IN THE COURT OF APPEALS OF IOWA

No. 3-1081 / 11-2028
Filed December 18, 2013

CHRISTOPHER LANGLEY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, John D. Telleen, Judge.

Christopher Langley appeals from the denial of his application for postconviction relief. **AFFIRMED IN PART, REVERSED IN PART, SENTENCE VACATED, AND REMANDED WITH DIRECTIONS.**

Lauren M. Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Michael J. Walton, County Attorney, and Joseph A. Grubisich Jr., Assistant County Attorney, for appellee State.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

Christopher Langley appeals from the denial of his application for postconviction relief. He challenges the representation of trial counsel at the reverse waiver hearing and the constitutionality of his sentences. We conclude criminal trial counsel was not ineffective in failing to argue the statutory requirements of reverse waiver. However, Langley was a juvenile at the time he was convicted; consequently, his life-without-parole and additional, consecutive sentences must be vacated. We remand for individualized resentencing.

I. Background Facts and Proceedings.

The underlying facts leading up to Langley's convictions are set out in the opinion addressing his direct criminal appeal:

> After more than ten years of never missing a day of work, Mark Willis failed to report for work on the evening of February 20, 2004. Willis was last seen around 4:30 p.m. on that date when he stopped in at Jack's Brake & Alignment to visit with his friends, Terry and Cheryl Weipert. He left Jack's Brake & Alignment sometime after 5 p.m. in his maroon Jeep Grand Cherokee. He was on his way home to take a nap and eat before beginning his 10 p.m. work shift at FBG, a janitorial service in Davenport. Willis did not show up for his work shift that evening. Cheryl Weipert called the police to report him missing on February 23, 2004.
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> Days later, Willis's body was discovered lying face down in a creek at the bottom of a steep incline near a gravel road in a rural area of Scott County. He had been beaten and stabbed repeatedly. The medical examiner opined that Willis died from drowning. His Jeep was found abandoned on Interstate 74 near Bloomington, Illinois, with stolen license plates. The interior of the Jeep, which Willis had kept in pristine condition, was littered with food, clothing, cigarettes, garbage, and a citation issued to the defendant, Christopher Allen Langley, for possession of drug paraphernalia.
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> The Weiperts testified that Willis and Langley first became acquainted in the late nineties through the Weiperts and their auto shop business. Langley would often stop by the Weiperts' business before or after school because of his interest in cars. Willis was also a frequent visitor at the Weiperts' shop. He befriended

Langley and attempted to be "sort of a big brother" to him. He took Langley to the movies, gave him money on occasion, and taught him how to drive.

On the evening of February 20, 2004, Langley's friends, Kyle Bahnsen, Kyle Long, and Lance Brady, met at Brady's house to plan their activities for the night. Bahnsen, Long, and Brady testified that Langley arrived at Brady's house sometime between six and seven o'clock. Langley and Brady left for a short period of time to "go get some weed." The teens smoked marijuana and decided to go play pool at a local club, Miller Time. Bahnsen, Long, Brady, and Langley left the house and got into a "dark colored" Jeep parked outside. Inside the Jeep were two of Langley's other friends, Michael Cargill and Trenton Howard. When Bahnsen, Long, or Brady asked where the Jeep had come from, they were told by the other three they had "killed someone for it." Right after they said that, they stated, "no, don't worry about it, we got it from a relative." Brady testified that at one point, Langley referred to himself, Cargill, and Howard as "thieves and murderers."

After leaving Brady's house, the group did not immediately go to Miller Time as they had planned. Instead, they drove to a secluded area on a gravel road. Langley and Cargill got out of the Jeep and said they were going to check on a body. The two went down a steep incline and "disappeared." When they returned, they told the others in the Jeep the man was dead and "still lying face down in a creek." The group then headed to Miller Time to play pool. On the way there, they stopped at the mall where Langley used an ATM machine and bought a hat. Langley told Long he was using the debit card of the man they killed.

The six teens stayed at Miller Time until 11 p.m. or midnight. Before leaving the parking lot of Miller Time, they drove to the rear of the building and stopped. Howard got out of the Jeep and retrieved a white bag from the back of the vehicle. He threw the bag into the wooded area behind Miller Time. Langley, Howard, or Cargill told the others the bag contained bloodstained clothing from the man they killed. Davenport police later recovered a white bag containing bloody clothing, a boot and a sweatshirt from the wooded area behind Miller Time. Willis's DNA was found on the bloody clothes in the bag. A hair discovered in the bag was found to be genetically consistent with Langley.

