

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

BOBBY CHARLES PURCELL , *Petitioner*.

No. 1 CA-CR 13-0614 PRPC
FILED 5-21-2015

Petition for Review from the Superior Court in Maricopa County
No. CR 98-08705
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Bobby Charles Purcell, Phoenix
Petitioner

Greenberg Traurig, LLP, Phoenix
By Stacy F. Gottlieb
Counsel for Amicus Curiae Arizona Justice Project

STATE v. PURCELL
Decision of the Court

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Michael J. Brown joined.

O R O Z C O, Judge:

¶1 Bobby Charles Purcell petitions this court for review of the summary dismissal of his notice of post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury convicted Purcell of two counts of first degree murder, nine counts of attempted first degree murder and one count each of aggravated assault and misconduct involving weapons in 1999. Purcell committed the offenses in 1998 when he was sixteen years old. The trial court sentenced Purcell to an aggregate term of two consecutive terms of imprisonment for natural life. On direct appeal, we vacated and remanded Purcell's sentence for misconduct involving weapons, but otherwise affirmed Purcell's convictions and sentences. *State v. Purcell*, 199 Ariz. 319 (App. 2001). On remand, the trial court sentenced Purcell to three years' imprisonment for his misconduct involving weapons conviction and ordered that sentence to run concurrently with the second life sentence. Purcell now seeks review of the summary dismissal of his first petition for post-conviction relief. We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9.c.

¶3 Purcell contends the Supreme Court opinion in *Miller v. Alabama* constitutes a significant change in the law that required the trial court to vacate his sentences of natural life. *Miller v. Alabama*, 132 S.Ct. 2455, 2460 (2012). See Ariz. R. Crim. P. 32.1.g. (significant change in the law as a ground for post-conviction relief); 32.2.b. (rule of preclusion does not apply to claims for relief based on Rule 32.1.g.). In *Miller*, the Supreme Court held "that mandatory life [sentences] without parole for those under the age of [eighteen] at the time of their crimes violates the Eighth amendment's prohibition on 'cruel and unusual punishments.'" The court further held that a trial court may sentence a juvenile offender convicted of murder to life imprisonment without the possibility of parole so long as the court takes

STATE v. PURCELL
Decision of the Court

into account “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 2469.

¶4 We assume arguendo that *Miller* is retroactive. Even so, we deny relief. *Miller* prohibits mandatory life sentences without the possibility of parole for juvenile offenders. *Id.* at 2460. Purcell's sentences to natural life were not mandatory. The trial court knew it had the option to sentence Purcell to natural life or life with a possibility of parole after twenty-five years' imprisonment. Ariz. Rev. Stat. (A.R.S.) § 13-703.A. (1998). Further, in its determination of the appropriate sentences, the trial court found Purcell was a “child” at the time of the murders; that by virtue of his age, Purcell “had no reason to know how troubled he was or how to deal with his enormous psychological problems[,]” and “[v]irtually no sixteen year old could cope with such problems on his own.” Finally, the court found Purcell's age and lack of family support were “sufficiently substantial [mitigating factors] to call for leniency.” Therefore, the court took into account “how children are different” and Purcell's sentence to natural life complied with *Miller*. See *Miller*, 132 S.Ct. at 2469.

¶5 Although the petition for review presents additional issues, Purcell did not raise those issues in the petition for post-conviction relief he filed with the trial court. A petition for review may not present issues the petitioner did not first present to the trial court. *State v. Ramirez*, 126 Ariz. 464, 467, 616 P.2d 924, 927 (App. 1980); *State v. Wagstaff*, 161 Ariz. 66, 71 (App. 1988); *State v. Bortz*, 169 Ariz. 575, 577 (App. 1991); Ariz. R. Crim. P. 32.9.c.1.ii.

¶6 We also decline to address issues and arguments Purcell himself did not present but which are contained in the amicus briefs filed in this court and below. See *Town of Chino Valley v. City of Prescott*, 131 Ariz. 78, 84 (1981) (amici curiae may not “create, extend or enlarge issues”).

¶7 For the foregoing reasons, we grant review and deny relief.



Ruth A. Willingham · Clerk of the Court
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