No. 20-

IN THE
SUPREME COURT OF THE UNITED STATES

STAFON THOMPSON,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition for a Writ of Certiorari to the Minnesota Supreme Court

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APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

Rachel Moran
Counsel of Record
University of St. Thomas School of Law
Legal Services Clinic
30 South 10th Street Suite 100
Minneapolis, MN 55403
(651) 962-4810
rmoran@stthomas.edu

Attorney for Petitioner

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APPENDIX A

MINNESOTA SUPREME COURT

STATE OF MINNESOTA,

Respondent,

v.

STAFON EDWARD THOMPSON,

Appellant.

OPINION

[FILED APRIL 29, 2020]

STATE OF MINNESOTA

IN SUPREME COURT

A19-0717

Hennepin County District Court — McKeig, J.
Concurring, Chutich, Anderson, Thissen, JJ.

State of Minnesota,

Respondent,

vs.

Filed: April 27, 2020
Office of Appellate Courts

Stafon Edward Thompson,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Rachel Moran, University of St. Thomas Legal Services Clinic, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not err in concluding that the language of the federal district court order reflected a limited remand.

2. The district court did not abuse its discretion in concluding that the issue of whether appellant's sentences should be served consecutively was beyond the scope of the remand order.

Affirmed.

O P I N I O N

McKEIG, Justice.

Appellant Stafon Edward Thompson appeals from a state district court order that revised his sentence from two consecutive terms of life without the possibility of release to two consecutive terms of life with the possibility of release after 30 years. According to Thompson, when the federal district court partially granted his petition for a writ of habeas corpus and remanded for resentencing, the state district court should have held a hearing on the issue of whether his sentences should be served consecutively. Because the language of the federal district court's order indicated a limited remand, the state district court did not abuse its discretion when it strictly followed the terms of the remand order. We therefore affirm.

FACTS

In 2009, after a 3-week trial, a Hennepin County jury found Stafon Edward Thompson guilty of two counts of first-degree premeditated murder, Minn. Stat. § 609.185(a)(1) (2018), for the brutal killings of Katricia Daniels and her 10-year-old son, Robert Shepard. The 2009 sentencing statutes mandated that Thompson be sentenced to life without the possibility of release (LWOR). *See* Minn. Stat. § 609.106, subd. 2(1) (2008). The district court did not order a presentence investigation or hear any argument

on the issue of consecutive sentencing. The district court heard eight victim-impact statements and asked Thompson if he would like to address the court, but Thompson declined. In accordance with Minnesota Sentencing Guidelines 2.F.2.a(1)(ii), the district court ordered that Thompson serve two LWOR sentences consecutively. We affirmed Thompson's convictions and sentences on direct appeal. *State v. Thompson*, 788 N.W.2d 485 (Minn. 2010).

Two years after we affirmed Thompson's convictions and sentences, the United States Supreme Court held that mandatory LWOR sentences for juvenile homicide offenders violate the Eighth Amendment's ban on cruel and unusual punishment. *Miller v. Alabama*, 567 U.S. 460, 465 (2012). After *Miller*, qualifying juvenile homicide offenders could challenge the duration of their confinement as unconstitutional by a writ of habeas corpus under 28 U.S.C. § 2254(a) (2018).[1]

In 2013, Thompson filed a petition for a writ of habeas corpus with the United States District Court for the District of Minnesota, claiming that he was incarcerated in violation of the Constitution.[2] He asked the federal district court to "[r]everse the sentence imposed"

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[1] Under 28 U.S.C. § 2254(a), "a person in custody pursuant to the judgment of a State court" can file a petition for writ of habeas corpus in federal court "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." Although the writ was used at common law to secure immediate release from confinement, it is no longer so limited. Now, "the writ is [also] available . . . to attack future confinement and obtain future releases." *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973); *see also Peyton v. Rowe*, 391 U.S. 54, 64–65 (1968).

[2] Thompson filed a federal habeas petition rather than a state postconviction petition because of our decision in *Chambers v. State*, 831 N.W.2d 311 (Minn. 2013). In *Chambers*, we held that *Miller* was not retroactive for offenders like Thompson, whose

and remand to the state district court for resentencing. The federal district court dismissed the petition and the United States Court of Appeals for the Eighth Circuit affirmed. *Thompson v. Roy*, No. 13-CV-1524 (PJS/JJK), 2014 WL 1234498, at *2 (D. Minn. Mar. 25, 2014), *aff'd*, 793 F.3d 843 (8th Cir. 2015), *cert. granted, judgment vacated*, ___ U.S. ___, 136 S. Ct. 1375 (2016). Thompson petitioned for certiorari to the United States Supreme Court.

While Thompson's petition was pending, the Supreme Court held that the rule announced in *Miller* applies retroactively. *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 732 (2016); *see also Jackson v. State*, 883 N.W.2d 272, 274 (Minn. 2016) (acknowledging that *Montgomery* "holds that the *Miller* rule applies retroactively"). The Court remanded Thompson's case to the Eighth Circuit for reconsideration in light of *Montgomery*, 136 S. Ct. at 1375, and the Eighth Circuit remanded to the federal district court, *Thompson v. Roy*, 641 F. App'x 681, 682 (8th Cir. 2016).

On remand, a federal magistrate judge recommended that Thompson's petition for a writ of habeas corpus be granted in part and denied in part. More specifically, the magistrate judge recommended that the sentence vacatur be "limited" to the "without possibility of release provision" of Thompson's sentences, as opposed to "a complete reversal of [his] sentences." *Thompson v. Roy*, No. 13-CV-1524 (PJS/HB), 2016 WL 7242566, at *2 (D. Minn. Nov. 23, 2016), *adopted by* 2016 WL 7231599 (D. Minn. Dec.

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direct appeals were final at the time *Miller* was decided. *Id.* at 331. That holding was later overruled by *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016); *see Jackson v. State*, 883 N.W.2d 272, 278–79 (Minn. 2016) (explaining that *Montgomery* "overruled our retroactivity analysis from *Chambers*").

14, 2016). After conducting a de novo review of the record, the federal district court adopted the magistrate judge's report and recommendation "in its entirety," vacated the "without possibility of release" provision of Thompson's sentences, remanded to Hennepin County District Court for resentencing, and denied the petition "in all other respects." *Thompson*, 2016 WL 7231599, at *1.

A hearing before the Hennepin County District Court was scheduled. The district court deferred the hearing because of our pending decisions in *State v. Ali*, 895 N.W.2d 237 (Minn. 2017), *cert. denied*, ___ U.S. ___, 138 S. Ct. 640 (2018) and *Flowers v. State*, 907 N.W.2d 901 (Minn.), *cert. denied*, ___ U.S. ___, 139 S. Ct. 194 (2018). After we decided *Ali* and *Flowers*, the district court ordered the parties to file supplemental briefs addressing whether a hearing was required on the issue of whether the sentences should be served consecutively.

After discussing federal habeas corpus principles, federal and state case law on juvenile offender sentencing, and the federal district court order, the district court concluded that the federal district court had ordered a limited remand and therefore determined that a hearing on the issue of whether the sentences should be served consecutively was beyond the scope of the remand order. The district court cancelled all further hearings, mooted all pending motions, and, without a resentencing hearing, revised

Thompson's sentence to two consecutive terms of life with the possibility of release after 30 years.[3] This appeal followed.

