STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW SCOTT BENTLEY,

Defendant-Appellant.

UNPUBLISHED
April 11, 2000

No. 214170
Huron Circuit Court
LC No. 97-003958-FC

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant, a juvenile tried as an adult under MCL 764.1f(1); MSA 28.860(6)(1), appeals by right from his convictions by a jury of first-degree felony-murder, MCL 750.316(1)(b); MSA 28.548(1)(b), first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and possession of a firearm during the commission of a felony, MCL 750.227b(1); MSA 28.424(2)(1). The trial court sentenced defendant to a mandatory two years' imprisonment for the felony-firearm conviction, followed by twelve to twenty years' imprisonment for the home invasion conviction. For the felony-murder conviction, the court, following the mandatory sentencing provisions of MCL 769.1(1)(g); MSA 28.1072(1)(g) and MCL 750.316; MSA 28.548, sentenced defendant to life imprisonment without the possibility of parole. We affirm.

Defendant first argues that the statute authorizing his sentence as an adult, MCL 769.1; MSA 28.1072, as amended by 1996 PA 247, is unconstitutional because it violates state and federal rights to due process, state and federal rights to equal protection, and the separation of powers doctrine. Essentially, defendant argues that because prosecutors have discretion under MCL 764.1f(1); MSA 28.860(6)(1) to determine which juveniles accused of felony-murder will be tried as adults, and because MCL 769.1; MSA 28.1072 mandates that juveniles convicted of felony-murder be sentenced as adults, MCL 769.1; MSA 28.1072 impermissibly denies juveniles a hearing on the appropriateness of adult treatment, irrationally treats some juveniles differently than other, similarly-situated juveniles, and impermissibly deprives the judiciary of sentencing discretion. These claims involve constitutional issues that we review de novo. *People v Conat*, 238 Mich App 134, 144; 605 NW2d 49 (1999).

Constitutional claims analogous to those now raised by defendant were recently addressed and rejected by this Court in *Conat, supra* at 146-164. Defendant raises no new arguments not already considered and rejected in *Conat*. Therefore, defendant's claim that the statute is unconstitutional on the aforementioned grounds is without merit.

Next, defendant argues that MCL 769.1(1)(g); MSA 28.1072(1)(g), by requiring the imposition of a sentence of life imprisonment without the possibility of parole upon a juvenile tried as an adult and convicted of first-degree murder, violates the Michigan constitution's prohibition against cruel or unusual punishment. See Const 1963, art 1, § 16. Defendant contends that a *mandatory*, nonparolable life sentence should not apply to a fourteen-year-old, since age and maturity are significant mitigating factors with regard to crimes committed by juveniles.

We review constitutional questions de novo. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997). Moreover, statutes are presumed constitutional, and we have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent. *People v Hubbard (After Remand)*, 217 Mich App 459, 483-484; 552 NW2d 493 (1996). The party challenging a statute has the burden of proving its invalidity. *People v Thomas*, 201 Mich App 111, 117; 505 NW2d 873 (1993).

In deciding if punishment is cruel or unusual under Michigan law, we employ a four-part test where we (1) look to the gravity of the offense and the harshness of the penalty, (2) compare the punishment to the penalty imposed for other crimes in this state, (3) compare the penalty imposed for the same crime in other states, and (4) consider the goal of rehabilitation. *In re Ayres*, ___ Mich App ___; ___ NW2d ___ (Docket No. 216523, issued 12/7/99), slip op, p 2; *People v Launsburry*, 217 Mich App 358, 363; 551 NW2d 460 (1996).

