

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs June 3, 2014

CEDRIC DICKERSON v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Shelby County
No. 97-03227 Chris Craft, Judge**

No. W2013-01766-CCA-R3-PC - Filed July 28, 2014

Cedric Dickerson (“the Petitioner”) was convicted by a jury of first degree felony murder and aggravated robbery. The trial court sentenced the Petitioner to life without the possibility of parole for his first degree felony murder conviction and eleven years for his aggravated robbery conviction and ordered the sentences to run concurrently. On direct appeal, this Court affirmed the trial court’s judgments. See State v. Cedric Dickerson, No. 02C01-9802-CR-00051, 1999 WL 74213, at *4 (Tenn. Crim. App. Feb. 17, 1999). The Petitioner subsequently filed for post-conviction relief, which the post-conviction court denied following a post-conviction hearing. The Petitioner now appeals, arguing that “the Eighth Amendment should prohibit life without parole sentences for juvenile offenders.” Upon our thorough review of the record and the applicable law, we affirm the post-conviction court’s decision denying relief.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment
of the Criminal Court Affirmed**

JEFFREY S. BIVINS, SP. J., delivered the opinion of the Court, in which ALAN E. GLENN and CAMILLE R. MCMULLEN, JJ., joined.

Eric Mark Mogy, Memphis, Tennessee, for the appellant, Cedric Dickerson.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany Faughn, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Chris Lareau, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

The Petitioner was sixteen years old at the time the offenses in this case were committed. Although the Petitioner was a juvenile, the record indicates that he was transferred to the Criminal Court of Shelby County for prosecution.¹ To assist in the resolution of this proceeding, we repeat here the summary of the facts set forth in this Court's opinion resolving the Petitioner's direct appeal:

The victim, Samuel Bumpus, was killed by three (3) shotgun blasts as he lay in bed in the early morning hours of February 1, 1996. Jermaine Harris discovered the victim at approximately 6:15 a.m., when he entered the apartment to borrow the victim's car. Harris testified that the door was ajar when he arrived. When he subsequently found the victim on the bedroom floor under a mattress, he called the police.

Harris was in the victim's apartment twice the previous evening, once to borrow the victim's car and again to return the keys. Harris saw a twelve (12) gauge shotgun in the victim's apartment the previous evening, but did not see one when he returned that morning.

On the evening prior to being killed, the victim allowed the [Petitioner], also known as "Scarface," and his friend, Derrick Starks, to play video games in his apartment. Sheila Brown testified she observed the [Petitioner] and Starks in the victim's apartment that night. Brown made several visits to the apartment that night to purchase crack cocaine. Brown initially asked the [Petitioner] for crack, but he stated that he had none. She saw the [Petitioner] holding a shotgun and heard the victim instruct him to put it down several times. After his requests were ignored, the victim took the shotgun from the [Petitioner] and placed it under his bed. During a later visit that night, Brown observed the victim discover the shotgun had been moved and exclaim, "[b]ring my gun, Scarface, damn." The victim then fell asleep without retrieving the shotgun.

¹ We note that the record on appeal does not include a transcript of the Petitioner's sentencing hearing, but we have reviewed that transcript from his appellate record on direct appeal. See Harris v. State, 301 S.W.3d 141, 147 n. 4 (Tenn. 2010) ("The Court may take judicial notice of its own records.") (citing State v. Lawson, 291 S.W.3d 864, 869-70 (Tenn. 2009)).

Brown returned to the victim's apartment fifteen minutes later with a friend. She discovered the open door and could see that the victim's bed was disturbed. Brown then left the apartment and shortly thereafter saw the police approaching the apartment with Harris. Later that morning, the [Petitioner] sold crack to Brown that was in a package similar to that the victim had sold her the previous night.

Aaron Newman lived in the same apartment complex as the victim. Newman allowed the [Petitioner]'s brother-in-law, William Green, and his family to sleep in his apartment. Around 6:00 a.m. on February 1, 1996, Newman let the [Petitioner] and Starks into his apartment. The [Petitioner] told Newman that he had killed the victim and robbed him of some cash, a pager, some keys, and crack cocaine. The [Petitioner] told Newman that he shot the victim three times "[t]o see how it feel to kill a motherfucker."

