

Cite as 2019 Ark. 162

SUPREME COURT OF ARKANSAS

No. CR-17-1069

MATTHEW RYAN ELLIOTT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: May 23, 2019

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. 14CR-2000-39]

HONORABLE DAVID W. TALLEY,
JUDGE

REVERSED AND REMANDED.

COURTNEY HUDSON GOODSON, Associate Justice

Appellant Matthew Ryan Elliott appeals from the Columbia County Circuit Court's order denying him a resentencing hearing and imposing a life sentence with parole eligibility pursuant to the Fair Sentencing of Minors Act of 2017 (FSMA).¹ For reversal, Elliott argues that (1) we have held that defendants must be sentenced in accordance with the law in effect at the time the crime is committed, and sentencing him under the FSMA violates that holding; (2) the FSMA does not provide for the retroactive application of its new sentencing schemes and the circuit court could not sentence him pursuant to the FSMA; (3) he is entitled to the same relief as other similarly situated defendants, and the

¹See FSMA, No. 539, § 3, 2017 Ark. Acts 2615, 2617 (codified at Ark. Code Ann. § 5-4-104(b) (Supp. 2017)); § 6, 2017 Ark. Acts at 2618-19 (codified at Ark. Code Ann. § 5-10-101(c)(1)(B) (Supp. 2017)).

failure to grant such relief violates his due-process rights under the Arkansas and United States Constitutions; (4) he is entitled to the same relief as other similarly situated defendants, and the failure to grant such relief violates his equal-protection rights under the Arkansas and United States Constitutions; (5) the FSMA sentencing scheme, as applied to him, is an unconstitutional ex post facto law; (6) the FSMA sentencing scheme, as applied to him, is an unconstitutional bill of attainder; (7) the FSMA sentencing scheme, as applied to him, is an unconstitutional special law. We reverse and remand for resentencing in accordance with *Harris v. State*, 2018 Ark. 179, 547 S.W.3d 64.

In April 2000, Elliott pled guilty to capital murder in connection with the February 5, 2000, death of Brittini Pater. The State waived the death penalty, and Elliott received a mandatory sentence of life in prison without parole. See Ark. Code Ann. § 5-10-101(c) (Repl. 1997) (amended 2017). Elliott was sixteen years old at the time of the murder.

In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that the Eighth Amendment forbids a mandatory sentence of life without parole for a juvenile offender and that a juvenile facing a life-without-parole sentence is entitled to a sentencing hearing at which a judge or jury may consider the individual characteristics of the defendant and the circumstances of the crime. In *Jackson v. Norris*, 2013 Ark. 175, 426 S.W.3d 906, this court decided a companion case to *Miller* on remand from the Supreme Court. We granted habeas relief and remanded to the circuit court for a sentencing hearing where Jackson could present *Miller* evidence for consideration. *Id.* We further held that Jackson's sentence must fall within the statutory discretionary sentencing range for a Class Y felony,

which is ten to forty years or life. *Id.* Subsequent to *Jackson*, we held in *Kelley v. Gordon*, 2015 Ark. 277, 465 S.W.3d 842, that *Miller* was to be applied retroactively to other cases on collateral review.²

Elliott filed a petition for a writ of habeas corpus in the Jefferson County Circuit Court. On June 30, 2016, the circuit court entered an order granting the writ, vacating Elliott's life-without-parole sentence, and remanding his case to the Columbia County Circuit Court for resentencing. Before that resentencing hearing was held, however, the Arkansas General Assembly passed the FSMA, which became effective on March 20, 2017. The FSMA eliminated life without parole as a sentencing option for juvenile offenders and extended parole eligibility to juvenile offenders.

