

State v. Comer, 249 N.J. 359 (2022)

In Comer, the New Jersey Supreme Court analyzed two consolidated cases involving two juvenile offenders that were tried as adults, convicted of murder, and sentenced to lengthy periods of parole ineligibility. The Court held that the state's murder statute, requiring a mandatory minimum of thirty-years imprisonment, is unconstitutional as applied to juveniles and that, as a result, juvenile offenders sentenced under the murder statute are permitted to request a review of their sentence after serving 20 years. Rutgers' very own Criminal and Youth Justice Clinic submitted an amicus curiae brief in this case in support of the petitioners.

In 2000, 17-year-old James Comer and two others participated in four armed robberies. During the second robbery, his accomplice shot and killed a robbery victim. Comer was convicted of felony murder, among other things. This sentence included a term of 30 years imprisonment without the possibility of parole for first-degree felony murder, consistent with the murder statute, N.J.S.A. 2C:11-3(b)(1). The court also imposed three consecutive terms of 15 years' imprisonment.

In 2009, James Zarate was convicted of participating in a murder with his then-18-year-old brother when he was 14 years old. For the murder conviction, he was first sentenced to life imprisonment, subject to an 85% period of parole ineligibility under the No Early Release Act (NERA). Both Comer and Zarate argued that their sentences amounted to cruel and unusual punishment and asked the Court to find that the thirty-year minimum requirement of the murder statute, as it applies to juveniles, was unconstitutional under both the U.S. and New Jersey State Constitutions. The Court anticipated such a request in 2017 and asked the Legislature to consider amending the statute to provide for a review of juvenile sentences with lengthy periods of parole ineligibility. State v. Zuber, 227 N.J. 422, 451-53 (2017). However, in the absence of legislative action after four plus years, the Court determined that it was necessary to address this significant constitutional issue.

The Court analyzed whether the statutory framework when applied to sentencing juveniles amounted to cruel and unusual punishment using the following three part-test: (1) whether the punishment for the crime conforms with contemporary standards of decency; (2) whether the punishment is grossly disproportionate to the offense; and (3) whether the punishment goes beyond what is necessary to accomplish any legitimate penological objective. The Court determined that the sentencing provision as applied to juveniles failed each part of the test.

However, rather than striking the whole statute down as unconstitutional, the Court stated that "allowing minors a later opportunity to show they have matured, to present evidence of their rehabilitation, and to try to prove they are fit to reenter society would address the problem posed." In other words, as articulated by the Court, it added a lookback provision, permitting juvenile offenders sentenced under the murder statute to petition for a review and possible reduction of their sentence after serving 20 years in prison.

At the resentencing hearing the judge must assess the factors set forth by the U.S. Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012), designed to consider the "mitigating qualities of youth," as well as those that could not be fully assessed at the time of sentencing. The Court in

Miller set forth the following five factors to be considered before imposing mandatory life without parole for a juvenile: (1) age and its hallmark features among them, immaturity, impetuosity, and failure to appreciate risks and consequences; (2) family and home environment; (3) the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him; (4) whether they may have been convicted of a lesser offense if not for the incompetence associated with youth such as an inability to deal with police officers or prosecutors or his incapacity to assist his own attorneys; and (5) the possibility of rehabilitation.

As noted by the Court, while Miller did not rule out the possibility of life without parole for juveniles convicted of murder; Miller does require judges "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Miller at 480. At the resentencing hearings, the trial court may consider other relevant evidence from both parties including, but not limited to, the juvenile offender's behavior in prison and any rehabilitative efforts taken by the defendant since sentencing.

Once the evidence has been evaluated, the judge has the discretion to affirm or reduce the original sentence within the statutory range, and to reduce the parole bar below the statutory limit, but not less than 20 years.