Newman told the [Petitioner] to cut up the remaining shotgun shells and flush them down the toilet. Starks placed the shotgun under Newman's mattress. The [Petitioner] placed the stolen keys and pager in one of Newman's socks and threw it on the roof. The police recovered the sock on the roof several days later, and the victim's mother identified the contents as belonging to her son.

Several days later, Newman instructed the [Petitioner] to remove the shotgun from his apartment. The [Petitioner] and his cousin, David Mitchell, removed the shotgun from Newman's apartment in a Christmas tree box. Mitchell took the weapon to his girlfriend's house where it was later recovered by the police.

William Green, the [Petitioner]'s brother-in-law, testified that the shotgun recovered from Mitchell's girlfriend's house was his. Green stated that he loaned the shotgun to the victim's roommate, Antonio Hill. Contrary to the testimony of Newman, Green denied ever hearing the [Petitioner] admit killing the victim.

The [Petitioner] gave the police a five (5) page statement on February 7, 1996. In the statement and at trial, the [Petitioner] denied killing the victim. He admitted playing video games there, but stated that he and Starks left around 5:00 a.m. [The Petitioner] admitted going to Newman's apartment, but denied telling Newman he killed the victim. The [Petitioner] denied taking the victim's keys and pager or removing guns from Newman's house. Further, the

[Petitioner] stated that the crack he sold Brown after the . . . murder was his, not the victim's.

State v. Cedric Dickerson, No. 02C01-9802-CR-00051, 1999 WL 74213, at *1-2 (Tenn. Crim. App. Feb. 17, 1999).

The Petitioner filed a petition for post-conviction relief on January 18, 2013, claiming that his sentence of life without the possibility of parole violated his protection from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and under Article 1, Section 16 of the Tennessee Constitution. The Petitioner proceeded to a post-conviction hearing, in which no proof was adduced. At the conclusion of his post-conviction hearing, the post-conviction court determined that Miller v. Alabama, __ U.S. __, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), did not entitle the Petitioner to relief based on the specific facts of the Petitioner's case. Following the post-conviction court's denial of relief, the Petitioner timely appealed.

Analysis

Relief pursuant to a post-conviction proceeding is available only when the petitioner demonstrates that his or her "conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Tenn. Code Ann. § 40-30-103 (2012). To prevail on a post-conviction claim of a constitutional violation, the petitioner must prove his or her allegations of fact by "clear and convincing evidence." Tenn. Code Ann. § 40-30-110(f) (2012); see also Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999). This Court will not overturn a post-conviction court's findings of fact unless the preponderance of the evidence is otherwise. Pylant v. State, 263 S.W.3d 854, 867 (Tenn. 2008); Sexton v. State, 151 S.W.3d 525, 531 (Tenn. Crim. App. 2004). We will defer to the post-conviction court's findings with respect to the witnesses' credibility, the weight and value of their testimony, and the resolution of factual issues presented by the evidence. Momon, 18 S.W.3d at 156. With respect to issues raising mixed questions of law and fact, however, including claims of ineffective assistance of counsel, our review is de novo with no presumption of correctness. See Pylant, 263 S.W.3d at 867-68; Sexton, 151 S.W.3d at 531.

At issue in this case is whether the Petitioner is entitled to post-conviction relief in spite of the Petitioner's filing his claim for relief more than twelve years after his judgments of conviction became final, clearly beyond the one-year statute of limitations applicable to petitions for post-conviction relief. See Tenn. Code Ann. § 40-30-102(a) (2012). The Petitioner is claiming that he is entitled to have the statute of limitations tolled on the basis of the United States Supreme Court's recent decision in Miller v. Alabama, __ U.S. __, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), which he argues established a new rule of constitutional

law that must be applied retroactively to cases on collateral review. See Tenn. Code Ann. § 40-30-102(b)(1).

The Petitioner’s argument stems from a very narrow exception to the one-year, post-conviction statute of limitations, which provides that a petitioner may be entitled to have the limitations period tolled where “[t]he claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required.” Tenn. Code Ann. § 40-30-102(b)(1). The plain language of this provision makes clear that any claim thereunder is subject to a two-prong inquiry. The first prong is whether there has been a new rule of constitutional law established. If the answer to this question is affirmative, then the second prong requires a determination of whether the new rule must be applied retroactively to cases on collateral review. See Bush v. State, 428 S.W.3d 1, 17 (Tenn. 2014).