ANALYSIS

This case presents two issues. First, whether the district court erred in concluding that the language of the federal district court order indicated a limited remand. Second, whether the district court abused its discretion in concluding that the issue of whether Thompson's sentences should be served consecutively was beyond the scope of the remand order. We consider each issue in turn.

I.

We have previously said that trial courts generally have "broad discretion to determine how to proceed on remand." *Dobbins v. State*, 845 N.W.2d 148, 156 (Minn. 2013) (citing *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). But we have also said that, "[o]n remand, it is the duty of the district court to execute the mandate of [the remanding court] strictly according to its terms." *State v. Roman Nose*, 667 N.W.2d 386, 394 (Minn. 2003). These statements reflect the distinction between two types of remand: general and limited.

The distinction between general and limited remands is well recognized in the federal courts. For example, in *United States v. Campbell*, the United States Court of Appeals for the Sixth Circuit explained that:

[3] The parties do not dispute that the district court acted within its authority in revising Thompson's two LWOR sentences to two terms of life with the possibility of release after 30 years.

> Remands . . . can be either general or limited in scope. Limited remands explicitly outline the issues to be addressed by the district court and create a narrow framework within which the district court must operate. General remands, in contrast, give district courts authority to address all matters as long as remaining consistent with the remand.

168 F.3d 263, 265 (6th Cir. 1999) (internal citation omitted); *see also United States v. Walker*, 918 F.3d 1134, 1144 (10th Cir. 2019) (discussing general and limited remands); *United States v. Malki*, 718 F.3d 178, 182–83 (2nd Cir. 2013) (same); *United States v. Young*, 66 F.3d 830, 835–37 (7th Cir. 1995) (same); *United States v. Klump*, 57 F.3d 801, 803 (9th Cir. 1995) ("This court's remand was general, not limited."). "A general remand permits the district court to redo the entire sentencing process, including considering new evidence and issues." *United States v. McFalls*, 675 F.3d 599, 604 (6th Cir. 2012). "A limited remand, by comparison, does not allow a *de novo* resentencing and instead constrains the district court's authority to the issue or issues adjudicated." *Id.*

According to the federal courts, the issue of whether a remand order is general or limited is a legal question that is reviewed de novo. *See, e.g.*, *United States v. Watson*, 189 F.3d 496, 500 (7th Cir. 1999) ("The scope of the remand is a question of law that we review *de novo*."). When determining whether a remand is general or limited, federal courts consider the remand language in the context of an entire opinion or order. *See Campbell*, 168 F.3d at 266–67; *United States v. Parker*, 101 F.3d 527, 528 (7th Cir. 1996) ("[T]he scope of the remand is determined not by formula, but by inference from the opinion as a whole."). For example, in *United States v. Patterson*, the United States Court of Appeals for the Eighth Circuit concluded that a remand was limited because the opinion as a whole focused solely on one aspect of sentencing. 147 F.3d 736, 737 (8th Cir. 1998).

Although we have not previously used the terms "general" and "limited" when discussing remand orders, our statements in *Dobbins* and *Roman Nose* implicitly reflect the well-reasoned distinction between general and limited remands drawn by the federal appellate courts. We are also persuaded that the issue of whether a remand order is general or limited is a legal question that should be reviewed de novo.

Having clarified the relevant legal standards, we turn to the language of the federal district court's remand order to determine whether it involved a general or limited remand. The federal district court order adopted the magistrate judge's report and recommendation "in its entirety." The report recommended that the sentence vacatur be "limited" to the "without possibility of release provision" of Thompson's sentences, as opposed to "a complete reversal of [his] sentences." It would be unreasonable to read this language as suggesting that the federal district court vacated Thompson's sentences in their entirety or remanded for de novo resentencing. Consequently, the district court did not err in concluding that the language of the federal district court order indicated a limited remand.

II.

We next consider whether the district court abused its discretion when it concluded that the issue of whether Thompson's sentences should be served consecutively was beyond the scope of the remand order. For the reasons that follow, we conclude that there was no abuse of discretion.

When a remand is limited, it is the duty of the district court to execute the mandate of the remanding court strictly according to its terms. *Roman Nose*, 667 N.W.2d at 394; *see McFalls*, 675 F.3d at 604 (stating that a limited remand "does not allow a *de*

novo resentencing and instead constrains the district court's authority to the issue or issues adjudicated"). Here, the remand order was limited to the singular issue of the possibility of release.[4] Consequently, the district court's limited revision of the sentences from LWOR to life with the possibility of release after 30 years—without reconsidering the issue of whether the sentences should be consecutive—was not an abuse of discretion.[5]

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

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[4] The issue of whether Thompson's sentences should be consecutive is not inherently bound to the possibility-of-release issue. Although two consecutive life sentences with the possibility of release may, in some cases, amount to de facto life without the possibility of release, "[t]he United States Supreme Court has not held that the *Miller*/*Montgomery* rule applies to sentences other than life imprisonment without the possibility of parole." *Flowers*, 907 N.W.2d at 906.

[5] The substantive issue of whether Thompson's consecutive sentences are commensurate with his culpability and criminality under the standard articulated in *State v. Warren*, 592 N.W.2d 440, 451–52 (Minn. 1999), is not properly before us. Nothing in our decision today forecloses Thompson from seeking otherwise available relief under the Minnesota postconviction statute, Minn. Stat. § 590.01 (2018).

C O N C U R R E N C E

CHUTICH, Justice (concurring).

I agree that the language of the federal district court order reflected a limited remand and, therefore, the issue of whether Thompson's sentences should be served consecutively was beyond the scope of the remand. But as the court acknowledges, nothing in our decision today forecloses Thompson from seeking otherwise available relief under the Minnesota postconviction statute. I write separately to affirm two key legal principles that pertain to the validity of Thompson's sentences: (1) truth and fairness are best discovered by powerful statements on both sides of a question and (2) children are constitutionally different from adults in their level of culpability.

I.

Our adversarial system "is premised on the well-tested principle that truth—as well as fairness—is best discovered by powerful statements on both sides of the question." *Penson v. Ohio*, 488 U.S. 75, 84 (1988) (citations omitted) (internal quotation marks omitted). We jealously guard the protections created by the adversarial process in sentencing because a criminal "defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process." *Gardner v. Florida*, 430 U.S. 349, 358 (1977).

Here, as the majority recognizes, the district court did not order a presentence investigation or hear any argument on the issue of consecutive sentencing before imposing two consecutive sentences of life without the possibility of release upon Thompson, who

was 17 years old when he committed the crimes. Useful arguments on both sides of the consecutive-sentencing question were not presented in Thompson's first sentencing hearing because, as a practical matter, a defendant can only serve one sentence of life without the possibility of release before he or she dies. Under the law applicable at that time, whether the two sentences were imposed consecutively or concurrently did not matter one whit.

