

CABALLERO ATTACHMENT:

**ANSWERS TO QUESTION 6, GROUNDS FOR RELIEF
(JUDICIAL COUNCIL FORM MC-275)**

QUESTION 6: To answer Question 6, write “Please see attached” in the space for that question on the MC-275 form if it is not already printed there. **Fill in the blanks in section (a), Supporting facts,** below in this Attachment.

SIGN, DATE, ATTACH: When you are done with the Attachment, sign and date it on the last page. Attach all pages to your MC-275 form.

IMPORTANT: *Read everything very carefully, both the parts already printed and the information you add. Make sure it is all correct and applies to your case. Cross out or change anything that is not accurate. This Attachment is filed under penalty of perjury.*

Question 6: GROUNDS FOR RELIEF

Ground 1: This petition alleges cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution and article I, section 17 of the California Constitution. I am serving a sentence in excess of my natural life expectancy for an offense other than murder, committed when I was under 18 years of age. Life without possibility of parole (LWOP) is categorically prohibited for a nonhomicide committed by a juvenile. (*Graham v. Florida* (2010) 560 U.S. 48.) A sentence equivalent to LWOP for a nonhomicide is likewise banned. (*People v. Caballero* (2012) 55 Cal.4th 262.) *Caballero* is fully retroactive as a substantive rule “prohibiting a certain category of punishment for a class of defendants because of their status or offense.” (*Penry v. Lynaugh* (1990) 492 U.S. 302, 330.) This petition asks for resentencing to give me a sentence that offers a realistic chance to earn release during my natural life expectancy, in conformity with *Caballero*. Habeas corpus is the proper remedy for those cases past the time for direct appeal. (*Caballero*,

(a) Supporting facts:

The offense for which I was convicted and the sentence I am serving are shown above in question 3 of my MC-275 form. The offense allegedly was committed on

_____ *(month/day/year)*. I was born on _____

(month/day/year). Therefore, when the offense was committed, I was less than 18 years of age. *(If you have more than one crime, you may use a separate sheet to provide more information.)*

Under the sentence I am now serving, I would not be eligible even to be considered for parole until _____ *(date)*. *(Attach copy of California Department of*

Corrections and Rehabilitation notice showing first parole consideration date, if available.) At that

time I would be _____ years of age. This age is beyond the normal life expectancy of the average healthy person of my age and gender. For that reason, I cannot realistically expect ever to be considered for release from custody during my natural lifetime and am serving the functional equivalent of an LWOP sentence.

(b) Principal supporting authority:

United States Constitution, Amendments Eight and Fourteen

California Constitution, article I, section 17

Graham v. Florida (2010) 560 U.S. 48

Miller v. Alabama (2012) ___ U.S. ___ [132 S.Ct. 2455, 183 L.Ed.2d 407]

Penry v. Lynaugh (1990) 492 U.S. 302, 330

People v. Caballero (2012) 55 Cal.4th 262 and related Court of Appeal decisions

Please see following “Memorandum of Points and Authorities in Support of Question 6” for more authorities and more details.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF QUESTION 6 OF MC-275

This memorandum supports petitioner's position that his sentence constitutes cruel and unusual punishment under the United States and California Constitutions.

A. A sentence functionally equivalent to life without possibility of parole for a nonhomicide committed by a juvenile offender is unconstitutional.

In *Graham v. Florida* (2010) 560 U.S. 48, the United States Supreme Court held that a life without parole (LWOP) sentence for juveniles who commit crimes other than homicide is cruel and unusual punishment in violation of the Eighth Amendment. It relied on findings that minors have diminished capacity and greater opportunity for rehabilitation than do adults. (See also *In re Nunez* (2009) 173 Cal.App.4th 709 [LWOP for kidnapping for ransom by youth 14 years old is cruel and unusual punishment].)

