

334 Mich.App. 553
Court of Appeals of Michigan.

PEOPLE of the State of Michigan,
Plaintiff-Appellee,
v.
Montez STOVALL, Defendant-Appellant.

No. 342440

|
Submitted June 9, 2020, at Detroit.

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Decided November 5, 2020, 9:05 a.m.

Synopsis

Background: Defendant, who pled guilty to two counts of second-degree murder and possessing firearm when committing or attempting to commit felony, committed as a juvenile, filed successive motion for relief of judgment. The Circuit Court, Wayne County, denied the motion. Defendant appealed.

Holdings: The Court of Appeals, Sawyer, J., held that:

defendant's motion was filed on basis of retroactive change in law that occurred after his first motion for relief from judgment;

defendant's sentence was not premised on guilty plea resulting from illusory plea bargain;

trial court did not commit plain error when it failed to consider defendant's purported juvenile status when it accepted his guilty pleas;

defendant's sentence did not constitute cruel or unusual punishment;

defendant's assertion that parole process denied him opportunity to demonstrate his maturity and rehabilitation was matter to be asserted against parole board; and

trial court's failure to consider defendant's juvenile status and attendant circumstances did not violate due process.

Affirmed.

Gleicher, J., dissented with opinion.

Procedural Posture(s): Appellate Review;
Post-Conviction Review.

****267** Wayne Circuit Court, LC No. 92-000334-01-FC, Kelly Ramsey, J.

Attorneys and Law Firms

Dana Nessel, Attorney General, Fadwa A. Hammoud, Solicitor General, Kym L. Worthy, Prosecuting Attorney, Jason W. Williams, Chief of Research, Training, and Appeals, and Jon P. Wojtala, Assistant Prosecuting Attorney, for the people.

State Appellate Defender, Detroit (by Sofia V. Nelson) for defendant.

Before: Gleicher, P.J., and Sawyer and Meter, JJ.

Opinion

Sawyer, J.

****268 *557** This case is before us on remand from our Supreme Court for consideration as on delayed leave granted.¹ Defendant appeals the trial court's order denying his successive motion for relief from judgment. We affirm.

In 1991, while still a juvenile, defendant shot and killed two men. As part of a plea agreement with the prosecution, defendant pleaded guilty to two counts of second-degree murder, MCL 750.317, and two counts of possessing a firearm when committing or attempting to commit a felony (felony-firearm), MCL 750.227b(1). In exchange for defendant's guilty pleas, the prosecution reduced the charges in one of the cases from first-degree murder, MCL 750.316, to second-degree murder, MCL 750.317, with defendant sentenced to two concurrent sentences of life imprisonment with the possibility of parole after 10 years and the mandatory two-year sentence for the felony-firearm convictions. In pleading guilty to second-degree murder, defendant avoided the mandatory sentence of life imprisonment without the possibility of parole were he found guilty of first-degree murder.

Over the next quarter-century, defendant filed several motions for relief from judgment in the trial court, all of which were denied. In 2016, after several United States Supreme Court decisions regarding the sentencing of juvenile offenders, defendant filed another successive motion for relief from judgment in the trial court, asserting that there had been a retroactive change in the law warranting the withdrawal of his guilty plea and the vacation of his sentences. After considering defendant's motion, the trial court determined *558 that defendant was not entitled to relief from judgment because of the validity of his sentences. This appeal ensued.

I. STANDARDS OF REVIEW

This Court reviews "a trial court's decision on a motion for relief from judgment for an abuse of discretion and its findings of facts supporting its decision for clear error. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes or makes an error of law." *People v. Swain*, 288 Mich. App. 609, 628-629, 794 N.W.2d 92 (2010) (citations omitted). "Interpretation of a court rule is treated like interpretation of a statute, it is a question of law that is reviewed de novo." *People v. Phillips*, 468 Mich. 583, 587, 663 N.W.2d 463 (2003). Similarly, questions of constitutional law are reviewed de novo. *People v. Trakhtenberg*, 493 Mich. 38, 47, 826 N.W.2d 136 (2012).

Unpreserved constitutional claims are reviewed against the plain-error standard. *People v. Vandenberg*, 307 Mich. App. 57, 61, 859 N.W.2d 229 (2014), citing *People v. Carines*, 460 Mich. 750, 764, 597 N.W.2d 130 (1999).

To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the **269 lower court proceedings. It is the defendant rather than the Government who bears the burden of persuasion with respect to

prejudice. Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually *559 innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. [*Carines*, 460 Mich. at 763-764, 597 N.W.2d 130 (quotation marks, citations, and brackets omitted).]

