NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMMY LASHAWN MCGILL, Petitioner - Appellant, v. DAVID SHINN, Director, Arizona Department of Corrections; ATTORNEY GENERAL OF THE STATE OF ARIZONA, Respondents - Appellees.	No. 25-3593 D.C. No. 2:21-cv-01728-DJH MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Submitted October 29, 2026**
Phoenix, Arizona

Before: GRABER, HURWITZ, and BADE, Circuit Judges.

Petitioner Jimmy LaShawn McGill timely appeals the district court's denial of habeas relief. Reviewing de novo, Brown v. Broomfield, 186 F.4th 1143, 1154

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(9th Cir. 2026), we affirm.

A state-court jury concluded that, at the age of 16, Petitioner committed first-degree murder, sexual assault, and second-degree burglary. At the time, the first-degree murder conviction required a sentence of life without the possibility of parole or other release for 25 years. At the sentencing hearing, the prosecutor advocated for maximum sentences on the other two convictions and for all three sentences to run consecutively. Petitioner's lawyer sought shorter, concurrent sentences. The parties disputed, in particular, Petitioner's potential for rehabilitation. The court imposed maximum sentences of life imprisonment without the possibility of parole for 25 years, 14 years' imprisonment, and 10 years' imprisonment, with all three sentences to run consecutively.

Petitioner's sentence does not violate the Eighth Amendment. In Miller v. Alabama, 567 U.S. 460 (2012), the Supreme Court held that, for juvenile offenders, a sentence of life imprisonment without the possibility of parole, when imposed under a mandatory sentencing regime that precludes consideration of age and its attendant circumstances, violates the Eighth Amendment. Id. at 465; see also Montgomery v. Louisiana, 577 U.S. 190, 206 (2016) (holding that Miller applies retroactively); Graham v. Florida, 560 U.S. 48, 74 (2010) (holding that the Eighth Amendment prohibits a sentence of life without parole for a juvenile offender who did not commit homicide). Here, however, the sentencing court

imposed a sentence that permitted Petitioner's eligibility for release at the age of 65, and the court considered Petitioner's age and age-related factors when rejecting a more lenient total sentence.

Because Petitioner's sentence is not "the 'functional equivalent' of life without parole," the sentence does not violate the Eighth Amendment. Demirdjian v. Gipson, 832 F.3d 1060, 1076–77 (9th Cir. 2016); see also Jessup v. Shinn, 31 F.4th 1262, 1267–68 (9th Cir. 2022) (holding that the state court did not unreasonably apply Miller in upholding a life sentence imposed after consideration of age and its attendant circumstances). In Lockyer v. Andrade, 538 U.S. 63 (2003), the Supreme Court "reasoned a sentence of two consecutive terms of 25 years to life was 'materially []distinguishable' from a life-without-parole term because the petitioner actually 'retain[ed] the possibility of parole,' albeit when he was 87 years old." Demirdjian, 832 F.3d at 1077 (alterations in original) (quoting Lockyer, 538 U.S. at 74, and citing id. at 79 (Souter, J., dissenting)). Because Petitioner's sentence permitted eligibility for release at the age of 65, his sentence does not violate the Eighth Amendment. See id. (holding that a sentence with the possibility of parole at the age of 66 "does not necessarily trigger Miller's requirements").

Petitioner argues that, because he was not paroled on the murder charge until he had served more than 25 years of that sentence and still must serve consecutive

sentences on the other two convictions, he will not be eligible for release until he is at least 73 years old. But that circumstance does not affect the legality of his sentences under the Eighth Amendment. Had Petitioner received parole after serving 25 years on the murder conviction, he would have fully served all sentences by age 65. The Supreme Court's concern in Miller and other cases was a sentence that prohibited parole for the entirety of a juvenile offender's life. See 567 U.S. at 472–73 (reasoning that a sentence of life without parole is a judgment that "a 'juvenile offender forever will be a danger to society'" and is an "'irrevocable judgment'" that the offender has no possibility of rehabilitation (emphases added) (quoting Graham, 460 U.S. at 72, 74)). The Eighth Amendment thus requires, for all but the worst juvenile offenders, the possibility of release, not a guarantee of release. See Montgomery, 577 U.S. at 209. The appropriate consideration is thus whether, at the time of sentencing, Petitioner was subject to a sentence of effective lifetime imprisonment. Demirdjian, 832 F.3d at 1076–77. He was not. Moreover, even if we consider that Petitioner may not be released until age 73, his sentence remains, for the reasons described above, materially distinct from a true sentence of lifetime imprisonment. Lockyer, 538 U.S. at 74; Demirdjian, 832 F.3d at 1077. Petitioner's sentence is distinct from a sentence that, as a practical matter, clearly prohibits any possibility of release, such as the sentence of more than 254 years of imprisonment that we considered in Moore v.

Biter, 725 F.3d 1184, 1186 (9th Cir. 2013).

Because we hold that Petitioner's sentence does not violate the Eighth Amendment for the reasons described above, we do not reach the State's alternative arguments.

AFFIRMED.