

No. 1-11-2991

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County, Illinois.
)	
)	
)	No. 91 CR 02966
v.)	
)	
MICHAEL COOKS,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices McBride and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's life sentence without parole for offenses committed when he was a minor was an unconstitutional violation of the "cruel and unusual punishment" clause of the eighth amendment. Since the Supreme Court's decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which first proscribed such mandatory sentences for juvenile defendants, was not decided when defendant filed his initial post-conviction petition and applies retroactively to this matter, the

circuit court erred in denying defendant leave to file a successive post-conviction petition.

¶ 2 Defendant Michael Cooks appeals from an order of the circuit court of Cook County dismissing his successive petition for relief from judgment under the Post Conviction Hearing Act ("Act") (725 ILCS 5/122-1 *et seq.* (2011)), challenging his mandatory life sentence for two counts of first degree murder on the grounds that he was a minor when the crimes were committed. He contends that his sentence is unconstitutional based on the United States Supreme Court holding in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which prohibits mandatory life sentences without parole for juveniles. According to defendant, that holding should be retroactively applied to this matter. The State responds that the new rule mandated in *Miller* cannot be applied retroactively because it does not prohibit life sentences for juveniles in all cases, but merely requires sentencing courts to take their age into account. For the reasons discussed below, we agree with defendant.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with the murders of Rayford Taylor and Vincent Zaworsky in connection with events that took place on September 6, 1990, when defendant was 14 years old. Following a hearing, defendant was transferred from juvenile court, indicted and prosecuted as an adult. After a bench trial, defendant was convicted of both murders and sentenced to a mandatory life sentence without parole under section 5-8-1(a)(1)(c)(ii) of the Illinois Code of Corrections ("Code") (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1989)).

¶ 5 This court affirmed that judgment on direct appeal, rejecting defendant's challenges to his

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transfer from the juvenile court and to the constitutionality of his sentence. *People v. Cooks*, 271 Ill. App. 3d 25 (1995). In doing so, we noted that defendant's challenge to the mandatory life sentence provision had been previously rejected on the grounds that no constitutional provision precludes the legislature from fixing mandatory minimum penalties where it has determined that no set of mitigating circumstances would allow a sentence of less than natural life. *Id.* at 40. Our supreme court subsequently denied defendant's petition for leave to appeal. *People v. Cooks*, 162 Ill. 2d 571 (1995).

¶ 6 On February 5, 2001, defendant filed a *pro se* post-conviction petition, raising a challenge to his life sentence based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which was dismissed by the circuit court as frivolous and patently without merit. This court affirmed that ruling (*People v. Cooks*, No. 1-01-2131 (unpublished order under Supreme Court Rule 23)), and our supreme court again denied defendant leave to appeal (*People v. Cooks*, 205 Ill. 2d 599).

¶ 7 Subsequently, on July 7, 2011, defendant filed the instant motion for leave to file a successive post-conviction petition under the Act, in which he claimed that his natural life sentence was unconstitutional, based on the decision in *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010), where the Supreme Court held that it is a violation of the eighth amendment to sentence a juvenile to a life sentence without parole for a non-homicide offense. The circuit court denied defendant's motion, finding that the holding in *Graham* is limited to non-homicide cases, and is, therefore, inapplicable to the case at bar.

¶ 8 ANALYSIS

¶ 9 On appeal from that judgment, defendant now contends that the circuit court erred in

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denying his motion for leave to file a successive petition because his mandatory life sentence without parole, for a crime committed when he was 14 years old, is unconstitutional. He maintains that such a mandatory sentencing scheme violates the constitutional mandate against cruel and unusual punishment because it prevents a court from taking into account the "hallmark features" of juveniles. In doing so, he relies on the Supreme Court holding in *Miller*, 567 U.S. ___, 132 S. Ct. 2455, which was decided after the denial of his motion to file a successive petition, and which held that "the [e]ighth [a]mendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." Defendant argues that his sentence is void *ab initio* and can be attacked at any time, and alternatively, that he satisfied that cause-and-prejudice test under section 122-1(f) of the Act because *Miller* had not been decided when he filed his initial petition and without that argument, he was denied his right to due process at his sentencing hearing.

