



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**CR-18-0595-PR** (*State v. Martin Raul Soto-Fong*)  
**CR-18-0489-PR** (*State v. Wade Nolan Clay*)  
**CR-19-0379-PR** (*State v. Mark Noriki Kasic Jr.*)  
(Consolidated as **CR-18-0595-PR**)

**PARTIES:**

*Petitioners:* Martin Raul Soto-Fong (CR-18-0595-PR)  
Wade Nolan Clay (CR-18-0489-PR)  
Mark Noriki Kasic Jr. (CR-19-0379-PR)

*Respondent:* State of Arizona

**FACTS:**

***State v. Martin Raul Soto-Fong***

Petitioner Soto-Fong was convicted of three counts of first-degree murder, two counts of attempted armed robbery, two counts of attempted aggravated robbery, and one count each of armed and aggravated robbery, all committed in 1992 when he was 17 years old. In 1994, he received the death sentence for the murders and concurrent and consecutive prison terms for the remaining convictions. The Arizona Supreme Court affirmed his convictions and sentences on appeal. [\*State v. Soto-Fong\*, 187 Ariz. 186 \(1996\)](#).

His death sentences were subsequently vacated pursuant to *Roper v. Simmons*, 53 U.S. 551 (2006). At the resentencing hearing, petitioner requested resentencing on all counts because the original sentencing court rejected age as a mitigating factor. The resentencing judge denied that request, limited the resentencing proceedings to the homicide counts, and ordered that he would impose the same sentence imposed by the prior judge on the nonhomicide counts. Petitioner presented substantial evidence at resentencing documenting his immaturity at the time of the offense in 1992 and maturation in the years that followed. The resentencing judge relied on the aggravation findings made at the original sentencing proceedings to sentence petitioner to three consecutive life terms, to run consecutively to the nonhomicide sentences imposed at the original sentencing, resulting in a sentence of at least 109 years.

After the resentencing, the U.S. Supreme Court decided [\*Graham v. Florida\*, 560 U.S. 48 \(2010\)](#), which held that the Eighth Amendment prohibits life without parole sentences (“LWOP”) for nonhomicide crimes committed by juveniles. Two years later, in [\*Miller v. Alabama\*, 567 U.S. 460 \(2012\)](#), the Court extended *Graham*, holding that the Constitution prohibits mandatory LWOP sentences for juveniles convicted of homicide. In 2013, petitioner filed a post-conviction relief petition, alleging that his 109-year minimum sentence was the functional equivalent of natural life

and must be set aside pursuant to *Miller*. On February 19, 2016, petitioner filed a notice of supplemental authority alerting the court to the issuance of *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), which held that *Miller* applied retroactively, and clarified that, under this rule, “life without parole is excessive for all but ‘the rare juvenile offender whose crime reflects irreparable corruption[.]’” *Id.* at 734 (quoting *Miller*, 567 U.S. at 479-80).

Thereafter, the Superior Court ordered supplemental briefing on the applicability of *Montgomery* to this post-conviction proceeding. On July 17, 2016, the court issued an under-advisement ruling finding that the petitioner presented a colorable claim. Thereafter, by stipulation of the parties, proceedings were stayed pending the issuance of a decision by the Arizona Supreme Court in *State v. Valencia*, 241 Ariz. 206 (2016).

After the mandate issued in *Valencia* and the stay was dissolved, the superior court issued a ruling denying petitioner’s petition. It noted that “[t]here is no doubt that [petitioner’s] sentence will exceed Defendant’s life expectancy and that no meaningful chance for parole exists.” Therefore, it ruled, petitioner’s sentence was a “‘defacto [sic] life’ sentence.” Nevertheless, the court denied relief, ruling that there was no Arizona case law or statute that considers de facto life sentences to be governed by *Miller*.

Petitioner filed a Petition for Review to the Arizona Court of Appeals, which denied relief on the grounds petitioner’s sentence did not fall within the scope of *Miller*. Petitioner filed his Petition for Review to the Arizona Supreme Court on December 2018. The Court continued this case after the U.S. Supreme Court granted certiorari in *Mathena v. Malvo*, 2019 WL 1231751 (Mar. 18, 2019), which appeared likely to clarify the scope of *Miller*. However, in February 2020, the U.S. Supreme Court dismissed *Malvo* after a new Virginia law largely made the case moot and the parties stipulated to dismissal. Petitioner’s case then went forward in the Arizona Supreme Court, which granted review and consolidated petitioner’s case with two other cases, *State v. Wade Nolan Clay* and *State v. Mark Noriki Kasic*.

