

At 16, Brian stood at 5' 3" and looked more like a 12 year old when he and an adult man got into an argument. As the argument escalated into a fight, Brian took a knife and stabbed the man who later died. The presentencing report said the crime happened because of "poor judgment and immaturity" and that Brian could be rehabilitated. The trial judge, recognizing that Brian had been neglected and left to fend for himself stated, "I wish I had some type of options because of the [life] sentence that is mandatory. I truly wish that it was a sentence of, for example, a number of years to life."

The U.S. Supreme Court recently ruled in *Montgomery v Louisiana* that people serving mandatory life without parole sentences (LWOP) for crimes committed as children must be reviewed and given an opportunity for release if they can demonstrate rehabilitation. *Montgomery* reinforced the 2012 ruling in *Miller v Alabama* that those sentences imposed on minors as if they were adults, "pos[e] too great a risk of disproportionate punishment" and must be limited to that "rare juvenile offender" who is incapable of reform.

The rulings do not mean that those youth must be set free. Instead, they require states to assess who the youth have become and provide them an opportunity to demonstrate their rehabilitation through a rigorous parole board review, stating "Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment...Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller's* central intuition—that children who commit even heinous crimes are capable of change."

As the Times' September 10<sup>th</sup> editorial *Michigan Prosecutors Defy Supreme Court* makes clear, most Michigan prosecutors are not following the spirit and letter of the law. They are not adhering to the Court's warning that only the rare youth warranted a LWOP sentence and are conveniently ignoring the fact that the vast majority of youth have been rehabilitated. Eighty-five percent of those serving LWOP sentences have been assigned the lowest security level allowed by prison officials. Officials assess the security risk level of each inmate from Level 1 (lowest risk) to 5. Those serving LWOP enter at Level 4 and, depending on their

behavior, can move to a higher or lower risk level but cannot go below a Level 2. When 85% behaved well enough in prison to be at Level 2, you might think they are the ones the Supreme Court had in mind when it wrote “that children who commit even heinous crimes are capable of change” and deserve the “opportunity for release”.

In prison now for 25 years, Brian’s glowing work reports’ state not only does he “always do what you ask” but is “always willing to do extra.” He has only 3 misconducts in over a decade for things like delaying in the food line. Several guards have written support letters stating that Brian “is one of those individuals making an effort to use his experience in a positive way and bettering not only himself but those around him as well” and that he “would be a productive member of society” and “poses no danger to anyone.” Even his former warden said he was a role model, writing “it would be an injustice not to consider him for resentencing and possible release.”

And yet, instead of allowing parole review, the prosecutor seeks that very injustice by seeking LWOP for Brian.

While thirty-eight states abolished juvenile LWOP or have less than 5 people serving that sentence, Michigan has the second highest number of people serving LWOP (363). That’s partially because Michigan sentences children as young as 14 and those that never fired a weapon. Where other states follow Supreme Court rulings and develop data-driven policies, Michigan sidesteps rulings and ignores data and facts. And spends money doing so. Michigan’s top prosecutor spent taxpayer resources unsuccessfully fighting *Miller* and *Montgomery* and now county prosecutors are willing to spend millions more to keep those youth who have long since been rehabilitated in prison.

As former U.S. Attorneys, we would have expected Michigan prosecutors to understand *Montgomery*’s central tenet that children are uniquely capable of growth and maturation and must be able to demonstrate their rehabilitation. Instead, too many prosecutors are focusing on the crime committed by a troubled adolescent without exercising the judgement to recognize whether the adult before them today has rehabilitated himself. The first responsibility of a prosecutor in criminal litigation is to see that in each case, justice is done. In failing to exercise a case by case review pursuant to the mandates of *Miller* and *Montgomery*, Michigan

prosecutors not only fail our justice system, they fail all of us, the citizens of the State of Michigan.

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