STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD WILSON, JR.,

Defendant-Appellant.

UNPUBLISHED
December 17, 2020

No. 349819
Saginaw Circuit Court
LC No. 16-042872-FC

Before: O'BRIEN, P.J., and M. J. KELLY and REDFORD, JJ.

PER CURIAM.

Defendant, Charles Wilson, Jr., was convicted by a jury of felony murder, MCL 750.316(b), armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.529; MCL 750.157a, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. In 2017, Wilson appealed his convictions and his sentence. In 2018, this Court affirmed Wilson's convictions, but remanded for resentencing because the trial court failed to consider age-related factors before sentencing Wilson.[1] On remand, the trial court resentenced Wilson to concurrent prison terms of 35 to 60 years for the felony-murder conviction, 225 to 600 months for both the armed robbery and the conspiracy to commit armed robbery convictions, and to concurrent two-year terms for the felony-firearm convictions, to be served consecutively to the other convictions. Wilson now appeals by right the sentence imposed by the court following resentencing. For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

Wilson's convictions were a result of aiding and abetting Jason Wrenn, who used a gun to rob and kill Laquavis Cooper. A third man, Jamal Reid, was present during the planning and preparation for the crimes.[2] Reid drove Wilson and Wrenn from Saginaw to Grand Rapids because

[1] *People v Wilson*, unpublished per curiam opinion of the Court of Appeals, issued September 13, 2018 (Docket Nos. 339774 and 342110).

[2] As part of a plea agreement, Reid testified at both Wilson's trial and Wrenn's trial.

Cooper had offered Reid money to transport him from Grand Rapids back to Saginaw. Cooper had to cash a check, and Wilson and Wrenn planned to rob Cooper after the check was cashed. Once the group returned to Saginaw, Reid dropped Cooper and Wrenn off and waited at a nearby store. In a park near Cooper's home, Wrenn shot Cooper twice in the head, and took his money. After the shooting Wrenn told Reid and Wilson that he had killed Cooper, and he distributed $50 of the $120 stolen to Wilson. Wilson was 17 years old at the time.

II. SENTENCING

A. STANDARD OF REVIEW

Wilson argues that the trial court abused its discretion by resentencing him to the same minimum 35-year minimum term for felony murder that it had imposed before remand. He maintains that the court did not comprehensively consider distinctive factors related to his youth. In reviewing sentences under MCL 769.25 for juvenile offenders, this Court reviews the trial court's findings of fact for clear error while "questions of law are to be reviewed de novo," and this Court reviews the trial court's sentence for an abuse of discretion. *People v Hyatt*, 316 Mich App 368, 423; 891 NW2d 549 (2016), rev'd in part on other grounds *People v Skinner*, 502 Mich 89, 137-138; 917 NW2d 292 (2018).

B. ANALYSIS

In *Miller v Alabama*, 567 US 460, 470; 132 S Ct 2455; 183 L Ed 2d 407 (2012), the United States Supreme Court held that "mandatory life-without-parole sentences for juveniles" constituted cruel and unusual punishment in violation of the Eighth Amendment, US Const, Am VIII. The Court reasoned that these life sentences prevented sentencing courts from considering whether life was a proportional sentence for a juvenile because the laws removed "youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult[.]" *Id*. at 474. The Court explained:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects 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. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys . . . . And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it. [*Id*. at 477-478 (citations omitted).]

After *Miller* was decided, the Michigan Legislature enacted MCL 769.25. *People v Meadows*, 319 Mich App 187, 189; 899 NW2d 806, 807 (2017). MCL 769.25 applies to "a criminal defendant who was less than 18 years of age at the time he or she committed an offense

described in subsection (2)" when the defendant's conviction occurred after the statute was enacted and in other specified situations. MCL 769.25(1).[3] Under MCL 769.25(2) the prosecutor has the option of "fil[ing] a motion under this section to sentence a defendant described in subsection (1) to imprisonment for life without the possibility of parole" for listed crimes. Should the prosecutor not move for a life sentence, or should the trial court deny the prosecutor's motion, "the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years." MCL 769.25(9). During resentencing in this case, the prosecutor requested that Wilson be resentenced to a minimum of 35 years in prison, and Wilson requested a minimum sentence of 25 years. The trial court issued a 35 to 60-year sentence.

If sentencing a juvenile offender convicted of first-degree murder when a life sentence is not being considered, the trial court must consider the "attributes of youth" described in *Miller*. *People v Wines*, 323 Mich App 343, 352; 916 NW2d 855 (2018). Specifically, "when sentencing a minor convicted of first-degree murder, when the sentence of life-without-parole is not at issue, the court should be guided by a balancing of the *Snow* objectives and in that context is required to take into account the attributes of youth such as those described in *Miller*." *Id*. In *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972), our Supreme Court stated that the "basic considerations" to determine an appropriate sentence are: "(a) the reformation of the offender, (b) protection of society, (c) the disciplining of the wrongdoer, and (d) the deterrence of others from committing like offenses." According to *Wines*, "a failure to consider the distinctive attributes of youth, such as those discussed in *Miller*, when sentencing a minor to a term of years pursuant to MCL 769.25a, so undermines a sentencing judge's exercise of his or her discretion as to constitute reversible error." *Wines*, 323 Mich App at 352. In this case, the trial court considered the "attributes of youth," recited the sentencing factors set forth in *Miller* and *Snow*, and discussed each individual factor.

