Summary of SC97692, *James Hicklin a/k/a Jessica Hicklin v. Eric Schmitt, et al.*
Appeal from the Cole County circuit court, Judge Daniel R. Green
Argued and submitted September 9, 2020; opinion issued November 24, 2020

Attorneys: Hicklin was represented by Anthony E. Rothert, Kayla Deloach and Jessie Steffan of the ACLU of Missouri Foundation in St. Louis, (314) 652-3114, and Gillian R. Wilcox of the ACLU of Missouri Foundation in Kansas City, (816) 470-9933. The state was represented by Andrew J. Crane of the attorney general's office in Jefferson City, (573) 751-3321.

Several entities or individuals filed briefs as friends of the Court. The Roderick & Solange MacArthur Justice Center was represented by Amy E. Breihan and Megan G. Crane of the center in St. Louis, (314) 254-8540. Joseph P. Dandurand, an attorney in Warrensburg, (660) 238-1927, represented himself; he also was represented by Ronald R. Holliger, an attorney in Kansas City, (816) 889-3608. Law faculty experts in criminal justice, civil rights and parole law were represented by Sean D. O'Brien of the University of Missouri-Kansas City School of Law, (816) 235-6152.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An inmate appeals from the circuit court's judgment against her in a declaratory judgment action challenging her sentence and the constitutional validity of statutes pertaining to juvenile offenders sentenced to life without parole. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the circuit court's judgment. Controlling United States Supreme Court precedent expressly provides for the method adopted by Missouri's legislature, allowing juvenile life-without-parole offenders automatic parole eligibility after 25 years and a hearing at which the parole board considers the youth and attendant factors outlined in those Supreme Court decisions. A declaratory judgment action was the appropriate method of raising these claims. To the extent the inmate also asks this Court to vacate her sentence as unconstitutional and remand for resentencing, such claims must be raised in a habeas corpus action.

Facts: In 1995, at the age of 16, Jessica Hicklin shot and killed a man, for which she was found guilty of first-degree murder and armed criminal action and sentenced to life in prison without eligibility for probation or parole pursuant to section 565.020.2, RSMo. In 2012, the United States Supreme Court in *Miller v. Alabama* held mandatory life sentences for juveniles without the possibility for parole violate the Eighth and Fourteenth amendments. Hicklin then filed a petition for declaratory judgment in the Cole County circuit court asserting her mandatory life sentence was unconstitutional. The Supreme Court's subsequent decision in *Montgomery v. Louisiana* made the *Miller* holding retroactive to persons such as Hicklin who previously were sentenced to life without parole as juveniles. After *Montgomery*, the legislature enacted Senate Bill No. 590, modifying section 565.020.2 and enacting section 558.047, RSMo, which permits offenders sentenced to a mandatory life imprisonment without eligibility for probation or parole to seek a sentence review from the parole board after serving 25 years. The circuit court found SB 590 rendered Hicklin's claims moot and directed her to file an amended petition. In her

amended petition, Hicklin alleged section 558.047 did not remedy her unconstitutional sentence. The state filed a motion for judgment on the pleadings, which the circuit court sustained, finding she must challenge her sentence in habeas corpus, not by bringing a declaratory judgment action. Hicklin appeals.

AFFIRMED.

Court en banc holds: (1) Because declaratory judgment actions may be used to determine the rights of persons affected by statutes, including parole eligibility statutes, Hicklin properly raised her challenges to the constitutional validity of section 565.020, the provisions of SB 590, and their application to her in light of *Miller* and *Montgomery* in a declaratory judgment action. To the extent Hicklin seeks to have her sentence vacated, habeas corpus – not a declaratory judgment – is the appropriate action.

(2) The enactment of SB 590 was constitutional under *Montgomery*, which expressly held that *Miller*'s retroactive application did not require states to relitigate sentences; rather, *Miller* violations could be remedied by permitting juvenile offenders to be considered for parole. Missouri's law, therefore, is consistent with *Miller* and *Montgomery* in that section 558.047 makes *Miller*-impacted juvenile offenders like Hicklin parole eligible and requires a parole hearing at which the parole board considers the youth and attendant circumstances factors outlined in *Miller* and *Montgomery* in determining whether to grant parole.

(3) Section 558.047 does not permit the parole board to determine an individual's sentence; rather, it gives the parole board the authority to grant parole. Missouri's legislature, in which sentencing power is inherent, granted offenders like Hicklin parole eligibility. Accordingly, section 558.047 does not violate the separation of powers clause in the state constitution. Neither is it a bill of attainder as it provides a benefit, not a punishment.