

## Criminal Procedure

### Retroactivity

[\*Montgomery v. Louisiana\*](#), 577 U.S. \_\_\_\_ (Jan. 25, 2016). *Miller v. Alabama*, 567 U. S. \_\_\_\_ (2012) (holding that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances), applied retroactively to juvenile offenders whose convictions and sentences were final when *Miller* was decided. A jury found defendant Montgomery guilty of murdering a deputy sheriff, returning a verdict of "guilty without capital punishment." Under Louisiana law, this verdict required the trial court to impose a sentence of life without parole. Because the sentence was automatic upon the jury's verdict, Montgomery had no opportunity to present mitigation evidence to justify a less severe sentence. That evidence might have included Montgomery's young age at the time of the crime; expert testimony regarding his limited capacity for foresight, self-discipline, and judgment; and his potential for rehabilitation. After the Court decided *Miller*, Montgomery, now 69 years old, sought collateral review of his mandatory life without parole sentence. Montgomery's claim was rejected by Louisiana courts on grounds the *Miller* was not retroactive. The Supreme Court granted review and reversed. The Court began its analysis by concluding that it had jurisdiction to address the issue. Although the parties agreed that the Court had jurisdiction to decide this case, the Court appointed an amicus curiae to brief and argue the position that the Court lacked jurisdiction; amicus counsel argued that the state court decision does not implicate a federal right because it only determined the scope of relief available in a particular type of state proceeding, which is a question of state law. On the issue of jurisdiction, the Court held:

[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Teague's* conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. This holding is limited to *Teague's* first exception for substantive rules; the constitutional status of *Teague's* exception for watershed rules of procedure need not be addressed here.

Turning to the issue of retroactivity, the Court held that *Miller* announced a new substantive rule that applies retroactively to cases on collateral review. The Court explained: "*Miller* ... did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" The Court continued:

Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" Because *Miller* determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,'" it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it "'necessarily carr[ies] a significant risk that a

defendant” —here, the vast majority of juvenile offenders— “faces a punishment that the law cannot impose upon him.” (citations omitted).

The Court went on to reject the State’s argument that *Miller* is procedural because it did not place any punishment beyond the State’s power to impose, instead requiring sentencing courts to take children’s age into account before sentencing them to life in prison. The Court noted: “*Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” It explained: “Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence.” Noting that *Miller* “has a procedural component,” the Court explained that “a procedural requirement necessary to implement a substantive guarantee” cannot transform a substantive rule into a procedural one. It continued, noting that the hearing where “youth and its attendant characteristics” are considered as sentencing factors “does not replace but rather gives effect to *Miller*’s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.”