

distinguishable from his case. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that the Eighth Amendment prohibits a sentencing scheme that mandates life in prison *without* the possibility of parole for juvenile offenders. Then, in *Montgomery*, 136 S. Ct. at 718, the Supreme Court held that *Miller* applies retroactively. Thus, as the Sixth Circuit has recognized, *Miller* and *Montgomery* only apply to mandatory sentences of life *without* parole, *see In re Harrell*, No. 16-1048, 2016 WL 4708184, *2 (6th Cir. 2016), and, here, O’Neal did not receive a sentence of life without parole. After all, the Kentucky Parole Board provided O’Neal with a parole hearing and, when it denied him parole, scheduled him for a future hearing date. [R. 1-1 at 1]. Thus, O’Neal’s Eighth Amendment claim is baseless.

O’Neal nevertheless argues that, while he can formally apply for parole, he is functionally “serving a de-facto life without parole sentence due to the fact that Kentucky statutes governing parole eligibility do not provide juvenile offenders a meaningful opportunity for parole past resentencing as an adult.” [R. 1 at 5]. But O’Neal does not clearly identify which statutes he is challenging or explain how those statutes run afoul of his rights. And while O’Neal also claims that he was not given “a meaningful opportunity to prove rehabilitation” at his last hearing, he neither alleges that he was prevented from presenting arguments or evidence at that hearing nor explains how the hearing was otherwise legally deficient.

Accordingly, **IT IS ORDERED** that:

1. O’Neal’s complaint [R. 1] is **DISMISSED WITHOUT PREJUDICE**.
2. O’Neal’s pending motion for reconsideration [R. 9] is **DENIED AS MOOT**.
3. This action is **STRICKEN** from the Court’s docket.

This the 8th day of August, 2017.



Gregory F. Van Tatenhove
United States District Judge