¶ 10 The circuit court's decision to deny defendant leave to file a successive petition is controlled by statute, and we review the court's compliance with statutory procedure *de novo*. *People v. Barber*, 381 Ill. App. 3d 558, 559 (2008), citing *Woods v. Cole*, 181 Ill. 2d 512 (1998). We initially reject defendant's argument that his sentence was void *ab initio* because such a result can occur only if "there are no circumstances in which [the statute in question] could be validly applied. *Lucien v. Briley*, 213 Ill. 2d 340, 344 (2004). The statute under which defendant was sentenced, which mandates life imprisonment for all those convicted of first degree murder of more than one victim (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1996)), was not invalidated by *Miller* with respect to adult defendants and is not, therefore, unconstitutional on its face. See, *e.g.*,

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People v. Morfin, 2012 IL App (1st) 103568 (finding that *Miller* did not invalidate section 5-8-1(a)(1)(c)(ii) of the Code for nonminors), and *People v. Williams*, 2012 IL App (1st) 111145 (same). Further, the holding in *Miller* did not deprive courts from the authority to sentence a defendant who was a minor at the time of the offense to life imprisonment after a proper hearing.

¶ 11 Turning to defendant's contention that his motion was improperly denied because he met the cause-and-prejudice test, we note that the Act contemplates the filing of only one post-conviction petition, and the strict application of this statutory bar will be relaxed only when fundamental fairness so requires. *People v. Pitsonbarger*, 205 Ill. 2d 444, 456-58 (2002). In order to determine whether fundamental fairness requires an exception to the bar on successive petitions, we generally employ the cause and prejudice test. *Id.* at 459. Section 122-1(f) of the Act, which codifies the cause and prejudice test, states:

"Only one petition may be filed by petitioner *** without leave of court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim was not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." 735 ILCS 5/122-1(f) (West 2010).

¶ 12 Here, defendant maintains that the new constitutional rules announced in *Graham* and

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Miller, respectively, that juveniles are generally less deserving of the most serious forms of punishments (*Graham*, 130 S. Ct. at 2022), and a mandatory life sentence without parole for juveniles violates the eighth amendment (*Miller*, 567 U.S. ___, 132 S. Ct. 2455), form the basis of his constitutional challenge to his sentence in his successive post-conviction petition. Since his constitutional claim was not reasonably available prior to those decisions, defendant explains that he made a substantial showing of cause for his failure to raise the claim in his 2001 post-conviction petition, which predates those decisions.

¶ 13 In *Miller*, 567 U.S. at ___, 132 S. Ct. at 2460, two juvenile defendants were, like defendant in this case, sentenced to life without the possibility of parole for their respective murder convictions, under sentencing statutes that did not allow the trial court any discretion to impose a different punishment. In holding "that mandatory life without parole for those under the age of 18 at the time of their crimes violates the [e]ighth [a]mendment's prohibition on 'cruel and unusual punishments,'" the Court relied on its prior decision in *Graham*, 560 U.S. ___, 130 S. Ct. 2011, and *Roper v. Simmons*, 543 U.S. 551 (2005), which found that minors are "constitutionally different from adults for the purposes of sentencing," given their "diminished culpability and greater prospects of reform." *Miller*, 567 U.S. ___, 132 S. Ct. at 2464. The Court stated:

¶ 14 "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them immaturity, impetuosity and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surround him – and from which he cannot extricate himself – no matter how brutal or dysfunctional. It neglects the

circumstances of the homicide offense, including the extent of his participation in the conduct or the way familial and peer pressure may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for the incompetencies associated with his youth – for example, his inability to deal with police officers and prosecutors (including on a plea agreement) or his incapacity to assist with his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." *Id.* at 2455. (Internal citations omitted).

