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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TANINO EMON MILLER,

Defendant-Appellant.

UNPUBLISHED
November 23, 2026
11:55 AM

No. 374945
Wayne Circuit Court
LC No. 17-003878-01-FC

Before: MURRAY, P.J., and PATEL and FEENEY, JJ.

PER CURIAM.

Defendant appeals as of right his resentencing for his jury trial convictions of second-degree murder, MCL 750.317; assault with intent to do great bodily harm (AWIGBH), MCL 750.84(1)(a); and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). On appeal, defendant argues that the trial court abused its discretion by imposing a sentence for second-degree murder that is disproportionate to the severity of the offense, without consideration of defendant's youth and other individualized factors. Defendant further notes that the trial court failed to resentence defendant on his convictions for AWIGBH, as was required by this Court's prior opinion and order.[1] We affirm in part, vacate in part, and remand for resentencing on defendant's AWIGBH convictions.

I. STATEMENT OF FACTS

On April 3, 2017, Eric Surls, accompanied by Jerrard Walker and Amyre Collier, drove to a liquor store in Detroit, Michigan, to meet defendant and purchase marijuana from him. Collier, who was in the back seat of the vehicle, and defendant began negotiating the sale of the marijuana. After defendant handed Collier some marijuana, and before Collier could pay for it, Surls began to drive away. Defendant chased after the car and fired shots, wounding Walker in the head. Walker died of his injuries the next day. Defendant was convicted by a jury as noted above. At

[1] *People v Miller*, unpublished per curiam opinion of the Court of Appeals, issued August 1, 2019 (Docket No. 341306), pp 1-2.

defendant's sentencing, the trial court heard several arguments regarding the scoring of the sentencing guidelines variables. Of note, the prosecution argued that Offense Variable (OV) 6 (intent to kill or injure another individual) and OV 13 (continuing pattern of criminal behavior) should have been assessed 25 points each. Counsel for defendant disagreed and posited that OV 6 and OV 13 should be scored at 10 points and 0 points, respectively. While the trial court assessed 10 points for OV 6, the trial court also assessed 25 points for OV 13 over defendant's objections. Defendant was originally sentenced to 20-30 years for second-degree murder and 6-10 years for each count of AWIGBH, consecutive to the mandatory two years for felony-firearm.

Defendant appealed his convictions and sentences. This Court affirmed defendant's convictions but remanded the case for resentencing on his second-degree murder and AWIGBH convictions because OV 13 was incorrectly scored. *People v Miller*, unpublished per curiam opinion of the Court of Appeals, issued August 1, 2019 (Docket No. 341306), pp 6-9. Defendant was resentenced on the second-degree murder conviction after accounting for the OV scoring error. The trial court ordered a small reduction in defendant's sentence for second-degree murder, lowering the minimum sentence from 20 years' imprisonment to 19 years' imprisonment. The trial court did not address defendant's other sentences other than to note that "[a]ll of the other terms and conditions will remain the same." This appeal followed.

II. PROPORTIONALITY OF DEFENDANT'S SENTENCE

On appeal, defendant contends that resentencing is required because defendant was given a disproportionate sentence without consideration of his age or other individualized factors. We disagree.

"Sentencing decisions are reviewed for an abuse of discretion." *People v Boykin*, 510 Mich 171, 182; 987 NW2d 58 (2022). "An abuse-of-discretion standard recognizes that there may be more than one principled outcome and the trial court may not deviate from that principled range of outcomes." *Id*., citing *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "[W]ithin-guidelines sentences are to be reviewed for reasonableness" on appeal. *People v Posey*, 512 Mich 317, 359; 1 NW3d 101 (2023) (Opinion by BOLDEN, J.).[2] "[T]he key to reasonableness review is whether the sentence is proportionate." *Id*. A trial court abuses its discretion if the sentence imposed is not "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017) (cleaned up). A proportionate sentence considers "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*, 510 Mich at 183. But "these are not the only relevant sentencing criteria and trial courts are not required to consider each of these factors when imposing a sentence." *Id*. at 183-184.

[2] While *Posey* was a plurality opinion that is not technically binding, this Court concluded that following the essential holdings upon which the *Posey* majority agreed was prudent "in the interest of judicial economy and jurisprudential stability." *People v Purdle (On Remand)*, 350 Mich App 446, 453-454; 32 NW3d 479 (2024).

"When a trial court sentences a defendant within the guidelines' recommended range, it creates a presumption that the sentence is proportionate." *Posey*, 512 Mich at 360. To overcome that presumption, "the defendant bears the burden of demonstrating that their within-guidelines sentence is unreasonable or disproportionate." *Id*. at 359. In order to overcome the presumptive proportionality of a within-guidelines sentence, a defendant must "present unusual circumstances that would render the presumptively proportionate sentence disproportionate." *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013) (cleaned up); see also *Milbourn*, 435 Mich at 636 ("Conceivably, even a sentence within the sentencing guidelines could be an abuse of discretion in unusual circumstances."). "Unusual" means "uncommon, not usual, rare." *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992) (cleaned up).

In this case, it is undisputed that defendant's sentence for second-degree murder was within the guidelines range. Therefore, defendant's sentence is presumptively proportionate. *Posey*, 512 Mich at 360. While the trial court never explicitly stated that it was taking defendant's youth into account in its sentencing of defendant, it is clear from the record that the court was aware of defendant's age at the time of the offense. Further, defendant did not identify any unusual circumstances that would render his sentence disproportionate and thus has not rebutted the presumption of proportionality.

The trial court made a particularized assessment of defendant before the resentencing. Defendant argued for a lower sentence, noting the presence of his family at his resentencing, multiple letters being filed on his behalf with the court discussing his character and work ethic, and his low number of prison misconducts. The trial court heard defendant's arguments but ultimately concluded that nothing presented warranted a drastic reduction in his sentence. The trial court resentenced defendant to a within-guidelines minimum term of 19 years for the second-degree murder conviction. A defendant must demonstrate "unusual circumstances that would render the presumptively proportionate sentence disproportionate." *Bowling*, 299 Mich App at 558. Defendant has failed to identify any circumstances that would be sufficient to overcome this presumption of proportionality.[3]

The trial court did, however, fail on remand to resentence defendant on his AWIGBH convictions, as was required by this Court's prior opinion. As a result, we vacate defendant's AWIGBH sentences and remand for resentencing in keeping with this Court's prior opinion and order.

[3] Defendant cites *People v Taylor*, ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 166428) for the proposition that the trial court was required to consider his age, 20 at the time of the offense, as a mitigating factor during sentencing. But *Taylor* involved the constitutionality of mandatory life without parole sentences under the cruel or unusual clause of Michigan's Constitution, Const 1963, art 1 § 16. Defendant was not sentenced to life without parole, nor is his term of years such that it would be a de facto life sentence. Cf *People v Eads*, ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 357332). *Taylor* and *Eads* are inapposite.

III. DEFENDANT'S STANDARD 4 BRIEF

In a brief filed under Administrative Order No. 2004-6, Standard 4, defendant raises nine additional issues for this Court to consider. In each of the nine issues, however, defendant argues that errors occurred at his trial, rather than during the resentencing proceedings. Following a remand for resentencing, our jurisdiction is limited to issues arising from the resentencing itself. Issues pertaining to the initial trial are outside of the scope of the second appeal. See *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975) ("[T]he scope of the second appeal is limited by the scope of the remand."); *People v Gauntlett*, 152 Mich App 397, 400; 394 NW2d 437 (1986) ("An appeal from a resentencing is limited to the resentencing proceeding."). Because defendant raises only issues outside of the scope of the remand, this Court is without jurisdiction to afford him his requested relief. Therefore, we decline to address any of the issues raised in defendant's Standard 4 brief.

Affirmed in part, vacated in part, and remanded for resentencing on defendant's AWIGBH convictions. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Sima G. Patel
/s/ Kathleen A. Feeney