FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-5383

JOSHUA PHILLIPS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Waddell A. Wallace, Judge.

December 17, 2019

RAY, C.J.

Joshua Phillips appeals his sentence of life in prison for a first-degree murder he committed when he was a juvenile. We affirm on all issues and write only to address his arguments that his sentence and the statutory scheme he was sentenced under violate the Eighth Amendment to the United States Constitution and article I, section 17 of the Florida Constitution.

I.

Phillips was fourteen years old when he brutally killed an eight-year-old girl who lived next door to him. In 1999, a jury convicted him of first-degree murder, and the trial court sentenced him to life without the possibility of parole. In affirming the

conviction and sentence, the Second District Court of Appeal* outlined the relevant facts of Phillips' case:

> Maddie Clifton, eight years of age, came home from school at 4:30 p.m. on November 3, 1998, practiced her piano, and then went outside to play. She first went to the yard of a sixteen-year-old neighbor and then returned to her own yard. The neighbor's grandmother could see Maddie in her driveway and she also saw Joshua Phillips "creeping up" on Maddie. She watched them for a few moments but went back into her home after deciding that what she saw was nothing more than two kids playing together. By 6:20 p.m. Maddie's mother called her children to dinner, and when Maddie did not appear, Mrs. Clifton asked some of the neighbors to look for her daughter, but no one could find her. By 6:33 p.m. Mrs. Clifton called 911.
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> That evening several of the neighborhood children, including Joshua, took part in a search. Witnesses to that event described Joshua as "acting normal" but looking as if he had just taken a shower. The next day a Jacksonville Sheriff's Office detective spoke with Joshua about Maddie, who stated that he had seen Maddie the day before but had not played with her. He was not supposed to play with her because of their age difference. Police searched the Phillips' storage shed and car after Joshua's father arrived home, but they found nothing. A couple of days later, another homicide detective went to the Phillips' home when only Joshua was present and interviewed Joshua as he sat on the bed in his room.
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> Maddie's body was not discovered until November 10, 1998, when Joshua's mother, upset and crying, flagged down uniformed officers who were doing investigations in the neighborhood. The officers and Mrs.

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* Although the crime occurred in Duval County, the trial was transferred to Polk County because of extensive pretrial publicity. Thus, the Second District Court of Appeal heard the direct appeal.

Phillips went to Joshua's room and opened the door. There they saw two small feet with white socks sticking out from the bottom of Joshua's waterbed, along with liquid coming from underneath the bed and tape on the floor. A strong odor emanated from the room, which was immediately sealed as a crime scene. One of the detectives then picked up Joshua at school and took him to the police station.

When Joshua's room was searched the police found several types of air fresheners, rolls of tape, a baseball bat hidden behind a dresser, and a Leatherman knife tool. Maddie's body was under the waterbed with her shirt pulled up and her panties beneath her.

Joshua confessed to killing Maddie. He claimed that the two were playing with a baseball in his back yard when he hit the ball very hard and accidentally struck her near the left eye. She began to cry and holler, so Joshua, fearful that his father would be angry at him for playing with the younger girl, took her into his room. She was bleeding from the gash and crying loudly, and to keep his father from discovering her he struck Maddie once or twice in the head. She whimpered, and when she began to moan more loudly he took his knife and cut her throat. Then he concealed her body by prying off the side of his waterbed and pushing Maddie underneath. Joshua's father had come home by this time, and, realizing that Maddie's labored breathing was loud enough for his father to hear in another room, Joshua pulled the child out and stabbed her in her lungs so that she would stop breathing. He explained that her shorts and underwear came off when he dragged her into his room and that her shoes came off when he shoved her under the bed the second time. All of this happened because Joshua was afraid of getting in trouble.

The State's medical expert testified that Maddie had suffered three separate attacks. She was struck three times on her forehead and top of her head, receiving wounds that would have been fatal about thirty minutes

> after infliction. Her neck wounds perforated her windpipe, causing her to bleed to death or drown in her own blood. Nine stab wounds to her chest and abdomen were inflicted when she was already dead. However, Maddie's hand clutched a bracket from the waterbed frame, which indicated that she was still alive when Joshua shoved her underneath.

