2020 IL App (1st) 171645-U

SIXTH DIVISION
July 17, 2020

No. 1-17-1645

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of Cook County.
	)	
v.	)	96 CR 5317
	)	
RONALD HOOD,	)	Honorable Stanley J. Sacks,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment and opinion.

ORDER

¶ 1 *Held:* Defendant's *de facto* life sentence must be vacated where trial court found that defendant was not irretrievably depraved. Remanded for resentencing.

¶ 2 Defendant, Ronald Hood, was convicted in 1997 of two counts of first degree murder and two counts of attempted armed robbery in connection with the shooting deaths of Malinda Gavin and Ray Bowen. He was 16 years old at the time of the crimes and was sentenced to mandatory life in prison for the murders and 15 years' imprisonment for the attempted armed robberies. In June 2013, defendant filed a *pro se* postconviction petition, alleging that his natural life

imprisonment sentence violated *Miller v. Alabama*, 567 U.S. 460 (2012). *Miller* held that the imposition of a mandatory term of natural life imprisonment without the possibility of parole on a juvenile convicted of homicide violated the eighth amendment's prohibition against cruel and unusual punishment. The circuit court granted defendant a new sentencing hearing. Following the new sentencing hearing, defendant was sentenced to concurrent terms of 60 years' imprisonment for each murder. The trial court denied defendant's motion to reconsider the sentence, and this appeal follows. For the reasons below, we vacate the sentence and remand for a new sentencing hearing.

¶ 3 I. BACKGROUND

¶ 4 The evidence presented at defendant's bench trial showed that on August 29, 1994, the victims, Gavin and Bowen, were in a parked car, naked from the waist down. Defendant, who was 16 years old at the time, walked past the car with his friends. One of the friends suggested they "fuck with" the people inside. Another friend asked defendant if he was scared, and then handed him a gun. Defendant approached the vehicle with his friend and codefendant, Anthony Spaulding, who demanded money from Bowen. When Bowen refused, Spaulding fired shots into the car. Defendant also fired shots into the car – shooting twice into the driver's side window. Both Gavin and Bowen were killed.

¶ 5 Defendant was found guilty of the two murders and two counts of attempted robbery. He received a mandatory sentence of natural life in prison under the multiple-murder provision of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c) (West 1994)), and a concurrent 15-year prison sentence for the attempted robberies.

¶ 6 In 2012, the United States Supreme Court decided *Miller*, which held that the eighth amendment prohibits mandatory sentences of life in prison without the possibility of parole for

juvenile homicide offenders. 567 U.S. at 479. Subsequently, defendant filed a *pro se* successive postconviction petition challenging his sentence of natural life in prison under *Miller*. The trial court granted defendant a new sentencing hearing to consider the *Miller* factors.

¶ 7 On May 18, 2017, the new sentencing hearing was held with the same judge that sentenced defendant and codefendant in 1997. At the hearing, Dr. James Garbarino, a psychologist, testified that he interviewed defendant twice (February 15, 2016, and June 20, 2016), looked at the information in defendant's social history, and wrote up a final report. Dr. Garbarino testified that he spent about four hours with defendant and reviewed records including a letter from defendant's GED instructor, transcripts from the original trial, and Illinois Department of Corrections (IDOC) records.

¶ 8 Dr. Garbarino testified that he used the factors from the *Miller* decision as the organizing framework for generating his report. He testified that defendant was 16 years old at the time of the murders, and that the brains of adolescents are immature. Adolescents tend to make decisions that are inferior to adult decisions, and their emotions are stronger and harder to manage.

¶ 9 With respect to the second *Miller* factor, Dr. Garbarino testified that defendant's social history and reports indicated that he grew up in a very difficult situation "without effective parenting, with a lot of disruption of parental or parental surrogate relationships, witnessing domestic violence, experiencing psychological maltreatment and neglect and a lot of chaos in the day-to-day caregiving." Defendant experienced multiple forms of trauma, including witnessing domestic violence, "which is understood to be a primary traumatic experience; witnessing fighting, witnessing assaults, being the victim of assaults, [and] living in a dangerous fear-laden environment." Dr. Garbarino stated that defendant's father was completely absent, and his mother was "psychologically unavailable because of her struggles with mental health issues and

her own trauma history." Dr. Garbarino stated that defendant's mother had three children that died in a fire before defendant was born, and that she self-medicated through drugs that impaired her capacity to be an effective mother to defendant.

¶ 10 Dr. Garbarino stated that defendant's main childhood house was his maternal grandmother's house in Englewood. There was "widespread drug use in that house, widespread substance abuse amongst [defendant's] extended family." He stated that "perhaps 20" people lived in that house.

¶ 11 Dr. Garbarino further testified that defendant left school completely by tenth grade, and that he was in a gang by the time he was 12 years old. His neighborhood was primarily Gangster Disciples territory, but he was a Vice Lord, which "put him at odds with others in the neighborhood even for things like going to school." Defendant had been shot at, had witnessed shootings, and had friends that had been shot and killed. Dr. Garbarino described defendant's neighborhood as a "war zone," which meant that he was highly sensitive to threats and developed a "war zone mentality."

¶ 12 Dr. Garbarino explained that one of the *Miller* factors was the role of peer pressure and in the environment that defendant grew up in, "there's a lot of peer modeling of aggressive behavior, there's often a lot of peer pressure to engage in criminal and aggressive behavior." Dr. Garbarino stated that "simply the presence of peers tends to degrade the behavior of teenagers," which was a factor in defendant's crimes. Dr. Garbarino testified that codefendant Spaulding was a "high prestige individual" in defendant's eyes and that defendant felt a responsibility to him.

¶ 13 Dr. Garbarino stated that defendant had a newfound maturity since being in prison. He was "able to engage in reflection and study and reading," and was able to take advantage of programs available to him. He was able to get a job and began pursuing a GED. The GED

instructor spoke positively about defendant's enthusiasm and competence. Dr. Garbarino opined that defendant would be a good candidate for parole with transitional support. Defendant has been institutionalized for a long time, and there are basic skills that individuals need, but Dr. Garbarino believed he would be a safe citizen.

¶ 14 When asked if defendant was "irretrievably depraved," Dr. Garbarino responded, "absolutely not."

¶ 15 On cross-examination, Dr. Garbarino testified that defendant did not specifically say he was afraid of codefendant Spaulding. He also testified that defendant had siblings who were presumably exposed to the same risk factors as defendant growing up, and they did not kill anyone at the age of 16.

¶ 16 The trial court then noted that it had some additional questions for Dr. Garbarino. It asked Dr. Garbarino about an error that had been in a previous draft of his report where Dr. Garbarino stated that defendant told him one of the victims had a gun. Dr. Garbarino explained, "That was an error on my part. That's why we submitted a corrected report. When I went back to the notes, I realized I had mistakenly drawn that conclusion because [defendant] had talked about being so afraid. So I accept responsibility for that error." The trial court then went into detail about the nature of the crime, asking Dr. Garbarino if he had read the trial testimony. Dr. Garbarino opined that he did not believe the crime was a planned assassination, but that it was spontaneous. The trial court asked if defendant was failing to accept responsibility by stating he shot the victims in self-defense. Dr. Garbarino responded that defendant had not said that, and that it was an error on his part. When Dr. Garbarino again explained that he had drawn that conclusion from defendant stating that he was afraid, the trial court asked what defendant was afraid of and then

stated, "He had the gun. Spaulding had the gun. The people in the car are half naked. What was he afraid of, according to him?"

¶ 17 Richard Bard, a former supervisor at IDOC, testified that he reviewed defendant's records, and that from 1997 to 1998, defendant received eight tickets within IDOC. During one incident in 1998, defendant attacked an officer, hit him from behind, and kicked another officer when he was on the floor. Between 2004 and 2015, defendant received five tickets, one of which was expunged. Bard testified that defendant had a "good" disciplinary record after 2001, and that he had been approved to work in the inmate commissary and the officer's commissary.

