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STATE OF CONNECTICUT *v.* DANIEL SANTIAGO (AC 44780)

Suarez, Clark and Seeley, Js.

Syllabus

The defendant, who had been previously convicted, following a jury trial, of manslaughter in the first degree with a firearm and assault in the first degree, appealed to this court from the judgment of the trial court dismissing his motion to correct an illegal sentence. In his motion to correct, the defendant claimed that the trial court, at the time of sentencing, had not considered his youth as a mitigating factor, despite the fact that the underlying offenses occurred when he was eighteen years old and that his total effective sentence of sixty years was an effective life sentence under Connecticut law, thus violating the principles announced in *Miller* v. *Alabama* (567 U.S. 460) and *Graham* v. *Florida* (560 U.S. 48) pertaining to the sentencing of juvenile offenders. The trial court granted the state's motion to dismiss the motion to correct, on the ground that the defendant failed to raise a colorable claim pursuant to the relevant rule of practice (§ 43-22) because he was not entitled under the federal or state constitution to have the sentencing court consider his youth as a mitigating factor at the time of sentencing. After the defendant brought this appeal, he filed a motion for sentence modification pursuant to statute (§ 53a-39). The trial court granted the motion after finding good cause to reduce the defendant's sixty year sentence. The trial court's sentence modification made the defendant eligible for parole at fifty years of age, reduced the sentence for the manslaughter conviction from forty years to thirty-seven years, reduced the sentence for the assault conviction from twenty years to fifteen years, and ordered the sentences for each conviction to run concurrently, thereby reducing the original sixty year sentence to thirty-seven years. *Held* that the defendant's appeal was dismissed as moot, as any consideration of the claims raised on appeal, in which the defendant challenged the dismissal of the motion to correct, would not result in practical relief to the defendant in light of the fact that the defendant was no longer burdened by the sentence he sought to correct; moreover, although the ruling dismissing the motion to correct had not been altered during the pendency of this appeal, it could not be disputed that the significance of that ruling nonetheless had been undermined by the fact that the subject of the motion to correct, the defendant's original sixty year sentence, had been superseded by the sentence modification.

Argued January 9—officially released April 25, 2023

Procedural History

Substitute information charging the defendant with the crimes of murder, manslaughter in the first degree with a firearm and assault in the first degree, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Dewey*, *J.*; verdict and judgment of guilty of manslaughter in the first degree with a firearm and assault in the first degree; thereafter, the defendant filed a motion to correct an illegal sentence; subsequently, the court, *Graham*, *J.*, granted the state's motion to dismiss the defendant's motion to correct an illegal sentence, and the defendant appealed to this court; thereafter, the trial court, *Gold*, *J.*, granted the defendant's motion for sentence modification. *Appeal dismissed.*

James B. Streeto, senior assistant public defender,

for the appellant (defendant).

Michele C. Lukban, senior assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *Debra A. Ware*, former senior assistant state's attorney, for the appellee (state).

Opinion

SUAREZ, J. The defendant, Daniel Santiago, appeals from the judgment of the trial court, *Graham*, *J.*, dismissing his motion to correct an illegal sentence. In the motion to correct, the defendant argued that he was serving the functional equivalent of a life sentence, despite being eligible for parole, and that, when his sentence was imposed, the sentencing court violated his rights by not taking into account his youth as a mitigating factor. The defendant claims that, in dismissing his motion, the court improperly (1) denied him the right to "an evidentiary hearing concerning the current state of science on the maturity, impulse control, and over receptiveness to peer pressure of [eighteen year olds], and the effect of science on Connecticut law" and (2) concluded that he did not present a colorable claim that he was entitled to relief under the Connecticut and United States constitutions. We dismiss the appeal as moot.

