

2011 IL App (2d) 100382-U
No. 2-10-0382
Order filed September 14, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 95-CF-573
)	
JOSEPH ARRIETA,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's petition to vacate his sentence on grounds the sentencing statute mandating life imprisonment violated the proportionate penalties clause of the state and federal constitutions.

¶ 1 Defendant, Joseph Arrieta, appeals the April 6, 2010, circuit court order denying his petition attacking his life sentence, which he received after being convicted of a double homicide, on grounds that the sentencing statute (730 ILCS 5/5-8-1(a)(c)(ii) (West 1994)), as applied to him, was unconstitutional. Defendant argues the mandatory sentencing provision for multiple murders violates the proportionate penalties clauses of the state and federal constitutions. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On April 13, 1995, defendant was charged by information with two counts of first-degree murder (720 ILCS 5/9-1(a)(1) (West 1994)) for the March 15, 1995, murders of Anthony Moore and Edward Riola, and with one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 1994)) of Brandy Benson. At trial, the testimony and evidence revealed the following facts, which we briefly summarize. Defendant told witness Danny Garcia that he wanted to rob Moore of some money and a gun that defendant knew Moore possessed. Garcia did not believe defendant was serious. Defendant also told Garcia that he intended to shoot the victims as well. Defendant then called Moore and advised him that he had a package for him and was going to bring it over. Defendant, Garcia, and Donna Hernandez went to Moore's house. When they arrived at Moore's house, Riola and a girl named "Brandy" were present. Moore showed Garcia his gun, and defendant told Hernandez to get the package from his truck. Defendant asked to see Moore's gun, which did not have a clip. Garcia then went downstairs to get a beer from the refrigerator. Garcia then heard three rapid gunshots and then another gunshot followed by Riola saying "Ahhhh." Defendant called Garcia upstairs. Garcia went up the stairs and put his hands above his head because defendant was pointing the gun at him. Defendant ordered Garcia to get his crutches from Moore's bedroom. Defendant used crutches to walk due to a childhood illness. Garcia saw Brandy on her hands and knees under the kitchen table, and she was crying. He saw Riola curled up in the hall with a big bloodstain on his back. As Garcia entered Moore's bedroom, he saw Moore curled up on his right side by the dresser. Garcia saw Moore's body twitch. He left and told defendant to get his own crutches. Defendant retrieved the crutches and shot Moore again. Defendant ordered Garcia and Hernandez to leave the house and get into his truck. Brandy exited the house with defendant behind

her, holding the gun. They all got into defendant's truck. Defendant threatened he would kill all of them if they did not quiet down. Defendant drove to a secluded area and he, Garcia, and Hernandez exited the vehicle. Defendant wanted to kill Brandy but Hernandez convinced him not to. Defendant then drove Garcia and Hernandez back to Hernandez's house. The testimony of Hernandez and Benson was consistent with Garcia's version of the events. Additionally, Riola was able to call 911 for help and told a responding officer that "Joe," a "Mexican," shot him, before he died later from his injuries.

¶ 4 On January 31, 1996, the jury convicted defendant of all three counts. On March 11, 1996, defendant was sentenced to life imprisonment for the murders and five years' imprisonment for the aggravated unlawful restraint conviction. Defendant filed a direct appeal, arguing several evidentiary errors occurred during trial. This court rejected defendant's contentions of error and affirmed his convictions on February 28, 1997, in a written order issued pursuant to Supreme Court Rule 23 (Ill. S. Ct. R. 23 (eff. July 1, 1994)). *People v. Arrieta*, No. 2-96-0293 (1997) (unpublished order under Supreme Court Rule 23).

