IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROGELIO MARTINEZ,
Petitioner.

No. 2 CA-CR 2017-0290-PR
Filed November 7, 2017

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NOT FOR PUBLICATION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. CR1997004420
The Honorable Bradley Astrowsky, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant, Deputy County Attorney, Phoenix
Counsel for Respondent

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

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Petitioner Rogelio Martinez seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Martinez has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Martinez was convicted of first-degree murder, armed robbery, and theft in 1997. On the murder charge, the trial court sentenced him to life imprisonment without the possibility of release on any basis for twenty-five years, and imposed 10.5- and 3.5-year prison terms on the other counts, ordering that they be served concurrently with one another, but consecutively to the life term on the murder charge. At the time of the offense, Martinez was fifteen, but was tried and convicted as an adult.

¶3 In March 2005, Martinez requested preparation of the record for a proceeding for post-conviction relief and filed a notice of post-conviction relief. The trial court, apparently unaware of the notice, denied the motion for preparation of the record. Later, in May 2014, after the United States Supreme Court issued its decision in *Miller v. Alabama*, 567 U.S. 460 (2012), Martinez initiated another proceeding for post-conviction relief, arguing his sentences did not meet the requirements set forth in *Miller*. He maintained clemency was not an adequate opportunity for release and "implementation of A.R.S. 13-716 d[id] not save [his] sentence." The trial court summarily denied relief, but set oral argument on Martinez's subsequent motion

for reconsideration based on the Supreme Court's later decision in *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016). After the argument, the court denied the motion for reconsideration and affirmed its earlier dismissal.

¶4 On review, Martinez repeats his claim that he was sentenced in violation of the principles set forth in *Miller*. *Miller* is a significant change in the law and is retroactive. *Montgomery*, ___ U.S. at ___, 136 S. Ct. at 736; *State v. Valencia,* 241 Ariz. 206, ¶¶ 14-15, 386 P.3d 392, 395 (2016). Therefore, his claim may be considered in this untimely and successive proceeding. *See* Ariz. R. Crim. P. 32.1(g), 32.2(b), 32.4(a). However, "[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery*, ___ U.S. at ___, 136 S. Ct. at 736.

¶5 Further, Arizona law now provides:

> 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.

A.R.S. § 13-716. We have previously concluded that this remedial statute, which allows parole in addition to clemency for defendants like Martinez, "provides an adequate remedy for [a] *Miller* claim" like

that presented in this case.[1] *State v. Vera*, 235 Ariz. 571, ¶ 18, 334 P.3d 754, 759 (App. 2014).

¶6 Martinez also contends, however, that in light of *Miller*, "aggregate sentences" should be "considered when determining if a child has been sentenced to an unconstitutionally cruel and unusual term in prison." But *Miller* did not address consecutive sentences. And this court has previously held that *Graham v. Florida*, 560 U.S. 48 (2010), on which the Supreme Court relied in deciding *Miller*, does not prohibit the imposition of cumulative sentences that result in an aggregate term of imprisonment that exceeds a juvenile's life expectancy. *State v. Kasic*, 228 Ariz. 228, ¶¶ 20-24, 265 P.3d 410, 414-15 (App. 2011). "[I]f the sentence for a single offense is not disproportionately long, it does not become so merely because it is consecutive to another sentence for a separate offense or because the consecutive sentences are lengthy in aggregate." *Id.* ¶ 24, *quoting State v. Berger*, 212 Ariz. 473, ¶ 28, 134 P.3d 378, 384 (2006).

¶7 Finally, Martinez contends broadly that "[m]andatory minimums are unconstitutional for juvenile offenders." Without addressing how such a rule is specifically relevant to his own case, and relying on the Iowa Supreme Court's holding in *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014), that "all mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional," he asks us to likewise "deem them unconstitutional for juvenile offenders." We are not, however, bound by decisions of other states. *State v. Solis*, 236 Ariz. 242, ¶ 14, 338 P.3d 982, 987 (App. 2014). And even so, the Iowa Supreme Court's ruling was based on its interpretation of the Iowa constitution. *Lyle*, 854 N.W.2d at 400.

¶8 More importantly, however, we disagree with the Iowa court's characterization of the holding in *Miller*. The court stated that "the heart of the constitutional infirmity with the punishment imposed in *Miller* was its mandatory imposition, not the length of the

[1]Martinez argues a twenty-five year sentence does "not provide a meaningful opportunity for release," but the same length of sentence was at issue in *Vera*. 235 Ariz. 571, ¶ 2, 334 P.3d at 755.

sentence." *Lyle*, 854 N.W.2d at 401. But the requirement for "individualized sentencing" was based on the *Miller* court's determination that natural-life prison terms for juveniles are analogous to capital punishment for adults. *See Miller*, ___ U.S. at ___, 132 S. Ct. at 2466–67. We do not read *Miller* to interpret the Eighth Amendment as broadly as did the Iowa court.[2] For all these reasons, we cannot say the trial court abused its discretion in denying relief. *See State v. Huez*, 240 Ariz. 406, ¶ 19, 380 P.3d 103, 109 (App. 2016) (appellate court will affirm trial court's ruling if legally correct for any reason).

¶9 Although we grant the petition for review, relief is denied.

[2]Martinez essentially asks us to reconsider our decision in *State v. Imel*, No. 2 CA-CR 2015-0112 (Ariz. App. Nov. 20, 2015) (mem. decision). We decline to do so.