

JUVENILE LIFE WITHOUT PAROLE IN WAYNE COUNTY:

Time to Join the Growing National Consensus?

INTRODUCTION

“Somebody’s been throwing this young man away from the day he was born ... I think he’s salvageable,” a trial judge said at the sentencing hearing for Cortez Ronald Davis, a man sentenced to life without parole for a felony-murder that he committed in Wayne County, Michigan, when he was 16 years old.¹ Originally, the judge sentenced Davis to a minimum of 10 and a maximum of 40 years, stating that imposing life without possibility of parole on a young man who “was not the person who pulled the trigger” and who “can be rehabilitated” was cruel and unusual punishment.² But under Michigan law at the time, the judge was required to sentence Davis to life without possibility of parole. In doing so, however, she encouraged Davis not to “give up hope” that he could one day be released from prison.³

It turns out that the judge was right – there is hope for Davis.

Since he began his sentence in 1994, Davis has taken advantage of multiple opportunities to change the course of his life. He learned American Sign Language and took numerous construction and career-training classes.⁴ In addition to earning his G.E.D.,⁵ he also completed more than 25 legal courses through the Blackstone Career Institute, qualifying him for a Paralegal Certificate, and he served as a Warden’s Forum Representative.⁶ The judge was prescient in 1994, but it took until 2012 for the United States Supreme Court to declare mandatory life without parole

1 Memorandum of Law In Support of Defendant’s Successive Motion for Post-Judgment Relief at 3-4, *People v. Davis*, No. 94-002089 (July 26, 2012), available at <http://voiceofdetroit.net/wp-content/uploads/2012/08/Cortez-Davis-Successive-Motion-for-Post-Judgment-Relief-signed.pdf> [hereinafter Memorandum].

2 *Id.*

3 *Id.*

4 See *id.* at 15-16; see also Diane Bukowski, *Michigan Challenges U.S. Supreme Court Ruling On Juvenile Life Without Parole*, Voice of Detroit (Aug. 16, 2012), <http://voiceofdetroit.net/wp-content/uploads/2012/08/Michigan-Challenges-U.S.-Supreme-Court-on-JLWOP-VOD.pdf>.

5 See Bukowski, *supra* note 4.

6 See *id.*

for juveniles to be unconstitutional.⁷

Davis is one of approximately 150⁸ people from Wayne County who have been serving life without parole sentences for crimes committed as juveniles (JLWOP), a sentence that is now unconstitutional except in the rarest of circumstances as a result of the U.S. Supreme Court's decision in *Montgomery v. Louisiana*.⁹ As a result of the *Montgomery* decision, the current Wayne County District Attorney Kym Worthy was forced to decide how to handle the juveniles from her county who had been sent away for life.

Davis is now one of the people selected by Wayne County District Attorney Kym Worthy to be resentenced to a term of years rather than a sentence of life in prison without parole. For Davis, this is an opportunity for him to contribute to society. Yet, despite the Supreme Court's ruling, Worthy will seek to retain one in three JLWOP sentences¹⁰, thereby denying any chance of parole for dozens of individuals who have either rehabilitated themselves, or who might be too young to show their future potential. In making this decision, Worthy has refused to align her policies with the majority of states that recognize that kids can change and deserve an opportunity to eventually earn a chance of release.

THE TIDE IS TURNING ON JLWOP

Over the last decade, a growing national consensus against the use of JLWOP has emerged. A majority of states have either outlawed the use of JLWOP completely or have fewer than five individuals serving the sentence. Of those, 19 states have abandoned JLWOP entirely, six states and the District of Columbia allow for JLWOP but have no individuals currently serving JLWOP sentences, and four states have five or fewer JLWOP sentences.¹¹ This momentum is not limited to left-leaning jurisdictions. Both Utah and South Dakota, which are Republican-led states, passed laws banning life without parole for minors this year.¹² Louisiana's conservative legislature also overwhelmingly passed a measure that would have eliminated

7 See infra notes 34-37 and accompanying text.

8 See Wayne County JLWOP Data, on file with the Fair Punishment Project: <http://fairpunishment.org/wp-content/uploads/2016/07/Wayne-County-JLWOP-List-July-2016.xlsx>

9 136 S.Ct. 718 (2016).

10 See Oralandar Brand-Williams and Mike Martindale, *Worthy seeking resentencing of juvenile lifers*, The Detroit News, July 23, 2016, <http://www.detroitnews.com/story/news/local/wayne-county/2016/07/22/worthy-seeking-resentencing-jvenile-lifers/87439616/>

11 See Joshua Rovner, The Sentencing Project, *Juvenile Life Without Parole: An Overview 1-2* (2016), <http://www.sentencingproject.org/publications/juvenile-life-without-parole/>; Madison Pauly, *3 Anger-Inducing Charts About Kids and Prison*, Mother Jones, January 4, 2016, <http://www.motherjones.com/politics/2016/01/disturbing-data-behind-juvenile-life-without-parole>

12 See *Utah Bans Life Without Parole for Children*, Campaign for Fair Sentencing of Youth Blog (Apr. 1, 2016), <http://fairsentencingofyouth.org/2016/04/01/utah-bans-life-without-parole-sentences-for-children/>; *South Dakota Bans Life-Without-Parole Sentences For Youth*, News Center 1, <http://www.newscenter1.tv/story/31497823/south-dakota-bans-life-without-parole-sentences-for-youth> (last visited July 13, 2016).

JLWOP sentences and allowed all youth a parole hearing after 35 years.¹³

The new laws are part of a larger bipartisan movement coalescing around the principle that children cannot and should not be discarded for the rest of their lives. South Dakota Republican Senator Craig Tieszen, who sponsored the South Dakota bill, said, “I believe that children, even children who commit terrible crimes, can and do change. And, I believe they deserve a chance to demonstrate that change and become productive citizens.”¹⁴ Over 100 national groups and organizations, including the American Correctional Association, Boy Scouts of America, and the American Probation and Parole Association have called for elimination of LWOP sentences for minors.¹⁵

Most recently, the district attorney of Philadelphia, Seth Williams, decided to stop seeking JLWOP entirely and to permit resentencing for those serving JLWOP sentences, giving those individuals a meaningful opportunity at parole.¹⁶ Before this announcement, Philadelphia had the largest number of JLWOP prisoners in America--approximately one out of every nine serving this sentence.¹⁷ Now 300 inmates who were condemned to prison until their death will have an opportunity to earn their release. As Philadelphia moves forward, Wayne County will now have more individuals serving juvenile life without parole sentences than any other jurisdiction in the country.¹⁸

Unlike D.A. Seth Williams, Wayne County District Attorney Kym Worthy has recently decided to maintain Wayne County’s status as an extreme outlier rather than meaningfully implement the Supreme Court’s limits on JLWOP sentences. Even though an astounding 93% of Wayne County’s JLWOP inmates are African-American, which reflects the deep roots of racial prejudice in the prosecution of crimes all over the nation, D.A. Worthy, the first Black woman to hold the position of District Attorney in the county that includes Detroit, has opted not to correct a pattern of racial inequality in sentencing.¹⁹

13 See Mark Joseph Stern, *Louisiana Is Poised To Abolish Life Without Parole Sentences For Juveniles*, Slate (Jun. 1, 2016), http://www.slate.com/blogs/the_slatest/2016/06/01/louisiana_legislature_abolishes_juvenile_life_without_parole.html. Unfortunately, the measure stalled in concurrence proceedings and the session ended before it could be re-adopted. See *Bill To Parole Juvenile Lifers Halted In Final Moments*, WBBJ-TV (Jun. 7, 2016), available at <http://www.wbbjtv.com/2016/06/07/bill-to-parole-juvenile-lifers-halted-in-final-moments/>.

14 *South Dakota Bans*, *supra* note 12.

15 See *American Correctional Association Opposes JLWOP*, Campaign for Fair Sentencing of Youth Blog (Oct. 1, 2014), <http://fairsentencingofyouth.org/2014/10/01/american-correctional-association-opposes-jlwop/>.

16 See Op-Ed., *When A Life Sentence Starts at 15*, N.Y. Times, June 8, 2016, <http://www.nytimes.com/2016/06/08/opinion/when-a-life-sentence-starts-at-15.html?referer=https://t.co/zWu760WYQJ>.

