"THE FEDERAL CORNER"

Sentencing Juvenile Defendants After *Miller*

Buck Files

What is a court to do with an inmate who was sentenced to life without parole for an offense that was committed when he was 16 years old and is now seeking habeas relief? A panel of the United States Court of Appeals for the Fifth Circuit answered that question on October 24, 2019, in *United States v. Sparks*, ___F.3d___, 2019 WL 5445897 (5th Cir. 2019) [Panel: Circuit Judges Elrod, Graves and Oldham. (Opinion by Oldham)].

In *Sparks*, the Court held, as to the life without parole issue, that

- an inmate's 35-year sentence did not violate the Eighth Amendment prohibition against sentencing a juvenile offender to a mandatory life sentence without the possibility of parole; and,
- the sentence satisfied the procedural requirement that a court consider the inmate's youth and its attendant characteristics.

The Beginning of the Case

In 2001, Sparks pleaded guilty to the offense of aiding and abetting a carjacking that resulted in death. A district judge of the Western District of Texas sentenced him to life without parole. On direct appeal, he argued that he was sentenced for a murder that he did not commit. On December 14, 2001, a panel of the Circuit [Circuit Judges Davis, Benavides and Stewart] (per curiam) affirmed the judgment and sentence in his case, holding that he was not sentenced for the murder; rather, for aiding and abetting a carjacking which resulted in the death of the victim. *United States v. Sparks*, 31 Fed.Appx. 156 (2001).

The offense, the plea and sentencing in the district court and the opinion in Sparks' first appeal to the United States Court of Appeals for the Fifth Circuit all occurred before *United States v. Booker*[1] made the United States Sentencing Guidelines advisory rather than mandatory and before *Graham v. Florida,*[2] in which the Court held that juveniles may not be sentenced to life without parole for non-homicide cases. Relying on *Graham*, Sparks began seeking habeas relief.

Judge Oldham's opinion reads, in part, as follows:

> [The Absolutely Horrible Facts in the Case]
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> … five gang members went to an IGA supermarket to find a carjacking victim. Bernard and Brown acted as lookouts while Sparks, Vialva, and Lewis approached potential victims to ask for a ride. No one offered them a ride, so they drove to a 'Mickey's' convenience store. Bernard and Brown went to a nearby

[1] 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005)
[2] 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)

laundromat to play video games. Sparks, Vialva, and Lewis went to the front of the convenience store.

Shortly after arriving at the convenience store, Sparks found Todd Bagley using a payphone outside. Todd and his wife Stacie were youth ministers from Iowa. They'd previously lived in Killeen because Todd was a veteran of the U.S. Army and had been stationed at Fort Hood. The young couple had gone to church at Grace Christian, where they worked with the youth group. They were back in Killeen on a vacation to see old friends and attend a revival meeting at the church.

Sparks approached Todd and asked if he would give Sparks, Vialva, and Lewis a ride to another location. Todd conferred with Stacie, and the young couple unsuspectingly agreed to give the gang members a ride. Bernard and Brown returned to their homes to wait for further instructions from Vialva.

Sparks, Vialva, and Lewis got into the back seat of the Bagleys' car. Todd drove while his wife sat in the front passenger seat. In accordance with their plan, Sparks and Vialva pulled out two handguns, and Vialva pointed his gun at Todd. Vialva told the Bagleys that the 'plan had changed,' and he forced Todd to drive to a semi-rural location near the edge of Killeen. While Vialva pointed a gun at the Bagleys, Sparks and Vialva robbed them of their money, wallets, purse, debit card, identification, and jewelry. Vialva demanded their bank account's pin number and then forced the Bagleys into the trunk of their car.

With the Bagleys locked in the trunk, Sparks, Vialva, and Lewis went on an hours-long crime spree. They went to an ATM to steal all of the Bagleys' money. That effort was frustrated, however, because the youth ministers had less than $100 in their bank account. They tried to pawn Stacie's wedding ring. They used what little money they could steal from the Bagleys to buy cigars, cigarettes, and fast food from Wendy's.

Meanwhile, the Bagleys evangelized from the trunk. According to Lewis (who later testified), the Bagleys asked him and Sparks about God, Jesus, and church. The Bagleys acknowledged not having earthly wealth, but they told their captors that faith in Jesus is more valuable than money. The Bagleys talked about the revival meeting at Grace Christian. And the Bagleys urged their captors to have faith in Jesus Christ. The Bagleys begged for their lives.

