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2015 IL App (3d) 130647-U

Order filed July 24, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0647
v.)	Circuit No. 78-Y-1369
)	
JAMES L. CHILDERS,)	Honorable
)	Kevin R. Galley,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The sentencing scheme is constitutional in permitting a discretionary sentence of natural life imprisonment without possibility of parole for a defendant under the age of 18.

¶ 2 A jury found defendant, James L. Childers, guilty of three counts of murder. Ill. Rev. Stat. 1979, ch. 38, ¶ 9-1. Defendant appeals from the trial court's denial of his motion for leave to file a successive postconviction petition, contending the sentencing statute in effect at the time

of the offense was unconstitutional to the extent it permitted a discretionary sentence of life imprisonment without parole for a defendant under the age of 18. We affirm.

¶ 3

FACTS

¶ 4

The criminal charges against defendant arise from a triple murder he committed when he was 17 years old. The victims were his mother, brother, and stepfather. The sentencing scheme in effect at the time of the offense permitted a sentence term of life imprisonment without parole if the court found in its discretion that the offense was accompanied by an aggravating factor. The trial court found defendant's offense was accompanied by an aggravating factor and sentenced defendant to three concurrent terms of natural life imprisonment without parole. The instant appeal represents defendant's sixth appellate challenge to his sentence.

¶ 5

In sentencing defendant to a term of life imprisonment without parole, the trial court found defendant's conduct to be exceptionally brutal and heinous behavior indicative of wanton cruelty. After shooting his stepfather, defendant shot him again and returned to kill him with a knife. Defendant then stabbed his mother and brother causing their deaths. Based on this, the trial court found defendant indicated cruelty, wantonness, and a callous intention to destroy his stepfather and to eliminate any possibility he would be held accountable for the murder of his stepfather by killing all persons who witnessed his crime. The court then told defendant that it was "not unaware of your own suffering as you stand here now." Defendant's convictions and sentences were affirmed on appeal. *People v. Childers*, 94 Ill. App. 3d 104 (1981), *cert. denied*, 455 U.S. 947 (1982).

¶ 6

Subsequently, defendant filed a postconviction petition alleging, *inter alia*, error imposing three natural life sentences because the sentence did not reflect his rehabilitative potential or the nature of the offense. The petition was summarily dismissed by the trial court

and later affirmed on appeal. *People v. Childers*, No. 3-86-0496 (1987) (unpublished order under Supreme Court Rule 23), *pet. for leave to appeal denied*, 119 Ill. 2d 562 (1998).

¶ 7 Next, defendant filed a *habeas corpus* petition based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000). That petition was denied and affirmed on appeal. *Childers v. Cowan*, No. 3-00-0678 (2003) (unpublished order under Supreme Court Rule 23), *pet. for leave to appeal denied*, 207 Ill. 2d 599 (2004). While the *habeas* petition was on appeal, defendant filed a separate postconviction petition based on *Apprendi*. The petition was also denied and affirmed on appeal. *People v. Childers*, No. 3-02-0234 (2003) (unpublished order under Supreme Court Rule 23), *pet. for leave to appeal denied*, 207 Ill. 2d 609 (2004).

¶ 8 In addition, defendant filed a petition pursuant to section 2-1401 of the Code of Civil Procedure arguing the extended-term portion of his sentence was void because the court lacked the authority to impose the sentence. 735 ILCS 5/2-1401(f) (West 2010). The petition was treated as a postconviction petition and was summarily dismissed. On appeal, this court reversed and remanded pursuant to *People v. Shellstrom*, 216 Ill. 2d 45 (2005) and *People v. Pearson*, 216 Ill. 2d 58 (2005), noting defendant was entitled to certain admonishments when the court opted to consider his section 2-1401 petition as a postconviction petition. *People v. Childers*, No. 03-05-0007 (2006) (unpublished order under Supreme Court Rule 23).