Phillips v. State, 807 So. 2d 713, 714-15 (Fla. 2d DCA 2002), *rev. denied*, 823 So. 2d 125 (Fla. 2002), *cert. denied*, 537 U.S. 1161 (2003).

Following the United States Supreme Court's decisions in *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), the postconviction court granted Phillips an individualized resentencing hearing under Florida's newly-enacted statutory scheme for juvenile sentencing. After a hearing conducted the week of August 7, 2017, the court again sentenced Phillips to life in prison, but this time subject to a sentence review after twenty-five years. This appeal followed.

II.

The prohibition against cruel and unusual punishments in the Eighth Amendment of the United States Constitution "guarantees individuals the right not to be subjected to excessive sanctions." *Miller,* 567 U.S. at 469 (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). This right "flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." *Id.* (internal quotation marks omitted). The Florida Constitution similarly prohibits cruel and unusual punishment. Art. I, § 17, Fla. Const. When construing the parallel provision of our state constitution, Florida courts are bound by precedent of the United States Supreme Court interpreting the Eighth Amendment. *See id.*; *see also Valle v. State*, 70 So. 3d 530, 538 (Fla. 2011).

In recent years, the United States Supreme Court has decided a series of cases defining the limits imposed by the Eighth Amendment on juvenile sentencing. These cases recognize that juveniles "are constitutionally different from adults for purposes of

sentencing" because they have "diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at 471. As such, juveniles are "less deserving of the most severe punishments." *Id.* (quoting *Graham*, 560 U.S. at 68).

Beginning with *Roper v. Simmons*, the Court determined that the Eighth Amendment prohibits the imposition of the death penalty on a juvenile offender. 543 U.S. at 578. Then, in *Graham v. Florida* the Court announced that the Eighth Amendment also forbids a sentence of life without parole for a juvenile who did not commit homicide. 560 U.S. at 74. While the Court found it necessary to draw a "clear line" prohibiting the imposition of a life-without-parole sentence on a juvenile nonhomicide offender, it cautioned that the Eighth Amendment "does not require the State to release that offender during his natural lifetime." *Id.* at 74-75. What the State must do, according to the Court, is provide the offender with "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75.

In *Miller v. Alabama*, the Court extended its analysis in *Roper* and *Graham* to hold that the Eighth Amendment prohibits a sentencing scheme that mandates life without parole for juvenile offenders, including those convicted of homicide. 567 U.S. at 489. The Court reasoned that these sentencing schemes "violate [the] principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment" because they mandate lifetime incarceration for all juveniles convicted of homicide "regardless of their age and age-related characteristics and the nature of their crimes." *Id.*

To be clear, *Miller* did not foreclose the possibility of a juvenile receiving a life-without-parole sentence for homicide as *Graham* did for nonhomicide offenses. It did, however, render life without parole "an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016) (citation and internal quotation marks omitted). Accordingly, the substantive rule of constitutional law announced in *Miller* requires "a sentencer to consider a juvenile offender's youth and attendant characteristics

before determining that life without parole is a proportionate sentence." *Id.* (citing *Miller*, 567 U.S. at 483).

In response to *Graham* and *Miller*, the Florida Legislature enacted chapter 2014-220, Laws of Florida, and the Florida Supreme Court promulgated a rule of procedure providing for a new, comprehensive sentencing scheme for juvenile offenders. The new sentencing range for a juvenile who committed first-degree murder is forty years in prison to life. § 775.082(1)(b)1., Fla. Stat. (2014). In determining the appropriate sentence, the sentencing court must hold an evidentiary hearing and allow the State and defendant "to present evidence relevant to the offense, the defendant's youth, and attendant circumstances, including, but not limited to those enumerated in section 921.1401(2), Florida Statutes." Fla. R. Crim. P. 3.781(b). These individualized sentencing factors largely mirror those described in *Miller*. *See* § 921.1401(2)(a)-(j), Fla. Stat. (2014) (*e.g.*, nature and circumstances of the offense; defendant's age, maturity, and intellectual capacity; effect of immaturity, impetuosity, or failure to appreciate risks and consequences; effect of characteristics attributable to the defendant's youth; and possibility of rehabilitating the defendant). Regardless of the length of the sentence imposed, the juvenile homicide offender is entitled to a sentence-review hearing after serving twenty-five years unless the juvenile was previously convicted of an enumerated offense. *See* §§ 775.082(1)(b)1. and 921.1402(2)(a), Fla. Stat.

