

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DUANE HENRY

CIVIL ACTION

VERSUS

NO. 15-5011

**N. BURL CAIN, WARDEN, LOUISIANA
STATE PENITENTIARY**

SECTION "S"(4)

ORDER

The Court, having considered the complaint, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the petitioner's objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion in this matter. Petitioner argues that the United States Magistrate Judge erred in finding that the matter should be returned to state court because the state court will impose another illegal sentence. The United States Magistrate Judge recommends granting the petition and ordering the Orleans Parish Criminal District Court to resentence or release petitioner within 90 days of the date of this Order. This is the correct result for the reasons stated in the Report and Recommendation.

Therefore,

IT IS ORDERED that Duane Henry's petition for issuance of a writ of habeas corpus under 28 U.S.C. § 2254 is **GRANTED**, his sentence to life in prison without benefit of parole is **VACATED**, and the Orleans Parish Criminal District Court is **ORDERED** to, within ninety (90) days of issuance of this Order, either resentence Henry, otherwise bring his sentence into conformity with *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455 (2012), or release Henry from confinement.

New Orleans, Louisiana, this 28th day of November, 2016.


UNITED STATES DISTRICT JUDGE