The following procedural history is relevant to our resolution of this appeal. Following a jury trial, the defendant was convicted of manslaughter in the first degree with a firearm in violation of General Statutes § 53a-55a (a), and assault in the first degree in violation of General Statutes § 53a-59 (a) (1). On April 25, 2000, the court, *Dewey*, *J.*, sentenced the defendant to a total effective sentence of sixty-five years of incarceration.[1] On July 25, 2000, the court granted the defendant's motion to correct the sentence, thereby reducing his total effective sentence by five years.[2]

The defendant appealed from the judgment of conviction to this court. This court agreed with the defendant that prosecutorial impropriety during cross-examination and closing argument had deprived him of a fair trial, reversed the judgment of conviction, and remanded the case for a new trial. *State* v. *Santiago*, 73 Conn. App. 205, 230–231, 246, 807 A.2d 1048 (2002). Our Supreme Court granted the state's petition for certification to appeal. *State* v. *Santiago*, 262 Conn. 939, 815 A.2d 673 (2003). Thereafter, our Supreme Court reversed this court's judgment and remanded the case to this court with direction to consider a remaining claim that it had not considered on its merits. *State* v. *Santiago*, 269 Conn. 726, 763, 850 A.2d 199 (2004). In compliance with the remand order, this court considered the merits of the remaining claim and affirmed the judgment of conviction. *State* v. *Santiago*, 87 Conn. App. 754, 867 A.2d 138, cert. denied, 273 Conn. 938, 875 A.2d 45 (2005).[3]

On November 1, 2019, pursuant to Practice Book § 43-22,[4] the defendant filed a motion to correct an illegal sentence. The trial court's resolution of that motion is the subject of the present appeal. The defendant asserted that, at the time of sentencing, Judge Dewey

had not considered "[his] youth or its attendant features as a mitigating factor" despite the fact that the underlying offenses occurred when he was eighteen years of age. The defendant argued that his total effective sentence of sixty years was, as a matter of law, "a life sentence under Connecticut law." The defendant argued that the court's sentence ran afoul of the principles announced in *Miller* v. *Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and *Graham* v. *Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), that pertain to the sentencing of juvenile offenders.[5] The defendant also argued that the sixty year sentence violated his "rights under the greater protections afforded by article first, §§ 8 and 9, of the Connecticut constitution because it is a cruel and unusual punishment and violates [his] right to substantive and procedural due process" and that "[his] sentence is also illegal and imposed in an illegal manner under the greater protections afforded by article first, § 20, of the Connecticut constitution."

In the defendant's accompanying memorandum of law, he argued that, first, the court must consider whether, under the federal and state constitutions, the principles requiring sentencing courts to consider a juvenile offender's youth in mitigation against severe punishment should also be applied to individuals, like him, "who were eighteen [years old] at the time of the offense and still in the stage of development that would scientifically constitute 'adolescence.' " Essentially, he argued that the "brain science" that underlies the holdings in *Miller* and its progeny, as well as the enactment of General Statutes § 54-125a (f),[6] supports a determination that he "share[s] the lessened culpability that other adolescents have." Second, the defendant argued, the court must consider "whether [his] sixty year sentence of incarceration for a crime he committed when he was eighteen years old is subject to this broader application of these principles."

On May 6, 2020, the state filed a motion to dismiss the motion to correct and an accompanying memorandum of law. The state argued that the court lacked subject matter jurisdiction because (1) the defendant was eligible for parole and (2) there was no support under the federal or state constitutions for the defendant's belief that a court, sentencing a defendant who committed an offense at eighteen years of age, was bound to consider the defendant's youth as a mitigating factor. The defendant filed an objection to the state's motion to dismiss. The defendant argued therein that (1) his parole eligibility did not undermine his arguments and (2) the due process provision of the state constitution compels a conclusion that the principles of *Miller* should be extended to persons who were eighteen at the time of the offense of which they stood convicted. Thereafter, the state filed a supplemental memorandum of law in support of its motion to dismiss.

The defendant filed a supplemental memorandum in support of his objection to the motion to dismiss.

On April 15, 2021, following a hearing, the court, *Graham*, *J.*, granted the state's motion to dismiss the defendant's motion to correct an illegal sentence. In its memorandum of decision, the court concluded that the defendant failed to raise a colorable claim under Practice Book § 43-22 because, in consideration of the undisputed relevant facts in the record, he was not entitled, under either the federal or state constitutions, to have the sentencing court consider his youth as a mitigating factor at the time of sentencing. The court stated: "Because the defendant was eighteen years of age at the time of the offense, and because he will be eligible for parole, he was not entitled to consideration of youth related mitigating factors in imposing his sentence. Nor does the imposition of a sixty year sentence with the possibility of parole upon a defendant that was eighteen years old at the time of his offense violate article first, §§ 8 and 9, of the Connecticut constitution. The defendant has failed to raise a colorable claim within the scope of Practice Book § 43-22." Thereafter, the defendant filed the present appeal, in which he claims error in what he characterizes as the court "denying" him an evidentiary hearing in connection with the motion to dismiss, as well as the court's conclusion that he did not state a colorable claim for relief under the federal and state constitutions.

