NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. 2013 KA 1905

STATE OF LOUISIANA

VERSUS

TREVOR REESE

Judgment Rendered: JUN 25 2014

RHP

On Appeal from the
20th Judicial District Court,
In and for the Parish of West Feliciana,
State of Louisiana
No. 10-WFLN-250

The Honorable William G. Carmichael, Judge Presiding

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* * * *

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

DRAKE, J.

The defendant, Trevor Reese, was charged by grand jury indictment with first degree murder, a violation of La. R.S. 14:30. He pled not guilty and not guilty by reason of insanity. The defendant subsequently withdrew this plea and pled guilty to second degree murder, a violation of La. R.S. 14:30.1. Following a sentencing hearing, the defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating five assignments of error. We affirm the conviction and sentence.

FACTS

On June 10, 2010, eight-year-old J.A. was biking the trails at the Bluffs Golf Resort in St. Francisville, West Feliciana Parish with family and friends. The defendant, who was sixteen-years-old, attacked and stabbed J.A. Following the stabbing, J.A. was taken to West Feliciana Parish Hospital, where he died a short time later from exsanguination, due to a lacerated internal jugular vein and multiple cuts to the neck. The defendant did not know J.A.

ASSIGNMENTS OF ERROR

In these five related sentencing assignments of error, the defendant argues, respectively, that the trial court failed to take into account his youth in sentencing him to life without the possibility of parole; the trial court erred when it gave no weight to evidence of his potential for growth and rehabilitation; the trial court erred in allowing improper victim impact statements at the sentencing hearing; the trial court erred in sentencing him to the harshest sentence available where there was no evidence he was the worst offender; and his sentence is unconstitutionally excessive.

The Eighth Amendment to the United States Constitution and Article I, § 20,

of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence falls within statutory limits, it may be excessive. *State v. Sepulvado*, 367 So. 2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *State v. Andrews*, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So. 2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See *State v. Holts*, 525 So. 2d 1241, 1245 (La. App. 1 Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. Code of Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. *State v. Brown*, 02-2231 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. Code Crim. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. Code Crim. P. art. 894.1. *State v. Lanclos*, 419 So. 2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See *State v. Jones*, 398 So. 2d 1049, 1051-52 (La. 1981).

We first address those three assignments of error that are so closely

interrelated: the trial court failed to take into account the defendant's youth; the trial court gave no weight to rehabilitation; and the life sentence is excessive. In *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 2469-75, 183 L.Ed.2d 407 (2012), the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. The *Miller* Court, however, made clear that it did not prohibit life imprisonment without parole for juveniles, but instead required that a sentencing court consider an offender's youth and attendant characteristics as mitigating circumstances before deciding whether to impose the harshest possible penalty for juveniles who have committed a homicide offense. See *State v. Simmons*, 11-1810 (La. 10/12/12), 99 So. 3d 28 (per curiam); *State v. Graham*, 11-2260 (La. 10/12/12), 99 So. 3d 28 (per curiam). Under *Miller*, 132 S.Ct. at 2475, for homicide-related offenses, a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.

According to the defendant, the trial court failed to treat him differently from an adult by not weighing his youth and its attendant characteristics, such as, per *Miller*, chronological age, the family and home environment, the circumstances of the offense, and the possibility of rehabilitation. The defendant asserts the trial court gave no weight to the potential for rehabilitation because, despite a physician testifying at the sentencing hearing that he believed the defendant had the potential to recover, the trial court found "there is not enough evidence that there is anything to fix or that can be fixed to prevent this sort of inexplicable crime from happening again." Finally, the defendant asserts the life sentence without parole is excessive because it needlessly inflicts suffering and makes no contribution to society.

Our review of the record reveals that the trial court did consider the

defendant's youth and the possibility of rehabilitation. As dictated by *Miller*, an extensive sentencing hearing was conducted by the trial court. Details of the horrific killing of eight-year-old J.A. were brought before the court. Several witnesses, including doctors and other mental health experts, thoroughly discussed the defendant's early life, his upbringing, his family and his relationships with them, his time in school, his social involvements, and his innermost thoughts and personal feelings. The trial court learned the defendant came from a good, solid family, was highly intelligent, and attended Baton Rouge Magnet High School. The trial court also learned the defendant showed no remorse after stabbing J.A., and that the defendant wanted to be a serial killer. One of the doctors who evaluated the defendant testified, "The crime was heinous. The ... classification it falls into is predatory, is the most dangerous." The defendant testified and when he was asked about the attack, he stated he attacked J.A. "because he was weaker than me. I'm a weak person. I was too scared to attack anyone stronger. Okay? I'm terrible, I'm a monster, it was evil. I know that."

In its reasons for sentencing the defendant to life imprisonment without benefit of parole, it is clear, as required under *Miller*, that the trial court thoroughly considered the defendant's youth, the possibility for rehabilitation, and the many other factors presented at the sentencing hearing:

> We're here for sentencing, and I'll get to that in a minute, and I'll try and explain the process and the chronology of how we came to be here in terms of the law as it exists now. But I want to say I -- I think when Mr. Reese said it would be an easy decision for me, I -- I know he's upset, and I don't think he really meant it, but it isn't easy. There's no easy aspect of depriving anyone of their freedom, even for a day. That's the hardest part of my job.
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> For the victims, no one knows how you feel. Everybody says they do. Nobody knows how you feel. We know that we can't know how you feel, but you have the heartfelt sympathy of everybody in the courtroom.
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> We are here for sentencing and that is the last part of this part of the process. And I wish that whatever I do would make you feel better, but it won't. And there have been a lot of psychologists and

psychiatrists that probably can answer that question better than I can, but I suspect when you leave here, you won't feel much better than when you came in. The system that brings us here today is a good system, and it works, but it's not very good at easing the pain of the victims, and I understand that, but that's why we're here.

On June 10th of 2010, Trevor Reese murdered [J.A.]. At the time of the murder, Trevor was sixteen, [J.A.] was eight.

* * * * *

At the hearing, which is what you have just sat through, the prosecution and the defense may produce any aggravating or mitigating evidence relevant to the charged offense or the character of the offender, including the facts and circumstances of the crime, the criminal history of the offender, his level of family support, social history, and other relevant factors.

The first issue relates to the chronological age of Trevor Reese at the time of the offense. He was sixteen. He was fifty-one days short of his seventeenth birthday. In other words, had the offense occurred one year and fifty-one days later, he would not be entitled to this hearing. I find that his chronological age, especially considering the evidence of his educational background, is not, of itself, a factor to be considered in mitigation.

As to the circumstances of the crime, it is difficult to imagine a more heinous crime than the murder of an innocent child. As to the character of the offender including the -- his family and home environment, Trevor Reese has no criminal record. He has had the benefit of a stable, loving family and a good education. He has had many advantages enjoyed by few others of his age. He has not been subjected to any negative influences or pressures from within or without his family environment. He has been active and good in sports. I have considered his mental and emotional development and his social, emotional, academic, and familial functioning to be on a higher than average level now and at the time of this offense. I believe that Trevor Reese has lived a life of privilege.

There is some deficiency in Trevor Reese's character that may have contributed to his actions on June 10th of 2010. And that in itself is troubling, as was his testimony. But there is no reason for this crime and no satisfactory explanation has been advanced here today. There is not enough evidence that there is anything to fix or that can be fixed to prevent this sort of inexplicable crime from happening again. That means it could happen again.

The defendant also argues the trial court erred in allowing improper victim impact statements at the sentencing hearing. At the hearing, J.A.'s mother's therapist testified about how she has been affected by her son's murder; and J.A.'s father and grandfather testified. J.A.'s grandfather described his hatred toward the defendant and added that, if the defendant ever left prison, he (grandfather) hoped

it would "be feet first in a pine box." J.A.'s father asked for the maximum sentence. According to the defendant, all of this testimony was improper and had no bearing on whether his juvenile characteristics warranted a life sentence without the possibility of parole.

In *Payne v. Tennessee*, 501 U.S. 808, 825, 111 S.Ct. 2597, 2608, 115 L.Ed.2d 720 (1991), the United States Supreme Court recognized that "[v]ictim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question," and "[i]n the majority of cases ... [it] serves entirely legitimate purposes." Furthermore, "for the jury to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before it at the sentencing phase evidence of the specific harm caused by the defendant." *Id.* at 825, 111 S.Ct. at 2608. The Court concluded "that if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar." *Id.* at 827, 111 S.Ct. at 2609. While evidence depicting the impact of the loss on the victim's survivors is permitted, the evidence may not descend into detailed descriptions of the good qualities of the victim, particularized narrations of the sufferings of the survivors, or what opinions the survivors hold with respect to the crime or the murderer. *State v. Bernard*, 608 So.2d 966, 972 (La. 1992). See *State v. Williams*, 96-1023 (La. 1/21/98), 708 So.2d 703, 721-22, *cert. denied*, 525 U.S. 838, 119 S.Ct. 99, 142 L.Ed.2d 79 (1998).

