

Mathena. v. Malvo, 217 U.S.\_\_ (2018)  
Paper # 2  
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Mathena v. Malvo is a case that the United States Supreme Court granted a writ of certiorari to and is pending a decision. Lee Malvo is part of two-man group the terrorized the nation's capital and surrounding areas in the fall of 2002. Known as the DC Sniper, Malvo was a 17-year-old young man that worked in tandem with John Muhammad to murder, maim, rob, and inflict terror throughout the Washington D.C. area and in Alabama, Arizona, California, Florida, Louisiana, and Texas. In December of 2003 Malvo was convicted of capital murder in Chesapeake, Virginia for crimes he committed at the age of 17 years old. The jury did not impose the harshest sentence possible, which was the death penalty. Instead, the jury sentenced Malvo to two-life sentences without the chance for parole. The following year in Spotsylvania County, Virginia Malvo entered an "Alford plea" in another case pending murder and attempted murder. The Alford plea is when the defendant agrees to plead guilty with no admission of guilt and continues to assert their innocence. Malvo also plead guilty to weapons charges and was sentenced to two life sentences in prison without the chance for parole, plus eight years for the weapons charges. In 2006 in the State of Maryland Malvo also plead guilty to the six murders that he was charged within that state. The judge sentenced Malvo to six consecutive life sentences without parole.

After Malvo's case was complete the United States Supreme Court made decisions that have the potential to impact Malvo's sentence. Malvo appealed his sentence based upon the finding in *Miller v. Alabama*, 567 U.S. 460 (2012). In that case, the Court said, "Mandatory life sentences without the parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and

unusual punishments.” *Miller* went on further to say that juveniles are less deserving of the most severe punishments unless in the rare few instances were they are “found to be permanently incorrigible.” Malvo also used the holding in *Montgomery v. Louisiana*, 577 U.S. (2016), in which the court said that its decision in *Miller* was a “substantive rule of constitutional law”. A substantive rule of constitutional law says there is a constitutional guarantee that says certain crimes and punishments are beyond the State’s power to impose and anytime the state does so it is illegal. The Court went on further to say its decision in *Miller* must be given “retroactive effect” in cases where a direct review was complete when *Miller* was decided.

On May 26, 2017, a federal district court judge in Virginia granted Malvo’s appeal and his sentence was overturned. This was done on the grounds that his life sentence without parole was unconstitutional based upon *Miller*. On June 21, 2018, the United States Court of Appeals for the Fourth Circuit unanimously upheld the district court’s decision. The Virginia Attorney General Mark Herring appealed the decision of the Fourth Circuit to the United States Supreme Court.

There are several key questions that the Court must consider in this case. The first of which is did the Court intend to say discretionary life without parole sentences for defendants under the age of 18, or did they only mean mandatory life without parole sentences? The second question before the Court is does Malvo fall under the portion of the court’s ruling where the Court specifically says some juveniles are permanently incorrigible? The last question for the Court is did their ruling in *Montgomery* clarify the *Miller* ruling meant to be extended retroactively?

The arguments for the petitioner, the State of Virginia, said that the Court's decision in *Miller & Montgomery* was retroactive and applied to instances of mandatory life sentences, not discretionary ones like what was done in Virginia. The State also asked for a review in this particular case because of the split in how *Miller* should be interpreted by the Commonwealth of Virginia's Supreme Court and the United States Court of Appeals for the Fourth Circuit Court. Virginia's highest court said that the *Miller* only applies to mandatory life without parole sentences in other cases where juvenile defendants sought relief such as *Jones v. Commonwealth*, 795 S.E.2d 705, 721(Va.) The Fourth Circuit says it applies to any case where a juvenile was sentenced to life imprisonment without the possibility for parole. The State also asserts that this issue is one that multiple states across the country are dealing with as well and widespread confusion exists as a result.

The respondent, Lee Malvo, argued that Virginia's sentencing was not discretionary and was indeed a mandatory sentence because the statute required a death sentence or life without parole sentence and no court had ever suspended a sentence of life without parole for capital murder. Even if the court felt it was a discretionary sentence Malvo argues that *Miller* found those sentences were unconstitutional for juveniles only in the rarest instances. Malvo also argues that there was no error made by the Court in Malvo also refutes the State's claim of widespread confusion by asserting the Court's decision in *Montgomery* cleared up any confusion and that the State's cases used to support their argument are old.

Although it seems likely that the Court will strike down one of the key pieces of *Montgomery* because they opted to hear *Mathena v. Malvo* it is my belief that the court will uphold and clarify their ruling. I believe the vote will be 5-4 in favor of Malvo forcing the courts to resentence Malvo in the crimes he was convicted of. The justices who were in support of *Montgomery* and are still on the bench will vote in favor of maintaining the Court's ruling. Those were Justice Ginsburg, Breyer, Sotomayer, and Kagan, and Chief Justice John Roberts. Chief Justice Roberts because he sided with what is considered the more liberal justices in his 6-3 vote on *Montgomery* will continue to thrive in the role as the swing vote and uphold the court's position as impartial to politics. As the Chief Justice, he is more responsible for ensuring that the Court is neither liberal nor conservative, but instead, justice is blind. "Once again, Roberts will have to choose whether his preference for institutional stability outweighs his conservative instincts."<sup>1</sup> In this instance, there is a chance for Chief Justice Roberts to do that. Roberts has a chance to make a big splash as he moves the Court in leadership and action through tough cases. No tougher being the case of an admitted killer, but history has shown that it is at least probable he could stay with the liberal-leaning side of the court on this issue. "For example, it was Roberts' vote that was decisive in the Court's decision to take a look at the mental competence of a death-row inmate."<sup>2</sup> Critics who use politics as their lens often are disappointed when

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<sup>1</sup> Stern, Mark Joseph. "Justice Anthony Kennedy's Juvenile Justice Legacy Is Under Assault in the D.C. Sniper Case". Slate.com. 28, March, 2019.

<https://slate.com/news-and-politics/2019/03/dc-sniper-supreme-court-malvo-kennedy-jlwop.html>

<sup>2</sup>

Byas, Stephen. "Chief Justice Roberts: The Last Great Liberal Hope?" The New American. 03, March, 2019. <https://www.thenewamerican.com/usnews/constitution/item/31623-chief-justice-roberts-the-great-liberal-hope>

Justices actually use the constitutions to be their guide. It will be no different in this case as well. “Conservatives have long complained that Republican appointees tend to drift to the left after being confirmed. Hard data on judicial records lend credence to this gripe.”<sup>3</sup>

The main reason this case is under review is to provide clarity and since it took only four justices to vote in favor of granting a writ of certiorari, the conservative justices voted in favor of this action. The United States is the only country in the world that allows for a life sentence without parole to someone under the age of 18. The sentences are known as juvenile life without parole (JLWOP) are extremely punitive for someone in such an early stage of human development. The Court will continue to eliminate this antiquated practice. “Today 1,1100 people are still serving JLWOP sentences; ”

I also believe since the charges were never filed in many other municipalities where Malvo has admitted to the murder, including places like Florida where the death penalty is still an option, the likelihood of Malvo ever seeing freedom is minuscule. The defendant in the *Montgomery* ruling still sits in prison in Louisiana and is seventy years old. It is important to note that Malvo will not likely see freedom in this case thereby it allows the Justices to vote without regard to Malvo’s status as permanently incorrigible or not.

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<sup>3</sup> “Supreme Court justices are increasingly political”. Economist.com. 5, October, 2018.  
<https://www.economist.com/graphic-detail/2018/10/05/supreme-court-justices-are-increasingly-political>

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