

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

OTTO LARON HUTCHINSON,
Petitioner.

No. 2 CA-CR 2016-0150-PR
Filed August 16, 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NOT FOR PUBLICATION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. CR2008006370001DT
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

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

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

M I L L E R, Judge:

¶1 Otto Hutchinson seeks review of the trial court’s order denying him post-conviction relief, pursuant to Rule 32, Ariz. R. Crim. P. We grant review and, for the following reasons, deny relief.

¶2 In 2008, Hutchinson pled guilty to first-degree murder, committed when he was sixteen years old. Pursuant to the plea agreement, the trial court sentenced him to a life term without the possibility of release for twenty-five years. In 2014, he filed a notice of post-conviction relief in which he alleged the Supreme Court’s decision in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), was a significant change in the law that entitled him to relief from his sentence.¹ He also filed a brief arguing that *Miller* was retroactively applicable to him and that it rendered his sentence improper because Arizona had abolished its parole system and commutation did not provide the “meaningful opportunity to obtain release” that *Miller* required. ___ U.S. at ___, 132 S. Ct. at 2469. The trial court set the matter for oral argument.

¹ In *Miller*, the Supreme Court held that Alabama and Arkansas statutes violated the Eighth Amendment by mandating sentences of life imprisonment without parole for juvenile homicide offenders. ___ U.S. at ___, 132 S. Ct. at 2475.

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¶3 Before the trial court held oral argument, our legislature passed H.B. 2593, which enacted A.R.S. § 13-716 and amended A.R.S. § 41-1604.09(I), establishing parole eligibility for juveniles sentenced to life imprisonment. *See* 2014 Ariz. Sess. Laws, ch. 156, §§ 2, 3. After oral argument, the court denied relief “with the condition that upon . . . § 13-716²] and § 41-1604.09(I) becoming effective under Arizona law,[] the Arizona Department of Corrections shall set a specific date for [Hutchinson’s] parole eligibility.” In support of its ruling, the court stated its conclusions that *Miller* applied retroactively;³ that “HB 2593,” which enacted § 13-716 and amended § 41-1604.09(I), “resolves the residual issues” of whether Hutchinson’s “sentence violated the letter and spirit of *Miller*”; and that Hutchinson “is not yet eligible for release” from the sentence imposed. This petition for review followed.

²Effective July 24, 2014, § 13-716 provides as follows:

Notwithstanding any other law, a person who is sentenced to life imprisonment with the possibility of release after serving a minimum number of calendar years for an offense that was committed before the person attained eighteen years of age is eligible for parole on completion of service of the minimum sentence, regardless of whether the offense was committed on or after January 1, 1994. If granted parole, the person shall remain on parole for the remainder of the person’s life except that the person’s parole may be revoked pursuant to § 31-415.

³The Supreme Court has since clarified that, as the trial court concluded, *Miller* “announced a substantive rule of constitutional law” to be applied retroactively to all cases. *Montgomery v. Louisiana*, ___ U.S. ___, ___, 136 S. Ct. 718, 734 (2016); *see also State v. Valencia*, 239 Ariz. 255, ¶ 17, 370 P.3d 124, 128 (App. 2016) (concluding *Montgomery* “constitutes a significant change in Arizona law that is retroactively applicable”).

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¶4 On review, Hutchinson contends the trial court abused its discretion in denying his “request for a new sentencing, at which time [he] would have been able to raise substantive arguments regarding HB 2593.” According to Hutchinson, had the court granted his request, he would have argued the statute was not intended to apply retroactively, that its retroactive application would violate separation of powers and ex post facto principles, and that *Miller* requires a new sentencing proceeding.⁴ He asks that we “vacate the trial court’s judgment, as it relates to the automatic resentencing by HB 2593, and remand this matter for a full resentencing.”

¶5 We review the denial of post-conviction relief for an abuse of discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Hutchinson has not identified any such abuse here. As the state suggests in its response, his arguments, including the argument that resentencing is required, were considered and rejected in *State v. Vera*, 235 Ariz. 571, ¶¶ 21-22, 26 & nn. 6-7, 334 P.3d 754, 759-61 & nn. 6-7 (App. 2014),⁵ cert. denied, ___ U.S. ___, 136 S. Ct. 121 (2015). See also *Montgomery v. Louisiana*, ___ U.S. ___, ___, 136 S. Ct. 718, 736 (2016) (suggesting “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them”). The superior court is bound to follow our decision in *Vera*, see *State v. Patterson*, 222 Ariz.

⁴The state does not dispute that Hutchinson raised his request to address such issues during oral argument in the trial court.

⁵ 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 Hutchinson with a basis for relief. In *Randles*, the court referred to § 13-716 as “appl[ying] retroactively.” 235 Ariz. 547, ¶ 10, 334 P.3d at 733. 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 Hutchinson is entitled to be resentenced.

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574, ¶ 20, 218 P.3d 1031, 1037 (App. 2009), and Hutchinson has failed to persuade us any purpose would be served by remanding the case for a hearing, *see* Ariz. R. Crim. P. 32.6(c) (summary disposition appropriate when “no purpose would be served by any further proceedings”).

¶6 Although we grant review, we deny relief.