Third District Court of Appeal

State of Florida

Opinion filed July 24, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2460
Lower Tribunal Nos. 89-12383C & 89-21846

David Ingraham,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Martin Zilber, Judge.

Carlos J. Martinez, Public Defender, and Jonathan Greenberg, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Linda Katz, Assistant Attorney General, for appellee.

Before EMAS, C.J., and LOGUE and HENDON, JJ.

PER CURIAM.

David Ingraham was charged with committing first-degree murder (Count I) and attempted first-degree murder (Counts II and III) on March 20, 1989.[1] Ingraham was a juvenile on the date of the offenses. Following trial, he was convicted of first-degree murder (as charged) and two counts of attempted second-degree murder with a firearm (as lesser-included offenses of attempted first-degree murder).

On the first-degree murder count (Count I), Ingraham was sentenced to life with parole eligibility after twenty-five years. On each of the two attempted second-degree murder counts (Counts II and III), Ingraham was sentenced to thirty years in prison without parole, each sentence to be served consecutively to each other and consecutively to the life-with-parole sentence on the murder count.[2]

Ingraham's convictions and sentences were affirmed on direct appeal. Ingraham v. State, 626 So. 2d 1117 (Fla. 3d DCA 1993).

In 2017, Ingraham filed a motion to vacate his judgments and sentences pursuant to Florida Rule of Criminal Procedure 3.850, raising two claims: 1) his life-

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[1] Additional background can be found in the Florida Supreme Court's opinion in Johnson v. State, 696 So. 2d 317 (Fla. 1997). Johnson was Ingraham's co-defendant and was an adult at the time of the offenses. Following a jury trial, Johnson was convicted of first-degree murder and sentenced to death. That death sentence was affirmed by the Court.

[2] Further, the trial court ordered that Ingraham's life-with-parole sentence for Count I be served consecutively to a twenty-two year sentence previously imposed on Ingraham for second-degree murder with a firearm in circuit court case number 89-21846.

with-parole sentence for first-degree murder violated Miller[3] and Graham;[4] and 2) his aggregate sentence of sixty years in prison for the non-homicide offenses (two consecutive thirty-year sentences on Counts II and III), to be served at the conclusion of his life-with-parole sentence on Count I, is unconstitutional and contrary to the Florida Supreme Court's decisions in Henry[5] and Kelsey.[6]

The trial court denied Ingraham's first claim, and we affirm. See Franklin v. State, 258 So. 3d 1239 (Fla. 2018); State v. Michel, 257 So. 3d 3 (Fla. 2018).

However, the trial court issued no ruling on Ingraham's claim that the aggregate sixty-year sentence, to be served at the conclusion of his life-with-parole sentence on Count I, is unconstitutional and contrary to Henry and Kelsey. Although we have the discretion to address this matter in the first instance, we decline to do so, and instead remand this cause for the trial court to conduct any further proceedings as may be appropriate, to make a determination on Ingraham's second claim, and to render an order accordingly.

Affirmed in part, remanded in part.

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[3] Miller v. Alabama, 567 U.S. 460 (2012).
[4] Graham v. Florida, 560 U.S. 48 (2010).
[5] Henry v. State, 175 So. 3d 675 (Fla. 2015).
[6] Kelsey v. State, 206 So. 3d 5 (Fla. 2016).

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

VS.

DAVID INGRAHAM,

Defendant.

_____/

CASE NO. 89-12383C &
89-21846

SECTION CF 05
JUDGE MARTIN ZILBER

ORIGINAL

FILED
OCT 11 2018
CLERK

ORDER DENYING DEFENDANT'S MOTION TO VACATE ILLEGAL SENTENCING

THIS CAUSE is before the Court upon the Defendant's, David Ingraham's (hereinafter "the Defendant"), Motion to Vacate Illegal Sentencing. The Court, after reviewing the Motion and subsequently hearing arguments by both parties, declares it is hereby;

ORDERED AND ADJUDGED that the said Motion is DENIED.

