

Supreme Court of Louisiana

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NEWS RELEASE #046

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

PER CURIAM:

2021-KP-01226

STATE OF LOUISIANA VS. JASON MICHAEL PILCHER (Parish of Natchitoches)

AFFIRMED. REMANDED. SEE PER CURIAM.

Hughes, J., dissents and assigns reasons.
Griffin, J., dissents.

SUPREME COURT OF LOUISIANA

No. 2021-KP-01226

STATE OF LOUISIANA

VS.

JASON MICHAEL PILCHER

On Supervisory Writ to the 10th Judicial District Court, Parish of Natchitoches

PER CURIAM

In 1993, applicant Jason Michael Pilcher, then fifteen years old, shot and killed Phyllis Allbritton and her eleven-year-old son Justin in their home in Natchitoches Parish. Mrs. Allbritton had allowed applicant to use her phone to call for assistance after he lost control of a stolen vehicle and drove it into a ditch. A Caldwell Parish jury found applicant guilty as charged of two counts of second degree murder,¹ and the trial court sentenced him to two consecutive terms of the statutorily mandated sentence of life imprisonment at hard labor without parole eligibility. The convictions and sentences were affirmed on appeal. *State v. Pilcher*, 27,085 (La. App. 2 Cir. 5/10/95), 655 So.2d 636, writ denied, 95-1481 (La. 11/13/95), 662 So.2d 466.

In *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the United States Supreme Court held that mandatory sentencing schemes that require all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, violate the Eighth Amendment's ban on cruel and unusual punishment. In *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), the United States Supreme Court held that in *Miller v. Alabama* it had

¹ Venue was changed to Caldwell Parish for trial because of pretrial publicity of the murders.

announced a new substantive rule of constitutional law and that the Constitution requires state courts to give retroactive effect to that rule on collateral review.

To implement *Miller* and *Montgomery*, the Louisiana legislature enacted La. C.Cr.P. art. 878.1 and amended La. R.S. 15:574.4. Article 878.1 originally required district courts to conduct a hearing “[i]n any case where an offender is to be sentenced to life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense ... to determine whether the sentence shall be imposed with or without parole eligibility pursuant to the provisions of R.S. 15:574.4(E).” Subsection 15:574.4(E), added by 2013 La. Acts, No. 239, provided the conditions under which persons serving life sentences for first or second degree murder committed under the age of eighteen could become parole eligible. On remand from the United States Supreme Court in *Montgomery v. Louisiana*, we directed lower courts to conduct parole eligibility hearings for pre-*Miller* juvenile offenders sentenced to life imprisonment without parole eligibility using these enactments. *State v. Montgomery*, 2013-1163 (La. 6/28/16), 194 So.3d 606.

The legislature continued to refine these provisions. The legislature confined the scope of Subsection 15:574.4(E) to the context of first degree murder and added Subsection 15:574.4(F) to govern persons (under the age of eighteen years at the time of the commission of the offense) serving a sentence of life imprisonment for a conviction for second degree murder. *See* 2017 La. Acts, No. 277. In addition, Subsections 15:574.4(E) and (F) only apply when an indictment is on or after August 1, 2017. For indictments before August 1, 2017, and whether for first or second degree murder, Subsection 15:574.4(G) was created.² Applicant, who was indicted

² La. R.S. 15:574.4(G)(1) provides:

for two second degree murders before August 1, 2017, that he committed when he was under the age of eighteen years, falls under Subsection 15:574.4(G).

As with offenders similarly situated to the applicant, Article 878.1 afforded the State an opportunity to timely file a notice of intent to seek a sentence of life imprisonment without parole eligibility, which would then be followed by a hearing conducted in accordance with the article. The State timely filed such notice in the present case. While awaiting the hearing mandated by Article 878.1, applicant filed a motion on October 14, 2020, asking the trial court to declare him parole eligible pursuant to La. R.S. 15:574.4(J).

By 2020 La. Acts, No. 99 (effective August 1, 2020), the legislature added Subsection J to R.S. 15:574.4, which provided in relevant part:

(1) Notwithstanding any provision of law to the contrary, any person serving a term or terms of imprisonment that result in a period of incarceration of twenty-five years or more and who was under the age of eighteen years at the time of the commission of the offense shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met:

(a) The offender has served at least twenty-five years of the sentence imposed.

...

The legislature swiftly amended it in 2020 La. Acts, 2nd Extraordinary Session, No. 4 (effective October 20, 2020) to reference other parole provisions in La. R.S. 15:574.4 and to add a Subsection J(4) as follows:

J. (1) Notwithstanding any provision of law to the contrary, and except as provided in Subsections D, E, F, G, and H of this Section, any person

Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) who was under the age of eighteen years at the time of the commission of the offense and whose indictment for the offense was prior to August 1, 2017, shall be eligible for parole consideration pursuant to the provisions of this Subsection if a judicial determination has been made that the person is entitled to parole eligibility pursuant to Code of Criminal Procedure Article 878.1(B) and all of the following conditions have been met:

(a) The offender has served twenty-five years of the sentence imposed.

...

serving a term or terms of imprisonment that result in a period of incarceration of twenty-five years or more and who was under the age of eighteen years at the time of the commission of the offense shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions have been met:

...

(4) The provisions of this Subsection shall not apply to a person serving a sentence of life imprisonment for a conviction of R.S. 14:30, 30.1, 42, or 44.

At the time applicant filed his motion La. R.S. 15:574.4(J), as enacted in 2020 La. Acts, No. 99, was in effect. The motion was filed about a week before the amendment in 2020 La. Acts, No. 4 became effective.

The trial court denied the motion after conducting a hearing on November 5, 2020. At the hearing, applicant acknowledged that Subsection J was amended after he filed the motion. Applicant contended that he was entitled to parole eligibility under the plain language of Subsection J, as originally enacted. He also argued that the amendment (under which he would no longer be eligible) changed the law and therefore could only apply to persons sentenced after the change went into effect without violating the Ex Post Facto Clause or the constitutional separation of powers. The court of appeal denied the subsequent writ application. *State v. Pilcher*, 21-00018 (La. App. 3 Cir. 7/15/21) (unpub'd).

We need not consider the legislature's purpose in amending Subsection J, or answer any ex post facto or separation of powers questions, because we find that applicant is not entitled to parole eligibility under La. R.S. 15:574.4(J), as it was originally enacted. To conclude it applies, applicant asks us to focus only on the language "Notwithstanding any provision of law to the contrary" that prefaces the originally enacted Subsection J(1) and to ignore the larger statutory context in which the provision operates.

Section 15:574.4 is an often amended provision of law that affords parole eligibility to several identifiable groups. For example, the legislature added

Subsection D to La. R.S. 15:574.4 to comply with *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), in which the United States Supreme Court held that the Eighth Amendment’s prohibition of cruel and unusual punishment forbids the imposition of life in prison without parole for juveniles committing non-homicide crimes. *See* 2012 La. Acts, No. 466. Similarly, as described above, the legislature added Subsections E, F, and G to implement the holdings of *Miller/Montgomery*.

More recently, the legislature added Subsection H to provide parole eligibility to persons who were convicted or pleaded guilty to second degree murder under an older statutory framework, which included as an element of the sentence that there would be no parole eligibility for the first twenty (later increased in 1975 La. Acts, No. 380 to forty) years of a life sentence, while no provision of law granted parole eligibility after those twenty (later forty) years passed (unless the life sentence was first commuted to a fixed term of years). *See Bosworth v. Whitley*, 627 So.2d 629, 634–35 (La. 1993); *see also State v. Thomas*, 2007-0634, pp. 1–2 (La. 1/11/08), 972 So.2d 323, 324 (per curiam) (“When the legislature added the offense of second degree murder to the Criminal Code and provided a sentence of life imprisonment at hard labor without eligibility for parole, probation, or suspension of sentence for 20 years, 1973 La. Acts 111, it did not, by negative implication, give an inmate the right to apply for suspension of sentence and probation after serving 20 years of his life term, . . .”).

Subsections D–G must be viewed as tacitly repealed if we adopt applicant’s interpretation of Subsection J, which requires applicant’s singular focus on a prefatory clause of that provision to the exclusion of all else. There is, however, no indication the legislature intended to enact such a broad repeal. Regardless, it is well settled that repeals by implication are not favored and will only be permitted where two acts are irreconcilably inconsistent or repugnant. *International Paper Co., Inc.*

v. Hilton, 07–0290 (La. 10/16/07), 966 So.2d 545, 555. In *International Paper*, this court explained:

Louisiana law and jurisprudence demonstrate that a newly passed legislative act that is repugnant to or in conflict with an earlier passed act will supersede and implicitly repeal the earlier act, even in the absence of a repealing clause. However, not all conflicts lead to tacit repeal; only those conflicts which are irreconcilable may lead to tacit repeal.

Id. (citations omitted).

Here, the conflict can be reconciled. The conflict arises because both Subsections G and J were prefaced: “Notwithstanding any provision of law to the contrary,” Applicant argues Subsection J should apply because it is the more recently enacted of the two, i.e. the legislature by enacting Subsection J displaced Subsection G, which should be viewed as tacitly repealed (at least until the legislature reactivated it by amending Subsection J). This approach disregards a long-favored canon of construction that directs that when two statutes deal with the same subject matter, and if there is a conflict between them, then the statute specifically directed to the matter at issue prevails over the more general statute. *See, e.g., Burge v. State*, 10-2229, p. 5 (La. 2/11/11), 54 So.3d 1110, 1113. Subsections J and G both deal with parole eligibility for persons serving sentences greater than twenty-five years for crimes they committed while juveniles. Subsection G, which applies more specifically to those persons serving a sentence for first or second degree murder who were under the age of eighteen years at the time of the commission of the offense and whose indictment for the offense was prior to August 1, 2017 (like the applicant), is the more specific provision. Therefore, it governs parole eligibility for this applicant who was fifteen years old when he committed two second degree murders and was indicted on August 26, 1993.

Criminal statutes must be “given a genuine construction, according to the fair import of their words, taken in their usual sense, *in connection with the context*, and

with reference to the purpose of the provision.” La. R.S. 14:3 (emphasis added). Viewing Subsection J as originally enacted in its context and applying a long held rule of statutory construction that disfavors implicit repeal, it is clear that applicant’s parole eligibility is governed by Subsection G and not by Subsection J. Therefore, the trial court correctly denied applicant’s motion to declare him parole eligible pursuant to Subsection J. We affirm the trial court’s ruling, and we remand to the trial court for further proceedings consistent with the views expressed here.

AFFIRMED; REMANDED.

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Hughes, J., dissents.

It has been said that the Legislature is presumed to say what it means and means what it says. I would rule accordingly.