¶ 18 Bard further testified that before the *Miller* decision, there were not many opportunities for someone facing life in prison without parole. The resources were primarily directed at inmates who would be transitioning back into society.

¶ 19 On June 9, 2017, the trial court pronounced its resentencing of defendant and codefendant. Initially, the trial court noted that it had read the sentencing memorandum filed on defendant's behalf and a presentence investigation on defendant. The trial court noted that it presided over defendant's jury trial and had read the court files and the postconviction files for defendant. The State submitted two victim impact statements that had been submitted at defendant's original sentencing hearing, one from Gavin's family and one from Bowen's family. The State read those letters into the record. Gavin's mother stated in her letter that Gavin was her only child, and she had graduated from nursing school. She thinks of her only child every single day, and she loses sleep every night. She has relived the night of the murder over and over, thinking of the fear her daughter must have felt in the last few moments of her life. Gavin's mother stated that she always looked forward to becoming a grandmother, and a major part of her is gone forever. No mother expects to bury a child. She stated that defendant's and

codefendant's mothers can still visit them in prison and give them a kiss. Instead, she has to visit her daughter at a graveyard.

¶ 20 The second letter that was read was authored by Bowen's parents. They stated that Bowen was the father of a four-year-old at the time of his murder. He loved his daughter very much. Bowen and Gavin were two people who cared about everybody and everything. Bowen's parents will never forget the day they got the news of their deaths. The pain was so great, and it took them weeks to come to terms with the fact that they were gone forever. They asked that defendant and codefendant be imprisoned for life.

¶ 21 The State then stated, "the position of the State's Attorney's Office as to these particular defendants based on the mitigation we've received would be a term of imprisonment that would not amount to a *de facto* life sentence." The trial court stated, "I'll certainly consider it."

¶ 22 Defendant then spoke on his own behalf. He stated he was so sorry for the pain and heartache he caused the victims' families. He should have refused to participate in the robbery, and there was no excuse for what he did.

¶ 23 The State then argued that the two victims were innocent people, and defendant and codefendant shot into their car over and over again. The victims never had a chance and never saw it coming. There was no reason to shoot into the car. The State claimed this was not a sentence the court was giving, but rather a sentence that the defendant and codefendant had given themselves. They were responsible when they were sentenced in 1997, and they are responsible 20 years later as they sit in court to answer for their crimes.

¶ 24 Defendant's attorney then reviewed the factors in mitigation, the *Miller* factors, and asked the court to sentence defendant "in the mid range between 20 to 60" years for the murders of Bowen and Gavin.

¶ 25 Before sentencing defendant, the trial court stated that defendant had not shown, based on his conduct while in custody that he was "irretrievably depraved," and therefore he would not be sentenced to life in prison again. The trial court then went into detail about the actual crime. It described the defenselessness of the victims and the brutality of the shooting. The trial court then stated that "sorry just doesn't cut it" and noted that the victims did not get a chance to live, while defendant and codefendant still did. The trial court then stated:

> "These two gentlemen are coldhearted murderers, as simple as that. They have changed in the last give or take 20 years while they've been in custody and changed much for the better. Had they been 18 instead of 16 back at the time of these murders, we'd be talking about something besides life in prison most likely. As I said before, however, the Court cannot find that they're both irretrievable, as the *Miller* case says.
>
> ***
>
> I am certainly going to consider that both men have done excellently well while they've been in custody. Maybe being locked up for a long time has benefited them.
>
> ***
>
> We're hearing all this evidence about [defendant] and [codefendant]. And it's sort of like on August 29, 1994, they were one person. They've metamorphosed into two different people now in 2017. And, oh, by the way, there's a little footnote to history, they savagely murdered Ray Bowen and Malinda Gavin. Like they're a little footnote to history. It's all about [codefendant] and [defendant]. I've considered all of it in that respect. They're not

> the only people in this case I've got to consider. I've got to consider Malinda Gavin and Ray Bowen. They're the ones who were murdered by these two men in a cold, calculated manner. And to hear them described as 'young boys' is a little hard to accept. They were young, but this was a crime that warrants something other than, 'go home today guys, just don't do it again.'
>
> ***
>
> This is a crime that shocks the conscience of a civilized society. Two young guys who are now mature men go out and kill two people for nothing, absolutely nothing at all."

