

# Federal courts must step in for juvenile lifers

John D. O'Hair 6:23 p.m. EDT September 22, 2016

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From 1983 to 2000, while I was the Wayne County prosecutor, 93 juveniles who were tried as adults and convicted of committing or abetting homicides were sentenced to life without parole. The sentencing process would have been much different if courts and prosecutors then had the U.S. Supreme Court mandates of the Miller and Montgomery cases and the benefit of current scientific data on the psychology and brain development of juveniles. We understand better today that the moral culpability of juvenile offenders is less than that of adults and their ability to reform is greater.

Last January, in [Montgomery v. Louisiana](#), the court reaffirmed its 2012 ruling in [Miller v. Alabama](#) that sentencing juveniles to life without parole is prohibited by the Eighth Amendment's cruel and unusual clause except in the rarest of cases. The court ordered that those now serving such sentences for crimes committed when they were 17 or younger must be given a meaningful opportunity to show they have been rehabilitated and are not the person they were at the time of the crime.

Are prosecutors, courts and state legislatures translating the Miller-Montgomery mandates into constitutionally sound policy? It seems so in the 38 states that have either banned juvenile life without parole or applied it in only a few instances, but in Michigan, there are worrisome signs that they are not.

Our Legislature amended the juvenile sentencing statute to ostensibly follow Miller. The statute retained the ability to impose a life without parole sentence and allowed the courts to impose a minimum sentence of 25 to 40 years, and a maximum sentence of 60 years. With the average life expectancy of a juvenile serving life without parole at 50.6 years, 40 and 60-year sentences are virtual life sentences.

Some prosecutors and judges in Michigan have ignored the Court's guidance that life sentences for youth are impermissible except for the "rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible" and have, instead, relied heavily on the life without parole option provided to them by the Legislature. Since Miller, Michigan judges have sentenced half of all eligible youth to life without any opportunity for parole.

It's even worse for the 363 youthful offenders who were sentenced to life without parole in Michigan before the 2012 Miller ruling and thus are eligible for resentencing. They got a shock recently when prosecutors filed for life without parole *again* for most, if not all, of those eligible for resentencing. Some prosecutors filed for life without parole in 100% of their cases while others tried to look as if they read Miller and Montgomery and filed for it in 75% of their cases. Their actions undermine the Supreme Court rulings and are an affront to our justice system.

One prosecutor filed life without parole for all of the people from his jurisdiction who were handed that sentence as minors, including one we will call “John” who was in the eighth grade when his offense happened. John was 16 years old and unarmed when he was with another youth who committed a robbery/homicide. John was a lookout and neither intended for anyone to get hurt nor did he hurt anyone. He was convicted of aiding and abetting a homicide with the testimony being that he was young, naive and a follower. John had a very difficult childhood after his father was murdered and his mother arrested. The former prosecutor offered the teen a plea deal with a sentence of less than 10 years, recognizing his limited involvement, unstable childhood and capacity for growth. Like many youths in this kind of situation, John didn’t understand what could happen if he rejected the plea and so he didn’t take the deal.

After serving 22 years in prison, John has matured, became an ordained minister and long ago has been rehabilitated. John is recognized as a stellar worker and classified at the lowest risk level possible; he is not the “rare irretrievably depraved” person who should die in prison for choices made as a troubled youth.

We could wait for the inevitable state appeals that will result, but that will tax the resources of state and county budgets and needlessly prolong the experience for victims’ families, the individuals serving these sentences and our communities. When some officials in a state’s justice system fail to honor constitutional mandates, it becomes the federal courts’ job to provide the remedy.

John D. O’Hair is a former circuit judge, a retired prosecutor for Wayne County and a past president of the Prosecuting Attorneys Association of Michigan.

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