
AND THEN THE NO PAROLE.
WAS THERE A STATUTE IN BETWEEN?
>> I'M NOT FAMILIAR WITH THE 50-YEAR MINIMUM MANDATORY STATUTE.
I KNOW THE 1993 STATUTE WAS THE MINIMUM MANDATORY 25-YEAR --
>> WHY WOULDN'T THAT STATUTE BE APPLICABLE?
IF THAT'S THE IMMEDIATE STATUTE BEFORE THE NO PAROLE, WHY NOT USE THAT ONE?
>> WE POINTED OUT THAT IT'S NOT THE IMMEDIATE STATUTE BEFORE.
THE IMMEDIATE STATUTE BEFORE WOULD BE THE 1994 STATUTE.
BUT AS OPPOSED TO GETTING INTO ALL THOSE TECHNICALITIES IN TERMS OF THE REVIVAL THEORY OF THE STATE, THE WHOLE PURPOSE OF REVIVAL IS TO ASSIST IN INTERPRETING THE LEGISLATIVE INTENT.
WHAT WOULD THE LEGISLATURE HAVE DONE IF THEY KNEW THAT THEIR NEW STATUTE WAS UNCONSTITUTIONAL?
WELL, THEY WOULD WANT YOU TO ENFORCE THE PRIOR STATUTE.
BUT IN THIS CASE NOT ONLY IS THE PRIOR STATUTE GOING BACK OVER 20 YEARS, BUT THE PRIOR STATUTE PROVIDED FOR PAROLE.
AND SINCE 1993, REPEATEDLY THE LEGISLATURE HAS TOLD US THAT THEY DO NOT WANT PAROLE.
>> ISN'T THE OTHER PROBLEM --
AND, AGAIN, I THINK WHEN THE JUDGES THAT CONSIDERED STATUTORY REVIVAL WERE DOING IT, AS YOU SAID, TO TRY TO EFFECTUATE LEGISLATIVE INTENT.

>> EXACTLY.
>> AND WANT TO BE VERY
DIFFERENTIAL IN THE AREA OF
SENTENCING.
SEEMS THAT THE PROBLEM WITH IT
IS THAT THERE'S NO -- THE WHOLE
POINT OF MILLER IS THERE HAS TO
BE INDIVIDUALIZED SENTENCING.
AND THERE IS NO -- UNDER THE
LIFE AND THEN YOU GET 25 YEARS,
PAROLE AS OPPOSED TO JUDICIAL
REVIEW, THERE'S NO
INDIVIDUALIZED SENTENCING.
THAT SEEMS TO ME ANOTHER
PROBLEM.
>> ABSOLUTELY.
ABSOLUTELY.
AND I WOULD --
>> BUT UNDER THE PAROLE ISSUE
THAT YOU WERE TALKING ABOUT, YOU
WOULD BE REVISING PAROLE.
IF UNDER THE NEW STATUTE WHEN
THE DEFENDANT WOULD COME UP FOR
REVIEW, WHAT IS THE OPTION THAT
A TRIAL JUDGE WOULD HAVE?
>> UNDER THE NEW STATUTE, THE
TRIAL JUDGE --
>> OR EVEN IF WE SAY ADOPT A
VERSION OF THAT.
WHAT WOULD HAPPEN IF THE
DEFENDANT COMES UP FOR REVIEW
AND THE TRIAL JUDGE DECIDES THAT
HE SPENT ENOUGH TIME, HE OR SHE
HAS SPENT ENOUGH TIME IN JAIL,
THAT THEY ARE REHABILITATED.
WHAT DO YOU DO?
DO YOU PUT THEM ON CONTROLLED
RELEASE?
DO YOU JUST LET THEM GO?
>> 921.1402 IS VERY SPECIFIC.
THERE IS A REQUIREMENT OF A
MINIMUM OF FIVE YEARS PROBATION.
>> OKAY.
>> SO THAT RELEASE IS GOING TO
BE SUPERVISED WITHIN THE
CONFINES OF THE JUDICIARY.
>> YOU'RE INTO YOUR REBUTTAL
TIME.
>> THANK YOU.
>> I'M KATHRYN RADTKE.

I REPRESENT ANTHONY HORSLEY, WHO
IS ENTITLED TO A
MILLER-COMPLIANT SENTENCING
HEARING WHICH HE DID NOT RECEIVE
BECAUSE IN HIS CASE THE TRIAL
JUDGE WAS NOT AWARE THAT HE
COULD CONSIDER A TERM OF YEARS
SENTENCE.
THE JUDGE THEN DIDN'T HAVE THE
BENEFIT OF THE LEGISLATIVE
INTENT AS EXPRESSED IN THE NEW
LAWS -- MILLER LISTS A TERM OF
YEARS AS ONE OPTION AND OUR
LEGISLATURE HAS NOW CONFIRMED
THAT THAT IS THEIR LEGISLATIVE
INTENT AS AN OPTION.
>> THEY'RE SAYING -- MR.HORSLEY
IS A PIPELINE CASE, SO NOT AN
ISSUE OF RETROACTIVITY.
>> YES.
>> BUT HE DID GET A
RESENTENCING.
HE DIDN'T?
>> NOT TRULY.
>> WELL, HE GOT ANOTHER HEARING,
WHATEVER YOU'D CALL IT.
>> BUT HE WAS SET FOR A HEARING
ON A MOTION TO CORRECT AND THEN
THE JUDGE INITIALLY AT THE
BEGINNING OF THAT HEARING
DECIDED HE WAS GOING TO GRANT
THE MOTION TO CORRECT AND HAVE A
RESENTENCING.
AND THEN PROCEEDED IMMEDIATELY
WITHOUT GRANTING THE ATTORNEY'S
MOTION TO CONTINUE.
THERE WERE EIGHT DAYS LEFT IN
WHICH THE COURT COULD HAVE HEARD
MORE TESTIMONY OR INSISTED--
[INAUDIBLE]
AND THE ATTORNEY REQUESTED THE
CONTINUANCE ON THE BASIS THAT IF
HE PROCEEDED AT THAT POINT, HE
COULD ONLY PRESENT MY CLIENT'S
TESTIMONY.
>> I SEE.
OKAY.
SO I GUESS WHAT I WAS GETTING
TO, IN ANY EVENT, THE COURT DID
NOT CONSIDER THAT THEY HAD ANY

OTHER OPTION.
BUT THE JUDGE ENUNCIATED WHAT ARE THE MAGIC WORDS OF MILLER. AND GIVE ME WHAT THAT WORD IS OR PHRASE?
LIKE YOU'RE BEYOND REDEMPTION, BASICALLY.
>> RIGHT.
WELL, HE SAID THAT HE WAS IRREDEEMABLY CORRUPTIBLE OR SOMETHING OF THAT SORT.
>> WHICH I ASSUME MEANS THAT THAT PERSON IS -- NO WAY, WHETHER THE PERSON IS 50, 60, 70, 80, THAT YOU CAN EVER BE REHABILITATED.
NOW, ON THAT EXPLAIN THAT IF THE JUDGE WERE TO -- WHERE DOES THAT -- ASSUMING THE NEW STATUTE IS TO APPLY, THOSE WORDS ARE NOT IN THE NEW STATUTE, BUT THEY ARE IN MILLER.
WHAT EFFECT -- IF THE JUDGE AGAIN -- AND THIS IS JUST REALLY TRYING TO FIGURE THIS OUT BECAUSE WE HAVE A LOT OF TAG CASES, A LOT OF CASES THAT WE'VE GOT TO CONSIDER HOW MILLER WOULD APPLY.
IF THE JUDGE AGAIN HEARS ALL THE MITIGATING EVIDENCE THAT YOUR CLIENT COULD PRESENT BUT STILL DECIDES THAT THIS WAS -- HE WAS THE RINGLEADER, IT WAS A TERRIBLE MURDER AND CONCLUDES USING THE MILLER LANGUAGE THAT HE IS NOT CAPABLE EVER OF BEING REHABILITATED, DOES-- UNDER THE STATUTE THE JUDGE DOES HAVE THE OPTION OF GIVING HIM WHAT, LIFE? BUT STILL REVIEW AFTER 25 YEARS? WHAT'S THE -- HE DOESN'T HAVE A PRIOR FELONY, RIGHT?
SO WHAT WOULD BE THEN THE EFFECT OF THAT SENTENCE?
IT WOULD BE WHAT?
>> THAT HE WOULD HAVE A JUDICIAL REVIEW, I BELIEVE.
>> AFTER 25 YEARS?
>> IF I READ IT CORRECTLY.

