

SUPREME COURT OF COLORADO

People v. Vigil, Jr., 2015 CO 43

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

OPINION

People v. Vigil, Jr 2015 CO 43

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& 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& 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& 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 (âLWOPâ), because it was the statutorily-mandated sentence for crimes committed between 1990 and 2006. See *People v. Tate*, 2015 CO 42, Â¶Â¶ 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 Vigilâs certiorari petition, and the judgment became final. Â¶4&Â 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 Vigilâs sentence, the trial court granted the motion. The People thenÂ 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 II. Â¶5&Â Â Â Â Â Â Â Â Today we hold in *Jensen* that *Miller* does not apply retroactively to cases on collateral review of a final judgment. Because Vigilâs judgment is final, and he is challenging that judgment on collateral review through a Crim. P. 35(c) motion, *Miller* does not apply. Â¶6&Â Â Â Â Â Â Â Â We therefore reverse the trial courtâs decision to apply *Miller* retroactively to Vigilâs collateral Crim. P. 35(c) motion.² III. Â¶7Â Â Â Â Â Â Â Â For the reasons stated above, we reverse the trial courtâs 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. Â Â JUSTICE HOOD, dissenting. Â¶8Â Â Â Â Â Â Â 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 courtâs 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

III

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 certiorari 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.

