JUVENILE LIFE WITHOUT PAROLE IN PHILADELPHIA

A time for hope?

MARCH 2016
Introduction

People who meet John “Freddie” Nole see an eloquent writer, a committed volunteer, and a loving husband.

Nole participates in community service projects, including a program he founded that helps prisoners build stronger relationships with their spouses and children.¹ He has won multiple awards, including the Spirit of Philadelphia, for his commitment to bettering his community.² Currently, Nole is a board member and facilitator of People Advancing Reintegration, which helps people who are returning to the community from prison.³ He also serves as one of the worship leaders of the Yokefellow program, which provides Christian spiritual guidance in prison.⁴

Freddie Nole, now 64 years old, is also a prisoner serving life without the possibility of parole for a homicide that he committed when he was 17 years old.

² Id.
³ E-mail from Susan Beard-Nole, wife of Freddie Nole, to Elizabeth Eisenberg, Fair Punishment Project (March 21, 2016, 09:23 EST) (on file with author).
⁴ Id.
300 juveniles were convicted and sentenced to life without the possibility of parole in Philadelphia County.

This report explores what should happen to the 300 people who, like Nole, are serving life without the possibility of parole for a juvenile homicide offense committed in Philadelphia County, Pennsylvania.

The U.S. Supreme Court ruled in 2012 that the Eighth Amendment prohibits the imposition of mandatory life without parole sentences on juveniles. At the time of the ruling, Pennsylvania was still imposing mandatory life without parole sentences on juveniles convicted of murder in the first and second degrees. In response to the Supreme Court ruling, then-Pennsylvania Governor Tom Corbett signed new legislation that changed the mandatory sentence for first-degree murder to 35 years to life without parole for juveniles older than 15 years, and 25 years to life without parole for youth under 15 years old.\(^5\) For second-degree murder, the sentence was changed to 30 years to life with parole for those 15 and older and 20 years to life with parole for those under 15 years old.\(^6\) Judges retained the discretion to determine a youth's suitability for life without parole sentences in first-degree cases.


\(^6\) Id.
Pennsylvania’s legislation explicitly did not apply retroactively. However, on January 26, 2016, the U.S. Supreme Court held in *Montgomery v. Louisiana* that the prohibition against mandatory life without parole sentences for youth must be applied retroactively to every person serving this sentence. The court also re-emphasized its determination in *Miller* in 2012 that the punishment should only be used in extremely rare cases when a juvenile offender is determined to be “irreparably corrupt.”

Philadelphia County, Pennsylvania, is now preparing for re-sentencing hearings for hundreds of inmates who were originally sentenced to juvenile life without parole (JLWOP) under the old laws. It is uncertain exactly how these new rules will be applied in practice.

In this report, we’ll explore several compelling reasons why Philadelphia District Attorney Seth Williams should use this opportunity to adopt a new approach for dealing with juvenile offenders, and move Philadelphia from its position as an extreme outlier on the issue of juvenile life without parole into the norm.

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7 18 Pa. Stat. Ann. § 1102.1; See Batts, 66 A.3d at 293.
KIDS ARE DIFFERENT

Modern neuroscience has proven that the adolescent brain differs substantially from the adult brain. The prefrontal cortex, which is the part of the brain used for impulse control and planning, is not fully developed until around age 25. As a result, young people have a reduced capacity to control their impulses; they may know and understand the choices they are making, but they have a harder time resisting the compulsion to act. Indeed, recent studies show that juveniles perform worse than adults in the areas of impulse control and suppression of aggression, both of which permit adults to make more adaptive decisions than adolescents, in part because they have a more mature capacity to resist the pull of social and emotional influences and remain focused on long-term goals.

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9 Id.
10 Dustin Albert & Laurence Steinberg, Judgment and Decision Making in Adolescence, 21 J. Research on Adolescence 211, 220 (2011)
These neurological differences translate into a differing risk-reward calculus between adolescents and adults. For example, “when asked to evaluate hypothetical decisions, adolescents as old as 17 were less likely than adults to mention possible long-term consequences, to evaluate both risks and benefits, and to examine possible alternative options.”11 This is especially true with regard to choices made under pressure, in emotionally charged situations, or when influenced by friends.12

It is no surprise that as people age, their likelihood of committing crimes significantly decreases. Developmental research shows that juveniles usually outgrow the type of reckless behavior that leads to contact with the criminal justice system.13 Thus, the strength of the adolescent brain lies in its elasticity and resilience.14 In a very real sense, the teenager who commits a serious crime is not the same person years—or decades—later when a parole board decides whether he or she should be released from prison.

