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STATE OF CONNECTICUT *v.* TAUREN
WILLIAMS-BEY
(SC 19954)

Palmer, McDonald, D'Auria, Mullins, Kahn and Ecker, Js.

Syllabus

The defendant, who had been convicted, on a plea of guilty, of murder as an accessory, appealed to the Appellate Court from the judgment of the trial court dismissing his motion to correct an illegal sentence for lack of subject matter jurisdiction. The defendant, who had committed the crime of which he was convicted when he was sixteen years old, was sentenced to thirty-five years imprisonment without the possibility of parole. In his motion to correct, the defendant claimed, *inter alia*, that he was entitled to be resentenced because his original sentence had been imposed in violation of the Connecticut constitution insofar as the sentencing court did not consider his age and the hallmarks of adolescence as mitigating factors in imposing his sentence, and insofar as the subsequent enactment of legislation (P.A. 15-84, § 1), which retroactively afforded certain juvenile offenders, including the defendant, parole eligibility, did not remedy that violation. The Appellate Court rejected the defendant's claim and upheld his sentence, concluding that, although the trial court had jurisdiction over his claim, any potential violation was cured by his eligibility for parole under P.A. 15-84. Thereafter, while the defendant's petition for certification to appeal from the Appellate Court's judgment was pending, this court determined in *State v. Delgado* (323 Conn. 801) that, under the federal constitution, resentencing was not required if a juvenile offender became eligible for parole under P.A. 15-84 and, therefore, that a court lacks jurisdiction to decide a juvenile offender's motion to correct an illegal sentence that is based on lack of parole eligibility. In light of *Delgado*, this court declined to rule on the petition for certification to appeal and remanded the case to the Appellate Court. The Appellate Court thereafter upheld the dismissal of the defendant's motion to correct an illegal sentence, and the defendant, on the granting of certification, appealed to this court, claiming that, under the Connecticut constitution, he was entitled to resentencing even after he became eligible for parole under P.A. 15-84. *Held* that the resolution of the defendant's appeal was controlled by this court's decision in *State v. McCleese* (333 Conn. 378), in which the court concluded that the parole eligibility afforded to juvenile offenders by P.A. 15-84 is an adequate remedy for a sentence of life imprisonment, or its functional equivalent, without the possibility of parole imposed on a juvenile without consideration of the juvenile offender's age and the hallmarks of adolescence, and, because the defendant became eligible for parole upon the enactment of P.A. 15-84, the state constitution did not require resentencing; accordingly, the Appellate Court's judgment was affirmed.

(One justice dissenting)

Argued October 15, 2018—officially released August 23, 2019*

Procedural History

Information charging the defendant with the crimes of murder as an accessory and conspiracy to commit murder, brought to the Superior Court in the judicial district of Hartford, where the defendant was presented to the court, *Clifford, J.*, on plea of guilty to the charge of murder as an accessory; thereafter, the state entered a nolle prosequi as to the charge of conspiracy to commit murder; judgment of guilty in accordance with the plea; subsequently, the court, *Alexander, J.*, dismissed the defendant's motion to correct an illegal sentence, and the defendant appealed to the Appellate Court,

Lavine, Beach and Alvord, Js., which reversed the judgment only as to its form and remanded the case with direction to render judgment denying the motion to correct; thereafter, this court, sua sponte, ordered the Appellate Court to reconsider its decision that the trial court had jurisdiction over the motion to correct; subsequently, the Appellate Court, *Lavine, Alvord and Beach, Js.*, affirmed the trial court's dismissal of the defendant's motion to correct an illegal sentence, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Heather Clark, assigned counsel, for the appellant (defendant).

Michele C. Lukban, senior assistant state's attorney, with whom, on the brief, were *Gail P. Hardy*, state's attorney, and *Vicki Melchiorre*, supervisory assistant state's attorney, for the appellee (state).

George Jepsen, former attorney general, *Steven R. Strom*, assistant attorney general, and *Leland J. Moore* filed a brief for the Connecticut Board of Pardons and Paroles as amicus curiae.

S. Max Simmons and *Marsha L. Levick* filed a brief for the Juvenile Law Center as amicus curiae.

Michael S. Taylor and *James P. Sexton* filed a brief for the Connecticut Criminal Defense Lawyers Association as amicus curiae.

Opinion

D'AURIA, J. Under the federal constitution's prohibition on cruel and unusual punishments, a juvenile offender cannot serve a sentence of imprisonment for life, or its functional equivalent, without the possibility of parole, unless his age and the hallmarks of adolescence have been considered as mitigating factors. *Miller v. Alabama*, 567 U.S. 460, 476–77, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Casiano v. Commissioner of Correction*, 317 Conn. 52, 60–61, 115 A.3d 1031 (2015), cert. denied sub nom. *Semple v. Casiano*, U.S. , 136 S. Ct. 1364, 194 L. Ed. 2d 376 (2016); *State v. Riley*, 315 Conn. 637, 641, 110 A.3d 1205 (2015), cert. denied, U.S. , 136 S. Ct. 1361, 194 L. Ed. 2d 376 (2016). The defendant, Tauren Williams-Bey, is presently serving a sentence of thirty-five years imprisonment, and, pursuant to No. 15-84 of the 2015 Public Acts (P.A. 15-84), codified at General Statutes § 54-125a, has the possibility of parole after twenty-one years in prison. His original sentence of thirty-five years without parole was imposed without consideration of his age or the hallmarks of adolescence. The defendant does not claim that this sentence violates the federal constitution. Rather, he claims that it violates the Connecticut constitution and that he must be resentenced, even after P.A. 15-84 later made him parole eligible. On the basis of our decision in *State v. McCleese*, 333 Conn. 378, A.3d (2019), which we also release today, we conclude that the defendant is not entitled to resentencing.

The following facts and procedural history are relevant to the present appeal. The defendant is currently imprisoned for murder. He was sixteen years old when he and two friends shot and killed the victim. The defendant pleaded guilty to murder as an accessory, in violation of General Statutes (Rev. to 1997) § 53a-54a and General Statutes § 53a-8. The parties waived the presentence investigation report, and the record does not reveal that the court otherwise considered the defendant's age and the hallmarks of adolescence as mitigating factors at sentencing. In accordance with the plea agreement, the court imposed a sentence of thirty-five years imprisonment. At the time of sentencing, the crime of which the defendant was convicted made him ineligible for parole. See General Statutes (Rev. to 1997) § 54-125a (b) (1). If he serves the full term of imprisonment, the defendant will be fifty-two years old when he is released.

“Subsequently, decisions by the United States Supreme Court, decisions by this court, and enactments by our legislature resulted in changes to the sentencing scheme for juvenile offenders. . . . Specifically, the United States Supreme Court . . . held that the eighth amendment's prohibition on cruel and unusual punishments is violated when a juvenile offender serves a mandatory sentence of life imprisonment without the

possibility of parole because it renders ‘youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence’ and ‘poses too great a risk of disproportionate punishment.’ *Miller v. Alabama*, supra, 567 U.S. 479. Thus, an offender’s age and the hallmarks of adolescence must be considered as mitigating factors before a juvenile can serve this particular sentence.¹ This court has interpreted *Miller* to apply not only to mandatory sentences for the literal life of the offender, but also to discretionary sentences and sentences that result in imprisonment for the ‘functional equivalent’ of an offender’s life. *State v. Riley*, supra, 315 Conn. 642, 654; see also *Casiano v. Commissioner of Correction*, supra, 317 Conn. 72. We also have ruled that *Miller* applies not only prospectively, but retroactively, and also to challenges to sentences on collateral review. *Casiano v. Commissioner of Correction*, supra, 71.

