

Principle of Proportionality—*State v. Booker*: Tennessee’s Delicate Entrance into the *Miller* Movement for Furthering Juvenile Justice

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I. INTRODUCTION

Sentencing schemes for juvenile homicide offenders have long been a contentious area of law for states endeavoring to ascribe just

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punishment for the most heinous of crimes—murder—while balancing the penological legitimacy and constitutionality for such prescribed punishment against minors.¹ While the U.S. Supreme Court (“Supreme Court”) has progressively laid the groundwork for many states’ recent development and adoption of more proportionate legal doctrines, the states have also been given considerable autonomy in implementing their own statutes and case law, resulting in a broad spectrum of disparate outcomes for juveniles across the nation.² One major outlier in the spectrum exists in Tennessee under the state’s current sentencing scheme requiring a mandatory sixty-year (60) life imprisonment term with release eligibility after fifty-one (51) years for homicide offenders, including juveniles tried as adults.³ This statute still stands today as the single harshest in the country when applied to juvenile homicide offenders.⁴

The Tennessee Supreme Court (“Court”) recently established a pivotal new precedent for lower Tennessee courts in *State v. Booker* when it specifically addressed the unconstitutionality of the state’s automatic life sentencing law as applied to juvenile homicide offenders under the age of eighteen.⁵ In *Booker*, sixteen-year-old Tyshon Booker shot and killed G’Metrik Caldwell during a failed robbery attempt with acquaintance, Bradley Robinson.⁶ Booker was tried as an adult in criminal court where a jury convicted him on all counts.⁷ In compliance with Tennessee law, the trial court enforced the state’s

1. See John R. Mills, et al., *Juvenile Life Without Parole in Law and Practice: Chronicling the Rapid Change Underway*, 65 AM. U.L. REV. 535, 537–39 (2016).

2. See Emily Komp, Comment, *Resentencing Juveniles: States’ Implementation of Miller and Montgomery Through Resentencing Hearings*, 53 UIC J. MARSHALL L. REV. 311, 314 (2020).

3. TENN. CODE ANN. § 40-35-501(h)(2) (1995). See also *A State-By-State Look at Juvenile Life Without Parole*, ASSOCIATED PRESS (July 31, 2017, 4:28 PM), <https://apnews.com/general-news-9debc3bdc7034ad2a68e62911fba0d85> (requiring a sixty-year sentencing term to be served “less sentence credits earned and retained. However, no sentence reduction credits authorized by . . . law, shall operate to reduce the sentence imposed by the court by more than fifteen percent.”).

4. ASSOCIATED PRESS, *supra* note 3.

5. *State v. Booker*, 656 S.W.3d 49, 66–68 (Tenn. 2022). See generally TENN. CODE ANN. § 40-35-501(h)(2) (1995).

6. *Booker*, 656 S.W.3d at 54.

7. *Id.* at 54.

mandatory life sentence, depriving Booker of a hearing that would have permitted relevant mitigating factors to be considered in light of the defendant's juvenile status—this serving as the crux of *Booker*'s appeal.⁸ Reversing both the trial court and appellate court decisions, the Tennessee Supreme Court *held* that Tennessee's law on automatic life sentences, when imposed on juvenile homicide offenders with no consideration of age or attendant circumstances, violated the Eighth Amendment of the U.S. Constitution. *State v. Booker*, 656 S.W.3d 49, 68 (Tenn. 2022).

The Court's conclusion intended to squarely address an issue of first impression and align with the proportionality principles already adopted by a majority of the nation.⁹ Even so, the Court's ruling in *Booker* came more than a decade after the landmark Supreme Court case, *Miller v. Alabama*, which established the analytical framework for individualized juvenile sentencing, and stops short of advancing a retroactive enforcement precedent as a remedy for the hundreds of juveniles currently serving Tennessee's unconstitutional mandatory life sentence.¹⁰ By declining to acknowledge in their holding that *Miller* applied to Booker's claim, the Court's heightened concerns of proportionality and contemporary standards of decency extend no further than Booker himself.

Part II of this case comment will explore developments in noteworthy Supreme Court and state court decisions over the past two

8. *Id.* at 64. See also Mills et al., *supra* note 1, at 544 (reviewing the Supreme Court's proportionality ruling in *Miller v. Alabama* that requires "individualized consideration of the mitigating aspects of youth before exercising discretion to impose [juvenile life without parole sentencing].").

9. See *Booker*, 656 S.W.3d at 67–68 (articulating in the majority opinion the urgency for furthering juvenile justice in stating "[t]he dissent would have us wait until the United States Supreme Court rules on this precise issue. But we will not shirk our duty and ignore an injustice.").

10. *Booker*, 656 S.W.3d at 67 n.19 (citing Anita Wadhvani & Adam Tamburini, *Special Report: In Tennessee, 185 People Are Serving Life for Crimes Committed as Teens*, THE TENNESSEAN (Mar. 6, 2019, 9:33 PM), <https://www.tennessean.com/story/news/2019/03/07/juvenile-sentencing-tennessee-cyntoia-brown-clemency-life/2848278002/> (reporting that 120 juvenile homicide offenders were sentenced in 2019 under the current Tennessee statute requiring incarceration between fifty-one and sixty years)).

decades that have prepared the states for retroactive enforcement of *Miller* in compliance with the Eighth Amendment proportionality principle. Part III will highlight the essential facts in *Booker* from which the majority view arose and explore the reasoning behind the Court's Eighth Amendment *Miller* analysis and conclusion. Part IV will evaluate the *Booker* holding alongside landmark Supreme Court decisions and other subsequent state court holdings regarding retroactivity of juvenile homicide offenders while also assessing the feasibility of its application in current and future Tennessee cases. Part V will envisage how an equally viable alternative to the Court's final decision may have heightened its impact and, in conclusion, Part VI will holistically review the narrow *Booker* decision with respect to its foreseeable consequences for the currently incarcerated individuals sentenced to a sixty-year life imprisonment term as juveniles.

II. A JUDICIARY HISTORY OF THE PROPORTIONALITY PRINCIPLE

The Eighth Amendment in its explicit prohibition of cruel and unusual punishments serves as the paramount authority by which the proportionality principle arises.¹¹ The framework for guaranteeing individuals the right to be free from disproportionate punishments extends beyond the margins of the Constitution, however, requiring the judiciary to balance the “evolving standards of decency” characterized by a maturing, civilized society.¹² The historical landscape of Supreme Court opinions on the Eighth Amendment proportionality principle charts a clear but narrow course when applied to juveniles tried as adults.

Dating back to 1988, the *Thompson v. Oklahoma* Court developed the platform for proportionality jurisprudence analysis at a time when no minimum age for imposing the death penalty had been formally established, yet historically, nearly forty percent of states, when considering the issue of a minimum age, enacted legislation requiring that a defendant be at least sixteen years old at the time of the capital offense before enforcing the death penalty.¹³ In *Thompson*, the

11. U.S. CONST. amend. VIII.

12. *Thompson v. Oklahoma*, 487 U.S. 815, 821–22 (1988) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)).

13. *Id.* at 829 n.30.

Supreme Court confronted the question of whether the death penalty was properly imposed on fifteen-year-old homicide offender, William W. Thompson, for his participation in the gruesome murder of his former brother-in-law, and concluded in a plurality decision that executing anyone under sixteen years of age is prohibited by the cruel and unusual punishment clause in the Eighth Amendment.¹⁴ Importantly, the *Thompson* Court reasoned that children like Thompson must be recognized as constitutionally different than adults due to the innate cognitive differences that exist between adolescents and adults.¹⁵ The *Thompson* majority further opined that such age-based distinctions have been consistently evidenced throughout United States' federal and state laws and, therefore, less culpability should attach to a crime committed by a juvenile than an adult.¹⁶

Nearly two decades later, the Supreme Court in *Roper v. Simmons* revisited the age of minority issue left unresolved in *Thompson* and, applying the same moral proportionality reasoning, extended their prior decision to bar capital punishment for *all* juvenile offenders under the age of eighteen.¹⁷ In doing so, the Court raised an important affirmation: once juveniles' characteristics for diminished culpability are recognized, the penological justifications for imposing the death penalty no longer suffice.¹⁸

14. *Id.* at 838 (noting the Court's holding); *id.* at 860 (Scalia, J. dissenting) (reciting the facts of the case).

15. *Id.* at 833–35.

