Third District Court of Appeal

State of Florida

Opinion filed March 31, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-2058
Lower Tribunal No. F15-18324A

Juaquan Antonio Hall,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Richard L. Hersch, Judge.

Rasco Klock Perez Nieto and Joseph P. Klock, Jr.; Thomas A. Cobitz, for appellant.

Ashley Moody, Attorney General, and Joanne Diez, Assistant Attorney General, for appellee.

Before FERNANDEZ, HENDON and LOBREE, JJ.

LOBREE, J.

Juaquan Antonio Hall ("Hall") appeals his conviction of first-degree

murder and two counts of attempted robbery with discharge of a firearm, as well as the fifty-year sentence as a juvenile for the murder. Although we affirm on all issues, we write only to address Hall's Eighth Amendment challenges based on Miller and Graham,[1] including the minimum mandatory term of forty years he received for the murder pursuant to section 775.082(1)(b)1, Florida Statutes (2015).

At sentencing, the trial court considered the entire trial record and all evidence presented, including testimony by Hall's mother and expert witnesses, primarily about his intelligence and ability to be rehabilitated. The court further considered new evidence of phone calls between Hall and co-defendant Terrence Smith and statements by Hall, wherein he admitted belonging to a criminal gang, and threatened to kill a fellow inmate when they both got out. The crime's impact on the victim's family was also considered. The trial court observed that the victim, Ramiro Izquierdo, was the caretaker of both his brother Javier and their grandmother, with whom they lived. According to his family, Ramiro dreamed of opening a business so that he could employ the rest of his family. Speaking of Javier in particular, the court

[1] Miller v. Alabama, 567 U.S. 460 (2012); Graham v. Florida, 560 U.S. 48 (2010).

noted that the impact on him was immeasurable, finding, "[Hall] set out to steal an iPhone," "[i]nstead he stole the eyes, legs and soul of a family."

Sixteen-year-old Hall was sentenced to a total of seventy years in prison with a sentencing review in twenty-five years: fifty years on the murder count, forty of which were a minimum mandatory term under section 775.082(1)(b)(1), twenty years on one of the attempted robbery counts, to be served concurrent with the murder count, and twenty years on the remaining attempted robbery count, to be served concurrent to the murder count but consecutive to the other attempted robbery count.

Hall argues that section 775.082(1)(b)1's minimum mandatory term of forty years reviewable after twenty-five years for juveniles convicted of murder is facially unconstitutional pursuant to Miller and Graham. He additionally claims that the section is unconstitutional as applied to him, given its failure to require the kind of individualized sentencing prescribed by Miller and Graham, as well as the trial court's alleged failure to consider certain evidence regarding the statutory factors enacted. The trial court denied Hall's request that it declare the statute unconstitutional.

We review a trial court's ruling on the constitutionality of a statute *de novo*, recognizing the strong presumption of validity with which the statute is clothed. See Gonzalez v. State, 948 So. 2d 892, 893 (Fla. 5th DCA 2007);

see also Andrews v. State, 82 So. 3d 979, 984 (Fla. 1st DCA 2011) (courts must afford "substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishment for crimes") (quoting Solem v. Helm, 463 U.S. 277, 290 (1983)). Moreover, while "[a]n as-applied challenge . . . is an argument that a law which is constitutional on its face is nonetheless unconstitutional as applied to a particular case or party, because of its discriminatory effects[,] in contrast, a facial challenge asserts that a statute always operates unconstitutionally." Miles v. City of Edgewater Police Dep't/Preferred Governmental Claims Sols., 190 So. 3d 171, 178 (Fla. 1st DCA 2016). Since they are reviewed differently, we address each challenge separately.

Facial Challenge to Section 775.082(1)(b)1

A facial challenge "is . . . 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." Pinnacle Hous. Grp., LLC v. Fla. Hous. Fin. Corp., 239 So. 3d 722, 724 (Fla. 3d DCA 2017) (quoting Fla. Dep't of Revenue v. DIRECTV, Inc., 215 So. 3d 46, 50 (Fla. 2017)). Hall argues that, because the section's minimum forty-year term is *mandated*, its prescription for all juveniles as a class is unconstitutional, since he reads Miller and Graham to allegedly hold that any sentence that is

mandated derogates from a juvenile's right to be punished only after the trial court has, in its discretion, considered several mitigating factors involving his youth and circumstances. We reject this contention.

Section 775.082(1)(b)1 reads:

> A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

Section 921.1401(2), Florida Statutes (2015), referenced therein, reads:

> (2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:
> (a) The nature and circumstances of the offense committed by the defendant.
> (b) The effect of the crime on the victim's family and on the community.
> (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
> (d) The defendant's background, including his or her family, home, and community environment.

> (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
> (f) The extent of the defendant's participation in the offense.
> (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
> (h) The nature and extent of the defendant's prior criminal history.
> (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
> (j) The possibility of rehabilitating the defendant.