“To comport with federal constitutional requirements, the legislature passed [P.A. 15-84].² In relevant part, the act retroactively provided parole eligibility to juvenile offenders sentenced to more than ten years in prison. See P.A. 15-84, § 1.” (Footnotes in original.) *State v. McCleese*, supra, 333 Conn. 382–83. As a result, the defendant is no longer serving a sentence without parole—he will be parole eligible after serving twenty-one years, or when he will be thirty-eight years old.

Following these developments, the defendant filed a motion to correct an illegal sentence, asserting, among other claims, a *Miller* violation.³ The trial court dismissed the motion for lack of jurisdiction, and the defendant appealed from that decision to the Appellate Court.

The Appellate Court rejected the defendant’s claim and upheld his sentence. *State v. Williams-Bey*, 167 Conn. App. 744, 749, 144 A.3d 467 (2016) (*Williams-Bey I*). It held that the trial court had jurisdiction over the defendant’s *Miller* claim but that his parole eligibility under P.A. 15-84, § 1, cured any potential violation. *Id.*, 759, 767–69. The defendant thereafter petitioned this court for certification to appeal.

While the petition was pending, this court held that, under the federal constitution, resentencing was not required to cure a *Miller* violation if the offender became eligible for parole under P.A. 15-84, § 1; parole eligibility negated the violation. *State v. Delgado*, 323 Conn. 801, 810–12, 151 A.3d 345 (2016); see *id.*, 811 (“As a result [of P.A. 15-84, § 1], the defendant’s sentence no longer falls within the purview of *Miller*, *Riley* and *Casiano*, which require consideration of youth related mitigating factors only if the sentencing court imposes a sentence of life without parole. . . . *Miller* simply does not apply when a juvenile’s sentence provides an opportunity for parole.” [Citations omitted.]). Therefore, if a juvenile offender is parole eligible, a court

lacks jurisdiction to hear a motion to correct an illegal sentence on the basis of an alleged violation of *Miller*. *Id.*, 812.

In accordance with *Delgado*, this court declined to rule on the defendant's petition for certification to appeal at that time and remanded his case to the Appellate Court. The Appellate Court summarily affirmed the dismissal of the defendant's motion to correct an illegal sentence on the alternative ground decided in *Delgado*. *State v. Williams-Bey*, 173 Conn. App. 64, 164 A.3d 31 (2017) (*Williams-Bey II*). The defendant then filed a second petition for certification to appeal, this time from the Appellate Court's decision in *Williams-Bey II*.

We granted both of the defendant's petitions at that time, limited to the following state constitutional issues: "1. Under the Connecticut constitution, article first, §§ 8 and 9, are all juveniles entitled to a sentencing proceeding at which the court expressly considers the youth related factors required by the United States constitution for cases involving juveniles who have been sentenced to life imprisonment without the possibility of release? See *Miller v. Alabama*, [supra, 567 U.S. 460]. 2. If the answer to the first question is in the affirmative and a sentencing court does not comply with the sentencing requirements under the Connecticut constitution, does parole eligibility under . . . § 54-125a (f) adequately remedy any state constitutional violation?" *State v. Williams-Bey*, 326 Conn. 920, 921, 169 A.3d 793 (2017).

Even if we assume, without deciding, that our answer to the first certified question in the defendant's appeal is in the affirmative,⁴ and that the defendant was entitled to have a court consider the *Miller* factors, our reasoning in *McCleese* compels us to answer the second question in the affirmative.⁵ In *McCleese*, we decided, among other issues, "whether the parole eligibility afforded by P.A. 15-84 adequately remedies an unconstitutional sentence under the state constitution . . ." *State v. McCleese*, supra, 333 Conn. 386. After analyzing the relevant factors enumerated in *State v. Geisler*, 222 Conn. 672, 684–85, 610 A.2d 1225 (1992), that are to be considered in construing the state constitution and applying the two part framework for adjudicating claims of cruel and unusual punishment, we stated that neither contemporary standards of decency nor our independent judgment compelled us to adopt a rule under the state constitution that would require resentencing to remedy a *Miller* violation. *State v. McCleese*, supra, 407–408. Instead, consistent with *Delgado* and the federal constitution, we concluded that "parole eligibility afforded by P.A. 15-84, § 1, is an adequate remedy for a *Miller* violation under the Connecticut constitution." *Id.*, 409.

Because the defendant is now eligible for parole under P.A. 15-84, § 1, the state constitution does not require a resentencing.

The judgment of the Appellate Court is affirmed.

In this opinion PALMER, McDONALD, MULLINS and KAHN, Js., concurred.

* August 23, 2019, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

¹ We refer to the offender's age and the hallmarks of adolescence as the *Miller* factors throughout this opinion. Specifically, a court must consider “‘immaturity, impetuosity, and failure to appreciate risks and consequences’; the offender's ‘family and home environment’ and the offender's inability to extricate himself from that environment; ‘the circumstances of the homicide offense, including the extent of [the offender's] participation in the conduct and the way familial and peer pressures may have affected him’; the offender's ‘inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys’; and ‘the possibility of rehabilitation’” *State v. Riley*, supra, 315 Conn. 658, quoting *Miller v. Alabama*, supra, 567 U.S. 477–78.

² Section 1 of P.A. 15-84 provides in relevant part: “(f) (1) . . . [A] person convicted of one or more crimes committed while such person was under eighteen years of age, who is incarcerated on or after October 1, 2015, and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes prior to, on or after October 1, 2015, may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which such person is confined, provided (A) if such person is serving a sentence of fifty years or less, such person shall be eligible for parole after serving sixty per cent of the sentence or twelve years, whichever is greater, or (B) if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years. . . .

“(2) The board shall apply the parole eligibility rules of this subsection only with respect to the sentence for a crime or crimes committed while a person was under eighteen years of age. . . .

“(3) Whenever a person becomes eligible for parole release pursuant to this subsection, the board shall hold a hearing to determine such person's suitability for parole release. . . .

“(5) After such hearing, the board shall articulate for the record its decision and the reasons for its decision. If the board determines that continued confinement is necessary, the board may reassess such person's suitability for a new parole hearing at a later date to be determined at the discretion of the board, but not earlier than two years after the date of its decision. . . .”

Section 2 of P.A. 15-84, codified as amended at General Statutes § 54-91g, provides in relevant part: “(a) If the case of a child . . . is transferred to the regular criminal docket of the Superior Court . . . and the child is convicted of a class A or B felony pursuant to such transfer, at the time of sentencing, the court shall:

“(1) Consider, in addition to any other information relevant to sentencing, the defendant's age at the time of the offense, the hallmark features of adolescence, and any scientific and psychological evidence showing the differences between a child's brain development and an adult's brain development; and

“(2) Consider, if the court proposes to sentence the child to a lengthy sentence under which it is likely that the child will die while incarcerated, how the scientific and psychological evidence described in subdivision (1) of this subsection counsels against such a sentence.

“(b) Notwithstanding the provisions of section 54-91a of the general statutes, no presentence investigation or report may be waived with respect to a child convicted of a class A or B felony. . . .

“(d) The Court Support Services Division of the Judicial Branch shall compile reference materials relating to adolescent psychological and brain development to assist courts in sentencing children pursuant to this section.”

³ “A *Miller* claim or *Miller* violation refers to the sentencing court's obligation to consider a juvenile's age and circumstances related to age at an individualized sentencing hearing as mitigating factors before imposing a sentence of life imprisonment [or its equivalent] without parole. See *Miller v. Alabama*, supra, 567 U.S. 478–79. A [claim or violation under *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)] refers to the sentencing court's obligation to provide a meaningful opportunity for parole to a juvenile who is sentenced to life imprisonment [or its equivalent, regardless of parole eligibility].” *State v. Delgado*, 323 Conn. 801, 806 n.5, 151 A.3d 345 (2016).

⁴ The dissent also does not address the first certified question but, rather, argues that the defendant's sentence was unconstitutional because a mandatory minimum sentence conflicts with *Miller's* requirement that juvenile defendants be provided with "individualized, fully discretionary sentencing." *State v. Taylor G.*, 315 Conn. 734, 776, 110 A.3d 338 (2015) (*Eveleigh, J.*, dissenting). In support of the dissent's argument, the dissent relies on Justice Eveleigh's dissenting opinion in *Taylor G.* In *Taylor G.*, the majority held that the defendant's fifteen year mandatory minimum sentence did not violate *Miller* because not only was the defendant's sentence less than life, or its equivalent, but also "the mandatory minimum requirements, while limiting the trial court's discretion to some degree, still left the court with broad discretion to fashion an appropriate sentence that accounted for the defendant's youth and immaturity when he committed the crimes." *Id.*, 744. In his dissent, Justice Eveleigh disagreed and concluded that all mandatory minimum sentences imposed on any juvenile defendant violate *Miller* because they inhibit a sentencing judge's discretion and ability to consider youth as a mitigating factor. *Id.*, 786–88 (*Eveleigh, J.*, dissenting). As a necessary prerequisite to this conclusion, Justice Eveleigh determined that *Miller* should extend to all juvenile defendants regardless of the sentence imposed. *Id.*, 776 (*Eveleigh, J.*, dissenting).

It is unclear whether the dissent in this case is arguing that a mandatory minimum sentence violates the federal or state constitution. Either way, this issue is not before this court. The defendant has argued only that, under the state constitution, the rule in *Miller* should extend to all juvenile defendants, regardless of the sentence imposed. The defendant cited Justice Eveleigh's dissent in *Taylor G.* in support of his argument under *State v. Geisler*, 222 Conn. 672, 684–85, 610 A.2d 1225 (1992), that state precedent supports a broader interpretation of *Miller*, but he never has argued that his sentence violated *Miller*, under either the federal or state constitution, because it was the product of a mandatory minimum sentencing scheme. Just because the defendant relied on Justice Eveleigh's analysis in *Taylor G.* to support his argument that Connecticut precedent is more liberal than federal precedent concerning the sentencing of juvenile defendants does not mean that the defendant raised the claim that was at issue in *Taylor G.*

Additionally, whether the rule in *Miller* applies to all juvenile defendants is an issue separate and distinct from whether mandatory minimum sentencing violates *Miller*. Although concluding that *Miller* applies to all juvenile defendants is a prerequisite to concluding that all mandatory minimum sentences imposed on any juvenile defendant violate *Miller*, the first conclusion does not necessarily require the second conclusion. Thus, we disagree with the dissent that the constitutionality of mandatory minimum sentences is intertwined with the legal arguments raised by the defendant. The dissent is of course free to address any issue it would like to address. That does not mean that the parties have addressed it, the trial court or Appellate Court have decided it, or this court has certified it. Accordingly, we do not address or opine on this unraised issue relied on by the dissent, especially as doing so would require this court to reexamine recent precedent that the defendant has not challenged and the state has not had the opportunity to defend, thereby depriving this court of any guidance on this issue. E.g., *State v. Connor*, 321 Conn. 350, 362, 138 A.3d 265 (2016) ("appellate courts generally do not consider issues that were not raised by the parties"); see also *New England Estates, LLC v. Branford*, 294 Conn. 817, 836 n.20, 988 A.2d 229 (2010) (declining to overrule precedent when not argued by parties); *Sepega v. DeLaura*, 326 Conn. 788, 799 n.5, 167 A.3d 916 (2017) (requiring "special justification" to depart from stare decisis).

⁵ For the same reasons that the majority in *McCleese* rejected the dissent's argument that parole eligibility under P.A. 15-84 is not a sufficient remedy for a *Miller* violation, we likewise reject the dissent's argument in the present case that resentencing is the only appropriate remedy for a *Miller* violation. See *State v. McCleese*, supra, 333 Conn. 432–33 (*Ecker, J.*, dissenting).