



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-72,852-02

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**EX PARTE MICHAEL McCARDLE, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1040846-B IN THE 339<sup>th</sup> DISTRICT COURT  
FROM HARRIS COUNTY**

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*Per curiam.*

## OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of capital murder and sentenced to life imprisonment without the possibility of parole. The Fourteenth Court of Appeals affirmed his conviction. *McCardle v. State*, No. 14-06-00781-CR (Tex. App.—Houston [14<sup>th</sup> Dist.] Aug. 2, 2007) (not designated for publication).

Applicant contends, *inter alia*, that his sentence in this cause is unconstitutional because he was under eighteen years of age at the time of the offense. The trial court has entered findings of fact

confirming that Applicant was under eighteen at the time of the offense in this case. Applicant is entitled to relief.

In *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the Supreme Court held that a mandatory “life without parole” sentence for a defendant who was under the age of 18 at the time of his crime violates the Eighth Amendment prohibition on cruel and unusual punishment. And, in *Ex parte Maxwell*, 424 S.W.3d 66 (Tex. Crim. App. 2014), this Court held that *Miller* announced a new rule and it applies retroactively.

Relief is granted. The sentence in Cause No. 1040846 in the 339th District Court of Harris County is vacated, and Applicant is remanded to the Sheriff of Harris County for further sentencing proceedings to permit the factfinder to assess Applicant’s sentence at (1) life with the possibility of parole or (2) life without parole after consideration of Applicant’s individual conduct, circumstances, and character. The trial court shall issue any necessary bench warrant within 10 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: September 28, 2016  
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