17 See Fair Punishment Project & Phillips Black Project, *Juvenile Life Without Parole in Philadelphia: A Time for Hope?* 11 (2016) [hereinafter *Phila. Report*], available at http://fairpunishment.org/wp-content/uploads/2016/03/FPP_JLWOP_philadelphia_r601.pdf.

18 See Wayne County JLWOP Data, *supra* note 9.

19 See *id.*

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 25.²⁰ 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 areas 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.²¹

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.²² This is especially true with regard to choices made under pressure, in emotionally charged situations, or when influenced by friends.²³ The differences in an adolescent's brain have historically been ignored in states like Michigan, where sentencing laws failed to make distinctions for youth and its attendant characteristics.

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.²⁴ Thus, the strength of the adolescent brain lies in its elasticity and resilience.²⁵ 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

20 See Dustin Albert & Laurence Steinberg, Judgment and Decision Making in Adolescence, 21 J. Res. on Adolescence 211, 212-17 (2011).

21 See *id.* at 220.

22 Bonnie Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. Applied Dev. Psychol. 257, 265-68 (2001). Even greater differences prevailed between adults and younger adolescents. See *id.* at 268.

23 See Albert & Steinberg, *supra* note 20.

24 See Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychol. 1009, 1012, 1014-15 (2003).

25 See Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. Adolescent Health 3, 216-21 (2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/>.

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 the practice.²⁶

LIFE WITHOUT PAROLE IS UNCONSTITUTIONAL

Recent Supreme Court jurisprudence has started to catch up with the science behind adolescent behavior. The first move came in *Roper v. Simmons*,²⁷ 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 children should not be executed.²⁸ Then, in a 2010 case, *Graham v. Florida*,²⁹ the Court banned life without parole sentences for juveniles convicted of non-homicide offenses.³⁰ 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.³¹

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 they are less deserving of severe punishment.³² The Court pointed specifically to three characteristics of youth that make their actions less likely to be irredeemable: 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.³³

The Supreme Court applied this same rationale in its 2012 decision in *Miller v. Alabama*,³⁴ which banned mandatory life without parole sentences for juveniles convicted of homicide offenses.³⁵ The Court held that automatically sentencing a

26 See U.N. Convention on the Rights of the Child, GA Res. 44/25, annex, 171, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).

27 543 U.S. 551 (2005).

28 See *id.* at 564-65 (“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.”).

29 560 U.S. 48 (2010).

30 See *id.* at 82.

31 See *id.* at 64 (“[O]nly 11 jurisdictions nationwide in fact impose life without parole sentences on juvenile non- homicide offenders—and most of those do so quite rarely—while 26 States, the District of Columbia, and the Federal Government do not impose them despite apparent statutory authorization.”).

32 See *id.* at 68 (quoting *Roper*).

33 See *Montgomery*, 136 S.Ct. at 733 (quoting *Roper and Graham*) (alterations, citations, and some internal quotation marks omitted).

34 132 S. Ct. 2455 (2012).

35 See *id.* at 2468.

juvenile to life without parole without specifically considering his or her youth as a mitigating factor violates the Eighth Amendment.³⁶ 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.”³⁷

Irreparable corruption is a high bar, and the Court has stressed that “appropriate 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.’”³⁸ In *Roper*, the Court noted that “it is difficult even for expert psychologists” to make a determination that a child is irreparably corrupt, given that an adolescent’s decision-making skills are still developing and changing.³⁹

At the time of the 2012 *Miller* decision, the Court left it up to the states to decide how to apply the prohibition on mandatory life without parole sentences for juveniles. Twenty-four states modified their laws for juvenile offenders following *Miller*,⁴⁰ and 19 jurisdictions now formally prohibit JLWOP.⁴¹ In January 2016, the Supreme Court determined in *Montgomery v. Louisiana* that *Miller* must be applied retroactively.⁴² Consequently, all people currently serving mandatory JLWOP sentences must have their sentences reconsidered or, alternatively, be made eligible for parole. *Montgomery* did not make release mandatory, but the Court was clear that the vast majority of JLWOP sentences should be reconsidered because the sentence should be an exception rather than the norm.⁴³

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.”⁴⁴

Some states that have begun to implement the Court’s standard following *Montgomery* are either significantly reducing or eliminating JLWOP. On March

36 See *id.*

37 *Id.* at 2469.