### *State v. Wade Nolan Clay*

Petitioner Clay was convicted in 1992 of First Degree Murder of J.M. (Count 1); Attempted Murder of A.M. (Count 2); and Aggravated Assault (Deadly Weapon or Dangerous Instrument) of A.M. (Count 3). He was 17 years old at the time of the offenses. At sentencing, the judge noted that petitioner “committed this offense while . . . a juvenile....” However, the judge stated that “I am not attaching as much significance to that as I might normally,” noting that “there is nothing about your appearance or anything that I read about you that convinces me that you are an immature child or anything of that nature. I am not willing to consider your age as a mitigating factor.”

The judge then imposed aggravated terms of 12 years for Count 2 and 9 years for Count 3 and used the aggravators to determine that such sentences would be served consecutively to a life sentence (parole eligible after 25 years) imposed for Count 1. In 2017, petitioner filed a petition for post-conviction relief, contending that he was eligible for release because a significant change in the law required the sentences imposed be vacated and a new sentencing hearing be granted. Rule 32.1(g); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 718

(2016); and [State v. Valencia, 241 Ariz. 206 \(2016\)](#). He requested that the sentence for First Degree Murder be determined to be complete; that any sentence imposed on the remaining offenses be ordered to be concurrent with the sentence for First Degree Murder, and that based thereon, he be released from prison.

The trial court ruled that defendant was not entitled to relief under [Miller](#) because he was receiving Parole Board hearings that give him the possibility of release, unlike the Defendants in [Miller](#). The petition for post-conviction relief was denied and a Petition for Review to the Court of Appeals followed. The Court of Appeals denied relief, finding that it was petitioner's burden to show that the Superior Court abused its discretion in denying post-conviction relief and that "petitioner has not shown any abuse of discretion." Petitioner filed a Petition for Review to the Arizona Supreme Court, which granted review and consolidated petitioner's case with *State v. Martin Raul Soto-Fong* and *State v. Mark Noriki Kasic Jr.*

### ***State v. Mark Noriki Kasic Jr***

Petitioner Kasic had a turbulent childhood due to the breakup of his parents' marriage and the absence of his mother from much of his life. When he and his father, stepmother, and brother moved to Tucson in 2004, petitioner bonded with a circle of friends who constantly attempted to prove their toughness by daring one another to do crazy stunts. Petitioner's need to impress them led him to regularly get into trouble at school. He was first arrested along with a friend at age 16 for throwing a Molotov cocktail at two classmates.

Between 2007 and 2010, arsonists set a large number of fires in Tucson garages and homes. After investigation, police identified petitioner and a friend as the arsonists. Petitioner, who had turned 18 on December 10, 2007, was charged as an adult with 41 counts. He had been a juvenile when he committed four of the arsons. A psychologist who examined petitioner found he showed "childlike impulses and expectations, and immature competencies," and concluded that his "desperate desire to please/impress others would have played a role in any fire-setting acts."

At petitioner's 2010 trial, the prosecution relied on testimony from petitioner's peers who participated in setting the fires. During closing arguments, the prosecutor stressed that investigators who interviewed the witnesses were "mindful that they are talking to teenagers, bearing in mind the rights of the teenagers, and aware that they're still kids."

On March 19, 2010, petitioner was convicted of 32 felonies arising from six arsons and one attempted arson committed during a one-year period beginning when petitioner was 17 years old. On May 24, 2010, Judge Munger imposed sentences of between 2.25 and 15.75 years on each of the 32 counts. Because many of these sentences ran consecutively, their aggregate total was 139.75 years.

The Court of Appeals vacated two convictions and affirmed the remainder. [State v. Kasic, 228 Ariz. 228 \(App. 2011\)](#) ("*Kasic I*") (rejecting claim under [Graham v. Florida, 560 U.S. 48 \(2010\)](#) and holding that, as a general rule, courts do not consider the imposition of consecutive sentences in an Eighth Amendment proportionality inquiry; and that this proposition holds true even if a defendant faces a total sentence exceeding a normal life expectancy as a result of

consecutive sentences).

In 2017 petitioner filed a petition for post-conviction relief, contending the aggregate of his sentences was the equivalent of life without parole (“*de facto* LWOP”) in violation of the Eighth Amendment and *Graham*, [Miller](#), and [Montgomery](#). The Superior Court summarily dismissed the petition, stating that the Court of Appeals had properly relied on [State v. Berger, 212 Ariz. 473, 477 ¶ 27 \(2006\)](#) (as a general rule, courts do not consider the imposition of consecutive sentences in the proportionality inquiry) in denying relief on direct appeal, and that “Arizona [law] has remained unchanged.” Petitioner sought review in the Arizona Court of Appeals, which issued a split decision affirming the denial of relief. Petitioner filed a Petition for Review, which the Arizona Supreme Court granted and consolidated with *State v. Martin Raul Soto-Fong* and *State v. Wade Noland Clay*.

**ISSUE:**

Do sentences that exceed the petitioner’s expected lifespan and are the equivalent of life without parole violate Eighth Amendment protections as articulated by *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016)?

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*