

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE LEE REYES,

Defendant-Appellant.

UNPUBLISHED

March 23, 2023

No. 357798

Genesee Circuit Court

LC No. 97-001065-FC

Before: GLEICHER, C.J., and O'BRIEN and MALDONADO, JJ.

PER CURIAM.

In 1998, a jury convicted then-16-year-old defendant, Tyrone Lee Reyes, of one count of first-degree premeditated murder, MCL 750.316; two counts of assault with intent to murder, MCL 750.83; one count of armed robbery, MCL 750.529; two counts of assault with intent to rob while armed, MCL 750.89; one count of first-degree criminal sexual conduct, MCL 750.520b; three counts of kidnapping, MCL 750.349; one count of carrying a concealed weapon (CCW), MCL 750.227; and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to life imprisonment without parole for first-degree murder, life imprisonment with the possibility of parole for the other non-homicide offenses, 3 to 5 years' imprisonment for CCW, and a consecutive term of 2 years' imprisonment for felony-firearm. Following *Montgomery v Louisiana*, 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016), defendant became entitled to resentencing pursuant to MCL 769.25a, whereupon the Genesee County prosecutor requested that defendant be resentenced to life without parole. At the ensuing evidentiary hearing, the trial court considered the factors announced in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) as required by MCL 769.25(6). The trial court found that the factors did not support a life sentence without the possibility of parole and accordingly ordered defendant to be resentenced pursuant to MCL 769.25(9). Following a resentencing hearing, the trial court reimposed defendant's sentences for CCW and felony-firearm and it sentenced defendant to concurrent terms of 40 to 60 years' imprisonment for each of the other charges. Defendant now appeals that sentence as of right.

I. BACKGROUND

On June 18, 1997, defendant was one of seven individuals involved in a horrific assault on three young teenagers who accidentally got off a train in Flint and found themselves lost. Defendant was the youngest of the perpetrators, but he was also one of two who were carrying a gun. The perpetrators severely beat all three of the children and raped one of them. Defendant directly participated in some of the beating, and thereafter, he shot each of the two boys in the back of their head twice, killing one of the boys, and he shot the girl through her face once before his gun jammed. The case drew national attention. Most of the perpetrators entered into plea agreements; defendant and his brother went to trial.

In the years since defendant was originally sentenced,

there were several notable changes in the law that substantively affected sentencing for juvenile defendants. In 2012, the United States Supreme Court decided *Miller*, which held that sentencing individuals to mandatory life without the possibility of parole for crimes they committed before the age of 18 violated the Eighth Amendment's ban on cruel and unusual punishments. *Miller*, 567 US at 489. Four years later, the Supreme Court announced that *Miller* was a substantive constitutional rule that was retroactive on state collateral review. *Montgomery v Louisiana*, 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016). The Michigan Legislature accounted for these changes by enacting a sentencing scheme that eliminated mandatory life without the possibility of parole for all individuals who were convicted of specific crimes, including first-degree murder, for acts committed while they were juveniles. MCL 769.25; MCL 769.25a. [*People v Boykin*, ___ Mich ___, ___; ___ NW2d ___ (2022) (Docket No. 157738); slip op at 3-4.]

MCL 769.25a created a scheme for resentencing juvenile offenders. *Id.* at ___ n 2; slip op at 4 n 2.

In this case, pursuant to MCL 769.25a(4)(b), the prosecutor filed a motion in the trial court seeking to resentence defendant to life without parole for defendant's first-degree murder conviction. The prosecutor's motion therefore triggered a "*Miller* hearing" pursuant to the procedures set forth in MCL 769.25(6) through (9). See *People v Parks*, ___ Mich ___, ___; ___ NW2d ___ (2022) (Docket No. 162086); slip op at 9. At a "*Miller* hearing," the trial court must consider, at a minimum, the factors enumerated in *Miller*, and it may also consider other criteria like a defendant's record while incarcerated. See MCL 769.25(6). The trial court must then "specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed." MCL 769.25(7).

The trial court held a *Miller* hearing in January 2020, at which evidence was presented that defendant was genuinely remorseful for his crimes, and indeed horrified by them. The trial court found that defendant's record in prison began dismally with approximately 80 misconducts and gang affiliation, but he eventually improved significantly. The trial court stated that defendant engaged in a considerable amount of self-improvement and made genuine efforts to be a positive influence for others by renouncing his gang affiliation in 2006, writing and advising his younger

cousins against gang affiliation, taking on many jobs and receiving positive evaluations, availing himself of educational opportunities, and participating in other self-improvement and personal development programs. Evidence was also presented which explained that defendant's upbringing had been highly adverse, his crimes were committed at an age when he would have been especially vulnerable to peer pressure, and his brain would not have been adequately developed to allow him to fully appreciate the long-term ramifications of his actions or think of alternatives. The trial court ultimately found that although defendant's crimes were deserving of severe punishment, it accepted that defendant's youthfulness and circumstances restricted his ability to consider alternatives or extricate himself from the situation, and defendant's prison record showed genuine self-improvement. In a detailed opinion issued in June 2020, the trial court therefore concluded that "[t]he mitigating factors announced in *Miller* do not support a sentence of life without the possibility of parole," so it ordered that defendant would be resentenced pursuant to MCL 769.25(9).

The trial court held a lengthy resentencing hearing in June 2021 at which numerous individuals testified on defendant's behalf and defendant made an impassioned statement attempting to convey both an apology and an explanation. The victims who spoke generally seemed to believe that defendant really had improved and probably did genuinely regret his actions, but in light of the sheer brutality of his offenses and the harm he had caused, they were unable to forgive him and did not believe he should be released from prison. In a lengthy bench ruling, the trial court endeavored to explain how severe and egregious defendant's crimes were, regarding them as the worst it had ever seen and noting that, even with the benefit of plea agreements, defendant's codefendants had still received severe sentences. Although it acknowledged that defendant deserved some lenity based on his youth and some credit for his progress while in prison, it believed that the highest minimum sentence permitted by law of 40 years was still too light. It therefore imposed a sentence of 40 to 60 years' imprisonment for first-degree murder. The trial court and the attorneys agreed that defendant's other non-homicide offenses also required resentencing,¹ following which the trial court explained that the same considerations applied to those sentences. It imposed sentences of 40 to 60 years' imprisonment for each other offense other than CCW and felony-firearm, for which it reimposed defendant's original sentences with credit for time served.

II. STANDARD OF REVIEW AND PRINCIPLES OF LAW

"Sentencing decisions are reviewed for an abuse of discretion," and "matters of constitutional and statutory interpretation . . . are reviewed de novo." *Boykin*, ___ Mich at ___; slip op at 6. "[T]he sentence should be tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973). Our Supreme Court has recently explained:

It is the trial court's duty to exercise discretion in a way that ensures the individualized sentence conforms with the principle of proportionality. An

¹ See *People v Turner*, 505 Mich 954, 954-955; 936 NW2d 827 (2020); see also *Stovall*, ___ Mich at ___; slip op at 7-11, 16.

appropriate sentence should give consideration to the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense. However, these are not the only relevant sentencing criteria and trial courts are not required to consider each of these factors when imposing a sentence. [*Boykin*, ___ Mich at ___; slip op at 7 (citations omitted).]

The trial court will generally be “in a better position than an appellate court” to determine an appropriately proportionate sentence “because the trial court will almost always be more familiar with each individual defendant than is an appellate court.” *People v Skinner*, 502 Mich 89, 136; 917 NW2d 292 (2018). The trial court must “state on the record which criteria were considered and what reasons support the court’s decision regarding the length and nature of punishment imposed.” *People v Coles*, 417 Mich 523, 550; 339 NW2d 440 (1983), overruled in part on other grounds in *People v Milbourn*, 435 Mich 630, 642-649; 461 NW2d 1 (1990).

III. ALLEGEDLY IMPROPER SENTENCING CONSIDERATIONS

Defendant first specifically argues that the trial court’s commentary at sentencing indicated a belief that defendant should receive a harsh sentence because he chose to go to trial rather than accept a plea agreement. “A sentencing court cannot base its sentence on a defendant’s decision to exercise his constitutional right to a jury trial.” *People v Brown*, 294 Mich App 377, 389; 811 NW2d 531 (2011). Defendant also argues that the trial court’s repeated references to, and implicit reliance on, his codefendants’ sentences demonstrates that the trial court failed to craft individualized sentences for him. We disagree with both arguments.

