COURT OF APPEALS
DECISION
DATED AND FILED

December 10, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2399 **Cir. Ct. No. 1997CF971255**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES DONTAE WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. James Dontae Williams, *pro se*, appeals from an order denying his WIS. STAT. § 974.06 (2011–12) motion that sought resentencing

on grounds that recent United States Supreme Court decisions require a consideration of "the unique nature of his character as a juvenile."[1] (Capitalization and bolding omitted.) We conclude that those decisions do not entitle Williams to resentencing. Therefore, we affirm.

BACKGROUND

¶2 In 1997, seventeen-year-old Williams and his thirteen-year-old girlfriend killed a woman and took her car. Williams was convicted of first-degree intentional homicide as a party to a crime, contrary to WIS. STAT. §§ 940.01(1) and 939.05 (1997–98). The trial court sentenced Williams to life in prison and set a parole eligibility date of August 4, 2098.[2]

¶3 Williams appealed and we affirmed the conviction. *See* ***State v. Williams***, No. 1998AP462–CR, unpublished slip op. (WI App June 17, 1999). He subsequently filed a WIS. STAT. § 974.06 motion that was also denied. Again, we affirmed. *See* ***State v. Williams***, No. 2008AP1831, unpublished slip op. (WI App May 5, 2009).

¶4 In September, 2012, Williams filed the WIS. STAT. § 974.06 motion that is the subject of this appeal. He argued that he is entitled to resentencing because of two United States Supreme Court decisions concerning the sentencing of juveniles to life in prison: ***Graham v. Florida***, 560 U.S. 48 (2010) and ***Miller***

[1] All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.

[2] The Honorable Dominic S. Amato presided over the jury trial and sentenced Williams. The Honorable Ellen R. Brostrom denied the September 2012 motion that is at issue in this appeal.

v. Alabama, __ U.S. __, 132 S. Ct. 2455 (2012). The trial court denied the motion in a written order, concluding that ***Graham*** and ***Miller*** do not affect Williams because he was not sentenced to life without parole.

DISCUSSION

¶5 Resolution of this appeal requires us to determine the potential applicability of ***Graham*** and ***Miller*** to Williams. This presents a question of law that we review *de novo*. *See* ***Welin v. American Family Mut. Ins. Co.***, 2006 WI 81, ¶16, 292 Wis. 2d 73, 80, 717 N.W.2d 690, 693 ("The interpretation and application of case law and statutes to undisputed facts are ordinarily questions of law" that are decided *de novo* on appeal.).

¶6 We begin with a brief review of ***Graham*** and ***Miller***, both of which addressed the constitutionality of life-without-parole sentences imposed on juvenile offenders. ***Graham***, which concerned juveniles convicted of non-homicide offenses, held:

> The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.

Id., 560 U.S. at 82. In reaching that decision, the Court discussed prior case law and scientific research suggesting that juveniles lack the same maturity as adults and that there are "fundamental differences between juvenile and adult minds." *See* ***id.*** at 68.

¶7 In ***Miller***, the Court considered mandatory life-without-parole sentences that were imposed on two juveniles who were convicted of murder. ***Id.***,

132 S. Ct. at 2460. The Court concluded 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.'" ***Ibid.*** (emphasis added). The Court explicitly declined to address the "argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger." ***Id.*** at 2469. Further, the Court said that it was "not foreclose[ing] a sentencer's ability" to sentence a juvenile convicted of homicide to life in prison without parole, but the Court predicted that such sentences "will be uncommon." ***Ibid.***

¶8 It is clear that ***Graham*** does not mandate resentencing for Williams, because that case addressed life sentences for juveniles who did not commit homicide. Williams acknowledges that ***Graham*** dealt with juveniles convicted of non-homicide offenses and explains that he has cited ***Graham*** because its rationale concerning the culpability of juveniles was adopted in ***Miller***.

¶9 But ***Miller*** is also not directly applicable to Williams, because it concluded that *mandatory* life-without-parole sentences were unconstitutional. Williams was not subjected to a mandatory life-without-parole sentence. Rather, the Wisconsin legislature gave trial courts the discretion to elect one of three options in sentencing a defendant convicted of first-degree intentional homicide: the trial court could make the defendant eligible for parole, eligible for parole on a date set by the trial court, or not eligible for parole. *See* WIS. STAT. § 973.014(1) (1997–98); *see also* ***State v. Ninham***, 2011 WI 33, ¶42, 333 Wis. 2d 335, 358, 797 N.W.2d 451, 463 (describing statutory penalties for juveniles convicted of first-degree intentional homicide). Here, the trial court exercised that discretion and elected to make Williams eligible for parole on a certain date.

¶10 Williams recognizes that the trial court "was allowed to exercise [its] discretion and sentence Williams to life in prison, without the possibility for parole (or parole in 101 years)," but he asserts that the trial court "was required to adequately explain why a 101 year sentence, which assures Williams will die in prison, was appropriate." Williams also implies that he should be resentenced so that the trial court can take into account new brain science concerning juvenile and adult minds. He states: "[T]he original sentencing court's articulated rationale for issuing such a lengthy sentence … has now been proven to actually mitigate against lengthy sentences, in all juvenile cases[,] including cases of juveniles convicted of first degree intentional homicide." In short, Williams argues that the trial court erroneously exercised its sentencing discretion in 1997 *and* that the trial court should resentence him in light of new brain science.

¶11 We are unconvinced that Williams is entitled to resentencing. He was sentenced for a homicide and was not subjected to a mandatory life-without-parole sentence, so neither ***Graham*** nor ***Miller*** are directly on point. Further, Williams has not shown any other legal basis for his argument that advances in scientific research entitle him to resentencing years after his sentence was imposed and after his direct appeal and first WIS. STAT. § 974.06 challenge to his conviction were completed. Finally, Williams has not shown that he is entitled to challenge the trial court's original exercise of sentencing discretion years after his direct appeal and first WIS. STAT. § 974.06 challenge.[3] We affirm the order denying Williams's motion for resentencing.

[3] The State argues that "a review of the [trial] court's sentencing remarks makes clear that it properly addressed the statutory factors set forth in [WIS. STAT.] § 973.017(2) and those outlined in ***McCleary v. State***, 49 Wis. 2d 263, 276, 182 N.W.2d 512[, 519] (1971), in determining Williams'[s] sentence: the gravity of the offense, the character and rehabilitative (continued)

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

needs of the offender, and the need for protection of the public." We decline to examine the merits of Williams's argument that the trial court failed to follow the dictates of ***McCleary*** because Williams has not shown that he is entitled to challenge the trial court's original exercise of sentencing discretion at this stage of the case.