2018 IL App (2d) 131040-B
No. 2-13-1040
Order filed July 5, 2018

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 James C. Hallock, 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 dismissed defendant's postconviction petition.

¶ 2 Defendant, Joseph A. Hauschild, appeals from the first-stage dismissal of his postconviction petition. We affirm.

¶ 3 Around 10:00 a.m. on August 13, 2001, Tom and Wendy Wright discovered the body of their teenage son, Chris, outside their home in rural St. Charles. Chris had committed suicide. The couple spent the day grieving for their son and making arrangements and phone calls concerning his death. At one point, one of Chris's acquaintances, Ethan Warden, called and

asked to speak to Chris. Tom informed Warden that Chris was dead.

¶ 4 Stricken with grief, Tom and Wendy Wright went to bed around 10:00 p.m. that evening. At around 1:30 a.m., Tom and Wendy were awoken by two armed masked men who demanded that the couple hand over "money" and "a safe." Tom retrieved a lockbox from another room and handed it over. At some point, a struggle ensued and the robbers began shooting; Tom was shot four times and the robbers fled the bedroom. Wendy ran to Tom, picked up the phone, and called 9-1-1. As Wendy dialed, one of the robbers returned to the bedroom and fired a single shot at her. The bullet missed and the robbers fled the house, this time for good. The assailants ran to a car and drove away. Tom ultimately survived the encounter.

¶ 5 Nine days later, the police arrested two teenage boys: Hauschild, then 17 years old, and Ethan Warden, age 15. The boys had been Chris's acquaintances. Warden pled guilty to armed robbery and home invasion in exchange for a 12-year sentence and his testimony at Hauschild's trial. According to Warden, the robbery was Hauschild's idea. Hauschild told Warden that there was a safe with $10,000 inside the Wright's home. On cross-examination Warden testified that he initially wanted to participate in the robbery because:

¶ 6 "Joe Hauschild made it seem real good, you know? We would get $10,000.

¶ 7 He's going -- he was going to become a rapper. I -- you know, I could be a D.J. We were going to move to New York.

¶ 8 He made it sound real glamorous, you know?"

¶ 9 Hauschild supplied the guns and the car that were used in the robbery. After Tom was shot and the pair fled the bedroom, Hauschild ordered Warden to go back upstairs and "whack the bitch," meaning Wendy, but Warden missed. Later, when Hauschild and Warden opened the lockbox, all they found inside was less than $30 cash.

¶ 10 A jury found Hauschild guilty of, *inter alia*, attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2000)), home invasion (720 ILCS 5/12-11(a)(3) (West 2000)), and armed robbery (720 ILCS 5/18-2(a)(4) (West 2000)). In addition, the jury issued a special finding that subjected Hauschild to enhanced penalties for discharging a firearm during the commission of the crimes. 720 ILCS 5/12-11(c) (West 2000); 730 ILCS 5/5-8-1(d) (West 2000). The level of the offenses, as well as the serious bodily harm inflicted on Tom, compelled the court to issue mandatory consecutive sentences (730 ILCS 5/5-8-4(a) (West 1990)); this meant that Hauschild faced a minimum determinate sentence of 53 years' imprisonment, a maximum determinate sentence of 125 years, and a possible sentence of natural life. After a thorough hearing, the trial court sentenced Hauschild to an aggregate 65-year term. Specifically, the court sentenced Hauschild to 35 years' imprisonment for home invasion, 18 years' imprisonment for attempted first degree murder, and 12 years' imprisonment for armed robbery. Additionally, because these were crimes of violence, under "Truth in Sentencing" laws, Hauschild must serve at least 85% of his sentence. See 730 ILCS 5/3-6-3(a)(2) (West 2000).

¶ 11 Hauschild appealed. His convictions were affirmed (see *People v. Hauschild*, 364 Ill. App. 3d 202 (2006), *aff'd in part, rev'd in part by People v. Hauschild*, 226 Ill. 2d 63 (2007)), however, our supreme court determined that his sentence for attempted murder improperly lacked an applicable firearm enhancement (720 ILCS 5/8-4(c)(1)(B) (West 2000)), which required resentencing on that count. On remand in 2008, the same judge sentenced Hauschild to 24 years' imprisonment for attempted murder, resulting in a combined 67-year term.

