STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS MCCANN WATSON,

Defendant-Appellant.

UNPUBLISHED
May 20, 2021

No. 352638
Wayne Circuit Court
LC No. 85-004346-01-FC

Before: RONAYNE KRAUSE, P.J., and RIORDAN and O'BRIEN, JJ.

PER CURIAM.

In 1986, a jury convicted defendant of two counts of first-degree premeditated murder, MCL 750.316(1)(a), two counts of assault with intent to commit murder, MCL 750.83, three counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b, one count of kidnapping, MCL 750.349, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was a 17-year-old juvenile at the time of the charged offenses. After defendant was convicted, the trial court sentenced defendant to concurrent prison terms of mandatory life without parole for each murder conviction and 20 to 40 years each for the assault, kidnapping, and CSC-I convictions, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. In a prior appeal, this Court affirmed defendant's convictions and sentences. *People v Watson (On Rehearing)*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 1988 (Docket No. 93134), lv den 435 Mich 852 (1990). In September 2019, following a hearing pursuant to *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and MCL 769.25a, the trial court resentenced defendant and again imposed life-without-parole sentences for the first-degree murder convictions. Defendant appeals that sentence as of right. We affirm.

I. BACKGROUND

On June 25, 1985, defendant shot Harold Anderson, Larry Anderson, Glenn Brown, and Tony Vicks, sexually assaulted and kidnapped KH, and took a taxicab driver's car at gunpoint. Harold and Brown died from their gunshot wounds, but Larry and Vicks survived. At the time of

the offenses, defendant had recently turned 17 years old. This Court's opinion in defendant's prior appeal provides the following summary of the relevant facts:

> On June 24, 1985, [KH] had an argument with a group of females. As a result of the argument, several of [KH's] friends gathered at her house that evening in order to protect her. This group included: Larry Anderson, Tony Vicks, Harold Anderson, Glen Brown, Mark Riley and defendant. The group brought weapons to the house. While at the house, the group drank beer, "Champale," smoked marijuana and listened to music.
>
> Sometime around 12:30 a.m. or 1:00 a.m., Vicks drove Riley home. The others remained in the living room and [KH] was in the kitchen. Larry stated that, after Vicks and Riley left, Harold was "dozing off," Brown was "stretched out" on the floor and defendant was sitting down holding a .357 caliber Magnum revolver. Larry had his eyes closed when he heard "movement." He opened his eyes and saw defendant pointing the revolver at Harold. Defendant shot Harold and then shot Larry in the chin. Defendant did not say anything before shooting Larry. Afterwards, defendant shot Brown. Larry saw that defendant had [KH] and she was saying "no, Dennis, no." Larry left the house and asked a man on the street to summon the police and an ambulance.
>
> [KH] testified that, while she was in the kitchen, she heard strange noises from the living room. She went to the dining room and saw defendant approaching her with a gun. He told her that he had shot everyone in the living room and that he would shoot her if she did not do what he wanted her to do. Defendant took [KH] to a bedroom and made her take off her clothes. Brown ran past the bedroom and defendant fired at him. Afterwards, defendant forced [KH] to submit to vaginal and anal intercourse and fellatio. [KH] dressed and they left the bedroom. She saw Brown lying on the floor.
>
> Defendant told [KH] that he would wait for Vicks and make Vicks take him to his girlfriend's house where he would kill himself and his girlfriend. When Vicks came, [KH] and defendant went out to the front porch. Defendant fired the gun and the bullet hit [KH's] arm and Vicks's arm. Vicks ran from the house. Defendant made [KH] leave her house, hail a cab, and drive the cab to defendant's girlfriend's house. When she pulled into the driveway of this woman's house, [KH] saw the police approaching. Defendant pointed the gun at his head and pulled the trigger twice but it only clicked.
>
> Vicks's testimony revealed that he had known defendant "like a brother" for seven or eight years. When Vicks returned to [KH's] house, defendant and [KH] were standing at the front door and defendant was holding [KH's] arm. Defendant fired several shots at Vicks but only hit him twice. Vicks ran down the street to his brother's house.
>
> Harold and Brown died as a result of their gunshot wounds. Larry, Riley and Vicks said that they knew no reason why defendant would have wanted to shoot

them. However, Riley stated that on prior occasions, defendant had said that one day he would kill his friends and himself because they were so "close." Riley believed that defendant was only joking. Vicks also said that defendant had said that he wanted to kill himself and his friends. During the evening of the shootings, Vicks remembered defendant saying "homicide" several times.

The friends also testified that there was nothing unusual about defendant's behavior the night of the shootings. They were not aware of anyone ingesting "hard drugs" such as "LSD" or "acid" during the evening. Larry said he did not place "anything" in anyone's drink.

After defendant was arrested, he was advised of his constitutional rights. Sergeant Bernard Brantley stated that defendant did not appear intoxicated but he did have a speech impediment, a stammer. This impediment was apparently not there before this incident. Detroit Police Officer Anthony Treier recovered a .357 revolver from a bedroom in [KH's] house. The gun did not have live rounds, but had four spent casings. A .38 caliber revolver was found in the living room. A search of the defendant produced a telephone beeper, a silver chain, keys, $35 and five packets containing suspected marijuana.

Defendant presented an insanity defense based upon the involuntary ingestion of a drug. Defendant's testimony revealed that, while at [KH's] house, Larry and Riley had fired the guns into the air. Defendant was drinking beer, Champale, and smoking marijuana. At one point, defendant went to use the bathroom. His beer cup was one-half full before he went to the bathroom. When he returned, the cup was full and very foamy. He drank the beer. Ten minutes later, his head began spinning and he saw two or three of everything. He put his hands over his head and laid back. At that point, he heard a gunshot and saw Harold's head "roll over to the side." Defendant heard another gunshot. He went into the dining room and saw Larry holding the .357 Magnum. Defendant shot Larry with a .38 caliber believing that Larry was going to shoot him. Larry dropped his gun and ran out the front door.

Defendant put the gun in the bedroom and told [KH] to drive him to his girlfriend's house. He left the .38 in [KH's] house but took the sawed-off shotgun in case Larry returned. As he and [KH] approached the front door, Vicks pushed open the door. At first, defendant did not know who Vicks was so he started shooting. Defendant denied sexually assaulting [KH] that night. However, he testified that he had had sexual intercourse with her two days prior to the shootings. Defendant did not see anyone put anything in his drinks. However, Larry had offered defendant "acid" on prior occasions. Defendant explained that he first began having a speech impediment when he and [KH] were flagging down the cab.

Dr. Wendell Rowan Sanders, a psychiatrist, testified on behalf of defendant. Dr. Sanders performed a psychiatric examination of defendant and concluded that defendant was psychotic at the time of the incident. His opinion was based upon defendant's inability to give a coherent history of that night and defendant's

> descriptions of the hallucinations he experienced. Dr. Sanders opined that defendant's psychosis could have been caused by someone putting a drug in his drink. A blood and urine sample obtained from defendant following his arrest did not reveal the presence of barbiturates, natural drugs, or "basic drugs." However, the test that was performed on these samples could not detect the presence of "acid."
>
> In rebuttal, the. prosecutor called Michael Farrara, a senior clinical psychologist at the Detroit Recorder's Court Psychiatric Clinic. Farrara performed an evaluation of defendant for criminal responsibility. He opined that defendant was not suffering from psychosis or mental illness the night of the shootings. There was no evidence to substantiate that defendant was criminally insane. There was nothing irrational about defendant's acts in shooting Larry because defendant feared being harmed. Other than defendant's claim that he saw colored lights and things moving in his vision, there was no indication of disordered thinking. Defendant's memory of the incident was clear. [*Watson (On Rehearing)*, unpub opn at 1-5.]

As noted, this Court affirmed defendant's convictions and sentences. *Id.* at 10.

