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ADVANCE SHEET HEADNOTE

June 1, 2015

**2015 CO 43**

**No. 14SC495, People v. Vigil – Juvenile Sentencing**

In this C.A.R. 50 petition on collateral review of a final judgment, the supreme court holds that, following its decision in Jensen v. People, 2015 CO 42, \_\_ P.3d \_\_, that Miller v. Alabama, 132 S. Ct. 2455 (2012), does not apply retroactively to cases on collateral review of a final judgment. It therefore does not apply to Vigil. The court reverses the decision of the trial court to grant Vigil's collateral Crim. P. 35(c) motion pursuant to Miller.

**The Supreme Court of the State of Colorado**  
2 East 14<sup>th</sup> Avenue • Denver, Colorado 80203

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**2015 CO 43**

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**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

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**Petitioner:**

The People of the State of Colorado,

v.

**Respondent:**

Frank Vigil, Jr.

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**Judgment Reversed**

*en banc*

June 1, 2015

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**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 ("LWOP"), because it was the statutorily-mandated sentence for crimes committed between 1990 and 2006. See People v. Tate, 2015 CO 42, ¶¶ 32-34, \_\_ 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.<sup>1</sup>

## II.

¶5 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.<sup>2</sup>

## III.

¶7 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

JUSTICE HOOD, dissenting.

¶8 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.