

**MILLER V. ALABAMA  
IN MISSISSIPPI**

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**BACKGROUND**

*Roper, Graham, Miller & Montgomery*



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**“CHILDREN ARE CONSTITUTIONALLY DIFFERENT  
FROM ADULTS FOR PURPOSES OF SENTENCING.”  
*MILLER V. ALABAMA*, 567 U.S 460, 471 (2012)**



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**"[J]UVENILES HAVE DIMINISHED CULPABILITY AND GREATER PROSPECTS FOR REFORM [AND THUS] 'THEY ARE LESS DESERVING OF THE MOST SEVERE PUNISHMENTS.'" MILLER, 567 U.S. AT 471 (CITATION OMITTED).**

- (1) "[C]hildren have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Id.*
- (2) "[C]hildren are more vulnerable ... to negative influences and outside pressures, including from their family and peers." *Id.*
- (3) "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity]'" *Id.*



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**"[T]HE DISTINCTIVE ATTRIBUTES OF YOUTH DIMINISH THE PENOLOGICAL JUSTIFICATIONS FOR IMPOSING THE HARSHTEST SENTENCES ON JUVENILE OFFENDERS." MILLER, 567 U.S. AT 472**

- (1) **Retribution** – Children are less culpable (i.e. less blameworthy) than adults because of their immaturity. *Id.*
- (2) **Deterrence** – “[T]he same characteristics that render juveniles less culpable than adults ... make them less likely to consider potential punishment.” *Id.*
- (3) **Rehabilitation** – Both the death penalty and life-without-parole sentences “forswear[] altogether the rehabilitative ideal.” *Id.* at 473.
- (4) **Incapacitation** – “Deciding that a ‘juvenile offender forever will be a danger to society’ would require ‘mak[ing] a judgment that [he] is incorrigible’ [and] ‘incorrigibility is inconsistent with youth.’” *Id.* at 472-473.



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***ROPER V. SIMMONS*, 543 U.S. 551 (2005)**

“The Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.” *Id.* at 578.



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***GRAHAM V. FLORIDA*, 560 U.S. 48 (2010)**

“The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” *Id.* at 82.

“[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.” *Id.* at 69.



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***MILLER V. ALABAMA*, 567 U.S. 460 (2012)**

“We ... hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* at 479.

“Such a scheme prevents those meting out punishments from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change.’” *Id.* at 465 (citation omitted).



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***MILLER V. ALABAMA*, 567 U.S. 460 (2012)**

“Our decision does not categorically bar a penalty for a class of offenders or type of crime—as, for example, we did in *Roper* or *Graham*.” *Id.* at 483.

“Instead, it mandates only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Id.*



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***MILLER V. ALABAMA*, 567 U.S. 460 (2012)**

“[G]iven all we have said in *Roper*, *Graham*, and this decision about children’s diminished culpability and heightened capacity for change, **we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.**” *Id.* at 479.

“That is especially so because of the great difficulty we noted in *Roper* and *Graham* of **distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’**” *Id.* at 479-80 (citation omitted).



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***MONTGOMERY V. LOUISIANA*, 136 S.C.T. 718 (2016)**

The question presented is “whether *Miller*’s prohibition on mandatory life without parole for juvenile offenders ... announce[d] a new substantive rule that, under the Constitution, must be retroactive.” *Id.* at 732.

“A substantive rule ... prohibits ‘a certain category of punishment for a class of defendants because of their status or offense.’” *Id.* (citation omitted).



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***MONTGOMERY V. LOUISIANA*, 136 S.C.T. 718 (2016)**

“*Miller* ... did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole.” *Id.* at 734.

“*Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham*. **Miller did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.**” *Id.*



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***MONTGOMERY V. LOUISIANA*, 136 S.C.T. 718 (2016)**

“Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence. The only difference between *Roper* and *Graham*, on the one hand, and *Miller*, on the other hand, is that **Miller drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.**” *Id.* at 734.



