STATE OF CONNECTICUT *v.* ACKEEM RILEY
(AC 33506)

Beach, Alvord and Borden, Js.

Argued January 12, 2012—officially released January 1, 2013

(Appeal from Superior Court, judicial district of Hartford, O'Keefe, J.)

Heather M. Wood, assistant public defender, for the appellant (defendant).

Melissa Patterson, assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, *John F. Fahey*, senior assistant state's attorney, and *Kathryn Ward Bare*, assistant state's attorney, for the appellee (state).

BEACH, J. "Determining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy." *Miller* v. *Alabama*, U.S. , 132 S. Ct. 2455, 2477, 183 L. Ed. 2d 407 (2012) (Roberts, C. J., dissenting). Last term, in *Miller*, the United States Supreme Court held that, in addressing this complicated issue, policymakers can no longer prescribe mandatory life without parole sentences for juveniles,[1] even for the most serious homicide offenses. Id., 2460.

The defendant, Ackeem Riley, who was seven months shy of his eighteenth birthday at the time of his crimes, challenges the sentence imposed by the trial court following his conviction of one count of murder in violation of General Statutes §§ 53a-54a (a) and 53a-8, two counts of attempt to commit murder in violation of General Statutes §§ 53a-49 (a) (2) and 53a-54a (a), two counts of assault in the first degree in violation of General Statutes §§ 53a-59 (a) (5) and 53a-8, and one count of conspiracy to commit murder in violation of General Statutes §§ 53a-48 (a) and 53a-54a (a). The defendant was sentenced to 100 years imprisonment.[2] Although the sentence imposed was not mandatory, the defendant claims that, in order to comply with the logic underpinning the holding in *Miller*, he is entitled to a resentencing procedure in which the court will be required not only to consider his youth and any attendant deficiencies, but also to articulate on the record that it has done so. The defendant further claims that, if the court were again to impose a life without parole sentence, it must explain why such a severe sentence was appropriate despite his age. We decline to adopt such a rigid interpretation of the rule announced in *Miller*. Because the court exercised discretion in fashioning the defendant's sentence, and was free to consider any mitigating evidence the defendant was able to marshal, including evidence pertaining to his age and maturity, we affirm the judgment of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant to the disposition of this appeal. At approximately 6 p.m. on November 17, 2006, the defendant and his companion, Lasell Lewis, were driving a borrowed car in Hartford's North End. As they drove by a house on Garden Street, they thought they saw a male named Mike, who they believed was responsible for a gang related shooting on Vine Street the previous week. The defendant and Lewis circled back with the intention of exacting revenge and drove by the house again, this time firing a barrage of bullets into a crowd of people and hitting three young men.

Tray Davis, a sixteen year old, died of gunshot wounds to his head and chest. Twenty-one year old

Montrel Gage and thirteen year old Jaequan Sheppard-Ray were seriously injured but survived. Gage was shot in the back; the bullet was never extracted from his body. Sheppard-Ray was shot in the abdomen and sustained multiple life-threatening injuries. There was no suggestion that any of the three victims was involved in gang activity.

The defendant was charged with six counts: one count of murder for the shooting of Davis; two counts each of attempted murder and first degree assault for the shootings of Gage and Sheppard-Ray; and one count of conspiracy to commit murder. Pursuant to General Statutes § 46b-127 (a), the defendant's case was automatically transferred from the juvenile docket to the regular criminal docket of the Superior Court. On March 3, 2009, after a five day trial, the jury returned a verdict of guilty on all charges.

On May 5, 2009, the defendant appeared for sentencing. The court heard statements from the prosecutor, defense counsel and the mothers of two of the three victims, Gage and Davis. The court had also reviewed the defendant's presentence investigation report, which included, among other things, information about the defendant's family, upbringing, education and physical and mental health.[3]

The state asked the court to impose an effective sentence of 120 years imprisonment because, in its view, the defendant "should never ever be on the streets again." Any chance for rehabilitation, the state argued, was significantly undermined by the defendant's alleged involvement in another shooting that took place several weeks after the Garden Street incident and which resulted in the paralysis of one of the two victims. There were, then, at least five victims shot by the defendant and his colleagues in these two transactions.