¶ 9 Defendant's most recent pleading is a motion for leave to file a successive postconviction petition and is the subject of this appeal. The petition was based on the United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012). The petition argued that, according to *Miller*, the sentencing scheme in effect at the time of the offense was unconstitutional. The court denied leave to file the successive postconviction petition.

¶ 10

ANALYSIS

¶ 11 On appeal, defendant argues that the sentencing scheme under which he was sentenced was unconstitutional in that it violated the eighth amendment prohibition against cruel and unusual punishment. Specifically, defendant argues juveniles are categorically barred from receiving a sentence of natural life imprisonment without parole.¹ Because the sentencing scheme in effect at the time of the offense permitted a juvenile sentence of life imprisonment without parole as a matter of discretion, we hold the statute was constitutional.

¶ 12 The eighth amendment prohibits, *inter alia*, the imposition of "cruel and unusual punishments." U.S. Const., amend VIII; *Roper v. Simmons*, 543 U.S. 551, 560 (2005). We review *de novo* the constitutionality of a statute. *People v. Fisher*, 184 Ill. 2d 441, 448 (1998).

¶ 13 At the outset, defendant acknowledges that the operative statute under which he was sentenced permitted a trial court to sentence a homicide defendant to a term of natural life imprisonment without parole as a matter of discretion. Under the statute in effect at the time of the offense, murder convictions carried a determinate sentence of between 20 and 40 years' imprisonment. Ill. Rev. Stat. 1979, ch. 38, ¶¶ 1005-8-1(a)(1), 9-1. However, the statute provided the trial court with discretion to impose a sentence of natural life imprisonment without parole if the court found that the offense was accompanied by an aggravating factor. *Id.*² Despite this, defendant argues that subsequent case law in *Miller*, 567 U.S. ___, 132 S. Ct. 2455 (2012), *Roper*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), renders the statute under which he was sentenced unconstitutional.

¹ Defendant does not challenge on appeal the sufficiency of the trial court's consideration of his status as a minor at the time of sentencing.

² The trial court's finding as to the existence of the aggravating factor in defendant's case was previously affirmed on appeal. *Childers*, 94 Ill. App. 3d at 113-14.

¶ 14 Upon review, we find the decision in *Miller* actually supports our finding that the sentencing scheme in effect was constitutional. In *Miller*, the Supreme Court held that the eighth amendment prohibited "a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders," even those convicted of homicide offenses. (Emphasis added.) *Miller*, 567 U.S. at ___, 132 S. Ct. at 2469. Significantly, *Miller* does not preclude a sentence of natural life imprisonment without parole for homicide offenders; it requires only that the trial court first consider the special characteristics of young offenders, such as immaturity, impetuosity, and the failure to appreciate risks and consequences, before imposing such a sentence on a juvenile defendant. *Id.* at ___, 132 S. Ct. at 2469. In fact, the Supreme Court explicitly noted that its decision would not foreclose a sentencer's ability to sentence a juvenile defendant to life imprisonment without parole so long as the sentencer considered how children are different than adult defendants when it determined the appropriate sentence. *Id.* Accordingly, the statute at issue is permissible under *Miller* in that the sentence it permitted was discretionary rather than mandatory.

¶ 15 In reaching our conclusion, we reject defendant's reliance on the decisions in *Roper* and *Graham*, because we find these decisions distinct and inapplicable to the case at hand. In *Roper*, the Supreme Court held that the eighth amendment barred capital punishment for juvenile offenders. *Roper*, 543 U.S. at 568. The court did not hold that juvenile sentences to life imprisonment without parole were unconstitutional. *Id.* Further, in *Graham*, the Supreme Court held that a sentence of life without the possibility of parole violated the eighth amendment when imposed on juvenile offenders for crimes other than homicide. *Graham*, 560 U.S. at 82. Notably, the *Graham* holding relates to nonhomicide offenders and does not extend to the crimes committed by defendant. *Id.*

¶ 16 As discussed above, the trial court sentenced defendant to three concurrent terms of natural life imprisonment without parole as a matter of discretion. Therefore, the sentencing scheme permitting the court to exercise such discretion is constitutional.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 19 Affirmed.