Here, an analysis of the four aforementioned factors leads us to conclude that the mandatory life sentence contained in MCL 769.1(1)(g); MSA 28.1072(1)(g) does not constitute cruel or unusual punishment. First, our courts have held that a mandatory life sentence without the possibility of parole is not an unduly harsh sentence for felony-murder, given the seriousness of the offense, even when applied to a minor. See *People v Hall*, 396 Mich 650, 657-658; 242 NW2d 377 (1976), and *Launsburry, supra* at 363-364. Second, defendant, in discussing *Launsburry*, essentially concedes that our state imposes mandatory, nonparolable life sentences for other offenses. Third, defendant acknowledges that thirteen other states allow the imposition of mandatory, nonparolable life sentences on minors. Finally, in the context of a mandatory life sentence, our Supreme Court has noted that rehabilitation and release are still possible because a defendant has available the possibility of (1) commutation of his or her sentence by the Governor to a parolable offense, or (2) outright pardon. *Hall, supra* at 658. Accordingly, defendant's sentence does not constitute cruel or unusual punishment in contravention of our state's constitution, and defendant has not met his burden of overcoming the presumption of constitutionality.[1] See *Thomas, supra* at 117

Next, defendant argues that MCL 769.1(1)(g); MSA 28.1072(1)(g), by setting forth a mandatory, nonparolable life sentence for certain minors, violates the federal constitutional prohibition against cruel and unusual punishment. See US Const, Am VIII, as applied to the states by Am XIV.

Again, we review constitutional questions de novo, *Pitts, supra* at 263, and a statute is presumed constitutional unless the party challenging it proves otherwise or unless an unconstitutional defect is clearly apparent. *Hubbard, supra* at 483-484; *Thomas, supra* at 117.

The Michigan Supreme Court has held that the federal constitutional protection against "cruel and unusual punishment" is less broad than the protections against "cruel or unusual punishment" afforded under our state constitution. *People v Bullock*, 440 Mich 15, 30; 485 NW2d 866 (1992). Our analysis of alleged cruel and unusual punishment under the federal constitution involves a two-step process. First, we determine whether the sentence is grossly disproportionate to the offense. If the sentence is indeed grossly disproportionate, we compare sentences imposed for other crimes within Michigan and sentences imposed for the same crime (here, first-degree murder) in other jurisdictions to assess whether the sentence is excessive. See *Smallwood v Johnson*, 73 F3d 1343, 1347 (CA 5, 1996), and *McGruder v Puckett*, 954 F2d 313, 315-316 (CA 5, 1992) (both discussing *Harmelin v Michigan*, 501 US 957, 1005; 111 S Ct 2680; 115 L Ed 2d 836 (1991), and *Solem v Helm*, 463 US 277, 290-292; 103 S Ct 3001; 77 L Ed 2d 637 (1983), partial overruling recognized by *Smallwood, supra* at 1347, and *McGruder, supra* at 315-316).[2]

It cannot seriously be contended that life imprisonment for the taking of another life is *grossly* disproportionate. Consequently, we need not conduct the second step – intra- and inter-jurisdictional comparisons – as discussed in *Smallwood, supra* at 1347, and *McGruder, supra* at 315-316. Defendant's argument that MCL 769.1(1)(g); MSA 28.1072(1)(g) facilitates cruel and unusual punishment under the federal constitution is without merit.[3]

Finally, defendant argues that the trial court erred by admitting into evidence two photographs of the victim's body – one depicting her entire, bloody body, and the other depicting her bruised left hand. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999); *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found when an unprejudiced person, considering the facts on which the trial court acted, could find no justification for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). Any error in the admission of evidence does not require reversal unless a substantial right of the party is affected. MRE 103(a); *People v Travis*, 443 Mich 668, 686; 505 NW2d 563 (1993).

Defendant contends that because he admitted killing the victim, the photographs were irrelevant. He further contends that even if the photographs *had* been relevant, any probative value was outweighed by their potential to prejudice defendant.