Defense counsel addressed the court next. He explained that the defendant would not be speaking on his own behalf because he maintained his innocence and therefore could not be expected to express remorse or sympathy. Moreover, defense counsel told the court that his client had instructed him to keep his remarks "short and sweet . . . ." Regarding the defendant's background, defense counsel pointed out that the defendant was "a young man"; that he had experienced a "fallout" with his father and subsequently "[taken] to the streets"; and that he had had difficulties in school. He also suggested that the defendant should be presumed innocent of the subsequent shooting, which the prosecutor had described. He concluded his remarks by asking the court "to consider [the defendant's] age" and that he had "little or no prior involvement in the criminal justice system" and to "use [its] wisdom in meting out a punishment that you feel is appropriate."

In rendering its sentence, the court asserted that it

was unable to identify anything in the defendant's background that might have explained why his life had taken such a violent turn. The court conceded that it had "very little sense of [the defendant]" because he had not testified at trial or spoken at his sentencing, but it observed that the defendant's life had been "pretty unremarkable. There's no reason or excuse for him being here. He didn't really come from a horrible family, wasn't abused as a child . . . wasn't raised by someone smoking crack or drinking all day. Had a loving mother . . . [and] a relationship with his father." The court also acknowledged the senselessness of the crimes of which the defendant had been convicted and the terror inflicted on Hartford neighborhoods by random shootings. The court finally considered the likelihood that the defendant would be rehabilitated and concluded that "[t]he answer is probably never." The court expressed its sympathy for the victims and their families, and then, exercising its sentencing discretion, imposed a total effective sentence of 100 years imprisonment.

The defendant was sentenced to sixty years for count one for the murder of Davis; twenty years for count two for the attempted murder of Gage, consecutive to the first count; twenty years for count three for the attempted murder of Sheppard-Ray, consecutive to the first two counts; twenty years for count four for the assault of Gage with a firearm, concurrent to the second count; twenty years for count five for the assault of Sheppard-Ray with a firearm, concurrent to the third count; and twenty years for count six for conspiracy to commit murder, concurrent to the previous counts. This appeal followed.

This case was argued before this court on January 12, 2012. At that time, the defendant claimed that *Roper* v. *Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), and *Graham* v. *Florida*, U.S. , 130 S. Ct. 2011, 2030, 176 L. Ed. 2d 825 (2010), entitled him to a resentencing procedure in which the trial court would expressly consider his youthful characteristics and reduced culpability. The state countered that *Graham* was not controlling because it created only a categorical ban on the imposition of life sentences without the possibility of parole for *nonhomicide* offenses, and did not require sentencing courts to consider the defendant's age and development in all cases. Additionally, the state asserted that *State* v. *Allen*, 289 Conn. 550, 581–86, 958 A.2d 1214 (2008),[4] had already settled the issue of whether life without the possibility of release is a constitutionally permissible sentence for juveniles convicted of murder, and that *Graham* did not disturb that holding.

While this case was pending, the United States Supreme Court granted certiorari in *Miller* v. *State*, 63 So. 3d 676 (Ala. Crim. App.), cert. denied, No. 1091663

(Ala. October 22, 2010); see *Miller* v. *Alabama*, U.S. , 132 S. Ct. 548, 181 L. Ed. 2d 395 (2011) (grant of certiorari); and a companion case, *Jackson* v. *Norris*, 378 S.W.3d 103 (Ark. 2011). See *Jackson* v. *Hobbs*, U.S. , 132 S. Ct. 548, 181 L. Ed. 2d 395 (2011) (grant of certiorari).[5] Both cases involved fourteen year old defendants who were sentenced, following aggravated murder convictions, to life imprisonment without the possibility of parole under mandatory sentencing schemes. *Miller* v. *Alabama*, supra, 132 S. Ct. 2460. In other words, once the petitioners were convicted of their respective crimes, the sentencing authority had no discretion to impose a sentence other than life without the possibility of parole.

The petitioners in *Miller* and *Jackson* argued first that the imposition of a life without parole sentence on a fourteen year old was unconstitutional under eighth amendment excessiveness principles. See *Miller* v. *Alabama*, U.S. Supreme Court Record & Briefs, January Term (2012), Petitioner's Brief p. 10. Specifically, they contended that "nothing in the constitutional analysis established by the *Roper* and *Graham* opinions and nothing in the real-world facts and conditions relevant to that analysis permits a rational distinction between life without parole for children who commit murder and life without parole for children who commit other serious crimes . . . ." *Jackson* v. *Hobbs*, U.S. Supreme Court Record & Briefs, January Term (2012), Petitioner's Brief p. 15. The petitioners additionally asserted that the mandatory nature of their life without parole sentences "provide[d] an independently sufficient ground for [their] invalidation." *Miller* v. *Alabama*, supra, Petitioner's Brief p. 8.

On June 25, 2012, *Miller* was decided. We ordered supplemental briefing on *Miller*'s effect, if any, on the present case. As *Miller* squarely addresses the propriety of life without parole sentences for juvenile offenders, we focus our analysis there.

I

The defendant claims that *Miller* renders the manner in which his sentence was imposed unconstitutional.[6] Specifically, he argues that *Miller* requires the sentencing court to hold a hearing at which the juvenile defendant may present mitigating evidence of the youthful deficiencies identified as constitutionally significant by the United States Supreme Court in its juvenile sentencing cases. Then, the court must articulate on the record which of the factors it considered in rendering a sentence. Finally, if the court nonetheless chooses to impose a life without parole sentence, it must explain why it believed such a severe sentence was warranted despite the evidence presented in mitigation. Such a procedure, the defendant claims, will ensure that life without parole sentences for juveniles will be "uncommon."

We disagree with the defendant for two reasons. First, we read *Miller* to hold that juvenile defendants, in cases where life without parole is a possible penalty, must have the opportunity to present mitigating evidence, but not to define a process that sentencing courts must follow. Second, even though the defendant declined to avail himself fully of the opportunity to present mitigating evidence related to his youth and upbringing, it is clear that the court was cognizant of these issues and searched the presentence investigation report for circumstances that might have militated against imposing a life without parole sentence. Therefore, the defendant's youth was not irrelevant, either statutorily or in practice, to the consideration of his sentence.

A

This case presents a question of constitutional law over which we exercise plenary review. See *State* v. *Marsala*, 93 Conn. App. 582, 587, 889 A.2d 943, cert. denied, 278 Conn. 902, 896 A.2d 105 (2006). In a trilogy of recent eighth amendment decisions; see *Miller* v. *Alabama*, supra, 132 S. Ct. 2455; *Graham* v. *Florida*, supra, 130 S. Ct. 2011; *Roper* v. *Simmons*, supra, 543 U.S. 551; the United States Supreme Court has significantly altered the landscape of juvenile sentencing practices.[7] In establishing that "children are constitutionally different from adults for purposes of sentencing," these decisions "[rest] not only on common sense—on what any parent knows—but on science and social science as well." (Internal quotation marks omitted.) *Miller* v. *Alabama*, supra, 2464.

The court has identified "three significant gaps between juveniles and adults" that reduce juveniles' moral culpability and increase their potential for reform. Id. First, juveniles have an "underdeveloped sense of responsibility" that can result in "recklessness, impulsivity, and heedless risk-taking." (Internal quotation marks omitted.) Id. Second, juveniles are more susceptible to peer pressure and negative influences. Id. This vulnerability is exacerbated by the fact that juveniles are generally unable to exert control over their environment and "lack the ability to extricate themselves from horrific, crime-producing settings." Id. Finally, a juvenile's character and attitudes are still developing; thus, "his actions [are] less likely to be evidence of irretrievabl[e] deprav[ity]." (Internal quotation marks omitted.) Id. As the court succinctly observed in *Graham*, "incorrigibility is inconsistent with youth." (Internal quotation marks omitted.) *Graham* v. *Florida*, supra, 130 S. Ct. 2029.