II. APPLICABLE LEGAL PRINCIPLES

Defendant premises much of his argument on two recent cases decided by the United States Supreme Court that exerted a significant change on the sentencing of juvenile offenders. In *Miller v. Alabama*, 567 U.S. 460, 479, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Supreme Court held that the prohibition against cruel and unusual punishment in the Eighth Amendment of the United States Constitution forbids "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." In reaching this conclusion, the *Miller* Court was concerned with the mandatory nature of these punishments that denied a sentencing judge the opportunity to make individualized sentencing determinations and to consider a juvenile's age or circumstances before deciding whether a sentence of life imprisonment without the possibility of parole was appropriate. *Id.* at 477-478, 480, 132 S. Ct. 2455. However, *Miller* did not categorically reject life imprisonment without the possibility of parole for juvenile offenders. Rather, it required that sentencing courts consider an offender's juvenile status and connected circumstances before determining whether a sentence of life imprisonment without the possibility of parole was a proportionate sentence. *Id.* at 479, 132 S. Ct. 2455.

Six years later, the United States Supreme Court revisited its *Miller* holding in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016). Writing

for the majority, then Justice Anthony Kennedy described *Miller* as holding “that a juvenile convicted of *560 a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile’s special circumstances in light of the principles and purposes of juvenile sentencing.” *Id.* at 193-194, 136 S.Ct. 718. While *Miller* expressed a procedural requirement, its holding established that the penological justifications that supported sentencing juvenile offenders to life in prison without the possibility of parole “collapse in light of ‘the distinctive attributes of youth.’ ” *Id.* at 208, 136 S.Ct. 718 quoting *Miller*, 567 U.S. at 472, 132 S.Ct. 2455. As a result, *Miller* announced a substantive rule of law that life imprisonment without the possibility of parole is an excessive punishment for juvenile offenders “whose crimes reflect transient immaturity.” *Montgomery*, 577 U.S. at 210, 136 S.Ct. 718. And because *Miller* announced a substantive rule of constitutional law, its holding had retroactive effect for those juvenile offenders who had been sentenced before *Miller* was decided. *Id.* at 212, 136 S.Ct. 718. The Supreme Court suggested that, as an alternative to relitigating sentences that violated *Miller*’s holding, states could remedy the situation by providing juvenile offenders serving mandatory sentences of life imprisonment without the possibility of parole the possibility to be considered for parole. *Id.*

Defendant asserts that these two decisions constituted a retroactive change in **270 the law that rendered his sentences of life imprisonment with the possibility of parole invalid. And, as a result, he argues that the trial court erred by denying his successive motion for relief from judgment. We disagree.

III. ANALYSIS

Before turning to defendant’s substantive claims, we must first address a procedural argument put forward by the prosecution. Under MCR 6.502(G)(1), one of several court rules that govern motions for relief from *561 judgment, a criminal defendant is entitled to file “one and only one motion for relief from judgment ... with regard to a conviction.” However, a defendant may file a second or subsequent motion for relief from judgment on the basis of “a retroactive change in law that occurred after the first motion for relief from judgment” MCR 6.502(G)(2). It is undisputed that *Miller* and *Montgomery* brought about a retroactive change in the law after

defendant filed his first motion for relief from judgment in 1995. The court rule allows a defendant to file a motion for relief from judgment on the basis of a retroactive change in the law that occurred after a defendant’s first motion for relief from judgment, which is precisely what defendant did in the trial court. And defendant’s arguments in the trial court and in this Court rely on the retroactive change defined in *Miller* and *Montgomery*. While these Supreme Court cases may not, as the trial court concluded, provide substantive support for defendant’s motion, they tenuously meet the procedural requirement to allow defendant to file a successive motion for relief from judgment. As a result, we will address defendant’s substantive claims.

A. ILLUSORY PLEA BARGAIN

Defendant first asserts that the trial court abused its discretion by denying his successive motion for relief from judgment because his guilty plea was the result of an illusory plea bargain. We disagree.

Defendant pleaded guilty to two counts of second-degree murder and two counts of felony-firearm as a result of a plea agreement he entered into with the prosecution. “A defendant pleading guilty must enter an understanding, voluntary, and accurate plea.” *562 *People v. Brown*, 492 Mich. 684, 688-689, 822 N.W.2d 208 (2012). “To ensure that a guilty plea is accurate, the trial court must establish a factual basis for the plea. In order for a plea to be voluntary and understanding, the defendant must be fully aware of the direct consequences of the plea.” *People v. Pointer-Bey*, 321 Mich. App. 609, 616, 909 N.W.2d 523 (2017) (quotation marks and citations omitted). When, as is the case here, “a plea is offered pursuant to a bargain with the prosecutor, voluntariness depends upon the defendant’s knowledge of the actual value of the bargain.” *People v. Williams*, 153 Mich. App. 346, 350, 395 N.W.2d 316 (1986) (quotation marks and citation omitted). “A criminal defendant may be entitled to withdraw his or her guilty plea if the bargain on which the guilty plea was based was illusory, i.e., the defendant received no benefit from the agreement.” *Pointer-Bey*, 321 Mich. App. at 621, 909 N.W.2d 523. Similarly, “an illusory plea bargain is one in which the defendant is led to believe that the plea bargain has one value when, in fact, it has another lesser value.” *Williams*, 153 Mich. App. at 350, 395 N.W.2d 316. In this case, the prosecution reduced the first-degree-murder charge for

defendant's killing of an individual in exchange for defendant pleading guilty to two counts of second-degree murder. Defendant asserts that because he pleaded guilty to a lesser offense to avoid an unconstitutional sentence, his plea bargain **271 was illusory. However, this argument is neither supported by the facts nor by the law.

