



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



State v. Bobby Charles Purcell
CR-21-0398-PR
State v. Scott Lee DeShaw
CR-21-0400
(Consolidated)

PARTIES:

Petitioners: Bobby Charles Purcell
Scott Lee DeShaw

Respondent: The State of Arizona

FACTS:

State v. Purcell

In 1998, petitioner Purcell was charged with two counts of first-degree murder, nine counts of attempted first-degree murder, and one count of aggravated assault. He was 16 years old at the time of the murders. A jury found petitioner guilty on all counts. He was sentenced to consecutive life terms without the possibility of release for the first-degree murders, and “aggravated terms of 15 years for each of the nine attempted murders and the aggravated assault and an aggravated term of eight years for the misconduct involving weapons,” to run concurrent with each other but consecutive to his life sentences. The sentencing judge found that petitioner’s age at the time of the offense qualified as a mitigating factor. He also found that petitioner was “likely to do well in the structured environment of a prison and that he possesses the capacity to be meaningfully rehabilitated.”

In 2013, petitioner Purcell sought post-conviction relief under *Miller v. Alabama*, 567 U.S. 460 (2012), a U.S. Supreme Court decision which prohibited imposing mandatory sentences of life without parole for juvenile offenders convicted of homicide. The Arizona trial court and Court of Appeals each denied relief, finding that *Miller* did not apply retroactively and that even if it did, it did not apply to petitioner’s case because the trial court considered petitioner’s youth at sentencing.

In 2016, the U.S. Supreme Court issued its decision in *Montgomery v. Louisiana*, 570 U.S. 190 (2016), holding that *Miller* applied retroactively to cases on collateral review. Petitioner Purcell (along with petitioner DeShaw) was among multiple defendants who filed petitions for certiorari to the U.S. Supreme Court challenging the constitutionality of their life sentences without parole.

In October 2016, in *Tatum v. Arizona*, 137 S.Ct. 11 (2016), Justice Sotomayor issued a decision granting a remand in petitioner’s and other Arizona cases in order to permit the Arizona courts to reconsider whether those petitioners’ sentences complied with the U.S. Supreme Court’s rules governing the imposition of a sentence of life without parole on a juvenile offender. She opined

that, on the records of these cases, none of the sentencing judges addressed the question *Miller* and *Montgomery* required a sentencer to ask: whether the petitioner was among the rare juvenile offenders whose crimes reflect permanent incorrigibility.

On February 14, 2018, the State stipulated to petitioner Purcell's resentencing. However, in April 2021, in *Jones v. Mississippi*, 141 S.Ct. 1307 (2021), the U.S. Supreme Court clarified the relationship between *Miller* and *Montgomery* and set out more clearly the requirements that sentencers must meet to sentence a juvenile homicide offender to life without parole. It stated that "in making the rule retroactive, the *Montgomery* Court . . . declined to impose new requirements not already imposed by *Miller*," *id.* at 1317, and sentencers need not make separate findings of permanent incorrigibility but need only consider the offender's "youth and attendant characteristics." *Id.* at 1311.

In light of this new holding in *Jones*, the State moved in *State v. Purcell* to withdraw its stipulation and to vacate petitioner's resentencing, arguing that petitioner Purcell's original sentencing was constitutionally sufficient because the trial court adequately considered petitioner's youth and attendant characteristics. Superior Court Judge Patricia Ann Starr agreed, vacated petitioner Purcell's resentencing, and dismissed his petition for post-conviction relief.

Petitioner Purcell then appealed from the order vacating his resentencing pursuant to [A.R.S. § 13-4033\(A\)\(3\)](#). In December 2021, a Court of Appeals Pro Tem Judge, following a jurisdictional review, dismissed petitioner Purcell's appeal for lack of jurisdiction. She ruled that, if petitioner wished to challenge the post-remand order dismissing his post-conviction relief proceedings, he must do so through a petition for review under the specific rule for post-conviction proceedings, [Ariz. R. Crim. P. 32.16\(a\)\(1\)](#), not under the rules for criminal appeals generally. Petitioner Purcell petitioned for review to the Arizona Supreme Court, which granted review and consolidated his case with *State v. DeShaw*.

State v. DeShaw

In 1994, petitioner DeShaw was charged with first degree murder, kidnapping, and armed robbery. He was 17 years old at the time of the crimes. A jury found him guilty as charged. He was sentenced to natural life for the murder and two consecutive terms of 15 years each for the kidnapping and armed robbery. In 2013, DeShaw filed a petition for postconviction relief, arguing that *Miller* was a significant change in the law applicable to his case that would probably overturn his conviction or sentence. The Superior Court found that *Miller* did not apply because the sentencing court chose to sentence DeShaw to natural life after considering his age as a mitigating factor. DeShaw petitioned for certiorari to the United States Supreme Court, where his case was consolidated with other Arizona cases. As in *Purcell*, his case was remanded to the Arizona courts "in light of" *Montgomery*, and the State stipulated to resentencing. However, as in *Purcell*, following the issuance of *Jones* by the U.S. Supreme Court, the State moved to withdraw from its stipulation and to vacate petitioner DeShaw's resentencing,

As in *Purcell*, Judge Starr ruled that the original sentencing of petitioner DeShaw complied with *Miller* because the trial court adequately considered petitioner's youth and attendant characteristics. As in *Purcell*, she dismissed the petition for post-conviction relief.

After petitioner DeShaw appealed pursuant to [A.R.S. § 13-4033\(A\)\(3\)](#), the Court of Appeals Pro Tem Judge issued an identical order as in *Purcell* dismissing petitioner DeShaw's appeal for lack of jurisdiction. Petitioner DeShaw petitioned for review to the Arizona Supreme Court, which granted review and consolidated the two cases.

ISSUE:

[Both cases] Did the Court of Appeals err by concluding that it did not have appellate jurisdiction over the dismissal of the re-sentencing proceedings?

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