38 *Id.*

39 *Roper*, 543 U.S. at 573.

40 See Rovner, *supra* note 11, at 3.

41 See *id.* at 1.

42 *Montgomery*, 136 S.Ct. at 736.

43 See *id.* at 724.

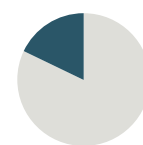
44 *Id.* at 736.

21, 2016, the Georgia Supreme Court ruled that there was an “almost-all juvenile murderer category for which LWOP sentences are banned,”⁴⁵ and state courts of appeal in Illinois⁴⁶ and Arizona⁴⁷ followed suit within one week of that decision. On May 27, 2016, the Iowa Supreme Court held that LWOP sentences are on their face unconstitutional *for all juvenile offenders*,⁴⁸ reasoning that assessing a juvenile’s incorrigibility at the time of sentencing is an inherently quixotic task. The Court agreed with a psychiatric expert who testified for the defense that “the *earliest* a determination could be made regarding [the defendant’s] potential for rehabilitation was age thirty.”⁴⁹

WAYNE COUNTY IS AN OUTLIER IN JLWOP SENTENCING

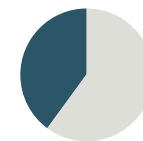
As of July 15, 2016, approximately 150 individuals from Wayne County are serving life without parole for offenses they committed as juveniles. The state of Michigan has approximately 363 individuals serving this sentence statewide.⁵⁰ Wayne County makes up only 18% of the state’s population, yet it accounts for at least 40% of the individuals serving these sentences in Michigan.⁵¹ While many of these people were sentenced during “tough on crime” years in the late 1980s and 1990s,⁵² 20 JLWOP sentences were handed down in Wayne County within the last decade and 92 individuals were sentenced in the last 20 years.⁵³ Ex-prosecutor John O’Hair, who served for 14 years as Wayne County’s D.A. and sent over 90 youth to prison for life, argues that prosecutors must follow the Supreme Court’s guidance and exercise judgment and discretion in ensuring that JLWOP is reserved only for the extremely rare youthful offender.⁵⁴

Even more troubling is the racial disparity in the implementation of these sentences. While Black people make up only 39% of Wayne County’s population,⁵⁵ more than 90% of the individuals serving juvenile life without parole sentences are Black.⁵⁶



18%

WAYNE COUNTY'S POPULATION AS A % OF MICHIGAN'S POPULATION



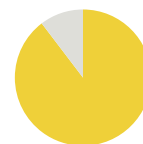
40%

WAYNE COUNTY'S PORTION OF THE STATE'S JLWOP POPULATION



39%

WAYNE COUNTY'S AFRICAN-AMERICAN POPULATION



93%

AFRICAN-AMERICANS AS A % OF WAYNE COUNTY'S JLWOP POPULATION

45 Veal v. State, No. S15A1721 (Ga. Mar. 21, 2016).

46 See, e.g., People v. Nieto, 2016 IL App (1st) 121604 (decided on Mar. 23, 2016).

47 See, e.g., State v. Valencia et al., Nos. 2 CA-CR 2015-0151-PR, 2 CA-CR 2015-0182-PR (Az. Ct. App., Mar. 28, 2016); see also *Court Orders New Sentencings For Men In Tucson Murder Cases*, A.P., Mar. 29, 2016, <http://www.washingtontimes.com/news/2016/mar/29/court-orders-new-sentencings-for-men-in-tucson-mur/>.

48 See State v. Sweet, 879 N.W.2d 811, 839 (Iowa 2016).

49 Id. at 816 (emphasis added).

50 See Wayne County JLWOP Data, *supra* note 9.

51 See *id.*

52 See Phila. Report, *supra* note 17, at 13.

53 See Wayne County JLWOP Data, *supra* note 9.

54 John O’Hair et al., *High Court’s Juvenile Justice Rulings Not To Be Evaded*, Detroit Free Press, July 15, 2016, <http://www.freep.com/story/opinion/contributors/2016/07/15/high-courts-juvenile-justice-rulings-followed-not-evaded/87076808/>.

55 See QuickFacts for Wayne Cnty., Mich., U.S. Census Bureau (2015), <http://www.census.gov/quickfacts/table/PST045215/26163>.