A.

Turning to the issues before us, Phillips first argues that his life sentence is unconstitutional under the Eighth Amendment because he has proven himself to be neither incorrigible, irredeemable, nor irreparably corrupt. He points to evidence before the resentencing court showing that during his nearly twenty years in prison, he has become a mature adult who has not only bettered his life but become a positive influence for others. He adds that the court even recognized in its resentencing order that his conduct in prison has been commendable and that the "potential for rehabilitation is present." Despite presenting substantial evidence of his maturation and rehabilitation, he contends the court improperly focused on the heinous nature of his crime and

the court's concerns that he may commit an equally brutal crime if released. Phillips asks that we reverse his life sentence and remand for the court to impose a term-of-years sentence that provides him with a meaningful opportunity for release.

We disagree that Phillips is entitled to relief. To begin with, Phillips did not receive an inescapable, irrevocable life sentence. The sentencing court therefore did not have to conclude that he was "the rare juvenile whose crime reflects irreparable corruption" as required by *Graham* and *Miller*. In *Graham*, the Supreme Court noted that the juvenile offender's "[life] sentence guarantee[d] he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes." 560 U.S. at 79. This, the Supreme Court held, "the Eighth Amendment does not permit." *Id.*

But here, Phillips is entitled to judicial review of his sentence to determine whether his sentence should be modified based on demonstrated maturity and rehabilitation. *See* § 921.1402(2)(a), Fla. Stat. (providing for judicial review of sentence after twenty-five years); *see also Serrano v. State*, 279 So. 3d 296, 303 (Fla. 1st DCA 2019) ("The life sentence imposed here is neither permanent nor irrevocable because [the juvenile offender] has the right to judicial review after twenty-five years."). At the sentence-review hearing, while the court must again consider the circumstances leading up to and including the offense, the primary focus is on the offender's maturity and rehabilitation. *See* § 921.1402(6)(a), Fla. Stat. (2014). Indeed, "[i]f the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court *shall* modify the sentence and impose a term of probation of at least 5 years." § 921.1402(7), Fla. Stat. (2014) (emphasis added).

Because Phillips' life-with-review sentence provides him with a meaningful opportunity for release, we find no Eighth Amendment violation. *Cf. Montgomery*, 136 S. Ct. at 736 ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing

them."); *State v. Michel*, 257 So. 3d 3, 8 (Fla. 2018) (holding that juvenile offenders' sentences of life with the possibility of parole after twenty-five years do not violate the Eighth Amendment).

We also find no abuse of the court's discretion in its determination that "life" was an appropriate sentence for Phillips. *See Jackson v. State*, 276 So. 3d 73, 75 (Fla. 1st DCA 2019) ("We review the findings in the trial court's sentencing order to determine whether they are supported by competent substantial evidence, and we review the court's ultimate sentencing decision based on these findings for an abuse of discretion.") (citations omitted). Over the course of four days, the court heard evidence on Phillips' youth and other attendant and mitigating circumstances. It analyzed all ten factors set forth in section 921.1401(2) and entered a thirty-one-page order explaining the basis for the sentence imposed. While the court found that the "potential for rehabilitation is perhaps present," it concluded this factor is "outweighed by other relevant considerations." *See Bellay v. State*, 277 So. 3d 605, 608-09 (Fla. 4th DCA 2019) (explaining that a defendant's possible rehabilitation is only one factor among many to be considered during resentencing under section 921.1401).

