

**STATE EX REL. MORGAN V. STATE: A
SMALL STEP IN THE RIGHT DIRECTION
FOR LOUISIANA’S INCARCERATED YOUTH**

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I. INTRODUCTION

From 2011 to 2015, Orleans Parish sent more children to serve life-without-parole sentences than any other county or parish in the nation except Los Angeles County, which has a population more than thirty times larger than that of Orleans Parish.¹ *State ex rel. Alden Morgan v. State* is an important Louisiana Supreme Court decision that signified a minor shift in Louisiana’s approach to its mass incarceration problem, moving the focus away from punishment and toward juvenile rehabilitation.²

1. John R. Mills et al., *No Hope: Re-Examining Lifetime Sentences for Juvenile Offenders*, PHILLIPS BLACK 1, 9 (2015), <https://static1.squarespace.com/static/55bd511ce4b0830374d25948/t/5600cc20e4b0f36b5caabe8a/1442892832535/JLWOP+2.pdf>.

2. *See State ex rel. Morgan v. State*, 2015-0100 (La. 10/19/2016); 217 So. 3d 266.

At age seventeen, Alden Morgan was found guilty of one count of armed robbery and sentenced to ninety-nine years of imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.³ In 2014, Morgan filed a *pro se* motion to correct his sentence in light of recent federal case law pertaining to the sentencing of juveniles, relying primarily on the United States Supreme Court's decision in *Graham v. Florida*.⁴ In *Graham*, the Supreme Court held that sentencing juvenile defendants to life in prison without the possibility of parole for a nonhomicide offense constitutes cruel and unusual punishment in violation of the Eighth Amendment.⁵ *Graham* stipulated that juvenile defendants guilty of nonhomicide crimes must be provided "with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."⁶ The Louisiana Supreme Court granted Morgan's writ application and ultimately held that his ninety-nine-year sentence without parole was an effective life sentence rendered illegal under *Graham*.⁷

Morgan is a significant case because it provides some of Louisiana's incarcerated population the opportunity to seek release or parole. As a result of *Morgan*, those convicted of nonhomicide crimes as juveniles who received literal *and* effective life sentences will have the chance to challenge their sentences. Louisiana still has a long way to go to rid itself of its infamous "most incarcerated" superlative, but *Morgan* signals that Louisiana is slowly making progress.

Part II of this Note discusses the facts of Morgan's crime, his sentencing, and his search for relief. Part III provides a brief legal background on recent judicial developments pertaining to juvenile sentencing schemes and examines the treatment of relevant federal case law in Louisiana. Part IV examines the Louisiana Supreme Court's decision that a ninety-nine-year sentence without parole is an effective life sentence for juveniles who committed nonhomicide crimes. Finally, Part V analyzes *Morgan's* future impact on Louisiana's incarcerated juvenile population. This Note concludes with a look to the future for Louisiana's incarcerated juveniles.

3. State ex rel. Morgan v. State, 1015-0100, p. 2 (La. 10/19/16); 217 So. 3d 266, 268.

4. See *Graham v. Florida*, 560 U.S. 48, 75 (2010).

5. *Id.* at 74.

6. *Id.* at 75.

7. *Morgan*, 1015-0100, pp. 13–15; 217 So. 3d at 275.

II. FACTS AND HOLDING

On August 9, 1998, Alden Morgan approached a car where two parents were fastening their daughter into a car seat.⁸ Morgan, just seventeen years old, demanded at gunpoint that the father turn over his wallet and keys.⁹ The gun was discharged in the heated moments that followed.¹⁰ Morgan managed to escape in the car, but a police chase ensued and ended with Morgan crashing the car into a tree.¹¹ He then fled on foot to a shed on private property but was apprehended shortly thereafter.¹² Morgan was arrested, charged with, and convicted of armed robbery.¹³ He received the maximum sentence of ninety-nine years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.¹⁴ He would become eligible for parole no earlier than 2082—at the age of 101.¹⁵

At sentencing, the district court judge declared that “the potential for rehabilitation for a person that would fire a weapon during the course of a robbery when a child is involved is relatively slim” and that “any lesser sentence other than the sentence to be imposed by the Court . . . would deprecate the serious nature of the defendant’s crime.”¹⁶ After sentencing, Morgan filed a motion to reconsider his sentence in light of mitigating circumstances.¹⁷ After hearing evidence about his learning disabilities, unstable home environment, substance abuse, lack of criminal history, and “the violent culture in which he was raised,” the district court denied the motion and reaffirmed Morgan’s sentence.¹⁸ The court of appeal affirmed the conviction and sentence, and the Louisiana Supreme Court denied the writs that followed.¹⁹

Sixteen years later, at the age of thirty-three, Morgan filed a *pro se* motion to correct his sentence in light of recent United

8. *State ex rel. Morgan v. State*, 1015-0100, p. 2 (La. 10/19/16); 217 So. 3d 266, 268.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Morgan*, 1015-0100, p. 2; 217 So. 3d at 268.

14. *Id.*

15. *Id.* at p. 12; 217 So. 3d at 274.

16. *Id.* at p. 3; 217 So. 3d at 268.

17. *Id.* at p. 3; 217 So. 3d at 269.

18. *Morgan*, 1015-0100, p. 3; 217 So. 3d at 269.

19. *Id.*

States Supreme Court decisions concerning juvenile sentencing.²⁰ The district court and court of appeal denied relief, but the Louisiana Supreme Court granted the writ.²¹ In his motion, Morgan asserted that his ninety-nine-year sentence without parole was an effective life sentence rendered illegal under *Graham v. Florida*.²² *Graham* held that the Cruel and Unusual Punishment Clause of the Eighth Amendment prohibits imposing a life sentence without the possibility of parole for a juvenile offender who did not commit homicide.²³ The State asserted that the rule from *Graham* only pertained to juvenile offenders sentenced to life without parole, not a sentence of a term-of-years.²⁴ Consequently, the State argued that because Morgan was sentenced to ninety-nine years and not life in prison, *Graham* should not apply.²⁵ After reviewing the relevant case law on the issue, the Louisiana Supreme Court unanimously held that Morgan's sentence of ninety-nine years imprisonment without parole constituted an "effective life sentence" that "provide[d] him no opportunity for parole."²⁶ Therefore, the court declared the sentence illegal under *Graham*.²⁷

III. LEGAL BACKGROUND: SETTING THE SCENE FOR A SHIFT IN THE NATION'S CONSCIOUSNESS TOWARD JUVENILE OFFENDERS

Several important federal and state decisions leading up to *Morgan* provide critical insight into both the legal dynamics at play and the shifting national consciousness regarding juvenile offenders. Section A briefly discusses recent Supreme Court cases regarding juvenile sentencing for homicide and nonhomicide crimes. Section B then examines Louisiana's adaptation to the federal developments prior to issuing its decision in *Morgan*.

20. State ex rel. Morgan v. State, 1015-0100, p. 4 (La. 10/19/16); 217 So. 3d 266, 269.

21. *Id.*

22. *Id.* at pp. 4–5; 217 So. 3d at 269.

23. *Id.* at p. 5; 217 So. 3d at 270.

24. *Id.* at p. 4; 217 So. 3d at 270.

25. *Morgan*, 1015-0100, p. 4; 217 So. 3d at 272.

26. *Id.* at pp. 16–17; 217 So. 3d at 277.

27. *Id.*

A. THE FEDERAL TRIAD: *ROPER V. SIMMONS*, *GRAHAM V. FLORIDA*, AND *MILLER V. ALABAMA*

The Louisiana Supreme Court's holding in *Morgan* was a logical and necessary decision based on the United States Supreme Court's relatively recent decisions on juvenile sentencing, specifically *Roper v. Simmons*,²⁸ *Graham v. Florida*,²⁹ and *Miller v. Alabama*.³⁰ This triad of cases implicates issues arising under the Eighth Amendment of the United States Constitution, which states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."³¹ In applying the Cruel and Unusual Punishment Clause to sentencing practices, the Supreme Court of the United States has held that the Eighth Amendment "guarantees individuals the right not to be subjected to excessive sanctions" because a basic principle of justice is that punishment should be proportional to the crime.³² Proportionality is an essential element of Eighth Amendment juvenile cases because "juvenile offenders cannot with reliability be classified among the worst offenders," which inevitably bears on an analysis of whether a punishment is an "excessive sanction."³³

In 2005, the Court in *Roper* held that the Constitution prohibits the execution of a defendant for capital murder committed by a juvenile.³⁴ Five years later, the Court in *Graham* held that the Constitution prohibits the imposition of a life sentence without parole on a juvenile offender who did not commit homicide.³⁵ Two years later, the Court in *Miller* went even further in deciding that the Constitution prohibits juvenile defendants from being subject to sentencing schemes that mandate life without parole—even for those convicted of homicide.³⁶ The Louisiana Supreme Court acknowledged that when viewing these three seminal holdings together, they "signify a shift in the nation's moral tolerance when it comes to the

28. *Roper v. Simmons*, 543 U.S. 551, 574 (2005).

29. *Graham v. Florida*, 560 U.S. 48, 75 (2010).

30. *Miller v. Alabama*, 567 U.S. 460, 279 (2012).