¶ 26 The trial court sentenced defendant and codefendant to 60 years in prison for each murder, to run concurrently. The court stated, "a sentence [for] a crime that took place back in '94 before truth in sentencing, it's day-for-day credit. So on a sentence of 60 years they'd do 30 calendars, approximately, maybe a little less." The court noted, "They get credit for the 20 or 21 years they've been in custody so far," and stated they would be out in 8 or 9 years. The trial court added that it considered defendant and codefendant's age and "everything the lawyers on both sides argued." Defendant moved to reconsider his sentence and the trial court denied the motion. Defendant now appeals.

¶ 27 II. ANALYSIS

¶ 28 Defendant contends that the trial court abused its discretion in sentencing him to 60 years in prison, where it failed to consider certain *Miller* factors. In *Miller*, the United States Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violate the Eight Amendment's prohibition on 'cruel and unusual punishments.' " *Miller*, 567 U.S. at 465. The Supreme Court held that minors are constitutionally different from adults

for sentencing purposes, being less mature and responsible, more impulsive, and more vulnerable to negative influences and peer pressure than adults, and not having the fully-formed character of adults so that their actions do not necessarily indicate irreversible depravity. *Id*. at 471-74. The Court stated, "[w]e therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id*. at 479. The Court continued that while "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon, *** we do not foreclose a sentencer's ability to make that judgment in homicide cases" but a "judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id*.

¶ 29 Our supreme court in *People v. Holman*, 2017 IL 120655, ¶ 46, considered "what it means to apply *Miller*" and stated:

> "[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 circumstances. 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." See also 730 ILCS 5/5-4.5-105(a) (West 2016) (codifying these factors).

¶ 30 The Supreme Court held in *Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016) (quoting *Miller*, 567 U.S. at 465), that "[a] hearing where 'youth and attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." The Court stated:

> "The [*Miller*] Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of children's diminished capacity for change, *Miller* made clear that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." (Internal quotation marks omitted.) *Id*. at 733-34.

¶ 31 Our supreme court subsequently determined that *Miller*'s holding and rationale applied not only to juvenile defendants who received mandatory life sentences without the possibility of parole but also to juvenile defendants sentenced "to a mandatory term of years that is the functional equivalent of life without the possibility of parole," *i.e*. a *de facto* mandatory life sentence (*People v. Reyes*, 2016 IL 119271, ¶ 9), and "to discretionary sentences of life without parole (*Holman*, 2017 IL 120655, ¶ 40). More recently, our supreme court has defined a *de facto* life sentence for a juvenile offender as one that is greater than 40 years. *People v. Buffer*, 2019 IL 12237, ¶¶ 41-42 (stating that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment" and

that because the "defendant's sentence was greater than 40 years," he received a *de facto* life sentence).

¶ 32 Defendant stated in his opening brief that he was not arguing that his new sentence was a *de facto* life sentence, but rather that the trial court did not properly consider all of the *Miller* factors before imposing his sentence. We nevertheless requested supplemental briefing on whether defendant's sentence was a *de facto* life sentence.

¶ 33 In his supplemental brief, defendant argued that his sentence was in fact a *de facto* life sentence because it was greater than 40 years. See *Buffer*, 2019 IL 12237, ¶¶ 41-42. Defendant further argued that because a trial court may only impose a life sentence on a juvenile offender "if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation," (*Id.* ¶ 46), and the court in this case specifically stated, "the Court cannot find that defendant is irretrievable," it therefore could not sentence defendant to another sentence of life in prison. We agree.

