A juvenile whose life without parole penalty has been reformed is not entitled to a new punishment hearing. [Lewis v. Nolley](14-3-2)

On April 30, 2014, the Texas Criminal Appeals held that a juvenile whose "life without parole" sentence has been modified to "life," is not entitled to an individualized punishment hearing before the new sentence can be assessed.

¶ 14-3-2. **Lewis v. Nolley**, No. PD—0833-13, PD—0999-13, 428 S.W.3d 860 (Tex.Crim.App., 4/30/14).

Facts: On or about August 28, 2008, Appellant Lewis killed Jaime Lujan while in the course of committing or attempting to commit retaliation against Lujan's coworker, who had provided police with information that led to the arrest of Lewis's friend. Appellant Lewis was born on August 29, 1991, meaning that he was sixteen on the date of the offense. He was originally detained as a juvenile but was later certified to be tried as an adult. See TEX. FAM.CODE ANN. § 54.02. He was eventually convicted of capital murder and assessed a mandatory sentence of life imprisonment without the possibility of parole as required by the then-current version of Section 12.31 of the Penal Code. TEX. PENAL CODE ANN. § 12.31(a) (2008) ("An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the institutional division for life without parole."). He was not afforded the opportunity to present mitigating evidence at a punishment hearing because life imprisonment without parole was automatic under the statutory scheme. Lewis filed a timely appeal, and the appellate court affirmed his conviction. Lewis v. State, No. 07–11–0444–CR (Tex.App.-Amarillo Apr. 17, 2013), withdrawn by Lewis v. State, 402 S.W.3d 852 (Tex.App.-Amarillo 2013). In 2013, after the Supreme Court announced its decision in Miller, he filed a supplemental brief contending that his life-without-parole sentence was unconstitutional in light of Miller v. Alabama, 567 U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (holding mandatory life without parole cruel and unusual punishment when imposed on juvenile offenders). The appellate court reaffirmed appellant Lewis's conviction but reformed his sentence to life imprisonment. Lewis v. State, 402 S.W.3d 852, 867 (Tex.App.-Amarillo 2013).

Appellant Nolley was also sixteen years old when he shot and killed Larry Ayala during a robbery and home invasion on July 27, 2010. His case was also transferred from the juvenile district court to the criminal district court. See TEX. FAM.CODE ANN. § 54.02. On April 19, 2012, a jury convicted appellant Nolley of capital murder. Without a hearing at which to present mitigating evidence, appellant Nolley was sentenced to life imprisonment without the possibility of parole. On appeal, he challenged the legality of his sentence under the 2009 version of Section 12.31(a) of the Texas Penal Code and Miller v. Alabama. The appellate court reformed appellant Nolley's sentence to life imprisonment to comport with Section 12.31(a) of the Penal Code and Supreme Court precedent but affirmed the trial court's judgment in all other respects. Nolley v. State, No. 14–12–00394–CR, 2013 WL 3326796, at *5 (Tex.App.-Houston [14th Dist.] Jun. 27, 2013) (mem. op., not designated for publication).

Both appellants filed petitions for discretionary review, claiming that their reformed sentences are unconstitutional because Miller requires individualized sentencing of juvenile offenders. Appellant Nolley contends, more specifically, that Miller mandates individualized sentencing when juveniles in Texas face life imprisonment because it is the most severe punishment for which juveniles are eligible in this state.

Held: Affirmed

Opinion: Appellants argue that they are entitled to individualized sentencing hearings before being assessed sentences of life imprisonment because they were juveniles at the time of their offenses. This is not what Miller requires. Miller does not entitle all juvenile offenders to individualized sentencing. It requires an individualized hearing only when a juvenile can be sentenced to life without the possibility of parole. After the reformations by the appellate courts, appellants are not sentenced to life without parole, and under Section 12.31 of the Penal Code, juvenile offenders in Texas do not now face life without parole at all. Therefore, appellants' cases do not fall within the scope of the narrow holding in Miller.

Appellant Nolley argues that, because Section 12.31 makes life imprisonment the most severe penalty available to juveniles in the state of Texas, he is entitled to an individualized hearing before he can be assessed that sentence. He cites the Supreme Court's language that "Graham, Roper, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles," Miller, 132 S.Ct. at 2475, for the proposition that courts should read Miller to apply to their jurisdiction's strictest penalty. Appellant's reliance is misplaced. The sentence immediately following that one reiterates that mandatory life imprisonment without the possibility of parole for juvenile offenders violates the principle of proportionality and, accordingly, the Eighth Amendment's ban on cruel and unusual punishment. In light of the simultaneous references to Graham and Roper, the United States Supreme Court's choice of "the harshest possible punishment," rather than "a state's harshest punishment," indicates that it was referring to sentencing a juvenile to life without parole. Finally, and most devastating to appellant's cause, is another sentence from the Miller opinion: "We therefore hold that mandatory 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.' " Miller, 132 S.Ct. at 2460. Appellant's suggested interpretation is broader than the Supreme Court's choice of language supports.

Conclusion: Because the holding in Miller is limited to a prohibition on mandatory life without parole for juvenile offenders, appellants are not entitled to punishment hearings. We therefore affirm the judgment of the appellate courts.