2018 IL App (2d) 170738-U
No. 2-17-0738
Order filed November 19, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 99-CF-0398
	)	
RICKEY L. QUEZADA,	)	Honorable
	)	William J. Parkhurst,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's petition for leave to file a successive postconviction petition.

¶ 2 In 1999, 15-year-old defendant, Rickey L. Quezada, committed first-degree murder (720 ILCS 5/9-1(a)(1) (West 1998)). The trial court sentenced defendant to 45 years' imprisonment. As relevant here, in 2017, defendant filed a petition for leave to file a successive postconviction petition, alleging that the sentencing judge did not properly consider the attendant circumstances of his youth, as required by subsequent case authority. For the following reasons, we affirm the court's denial of the petition.

¶ 3 I. BACKGROUND

¶ 4 On February 11, 1999, defendant murdered 14-year-old Hugo Rodriguez in their high-school classroom. Specifically, defendant obtained a .45-caliber firearm and donned a bandana. After school had already commenced, he walked into the classroom and approached Rodriguez, who was sitting at a computer station inside the door. Defendant shot Rodriguez in the back. Rodriguez tried to move away, and defendant kept shooting him. When Rodriguez was on the floor, defendant placed the weapon behind Rodriguez's right ear and fired another bullet into his head. The teacher told the other students to "get down" and called 911 from under her desk. In total, police found at the scene seven spent .45-caliber shell casings, fired bullets, and a chair with bullet holes. Rodriguez's body sustained seven gunshot entrance wounds, and bullets were recovered from his head, lower spine, and shoulder. The cause of death was multiple gunshot wounds causing a great loss of blood, a collapsed lung, and laceration to the brain.

¶ 5 On February 16, 1999, defendant was arrested. Defendant and Rodriguez were members of rival street gangs, the Spanish Gangster Disciples and Insane Deuces, respectively. After confessing to the murder, defendant claimed that he had acted in self-defense because Rodriguez had allegedly threatened him a few days before the murder. An officer who testified as an expert in street gangs, however, explained that the date of the shooting, February 11, was known as "Deuce Killer Day." Ultimately, the jury rejected defendant's self-defense claim and found him guilty of first-degree murder.

¶ 6 At sentencing, the State requested that the court impose upon defendant a 45-year sentence of incarceration for the "terribly ruthless assassination." The State argued that the evidence reflected that defendant showed no emotion during the killing and that "the only emotion that was demonstrated was later when he was smiling about it shortly after as he said in

his statement to the police." The State argued that gang wars are not recognized as legitimate by our society, that schools must be safe, and that the other students and teacher had experienced terror in their classroom. In addition to the need for deterrence, the State noted several other aggravating factors, including defendant's history of prior delinquency, that defendant was on probation at the time he committed the murder, that the shooting was gang related, and that, only five weeks prior to shooting Rodriguez, defendant was before a trial judge who had sternly warned him that, if he did not dissociate from the gang, he was going to wind up dead or in jail. At that time, the court had ordered that defendant have his gang-affiliation tattoos removed, but defendant had not complied.

¶ 7 The assistant State's Attorney further argued:

> "[T]here is some mitigation in this case, your Honor, and I think the most significant mitigation is that the defendant's age was only 15 years old. When you're talking about the age of the 15-year-old [defendant] when he committed this murder, also consider the fact that Hugo Rodriguez was even younger, and Hugo Rodriguez will never be 15 years old.
>
> It's also mitigating that [defendant] was associating with older gang members, and clearly there were some negative influences in [defendant's] life. But, your Honor, those negative influences were countered by positive influences. He had the positive influence of an extended family which was supporting, love and support, and you also had the positive influence of the court system and the very forceful influence of the court system who sentenced defendant to probation and also sentenced the defendant to incarceration.

> And the court system did everything short of lengthy incarceration to modify the defendant's behavior, and it was not modified, and now lengthy incarceration is necessary, and it's necessary as punishment for the crime."

¶ 8 Defendant presented testimony from his mother, aunt, and grandfather, concerning the closeness of their family, their love for and support of defendant, and their opinions that defendant could be rehabilitated. Defense counsel argued that, to an extent, the system failed defendant, noting that, despite court intervention, defendant never received any services from the probation department. Further, defense counsel reiterated to the court that defendant was only 15 years old at the time of the crime, and 17 years old at the time of sentencing. Counsel asked the court to consider in mitigation that older gang members influenced defendant, including a prominent member who drove defendant to the school the day of the murder. "This boy, this follower, as his grandfather told you this morning, was a pawn in the game that they were playing *** a gang war ***." In addition, defense counsel argued that defendant could be rehabilitated and that he had admitted that, despite a "pretty good" family life, he made "stupid decisions." Further, defendant admitted that his gang involvement had begun when he was 13 years old and, counsel argued, 13-year-olds are "very vulnerable to influences." Defense counsel requested that the court impose the mandatory minimum sentence of 20 years' imprisonment, so that, when defendant is released, he might have an opportunity to "have a life." "[T]o sentence him to 45 years, Judge, *at this age*, is to give him a life sentence[.]" (Emphasis added.) Counsel asked the court "to find that [defendant] does have the potential to be rehabilitated" and, "based on the mitigation of his age, and the influences that took hold of him "at a very young age," that the court "impose the minimum sentence upon him so that he does have some sort of life left in the future."

¶ 9 As noted, the trial court imposed a 45-year-sentence. The court noted first that it found no statutory mitigating factors applicable. It found that, although another gang member facilitated the crime by driving defendant to the scene, defendant's conduct was not induced by anyone but himself and the life that he chose. However, it found "[a] non-statutory factor in mitigation is the defendant's age."

¶ 10 The court found applicable four statutory aggravating factors. The court continued that, while murder is always a horrible crime, when "carried out in a school in front of other students, it is eminently worse" and the fact that it happened in a school "adds measurably to the severity of the crime and to the need to deter others." The court found that defendant's actions demonstrated that he is a "cold-blooded, cold-hearted merciless killer." Finally, the court found that defendant had been warned by another judge, a mere five weeks before committing his crime, but that the warning had no deterrent effect, defendant paid no attention to his probation, and he continued his affinity for guns and gangs.[1] Although defendant is fortunate to have a loving, devoted family, he kept his gang activity secret from his grandfather and, in the end:

> "The defendant did not care about the effect of his activities on his loved ones. His devotion was to his gang. Neither the love of his family, his arrests, his time in the youth home, or the straight, blunt warning of the judge could cause him to change his course.
>
> The defendant needs a structured setting, and my sentence today will provide a highly[-]structured setting for a long time. The manner in which this murder was carried out would merit a long sentence, even if it were not carried out in a school. To

[1] We note that defendant apparently went to a gun store the very next day after the murder, asking to see another.45-handgun.

assassinate someone by shooting them repeatedly in the back, to pursue them as they flee, badly wounded, to ensure their death by a close range shot behind the ear are the acts of a cold-blooded murderer."

¶ 11 The court denied defendant's motions for a new trial and to reconsider the sentence, which argued, in part, that the sentence was excessive in light of defendant's young age and potential for rehabilitation. We affirmed the conviction and sentence on direct appeal. *People v. Quezada*, 335 Ill. App. 3d 223 (2002). In July 2003, defendant filed his initial postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2002)), which the trial court denied and we affirmed the denial on appeal. *People v. Quezada*, No. 2-04-0301 (Nov. 15, 2005) (unpublished order under Supreme Court Rule 23).

¶ 12 On May 30, 2017, defendant, *pro se*, petitioned for leave to file a successive postconviction petition. In sum, defendant argued that the trial court imposed upon him a *de facto* life sentence without due consideration to the attendant characteristics of youth, in violation of *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny. Defendant argued, "even if [he] survives his 45 years of imprisonment[,] there is no way to be restored to useful citizenship because of lack of physical ability at 60 years of age."

