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Kimberly A. Thomas

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Mich. Ruling Widens Sentencing Protections For Young Adults

By **Kimberly Thomas** (September 9, 2022, 5:07 PM EDT)

On July 28, the Michigan Supreme Court held that the mandatory imposition of a life-without-parole sentence on an 18-year-old violated the state constitution.[1]

This decision expands the protections provided for young defendants by the U.S. Supreme Court in *Miller v. Alabama* and builds on a nascent trend that provides additional constitutional and statutory protections for young people over 17 years old who are charged with serious offenses.



Kimberly Thomas

Background U.S. Supreme Court Law

In 2012, the U.S. Supreme Court held in *Miller v. Alabama*[2] that the mandatory imposition of a life-without-parole sentence, without an individualized assessment of the mitigating aspects of youth, violated the Eighth Amendment for juveniles 17 and under.

The court's *Miller* decision built upon earlier U.S. Supreme Court rulings, which provided constitutional protections against extreme sentences for youth and that "establish[ed] that children are constitutionally different from adults for purposes of sentencing." [3]

These earlier cases include the court's 2005 decision in *Roper v. Simmons*,[4] which banned the imposition of the death penalty on youth 17 and under, and its 2010 decision in *Graham v. Florida*, which banned life sentences for youth who committed offenses that were not homicide.

The court "relied on three significant gaps between juveniles and adults" seen in adolescent brain science — as well as "on common sense ... on 'what any parent knows'" — to show that youth are "less deserving of the most severe punishment." [5] The court stated:

First, children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. ... Second, children "are more vulnerable ... to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. ... And third, 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]." [6]

In *Montgomery v. Louisiana*,[7] the Supreme Court found in 2016 that the rule in *Miller* was substantive and therefore applied retroactively.

Montgomery meant that people whose cases were final at the time of the Miller decision were also entitled to a new sentencing hearing at which youth and its attendant circumstances were considered in mitigation "to separate those juveniles who may be sentenced to life without parole from those who may not."^[8]

Developments in the Law Around the Country Prior to Parks

Some state courts and legislatures around the country responded to Miller by attempting to develop new state sentencing schemes that continued to permit life without parole, but provided for individualized sentencing hearings where youth and its attendant circumstances were taken into account for young people charged with homicide offenses.^[9] Other states responded by eliminating the possibility of life without parole for youth.

Now, 25 states ban life without parole for youth, and, in seven additional states, no one is serving life without parole for an offense committed under 18.^[10]

Broader reforms for the sentencing of those under 18 in adult court have also taken hold.^[11]

In a nascent trend, a handful of other states have recognized the impact of adolescent development on those who commit offenses as young adults over the age of 17, leading to a more individualized assessment of their individual culpability and allowing for the mitigation of youth and its attendant circumstances.

Last year, the Washington Supreme Court held in *In re: Personal Restraint of Monschke* that mandatory life without parole under the state's aggravated murder statute was unconstitutional under the state constitution for youth under 21.^[12]

The court stated that all three considerations of youth in *Roper* — youths' "lack of maturity and responsibility, their vulnerability to negative influences, and their transitory and developing character" — all "weigh[ed] in favor of offering similar constitutional protections to older offenders," and that "neurological science recognizes no meaningful distinction between 17- and 18-year olds as a class."^[13]

The court expanded protection for defendants up to age 21 under the Washington state constitution's ban on cruel punishment.^[14]

A few other jurisdictions have sought to recognize the lesser culpability of young adults and the mitigating impact of age through legislation.

California has youth offender parole hearings that apply to young people who were under 26 years old at the time of the controlling offense, and requires parole board hearings to give consideration to the diminished culpability of youth, the hallmark features of youth, and demonstrated growth and maturity.^[15]

Washington, D.C., implemented a "second look" act, which allows youth up to age 25 to ask for review of their sentence.^[16]

Michigan Supreme Court's Decision in Parks

The case before the Michigan Supreme Court involved a challenge to a mandatory life-without-parole sentence for Kemo Knicombi Parks, who was 18 years old at the time of his homicide offense. He argued that the protections for adolescents rooted in Miller must be applied to him as well.

The court found the mandatory life-without-parole sentence violated the Michigan Constitution's ban on cruel or unusual punishment. It found that such a mandatory sentence for an 18-year-old "lacks proportionality because it fails to take into account the mitigating characteristics of youth, specifically late-adolescent brain development."^[17]

The Parks court surveyed the Eighth Amendment law that has found that youth are "less deserving of the most severe punishments,"^[18] before exploring the greater protection against disproportionate punishment provided by the Michigan Constitution.^[19]

The court looked to the scientific research on the late-adolescent 18-year-old brain and concluded that there was a "clear consensus that late adolescence — which includes the age of 18 — is a key stage of development characterized by significant brain, behavioral, and psychological change" and "is a pivotal developmental stage that shares key hallmarks of adolescence," like those recognized in the U.S. Supreme Court decisions.^[20]

The Michigan constitutional analysis required the court to examine

(1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation, which is a criterion specifically "rooted in Michigan's legal traditions."^[21]

On the first factor, the court stated that while the offense — aiding and abetting first-degree murder — was grave, the sentence imposed was the most severe available in Michigan.

Additionally, the sentence was especially severe in light of the characteristics of late adolescence, which render young offenders less culpable than older adults, and did not allow for individual tailoring to personal responsibility.^[22]

The second factor also weighed in favor of a finding that mandatory life without parole was cruel or unusual, in part because of the number of years late adolescents will serve behind bars.^[23]

The court found that the third factor was "more neutral" and "slightly weigh[ed] in favor of an individualized sentencing procedure," noting that "25 states and the District of Columbia do not legislatively mandate life without parole for equivalent first-degree murder, regardless of the age of the offender," while six other states only mandate life without parole when there are proven aggravating circumstances.^[24]

Finally, the court found this system of mandatory life without parole, without an individualized consideration and chance to show an ability to rehabilitate, was "antithetical to [the Michigan] Constitution's professed goal of rehabilitative sentences."^[25]

As a remedy, the court ordered that 18-year-olds convicted of first-degree murder be sentenced under the individualized statutory sentencing procedure already in place for those 17 and under, instead of

receiving a mandatory life-without-parole sentence.[26]

Concurring and Dissenting Opinions

Justice Richard Bernstein's concurring opinion in Parks emphasized that the court's decision also increased local and individual control over sentencing decisions and highlighted the limitations of bright-line rules when striving to impose sentences that are proportionate to the offense and the offender.[27]

The dissent would have retained the bright-line rule providing protections to those 17 and under, following the case law for a state constitutional analysis.[28] And, though it did not disagree with the neuroscience evidence, the dissent argued that changes to the law in reliance on that evidence are best left to the Legislature.[29]

Two of the dissenting justices would have accepted the prosecutor's invitation to revisit whether the state constitution provides broader protection than the federal Constitution.[30]

Companion Case of People v. Poole

Argued and briefed with Parks before the Michigan Supreme Court was a companion case, People v. Poole.[31]

Poole raised the same challenge, on behalf of an 18-year-old, to the constitutionality of his mandatory life-without-parole sentence, but in a state post-conviction petition, instead of on direct appeal as in Parks.

The same day as the Parks decision, the court issued an order in Poole's case, stating that Poole met the requirements to file a successive post-conviction petition and remanding to the Michigan Court of Appeals to decide the merits of the case in light of People v. Parks.[32]

Potential Future Impact

Within Michigan, the extent of the impact is soon to be known once the Michigan Court of Appeals applies Parks in the People v. Poole case. Many anticipate that Parks will be applied to Poole, striking down Poole's mandatory life-without-parole sentence.

Nationally, with the Parks decision, Michigan joins the handful of other states that have extended Miller's protection to young or emerging adults, sometimes called youthful offenders by the courts.

The court's consideration of adolescent neuroscience, which does not draw a bright line of maturity at 18 years old, means that litigants in other states will press these arguments.

And, instead of wondering whether Washington state is a sole outlier, courts in other states may begin to see a constellation of state courts accepting these arguments.

Litigants will also raise arguments based in adolescent development that challenge long sentences or other mandatory adult sentences that fail to take any account of youth and its attendant circumstances.

Finally, legislatures may also move, like California did, to develop ways to take youth into account at the sentencing stage or by the parole board prior to release.

More broadly, the Parks decision builds on the decadelong focus in juvenile justice on evidence-based practices that are grounded in research about young people and their actions.

This focus extends far beyond the U.S. Supreme Court's jurisprudence on extreme sentences for youth in adult court to the day-to-day policies of juvenile courts across the country.

Kimberly Thomas is a clinical professor of law and co-director of the Juvenile Justice Clinic at the University of Michigan Law School.

Disclosure: Thomas filed an amicus brief on behalf of the Criminal Defense Attorneys of Michigan in People v. Poole.

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[1] *People v. Parks*, __ N.W.2d __, 2022 WL 3008548 (July 28, 2022).

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

[3] *Miller*, 567 US at 471.

[4] *Roper v. Simmons*, 543 U.S. 551 (2005).

[5] *Miller* at 471 (internal citation omitted).

[6] *Id.* (internal citations omitted).

[7] *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

[8] *Jones v Mississippi*, 141 S Ct 1307, 1317-18 (2021) (citing *Montgomery*, 577 US at 210).

[9] See, e.g., National Conference of State Legislatures, *Miller v. Alabama and Juvenile Life Without Parole Laws* (May 12, 2021) (available at <https://www.ncsl.org/research/civil-and-criminal-justice/miller-v-alabama-and-juvenile-life-without-parole-laws.aspx>).

[10] Campaign for the Fair Sentencing of Youth, *States that Ban Life without Parole for Children* (Updated January 27, 2022).

[11] See also American Law Institute (2017), *Model penal code: Sentencing: Final Draft. Sec 6.11A* (providing model guidance for the sentencing of youth under 18).

[12] In re Monschke, 482 P.3d 276 (2021).

[13] Id. at 284.

[14] Id. at 279 (quoting Wash. Const. art. 1, Sec 14).

[15] California Senate Bill 260; Senate Bill 261; Assembly Bill 1308 (expanding youth offender parole hearings to those under 26 when committed offense); see also California Department of Corrections and Rehabilitation, Youth Offender Parole Hearings (2022) (available at <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>).

[16] Omnibus Public Safety and Justice Amendment Act of 2020, District of Columbia (2021).

[17] Parks, at *5.

[18] Id. at *6 (quoting Miller, 567 US at 471).

[19] Id. at *9.

[20] Id. at 11-13.

[21] Id. at *15 (citing to People v. Bullock, 485 N.W.2d 866, 873 (Mich. 1992)).

[22] Id. at *16-17.

[23] Id. at *18.

[24] Id.

[25] Id. at *19.

[26] Id. at *10.

[27] Id. at *21 – 25.

[28] Id. at *25 – *31.

[29] Id. at *31 – *35 (Clement, J., dissenting).

[30] Id. at *25 (Zahra, J., dissenting).

[31] 977 N.W.2d 530 (mem) (Mich. July 28, 2022).

[32] Poole, 977 N.W.2d at 531.