



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. GREGORY NIDEZ VALENCIA JR. AND
JOEY LEE HEALER
CR-16-0156-PR**

PARTIES:

Petitioner: State of Arizona

Respondents: Gregory Nidez Valencia Jr. and Joey Lee Healer

Amici: Mark Brnovich, Attorney General
Arizona Attorneys for Criminal Justice
Arizona State Prisoners with Pending Claims under *Miller v. Alabama* in Federal Court

FACTS:

Respondent Healer

In 1994, sixteen-year-old Healer borrowed a friend's sawed-off rifle in order to get some money and a vehicle. Healer entered the home of seventy-four-year-old Chester Iserman, who had given Healer odd jobs to earn money, and shot him through the eye, departing in Iserman's truck. A jury convicted Healer of first-degree murder. A judge sentenced him to natural life imprisonment under then-in-effect [A.R.S. § 13-703 \(1995\)](#). The statute provided for three alternatives: death, natural life, or life without eligibility for release "on any basis until the completion of the service of twenty-five calendar years if the victim was fifteen or more years of age and thirty-five if the victim was under fifteen years of age."

The statute also required the judge to conduct a sentencing hearing to determine the existence of aggravating and mitigating circumstances for use in deciding the sentence. [§ 13-703\(A\)-\(E\)](#). It listed ten aggravating and five mitigating circumstances to be considered, including "the defendant's age." [§ 13-703\(F\)-\(H\)](#).

In sentencing Healer, the court found mitigating factors of age and family support, and aggravating factors of lack of remorse; offense committed for pecuniary gain and while on juvenile probation; extensive juvenile record; use of a firearm; emotional harm to the victim's family; the victim's advanced age; and the seriousness of the offense. The court opted to impose a natural life sentence, that is, lifetime imprisonment without any possibility of release.

Respondent Valencia

In 1995, seventeen-year-old Valencia and a sixteen-year-old accomplice entered a condominium complex, took a bicycle from a unit's enclosed patio, and attempted to enter another

unit's patio. The resident of the second unit, forty-five-year-old Fred George, heard his patio gate rattling, went outside to investigate, and confronted the two youths in a common area outside his patio. After some dialogue, the accomplice threw the stolen bicycle at the victim and Valencia pulled out a gun and shot the victim, hitting him once in the head and killing him.

A jury convicted Valencia of first-degree murder and a judge sentenced him to natural life imprisonment under the same statute under which respondent Healer had been sentenced.

Valencia's presentence report listed as aggravating factors the use of weapons, the presence of an accomplice, his prior criminal record, and his failure to benefit from previous attempts at rehabilitation. It stated that mitigating factors "may include [his] age."

The State recommended a natural life sentence due to Valencia's criminal history, prior opportunities for rehabilitation, lack of effective family support, presumed maturity in choosing to carry a gun, and lack of potential for rehabilitation.

The State took issue with Valencia's age as a mitigating circumstance, asserting that the law considers "a causal connection between age and conduct, [i.e.,] was the person so immature as a result of their youth that they couldn't appreciate what they were doing." The State conceded such a finding "would be sufficient to call for the Court to impose anything other than a natural life sentence."

The trial court found mitigating and aggravating factors and ultimately imposed a natural life sentence on Valencia, ruling as follows:

In mitigation the Court does look at the defendant's short term in the criminal justice system, short but very active throughout the juvenile system. He was just barely 17 when he did this murder. He has made some effort in jail and the Court acknowledges those, that he's completed some course work in jail during his incarceration, and I also am understanding of the fact that his family feels sorrow for their loss of this young man at this time.

....

The Court considers in aggravation the serious effect on the victim's family, the defendant's lengthy, intensely serious juvenile history and every opportunity was given to this defendant through the juvenile court system to rehabilitate himself through that system before this crime was done. And he was transferred to the adult system as the juvenile system could no longer protect society from him.

... And the Court believes the only way to protect the public from Greg Valencia is through a natural life sentence.

The U.S. Supreme Court's Decisions in *Miller* (2012) and *Montgomery* (2016)

In 2012, the U.S. Supreme Court decided [*Miller v. Alabama*, 132 S.Ct. 2455 \(2012\)](#),

holding 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.’” *Id.*, [132 S.Ct. at 2460](#). *Miller* “mandate[d] . . . that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Id.* In a footnote, *Miller* listed Arizona as among 29 jurisdictions mandating life without parole for juvenile murderers. *Miller*, [132 S.Ct. at 2473 & n. 13](#), citing [A.R.S. §§13-752](#) and [41-1604.09\(I\)](#).

Both respondents Healer and Valencia petitioned for post-conviction relief. In January 2016, while both respondents’ cases were pending before the Arizona Court of Appeals, Division 2, the U.S. Supreme Court issued its decision in [Montgomery v. Louisiana, 136 S.Ct. 718 \(2016\)](#). *Montgomery* held that “*Miller* announced a substantive rule of constitutional law,” and “when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.” *Id.*, [136 S.Ct. at 729, 736](#).

In responding to the impact of *Montgomery*, the State conceded that *Miller* was retroactively applicable to cases on collateral review but asserted that it did not constitute a “significant change” in the law under Rule 32.1(g), Arizona Rules of Criminal Procedure.

The Court of Appeals rejected the State’s argument and held that *Montgomery* was a significant change in the law retroactively applicable to respondents’ case; and that, under *Montgomery*, a natural life sentence imposed on a juvenile defendant is unconstitutional unless the juvenile’s offense reflects permanent incorrigibility. Therefore, it held, both respondents were entitled to be re-sentenced. The Arizona Supreme Court granted the State’s Petition for Review.

ISSUES:

- (1) Is the holding in *Miller* a significant change in the law that would change the petitioners’ sentences under Rule 32.1(g)?
- (2) Did the trial courts’ consideration of the petitioners’ ages satisfy *Miller*’s rule?

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