But now that the United States Supreme Court has announced a new substantive rule that applies retroactively to Thompson, *see Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 734 (2016), the consecutive nature of Thompson's life sentences may well be affected by the currently developing jurisprudence. Without presaging any particular result, under the unique circumstances of this case, I believe that providing the parties an opportunity to present "powerful statements" regarding the factors set forth in *State v. Warren*, 592 N.W.2d 440, 451–52 (Minn. 1999), is necessary to preserve the adversarial process that is the bedrock of our criminal justice system and to provide procedural fairness to Thompson.

II.

Another vital legal principle is relevant to Thompson's sentencing. As I explained in *State v. Ali*, 895 N.W.2d 237, 248–54 (Minn. 2017) (Chutich, J., dissenting), the principle that children are constitutionally different from adults in their level of culpability is firmly established by a line of decisions of the United States Supreme Court. Beginning with *Roper v. Simmons*, 543 U.S. 551 (2005), these decisions culminated in a substantive rule that prohibits a court from sentencing a juvenile to life without the possibility of release

unless the court determines that he or she belongs to "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 734 (2016).

I acknowledge that the United States Supreme Court has not yet expressly extended this substantive rule to juveniles who receive a series of consecutive sentences that are the functional equivalent of life without the possibility of release. But in my view, such silence does not justify inaction when the underlying principles and logic of the *Roper-Montgomery* line of cases apply with equal strength to a sentence that is the practical equivalent of life without parole. Accordingly, I believe that the Eighth Amendment of the United States Constitution prohibits a court from sentencing a juvenile to consecutive sentences of life with the possibility of release after 30 years unless the court determines that he or she belongs to the rarest of juvenile offenders—those whose crimes reflect permanent incorrigibility.

Other courts recognize this principle. For example, in *State v. Zuber*, the New Jersey Supreme Court held that the force and logic of the concerns discussed in the *Roper-Montgomery* line of cases "apply broadly: to cases in which a defendant commits multiple offenses during a single criminal episode; to cases in which a defendant commits multiple offenses on different occasions; and to homicide and non-homicide cases." 152 A.3d 197, 212 (N.J. 2017). As part of its analysis, the New Jersey Supreme Court explained that the "proper focus belongs on the amount of real time a juvenile will spend in jail and not on the formal label attached to his sentence." *Id.* at 201. Accordingly, it extended the *Roper-Montgomery* line of cases to a juvenile homicide defendant who

received an aggregate sentence of 75 years in prison and would not be eligible for parole until he was 85 years old. *Id.* at 204, 214.

In sum, I agree that the issue of whether Thompson's sentences should be served consecutively was beyond the scope of the remand in this case. But because Thompson may seek otherwise available relief under the Minnesota postconviction statute, I write separately to reaffirm two critical legal principles that apply to Thompson's sentences.

Accordingly, I respectfully concur.

ANDERSON, Justice (concurring).

I join in Part I of the concurrence of Justice Chutich.

THISSEN, Justice (concurring).

I join in the concurrence of Justice Chutich.

APPENDIX B

State of Minnesota
Fourth Judicial District
District Court
Hennepin County

STATE OF MINNESOTA,

Plaintiff,

v.

STAFON EDWARD THOMPSON,

Defendant.

Resentencing Order

[Filed March 26, 2019]

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

RESENTENCING ORDER

v.

27-CR-08-29634

Stafon Edward Thompson,
Defendant.

This matter came before the undersigned Judge of District Court on February 25, 2019 in response to an order requesting briefing on the appropriate scope of Mr. Thompson's resentencing. The State is represented by Assistant Hennepin County Attorneys Mark Griffin and Theresa White. Mr. Thompson is represented by Rachel Moran, Esq. and student attorneys Joseph Cavello and Krista Chaska.

This order addresses the scope of the Court's consideration of the remand from the United States District Court for the District of Minnesota to resentence Mr. Thompson for his role in the murder of two individuals in 2008. The remand was the result of changes in the United States Supreme Court's interpretation of constitutional protections for youthful offenders sentenced to mandatory life-without-the-possibility-of-release sentences. Both Mr. Thompson and his co-defendant, Brian Flowers, are coming before the Court for the identical sentences they received for the same offenses. But each case took a different route to this Court. In the end, this Court's review is limited by the manner in which the case reaches this Court.

FINDINGS OF FACT:

1. Stafon Thompson and Brian Flowers were charged on June 13, 2008 with two counts of Aiding and Abetting First-Degree Premeditated Murder and two counts of Aiding and Abetting First-Degree Murder while Committing Aggravated Robbery for the deaths of Katricia Daniels and her 10-year-old son, Robert Shepard. Mr. Thompson was seventeen at the time and Mr. Flowers was sixteen.

2. In early 2009, Mr. Thompson was convicted, and sentenced to two consecutive mandatory terms of life in prison without the possibility of release by Judge Mark Wernick. The

life sentences without the possibility of parole were the required minimum sentences at the time;[1] the sentences were presumptively concurrent, but permitted to be consecutive.[2]

3. Mr. Thompson appealed his conviction to the Minnesota Supreme Court on four grounds.[3] He claimed the trial court erred in admitting certain statements made to police and computer-generated images of the crime scene. He also claimed he received ineffective assistance because his trial counsel did not interview certain witnesses or administer polygraph tests. Finally, Mr. Thompson claimed a life sentence without the possibility of release for a 17-year-old was cruel and unusual punishment. The Minnesota Supreme Court rejected his arguments, affirmed his conviction, and upheld his sentence, rendering his sentence final in 2010.

Federal Proceedings and Case Law Developments

4. In 2012, the United States Supreme Court held in *Miller v. Alabama*,[4] sentencing juveniles to life without parole violates the Eighth Amendment prohibition on cruel and unusual punishment in most circumstances. *Miller* does not categorically bar such sentences, but requires a certain process to be followed before imposing a sentence of life without parole.[5] Mainly, a hearing must be held to consider alternative sentences in light of the offender's youth and other characteristics. At the time, the Supreme Court did not reach the issue of whether *Miller* should be applied retroactively.

5. Lacking federal guidance, the Minnesota Supreme Court held in 2013 the decision in *Miller* was a new procedural—rather than substantive—rule, and, therefore, should not be applied retroactively.[6] Consequently, Mr. Thompson lacked any further state remedies, and he filed a habeas petition claiming a singular ground for relief; his mandatory sentence of life imprisonment without parole violated the Eighth Amendment.[7] To remedy the infringement of his rights, Mr. Thompson asked the court to "[r]everse the sentence imposed and remand [his] case to the Minnesota district court for resentencing."[8] Nowhere in the petition does Mr. Thompson mention the consecutive nature of his sentences.

6. In 2014, the petition came before The Honorable Patrick J. Schiltz, on the report and recommendation of United States Magistrate Judge Jeffrey Keyes.[9] Judge Schiltz adopted

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[1] Minnesota Statute § 609.185 (2008).
[2] Minnesota Sentencing Guidelines Commission, Minnesota Sentencing Guidelines and Commentary, 68-69 (Updated August 1, 2008).
[3] *State v. Thompson*, 788 N.W.2d 485 (Minn. 2010).
[4] 567 U.S. 460 (2012).
[5] *Id*. at 482.
[6] *Chambers v State*, 831 N.W.2d 311 (2013).
[7] Thompson Petition (Exhibit B), pg. 6.
[8] *Id*. at 16.
[9] *Thompson v. Roy*, 13-CV-1524 (PJS/JJK) (March 25, 2014). (Exhibit C).

the recommendation to deny the petition but certify the question of whether *Miller* should apply retroactively.[10] Mr. Thompson appealed the question to the Eighth Circuit Court of Appeals, and was again denied relief in July of 2015.[11] Like the Minnesota Supreme Court, the Eighth Circuit found *Miller* to be a procedural rule and not applicable retroactively. Mr. Thompson appealed to the Supreme Court of the United States.