On January 3, 2022, after the defendant brought this appeal, he filed a motion for sentence modification pursuant to General Statutes § 53a-39.[7] In the memorandum of law in support of that motion, the defendant argued that his sixty year total effective sentence should be modified primarily because his efforts "to redeem himself . . . and to rehabilitate in prison have earned him a chance at a new sentence—one that can enable him to deepen his personal growth, and to do everything possible to right the wrongs of his adolescence." The defendant also argued that modification was warranted in light of the "sea change in legal and scientific thought" pertaining to juvenile offenders that had taken place since the time of his sentencing in 2000. In particular, the defendant relied on *Miller* v. *Alabama*, supra, 567 U.S. 467, and *State* v. *Riley*, 315 Conn. 637, 110 A.3d 1205 (2015) (interpreting and applying *Miller*), cert. denied, 577 U.S. 1202, 136 S. Ct. 1361, 194 L. Ed. 2d 376 (2016). On March 22, 2022, the court, *Gold*, *J.*, held a hearing on the motion.

On July 19, 2022, the court granted the motion after finding good cause to reduce the sixty year sentence. The court stated: "Having considered and balanced what it believes to be the factors relevant to determining whether the defendant's sentence should be reduced, the court has concluded that the defendant is deserving of some measure of relief. This is not to say that the

[eighteen year old defendant], who in 1997 shot and killed one person and seriously injured another, and the [twenty-one year old defendant] who stood before Judge Dewey in April, 2000, did not deserve the severe sentence that was imposed. Yet, at the same time, the [forty-three year old defendant] who comes before this court is not that same individual, and, significantly, his personal transformation over the years is of a nature and breadth that would not have been foreseeable when his original sentence was imposed." Accordingly, the court crafted a new sentence so as to make the defendant eligible for parole not when he reaches seventy years of age, but fifty years of age. The court modified the sentence for the manslaughter conviction from forty years to thirty-seven years. The court modified the sentence for the assault conviction from twenty years to fifteen years. Contrary to the terms of the original sentence, the court ordered that the sentences for each conviction were to run concurrently, thereby reducing the original sixty year sentence to thirty-seven years.

The state argues that this appeal is moot because, after the defendant's sixty year sentence was modified by Judge Gold, there is no longer any practical relief that this court may afford the defendant.[8] The state argues that the March 22, 2022 hearing before Judge Gold on the defendant's application for sentence reduction has rendered the present appeal moot because, by virtue of that hearing, the defendant achieved the remedy that he sought in connection with the underlying motion to correct, namely, a resentencing. Alternatively, the state argues that the appeal is moot because, assuming that the rationale of *Miller*, *Graham*, and their progeny applied to an eighteen year old offender, the fact that the defendant's modified sentence of thirty-seven years makes him eligible for parole at age fifty should compel the conclusion that he is not burdened by the functional equivalent of life without the possibility of parole. Thus, the state argues, the modified sentence falls outside of the ambit of precedent on which the defendant relies.

In his reply brief, the defendant "acknowledges that the case law from this court and the Supreme Court would hold that [his] 'modified' sentence is no longer a life sentence within the meaning of *Miller* [and] *Graham*. Case law from this court and the Supreme Court also holds that the modification represents a change in the case which deprives this court and the trial court of jurisdiction over the defendant's motion for modification."[9] Nonetheless, the defendant, suggesting that this court should consider the appeal even if it is moot, "requests the opportunity to move forward in this case" in an attempt to advocate, contrary to well established precedent, that (1) the modified sentence constitutes a life sentence, and (2) the sentencing court's failure to consider his youth as a mitigating factor constitutes a constitutional violation, "even if [he] receives a sen-

tence of less than life in prison." The defendant argues that Judge Gold, in modifying his sentence, did not base his decision on the fact that his youth entitled him to a shorter sentence. The defendant also argues that this court can grant him relief in connection with this appeal because it may "order the trial court [to] hold an evidentiary hearing on [his] motion to correct an illegal sentence" and may "order a new sentencing hearing."

