

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 2, 2014

v

QUAMAIN CONAY LEAK,

Defendant-Appellant.

No. 316498
Oakland Circuit Court
LC No. 2010-233891-FC

Before: METER, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from sentences imposed by the trial court following a remand by this Court. We remand for further proceedings.

On April 29, 2011, defendant was convicted by a jury of first-degree murder, MCL 750.316; armed robbery, MCL 750.529; and conspiracy to commit armed robbery, MCL 750.157a and MCL 750.529. The trial court sentenced defendant to life imprisonment without the possibility of parole for the first-degree murder conviction, 20 to 60 years' incarceration for the armed robbery conviction, and 20 to 60 years' incarceration for the conviction of conspiracy to commit armed robbery.

Defendant appealed, and this Court affirmed defendant's convictions but remanded for resentencing in accordance with *Miller v Alabama*, 567 US ___; 132 S Ct 2455; 183 L Ed 2d 407 (2012). *People v Leak*, unpublished opinion per curiam of the Court of Appeals, issued August 2, 2012 (Docket No. 304713), pp 1, 12.

Defendant was resentenced on May 21, 2013. At resentencing, the trial court referenced, and made findings on, several factors articulated in *Miller* for consideration when sentencing a juvenile offender convicted of first-degree murder. The trial court again sentenced defendant to life imprisonment without the possibility of parole for his first-degree murder conviction. Defendant now argues that this sentence of life imprisonment without the possibility of parole is unconstitutional. Constitutional arguments are generally reviewed de novo. *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011).

The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." US Const, Am VIII. Pursuant to Const 1963, art 1, § 16, "[e]xcessive bail shall not be required;

excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.” Relevant to all of defendant’s claims, the Michigan Supreme Court recently held that “neither the Eighth Amendment nor Const 1963, art 1, § 16 categorically bars the imposition of a sentence of life without parole on a juvenile first-degree-murder offender” *People v Carp*, 496 Mich 440, ___; ___ NW2d ___ (Docket Nos. 146478, 146819, 147428, issued July 8, 2014); slip op at 80.

However, the *Carp* Court cited MCL 769.25 and stated:

MCL 769.25, enacted in response to *Miller*, prescribes a new sentencing scheme for juveniles convicted of violating certain provisions of Michigan laws, such as MCL 750.316, that had previously carried with them a fixed sentence of life without parole. The effect of MCL 769.25 is that even juveniles who commit the most serious offenses against the laws of this state may no longer be sentenced under the same sentencing rules and procedures as those that apply to adults who commit the same offenses. Rather than imposing fixed sentences of life without parole on all defendants convicted of violating MCL 750.316, MCL 769.25 now establishes a default sentencing range for individuals who commit first-degree murder before turning 18 years of age. [*Carp*, 496 Mich at ___; slip op at 9-10.]

The *Carp* Court found that because the conviction of one of the defendants was still being considered on direct review, the defendant was entitled to resentencing pursuant to MCL 769.25. *Id.* at ___; slip op at 79. The Michigan Supreme Court emphasized that, under this statute, “the default sentence for a juvenile convicted of first-degree murder is a sentence of a term of years within specific limits rather than life without parole.” *Id.*

MCL 769.25 applies to a defendant who was less than 18 years of age at the time of commission of certain offenses, including first-degree murder. MCL 769.25(1) and (2)(b). If a defendant was convicted before the effective date of the statute,¹ the statute is still applicable if either of the following circumstances exist: (1) “[t]he case is still pending in the trial court or the applicable time periods for direct appellate review by state or federal courts have not expired” or (2) “[o]n June 25, 2012² the case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts had not expired.” MCL 769.25(1)(b).

In the present case, defendant was less than 18 years of age at the time he committed first-degree murder. Further, although defendant was convicted of this offense before the effective date of the statute, his case is still pending on direct review and on June 25, 2012, the applicable time periods for direct appellate review by state or federal courts had not expired. Therefore, MCL 769.25 is applicable to this case, and defendant is entitled to be resentenced in accordance with this statute. MCL 769.25; *Carp*, 496 Mich at ___; slip op at 79.

¹ MCL 769.25 became effective March 4, 2014. 2014 PA 22.

² *Miller, supra*, was decided on June 25, 2012.

We recognize that MCL 769.25(6) requires a trial court to consider the factors articulated in *Miller* when sentencing a juvenile offender convicted of first-degree murder and that the trial court already made specific findings regarding these factors at the resentencing hearing in May 2013. However, the statute also sets forth additional requirements, and defendant is entitled to have the trial court consider this statute during further sentencing proceedings. See, generally, *Carp*, 469 Mich at ____; slip op at 79.

We remand for further proceedings regarding sentencing. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly