Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Mathena v. Malvo—A Challenge to Life Without Parole for the Juvenile D.C. Sniper

October 10, 2019

On October 16, 2019, the Supreme Court is scheduled to hear oral argument in *Mathena v. Malvo*. *Mathena* may be of general interest in the D.C. area because it involves a challenge to the criminal sentence of Lee Boyd Malvo, one of the Beltway snipers. But the case also raises a novel legal question concerning the scope of *Miller v. Alabama* and *Montgomery v. Louisiana*, in which the Supreme Court held that the Eighth Amendment's ban on cruel and unusual punishment limits the circumstances where juvenile offenders may be sentenced to life in prison without the possibility of parole. This Sidebar first surveys key Eighth Amendment jurisprudence relevant to *Mathena*, before providing background on the case and outlining the parties' arguments before the Supreme Court. The Sidebar concludes by discussing possible outcomes in the case and their implications for Congress.

The Eighth Amendment

The Eighth Amendment, which applies to both the states and the federal government, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Supreme Court has interpreted the Eighth Amendment's ban on cruel and unusual punishments to categorically prohibit the use of certain forms of punishment that "superadd" terror, pain, or disgrace, such as drawing and quartering, "hard and painful labor," and revocation of the citizenship of a natural-born citizen. In addition, the Court has held that certain punishments that are permissible in some circumstances are nonetheless unconstitutional as applied to particular classes of defendants. For example, the Supreme Court has held that the Eighth Amendment prohibits imposing the death penalty on cognitively disabled defendants or on any defendant who has not committed homicide.

One class of offenders that has been the subject of considerable Eighth Amendment litigation is juvenile offenders—a category that includes any criminal defendant who was under eighteen years old at the time of the offense, regardless of whether the defendant was tried as an adult. In the past decade and a half, the Supreme Court has issued several opinions limiting the criminal punishments that may be imposed on juvenile offenders. First, in *Roper v. Simmons*, the Court held that juvenile offenders may not constitutionally be sentenced to death. Five years later, in *Graham v. Florida*, the Supreme Court held that juveniles may not be sentenced to life without parole for *non-homicide* offenses.

Congressional Research Service
https://crsreports.congress.gov
LSB10350

Two subsequent decisions, *Miller v. Alabama* and *Montgomery v. Louisiana*, are most relevant to *Mathena*. In *Miller*, the Supreme Court struck down state laws that imposed mandatory sentences of life without parole for juveniles convicted of certain homicide offenses. Justice Kagan, writing for a five-Justice majority, drew on "two strands of precedent reflecting [the Court's] concern with proportionate punishment." The first line of cases, embodied in decisions including *Roper* and *Graham*, "adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." For instance, with respect to juvenile offenders, those cases held that the harshest punishments were rarely or never warranted because of juveniles' "lesser culpability." The second line of cases that Justice Kagan invoked required individualized consideration of "the characteristics of a defendant and the details of his offense before sentencing him to death." Justice Kagan cited two cases from the 1970s, *Woodson v. North Carolina* and *Lockett v. Ohio*, in which the Court construed the Eighth Amendment to forbid the mandatory imposition of capital punishment and require courts to consider mitigating factors before issuing a death sentence. Building on the two foregoing lines of cases, the Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." The *Miller* majority further opined that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." While not foreclosing a sentencer's ability to make that judgment in homicide cases, the Court required that the sentencer consider "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

Chief Justice Roberts and Justices Thomas and Alito each filed a dissent in *Miller*. Chief Justice Roberts criticized what he characterized as the majority's invocation of the Eighth Amendment "to ban a punishment that the Court does not itself characterize as unusual, and that could not plausibly be described as such." Justice Thomas asserted that the precedent on which the majority relied was not "consistent with the original understanding of the Cruel and Unusual Punishments Clause." Justice Alito objected to the majority opinion as an expansion of prior Eighth Amendment precedent amounting to an "arrogation of legislative authority" by the Court.

In *Montgomery*, the Supreme Court's most recent case addressing the Eighth Amendment's application to juvenile offenders, the Court held that *Miller*'s prohibition on mandatory sentences of life without parole for juvenile offenders applied retroactively to convictions that were final before *Miller* was decided. The question whether *Miller* applied retroactively hinged on whether that case's holding was substantive or procedural, as the Court has long held that new *substantive* rules of constitutional law must have retroactive effect, while new *procedural* rules generally need not. Justice Kennedy, joined by five other Justices, held that *Miller* announced a new substantive rule. The Court acknowledged that "*Miller*'s holding has a procedural component": requiring a sentencer "to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." However, viewing the "[p]rotection against disproportionate punishment" to be "the central substantive guarantee of the Eighth Amendment" and one that went "beyond the manner of determining a defendant's sentence," the majority opinion held that *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.'" Thus, the *Montgomery* Court concluded, "[e]ven 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.'"