"[M]ootness implicates [this] court's subject matter jurisdiction and is thus a threshold matter for us to resolve" before we may reach the merits of an appeal. (Internal quotation marks omitted.) *In re Emma F.*, 315 Conn. 414, 423, 107 A.3d 947 (2015). "Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition or affairs between the parties. . . . A case is moot when due to intervening circumstances a controversy between the parties no longer exists." (Internal quotation marks omitted.) *Barber* v. *Barber*, 193 Conn. App. 190, 221, 219 A.3d 378 (2019). "It is well established that an appeal is considered moot if there is no possible relief that the appeals court can grant to the appealing party, even if the court were to be persuaded that the appellant's arguments are correct." *Wallingford Center Associates* v. *Board of Tax Review*, 68 Conn. App. 803, 807, 793 A.2d 260 (2002). "[T]he existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . Because mootness implicates subject matter jurisdiction, it presents a question of law over which our review is plenary." (Citation omitted; internal quotation marks omitted.) *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 502, 506–507, 970 A.2d 578 (2009).

Generally speaking, if, during the pendency of an appeal, the ruling at issue has been superseded, the appeal becomes moot. This court has applied this principle in various contexts. See, e.g., *In re Probate Appeal of Tunick*, 215 Conn. App. 551, 553, 284 A.3d 26 (2022) (dismissing appeal as moot because "probate decree at issue in this appeal was superseded by a subsequent probate decree, which is the subject of a separate probate appeal pending in the Superior Court"); *Dempsey* v. *Cappuccino*, 200 Conn. App. 653, 659, 240 A.3d 1072 (2020) (subsequent visitation orders superseded orders challenged on appeal, rendering appeal moot); *Thunelius* v. *Posacki*, 193 Conn. App. 666, 686, 220 A.3d 194

(2019) (dismissing portion of appeal as moot because it pertained to order that was superseded by subsequent orders addressing appointment of guardian ad litem for child); *Brown* v. *Brown*, 132 Conn. App. 30, 34–35, 31 A.3d 55 (2011) (dismissing appeal as moot because "we are asked to reverse the trial court even though the order in question has been superseded"); *Kennedy* v. *Kennedy*, 109 Conn. App. 591, 599–600, 952 A.2d 115 (2008) (dismissing portion of appeal as moot because challenged order "has been superseded and is no longer in effect" and thus "[the Appellate Court] is not able to afford the [appellant] any practical relief"); *Schult* v. *Schult*, 40 Conn. App. 675, 692, 672 A.2d 959 (1996) (claim regarding temporary custody order was moot when order merged with final dissolution decree), aff'd, 241 Conn. 767, 699 A.2d 134 (1997).

This rationale applies in the present case despite the fact that Judge Graham's ruling dismissing the motion to correct has not been altered during the pendency of the present appeal. It cannot be disputed that the significance of that ruling nonetheless has been undermined by the fact that the subject of the motion to correct, the defendant's original sixty year sentence, has been superseded by Judge Gold's sentence modification on July 19, 2022. We are persuaded that any consideration of the claims raised on appeal, in which the defendant challenges the dismissal of the motion to correct, would not result in practical relief to the defendant in light of the fact that the defendant is no longer burdened by the sentence he sought to correct. The modified sentence effectively has resulted in a situation in which the issues before this court, relating to the original sentence, have lost their significance because the order that was the subject of the challenged judgment has been superseded during the pendency of the appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

[1] The court imposed a sentence of forty years for the manslaughter conviction and ordered an additional five year period of incarceration pursuant to General Statutes § 53-202k. The court imposed a sentence of twenty years for the assault conviction.

[2] The court reduced the sentence to omit the portion of the sentence that it had imposed under General Statutes § 53-202k. Both the defendant's motion to correct and the court's decision were based on the then recent decision of the United States Supreme Court in *Apprendi* v. *New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) (defendant's sixth amendment right to jury trial requires that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"). See *State* v. *Santiago*, Superior Court, judicial district of Hartford, Docket No. CR-97-514778 (July 25, 2000).

[3] The defendant applied to have his sixty year sentence modified by the sentence review division of the Superior Court pursuant to General Statutes § 51-195 and Practice Book § 43-28. He argued that the sentence was disproportionate to other sentences of a like kind and that he was "functionally illiterate." *State* v. *Santiago*, Superior Court, judicial district of Hartford, Docket No. CR-97-514778 (March 20, 2006). Pursuant to General Statutes § 51-196, in 2006, a three judge panel rendered a written decision in which it affirmed the defendant's sentence after determining that it was neither inappropriate nor disproportionate. Id.