>> OKAY.
SO THAT WOULD STILL BE A BETTER
-- FOR YOUR CLIENT HAVING THAT
OPPORTUNITY, TO BE RESENTENCED
UNDER A STATUTORY SCHEME THAT
THE LEGISLATURE SET FORTH.
THAT WOULD STILL BE -- GIVE HIM
SOME CHANCE OF NOT HAVING A LIFE
SENTENCE WITH NO REVIEW EVER.
IS THAT CORRECT?
>> IF THAT WERE APPLIED TO HIM,
THAT WOULD BE A REMOTE GLIMMER.
>> IT WOULD BE WHAT?
>> IT WOULD BE A REMOTE GLIMMER.
THE PROBLEM HERE IS THAT --
>> SO ARE YOU SAYING THAT YOU'RE
SORT OF RESIGNED THAT YOUR
CLIENT'S GOING TO GET A LIFE
SENTENCE NO MATTER WHAT?
>> NO, YOUR HONOR.
I'M NOT.
I DON'T BELIEVE IF THE COURT
TRULY HEARD ALL OF THE EVIDENCE
THAT THERE COULD POSSIBLY BE
SUBMITTED IN MITIGATION.
AND IF THE COURT UNDERSTOOD ALL
OF THE OPTIONS AVAILABLE AND
TRULY UNDERSTOOD THAT A TERM OF
YEARS WAS SOMETHING HE COULD
CONSIDER.
I DON'T BELIEVE --
>> AGAIN, IF HE COMMITTED HIS
CRIME AS OF JULY 1, HE WOULD
HAVE THAT OPTION.
>> YES.
>> AND WHAT YOU'RE ASKING FOR IS
THAT IN A -- ESPECIALLY IN A
PIPELINE CASE, THAT WE APPLY THE
STATUTE OR ADHERE TO THE STATUTE
AS MOSTLY ALIGNED WITH
LEGISLATIVE INTENT.
>> YES, YOUR HONOR.
AND BECAUSE IT'S IN RESPONSE TO
THE MILLER DECISION.
IT'S IMPLEMENTING MUCH OF WHAT
MILLER OUTLINES.
OTHERWISE I AGREE WITH THE
ARGUMENT ON THAT.
>> MAY IT PLEASE THE COURT,
COUNSEL, GOOD MORNING.

MY NAME IS KELLIE NIELAN HERE ON BEHALF OF THE STATE OF FLORIDA.
FIRST, WE DON'T AGREE THAT IT'S RETROACTIVE.
I KNOW THAT WAS ALREADY ARGUED.
BUT COUNSEL SAID THAT AND WE DO NOT AGREE ON THAT.
IT'S ALSO NOT IN THE RECORD THAT MISSFALCON WAS NOT THE SHOOTER.
I WANT TO CLARIFY THOSE TWO FACTS AND MOVE ON TO THE HORSLEY ARGUMENT.
IT'S OUR POSITION, NUMBER ONE, THAT THE DISTRICT COURT WAS CORRECT IN FINDING THAT STATUTORY REVIVAL IS AN APPROPRIATE REMEDY.
BUT WHERE IT ERRED WAS FINDING THAT A SENTENCE OF LIFE WITHOUT PAROLE IS NOT A POSSIBILITY.
>> WAIT.
LET ME -- AGAIN, SO WE'RE REALLY BACK TO -- THE STATE UNDERSTANDS FOR CRIMES THAT ARE COMMITTED BY A JUVENILE AFTER JULY 1, 2014, THE JUVENILE GETS THIS INDIVIDUALIZED HEARING, PUTS ON MITIGATION ABOUT THE EFFECTS OF CHILDHOOD ABUSE, LEARNING DISABILITIES, THE WHOLE -- WHAT WE SEE OFTENTIMES ACTUALLY IN DEATH CASES, BUT WHAT HAPPENS IN EARLY CHILDHOOD.
SO THEY GET TO DO THAT.
AND THEN THE JUDGE HAS DISCRETION TO IMPOSE A RANGE OF SENTENCES WITH JUDICIAL REVIEW BEING MANDATORY, AS I UNDERSTAND IT, OTHER THAN IF THEY FIT INTO THE CATEGORY WHERE THEY COMMITTED A PRIOR VIOLENT FELONY AS SET FORTH IN THE STATUTE.
IS THAT CORRECT?
>> YEAH, EXCEPT ONE THING -- THE STATUTE STARTS OUT THEY SHALL BE SENTENCED TO LIFE UNLESS.
SO THE LEGISLATURE IS CLEARLY NOT SAYING YOU CAN GIVE THIS SENTENCE, THIS SENTENCE OR THIS SENTENCE.

THEY'RE INDICATING A PREFERENCE
FOR THE LIFE SENTENCE.
>> SURE.
IF WE DIDN'T HAVE MILLER, THEY
WOULDN'T HAVE -- I'M ASSUMING
WE'D STILL HAVE LIFE --
MANDATORY LIFE WITHOUT PAROLE
BECAUSE WE HADN'T HELD THAT
UNCONSTITUTIONAL.
IT'S THE U.S. SUPREME COURT THAT
DID IT.
BUT WE'RE WORKING WITHIN THE
PARAMETER OF WE GOT THE U.S.
SUPREME COURT SAYING -- IF IT'S
RETROACTIVE, IT'S
UNCONSTITUTIONAL.
AND WE'VE GOT THE -- IT'S
UNCONSTITUTIONAL AND THE
QUESTION IS IS IT RETROACTIVE,
CORRECT?
>> A LIFE SENTENCE IS NOT
UNCONSTITUTIONAL.
>> SO LET ME GO BACK TO THE IDEA
OF THE REMEDY.
>> OKAY.
>> THE COURT -- EVEN THOUGH THE
LEGISLATURE FOR THE PAST 20
YEARS HAS NOT HAD ANY STATUTE
THAT HAS INCLUDED PAROLE, AND
EVEN THOUGH THE LEGISLATURE
COULD HAVE PUT THAT AS THE
PREFERENCE WHEN THEY ENACTED THE
NEW STATUTE; THAT IS, PAROLE AS
OPPOSED TO JUDICIAL REVIEW, THEY
ELECTED JUDICIAL REVIEW.
SO I'M HAVING A HARD TIME -- I
WOULD HAVE UNDERSTOOD THIS A FEW
MONTHS AGO -- UNDERSTANDING IF
WE CAN'T -- IF WE'VE GOT TO
RESPECT LEGISLATIVE INTENT BUT
ALSO RESPECT WHAT THE U.S.
SUPREME COURT HAS SAID IN
MILLER, WHY ADHERING TO THE
REMEDY THE LEGISLATURE HAS
ENUNCIATED IS NOT PREFERABLE,
WHY THE STATE WOULD BE ARGUING
THAT PAROLE WOULD BE A
PREFERABLE SUBSTITUTE REMEDY IN
THIS UNIQUE SITUATION.
I'M JUST HAVING A HARD TIME WITH

THAT ARGUMENT, WHY YOU WOULDN'T WANT JUST TO ALLOW JUDGES -- YOU KNOW, HAVE A UNIFORM SYSTEM AND THAT STATUTE NOW IS THE SYSTEM THAT THE JUDGES GET FAMILIAR WITH AND THAT'S WHAT THEY APPLY.
>> YOUR HONOR, THAT WOULD BE A GREAT SOLUTION.
AND IF WE DID NOT HAVE THE ABATEMENT CLAUSE, I WOULD BE ALL FOR THAT SOLUTION.
>> BUT WHEN YOU SAY ABATEMENT, WHAT ARE YOU TALKING ABOUT?
>> YOU CAN'T CHANGE A CRIMINAL PENALTY AFTER THE STATUTE'S BEEN AMENDED.
>> WELL, WE DO KNOW THIS.
AGAIN, THAT'S TRUE, BUT WE HAVE A STATUTE THAT IF IT'S UNCONSTITUTIONAL AND IT'S RETROACTIVE, AGAIN, UNDERSTANDING YOU DON'T AGREE WITH THE RETROACTIVITY, THEN WE HAVE TO PUT SOMETHING IN PLACE.
NOW, THE SOMETHING IS EITHER A STATUTE THAT'S PROSPECTIVE OR A STATUTE THAT WAS ENACTED 20 YEARS AGO.
AND SO THAT IS -- YOU'RE SAYING WE'RE LIMITED BY THE CONSTITUTION FROM RESPECTING THE LEGISLATIVE INTENT THAT IS MORE FRIENDLY AND MORE CONSISTENT WITH MILLER?
I'M HAVING A HARD TIME WITH THAT.
>> YES.
AND YOU'RE LIMITED IN NOT BEING ABLE TO LEGISLATE.
I MEAN, THE CLOSEST FOR THE COURT TO COME TO THE LEGISLATIVE INTENT AND NOT ACTUALLY LEGISLATE A NEW STATUTE IS STATUTORY REVIVAL.
THAT'S THE WHOLE UNDERPINNING OF STATUTORY REVIVAL.
>> ISN'T THE PURPOSE OF THE ABATEMENT CLAUSE THAT THE STATE CANNOT RETROACTIVELY APPLY HARSHER SENTENCE?

>> I'M SORRY.
I DIDN'T HEAR THE FIRST PART OF
YOUR QUESTION.
>> THE PURPOSE OF THE ABATEMENT
CLAUSE IS THAT THE STATE CANNOT
ENACT STATUTES RETROACTIVELY TO
IMPOSE HARSHER SENTENCE.
>> THAT'S THE PURPOSE OF THE EX
POST FACTO CLAUSE.
THE ABATEMENT CLAUSE WORKS BOTH
WAYS.
IF THERE WAS A 15-YEAR SENTENCE
AND THE LEGISLATURE CHANGED IT
TO TEN YEARS, THE GUY STILL HAS
THE 15-YEAR SENTENCE.
HE DOES NOT GET TO GO BACK AND
GET A NEW SENTENCE.
>> BUT DOESN'T THE FEDERAL
CONSTITUTION TRUMP OURS?
>> IN TERMS OF 8TH AMENDMENT,
YES.
WE CANNOT GIVE, WITHOUT AN
INDIVIDUALIZED SENTENCING
HEARING --
>> IN TERMS OF RETROACTIVITY.
IN TERMS OF RETROACTIVITY.
>> I GUESS I DON'T UNDERSTAND
WHAT YOU'RE ASKING ME.
>> ALL RIGHT.
THE 8TH AMENDMENT IS
RETROACTIVELY APPLIED IN MILLER.
IS THAT NOT CORRECT?
>> WELL, MILLER -- AS FAR AS THE
STATE OF FLORIDA GOES,
RETROACTIVITY HAS NOT BEEN
DECIDED HERE YET, SO -- AND
MILLER APPLIES TO HORSLEY.
I MEAN, THERE'S NO DISPUTE ABOUT
THAT WHATSOEVER.
HE WAS A PIPELINE CASE.
MILLER DOES APPLY TO
MR. HORSLEY.
>> SO HOW DO YOU -- IF YOU HAVE
STATUTORY REVIVAL, AS YOU'RE
SUGGESTING, HOW DO YOU -- DOES
THE INDIVIDUALIZED SENTENCING
THEN BECOME PRO FORMA?
I MEAN, IF YOU ARE REQUIRED
UNDER MILLER TO TAKE INTO
CONSIDERATION CERTAIN THINGS

ABOUT THE JUVENILE BEFORE YOU
ACTUALLY SENTENCE THE JUVENILE,
BUT YOU'RE GOING TO GIVE THEM
THE SENTENCE WITH MANDATORY
MINIMUM, HOW DOES THAT -- HOW IN
THE WORLD IS THAT AN
INDIVIDUALIZED SENTENCING
PROCEEDING?
>> IT'S -- THE LEGISLATURE SET A
PENALTY FOR THIS.
AND IT WAS LIFE.
AND ALL THE UNITED STATES
SUPREME COURT HAS SAID IS IT
CANNOT BE A MANDATORY LIFE
SENTENCE.
>> BUT HERE'S THE OTHER PROBLEM.
FIRST OF ALL, MAJOR PROBLEM IS
THAT IT REALLY ALLOWS FOR --
WE'D HAVE TO SORT OF BE GOING,
OKAY, THERE'S AN INDIVIDUALIZED
SENTENCING EVEN THOUGH THAT'S
NOT WHAT THE 1993 STATUTE
CALLED FOR.
BUT THE OTHER PROBLEM IS THE
ONLY AVAILABLE SENTENCE IF WE
REVIVE THE 1993 STATUTE IS LIFE
WITH PAROLE AFTER 25 YEARS.
BUT YOU'RE SAYING THAT, NO, THE
JUDGE SHOULD BE ABLE TO HAVE AN
INDIVIDUALIZED SENTENCING AND
EITHER GIVE LIFE WITH PAROLE OR
LIFE WITHOUT PAROLE.
SO YOU'RE -- AGAIN, IT SEEMS TO
ME WE'RE COBBLING A LOT TO COME
UP WITH WHAT YOU CONSIDER TO BE
LEGISLATIVE INTENT.
SO HOW -- WHAT'S THE ANSWER?
WE'RE NOT REALLY REVIVING UNDER
THE STATE'S THEORY THE 1993
STATUTE THAT GAVE LIFE WITH
PAROLE AFTER 25 YEARS.
>> NO.
OUR POSITION IS THAT THE ONLY
UNCONSTITUTIONAL SENTENCE IN
THAT STATUTE IS SHALL BE
INELIGIBLE FOR PAROLE.
AND THAT ONLY COMES INTO PLAY --
IT WILL COME INTO PLAY AS
APPLIED AFTER THE INDIVIDUALIZED
SENTENCING HEARING.

IF SOMEONE DOES NOT MEET THE
TERMS OF THE -- YOU KNOW,
WHATEVER THE JUDGE--
[INAUDIBLE]
IRREPARABLE CORRUPTION, IF A
JUDGE THEN FINDS THAT A
LIFE-WITHOUT-PAROLE SENTENCE IS
APPROPRIATE, THAT CAN STILL BE
IMPOSED.
OTHERWISE THE JUDGE IMPOSES A
SENTENCE OF LIFE WITH THE
POSSIBILITY OR ELIGIBILITY FOR
PAROLE AFTER 25 YEARS.
>> BUT THERE'S NO PAROLE.
ARE YOU ASKING THIS COURT TO
ORDER THE PAROLE COMMISSION TO
HEAR THESE CASES EVEN THOUGH WE
DON'T HAVE THE POWER OF THE
PURSE.
WE CAN'T GIVE THEM MONEY,
AUTHORIZATION TO DO THIS.
ARE YOU ASKING US TO FROM THE
BENCH REQUIRE ANOTHER BRANCH OF
GOVERNMENT TO ENACT THE PAROLE
COMMISSION THAT'S BEEN
ABOLISHED?
>> THE PAROLE COMMISSION IS
STILL IN EFFECT.
>> I UNDERSTAND.
FOR THESE PURPOSES.
>> YES.
I'M ASKING COURT TO FOLLOW
PRECEDENT AND EVERYTHING THAT'S
BEEN DONE.
I MEAN, WE CAN'T -- I UNDERSTAND
WE HAVE TO FASHION A REMEDY FOR
THIS.
>> WELL, ASSUME THAT AT LEAST I
THINK THAT WE CAN'T DO THAT, ALL
RIGHT?
THEN IS THERE ANOTHER TERM OF
YEARS THAT WOULD BE APPROPRIATE
IF WE CAN'T APPLY THE CURRENT
STATUTE THAT SHOULD BE DONE UPON
RESENTENCING?
>> THERE'S NO METHOD FOR A TERM
OF YEARS UNDER THIS WITHOUT THIS
COURT LEGISLATING, WHICH IS NOT
APPROPRIATE.
>> WELL, WE'RE NOT -- THAT WOULD

HAVE BEEN FINE TO SAY A FEW
MONTHS AGO.
BUT WE'RE -- THE LEGISLATURE
UNANIMOUSLY -- I THINK THEY
UNANIMOUSLY PASSED THIS
LEGISLATION.
THAT'S ALMOST UNHEARD OF.
SO IT'S NOT JUST A FEW
LEGISLATORS OR EVEN THE
MAJORITY.
IT'S THE ENTIRE LEGISLATURE
SAYING AFTER LOTS OF HEARINGS WE
THINK THIS IS BOTH GOOD FROM A
POLICY POINT OF VIEW AS WELL AS
FAITHFUL TO MILLER.
IT IS STILL A LITTLE DIFFICULT
FOR ME TO UNDERSTAND -- AND I
APPRECIATE HOW THINGS HAPPEN --
THAT THE STATE WOULD BE
ADVOCATING FOR SETTING UP -- WE
HAVE, WHAT, 100, 200 JUVENILES,
300, TO HAVE A PAROLE COMMISSION
DOING THAT WHEN THE LEGISLATURE
HAS SAID THEY WANT JUDGES TO
MAKE THAT REVIEW AFTER A PERIOD
OF YEARS.
SO IT'S -- MAYBE WE'RE GOING
BACK OVER IT AND YOU'RE SAYING
THAT'S THE ONLY OPTION.
OTHERWISE WE'LL BE LEGISLATING.
BUT IT SEEMS TO ME WE'LL BE
LEGISLATING MORE THE OTHER WAY.
>> NOT STATUTORY REVIVAL.
THAT'S A DOCTRINE THAT'S BEEN
FOLLOWED BY THIS COURT SINCE THE
COURT WAS HERE.
THAT'S WHY -- I MEAN, WE'VE
LOOKED AT THIS.
I'M NOT TRYING TO SAY KEEP THESE
KIDS IN JAIL FOR THE REST OF
THEIR LIVES.
I AM TRYING TO FIND THE REMEDY
THAT MOST FITS IN WITH
PRECEDENT, WITH THE CONSTITUTION
AND WITH ALL THE PRINCIPLES.
>> I STILL DON'T UNDERSTAND --
DID YOU EVER ANSWER HOW THAT
BECOMES AN INDIVIDUALIZED
SENTENCING PROCEEDING IF YOU'RE
BOUND TO GIVE THEM THE LIFE WITH

THE 25-YEAR ELIGIBILITY FOR
PAROLE AFTER 25 YEARS?
HOW DOES THAT AN INDIVIDUALIZED
SENTENCING PROCEEDING?
>> BECAUSE YOU DIDN'T GET LIFE
WITHOUT THE POSSIBILITY OF
PAROLE.
IT'S JUST LIKE THE NEW STATUTE.
I MEAN, ONLY YOU HAVE THE
OPPORTUNITY FOR WHAT I BELIEVE
THIS COURT CALLED BEFORE
JUDICIAL PAROLE UNDER THE NEW
STATUTE.
UNDER THE OLD STATUTE YOU HAVE
THE OPPORTUNITY TO GO BEFORE THE
PAROLE COMMISSION AFTER 25
YEARS.
>> BUT IT SOUNDS LIKE A
MANDATORY SENTENCE.
>> WITH THE OPPORTUNITY FOR
REVIEW, WHICH YOU CAN STILL GET
UNDER THE NEW STATUTE.
>> SO YOU WANT -- WAIT A MINUTE.
AM I UNDERSTANDING YOU THAT
YOU'RE GOING TO MESH THE
STATUTORY REVIVAL GOING BACK TO
THE OLD STATUTE AND THEN ADD ON
TO IT SOMETHING FROM THE NEW
STATUTE?
>> NO.
NO.
I'M SAYING THAT'S ESSENTIALLY
WHAT THE NEW STATUTE SAYS.
YOU CAN GIVE A LIFE SENTENCE.
IT'S JUST YOU GET JUDICIAL
REVIEW AFTER 25 YEARS INSTEAD OF
PAROLE REVIEW.
>> LET'S SORT OF LOOK AT --
LET'S START WITH MISS FALCON,
OKAY?
NOW, LET'S ASSUME THAT THE JUDGE
-- DOES THE JUDGE MAKE A
DETERMINATION IF IT WASN'T MADE
IN THE CASE BELOW WHETHER OR NOT
THE JUVENILE WAS THE SHOOTER?
IS THAT THE FIRST DECISION THAT
HAS TO BE MADE?
>> UNDER THE NEW STATUTE, YES.
BUT SHE'S NOT UNDER THE NEW
STATUTE.

>> OKAY.
BUT INDULGE ME, US.
>> OKAY.
>> LET'S ASSUME THAT WE SET UP SOMETHING THAT'S IDENTICAL TO THE NEW STATUTE AS A RULE OR AS A DEFERENCE TO THE LEGISLATURE.
SO SHE GOES BACK AND SHE IS ABLE TO -- WHO WAS 15 YEARS AT THE TIME.
YOU WANT TO LOOK AT YOUR NOTES?
THE NOTES FIRST.
>> I'M JUST GOING OVER THE STATUTE TO MAKE SURE I'M ON THE SAME PAGE HERE.
I'M LISTENING TO YOU.
>> OKAY.
THAT THE JUDGE WOULD FIRST MAKE A DETERMINATION AS TO WHETHER OR NOT SHE'S THE SHOOTER.
IS THAT CORRECT?
>> WELL, IT SAYS ACTUALLY KILLED, INTENDED TO KILL OR ATTEMPTED TO KILL.
SO --
>> SINCE ACTUALLY SINCE THAT'S ALSO THE STATUTE' MEANT TO APPLY TO GRAHAM ALSO.
WE'RE TALKING ABOUT MILLER.
I MEAN, SOMEBODY WAS MURDERED.
>> IN THIS CASE?
CORRECT.
>> IT'S NOT AN ATTEMPT.
HE WAS KILLED.
SO IF THEY ARE THE SHOOTER, HOW-- FIRST OF ALL, DOES THE JUDGE MAKE THAT DETERMINATION?
IS THAT SOMETHING THAT HAS TO GO BACK IF IT WASN'T IN THE RECORD FOR A JURY DETERMINATION AS TO WHETHER BEYOND A REASONABLE DOUBT THE JUVENILE WAS THE SHOOTER?
>> I DON'T --
>> CAN'T BE JURY.
WELL, IT COULD.
IT WAS ADULT COURT, PROBABLY.
>> I'M SORRY.
I DON'T KNOW THE FACTS OF THE FALCON CASE.

