NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ROBERT BRIGHTWELL	:	
Appellant	:	No. 1123 EDA 2019

Appeal from the Judgment of Sentence Entered March 22, 2019
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0000732-1975

BEFORE: PANELLA, P.J., OLSON, J., and NICHOLS, J.

MEMORANDUM BY PANELLA, P.J.: **FILED DECEMBER 30, 2019**

In 1980, Robert Brightwell was convicted of, among other charges, second-degree murder, ***see*** 18 Pa.C.S.A. § 2502(b), and conspiracy, ***see*** Pa.C.S.A. § 903. Subsequently, he was sentenced to a mandatory sentence of life imprisonment without the possibility of parole ("LWOP"). The incident in question involved the shooting and killing of an individual during an armed robbery at a gas station, and although it is unclear from the record who performed the shooting, two others were implicated in this armed robbery and killing.

When Brightwell committed the offenses for which he was found guilty, he was seventeen years old. After the Supreme Court of the United States' decisions in ***Miller v. Alabama***, 567 U.S. 460 (2012) (holding that sentencing juveniles capable of rehabilitation to LWOP is unconstitutional under the Eighth Amendment) and ***Montgomery v. Louisiana***, 136 S.Ct. 718 (2016)

(indicating that ***Miller*** applies retroactively on collateral review), Brightwell received a new sentencing hearing. At this hearing, the trial court sentenced him for his second-degree murder conviction to thirty-five years to life imprisonment. Brightwell appeals from that judgment of sentence, arguing that the maximum term of life imprisonment imposed upon a juvenile convicted of second-degree murder violates the Eighth and Fourteenth Amendments of the United States Constitution, as interpreted by ***Miller*** and ***Montgomery***.

As we are bound by precedent to hold that a mandatory life maximum for a juvenile convicted of second-degree murder is not cruel and unusual punishment, ***see Commonwealth v. Olds***, 192 A.3d 1188, 1191 (Pa. Super. 2018), *appeal denied*, 199 A.3d 334 (Pa. 2018), we affirm.

Following his initial conviction and sentencing, Brightwell appealed, but this Court affirmed the trial court. After that, our Supreme Court denied *allocatur*. Approximately thirty years later, with ***Miller*** and ***Montgomery*** having been decided, Brightwell filed a petition pursuant to the Post Conviction Relief Act ("PCRA"), ***see*** 42 Pa.C.S.A. §§ 9541-9546. Correspondingly, Brightwell's LWOP sentence was vacated, and he was resentenced to thirty-five years to life for his second-degree murder offense and five to ten years of incarceration for the crime of conspiracy. Brightwell filed a timely appeal challenging this resentencing, and both the PCRA court and Brightwell followed the dictates of Pa.R.A.P. 1925.

On appeal, Brightwell presents one question for our review:

1) Did the lower court err by imposing an illegal sentence, which included a mandatory term of life imprisonment for second-degree murder, as well as a consecutive five- to ten-year sentence for conspiracy to commit robbery with serious bodily injury, where Brightwell committed those crimes when he was under the age of eighteen?

See Appellant's Brief, at 9.

Brightwell's sole issue is a challenge to the legality of his sentence. A challenge to the legality of a sentence presents pure questions of law; accordingly, our standard of review is *de novo* and our scope of review is plenary. ***See Commonwealth v. Rodriguez***, 174 A.3d 1130, 1147 (Pa. Super. 2017) (citation omitted).

Brightwell avers: 1) a "one size fits all" mandatory life maximum sentence violates ***Miller***'s individualized sentencing approach for juveniles; 2) a second-degree murder, which does not require intent to kill in Pennsylvania, should necessitate a lower sentence for a juvenile; 3) the sentencing of a juvenile to a maximum of life in prison does not serve a legitimate penological purpose. ***See*** Appellant's Brief, at 19, 24, 27.

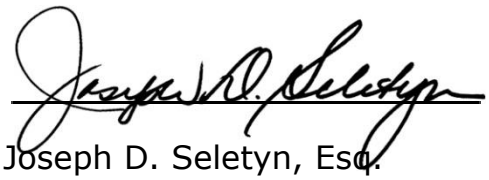
In ***Olds***, this Court determined that "mandatory life maximums for juveniles convicted of felony murder represent conventional sentencing practices." 192 A.3d at 1197. In so finding, we held that "the Eighth Amendment permits imposition of [18 Pa.C.S.A. §] 1102(b)'s mandatory maximum term of life imprisonment for juveniles convicted of second-degree murder, who did not kill or intend to kill." ***Id***., at 1197-98.

As in the case of ***Olds***, Brightwell's new sentence provides for a meaningful opportunity for release. ***See id***., at 1198; ***see also Miller***, 567 U.S. at 479 (remarking that states are not required to guarantee eventual freedom, but provide a meaningful opportunity to obtain released dependent on maturity and rehabilitation) (citation and quotation omitted). However, we also stated that "trial courts **must** sentence juveniles convicted of second-degree murder prior to June 25, 2012[,] to a maximum term of life imprisonment under section 1102(b)," ***Olds***, 192 A.3d at 1198 (emphasis added), and held that these "mandatory maximums [did] not violate the Eighth Amendment's ban on cruel and unusual punishment," ***id***.

Brightwell does not offer any distinguishable basis for a departure from the reasoning in ***Olds***. In fact, he concedes that he is raising this issue in order to preserve the issue in the event the Pennsylvania Supreme Court reverses ***Olds***. ***See, e.g.***, Appellant's Brief, at 18, n.* We note that the Supreme Court of Pennsylvania denied the petition for allowance of appeal in ***Olds***. ***See*** 199 A.3d 334 (Pa. 2018) (Table). Accordingly, we are bound by ***Olds***. ***See Sorber v. American Motorists Ins. Co.***, 680 A.2d 881, 882 (Pa. Super. 1996) ("As long as the decision has not been overturned by our Supreme Court, it remains binding precedent."). We therefore affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/30/19