Addressing the factor concerning the effect of the crime on the victim's family and community, the court observed that "the way this murder and surrounding circumstances rocked the Victim's family and this community is unmatched in the modern history of Jacksonville." The court found that Phillips' crime did not reflect the hallmarks of youth such as transient immaturity, impetuosity, or recklessness, but instead was a calculated, sexually motivated, heinously violent act that Phillips went to great lengths to conceal. The court explained,

> The facts demonstrate the brutality of the murder of Maddie Clifton. Her death was not accidental, it was intended. Her death was not quick or painless, it was long and agonizing. These facts also highlight disturbing aspects of Defendant's behavior: (1) the callousness and ruthless[ness] he demonstrated in the murder itself; (2) the cool, calm, and collected manner in which he carried on life, even helping in the search; and (3) the fact that he slept on top of her body for six days. All of these actions

> indicate to the Court the existence of something far more than mere immaturity, impetuosity, or the inability to assess consequences.

The court's findings are supported by competent, substantial evidence, and we will not substitute our judgment in determining the weight to be given to the statutory factors considered at sentencing. *See Jackson*, 276 So. 3d at 76.

B.

Phillips next argues that sections 921.1401 and 921.1402 are facially unconstitutional because neither statute places the burden on the State to prove that a juvenile offender falls within the rare category of offender who is irredeemable before the juvenile may be sentenced to life. He also contends the statutes are unconstitutional because they do not require the court to apply a proportionality review before imposing a life sentence.

The constitutionality of a statute is a question of law, which we review de novo. *Scott v. Williams*, 107 So. 3d 379, 384 (Fla. 2013). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Statutes are entitled to a presumption of constitutionality, and we will uphold the challenged legislation when possible. *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 243 So. 3d 894, 897 (Fla. 2018).

In support of his burden-of-proof argument, Phillips cites *Commonwealth v. Batts*, a Pennsylvania Supreme Court decision which found that *Miller* created a presumption against life without parole for juvenile offenders and thus the State has the burden to overcome that presumption beyond a reasonable doubt. 163 A.3d 410, 455 (Pa. 2017). We find *Batts* distinguishable because, as discussed earlier, Phillips was not sentenced to an irrevocable life sentence like the defendant in that case.

Even if we were dealing with an irrevocable life sentence, the fact that sections 921.1401 and 921.1402 do not place the burden

on the State—or on either party for that matter—does not render the statutes unconstitutional. *See Abrams v. State*, 971 So. 2d 1033, 1036 (Fla. 4th DCA 2008) (rejecting the argument that a sentencing statute was unconstitutional simply because it did not specify a burden of proof). None of the Supreme Court case law, including *Miller*, requires the State to carry the burden of proof in a juvenile sentencing proceeding. In fact, just the opposite could be concluded based on language in *Montgomery* which suggests that if a burden were assigned, it would be on the defense. *See Montgomery*, 136 S. Ct. at 736 (noting juvenile offenders "like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption").

Regarding his proportionality review claim, the Supreme Court explained in *Graham* that proportionality is a central concept to the Eighth Amendment and that punishment should be proportional to the crime. 560 U.S. at 59. *Miller* extended that reasoning to hold that courts must give juveniles individualized consideration so that their sentence is proportionate to the offense and the offender. 567 U.S. at 469, 480.

Contrary to Phillips' arguments, sections 921.1401 and 921.1402 do not lack a proportionality requirement. Both statutes adopted a list of the factors discussed in *Graham* and *Miller* that are relevant to the offense and the juvenile's youth and attendant circumstances, which the court must consider when imposing a sentence. *See* § 921.1401(2)(a)–(j), Fla. Stat. (stating that the court "shall consider" these and any other relevant factors), and § 921.1402(6)(a)–(i), Fla. Stat. (stating that the court "shall consider" these factors and any others that it deems appropriate). Those statutes were enacted in response to *Graham* and *Miller*, and they adhere to the principle that a juvenile's sentence must be proportionate to the offense and the offender. *See Horsley v. State*, 160 So. 3d 393, 406 (Fla. 2015). This satisfies the proportionality review required by those decisions under the Eighth Amendment.

III.

For these reasons, we affirm Phillips' sentence of life in prison with judicial review.

BILBREY and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Howard L. "Rex" Dimmig, II, Public Defender, and Carol J. Y. Wilson, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, and Benjamin L. Hoffman, Assistant Attorney General, Tallahassee, for Appellee.