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***MONTGOMERY V. LOUISIANA*, 136 S.C.T. 718 (2016)**

“Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child’s incorrigibility. **That this finding is not required, however, speaks only to the degree of procedure Miller mandated in order to implement its substantive guarantee.** When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States’ sovereign administration of their criminal justice systems.” *Id.* at 735



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***MALVO V. MATHENY*, 893 F.3D 265 (4<sup>TH</sup> CIR. 2018),  
CERT. GRANTED 139 S.C.T. 1317 (MAR. 18, 2019); ARGUED OCT. 16, 2019**

“[T]he *Montgomery* Court confirmed that, even though imposing a life-without-parole sentence on a juvenile homicide offender pursuant to a mandatory penalty scheme necessarily violates the Eighth Amendment as construed in *Miller*, a **sentencing judge also violates Miller’s rule any time it imposes a discretionary life-without-parole sentence on a juvenile homicide offender without first concluding that the offender’s ‘crimes reflect permanent incorrigibility,’ as distinct from ‘the transient immaturity of youth.’**” *Id.* at 274 (emphasis in original).



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***MALVO V. MATHENY***, 893 F.3D 265 (4<sup>TH</sup> CIR. 2018),  
CERT. GRANTED 139 S.Ct. 1317 (MAR. 18, 2019); ARGUED OCT. 16, 2019

On February 24, 2020, the parties filed a Rule 46.1 Stipulation of Dismissal stating they “hereby stipulate and agree that the case be dismissed in light of legislation signed today by the Governor of Virginia.”



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### MISSISSIPPI STATUTES

The Mississippi legislature has not (yet) amended any statutes to bring Mississippi into compliance with *Roper* (2005), *Graham* (2010), *Miller* (2012), or *Montgomery* (2016).



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### MISSISSIPPI STATUTES

#### LIFE SENTENCES (NOT AN EXHAUSTIVE LIST)

- (1) **First Degree Murder:** “...shall be sentenced by the court to imprisonment for life...” Miss. Code Ann. 97-3-21(1)
- (2) **Second Degree Murder:** “...shall be imprisoned for life ... if the punishment is so fixed by the jury.” Section 97-3-21(2)
- (3) **Capital Murder:** “...shall be sentenced to (a) death; (b) imprisonment for life ... without parole; or (c) to imprisonment for life ... with eligibility for parole as provided in Section 47-7-3(1)(f).” Section 97-3-21(3)



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**MISSISSIPPI STATUTES**  
LIFE SENTENCES (NOT AN EXHAUSTIVE LIST)

(4) **Armed robbery:** "...shall be imprisoned for life if the penalty is so fixed by the jury..." Miss. Code Ann. 97-3-79

(5) **Kidnapping:** "...shall be imprisoned for life ... if the punishment is so fixed by the jury in its verdict..." Miss. Code Ann. 97-3-53.




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**MISSISSIPPI STATUTES**  
PAROLE ELIGIBILITY

"Every person who has been convicted of any offense against the State of Mississippi, ... and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, ... **if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence**, may be released on parole..." Miss. Code Ann. 47-7-3(1)




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**MISSISSIPPI STATUTES**  
PAROLE ELIGIBILITY

**EXCEPT THAT...**

(1) No person convicted as a habitual offender is eligible for parole. Miss. Code Ann. 47-7-3(1)(a).

(2) No person convicted of armed robbery, armed carjacking, or drive-by shooting "on or after October 1, 1994" is eligible for parole. Miss. Code Ann. 47-7-3(1)(c)(ii).




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**MISSISSIPPI STATUTES**  
**PAROLE ELIGIBILITY**

(3) No person convicted of capital murder and sentenced to "life" in prison on or after August 23, 1994 is eligible for parole. Miss. Code Ann. 47-7-3(1)(e).

(4) No person convicted of a "violent" crime, as defined in this paragraph, "after June 30, 1995," is eligible for parole. Miss. Code Ann. 47-7-3(1)(f).

(5) No person convicted of a "crime of violence," as defined in Section 97-3-2, or a sex offense, "on or after July 1, 2014," is eligible for parole. Miss. Code Ann. 47-7-3(1)(g)(i).



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**MISSISSIPPI STATUTES**  
**CONDITIONAL RELEASE**

"... [A]n inmate, except an inmate sentenced to life imprisonment for capital murder, who has reached the age of sixty-five (65) or older and who has served fifteen (15) years may petition the sentencing court for conditional release." Miss. Code Ann. 47-5-139(1)(a).



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

***Parker v. State*, 119 So.3d 987 (Miss. 2013)**

**Interpretation of Miller's holding**

*Miller* bars **mandatory** life-without-parole for juvenile homicide offenders. *Id.* at 995

*Miller* requires trial courts to "hold an individualized sentencing hearing for juveniles before imposing a life[-without-parole] sentence." *Id.* at 996.



