



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
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MEMORANDUM

DATE: March 4, 2016

TO: Chief Circuit Court Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Milton L. Mack, Jr., State Court Administrator

RE: *Montgomery v Louisiana* Extends Retroactivity to *Miller v Alabama*'s Limitation on Sentences to Life Without Possibility of Parole for Juveniles

On January 25, 2016, the U.S. Supreme Court decided *Montgomery v Louisiana*, 577 US ___ (2016), which extended retroactivity to *Miller v Alabama*, 567 US 2455 (2012). In *Miller*, the Court struck down *mandatory* life without the possibility of parole (LWOP) sentences and held that LWOP sentences should be reserved for the rarest of juvenile offenders.

In the nearly four years between the date *Miller* and *Montgomery* were issued, the Michigan Legislature enacted 2014 PA 22, which added MCL 769.25 and MCL 769.25a to Michigan's Code of Criminal Procedure. PA 22 established a sentencing procedure for juvenile defendants who would otherwise have been subject to a mandatory LWOP sentence, and specifically contemplated the possibility that *Miller* would be held to apply retroactively to all juvenile offenders serving a sentence of LWOP at the time *Miller* was decided. Under MCL 796.25a(2), juveniles sentenced to LWOP must be resentenced by the original sentencing judge or the judge's successor.

To facilitate the orderly handling of these cases, the Legislature outlined some procedures for these cases. First, the prosecutor must provide the chief circuit judge of the county with a list of names of all defendants who must be resentenced. MCL 769.25a(4)(a). This list must be provided no later than 30 days after *Montgomery* becomes final. *Id.* Assuming *Montgomery* becomes final 25 days after January 25, 2016, the list is due by March 21, 2016.¹ Second, if a prosecutor wants the court to resentence a defendant to LWOP, the prosecutor must file a motion

¹ Parties generally have 25 days to file a motion for rehearing in the U.S. Supreme Court under Supreme Court Rule 44; if no petition is filed, a mandate is issued by the Supreme Court under Rule 45 signaling that the case is final.

with the court no later than 180 days after *Montgomery* becomes final, by August 17, 2016. MCL 769.25a(4)(b). The statute does not require a defendant to respond to the motion within any particular time frame; therefore, the defendant must respond to the motion within the time provided in MCR 2.119(C). If the prosecutor does not file a motion, “the court must resentence a defendant to a term of imprisonment for which the maximum term shall be 60 years and the minimum term shall be not less than 25 years or more than 40 years.” MCL 769.25a(4)(c).

While PA 22 requires a court to resentence a defendant, PA 22 does not indicate whether a defendant must file a motion seeking relief from judgment and resentencing before the court can take action. The requirement that a court must resentence a defendant suggests that a court may initiate resentencing proceedings on its own motion. Regardless of how the cases are initiated, they must be conducted in the order of priority as set by MCL 769.25a(5).²

To prioritize and process these cases as efficiently as possible, we recommend that courts do the following:

1. **Court Initiated Proceedings:** To minimize confusion, the court should not require a defendant to initiate resentencing proceedings under *Montgomery*.
2. **Notice:** Provide notice to each defendant, that under *Montgomery*:
 - a. the defendant must be resented by the court and the defendant need not file for relief from judgment;
 - b. the prosecutor may file a motion seeking to resentence the defendant to LWOP;
 - c. if a timely motion is not filed, MCL 769.25a(4)(c) requires that the court resentence the defendant to a term of years for which the maximum shall be 60 years and the minimum shall be not less than 25 years or more than 40 years; and
 - d. the defendant’s case will be scheduled according to the priority established by statute.

If the court sends this notice to the defendant, the notice should be recorded on the register of actions and a copy placed in the court file.

3. **Request for and Appointment of Counsel:** Along with the notice described above, the court should provide defendants with documentation for requesting court-appointed counsel, if the defendant so chooses. Doing so will facilitate timely appointment of counsel for a defendant and preparation for resentencing.
4. **180-Day Waiting Period:** The court should wait to schedule any resentencing hearings until the expiration of the prosecutor’s 180-day window for filing a motion. The court may choose to act sooner if the prosecutor has filed all motions before the conclusion of the 180 days. This waiting period will allow the court to effectively schedule cases according to statutory priority.

² Cases must be heard in the following order: a) cases involving defendants who have served 20 or more years of imprisonment; b) cases in which the prosecuting attorney has filed a motion requesting a sentence of imprisonment without the possibility of parole; c) all other cases.

- 5. Judicial Calendar:** The court should immediately begin to block out dates for conducting the necessary resentencing hearings. The statute requires the sentencing judge or the judge's successor to conduct the rehearing. MCL 769.25a(2). A judge may not assign the case to a different judge unless the judgeship of the sentencing judge was eliminated.
- 6. Presentence Investigation Report:** A defendant is entitled to a reasonably updated presentence investigation report to be used at resentencing. *People v Triplett*, 407 Mich 510 (1980). Therefore, the court should communicate with the probation supervisor regarding the identify of defendants that will be resentenced. This communication will facilitate timely investigation and preparation of presentence investigation reports.

Please contact Noah Bradow at TrialCourtServices@courts.mi.gov or 517-373-2451 with any questions you may have.

[SAMPLE NOTICE]

[Court Letterhead]

[Date]

[Defendant's Address]

Re: Case No. [Case Number]

YOU ARE NOTIFIED:

1. The court must resentence you because of the United States Supreme Court ruling in *Montgomery v Louisiana*, 577 US ____ (2016).
2. You must be sentenced by your original sentencing judge or his/her successor. However, if that judicial position has been eliminated you may be resented by a different judge.
3. You do not need to file anything to be resented.
4. You have the right to be represented by an attorney at your resentencing. Documents to request a court-appointed attorney are enclosed with this notice.
5. The prosecuting attorney may ask to resentence you to life in prison without parole.
6. If the prosecuting attorney does not ask to resentence you to life in prison without parole, the court must resentence you to a period in prison. The minimum period cannot be less than 25 years or more than 40 years. The maximum period is 60 years.
7. Your case will be scheduled according to the priority established by Michigan law.

CC: Prosecuting Attorney