

NOT DESIGNATED FOR PUBLICATION

No. 125,240

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

ANTWAN STEELE,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Geary District Court; BENJAMIN J. SEXTON. Opinion filed March 3, 2023. Affirmed.

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

Krista L. Blaisdell, county attorney, and *Derek Schmidt*, attorney general, for appellee.

Before SCHROEDER, P.J., WARNER and CLINE, JJ.

PER CURIAM: Antwan Steele received a controlling sentence of 615 months in prison for crimes he committed when he was 17 years old. He argues that this sentence violates the prohibition in the Eighth Amendment to the United States Constitution against cruel and unusual punishment, asserting that a 615-month sentence for a juvenile is the functional equivalent of life imprisonment without the possibility of parole. But the Kansas Supreme Court, considering a nearly identical sentence, recently rejected this claim in *State v. Gulley*, 315 Kan. 86, 505 P.3d 354, *cert. denied* 143 S. Ct. 361 (2022), and we are duty-bound to follow that precedent. We thus affirm the district court's decision upholding the constitutionality of Steele's sentence.

FACTUAL AND PROCEDURAL BACKGROUND

In 1997, Steele—who was 17 years old—committed three acts of sexual violence against three different women over the course of a few months. The State charged Steele with various crimes stemming from his actions and prosecuted him as an adult. He was convicted after a jury trial of two counts each of rape and aggravated burglary and one count of attempted aggravated criminal sodomy. At sentencing, the district court granted the State's request for an upward durational departure given the nature of Steele's crimes, sentencing him to 899 months—about 75 years—in prison. This court affirmed Steele's convictions. *State v. Steele*, No. 82,120, 2000 WL 36745812 (Kan. App.) (unpublished opinion), *rev. denied* 269 Kan. 939 (2000).

Steele's Attempts to Challenge the Constitutionality of His Sentence

In 2003, Steele filed a motion under K.S.A. 60-1507, claiming ineffective assistance of counsel and arguing that his sentence violated the Eighth Amendment to the United States Constitution. The district court denied this motion after an evidentiary hearing, but Steele appealed only his ineffective-assistance-of-counsel claim. This court again affirmed the district court's decision. *Steele v. State*, No. 92,595, 2005 WL 2495783 (Kan. App. 2005) (unpublished opinion).

In 2014, Steele filed a motion to correct an illegal sentence. This motion challenged the constitutionality of the district court's upward departure, arguing the sentence violated *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Steele also argued that his 899-month sentence was cruel and unusual punishment under the Eighth Amendment. The district court granted relief on Steele's *Apprendi* claim but did not address his Eighth Amendment challenge. The district court then resentenced Steele to 308 months' imprisonment on the primary offense (one of the rape convictions) and ordered the sentences for his remaining four convictions to be served consecutively, for a controlling 615-month prison sentence.

Steele appealed his Eighth Amendment claim, but this court dismissed the appeal for lack of jurisdiction, as Steele had received a presumptive sentence under the Kansas Sentencing Guidelines. *State v. Steele*, No. 115,280 (order filed December 12, 2016), *rev. denied* August 30, 2017. Within a month after the mandate was issued in that case, Steele filed a pro se motion to correct an illegal sentence, again claiming that his sentence was cruel and unusual punishment under the Eighth Amendment. The district court denied this motion, and this court affirmed, finding that Steele's challenge was not one that could be addressed in a motion to correct an illegal sentence. *State v. Steele*, No. 118,799, 2018 WL 5728276, at *1 (Kan. App. 2018) (unpublished opinion), *rev. denied* 310 Kan. 1070 (2019).

Steele's Current Eighth Amendment Challenge

In 2019, Steele filed a second pro se K.S.A. 60-1507 motion that challenged several aspects of his sentence. Most relevant to our decision here, Steele again claimed that his 615-month sentence was cruel and unusual punishment under the Eighth Amendment since he was a juvenile when he committed the underlying offenses.

The district court summarily denied his motion as untimely and successive. Steele appealed, and a panel of this court reversed the district court's summary dismissal and remanded for consideration of the merits of his constitutional claim. *Steele v. State*, No. 122,754, 2021 WL 2386026, at *8 (Kan. App. 2021) (unpublished opinion). The panel noted that Steele had been attempting to challenge the constitutionality of his sentence since his original K.S.A. 60-1507 motion in 2003, but for various reasons that claim had never been presented to the appellate courts in a posture where it could be considered on the merits. The panel found that further denial of his claims without more consideration would give rise to manifest injustice, particularly considering the Kansas and federal courts' conflicting Eighth Amendment jurisprudence. 2021 WL 2386026, at *5-8.

On remand, the district court appointed counsel to represent Steele and, following a preliminary hearing, ordered the parties to submit briefing on the Eighth Amendment question. While the parties were in the midst of submitting their written arguments, the Kansas Supreme Court issued its decision in *Gulley*, which rejected a constitutional challenge to a sentence imposed on a juvenile for first-degree murder—a longer sentence than Steele's—who would not be eligible for parole until he was 66 years old. *Gulley* found that sentence was not equivalent to a life sentence without the possibility of parole. 315 Kan. at 102. Steele attempted to distinguish *Gulley* by arguing that a different analysis should apply to his situation since his convictions were not for homicides.

