FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-3250

SHAWN MICHAEL MCDUFFEY, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Elijah Smiley, Judge.

December 6, 2019

WINOKUR, J.

After a jury convicted Shawn Michael McDuffey, Jr. of kidnapping and robbery, the trial court sentenced him to life in prison as a prison releasee reoffender (PRR). On appeal, McDuffey argues that his mandatory life sentence is illegal pursuant to *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 567 U.S. 460 (2012), because prior offenses that qualified him as a PRR occurred when he was a juvenile. We affirm McDuffey's sentence and hold that a trial court can consider a prior juvenile offense, where the defendant was adjudicated as an adult, in determining whether a defendant qualifies for a mandatory life sentence under the PRR statute.

I.

McDuffey was an adult when he committed the charged crimes of kidnapping and robbery. Prior to trial, the State filed notice of its intent to classify McDuffey as a PRR and to pursue the corresponding sentences. At sentencing, the State introduced certified copies of McDuffey's qualifying prior offenses: twelve felony convictions for a series of burglaries and thefts McDuffey committed when he was sixteen years old and for which he was sentenced as an adult. As a result, the trial court sentenced McDuffey pursuant to the PRR statute and imposed the statutorily-mandated sentences of life in prison for kidnapping and fifteen years in prison for robbery.

II.

The legality of a sentence is reviewed de novo.[1] *Washington v. State*, 199 So. 3d 1110, 1111 (Fla. 1st DCA 2016). Similarly, review of a constitutional question is de novo. *Henry v. State*, 134 So. 3d 938, 944-47 (Fla. 2014).

The Eighth Amendment to the United States Constitution, as well as Article I, section 17 of the Florida Constitution, proscribes cruel and unusual punishment. In *Graham*, the United States Supreme Court held that sentencing a juvenile to life imprisonment without the possibility of parole for a non-homicide offense constituted cruel and unusual punishment. 560 U.S. at 48. The court also found that the imposition of a mandatory life sentence without the possibility of parole for juvenile offenders violates the Eighth Amendment. *Miller*, 567 U.S. at 460.

The PRR statute provides for enhanced penalties for defendants who commit certain offenses within three years of release from a state correctional facility. § 775.082(9), Fla. Stat. If

[1] We reject the State's argument that McDuffey did not preserve this issue for appeal.

the defendant commits a felony punishable by life imprisonment, the trial court must impose a mandatory sentence of life in prison. § 775.082(9)(a)3.a., Fla. Stat. If the defendant commits a second-degree felony, the trial court must impose a sentence of fifteen years in prison. § 775.082(9)(a)3.c., Fla. Stat. Defendants sentenced pursuant to the PRR statute have no possibility of parole or early release and must serve 100 percent of their sentence. § 775.082(9)(b), Fla. Stat. A trial court has no discretion in the imposition of a PRR sentence. § 775.082(9)(a)3., Fla. Stat.

Both kidnapping and robbery qualify for PRR sentencing. § 775.082(9)(a), Fla. Stat. Kidnapping is a first-degree felony punishable by up to life in prison. § 787.01(2), Fla. Stat. Robbery is a second-degree felony. § 812.13(2)(c), Fla. Stat. Additionally, McDuffey was released from prison less than three years before he was convicted of kidnapping and robbery.

While McDuffey therefore qualifies for a mandatory life sentence under the PRR statute, he claims that imposition of a life sentence violates either *Graham* or *Miller* when the prior offense considered by the trial court occurred when the defendant was a juvenile. [2]

III.

[2] We reject the State's contention that *Graham v. State*, 974 So. 2d 440 (Fla. 2d DCA 2007) and *Tatum v. State*, 922 So. 2d 1004 (Fla. 1st DCA 2006), apply here. First, both cases concerned the use of a prior conviction where the defendant received youthful offender sanctions to qualify for PRR sentence enhancement. *Graham*, 974 So. 2d at 440-41; *Tatum*, 922 So. 2d at 1005-06. Second, neither case specified whether the defendant was a juvenile at the time of the prior convictions. *Id*. Lastly, both cases predate *Graham* and *Miller* and do not consider any constitutional implications of the sentences.