¶ 13 On August 23, 2017, the trial court denied the petition for leave to file a successive postconviction petition. The court determined that defendant misinterpreted *Miller* and its progeny, which concerned mandatory life sentences without possibility of parole, not a sentence imposed, as here, in the court's judgment and within a sentencing range, after the court heard testimony concerning defendant's youth, immaturity, and possibility of rehabilitation. Acknowledging that cause existed for defendant's petition, the court determined that the petition failed to establish the requisite prejudice, where the court was aware of defendant's youth and

possibility of rehabilitation, but, after considering those factors, entered a 45-year sentence. On September 18, 2017, defendant appealed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues on appeal that the trial court erred in denying his petition for leave to file a successive postconviction petition. Defendant notes that he was only 15 years old at the time of his crime and, if he survives his sentence (which, citing life-expectancy tables pertaining to incarceration, he asserts is questionable), he will be 62 years old at the time of his projected parole, and 65 years old upon discharge in the year 2048. Defendant contends that he is entitled to a new sentencing hearing because he received a *de facto* life sentence without proper consideration of the factors set forth in *Miller*, and, accordingly, his sentence violates the eighth amendment (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11).

¶ 16 The Act provides a remedy for defendants who have suffered a substantial violation of constitutional rights at trial. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). The Act sets forth three stages of proceedings. *Id.* at 471-72. However, the Act contemplates the filing of only one petition without leave of court. 725 ILCS 5/122-1(f) (West 2014). Specifically, section 122-1(f) of the Act addresses successive postconviction petitions:

> "(f) Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner

shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2014).

¶ 17 As such, section 122-1(f) unambiguously requires a defendant to obtain leave of the trial court prior to filing a successive postconviction petition, and such leave may be granted only if the petition demonstrates: (1) cause for the failure to bring the claim in the initial postconviction proceedings; and (2) prejudice resulting from that failure. *People v. Smith*, 2014 IL 115946, ¶ 33. "Leave of court to file a successive postconviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Id.* at ¶ 35. When faced with a motion for leave to file a successive postconviction petition, the court conducts "a preliminary screening" to determine whether the motion adequately alleges facts to make a *prima facie* showing of cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 24. Where the trial court does not hold an evidentiary hearing, we review *de novo* the denial of a defendant's motion for leave to file a successive postconviction petition. See *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010).

¶ 18 Defendant contends that he has established both cause and prejudice for filing a successive postconviction petition. The State *concedes* that defendant has established cause, and we agree. Indeed, the case law upon which defendant relies (as described below) did not issue until after his direct appeal and initial postconviction petitions, and it is retroactive. See, *e.g.*, *People v. Davis*, 2014 IL 115595, ¶ 39 (*Miller* stated a new substantive rule of law applicable retroactively to cases on collateral review).

¶ 19 Thus, the primary issue here concerns prejudice. To adequately address prejudice, we must briefly summarize the pertinent law concerning eighth-amendment prohibitions against certain sentences for juveniles. In a series of cases, the Supreme Court has held that: (1) the death penalty for juvenile offenders is unconstitutional (*Roper v. Simmons*, 543 U.S. 551, 578 (2005)); (2) a life sentence without the possibility of parole for juveniles (not convicted of homicide) is unconstitutional (*Graham v. Florida*, 560 U.S. 48, 74 (2010)); (3) a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders (*i.e.*, without consideration of certain attendant circumstances of youth), including those convicted of homicide, is unconstitutional (*Miller*, 567 U.S. at 489); and (4) *Miller* announced a new substantive rule of constitutional law that is retroactive on state collateral review, and life imprisonment without parole is unconstitutional "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility" (*Montgomery v. Louisiana*, 577 U.S. __, 136 S. Ct. 718, 734 (2016)).

¶ 20 Our supreme court, in turn, has held that: (1) *Miller* extends to a mandatory term of years that is the functional equivalent of life without the possibility of parole (*de facto* life sentence) (*People v. Reyes*, 2016 IL 119271, ¶¶ 9-10); and (2) *Miller* also applies to discretionary sentences of life without parole for juvenile defendants (*People v. Holman*, 2017 IL 120655, ¶ 40). 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: (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.

¶ 21 In *Holman*, the trial court had imposed upon a 17-year-old defendant who had committed murder a discretionary sentence of life imprisonment. The supreme court held that, even if the sentencing court had not made specified findings exactly as they are delineated above, the record nevertheless sufficiently reflected that the court had, in fact, adequately considered the necessary factors before imposing sentence. *Holman*, 2017 IL 120655, ¶¶ 47-50.

¶ 22 Accordingly, our supreme court has held that a discretionary natural life sentence (*Holman*) and a mandatory *de facto* life sentence (*Reyes*) raise issues under *Miller* and its progeny. However, it has not yet held that the type of sentence that defendant received here, *i.e.*, a discretionary sentence of a term of years in prison, may constitute a *de facto* life sentence falling under *Miller*. Further, the court has left open the question of what age constitutes a lifetime and who makes that decision. See, *e.g.*, *People v. Buffer*, 2017 IL App (1st) 142931, ¶ 57. A decision on these outstanding issues might, however, soon be forthcoming. We note that, in *Buffer*, 2017 IL App (1st) 142931, ¶ 62, a case upon which defendant relies, the court (relying, in part, on life-expectancy data for incarcerated youth) found that a 50-year discretionary

sentence of a juvenile who was age 17 at the time of his crime, without consideration of the factors unique to juveniles, constitutes an unconstitutional *de facto* life sentence. The supreme court has granted the State's petition for leave to appeal. *People v. Buffer*, No. 122327 (Ill. Nov. 22, 2017).[2]

¶ 23 Here, however, even if we were to conclude that defendant has made a *prima facie* case that *Miller* and its progeny applies to his determinate sentence of 45 years, and even if we were to accept that defendant's sentence constitutes a "*de facto*" life sentence, there remains the hurdle of establishing that the court failed to consider the required circumstances before imposing the sentence. In other words, the key consideration remains whether the sentence, even if it constitutes a "*de facto*" life sentence, was imposed after due consideration of the attendant circumstances of youth. Here, as in *Holman*, we conclude that the record reflects no violation of *Miller*, where the trial judge considered evidence concerning defendant's youth and its attendant characteristics. *Holman*, 2017 IL 120655, ¶¶ 47-50.

¶ 24 Here, the record reflects that evidence was presented at the sentencing hearing concerning most of the factors described in *Holman.* First, defendant's chronological age at the time of the offense was the subject of repeated argument and evidence, and the court found that defendant's youthfulness constituted a non-statutory mitigating factor. As to his particular immaturity, defendant's grandfather described him as a "follower." Second, the court heard

---

[2] Similarly, in *People v. Ortiz*, 2016 IL App (1st) 133294, ¶ 24 the appellate court found that a 60-year discretionary sentence imposed upon a 15-year-old defendant, without consideration of the factors unique to juveniles, constituted a *de facto* life sentence and violated *Miller*. The State's petition for leave to appeal remains pending. See *People v. Ortiz*, No. 121578.

evidence concerning defendant's close family, including testimony from his grandfather, mother, and aunt. Third, the court heard evidence and made findings concerning defendant's degree of participation in the homicide, noting that, although peer pressures in the form of gang affiliation may have affected him, he primarily undertook this murder alone. Fourth, as to defendant's capacity and his ability to deal with police officers or prosecutors, the court was aware of defendant's prior experience with the court system, including his prior delinquency, probationary status, and court appearances. Finally, the court heard evidence and argument concerning defendant's prospects for rehabilitation. In fact, the court made rather explicit findings touching on this factor. Defendant's grandfather, aunt, mother and counsel all urged the court to find that defendant could be rehabilitated. The court, however, found that "[n]either the love of his family, his arrests, his time in the youth home, or the straight, blunt warning of the judge" previously caused defendant to change his course, and for that reason the court found that defendant needed a long period of structured incarceration. We note, further, that it appears that even after considering all of the foregoing, the trial court did not impose upon defendant the maximum possible sentence. Indeed, the sentencing range for first-degree murder, at the time, was 20 to 60 years (730 ILCS 5/5-8-1(a)(1)(a) (West 1999)). Accordingly, the trial court, after consideration of all factors, including factors attendant to youth, determined that 45 years' imprisonment was the appropriate sentence.

¶ 25 As such, defendant's petition for leave to file a successive postconviction petition fails to adequately demonstrate a *prima facie* showing of prejudice. Even if we presume that the sentence is one that falls under the protections of *Miller* and its progeny generally, the trial court here sufficiently considered the requisite factors attendant to defendant's youth before imposing it.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 28 Affirmed.