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**IN THE
SUPREME COURT OF THE UNITED STATES**

ANTONIO M. RAMIREZ, Petitioner,

vs.

CINDY GRIFFITH, Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

PETITIONER'S APPENDIX

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INDEX TO APPENDICES

A.	Judgment of the United States Court of Appeals, Eighth Circuit, in <i>Antonio M. Ramirez v. Cindy Griffith</i> , No. 17-1478, dated August 3, 2017	1a
B.	Order of the United States Court of Appeals for the Eighth Circuit in <i>Ramirez v. Griffith</i> , No. 17-1478, denying the petition for rehearing en banc and for rehearing by the panel, dated October 4, 2017	2a
C.	Judgment of the United States District Court for the Western District of Missouri in <i>Ramirez v. Griffith</i> , No. 16CV01058-W-DV, dated December 2, 2016, and entered December 5, 2016	3a
D.	Order of the United States District Court for the Western District of Missouri in <i>Ramirez v. Griffith</i> , No. 16CV01058-W-DV, denying Ramirez' petition under § 2254 for a writ of habeas corpus, dated December 2, 2016	4a
E.	Application for Certificate of Appealability, <i>Ramirez v. Griffith</i> , No. 17-1478 (8 th Cir. filed Mar. 28, 2017)	10a
F.	Order of the Missouri Supreme Court issued in <i>State ex rel. Ramirez v. Steele</i> , No. SC93255, denying Ramirez's state petition for writ of habeas corpus, dated July 19, 2016	18a
G.	Order of the Missouri Supreme Court in <i>State ex rel. Ramirez v. Steele</i> , No. SC93255, sustaining, in part, Ramirez's state petition for habeas corpus, dated March 15, 2016	19a

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-1478

Antonio M. Ramirez

Petitioner - Appellant

v.

Cindy Griffith, Potosi Correctional Center Warden

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-01058-DW)

JUDGMENT

Before WOLLMAN, BOWMAN and COLLOTON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

August 03, 2017

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-1478

Antonio M. Ramirez

Appellant

v.

Cindy Griffith, Potosi Correctional Center Warden

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cv-01058-DW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 04, 2017

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ANTONIO RAMIREZ,

Petitioner,

v.

CINDY GRIFFITH, Potosi Correctional
Center Warden,

Respondent.

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Case No. 16-CV-01058-W-DW

ORDER

Before the Court is the Petitioner Antonio Ramirez's (the "Petitioner") Petition Under 28¹ U.S.C. § 2254 for Writ of Habeas Corpus by Person in State Custody (the "Petition"). See Doc. 1. The Respondent filed a brief in opposition (Doc. 4), and Petitioner filed a Traverse (Doc. 7). As set forth below, the Petition is DENIED.

I.

Under § 2254, a petitioner may challenge a state court ruling as: "[1] contrary to, or [2] . . . an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or [3] . . . a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Thai v. Mapes, 412 F.3d 970, 975 (8th Cir. 2005) (citing and quoting 28 U.S.C. § 2254(d)(1), (d)(2)). "This is a difficult to meet and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." Cullen v. Pinholster, 563 U.S. 170, 181 (2011) (citations and quotations omitted). Additionally, a petition

¹ The title of the Petition incorrectly cites Title 18 of the United States Code.

for habeas corpus cannot be granted unless the petitioner first exhausted his available remedies in state court. Middleton v. Roper, 759 F.3d 867, 868-69 (8th Cir. 2014).

II.²

In 1999, Petitioner was convicted in the Circuit Court of Cass County, Missouri of first-degree murder for the death of Florence Walker. Under the then-applicable Missouri law, Petitioner faced two possible punishments: death, or life imprisonment without the possibility of parole. Because the prosecutor did not seek the death penalty, the trial judge was required to—and did—impose a sentence of life imprisonment without the possibility of parole.

Petitioner was 17 years old at the time of the offense; he was born on March 29, 1980, and murdered Ms. Walker on September 19, 1997.³ Many years later, the United States Supreme Court decided cases that addressed the permissible range of punishment for juvenile offenders. The Petitioner relies on two of those cases, and they are discussed below.

III.

On June 25, 2012, the Supreme Court decided Miller v. Alabama, 132 S. Ct. 2455 (2012). Miller held that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” Id. at 2460. The Court found that such a sentence impermissibly fails to consider the juvenile’s “chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences,” the “family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional,” the “circumstances of the homicide offense,” and “the possibility of rehabilitation[.]” Id. at 2468.

