2017 IL App (1st) 151504-U

FIFTH DIVISION
December 22, 2017

Nos. 1-15-1504 & 1-16-1850

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. LADELL HENDERSON, Petitioner-Appellant.	)	Appeal from the Circuit Court of Cook County No. 84 C 2416 Honorable Alfredo Maldonado, Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgments of the circuit court of Cook County denying defendant leave to file his fourth and fifth successive postconviction petitions.

¶ 2 Defendant Ladell Henderson appeals from the judgments of the circuit court of Cook County denying him leave to file his fourth and fifth successive *pro se* petitions for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122 (West 2016)). The circuit court denied defendant leave to file his fourth successive postconviction petition, finding it was barred by *res*

judicata. The circuit court further denied defendant leave to file his fifth successive postconviction petition, finding he failed to meet the cause-and-prejudice test. Thereafter, defendant filed two separate appeals, which were consolidated for our review. In briefing the matter, however, defendant failed to raise any arguments regarding the propriety of the ruling on his fourth successive postconviction petition. Thus, we find defendant has waived review of the circuit court's determination regarding his fourth successive postconviction petition and will only address herein the parties' arguments regarding the denial of leave to file the fifth successive postconviction petition. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued in the appellant's brief "are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing"). For the reasons that follow, we affirm the judgments of the circuit court.

¶ 3 BACKGROUND

¶ 4 In March 1984, defendant was indicted for murder, attempted murder, home invasion, and conspiracy to commit murder. The indictment arose out of an incident in which defendant and two other men entered the residence of Mona Chavez (Chavez) her uncle, Dennis Leonard (Leonard), and shot them both. Leonard died as a result of the wounds he received during the shooting, while Mona survived. At the time of the offenses, defendant was 18 years old.

¶ 5 At trial, the State introduced testimony that on February 28, 1984, Chavez and Leonard were at home watching television. Chavez heard a knock on the door. When Leonard opened the door, defendant and two other men were standing in the doorway. Two of the men grabbed Leonard and threw him to the floor. Defendant then walked to Chavez and said, "You gonna die b***." Defendant told Leonard that he was going to die, pulled out a handgun and fired two shots into the back of Leonard's head. Chavez pleaded for her life with defendant, but he

informed her that if he could not have her then nobody would. Defendant then grabbed her hair, pulled her head to the side and shot her.

¶ 6 Hours later, Chavez stumbled down the apartment stairs and cried for help. When the police arrived, Chavez informed them that defendant had shot her. Chavez knew defendant from the neighborhood because he had asked her several times to be "his lady." Chavez had also seen defendant four days prior to the shooting because he kicked in the back door of her apartment and removed some of her personal possessions.

¶ 7 Assistant State's Attorney Kim Kardas (Kardas), who interviewed defendant subsequent to defendant's arrest, also testified regarding a statement defendant made to him. According to defendant's statement, on the evening of the shooting, defendant was informed by someone named Billy Ray that there was a contract out on Chavez. Billy Ray wanted defendant to take him to Chavez's apartment. Defendant, Billy Ray and another man, "Speedy," went to Chavez's residence. Leonard opened the door and informed Billy Ray that he thought Chavez's debt of $1500 had been settled. Billy Ray and Speedy displayed their firearms and ordered Leonard to lie down on the floor. In response to Chavez's request for help, defendant informed her that it was out of his hands. Billy Ray and Speedy instructed defendant to leave the apartment. As defendant left the apartment, he heard the shots that were fired.

¶ 8 Following the trial, defendant was found guilty by a jury of murder, attempted murder, conspiracy, and home invasion. The matter proceeded to the sentencing phase. At that time, Illinois law provided that a defendant found guilty of murder could be sentenced to death.[1] Accordingly, the matter proceeded to a death penalty hearing where the State presented the

[1] The death penalty was abolished in Illinois effective July 1, 2011 (*People v. Garcia-Rocha*, 2017 IL App (3d) 140754, ¶ 27 n. 2).

following evidence. Reginald White (White) testified that in August 1981, defendant shot him in the back, shoulder, chest, and three times in the stomach. White further informed the trial court that while he was testifying regarding this incident, defendant (who was in the courtroom at the time) made "trigger motion[s]" with his hand toward White and White's wife.

¶ 9 Defendant's juvenile record was also admitted into evidence over defendant's objection. Defendant's juvenile record demonstrated that in February 1983 he was adjudicated delinquent for the aggravated battery and attempted murder of White. The State further presented evidence that defendant had been sentenced to one year probation and 30 days imprisonment for burglary in April 1983 and, thus, was on probation at the time the current offense was committed.