56 See Wayne County JLWOP Data, *supra* note 9.

Furthermore, a substantial number of these youth were either offered plea agreements for sentences substantially less severe than LWOP, or had co-defendants who received less severe sentences. Nearly one in three of the individuals currently serving LWOP were at one time offered plea agreements consisting of terms of years, averaging around 20 years.⁵⁷ More than one in four persons serving a JLWOP sentence had co-defendants who, though not necessarily less culpable, are serving less time or have already been released.⁵⁸ It is disingenuous to argue that these incarcerated individuals are “irreparably corrupt” when the D.A. offered them terms of years as a plea agreement; in many cases, they were offered terms that would have released them years ago.

District Attorney Worthy inherited the vast majority of JLWOP sentences that she now must reconsider in light of *Montgomery*; however, her office has obtained 27 JLWOP sentences during her tenure. Even post-*Miller*, when she knew the changes in the law, Worthy’s office sought JLWOP for eight youth and received it in four instances.⁵⁹ Her recent decision to pursue LWOP in a large percentage of these cases reflects her tenacious grasp on an old style of thinking that is outdated and disproven by modern science.

WHY MICHIGAN, AND WHY WAYNE COUNTY?

Michigan’s “direct file” laws have made it easy for Wayne County prosecutors to obtain life without parole terms for juvenile offenders. While Michigan has juvenile courts, like most other states, its laws on how defendants can be transferred between juvenile and adult courts undermine the primary purpose of juvenile justice: rehabilitation.⁶⁰ If a teenager is accused of any felony punishable by over a year, a prosecutor can file a motion to have his or her case moved to an adult criminal court.⁶¹ A youth as young as 14 who is accused of specific crimes, such as aggravated assault, armed robbery, rape, attempted murder, or murder, will automatically be tried in adult court unless the prosecutor makes the explicit

57 See *id.*

58 See *id.*

59 See *id.*

60 The first juvenile court was founded in 1899 in Cook County, Illinois, on the idea that it was cruel and unusual to treat juveniles in the same way as adult offenders, and that it was more appropriate to rehabilitate juveniles instead of punish them. See ABA Div. for Pub. Ed., *Dialogue On Youth And Justice* 5 (2007), available at <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJfull.authcheckdam.pdf>. The majority of the country supports rehabilitation instead of long-term incarceration for juvenile offenders. See Alex R. Piquero & Laurence Steinberg, *Public Preferences For Rehabilitation Versus Incarceration Of Juvenile Offenders*, 38 *J. Crim. J* 1, 1 (2010), available at <http://www.sciencedirect.com/science/article/pii/S0047235209001366A> (“Data from four states (Illinois, Louisiana, Pennsylvania, and Washington) aimed at assessing public preferences for rehabilitation and incarceration as a response to serious juvenile crime indicated that, for the most part, the public was willing to pay more in taxes for rehabilitation than incarceration.”).

61 Mich. Comp. Laws § 712A.4 (2016).

decision to pursue the case against a 14, 15, or 16 year old in juvenile court.⁶² Michigan is one of only a handful of states that treats 17 year olds as adults for all criminal charges.⁶³

Finally, in Michigan, the only sentence available for first-degree murder has historically been life without parole.⁶⁴ In Michigan, a person is guilty of first-degree murder if he or she aided and abetted the murder or was involved in a felony when someone else committed the murder. The punishment is the same for the person who actually committed a premeditated murder—mandatory life without possibility of parole.

Thus, under this sentencing scheme, every 14-17 year old who was convicted of first-degree murder in adult court automatically received a life without parole sentence. There was no consideration of youth or its attendant characteristics, and no discretion to consider a person’s age, family history, mental history, or even the circumstances of the crime.

WHO ARE THE KIDS SENTENCED TO LWOP IN WAYNE COUNTY?