31. U.S. CONST. amend. VIII.

32. *Roper*, 543 U.S. at 560.

33. *Id.* at 569.

34. *Id.* at 574; *see also* *State ex rel. Morgan v. State*, 1015-0100, p. 5 (La. 10/19/16); 217 So. 3d 266, 270.

35. *Graham*, 560 U.S. at 82; *see also* *Morgan*, 1015-0100, p. 5; 217 So. 3d at 270.

36. *Miller*, 567 U.S. at 479; *see also* *Morgan*, 1015-0100, p. 5; 217 So. 3d at 270.

sentencing of juvenile offenders.”³⁷

1. *ROPER V. SIMMONS*

Roper is particularly instructive because it discusses juvenile offenders’ unique traits, examines how those traits influence the Court’s understanding of the Eighth Amendment, and lays the groundwork for the theoretical, moral, and legal underpinnings of *Graham*. The defendant, Christopher Simmons, committed murder when he was seventeen but was tried and sentenced to death after turning eighteen.³⁸ Simmons appealed his conviction to the Missouri Supreme Court, which ultimately set aside his sentence and instead imposed life imprisonment on the grounds that “a national consensus ha[d] developed against the execution of juvenile offenders.”³⁹ The Supreme Court granted certiorari and affirmed the Missouri Supreme Court decision.⁴⁰

Roper outlined three significant differences between juveniles and adults over eighteen which “demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.”⁴¹ First, the Court reasoned that juveniles lack maturity and a developed sense of responsibility, which results in “impetuous and ill-considered actions and decisions.”⁴² To buttress this, the Court cited to state prohibitions on voting, jury service, or marriage without parental consent for individuals under eighteen years old.⁴³ Second, the Court stated that juveniles are more susceptible to negative influences and outside pressures, resulting in “less control, or less experience with control, over their own environment.”⁴⁴ Finally, the Court found that “the personality traits of juveniles are more transitory, less fixed.”⁴⁵ These three fundamental differences between juveniles and adults render juvenile criminal conduct “not as morally reprehensible as that of an adult.”⁴⁶

This conclusion led the Court to view an offender’s youth as a

37. State ex rel. Morgan v. State, 1015-0100, p. 5 (La. 10/19/16); 217 So. 3d 266, 270 (internal citations omitted).

38. *Roper v. Simmons*, 543 U.S. 551, 556 (2005).

39. *Id.* at 559–60.

40. *Id.* at 559.

41. *Id.*

42. *Id.*

43. *Roper*, 543 U.S. at 559.

44. *Id.*

45. *Id.* at 570 (citing E. ERICKSON, *IDENTITY: YOUTH AND CRISIS* (1968)).

46. *Id.*

mitigating factor when assessing the reprehensibility of the conduct and the culpability of the offender.⁴⁷ Consequently, to ensure that the Eighth Amendment's fundamental principle of proportionality would be upheld, the Court declared that "[w]hen a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity."⁴⁸ The Court ultimately held that the death penalty for offenders under eighteen years old will always be a categorically "disproportionate punishment."⁴⁹

2. *GRAHAM V. FLORIDA*

Five years after *Roper v. Simmons*, the Supreme Court in *Graham v. Florida* extended its analysis of juvenile culpability by holding that the Eighth Amendment prohibits imposing a life sentence without parole "on a juvenile offender who did not commit homicide."⁵⁰ The Supreme Court used the *Roper* precedent to identify unique juvenile traits that mitigate harsh sentencing.⁵¹ Using the Eighth Amendment as the foundation of its analysis, the Court held that the "precept of justice [is] that punishment for crime should be graduated and proportioned to [the] offense."⁵² To reach its holding, the Court looked first to "objective indicia of society's standards"⁵³ and then to "its own independent judgment."⁵⁴

An objective analysis of society's standards and practices at the time of the decision revealed that although most jurisdictions permitted sentencing nonhomicide juvenile offenders to life imprisonment without parole, only eleven of those jurisdictions actually imposed such a sentence; twenty-six states, the District of Columbia, and the federal government did not impose the

47. *Roper v. Simmons*, 543 U.S. 551, 571–73 (2005) ("Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity. . . . It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.").

48. *Id.* at 573–74.

49. *Id.* at 575.

50. *Graham v. Florida*, 560 U.S. 48, 82 (2010).

51. *Id.* at 68–69.

52. *Id.* at 59 (quoting *Weems v. United States*, 567 U.S. 349, 367 (1910)).

53. *Id.* at 61 (quoting *Roper v. Simmons*, 543 U.S. 551, 572 (2005)).