We note that numerous federal[3] and state[4] courts have rejected the claim that using prior juvenile offenses, to qualify

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[3] *See United States v. Hoffman*, 710 F.3d 1228, 1233 (11th Cir. 2013) (rejecting defendant's *Miller* claim "that the Eighth Amendment prohibits using juvenile felony drug convictions to enhance to life imprisonment an adult defendant's sentence for a crime he committed as an adult"); *United States v. Banks*, 679 F.3d 505, 507 (6th Cir. 2012) (rejecting defendant's claim "that using an offense committed as a juvenile to enhance [an adult sentence] to life without parole" violates the Eighth Amendment); *United States v. Scott*, 610 F.3d 1009, 1018 (8th Cir. 2010) (upholding defendant's mandatory life sentence and finding that *Graham* does not preclude "the use of juvenile court adjudications to enhance subsequent sentences for adult convictions").

[4] *See Wilson v. State*, 521 S.W.3d 123, 128 (Ark. 2017) (finding that defendant's mandatory life sentence did not violate *Miller* and "hold[ing] that a conviction imposed on a juvenile sentenced as an adult may be used as the basis for an increased penalty imposed under the habitual-offender statute"); *Vickers v. State*, 117 A.3d 516, 519-20 (Del. 2015) (finding that neither *Graham* nor *Miller* bar the use of a defendant's prior juvenile conviction to impose a mandatory life sentence under the habitual offender statute because it is a punishment for the current adult offense and "not an additional punishment for the earlier juvenile offense"); *Counts v. State*, 338 P.3d 902, 906 (Wyo. 2014) (finding that *Miller* does not bar adult defendant's life sentence as a habitual criminal offender because "[u]nder recidivist sentencing schemes, the enhanced punishment imposed for a current offense is not an additional penalty for earlier crimes but a stiffened penalty for the latest crime"); *Com. v. Lawson*, 90 A.3d 1, 7 (Pa. Super. Ct. 2014) (rejecting defendant's claim that "*Miller* should be applied to persons who have committed crimes as adults and sentenced to serve mandatory terms of life imprisonment without the possibility of parole based upon statutes that take into account prior juvenile conduct").

adult offenders for mandatory life sentences under recidivist sentencing statutes, violate *Graham* or *Miller*. We agree.[5]

McDuffey was twenty-one years old when he committed the kidnapping and robbery that resulted in his mandatory life sentence. Yet, McDuffey argues that both *Graham* and *Miller* apply because the brain science underpinning those cases demonstrate that the judgment centers of the brain are not fully developed until the age of twenty-five. This is precisely the argument that this Court rejected in *Romero v. State*, 105 So. 3d 550 (Fla. 1st DCA 2012), where we found that *Graham* and *Miller* do not apply to adult offenders.[6]

More importantly, McDuffey's position fundamentally misapprehends the function of recidivist sentencing statutes. By claiming that the use of a juvenile adjudication as a predicate offense under the PRR statute violates the Eighth Amendment because juveniles are less morally culpable, McDuffey presumes that he is being punished for conduct he committed as a juvenile. In fact, McDuffey's sentence is solely punishment for his acts of committing kidnapping and robbery. *See United States v. Rodriquez*, 553 U.S. 377, 386 (2008) (finding that "[w]hen a defendant is given a higher sentence under a recidivism statute

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[5] We note also that this Court has recently ruled that an offender who was imprisoned for a crime committed as a juvenile may be subject to a life sentence on a subsequent felony under the PRR statute. *Singleton v. State*, 278 So. 3d 895 (Fla. 1st DCA 2019). *See also Marshall v. State*, 277 So. 3d 1149 (Fla. 1st DCA 2019) (holding that a fifteen-year mandatory sentence under the PRR statute, where the defendant's qualifying prior crimes were committed when he was a juvenile, was not unconstitutional pursuant to *Graham* and *Miller*).

[6] In rejecting this argument, this Court found that "[w]ere we to apply this novel analysis and find for the appellant, we would be bound to find, for example, that a life sentence for a 49 year old offender with similar juvenile traits would also be unconstitutional under the theory of diminished culpability due to his youth." *Romero*, 105 So. 3d at 554.

. . . *100% of the punishment is for the offense of conviction*") (emphasis added).

Lastly, *Graham* and *Miller* are rooted in the understanding that "children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . ." *Miller*, 567 U.S. at 471. As a result, mandatory sentencing schemes do not allow a trial court to differentiate "between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Graham*, 560 U.S. at 73 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)).

