

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
BAY COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

CASE NO.: 95CF111

THOMAS ROBERT MCGILL
Defendant.

SENTENCING ORDER

THIS CAUSE is before the court for re-sentencing pursuant to §921.1401 F.S. Counsel and parties appeared for a sentencing hearing and presented evidence. The court is fully informed in the matter.

INTRODUCTION

The United States Supreme Court has concluded that the Eighth Amendment to the Constitution of the United States which proscribes cruel and unusual punishment, forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455 (2012).

In support of their finding, the Court in *Miller* summarized the rationale for their decision:

“Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family home environment that surrounds him--- and from which he cannot usually extricate himself---no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth---for example his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.” *Miller* at 2468.

The evolution of the Court’s conclusion that juveniles are Constitutionally different is the result of what has been a fundamental understanding of parents over the ages and which is also now supported by advances in psychology and brain science which have established that different regions of a child’s brain develop at different times...some of which are not fully developed even by the age of majority.

“Scientists have identified a specific region of the brain called the amygdala which is responsible for instinctual reactions including fear and aggressive behavior. This region develops early. However, the frontal cortex, the area of the brain that controls reasoning and helps us think before we act,

develops later. This part of the brain is still changing and maturing well into adulthood.” **Facts for Families. American Academy of Child and Adolescent Psychiatry. No. 95. December 2011.**

These findings were specifically addressed by the Court in **Graham v. Florida**, 560 U.S. 48,130 S. Ct. 2011 at 2026 (2010). The court noted that in our criminal justice system, the severity of punishment for a crime should be proportional to moral culpability. And in the context of juveniles, because a child’s behavior is more the result of transient immaturity than that of an adult, the child’s moral culpability is lessened when compared to that of an adult who has committed the same crime under the same circumstances. **Graham** at 2027.

On the subject of proportionality, the Court has also reasoned that a life sentence for a child compared to that of an adult is inherently disproportionate by virtue of the child’s age at sentencing since his life sentence will result in a much longer incarcerative period.

Additionally, the Court has placed significant emphasis on comparing the prospect of rehabilitation of a child offender with that of an adult offender. In the child, the Court noted that character is less formed and traits less fixed when compared to those of an adult. Because of this understanding, the Court has opined that since a child has a higher propensity for rehabilitation when compared to an adult offender, a life sentence in many cases is unjust. **Miller** at 2465. The Court in **Miller** went on to say:

“**Roper** and **Graham** emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders even when they commit terrible crimes.” **Miller** at 2458.

Finally, the Court in looking beyond the unique developmental characteristics of youth in support of their decisions has also suggested that in the future the type of crime committed by a juvenile which would be considered appropriate for a sentence of life imprisonment would be a crime in which the actions of the juvenile would evidence irreparable corruption or irretrievable depravity. **Roper v Simmons**, 543 U.S. 551 (2005) at 573. In that regard, the Court has suggested that the occasion for sentencing a juvenile to a life sentence will be uncommon. **Miller** at 2469.

DISCUSSION AND FINDINGS

As a result of the cases set forth above, our legislature enacted **§921.1401 F.S.** The statute requires that in cases involving juvenile defendants, the court must determine whether their sentence of life imprisonment or their sentence of years amounting to life imprisonment was appropriate. If the answer to that inquiry is in the negative, this court is allowed discretion to impose any prison sentence, provided that it is not less than 40 years. The State of Florida has advocated that this court re-impose a life sentence upon the

defendant. The defendant has requested the lowest sentence permitted by law, which in this case would be imprisonment for 40 years.

The court conducted a two-day sentencing hearing during which time numerous witnesses were called on behalf of the parties. The court has considered the evidence presented, the written closing arguments of counsel, the transcripts of the jury trial and resentencing hearing in the underlying case, and the law applicable to these circumstances. The court will evaluate the evidence using the ten criteria set for in §921.1401 F.S. Further, it is important to note that while each of the statutory criteria must be considered by this court, by virtue of the opinions cited above, there is an overarching question to be answered in which this court must decide whether the defendant is irreparably corrupt or irretrievably depraved given the totality of the circumstances surrounding the defendant's crime and the events that have transpired since.

This court hereby makes findings with respect to the following statutory factors:

1. Pursuant to §775.082(1)(b)1 F.S. and 3.781(c) FRCP, the defendant Thomas Robert McGill intended to kill and actually killed Torrey King.
2. Pursuant to §921.1401 F.S.:

(a) The nature and circumstances of the offense committed by the defendant.

There have been no credible facts presented which would allow this court to conclude that youthful impetuosity played any role in the defendant's decision to kill Torrey King. If anything, the defendant was given numerous opportunities to reflect upon and to reconsider his plan to kill Torrey. At the time of the commission of the crime, the defendant was fully informed about the consequences of his decision. The defendant shot Torrey thirteen times. He desecrated Torrey's body by burning it after Torrey had died.

(b) The effect of the crime on the victim's family and on the community.

It is hard for this court to imagine sadness and sorrow more profound than that which continues to burden Torrey's family. It appears to this court that the intensity of those feelings will never diminish.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

The defendant was about seventeen and a half years of age when he murdered Torrey King. The defendant's intellectual capacity is average. The defendant's maturity level at the time of the offense was consistent with a person his age and similar to individuals on their 18th birthday. Test results indicate that the defendant experienced minimal adverse childhood experiences.

(d) The defendant's background, including his family, home and community environment.

The defendant was raised in a normal family environment. The family loved and supported him. The defendant had an extended family with whom he enjoyed a positive relationship. There is simply nothing about the defendant's family, home and community environment which impacted him in a negative way.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

As this court noted at the outset, the evidence suggests that the defendant's decision to take the life of Torrey King came after considerable reflection. His peer group persuaded him not to commit the crime. His peer group counseled him about the long term consequences of the planned crime. Until he acted, the defendant had every opportunity to reverse his decision to rob and kill Torrey King.

This court also carefully considered the testimony of defendant's witnesses Drs. Garbarino, Quaou and Lipman. Their testimony that the defendant's conduct at the time of the crime may have been influenced by steroid use and/or closed head trauma was speculative and plays no significant role in this court's sentencing decision. Nor did this court find compelling Dr. Prichard's concern that the defendant's current neurological deficits may portend future acts of violence. (emphasis supplied).

(f) The extent of the defendant's participation in the offense

The defendant was the sole participant.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

The court finds that there was none.

(h) The nature and extent of the defendant's prior criminal history.

The defendant had no criminal history.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

See (e) above.

(j) The possibility of rehabilitating the defendant.

Because the defendant has spent over twenty years in prison since murdering Torrey King, this court has the benefit of hindsight when evaluating the defendant's likelihood of rehabilitation. There was substantial evidence presented that the defendant has used much of his time in prison in a productive and positive fashion. Prison staff and a prison consultant were effusive in their praise of the defendant's accomplishments during his incarceration. However, offset against this progress is the fact that the

defendant earned 7 disciplinary reports while in prison, one of which involved threatening a prison officer with violence.

This court concurs with the state's witness, Dr. Prichard, who has opined in this matter that the acknowledgment of one's criminal behavior is a critical element in any rehabilitation process. Consequently, it is of great significance to this court that the defendant has failed to meaningfully accept his responsibility for the premeditated killing of Torrey King. Until the hearing in this matter, the defendant continued to minimize his culpability in the killing of Torrey King by claiming he acted out of self-defense. At the resentencing hearing, Dr. Lipman suggested that the defendant had an epiphany of sorts during preparation for this sentencing hearing when Mr. McGill finally realized how his conduct precipitated the death of Torrey King. The timing of this revelation, as well as the fact that it took the defendant over twenty years to experience one, causes this court great concern.

From the foregoing, the court finds that the defendant is clearly not rehabilitated at this time. The possibility for the defendant's future rehabilitation remains just that, a possibility. However, this court also concurs with Dr. Prichard who has also opined in this matter that the defendant's crime does not reflect irreparable corruption. Consequently, from the totality of the circumstances in this matter this court concludes that the defendant does not fit within the limited category of defendants who are either irreparably corrupt or irretrievably depraved. As such, the defendant is entitled to receive a prison sentence for a term of years.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED:

1. The defendant is adjudicated guilty of First Degree Murder.
2. As to Count I, First Degree Murder, the defendant is committed to the Department of Corrections for a period of 50 years. This sentence to run concurrent with Count II.
3. The defendant is entitled to all prior prison and jail credit. The defendant will not be awarded gain time for Count I. He will serve the remainder of his sentence day for day. The defendant is entitled to gain time for Count II.
4. The defendant shall have no contact of any kind with any family member of Torrey King.

DONE AND ORDERED ON JUNE 10, 2017. Nunc Pro Tunc to April 12, 1996.


Michael C. Overstreet, Circuit Court Judge.

CC:
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Laurie Hughes, ASA
Sonya Rudenstine, Esq.
Michael Ufferman, Esq.