In 2012, the Supreme Court of the United States in *Miller*, 567 US at 465, held that a mandatory sentence of life imprisonment without the possibility of parole for a juvenile offender was unconstitutional. The *Miller* Court explained that its decision did "not foreclose a sentencer's ability to" sentence a juvenile to life without parole, but instead required the sentencing court "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id*. at 480.

In response to *Miller*, the Michigan Legislature enacted MCL 769.25, which provides a procedural framework for sentencing juvenile offenders who have committed offenses punishable by life imprisonment without parole. This statute applied to pending and future cases, but in anticipation of the possibility of *Miller*'s retroactive application, the Legislature also enacted MCL 769.25a, which provided sentencing provisions for juvenile offenders who had been sentenced to life imprisonment without parole and had exhausted their appeals. MCL 769.25a(2) and (3). In 2016, in *Montgomery v Louisiana*, 577 US 190; 136 S Ct 718; 193 L Ed 2d 599 (2016), the United States Supreme Court held that *Miller* applies retroactively. Accordingly, MCL 769.25a took effect. The prosecution filed a notice identifying defendant as a juvenile offender who would be affected by retroactive application of *Miller*, and, pursuant to MCL 769.25(2), requested that the trial court resentence defendant to imprisonment for life without parole for his first-degree murder convictions. After a three-day *Miller* evidentiary hearing, the trial court again imposed sentences of imprisonment for life without parole for defendant's first-degree murder convictions.

II. LIFE-WITHOUT-PAROLE SENTENCE

Defendant argues that the trial erred in its consideration of the *Miller* factors, and abused its discretion by resentencing him to life imprisonment without parole. We disagree.

We review the trial court's sentencing decision for an abuse of discretion. *People v Skinner*, 502 Mich 89, 131; 917 NW2d 292 (2018).[1] "The trial court abuses its discretion when its decision falls outside the range of principled outcomes or when it erroneously interprets or applies the law." *People v Lane*, 308 Mich App 38, 51; 862 NW2d 446 (2014) (citation omitted). A sentence constitutes an abuse of discretion when the sentence violates the principle of proportionality, which requires that a sentence be proportionate to the seriousness of the circumstances of the offense and the offender. *Skinner*, 502 Mich at 131-132. We review the trial court's findings of fact for clear error. *Id*. at 137 n 27. "A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made." *People v Hesch*, 278 Mich App 188, 192; 749 NW2d 267 (2008) (quotation marks and citation omitted).

As explained, *Miller* does not prohibit a juvenile from being sentenced to life without parole. *Miller*, 567 US at 479. Rather, it prohibits a sentencing scheme that mandates life without parole for juvenile offenders. See *Jones v Mississippi*, ___ US ___, ___; 141 S Ct 1307; ___ L Ed 2d ___ (2021) ("And then in *Miller* in 2012, the Court allowed life-without-parole sentences for defendants who committed homicide when they were under 18, but only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to 'consider the mitigating qualities of youth' and impose a lesser punishment.") (Citation omitted.) The *Miller* Court explained that such a scheme requires a court to consider "children's diminished culpability and heightened capacity for change" before imposing a sentence of life without parole. *Miller*, 567 US at 479. That is, a court is required "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id*. at 480. To assist in making these determinations, the Court outlined several factors about a juvenile offender that a sentencing court should consider:

> (1) "his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) "the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional"; (3) "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"; (4) whether "he might have been charged [with] 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 (5) "the possibility of rehabilitation . . . ." [*Skinner*, 502 Mich at 114-115, quoting *Miller*, 567 US at 477-478.]

[1] We reject defendant's claim that this Court should apply a de novo standard of review to determine the validity of defendant's life-without-parole sentences. In *Skinner*, our Supreme Court held that a trial court's decision to sentence a juvenile to life without parole "is to be reviewed under the traditional abuse-of-discretion standard." *Id*. at 137. Although defendant argues that *Skinner* was wrongly decided, this Court is bound to follow decisions of our Supreme Court. *People v Anthony*, 327 Mich App 24, 44; 932 NW2d 202 (2019).