On September 22, 1997, defendant, through private counsel, filed a postconviction petition pursuant to section 122-1 of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 1996)). On December 15, 1997, the trial court dismissed defendant's postconviction petition. Defendant appealed the denial of his postconviction petition, and this court affirmed in a written order issued on December 18, 1998, pursuant to Rule 23. *People v. Arrieta*, No. 2-97-1313 (1998) (unpublished order under Supreme Court Rule 23). On September 28, 2000, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)), arguing that his sentence was void because of an unconstitutional

sentencing statute. While that petition was pending, defendant filed a *pro se* petition for postconviction relief on November 8, 2000. In defendant's *pro se* petition, he argued that the prosecutor withheld evidence that the victims had a previous history of violent behavior preventing him from adequately presenting his self-defense theory to the jury; that trial and appellate counsel failed to raise such issues; and that the trial and appellate courts improperly dismissed his first postconviction petition at the first stage. The public defender was given leave to withdraw from defendant's case, and the pending petitions were continued.

On March 9, 2000, defendant, through private counsel, filed an amended postconviction petition. In this amended petition, defendant argued that he was denied due process because he was sentenced to life imprisonment for murdering more than one victim though no charge was brought against him alleging that he murdered more than one victim. On April 6, 2001, the trial court dismissed defendant's amended postconviction petition as frivolous and without merit pursuant to section 122-2.1 of the Act (725 ILCS 5/122-2.1 (West 2000)). While it is unclear from the record, we presume that the trial court also dismissed defendant's petition for relief from judgment or merged that claim into the postconviction petition. Again, defendant appealed the denial of his postconviction petition for relief, and again, this court affirmed the judgment of the circuit court in a summary order issued on May 30, 2002, pursuant to Rule 23. *People v. Arrieta*, No. 2-01-0492 (2002) (unpublished order under Supreme Court Rule 23).

On April 28, 2006, defendant filed a petition for leave to file a successive (third) postconviction petition. On May 31, 2006, the trial court denied defendant's petition for leave, finding that he failed to establish a sufficient cause-and-prejudice basis pursuant to *People v. Pitsonbarger*, 205 Ill. 2d 444 (2002). This court affirmed the denial of the third postconviction

petition in a summary order issued pursuant to Rule 23. *People v. Arrieta*, No. 2-06-0639 (unpublished order under Supreme Court Rule 23).

On March 18, 2010, defendant filed a *pro se* “Petition to Vacate Void and Unconstitutional Judgment.” It appears that the petition was filed under section 2-1401 of the Code of Civil Procedure as it argued that the sentencing order was void because section 5-8-1(a)(c)(ii) of the Code of Criminal Procedure of 1963 (Code) (730 ILCS 5/5-8-1(a)(c)(ii) (1994)) was unconstitutional as applied to him. In its denial of defendant’s *pro se* petition, the trial court issued a written memorandum. The trial court indicated that defendant was three months shy of his 18th birthday at the time of the murders and was tried as an adult for the heinous double murder. The trial court rejected defendant’s argument that *Roper v. Simmons*, 543 U.S. 551 (2005), held that he could not be subject to a life sentence because of his age. The court explained that numerous Illinois cases pre- and post-*Roper* have held that a mandatory life sentence for a double homicide did not violate the Eighth Amendment of the U.S. Constitution. In its discussion, the trial court distinguished *People v. Miller*, 202 Ill. 2d 328 (2002), which held that under its circumstances, the mandatory life sentence violated the proportionate penalties clause of the Illinois Constitution. The trial court explained that the facts in *Miller* involved a juvenile being convicted of murders on an accountability theory unlike the facts of this case which showed defendant’s direct actions. Defendant timely appealed, arguing that the Supreme Court recently extended *Roper* in *Graham v. Florida*, 130 S. Ct. 2011 (2010), to bar sentences of natural life without parole for juveniles convicted of non-homicide offenses. Defendant argues that the Supreme Court’s reasoning and scientific evidence pertaining to the brains of juveniles warrant this court to find the mandatory life sentencing statute unconstitutional as applied to him.