Undoubtedly, defendant's plea bargain allowed him to avoid a sentence that would subsequently be declared unconstitutional by the Supreme Court in *Miller* and *Montgomery*. It does not follow, however, that the plea bargain was wholly without benefit. Under the terms of the second-degree-murder statute, MCL 750.317, defendant could have been sentenced to imprisonment for "any term of years" in the sentencing *563 court's discretion. But, consistently with the terms of the plea agreement, defendant was sentenced to life imprisonment with the possibility of parole after serving 10 years of the second-degree-murder sentences and the two-year felony-firearm sentence. Wholly apart from avoiding the unconstitutional sentence, defendant received the benefit of a certain date at which he would become eligible for consideration of release on parole and avoided the risk of being found guilty of first-degree murder, which would have constituted a more severe sentence. Moreover, *Miller* and *Montgomery* did not categorically bar sentences of life imprisonment without parole for juveniles but required an individualized sentencing hearing to determine whether such a sentence is proportionate after considering a defendant's juvenile status. *Miller*, 567 U.S. at 479, 132 S.Ct. 2455; *Montgomery*, 577 U.S. at 208-210, 136 S.Ct. 718. Thus, defendant's choice to plead guilty to a lesser offense definitively removed a life imprisonment without parole sentence from the range of possible penalties facing defendant. As a result, defendant received a benefit for having pleaded guilty apart from avoiding an unconstitutional sentence.

Yet, even if the only benefit defendant received was the avoidance of an unconstitutional sentence, this would not, as a matter of law, render the plea bargain illusory. As articulated by the United States Supreme Court in *Brady v. United States*, 397 U.S. 742, 757, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970),

absent misrepresentation or other impermissible conduct by state agents, a voluntary plea of guilty intelligently made in the light of the

then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise. A plea of guilty triggered by the expectations of a competently counseled defendant that the State will have a strong case against *564 him is not subject to later attack because the defendant's lawyer correctly advised him with respect to the then existing law as to possible penalties but later pronouncements of the courts, as in this case, hold that the maximum penalty for the crime in question was less than was reasonably assumed at the time the plea was entered. [Citation omitted.]

There is nothing in the record to suggest that the prosecution or defendant's counsel misrepresented the applicable law to defendant when defendant chose to accept the plea bargain or enter his guilty plea. Nor is there any evidence that any party in this case was aware that mandatory sentences of life imprisonment without the possibility of parole for juvenile offenders were impermissible under the Eighth Amendment. Defendant voluntarily admitted to killing two people and received the agreed-upon sentences. As the Supreme Court further articulated in *Brady*, the United States Constitution does not require "that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply because it later develops that ... the maximum penalty then **272 assumed applicable has been held inapplicable in subsequent judicial decisions." *Id.* The record indicates that all parties in this case, including the sentencing judge, moved forward in good faith, applying the law as it was understood at the time. Defendant was aware of the terms of the plea agreement and stated, on the record, that he understood the terms of his sentences. That one part of defendant's calculus in deciding to accept the plea bargain—the mandatory sentence of life without the possibility of parole if found guilty of first-degree murder—was rendered unconstitutional nearly 20 years later does not, under the terms of *Brady*, render the plea bargain illusory or invalidate defendant's pleas.

*565 Finally, defendant asserts that his pleas were invalid

because he lacked the capacity to understand the terms and consequences of the plea bargain. He argues that the sentencing court should have considered his juvenile status as part of the plea process and that the court's failure to do so violated due process. We note that defendant did not raise this argument in the trial court as part of his successive motion for relief from judgment; as a result, it is unpreserved for appeal. *People v. Metamora Water Serv., Inc.*, 276 Mich. App. 376, 382, 741 N.W.2d 61 (2007). As an unpreserved constitutional error, this claim is subject to plain-error review. *Vandenberg*, 307 Mich. App. at 61, 859 N.W.2d 229.

Defendant asserts that the sentencing court was required to take account of his juvenile status when accepting his guilty plea in accordance with the terms of the plea bargain. However, defendant was more than 18 years old when he agreed to the plea bargain and entered his plea. At defendant's plea hearing, the court and defendant's counsel explained to defendant the terms of the plea agreement and sentence; moreover, defendant stated on the record that he understood the terms. At no point did defendant state that he did not or could not understand. Further, defendant states in his appellate brief that he understood the terms of the plea agreement to mean that he would be sentenced to life imprisonment and be eligible for parole after serving 10 years. These, of course, are the terms of the plea agreement entered on the record and the sentence defendant received, undermining defendant's assertion that he lacked the capacity to understand the terms of his agreement. Rather, this seems more akin to a defendant seeking to withdraw his plea because he is dissatisfied with the sentence to which he agreed. However, dissatisfaction with a sentence does not render a guilty plea invalid. See *566 *People v. Fonville*, 291 Mich. App. 363, 378, 804 N.W.2d 878 (2011) (stating that "dissatisfaction with the sentence or incorrect advice from the defendant's attorney" do not constitute justification for withdrawal of a guilty plea). Considering all these factors and the record available, we cannot conclude that the sentencing court erred by failing to consider defendant's purported juvenile status when it accepted his guilty pleas under the terms of the agreed-upon plea bargain.

Because defendant's sentences were not premised on a guilty plea resulting from an illusory plea bargain, it was not outside the range of principled outcomes for the trial court to deny defendant's successive motion for relief from judgment on this basis.

B. CONSTITUTIONAL CLAIMS

Defendant next asserts that the trial court abused its discretion by denying defendant's successive motion for relief from judgment because his sentences violate **273 due process and constitute cruel or unusual punishment. We disagree.²

We begin with defendant's claim that his sentences constitute cruel or unusual punishment. "The Michigan Constitution prohibits cruel *or* unusual punishment, Const. 1963, art. 1, § 16, whereas the United States Constitution prohibits cruel *and* unusual punishment, U.S. Const., Am. VIII." *People v. Benton*, 294 Mich. App. 191, 204, 817 N.W.2d 599 (2011). Generally, the protection afforded under the Michigan Constitution is considered to be broader than that provided for under the United *567 States Constitution. As a result, "[i]f a punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *Id.* (quotation marks and citation omitted).

"The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions." *Miller*, 567 U.S. at 469, 132 S.Ct. 2455 (quotation marks and citation omitted). In construing this principle, the Supreme Court held in *Miller* 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.'" *Id.* at 465, 132 S. Ct. 2455. While these sentences violate the Eighth Amendment, the Supreme Court stated that "[a] State is not required to guarantee eventual freedom, but must provide [juveniles] some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 479, 132 S. Ct. 2455 (quotation marks and citation omitted). Further, in *Montgomery*, the Supreme Court held that the rule announced in *Miller* applied retroactively to juvenile offenders. *Montgomery*, 577 U.S. at 212, 136 S.Ct. 718. This Court has interpreted the holding of these two cases to guarantee that defendants convicted as juveniles "at a maximum ... are afforded some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. At a minimum, these cases apply only to mandatory sentences of life without the possibility of parole." *People v. Williams*, 326 Mich. App. 514, 521, 928 N.W.2d 319 (2018) (quotation marks and citations omitted), rev'd on other grounds 505 Mich. 1013, 940 N.W.2d 75 (2020).³

**274 *568 Applying these principles as they were

construed in *Williams*, we conclude that defendant's sentences do not constitute cruel or unusual punishment. If the rule articulated in *Miller* and *Montgomery* is given a minimal reading, defendant's sentences do not violate the Eighth Amendment because defendant did not receive a mandatory sentence of life imprisonment without parole. *Williams*, 326 Mich. App. at 521-522, 928 N.W.2d 319. Conversely, if *Miller* and *Montgomery* are given a maximal reading, defendant's sentences still comport with the Eighth Amendment's requirement that juvenile offenders be given a meaningful opportunity to obtain release on the basis of maturity and rehabilitation. *Id.* at 521, 928 N.W.2d 319. As is demonstrated by the record, defendant is eligible and has been considered for parole. Under this Court's decision in *Williams*, this constitutes a meaningful opportunity for release, as required by *Miller*. *Id.* at 522, 928 N.W.2d 319. "And because defendant has some meaningful opportunity to obtain release from his sentence of life with the possibility of parole, that sentence was not *569 invalid under *Miller*." *Id.* While defendant has, until now, been unsuccessful in obtaining release, this fact does not render his sentences violative of the Eighth Amendment. *Miller* requires only that defendant be provided a meaningful opportunity to obtain release, not that he be guaranteed eventual freedom. *Miller*, 567 U.S. at 479, 132 S.Ct. 2455.