In 2005, the defendant petitioned for a writ of habeas corpus and, after the habeas court denied his amended petition as well as his petition for certification to appeal from that judgment, this court dismissed the defendant's subsequent appeal. See *Santiago* v. *Commissioner of Correction*, 125 Conn. App. 641, 648, 9 A.3d 402 (2010).

[4] Practice Book § 43-22 provides: "The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner."

[5] By way of background, in *Graham* v. *Florida*, supra, 560 U.S. 79–80, 82, the United States Supreme Court barred life imprisonment without the possibility of parole for juvenile nonhomicide offenders. In *Miller* v. *Alabama*, supra, 567 U.S. 467, the United States Supreme Court held that mandatory sentencing schemes that impose a term of life imprisonment without parole on juvenile homicide offenders, thus precluding consideration of the offender's youth (and all that accompanies it) as a mitigating factor against such a severe punishment, violate the principle of proportionate punishment under the eighth amendment to the United States constitution.

"Thus, an offender's age and the hallmarks of adolescence must be considered as mitigating factors before a juvenile can serve [a mandatory sentence of life imprisonment without the possibility of parole]. [Our Supreme Court] has interpreted *Miller* to apply not only to mandatory sentences for the literal life of the offender, but also to discretionary sentences and sentences that result in imprisonment for the 'functional equivalent' of an offender's life. . . . [Our Supreme Court also has] ruled that *Miller* applies not only prospectively, but retroactively, and also to challenges to sentences on collateral review." (Citations omitted; footnote omitted.) *State* v. *McCleese*, 333 Conn. 378, 383, 215 A.3d 1154 (2019). We note that "*Miller*'s holding is limited to cases in which the defendant is younger than eighteen at the time of the crime. . . . [A]n offender who has reached the age of eighteen is not considered a juvenile for sentencing procedures and eighth amendment protections articulated in *Miller*." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Woods* v. *Commissioner of Correction*, 197 Conn. App. 597, 620, 232 A.3d 63 (2020), appeal dismissed, 341 Conn. 506, 267 A.3d 193 (2021) (certification improvidently granted).

[6] General Statutes § 54-125a (f) provides: "(1) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, a person convicted of one or more crimes committed while such person was under eighteen years of age, who is incarcerated on or after October 1, 2015, and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes prior to, on or after October 1, 2015, may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which such person is confined, provided (A) if such person is serving a sentence of fifty years or less, such person shall be eligible for parole after serving sixty per cent of the sentence or twelve years, whichever is greater, or (B) if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years. Nothing in this subsection shall limit a person's eligibility for parole release under the provisions of subsections (a) to (e), inclusive, of this section if such person would be eligible for parole release at an earlier date under any of such provisions."

[7] General Statutes § 53a-39 provides in relevant part: "(a) Except as provided in subsection (b) of this section, at any time during an executed period of incarceration, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced. . . ."

[8] The parties have thoroughly addressed the issue of whether the present appeal is moot. As we stated previously in this opinion, the defendant filed the motion for sentence modification after he filed the present appeal. In its initial brief, which the state filed before Judge Gold granted the motion for sentence modification, the state argued that this court should conclude that the present appeal is moot because the defendant had filed the motion and, in arguing that the motion should be granted, relied, in part, on the sentencing court's failure to view his age at the time of the offenses as a mitigating factor. After Judge Gold granted the motion, this court granted the state's subsequent motion for permission to file a supplemental brief to address the significance of Judge Gold's sentence modification on the present appeal. The state filed its supplemental brief on September 9, 2022,

arguing that the appeal is moot in light of the modified sentence. On October 7, 2022, the defendant filed his reply brief, in which he responded to the state's mootness argument. Oral argument in this appeal took place on January 9, 2023.

[9] The defendant states that "there is no consensus in this nation's case law on when a lengthy sentence becomes a de facto life sentence" and "acknowledges [that] it is difficult to read [relevant precedent] without concluding that a sentence which results in a defendant's release at the age of fifty years is not a life sentence for *Miller-Graham* purposes. This would mean that the sentence modification court reduced the defendant's sentence to one in which he would be released and have an opportunity to engage in meaningful life activities. A careful reading of the modification decision reveals that this was the court's intention."