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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1157

Filed 17 September 2024

Guilford County, Nos. 15 CRS 93186-88, 19 CRS 25103-07

STATE OF NORTH CAROLINA

v.

CHAUNCEY JAMAL SLADE

Appeal by defendant from judgment entered 8 July 2021 by Judge David L. Hall in Guilford County Superior Court. Heard in the Court of Appeals 5 September 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Michael T. Wood, for the State.*

*Kimberly P. Hoppin for Defendant-Appellant.*

PER CURIAM.

Defendant Chauncey J. Slade appeals from his sentence imposed during a resentencing hearing for two murders and other felonies which he committed when he was a minor.

I. Background

Defendant was convicted at trial of two counts of first-degree murder, five

counts of discharging a firearm into an occupied dwelling, and one count of discharging a weapon into an occupied vehicle. The trial court sentenced Defendant to two consecutive life sentences *with* the possibility of parole for the murder charges, two consecutive terms of 66 to 91 months and 24 to 41 months for the other felonies. Defendant appealed that judgment.

In 2020, our Court reversed one of Defendant's felony convictions based on an indictment issue and remanded the matter to the trial court with instructions to arrest judgment on an underlying felony for each felony murder conviction and to resentence Defendant accordingly. *See State v. Slade*, 275 N.C. App. 422 (2020) (unpublished). We did not reach one of Defendant's issues in that appeal, namely, whether the sentences imposed an unconstitutional *de facto* life without parole sentence, as we ordered Defendant to be resentenced, which would have potentially mooted the issue.

On remand from the first appeal, the trial court vacated two of the felony convictions, as mandated by our Court, and resentenced Defendant to two consecutive terms of life with the possibility of parole on the two murder convictions. The trial court also consolidated the three other felonies into a single judgment, sentenced Defendant to 66 to 92 months on that judgment, and ordered this sentence to run consecutively with the life sentences.

Defendant did not give a notice of appeal. However, in October 2022, we allowed Defendant's petition for writ of *certiorari*.

## II. Analysis

When constitutional rights are implicated, the appropriate standard of review is *de novo*. *In re Adoption of S.D.W.*, 367 N.C. 386, 391 (2014).

The United States Supreme Court held that a mandatory sentence of life imprisonment *without* the possibility of parole (“LWOP”) was unconstitutional for a juvenile, and a sentencing court must instead consider how juvenile offenders differ from adult offenders. *See Miller v. Alabama*, 567 U.S. 460, 479–80 (2012). Our General Assembly subsequently revised our statutes to comply with the United States Supreme Court case. *See* 2012 N.C. Sess. Laws 2012-148, § 1; N.C.G.S. §§ 15A-1340.19A *et seq.* (2012).

Four years later, in 2016, the United States Supreme Court held that *Miller* applied retroactively to defendants already sentenced to LWOP for crimes they committed while minors. *See Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016).

In 2022, our Supreme Court held that it violated our state constitution to impose a sentence or consecutive sentences on a defendant who was a juvenile at the time of his crime(s) which would not make him eligible for parole for more than forty years, *unless* the sentencing court “expressly finds that [the defendant] is one of those ‘exceedingly rare’ juveniles who cannot be rehabilitated[.]” *State v. Kelliher*, 381 N.C. 558, 587 (2022). In so holding, the Court determined that “any sentence or [consecutive sentences] which [ ] require a juvenile to serve more than forty years in

prison before becoming eligible for parole is a de facto sentence of life without parole within the meaning of article I, section 27 [of our state constitution].” *Id.* at 589.

Here, the consecutive sentences imposed on Defendant, as is, would require him to serve 55 1/2 years before he would be eligible for parole. (Defendant would be required to serve 25 years on *each* of the two felony murder convictions, *see* N.C.G.S. § 15A-1340.19A (juvenile offender sentenced to life with parole is eligible for parole after serving 25 years), and then at least 5 1/2 years before being eligible for parole on the other consolidated sentence for the other felonies.)

The consecutive sentences are valid under our sentencing statutes. Indeed, under our relevant sentencing statutes, the trial court acted within its discretion to impose a sentence of life *with* the possibility of parole for *each* felony murder conviction, *see* N.C.G.S. § 15A-1340.19B(a)(1) (juvenile offender convicted of felony murder to be sentenced to life *with* parole); a consolidated sentence of 66 to 92 months on the other convictions; and then order that these sentences be served consecutively, *see* N.C.G.S. § 15A-1354(a) (authorizing sentencing court discretion to determine whether multiple sentences are to run concurrently or consecutively).

Further, Defendant does not cite to any case indicating that the consecutive sentences violate the federal constitution.

However, based on our Supreme Court’s decision in *Kelliher*, because the trial court did not make an express finding that Defendant was irredeemable, Defendant’s consecutive sentences do violate our state constitution, as Defendant is not eligible

for parole prior to serving 40 years.

In *Kelliher*, the trial court actually made a finding that the defendant was *not* irredeemable; and our Supreme Court held “[b]ecause the trial court affirmatively found that [the juvenile offender] was ‘neither incorrigible nor irredeemable,’ ” it violated our state constitution to sentence him to two life with parole sentences *to run consecutively*, as he would not be eligible for parole for 50 years. 381 N.C. at 560. Since the trial court had already made a finding that the defendant was *not* irredeemable, our Supreme Court concluded there was no need to remand for the trial court to make that determination. *Id.* at 597.

Here, the trial court made no finding in its *written* order – one way or the other – whether Defendant was irredeemable. It is within the trial court’s discretion to make that call. However, as Defendant points out, during the resentencing hearing, the trial court essentially made an *oral* finding that there was no evidence showing that Defendant was irredeemable.

Unlike the civil context where Rule 58 of our Rules of Civil Procedure requires orders to be reduced to writing, in the criminal context the trial court generally may make findings orally or in writing. Generally, though, where an oral finding conflicts with a written finding in a criminal order, the written finding controls. Our Supreme Court has also instructed us to “err on the side of caution and resolve in the defendant’s favor [any mere] discrepancy between the trial court’s statement in open court, as revealed by the transcript, and the [written order].” *State v. Morston*, 336

N.C. 381, 410 (1994). Here, there is no *conflict* between the oral findings and the written findings regarding whether Defendant is irredeemable, as the trial court made no determination either way in its written order regarding whether Defendant was irredeemable. Accordingly, we conclude the trial court's oral finding that Defendant is not irredeemable stands. *See, e.g., State v. Harrison*, 282 N.C. App. 402 (2022) (unpublished) (holding that oral finding of "good cause shown" was sufficient to revoke probation though the oral finding was not contained in the written order).

### III. Conclusion

In his resentencing, Defendant was sentenced essentially for five felonies: namely, two counts of felony murder and three other felonies. He received two life with parole sentences for the felony murder convictions. The three other felonies were consolidated into a single judgment, whereby Defendant was sentenced to 66 to 92 months. The trial court ordered all three sentences to run consecutively, such that Defendant would not be eligible for parole for 55 1/2 years.

Based on *Kelliher*, the consecutive sentences amount to a *de facto* life sentence, as the time before which Defendant would be eligible for parole exceeds 40 years. And because the trial court essentially found Defendant *not* to be incorrigible, the sentence was unconstitutional.

Regarding Defendant's life with parole sentences for the felony murders, we affirm those judgments, except that we reverse the trial court's order that these life sentences be served consecutively. They are to run concurrently. Otherwise, on those

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two convictions alone, Defendant would not be eligible for parole for 50 years.

Regarding the other three felonies, we remand this consolidated judgment to the trial court for reconsideration. On remand, the trial court may allow its judgment to stand, including its order that the sentence run consecutively with the life sentences, as Defendant would still be eligible for parole in 30 1/2 years. Or the trial court may modify its prior decision to require the term to run consecutively. Or the trial court, in its discretion, may revisit its decision to consolidate the three felony convictions into a single judgment. That is, the trial court on remand may enter two or three different judgments on those three felony convictions with separate sentences for each judgment. And the trial court may require these sentences to run consecutively, if it chooses, so long as the aggregate of all consecutive sentences (including the life with parole sentences) does not exceed 40 years.

AFFIRMED IN PART, VACATED IN PART, REMANDED FOR RESENTENCING.

Panel consisting of Chief Judge DILLON and Judges MURPHY and STADING.

Report per Rule 30(e).