

STATE OF MINNESOTA

IN SUPREME COURT

A19-0717

Hennepin County District Court

McKeig, J.

Concurring, Chutich, Anderson, Thissen, JJ.

State of Minnesota,

Respondent,

vs.

Filed: April 29, 2020
Office of Appellate Courts

Stafon Edward Thompson,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Rachel Moran, University of St. Thomas Legal Services Clinic, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not err in concluding that the language of the federal district court order reflected a limited remand.

2. The district court did not abuse its discretion in concluding that the issue of whether appellant's sentences should be served consecutively was beyond the scope of the remand order.

Affirmed.

OPINION

McKEIG, Justice.

Appellant Stafon Edward Thompson appeals from a state district court order that revised his sentence from two consecutive terms of life without the possibility of release to two consecutive terms of life with the possibility of release after 30 years. According to Thompson, when the federal district court partially granted his petition for a writ of habeas corpus and remanded for resentencing, the state district court should have held a hearing on the issue of whether his sentences should be served consecutively. Because the language of the federal district court's order indicated a limited remand, the state district court did not abuse its discretion when it strictly followed the terms of the remand order. We therefore affirm.

FACTS

In 2009, after a 3-week trial, a Hennepin County jury found Stafon Edward Thompson guilty of two counts of first-degree premeditated murder, Minn. Stat. § 609.185(a)(1) (2018), for the brutal killings of Katricia Daniels and her 10-year-old son, Robert Shepard. The 2009 sentencing statutes mandated that Thompson be sentenced to life without the possibility of release (LWOR). *See* Minn. Stat. § 609.106, subd. 2(1) (2008). The district court did not order a presentence investigation or hear any argument

on the issue of consecutive sentencing. The district court heard eight victim-impact statements and asked Thompson if he would like to address the court, but Thompson declined. In accordance with Minnesota Sentencing Guidelines 2.F.2.a(1)(ii), the district court ordered that Thompson serve two LWOR sentences consecutively. We affirmed Thompson’s convictions and sentences on direct appeal. *State v. Thompson*, 788 N.W.2d 485 (Minn. 2010).

Two years after we affirmed Thompson’s convictions and sentences, the United States Supreme Court held that mandatory LWOR sentences for juvenile homicide offenders violate the Eighth Amendment’s ban on cruel and unusual punishment. *Miller v. Alabama*, 567 U.S. 460, 465 (2012). After *Miller*, qualifying juvenile homicide offenders could challenge the duration of their confinement as unconstitutional by a writ of habeas corpus under 28 U.S.C. § 2254(a) (2018).¹

In 2013, Thompson filed a petition for a writ of habeas corpus with the United States District Court for the District of Minnesota, claiming that he was incarcerated in violation of the Constitution.² He asked the federal district court to “[r]everse the sentence imposed”

¹ Under 28 U.S.C. § 2254(a), “a person in custody pursuant to the judgment of a State court” can file a petition for writ of habeas corpus in federal court “on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” Although the writ was used at common law to secure immediate release from confinement, it is no longer so limited. Now, “the writ is [also] available . . . to attack future confinement and obtain future releases.” *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973); *see also Peyton v. Rowe*, 391 U.S. 54, 64–65 (1968).

² Thompson filed a federal habeas petition rather than a state postconviction petition because of our decision in *Chambers v. State*, 831 N.W.2d 311 (Minn. 2013). In *Chambers*, we held that *Miller* was not retroactive for offenders like Thompson, whose

and remand to the state district court for resentencing. The federal district court dismissed the petition and the United States Court of Appeals for the Eighth Circuit affirmed. *Thompson v. Roy*, No. 13-CV-1524 (PJS/JJK), 2014 WL 1234498, at *2 (D. Minn. Mar. 25, 2014), *aff'd*, 793 F.3d 843 (8th Cir. 2015), *cert. granted, judgment vacated*, ___ U.S. ___, 136 S. Ct. 1375 (2016). Thompson petitioned for certiorari to the United States Supreme Court.