² The following facts are taken from the parties’ briefs and exhibits, without further quotation or attribution unless otherwise noted. Only those facts necessary to resolve the Petition are discussed, and those facts are simplified to the extent possible.

³ In the same criminal case, Petitioner was sentenced to a concurrent term of life imprisonment for the offense of armed criminal action.

Four years later, the Supreme Court decided Montgomery v. Louisiana, 136 S. Ct. 718 (2016). Montgomery held that Miller announced a new substantive constitutional rule that applied retroactively to cases on collateral review. Importantly, the Court clarified that this retroactive application “does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” Id. at 736. As to this remedy, the Court cited a Wyoming statute that allows a juvenile convicted of homicide to be eligible for parole after 25 years of incarceration. Id. (citing Wyo. Stat. Ann. § 6-10-301(c) (2013)).

On March 26, 2013, Petitioner filed a Petition for Writ of Habeas Corpus with the Missouri Supreme Court. Relying on Miller, Petitioner argued that his sentence of life imprisonment without the possibility of parole violated the Eighth Amendment. In a one-page Order dated July 19, 2016, the Missouri Supreme Court denied the petition. The Order cited Senate Bill 590, which was passed by the Missouri legislature and signed into law on July 13, 2016.

In relevant part, Senate Bill 590—which is codified in Missouri Revised Statute § 558.047—states that:

Any person sentenced to a term of imprisonment for life without eligibility for parole before August 28, 2016, who was under eighteen years of age at the time of the commission of the offense or offenses, may submit to the parole board a petition for a review of his or her sentence, regardless of whether the case is final for purposes of appeal, after serving twenty-five years of incarceration on the sentence of life without parole.

See Mo. Rev. Stat. § 558.047.1(1).

IV.

Following the Missouri Supreme Court's denial of his petition, Petitioner timely filed the pending Petition under § 2254. As in his state court petition, Petitioner relies on Miller and raises a single ground for relief. Petitioner argues that his "sentence of life imprisonment without parole, imposed for a murder that he committed when he was 17 years old, violates the Eighth and Fourteenth Amendments to the United States Constitution because it was mandatorily imposed without providing him with an individualized sentencing hearing." Doc. 1, p. 4. Despite Senate Bill 590, Petitioner claims that "Missouri's parole scheme neither ensures that a juvenile offender will receive the individualized sentencing hearing mandated by Miller, nor that he or she will have a reasonable opportunity for release." Id., p. 6-8.

After reviewing the record, the Court rejects Petitioner's arguments for three primary reasons. First, Petitioner is correct that Miller and Montgomery invalidated his sentence of life imprisonment without the possibility of parole. Montgomery, however, expressly held that "[a] State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." Montgomery, 136 S. Ct. at 736.

Under Montgomery, Missouri remedied Petitioner's Miller violation by enacting Senate Bill 590. This statute provides that Petitioner is now eligible for parole "after serving twenty-five years of incarceration on the sentence of life without parole." Mo. Rev. Stat. § 558.047.1(1). Because Petitioner is eligible for parole under this statute, any Miller claim is moot.

Petitioner argues that his claim is not moot because Missouri's parole laws and procedures do not provide him the "individualized" consideration that was contemplated by Miller and Montgomery. This argument is rejected. Senate Bill 590 expressly provides that—

among other enumerated factors⁴—the parole board shall consider the following factors under Mo. Rev. Stat. § 565.033:

- (1) The nature and circumstances of the offense committed by the defendant;
- (2) The degree of the defendant's culpability in light of his or her age and role in the offense;
- (3) The defendant's age, maturity, intellectual capacity, and mental and emotional health and development at the time of the offense;
- (4) The defendant's background, including his or her family, home, and community environment;
- (5) The likelihood for rehabilitation of the defendant;
- (6) The extent of the defendant's participation in the offense;
- (7) The effect of familial pressure or peer pressure on the defendant's actions;
- (8) The nature and extent of the defendant's prior criminal history, including whether the offense was committed by a person with a prior record of conviction for murder in the first degree, or one or more serious assaultive criminal convictions;
- (9) The effect of characteristics attributable to the defendant's youth on the defendant's judgment; and
- (10) A statement by the victim or the victim's family member[.]