FINDINGS OF FACT[1]

In 1989, the Defendant, who was seventeen years old at the time, along with a co-defendant (hereinafter "Johnson") participated in a kill for hire, wherein the Defendant shot and killed victim Lawrence (hereinafter "the victim"). Following his arrest, and being properly Mirandized, the Defendant confessed to being hired to shoot and kill the victim by co-defendant

[1] The facts at issue in this case are taken from the testimony provided by the Defense's Motion and the State's response to the Motion. The State and the Defense each have an interpretation of what events actually occurred. Ultimately, the Court bases its findings of fact on its own conclusions about what the evidence and testimony depicts.

Robinson (hereinafter "Robinson"), to whom the Defendant owed money. According to the Defendant, upon arriving to the victim's store, Johnson (in possession of a .357 revolver) went inside the victim's store while the Defendant (in possession of an Uzi) remained outside calling his girlfriend. The Defendant stated that while he was outside he heard shots coming from inside the store and began running toward the store shooting in the direction of the victim. However, the Defendant claimed he did not know whether he had shot the victim. After firing a series of shots in the direction of the victim's store, the Defendant told the police he ran toward the street, where he continued to shoot, until reaching the getaway car driven by the third co-defendant, Newsome. In addition, the Defendant also confessed to his friend Mr. Baines that he shot the victim. Mr. Baines testified that he and the Defendant were friends and that the Defendant had come to him several days after the incident and told him that the police were looking for him for the murder of the victim as previously mentioned.

Furthermore, three eyewitnesses, two of which were the victims of the attempted second degree murder by the Defendant, testified to seeing the Defendant shoot and kill the victim on the day of the incident. All three witnesses testified to having seen the Defendant, wearing camouflage clothing and standing outside the store, on the phone, right before the shooting occurred. The witnesses also testified to later seeing the Defendant holding an Uzi and shooting at the victim and subsequently shooting in the direction of the other two attempted second degree murder victims (Mr. Dukes and Mr. Williams).

On or about April 12, 1989, the Defendant was charged with one count of First Degree murder, two counts of attempted first degree murder, and one count of possession of a firearm by a felon. The Defendant was later convicted by a jury for First Degree premeditated murder for which he was sentenced to life in prison with the possibility of parole after a mandatory

minimum of 25 years. The jury also convicted the Defendant of Attempted Second Degree Murder, with a firearm, for which he was sentenced to two consecutive 30 year terms for each offense, with a minimum mandatory of three years for each, given the use of a firearm.

The Defendant is currently serving the final portion of his minimum mandatory sentences and is eligible for his initial parole interview in 2019. At the interview, the Defendant's Presumptive Parole Release Date ("PPRD") and release date are to be determined on the current sentences in place. Despite not yet having had the opportunity to go before the Florida Parole review board, the Defendant, arguing that his current sentence does not allow for judicial review, and does not provide a realistic opportunity for release, filed a filed a Motion to Vacate an Illegal Sentence based on the decision in *Atwell v. State*. 197 So.3d 1040 (Fla. 2016).

ANALYSIS

The issue before the Court is whether the Defendant is entitled to a resentencing hearing after being sentenced to life in state prison with the possibility of parole as a juvenile offender. Relying on the Florida Supreme Court's decision in *Atwell v. State*, the Defendant claims that his sentence – life with the possibility of parole – violates his Eighth Amendment right against cruel and unusual punishment and entitles him to a resentencing hearing. 197 So.3d 1040 (Fla. 2016). Specifically, the Defendant contends two points: (1) because he was sentenced to life in prison as a juvenile offender and given the differences between children and adults cognitive development, he is entitled to a resentencing hearing and (2) denying him the opportunity to a resentencing would violate his Eighth Amendment right against cruel and unusual punishment. *See Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). Additionally, the Defendant argues that because *Michel v State* is a plurality opinion, with no precedential value, the Court must only rely on *Atwell* as the guiding law in deciding this case.

