

Legal Corner:

While Juvenile Offenders Get a Second Chance, Do Not Open the Cell Doors Just Yet.

The United States Supreme Court, in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), held on June 25, 2012 that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violated the Eighth Amendment to the United States Constitution. The Commonwealth of Pennsylvania, through legislation now codified at 18 Pa. C.S. § 1102.1, responded to the *Miller* decision by creating a new sentencing scheme for persons under the age of 18 who are convicted of murder, which includes a term of life imprisonment without parole, as well as a term of imprisonment with the opportunity for parole. Moreover, the sentencing court, when making the determination, needs to consider the impact on the victim and victim's family members, the impact on the community, the threat to public safety, the nature and circumstances of the offense, the offender's culpability, the sentencing guidelines, and age-related characteristics of the juvenile offender including mental capacity, maturity, degree of criminal sophistication, prior criminal history, and institutional reports. The legislation was prospective, or applied only to minors convicted of murder on or after June 25, 2012.

Okay, that is old news, so why include it in a newsletter being published in February 2016? Well, on January 25, 2016 the United States Supreme Court in *Montgomery v. Louisiana*, No. 14-280, slip op. at 1 (U.S. Jan. 25, 2016), determined that the *Miller* decision applies retroactively. "Retroactivity" is one of those fifty-cent words that lawyers like to use to impress people, but when applied to a legal principle, it means that there are new and different legal effects to transactions or considerations that occurred in the past. As a practical matter, the *Montgomery* decision means that offenders who committed murder as juveniles sentenced to life in prison without parole prior to June 25, 2012, now get a second judicial look at their case, albeit through resentencing or parole. Why?

Without getting bogged down in lots of important details, suffice it to say that the United States Constitution recognizes the right of each state to legislate its own punishments, unless it could be proved that a particular punishment is "cruel and unusual." We all learned in school that the Bill of Rights (i.e. the first 10 Amendments to the United States Constitution adopted in 1791) includes the Eighth Amendment, which simply states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Supreme Court of the United States, through over 225 years of decisions interpreting the United States Constitution, forbids some punishments entirely, and forbids some other punishments that are excessive when compared to the crime, or compared to the competence of the perpetrator. Unlike other provisions of the United States Constitution, the Supreme Court reviews the Eighth Amendment in light of the "evolving standards of decency that mark the progress of a maturing society." It is the United States Supreme Court's focus on the "competence of the perpetrator" language that will shed light on why the *Miller* decision is being applied retroactively to juvenile offenders.

The United States Supreme Court laid the foundation of its later decisions involving juvenile offenders in a case that did not involve a juvenile offender. In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Court overturned the death penalty for offenders with intellectual disabilities, finding that it violated the Eighth Amendment's ban on cruel and unusual punishment. The Court focused on the diminished intellectual functioning that can result in deficiencies in adaptive skills like communication, self-care, and self-direction, and can also lead the offender to be a poor witness, open to suggestions, and more willing to confess to crimes (s)he may not have committed. The Court found that, following evolving

standards of decency, the goals of retribution and deterrence behind capital punishment were not served well by the execution of the mentally retarded.

The *Atkins* case paved the intellectual road for the United States Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), holding that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18. The Court, once again making its judgment under the evolving standards of decency test, as well as reviewing the national consensus, found that juveniles have a lack of maturity and sense of responsibility when compared to adults. Further, in recognition of the comparative immaturity and irresponsibility of juveniles, who are more vulnerable to peer pressure and outside influences, the Court also noted that almost every state recognized these factors by prohibiting those under the age of 18 from voting, serving on juries, or marrying without parental consent. The Court also cited the lack of control, or experience with control, juveniles have over their own environment as support for its conclusion.

The United States Supreme Court extended the *Roper* decision in *Graham v. Florida*, 560 U.S. 48 (2010), holding that juvenile offenders cannot be sentenced to life imprisonment without parole in non-homicide cases. The Court reasoned that the lack of parole prevented all non-homicide juvenile offenders the opportunity to demonstrate maturity and reform, and the ability to show that they are fit to return to society, even though they committed a crime while deemed a child in the eyes of the law. Two years later, in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the Court expanded the *Graham* decision to include juvenile offenders convicted of murder, holding that mandatory life sentences without parole for those under the age of 18 at the time of their crime violates the Eighth Amendment's prohibition on cruel and unusual punishment. While the holding did not automatically free any prisoner, and does not forbid life terms for juvenile murderers, it requires judges to consider the juvenile offender's youth and nature of the crime before sentencing the defendant to imprisonment with no hope for parole. The United States Supreme Court did not address the issue of whether it was prospective or retroactive in the *Miller* case, but numerous states only applied it to sentences that occurred after the June 24, 2012 decision.

Which leads us to the Supreme Court's decision in *Montgomery v. Louisiana*, No. 14-280, slip op. at 1 (U.S. Jan. 25, 2016), holding that juvenile offenders sentenced prior to June 24, 2012 to a mandatory life sentence without parole must now be re-sentenced or considered for parole. The Supreme Court stated that, "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption and if it did not, their hope for some years outside the prison walls must be restored." While reasonable minds may (and likely will) differ on the "correctness" of the United States Supreme Court decisions, it is now the law of the land that juvenile offenders cannot automatically be sentenced to life in prison without parole.

A word of caution – do not open the cell doors quite yet, because judges maintain their discretion under the *Miller* decision to conclude that particular juvenile offenders convicted of homicide are, in fact, intrinsically incapable of redemption and will never be fit to reenter society. This decision, based on the factors required by 18 Pa. C.S. § 1102.1 to be on the record, will likely be part of a hearing at Courts of Common Pleas. Next, assuming that the sentencing court determines that parole is a possibility, the Pennsylvania Board of Probation and Parole will also need to decide whether a former juvenile offender deserves the grace of parole, or will remain incarcerated. While the parole process is not as formal as a court proceeding, the Prison and Parole Code, 61 Pa. C.S. §§ 6134, 6135, and 6137

requires the Board decision makers to review many records, including recommendations from the District Attorney, Sentencing Judge, and Prison Officials. Further, the Crime Victims Act, 18 P.S. § 11.502 (b), directs that the victim or the victim's representative shall be permitted to appear in person and provide testimony before the panel or majority of those Parole Board members charged with making the parole release decision. The decision-making process takes time, and does not happen overnight. Even if the offender is paroled, he or she will likely be subject to parole supervision for the rest of his or her life.

Here is what we know for sure – the *Montgomery* decision will have a definite impact in 479 cases in the Commonwealth of Pennsylvania, as well as the lives of the over 300 victims involved in those cases. The Department of Corrections, Parole Board, and Office of Victim Advocate will work together with local counties to determine the exact process to ensure a timely review. Crime victims will have opportunities to share their grief, vent their anger, express their concerns, and provide their opinion to decision makers before the former juvenile offender is released from prison, if that outcome even occurs. Like everything else, the process begins with one step and moment at a time.