After dissenting in *Miller*, Chief Justice Roberts joined the majority in *Montgomery*. Justice Scalia filed a dissent in which he accused the majority of "rewrit[ing] *Miller*" as "a devious way of eliminating life without parole for juvenile offenders." Justice Thomas also dissented on jurisdictional grounds.

Beltway Sniper Attacks and Aftermath

In September and October 2002, 17-year-old Malvo and 41-year-old John Allen Muhammad shot and killed twelve people and injured six others during a multistate crime spree. The shootings, many of which occurred in and around the District of Columbia, came to be known as the Beltway sniper attacks or the D.C. sniper attacks. Following their arrest in October 2002, Muhammad and Malvo were each convicted of multiple counts of murder in Virginia and Maryland. Muhammad was sentenced to death in Virginia and received six sentences of life without the possibility of parole in Maryland. He was executed in Virginia in 2009.

Malvo was tried as an adult, and in December 2003 a Virginia jury convicted him of two counts of capital murder. In 2004, in a second Virginia trial involving separate shootings, Malvo pled guilty to an additional count of capital murder and one count of attempted capital murder. The applicable Virginia sentencing statute expressly authorized only two possible punishments for a person over the age of sixteen who committed capital murder: death or life without parole. Malvo was sentenced in both Virginia cases in 2004—about a year before the Supreme Court's decision in *Roper* barred death sentences for juvenile offenders, and eight years before *Miller* prohibited mandatory sentencing of juveniles to life without parole. Thus, both of the potential punishments were lawful at the time of Malvo's trials.

In Maryland, Malvo pleaded guilty to six counts of first-degree murder and received an additional six terms of life without parole. Malvo did not appeal his convictions, but has since brought post-conviction challenges to his Virginia and Maryland sentences. The current case, *Mathena v. Malvo*, involves Malvo's claim that his Virginia sentences of life without parole for crimes he committed as a juvenile violate the Eighth Amendment's ban on cruel and unusual punishments. Malvo's challenges to his Maryland sentences remain pending in the lower courts.

Mathena v. Malvo

In 2013, Malvo filed in federal court two petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, arguing that his Virginia sentences violate the Eighth Amendment. He asserted the sentences were invalid under *Miller* because he received sentences of life without parole without consideration of his youth. The U.S. District Court for the Eastern District of Virginia initially denied habeas relief, and Malvo appealed. While that appeal was pending, the Supreme Court decided *Montgomery*, and the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit) remanded Malvo's case for further consideration in light of that decision.

The Commonwealth of Virginia moved to dismiss the habeas petitions, arguing in relevant part that *Miller* and *Montgomery* do not apply to Malvo because Virginia's sentencing scheme is not mandatory. Virginia asserted that, although the statute under which Malvo was sentenced does not expressly authorize any punishment less severe than life without parole, Virginia law generally permits a court to suspend a life sentence in whole or in part on a discretionary basis. The Supreme Court of Virginia has therefore held that the commonwealth's sentencing scheme is not mandatory. However, the Virginia Supreme Court's decision postdates Malvo's sentencing by a decade, and it is not clear whether any of the participants in Malvo's sentencing were aware at the time that such a suspension might be available. In any event, Malvo's counsel did not request a suspension, and it does not appear that the sentencer in either of Malvo's trials actually considered whether a sentence of less than life without parole was warranted in light of his youth. As a result, Malvo argued, at the time he was sentenced his sentences of life without parole were effectively mandatory.

On remand, the district court granted Malvo's habeas petition, and the Fourth Circuit affirmed on appeal. The Fourth Circuit held that it "need not . . . resolve whether any of Malvo's sentences were mandatory because *Montgomery* has now made clear that *Miller*'s rule has applicability beyond those situations in

which a juvenile homicide offender received a *mandatory* life-without-parole sentence." Virginia petitioned for a writ of certiorari, and the Supreme Court granted the petition.

Before the Supreme Court, Virginia argues that the Fourth Circuit erred in holding that it need not determine whether Malvo's sentence was mandatory, because *Miller*'s rule is limited to mandatory sentences, and *Montgomery* is properly understood as holding only that *Miller* applies retroactively. The commonwealth claims that the Fourth Circuit incorrectly read *Montgomery* to broaden the scope of the right announced in *Miller* and thus improperly applied *Miller* and *Montgomery* to Malvo's discretionary life without parole sentences.