Defendant invites this Court to extend the provisions of *Montgomery* and *Miller* to sentences beyond those labeled "life imprisonment without parole." In support of this invitation, defendant makes mention of a multitude of cases decided by the supreme courts of our sister states and several federal circuit courts of appeal. We note that these sorts of cases lack precedential authority but can be considered for their persuasive value. See *People v. Walker (On Remand)*, 328 Mich. App. 429, 444-445, 938 N.W.2d 31 (2019) ("While the decisions of lower federal courts and other state courts are not binding on this Court, they may be considered as persuasive authority.") (quotation marks and citation omitted). However, none of the cases on which defendant relies addresses the sentence at issue here—life imprisonment with the possibility of parole in 10 years. Rather, those cases deal with the constitutionality of term-of-years sentences that act as de facto life sentences. "[A] sentence of life *with* the possibility of parole is not a de facto sentence of life *without* the possibility of parole." *Williams*, 326 Mich. App. at 521 n. 3, 928 N.W.2d 319. Defendant's sentences are different not only in degree, but in kind, and the cases on which he relies to extend *Miller* and *Montgomery* are inapposite to this goal.

Defendant also asserts that his sentences constitute cruel or unusual punishment because the parole process for individuals serving sentences of life imprisonment with the possibility of parole denies him the opportunity *570 to demonstrate his maturity and rehabilitation. This, in turn, he argues, denies him a meaningful and realistic opportunity for release. In support, defendant asserts that the parole-review procedures available for juvenile offenders who were resentenced after *Miller* and *Montgomery* invalidated their unconstitutional mandatory sentences of life imprisonment without the opportunity for parole are less onerous than those defendant faces. Defendant asserts that the parole board must consider his youth at the **275 time of the crime and his subsequent maturity and rehabilitation for his sentences to be constitutional. And in support of this assertion, he relies on an unpublished case from a federal district court.⁴ While we accept the possibility that the parole board's policies and procedures might not comport with the requirements of *Miller* and *Montgomery*, a motion for relief from judgment is not the proper procedural method for defendant to pursue those claims. Defendant's sentences, as imposed by the sentencing court, comport with the Eighth Amendment because they provide him with a meaningful opportunity for release. That the parole board's policies stymie defendant's efforts is a matter to be asserted against the parole board; it is not a ground for vacating defendant's sentences.

Finally, defendant asserts that his sentences violate due process because neither the sentencing court nor the parole board has considered his juvenile status and attendant circumstances. However, none of the authorities on which defendant relies supports this assertion. *571 While *Miller*, 567 U.S. at 480, 132 S.Ct. 2455, requires a sentencing court to consider "how [juveniles] are different," these differences are to be considered "before determining that life without parole is a proportionate sentence," *Montgomery*, 577 U.S. at 209-210, 136 S.Ct. 718. The clear language of these opinions does not support the proposition, as defendant asserts, that consideration of a defendant's juvenile status is a procedural requirement when sentencing all individuals convicted of a crime committed while a juvenile. In this case, defendant was not sentenced to either a mandatory or a discretionary sentence of life imprisonment without the possibility of parole. Rather, he received a sentence that expressly provided for the possibility of parole. As a result, he was afforded some "hope for some years of life outside prison walls" *Id.* at 213, 136 S.Ct. 718.

This discussion also undermines defendant's claim that

the parole board's policies and procedures deny him due process. Generally, a parole board's consideration of an individual's application for parole does not implicate a due-process right. " 'That the state holds out the possibility of parole provides no more than a mere hope that the benefit will be obtained ... a hope which is not protected by due process.' " *Glover v. Parole Bd.*, 460 Mich. 511, 520, 596 N.W.2d 598 (1999), quoting *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1, 11, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979). *Miller* and *Montgomery* undoubtedly establish a procedure at sentencing that requires a sentencing court to weigh a juvenile offender's status before determining whether that individual is one of the rare juvenile offenders who "may be sentenced to life without parole" *Montgomery*, 577 U.S. at 210, 136 S.Ct. 718. And the Supreme Court's solution in *Montgomery* was to allow those juvenile offenders who had not been given the opportunity to demonstrate that they did not fall into *572 that class to be considered for parole. *Id.* at 212, 136 S.Ct. 718. But defendant was never a member of that class of offenders and, after serving the required minimum sentence, has always been eligible for parole. There is nothing in these opinions to imply that defendant's sentences to life imprisonment with the **276 possibility of parole are invalid because they deny defendant a parole process aimed toward a meaningful opportunity for release. As discussed earlier, while the parole board's policies and procedures might not comport with the Eighth Amendment, defendant's constitutional claim lies with those policies and not with the validity of his sentences.

Because defendant's sentences of life imprisonment with the possibility of parole do not violate due process or constitute cruel or unusual punishment, the trial court did not abuse its discretion by denying defendant's successive motion for relief from judgment.

Affirmed.

Meter, J., concurred with Sawyer J.

Gleicher, P.J. (dissenting).

In 1992, the prosecution charged Montez Stovall with one count of first-degree murder, one count of second-degree

murder, and two counts of possessing a firearm when committing or attempting to commit a felony (felony-firearm). Stovall was 17 years old. He faced a mandatory sentence of life imprisonment without the possibility of parole if convicted of first-degree murder.

To avoid the imposition of a life-without-parole sentence, Stovall pleaded guilty to two counts of second-degree murder and the felony-firearm charges. At the plea hearing, Stovall's counsel stated, "I've advised him that the statute permits the Parole Board to consider him for probation [sic] at the end of ten years *573 on this type of life sentence, after the two years [for the felony-firearm charges]." Counsel's advice was consistent with the law then in effect, which provided that Stovall would be eligible for parole consideration after serving 10 years on the murder convictions. MCL 791.234(7)(a).

Stovall's sentencing guidelines were scored in preparation for his sentencing; the calculated minimum sentence ranged from 144 to 300 months, with the maximum being life. Under MCL 750.317, the court alternatively could have sentenced Stovall to "imprisonment in the state prison for life, or any term of years" The judge imposed a life sentence rather than a guidelines sentence. The life sentence permitted Stovall to be considered for parole after serving 10 years. A guidelines sentence would have delayed his parole eligibility to 12 years of incarceration.

In the 28 years that have elapsed since Stovall entered prison, two changes have undermined the legal foundation for Stovall's sentence. The first was evolutionary. Over time, it became progressively more difficult for an inmate convicted of second-degree murder to obtain parole. In 1992, the Legislature extended the amount of time that must be served before eligibility for parole consideration from 10 to 15 years. MCL 791.234(7)(a).¹ In 1997, the parole board chairperson announced that for the parole board, "life means life":

It has been a long standing philosophy of the Michigan Parole Board that a life sentence means just that—life in prison. Of course there are exceptions and parole may be appropriate under certain circumstances. It is the parole board's belief that something exceptional must occur which

would cause the parole board to request the sentencing *574 judge or Governor to set aside a life sentence. Good behavior is expected and is not in and of itself grounds for parole. [Citizens **277 Alliance on Prisons and Public Spending, *No Way Out: Michigan's Parole Board Redefines the Meaning of "Life"* (September 2004), p 10, available at <<https://static.prisonpolicy.org/scans/cappsmi/fullliferreport.pdf>> (accessed September 30, 2020) [<https://perma.cc/US3Q-5BP7>] (ellipsis omitted; formatting altered).]

In 1999, the Legislature eliminated a prisoner's right to appeal a parole denial. MCL 791.234(11). Subsequent statutes tightened parole procedures, making it more difficult for a prisoner to enter even the initial steps of the process. See MCL 791.234(8). As a result of these legislative overhauls, Michigan's parole system now affords virtually unbridled discretion to politically appointed parole board members and the sentencing judge. See Citizens Alliance on Prisons and Public Spending, *Parolable Lifers in Michigan: Paying the Price of Unchecked Discretion* (February 2014), available at <<https://www.prisonpolicy.org/scans/cappsmi/Parolable-Lififers-in-Michigan-Paying-the-price-of-unchecked-discretion.pdf>> (accessed September 30, 2020) [<https://perma.cc/5PR4-FGPY>].² In *People v. Carp*, 298 Mich. App. 472, 533-535; 828 N.W.2d 685 (2012), rev'd on other grounds, 499 Mich. 903, 877 N.W.2d 716 (2016), this Court acknowledged that a parolable life sentence likely results in lifetime imprisonment.

*575 Stovall has been incarcerated for 28 years and has not been granted even a single interview, the preliminary step to parole eligibility. Nor have his parole guidelines been scored. Although the statute underlying his guilty plea permitted parole review in 10 years, 28 years have passed without a formal review and, according to the record, Stovall will wait at least another three years for an opportunity for parole consideration.

The changes in the law and the parole board's approach, standing alone, do not afford Stovall a legal ground for withdrawing his guilty plea or being resentenced. See

Jones v. Dep't of Corrections, 468 Mich. 646, 651, 664 N.W.2d 717 (2003) ("A prisoner enjoys no constitutional or inherent right to be conditionally released from a validly imposed sentence."). In combination with a much more dramatic change, however, the shift in parole processes invalidates Stovall's sentence and compels a resentencing hearing.

In 2012, the United States Supreme Court held in *Miller v. Alabama*, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), that a mandatory sentence of life imprisonment without the possibility of parole violates the Eighth Amendment's prohibition of "cruel and unusual punishments" when imposed on an offender who had not reached the age of 18 at the time of his crime. The Supreme Court imbued *Miller* with retroactive effect in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

Because "youth matters" in determining whether lifetime incarceration without the possibility of parole is warranted, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Miller*, 567 U.S. at 473-474, 132 S.Ct. 2455 (quotation marks and citation omitted). "*Miller* requires that before **278 *576 sentencing a juvenile to life without parole, the sentencing judge take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Montgomery*, 577 U.S. at 208, 136 S.Ct. 718 (quotation marks and citation omitted). A mandatory sentence of life imprisonment precludes the individualized consideration that *Miller* and the Eighth Amendment demand and is therefore unconstitutional. Ultimately, *Miller* instructs that a juvenile homicide offender must be afforded a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Miller*, 567 U.S. at 479, 132 S.Ct. 2455 (quotation marks and citation omitted).

