SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3537-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GARY GUIONS,

Defendant-Appellant.

Submitted October 17, 2017 – Decided October 26, 2017

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Indictment No. 99-08-2813.

Gary Guions, appellant pro se.

Robert D. Laurino, Acting Essex County Prosecutor, attorney for respondent (LeeAnn Cunningham, Special Deputy Attorney General/Acting Assistant Prosecutor, on the brief).

PER CURIAM

Defendant, who was sixteen years old when he murdered two victims, appeals from a March 28, 2016 order denying his motion to correct what he argued was an illegal sentence. Judge Michael

A. Petrolle entered the order and rendered a written opinion. We conclude the judge did not impose a sentence that violates the Eighth Amendment's ban on cruel and unusual punishment. We therefore affirm.

In 2000, the court waived defendant to adult court and defendant pled guilty to the murders. In accordance with the plea agreement, the court sentenced defendant to concurrent forty-year prison terms, with thirty-four years of parole ineligibility. In 2001, we affirmed defendant's sentence on our excessive sentence oral argument calendar. State v. Guions, No. A-5983-99 (App. Div. Jan. 23, 2001).

Defendant filed a petition for post-conviction relief (PCR), which the court denied in November 2007. We affirmed the denial of defendant's PCR petition. State v. Guions, No. A-3843-07 (App. Div. June 22, 2010), certif. denied, 212 N.J. 459 (2012). Pro se defendant then filed his motion to correct the sentence, which led to the order under review.

On appeal, defendant raises the following arguments:

> POINT [I]
> THE [DEFENDANT'S] JUVENILE DE FACTO LIFE WITHOUT PAROLE SENTENCE IS UNCONSTITUTIONAL PURSUANT TO THE . . . EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND MILLER [v.] ALABAMA, 132 S. CT. 2455 (2012), THE PROCEDURAL PROTECTION ENVISIONED IN MILLER [v.] ALABAMA WAS NEVER CONSIDERED BY THE SENTENCING COURT BEFORE [DEFENDANT'S] DE FACTO

LIFE WITHOUT PAROLE SENTENCE WAS IMPOSED [AND] THEREFORE IS AN ILLEGAL SENTENCE.

SUBPOINT A
THE DEFENDANT RECEIVED THE SAME SENTENCE AS AN ADULT[,] THE EIGHTH AMENDMENT REQUIRES A SEPARATE ANALYSIS FOR JUVENILE OFFENDERS PROPORTIONALITY[.]

SUBPOINT B
THE SENTENCE WAS OFFENSE BASED AND NOT OFFENDER BASED AS ENVISIONED IN MILLER[.]

SUBPOINT C
MANDATORY SENTENCES UNCONSTITUTIONALLY DEPRIVE JUVENILES OF ANY CONSIDERATION OF THE RELEVANT CHARACTERISTICS OF YOUTH[.]

SUBPOINT D
JUVENILES ARE PARTICULARLY VULNERABLE TO NEGATIVE INFLUENCES AND OUTSIDE PRESSURES[.]

SUBPOINT E
MANDATORY SENTENCES FOR JUVENILES IMPERMISSIBLY UNDERMINE THE RELIABILITY OF THE SENTENCE AS IT RELATES TO THE DEFENDANT['S] MORAL CULPABILITY AND POTENTIAL FOR MATURITY AND REFORM AND PREVENT THE TRIAL COURT FROM FULFILLING ITS CONSTITUTIONAL REVIEW FUNCTION[.]

SUBPOINT F
BECAUSE [DEFENDANT] WAS [SEVENTEEN] YEARS OLD AT THE TIME OF THE OFFENSE, THE DE FACTO LIFE WITHOUT PAROLE OR VIRTUAL FUNCTIONALLY EQUIVALENT LIFE WITHOUT PAROLE SENTENCE THAT HE RECEIVED VIOLATED THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS[.]

SUBPOINT G
THE DEFENDANT GARY GUIONS TODAY IS NOT [THE] SAME GARY GUIONS HE WAS WHEN HE WAS [SEVENTEEN] YEARS OLD AND WHEN THE OFFENSE OCCURRED[.]

POINT [II]
THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN MISAPP[L]YING THE LAW IN DENYING [DEFENDANT'S] MOTION TO CORRECT AN ILLEGAL SENTENCE WIHTOUT AFFORDING AN EVIDENTIARY HEARING TO DETERMINE THE QUESTION OF THE LEGALITY OF HIS SENTENCE DENIED HIM OF THE RIGHT TO BE HEARD IN FULL.

After considering the record and the briefs, we conclude that defendant's arguments are "without sufficient merit to warrant discussion in a written opinion." R. 2:11-3(e)(2). We conclude an evidentiary hearing was unwarranted and affirm substantially for the reasons expressed by Judge Petrolle. We add the following brief remarks.

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment and "guarantees individuals the right not to be subjected to excessive sanctions." Roper v. Simmons, 543 U.S. 551, 560, 125 S. Ct. 1183, 1190, 161 L. Ed. 2d 1, 16 (2005). The Eighth Amendment's provisions are applicable to the states through the Fourteenth Amendment. Ibid. New Jersey's analog to the Eighth Amendment similarly declares that "cruel and unusual punishments shall not be inflicted." N.J. Const. art. I, ¶ 12.

In Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that a mandatory life sentence without the possibility of parole for

those under the age of eighteen at the time of their offense violates the Eighth Amendment's prohibition on cruel and unusual punishments. Miller, supra, 567 U.S. at 479, 132 S. Ct. at 2469, 183 L. Ed. 2d at 424. Miller rejected a "categorical bar on life without parole for juveniles." Ibid. Unlike in Miller, defendant did not receive a mandatory life sentence without parole. Defendant received concurrent forty-year prison terms with thirty-four years of parole ineligibility. Nothing in Miller prevents the court from imposing such a sentence. Finally, the court complied with Miller and considered defendant's age at sentencing. Id. at 479-80, 132 S. Ct. at 2469, 183 L. Ed. 2d at 424.

Affirmed.