16. *Id.* at 823–25 (citing *Goss v. Lopez*, 419 U.S. 565, 590–591 (1975) (Powell, J., dissenting) (depicting notable distinctions that have been made between children and adults in all areas of the law including “in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and hold office” as well as various states' development of separate sentencing statutes for juveniles and juvenile justice systems.)).

17. Amanda Huston, Comment, *Jurisprudence vs. Judicial Practice: Diminishing Miller in the Struggle Over Juvenile Sentencing*, 92 DENV. U.L. REV. 561, 571.

18. *Roper v. Simmons*, 543 U.S. 551, 561, 571, 574 (2005) (“[t]he reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.” (quoting *Thompson*, 487 U.S. at 835)). The necessity of objective indicia of societal standards in determining proportional punishments for juveniles factored into the Supreme Court's decision noting that eighteen years of age is the point where society

More recent cases have reinforced a firm reliance on the *Thompson* and *Roper* analytical framework for shielding juvenile offenders from harsh sentences.¹⁹ The 2010 Supreme Court decision in *Graham v. Florida* zeroed in on children's diminished culpability and heightened capacity for change when it established a bright line rule prohibiting non-homicide juvenile offenders from receiving life sentences without parole.²⁰ Soon after the *Graham* ruling, the Supreme Court in *Miller v. Alabama* notably established another categorical rule (the "*Miller* rule") denouncing mandatory sentencing schemes imposed on juvenile offenders (except in the rarest of cases)²¹ whereby courts must make individualized sentencing decisions that take a juvenile offender's age and age-related characteristics into consideration before imposing the harsh penalty of a life sentence without the possibility of parole.²² In their reasoning, the *Miller* plurality expressed considerable concern for the discernable mismatch between the culpability of a class of offenders and the severity of the punishment while recognizing that most states impose mandatory sentences of life without parole with no regard for age by virtue of a general provision.²³

In the aftermath of *Miller*, the *Montgomery v. Louisiana* Court grappled with a collateral challenge to the lawfulness of disproportionate imprisonment against a longstanding Louisiana state

draws the line between childhood and adulthood, therefore it is logically the age at which death eligibility should apply. *Id.* at 574.

19. See *Graham v. Florida*, 560 U.S. 48, 61–62 (2010); *Miller v. Alabama*, 567 U.S. 460, 481 (2012).

20. See *Graham*, 560 U.S. at 72, 74, 82 (internal citations omitted) ("For juvenile offenders, who are most in need of and receptive to rehabilitation, the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.").

21. The Supreme Court in *Roper* made an important distinction between a "juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573. The Court also noted that in rare occasions where the juvenile offender exhibits "sufficient psychological maturity" while also demonstrating irreparable immorality, imposition of a harsher sentence may be justifiable. *Id.* at 572-73.

22. *Miller*, 567 U.S. at 489.

23. See *id.* at 470, 486 (iterating their heightened reservations in applying harsher punishment schemes to juveniles by pointing to *Roper* and *Graham* Supreme Court precedents, "[t]he cases before us implicate two strands of precedent reflecting our concern with proportionate punishment.").

law through which a juvenile homicide offender was automatically sentenced to life without parole in 1963.²⁴ Taking care to eliminate one area of ambiguity lingering after the *Miller* decision, the Supreme Court decidedly held the *Miller* rule was, in fact, a substantive rule of constitutional law to be applied retroactively and, upon doing so, states can remedy *Miller* violations “by permitting juvenile homicide offenders to be considered for parole” rather than relitigating sentences.²⁵

Since the implementation of pivotal Supreme Court opinions like *Graham*, *Miller*, and *Montgomery*, state courts have gradually begun to evaluate whether retroactive enforcement must apply to rectify harsh sentencing schemes for juvenile offenders in accordance with the Eighth Amendment proportionality analysis.²⁶ In one such case out of North Carolina, *State v. Kelliher*, the North Carolina Supreme Court addressed retroactive applicability of the *Miller* rule involving a juvenile homicide offender serving two consecutive life sentences of fifty years before becoming eligible for parole.²⁷ There, the state legislature had amended the juvenile sentencing statute in 2021 to comport with the *Miller* rule so the court had little difficulty in concluding that Kelliher’s aggregate life sentences were categorically prohibited from being imposed on a juvenile that is “neither

24. *Montgomery v. Louisiana*, 577 U.S. 190, 198 (2016) (explaining that a state collateral challenge is required by the Constitution when a new substantive rule of constitutional law controls the outcome of a case, therefore, courts must give retroactive effect to the new rule). The *Montgomery* Court further iterated that the requirement for a state collateral challenge was established “by precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application.” *Id.* at 191.

