

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45716
 Plaintiff-Respondent,)
) Jefferson County Case No.
 v.) CR-1995-502
)
 CHRISTOPHER T. SHANAHAN,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEFFERSON**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Christopher T. Shanahan appeals from the district court's order denying his Rule 35(a) motion. On appeal, he argues that the United States Supreme Court's recent decisions in Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016), which made it illegal to impose a *fixed* life sentence upon a juvenile offender absent a weighing of certain factors, render his *indeterminate* life sentence with 35 years fixed for his first degree murder of Fidela Tomchak unconstitutional.

Statement Of The Facts And Course Of The Proceedings

In Shanahan's prior appeal, the Court of Appeals set forth the following factual background for this case:

According to Shanahan's testimony at the trial of one of his co-defendants, Thomas P. Lundquist, Shanahan had spoken often of his desire to join a gang and believed that one way to become a member of a gang was to shoot someone. At a party on the evening of November 9, 1995, Shanahan discussed with several of his friends his plan to run away to Las Vegas, Nevada, and join a gang. Shanahan also shared his plan to rob the Grant store and, if necessary, shoot the clerk. In an effort to dissuade Shanahan from his proposed course of action, his friends offered Shanahan money for his trip to Las Vegas. However, Shanahan refused their offer.

The next day, Shanahan, Lundquist and Benjamin Jenkins agreed to run away to Las Vegas. In preparing for that trip, Jenkins and Shanahan obtained three guns from Jenkins' home. The weapons included a double-barrel shotgun, a single-barrel shotgun and a .22 caliber rifle. After retrieving the weapons from Jenkins' home, the three proceeded to Lundquist's residence. At Lundquist's home, ammunition for the weapons was procured, and Shanahan obtained gloves and two gasoline cans.

Also at Lundquist's residence, Shanahan and Jenkins sawed off the barrels and the stocks of the guns. The weapons were test fired after they were altered.

One of the shotguns failed to operate properly. Therefore, after leaving the Lundquist residence, the three individuals went back to Jenkins' home where Shanahan and Jenkins obtained another weapon. Shanahan then drove the three in his car to the Grant store. Shanahan testified that all three individuals participated in a discussion regarding the robbery of the store, what each person's role would be, and the possible shooting of the clerk. Shanahan agreed that he would enter the store and shoot the clerk.

After waiting for a delivery person to leave, Shanahan drove to the fuel pumps located at the store. After filling the car and two gas cans and waiting for another individual to leave, Shanahan signaled to Jenkins that he should go into the store. Jenkins entered the store. Shanahan put on the gloves, so as not to leave fingerprints at the scene, picked up the .22 caliber sawed-off rifle, and entered the store. Shanahan moved down the aisle behind where the store clerk, Fidela Tomchak, was working. Shanahan stood behind Tomchak, lifted the gun, hesitated for a minute, then raised the gun again and fired, killing Tomchak. Shanahan went around to where the victim lay, looked at her, and then checked the store for other witnesses. Finding none, Shanahan went to the cash register, put the murder weapon on the counter, removed cash and cigarettes, and ran out of the store. Realizing that he left the murder weapon inside the store, however, Shanahan returned to the store to retrieve the rifle. After again leaving the store, Shanahan got into his car and the three individuals left the scene, driving to Las Vegas.

Eventually, all three individuals were apprehended. Shanahan was charged with first degree murder and robbery. Claiming that Shanahan had used a firearm in the commission of the crimes, the state alleged a sentencing enhancement. Pursuant to a plea agreement, Shanahan pled guilty to first degree murder and robbery, and the state dismissed the firearm enhancement. According to Shanahan's testimony, under the terms of the plea agreement, the state agreed not to pursue the death penalty and agreed to recommend that Shanahan receive concurrent sentences. After pleading guilty, Shanahan filed a motion requesting that he be sentenced pursuant to the Juvenile Corrections Act. The district court denied the motion. A presentence investigation report was prepared and testimony was presented at a sentencing hearing. The district court issued extensive findings of fact and sentenced Shanahan to concurrent unified life terms, with thirty-five years fixed for first degree murder and ten years fixed for robbery. Shanahan filed an I.C.R. 35 motion for reduction of the sentences, which the district court denied.

