

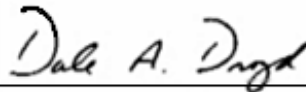


1           4. In the pending petition petitioner claims that his 135-years-eight-months-to-life  
2 sentence for his conduct when he was fourteen-years old constituted cruel and unusual  
3 punishment under the Eighth Amendment.

4           5. The court wishes to receive further briefing addressing the applicability of the decision  
5 in Miller v. Alabama, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455, 2469 (2012) (“We therefore hold that the  
6 Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility  
7 of parole for juvenile offenders.”) to this case. Specifically, the court wishes the parties to  
8 address whether the decision in Miller v. Alabama applies retroactively to this federal habeas  
9 action.\*

10           6. A status conference is set for September 27, 2013, at 10:00 a.m. in courtroom #27 for  
11 purposes of setting a schedule for the filing of the requested further briefing. If the parties wish to  
12 agree in advance to a briefing schedule, they may do so by stipulation and proposed order and the  
13 court would then vacate the status conference and schedule the matter for oral argument, if  
14 deemed appropriate, after review of the parties’ supplemental briefing.

15 Dated: August 30, 2013

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17 \_\_\_\_\_  
18 DALE A. DROZD  
19 UNITED STATES MAGISTRATE JUDGE

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24 \_\_\_\_\_  
25 \* The court notes that federal and state courts are divided on the question of whether the decision  
26 in Miller applies retroactively under Teague v. Lane, 498 U.S. 288 (1989), to habeas corpus  
27 petitions. See, e.g., State v. Ragland, No. 12-1758, \_\_\_ N.W. 2d \_\_\_, 2013 WL 4309970, at \*5-  
28 \*8 (Aug. 16, 2013, Iowa) (summarizing the competing arguments and collecting cases). Compare  
In re Morgan, 713 F.3d 1365, 1367 (11th Cir. 2013) (holding Miller does not apply retroactively),  
with Johnson v. United States, 720 F.3d 720, 720 (8th Cir. 2013) (per curiam) (holding that  
Miller established “a new rule of constitutional law, made retroactive to cases on collateral  
review”).