These deficiencies, the court further explained, undermine the traditional penological justifications for imposing "the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller* v. *Alabama*, supra, 132 S. Ct. 2465. "Because [t]he heart of

the retribution rationale relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." (Internal quotation marks omitted.) Id. Deterrence is also a less compelling justification for the imposition of severe penalties on juveniles because their heightened proclivity for risky behavior makes them less likely to foresee potential punishment and to alter their conduct accordingly. Id. Finally, incapacitation, particularly in the context of life sentences, requires a judgment that a juvenile "forever will be a danger to society"—a conclusion that is possibly premature given a minor's likelihood to develop and mature. (Internal quotation marks omitted.) Id.

In light of these principles, the court invalidated the death penalty for all juvenile offenders in *Roper* v. *Simmons*, supra, 543 U.S. 568. Next, in *Graham* v. *Florida*, supra, 130 S. Ct. 2030, the court categorically barred life without parole sentences for juveniles convicted of nonhomicide offenses. Neither of these cases, however, seemed to suggest that life without parole sentences were constitutionally impermissible for juvenile homicide offenders. See id., 2027 ("[t]here is a line between homicide and other serious violent offenses against the individual" [internal quotation marks omitted]); *Roper* v. *Simmons*, supra, 572 (noting that, to extent that prospect of death penalty deters juvenile offenders, life without possibility of parole is "a severe sanction, in particular for a young person"); see also *State* v. *Allen*, supra, 289 Conn. 581 ("[t]he scope of *Roper* . . . is narrow: it applies only where an individual under eighteen years of age is sentenced to death").

Notwithstanding this implicit sanction of life without parole for juveniles convicted of homicide offenses, in *Miller*, the court demarcated some limitations on the imposition of this sentence. The court did not categorically bar this penalty for juveniles; instead, it "mandate[d] only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing [a sentence of life without parole]." *Miller* v. *Alabama*, supra, 132 S. Ct. 2471; contra *Graham* v. *Florida*, supra, 130 S. Ct. 2032 (categorically barring life without possibility of parole for juveniles convicted of nonhomicide offenses because "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive [such a sentence] . . . despite insufficient culpability" [internal quotation marks omitted]).

The problem with mandatory penalties, the court explained, is that the sentencer is precluded "from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the

14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one." *Miller* v. *Alabama*, supra, 132 S. Ct. 2467–68. In determining an appropriate sentence, the court must be permitted to consider potentially mitigating factors such as the defendant's age and "its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; the characteristics of his home environment, from which "he cannot usually extricate himself—no matter how brutal or dysfunctional"; the circumstances of the offense, including the extent of his participation and whether peer pressure may have induced his involvement; and his difficulties in negotiating the criminal justice system, including the diminished ability to assist his attorneys in presenting a defense. Id., 2468. Failure to consider these potentially mitigating circumstances—an inherent failure of mandatory schemes—presents a risk that punishment will be disproportionate to the young defendant's degree of culpability. Id., 2469.

The court in *Miller* identified another difficulty with life without parole sentences for juveniles: these sentences "share some characteristics with death sentences that are shared by no other sentences. . . . Imprisoning an offender until he dies alters the remainder of his life by a forfeiture that is irrevocable." (Citation omitted; internal quotation marks omitted.) Id., 2466. Moreover, for a juvenile, this is an especially harsh penalty "because he will almost inevitably serve more years and a greater percentage of his life in prison than an adult offender." (Internal quotation marks omitted.) Id. The equation of these two sentences implicated another line of Supreme Court precedents, which require individualized sentencing before imposing the death penalty—a procedure meant to ensure "that the death penalty is reserved only for the most culpable defendants committing the most serious offenses." Id., 2467. "[T]he confluence of these two lines of precedent" provided additional support for "the conclusion that mandatory life-without-parole sentences for juveniles violate the [e]ighth [a]mendment." Id., 2464.

