TWENTY- FOURTH JUDICIAL DISTRICT COURT PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 96-7161 **DIVISION "H"**

STATE OF LOUISIANA

VERSUS

LAWRENCE JACOBS

FILED 10/01/2020 _____
DEPUTY CLERK

REASONS FOR JUDGMENT

This matter came before the Court for a resentencing hearing, as per the instruction of Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 194 So. 3d. 606 (La. 2016), on July 20, September 1, and September 2, 2020.

Appearances: **Richard Olivier, Lynn Schiffman, and Darren Allemand, attorneys for the State of Louisiana; and**

Shanita Farris and Joshua Schwartz, attorneys for defendant

After receiving memoranda, hearing testimony and receiving evidence, the matter was taken under advisement.

Having considered the law, evidence and arguments of counsel;

IT IS ORDERED, ADJUDGED AND DECREED that defendant shall be resentenced insofar as he shall be eligible for parole.

JUDGMENT READ, RENDERED AND SIGNED at Gretna, Louisiana, on this 6th day of October, 2020.

_____
JUDGE

IMAGED OCT 06 2020

ISSUED 10/7/2020 JT

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REASONS FOR JUDGMENT

Background

In this matter, the defendant, Lawrence Jacobs, was convicted in April of 1998, along with co-defendant Roy Bridgewater, of the murders, in Nelson's home, of Della Beaugh and her son, Nelson Beaugh, which occurred when defendant was sixteen years old. His conviction was reversed in 2001, and he was retried and convicted once again on August 25, 2006, and sentenced to life without parole on October 4, 2006. He has remained incarcerated in the Louisiana State Penitentiary at Angola ever since.

Law

In 2012, the United States Supreme Court rendered a decision in Miller v. Alabama, 567 U.S. 460 (2012), which, defendant states, has consequences for him as someone who committed the crime he did at a time when he was under the age of 18. Briefly, the Court held that automatic criminal sentences of mandatory life without parole for those under the age of 18 at the time of their crimes violate the Eighth Amendment's prohibition on cruel and unusual punishments. Miller, supra, at 476. Miller does not foreclose a sentencer's ability to impose a life without parole sentence, but mandates only that a sentencer follow a certain process – considering an offender's youth and attendant characteristics – before imposing a particular penalty. *Id.* at 483.

Further, in 2016, the United States Supreme Court decided Montgomery v. Louisiana, 136 S. Ct. 718 (2016), which clarified Miller insofar as it stated that the Miller decision, prohibiting under the Eighth Amendment mandatory life sentences without parole for juvenile offenders *unless* the sentencing court has considered a juvenile offender's diminished culpability and heightened capacity for change, was a substantive

rule of constitutional federal law which was retroactive on state collateral review. In sum, then, it would apply even to cases such as defendant's, where a conviction was final when the new rule was announced.

In Louisiana, C. Cr. P. Art. 878.1 was enacted to comply with the directive set forth in Miller. State v. Terrick, 254 So. 3d. 1246 (La. App. 5th Cir. 2018). The statute creates a two-step process, whereby a defendant who was a juvenile at the time of his offense must prevail at a hearing (a "Miller hearing") before a sentencing court and then, after serving at least 25 years, before the Parole Board, before securing release. The decision to be made at a hearing under Art. 878.1 is whether a juvenile should have parole *eligibility* only – an individual deemed to be eligible would still have to be granted parole under the Parole Board's discretion and would have to, at a minimum, meet the requirements of La. R.S. 15:574.4(G). That statute further restricts parole eligibility, requiring individuals to serve 25 years in prison, not commit any major disciplinary offenses in the year prior to the parole hearing, complete 100 hours of prerelease programming, earn a GED, receive a "low-risk" designation from the DOC, and complete a re-entry program.

