

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
November 22, 2016

v

LLOYD WEST,

Defendant-Appellee.

No. 328687
Wayne Circuit Court
LC No. 13-009541-01-FJ

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

The prosecution appeals by leave granted¹ the trial court's order denying the prosecution's motion to have the trial court decide defendant Lloyd West's sentence without the jury's advice. Following a jury trial, West was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Because a judge, not a jury, must determine a juvenile offender's sentence under MCL 769.25, we reverse and remand for proceedings consistent with this opinion.

I. BASIC FACTS

West was under 18 when he shot and killed Robert Carter in a drive-by shooting. After he was convicted, the trial court ruled that a jury was required to determine whether or not West would be sentenced to life imprisonment without the possibility of parole or whether the trial court would have discretion to sentence him to a term of years. The prosecution objected, arguing that under MCL 769.25, the trial court, not a jury, was responsible for determining West's sentence. The trial court, however, maintained that it would use a jury to make the determination. The prosecution appealed that decision to this Court on August 6, 2015. We held the matter in abeyance pending the decision of the special panel in *People v Hyatt*, ___ Mich

¹ *People v West*, unpublished order of the Court of Appeals, entered September 22, 2015 (Docket No. 328687).

App ___; ___ NW2d ___ (2016) (Docket No. 325741).² On July 21, 2016, this Court’s decision in *Hyatt* was issued and proceedings in this appeal continued.

II. SENTENCING

A. STANDARD OF REVIEW

The prosecution argues that the trial court erred in holding that a jury must participate in the sentencing of a juvenile defendant in cases where the prosecution is seeking a sentence of life imprisonment without the possibility of parole. The prosecution also contends that a defendant’s Sixth Amendment right to a jury is not implicated in a sentencing hearing where the trial court weighs the factors set forth in *Miller v Alabama*, ___ US ___; 132 S Ct 2455; 183 L Ed 2d 407 (2012). We review de novo questions of constitutional law. *People v Hyatt*, ___ Mich App ___, ___; ___ NW2d ___ (2016) (Docket No. 325741); slip op at 2.

B. ANALYSIS

In *Miller*, the United States Supreme Court held that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’ ” *Miller*, ___ US at ___; 132 S Ct at 2460, quoting US Const, Am VIII. The Court stated that “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *Miller*, ___ US at ___; 132 S Ct at 2475.

In response to *Miller*, our Legislature enacted MCL 769.25, which provides in pertinent part:

(1) This section 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) if either of the following circumstances exists:

(a) The defendant is convicted of the offense on or after the effective date of the amendatory act that added this section.

* * *

(2) The prosecuting attorney may file a motion under this section to sentence a defendant described in subsection (1) to imprisonment for life without the possibility of parole if the individual is or was convicted of any of the following violations:

² *People v West*, unpublished order of the Court of Appeals, entered February 24, 2016 (Docket No. 328687).

* * *

(b) A violation of section . . . 316, . . . of the Michigan penal code, 1931 PA 328, . . . 750.316,

* * *

(3) If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described in subsection (1)(a), the prosecuting attorney shall file the motion within 21 days after the defendant is convicted of that violation. . . . The motion shall specify the grounds on which the prosecuting attorney is requesting the court to impose a sentence of imprisonment for life without the possibility of parole.

(4) If the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for in that subsection, the court shall sentence the defendant to a term of years as provided in subsection (9).

* * *

(6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v Alabama*, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

(7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.

* * *

(9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, 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.

Interpreting this statute, we initially held in *People v Skinner*, 312 Mich App 15, 20; 877 NW2d 482 (2015), that “the Sixth Amendment mandates that juveniles convicted of homicide who face the possibility of a sentence of life without the possibility of parole have a right to have their sentences determined by a jury.” Subsequently, in *People v Perkins*, and its companion cases, *People v Hyatt*, and *People v Williams*, a panel of this Court stated that it believed that *Skinner* was wrongly decided and declared a conflict with *Skinner* pursuant to MCR 7.215(J)(2). *People v Perkins*, 314 Mich App 140, 145, 165; ___ NW2d ___ (2016).

We convened a special conflict panel to resolve the conflict, and, pertinent to this appeal, concluded “that a judge, not a jury,” must make the final determination of whether a juvenile should be sentenced to life imprisonment without the possibility of parole. *Hyatt*, ___ Mich App at ___; slip op at 1, 21. Thus, the issue of whether a judge or a jury must determine whether to sentence a juvenile offender to life without parole was plainly resolved by the decision in *Hyatt*. Accordingly, because the trial court’s determination that a jury must participate does not comport with *Hyatt*, which is given retroactive effect, *People v Johnson*, 302 Mich App 450, 464; 838 NW2d 889 (2013), its decision amounted to legal error requiring reversal.

On remand, the trial court should conduct a sentencing hearing that follows the dictates of *Hyatt*, recognizing that “in all but the rarest of circumstances, a life-without-parole sentence will be disproportionate for the juvenile offender at issue.” *Hyatt*, ___ Mich App at ___; slip op at 23. The trial court must also “undertake a searching inquiry into the particular juvenile, as well as the particular offense, and make the admittedly difficult decision of determining whether this is the truly rare juvenile for whom life without parole is constitutionally proportionate as compared to the more common and constitutionally protected juvenile whose conduct was due to transient immaturity” *Id.*; slip op at 24.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Stephen L. Borrello