On remand, Elliott filed a motion for declaratory judgment, in which he argued that he could not be sentenced pursuant to the FSMA and sought a sentencing hearing where he could present *Miller* evidence. Elliott also argued that denying him a resentencing hearing would violate his equal-protection and due-process rights and would amount to an unconstitutional ex post facto law, bill of attainder or special law. The State opposed the motion and argued that Elliott should be sentenced pursuant to the FSMA to life in prison with the possibility of parole after thirty years. On October 31, 2017, the circuit court entered an order finding that the provisions of the FSMA applied to Elliott

²Thereafter, the Supreme Court decided *Montgomery v. Louisiana*, 577 U.S. ____, 136 S. Ct. 718 (2016), wherein it confirmed that its decision in *Miller* must be given retroactive effect. The court also indicated that states could remedy *Miller* violations by extending parole eligibility to juvenile offenders serving unconstitutional sentences.

and did not violate his state or federal constitutional rights. The court therefore sentenced Elliott to life in prison with parole eligibility after 30 years. Elliott filed a timely appeal. After Elliott filed his appellate brief, we decided *Harris* in which we concluded that under the FSMA, the revised punishment for capital murder, which is life imprisonment with the possibility of parole after serving a minimum of thirty years' imprisonment, is not retroactive and applies only to crimes committed on or after March 20, 2017, the effective date of the act. *Harris*, 2018 Ark. 179, at 11-13, 547 S.W.3d at 70-71 (citing §§ 3, 6 of the FSMA, codified at Ark. Code Ann. §§ 5-4-104(b), 5-10-101(c)(1)(B) (Supp. 2017)).³ Furthermore, we concluded that the FSMA's parole-eligibility provisions did not apply to Harris at the time of his resentencing hearing because his sentence had been vacated, and he was no longer serving a sentence to which parole eligibility could attach. *Id.* We held that Harris was in the same situation as the defendant in *Jackson* and that he was entitled to a hearing at which he could present *Miller* evidence and to resentencing within the discretionary range for a Class Y felony, which is ten to forty years or life. *Id.*

Because Elliott, like Harris, committed his crime before the effective date of the FSMA, the penalty provisions of the Act do not apply to him. Further, because Elliott's sentence had already been vacated by the Jefferson County Circuit Court, he was no longer serving a sentence to which parole eligibility could attach. Thus, the parole-eligibility provisions of the FSMA also did not apply to Elliott at the time of the circuit court's

³On April 26, 2018, we granted the State's motion to stay briefing in this case until the mandate issued in *Harris*.

decision in this case. We therefore hold that the circuit court erred by sentencing Elliott under the FSMA.⁴ We reverse and remand for a resentencing hearing where Elliott is entitled to present *Miller* evidence for consideration and where he is subject to the discretionary sentencing range for a Class Y felony, which is ten to forty years or life. Because we are holding that the penalty provisions of the FSMA do not apply to Elliott, we do not need to address his remaining constitutional arguments. *See Harris* at 14, 547 S.W.3d at 71.

Reversed and remanded.

Special Justices HERMANN IVESTER and JASON HENDREN join in this opinion.

WYNNE, J., concurs.

WOOD and WOMACK, JJ., not participating.

ROBIN F. WYNNE, Justice, concurring. I concur for the reasons set out in my concurring opinion in *Harris v. State*, 2018 Ark. 179, 547 S.W.3d 64.

Fuqua Campbell, P.A., by: *J. Blake Hendrix* and *Annie Depper*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Vada Berger*, Ass’t Att’y Gen., for appellee.

⁴Relying on our decision in *Harris*, we have reached the same conclusion in several other recent cases involving similarly situated *Miller* defendants. *See, e.g., Howell v. State*, 2019 Ark. 59, 567 S.W.3d 842; *Segerstrom v. State*, 2019 Ark. 36, 566 S.W.3d 466. We have also previously declined the State’s invitation to overrule *Harris*. *See, e.g., Ray v. State*, 2019 Ark. 46, 567 S.W.3d 63; *Robinson v. State*, 2018 Ark. 353, 563 S.W.3d 530. We do so in this instance as well.