25. *Montgomery*, 577 U.S. at 212.

26. Amanda Huston, Comment, *Jurisprudence vs. Judicial Practice: Diminishing Miller in the Struggle Over Juvenile Sentencing*, 92 DENV. U.L. REV. 561, 585 n.194 (exploring the split in post-*Miller* state court decisions on whether to apply the *Miller* holding retroactively for defendants currently serving life without parole who were sentenced as juveniles. According to the data, the First, Third, and Eighth circuits are among the circuit courts that have declared prima facie showing that *Miller* applies retroactively).

27. *State v. Kelliher*, 873 S.E.2d 366, 371, 373–74 (N.C. 2022).

incorrigible nor irredeemable.”²⁸ Relying heavily on the language of the Eighth Amendment and their own state constitutional provisions as well as persuasive Supreme Court dicta in their analysis, the North Carolina Supreme Court reasoned that *Graham*, *Miller*, and *Montgomery* must stand as the firm guideposts not only for establishing Eighth Amendment constitutionality of life sentences without parole when imposed on juveniles but also in bridging ambiguities on which legislative sentencing statutes remain silent.²⁹

Similarly, in *McKinley v. Butler*, the Seventh Circuit Court of Appeals applied the logic of *Miller* to a first-degree murder case involving a *de facto* life sentence in which the trial judge exercised judicial discretion in issuing the two consecutive 50-year prison terms to a juvenile defendant even though the Illinois statutory sentencing scheme prevented any chance of early release for individuals convicted of first-degree murder.³⁰ The appellant in *McKinley* presented a compelling post-*Miller* argument for retroactive enforcement on collateral review by challenging the 100-year sentence as excessive given that he was only sixteen when he committed the murder.³¹ His argument that the judge’s choice of sentencing violated the Proportionate Penalties Clause of the Illinois Constitution³² was strengthened by a broader interpretation of the *Miller* principle that “children are different” must apply not only to mandatory life sentences decreed by legislature but to discretionary life sentences as well.³³ The court ultimately extended the *Miller* rule for retroactive application reasoning that *Miller* “does not forbid, but it expresses great skepticism concerning, life sentences for juvenile murderers. . . . [I]ts concern that courts should consider in sentencing that ‘children are different’

28. See *id.* at 380; see also N.C. CONST. art. I, § 27. In *Kelliher*, N.C.G.S. § 15A-1340.19, a statute amending North Carolina’s juvenile sentencing scheme in the wake of *Miller*, was enacted in 2021, nearly twenty years after *Kelliher* received his consecutive *de facto* life without parole sentences.

29. See *Wynn*, 354 So. 3d at 1016–22; *Kelliher*, 873 S.E.2d at 375–80.

30. *McKinley v. Butler*, 809 F.3d 908, 909 (7th Cir. 2016).

31. *Id.* at 910.

32. ILL. CONST. art. 1, § 11. This provision is more commonly known as the ‘Proportionate Penalties Clause of the Illinois Constitution’ as noted in *McKinley*. *McKinley*, 809 F.3d at 910.

33. See *McKinley*, 809 F.3d at 910–11.

extends to discretionary life sentences and *de facto* life sentences, as in this case.”³⁴ In essence, the opinion of the court disclosed that the relevance of *Miller*’s “children are different” to sentencing is broad in scope and must be guided by consideration of age-relevant factors.³⁵

