

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS JANARVIS ARMSTRONG,

Defendant-Appellant.

UNPUBLISHED

April 19, 1996

No. 192043

LC No. 89-041659-FH

ON REMAND

Before: Fitzgerald, P.J., and Michael J. Kelly and MacKenzie, JJ.

PER CURIAM.

This case is before us on remand from the Supreme Court for a “fuller explanation and analysis of the defendant’s challenge to his being sentenced as an adult in terms of the evidence and ruling below under the relevant statutory and court rule criteria.” We again affirm the trial court’s decision to sentence defendant as an adult offender.

Following a jury trial, defendant, a fifteen-year-old juvenile, was convicted of first-degree murder, MCL 750.316; MSA 28.548. Thereafter, a juvenile sentencing hearing was conducted and the trial court concluded, in accordance with MCL 769.1(3); MSA 28.1072(3), that defendant should be sentenced as an adult to life imprisonment. Defendant then filed an appeal as of right with this Court.

On appeal, defendant alleged, among other things, that the trial court abused its discretion in sentencing him as an adult. We affirmed defendant’s conviction and sentence. *People v Armstrong*, unpublished memorandum opinion of the Court of Appeals, issued 12/2/94 (Docket No. 125736). Thereafter, defendant filed a delayed application for leave to appeal to the Michigan Supreme Court. The Supreme Court, in an order entered January 23, 1996, remanded this matter to us for a fuller analysis of defendant’s claim that the trial court abused its discretion in sentencing him as an adult. Hence, the only issue before us on remand is whether the trial court abused its discretion in sentencing defendant, a fifteen-year-old juvenile at the time of the offense in question, as an adult offender instead of as a juvenile offender.

The standard of review of a trial court's decision to sentence a minor as a juvenile or as an adult offender is a bifurcated one. First, the trial court's factual findings supporting its determination regarding each factor enumerated in MCL 769.1(3); MSA 28.1072(3) are reviewed under the clearly erroneous standard. *People v Lyons (On Remand)*, 203 Mich App 465, 467-468; 513 NW2d 170 (1994); *People v Miller*, 199 Mich App 609, 612-613; 503 NW2d 89 (1993); *People v Passeno*, 195 Mich App 91, 103; 489 NW2d 152 (1992). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *Lyons, supra*, 203 Mich App 468; *Miller, supra*, 199 Mich App 612-613; *Passeno, supra*, 195 Mich App 103. Second, the ultimate decision whether to sentence the minor as a juvenile or as an adult is reviewed for an abuse of discretion. The abuse-of-discretion standard requires the reviewing court to determine whether the sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *Lyons, supra*, 203 Mich App 468; *Passeno, supra*, 195 Mich App 103-104.

MCL 769.1(3); MSA 28.1072(3), and MCR 6.931(A), require that the trial court conduct a juvenile sentencing hearing to determine if the best interests of the juvenile and the public would be served better by placing the minor in the custody of the juvenile offender system or by sentencing the juvenile as an adult. *Lyons, supra*, 203 Mich App 465. The trial court is required to consider the following factors in making its determination, giving weight to each as appropriate under the circumstances:

- (a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.
- (b) The seriousness and the circumstances of the offense.
- (c) Whether the offense is part of a repetitive pattern of offenses which would lead to 1 of the following determinations:
 - (i) The juvenile is not amenable to treatment.
 - (ii) That despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to disrupt the rehabilitation of other juveniles in the treatment program.
- (d) Whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public if released at the age of 21.

(e) Whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

(f) What is in the best interests of the public welfare and the protection of the public security. [MCL 769.1(3)(a)-(f); MSA 28.1072(3)(a)-(f). See also MCR 6.931(E)(3)(a)-(f) and *Lyons, supra*, 203 Mich App 468-469.]

The prosecutor has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be served by sentencing the juvenile as an adult offender. MCR 6.931(E)(2); *Lyons, supra*, 203 Mich App 469; *Miller, supra*, 199 Mich App 611.

The following evidence was presented at the juvenile sentencing hearing. Charles Karafa, a veteran social services worker for the Genesee County Department of Social Services, was first to testify. Karafa recommended that defendant be sentenced as a juvenile. Karafa indicated that defendant's specific treatment needs could be met in a training program for juvenile offenders. He testified that there was a "good chance" that defendant was "treatable," but that "he certainly had his limitations and the outcome [was] in question." Karafa admitted that defendant was in denial regarding his involvement in the crimes, but indicated that "at times [he] did show some insight and at times is amenable to structure and to being able to learn and accomplish some things." When asked if he believed that defendant would be "rendered harmless" if he were placed in a juvenile treatment facility and then released at age twenty-one, Karafa indicated that "I think that's something that would have to be carefully gauged." Karafa admitted that "about fifty percent of the youth who go through our program continue to be in trouble." However, Karafa expressed concern that defendant would be "completely adrift" in the prison system. Karafa characterized defendant as a "fair" rehabilitative risk.

Karafa also testified that defendant had a prior breaking and entering charge against him, defendant's school record was "very poor," that although defendant's mother was somewhat supportive, there was "a lack of family structure and support," that defendant was "a learning disabled child," and that he had been suspended from school eight times and transferred from school to school three times within the last year. Karafa admitted that defendant had been unsuccessful in school, and that he was currently functioning at a third grade level in reading and spelling and a fifth or sixth grade level in math. However, Karafa indicated that to upgrade these skills defendant could be referred to a juvenile training school where he would be "given an IAPC and be placed in a full-time special education program within the training school."

Karafa also testified that defendant had "been in trouble four times" during his incarceration while awaiting sentencing. Apparently, defendant instigated fights with other juveniles during his incarceration in the detention center. Karafa testified that those at the juvenile detention center considered defendant "immature and just kind of mouthy and acting out at times." Karafa admitted that he also found defendant to be immature.

Next to testify at the sentencing dispositional hearing was Joan Pigott, probation agent for the Michigan Department of Corrections. Although Pigott had only been with the Department of Corrections for six months at the time of this hearing, she testified that she had previously worked at a halfway house and for seven years as a probation officer. Pigott recommended that defendant be sentenced as an adult because of the serious nature of the offense, because she doubted that defendant could be rehabilitated, and because she considered him a threat to society.

As to rehabilitation, Pigott noted that defendant did not “adjust well to institutional expectations” in school and that his adjustment to the detention center was “considered poor,” that he had a low IQ, poor ability to realize consequences for behavior, poor adjustment to societal expectations, and was impulsive and “difficult to control.” Pigott indicated that she had concerns regarding defendant’s amenability to treatment due to the fact that he denied or minimized his involvement in the offense. Pigott also noted that defendant’s father provided little, if any, supervision or structure, and that defendant was frequently absent throughout his school career. As to the best interests of the public, Pigott opined that defendant would still be dangerous if he were released at age twenty-one.

After hearing the above evidence, the trial court made findings of fact and concluded that defendant should be sentenced as an adult offender.

With regard to the first statutory criterion, which requires consideration of the defendant’s prior record, physical and mental maturity, and his pattern of living, the trial court found that defendant’s prior school record and record at the juvenile detention center was “bad,” that defendant was mentally immature, and that defendant had moved back and forth from parent to parent. The evidence presented at the juvenile sentencing hearing supports these findings. Social worker Karafa testified that defendant’s school record was “very poor,” that defendant had “been in trouble four times” during his incarceration at the juvenile detention center, that defendant was immature, and that defendant was living with his father when the incident in question occurred. Probation agent Pigott testified that defendant did not “adjust well to institutional expectations” in school and that his adjustment to the detention center was “considered poor.” She also testified that although defendant was living with his father at the time of the instant offense, he had previously lived with his mother. In light of this evidence, the trial court’s findings with regard to the first statutory criterion were not clearly erroneous.

Regarding the seriousness and the circumstances of the offense, the trial court found that defendant was convicted of an extremely serious offense. The evidence supports such a finding. On July 18, 1989, at approximately 12:00 a.m., defendant, age fifteen, Terry Anderson, age seventeen, and Joseph Brown, age fourteen, broke into and entered the residence of Ruth Snook, an elderly woman. The youths took Snook’s car keys and garage door opener, but fled when Snook discovered they were in the house and called the police. After leaving Snook’s house, codefendant Brown told defendant that “he should have killed the old lady.” Later that evening, the youths broke into the residence belonging

to the elderly William Watson. Using a butcher knife, Brown cut open a window screen, gained access to the residence, and then opened the door for defendant and Anderson to enter. When Watson awakened, Anderson ran out of the house. As Watson came out of his bedroom, Brown stabbed him in the chest with the butcher knife, killing him. Defendant then took Watson's car keys and Brown took his change purse. Brown then drove away in Watson's station wagon. Later that evening, while knowing that Brown had just stabbed Watson and had previously indicated that he should have killed Snook, defendant told Brown that he wanted to go back to Snook's house and get her car. Using the garage door opener and car keys that they had taken from Snook earlier in the evening, defendant was able to steal Snook's car.

In sum, defendant and his companions targeted elderly people, broke into their houses in the middle of the night, robbed them and killed the elderly William Watson. Although defendant seeks to downplay his involvement in the murder of Watson, it is clear that although defendant did not actually stab Watson, he was very involved in the incidents in question. In fact, after Brown had stabbed Watson and had indicated to defendant that he should have killed Snook, defendant encouraged Brown to return to the Snook residence to help defendant get Snook's car, thus placing Snook's life in extreme danger. Fortunately, Snook was not killed.

