

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 14-7016**

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MARLIN MAURICE DUMAS,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director of the Virginia Department of  
Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern  
District of Virginia, at Norfolk. Rebecca Beach Smith, Chief  
District Judge. (2:13-cv-00398-RBS-LRL)

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Submitted: May 27, 2016

Decided: June 15, 2016

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Before WILKINSON, MOTZ, and FLOYD, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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David W. O'Brien, Daniel T. Campbell, Joseph L. Meadows, Craig  
P. Lytle, CROWELL & MORING LLP, Washington, D.C., for Appellant.  
Mark R. Herring, Attorney General of Virginia, Kathleen B.  
Martin, Senior Assistant Attorney General, Richmond, Virginia,  
for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marlin Maurice Dumas appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2254 (2012) petition as untimely. In his petition, Dumas sought to challenge his Virginia sentence of mandatory life without parole under Miller v. Alabama, 132 S. Ct. 2455 (2012).<sup>\*</sup> The district court concluded that Miller was not retroactively applicable to cases on collateral review for purposes of 28 U.S.C. § 2244(d)(1)(C) (2012), but granted a certificate of appealability on the issue.

Subsequent to the district court's decision, the Supreme Court held in Montgomery v. Louisiana, 136 S. Ct. 718, 732 (2016), that Miller "announced a substantive rule that is retroactive in cases on collateral review." Because the district court did not have the benefit of this decision, we vacate the judgment and remand for further proceedings in light of Montgomery. We express no opinion as to the timeliness or merits of Dumas' petition. We grant Dumas' unopposed motion for judicial notice. We dispense with oral argument because the facts and legal contentions are adequately presented in the

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<sup>\*</sup> Dumas received this mandatory life sentence for capital murder; he was 16 at the time he committed the offense.

materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED