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ATTORNEY GENERAL  
STATE OF MICHIGAN

February 11, 2013

Re: Juvenile Life Without Parole issues  
*Hill, et al. v. Snyder, et al.*, U.S.D.C. No. 10-14568.

Dear Prosecutors of the State of Michigan:

I write to dispel some of the rumors being circulated in the news regarding life-without-parole sentences for teenage murderers following the federal court's recent opinion in *Hill v. Snyder*. As you are aware, the United States Supreme Court in 2012 upheld the validity of life-without-parole sentences for teenage murderers, but it said that such sentences could not be part of a mandatory sentencing scheme. A convicted juvenile murderer is entitled to a hearing to determine whether a life-without-parole sentence is appropriate under the circumstances of the particular criminal case. *Miller v. Alabama*, 135 S. Ct. 455 (2012).

The Supreme Court was silent as to whether *Miller* should be applied retroactively. That silence leaves open the question whether family members and friends of those murdered by teenagers will be re-victimized by convicted murderers seeking a *Miller* resentencing hearing in cases that are already final on direct review.

The State of Michigan is currently litigating this retroactivity issue in both state and federal court. In *People v. Carp*, \_\_ N.W.2d \_\_, 2012 WL 5846553 (Mich. Ct. App. Nov. 15, 2012), the Michigan Court of Appeals issued a unanimous, published decision holding that *Miller* cannot be applied retroactively. Under *Teague v. Lane*, 489 U.S. 288 (1989), a procedural (rather than a substantive) change in the law is only given retroactive application if it announces a "watershed" rule of criminal procedure, such as the right to counsel. The only criminal procedure rule the Supreme Court has recognized as rising to the "watershed" level is the right to counsel as announced in *Gideon v. Wainwright*, 372 U.S. 335 (1963). In *Carp*, the Michigan Court of Appeals concluded—correctly in our office's view—that the *Miller* rule is procedural and not a watershed rule and therefore has no retroactive effect. Accord *Craig v. Cain*, 2013 WL 69128 (5th Cir. Jan. 4, 2013) (*Miller* not retroactive); *Geter v. State*, 2012 WL 4447760 (Fla. Ct. App. Sept. 27, 2012) (same). Accordingly, *Carp* is binding precedent and does not require prosecutors to re-open any case that is final on direct review simply because it involves a life-without-parole sentence for a teenage murderer.

In *Hill v. Snyder*, No. 10-14568, Eastern District of Michigan, Judge Corbett O'Meara recently expressed his opinion that *Miller* should be applied retroactively. However, given recent misinformation propounded in a number of news accounts, it is important to clarify the precedential value of Judge O'Meara's opinion.

Critically, Judge O'Meara stops short of actually holding that *Miller* must be applied retroactively. As Judge O'Meara's opinion explains, that issue was not before him because the five plaintiffs in *Hill* still had their (civil) case pending at the time the Supreme Court issued *Miller*. It is a novel interpretation of *Teague* to say that a United States Supreme Court change in law applies to pending *civil* cases. But the important point is that **any relief is limited to the five plaintiffs in *Hill* and no one else**. Judge O'Meara must now decide what relief can be afforded to these five plaintiffs and has requested briefing on that subject.

Our office's position is that Judge O'Meara's nonbinding comments about *Miller*'s retroactive effect are wrong in any event. The opinion's substantive analysis consisted of a single footnote that simply announced that *Miller* has to be a substantive change in law. And the opinion's text says that *Miller* should be given retroactive effect as a matter of "morality" without referencing the morality of the horrific crimes perpetrated by many of Michigan's teenage murderers or the emotional damage that *Miller* hearings will inflict on victim families and friends. Indeed, there is a striking difference between *Hill*'s one footnote of non-binding commentary and the more than 17,000-word analysis the Michigan Court of Appeals provided on the merits of this issue in *Carp*.

In sum, contrary to recent newspaper articles and other reports, Judge O'Meara's January 30, 2013 Opinion *does not* give the *Miller* decision retroactive effect; *does not* require the resentencing of every teenage murderer serving a mandatory life-without-parole sentence; and *does not* require immediate parole review of every teenage murderer serving such a sentence. Michigan trial courts are bound only by the Michigan Court of Appeals' published precedent in *Carp*. As these matters continue to be litigated, our office remains dedicated to being the voice for those family members and friends who lost loved ones to the most heinous of crimes—the taking of human life.

Sincerely,



Bill Schuette  
Attorney General

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