In *Miller v. Alabama* (2012) ___ U.S. ___ [132 S.Ct. 2455, 183 L.Ed.2d 407], the United States Supreme Court further decided that *mandatory* LWOP sentences for minors under age 18 convicted of homicide violate the prohibition against cruel and unusual punishment. The sentencing court must consider individualized circumstances in making such a decision, including the "mitigating qualities of youth." (*Johnson v. Texas* (1993) 509 U. S. 350, 367.)

In *People v. Caballero* (2012) 55 Cal.4th 262, the California Supreme Court held that, under *Graham* and *Miller*, a 110-year-to-life sentence for three attempted murders, committed when the defendant was a minor, is cruel and unusual punishment under the Eighth Amendment. A juvenile offender must have a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" – i.e., eligibility for parole

some time during the person's natural life expectancy. (*Caballero*, at p. 266; see also *People v. Mendez* (2010) 188 Cal.App.4th 47 [84 years to life for nonhomicides constitutes cruel and unusual punishment]; see *People v. Thomas* (2012) 211 Cal.App.4th 987 [196 years to life sentence not precluded in murder case, but court must exercise discretion]; *People v. Argeta* (2012) 210 Cal.App.4th 1478 [minimum aggregate sentence of 100 years for murder is equivalent to life without possibility of parole].)

“‘[L]ife expectancy’ means the normal life expectancy of a healthy person of defendant’s age and gender living in the United States.” (*Caballero*, at p. 267, fn. 3.)

B. *Caballero* is fully retroactive, and habeas corpus is the appropriate remedy for a person whose judgment is final

Although normally new rules (such as *Caballero*) are not applicable to cases already final when the new rule is announced, an exception exists for substantive rules “prohibiting a certain category of punishment for a class of defendants because of their status or offense.” (*Penry v. Lynaugh* (1990) 492 U.S. 302, 330, abrogated on other grounds in *Atkins v. Virginia* (2002) 536 U.S. 304; *Teague v. Lane* (1989) 489 U.S. 288; cf. *In re Gomez* (2009) 45 Cal.4th 650.) In *Penry*, the Supreme Court held a ruling that executing the retarded is cruel and unusual punishment would be an exception to *Teague*’s policy of non-retroactivity for new law. Even before *Penry*, the California Supreme Court in *People v. Anderson* (1972) 6 Cal.3d 628, 657, fn. 45, held a decision invalidating death penalty as cruel or unusual punishment under California Constitution was fully retroactive. *Anderson* was abrogated on other grounds by constitutional amendment, as recognized in *People v. Bean* (1988) 46 Cal.3d 919, 957.)

In *Caballero* the Supreme Court specifically determined that habeas corpus would be the appropriate remedy for defendants who were already sentenced:

Defendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for a writ of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings.

(*People v. Caballero, supra*, 55 Cal.4th at p. 269; see also *People v. Anderson, supra*, 6 Cal.3d 628, 657, fn. 45; *In re Nunez, supra*, 173 Cal.App.4th 709.)

C. Request for resentencing and appointment of counsel

My sentence is the equivalent of life without possibility of parole in that I will have no reasonable expectation of being considered for release during my natural life expectancy. It is for a nonhomicide committed when I was less than 18 years old. Under the authorities cited here, I ask that I be resentenced and given a sentence that offers a realistic opportunity to earn release during my natural life expectancy, as required by *People v. Caballero, supra*, 55 Cal.4th 262.

I also request that counsel be appointed to represent me at proceedings ordered by this court. (Cal. Rules of Court, rules 4.551(c)(2), 8.385(f).) I am indigent and am unable to hire my own attorney.

CHECK: Carefully check everything in this Attachment, both the parts already printed and everything added by you, for accuracy. Make any needed corrections.

SIGN AND DATE: Sign and date the Verification of Attachment below on this page.

ATTACH: Add all pages of this Attachment (including any continuation sheets you prepared) to your form MC-275.

COMPLETE AND CHECK MC-275 FORM: If you have not completed and signed your form MC-275, do that next. Follow the "Instructions for a *Caballero* Habeas Corpus Petition" handout. Check everything again when done.

VERIFICATION OF ATTACHMENT

DECLARATION: I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Date

Signature of petitioner

