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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2783-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASHID WALKER,

Defendant-Appellant.

Submitted January 18, 2023 – Decided March 31, 2023

Before Judges Susswein and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 02-06-0824.

Joseph E. Krakora, Public Defender, attorney for appellant (Ruth E. Hunter, Designated Counsel, on the brief).

Camelia M. Valdes, Passaic County Prosecutor, attorney for respondent (Marc A. Festa, Chief Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Rashid Walker appeals from a 2020 order denying his motion for reconsideration of a sentence imposed in 2008 for a series of violent crimes committed in 2002 when defendant was twenty-one-years-old. He contends that for purposes of the Eighth Amendment prohibition against cruel and unusual punishment, young adult offenders should be treated the same as juvenile offenders. We affirm the denial of the motion for reconsideration of his sentence. Defendant's constitutional arguments have been rejected by our Supreme Court and, thus, lack sufficient merit to warrant extensive discussion. See R. 2:11-3(e)(2).

I.

In 2003 and 2004, defendant was convicted in two trials of multiple crimes, including murder, armed robbery, and felony murder. We affirmed the convictions from both trials but remanded for resentencing. State v. Walker, Nos. A-5769-03 and A-5952-04 (App. Div. May 9, 2008). The Supreme Court denied certification. State v. Walker, 196 N.J. 466 (2008). In June 2008, defendant was resentenced to an aggregate term of sixty years in prison with an eighty-five-percent period of parole ineligibility pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

In 2010, defendant petitioned for post-conviction relief (PCR). After convening a two-day evidentiary hearing, the PCR judge denied relief, rendering a lengthy oral opinion on the record. We affirmed the denial of PCR. State v. Walker, No. A-2563-12 (App. Div. June 23, 2015). The Supreme Court again denied certification. State v. Walker, 224 N.J. 246 (2016). Defendant filed a second petition for PCR in 2017, which was denied as time-barred. We affirmed that denial. State v. Walker, No. A-3480-17 (App. Div. Apr. 11, 2019). The Supreme Court denied certification yet again. State v. Walker, 240 N.J. 251 (2019).

In 2019, defendant again challenged his sentence, this time by filing a motion for reconsideration. Judge Sohail Mohammed denied defendant's motion on February 13, 2020.

Defendant raises the following contentions for our consideration:

POINT I

DEFENDANT'S "LENGTHY SENTENCE THAT IS THE PRACTICAL EQUIVALENT OF LIFE WITHOUT PAROLE," STATE V. ZUBER, 227 N.J. 422, 447–48 (2017), WHICH WAS IMPOSED WITHOUT THE CONSIDERATION OF HIS YOUTH IS CRUEL AND UNUSUAL PUNISHMENT BECAUSE HE WAS A YOUNG ADULT UNDER THE AGE OF [TWENTY-SIX], AND YOUNG ADULTS AS A CLASS, LIKE JUVENILES, SHARE THE MITIGATING QUALITIES OF YOUTH;

THEREFORE, THERE MUST BE A RESENTENCING PURSUANT TO MILLER V. ALABAMA, 567 U.S. 460, 471 (2012). THE RESENTENCING COURT SHOULD ALSO CONSIDER DEFENDANT'S REHABILITATIVE EFFORTS PURSUANT TO STATE V. RANDOLPH, 210 N.J. 330 (2012), AND APPLY THE YOUTH MITIGATING FACTOR, N.J.S.A. 2C:44-1(B)(14).

A. A "LENGTHY SENTENCE THAT IS THE PRACTICAL EQUIVALENT OF LIFE WITHOUT PAROLE" FOR JUVENILES IS UNCONSTITUTIONAL WITHOUT CONSIDERATION OF THE "DISTINCTIVE ATTRIBUTES OF YOUTH," AND IT IS ONLY THE RAREST OF JUVENILE OFFENDERS FOR WHICH SUCH A SENTENCE WOULD NOT BE UNCONSTITUTIONALLY DISPROPORTIONATE.

B. AS A CLASS, YOUNG ADULTS, LIKE JUVENILES, SHARE THE "DISTINCTIVE ATTRIBUTES OF YOUTH."

C. A "LENGTHY SENTENCE THAT IS THE PRACTICAL EQUIVALENT OF LIFE WITHOUT PAROLE" WITHOUT THE CONSIDERATION OF YOUTH FOR YOUNG ADULTS LIKE DEFENDANT IS ALSO CRUEL AND UNUSUAL PUNISHMENT.

D. DEFENDANT'S SENTENCE QUALIFIES AS A "LENGTHY SENTENCE THAT IS THE PRACTICAL EQUIVALENT OF LIFE WITHOUT PAROLE" BECAUSE, LIKE THE DEFENDANT IN ZUBER, DEFENDANT MUST "SPEND MORE THAN HALF A CENTURY IN JAIL BEFORE [HE] MAY BE

RELEASED." STATE V. ZUBER, 227 N.J. 422, 429 (2017).

