

S233508

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re KRISTOPHER KIRCHNER on Habeas
Corpus

No.: S

No.: D067920

(Super. Ct. Nos.
HC21804, CRN26291)

**SUPREME COURT
FILED**

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Frank A. McGuire Clerk
Deputy

PETITION FOR REVIEW

**Of the February 23, 2016 Decision
From the Court of Appeal,
Fourth District Division One,
Reversing the Trial Court's Grant of
Petitioner's Habeas Corpus Petition**

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In re KRISTOPHER KIRCHNER on)	
Habeas Corpus)	(Super. Ct. Nos.
)	HC21804, CRN26291)
)	
)	PETITION FOR
)	REVIEW

Petitioner, KRISTOPHER KIRCHNER, by and through his attorney, the Public Defender of the County of San Diego, respectfully petitions this honorable court to grant review of the Court of Appeal's February 23, 2016, published decision reversing with directions the superior court's granting of Mr. Kirchner's habeas petition. A typewritten copy of the opinion is appended as Appendix A, *In re Kirchner* (2016) 244 Cal.App.4th 1398.

INTRODUCTION

On April 28, 1993, a sixteen-year-old Kristopher Kirchner, and a fifteen-year-old Damien Miller, committed a murder during the course of a robbery. This was Mr. Kirchner's first criminal offense. Prior to sentencing, the California Youth Authority(CYA)'s "Amenability Determination" concluded that his likelihood to commit criminal behavior would be significantly reduced or eliminated within the confinement time or jurisdiction time available. The trial court ignored the recommendation and sentenced Mr. Kirchner to life without the possibility of parole (LWOP) on September 15, 1994.

In 2013, Mr. Kirchner filed a habeas petition citing *Miller v. Alabama* (2012) 567 U.S. ____ [132 S.Ct. 2455, 183 L.Ed.2d 407] (*Miller*). This petition was denied because *People v. Gutierrez* (2014) 58 Cal.4th 354 (*Gutierrez*) was pending before this Court at the time. In October of 2014, Mr. Kirchner again petitioned the superior court via writ of habeas corpus to resentence him pursuant to *Miller/Gutierrez* and the superior court granted his habeas petition on March 27, 2015. The District Attorney's Office appealed this decision, arguing that the holdings in *Miller/Gutierrez* were not retroactive.

In January of 2016, the U.S. Supreme Court decided *Montgomery v. Louisiana* (2016) ____ U.S. ____ [136 S.Ct. 718] (*Montgomery*), holding that their decision in *Miller* applies retroactively. This squarely decided the only issue raised by the District Attorney's Office on appeal.

Despite the overwhelming case law in support of the superior court's decision to grant Mr. Kirchner's petition, the Fourth District Court of Appeal (hereinafter referred to as the Fourth District) defied this Court's ruling in *Gutierrez* and the U.S. Supreme Court's decisions in *Miller* and *Montgomery*. The court held Penal Code section 1170, subdivision (d)(2)¹ (hereinafter referred to as 1170(d)(2)) provides an adequate remedy at law to juveniles serving an illegal life without parole sentence who have served 15 or more years of their sentence. (*In re Kirchner*, *supra*, 244 Cal.App.4th at p. 1419.) The Fourth District reversed the grant of Mr. Kirchner's habeas petition with directions that he must pursue relief via 1170(d)(2). (*Ibid.*) This decision by the Fourth District eliminates the ability of juveniles serving an illegal LWOP sentence to seek constitutionally mandated relief and is also in direct conflict with another published decision from the Second District, *People v. Lozano* (2016) 243 Cal.App.4th 1126.

QUESTIONS PRESENTED FOR REVIEW

Does the Fourth District's holding in *In re Kirchner* overrule this Court's holding in *Gutierrez* that 1170(d)(2) is not an adequate remedy at law for a *Miller* violation?

Does the Fourth District's holding in *In re Kirchner* create a split of authority in light of *Gutierrez* and *People v. Lozano*, *supra*?

Does the Fourth District's holding in *In re Kirchner* result in continued violations of the Eighth and Fourteenth Amendments for juveniles offenders illegally sentenced to LWOP?

¹ All References are to the California Penal Code unless otherwise noted.

WHY REVIEW SHOULD BE GRANTED

Review should be granted because there is a split of authority and review is now necessary to secure uniformity of decision. (California Rules of Court 8.500, subdivision (b)(1).) The lower court expressly disagrees with *People v. Gutierrez, supra*, 58 Cal.4th 354, *Miller v. Alabama, supra*, 132 S.Ct. 2455, *Montgomery v. Louisiana, supra*, 136 S.Ct. 718, and *People v. Lozano, supra*, 243 Cal.App.4th 1126. This decision by the lower court undermines this Court's determination that 1170(d)(2) does not present an adequate remedy for the constitutional violations of *Miller*. (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1387.)

Apart from the express and implicit departures from the long held doctrine of *stare decisis*, the issues in this case are important in their own right: Must all juvenile offenders illegally sentenced to LWOP, who have served 15 years of their illegal sentence, seek relief via 1170(d)(2)? Are those juvenile LWOP offenders, who do not qualify for relief under 1170(d)(2),² still eligible for habeas corpus relief? Does it violate the prohibition against Cruel and Unusual Punishment under the Eighth Amendment, and/or Due Process and Equal Protection rights under the Fourteenth Amendment for those offenders forced to file a petition for relief under 1170(d)(2)?

There are approximately 305 juveniles sentenced to LWOP in California Department of Corrections and Rehabilitation (CDCR).

² 1170(d)(2) is not available for those who committed torture, those with police and firefighter victims, those who still maintain their innocence and are thus not remorseful, those who have not yet served 15 years of their sentence, or have served over 24 years of their sentence. (Pen. Code, § 1170, subd. (d)(2)(A)(ii))

Approximately six of those juveniles have served over 24 years of their sentence, approximately 130 have 15 years in custody and approximately 153 have not yet served 15 years in custody. (See attached Appendix B.) The decision by the Fourth District affects every one of these juveniles and review is necessary to provide clarity as to their legal rights.

STATEMENT OF THE CASE AND FACTS

On April 28, 1993, Mr. Kirchner, age 16, and Mr. Damien Miller, age 15, robbed a gun store in Vista, where the owner was ultimately killed. Mr. Kirchner hit Mr. Elvey, the 59-year-old owner in the head, causing severe injuries that ultimately resulted in his death 40 days later.

On March 10, 1994, after a bench trial, Mr. Kirchner was found guilty of one count of first degree murder (Pen. Code, § 187, subd. (a)) and the special circumstance allegation that he committed the murder while engaged in the commission of a robbery and burglary (Pen. Code, § 190.2, subd. (a)(17)(A), (G)), and that he personally used a deadly or dangerous weapon during the commission of the murder (Pen. Code, § 12022, subd. (b)). Mr. Kirchner was also convicted of one count of robbery (Pen. Code, § 211) and one count of burglary (Pen. Code, § 459), with allegations as to each offense that he personally inflicted great bodily injury (Pen. Code, § 12022.7) and personally used a deadly or dangerous weapon (Pen. Code, § 12022, subd. (b)).

Mr. Kirchner was remanded to the CYA to determine his amenability to training and treatment at their facility. He was evaluated by members of the interdisciplinary team, which included a psychologist. They described Mr. Kirchner as unsophisticated, vulnerable to peer influences and likely to have

his criminal behavior exacerbated if he were sentenced to adult prison, concluding there was a reasonable probability that Mr. Kirchner's likelihood to commit further crimes could be reduced or eliminated within the available confinement time if sentenced as a juvenile.

The trial court declined to follow the recommendation of the CYA and, on September 15, 1994, sentenced Mr. Kirchner to LWOP on the murder conviction, plus one year consecutive for the weapon enhancement.³ The court stayed sentencing on the remaining counts and attendant allegations under Penal Code section 654. Mr. Kirchner filed a notice of appeal, but his appeal was dismissed after an opening brief was not filed on his behalf.

In 2013, after *Miller* was decided, Mr. Kirchner filed a writ of habeas corpus that was denied. This denial came before this court decided *Gutierrez*.

Mr. Kirchner filed a second writ of habeas corpus in October 2014 contending his sentence violated the Eighth Amendment as defined by *Miller* and *Gutierrez*. On March 27, 2015, the superior court granted Mr. Kirchner's petition and the district attorney appealed.

On June 29, 2015, the district attorney filed their opening brief reiterating their arguments that the holdings in *Miller/Gutierrez* did not apply

³ These actions by the trial court are not surprising given the atmosphere at the time: "Surveys indicate that Americans are fed up with vicious young criminals who seem to terrorize their communities without fear of punishment." (Times Advocate News Article "A Nation Struggles with Juvenile Crime"). "They want to see legislation that would lower to 14 the age at which minors charged with murder could be tried as adults. Others want the gas chamber for 16 to 17 year olds convicted of murder." (Times Advocate News Articles "North County Cases Highlight Problems").

retroactively. On July 28, 2015, Mr. Kirchner filed a response, arguing that the U.S. Supreme Court and California Supreme Court's rulings in *Miller/Gutierrez* dictated a substantive rule that should be applied on collateral review. On October 29, 2015, the court of appeal requested additional briefing regarding whether California courts have traditionally used the rules laid out by *Teague v. Lane* (1989) 489 U.S. 288 and *Schriro v. Summerlin* (2004) 542 U.S. 348 to determine whether to grant collateral review. Both parties answered this question in the affirmative.

At oral argument on December 16, 2015, Justice Benke voiced concerns that 1170(d)(2) presented an adequate remedy at law, asking if forcing juveniles to seek relief via 1170(d)(2) ensured review by the re-sentencing court of their post-sentence conduct. On January 26, 2016, the court of appeal requested letter briefing regarding the effect of *Montgomery* on the issues in the case. The court specifically asked the parties to address 1170(d)(2) and the language from *Montgomery* that referenced a Wyoming statute that automatically converted juvenile LWOP sentences to life with parole at 25 years without a re-sentencing hearing. Mr. Kirchner submitted a letter brief on February 1, 2016, that argued 1170(d)(2) did not present an adequate remedy at law. On February 23, 2016, the court of appeal issued a published decision, reversing the grant of Mr. Kirchner's habeas petition with directions that Mr. Kirchner, and any other juvenile illegally sentenced to life without parole who has served 15 years of his sentence, must seek relief via 1170(d)(2).

ARGUMENT

California has almost 300 juvenile offenders serving an illegal sentence of LWOP.⁴ These juveniles were sentenced under a presumption of LWOP and no consideration of the *Miller* factors. The U.S. Supreme Court has declared these offenders are entitled to collateral review of their illegal sentences. (*Montgomery v. Louisiana, supra*, 136 S.Ct. at p. 735.) “[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.” (*Id.* at p. 729.) Because the holdings in *Miller* and *Roper* reaffirm that sentencing a child to life without parole is excessive and unconstitutional for all but the rare juvenile offender, *Miller* announced a new substantive rule. (*Id.* at pp. 733-734.) The superior court correctly determined Mr. Kirchner is serving an illegal sentence.

1170(d)(2) is an inadequate remedy for juvenile offenders illegally sentenced to LWOP and should not be forced upon them as their only means of seeking a legal sentence. (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1387 and *People v. Lozano, supra*, 243 Cal.App.4th at p. 1138). Forcing a select group of offenders to seek relief via 1170(d)(2) violates their constitutional rights to be free from Cruel and Unusual Punishment under the Eighth Amendment and their rights to Due Process and Equal Protection under the Fourteenth Amendment.

⁴ See Appendix B where approximately six offenders out of 289 provided by CDCR received their sentence of LWOP after this court decided *Gutierrez*.

I.
THE TRIAL COURT PROPERLY GRANTED MR. KIRCHNER'S
HABEAS PETITION UNDER *MILLER/GUTIERREZ*

The trial court properly found that Mr. Kirchner was serving an illegal sentence under *Miller/Gutierrez* and granted his habeas petition. Both the superior court and Fourth District agree that Mr. Kirchner was illegally sentenced to LWOP in 1994. However, the court's ruling does nothing to correct the illegal sentence. Mr. Kirchner is now forced to continue serving his illegal sentence while seeking mere potential relief via 1170(d)(2). (*In re Kirchner*, *supra*, 244 Cal.App.4th at p. 1419.) The Fourth District incorrectly overturned the trial court's order granting Mr. Kirchner a re-sentencing hearing.

