

## Juvenile Life without Parole (JLWOP) – the effect of *Miller v. Alabama* on the delivery of indigent defense services in Mississippi. (April 2018)

### Background

In 2005 the Supreme Court of the United States held that sentencing a person to death for a crime that occurred prior to their 18<sup>th</sup> birthday violated the federal constitution. *Roper v. Simmons*, 543 U.S. 551 (2005). In 2010 the Court held sentencing juvenile offenders to life without parole (JLWOP) for non-homicide offenses violated the federal constitution. *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010).

In June 2012 the Court held that automatic life without parole sentences for juvenile offenders convicted of homicide offenses violated the federal constitution. *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

In June 2013 the Mississippi Supreme Court recognized that under Mississippi's parole law enacted in 1994 and 1995, all life sentences are without parole. *Parker v. State*, 119 So.3d 987 (Miss. 2013). Thus the *Parker* Court held that *Miller* requires individual determinations of parole eligibility in all capital murder and murder cases before a life sentence without parole can be imposed. *Parker* applies to all juvenile offenders serving an automatic life sentence as well as all juvenile offenders convicted since *Miller*. See *Jones v. State*, 122 So3d 698 (Miss. 2013) (*Miller* applies retroactively as matter of state law).

In light of these decisions every juvenile homicide offender is now entitled to a sentencing or resentencing hearing. Because life without parole is the equivalent of a death sentence when imposed on a juvenile offender, see *Miller*, equivalent procedures must be in place to ensure the defendant's constitutional rights are protected. This will require mitigation investigation and presentation including the use of experts, particularly in the field of child development.

### Scope of the Problem – old cases

Eighty-seven people<sup>1</sup> in Mississippi were sentenced to automatic life without parole sentences for crimes occurring when they were juveniles (JLWOP sentences). Four were on direct appeal when *Miller* was decided and 83 have since filed 85 post-conviction motions raising *Miller* claims.

Of the four cases on direct appeal when *Miller* was decided, two had their convictions reversed and two had the JLWOP sentence vacated. In one of the two reversals the defendant was acquitted on retrial and the other plead to a reduced charge of manslaughter. One person whose sentence was vacated, Lester Parker, has been resentenced to life with parole. The second, Terry Hye, is pending resentencing.

In the post-conviction cases, courts have been vacating the sentences and remanding for resentencing. So far, 41 resentencing proceedings have resulted in 31 sentences of life with eligibility for parole and 10 JLWOP sentences. One person died prior to resentencing.

Forty-four resentencing proceedings are pending, including Hye.

### Scope of the Problem – new cases

There were 16 potential JLWOP cases pending pre-trial when *Miller* was decided. Two were sentenced to automatic JLWOP for murder before *Parker* was decided and are counted in the 85 post-conviction cases noted above. One since *Parker* has been sentenced to JLWOP for murder. The others have been convicted of lesser charges or had charges dismissed.

Ninety-five new JLWOP eligible cases have been filed since July 1, 2012. Fifty-one of these cases remain open. Of the 44 closed cases five people have been sentenced to JLWOP bringing the total LWOP sentences post-*Parker* to sixteen.

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<sup>1</sup> Two people have two sentences imposed in separate cases so the total number of cases is 89.

It is anticipated that there will be 12 new JLWOP eligible cases indicted each year needing appointed counsel. Because these juvenile homicide cases are not “death penalty eligible offenses” Capital Defense Counsel cannot provide direct representation, *Miss. Code* § 99-18-5, leaving the primary burden on the county funded public defender systems. This development increases the need for comprehensive indigent defense reform in Mississippi.

