The Supreme Court was supposed to decide whether D.C. Sniper Lee Boyd Malvo could have his Virginia sentence of life in prison without parole reconsidered. The Supreme Court dismissed this case because Virginia just passed a law making all juvenile offenders eligible for parole after 20 years. Even if paroled in Virginia, Malvo faces six additional life sentences in Maryland.

In Miller v. Alabama [2] (2014) the Supreme Court held that juvenile offenders convicted of homicide can’t receive a mandatory sentence of life imprisonment without parole. Instead the sentencing court must take into account how children are different from adults and only sentence the “rare juvenile offender whose crime reflects irreparable corruption” to life imprisonment without parole. In Montgomery v. Louisiana [3] (2016) the Supreme Court held that Miller’s rule applies retroactively to juveniles convicted and sentenced before Miller was decided.

The question in Malvo v. Mathena [4] was whether Malvo may have his sentences of life imprisonment without the possibility of parole, issued before Miller, reconsidered under Miller even though they weren’t mandatory.

In 2002 Malvo was seventeen years old when he and John Muhammad killed twelve people over the course of seven weeks. In 2003 Malvo was convicted of two counts of capital murder for his crimes in Fairfax County, Virginia. The jury choose life imprisonment without parole instead of the death penalty. Subsequently, Malvo pled guilty to capital murder in another Virginia jurisdiction and received two additional terms of life imprisonment without parole.

Malvo sought to have his sentences remanded for a determination of whether he is “one of the rare juvenile offenders who may, consistent with the Eighth Amendment, be sentenced to life without the possibility of parole because his ‘crimes reflect permanent incorrigibility.’” Warden Mathena objected to resentencing arguing that Malvo’s sentences weren’t mandatory and that “Miller’s new rule explicitly applies to mandatory life-without-parole sentences.”

Mathena claimed Malvo’s sentences weren’t mandatory because Virginia judges have the discretion to suspend capital sentences. Malvo responds that judges weren’t aware of their power to do so at the time.

The Fourth Circuit agreed with Malvo that regardless of whether his sentence was mandatory, broad language in Montgomery indicates that Miller “is not limited to mandatory life-without-parole sentences but also applies . . . to all life-without-parole sentences where the sentencing court did not resolve whether the juvenile offender was ‘irretrievably corrupt’ or whether his crimes reflected his ‘transient immaturity.’” Specifically, Montgomery states that Miller “rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.”

The Supreme Court had already heard oral argument in this case. Amy Howe [5] at SCOTUSblog wrote that the outcome of the case likely hinged on Justice Kavanaugh’s vote.