

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

ROBIN RICK MANNING,
Defendant-Appellant.

Supreme Court No. 160034

Court of Appeals No. 345268

Circuit Court No. 84-000570-FC

**Brief of Amicus Curiae State Appellate Defender Office
in Support of Robin Rick Manning**

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Statement of Questions Presented

- I. Is mandatory life without parole an unconstitutional sentence for individuals 17-years-old and under? Because there is no meaningful distinction between the brain development of a 17-year-old and an 18-year-old, does proportionality demand that the holdings of *Miller* and *Montgomery* be applied to 18-year-olds?

Amicus answers, "Yes."

Interest and Identity of Amicus Curiae

The State Appellate Defender Office (SADO) is the only statewide public defender office in Michigan. SADO's statutory mandate is to provide quality, efficient legal representation to indigent criminal defendants in post-conviction matters, and educational resources and trainings to the criminal defense bar.

The United States Supreme Court's decision in *Montgomery v Louisiana*, __ US __; 136 S Ct 718 (2016), in January 2016, entitled Michigan's over 350 juveniles serving life without parole to resentencing hearings. After receiving authorization from the Appellate Defender Commission, SADO was appointed to represent approximately 200 of those individuals for their resentencing hearings. SADO created a Juvenile Lifer Unit to ensure that the attorneys and staff representing these individuals had access to the resources, trainings, and information necessary to be effective in the new, post-*Montgomery* legal landscape. SADO continues to litigate a variety of legal issues surrounding juvenile life without parole resentencing hearings and related court cases.

I. Mandatory life without parole is an unconstitutional sentence for individuals 17-years-old and under. Because there is no meaningful distinction between the brain development of a 17-year-old and an 18-year-old, proportionality demands that the holdings of *Miller* and *Montgomery* be applied to 18-year-olds.

The primary purpose of this amicus brief is to provide this Court with relevant data¹ to show that a life without parole (LWOP) sentence for an 18-year-old is disproportionate and unjust. The number of 18-year-olds serving LWOP sentences is significantly fewer than the number of juveniles sentenced to LWOP. It is a disproportionate sentence if these 18-year-olds do not have the opportunity for the same relief—a resentencing hearing—as those under the age of 18.

The United States Supreme Court relied on brain science to hold that children younger than 18 possess “characteristics of youth” that render mandatory LWOP sentences unconstitutional. See *Miller v Alabama*, 567 US 460, 473 (2012). The science and lived realities of young adults confirm that the same logic extends to 18-year-olds. See Ryan, *The Law of Emerging Adults*, 97 *Was U L Rev* 1131 (2020).

The Chief Justice acknowledged this in her dissent in *People v Masalmani*, ___ Mich ___, 943 NW2d 359 (2020) (McCormack, C.J., dissenting):

Miller did not suggest that 18-year-olds are, as a class, equipped with the decision-making faculties that 17-year-olds lack. Nor did *Miller* suggest that a sentence should disregard the expanding body of scientific knowledge on adolescent brain development merely because an older offender who, although developmentally similar, may be subject to mandatory LWOP sentencing. To the extent *Miller* drew a bright line

¹ The data is based on internal SADO record-keeping and information provided by non-SADO attorneys.

at the legal age of majority, the Court was not suggesting that the adolescent development period ends at the age of 18.

...

The testimony in this case, which the trial court appeared to accept, suggested that 18-year-old offenders too should *not* be sentenced as adults, for the reasons explained in *Miller*. That is, while the law does not require that categorically, the facts might well in most cases. The court's treatment of this factor invoked the scientific evidence for the precise opposite of what it showed. In doing so, the court upended *Miller*'s foundational principle—that the “imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.” Quoting *Miller*, 567 US at 474.

Mr. Manning and other amici have thoroughly briefed the science involved and have supported the proposition that there is no meaningful distinction between the brain of a 17-year-old and an 18-year-old. But individuals who are 17² are entitled to an individualized hearing under *Miller* to determine a constitutionally proportionate and individualized sentence, while there are 246 people left to die in the MDOC because they were 18 instead of 17 at the time of the offense.

The data in this brief includes the numbers of young adults serving LWOP sentences in the Michigan Department of Corrections (MDOC) and a glimpse at the juvenile LWOP landscape in Michigan in the eight years since *Miller* and the four years since *Montgomery v Louisiana*, __ US __; 136 S Ct 718 (2016).

Michigan ranks second in the country for the number of juveniles sentenced to LWOP, behind Pennsylvania. Allie Gross, *More than half of Michigan juvenile lifers still wait for resentencing* <<https://www.freep.com/in-depth/news/local/michigan/>

² Even those 1-day shy of turning 18 will be resentenced. *People v Woolfolk*, 497 Mich 23 (2014).

[2019/08/15/juvenile-lifers-michigan/1370127001/](https://www.sado.org/2019/08/15/juvenile-lifers-michigan/1370127001/)> (accessed September 8, 2020). Michigan initially incarcerated 354 juveniles sentenced to LWOP. *Id.* SADO was assigned to represent 188 people and has 77 clients who are still in need of resentencing. Statewide, over 100 people have already been resentenced, either because the prosecutor's office declined to pursue a LWOP sentence or after a full *Miller* resentencing hearing. Seven of SADO's clients have been resentenced to life without parole after a *Miller* hearing and all 7 of those clients were 17 years old at the time of the offense.

Since *Miller*, 23 states and the District of Columbia have banned LWOP sentences and in several other states, no juvenile is currently serving a LWOP sentence. Josh Rovner, The Sentencing Project, *Juvenile Life Without Parole: An Overview* <<https://www.sentencingproject.org/publications/juvenile-life-without-parole/>> (accessed September 8, 2020).

Based on data from 1980 to 2017, there are 1,392 people serving LWOP in the MDOC for offenses committed between the ages of 14 and 21.³ This is 3% of the MDOC population in 2017, which was 39,666 people. Michigan Department of Corrections, *2017 Statistical Report*, page C-11 <https://www.michigan.gov/documents/corrections/MDOC_2017_Statistical_Report_644556_7.pdf> (accessed September 8, 2020).

³ As discussed in the Criminal Defense Attorneys of Michigan amicus brief, 21 is the age the Legislature determined was appropriate for assignment under the Holmes Youthful Trainee Act, without the need for prosecutor consent. See *CDAM Amicus Brief*, pp 29-30.

Every data point in the table below shows that the majority of those juveniles serving life without parole were 17-years-old at the time of their offenses.

Age at time of offense	Number of individuals sentenced to LWOP	Number of individuals resentenced to a term of years	Number of SADO clients	Number of SADO clients paroled/discharged
14	6			
15	46	15	29	10
16	115	28	52	18
17	198	55	107	28
18	246			
19	292			
20	246			
21	243			
Total	1,392	98	188	56

A majority of those initially sentenced to LWOP were 17. A majority of those already resentenced to a term of years were 17. A majority of SADO's clients were 17. And, a majority of SADO's clients who have already paroled or discharged from the MDOC were 17.

If a term of years sentence—and eventual parole and discharge—can be proportionate for a 17-year-old, a mandatory sentence of LWOP for someone born one day, one month, or one year earlier is disproportionately cruel and/or unusual.

Summary and Relief

Wherefore, amicus respectfully requests, for the foregoing reasons, that this Honorable Court hold that the rationale of *Miller* and *Montgomery* apply to those who were 18 at the time of the homicide.

Respectfully submitted,

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