

STATE OF LOUISIANA NO. 48,489 SECTION II
 19th JUDICIAL
 DISTRICT COURT
VERSUS
 PARISH OF EAST
 BATON ROUGE
HENRY MONTGOMERY STATE OF LOUISIANA

ORDER

HAVING CONSIDERED Defendant's Motion to Correct an Illegal Sentence filed in the above numbered and captioned cause,

IT IS ORDERED THAT the motion is DENIED.

The defendant was convicted of the murder of Charles Hurt in February of 1964. At the time of the offense, the defendant was seventeen years of age. The defendant was granted a new trial in 1969, but was found guilty again in February of 1969 and was sentenced to life imprisonment.

In **Miller v. Alabama**, 132 S. Ct. 2455 (2012), the Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." In order for a new rule to overcome the bar to retroactivity on collateral review, one of the two **Teague** exceptions must be met. **Teague v. Lane**, 489 U.S. 288, 307 (1989). The first exception applies when a new rule completely removes a particular punishment from the list of punishments that can be constitutionally imposed on a class of defendants.

See **Craig v. Cain**, 2013 WL 69128 (C.A.5(La.)). Therefore, it does not satisfy the first exception for retroactivity because it does not categorically bar all sentences of life imprisonment for juveniles. **Miller** bars only those sentences made mandatory by a sentencing scheme. See **Craig v. Cain**, 2013 WL 69128 (C.A.5(La.)).

The second exception applies to “watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.” **Teague**, 489 U.S. at 307. The holding in **Miller** does not qualify as a “watershed rule,” See **Craig v. Cain**, 2013 WL 69128 (C.A.5 (La.)), and therefore, does not satisfy the requirements of the second exception of **Teague**.

Therefore, for the reasons stated above, the present case does not overcome the general bar to retroactivity and the Defendant’s motion is DENIED.

THUS DONE AND SIGNED this 30th day of January, 2013, in Baton Rouge, Louisiana.

/s/ Richard D. Anderson
JUDGE RICHARD D. ANDERSON
19th JUDICIAL DISTRICT COURT