54. *Id.* (citing *Roper*, 543 U.S. at 572).

sentence despite statutory authorization to do so.⁵⁵ The Court read these statistics to signify that “a national consensus has developed against [imposing such sentencing].”⁵⁶

The Court then applied its own independent judgment. It reiterated some of the basic principles about juvenile culpability espoused in *Roper* and declared that “life without parole is the second most severe penalty permitted by law.”⁵⁷ Considering both the characteristics of the offender (youth) and the nature of the crime (nonhomicide), the Court found that it was “especially harsh” to sentence juvenile offenders, a class of people more deserving of rehabilitation, to life without parole—the second harshest penalty possible—for nonhomicide crimes.⁵⁸ The Court also considered the international implementation of the sentence and found that while only eleven countries authorize its use for juveniles, only two countries, the United States and Israel, ever impose the punishment.⁵⁹ Finally, the Court examined the penological justifications of retribution, deterrence, incapacitation, and rehabilitation and found that none of those purposes were served by implementing life without parole on juvenile nonhomicide offenders.⁶⁰

The State argued that the Supreme Court did not need to make a categorical rule banning the sentencing practice because pre-existing laws of the state take sufficient consideration of the juvenile offender’s age.⁶¹ Among other things, the State cited to the fact that “prosecutors may not charge nonrecidivist 16- and 17-year-old offenders as adults for misdemeanors.”⁶² Florida also argued in the alternative that a rule requiring courts to take offenders’ ages into consideration during sentencing would satisfy the Eighth Amendment’s requirements.⁶³ The Court found these arguments unpersuasive because neither would avoid the risk that “a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable to deserve life without parole for a nonhomicide.”⁶⁴ Ultimately, the Court determined that a

55. *Graham v. Florida*, 560 U.S. 48, 64 (2010).

56. *Id.* at 67.

57. *Id.* at 69 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991)).

58. *Id.* at 70.

59. *Id.* at 80.

60. *See Graham*, 560 U.S. at 71–74.

61. *Id.* at 75–76.

62. *Id.* at 75.

63. *Id.* at 77.

64. *Id.* at 78–79.

categorical rule banning such a sentencing practice would be the only way to ensure that states will refrain from “making the judgment at the outset that those [juvenile] offenders never will be fit to reenter society.”⁶⁵ In issuing its decision, the Court expressly stated that “[a] State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants . . . a meaningful opportunity to obtain release.”⁶⁶

3. *MILLER V. ALABAMA*

Shortly after deciding *Graham*, the Supreme Court issued a decision forbidding sentencing schemes that impose mandatory life without parole sentences for juvenile offenders convicted of homicide.⁶⁷ The Court stated in *Miller* that “[m]ost fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.”⁶⁸ Using this premise, the Court held that the “Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders,” ultimately requiring that sentencers take into account “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”⁶⁹

Miller relied on the same Eighth Amendment principles the Court relied on in *Roper* and *Graham*: that proportionality is central to the tenant of justice and that excessive sanctions violate the Cruel and Unusual Punishment Clause.⁷⁰ In adopting the view from *Roper* and *Graham* that “children are constitutionally different from adults for the purposes of sentencing,”⁷¹ the Court noted that “none of what i[s] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.”⁷² Consequently, the Court decided that because “[t]hose features are evident in the same way, and to the same degree” when a

65. *Graham v. Florida*, 560 U.S. 48, 75 (2010).

66. *Id.*

67. *Miller v. Alabama*, 567 U.S. 460, 473 (2012).

68. *Id.*

69. *Id.* at 479–80.

70. *Id.* at 469.

71. *Id.* at 471.

72. *Miller*, 567 U.S. at 473.

juvenile offender commits a homicide,⁷³ its holding from *Graham* should be extended to juvenile homicide offenders in such a way that, at minimum, requires sentencers to consider the youth of the homicide offender before sentencing him or her to life imprisonment without parole.⁷⁴

B. LOUISIANA'S RESPONSE: AMENDING LOUISIANA REVISED STATUTE § 15:574.4(D) AND ADJUDICATING *STATE V. BROWN*

Following *Graham*, the Louisiana legislature amended its statute concerning parole eligibility.⁷⁵ Under the revised statute, any person serving a sentence of life imprisonment⁷⁶ who was under the age of eighteen at the time of the commission of the offense is eligible for parole if: (1) they were not convicted of first or second-degree murder, (2) they have served twenty-five years of the sentence imposed, and (3) they have met other subsidiary parole requirements.⁷⁷

Prior to *Morgan*, the Louisiana Supreme Court only adjudicated one other case, *State v. Brown*, in light of the *Graham* decision.⁷⁸ Brown was sixteen years old during the commission of his crime, which consisted of multiple offenses that occurred over the course of a singular event.⁷⁹ He was found guilty of aggravated kidnapping and four counts of armed robbery.⁸⁰ He received the mandatory life term without parole for the aggravated kidnapping count and a ten-year term “without benefit [of parole]” for each of the four counts of armed robbery, each “to run consecutively.”⁸¹

In 2011, Brown filed a motion to correct an illegal sentence

73. *Miller v. Alabama*, 567 U.S. 460, 473 (2012).

74. *Id.* at 480.

75. Act 466, S.B. 317, 2012 La. Sess. Law Serv., Reg. Sess. (La. 2012) (enacted); see *State ex rel. Morgan v. State*, 1015-0100, pp. 14–15 (La. 10/19/16); 217 So. 3d 266, 275–76.

76. Prior to *Morgan*, there was some ambiguity surrounding the scope of “life imprisonment.” *Morgan* established that Louisiana Revised Statute § 15:574.4(D) is to be read as encompassing juvenile offenders serving a life sentence *and* juvenile offenders serving an *effective* life sentence—but what is an effective life sentence? The Louisiana Supreme Court declined to say, but we do know that ninety-nine years of imprisonment will suffice. This question is explored more in Part V of this Note.

77. LA. STAT. ANN. § 15:574.4 (D) (Supp. V. 2018).

78. *State v. Brown*, 2012-0872, pp. 1–3 (La. 5/7/13); 118 So. 3d 332, 332–33.

79. *Id.*

80. *Id.* at p. 3; 118 So. 3d at 333–34.

81. *Id.* at p. 3; 118 So. 3d at 334.

pursuant to *Graham*.⁸² The district court granted the motion and “amended all of the defendant’s sentences to delete the parole eligibility restrictions.”⁸³ The court of appeal affirmed, finding that *Graham*’s intent was to give juveniles convicted of nonhomicide offenses “some meaningful opportunity to obtain release.”⁸⁴ The Louisiana Supreme Court held that the trial court “correctly amended defendant’s life sentence” for aggravated kidnapping pursuant to *Graham*, *Shaffer*, and Louisiana Revised Statute § 15:574.4(D), but the trial court “erred in amending defendant’s four, ten-year sentences for armed robbery and removing the parole eligibility restrictions on those sentences.”⁸⁵

Consequently, Brown’s final sentence consisted of life *with parole* for the aggravated kidnapping charge and four consecutive ten-year terms *without parole* for the armed robbery charges.⁸⁶ In its reasons for rejecting the amendments to the ten-year sentences, the Louisiana Supreme Court explained that “*Graham* does not prohibit consecutive term of year sentences for multiple offenses committed while a defendant was under the age of 18, even if they might exceed a defendant’s lifetime.”⁸⁷ Thus, the Louisiana Supreme Court held that despite not being subject to release until the age of eighty-six,⁸⁸ the defendant’s sentencing in *Brown* for a juvenile nonhomicide crime was legal under *Graham*.⁸⁹ Even in light of *Graham*, it remains all too possible for juveniles convicted of multiple nonhomicide charges to be incarcerated for the remainder of their lives.

IV. THE COURT’S DECISION

Three years after *Brown* was decided, the Louisiana Supreme Court confronted another critical question concerning juvenile sentencing: Does a single sentence of ninety-nine years imprisonment without benefit of parole for a nonhomicide juvenile offense constitute an illegal sentence? The defendant, Alden Morgan, argued that his ninety-nine-year sentence provided him with no meaningful opportunity for release or

82. *State v. Brown*, 2012-0872, p. 3 (La. 5/7/13); 118 So. 3d 332, 334.

83. *Id.*

84. *Id.* at p. 4; 118 So. 3d at 334.

85. *Id.* at pp. 15–16; 118 So. 3d at 342.

86. *Id.*

87. *Brown*, 2012-0872, p. 15; 118 So. 3d at 341.

88. *Id.* at p. 5; 118 So. 3d at 335.

89. *Id.* at pp. 15–16; 118 So.3d at 342.

rehabilitation as mandated by *Graham*.⁹⁰ The State maintained that Morgan's sentence was legal because it was not an *actual* life sentence but rather a "term-of-years" sentence.⁹¹ The State argued that the Virginia Supreme Court adopted such a view, but in that case, as in *Brown*, the defendant was convicted of multiple offenses, which in the aggregate would deprive him of parole, as opposed to one offense with a lengthy term.⁹²