After their night at Miller Time, Langley, Cargill, and Howard embarked on a trip to Florida. Testimony presented at trial revealed that Willis's debit card was used in Iowa, Illinois, Florida, Mississippi, Tennessee, Georgia, and Kentucky. Langley told an acquaintance he traveled to Florida in Cargill's grandmother's Jeep and they had an accident on their return trip. Evidence offered at trial showed Langley hired a limousine driver in Bloomington,

> Illinois, where Willis's Jeep was found abandoned on the side of the road, to drive them to the Quad Cities area.

State v. Langley, No. 04-1606, 2005 WL 1965866, at *1-2 (Iowa Ct. App. Aug. 17, 2005).

Christopher Langley was sixteen years of age in 2004 when he was convicted of first degree murder, in violation of Iowa Code sections 707.1, 707.2, and 902.1 (2003); first-degree robbery, in violation of sections 711.1 and 711.2; first-degree theft, in violation of section 714.2(1) and (2); willful injury causing serious injury, in violation of section 708.4(1); conspiracy to commit a felony, in violation of section 706.1(1); and first-degree kidnapping, in violation of sections 710.1 and .2. The trial court merged the willful injury conviction with the murder conviction, and vacated the conspiracy conviction. Langley was sentenced to life without parole for murder, twenty-five years in prison for robbery, ten years in prison for theft, and life without parole for kidnapping—all to be served consecutively.

Langley appealed his convictions. This court affirmed the murder, robbery, and theft convictions, but reversed the kidnapping conviction. *See id.* at *4, *6.

Langley then filed this application for postconviction relief raising a number of issues, only two of which are before us. On appeal from the denial of his application, Langley contends his criminal trial counsel failed to effectively argue the statutory requirements for a reverse waiver.[1] He also contends his life-without-parole sentence is unconstitutional.

[1] The reverse waiver provision, Iowa Code section 232.8(1)(c) states:

II. Scope and Standard of Review.

"A defendant may challenge his sentence as inherently illegal because it violates the Iowa or Federal Constitutions at any time." *State v*. *Null*, 836 N.W.2d 41, 48 (Iowa 2013). An ineffective-assistance-of-counsel claim is constitutional in nature. *See id.* We review constitutional challenges de novo. *Id.*

III. Discussion.

To establish an ineffective-assistance-of-counsel claim, a postconviction applicant must prove counsel breached an essential duty and prejudice resulted. *State v*. *Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). Langley must establish both prongs by a preponderance of the evidence. *See State v*. *Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

A. *Reverse waiver*. Under the reverse waiver statute, an individual age sixteen or older charged with committing a forcible felony is subject to the jurisdiction of the adult courts rather than the juvenile system. Iowa Code § 232.8(1)(c). The district court may, however, transfer jurisdiction over the child and the charges to the juvenile court upon a finding of good cause. *Id.* The juvenile bears the burden to show good cause for a reverse waiver. *State v*. *Terry*, 569 N.W.2d 364, 366 (Iowa 1997). A reverse waiver is granted only if the district court concludes that prosecuting the offense in "the criminal court would

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> Violations by a child, aged sixteen or older, . . . violations which constitute a forcible felony are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause.

be inappropriate under the criteria set forth in section 232.45(6)(c) and (8)."[2] Iowa Code § 803.6(3).

The postconviction court concluded, and we agree, that Langley failed to prove trial counsel's further urging of the statutory reverse waiver factors would have changed the result of the reverse waiver hearing. A juvenile court officer testified that based on Langley's age, his prior contact with juvenile court services involving acts of violence, the approximately two or three years remaining to provide services in the juvenile system, the nature of the charges, and "the lack of programs, facilities, and personnel that we have to deal with rehabilitation," the juvenile court system was not equipped to provide adequate services. The waiver court ruled, based on the juvenile court officer's report and testimony, the nature of the charges, and safety of the community, jurisdiction would remain in district court. Criminal trial counsel was not ineffective.

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[2] Iowa Code section 232.45(6)(c) and (8) provide:

> (6)(c) The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.
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> . . . .
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> (8) In making the determination required by subsection 6, paragraph "c", the factors which the court shall consider include but are not limited to the following:
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> (a) The nature of the alleged delinquent act and the circumstances under which it was committed.
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> (b) The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.
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> (c) The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

B. *Life-without-parole for juvenile*. Langley claimed his sentence for life without parole was a cruel and unusual punishment in violation of the Eighth Amendment, urging an expansion of the reasoning in *Graham v*. *Florida*, 560 U.S. 48 (2010). The postconviction court denied relief on December 2, 2011.