Missouri law thus incorporates many of the youth-related concerns identified in Miller, such as the offender's age and maturity, his family environment, the circumstances of the offense, and prospects for rehabilitation. See Miller, 132 S. Ct. at 2468; Mo. Rev. Stat. § 565.033.2(1)-(10). Additionally, Petitioner fails to adequately explain how or why Missouri's parole system is deficient either on its face or as applied to him. For all these reasons, Petitioner's Miller/Montgomery claim fails and it is dismissed.

⁴ These additional factors include rehabilitation efforts, "the subsequent growth and increased maturity of the person since the offense or offenses occurred," and "whether the person remains the same risk to society as he or she did at the time of the initial sentencing." Mo. Rev. Stat. § 558.047.5(1)-(5).

Second, Petitioner also challenges the Missouri Supreme Court's denial of his state court habeas petition as contrary to Miller and Montgomery. See Doc. 7, p. 2-7. As stated above, the Missouri Supreme Court cited Senate Bill 590 and summarily denied the petition. This denial comports with settled law; Montgomery expressly permits the use of parole eligibility to remedy a Miller violation, and Senate Bill 590 contains that remedy. As such, the Missouri Supreme Court's denial was not contrary to or an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of facts. See 28 U.S.C. § 2254(d)(1), (d)(2). Consequently, the Court rejects Petitioner's challenge to the Missouri Supreme Court's denial.

Third, to the extent Petitioner is independently challenging the constitutionality of Senate Bill 590, he has failed to exhaust that claim in state court. Petitioner has also failed to show that the exhaustion requirement should somehow be excused. Therefore, any independent challenge to the constitutionality of Senate Bill 590 is dismissed for failure to exhaust. Middleton, 759 F.3d at 868-69.

For the foregoing reasons, and for the additional reasons stated by Respondent, it is hereby ORDERED that:

- (1) Petitioner's Petition Under § 2254 for Writ of Habeas Corpus by Person in State Custody (Doc. 1) is DENIED; and
- (2) a certificate of appealability will not issue because Petitioner has not made a substantial showing of the denial of a constitutional right; and
- (3) an evidentiary hearing is not necessary for the reasons set forth above, because the material facts are not disputed, and because Petitioner's arguments are inadequate on their face.

IT IS SO ORDERED.

Date: December 2, 2016

/s/ Dean Whipple
Dean Whipple
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ANTONIO RAMIREZ,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 17-1478
	)	
CINDY GRIFFITH, Potosi Correctional	)	
Center Warden,	)	
	)	
Appellee.	)	

APPLICATION FOR CERTIFICATE OF APPEALABILITY

COMES NOW appellant, Antonio Ramirez, by and through undersigned counsel, and applies under 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b), for a certificate of appealability authorizing him to appeal the district court's denial of his motion for a writ of habeas corpus filed under 28 U.S.C. § 2254.

Procedural History

Antonio Ramirez was convicted by a jury of first-degree murder in violation of Mo. Rev. Stat. § 565.020.1 (1994), for a crime committed when he was 17 years old. Because the State did not seek the death penalty, the judge imposed the only punishment available under the law – life without eligibility for probation or parole. Ramirez was also convicted of armed criminal action for which he received a concurrent life with parole sentence.

In 2012, the Supreme Court issued its opinion in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), holding that a sentencing scheme that mandates a term of “life without parole for those under 18 at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishment.” *Id.* at 2460. Following the *Miller* decision, Ramirez filed a petition for writ of habeas corpus in the Missouri Supreme Court under Mo. Sup. Ct. R. 91, seeking relief from his life without

parole sentence under *Miller*. While the state habeas petition was pending, the United States Supreme Court decided *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), holding that *Miller* applied retroactively to cases on collateral review. *Id.*, at 736.

Following *Montgomery*, the Missouri Supreme Court issued an order sustaining Ramirez' petition, in part, ruling that he "shall be eligible to apply for parole after serving 25 years' imprisonment on his sentence of life without parole unless his sentence is otherwise brought into conformity with *Miller* and *Montgomery* by action of the governor, or enactment of necessary legislation." *State ex rel. Ramirez v. Steele*, No. SC93255, Order (Mo. March 15, 2016). Ramirez sought rehearing, arguing that a parole hearing under Missouri law does not provide the individualized sentencing hearing mandated by *Miller*.