Lastly, section 921.1402(2)(a), Florida Statutes (2015), also incorporated by reference in section 775.082(1)(b)1, reads:

> A juvenile offender sentenced under s. 775.082(1)(b) 1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b) 1 . . . [listing murder and nine other felonies].

As recently explained by our Supreme Court, these statutes were amended in response to Miller and Graham:

> Although the holdings of Graham and Miller are narrow and specific, the discussion in both cases broadly outlines Eighth Amendment principles requiring states to take into account, as part of the sentencing process, the immaturity of those under the age of 18—and the consequent ability of younger offenders to reform as they mature. In response, the

> Florida Legislature adopted chapter 2014-220, Laws of Florida, codified in sections 775.082, 921.1401, and 921.1402 of the Florida Statutes, to address the Eighth Amendment principles articulated in Graham and Miller . . . With the enactment of chapter 2014-220, the Legislature amended section 775.082(1) to provide new sentencing options for juveniles convicted of capital offenses.

State v. Purdy, 252 So. 3d 723, 725-26 (Fla. 2018); see also Bailey v. State, 277 So. 3d 173, 178 (Fla. 2d DCA 2019) ("The legislature cured the Miller problem by adopting a sentencing scheme that no longer mandates life in prison for juveniles.").

Miller narrowly held that "mandatory *life without parole* for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" 567 U.S. at 465 (emphasis added). Graham, in turn, held that "*life without parole* violates the Eighth Amendment when imposed on juvenile *nonhomicide* offenders." Id. at 466 (emphasis added); see also Graham, 560 U.S. at 82 ("The Constitution prohibits the imposition of a *life without parole* sentence on a juvenile offender who did *not* commit homicide.") (emphasis added). In neither case was the *mandated* nature of the sentences what primarily made them run afoul of the Eighth Amendment, but the "confluence of . . . two lines of precedent." Miller, 567 U.S. at 470. One line, "adopt[ing] categorical bans on sentencing practices based on mismatches between the culpability of a

class of offenders and the severity of a penalty" (likening life without parole for juveniles to the death penalty itself), and another, prohibiting mandatory *capital* punishment and "requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death." Id.

The ultimate rationale of the two cases was "that imposition of a State's *most severe penalties* on juvenile offenders cannot proceed as though they were not children," and sentencing schemes cannot "prohibit a sentencing authority from *assessing* whether the law's *harshest term of imprisonment* proportionately punishes a juvenile offender." Id. at 474 (emphasis added). Only "criminal procedure laws that fail to take defendants' youthfulness into account *at all* would be flawed." Graham, 560 U.S. at 76 (emphasis added). The Court's concern in Miller was specifically "irrevocably sentencing [juveniles] to a *lifetime* in prison." Id. 567 U.S. at 480 (emphasis added).

Section 775.082(1)(b)1, in compliance with Miller and Graham, requires a judge to consider a list of non-exhaustive factors regarding the juvenile's character and circumstances before sentencing him or her to a lifetime in prison. Only if the trial court determines that the mitigating factors do not support a lifetime sentence as appropriate for the juvenile is the court then required to sentence the juvenile to at least forty years, subject to a

review in twenty-five. Hall asks us to hold that a minimum sentence of forty years is a de facto life sentence and, hence, its mandatory character brings it within the dangerous purview of those laws struck by Miller. This, however, is simply not the case.

Graham recognized that "[a] State need not guarantee the offender eventual release, but *if it imposes a sentence of life* it must provide him or her with *some realistic opportunity to obtain release* before the end of that term." 560 U.S. at 82 (emphasis added). Here, not only does section 775.082 not require a life sentence for juveniles, but even if its mandatory sentence of forty years was its functional equivalent, the statute *has already complied* with Graham by affording juveniles a realistic opportunity to obtain release through a twenty-five-year review mechanism, the hearing for which was here already scheduled at sentencing. See also Graham, 560 U.S. at 79 (lifetime sentence without parole unlawful only because it "gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope"). Miller also recognized that it did not overrule a prior holding that "'a sentence which is not otherwise cruel and unusual' does not 'becom[e] so simply because it is 'mandatory.'" 567 U.S. at 480-81. "A State may remedy a Miller violation by permitting juvenile homicide offenders to be

considered for parole, rather than by resentencing them." Montgomery v. Louisiana, 136 S.Ct. 718, 736 (2016).

Our conclusion is supported by Bailey, 277 So. 3d at 173, considering an identical challenge. The Second District Court of Appeal explained:

> When imposed on a juvenile, the minimum sentence of forty years required by section 775.082(1)(b)1 is not comparable to mandatory life in prison or the death penalty. And Bailey will be in his early forties when he receives review of his sentence after twenty-five years, and an opportunity for early release, under sections 775.082(1)(b)1 and 921.1402(2). The Miller holding does not extend to Bailey's sentence imposed pursuant to section 775.082(1)(b)1, where he received the individualized sentencing hearing required by Miller (codified in section 921.1401(1)) and where he will receive a review of his sentence after twenty-five years.