While defendant is correct that the trial court remarked about defendant’s decision to go to trial and his codefendants’ sentences during the court’s ruling from the bench, defendant’s arguments take those remarks out of context. The trial court commented that a 40-year minimum sentence for first-degree murder was not really fair as compared to the longer sentences of 50 years and life imposed on some of the codefendants. The trial court also noted that some of the codefendants’ decisions to enter pleas saved the victims and their families from having to go through a trial or subsequent hearings reliving the horrific crimes. These comments were made by the trial court in the context of describing how egregious and horrifying defendant’s crimes were and also questioning the fairness of the statutory limitations on sentencing. The trial court explained that the brutal rape, robbery, murder, and attempted murder of three innocent children made national headlines, and that this is the case that comes to mind when people express fearfulness of going to Flint. We will consider the trial court’s remarks in the context in which they were made.

Sentencing courts are not required to consider sentences given to codefendants, because sentences should be individualized to the particular offender. *People v Bisogni*, 132 Mich App 244, 245-246; 347 NW2d 739 (1984).² However, it does not stand to reason that a sentencing

² Although published decisions of this Court issued prior to November 1, 1990, are not strictly binding on this Court, all published decisions of this Court are precedential under the rule of stare

court is obligated to ignore the sentences given to codefendants. “The premise of our system of criminal justice is that, everything else being equal, the more egregious the offense, and the more recidivist the criminal, the greater the punishment.” *People v Babcock*, 469 Mich 247, 263; 666 NW2d 231 (2003). It would be improper for a sentencing court to base a sentence entirely on how a codefendant was sentenced, because doing so could hardly be individually tailored to the offender. See *McFarlin*, 389 Mich at 574. Nevertheless, there is no reason why a sentencing court may not consider a codefendant’s sentence as one out of many relevant factors. Further, “it is not per se unconstitutional for a defendant to receive a higher sentence following a jury trial than he would have received had he pleaded guilty.” *Brown*, 294 Mich App at 389. When reading the trial court’s ruling as a whole, it was attempting to illustrate the egregiousness of defendant’s crimes by pointing out that the codefendants had received severe sentences *even with the benefit of* plea agreements. The trial court also highlighted that only defendant *personally* committed murder; and, unlike most of the other codefendants, defendant was carrying a gun.

The trial court clearly did not base its sentence on the sentences given to the codefendants or on defendant’s decision to have a trial. In light of the fact that defendant’s crimes were part of a group transaction in which defendant stood out both as the youngest *and* as the shooter, but also in which all of the participants shared overall responsibility, it does not appear unreasonable for the trial court to have considered the codefendants’ sentences as one factor out of many. Comparison of defendant’s sentence to the codefendants’ sentences did not constitute a punishment for defendant going to trial or a failure to impose an individualized sentence.

IV. INDIVIDUALIZED SENTENCING FOR FIRST-DEGREE MURDER

Defendant does not appear to present any other specific challenge to his first-degree murder sentence beyond the general assertion that his sentence was not individualized. Indeed, defendant acknowledges that the trial court “did give careful consideration to all of the *Miller* factors.”

Those “*Miller* factors” are: (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.” [*People v Taylor*, ___ Mich ___, __; ___ NW2d ___ (2022) (Docket No. 154994); slip op at 8 (citation omitted).]

decisis pursuant to MCR 7.215(C)(2) and generally should be followed. *In re Guardianship of Bazakis*, ___ Mich App ___, ___ n 4; ___ NW2d ___ (2022) (Docket No. 358276); slip op at 5 n 4, app for lv pending.

The trial court may also “consider any other criteria relevant to its decision, including the individual’s record while incarcerated.” MCL 769.25(6). Further, the trial court must “specify on the record the aggravating and mitigating circumstances considered by the court and the court’s reasons supporting the sentence imposed,” and it “may consider evidence presented at trial together with any evidence presented at the sentencing hearing.” MCL 769.25(7). By necessary implication, the traditional sentencing considerations of “the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense,” *Boykin*, ___ Mich at ___; slip op at 7, must also be considered on resentencing.