Art. 878.1 did not mandate specific procedures to be employed at a Miller hearing. While subsection D states that "life without parole should normally be reserved for the worst offenders and the worst cases," it does not provide factors for the Court to consider to arrive at that determination. Instead, Art. 878.1 is permissive; it allows the prosecution and defense "to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender." Aside from expert testimony, furthermore, the rules of evidence do not apply at the hearing (La. C.E. 1101(C)(4), evidentiary rules do not apply to sentencing hearings), aside from constitutional limits on the State's evidence (for example, a defendant has a due process right to challenge incorrect or misleading information, State v. Myles, 638 So. 2d. 218 (1994)). Other than the Miller requirement that a sentencer consider a juvenile offender's youth and attendant characteristics, Article 878.1 does not require the Court to consider any particular factors. *Id.* at 736.

Positions of the Parties

Defendant in the instant matter requested that this Court conduct a Miller hearing

to determine his eligibility for parole, in line with Miller, *supra*, and Montgomery, *supra.* Prior to his hearing, which took place over three days, both his defense and the State prepared memoranda regarding their interpretations of the applicable law, and after the hearing, both sides reiterated their positions during argument.

The State noted that in Montgomery, *supra*, at 734, the U.S. Supreme Court stated that life without parole is excessive for all but the rare juvenile offender whose crime reflects *irreparable corruption.* Courts are faced with only one task: to distinguish between the rare juvenile offender whose crimes reflect irreparable corruption and the juvenile offender whose crime reflects unfortunate yet transient immaturity. *Id.* at 609.

The prosecution put forth that the State is not required to prove, and the Court is not obligated to find, any specific facts in support of this determination. Miller did not impose a formal factfinding requirement to avoid interfering with the States' administration of the criminal justice system. Montgomery, supra, at 375. Instead, all Miller requires is a hearing at which youth-related mitigating factors can be presented to the sentencer and considered in making a determination of whether the life sentence imposed upon a juvenile killer should be with or without parole eligibility. State v. Allen, 247 So. 3d. 179 (La. App. 5th Circuit 2018).

The State argued that the United States Supreme Court has never defined "irreparable corruption," but has discussed extensively "transient immaturity;" therefore, if the case does not fit the definition of transient immaturity, it must involve irreparable corruption. The State took the position that the Court's concern in Miller was to ensure that murders resulting *merely from an offender's youth* were not excessively punished. This danger must be avoided because children are constitutionally different from adults for purposes of sentencing, in light of their typically diminished culpability and greater prospects for reform. Montgomery, supra, at 733. These differences stem from three characteristics common to all juveniles and which reflect "transient immaturity:" (1) children have a lack of maturity and an undeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; (2) children are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings, and (3) a child's character is not as

well-formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irreparable depravity. Miller, supra, at 567. The State argued, therefore, that only a crime stemming from these characteristics would show that a defendant is not irreparably corrupt and eligible for the possibility of parole.

The defense, meanwhile, presented the idea that Miller bars life without parole only for those whose crimes reflect permanent incorrigibility, and who are the rarest of juvenile offenders. Montgomery, *supra*, at 734. Deciding that a juvenile offender "forever will be a danger to society" [such that he should be ineligible for parole] requires a finding that he is incorrigible. Miller, supra, at 472-3. In terms of an offender being "irreparably corrupt," the defense cited Montgomery, *supra*, at 733 as stating that this is the case only if *rehabilitation* of that offender is impossible; further, the facts of the crime, while not irrelevant, are not central to the analysis. Montgomery, supra, at 609. [Emphasis added.] In keeping with such a high bar, the defense pointed out that life without parole sentences should be rare according to Miller, supra, at 479. The vast majority of youth are not the "rare and uncommon juvenile whose crime reflects irreparable corruption." Montgomery, supra, at 754. Further, in its opening statement at defendant's hearing, the defense stated that the main question is whether an offender is incapable of rehabilitation, and pointed out that the State's argument that a sentencer must find irreparable incorrigibility if a defendant's crime does not show transient immaturity is not supported by law.