The Louisiana Supreme Court found that the State was unable to point to "a single case in which a juvenile convicted of just one nonhomicide offense was sentenced to a single term-of-years exceeding his life expectancy."⁹³ The Court itself was only able to locate one case from the South Dakota Supreme Court, *State v. Springer*.⁹⁴ In *Springer*, the juvenile was convicted of one count of kidnapping and given a 261-year sentence.⁹⁵ The South Dakota Supreme Court held that this was not an effective life sentence because the defendant was still afforded parole eligibility after thirty-three years of imprisonment when the defendant would be forty-nine.⁹⁶ The Louisiana Supreme Court interpreted this decision to mean that "the dispositive issue in such a case was whether the sentence provided a meaningful opportunity for release, not whether it was labeled as a 'life' sentence or a 'term-of-years' sentence."⁹⁷

In fact, the Louisiana Supreme Court felt that the State's claim that courts are bound by the "life" versus "term-of-years" distinction circumscribed *Graham's* mandate that a juvenile convicted of a nonhomicide offense be given a meaningful opportunity for release.⁹⁸ The Court declared that "the State misinterprets *Graham's* holding to the extent it fails to acknowledge its central premise that, because a juvenile nonhomicide offender has diminished culpability, a sentence which, based upon a judgment at the time of sentencing, bars him from ever re-entering society, is a grossly disproportionate

90. State ex rel. Morgan v. State, 1015-0100, p. 4 (La. 10/19/16); 217 So. 3d 266, 269.

91. *Id.* at p. 9; 217 So. 3d at 272.

92. *Id.*

93. *Id.* at p. 9; 217 So. 3d at 273.

94. *Id.* at pp. 9-10; 217 So. 3d at 273; *State v. Springer*, 856 N.W.2d 460 (S.D. 2014).

95. *Springer*, 856 N.W.2d at 461-62.

96. *Id.* at 469-70.

97. *Morgan*, 1015-0100, p. 10; 217 So. 3d at 273.

98. *Id.*

punishment.”⁹⁹

The Louisiana Supreme Court then addressed the district court’s statement at Morgan’s sentencing, finding that the judge made a “premature judgment” when he said that that Morgan’s lifetime potential for rehabilitation was “relatively slim” and that he would be an “undue risk” to society.¹⁰⁰ The court concluded that “the *Graham* court specifically rejected such premature judgement about a juvenile’s lack of potential for growth and maturity.”¹⁰¹ Because Morgan would not become parole-eligible until 2082, after reaching the age of 101, the Louisiana Supreme Court found that he “received the functional equivalent of life without parole.”¹⁰²

The court illustrated the illogical outcomes of the State’s arguments by examining the perverse results of the then-existing sentencing schemes for armed robbery, aggravated kidnapping, and aggravated rape. Under Louisiana law, aggravated kidnapping and aggravated rape carry mandatory life sentences, whereas armed robbery carries a maximum sentence of ninety-nine years without parole.¹⁰³ Under the State’s argument—that *Graham* only be applied to life sentences—juvenile offenders convicted of the more serious crimes of aggravated kidnapping or aggravated rape would be eligible for parole before someone convicted of a less serious crime like armed robbery.¹⁰⁴ The Louisiana Supreme Court determined that if it adopted the State’s argument, “there could be a perverse incentive to kill one’s victims.”¹⁰⁵

Finally, noting that the State agreed there is no practical difference between a life sentence and a ninety-nine-year sentence, the court found that “the State offers no compelling reason why *Graham* should be construed as any less applicable to the defendant’s lengthy sentence than to the sentence for another nonhomicide offense which under state law happens to be mandatory life.”¹⁰⁶ In fact, the court noted that nothing in

99. *State ex rel. Morgan v. State*, 1015-0100, pp. 10–11 (La. 10/19/16); 217 So. 3d 266, 273.

100. *Id.* at p. 11; 217 So. 3d at 273.

101. *Id.*

102. *Id.* at p. 12; 217 So. 3d at 274.

103. *Id.* at p. 12; 217 So. 3d at 273, 274 nn.12–13.

104. *Morgan*, 1015-0100, p. 12; 217 So. 3d at 273, 274 n.13.

105. *Id.* at p. 12; 217 So. 3d at 274.

106. *Id.* at p. 13; 217 So. 3d at 275.

