

No. 1-13-2163

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 5844
)	
TERRANCE TUCKER,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for first degree murder is affirmed, while his 55-year prison sentence is vacated and this matter is remanded for a new sentencing hearing, where: (1) there were no errors at trial depriving defendant of a fair trial; (2) defendant was not provided ineffective assistance of trial counsel; and (3) defendant, who was a juvenile at the time of the murder, was subjected to an unconstitutional *de facto* life sentence.

¶ 2 After a jury trial, defendant-appellant, Terrance Tucker, was convicted of first degree murder and sentenced to a term of 55 years' imprisonment. Having previously affirmed defendant's conviction and sentence (*People v. Tucker*, 2016 IL App (1st) 132163-U), this case returns to us following the entry of a supervisory order by our supreme court directing this court to vacate our prior judgment and to reconsider whether defendant's sentence constitutes an

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unconstitutional *de facto* life sentence (*People v. Tucker*, No. 120821 (Ill. March 25, 2020) (supervisory order)). For the following reasons, we affirm defendant's conviction, vacate his sentence, and remand this matter for a new sentencing hearing.

¶ 3 Defendant was charged by indictment with multiple counts of first degree murder, unlawful use or possession of a weapon by a felon, and aggravated unlawful use of a weapon. A jury trial was held in January of 2013, at which the State elected to proceed solely on two of the first degree murder counts. Each of those counts generally alleged that, on or about December 20, 2009, defendant personally discharged a firearm that proximately caused the death of Gregory Tuck.

¶ 4 The pretrial and trial proceedings were fully set out in our prior order and need not be restated here. See *Tucker*, 2016 IL App (1st) 132163-U, ¶¶ 5-21.

¶ 5 At the conclusion of the jury trial, defendant was found guilty of first degree murder, with the jury also finding that defendant personally discharged a firearm resulting in the death of another person. Defendant's motion for a new trial was denied, and a sentencing hearing commenced in April 2013.

¶ 6 In preparation for that hearing, a presentence investigation report was prepared. That report reflected—*inter alia*—that defendant was 17 years old at the time of the shooting, was the father of a young daughter, had begun using marijuana and alcohol as a minor, and had previously been identified as a gang member. In aggravation, the State introduced additional evidence of defendant's prior arrests for possession of a stolen vehicle, burglary, and robbery, his prior adult conviction for aggravated unlawful use of a weapon, a juvenile finding of delinquency for defendant's participation in an armed robbery, and a victim impact statement from the victim's aunt. In mitigation, defendant introduced a letter from his family and evidence that he had previously received special education services for a diagnosed learning disability. Defendant made

a statement in allocution, in which he maintained his innocence and asked the court for “mercy” in light of his young age and the fact that he had a young daughter. The State asked the trial court to impose a “significant period” of incarceration, while defendant asked the trial court to impose the statutory minimum sentence.

¶ 7 At the conclusion of the sentencing hearing, the trial court specifically reviewed defendant’s juvenile and adult criminal history, the mitigating circumstances outlined by defense counsel, the defendant’s relative youth, the fact that defendant was the father of a young daughter, and the circumstances of defendant’s actions in this case. The trial court then noted that that defendant was subject to a statutorily-mandated sentence ranging from 45 years’ imprisonment to a term of natural life, which would be comprised of a 20-to-60-year sentence for the murder conviction and a mandatory 25-year-to-natural life sentencing enhancement due to defendant’s use of a firearm. Defendant was ultimately sentenced to a term of 55 years’ imprisonment, with the trial court specifically indicating that—considering all the sentencing factors—this was not a case where a minimum sentence was appropriate. Defendant’s motion to reconsider his sentence was denied.

¶ 8 Defendant filed a timely appeal raising claims of various trial errors, ineffective assistance of trial counsel, and unconstitutional sentencing. In an order modified upon denial of defendant’s petition for rehearing, this court previously rejected defendant’s arguments and affirmed his conviction and sentence. *Tucker*, 2016 IL App (1st) 132163-U.

¶ 9 Defendant thereafter filed a petition for leave to appeal with our supreme court. In a supervisory order entered on March 25, 2020, our supreme court denied defendant’s petition for leave to appeal, but directed this court to vacate our prior judgment and to consider the effect of its opinions in *People v. Buffer*, 2019 IL 122327, and *People v. Holman*, 2017 IL 120655, on the

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issue of whether defendant's sentence constitutes a *de facto* life sentence in violation of the eighth Amendment (U.S. Const., amend. VIII) and *Miller v. Alabama*, 567 U.S. 460 (2012), and to determine if a different result is warranted. *Tucker*, No. 120821 (Ill. March 25, 2020) (supervisory order).

¶ 10 As noted above, defendant has presented several arguments on appeal, involving claims of various trial errors, ineffective assistance of trial counsel, and unconstitutional sentencing. With respect to his claims of trial errors and ineffective assistance of counsel, and relying upon the analysis set out in our prior order, we once again reject those contentions. *Tucker*, 2016 IL App (1st) 132163-U, ¶¶ 27-52. Pursuant to the supervisory order entered by our supreme court in this matter, we now therefore turn to reconsider defendant's claim that his sentence was unconstitutional.

¶ 11 In *Roper v. Simmons*, 543 U.S. 551, 574-75 (2005), the Supreme Court found that the death penalty was unconstitutional as applied to minors. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." *Id.* at 82. Then, in *Miller v. Alabama*, 567 U.S. 460, 479 (2012), the Supreme Court concluded that the eighth amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" convicted of homicide. In each case, the Supreme Court relied in part on the lesser moral culpability and greater rehabilitative potential of minors in support of its decisions, and "it is clear the United States Supreme Court in *Roper*, *Graham*, and *Miller* has provided juveniles with more constitutional protection than adults." *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 68.

¶ 12 However, *Miller* itself did not impose an outright ban on the imposition of a life sentence upon a juvenile convicted of homicide, let alone a ban on lengthy term-of-years sentences imposed upon juveniles. See, *Miller*, 567 U.S. 479-80 (refusing to completely foreclose the possibility that a life sentence could be constitutionally imposed upon a juvenile convicted of homicide). Rather, the Supreme Court held only that such a sentence could not be *mandated*, and that before a life sentence could be properly imposed, “mitigating circumstances” such as “an offender’s youth and attendant characteristics” must be considered. *Id.* at 483, 489.

¶ 13 The Illinois Supreme Court has ruled that *Miller* applies to discretionary, as well as mandatory life sentences (*People v. Holman*, 2017 IL 120655, ¶ 40), and also to *de facto* life sentences, or sentences “that cannot be served in one lifetime” and have “the same practical effect on a juvenile defendant’s life as would an actual mandatory sentence of life without parole” (*People v. Reyes*, 2016 IL 119271, ¶¶ 9-10). More recently, our supreme court concluded that any sentence exceeding 40 years is a *de facto* life sentence, requiring the sentencing court to consider “[the] defendant’s youth and its attendant circumstances.” *People v. Buffer*, 2019 IL 122327, ¶¶ 41-42.

¶ 14 Thus, while a juvenile defendant may be sentenced to a natural life or *de facto* sentence of life imprisonment, before doing so the trial court must:

“[D]etermine[] that the defendant’s conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant’s youth and its attendant characteristics. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant’s chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and

consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's prospects for rehabilitation." *Holman*, 2017 IL 120655, ¶ 46; *Buffer*, 2019 IL 122327, ¶ 19.

¶ 15 Here, defendant was convicted of first degree murder. The sentencing range for defendant's first degree murder conviction was from 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2010). Because the jury also found that defendant personally discharged a firearm resulting in the death of another person, defendant's sentence for murder was also subject to a mandatory sentencing enhancement ranging from an additional 25 years' imprisonment to a term of natural life. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). Further, pursuant to section 3-6-3(a)(2)(i) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2)(i) (West 2010)), defendant's sentence is not eligible to be reduced through good-conduct credit. Thus, defendant faced a sentence ranging from a statutorily-mandated 45-year term of imprisonment to a term of natural life, without the possibility of early release. Ultimately, the trial court sentenced defendant to a term of 55 years' imprisonment.

¶ 16 The sentencing scheme defendant faced therefore mandated that he—a minor at the time he committed murder—faced a statutorily-mandated sentence in excess of 40 years without the possibility of early release, a *de facto* life sentence. *Buffer*, 2019 IL 122327, ¶¶ 41-42. As noted above, the eighth amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Alabama*, 567 U.S. at 479; see also, *Reyes*, 2016 IL 119271, ¶ 9 ("sentencing a juvenile offender to a mandatory term of years that is the functional

equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the eighth amendment”).

¶ 17 Defendant was not actually sentenced to that minimum sentence, but to an even greater term of 55 years’ imprisonment which similarly represents a *de facto* life sentence. However, while the record indicates that the trial court did consider defendant’s youth and some of the attendant characteristics outlined above (*supra*, ¶ 14), the trial court did not consider all those characteristics. Nor did the trial court explicitly determine from its consideration of those characteristics that the defendant’s conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation.

¶ 18 Defendant’s sentence therefore violates the eighth amendment. It must therefore be vacated and this matter must be remanded for a new sentencing hearing. *Buffer*, 2019 IL 122327, ¶ 42.; *Reyes*, 2016 IL 119271, ¶¶ 11-12. Upon remand, defendant is entitled to be sentenced under the scheme prescribed by section 5-4.5-105 of the Unified Code of Corrections (730 ILCS 5/5-4.5-105 (West 2018)). *Buffer*, 2019 IL 122327, ¶ 47.

¶ 19 For the foregoing reasons, we affirm defendant’s conviction, vacate his sentence, and remand for resentencing.

¶ 20 Affirmed in part and vacated in part.

¶ 21 Cause remanded.