Most developed nations have accepted these breakthroughs in neuroscience research on juveniles and refuse to assign life sentences to youth. **There are no other Western nations that assign juveniles life without parole sentences, and the U.N. Convention on the Rights of the Child formally condemns it.**15

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12 Albert & Steinberg, supra note 10.
MANDATORY JUVENILE LIFE WITHOUT PAROLE IS UNCONSTITUTIONAL

Recent Supreme Court jurisprudence has now started to catch up with the science behind adolescent behavior. The first move came in *Roper v. Simmons*, decided in 2005, when the U.S. Supreme Court banned the death penalty for those under the age of 18 at the time of the crime, pointing both to the science and the growing national consensus that kids should not be executed.16 Then, in a 2010 case, *Graham v. Florida*, the court banned life without parole sentences for juveniles convicted of non-homicide offenses. While the majority of states technically permitted JLWOP sentences, the court found that they were very rarely imposed for non-homicide offenses, citing only 11 jurisdictions that had done so.17

*Roper* and *Graham* established the important point that youth matters—children under 18 are in a constitutionally distinct category for purposes of sentencing. The Supreme Court determined that juveniles are less culpable and have greater possibilities for reform, and therefore are less deserving of severe punishment.18 The court pointed specifically to three characteristics of youth that make their actions less likely to be evidence of irredeemability: a less developed sense of responsibility leading to recklessness and impulsive behavior; greater vulnerability to negative influences and outside pressures in their environment; and a more malleable character than that of an adult.19

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16 Roper v. Simmons, 543 U.S. 551, 564-565 (2005) (“30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach... even in the 20 States without a formal prohibition on executing juveniles, the practice is infrequent.”).
18 Id. at 68 (quoting Roper).
19 Montgomery, 136 S.Ct. at 733 (2016) (quoting Roper and Graham; alterations, citations, and some internal quotation marks omitted).
The Supreme Court applied this same rationale in their 2012 decision in *Miller v. Alabama*, which banned mandatory life without parole sentences for juveniles convicted of homicide offenses.\(^{20}\) The court held that automatically sentencing a juvenile to life without parole without specifically considering his or her youth as a mitigating factor violates the Eighth Amendment.\(^{21}\) The *Miller* court then went on to propose a standard for the rare case in which life without parole could be imposed on a juvenile, explaining that this punishment should be reserved for exceptional cases—for juveniles whose crimes reflect “irreparable corruption.”\(^ {22}\) They reaffirmed this standard this year in the *Montgomery* decision.

**Irreparable corruption** is a very high bar, and the court has stressed, “[A]ppropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”\(^ {23}\) In *Roper*, the court noted that “it is difficult even for expert psychologists"\(^ {24}\) to make a determination that a child is irreparably corrupt, given that decision-making skills are still developing and changing.

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21 Id.
22 Id. at 2469.
23 Id.
24 Roper, 543 U.S. at 573.
At the time of the 2012 decision, the court left it up to the states to decide how to apply the prohibition on mandatory life without parole sentences for juveniles. Ten states have abolished juvenile life without parole completely in the years since Miller, bringing the national total of jurisdictions that formally prohibit it to 17 states and the District of Columbia.\(^\text{25}\) While many of the states that retained juvenile life without parole determined that Miller should apply retroactively, meaning that youth sentenced under old rules would have resentencing hearings to determine if their punishment fit the Miller criteria, Pennsylvania chose not to apply Miller retroactively.\(^\text{26}\) In fact, in Commonwealth v. Cunningham, Philadelphia County District Attorney Seth Williams’ office fought all attempts to make Miller retroactive, arguing that there was no legal reason to change the sentences.

\(^{25}\) PHILLIPS BLACK PROJECT, supra note 5.

\(^{26}\) Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013).
In January 2016, the Supreme Court determined in *Montgomery v. Louisiana* that *Miller* must be applied retroactively.\(^{27}\) This means that all people currently serving JLWOP sentences must have their sentences reconsidered or, alternatively, be made eligible for parole.\(^{28}\) *Montgomery* did not make release mandatory, but the court was clear that the vast majority of JLWOP sentences should be significantly reduced because the sentence should be unusual and an exception rather than the norm.

"*Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption."\(^{29}\)

The court thus established the legal standard for resentencing and parole determinations by holding that those individuals serving JLWOP sentences *must be given the opportunity to show their crime did not reflect irreparable corruption.*\(^{30}\)

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\(^{27}\) *Montgomery*, 136 S.Ct. 718.

\(^{28}\) The issue about parole versus resentencing remains to be litigated in the various states.

\(^{29}\) *Montgomery*, 136 S.Ct. at 724 (quoting *Miller*).

\(^{30}\) Id. at 736
PHILADELPHIA IS AN ‘EXTREME OUTLIER’ ON JUVENILE LIFE WITHOUT PAROLE

Among all U.S. jurisdictions, Pennsylvania has imposed the highest percent of JLWOP sentences of any state. In particular, Philadelphia County is responsible for the highest number of juvenile life without parole convictions in the country.\textsuperscript{31} By way of comparison, Philadelphia County is home to .5\% of all Americans, but at least 9\% of all juveniles sentenced to life without parole.\textsuperscript{32} There are approximately 300 individuals currently serving JLWOP sentences from Philadelphia County.\textsuperscript{33}

A number of legal factors coalesced to make Philadelphia the center of JLWOP sentencing. \textit{Pennsylvania does not have a “juvenile murder” charge, meaning that all youth—no matter how young—who commit homicide in Pennsylvania can be tried as adults}. All juveniles charged with homicide begin their cases in adult court, and the


\textsuperscript{32} Id.

\textsuperscript{33} Data from Bradley Bridge, Assistant Defender at Philadelphia Defender Association.
Pennsylvania is one of just six states where all life sentences are imposed without the possibility of parole.

The burden is on the defense to convince a judge to move the case to juvenile court. The mandatory sentence for first-degree and second-degree murder committed by a juvenile, up until the rulings in *Miller* and *Montgomery*, was life without parole.34 Murder in the second degree is a homicide that occurs “while defendant was engaged as a principal or an accomplice in the perpetration of a felony.”35 Pennsylvania is just one of six states where all life sentences are imposed without the possibility of parole,36 and is one of just two states where both first- and second-degree murder convictions automatically trigger life without parole sentences.37

In addition to the extremely punitive laws, the Philadelphia County District Attorney’s Office historically embraced a culture that valued excessive punishment in response to the nationwide moral panic surrounding the so-called “superpredator” scare in the 1990s. This scare was facilitated by the perception that violent crimes committed by youth were increasing. The “superpredators” were a coming “breed” of “fatherless, Godless and jobless” teenagers who would “kill, rape, [and] maim, without giving it a second thought.”38

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35 18 Pa C.S.A. § 2502(b).


37 Id.

The Myth of the \textbf{SUPERPREDATOR}

The myth of a new wave of young “superpredators” carried with it racial undertones that had dire repercussions for young people of color who became caught up in the criminal justice system during this era.

Black youth in Philadelphia were disproportionately sentenced to life without parole. African-Americans make up 17% of Pennsylvania’s population, but 80% of its juvenile lifers.\footnote{Holly Otterbein, Philly Tops All Cities in Sending Juveniles to Prison for Life, Philly Magazine (Sep. 23, 2015), http://www.phillymag.com/cityfied/2015/09/23/juvenile-life-without-parole-sentence/ .}

The “superpredator” myth, which led to an increase in juvenile life without parole sentences, was proposed by political scientist John Dilulio in the early 1990s. Dilulio argued that young people, particularly young people of color in urban areas, were so morally corrupt that rehabilitation was useless. Dilulio and former Philadelphia District Attorney Lynne Abraham served together on the Council on Crime in America, a pro law-and-order organization that sought solutions to what was perceived to be a rise in violent crimes committed by youth. The Council on Crime in America emphasized the need to “contain” young people who were committing violent crimes and refused to acknowledge all scientific evidence supporting rehabilitation of youth and the impact of trauma on development.\footnote{The Counsel On Crime In America, The State of Violent Crime in America (1996) https://www.heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/4390.pdf.} While these theories have since been debunked, vestiges remain in punitive sentencing schemes—like Pennsylvania’s use of JLWOP sentencing as a mandatory minimum sentence, which sends an unambiguous message that a child is too incorrigible to ever change.\footnote{Phillips Black Project, supra note 5.} Much like his predecessor Lynne Abraham, Philadelphia County’s current district attorney, Seth Williams, has spoken in favor of harsh sentencing for juveniles.\footnote{Allyn, supra note 34.} The \textit{Montgomery} decision offers him the chance to reconsider his approach to juvenile justice.

\textit{JLWOP Sentences in Philadelphia}\footnote{Infographic by Phillips Black.}
WHO ARE THE KIDS SENTENCED TO LIFE WITHOUT PAROLE?

Freddie Nole shows how much a person can change as he grows into an adult. Nole grew up in South Philadelphia as one of 11 siblings, and was left to run the streets and fend for himself. In 1969, when he was just 17 years old, Nole and two other teens were arrested for robbing an elderly South Philadelphia shopkeeper, who later died from injuries sustained during the robbery. All of the youth involved were charged with murder. While the other two teens were tried in juvenile court and given short sentences, Nole was charged as an adult and sentenced to life in prison without parole.

Nole uses his first-hand knowledge to help prisoners, family members, and other community members by contributing writings to the Human Rights Coalition, a Philadelphia-based organization committed to rehabilitation and humane prison conditions.

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44 Marriot, supra note 1.
Nole has pointed out that, like him, many youth sentenced to JLWOP are “poor, uneducated, from single parent homes, alcohol and drug infested neighborhoods, and minorities.”

Mr. Nole is not the same person he was as a teenager, and this is true of countless other inmates who were sentenced as juveniles in Philadelphia and are still serving time.

Luis Gonzalez was 17 years old when he was spending time with a group of friends and they decided to steal someone’s jacket. The man was killed, although police never determined who pulled the trigger. Luis was sentenced to life without parole for the crime. Since then, he has dedicated himself to education and has spearheaded several volunteer initiatives, including a scholarship program funded by inmates at Graterford State Correctional Institution from their meager wages.

"About four years after I came in, I started changing my life around. I had started going to school, and I passed my GED. That was significant; that was like a milestone for me. It made me feel wonderful. It was the first time I had the opportunity to make my family proud of me. But more than that, it allowed me to see what I was capable of as an individual." — Freddie Nole

Luis Gonzalez

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<tr>
<th>Age at Arrest</th>
<th>Current Age</th>
<th>Years Incarcerated</th>
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<td>17</td>
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Id.
In 1953, Joe Ligon, then 15 years old, was arrested along with five other youths in connection with the deaths of two other teens in a large brawl.\textsuperscript{51} Ligon is developmentally disabled and did not actually stab the victims who died.\textsuperscript{52} Today, all four of the other defendants have been released; only Ligon remains locked up.\textsuperscript{53} He is now a 78-year-old man, and with more than six decades of incarceration, he is the longest-serving juvenile lifer in the state.\textsuperscript{54}

In 1980, David Maldonado, then 16, stabbed a man who was pursuing him after David’s brother stole a box from the man.\textsuperscript{55} Maldonado cried when he realized he had killed someone. He was later convicted of second-degree murder.\textsuperscript{56} Thirty-five years later, he has overcome his drug addiction, received multiple degrees, and hopes to become a drug and alcohol counselor.\textsuperscript{57}

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Age at Arrest & Current Age & Years Incarcerated \\
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Joe Ligon
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David Maldonado
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\textsuperscript{52} Id.

\textsuperscript{53} Id.


\textsuperscript{56} Id.

\textsuperscript{57} THE REDEMPTION PROJECT, supra note 49, Profile on David Maldonado.
In 1987, 15-year-olds Kempis Songster and Dameon Brome got in over their heads with a Jamaican drug gang in Philadelphia. After being locked in a room without food, and fearing for their lives, they participated in an attack that resulted in the death of another boy who worked for the gang. Songster and Brome deeply regret their actions and have spent their time in prison studying, writing, and volunteering. Even the victim’s father forgave Songster and Brome, arguing that both boys were as much victims as his own son, due to their youth and the extreme influence of gang leaders.

Many of the youth sentenced to JLWOP were sentenced under the felony murder rule, meaning they had no intent to kill anyone. When John Pace was just 17 years old, he hit a man in the head with a rubber blackjack, intending to knock the man out so he could rob him. The man died 10 days later, and Pace ultimately pled guilty to second-degree murder. Since then, more than 30 years have passed, and John has used the time to earn a bachelor’s degree and to teach other prisoners how to read.