In MCL 769.25, our Legislature incorporated these factors into this state's procedure for sentencing juvenile offenders who face the possibility of life in prison without the possibility of parole. Specifically, MCL 769.25(6) requires sentencing courts to consider the five *Miller* factors before sentencing a juvenile to life without parole. These factors are "mitigating factors." *Skinner*, 502 Mich at 115. "That is, these are factors that counsel against irrevocably sentencing [juveniles] to a lifetime in prison." *Id*. (quotation marks and citation omitted).

But MCL 769.25(6) makes clear that the *Miller* factors are part of a non-exhaustive list of factors sentencing courts should consider when sentencing juvenile defendants. The statute states that a sentencing court "may consider any other criteria relevant to its decision, including the individual's record while incarcerated." MCL 769.25(6). See also *People v Garay*, 949 NW2d 673, 674 (2020) (explaining that, when sentencing a juvenile, sentencing courts may consider "the traditional objectives of sentencing"); *People v Bennett*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 350649), slip op at 4. Although the sentencing court is not required to make any specific factual findings, *Skinner*, 502 Mich at 119, it must "specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed," MCL 769.25(7).

A. CHRONOLOGICAL AGE AND ITS HALLMARK FEATURES

The trial court found that the first *Miller* factor—defendant's "chronological age and its hallmark features," including "immaturity, impetuosity, and failure to appreciate risks and consequences," *Miller*, 567 US at 477—did not constitute a mitigating factor at the time of the offense. Defendant was 17 years old at the time he committed the crimes. The trial court acknowledged that defendant exhibited some traits typical of juveniles—the court said defendant "socialized with people in his age group in the community in a relatively normal way; hanging out, playing sports, et cetera," and he would "get involved in mischief generally typical of young—of a young person." Despite this, the court concluded that it was "not convinced that [defendant] didn't appreciate consequences of his actions or necessarily acted impulsively in any specific or particular situation or at all while growing up." The court noted that defendant made comments to his friend (who became his victims) about killing them, but being young, the friends assumed he was joking. Defendant also referred to himself as "Homicide" and he began carrying a gun on occasion. As for the crime itself, the court believed it "was deliberate in nature."

On these facts as found by the trial court, the court's decision with respect to this factor was not an abuse of discretion. The evidence of defendant's crime showed that defendant acted alone, without any encouragement or provocation, and, after committing multiple shootings and a sexual assault at KH's house, he told KH that he intended to go to his girlfriend's house to kill her and himself. The evidence that defendant took the opportunity to act on his previously stated comments to kill his friends demonstrates that his behavior was not a simple matter of reckless impulsivity, and the trial court could infer from defendant's intent to take his own life that he appreciated the consequences of his actions. Contrary to defendant's claim, there is record support for the trial court's ultimate determination that defendant's actions during the crimes were not the product of immaturity or impulsivity, and that defendant appreciated the risks and consequences of his actions. Thus, the trial court properly considered the first *Miller* factor, and did not abuse its discretion by finding that it was not a mitigating factor.

B. FAMILY AND HOME ENVIRONMENT

The trial court found that the second *Miller* factor—defendant's family and home environment—likewise did not favor leniency. The trial court determined that defendant's home environment, while perhaps not ideal, was not a mitigating factor because his parents were "good" parents, maintained a stable household, and provided for the family's needs. The court weighed the evidence of defendant's "somewhat rough upbringing coming from a lower-middle income house," against the facts that defendant was raised by "a good family and parents" in a "fairly normal" and "seemingly good home" with "a relatively supportive and structured family unit." The court cited evidence that defendant's parents were supportive, provided for defendant and his siblings' needs, and tried to keep defendant "on track," and that defendant was always neat and well-put together, noting that defendant and his siblings did not have to use hand-me-down clothing. Although, according to defendant's brother, defendant's father used corporal punishment at times, it was used as a consequence of poor performance in school or staying out past curfew, and not just to "beat" them. There was also no evidence that defendant affiliated with a gang or that his closest neighborhood friends were violent.

