No. 124046

IN THE
SUPREME COURT OF ILLINOIS

People State of Illinois,	)	
	)	
Appellant	)	
	)	Appeal from
v.	)	Appellate Court
	)	Third District
Ashanti Lusby,	)	3-15-0189
	)	01 CF 664
Appellee	)	
	)	
	)	

ORDER

On the Court's own motion, it is hereby ordered that *People v. Lusby*, Docket No. 124046, Agenda 3, is removed from the call of the docket pending the United States Supreme Court's disposition of *Mathena v. Malvo*, No. 18-217.

Order entered by the Court.

Karmeier, C.J., joined by Thomas, J., dissenting. Dissent attached.

FILED
September 06, 2019
SUPREME COURT
CLERK

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 124046)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v.
ASHANTI LUSBY, Appellee.

Filed September 6, 2019.

CHIEF JUSTICE KARMEIER, dissenting from the removal of the case from the call of the docket:

¶ 1 Our court granted leave to appeal in this case more than seven months ago. We did so because it presented two questions of state law we deemed significant: (1) whether the appellate court's decision implicates a split that has arisen under our decision in *People v. Bailey*, 2017 IL 121450, concerning the appellate court's remedial authority where the State has provided input on the merits of a *pro se* motion for leave to file a successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)) and (2) whether the appellate court's decision deepens a conflict with respect to the authority of the appellate court to bypass the Act's procedures and grant collateral relief without first remanding for the filing of a postconviction petition, appointing of counsel, and following certain steps required under the Act.

¶ 2 Now, mere days before the case is scheduled to be argued before us at our September Term, a majority of the court has decided, without prior notice to

counsel, to abruptly cancel oral arguments and put the matter on indefinite hold pending the United States Supreme Court's disposition of *Mathena v. Malvo*, No. 18-217. I cannot join in this hasty and ill-considered course of action.

¶ 3 *Malvo* will review a decision by the United States Court of Appeals for the Fourth Circuit arising out of Virginia that construed the United States Supreme Court's decision in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), to mean that the eighth amendment's prohibition against imposition on juveniles of life imprisonment without parole, as set forth in *Miller v. Alabama*, 567 U.S. 460 (2012), applies retroactively to life sentences that were discretionary as well as to those that were mandatory. Our court unanimously reached the same conclusion as the Fourth Circuit in *People v. Holman*, 2017 IL 120655. Holman was based squarely on the language and rationale of Miller and Montgomery. We have no reason to suspect that in resolving the conflict that led to its grant of review in *Malvo*, the United States Supreme Court will suddenly jettison that precedent.

¶ 4 Significantly, the last-minute concern over *Miller* and *Montgomery* has been injected into this case solely by my colleagues in the majority. The parties themselves have never questioned the validity or applicability of that precedent. There is no reason why they should. The questions on which the State sought our intervention and guidance involve issues of procedure under Illinois law that are not unique to cases involving imposition of life sentences on juveniles and the applicability of *Miller* and *Montgomery*. No matter how *Malvo* is ultimately decided by the United States Supreme Court, those state law procedural questions will therefore still require resolution by this court. If they were important enough to warrant our consideration before *Malvo*, they remain important enough for us to take up now.

¶ 5 The majority cannot justify its eleventh-hour decision on the grounds that it was previously unaware of *Malvo*. *Malvo* is scarcely fresh news. The United States Supreme Court granted review in *Malvo* last March, after this case was already before us, and the pendency of. *Malvo* was expressly noted on page 12 of the State's opening brief, which was filed on April 9, nearly five months ago. Nothing has occurred in the interim that would alter the posture of this case or the significance of *Malvo* to the matters presented by this appeal.

¶ 6 As judges, we have an obligation to decide the cases that come before us fairly, expeditiously, and in accordance with the law as it exists when we are called upon to rule. So far as the issues presented by *Malvo* are concerned, the position of this court is settled. Our obligation to manage our docket should not yield to fears that future rulings by other courts might require that we reassess that position. The law is ever changing. If we hit the pause button every time a new case with potential relevance to our jurisprudence reached the United States Supreme Court, our work would grind to a halt.

¶ 7 The parties in this case are ready to proceed. We should allow them to do so.

¶ 8 JUSTICE THOMAS joins in this dissent.