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60 Id.
62 THE REDEMPTION PROJECT, supra note 49, Profile on John Pace.
63 Id.
Robert “Saleem” Holbrook was 16 years old when he served as a lookout for what he was told would be a drug deal. The incident ended with a killing that he did not participate in or anticipate, yet he was convicted of second-degree murder. Since then, he has written articles for newspapers, journals, and newsletters; joined the Human Rights Coalition; and written a survivor’s manual to assist juveniles and their families in navigating juvenile life without parole.

Stacey Torrance was only 14 years old when he was involved in the plans of his cousin and another man to commit a burglary that he did not know would end in a homicide. Despite his youth and the fact that he was not present for the killing, Torrance was convicted of the murder and sentenced to life without parole. Since then, he has found his passion working as an electrician. He makes 42 cents an hour doing this work for the prison and dreams of continuing this work on the outside. He is now 40 years old and has been in prison for all of his young life; he’s never paid a bill or driven a car.

66 16 And Life to Go...The Case of Robert L. Holbrook, FREESALIM.NET, http://freesalim.net/16_and_life_to_go.
69 Id.
These stories are compelling examples that demonstrate just how much juvenile offenders can transform themselves as they age.

These sentencing decisions were made without credible information about an individual’s potential. A life without parole sentence for a teenager “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the inmate], he will remain in prison for the rest of his days.”70 It means “there is no possible piece of information that could be learned between sentencing and death that could bear in any way on the punishment the convicted is said to deserve, short of what might ground an appeal.”71

But juveniles who commit a serious crime and the person they become later in life are often very different people.72 Many of them demonstrate a great elasticity and capacity for change and simply grow out of any proclivity toward criminal activity.73 Often, they are more mature and introspective, and have great potential to be a valuable member of society. No compelling evidence exists to show that a juvenile who is charged with a violent crime will continue to commit crimes throughout adulthood. Indeed, many of these prisoners have transformed their lives in dramatic fashion in the years—and decades—since their convictions. The vast majority of those sentenced to JLWOP are not the same 14- or 17-year-olds who long ago committed serious crimes.

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70 Graham, 560 U.S. at 70 (quoting Naovarath v. State, 105 Nev. 525, 526, 779 P.2d 944 (1989)).
72 Id.
This is a critical moment in District Attorney Seth Williams’ career. Hundreds of individuals sentenced to life without parole for crimes they committed as kids are now eligible for resentencing hearings under Montgomery. In this scenario, as in many other sentencing decisions, the prosecutor wields a great deal of discretion.

Throughout the United States, the tide has turned against life without parole sentences for juveniles, with both neuroscience and common sense guiding the shift. Philadelphia County remains an extreme outlier in its high usage of JLWOP sentences, although it now has the opportunity to adopt a new approach to juvenile justice. It is up to Seth Williams’ office to consider the growing body of evidence against sentencing juveniles to life in prison without parole and seek more appropriate sentences in these cases.
ABOUT THE FAIR PUNISHMENT PROJECT AND PHILLIPS BLACK PROJECT

The Fair Punishment Project uses legal research and educational initiatives to ensure that the U.S. justice system is fair and accountable. As a joint initiative of Harvard Law School’s Charles Hamilton Houston Institute for Race & Justice and its Criminal Justice Institute, the Fair Punishment Project works to highlight the gross injustices resulting from prosecutorial misconduct, ineffective defense lawyers, and racial bias, and illuminate the laws that result in excessive punishment. For more information visit: www.fairpunishment.org.

Phillips Black is at the forefront of compiling and analyzing the transformation of juvenile life without parole sentencing (JLWOP) resulting from the seminal Eighth Amendment decisions of Graham v. Florida, 560 U.S. 48 (2010), and Miller v. Alabama, 132 S. Ct. 2455 (2012). Phillips Black is a leading producer of JLWOP legal scholarship examining the rapid changes across the country, identifying the jurisdictions that have already abandoned or are decidedly moving away from this sentence, and explicating the law and actual practices in counties and states that continue to countenance sentencing individuals to die in prison for crimes they committed before reaching age 18. For more information visit: www.phillipsblack.org/juvenile-justice.