As night began to fall, Sparks told the gang that he needed to go home to avoid violating his 8 p.m. probation curfew for a previous robbery conviction. The group dropped Sparks off at his home. Sparks took the Bagleys' jewelry with him. But Vialva asked Sparks not to take his .22 caliber handgun. After initially refusing, Sparks agreed.

Bernard and Brown purchased fuel to burn the Bagleys' car. Vialva and Lewis picked them up, and the four gang members drove (again, with the Bagleys still

locked in the trunk) to the Belton Lake Recreation Area on the Fort Hood military installation. Vialva parked the Bagleys' car on top of a little hill. Brown and Bernard poured lighter fluid on the interior of the car. All the while, the Bagleys sang and prayed in the trunk.

Stacie's last words were 'Jesus loves you,' and 'Jesus, take care of us.' Vialva crudely cursed at her, told Lewis to pop the trunk, and then executed Todd in front of his wife. Vialva shot Todd in the head with the .40 caliber Glock, killing him instantly. Then Vialva shot Stacie in the face but failed to kill her. Bernard set the car on fire and burned Stacie alive. Todd was 26. Stacie was 28.

* * *

[The Three Supreme Court Decisions on Life
Without Parole for Defendants Under 17 Years of Age]

Since then, several Supreme Court decisions involving the Eighth Amendment raised constitutional concerns about Sparks's LWOP sentence. In *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), the Court held that juveniles may not be sentenced to life without parole for non-homicide offenses. In *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the Court held that juveniles may not receive mandatory sentences of life without parole. And in *Montgomery v. Louisiana*, —— U.S. ——, 136 S. Ct. 718, 193 L.Ed.2d 599 (2016), the Court made *Miller* retroactive to cases on collateral review.

[The Procedural Background]

We authorized Sparks to file a successive § 2255 motion based on *Graham*. *In re Sparks*, 657 F.3d 258, 262 (5th Cir. 2011). The district court denied the motion. But we granted a certificate of appealability, *United States v. Sparks*, No. 13-50807 (5th Cir. July 10, 2014), and remanded the case for reconsideration at the Government's request, *United States v. Sparks*, No. 13-50807 (5th Cir. Feb. 10, 2015). We also authorized Sparks to file a successive § 2255 motion based on *Miller*, which the Government did not oppose. *In re Sparks*, No. 16-50973 (5th Cir. Nov. 18, 2016).

[The Re-Sentencing Hearing Before Judge Yeakel]

Upon joint motion of the parties, the district court consolidated the motions and ordered a resentencing. It provided Sparks with court-appointed experts and conducted a five-day sentencing hearing. At the hearing, the Government introduced evidence that Sparks committed repeated acts of brutal violence during his first decade in prison. In 2004, Sparks participated in a riot involving approximately 600 inmates, carrying a baseball bat during the fighting. In July 2006, Sparks stabbed his cellmate 12 times in the back, neck, head, and right arm. In September 2007, he stabbed another inmate in the neck, resulting in a spinal cord injury that left the inmate unable to walk or urinate by himself. In March

2008, Sparks attempted to murder an inmate by stabbing him repeatedly in the head, resulting in brain damage and the loss of the victim's right eye. Sparks's violence led to his transfer to ADX Florence in Colorado, a supermax facility where the nation's most dangerous federal prisoners are located. Before that transfer, he had been sanctioned for at least 23 incidents. And in 2014, Sparks instructed two inmates to assault another inmate.

[Judge Yeakel's Memorandum Opinion]

The district court carefully examined Sparks's youth and its attendant characteristics in a twenty-six-page memorandum opinion. The district court included a thorough discussion of *Miller* and the 18 U.S.C. § 3553(a) factors. The court also considered the PSR, which could not identify any basis under § 3553(a) for varying from the recommended sentence of life imprisonment. The district court could not 'imagine a worse offense, nor [could] the court imagine a more callous perpetrator than the defendant.' Nonetheless, the district court chose to vary downward and sentenced Sparks to 35 years, with credit for time in custody. Sparks appealed.