The majority in *Miller* finally suggested that individualized sentencing practices which account for the defendant's "youth (and all that accompanies it)" would likely make the imposition of life without parole sentences on juvenile offenders an "uncommon" occurrence. Id., 2469. Just how uncommon was not clear, and the dissent criticized the majority for making this statement, "although doing so [was] entirely unnecessary to the rule it announce[d] . . . ." Id., 2481 (Roberts, C. J., dissenting). Perhaps, as Chief Justice Roberts suggested, this "gratuitous prediction" was "an invitation to overturn life without parole sentences imposed by juries and trial judges." Id. If it was, we decline that invitation in this case.

To summarize our view of the holding in *Miller*, it is clear that the majority in *Miller* was principally concerned with "sentencing *scheme*[*s*] that [mandate] life in prison without possibility of parole for juvenile offenders"—these statutory schemes were deemed contrary to the eighth amendment. (Emphasis added.) Id., 2469. It is equally apparent that life without parole sentences still can be imposed pursuant to an individualized sentencing process, where the sentencing "judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." Id., 2475;[8] see also id., 2469. There may be some ambiguity as to whether such sentencing procedures must simply afford juvenile defendants the opportunity to present mitigating evidence, or whether sentencing authorities are "require[d] . . . to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id., 2469. We believe that *Miller*, which invalidated two sentencing schemes in which the sentencing courts had no discretion, and in which the defendants were unable to present any evidence in mitigation, requires only the opportunity to present such evidence to a court permitted to consider it, and to impose a lesser sentence in its discretion.[9]

B

The sentencing procedure at issue here differed in critical respects from those the Supreme Court found problematic in *Miller*. Unlike the Supreme Court's action in *Jackson* and *Miller*, in which the court invalidated, respectively, certain Arkansas and Alabama statutes, the court in this case was not obligated to sentence the defendant to life without the possibility of release. Indeed, our sentencing statutes permit the court a great deal of discretion in determining an appropriate sentence.

On his murder conviction, a class A felony; see General Statutes § 53a-54a (c); the defendant was exposed to between twenty-five and sixty years incarceration. See General Statutes §§ 53a-35a (2) and 53a-35b. The other offenses of which the defendant was convicted are class B felonies, which carry terms of imprisonment between one and twenty years. See General Statutes §§ 53a-51 (attempt to commit murder is class B felony) and 53a-35a (6) (class B felonies, other than manslaughter in first degree with firearm, carry terms of incarceration between one and twenty years); General Statutes § 53a-59 (b) (assault in first degree by means of firearm is class B felony); General Statutes § 53a-51 (conspiracy to commit class A felony is class B felony).

"A sentencing judge has very broad discretion in imposing any sentence within the[se] statutory limits . . . ." (Internal quotation marks omitted.) *State* v. *Bletsch*, 281 Conn. 5, 20, 912 A.2d 992 (2007). In

determining an appropriate sentence, "the trial court may consider responsible unsworn or out-of-court information relative to the circumstances of the crime and to the convicted person's life and circumstance." (Internal quotation marks omitted.) Id. The presentence investigation report, which the trial court is required to review; *State* v. *Tarasco*, 301 Conn. 103, 107, 22 A.3d 530 (2011); informs the sentencing process and "play[s] a significant role in reaching a fair [result]." *State* v. *Thomas*, 296 Conn. 375, 389, 995 A.2d 65 (2010). It serves this function by inquiring into a wide range of issues, including "the circumstances of the offense, the attitude of the complainant or victim, or of the immediate family where possible in cases of homicide, and the criminal record, social history and present condition of the defendant. . . ." General Statutes § 54-91a (c). Thus, the presentence investigation report compiles for the court an array of information, which is potentially mitigating or critical in nature.

Moreover, our rules of practice permit a defendant to supplement or challenge the information contained in the presentence investigation report at the sentencing hearing. See Practice Book § 43-10. The sentencing court is instructed to "afford the parties an opportunity to be heard and, in its discretion, to present evidence on any matter relevant to the disposition, and to explain or controvert the presentence investigation report . . . or any other document relied upon by the judicial authority in imposing sentence. . . ." Practice Book § 43-10 (1). The defendant is also afforded "a reasonable opportunity to make a personal statement in his or her own behalf *and to present any information in mitigation of the sentence*." (Emphasis added.) Practice Book § 43-10 (3).

The defendant is thus sentenced by a court that is empowered to "conduct an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider or the source from which it may come." (Internal quotation marks omitted.) *State* v. *Anderson*, 212 Conn. 31, 47, 561 A.2d 897 (1989). This inquiry is certainly expansive enough to encompass information regarding the defendant's age, maturity, upbringing, mental health, and development. Indeed, the sentencing court's mandatory review of the presentence investigation report ensures that many of these issues will be considered. We cannot say that our sentencing scheme is contrary to the holding in *Miller* or the concerns that informed it.

The defendant requests us to impose a sentencing practice for juveniles that would require express, on-the-record consideration of the defendant's age—but sentencing, of course, is not a science.[10] Nor is the process easily reduced to a script or a discrete set of considerations that will ensure a just result in all cases. "Our system depends upon sentencing judges applying

their reasoned judgment to each case that comes before them." *Graham* v. *Florida*, supra, 130 S. Ct. 2042 (Roberts, C. J., concurring in the judgment). And, as Chief Justice Roberts observed, "courts traditionally have made [sentencing] judgments by applying generally accepted criteria to analyze the harm caused or threatened to the victim or society, and the culpability of the offender." (Internal quotation marks omitted.) Id. One of the "generally accepted" factors that courts consider in assessing the culpability of the defendant is age. *Roper* suggested as much when it observed that "any parent knows" that "lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young." (Internal quotation marks omitted.) *Roper* v. *Simmons*, supra, 543 U.S. 569. We believe that our current sentencing procedures afford juvenile defendants sufficient opportunity, and courts ample discretion, for meaningful mitigation of juvenile sentences. This individualized sentencing process therefore comports with the eighth amendment.

C

Our belief that current sentencing practices adequately account for the age, maturity, and upbringing of juvenile defendants is bolstered by the record in this case. Even without a procedure that mandated specific consideration of juvenile deficiencies, the court nonetheless addressed many of the potentially mitigating issues identified in *Miller*. See *Miller* v. *Alabama*, supra, 132 S. Ct. 2467–69. The court explicitly discussed the defendant's family and upbringing, noting that he had a "loving mother" and "a relationship with his father . . . ." The court also observed that there was no indication that the defendant had grown up in an environment of drug or alcohol abuse. In an allusion to the defendant's young age, which had been mentioned by his attorney, the court suggested that the defendant "had all the opportunities that everybody else has in this world . . . ." The court ultimately concluded that "[t]here's no reason or excuse for him being here,"[11] suggesting that it was looking for circumstances that might have provided grounds for leniency.

In contrast to the information available about the defendant, which the court characterized as "pretty unremarkable," were his crimes, which the court described as senseless and contributing to an atmosphere of terror in Hartford. The court additionally lamented the fact that the three victims were "innocent, blameless young guys minding their own business . . . ." As to the possibility of the defendant's rehabilitation, the court found it improbable. In making this determination, the court may have considered the subsequent shooting incident for which the defendant was charged, which consideration would not have been improper.[12] See *State* v. *Bletsch*, supra, 281 Conn. 20

(sentencing judge may consider "evidence of crimes for which the defendant was indicted but neither tried nor convicted" [internal quotation marks omitted]).