### Filling the Gap

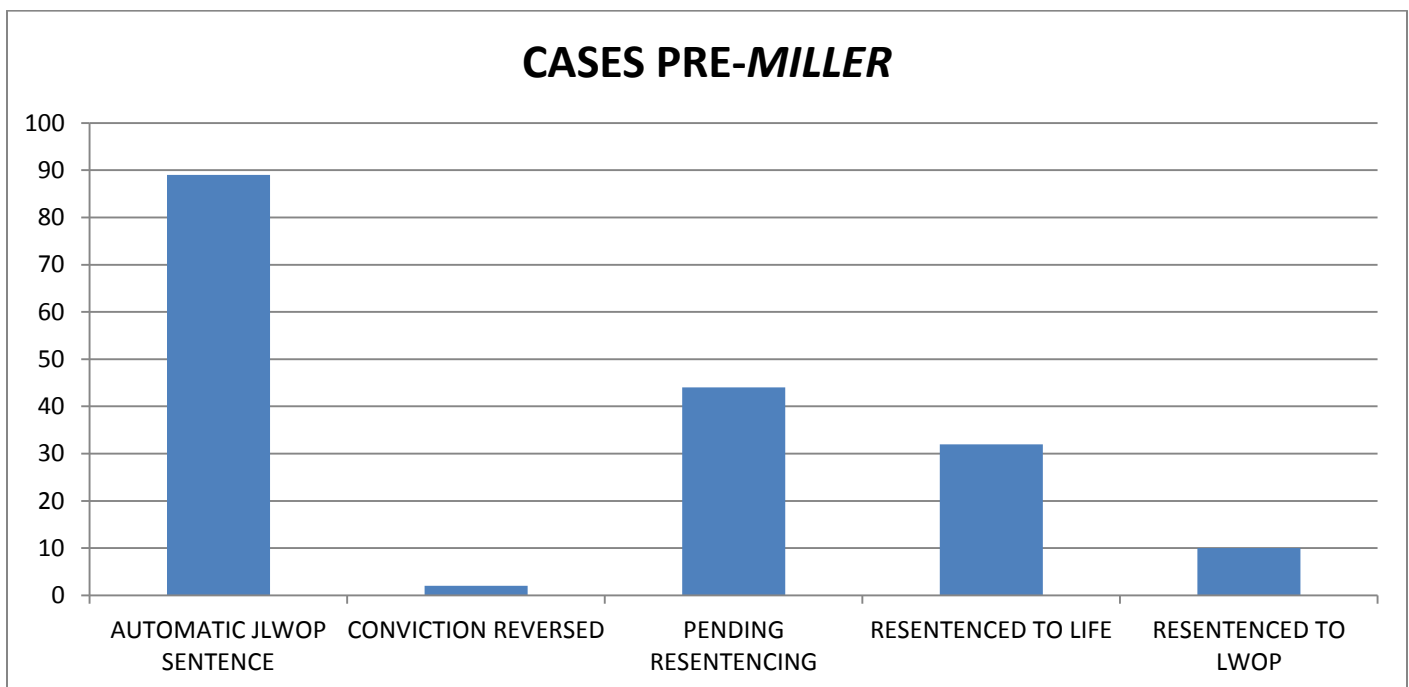
In the wake of the *Miller* decision a working coalition formed in Jackson to identify and assist individuals serving mandatory life-without-parole sentences for crimes they committed as juveniles. The Mississippi Office of the Southern Poverty Law Center and the Law Office of McDuff & Byrd volunteered to coordinate the effort which included recruiting over 35 *pro bono* attorneys taking on over 50 cases. OSPD provided guidance and assistance, including conducting a three-day bring-your-own-case training program for attorneys with JLWOP cases. This is now a bi-annual program.

Since 2014 the State Defender’s assistance and training has been enhanced by a partnership with the Southern Poverty Law Center in which OSPD housed the part-time JLWOP Resource Counsel funded through SPLC with a grant from the Vital Projects Fund (VPF). This limited assistance benefits the local defenders and counties but falls far short of ensuring they can meet the new constitutional mandate.

Beginning January 1, 2018, the Resource Counsel project has expanded to a full-time attorney and full-time mitigation investigator. This expansion was made possible by a generous grant from the Southern Poverty Law Center. This grant is in addition to the VPF grant which will continue to be used to meet needs of the clients. The primary intent of the new grant is to help expedite the resentencing of the remaining people through assisting the many *pro bono* attorneys who have stepped in where the government has failed to meet this Constitutional crisis.

### The Bottom Line

Even the most conservative estimate of the cost to counties to provide constitutionally adequate counsel, investigators and experts in the pending cases would be in the millions with an additional \$900,000/year to handle future cases. This cost does not include the cost of empaneling juries.<sup>2</sup>



<sup>2</sup> See *Vicksburg Post* Editorial, April 1, 2015, regarding retrial of Vega case.