By contrast, the sentencing provision Tenn. Code Ann. § 40-35-501(h)(2) provides little if any reprieve for defendants convicted of felony murder or homicide in the state of Tennessee.³⁶ The statute mandates a sentence of death, imprisonment for life without possibility of parole, or imprisonment for life in such cases, requiring a mandatory sixty-year life imprisonment term with release eligibility only after having served fifty-one years of the term.³⁷ Under this strict sentencing scheme, Tennessee courts have traditionally construed the *Miller* decision narrowly because the Supreme Court has not yet explicitly held that the Eighth Amendment extends to juvenile sentences that are the functional equivalent of life.³⁸ A 2016 appeal presented to the Sixth Circuit Court of Appeals in *Starks v. Easterling* exemplified the Tennessee courts’ reluctance to expand the *Miller* decision to post-conviction proceedings for juveniles sentenced under the mandatory life imprisonment term for felony murder.³⁹ There, the court discussed at length the key Supreme Court findings in *Miller*, recognizing first, that the Eighth Amendment forbids a sentencing scheme of mandatory life imprisonment without possibility of parole for juvenile offenders, and additionally, when all the factors relevant to youth are disregarded as the harshest prison sentence is being imposed, such a scheme creates a profound risk of disproportionate punishment.⁴⁰ Despite the court’s compelling rationale for extending *Miller* to *Starks*’ case, it declined to do so, relying solely on the fact that lower courts were still divided on *Miller*’s applicability to sentencing schemes that function as the equivalent of life in prison for juveniles.⁴¹

34. *Id.* at 914.

35. *Id.* at 911.

36. TENN. CODE ANN. § 40-35-501(h)(2) (1995) (setting forth the automatic life in prison sentencing terms for felony murder and homicide convictions).

37. *Id.*

38. *See Starks v. Easterling*, 659 F. App’x 277, 280–81 (6th Cir. 2016).

39. *Id.* at 278.

40. *Id.* at 280.

41. *Id.*

III. ANALYSIS OF THE TENNESSEE SUPREME COURT'S DEFERENTIAL DECISION IN *STATE V. BOOKER*

The circumstances giving rise to the 2022 Tennessee Supreme Court case *State v. Booker* began the afternoon of November 15, 2015 when two juveniles, Tyshon Booker (“Booker”) and Bradley Robinson (“Robinson”), arranged to take a ride with twenty-six year old G’Metrik Caldwell (“Caldwell”) in his car around Knoxville to smoke cannabis.⁴² According to Booker’s testimony, an altercation ensued between Caldwell and Robinson in the front seat of the car and during the scuffle Booker observed Caldwell reach down in the floorboard of the driver’s side to grab a gun, then turn towards him in the backseat.⁴³ Booker admittedly shot Caldwell six times from the back of the car “until he stopped moving,” and both he and Robinson fled the scene with the victim’s cell phone.⁴⁴

Subsequently, a petition was filed in juvenile court charging the then sixteen-year-old Booker with felony murder, but the case was transferred to criminal court where he was tried as an adult and indicted by a grand jury on two counts of first-degree felony murder and two counts of especially aggravated robbery.⁴⁵ In accordance with Tenn. Code Ann. § 40-35-501(h)(2), the criminal court automatically sentenced Booker to serve a mandatory sixty-year life imprisonment term with release eligibility after fifty-one years.⁴⁶ On appeal, Booker challenged the constitutionality of Tennessee’s mandatory sentencing scheme when imposed on a juvenile.⁴⁷ The Criminal Court of Appeals concluded that state court precedent was binding on the issue and denied relief on those grounds but simultaneously acknowledged the strength of the proportionality concerns supporting Booker’s claim.⁴⁸

The Tennessee Supreme Court granted permission to appeal the case on the question of “whether a mandatory sentence of life imprisonment for juvenile offenders for first-degree murder, with no

42. *State v. Booker*, 656 S.W.3d 49, 54–55 (Tenn. 2022).

43. *Id.*

44. *Id.*

45. *Id.* at 54 n. 3–4.

46. *Id.* at 55. *See also* TENN. CODE ANN. § 40-35-501(h)(2) (1995).

47. *Booker*, 656 S.W.3d at 55.

48. *Id.*

aggravating factors, . . . violates the provisions in the United States and Tennessee Constitutions forbidding cruel and unusual punishment.”⁴⁹ Booker presented two theories for consideration.⁵⁰ First, the analytical framework for compliance with the Eighth Amendment was well-established by Supreme Court precedent and centered on strong objective indicia of a national consensus against juvenile sentencing statutes like Tennessee’s.⁵¹ Second, when a mandatory life sentence of sixty years requires a minimum of fifty-one years be served it is the “functional equivalent” of a mandatory life sentence without parole and therefore unconstitutional as held in *Miller*.⁵² The Court held that Tennessee’s automatic life sentence when imposed on juvenile homicide offenders constitutes disproportionate punishment in violation of the Eighth Amendment because “children are constitutionally different from adults for purposes of sentencing” and juries are provided no opportunity to individualize their punishments under the current sentencing law.⁵³ With no hearing, the Court reasoned that factors that would have applied in juvenile court such as Booker’s age at the time of his offense, the nature of his crime, childhood traumas, and trauma-induced secondary disorders were all excluded for consideration.⁵⁴ When a sentencer fails to properly consider an offender’s youth and other attendant circumstances for the

49. *Id.* at 69.

50. *Id.* at 56, 77.

51. *Id.* at 69, 77 (Bivins, J. dissenting). *See also* *Roper v. Simmons*, 543 U.S. 551, 564–67 (2005) (providing that the Supreme Court’s analysis must begin with a review of objective indicia of consensus via the enactments of legislatures on the precise issue to then determine the acceptability of the death penalty under the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 62–67 (2010) (“The analysis begins with objective indicia of national consensus. “[T]he “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.”” (quoting *Atkins v. Virginia*, 536 U.S. 304, 312)).

52. *Booker*, 656 S.W.3d at 77. *See* *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012) (“[G]iven all we have said in *Roper*, *Graham*, and this decision about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.”).

53. *Booker*, 656 S.W.3d at 66, 68.

54. *Id.* at 64–65. According to psychological expert testimony in *Booker*, these factors played a significant role in contributing to his reckless and impulsive behaviors. *Id.* at 65.

purposes of sentencing, this denial effectively bars any possibility of a “responsible and productive life or reconciliation with the community” because it is not supported by sufficient penological objectives.⁵⁵

IV. PROPOSAL FOR A STRONGER STANCE: RETROACTIVE APPLICABILITY OF THE *MILLER* RULE

Today, when considering the Eighth Amendment principle of proportionality, courts are required to look beyond historical conceptions to the “evolving standards of decency that mark the progress of a maturing society.”⁵⁶ However, ruling on a constitutional challenge to a statute which mandates life in prison for juvenile homicide offenders is often an exercise in judicial restraint by the courts so as to not overstep into the legislative authority of making sound policy judgments.⁵⁷ Under the premise established in *Graham*, courts must begin their categorical proportionality review by giving consideration to the objective indicia of society’s standards as voiced in legislative enactments and state practices to determine whether a national consensus against the sentencing system at issue exists.⁵⁸ Then, the holdings of controlling precedents and the Court’s own “interpretation of the Eighth Amendment’s text, history, meaning, and purpose” are also to be considered when determining whether the punishment inflicted violates the Constitution.⁵⁹

The plurality opinion in *Booker* fixated their constructive ruling on the proportionality principles of the Eighth Amendment, supporting the notion first established by Supreme Court precedents that an

55. *See id.*

56. Brian J. Fuller, Case Note, *A Small Step Forward in Juvenile Sentencing, But Is It Enough? The United States Supreme Court Ends Mandatory Juvenile Life Without Parole Sentences*; *Miller v. Alabama*, 132 S. Ct. 2455 (2012), 13 WYO. L. REV. 377, 382 (2013) (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion)).

57. *See Booker*, 656 S.W.3d at 56.

58. *Graham v. Florida*, 560 U.S. 48, 49 (2010) (citations omitted).

59. *Graham*, 560 U.S. at 49; *see also State v. Link*, 482 P.3d 28, 38 (2021).

automatic sentencing law mandating life in prison expressly contradicts the Constitution's cruel and unusual punishment prohibition when imposed on juvenile homicide offenders.⁶⁰ Despite a lengthy analysis demonstrating the relevance and importance of Supreme Court controlling precedents to Tennessee's unconstitutional sentencing scheme imposed on Booker as a juvenile, the *Booker* Court declined to officially rule that the mandatory sentencing scheme was subject to the entirety of the substantive rules established by *Miller* and *Montgomery*.⁶¹ However, unlike *Wynn*, *Kelliher*, or *McKinley*, where legislatures were quick to remediate state sentencing laws post-*Miller*, thereby effectively intercepting any conflict within prevailing public policies and post-*Miller* judicial decisions,⁶² the Tennessee Supreme Court opted to strike a delicate balance in issuing a rational judicial opinion that comported with their own constitutional interpretation while also conveying deference to the state legislature in governing public policies.⁶³

V. OPINION AND CRITIQUE OF COURT'S OPINION

While bestowing credence to the separation of powers is a fundamental prerequisite in cases like *Booker* that, at their core,

60. *Booker*, 656 S.W.3d at 69, 77. See also *Roper v. Simmons*, 543 U.S. 551, 564–67 (1986); *Graham v. Florida*, 560 U.S. at 62–67.