7. A few months after the Eighth Circuit denial of Mr. Thompson's appeal, the Supreme Court heard oral arguments on the retroactive application of *Miller* in *Montgomery v. Louisiana*.[12] The Supreme Court held *Miller* did, indeed, establish a new substantive constitutional rule of law and should be applied retroactively.[13] Shortly thereafter, the Supreme Court granted Mr. Thompson's petition for a writ of certiorari and remanded the case to the Eighth Circuit for further proceedings in light of *Montgomery*.[14] The Eighth Circuit followed suit, vacating the earlier opinion and remanding the case to the United States District Court of Minnesota to reconsider Mr. Thompson's habeas petition anew.[15]

Writ of Habeas Corpus Order & Remand

8. On remand and reconsideration, Judge Magistrate Hildy Bowbeer recommended, and Judge Patrick Schiltz later issued, the following order:

> Stafon Edward Thompson's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus [Doc. No. 1] be GRANTED IN PART and DENIED IN PART as follows:
>
> 1. The "without possibility of release" provision of Petitioner's life sentences be VACATED in accordance with *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016);
>
> 2. Petitioner's case be REMANDED to the Hennepin County District Court for resentencing; and
>
> 3. The petition be denied in all other respects.[16]

[10] *Id*.
[11] *Thompson v. Roy*, 793 F.2d 842 (2015).
[12] 136 S.Ct. 718. Argued on October 13, 2015.
[13] *Id*.
[14] *Thompson v. Roy*, 136 S.Ct. 1375 (Memo) (2016).
[15] *Thompson v. Roy*, 641 Fed.Appx. 681 (Mem) (2016).
[16] *Thompson v. Roy*, 2016 WL 7242566 (2016).

9. Judge Bowbeer noted the parties agreed Mr. Thompson's "mandatory sentences of life in prison without the possibility of parole are contrary to clearly established federal law."[17] There is no mention of the consecutive nature of his sentences nor a discussion of the constitutionality of such sentences.

10. The recommendation recommended the limited vacatur for the same reasons expressed in *Martin v. Smith*.[18] Mr. Martin was convicted of Murder in the First Degree and Crime Committed for the Benefit of a Gang. He was 17-years-old at the time of the offense in 2006. Subsequent to *Miller*, *Montgomery*, and *State v. Ali*[19], Mr. Martin's habeas petition was granted in part and denied in part. After initially vacating Mr. Martin's sentence "in accordance with *Miller v. Alabama* and *Montgomery v. Louisiana*,"[20] the court revised the order to say "The 'without release' provision of Petitioner's life sentence is vacated in accordance with *Miller v. Alabama* and *Montgomery v. Louisiana*." In its Amended Order in *Martin*, the court clarified its position, addressing both the unintended negative penal consequences of the misinterpretation of the order and the meaning of the original order:

> As the original order made clear, Petitioner's sentence is vacated in accordance with *Miller v. Alabama*, 132 S. Ct. 2455 (2012). *Miller* held that a juvenile could not be sentenced to mandatory life without the possibility of parole. 132 S. Ct. at 2475. Rather, a judge or jury needed to consider the specific circumstances of a case before imposing such a sentence. *Id.* *Miller* did not categorically disallow sentencing juveniles to life without parole or to life in general. *Id.*; *see United States v. Jefferson*, 816 F.3d 1016, 1018 (8th Cir. 2016) ("The Court in *Miller* did not hold that the Eighth Amendment categorically prohibits imposing a sentence of life without parole on a juvenile offender."). This Court's original order vacating Petitioner's sentence in accordance with *Miller* did not vacate his "entire life sentence." However, to avoid any negative consequences to Petitioner stemming from MNDOC's "interpretation" otherwise, the Court amends its order to explicitly narrow the vacatur.[21]

11. Following the remand of Mr. Thompson's matter to the Hennepin County District Court, the case was assigned to Judge Kerry Meyer. On February 1, 2017, Judge Meyer ordered Mr. Thompson's resentencing to be deferred until after the Minnesota Supreme Court decision in *State v. Ali*, on the joint agreement of the parties.[22] After *Ali* was decided in May 2017, the State Public Defender's office requested an additional deferment until after the Supreme Court decided whether or not to accept certiorari of *Ali*.[23] The Court granted the deferment and

[17] *Id*.
[18] 0:10-cv-4753-SRN-TNL.
[19] 855 N.W.2d 235 (Minn. 2014).
[20] Citations omitted.
[21] 0:10-cv-04753-SRN-TNL, Document 56, pg. 1.
[22] Order, dated February 1, 2017.
[23] Correspondence signed by Benjamin Butler, dated July 28, 2017.

further extended it to allow for an appeal to be heard on the appeal of Mr. Flowers' resentencing.

12. Mr. Flowers' resentencing was remanded to the Hennepin County District Court, and assigned to this Court. With the agreement of both Mr. Thompson and Mr. Flowers, in an attempt to bring both co-defendants under the same judge, Mr. Thompson's resentencing was re-assigned to this Court.[24] The parties participated in a joint status conference on November 26, 2018, where Mr. Thompson was represented by the Hennepin County Public Defenders' Office. Shortly thereafter, Mr. Thompson filed a petition to substitute counsel from the University of St. Thomas Law School clinic. The Court granted the motion and held a new status conference with the State and Mr. Thompson's counsel on January 22, 2019. Parties and the Court discussed scheduling and the potential need for expert witness funds.

13. In preparation for the anticipated need for expert witness funds, this Court more closely reviewed the record and the limited vacatur order from Judge Schiltz. In response to this research, the Court ordered briefing on the appropriate scope of Mr. Thompson's resentencing.

Argument of the Parties

14. Mr. Thompson argues the Court should undertake a full hearing exploring the culpability and criminality of Mr. Thompson, in line with the decision in *Flowers v. State*.[25] He relies on a number of theories to support his assertion. First, he argues the limited vacatur order does not limit this Court's authority to consider concurrent or consecutive sentences. Next, he presents two equitable. First, the parties and District Court have acted as if a full resentencing hearing would take place, so it would be unfair to proceed otherwise. Second, his co-defendant, Mr. Flowers, is required to have full resentencing hearing under *Warren*, so it would be unfair to treat the two defendants differently. Finally, Mr. Thompson argues both *Warren* and *Ali* require an examination of an array of factors relating to the defendant's culpability and criminality before imposing consecutive sentences.

