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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3353-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDWARD V. ROBINSON,

Defendant-Appellant.

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Submitted May 15, 2018 – Decided May 24, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey,  
Law Division, Camden County, Indictment No.  
321-78.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Kevin G. Byrnes, Designated  
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney  
for respondent (Adam D. Klein, Deputy Attorney  
General, of counsel and on the letter brief).

PER CURIAM

In November 1978, when he was seventeen years old, defendant and two others conspired to rob the driver of a vehicle that had been circling their Camden neighborhood. Defendant fired a shot

at the car, hitting and killing the driver. The juvenile court waived jurisdiction and defendant was charged as an adult with murder, N.J.S.A. 2A:113-1, armed murder, N.J.S.A. 2A:151-5; unlawful possession of a firearm, N.J.S.A. 2A:151-41(a), conspiracy, N.J.S.A. 2A:98-1, robbery, N.J.S.A. 2A:85-5 and 141-1, and attempted armed robbery, N.J.S.A. 2A:151-5. In March 1979, defendant retracted his not guilty plea and entered a plea of non vult to the armed murder charge and guilty to the rest. In May 1979, he was sentenced to life imprisonment on the murder conviction and other concurrent prison terms, as well.<sup>1</sup>

Defendant appealed, arguing the sentence was manifestly excessive. We rejected that argument and affirmed. State v. Robinson, No. A-3968-78 (App. Div. May 30, 1980). A trial court motion for resentencing was also denied later that year.

Four years later, defendant filed a post-conviction relief (PCR) petition that was denied; we affirmed defendant's appeal of that disposition. State v. Robinson, No. A-3731-83 (App. Div. Apr. 18, 1986). He filed another PCR petition in 2001 that was denied, as was a subsequent motion for reconsideration and a motion to withdraw defendant's plea. Defendant appealed those orders, and

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<sup>1</sup> The statutes under which defendant was charged and convicted have since been repealed and replaced.

we affirmed in all respects. State v. Robinson, No. A-2625-01 (App. Div. June 4, 2003).

In 2016, defendant filed yet another PCR petition, arguing that the life sentence was illegal and ought to be set aside. For reasons expressed in a written opinion dated December 16, 2016, the PCR judge denied that application.


Defendant had argued that Miller v. Alabama, 567 U.S. 460 (2012) renders his sentence unconstitutional. In denying relief, the PCR judge recognized that Miller's holding – that "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" is forbidden by the Eighth Amendment, id. at 479 – is to be given retroactive effect, Montgomery v. Louisiana, 577 U.S. \_\_, \_\_, 136 S. Ct. 718, 736 (2016), but he also held that Miller still permits the imposition of "the harshest possible penalty for a crime" so long as defendant's age is considered in mitigation. The PCR judge determined that the sentencing judge considered that circumstance.

Less than a month after the PCR judge ruled, our Supreme Court determined that "Miller's command that a sentencing judge 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,' applies with equal strength to a sentence that is the practical equivalent of life without parole," State

v. Zuber, 227 N.J. 422, 446-47 (2017) (quoting Miller, 567 U.S. at 480), thus recognizing a broader scope to Miller than that applied by the PCR judge. Defendant is entitled to have his trial court application reconsidered in light of our Supreme Court's Zuber decision.

The order under review is vacated and the matter remanded to the PCR court for further proceedings. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION