



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONTA E. VICKERS,)
)
 Defendant Below,)
 Appellant,)
)
 v.) No. 448, 2014
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

The Defendant was arrested in August 2013, and later indicted for the offenses of home invasion, attempted robbery first degree, assault first degree, possession of a firearm during the commission of a felony (3 counts), possession of a firearm by a person prohibited, and conspiracy second degree . (A1, 10-13).

After a jury trial, he was convicted of all offenses except for an included offense of assault second degree and the possession of a firearm by a person prohibited charge that was severed. The State filed a motion to have him sentenced to life imprisonment as an habitual offender under 11 *Del. C.* § 4214(b), which was granted. [D.I. 75, 77]. A103-148

The Defendant was sentenced to life imprisonment as an habitual offender. A150-151. [Exhibit B attached to Opening Brief].

A notice of appeal was docketed for the Defendant. This is the Defendant's opening brief on appeal.

SUMMARY OF THE ARGUMENTS

1. The Superior Court erred in sentencing the defendant to life imprisonment as an habitual offender because his first of two predicate felony convictions occurred when he was a juvenile thereby not taking into account the Defendant's lessened culpability with respect to his first predicate conviction that occurred when he was a juvenile.

STATEMENT OF FACTS

Amilcar Mercado testified that on August 15, 2013, he lived in a rooming house on Kimmey Street in Georgetown. Before midnight, he was called by a woman named "Black Nada," whom he knew as a prostitute. He invited her to his house. While they were having sex in his room at around midnight, her phone kept ringing and he told her to answer it. She did, but he did not know who she spoke with or understood what she said. She said that she had to go the bathroom and left his room but returned a few minutes later. Mercado testified that a few minutes after she returned and they were having sex again someone kicked open the door to his room. A man carrying a handgun entered, pointed it at Mercado's face, and demanded to know where his money was. Mercado told him that his wallet, which contained about \$500, was in his pants and the man grabbed Mercado's pants. Mercado testified that he thought Black Nada was also pointing to a change jar that contained about \$50 in coins and the man grabbed that too. He testified that the man's face was covered by a stocking like material and that he saw a second man standing outside the bedroom door but could not see who it was. Mercado testified that although the man with the gun had a stocking covering his face, it was transparent and that because the man was standing close to him and close to the light in the room, Mercado could see his face. He recognized the man as someone he worked with for three weeks at

a local plant. He also saw the man around Georgetown and knew where he lived. Mercado identified the Defendant in court as the man who robbed him. A14-29, 37-55, 67-68 (D.I. 24. 6/9/13, pp. 84-99, 107-125, 137-138).

Mercado testified that after the man took Mercado's wallet and change jar, he then shot Mercado in the knee before leaving. Black Nada also ran out of the room naked. Mercado found a towel and placed it over his bleeding knee. He walked to the front door and saw the men and Black Nada running toward the Perdue plant on Savannah Drive, where Mercado knew the Defendant lived. He called 911 using the phone of another resident in the rooming house. He testified that told the police that he knew the man who shot him and where he lived. While he was being transported to the hospital, the ambulance stopped in front of the house on Savannah Drive where the Defendant lived in a rooming house with others and Mercado testified that he pointed out the Defendant, who was on the front porch with other people, as the man who shot him. A30-33, 60-66 (D.I. 24. 6/9/13, pp. 100-103, 130-136).

Detective Bradley Cordrey of the Georgetown Police Department testified that he was the chief investigator on call and went to the Savannah Drive address at about midnight. The rooming house was owned by Lennetta Long's (Black Nada's) mother and Ms. Long and the Defendant lived there with several other people. Det. Cordrey testified that the Defendant was already

detained in a police car when he arrived. He testified that after the execution of a search warrant, police did not find Mercado's pants, wallet, or jar of change although they did find two types of transparent head coverings on the Defendant's bed. The Defendant was taken to the Georgetown Police Department where Cordrey interviewed him and recorded the interview. A72-80 (D.I. 86. 6/10/13, p. 6-14). The Defendant's statement was played for the jury. A82 (D.I. 86. 6/10/13, p. 16). In his statement, the Defendant initially denied any connection with the robbery but eventually admitted that two men he was not previously acquainted with drove him to the Kimmey Street address in order to arrange a prostitution transaction while he rode along and remained outside not knowing that a robbery would occur. State Exhibit 15. Det. Cordrey reiterated that no gun, ammunition, pants, wallet change jar or other proceeds of the crime were found that night. A98 (D.I. 86. 6/10/13, p. 32).

- I. THE SUPERIOR COURT ERRED IN SENTENCING THE DEFENDANT TO LIFE IMPRISONMENT AS AN HABITUAL OFFENDER BECAUSE HIS FIRST OF TWO PREDICATE FELONY CONVICTIONS OCCURRED WHEN HE WAS A JUVENILE.

Question Presented

The question presented is whether the Superior Court erred when it sentenced the Defendant to life imprisonment as an habitual offender although the Defendant's first of two predicate felony convictions occurred in the Superior Court when he was a juvenile. The issue was raised by the Defendant's objection to sentencing as an habitual offender. A123-124.

Standard and Scope of Review

Where no facts are in dispute, the standard of review on this question of law is *de novo*. *Torres v. State*, 2008 WL 5069656, *20 (Del.).

Merits of Argument

Prior to the Defendant's sentencing, the State moved to have the Defendant sentenced to life imprisonment as an habitual offender under 11 *Del. C.* § 4214(b). A104-117. There were two predicate felony convictions. In 1995, the Defendant was convicted and sentenced for arson first degree in the Superior Court, Sussex County, when he was seventeen years old. A105, 114-115. He was also arrested in 1997, when he was twenty years old, and

subsequently convicted and sentenced for the offense of robbery first degree in the Superior Court, Kent County. A104-105, 110-111. When he was thirty six years old, the Defendant was arrested for the instant offenses and subsequently, after being convicted at trial, sentenced to life imprisonment as a result of the commission of three violent felonies under 11 *Del. C.* § 4214(b). Prior to this sentencing, the Defendant argued, *inter alia*, that he should not be sentenced to life imprisonment because, although he was sentenced in the Superior Court, not the Family Court, the first predicate conviction should not be counted because he was a juvenile at the time of the offense which undermined the rationale for a finding of three predicate felony convictions and life sentence imprisonment due to the Defendant's juvenile status at the time of the first offense in 1995.¹ A123-124. The State responded that, although the Defendant's first conviction occurred when he was seventeen, because it occurred in the Superior Court, it was sufficient as a predicate conviction for habitual offender sentencing. A125-127.² The Superior Court rejected the Defendant's argument

¹ The Defendant relied on three relatively recent decisions of the United States Supreme Court recognizing a categorical exception for sentences of death or life imprisonment imposed on a defendant based on conduct that occurred when the defendant was a juvenile: *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012) (mandatory life imprisonment for juvenile offender is cruel and unusual under Eighth Amendment); *Graham v. Florida*, 560 U.S. 48 (2010) (non-homicide juvenile offender could not be sentenced to life imprisonment); *Roper v. Simmons*, 543 U.S. 551 (2005) (death penalty invalidated for all juvenile offenders under the age of 18).

² The State relied on two previous decisions of this Court rendered before *Miller*, *Graham*, and *Roper*, *supra*, note 1: *Stone v. State*, 1994 WL 276984 (Del.) (although

that he could not be sentenced to life imprisonment as an habitual offender on the ground that his first predicate felony conviction occurred in the Superior Court when he was seventeen years old, not as an adjudication of delinquency in the Family Court. A145.

The Defendant's contention in this appeal is that to the extent that the Defendant's mandatory life sentence in this case relied on the Defendant's felony juvenile conviction is a violation of due process because the Superior Court could not take into account the Defendant's juvenile status when he was first adjudicated for a felony as a seventeen year old. In essence, the Defendant is being now punished as an habitual offender would be punished whose predicate felony convictions all occurred when he was an adult. That the diminished responsibility for the juvenile offense cannot be considered because of the mandatory nature of habitual offender sentencing under 11 *Del. C.* § 4214(b) conflicts with the basis of the United States Supreme Court's decisions over the past ten years addressing juvenile criminal culpability for serious offenses. In the first of these cases, the Supreme Court recognized three general differences between juveniles at the time of their offenses and adult offenders when committing the same offense. First is the "lack of maturity and an

juvenile at the time, because defendant was adjudicated in the Superior Court, that first conviction could serve as predicate for later adult habitual offender sentencing); *Summers v. State*, 2000 WL 1508771 (Del.) (although defendant's first predicate conviction occurred as a juvenile in the Superior Court, later habitual offender sentence did not offend proportionality.).

underdeveloped sense of responsibility” of the juvenile offender. *Roper v. Simmons*, 543 U.S., at 569. The second is that juveniles are “more vulnerable or susceptible ... to peer pressure.” *Id.* Third, “the character of a juvenile is not as well formed as that of an adult [and] their irresponsible conduct is not as morally reprehensible as that of an adult.” *Id.* at 570 (internal quotation omitted). Finally, the Supreme Court recognized that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult.” *Id.* But that is what happened in this case. The Superior Court believed it was required to equate the failings of the Defendant when he was adjudicated of arson first degree when he was seventeen years old to the failings of an adult for the same offense. Likewise, in *Graham v. Florida*,³ the Court reiterated that “[t]he age of the offender and the nature of the crime each bear on the analysis.”⁴ However, in this case the Superior Court could not consider the age of the juvenile offender at the time of the commission of his first felony offense when he was sentenced as an adult habitual offender to life imprisonment. So to, in *Miller v. Alabama*,⁵ the Supreme Court again recognized that a mandatory sentencing “scheme prevents those meting out punishment from considering a ‘juvenile’s lessened culpability’ and ‘greater

³ 560 U.S. 48 (2010).

⁴ *Graham*, 560 U.S., at 69.

⁵ 132 S.Ct. 2445.

capacity for change.”⁶

In *Graham, Roper, and Miller*, the United States Supreme Court recognized that juveniles were less culpable than adults when charged with the same offenses. To use a juvenile adjudication as a mandatory sentencing enhancement under these circumstances conflicts with the Constitutional tenets of *Graham, Roper, and Miller* because a conviction while the Defendant was a juvenile cannot be equated with a conviction while an adult. “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult...”⁷ In addition, “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”⁸ The Defendant’s mandatory sentence as an adult to life imprisonment did not take into account the Defendant’s lessened culpability with respect to his first predicate conviction that occurred when he was a juvenile.⁹ As a consequence, the Defendant’s sentencing violated the fundamental constitutional tenets of *Graham, Roper, and Miller*.

⁶ *Miller*, 132 S.Ct. at 2460.

⁷ *Roper*, 543 U.S., at 570.

⁸ *Roper*, 543 U.S., at 571.

⁹ “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.” *Graham*, 560 U.S., at 82.

CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's life sentence should be vacated and remanded for resentencing.

Respectfully submitted,

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