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Parker v. State*, 119 So.3d 987 (Miss. 2013)

The Miller Factors

“The Miller Court identified several factors that must be considered by the sentencing authority [before imposing a LWOP sentence].” *Id.* at 995.

(1) The juvenile’s “**chronological age and its hallmark features**—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.” *Id.* at 995.



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Parker v. State*, 119 So.3d 987 (Miss. 2013)

The Miller Factors (cont.)

(2) The juvenile’s “**family and home environment**” and the fact that “he cannot usually extricate himself” for it, “no matter how brutal or dysfunctional.” *Id.* at 995.

(3) “[T]he **circumstances of the homicide offense**, including the extent of [the juvenile’s] participation in the conduct and the way familial and peer pressures may have affected him.” *Id.*



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Parker v. State*, 119 So.3d 987 (Miss. 2013)

The Miller Factors (cont.)

(4) Whether the juvenile “**might have been charged and convicted of a lesser offense** if not for incompetencies associated with youth.” *Id.* at 996

(5) “[T]he **possibility of rehabilitation.**” *Id.*



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Parker v. State*, 119 So.3d 987 (Miss. 2013)

**Application of Miller to Mississippi's homicide statutes**

Mississippi's "statutory scheme" for **first degree murder** "contravenes the dictates of *Miller*" because when the sentencing statute and parole statute are "read together" they mandate a sentence that is "tantamount to life without parole." *Id.* at 996-97.



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Parker v. State*, 119 So.3d 987 (Miss. 2013)

**Application of Miller to Mississippi's homicide statutes**

"[W]e reject the State's argument that 'conditional release' satisfies the *Miller* mandate. Conditional release is more akin to clemency, which the Supreme Court has held '[a]s a matter of law' to be different from parole 'despite some surface similarities.'" *Id.* at 997 (citation omitted).



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Parker v. State*, 119 So.3d 987 (Miss. 2013)

**The Remedy**

"[I]f the trial court should determine, after consideration of all circumstances set forth in *Miller*, that [the juvenile] should be eligible for parole, the court shall enter a sentence of 'life imprisonment with eligibility for parole notwithstanding the present provisions of Mississippi Code Section 47-7-3(1)(f).'" *Id.* at 999.



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Jones v. State*, 122 So.3d 698 (2013)

**Retroactivity & Post-Conviction Remedy**

*Miller* applies retroactively because it “modified our substantive law by narrowing its application for juveniles.” *Id.* at 702.

If a juvenile shows that he was subjected to a mandatory life-without-parole sentence prior to *Miller*, the court should “**vacate [the] sentence and remand ... for a new sentencing hearing** to be conducted consistently with this Court’s opinion in *Parker*.” *Id.* at 703.



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Jones v. State*, 122 So.3d 698 (2013)

**The Burden**

“Section 47-7-3(1)[(f)] cannot be applied in all cases, but it can be applied constitutionally to **juveniles who fail to convince the sentencing authority that *Miller* considerations are sufficient to prohibit its application.**” *Id.* at 702.



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**MISSISSIPPI CASELAW**  
**PRE-MONTGOMERY**

*Hudspeth v. State*, 179 So.3d 1226 (Miss. Ct. App. 2013)

**Appellate review of sentencing under *Miller***

“The trial court noted that it did ‘not take lightly its obligation in weighing these factors and coming to a conclusion,’ but that ‘nothing compelling, under the *Miller* factors, has been presented in mitigation other than [Hudspeth’s] home life.’ Under these circumstances, we cannot find the trial court abused its discretion in sentencing Hudspeth to life without parole.” *Id.* at 1228.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

Initially, the Mississippi Supreme Court ignored *Montgomery's* holding that *Miller* announced a substantive rule of constitutional law that bars life without parole for all but the rare juvenile offender whose crime reflects irreparable corruption.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Chandler v. State*, 242 So.3d 65 (Miss. 2018)

Appellate review of sentencing under *Miller & Montgomery*

In *Chandler*, a 5-4 decision, the MSSCT continued to maintain that “*Miller* and *Parker* [merely] require the trial court to ‘take into account’ and ‘consider’ the factors identified in *Miller* before sentencing.” *Id.* at 68.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Chandler v. State*, 242 So.3d 65 (Miss. 2018)

Appellate review of sentencing under *Miller & Montgomery*

The Court affirmed Joey Chandler's life-without-parole sentence because “[t]he trial court did not automatically resentence Chandler to life in prison or perceive a legislative mandate that Chandler must be sentenced to life in prison without parole in violation of *Miller*. As required by *Miller* and our subsequent decision in *Parker*, the trial court held a hearing and, after considering all that was presented as well as the entire court file, sentenced Chandler to life in prison.” *Id.* at 70.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Chandler v. State*, 242 So.3d 65 (Miss. 2018)

**Appellate review of sentencing under *Miller & Montgomery***

The *Chandler* majority's only reference to incorrigibility was to note that "[t]he *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child's incorrigibility." *Id.* at 69.

