

# Sentencing the Juvenile Lifer

## The Wayne County Experience



By Thomas Dawson

This article details the procedures of the Wayne County Prosecutor's Office for ensuring that those convicted of first-degree murder for crimes committed when they were under the age of 18 are re-sentenced to remedy the unconstitutional procedure used to impose their life-without-parole sentences.

### Sentencing pre- and post-*Miller v Alabama*

Before being amended in July 2014, MCL 750.316 and MCL 791.234 mandated that all individuals convicted as adults of first-degree murder were to be sentenced to life in prison without the possibility of parole. Under the statutory provisions at the time, 17-year-olds and certain younger offenders were tried and sentenced as adults for first-degree murder.

On June 25, 2012, the United States Supreme Court held in *Miller v Alabama* that absent an individualized sentencing hearing, life-without-parole sentences for juveniles—those under the age of 18—violated the Eighth Amendment of the United States Constitution.<sup>1</sup> *Miller* held that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.”<sup>2</sup> Instead, “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”<sup>3</sup> *Miller* provided that the following factors should be considered before sentencing a juvenile to life in prison without the possibility of parole:

- The defendant's chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences
- The defendant's family and home environment
- The circumstances of the homicide offense, including the extent of the defendant's participation in the conduct

and the way familial and peer pressures may have affected the defendant

- Whether the defendant might have been charged with and convicted of a lesser offense if not for incompetencies associated with youth
- The defendant's possibility of rehabilitation<sup>4</sup>

To comply with the dictates of *Miller*, the Michigan legislature enacted MCL 769.25 and MCL 769.25a in 2014. MCL 769.25 applies to defendants whose offenses occurred after the *Miller* decision or whose cases were still pending at the time of *Miller* (either in the trial court or on direct appeal). With regard to post-*Miller* cases, if the prosecuting attorney intends to seek a life sentence without the possibility of parole, the prosecutor must file a motion within 21 days of the date of conviction or within 90 days of the effective date of MCL 769.25.<sup>5</sup> This motion must specify the grounds for the requested sentence.<sup>6</sup> If the motion is filed, the court conducts a hearing as part of the sentencing process where both sides have the opportunity to present evidence relevant to whether the offender should be sentenced to life without the possibility of parole.<sup>7</sup> During this hearing, the court considers the factors listed in *Miller* as well as any other criteria relevant to its decision.<sup>8</sup> At the conclusion of the hearing, the court decides whether to sentence the offender to life without the possibility of parole or a term of years. In its decision, the court must state on the record the aggravating and mitigating factors it considered in reaching its decision.<sup>9</sup> If the court decides not to sentence an offender to life without the possibility of parole or the prosecuting attorney does not file a motion seeking a life sentence, the offender is sentenced to a term of years. If a term of years is imposed, the maximum sentence must not be less than 60 years and the minimum term must not be less than 25 years or more than 40 years.<sup>10</sup>

The legislature enacted MCL 769.25a in case *Miller* was ever determined to be retroactive. On January 25, 2016, in *Montgomery v Louisiana*,<sup>11</sup> the United States Supreme Court held that *Miller* applies retroactively to juvenile offenders whose convictions and sentences were final when *Miller* was decided.<sup>12</sup> When *Montgomery* was decided, the provisions of MCL 769.25a went into effect. At that time, 363 individuals were in Michigan prisons serving life without the possibility of parole for homicides they committed as juveniles ("juvenile lifers"); of those, 144 were convicted in Wayne County Circuit Court, Wayne County Probate Court, or Detroit Records Court.<sup>13</sup>

MCL 769.25a provided that the county prosecutors had only 180 days from the effective date of the *Montgomery* decision to decide whether to file a motion requesting that the court resentence the juvenile lifers to life without parole.<sup>14</sup> If the motion was not filed within the 180-day period, the juvenile lifers would be resentenced to a term of years with a maximum sentence of 60 years and a minimum sentence of at least 25 years and not more than 40 years.<sup>15</sup> If the motion was filed, the court was required to conduct a hearing pursuant to the provisions of MCL 769.25.<sup>16</sup>

### Prosecutorial review of all juvenile lifer cases

The Wayne County Prosecutor's Office began the herculean task of reviewing the files for each of the 144 juvenile lifers convicted in Wayne County. To accomplish this review in the limited time provided, the Prosecutor's Office created a committee to direct the collection and review of information regarding each juvenile lifer and his or her crime. The committee represented a diverse cross-section of the office: appellate attorneys, trial attorneys, and supervisors.

The first step was collecting information, which proved difficult given that many of the homicides were in excess of 40 years old (one exceeded 50 years). The committee obtained, when available, case files from both the Prosecutor's Office and the investigating agencies to evaluate the circumstances of the offenses. The committee also obtained, when available, transcripts from hearings, including but not limited to trial and sentencing. The transcripts shed additional light on facts

## At a Glance

After carefully reviewing the 144 juvenile lifers convicted in Wayne County, the Wayne County Prosecutor's Office agreed that 81 of them should be resentenced to a term of years.

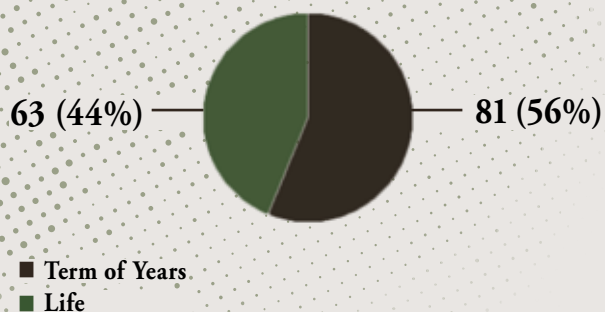
Seventy-nine of the 81 term-of-years juvenile lifers have been resentenced.

Sentencing hearings for the Wayne County life-without-parole cases will begin in 2019.

proven at trial, the juvenile lifer's participation in the murder, the juvenile lifer's family and home environment, whether the juvenile lifer was subjected to peer pressure or other influences at the time he or she committed the murder, and the juvenile lifer's psychological state at the time he or she committed the murder. The committee also obtained the juvenile lifer's institutional records. These records were voluminous with some exceeding 2,000 pages. The records helped clarify whether the juvenile lifer could be rehabilitated and was making any efforts to improve himself or herself while incarcerated. The committee also attempted to locate the murder victims' families to inform them of the process and get their input.

Once this information was reviewed, the committee decided whether to recommend a sentence of life without parole for each juvenile lifer. The committee presented each individualized decision and the reasoning behind it to Prosecutor Kym Worthy, who then made a decision for each of the 144 juvenile lifers convicted in Wayne County.<sup>17</sup> After this extensive process, the Wayne County Prosecutor's Office filed motions requesting life-without-parole sentences for 63 of the 144 incarcerated juvenile lifers and consented to term-of-years sentences for the remaining 81 juvenile lifers, as depicted below:

## Wayne County Juvenile Lifers



### Resentencing in term-of-years cases

Under MCL 769.25a(5), resentencing hearings are conducted in the following order:

- Term-of-years cases for offenders who have been imprisoned for 20 or more years
- Cases for which the prosecuting attorney had filed a motion seeking life without the possibility of parole
- All other cases

In Wayne County, resentencing hearings for the term-of-years offenders began in September 2016. The first offender resentenced was William Washington, who was originally sentenced in March 1976. At the time of his resentencing in



## On June 20, 2018, the Michigan Supreme Court held that a judge, not a jury, was authorized to decide whether to sentence a juvenile offender to life in prison without the possibility of parole.

September 2016, he had served more than 41 years in the Michigan Department of Corrections. The court resentenced Washington to serve a minimum of 40 years and the statutory maximum of 60 years. He was paroled in November 2016.

During the initial phase of the resentencing process, the Wayne County Prosecutor's Office assembled a team of four attorneys, one investigator, and one victim advocate to represent the People. The team handled all aspects of the resentencing, including trying to locate families of the deceased victims as well as the surviving victims in cases with concurrent convictions and informing them of the need for resentencing. The team reviewed not only the facts of each murder, but also the juvenile lifer's prison record and any other relevant information. Based on this comprehensive review, the team made sentence recommendations to the court. Twenty-nine juvenile lifers were resentenced by the Wayne County Circuit Court in 2016. In 2017, the court resentenced 47 juvenile lifers. As of November 2018, only two term-of-years juvenile lifers had not been resentenced.

### Resentencing in life-without-parole cases

As of November 2018, the Wayne County Circuit Court has not conducted *Miller* hearings for 63 juvenile lifers for which the Prosecutor's Office filed a motion for life without parole. These hearings were placed on hold pending the Michigan Supreme Court's decision in *People v Skinner* and *People v Hyatt*.<sup>18</sup>

In *Skinner*, the Michigan Court of Appeals held that a jury must decide whether to sentence a juvenile offender to life without parole. Shortly after the *Skinner* decision, another panel opined that a judge, not a jury, was to decide whether to sentence a juvenile offender to life without parole.<sup>19</sup> The Court of Appeals convened a special panel to resolve this conflict, and in July 2016, the panel held that a judge, not a jury, was to decide whether to sentence a juvenile offender to life in prison without the possibility of parole.<sup>20</sup> The *Hyatt*

panel further determined the sentencing court had to find that the offender was “irreparably corrupt” or “rare,” and indicated that appellate courts should impose a “heightened degree of scrutiny regarding whether a life without parole sentence is proportionate to a particular Juvenile Offender.”<sup>21</sup>

The parties to both cases sought leave to appeal to the Michigan Supreme Court. On January 24, 2017, the Supreme Court granted leave to appeal with regard to *Skinner* and ordered the filing of supplemental briefs concerning the heightened standard of review imposed by *Hyatt*.