Beyond the growing consensus that life without parole is an unconstitutional and unfit sentence for any juvenile, the following individuals in particular demonstrate the inequity and injustice of JLWOP. Each one of these individuals endured significant hardship and suffering as children, yet has demonstrated tremendous capacity for growth. While it is impossible to provide detailed information about all of the individuals serving JLWOP sentences in Wayne County, a handful of stories illustrate why it is essential to consider the possibility of redemption for troubled teenagers. Right now, at least two of these individuals will no longer face JLWOP

62 Mich. Comp. Laws § 600.606 (2016).

63 See *id.*

64 See Mich. Comp. Laws § 750.316(1) (2010) (“A person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life. . . .”); Mich. Comp. Laws § 791.234(6) (“A prisoner sentenced to imprisonment for life for any of the following is not eligible for parole”); Mich. Comp. Laws § 791.234(6) (listing first degree murder as an offense disqualifying prisoner from parole eligibility).

sentences; however, the fate of the others is not known at this time. D.A. Worthy intends to again seek life without parole for approximately one out of three of the men and women currently serving this sentence.

#1

HERBERT LEE ALLEN-BEY ⁶⁵

In October of 1986, **Herbert Allen-Bey** was with his cousin in a park on the lower east side of Detroit when they got into an argument with other teenage boys who had previously assaulted Allen-Bey's cousin. Allen-Bey admits that he was carrying a gun that day on the advice of his uncles, and that he shot and killed one of the other teens. At 16, Allen-Bey was sentenced to life without parole and went to adult prison.



Before his conviction, Allen-Bey lived a life beset by abuse from his mother and her partners; he was also sexually abused as a child, and many family members struggled with drug and alcohol addiction. Imprisoned with grown men as a teen, Allen-Bey was threatened with rape and induced into criminal activity. Then, previously illiterate and with no education past the 8th grade, he learned how to read. Embarking on a process of education and scholarship, Allen-Bey matured substantially and came to take responsibility for his actions. Allen-Bey has served as a prison representative to the Warden and joined organizations like the NAACP. He has received certificates in journalism and legal writing. In addition, he formed two groups inside of prison to help other juvenile offenders and now, at age 46, he plans to counsel at-risk youth if he is granted his freedom.

#2



CORTEZ ROLAND DAVIS ⁶⁶

Born to a teenage mother who struggled with chronic drug addiction and already had a two-year-old daughter, **Cortez Roland Davis** and his siblings grew up abused, hungry, and occasionally homeless. Child Protective Services removed him from his mother's custody when he was approximately 10 years old because he lived in a "crack house" littered with filth and cockroaches. After that, he was shuttled between

⁶⁵ See Biographies, Wayne County JLWOP Data, *supra* note 9.

⁶⁶ See Application for Leave to Appeal at 2-4, *People v. Davis*, No. 314080 (Mich. Ct. App., Jan. 16, 2013), available at http://www.sado.org/content/mjl/attachments/10176_1-Application-for-Leave-to-Appeal-v-2_01.pdf

CPS custody, his grandmother's house (until his maternal uncle sexually assaulted his younger sister), and his mother's house, where there was seldom food to eat. He dropped out of school in 8th grade to support himself and his siblings.

At the time Davis was arrested, he was a ward of the state: his mother was in a drug rehabilitation center, his father had died from a drug overdose seven years earlier when Davis was 9, and the two siblings who could be located were in foster care. Davis was charged with aiding and abetting an armed robbery, where his accomplice fatally shot the victim. He was only 16, but was waived into adult court with a charging document that "was literally rubber stamped with the words 'Automatic Waiver.'"

Davis received a sentence less than LWOP at his original sentencing hearing, but the state's prosecutors used their discretion to appeal. The judge at Davis's 1994 resentencing hearing opined in open court that Davis was "salvageable." She expressed that she did not believe that a sentence that would allow Davis to be released by the time he turned 18 or 21 was sufficient, but she explicitly did not believe Davis was incapable of rehabilitation, or "irreparably corrupted."

"I believe somebody's been throwing this young man away from the day he was born," said the judge, adding that Davis should continue to hope that the legislature would eventually recognize "how unjust it is" to sentence a person still developing psychologically to a natural life term.

Davis has made the most of his time in prison, educating and rehabilitating himself into a young man who no longer resembles the troubled teenager he once was.⁶⁷ Worthy has announced that she will seek a term of years for Davis, although she opposed his resentencing after *Miller* was decided

#3

BOBBY HINES⁶⁸

In 1989, a group of teenagers got into an argument over a coat. It ended in gunshots, leaving one dead and one injured. **Bobby Hines**, then 15, was arrested with 19-year-old and 16-year-old co-defendants. At the time, Hines was in 8th grade and made good grades, spending his spare time helping his father repair homes.