While the petition for rehearing was under submission, the Missouri Legislature passed Senate Bill No. 590, which provides, in relevant part, as follows:

Any person sentenced to a term of imprisonment for life without parole before August 28, 2016, who was under eighteen years of age at the time of the commission of the offense or offenses, may submit to the parole board a petition for a review of his or her sentence, regardless of whether the case is final for purposes of appeal, after serving 25 years of incarceration on the sentence of life without parole.¹

Missouri Governor Jeremiah Nixon signed the bill on July 13, 2016. Shortly thereafter, the Supreme Court of Missouri entered the following order in Ramirez' case:

On the Court's own motion, the Court's March 15, 2016, order is vacated. The motion for rehearing is overruled as moot. The petition is denied. *See* Senate Bill No. 590, 98th General Assembly.

State ex rel. Ramirez v. Steele, No. SC93255, Order (Mo. July 19, 2016).

¹Mo. Rev. Stat. § 558.047.1(1) (2016).

Ramirez then filed a petition in the district court below under 28 U.S.C. § 2254 for a writ of habeas corpus challenging his mandatorily imposed life without parole sentence on the ground that it violates the Eighth and Fourteenth Amendments under *Miller* and *Montgomery*. *Ramirez v. Griffith*, No. 4:16-CV-01058-DW, Petition a Writ of Habeas Corpus (September 29, 2016); Doc. 1. On December 2, 2016, United States District Judge Dean Whipple issued an order denying habeas relief. *Id.*, Doc. 8. Three days later, on December 5, 2016, Judge Whipple entered judgment in accordance with the order. *Id.*, Doc. 9. As part of its judgment, the district court declined to issue a certificate of appealability. *Id.*

Ramirez then filed a notice of appeal in the district court along with a motion to proceed *in forma pauperis*. The district court granted the motion, and transferred the notice of appeal to this Court.

Standard for Issuance of a Certificate of Appealability

A circuit judge or judges, as prescribed by the court, have the authority to consider and issue a certificate of appealability in a 28 U.S.C. § 2254 proceeding. Fed. R. App. P. 22(b). A certificate of appealability must issue when the applicant makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this standard, an applicant need only to show “that reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented are ‘adequate to deserve encouragement to proceed further’.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); and *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983)).

As the Supreme Court recently emphasized in *Buck v. Davis*, 137 S.Ct. 759 (2017), the certificate of appealability inquiry “is not coextensive with a merits analysis”. *Id.*, at 773. In

determining whether to issue a certificate of appealability, a court of appeals should limit its examination to “a threshold inquiry into the underlying merit of [the] claims” and ask “only if the District Court’s decision was debatable.” *Id.*, at 774 (quoting *Miller-El*, 537 U.S. at 327, 348). Further, “a court of appeals should not decline the application for a certificate of appealability merely because it believes the applicant will not demonstrate an entitlement to relief.” *Miller-El*, 537 U.S. at 337. “[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner would not prevail.” *Id.*, at 338.

Reasonable jurists can debate whether a parole hearing under Missouri law provides Ramirez with the individualized sentencing hearing mandated by *Miller* and *Montgomery*.

While acknowledging that Ramirez’ life without parole sentence is invalid under *Miller* and *Montgomery*, the district court nonetheless denied relief, finding that Senate Bill No. 590, which gives Ramirez the opportunity to apply to the parole board for review of his sentence after 25 years of incarceration, remedied the violation. *See* Order (Doc. 8, p. 4). Given the structure and limitations of a parole hearing under Missouri law, the district court’s resolution of Ramirez’ claim is debatable among jurists of reason.

Despite the language in *Montgomery* suggesting that a State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole rather than resentencing them, *see Montgomery*, 137 S.Ct., at 736, mere access to a parole hearing does not assure compliance with *Miller*. *Miller* and *Montgomery* mandate that states must ensure “that prisoners serving sentences of life without parole for offenses committed before the age

of 18 have the benefit of an **individualized sentencing proceeding** that considers their youth and immaturity at the time of the offense.” *Adams v. Alabama*, 36 S.Ct. 1796, 1797 (2016) (Alito, J., concurring) (emphasis added). In order to qualify as an individualized sentencing hearing under *Miller*, the parole hearing must be a proceeding where the juvenile offender has the opportunity to develop and present mitigating evidence to demonstrate why his or her crime(s) represents the immaturity of youth and its attendant circumstances, and why, given the offender’s maturity and rehabilitation, he or she should be released on parole. *See Montgomery*, 137 S.Ct. at 732-36.

