

2020 IL App (2d) 120913-UB
No. 2-12-0913
Order filed October 15, 2020

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 02-CF-2047
)	
JOSHUA MINNITI,)	Honorable
)	Patricia Piper Golden,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Bridges and Brennan concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant is entitled to a new sentencing hearing in light of *People v. Holman*, 2017 IL 120655, and *People v. Buffer*, 2019 IL 122327.

¶ 2 Following a bench trial, the defendant, Joshua A. Minniti, was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)), home invasion (720 ILCS 5/12-11(a)(2) (West 2000)), and two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2000)). The defendant was sentenced to an aggregate term of 79 years' imprisonment. On appeal from the third-stage denial of his petition for postconviction relief, we held that the defendant was

not entitled to a new sentencing hearing under *Miller v. Alabama*, 567 U.S. 460 (2012). *People v. Minniti*, 2017 IL App (2d) 120913-U. On March 25, 2020, our supreme court entered a supervisory order directing us to vacate that order and to reconsider the sentencing issue in light of new authority. *People v. Minniti*, No. 122172 (March 25, 2020) (supervisory order). We now hold that the defendant's sentencing hearing did not comply with the eighth amendment to the United States Constitution (U.S. Const. amend. VIII). Accordingly, we affirm the defendant's convictions but vacate his sentence and remand for resentencing.

¶ 3

BACKGROUND

¶ 4 On October 21, 2001, the 57-year-old victim, Irma Braun, was found bludgeoned to death in her home. On October 8, 2002, the defendant was indicted on four counts of first degree murder, home invasion, and two counts of aggravated criminal sexual assault, based on crimes committed against the victim at her residence on October 20 and 21, 2001. The defendant was 15 years old at the time of the offenses and 16 years old at the time of the indictment.

¶ 5 On February 2, 2004, a bench trial commenced. At trial, the evidence indicated that the defendant, after breaking into the victim's home, had sexually assaulted and physically attacked the victim. The victim died at the scene from her injuries. On February 6, 2004, the trial court found the defendant guilty of one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)), home invasion (720 ILCS 5/12-11(a)(2) (West 2000)), and both counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2000)).

¶ 6 On November 30, 2004, at sentencing, the trial court found the defendant eligible for an extended-term or a natural life sentence for first degree murder based on the brutal and heinous nature of the crime. The trial court made a finding that the defendant inflicted severe bodily injury

on the victim. In mitigation, the trial court noted that the defendant did not have a history of delinquency or criminal behavior involving violence. In aggravation, the trial court stated that the sentence should be a deterrent to other such criminal behavior.

¶ 7 The trial court further stated that it considered “the defendant’s demeanor, his habits, his age, mentality, credibility, general moral character, his social environment, as well as the nature and circumstances of th[e] offense.” The trial court noted that the constitution required that it consider the defendant’s possibilities for rehabilitation, but stated that it “was not necessarily to give more weight to that than to the considerations [it] must give to the seriousness of the offense.”

¶ 8 The trial court also stated that it considered the evidence at trial and the Kane County diagnostic reports as to the defendant’s fitness. The trial court noted that the defendant was diagnosed as having a borderline personality disorder with antisocial features. The trial court also considered psychological evaluations completed by Drs. Lesley Kane and Eric Ostrov. Dr. Kane opined that the defendant had a profound lack of empathy, would not hesitate to take advantage of a companion to satisfy his own needs, was more concerned with the effect of his behavior on himself than about any distress he might inflict on others and was resistant to socially acceptable standards of behavior. Dr. Ostrov opined that the defendant suffered from extreme borderline pathology with antisocial features. A symptom of that condition was inappropriate intense anger. Dr. Ostrov opined that the crime scene suggested “rageful, uncontrolled behavior that was in large measure an expression of his severe psychopathology.” Dr. Ostrov concluded that the defendant needed intense psychological treatment.

¶ 9 The trial court stated that it was difficult to determine the appropriate sentence for a juvenile with no criminal history that “commits a very brutal, heinous, and violent attack on a

woman in her home, and murders her.” The trial court further stated that the attack was unprovoked and that the defendant’s conduct was intentionally torturous, noting that “the victim was terrorized, and that there was no mercy or compassion shown for her in any way.” The trial court noted that the defendant imposed gratuitous violence on the victim, stating that she received many blows all over her body, including over ten blows to her facial area, multiple blows on the back of her head, and two depressed skull fractures that caused her death. The trial commented that the victim suffered broken bones all over her body, had a stab wound in the vital organ of her lung, and that her death was not instantaneous and that she was handcuffed during some part of the attack. The trial court stated that “words like brutal and heinous sometimes may not adequately describe the degree of depravity here.”