After the postconviction court's ruling, the United States Supreme Court decided *Miller v*. *Alabama*, 132 S. Ct. 2455, 2460 (2012) ("We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'"). And our supreme court decided *State v*. *Ragland*, 812 N.W.2d 654, 659 (Iowa 2012), holding the district court should have allowed the postconviction applicant—a juvenile when he committed the murder resulting in a life-without-parole sentence—to proceed with the cruel and unusual punishment challenges to this sentence, based on the Iowa and United States Constitutions.

On July 16, 2012, Governor Terry Branstad commuted the life-without-parole sentences of all Iowa juvenile offenders who had been convicted of first-degree murder to sentences of life with no possibility of parole for sixty years.

On August 16, 2013, in *State v*. *Ragland*, 836 N.W.2d 107, 117 (Iowa 2013) (*Ragland II*), our supreme court held *Miller* applies retroactively.

The supreme court then considered "whether Ragland's sentence, as commuted by the Governor, rendered *Miller* inapplicable to Ragland." *Ragland II*, 836 N.W.2d at 117. The court stated:

> A commutation, the action taken by the Governor in this case, is "[t]he executive's substitution in a particular case of a less severe punishment for a more severe one that has already been judicially imposed on the defendant." *Black's Law Dictionary* 318 (9th ed. 2009); *see also People v*. *Mata*, 842 N.E.2d 686, 691 (Ill.

> 2005) ("[I]t is axiomatic from the plain language of this constitutional provision that the Governor cannot use the commutation power to *increase* a defendant's punishment." (Emphasis added.)); *Lee v. Murphy*, 63 Va. (22 Gratt.) 789, 798 (1872) ("A commutation is the substitution of a less for a greater punishment. . . ."). The power to commute sentences includes the power to impose "conditions which do not in themselves offend the Constitution, but which are not specifically provided for by statute." *Schick v. Reed*, 419 U.S. 256, 264 (1974). Yet, the power to commute a sentence is not without limitation and does not foreclose legal challenges. *See Arthur v. Craig*, 48 Iowa 264, 268 (1878); *see also* Iowa Const. art. IV, § 16 (stating the power to commute is subject to regulations provided by law).
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> Nevertheless, we do not believe it is necessary to traipse into this constitutional thicket. If possible, we should avoid constitutional confrontation between two branches of government. *See*, *e.g.*, *Schwarzkopf v. Sac Cnty. Bd. of Supervisors*, 341 N.W.2d 1, 6 (Iowa 1983) ("We must, of course, guard against overextension of legislative powers; we must also, however, avoid our own infringement upon the constitutional powers of the legislature in our efforts to protect our own.").
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> Even if we accept that the Governor had the authority to exercise the power to commute under the circumstances of this case, the question remains whether the commuted sentence amounts to mandatory life without parole. If so, *Miller* applied, and the district court was required to resentence Ragland after providing the individualized sentencing hearing.

Ragland II, 836 N.W.2d at 118. The court concluded: "[T]he rationale of *Miller*, as well as *Graham*, reveals that the unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole."[3] *Id.* at 121.

The same day it issued *Ragland II,* the Iowa Supreme Court also decided *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013), holding "*Miller*'s principles are fully

[3] We note, too, the legislature amended section 902.1 in 2011 to require that persons under the age of eighteen at the time of the offense and who are convicted of a class "A" felony "shall be eligible for parole after serving a minimum term of confinement of twenty-five years." 2011 Iowa Acts ch. 131, § 147 (now codified at Iowa Code § 902.1(2)(a) (2013)).

applicable to a lengthy term-of-years sentence as was imposed in this case [52.5 years] because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under *Miller*." The court opined a 52.5-year minimum prison term for a juvenile based on the aggregation of mandatory minimum sentences for second-degree murder and first-degree robbery "triggers the protections to be afforded under *Miller*—namely, an individualized sentencing hearing to determine the issue of parole eligibility." *Null*, 836 N.W.2d at 71. The *Null* court also enunciated the factors to be considered in such an individualized sentencing hearing. *Id.* at 74-75.

Consequently, we reverse the denial of postconviction relief in part. We vacate Langley's sentences, including the two consecutive sentences, and remand for an individualized sentencing hearing with consideration of the factors identified in *Miller*, *Ragland II*, and *Null*.[4] *See Ragland II*, 836 N.W.2d at 122.

AFFIRMED IN PART, REVERSED IN PART, SENTENCE VACATED, AND REMANDED WITH DIRECTIONS.

[4] The State concedes Langley's life-without-parole sentence cannot stand. However, the State asserts the sentencing hearing would impact only Langley's first-degree murder conviction and "would not disturb the consecutive sentences imposed on Langley's additional convictions." The State's brief, however, was filed before the supreme court issued *Null.*