¶ 5

II. ANALYSIS

¶ 6 Defendant argues that imposing a mandatory life sentence on him, a 17 year-old boy, without consideration of the inherently mitigating circumstance of his young age is such a disproportionate penalty that it shocks the moral sense of the community. In support of this sweeping statement, defendant cites to the scientific evidence discussed in *Roper* and *Graham* that suggests that the frontal lobe of the brain, which controls impulse functions, is the last part of the brain to develop and does not complete development until one's early 20's. The research indicates that juveniles, because of their immature frontal lobes, are more susceptible to commit crimes but that such juveniles typically cease committing crimes as they become older. While acknowledging that *Roper* and *Graham* involve different factual circumstances than this case presents, defendant still argues that *Roper* and *Graham* support his conclusion that a life sentence is a disproportionate penalty when juveniles cannot be assumed to be a permanent danger to society or unable to rehabilitate, given the nature of their brains. We review the constitutionality of a statute *de novo*. *People v. Smolley*, 375 Ill. App. 3d 167, 169 (2007).

¶ 7 Defendant's reliance on *Roper*, *Graham*, and *Miller* to establish that the mandatory life sentencing statute is unconstitutional as applied to him is misplaced. In *Roper*, the Supreme Court addressed whether the constitution permitted the execution of a juvenile offender who was older than 15 but younger than 18 when he committed the crime. *Roper*, 543 U.S. at 555. The facts of *Roper* are not unlike the facts of our case. In *Roper*, the juvenile offender, 17 years old at the time of the offense, planned to commit the crime with two friends, broke into the home of the victim, duct taped her eyes, mouth and hands, and threw her from a bridge, resulting in the victim's drowning death. *Id.* at 557. The Supreme Court reiterated that it had previously barred application of the death

penalty to mentally handicapped defendants and defendants who committed their crimes under the age of 16. *Id.* at 561-562. In reconsidering its position on imposing the death penalty on juveniles, the court discussed that: (1) juveniles are more likely to lack the maturity and sense of responsibility that are found in adults; (2) juveniles are more susceptible to peer pressure or negative influences; and (3) the character and personality traits are not well-formed in juveniles. *Id.* at 569. Accordingly, a conclusion that a juvenile could be among the worst offenders for which the death penalty is reserved was suspect, and the Supreme Court held that the Eighth Amendment prohibited imposition of the death penalty on an offender under the age of 18. *Id.* As defendant acknowledges, *Roper* did not hold that a mandatory life sentence was prohibited for an offender under the age of 18. In fact, the Supreme Court stated in its discussion on the deterrence factor of the death penalty that “[t]o the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person.” *Roper*, 543 U.S. at 572. The defendant in *Roper* was sentenced to just that—life imprisonment without the possibility of parole—and the Supreme Court affirmed that sentence. *Id.* at 560. Thus, we do not find *Roper* persuasive to defendant’s position.

¶ 8 In *Graham*, the issue before the Supreme Court was whether the Eighth Amendment permitted a juvenile offender to be sentenced to life in prison without parole for a nonhomicide offense. *Graham*, 130 S. Ct. at 2017-18. The 16-year-old offender in *Graham* had been sentenced to concurrent three-year terms of probation with one year imprisonment after pleading guilty to armed burglary with assault and attempted armed robbery offenses. *Id.* at 2018. Less than six months later, the defendant was arrested again for home invasion, an attempted robbery offense later that night, and fleeing from police. The defendant was 34 days shy of his 18th birthday. *Id.* at 2018-

19. With the defendant's various offenses and violation of probation, he was eligible to receive five years' imprisonment to life imprisonment. *Id.* at 2019. The trial court sentenced the defendant to life imprisonment without the possibility of parole for the earlier armed burglary and attempted armed robbery charges. *Id.* The Supreme Court acknowledged that it had not previously addressed a categorical challenge to a term-of-years sentence, but had only previously addressed such a challenge to the death penalty, namely with the categories of juveniles and mentally retarded defendants. *Id.* at 2022-23.