15. The State argues Judge Schuiltz's limited vacatur order should be interpreted to allow only the change of Mr. Thompson's sentence from consecutive life sentences without the possibility of release to consecutive life sentences with the possibility of release. Further, the State argues Mr. Thompson is barred from raising the consecutive nature of his sentences in state court proceedings anew due to Mr. Thompson's failure to bring the issue on direct appeal. Coupled with the limited scope of *Miller* as the basis for the federal court action, the State argues this Court is severely limited in how it may proceed.

[24] Notice of Case Reassignment, dated November 7, 2018.
[25] 907 N.W.2d 901.

CONCLUSIONS OF LAW:

16. The task before the Court is to interpret and carry out Judge Schiltz's order. In doing so, the Court looks to the purpose of the federal habeas corpus petition, the role and duty of the District Court in carrying out an order to remand, and the language of Judge Schiltz's order.

Purpose of Federal Habeas Proceedings

17. The purpose of federal habeas corpus relief is to address the violation of a state-prisoner's constitutional rights.[26] Such relief is warranted in three situations: (1) when a state court decision was contrary to established federal law; (2) when a state court decision involved an unreasonable application of established federal law; or (3) when a state court decision was based on unreasonable determination of facts.[27] "Contrary to" established federal law means either the state court applies a rule contradicting the governing federal precedent or the state court "confronts a set of facts that are materially indistinguishable" from a Supreme Court case and arrives at a different result.[28]

18. As stated in Judge Bowbeer's recommendation, *Miller* was the basis for Mr. Thompson's habeas petition. *Miller* announced a requirement for hearings before juveniles could be sentenced to life without the possibility of release sentences.[29] Here, as the federal courts point out, Mr. Thompson was not afforded such a hearing under Minnesota's mandatory sentencing guidelines.[30] Further, the Supreme Court held in *Montgomery* the *Miller* rule should be applied retroactively to those sentenced for juvenile crimes to life without possibility of release. The federal courts and parties all agree Mr. Thompson's sentence must be amended to "with the possibility of release."

19. In *Miller/Montgomery* the Supreme Court limited its holdings to the issue of release. At this point in time, the Supreme Court has yet to address in any case the issue of whether consecutive sentences of life with the possibility of release for juvenile offenders violates the Eighth Amendment. Lacking any further direction, the Minnesota Supreme Court has refused to extend the *Miller/Montgomery* rule to multiple consecutive sentences of life with the possibility of release.[31] This issue has not been addressed in either state or federal law, as recognized by Justice Chutich in her *Flowers* concurrence, recognizing it as an "open question" of law both federally and in Minnesota.[32] Because the Minnesota Supreme Court—the highest

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[26] 28 U.S.C. § 2554(a).
[27] 28 U.S.C. § 2254(d)(1), (2).
[28] *Williams v. Taylor*, 592 U.S. 362, 405-06 (2000).
[29] *Miller*.
[30] Minnesota Sentencing Guidelines (2008).
[31] *Ali II*, 895 N.W.2d 237, 246 (2018).
[32] "I write separately to emphasize that it is an open question whether the United States Supreme Court will apply its 126 year-old dictum in *O'Neil v. Vermont*, 144 U.S. 323, 331, 12 S.Ct. 693, 36 L.Ed. 450 (1892), to

court of this State, which this court must follow—has specifically not taken action to find consecutive life-with-possibility-of-release sentences for juvenile offenders is included within the ambit of *Miller/Montgomery*, it would be improper for this Court to do so.

20. The unsettled nature of the law leaves the consecutive-versus-concurrent debate unreachable by a federal habeas petition. Habeas petitions can only be granted when an established rule of law or precedent is violated. Logically, without a federal precedent on the issue of consecutive versus concurrent sentences, a habeas petition could not be granted on such grounds.

21. The next point of inquiry is whether or not a habeas petition granted on different grounds allows this Court to reopen the entire sentencing package, given the limited vacatur.

Role and Duty of District Court

22. Courts hold no inherent power to modify sentences.[33] "A [district] court's duty on remand is to execute the mandate of the remanding court strictly according to its terms."[34] Though a district court may exercise broader discretion under the sentencing-package doctrine, either as a result of a direct appeal or a collateral attack,[35] it cannot act in a way that is "inconsistent with the remand instructions provided."[36]

23. Here, the Court has no inherent authority to resentence Mr. Thompson, except as instructed.[37] The Court is limited in opening the sentencing package, removing the

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a *juvenile* offender's Eighth Amendment challenge to consecutive sentences that are the functional equivalent of life without the possibility of release. Tellingly, since the United States Supreme Court's landmark decision in *Roper v. Simmons*, 543 U.S. 551, 569–73, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (acknowledging fundamental differences between juveniles and adults), no state supreme court or federal circuit court has adopted the *O'Neil* dictum in a *juvenile* sentencing case. (Footnote 1: In *Ali II*, 895 N.W.2d 237, we did not adopt the *O'Neil* dictum, which discusses the issue of whether consecutive sentences should be viewed separately when conducting a proportionality analysis under the Eighth Amendment. Instead, we held "that absent further guidance from the Court, we will not extend the *Miller/Montgomery* rule to include ... juvenile offenders who are being sentenced for multiple crimes, especially when ... the issue of whether consecutive sentences should be viewed separately when conducting a proportionality analysis under the Eighth Amendment *remains an open question*." *Id.* at 246)."

[33] *Reesman v. State*, 449 N.W.2d 489, 490 (Minn. Ct. App. 1989)

[34] *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn.App.1988).

[35] *State v. Hutchins*, 856 N.W.2d 281, 286 (Minn. Ct. App. 2014) "If the district court receives no specific instructions as to how it must fulfill the remanding court's order, the district court has discretion to proceed in any manner consistent with the remand order."

[36] *Dobbins v. State*, 845 N.W.2d 148, 156 (Minn. 2013)

[37] Likewise, the Court holds no authority to resentence Mr. Flowers other than as directed on remand. The difference between the two cases matters. Mr. Flowers came to the Court initially on remand from a fully-granted federal habeas petition. Mr. Thompson's federal habeas petition was only granted with a limited vacatur. After a first attempt at Mr. Flower's resentencing, the issue was appealed to the Minnesota Supreme Court and returned to this Court on remand with further, specific instructions. Here, Mr. Thompson does not have such a specific order. The Court expects this order to be appealed, and will properly follow any further instructions provided by the

unconstitutional portion identified by the vacatur, and leaving the rest of the contents intact. It cannot, sua sponte, tear open the package, move around everything found within, and attempt to tape it back together. Given the specific instructions of the remand, the Court's task is more akin to a surgeon deftly opening the body, removing the offending portion, and suturing it back together with as little damage as possible.

24. The stark fact remains—Mr. Thompson was properly convicted of two heinous murders and must be sentenced in line with such convictions and the Constitution. Here, Judge Schiltz's order provides specific instructions on how this Court must fulfill the remand order in order to bring Mr. Thompson's sentencing in line with the Constitution.

25. The equitable argument by Mr. Thompson pointing to how the parties viewed the breadth of the remand does not alter this legal determination. It is unfortunate it took as long as it did to reach this point, but the legal roadmap requires this destination. This Court is bound by the remand.