The trial court noted that, at one point, defendant moved in with his older sister and her boyfriend, which the evidence showed was defendant's own decision because he did not want to follow his father's rules related to curfew and school. The court recognized the defense evidence that the sister's household was different to the extent that there were drugs in the house and possible abuse between defendant's sister and her husband. The court also cited, however, the testimony of witnesses who had been to the home and described the house as a normal home environment, where no drugs were visible, and defendant had his own bedroom. Further, defendant does not dispute the trial court's finding that he had not suffered from extreme abuse, random beatings, or parental neglect. Thus, we find no error in the trial court's analysis of the second *Miller* factor, and the court did not abuse its discretion by finding that this factor did not favor mitigation.

C. CIRCUMSTANCES OF THE HOMICIDE OFFENSE

The trial court found that the third *Miller* factor—the circumstances of the homicide—also did not favor leniency. Defendant does not challenge the trial court's finding that the circumstances of the homicides had no mitigating effect on his sentences. Thus, it is unnecessary to address this factor.

D. POSSIBILITY OF LESSER CHARGES OR CONVICTION OF A LESSER OFFENSE

The trial court found that the fourth *Miller* factor—whether "he might have been charged [with] and convicted of a lesser offense if not for incompetencies associated with youth," *Miller*, 567 US at 477—likewise did not support mitigation of defendant's sentences. Preliminarily, defendant relies on the fact that at a retrial when he was 20 years old, a jury convicted him of the lesser offense of second-degree murder. This second trial and resultant convictions were found to be null and void, resulting in the reinstatement of defendant's original convictions, which were

affirmed.[2] While the trial court acknowledged that this case had "a unique procedural history," it did not discuss the interplay between the retrial verdict and the fourth *Miller* factor. Defendant essentially argues that this unique procedural nuance is mitigating because the second-degree murder verdict necessarily meant that he "he might have been charged [with] and convicted of a lesser offense . . . ." *Miller*, 567 US at 477. The proper inquiry, however, is whether "he might have been charged [with] 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*[.]" *Id*. at 477-478 (emphasis added). Defendant's contention that he was convicted of the lesser offense of second-degree murder on retrial because he was older and able to offer more assistance to counsel, apart from being speculative, ignores pertinent considerations of the fourth *Miller* factor.

Contrary to what defendant argues, there was no evidence that defendant's age or incompetency of youth rendered him unable to interact with police officers or the prosecution, or compromised his ability to assist in his defense. Defendant maintained his innocence from his arrest through trial. Defendant acknowledged that, after his arrest, he gave a statement to the police claiming that he acted in self-defense; he accused Larry of being the initial shooter and denied shooting Brown. At trial, he likewise testified that he shot Larry in self-defense. Defendant also told his former doctor that he shot Larry in self-defense and shot Vicks because he thought Vicks was Larry. Defendant also claimed that someone put a drug in his unattended drink, which caused hallucinations. As for KH, defendant admitted engaging in sex with KH, but claimed that it was consensual and occurred two days previously. Defendant's statements to the police demonstrated a lucid and strategic attempt to avoid culpability. Defendant laid the foundation for his alternate defense theories, e.g., insanity based on the involuntary ingestion of a drug and self-defense, which was used at trial by defense counsel. Thus, the record supports the trial court's finding that there was no evidence that defendant had an inability to deal with police officers or prosecutors, and that "the way he was involved in his case was not much different from any other defendant going