Clearly, this was a very serious offense. In fact, defendant admits that this was a very serious offense. However, as defendant points out in his brief in support of his motion to file supplemental authority, the seriousness of the offense alone does not justify sentencing a juvenile as an adult, see *People v Dunbar*, 423 Mich 380, 396; 377 NW2d 262 (1985); *People v Whitfield*, 214 Mich App 348; ___ NW2d ___ (1995); *People v Schumacher*, 75 Mich App 505, 512; 256 NW2d 39 (1977), and that no single criterion shall be given preeminence over the others, *People v Brown*, 205 Mich App 503, 504; 517 NW2d 806 (1994); *In re LeBlanc*, 171 Mich App 405, 411; 430 NW2d 780 (1988). From a review of the findings made by the trial court, it does not appear, however, that the trial court relied solely upon the seriousness of the offense or gave undue weight to this factor in deciding to sentence defendant as an adult offender. The trial court's findings with regard to the seriousness of the offense were not clearly erroneous.

With regard to whether the offense was part of a repetitive pattern of offenses indicating that defendant was not amenable to treatment or that despite his potential for treatment, would be likely to disrupt the rehabilitation of other juveniles, the trial court found that defendant was not amenable to treatment and that he would cause "a great deal of disruption" within the juvenile system. These findings were supported by the evidence presented at the juvenile sentencing hearing. Although social worker Karafa recommended that defendant be sentenced as a juvenile, he characterized defendant as a "fair" rehabilitative risk. While Karafa indicated that defendant was "at times amenable to structure," he acknowledged that defendant had not previously done well in structured environments, having been suspended from school eight times and transferred from school to school three times within the last year and having "been in trouble" numerous times during his stay at the juvenile detention center. Karafa acknowledged that defendant instigated fights with other juveniles at the detention center. Probation

agent Pigott expressed concerns regarding defendant's amenability to treatment due to the fact that he denied or minimized his involvement in the instant offense. She acknowledged that defendant had adjusted poorly to other structured environments including school and the detention center. Defendant's character defects, including a tendency to lie, impulsiveness, aggressiveness, and an inability to conform to rules, also indicated that he was not amenable to treatment and would be disruptive of the treatment of others.

In light of Pigott's testimony that she did not believe that defendant was amenable to treatment, and in light of defendant's prior record in other structured settings and the fact that he instigated fights in the juvenile detention center and was difficult to control, the trial court's findings with regard to the third statutory criterion were not clearly erroneous.

Regarding whether defendant would pose a danger to the public if released at age twenty-one, the trial court found that defendant was likely to be dangerous to the public if released then. This finding was also supported by the evidence. Defendant committed a very serious offense, lied about his involvement, refused to accept responsibility for his actions, exhibited a very poor attitude, and suffered from "poor adjustment" to societal expectations. Probation agent Pigott testified that she doubted that defendant could be rehabilitated and that she considered him a threat to society. Both experts admitted that defendant denied or minimized his involvement in the offenses. When asked if he believed that defendant would be "rendered harmless" if he was placed in a juvenile treatment facility and then released at age twenty-one, social worker Karafa indicated that "I think that's something that would have to be carefully gauged," and admitted that graduates of juvenile treatment facilities had a high recidivism rate. In fact, Karafa only characterized defendant as a "fair" rehabilitative risk.

Furthermore, the nature of the offense itself suggests that defendant would be a danger to society if released at age twenty-one. Defendant and his cohorts broke into the homes of two elderly people in the middle of the night, robbed them, and killed the elderly William Watson. Since there was little evidence presented to indicate that defendant could be rehabilitated, in light of his prior conduct it appears that he would clearly continue to be a threat to society. In light of the evidence presented at the juvenile sentencing hearing, the trial court's finding that defendant would be a danger to society if released at age twenty-one was not clearly erroneous.

With respect to whether defendant would more likely be rehabilitated by the services and facilities available in adult programs than in juvenile programs, the trial court found that defendant was not likely to be rehabilitated by either the services available in the adult programs or the services available in the juvenile programs. Again, this finding is supported by the evidence relating to defendant's poor school record, his negative adjustment to the juvenile detention facility, his attitude, behavior and negative personality characteristics. Also, probation agent Pigott testified that she did not believe that defendant could be rehabilitated. Therefore, the trial court's finding with regard to statutory criterion (e) was not clearly erroneous.

Lastly, the trial court found that the best interests of the public welfare and the protection of public security required that defendant be sentenced as an adult. This finding is supported by the evidence. The seriousness of the offense combined with the lack of rehabilitation potential indicates that in order to protect society it was necessary to place defendant in the adult system.

In sum, the trial court's factual findings were supported by the evidence, and the court properly determined that the interests of the public welfare and the protection of the public security would be served best by sentencing defendant as an adult. *Lyons, supra*, 203 Mich App 473. Defendant's sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. Therefore, the trial court's decision to sentence defendant as an adult was not an abuse of discretion. *Id.*

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly
/s/ Barbara B. MacKenzie