

EXTENDING *ROPER V. SIMMONS* AND *MILLER V. ALABAMA* TO 18- TO 25-YEAR-OLDS

The purpose of this handout is to provide guidance to attorneys appointed to represent defendants charged with first-degree murder who were 18- to 25-years-old on the offense date. As these cases involve a fast-developing area of the law, counsel should use this guide as a starting point and email Assistant Appellate Defender David Andrews at David.W.Andrews@nccourts.org.

I. Background

The age of 18 is the current threshold that determines whether the State may seek a death sentence or a mandatory LWOP sentence for a defendant convicted of first-degree murder. In *Roper v. Simmons*, 543 U.S. 551, 573 (2005), the United States Supreme Court prohibited the execution of individuals convicted of first-degree murder who were under 18 on the offense date. In *Miller v. Alabama*, 567 U.S. 460, 470 (2012), the Court banned mandatory LWOP sentences for the same class of defendants. The rulings in *Roper* and *Miller* hinged in large measure on recent advances in adolescent brain science. And, yet, many of those advances indicate that the adolescent brain does not finish maturing until the mid-20s.

In other cases involving sentencing issues, the Supreme Court has relied on standards of the scientific community to resolve 8th Amendment claims. In *Hall v. Florida*, 572 U.S. 701 (2014), the Court ruled that the bright line test then used by Florida, which precluded anyone with an IQ score of over 70 from presenting evidence of intellectual disability, ignored the medical consensus that an IQ score was not dispositive of a person's intellectual capacity. In *Moore v. Texas*, 137 S. Ct. 1039 (2017), the Court concluded that the Texas Court of Criminal Appeals erred when it applied judicially created non-clinical standards based on lay stereotypes of intellectual disability rather than medical diagnostic standards.

One of the main arguments for extending *Roper* and *Miller* to 18- to 25-year olds is that there is a consensus in the scientific community that the adolescent brain continues developing past the age of 18. Thus, many of the youthful characteristics relied on in *Miller* – immaturity, impulsivity, susceptibility to peer pressure – are also present in 18- to 25-year olds. Additionally, if – as explained in *Hall* and *Moore* – courts may not disregard scientific consensus when deciding questions of intellectual disability, courts should likewise not be able to disregard the consensus of the scientific community in cases involving the sentencing of juvenile defendants convicted of first-degree murder.

If you are appointed to represent an 18- to 25-year old charged with first-degree murder, you should be prepared to present this and other arguments for extending *Roper* and *Miller* to 18- to 25-year olds. You should take the steps outlined below in order to preserve the arguments for appeal.

II. How to present the argument

There are two separate motions that address the current age threshold for first-degree murder cases. If your case will be tried capitally, use the motion for capital cases. That motion argues that *Roper* should be extended to 25-year-olds. If your case will be tried non-capitally, use the motion for non-capital cases. That motion argues that *Miller* should be extended to 25-year-olds. After downloading the motion, be prepared to take the following steps:

1. Review the motion so that you have an understanding of the arguments for extending *Roper* and *Miller* to 18-to 25-year olds.
2. File a motion for funds to hire an expert in adolescent brain science.
 - a. You would want an expert in adolescent brain science to (1) provide testimony about how the adolescent brain continues maturing into the mid-twenties, (2) evaluate your client, and (3) testify about the psychological maturity of your client. The following two experts are familiar with research into adolescent brain science and would be willing to provide testimony explaining how the human brain develops.
 - i. Cindy C. Cottle, Ph.D.:
 1. Clinical and forensic psychologist.
 2. Email: cindycottle@gmail.com
 3. Phone: (919) 827-2148.
 - ii. Moira Artigues, M.D.
 1. Board certified in general psychiatry.
 2. Email: drmoira@bellsouth.net
 3. Phone: (919) 678-0002
3. Tailor the motion to extend *Roper/Miller* to your case and file it with the court.
4. If your client will be tried capitally, request a pre-trial hearing on the motion. If your case will be tried non-capitally, request either a pre-trial hearing or a pre-sentencing hearing in the event that the client is convicted of first-degree murder.
 - a. At the hearing, present expert testimony explaining that the adolescent brain does not finish maturing until the mid-20s.
 - b. Argue that the testimony and authorities included in the motion support extending *Roper/Miller* to 18- to 25-year-olds.
 - c. Be sure to get a ruling on the motion. The judge might issue an oral ruling at the end of the hearing or a written ruling after the hearing. **If you do not get a ruling, the argument will not be preserved for appeal.**
5. If the client is convicted of first-degree murder and the judge rejects your arguments, object under the 8th Amendment and Article I, § 27 of the North Carolina Constitution after the judge imposes the sentence.
6. Be sure to give timely and proper notice of appeal.
 - a. If you appeal, please be sure to arrange for the judge to issue an appellate entries appointing the Office of the Appellate Defender to the appeal.
 - b. Please also alert the Appellate Defender know to be on the lookout for the case so that the case does not get lost in the Trial Division.