In this case, McDuffey's life sentence was a result of crimes he committed when he was an adult. The fact that his juvenile priors qualified McDuffey for a mandatory life sentence is irrelevant. *Graham* and *Miller* did not prohibit "consideration of prior youthful offenses when sentencing criminals who continue their illegal activity into adulthood." *Hoffman*, 710 F.3d at 1233 (quoting *United States v. Wilks*, 464 F.3d 1240, 1243 (11th Cir. 2006)). Therefore, the use of juvenile offenses as qualifying priors under the PRR statute does not violate *Graham* or *Miller*.[7]

IV.

Less than three years after being released from prison, McDuffey reoffended and was sentenced to life in prison under the PRR statute. McDuffey's criminal history demonstrates persistent criminality rather than the incorrigibility inherent in youth. We, therefore, affirm McDuffey's judgment and sentence and hold that the consideration of a juvenile offense, which resulted in an adult conviction, to qualify a defendant for a mandatory life sentence

[7] McDuffey argues only that his sentence violates the prohibition against cruel and unusual punishment, under the reasoning of *Graham* and *Miller*. We are not called upon in this case to address the wisdom or propriety of mandatory minimum sentences, either in general or how McDuffey was sentenced here, so we see no reason to express a view on it.

under the PRR statute does not constitute cruel and unusual punishment.

AFFIRMED.

M.K. THOMAS, J., concurs; MAKAR, J., concurs in result with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., concurring in result.

Despite qualms about doing so, the seasoned trial judge (who's handled thousands of cases in his twenty-plus years on the bench) sentenced twenty-two-year-old Shawn Michael McDuffey, Jr., to life without parole in prison as required by Florida's Prison Releasee Reoffender statute (PRR), which compels this sentence if a former felon, even if a minor at the time, commits another specified felony within three years of release as an adult. § 775.082(9), Fla. Stat. (2019); *see, e.g.*, *Marshall v. State*, 277 So. 3d 1149, 1151 (Fla. 1st DCA 2019) (holding that antecedent offense, if committed as a juvenile, does not matter because the "purpose of the PRR statute . . . is to punish certain reoffenders to the fullest extent and thereby deter recidivism."); *Singleton v. State*, 278 So. 3d 895, 897 (Fla. 1st DCA 2019) ("prohibition against life without parole sentences for juvenile offenders does not extend to adult reoffenders"). Affirmance with citation to *Marshall* or *Singleton* resolves the legal issue in this case.

As the trial judge noted, McDuffey had a non-violent felony record as a juvenile (a one-day spree of thefts including his mother's car in 2012 when he was sixteen). The felony incident that triggered the PRR occurred in 2017 when McDuffey, then twenty-one, and three others abducted and robbed the victim of drugs the victim was offering for sale; no firearm was involved. The trial judge said, "If I had discretion on this, I would not sentence you to life in prison on these offenses given your history," but

followed the law as required despite his misgivings, a not uncommon pattern where mandatory minimums and mandatory life sentences are statutorily compelled. *See Wright v. State*, 225 So. 3d 914, 915 (Fla. 1st DCA 2017) ("The trial judge stated she would like not to sentence appellant to the mandatory minimum [of 20 years] if she felt there was another option, stating she '[didn't] disagree that the defendant shouldn't be spending that kind of time in the Florida State Prison, but I, in my charge, I am bound by the law to do what the law says.'") (Wolf, J., concurring).

The concerns Judge Wolf expressed in *Wright*—a case involving the discharge of a firearm and a 20-year mandatory minimum—apply to McDuffey's situation, perhaps more so due to the imposition of Florida's maximum prison sentence of life without parole based, in part, on a non-violent felony juvenile conviction and no firearm charges. *Id.* ("I concur that there is no legal reason to overturn appellant's conviction and 20–year mandatory minimum sentence for aggravated assault with a firearm. This case, however, is a classic example of how inflexible mandatory minimum sentences may result in injustices within the legal system that should not be tolerated."). McDuffey's criminal history is short-lived, consisting of the one-day theft spree as a sixteen-year-old and the joint kidnapping/robbery of a drug dealer at age twenty-one. His offenses require punishment and appropriate incarceration, but a mandatory sentence of life without parole—meaning he will serve approximately 56 years[*] in a Florida prison until his death therein—raises more than one judicial eyebrow.

Andy Thomas, Public Defender, and Kathleen Stover, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Benjamin L. Hoffman, Assistant Attorney General, Tallahassee, for Appellee.

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[*] *See Actuarial Life Table*, SOCIAL SECURITY ADMINISTRATION, https://www.ssa.gov/oact/STATS/table4c6.html (last visited October 28, 2019).