2019 IL App (1st) 170233-U

FIRST DISTRICT,
SECOND DIVISION
September 3, 2019

No. 1-17-0233

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 99 CR 25681
	)	
LAMONT DANTZLER,	)	Honorable
	)	Thomas V. Gainer Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was sentenced to 50 years' imprisonment for aggravated vehicular hijacking and aggravated battery with a firearm that he committed at 18 years of age. He moved for leave to file a successive postconviction petition, arguing that his sentence was unconstitutional pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny. We affirm the trial court's denial of leave to file a successive postconviction petition.

¶ 2 In 1999, when defendant Lamont Dantzler was 18, he hijacked a vehicle at gunpoint and shot and seriously wounded the car's owner. Dantzler was tried as an adult, found guilty, and sentenced to discretionary terms of 25 years for aggravated battery with a firearm and 25 years

for aggravated vehicular hijacking. His conviction was affirmed on direct appeal. In 2006, Dantzler filed a postconviction petition which was dismissed as frivolous and patently without merit.

¶ 3 In 2016, Dantzler moved for leave to file a successive postconviction petition in which he argued that, in light of *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny, his 50-year sentence was unconstitutional because the court did not properly consider his youth when imposing sentence. The trial court denied his motion, finding that Dantzler failed to establish the cause and prejudice necessary to merit leave to file a successive petition. We affirm.

¶ 4 BACKGROUND

¶ 5 At around 11 p.m. on September 17, 1999, Paris Cooper drove to visit his grandfather. He parked in front of his grandfather's house under a streetlight. He had been parked for a minute or two when Dantzler approached his car from the driver's side and said something that Cooper could not understand. Cooper rolled down his window to hear better and realized that Dantzler was pointing a gun at him.

¶ 6 Dantzler ordered Cooper out of the car, and Cooper complied, leaving his keys in the car. As he was walking away, he heard Dantzler tell him to get back in the car, but Cooper continued walking. Dantzler shot him in the back. Cooper fell to the ground; behind him, he heard two car doors slam and the car driving away. Cooper was able to get up and enter his grandfather's house. He was taken for treatment to Cook County Hospital, where he remained for over a month.

¶ 7 Two teenagers, Anthony Alexander and Eric Carter, witnessed the incident while sitting on a porch a few houses away. Both saw a gray car pull up behind Cooper's car. Carter saw two people—Dantzler and another individual—exit the gray car. Dantzler, holding a handgun,

approached Cooper's car from the driver's side, while the other individual approached from the passenger side. Cooper disembarked, and both Dantzler and his companion got into Cooper's car. Alexander's account of events was similar, except he did not see Dantzler's companion, and he did not initially see Dantzler's gun because Dantzler's hands were in the pouch pocket of his hoodie.

¶ 8 As Cooper walked toward his grandfather's house, both Alexander and Carter saw Dantzler lean out of Cooper's car and shoot Cooper in the back. Cooper fell, then got up and ran toward his grandfather's house while Dantzler got back in the car and drove away.

¶ 9 Police arrived on the scene, and both Alexander and Carter gave them a description of the shooter. They then went to the police station and viewed an array of six photographs chosen based on their descriptions; both of them identified Dantzler as the shooter. Cooper viewed the same photo array on October 13 and selected two photos, one of which was Dantzler's. On October 27, Cooper, Alexander, and Carter viewed an in-person lineup at the police station. All three identified Dantzler as the shooter.

¶ 10 Following a jury trial, Dantzler was convicted of aggravated battery with a firearm and aggravated vehicular hijacking. At the sentencing hearing, the court considered Dantzler's presentence investigation report (PSI), which reflected that he was 18 years old when he committed the crime. He became a member of the Vice Lords street gang at the age of 13, but left in 2000 because he "became tired of it." He had multiple prior convictions, including a juvenile delinquency finding for possession of a controlled substance and four adult drug offenses between 1997 and 1999, though he had no prior convictions for violent offenses. As for the present case, Dantzler maintained his innocence, stating: "I didn't do nothing. I got picked up for my other case and they came up with this case too."

¶ 11 In the PSI, Dantzler described his childhood as "terrible"; he said that his father, a cocaine addict, was not active in his childhood, and his mother was neglectful, though never abusive. As a result, Dantzler "grew up in the streets." He did not attend school past eighth grade and had never been employed, although he hoped to obtain employment as a construction worker. While incarcerated, he attended GED classes twice a week. He had no history of mental illness.

¶ 12 In addition to the PSI, the court considered evidence in aggravation and mitigation. The State presented a victim impact statement from Cooper, who stated he incurred "thousands of dollars in medical bills" and "ha[d] to live with one bullet lodged inside [his] body." The State also presented testimony from witnesses regarding an unrelated incident on September 1, 1999, where Dantzler allegedly ran into a grocery store and shot a man identified as Richard West.

¶ 13 In mitigation, the defense presented the testimony of Dantzler's grandmother, Sealester Lagron, and Dantzler's aunt, Belinda Dantzler. Lagron, Belinda, Dantzler, and Dantzler's mother all lived in the same house since Dantzler was a baby. Lagron testified that Dantzler was "a sweetie"; she "never [knew] him to get in any trouble," and he was a good father to his three-year-old daughter. Belinda testified that Dantzler was "a fairly good person" and she never knew him to be violent in any way. Finally, in allocution, Dantzler stated: "I didn't do it. I ask that you have some leniency on me for the sentencing now."

¶ 14 Following argument by the parties, the court observed that Dantzler shot Cooper in the back in a "coldhearted" and "unprovoked" fashion as Cooper was attempting to walk away—a "gratuitous" shooting since Dantzler already had possession of Cooper's car. The court also explicitly found that Dantzler's actions caused severe bodily injury to Cooper.

¶ 15 With regard to Dantzler's potential for rehabilitation, the court acknowledged that he was 18 when he committed the offense, but noted his "significant" and "somewhat regular" juvenile and criminal history. The court also observed that, although he was neglected as a child, he had no mental illness that might explain or mitigate the coldhearted and senseless nature of the crime. The court additionally took into account the State's evidence regarding the shooting of West.[1] Based on all of these factors, the court found that Dantzler lacked "any significant potential for rehabilitation" and, if released in the near future, "it is likely that he would continue *** his violent ways," notwithstanding the testimony of his relatives.

¶ 16 Finally, the court stated that the sentencing range for aggravated battery with a firearm was 6 to 30 years, and the sentencing range for aggravated vehicular hijacking was 7 to 30 years. Finding neither the minimum nor the maximum sentence to be appropriate for either conviction, the trial court sentenced Dantzler to 25 years for aggravated battery with a firearm and 25 years for aggravated vehicular hijacking, to be served consecutively.

¶ 17 Dantzler appealed his conviction and sentence, arguing that the evidence was insufficient to convict him, the trial court erred in allowing a witness to call Dantzler's lineup photo a "mugshot," and the trial court improperly heard victim impact testimony as to West. We affirmed in *People v. Dantzler*, No. 1-02-2016 (2004) (unpublished order under Illinois Supreme Court Rule 23). Although we agreed that the victim impact testimony as to West was improper, "in light of the sentencing record," Dantzler was not prejudiced by its inclusion. *Id.*

¶ 18 In 2006, Dantzler filed his first postconviction petition, which the circuit court summarily dismissed as frivolous and patently without merit. On June 27, 2011, this court granted

[1] Regarding the shooting of West, the court stated that it gave no weight to the testimony of Jerry Love, a jailhouse informant; but it did consider the evidence that two other witnesses identified Dantzler, including West himself.

Dantzler's motion to dismiss his appeal from that denial. People v. Dantzler, No. 1-11-0447 (Ill. App. 1st. Dist.).

¶ 19 On August 12, 2016, Dantzler sought leave to file a successive postconviction petition. Citing the Supreme Court's 2012 decision in *Miller*, 567 U.S. 460, he argued that his 50-year "de facto life sentence" for a crime he committed at the age of 18 violated the proportionate penalties clause of the Illinois constitution because it did not properly take into account his rehabilitative potential. (Dantzler also claimed his sentence violated the eighth amendment, but the trial court rejected this claim and he does not raise it here.) In an attached affidavit, Dantzler stated that he grew up in Chicago's West Side, where "street gangs flourished and controlled the streets," and his home environment was "marred by parental substance abuse, a lack of supervision, indifference, mental health issues, and juvenile delinquency," all of which led him to commit crime. Nevertheless, he stated that he accepted full responsibility for his actions and had shown willingness to participate in the limited rehabilitative programming offered in his correctional facility.

¶ 20 The circuit court denied him leave to file, finding that his petition lacked merit. The court found that *Miller* was inapplicable since Dantzler was 18 when he committed the offense and his sentence was discretionary rather than mandatory.

¶ 21 ANALYSIS

¶ 22 Dantzler contends that the trial court erred in denying him leave to file a successive postconviction petition based on his argument that his 50-year sentence, of which he will serve at least 42.5 years (730 ILCS 5/3-6-3(2)(ii), (iii) (West 2016) (aggravated battery with a firearm and aggravated vehicular hijacking are 85% crimes)) violates the proportionate penalties clause

of the Illinois constitution. We review the trial court's order *de novo*. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010).