Graham is “offense-specific, aside from the homicide/nonhomicide distinction.”¹⁰⁷

After concluding that a ninety-nine-year sentence is an effective life sentence under *Graham*, the court then ensured that Morgan’s sentence conformed with the dictates of *Graham* by analyzing Morgan’s parole eligibility. The Louisiana Supreme Court looked to Louisiana Revised Statute § 15:574.4(D), the sentencing statute for juvenile nonhomicide offenses, and found that the “legislature affirmatively fixed the point beyond which a juvenile nonhomicide offender in Louisiana cannot constitutionally be incarcerated without an opportunity for parole.”¹⁰⁸ That point is after serving thirty years of the sentence.¹⁰⁹ Consequently, the court maintained that Morgan’s conviction be amended in light of Louisiana Revised Statute § 15:574.4(D):

[C]onsiderations of equity and consistency require that 15:574.4(D) be construed as applicable not just to those juvenile offenders serving a sentence of life for a nonhomicide offense, but also to those, like the defendant, serving an effective life sentence for a single nonhomicide offense which the legislature deems not so serious as to warrant an automatic life sentence.¹¹⁰

Ultimately, the Louisiana Supreme Court concluded that Morgan’s sentence was illegal under *Graham* for two reasons: (1) it was a single sentence distinguishable from the concurrent sentences in *Brown*, and (2) the ninety-nine-year sentence provided him no meaningful opportunity for parole, functioning as an effective life sentence.¹¹¹

107. *State ex rel. Morgan v. State*, 1015-0100, p. 13 (La. 10/19/16); 217 So. 3d 266, 275.

108. *Id.* at p. 14; 217 So. 3d at 275.

109. *Id.* At the time *State ex rel. Morgan v. State* was decided, a nonhomicide juvenile offender who was sentenced to life imprisonment was required to serve thirty years of the sentence before becoming eligible for parole. LA. STAT. ANN. § 15:574.4 (Supp. 2016), amended by LA. STAT. ANN. § 15:574.4 (Supp. 2017). The time limit has since been amended to twenty-five years. LA. STAT. ANN. § 15:574.4 (Supp. 2017).

110. *Morgan*, 1015-0100, p. 15; 217 So. 3d at 273, 275.

111. *Id.* at p. 16; 217 So. 3d at 276.

**V. ANALYSIS: IN LOUISIANA, PROSECUTORIAL AND
JUDICIAL DISCRETION TRUMP THE MITIGATING
FACTOR OF YOUTH**

The difference between spending a lifetime in jail and having a “meaningful opportunity” at rehabilitation and eventual freedom may ultimately come down to the wishes and desires of the local prosecutor or sentencing judge. *Brown* and *Morgan* demonstrate that only *some* juvenile nonhomicide offenders will see the outside of their prison cells. *Brown* made it clear that juveniles facing numerous charges emanating from a singular event will not be guaranteed the opportunity to leave prison, especially if the sentencing judge, at his or her personal discretion, mandates that the sentences run consecutively. Thus, while the Louisiana Supreme Court in *Morgan* espoused such commendable notions as transitory immaturity, youth as a mitigating circumstance, and the ability of offenders to change, it nonetheless failed to ensure consistent application of those values.

In its decision, the Louisiana Supreme Court reiterated and relied on the U.S. Supreme Court’s sound assessments of juvenile offenders found in *Roper*, *Graham*, and *Miller*. Indeed, the Louisiana Supreme Court expressly stated that the State “fail[ed] to acknowledge [*Graham*’s] central premise that, because a juvenile nonhomicide offender has diminished culpability, a sentence which, based upon a judgment at the time of sentencing, bars him from ever re-entering society, is a grossly disproportionate punishment.”¹¹²

It seems that the Louisiana Supreme Court abandoned this premise when it issued *Brown*. The defendant in *Brown* faced five separate charges emanating from a singular incident that took place on one evening.¹¹³ *Morgan* faced one charge. The Louisiana Supreme Court concluded that *Graham* applies squarely to *Morgan*’s ninety-nine-year sentence¹¹⁴ but not to *Brown*’s consecutive sentences totaling seventy years.¹¹⁵ Both defendants were juvenile nonhomicide offenders, and according to the Louisiana Supreme Court’s own words, had a “diminished culpability” that should have shielded them from a discretionary

112. State ex rel. Morgan v. State, 1015-0100, pp. 10–11 (La. 10/19/16); 217 So. 3d 266, 273.

113. State v. Brown, 2012-0872, pp. 1–3 (La. 5/7/13); 118 So.3d 332, 332–34.

114. *Morgan*, 1015-0100, p. 16; 217 So. 3d at 276.

115. *Brown*, 2012-0872, pp. 15–16; 118 So. 3d at 342.

judgment that would prevent them from ever reentering society. However, because Brown faced numerous charges, and because the sentencing judge mandated that those sentences be served consecutively, Brown will not be given the same “meaningful opportunity” at rehabilitation and release afforded to Morgan.