---

[2] This Court initially reversed defendant's convictions and remanded for a new trial because of instructional errors. *People v Watson*, unpublished per curiam opinion of the Court of Appeals, issued September 1, 1988 (Docket No. 93134), unpub op at 10. Thereafter, plaintiff filed a motion for rehearing. While that motion was pending, defendant was retried and a jury convicted him of two counts of the lesser offense of second-degree murder, MCL 750.317, two counts of assault with intent to commit murder, three counts of CSC-I, kidnapping, and felony-firearm. This Court then granted plaintiff's pending motion for rehearing and, on rehearing, affirmed defendant's original convictions and sentences. *Watson (On Rehearing)*, unpub opn at 10. Defendant filed an application for leave to appeal in our Supreme Court, which, in lieu of granting leave to appeal, remanded the case to this Court for "consideration of whether defendant's conviction of second-degree murder at the retrial bars reinstatement of his first-degree murder conviction on double jeopardy grounds." *People v Watson*, 433 Mich 913, 913 (1989). On remand, this Court held that there was "no double jeopardy bar" because the trial court never regained jurisdiction while plaintiff's motion for rehearing was pending in this Court; thus, the trial court was "without jurisdiction or authority to conduct a retrial." *People v Watson (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 1990 (Docket No. 93134), pp 1, 3. Our Supreme Court thereafter denied leave to appeal. *People v Watson*, 435 Mich 852 (1990).

through the criminal justice system in terms of his input or response to the allegations or the prosecution and/or representation." The court also correctly cited that "defendant received no favorable appellate rulings regarding issues with counsel or improper or illegal acts of law enforcement or any coercion or any other due process issues," and defendant points to none in this appeal. Accordingly, the trial court did not abuse its discretion when it determined that this factor did not mitigate defendant's sentence.

E. POSSIBILITY OF REHABILITATION

With regard to the fifth and final *Miller* factor—the possibility of rehabilitation—the trial court found defendant's prison record "unremarkable" and expressed concern regarding defendant's possibility of rehabilitation. Defendant entered prison in 1986. From 1986 until 1991, he participated in only one self-improvement course when he obtained his GED in 1991. He did not obtain employment until 1995. After 2012, the year the *Miller* decision was issued, defendant participated in 10 self-improvement programs. He began to enroll in several additional programs after 2016. Those are notable years in relation to the *Miller* case. A Michigan Department of Corrections (MDOC) expert testified that more programs were offered later. However, on the basis of the evidence, the trial court believed that defendant's engagement in available programming was connected to the changes in the juvenile-lifer law.

While incarcerated, defendant had 52 misconducts that were classified as major misconducts, two of which involved assault. In 1987, when a corrections officer attempted to search him, defendant pushed the officer over. In 1994, defendant and two other inmates attacked another inmate. The court observed that defendant accumulated fewer misconducts as he got older, but inferred that the decline was because of his age and becoming more accustomed to the conditions of prison. Based on the evidence presented, the trial court ultimately found defendant's prison record to be "unremarkable." Thus, it is unclear how much weight, if any, the trial court placed on defendant's MDOC record.

However, the court placed particular importance on defendant's claim to not being able to recall committing the crimes and his related inability to explain why he committed the crimes. Defendant did not recall any of his "negative acts" that night, as the court cited, but he recalled events both before and after the criminal episode. From defendant's consistent indication that he did not recall committing the crimes, coupled with his acceptance of responsibility and apology to the victims, the court inferred that this approach was a way for defendant to "avoid an actual connection to the harm and violence that he is solely responsible for." The court also found that, given defendant's claimed lack of memory, there was never a reason offered for why he committed the heinous crimes, which the court found is an obstacle to being able to find, with any assurance, that defendant has been rehabilitated or has the potential to be rehabilitated. Given the evidence and the trial court's inferences from it, the trial court did not abuse its discretion by finding that the fifth *Miller* factor is not mitigating.

F. CONCLUSION

For the reasons discussed, the trial court did not abuse its discretion when, after considering evidence on the potentially mitigating *Miller* factors and articulating its reasoning on the record, it again imposed a sentence of life without parole for defendant's first-degree murder convictions.

The trial court's determination is within the range of reasonable and principled outcomes, and the sentences do not violate the principle of proportionality. *Skinner*, 502 Mich at 131-132.

III. EFFECTIVE ASSISTANCE OF COUNSEL

Defendant also argues that defense counsel was ineffective for failing to cross-examine any of the four prosecution witnesses, and failing to correct the record regarding the trial court's "blatant inaccuracies." We disagree. Because defendant failed to raise this ineffective-assistance claim in the trial court in a motion for a new trial or request for an evidentiary hearing, our review is limited to mistakes apparent from the record. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). "To demonstrate ineffective assistance of counsel, a defendant must show that his or her attorney's performance fell below an objective standard of reasonableness under prevailing professional norms and that this performance caused him or her prejudice." *People v Nix*, 301 Mich App 195, 207; 836 NW2d 224 (2013). "To demonstrate prejudice, a defendant must show the probability that, but for counsel's errors, the result of the proceedings would have been different." *Id*. Counsel's decisions are presumed strategic, and the defendant bears the "heavy burden" of proving otherwise. *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009).

A. FAILURE TO CROSS-EXAMINE

Decisions regarding what questions to ask are matters of trial strategy, *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999), and "this Court will not second-guess defense counsel's judgment on matters of trial strategy." *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011). The prosecution's witnesses consisted of three of defendant's victims (Larry, Vicks, and KH), and Farry Irvin, who is Vicks' mother and the sister of deceased victim Brown, and the former fiancée of deceased victim Harold. Defendant claims that there is a reasonable probability that, had his counsel questioned these witnesses, the trial court might not have imposed life-without-parole sentences.

Considering the facts of the case, defense counsel's failure to question the witnesses was not objectively unreasonable. Preliminarily, it is apparent from the record that defense counsel made a strategic decision not to question the witnesses, perhaps to assist defendant in appearing remorseful and understanding of what the victims had experienced, and to instead ask defendant about some of the problematic testimony. After the prosecutor completed his direct examination of each witness, defense counsel apologized on behalf of the defense:

> *Defense counsel*: Mr. [Larry] Anderson, we are sorry for what has happened to you. We don't have any questions.
>
> * * *
>
> *Defense counsel*: We are sorry for what you have experienced, Mr. Vicks, and we don't have any questions.
>
> * * *
>
> *Defense counsel*: [To Irvin:] We are very sorry for your loss.

* * *

> *Defense counsel*: [KH], we don't have any questions for you but we do want you to know that we're very sorry for everything that you've been through.

Defense counsel's strategy in this regard was not objectively unreasonable, given the content of the testimony that defendant challenges. Defendant complains that defense counsel should have questioned the witnesses regarding their "false claims about [his] upbringing, violent tendencies, and state of mind." As plaintiff aptly noted, the witnesses' testimony regarding defendant's upbringing and household were basically consistent with the descriptions provided by defendant and his own brother. For example, the prosecution witnesses testified that defendant was neatly dressed, did not appear unkempt or without a home, and did not complain of hunger or abuse. Defendant and his brother, as well as the prosecution witnesses, explained that defendant moved out of his family home at one point and moved in with his sister. Defendant's brother testified that their parents ensured that all of their basic needs were met, and defendant testified that his parents took care of them as best they could. Defendant's brother explained that he and his siblings would be subjected to corporal punishment only as a consequence of "staying out late [or] doing bad in school." Defendant, himself, testified that he did not blame his parents or siblings for his choices as a teenager.