¶ 23 Under the Post-Conviction Hearing Act, claims not presented in an initial postconviction petition are generally considered waived. 725 ILCS 5/122-3 (West 2016). To avoid that procedural bar, a petitioner must obtain leave of court to file a successive postconviction petition, which will be granted only if the petitioner demonstrates cause for his failure to bring the claim in his initial postconviction petition and prejudice resulting from that failure. 725 ILCS 5/122-1(f) (West 2016). At this stage in the proceedings, we take all allegations in the petition as true and construe them liberally in the petitioner's favor. *People v. Smith*, 2014 IL 115946, ¶ 22 (citing *People v. Jones*, 211 Ill. 2d 140, 148 (2004)).

¶ 24 Dantzler correctly argues that he has shown cause for not presenting his current claims in his first postconviction petition. This is because the 2012 *Miller* decision and its progeny created new, retroactively applicable constitutional rules that were not previously available to counsel. See *People v. Davis*, 2014 IL 115595, ¶ 42 (holding that *Miller*'s new rule constitutes "cause"); *People v. Sanders*, 2016 IL App (1st) 121732-B, ¶ 19 (same).

¶ 25 Dantzler must also show prejudice, which, in this context, is a reasonable probability that he would have received a more lenient sentence if the trial court had correctly applied the proportionate penalties clause. *Sanders*, 2016 IL App (1st) 121732-B, ¶ 20. The proportionate penalties clause provides that "all penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. The application of a sentencing statute violates this provision if the sentence is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the

community," which must be evaluated in light of society's evolving standards of decency. *People v. Miller*, 202 Ill. 2d 328, 338-39 (2002) (*Leon Miller*).

¶ 26 As part of these evolving standards of decency, in *Miller*, 567 U.S. at 479, the Supreme Court held that the eighth amendment prohibits mandatory life sentences without possibility of parole for offenders under the age of 18, explaining:

> "[C]hildren are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, *** they are less deserving of the most severe punishments. [Citation.] [*Roper* and *Graham*] relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. [Citation.] Second, children are more vulnerable *** to negative influences and outside pressures, including from their family and peers; they have limited contro[l] over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. [Citation.] And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievabl[e] deprav[ity]." (Internal quotation marks omitted.) *Id.* at 471 (citing *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010)).

In light of these factors, the Court stressed that it is rare that a juvenile offender's crime " 'reflects irreparable corruption' " and further stated: "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 479-80 (quoting *Roper*, 543 U.S. at 573).

¶ 27 As Dantzler concedes, *Miller*'s eighth amendment protections apply only to juveniles and not to him, since he was 18 at the time he committed the instant offenses. *People v. Harris*, 2018 IL 121932, ¶ 54 (rejecting 18-year-old offender's eighth amendment claim under *Miller*, finding that the Supreme Court "drew a line between juveniles and adults at the age of 18 years" and defendant "falls on the adult side of that line" (internal quotation marks omitted)); see *Roper*, 543 U.S. at 574 (acknowledging that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18" but emphasizing that "a line must be drawn" and further stating that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood."); *Leon Miller*, 202 Ill. 2d at 342 ("There is *** a marked distinction between persons of mature age and those who are minors." (Internal quotation marks omitted.)). Nevertheless, the proportionate penalties clause " 'provide[s] a limitation on penalties beyond those afforded by the eighth amendment.' " *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 69 (rejecting State's assertion that proportionate penalties clause must be determined in lockstep with the eighth amendment) (quoting *People v. Clemons*, 2012 IL 107821, ¶ 39); see *People v. Harris*, 2018 IL 121932 (conducting separate analyses as to whether 18-year-old offender's mandatory life sentence violated the eighth amendment and the proportionate penalties clause). Dantzler argues that under the facts and circumstances of his case, his 50-year sentence for a crime he committed at 18 "shock[s] the moral sense of the community" (*Leon Miller*, 202 Ill. 2d at 338).

¶ 28 We disagree. Initially, we observe that no court has recognized a proportionate penalties challenge to a *discretionary*, as opposed to mandatory, term of years imposed on an adult offender. The trial court could have sentenced Dantzler to as little as six years on each count. In finding the minimum sentence to be inappropriate, the court conducted a thorough analysis of

Dantzler's rehabilitative potential. In mitigation, the court explicitly considered Dantzler's age, as well as his neglected childhood and the testimony of his relatives that he was not a violent person. In weighing these factors against the nature of the crime, the court specifically noted the fact that Dantzler personally shot the victim in the back in a "coldhearted" and "unprovoked" fashion, as well as his "significant" criminal history and evidence that he committed another shooting weeks earlier. Viewing the evidence as a whole, the court concluded that Dantzler lacked "any significant potential for rehabilitation" and would likely "continue *** his violent ways" if released in the near future.