¶ 15 As noted above, the State does not dispute that the holding in *Miller* affects the constitutionality of the statute under which defendant was sentenced, but argues that it does not apply to the instant case because it cannot be applied retroactively to cases no longer on direct appeal. In doing so, the State maintains that *Miller* establishes a new rule of constitutional law, which cannot be applied retroactively to collateral proceedings because it does not fall into the standards announced in *Teague v. Lane*, 489 U.S. 288, 307 (1989), which governs the retroactive applicability of new rules of law. According to the State, since *Miller* cannot apply retroactively to this matter and *Graham* did not involve a homicide offense, defendant cannot satisfy the prejudice prong of the cause and prejudice test.

¶ 16 This court, however, has explicitly rejected the State's argument and ruled that the holding in *Miller* can, in fact, be applied retroactively on collateral review in *Morfin*, 2012 IL App (1st) 103568, and *Williams*, 2012 IL App (1st) 111145. In both cases, the court noted that under the standard set by *Teague*, 489 U.S. at 331, and adopted by our supreme court in *People*

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v. Flowers, 138 Ill. 2d 218 (1990), new rules are generally not applied retroactively, except where the rule: (1) " 'places certain kinds of primary, private individual conduct beyond the power of the criminal-law-making authority to proscribe;' " or (2) " 'requires the observance of those procedures that are implicit in the concept of ordered liberty.' " *Morfin*, 2012 IL App (1st) 103568 at ¶43 (quoting *People v. Sanders*, 238 Ill. 2d 391, 401 (2010)); *Williams*, 2012 IL App (1st) 11145 at ¶ 51. The second exception applies only to "watershed rules of criminal procedure," and to new procedures "without which the likelihood of an accurate conviction is seriously diminished." *Morfin*, 2012 IL App (1st) 103568 at ¶ 43 (quoting *Sanders*, 238 Ill. 2d at 401 (quoting *Teague*, 489 U.S. at 311)) (internal quotation marks omitted); *Williams*, 2012 IL App (1st) 11145 at ¶ 51 (quoting *Sanders*, 238 Ill. 2d at 401 (quoting *Teague*, 489 U.S. at 311)) (internal quotation marks omitted).

¶ 17 Under those standards, the court in *Williams*, 2012 IL App (1st) 11145 at ¶ 51-53, held that *Miller* is retroactively applicable because it enunciates such a "watershed rule of criminal procedure" so as to meet the second exception under *Teague*. In doing so, the court noted that the Supreme Court stated, under the proportionate punishment analysis in *Miller*, that defendant was denied a "basic precept of justice" by not receiving any consideration of his young age by the lower court at sentencing. *Id.* (Internal quotation marks omitted). The court further noted that *Miller* made a substantial change in the law by holding that under the eighth amendment, the government cannot constitutionally apply a mandatory sentence of life without parole to juveniles convicted of homicides, and that such a sentence is justified only where the State shows that it is appropriate regardless of the defendant's age. *Williams*, 2012 IL App (1st) 11145 at ¶ 53

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(internal quotation marks omitted). In *Morfin*, 2012 IL App (1st) 103568 at ¶ 56, the court found that *Miller* is retroactively applicable on collateral review because it creates a new substantive rule in requiring courts to hold a sentencing hearing for every juvenile defendant convicted of homicide, at which a sentence other than life imprisonment without parole must be available.

¶ 18 We agree with this court's reasoning in both *Williams* and *Morfin*, and conclude that the holding in *Miller* is retroactively applicable to the case at bar because it is a rule that " 'requires the observance of those procedures that are implicit in the concept of ordered liberty.' "

Williams, 2012 IL App (1st) 11145 at ¶ 52 (quoting *Sanders*, 238 Ill. 2d at 401). Since the holding in *Miller*, which made a substantial change in the law, was not yet decided when defendant filed his initial post-conviction petition, and applies retroactively, rendering defendant's mandatory life sentence unconstitutional, he has met the cause-and-prejudice test of section 122-1(f) of the Act. See *Williams*, 2012 IL App (1st) 11145 at ¶ 54 ("[W]hen a defendant has met his burden under *Teague* that a new rule must be retroactively applied, the defendant has also met his burden under the cause-and-prejudice test."). Thus, the circuit court erred in denying his motion for leave to file a successive post-conviction petition.

¶ 19 For the foregoing reasons, the judgment of the circuit court is reversed and the cause reversed with directions.

¶ 20 Reversed and cause remanded.