

# The Decline of the Judicial Override

## Annual Review of Law and Social Science

Vol. 15:539-557 (Volume publication date October 2019)

First published as a Review in Advance on May 15, 2019

<https://doi.org/10.1146/annurev-lawsocsci-101518-042834>

### UPDATE OF NOVEMBER 12, 2019.

As we suspected, regular updates and corrections to this inventory of relevant cases are necessary. Below we update data collected in April 2019, and clarify questions posed by readers. Some readers were confused by our observation that Idaho has had only “3 post-*Furman* executions, and our data show no death sentences since 2002.” The Death Penalty Information Center indicates that Idaho has sentenced five individuals to death since 2002. Our statement about “no death sentences” refers to the fact that there have been no death sentences *imposed by judges* (rather than juries) in Idaho since 2002.

In our conclusion we suggested that “(Arizona, Nevada, and Kentucky) throw the life-or-death decisions into the laps of the judges if the trial jury is unable to unanimously decide on a sentence.” However, the body of the article more accurately reflects the statutes in the states: “Arizona, Nevada and Kentucky allow for a retrial of the sentencing phase of the trial if the jury cannot agree on a sentence.”

A very helpful reader<sup>1</sup> provided additional information concerning Missouri, which greatly assists our efforts to keep track of these cases. We missed learning that Marvin Rice was tried in St. Charles County 1611-CR00967-01 after change of venue from Dent County and sentenced by Dent County Judge Kelly W. Parker. His death sentence was overturned by the Missouri Supreme Court. [State v. Rice, 573 S.W.3d 53 \(Mo. 2019\)](#).

Two other individuals from Missouri are under a judge-sentenced death sentence. **Lance Shockley<sup>2</sup> and Scott McLaughlin<sup>3</sup>**. In addition, we have now been informed that three other individuals (**Milton Griffin** (March 25, 1998); **Leon Taylor** (November 19, 2014); **Reginald Love Powell** (February 25, 1998)) were

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<sup>1</sup> We are indebted to Elyse Max, Executive Director of MADP and Joe Welling, of Phillips Black, for information concerning Missouri’s death penalty procedures.

<sup>2</sup> Carter County. Trial: 05C2-CR00080-01. Sentenced by Judge David P. Evans. Direct appeal: SC 90286 (affirmed in 2013; motion to recall the mandate denied Apr. 4, 2017). Postconviction: 14AK0CC00001, SC 96633 (currently pending, but this issue was not raised). State habeas denied Nov. 21, 2017 and PWC denied Oct. 4, 2018: SC 96694.

<sup>3</sup> St. Louis County. Trial 2103R-05745-01. Sentenced by Judge Steven Goldman. Direct appeal: SC 88181. Issued raised at PCR: 08SL-CC0531, SC 91255.) McLaughlin won relief in federal habeas. *McLaughlin v. Steele*, 173 F. Supp. 3d 855 (E.D. Mo. 2016) (holding based on Missouri’s holding in Whitfield, the interrogatory is not adequate to discern the step 3 finding; sentence vacated and remanded either for imposition of life or for resentencing.). The appeal in the Eighth Circuit has re-opened the case.

executed based upon a Missouri judge-imposed death sentence, and a fourth (**Richard Dean McMillin**) took his own life while his case was pending on appeal. In the end, our helpful reader notes that though there were at least eighteen death sentences involving sixteen defendants imposed by judges in Missouri, after dead-locked verdicts. Nine of these defendants were subsequently re-sentenced to a punishment less than death.

Like all research of this type, our research is stronger and better as a result of the suggestions and additions from people on the ground in relevant states. . We will post any further updates that we learn about on the DPIC web page, so please let us know if you spot points that need clarification or updates on our lists of relevant cases.