We find nothing improper about the testimony of the therapist of J.A.'s mother. Assuming, but not deciding, that the testimony of J.A.'s father or grandfather exceeded the boundaries set forth in *Bernard*, any possible error was harmless. See La. Code Crim. P. art. 921. A good deal of mitigation evidence, including the defendant's own testimony, was introduced at the sentencing hearing.

In a hearing that comprised 135 pages of testimony, seven of those pages totaled J.A.'s father's and grandfather's testimony. Thus, any possible prejudice was diluted by the entirety of the testimony, comprised largely of the opinions of doctors and other mental health experts. Finally, it must be noted that surely the trial court regarded the testimony of these victim impact witnesses as normal human reactions to the death of a loved one. That the victim's survivors might have little or no sympathy for the defendant certainly would come as no surprise to the trial court. See *State v. Taylor*, 93-2201 (La. 2/28/96), 669 So.2d 364, 371, *cert. denied*, 519 U.S. 860, 117 S.Ct. 162, 136 L.Ed.2d 106 (1996). See also *Williams*, 708 So. 2d at 720-22; *State v. Schwarz*, 13-255 (La. App. 3 Cir. 10/9/13), 123 So. 3d 1256, 1259.

Finally, the defendant argues the trial court erred in sentencing him to the harshest sentence available where there was no evidence he was the worst offender. According to the defendant, he had no criminal record and prior to the offense, he did not engage in any violent behavior, such as hurting other human beings or animals. Maximum sentences may be imposed for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. *State v. Hilton*, 99-1239 (La. App. 1 Cir. 3/31/00), 764 So. 2d 1027, 1037, *writ denied*, 00-0958 (La. 3/9/01), 786 So. 2d 113. We find the murder of a small child to be the worst crime and the defendant to be the worst offender. The defendant deliberately stabbed an eight-year-old child. The defendant laid in wait, grabbed the boy, and relentlessly attacked him as the boy struggled for his life. The defendant cut his neck, then chased his victim, and cut his neck again. As J.A. lay dying in his blood, the defendant left. As one of the assistant district attorneys pointed out at the end of the sentencing hearing:

> Obviously, from the evidence, the testimony, and the photographs elicited in this hearing, this is a murder of the harshest and the most egregious nature. There is no mitigation.
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> There are so many aggravating factors throughout this ordeal. Little [J.A.] was hunted, he was stalked, and he was carved with a box cutter. And nobody could help him, not even his physician mother because he was nearly decapitated. Of all of the doctors who have examined him in the last years, the psychiatrists, the psychologists, they all agreed on one thing: He continued to have notions of wanting to kill again, he continued to have the desire to kill again, and he continued to replay how he could have perfected that murder if he could have chosen an easier victim or how he could deal with the body differently. He just didn't think that out. And he could -- and the problem was he just couldn't find his release. Perhaps it was because he didn't get to achieve his goal of becoming that serial killer and he got unexpected results. Basically, he told the doctors it wasn't as exciting as he thought it would be.
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> Dr. Seiden testified that Trevor Reese had no remorse, he had no empathy for the victim. And no remorse and no empathy is a good indicator of repeating a behavior. The defendant-- the defendant, Trevor Reese, when asked, when speaking of the death of little [J.A.] asked, "What's the big deal?" The big deal is that an eight-year-old boy's last moments in this world were at the hands of a vicious person, and the defense asks this Court for the opportunity for options.
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> Monique Attuso, Craig Attuso, Mark Attuso, Zachary Attuso, Mr. Wayne Attuso, they didn't get any options, and little smiling [J.A.], he certainly didn't have any options. His life was sacrificed. His bright little light was extinguished, and the only just punishment in this case, in this case of the most horrific kind, is life in prison. Life in prison for the rest of his life without the possibility of parole.

Moreover, given the violence and brutality of the crime, the maximum sentence was justified in this case. The fact the defendant was a first-time offender does little to mitigate the atrocity of the crime. See *State v. Lewis*, 430 So. 2d 1286, 1289 (La. App. 1st Cir.), *writ denied*, 435 So. 2d 433 (La. 1983).

The trial court complied with *Miller* and adequately considered the factors set forth in Article 894.1. See La. Code Crim. P. art. 878.1. Considering the testimony adduced at the sentencing hearing, the trial court's careful review of the circumstances, and the nature of the crime, we find no abuse of discretion by the

trial court. The trial court provided ample justification in imposing a life sentence without the possibility of parole. See *State v. Mickey*, 604 So. 2d 675, 679 (La. App. 1 Cir. 1992), *writ denied*, 610 So. 2d 795 (La. 1993). Accordingly, the sentence imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.