¶ 9 The *Graham* court recognized that defendants who “do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.” *Id.* at 2027. The Supreme Court stated that although serious nonhomicide crimes may be devastating, they still cannot compare to murder in their severity and irrevocability. *Id.* The Supreme Court, based on much of the facts pertaining to the perils of the young, immature brain set forth in *Roper* and the fact that it was not common practice to impose such a sentence on nonhomicide-offending juveniles, held that it was necessary to have a categorical rule prohibiting life imprisonment without possibility of parole from being imposed on juvenile nonhomicide-offenders. *Id.* at 2030. In doing so, the court was clear to delineate nonhomicide-offending juveniles from homicide-offending juveniles. The court also made clear that it was perfectly possible for a nonhomicide-offending juvenile to never be released; the court was simply prohibiting the State at the outset from determining that a nonhomicide-offending juvenile could never be released. *Id.*

¶ 10 As defendant acknowledges, the case at bar does not involve the imposition of the death penalty on a juvenile (*Roper*) or the imposition of a mandatory life sentence without the possibility of parole on a nonhomicide-offending juvenile (*Graham*). In addition to the reasoning behind the

decisions in *Roper* and *Graham*, defendant relies on *Miller* to support his position that the mandatory life sentence provision was unconstitutional as applied to him because of his age. In *Miller*, the 15-year-old juvenile was charged with two counts of first-degree murder based upon accountability and was convicted. *Miller*, 202 Ill. 2d at 330. The trial court declined to sentence the juvenile to a life sentence pursuant to the multiple-murder provision of the Code (730 ILCS 5/5-8-1(a)(1) (West 1996)) because it held that the application of that provision to the defendant would violate the proportionate penalties clause of the state and federal constitutions. *Id.* Instead, the court sentenced the defendant to 50 years in prison. *Id.* The supreme court reiterated that the legislature has discretion to prescribe penalties for defined offenses, even if it restricts the discretion of the judiciary. *Id.* at 336. “However, the power to impose sentences is not without limitation; the penalty must satisfy constitutional constrictions.” *Id.* The State argued that the mandatory life sentence provision did not exempt juveniles from its application. The supreme court noted that while Illinois courts have upheld application of the statute to juvenile principals and adult accomplices, the court had not addressed whether the application of the statute to a juvenile accomplice violated constitutional constrictions. *Id.* at 337; see *People v. Taylor*, 102 Ill. 2d 201, 206 (1984) (finding mandatory life sentence provision for multiple homicide offenders was not unconstitutional as applied to 16-year-old principal offender). The *Miller* court then considered the trial court’s decision that the provision was disproportionate for its defendant, who was 15 years old, was not a principal offender, and had only about one minute from the time the plan began until the act was completed by the others to decide what to do. *Id.* at 340-41. The court also noted that the defendant’s sentence was the result of three converging statutes, including a portion of the Juvenile Court Act which mandated that 15- or 16-year-olds charged with murder be automatically transferred and prosecuted

as adults, the accountability statute that barred courts from considering the offender's degree of participation by making all persons acting in a common criminal design be held equally responsible, and the multiple-murder sentencing provision that mandated a life sentence regardless of the facts of the case and the age of the offender. *Id.* at 340. Under its specific facts, the supreme court stated that a life sentence without the possibility of parole "implies under any circumstances a juvenile defendant convicted solely by accountability is incorrigible and incapable of rehabilitation for the rest of his life." *Id.* at 342-43. The court agreed with the trial court that such an implication for its defendant offended the proportionate penalties clause of the Illinois Constitution, and it affirmed the 50-year sentence. *Id.* at 343.

¶ 11 Again, *Miller* involved a much different factual scenario than we have in this case, namely that its defendant was a juvenile accomplice offender who by virtue of several statutes was mandated to be prosecuted and sentenced as an adult, regardless of the facts and age of the defendant. Other cases, more factually akin to the facts of our case, have upheld a mandatory life sentence for juvenile offenders who acted directly in their offenses. See *Taylor*, 202 Ill. 2d at 209 (mandatory life sentencing provision for multiple murders held constitutional as applied to 16-year-old defendant who directly acted in the commission of crime); *People v. Smolley*, 375 Ill. App. 3d 167, 172-73 (2007) (mandatory life sentencing provision for multiple murders held constitutional as applied to the defendant who was one month shy of his 16th birthday at the time of the double homicide, was the principal and sole actor in the crime, who planned and executed the crime, and had a history of other criminal incidents that would have outweighed any mitigating factors that the defendant argued the trial court could not consider); *People v. Griffin*, 368 Ill. App. 3d 369, (2006) (mandatory life sentencing provision for triple murder was constitutional as applied to the 17 year-old defendant who

drove the getaway car from the robbery/murder scene where unlike in *Miller*, the defendant's age did not trigger the juvenile transfer statute and where the defendant actively participated for a week in the planning of the armed robbery, which led to the murders).