The majority also noted that "Chandler places the trial court in error for failing to make any findings concerning Chandler's capacity for rehabilitation," and held that "[n]either *Miller* nor *Parker* mandates that a trial court issue findings on each factor." *Id.* at 70.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Chandler v. State*, 242 So.3d 65 (Miss. 2018)

**Appellate review of sentencing under *Miller & Montgomery***

The majority also noted that the trial court did *consider* the possibility rehabilitation, explaining:

"As to the rehabilitation factor, the trial court found: 'The United States Supreme Court also talks about rehabilitation and the defendant's prospects for future rehabilitation. Th[e] trial court] notes that the Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted.'" *Id.* at 70.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Chandler v. State*, 242 So.3d 65 (Miss. 2018)

**DISSENT**

"In light of the Supreme Court's recent clarification of *Miller* in *Montgomery*, the trial court, at a minimum, should have addressed Chandler's capacity for rehabilitation and made an on-the-record finding that Chandler was one of the rare juvenile offenders whose crime reflected permanent incorrigibility before imposing what in effect is a life-without-parole sentence." *Id.* at 72-73 (Waller, C.J.) (joined by Kitchens, King, and Ishee).



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Moore v. State*, 2019 WL 4316161 (Miss. May 30, 2019)

**Jury Sentencing in Capital Murder Cases**

"Section 99-19-101(1), in part, provides, 'Upon conviction or adjudication of guilt of a defendant of capital murder..., the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without eligibility for parole, or life imprisonment. The proceeding be conducted by the trial judge **before the trial jury** as soon as practicable.'" *Id.* at \*8



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Moore v. State*, 2019 WL 4316161 (Miss. May 30, 2019)

**Jury Sentencing in Capital Murder Cases**

The Court had previously held that Section 99-19-101's jury sentencing procedure does not apply when the State is not seeking death "because the parole statutes leave only one sentence option[: life without parole]." *Id.* at \*10 (citing *Pham v. State*, 716 So.2d 1100, 1103-04 (Miss. 1998)).

"In the sentencing of a juvenile, capital-murder offender, though, more than one sentence is possible due to *Miller*." *Id.*



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Moore v. State*, 2019 WL 4316161 (Miss. May 30, 2019)

**Jury Sentencing in Capital Murder Cases**

"We vacate Moore's sentence and remand the case for resentencing before a jury. The jury will be tasked with determining whether Moore should be sentenced to life imprisonment without parole or life imprisonment with eligibility for parole. If the jury determines that Moore should be eligible for parole, the trial court shall sentence Moore to life imprisonment with eligibility for parole, notwithstanding the provisions of Mississippi Code Section 47-7-3(1)(e)." *Id.* at \*10.



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### MISS CODE ANN. 99-19-101

**Jury Sentencing in Capital Murder Cases**

“If, after the trial of the penalty phase, the jury does not make the findings requiring the death sentence or life imprisonment without eligibility for parole, or is unable to reach a decision, **the court shall impose a sentence of life imprisonment.**” Miss. Code Ann. 99-19-101(3).



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### MISSISSIPPI CASELAW

*POST-MONTGOMERY*

*Wharton v. State*, 2019 WL 6605871 (Miss. Dec. 5, 2019)

The MSSCT has held that juveniles who were previously convicted of capital murder and sentenced to LWOP or death by a jury are **NOT** entitled to be resentenced by a jury. Instead—acknowledging *Miller’s* substantive rule for the first time—the Court modified the requirements for receiving post-conviction relief from an LWOP sentence.



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### MISSISSIPPI CASELAW

*POST-MONTGOMERY*

*Wharton v. State*, 2019 WL 6605871 (Miss. Dec. 5, 2019)

In *Wharton*, the Court of Appeals reversed an LWOP sentence in a capital murder case, holding that because Darren Wharton’s initial LWOP sentence was vacated in a post-conviction proceeding, he had a statutory right, under Section 99-19-101, to be re-sentenced by a jury.