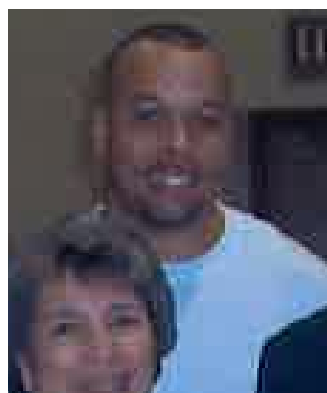
⁶⁷ See *supra* text accompanying notes 4-8.

⁶⁸ See Biographies, Wayne County JLWOP Data, *supra* note 9.

Hines has consistently denied that he was at the scene of the crime. Trial testimony proved that the gun belonged to the 19-year-old and was shot by the 16-year-old. Yet Hines was sentenced to life without parole for felony murder. The other two youth pled to parolable sentences and have since been released on parole while Hines remains in prison.

Now 42, Hines has completed his GED and vocational programs. He had worked on the prison yard crew since 2004, and his reports state that he does not cause problems and expresses a positive attitude.

#4



LYNN MCNEAL⁶⁹

In 1987 at the age of 17, **Lynn McNeal** was convicted of first degree murder and sentenced to automatic LWOP. His trial attorney inappropriately persuaded McNeal to forego a jury trial because he said the judge was his ex-girlfriend and would give him a lighter sentence.

Since his imprisonment, McNeal has dedicated himself to rehabilitation and to helping others. He earned his GED and is studying Business Management as a community college student. In a variety of prison jobs, McNeal has consistently received positive evaluations.

Beyond taking time to better himself, McNeal has worked hard to help others. He apologized to the victim's mother and maintains correspondence with her. McNeal also leads a variety of social service organizations: he is president of the Child of the Month Club, president of the National Lifers Association, and the founder of Project Help, which raised thousands of dollars for women and children in domestic violence shelters. With the help of the warden, he has also facilitated self-esteem and conflict resolution classes for other prisoners. If released, he hopes to continue to help at-risk young people avoid bad decision-making.⁷⁰ Worthy has decided not to seek a LWOP sentence for McNeal.

⁶⁹ See *id.*

⁷⁰ Gus Burns, *After Brushes With Crime, Saginaw County Youths Visit Detroit Prison*, MLive (June 6, 2011), http://www.mlive.com/news/saginaw/index.ssf/2011/06/after_brushes_with_crime_opera.html.

#5

YOLANDA SIMPSON⁷¹

After a 1984 bench trial, **Yolanda Simpson**, then 17, was sentenced to life without parole for allegedly aiding and abetting the murder of her mother. Her conviction was largely based on a joint statement she gave with her sister and co-defendant to the police without counsel. Always described as a “follower,” Simpson looked up to her older sister, who spoke frequently about killing their mother. Simpson’s home life was unstable and violent; her own mother and sister sexually abused her for years, acts that Simpson interpreted as love because it was the only thing she knew. She also was cognitively impaired, had an IQ of 57, and operated on the level of a 7-year-old--a factor not considered at sentencing. Simpson’s counsel gave her puzzle books and candy to occupy her during trial. The man who did the actual shooting was released on parole in 2001 after serving 15 years in prison.

After 32 years in prison, Simpson has transformed. Despite her learning difficulties, she graduated from high school and obtained a community college degree. She has earned several vocational certificates in food service, and has worked consistently as a porter, baker, and academic tutor with excellent reviews.

Simpson has worked hard to develop her character and emotional growth. She began attending prison Bible study classes and completed a course on domestic violence. With new hope for the future at age 49, Simpson deserves a chance at release.

#6

EDWARD SANDERS⁷²

Edward Sanders is one of the longest-serving juvenile lifers. Sanders was sentenced to LWOP in 1975 at the age of 17 along with **David Walton** for participating in a drive-by shooting where he was indisputably not the shooter.

Over the course of his prison time, Sanders served as a member of a committee formed after the 1981 Michigan prison riots to develop recommendations to improve relations between staff and inmates. Sanders, now 58, has received his bachelor’s degree, taken a paralegal course, and works as a jailhouse lawyer, assisting attorneys and other prisoners with legal research and related matters. He has also taught legal classes for other inmates.

