



WATCH OUT FOR KIDS

Juveniles Direct Filed in Adult Court

by
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Over the past several years there has been an influx of changes with regard to the sentencing of juvenile defendants. Courts are now required to consider the “youthful attributes” of juveniles to consider their level of culpability. Limitations have also been placed on the sentences applicable to juveniles. As a general rule, all juvenile defendants should: 1) Be given a meaningful opportunity for release, and a judicial review after 20 years on sentences over 20 years; 2) Be entitled to juvenile protections for crimes committed as juveniles, even if they commit a violation of probation (VOP) as an adult; and 3) Be entitled to an individualized sentencing hearing to consider their “youthful attributes.”

JUDICIAL REVIEW OF SENTENCES OVER 20 YEARS

In *Kelsey*¹ the defendant was



JUVENILES BY THE NUMBERS

The Florida legislature passed the state’s first direct file law in 1978, making it one of the oldest such statutes in the United States.

HUMAN RIGHTS WATCH,
“Branded For Life Florida’s Prosecution of Children As Adults Under Its ‘Direct File’ Statute”

Between 1990 and 2010 the number of U.S. juveniles in adult jails went up by nearly **230%.**

THE SENTENCING PROJECT

re-sentenced to 45 years in prison after his life sentence was held unconstitutional based on *Miller*² and *Graham*.³ In *Kelsey*, the Florida Supreme Court held that “his sentence [of 45 years] was unconstitutional not because of the length of his sentence, but because it did not provide him a meaningful opportunity for early release based on maturation and rehabilitation....” The Florida Supreme Court went on to say that it is for the legislature to decide the mechanism to provide juveniles with a meaningful opportunity for early release. The Florida Supreme Court was referring to chapter 2014-220 requiring juvenile offenders who were sentenced as adults to more than 20 years to receive a judicial review after 20 years in order to give them an opportunity for early release based on maturity and rehabilitation. *Kelsey*, 206 So. 3d 5 (Fla. 2016). Any juvenile who receives a sentence that does not comply with chapter 2014-220 is entitled to be re-sentenced pursuant to said chapter at a new sentencing hearing. *Id.*

JUVENILES WHO VIOLATE PROBATION AS AN ADULT SHOULD BE SENTENCED AS JUVENILES FOR THE VOP

In *Guzman*,⁴ the court made it clear that defendants who commit crimes as a juvenile are entitled to the protection afforded to juveniles on the VOP, even if the violation occurs when the defendant is an adult. However,

it should be noted that the Florida Supreme Court granted cert and decided *Guzman*⁵ on other issues, but Justice Pariente wrote a concurring opinion stating that juvenile defendants who violate their probation as adults are not entitled to be sentenced as a juvenile since they were already out of custody as an adult and were given a meaningful opportunity for release. *Id.*

INDIVIDUALIZED SENTENCING HEARINGS

Whether juvenile defendants are entitled to an individualized sentencing hearing is currently being litigated. Florida Statute 921.1401 indicates that the court “may” conduct a separate hearing when sentencing juvenile defendants in order to consider a number of factors. However, the United States Supreme Court in *Miller* unequivocally required the court “to consider a juvenile defendant’s ‘mitigating qualities of youth.’” *Miller*⁶ specifically lays out a number of attributes associated with youth that a court must consider when sentencing juvenile defendants to long periods of incarceration.

The court must also consider that juveniles are different than adults. In *Lindsey*,⁷ the court held it was error to fail to consider the difference between

juvenile and adult defendants. In *Lindsey*, the court went on to state it was error to put the burden on the defendant to show youthful immaturity, because the Supreme Court has already determined that these “distinctive attributes of youth” already exist. *Id.*

CONCLUSION

The many inherent differences of juvenile defendants from adults should be reflected at sentencing. A juvenile defendant should receive: 1) A judicial review after 20 years to provide for an opportunity for release; 2) An individualized sentencing hearing; and 3) All the protections afforded to juveniles should apply to VOPs even if they violate their probation as an adult. Roseanne Eckert of the FIU College of Law deserves special thanks for all the work she has done to help ensure the quality of representation with regard to the sentencing of juvenile defendants. 🙏

¹ *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016).

² *Miller v. Alabama*, 132 S.Ct. 2455 (2013).

³ *Graham v. Florida*, 130 S.Ct. 2011 (2010).

⁴ *Guzman v. State*, 68 So.3d (Fla. 4th DCA 2011).

⁵ *Guzman v. State*, 183 So.3d 1025 (Fla. 2016).

⁶ The court in *Miller* cited *Johnson v. Texas*, 509 U.S. 350, 367 (1993).

⁷ *Lindsey v. State*, 168 So.3d 267 (Fla. 2nd DCA 2015).

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From 2003 to 2008, Florida transferred youth to adult court at 1.7 times the rate of Oregon, the state with the second-highest transfer rate, and twice the rate of Arizona, the state with the third-highest.

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Young people charged as adults are nearly **35% likelier** to be rearrested than those who are tried as juveniles.

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