

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

14-P-546

COMMONWEALTH

vs.

AHMAD BRIGHT.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, sixteen years of age at the time of the crime, was convicted by a jury in the Superior Court of murder in the second degree, assault by means of a dangerous weapon, and possession of an unlicensed firearm. He was sentenced by the trial judge to a term of life on the murder conviction and to concurrent sentences of four and three years respectively on the remaining convictions.

On direct appellate review, the Supreme Judicial Court reduced the conviction for assault by means of a dangerous weapon to simple assault and otherwise left the judgments undisturbed.¹ See Commonwealth v. Bright, 463 Mass. 421 (2012). The defendant then filed a motion for resentencing pursuant to

¹ The defendant did not contest his sentences on appeal.

Mass.R.Crim.P. 30(a), as appearing in 435 Mass. 1501 (2001).
The judge denied the motion, and this appeal ensued. We affirm.

Discussion. The defendant argues that his life sentence is both cruel and unusual and therefore violates the Eighth Amendment to the United States Constitution. He also asserts that his sentence is either cruel or unusual (if not both) and thus also violates art. 26 of the Declaration of Rights of the Massachusetts Constitution. While the defendant asserts, as an initial position, that his age renders a life sentence intrinsically unconstitutional, we perceive the gravamen of his complaint to be that the State and Federal Constitutions both require "individualized sentencing," Commonwealth v. Okoro 471 Mass. 51, 56 (2015), citing Miller v. Alabama 132 S. Ct. 2455, 2467 (2012), and that his peripheral involvement² in the murder at issue here invalidates the mandatory imposition of a life sentence with parole on this particular record.

This appeal thus seeks not only to invoke the prohibition applied to protect juveniles from a sentence of life without possibility of parole (i.e., life imprisonment), but to extend it so that underage defendants (i.e., youthful offenders) may also be ruled ineligible to receive a life sentence that does provide eligibility for parole -- in this case after fifteen

² The defendant was convicted on a theory of joint venture.

years. We are persuaded that neither the State nor the Federal Constitutions prescribe this approach.

The possibility of parole is a central element in the Supreme Court's analysis of the Eighth Amendment in Graham v. Florida, 560 U.S. 48 (2010), and Miller v. Alabama, supra at 2455. "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity]'. . . . [Therefore,] those findings -- of transient rashness, proclivity for risk, and inability to assess consequences -- both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" Miller, supra at 2464-2465, quoting from Roper v. Simmons, 543 U.S. 551, 570 (2005).

This line of reasoning is likewise central to the Supreme Judicial Court's analysis of the issue under art. 26. "This court has construed Miller and its consideration of individualized sentencing to be limited to the question whether a juvenile homicide offender can be subjected to a mandatory sentence of life in prison without parole eligibility." Commonwealth v. Okoro, supra at 57, citing Diatchenko v. District Attorney, 466 Mass. 655, 668 (2013). "In sum, we conclude that at present, a mandatory life sentence with parole eligibility after fifteen years for a juvenile homicide offender

convicted of murder in the second degree does not offend the Eighth Amendment or art. 26." Okoro, supra at 62.

The defendant emphasizes that he was sixteen years old at the time of the crime and that he had no previous criminal record. He characterizes his role in the shooting as "minimal," and points to the fact that he was convicted as a joint venturer, not the killer. He also stresses that the Commonwealth never alleged that he shot the victim or pulled the trigger of the .38 revolver that he brought to the scene, that, at most, he "froze" at the scene of the shooting.³

The argument that a life sentence with the possibility of parole is unconstitutional as applied to this record relies on a factual reading that views the evidence in a light most favorable to the defendant. Even were we to view the evidence in that light, our cases state unambiguously that the unconstitutional aspect of a sentence that does not allow the possibility of parole is its irrevocability.⁴ Moreover, the decisions in Miller and Okoro are based on the inability to ascribe incorrigibility to juveniles because of their age, not

³ In this latter assertion he overlooks several pieces of evidence: 1) the victim's companion testified that the defendant approached the car in which the victim was ambushed and assumed a "firing stance," pointing the revolver directly at the companion, and 2) the revolver was fully loaded when found, but strike marks on all five live cartridges indicated that unsuccessful attempts had been made to fire them.

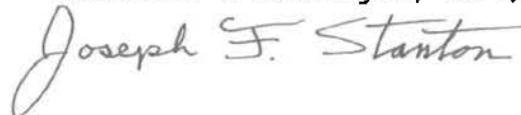
⁴ Here, the defendant becomes eligible for parole at the age of thirty-one.

because of claims mitigating the seriousness of specific criminal activity.

Finally, we note that the arguments advanced by the defendant seeking to expand previous interpretations of the State and Federal Constitutions are properly addressed to those courts whose precepts we are bound to follow. See Commonwealth v. Dube, 59 Mass. App. Ct. 476, 485 (2003).

Order denying motion for
resentencing affirmed.

By the Court (Green,
Katzmann & Grainger, JJ.,⁵),



Clerk

Entered: April 4, 2016.

⁵ The panelists are listed in order of seniority.