While Senate Bill 590 does direct the parole board to consider many of the youth-related concerns identified in *Miller*, *see* Mo. Rev. Stat. §§ 558.047.5 and 565.033.2, it doesn’t change the fact that Ramirez’ rights before the parole board are extremely limited. He has no right to counsel, *see Mitchell v. Nixon*, 351 S.W.3d 676, 680 (Mo.App. 2011); no right to cross-examine witnesses or offer evidence, *see Ladd v. Board of Probation and Parole*, 299 S.W.3d 33, 38 (Mo.App. 2009); and no right to expert assistance to develop any type of mental health evidence. This is not the “individualized sentencing proceeding” mandated by *Miller* – one where Ramirez would have the opportunity to present evidence showing how his youth, immaturity, impulsivity, and other mitigating factors, including his mental health, and family and home environment, may have played a role in the offense, as well as evidence of his maturity and rehabilitation. *See Miller*, 132 S.Ct., at 2468.

The inequity of Ramirez' situation is obvious when you compare it to the sentencing process given to those juvenile homicide offenders whose cases were on direct appeal when *Miller* was announced. Those juvenile offenders had their life without parole sentences set aside, and their cases remanded for a sentencing hearing with the assistance of counsel, and resources to develop and present evidence in support of their position that a life without parole sentence is not appropriate in light of their youth and other mitigating factors. See *State v. Hart*, 404 S.W.3d 232, 238-39, 241-42 (Mo. banc 2013); *State v. Nathan*, 404 S.W.3d 253, 270-71 (Mo. banc 2013). Contrast that to Ramirez' situation where he has no right to counsel, nor any type of assistance or resources to develop and present evidence at his parole hearing to show why he should be considered for release.

As Justice Sotomayor recognized in *Adams v. Alabama*, *Miller* "did not merely impose an 'individualized sentencing requirement'; it imposed a substantive rule that life without parole is only an appropriate punishment for 'the rare juvenile offender whose crime reflects irreparable corruption'". *Adams v. Alabama*, 136 S.Ct. at 1799 (Sotomayor, J., concurring) (quoting *Montgomery*, 136 S.Ct. at 735). Accordingly, a juvenile homicide offender must have a reasonable opportunity for release. This guarantee is non-existent in Missouri where the parole board has "almost unlimited discretion" whether or not to grant parole. *Ingrassia v. Purkett*, 985 F.2d 987, 988 (8th Cir. 1993); see Mo. Rev. Stat. § 217.690 (2013).

A number of federal district courts have decided that merely providing juvenile homicide offenders with an opportunity to apply for parole is insufficient to remedy a *Miller* violation. See *Songster v. Beard*, 201 F.Supp.3d 639, 642 (E.D.Pa. 2016) (passing the buck to the parole board by giving a juvenile homicide offender a chance to have his life without parole sentence reviewed by

the board “with its limited resources and lack of sentencing expertise is not a substitute for a judicially imposed sentence . . . [and] reflects an abdication of judicial responsibility and ignores the *Miller* mandate”); *Greiman v. Hodges*, 79 F.Supp.3d 933 (S.D.Iowa 2015) (deficiencies in Iowa’s parole board procedures denied Greiman any meaningful opportunity of parole, and failed to satisfy *Miller*). Other courts have held that the proper remedy for a *Miller* violation is remand to the trial court for resentencing. See *Cessna v. Wetzel*, 2016 WL 3090402 at *2 (M.D.Pa. June 2, 2016); *Trevathan v. Cain*, 2016 WL 1440794 at *2 (E.D.La. March 1, 2016) (acknowledging the *Montgomery* dictum and holding that petitioner “is entitled to be resentenced in conformity with *Miller*”).

Conclusion

The question before this Court is “the debatability of the underlying constitutional claim, not the resolution of that debate.” *Miller-El*, 537 U.S. at 342. The above-referenced cases clearly demonstrate that Ramirez’ claim is debatable among jurists of reason, that a court could resolve the issues differently, and the question is adequate to deserve encouragement to proceed further. Accordingly, consistent with *Miller-El v. Cockrell* and *Buck v. Davis*, this Court should issue a certificate of appealability authorizing Ramirez to appeal the district court’s denial of his *Miller* and *Montgomery* claim.

