IN THE COURT OF APPEALS OF IOWA

No. 1-676 / 11-0061
Filed July 11, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS WILLIAM BENNETT,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard J. Blane II, Judge.

Thomas Bennett contends the sentence imposed upon his conviction for first-degree murder—life without parole—constitutes cruel and unusual punishment because he was a minor when he committed the offense. **SENTENCE VACATED, REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Jeffrey K. Noble, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Vaitheswaran, Potterfield, Doyle, and Danilson, JJ. Eisenhauer, J. takes no part.

POTTERFIELD, J.

Thomas Bennett contends the sentence imposed upon his conviction for first-degree murder—life without parole (LWOP)—constitutes cruel and unusual punishment because he was a minor when he committed the offense. Pursuant to *Miller v. Alabama*, 2012 WL 2368659 (2012), we vacate Bennett's sentence, and remand for resentencing.

I. Background Facts and Proceedings.

When viewed in the light most favorable to the State, the evidence shows that in August 1998, Thomas Bennett, then aged seventeen years and four months, was living with his friend John Molloy. Bennett and Molloy lived next door to a disabled man and Bennett knew when the man received his disability checks. Bennett, Molloy, and another friend, Tony Vang, planned to rob the neighbor knowing he had recently cashed his $813 social security disability check. Bennett provided a black trench coat and bandana to Vang and helped tie a pool cue case inside Molloy's trench coat to function as a shoulder holster for a pump-action rifle. The three walked to the neighbor's house. Bennett told the other two to wait five minutes while he went into the victim's residence to act friendly and "set [the victim] up." He gave Molloy a pager that showed the time so Molloy could gauge when five minutes had elapsed. Bennett entered the house. After the allotted five minutes, with rifle drawn and wearing a mask, Molloy entered the victim's house and shot the man as he sat on his couch. Bennett ordered Molloy to shoot the victim two or three times more, which Molloy did. Bennett then picked something up from near the victim's body and the three

men ran through and away from the victim's house. Bennett took the rifle from Molloy and threw it away in an alley.

Bennett, Molloy, and Vang were charged with murder as co-defendants. Their trials were severed. As part of a plea agreement with the State, Vang agreed to testify.[1]

At trial, Vang, James Clark, and Randy Grimm (Molloy's stepfather) testified that Bennett and Molloy were friends, but Bennett was the leader of the two. A jury convicted Bennett of first-degree murder[2] and the court sentenced him to the mandatory sentence of life in prison without parole pursuant to Iowa Code section 902.1 (1997). On direct appeal, this court affirmed the conviction and sentence. *State v. Bennett*, No. 99-0726, 2000 WL 1675593 (Iowa Ct. App. Nov. 8, 2000).

Bennett subsequently filed a postconviction relief application contending, among other things, that his counsel was ineffective. The application was dismissed as untimely.

In August 2007, Bennett filed his second application for postconviction relief alleging his conviction and sentence violated his due process and equal protection rights under the United States and Iowa constitutions. The application was denied. On appeal, this court affirmed. *See Bennett v. State*, No. 08-1157, 2010 WL 1375346 (Iowa Ct. App. April 8, 2010).

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[1] Bennett's co-defendants were both eighteen at the time of the offense. The disposition of their cases is not part of the appellate record before us.

[2] The verdict did not specify whether the jury found Bennett guilty of felony murder under Iowa Code section 707.2(2) or as an aider and abettor of murder committed with specific intent under section 707.2(1).

On June 21, 2010, Bennett filed a pro se motion to correct an illegal sentence[3] asserting for the first time that his sentence constituted cruel and unusual punishment as he was juvenile at the time of the offense. The district court appointed counsel and heard arguments on counsel's subsequently filed amended motion to correct an illegal sentence. No evidence was offered or received regarding Bennett's psychological or physiological brain development at the time of the crime. The court denied relief.

Bennett appeals, contending the LWOP sentence is illegal and constitutes cruel and unusual punishment under the United States and Iowa constitutions because he was a juvenile at the time of the offense.

II. Scope and Standard of Review.

Illegal sentences are reviewed for corrections of errors at law. *State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000). However, we review constitutional claims de novo. *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009).

III. Analysis.

> Both the federal and state constitutions prohibit the imposition of cruel and unusual punishment. U.S. Const. Amend. 8; Iowa Const. art. I, § 17. "Punishment may be cruel and unusual because it inflicts torture, is otherwise barbaric, or is so excessively severe it is disproportionate to the offense charged." *State v. Cronkhite*, 613 N.W.2d 664, 669 (Iowa 2000). If a punishment "falls within the parameters of a statutorily prescribed penalty," it generally "does not constitute cruel and unusual punishment." *Id.* "Only extreme sentences that are 'grossly disproportionate' to the crime conceivably violate the Eighth Amendment." *Id.* (citations omitted). While we provide the legislature substantial deference "in setting the penalty for crimes," it is within our power "to determine

[3] In *Veal v. State*, 779 N.W.2d 63, 65 (Iowa 2010), our supreme court held that a challenge to a sentence on cruel-and-unusual-punishment grounds is a claim of an illegal sentence, which may be raised at any time under Iowa Rule of Criminal Procedure 2.24(5)(a).