>> BUT -- SO LET'S ASSUME
THERE'S A FINDING -- MAYBE THERE
WAS OR WASN'T THAT SHE WAS THE
SHOOTER.
>> OKAY.
>> WHAT IS THEN -- UNDER THE
STATUTE WHAT ARE THE JUDGE'S
OPTIONS?
>> THEN I BELIEVE THE JUDGE HAS
TO HAVE THE INDIVIDUALIZED
SENTENCING HEARING.
THEN WE GO TO SECTION 92.1401
AND THAT SETS OUT THE TYPE OF
HEARING THAT THE JUDGE HAS TO
HAVE.
>> AND AS I UNDERSTAND IT, THEY
CANNOT SENTENCE TO LESS THAN 40
YEARS IF THEY FIND THAT THE
JUVENILE WAS THE SHOOTER.
>> CORRECT.
>> OKAY.
WITH UNDER THAT CIRCUMSTANCES A
REVIEW AFTER 25 YEARS.
>> CORRECT.
>> SO WOULD ESSENTIALLY MEAN
THIS 15-YEAR-OLD WOULD BE GIVEN
A SENTENCE THAT WOULD LAST UNTIL
SHE WAS 55 YEARS OF AGE AND
SHE'D HAVE A REVIEW OF HER
SENTENCE WHEN SHE WAS 40.
IS THAT CORRECT?
>> WELL, SHE WAS SENTENCED UNDER
THE 10/20 LIFE STATUTE.
ACTUALLY, NO, THAT WOULDN'T
APPLY TO HER.
SO PROBABLY YES.
IT WOULD APPLY TO MR. HORSLEY,
THOUGH.
>> SO THAT'S THE -- SO THAT'S
MISSFALCON.
MR. HORSLEY GOT LIFE WITHOUT
THE POSSIBILITY OF PAROLE.
UNDER THE --
>> AFTER A HEARING.
>> AFTER A HEARING.
BUT UNDER THE NEW STATUTE, THAT
IS ONLY AN OPTION; THAT IS, LIFE
WITHOUT ANY REVIEW, IF THE
DEFENDANT, THE JUVENILE, IS
FOUND TO HAVE COMMITTED A PRIOR

VIOLENT FELONY?
IS THAT CORRECT?
>> CORRECT.
THEY'RE NOT ENTITLED TO REVIEW.
THERE'S A LIST OF FELONIES.
>> OKAY.
MR. HORSLEY, AS BAD AS THE JUDGE FOUND HE WAS, DID NOT HAVE A PRIOR VIOLENT FELONY, CORRECT?
>> I HAD NOT LOOKED INTO THAT.
>> I'M JUST TRYING TO SEE HOW THE STATUTE OPERATES AND THAT THERE IS A REASON FOR EITHER OF THEM, THAT THEY DO HAVE A CHANCE FOR SOME RELIEF THAT MIGHT PUT THEM OUT BEFORE THE END OF THEIR NATURAL LIFE.
CORRECT?
>> WHICH CONSTITUTIONALLY IS NOT REQUIRED.
>> I -- WELL, AGAIN, WHAT'S REQUIRED IS AN INDIVIDUALIZED SENTENCING HEARING.
>> CORRECT.
>> WHERE THE JUDGE HAS OPTIONS, WHICH WASN'T -- AND THAT'S WHAT WE'RE TALKING ABOUT.
>> RIGHT.
BUT A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE IS NOT UNCONSTITUTIONAL FOR A JUVENILE MURDERER.
AND THESE KIDS ARE MURDERERS.
THEY DIDN'T STEAL A CAR AND GO ON A JOY RIDE.
>> BUT THE LEGISLATURE DECIDED AFTER JULY1 THAT EVEN FOR JUVENILE MURDERERS AT 15 YEARS OLD OR -- HOW OLD WAS MR. HORSLEY?
>> 17.
>> 17.
THAT THEY'RE NOT GOING TO TREAT THEM AS ADULTS, THEY'RE NOT GOING TO HAVE -- IF THEY WERE -- DID THIS -- ACTUALLY, BEFORE ROPER, THEY'D BE ELIGIBLE FOR THE DEATH PENALTY.
>> RIGHT.
>> SO WE'RE TREATING JUVENILES

DIFFERENTLY THAN WE'RE TREATING
ADULTS.
SO I UNDERSTAND THAT THE STATE
FEELS THAT THEY SHOULD BE IN
PRISON FOR THE REST OF THEIR
LIFE.
BUT THE LEGISLATURE NO LONGER
AGREES WITH THAT.
>> ACTUALLY, THE LEGISLATURE,
THE FIRST LINE OF THAT IS SHALL
BE SENTENCED TO LIFE UNLESS.
AND, LIKE I SAID, I'M NOT
ADVOCATING THAT EVERYONE BELONGS
IN JAIL FOR LIFE.
AS I SAID, WE ARE TRYING TO FIND
A REMEDY THAT FITS IN WITH
PRECEDENT, WITH THE CONSTITUTION
AND THAT -- A WORKABLE REMEDY IS
WHAT WE ARE LOOKING FOR.
AND BASED ON PRECEDENT,
CONSTITUTIONAL LAW, THE BEST
REMEDY FOR THAT IS STATUTORY
REVIVAL.
>> SO WHY ISN'T A REMEDY
FASHIONED MORE LIKE THE NEW
STATUTE?
WHAT WOULD BE WRONG WITH THAT
KIND OF REMEDY?
>> BECAUSE THEN THIS COURT WOULD
HAVE TO LEGISLATE.
YOU'RE SAYING IT WOULD BE LIKE
THE NEW STATUTE.
>> WE'RE NOT LEGISLATING.
THE LEGISLATURE ITSELF WAS FACED
WITH TRYING TO FASHION A REMEDY
AND IT ITSELF CAME UP WITH ONE.
SO WHY IF IT HAS NO DETRIMENT TO
THE CRIMINAL DEFENDANT UPON
RESENTENCING, WHY WOULD WE NOT
USE THE VERY FASHION REMEDY THAT
THE LEGISLATURE ITSELF
DETERMINED WAS APPROPRIATE?
>> BECAUSE IT'S CHANGING THE
PENALTY FOR A CRIME, WHICH
VIOLATES THE ABATEMENT CLAUSE.
I THINK THE COURT'S PROHIBITED
FROM DOING THAT.
>> THE SUPREME COURT HAS ALREADY
CHANGED -- SAID THAT THAT
PENALTY THAT WAS AVAILABLE IS

UNCONSTITUTIONAL.
>> THE MANDATORY ONE.
>> SO FOR THOSE PEOPLE WHO ARE IN THE -- CAUGHT BETWEEN HAVING COMMITTED THEIR CRIMES BEFORE JULY OF 2014, SOMETHING HAS TO BE DONE BECAUSE THOSE SENTENCES WERE UNCONSTITUTIONAL.
>> CORRECT, BECAUSE THEY ARE INELIGIBLE FOR PAROLE.
AND MAKING THEM ELIGIBLE FOR PAROLE IS COMPLETELY CONSISTENT WITH THE MILLER DECISION.
IT GIVES THEM AN OPPORTUNITY TO--
>> THE LEGISLATURE NO LONGER PROVIDES FOR.
>> I'M SORRY?
>> I SAY WE'RE MAKING THEM ELIGIBLE FOR PAROLE THAT THE LEGISLATURE NO LONGER PROVIDES FOR, SO ARE WE LEGISLATING IN THAT ARENA?
>> NO.
YOU'RE SIMPLY GOING BACK TO THE PREVIOUS STATUTE WHICH IS, AGAIN, WHAT THE COURTS HAVE ALWAYS DONE WHEN A PORTION OF A STATUTE IS STRICKEN AS UNCONSTITUTIONAL.
>> BUT YOU'RE ASKING US TO CREATE SOMETHING FROM THE BENCH, SOMETHING THAT THE LEGISLATURE A LONG TIME AGO HAS ELIMINATED AND CHOSEN NOT TO REVIVE.
>> THEY ELIMINATED IT, BUT IT CAN BE REVIVED.
>> WELL, IT COULD, BUT YOU'RE ASKING US TO DO IT INSTEAD OF THE LEGISLATURE.
THAT'S THE PROBLEM I'M HAVING.
>> NO.
THEY ELIMINATED THAT PORTION OF THE STATUTE THAT SAYS SHALL BE ELIGIBLE FOR PAROLE.
THE UNITED STATES SUPREME COURT SAYS THAT IS UNCONSTITUTIONAL.
SO WE HAVE TO GO BACK TO A CONSTITUTIONAL STATUTE, WHICH WOULD BE THE 1993 VERSION, WHICH