The court first considered: "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences," *Miller*, 567 US at 477, and determined that "this factor does not weigh in favor of any mitigation." The court noted that Wilson was 17-years-old at the time, but had actively participated in the "planned armed robbery" of Cooper which "resulted in his brutal execution as he was shot twice in the head" by Wrenn. The trial court detailed Wilson's involvement:

> [Wilson] assisted in planning the robbery, provided co-defendant Wrenn with a sweatshirt to disguise himself, offered verbal encouragement, and [Wilson] walked into three stores with victim Cooper to make sure his check was cashed. In addition, there was testimony from Reid . . . that he witnessed [Wilson] hand Wrenn, the shooter, the gun, at Wrenn's request.

The trial court also described Wilson encouraging the older Wrenn to commit the crimes, noting that he called Reid "soft" when Reid objected to Wrenn taking the gun. The trial court concluded that Wilson's actions were "well thought out," and that the disregard for Cooper's "life and

[3] MCL 769.25(2)(b) provides that a violation of MCL 750.316 is a specified offense for purposes of MCL 769.25(1).

endangering consequences is not merely reflective of his immaturity, impetuosity, and failure to appreciate the risks and consequences of his actions."

On appeal, Wilson argues that the trial court failed to grapple with the question of "whether the [his] actions represented 'transient immaturity' or 'irreparable corruption,' " and that the court should have considered his psychological state in addressing this question. Yet, Wilson does not argue that the trial court's factual findings were erroneous. The actions cited by the trial court indicated Wilson's active and calculated involvement—ensuring that Cooper had money, ensuring that Wrenn was armed and his appearance obscured, and offering encouragement. The trial court distinguished impulsiveness and the failure to appreciate risk and consequences associated with youth, noting that Wilson's actions were "well thought out" and evidenced a "disregard" for life and consequences. Therefore, the trial court did properly consider the first *Miller* factor, "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences."

The second consideration mentioned in *Miller* is "the family and home environment that surrounds [the defendant]." *Id*. The court concluded that this factor did not favor mitigation of the sentence. The trial court weighed the fact that Wilson's father had an extensive criminal history, and sporadic involvement in Wilson's life, against the fact that Wilson was raised by his mother, who had been cooperative with the Probation Department, but whose health may have limited her cooperation with Wilson's lawyer. On appeal, Wilson argues that the trial court failed to thoroughly examine the psychological effects of the family dynamics. However, he does not dispute the trial court's finding that he had not suffered from abuse or neglect. Moreover, Wilson has not directed this Court to any evidence that the home environment was "brutal or dysfunctional" as stated in *Id*. Thus, we discern no error in the court's analysis of Wilson's family and home environment in relationship to his youth.

Next, the trial court extensively discussed "the circumstances of the homicide offense, including the extent of [Wilson's] participation in the conduct and the way familial and peer pressures may have affected him"—the third consideration mentioned in *Miller*—before concluding that the factor did "not weigh in favor of any mitigation." Wilson contends that he merely joined in the crime that Wrenn suggested; he noted that he "did not suggest the robbery, was not the shooter, was not even present at the shooting, did not own the gun, and was not the getaway driver." By contrast, the trial court found that Wilson's role was "quite significant." The court found that Wilson had worked with Wrenn to execute the plan to rob Cooper, as indicated by his verbal indication of assent and the bumping of fists at the suggestion to rob Cooper after he cashed his check. The trial court reiterated Wilson's active role of following Cooper into stores to ensure that he cashed his check, giving Wrenn a sweatshirt to obscure his appearance, handing the gun used to rob and kill Cooper to Wrenn, offering encouragement by calling Reid "soft" for resisting and by offering to accompany Wrenn while robbing Cooper, receiving a portion of the money that Wrenn took from Cooper, and instructing Reid to lie to the police to conceal the crime. Based on the foregoing, the court noted that Wilson had "aided and abetted Wrenn in committing the murder and intentionally set in motion a force likely to cause death or great bodily harm by handing Wrenn the gun and having previously discussed and planned the robbery of Cooper." Wilson does not dispute the trial court's findings other than to state that Wrenn planned the robbery. However, even though it appears that Wrenn may have first raised the idea of robbing Cooper, the evidence indicated that Wilson responded enthusiastically, by emphasizing his

agreement to participate in robbing Cooper by stating "fuck yeah, I'm down," and giving Wrenn a "fist bump." Therefore, we discern no clear error in the court's findings related to this *Miller* factor.

The trial court also discussed how familial or peer pressure may have affected Wilson's participation in the crime. Wilson argues that he was "going along" with Wrenn's plan. However, as the trial court noted, Wilson's immediate response to Wrenn's idea to rob Cooper was to indicate with his words and a fist bump that he wanted to participate; he also asked to be present during the robbery but this idea was rejected. The trial court also noted that Wilson never resisted, that he provided the substantial assistance discussed above, that he rebuffed Reid's objections, and that he directed Reid to hide the gun and lie to the police after the crime. Although Wilson was not present at the scene of the crime and it was not his idea, initially, to rob Cooper, his actions demonstrated that he was active in participating in the planning and execution of the crime, as opposed to just "going along" with others. Thus, the trial court properly considered "the circumstances of the homicide offense."

The next consideration mentioned in *Miller* was whether the defendant might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors or his incapacity to assist his own attorneys." *Miller*, 567 US at 477-478. The court determined that this favor did not weigh in favor of mitigation, concluding that there was "no evidence before this court to suggest that there are any incapacities of youth that prevented defendant from participating in his defense." Wilson agrees with the trial court's findings on this point, and the trial court properly considered this factor.

The trial court discussed the final consideration of *Miller*, "the possibility of rehabilitation," *Miller*, 567 US at 478, and determined that it favored neither party. The trial court found that Wilson laughed after learning of Cooper's killing. The court also considered that during his original sentencing, Wilson denied guilt and then stated, "my condolences to the family or whatever." Conversely, the trial court stated that Wilson demonstrated some capacity for rehabilitation because he had earned his GED in prison and had progressed to a less secure level. Wilson argues on appeal that the trial court did not examine any psychological issues that might affect the possibility of rehabilitation, and did not identify any prison programs that could assist him. However, Wilson does not dispute the trial court's fact-finding as it related to the possibility of rehabilitation. Moreover, Wilson has not presented anything suggesting that his psychological issues and the availability of prison programs would make his rehabilitation more or less possible. On this record, the trial court adequately considered this factor.

The trial court also discussed the factors listed in *Snow*, 386 Mich at 592. Wilson, however, does not discuss or dispute the trial court's analysis of the *Snow* factors, and we discern no error in the court's application of those factors.

In sum, the trial court properly analyzed the considerations for sentencing a juvenile according to MCL 769.25, which are discussed in *Miller* and *Snow*. Wilson has not demonstrated that any of the findings of fact were clearly erroneous, and the trial court's sentence was not an abuse of discretion.

III. INEFFECTIVE ASSISTANCE

A. STANDARD OF REVIEW

Next, Wilson argues that his trial lawyer provided ineffective assistance at his resentencing hearing. Where, as here, there was no evidentiary hearing on a claim of ineffective assistance of counsel, review is limited to errors apparent on the record. See *People v Unger* (*On Remand*), 278 Mich App 210, 253; 749 NW2d 272 (2008).

B. ANALYSIS

In order to demonstrate that his lawyer provided ineffective assistance, a defendant must show his lawyer's performance was deficient and that the "deficient performance prejudiced the defense." *People v Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (2007) (quotation marks and citation omitted). Prejudice to the defense can be established by showing that it is reasonably probable that, but for the lawyer's deficient performance, "the result of the proceeding would have been different." *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007).

Wilson argues that his lawyer should have presented evidence and made arguments pertaining to the *Miller* factors at his resentencing hearing in order to advocate for a mitigated sentence. At the sentencing hearing, Wilson's lawyer requested the shortest minimum term of 25 years, and referred to the "whole situation" as "quite sad" and "tragic." As noted by Wilson, his lawyer did not present oral argument in favor of mitigation based on the *Miller* considerations as they pertain to his youth. However, the record reflects that before the resentencing hearing, Wilson's lawyer submitted a sentencing memorandum that included a thorough analysis of how the *Miller* factors pertained to Wilson. The memorandum discussed Wilson's lack of participation in the crime, sparse criminal history, young age in contrast to his codefendants, family history, and progress toward rehabilitation while incarcerated. Wilson's lawyer concluded her memorandum by requesting the minimum sentence based on Wilson's youth and potential for rehabilitation. At the hearing, Wilson's lawyer referred the trial court to the sentencing memorandum, and stated that she would not repeat the contents of the memorandum because the trial court was familiar with the facts and circumstances of the case. Therefore, the record reflects that although she did not *orally* repeat her argument that the court should impose a minimum term based on the *Miller* factors in light of Wilson's youth, she did make the argument in her sentencing memorandum, which the court considered. Wilson's lawyer's decision not to orally argue the contents of the memorandum did not constitute ineffective assistance.[4]

Affirmed.

/s/ Colleen A. O'Brien
/s/ Michael J. Kelly
/s/ James Robert Redford

[4] We note that Wilson does not identify any specific arguments that his lawyer failed to make.