The Miller Hearing

At defendant's Miller hearing, the State's presentation began with the argument that the nature of the crime he committed, involving the execution of a mother in front of her son (or vice versa), demonstrates that defendant is one of the "worst of the worst." Through introduction of the trial transcripts and defendant's statement taken a few days following the murders, the State established that on Halloween 1996, defendant and Roy Bridgewater set out with weapons to find victims. They first approached Ms. Maynard, in Nelson Bough's neighborhood; she said Bridgewater did most of the talking to her, but defendant, six days shy of age 17, and 6'3", 170 pounds, participated. They did not rob her, but she called the police.

They then went to Nelson Bough's home; they saw Mr. Bough in the driveway and

forced him into the house. Della, Mr. Bough's mother, was also there, unbeknownst to them. Mrs. Bough had been widowed a few days before and was staying with her son. Defendant and Bridgewater gathered everything of value from the victims, then made them go into the master bedroom, and sit on the bed; they then executed the victims. The State could not prove who shot anyone, or how many weapons were used, but the defendant did give a statement admitting that he participated directly in the armed robbery and burglary, which led to the victims' death, although he denied shooting either of them himself.

Following the murder, defendant and Bridgewater took the victim's car, went to eat, and then played video games on Canal Street. Defendant then went to his uncle's house in Mississippi. His fingerprint was ultimately lifted from the victim's abandoned car. Defendant's father then made him turn himself in, and defendant after that gave his statement.

The State also presented the victim impact statements of Sandra Bough, the daughter of Della and sister of Nelson; Stephanie Bough, Nelson's daughter; and Annette Bough, Nelson's wife. Their statements were heart-wrenching and moving, and clearly showed how the loss of Della and Nelson still impact their daily lives. After presentation of this evidence, the State ended its presentation.

The defense then began its presentation, which extended over two days. Their first witness was Perry Staggs, who is currently an assistant secretary at the Office of Juvenile Justice, and who worked in the Department of Corrections for over 20 years, including in the position of Assistant Warden at Angola, where defendant is housed. His responsibilities at Angola included being a unit warden; he was in charge of all the offenders who were in that unit. He was also assistant warden in charge of all the programs throughout Angola.

His employment included reviewing prisoners' records "all the time." He was entitled to review all of a particular defendant's trial transcripts and rap sheet, as well as his accomplishments and disciplinary reports. These records would also generally include a custody level and a risk classification. The custody level tells staff how to interact with that inmate; meaning, for example, whether someone must be in restraints when he is outside of a secure area. Depending on the trust an inmate earns, he can get

to the point where he could be unsupervised outside of a custody area. Mr. Staggs would review these records for inmate housing placement or jobs.

Mr. Staggs testified that he has reviewed thousands of those records, and stated that he reviewed defendant's record. It shows that defendant has been at Angola for 25 years, and that his record over last 5-10 years has been very good – even the things he got in trouble for were not serious violations.

Mr. Staggs testified that the levels of security at Angola are maximum security, medium security, or lowest security. He noted that defendant has done culinary training and welding while incarcerated, as well as anger management and a lot of other self-help classes. Mr. Staggs opined that nothing in defendant's write-ups suggests he is the "worst of the worst;" those would be guys who continue with horrible conduct throughout their prison sentences. In his opinion, defendant can conduct himself the way he is supposed to most of the time.

Mr. Staggs saw in defendant's record that his custody level currently is minimum B. Trustees are either level A or B; both are allowed to go outside a secure area without restraints; B level must have someone with him. Defendant is a trustee. Trustee status can go back and forth depending on a prisoner's behavior. To become a trustee at Angola, Mr. Staggs testified, you have to have been there 10 years, have a good conduct record, and have a good rapport with at least one member of staff, who has to have faith in you. Then, trustee status has to be approved by three levels of prison administration. Defendant had to have done all this, as he is a trustee. Mr. Staggs testified that Angola does not allow "the worst of the worst" to become trustees, although he stated that he does not really know defendant.