IS SHALL BE ELIGIBLE FOR PAROLE.
>> WE ELIMINATED SHALL NOT BE --
BASICALLY THEY'RE NOT ELIGIBLE
FOR PAROLE.
>> THAT'S WHAT THEY ADDED IN THE
1994 STATUTE, YES.
>> RIGHT.
AND SO THE SUPREME COURT
ELIMINATED THAT PORTION, THAT
YOU CANNOT HAVE THE SENTENCE
WHERE IT'S MANDATORY THAT YOU
SERVE A LIFE SENTENCE WITH NO
OTHER CONSIDERATION.
>> WELL, YOU STILL CAN, BUT YOU
HAVE TO HAVE AN INDIVIDUALIZED
SENTENCING HEARING FIRST.
AND, YOU KNOW --
>> COMES BACK TO -- I STILL
CANNOT UNDERSTAND HOW YOU CAN
POSSIBLY HAVE AN INDIVIDUALIZED
SENTENCING HEARING AND STILL
HAVE A MANDATORY SENTENCE LIKE
THE REVISION WOULD BE.
>> WELL, YOU CAN UNDER THE NEW
STATUTE.
>> YOU CAN'T -- BUT YOU ARE --
UNDER THE NEW STATUTE, YOU ARE
CONSIDERING THESE FACTORS, AND
YOU HAVE AT LEAST A RANGE OF
SENTENCING THAT YOU CAN GIVE A
JUVENILE DEFENDANT.
ISN'T THAT TRUE UNDER THE NEW
STATUTE?
>> YES.
BUT LIFE WITH PAROLE AND LIFE
WITHOUT PAROLE IS A RANGE.
THERE ARE STATES OUT THERE,
THAT'S HOW THEY HAVE SOLVED
THEIR GRAHAM PROBLEM, THEIR
MILLER PROBLEM.
THEY MAKE THESE JUVENILES
ELIGIBLE FOR PAROLE AND THAT
RENDERS THE PUNISHMENT
CONSTITUTIONAL.
>> DID THE LEGISLATURE DO THAT?
DO WE HAVE ANY STATE WHICH HAS
ENACTED A STATUTE SIMILAR TO
FLORIDA ENACTED WHERE THE
SUPREME COURT OF THAT STATE
REFUSED TO ACTUALLY CONSIDER

THAT STATUTE IN FASHIONING A
REMEDY?
>> THAT I DON'T KNOW.
I KNOW UNDER THE GRAHAM CASE, I
THINK LIKE LOUISIANA AND ONE OF
THE OTHER STATES MADE THEIR
JUVENILES ELIGIBLE FOR PAROLE IN
ORDER TO MAKE THEIR SENTENCES
PASS CONSTITUTIONAL MUSTER.
AGAIN, IT'S ONLY A LIFE --
MANDATORY LIFE-WITHOUT-PAROLE
SENTENCE THAT IS
UNCONSTITUTIONAL.
A LIFE SENTENCE WITHOUT PAROLE
IS CONSTITUTIONAL.
A LIFE SENTENCE WITH PAROLE IS
CONSTITUTIONAL.
>> I GUESS AGAIN MAYBE WE'RE
GOING TO BEAT A DEAD HORSE, BUT
SINCE MILLER SAYS THAT LIFE IS
-- I MEAN, THEY GO THROUGH SO
MANY THINGS ABOUT A JUVENILE AND
HOW IT SHOULD BE THE RAREST OF
CASES WHERE YOU LOCK THE DOOR
AND THROW AWAY THE KEY.
SO THE PRESUMPTION IS NOT LIFE.
THE PRESUMPTION IS THAT BECAUSE
OF EVERYTHING THAT THE U.S.
SUPREME COURT SAID THAT WAS
ENTERED INTO THE RECORD ABOUT
BRAIN DEVELOPMENT THAT WE'RE
GOING TO TREAT JUVENILES
DIFFERENTLY.
AND IT SEEMS TO ME THIS
LEGISLATURE, AFTER MANY YEARS OF
WRESTLING WITH IT, DECIDED THAT
THAT WAS GOOD FOR THIS STATE AND
FOR THE JUVENILES OF THIS STATE.
I MEAN, -- YOU KNOW, SO I DON'T
KNOW WHAT HAPPENS IN LOUISIANA
OR ALL THOSE OTHER STATES, BUT
IT SEEMS TO ME THAT I WOULD BE
SURPRISED TO FIND A STATE THAT
JUST DISREGARDED A RECENT
ENACTMENT OF THE LEGISLATURE IN
ORDER TO GO BACK 20 YEARS TO PUT
INTO EFFECT A SYSTEM THAT, AS
JUSTICE POLSTON SAID, IS
ESSENTIALLY RELEGATED TO SOME OF
THE -- YOU KNOW, PEOPLE THAT HAD

SENTENCES OF GETTING PAROLE
AFTER 25 YEARS, ADULTS.
SO, YOU KNOW, WE MAYBE ARE GOING
AROUND IN A CIRCLE ON THIS.
YOU'RE SAYING WE
CONSTITUTIONALLY CAN'T DO IT.
>> CORRECT.
>> AND WE'RE SORT OF SAYING BUT
MILLER'S THERE SAYING WE GOT TO
DO SOMETHING.
>> AND STATUTORY REVIVAL FITS
COMPLETELY WITHIN WHAT MILLER
HELD IS WHAT OUR POSITION IS.
AND IT'S THE BEST.
AND AS FAR AS FOLLOWING
PRECEDENT AND THE CONSTITUTION.
IF THERE'S NO FURTHER QUESTIONS,
THANK YOU.
>> REBUTTAL IN STATE V FALCON.
>> MAY IT PLEASE THE COURT,
FIRST, THE RECORD AT PAGE 118
CONTAINS THE VERDICT OF THE JURY
IN MISS FALCON'S CASE AND
INDICATES THAT THE JURY FOUND
THAT SHE WAS NOT IN POSSESSION
OF A FIREARM.
IN TERMS OF THE DISTINCTION THAT
THE STATE HAS MENTIONED IN TERMS
OF PIPELINE AND RETROACTIVITY, I
WOULD POINT OUT TO THE COURT
THAT THE STATE HAS CONCEDED IN
THE SUPPLEMENTAL BRIEFING THAT
THERE IS NO PRINCIPAL
DISTINCTION BETWEEN THE TWO.
>> WELL, THEY'RE CONSISTENT.
THEY SAY LIFE -- THE OPTION OF
LIFE WITH PAROLE IS WHAT WE
SHOULD DO FOR THOSE IN THE
PIPELINE.
AND IF WE WERE TO FIND IT
RETROACTIVE.
SO THEY'RE BEING CONSISTENT.
>> RIGHT.
WELL, THEIR REVIVAL THEORY IS
NOT REVIVAL.
THEIR REVIVAL THEORY USES THREE
STATUTES AND GOES TO THE STATUTE
UNDER WHICH THE JUVENILE WAS
SENTENCED, STRIKES THE WORD
MANDATORY, TAKES OUT A PERSON'S