> whether the term of imprisonment imposed is grossly disproportionate to the crime charged." *Id.* "If it is not, no further analysis is necessary." *Id.*

State v. Seering, 701 N.W.2d 655, 669–70 (Iowa 2005).

In *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court discussed the relevance of juvenile status in a cruel-and-unusual-punishment analysis where defendants are faced with the death penalty.

> After noting that the Eighth Amendment applied to the death penalty with "special force," Justice Kennedy next turned to consideration of the mental abilities of juveniles. *Roper*, 543 U.S. at 568. Citing the common experience of parents, confirmed by scientific and sociological studies, Justice Kennedy noted that juveniles tend to have immature judgment and act impulsively and without a full appreciation of the consequences of their actions, were more susceptible to negative peer influences than adults, were dependent on parents and others, and had personalities that were less well developed and more transitory than adults. *Id.* at 569-72. Justice Kennedy noted that as a result of their immature judgment, impulsivity, dependence on others, and lack of responsibility, nearly all states prohibit persons under eighteen years of age from voting, serving on juries, or marrying without parental consent. *Id.* at 569. Finally, Justice Kennedy surveyed international law, noting that various sources of international law condemn the death penalty for juveniles and that only a few countries continue the practice. *Id.* at 576-77.
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> Because of the psychosocial and neurological differences between juveniles and adults, Justice Kennedy wrote that the penological justifications for the death penalty—retribution and general deterrence—apply to juveniles "with lesser force than to adults." *Id.* at 571. Justice Kennedy noted that "punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person." *Id.* at 572.

Bruegger, 773 N.W.2d at 877. Thus, because of the psychosocial, neurological, and penological differences between juveniles and adults, the *Roper* court determined the death penalty categorically could not be applied to juveniles. *Roper*, 543 U.S. at 573–74 ("When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State

cannot extinguish his life and his potential to attain a mature understanding of his own humanity.").

More recently, the Supreme Court held the Eighth Amendment prohibits the imposition of LWOP sentence upon a juvenile offender who did not commit a homicide. *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010). The Court wrote,

> In sum, penological theory is not adequate to justify life without parole for juvenile nonhomicide offenders. This determination; the limited culpability of juvenile nonhomicide offenders; and the severity of life without parole sentences all lead to the conclusion that the sentencing practice under consideration is cruel and unusual. This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.

Id.

On June 25, 2012, the United States Supreme Court issued its decision in *Miller v. Alabama*, 2012 WL 2368659, at *17, holding that the mandatory imposition of a sentence of life without parole for juvenile offenders "violates th[e] principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." As in *Roper* and *Graham*, the Court in *Miller* focused on the relevancy of an offender's age and the circumstances of the offense in the context of Eighth Amendment jurisprudence. *See Miller*, 2012 WL 2368659, at *7-11. The Court explained,

> To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surround him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not

> for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Id. at *11.

While *Miller* did not foreclose the sentencing court's option to impose life without parole on a juvenile convicted of a homicide, it required consideration of "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at *12. The Court concluded,

> *Graham*, *Roper*, and our individual sentencing decisions make clear that the sentencing court must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

Id. at *17.

Under *Miller, mandatory* imposition of the entirety of Bennett's sentence under section 902.1—"life without the possibility of parole"—violates the principle of proportionality encompassed in the Eighth Amendment's ban on cruel and unusual punishment. *Id. Miller* does not impose a categorical ban on a sentence of life without parole for juvenile homicide offenders. *See id*. at *12. Rather, it requires that prior to sentencing a juvenile to life without parole, the sentencing court take into consideration all pertinent factors—namely an offender's status as a juvenile and the numerous characteristics that accompany this status. *See id.*

at *11, 17. Under the principles articulated in *Miller* we vacate Bennett's sentence and remand for resentencing in accordance with the process articulated in *Miller*.[4]

SENTENCE VACATED, REMANDED FOR RESENTENCING.

[4] In *Bonilla v. State*, 791 N.W.2d 697 (Iowa 2010), our supreme court applied *Graham* to set aside as unconstitutional juvenile offender Julio Bonilla's sentence to life without parole. This sentence was based on Bonilla's 2005 conviction for kidnapping in the first degree—a non-homicide crime—committed when he was sixteen years old. *Bonilla*, 791 N.W.2d at 699. Bonilla was sentenced pursuant to Iowa Code section 902.1, which precluded the possibility of parole other than by commutation by the governor; the court found this violative of the Federal Constitution. *Id.* at 701. The remedy crafted by the court ordered that Bonilla continue to serve a life sentence, but the court struck the provision that had foreclosed the possibility of parole. *Id.* at 702. While that remedy was appropriate in accordance with the prevailing case law under *Graham* for non-homicide offenders, under the broader holding of *Miller*, severance of "without parole" is merely a suggested option. *See Miller*, 2012 WL 2368659, at *17 (requiring individualized sentencing for minors).