COURT OF APPEALS
DECISION
DATED AND FILED

November 18, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1020 **Cir. Ct. No. 1994CF943992**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARLAND D. HAMPTON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: STEPHANIE G. ROTHSTEIN, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Garland D. Hampton, *pro se*, appeals from an order of the circuit court, denying his motion for resentencing. Hampton asserts that ***Miller v. Alabama***, 132 S. Ct. 2455 (2012), requires resentencing. We agree

with the circuit court that ***Miller*** does not apply to Hampton, so we affirm the order.

¶2 Hampton was charged with one count of first-degree intentional homicide with a dangerous weapon, as party to a crime, for events that happened on or about June 10, 1994. Then-fifteen-year-old Hampton was waived to adult court. *See* WIS. STAT. § 48.18(1)(a)1. (1993-94). A jury convicted Hampton on July 7, 1995. The circuit court sentenced Hampton to life imprisonment with a parole eligibility date of July 7, 2015, the earliest possible date. *See* WIS. STAT. § 973.014(1) (1993-94). Hampton appealed, but we affirmed. *See* ***State v. Hampton***, 207 Wis. 2d 367, 558 N.W.2d 884 (Ct. App. 1996). Hampton has since filed a myriad of other postconviction motions but has been unsuccessful at changing his conviction and sentence.

¶3 In June 2012, the United States Supreme Court decided ***Miller***. The Court held that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment" prohibition against cruel and unusual punishment. *See* ***id.***, 132 S. Ct. at 2463-64, 2469. On April 21, 2014, Hampton filed a postconviction motion, seeking resentencing based on ***Miller***. The circuit court denied the motion, explaining that Miller "does not apply to [Hampton's] case because a parole eligibility date was set in his case, and he was not subjected to a mandatory life-without-parole sentence." Hampton appeals.

¶4 Hampton asserts that the "mandatory life penalty," as set out in WIS. STAT. §§ 940.01(1), 939.50(3)(a), and 973.014,[1] is unconstitutional as applied

[1] Hampton does not specify which version of the statutes he is referencing.

because it subjects juvenile offenders to the same penalty as adult offenders. He claims that ***Miller*** requires "judges to consider the background of juveniles, the circumstances of their crimes, and the extent of their involvement before imposing a life imprisonment sentence," but the required life imprisonment sentence under WIS. STAT. § 940.01 "does not allow judges such discretion."

¶5 "The constitutionality of a statutory scheme is a question of law that we review *de novo*." *See* ***State v. Ninham***, 2011 WI 33, ¶44, 333 Wis. 2d 335, 797 N.W.2d 451. The Eighth Amendment to the United States Constitution is mirrored by substantially identical language in the Wisconsin Constitution. *See* ***id.***, ¶45. We generally interpret state constitutional provisions to be consistent with the United States Supreme Court's interpretation of parallel provisions in the United States Constitution. *See* ***id.***

¶6 We also decide cases on the narrowest possible grounds. *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997). For that reason, we will assume without deciding that ***Miller*** is retroactively applicable to Hampton's case. Even so, ***Miller*** does not require Hampton's resentencing.

¶7 ***Miller*** disapproved of mandatory life-*without-parole* sentences for juvenile offenders, in part because they are akin to death sentences and because they are disproportionately harsher the younger the offender is. *See* ***id.***, 132 S. Ct. at 2466. In explaining the particular harms of such sentences, the Court wrote that "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." ***Id.*** at 2467.

¶8 Hampton evidently believes that Wisconsin's sentencing scheme does not allow such considerations, either. Under WIS. STAT. § 940.01(1)

(1993-94) and § 940.01(1)(a) (2011-12), first-degree intentional homicide is a class A felony. In either biennium, the penalty for a class A felony is life imprisonment. *See* WIS. STAT. § 939.50(3)(a). Thus, Hampton characterizes the statutes as requiring a "mandatory" life sentence that runs afoul of ***Miller***.

¶9 In ***Miller***, the Alabama and Arkansas sentencing courts could only impose sentences of life without parole on the juvenile offenders. *See* ***id.***, 132 S. Ct. at 2461-63. In Wisconsin, however, a circuit court imposing a sentence of life imprisonment must also exercise its discretion and determine when a defendant will be eligible for parole or extended supervision. *See* WIS. STAT. § 973.014(1) & (1g)(a) (2011-12). The circuit court, in determining parole or extended supervision eligibility, may consider the defendant's age and related factors as part of its ordinary exercise of discretion. *See* ***State v. Odom***, 2006 WI 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695.

¶10 Currently, a circuit court may determine that an offender will not be eligible for release to extended supervision at any time. *See* WIS. STAT. § 973.014(1g)(a)3. (2011-12). This would effectively be a life-without-parole sentence. However, the circuit court in 1995 could not impose life without parole eligibility unless the defendant was also a persistent repeater, which Hampton was not. *See* WIS. STAT. §§ 973.014(2) (1993-94) & 939.62(2m) (1993-94).

¶11 Ultimately, Hampton was not sentenced as a juvenile to life without parole, which is the only sentence with which ***Miller*** was concerned. Instead, he was given life imprisonment with parole eligibility, which ***Miller*** suggests is an appropriate sentence for a juvenile. *See* ***id.***, 132 S. Ct. at 2460. And, while Hampton attempts to make an argument from the fact that his release to parole is not a certainty, the Supreme Court noted that "'[a] State is not required to

guarantee eventual freedom,' but must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *See* ***id.*** at 2469 (citing ***Graham v. Florida***, 560 U.S. 48, 75 (2010)). Hampton will have that opportunity. Accordingly, the circuit court properly concluded that ***Miller*** does not apply, and it properly rejected Hampton's motion for resentencing.

By the Court.—Order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).