

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JOEL DESHAWN HENDERSON,  
*Petitioner.*

No. 2 CA-CR 2023-0175-PR  
Filed September 5, 2023

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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NOT FOR PUBLICATION  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).*

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Petition for Review from the Superior Court in Maricopa County  
No. CR1993005500  
The Honorable Joseph Kiefer, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Rachel H. Mitchell, Maricopa County Attorney  
By Douglas Gerlach, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Judge Sklar and Judge O’Neil concurred.

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S T A R I N G, Vice Chief Judge:

¶1 Joel Henderson seeks review of the trial court’s ruling summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Henderson has failed to establish such abuse here.

¶2 After a 1995 jury trial, Henderson—who was a juvenile at the time he committed the offenses—was convicted of two counts of first-degree murder, three counts of armed robbery, two counts of first-degree burglary, eight counts of aggravated assault, eight counts of kidnapping, and one count each of theft and attempted armed robbery. The trial court sentenced him to consecutive life sentences without the possibility of parole for twenty-five years for the first-degree murder convictions. For the remaining convictions, the court imposed concurrent and lesser terms. This court affirmed Henderson’s convictions and sentences on appeal. *State v. Henderson*, No. 1 CA-CR 96-0681 (Ariz. App. July 31, 1997) (mem. decision).

¶3 Thereafter, the United States Supreme Court refined the law concerning sentences for juvenile offenders. Starting with *Roper v. Simmons*, 543 U.S. 551, 568 (2005), the Supreme Court “rejected the imposition of the death penalty” on those under eighteen years of age. In *Graham v. Florida*, 560 U.S. 48, 82 (2010), the Court concluded that the federal constitution also “prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” Next, in *Miller v. Alabama*, 567 U.S. 460, 479 (2012), the Court expanded *Graham* to hold that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” In *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016), the Court determined that *Miller* was retroactive.

¶4 Based on this case law, Henderson filed a notice of post-conviction relief in January 2017. The trial court consolidated his case

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with several others in which the defendants were all claiming they had received the “functional equivalent” of a life sentence,” which was unconstitutional under the Eighth Amendment’s prohibition against cruel and unusual punishment. The cases were subsequently deconsolidated, and the court appointed new counsel for Henderson. The court then granted a stay in Henderson’s case pending related decisions by the United States Supreme Court and the Arizona Supreme Court. In October 2020, our supreme court issued its opinion in *State v. Soto-Fong*, 250 Ariz. 1, ¶¶ 40, 44, 46 (2020), concluding “de facto juvenile life sentences” are not prohibited under the Eighth Amendment, article 2, § 15 of the Arizona Constitution, or Supreme Court precedent. The trial court subsequently lifted the stay in Henderson’s case.

¶5 In August 2022, Henderson filed a petition for post-conviction relief. He argued *Miller* and *Montgomery* constituted a significant change in the law pursuant to Rule 32.1(g). He reasoned that his “term of years, consecutive sentences constitute the functional equivalent of [a] life sentence[]” in violation of the Eighth Amendment. Henderson recognized that the Arizona Supreme Court had determined such sentences did not violate the Eighth Amendment in *Soto-Fong* but nonetheless argued that “this view is not universal.” He relied on several out-of-state cases to assert that “*Graham’s* reach extends to lengthy aggregate term-of-years sentence[s].”

¶6 The state filed a motion to dismiss, arguing Henderson’s claim “fails as a matter of law” based on our supreme court’s holding in *Soto-Fong*. In reply, Henderson argued his claim “should be heard on the merits” because *Soto-Fong* “did not address the fundamental precept underlying juveniles sentenced as adults—juveniles are different.”

¶7 In December 2022, the trial court summarily dismissed Henderson’s petition. It found Henderson had “failed to demonstrate that his sentence would necessarily run past his current life expectancy or is the functional equivalent of a life sentence without the possibility of parole” because he is “eligible for parole at about age 68.” Even if the sentences were shown to exceed his life expectancy, however, the court concluded *Soto-Fong* was applicable and held “such circumstances would not violate” the federal constitution, the state constitution, or “any other applicable statute or authority.” The court thus concluded there was “no valid basis for relief under Rule 32.” This petition for review followed.

¶8 On review, Henderson reasserts his claim that “consecutive sentences of juvenile defendants that cumulatively exceed the juvenile’s life

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expectancy violate the Eighth Amendment’s prohibition against cruel and unusual punishments,” as set forth in *Graham, Miller, and Montgomery*. He argues the “Arizona Supreme Court’s decision in *Soto-Fong* focused on the offense, as opposed to the offender,” and asks this court to “reconsider *Soto-Fong* in light of the cases that have found that *Miller/Montgomery* applies to cases that amount to the functional equivalent of a life sentence.” Henderson further maintains that, “as applied,” his sentence “is disproportionate in violation of the Eighth Amendment.”

¶9 *Soto-Fong* involved three consolidated cases, in which the defendants were each sentenced to consecutive prison terms for various offenses. 250 Ariz. 1, ¶¶ 2-5. In one of those cases, Martin Soto-Fong was sentenced to three consecutive life sentences without the possibility of release for twenty-five years for three murders. *Id.* ¶ 4. As mentioned above, our supreme court determined that consecutive sentences imposed for separate crimes – even if the cumulative sentences exceed the juvenile’s life expectancy – do not violate the Eighth Amendment. *Id.* ¶ 1. It explained, in part, that the Supreme Court’s analysis in *Graham, Miller, and Montgomery* had focused on the defendant’s sentence for a single crime and “did not involve contested consecutive sentences arising from multiple crimes.” *Id.* ¶ 26. And the court reasoned that the Supreme Court had not expanded its analysis to such cases. *Id.* ¶ 31. Thus, according to the court, “*Graham, Miller, and Montgomery* do not constitute a significant change in the law” pursuant to Rule 32.1(g). *Id.* ¶ 1.

¶10 As an intermediate state court of appeals, we are bound by our supreme court’s ruling in *Soto-Fong*, a fact Henderson expressly acknowledges in his petition for review. *See State v. McPherson*, 228 Ariz. 557, ¶ 13 (App. 2012). Applying *Soto-Fong* here, we conclude the Eighth Amendment’s prohibition against cruel and unusual punishment does not preclude Henderson’s two consecutive life sentences for separate murders. Notably, Henderson’s two consecutive life sentences are less than the three imposed on Soto-Fong, which the supreme court affirmed. *Id.* ¶ 50. Moreover, as the trial court pointed out, Henderson has failed to establish that his consecutive life sentences will necessarily exceed his life expectancy.

¶11 Henderson nevertheless relies on several out-of-state cases, as he did below, to argue that his consecutive sentences “amount to the functional equivalent of a life sentence” and are thus prohibited by the Eighth Amendment. However, unlike *Soto-Fong*, those cases are not binding on this court. *See State v. Solis*, 236 Ariz. 242, ¶ 14 (App. 2014) (“[W]e are not bound by decisions from other states.”). In addition, those

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cases predate *Soto-Fong*, suggesting the Arizona Supreme Court was aware of them at the time of its decision. Indeed, the court disagreed with other courts “that have interpreted *Graham* and *Miller* to prohibit de facto juvenile life sentences.” *Soto-Fong*, 250 Ariz. 1, ¶¶ 34-35.

¶12 The only case relied upon by Henderson that has been decided since *Soto-Fong* does not diminish its effect here. In *Jones v. Mississippi*, \_\_\_ U.S. \_\_\_, \_\_\_, 141 S. Ct. 1307, 1311 (2021), the Supreme Court upheld a life-without-parole sentence for a Mississippi man convicted of murder as a juvenile. The Court explained that “a separate factual finding of permanent incorrigibility is not required before a sentencer imposes a life-without-parole sentence on a murderer under 18.” *Id.* at 1318-19. It highlighted the distinction between “mandatory life-without-parole sentences,” which are impermissible for those under eighteen convicted of murder, and “discretionary life-without-parole sentences,” which are permissible for such offenders. *Id.* at 1312. Applying *Soto-Fong*, as we must, we cannot say the trial court erred in summarily dismissing Henderson’s petition for post-conviction relief. *See Martinez*, 226 Ariz. 464, ¶ 6.

¶13 Accordingly, we grant review but deny relief.