2020 IL App (1st) 172269-U

SIXTH DIVISION
July 17, 2020

No. 1-17-2269

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of Cook County.
	)	
v.	)	96 CR 5317 05
	)	
ANTHONY SPAULDING,	)	Honorable Stanley J. Sacks,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Mikva and Justice Harris concurred in the judgment and opinion.

ORDER

¶ 1 *Held:* Defendant's *de facto* life sentence must be vacated where trial court found that defendant was not irretrievably depraved. Remanded for resentencing.

¶ 2 Defendant, Anthony Spaulding, was convicted in 1997 of two counts of first degree murder and two counts of attempted armed robbery in the shooting deaths of Malinda Gavin and Ray Bowen. The offense occurred on August 28, 1994, when defendant was 16 years old. Defendant was sentenced to a mandatory term of life in prison for the murders. Following the decision in *Miller v. Alabama*, 567 U.S. 460 (2012), defendant filed a successive postconviction

petition arguing that his natural life sentence was unconstitutional because he was a juvenile at the time of the offense. Defendant was granted a new sentencing hearing. Following the new sentencing hearing, defendant was sentenced to concurrent terms of 60 years' imprisonment for each murder. The trial court denied defendant's motion to reconsider the sentence, and this appeal ensued. For the reasons below, we vacate the new sentence and remand for a new sentencing hearing.

¶ 3 I. BACKGROUND

¶ 4 The following evidence was presented at defendant's bench trial. On August 29, 1994, Gavin and Bowen were in a parked car, "half naked." Defendant walked past the car with a group of his friends. One of them suggested that they "fuck with" the people inside. Defendant and his friends demanded money from the victims. When they refused, defendant fired shots into the car. Both Gavin and Bowen were killed. Defendant received mandatory concurrent sentences of natural life imprisonment for the murders, and concurrent terms of 15 years' imprisonment for each of the attempted armed robberies.

¶ 5 In 2012, the United States Supreme Court decided *Miller*, which held that the Eighth Amendment prohibits mandatory sentences of life in prison without the possibility of parole for juvenile homicide offenders. 567 U.S. at 479. Subsequently, defendant filed a successive postconviction petition challenging his natural life sentence under *Miller*. The trial court granted defendant a new sentencing hearing to consider the *Miller* factors.

¶ 6 A new sentencing hearing for defendant and his codefendant was held before the same judge that sentenced them in 1997.

¶ 7 Former Illinois Department of Corrections (IDOC) director Salvador Godinez, appeared as a mitigation witness. Godinez was hired as a consultant to evaluate defendant's prison record

and provide an assessment of his rehabilitative potential. Godinez testified that defendant had no record of violence, drug use, or gang activity in prison. Given defendant's offense and sentence, defendant had the lowest possible security score.

¶ 8 Godinez testified that defendant's status as a person serving life in prison made him ineligible for most prison jobs, but defendant was employed as a painter, law library clerk, teacher's aide, print show worker, and barber. Defendant also worked as a tutor helping other inmates.

¶ 9 Defendant's uncle testified that he was able to "re-start" his relationship with defendant after realizing defendant was sincere in his remorse and desire to contribute to society.

¶ 10 Defendant addressed the court, stating he took "full responsibility" for the offense and that he was "truly sorry." Defendant stated that he thought about the victims all the time, and would mentor troubled youth upon his release.

¶ 11 Defense counsel noted that defendant's father became addicted to cocaine and sold stolen goods out of the house when defendant was a child. Defendant was sexually abused by a female babysitter for a period of three to four years, beginning when defendant was nine years old.

¶ 12 Defense counsel also stated that defendant was valedictorian of his eighth-grade class, but that the school was shut down around the same time defendant's family life was destabilizing. As a result, defendant was forced to walk through two different gang territories to reach a different school we he lacked structure and support. Defendant joined the Gangster Disciples and began abusing alcohol and marijuana on a regular basis.

¶ 13 The State submitted two victim impact statements that had been provided at defendant's original sentencing hearing, one from Gavin's family and one from Bowen's family. The State read those letters into the record. Gavin's mother stated in her letter that Gavin was her only

child, and that Gavin graduated from nursing school. She thinks of her only child every single day, and she loses sleep every night. She has relived the night of the murder over and over, thinking of the fear her daughter must have felt in the last few moments of her life. Gavin's mother stated that she always looked forward to becoming a grandmother, and that a major part of her is gone forever. No mother expects to bury a child. She stated that defendant's and codefendant's mothers can still visit them in prison and give them a kiss. Instead, she has to visit her daughter at a graveyard.

¶ 14 The second letter that was read was authored by Bowen's parents. They stated that Bowen was the father of a four-year-old at the time of his murder. He loved his daughter very much. Bowen and Gavin were two people who cared about everybody and everything. Bowen's parents will never forget the day they got the news of their deaths. The pain was so great, and it took them weeks to come to terms with the fact that they were gone forever. They asked that defendant and codefendant be imprisoned for life.

