IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JONATHAN DAVID WALKER, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11784 Trial Court No. 3PA-11-2143 CI MEMORANDUM OPINION No. 6493 — July 19, 2017

Appeal from the Superior Court, Third Judicial District, Palmer, Eric Smith, Judge.

Appearances: Douglas O. Moody, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

The defendant in this case, Jonathan David Walker, received a sentence of 70 years' imprisonment (with normal eligibility for parole) for a murder that he

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

committed when he was a juvenile. The question is whether this sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment.

In 1998, when Walker was 17 years old, he and two companions beat a homeless man to death. Walker was charged as an adult with first-degree murder and evidence tampering. Walker ultimately reached a plea agreement with the State: he pleaded guilty to first-degree murder, and the State agreed to a sentencing cap of 70 years' imprisonment. (The maximum penalty for first-degree murder is 99 years' imprisonment. [1])

Following a sentencing hearing, Superior Court Judge Eric Smith sentenced Walker to 70 years' imprisonment, but with no restriction on his parole eligibility.

In his sentencing remarks, Judge Smith noted the "brutal, horrifying" nature of the homicide, and he declared that this was the kind of crime that could merit a 99-year sentence. But Judge Smith recognized the significance of Walker's young age and his rehabilitative potential:

> *The Court*: It is a difficult thing for a judge [to] pass judgment on an 18-year-old boy — he still is a boy — and not take that into consideration in making a [sentencing] decision. This 18-year-old boy participated in a really brutal murder, and I have to take that into consideration as well. Balancing all of these things, it is my judgment that the 70-year cap in the [plea bargain] was an appropriate one here. ... [W]hat might otherwise be a 99-year sentence is appropriately mitigated ... in light of the defendant's age and in light of his forthright acceptance of his responsibility for what he did.

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[1] AS 12.55.125(a).

The judge stated that these factors mitigated Walker's offense, but "anything less [than a 70-year sentence] would ... defeat the criteria and the importance of community condemnation and general deterrence."

In 2012, twelve years after Walker was sentenced, the United States Supreme Court issued its decision in *Miller v. Alabama*.[2] In *Miller*, the Supreme Court held that, because of the Eighth Amendment's ban on cruel and unusual punishment, it is unconstitutional for a state to *mandate* a sentence of life imprisonment without parole for a juvenile offender who is convicted of murder. It is still lawful to impose such a sentence on a juvenile convicted of murder, but the sentence can not be imposed automatically; it can only be imposed after an individualized sentencing hearing where the sentencing judge "take[s] into account how children are different [from adult offenders], and how those differences counsel against irrevocably sentencing them to a lifetime in prison."[3]

After the Supreme Court issued its decision in *Miller*, Walker filed a petition for post-conviction relief in which he argued that his sentence — 70 years' imprisonment with normal eligibility for parole — was unconstitutional under *Miller*.

Walker acknowledged that his sentence is not, on its face, a life sentence without possibility of parole: he is eligible to apply for discretionary parole release after serving one-third of his sentence (23 years, 4 months); and, if he does not forfeit any of his good time credit, he will be entitled to mandatory parole release after serving two-thirds of his sentence (46 years, 8 months).

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[2] 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

[3] *Miller*, 567 U.S. at __, 132 S.Ct. at 2469.

But Walker argued that the Parole Board would be reluctant to grant discretionary parole to an offender like him, and Walker noted that he would not be eligible for release on mandatory parole until he was 63 years old.

The superior court granted summary judgement to the State, and Walker now appeals. We uphold the superior court's decision for two reasons.

Walker failed to prove that he will inevitably spend his entire life in prison

Under Alaska's laws relating to discretionary parole, Walker will be eligible to apply for discretionary parole after serving one-third of his sentence (*i.e.*, after serving a little over 23 years). [4]

It may be true, as Walker's attorney asserted in the trial court, that "it is difficult under any circumstances" for a person convicted of first-degree murder to be granted discretionary parole release by the Alaska Parole Board upon their first application. (This matter was not actively litigated; rather, at the superior court's urging, the prosecutor conceded for purposes of this case that it was difficult for a murder defendant to obtain discretionary parole on their first application.)

But "difficult" is not the same as "impossible". And Walker is not limited to a single application for discretionary parole. In making its decision, the Board would be entitled to consider Walker's conduct and attitude while in prison, his participation in rehabilitative programs, and whether there were conditions of parole that would minimize the level of danger that Walker might pose if released.

In short, Walker gave the superior court no reason to believe that his right to apply for discretionary parole was illusory.

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[4] *See* AS 33.16.090(b)(1) and AS 33.16.100(a).

Turning to Alaska's laws relating to mandatory parole, if Walker does not forfeit any good time credit for misbehavior, he must be released on mandatory parole after serving 46 years, 8 months of his sentence.[5] Walker will be 63 years old at that time.

In his brief to this Court, Walker cites studies which conclude that people serving lengthy prison sentences have a life expectancy of 65 years or less. Based on these studies, Walker suggests that his prospect of being released on mandatory parole is illusory. But none of this information was presented to the superior court — because Walker did not raise the issue of his life expectancy when he litigated his petition for post-conviction relief. In fact, Walker's post-conviction relief pleadings do not even mention life expectancy.

For these reasons, we conclude that Walker failed to prove that he will inevitably spend his entire life in prison.

Walker received an individualized sentencing hearing at which the judge expressly considered Walker's youth and his potential for rehabilitation

Our second reason for affirming the superior court's decision is that Walker received an individualized sentencing hearing at which the judge expressly considered Walker's youth and his rehabilitative potential.

As we explained earlier, the Supreme Court's decision in *Miller* does not say that it is unconstitutional to sentence a juvenile offender to life imprisonment without parole for the crime of murder. Rather, *Miller* holds that such a sentence can not be imposed *automatically* — that it can only be imposed after an individualized sentencing hearing where the sentencing judge "take[s] into account how children are different

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[5] *See* AS 33.20.010 and AS 33.20.040.

[from adult offenders], and how those differences counsel against irrevocably sentencing them to a lifetime in prison."[6] As we explained in the opening section of this opinion, Walker received such a sentencing hearing.

Conclusion

For the reasons explained here, the judgement of the superior court is AFFIRMED.

[6] *Miller*, 567 U.S. at __, 132 S.Ct. at 2469.