2022 IL App (1st) 201276-U

THIRD DIVISION
June 30, 2022

No. 1-20-1276

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.
	)	
v.	)	No. 86 CR 1416 02
	)	
JOHN RAMEY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justice Ellis concurred in the judgment.
Presiding Justice Gordon specially concurred.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion for leave to file a successive postconviction petition because defendant's sentencing claim is not cognizable when he committed the offenses as an adult.

¶ 2 Defendant John Ramey appeals the trial court's denial of his motion for leave to file his *pro se* successive postconviction petition. He argues on appeal that as a 22-year-old, his natural life sentence is unconstitutional as applied to him under the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Based on emerging authority regarding youthful offenders and his unconstitutional sentence, defendant asserts that he satisfied the

requisite cause and prejudice for filing a successive postconviction petition and the trial court erred in denying his motion.

¶ 3 Following a jury trial, defendant was convicted of first degree murder, residential burglary, and robbery after police discovered the bound, gagged and beaten body of 65 year-old Sylvia Wilson in her apartment located at West Jackson Boulevard and South Homan Avenue in Chicago. Since defendant is not challenging his conviction, we provide a brief summary of the evidence presented at trial. Defendant admitted in a statement to the police that on January 5, 1986, his codefendant suggested that defendant and a second codefendant help to rob Wilson. While the codefendant entered Wilson's apartment, defendant waited in the lobby of her apartment building and the second codefendant waited in a car on the street. Codefendant returned to the lobby 15 minutes later and asked defendant to help carry bags from the apartment. When defendant entered Wilson's apartment, she was tied up on the bed. After reentering the apartment, codefendant hit her on the head, placed a rag into her mouth, and tied the rag in place. Defendant and the codefendant rejoined the second codefendant in the car, left the scene and split the $45 proceeds of the robbery. The evidence disclosed that Wilson died from strangulation. Multiple witnesses testified that they saw defendant in the lobby of Wilson's building the day of the offense.

¶ 4 At the sentencing hearing, the trial court found the murder was committed in a brutal and heinous manner. Specifically, the court discussed its findings on the record.

> "Well, as I said earlier, this 65-year old lady lived alone in a one-bedroom apartment. [Defendant] knew that she lived there. He had some contact with that building, his brother did, and this lady who had been evicted from that apartment a short time before the day of the murder produced money to pay the rent that was

> in arrears. They, apparently, somebody thought she had more money and [defendant and the codefendants] drove there that day. And the killing of this lady was unbelievable. She was bound and in a very strange way, the medical examiner testified. She was beaten. A couple of teeth were broken out. Now, you don't knock out teeth of an old 65-year-old lady out very easily, but that is what happened. Obviously, they beat her and they tied her up. It was in January. They left the window open, and they left her bound there. I don't know how long she was alive, but she eventually died. As the statute says, the murder was accompanied by brutal and heinous and savage behavior, and of course, at the same time, the aggravating factors of committing another felony. *** I recognize the fact that these defendants are relatively free of any background, but they had decided to take this lady's life, and they did it in a terrible way. It is just as hard for me to grasp why they would do this to her; why they thought it was necessary to take her money, you want to beat her, but to murder her. She was murdered. It is just outrageous."

¶ 5 The court then sentenced defendant to life imprisonment, a consecutive extended term of 30 years, and a concurrent term of 7 years in prison, respectively. This court affirmed defendant's conviction and sentence on direct appeal. *People v. Ramey*, 240 Ill. App. 3d 456 (1992).

¶ 6 Defendant subsequently filed multiple collateral attacks against his conviction. See *People v. Ramey*, No. 1-96-3098 (1998) (unpublished summary order under Illinois Supreme Court Rule 23) (granting appointed appellate counsel's motion for leave to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987) and affirming the circuit court's dismissal of

defendant's 1994 postconviction petition); *People v. Ramey*, No. 1-99-3474 (2002) (unpublished order under Illinois Supreme Court Rule 23) (affirming the circuit court's judgment denying defendant's 1999 *pro se* petition for *habeas corpus* and finding that defendant's sentences were constitutional under *Apprendi v. New Jersey*, 530 U.S. 466, (2000)); *People v. Ramey*, 393 Ill. App. 3d 661, 679-80 (2009) (affirming the second stage dismissal of defendant's successive postconviction petition claims of ineffective assistance of counsel, but modifying defendant's 30-year sentence for residential burglary to be served concurrently with his natural life sentence); *People v. Ramey*, No. 1-13-3388 (2015) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (granting appointed appellate counsel's motion for leave to withdraw under *Finley*, 481 U.S. 551, and affirming the circuit court's denial of defendant's 2013 petition for relief from judgment); and *People v. Ramey*, No. 1-16-2656 (2019) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (granting appointed appellate counsel's motion for leave to withdraw under *Finley*, 481 U.S. 551, and affirming the circuit court's denial of defendant's motion for leave to file a successive postconviction petition).