¶ 10 The defense presented the following evidence. Mildred Camron (Camron), defendant's aunt, testified that defendant was an orphan (his mother was murdered when he was 12 years old and his father passed away shortly thereafter of kidney failure) and defendant had only one brother whose whereabouts were unknown. Camron further testified that defendant had a low IQ, was in special schools, and had only a grade-school education. While she was defendant's legal guardian, he obeyed her and helped around the house. According to Camron, defendant ultimately became a ward of the state due to the fact his special schooling was cost prohibitive and other schools did not have the proper facilities for him. Defendant also presented numerous letters from family members in which the author indicated defendant could be rehabilitated. Defendant also presented the testimony of Ronald Wynne, defendant's social worker, who testified he was present in the courtroom during defendant's juvenile proceedings and did not witness defendant make any gestures.

¶ 11 After hearing the evidence, the trial court concluded that it was possible the jury could have found defendant was not the sole perpetrator of the offense and declined to impose the

death penalty. In so finding, the trial court observed that the crime involved "cruel acts." The trial court, however, took into consideration defendant's background, noting that it "weighs very great in the Court's judgment" along with defendant's age and mental status.

¶ 12 The matter then proceeded to a sentencing hearing where the State requested defendant receive natural life imprisonment without parole. The State noted that defendant was eligible for an extended term sentence due to the brutal and heinous nature of the crime. The State further argued for defendant to serve his time consecutively. In response, defendant stressed that the evidence could have supported a finding that he did not actually shoot the victims, but merely aided and abetted. Defendant declined to address the court in elocution.

¶ 13 The trial court sentenced defendant to natural life imprisonment for the murder of Leonard, 30 years for the attempted murder of Chavez, and seven years for conspiracy to commit murder, to run concurrently. No sentence was imposed for home invasion.

¶ 14 Defendant's convictions and sentences for murder and attempted murder were affirmed on direct appeal, but his conviction for conspiracy to commit murder was vacated. *People v. Henderson*, 175 Ill. App. 3d 483, 490 (1988). Pertinent to this appeal, the reviewing court concluded that the trial court did not abuse its discretion when it sentenced defendant to natural life imprisonment. *Id.* Our supreme court denied leave to appeal. *People v. Henderson*, 125 Ill. 2d 570 (1989) (table).

¶ 15 Thereafter, defendant filed three separate postconviction petitions which were ultimately unsuccessful both in the circuit court and on appeal. Pertinent to this appeal, on February 15, 2015, defendant filed a motion for leave to file his fourth successive postconviction petition. Defendant claimed that his natural life sentence is void and should be reduced to a term of 40 years' imprisonment. In a written order dated April 10, 2015, the circuit court denied leave to

file the fourth postconviction petition, finding the petition was meritless because it was barred by *res judicata*. Defendant filed a notice of appeal, and the appeal was docketed under case No. 1-15-1504.

¶ 16 On March 18, 2016, defendant, *pro se*, filed a motion for leave to file his fifth successive postconviction petition, along with the fifth successive petition. Defendant requested his natural life sentence be vacated because it violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. Defendant maintained that his claim was predicated on case law, namely *People v. House*, 2015 IL App (1st) 110580, which was developed after the proceedings on his initial petitions had been completed. Defendant further asserted that *House* stood for the proposition that "young adults" should be afforded the same sentencing considerations as juveniles when facing life sentences.

¶ 17 In a written order dated May 27, 2016, the circuit court denied defendant leave to file the fifth successive petition, finding the issue raised in the petition did not meet the cause-and-prejudice test. This appeal followed and was docketed as No. 1-16-1850.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant contends that the circuit court erred when it denied him leave to file his fifth successive *pro se* postconviction petition because (1) his claim is based on law that was not in existence at the time he filed his earlier petitions, and (2) his claim involves a constitutional error so serious that it violates due process. Specifically, defendant maintains that the sentence he received when he was 18 years old violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. Defendant requests that because he meets the cause-and-prejudice test this court should remand for resentencing or, in the alternative, further postconviction proceedings.

¶ 20 Illinois prisoners are entitled to file only one postconviction petition without leave of the circuit court. 725 ILCS 5/122-1(f) (West 2016). A defendant seeking to institute a successive postconviction proceeding must first obtain "leave of court." *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010). The circuit court may grant leave to file a "successive" postconviction petition only if the defendant meets the cause-and-prejudice test. *People v. Smith*, 2014 IL 115946, ¶ 24. A defendant establishes "cause" by identifying an objective factor external to the defense that impeded his efforts to raise his claim in the earlier proceeding. *People v. Pitsonbarger*, 205 Ill. 2d 444, 462 (2002). To establish "prejudice," the defendant must demonstrate that the claim not raised in his initial postconviction petition "so infected the entire trial that the resulting conviction or sentence violates due process." *Id.* at 464. If we conclude that the defendant cannot demonstrate prejudice, we need not address defendant's claim of cause. *Smith*, 2014 IL 115946, ¶ 37.