We recognize that a panel of this Court has determined previously that Miller v. Alabama created a new rule of law that should be applied retroactively. See Charles Damien Darden v. State, No. M2013-01328-CCA-R3-PC, 2014 WL 992097, at *9-11 (Tenn. Crim. App. Mar. 13, 2014), perm. app. filed. We need not resolve this issue in this appeal, however, because even a retroactive application of Miller would not afford the Petitioner relief.

In Miller, the Supreme Court held that “the Eighth Amendment forbids a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders.” 132 S.Ct. at 2469 (emphasis added). The Court, noting that such a sentence for juveniles would be “uncommon,” stated, “Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id.

In the Petitioner’s case, the Petitioner waived his right to sentencing by a jury. See Cedric Dickerson, 1999 WL 74213, at *1. We note that the record on appeal does not include a transcript of the Petitioner’s sentencing hearing, but we have reviewed that transcript from his appellate record on direct appeal. See Harris v. State, 301 S.W.3d 141, 147 n. 4 (Tenn. 2010) (“The Court may take judicial notice of its own records.”) (citing State v. Lawson, 291 S.W.3d 864, 869-70 (Tenn. 2009)). At the sentencing hearing, the trial court, in imposing a sentence of life imprisonment without the possibility of parole, stated the following with regard to its consideration of the Petitioner’s youth as a mitigating factor:

Number 7, “the youth or advanced age of the defendant at the time of the crime,” the Court’s considering his youth, being sixteen. If you take his age at 6/30/79, that means that at the time of this crime, which was February

1, 1996, he would be sixteen years and eight months old, four months shy of seventeen.

Although that is somewhat mitigating, it's kind of rebutted by the problems that we have of his repeated contact with the law, the fact that he knew that drugs were illegal, had gone to juvenile court. He'd been shot himself in his life style.

And unfortunately is one of these young men in Shelby County that's wise in the ways of the world beyond his years and thought so little of this crime that he would be back out on the street selling the drugs as the body was taken away to my mind, from the proof, just shows that this wasn't a crime that he committed because he didn't know what he was doing.

I mean, I know that he's young and that life imprisonment therefore is – without parole is longer the younger you are, presumably if you live an average age. But I just can't give that a whole lot of weight because [the Petitioner], now eighteen and a half years old at the time of sentencing, even though he was only sixteen years and eight months at the time of the crime is – I think he lived a life beyond his years and knew exactly what he was doing, volunteered to do it, according to the proof.

Clearly, the trial court thoroughly considered the Petitioner's age at the time of the commission of the crime and gave detailed reasoning as to why it believed life without the possibility of parole was the appropriate sentence, despite the Petitioner's youth. Therefore, we conclude that the trial court provided the exact consideration that the Supreme Court called for in Miller. Accordingly, under the specific facts of the Petitioner's case, Miller does not entitle the Petitioner to post-conviction relief.

The Petitioner also argues that this Court should consider all sentences of life without the possibility of parole for juveniles per se unconstitutional under both the Eighth Amendment to the U.S. Constitution and Article 1, Section 16 of the Tennessee Constitution. This Court already has declined to extend, under the Tennessee Constitution, the per se unconstitutionality of the death penalty for juveniles to the per se unconstitutionality of life imprisonment without parole for juveniles. See State v. Antonio M. Byrd, No. 02C01-9508-CR-00232, 1997 WL 1235, at *20-21 (Tenn. Crim. App. Jan. 2, 1997), perm. app. denied (Tenn. Sept. 22, 1997); see also State v. Howell, 34 S.W.3d 484, 494 (Tenn. Crim. App. 2000) (citing U.S. Const. amend. VIII; Tenn. Const. art. I, § 16) (“[A] sentence of life without the possibility of parole for a juvenile for a first degree murder conviction did not abridge the federal or state constitutional safeguards against cruel and unusual punishment.”).

Therefore, we decline to extend additional protection under the Tennessee Constitution beyond the holding in Miller. Accordingly, the Petitioner is entitled to no relief.

CONCLUSION

For the foregoing reasons, we conclude that the Petitioner is not entitled to post-conviction relief. Therefore, we affirm the judgment of the post-conviction court.

JEFFREY S. BIVINS, SP. JUDGE