Stovall was sentenced to an ostensibly parolable term of life imprisonment that should have afforded him a meaningful opportunity to obtain release if he demonstrated personal growth and positive change. But his plea and sentence were predicated on two misconceptions, one legal and the other factual: that he would be imprisoned for life without the possibility of parole if convicted of first-degree murder, and that he would have a genuine opportunity for parole after serving 10 years of a parolable life sentence.

Legally, had Stovall been convicted of or pleaded guilty

or no-contest to first-degree murder, he would have been sentenced to a mandatory term of life imprisonment without parole. But post-*Miller*, likely he would have been automatically eligible to be resentenced to a minimum term of no less than 25 years and no more than 40 years' imprisonment. See MCL 769.25a(4)(c). Factually, if Michigan's parole system functioned in the manner envisioned by the Legislature when it enacted the version of MCL 791.234(7) applicable to Stovall, he would have been considered *577 for release by now, if not paroled. Instead, Stovall is serving a de facto sentence of life in prison without the possibility of parole, with no reasonable ability to demonstrate that he has matured and been rehabilitated.

A sentence is invalid if it is "based upon ... a misconception of law" *People v. Miles*, 454 Mich. 90, 96, 559 N.W.2d 299 (1997). In my view, the factual misconception at the heart of Stovall's appeal magnifies the injustice of the legal misconception. In two cases somewhat analogous to this one, our Supreme Court has identified a misconception of law necessitating a new sentencing hearing. In *People v. Turner*, 505 Mich. 954, 936 N.W.2d 827 (2020), the defendant was convicted of first-degree murder at age 16 and sentenced to life without parole. *People v. Turner*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2018 (Docket No. 336406), p 1, 2018 WL 2269954. He was also convicted of assault with intent to commit murder (AWIM) and sentenced to life imprisonment with the possibility of parole, the same sentence that Stovall received. *Id.* Invoking *Miller* and *Montgomery*, Turner sought resentencing on both his first-degree murder sentence and his AWIM sentence. This Court held that he was not entitled to be resentenced for AWIM "because the retroactive change in law did not apply to the AWIM sentence." *Id.* at 3.

The Supreme Court reversed, explaining that Turner's AWIM sentence could not stand because "[i]n the *Miller* context, a concurrent sentence for a lesser offense is invalid if there is reason to believe that it was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole on the greater offense." *Turner*, 505 Mich. at 954-955, 936 N.W.2d 827. The Court directed that at Turner's *Miller* resentencing, the trial court could exercise its discretion **279 *578 to resentence Turner for his AWIM conviction "on a concurrent sentence if it finds that the sentence was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole on the greater offense." *Id.* at 955, 936

N.W.2d 827.

And in *People v. Williams*, 505 Mich. 1013, 940 N.W.2d 75 (2020), the defendant was convicted as a juvenile of both first and second-degree murder and sentenced to life without parole and parolable life, respectively. *People v. Williams*, 326 Mich. App. 514, 517, 928 N.W.2d 319 (2018) rev'd 505 Mich. 1013, 940 N.W.2d 75 (2020). This Court held that Williams was not entitled to resentencing for second-degree murder. *Williams*, 326 Mich. App. at 521, 928 N.W.2d 319. As in *Turner*, the Supreme Court remanded for consideration of "whether the sentence for second-degree murder was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole for first-degree murder. If so, the trial court may exercise its discretion to resentence the defendant for second-degree murder." *Williams*, 505 Mich. at 1013, 940 N.W.2d 75.

The majority in this case holds that *Williams* is simply inapposite here, as Stovall "was not facing a mandatory life sentence," and that *Miller* does not apply to a parolable life sentence for second-degree murder. I disagree for two reasons. First, Stovall was facing a mandatory sentence of life without parole. His plea to second-degree murder was based on the legal misconception that if convicted of first-degree murder by verdict or plea, he would serve a mandatory sentence of life without parole. Accordingly, the reasoning of the orders in *Williams* and *Turner* governs this case.

Second, and aside from the legal misconception at the heart of Stovall's sentence, as a juvenile convicted of second-degree murder, Stovall was and is entitled to *579 a sentencing process focused on any individualized circumstances mitigating his crimes as mandated by *Miller*. The record reflects a host of such circumstances, including severe childhood abuse and neglect. With his background taken into account, *Miller* counsels that Stovall's sentence must offer him a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" unless a judge determines that Stovall is irreparably corrupt. *Miller*, 567 U.S. at 479, 132 S.Ct. 2455 (quotation marks and citation omitted).