¶ 12 Like in *Griffin*, defendant in this case was not covered by the juvenile transfer statute that was a factor in the *Miller* decision as he was three months shy of his 18th birthday. In addition to not being a “juvenile” as understood in *Miller*, defendant in this case was also not convicted as an accomplice; rather he was the sole actor and commissioner of the crime. Defendant planned to rob and kill the victims and did so without any assistance. Defendant, for no other reason than for drugs and money, went to Moore's home to kill him and Riola for a couple of thousand dollars and drugs that defendant knew Moore to have. Shortly after the murders, another witness, Linda Kranz, testified that defendant offered to sell her drugs cheaper than Moore, knowing that she had purchased drugs from Moore in the past. Defendant's conduct demonstrated that his crime was purposeful and calculated. Further, Hernandez testified that she had to persuade defendant not to murder Brandy because she was a witness. The State argued these facts adduced at trial during the sentencing hearing and further pointed out that defendant had a juvenile record, including a burglary offense. It was during a 12-month probation period for that burglary offense that defendant committed the double murder, demonstrating his inability to conform to the law during a 12-month period. The State also argued that defendant's self-defense theory at trial was disingenuous given the fact that Moore was shot six different times, some wounds on the back. The State argued that defendant showed no remorse for the crime, initially blamed others for the crime, took no responsibility for the crime, claimed self-defense, and admitted that he went home to sleep after the murders.

¶ 13 Defendant does not argue in his brief any mitigating factors, other than age, that the mandatory life sentencing provision prevented the court from considering when sentencing him. Defendant solely relies upon the three cases that are distinguishable from the facts of this case to argue that we extend the *Miller*, *Roper*, and *Graham* decisions to find mandatory life sentences unconstitutional as applied to actively participating-multiple-murdering defendants under the age of 18. We decline to do so. However, we reviewed the sentencing hearing to find that the court heard the State's arguments that regardless of defendant's age, the life sentence was appropriate as we discussed earlier. Defense counsel acknowledged that the court had no discretion but argued that a long imprisonment would endanger defendant's childhood disease (Perthes disease) and that defendant acted in self-defense. Defendant made a statement that he went to Moore's house only to buy marijuana and was forced to defend himself and that it was "a shame that because of Tony Moore's mistake on trying to take my life, it cost him his life and Ed's life, as well." The presentencing investigation report showed that defendant had a history of juvenile delinquency, including the burglary offense mentioned earlier, obstructing justice, retail theft, criminal damage to property, aggravated assault, and aggravated discharge of a firearm. Defendant suffered from Perthes disease, which affected his legs, requiring him to use crutches to walk, and asthma. He had several surgeries for his legs and was also injured in a car accident in 1991, approximately four years prior to the murders. He received a monthly settlement from the accident and rehabilitation services to recuperate. He did not complete high school but was enrolled in a G.E.D. program.

¶ 14 While defendant's physical ailments could factor into mitigation, we do not see anything else in the presentence report, presented during the sentencing hearing, or in defendant's petition or brief to this court, that would outweigh defendant's criminal history and the facts and circumstances of

the crime such that defendant's sentence could be deemed constitutionally disproportionate. Based on the facts of this case, we agree with the State that the mandatory life sentencing provision is not unconstitutional as applied here where defendant was three months shy of his 18th birthday at the time of the offense, an active commissioner of the crime, and had a juvenile delinquency record.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, we affirm the Du Page County circuit court's denial of defendant's petition to void his sentence for constitutional grounds.

¶ 17 Affirmed.