

Sentence of life without parole reformed to life imprisonment for juvenile. [Lewis v. State](13-3-5)

On May 29, 2013, the Amarillo Court of Appeals found that appellant was younger than eighteen years of age at the time of the offense and pursuant to the Supreme Court's mandate in *Miller v. Alabama*, his sentence of life without parole was reformed to a sentence of life imprisonment.

¶ 13-3-5. **Lewis v. State**, No. 07-11-00444-CR, --- S.W.3d ----, 2013 WL 2360146 (Tex.App.-Amarillo, 5/29/13).

Facts: By opinion and judgment dated April 17, 2013, this Court affirmed the capital murder conviction and sentence of life without parole of Appellant, Derrick Lynn Lewis [See *Lewis v. State*, No. 07-11-0444-CR, --- S.W.3d ----, Tex. Juv. Rep. Vol. 27, No. 2 ¶ 13-2-9, 2013 WL 1665835 (Tex.App.-Amarillo, 4/17/13)]. By motion for rehearing, he contends his sentence of life without parole is unconstitutional. Appellant asserts the issue raised by his supplemental brief was not disposed of by our earlier opinion, as required by Rule 47.1 of the Texas Rules of Appellate Procedure. That issue challenges the constitutionality of his sentence under *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), a decision handed down by the United States Supreme Court subsequent to the filing of his original brief. His motion does not challenge this Court's disposition of his original three issues. Having considered the merits of his supplemental issue, we grant the motion for rehearing, withdraw our original opinion and judgment, and issue this opinion in lieu thereof.

Held: Conviction affirmed, Punishment reformed to delete the phrase “without parole.”

Opinion: In his Supplemental Brief, Appellant contends that because he was sixteen years old when his crime was committed, and because his case was transferred to the trial court under section 54.02 of the Texas Family Code, assessment of the sentence of life without parole violates the Eighth Amendment to the United States Constitution. In support of his claim, Appellant cites *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), FN8 decided June 25, 2012, in which the United States [19] Supreme Court held that, as to a criminal defendant who was under the age of eighteen at the time when he committed a capital crime, the mandatory imposition of life without the possibility of parole violates the Eighth Amendment's prohibition of “cruel and unusual punishments .”

FN8. The *Miller* opinion actually addresses two separate cases, No. 10–9646, *Miller v. Alabama* and No. 10–9647, *Jackson v. Hobbs*.

Miller, a fourteen year old at the time of his offense, was charged with murder in the course of arson, a capital offense under Alabama law. His case was removed to adult court and, following conviction, the trial court imposed the statutorily mandated punishment of life without parole in accordance with Alabama law. 132 S.Ct. at 2463. *Jackson*, also fourteen years old at the time of his offense, was charged with capital felony murder and aggravated robbery in

connection with the robbery of a video store. An Arkansas jury convicted him of both crimes and the trial court imposed a mandatory sentence of life imprisonment without the possibility of parole in accordance with Arkansas law. *Id.* at 2461. In both cases, the Supreme Court held that a sentencing scheme requiring the mandatory imposition of a life sentence without parole, in a homicide case where the criminal defendant was under the age of eighteen at the time the crime was committed, violated the Eighth Amendment's prohibition of cruel and unusual punishment. *Id.* at 2460.

Here, there is evidence in the record that Appellant was sixteen years old when he committed the instant offense, and the State does not contend otherwise. The offense was committed on or about August 28, 2008, and the Clerk's Record contains a Waiver of Jurisdiction and Order of Transfer to Criminal District Court wherein it is stated that the Appellant's date of birth is August 29, 1991. In view of the State's [20] implied concessions and the documentation reflecting Appellant's birthdate, the record adequately reflects that Appellant was younger than eighteen years of age at the time of the offense and his case was transferred to the trial court pursuant to section 54.02 of the Texas Family Code. Accordingly, Appellant's supplemental issue is sustained.

Conclusion: Pursuant to the Supreme Court's mandate in *Miller*, Appellant's sentence of life without parole is hereby reformed to a sentence of life imprisonment. TEX.R.APP. P. 43.2. See *Salinas v. State*, 163 S.W.3d 734 (Tex.Crim.App.2005); *Herrin v. State*, 125 S.W.3d 436, 444 (Tex.Crim.App.2002); *Collier v. State*, 999 S.W.2d 779, 782 (Tex.Crim.App.1999). As reformed, the trial court's judgment is affirmed.