¶ 21 Our review of the denial of leave to file a successive petition is *de novo*. *People v. Terry*, 2016 IL App (1st) 140555, ¶ 28.

¶ 22 Defendant challenges the propriety of his sentence of natural life imprisonment on the murder charge, arguing it violates both the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. The eighth amendment of the United States Constitution prohibits "cruel and unusual punishments." U.S. Const., amend. VIII. This provision prohibits not only "inherently barbaric punishments" but those "disproportionate to the crime." *Graham v. Florida*, 560 U.S. 48, 59 (2010). The proportionate penalties clause of the Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11.

¶ 23 Setting the "cause test" aside for the time being, defendant argues that his successive petition meets the prejudice test because his sentence is unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012). In *Miller*, the Supreme Court held that life without parole is unconstitutional for juvenile offenders if the sentence is mandatory. *Id.* at 470. The Court reasoned that minors are constitutionally different from adults for sentencing purposes, being more impulsive and vulnerable to negative influences and peer pressures than adults, and further lack fully-formed characters so that their actions do not necessarily indicate irreversible depravity. *Id.* at 471-77. The Court, however, continued to allow such sentences when they were based on judicial discretion. *Id.* at 479. The Court made *Miller*'s holding retroactive in *Montgomery v. Louisiana*, 577 U.S. ___, ___, 136 S. Ct. 718, 736 (2016), which also instructed that states could remedy a *Miller* violation by allowing juvenile offenders with mandatory life sentences to become eligible for parole. *Id.* at ___, 136 S. Ct. at 736. "So far, the Supreme Court has reserved these rulings for the most severe punishments: death or life imprisonment." *People v. Evans*, 2017 IL App (1st) 143562, ¶ 11.

¶ 24 Defendant acknowledges that *Miller* is distinguishable as it involved a juvenile defendant facing a mandatory life sentence whereas he did not commit the offense as a juvenile and was not subject to a mandatory sentence. Defendant, however, maintains that the recent Illinois cases of *House* and *People v. Harris*, 2016 IL App (1st) 141744, applied *Miller*'s rationale to young adults who received discretionary life sentences. Thus, under *House* and *Harris*, defendant asserts he is entitled to a new sentencing hearing. We disagree.

¶ 25 In *House*, the 19-year-old defendant was convicted of two murders and aggravated kidnapping on an accountability theory (he served as the lookout) for which he received a *mandatory* life sentence. *House*, 2015 IL App (1st) 110580, ¶¶ 82-83. In determining that the

defendant's mandatory life sentence was imposed in error, this court considered not just his youthfulness, but also his level of participation in the commission of the offense. *Id.* at ¶ 101. This court also considered the defendant's lack of a criminal history of violent crimes. *Id.* The *House* court observed, however, that the trial court's "ability to take any factors into consideration was negated by the mandatory nature of defendant's sentence. The trial court was also precluded from considering the goal of rehabilitation in imposing the life sentence, which is especially relevant in defendant's case." *Id.* The *House* court therefore concluded the defendant's sentence violated the proportionate penalties clause and remanded the matter for a new sentencing hearing. *Id.* ¶ 103.

¶ 26 In *Harris*, the 18-year-old defendant was convicted of murder and attempted murder and received a sentence totaling 76 years. *Harris*, 2016 IL App (1st) 141744, ¶ 15. While the trial court sentenced him to the minimum for each conviction, mandatory firearm enhancements were also added and mandatory consecutive sentencing applied. *Id.* On appeal, the defendant maintained that his sentence was unconstitutional under the eighth amendment and the proportionate penalties clause, as it constituted a mandatory *de facto* life sentence. *Id.* ¶¶ 31-32. The *Harris* court initially found the defendant's sentence did not violate the eighth amendment under *Miller* because the defendant was over the age of 18. *Id.* ¶¶ 43-47. Following *House*, the *Harris* court did, however, find the defendant's sentence shocked the moral sense of the community and thus violated the proportionate penalties clause. *Id.* ¶ 69. In so doing, the *Harris* court stressed that "all as-applied challenges are necessarily fact-specific; in upholding Harris's constitutional challenge, we are merely saying that his sentencing should have been similarly specific to his own circumstances, to effectuate the constitutional mandate of restoring Harris to useful citizenship." *Id.* ¶ 68.