The U.S. Supreme Court in *Montgomery v. Louisiana* held that its decision in *Miller v. Alabama*, *supra*, 132 S.Ct. 2455, applies retroactively to juveniles serving life without parole and that collateral review is the proper avenue to correct this illegal sentence. (*Montgomery v. Louisiana*, *supra*, 136 S.Ct. 718.) Sentencing a child to life without parole is excessive and unconstitutional for all but the rare juvenile offender whose crime reflects irreparable corruption. (*Id.* at p. 733.) *Miller* requires the sentencing court consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a constitutional sentence (*Id.* at pp. 733, 735.) Because a juvenile offender whose crimes reflect the transient immaturity of youth faces a punishment that the law cannot impose upon him, *Miller* announced a new substantive constitutional rule of law that requires retroactive application. (*Id.* at p. 734.)

Faced with the constitutional concerns raised in *Miller*, this Court determined in *Gutierrez* the presumption of sentencing a juvenile to life without parole (LWOP) under Penal Code section 190.5 was unconstitutional. “In light of *Miller*’s reasoning, a sentence of life without parole under section 190.5(b) would raise serious constitutional concerns if it were imposed pursuant to a statutory presumption in favor of such punishment.” (*Gutierrez, supra*, 58 Cal.4th at p. 1379.) “ ‘The distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, *even when they commit terrible crimes.*’ ” (*Id.* at p. 1380 emphasis added by the court, citing *Miller, supra*, 132 S.Ct. at p. 2465.) This presumption was not remedied by the sentencing court’s power to consider an individualized sentencing for the youth since serious constitutional issues arise when the court is “...presuming ‘[i]n the first instance’ that life without parole is the appropriate sentence for special circumstance murder committed by a 16- or 17-year-old juvenile.” (*Id.* at p. 1382, citing *People v. Guinn* (1994) 28 Cal.App.4th 1130, 1142.)

In Mr. Kirchner’s case, the trial court and the Fourth District agree that he is serving an unconstitutional sentence as defined by *Miller/Gutierrez*. Therefore, the trial court properly granted Mr. Kirchner’s habeas petition and the Fourth District was wrong to order him to continue serving an illegal sentence and pursue inadequate relief via a statute.

II. THE FOURTH DISTRICT CONTRAVENES CALIFORNIA LAW THAT TRADITIONALLY GRANTS HABEAS CORPUS RELIEF TO OFFENDERS SERVING AN ILLEGAL SENTENCE

The Fourth District refused to follow a long line of precedents dictating that habeas corpus relief is the proper remedy for an illegal sentence. Habeas

corpus review is the proper remedy when a court imposed an illegal sentence. (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn.8.) California courts have traditionally applied habeas corpus relief when this Court has issued decisions changing sentencing laws. (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530, fn.13; *Belmontes, supra*, 34 Cal.3d at p. 348, fn.8; *People v. Navarro* (1972) 7 Cal.3d 248, 265, fn. 13; *People v. Tenorio* (1970) 3 Cal.3d 89, 95, fn.2; *In re Jackson* (1964) 61 Cal.2d 500, 505-508; *People v. Hannon* (1971) 5 Cal.3d 330, 340 fn.7.)

Giving retroactive effect to changes in sentencing law is not overly burdensome on the courts. (*In re Johnson* (1970) 3 Cal.3d 404, 415.) When this Court declared in *Romero* that judges still maintained discretion to dismiss prior felony strikes; it unequivocally held that defendants were entitled to habeas corpus relief. (*People v. Superior Court (Romero), supra*, 13 Cal.4th at p. 530, fn.13.) When the court is merely faced with changing the sentence from life without parole to a term of life with parole, the courts should not limit retroactive application. (*In re Johnson*, at p. 415.)

The appellate court in *Kirchner* relied on *In re Gandolfo* (1984) 36 Cal.3d 889 to justify the holding that 1170(d)(2) is an adequate remedy at law. (*In re Kirchner, supra*, 244 Cal.App.4th at 1416.) *Gandolfo* dealt with a person seeking relief from a conservatorship order that was subject to review every six months under the Lanterman-Petris-Short Act (LPS Act). The *Gandolfo* court cautioned that the conservatee would still be entitled to habeas relief if the limitations of the statutory review were shown to be inadequate. (*Id.* at pp. 899-900.) The reasoning in *Gandolfo* cannot be

applied to an illegal criminal sentence, particularly when the “relief” afforded to a defendant under 1170(d)(2) is grossly inadequate and does not pass constitutional muster (See *Gutierrez, supra*, 58 Cal.4th at p. 1387.)

III. THE FOURTH DISTRICT DISTORTS THE SOLE HOLDING IN *MONTGOMERY* BY INCORRECTLY RELYING ON *Dicta* AND THE DISSENT

The holding in *Montgomery* is singular; the U.S. Supreme Court’s ruling in *Miller* applies retroactively. (*Montgomery, supra*, 136 S.Ct. at p. 736.) “*Miller*’s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.” (*Ibid.*) The Fourth District distorts the holding of *Montgomery* when it states a “...process by which the defendant is given a fair opportunity to be considered for parole,” satisfies *Miller*. (*In re Kirchner, supra*, 244 Cal.App.4th at pp. 1413-1414.)

The Fourth District highlights the dissent in *Montgomery* in an attempt to justify 1170(d)(2) as an adequate remedy. (*In re Kirchner, supra*, 244 Cal.App.4th at p. 1412.) “The court’s majority opinion in *Montgomery* was subject to a vigorous dissent, in which among other matters Justice Scalia pointed out the practical burden state courts will face in attempting to resentence juveniles who committed crimes long before they are given habeas corpus relief under the court’s holding.” (*Ibid.*) The Fourth District’s reliance on the dissent in *Montgomery* is misplaced.

The Wyoming statute mentioned by the *Montgomery* court goes beyond 1170(d)(2) because it legally changes a juvenile’s sentence from

LWOP to life with parole at 25 years. (Wyo. Stat. Ann. § 6-10-301(c).) The Wyoming Supreme Court held in *State v. Mares* 2014 WY 126 that defendant's life without parole sentence was, as a matter of law, converted to life with the possibility of parole in 25 years. Unlike 1170(d)(2), the Wyoming statute does not require: a petition, evidence of remorse, evidence of rehabilitation, influence from an adult co-defendant, lack of a prior juvenile record, or current letters to family members; among other various requirements in order to have a juvenile LWOP sentence converted. (Wyo. Stat. Ann. § 6-10-301(c), Pen. Code, §1170, subd. (d)(2).) The Wyoming statute automatically changes an offender's sentence to a term of life with parole.

Montgomery makes clear that petitioner's such as Mr. Kirchner are entitled to habeas corpus relief. Anything short of converting Mr. Kirchner's illegal LWOP sentence to life with parole at 25 years does not pass constitutional muster and cannot stand as a constitutionally sound substitute. The trial court was correct to grant Mr. Kirchner's habeas petition, the Fourth District was wrong to reverse the trial court.

IV.

1170(D)(2) DOES NOT PRESENT AN ADEQUATE REMEDY FOR THE CONSTITUTIONAL VIOLATIONS OF *MILLER/GUTIERREZ*

A. *Gutierrez* Correctly Held that 1170(d)(2) Did Nothing to Solve the Illegal LWOP Sentences Imposed on Juveniles in California

This Court expressly rejected 1170(d)(2) as a constitutional remedy, and the Fourth District defied that decision. (*Gutierrez, supra*, 58 Cal.4th at p. 1387.) *Gutierrez* properly examined 1170(d)(2) and found it did not

satisfy *Miller*. (*Gutierrez, supra*, 58 Cal.4th 1387.) Although 1170(d)(2) provides a potential mechanism for re-sentencing after 15 to 24 years, the convicted still has an effective sentence of life without the possibility of parole. (*Id.* at p. 1386.) Ultimately *Gutierrez* held:

In sum, construing section 190.5(b) to establish a presumption in favor of life without parole raises serious constitutional concerns under the reasoning of *Miller* and the body of precedent on which *Miller* relied. **The recent enactment of section 1170(d)(2) does not eliminate those concerns.** (*Id.* at p. 1387, emphasis added.)

The Fourth District claims that the *Gutierrez* court's invalidation of 1170(d)(2) was due to the, "...strictly prospective focus of the courts in *Gutierrez* and *Graham*..." (*In re Kirchner, supra*, 244 Cal.App.4th at p. 1419.) But, the holding in *Gutierrez* does not draw a distinction between direct appeal and collateral review cases, instead *Gutierrez* states why 1170(d)(2) fails to address the juveniles' unconstitutional sentences.

The court in *Kirchner* incorrectly attempted to over-rule *Gutierrez*. The court was concerned with addressing the dissent in *Montgomery* about conducting sentencing hearings after decades have passed. "Arguably, in the absence of mandatory resort to section 1170, subdivision (d)(2), a defendant whose post-conviction conduct would not warrant an opportunity for parole would nonetheless be entitled to a new sentence upon a showing that at the time of his or her original sentencing there had been no proof of his or her incorrigibility." (*In re Kirchner, supra*, 244 Cal.App.4th at p. 1417.) The *Kirchner* ruling forces a select group of offenders to seek relief under 1170(d)(2) by assuming this Court's decision invalidating 1170(d)(2) was

strictly due to concerns with the prospective application of *Miller*. (*Id.* at p. 1419.) The *Kirchner* court's desire to validate post-conviction conduct during re-sentencing caused it to ignore controlling case law. (*Id.* at p. 1417.)

The Fourth District's ruling cuts too great a swath, because controlling case law already permits the admissibility of post-sentence behavior at *Miller* re-sentencing hearings. *Montgomery* reiterated this position by considering the petitioner's evolution from a troubled, misguided youth to a model member of the prison community—the petitioner's submissions demonstrated rehabilitation. (*Montgomery, supra*, 136 S.Ct. at p. 736.) However, unlike an 1170(d)(2) petition, rehabilitation evidence is not the overriding factor in determining whether an offender should be resentenced to life with parole. (*Miller, supra*, 132 S.Ct. 2455 (slip.op., at 10), quoting *Graham, supra*, at p. 74; *Gutierrez, supra*, 58 Cal.4th at 1388-1389.) Thus, the Fourth District's concern that Mr. Kirchner's subsequent conduct in prison would not be considered by the courts at a re-sentencing hearing is misguided and violates the spirit of *Miller* by placing too much emphasis on post-conviction conduct.

B. 1170(d)(2) Does Not Satisfy *Miller/Montgomery/Gutierrez*.

1170(d)(2) cannot satisfy the constitutional requirements of *Miller/Montgomery/Gutierrez*. Throughout the statute the defendant bears the burden of showing a litany of factors to the court in order to be granted a re-sentencing hearing and then, if the offender is lucky enough to be granted a re-sentencing hearing, the defendant must show additional factors, not

outlined under *Miller*. (See Pen. Code, § 1170, subd. (d)(2).)

When applying for a re-sentencing hearing under 1170(d)(2), the defendant must demonstrate rehabilitation and remorse along with many other restrictive criteria. The court is instructed to exercise its discretion with those limiting criteria in mind. (See Pen. Code, § 1170, subd. (d)(2)(G).) The limitations placed on the court by an 1170(d)(2) petition mean it is an inadequate remedy at law.

In contrast, the sole question in granting a habeas petition under *Miller/Montgomery/Gutierrez*, is whether the defendant was sentenced under an unlawful presumption of LWOP and/or whether the *Miller* factors were not properly considered. If that question is answered in the affirmative, the court must recall the illegal sentence and conduct a new sentencing hearing. At the re-sentencing hearing, the court shall consider five factors as dictated by *Miller/Gutierrez*: “(1) the inherent impact of the juvenile's age on his culpability; (2) the juvenile's home and family environment; (3) the circumstances of the homicide offense; (4) the juvenile's ability to deal with law enforcement officers and prosecutors as well as effectively assist in his own defense; and (5) the **possibility** of rehabilitation.” (*People v. Chavez* (2014) 228 Cal.App.4th 18, 32; citing *Gutierrez, supra*, 58 Cal.4th at pp. 1389–1390, emphasis added.) These five factors are markedly different from the various criteria an offender must meet to earn a re-sentencing hearing under 1170(d)(2).

The extensive list of required elements under 1170(d)(2) are among the many reasons the Fourth District erroneously determined that this statute

satisfies the constitutional mandates under *Miller/Montgomery/Gutierrez*. Specifically, neither the U.S. Supreme Court nor the California Supreme Court requires a showing of remorse, rehabilitation, or confinement for at least 15 years to demonstrate that a LWOP sentence is illegal. Rather, the focus is on the “**potential** for rehabilitation.” (*Miller, supra*, 132 S.Ct. at p. 2468, emphasis added.)

C. 1170(d)(2) Is a Remedy for the “Rare” Juvenile Offender Deemed to be “Incorrigible” and Legally Sentenced to LWOP

1170(d)(2), presents an option to a select group of *legally* sentenced juveniles who are determined to be “incorrigible” after a proper *Miller/Gutierrez* sentencing hearing. Mr. Kirchner has not had a legal sentence imposed upon him and as such *Miller/Montgomery/Gutierrez* dictate that he has properly sought collateral review to correct the illegal sentence. (*Montgomery, supra*, 136 S.Ct. at p. 736.) An 1170(d)(2) petition, gives hope to a group of rare juveniles legally sentenced to LWOP; it gives them the opportunity to prove the court wrong and show that they can rehabilitate. Mr. Kirchner is entitled to be serving a legal sentence before he seeks relief via 1170(d)(2).

V.

***IN RE KIRCHNER* CREATES A SPLIT OF AUTHORITY
IN THE LOWER COURTS**

The Fourth District has created a split in the courts of appeal by holding that post-conviction conduct can only be considered by a court conducting a re-sentencing hearing under 1170(d)(2). In *People v. Lozano, supra*, 243 Cal.App.4th 1126, the Second District Court of Appeal

(hereinafter referred to as the Second District) reiterated this Court's holding in *Gutierrez* and rejected the Attorney General's argument that Ms. Lozano could only present post-conviction conduct at an 1170(d)(2) re-sentencing hearing. (*Lozano, supra*, at p. 1138.) The Second District dismissed this argument as having been thoroughly rejected by the California Supreme Court. (*Ibid.*)

The Second District correctly held that post-conviction behavior can be relevant and admissible at a *Miller/Gutierrez* re-sentencing. In the *Lozano* case, Ms. Lozano was 16 years old at the time she participated in the murder of a 13-year-old girl and was sentenced to life without parole in 1996. (*Id.* at pp. 1129-1130.) In 2015, the court held a re-sentencing hearing pursuant to *Miller/Gutierrez* and refused to admit evidence of her rehabilitation in prison. (*Id.* at p. 1132.) The Second District reversed this decision by the trial court and held the California Supreme Court in *Gutierrez* specifically found that sentencing court must consider any evidence or other information in the record that supported a possibility of rehabilitation. (*Id.* at pp. 1137-1138, citing *Gutierrez, supra*, 58 Cal.4th at p. 1390.) It further held that 1170(d)(2), is not exclusive, nor is it a substitute for the Eighth Amendment right to a sentencing hearing that would consider amenability towards rehabilitation. (*Id.* at p. 1138.) Thus, *Lozano* is at odds with *In re Kirchner* and review is necessary to resolve this split of authority.

VI.
THE *KIRCHNER* HOLDING RESULTS IN CONTINUED
VIOLATIONS OF THE EIGHTH AND FOURTEENTH
AMENDMENTS FOR JUVENILE OFFENDERS SERVING LWOP

Every juvenile in the State of California sentenced prior to *Miller* and

Gutierrez is likely serving an illegal sentence. (*Montgomery v. Louisiana, supra*, 136 S.Ct. at pp. 733-734, See Appendix B.) 1170(d)(2) abrogates their ability to seek relief for their illegal sentence. The effect of *Kirchner* is an outright bar for those who murdered a peace officer, a public official, a firefighter, committed torture, and/or cannot show remorse or rehabilitation (like those claiming their innocence). (Pen. Code, § 1170, subd. (d)(2)(ii) and (B).) Unlike the Wyoming statute cited in dicta in *Montgomery*, 1170(d)(2) merely provides certain juveniles with a chance at a chance at a re-sentencing hearing. (Pen. Code, § 1170, subd. (d)(2).) The Wyoming statute automatically changed a juvenile's sentence from LWOP to life with parole at 25 years. (Wyo. Stat. Ann. § 6-10-301(c) and *State v. Mares, supra*, 2014 WY 126). The court in *Montgomery* did not hold that merely affording a particular class of offenders a chance at a chance at parole is sufficient to address juveniles serving an illegal sentence of LWOP. (*Montgomery, supra*, 136 S.Ct. at p. 736.)

A. Forcing Offenders to Seek Relief via 1170(d)(2) Violates Their Rights to be Free from Cruel and Unusual Punishment Under the Eighth Amendment of the U.S. Constitution

The Fourth District's holding results in continued Eighth Amendment violations for many juvenile offenders. 1170(d)(2) leaves many defendants ineligible to seek the very relief the U.S. Supreme Court held is guaranteed by the Eighth Amendment via collateral review. (*Montgomery, supra*, 136 S.Ct. at p. 736.) The *Kirchner* court fails to address that 1170(d)(2) would bar Mr. Montgomery himself, who shot and killed a deputy sheriff at age 17, from re-sentencing in California. (*Montgomery, supra*, 136 S.Ct. at p. 725.) Mr. Montgomery would still be subject to an illegal sentence of life without

the possibility of parole with *no remedy*. Forcing a select group of offenders to seek relief via 1170(d)(2) leaves many offenders still serving a Cruel and Unusual Punishment under the Eighth Amendment of the U.S. Constitution.

B. The Fourth District Holding in *In re Kirchner* Violates Due Process and Equal Protection Under the Fourteenth Amendment

Forcing offenders who have served 15 or more years of their illegal LWOP sentence to seek relief under 1170(d)(2) violates Due Process and Equal Protection rights under the Fourteenth Amendment. The Fourth District suggests that filing petitions under 1170(d)(2) would create a more uniform and integral process; however this statute places a more onerous burden on the courts, victims, and defendants. (*In re Kirchner, supra*, 244 Cal.App.4th at pp. 1417-1418.) An analysis of the procedural mechanics of 1170(d)(2) illustrates this flaw. A defendant may petition a court at 15 years, 20 years and 24 years with up to two hearings (one for the petition and one for the re-sentencing) each time. (Pen. Code, § 1170, subd. (d)(2).) Besides the required time in custody, 1170(d)(2) places many limitations on the type of offender who may qualify to file a petition. (*Ibid.*) However, if an illegally sentenced juvenile offender seeks relief under *Miller/Montgomery/Gutierrez*, there are no limitations based on the nature of the offense or time in custody. Further, if the court resentsences the offender to life with the possibility of parole, the courts, victims, and defendants are only subjected to one re-sentencing hearing, properly leaving the determination of whether a juvenile offender has rehabilitated with the parole board.

The *Kirchner* court does not mention why some offenders should be afforded a *Miller* hearing and those who have served at least 15 years in

custody should be required to petition the court under 1170(d)(2). What of those offenders that have served over 24 years of their sentence? What of those offenders who have missed their first two chances at petitioning the court under 1170(d)(2)? What of those offenders who have petitioned under 1170(d)(2) and were not afforded a release? Must they wait until their next available petitioning date, if there is one left? What of those that are outright banned from seeking relief under 1170(d)(2)? What of those offenders who have served 14 years of their illegal sentence, is their post-conviction behavior excluded at a *Miller* re-sentencing? (Pen. Code, § 1170, subd. (d)(2)(A)(ii) and (B).)

While the *Kirchner* court claims that granting a habeas petition and holding a re-sentencing hearing would “lack(s) uniformity and internal integrity,” it is forcing a portion of offenders to seek relief via 1170(d)(2) motions that would lead to varying results. (*In re Kirchner, supra*, 244 Cal.App.4th at p. 1418.) How is a court to determine whether a defendant has shown remorse (especially if an offender still claims his innocence)? How is a court to determine whether a defendant has shown efforts at rehabilitation? If a defendant cannot show either of these things, his petition will fail from the outset and he will not be awarded a re-sentencing hearing. (Pen. Code, § 1170, subd. (d)(2)(B) and (G).)

The court in *Kirchner* announced a rule that not only violates the Eighth Amendment’s protection against Cruel and Unusual Punishment, but also violates the Due Process and Equal Protection clause of the U.S. Constitution.


CONCLUSION

Based on the foregoing, petitioner requests review be granted. The *In re Kirchner* court placed an unconstitutional burden on juveniles serving an illegal LWOP sentence and created a split of authority in the lower courts. 1170(d)(2) is only a remedy for those juvenile offenders serving a *legal* sentence of LWOP. These issues are of paramount importance and this decision affects many offenders across the state of California. (See Appendix B.) Review is necessary to provide clarity.

Dated: April 1, 2016

Respectfully submitted,

RANDY MIZE
Primary Public Defender

By: 
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Deputy Public Defender

Attorneys for Petitioner
KRISTOPHER KIRCHNER

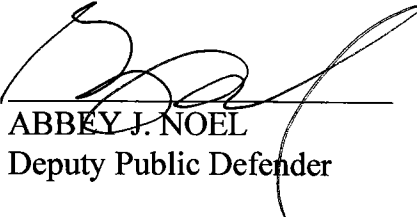
CERTIFICATE OF WORD COUNT

I, ABBEY J. NOEL, hereby certify that based on the software in the word processor program, the word count for this document is 5,395 words.

Dated: 4/1/16

Respectfully submitted,

RANDY MIZE
Primary Public Defender

By: 
ABBHEY J. NOEL
Deputy Public Defender

Attorneys for Petitioner
KRISTOPHER KIRCHNER

CERTIFICATE OF SERVICE
Rule 1.21(c)

CASE NAME: *In re Kristopher Kirchner*
Ct. Appeal 4th DCA, Div. 1 No.: D067920
Superior Ct No.: HC21804, CRN26291

I, Michael A. Owens, declare as follows:

I am employed in the County of San Diego, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 450 "B" Street, Suite 900, San Diego, California 92101-4009, in said County and State.

On April 1, 2016, I served the foregoing document:

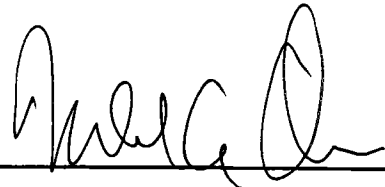
PETITION FOR REVIEW

on the parties stated below, by the following means of service:

- ☒ **BY INTEROFFICE MAIL:** Pursuant to Rule 1.21(b), on the above-mentioned date I personally deposited in the United States Mail true and correct copies thereof, each in a separate envelope, postage thereon fully prepaid, addressed to the following [See Service List]. .
- ☒ **BY PERSONAL SERVICE:** On the date of execution of this document, I personally served true and correct copies of the above-mentioned document(s) on each of the following [See Service List].
- ☒ **BY ELECTRONIC SERVICE:** From my e-mail account at Michael.Owens@sdcounty.ca.gov, I caused each such document to be transmitted electronically, to the parties and websites indicated, authorized under California Rules of Court, Rule 8.71. [See Service List].
- ☐ **BY E-MAIL:** On the above-mentioned date, I caused a true copy of said document to be emailed to said parties' e-mail addresses as indicated on the attached Service List. (Rules of Court, Rule 2.251(c)(1))
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on

4/1/16



Michael A. Owens
Declarant

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Mr. KRISTOPHER KIRCHNER
(*through counsel*)

Exhibit A

Filed 2/23/16

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re KRISTOPHER KIRCHNER on Habeas
Corpus.

D067920

(Super. Ct. Nos. HC21804, CRN
26291)

APPEAL from a judgment of the Superior Court of San Diego County, Louis R.
Hanoian, Judge. Reversed with directions.

Bonnie M. Dumanis, District Attorney, James E. Atkins, Jennifer Kaplan and
Craig E. Fisher, Deputy District Attorneys, for Appellant the People.

Randy Mize, Chief Deputy Public Defender, Abbey J. Noel and Troy Anthony
Britt, Deputy Public Defenders, for Respondent Kristopher Kirchner.

The district attorney appeals the trial court's order granting Kristopher Kirchner's
petition for habeas corpus. The trial court correctly concluded the holdings of *Miller v.*
Alabama (2012) 567 U.S. ____ [132 S.Ct. 2455, 183 L.Ed.2d 407] (*Miller*) and *People v.*
Gutierrez (2014) 58 Cal.4th 1354 (*Gutierrez*) apply retroactively in state collateral
proceedings such as the one presented here and that the Eighth Amendment of the United

States Constitution requires that when inmates, such as Kirchner, are serving life terms for crimes committed while they were juveniles, they must, except in the most extraordinary circumstances, be given an opportunity to seek parole. (See *Montgomery v. Louisiana* (2016) ___ U.S. ___ [135 S.Ct. 1546, 191 L.Ed.2d 635] (*Montgomery*).) However, where, as is the case in California, a legislature has provided inmates serving life sentences for crimes committed while they were juveniles with an opportunity to obtain a parole hearing, the state has remedied any constitutional defect in the inmate's sentence.¹

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 1993, Kirchner, age 16 at the time, and Damien Miller, age 15, executed a plan to rob a gun store in Vista, California owned by Ross Elvey. Once inside the store, Kirchner repeatedly hit 59-year-old Elvey in the head with a metal pipe causing severe trauma that ultimately resulted in Elvey's death after languishing in a coma for 40 days. Leaving Elvey unconscious and bleeding, Kirchner and Miller took numerous weapons and fled on foot. The pair knocked on doors in a nearby residential neighborhood claiming they needed a ride to nearby San Marcos because they had been attacked by gang members. The minors convinced someone to drive them, but were quickly apprehended by sheriff's deputies searching the area.

¹ Our opinion is limited to inmates, who, like Kirchner, have been incarcerated for at least 15 years. We do not decide whether inmates whose incarceration is less than 15 years are entitled to an expedited recall and resentencing under Penal Code section 1170, subdivision (d)(2).

Kirchner was initially charged in juvenile court. After a hearing under Welfare and Institutions Code section 707, however, the court found Kirchner unfit to be prosecuted as a juvenile and he was charged as an adult. During trial, Kirchner brought a motion to strike the People's special circumstance allegation under Penal Code section 190.2, subdivision (a)(17) that he committed the murder while engaged in the commission of a robbery and burglary. Kirchner argued the imposition of the sentence of life without the possibility of parole (LWOP) that he faced under Penal Code section 190.5 as a result of the special circumstance allegation would constitute a violation of the Eighth Amendment to the United States Constitution. The district attorney responded that since a sentence of death for a 16- or 17-year-old was constitutionally permissible, there was no question the LWOP sentence Kirchner faced was also permissible. The trial court agreed with the prosecutor and denied Kirchner's motion.

After a court trial, on March 10, 1994, Kirchner was found guilty of one count of first degree murder (Pen. Code, § 187, subd. (a)). The court found true the special circumstance allegation that Kirchner committed the murder while engaged in the commission of a robbery and burglary (Pen. Code, § 190.2, subd. (a)(17)(A), (G)) and that Kirchner personally used a deadly or dangerous weapon during the commission of the murder (Pen. Code, § 12022, subd. (b)). Kirchner was also convicted of one count of robbery (Pen. Code, § 211) and one count of burglary (Pen. Code, § 459), with allegations as to each offense that Kirchner personally inflicted great bodily injury (Pen. Code, § 12022.7) and personally used a deadly or dangerous weapon (Pen. Code, § 12022, subd. (b)). Kirchner was remanded to the California Youth Authority (CYA)

pursuant to Welfare and Institutions Code section 707.2 in order to determine his amenability to the training and treatment offered by that agency. The CYA concluded there was a reasonable probability that Kirchner's likelihood to commit further crimes could be reduced or eliminated within the available confinement time if sentenced as a juvenile.

The trial court declined to follow the recommendation of the CYA and, on September 15, 1994, sentenced Kirchner to LWOP on the murder conviction, plus one year consecutive for the weapon enhancement. The court stayed sentencing on the remaining counts and attendant allegations under Penal Code section 654. Kirchner appealed, but the appeal was dismissed after he failed to file an opening brief and his sentence became final. In 2013, after *Miller* was decided, Kirchner filed a petition for writ of habeas corpus challenging the LWOP sentence. The trial court denied the petition but noted the issues raised by Kirchner were then pending before the California Supreme Court in *Gutierrez*.

Kirchner filed a second petition for writ of habeas corpus in October 2014 contending that under *Miller* and *Gutierrez* his sentence violated the Eighth Amendment. The superior court issued an order to show cause asking why relief should not be granted and stated that the record showed the "trial court did not engage in the youth oriented analysis required" under *Miller* and *Gutierrez*. The district attorney's initial return conceded Kirchner was entitled to a new sentencing hearing for the court to consider whether the imposition of the LWOP sentence was appropriate.

Before the superior court issued a ruling, however, the district attorney filed an application for permission to file a supplemental return. In the supplemental return, the district attorney reversed course. The return argued *Miller* and *Gutierrez* could not be applied retroactively and Kirchner was, therefore, barred from collaterally attacking his sentence. The court granted the request to file a supplemental return. Kirchner filed a supplemental denial. On March 27, 2015, the superior court granted Kirchner's petition. The district attorney filed a timely notice of appeal.

DISCUSSION

I

In *Miller*, the United States Supreme Court held "mandatory life without 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.'"² (*Miller, supra*, 132 S.Ct. at p. 2460.) *Miller* explained the Supreme Court's prior cases had "establish[ed] that children are constitutionally different from adults for purposes of sentencing." (*Id.* at p. 2464.) Summarizing its holding, the court stated: "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It

² *Miller* decided two companion cases, both involving petitioners who were 14 at the time they committed homicides that resulted in sentences of LWOP. Petitioner Evan Miller's case arose on direct appeal, and Kuntrell Jackson's case arose on appeal from a petition for writ of habeas corpus. (*Miller, supra*, 132 S.Ct. at pp. 2461-2463.)

neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. [Citations.] And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." (*Id.* at p. 2468.)

Miller looked to two lines of precedent to support its holding. The first holds the Eighth Amendment's bar against cruel and unusual punishment bans sentencing practices that result in a divergence between the culpability of a class of offenders and the severity of the penalty imposed. (*Miller, supra*, 132 S.Ct. 2544, citing *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*) [holding unconstitutional a sentence of life imprisonment without parole for a minor who committed a nonhomicide offense]; *Atkins v. Virginia* (2002) 536 U.S. 304 [holding the execution of intellectually disabled defendants unconstitutional]; *Roper v. Simmons* (2005) 543 U.S. 551 (*Roper*) [holding the execution of individuals who were under 18 years of age at the time of their capital crimes unconstitutional]; *Kennedy v. Louisiana* (2008) 554 U.S. 407 [holding unconstitutional the death penalty for nonhomicide offenses].)

These cases "evok[e] a second line of . . . precedents . . . prohibit[ing] mandatory imposition of capital punishment" and instead "require[e] that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing

him to death." (*Miller, supra*, 132 S.Ct. at pp. 2463-2464, citing *Woodson v. North Carolina* (1976) 428 U.S. 280 (plur. opn.) and *Lockett v. Ohio* (1978) 438 U.S. 586.) *Miller* looked to these two lines of precedents, as well as advances in the science of children's brains and behavior, to conclude "juveniles have diminished culpability and greater prospects for reform" and, therefore, are " 'less deserving of the most severe punishments.' " (*Miller*, at p. 2464.)

In *Gutierrez*, the California Supreme Court addressed the impact of *Miller* on Penal Code³ section 190.5, subdivision (b), enacted in 1990 to permit the imposition of LWOP sentences on 16- and 17-year-old offenders in California in certain circumstances. (*Gutierrez, supra*, 58 Cal.4th at pp. 1371-1372.) Section 190.5, subdivision (b), which authorized Kirchner's LWOP sentence, provides in relevant part: "The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances . . . has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life." (§ 190.5, subd. (b).)

Gutierrez stated that since the pronouncement in *People v. Guinn* (1994) 28 Cal.App.4th 1130 (*Guinn*), "Courts of Appeal have uniformly interpreted section 190.5[, subdivision] (b) as establishing a presumption in favor of life without parole for juvenile offenders who were 16 years of age or older when they committed special circumstance

³ All further statutory references are to the Penal Code unless otherwise indicated.

murder." (*Gutierrez, supra*, 58 Cal.4th at p. 1369.) *Gutierrez* concluded *Guinn's* interpretation of the statute to create a presumption in favor of LWOP "was inconsistent with the principles set forth in *Miller*. ' "Treating [life without parole] as the default sentence takes the premise in *Miller* that such sentences should be rarities and turns that premise on its head, instead placing the burden on a youthful defendant to affirmatively demonstrate that he or she deserves an opportunity for parole." ' " (*People v. Chavez* (2014) 228 Cal.App.4th 18, 31 (*Chavez*), quoting *Gutierrez*, at p. 1379.)

Gutierrez "further held that in considering whether to impose a life sentence without possibility of parole, a sentencing court must consider the five factors enumerated in *Miller*: (1) the inherent impact of the juvenile's age on his culpability; (2) the juvenile's home and family environment; (3) the circumstances of the homicide offense; (4) the juvenile's ability to deal with law enforcement officers and prosecutors as well as effectively assist in his own defense; and (5) the possibility of rehabilitation." (*Chavez, supra*, 228 Cal.App.4th at p. 32, citing *Gutierrez, supra*, 58 Cal.4th at pp. 1389-1390.) *Gutierrez*, which decided two companion cases both arising on direct appeal, presumed that the trial courts had followed the law as interpreted by *Guinn* and its progeny and "therefore erroneously treated a sentence of life without possibility of parole as *required* by section 190.5, unless good reason to impose the less severe option of 25 years to life existed." (*Chavez*, at p. 32, italics added.)

Gutierrez concluded the presumed error required remand for resentencing because the records before it did "not clearly indicate that [the trial courts] would have imposed the same sentence had they been aware of the full scope of their discretion." (*Gutierrez*,

supra, 58 Cal.4th at p. 1391.) "Because the trial courts operated under a governing presumption in favor of life without parole, we cannot say with confidence what sentence they would have imposed absent the presumption. . . . [¶] . . . The question is whether each [defendant] can be deemed, at the time of sentencing, to be irreparably corrupt, beyond redemption, and thus unfit ever to reenter society, notwithstanding the 'diminished culpability and greater prospects for reform' that ordinarily distinguish juveniles from adults. [Citation.]"⁴ (*Ibid.*)

Finally, as we discuss more fully in part III, *Gutierrez* rejected the Attorney General's contention that the LWOP sentence the court was reviewing on direct appeal had been remedied by the Legislature's enactment of section 1170, subdivision (d)(2). (*Gutierrez, supra*, 58 Cal.4th at p. 1386.)

II

The principal issue we consider here is whether the rule announced in *Miller* must be applied retroactively in a collateral proceeding. The issue was quite recently, and definitively, resolved by the court's opinion in *Montgomery*, which held that *Miller* must be given retroactive application.

⁴ Kirchner was sentenced weeks before *Guinn* announced that "Penal Code section 190.5 means . . . that 16- or 17-year-olds who commit special circumstance murder *must* be sentenced to LWOP, *unless* the court, in its discretion, finds good reason to choose the less severe sentence of 25 years to life." (*Guinn, supra*, 28 Cal.App.4th at p. 1141.) The district attorney, however, does not argue that the sentencing court properly exercised its discretion under 190.5 in imposing the LWOP sentence, rather than improperly applying a presumption in favor of LWOP.

The petitioner in *Montgomery* was 17 years old in 1963 when he killed a police officer. Although initially sentenced to death, his initial conviction was reversed, and, on retrial, he was given an automatic LWOP sentence. Following *Miller*, he filed a petition for habeas corpus relief in state court in Louisiana and was denied any relief.

The petitioner asserted *Miller* provided a substantive federal constitutional limitation on the state's sentencing power, rather than a procedural one. He argued the United States Supreme Court had federal question jurisdiction over his contention as to the nature of the rights recognized in *Miller* and that, given their substantive character, state courts should be required to apply *Miller* retroactively. The court agreed both that the petition presented a federal question and that *Miller* was a substantive limitation on the state's sentencing powers. The court found that under the court's prior holdings in *Teague v. Lane* (1989) 489 U.S. 288 (*Teague*), *Schiro v. Summerlin* (2004) 542 U.S. 348, 352 and *Penry v. Lynaugh* (1989) 492 U.S. 302, *Miller*'s substantive, as opposed to procedural, character in turn required that *Miller* be given retroactive effect.⁵ (*Montgomery, supra*, 193 L.Ed.2d at p. 609.)

⁵ In *Teague*, the United States Supreme Court held "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced," unless the rule falls within one of two narrow categories of exception. (*Teague, supra*, 489 U.S. at p. 310.) The court explained new rules are generally not applied retroactively to cases on collateral review because the function of habeas corpus is limited. " '[T]he Court never has defined the scope of the writ simply by reference to a perceived need to assure that an individual accused of crime is afforded a trial free of constitutional error.' " (*Id.* at p. 308.) "Application of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." (*Id.* at p. 309.)

In explaining the need for retroactive application of new substantive constitutional rules, as opposed to procedural ones, the *Montgomery* court stated: "Substantive rules . . . set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful. Procedural rules, in contrast, are designed to enhance the accuracy of a conviction or sentence by regulating 'the *manner of determining* the defendant's culpability.' [Citations.] Those rules 'merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise.' [Citation.] Even where procedural error has infected a trial, the resulting conviction or sentence may still be accurate; and, by extension, the defendant's continued confinement may still be lawful. For this reason, a trial conducted under a procedure found to be unconstitutional in a later case does not, as a general matter, have the automatic consequence of invalidating a defendant's conviction or sentence.