The trial court fully and thoughtfully explained why defendant should be sentenced to a term of years rather than life imprisonment, a holding that the prosecution notably does not cross-appeal. It also acknowledged that defendant had genuinely displayed some potential for rehabilitation. However, the trial court also observed, not unreasonably, that defendant’s crimes were the most horrific it had yet encountered and that defendant’s crimes dramatically increased Flint’s notoriety as a perceived violent and lawless hellscape. Those factors would necessarily weigh in favor of a harsher sentence in the interest of discipline, deterrence, and the protection of society. The trial court unambiguously gave proper consideration to *all* of the factors it was required to consider before determining that it was *specifically appropriate to defendant* to impose a sentence at the top of the allowable minimum sentence range. The trial court’s sentence of 40 to 60 years’ imprisonment for first-degree murder was not an abuse of discretion.

V. INDIVIDUALIZED SENTENCING FOR NON-HOMICIDE OFFENSES

Finally, defendant argues that all of the non-homicide offenses should be remanded for resentencing because the trial court did not take the sentencing guidelines into consideration and the minimum sentence for all of the non-homicide offenses was double the top end of the guidelines for the most serious offense. We disagree.

As defendant points out, because his crimes were committed before January 1, 1999, the former judicial sentencing guidelines applied. See *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). See also Administrative Order No. 1998-4, 459 Mich clxxv. The trial court does not appear to have considered any sentencing guidelines. However, because the judicial sentencing guidelines were merely advisory, the trial court “was not necessarily obliged to impose a sentence” within the recommended range under those guidelines. *People v Hegwood*, 465 Mich 432, 438; 636 NW2d 127 (2001). The judicial sentencing guidelines conferred no substantive rights and established no presumptive sentence ranges, serving only as guidance. *People v Potts*, 436 Mich 295, 302-303; 461 NW2d 647 (1990). Under the judicial sentencing guidelines, “a sentence may be set aside only when it is invalid.” *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997). A sentence might be invalid if it was based on inaccurate information, constitutionally impermissible considerations, a misapprehension of the law, or a departure from critical procedural requirements. *People v Whalen*, 412 Mich 166, 169-170; 312 NW2d 638 (1981). The trial court did not rely on inaccurate information or impermissible considerations, nor did it deprive defendant of any mandatory procedural protections.

To the extent defendant argues that the trial court erred by failing to individualize each sentence separately, this argument is unmaintainable. In principle, the trial court should have articulated why it crafted a sentence of 40 to 60 years’ imprisonment for each of the non-homicide

offenses. *Coles*, 417 Mich 550. Failure to do so generally impairs appellate review. *People v Broden*, 428 Mich 343, 350-351; 408 NW2d 789 (1987). However, defendant explicitly declined the trial court's invitation to make a record of its reasoning for each of the sentences:

Mr. Fehrman: So that will be the sentence on each of the [non-homicide] offense[s]?

The Court: Each of the [non-homicide] offense[s]. And I went through—I'll go through each one of them again if you would like me to do so, Ms. Mainprize-Hajek, would you like me to go through each one? One through ten? Read each offense again and address each one?

Ms. Mainprize-Hajek: No, Judge. We don't believe that's necessary. I think the Court has made it very clear that on each of the counts the sentence is forty to sixty. And again, is running concurrent. Obviously, the two is a consecutive.

Defendant thereby waived consideration of the trial court's reasoning as to each sentence individually. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). In any event, because all of the non-homicide offenses were punishable by life imprisonment, it is reasonable to conclude that the Legislature regarded their individual seriousness as roughly equivalent. Defendant's offenses were all part of a conceptually interlinked single transaction and the trial court articulated why a term of 40 to 60 years' imprisonment was appropriate as to *defendant* in light of that entire transaction. We find no error in defendant's sentences on resentencing.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Colleen A. O'Brien
/s/ Allie Greenleaf Maldonado