The MSSCT granted certiorari and reversed, holding “that the trial court erred by vacating Wharton’s original sentence.” *Id.* at \*3.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Wharton v. State*, 2019 WL 6605871 (Miss. Dec. 5, 2019)

In *Wharton*, a majority of the MSSCT finally acknowledged *Miller's* substantive rule “**that ‘sentencing a child to life without parole is excessive for all but the ‘rare juvenile offender whose crime reflects irreparable corruption.’**” *Id.* at \*1 (citation omitted).



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Wharton v. State*, 2019 WL 6605871 (Miss. Dec. 5, 2019)

In keeping with its recognition of *Miller's* substantive rule, the *Wharton* Court held that juvenile offenders “**‘must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.’**” *Id.* \*4 (quoting *Montgomery v. Louisiana*, 136 S.Ct. at 736-37) (italicized emphasis by court).



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Wharton v. State*, 2019 WL 6605871 (Miss. Dec. 5, 2019)

**BUT** the Court also said:

“This is no different from what *Jones* mandated, requiring the juvenile offender ‘to convince the sentencing authority that *Miller* considerations are sufficient to prohibit’ a sentence of life without parole.” *Id.* at \*5.

**AND** the Court reiterated:

“*Miller* does not ‘require trial courts to make a finding of fact regarding a child’s incorrigibility.’” *Id.*



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*Wharton v. State*, 2019 WL 6605871 (Miss. Dec. 5, 2019)

**AND** in reviewing the circuit court's judgment, it does not appear that the Supreme Court evaluated whether Wharton "show[ed] [his] crime did not reflect irreparable corruption." Instead, the Court said this:

"The trial court **took into consideration the characteristics and circumstances unique to juveniles as required by Miller**. Having satisfied its obligation under *Miller* and *Parker*, we cannot say that the trial court abused its discretion by denying Wharton relief from his sentence of life in prison without parole." *Id.* at \*9.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*McGilberry v. State*, 2020 WL 372705 (Miss. Jan. 23, 2020)

**BUT** subsequently, in *McGilberry*, the Court said this:

"Because the record supports the trial court's determination McGilberry should be sentenced to life without parole **based on his irreparably corrupt nature**, we find no abuse of discretion in the court's sentencing decision." *Id.* at \*1.



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**MISSISSIPPI CASELAW**  
*POST-MONTGOMERY*

*McGilberry v. State*, 2020 WL 372705 (Miss. Jan. 23, 2020)

"The trial judge based its conclusion that McGilberry was irreparably corrupt on '[t]he heinous nature of his crime, the expert testimony from his trial and resentencing, and his lack of remorse,' which in the trial court's view 'reveal[ed] an individual with a broken moral compass.' Because the trial judge took into consideration the *Miller* factors and based its decision on the entire trial court record and McGilberry's expert testimony regarding his maturity and rehabilitation, we find no abuse of discretion in his decision to resentence McGilberry to life without parole...." *Id.* at \*9



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### WHAT SHOULD WE TAKE FROM WHARTON & MCCILBERRY?

A *Miller* hearing is about irreparable corruption (just like an *Atkins* hearing is about intellectual disability):

If a juvenile *shows* that his crime did not reflect irreparable corruption (i.e. if he shows that he is capable of rehabilitation), then LWOP is an unconstitutional sentence.

BUT be prepared to present evidence on all the *Miller* factors.

AND be prepared to show how each of those factors weigh against an LWOP sentence.



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### OTHER ISSUES



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### EXPERT TESTIMONY

The United States Supreme Court has stated in *Roper*, *Graham*, and *Miller* that:

“It is **difficult even for expert psychologists** to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper v. Simmons*, 543 U.S. 551, 573 (2005) (citing Steinberg and Scott, *Less Guilty by Reason of Adolescence*, 58 Am. Psychologist 1009, 1014-1016 (2004))



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**EXPERT TESTIMONY**

*Moore v. State*, 2019 WL 4316161 (Miss. May 30, 2019)

“After review of the record, we conclude that the trial court did not abuse its discretion in denying Moore’s motion [for funds for expert assistance in the field of mitigation investigation]. **We have never held that expert testimony is required in a Miller hearing.** The determination of an offender’s potential for rehabilitation under the *Miller* factors is left to the sentencing authority.” *Id.* at \*11 (internal citations omitted).



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**EXPERT TESTIMONY**

*Moore v. State*, 2019 WL 4316161 (Miss. May 30, 2019)

“This is not to say that a specific case may not arise in which expert testimony could be helpful and could be allowed. While the trial court did not err in denying Moore’s motion for funds, Moore—given his resentencing before a jury—may seek funds on remand should his counsel determine that an expert witness is warranted. If Moore does request funds, the trial court, of course, will still need to determine if Moore is entitled to them.” *Id.* at \*11.



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**EXPERT TESTIMONY**

As far as I know, *Moore* is the only case where a trial court has denied a motion for funds for a psychologist. And in *Moore*, the trial attorney filed a motion for funds for an expert in mitigation investigation, rather than a motion for funds for a psychologist.

**See Orders granting funds.**



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**DID NOT KILL OR INTEND TO KILL**  
JUSTICE BREYER'S CONCURRING OPINION

*Miller v. Alabama*, 567 U.S. 460 (2012)

"Given *Graham's* reasoning, the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim." *Id.* at 490 (Breyer, J., concurring).



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**DID NOT KILL OR INTEND TO KILL**  
JUSTICE BREYER'S CONCURRING OPINION

*Graham v. Florida*, 560 U.S. 48 (2010)

"The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." *Id.* at 82.

"[W]hen compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." *Id.* at 69.



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**DID NOT KILL OR INTEND TO KILL**  
JUSTICE BREYER'S CONCURRING OPINION

*Davis v. State*, 2013-0039, Order  
(Quitman Cty. Cir. Ct. Feb 14, 2017)

"[T]he Court finds that a life without parole sentence would ... be unconstitutional under the holding of *Graham* because Davis did not kill or intend to kill. The factual basis for Mr. Davis' guilty plea establishes that he was convicted of capital murder pursuant to the felony murder doctrine because his co-defendant, Andre Lashun Smith, committed a murder while the two were engaged in a robbery. There is no evidence before the Court that Mr. Davis killed or intended to kill the victim in this case." *Id.* at 3.



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**DID NOT KILL OR INTEND TO KILL**  
**JUSTICE BREYER'S CONCURRING OPINION**

*Alexander Hymes v. State, No. 13-117, Order*  
*(Pike County Cir. Ct, Nov. 13, 2015)*

“Considering the evidence presented in this case, including specifically that Hymes did not kill or intend to kill the victim and was convicted on the transferred intent theory underlying the felony murder rule, the Court finds that there is insufficient evidence before the Court that Hymes is one of those ‘uncommon’ and ‘rare’ juvenile homicide offenders who may be sentenced to life without eligibility for parole[.]” *Id.* at 6.




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**DID NOT KILL OR INTEND TO KILL**  
**JUSTICE BREYER'S CONCURRING OPINION**

*Small v. State, 224 So.3d 1272 (Miss. Ct. App. 2017)*

“Because Small did not pull the trigger and was fourteen years old at the time of the offense, the trial judge sentenced him to life imprisonment with the possibility of parole. See *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).” ***Id.* at 1275.**




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**DE FACTO LWOP**

*Mason v. State, 235 So.3d 129 (Miss. Ct. App. 2017)*

“[*Miller* and *Montgomery* do] not invalidate Mason's sentence, as Mason was not sentenced to *life* without parole. He received a fifty-year sentence commencing at age fifteen. In his PCR motion, Mason asserted that ‘[t]his effectively takes away his entire life,’ but he provided nothing to support that assertion. To support his claim, Mason might have offered evidence such as life expectancy tables. However, the UPCRA requires that such documents ... be attached to the PCR motion.” *Id.* at 134.




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**DE FACTO LWOP**

*Mason v. State*, 235 So.3d 129 (Miss. Ct. App. 2017)

"Moreover, on appeal Mason all but concedes that he is not serving a de facto life sentence. Mason's brief ... states that he has 'a tentative release date of November 25, 2050,' at which point 'he will be fifty-seven (57) years of age,' and that his 'life expectancy is 70 to 71 years of age.' Thus, Mason's sentence is lengthy, but it is not a de facto life sentence." *Id.* at 134.

"Even if Mason somehow forfeits all of his accumulated trusty time and earned time and ultimately serves every day of his sentence, the State cannot imprison him beyond age sixty-five. Such a sentence does not implicate the holdings of *Miller* or *Montgomery*." *Id.* at 135.



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