The Defendant relies on *Atwell v. State*, as one of the main cases in support of his contentions. In *Atwell*, the Florida Supreme Court held that a life sentence with the possibility of parole, where the defendant was given a PPRD of 140 years, was the functional equivalent to a life sentence without parole for a juvenile. *Id.* This case is distinguishable from *Atwell*, because the Defendant was sentenced at the age of seventeen and is eligible for parole well within his natural lifetime. Furthermore, given the Florida Supreme Court's recent decision in *Michel v. State*, this court is no longer bound to rely solely on *Atwell* when reviewing a case where a juvenile is requesting a rehearing based on a life sentence with the possibility of parole.

The Defendant claims that the use of *Michel* as guiding law in this case is incorrect. The Court recognizes the Defense attorney's frustration and concern with other litigants previously being resentenced under *Graham* and *Miller*. The law is continuingly evolving and it is the Court's function to follow this evolution and adhere to its proper precedent. For example the recent amendment to Florida Statute § 776.032(4) (commonly known as Stand Your Ground) in July of 2017, is just one of many examples of the evolution of the law affecting the outcome, and timing, of defendants with similar legal arguments. Though the Court sympathizes with the Defendant and his attorney's frustration with the fairness and timing issues that they have raised, it is nonetheless the job of a neutral judicial officer to follow and adhere to the law and its legal precedent. As the State properly points out, *Michel,* despite not creating a binding precedential opinion, nonetheless creates a binding precedential decision which this Court can adhere to. *See Santos v. State*, 629 So.2d 838, 840 (Fla. 1994) (showing the distinction between an opinion and a decision). This Court although choosing to rely on *Michel's* decision, nonetheless acknowledges that the issue at hand is a fact specific inquiry as established by *Graham v. Florida*. 130 S. Ct. 2011, 2033 (2010). However, unlike *Atwell* where the defendant was given a

PPRD of 140 years, extending beyond his lifetime, this case is almost factually identical to *Michel v. State*, where the Defendant was provided a PPRD falling well within his lifetime, thus providing the possibility of release. This PPRD future date properly adheres to the constitutional requirements under *Graham*. *Id.* As in *Michel*, here the Defendant was sentenced to life in prison with the possibility of parole after a minimum mandatory of twenty five years. As the Court in *Michel*, this Court finds that because the Defendant was seventeen at the time of his sentence, despite the twenty-five year mandatory minimum, he is nonetheless being given the opportunity to be considered for early release, in accordance with *Graham*'s requirements. *See Graham*, 130 S. Ct. at 2033.

Under *Graham v. Florida* the Florida Supreme Court held that sentencing a juvenile offender to life in prison without parole was a constitutional violation. *Id.* Relying on developments in psychology and the opinion in *Roper v. Simmons*, the Court found that a juvenile's mind continues to develop and therefore does not merit a sentence to life in prison without the possibility of parole. *Id.; see Roper v. Simmons*, 543 U.S. 551 (2005). Despite solely focusing on sentences to juveniles who had committed non-homicidal offenses, the opinion in *Graham* was later extended by *Miller v. Alabama* to juvenile offenders sentenced to life in prison for homicidal crimes. 132 S. Ct. at 2455.

In *Miller*, the Supreme Court, finding that juveniles are constitutionally different from adults for sentencing purposes, given their cognitive developments, held that life sentences without the possibility of parole were a violation of the Eighth Amendment right against cruel and unusual punishment. *Id.* at 2463. However, as the Supreme Court in *Montgomery v. Louisiana* later pointed out *Miller* does not establish the need for a resentencing if the defendant is eligible for parole that falls within his natural lifetime. 136 S. Ct. 718, 736 (2016). According

to the Court, eligibility for parole affords juveniles who have been sentenced to life an opportunity to "demonstrate the truth of *Miller's* central institution – that children who commit even heinous crimes are capable of change." *Id.*

This Court, adhering to *Montgomery*, finds that a sentence to life with the possibility of parole is proper and does not violate Mr. Ingraham's Eighth Amendment right against cruel and unusual punishment. Although the Defendant may raise the argument that parole, being run by a separate entity, is not a proper judiciary function, such an argument has no standing. As is mentioned by the Court in *Michel*, the opportunity for parole gives a defendant sentenced to life as a juvenile "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" *Id.; see generally Graham,* 130 S. Ct. 2011. As a result, this Court not only finds parole to be an adequate function to addressing the Defendant's mental development, but similarly finds that parole provides more opportunity to a defendant's possibility for early release than would a resentencing hearing. Parole allows a defendant to be considered on more than one occasion and allows for the consideration of the defendant's individual progress, psychological development, and disciplinary records while in prison. This Court finds parole to be a more thorough and adequate function, which, if necessary, is subject to further judicial review through a petitioned writ. *See State v. Michel*, SC16-2187 (Fla. July 12 2018); *see also Mayes v. Moore*, 827 So.2d 967 (Fla. 2002) (considering a challenge to the parole commissions authority and finding that the commission does not have unbridled power in the face of judicial review).

In *Michel v. State*, the Florida Supreme Court, following the Fifth District Court of Appeal's decisions in *Stallings v. State* and *Williams v. State*, reversed the Fourth District's decision, holding that a juvenile sentenced to life with the possibility of parole was not entitled to a resentencing hearing when their PPRD was issued during their lifetime. SC16-2187 (Fla. July

12 2018). Finding the defendant's sentence was not in violation of *Graham's* requirement that juveniles "have a meaningful opportunity to receive parole," the Court in *Michel* denied the defendants motion for rehearing, as eligibility for parole served as the functional equivalent of a resentencing. *Id.; see Graham v. Florida*, 130 S. Ct. 2011 (2010).

Similar to the defendant in *Michel*, the Defendant in this case raises the argument that he is eligible to a resentencing hearing based on his life sentence as a juvenile offender. However, as the Court in *Michel* properly points out:

> The United States Supreme Court's Eighth Amendment precedent regarding juvenile sentencing requires a mechanism for providing juveniles with an opportunity for release based upon their individual circumstances, which is not a standard aimed at guaranteeing an outcome of release for all juveniles regardless of individual circumstances that might weigh against release.

State v. Michel, SC16-2187 (Fla. July 12 2018).

Like the Court in *Michel*, this Court finds that eligibility for parole serves as a proper mechanism for providing a juvenile offender with the possibility of release and is not in violation of the Defendants Eighth Amendment right against cruel and unusual punishment. As the Court in *Graham* points out: "while the Eighth Amendment forbids a State from imposing a life sentence without parole on a juvenile" it only prohibits the State "from making the judgement at the outset that those offenders will never be fit to reenter society." 130 S. Ct. at 2030. Thus, in line with *Graham*, this Court finds that the possibility for parole provides the Defendant with the opportunity to reenter society, despite the Defendant's requirement of serving a minimum mandatory of 25 years before being eligible for review.

CONCLUSION

The Defendant is not being held under a life sentence without the possibility of parole, and his sentence is not in violation of the Eighth Amendment, as interpreted in *Graham, Miller,*

and *Montgomery*, and additionally by the Florida Supreme Court in *State v. Michel.* In addition, the Defendant will be eligible for his first interview in 2019, at which point his PPRD and possible release date will be determined. Therefore, this Court finds Defendant's sentence falls within the requirements of *Miller / Graham* and is not in violation of his Eighth Amendment right. Hence, this Court denies the Defendant's Motion to Vacate Illegal Sentence.

SO ORDERED, in Miami-Dade County, Florida, this 11th day of October, 2018.

MARTIN ZILBER
CIRCUIT COURT JUDGE

MARTIN ZILBER
Circuit Court Judge