2015 IL App (2d) 131040-U
No. 2-13-1040
Order filed December 7, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSEPH A. HAUSCHILD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 01-CF-2403 Honorable Robert J. Morrow, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly summarily dismissed defendant's postconviction petition, which alleged that his term-of-years sentence, which he deemed a *de facto* life sentence, was unconstitutional under *Miller* and *Graham*: per this district's law, which bound the trial court and which defendant declined to challenge on appeal, defendant's sentence was not subject to *Miller* and *Graham*.

¶ 2 Following a jury trial, defendant, Joseph A. Hauschild, received a sentence of 35 years' imprisonment for home invasion, consecutive to 18 years' imprisonment for attempted first-degree murder, consecutive to 12 years' imprisonment for armed robbery, or an aggregate

60-year term. Each offense was alleged to have occurred when defendant was 17 years old. On direct appeal, we vacated the sentences for attempted murder and armed robbery, and we remanded for the trial court to impose new (though still consecutive) sentences. *People v. Hauschild*, 364 Ill. App. 3d 202, 229 (2006). Defendant appealed that decision, and our supreme court affirmed in part and reversed in part, clarifying that the sentence for attempted murder must be 6 to 30 years plus a 15-year enhancement and that the sentence for armed robbery must be 6 to 30 years. *People v. Hauschild*, 226 Ill. 2d 63, 91-92 (2007). On remand, the trial court imposed a 24-year sentence for attempted murder and an 8-year sentence for armed robbery, which along with his 35-year sentence for home invasion resulted in an aggregate sentence of 67 years.

¶ 3 On July 31, 2013, defendant filed a *pro se* postconviction petition alleging that his 67-year sentence is unconstitutional in light of *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which held that mandatory life imprisonment without parole for offenders under the age of 18 at the time of their crimes violates the eighth amendment's prohibition on cruel and unusual punishments. According to defendant, his 67-year aggregate sentence was the "equivalent" of a life sentence. The trial court summarily dismissed the petition, finding it frivolous and patently without merit. The court found that defendant's sentence was "not a life sentence without the possibility of parole. *** A sentence that is extremely long, which is within the statutory limits when imposed does not create a constitutional claim which may serve as a basis for post-conviction relief." Defendant timely appealed.

¶ 4 Defendant contends that the trial court erred in summarily dismissing his petition, because his petition states an arguable claim that his 67-year aggregate prison sentence for nonhomicide offenses violates the eighth amendment's prohibition on cruel and unusual punishments.

¶ 5 The Post-Conviction Hearing Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings that resulted in his conviction. 725 ILCS 5/122-1(a)(1) (West 2012). At the first stage of a postconviction proceeding, the trial court independently reviews the petition, taking the allegations as true, and determines if it is frivolous or patently without merit. *People v. Tate*, 2012 IL 112214, ¶ 9*; People v. Hodges*, 234 Ill. 2d 1, 10 (2009). A petition is frivolous or patently without merit if it "has no arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 12. Our supreme court has explained:

> "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation. An example of an indisputably meritless legal theory is one which is completely contradicted by the record. [Citation.] Fanciful factual allegations include those which are fantastic or delusional." *Id*. at 16-17.

Here, the trial court summarily dismissed the petition at the first stage, which we review *de novo*. *Hodges*, 234 Ill. 2d at 9. In addition, we note that we may affirm the dismissal of a postconviction petition on any basis supported by the record. *People v. Rivera*, 2014 IL App (2d) 120884, ¶ 8.

¶ 6 In his petition, defendant primarily relied on *Miller* to support his claim that his sentence was unconstitutional. On appeal, defendant primarily relies on *Graham v. Florida*, 560 U.S. 48 (2010). In *Graham*, the Supreme Court held that the eighth amendment prohibited a sentence of life imprisonment without parole for a juvenile defendant convicted of a nonhomicide offense. *Graham*, 560 U.S. at 82. The Court stated that the Constitution required the State to give juvenile nonhomicide offenders "some meaningful opportunity to obtain release based on demonstrated

maturity and rehabilitation." *Id.* at 75. Subsequently, in *Miller*, the Supreme Court held that the eighth amendment prohibited the imposition of a *mandatory* sentence of life imprisonment without parole for a juvenile defendant convicted of a homicide offense. *Miller*, 567 U.S. at ___; 132 S. Ct. at 2469. The Court explained that the constitutional defect of such statutes was that they divested courts of any discretion to take into account a juvenile defendant's youth and other traits during sentencing. *Id*. at ___, 132 S. Ct. at 2466.

¶ 7 Defendant argued in his petition that his sentence violated the eighth amendment because it was "equivalent" to a term of natural life without parole, *i.e.* a *de facto* life sentence. According to defendant, the record showed that defendant received an aggregate prison sentence of 67 years, that he must serve at least 85% of the aggregate term (which totaled 56.95 years), and that therefore he must be in prison until he is 75 years old, which is greater than his average life expectancy of 71 years. Thus, he contends on appeal that, because his petition alleged that he received a *de facto* life sentence, which is arguably prohibited by *Graham*, it should not have been summarily dismissed. In response, the State argues that defendant's claim is legally insufficient because binding authority holds that *Graham* does not apply to *de facto* life sentences. We agree with the State.

¶ 8 We note that although defendant's petition was dismissed in 2013, the recent law of this district defeats defendant's claim that *Graham* prohibits *de facto* life sentences for juvenile nonhomicide offenders. First, in *People v. Cavazos*, 2015 IL App (2d) 120444, the juvenile defendant was convicted of first-degree murder in addition to various nonhomicide offenses. He was sentenced to an aggregate term of 60 years in prison. On appeal, the defendant argued that his sentence was unconstitutional in light of *Graham* and *Miller*. We disagreed and rejected the

defendant's argument (supported by life-expectancy tables) that the 60-year sentence was subject to *Graham* and *Miller*. We noted that *Graham* and *Miller* applied only to life sentences and that that "there are distinct differences between a sentence of natural life without parole and a sentence of a determinate, albeit lengthy, number of years." *Id*. ¶ 87; see also *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 99 (holding same with respect to juvenile co-defendant who received 75-year sentence).

¶ 9 In *People v. Reyes*, 2015 IL App (2d) 120471, the juvenile defendant was convicted of first-degree murder and attempted murder with a firearm. The trial court sentenced him to an aggregate sentence of 97 years in prison. On appeal, the defendant argued that his sentence was unconstitutional under *Miller*. Noting our decision in *Cavazos*, 2015 IL App (2d) 120444, we disagreed. We declined to extend the eighth amendment rationale in *Miller* to the facts of the case stating, "[o]nce again, the defendant did not receive the most severe of all possible penalties, such as *** life without the possibility of parole. Rather, he received an aggregate term-of-years sentence." *Id*. ¶ 23.

¶ 10 Notwithstanding both *Cavazos* decisions and the decision in *Reyes*, defendant contends that, because there is a "body of authority" holding that *Graham* applies to *de facto* life sentences, he has stated an arguable constitutional claim. See generally *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 61; *Moore v. Biter*, 725 F. 3d 1184, 1192 (9th Cir. 2013); *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012). Defendant concedes, however, that he is not asking us to reconsider the *Cavazos* cases and *Reyes*. Instead, he asserts, because those cases are "non-controlling" (*i.e.*, decisions of this court, rather than the United States or Illinois Supreme Court), he has stated an arguable claim *despite* our holdings. But to the trial court hearing defendant's postconviction

petition, the *Cavazos* decisions and *Reyes are* controlling. See *People v. Thorpe*, 52 Ill. App. 3d 576, 579 (1977) (where two or more appellate districts are in conflict the circuit court must follow the decision of the appellate court of its district). Thus, a remand to the trial court would be fruitless because, under the law of this district, the trial court would be obliged to dismiss the petition.

¶ 11 To be sure, *Cavazos* and *Reyes* are not binding on *this* court (or a higher court). And, if defendant were to argue that we should abandon those cases, and if we were to agree, we could hold that defendant stated an arguable claim. But defendant has specifically disclaimed that argument and, so, has left standing the law in this district. Per that law, we affirm the trial court's first stage dismissal of defendant's postconviction petition because the theory on which the petition was based was not an arguable legal claim.

¶ 12 For the reasons stated, we affirm the judgment of the circuit court of Kane County summarily dismissing defendant's *pro se* postconviction petition. As part of our judgment, we grant the State's request for fees and assess defendant $50 as costs for this appeal. 55 ILCS 5/42002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 13 Affirmed.