61. *Booker*, 656 S.W.3d at 66. The Supreme Court in *Miller* denounced mandatory sentencing schemes imposed on juvenile offenders and required courts to make individualized sentencing decisions taking into consideration a juvenile offender's age and age-related characteristics before imposing a life sentence without the possibility of parole. *Miller v. Alabama*, 567 U.S. 460, 489 (2012). The hallmark holding of the *Montgomery* Court made the *Miller* rule a substantive rule of constitutional law, able to be applied retroactively, which allowed states to remedy *Miller* violations by granting juvenile homicide offenders parole opportunities rather than relitigating their sentences. *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016). Despite the emphasis placed on these case holdings, the *Booker* court declined to rule that *Miller* and *Montgomery* opinions applied holistically as a call to action for legislative reform of the mandatory sentencing scheme in juvenile sentencing. *Booker*, 656 S.W.3d at 68.

62. See *Wynn v. State*, 354 So. 3d 1007, 1023 (Ala. Crim. App. 2021); *State v. Kelliher*, 873 S.E.2d 366, 374 (N.C. 2022); *McKinley v. Butler*, 809 F.3d 908, 910 (7th Cir. 2016).

63. See *Booker*, 656 S.W.3d at 68.

examine federal questions of constitutionality, the Tennessee Supreme Court undervalued the breadth of their judicial power in their limited holding. With more than a decade having passed since the individualized-sentencing requirement was established by *Miller* and nearly seven years since *Montgomery* announced that substantive constitutional rules were retroactively applicable in state post-conviction proceedings, the unyielding Tennessee sentencing provision continues to stand alone in the nation as the single harshest penalty imposed on juvenile homicide offenders.⁶⁴ Under the current state statute, Tennessee courts must carry out prison sentencing for juvenile homicide offenders by imposing the mandatory sixty-year life imprisonment term, which when compared with every other state statute, effectively serves as the functional equivalent of life without parole.⁶⁵ As such, the Court had sufficient justification in expanding the scope of their holding to discuss holistic remediation of the constitutional violation.

Retroactively applying the *Miller* rule would not serve as a basis to overturn trial court's sentencing of juvenile homicide offenders sentenced to life in prison, rather it would ensure the proportionality factors for juveniles are being considered. The *Montgomery* Court in their bold admonishment prompts the need for state courts to take action: "*Miller*'s conclusion . . . raises a grave risk that many [juvenile offenders] are being held in violation of the Constitution."⁶⁶ In this case, the effects of not applying *Miller* retroactively means that many Tennessee defendants who were sentenced as juveniles will not be granted individualized sentencing hearings merely because of the timing of their decisions, not because they are not constitutionally entitled to such protection.

64. *Id.* at 61.

65. Blake Lee, *It's About Time: Tennessee's Modernization of Juvenile Sentencing and Where to Go from Here*, 10 LINCOLN MEM'L UNIV. L. REV. 49, 57–58 (2023) (highlighting the disparity between Tennessee's minimum juvenile life sentence parole eligibility with the rest of the country where no other state operates under a fifty-year minimum sentence since most cap their minimums well below the fifty-year mark).

66. *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016).

VI. CONCLUSION

In sum, the Tennessee Supreme Court in *Booker* is to be acknowledged for taking an essential (albeit modest) step towards resolving the Eighth Amendment transgression existing under Tennessee's mandatory sentencing scheme for juvenile homicide offenders. The remedy applied to Tyshon Booker whereby the Court reinstated an unrepealed version of the state statute to allow for a more individualized sentencing settled the isolated case before the Court and provided a means for sentencing courts to do so for future cases involving conviction of juvenile homicide offenders. Theoretically, such a pivotal decision should apply not only to all subsequent juvenile homicide cases post-*Booker*, but because of the life-altering implications for the previously convicted offenders already serving life sentences—convicted when they were merely children in the eyes of the law—retrospective application of *Miller* would have certainly guaranteed justice for those individuals.