

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JIMMY LASHAWN MCGILL,
Petitioner.

No. 2 CA-CR 2020-0076-PR
Filed August 2, 2021

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Pinal County
No. S1100CR16474
The Honorable Lawrence M. Wharton, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Bureau Chief – Criminal Appeals, Florence
Counsel for Respondent

Arizona Capital Representation Project, Tucson
By Amy Armstrong, Director/Staff Counsel
and Sam Kooistra, Staff Counsel
Counsel for Petitioner

STATE v. MCGILL
Decision of the Court

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Chief Judge Vásquez and Vice Chief Judge Staring concurred.

BREARCLIFFE, Judge:

¶1 Jimmy McGill seeks review of the trial court’s orders denying his request to seal his motion seeking an appointed expert in his post-conviction proceeding, denying that motion, and summarily dismissing his petition for post-conviction relief. We will not disturb those orders unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015); *State v. Amaya-Ruiz*, 166 Ariz. 152, 182 (1990); *In re Marriage of Flynn*, 27 Ariz. App. 653, 655 (1976). McGill has not shown such abuse here.

¶2 McGill was convicted after a jury trial of first-degree murder, sexual assault, and burglary. He was sixteen at the time of his 1990 offenses. For first-degree murder, the trial court sentenced him to life without eligibility for parole or other release for twenty-five years, to be followed by consecutive prison terms for his other offenses totaling twenty-four years. We affirmed his convictions and sentences on appeal, *State v. McGill*, No. 2 CA-CR 92-0544 (Ariz. App. Aug. 30, 1994) (mem. decision), and he has unsuccessfully sought post-conviction relief twice.

¶3 McGill filed a third notice of post-conviction relief in 2017, asserting *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and *State v. Valencia*, 241 Ariz. 206 (2016), constituted a significant change in the law relevant to his sentences. The trial court dismissed the notice. On review, however, we granted relief, determining the court was required to allow him to file a petition. *State v. McGill*, No. 2 CA-CR 2017-0095-PR, ¶¶ 6, 10 (Ariz. App. July 19, 2017) (mem. decision).

¶4 Before filing a petition, McGill requested, ex parte and under seal, that the trial court appoint a mitigation expert for his sentencing claim. The court declined to seal the request and ordered the state to respond. After the state filed its response, the court denied McGill’s request. McGill then filed a petition for post-conviction relief, asserting that, “in the aggregate,” his sentences were “indistinguishable from a sentence of

STATE v. MCGILL
Decision of the Court

natural life,” and therefore were unconstitutional under *Montgomery* and *Miller*. He additionally argued that this court’s decision in *State v. Helm*, in which we determined the rule announced in *Miller* did not apply to consecutive sentences, was wrongly decided. 245 Ariz. 560, ¶¶ 8, 10 (App. 2018).

¶5 Citing *Helm*, the trial court summarily dismissed the petition and denied McGill’s motion for rehearing. This petition for review followed. While McGill’s petition was pending, we ordered the parties to submit supplemental briefing addressing the effect our supreme court’s recent decision in *State v. Soto-Fong*, 250 Ariz. 1 (2020), had on McGill’s claims. That briefing having been submitted, we now address that question.

¶6 *Miller* and *Montgomery* prohibit sentences of life without parole for all juveniles save those “whose crime reflects irreparable corruption” rather than “transient immaturity.” *Valencia*, 241 Ariz. 206, ¶ 14 (quoting *Montgomery*, 577 U.S. at 208). Consistent with *Helm*, our supreme court in *Soto-Fong* determined those cases are inapplicable to defendants, like McGill, who received a parole-eligible life sentence, irrespective of whether that defendant had been sentenced to consecutive prison terms for other offenses. 250 Ariz. 1, ¶¶ 2, 4, 28, 31, 47, 49, 50. Although McGill argues *Soto-Fong* was incorrectly decided, we have no authority to reach that question. See *State v. Zamora*, 220 Ariz. 63, n.7 (App. 2009) (“On questions of federal constitutional law, we are bound by decisions of our supreme court absent a subsequent decision of the United States Supreme Court on the same subject.”).

¶7 McGill also argues on review that the trial court erred in denying his motion to seal, ordering the state to respond, and ultimately denying his request for an expert. Because the sole post-conviction claim McGill has identified is not cognizable, any error is moot, and we do not address this argument. See *State v. Henderson*, 210 Ariz. 561, n.2 (2005) (court generally will not address moot issues on review).

¶8 We grant review but deny relief.