Written by **Jack Kenny** on August 22, 2012

N.H. Killer Hopes for Lighter Sentence From Supreme Court Ruling

An inmate of New Hampshire State Prison, serving a sentence of life without parole for the murder of two Dartmouth College professors 11 years ago, may be seeking a reduced sentence based on a recent Supreme Court ruling that a mandatory life-without-parole sentence is unconstitutional when imposed on someone who was a juvenile at the time he committed the crime.

Robert Tulloch, 29, pled guilty in April 2002 to two counts of first-degree murder and one count of murder conspiracy in the stabbing deaths of Half and Susanne Zantop at the Zantops' home on January 7, 2001 — four months before Tulloch's 18th birthday. He was sentenced on each murder count to life in prison without the possibility of parole, in accordance with a New Hampshire statute that says: "A person convicted of a murder in the first degree shall be sentenced to life imprisonment and shall not be eligible for parole at any time." But on June 25 of this year, the U.S. Supreme Court ruled in *Miller v. Alabama* that a mandatory life sentence for a crime committed by a juvenile violates the Eighth Amendment ban on "cruel and unusual punishment." Tulloch has since contacted the New Hampshire Public Defender's office for advice on whether he might seek relief under the *Miller* ruling, the *New Hampshire Union Leader* reported Tuesday.

"I believe that Mr. Tulloch may be entitled to some relief under the *Miller* decision since he was under the age of eighteen at the time of the murders and since he was sentenced to life without parole," public defender Richard Guerriero said in a letter he filed Monday with the Grafton Country Superior Court, where Tulloch was sentenced 10 years ago. Whether the *Miller* ruling might be applied retroactively is unclear, though it may have an effect on the case of Steven Spader, whose appeal of his conviction and sentence is now before the Supreme Court of New Hampshire. Spader was sentenced to life without parole for the murder of a Mount Vernon woman and the maiming of her daughter in 2009, when he was 17. Attorneys for Spader told the *Concord Monitor* in June that they were reviewing the *Miller* decision to see if it might be the basis for a reconsideration of Spader's sentence. The

Monitor noted that there were at least two other convicts serving life sentences in New Hampshire for murders they committed when they were 17, one for killing his parents and the other for killing a restaurant owner.

The Supreme Court in *Miller* did not rule out all life-without-parole sentences for crimes committed by juveniles, but held that laws that make such sentences mandatory deny judges and juries the opportunity to take into account mitigating factors to determine whether the punishment is proportional to the crime.

"By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment," Justice Elena Kagan wrote for the majority in the 5-4 decision. Kagan was joined by the other members of the court's liberal bloc: Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor. Justice Anthony Kennedy, frequently the "swing vote" on 5-4 rulings, swung with the liberal bloc on that case. The Court's conservatives — Chief Justice John Roberts, and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito — were unanimous in opposing the decision. Citing 2,500 prisoners nationwide now serving life sentences without parole for murders they committed before they were 18, Roberts argued in his dissent that the mandatory sentences did not come under the Eighth Amendment ban.

"Today the Court invokes that Amendment to ban a punishment that the Court itself does not find unusual and that could not plausibly be described as such," Roberts wrote. Kagan's opinion relied heavily on Supreme Court precedents in the 2005 *Roper v. Simmons* ruling, declaring capital punishment for juveniles violated the Eighth Amendment ban, and the *Graham v. Florida* finding in 2010 that life without parole sentences for juveniles who committed non-homicide crimes violated the same amendment. Roberts noted, however, that in *Roper* the Court "reasoned that the death penalty was not needed to deter juvenile murderers because 'life imprisonment without the possibility of parole' was available.

"In a classic bait and switch, the Court now tells state legislatures that — *Roper's* promise notwithstanding — they do not have power to guarantee that once someone commits a heinous murder he will never do so again," the chief justice wrote. "To claim that Roper actually 'leads to' revoking its own reassurance surely goes too far."

Kagan also cited from the *Roper* case "studies … showing that 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior.' " Roberts agreed there were complex issues tied up in the sentencing laws, but he argued that the issues belong to legislatures rather than courts.

"Determining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy," he wrote. "Our role, however, is to apply the law, not to answer such questions."

Photo: Robert Tulloch is escorted into court on Feb. 20, 2001, in New Castle, Ind., by Henry County Sheriff Kim Cronk, left, and Major Jay Davis, right, for an extradition hearing: AP Images