

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

KOBI AUSTIN TAYLOR,

Defendant-Appellant.

UNPUBLISHED

May 20, 2021

No. 353175

Wayne Circuit Court

LC No. 17-002247-02-FC

Before: MARKEY, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of two counts of second-degree murder, MCL 750.317, two counts of armed robbery, MCL 750.529, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was originally sentenced to 65 to 95 years’ imprisonment for each of the second-degree murder convictions, 18 to 40 years’ imprisonment for each of the armed robbery convictions, and a consecutive term of two years’ imprisonment for the felony-firearm conviction. Defendant appealed by right and argued, in relevant part, that the trial court abused its discretion by imposing 65-year minimum sentences for murder that unreasonably exceeded the recommended minimum sentence guidelines range of 22 ½ to 37 ½ years. This Court affirmed defendant’s convictions but “remand[ed] for resentencing to allow the trial court to take Taylor’s background into account and explain why the sentence imposed was more proportionate to Taylor than that indicated in his sentencing guidelines.” *People v Charleston*, unpublished per curiam opinion of the Court of Appeals, issued March 5, 2019 (Docket Nos. 339923 and 340027), p 9.¹ On remand, the trial court did not alter the murder sentences. We again remand for further proceedings.

On remand, the trial court conducted a hearing where it entertained the parties’ arguments and took into consideration extensive documentation regarding defendant’s background. The trial court very thoroughly discussed and considered defendant’s personal history but ultimately refused to modify the murder sentences of 65 to 95 years’ imprisonment. Notwithstanding defendant’s

¹ Dominik Lou Charleston was defendant’s codefendant, and their appeals were consolidated.

difficult childhood, immaturity, and cognitive and emotional limitations, the trial court found that defendant's behavior demonstrated that he had the sophistication and the mental wherewithal to hatch the underlying criminal transaction, i.e., defendant was "the mastermind." Accordingly, contrary to defendant's argument on appeal, the trial court indeed contemplated defendant's personal background and history when it declined to change the murder sentences.

The trial court, however, did not explain why the murder sentences were more proportionate to the offenses and the offender than that recommended under the sentencing guidelines. This Court had specifically ordered the trial court to do so on remand. See *Int'l Business Machines Corp v Dep't of Treasury*, 316 Mich App 346, 352; 891 NW2d 880 (2016) (The "'rule of mandate' . . . quite plainly embodies the well-accepted principle in our jurisprudence that a lower court must strictly comply with, and may not exceed the scope of, a remand order."). Because the trial court here did not, we must again remand the case.² On remand, the trial court shall hold a resentencing hearing and explain why the 65-year minimum sentence the court imposed for each of the murder convictions was more proportionate than a sentence within the minimum sentence guidelines range, which had a top end of 37 ½ years. Because the prior panel remanded the case for "resentencing," as we also do under law of the case, the trial court has the discretion to modify the murder sentences. See *People v Rosenberg*, 477 Mich 1076 (2007) ("Once the Court of Appeals vacated the defendant's original sentence and remanded for resentencing, the case was before the trial court in a presentence posture[.]").

Finally, defendant argues that this matter should be remanded for resentencing before a different judge. We disagree. It is apparent from the record that the trial court carefully reviewed and considered the extensive documentation and records the defense submitted pertaining to defendant's history and background. We conclude that the trial court inadvertently failed to address the justification for the extent of the departure in the context of proportionality analysis. There is no indication that the trial court deliberately failed to address the proportionality issue as previously directed by this Court. Moreover, there is nothing in the record suggesting that the trial court would have substantial difficulty in putting aside earlier expressed views or findings. See *In re Foster Attorney Fees*, 317 Mich App 372, 379; 894 NW2d 718 (2016). Indeed, the general issue on remand pertains more to clarification and elaboration than setting aside previous views or findings, with the one caveat being that the court can alter the sentences if it changes its position. Reassignment is not necessary to serve justice or to preserve the appearance of justice, and reassignment would entail waste and the duplication of efforts out of proportion to any assumed gain in preserving the appearance of fairness. *Id.*

We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Brock A. Swartzle

² We note that on appeal the prosecutor fully agrees that a remand is necessary for the trial court to satisfy the demands of the prior remand order.