¶ 29 On these particular facts, we find no reasonable probability that the trial court would have imposed a more lenient sentence if it had correctly applied the proportionate penalties clause in light of *Miller* and its progeny. In this regard, Dantzler's case is distinguishable from cases involving mandatory sentences where the trial court may have wished to show leniency to a youthful offender but was precluded from doing so by the statutory sentencing scheme. See, *e.g.*, *Gipson*, 2015 IL App (1st) 122451, ¶ 76 (in reversing 15-year-old offender's mandatory sentence of 52 years for attempted murder, court found it significant that "trial court's discretion was frustrated" and judge indicated he would have given a shorter sentence if given statutory license to do so).

¶ 30 The parties also cite *People v. House*, 2019 IL App (1st) 110580-B, and *People v. Pittman*, 2018 IL App (1st) 152030, both cases in which a young adult raised a proportionate penalties challenge to his sentence of mandatory natural life. In *House*, we found defendant was entitled to a new sentencing hearing; in *Pittman*, we did not. Although these cases do not deal with a discretionary sentence—reason alone to distinguish them—we find them instructive as to their facts.

¶ 31 When House was 19 years old, he acted as a lookout while his fellow gang members shot and killed two victims, as part of an intra-gang conflict over who had the right to sell drugs on a particular street corner. *House*, 2019 IL App (1st) 110580-B, ¶¶ 5, 13. House did not witness the actual shooting but was aware the victims were going to be "violated" (physically punished). *Id.* ¶¶ 13-14. He was convicted on a theory of accountability of two counts of first degree murder and sentenced to mandatory life. On appeal from the dismissal of his amended postconviction petition, we found he was entitled to a new sentencing hearing based on "the convergence of the accountability statute and the mandatory natural life sentence." *Id.* ¶ 46. In reaching this decision, we emphasized that House was not present at the scene of the murder and there was no evidence that he helped plan its commission. *Id.*

¶ 32 By contrast, Pittman, at the age of 18, fatally stabbed his girlfriend, his girlfriend's mother, and his girlfriend's 11-year-old sister. *People v. Pittman*, 2018 IL App (1st) 152030, ¶ 1. He was convicted of first degree murder and received a mandatory sentence of natural life in prison. We rejected his proportionate penalties challenge to the sentence, finding *House* distinguishable because Pittman was the actual perpetrator whereas House was only found guilty under a theory of accountability. *Id.* ¶¶ 34-38.[2] We additionally found it significant that "the trial court findings suggest that the court would have imposed the same sentence if it had discretion." *Id.* ¶ 41.

[2] *Pittman* cites to *People v. House*, 2015 IL App (1st) 110580, which our supreme court later vacated and remanded with instructions to reconsider in light of *Harris*, 2018 IL 121932 (rejecting 18-year-old's proportionate penalties challenge on direct appeal because the record was insufficiently developed to determine "how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to defendant's specific facts and circumstances."). On remand, we reaffirmed our holding that House was entitled to a new sentencing hearing, distinguishing *Harris* on grounds that a new sentencing hearing would give adequate opportunity to develop the record. *House*, 2019 IL App (1st) 110580-B, ¶ 65.

¶ 33 As in *Pittman*, Dantzler personally committed the vehicular hijacking and the shooting for which he has been convicted. He approached Cooper's car, ordered Cooper out at gunpoint, and shot Cooper in the back as he was attempting to walk away. In light of these facts, the trial court properly exercised its discretion and imposed a sentence that was neither the minimum nor the maximum available. Under these circumstances, we do not find that Dantzler's 50-year sentence shocks the moral sense of the community so as to violate the proportionate penalties clause.

¶ 34 CONCLUSION

¶ 35 We find no reasonable probability that Dantzler was prejudiced by his inability to raise his proportionate penalties claim in his initial postconviction petition. He received a discretionary term of years based on the trial court's comprehensive analysis of his potential for rehabilitation in light of his age and other factors. Moreover, Dantzler personally committed the crime at issue, shooting the victim in a "coldhearted" and "unprovoked" manner. We therefore affirm the circuit court's denial of Dantzler's motion for leave to file a successive postconviction petition.

¶ 36 Affirmed.