Regarding defendant's complaint about his alleged "violent tendencies, and state of mind," Larry and Vicks testified at the *Miller* hearing that defendant talked about killing them before the offense, and Larry, Vicks, and KH testified that defendant referred to himself as "Homicide." At trial, there was testimony from prosecution witnesses that defendant stated "homicide" several times on the night of the shooting, and that defendant had previously stated that one day he would kill his friends and himself. *Watson (On Rehearing)*, unpub op at 2-3. At the *Miller* hearing, the prosecution also presented the witness statements that Larry and Vicks gave to the police after the crimes, wherein they mentioned that defendant had previously talked about killing his friends and himself, and that defendant said "homicide" several times on the night of the crimes. Also, in KH's police statement, she reported that defendant introduced himself as "Homicide." Given the consistency of the witness accounts of defendant's statements, and defendant's failure to explain what helpful questions could have been asked or how the witnesses could have been impeached, defendant has not demonstrated that defense counsel's decision to forgo cross-examining the witnesses on these matters was objectively unreasonable.

Defendant also cites the testimony of prosecution witnesses that he hurt cats, which is an allegation that plaintiff agrees was not raised before the *Miller* hearing. While defense counsel did not question any prosecution witness about this accusation, counsel raised this matter (and defendant's alleged statements about killing his friends and himself) during her direct examination of defendant, questioning him as follows:

> *Q.* You were in court when [Vicks] testified along with [KH] and they testified that you—that you hurt cats. Is that something that you remember doing?
>
> *A.* No.

Q. They also said you made comments about wanting to kill people or yourself. Do you remember making those comments?

A. No.

* * *

Q. Is it fair to say that your memory of some of the things from your teenage years is a little sketchy?

A. Yes.

Q. So you're not saying that Mr. Anderson or Mr. Vicks were lying?

A. No, I would not say that.

Q. When you think about the things they described you doing in the time before the offense, how do you feel?

A. I feel disgusted.

There is no reason for counsel to have believed that questioning the prosecution witnesses about the allegation that defendant hurt cats (and his statements about killing people) would have made a difference in the resentencing, particularly when defendant himself had a "sketchy" memory about his prior actions as a teenager and "would not say" that the witnesses were lying. Moreover, the trial court did not mention that defendant allegedly hurt cats when articulating its reasoning on the *Miller* factors. Consequently, defendant has failed to establish an ineffective-assistance claim on the basis of defense counsel's failure to question the prosecution's witnesses.

B. FAILURE TO CORRECT THE RECORD

In his last ineffective-assistance claim, defendant contends that defense counsel failed to correct the trial court's mischaracterization of defendant's recollection of the crimes as inconsistent, implying that he changed his story, and that he failed to take responsibility. The trial court, however, clearly stated that defendant "has consistently indicated that he doesn't remember committing the alleged crimes he's been convicted of." Although defendant claims that the court found that he failed to take responsibility, the court clearly stated that defendant "says he accepts the allegations and takes responsibility for what took place. The defendant also apologized to the victims and their families while also claiming a failure to rather [sic] the circumstances of the case." Defendant appears to take issue with the court's *view* of defendant's lack of memory of the crimes and his acceptance of responsibility. As previously indicated, the trial court inferred from the evidence that defendant's lack of memory was "some kind of denial and avoidance of responsibility. It's seemingly a way for the defendant to avoid an actual connection to the harm and violence that he is solely responsible for." These statements are not mischaracterizations of the record, but involve inferences drawn by the trial court from the evidence presented. Thus, there was nothing for defense counsel to correct in this regard. "Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People*

v Ericksen, 288 Mich App 192, 201; 793 NW2d 120 (2010). Consequently, defendant has not established a claim of ineffective assistance of counsel.

IV. INCORRIGIBILITY

In his last claim, defendant argues that the trial court was required to find that he was incorrigible before resentencing him to life in prison without parole, and if this Court disagrees, it should stay this appeal pending the United States Supreme Court's decision on this very issue. See *Jones v Mississippi*, 141 S Ct 1307. The United States Supreme Court recently decided *Jones* and held that neither *Miller* nor *Montgomery* require a court to find, either implicitly or explicitly, permanent incorrigibility before sentencing a juvenile defendant to life in prison without the possibility of parole. *Jones*, 141 S Ct at 1318-1319; 1321. Thus, defendant's argument on this ground does not warrant appellate relief.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Michael J. Riordan
/s/ Colleen A. O'Brien