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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0638-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VICTOR J. MARRERO,

Defendant-Appellant.

Submitted April 8, 2024 – Decided May 31, 2024

Before Judges Gilson and Jacobs.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 07-07-1630.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Alicia J. Hubbard, Assistant Deputy Public Defender, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Thomas Michael Caroccia, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

In 2009, defendant Victor Marrero was convicted of first-degree murder, N.J.S.A. 2C:11-3(a)(1) to (2), and related crimes. He was ultimately sentenced to forty-nine years in prison with an eighty-five percent period of parole ineligibility as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

At the time of the murder, defendant was twenty years old. He appeals from a July 6, 2021 order denying his motion to correct an alleged illegal sentence. Defendant argues that he is entitled to resentencing under a line of cases addressing criminal sentences of juveniles. Because defendant was an adult when he committed the murder and because the cases he relies on apply only to juveniles, we reject his arguments and affirm.

I.

The evidence at trial established that defendant and two co-defendants, Anita Pratts and Robin Perez, conspired to assault Roberto Feliciano.¹ Pratts told Perez that Feliciano had sexually assaulted her younger daughter. Perez, defendant, and Pratts then planned an assault of Feliciano.

¹ Defendant did not provide a complete set of the transcripts from the trial. We discern the facts from the record that is available and from the unpublished opinion in which we affirmed defendant's convictions. See State v. Marrero, No. A-2951-09 (App. Div. May 27, 2011).

On May 9, 2006, Pratts let Perez and defendant into the house where she lived with Feliciano. Defendant and Perez hid inside the house in a bedroom until Feliciano returned home after driving Pratts to work. When Feliciano entered the home, defendant and Perez assaulted him. Defendant struck Feliciano numerous times with a pipe, and Perez stabbed Feliciano multiple times with a knife. Perez and defendant left Feliciano lying on the floor in the home, and Feliciano died from his wounds.

Perez, who was a juvenile at the time of the murder, pled guilty. Pratts also pled guilty. Defendant contended that he was only accompanying Perez with the intent of talking Perez out of harming Feliciano and that although he was present during the assault, he did not intend to kill Feliciano. Following a trial at which both Perez and defendant testified, a jury rejected defendant's positions and convicted him of first-degree murder and related crimes, including first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:11-3(a), and third-degree hindering apprehension, N.J.S.A. 2C:29-3(b)(1).

In October 2009, defendant was sentenced. On the murder conviction, he was sentenced to fifty years in prison with an eighty-five percent period of parole ineligibility under NERA. All his other sentences were either merged with or run concurrently to his sentence for the murder.

On his direct appeal, we affirmed defendant's convictions but remanded for resentencing because the sentencing court had improperly applied aggravating factor two and did not give appropriate weight to defendant's absence of a criminal record. Marrero, slip op. at 16-17.

In July 2011, defendant was resentenced. On the murder conviction, defendant was sentenced to forty-nine years in prison with an eighty-five percent parole-ineligibility period under NERA. Several other convictions were merged, and his sentences on his other convictions were run concurrently. Accordingly, his aggregate sentence was forty-nine years subject to NERA.

In January 2021, almost ten years after his resentencing, defendant moved to correct an alleged illegal sentence. He was assigned counsel. The same judge who presided over defendant's original trial, sentencing, and resentencing heard argument on defendant's motion. On June 23, 2021, the court issued a written opinion denying defendant's motion, which it later memorialized in an order filed on July 6, 2021.

II.

Defendant now appeals from the order denying his motion to correct an alleged illegal sentence. He contends that he is entitled to resentencing and

relies on cases that have prescribed rules for sentencing juveniles. In that regard, defendant articulates his argument as follows:

POINT I: A RESENTENCING SHOULD OCCUR BECAUSE THE LANDMARK ZUBER DECISION—WHICH ENTITLES JUVENILE OFFENDERS SERVING VERY LENGTHY SENTENCES TO A RESENTENCING WHICH TAKES THEIR YOUTH INTO ACCOUNT—SHOULD EXTEND TO [TWENTY]-YEAR-OLD OFFENDERS LIKE MARRERO, WHO SHARE THE SAME CHARACTERISTICS AS SLIGHTLY YOUNGER JUVENILES.

A. The Sentencing Protections Announced in Zuber Should Be Extended to Very Young Adult Offenders.

B. Marrero Received a Very Lengthy Sentence.

"An 'illegal sentence' is one 'not imposed in accordance with the law,' including a sentence that violates a constitutional safeguard." State v. Ryan, 249 N.J. 581, 592 (2022) (quoting State v. Zuber, 227 N.J. 422, 437 (2017)). Defendant contends that because he was twenty years old when he committed the murder, he should be accorded the same considerations that are given to juveniles.

In support of his arguments, defendant cites to Miller v. Alabama, 567 U.S. 460 (2012), Zuber, 227 N.J. 422, and State v. Comer, 249 N.J. 359 (2022). In Miller, the United States Supreme Court held that it is a violation of the

Eighth Amendment to impose mandatory life imprisonment, without parole, on a juvenile who is under the age of eighteen at the time he or she committed the crime. 567 U.S. at 465. In Zuber, the New Jersey Supreme Court extended the application of the Miller factors to juveniles facing a term of imprisonment that is the practical equivalent of life without parole. Zuber, 227 N.J. at 428-30. In that regard, the Court directed that "sentencing judges should evaluate the Miller [juvenile] factors at [the time of sentencing] to 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" Id. at 451 (quoting Miller, 567 U.S. at 480). In Comer, the New Jersey Supreme Court held that under New Jersey's Constitution, juveniles who have previously been sentenced to a mandatory prison term of at least thirty years without parole will be permitted to petition for a review of their sentences after they have served two decades in prison. 249 N.J. at 369-70.

Miller, Zuber, Comer, and the line of cases that follow them are not applicable to defendant. Defendant was not a juvenile when he committed the murder. Instead, he was twenty years old. The New Jersey Supreme Court has explained that "Miller and Zuber are uniquely concerned with the sentencing of juvenile offenders to lifetime imprisonment or its functional equivalent without

the possibility of parole." Ryan, 249 N.J. at 601. The Court also noted that the "Legislature has chosen eighteen as the threshold age for adulthood in criminal sentencing." Id. at 600 n.10; see also N.J.S.A. 2A:4A-22(a) to (b) (defining "juvenile" as "an individual who is under the age of [eighteen] years" and an "adult" as "an individual [eighteen] years of age or older").

Defendant seeks to extend the law. As noted, he wants the Miller factors to apply to young adults. The New Jersey Legislature has considered this issue, and in 2020, it added mitigating factor fourteen, which allows the court to address the impact of youth for a defendant who is under the age of twenty-six when he or she commits an offense. L. 2020, c. 110 (codified at N.J.S.A. 2C:44-1(b)(14)). That legislation, however, was made effective on October 19, 2020, and the New Jersey Supreme Court has held that mitigating factor fourteen does not apply retroactively. State v. Lane, 251 N.J. 84, 96-97 (2022). Given that the Legislature has considered an appropriate remedy for young offenders, we decline to extend the holdings and rationales in Miller and Zuber to defendant's sentence.

Defendant also relies on cases from other jurisdictions that have extended Miller's considerations to defendants who were eighteen or older at the time they committed an offense. See In re Monschke, 482 P.3d 276 (Wash. 2021); People

v. Parks, 987 N.W.2d 161 (Mich. 2022); Commonwealth v. Watt, 146 N.E.3d 414 (Mass. 2020). All those cases are factually distinguishable because they involved mandatory life sentences without parole. See Monschke, 482 P.3d at 277; Parks, 987 N.W.2d at 164-65; Watt, 146 N.E.3d at 427-28. Moreover, those out-of-state cases do not persuade us that the law in New Jersey should be extended to apply to defendant's sentence.

In short, defendant's sentence is not illegal. When defendant was resentenced in 2011, the criminal code provided that a person convicted of murder would be sentenced to a term of imprisonment between thirty years and life, subject to NERA. N.J.S.A. 2C:11-3(b)(1) (2017). Miller, Zuber, and the line of cases following them apply to juveniles and, therefore, do not affect defendant's sentence.

Affirmed.

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

CLERK OF THE APPELATE DIVISION