Mr. Staggs pointed out that page 1491 of defendant's DOC record shows a risk assessment DOC completed on Jacobs. His risk score is "low." This type of assessment is done once a year; it is based on static factors (like a prisoner's age, his age at his first crime, and other things he can't change), as well as dynamic factors, including what he does in jail. Accomplishing positive things will bring one's risk score down. Defendant's status is supposed to mean he has a low risk of reoffending if he is released.

Mr. Staggs stated that he has been consulted many times in juvenile "life without parole" cases, and that he has testified previously that some inmates are the "worst of the

worst." He has also testified to the parole board, and has testified that a particular prisoner should not be released. In this case, however, Mr. Staggs testified that defendant is a class B trustee, and has been at least since May of 2017, and is at low risk of recidivism.

The defense next presented the testimony of Dr. Robert Kinscherff, an expert in forensic psychology. Although he was retained by the defense in this case, he stated that he also does retained work for prosecutors, and always tries to let the chips fall where they may; he does not always agree with who hired him.

During his evaluation of defendant, he reviewed voluminous records, and did a personal evaluation of defendant himself over two days at Angola. He studied the dynamics of defendant's offense and of his life at the time of the offense. Dr. Kinscherff also did tests, one to evaluate how someone deals with anger, and another that has to do with recidivism. He testified that he used the standard methods for his field and the best practices.

His conclusion was that from a forensic health perspective, there is no reason to conclude that defendant is incorrigible or irreparably corrupt. Overall, the risk assessment tools led him to conclude that defendant is most fairly seen at the very low end of the medium risk range. Defendant does not present with characteristics of an anti-social personality disorder or psychopathy. He does not have a diagnosable clinical condition or a substance abuse problem. He has also managed to lower his risk by receiving a high level of education while incarcerated, especially since 2008.

Dr. Kinscherff also tested defendant for anger issues; this test screens for anger which is reasonable (state anger), and for general anger every day (trait anger). Dr. Kinscherff found that defendant is now likely when he is angry to control it and manage it. Any outburst would be mild, non-violent, and transient. At the time of the offense, defendant was living with peers and consuming drugs and alcohol. The offense was planned but not well-planned. It was done without consideration of risks. Defendant's family had been supportive of him, but he was estranged from them at that time.

Dr. Kinscherff testified that this type of behavior is not uncommon in midadolescents to young adults. As these people mature, they start to desist from crime. Dr. Kinscherff stated that defendant's offense has the features of transient immaturity.

Dr. Kinscherff testified that his in-person forensic observations of defendant were consistent with the records he reviewed. Defendant did not present as having a mental health disorder, and responded thoughtfully and candidly to interview. Defendant ultimately scored at the low end of the medium risk range; he will always be assessed at some risk because there are some things that cannot be changed in his history. Dr. Kinscherff stated that if you take the total package of risk factors and strengths, defendant is less of a risk for recidivism than ¾ of incarcerated males in America.

Dr. Kinscherff also assessed whether defendant's family would be willing to provide assistance and support to him if he is released at some point. The family presented themselves as being willing and able to support defendant and assist him with adjustment to outside world.

Ultimately, Dr. Kinscherff testified that there is no basis for finding that defendant is irreparably corrupt or incorrigible; he is capable of further character development and embrace of social mores and expectations. Dr. Kinscherff stated that he is sympathetic to courts who are faced with sentencing a 16 or 17 year old and have to make a prediction of what they will look like when 40 or 50; defendant, though, is 40 and has a record of who he was and who he is now. We don't have to guess as to his capacity for embracing a positive way of life; we can see how defendant has developed.

The defense next presented the testimony of Commissioner James Aiken. He testified that he has worked in corrections for 48 years, involved with all aspects of confinement and management of inmate populations. He was a consultant for the U.S. Justice Department relative to the classification and management of inmates. Commissioner Aiken has provided expert testimony on the federal and state level, in Louisiana as well as other places.

Commissioner Aiken testified that he was contacted by the defense to evaluate defendant himself. He also reviewed documents including an overview of the offenses defendant committed, and his confinement record. These are the standard things to rely upon in the field.

Commissioner Aiken testified that he did an onsite interview of defendant at Angola in December 2019, which lasted about an hour. Based upon his review of the records and his meeting with defendant, Commissioner Aiken testified that his

rehabilitation is considered to be excellent; he stated that one can see that defendant came into the system in a very immature and impulsive state, and one can also see his transformation over decades to compliance and adhering to the regimentation of the institution. It was not hard for him to determine that defendant had been rehabilitated. Commissioner Aiken felt that defendant is well within the spectrum of those who have matured, become compliant, and reduced negative patterns.

The defense then presented the testimony of three individuals who have worked at Angola and have been personally acquainted with defendant. Captain Wyvonna Kettley testified that she has known defendant for almost 23 years, and now sees him on a daily basis. Her impression of him as a prisoner is that he has been in no serious trouble and has no problems preventing his rehabilitation. She testified that defendant has become a role model for other offenders and helps them to stay out of trouble. She stated that from what she has seen, people who have been in the system for more than 15-20 years have grown up, and become better; she stated that "the things he used to do, he does not do anymore."

Anne Marie Easley testified that she has worked in the Department of Corrections for 19 years, and is currently the assistant warden over the East Yard. She has been involved in education programs and has worked in the Reentry Program. She knows defendant and has discussed prison programming with him, and testified that defendant has been very involved in trying to create programs to create a difference with younger offenders at Angola.

Sgt. Reggie Hawkins testified that he is a transportation officer and has known defendant for ten years; defendant used to work for him as an orderly. Sgt. Hawkins stated that he supervised defendant, who responded very well to taking orders, and that he never had to ask defendant to do anything twice; the quality of defendant's work was very good. Sgt. Hawkins testified that he has seen defendant interact with his fellow inmates, whom defendant was always willing to help. On cross, he stated that he personally never had to write defendant up, but was unaware that defendant had been written up by others over 60 times, including for acts of defiance in 2011 and 2016.

The defense also furnished the testimony of Laura Norton, who taught defendant at Angola and felt that he showed real interest and commitment to the class, and Andrew

Hundley, the Director of the Louisiana Parole Project, in which defendant has signed up to participate if he receives parole eligibility. Finally, the defense presented the testimony of defendant's father, Lawrence Jacobs, Sr., Clarence Johnson, defendant's uncle, and Rashondra Jacobs, defendant's cousin. Mr. Jacobs testified that he has maintained contact with his son over the 24 years defendant has been in prison, and he has seen his son mature and achieve things like his GED and skills learning. Mr. Jacobs also stated that if defendant were granted parole, he would be in a position to provide him with support, including assisting him with finding employment. Mr. Johnson, meanwhile, testified that he is a painting contractor who hires his own employees, and that he would hire defendant if he were to be released one day. Finally, Ms. Jacobs testified that she has visited defendant in prison many times and has noticed a lot of change in him over the years.

After the defense finished its presentation, the State presented a final "rebuttal" witness, Mr. Kenneth Stage. Mr. Stage testified that on October 30, 2016, the day before the murders involved in this case, his doorbell rang and when he opened the door, defendant burst inside with a gun, a .38 revolver. Mr. Stage said that he could see that there were cartridges in the gun's chamber. Defendant demanded money and guns, and made Mr. Stage go into his master bedroom to turn on the lights and turn doorknobs. He described defendant as cool, calm, and collected, and there was no one else telling defendant what to do. Mr. Stage feared for his life, and ultimately escaped by jumping out of the bedroom window.

Summary

In determining whether or not defendant should be entitled to parole eligibility as an offender who committed a crime which was punishable by a "life without parole" sentence when he was under the age of 18, the Court turns first to the law itself as found in Miller, *supra*, and Montgomery, *supra*, and the interpretations thereof espoused by the State of Louisiana, and by the defendant. As stated previously, the prosecution argues that the United States Supreme Court's concern in Miller was to ensure that murders resulting *merely from an offender's youth* were not excessively punished, and that therefore if a case does not fit the definition of transient immaturity, it must involve irreparable corruption, and the defendant involved should be denied parole eligibility as

one of "the worst of the worst." This interpretation, however, does not in the Court's opinion fit with what the United States Supreme Court actually said in Miller, which was that there are three characteristics *common to all juveniles* which reflect "transient immaturity:" again, (1) children have a lack of maturity and an undeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; (2) children are more vulnerable to negative influences and outside pressures, including from their family and peers, and they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings, and (3) a child's character is not as well-formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irreparable depravity. Miller, supra, at 567. Miller therefore seems to state that since *all* children have these characteristics, to some extent *all* of children's crimes – even those which result in sentences of life without parole, e.g. murders – to some extent reflect their transient immaturity. This is the reason the Miller court found it was necessary for sentencers to consider those traits in sentencing child murderers in the first place. Therefore, the Court finds the defense interpretation of the law to make more sense – namely, that a court must during a Miller hearing determine who is incorrigibly corrupt despite the transient immaturity which *must* have surrounded their crimes committed as children, such that he should be ineligible to be *considered by a parole board* as a possibility for parole. Further, as the nature of crimes which require a "life without parole" sentence (again, murders) is generally reprehensible, the Court agrees with the defense that an offender is incorrigibly corrupt only if *rehabilitation* of that offender is impossible, and the facts of the crime, while not irrelevant, are not central to the analysis.

For these reasons, the Court finds that the most helpful evidence presented during the hearing was that which bore specifically upon defendant's chances of rehabilitation, and in this case, as someone who has already spent over two decades incarcerated, *actual* rehabilitation. As Dr. Kinscherff stated in his testimony, we don't have to guess as to defendant's capacity for embracing a positive way of life; we can see how he has developed. In this case there was overwhelming evidence that when he was convicted and sent to death row, defendant was still an immature young man. As he aged in prison from a teenager to a young adult to now approaching middle age, he matured and took

advantage of many programs, including obtaining his GED; studying culinary arts and welding as well as the Bible; participating in anger management and self-help programs; and even helping to design programs for younger inmates. He also became a Class B trustee. Perry Staggs, who has worked in the Department of Corrections for over 20 years and has reviewed thousands of prisoner records, stated clearly in his testimony that Angola does not allow "the worst of the worst" to become trustees, as defendant has become, and that defendant has a low risk of reoffending if he is released. Commissioner Aiken concurred with this evaluation. Also compellingly, three Angola employees, a captain, an assistant warden, a sergeant, as well as an outside teacher participating in prison programming, none of whom would have anything to gain through false positive testimony regarding defendant, testified to his development while in prison, trustworthiness, and positive impact upon other prisoners. The State was unable, other than through cross-examination of Sgt. Thompson which pointed out 60 write-ups for defendant over almost 25 years, two of which were "acts of defiance" from nine years ago and four years ago, to put forth any evidence beyond the admittedly horrific facts of the crime itself that defendant is incapable of rehabilitation, or irreparably corrupt. The Court finds that he is not.

The Court is repulsed by the horrendous nature of the acts defendant committed, and is saddened by the loss of two beloved members of the Bough family, which has led to the survivors' strong and lifelong feelings of sorrow. However, again, the great weight of the current legal authority, including United States Supreme Court decisions, is in favor of granting parole eligibility to this type of defendant. The Court reiterates, furthermore, that finding defendant simply eligible for parole is not in any way a guaranteed release; any ultimate release of the defendant is under the purview of the parole board.

For the above reasons, therefore, the Court will resentence defendant insofar as he shall be eligible for parole consideration by the Parole Board, as it finds appropriate.

JUDGE

Service information on next page

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