Malvo rejects Virginia's narrow reading of *Miller* and *Montgomery*, instead arguing that the two cases require actual consideration of youth and its attendant characteristics, not mere discretion to consider those factors, before any juvenile can be sentenced to life without parole. He therefore argues that "*Miller*'s requirements—which do not depend on whether Virginia's [sentencing] scheme was 'mandatory'—were not met" in his case because "the judge and jury who sentenced Malvo in 2004 never undertook th[e] required consideration of his youth."

Numerous outside parties, including the United States and a group of fifteen states, have filed amicus curiae ("friend of the court") briefs in this case. The United States argues that *Miller* is properly understood to apply only to mandatory life without parole sentences, but *Montgomery* has created confusion about the scope of *Miller*. The United States thus encourages the Court to "make clear that *Miller* does not, in fact, require courts to revisit final life-without-parole sentences imposed as a matter of discretion." The United States also suggests that the Court remand the case for a determination of whether Malvo's sentences were mandatory. The fifteen states contend that the Supreme Court's juvenile sentencing precedent under the Eighth Amendment is in tension with the historical meaning of the Amendment, and the Court should not expand that precedent and intrude further into state sentencing procedures. They further assert that *Miller* and *Montgomery* merely require a sentencer to consider the youth of a juvenile offender before imposing a life without parole sentence, and "sentencers imposing discretionary life-without-parole sentences inevitably consider" youth and its attendant characteristics.

Possible Outcomes and Considerations for Congress

There are several possible outcomes in this case. The Supreme Court could hold, based on language in *Miller* and *Montgomery* requiring a sentencer "to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence," that those cases apply to any juvenile facing a sentence of life without parole, regardless of whether the sentence is mandatory. If the Court came to that conclusion, it would likely hold that Malvo's Virginia life without parole sentences violate the Eighth Amendment because the sentencers did not actually consider whether his youth warranted a lesser sentence. In the alternative, the Court could confine *Miller* and *Montgomery* to their facts and hold that those cases do not apply to discretionary juvenile life without parole sentences. If the Court so holds, it is likely that the legality of Malvo's sentences would hinge on whether his sentences were in fact mandatory or discretionary, which the parties dispute. The Court might elect to resolve that dispute as a matter of law or remand the case to the lower courts to resolve it in the first instance—to the extent the question hinges on the interpretation of Virginia law rather than the U.S. Constitution, the federal courts must defer to the rulings of the Virginia Supreme Court. Another possibility is that the Court could decline to reach the merits of the case at this time and simply remand to the lower courts for a factual determination of whether Malvo's sentences were mandatory.

Even if the Supreme Court determines that Malvo's Virginia sentences violate the Eighth Amendment, Malvo is unlikely to be released from prison in the foreseeable future for two reasons. First, prevailing on his habeas petition would not secure Malvo's release; it would simply mean that Virginia must bring his sentences into compliance with the Eighth Amendment. The commonwealth could do that by granting

Malvo a new sentencing hearing. But, under *Miller* and *Montgomery*, Malvo could potentially be resentenced to life without parole as long as the court considered the appropriate factors and determined that such a sentence was warranted. In the alternative, Virginia could allow Malvo to be considered for parole; but even if Malvo became eligible for parole, the parole board could deny his applications (as has happened with the petitioner in *Montgomery*). Second, Malvo is subject to six life without parole sentences in Maryland. While he has also challenged those sentences on similar grounds in separate proceedings, a ruling on his Virginia sentences would not automatically affect the validity of his Maryland sentences.

Nonetheless, *Mathena v. Malvo* has broader national implications beyond Malvo's individual situation that may be of interest to Congress. The case has the potential to affect prisoners across the country serving life without parole for offenses committed while they were juveniles—a group that one commentator recently estimated numbers over a thousand. Moreover, federal law currently allows juvenile offenders to be sentenced to life without parole and, in fact, a number of federal inmates are currently serving juvenile life without parole sentences. Following *Montgomery*, some federal inmates who had received mandatory life without parole sentences for crimes committed as juveniles sought resentencing. A holding in *Mathena* that *Miller* and *Montgomery* also apply to discretionary sentences could allow additional federal inmates to seek resentencing or consideration for parole.

Regardless of the outcome in *Mathena*, Congress could pass legislation to alter juvenile life without parole sentencing under federal law. Such legislation could not alter the constitutional limits articulated in *Miller*, *Montgomery*, and any other applicable cases, but could provide legislative guidance to federal courts implementing those decisions or further limit the use of life without parole sentences for juvenile offenders convicted in federal court. As an example, H.R. 6011, proposed during the 115th Congress, would have allowed courts to reduce the sentence of a juvenile offender tried as an adult if the defendant had served at least 20 years in prison and the court found that the defendant did not pose a safety risk and the interests of justice warranted a sentence modification.

A decision in *Mathena* is expected sometime in the spring of 2020.

Author Information

Joanna R. Lampe
Legislative Attorney

Disclaimer