

APPENDIX

APPENDIX A

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ANGELA RENE LEEMAN,
Petitioner.

No. 2 CA-CR 2017-0419-PR
Filed March 9, 2018

THIS DECISION DOES NOT CREATE LEGAL
PRECEDENT AND MAY NOT BE CITED EXCEPT
AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P.
31.19(e).

Petition for Review from the Superior Court in Pima
County No. CR42678
The Honorable James E. Marner, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Joel Feinman, Pima County Public Defender
By David J. Euchner, Assistant Public Defender,
Tucson

and

Kevin M. Burke, Pima County Legal Advocate
By A. Kate Bouchee Verenna, Assistant Legal
Advocate, Tucson
Counsel for Petitioner

Phillips Black Project, San Francisco, California
By John R. Mills

and

Arizona Attorneys for Criminal Justice, Phoenix
By Mikel Steinfeld
*Counsel for Amici Curiae Phillips Black Project and
Arizona Attorneys for Criminal Justice*

Arizona Capital Representation Project, Tucson
By Amy Armstrong and Sam Kooistra

and

Arizona Justice Project, Phoenix
By Lindsay Herf
*Counsel for Amici Curiae Arizona Capital
Representation Project and Arizona Justice Project*

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Eppich concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Angela Leeman seeks review of the trial court’s order denying her fourth petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Leeman has not sustained her burden of establishing such abuse here.

¶2 After a jury trial, Leeman, seventeen years old at the time of the offenses, was convicted of thirteen counts of child abuse, one count of possession of methamphetamine, and one count of possession of drug paraphernalia. The trial court sentenced her to concurrent and consecutive prison terms totaling sixty-one years. This court affirmed her convictions on appeal, but ordered resentencing on certain counts because the court had corrected the sentences in Leeman’s absence. *State v. Leeman*, No. 2 CA-CR 94-0364 (Ariz. App. Mar. 14, 1996) (mem. decision). The trial court denied her subsequent petition for post-conviction relief, and this court granted review, but denied relief on her petition for review. *State v. Leeman*, No. 2 CA-CR 97-0286-PR (Ariz. App. May 21, 1998) (mem. decision). Two more proceedings for post-conviction relief were also dismissed.

¶3 In December 2016, Leeman filed another notice of post-conviction relief, arguing she was entitled to relief based on a significant change in the law. Specifically, she argued that the United States Supreme Court’s decisions in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016), entitled her to relief from her consecutive sentences, which were of such length that she would “never be released from prison.” She also claimed she received ineffective assistance of trial and appellate counsel based on her child abuse convictions having been multiplicitous and on appellate counsel’s failure to raise several sentencing issues. The trial court summarily denied relief.

¶4 We cannot say the trial court abused its discretion in denying Leeman’s petition for post-conviction relief. The court clearly identified the claims Leeman had raised and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶5 We grant the petition for review, but deny relief.

APPENDIX B

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. JAMES E MARNER

CASE NO. CR042678-001

DATE: November 27, 2017

STATE OF ARIZONA
Plaintiff,

vs.

ANGELA RENE LEEMAN
Defendant.

RULING

**IN CHAMBERS RULING REGARDING
DEFENDANT'S PETITION FOR POST-
CONVICTION RELIEF**

Defendant filed a petition for conviction relief pursuant to Rule 32.1 of the Arizona Rules of Criminal Procedure, arguing as follows:

1. Defendant received ineffective assistance of counsel at trial and on appeal.
2. The United States Supreme Court's decisions of *Miller v. Alabama*, 132 S.Ct. 2455 (2012) and *Montgomery v. Alabama*, 136 S.Ct. 718 (2016) represent a significant change in the law that requires resentencing of defendant because she

was a juvenile at the time the offenses were committed and was given a *de facto* life sentence. The Court has received and reviewed the opening and reply pleadings and attachments filed by defendant, as well as the response filed by the State. The Court rules as follows:

PROCEDURAL FACTS

I. The Verdicts

Defendant Angela Lehman was found guilty by a jury verdict on May 26, 1994 of the following offenses against her infant son, Steven:

Count 1 – Child Abuse (failing to get medical attention for the baby)

Count 2 – Child Abuse (not protecting him from sexual maltreatment)

Count 3 – Child Abuse (fracture of the right distal radius)

Count 5 – Child Abuse (bruising on the upper right arm of the victim)

Count 6 – Child Abuse (bruising on the right eye)

Count 7 – Child Abuse (avulsion fracture of the right elbow) Count 8 – Child Abuse (fracture to the head of the left humerus)

Count 9 – Child Abuse (fracture of the left distal humerus) Count 10 – Child Abuse (spiral fracture of the right tibia)

Count 11 – Child Abuse (fracture of the right femur)

Count 12 – Child Abuse (fracture of the left tibia)

Count 13 – Child Abuse (fracture of the left distal femur)

Count 14 – Child Abuse (permitting the victim to suffer from malnutrition)

As to Counts 1 and 8, the jury indicated by way of interrogatory that these offenses were proven beyond

a reasonable doubt to have been committed under circumstances likely to produce death or serious physical injury. As to counts 1, 2, 3 and 5 through 14, the jury returned guilty verdicts on each and declined to enter guilty verdicts on the lesser included offenses which would be satisfied by a showing of recklessness or negligence on the part of defendant. The jury also found defendant guilty on Count 15 (possession of a dangerous drug – methamphetamine) and Count 16 (possession of drug paraphernalia).

II. The Sentences

Defendant was sentenced on June 30, 1994. Counsel for defendant argued at length about his client's reduced culpability and flaws in the State's evidence which amounted to lack of proof that the infant's injuries could be attributed to defendant, as opposed to co-defendant Gregory Hatton. Counsel for defendant questioned the credibility and accuracy of many the representations made in the presentencing report. And most significantly, counsel for defendant repeatedly pointed out to the sentencing judge that defendant was a juvenile at the time of the offenses. Specifically, as reflected in the June 30, 1994 sentencing hearing transcript (Exhibit B – 2 to defendant's petition), defense counsel presented the following arguments:

- ". . . . Angela Leeman is, too, a child." page 29, line 12
- "So the spillover from the childhood that she had in Florida to the childhood crimes that she committed in Arizona [was] one continuous inexorable event." page 34, lines 20 – 23
- "Experts that I have talked to, the people that I've talked to, informally said that this was a child who had a child." page 36, lines 2 – 4

- “There is no question that the injuries to Steven Leeman were atrocious, but you will be sentencing today woman – child who was under 18 years old when these things happened.” page 36, lines 5 – 8
- "This was under the law of Arizona a child with no sense of how to raise a child, perhaps somebody who shouldn't have had a child. But she was in fact a child." Page 37, lines 10 – 13

Defense counsel also argued that as a child, defendant was the victim of a horrible upbringing which involved abandonment and abuse. Finally, defense counsel pointed out that in the weeks leading up to the crimes, defendant herself was, at 15 years old, the child victim of co-defendant Gregory Hatton.

The Adult Probation Department prepared an extensive report. The report included a detailed social history of defendant that documented a very difficult childhood which included sexual, emotional and physical abuse by her parents and caretakers. A section of the report titled “Evaluative Summary” noted the detrimental effects of defendant’s upbringing, immaturity and drug abuse, and the causal role these factors had in the underlying crimes.

During the sentencing hearing, the trial court made findings on both mitigating and aggravating circumstances. For mitigation, the trial court noted:

1. The defendant was not yet 18 years old at the time of the offenses.
2. The defendant’s poor home life and her background.
3. The defendant’s lack of prior felony record.
4. Defendant Hatton’s influence over the defendant.

As aggravating factors, the trial court noted:

1. The infliction of serious physical, emotional and financial harm to the victim.
2. The presence of an accomplice.
3. The extreme young age of the victim.
4. The especially heinous manner in which the injuries were inflicted.
5. The substantially continuous use of controlled substances.
6. The defendant was the victim's own mother.

After making the above findings, the trial court imposed an aggravated sentence of 20 years on Count 1 to be served day for day and consecutive to all other sentences and an aggravated sentence of 30 years on Count 8 to be served day for day and consecutive to all other sentences. As to the remaining counts, the trial court imposed sentences ranging from 3.75 years to 11 years, all to run concurrently with each other and concurrent to Counts 1 and 8. The sentence imposed by the trial court amounted to 50 years. This was subsequently increased to 61 years upon discovery that the 11 year sentence for Count 5 must, by statute, run consecutively to Counts 1 and 8.¹

LAW

I. The Ineffective Assistance of Counsel Claim²

¹ This matter was remanded for resentencing per Memorandum Decision to CA – CR 94 – 0364 of the Court of Appeals, Division 2.

² The State argues that per *State v. Bennett*, 213 Ariz. 562, 146 P.3d, 63 (2006), the Pima County Public Defender's Office cannot properly file an ineffective assistance of counsel claim because defendant was represented by the same entity at trial and in the original appeal. However, given the language in the *Bennett* decision that repeatedly refers to a single person rather

As a general rule, “where ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.” *State v. Spreitz*, 202 Ariz. 1, 39 P.3d 525 (2002). Additionally, the Arizona Supreme Court has acknowledged that a defendant generally is precluded from raising an ineffective assistance of counsel claim in a successive post-conviction proceeding if there had been an opportunity to raise it in a prior post-conviction proceeding. *State v. Bennett*, 213 Ariz. 562, 146 P.3d 63 (2006).

Per Rule 32.2(c), the State has the burden to plead and prove “any ground of preclusion by a preponderance of the evidence.” The State met this burden in its response. On pages 3 and 8 of its brief filed on October 12, 2017, the State pled that the ineffective assistance of counsel claims are waived. The State’s response brief also provided both factual reasons and cited legal precedent to support its position. A review of the file also supports the State’s position.

Defendant previously filed three notices of post-conviction relief but only one substantive petition was filed and it addressed re-sentencing. Petitioner could not have raised a claim for ineffective assistance of both trial and appellate counsel in her first petition because counsel was the same for both. *State v. Bennett, Supra*. However, when Petitioner’s second notice of post-conviction relief was filed,

than an entity being barred from subsequent reputation, coupled with the passage of time and the fact that the Pima County Legal Advocates Office is also representing defendant, the Court declines to adopt the State's position.

attorney Harriett Levitt was appointed as counsel. Ms. Levitt did not represent defendant either at trial or on appeal. After requesting an extension of time to obtain a complete copy of the file, Ms. Levitt filed a brief stating she found no colorable claims that could be raised on behalf of defendant pursuant to *State v. Montgomery*.³ Ms. Levitt also requested additional time for defendant to file a pro per brief and the request was granted. Petitioner then failed to submit a petition pro se despite multiple extensions being granted. Later, a third notice for post-conviction relief was filed by Petitioner, which was summarily dismissed by the Court on August 23, 2004 as untimely. Even had it not been dismissed, defendant did not raise a claim of ineffective assistance of counsel at that time.

The ineffective assistance of counsel claims defendant makes in the current petition are separate and distinct from the change in law resulting from the *Miller* and *Montgomery* decisions. Defendant has provided no persuasive argument or evidence to counter the State's contention that these claims could have been brought years earlier. Consequently, Defendant's claim of ineffective assistance of counsel is precluded as untimely because she had ample time and opportunity to raise the claim but failed to do so.

II. Miller, Montgomery and Resentencing

Defendant contends that the United States Supreme Court's decisions of *Miller v. Alabama*, 132 S.Ct. 2455 (2012) and *Montgomery v. Arkansas*, 136

³ Defendant suggests that because Ms. Levitt was found to be ineffective by both the United States Supreme Court and the Ninth Circuit Court of Appeals in separate matters after fully briefed analyses, this Court should automatically conclude that she was ineffective when she reviewed defendant's case. This Court does not find this conclusory argument persuasive.

S.Ct. 718 (2016) represent a significant change in the law that requires resentencing her because (1) she was a juvenile at the time the offenses were committed and (2) the sentence she received is a *de facto* sentence of life without parole. The *Miller/Montgomery* decisions created a significant change in the law which, in some circumstances, can be the basis for relief in Rule 32 proceedings. The real question, as this Court sees it, is whether the 61 year sentence imposed by the trial judge must be equated to a life sentence without parole, thereby mandating a resentencing hearing per *Miller/Montgomery*.

The plain language of the *Miller* decision requires resentencing only in cases involving juveniles who received life without parole sentences. Defendant Leeman argues that the decision must apply to juveniles who receive lengthy prison terms as well. This Court disagrees.

In reaching this conclusion, the Court first notes that the majority in *Miller* relied heavily on its decision from two years earlier in *Graham v. Florida*, 560 US 48, 130 S.Ct. 2011 (2010).⁴ In *Graham*, the Supreme Court considered not only life without parole sentences for non-homicide offenses but also lengthy term of year sentences. To that end, the *Graham* court distinguished the two, noting:

“A State is not required to guarantee eventual freedom to a juvenile offender convicted of a non-homicide crime. What the State must do, however, is give defendants like *Graham* some meaningful opportunity to obtain release based on

⁴ The majority in *Graham* was made up of Justices Kennedy, Ginsberg, Sotomayor, Breyer and Stevens. The majority in *Miller* included all of the above except for Justice Kagan, who was appointed in 2010 to fill Justice Stevens’ seat when he retired shortly after *Graham* was decided.

demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile non-homicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of non-homicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.”

Graham, 130 S.Ct. at 2030.

As noted above, the *Miller* decision borrowed extensively from *Graham* when limiting its application strictly to juveniles sentenced to life without parole.

Additionally, the *Miller* court recognized situations where a juvenile defendant could receive a lengthy prison term short of life without parole that would not amount to a violation of the juvenile defendant’s Eighth Amendment rights. Specifically, when rejecting arguments that Alabama and Arkansas transfer statutes afforded judges the necessary discretion to factor in the differences between juvenile and adult offenders, (thereby addressing the underlying “children are different” concerns), the *Miller* court observed:

“Because many juvenile systems require that the offender be released at a particular age or after a certain number of years, transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without parole). In many States, for example, a child convicted in juvenile court must be released from custody by the age of 21. . . . Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole **or a lengthy term of years**. It is easy to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate.”