71 See Biographies, Wayne County JLWOP Data, *supra* note 9.

72 See *id.*

DAVID WALTON⁷³

Now 58, **David Walton** was age 17 when he was convicted with **Edward Sanders** of first-degree murder.

Sent to adult prison as a teen, Walton, who is small in stature, was raped by adult male prisoners. In 1986, Walton saved the life of a correctional officer and is one of only two lifers currently housed at a Level 1 reentry facility, which is a sign of his rehabilitation. He is deeply trusted by staff, with various commendations and certificates of appreciation. His work evaluations are superb, and Walton hasn't had an instance of misconduct in decades.

Walton was recommended for commutation via a public hearing where one member of the board said, "Mr. Walton has proven himself worthy and well deserving of a second chance." The governor refused to sign the commutation, so Walton remains in prison.

These stories reveal how much juvenile offenders can transform themselves as they age. We should understand their stories not as exemplary, but as supporting the principle that with time, natural brain development, and opportunity, young people will mature and become self-reflective. These stories also illustrate why the majority of states have eliminated JLWOP sentences. There is no public safety justification for keeping such men and women in prison for their entire natural lives.

CONCLUSION

Kym Worthy and her office have obtained 27 LWOP sentences for young people since 2004.⁷⁴ Before the *Miller* decision, Worthy testified in opposition to four state bills that would have allowed juveniles to become eligible for parole after 15 years.⁷⁵ She also spoke out against the pre-*Montgomery* prospect of applying *Miller* retroactively, arguing in favor of the finality of the process above the individual consideration of an offender's young age.⁷⁶ D.A. Worthy also previously stated that she believes that eliminating LWOP for juveniles would encourage gang activity and

⁷³ See *id.*

⁷⁴ See Biography for Wayne County Prosecutor Kym L. Worthy, Wayne Cnty., <http://www.waynecounty.com/prosecutor/321.htm> (last visited July 8, 2016).

⁷⁵ See Mich. H. Standing Comm. on Jud., Minutes of May 26, 2009, https://legislature.mi.gov/documents/2009-2010/CommitteeDocuments/House/Judiciary/Minutes/JUDI0526_09.pdf (testimony of Kym L. Worthy in opposition to HB 4596).

⁷⁶ See Press Release, Mich. Att'y Gen Office, Schuette, Worthy Ask Michigan Supreme Court to Respect Crime Victims with Review of U.S. Supreme Court Ruling Addressing Life Sentences for Teenage Murderers (July 31, 2012), available at <http://voiceofdetroit.net/wp-content/uploads/2012/08/Schuette-Worthy-re-Miller-case.pdf>.

make it more difficult to leverage first-degree murder charges into second-degree murder pleas.⁷⁷

Not only did D.A. Worthy's office delay the resentencing of the 150 individuals serving JLWOP, she has opted to file for life without parole for at least one out of three of them.⁷⁸ Under *Miller/Montgomery*, the cases in which LWOP is pursued should only be the exceedingly rare cases where rehabilitation is impossible, but it's clear that D.A. Worthy has not done this.

Time has nearly run out for D.A. Worthy to seize the opportunity to become a leader in the growing national movement against JLWOP sentences. Now that LWOP sentences are not mandatory under Michigan law for youth, D.A. Worthy could have exercised discretion in a way her predecessors could not. Rather than keep these men and women locked up, Worthy should have taken the opportunity to shed Wayne County's outlier status by recognizing that all of these individuals deserve a chance to earn their eventual release. This is the only action consistent with a growing body of scientific evidence, years of experience, and evolving Eighth Amendment jurisprudence on the constitutionality of life without parole sentences for juveniles.

ABOUT THE FAIR PUNISHMENT 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, we work to highlight the gross injustices resulting from prosecutorial misconduct, ineffective defense lawyers, and racial bias, and to illuminate the laws that result in excessive punishment. For more information visit: www.fairpunishment.org.

77 See Diane Bukowski, *Worthy Opposes Bills to Parole Juvenile Lifers*, Mich. Citizen, May 30, 2009, http://abolish-jlwop.blogspot.com/2009_05_01_archive.html.

78 See Oralandar Brand-Williams and Mike Martindale, *supra* note 10