

SUPREME COURT OF COLORADO

People v. Vigil, Jr., 2015 CO 43

352 P.3d 959 (2015) · No. 14SC495 · Decided June 1, 2015

SUMMARY

The Colorado Supreme Court reversed the trial court's grant of Frank Vigil Jr.'s Crim. P. 35(c) motion for post-conviction relief. Relying on its contemporaneous decision in *Jensen v. People*, the court held that *Miller v. Alabama* does not apply retroactively to cases on collateral review of a final judgment. Justice Hood dissented, joined by Justice Hobbs; Justice Boatright did not participate.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Eid; Justice Hood; Justice Hobbs
JURISDICTION	Colorado
DECIDED	June 1, 2015
DOCKET	14SC495
DISPOSITION	reversed
PROCEDURAL POSTURE	The People petitioned under C.A.R. 50 for review of the trial court's order granting Vigil's Crim. P. 35(c) post-conviction motion on the ground that <i>Miller v. Alabama</i> applied retroactively to his final sentence.
STANDARD OF REVIEW	De novo review of the legal question whether <i>Miller</i> applies retroactively to a final judgment on collateral review.
PRECEDENTIAL VALUE	published
PARTIES	The People of the State of Colorado v. Frank Vigil, Jr.

TOPICS

[post-conviction relief](#)[sentencing](#)[state post-conviction relief](#)[appellate procedure](#)[criminal procedure](#)

PRACTICE AREAS

[criminal law](#)[juvenile sentencing](#)[post-conviction relief](#)[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Miller v. Alabama applies retroactively to cases on collateral review of a final judgment.
2. Whether the trial court properly granted Vigil's Crim. P. 35(c) motion and ordered a new sentencing hearing if Miller applied retroactively.

HOLDINGS

1. Miller does not apply retroactively to cases on collateral review of a final judgment. Because Vigil's judgment was final and he challenged it through a Crim. P. 35(c) motion, Miller did not apply to his sentence.
2. The trial court erred in granting Vigil's Crim. P. 35(c) motion because Miller did not apply retroactively to his final judgment.

KEY QUOTATIONS

“Today we hold in Jensen that Miller does not apply retroactively to cases on collateral review of a final judgment. Because Vigil’s judgment is final, and he is challenging that judgment on collateral review through a Crim. P. 35(c) motion, Miller does not apply.” (2015 CO 43, ¶ 5)

FACTUAL BACKGROUND

In 1997, Vigil was convicted of first-degree murder arising from the kidnapping, rape, torture, and murder of a fourteen-year-old girl. Vigil was sixteen when he committed the crime. Because the governing statutory scheme mandated the sentence for offenses committed between 1990 and 2006, the trial court sentenced him to life without the possibility of parole.

PROCEDURAL HISTORY

Vigil was convicted of first-degree murder in 1997 and sentenced to life without parole for a crime committed when he was sixteen. The court of appeals affirmed on direct appeal, and the Colorado Supreme Court denied certiorari, making the judgment final. In 2013, Vigil filed a Crim. P. 35(c) motion asserting that his sentence was unconstitutional under Miller; the trial court granted relief. The People sought review under C.A.R. 50, and the Colorado Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Jensen v. People, 2015 CO 42, 352 P.3d 959
- Miller v. Alabama, Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)
- People v. Tate, 2015 CO 42, 352 P.3d 959
- People v. Vigil, No. 98CA0689 (Colo. App. July 29, 1999)

OPINION

PER CURIAM.

Colorado Supreme Court Opinions || June 1, 2015 Colorado Supreme Court -- June 1, 2015 2015 CO 43. No. 14SC495. People v. Vigil, Jr. The Supreme Court of the State of Colorado 2 East 14th Avenue â€ Denver, Colorado 80203 2015 CO 43 Supreme Court Case No. 14SC495 C.A.R. 50 to the Colorado Court of Appeals Court of Appeals Case No. 13CA2046 Jefferson County District Court Case No. 97CR1195 Honorable Tamara Russell, Judge Petitioner: The People of the State of Colorado, v. Respondent: Frank Vigil, Jr. Judgment Reversed en banc June 1, 2015 Attorneys for Petitioner: Peter A. Weir, District Attorney, First Judicial District Donna Skinner Reed, Chief Appellate Deputy District Attorney Golden, Colorado Attorneys for Respondent: Nelson Colling Law LLC Stacie Nelson Colling Denver, Colorado Attorneys for Amici Curiae Juvenile Law Center: Juvenile Law Center Marsha Levick Philadelphia, Pennsylvania Colorado Juvenile Defender Coalition Kim Dvorchak Denver, Colorado Attorneys for Amici Curiae District Attorneys for the Second and Eighteenth Judicial Districts: Mitchell R. Morrissey, District Attorney, Second Judicial District Robert J. Whitley, Chief Appellate Deputy District Attorney, Second Judicial District Denver, Colorado George H. Brauchler, District Attorney, Eighteenth Judicial District L. Andrew Cooper, Chief Deputy District Attorney, Eighteenth Judicial District Centennial, Colorado Attorneys for Amicus Curiae Colorado Juvenile Defender Center: Colorado Juvenile Defender Center Kimberly E. Dvorchak Denver, Colorado JUSTICE EID delivered the Opinion of the Court.

JUSTICE HOOD dissents, and JUSTICE HOBBS joins in the dissent. JUSTICE BOATRIGHT does not participate. ¶1&â€ In this C.A.R. 50 petition, the People argue that the trial court erred in ruling that *Miller v. Alabama*, 132 S. Ct. 2455 (2012), applies retroactively to cases on collateral review of a final judgment. Arguing that his sentence was unconstitutional under *Miller*, defendant Frank Vigil Jr. filed a Crim.

P. 35(c) motion for post-conviction relief of his final judgment. The trial court applied *Miller* retroactively and granted his motion. ¶2&â€ This case is governed by today's decision in *Jensen v. People*, 2015 CO 42, __ P.3d __, which holds that *Miller* does not apply retroactively to cases on collateral review of a final judgment.

Accordingly, *Miller* does not apply to Vigil. The decision of the trial court to grant Vigil's Crim. P. 35(c) motion is therefore reversed. I. ¶3&â€ In 1997, the trial court convicted Vigil of first degree murder for his participation in the kidnapping, rape, torture, and murder of a 14-year-old girl. Vigil was sixteen at the time of the crime.

The trial court sentenced him to life without the possibility of parole (â€LWOPâ€), because it was the statutorily-mandated sentence for crimes committed between 1990 and 2006. See *People v. Tate*, 2015 CO 42, ¶32â34, __ P.3d__ (discussing the statutory scheme).

On direct appeal, the court of appeals affirmed the conviction. *People v. Vigil*, No. 98CA0689 (Colo. App. July 29, 1999). This court denied Vigil's certiorari petition, and the judgment became final. ¶4 In 2013, Vigil filed a Crim. P. 35(c) motion for post-conviction relief, arguing that his sentence was unconstitutional under *Miller*. Finding that *Miller* applied retroactively to Vigil's sentence, the trial court granted the motion.

The People then filed a petition with this court for review pursuant to C.A.R. 50, arguing that *Miller* does not apply retroactively. This court granted review.¶5 II. Today we hold in *Jensen* that *Miller* does not apply retroactively to cases on collateral review of a final judgment.

Because Vigil's judgment is final, and he is challenging that judgment on collateral review through a Crim. P. 35(c) motion, *Miller* does not apply. ¶6 We therefore reverse the trial court's decision to apply *Miller* retroactively to Vigil's collateral Crim. P. 35(c) motion.¶7 III. For the reasons stated above, we reverse the trial court's granting of the Crim.

P. 35(c) motion. JUSTICE HOOD dissents, and JUSTICE HOBBS joins in the dissent. JUSTICE BOATRIGHT does not participate. 1 The questions upon which we granted certiorari are the following: 1. Whether *Miller v. Alabama*, 132 S. Ct. 2455 (2012), is to be applied retroactively to cases on collateral review. 2. If *Miller v. Alabama* is retroactive, whether the trial court properly ordered a new sentencing hearing.

2 Because we find that *Miller* does not apply retroactively to cases on collateral review of a final judgment, we need not consider the second certiorari question regarding the propriety of a new sentencing hearing. ¶8 JUSTICE HOOD, dissenting. Today, in *People v. Jensen*, 2015 CO 42, __P.3d __, this court held that the rule announced by the Supreme Court in *Miller v. Alabama*, 132 S. Ct.

2455 (2012), is procedural and, as a result, does not apply retroactively to cases on collateral review. In this case, the court says no more than it did in *Jensen*. Thus, for the same reasons I articulated in *Jensen*, I respectfully dissent here too. (In this case, it should be noted, however, that the People are represented by the District Attorney for the First Judicial District, who does not concede retroactivity, as the Attorney General did in *Jensen*.)

Because the *Miller* rule is substantive, I would apply it retroactively to Vigil and affirm the trial court's order granting his Crim. P. 35(c) motion. I am authorized to state that JUSTICE HOBBS joins in this dissent. These opinions are not final. They may be modified, changed or withdrawn in accordance with Rules 40 and 49 of the Colorado Appellate Rules.

Changes to or modifications of these opinions resulting from any action taken by the Court of Appeals or the Supreme Court are not incorporated here. Colorado Supreme Court Opinions ||

June 1, 2015 Back

EID, J.

JUSTICE EID delivered the Opinion of the Court. T1 In this C.A.R. 50 petition, the People argue that the trial court erred in ruling that *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), applies retroactively to cases on collateral review of a final judgment. Arguing that his sentence was unconstitutional under *Miller*, defendant Frank Vigil Jr. filed a Crim.

P. 35(c) motion for post-conviction relief of his final judgment. The trial court applied *Miller* retroactively and granted his motion. *104612 This case is governed by today's decision in *Jensen v. People*, 2015 CO 42, 352 P.3d 959, which holds that *Miller* does not apply retroactively to cases on collateral review of a final judgment.

Accordingly, *Miller* does not apply to Vigil. The decision of the trial court to grant Vigil's Crim, P. 35(c) motion is therefore reversed. L. T8 In 1997, the trial court convicted Vigil of first degree murder for his participation in the kidnapping, rape, torture, and murder of a 14-year-old girl, Vigil was sixteen at the time of the crime, The trial court sentenced him to life without the possibility of parole ("LWOP"), because it was the statutorily-mandated sentence for crimes committed between 1990 and 2006, See *People v. Tate*, 2015 CO 42, ¶¶ 32-34, 352 P.3d 959 (discussing the statutory scheme).

On direct appeal, the court of appeals affirmed the conviction, *People v. Vigil*, No. 98CA0689 (Colo.App. July 29, 1999). This court denied Vigil's certiorari petition, and the judgment became final. {4 In 2018, Vigil filed a Crim. P. 85(c) motion for post-conviction relief, arguing that his sentence was unconstitutional under *Miller*. Finding that *Miller* applied retroactively to Vigil's sentence, the trial court granted the motion, The People then filed a petition with this court for review pursuant to C.A.R.

50, arguing that *Miller* does not apply retroactively. This court granted review.¹ IL. T5 Today we hold in *Jensen* that *Miller* does not apply retroactively to cases on collateral review of a final judgment, Because Vigil's judgment is final, and he is challenging that judgment on collateral review through a Crim. P. 85(c) motion, *Miller* does not apply. T6 We therefore reverse the trial court's decision to apply *Miller* retroactively to Vigil's collateral Crim.

P. 85(c) motion.² IIL T7 For the reasons stated above, we reverse the trial court's granting of the Crim. P. 85(c) motion. JUSTICE HOOD dissents, and JUSTICE HOBBS joins in the dissent. JUSTICE BOATRIGHT does not participate..

The questions upon which we granted certiora-ri are the following: 1. Whether *Miller v. Alabama*, — U.S. —, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), is to be applied retroactively to cases on

collateral review. 2. If *Miller v. Alabama* is retroactive, whether the trial court properly ordered a new sentencing hearing..

Because we find that *Miller* does not apply retroactively to cases on collateral review of a final judgment, we need not consider the second certiorari question regarding the propriety of a new sentencing hearing.