¶ 12 In 2013, Hauschild filed a *pro se* postconviction petition alleging that his 67-year sentence, as well as his potential 53-year minimum term, violated the United States Constitution (U.S. Const. amend VIII) and the Illinois Constitution (Ill. Const. 1970, art. 1, § 11). Hauschild

was 17 at the time of his crimes and, thus, a juvenile offender. The United States Supreme Court has long maintained that children are constitutionally different from adults for sentencing purposes. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court prohibited the imposition of the death penalty for crimes committed under the age of 18. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court held unconstitutional a life without parole sentence imposed on a juvenile for a single nonhomicide offense. And, in *Miller v. Alabama*, 567 U.S. 460 (2012), the Court held "that the [e]ighth [a]mendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id*. at 479.

¶ 13 *Miller*, it should be noted, did not forbid life sentences for juveniles altogether, however; discretionary life sentences for juveniles are still possible. But, the Supreme Court said, in deciding on a sentence for a juvenile offender, "we require [the sentencing judge] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 481. Although Hauschild was resentenced in 2008, *Miller* retroactively applies to his sentence. See *Montgomery v. Louisiana*, 577 U.S. ___ (2016); *People v. Davis*, 2014 IL 115595.

¶ 14 In his postconviction petition, Hauschild argued that his sentence was "equivalent" to a term of natural life without parole, *i.e.* a *de facto* life sentence. At present, Hauschild is not eligible for parole until 2058, when he will be 74. And, had Hauschild received the minimum 53-year sentence, he would not be eligible for parole until he was at least 62. Either way he argued, he must serve "a lifetime in prison" for non-homicide offenses, in violation of *Miller* and *Graham*.

¶ 15 Our state's sentencing "scheme"—the applicable sentencing statutes cited earlier—did not require that Hauschild be sentenced to *life* in prison. At his re-sentencing, Hauschild faced a

mandatory minimum of 53 years in prison; moreover, his final sentence was a determinate term of years (67) and not a sentence of mandatory life. In the wake of *Miller*, our appellate district and others took the position that *Miller* categorically did not apply to a juvenile offender sentenced to a determinate term, no matter how long the term—that it *only* applied to juvenile offenders sentenced to mandatory life. Accordingly, *Miller* relief was denied to several juvenile offenders who had arguably received *de facto*—but not *de jure*—life sentences. See, *e.g.*, *People v. Cavazos*, 2015 IL App (2d) 120444, ¶ 87 (60-year sentence not unconstitutional for 16-year old); *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 99 (75-year sentence not unconstitutional for 17-year old); *People v. Reyes*, 2015 IL App (2d) 120471, ¶ 23 (97-year sentence, which was the minimum, not unconstitutional for 16-year old); *People v. Edwards*, 2015 IL App (3d) 130190, ¶ 78 (90-year sentence not unconstitutional for 17-year-old); *cf. People v. Luciano*, 2013 IL App (2d) 110792, ¶ 63 (mandatory life sentence unconstitutional for 17-year old). Based on these and similar decisions, the trial court dismissed Hauschild's petition and we, initially, affirmed that result in an unpublished order. *People v. Hauschild*, 2015 IL App (2d) 131040-U.

¶ 16 Since then, however, the Illinois Supreme Court overturned one of our decisions. In *People v. Reyes*, 2016 IL 119271, the supreme court held that a "mandatory term of years that is the functional equivalent of life without the possibility of parole" is unconstitutional. *Reyes*, 2016 IL 119271, ¶ 9. [1] In light of *Reyes*, the Illinois Supreme Court directed us to vacate our decision affirming the dismissal of Hauschild's petition, and to determine whether a different result is warranted. Having done so, we continue to affirm the judgment of the trial court.

