

Summary of SC93153, *State of Missouri v. Laron Hart*

Appeal from the St. Louis circuit court, Judge John J. Riley

Argued and submitted April 30, 2013; opinion issued July 30, 2013

Attorneys: Hart was represented by Gwenda R. Robinson of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who was 17 at the time the crimes were committed challenges the use of his videotaped interrogation at a murder and robbery trial and his sentence of life in prison without the possibility of parole. In a decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirmed the conviction but remanded (sent back) the case for resentencing. In a separate opinion, Judge Zel M. Fischer concurs in part and dissents in part. All seven judges agree and the state concedes that, because the sentencer in the man's case – which was pending on appeal when the United States Supreme Court issued its decision in *Miller v. Alabama* – made no individualized consideration of the myriad factors discussed in *Miller*, the man's sentence of life in prison without parole violates the Eighth Amendment, and he must be resentenced in accordance with *Miller's* constitutional safeguards. All seven judges also agree the trial court did not abuse its discretion or violate the man's constitutional rights in allowing the jury to see the videotaped interrogation. Five judges agree that the man should be allowed to determine, on remand, whether he wishes to be sentenced by a jury or by the trial court. Judge Fischer, joined by one other judge, however, believes the man should be held to his prior waiver of jury sentencing.

Facts: Laron Hart was charged with multiple crimes committed in St. Louis in January 2010, when he was 17 years old. In one, he was charged with first-degree robbery and armed criminal action for pulling open the door of a woman's car and taking her purse at gunpoint. In the second – committed a short time later and a short distance away – he was charged with first-degree murder and armed criminal action for approaching a man from behind and, as he struggled to take the man's backpack, shooting him in the chest and leaving him to die. The jury found Hart guilty. After Hart waived his right to have the jury recommend his sentences, the court sentenced him to life in prison without the possibility of parole for the murder conviction and concurrent 30-year sentences for the other three convictions. He appeals only his convictions for murder and the related charge of armed criminal action, challenging his life sentence and the use of his videotaped interrogation at trial.

AFFIRMED AND REMANDED.

Court en banc holds: (1) While Hart's appeal was pending, the United States Supreme Court held in *Miller v. Alabama* that the Eighth Amendment forbids sentencing a juvenile to life in prison without parole when there has been no consideration of the offender's age and the particular circumstances of the crime. The state concedes *Miller* applies to Hart's case because it

was not yet final before *Miller* was decided. Because the sentencer in Hart's case made no individualized consideration of the myriad factors discussed in *Miller*, Hart's sentence of life in prison without parole violates the Eighth Amendment, and he must be resentenced in accordance with *Miller*'s constitutional safeguards.

(2) Missouri's first-degree murder statute – section 565.020, RSMo – provides two punishment options: death or life in prison without parole. Because Hart was 17 at the time he committed the murder, he cannot be sentenced to death. The United States Supreme Court held in *Roper v. Simmons* that the Eighth Amendment prohibits the death penalty for defendants who commit first-degree murder when they are 17 years or younger. *Miller*, however, does not categorically bar juvenile offenders from being sentenced to life in prison without parole. Instead, *Miller* holds that such a sentence is constitutionally permissible as long as the sentencer determines it is just and appropriate in light of the particular circumstances, including the nature of the offense and the offender's age. On remand, the sentencer must conduct the individualized assessment required by *Miller* and, on that basis, determine whether life without parole is a just and appropriate sentence for Hart under all the circumstances.

(3) Unless Hart decides to waive jury sentencing on remand (see paragraph 4, below), the jury must be instructed properly that it may not “assess and declare” that Hart's punishment for first-degree murder should be life without parole unless it is persuaded beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances. Before the jury begins its deliberations, it also must be instructed that, if it is not persuaded that life without parole is a just and appropriate sentence under all the circumstances of the case, additional instructions about the applicable punishments will be given at that time. It is not appropriate for the sentencer to be able to choose between life without parole and some lesser punishment not now authorized by the legislature (see paragraph 5, below, for more discussion).

(a) If, after making the individualized assessment required by *Miller*, the sentencer *is* persuaded beyond a reasonable doubt that sentencing Hart to life in prison without parole is just and appropriate under all the circumstances, the trial court must impose that sentence. In that event, section 565.020, RSMo, will be valid as applied to Hart because it will provide a constitutionally permissible punishment.

