

IN THE SUPREME COURT OF FLORIDA

WILLIE MILLER,

Appellant,

v.

CASE NO. SC01-837

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

SUPPLEMENTAL ANSWER BRIEF

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Statement of the Case and Facts

The facts of this case are set out in the answer brief. Pertinent to the issue raised in Miller's supplemental brief, however, it should be noted that trial counsel filed the following motions prior to resentencing: 1) sections 782.04 and 921.141, Florida Statutes, are unconstitutional because mitigation is too restrictive (I 82); 2) the heinous, atrocious, or cruel (HAC) and cold, calculated, and premeditated (CCP) aggravators are vague and overbroad (I 92); 3) the felony murder aggravator is overbroad and constitutes an improper automatic aggravator (I 96); 4) the death penalty is unconstitutional because it is imposed arbitrarily (I 105); and 5) the HAC aggravator is unconstitutional. (I 111). The trial court found the second motion moot because the state was not going to rely on the HAC or CCP aggravators (I 95) and denied the others. (I 86, 104, 110, 125).

Summary of Argument

Miller's claim that Florida's capital sentencing is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), is procedurally barred and without merit.

Argument

Issue I

MILLER'S APPRENDI ARGUMENT IS PROCEDURALLY BARRED AND MERITLESS.

Miller argues that his death sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000), because: 1) the indictment did not specify the aggravators the state would rely on; 2) the aggravators were not withheld until the jury found him guilty of first-degree murder; 3) the jury was not instructed on all elements of the aggravators; 4) the jury was not instructed to find that he was death eligible; 5) the jury was not instructed to find that death was the appropriate penalty; 6) the jury did not make written findings; and 7) the jury was not instructed that its recommendation must be unanimous.¹ (Amended supplemental brief at 4). This claim is both procedurally barred and meritless.

This Court has long held that “for an argument to be cognizable on appeal, it must be the specific contention asserted as legal grounds for the objection, exception, or motion below.” Steinhorst v. State, 412 So.2d 332, 338 (Fla. 1982). Miller complains that his death sentence violates Apprendi in seven respects, but raised none of them in the trial court. Apprendi claims are procedurally barred on appeal if not properly raised

¹ In fact, however, the jury's recommendation was unanimous. (I 159).

at trial. E.g., Sheffield v. State, 794 So.2d 592 (Fla. 2001); Barnes v. State, 794 So.2d 590 (Fla. 2001). This claim, therefore, should be denied summarily.

Even if the claim were cognizable, however, this Court has held repeatedly that Apprendi does not apply to Florida's capital sentencing. E.g., Sireci v. Moore, 27 Fla.L.Weekly S185 (Fla. February 28, 2002); Bottoson v. State, 27 Fla.L.Weekly S119 (Fla. January 31, 2002); King v. State, 27 Fla.L.Weekly S65 (Fla. January 16, 2002); Looney v. State, 803 So.2d 656 (Fla. 2001); Hertz v. State, 803 So.2d 629 (Fla. 2001); Card v. State, 803 So.2d 613 (Fla. 2001); Brown v. Moore, 800 So.2d 223 (Fla. 2001); Mann v. Moore, 794 So.2d 595 (Fla. 2001); Mills v. Moore, 786 So.2d 532 (Fla. 2001). Miller acknowledges that this Court has held that Apprendi is inapplicable to capital sentencing. (Amended supplemental brief at 2). He makes no claim different from those in the just-listed cases and presents nothing that this Court has not considered previously.² Therefore, no relief is warranted on this issue.³

² This Court has considered and rejected the instant complaints when not based on Apprendi. E.g., Evans v. State, 800 So.2d 182 (Fla. 2001); Hunter v. State, 660 So.2d 244 (Fla. 1995); Vining v. State, 637 So.2d 921 (Fla. 1994).

³ Miller's counsel filed an identical supplemental brief in Taylor v. State, case no. 96,959. The state incorporates by reference its supplemental answer brief in Taylor, a copy of which is attached to this brief for the Court's convenience.

Conclusion

For the foregoing reasons the State of Florida asks this Court to deny the claim raised in Miller's amended supplemental brief and to affirm his death sentence.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Ms. Nada Carey, Office of the Public Defender, 301 South Monroe Street, Tallahassee, FL 32301, this 27th day of March 2002.

BARBARA J. YATES
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Certificate of Compliance

This brief was prepared using 12 point Courier New, a font that is not proportionality spaced.

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