¶ 17 Illinois's postconviction statute allows a criminal defendant to assert a substantial denial

[1] In addition, petitions for leave to appeal are still pending before the supreme court in both *Cavazos* cases.

of his constitutional rights in the proceedings that resulted in his conviction and sentence. 725 ILCS 5/122-1(a)(1) (West 2012). At the first stage of a postconviction proceeding, the trial court independently reviews the petition in an administrative capacity, taking the allegations as true, and, after considering the record, determines if the petition is frivolous or patently without merit. *People v. Tate*, 2012 IL 112214, ¶ 9. A petition should survive the trial court's initial review if it has any arguable basis in law or in fact—in other words, if it is not indisputably meritless—and we review summary dismissals *de novo*. *Id.*

¶ 18 *Reyes* does not alter our conclusion that Hauschild's postconviction petition failed to state an arguable claim. Like *Miller* before it, the constitutional infirmity identified in *Reyes* was the mandatory character of the defendant's minimum sentence.[2] As the *Reyes* court explained:

> "A *mandatory* term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole—in either situation, the juvenile will die in prison. *Miller* makes clear that a juvenile may not be sentenced to a *mandatory, unsurvivable prison term* without first considering in mitigation his youth, immaturity, and potential for rehabilitation." (Emphasis added.) *Reyes*, 2016 IL 119271, ¶ 9.

Accordingly, in *Reyes*, the court found that the defendant's 97-year minimum sentence ensured that he would remain in prison "until at least the age of 105," which the court found was "a mandatory, *de facto* life-without-parole sentence." *Reyes*, 2016 IL 119271, ¶ 10.

---

[2] We note that courts have been circumspect in the application of severe mandatory sentencing schemes long before *Miller* and *Reyes* because such regimes preclude the sentencer from considering mitigating factors. See, *e.g.*, *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976) (plurality opinion); *Williams v. New York*, 337 U.S. 241, 247 (1949).

¶ 19 *Reyes* requires only that we evaluate whether the defendant's mandatory minimum sentence was an unsurvivable term of years. Here, Hauschild did not receive a mandatory, *de facto* life sentence. A minimum 53-year sentence would have kept Hauschild in prison until he was at least 62; it would not have exposed him to an unsurvivable term.

¶ 20 In his supplemental brief, Hauschild argues that, in light of *Reyes*, *Graham* requires that we determine whether his 67-year sentence affords him "[a] meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75. We reject his assertion as it is premised on a misreading of *Graham*. The defendant in *Graham* was given a discretionary *life* sentence for a *single* nonhomicide offense. *Id.* at 57. Life without parole is distinctly an unsurvivable sentence. Moreover, nothing in *Graham* concerns or even considers a sentence like Hauschild's—that is, separate consecutive term-of-years sentences for three violent offenses. See *id*. at 59 (noting the court's eighth amendment "precedents consider punishments challenged not as inherently barbaric but as disproportionate to *the crime*") (emphasis added); *id* at 124 (Alito, J., dissenting) ("[n]othing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole"); accord. *Lucero v. People*, 2017 CO 49, ¶ 20, *cert. denied sub nom. Lucero v. Colorado*, 138 S. Ct. 641 (2018).

¶ 21 We adhere to the longstanding practice that courts individually review the discretionary sentence imposed for each specific crime, and not the cumulative sentence imposed for multiple crimes. As courts have repeatedly held, it is an "unremarkable proposition that it is constitutionally permissible to punish a person who commits two, three, four or even more crimes *** more severely than a person who commits a single crime." (Internal quotation marks omitted.) *State v. Ali*, 895 N.W.2d 237, 243 (Minn. 2017) (collecting cases), *cert. denied sub nom. Hassan Ali v. Minnesota*, 138 S. Ct. 640 (2018). As the Supreme Court once explained, if

the defendant " 'has subjected himself to a severe penalty' " by committing multiple offenses " 'it is simply because he has committed *a great many* such offen[s]es.' " (Emphasis in original.) *O'Neil v. Vermont*, 144 U.S. 323, 331 (1892) (quoting *State v. O'Neil*, 58 Vt. 140 (1886)). Accordingly, we decline to read *Graham* or *Reyes* as requiring that Hauschild's multiple consecutive discretionary sentences be treated analytically as a single concurrent sentence.

¶ 22 In sum, we affirm the judgment of the Circuit Court of Kane County dismissing Hauschild's petition. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

¶ 23 Affirmed.