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APPROVAL OF THE APPELLATE DIVISION**

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3477-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

THOMAS CROSS,

Defendant-Appellant.

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Submitted May 15, 2024 – Decided May 22, 2024

Before Judges Firko and Susswein.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Indictment No. 95-08-2755.

Thomas Cross, appellant pro se.

Theodore N. Stevens, II, Essex County Prosecutor,  
attorney for respondent (Frank J. Ducoat, Assistant  
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Thomas Cross appeals from an April 19, 2023 order denying his motion for a reduction of sentence. He urges us to remand this matter for

resentencing pursuant to State v. Comer, 249 N.J. 359 (2022), because he was twenty-four-years old when he committed murder, three carjackings, and assaults upon several elderly victims. Defendant contends our Court's holding in Comer—that juveniles convicted of murder are constitutionally entitled to reconsideration of their sentence after twenty years—should apply to him. Defendant also argues mitigating factor fourteen, N.J.S.A. 2C:44-1(b)(14),<sup>1</sup> which became effective on October 19, 2020, and allows a trial court to consider a defendant's youth as a mitigating factor if the defendant was under the age of twenty-six when the crime was committed, should apply to him. We disagree and affirm. Defendant's constitutional arguments have been rejected by our Court and lack sufficient merit to warrant extensive discussion. See R. 2:11-3(e)(2).

## I.

Defendant was charged in a twenty-nine-count indictment with numerous offenses, including murder, N.J.S.A. 2C:11-3(a)(1) and (2), and first-degree carjacking, N.J.S.A. 2C:15-2. Following a trial, a jury convicted defendant of twenty-three of the twenty-nine counts in the indictment. He was sentenced to

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<sup>1</sup> N.J.S.A. 2C:44-1(b)(14), defines a mitigating circumstance when "[t]he defendant was under [twenty-six] years of age at the time of the commission of the offense." L. 2020, c. 110, § 1.

an aggregate term of life imprisonment plus fifty years, subject to fifty years of parole ineligibility. We affirmed defendant's conviction and sentence. State v. Cross, No. A-0675-96 (App. Div. Apr. 20, 1999). The Court denied certification. State v. Cross, 161 N.J. 335 (1999). Defendant filed three post-conviction relief petitions, which were reversed and remanded on appeal, affirmed on appeal, and denied certification. State v. Cross, No. A-4278-09 (App. Div. Sept. 21, 2011); State v. Cross, No. A-1329-12 (App. Div. Aug. 1, 2014); State v. Cross, 220 N.J. 269 (2015). Defendant also filed a pro se petition for habeas corpus in the United States District Court, which was denied.

On March 6, 2023, defendant filed a pro se motion for reduction of sentence pursuant to Rule 3:21-10(b)(5). Defendant argued that he has served twenty-seven years of his sentence and was twenty-four-years old when he committed the offenses, warranting resentencing under the look-back provision in Comer and mitigating factor fourteen. Defendant sought reconsideration of his sentence based on the reasoning established in Miller v. Alabama, 567 U.S. 460 (2012), and amplified by our Court in State v. Zuber, 227 N.J. 422 (2017), applicable to juveniles.

Defendant argued the sentencing court failed to consider that "[s]cience shows that late adolescent offenders of [his] age are like juveniles in their

diminished culpability and in their likelihood of reform," at the time he committed the offenses. He asserted that the Legislature's 2020 enactment of mitigating factor fourteen supports his contention his sentence is illegal. Defendant also claimed he was entitled to resentencing under State v. Torres, 246 N.J. 246 (2021).

In his April 19, 2023 letter-opinion, Judge Ronald D. Wigler denied defendant's motion for a reduction of sentence. The judge found defendant's sentence was not illegal and that he was not entitled to a "Miller/Zuber" or Comer hearing. Judge Wigler reasoned that because defendant "was an adult when he committed his crimes," his sentence does not raise the constitutional concerns addressed in those cases, which are "related to juvenile sentencing."