ADULT, JUVENILES, FAST FORWARDS
JUVENILES TO THE NEW STATUTE
STRUCTURE, GIVES THEM THE
INDIVIDUALIZED HEARING THAT'S
REQUIRED IN THE 2014 STATUTE,
BUT DOESN'T GIVE THEM THAT
REMEDY BECAUSE THEN THEY GO BACK
TO THE CURRENT -- THE STATUTE IN
WHICH THEY WERE SENTENCED.
THEY USE THAT STATUTE TO SAY,
YES, YOU CAN GET LIFE WITHOUT
PAROLE.
BUT OF COURSE WE KNOW THAT'S FOR
THE UNCOMMON OR RARE CHILD.
SO FOR THE COMMON CHILD, WE THEN
GO BACK TO THE 1993 STATUTE AND
REVIVE LIFE WITH A MINIMUM
MANDATORY 25.
SO THIS IS NOT REVIVAL.
THIS IS JUDICIAL REWRITING.
THREE STATUTES.
IT'S NOT WHAT REVIVAL IS MEANT
TO DO.
AND IT'S CERTAINLY NOT THE
INTENT OF THE LEGISLATURE.
>> COULD YOU ADDRESS THE STATE'S
POSITION ON ABATEMENT?
>> ABSOLUTELY.
ARTICLE 10, SECTION 9, WHILE IT
BOUND THE LEGISLATURE TO MAKE
THEIR STATUTE PROSPECTIVE, IT IN
NO WAY BINDS THIS COURT.
FIRST OF ALL, THIS COURT HAS THE
OBLIGATION TO CONSTRUE A
STATUTORY PROVISION IN OUR
CONSTITUTION.
THE SAVINGS CLAUSE, WHICH
ACTUALLY WAS FIRST PROMULGATED
IN OUR CONSTITUTION -- AND IT'S
UNUSUAL TO HAVE A SAVINGS CLAUSE
IN A STATE CONSTITUTION.
BUT IT STARTED IN THE 1880s
AND THE PURPOSE WAS TO EXCLUDE
AN INDIVIDUAL ESCAPING
PUNISHMENT WHEN A NEW STATUTE
WAS PASSED.
SO IT'S TO ENFORCE THE STATUTE
IN EFFECT AT THE TIME OF THE
COMMISSION OF THE CRIME.
BUT WE CAN'T DO THAT HERE.

THAT'S THE WHOLE REASON WE'RE HERE.
THE STATUTE IN EFFECT AT THE TIME MISSFALCON COMMITTED HER CRIME VIOLATED THE 8TH AMENDMENT.
IT'S UNCONSTITUTIONAL.
SO WE CAN'T GO BACK TO THAT STATUTE.
AND IN FACT THE STATE ISN'T SUGGESTING WE GO TO THAT STATUTE.
THEY'RE NOT SUGGESTING THAT WE USE MANDATORY LIFE WITHOUT PAROLE.
BECAUSE WE CAN'T.
>> WELL, CAN YOU GO BACK UNDER REVIVAL THEORY TO THAT PORTION OF THE EXISTING STATUTE THAT WOULD BE VALID, ELIMINATING ONLY THOSE UNCONSTITUTIONAL PROVISIONS?
>> WELL, CLASSIC REVIVAL WE WOULD GO BACK 20 YEARS TO THE 1993 STATUTE --
>> I UNDERSTAND.
>> -- AND GIVE A SENTENCE OF LIFE WITH A MINIMUM MANDATORY 25 YEARS.
>> YOU DIDN'T RESPOND TO MY QUESTION.
CAN YOU NOT UNDER REVIVAL THEORY GO BACK TO THE PRIOR STATUTE, ELIMINATING ONLY THAT PROVISION THAT IS UNCONSTITUTIONAL, BUT APPLYING THE REST OF THE STATUTE?
CAN YOU DO THAT?
>> YES AND NO.
>> WELL, THAT GIVES ME A GREAT ANSWER.
>> I THINK MILLER CONTEMPLATES AN INDIVIDUALIZED HEARING.
I THINK THAT --
>> WELL, YOU MAY HAVE TO ADD SOMETHING ON THAT'S REQUIRED BY A HIGHER AUTHORITY.
BUT --
>> AND I THINK REVIVAL -- THE WHOLE PURPOSE OF REVIVAL IS TO

EFFECTUATE LEGISLATIVE INTENT.
AND IF THERE'S ONE THING THAT THE FLORIDA LEGISLATURE HAS MADE CLEAR, IN INNUMERABLE STATUTES, SINCE THE TIME OF THE 1993 STATUTE -- IN FACT, EVEN BEFORE THAT THE LEGISLATURE WAS ELIMINATING PAROLE.
>> WELL, THAT CREATES A PROBLEM, AS JUSTICE POLSTON HAS BROUGHT TO THE TABLE.
I MEAN, THAT'S THE WHITE ELEPHANT IN THE ROOM.
THERE'S NO PAROLE COMMISSION.
YOU EXPECT THIS COURT TO ORDER THE STATE OF FLORIDA TO IMPLEMENT A FULLY OPERATIONAL PAROLE SYSTEM.
>> AND I THINK CERTAINLY IF THE LEGISLATURE WANTED TO HAVE A PAROLE SYSTEM AGAIN, THE 2014 STATUTE WOULD REFLECT THAT.
BUT IT CLEARLY DOES NOT.
THAT'S CLEARLY NOT WHAT THEY INTEND.
AND TO JUST CONTINUE TO ANSWER THE QUESTION IN TERMS OF THE ABATEMENT, THE SAVINGS CLAUSE, EVEN IF ARTICLE 10, SECTION 9 APPLIED TO THIS SITUATION -- AND WE SUBMIT IT DOES NOT.
>> WHY NOT?
>> BECAUSE WE CAN'T GO BACK TO THE STATUTE IN EFFECT AT THE TIME OF THE COMMISSION OF THE OFFENSE.
THAT STATUTE WAS UNCONSTITUTIONAL.
AND THAT'S THE BASIS FOR ARTICLE 10, SECTION 9.
>> THERE'S NO ALTERNATIVE TERM OF YEAR SENTENCING THAT COULD BE APPLIED THERE, RIGHT?
>> IN THAT STATUTE.
THAT'S EXACTLY RIGHT.
AND EVEN IF IT COULD APPLY, WE STILL WOULD HAVE TO RETURN THEN TO THE SUPREMACY CLAUSE, WHICH BINDS JUDGES TO ENFORCE THE UNITED STATES CONSTITUTION, ANY

STATE STATUTE OR CONSTITUTIONAL PROVISION NOTWITHSTANDING.
SO IN LIGHT OF THE SUPREMACY CLAUSE, IN LIGHT OF ALL REASONS STATED, WE'D ASK THE COURT TO HOLD MILLER RETROACTIVE AND TO INSTRUCT JUDGES TO FOLLOW THE PROCEDURE THAT IS DESIGNATED IN THE 2014 STATUTE.
>> THANK YOU.
REBUTTAL IN HORSLEY?
>> THE ATTORNEY GENERAL ARGUES THAT -- WELL, CONCEDES ACTUALLY THAT MILLER APPLIES TO MR. HORSLEY.
AND I BELIEVE IT'S INCONSISTENT, THEREFORE, FOR THE STATE TO ARGUE THAT REVIVAL OF A 20-YEAR OLD STATUTE WHICH HAS NOTHING TO DO WITH MILLER COULD BE PART AND PARCEL OF THIS.
>> ISN'T THE ARGUMENT THAT THAT IS THE PROVISION PURSUANT TO WHICH AN INDIVIDUAL WOULD HAVE RECEIVED WHATEVER PUNISHMENT OR SENTENCE WOULD HAVE BEEN APPLIED AT THE TIME, WHETHER IT'S A YEAR OR 20 YEARS.
ISN'T IT?
>> YES, YOUR HONOR.
>> I'M TRYING TO UNDERSTAND.
I MEAN, WHY WOULD YOU GO?
YOU'RE SAYING IT'S NOT REVIVAL.
>> RIGHT.
>> THE ONLY AUTHORITY IN EXISTENCE.
>> WELL, I DON'T SEE HOW THE COURT CANNOT LOOK AT THE LEGISLATIVE INTENT THAT'S MOST RECENTLY EXPRESSED.
ALSO, --
>> I MEAN, THAT'S AFTER THE FACT.
SO THAT THROWS YOU INTO A QUANDARY -- I MEAN, I CAN SEE SOME REAL DANGEROUS RAMIFICATIONS FROM HOLDING THAT A NEW STATUTE IS GOING TO APPLY RETROACTIVELY HERE AND WHERE IT'S GOING TO GO DOWN THE ROAD.