State v. Shanahan, 133 Idaho 896, 897-98, 994 P.2d 1059, 1060-61 (Ct. App. 1999).

Shanahan appealed, arguing that the district court abused its discretion when it denied his motion to be sentenced under the Juvenile Corrections Act, id. at 899, 994 P.2d at 1062; that his sentences violated the Eighth Amendment's and Idaho Constitution's ban on cruel and unusual punishments, id.; that his sentences were otherwise excessive, id. at 900, 994 P.2d at 1063; and that the district court abused its discretion by denying his Rule 35 motion, id. at 902, 994 P.2d at 1065. The Court of Appeals, rejecting Shanahan's arguments, affirmed the district court. Id.

In 2017, Shanahan filed a Rule 35(a) motion to correct an (allegedly) illegal sentence, asserting that based on new precedent from the United States Supreme Court, his sentence now violated his Eighth Amendment rights. (R., pp.4-29.) After briefing by the parties and holding a hearing on the motion, the district court denied the Rule 35(a) motion. (R., pp.112-20.) Shanahan filed a timely notice of appeal. (R., pp.122-25.)

ISSUES

Shanahan states the issues on appeal as:

I. Because of the material changes in constitutional law regarding the sentencing of juvenile offenders since the judgment was final in this case, Christopher Shanahan's life sentence, with 35 years fixed, now violates the Eighth Amendment's prohibition on cruel and unusual punishments.

II. Failing to provide Mr. Shanahan a new sentencing hearing at which the mitigating qualities of youth must be considered in a constitutionally relevant way, when other similarly situated defendants are given that relief, violates his right to equal protection of the law under the Fourteenth Amendment.

(Appellant's brief, p.6.)

Miller v. Alabama, 567 U.S. 460 (2012), upon which Shanahan relies extensively, only applies to juvenile offenders who received fixed life sentences. Miller does not apply to Shanahan's case because Shanahan did not receive a fixed life sentence. The state therefore rephrases the issues as:

1. Whereas Miller only applies to juvenile offenders who received fixed life sentences, and whereas Shanahan did not receive a fixed life sentence for his first degree murder of Fidela Tomchak, has Shanahan failed to show any violation of his Eighth Amendment rights?
2. Whereas Miller only applies to juvenile offenders who received fixed life sentences, and whereas Shanahan did not receive a fixed life sentence for his first degree murder of Fidela Tomchak, has Shanahan failed to show any violation of his Fourteenth Amendment right to equal protection under the law?

ARGUMENT

I.

Shanahan Has Failed To Show That His Sentence Violates The Eighth Amendment

A. Introduction

Shanahan asserts that the district court erred when it denied his Rule 35(a) motion for correction of an (allegedly) illegal sentence, arguing (as he did below) that, in light of recent United States Supreme Court precedent, his indeterminate life sentence with 35 years fixed for the first degree murder of Fidela Tomchak violates his Eighth Amendment right against cruel and unusual punishment. (Appellant’s brief, pp.7-22.) Applying the correct legal standards, the district court correctly denied Shanahan’s motion. (See R., pp.113-20.) The district court should be affirmed.

B. Standard Of Review

Constitutional issues are purely questions of law over which the Court exercises free review. State v. Forbes, 152 Idaho 849, 851, 275 P.3d 864, 866 (2012) (citations omitted).

C. Shanahan’s Indeterminate Life Sentence With 35 Years Fixed For The First Degree Murder Of Fidela Tomchak Does Not Violate The Eighth Amendment

The Eighth Amendment prohibits the infliction of “cruel and unusual punishments.” U.S. Const. amend. I. When challenging his sentence on direct appeal, Shanahan asserted that his indeterminate life sentence with 35 years fixed violated his Eighth Amendment right against cruel and unusual punishment, based on disproportionality. See State v. Shanahan, 133 Idaho 896, 899, 994 P.2d 1059, 1062 (Ct. App. 1999). The Court of Appeals rejected Shanahan’s argument, holding that, “[b]ased on the record before this Court, and given the premeditated and cold-blooded nature of [the murder],” the sentences were not “out of proportion to the gravity of

the offenses.” Id., 133 Idaho at 900, 994 P.2d at 1063. Shanahan now argues, in light of the United States Supreme Court’s decision in Miller v. Alabama, 567 U.S. 460 (2012), that his sentence violates the Eighth Amendment. Shanahan’s revised argument equally fails.

