MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Leo Dent, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 2, 2023

Court of Appeals Case No. 22A-PC-1032

Appeal from the Lake Superior Court

The Honorable Gina Jones, Judge

The Honorable Kathleen Sullivan, Magistrate

Trial Court Cause No. 45G03-9605-CF-94

Memorandum Decision by Judge Robb

Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issues

[1] In 1996, following a jury trial, Leo Dent was convicted of two counts of murder. The trial court sentenced Dent to serve an aggregate term of 100 years in the Indiana Department of Correction ("DOC"). Dent pursued a direct appeal, as a result of which his convictions were affirmed. Dent then filed a petition for post-conviction relief which was denied. This court affirmed the denial on appeal.

[2] In 2018, Dent sought permission from this court to file a successive petition for post-conviction relief, which this court granted. Dent then filed his successive petition for post-conviction relief, which the post-conviction court denied. Dent now appeals raising multiple issues for our review, which we restate as: (1) whether Dent's sentence violates the Eighth Amendment; and (2) whether newly discovered evidence requires resentencing. Concluding that Dent's sentence does not violate the Eighth Amendment and that Dent failed to present newly discovered evidence that requires resentencing, we affirm.

Facts and Procedural History

[3] We summarized the facts of this case in Dent's direct appeal:

> On January 8, 1996, Elisha "P.J." Woodard, Antonio Terrell Brown, McKinley Kelley, and Dent were driving around a neighborhood in East Chicago. P.J. and Dent were in P.J.'s

> Blazer, and Kelley and Brown were in an Oldsmobile. They all eventually drove to a housing project in East Chicago. When they arrived, they encountered three men -- Vincent Ray, Jr., Karl Jackson, and Maurice Hobson.
>
> Both the Blazer and the Oldsmobile stopped, and Kelley exited the Oldsmobile. Kelley began arguing with Jackson. Eventually, Jackson said, "Well, what y'all gonna do now? Y'all ain't gonna do shit. Y'all some hoes and y'all some bitches. Y'all ain't gonna do shit." Kelley then pulled out a handgun and fired three or four shots at Jackson, killing him. Dent got out of the Blazer with a sawed-off shotgun and fired a shot at Ray, killing him. Finally, Dent fired two shots at Maurice Hobson, killing him.
>
> Dent was sentenced to fifty years for each of the two counts of Murder. In addition, the trial court ordered that these sentences be served consecutively because it found the following aggravating factors:
>
> > 1) The crimes committed indicate a lack of respect for human life; 2) His lack of respect for human life leads the court to conclude that there is a great risk that he will commit another serious crime; 3) Concurrent sentences would depreciate the seriousness of the crimes; 4) Defendant murdered more than one person.
>
> The trial court also found two mitigating factors as follows: "1) The defendant's youthful age of 16 years now, and 15 years of age at the time the crimes were committed; and 2) the defendant has no prior felony convictions."

Dent v. State, No. 45A03-9704-CR-139 at 2-3 (Ind. Ct. App. Dec. 15, 1997) (internal citations omitted).

[4] On direct appeal, Dent challenged the imposition of consecutive sentences, and this court affirmed. Dent then filed a petition for post-conviction relief which was denied. Dent appealed the post-conviction court's denial. This court restated Dent's claims as: "[w]hether his appellate counsel's failure to raise certain issues on appeal constituted ineffective assistance of counsel; and [w]hether the post-conviction court erred in not allowing Dent to file proposed findings of fact and conclusions of law." *Dent. v. State*, No. 45A03-0011-PC-404 at 2 (Ind. Ct. App. June 25, 2001). This court affirmed the denial on appeal.

[5] In 2018, Dent requested permission to file a successive petition for post-conviction relief raising the following issues:

> (a) [Dent's] Sentence is unconstitutionally disproportionate thereby violating the Eighth Amendment of the United States Constitution. The precedent established in *Miller v. Alabama* and *Montgomery v. Louisiana* require[s] reconsideration of [Dent's] sentence.
>
> (b) Advances in Developmental Psychology and Neuroscience in juvenile offenders constitute newly discovered evidence and require resentencing.

Appendix of the Appellant, Volume Two at 35. This court authorized the filing of the successive post-conviction petition.

[6] On November 30, 2021, Dent filed an amended petition for successive post-conviction relief to include a claim that his "sentence is inappropriate in light of the nature of the offense and the character of the offender under Appellate Rule

7(B).” App., Vol. Three at 15. The post-conviction court allowed the amended petition but informed Dent it would not address his Rule 7(B) claim. *See* Transcript, Volume 2 at 5. That same day, the post-conviction court held an evidentiary hearing.

[7] At the hearing, Dent presented the testimony of Dr. James Garbarino, a developmental psychology specialist. Dr. Garbarino testified that since 1996, when Dent was convicted, developmental science has indicated that “brain growth and development takes place . . . until the mid 20s” and that brain maturation is not complete until about age twenty-five. *Id.* at 13. Dr. Garbarino stated that this is important because two of the primary areas affected by the immaturity of adolescent brains are “executive function” and “affective regulation[.]” *Id.* at 14. Dr. Garbarino explained that executive function includes “good decision making, weighing costs and benefits, [and] anticipating future versus present rewards.” *Id.* And affective regulation includes “emotional regulation, the ability to understand one’s feelings, understand the feelings of others, manage those feelings, and, particularly important, connect action and thinking with feeling.” *Id.*

[8] According to Dr. Garbarino, the implication of this new understanding is that there is a larger capacity for “rehabilitation and positive transformation” for adolescents “even if their behavior as teenagers seems extreme[.]” *Id.* Further, Dr. Garbarino gave Dent an Adverse Childhood Experience test which revealed that Dent “had more adversities than 999 out of 1,000 kids growing up.” *Id.* at 22. Dr. Garbarino explained that “adversity and trauma . . . slow

down brain development and exacerbate these issues of executive function and affective regulation." *Id.* at 20.

[9] Following the hearing, the post-conviction court entered findings of fact and conclusions of law denying Dent's successive petition for post-conviction relief. Dent now appeals.

Discussion and Decision

Successive Post-Conviction Relief[1]

A. Standard of Review

[10] Post-conviction procedures provide a narrow remedy for collateral challenges to convictions based on grounds enumerated in the post-conviction rules. *Wrinkles v. State*, 749 N.E.2d 1179, 1187 (Ind. 2001), *cert. denied*, 535 U.S. 1019 (2002). Generally, one convicted of a crime in an Indiana state court can seek collateral

[1] Dent also argues that his 100-year sentence is inappropriate in light of the nature of the offense and the character of the offender. On direct appeal, Dent argued that his "sentence violate[d] both the Indiana and United States Constitutions because the penalties assessed for his crimes were not proportional to the nature of the offense and the character of the offender." *Dent v. State*, No. 45A03-9704-CR-139 at 3 (Ind. Ct. App. Dec. 15, 1997). Further, Dent contended that "his sentence was manifestly unreasonable[.]" *Id.* However, this court found that Dent's "sentence was reasonable in light of the nature of his crime and his character." *Id.* at 5. Dent now seemingly contends that because at the time of his direct appeal there was a standard for appellate review of sentences that has since been changed, he should be permitted to raise the issue again under the new standard. However, Dent fails to cite any case law that would suggest that this change in standard affords him a second opportunity for appellate review of his sentence's appropriateness. Accordingly, we conclude Dent's Rule 7(B) challenge is barred by *res judicata*.

review of that conviction and sentence in a post-conviction proceeding only once. *See Baird v. State*, 831 N.E.2d 109, 114 (Ind. 2005), *cert. denied*, 546 U.S. 924 (2005); Ind. Post-Conviction Rule 1. To proceed with each "successive" post-conviction claim, petitioners need court permission, P-C.R. 1(12)(a), which will be granted if they establish a "reasonable possibility" of entitlement to post-conviction relief, P-C.R. 1(12)(b). This court granted Dent permission to proceed on his successive post-conviction petition.

[11] Dent appeals from the denial of his successive petition for post-conviction relief, which is a negative judgment. *See Wrinkles*, 749 N.E.2d at 1187. As a result, he must convince this court that the evidence "as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court." *Id.* at 1187-88. We "will disturb a post-conviction court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion." *Id.* at 1188 (quotation and citation omitted). In this review, we accept findings of fact unless they are clearly erroneous, but we accord no deference to conclusions of law. *Polk v. State*, 822 N.E.2d 239, 244 (Ind. Ct. App. 2005), *trans. denied.* The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. *Id.*

B. Eighth Amendment

[12] Dent argues that the 100-year-sentence the trial court imposed was disproportionate therefore violating the Eighth Amendment of the United

States Constitution. 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 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 Court found that "making youth . . . irrelevant to [the] imposition of that harshest prison sentence . . . poses too great a risk of disproportionate punishment." *Id.* Therefore, before sentencing a juvenile to life without parole, the sentencing judge must take into account "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).

[13] Dent contends that the trial court violated the principals outlined in *Miller* and *Montgomery* by failing to "properly consider the mitigating factors of youth" when sentencing him. Brief of Appellant at 11. However, our supreme court already addressed this question in *Wilson v. State*, 157 N.E.3d 1163 (Ind. 2020). In *Wilson*, our supreme court found that *Miller's* enhanced protections did not apply to a 181-year term of years sentence, concluding that *Miller* and *Montgomery* "expressly indicate their holdings apply only to life-without-parole sentences." *Wilson*, 157 N.E.3d at 1176.

[14] Here, Dent was sentenced to 100 years in the DOC. He was not sentenced to life without parole. As noted by the successive post-conviction court, Dent will become eligible for parole in his early sixties. *See* App., Vol. Three at 43. As

such, this case falls outside the purview of *Miller* and *Montgomery*. Therefore, we conclude that Dent's sentence did not violate his Eighth Amendment rights and the post-conviction court did not err in denying him relief on this claim.

C. Newly Discovered Evidence

[15] Dent next argues that the "advancement in developmental psychology of adolescent brains constitute[s] newly discovered evidence that require[s] resentencing." Br. of Appellant at 15. For newly discovered evidence to merit post-conviction relief, 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).

[16] Dent contends the testimony from Dr. Garbarino regarding the development of juvenile brains constitutes newly discovered evidence. The only prongs at issue

are whether this evidence (A) is cumulative, and (B) would produce a different result at retrial.

i. Cumulative Evidence

[17] Dent contends that Dr. Garbarino's testimony was not cumulative. Cumulative evidence is "additional evidence that supports a fact established by the existing evidence . . . . [T]o be considered cumulative, evidence should be of the same kind or character. That is, evidence will not be considered cumulative if it tends to prove the same facts, but in a materially different way." *Bunch*, 964 N.E.2d at 290.

[18] Dent argues the evidence is not cumulative because at the time of his sentencing "there was no expert testimony presented regarding the development of juvenile brains[, n]or was there any evidence regarding the detrimental impact [of] the trauma and adversity" that he faced. Br. of Appellant at 16. However, the trial court did consider Dent's age to be a mitigating factor and Dent's father testified at trial regarding Dent's tumultuous upbringing. *See* Record of Proceedings ("Direct Appeal Appendix"), Volume V at 355-58, 385.[2] Although Dr. Garbarino provided scientific insight into the differences between adult and adolescent brains and how trauma can alter the development of an adolescent's brain, Dr. Garbarino essentially presented a scientific explanation for

[2] Citation to the Direct Appeal Appendix is based on pdf. pagination.

something the court already knew, i.e., that someone of a younger age is due more leniency than an adult. Therefore, this evidence is merely cumulative.

ii. Probability of a Different Result

[19] Notwithstanding our decision that the evidence was cumulative, we address Dent's contention that "it is highly probable that had evidence been presented to the lower court of how the trauma and adversity Mr. Dent faced impacted his development, a lower sentence would have been imposed." Reply Brief of Appellant at 6. In determining whether newly discovered evidence would likely produce a different result at a new sentencing hearing, the post-conviction court may consider the weight a reasonable trier of fact would give the evidence and may evaluate the probable impact the evidence would have in a new sentencing hearing considering the facts and circumstances shown at the original hearing. *See Nunn v. State*, 601 N.E.2d 334, 337 (Ind. 1992).

The newly discovered evidence must raise a strong presumption a new hearing would achieve a different result. *Id.*

[20] Here, Dent was convicted of two counts of murder and sentenced to fifty years on each count, to run consecutively. *See Perry v. State*, 845 N.E.2d 1093, 1097 (Ind. Ct. App. 2006) (stating that "[i]n cases involving multiple killings, the imposition of consecutive sentences is appropriate"), *trans. denied.* At the time of Dent's crime, the sentence for murder was defined as a fixed term of fifty-five years, with not more than ten years added for aggravating circumstances or not more than ten years subtracted for mitigating circumstances. Ind. Code § 35-50-2-3 (1995). Therefore, Dent already received a reduced sentence.

[21] Further, as noted above, the trial court considered Dent's youth and afforded it weight as a mitigator. *See* Direct Appeal App., Vol. V at 385; App., Vol. Three at 37. In *Conley v. State*, our supreme court stated that when a trial court does consider a youth's age and finds it mitigating, "we do not find a reasonable probability that the outcome would have been different had counsel presented additional evidence about juvenile brain development." 183 N.E.3d 276, 284 (Ind. 2022).

[22] Accordingly, given that the trial court already considered Dent's age as a mitigating factor and imposed a reduced sentence, we conclude that Dent has failed to show that the introduction of Dr. Garbarino's testimony would have resulted in an even lower sentence.

Conclusion

[23] We conclude that Dent's sentence does not violate his Eighth Amendment rights and that Dent failed to present newly discovered evidence that requires resentencing. Accordingly, we affirm.

[24] Affirmed.

Mathias, J., and Foley, J., concur.