Thus, despite the shared mitigating circumstance of youth and the Louisiana Supreme Court’s attested compassion for juvenile offenders, one offender will remain imprisoned for at least seventy years while the other will have an opportunity for release after serving twenty-five years. The Louisiana Supreme Court maintains that this discrepancy stems from the fact that, in the case of the defendant in *Brown*, the “actual duration of imprisonment is so lengthy only because he had committed five offenses.”¹¹⁶ This explanation, however, fails to take into account the principle of diminished culpability for juvenile criminal behavior: Does a juvenile’s diminished culpability evaporate the moment that the local prosecutor decides to charge a juvenile with five charges instead of one, or when a sentencing judge decides that the sentences should be served consecutively?

If the principles espoused by the Louisiana Supreme Court are indeed genuine and meaningful, then the same opportunity afforded to Morgan should likewise be granted to other juvenile nonhomicide offenders—despite a possible plurality of charges—because juveniles “are inherently less culpable, owing to their immaturity and underdeveloped sense of responsibility.”¹¹⁷ The Louisiana Supreme Court acknowledged that one of *Graham*’s primary objectives was to prevent juveniles from being imprisoned for the remainder of their lives for a nonhomicide offense “based only on a discretionary, subjective judgment by a judge or jury that the juvenile offender is irredeemably depraved.”¹¹⁸ Despite this acknowledgment, the Louisiana Supreme Court in *Brown* effectively decided against the application of such an objective if the “discretionary, subjective judgment by a judge” or a prosecutor pertains to the number of charges a juvenile faces or how those sentences are served.

In a concurrence to the *Morgan* decision, Justice Crichton criticized the State for taking “the stunning position” that

116. State ex rel. Morgan v. State, 1015-0100, p. 8 (La. 10/19/16); 217 So. 3d 266, 272.

117. *Id.* at p. 6; 217 So. 3d at 270.

118. *Id.* p. 11; 217 So. 3d at 270 (internal quotations omitted).

Morgan would have a “meaningful opportunity to obtain release” in accordance with *Graham* if his ninety-nine-year without parole sentence remained intact.¹¹⁹ However, this position is not any more “stunning” than the Louisiana Supreme Court’s decision in *Brown*. The defendant’s chances in *Brown* at having a “meaningful opportunity to obtain release” are just as nonexistent as were Morgan’s chances for release prior to the court’s decision. Instead, the Louisiana Supreme Court rationalized the defendant’s lengthy sentencing in *Brown* by looking to the multiplicity of charges and ignoring the mitigating factor of his youth. It remains unclear as to how the court rationalized the sentences in *Brown* despite the jurisprudence on juvenile sentencing practices. Perhaps the Louisiana Supreme Court thought that the defendant in *Brown* would have a meaningful opportunity for release after serving a minimum of seventy years in prison or that the defendant’s youth was less mitigating because the State dealt him multiple charges and mandated consecutive sentences.

Regardless of which rationale the Louisiana Supreme Court opts to take, some pertinent questions remain. What is the functional equivalent of life? *Morgan* has established that ninety-nine years is the equivalent of a life sentence. What is the threshold number of years required of an effective life sentence? *Brown* demonstrated that a seventy-year sentence (resulting from numerous charges) falls short of an effective life sentence. Under what circumstances does a juvenile’s youth give way to the seriousness or multiplicity of his crimes? These questions will inevitably be addressed in future decisions.

VI. CONCLUSION: DO NOT BE TOO OPTIMISTIC

When the Louisiana Supreme Court issued its decision in *Morgan*, twenty-nine inmates in Louisiana were serving non-life sentences of sixty years or more for crimes committed as juveniles.¹²⁰ Louisiana will have to decide the threshold for when a term-of-years sentence becomes an effective life sentence. Louisiana may also be forced to grapple with the possibility that some of those twenty-nine juvenile offenders are serving multiple,

119. *State ex rel. Morgan v. State*, 1015-0100, p. 17 (La. 10/19/16); 217 So. 3d 266, 277 (Crichton, J., concurring).

120. John Simerman, *Louisiana Supreme Court Overturns Maximum Sentence for Orleans Juvenile Armed Robber*, NEW ORLEANS ADVOCATE (Sept. 6, 2017), http://www.theadvocate.com/new_orleans/news/courts/article_75b23f0e-971f-11e6-abf4-4f034d7dbcbc.html.

concurrent sentences—a predicament similar to the one presented in *Brown*.

Louisiana, the incarceration capital of the world, took an obvious and small step in the right direction with the *Morgan* decision. If Louisiana truly subscribes to the ideals put forth by the U.S. Supreme Court's decisions in *Graham*, *Roper*, and *Miller*, then Louisiana's courts must bear those principles in mind and keep them at the forefront of their future sentencing decisions and appellate reviews. If Louisiana is capable of looking beyond a young offender's immediate criminal acts to see a valuable individual deserving of rehabilitation and a life outside of bars, then perhaps the future looks a little brighter for mass incarceration reform efforts.

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