In Miller, the United States Supreme Court held that state laws that require mandatory fixed life sentences for juveniles convicted of murder violate the Eighth Amendment’s prohibition against cruel and unusual punishment. The Supreme Court further held that, while sentencing courts maintained the discretion to impose a fixed life sentence upon a juvenile offender convicted of murder, before the courts could impose such sentences, they first had to consider whether the juvenile offender’s “crime reflects unfortunate yet transient immaturity,” or whether it “reflects irreparable corruption.” Id. at 479-80. In Montgomery v. Louisiana, 136 S. Ct. 718 (2016), the Supreme Court clarified that its Miller decision was retroactive.

But Miller only applies to juvenile offenders who were sentenced to fixed life terms. Shanahan was not sentenced to a fixed life term. Miller, therefore, does not apply to Shanahan’s case or sentence.

Moreover, even if Miller did apply to Shanahan’s sentence (which it does not), the district court complied with that decision’s mandate: Contrary to Shanahan’s assertions, Miller does not require a specific hearing or that the district court make specific findings. See Adamcik v. State, 163 Idaho 114, ___, 408 P.3d 474, 488-89 (2017) (citing Johnson v. State, 162 Idaho 213, 395 P.3d 1246 (2017)). Rather, it requires the district court to consider whether the crime reflected the juvenile offender’s transient youthful immaturity or irreparable corruption. Id. The district court conducted that analysis in this case.

As the Court of Appeals explained in its prior decision, Dr. Heinbecker, a psychiatrist, testified during Shanahan’s sentencing hearing. Shanahan, 133 Idaho at 901, 994 P.2d at 1064.

The doctor opined that Shanahan’s thinking was “immature and uninformed” and that Shanahan had “no comprehension of the gravity of killing someone.” Id. (quotations in original). The doctor further opined that, even at the time of sentencing, Shanahan still did not fully appreciate the seriousness of his crime. Id. The Court of Appeals recognized that the district court put great weight in Dr. Heinbecker’s testimony, specifically considering it and setting forth the relevant parts quoted above in its sentencing memorandum. Id. And that testimony was apparently persuasive to the district court, which noted its hope that Shanahan could be rehabilitated and eventually become a contributing member of society. Id. With that in mind, though recognizing its discretion to impose a fixed life sentence, the district court chose instead to impose an indeterminate life sentence with only 35 years fixed for the first degree murder committed by Shanahan. Id. at 901-02, 994 P.2d at 1064-65.

Shanahan also argues that his sentence is “grossly disproportionate” to his offense. (Appellant’s brief, pp.21-22.) This argument was previously raised to the Court of Appeals, which held that Shanahan’s sentence was appropriate, explaining:

This case presents the senseless, cold-blooded, and unprovoked murder of Fidela Tomchak. On the night before the murder, Shanahan talked about robbing the store in order to finance his trip to Las Vegas. Shanahan also spoke of potentially killing the clerk. Shanahan was offered money from his friends to fund his trip, making the robbing of the store unnecessary. However, Shanahan refused the generosity of his friends. On the morning of the crime, Shanahan, Jenkins, and Lundquist drove to Jenkins’ home and obtained three weapons. Shanahan participated in sawing off the weapons so that they would be easier to conceal.

At one point, because Jenkins was going to ruin a weapon, Shanahan directed him to alter another gun, while Shanahan finished sawing off the weapon correctly. Shanahan loaded the gun that he would eventually use in the murder.

Shanahan drove the group to the store. As the three individuals were discussing the role each would take in the robbery, Shanahan agreed to be one of

those to go into the store and the one to shoot the clerk. After arriving at the store, Shanahan filled up his car and two cans with gasoline waiting for possible witnesses to leave. He then told Jenkins to go into the store because the plan called for Jenkins to distract the clerk so that she could not activate any alarm that might have been present. Before following Jenkins into the store, Shanahan put gloves on so that he would not leave fingerprints at the scene. Also before entering the store, Shanahan had determined that he would kill the clerk, even though it was unnecessary to do so. Shanahan entered the store, concealing the rifle behind his legs. He walked to within three feet of the victim. He raised the gun, lowered it, then raised it again and fired into the back of Tomchak's head, killing her. Shanahan walked over to the victim and looked at her. Shanahan then searched the store for other witnesses, testifying that if he found any other people in the store, they would also have been killed. Finally, Shanahan went to the cash register and took money and cigarettes. He then fled the scene.

Shanahan, 133 Idaho at 901, 994 P.2d at 1064. Because the Court of Appeals has already addressed the appropriateness of Shanahan's sentence—including Shanahan's disproportionality argument raised under the Eighth Amendment, id. at 899-900, 994 P.2d at 1062-63—re-litigation of this issue is barred by the doctrine of *res judicata*. State v. Rhoades, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000).

An illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law. State v. Alsanea, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003). Because Shanahan's indeterminate life sentence with 35 years fixed falls within the statutory guidelines, it is not in excess of the applicable statutory provisions. Nor is Shanahan's sentence otherwise contrary to law: Shanahan has failed to show any violation of his Eighth Amendment right against cruel and unusual punishment, both because Miller does not apply to his sentence and because, even if it did, the district court actually conducted the analysis required by Miller. The district court, therefore, correctly denied Shanahan's Rule 35(a) motion and should be affirmed.

II.

Shanahan Has Failed To Show That His Sentence Violates The Fourteenth Amendment

A. Introduction

In addition to his argument that his indeterminate life sentence with 35 years fixed for first degree murder violates his Eighth Amendment right against cruel and unusual punishment, Shanahan also argues that the district court's failure to hold a new sentencing hearing to reconsider his sentence in light of Miller v. Alabama, 567 U.S. 460 (2012), violates his Fourteenth Amendment right of equal protection. (Appellant's brief, pp.22-24.) Application of the correct legal standards shows no violation of Shanahan's equal protection rights. The district court's denial of Shanahan's Rule 35(a) motion should be affirmed.

B. Standard Of Review

Constitutional issues are purely questions of law over which the Court exercises free review. State v. Forbes, 152 Idaho 849, 851, 275 P.3d 864, 866 (2012) (citations omitted).

C. Shanahan's Indeterminate Life Sentence With 35 Years Fixed For The First Degree Murder Of Fidela Tomchak Does Not Violate The Fourteenth Amendment

The Equal Protection Clause of the Fourteenth Amendment states that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1, cl. 4. The Idaho Constitution also provides for equal protection. See Idaho Const. art. I, § 2. "The principle underlying the Equal Protection Clause of both constitutions is that all persons *in like circumstances* should receive the same benefits and burdens of the law." State v. Rome, 160 Idaho 40, 43, 368 P.3d 660, 663 (Ct. App. 2016) (emphasis added). Neither the Constitution of the United States nor the Idaho Constitution requires the law to treat different persons in different circumstances the same. See State v. Rawlings, 159 Idaho 498, 501, 363

P.3d 339, 342 (2015) (finding no violation of the Equal Protection Clause because “[t]he persons in these two classifications are not in like circumstances”); Rome, 160 Idaho at 43, 368 P.3d at 663 (rejecting equal protection claim because “these two type of thieves are not similarly situated”). Or as the United States Supreme Court has said: “[t]he Equal Protection Clause was not designed to compel uniformity in the face of difference.” Whitney v. State Tax Commission of N.Y., 309 U.S. 530, 542 (1940).

As noted above (Arg. I), and contrary to Shanahan’s assertions, the United States Supreme Court’s decision in Miller v. Alabama, 567 U.S. 460 (2012), does not apply to the sentencing of all juvenile offenders, but to all juvenile offenders who receive fixed life sentences. Id. at 479-80. Shanahan did not receive a fixed life sentence. Shanahan, therefore, is not in “like circumstances” with those juvenile offenders who received fixed life sentences, and the equal protection clause does not “compel uniformity in the face of [that] difference.”

The district court correctly denied Shanahan’s Rule 35(a) motion and, contrary to Shanahan’s arguments, his rights to equal protection under the Fourteenth Amendment have not been violated by the denial of that motion. The district court should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Shanahan's Rule 35(a) motion.

DATED this 6th day of November, 2018.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of November, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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