With regard to the photograph of defendant's bruised hand, the transcript of the relevant motion hearing reveals no basis for admissibility. Indeed, the prosecutor made no argument that defendant caused the victim to bruise her hand. However, under MCL 769.26; MSA 28.1096, error in the admission of evidence does not warrant reversal unless it affirmatively appears that the error resulted in a miscarriage of justice. "In other words, the effect of the error is evaluated by assessing it in the context of the untainted evidence to determine whether it is more probable than not that a different outcome would have resulted without the error." *Lukity, supra* at 495. Here, the admission of the

photograph depicting the victim's hand could not possibly have affected the jury's verdict, given the overwhelming evidence that defendant killed the victim and given the other, properly admitted photographs depicting the victim's dead body and the victim's autopsy.

With regard to the photograph wholly depicting the victim's dead body, we conclude that the court did not abuse its discretion in admitting this photograph. First, the blood loss shown in the photographs was relevant toward defendant's intent, an important element of the felony-murder charge. See *People v Mills*, 450 Mich 61, 71; 537 NW2d 909, modified and remanded on other grounds 450 Mich 1212 (1995) ("The severity and the vastness of the victim's injuries were of consequence to the determination whether the defendants' acts were intentional"). The photograph was also relevant to establish the position of the body and to corroborate the prosecution's witnesses' version of the events that took place on the day of the killing. See *People v Eddington*, 387 Mich 551, 562; 198 NW2d 297 (1972) (photographs showing the corpus delecti of the crime admissible even though witnesses were available to testify regarding the subject matter of the photographs). Furthermore, the Court carefully considered a number of photographs and admitted only those it considered probative and not particularly inflammatory. See *Mills*, *supra* at 78. As in *Mills*, we are satisfied in the instant case that the court "admitted only those photographs that were necessary in furthering the probative force, and omitted those that were repetitive or too gruesome and unfairly prejudicial." *Id.* at 78. Accordingly, we conclude that the trial court did not abuse its discretion by admitting the photograph of the victim's body.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens

[1] Defendant suggests that because prosecutors have discretion regarding whether to try a juvenile as an adult for first-degree murder, and because a minor convicted of first-degree murder now faces a mandatory, nonparolable life sentence under the amended version of MCL 769.1; MSA 28.1072, the mandatory sentence now constitutes cruel or unusual punishment. In other words, defendant argues that whereas a mandatory life sentence for a minor might have been appropriate prior to the amendment of MCL 769.1; MSA 28.1072, when a hearing was held to determine if a juvenile should be sentenced as an adult or a minor, such a sentence is now cruel or unusual because of the absence of this hearing. We disagree, however, that the mere absence of this hearing somehow elevates an otherwise appropriate sentence to the level of cruel or unusual punishment, when a minor accused of first-degree murder and tried as an adult has been validly convicted of this most serious of offenses. As stated in *Conat*, *supra* at 159, "juveniles have no constitutional right to be treated differently from adults when they engage in criminal conduct."

[2] In *Solem*, the Court adopted three factors to assess in determining whether a sentence is cruel and unusual under federal law: (1) the gravity of the offense relative to the harshness of the penalty (i.e., the proportionality of the sentence), (2) the sentences imposed for other crimes in the jurisdiction, and (3) the sentences imposed for the same crime in other jurisdictions. See *Solem*, *supra* at 292. In

Harmelin, which was a plurality opinion, five justices rejected this full three-part test. See *Harmelin, supra* at 964-990, 997-1005. However, seven justices in *Harmelin* supported a continued "proportionality analysis" for alleged cruel and unusual punishment. *Id.* at 997-1005, 1018-1028. Accordingly, federal courts have interpreted *Solem* and *Harmelin*, read together, to mean that a threshold inquiry must be made to determine if a sentence is grossly disproportionate to an offense, and only if this threshold question is answered in the affirmative do the remaining two *Solem* factors need to be considered. See *McGruder, supra* at 315-316, and *Smallwood, supra* at 1347.

[3] Because the statute at issue here does not violate the state constitution against cruel or unusual punishment, as discussed *supra*, and because the federal constitution provides less protection in this area than the state constitution, *Bullock, supra* at 30, it would be a strange result indeed to hold that the statute violates the federal prohibition against cruel and unusual punishment.