

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EFREN PAREDES, JR., also known as EFREN
PAREDES, JR.,

Defendant-Appellant.

UNPUBLISHED

July 27, 2023

No. 359130

Berrien Circuit Court

LC No. 1989-001127-FH

Before: M. J. KELLY, P.J., and JANSEN and CAMERON, JJ.

PER CURIAM.

AFTER REMAND

Defendant was convicted in 1989 of first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316(1)(b), and armed robbery, MCL 750.529.¹ The evidence at trial established that he told his friends his plan to kill and rob the assistant manager at the grocery store where he worked. He attempted to carry out his plan one evening, but the store was too busy. Two days later, he lured the victim to the office in the back of the store and shot the victim four times. Defendant’s fingerprints were found on the office cash drawer, and \$2,500 was later found in his bedroom. He was a juvenile at the time of the offenses, and sentenced to life without parole (LWOP) for murder and life imprisonment for armed robbery. In October 2021, following proceedings held under *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), defendant was resentenced to LWOP. Defendant appealed as of right, and in this Court’s previous opinion, we remanded the matter for resentencing under the proper framework set forth in *People v Taylor*, 510 Mich 112; 987 NW2d 132 (2022). *People v Paredes*, unpublished per curiam opinion of the Court of Appeals, entered March 16, 2023 (Docket No. 359130), p 1, 6. On remand, the trial court again sentenced defendant to LWOP. We affirm.

¹ Defendant’s two murder convictions were consolidated by stipulated order into one count and his armed robbery conviction was conditionally dismissed.

The trial court's decision to sentence a juvenile offender to LWOP is reviewed for an abuse of discretion. *Taylor*, 510 Mich at 128. "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *People v Rogers*, 338 Mich App 312, 320; 979 NW2d 747 (2021). The trial court's underlying factual findings in support of the sentence are reviewed for clear error. *Taylor*, 510 Mich at 128. "A trial court's factual finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *People v Wiley*, 324 Mich App 130, 165; 919 NW2d 802 (2018) (quotation marks and citation omitted).

The *Miller* Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Miller*, 567 US at 465 (emphasis added). This holding did not categorically ban LWOP sentences for juveniles; however, this penalty would be uncommon. *Taylor*, 510 Mich at 126-127. Rather, the sentencing court is required to consider the following factors when debating a juvenile sentence to LWOP:

(1) the juvenile's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the juvenile's family and home environment—"from which he cannot usually extricate himself—no matter how brutal or dysfunctional"; (3) "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"; (4) "the incompetencies of youth," which affect whether the juvenile might have been charged with and convicted of a lesser crime, for example, because the juvenile was unable to deal with law enforcement or prosecutors or because the juvenile did not have the capacity to assist their attorney in their own defense; and (5) the juvenile's "possibility of rehabilitation." [*Id.* at 126.]

These factors are incorporated into Michigan's LWOP sentencing scheme under MCL 769.25(6), *id.*, which allows the prosecution to move to sentence a juvenile defendant to LWOP, MCL 769.25(2).

What the *Taylor* decision made clear is that the prosecution bears the burden of proof at the *Miller* hearing to overcome the presumption that LWOP is disproportionate by clear and convincing evidence. *Taylor*, 510 Mich at 129. Additionally, the *Taylor* Court provided that the *Miller* factors are mitigating, and cannot be considered "aggravating," meaning that "if a particular *Miller* factor does not militate against LWOP," "at most that factor will be considered neutral." *Id.* at 139 n 25.

During the initial *Miller* proceedings in this case, which occurred before the *Taylor* decision was issued, the parties compared the proceedings to ordinary sentencing and agreed that there was no particular burden of proof. This error was resolved on remand as the trial court confirmed with the prosecution that it bore the burden of proof, which was by clear and convincing evidence. The trial court also resolved its prior errors by not considering any of the *Miller* factors as aggravating, but rather, as "neutral" at most.

Having resolved these procedural errors and following the *Taylor* framework on remand, we conclude that the trial court did not abuse its discretion in resentencing defendant to LWOP. The trial court rendered a thorough and thoughtful analysis of each *Miller* factor, the factual findings of which were not clearly erroneous.

First, the trial court found that defendant's age was a mitigating factor because he was 15 years and 11 months old at the time of the crime. However, his maturity was a neutral factor as defendant was an honors student, was involved in teams and clubs, and held a job at the time of the crime. His impetuosity and potential failure to appreciate the risks and consequences of his actions were also neutral factors as he planned the murder, was the leader of a gang and the actual shooter, and the crime was not done quickly. He lured the victim to a specific area and laid in wait. The court's factual findings were supported by the record and not clearly erroneous.

Second, the court found defendant's family home and home environment to be a neutral factor. Defendant had a "near idyllic" home situation as he was involved in school and sports, and had an attentive mother. Although his parents divorced when he was six years old and his biological father had drug problems, his mother remarried, and defendant had a good relationship with his step-father. These factual findings by the trial court were not clearly erroneous.

Third, the court found that the circumstances of the offense was a neutral factor. Defendant was the leader of a gang, he planned to murder his supervisor at work, and he told his friends his plan. He lured the victim to an isolated place in the back of the store, and laid in wait. Defendant shot the victim four times, three of which were considered fatal. Although the circumstances of the crime in sentencing a juvenile offender are most likely to be horrific, the *Miller* factors allow the sentencing court to "distinguish between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *People v Bennett*, 335 Mich App 409, 419; 966 NW2d 768 (2021) (quotation marks and citation omitted). The trial court's factual findings were not clearly erroneous.

Fourth, the trial court found that any incompetencies associated with youth were a neutral factor. Defendant continually maintained his innocence, and the court found that there was no evidence that he would have dealt with the police or prosecution any differently had he been older based on his demonstrated maturity and intelligence at the time of the crime. He was represented by a highly-regarded criminal defense attorney at trial. These factual findings were not clearly erroneous.

Lastly, the court found that the possibility of rehabilitation was a neutral factor. The achievements defendant reached while in prison show his maturity and intelligence, but do not support that he has been rehabilitated. He was at one point involved with a threat group, received prison misconduct tickets, and used his prison privileges to abuse the system (i.e., impregnate his wife while imprisoned). He continued to maintain his innocence of this crime despite the clear evidence to the contrary. This does not demonstrate rehabilitation.

Thus, the trial court did not abuse its discretion in its consideration of the *Miller* factors and its decision to resentence defendant to LWOP, following the framework set forth in *Taylor*. The court found defendant's testimony at the *Miller* hearing not credible nor persuasive, but rather, "manipulative, evasive, [and] sociopath[ic]." This Court gives deference to the trial court's

credibility determinations. See *People v Kimble*, 252 Mich App 269, 273; 651 NW2d 798 (2002), aff'd 470 Mich 305 (2004). The court concluded that defendant's crime was not the result of impetuosity or recklessness. Therefore, the trial court properly found that the prosecution rebutted the presumption that a sentence to LWOP was disproportionate, and did not abuse its discretion on remand in granting the prosecution's motion and resentencing defendant to LWOP. This resolves the issues after remand, and renders moot defendant's argument to remand the case to a different trial court judge raised in his post-remand supplemental brief. See *People v Gonzalez*, 256 Mich App 212, 235 n 8; 663 NW2d 499 (2003) ("An issue is moot where a subsequent event renders it impossible for this Court to fashion a remedy.").

Affirmed.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Thomas C. Cameron