

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Case No. 12-C-1051
(Criminal Case No. 05-Cr-240)**

TIMOTHY VALLEJO,

Movant,

DECISION AND ORDER

The Movant, Timothy Vallejo (“Vallejo”), was sentenced to life in prison by this Court on January 26, 2010, after Vallejo pleaded guilty to a RICO conspiracy in violation of 18 U.S.C. §§ 1961 and 1962(d) along with other defendants. (ECF Nos. 1194, 1732.) Vallejo challenges this disposition by way of 28 U.S.C. § 2255, arguing that said sentence is a violation of the Eighth Amendment to the United States Constitution and *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012), which held that mandatory life sentences without parole administered to those under the age of 18 violate that Amendment.

Miller applies if a movant was (1) younger than eighteen years old at the time of the crimes, which Vallejo was; and (2) subject to a mandatory sentence of life in prison without the possibility of parole, which can be determined as a matter of law by reference to legal documents such as statutes, sentencing guidelines, and court

documents. See *Evans-Garcia v. United States*, 744 F.3d 235, 240 (1st Cir. 2014) (citing *Miller*, 132 S. Ct. at 2469).

Vallejo concedes that a non-mandatory life sentence passes constitutional scrutiny but argues that because this Court was required to give him a life sentence, it was indeed mandatory and therefore does not pass constitutional muster. Vallejo was convicted of violating 18 U.S.C. §§ 1961 and 1962(d). A RICO count contains its own unique sentencing structure, in that it allows the court to impose a maximum sentence of 20 years which can be increased if the underlying predicate act carries a maximum sentence that is longer. Because, argues Vallejo, his predicate act was first degree murder — which requires a sentence of life, this Court was required to impose a life sentence and, therefore, violated *Miller*.

The Court disagrees. Under the scheme of sentencing presented by these provisions the Court has the discretion, after analysis of the appropriate sentencing factors, to sentence a juvenile defendant anywhere along the sentencing scale up to life. It was not required to impose a life sentence. The RICO statutory formula treats a first degree intentional murder predicate act as a guide for determining what a maximum sentence could be under RICO law, given that predicate act. The RICO statute is not 18 U.S.C. § 1111. They are separate offenses containing different elements. RICO merely incorporates 18 U.S.C. § 1111 to establish a high-end range of sentence for a RICO charge. The Court has the discretion to sentence a defendant anywhere in that range. It did so with Vallejo. It was not required to impose the

sentence that it did, and therefore Vallejo's motion must be denied.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Vallejo's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (ECF No. 1) is **DENIED**;

This action is **DISMISSED**.

The Clerk of Court is **DIRECTED TO ENTER JUDGMENT** accordingly;
and

The Court declines to issue a certificate of appealability.

Dated at Milwaukee, Wisconsin, this 25th day of June, 2014.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge