



In the Missouri Court of Appeals Eastern District

DIVISION TWO

STATE OF MISSOURI	)	No. ED108148
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit Court
	)	of St. Charles County
v.	)	
	)	
LAMARION V. E. THOMAS,	)	Honorable Jon A. Cunningham
	)	
Defendant/Appellant.	)	Filed: December 15, 2020

Introduction

Lamarion V. E. Thomas (Appellant), a juvenile offender, appeals the trial court's decision holding the statutorily mandated 15-year minimum sentence for forcible rape constitutional as applied to him. Appellant's claim is properly preserved for appellate review. We affirm.

Jurisdictional Statement

The Missouri Supreme Court has exclusive jurisdiction over challenges to the constitutional validity of a state statute. MO. CONST. art. V, § 3. However, "[t]he Missouri Supreme Court's exclusive appellate jurisdiction is only invoked when the constitutional issues are real and substantial, not merely colorable." State v. Henry, 568 S.W.3d 464, 479 (Mo. App. E.D. 2019). "If the United States Supreme Court or Missouri Supreme Court has addressed a constitutional challenge, the claim is merely colorable and the intermediate appellate court has

jurisdiction.” Id. Appellant’s claim has been previously addressed by both the United States Supreme Court and the Missouri Supreme Court. Therefore, as a merely colorable claim, this Court has jurisdiction. Id.

Factual and Procedural Background

During the early morning hours of July 12, 2010, Appellant, then 14 years old, broke into the home of 57-year-old R.H. (Victim). Appellant wore all black clothing, including a ski mask and gloves, and brandished a large knife. He proceeded to wake up Victim and demanded she take her pants off. Appellant then raped Victim and threatened to return and kill her if she called the police.

Victim contacted the police immediately. She was taken to the hospital where a sexual assault examination resulted in the discovery of a sperm sample. However, it was not until December 2017, when a DNA sample was obtained from Appellant in an unrelated matter, that a DNA match to the rapist’s July 12, 2010 sperm sample was found. Following this “DNA hit,” police arrested Appellant and informed him his DNA was found in the sperm sample recovered from Victim. At that point, Appellant confessed to raping Victim in July 2010.

In February 2018, a petition was filed in the Family Court Division of St. Charles County Circuit Court, alleging Appellant raped Victim when he was 14 years old. The Family Court determined that because Appellant was now 22 years old, he was no longer a proper subject to be dealt with under the Juvenile Code. The Family Court dismissed the petition and transferred Appellant to a court of general jurisdiction, where he was charged with forcible rape under section 566.030.¹ Specifically, section 566.030 states:

1. A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim’s knowledge or

¹ All references to section 566.030 are to RSMo Cum. Supp. 2009, unless otherwise noted.

consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than fifteen years.

Before trial, Appellant filed a motion to declare section 566.030 unconstitutional as applied to him because the statute imposes a mandatory minimum sentence of 15 years and therefore does not allow the sentencer discretion to consider a sentence of less than 15 years, despite Appellant's status as a juvenile at the time of the offense. The trial court denied Appellant's motion. Appellant was tried by the court in May 2019, and found guilty of forcible rape through the use of a dangerous instrument.

During his sentencing hearing, Appellant presented numerous witnesses testifying to his difficult and traumatizing childhood. Appellant's aunt testified Appellant was severely beaten, starved, and mistreated by his stepfather throughout his childhood. Appellant's former foster mother testified Appellant was a good kid who was seriously abused by his stepfather. Appellant's girlfriend testified Appellant was never violent with her and was a kind and caring father to their three children. Finally, a forensic psychologist testified as to the severe nature of the abuse suffered by Appellant and its likely effects on his neurodevelopment.

Ultimately, the trial court sentenced Appellant to 17 years in prison. Appellant was sentenced as a dangerous felon,² requiring him to serve 85 percent of his sentence before he

² Section 556.061(8), RSMo Cum. Supp. 2008, lists the felonies determined to be dangerous and includes the felony of forcible rape. Therefore, because Appellant was found guilty of forcible rape, he was sentenced as a dangerous felon.

would become eligible for parole. See Section 558.019.3, RSMo Cum. Supp. 2005. In determining that 17 years was appropriate under the circumstances, the court stated:

This is a horrific crime. It's a tragic set of circumstances. If . . . someone over the age of 18 committed this crime the sentence would be much greater. The Court has to take into consideration the age of the defendant in – at the time of the offense, which was less than 15 years of age. 14 years of age.

I took into consideration the sentencing assessment report, I took into consideration the testimony from the doctor today, I certainly took into consideration the heartache of the victim in this case. There's nothing I can do with this sentence that's going to make everything okay and I don't – I mean those are very simple words and I'm sorry I'm not a little more eloquent, but a sentence can't do that.

Mr. Thomas, like I say, this was a horrific crime. You made a horrible mistake and you were certified up here as an adult and the case was tried as you being an adult. Although you have some other criminal matters as an adult they weren't of a horrific nature, they weren't of a sexual nature, and so I do not believe a life sentence would be appropriate in this case and I have determined a sentence that I believe is appropriate under all the circumstances.

You are being sentenced as a dangerous felon. You'll have to serve 85 percent of this time before you would be eligible for parole. The Court also took into consideration – and I think Ms. Norman said it's not an excuse – saying it's a reason might be strong also – but it's not something I can ignore that you've had a rather horrific upbringing.

This appeal follows.

Point Relied On

Appellant contends the trial court erred in refusing to declare the statutorily mandated 15-year minimum sentence for forcible rape unconstitutional as applied to Appellant, a juvenile offender.

Standard of Review

Appellant's petition has raised challenges to the constitutionality of section 566.030 under both the Missouri and United States constitutions. We review the constitutional validity of a statute *de novo*. Alpert v. State, 543 S.W3d 589, 597 (Mo. banc 2018). “This Court will presume the statute is valid and will not declare a statute unconstitutional unless it clearly

contravenes some constitutional provision.” Id. We resolve all doubt in favor of the statute’s validity and may make all reasonable interpretations to uphold the statute’s constitutionality. Murrell v. State, 215 S.W.3d 96, 102 (Mo. banc 2007). “If a statutory provision can be interpreted in two ways, one constitutional and the other not constitutional, the constitutional construction shall be adopted.” State v. Vaughn, 366 S.W.3d 513, 517 (Mo. banc 2012).

Discussion

The Eighth Amendment of the United States Constitution prohibits the infliction of cruel and unusual punishment. Since Thompson v. Oklahoma, 487 U.S. 815 (1988), the U.S. Supreme Court has recognized that certain punishments imposed on juvenile offenders are cruel and unusual. In Thompson, the Court held that the Eighth and Fourteenth Amendments prohibited the imposition of capital punishment on juvenile offenders under 16 years old at the time of the offense. Subsequently, the Supreme Court banned capital punishment for all offenders who were under the age of 18 years old at the time of their offense. Roper v. Simmons, 543 U.S. 551, 568 (2005). The Roper Court explained “the death penalty is the most severe punishment,” and therefore not appropriate for juvenile offenders who, due to their youth, are less culpable.

The Supreme Court further extended its Eighth Amendment prohibitions in Graham v. Florida, 560 U.S. 48, 82 (2010), when the Court categorically banned juveniles from being sentenced to life without the possibility of parole for nonhomicide offenses. In reaching its conclusion, the Supreme Court emphasized that the sentence of life without the possibility of parole “is the second most severe penalty permitted by law” and “alters the offender’s life by a forfeiture that is irrevocable.” Id. at 69. The Supreme Court stated because “of the severity of sentences that deny convicts the possibility of parole,” the Eighth Amendment prohibits such a sentence on juvenile nonhomicide offenders because they are not sufficiently culpable. Id. at 74.

Finally, in Miller v. Alabama, 567 U.S. 460, 479 (2012), the Supreme Court held that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” Therefore, under the Eighth Amendment, a sentence of life without the possibility of parole could only be imposed on a juvenile homicide offender after the sentencer considered “mitigating circumstances,” such as the offender’s age, development, and other characteristics. Id. at 489.

Similarly, Article I, Section 21 of the Missouri Constitution prohibits the infliction of cruel and unusual punishment. This provision mirrors the language of the Eighth Amendment and Missouri courts have followed Supreme Court precedent. In State ex rel. Carr v. Wallace, 527 S.W.3d 55 (Mo. banc 2017), the Missouri Supreme Court relied upon Miller to overturn a juvenile homicide offender’s sentence of life without the possibility of parole for 50 years. The Court held under the mandatory sentencing scheme, the sentencer had not been able to consider the juvenile offender’s age, maturity, home environment, and numerous other pertinent factors. Id. at 61-62. However, like in Miller, the Missouri Supreme Court explained that a juvenile offender could still be sentenced to life in prison without the possibility of parole, but only if the sentencer finds the punishment appropriate after considering the juvenile’s circumstances. Id. at 62-63.

Pointing to language from Miller and Wallace, Appellant argues that all mandatory minimum sentences fail to adequately consider and afford discretion to the attendant circumstances of juvenile offenders and, therefore, must be held unconstitutional. We disagree. As the U.S. Supreme Court stated in both Miller and Graham, the Eighth Amendment protects juveniles from mandatorily being subjected to *the harshest possible penalty*. Graham, 560 U.S. at 69; Miller, 567 U.S. at 489. But “the harshest possible penalty” for juveniles is not an expansive

term and quite literally only includes a mandatory sentence of life in prison without the possibility of parole. This is because, in addition to capital punishment, the sentence of life in prison without the possibility parole is inherently different from all other sentences as it “alters the offender’s life by a forfeiture that is irrevocable.” Graham, 560 U.S. at 69. As such, the sentencer must have the discretion to consider the juvenile offender’s mitigating circumstances before imposing the harshest possible penalty. Miller, 567 U.S. at 489.

Here, Appellant’s sentence has not altered his life by a forfeiture that is irrevocable because Appellant was sentenced to a term of years with the possibility of parole. Furthermore, the trial court did consider the attendant circumstances of Appellant’s childhood when sentencing him. The trial court explicitly stated that “[it] took into consideration the sentencing assessment report, [it] took into consideration the testimony from the doctor today, [it] certainly took into consideration the heartache of the victim in this case.” Additionally, the trial court admitted that “[i]f . . . someone over the age of 18 committed this crime the sentence would be much greater.” Considering the trial court’s statements and the discretion possessed by the trial court to sentence Appellant to between 15 years and life in prison, it is clear from the record the trial court considered the circumstances of Appellant’s youth.

Additionally, several cases in Missouri have addressed similar issues regarding the constitutionality of youth sentences.³ In State v. Nathan, 522 S.W.3d 881 (Mo. banc 2017), the Missouri Supreme Court held a juvenile offender’s constitutional rights were not violated when he was sentenced to consecutive sentences which were functionally equivalent to a sentence of

³ Appellant cites to State v. Smiley, 478 S.W.3d 411 (Mo. banc 2016) to support his argument that Missouri courts have held mandatory minimum sentences for juvenile offenders as unconstitutional. However, as Appellant later admits, the Missouri Supreme Court did not address the challenge to the constitutionality of mandatory minimum sentences in Smiley. Instead, the Court limited its review to the question of whether a final judgment had been reached to which the state could appeal. Id. No further discussion of the constitutionality of mandatory minimum sentences for juvenile offenders occurred and the judgment of the trial court on that issue was rendered moot. Id.

life in prison without the possibility of parole. The Missouri Supreme Court explained it would not extend the holdings of Miller and Graham to the “uncharted waters” of sentences less than life in prison without the possibility of parole. Id. at 893. Likewise, in State v. Denzmore, 436 S.W.3d 635 (Mo. App. E.D. 2014), this Court declined to hold a 44-year sentence on a juvenile nonhomicide offender unconstitutional. Noting the trial court considered the circumstances of the offender’s youth, this court found no constitutional violation existed because the juvenile nonhomicide offender was sentenced to a term of years and not a life sentence without the possibility of parole. Id. at 645. Thus, Nathan and Denzmore are instructive in the refusal to expand the holding of Miller to sentences that are less than life without the possibility of parole, such as Appellant’s.

Finally, decisions of assigning sentence lengths to particular crimes are within the province of the legislature. State v. Hart, 404 S.W.3d 232, 246 (Mo. banc 2013) (“Fixing of the punishment for crime is a legislative and not a judicial function.”). The General Assembly has established the situations in which a juvenile offender must be tried as an adult. Section 211.071.1, RSMo Cum. Supp. 2008. Additionally, the General Assembly has decided the range of punishment it finds appropriate for forcible rape, section 566.030, and determined when an individual found guilty of a dangerous felony may be eligible for parole, section 558.019, RSMo Cum. Supp. 2005. “Substantial deference is due to the legislature’s determination of proper punishment.” State v. Pribble, 285 S.W.3d 310, 314 (Mo. banc 2009).

Conclusion

For the reasons discussed above, the trial court's judgment is affirmed.

A handwritten signature in dark ink, reading "Sherri B. Sullivan", written in a cursive style. The signature is positioned above a horizontal line.

SHERRI B. SULLIVAN, J.

Robin Ransom, P.J., and
Lisa P. Page, J., concur.