An Update on Life with and without Parole for Young Defendants

Author : Jamie Markham

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In Miller v. Alabama, 567 U.S. 460 (2012), the Supreme Court held that a sentencing regime that makes life without parole mandatory for a murder committed by a defendant under the age of 18 is unconstitutional. The rule applies retroactively. Montgomery v. Louisiana, 577 U.S. __, 136 S. Ct. 718 (2016). North Carolina amended its statutes to comply with the ruling in 2012, enacting G.S. 15A-1340.19A through -1340.19D to create an option to sentence certain young defendants to life with the possibility of parole after 25 years. Today's post considers where we are after a half-decade under the new regime.

I described the details of North Carolina's *Miller* fix law here. It applies to defendants convicted of first-degree murder who were under 18 at the time of the offense. Here is the basic structure:

If the sole basis for a youthful defendant's first-degree murder conviction is the felony murder rule, the court must sentence the defendant to life imprisonment *with the possibility of parole after 25 years*. G.S. 15A-1340.19B(a)(1).

If a youthful defendant is convicted of first-degree murder under any theory other than felony murder, then the court must hold a hearing to determine whether the defendant will be sentenced to *life without parole* (which I'll call LWOP, because most people do) or *life with the possibility of parole after 25 years*. At the hearing, conducted by the trial judge as soon as practicable after the guilty verdict is returned, the court may consider evidence on "any matter the court deems relevant to sentencing." G.S. 15A-1340.19B(b). The law invites the defendant to submit mitigating circumstances to the court related to the defendant's age, immaturity, exposure to familial or peer pressure, likelihood of benefitting from rehabilitation in confinement, and other potential mitigators. G.S. 15A-1340.19B(c). At the conclusion of the hearing the judge determines whether, based on all the circumstances of the offense and the offender, the defendant should be sentenced to life imprisonment *with* parole instead of LWOP.

The supreme court upheld the new regime in the recent case of State v. James, __ N.C. __, 813 S.E.2d 195 (2018). In *James*, the defendant was convicted in 2010 of first-degree murder for a crime committed in 2006, when he was 16. He was sentenced to LWOP—the mandatory sentence at the time. While his case was in the appellate division, the Supreme Court decided *Miller* and the General Assembly enacted the statutory fix described above. So the matter was remanded to the trial division for resentencing.

At the resentencing hearing, the judge considered the presented mitigation evidence, but nonetheless concluded that it was "insufficient to warrant imposition of a sentence of less than life without parole." *Id.* at 199. And so the judge again sentenced the defendant to LWOP.

The defendant appealed the resentencing, arguing (among other things) that North Carolina's *Miller* fix was flawed in that it appeared to create a *presumption* of life without parole, from which the trial judge could, based on its consideration of mitigating factors, move *down* to life *with* parole. After all, there is no balancing of aggravating and mitigating factors; only consideration of possible mitigators, suggesting that the General Assembly intended life without parole to be the presumptive default. And if that were the case, the defendant argued, it would be unconstitutional, because how could LWOP be the presumptive default if *Miller* and *Montgomery* said it would be cruel and unusual for "all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility"? *Montgomery*, 136 S.Ct. at

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The court of appeals rejected the argument, concluding that North Carolina's *Miller* fix law *did* establish a presumption of LWOP, but that that presumption didn't render the law unconstitutional.

The defendant appealed to the supreme court, arguing that the court of appeals' approval of a presumption in favor of LWOP violated *Miller*.

The supreme court parted ways from the court of appeals and concluded that the law did *not* create a presumption of LWOP. Rather, it treats LWOP and life with parole as "alternative sentencing options, with the selection between these two options to be made on the basis of an analysis of all of the relevant facts and circumstances in light of the substantive standard enunciated in *Miller*." *James*, 813 S.E.2d at 204. When that analysis is done correctly, the court concluded, LWOP will be "exceedingly rare." *Id.* at 209. The court remanded the case to the trial division for a new sentencing hearing consistent with its revised interpretation of the statute.

When I wrote about *Miller* back in 2012, there were about 90 inmates serving LWOP sentences for crimes committed before they were 18 who needed to be resentenced in light of the new constitutional rule. Since then, accounting for new first-degree murder convictions for young defendants, there have now been a total of 93 *Miller*-affected defendants sentenced to LWOP. Thanks to a careful analysis of those cases by Ben Finholt and his colleagues at North Carolina Prisoner Legal Services, we have good visibility on their status.

Here's what we know (and please forgive me if these numbers have changed slightly based on recently resolved cases). Forty-eight of the 93 defendants are still awaiting a *Miller*-compliant hearing under the new statute. (That includes Mr. James, whose case is back in the trial division for resentencing.)

Of the remaining 45 defendants whose cases have been reexamined under the new law:

- 28 were convicted on a felony murder theory and were thus sentenced to life with parole (or, in a couple of cases, a non-life sentence for second-degree murder or some other resolution).
- 17 were convicted at least in part on a premeditation and deliberation theory and were thus eligible for LWOP or life with parole based on the results of a hearing under the new statute.

Of those 17 cases:

- 1 negotiated a non-life resolution based on other issues in the case.
- 10 were sentenced to life with parole (although one of those is arguably a "de facto" LWOP sentence based on the imposition of consecutive sentences).
- 6 were sentenced to LWOP

Of those 6 LWOP sentences:

- 5 are on appeal.
- 1 is final. And that is Laurence Lovette (discussed here).

So, is LWOP for young defendants "exceedingly rare"? At the risk of sounding a little robotic, I think it depends on how you define your data set. But if we focus on the cases where LWOP was permissible under the *Miller* fix law, we see that the court sentenced the defendant to LWOP 6 out of 17 times (35 percent). Only one of those cases is final, so the numbers may change over time.

Thank you to NCPLS for sharing your data.

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