



# **IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

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**NO. PD-1049-13**

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**FERNANDO JUAREZ, Appellant**

**v.**

**THE STATE OF TEXAS**

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**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE TENTH COURT OF APPEALS  
ELLIS COUNTY**

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*Per curiam.*

## **OPINION**

Appellant was convicted of capital murder and sentenced to life in prison without the possibility of parole. While appellant's appeal was pending, the United States Supreme Court decided *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in which it held that the Eighth Amendment to the United States Constitution forbids a sentencing scheme for juvenile offenders in which life without parole is mandatory rather than based upon an individualized sentencing assessment.

Citing *Miller*, appellant argued before the court of appeals that his punishment violated the Eighth Amendment because he was under the age of eighteen at the time of the offense. The court of appeals declined to address the merits of appellant's claim and held that because

appellant did not object to the sentence imposed at trial, he had failed to preserve the issue for review. *Juarez v. State*, No. 10-11-00213-CR slip op. at 12 (Tex. App.–Waco July 25, 2013)(not designated for publication).

Appellant filed a petition for discretionary review contending, in part, that *Miller* should apply retroactively to a case pending on direct appeal when *Miller* was decided and therefore the court of appeals erred to hold that the issue was procedurally defaulted.

The Court recently held that a claim under *Miller* is not forfeited by a failure to raise it in the trial court. *Garza v. State*, PD-1596-12 slip op. at 8 (Tex. Crim. App. June 11, 2014). In *Garza*, the juvenile offender was sentenced to mandatory life without the possibility of parole. He contested his sentence under *Miller* on appeal, but the court of appeals refused to address his *Miller* claim and held that because he failed to object to his sentence at trial, the claim was forfeited. This Court reversed the judgment of the court of appeals and remanded for proceedings consistent with its opinion.

The Court also recently decided *Lewis v. State* and *Nolley v. State*, PD-0833-12 and PD-0999-13 slip op. (Tex. Crim. App. April 30, 2014). The juvenile offenders in those cases were both sentenced to mandatory life without the possibility of parole. The courts of appeals in both cases affirmed the convictions but reformed the sentences to life imprisonment under *Miller*. We granted review in both cases to decide whether, under *Miller*, a juvenile offender is entitled to an individualized sentencing proceeding when faced with a sentence of life with the possibility of parole. The Court consolidated the cases and issued one opinion holding that *Miller* is limited to a prohibition on mandatory life without parole for juvenile offenders; thus, juvenile offenders

sentenced to life with the possibility of parole are not entitled to individualized sentencing under the Eighth Amendment. The Court affirmed the judgments of the courts of appeals.

In light of *Garza*, the court of appeals erred to hold that appellant failed to preserve his *Miller* claim for review. We grant ground two of appellant's petition for discretionary review, vacate the judgment of the court of appeals, and remand this case to that court to consider appellant's *Miller* claims in light of *Lewis/Nolley*. Grounds for review one and three are refused.

DELIVERED: July 23, 2014  
DO NOT PUBLISH