¶ 34 The State maintains, however, that defendant's 60-year sentence was not a *de facto* life sentence because he was sentenced before "truth-in-sentencing," which requires those convicted of first degree murder after June 1998 to serve 100% of their imposed sentences. See 730 ILCS 5/3-6-3(a)(2)(i) (West 2008). Because defendant was sentenced before June 1998, defendant is entitled to day-for-day good-time credit. See 730 ILCS 5/3-6-3(a)(2) (West 1996) (the prisoner "shall receive one day of good conduct credit for each day of service in prison other than where a sentence of 'natural life' has been imposed. Each day of good conduct credit shall reduce by one day the inmate's period of incarceration set by the court.") As a result, defendant, who has been incarcerated since 1996, could be eligible for release from prison in September 2025. The State

contends that because he is eligible for day-for-day credit, and therefore only likely to serve 30 years of his 60-year sentence, he did not receive a *de facto* life sentence.

¶ 35 However, in the recent case of *People v. Peacock*, 2019 IL App (1st) 170308, ¶ 19, this court specifically found that sentencing credit is irrelevant because early release from prison is only a "possibility" under the sentencing scheme. Reviewing courts must look at the actual sentence imposed by the trial court, rather than the statutory sentencing credit available to the offender, to measure the propriety of the sentence. *Id*. This court explained:

> "Defendant was not sentenced to 40 years' imprisonment but was instead sentenced to 80 years' imprisonment with the mere possibility of release after 40 years. Moreover, to serve a sentence of 40 years, he must receive every single day of good conduct credit for which he could be eligible. Defendant's receipt of day-for-day credit is not guaranteed. [Citations]. The IDOC 'has the right to revoke good-conduct credits for disciplinary infractions, [and] an inmate's right to receive the credits is contingent upon his good behavior while in prison.' [Citations]. The IDOC 'ultimately has discretion as to whether defendant will be awarded any credit,' and the trial court has no control over the manner in which a defendant's good-conduct credit is earned or lost. [Citation]. Accordingly, we conclude that defendant's 80-year sentence, for which he may receive day-for-day credit, constitutes a *de facto* life sentence." *Id*.

¶ 36 The State argues that the *Peacock* court incorrectly concluded that the application of day-for-day statutory sentencing credit is irrelevant to the question of whether a sentence qualifies as a life sentence under *Miller* and its progeny. Specifically, the State contends *Miller* makes clear that only sentences that are equivalent to a life sentence *without parole* violate the eighth

amendment. See *Miller*, 567 U.S. at 479 (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)) ("[a] State is not required to guarantee eventual freedom to a juvenile offender" and must only provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.") The State thus argues that a defendant who is statutorily entitled to cut his sentence in half by exhibiting good behavior while in prison has been afforded such an opportunity. We disagree.

¶ 37 We acknowledge that *Miller* and its progeny focus on life sentences without the possibility of parole and the defendant's sentence includes the possibility of release after 30 years served. However, as *Peacock* noted, day-for-day credit is not guaranteed and it is IDOC, not the circuit court, that has the ultimate discretion as to whether the defendant will be awarded any credit. *Peacock*, 2019 IL App (1st) 170308, ¶ 19. Accordingly, we conclude that regardless of defendant's eligibility for day-for-day credit, his term of 60 years' imprisonment is a *de facto* life sentence.

¶ 38 Because a defendant can only be sentenced to a *de facto* life sentence if he is found, after consideration of the *Miller* factors, to be irretrievably depraved, and because the trial court here specifically found that defendant was *not* irretrievably depraved, we must vacate the sentence and remand for a new sentencing hearing. *Holman*, 2017 IL 120655, ¶ 46. Given our disposition, we do no reach defendant's other contention on appeal, *i.e.*, that the trial court abused its discretion by failing to adequately consider the *Miller* factors that were presented during the sentencing hearing.

¶ 39 Defendant, in his final point, requests that this court order that a different judge preside over the new sentencing hearing. Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) permits a reviewing court to make any order or grant any relief that a case may require. "This

authority includes the power to reassign a matter to a new judge on remand." *Eychaner v. Gross*, 202 Ill. 2d 228, 279 (2002). Though we have found that the court committed error in this case, we see no indication that the court will not follow the law on remand. Thus, we decline to reassign this matter to a different judge.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we vacate defendant's sentence and remand for a new sentencing hearing.

¶ 42 Sentence vacated.
Remanded for resentencing.