

NOT DESIGNATED FOR PUBLICATION

No. 125,017

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CURTIS COLEMAN,  
*Appellant,*

v.

STATE OF KANSAS,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JENNIFER L. MYERS, judge. Opinion filed April 14, 2023.  
Affirmed.

*Joseph A. Desch*, of Law Office of Joseph A. Desch, of Topeka, for appellant.

*Zahi Omari*, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before GREEN, P.J., GARDNER, J., and PATRICK D. MCANANY, S.J.

PER CURIAM: Curtis L. Coleman is serving a hard 40 life sentence following his convictions of first-degree murder and three counts of aggravated assault. Coleman was a juvenile at the time of these crimes. He challenged the constitutionality of his sentence because, as a juvenile, he was sentenced to what is effectively a life sentence without properly considering his age at the time of the crimes. The district court summarily denied Coleman's challenge, and he now appeals. Because the sentencing court adequately considered Coleman's age in imposing his hard 40 sentence, we agree with the district court and affirm Coleman's sentence.

On March 11, 1999, a jury convicted Coleman of premeditated first-degree murder and three counts of aggravated assault for crimes he committed in 1998 when he was 15 years old. The district court sentenced Coleman to a hard 40 life sentence on the murder charge (life without the possibility of parole for 40 years) and an additional 13 months in prison for the aggravated assault charges. Coleman appealed.

In 2001, our Supreme Court vacated Coleman's sentence and remanded for resentencing after finding that the district court erred in considering two nonstatutory factors—the victim's age and the victim's state of mind between the time of her injury and the time of her death—in imposing Coleman's hard 40 sentence. *State v. Coleman*, 271 Kan. 733, 742, 26 P.3d 613 (2001) (*Coleman I*).

On September 14, 2001, at resentencing, Coleman argued that his age at the time of the crimes, in addition to other factors, justified the imposition of less than a hard 40 sentence. The district court disagreed and once again sentenced Coleman to a hard 40 life sentence. In doing so, the court noted that it was aware of Coleman's age at the time of the crime but found that there were aggravating factors that outweighed any mitigating factors in imposing Coleman's sentence. Coleman again appealed.

In 2003, our Supreme Court affirmed Coleman's sentence after remand. *State v. Coleman*, No. 88,159, 2003 WL 21664787 (Kan. 2003) (unpublished opinion) (*Coleman II*).

In 2012, in *Miller v. Alabama*, 567 U.S. 460, 470, 487, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that mandatory life without parole for juveniles violates the Eighth Amendment to the United States Constitution. Under *Miller*, courts are required "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" before imposing life without parole. 567 U.S. at 480.

In 2016, in *Montgomery v. Louisiana*, 577 U.S. 190, 210-12, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), the Court gave *Miller* retroactive effect.

On January 5, 2018, Coleman moved to modify his sentence under K.S.A. 60-1507. He argued that his sentence was unconstitutional because the sentencing judge, and not a jury, made the factual findings required to enhance his sentence, in violation of *Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). The district court denied relief, finding that *Alleyne* did not apply retroactively. Coleman appealed, and our Supreme Court affirmed. *State v. Coleman*, 312 Kan. 114, 124, 472 P.3d 85 (2020) (*Coleman III*).

Less than a month after *Coleman III*, the Kansas Court of Appeals issued its decision in *Williams v. State*, 58 Kan. App. 2d 947, 985, 476 P.3d 805 (2020) (*Williams I*), *rev'd* 314 Kan. 466, 500 P.3d 1182 (2021). The *Williams I* court ruled that *Miller* required sentencing courts to consider youth and its attendant characteristics before imposing life without parole, or the functional equivalent of life without parole, and that a hard 50 life sentence was the functional equivalent of life without parole. *Williams I*, 58 Kan. App. 2d at 970-73. The State petitioned for review, and review was granted.

On September 3, 2021, Coleman filed his current K.S.A. 60-1507 motion. Taking his cue from *Williams I*, Coleman argued that his hard 40 life sentence was the functional equivalent of life without parole and that the district court did not properly consider his youth before imposing this sentence. Thus, he argued his sentence was unconstitutional under *Miller*.

Coleman acknowledged that his current motion was untimely. But he argued that exceptional circumstances and manifest injustice required the court to consider his claim. According to Coleman, *Miller*—as applied to Kansas law by *Williams I*—was an

intervening change in the law, prior to which his claim would not have been viable. Because he did not learn of *Miller* and *Montgomery* until the Court of Appeals issued *Williams I*, it was not possible for him to include his current claim in his original K.S.A. 60-1507 motion or to otherwise raise it within the one-year time limit of K.S.A. 60-1507.

While Coleman's current K.S.A. 60-1507 motion was pending before the district court, the United States Supreme Court announced its decision in *Jones v. Mississippi*, 593 U.S. \_\_\_, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021). In *Jones*, the Court held that a juvenile who commits a homicide may be sentenced to life without parole so long as the sentencing court has discretion to consider the defendant's youth and to impose a lesser sentence. 141 S. Ct. at 1319.

Relying on *Jones*, the Kansas Supreme Court—which had granted review in *Williams I*—reversed the Court of Appeals. *Williams v. State*, 314 Kan. 466, 500 P.3d 1182 (2021), *cert. denied* 142 S. Ct. 2725 (2022) (*Williams II*). The court held that Kansas' hard 50 sentencing scheme is not a mandatory sentencing scheme under *Jones* because a sentencing court has discretion to consider the defendant's youth and impose a lesser sentence than the hard 50. 314 Kan. at 471-72.

