

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JESUS EMMANUEL JARA,
Petitioner.

No. 2 CA-CR 2016-0149-PR
Filed June 7, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2005005248001DT
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Diane Meloche, Deputy County Attorney, Phoenix
Counsel for Respondent

STATE v. JARA
Decision of the Court

James J. Haas, Maricopa County Public Defender
By Tennie B. Martin, Deputy Public Defender, and
Mikel Steinfeld, Deputy Public Defender, Phoenix
Counsel for Petitioner

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

STARING, Judge:

¶1 Following a jury trial in 2007, petitioner Jesus Jara was convicted of one count of armed robbery and two counts of first-degree murder based on offenses committed when he was fifteen years old. He was sentenced to concurrent prison terms, the longest of which were life terms on the murder convictions. This court affirmed the convictions and sentences on appeal. *State v. Jara*, No. 1 CA-CR 07-0898 (memorandum decision filed Jan. 2, 2009). In this petition for review, Jara challenges the trial court's order denying his successive petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., based on *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). We review a trial court's denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶2 In *Miller*, the Supreme Court held that "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" violates the Eighth Amendment's prohibition against cruel and unusual punishment. *Id.* at ___, 132 S. Ct. at 2469. Although Jara was sentenced on the murder convictions to life terms of imprisonment with the possibility of parole after twenty-five years, parole had been eliminated in 1994, 1993 Ariz. Sess. Laws, ch. 255, § 86, and the only means of obtaining early release was through clemency or commutation of the sentence by the Governor. *See* A.R.S. §§ 31-402(C), 31-443. Jara argued in this post-conviction proceeding that the sentence was tantamount to a natural-life term.

STATE v. JARA
Decision of the Court

¶3 After consolidating post-conviction proceedings of Jara and other defendants who were seeking relief pursuant to *Miller*, extensive briefing, and a hearing, the trial court denied Jara’s request to be resentenced and denied his Rule 32 petition. The court found *Miller* retroactively applicable¹ and agreed with Jara clemency or commutation of sentence did not provide him with a “meaningful opportunity” for obtaining early release as contemplated by *Miller*. But the court found the legislature’s passage of House Bill 2593, which the Governor had signed just weeks earlier, resolved Jara’s claim. See 2014 Ariz. Sess. Laws, ch. 156, §§ 2-3; House Fact Sheet, H.B. 2593, 51st Leg., 2d Reg. Sess. (Ariz. 2014). Newly enacted A.R.S. § 13-716 and amended A.R.S. § 41-1604.09(I) establish parole eligibility for juveniles sentenced to life imprisonment. After oral argument, the court denied relief but directed the Department of Corrections to set a date on which Jara was eligible for parole after the statute went into effect.

¶4 In his petition for review, Jara contends the trial court erred by denying him the opportunity to raise issues regarding the application of H.B. 2593. He asserts he had intended to investigate claims and present these potential issues at a resentencing, but “the trial court plainly refused to consider” them. He urges this court not to address matters on review that the trial court has not addressed first. Among the issues he would have raised and presents to this court is that H.B. 2593 was not intended to apply retroactively, its retroactive application violates separation of powers and ex post facto principles, and parole availability under the statues does not satisfy *Miller*.

¹The trial court was correct. The Supreme Court recently concluded in *Montgomery v. Louisiana*, ___ U.S. ___, ___, 136 S. Ct. 718, 736 (2016), that *Miller* “announced a substantive rule of constitutional law” to be applied retroactively to all cases. See also *State v. Valencia*, No. 2 CA-CR 2015-0151-PR, ¶ 17, 2016 WL 1203414 (Ariz. Ct. App. Mar. 28, 2016) (concluding *Montgomery* “constitutes a significant change in Arizona law that is retroactively applicable”).

STATE v. JARA
Decision of the Court

¶5 We considered and rejected the retroactivity argument, and the argument that resentencing is required, in *State v. Vera*, 235 Ariz. 571, ¶¶ 21-22, 26 & nn.6-7, 334 P.3d 754, 759-61 & nn.6-7 (App. 2014), *cert. denied*, ___ U.S. ___, 136 S. Ct. 121 (2015). Jara has not persuaded us that *Vera* is meaningfully distinguishable.² In addition, the Supreme Court suggested in *Montgomery v. Louisiana*, ___ U.S. ___, ___, 136 S. Ct. 718, 736 (2016), that “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” No purpose would be served by remanding this case for further proceedings on these claims. *See* Ariz. R. Crim. P. 32.6(c) (summary disposition appropriate when “no purpose would be served by any further proceedings”). Nor do we believe Jara has been prevented from making a record of his objections to the application of H.B. 2593.

¶6 Jara has not sustained his burden of establishing the trial court abused its discretion. Consequently, although we grant his petition for review, we deny relief.

² Nor are we persuaded that the decision by another department of this court in *State v. Randles*, 235 Ariz. 547, 334 P.3d 730 (App. 2014), provides Jara with a basis for relief. In *Randles*, the court referred to § 13-716 as “appl[ying] retroactively.” *Id.* ¶ 10. To the extent that statement conflicts with our holding in *Vera*, we conclude that *Vera* properly characterizes § 13-716 as a remedial statute that affects future events and is not a retroactive statute. 235 Ariz. 571, ¶ 21, 334 P.3d at 759. And, in any event, whether the statute is classified as retroactive or remedial does not change whether Jara is entitled to be resentenced.