* * *

[Sparks' Argument on Appeal]

Sparks's principal argument on appeal is that the district court violated *Miller v. Alabama*. That case held the Eighth Amendment prohibits mandatory LWOP sentences for juveniles. *Miller*, 567 U.S. at 465, 132 S.Ct. 2455. It's not clear from Sparks's briefs whether he thinks his below-Guidelines sentence violates the substantive or procedural aspects of the *Miller* decision. At argument, his counsel urged us to consider both. We do so.

* * *

[Understanding *Miller*]

Three corollaries follow from *Miller*'s substantive rule. First, it 'did not foreclose a sentencer's ability to impose life without parole' on a *discretionary* basis. *Montgomery*, 136 S. Ct. at 726; *see also Miller*, 567 U.S. at 483, 132 S.Ct. 2455.

* * *

Second, *Miller* has no relevance to sentences less than LWOP. *See United States v. Walton*, 537 F. App'x 430, 437 (5th Cir. 2013) (per curiam). This means that sentences of life *with* the possibility of parole or early release do not implicate *Miller*.

* * *

Third, a term-of-years sentence cannot be characterized as a *de facto* life sentence. *Miller* dealt with a statute that specifically imposed a mandatory sentence of life. The Court distinguished that sentencing scheme from 'impliedly constitutional alternatives whereby "a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole or a lengthy

term of years.'" *Lucero*, 394 P.3d at 1133 (quoting *Miller*, 567 U.S. at 489, 132 S.Ct. 2455). Given *Miller*'s endorsement of 'a lengthy term of years' as a constitutional alternative to life without parole, it would be bizarre to read *Miller* as somehow foreclosing such sentences.

* * *

[There Was No Substantive *Miller* Violation]

Sparks cannot show a substantive *Miller* violation. First, he received a discretionary sentence under § 3553(a) rather than a mandatory sentence. Second, he was sentenced to thirty-five years in prison rather than life without parole. Because Sparks did not receive a mandatory sentence of life without parole, he has failed to demonstrate a violation of *Miller*'s substantive requirements.

* * *

[The Procedural Argument]

The procedural component of *Miller* 'requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence.' *Montgomery*, 136 S. Ct. at 734. In *Miller* and *Montgomery*, the Supreme Court considered state laws in Alabama and Louisiana imposing mandatory LWOP sentences on juveniles. But *federal* prisoners have procedural protections that state prisoners do not have—namely, the sentencing factors in § 3553(a) and the advisory Sentencing Guidelines.

[Judge Yeakel's §3553(a) Analysis Satisfies *Miller*]

Under § 3553(a), a sentencing court 'shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes' of sentencing. In choosing an appropriate sentence, the court must examine 'the nature and circumstances of the offense and the history and characteristics of the defendant.' 18 U.S.C. § 3553(a)(1). It must also consider the policy statements of the Sentencing Commission, *id.* § 3553(a)(5), which expressly allow for consideration of the defendant's age, 'including youth,' U.S.S.G. § 5H1.1, p.s.

The § 3553(a) analysis satisfies *Miller*'s procedural requirement that the court consider the defendant's youth and its attendant characteristics before imposing a sentence of life without parole. *See Moore v. United States*, 871 F.3d 72, 79 (1st Cir. 2017)…

* * *

Thus, a sentence that satisfies § 3553(a)'s procedural requirements cannot be challenged under the procedural component of the *Miller* decision.

* * *

[There Was No Procedural *Miller* Violation]

> In this case, the district court appointed taxpayer-funded experts for Sparks, held a lengthy five-day hearing, and wrote twenty-six pages explaining its sentence. This fulsome process gave Sparks far more than the minimum procedure necessary to conduct a proper § 3553(a) analysis. And we agree with the Government that *Miller* does not add procedural requirements over and above § 3553(a).
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> * * *
>
> Sparks's sentence is affirmed.

My Thoughts

- We will probably never be confronted with a *Graham v. Florida* issue because the law is now so well settled.
- As usual, Judge Lee Yeakel showed wisdom as he decided the *Miller* issue in *Sparks*.

Buck Files is a member of TDCLA's Hall of Fame and a former President of the State Bar of Texas. In May, 2016, TDCLA's Board of Directors named Buck as the *author transcendent* of the Texas Criminal Defense Lawyers Association. This is his 236th column or article. He practices in Tyler with the law firm of Bain, Files, Jarrett and Harrison, P.C., and can be reached at bfiles@bainfiles.com.