While Thompson's petition was pending, the Supreme Court held that the rule announced in *Miller* applies retroactively. *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 732 (2016); *see also Jackson v. State*, 883 N.W.2d 272, 274 (Minn. 2016) (acknowledging that *Montgomery* "holds that the *Miller* rule applies retroactively"). The Court remanded Thompson's case to the Eighth Circuit for reconsideration in light of *Montgomery*, 136 S. Ct. at 1375, and the Eighth Circuit remanded to the federal district court, *Thompson v. Roy*, 641 F. App'x 681, 682 (8th Cir. 2016).

On remand, a federal magistrate judge recommended that Thompson's petition for a writ of habeas corpus be granted in part and denied in part. More specifically, the magistrate judge recommended that the sentence vacatur be "limited" to the "without possibility of release provision" of Thompson's sentences, as opposed to "a complete reversal of [his] sentences." *Thompson v. Roy*, No. 13-CV-1524 (PJS/HB), 2016 WL 7242566, at *2 (D. Minn. Nov. 23, 2016), *adopted by* 2016 WL 7231599 (D. Minn. Dec.

direct appeals were final at the time *Miller* was decided. *Id.* at 331. That holding was later overruled by *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016); *see Jackson v. State*, 883 N.W.2d 272, 278–79 (Minn. 2016) (explaining that *Montgomery* "overruled our retroactivity analysis from *Chambers*").

14, 2016). After conducting a de novo review of the record, the federal district court adopted the magistrate judge's report and recommendation "in its entirety," vacated the "without possibility of release" provision of Thompson's sentences, remanded to Hennepin County District Court for resentencing, and denied the petition "in all other respects." *Thompson*, 2016 WL 7231599, at *1.

A hearing before the Hennepin County District Court was scheduled. The district court deferred the hearing because of our pending decisions in *State v. Ali*, 895 N.W.2d 237 (Minn. 2017), *cert. denied*, ___ U.S. ___, 138 S. Ct. 640 (2018) and *Flowers v. State*, 907 N.W.2d 901 (Minn.), *cert. denied*, ___ U.S. ___, 139 S. Ct. 194 (2018). After we decided *Ali* and *Flowers*, the district court ordered the parties to file supplemental briefs addressing whether a hearing was required on the issue of whether the sentences should be served consecutively.

After discussing federal habeas corpus principles, federal and state case law on juvenile offender sentencing, and the federal district court order, the district court concluded that the federal district court had ordered a limited remand and therefore determined that a hearing on the issue of whether the sentences should be served consecutively was beyond the scope of the remand order. The district court cancelled all further hearings, mooted all pending motions, and, without a resentencing hearing, revised

Thompson’s sentence to two consecutive terms of life with the possibility of release after 30 years.³ This appeal followed.

ANALYSIS

This case presents two issues. First, whether the district court erred in concluding that the language of the federal district court order indicated a limited remand. Second, whether the district court abused its discretion in concluding that the issue of whether Thompson’s sentences should be served consecutively was beyond the scope of the remand order. We consider each issue in turn.

I.

We have previously said that trial courts generally have “broad discretion to determine how to proceed on remand.” *Dobbins v. State*, 845 N.W.2d 148, 156 (Minn. 2013) (citing *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005)). But we have also said that, “[o]n remand, it is the duty of the district court to execute the mandate of [the remanding court] strictly according to its terms.” *State v. Roman Nose*, 667 N.W.2d 386, 394 (Minn. 2003). These statements reflect the distinction between two types of remand: general and limited.

The distinction between general and limited remands is well recognized in the federal courts. For example, in *United States v. Campbell*, the United States Court of Appeals for the Sixth Circuit explained that:

³ The parties do not dispute that the district court acted within its authority in revising Thompson’s two LWOR sentences to two terms of life with the possibility of release after 30 years.

Remands . . . can be either general or limited in scope. Limited remands explicitly outline the issues to be addressed by the district court and create a narrow framework within which the district court must operate. General remands, in contrast, give district courts authority to address all matters as long as remaining consistent with the remand.