On June 20, 2018, the Michigan Supreme Court decided *People v Skinner (Skinner/Hyatt)* and held that a judge, not a jury, was authorized to decide whether to sentence a juvenile offender to life in prison without the possibility of parole.<sup>22</sup> In reaching this decision, the Court first analyzed whether MCL 769.25 required the sentencing court to make additional findings of fact before sentencing a juvenile to life in prison without parole. The Court determined that “MCL 769.25 does not require the trial court to make any particular factual finding before it can impose a life without parole sentence.”<sup>23</sup> *Skinner/Hyatt* held that a sentence of life without parole was authorized by the verdict. Next, the Court examined both *Miller* and *Montgomery* to determine if either decision required additional factual findings before handing down a life-without-parole sentence. *Skinner/Hyatt* held that *Miller* did not require any specific factual finding before the imposition of a life-without-parole sentence:

*Miller* simply held that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment and that before such a sentence can be imposed on a juvenile, the sentencer must consider the mitigating qualities of youth. *Miller* thus did not hold that a finding of “irreparable corruption” must be made before a life-without-parole sentence can be imposed on a juvenile.<sup>24</sup>

The *Skinner/Hyatt* Court next examined the *Montgomery* decision. “*Montgomery* itself expressly stated that . . . *Miller* did not require trial courts to make a finding of fact regarding a child’s incorrigibility.”<sup>25</sup> Based on *Skinner/Hyatt*’s readings of *Miller* and *Montgomery*, the Michigan Supreme Court endorsed the conclusion that upon resentencing of a juvenile lifer in Michigan, the judge must only consider the *Miller* factors and need not make an additional finding regarding whether the juvenile lifer is irreparably corrupt or rare. As such, a judge, not a jury, is authorized to make this decision.

*Skinner/Hyatt* then addressed the standard of appellate review. It held that “neither *Miller* nor *Montgomery* requires this Court to deviate from its traditional abuse-of-discretion standard in reviewing a trial court’s decision to impose life without parole. This Court reviews sentencing decisions for an abuse of discretion.”<sup>26</sup> *Skinner/Hyatt* also pointed out that the Michigan legislature “has imposed on the trial court the responsibility of making the difficult decision regarding whether

to impose a sentence of life without parole or a term of years.”<sup>27</sup> The trial court is in a better position than an appellate court to consider the *Miller* factors and therefore an appellate court “must review the trial court’s consideration of these factors and its ultimate decision whether to impose a life-without-parole or a term-of-years sentence under a deferential abuse-of-discretion standard of review.”<sup>28</sup>

Now that *Skinner/Hyatt* has been decided, the process of conducting *Miller* hearings and resentencing Wayne County’s remaining juvenile lifers has begun. ■



*Thomas Dawson is an assistant Wayne County prosecuting attorney. He currently works in the Juvenile Lifer Unit of the Appellate Division.*

## ENDNOTES

1. *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012).
2. *Id.* at 479.
3. *Id.* at 489.
4. *Id.* at 477–478.
5. MCL 769.25(3).
6. *Id.*
7. MCL 769.25(6).
8. *Id.*
9. MCL 769.25(7).
10. MCL 769.25(9).
11. *Montgomery v Louisiana*, 136 S Ct 718; 193 L Ed 2d 589 (2016).
12. *Id.* at 734–736.
13. Winowiecki & LaFond, UPDATE: How many of Michigan’s “juvenile lifers” have been re-sentenced? Michigan Radio (August 25, 2017) <<http://www.michiganradio.org/post/update-how-many-michigans-juvenile-lifers-have-been-re-sentenced>> [<https://perma.cc/9MLZBTDF>].
14. MCL 769.25a(4)(b).
15. MCL 769.25a(4)(c).
16. MCL 769.25a(4)(b).
17. Prosecutor Worthy was the sentencing judge for two of the juvenile lifers. The review committee made the sentencing decision with regard to these two offenders and decided not to seek sentences of life without parole.
18. *People v Skinner*, 312 Mich App 15; 877 NW2d 482 (2015) and *People v Hyatt*, 316 Mich App 368; 891 NW2d 549 (2016).
19. *People v Perkins*, 314 Mich App 140; 885 NW2d 900 (2016). Defendant Hyatt was initially consolidated with Mr. Perkins. The Court of Appeals, on its own motion, vacated its previous order consolidating the cases to allow Defendant Hyatt’s case to proceed on its own.
20. *People v Hyatt*, 316 Mich App at 415.
21. *Id.* at 424.
22. *People v Skinner*, 502 Mich 89; 917 NW2d 292.
23. *Id.* at 118–119.
24. *Id.* at 120.
25. *Id.* at 121 [citations omitted].
26. *Id.* at 131.
27. *Id.* at 133–134.
28. *Id.* at 136 n 26.