

2019 IL App (1st) 163023-U

No. 1-16-3023

Order filed April 25, 2019

Fourth Division

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
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 83 C 11071
)	
PAUL CHATMAN,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order denying defendant leave to file a successive postconviction petition, challenging his sentence based on *Miller v. Alabama*, is affirmed where defendant's 75-year prison term, for which he is eligible for day-for-day credit, did not represent a *de facto* life sentence, and thus he cannot meet the prejudice requirement for filing a successive petition.

¶ 2 Defendant Paul Chatman appeals the trial court's order denying him leave to file a successive petition under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). He asserts his petition should receive further review because pursuant to *Miller v.*

Alabama, 567 U.S. 460 (2012), his 75-year extended-term prison sentence violates the prohibition against cruel and unusual punishment in the eighth amendment to the United States Constitution (U.S. Const., amend. VIII). We affirm.

¶ 3 Following a bench trial in 1984, defendant was convicted of the first-degree murder of 66-year-old Vera Kibby. He was 17 years old at the time of the offenses. Kibby's body was discovered in her home on October 29, 1983, and the parties stipulated she died of skull and brain injuries due to blunt force trauma.

¶ 4 At trial, Steven Harris, a friend of defendant, testified that the day before the murder, defendant told him he planned to steal Kibby's car and money. Kibby's car was stopped by police later that day while being driven by Craig Long, another friend of defendant. Long testified for the State that defendant admitted killing Kibby, burning a blood-stained baseball bat and throwing the bat in a neighbor's yard. A bat was recovered and the blood stains matched the blood antigens of Kibby.

¶ 5 After defendant was arrested, he gave a statement memorialized by police. In the statement, defendant said Kibby was his mother's friend and he went to Kibby's house with a baseball bat to frighten her into giving him money he needed to go on a date that had been arranged two days before. Defendant resented Kibby because she interfered in his conversations with his mother. Defendant admitted striking Kibby in the head with a baseball bat and taking her car.

¶ 6 Defendant raised an insanity defense supported by the testimony of a psychiatrist. In rebuttal, the State called a psychiatrist who opined that defendant appreciated the criminality of

his conduct and was sane at the time of the offenses. The trial court found defendant guilty of first-degree murder, armed violence and armed robbery.

¶ 7 At sentencing, no witnesses were presented. A written presentence investigation (PSI) report indicated defendant told the probation officer who prepared the report that he had been “examined by psychiatrists and psychologists” beginning at age 13 when he tried to commit suicide and that he struggled with a poor self-image. Defendant said he used marijuana and was treated for a “psychological dependency on P.C.P.”

¶ 8 In aggravation, the State argued that defendant acted in a premeditated manner and out of resentment toward the victim. The State referred to photographs viewed by the court showing the damage to the victim’s skull and argued defendant had demonstrated clear thinking and a lack of remorse after the offenses. The State asserted that despite defendant’s lack of a criminal record, an extended-term sentence should be imposed given the brutal and heinous nature of his conduct and because the victim was more than 60 years old at the time of the offense.

¶ 9 In mitigation, the defense contended defendant’s actions were not those of a rational or “professional killer” and that he required mental health treatment. Counsel asserted an extended-term sentence was “not appropriate in this case” and that a minimum sentence should be imposed. Defendant addressed the court, stating it was “a bad crime” and expressing remorse. He told the court that if he “could do anything, I would try to go back” and not commit the crime again and “just forget about it.”

¶ 10 In pronouncing sentence, the court noted it had considered all factors in the PSI report and the arguments in aggravation and mitigation, as well as defendant’s statement in allocution. The court stated it would impose an extended term of 75 years for murder based on the

circumstances of the offense, finding the victim's murder exceptionally brutal and heinous and indicative of wanton cruelty. The court noted that defendant would be subject to the death penalty if not for his juvenile status at the time of the offense. The court merged defendant's armed violence conviction into the murder conviction. The court also sentenced defendant to an extended term of 40 years for the armed robbery, to be served concurrent to the murder sentence.

¶ 11 On direct appeal, defendant challenged the trial court's determination that he was sane at the time of the offenses and argued he should not have been sentenced to an extended term. This court rejected both contentions, finding that, even aside from the brutality of defendant's conduct, an extended term could be imposed based on the victim's age alone. This court further stated that the trial court did not abuse its discretion in imposing an extended term for murder where the court acknowledged its consideration of the arguments in mitigation and defendant's expression of remorse. However, because an extended term could be imposed only on the most serious offense of which he was convicted, defendant's concurrent sentence for armed robbery was reduced to a non-extended term of 30 years. *People v. Chatman*, 145 Ill. App. 3d 648, 661-62 (1986).