I MEAN, WE HAVE SUCH A UNIQUE CIRCUMSTANCE THAT IT SEEMS LIKE EVERY TURN WE HAVE TO ADD SOMETHING AND THERE'S NO CLEAR OR CLEAN WAY TO DO THIS.
>> WELL, ACTUALLY, YOUR HONOR, IN THE WASHINGTON CASE, JUDGE WOLF REASONED THAT A TERM OF YEARS IS THE MOST APPROPRIATE OPTION AVAILABLE UNDER MILLER BECAUSE IT DOES NOT REQUIRE REWRITING OF ANY STATUTE BY THE COURT AND THAT A LIFE SENTENCE IS BASICALLY A TERM OF YEARS EQUIVALENT TO LIFE.
AND SO A PERSON COULD BE SENTENCED TO A TERM OF YEARS BECAUSE THAT'S NECESSARILY INCLUDED WITHIN THE PURVIEW OF LIFE.
>> SO WE GOT TO SOME LESSER OFFENSE?
IS THAT HOW WE GET THERE, TO A TERM OF YEARS?
>> I DON'T THINK HE INCLUDES THAT IN THE REASONING.
I DON'T THINK THAT'S NECESSARILY PART OF IT.
>> HOW DO YOU HAVE A TERM OF YEARS LOOKING BACK AT THE STATUTE IN EFFECT AT THE TIME THE CRIME WAS COMMITTED, WHERE A TERM OF YEARS WAS NOT PROVIDED, HOW DO YOU GET THERE FROM A SENTENCING ASPECT?
>> WELL, TWO WAYS.
WE NOW HAVE THE BENEFIT OF LEGISLATIVE INTENT.
AND LOOKING AT JUDGE WOLF'S REASONING IN WASHINGTON.
THE OTHER THING IS MILLER MUST APPLY --
>> HOW DID JUDGE WOLF IN THAT CASE SUGGEST WE GET THERE?
>> I'M SORRY?
>> HOW DID JUDGE WOLF ARTICULATE HOW WE GET THERE BASE, BASED UPON WHAT STATUTORY PROVISIONS?
>> HE WAS JUST RELYING ON THE REASONING ABOUT WHAT LIFE

INCLUDES.
>> SINCE LIFE NECESSARILY
INCLUDES SOME TERM OF YEARS, WE
CAN MAKE UP WHATEVER WE WANT TO?
>> EXTRAPOLATE.
>> IS THAT THE IDEA?
>> I DON'T THINK HE MEANT IT TO
GO QUITE THAT FAR, BUT THAT A
TERM OF YEARS WOULD BE AN OPTION
THAT THE FIRST DISTRICT
COURT OF APPEALS--
[INAUDIBLE]
AFFIRMED SOME SENTENCES OF
40 YEARS.
>> HOW WOULD YOU EVEN DETERMINE
A TERM OF YEARS?
I MEAN, WE JUST ARBITRARILY SAY
25 YEARS?
OR SHOULD WE LOOK AT THE STATUTE
AND SAY, YOU KNOW, THEY ARE
TALKING ABOUT 40, SO MAYBE IT
SHOULD BE -- I MEAN, UNDER THAT
THEORY I'M NOT SURE HOW YOU
WOULD EVEN DETERMINE.
>> YOUR HONOR, I DON'T THINK THE
COURT CAN POSSIBLY IGNORE THE
NEW STATUTE.
>> I'M SORRY.
I CAN'T HEAR YOU.
>> I DON'T THINK THAT THE COURT
CAN POSSIBLY IGNORE THE NEW
STATUTE IN TERMS OF THE
LEGISLATIVE INTENT.
IT'S QUITE CLEAR.
>> SO WE WOULD USE THAT STATUTE
TO DETERMINE A TERM OF YEARS.
>> YES, YOUR HONOR.
I ALSO WANTED TO POINT OUT THAT
IN THE ATTORNEY GENERAL'S
SUPPLEMENTAL RESPONSE BRIEF
THEY'D ALSO ARGUED THAT THE
LEGISLATIVE INTENT OF THE NEW
LAW APPLIES TO THEIR ARGUMENT
THAT MR. HORSLEY--
[INAUDIBLE]
FOR LIFE.
AND SO THERE'S A LITTLE
INCONSISTENCY IN THE ARGUMENT, I
THINK, THAT BOTH SIDES TO SOME
DEGREE AGREE THAT THE NEW LAW IS

A GOOD EXPRESSION OF LEGISLATIVE
INTENT.
>> LET ME ASK YOU ABOUT
MR. HORSLEY SPECIFICALLY.
WHEN HE HAD HIS NEW SENTENCING,
RIGHT, HE HAD A NEW SENTENCING
PROCEEDING.
>> WELL, HE HAD A MOTION TO
CORRECT HEARING.
>> I KNOW YOU SAY BUT THEN THEY
PROCEEDED ON TO -- HE SAID I
WILL CORRECT THIS AND PROCEEDED
ON TO THE SENTENCING HEARING,
CORRECT?
>> YES, YOUR HONOR.
>> AT THAT SENTENCING HEARING,
THE TRIAL JUDGE GO THROUGH THOSE
INDIVIDUAL FACTORS THAT HAVE
BEEN TALKED ABOUT?
>> NOT ALL OF THEM, YOUR HONOR,
AND HE DIDN'T HAVE THE BENEFIT
OF ANY EVIDENCE TO SUPPORT SOME
OF THOSE FACTORS.
HE USED TERMS LIKE COLD AND
CALCULATED IN APPLYING -- SO THE
TRIAL JUDGE WAS APPLYING DEATH
PENALTY FACTORS WHICH ARE NOT
INCLUDED IN THE FACTORS TO BE
CONSIDERED WHEN SENTENCING A
JUVENILE UNDER MILLER.
THERE WAS NO JURY FINDING THAT
MR. HORSLEY HAD PREMEDITATED OR
CALCULATED ANYTHING.
AND HE NEVER ADMITTED THAT.
MILLER FOUND THAT
INCORRIGIBILITY, IS INCONSISTENT
WITH YOUTH.
AND THE JUDGE MAY IMPOSE ANY
SENTENCE BASED SOLELY ON FACTS
REFLECTED IN A JURY VERDICT OR
ADMITTED BY THE DEFENDANT.
NEITHER OF THOSE SITUATIONS IS
PRESENT IN HORSLEY.
AND IT WAS NOT AN ADEQUATE
HEARING.
HE DIDN'T HAVE THE OPPORTUNITY
TO CONTINUE -- I MEAN, THE
ATTORNEY WAS COMING INTO THIS
THINKING IT'S A HEARING ON THE
MOTION TO CORRECT.

NOW, WHETHER IT'S GOING TO BE GRANTED, AND THINKING THAT HE HAD THE ABILITY TO CONTINUE AT LEAST FOR INTO THE NEXT WEEK AND PRESENT SOME FURTHER EVIDENCE.
AND THAT DIDN'T HAPPEN.
HE JUST DIDN'T GET AN ADEQUATE HEARING.
HE DIDN'T GET A FULL AND FAIR HEARING.
AND HE DIDN'T -- THE JUDGE ALSO DIDN'T THINK HE COULD CONSIDER A TERM OF YEARS, WHICH IS CONTAINED IN MILLER AS AN OPTION.
AND SO FOR THAT REASON, WE'RE REQUESTING THAT HORSLEY BE GIVEN A NEW SENTENCE, BE GIVEN A PROPER, FULL, FAIR, 8TH AMENDMENT, MILLER-COMPLIANT HEARING.
>> THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR TEN MINUTES.
>> ALL RISE.