¶ 15 The State then stated, "The position of the State's Attorney's Office as to these particular defendants based on the mitigation we've received would be a term of imprisonment that would not amount to a *de facto* life sentence." The trial court stated, "I'll certainly consider it."

¶ 16 Before sentencing defendant, the trial court noted that it had reviewed defendant's mitigation plan, presentence investigation report (PSI), IDOC feedback, and letters from both family and professionals. The trial court also noted that it had presided over defendant's bench trial and was familiar with the facts of the case. The trial court specifically found that defendant was not "irretrievably depraved," and therefore would not be sentenced to life in prison again. The trial court then detailed the crime, focusing on the brutality of the shooting and the defenselessness of the victims. The trial court then stated that "sorry just doesn't cut it" and

noted that the victims did not get a chance to live, while defendant and codefendant still did. The trial court then stated,

> "These two gentlemen are coldhearted murderers, as simple as that. They have changed in the last give or take 20 years while they've been in custody and changed much for the better. Had they been 18 instead of 16 back at the time of these murders, we'd be talking about something besides life in prison most likely. As I said before, however, the Court cannot find that they're both irretrievable, as the *Miller* case says.
>
> ***
>
> I am certainly going to consider that both men have done excellently well while they've been in custody. Maybe being locked up for a long time has benefited them.
>
> ***
>
> We're hearing all this evidence about [defendant] and [codefendant]. And it's sort of like on August 29, 1994, they were one person. They've metamorphosed into two different people now in 2017. And, oh, by the way, there's a little footnote to history, they savagely murdered Ray Bowen and Malinda Gavin. Like they're a little footnote to history. It's all about [codefendant] and [defendant]. I've considered all of it in that respect. They're not the only people in this case I've got to consider. I've got to consider Malinda Gavin and Ray Bowen. They're the ones who were murdered by these two men in a cold, calculated manner. And to hear them described as 'young boys' is a little

> hard to accept. They were young, but this was a crime that warrants something other than, 'go home today guys, just don't do it again.'
>
> ***
>
> This is a crime that shocks the conscience of a civilized society. Two young guys who are now mature men go out and kill two people for nothing, absolutely nothing at all."

¶ 17 The trial court sentenced defendant and codefendant to 60 years in prison for each murder, to run concurrently. The court stated, "a sentence [for] a crime that took place back in '94 before truth in sentencing, it's day-for-day credit. So on a sentence of 60 years they'd do 30 calendars, approximately, maybe a little less." The court noted, "They get credit for the 20 or 21 years they've been in custody so far," and stated they would be out in eight or nine years. The trial court added that it considered defendant and codefendant's age, and "everything the lawyers on both sides argued." Defendant moved to reconsider his sentence, and the trial court denied the motion. Defendant now appeals.

¶ 18 II. ANALYSIS

¶ 19 We first address defendant's argument that his new sentence of 60 years' imprisonment amounts to a *de facto* life sentence and therefore must be vacated as required by *Miller* and its progeny. In *Miller*, the United States Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' " *Miller*, 567 U.S. at 465. The Supreme Court stated that minors are constitutionally different from adults for sentencing purposes, being less mature and responsible, more impulsive, and more vulnerable to negative influences and peer pressure than adults, and not having the fully-formed character of adults so that their actions do not necessarily

indicate irreversible depravity. *Id*. at 471-74. The Court continued, "[w]e therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id*. at 479. The Court noted that while "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon, *** we do not foreclose a sentencer's ability to make that judgment in homicide cases" but a "judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id*.

¶ 20 Our supreme court in *People v. Holman*, 2017 IL 120655, considered "what it means to apply *Miller*" and stated:

> "[A] juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant's youth and its attendant circumstances. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's

> prospects for rehabilitation." *Holman*, 2017 IL 120655, ¶ 46; see also 730 ILCS 5/5-4.5-105(a) (West 2016) (codifying these factors).

¶ 21 The Supreme Court held in *Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016) (quoting *Miller*, 567 U.S. at 465), that "[a] hearing where 'youth and attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." The Court stated:

> "The [*Miller*] Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of children's diminished capacity for change, *Miller* made clear that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." (Internal quotation marks omitted.) *Id*. at 733-34.

¶ 22 Our supreme court subsequently determined that *Miller*'s holding and rationale applied not only to juvenile defendants who received mandatory life sentences without the possibility of parole but also to juvenile defendants sentenced "to a mandatory term of years that is the functional equivalent of life without the possibility of parole," *i.e*. a *de facto* mandatory life sentence (*People v. Reyes*, 2016 IL 119271, ¶ 9), and "to discretionary sentences of life without parole (*Holman*, 2017 IL 120655, ¶ 40). More recently, our supreme court has defined a *de facto* life sentence for a juvenile offender as one that is greater than 40 years. *People v. Buffer*, 2019 IL 12237, ¶¶ 41-42 (stating that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment" and that because the "defendant's sentence was greater than 40 years," he received a *de facto* life sentence).

¶ 23 Here, defendant argues, and we agree, that the trial court's imposition of a 60-year sentence amounted to a *de facto* life sentence. As noted above, a trial court may only impose a life sentence on a juvenile offender "if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *Id*. ¶ 46. A trial court can only make that determination after a consideration of a defendant's youth and its attendant characteristics. *Id*.

¶ 24 The trial court heard evidence as to these factors. It then specifically stated, "The Court cannot find that defendant is irretrievable." Because the trial court found that defendant was not irretrievably depraved, it follows that defendant could not be sentenced to a life sentence. Nevertheless, the trial court in this case sentenced defendant to 60 years' imprisonment, which constitutes a *de facto* life sentence pursuant to *Buffer*.

¶ 25 The State maintains that defendant's 60-year sentence was not a *de facto* life sentence because he was sentenced before "truth-in-sentencing," which requires those convicted of first degree murder after June 1998 to serve 100% of their imposed sentences. See 730 ILCS 5/3-6-3(a)(2)(i) (West 2008). Because defendant was sentenced before June 1998, defendant is entitled to day-for-day good-time credit. See 730 ILCS 5/3-6-3(a)(2) (West 1996) (the prisoner "shall receive one day of good conduct credit for each day of service in prison other than where a sentence of 'natural life' has been imposed. Each day of good conduct credit shall reduce by one day the inmate's period of incarceration set by the court.") As a result, defendant, who has been incarcerated since 1996, could be eligible for release from prison in September 2025. The State contends that because he is eligible for day-for-day credit, and therefore only likely to serve 30 years of his 60-year sentence, he did not receive a *de facto* life sentence.

¶ 26 However, in the recent case of *People v. Peacock*, 2019 IL App (1st) 170308, ¶ 19, this court specifically found that sentencing credit is irrelevant because early release from prison is only a "possibility" under the sentencing scheme, and that reviewing courts must look at the actual sentence imposed by the trial court, rather than the statutory sentencing credit available to the offender, in measuring the propriety of the sentence. This court explained:

> "Defendant was not sentenced to 40 years' imprisonment but was instead sentenced to 80 years' imprisonment with the mere possibility of release after 40 years. Moreover, to serve a sentence of 40 years, he must receive every single day of good conduct credit for which he could be eligible. Defendant's receipt of day-for-day credit is not guaranteed. [Citations]. The IDOC 'has the right to revoke good-conduct credits for disciplinary infractions, [and] an inmate's right to receive the credits is contingent upon his good behavior while in prison.' [Citations]. The IDOC 'ultimately has discretion as to whether defendant will be awarded any credit,' and the trial court has no control over the manner in which a defendant's good-conduct credit is earned or lost. [Citation]. Accordingly, we conclude that defendant's 80-year sentence, for which he may receive day-for-day credit, constitutes a *de facto* life sentence." *Id*.

¶ 27 The State argues that the *Peacock* court incorrectly concluded that the application of day-for-day statutory sentencing credit is irrelevant to the question of whether a sentence qualifies as a life sentence under *Miller* and its progeny. Specifically, the State contends *Miller* makes clear that only sentences that are equivalent to a life sentence *without parole* violate the eighth amendment. See *Miller*, 567 U.S. at 479 (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)) ("[a] State is not required to guarantee eventual freedom to a juvenile offender" and must only

provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.") The State thus argues that a defendant who is statutorily entitled to cut his sentence in half by exhibiting good behavior while in prison has been afforded such an opportunity. We disagree.

¶ 28 We acknowledge that *Miller* and its progeny focus on life sentences without the possibility of parole and the defendant's sentence includes the possibility of release after 30 years served. However, as *Peacock* noted, day-for-day credit is not guaranteed and it is IDOC, not the circuit court, that has the ultimate discretion as to whether the defendant will be awarded any credit. *Peacock*, 2019 IL App (1st) 170308, ¶ 19. Accordingly, we conclude that regardless of defendant's eligibility for day-for-day credit, his term of 60 years' imprisonment is a *de facto* life sentence.

¶ 29 Because a defendant can only be sentenced to a *de facto* life sentence if he is found, after consideration of the *Miller* factors, to be irretrievably depraved, and because the trial court here specifically found that defendant was *not* irretrievably depraved, we must vacate the sentence and remand for a new sentencing hearing. *Holman*, 2017 IL 120655, ¶ 46. Given our disposition, we do no reach defendant's other contention on appeal, *i.e.*, that the trial court abused its discretion by failing to adequately consider the *Miller* factors that were presented during the sentencing hearing.

¶ 30 Defendant, in his final point, requests that this court order that a different judge preside over the new sentencing hearing. Supreme Court Rule 366(a)(5) permits a reviewing court to make any order or grant any relief that a case may require. Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). "This authority includes the power to reassign a matter to a new judge on remand." *Eychaner v. Gross*, 202 Ill. 2d 228, 279 (2002). Though we have found that the court committed

error in this case, we see no indication that the court will not follow the law on remand. Thus, we decline to reassign this matter to a different judge.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we vacate defendant's sentence and remand for a new sentencing hearing.

¶ 33 Sentence vacated.
Remanded for resentencing.