¶ 27 Here, we first observe that, despite defendant's contention otherwise, the *House* court did not extend *Miller* to young adults as it ruled that the defendant's sentence violated the proportionate penalties clause of the Illinois constitution and not the eighth amendment of the United States Constitution. See *House*, 2015 IL App (1st) 110580, ¶¶ 102-03. With that in mind, we further observe that defendant's reliance on *House* and *Harris* is misplaced. Defendant maintains that these cases support his claim that his sentence violated the proportionate penalties clause, but he does not take into consideration the very relevant fact that the *House* and *Harris* defendants were given *mandatory* life sentences. See *id.* ¶¶ 82-83; *Harris*, 2016 IL App (1st) 141744, ¶ 15. Moreover, defendant's criminal history differs from the *House* and *Harris* defendants. In *House* and *Harris*, the reviewing court considered the fact that they either had no violent criminal history (*House*) or no criminal history at all (*Harris*). See *House*, 2015 IL App (1st) 110580, ¶ 101; *Harris*, 2016 IL App (1st) 141744, ¶ 64. In contrast, defendant here had previously been adjudicated delinquent for attempted murder and aggravated battery and was on probation at the time he committed the offenses. Furthermore, unlike the defendant in *House*, defendant here was convicted of the brutal, premeditated murder of Leonard and attempted murder of Chavez. Moreover, unlike the facts of *Harris*, where the attempted murder charge was premised on Harris pulling the trigger even though the weapon did not discharge, defendant in this case grabbed Chavez by the hair, aimed his weapon, and fired it three times at close range striking her in the head. See *Harris*, 2016 IL App (1st) 141744, ¶ 6. Accordingly, defendant's reliance on *House* and *Harris* is misplaced.

¶ 28 Defendant further argues that his specific characteristics support his claim that his sentence violates the proportionate penalties clause. Defendant points to the fact that he was "only six months past his 18th birthday" when the offense was committed, suffered from "an

abnormally low IQ," and had only a "fourth grade education." Defendant maintains that these traits made him "particularly susceptible to influence from others" and that this is "an important fact because it is undisputed that the crime at issue was motivated by Henderson's gang involvement." Defendant's claim that the motivation for this offense was "undisputed" is not supported by the record. First, we observe that defendant fails to cite to the record in support of this claim. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Second, our review of the record reveals that the parties argued two different motives in the trial court, with the State arguing the offense was motivated by unrequited love and defendant arguing it was motivated by gang retaliation.

¶ 29 Importantly, all of defendant's characteristics were before the trial court when it exercised its *discretion* to sentence defendant to natural life imprisonment. See Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-8-1(a)(1)(b). This included defendant's contention that he was "susceptible to influence from others" as his aunt so testified. Defense counsel further presented evidence that defendant had a low IQ and a grade-school education. The trial court, being cognizant of defendant's personal history, mental status, and age, first concluded the offenses he committed were cruel. Then, in its discretion, the trial court sentenced defendant to natural life.

¶ 30 Defendant further cites this court's decisions of *People v. Nieto*, 2016 IL App (1st) 121604, and *People v. Ortiz*, 2016 IL App (1st) 133294, for the proposition that *Miller* applies to discretionary life sentences where the sentencing court considered the defendant's age but not the corresponding characteristics of youth. We find these cases to be inapposite to the case at bar as they involved juvenile defendants who were, respectively, 17 and 15 years of age at the time they committed their offenses. See *Nieto*, 2016 IL App (1st) 121604, ¶ 4; *Ortiz*, 2016 IL App (1st) 133294, ¶ 1.

¶ 31 In sum, defendant has failed to demonstrate his sentence violated due process and therefore has not met the "prejudice test." See *Smith*, 2014 IL 115946, ¶ 37. Under these facts, we cannot say that defendant's sentence shocks the moral conscious of the community so as to violate the proportionate penalties clause. See *Harris*, 2016 IL App (1st) 141744, ¶ 64 (as-applied challenges to one's sentence under the proportionate penalties clause of the Illinois Constitution are fact-specific). Not only was defendant an adult when he committed the offense, but the trial court sentenced him to natural life in its discretion. See *Henderson*, 175 Ill. App. 3d at 490; Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-8-1(a)(1)(b). Accordingly, defendant's natural life sentence does not violate the eighth amendment of the United States Constitution nor does it violate the proportionate penalties clause of the Illinois Constitution. We thus conclude the circuit court correctly denied him leave to file his fifth successive postconviction petition.

¶ 32 CONCLUSION

¶ 33 For the reasons stated above, we affirm the judgments of the circuit court of Cook County denying defendant leave to file his fourth and fifth successive postconviction petitions.

¶ 34 Affirmed.