Judge Schiltz's Order

26. The parties do not dispute Judge Schiltz's order controls the scope and context of Mr. Thompson's resentencing. Likewise, no one disputes the matter should be before the District Court for resentencing. At the heart of the issue before the Court is the interpretation of the limited vacatur: "The 'without possibility of release' provision of Petitioner's life sentences be VACATED….The petition be denied in all other respects."[38] Such language provides the Court with two directions: (1) the limits upon the vacatur and resentencing; and (2) the limited grant of the petition. Both are important in determining how to proceed.

27. First, it is important to understand if Mr. Thompson's petition is granted in full or only in part. Mr. Thompson's original prayer for relief requests the federal court to "[r]everse the sentence imposed and remand Thompson's case to the Minnesota district court for resentencing." The federal court did not fully grant the petition, but instead denied all relief beyond the limiting instruction. It logically follows, if some part of the petition is denied, the original prayer for relief cannot be fully granted. Mr. Thompson would like the Court to ignore this portion of the order, and fully grant the petition without limit. The Court cannot do so.

28. Next, the Court must identify the limited scope of relief. Judge Schlitz's order adopts Judge Bowbeer's recommendation in its entirety. Her recommendation outlines the constitutional issue regarding life sentences without the possibility of release, but does not touch on the consecutive nature of the sentences. It does provide some guidance in its reference to the similar order in *Martin*. While the opinion in *Martin* does discuss the

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Minnesota Supreme Court regarding how to proceed if the Supreme Court decides to address the consecutive-versus-concurrent sentences within the context of *Miller*, *Montgomery*, or another legal doctrine.

[38] *Supra* ¶ 8.

unintended penal consequences of the original order, as Mr. Thompson suggests, it does not suggest the penal consequences were the only reason it was clarified or that the clarification undermined the intended meaning of the original order. Rather, it clarifies the original order "did not vacate his 'entire life sentence.'"[39] Given the strong reliance on *Martin* as the reason for the limited vacatur, it is proper to infer Judge Schiltz's order should also be understood as not vacating Mr. Thompson's entire life sentences, but only the "without possibility of release" portion thereof.

29. Further, the plain language of the order provides only for a limited vacatur. The plain language and more contextual analysis of the order both support the same outcome, the Court finds Judge Schiltz's order does provide specific instruction limiting the resentencing to the singular issue of the "possibility of release."

30. Thus, before the Court is left only the remaining question of whether or not Mr. Thompson should be sentenced to two consecutive life sentences with or without the possibility of release. The State has not made a motion, requested a hearing, or made any indication it seeks to establish Mr. Thompson is "of the rare sort of juvenile offender"[40] deserving of a life without the possibility of release sentence. Thus, in line with Judge Schiltz's limited vacatur order, the Court revises Mr. Thompson's sentence from two consecutive terms of life without the possibility of release to two consecutive terms of life with the possibility of parole after 30 years.[41]

Now, therefore,

IT IS ORDERED:

1. Mr. Thompson's resentencing is restricted to the issue of life without the possibility of release.

2. Mr. Thompson is sentenced to two life sentences with the possibility of release after 30 years, to be served consecutively.

3. All further hearings in this matter are cancelled, and all pending motions deemed moot.

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[39] *Martin* order.

[40] *Miller.*

[41] The Minnesota Supreme Court has found the appropriate remedy for juveniles sentenced to life without release is sentencing under the revival of the constitutional, 2004 sentencing-statute—life with the possibility of release after 30 years. *State v. Ali*, 855 N.W.2d 235, 267 (Minn. 2014). Consistent with the logic of the later *State v. Ali,* Mr. Thompson would be eligible for release after 60 years. *895 N.W.2d 237, 241 (Minn. 2017), cert. denied sub nom. Ali v. Minnesota, 138 S. Ct. 640, 199 L. Ed. 2d 543 (2018)* (finding Mr. Ali would be eligible for release after 90 years as a result of three consecutive life with the possibility of release sentences).

BY THE COURT

DATED: March 26, 2019

_____

William H. Koch
Judge of District Court

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STAFON EDWARD THOMPSON,

Petitioner,

v.

TOM ROY, Minnesota Commissioner of Corrections,

Respondent.

Order Adopting Report and Recommendation

[FILED DECEMBER 14, 2016]

(26a)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Stafon Edward Thompson,

Petitioner,

v.

Tom Roy, Minnesota Commissioner of Corrections,

Respondent.

Case No. 13-cv-1524 (PJS/HB)

ORDER

Benjamin J. Butler, Office of the Minnesota Appellate Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104, for Petitioner

J. Michael Richardson and Jean E. Burdorf, Hennepin County Attorney's Office, 300 South 6th Street, Suite C-2000, Minneapolis, MN, for Respondent

PATRICK J. SCHILTZ, United States District Judge

This matter comes before the Court on the Report and Recommendation ("R&R") dated November 23, 2016, of United States Magistrate Judge Hildy Bowbeer. Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the record and will adopt the R&R in its entirety. Accordingly, Stafon Edward Thompson's Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus [Doc. No. 1] is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The "without possibility of release" provision of Petitioner's life sentences are **VACATED** in accordance with *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016);

2. Petitioner's case is **REMANDED** to the Hennepin County District Court for resentencing; and

3. The petition is denied in all other respects.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 12/14/16

s/Patrick J. Schiltz
PATRICK J. SCHILTZ
United States District Judge

APPENDIX D

MINNESOTA SUPREME COURT

STATE OF MINNESOTA,

Respondent,

v.

STAFON EDWARD THOMPSON,

Appellant.

Excerpt from Mr. Thompson's Minnesota Supreme Court Brief, Issue B, pp. 19-24

[FILED SEPTEMBER 9, 2020]

SUPREME COURT CASE #A19-0717
STATE OF MINNESOTA
IN MINNESOTA SUPREME COURT

STATE OF MINNESOTA,
Respondent

vs.

STAFON EDWARD THOMPSON,
Appellant

APPELLANT'S BRIEF AND ADDENDUM

ORAL ARGUMENT REQUESTED

HENNEPIN COUNTY ATTORNEY'S OFFICE
Michael Freeman
Hennepin County Attorney

Mark Griffin
Senior Assistant County Attorney
Attorneys for Respondent
C-2000 Government Center
300 South 6th Street
Minneapolis, MN 55487
(612) 348-2146

UNIVERSITY OF ST. THOMAS LEGAL SERVICES CLINIC
Rachel Moran*
Attorney for Appellant
30 South 10th Street Suite 100
Minneapolis, MN 55403-2009
(651) 962-4810
rmoran@stthomas.edu
#0399859

*University of St. Thomas School of Law students Kailey Meadows and Megan Kratzke, as well as summer legal intern Lourdes Regules Verduzco, contributed research and editing to this brief.

Even more recently, when the trial court set aside three days for Stafon's resentencing hearing and ordered his counsel to submit motions for expert funding, neither the State nor the court suggested that three days was too long, or that experts were unnecessary because the federal court had already decided the terms of Stafon's sentences. (Docs. 25, 28, 31) The consistent behavior of all parties after the federal district court's 2016 report confirms what the *Martin* decision already indicated: that the federal court never intended to deny Stafon a resentencing hearing, and no one until January of 2019 understood it as doing so. The trial court erred in fixating on the last few paragraphs of the report and interpreting them as precluding a resentencing hearing, rather than reading those paragraphs in the context of the entire report and the parties' joint request for a resentencing hearing. This Court should reverse the trial court's order and remand for a resentencing hearing, with instructions that the trial court consider mitigating evidence before deciding whether to impose concurrent or consecutive sentences.

