Miller Retroactivity: Where Are We?

Author : Jessica Smith

Categories : Sentencing, Uncategorized

Tagged as : Eighth Amendment, miller, procedural, retroactivity, substantive, teague, watershed

Date : March 31, 2014

Almost two years after the United States Supreme Court decided *Miller v. Alabama*, the question of whether the case applies retroactively to convictions that became final before it was decided continues to be a thorny one for the nation's courts. *Miller* held that under the Eighth Amendment a sentencing scheme that mandates life without parole for defendants less than eighteen years old at the time of their crimes is unconstitutional. *Miller* of course applies to all cases that were pending when it was decided as well as to all future cases. The question of retroactivity is whether the *Miller* rule applies to cases that became final before the decision was handed down. And that's not just a theoretical question. After *Miller* was decided many defendants with old convictions filed post-conviction motions, challenging their sentences under the Eighth Amendment. *See, e.g., Diatchenko v. Dist. Attorney for Suffolk Dist.,* 466 Mass. 655 (2013) (when *Miller* was decided--thirty years after the defendant's conviction became final--the defendant filed a post-conviction motion challenging his sentence).

In a nutshell, here's how the retroactivity issue plays out. In the federal courts, the question of retroactivity is decided under what's called the *Teague* test (so named for the seminal U.S. Supreme Court case). Under the *Teague* test, new constitutional rules are presumed to apply prospectively only, unless one of two exceptions applies. First, if the rule is substantive, it applies retroactively. And second, if the rule is procedural and it constitutes a watershed rule of criminal procedure, it applies retroactively. The United States Supreme Court had never held any rule to be a watershed rule of criminal procedure. As a result, the focus of retroactivity analysis typically is on whether a rule is substantive or procedural. *Teague* doesn't limit the authority of the state courts to give broader effect to new federal rules in their own post-conviction proceedings than is required by the *Teague* test. Danforth v. Minnesota, 552 U.S. 264 (2008). Put simply, the states are free to adopt their own more permissive rules regarding the retroactive application of new federal constitutional rules. North Carolina, like many states, however, applies the *Teague* test to determine whether new federal constitutional rules apply retroactively in state post-conviction proceedings. This is admittedly a brief summary of a complicated area of the law. If you want more detail about retroactivity in general, I've provided it in a paper here—with many case citations.

So back to *Miller*. The question of *Miller*'s retroactive application to convictions that became final before it was decided has split the nation's high courts. To date, three state supreme courts have held that *Miller* is not retroactive. They include:

- Com. v. Cunningham, 81 A.3d 1 (Pa. 2013).
- Chambers v. State, 831 N.W.2d 311 (Minn. 2013).
- State v. Tate, 130 So. 3d 829 (La. 2013), *reh'g denied* (Jan. 27, 2014).

Each of these cases applies the same reasoning: Under *Teague, Miller* is a procedural rule that doesn't qualify as a watershed rule of criminal procedure. *See also* In re Morgan, 713 F.3d 1365 (11th Cir. 2013) (holding, in the context of deciding whether the petitioner should be granted permission to file a successive post-conviction petition, that *Miller* is a procedural rule; admittedly a different analysis but one with very clear *Teague* overtones).

On the other side are five high court decisions, all finding that *Miller* is a new substantive rule. They include:

- People v. Davis, __ Ill.__ (Mar. 20, 2014) (available online here).
- State v. Mantich, 287 Neb. 320 (2014).
- Diatchenko v. Dist. Attorney for Suffolk Dist., 466 Mass. 655, 675 (2013).
- State v. Ragland, 836 N.W.2d 107, 122 (Iowa 2013).
- Jones v. State, 122 So. 3d 698 (Miss. 2013), *reh'g denied* (Sept. 26, 2013).

Additionally, a number of state intermediate appellate courts and lower federal courts have decided the issue. By the looks of it, the issue may be ripe for consideration by the U.S. Supreme Court.