The district court held a hearing on the parties' arguments and later denied Steele's K.S.A. 60-1507 motion in a written decision. Relying on *Gulley*, the district court found that Steele's 615-month aggregate sentence was not tantamount to a sentence of life imprisonment without parole. And the court rejected Steele's claim that the nature of his offenses—sex offenses and aggravated robbery, as opposed to *Gulley*'s offense of first-degree, premeditated murder—should lead to a different outcome. Steele appeals.

DISCUSSION

Steele argues that his 615-month controlling prison sentence—imposed for crimes he committed when he was 17 years old—is the functional equivalent of a life sentence without the possibility of parole and thus violates the Eighth Amendment's prohibition of cruel and unusual punishment. Though Steele acknowledges the Kansas Supreme Court's holding in *Gulley*, he urges us to reach a different conclusion here since the defendant in *Gulley* was convicted of a homicide, while Steele was not. We find, based on the caselaw of our reviewing courts, that *Gulley* was not limited to homicide offenses, and we are bound by its holding. We therefore affirm the district court's denial of Steele's motion.

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. This provision "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). A punishment that is disproportionate to the offense is excessive—and thus deemed cruel and unusual under the Eighth Amendment. 543 U.S. at 560-61.

The United States Supreme Court has held that some sentences are categorically unconstitutional under this standard; those punishments will always be disproportionate due to "mismatches between the culpability of a class of offenders and the severity of a penalty." *Miller v. Alabama*, 567 U.S. 460, 470, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). Under this rationale, the Court has categorically invalidated:

- Death-penalty sentences for people who have not committed homicides or for mentally disabled offenders. *Kennedy v. Louisiana*, 554 U.S. 407, 128 S. Ct. 2641, 171 L. Ed. 2d 525 (2008); *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002).
- Death-penalty sentences for juvenile offenders. *Roper*, 543 U.S. at 569-70.
- Sentences of life imprisonment without the possibility of parole for juvenile offenders who are not convicted of homicides. *Graham v. Florida*, 560 U.S. 48, 81-82, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).
- Mandatory sentences of life imprisonment without the possibility of parole for juvenile offenders who have been convicted of homicide. *Miller*, 567 U.S. at 487. (Sentencing courts must be given the opportunity to "take into account how children are different, and how those differences counsel against irrevocably

sentencing them to a lifetime in prison" before imposing a sentence of life imprisonment without parole. 567 U.S. at 480.)

Steele argues his 615-month aggregate sentence, imposed on him as a juvenile, is the functional equivalent of a life sentence without the possibility of parole—the sentence invalidated in *Graham*—and thus similarly violates the Eighth Amendment's prohibition against cruel and unusual punishment. Steele asserts that his 615-month sentence constitutes life imprisonment without parole because he does not have a meaningful opportunity to be released; he will have served his entire adult life in prison and be released on parole as an older adult. He also argues that he may not be released before the end of his life expectancy.

The Kansas Supreme Court rejected an almost identical claim in *Gulley*. There, the defendant, who was 15-year-old when he committed his crimes of conviction, argued that his sentence—618 to 679 months in prison—was the functional equivalent of a sentence of life imprisonment without the possibility of parole. Our Supreme Court disagreed and held that the defendant's sentence in that case was not a de facto sentence of life without parole because he *was* eligible for parole. 315 Kan. at 101-02. The court pointed out that the sentences in *Graham* and *Miller*, like the death penalty, were unconstitutional because neither sentence offered any possibility of release. *Gulley*, 315 Kan. at 102. Yet "[u]nlike life without parole and the death penalty, life with parole offers 'hope of restoration' because it provides an opportunity for release within an offender's lifetime." 315 Kan. at 102 (quoting *Graham*, 560 U.S. at 70). Thus, the *Gulley* court found that the sentence in that case did not offend the Eighth Amendment. 315 Kan. at 102-03.

Steele attempts to distinguish *Gulley*'s holding by noting that the defendant there was convicted of a homicide offense (first-degree murder) and thus was governed by the United States Supreme Court's decision in *Miller*, while Steele was not. But while there are important differences between homicide and nonhomicide offenses and the sentences

associated with convictions for those crimes, the categorical invalidations discussed in *Graham* and *Miller* both "repeatedly and unambiguously" concern "the sentence of life without parole"—not the nature of the conviction. *Gulley*, 315 Kan. at 103. Indeed, another panel of this court recently concluded that *Gulley* applies with equal force to people convicted of homicide or nonhomicide offenses. See *State v. Redmon*, No. 123,811, 2022 WL 5267694, at *3 (Kan. App. 2022), *petition for rev. filed* November 7, 2022; see also 2022 WL 5267694, at *4 ("Although *Gulley* involved a murder conviction, the court's discussion of if or when a sentence for a term of years might be considered comparable to imprisonment for life without the parole under the Eighth Amendment is applicable here and undercuts" the argument that it only applies to sentences for homicides.) (Atcheson, J., concurring). We reach the same conclusion and find that *Gulley's* holding is controlling even though Steele was not convicted of murder.

Steele also argues that there is no guarantee that he will be released from prison, pointing out that he will not be eligible for release until he is roughly 62 years old—an age that could exceed Steele's projected life expectancy. But though Steele's argument continues to rely on an extension of *Graham*, the *Graham* Court contemplated, but rejected, the very claim Steele raises here:

"A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like *Graham* some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life." 560 U.S. at 75.

Steele's 615-month sentence is not the functional equivalent of life in prison without the possibility of parole. Based on the Kansas Supreme Court's decision in

Gulley, the district court did not err when it found that Steele's Eighth Amendment challenge to his sentence was without merit.

Affirmed.