B. The federal district court could not have mandated consecutive sentences, because the federal habeas power does not authorize federal courts to dictate the terms of state court sentences.

In denying Stafon's request for a resentencing hearing, the trial court concluded that the federal district court's order barred such a hearing because the order vacated only the "without possibility of release" portions of Stafon's sentences. (Doc. 42 at 3, 8-9) The trial court believed that the federal court's order mandated two consecutive life sentences with the possibility of release after a total of 60 years, and that it was bound to impose the new sentences the federal court crafted. *Id.* at 7-9.

The trial court's reasoning was based on a mistaken understanding of federal habeas law. Federal habeas corpus petitions provide a vehicle for limited federal court jurisdiction over state convictions in which the petitioner alleges that the State is wrongly confining him pursuant to an unconstitutional conviction or sentence. *See* 28 U.S.C. §2254(a); *Fay v. Noia*, 372 U.S. 391, 430 (1963). The phrase "habeas corpus" derives from a Latin term referencing custody over a person's body, and that is literally what federal habeas petitions are for: arguing that the State's physical custody of the petitioner violates federal law. *Fay*, 372 U.S. at 430; *see also* BLACK'S LAW DICTIONARY (11th ed. 2019), "*habeas corpus"* (translating the Latin term "habeas corpus" as "that you have the body").

Fay is the United States Supreme Court's seminal decision addressing the boundaries of federal habeas authority over state criminal convictions. *See* 372 U.S. at 394 ("This case presents important questions touching the federal habeas corpus jurisdiction . . . in its relation to state criminal justice."). After a lengthy discussion regarding the history of the habeas writ and federalism principles that favor deference to state courts, the Court concluded that federal habeas jurisdiction did indeed extend to state prisoners. *Id.* at 399-426. But that jurisdiction has limitations. On review of a habeas petition filed by a state prisoner, the federal court's authority is limited to agreeing or denying that the petitioner is wrongly confined. *Id.* at 430-31. If the court agrees that the petitioner is wrongly confined, it may order the State to either correct the unconstitutional sentence or release the petitioner. *Id.* (federal habeas courts have the right to "enforce the right of personal liberty [over state prisoners]; when that right is denied and a person confined, the federal court has the power to release him."); *see also, e.g.*, *Henderson v. Frank*, 155 F.3d 159,

168 (3d Cir. 1998) (ordering release of prisoner "conditioned on the state's opportunity to correct constitutional errors"); *Brewer v. Williams*, 430 U.S. 387, 406 n.13 (1977) (suspending issuance of habeas writ until State had opportunity to correct constitutional error).

What the federal court cannot do is correct the unconstitutional sentence itself, or dictate how the State must correct the unconstitutional sentence. *Fay*, 372 U.S. at 430-31. The *Fay* Court made this point explicitly, holding that while a federal habeas court can order a state prisoner's release, "it has no other power; it cannot revise the state court judgment; it can act only on the body of the petitioner." *Id.*; *see also Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.").

Courts continue to rely on *Fay* when analyzing the limited remedies a federal habeas court can order in cases involving state prisoners. Shortly after *Fay* was decided, the Eighth Circuit Court of Appeals cited *Fay* in reasoning that the federal habeas power over state judgments is limited to "acting as to the restraint involved and not of dealing with the judgment existing." *Waldon v. State of Iowa*, 323 F.2d 852, 853 (8th Cir. 1963) (emphasizing the sensitivity federal habeas courts must show with respect to state court convictions).

The following decade, the Supreme Court in *Preiser* cited *Fay* for the proposition that the purpose of a habeas petition is to "inquir(e) into illegal detention with a view to an order releasing the petitioner." 411 U.S. at 484 (quoting *Fay*, 372 U.S. at 399 n.5). *Preiser*

held that habeas petitions are "the specific instrument to obtain release from [unlawful] confinement." 411 U.S. at 486. The Seventh Circuit subsequently relied on *Preiser* for the principle that habeas corpus "is not a compensatory remedy. The object is not to make whole someone who has suffered a loss; it is to determine whether a person is being confined in violation of basic norms of legality." *See Allen v. Duckworth*, 6 F.3d 458, 460 (7th Cir. 1993). Each of these cases reaffirm the *Fay* holding that federal habeas courts can grant petitions and order prisoners' conditional release, but they cannot fashion or mandate a particular state court remedy for the constitutional error.

The Third Circuit's subsequent decision in *Henderson v. Frank* elucidated *Fay*'s restriction on federal habeas authority even more clearly. 155 F.3d 159 (3d Cir. 1998). *Henderson* involved a state court prisoner who filed a meritorious habeas petition based on the state's failure to ensure a valid waiver of counsel at a suppression hearing. *Id.* at 162, 167. The parties disputed the proper habeas remedy for such a violation, and the court began its analysis by "addressing the precise nature of federal court habeas corpus jurisdiction over petitions emanating from criminal convictions in the state court system." *Id.* at 167. The court then cited *Fay* for the now-familiar proposition that habeas authority is limited to ordering the prisoner's release, and does not extend to revising the state court's judgment. *Id.* at 168 (quoting *Fay*, 372 U.S. at 430-31). Relying on *Fay*, the court concluded that the "federal habeas power is limited, first, to a determination of whether there has been an improper detention by virtue of the state court judgment; and second, if we find such an illegal detention, to ordering the immediate release of the prisoner." *Henderson*, 155 F.3d at 168.

Most recently, the Fourth and Fifth Circuits also reiterated the *Fay* holding that federal habeas courts have no authority to modify the terms of a state court judgment. *See Winston v. Pearson*, 683 F.3d 489, 507 (4th Cir. 2012); *Woodfox v. Cain*, 789 F.3d 565, 569 (5th Cir. 2015). In *Winston*, the Fourth Circuit addressed the proper remedy for a state court prisoner who was improperly sentenced to death without effective assistance of counsel. 683 F.3d at 492-93 (citing *Henderson*, 155 F.3d at 168). The Fourth Circuit held that, after granting the habeas petition and holding the sentence unconstitutional, the federal district court "had no authority to fashion a particular procedure to remedy" the improper death sentence. 683 F.3d at 507. Instead, the court could only remand for resentencing, and "leave it to the [State's] prerogative to craft a remedy consonant with the strictures of state law." *Id.* at 507.

Woodfox involved a State appeal after a federal district court granted a state prisoner's habeas petition and took the rare step of ordering unconditional release without giving the State an opportunity to correct its constitutional error. 789 F.3d at 567. Reversing the federal district court's usurpation of state authority, the Fifth Circuit reasoned that federalism principles prevented the habeas court from interfering with the state court's judgment. *Id.* at 569. The court concluded that, while the federal court could grant the habeas petition and order the state to either release the prisoner or correct its constitutional error, "the precise remedy is generally left to the state." *Id.* (citing Brian R. Means, FEDERAL HABEAS MANUAL: A GUIDE TO FEDERAL HABEAS CORPUS LITIGATION § 13:4 at 1371 (2014)) (citing multiples cases for proposition that a federal habeas court cannot dictate the precise remedy for state error).