"The same possibility of a valid result does not exist where a substantive rule has eliminated a State's power to proscribe the defendant's conduct or impose a given punishment. '[E]ven the use of impeccable factfinding procedures could not legitimate a verdict' where 'the conduct being penalized is constitutionally immune from punishment.'

Teague nonetheless identified two categories of exception to this bar: "First, a new rule should be applied retroactively if it places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.' [Citation.] Second, a new rule should be applied retroactively if it requires the observance of 'those procedures that . . . are "implicit in the concept of ordered liberty." ' ' " (*Teague, supra*, 489 U.S. at p. 307.)

[Citation.] Nor could the use of flawless sentencing procedures legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed. 'No circumstances call more for the invocation of a rule of complete retroactivity.' [Citation.]" (*Montgomery, supra*, 193 L.Ed.2d at p. 615.)

In determining that *Miller* was a substantive limitation on state sentencing powers, the *Montgomery* court emphasized the narrow number of instances in which imposing an LWOP sentence on a juvenile will be permissible under the Eighth Amendment: "*Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham*. *Miller* did bar life without parole, however, *for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility*. For that reason, *Miller* is no less substantive than are *Roper* and *Graham*. Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, *it will be the rare juvenile offender who can receive that same sentence*. The only difference between *Roper* and *Graham*, on the one hand, and *Miller*, on the other hand, is that *Miller* drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right." (*Montgomery, supra*, 193 L.Ed.2d at p. 620, italics added.)

Thus, the court held the procedural limitations *Miller* imposed when courts sentence juveniles did not deprive the constitutional interests recognized in *Miller* of their

substantive nature. "To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence. [Citation.] Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural requirement necessary to implement a substantive guarantee with a rule that 'regulate[s] only the *manner of determining* the defendant's culpability.' [Citation.] There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. [Citation.] For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. [Citation.] Those procedural requirements do not, of course, transform substantive rules into procedural ones.

"The procedure *Miller* prescribes is no different. A hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. [Citation.] The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." (*Montgomery, supra*, 193 L.Ed.2d at pp. 620-621.)

In light of the holding in *Montgomery*, inmates such as Kirchner, who are serving LWOP sentences for crimes they committed while they were juveniles, are plainly entitled to the benefits of *Miller*, even though their judgments of conviction are final.

III

A. Remedies Available in Collateral Proceedings

The court's majority opinion in *Montgomery* was subject to a vigorous dissent, in which among other matters Justice Scalia pointed out the practical burden state courts will face in attempting to resentence juveniles who committed crimes long before they are given habeas relief under the court's holding. Justice Scalia stated: "Federal and (like it or not) state judges are henceforth to resolve the knotty 'legal' question: whether a 17-year-old who murdered an innocent sheriff's deputy half a century ago was at the time of his trial 'incurable.' Under *Miller*, bear in mind, the inquiry is whether the inmate was seen to be incurable when he was sentenced—not whether he has proven curable and so can safely be paroled today. What silliness. (And how impossible in practice, see Brief for National District Attorneys Assn. et al. as *Amici Curiae* 9-17.)" (*Montgomery*, *supra*, 193 L.Ed.2d at p. 631 (dis. opn. of Scalia, J.).)

In apparent response to Justice Scalia's concerns, in addition to finding that *Miller* sets forth substantive limitations, rather than wholly procedural ones, the court in *Montgomery* also prescribed alternative remedies states may provide to inmates serving LWOP sentences imposed for crimes committed while they were juveniles, when, as here, their judgments of conviction are final: "Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a

juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by *permitting juvenile homicide offenders to be considered for parole*, rather than by resentencing them. [Citation.][⁶] Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and *who have since matured*—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." (*Montgomery, supra*, 193 L.Ed.2d at p. 622, italics added.)

In expressly providing that a state need not relitigate sentences, but may instead simply permit defendants such as Kirchner "to be considered for parole," the court in *Montgomery* made it unambiguously clear that, in collateral proceedings, a defendant's release may, under the Constitution, depend in part at least on his postconviction behavior. Indeed, in explaining that the opportunity for parole is sufficient to satisfy the Eighth Amendment, the court stated: "Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller's* central intuition—that children who

⁶ In creating this alternative remedy, the court cited, as an example, a Wyoming statute (Wyo. Stat. Ann § 6-10-301(c) (2013)), which makes juvenile offenders eligible for parole after 25 years so long as they have not committed an assault on a prison employee or attempted to escape. (*Montgomery, supra*, 193 L.Ed.2d at p. 622.) The Wyoming statute is somewhat similar to our own section 3051, which provides for juvenile parole hearings for prisoners sentenced to either determinate sentences or life sentences with the possibility of parole. As we explain, LWOP sentences imposed on juveniles are governed by section 1170, subdivision (d)(2), which permits a prisoner to apply for a recall and resentencing after serving 15 years of his or her sentence. We do not believe the court's citation to the Wyoming statute excluded alternative remedies such as section 1170, subdivision (d)(2), which, like the Wyoming statute and section 3051, avoid the practical problem of attempting to determine retroactively whether a defendant was incorrigible at the time of his or her initial sentence.

commit even heinous crimes are capable of change." (*Montgomery, supra*, 193 L.Ed.2d at p. 622.) Thus, following *Montgomery*, in collateral proceedings all that is required is either resentencing in compliance with *Miller* or a process by which the defendant is given a fair opportunity to be considered for parole.

In an order permitting the parties to provide supplemental briefing with respect to *Montgomery*, we brought the foregoing passage from *Montgomery*, as well as section 1170, subdivision (d)(2) to the parties' attention.

B. Section 1170, subdivision (d)(2)

In general and with exceptions not pertinent here, section 1170, subdivision (d)(2)⁷ permits an inmate serving an LWOP sentence for a crime committed while he or

⁷ Section 1170, subdivision (d)(2) provides:

"(A)(i) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 15 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing.

"(ii) Notwithstanding clause (i), this paragraph shall not apply to defendants sentenced to life without parole for an offense where the defendant tortured, as described in Section 206, his or her victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

"(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

"(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

"(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

"(iii) The defendant committed the offense with at least one adult codefendant.

"(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

"(C) If any of the information required in subparagraph (B) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

"(D) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

"(E) If the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

"(F) The factors that the court may consider when determining whether to recall and resentence include, but are not limited to, the following:

"(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

"(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

"(iii) The defendant committed the offense with at least one adult codefendant.

"(iv) Prior to the offense for which the sentence is being considered for recall, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

"(v) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

"(vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

she was a juvenile, to file a petition in the sentencing court for recall and resentencing after serving 15 years of the LWOP sentence. (§ 1170, subd. (d)(2)(A)(i).) The petition must be supported by a statement from the inmate that one of four enumerated circumstances is true, and the court must hold a hearing on the petition if it determines by a preponderance of the evidence that the petitioner's statement is true. At the hearing, based on eight criteria set forth in the statute or any other criteria identified by the sentencing court as relevant, the court may recall the sentence and resentence the inmate as if the inmate had not been previously sentenced. (§ 1170, subd. (d)(2)(G).) If the petition is not granted, the inmate may petition again for recall and resentencing after serving 20 years and again after serving 24 years. (§ 1170, subd. (d)(2)(H).)

"(vii) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

"(viii) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

"(G) The court shall have the discretion to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in subparagraph (B). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

"(H) If the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

"(I) In addition to the criteria in subparagraph (F), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

"(J) This subdivision shall have retroactive application."

The eight criteria for recall listed in the statute are factors related to: the nature of the defendant's participation in the underlying offense (§ 1170, subd. (F)(i) & (iii)); the defendant's previous criminal record, if any (§ 1170, subd. (F)(ii)); the defendant's psychological and social history at the time of the underlying offense (§ 1170, subd. (F)(iv) & (v)); and the defendant's conduct while incarcerated (§ 1170, subd. (F)(vi), (vii) & (viii)). In particular, the defendant may show that he or she has "performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse." (§ 1170, subd. (F)(vi).)

C. Adequate Remedy

Where a habeas petitioner has an adequate remedy at law, he or she must employ it before seeking writ relief. (*In re Gandolfo* (1984) 36 Cal.3d 889, 899-900; see *In re Robbins* (1998) 18 Cal.4th 770, 777 ["habeas corpus is an extraordinary remedy that 'was not created for the purpose of defeating or embarrassing justice, but to promote it' "].) Thus, we must determine whether, in light of *Montgomery*, section 1170, subdivision (d)(2) is an adequate remedy which Kirchner was required to pursue before seeking habeas relief.

It is important to recognize that, although section 1170, subdivision (d)(2) does *not* provide an inmate with a parole hearing, it provides him or her with all the rights set forth in *Miller* and *Montgomery*. As we have discussed, the statute establishes that when a

defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 15 years of that sentence, the defendant may submit to the sentencing court *a petition for recall and resentencing*. In determining whether recall and resentencing is warranted, the sentencing court will examine not just the factors existing at the time of the crime, that is, those factors related to the defendant's status as a juvenile, but also the factors relating to the defendant's postconviction conduct and rehabilitation.

This procedure of course responds to and remedies Justice Scalia's concerns, which are implicitly recognized by the majority in *Montgomery*, that, after perhaps decades in prison, a defendant cannot logically or in fairness be returned to the same status as existed on the day of sentencing. Under section 1170, subdivision (d)(2), a defendant who has committed a heinous crime but, in the aftermath, has matured and exhibited remorse and rehabilitation will be given not just the benefit of worthy conduct, but also judicial recognition of his or her inherent ability to reform. Likewise, upon the People's proper showing, a defendant who has committed a heinous crime and, in the aftermath, has continued a life of additional heinous acts, may continue to be separated from society, as expressly permitted by the court in *Montgomery*.

The state has obvious and legitimate interests in requiring a petition under section 1170, subdivision (d)(2), as opposed to either simple resentencing or providing an unconditional right to parole to all inmates serving LWOP sentences imposed for crimes committed while they were juveniles. Not only does the section 1170, subdivision (d)(2)

process of recall and resentencing provide an inmate with his or her *Miller* rights, it provides the state with a mechanism for uniform application of those rights.

Were we to find that section 1170, subdivision (d)(2) was not an adequate remedy at law and, thus, not a petitioner's exclusive remedy, we would permit a petitioner to *select* whether to take advantage of section 1170, subdivision (d)(2) *or* seek a direct resentencing limited to those factors existing at the time of the original sentencing. Arguably, in the absence of mandatory resort to section 1170, subdivision (d)(2), a defendant whose postconviction conduct would not warrant an opportunity for parole would nonetheless be entitled to a new sentence upon a showing that at the time of his or her original sentencing there had been no proof of his or her incorrigibility.

This case presents an example of the mischief possible if a defendant is left to select whether or not to use the statutory recall of sentence procedure. Kirchner has served some 22 years in prison. It is clear that he is eligible for recall and resentencing according to the provisions of section 1170, subdivision (d)(2). At oral argument, we asked why he has not availed himself of that statute's recall and resentencing process. Counsel candidly admitted selection of the process depends on the defendant. Counsel also indicated to the court that when seeking resentencing in trial courts, some courts have allowed resentencing based only upon circumstances existing at the time of resentencing and some have allowed evidence of all postconviction conduct, maturity and rehabilitation. Such a system lacks uniformity and internal integrity.

It must be emphasized that *Miller* and *Montgomery* do not hold, and Kirchner does not contend, that a sentence of prison for life without the possibility of parole is in all

instances unlawful. The LWOP sentence of a juvenile is unconstitutional only when the trial judge has imposed it without meeting the procedural requirements of *Miller*.

However, *Montgomery* does not preclude a procedure, such as set forth in section 1170, subdivision (d)(2), under which both a defendant's interests and the state's are fully examined and vindicated and where, as here, a defendant is seeking release after decades of incarceration.

It bears emphasizing, however, that where a prisoner is serving an LWOP sentence for a crime committed while he or she was a juvenile, and at the time of his or her sentence the trial judge failed to employ the procedures required by *Miller*, his or her sentence is *presumptively* unlawful and he or she is entitled to relief from it.

