

STATE OF LOUISIANA

*

NO. 2018-K-0080

VERSUS

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COURT OF APPEAL

ROBERT CEASAR

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

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ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 391-148, SECTION "J"

Honorable Darryl A. Derbigny, Judge

* * * * *

Judge Terri F. Love

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(Court composed of Judge Terri F. Love, Judge Rosemary Ledet, Judge Paula A. Brown)

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RELATOR/ PRO SE

WRIT GRANTED; RELIEF DENIED
FEBRUARY 28, 2018

Relator Robert Ceasar (“Mr. Ceasar”) seeks review of the trial court’s September 13, 2017 denial of his amended motion to correct an illegal sentence. Mr. Ceasar seeks resentencing pursuant to *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), that was made retroactive by *Montgomery v. Louisiana*, 577 U.S. ____, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). The holdings in *Miller* and *Montgomery* do not apply to Mr. Ceasar, who was 18 years old at the time he committed second-degree murder, the offense for which he was convicted. Additionally, Mr. Ceasar offers no new rule of law or newly discovered evidence under La. C.Cr.P. art. 930.8, nor does he show he received an illegal sentence. Accordingly, the writ is granted; however, relief is denied.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On October 2, 1997, Mr. Ceasar was found guilty as charged of second-degree murder. He was sentenced to life imprisonment at hard labor without benefit of parole. This Court later affirmed Mr. Ceasar’s conviction and sentence. *State v. Ceasar, unpub.*, 98-0010 (La. App. 4 Cir. 9/29/99), writ denied, 99-3216 (La. 4/20/00), 752 So.2d 994.

In writ 2016-K-1064, Mr. Ceasar’s writ of mandamus concerning his motion to correct an illegal sentence was transferred to the trial court for consideration. The trial court then granted the motion for the limited purpose of conducting a hearing. Initially, Mr. Ceasar sought resentencing pursuant to *Miller*, in which the U.S. Supreme Court held a mandatory sentence of life imprisonment without the

possibility for early release imposed upon a juvenile offender under the age of 18 violated the Eighth Amendment. Mr. Ceasar believed that he was under the age of 18 when he committed the homicide for which he was convicted. A copy of Mr. Ceasar's birth certificate indicated that based on his birthday he was 18 years old at the time of the crime. Mr. Ceasar, through counsel, filed an amended motion to correct an illegal sentence that was summarily denied on September 13, 2017. Mr. Ceasar seeks this Court's supervisory review of the trial court's denial of his amended motion to correct an illegal sentence.

STANDARD OF REVIEW

Unlike an application for post-conviction relief, a motion to correct an illegal sentence is never time-barred. La. C.Cr.P. art. 882(A). “[W]hether a particular sentence is legal or illegal is a question of law. Thus, a district judge’s legal determination of the legality or illegality of a particular sentence, like any other question of law, is not entitled to our deference.” *State v. Gibson*, 16-0132, p. 3 (La. App. 4 Cir. 3/16/16), 192 So.3d 132, 135. Therefore, we review the district court’s ruling *de novo*. *Id.*

DISCUSSION

In his amended motion, Mr. Ceasar avers that there is no distinction based on science between him and someone who is under the age of 18. He claims that the same science relied on by the *Miller* court demonstrates that the neurological maturation process continues well into a young person’s twenties. Accordingly, Mr. Ceasar asserts that he is entitled to a new sentencing hearing.

The United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005)¹, a case cited in *Miller* and relied upon by Mr. Ceasar, acknowledged that “the qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” *Id.*, 543 U.S. at 574, 125 S.Ct. at 1197. Likewise, in *Miller*, the United States Supreme Court observed the unique qualities and characteristics of juveniles, explaining: “youth is more than a chronological fact. . . . It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. . . . And its signature qualities are all transient.” *Miller*, 567 U.S. at 467, 132 S.Ct. at 2467 (internal citations omitted). However, the *Roper* court observed, as did *Miller*, that “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood.” *Roper*, 543 U.S. at 574, 125 S.Ct. at 1197-98. Mr. Ceasar has presented nothing new or persuasive that would warrant a change in that conclusion. *Cf. Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242 (2002) (holding that although executing mentally disabled offender is excessive punishment under the Eighth Amendment, sentencing those offenders to terms of life imprisonment without parole was not prohibited).

In this case, the holdings of *Miller* and *Montgomery*, which made *Miller* retroactive, do not apply to Mr. Ceasar. He was 18 years old at the time he committed second-degree murder. Under these circumstances, he offers no new rule of constitutional law that would except his case from the prescriptive period

¹ *Roper* held “[t]he Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.” *Roper*, 125 S.Ct. at 1200, 543 U.S. at 578 (2005).

set forth in La. C.Cr.P. art. 930.8. Similarly, he has not demonstrated that he received an illegal sentence when the trial court imposed the sentence required under law. *State ex rel. Melinie v. State*, 93-1380 (La. 1/12/96), 665 So.2d 1172. Therefore, the trial court did not err when it summarily denied Mr. Ceasar's amended motion to correct an illegal sentence. La. C.Cr.P. art. 929.

Additionally, Mr. Ceasar asserts claims of ineffective assistance of counsel and the mishandling of the notice of judgment requirements, alleging he did not receive the ruling on his amended motion to correct an illegal sentence until December 20, 2017.² We find no merit to the arguments asserted. Mr. Ceasar was not entitled to the relief sought in his amended motion to correct an illegal sentence. Therefore, he cannot show that counsel was ineffective in the handling of his amended motion to correct an illegal sentence. Even if Mr. Ceasar could show that his attorney's performance fell below the standards set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed2d 674 (1984) and that he was prejudiced by his attorney's performance, there is no constitutional right to an attorney in state post-conviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S.Ct. 1990, 1994, 95 L.Ed.2d 539 (1987). Thus, a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings. *See Wainwright v. Torna*, 455 U.S. 586, 587-588, 102 S.Ct. 1300, 1301, 71 L.Ed.2d 475 (1982) (finding where there is no constitutional right to counsel, there can be no deprivation of effective assistance). Likewise, the late

² Mr. Ceasar also notes a recusal motion that is not reflected in the docket master as being filed in the trial court, and he has not provided this Court a copy.

disclosure of the trial court's judgment did not preclude this Court's review.

DISPOSITION

For these reasons, we find no error in the trial court's September 13, 2017 denial of Mr. Ceasar's amended motion to correct an illegal. Accordingly, Mr. Ceasar's application for supervisory review is granted; however, relief is denied.

WRIT GRANTED; RELIEF DENIED