¶ 7 In May 2020, defendant filed the *pro se* motion for leave to file a successive postconviction petition at issue in this case. In his successive petition, defendant raised multiple issues, including the claim that his natural life sentence was unconstitutional as applied to him in violation of the proportionate penalties clause because the trial court failed to consider defendant's age and other information before imposing his sentence. According to defendant, he started using marijuana and PCP at age 15 which slowed his brain development. He supported this claim with his own affidavit as well as affidavits from friends and family members attesting that he used drugs as a teenager. He also attached an article discussing brain development in teenagers.

¶ 8 In October 2020, the trial court entered a written order denying defendant leave to file his successive postconviction petition. The court rejected defendant's sentencing claim, finding that defendant was not a juvenile at the time of the incident and that defendant failed to include any research to support his claim.

¶ 9 This appeal follows.

¶ 10 Defendant raises a single claim on appeal that the trial court erred in denying him leave to file his successive petition. Specifically, he argues that his sentencing claim satisfied the cause and prejudice test because the trial court imposed defendant's natural life sentence without considering defendant's youthful age in violation of the proportionate penalties clause.

¶ 11 The Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1(a)(1) (West 2018)) provides a tool by which those under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). Only one postconviction proceeding is contemplated under the Post-Conviction Act (*People v. Edwards*, 2012 IL 111711, ¶ 22) and a defendant seeking to file a successive postconviction petition must first obtain leave of court (*People v. Tidwell*, 236 Ill. 2d 150, 157 (2010)). The bar against successive postconviction proceedings should not be relaxed unless (1) a defendant can establish "cause and prejudice" for the failure to raise the claim earlier or (2) he can show actual innocence under the "fundamental miscarriage of justice" exception. *Edwards*, 2012 IL 111711, ¶¶ 22-23; *People v. Smith*, 2014 IL 115946, ¶ 30. Under the cause and prejudice test, a defendant must establish both (1) cause for his or her failure to raise the claim earlier; and (2) prejudice stemming from his or her failure to do so. *Edwards*, 2012 IL 111711, ¶ 22 (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002)). It is defendant's

burden to establish a prima facie showing of both cause and prejudice in order to be granted leave before further proceedings on his claims can follow. See *People v. Bailey*, 2017 IL 121450, ¶ 24.

¶ 12 The sentencing of juvenile and youthful offenders has been evolving in the country over the last several years. Beginning with *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court weighed in and set forth new constitutional parameters for the sentencing of juvenile offenders. See also *Graham v. Florida*, 560 U.S. 48, 68 (2010), *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718, 735-36 (2016). "[T]he United States Supreme Court has advised that 'children are constitutionally different from adults for purposes of sentencing.' " *People v. Lusby*, 2020 IL 124046, ¶ 32 (quoting *Miller*, 567 U.S. at 471). "The Court outlawed capital sentences for juveniles who commit murder in *Roper* and capital sentences for juveniles who commit nonhomicide offenses in *Graham*. And in *Miller*, the Court barred mandatory life sentences for juveniles who commit murder." *Id. Miller* has since been held to apply retroactively. *Montgomery*, 136 S. Ct. at 735-36; see also *People v. Holman*, 2017 IL 120655, ¶ 38 (recognizing that *Miller* applied retroactively).

¶ 13 Since *Miller*, the Illinois Supreme Court has suggested similar sentencing challenges are viable for youthful offenders, *i.e.*, defendants who are young, but legal adults. See *People v. Thompson*, 2015 IL 118151, ¶¶ 43-44 (finding that a 19-year-old defendant was not necessarily foreclosed from raising an as-applied challenge in the trial court and observing that the Post-Conviction Act was designed to resolve such constitutional claims); *People v. Harris*, 2018 IL 121932, ¶ 48 (concluding that the 18-year-old defendant's as-applied proportionate penalties challenge was "more appropriately raised" in a postconviction proceeding rather than on direct appeal).

¶ 14 Here, defendant contends that under *Miller* and its progeny, his natural life sentence violates the proportionate penalties clause because his brain was more akin to that of a juvenile when he committed the offenses at age 22. While defendant relies on several cases to support his *Miller* claim, nearly all involved proportionate penalties claims advanced by defendants who were 18 or 19 years old at the time they committed the offenses, rather than a 22-year-old. See *People v. Minniefield,* 2020 IL App (1st) 170541; *People v. Franklin*, 2020 IL App (1st) 171628; *People v. Johnson*, 2020 IL App (1st) 171362; *People v. Bland*, 2020 IL App (3d) 170705; *Ruiz,* 2020 IL App (1st) 163145; *People v. Ross*, 2020 IL App (1st) 171202.

¶ 15 This court recently considered and rejected the same argument advanced by defendant. *People v. Green*, 2022 IL App (1st) 200749; *People v. Hemphill*, 2022 IL App (1st) 201112. We held that *Miller* and its progeny do not support a sentencing challenge for a defendant aged 21 years and over. *Green*, 2022 IL App (1st) 200749, ¶ 42; *Hemphill*, 2022 IL App (1st) 201112, ¶ 32. In those cases, the defendants, who were 21 years old, each argued that they had a viable claim that their sentences violated the proportionate penalties clause because the trial court imposed the sentences without any consideration of their age and its attendant characteristics. *Green*, 2022 IL App (1st) 200749, ¶ 30; *Hemphill*, 2022 IL App (1st) 201112, ¶ 25.

¶ 16 In reaching our conclusion, we reviewed the recent line of cases considering *Miller*'s applicability to defendants who were 21 years old or older at the time of the offenses as well as recent statutory enactments by the General Assembly. *Green*, 2022 IL App (1st) 200749, ¶¶ 37-41; *Hemphill*, 2022 IL App (1st) 201112, ¶¶ 35-39. We found the decisions in *People v. Humphrey*, 2020 IL App (1st) 172837, *People v. Rivera*, 2020 IL App (1st) 171430, and *People v. Suggs*, 2020 IL App (2d) 170632, to be instructive. *Green*, 2022 IL App (1st) 200749, ¶ 42; *Hemphill*, 2022 IL App (1st) 201112, ¶ 40.

¶ 17 In *Humphrey*, 2020 IL App (1st) 172837, ¶ 1, the defendant filed a successive postconviction petition, alleging that his natural life sentence for crimes committed when he was 21 violated the proportionate penalties clause. The reviewing court similarly observed that the defendant could "point to no case in which an Illinois court has recognized that a life sentence imposed on a young adult—21 or older as [the defendant] was—is unconstitutional as applied to that offender under the proportionate penalties clause." *Id.* ¶ 33. "The evolving science on brain development may support such claims at some time in the future, but for now individuals who are 21 years or older when they commit an offense are adults for purposes of a *Miller* claim." *Id.* The *Humphrey* court reasoned:

> "While 21 is undoubtedly somewhat arbitrary, drawing a line there is in keeping with other aspects of criminal law and society's current general recognition that 21 is considered the beginning of adulthood. In Illinois, a person under the age of 21 when he or she commits first degree murder is now eligible for parole review after serving 20 or more years of his or her sentence. 730 ILCS 5/5-4.5-115 (West Supp. 2019). The Illinois legislature has also prohibited the sale of nicotine and tobacco products to persons under 21 (720 ILCS 675/1 (West Supp. 2019)), prohibited the sale of alcohol products to persons under 21 (235 ILCS 5/6-16 (West 2016)), and made possession of a firearm by those under the age of 21 an aggravating factor for aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2016))." *Id.* ¶ 34.

¶ 18 In *Rivera*, 2020 IL App (1st) 171430, ¶ 1, the defendant filed a successive postconviction petition seeking *Miller* protections for youthful offenders because he received a sentence of 55 years for first degree murder and armed robbery committed when he was 23. In reviewing the

defendant's proportionate penalties claim, the *Rivera* court found that any arguments that could be made based on the statutes and cases relating to defendants under the age of 21 were not applicable. *Id.* ¶ 26. The reviewing court concluded that if an extension of *Miller* protections should be made for defendants over the age of 21, then it should be made by our legislature or our supreme court. *Id.* ¶ 27. "The supreme court and the legislature are in a better position to draw clear, predictable and uniform lines for our state." *Id.*; see also *People v. Kruger*, 2021 IL App (4th) 190687, ¶ 32 (agreeing with the *Humphrey* court's limitation of *Miller*-based claims to defendants 18 to 20 years old and any further extension should be made by either the legislature or the supreme court).

¶ 19 Similarly, in *Suggs*, 2020 IL App (2d) 170632, ¶¶ 30-44, the reviewing court affirmed the summary dismissal at the first stage of an initial postconviction petition where the defendant, who was 23 years old at the time of his offense, raised eighth amendment and proportionate penalties challenges to his *de facto* life sentence. The *Suggs* court noted that although "society has drawn lines at ages 18 and 21 for various purposes," the defendant failed to "point to any line, societal, legal, or penological, that is older than 21 years." *Id.* ¶ 35. The reviewing court concluded while it may seem "but a short step" to apply the *Miller* factors to an 18-year-old offender, "it is a much greater leap to extend [them] to a 21-year-old, and an even greater leap to apply [them] to a 23-year-old," such as the defendant in that case. *Id.*

¶ 20 Additionally, this court in *Green* reviewed the recent statutes enacted by the General Assembly regarding youthful offenders limiting relief to defendants under 21 years of age.

> "In addition to addressing the growing case law regarding youthful offenders, the legislature firmly established the line between a young adult offender entitled to sentencing protection and adult offenders. Section 5-4.5-115 of the Unified Code

> of Corrections created a parole review for offenders under the age of 21 at the time of the offense. See 730 ILCS 5/5-4.5-115 (West 2020). Under this statute, a person convicted of first degree murder is eligible for parole after serving only 20 years, if he or she was under 21 years old at the time of the offense and was sentenced after the law took effect. *Id.* § 5-4.5-115(b). Additionally, the Juvenile Court Act of 1987 defines a ' " '[m]inor' " ' as "a person under the age of 21 years subject to this Act" (705 ILCS 405/1-3(10) (West 2018)), while an ' " '[a]dult' " means a person 21 years of age or older' (*id.* § 1-3(2)). Thus, under this statutory scheme, defendant was an adult at age 21. It is also worth noting that under the current sentencing requirements, the murder of a police officer mandates the imposition of a mandatory sentence of natural life without the possibility of parole for a defendant over the age of 18. See 730 ILCS 5/5-8-1(a)(1)(c)(iii) (West 2020); *id.* § 5-4.5-115(b)." *Green*, 2022 IL (1st) 200749, ¶ 41.

¶ 21 This court in *Green* found *Humphrey*, *Rivera*, and *Suggs* to be controlling. *Id.* ¶ 42. Based on these cases and the relevant statutes, we concluded that "the line of adulthood has been drawn at age 21." *Id.* We reached the same conclusion in *Hemphill* and found that the 21-year-old defendant "was an adult for purposes of a *Miller* claim." *Hemphill*, 2022 IL App (1st) 201112, ¶ 40.

¶ 22 We continue to adhere to this reasoning in the present case and hold that *Miller* is inapplicable because defendant was a 22-year-old adult at the time of the offenses. Since defendant's sentencing claim is not cognizable under *Miller*, he cannot establish the requisite cause and prejudice and the trial court properly denied defendant leave to file his successive

postconviction petition.

¶ 23 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 24 Affirmed.

¶ 25 PRESIDING JUSTICE GORDON, specially concurring:

¶ 26 I agree that the trial court committed no error in the case at bar and I would affirm; however, I do not agree with the analysis of the majority that there is a bright line rule that individuals who are 21 years or older when they commit an offense must be treated as adults for purposes of a *Miller* claim and as a result I must write separately, as there may be exceptions. A bright line rule of age has to be decided by our legislature or by our Supreme Court, not by a panel of the Illinois Appellate Court. The area of offenses over the age of 21 years old is still an area of the law in the development stage.

¶ 27 There may be situations where young adults can be treated as juveniles, as our Supreme Court has indicated in *Harris*, 2018 IL 121932, ¶ 45. In the successive petition filed by the defendant, he failed to claim how the drugs he consumed / or how his brain development caused him to be in the same situation as that of a juvenile. There is nothing in the successive petition to support any of the petition's claims his brain was more like a juvenile than an adult, as the trial court concluded. The defendant participated in a brutal and heinous crime that took the life of a 65-year-old female for $45.00, and there was no evidence at sentencing that this 21-year-old had any potential for rehabilitation.