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**To:** Assignment Judges **DIRECTIVE # 01-22**  
Criminal Presiding Judges

**From:** Glenn A. Grant,   
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**Subj:** Criminal – Juveniles Tried as Adults – Motions to Reconsider  
Sentence – State v. Comer/ State v. Zarate ( \_\_ N.J. \_\_ (2022))

**Date:** February 15, 2022

This Directive provides guidance for courts and litigants in accordance with the Supreme Court’s decision in State v. Comer/State v. Zarate (referred to hereinafter as Comer), decided on January 10, 2022, regarding the review of juvenile sentences under N.J.S.A. 2C:11-3(b), which requires a mandatory minimum sentence of 30 years without eligibility for parole. Motions made pursuant to Comer must be submitted electronically through eCourts pursuant to the December 5, 2016 Supreme Court order mandating electronic filing in criminal matters. The filer must use the motion type entitled: “Sentence Reconsideration.”

In Comer, the Court analyzed two consolidated cases involving two juvenile offenders that were tried as adults and convicted of murder. At the time of Comer’s felony murder offense, he was 17 years old. Following an appeal, he was sentenced to 30 years in prison without the possibility of parole. Zarate was almost 15 years old at the time of his murder offense and, after multiple appeals, was sentenced to 50 years in prison with an 85-percent period of parole ineligibility under the No Early Release Act. Both Comer and Zarate argued that their sentences amounted to cruel and unusual punishment and asked the Court to find that the sentencing requirement of the murder statute, as it applies to juveniles, was unconstitutional under both the U.S. and State Constitutions.

The Court anticipated such a request in 2017 and asked the Legislature to consider amending the statute to provide for a review of juvenile sentences with lengthy periods of parole ineligibility. Comer (slip op. at 5), State v. Zuber, 227 N.J. 422, 451-53 (2017). However, in the absence of legislative action after four plus years, the Court determined that it was necessary to address this significant constitutional issue, noting that courts have the authority to act in order to save a statute from constitutional infirmity. Comer (slip op. 5-6).

The Court analyzed the constitutionality of the statutory framework for sentencing juveniles under the following three part-test, which is “generally the same” under both Constitutions: (1) whether the punishment for the crime conforms with contemporary standards of decency; (2) whether the punishment is grossly disproportionate to the offense; and (3) whether the punishment goes beyond what is necessary to accomplish any legitimate penological objective. Comer (slip op. 25, citations omitted). The Court determined that the sentencing provision as applied to juveniles failed each part of the test, but it declined to strike the statute as it applies to juveniles since “allowing minors a later opportunity to show they have matured, to present evidence of their rehabilitation, and to try to prove they are fit to reenter society would address the problem posed.” Comer (slip op. 51), citing Graham v. Florida, 560 U.S. 48, 75, 79 (2010). Instead, the Court added a lookback provision, permitting juvenile offenders sentenced under the murder statute to request a review of their sentence after serving 20 years. The Court explained that this intervention was necessary to prevent the statute from being invalidated on constitutional grounds, noting that the Legislature would want the law to survive. Comer (slip op. 53, citations omitted).

The Court did not take issue with the length of the sentences. Rather,

...the constitutional concern here is twofold: the court’s lack of discretion to assess a juvenile’s individual circumstances and the details of the offense before imposing a decades-long sentence with no possibility of parole; and the court’s inability to review the original sentence later, when relevant information that could not be foreseen might be presented.

Comer (slip op. 53).

As articulated by the Court, juvenile offenders convicted of murder may petition for a review and possible reduction of their sentence after serving 20 years in prison. At the sentence review hearing the judge will assess the factors set forth by the U.S. Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012), designed to consider the “mitigating qualities of youth,” as well as those that could not be fully assessed at the time of sentencing. Comer (slip op. 53), Miller, 567 at 478. The U.S.

Supreme Court in Miller set forth the following five factors regarding mandatory life without parole for a juvenile:

[1] [It] precludes consideration of his chronological age and its hallmark features -- among them, immaturity, impetuosity, and failure to appreciate risks and consequences.

[2] It prevents taking into account the family and home environment that surrounds him -- and from which he cannot usually extricate himself -- no matter how brutal or dysfunctional.

[3] It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him.

[4] Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth -- for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

[5] And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Comer (slip op. 30-31), citing Miller, 567 U.S. at 477-78. As noted by the Court, Miller did not rule out the possibility of life without parole for juveniles convicted of murder; rather, Miller requires judges “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id., citing Miller at 480.

Whether the juvenile offender still fails to appreciate risks and consequences and whether he or she has matured or been rehabilitated are among the factors to be considered. The trial court may consider other relevant evidence from both parties including, but not limited to, the juvenile offender’s behavior in prison and any rehabilitative efforts taken by the defendant since sentencing.

Once the evidence has been evaluated, the judge has the discretion to affirm or reduce the original sentence within the statutory range, and to reduce the parole bar below the statutory limit, but not less than 20 years. Comer (slip op. 54). The

trial court is to make a thorough record explaining its findings to ensure fairness and facilitate any future review. Id.

Questions or comments regarding this Directive may be directed to Sue Callaghan, Assistant Director for Criminal Practice, by phone at 609-815-2900 extension 55300 or by email at [sue.callaghan@njcourts.gov](mailto:sue.callaghan@njcourts.gov).

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