

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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November 25, 2013

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RE: *State of Delaware v. Hayward Evans,*
Def. ID# 0111010136

Dear Counsel:

This matter comes to the Court on the Defendant Hayward Evans' ("Evans")
Memorandum of Law Concerning Sentencing Issues as it relates to his pending
Application for Resentencing.

FACTUAL AND PROCEDURAL HISTORY

On March 14, 2003, Evans was found guilty by a jury of Murder in the First
Degree, two counts of Attempted Murder in the First Degree and three counts of
Possession of a Firearm During Commission of a Felony. On June 26, 2003, Evans

was sentenced to life imprisonment, without the possibility of parole or probation, for the offense of First Degree Murder and 20 years at Level V as to each count on the collateral offenses. The above offenses were committed when Evans was 15 years of age.¹

Subsequently, on June 25, 2012, the United States Supreme Court, in *Miller v. Alabama*, held that the Eighth Amendment prohibits sentencing a juvenile convicted of a homicide offense to mandatory life without parole.² Thus, any individual who committed Murder in the First Degree when they were a juvenile and subsequently was sentenced to mandatory life imprisonment currently has an unconstitutional sentence.³

In light of *Miller*, on June 4, 2013, Delaware's sentencing laws regarding juveniles were modified in Senate Bill No. 9.⁴ As a result, Section 4209A of Title 11 of the Delaware Code ("Section 4209A") was enacted to provide the penalty for First Degree Murder committed by juvenile offenders.⁵ Section 4209A states:

Any person who is convicted of first-degree murder for an offense that

¹ Evan's birth date is November 23, 1986.

² 132 U.S. 2455 (2012).

³ State's Resp. at 2.

⁴ 79 Del. Laws., ch. 37 (2013) (S.B. 9).

⁵ *Id.*

was committed before the person had reached the person's eighteenth birthday shall be sentenced to a term of incarceration not less than 25 years to be served at Level V up to a term of imprisonment for the remainder of the person's natural life to be served at Level V without benefit of probation or parole or any other reduction.⁶

Additionally, Section 4204A of Title 11 of the Delaware Code (“Section 4204A”) was amended to address modification of sentences for those juveniles who were sentenced before their eighteenth birthday. Section 4204A(d)(2) states, in relevant part:

...any offender sentenced to a term of incarceration for Murder First Degree when said offense was committed prior to the offender’s eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.⁷

Section 4204A(d) also contains a provision which allows a Superior Court judge to use their discretion to “modify, reduce, or suspend a petitioner’s sentence, including any minimum or mandatory sentence.”⁸

Lastly, the General Assembly provided the Court with the ability to enact

⁶ 11 *Del. C.* § 4209A.

⁷ 11 *Del. C.* § 4204A(d)(2) (Emphasis added).

⁸ 11 *Del. C.* § 4202A(d)(4); (“...a Superior Court judge upon consideration of a petition filed pursuant to subsection (d) of this Section, may modify, reduce, or suspend such petitioner’s sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the court. Nothing in this Section, however, shall require the court to grant such a petitioner a sentence modification pursuant to this section.”).

procedures to receive petitions for resentencing from those previously sentenced for First Degree Murder for any offense that was committed before the person had reached his or her eighteenth birthday.⁹ As a result, the Court adopted the Criminal Case Management Plan for Resentencing Proceedings Under 79 Del. Laws. c. 37 (2013) and 11 *Del. C.* § 4209A (“Case Management Plan”).¹⁰ Under the Case Management Plan, the Court “must resentence [the offender] on all offenses for which he was sentenced contemporaneously with the first degree murder mandatory life sentence.”¹¹ Finally, at resentencing the Court is not required to reduce the sentence for any offense, and may, in fact, reimpose a life sentence.¹²

PARTIES’ CONTENTIONS

Evans claims that he is now eligible to be resentenced on the offense of First Degree Murder and the collateral offenses and that, in resentencing him the Court may use its discretion to disregard any statutory minimum/mandatory sentencing requirements contained in the Delaware Criminal Code and impose such sentences concurrently.¹³

⁹ 79 Del. Laws. ch. 37 (2013) (S.B, No. 9).

¹⁰ State’s Resp. at 1. (citing to the Case Management Plan).

¹¹ *Id.* at 1 - 2.

¹² Case Management Plan, Section D; 11 *Del. C.* § 4209A.

¹³ Def.’s Mem. at 6.