In 1992, Stovall and his counsel bargained for a sentence that would allow Stovall the ability to work toward his freedom. They believed that parole eligibility would undercut the harshness of a life sentence and offer Stovall a rational hope for release. They fundamentally misconceived two things: that a parolable life sentence was preferable to a nonparolable life sentence, and that

Michigan’s parole system would allow Stovall to actually demonstrate his growth and rehabilitation. Stovall’s sentence was predicated on fundamental legal and factual misunderstandings. Due to the misconception that Stovall’s parolable life sentence offered him a realistic opportunity to demonstrate maturity and rehabilitation, Stovall is now serving a functional life sentence without parole in violation of *Miller*.

Ironically, Stovall has fared worse than he would have if convicted of first-degree murder and sentenced to life without parole. In that circumstance, he would have had a right to an individualized resentencing hearing at which he would be able to demonstrate his own growth and evolution and his worthiness for parole. Instead, he ****280** has no meaningful opportunity for release before he is elderly. Stovall now serves a life sentence that is parolable in name only and therefore violates the central precepts of *Miller*.

***580** The unlikely chance that he will ever appear before a parole board disinterested in evaluating Stovall’s diminished moral culpability at the time he committed the crimes, the “wealth of characteristics and circumstances attendant to” his youth, and the harshness of a functional life sentence, *Miller*, 567 U.S. at 476, 132 S.Ct. 2455, is not a substitute for a *Miller* hearing. Uncertain, unpredictable, and unlikely parole does not substitute for factoring in on the “front end” a juvenile’s lessened culpability. Because Stovall’s sentence rests on a misconceptions of the law and facts that undercut the sentence’s constitutionality, I would remand for a resentencing hearing consistent with *Miller*.

All Citations

334 Mich.App. 553, 965 N.W.2d 264

Footnotes

¹ *People v. Stovall*, 504 Mich. 892, 928 N.W.2d 698 (2019).

² Although the trial court did not address these issues in its order denying defendant’s motion, we exercise our discretion to resolve these issues that defendant presented to the trial court because the record provides “all the facts necessary to resolve [the] issue[s]” *Metamora Water Serv., Inc.*, 276 Mich. App. at 382, 741 N.W.2d 61.

³ In *Williams*, unlike the case at bar, the defendant was convicted of both first-degree murder and second-degree murder. The defendant in *Williams* argued that he was entitled under *Miller v. Alabama* to be resentenced on his second-degree-murder conviction, and he advanced two principal arguments: (1) that, like defendant in this case, the decision in *Miller* invalidated his life-with-parole sentence for second-degree murder and (2) that the sentencing judge’s belief that the defendant’s mandatory sentence of life without parole on the first-degree-murder conviction, now deemed invalid, might have improperly influenced the judge’s sentencing decision on the second-degree-murder conviction. This Court rejected both arguments. *Williams*, 326 Mich. App. at 519, 928 N.W.2d 319. The Michigan Supreme Court thereafter reversed, holding that the trial court “shall consider whether the sentence for second-degree murder was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole for first-degree murder.” *Williams*, 505 Mich. at 1013, 940 N.W.2d 75. That is, the Court accepted the defendant’s second argument, an argument not available to defendant in our case because he was not facing a mandatory life sentence.

Our consideration of *Williams* in this case is only in regard to the defendant’s first argument—whether *Miller* applies to sentences of life imprisonment with parole for second-degree murder. The Michigan Supreme Court did not consider, nor did it reverse, this Court’s analysis and conclusion on that issue.

⁴ While “state courts are bound by the decisions of the United States Supreme Court construing federal law, there is no similar obligation with respect to decisions of the lower federal courts.” *Abela v. Gen. Motors Corp.*, 469 Mich. 603, 606, 677 N.W.2d 325 (2004) (citations omitted). As a result, “[a]lthough lower federal court decisions may be persuasive, they are not binding on state courts.” *Id.* at 607, 677 N.W.2d 325.

¹ This change does not apply to Stovall, who remained eligible for parole consideration after serving 10 years.

² For an overview of the changes in Michigan’s parole system, see *Foster v. Booker*, 595 F.3d 353, 358-359 (C.A. 6, 2010) (summarizing that statutory amendments “(1) altered the structure and composition of the Board; (2) reduced the frequency of parole reviews after an initial ten-year interview; (3) substituted paper reviews for in-person interviews; (4) eliminated [prisoners’] right to appeal a denial of parole; and (5) contained new language consistent with the Board’s practice of not giving written reasons for a statement of ‘no interest’ in moving forward with parole”).