These limitations on the federal court's habeas authority over state prisoners—preventing federal courts from modifying or fashioning the specific terms of a state judgment—mean that the federal district court in Stafon's case had no authority to "revise the state court judgment" (*see Fay*, 372 U.S. at 431) by striking portions of Stafon's sentences and refashioning the sentences into something more constitutional. Instead, the federal district court could only recognize that Stafon's LWOR sentences were unconstitutional—which no one questions—and order the State to either correct the sentences or release Stafon. *Cf. Henderson*, 155 F.3d at 168; *Winston*, 683 F.3d at 507; *Woodfox*, 789 F.3d at 567.

The Hennepin County District Court, in concluding that the federal court's order mandated consecutive sentences and prevented the trial court from exercising discretion, misunderstood the limits of the federal habeas power. (Doc. 42 at 8-9) The trial court believed it must defer to the federal court's imposition of specific sentences, when actually its prerogative was to craft new sentences consistent with both state law and the United States Constitution. *See Winston*, 683 F.3d at 507; *Woodfox*, 789 F.3d at 569. While the trial court cited two Minnesota state cases for the idea that the trial court's role on remand is to "execute the mandate of the remanding court strictly according to its terms," those cases involved remand orders from state courts. *Id.* at 7 (citing *Duffey v. Duffey*, 432 N.W.2d 473 (Minn. Ct. App. 1988); *Dobbins v. State*, 845 N.W.2d 148 (Minn. 2013)). They shed no light on the limitations of the federal habeas power or the state court's role in correcting unconstitutional sentences.

APPENDIX E

State of Minnesota
Fourth Judicial District
District Court
Hennepin County

STATE OF MINNESOTA,

Plaintiff,

v.

STAFON EDWARD THOMPSON,

Defendant.

Excerpt from Mr. Thompson's Reply To State's February 15 Additional Briefing, pp. 1-2

[Filed February 25, 2019]

(37a)

FOURTH JUDICIAL DISTRICT, HENNEPIN COUNTY STATE OF MINNESOTA	
STATE OF MINNESOTA v. STAFON EDWARD THOMPSON	▲ COURT USE ONLY ▲
Firm: University of St. Thomas School of Law Legal Services Clinic Attorneys: Joseph Cavello and Krista Chaska Address: 30 South 10th St. Suite 100 Minneapolis, MN 55403 Phone: (651) 962-4810 E-mail: ipc-cave3820@stthomas.edu ipc-chas2109@stthomas.edu Atty. Reg.: Student attorneys	Case No. 27-CR-08-29634 Next Court Date: May 29 - 31, 2019 Sentencing Hearing
Mr. Thompson's Response to State's February 15 Additional Briefing	

I. The State's new interpretation of Judge Schiltz's order is not consistent with the limited power of a federal habeas court when issuing an order for resentencing.

The State's interpretation of Judge Schiltz's order asks this Court to read into Judge Schiltz's order a power beyond the limited scope that is granted to a federal habeas court when issuing a resentencing order. The State argues that Judge Schiltz's order both grants Mr. Thompson's petition for relief, while also giving specific instructions about how the sentencing court should resentence him. (St. Br. 5-6). To issue an order with such specific instructions goes beyond the power of a federal habeas court.

The Federal Habeas Manual explains that a federal district court's discretion is limited when choosing the appropriate remedy for a petitioner. Federal Habeas Manual § 13:5 and cases cited within (attached as Exhibit R). Moreover, a federal district court "lacks the power in habeas to

revise a challenged state court judgment . . . in order to correct constitutional errors." *Id.* Instead, "the precise remedy is generally left to the state" because the federal district court must "avoid directly interfering with a state court's conduct of state litigation." *Id.* This limited scope makes sense, given that a habeas petition is limited to requests for relief from being held in prison unlawfully. When reviewing a habeas petition, a federal habeas court may either accept or deny that the petitioner is being held unlawfully. If the habeas court accepts, then it may remand for resentencing or release, but it may not instruct the court on how to revise the sentence, and must instead leave the determination of a precise remedy to the sentencing court. *See id.*

Here, the State's newly proposed interpretation of the order does not take into account the limited scope of Judge Schiltz's power. To specifically instruct this Court to resentence Mr. Thompson to consecutive sentences would be an inappropriate intrusion into this Court's authority to determine the proper remedy for Mr. Thompson's unconstitutional sentences. Therefore, the correct interpretation, as it has been understood for more than two years, is that Judge Schiltz remanded Mr. Thompson's sentence to this Court so that it could use its own discretion in applying the appropriate remedy for resentencing.

II. Judge Schiltz's order has been understood by all parties—for more than two years—as requiring a full resentencing hearing to determine whether concurrent sentences are appropriate.

Judge Schiltz's order remanding to the Hennepin County District Court for resentencing has been understood by all parties for more than two years as requiring a full resentencing hearing. In his opening brief, Mr. Thompson argued that Judge Schiltz's order requires a full resentencing hearing, and pointed to numerous communications between parties, as well as court filings, that support his argument. (Thompson Br. 7-9). Contrarily, the State argues that the plain reading of Judge Schiltz's order prohibits this Court from imposing concurrent sentences. (State Br. 6).

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STAFON EDWARD THOMPSON,

Petitioner,

v.

TOM ROY, Minnesota Commissioner of Corrections,

Respondent.

Meet and Confer Statement

[Filed November 9, 2016]

(40a)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Stafon Edward Thompson

Petitioner

v.

Tom Roy, Commissioner of Corrections

Defendant(s)

MEET AND CONFER STATEMENT

Case No: 13-cv-01524 (PJS/HB)

We certify that on November 3, 7, and 8, 2016, the parties met via e-mail to confer about the status of the above-named case. As a result of that conference, the parties jointly recommend that the Court resolve the case as follows:

1. In light of the United States Supreme Court's decision in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), the Court should recommend that the petition for writ of habeas corpus (ECF # 1) be GRANTED;

2. The Court should recommend that petitioner's mandatory sentences of life in prison without possibility of release be VACATED; and

3. The Court should recommend that the case be REMANDED to the Hennepin County District Court for resentencing consistent with *Miller v. Alabama*, 132 S.Ct. 2455 (2012), and *Montgomery*, 577 U.S. ___ (2016).

Dated: November 9, 2016

/s/
Benjamin J. Butler
Assistant State Public Defender
Minnesota Lic. No. 0314985
Office of the Minnesota Appellate Public Defender
540 Fairview Avenue North, Suite 300
St. Paul, MN 55104
(651) 201-6700
Ben.Butler@pubdef.state.mn.us

ATTORNEY FOR PETITIONER

Dated: November 9, 2016

/s/
J. Michael Richardson
Mike.Richardson@hennepin.us
Assistant Hennepin County Attorney

300 South Sixth Street, Suite C-2000
Minneapolis, MN 55487

ATTORNEY FOR RESPONDENT