168 F.3d 263, 265 (6th Cir. 1999) (internal citation omitted); *see also United States v. Walker*, 918 F.3d 1134, 1144 (10th Cir. 2019) (discussing general and limited remands); *United States v. Malki*, 718 F.3d 178, 182–83 (2nd Cir. 2013) (same); *United States v. Young*, 66 F.3d 830, 835–37 (7th Cir. 1995) (same); *United States v. Klump*, 57 F.3d 801, 803 (9th Cir. 1995) (“This court’s remand was general, not limited.”). “A general remand permits the district court to redo the entire sentencing process, including considering new evidence and issues.” *United States v. McFalls*, 675 F.3d 599, 604 (6th Cir. 2012). “A limited remand, by comparison, does not allow a *de novo* resentencing and instead constrains the district court’s authority to the issue or issues adjudicated.” *Id.*

According to the federal courts, the issue of whether a remand order is general or limited is a legal question that is reviewed *de novo*. *See, e.g., United States v. Watson*, 189 F.3d 496, 500 (7th Cir. 1999) (“The scope of the remand is a question of law that we review *de novo*.”). When determining whether a remand is general or limited, federal courts consider the remand language in the context of an entire opinion or order. *See Campbell*, 168 F.3d at 266–67; *United States v. Parker*, 101 F.3d 527, 528 (7th Cir. 1996) (“[T]he scope of the remand is determined not by formula, but by inference from the opinion as a whole.”). For example, in *United States v. Patterson*, the United States Court of Appeals for the Eighth Circuit concluded that a remand was limited because the opinion as a whole focused solely on one aspect of sentencing. 147 F.3d 736, 737 (8th Cir. 1998).

Although we have not previously used the terms “general” and “limited” when discussing remand orders, our statements in *Dobbins* and *Roman Nose* implicitly reflect the well-reasoned distinction between general and limited remands drawn by the federal appellate courts. We are also persuaded that the issue of whether a remand order is general or limited is a legal question that should be reviewed de novo.

Having clarified the relevant legal standards, we turn to the language of the federal district court’s remand order to determine whether it involved a general or limited remand. The federal district court order adopted the magistrate judge’s report and recommendation “in its entirety.” The report recommended that the sentence vacatur be “limited” to the “without possibility of release provision” of Thompson’s sentences, as opposed to “a complete reversal of [his] sentences.” It would be unreasonable to read this language as suggesting that the federal district court vacated Thompson’s sentences in their entirety or remanded for de novo resentencing. Consequently, the district court did not err in concluding that the language of the federal district court order indicated a limited remand.

II.

We next consider whether the district court abused its discretion when it concluded that the issue of whether Thompson’s sentences should be served consecutively was beyond the scope of the remand order. For the reasons that follow, we conclude that there was no abuse of discretion.

When a remand is limited, it is the duty of the district court to execute the mandate of the remanding court strictly according to its terms. *Roman Nose*, 667 N.W.2d at 394; see *McFalls*, 675 F.3d at 604 (stating that a limited remand “does not allow a *de*

novo resentencing and instead constrains the district court’s authority to the issue or issues adjudicated”). Here, the remand order was limited to the singular issue of the possibility of release.⁴ Consequently, the district court’s limited revision of the sentences from LWOR to life with the possibility of release after 30 years—without reconsidering the issue of whether the sentences should be consecutive—was not an abuse of discretion.⁵

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

⁴ The issue of whether Thompson’s sentences should be consecutive is not inherently bound to the possibility-of-release issue. Although two consecutive life sentences with the possibility of release may, in some cases, amount to de facto life without the possibility of release, “[t]he United States Supreme Court has not held that the *Miller/Montgomery* rule applies to sentences other than life imprisonment without the possibility of parole.” *Flowers*, 907 N.W.2d at 906.

⁵ The substantive issue of whether Thompson’s consecutive sentences are commensurate with his culpability and criminality under the standard articulated in *State v. Warren*, 592 N.W.2d 440, 451–52 (Minn. 1999), is not properly before us. Nothing in our decision today forecloses Thompson from seeking otherwise available relief under the Minnesota postconviction statute, Minn. Stat. § 590.01 (2018).

CONCURRENCE

CHUTICH, Justice (concurring).

I agree that the language of the federal district court order reflected a limited remand and, therefore, the issue of whether Thompson’s sentences should be served consecutively was beyond the scope of the remand. But as the court acknowledges, nothing in our decision today forecloses Thompson from seeking otherwise available relief under the Minnesota postconviction statute. I write separately to affirm two key legal principles that pertain to the validity of Thompson’s sentences: (1) truth and fairness are best discovered by powerful statements on both sides of a question and (2) children are constitutionally different from adults in their level of culpability.

I.

Our adversarial system “is premised on the well-tested principle that truth—as well as fairness—is best discovered by powerful statements on both sides of the question.” *Penon v. Ohio*, 488 U.S. 75, 84 (1988) (citations omitted) (internal quotation marks omitted). We jealously guard the protections created by the adversarial process in sentencing because a criminal “defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process.” *Gardner v. Florida*, 430 U.S. 349, 358 (1977).

Here, as the majority recognizes, the district court did not order a presentence investigation or hear any argument on the issue of consecutive sentencing before imposing two consecutive sentences of life without the possibility of release upon Thompson, who

was 17 years old when he committed the crimes. Useful arguments on both sides of the consecutive-sentencing question were not presented in Thompson’s first sentencing hearing because, as a practical matter, a defendant can only serve one sentence of life without the possibility of release before he or she dies. Under the law applicable at that time, whether the two sentences were imposed consecutively or concurrently did not matter one whit.

But now that the United States Supreme Court has announced a new substantive rule that applies retroactively to Thompson, *see Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 734 (2016), the consecutive nature of Thompson’s life sentences may well be affected by the currently developing jurisprudence. Without presaging any particular result, under the unique circumstances of this case, I believe that providing the parties an opportunity to present “powerful statements” regarding the factors set forth in *State v. Warren*, 592 N.W.2d 440, 451–52 (Minn. 1999), is necessary to preserve the adversarial process that is the bedrock of our criminal justice system and to provide procedural fairness to Thompson.

II.

Another vital legal principle is relevant to Thompson’s sentencing. As I explained in *State v. Ali*, 895 N.W.2d 237, 248–54 (Minn. 2017) (Chutich, J., dissenting), the principle that children are constitutionally different from adults in their level of culpability is firmly established by a line of decisions of the United States Supreme Court. Beginning with *Roper v. Simmons*, 543 U.S. 551 (2005), these decisions culminated in a substantive rule that prohibits a court from sentencing a juvenile to life without the possibility of release

unless the court determines that he or she belongs to “the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 734 (2016).

I acknowledge that the United States Supreme Court has not yet expressly extended this substantive rule to juveniles who receive a series of consecutive sentences that are the functional equivalent of life without the possibility of release. But in my view, such silence does not justify inaction when the underlying principles and logic of the *Roper-Montgomery* line of cases apply with equal strength to a sentence that is the practical equivalent of life without parole. Accordingly, I believe that the Eighth Amendment of the United States Constitution prohibits a court from sentencing a juvenile to consecutive sentences of life with the possibility of release after 30 years unless the court determines that he or she belongs to the rarest of juvenile offenders—those whose crimes reflect permanent incorrigibility.

Other courts recognize this principle. For example, in *State v. Zuber*, the New Jersey Supreme Court held that the force and logic of the concerns discussed in the *Roper-Montgomery* line of cases “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.” 152 A.3d 197, 212 (N.J. 2017). As part of its analysis, the New Jersey Supreme Court explained that the “proper focus belongs on the amount of real time a juvenile will spend in jail and not on the formal label attached to his sentence.” *Id.* at 201. Accordingly, it extended the *Roper-Montgomery* line of cases to a juvenile homicide defendant who

received an aggregate sentence of 75 years in prison and would not be eligible for parole until he was 85 years old. *Id.* at 204, 214.

In sum, I agree that the issue of whether Thompson's sentences should be served consecutively was beyond the scope of the remand in this case. But because Thompson may seek otherwise available relief under the Minnesota postconviction statute, I write separately to reaffirm two critical legal principles that apply to Thompson's sentences.

Accordingly, I respectfully concur.

ANDERSON, Justice (concurring).

I join in Part I of the concurrence of Justice Chutich.

THISSEN, Justice (concurring).

I join in the concurrence of Justice Chutich.