¶ 12 During his incarceration, defendant filed several *pro se* requests for relief. In 1994, defendant filed a petition for writ of *habeas corpus* in federal court alleging the ineffectiveness of his trial and appellate counsel. The United States District Court for the Northern District of Illinois dismissed that filing, ruling those claims should be presented in a postconviction petition in state court. *Chatman v. Page*, 868 F. Supp. 1036 (N.D. Ill. 1994).

¶ 13 On October 6, 2000, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 1998)), asserting his

extended-term sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The circuit court dismissed the petition, and this court affirmed, finding defendant's petition untimely. *People v. Chatman*, No. 1-01-0373 (2002) (unpublished order pursuant to Supreme Court Rule 23).

¶ 14 On February 20, 2004, defendant filed a petition for collateral relief citing section 2-1401 and the Act, again challenging his extended-term sentence and also claiming his jury waiver was involuntary and his trial counsel was ineffective for failing to convey a plea offer. On September 22, 2005, defendant filed a supplement to that petition. The circuit court granted the State's motion to dismiss those petitions, and defendant appealed. The State Appellate Defender filed a motion for leave to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). This court allowed appellate counsel's motion and affirmed the circuit court's ruling. *People v. Chatman*, No. 1-06-1555 (2007) (unpublished order pursuant to Supreme Court Rule 23).

¶ 15 On May 18, 2008, defendant filed a successive postconviction petition claiming the trial court failed to consider his rehabilitative potential when sentencing him, his extended-term sentence was void under *Apprendi*, and every attorney who represented him was ineffective. That petition was omitted from the court call for several months and was not ruled upon. In 2009, defendant filed a *pro se* motion for leave to file a successive postconviction petition, asserting he had newly discovered evidence he was sexually abused as a child that should have been presented in support of his insanity defense. On November 10, 2010, the circuit court granted the State's motion to dismiss defendant's petition, finding the claims procedurally barred. Defendant appealed, and this court reversed, finding the circuit court failed to rule on

defendant's motion for leave to file his successive petition and remanding the case for that determination. *People v. Chatman*, 2012 IL App (1st) 103678-U, ¶ 22.

¶ 16 On remand, the circuit court dismissed the petition, finding that on direct appeal, the trial court addressed defendant's claim that his sentence should be mitigated by his age and rehabilitative potential and that claim was therefore barred by *res judicata*. The court found defendant's remaining claims could have been raised on direct appeal and were waived or that they were meritless. The court concluded defendant had not met the cause and prejudice requirements for a successive postconviction petition. On appeal, this court affirmed. *People v. Chatman*, 2014 IL App (1st) 133562-U, ¶¶ 28-29.

¶ 17 On July 22, 2014, defendant filed a *pro se* motion seeking to be resentenced pursuant to pending legislation that required courts sentencing defendants younger than 18 years of age to consider the defendant's age at the time of the offense, peer and familial pressure and negative influences on the defendant,¹ as well as a "dysfunctional home environment, social ostracization and sexual child abuse." Defendant argued that at his sentencing, the court did not consider those mitigating circumstances, including his "age, rehabilitative potential, extreme mental disturbance caused by his sexual child abuse nor his background of extreme emotional and physical abuse." He asserted it was his first offense and he lacked a criminal record but that the court did not consider his age and history of mental and emotional disturbance. He pointed out he had been incarcerated for 31 years and during his incarceration had demonstrated outstanding rehabilitative potential. The circuit court denied defendant's request for a new sentencing

¹ A sentencing court is now required to consider those and other enumerated factors in mitigation of a sentence imposed on a defendant younger than 18 years of age. See 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016).

hearing. Defendant appealed that ruling and then voluntarily dismissed the appeal. *People v. Chatman*, No. 1-14-2829 (2015) (dispositional order).

¶ 18 On June 14, 2016, defendant filed a motion for leave to file a successive postconviction petition, which is the subject of this appeal. In that filing, defendant cited *Miller* and contended his 75-year sentence violated the eighth amendment's prohibition against cruel and unusual punishment as applied to him, a 17-year-old offender. He also asserted his automatic transfer to adult court violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11).

¶ 19 In *Miller*, 567 U.S. at 465, the United States Supreme Court held that a statutory sentencing scheme mandating life imprisonment without the possibility of parole for offenders under the age of 18 at the time of the offenses violates the eighth amendment's prohibition against cruel and unusual punishment. Under *Miller*, a juvenile defendant may be sentenced to life imprisonment without parole only if the trial court determines the defendant's conduct reflected "irreparable corruption" beyond the bounds of rehabilitation. *Id.* at 479-80 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)). The sentencing court may make that determination only after considering the juvenile defendant's youth and its attendant characteristics, including age and evidence of any particular immaturity, impetuosity and failure to appreciate risks and consequences, family and home environment, the degree of participation in the offense and any evidence of familial or peer pressure, any incapacity or inability to deal with police or prosecutors and prospects for rehabilitation. *Miller*, 567 U.S. at 477-78; see also *People v. Holman*, 2017 IL 120655, ¶¶ 45-46.

¶ 20 Defendant contended in his successive petition that under *Miller* and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), which held that *Miller* applies retroactively, as well as the Illinois Supreme Court’s decision in *People v. Davis*, 2014 IL 115595, he was “subject to a mandatory sentencing enhancements [*sic*] at a sentencing hearing where according to the law [] the Judge’s hands were tied and could not meaningfully take into consideration petitioner’s juvenile status before sentencing him to an extended term of 75 years.” Defendant asserted that *Miller* prohibits lengthy sentences for youthful offenders where the sentencing court did not consider mitigating factors such as those in the newly enacted sentencing statute. He pointed out that he was sentenced in adult court where his juvenile status was not considered.

¶ 21 Defendant maintained he could not have raised this issue prior to *Miller* being decided in 2012 and *Miller* should be applied to his case due to his age at the time of sentencing. Defendant asserted in his petition:

“[P]etitioner was sentenced the same as a culpable adult with enhancements (extended-term) applied as if a culpable adult. 730 ILCS 5/5-4.5-105 “NOW” allows judges to consider a multitude of factors before applying enhancements to the sentences of juveniles. In today’s climate, through the lens of *Miller*, its progeny and new Illinois legislation, the [fact that the victim was more than 60 years of age] and [the] brutal/heinous manner of death would have ‘meaningfully’ been mitigated resulting in a non-extended term.”

¶ 22 On October 14, 2016, the circuit court entered an order denying defendant leave to file a successive postconviction petition. The circuit court held the application of the automatic transfer provision to defendant did not violate his constitutional rights because it did not amount

to punishment but instead specified the forum in which the defendant's guilt would be adjudicated. Further, the circuit court concluded *Miller* and related decisions did not apply to defendant because they address mandatory life sentences without parole and that defendant's 75-year term did not constitute a *de facto* life sentence. The court further found the sentencing court acted within its authority in imposing an extended term given the brutal and heinous nature of the offense and the victim's age.

¶ 23 On appeal, defendant contends the circuit court erred in denying him leave to file a successive postconviction petition, arguing he should be allowed to pursue his eighth amendment claim based on *Miller*. Defendant makes no reference in this appeal to the claim in his petition involving the automatic transfer statute and has therefore forfeited it for review. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *People v. Guest*, 166 Ill. 2d 381, 414 (1995).

¶ 24 The Act provides a statutory remedy to criminal defendants who claim that their convictions resulted from a substantial violation of their rights under the federal or Illinois constitution or both. 725 ILCS 5/122-1(a) (West 2014); *People v. Edwards*, 2012 IL 111711,

¶ 21. Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *People v. Guerrero*, 2012 IL 112020, ¶ 14.

¶ 25 The Act generally contemplates the filing of only one postconviction petition and provides that “[a]ny claim of [a] substantial denial of constitutional rights not raised in the original or amended petition is waived.” 725 ILCS 5/122-3 (West 2014); *People v. Ortiz*, 235 Ill. 2d 319, 328-29 (2009). To file a successive postconviction petition, a defendant must first obtain leave of court, and further proceedings on the petition do not take place until leave is granted. 725 ILCS 5/122-1(f) (West 2014); *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010). A successive

petition is allowed if the defendant can meet the “cause and prejudice” requirements for not raising the issue in an earlier proceeding. *Holman*, 2017 IL 120655, ¶ 26. A defendant may establish cause by showing some objective factor external to the defense that impeded his ability to raise the specific claim in the initial postconviction proceeding. *Id.* (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002)). Prejudice may be shown where the defendant demonstrates the claimed constitutional error so infected the trial that the resulting conviction or sentence violated due process. *Id.* We review the trial court’s denial of leave to file a successive petition *de novo*. *People v. Bailey*, 2017 IL 121450, ¶ 13.

¶ 26 As to cause, defendant contends he could not have raised this claim before the United States Supreme Court decided *Miller* in 2012 and then held in *Montgomery* that *Miller* applied retroactively. Although the State argues defendant could have raised *Miller* in his 2014 motion for resentencing, the cause requirement is met by identifying an objective factor that impeded the defendant from raising the claim in his *initial* postconviction proceeding. See *Holman*, 2017 IL 120655, ¶ 26; *People v. Guerrero*, 2012 IL 112020, ¶ 17. Moreover, the Supreme Court did not rule until 2016 that *Miller* would apply retroactively. See *Montgomery*, 136 S. Ct. at 735-36. Thus, defendant has met the cause requirement for this successive petition.

¶ 27 However, defendant also must show he suffered prejudice from the inability to raise the applicability of *Miller* to his case previously. Defendant contends his sentencing hearing did not comport with *Miller* because the court did not consider the characteristics of juvenile offenders such as recklessness, impetuosity and disregard for the consequences of their behavior. Defendant claims to have suffered from mental illness at the time of the offense, which he concedes was argued before the sentencing court; nevertheless, he contends the sentencing court

did not lend proper weight to that factor. He further details his activities and good disciplinary record during his incarceration and argues that he has been rehabilitated.

¶ 28 Defendant urges this court to find that *Miller* applies to his case even though he was sentenced to a term of years, as opposed to a sentence of natural life. In setting forth this argument, he acknowledges that because he was sentenced before the enactment of the truth-in-sentencing statute, he has received day-for-day credit against his 75-year sentence and will be 54 years old when released from prison in 2021.² He contends, however, that his term of years “essentially amounts to a life sentence” based on studies indicating that youth who have spent most of their adult years in prison have a reduced life expectancy.

¶ 29 This court has limited *Miller* to cases that involved mandatory life imprisonment without the possibility of parole. *People v. Wilson*, 2016 IL App (1st) 141500, ¶¶ 34-35, *appeal allowed*, Nos. 121345, 121306 (Nov. 23, 2016); see also, *e.g.*, *Holman*, 2017 IL 120655, ¶¶ 45-47 (applying *Miller* factors retroactively to juvenile defendant sentenced to life in prison without parole). Here, defendant was not sentenced to life imprisonment without parole.

¶ 30 Moreover, a number of Illinois decisions have rejected the claims that a particular term of years constitutes a *de facto* life sentence; those cases have considered the amount of sentencing credit awarded to the defendant as well as the total term of years imposed. See, *e.g.*, *People v. Reyes*, 2016 IL 119271, ¶ 10; *People v. Lopez*, 2019 IL App (3d) 170798, ¶ 20 (50-year sentence allowing release at age 41 was not *de facto* life sentence); *People v. Rodriguez*, 2018 IL App (1st) 141379-B, ¶ 73 (50-year sentence allowing release at age 65 did not constitute *de facto* life

² The Illinois Department of Corrections website, of which this court may take judicial notice (see *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010)), indicates that defendant’s scheduled date of release is April 19, 2021.

sentence); *People v. Evans*, 2017 IL App (1st) 143562, ¶¶ 15-18 (90-year sentence comprised of a 60-year extended term and a consecutive 30-year term, allowing release at age 62 was not *de facto* life sentence). Here, as in these decisions, defendant's sentence in this case would not resemble a *de facto* life sentence, as he is serving a 75-year term but is subject to release at age 54.

¶ 31 Cases where defendants' terms have been deemed *de facto* life sentences have featured considerably longer terms or have involved defendants who would be older at the time of their release than defendant here. See, e.g., *People v. Lusby*, 2018 IL App (3d) 150189, ¶ 21, *appeal allowed*, No. 124046 (Jan. 31, 2019) (130-year term); *People v. Buffer*, 2017 IL App (1st) 142931, ¶ 62, *appeal allowed*, No. 122327 (Nov. 22, 2017) (oral argument held Jan. 15, 2019) (50-year sentence allowing release at age 69 was *de facto* life sentence); *People v. Nieto*, 2016 IL App (1st) 121604, ¶¶ 42-43 (78-year term, which included mandatory firearm enhancement and requirement that sentences be served consecutively, allowing release at age 94, resembled a life sentence).

¶ 32 Because defendant is not serving a *de facto* life sentence, *Miller* does not apply to his case, and he has not met the prejudice requirement for a successive postconviction petition. Moreover, as the circuit court noted in denying defendant leave to file this successive petition, the sentencing court in this case was presented with two factors that allowed it to impose an extended term: the exceptionally brutal and heinous nature of the offense and the victim's age. Ill. Rev. Stat. 1981, ch. 38, par 1005-5-3.2(b) (now codified at 730 ILCS 5/5-5-3.2(b)(2), (3)(ii) (West 2018)). The sentencing court could consider whether the crime was planned as a significant factor in determining whether the defendant's conduct was exceptionally brutal or

heinous (*People v. McGee*, 121 Ill. App. 3d 1086, 1090 (1984)), and here, evidence was presented that defendant acted in a premeditated manner. The sentencing court was not bound by a mandatory sentencing scheme and instead exercised its discretion in imposing a 75-year extended-term sentence based on the facts of the case.

¶ 33 For the reasons stated, the circuit court's order denying defendant leave to file the successive petition is affirmed.

¶ 34 Affirmed.