¶ 10 The trial court further noted that defense counsel had requested a sentence that would give the defendant some hope for a future outside of prison. The trial court stated that it was “not sure that this sentence will provide that” but noted that it was “not trying to withhold that.” However, the trial court asserted that because an extended term sentence on the murder was appropriate, and because the sentences on the other convictions must run consecutively, the defendant might never be released from prison. The trial court stated that “for the protection of the public, I don’t have a real issue with that.”

¶ 11 The trial court ultimately sentenced the defendant to 61 years’ imprisonment for murder and three consecutive six-year terms of imprisonment for his convictions of home invasion and two counts of aggravated criminal sexual assault. In total, the defendant was sentenced to 79 years’ imprisonment. The trial court noted that, based on truth-in-sentencing provisions, the defendant had to serve 100% on the murder sentence, but that on the remaining convictions the defendant

would serve 85%. The trial court also ordered that the defendant receive psychiatric treatment while incarcerated.

¶ 12 The defendant filed a motion to reconsider his sentence. At a January 7, 2005 hearing, the defendant argued that, based on the length of his sentence, there was no possibility he would be released from prison during his lifetime. The defendant requested that the trial court reconsider the sentence imposed for first degree murder and reduce it to 25 years, which would result in a total prison sentence of about 40 years, and a possible release from prison while the defendant was in his mid-fifties. The trial court denied the motion. The trial court stated that based on the facts of the case, the sentence was warranted. The trial court acknowledged that the defendant would likely never be released from prison and stated that while it was “not something that I relish, *** I think it’s required.”

¶ 13 On April 30, 2007, on direct appeal, this court affirmed the defendant’s conviction and sentence. *People v. Minniti*, 373 Ill. App. 3d 55, 74 (2007). On September 5, 2008, the defendant filed a *pro se* post-conviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). On August 14, 2012, following a third-stage evidentiary hearing, the trial court denied the defendant’s petition. The defendant filed a timely notice of appeal.

¶ 14 On appeal, the defendant argued that the excluded jurisdiction statute (705 ILCS 405/5-130 (West 2002)), which requires that juveniles be tried and sentenced as adults, was unconstitutional. The defendant also argued that, under the holding in *Miller*, the Illinois statutory sentencing scheme was unconstitutional as applied to him. We rejected these arguments and affirmed the defendant’s convictions and sentence. *People v. Minniti*, 2015 IL App (2d) 120913-

U. Our supreme court directed us to vacate our judgment and reconsider in light of *People v. Reyes*, 2016 IL 119271. See *People v. Minniti*, No. 119268 (Nov. 23, 2016). *Reyes* required us only to reconsider whether, under *Miller*, the defendant’s sentence was unconstitutional. On April 3, 2017, we held that, even in light of *Reyes*, the defendant was not entitled to a new sentencing hearing. *Minniti*, 2017 IL App (2d) 120913-U.

¶ 15 Thereafter, our supreme court denied the defendant’s petition for leave to appeal, but directed this court to vacate our decision and to consider the effect of the court’s opinions in *People v. Buffer*, 2019 IL 122327, and *People v. Holman*, 2017 IL 120655, on the issue of whether the defendant’s sentence constituted a *de facto* life sentence in violation of the Eighth Amendment and *Miller*. *Minniti*, No. 122172 (March 25, 2020) (supervisory order). We allowed the parties to submit supplemental briefing on this issue.

¶ 16 ANALYSIS

¶ 17 At the outset, we note that we maintain our original holding as to the constitutionality of the excluded jurisdiction statute (705 ILCS 405/5-130 (West 2002)), and we reconsider only the constitutionality of the defendant’s sentence. See *Minniti*, 2017 IL App (2d) 120913-U.

¶ 18 In *Miller*, the United States Supreme Court held “that the [e]ighth [a]mendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders” who commit murder. *Miller*, 567 U.S. at 479. *Miller* did not preclude a sentence of life without parole for homicide offenders; it required 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 them. *Id.* at 477. In other words, the

Court's holding required that life-without-parole sentences be based on judicial discretion, rather than statutory mandates. *Id.* at 479.

¶ 19 The Court later clarified *Miller's* holding in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016). *Montgomery* reinforced that children are constitutionally different from adults for sentencing purposes. *Id.* at ___, 136 S. Ct. at 733. The Court noted that, under *Miller*, sentencing a child to life without parole is excessive for all but “the rare juvenile offender whose crime reflects irreparable corruption.” (Internal quotation marks omitted.) *Id.* at ___, 136 S. Ct. at 734 (quoting *Miller*, 567 U.S. at 479-80). *Montgomery* explained that, in *Miller*, “[t]he Court recognized that a [trial court] 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 culpability and heightened capacity for change,’ *Miller* made clear that ‘appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.’” *Id.* at ___, 136 S. Ct. at 733-34 (quoting *Miller*, 567 U.S. at 479). The Court held that *Miller's* holding was retroactive. *Id.* at ___, 136 S. Ct. at 736; see also *People v. Davis*, 2014 IL 115595, ¶ 39 (same).

¶ 20 Our supreme court has extended the *Miller* rationale, holding that (1) *Miller* applies to a mandatory term-of-years sentence that is the functional equivalent of life without the possibility of parole (a *de facto* life sentence) (*Reyes*, 2016 IL 119271, ¶¶ 9-10) and (2) *Miller* applies to discretionary sentences of life without parole for juvenile defendants (*People v. Holman*, 2017 IL 120655, ¶ 40). More recently, the 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 122327, ¶¶ 41-42 (stating “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”).

¶ 21 In *Buffer*, our supreme court held that, “to prevail on a claim based on *Miller* and its progeny, a defendant sentenced for an offense committed while a juvenile must show that (1) the defendant was subject to a life sentence, mandatory or discretionary, natural or *de facto*, and (2) the sentencing court failed to consider youth and its attendant characteristics in imposing the sentence.” *Id.* ¶ 27 (citing *Holman*, 2017 IL 120655, ¶ 40, and *Reyes*, 2016 IL 119271, ¶ 9).

¶ 22 In *Holman*, the court explained:

“Under *Miller* and *Montgomery*, 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 characteristics. Those characteristics include, but are not limited to, the following factors [(the *Miller* 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 (citing *Miller*, 567 U.S. at 477-78).

¶ 23 The Illinois legislature has codified the *Miller* factors. Section 5-4.5-105(a) of the Unified Code of Corrections, which went into effect in 2016, provides that, when a person under 18 years of age commits an offense, the trial court at the sentencing hearing shall consider numerous factors in mitigation. In addition to setting forth the above five factors listed in *Holman*, the statute also lists the following factors to be considered: the circumstances of the offense, the defendant’s prior juvenile or criminal history, the defendant’s specific role in and the level of planning before the offense, and “any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.” 730 ILCS 5/5-4.5-105(a) (West 2018).

¶ 24 In this case, the defendant was sentenced prior to the decision in *Miller* and before the legislature enacted section 5-4.5-105 of the Code. Thus, “any inquiry into the *Miller* factors is “backwards-looking” and requires us to “look at the cold record to determine if the trial court considered such evidence at the defendant’s original sentencing hearing.” *Holman*, 2017 IL 120655, ¶ 47. Although specific factual findings are not required (*Montgomery*, 577 U.S. at ___, 136 S. Ct. at 735) to withstand a *Miller*-based constitutional challenge to a defendant’s sentence, the trial court must have considered the *Miller* factors and determined whether the defendant was among those juvenile offenders whose conduct reflected transient immaturity or whether the defendant was among the rarest of juvenile offenders whose conduct placed him beyond the possibility of rehabilitation. *Id.*

¶ 25 In his supplemental brief, the defendant argues that his 79-year sentence is a discretionary *de facto* life sentence under *Buffer*, 2019 IL 122327, ¶¶ 41-42. The defendant also argues that his

sentence is unconstitutional because the trial court did not consider his youth and attendant circumstances or find that he was a rare incorrigible youth beyond the possibility of rehabilitation. The defendant acknowledges that the trial court considered his age, generally, but argues that it did not consider it as a mitigating factor or that it lessened his culpability and heightened his potential for rehabilitation. The defendant asserts that the trial court placed undue emphasis on the brutality of the crime rather than on the mitigating arguments associated with his age. Finally, the defendant notes that the trial court, in its pronouncement of sentence, stated that it was “not trying to withhold” the defendant from a future outside of prison. The defendant argues that this statement was an implicit finding by the trial court that he was not beyond rehabilitation.

¶ 26 The State concedes that the defendant is subject to a *de facto* life sentence under *Buffer* but argues that time served prior to sentencing and eligibility for good conduct credits should be considered in determining whether a *de facto* life sentence was imposed on a defendant. The State further argues that the defendant’s sentence does not violate the eighth amendment because the evidence demonstrated that the defendant’s conduct went beyond mere “transient immaturity” and reflected “irreparable corruption.” In particular, the State cited Dr. Kane’s opinion that the defendant had a profound lack of empathy, would not hesitate to take advantage of others to satisfy his own needs, and was resistant to abiding by socially acceptable standards of behavior. The State also cited Dr. Ostrov’s opinion that the defendant had inappropriate and intense anger, a severe psychopathology, and needed intense psychological treatment.

¶ 27 We agree with the parties that the defendant’s 79-year sentence was a discretionary *de facto* life sentence. *Buffer*, 2019 IL 122327, ¶¶ 41-42 (any sentence exceeding 40 years is a *de facto* life sentence). Because the State ultimately concedes that, regardless of any sentencing credits, the

defendant's sentence is a *de facto* life sentence, we need not address its argument that time spent in presentence custody and the applicability of truth in sentencing and good conduct credits should be considered in determining whether a defendant's sentence has met the threshold for a *de facto* life sentence. Moreover, other courts have rejected these arguments. See, e.g., *People v. Walls*, 2020 IL App (2d) 130761-B, ¶ 79 (not yet released for publication and subject to withdrawal) (rejecting argument that time spent in presentence custody must be deducted from a defendant's total sentence in determining whether the sentence meets *Buffer's* 40-year threshold); and *People v. Peacock*, 2019 IL App (1st) 170308, ¶ 19 (the availability of statutory sentencing credit is irrelevant to determining whether a sentence amounts to an unconstitutional sentence under *Miller* and its progeny). The State asserts in its supplemental response brief that this court, in *People v. Reyes*, 2020 IL App (2d) 180237, held that sentencing credits should be considered in assessing the length of a defendant's *de facto* life sentence. However, in *Reyes*, that issue was neither raised nor addressed by this court. As such, the State's reliance on *Reyes* for the foregoing assertion is without merit.

¶ 28 The remaining issue is whether the defendant's *de facto* life sentence is unconstitutional. The trial court did consider many of the *Miller* factors. The trial court stated that it considered the defendant's age, lack of criminal history, social environment, the nature and circumstances of the offense, and the issue of rehabilitation. The trial court specifically noted the evidence that the defendant was not properly nurtured as a child and had been diagnosed with borderline personality disorder. The trial court also noted the exceptionally violent attack on the victim, that her death was not instantaneous, and that she suffered immensely before her death. However, mere consideration of the *Miller* factors does not mean that the trial court adequately considered whether

the defendant was the rare juvenile beyond rehabilitation. See, e.g., *People v. Reyes*, 2020 IL App (2d) 180237, ¶ 31.

¶ 29 Indeed, we are unable to conclude from the record whether the trial court made any determination that the defendant was beyond rehabilitation or that his conduct reflected permanent incorrigibility. In acknowledging that it had to consider the possibility of rehabilitation, the trial court stated that it was not required to give more weight to that consideration than to the seriousness of the offense. We acknowledge that the circumstances of the offense and the defendant's prospects for rehabilitation are both proper considerations in determining an appropriate sentence. See 730 ILCS 5/5-4.5-105(a)(4), (a)(5) (West 2018). However, evolving case law now indicates that a trial court may not sentence a juvenile defendant to a *de facto* life sentence unless it determines that the defendant's conduct showed irreparable corruption beyond rehabilitation. See *Holman*, 2017 IL 120655, ¶ 46.

¶ 30 The trial court commented that, in sentencing the defendant, it was not necessarily trying to prevent the defendant from possibly having a future outside of prison. Nonetheless, the trial court found that an extended term was appropriate on the murder charge based on the brutal and heinous nature of the offense and acknowledged that, since the other offenses would require consecutive sentences, the defendant might never be released from prison. The trial court then stated that, "for the protection of the public, I don't have a real issue with that." In denying the motion for reconsideration, the trial court stated that, while it did not relish the reality that the defendant might spend his life in prison, such a reality was "required."

¶ 31 The State asserts that these comments were an implicit finding by the trial court that the defendant was beyond rehabilitation. However, these statements could also be in response to the

brutality of the crime, as the trial court found that “brutal and heinous” did not “adequately describe the degree of depravity” demonstrated by the circumstances of the offense. Further, at the original sentencing hearing, the trial court reiterated in detail all the injuries suffered by the victim during the attack. As such, it is unclear whether the trial court imposed a *de facto* life sentence because the defendant was beyond rehabilitation or only because it found that the brutality of the crime warranted such a sentence. While we agree that the circumstances of this offense are horrific, *Holman* makes clear that the trial court cannot impose a *de facto* life sentencing without determining that the defendant was beyond rehabilitation. *Id.* Because such a determination is not clear from the record, and in light of the evolving case law since the defendant’s sentence, we find it appropriate to remand for a new sentencing hearing.

¶ 32 In so ruling, we acknowledge that in prior decisions, we held that the defendant’s sentence was constitutional because the trial court had considered the defendant’s age and the attendant circumstances of his youth prior to sentencing. See *Minniti*, 2017 IL App (2d) 120913-U, ¶ 22; *Minniti*, 2015 IL App (2d) 120913-U, ¶ 18. However, as we explained in *Reyes*, under more recent case law, consideration of the *Miller* factors alone is not sufficient absent some determination, either explicit or implied, that the defendant was beyond rehabilitation or that the defendant’s conduct reflected permanent incorrigibility. *Reyes*, 2017 IL App (2d) 180237, ¶¶ 31-32. As stated, the record in the present case is not clear as to whether the trial court made such a determination.

¶ 33 CONCLUSION

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

¶ 35 Vacated and remanded.