Respectfully submitted,

/s/ Michael J. Gorla

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Counsel for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(7)(c), the undersigned certifies that his Application for Certificate of Appealability complies with the applicable type-volume limitations of Federal Rules of Appellate Procedure 32(a). This application was prepared using a proportionally spaced type (Time New Roman, 13 points). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), the application contains 1,905 words, according to the word count function of WordPerfect Office X5 word processing software.

/s/ Michael J. Gorla

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and by email upon the following: Mr. Stephen D. Hawke, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, Email: stephen.hawke.ago.mo.gov.

/s/ Michael J. Gorla



Supreme Court of Missouri
en banc

SC93255

State ex rel. Antonio Ramirez, Petitioner,
vs.
Troy Steele, Superintendent, Respondent.

- ☐ Sustained
- ☐ Overruled
- ☐ Denied
- ☐ Taken with Case
- ☐ Sustained Until
- ☒ Other

Order issued: On the Court's own motion, the Court's March 15, 2016, order is vacated. The motion for rehearing is overruled as moot. The petition is denied. See Senate Bill No. 590, 98th General Assembly.

By: 
Chief Justice

July 19, 2016
Date



Supreme Court of Missouri
en banc

March 15, 2016

State ex rel. Antonio Ramirez,	)	
Petitioner,	)	
	)	
vs.	)	No. SC93255
	)	
	)	
Troy Steele, Superintendent,	)	
Respondent.	)	

ORDER

WHEREAS, the United States Supreme Court issued its decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), holding the Eighth Amendment prohibits a juvenile from being sentenced to mandatory life without parole. The *Miller* decision explained that juveniles are inherently different from adults in maturity and culpability and that in pending and future cases a jury is required to consider certain relevant factors before imposing a sentence of life without parole on a juvenile.

WHEREAS, in accordance with *Miller*, this Court issued its opinions in *State v. Hart*, 404 S.W.3d 232 (Mo. banc 2013), and *State v. Nathan*, 404 S.W.3d 253 (Mo. banc 2013), holding that a juvenile on direct appeal that had been sentenced to mandatory life without parole must be resentenced. *Hart* required that a jury be provided the opportunity to "conduct the individualized analysis required by *Miller* and, on that basis, determine whether life without parole is a just and appropriate sentence[.]" *Hart*, 404 S.W.3d at 238-39. *Hart* and *Nathan* provided a constitutional, temporary, judicial remedy for those cases when a jury determined that life without parole was not an appropriate sentence, and that procedure shall continue to be applied to pending and future cases until such time as the Missouri General Assembly enacts a constitutional sentence for juveniles convicted of first-degree murder.

WHEREAS, the United States Supreme Court's recent decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), holds that the prohibition of mandatory life without parole, as established in *Miller*, now applies retroactively to those petitioners, whose convictions are final, seeking collateral review. However, *Montgomery* also explained, that its decision "does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole." *Montgomery*, 136 S. Ct. at 736. *Montgomery* expressly states, for those cases where the conviction and life without parole sentence were final, that a State could "remedy a *Miller* violation by allowing juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Id.* (citing, with approval a Wyoming statute making juveniles eligible to apply for parole after 25 years' imprisonment).

WHEREAS, the General Assembly has yet to enact a sentencing provision that is constitutionally valid in accordance with *Miller* and *Montgomery*.

WHEREAS, the Governor has yet to commute the life without parole sentence of petitioner.

NOW, THEREFORE, this Court, in order to comply with the constitutional requirements of *Miller* and *Montgomery*, hereby orders that this petition be sustained in part. This petitioner shall be eligible to apply for parole after serving 25 years' imprisonment on his sentence of life without parole unless his sentence is otherwise brought into conformity with *Miller* and *Montgomery* by action of the governor or enactment of necessary legislation. All other claims alleged in the petition and pending motions are denied without prejudice.

Day - to - Day



Patricia Breckenridge
Chief Justice

STATE OF MISSOURI – SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 15th day of March, 2016, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, *I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 15th day of March, 2016.*



Bill L. Thompson, Clerk

Cynthia Z. Twale, Deputy Clerk