

Youngest lifers' fate in court's hands

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Missouri's highest court is weighing how to apply a recent U.S. Supreme Court ruling that bars juvenile offenders from receiving mandatory life sentences without the possibility of parole.

The Missouri Supreme Court heard three cases back-to-back on Tuesday involving current inmates convicted of committing first-degree murder when they were less than 18 years old.

Ledale Nathan Jr. was 16 when he participated in a fatal home invasion in St. Louis in 2009. Sheena Eastburn was 17 when she was an accomplice in the fatal shooting of her ex-husband, Tim Eastburn, in McDonald County in 1992. And Laron Hart was convicted of the fatal shooting of a St. Louis man in 2010, when Hart was 17.

They are among an estimated 84 such inmates in Missouri's prisons, and it's not yet clear what the court will do with them.

"We're between a rock and a hard place," Judge Laura Denvir Stith said Tuesday.

Under current Missouri law, first-degree homicide is punishable by either the death sentence or life in prison without parole. But a 2005 U.S. Supreme Court ruling that originated in Missouri, *Roper v. Simmons*, prohibited the death penalty for juvenile offenders.

Then last year, the U.S. Supreme Court ruled in *Miller v. Alabama* that while juvenile offenders can be sentenced to life without parole on rare occasions, such a sentence can't be given automatically. Instead, the court said, judges must take into account the particular facts of the offender's cases, as well as the offender's lack of maturity.

The court appears to have a few options to deal with the lack of a constitutional penalty for juveniles convicted of first-degree murder. It could downgrade the offenders' sentences to second-degree murder, the next most serious offense on Missouri's books. Or the court could retain the first-degree murder convictions but declare the penalty unenforceable.

In either case, offenders' crimes would be punished as if they were normal class A felonies, for which the sentence is a term of 10 to 30 years or life in prison.

That was the approach that the Arkansas Supreme Court took just last week with Kuntrell Jackson, the subject of *Jackson v. Hobbs*, a companion case to *Miller* that the U.S. Supreme Court issued the same day. An amicus brief from the Missouri Association of Criminal Defense Lawyers, filed in one of Tuesday's cases, also urged the court to fall back on the class A felony penalties.

The "tricky part," as Judge Zel Fischer pointed out, is that *Miller* didn't entirely rule out a sentence of life without parole for juveniles. Juvenile offenders can indeed receive such sentences in certain circumstances.

But the normal class A felony sentencing range doesn't specifically provide such an option — though, as Kent Gipson, a Kansas City attorney representing Eastburn, noted, "the parole board will probably never let them out."

In contrast, the Missouri Attorney General's Office argued that the state Legislature obviously intended for juveniles convicted of first-degree murder to spend the rest of their lives in prison. Evan Buchheim, an assistant attorney general, said the juvenile offenders should be resentenced, but the judge or jury should only have a choice between sentences of life with the possibility of parole and life without parole.

"It's not the penalty itself that's unconstitutional, it's the process," Buchheim said.

But that approach is also problematic, as the court would essentially have to insert language into the statute that doesn't currently exist.

"You'd basically be pulling a penalty out of the air," said Jessica Hathaway, a public defender for Ledale Nathan. 

Fischer asked if it would be best to let the Missouri Legislature pass a new law that would resolve the issue, but lawyers for both the state and the appellants urged the court not to wait.

One bill under consideration, for instance, offers the possibility of parole, but only after the offender has served 50 years. But it's not certain that a statutory change will pass before the session ends May 17, and even if it does pass it isn't clear that a new law would apply to previous convictions.

Buchheim argued that the court has the authority to come up with a solution as a "stop-gap" until lawmakers enact a permanent fix.

"In the meantime, there is this gap in the law, a vacuum," he said.

The cases are *State v. Ledale Nathan*, SC92979; *Sheena Eastburn v. State*, SC92927; and *State v. Laron Hart*, SC93153.

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