Shortly after *Williams II* was published, the district court handed down its decision summarily denying Coleman's current motion. Applying *Jones* and *Williams II*, the district court concluded that Coleman's sentence satisfied *Miller* because the sentencing court had discretion to consider Coleman's youth and impose a lesser sentence. The district court stated: "Just as in *Williams*, because the sentencing scheme satisfied *Miller's* constitutional requirements, it is unnecessary to consider manifest injustice."

#### ANALYSIS

Coleman's appeal brings the matter to us. He argues on appeal that the district

court erred in summarily dismissing his K.S.A. 60-1507 motion because, according to Coleman, his sentence is unconstitutional under *Miller*.

Coleman also contends that the district court erred in finding that the untimely filing of his motion was not excused by manifest injustice. It is clear that Coleman's motion was untimely. Under K.S.A. 2022 Supp. 60-1507(f)(2), the one-year time limitation may be extended only to prevent manifest injustice. Colman argues that manifest injustice applied based on the state of the law on the date he filed his motion as expressed in *Williams I* and *Miller*. But the district court did not rule on the claim of manifest injustice. The court simply moved straight to the merits of Coleman's claim. Thus, manifest injustice is a nonissue and we need not address it.

The standard of review for the summary dismissal of K.S.A. 60-1507 motions is de novo. *Bellamy v. State*, 285 Kan. 346, 354, 172 P.3d 10 (2007). In considering a K.S.A. 60-1507 motion, the district court has the option to determine whether "the motion, files, and records of the case conclusively show that the petitioner is entitled to no relief, in which case it will summarily deny the petitioner's motion." 285 Kan. at 353. That is the route the district court followed in the present proceedings.

Turning to the merits of Coleman's claim, the Eighth Amendment "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560-61, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). A punishment that is disproportionate to the offense is excessive and thus cruel and unusual under the Eighth Amendment. 543 U.S. at 560-61.

The United States Supreme Court has held that certain sentencing practices will always be disproportionate to the offense because of "mismatches between the culpability of a class of offenders and the severity of a penalty." *Miller*, 567 U.S. at 470. It has imposed categorical bans on these sentencing practices. See, e.g., *Kennedy v. Louisiana*,

554 U.S. 407, 128 S. Ct. 2641, 171 L. Ed. 2d 525 (2008) (banning death penalty for individuals who commit nonhomicide crimes); *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (banning death penalty for mentally disabled offenders). Under a string of cases spanning the last two decades, the Court has applied this principle to bar certain sentencing practices for juveniles.

In *Roper*, the Court held that the death penalty is disproportionate punishment for juvenile offenders. 543 U.S. at 571. In *Graham*, the Court relied on the *Roper* reasoning to hold that life without parole is also a disproportionate sentence for juvenile offenders who commit nonhomicide crimes. *Graham v. Florida*, 560 U.S. 48, 81-82, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). In *Miller*, the Court recognized that life without parole is disproportionate for most juvenile offenders—even those convicted of homicide—and held that mandatory life without parole for juveniles violates the Eighth Amendment. 567 U.S. at 487. The Court explained that the sentencing court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" before imposing life without parole. 567 U.S. at 480. In *Montgomery*, the Court held that *Miller* has retroactive effect. *Montgomery*, 577 U.S. at 208.

But in *Jones*, the Court held that *Miller* does not require a sentencing court to explain on the record how it considered youth and its attendant characteristics or to make an explicit finding of permanent incorrigibility before imposing life without parole on a juvenile. *Jones*, 141 S. Ct. at 1319. The Court reasoned that an on-the-record-discussion "is not necessary to ensure that a sentencer considers a defendant's youth," because "if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth." 141 S. Ct. at 1319.

Coleman argues that before a sentencing court is allowed to impose a hard 40 sentence on a 15-year-old—the maximum sentence under Kansas law and what is

effectively a life sentence given the lack of a meaningful opportunity for a life outside prison upon release at age 55—the court must engage in a meaningful analysis under *Miller* and *Graham*. Thus, he contends, *Williams II* was wrongly decided and we should ignore it and *Jones* and follow the United States Supreme Court's "more practical" precedent under *Miller* and *Graham*.

This, of course, we cannot do. We are duty-bound to follow controlling Kansas Supreme Court precedent absent an indication the court is departing from its previously held position. *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 168, 298 P.3d 1120 (2013). And this rule applies even more stringently with regard to opinions of the United States Supreme Court. See *Agostini v. Felton*, 521 U.S. 203, 237, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997). We see no evidence that these courts are departing from their positions in *William II* and *Jones*. Accordingly, we cannot simply disregard those cases as Coleman would have us do.

Coleman's sentence was validly imposed. The sentencing court had discretion to impose upon Coleman a lesser sentence. After considering Coleman's age on the record, it exercised its discretion and imposed a hard 40 life sentence. Coleman's sentence is valid under the Eighth Amendment.

The district court did not err in summarily denying Coleman's K.S.A. 60-1507 motion because the motion, files, and records of the case conclusively demonstrated that he was not entitled to relief.

Affirmed.