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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1121

Filed: 7 May 2019

Guilford County, No. 99 CRS 110602

STATE OF NORTH CAROLINA

v.

MICHAEL ANTHONY DUDLEY

Appeal by defendant from judgment entered 4 June 2018 by Judge Paul L. Jones in Guilford County Superior Court. Heard in the Court of Appeals 11 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly N. Callahan, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant-appellant.*

PER CURIAM.

Michael Anthony Dudley ("Defendant") appeals from resentencing order entered upon remand from this Court. We affirm.

## I. Background

The State's evidence tended to show that Defendant, his brother DeAndre Dudley ("DeAndre"), and DeAndre's friend, Robert Adams ("Adams"), conspired to rob

drug dealers in pursuit of cash, drugs, and other items of value. During the robbery, DeAndre carried a shotgun and held the two victims, while Defendant searched upstairs for something of value to take. While Defendant searched upstairs, Adams shot both victims. Eric Fowler died from a single gunshot wound in the buttocks. Adonnis Whitfield was shot in the leg and received medical treatment.

The shooter, Adams, was 17 years old at the time and pled guilty to second-degree murder and other offenses. He received a total active sentence of 92 years in prison. Adams hanged himself in prison in 2003 after serving three years. DeAndre, Defendant's older brother, was also 17 years old at the time of the murder. DeAndre's charges were pending when Defendant went to trial. The prosecution offered Defendant a plea to second-degree murder, conditioned upon him testifying against DeAndre. Defendant was 16 years old and refused to accept the plea and testify against DeAndre. The jury found Defendant guilty of first-degree felony murder. The trial court sentenced him to life in prison without parole. In addition, Defendant received 42-60 months for the combined robbery charges; 42-60 months for burglary; and 17-30 months for assault, all to run concurrently with his life sentence without parole.

Defendant appealed his original judgment and sentence. On 6 August 2002, this Court found no error except that it ordered the judgment and sentence for burglary be arrested because the sentence had served as the basis for the felony

murder conviction. Defendant filed a motion for appropriate relief in 2011, arguing that a sentence of life without parole violated his constitutional protections under *Graham v. Florida,* 560 U.S. 48, 176 L. Ed. 2d 825 (2010). The superior court denied his motion. This Court subsequently denied a petition for writ of certiorari.

On 12 December 2012, Defendant filed a second motion for appropriate relief relying on the Supreme Court of the United States' decision in *Miller v. Alabama*, 567 U.S. 460, 183 L. Ed. 2d 407 (2012). The superior court denied his motion, finding that *Miller* could not be applied retroactively. Defendant filed a second petition for writ of certiorari. On 6 February 2017, this Court granted the petition and remanded the case for resentencing. The superior court resentenced Defendant to life with parole on 4 June 2018, in accordance with N.C. Gen. Stat. § 15A-1340.19B(a)(1). Defendant appeals.

## II. Jurisdiction

Jurisdiction lies in this Court from a final judgment of a superior court. N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2017).

## III. Issues

Defendant asserts that the sentence imposed in superior court violates the Eighth Amendment of the Constitution of the United States and Article I, Section 27 of the North Carolina Constitution. Defendant argues that this case should be

remanded for an explicit ruling on his as-applied proportionality challenge. We disagree and affirm.

## IV. Analysis

### *A. State v. Seam*

Since Defendant filed his appeal, this Court unanimously decided *State v. Seam*, __ N.C. App. __, __ S.E.2d __ (18 December 2018) (COA 18-202). Defendant acknowledges the legal issues in *Seam* mirror those in his case and has conceded *Seam* is controlling authority.

In *Seam*, a grand jury "indicted [the] [d]efendant for first-degree murder and attempted robbery with a dangerous weapon." *Seam,* __ N.C. App. at __, __ S.E 2d at __. At the time the offense occurred, the defendant was a juvenile. At his first sentencing hearing, the defendant received a "sentence of life imprisonment without the possibility of parole. . . .Defendant appealed to this court and [this Court] upheld his conviction." *Id.* at __, __ S.E.2d at __.

The defendant filed a motion for appropriate relief and this Court found his sentence was unconstitutional in light of *Miller*. *Id.* Ultimately, the defendant received a resentencing order to "life imprisonment with the possibility of parole." *Id.* at __, __ S.E.2d at __. The defendant in *Seam* challenged the constitutionality of this sentence on appeal. This Court concluded "[d]efendant's sentence of life

imprisonment with the possibility of parole" was constitutional and remand was unnecessary. *Id.* at __, __ S.E.2d at __.

*B. Defendant's Stipulation*

Like the defendant in *Seam*, Defendant committed first-degree felony murder as a juvenile and was sentenced appropriately upon remand to life with parole, in light of *Miller* and the revised North Carolina sentencing scheme. N.C. Gen. Stat. § 15A-1340.19B(a)(1). Defendant acknowledged that the "legal issues in Mr. Seam's case and this case are essentially identical."

Additionally, Defendant argues an "as-applied" challenge. N.C. Gen. Stat. § 15A-1340.19B(a)(1). However, in *Seam*, the defendant's counsel, as here, brought and asserted the same "as-applied" constitutional challenge, and this Court held that remand was unnecessary. *Seam*, __ N.C. App. at __, __ S.E.2d at __.

Furthermore, Defendant has stipulated to the applicability of *Seam* as controlling precedent. This Court is "bound by a prior decision of another panel of the same court addressing the same question, but in a different case, unless overturned by an intervening decision from a higher court." *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Following *State v. Seam*, Defendant's sentence of life with parole is constitutional. *Seam* forecloses all issues on appeal. *See id.*

Being bound by *Seam*, this Court recognizes Defendant "is limited solely to a review of whether his sentence was grossly disproportionate to his crime." *Seam*, __ N.C. App. at __, __ S.E.2d at __. Here, as in *Seam*, Defendant's sentence of life with the possibility of parole is not grossly disproportionate to his crime of first-degree murder because it complies with the legislative sentencing scheme in N.C. Gen. Stat. §15A-1340.19A. The North Carolina General Assembly revised the sentencing statute to comply with *Miller*, 567 U.S. 460, 183 L. Ed. 2d 407.

This Court is bound by precedent as set forth by *Seam* and by legislative deference. *In re Civil Penalty*, 324 N.C. at 384, 379 S.E.2d at 37. Defendant's sentence is consistent with *Miller* and the proportionality principle of the Eighth Amendment. *Miller*, 567 U.S. 460, 183 L. Ed. 2d 407. Defendant is eligible to be considered for parole after serving 25 years of imprisonment. N.C. Gen. Stat. § 15A-1340.19A.

## V. Conclusion

Defendant stipulated his appeal is governed by this Court's precedent in *State v. Seam*. Further, Defendant's sentence is wholly consistent with the legislative sentencing scheme in N.C. Gen. Stat. § 15A-1340.19A. For the reasons stated above, we affirm Defendant's sentence. *It is so ordered.*

AFFIRMED.

Panel consisting of Judges DIETZ, TYSON, and ZACHARY.