2018 IL App (2d) 150799-U
No. 2-15-0799
Order filed July 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-238
TRAVEONTAYE M. BERRY,	)	Honorable Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice Jorgensen and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 52-year sentence for first degree murder in shooting death was neither cruel nor unusual.

¶ 2 This case concerns the constitutionality of sentencing a juvenile homicide offender to a lengthy term of imprisonment.

¶ 3 In 2013, 16-year-old Traveontaye Berry, defendant, shot and killed a 30-year-old man, Carl Green, Jr., in front of a residence in Freeport. Police apprehended Berry near the scene within minutes of the shooting. A witness testified that, after hearing several gunshots, she saw the gun used to kill Green in Berry's hands as Berry tumbled through the back door of her house

while firing shots in Green's direction. Green's jacket was found several blocks from where his body was discovered.

¶ 4 Berry was tried as an adult, and a jury found him guilty of first-degree murder and of using a firearm to commit that murder. See 730 ILCS 5/5-8-1(a)(1)(a), (a)(1)(d)(iii) (West 2012). At sentencing, Berry faced a minimum of 45 years' imprisonment up to a term of natural life; that is, between 20 and 60 for the murder, and an enhancement from 25 to life for the use of a firearm. See *id*. The trial court sentenced Berry to a 52-year term (27 years the murder, plus the minimum 25-year firearm enhancement). Because the crime was murder, the sentence must be served in its entirety. 730 ILCS 5/3-6-3(a)(2)(i) (West 2012).

¶ 5 On appeal, Berry does not challenge his conviction, only his sentence. He contends that his minimum automatic 45-year sentence as well as his 52-year actual sentence, violated the United States Constitution (U.S. Const. amend VIII) and the Illinois Constitution (Ill. Const. 1970, art. 1, § 11). Further, he contends that the trial court "failed to sufficiently consider [his] youth" prior to issuing the sentence.

¶ 6 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 forbid 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. *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.

¶ 7 To the extent Berry argues his sentence violated *Miller*, he is simply incorrect. Berry did not face a mandatory nor did he receive a discretionary life sentence. See *People v. Holman*, 2017 IL 120655, ¶ 40. Rather, Berry received a full sentencing hearing and was given a determinate term of imprisonment. Accordingly, *Miller* is inapposite. See *People v. Walker*, 2018 IL App (3d) 140723-B, ¶ 25.

¶ 8 In addition, Berry argues that he received a "*de facto* life sentence." He notes that in *People v. Reyes*, 2016 IL 119271, our supreme court held that a mandatory minimum 97-year sentence, which ensured the defendant would remain in prison "until at least the age of 105," was unconstitutional for a juvenile offender. Berry argues that "[w]hile a 52-year sentence is shorter than the 97-year aggregate minimum term addressed in *Reyes*, 52 years still amounts to a *de facto* life sentence." He points out that as a result of his sentence, he will not be eligible for parole until he is 68, and points our attention to a First District decision indicating that the average life expectancy of federal inmates is 64. See *People v. Sanders*, 2016 IL App (1st) 121732-B, ¶ 26, *app. denied*, No. 121277 (Nov. 23, 2016).

¶ 9 We reject Berry's interpretation of *Reyes*. Like *Miller* before it, the constitutional infirmity identified in *Reyes* was the mandatory character of the defendant's minimum sentence. 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, *Reyes* requires only that we evaluate whether the defendant's mandatory minimum sentence was an unsurvivable term of years.

¶ 10 Here, Berry's 45-year minimum sentence would not have exposed him to an unsurvivable prison term. Therefore, *Reyes* is inapposite.

¶ 11 Finally, although we have found *Miller* does not apply to this case, we will briefly address Berry's argument that the trial court failed to consider what *Miller* would require. Per *Miller*, courts are required to consider how "children are different" and how those differences counsel against a life sentence. Such factors include the following:

> "(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. Our task would be to examine "the cold record to determine if the trial court considered" what *Miller* requires "at the defendant's *** sentencing hearing." *Id.*, ¶ 47.

¶ 12 After examining the record, we find that trial court sufficiently considered Berry's age, his youth and its attendant characteristics. The court noted that Berry had previously been adjudicated delinquent for two felony offenses—residential burglary and theft—and had previously been committed to the Illinois Department of Juvenile Justice. The court also stated it had considered the presentence investigation report (PSI) in this case. The trial court knew the defendant was 16 at the time of the offense, and the State and defense both highlighted his age in their arguments at his sentencing hearing. The PSI shed light on his family and home environment. Berry reported that he lived in a "stable household" with his mother and grandmother, whom he described as "great." He claimed no history of mental health problems. He reported smoking marijuana "every day" since he was 12, roughly until his arrest in this case. He also reported completing outpatient substance abuse treatment in 2010, when he was 13. At the sentencing hearing, Berry's mother described him as a "big brother" and "father figure" who had helped raise his two younger sisters. Her son, she reported, had graduated from high school, and played football and basketball. Berry's mother also stated that he did not "grow up in violent situations" and had "a whole courtroom" of family that supported him through his trial.

¶ 13 As in *Holman*, the information before the trial court at sentencing "did not depict [defendant] as immature, impetuous, or unaware of risks." 2017 IL 120655, ¶ 48. The evidence showed that Berry shot Carl Green, Jr., for unknown reasons. Green was found some distance away from his jacket, indicating that Berry's confrontation with Green had begun earlier. In addition, we note that "there was nothing presented at trial or sentencing to indicate that the defendant was incompetent and could not communicate with police officers or prosecutors or assist his own attorney." *Id.* Accordingly, we reject Berry's argument that the trial court failed to consider what *Miller* would require.

¶ 14 Based on the foregoing, sufficient evidence shows that the trial court made an informed and considered sentencing determination, and did not overlook Berry's youth, or any of the other *Miller* factors, at sentencing. Accordingly, we affirm the judgment of the Circuit Court of Stephensen County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

¶ 15 Affirmed.