

Mandatory sentence of life without parole violated Eighth Amendment rights of juvenile who was 15 years old at the time of the crime. [Turner v. State] (13-5-3)

On August 27, 2013, the Houston (1 Dist.) Court of Appeals remanded a Capital Murder conviction of a certified juvenile who was 15 at the time of the offense for a new sentencing hearing in accordance with Miller and state law as recently revised in response to Miller.

¶ 13-5-3. **Turner v. State**, No. 01-11-00839-CR, --- S.W.3d ----, 2013 WL 4520897, Tex.App.-Hous. (1 Dist.), 8/27/13.

Facts: A jury convicted appellant Litrey Demond Turner of capital murder, and in accordance with the mandatory sentencing statute that was in effect at the time of sentencing, the trial court sentenced him to life in prison without the possibility of parole.¹ In three issues, Turner challenges his sentence arguing that because he was only 15 years old at the time of the offense, his sentence is unconstitutional. In two additional issues, he challenges the legal sufficiency of the evidence to support a conviction for either capital murder or murder, arguing that there is no evidence that he intended to kill the complainant.

Held: Reversed and remanded for a new disposition hearing.

Opinion: In his first three issues, Turner challenges the sentence he received as unconstitutional and in violation of the Eighth Amendment’s prohibition of cruel and unusual punishment. In his first issue, he argues that *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), applies retroactively to this case. *Miller* held that a mandatory sentence of life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on “cruel and unusual punishments.” *Id.* at 2460. Accordingly, in his second issue, Turner argues that his mandatory sentence of life without parole violated his Eighth Amendment rights because he was 15 years old at the time of the crime. Turner’s third issue argues that even if the possibility of parole had been permitted under the statute applicable at the time of his sentencing hearing, a mandatory life sentence would still be unconstitutional. Turner thus argues that the sentencing statute is unconstitutional as applied to him and that this court cannot amend his sentence and render judgment that his sentence be life with the possibility of parole. The State concedes error on Turner’s first two issues. Specifically, “[t]he State concedes *Miller* applies to Turner’s case, and Turner should be resentenced.” We agree that *Miller* is controlling and that the sentencing statute is unconstitutional as applied to Turner. We therefore sustain Turner’s first two issues.

Both Turner and the State pray for remand for a new sentencing hearing. Accordingly, we remand this case for a new sentencing hearing in accordance with *Miller* and state law as recently revised in response to *Miller*. See Act of May 28, 2005, 79th Leg. , R.S., ch. 787, § 1, sec. 12.31, 2005 Tex. Gen. Laws 2705 (former version of Tex. Penal Code Ann. § 12.31), amended by Act of July 11, 2013, 83rd Leg.2d C.S., ch. 2 (S.B.2).

Conclusion: We reverse the trial court’s judgment as to punishment, and we remand for a new sentencing hearing.