UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0408

September Term, 2015

AARON DWAYNE HOLLY

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: June 28, 2016

In 2004, following a jury trial in the Circuit Court for Baltimore County, Aaron Dwayne Holly, appellant, was convicted of first-degree murder, felony murder, and use of a handgun in the commission of a crime of violence, crimes he committed when he was seventeen years old. He was thereafter sentenced to life imprisonment without parole. And his convictions were subsequently affirmed by this Court. *Aaron Dwayne Holly v. State of Maryland*, No. 2283, September Term, 2004 (filed July 30, 2007).

Eight years after Holly was sentenced, the United States Supreme Court, in *Miller v. Alabama,* 567 U.S. ___, 132 S.Ct. 2455, 2460 (2012), held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Although the Supreme Court did "not foreclose a sentencer's ability" to impose a life sentence without parole "in homicide cases," the Supreme Court stated that the sentencer must "take into account how children are different [from adults], and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S.Ct. at 2469.

In 2015, Holly, relying on *Miller*, filed a motion to correct an illegal sentence in which he asserted that his sentence to life without parole was unconstitutional because the sentencing court had not considered that he was a youth when the crimes were committed. The circuit court summarily denied the motion, without a hearing or an explanation, an order which Holly appeals. For the reasons to be discussed, we reverse.

After Holly filed this appeal, the Supreme Court, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), held that *Miller* applies retroactively.

The *Montgomery* Court summarized the import of the *Miller* decision:

> *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the "distinctive attributes of youth." **Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'"** Because *Miller* determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,'" it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status" – that is, juvenile offenders whose crimes reflect the transient immaturity of youth.

136 S.Ct. at 734 (internal citations omitted) (emphasis added).

To comply with *Miller,* the *Montgomery* Court stated:

> A hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. The hearing does not replace but rather gives effect to *Miller's* substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.

136 S.Ct. at 735 (citation omitted).

The State agrees with Holly that his sentence to life without parole should be vacated and this case remanded for re-sentencing in accordance with *Miller* and *Montgomery*.

BACKGROUND

On June 7, 2002, about 4:50p.m., Holly and another man forced their way into a woman's apartment, located on the third floor of the building. The plan was to use duct tape to subdue the woman, and then shoot her husband. Holly and his twenty-four year old co-

defendant had been recruited by another man to carry out the plan. The woman, however, ran for the balcony. As she was climbing down the railing, she slipped and fell to the ground. Holly and his accomplice ran down the stairs of the apartment building, located the woman on the ground, and shot her at close range. She died from the gunshot wounds, one of which struck her in the chest and the other in the back. The State was unable to establish at trial whether Holly or his co-defendant, both of whom had confronted the victim with weapons drawn, fired the shots.

After a jury convicted Holly of first-degree murder, felony murder, and use of a handgun in the commission of a felony or crime of violence, a pre-sentence investigation was prepared. Among other things, the report reviewed Holly's criminal history (including numerous juvenile offenses), education, family background, and health status. The report did not address Holly's prospect for rehabilitation.

At the sentencing hearing, the State urged the court to sentence Holly and his co-defendant to life without the possibility of parole, noting that they "made a choice to kill." In advocating for a sentence at the low end of the guidelines (which were twenty years to life), Holly's counsel asserted that his juvenile record was "not an indication of any type of violent behavior" and that "at some point in his life he would like to have the opportunity to be out [of prison] and live again." Counsel did not focus specifically on Holly's age, nor on his chances for rehabilitation.

The court, addressing Holly and his co-defendant, Shawn Gardner, stated in part:

> This murder occurred in broad daylight in front of children outside. [The victim] was not a threat to you Mr. Gardner, nor was she a threat to you, Mr. Holly. Yet you came down the steps of her apartment building, and within a few feet of her shot her like she was some kind of animal to be hunted. The murder was cold. It was calculated. It was brazen and most of all it was completely, completely unwarranted. It was unwarranted. She was no threat to either of you. And she was on the ground after having fallen off the balcony. You could have walked away, but you didn't.
>
> The court takes into account with respect to Mr. Holly, I saw in the presentence investigation report the reference to him having been a Level Five student. I recall when [defense counsel] first brought that information to my attention, and it is something to be considered. Now, when the agent prepared this report the agent indicated that they did not have access to the Western Vocational Tech' School records, although those records have been requested and you do not have that here today. But in any event, I have had an opportunity not only to listen to the evidence but also to observe Mr. Holly. And Mr. Holly in the Court's opinion understands the difference between right and wrong, whether he had a Level Five placement while he was in public school or not.
>
> I understand the [sentencing] guidelines, which are voluntary, apply as to each defendant. But **the court in taking into account the purposes of sentencing, in particular the purpose of deterrence and punishment,** finds that as to Mr. Gardner the appropriate sentence as to first degree premeditated murder is life without the possibility of parole.
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> * * *
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> As to Mr. Holly, I have indicated that I have taken his educational background into account, even though I don't have records from the school, I know that counsel taught him when he was in middle school. **I also take into account that the defendant was 18 years old when this offense**

> **occurred.**[1] He did have the context that his defense counsel has made reference to. I have looked at his family history.
>
> I have considered everything that's in the PSI. I have considered all the arguments that counsel made, but my findings about how this defendant, or how Mr. Gardner could have walked away apply to Mr. Holly as well. He could have walked away. He smiled at me periodically throughout these proceedings, and his smile may be just a sign of nervousness, perhaps that's the case. I made reference to the remarks made by the agent in the PSI about Mr. Holly not showing any sign of remorse and appearing to be superficial in his expressions of empathy towards the victim. Defense counsel has addressed that issue, but in any event Mr. Holly was a full participant; he had a choice, he elected to commit murder. I don't know whether he was the trigger man. There was evidence at trial that there was gunshot residue on his jean pocket. But we have various explanations for why that might occur.
>
> I simply mention that as just one piece in a much larger piece, much larger body of evidence that convinces the court that the appropriate sentence for Mr. Holly as well as to first degree premeditated murder is life without the possibility of parole.

(Emphasis added.)

DISCUSSION

Although the sentencing court was aware of Holly's age when imposing sentence, it did not address his youth to any significant degree, much less the possibility that he could be rehabilitated. Rather, the court focused on the heinous nature of the crime and "deterrence and punishment." In short, based on the record before us, we cannot say that the sentencing court considered whether Holly was one of those "rare juvenile offenders[s] whose crime

[1] The record indicates that Holly was four months shy of his eighteen birthday when the crime was committed.

reflects irreparable corruption" warranting a sentence of life without parole or whether, instead, his crimes "reflect[ed] the transient immaturity of youth." As the Supreme Court in *Montgomery* reminds us, "*Miller* require[s] that sentencing courts consider a child's 'diminished culpability and heightened capacity for change' before condemning him or her to die in prison." 136 S.Ct. at 726 (quoting *Miller,* 132 S.Ct. at 2469). There is no indication that the court did so in Holly's case. Accordingly, we reverse the circuit court's denial of Holly's motion to correct an illegal sentence, vacate his life sentence without the possibility of parole, and remand the case for re-sentencing in light of the *Miller* and *Montgomery* decisions.

RE-SENTENCING

Neither *Miller* nor *Montgomery* provide much guidance to the sentencing court upon remand for re-sentencing. As noted, however, the Supreme Court in *Mongomery* did state that a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." 136 S.Ct. at 735 (quoting *Miller*, 132 S.Ct. at 2460).[2] The *Miller* Court suggested that, before a sentence of life without parole is imposed, the sentencer

[2] The Supreme Court in *Montgomery* also noted that, in "[g]iving *Miller* retroactive effect," a new sentencing hearing is not necessarily required in every case. 136 S.Ct. at 736. Rather, the Supreme Court suggested that a State "may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Id.* That option, it seems, is one for the legislature to consider.

consider the offender's "chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; the offender's "family and home environment"; and the offender's "participation in the conduct and the way familial and peer pressures may have affected him." 132 S.Ct. at 2468. Moreover, the sentencer must take into consideration the offender's "'heightened capacity for change' before condemning him or her to die in prison." *Montgomery,* 136 S.Ct. at 726 (quoting *Miller*, 132 S.Ct. at 2469).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY DENYING MOTION TO CORRECT AN ILLEGAL SENTENCE REVERSED. SENTENCE TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR RE-SENTENCING. COSTS TO BE PAID BY BALTIMORE COUNTY.