MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Huspon,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

October 18, 2023

Court of Appeals Case No. 22A-PC-2853

Appeal from the Marion Superior Court

The Honorable Matthew E. Symons, Magistrate

Trial Court Cause No. 49D29-1903-PC-9991

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] In 1987, a jury found James Huspon guilty of murder, Class A felony burglary, and Class A felony robbery, and the trial court sentenced him to 160 years of incarceration. In 2001, the post-conviction court reduced Huspon's burglary and robbery convictions to Class B felonies and resentenced him to an aggregate 100-year sentence. In 2019, we granted Huspon's request to file for successive post-conviction relief ("PCR"), and, in November of 2022, the successive post-conviction court denied his successive PCR petition in full. Huspon contends that the successive post-conviction court erred in denying him relief because (1) his sentence violates Article 1, Section 16, of the Indiana Constitution, (2) his sentence violates the Eighth Amendment to the United States Constitution, and (3) newly-discovered evidence relating to juvenile brain development entitles him to be resentenced. Because we disagree, we affirm.

Facts and Procedural History

[2] The facts underlying this successive post-conviction proceeding are as follows:

> At approximately 5:30 a.m. on December 12, 1985, Juana Scott was delivering the morning newspaper to homes on Moreland Avenue in Indianapolis. She saw three black males running out of a house on Moreland, and when they saw her, they stopped and huddled together. When the three men proceeded down an alley, Scott continued delivering her newspapers. When she delivered the paper to 936 Moreland, the home of Boris Tom, she noticed that the lights were on in the home, which was unusual. She looked inside the home and saw a man lying face down on the floor. She realized that this was the home from which she had seen the three men running. She called the police.

When police arrived at Tom's home, his car engine was still warm, and he was still alive. However, Tom later died from a gunshot wound to the chest. In Tom's home, police found obscene handwritten messages on the walls indicating the victim was homosexual and that they intended to kill him.

Later in the morning on December 12, 1985, [Huspon]'s neighbor saw two young black men, who were carrying what appeared to be a gun, enter a vacant house on the block. Police were called and they arrested the two men, who were [Huspon]'s brother and [Huspon]'s cousin, outside of [Huspon]'s home. Police obtained permission from [Huspon]'s mother to search his home for the purpose of conducting an investigation for stolen or sawed-off weapons. In [Huspon]'s room, police found a pair of binoculars which were later identified as belonging to Tom. Also[,] they found a commemorative coin and a car key belonging to Tom. Several miniature liquor bottles were found hidden in [Huspon]'s home and in the vacant house next door. Tom had possessed similar bottles. The police found more bottles in the binocular case which they found outside of Tom's home.

A handwriting expert compared the handwriting of [Huspon] and his brother with that of the handwriting on the walls in Tom's home. The expert testified that most of the writing on the walls was done by [Huspon]. A fingerprint found on a tissue box in Tom's home was determined to be that of [Huspon]'s brother.

Kenneth Edwards, an acquaintance of [Huspon], testified that before Tom was killed, [Huspon] told him that he was going to break into the house at 936 Moreland and that Tom was a "fag."

Robert Henson testified that when he was incarcerated with [Huspon] in the Marion County Jail, he heard [Huspon] say that he, his brother, and his cousin went into the man's house, took stuff, and left. They came back later when the man was there and [Huspon]'s brother shot him.

Huspon v. State, 545 N.E.2d 1078, 1080 (Ind. 1989) ("*Huspon I*"). After a jury convicted Huspon of murder, Class A felony burglary, and Class A felony robbery, the trial court imposed an aggregate sentence of 160 years of incarceration. *Id*. at 1079–80. In 1989, the Indiana Supreme Court affirmed Huspon's convictions and sentence on direct appeal. *Id*. at 1085. Huspon pursued PCR in 2001, and the post-conviction court reduced Huspon's burglary and robbery convictions to Class B felony offenses and resentenced him to 100 years of incarceration. We affirmed the post-conviction order in a memorandum decision. *See Huspon v. State*, No. 49A02-0306-PC-550, slip op. (Ind. Ct. App. January 22, 2004) ("*Huspon II*"), *trans. denied.*

[3] On successive PCR, Huspon alleged that his sentence violated Article 1, Section 16, and the Eighth Amendment and that evidence relating to juvenile brain development was newly-discovered evidence warranting a new sentencing hearing. The successive post-conviction court denied Huspon relief, concluding that Huspon's aggregate 100-year sentence was not a *de facto* life sentence and, therefore, did not violate the Eighth Amendment or Article 1, Section 16. The successive post-conviction court also rejected Huspon's claim of newly-discovered evidence in the form of juvenile-brain-development evidence.

Discussion and Decision

[4] Huspon contends the successive post-conviction court erred in denying his successive PCR petition. Our standard for reviewing the denial of a PCR petition is well-settled:

> In reviewing the judgment of a post-conviction court, appellate courts consider only the evidence and reasonable inferences supporting its judgment. The post-conviction court is the sole judge of the evidence and the credibility of the witnesses. To prevail on appeal from denial of [PCR], the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite to that reached by the post-conviction court. […] Only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, will its findings or conclusions be disturbed as being contrary to law.

Hall v. State, 849 N.E.2d 466, 468, 469 (Ind. 2006) (internal citations and quotations omitted).

I. Article 1, Section 16

[5] Article 1, Section 16, of the Indiana Constitution provides, in relevant part, that "[a]ll penalties shall be proportioned to the nature of the offense." This express requirement of proportionality goes beyond Eighth Amendment protections and permits review of the duration of a sentence, as it is possible for a sentence within the statutory range to be unconstitutional as applied to a particular case. *Knapp v. State*, 9 N.E.3d 1274, 1289 (Ind. 2014). Nevertheless, its protection is "still narrow." *Id*. The nature and extent of penal sanctions are primarily the province of the legislature, and a court may not set aside a legislatively-sanctioned penalty merely because it seems too severe. *Id*. at 1290; *Clark v. State*, 561 N.E.2d 759, 765 (Ind. 1990); *see also State v. Moss-Dwyer*, 686 N.E.2d 109, 111–12 (Ind. 1997) (stating that Indiana's "separation of powers doctrine" requires a "highly restrained" approach under Section 16 and permits a court to engage only in a "very deferential" review of legislatively-sanctioned penalties).

[6] As the State points out, however, Huspon's argument is based entirely on his personal characteristics, not the "nature of [his] offense[s,]" and it notes that there is no authority for the proposition that such an offender-based argument is cognizable pursuant to Article 1, Section 16. Because the plain language of Article 1, Section 16, requires that, if a sentence is to be found disproportionate, it will be because of the nature of the offenses, we need not address this argument further.

II. Eighth Amendment

[7] The Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (citation omitted). In *Miller*, the United States Supreme Court determined that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id*. at 479. The *Miller* Court concluded that "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id*. Therefore, before sentencing a juvenile to life without parole, the sentencing judge must consider "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Montgomery v. Louisiana*, 577 U.S. 190, 208 (2016) (citation omitted).

[8] Huspon, however, was not sentenced pursuant to a sentencing scheme mandating a life sentence without possibility of a parole; he received a

discretionary 100-year sentence. (Succ. PC Ex. 8). Eighth Amendment enhanced protections for juveniles under *Miller* do not apply to a term-of-years sentence. *See Wilson v. State*, 157 N.E.3d 1163, 1176 (Ind. 2020) (holding that a term-of-years sentence does not violate the Eighth Amendment because *Miller*, *Graham v. Florida*, 560 U.S. 48 (2010), and *Montgomery* expressly apply only to life-without-parole sentences); *see also Jones v. Mississippi*, 593 U.S. ___, 141 S. Ct. 1307, 1323 (2021) (reaffirming that *Miller* and *Montgomery* only prohibited mandatory life-without-parole sentences for juvenile homicide offenders). Because Huspon's sentence is not covered by the holdings of *Miller* and *Montgomery*, it does not violate the Eighth Amendment, and the successive post-conviction court properly denied relief on this basis.

III. Evidence Relating to Juvenile Brain Development

[9] For newly-discovered evidence to merit PCR, the petitioner must establish each of the following nine requirements:

> (1) the evidence has been discovered since the trial; (2) it is material and relevant; (3) it is not cumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the evidence is worthy of credit; (8) it can be produced upon a retrial of the case; and (9) it will probably produce a different result at retrial.

Bunch v. State, 964 N.E.2d 274, 283 (Ind. Ct. App. 2012) (citation omitted), *trans. denied*. On appeal, we "analyze[] these nine factors with care, as [t]he basis for newly discovered evidence should be received with great caution and the alleged new evidence carefully scrutinized." *Carter v. State*, 738 N.E.2d 665, 671 (Ind. 2000) (internal quotation marks and citation omitted). The burden of

showing all nine requirements is on the petitioner. *Bunch*, 964 N.E.2d at 283 (citing *Webster v. State*, 699 N.E.2d 266, 269 (Ind. 1998)).

[10] Huspon has failed to establish that his proffered evidence relating to juvenile brain development was "new" evidence that was not available to him at his sentencing hearing in 1987. As far back as the late 1970's and early 1980's, the United States Supreme Court recognized the relevance of youth and the immaturity of the juvenile brain:

> The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment" expected of adults.

Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982) (footnotes omitted) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)). The *Eddings* Court cited two studies published well before Huspon's 1987 sentencing hearing: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967), and Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime 7 (1978). *Eddings*, 455 U.S. at 116 n.11. Put simply, this type of evidence is not newly-discovered, was known and available at Huspon's sentencing hearing, and could have been discovered with due diligence.

[11] Moreover, we conclude that the successive post-conviction court properly found that Huspon's proffered evidence would not likely produce a different sentence.

> "In ruling on whether the evidence would produce a different result, the trial court may properly consider the weight that a reasonable trier of fact would give it and while so doing may also evaluate its probable impact on a new trial in light of all the facts and circumstances shown at the original trial of the case."

Bunch, 964 N.E.2d at 296 (quoting *Reed v. State*, 702 N.E.2d 685, 691 (Ind. 1998)). Huspon must raise a "strong presumption" that the result at retrial would "in all probability" be different. *Reed*, 702 N.E.2d at 691.

[12] Huspon has failed to establish that his proffered evidence, which is similar to evidence known and available at the time of sentencing, would result in a shorter sentence. The trial court, while finding Huspon's age and his unfortunate childhood to be mitigating, also found several aggravating circumstances, and the Indiana Supreme Court declined to find his aggregate sentence manifestly unreasonable in light of those aggravating circumstances. *See Huspon I*, 545 N.E.2d at 1084–85. In other words, the trial court took Huspon's youth into account and found it to be a mitigating circumstance, and Huspon does not explain how additional evidence relating to juvenile brain development would cause a resentencing court to find it additionally mitigating such that a lighter sentence was warranted. Huspon has failed to establish that his sentence would "in all probability" be less than 100 years were he to be resentenced. *Reed*, 702 N.E.2d at 691.

[13] We affirm the judgment of the successive post-conviction court.

Vaidik, J., and Brown, J., concur.