E. DEFENDANT IS NOT A "RARE" YOUNG ADULT OFFENDER WHOSE CRIMES REFLECT PERMANENT INCORRIGIBILITY, AND HE MUST AT LEAST BE AFFORDED THE OPPORTUNITY TO PRESENT TO A SENTENCING COURT THE MITIGATING QUALITIES OF YOUTH. AT A MINIMUM, RESENTENCING IS REQUIRED BECAUSE NO COURT APPROPRIATELY CONSIDERED DEFENDANT'S YOUTH PRIOR TO SENTENCING HIM, AND THE MOTION COURT'S FINDINGS WERE AN ABUSE OF DISCRETION.

F. DEFENDANT'S CONVICTION AND SENTENCE FOR FELONY MURDER IS AN ADDITIONAL REASON WHY DEFENDANT'S SENTENCE IS UNCONSTITUTIONALLY CRUEL AND UNUSUAL.

G. DEFENDANT RECEIVED AN EXCESSIVELY DISPARATE SENTENCE WITH RESPECT TO HIS CO-DEFENDANT.

H. A PROPER MILLER RESENTENCING INCLUDES A CONSIDERATION OF DEFENDANT'S REHABILITATIVE EFFORTS, WHICH THE MOTION COURT IMPROPERLY FOUND IRRELEVANT, AND APPLICATION OF THE YOUTH MITIGATING FACTOR, "THE DEFENDANT WAS UNDER [TWENTY-SIX] YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE," N.J.S.A. 2C:44-1(B)(14).

II.

The gravamen of defendant's constitutional argument is that his sentence violates principles established by the United States Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012) and embraced and amplified by our Supreme Court in State v. Zuber, 227 N.J. 422 (2017). In Miller, a case involving fourteen-year-old defendants, the United States Supreme Court recognized that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." 567 U.S. at 465, 472. It continued, "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate." Id. at 473. That led the Court to prohibit sentencing schemes that "mandate[] life in prison without the possibility of parole for juvenile offenders," while leaving open the possibility that sentencing courts could impose such a sentence in homicide cases if the mitigating effect of the defendant's age is properly taken into account. Id. at 479–80.

In Zuber, a case involving seventeen-year-old defendants, the New Jersey Supreme Court expanded the protections for juveniles outlined in Miller. 277 N.J. at 430, 433, 438. The Court held Miller's requirement "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." Id. at 446–47 (citation omitted). Further, the Court found "that the force and logic of Miller's concerns apply broadly: to cases in which a defendant commits multiple offenses during a single criminal episode; to cases in which a defendant commits multiple offenses on different occasions; and to homicide and non-homicide cases." Id. at 448.

In State v Ryan, the defendant argued that his sentence of life without parole under New Jersey's "Three Strikes Law," N.J.S.A. 2C:43-7.1(a), was illegal. 249 N.J. 581, 586 (2022). He based his argument, in part, on the sentencing judge not applying the Miller factors to his "first strike" conviction, which he committed when he was sixteen. Id. at 590. In rejecting defendant's appeal, the Court emphasized that "[b]ecause defendant committed his third offense and received an enhanced sentence of life without parole as an adult, we hold that this appeal does not implicate Miller or Zuber." Id. at 586–87.

Put simply, the Court reviewed its decision in Zuber and reaffirmed that Miller did not apply to defendants sentenced for crimes committed when they were over the age of eighteen. Id. at 596. The Court unequivocally held that it

"did not . . . extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen." Ibid.; see also State v. Comer, 249 N.J. 359, 384 (2022) (quoting Miller for the proposition that "children are constitutionally different from adults for purposes of sentencing").¹

Defendant was twenty-one-years-old at the time of his violent spree. He may have been a young adult, but an adult nonetheless. See N.J.S.A. 2A:4A-22(a) (defining a juvenile as an individual under the age of eighteen). In view of the severity of the crimes committed more than three years after he reached the age of majority, defendant cannot show that the aggregate sixty-year prison term subject to NERA is cruel and unusual punishment.

III.

We likewise reject defendant's contention that the motion court abused its discretion, made findings not grounded in "competent, reasonably credible evidence" in the record, and failed to apply "correct legal principles." Defendant's sentence was authorized by the New Jersey Code of Criminal

¹ In Comer, the Court held that juvenile offenders waived to the adult Criminal Part and sentenced to a term exceeding twenty years may petition for review of the sentence after they have served twenty years in prison. 249 N.J. at 402–03. Significantly, the Court did not extend this right to sentence review to offenders who were eighteen years of age or older at the time of their crimes.


Justice and did not exceed the maximum term of imprisonment and parole ineligibility that could be imposed on his convictions. His sentence has been reviewed on multiple occasions. It remains a legal sentence.

Finally, defendant is not entitled to the benefit of the new mitigating factor regarding youthful offenders, N.J.S.A. 2C:44-1(b)(14).² In State v. Lane, our Supreme Court made clear this sentencing provision is to be given prospective application only. 251 N.J. 84, 96–97 (2022) ("In short, nothing in N.J.S.A. 2C:44-1(b)(14)'s statutory text warrants a determination that the presumption of prospective application is overcome.").

To the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

² N.J.S.A. 2C:44-1(b)(14), which became effective on October 19, 2020, defines a mitigating circumstance when "[t]he defendant was under [twenty-six] years of age at the time of the commission of the offense."