PEOPLE v. HYATT

Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff–Appellee, v. Kenya Ali HYATT, Defendant–Appellant.

Docket No. 325741.

Decided: July 21, 2016

Before: SHAPIRO, P.J., and MARKEY, METER, BECKERING, STEPHENS, M.J. KELLY, and RIORDAN, JJ.

Pursuant to MCR 7.215(J), this Court convened a special conflict panel to resolve the conflict between the previous opinion issued in this case in People v. Perkins,1 ––– Mich.App ––––; ––– NW2d –––– (2016) (Docket Nos. 323454; 323876; 325741), and the decision issued in People v. Skinner, 312 Mich.App 15; 877 NW2d 482 (2015). The issue involves whether a juvenile the prosecution seeks to subject to a sentence of life without parole under MCL 769.25 is entitled, under the Sixth Amendment to the United States Constitution, to have a jury determine whether life without parole is warranted. As evidenced by the existence of this special conflict panel, we recognize that this is a difficult issue. Also not lost on this panel is the understanding that juveniles who commit a heinous offense, while undoubtedly deserving of punishment, are categorically less culpable than their adult counterparts and are less deserving of the maximum punishment available under the law. As the United States Supreme Court has made unmistakably clear, it is only the truly rare juvenile who will be deserving of the harshest penalty available under the laws of this state, and a life-without-parole sentence is an unconstitutional penalty for all juveniles but for those whose crimes reflect irreparable corruption. Thus, while we conclude that a judge, not a jury, is to make this determination, the sentencing judge must honor the mandate that was made abundantly clear in Miller v. Alabama, 576 U.S. ––––; 132 S Ct 2455, 2469; 183 L.Ed.2d 407 (2012), and other recent Eighth Amendment caselaw: life without parole is to be reserved for only the rarest of juvenile offenders so as to avoid imposing an unconstitutionally disproportionate life-without-parole sentence on a transiently immature offender. Such mandate necessarily affects not only the way a trial court is to exercise its discretion when meting out punishment, but also the way an appellate court is to review a life-without-parole sentence for a juvenile offender. In short, youth matters when it comes to sentencing, and our courts, at sentencing and on appeal, must carefully take this into account when going about the exceedingly difficult task of determining whether a juvenile is irreparably corrupt—meaning incapable of rehabilitation for the remainder of his or her life-in order to avoid an unconstitutional sentence.

I. FACTS

The facts of this case are fully set forth in the prior opinion and need not bear repeating, save for a few pertinent details. Following trial, a jury convicted defendant Hyatt of first-degree felony murder, conspiracy to commit armed robbery, armed robbery, and felony-firearm. At a sentencing hearing required by MCL 769.25(6), the trial court decided to sentence defendant, who was 17 years old at the time of the offenses, to life without the possibility of parole on the first-degree murder conviction. The prior panel reversed his sentence because the trial judge, not a jury, was the sentencer, and because it was bound to follow the decision reached by the majority in Skinner, 312 Mich.App 15. Nevertheless, the prior panel in the instant case noted that but for Skinner, it would have affirmed the sentence because it concluded that a judge, not a jury, was to determine a juvenile's eligibility for a life-without-parole sentence under MCL 769.25. Because it disagreed with Skinner on this point, the prior panel declared a conflict with Skinner.

II. STANDARD OF REVIEW

Resolution of the conflict in this case requires us to construe MCL 769.25 and to examine defendant's constitutional rights under the Sixth Amendment and the Eighth Amendment to the United States Constitution. We review de novo these issues of law. People v. Humphrey, 312 Mich.App 309, 314; 877 NW2d 770 (2015); People v. Al–Shara, 311 Mich.App 560, 567; 876 NW2d 826 (2015).

III. ANALYSIS

As was recognized in Skinner and by the prior panel in this case, the instant case involves the confluence of Sixth Amendment and Eighth Amendment jurisprudence. We begin by briefly touching on the pertinent Eighth Amendment caselaw.

A. RECENT EIGHTH AMENDMENT CASELAW

1. MILLER V. ALABAMA

In Miller v. Alabama, 576 U.S. ––––; 132 S Ct 2455, 2469; 183 L.Ed.2d 407 (2012), the United States Supreme Court considered an Eighth Amendment challenge to mandatory life-without-parole sentences for juvenile offenders in homicide cases and concluded that "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence [life without parole], such a scheme poses too great a risk of disproportionate punishment." The Court emphasized that the unique characteristics of youth warranted treating juveniles differently from adults for purposes of sentencing. In particular, drawing on past Eighth Amendment precedent in Roper v. Simmons, 543 U.S. 551; 125 S Ct 1183; 161 L.Ed.2d 1 (2005) (imposing a categorical ban on capital punishment for all juvenile offenders), and Graham v. Florida, 560 U.S. 48; 130 S Ct 2011; 176 L.Ed.2d 825 (2010) (banning life-without-parole sentences for juveniles in non-homicide cases), the Court noted that juveniles have "lesser culpability" and a greater capacity for reform and thus "are constitutionally different from adults for purposes of sentencing." Miller, 132 S Ct at 2463–2464. Specifically, the Court explained that Roper and Graham recognize "three significant gaps between juveniles and adults":

First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable . to negative influences and outside pressures, including from their family and peers; they have limited contro[l] over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievabl[e] deprav[ity]. [Id. at 2464 (citations and quotation marks omitted; alterations in original).]

In addition to noting that the characteristics of youth warranted treating juveniles differently, the Court noted the severity of a life-without-parole sentence for juveniles. Particularly, the Court took notice of the idea that the majority in Graham "likened life without parole for juveniles to the death penalty itself." Id. at 2463. See also Graham, 560 U.S. at 69–71. The Graham majority did so by noting that life without parole was especially harsh for a juvenile offender, who will "almost inevitably serve 'more years and a greater percentage of his life in prison than an adult offender.' " Miller, 132 U.S. at 2466, quoting Graham, 560 U.S. at 70. And given that Roper categorically banned the death penalty for juvenile offenders, life without parole became the "ultimate penalty for juveniles." Miller, 132 U.S. at 2466. Because Graham likened life without parole for juveniles to the death penalty, the Court reasoned that Graham made relevant to the issue at hand death-penalty caselaw, which imposed the requirement of individualized sentencing pursuant to which the offender's character and record, along with the circumstances of the offense and other mitigating or aggravating factors, were to be considered. Id. at 2467 (citations omitted).

In light of characteristics of youth and pertinent Eighth Amendment precedent, the Court concluded that mandatory life-without-parole sentencing schemes for juveniles, "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. "And still worse," continued the Court, "each juvenile (including these two 14–year–olds) will

receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as Graham noted, a greater sentence than those adults will serve.” Id. at 2468. Accordingly, the Court barred mandatory life-without-parole sentences for juvenile offenders in homicide cases and provided a number of non-exhaustive factors[2] that a sentencer should consider before imposing a life-without-parole sentence:

. Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. [Id.]

The Court stopped short of considering a categorical ban on life-without-parole sentences for juveniles because that issue was not before it, but held that the Eighth Amendment forbade the imposition of a mandatory penalty because it “prevent[s] the sentencer from taking account of” the offender's youthfulness, diminished culpability, and increased potential for reform. Id. at 2466. Yet, while not imposing a categorical ban, the Court was careful to note that because of a juvenile's “diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” Id. at 2469. “That is especially so,” reasoned the Court, “because of the great difficulty we noted in Roper and Graham of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” Id. (citations and quotation marks omitted).

2. MONTGOMERY V. LOUISIANA

The first—and perhaps most pressing—issue left in Miller 's wake was the issue of retroactivity. A number of states took aim at this issue, including this Court and the Michigan Supreme Court.[3] The United States Supreme Court resolved this issue in Montgomery v. Louisiana, ––– U.S. ––––; 136 S Ct 718; 193 L.Ed.2d 599 (2016), a case of which neither Skinner nor Hyatt had the benefit. The majority ruled—in a holding that is not of particular relevance for resolving the issue in the present case—that Miller applied retroactively. Id. at 736. More relevant to our discussion in the instant case was Montgomery 's admonition—continued from Miller—that “a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect irreparable corruption.” Id. at 726 (citation and quotation marks omitted). The Court also acknowledged, in the context of concluding that the rule in Miller was substantive and thus subject to retroactive application, that Miller did not forbid states from imposing life-without-parole sentences altogether. Id. at 734. However, Miller nevertheless barred life without parole “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility”; thus, “[f]or that reason, Miller is no less substantive than are Roper and Graham.” Id.

Also relevant to our discussion, the Court in Montgomery acknowledged that Miller 's holding, while substantive, nevertheless “has a procedural component” in that it requires “a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence.” Id. This procedural component—a hearing at which “ ‘youth and its attendant characteristics' are considered as sentencing factors”—was necessary to give effect to Miller 's “substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.” Id. at 735. The Supreme Court, in rejecting an argument made in that case, acknowledged that Miller did not require trial courts to make findings of fact regarding a child's “incorrigibility.” Id. However, “[t]hat Miller did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, Miller established that this punishment is disproportionate under the Eighth Amendment.” Id. In the absence of express procedural requirements or factfinding requirements set forth in Miller, the Court in Montgomery

emphasized that it was incumbent upon states to develop procedures to enforce Miller 's substantive guarantee of individualized sentencing for juvenile offenders facing the possibility of life without parole. Id.

B. MCL 769.25—OUR RESPONSE TO MILLER

In response to Miller 's directive about individualized sentencing, our Legislature enacted 2014 PA 22 which included, relevant to our purposes in the instant case, MCL 769.25. For certain, enumerated homicide offenses, the statute allowed the prosecuting attorney to "file a motion under this section to sentence" a juvenile offender "to imprisonment for life without the possibility of parole." MCL 769.25(2). With a nod toward Miller, the statute provided that:

(6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in Miller v. Alabama, 576 U.S. ––––; 183 L.Ed.2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

(7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing. [MCL 769.25(6)-(7).]

However, absent a motion by the prosecutor seeking the penalty of life without parole, see MCL 769.25(4), or "[i]f the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years[,]" MCL 769.25(9).

C. APPRENDI AND SIXTH AMENDMENT JURISPRUDENCE

1. APPRENDI

The issue at the heart of this conflict case is whether Miller, and how our Legislature has chosen to implement Miller 's guarantee of individualized sentencing in MCL 769.25, runs afoul of Sixth Amendment caselaw concerning the right to have a jury decide facts that increase the maximum available punishment. Neither Miller nor Montgomery had occasion to address this issue. In People v. Carp, 496 Mich. 440, 490–491, 491 n 20; 852 NW2d 801 (2014)—a pre-Montgomery case dealing with the retroactivity of Miller—our Supreme Court declined to address the issue. Accordingly, we must turn our attention to pertinent Sixth Amendment caselaw.

In one of the more influential cases in this line of precedent, Apprendi v. New Jersey, 530 U.S. 466, 490; 120 S Ct 2348; 147 L.Ed.2d 435 (2000), the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." In Apprendi, the defendant pleaded guilty to a weapons offense for which the proscribed penalty was 5 to 10 years' imprisonment. Id. at 469–470. Subsequent to the trial court accepting the plea, the prosecutor filed a motion to extend the term of imprisonment based on a "hate crime" statute. Id. at 470. The trial court found that the defendant acted "with a purpose to intimidate" under the statute, which authorized the court to enhance the defendant's maximum sentence to 10–20 years' imprisonment. Id. at 471.

The Supreme Court agreed with the defendant's challenge to his sentence in Apprendi, finding that the Fourteenth Amendment's due process guarantee, as well as the Sixth Amendment right to a jury trial, "indisputably entitle a criminal defendant to a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." Id. at 477 (citation and quotation marks

omitted; alteration in original). A fact, other than a prior conviction, that increased the maximum penalty beyond what was authorized by the jury's verdict, was in essence, an element that needed to be proved to the jury beyond a reasonable doubt. Id. at 490.

While the Apprendi Court held that elements of the offense must be submitted to the jury, it was careful, however, to specify that the holding in that case did not suggest that it is impermissible for judges to exercise discretion-taking into consideration various factors relating both to offense and offender-in imposing a judgment within the range prescribed by statute. We have often noted that judges in this country have long exercised discretion of this nature in imposing sentence within statutory limits in the individual case. [Id. at 481.]

Provided that a sentencing judge operated within the limits of punishment as provided by statute and did not increase the maximum punishment, the judge properly exercised his or her sentencing authority. See id. at 482–483. In such an instance, any facts found function as mere sentencing factors, rather than elements of an aggravated offense. See id. at 482–483, 485–486. See also LaFave, et al, Criminal Procedure (4th ed), § 26.4(h), p 1007.

The Apprendi Court also took care to note the historical difference in its jurisprudence "between facts in aggravation of punishment and facts in mitigation." Apprendi, 530 U.S. at 490 n 16. The former requires a jury finding beyond a reasonable doubt, while the latter does not. Id. As to mitigating factors, the Court explained:

If facts found by a jury support a guilty verdict of murder, the judge is authorized by that jury verdict to sentence the defendant to the maximum sentence provided by the murder statute. If the defendant can escape the statutory maximum by showing, for example, that he is a war veteran, then a judge that finds the fact of veteran status is neither exposing the defendant to a deprivation of liberty greater than that authorized by the verdict according to statute, nor is the judge imposing upon the defendant a greater stigma than that accompanying the jury verdict alone. Core concerns animating the jury and burden-of-proof requirements are thus absent from such a scheme. [Id.]

2. EXPANSION OF APPRENDI

In the years since it issued Apprendi, the Supreme Court has expanded the territorial limits of "Apprendi-land"—a term coined by Justice Scalia[4] —to include, among other matters, judicial factfinding on aggravating factors required for the imposition of the death penalty, Ring v. Arizona, 536 U.S. 584; 122 S Ct 2428; 153 L.Ed.2d 556 (2002), judicial factfinding that affected sentencing-guideline range maximums, see United States v. Booker, 543 U.S. 220; 125 S Ct 738; 160 L.Ed.2d 621 (2005); Blakely v. Washington, 542 U.S. 296; 124 S Ct 2531; 159 L.Ed.2d 403 (2004), determinate sentencing tiers pursuant to which the trial judge, not the jury, was given authority to find facts that exposed a defendant to an elevated sentence, see Cunningham v. California, 549 U.S. 270; 127 S Ct 856; 166 L.Ed.2d 856 (2007), mandatory minimum sentences, see Alleyne v. United States, ––– U.S. ––––; 133 S Ct 2151; 186 L.Ed.2d 314 (2013);[5] and criminal fines, Southern Union Co. v. United States, ––– U.S. ––––; 132 S Ct 2344; 183 L.Ed.2d 318 (2012). In each of these cases, the Court reiterated that any fact, other than a prior conviction, that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. See, e .g., Blakley, 542 U.S. at 301. For purposes of Apprendi, this statutory maximum "is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings." Id. at 303–304. It does not matter for purposes of Apprendi whether the enhancement of the maximum sentence occurs based on the finding of a single, specified fact, based on several specified facts, or based on any aggravating fact: the Sixth Amendment violation is the same regardless. Id. at 305. Hence, if a statute provides for a particular term of imprisonment as well as an enhanced term, a judge cannot, when the jury's verdict only authorized the lower term, find facts that increase the maximum punishment. Cunningham, 549 U.S. at 288. A defendant has the right to have a "jury find the existence of any particular fact that the law makes essential to his punishment." Booker, 543 U.S. at 232 (citation and quotation marks omitted). The Court has repeatedly stressed that a "judge's authority to sentence derives wholly from the jury's verdict.

Without that restriction, the jury would not exercise the control that the Framers intended.” Blakely, 542 U.S. at 306.

The Supreme Court's Sixth Amendment jurisprudence has emphasized that the Apprendi rule was not concerned with the label—element or sentencing factor—assigned to a particular factual finding. Rather, it was the effect of the particular finding that mattered. That is, did the fact or facts found by the sentencing judge increase the statutory maximum from that which was authorized by the jury's verdict? Booker, 543 U.S. at 231; Blakely, 542 U.S. at 306; Apprendi, 530 U.S. at 494. See also Alleyne, 133 S Ct at 2158 (“The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an ‘element’ or ‘ingredient’ of the charged offense . a fact is by definition an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed.”); Cunningham, 549 U.S. at 290 (“If the jury's verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer sentence, the Sixth Amendment requirement is not satisfied.”). A particular fact functions as an “element” if by law, it increases the penalty for a crime. Alleyne, 133 S Ct at 2155.

3. HURST AND RING

In addition to the above-noted extensions of Apprendi, we note an area of caselaw to which the parties pay particular attention in the instant case: the extension of the Apprendi rule to cases involving aggravating factors used to enhance a sentence for purposes of imposing the death penalty. See Hurst v. Florida, ––– U.S. ––––; 136 S Ct 616; 193 L.Ed.2d 504 (2016); Ring, 536 U.S. 584. Although these cases dealt with the imposition of the death penalty on adult offenders, the sentencing scheme—and the intersection of Eighth Amendment considerations and Sixth Amendment jury entitlements at issue in both Hurst and Ring—provide useful analysis for the sentencing scheme at issue in the instant case.

In Ring, 536 U.S. at 591, the jury convicted the defendant, Timothy Ring, of felony murder for the death of the victim during an armored car robbery, but deadlocked on premeditated murder. The issue in that case concerned whether the jury's verdict authorized the imposition of the death penalty under Arizona law. “Under Arizona law, [the defendant] could not be sentenced to death, the statutory maximum penalty for first-degree murder, unless further findings were made.” Id. at 592 (emphasis added). In particular, Arizona's first-degree murder statute authorized the penalty of death or life imprisonment, but, for purposes of determining which penalty to impose, Arizona law directed the trial judge to “conduct a separate sentencing hearing to determine the existence or nonexistence of [certain enumerated] circumstances.” Id. (citation and quotation marks omitted). The sentencing scheme at issue went on to provide that the trial judge was to determine whether any of the enumerated aggravating factors existed, as well as any mitigating circumstances, and the judge could only impose the death penalty “if there is at least one aggravating circumstance and there are no mitigating circumstances sufficiently substantial to call for leniency.” Id. at 593 (citation and quotation marks omitted).

The defendant in Ring contended that the Sixth Amendment required jury findings on the statutory aggravating factors. Id. at 597 n 4. The “aggravating” factors required by Arizona law were added by the state's legislature in large part due to Eighth Amendment caselaw concerning the imposition of death sentences and the requirement of aggravating factors. Id. at 606, citing Maynard v. Cartwright, 486 U.S. 356, 362; 108 S Ct 1853; 100 L.Ed.2d 372 (1988); Furman v. Georgia, 408 U.S. 238; 92 S Ct 2726; 33 L.Ed.2d 346 (1972). The Supreme Court in Ring remarked that the addition of aggravating factors was an “element” which was “constitutionally required” by the Eighth Amendment. Ring 536 U.S. at 607.