Faced with these competing concerns—the defendant's youth, the nature of his crime, his alleged involvement in another serious shooting incident—the court imposed a term of years, which functionally was a sentence of life without the possibility of release. It is clear from the record that the defendant's youth was not "irrelevant"; *Miller* v. *Alabama*, supra, 132 S. Ct. 2469; to the analysis, but in this case it did not trump other legitimate sentencing concerns. After all, "[t]hose under 18 years old may as a general matter have 'diminished' culpability relative to adults who commit the same crimes . . . but that does not mean that their culpability is always insufficient to justify a life sentence." (Citation omitted.) *Graham* v. *Florida*, supra, 130 S. Ct. 2041–42 (Roberts, C. J., concurring in the judgment). Thus, even under an expansive interpretation of *Miller*'s holding—one which requires not only an opportunity for the defendant to present mitigating evidence, but also imposes on the sentencing court a duty to inquire into issues related to the defendant's age and to consider such issues in sentencing—the record in this case passes constitutional muster.

II

The facts of this case are tragic, "most of all for the innocent victims. But also for the murderer, whose life has gone so wrong so early. And for society as well, which has lost one . . . of its members to deliberate violence, and must harshly punish another." *Miller* v. *Alabama*, supra, 132 S. Ct. 2482 (Roberts, C. J., dissenting). In these difficult cases, the federal constitution requires that the young defendant be sentenced as an individual, where the court can, and should, weigh his maturity, development, and likelihood for rehabilitation against the harm he has caused to his victims and society. The defendant here received what the constitution guarantees.

The judgment is affirmed.

In this opinion ALVORD, J., concurred.

[1] Throughout this opinion, we refer to individuals younger than age eighteen as juveniles.

[2] Although the defendant's sentence is a term of years, the parties do not dispute that it is tantamount to life in prison without the possibility of parole. The defendant is not eligible for parole for his murder conviction until he has six months or less remaining on the sixty year sentence. See General Statutes § 54-125g. He will not be eligible for parole on his conviction of the attempted murder charges until he has served 85 percent of his consecutive sentences for those offenses. See General Statutes § 54-125a (b) (2) (individual convicted of offense "where the underlying facts and circumstances . . . involve the use, attempted use or threatened use of physical force against another person shall be ineligible for parole . . . until such person has served not less than eighty-five per cent of the definite sentence imposed").

At least one court has held that § 54-125a (b) (1) precludes individuals convicted of certain enumerated homicide offenses from being eligible for parole on any other related sentence, that is, even after the discharge of

the homicide sentence. See *Stevens* v. *Warden*, Superior Court, judicial district of Tolland, Docket No. CV-03-0004193 (May 24, 2006) (41 Conn. L. Rptr. 415). Under this construction of the parole statute, the defendant would be ineligible for parole for all the offenses of which he was convicted. For purposes of this case, we need not resolve which interpretation of the statute is correct; it is sufficient to conclude that he was sentenced to serve between ninety-four and 100 years in prison.

[3] Under General Statutes § 54-91a, a sentencing court is required to consider the information contained in the presentence investigation report. See also *State* v. *Tarasco*, 301 Conn. 103, 107, 22 A.3d 530 (2011) ("it is axiomatic that the trial court must consider during sentencing the information contained in a presentence investigation report").

[4] The juvenile defendant in *Allen*, unlike the defendant here, was sentenced to life without the possibility of release following his conviction of capital felony. *State* v. *Allen*, supra, 289 Conn. 580. Therefore, his life sentence was mandatory. See General Statutes § 53a-35a (1). This application of Connecticut's sentencing scheme, which imposes mandatory life without parole sentences on juveniles convicted of capital felony, has been rendered unconstitutional by *Miller*.

[5] These two cases were later consolidated. See *Miller* v. *Alabama*, supra, 132 S. Ct. 2463.

[6] The defendant did not object at the sentencing hearing to the manner in which his sentence was determined. He therefore seeks appellate review under *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989). In order to obtain review under *Golding*, the defendant must provide an adequate record and must assert a claim of constitutional magnitude. See *State* v. *Moore*, 293 Conn. 781, 805, 981 A.2d 1030 (2009), cert. denied, U.S. , 130 S. Ct. 3386, 177 L. Ed. 2d 306 (2010). The record here, which includes the sentencing hearing transcript and presentence investigation report, is adequate for review of the defendant's eighth amendment claim.

[7] The eighth amendment; U.S. Const., amend. VIII; is applicable to the states under the due process clause of the fourteenth amendment. See *Robinson* v. *California*, 370 U.S. 660, 666–67, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962).

[8] The dissent states that we have failed to recognize "four significant points" from *Miller*. In fact, we address each of the four points. See part I A of this opinion. Nor do we fail to appreciate that the reasoning underpinning *Roper* and *Graham* also applies to the sentencing of juvenile homicide offenders. We do disagree in the application. As we explain, the court in *Miller* said that the constitutionally significant characteristics of juvenile defendants militate against the mandatory sentencing schemes in effect in Arkansas and Alabama. We cannot find in *Miller* the mandate that all juveniles convicted of homicide, and sentenced to life without the possibility of parole under a discretionary regime—a sentence that is certainly not per se unconstitutional—are entitled to a so-called "second look," as indicated by the dissent. The dissent characterizes our failure to find this "second look" requirement in *Miller* to be a "gross misreading" of the opinion. At the same time, it acknowledges that "*Miller*'s narrow holding involves *only a mandatory sentence* of life without the possibility of parole imposed on a juvenile for a homicide offense . . . ." (Emphasis added.) It is hard to reconcile the assertion that our interpretation of *Miller* constitutes a "gross," or even a "cramped," misreading when it is consistent with what the dissent opines is *Miller*'s narrow holding. A narrow or cautious reading, where our state's Supreme Court has previously placed an imprimatur on, and the General Assembly has clearly authorized, the sort of sentence imposed in this case, does not in conscience constitute a "gross misreading . . . ."

We do not necessarily disagree, as reforms worth considering, with the procedures urged by the dissent. We note, however, that the state's duly constituted sentencing commission is reportedly in the process of proposing reforms to the General Assembly; see Conn. Sentencing Commission, Juvenile Sentence Reconsideration Proposal, available at http://www.ct.gov/opm/lib/opm/20121108_juvenile_sentence_reconsideration_proposal.pdf (last visited December 19, 2012); these legislative reforms may alter the parole proceedings as applied to juvenile offenders. It is more appropriate to allow the legislative process to work than to engage in an expansive and unnecessary interpretation of *Miller*.

[9] This interpretation of *Miller* is consistent with the United States Supreme Court's individualized sentencing cases in the capital punishment context. See, e.g., *Sumner* v. *Shuman*, 483 U.S. 66, 76, 107 S. Ct. 2716, 97 L. Ed. 2d 56 (1987) (summarizing court's individualized sentencing cases and noting

that eighth amendment requires "capital-sentencing schemes [that] permit the defendant to present any relevant mitigating evidence" and that the "sentencing authority be permitted to consider" such evidence).

[10] See generally D. Chin, "Sentencing: A Role for Empathy," 160 U. Pa. L. Rev. 1561, 1580 (2012) ("[t]here is no 'right' answer as to what a particular sentence should be; rather, there usually is a range of acceptable sentences, and often that range is quite wide").

[11] In this regard, a comparison with the fourteen year old petitioners in *Miller* is instructive. The majority noted that Kuntrell Jackson had been "immers[ed] in violence," and that his mother and grandmother had previously shot other individuals. *Miller* v. *Alabama*, supra, 132 S. Ct. 2468. Evan Miller had been physically abused by his stepfather; neglected by his mother, who was addicted to drugs and alcohol, and consequently put into foster care; and had attempted suicide four times in his young life. Id., 2469.

[12] There is nothing in the record to suggest one way or the other whether the court considered the subsequent criminal charges.