(b) If, after making the individualized assessment required by *Miller*, the sentencer is *not* persuaded that a sentence of life in prison without parole is appropriate, the court cannot impose that sentence. In that event, the trial court must declare section 565.020 void as applied to Hart because it fails to provide a constitutionally permissible punishment. If section 565.020 is declared void as applied to Hart, then the trial court must vacate the verdict finding Hart guilty of first-degree murder and instead enter a new finding that he is guilty of the lesser-included offense of second-degree murder. It also must vacate his conviction for armed criminal action predicated on first-degree murder and instead find him guilty of armed criminal action predicated on second-degree murder. The sentencer then must sentence Hart for these two crimes within the applicable statutory punishment ranges. The question of any sentence for Hart for second-degree murder must not arise – and should not be submitted to the sentencer – unless and until the sentencer has

deliberated upon and rejected sentencing Hart to life in prison without parole for first-degree murder.

(4) Hart's waiver of jury sentencing may not be enforced on remand. Hart waived jury sentencing in July 2011, before his trial. At that time, if he was found guilty of first-degree murder, the only sentence he could have received was life in prison. But if he had been found guilty of second-degree murder, the sentencer would have determined the length of his sentence within the range allowed by statute. The decision under *Miller* of whether a sentence of life without parole is just and appropriate under the particular circumstances of the case, however, is a both new decision and a new type of decision. Even though it is reasonable to assume Hart waived his right to jury sentencing based on which sentencer – the jury or the court – he thought would be more lenient in determining the length of his sentences, it is not reasonable to assume that Hart ever considered whether he would prefer the court or jury to make the new – and qualitatively different – decision now required by *Miller*. On remand, Hart may elect again to waive jury sentencing pursuant to section 557.036.4(1), RSMo, but he is not required to do so.

(5) The Court rejects any invitation to engage in any rewrite of section 565.020. The severance doctrine never has been used, in this Court or any other, to justify replacing a statute drafted by the legislature with one of the judiciary's own invention. Severance does not authorize – and cannot justify – an intrusion by this Court into the legislative prerogative to determine what is a crime under Missouri law and which punishments will apply to which crimes. The Court rejects any application of the severance doctrine (or any other form of judicial construction) that results in any punishment for first-degree murder other than that plainly authorized in section 565.020.2.

(6) The trial court did not abuse its discretion in overruling Hart's objection to allowing the jury to observe the portion of Hart's videotaped interrogation that included a brief discussion of prior robberies in which Hart denied any involvement and to which no later reference was made, either in the videotape or by the state during the trial. Such a passing reference to other robberies does not constitute improper evidence of uncharged crimes, wrongs or acts, and it was not error for the court to admit this evidence, which rebutted the defense suggestion to the jury that Hart's statements were coerced. Further, Hart fails to demonstrate any constitutional violation in the court's decision to allow the state to use the statements at trial. The circumstances undercut Hart's contention that his statements were involuntary.

Opinion concurring in part and dissenting in part by Judge Fischer: The author agrees with the principal opinion except he would hold that Hart's knowing and voluntary waiver of his right to have the jury participate in his sentencing should prohibit him from demanding that a jury participate in his sentencing on remand. Hart waived jury sentencing before the guilt phase of his trial – at a time when he could have been found guilty of first-degree murder or second-degree murder and sentenced accordingly, or he could have been found guilty of nothing at all. The trial court inquired into whether Hart's waiver was made knowingly, voluntarily and intelligently and was convinced by his responses. Once the right to jury sentencing is waived, it is considered waived for all future proceedings. *Miller* presents no substantive legal change to the punishment permitted or the evidence allowed on resentencing, and the principal opinion only modifies the procedure for determining whether the legislatively authorized sentence may be imposed. Hart, therefore, should be held to his waiver of jury sentencing. The author concludes by stating that

the Court has adhered strictly to the mandates of *Miller* but also protected the legislature's prerogative to decide what valid alternative sentence to life without parole is appropriate for juveniles who commit first-degree murder. The author points out that the legislature's failure to provide a valid alternative sentence will result in juveniles who have committed first-degree murder, by necessity, being sentenced to the punishment authorized for second-degree murder.