

SUPREME COURT OF LOUISIANA

No. 16-KH-0039

STATE EX REL. HERBERT PICHON

v.

STATE OF LOUISIANA

**ON SUPERVISORY WRITS TO THE TWENTY-SECOND
JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY**

PER CURIAM:

Denied. We attach hereto and make a part hereof the district court's written reasons for judgment.

STATE OF LOUISIANA

NO. 24219 & 24221 "B"

VERSUS

22ND JUDICIAL DISTRICT COURT

PARISH OF ST. TAMMANY

HERBERT PICHON

STATE OF LOUISIANA

FILED: Dec 18, 2015

Maureen Seal
DEPUTY CLERK

ORDER DENYING MOTION TO CORRECT ILLEGAL, INVALID SENTENCE UNDER LA. C.CR.P. ARTS. 882 AND 872 WITH INCORPORATED REASONS

On December 1, 2015, Herbert Pichon filed a motion to correct illegal sentences under La. C.Cr.P. articles 882 and 872. He claims his two consecutive life sentences, imposed without benefit of parole, probation or suspension of sentence, violate the law expressed in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) and *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). After considering the motion and argument presented by movant, an opposition filed by the state, and the applicable law, the Court finds the motion must be denied for the following reasons.

A review of the records shows the petitioner was indicted by the same grand jury on February 7, 1969 in two separate cases with having committed aggravated rape, one occurring on January 26, 1969 (#24221) and the other occurring on January 31, 1969 (#24219), with two different victims. On February 26, 1970, the petitioner pleaded guilty without capital punishment to the two separate charges of aggravated rape. Within the same proceeding, Pichon was sentenced to life imprisonment at hard labor for each separate charge and the sentences were ordered to run consecutively.

An illegal sentence may be corrected at any time by the court that imposed the sentence. La. C.Cr.P. art. 882(A). In his motion, Pichon asserts that the basis for the U.S. Supreme Court's rulings in *Roper* and *Graham* is that children are constitutionally different from adults for purposes of sentencing. Relying on the rulings in those cases, Pichon argues a juvenile's diminished culpability and greater prospect for reform makes them less deserving of the most severe punishments. Pichon requests that the court provide him with parole eligibility and grant any further relief as the court deems necessary.

In *Roper*, the U.S. Supreme Court found the imposition of capital punishment on a person convicted of a capital offense while the person was a juvenile violated the Eighth Amendment's

prohibition against cruel and unusual punishment. *Roper*, 543 U.S. at 575; 125 S.Ct. at 1198. In *Graham*, the U.S. Supreme Court held that courts could not sentence a juvenile to life imprisonment without parole for a non-homicide offense. *Graham*, 130 S.Ct. at 2030. In *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 2464, 183 L.Ed.2d 407 (2012), the U.S. Supreme Court found sentences of mandatory life imprisonment without parole for juvenile homicide offenders violate the Eighth Amendment. These cases all define a juvenile as a person under the age of 18 years old.

Pichon asserts his 18th birthday was December 28, 1968. The bills of indictment charge that the crimes at issue were committed on January 26 and January 31 of 1969. Thus, Pichon was 18 years and almost one month old when the crimes were committed. Pichon asserts that there is no reason to distinguish between his mental maturity at 18 years and one month and the arguments found to have merit in *Roper* and *Graham* regarding the mental maturity of a defendant under 18 years old.

The Louisiana Supreme Court has recently denied a similar argument in *State v. Tucker*, 2013-1631, p. 51-52 (La. 9/1/15); __So.3d__ (2015 WL 5104402). The Supreme Court reasoned, as follows:

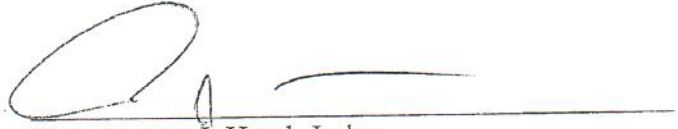
In *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the U.S. Supreme Court held that "the death penalty cannot be imposed upon juvenile offenders," 543 U.S. at 575, 125 S.Ct. at 1198, and the court further drew the line between juvenile and adult offenders at age 18, 543 U.S. at 574, 125 S.Ct. at 1197. Defendant here was over 18 years of age when he murdered Tavia Sills. Nonetheless, he claims that because of his immaturity there is little practical difference between himself and an offender who commits murder before reaching the age of 18 years. However, the Supreme Court drew the line at age 18 well aware of the "objections always raised against categorical rules," *id.*, 543 U.S. at 574, 125 S.Ct. at 1197, driven by two rationales: there was "objective indicia of consensus" against sentencing juvenile offenders to death in that, for example, most States had already rejected that possibility; and the death penalty "is a disproportionate punishment" because juvenile offenders as a class are less culpable than adult offenders. *Id.*, 543 U.S. at 563-69, 125 S.Ct. 1191-95.

The U.S. Supreme Court has drawn the line at 18 years in declaring the prohibition against life imprisonment without benefit of parole for juvenile offenders in *Graham*. The Louisiana Supreme Court has followed that rule and the similar rule against imposition of capital punishment for offenders under 18 years of age. This Court finds no reason to deviate from that bright-line rule. Pichon was over 18 years old when he committed the crimes at issue. The fact that he was only a month older than 18 years does not change the analysis where there exists a bright-line rule.

Accordingly,

IT IS ORDERED that the motion to correct an illegal or invalid sentence under La. C.Cr.P. art. 882 is DENIED.

Covington, Louisiana, this 16th day of December, 2015.



Hon. August J. Hand, Judge
22nd Judicial District Court, Division B