Id. at 177 (footnote omitted). A similar result, if in a different procedural posture, was reached in State v. Moran, 45 Fla. L. Weekly D646 (Fla. 2d DCA Mar. 20, 2020) (reversing trial court's refusal to impose section 775.082(1)(b)1's forty-year minimum, as Miller held only against "harshest" of penalties and section provides for review in twenty-five years). While Bailey and Moran are indistinguishable from this case, the cases on which Hall purports to find support are unavailing.[2]

[2] Hall cites Harris v. United States, 536 U.S. 545, 569-72 (2002) (Breyer, J., concurring in part); State v. Lyle, 854 N.W.2d 378 (Iowa 2014); and

Similar attacks on section 775.082's minimum mandatory sentences of twenty-five years have been rejected. See State v. Michel, 257 So. 3d 3, 8 (Fla. 2018) (rejecting challenge to life sentences because juvenile entitled to possibility of parole in twenty five years); Phillips v. State, 286 So. 3d 905, 910 (Fla. 1st DCA 2019) (same); Serrano v. State, 279 So. 3d 296, 303 (Fla. 1st DCA 2019) (same). Necessarily, if section 775.082's twenty-five-year review mechanism makes *life* sentences acceptable under Miller, the same mechanism must make its mandatory forty-year term no less acceptable. To the extent Hall argues that his fifty-year sentence is, in length, a term that is the functional equivalent of life and violative of Miller, our supreme court has recently held that a comparable sentence was not. Pedroza v. State, 291 So. 3d 541, 549 (Fla. 2020) (clarifying that *only* life sentence or its functional equivalent can satisfy threshold showing for Miller-Graham relief and holding juvenile's forty-year sentence failed to conform with that showing).

Lastly, to the extent that Hall argues that, to comply with Miller and Graham, section 775.082(1)(b)1's mandatory minimum sentence must require the State to show—or the trial court to find—that he is incorrigible, this is incorrect. See Bailey, 277 So. 3d at 178 ("Miller itself does not

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Montgomery, 136 S. Ct. at 736. We find Harris and Montgomery to be inapposite and Lyle to be unpersuasive.

mandate a sentencing scheme that requires a trial court to make certain findings. Rather, Miller prohibits a 'sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders,' and it requires a sentencing scheme 'to take into account how children are different.'"); Phillips, 286 So. 3d at 911-12 (same with regard to alleged burden on State to make certain showing).

As-Applied Challenge to Section 775.082(1)(b)1

Hall also argues that, as applied to him, section 775.082(1)(b)1 is unconstitutional, both because the trial court did not, in fact, consider the correct factors and because it disregarded certain unrebutted evidence. However, he fails to show that sections 775.082(1)(b)1, 921.1401(2), or 921.1402(2)(a), as applied to him, operate any infringement on his Eighth Amendment rights. As noted above, controlling precedent in Florida shows not only that these sections comply with the dictates of Miller and Graham, but that Hall's sentence does not even trigger Miller-Graham to begin with.

Moreover, the record reflects that the trial court considered not just some, but *all* of the statutory factors, making detailed written findings as to each. Not only are Hall's allegations that the trial court refused to consider

unrebutted evidence on the Miller factors belied by the record,[3] but even if true, the alleged portions of evidence so disregarded relate, at best, only to two or three of the ten factors. Since the rest of the factors sufficiently supported the sentence, any such error would be harmless. Because Hall has failed to show that section 775.082(1)(b)1 is unconstitutional, whether facially or as applied to him, we affirm the judgment and sentence.

[3] Hall concedes that a trial court may reject unrebutted expert testimony, "so long as there is a reasonable evidentiary basis for doing so." Trejo-Petrez v. Arry's Roofing, 141 So. 3d 220, 223 (Fla. 1st DCA 2014). The record shows that the critical portions of expert testimony that the trial court is alleged to have disregarded were either not disregarded at all or rejected on a more than reasonable basis. For example, Dr. Brannon, who testified that Hall was not incorrigible, conceded that he had not examined Hall since his conviction, whereas the trial court had been presented with recordings and testimony about Hall's phone calls while in custody, wherein he admitted gang membership and threatened to kill a fellow inmate. Similarly, Dr. Brannon's testimony that Hall's academic decline was caused by bullying at school was both prefaced by his acknowledgment that he "d[id]n't know what caused [the absences]" and qualified by his assertion that he "d[id]n't know if it's accurate or not." Contrary to Hall's assertion, Dr. Brannon never recommended a rehabilitation program in lieu of imprisonment. Instead, when asked by the court whether he was recommending the clinical plan in lieu of prison, the doctor was adamant that "Well, from a clinical perspective . . . [but] I'm not recommending that to the Court."