The State concurs that Evans is now eligible to be resentenced on the offense of First Degree Murder and the collateral offenses.¹⁴ On the other hand, the State asserts that the Court is not required to impose any sentences concurrently and/or disregard any statutory minimum/mandatory sentencing requirements.¹⁵

DISCUSSION

To begin, the newly enacted Section 4209A together with Senate Bill No. 9 and the Case Management Plan require the Court to resentence Evans. At the age of 16, Evans was handed a mandatory sentence of life imprisonment without the possibility of parole or probation for the offense of First Degree Murder.¹⁶ Therefore, based on Evans' age at the time of the offense and the then mandatory life sentence, he squarely falls within the category of offenders who *must* now be resentenced in light of *Miller*.¹⁷

Second, Evans shall receive a unitary sentence in which the Court will combine the First Degree Murder charge and the collateral offenses together for purposes of resentencing. Specifically, the Case Management Plan states:

¹⁴ State's Resp. at 1.

¹⁵ Id. at 2.

¹⁶ Evans was sentenced on June 13, 2003.

¹⁷ 79 Del. Laws ch. 37 (2013).

If judgments of sentence were entered on more than one offense at the same time as for the offense of murder in the first degree because of joinder of offenses in one indictment,...or in one trial, the applicant may seek resentencing of each such judgment.¹⁸

Third, Evans claims the Court has discretion to reduce his sentence by ignoring any statutory minimum/mandatory sentencing requirements found in the Delaware Criminal Code.¹⁹ This assertion is plainly incorrect. Evans appears to confuse the procedures for resentencing juveniles with mandatory life sentences for First Degree Murder with the procedures set forth in Section 4202A(d) for sentence modification.²⁰ Accordingly, when an offender is *resentenced* pursuant to Section 4209A the Court is not required to grant a reduction in sentence, and, may in fact, reimpose a life imprisonment sentence.²¹ In contrast, Section 4204A(d) allows an offender who was previously sentenced or resentenced under Section 4209A to petition the Court for a *sentence modification*.²² It is *then*, at the sentence modification stage, that the Court may use its discretion to “modify, reduce, or suspend [the offender’s] sentence,

¹⁸ Case Management Plan, Section B(b).

¹⁹ Def.’s Mem. at 5.

²⁰ State’s Resp. at 4.

²¹ 11 *Del. C.* § 4209A; 79 Del. Laws ch. 37, § 6 (2013).

²² 11 *Del. C.* § 4204A(d).

To clarify, Evans must first be resentenced according to Section 4209A. After serving the required amount of time as set forth in Section 4204A(d)(2), Evans may petition the Court under Section 4204A(d) for a sentence modification.

including any minimum or mandatory sentence.”²³ In the case of Evans, who has been sentenced to a term of incarceration for First Degree Murder, sentence modification will only be available after he has served 30 years of his sentence.²⁴

Finally, it is Evans’ contention that at resentencing the Court may impose concurrent sentences.²⁵ As previously mentioned, the Court may use its discretion to ignore minimum mandatory sentences in considering a sentence modification. However, the statute does not provide the Court with the ability to impose sentences concurrently. Evans cites to the “Synopsis” of Senate Bill No. 9, which states “...multiple terms of incarceration...may be served concurrently....”²⁶ Unfortunately, Evans fails to recognize that Senate Amendment No. 2 to Senate Bill No. 9 did away with the Court’s discretion to impose sentences concurrently.²⁷ Specifically, the State asserts, “It is axiomatic that a Synopsis cannot insert a provision into the law that the

²³ 11 *Del C.* § 4204A(d)(6).

²⁴ 11 *Del. C.* § 4204A(d)(2). (“...any offender sentenced to a term of incarceration for Murder First Degree when said offense was committed prior to the offender’s eighteenth birthday shall be eligible to petition the Superior Court for sentence reduction after the offender has served 30 years of the originally imposed level V sentence.”).

²⁵ Def.’s Mem. at 6.

²⁶ *Id.* at 5.

²⁷ State’s Resp. at 5.

General Assembly specifically omitted.”²⁸ The Court finds the State’s assertion prevailing. Thus, the Court does not have discretion to impose sentences concurrently rather than consecutively.

CONCLUSION

Based on the aforementioned, the Court finds Evans shall receive a unitary sentence in which the Court will resentence Evans on the First Degree Murder charge together with the collateral charges. In doing so, the Court may not impose sentences concurrently nor may the Court ignore statutory minimum/mandatory sentencing requirements. Finally, it is noted that Evans will be eligible to petition the Court for a sentence modification after having served 30 years at Level V.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Prothonotary’s Office
Cc: Case Manager

²⁸ *Id.*