



Office of the Attorney General
Washington, D. C. 20530

July 21, 2011

The Honorable John A. Boehner
Speaker
United States House of Representatives
Washington, DC 20515

Re: United States v. James Mathurin, No. 09-21075-CR-Cooke (S.D. Fla.)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that in this criminal case in the United States District Court for the Southern District of Florida, the Department of Justice acknowledged that, under the Eighth Amendment as interpreted by the Supreme Court in *Graham v. Florida*, 130 S. Ct. 2011 (2010), application of the full consecutive sentencing requirements of 18 U.S.C. 924(c) to a defendant whose crimes were committed as a juvenile would be unconstitutional. The United States therefore urged the district court not to impose consecutive sentences on all of the Section 924(c) counts and instead urged imposition of consecutive sentences under Section 924(c) to the extent permitted by *Graham*. The district court agreed with the government that the Eighth Amendment as interpreted in *Graham* precluded imposition of all of the consecutive sentences that would otherwise be required under Section 924(c) and sentenced the defendant to 41 years imprisonment. The government does not intend to appeal the sentence.

From July to December 2007, defendant James Mathurin, then 17 years old, participated in a conspiracy to rob businesses and individuals in South Florida. Mathurin was charged as an adult in federal court and was convicted of 31 offenses. These included 15 counts of robbery, attempted robbery, or conspiracy to commit robbery, in violation of the Hobbs Act, 18 U.S.C. 1951(a); two counts of carjacking, in violation of 18 U.S.C. 2119; one count of conspiracy to possess a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c) and (o); and 13 counts of possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A).

Section 924(c) of Title 18 would ordinarily require imposition of consecutive prison terms for Mathurin's firearm offenses. In particular, Section 924(c) would require the district court to impose at least a seven-year mandatory consecutive sentence for Mathurin's first firearms offense, 18 U.S.C. 924(c)(1)(A)(ii), and additional 25-year mandatory consecutive sentences for each of the successive firearms offenses, 18 U.S.C. 924(c)(1)(C)(i). Because Mathurin was convicted of 13 firearms counts under Section 924(c), he would face a mandatory minimum sentence of 307 years in prison, in addition to whatever sentence the district court chose to impose on the other counts.

In *Graham*, the Court held that the Eighth Amendment requires that juveniles sentenced for non-homicide crimes be given “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 130 S. Ct. at 2030. The Department of Justice concluded that because Mathurin was a juvenile when he committed his offenses, the Eighth Amendment, as interpreted by the Court in *Graham*, prohibited imposition of the 307-year sentence that Section 924(c) would otherwise require. When a court sentences a defendant for nonhomicide offenses that were committed when the defendant was under the age of 18, *Graham* prohibits imposition of a sentence that is so lengthy that it would deny the defendant a meaningful opportunity for release from incarceration during his lifetime.

Because federal law does not provide for parole, the 307-year sentence Section 924(c) requires in Mathurin’s case would deny him a meaningful opportunity for release from incarceration during his lifetime. “This the Eighth Amendment does not permit.” *Graham*, 130 S. Ct. at 2033. Accordingly, the Department advised the sentencing court that the 307-year sentence mandated by Section 924(c) could not be constitutionally imposed on Mathurin.

While imposition of the mandatory minimum 307-year sentence corresponding to all 13 of Mathurin’s Section 924(c) convictions would violate the Eighth Amendment as interpreted in *Graham*, the Department argued that imposition of consecutive mandatory minimum penalties corresponding to three of those offenses (with concurrent sentences for the remaining Section 924(c) counts) would not. Accordingly, the Department asked the district court to impose a mandatory 57-year sentence pursuant to Section 924(c) and additional brief consecutive sentences on the non-Section 924(c) counts.

At Mathurin’s sentencing on June 29, 2011, the district court largely followed the Department’s proposed approach. The court agreed that a 307-year sentence would violate the Eighth Amendment as interpreted in *Graham*. The court also agreed that the sentencing requirements of Section 924(c) should be followed to the fullest extent permitted by the Eighth Amendment, and that the only provision of the statute that posed a constitutional problem in this case was the requirement of consecutive sentencing for all of Mathurin’s successive firearm convictions. The court limited its holding “to the unique circumstances of this case, which involves a non-homicide juvenile offender sentenced under § 924(c)(1) for multiple counts of possession of a firearm during the commission of a violent crime; it does not affect the consecutive sentence requirement as applied to adult offenders or juvenile offenders under different factual circumstances.” Slip op. 10-11. The court then imposed concurrent Guidelines sentences of 108 months on each of the underlying Hobbs Act and conspiracy counts, a consecutive seven-year sentence on the first Section 924(c) count, and a single consecutive 25-year sentence for the remaining eleven Section 924(c) counts, for a total of 492 months (41 years).

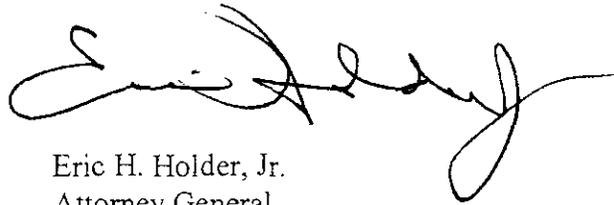
The government has decided not to appeal Mathurin’s sentence. The district court agreed with the Department that *Graham* did not permit imposition of a 307-year sentence on Mathurin and also adopted the Department’s proposed approach of following Section 924(c)’s sentencing rules

The Honorable John A. Boehner
Page 3

to the greatest extent possible. Although the sentence imposed is lower than that advocated by the Department, it is still substantial and, in the government's view, was not based on any legal error. A notice of appeal would be due by approximately July 29, 2011.

Please let me know if we can be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Holder", with a long, sweeping flourish extending to the right.

Eric H. Holder, Jr.
Attorney General

Enclosure