



Volume #55, Report #15, Article #2--Monday, January 25, 2016

## U.S. Supreme Court Decision Sets In Motion Law On Juvenile Lifer Parole

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Some 350 individuals now in Michigan prisons and sentenced to automatic life without parole will be able to seek parole following a 6-3 decision by the U.S. Supreme Court on Monday, but the process for those individuals to get a chance at parole will now be governed by two laws enacted in 2014.

The court, with Justice Anthony Kennedy writing for the majority, held that once it is held the U.S. Constitution denies a state the right to impose a punishment, a state cannot leave in place a punishment that violates that rule even if the punishment was meted out before the decision was made.

The specific decision was in the case *Montgomery v. Louisiana* ([USSC docket No. 14-280](#)), but it affects all states, including Michigan, that had ruled juvenile offenders sentenced before the 2012 decision in *Miller v. Alabama* were not eligible for the chance at parole if they had been sentenced to life without parole.

The Michigan Supreme Court narrowly reached that conclusion in 2014 when it held in a 4-3 decision in *People v. Carp* that Raymond Carp, who was 15 when he participated in a murder in 2006, could not ask for parole.

Now Mr. Carp's chances at a parole application will fall under the requirements in [PA 22 of 2014](#), which the Legislature enacted in anticipation of either the U.S. or Michigan Supreme Court holding those who were juveniles and sentenced before the early summer of 2012, when *Miller* was decided, could at least petition for parole (parole would never be automatic in such cases).

[Attorney General Bill Schuette](#) had opposed allowing juveniles sentenced before the *Miller* decision having the right to seek parole, arguing that would be traumatic to the victims' families. A spokesperson for Mr. Schuette said late Monday that he was still reviewing the latest decision.

The specific decision Monday dealt with Henry Montgomery, who was 17 when he killed a sheriff's deputy in 1963. Now 69, he had sought the right, under *Miller*, to argue for parole but was denied by Louisiana. Mr. Kennedy, joined by Chief Justice John Roberts, and Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan, held that when there is a new substantive rule of constitutional law that governs the outcome of a case, the U.S. Constitution requires that rule be given retroactive effect. Justices Antonin Scalia, Clarence Thomas and Samuel Alito dissented.

When the Michigan Supreme Court ruled against retroactive application in 2014, [Justice Stephen Markman](#), who wrote the majority decision, said there was no automatic requirement in either the U.S. or Michigan Constitution that the *Miller* decision be applied retroactively.

Even at that time, the U.S. District Court in Ann Arbor had held that retroactivity was required, and at one point ordered the state to move ahead with parole proceedings.

State Department of Corrections officials said Monday the process regarding the pre-2012 sentenced juveniles is set out in [PA 22 of 2014](#).

Under that law, each county prosecutor must notify the circuit court within 30 days who might fall under the decision as someone sentenced to life without parole before 2012. Then, within 180 days, the prosecutors must decide if they will still move to sentence the individual to life without parole (which *Miller* allows under narrow circumstances) or to a term of years.

The minimum number of years the individuals could be sentenced is 25 and the maximum is 60. Chris Gautz, spokesperson for Corrections, said that of the 350 estimated affected inmates, 162 have not yet served 25 years. That leaves the rest who could be eligible for parole hearings.

If the prosecutor does decide to seek life without parole, there is another court decision - which likely will be heard by the U.S. Supreme Court - that holds that decision must be affirmed by a jury, Mr. Gautz said. And even if the individuals are sentenced to life without parole, they could still get a chance to argue for parole. Under Michigan law, even those lifers have to appear before the Parole Board on a regular basis - a fact that has confused and annoyed both prosecutors and prisoners, Mr. Gautz said - and therefore those convicted as juveniles will still get a chance to argue for parole.

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