Miller, 560 U.S. at 488-89. (Emphasis added)

And where the *Montgomery* decision more precisely defined the application of *Miller*, the United States Supreme Court again confined its application to life without parole sentences and did not expand the holding to include lengthy term-of-years sentences.

While no post-*Miller/Montgomery* Arizona decisions have directly addressed this question, the Arizona Court of Appeals decision of *State v. Kasic*, 228 Ariz. 228, 265 P.3d 410 (App. 2011) is instructive.⁵ In *Kasic*, the defendant committed a

⁵ Defendant’s suggestion that the Arizona Supreme Court’s decision of the *State v. Davis*, 206 Ariz. 377, 79 P.3d 64 (2003) is somehow inconsistent with *Kasic* and supportive of her position in this case is without merit. The factual differences *Davis* and *Kasic* (and this case) are enormous. In the *Davis* case, the 20-year-old defendant was sentenced to 52 years for engaging in consensual sexual intercourse with two post-pubescent underage females. While this was criminal behavior,

series of arsons beginning when he was 17 and ending when he was 18 years old. The defendant was convicted of 32 felonies and sentenced to 139.75 years. Of that sentence, 80.5 years were for arsons the defendant committed as a juvenile.

The defendant appealed, arguing that the sentence violated the Eighth Amendment and citing the United States Supreme Court's opinion in *Graham, supra*. The defendant argued that given the fact that a significant portion of the sentence he received was for he committed as a juvenile, the "reasons underlying the Court's decision in *Graham* are applicable to juveniles, including him, sentenced to a term of years in prison that exceeded his life expectancy. In response, the *Kasic* court disagreed, noting that the United States Supreme Court in *Graham* made it clear that its decision "concerns only those juvenile offenders sentenced to life without parole solely for a non-homicide offense." *Kasic*, 228 Ariz. at 232, citing *Graham* at 130 S.Ct. at 2023.

Defendant Leeman argues that the "foundational premise of *Kasic* has now been completely undermined" by the United States Supreme Court's decision in *Miller/Montgomery*. This Court concludes differently. Like the United States Supreme Court in *Miller*, the Arizona Court of Appeals in *Kasic* repeatedly referenced the *Graham* decision as well as the United States Supreme Court's decision in *Roper vs. Simmons*, 543 US 551, 120 5 S.Ct. 1183 (2005) when considering the propriety of trial court's decision to sentence Kasic to 80.5 years for the crimes he committed as a juvenile. Ultimately, *Kasic* court

it pales in comparison to the nighttime residential arsons committed by Kasic or the crimes against her 9-month-old son for which defendant Leeman was found guilty.

cited the *Graham* decision where the United States Supreme Court emphasized “. . . that while the Eighth Amendment for bids a State from imposing a life without parole sentence on a juvenile non-homicide offender, it does not require the State to release that offender during his natural life.” *Kasic*, 228 Ariz. at 233, citing *Graham* at 130 S.Ct. at 2030.

The *Kasic* court went on to note that “we conclude *Graham* does not categorically bar the sentences imposed in this case, and we declined to extend its reasoning in the manner *Kasic* urges.” *Id.* The subsequent decisions in *Miller/Montgomery*, which relied heavily on *Graham*, do not contradict this conclusion.

Additionally, the trial court was presented with substantial information regarding the age, immaturity, difficult childhood and susceptibility of defendant due to her age. The trial court made specific findings of mitigation on these factors, recognizing that “children are different” as required by *Miller/Montgomery*. The trial court ran the sentences concurrently on most of the charges. Even on the aggravated sentences, the individual term of years for each count, while lengthy, did not amount to a life without parole sentence.

Accordingly,

IT IS ORDERED that defendant’s petition for post-conviction relief is **DENIED**.

/s/ James Marner
HON. JAMES MARNER

cc: A. Kate Bouchee Verenna, Esq.
David J Euchner, Esq.
Attorney General - Criminal - Tucson

Attorney General - Victim Notification
Clerk of Court - Appeals Unit
Clerk of Court - Criminal Unit
County Attorney

APPENDIX C

**SUPREME COURT
STATE OF ARIZONA**

October 30, 2018

**RE: STATE OF ARIZONA v ANGELA RENE
LEEMAN**

Arizona Supreme Court No. CR-18-0142-PR
Court of Appeals, Division Two No. 2 CA-CR
17-0419 PRPC
Pima County Superior Court No. CR42678

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 30, 2018, in regard to the above-referenced cause:

ORDERED: Petition for Review to Arizona Supreme Court = DENIED.

Justice Pelander voted to grant review on issue 1 only.

Janet Johnson, Clerk