

Serial: 193688

IN THE SUPREME COURT OF MISSISSIPPI

No. 2012-M-02041

KELVIN DYCUS A/K/A KEVIN DYCUS

FILED

Petitioner

v.

SEP 17 2014

STATE OF MISSISSIPPI

CLERK OF SUPREME COURT
JAMES H. HARRIS, JR.
1000 BAYVIEW DRIVE
TALLAHASSEE, FL 32301

Respondent

ORDER

This matter is before the panel of Randolph, P.J., Chandler and Pierce, JJ., on the Application for Leave to Proceed in the Trial Court filed by Kelvin Dycus a/k/a Kevin Dycus. The State's response and Dycus's reply are also before us.

Dycus was 17 years old when he and his brother robbed and murdered an elderly woman. *Dycus v. State*, 910 So. 2d 1100, 1101 (Miss. 2005). He was sentenced to death, and this Court affirmed. *Id.* (citing *Dycus v. State*, 875 So. 2d 140 (Miss. 2004)). But after the Supreme Court of the United States held that the Eighth and Fourteenth Amendments to the United States Constitution forbid imposing the death penalty on offenders who were under 18 years old when their crimes were committed, *Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 1200, 161 L. Ed. 2d 1 (2005), this Court vacated Dycus's death sentence and remanded the case for him to be resentenced to life in prison without parole. *Dycus*, 910 So. 2d at 1101.

Dycus argues that his mandatory life-without-parole sentence violates *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). Thus, he asks this Court to vacate the sentence and remand the case for a new sentencing hearing.

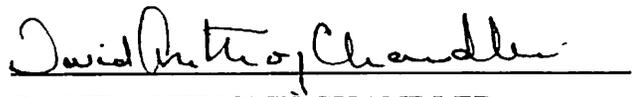
This Court has held that *Miller* applies retroactively to cases on collateral review. *Jones v. State*, 122 So. 3d 698, 703 (Miss. 2013). The procedural bars are excepted when an intervening decision of either this Court or the Supreme Court of the United States adversely affects the outcome of the petitioner's conviction or sentence. *Rowland v. State*, 98 So. 3d 1032, 1035 n.6 (Miss. 2012) (citation omitted).

After due consideration, we find that Dycus's sentence should be vacated and that the case should be remanded for a new sentencing hearing before a jury under Section 99-19-101. If the jury, after considering all of the circumstances set forth in *Miller*, determines that Dycus should be eligible for parole or if the circuit court imposes a life sentence because the jury is unable to reach a decision, the court shall sentence Dycus to "life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(h)." *Parker v. State*, 119 So. 3d 987, 999 (Miss. 2013).

IT IS THEREFORE ORDERED that Kelvin Dycus's sentence is vacated.

IT IS FURTHER ORDERED that the case is remanded for a new sentencing hearing before a jury under Section 99-19-101.

SO ORDERED, this the 17th day of September, 2014.



DAVID ANTHONY CHANDLER,
JUSTICE

CIRCUIT COURT

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IN THE CIRCUIT COURT OF CARROLL COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

PAUL MURRELL STEWART

Petitioner,

vs.

NO. 2013-0027 evim

STATE OF MISSISSIPPI

Respondent.

ORDER

THIS CAUSE came on to be heard on October 3, 2013 on the Petitioner, Paul Murrell Stewart's Motion To Vacate Sentence and the Court having considered the Motion finds as follows:

1. On July 19, 1996 Paul Murrell Stewart pled guilty to two counts of Capital Murder and was sentenced to life in prison with no possibility of parole on Count I and life in prison with no possibility of parole on Count II, with the second sentence to run consecutive to the first.

2. Jurisdiction of this matter is properly before this Court pursuant to Miss. Code. Ann. § 99-39-7 (1972 as amended).

3. The Supreme Court Of The United States' opinion in *Graham v. Florida*, ---U.S.---, 130 S.Ct. 2011 (2010) does not apply to this case. Petitioner's request for this Court to vacate his sentence and re-sentence him to a term of life in prison with the possibility of parole based on *Graham* is therefore DENIED.

4. The Supreme Court Of The United States' opinion in *Miller v. Alabama*, ---U.S.---, 132 S.Ct. 2455 (2012) holding that a sentencing scheme that imposes "mandatory life without parole [on] those under the age of 18 at the time of their crimes violates the Eighth

FILED

October 15 2013

DURWARD STANTON, CIRCUIT CLERK
CARROLL COUNTY, MISSISSIPPI

BY Audra Williams D.C.

CIRCUIT COURT

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Amendment's prohibition on 'cruel and unusual punishments'" does apply to Petitioner's case because Petitioner was a minor at the time the crimes were committed, he was sentenced to two consecutive life sentences without the possibility of parole and his sentence was mandatory under Mississippi law. Petitioner's request for this Court to vacate his sentence based on *Miller* is therefore GRANTED.

5. Pursuant to Mississippi's Capital Murder Statute, Miss. Code Ann. § 99-19-101(1) (1972 as amended), Petitioner is entitled to be re-sentenced by a jury to determine whether Petitioner is entitled to a sentence of life in prison with the possibility of parole on each count, or a sentence of life in prison without the possibility of parole on each count. In reaching its conclusion, the jury shall take into account the factors listed in *Miller* as well as those listed in Miss. Code Ann. § 99-19-101(1).

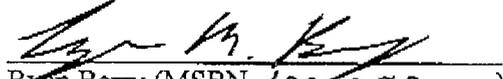
IT IS THEREFORE ORDERED AND ADJUDGED that Petitioner's two consecutive sentences to life in prison without the possibility of parole for each of the two counts he was convicted on are hereby VACATED and he shall be re-sentenced by a jury that will take into account the mitigating factors enumerated in *Miller* and the factors enumerated in Miss. Code Ann. § 99-19-101(1).

SO ORDERED AND ADJUDGED, this the 14 day of October, 2013.


CLARENCE E. MORGAN III
CIRCUIT JUDGE

Prepared By:

Hiram C. Eastland III (MSBN 101560)
Attorney for Paul Murrell Stewart

Agreed as to form:

Ryan Berry (MSBN 102285)
Assistant District Attorney

IN THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY, MISSISSIPPI

ARTHUR WATTS

PETITIONER

VERSUS

CAUSE NO. PCR2013-058M

STATE OF MISSISSIPPI

RESPONDENT

ORDER

THIS CAUSE came on to be heard on the motion of Defendant Arthur Watts, through counsel, for jury sentencing, and the Court, after having received, reviewed and considered pertinent authorities and arguments from counsel for Defendant Watts and the State of Mississippi, and being fully advised in the premises, finds that the motion is well-taken and should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's motion for jury sentencing should be and the same hereby is GRANTED. The sentencing hearing in this cause shall commence January 18, 2016, at 9:00 o'clock a.m., in the Circuit Court of Jefferson County, Mississippi, and proceed until concluded.

SO ORDERED AND ADJUDGED this the 8 day of July, 2015.

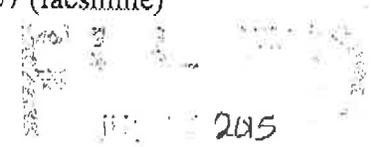


Honorable Anthony Mozingo
Circuit Court Judge

Presented to the Court by:

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Clerk of Court
By: 