The judge acknowledged the Legislature added mitigating factor fourteen after defendant was sentenced but concluded this was an insufficient basis to resentence him and does not apply to Comer. In addition, the judge highlighted that our Court decided that mitigating factor fourteen "is not retroactive" and applies prospectively. State v. Lane, 251 N.J. 84, 87-88 (2022). This appeal followed.

## II.

In his self-authored letter brief, defendant raises the following points for our consideration:

### POINT I

THE TRIAL COURT ERRED BY NOT APPLYING R[ULE] 1:7-4 AND R[ULE] 3:29 TO POINT I OF APPELLANT'S BRIEF THEREFORE THE APPELLATE DIVISION MUST REMAND FOR AN OPINION CONSISTENT WITH THESE RULES ALLOWING [DEFENDANT] THE RIGHT TO PROPERLY APPEAL BEFORE THIS COURT.

### POINT II

THE TRIAL COURT ERRED IN ITS RULING WHERE [DEFENDANT] ARGUED THAT A RESENTENCING SHOULD OCCUR BECAUSE THE LANDMARK COMER DECISION WHICH ENTITLED JUVENILE OFFENSES TO A RESENTENCING AFTER TWENTY YEARS SHOULD EXTEND TO YOUTHFUL OFFENDERS LIKE DEFENDANT . . . , WHO SHARE THE SAME CHARACTERISTICS AS JUVENILES. U.S. CONST. AMENDS. VII, XIV; N.J. CONST. ART. I, ¶ 12 AS THE COURT SHOULD HAVE ARGUED THE FACTS ON POINT I WHERE THE ISSUES HEREIN ARGUED WOULD HAVE FELL INTO THE OVERALL FAIRNESS OF THE SENTENCING.

In his supplemental pro se reply letter brief, defendant raises the following additional points:

POINT I

[DEFENDANT] MUST REITERATE HIS INITIAL ARGUMENT IN WHICH THE STATE HAS IMPROPERLY ARGUED BEFORE THIS COURT THAT [DEFENDANT] ONLY RAISED THE ISSUE OF COMER'S APPLICABILITY AND THEREFORE ABANDONED HIS CLAIMS UNDER TORRES.

POINT II

[DEFENDANT] MUST REITERATE HIS INITIAL ARGUMENT UNDER POINT II OF HIS INITIAL LETTER BRIEF.

Under Rule 3:21-10(b)(5), "an order may be entered at any time . . . correcting a sentence not authorized by law including the Code of Criminal Justice." See State v. Acevedo, 205 N.J. 40, 47 n.4 (2011) ("[A] truly 'illegal' sentence can be corrected 'at any time.'" (quoting R. 3:21-10(b)(5); R. 3:22-12). "[A]n illegal sentence is one that 'exceeds the maximum penalty . . . for a particular offense' or a sentence 'not imposed in accordance with law.'" Id. at 45 (quoting State v. Murray, 162 N.J. 240, 247 (2000)). "That includes a sentence 'imposed without regard to some constitutional safeguard.'" Zuber, 227 N.J. at 437 (quoting State v. Tavares, 286 N.J. Super. 610, 618 (App. Div. 1996)). "Whether [a] defendant's sentence is unconstitutional is . . . an issue of law subject to de novo review." State v. Drake, 444 N.J. Super. 265, 271 (App. Div. 2016) (citing State v. Pomianek, 221 N.J. 66, 80 (2015)).

In Miller, a case involving fourteen-year-old defendants, the United States Supreme Court recognized that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." 567 U.S. at 465, 472. Thus, the Court continued, "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate." Id. at 473. That led the Court to prohibit sentencing schemes that "mandate[] life in prison without the possibility of parole for juvenile offenders," while leaving open the possibility that sentencing courts could impose such a sentence in homicide cases if the mitigating effect of the defendant's age is properly taken into account. Id. at 479-80.

In Zuber, a case involving seventeen-year-old defendants, our Court expanded the protections for juveniles outlined in Miller. 227 N.J. at 428-30. Our Court held Miller's requirement "that a sentencing judge 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison' applies with equal strength to a sentence that is the practical equivalent of life without parole." Id. at 446-47 (citation omitted). Further, our Court found "that the force and logic of Miller's concerns apply broadly: to cases in which a defendant commits multiple

offenses during a single criminal episode; to cases in which a defendant commits multiple offenses on different occasions; and to homicide and non-homicide cases." Id. at 448.

In State v Ryan, the defendant argued his sentence of life without parole under New Jersey's "Three Strikes Law," N.J.S.A. 2C:43-7.1(a), was illegal. 249 N.J. 581, 586 (2022). He based his argument, in part, on the sentencing judge not applying the Miller factors to his "first strike" conviction, which was for an offense he committed when he was sixteen. Id. at 590. In rejecting defendant's appeal, the Court emphasized that "[b]ecause defendant committed his third offense and received an enhanced sentence of life without parole as an adult, we hold that this appeal does not implicate Miller or Zuber." Id. at 586-87.

In plain terms, our Court reviewed its decision in Zuber and unequivocally held that it "did not . . . extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen." Id. at 596; see also Comer, 249 N.J. at 384 (quoting Miller for the proposition that "children are constitutionally different from adults for purposes of sentencing").

We note that in Comer, our Court held that juvenile offenders waived to the adult Criminal Part, convicted under the homicide statute, N.J.S.A. 2C:11-



3(b)(1), and sentenced to a term exceeding twenty years, may petition for review of the sentence after they have served twenty years in prison. 249 N.J. at 403. Significantly, our Court did not extend that right to sentence review to offenders who were eighteen years of age or older at the time of their crimes.

Here, defendant was twenty-four-years old at the time he killed a retired police chief, committed three separate carjackings, and assaulted several elderly victims. Defendant may have been a young adult, but he was an adult, nonetheless. See N.J.S.A. 2A:4A-22(a) (defining a juvenile as an individual under the age of eighteen). In light of the severity of the crimes committed past the age of majority, defendant cannot show the life imprisonment term with a fifty-year period of parole ineligibility is cruel and unusual punishment.

### III.

We likewise reject defendant's contention that the holding in Comer should be extended to individuals who commit crimes after becoming adults at the age eighteen and through age twenty-four and defendant should have a Comer resentencing hearing. We discern no basis for a remand for a hearing to consider expert testimony on the "age-crime" curve, developmental science, or neuroscience. The Comer Court did not extend lookback periods to adults, including twenty-four-years old adults, and neither do we. Defendant's sentence

was authorized by the New Jersey Code of Criminal Justice and did not exceed the maximum term of imprisonment and parole ineligibility that could be imposed on his conviction. It remains a legal sentence.

Finally, defendant is not entitled to the benefit of the mitigating factor regarding youthful offenders, N.J.S.A. 2C:44-1(b)(14). Mitigating factor fourteen became effective on October 19, 2020, L. 2020, c. 110, § 1, and in Lane, our Court made clear this sentencing provision is to be given prospective application only. 251 N.J. at 96-97 ("In short, nothing in N.J.S.A. 2C:44-1(b)(14)'s statutory text warrants a determination that the presumption of prospective application is overcome.").


Unlike in State v. Rivera, 249 N.J. 285, 302-04 (2021), where there was an independent basis to remand for resentencing, i.e., the mistaken treatment of the defendant's youth as an aggravating factor, here there is no independent basis to review defendant's sentence. Defendant exhausted his avenues of appeal several years before N.J.S.A. 2C:44-1(b)(14) was enacted, and we find no independent basis to remand for resentencing.

We have carefully considered defendant's arguments and the applicable law. We affirm substantially for the reasons expressed by Judge Wigler. To the extent we have not addressed them, any remaining arguments raised by

defendant, including the arguments advanced in his supplemental pro se reply letter brief, lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION