

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ETHAN WINDOM,

Petitioner - Appellant,

v.

RANDY BLADES, Warden,

Respondent - Appellee.

No. 14-35746

D.C. No. 1:12-cv-00468-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Argued and Submitted June 8, 2016
Seattle, Washington

Before: PAEZ, BYBEE, and CHRISTEN, Circuit Judges.

Ethan Windom appeals the district court's denial of his petition for a writ of habeas corpus, 28 U.S.C. § 2254. In his petition, Windom asserted that the Idaho trial court's imposition of a sentence of life without parole violated the Eighth Amendment. After the district court denied Windom's petition, the Supreme Court

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

issued its decision in *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016), which held that the Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), applied retroactively. Because the district court did not have the benefit of the Court's opinion in *Montgomery* when it ruled on Windom's petition, we vacate the district court's judgment and remand for further consideration in light of *Montgomery*.

Upon remand, Windom may file a motion with the district court to stay his federal habeas petition pending the Idaho Supreme Court's decision on his state habeas petition.

VACATED and REMANDED.