(*Montgomery, supra*, 193 L.Ed.2d at pp. 620-622.) As we have noted, under *Montgomery* he or she must be given either a statutory right to apply for parole or a hearing in which the People establish that he or she falls within the narrow category of incorrigible criminals for whom an LWOP sentence is not disproportionate. Because an LWOP sentence is presumptively unlawful when the underlying crime was committed while an inmate was a juvenile and because *Miller* and *Montgomery* repeatedly state that courts will only rarely be able to find that a juvenile criminal is so incorrigible that he or she may never be considered for release, a petition under section 1170, subdivision (d)(2) will meet the requirements of *Miller* and *Montgomery*, only if, at both the trial court's review of the sufficiency of the petition (see § 1170, subd. (d)(2)(E)) and at any hearing ordered thereafter, the People bear the burden, as they would at any initial sentencing under *Miller* and *Gutierrez*, of showing that the defendant is one of the rare individuals

for whom no possibility of parole should be provided. A process in which an *inmate* serving an unlawful sentence was required to show that he or she was *not* one of the rare incorrigible criminals would ignore the mandate of *Montgomery* that *Miller* be given retroactive effect, as well as creating a presumption in favor of LWOP akin to the one rejected by the court in *Gutierrez*.

In sum then, under the circumstances we have described, and in particular given the requirement that the People bear the burden of proof at all stages of a section 1170, subdivision (d)(2) petition, the statute meets the requirements of *Miller* and *Montgomery* and is therefore an adequate remedy which Kirchner must pursue before resorting to habeas relief.

D. *Gutierrez*

Our conclusion the remedy provided by section 1170, subdivision (d)(2) meets the requirements of *Montgomery*, does not conflict with the holding in *Gutierrez*. *Gutierrez* was considered by the court on the direct appeals of two defendants from LWOP sentences imposed by separate trial courts. After sentence was imposed in each case and while the defendants' appeals were pending in the Court of Appeal, *Miller* was decided. In discussing the Attorney General's argument that any defect in the defendants' sentences under *Miller* had been cured by enactment of section 1170, subdivision (d)(2), the court noted that at the time a juvenile is sentenced to a life term without the possibility of parole, the sentence is, except in rare circumstances, disproportionate because it ignores the possibility of future rehabilitation and maturation. (*Gutierrez, supra*, 58 Cal.4th at pp. 1386-1387.) The court found that the possibility that an LWOP

sentence would later be recalled and a new sentence imposed under section 1170, subdivision (d)(2) did not cure the defect in the original sentence. (*Gutierrez*, at pp. 1386-1387.) In reaching this conclusion on appeal, the court in *Gutierrez* cited the following from the Supreme Court's earlier opinion in *Graham*, *supra*, 560 U.S. at page 73, also a direct appeal, in which the court held that it was unconstitutional to impose LWOP's on juveniles who had not committed a homicide offense: "Even if the State's judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made *at the outset*." (*Ibid.*, italics added; see *Gutierrez*, at pp. 1386-1387.)

There is no conflict between the strictly prospective focus of the courts in *Gutierrez* and *Graham* and the retrospective focus expressly permitted by the court in *Montgomery*. Where, as in *Gutierrez* and *Graham*, the court was directly reviewing the legality of a sentence, its focus was properly prospective and on the requirements of the constitution when a sentencing judge is making a prospective sentencing decision. In contrast, in *Montgomery*, the court was considering the somewhat broader question of the constitutionality of the prisoner's *continued* confinement. (*Montgomery*, *supra*, 193 L.Ed.2d at p. 622) [*Miller* must be retroactive because of "grave risk that many are being held in violation of the Constitution"].) In that procedural context, it is quite reasonable to permit consideration of a defendant's postconviction conduct, especially in light of the possibility that a defendant's postconviction behavior might show that he or she falls within the very narrow category of incorrigible.

DISPOSITION

The trial court's order granting Kirchner's petition is reversed with directions that the trial court enter an order denying the petition without prejudice to Kirchner's right to bring a petition under section 1170, subdivision (d)(2).

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.

I, KEVIN J. LANE, Clerk of the Court of Appeal,
Fourth Appellate District, State of California, do
hereby certify that this preceding and annexed is a
true and correct copy of the original on file in my office.

WITNESS, my hand and the Seal of the Court this
February 23, 2016

KEVIN J. LANE, CLERK



By A. Galvez
Deputy Clerk

Exhibit B

Data Analysis Unit
Estimates and Statistical Analysis Section
Offender Information Services Branch

Department of Corrections and Rehabilitation
State of California
October 2015

Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
ROBINSON, AARON	05/24/2004	08/28/2009	16	Los Angeles	Salinas Valley State Prison
SAM, SAVIN	11/29/2003	09/29/2009	18	Santa Clara	High Desert State Prison
SOTO, MARIO	08/17/2005	09/29/2009	17	Riverside	High Desert State Prison
UY, RATTANY	02/08/2008	10/09/2009	17	San Joaquin	California Correctional Center
KUPSCH, RONALD	02/28/2003	10/09/2009	16	Los Angeles	North Kern State Prison
ATLAS, TYSON	04/22/2006	10/29/2009	16	San Bernardino	Ironwood State Prison
MILTON, ANTHONY	12/02/2003	12/04/2009	17	Alameda	Calipatria State Prison
RUSSELL, DANIEL	04/16/2006	11/16/2009	16	Sacramento	Kern Valley State Prison
PEARSON, CALVIN	04/15/2006	11/16/2009	16	Sacramento	High Desert State Prison
GUILLEN, JOSE	05/23/2008	12/01/2009	17	Los Angeles	California Medical Facility
CARRASCO, ANGEL	03/12/2008	12/31/2009	17	Tulare	Centinela State Prison
HOFFMAN, KYLE	08/04/2008	10/08/2010	16	Kern	California Correctional Institution
BLACKWELL, BRADLEY	02/07/2007	04/20/2010	17	Sonoma	Kern Valley State Prison
HERNANDEZ, ANTHONY	01/12/2008	04/12/2010	17	Los Angeles	High Desert State Prison
THOMAS, EDWARD	08/14/2004	06/15/2010	17	San Diego	High Desert State Prison
DAVIS, DEVIN	05/11/2007	05/26/2010	17	Los Angeles	California State Prison, Corcoran
SIACKASORN, JIMMY	12/19/2007	06/25/2010	16	Sacramento	Pelican Bay State Prison
SILVA, JESSE	06/08/2008	06/18/2010	16	Los Angeles	Calipatria State Prison
PEREZ, JESSE	07/19/2008	07/30/2010	17	Kern	High Desert State Prison
ABELLA, FRANK	06/07/2008	09/07/2010	17	Sacramento	Kern Valley State Prison
LEWIS, JERRETT	06/09/2007	09/17/2010	17	Riverside	Ironwood State Prison
RUIZ, IGNACIO	01/19/2008	09/29/2010	16	Orange	North Kern State Prison
PALAFIX, LUIS	08/04/2008	06/07/2013	16	Kern	Calipatria State Prison
STRATIS, CHRISTOPHER	03/19/2008	12/14/2010	17	Los Angeles	California State Prison, Los Angeles County
AYALA, OIRAM	12/17/2006	12/08/2010	17	Orange	California Medical Facility
RAMIREZ, LUIS	08/27/2007	02/18/2011	16	Orange	North Kern State Prison
LUCERO, NATHAN	02/18/2006	04/05/2011	17	Riverside	Pelican Bay State Prison
ORTEGA, LUIS	11/04/2007	04/06/2011	17	Ventura	Pelican Bay State Prison
ROLDAN, JUAN	12/17/2006	04/13/2011	16	Orange	Pelican Bay State Prison
CARDENAS, JOSE	12/09/2007	09/09/2011	17	San Joaquin	Centinela State Prison
MERAZ, VICTOR	05/27/2007	08/17/2011	16	Ventura	Kern Valley State Prison
ROJAS, ORLANDO	03/28/2007	10/05/2011	17	Santa Clara	Calipatria State Prison
MARQUEZ, VICTOR	06/02/2009	10/28/2014	17	Tulare	Kern Valley State Prison
MCCUTCHEEN, KAYL	06/28/2009	12/15/2011	17	Contra Costa	California State Prison, Corcoran
DUBOSE, CARLOS	08/22/2009	12/15/2011	17	San Bernardino	California State Prison, Los Angeles County
MURRAY, DEJON	03/26/2010	12/20/2011	17	Sacramento	Centinela State Prison

These data values may differ from those previously published due to database updates.

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OUTPUT: W:\OISB\DAU\Projects\DAU06\Ad_Hoc\2015-10\Under 18 LWOPS with Sentence Date

000001

Data Analysis Unit
Estimates and Statistical Analysis Section
Offender Information Services Branch

Department of Corrections and Rehabilitation
State of California
October 2015

Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
CHAVEZ, LEOPOLDO	09/25/1993	05/18/2012	17	San Diego	California Institution for Men
ELIAS, EDWARD	09/25/1993	06/25/2012	17	San Diego	California Institution for Men
GOMEZ, DAVID	12/14/2009	09/25/2012	16	San Bernardino	California State Prison, Los Angeles County
MOSES, DAVID	04/14/2010	11/02/2012	17	Kern	California Medical Facility
BIBIANO, VICTOR	09/20/2009	12/21/2012	17	Los Angeles	Calipatria State Prison
MERAZ, JUAN	09/20/2009	12/21/2012	16	Los Angeles	Kern Valley State Prison
SEE, TONY	06/08/2011	12/27/2012	17	Tulare	North Kern State Prison
ABRAM, KEVIN	09/13/2008	04/16/2013	17	Marin	California Correctional Center
PEREZ, CHRISTIAN	10/01/2004	05/08/2013	17	Los Angeles	San Quentin State Prison
SALDANA, JOSE	07/26/2011	06/07/2013	17	Kings	RJ Donovan Correctional Facility
Tran, Truc	02/24/1995	07/24/2013	17	Orange	Calipatria State Prison
GUZMAN, MANUEL	05/30/2011	11/01/2013	17	Riverside	California State Prison, Los Angeles County
SPEAKER, CHRISTIAN	10/19/2010	11/21/2013	17	Santa Cruz	Kern Valley State Prison
RENTERIA, JOSE	08/02/2008	12/11/2013	17	Los Angeles	California State Prison, Corcoran
GALLARDO, GIOVANNI	10/15/2011	02/19/2014	16	Los Angeles	RJ Donovan Correctional Facility
VALLER, RAYMOND	03/31/2012	08/06/2014	17	San Joaquin	High Desert State Prison
LLAMAS, AURELIO	01/17/2009	08/12/2014	17	Tulare	Centinel State Prison
CASTANEDA, JESUS	10/20/2012	12/16/2014	17	Tulare	Salinas Valley State Prison
SANTANA, EDGAR	03/19/2010	02/27/2015	16	Los Angeles	Calipatria State Prison
MENDOZA, JOHNNY	09/25/2010	06/23/2015	17	Los Angeles	North Kern State Prison
MCGHEE, DIAMONTE	10/31/2011	07/10/2015	17	Los Angeles	California Institution for Men
MARQUEZ, GONZALO	03/15/1981	10/03/1984	16	Los Angeles	Pelican Bay State Prison
COX, JOHN	12/20/1983	08/03/1985	17	Santa Clara	RJ Donovan Correctional Facility
HENDERSON, PHILLIP	01/11/1982	08/11/1986	16	San Francisco	Mule Creek State Prison
JIMENEZ, SALVADOR	04/16/2004	02/02/2006	17	Sonoma	California State Prison, Sacramento
KAK, RATTANAK	10/10/2003	01/20/2006	16	San Joaquin	Salinas Valley State Prison
LOPEZ, GERARDO	10/02/2002	06/30/2006	17	Orange	Centinela State Prison
CRISLER, ROBERT	08/05/2004	07/05/2006	17	Sacramento	High Desert State Prison
GARZA, JULIAN	08/29/2005	08/11/2006	17	Kern	High Desert State Prison
SESSING, NATHAN	12/03/2004	09/06/2006	17	Ventura	California Substance Abuse Treatment Facility
DYLESKI, SCOTT	10/15/2005	10/31/2006	16	Contra Costa	California State Prison, Corcoran
O'BRIEN, SEAN	02/26/2003	11/01/2006	16	El Dorado	California State Prison, Corcoran
CUELLAR, EDWARD	05/11/2005	10/24/2006	16	Riverside	Kern Valley State Prison
TAYLOR, LEIF	05/31/1993	10/31/2006	16	Los Angeles	Centinela State Prison
VANG, COMDY	04/02/2005	11/17/2006	17	San Joaquin	Pleasant Valley State Prison
GALVEZ, DAVID	03/20/2005	11/07/2006	16	Los Angeles	Centinela State Prison

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Data Analysis Unit
Estimates and Statistical Analysis Section
Offender Information Services Branch

Department of Corrections and Rehabilitation
State of California
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Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
DIAZ, JOHN	05/08/2004	12/08/2006	16	Los Angeles	Kern Valley State Prison
ISAYEV, MAKSIM	10/04/2005	04/18/2007	17	Sacramento	California Substance Abuse Treatment Facility
RIVERA, SAUL	02/02/2005	03/02/2007	16	Los Angeles	Ironwood State Prison
BENSON, JIMMY	09/25/2004	03/23/2007	17	San Joaquin	California Correctional Institution
SIORDIA, FREDDY	10/02/2005	03/08/2007	16	Butte	High Desert State Prison
MONDRAGON, GIANCARLO	08/23/2003	07/20/2007	17	Orange	California State Prison, Los Angeles County
GARCIA, DAVID	05/19/2006	10/18/2007	17	Tulare	California State Prison, Corcoran
RHONE, JAMAL	10/28/2004	12/11/2007	17	San Bernardino	California State Prison, Los Angeles County
MARTINEZ, ISAAC	06/28/2012	01/03/2013	22	Los Angeles	Salinas Valley State Prison
SOLIS, JUAN	01/29/2006	12/20/2007	16	Los Angeles	Centinela State Prison
MURRAY, CHRISTOPHER	04/03/2006	11/20/2007	17	Los Angeles	California State Prison, Los Angeles County
RIVERA, FERNANDO	01/27/2004	12/28/2007	16	Riverside	Calipatria State Prison
CONTRERAS, ANDRES	03/27/2005	01/25/2008	16	Tulare	California Correctional Institution
SANDOVAL, RODOLFO	05/05/2004	01/30/2008	17	Ventura	High Desert State Prison
BUNN, REGINALD	03/09/2006	01/30/2008	17	Sacramento	California State Prison, Corcoran
MINOR, ANTONIO	03/09/2006	01/30/2008	17	Sacramento	California State Prison, Corcoran
AVENDANO, DIEGO	12/02/2004	02/07/2008	17	Los Angeles	California Correctional Institution
SEE, LAVANG	10/01/2006	06/05/2008	16	Tulare	Salinas Valley State Prison
ALFRED, EVAN	06/27/2007	09/22/2008	16	Los Angeles	California State Prison, Corcoran
SOTO-ENRIQUEZ, MIGUEL	06/11/2006	06/17/2008	16	Sacramento	Deuel Vocational Institution
COTTON, JOHNNY	04/22/2006	06/17/2008	17	Sacramento	North Kern State Prison
DONALD, DEONTE	01/06/2003	06/23/2008	17	Alameda	California State Prison, Solano
SEE, CHAWA	10/01/2006	07/03/2008	16	Tulare	California State Prison, Corcoran
CRUZ, EDWIN	04/08/2007	07/29/2008	17	Los Angeles	California State Prison, Los Angeles County
FLORES, RALPH	05/14/1999	09/17/2008	17	Los Angeles	San Quentin State Prison
PEREZ, DANIEL	07/26/2005	09/03/2008	17	Sacramento	Salinas Valley State Prison
MOFFETT, ANDREW	04/23/2005	07/26/2011	17	Contra Costa	Salinas Valley State Prison
GALLEGOS, GEORGE	10/29/2006	10/21/2008	16	Los Angeles	California State Prison, Los Angeles County
ZAVALA, EDGAR	01/13/2007	10/17/2008	17	Kern	Kern Valley State Prison
MYERS, ROBERT	08/14/2004	11/24/2008	17	San Diego	California State Prison, Sacramento
TAOTUI, PENIFOTI	12/20/2006	01/26/2009	16	San Diego	Calipatria State Prison
SUAREZ, JOSE	05/15/2006	02/18/2009	16	Orange	High Desert State Prison
SALCIDO, MARCOS	11/14/2007	03/10/2009	17	Los Angeles	Ironwood State Prison
FERNANDEZ, JOHN	08/16/2007	03/05/2009	17	Tulare	California State Prison, Sacramento
CUELLAR, STEVEN	11/02/2006	04/07/2009	16	Los Angeles	California State Prison, Los Angeles County
WHITE, CHRISTOPHER	03/16/2005	05/27/2009	17	San Bernardino	California Substance Abuse Treatment Facility

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Data Analysis Unit
Estimates and Statistical Analysis Section
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Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
GAONO, MEKI	12/20/2006	06/30/2009	17	San Diego	Calipatria State Prison
ADDERLEY, DUKWAN	04/15/2006	06/10/2009	16	Los Angeles	Kern Valley State Prison
RAMOS, OSVALDO	04/08/2007	06/17/2009	16	Los Angeles	RJ Donovan Correctional Facility
BAUTISTA, LUIS	08/27/2007	07/16/2009	17	Fresno	Salinas Valley State Prison
HEARN, RALPH	07/23/1990	12/19/1991	16	Los Angeles	Kern Valley State Prison
LYNCH, DAVID	07/23/1990	01/15/1992	16	Los Angeles	California State Prison, Corcoran
THROOP, EDWARD	04/07/1991	04/08/1992	17	Ventura	California Substance Abuse Treatment Facility
MORA, OSCAR	04/10/1991	09/30/1992	16	Los Angeles	Calipatria State Prison
LULU, FAAFETA	02/12/1991	01/06/1993	16	Los Angeles	California State Prison, Los Angeles County
ADKINS, DAVID	03/21/1991	04/07/1993	16	Los Angeles	Pleasant Valley State Prison
GUINN, ANA	10/19/1990	04/29/1993	17	Riverside	California State Prison, Sacramento
GARNICA, JOSE	08/06/1991	08/23/1993	17	San Bernardino	Calipatria State Prison
PAYTON, DESMOND	05/04/1992	08/11/1993	16	San Diego	California Institution for Men
GINES, MICHAEL	10/04/1992	08/13/1993	16	Kern	California Correctional Institution
ESPINOZA, CANDE	07/05/1990	08/24/1993	17	Los Angeles	Pelican Bay State Prison
HOBLEY, LEON	06/08/1991	09/15/1993	17	Los Angeles	California Substance Abuse Treatment Facility
JONES, KEVIN	03/03/1992	10/27/1993	17	Los Angeles	Wasco State Prison
RUSSELL, MICHAEL	08/27/1992	01/31/1996	17	Kern	California State Prison, Los Angeles County
SANCHEZ, BENIGNO	04/19/1992	11/04/1993	17	Tulare	Kern Valley State Prison
VIERA, FERNANDO	10/03/1991	02/16/1994	16	Los Angeles	Pleasant Valley State Prison
DOMINGUEZ, MARVIN	10/12/1991	12/15/1993	16	Los Angeles	California Correctional Institution
PEREZ, FRANCISCO	06/17/1992	01/07/1994	17	Los Angeles	High Desert State Prison
MOORE, DEANDRE	12/03/1991	02/09/1994	16	San Mateo	North Kern State Prison
RUSSELL, ATHAIN	12/03/1991	02/09/1994	16	San Mateo	Kern Valley State Prison
SPANN, TROY	03/28/1992	03/09/1994	16	Los Angeles	Kern Valley State Prison
PULIDO, MICHAEL	05/24/1992	04/06/1994	16	San Mateo	Salinas Valley State Prison
FLORES, FABIAN	12/12/1992	08/18/1994	16	Riverside	Kern Valley State Prison
HER, CHA	04/09/1993	10/18/1994	16	San Joaquin	Pleasant Valley State Prison
KTRCHNER, KRISTOPHER	04/28/1993	11/08/1994	16	San Diego	Pelican Bay State Prison
SEIDEL, DAVID	11/26/1991	11/10/1994	16	San Bernardino	Centinel State Prison
RUSK, DANIEL	09/17/1993	07/06/1995	16	Solano	California State Prison, Corcoran
WARD, RAYMOND	10/14/1993	07/27/1995	17	Sacramento	Ironwood State Prison
DAVIS, MICHAEL	06/01/1993	07/21/1995	17	San Bernardino	Mule Creek State Prison
CURTIS, ELLIS	09/21/1993	08/10/1995	17	Sacramento	California State Prison, Solano
BONILLA, RENE	02/04/1992	08/02/1995	17	Los Angeles	Mule Creek State Prison
COOK, EDWARD	08/21/1994	09/22/1995	16	Kern	Mule Creek State Prison

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Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
BIVENS, JAMES	10/29/1993	10/11/1995	17	Los Angeles	California State Prison, Los Angeles County
THOMPSON, MARIYA	04/15/1994	10/27/1995	16	Kern	Salinas Valley State Prison
PHIM, VIRET	01/11/1994	12/22/1995	17	Stanislaus	Ironwood State Prison
TATE, IRVIN	01/28/1993	12/29/1995	16	Los Angeles	Kern Valley State Prison
SHOWELL, FRANK	03/16/1993	01/05/1996	17	Los Angeles	California State Prison, Sacramento
CASTILLO, DUSTY	01/14/1993	01/23/1996	16	Los Angeles	California State Prison, Corcoran
SANCHEZ, LUIS	09/13/1994	05/20/2015	16	Fresno	California State Prison, Los Angeles County
LOPEZ, RAMON	09/13/1994	02/28/1996	17	Fresno	Mule Creek State Prison
JONES, ANTONIO	11/15/1994	02/28/1996	17	Los Angeles	California State Prison, Corcoran
BAZE, GARY	07/28/1995	04/08/1996	17	Los Angeles	Calipatria State Prison
RAMIREZ, ROBERT	06/09/1995	04/15/1996	17	Los Angeles	Centinela State Prison
NILAKOUT, THONGXAY	05/16/1994	04/26/1996	17	Riverside	Ironwood State Prison
DRAYTON, ROBERT	09/28/1995	06/05/1996	16	Sacramento	California State Prison, Solano
HERNANDEZ, LARRY	06/09/1995	06/17/1996	16	Los Angeles	California State Prison, Sacramento
WHITE, BOBBY	08/22/1995	06/19/1996	17	Los Angeles	Mule Creek State Prison
VELIZ, ARMANDO	03/02/1995	06/20/1996	17	Solano	Pelican Bay State Prison
HODGE, RICHARD	08/09/1993	07/24/1996	17	Los Angeles	California State Prison, Solano
READY, ISSACH	10/01/1994	07/29/1996	16	Sacramento	High Desert State Prison
MAEA, MAUTU	10/01/1993	07/31/1996	16	San Francisco	Pelican Bay State Prison
GOMEZ, LOUIS	11/11/1994	08/08/1996	16	Los Angeles	Pelican Bay State Prison
WILLIAMS, GARY	08/28/1994	08/22/1996	16	San Bernardino	North Kern State Prison
WILSON, DERRICK	08/22/1995	09/23/1996	17	Los Angeles	High Desert State Prison
DELUNA, DWAYNE	10/23/1994	10/17/1996	17	Sacramento	Kern Valley State Prison
JONES, JOHN	10/20/1995	10/21/1996	17	Los Angeles	California State Prison, Los Angeles County
OZAETA, JAIME	04/22/1995	11/12/1996	17	Los Angeles	Kern Valley State Prison
BANGS, RYAN	12/15/1992	11/22/1996	17	Riverside	High Desert State Prison
GOMEZ, ALEJANDRO	09/29/1995	11/21/1996	17	Fresno	Salinas Valley State Prison
JOHNSON, KENNY	12/02/1993	12/03/1996	16	Los Angeles	Kern Valley State Prison
BOUNPRASEUTH, BOUPHA	03/04/1995	12/05/1996	17	Los Angeles	Pleasant Valley State Prison
ASKEW, DAVID	11/18/1993	12/13/1996	16	Los Angeles	California State Prison, Los Angeles County
GARCIA, JUAN	06/18/1994	12/09/1996	17	Los Angeles	Kern Valley State Prison
GIBSON, CLIFTON	06/08/1994	12/26/1996	17	San Bernardino	California State Prison, Los Angeles County
COROTHERS, DONTE	12/26/1995	02/20/1997	17	San Diego	California Substance Abuse Treatment Facility
JAMES, JAWAD	02/02/1995	02/18/1997	16	Los Angeles	Ironwood State Prison
GUY, GLEN	06/07/1995	03/04/1997	17	San Bernardino	California State Prison, Sacramento
BRYANT, RIITCH	11/25/1995	12/21/1999	16	Los Angeles	High Desert State Prison

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Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
BRASH, LOUIE	05/13/1995	04/17/1997	16	Los Angeles	California State Prison, Los Angeles County
OSORIO, FRANK	11/21/1995	04/30/1997	17	Sacramento	Ironwood State Prison
HAWKINS, TRAVIS	08/27/1994	04/23/1997	16	Riverside	Pelican Bay State Prison
GALLEGOS, ASHLEY	08/27/1994	04/25/1997	17	Riverside	Centinel State Prison
BERG, JASON	05/23/1996	07/08/1997	17	San Diego	Kern Valley State Prison
WALLACE, JILES	11/16/1994	08/04/1997	17	Sacramento	High Desert State Prison
SANCHEZ, EDWARD	01/24/1994	08/20/1997	16	Sacramento	California State Prison, Sacramento
VIKTOR, JARRED	09/23/1995	11/17/1997	16	San Diego	Salinas Valley State Prison
SALINAS, JOEL	11/17/1996	08/16/1999	17	Los Angeles	California Correctional Institution
JONES, ERIC	09/12/1996	02/06/1998	17	Los Angeles	Mule Creek State Prison
MORALES, ROBERT	06/30/1995	11/06/2008	17	Los Angeles	Salinas Valley State Prison
TZUL, DAMIAN	07/27/1992	03/11/1998	16	Los Angeles	Pelican Bay State Prison
COTTE, LAWRENCE	11/14/1996	03/12/1998	16	Los Angeles	High Desert State Prison
DREBERT, MICHAEL	12/09/1995	03/19/1998	17	Los Angeles	California Correctional Institution
CAMARENA, ERIC	06/29/1996	04/03/1998	17	Los Angeles	Centinela State Prison
LOPEZ, FERNANDO	10/11/1991	04/16/1998	16	Los Angeles	Kern Valley State Prison
SHAHEED, HANEEF	03/12/1994	07/02/1998	16	San Diego	Ironwood State Prison
RAMAZZINI, NATHAN	07/15/1997	07/24/1998	16	Colusa	High Desert State Prison
HARRING, DAVID	11/18/1997	08/07/1998	17	Kern	Kern Valley State Prison
JOSHUA, EGNACIO	06/28/1997	08/13/1998	17	San Joaquin	California State Prison, Corcoran
RODRIGUEZ, ROMAN	10/06/1996	09/04/1998	17	Orange	Centinela State Prison
YSLAS, MICHAEL	10/06/1996	09/04/1998	17	Orange	RJ Donovan Correctional Facility
WINN, SAMONT	09/23/1997	09/02/1998	17	Los Angeles	California Substance Abuse Treatment Facility
SECREASE, SHANNON	09/15/1996	09/24/1998	17	Solano	California State Prison, Solano
LOPEZ, RICARDO	04/12/1996	10/07/1998	17	Los Angeles	Salinas Valley State Prison
LEOPOLD, CARL	12/01/1996	10/19/1998	17	Alameda	California State Prison, Solano
NEVAREZ, ANDREW	07/23/1997	11/02/1998	17	Kings	Pleasant Valley State Prison
JIMENEZ, RAYMOND	07/23/1997	11/02/1998	17	Kings	Salinas Valley State Prison
RUIZ, EDGARDO	07/29/1995	12/23/1998	17	Santa Clara	Pleasant Valley State Prison
AYALA, ROY	07/26/1997	01/08/1999	17	Stanislaus	Mule Creek State Prison
MCDOUFFY, MAJUBA	06/17/1995	01/06/1999	16	Los Angeles	California State Prison, Los Angeles County
DREYER, HENRY	01/29/1998	03/25/1999	17	San Diego	Salinas Valley State Prison
WHITLOW, DANIEL	01/29/1998	02/11/2003	17	San Diego	California State Prison, Los Angeles County
TOSCANO, JUAN	06/11/1998	03/29/1999	17	Los Angeles	Calipatria State Prison
PALENCIA, BENJAMIN	11/23/1997	03/25/1999	17	Los Angeles	Kern Valley State Prison
SALAZAR, MAGDALENO	11/06/1991	03/22/1999	17	Los Angeles	San Quentin State Prison

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Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
WILLOVER, NORMAN	01/31/1998	04/19/1999	17	Monterey	North Kern State Prison
NUTH, KIMORAN	08/01/1995	04/29/1999	16	Los Angeles	Centinel State Prison
MONCADO, CHRISTOPHER	07/29/1995	05/19/1999	17	Los Angeles	California State Prison, Sacramento
RUELAS, ANGEL	09/19/1997	07/15/2013	17	Monterey	Pleasant Valley State Prison
BRAZILE, BRIAN	07/22/1997	07/29/1999	16	San Bernardino	California State Prison, Los Angeles County
PADILLA, MARIO	01/13/1998	08/02/1999	16	Los Angeles	Wasco State Prison
RAINEY, CLYDE	10/31/1996	08/25/1999	16	Contra Costa	North Kern State Prison
MCGINNIS, RAYMOND	03/04/1998	09/16/1999	16	Los Angeles	Centinel State Prison
THOMPSON, BERTRAND	07/12/1995	12/29/1999	17	San Joaquin	Ironwood State Prison
CHAVEZ, MARCOS	11/23/1997	09/16/1999	17	Tulare	Pelican Bay State Prison
BARROSO, DENNIS	09/30/1998	09/21/1999	16	Los Angeles	Pelican Bay State Prison
GUZMAN, JAIME	11/23/1997	10/14/1999	16	Tulare	Salinas Valley State Prison
CASTILLE, CLEMETH	11/11/1996	01/03/2000	17	Alameda	California State Prison, Solano
SHIELDS, RAMON	11/11/1996	01/03/2000	17	Alameda	Deuel Vocational Institution
JOHNSON, MARCUS	06/12/1997	10/19/2000	16	Los Angeles	California State Prison, Corcoran
BRACAMONTES, CHRISTIAN	05/09/1998	02/18/2000	16	Riverside	High Desert State Prison
PIMENTEL, FRANCISCO	07/21/1999	03/17/2000	17	Kern	Kern Valley State Prison
ROWE, ELIJAH	04/22/1999	05/18/2000	17	San Diego	Kern Valley State Prison
HERNANDEZ, THOMAS	02/21/1999	07/19/2000	17	Sacramento	California State Prison, Sacramento
BARNES, ROMAN	01/05/1999	09/28/2000	16	San Bernardino	Centinel State Prison
WATSON, KHARY	10/01/1994	12/28/2009	17	San Diego	RJ Donovan Correctional Facility
SANNS, ALEXANDER	04/02/1997	02/06/2001	16	San Bernardino	Centinel State Prison
VALDEZ, MARIANO	11/04/1998	02/09/2001	17	Riverside	California State Prison, Corcoran
JOHNSTON, JASON	02/19/1999	02/09/2001	17	Riverside	Centinel State Prison
SNYDER, LEE	03/24/1998	03/21/2001	17	Contra Costa	High Desert State Prison
ROGERS, TONY	04/20/1996	03/29/2001	17	San Bernardino	California State Prison, Los Angeles County
ARANDA, ALFONSO	06/20/1999	04/23/2001	17	Los Angeles	California State Prison, Los Angeles County
HAYGOOD, DOEN	12/07/1999	05/21/2001	16	San Diego	RJ Donovan Correctional Facility
ZAVALA, JOSE	06/09/1999	05/21/2001	17	Los Angeles	Calipatria State Prison
HARPER, JARRETT	01/08/2000	05/23/2001	17	Los Angeles	California State Prison, Los Angeles County
JOHNSON, TARAY	07/27/1998	06/27/2001	17	Los Angeles	Calipatria State Prison
ROBINSON, TRAVON	04/14/2000	02/20/2002	17	Los Angeles	Ironwood State Prison
CARROLL, MAURICE	05/16/2000	04/17/2002	17	Los Angeles	Ironwood State Prison
GAINES, JOE	07/21/2001	07/26/2002	17	Los Angeles	Salinas Valley State Prison
GOMEZ, RICARDO	02/03/2001	08/08/2002	17	Los Angeles	Ironwood State Prison
CERNAS, HUGO	10/05/2001	04/27/2005	17	Fresno	Salinas Valley State Prison

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HARPER, JASON	11/29/2001	11/08/2002	16	Riverside	California State Prison, Corcoran
ZAMORA, AGUSTINE	07/21/2000	11/20/2002	17	Los Angeles	California State Prison, Los Angeles County
HODGSON, WILLIAM	12/12/2000	01/07/2003	16	Los Angeles	California Substance Abuse Treatment Facility
DOUGLAS, TYRONE	06/19/2000	03/26/2003	17	Los Angeles	California Correctional Institution
VALDEZ, RAMON	04/25/2001	03/27/2003	17	Los Angeles	Centinela State Prison
ROBINSON, KENYUN	10/18/1992	05/21/2003	16	Los Angeles	Calipatria State Prison
VO, NHUT	05/31/1997	06/20/2003	16	Orange	Salinas Valley State Prison
MOTE, BRIAN	12/19/1997	06/27/2003	16	Orange	California Health Care Facility - Stockton
NGUOM, THAILLEE	01/26/2001	07/15/2003	16	Los Angeles	Pleasant Valley State Prison
IZAGUIRRE, JOHNNY	06/01/2002	09/09/2003	16	Los Angeles	California State Prison, Corcoran
RAMIREZ, RAYMOND	08/20/2002	09/23/2003	17	Los Angeles	California State Prison, Sacramento
BARRON, TONY	07/05/2003	04/16/2004	16	Los Angeles	High Desert State Prison
GOLDSBERRY, ROBERT	08/31/2002	11/04/2003	17	San Joaquin	Kern Valley State Prison
NARANJO, MICHAEL	07/21/2000	11/14/2003	17	Los Angeles	Mule Creek State Prison
COPELAND, ANDRE	06/01/2002	01/21/2004	17	Los Angeles	California State Prison, Los Angeles County
JOHNSON, ANTWONE	07/13/2002	04/02/2004	16	Los Angeles	California Substance Abuse Treatment Facility
BARRAGAN, DANIEL	01/17/2003	06/01/2004	17	Los Angeles	Kern Valley State Prison
HUDSON, DEONORE	01/12/2003	06/28/2004	16	Sacramento	California State Prison, Solano
ZHUK, DANIEL	01/20/2000	07/21/2004	17	Sacramento	Deuel Vocational Institution
MONTES, LOUIS	01/09/2001	08/13/2004	17	San Bernardino	Kern Valley State Prison
SARABIA, ADAM	10/21/2002	09/29/2004	16	Ventura	Kern Valley State Prison
ARENAS, VALENTINO	04/21/2004	03/17/2005	16	Los Angeles	Kern Valley State Prison
CAMPOS, RAUL	01/11/2002	03/02/2005	17	San Mateo	Pelican Bay State Prison
PONCE, JULIO	08/30/2002	02/23/2005	16	Orange	California Substance Abuse Treatment Facility
ORNELAS, JUAN	10/15/1996	07/22/2005	16	Kern	Salinas Valley State Prison
BELL, TERRY	04/10/2001	08/02/2005	17	Riverside	California State Prison, Los Angeles County
ANDRADE, OSCAR	02/27/2004	08/19/2005	17	Orange	Centinela State Prison
MONTEROS, FRANCISCO	11/14/2001	09/26/2005	17	Alameda	Kern Valley State Prison
HOWARD, REGINALD	11/03/1998	10/05/2005	17	Los Angeles	Centinela State Prison
SERVIN, RAFAEL	03/23/2003	10/14/2005	16	Orange	Kern Valley State Prison
LOZANO, ELIZABETH	01/26/1992	10/17/1996	16	Los Angeles	Central California Women's Facility
BROWN, CINDY	12/02/1993	02/13/1997	17	Los Angeles	Central California Women's Facility
CORDOVA, DAYANA	10/18/2007	12/30/2009	16	Riverside	Central California Women's Facility
NAVARRA, BRITTANY	01/14/2008	03/05/2015	16	Madera	Central California Women's Facility
DEMOLA, NATALIE	04/10/2001	08/03/2005	16	Riverside	Central California Women's Facility
PREASMYER, AMY	08/12/1997	03/04/2008	16	Los Angeles	Central California Women's Facility

These data values may differ from those previously published due to database updates.

REFERENCE: W:\OISB\DAU\SAS\DAU06\Ad_Hoc\2015-10\Under18 LWOPS - Rev DC

OUTPUT: W:\OISB\DAU\Projects\DAU06\Ad_Hoc\2015-10\Under 18 LWOPS with Sentence Date

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Data Analysis Unit

Estimates and Statistical Analysis Section
Offender Information Services Branch

Department of Corrections and Rehabilitation
State of California
October 2015

Name	Offense Date	Sentence Begin Date	Age at Offense	County of Conviction	Institution
HANSEN, BRAE	06/19/2007	07/08/2009	17	San Diego	Central California Women's Facility

These data values may differ from those previously published due to database updates.
REFERENCE: W:\OISB\DAU\SAS\DAU06\Ad_Hoc\2015-10\Under18 LWOPS - Rev DC
OUTPUT: W:\OISB\DAU\Projects\DAU06\Ad_Hoc\2015-10\Under 18 LWOPS with Sentence Date

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