

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

YASMEEN JASMILLA TAYLOR,

Defendant-Appellant.

UNPUBLISHED

November 23, 2021

No. 355360

Wayne Circuit Court

LC No. 15-002737-01-FC

Before: M. J. KELLY, P.J., and STEPHENS and REDFORD, JJ.

PER CURIAM.

Defendant was convicted of second-degree murder, MCL 750.317, assault with intent to murder (AWIM), MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, following a jury trial. On October 1, 2015, defendant was sentenced to 39 to 55 years’ imprisonment for the second-degree murder conviction, 20 to 30 years’ imprisonment for the AWIM conviction, and two years’ imprisonment for the felony-firearm conviction. Defendant appealed her convictions and sentences. Ultimately, the case was remanded to the trial court for resentencing or an articulation of why an upward departure sentence was justified. On September 30, 2020, defendant was resentenced to 33 to 55 years’ imprisonment for second-degree murder, 20 to 30 years’ imprisonment for AWIM, and two years’ imprisonment for felony-firearm. Defendant now appeals her second-degree murder sentence arguing it is unreasonable and disproportionate. We affirm.

I. FACTUAL BACKGROUND

This case arises out of the murder of Marquez Douglas and assault against Latoya Johnson. *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued March 7, 2017 (Docket No. 329849), p 1 (*Taylor I*). The facts of this case were presented in *Taylor I* as follows:

This case arises from the death of Marquez Douglas (Douglas), and the assault of Latoya Johnson. Defendant, who testified at trial, offered a defense of alibi and denied being present at the crime scene or in the state on the day of the offense. In contrast, the prosecution presented the testimony of Johnson. Johnson testified that on February 13, 2015, she, her children, brother Milton, and the

decedent lived at the house of Alicia Johnson, her mother, located at Teppert Street, in Detroit. She testified that Douglas returned home around 5:50 a.m. accompanied by defendant whom she had seen previously. Johnson overheard conversational exchanges between defendant and Douglas both of whom were in Douglas's bedroom. At some point, the conversation and laughter were replaced by about 15 minutes of silence that ended with a single gunshot. As she was seeking cover, Johnson heard approximately five more gunshots. Minutes later, defendant entered the room where Johnson was hiding, and despite her pleading shot her. Johnson called 911, and she then went to the living room. She saw Douglas on the floor of the living room. Douglas had a pulse, but he was not responsive. She testified that Douglas "was shot above the chest on his left side and on his stomach on his left side." When the police arrived, Johnson gave them a statement. Eventually, defendant was apprehended in Huntington, West Virginia. [*Id.* at 1-2.]

II. PROCEDURAL HISTORY

The defendant, after conviction and sentencing, appealed to this Court arguing the trial court impermissibly denied a for-cause challenge to a juror and that defendant's second-degree murder sentence were unreasonable and disproportionate. This Court affirmed defendant's convictions, but remanded for the trial court to consider the principle of proportionality in regard to defendant's second-degree murder sentence. *Taylor I*, unpub op at 6. This Court noted that defendant was sentenced in between the Michigan Supreme Court issuing its opinion in *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), and this Court's decision in *People v Steanhouse*, 313 Mich App 1; 880 NW2d 297 (2015), aff'd in part and rev'd in part 500 Mich 453 (2017). Although the trial court complied with *Lockridge*'s requirement of articulating its reasons for imposing a departure sentence for second-degree murder, it did not assess whether the sentence was proportionate to the offender and the offense as required by *Steanhouse*. *Taylor I*, unpub op at 5-6. Therefore, this Court remanded for a *Crosby*¹ hearing. *Id.* at 6. Defendant then filed an application for leave to appeal with the Michigan Supreme Court. The Supreme Court remanded the case to this Court for plenary review of defendant's claim that her sentence for second-degree murder was disproportionate under *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), abrogated on other grounds by *People v Steanhouse*, 500 Mich 453; 902 NW2d 327 (2017), and it denied the application for leave in all other respects. *People v Taylor*, 501 Mich 906 (2017).

On remand, this Court again remanded to the trial court for resentencing or an articulation of why a departure sentence was more proportional than a sentence within the guidelines range. *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued April 24, 2018 (Docket No. 329849), pp 5-6 (*Taylor II*). The prosecution sought leave to appeal to the Michigan Supreme Court, arguing that remand was unnecessary because defendant's second-degree murder sentence was reasonable and proportionate. The Supreme Court ordered that the application be held in abeyance pending the decisions in *People v Dixon-Bey*, 321 Mich App 490; 909 NW2d 458 (2017), and *People v Beck*, 504 Mich 605; 939 NW2d 213 (2019). *People v Taylor*, 914

¹ *United States v Crosby*, 397 F3d 103 (CA 2, 2005).

NW2d 922 (2018). After *Beck* was decided and the application in *Dixon-Bey* was denied, the Supreme Court entered an order denying leave to appeal. *People v Taylor*, 505 Mich 868 (2019).

On September 30, 2020, the trial court held a resentencing hearing. The court cited defendant's lack of remorse for the crime in support of the departure sentence which is a factor not considered by the guidelines. The court then reduced the sentence from 39 to 55 years, to 33 to 55 years' imprisonment for the second-degree murder, and reaffirmed its sentences of 20 to 30 years' imprisonment for AWIM, and two years' imprisonment for felony-firearm. Defendant now appeals as of right arguing that her second-degree murder sentence is disproportionate and she is entitled to resentencing.

III. STANDARD OF REVIEW

"A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness." *Lockridge*, 498 Mich at 391-392. "[T]he standard of review to be applied by appellate courts reviewing a sentence for reasonableness is abuse of discretion." *People v Steanhouse (Steanhouse II)*, 500 Mich 453, 472; 902 NW2d 327 (2017). A trial court abuses its discretion when it chooses an outcome that falls outside the range of reasonable and principled outcomes. *People v Blanton*, 317 Mich App 107, 117; 894 NW2d 613 (2016). It is also an abuse of discretion when the trial court imposes a sentence that violates the principles of proportionality set forth in *Milbourn*, 435 Mich at 636. *Steanhouse II*, 500 Mich at 459-460.

IV. DISCUSSION

Defendant contends that her upward departure sentence for second-degree murder is unreasonable and disproportionate. We disagree.

Sentences imposed by a trial court must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse II*, 500 Mich at 460 (quotation marks and citation omitted). A trial court is required to score the sentencing guidelines and consider the recommended guidelines range when crafting a defendant's sentence, but the guidelines are neither mandatory nor even presumptive. *Lockridge*, 498 Mich at 391-392. An out-of-guidelines sentence may be imposed when the trial court determines the recommended range is disproportionate. *People v Lampe*, 327 Mich App 104, 125; 933 NW2d 314 (2019). Proportionality of the sentence to the offense and the offender is the focus of appellate review rather than departure from the guidelines. However, the court must also justify the extent of any departure as a part of its proportionality analysis. *Steanhouse II*, 500 Mich at 472. "The premise of our system of criminal justice is that, everything else being equal, the more egregious the offense, and the more recidivist the criminal, the greater the punishment." *People v Babcock*, 469 Mich 247, 263; 666 NW2d 231 (2003). A non-exhaustive list of factors that may be considered under the principle of proportionality include:

- (1) the seriousness of the offense;
- (2) factors that were inadequately considered by the guidelines; and
- (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*Lampe*, 327 Mich App at 126.]

“[A] trial court must justify the sentence imposed in order to facilitate appellate review, which includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been.” *Dixon-Bey*, 321 Mich App at 525. “[E]ven in cases in which reasons exist to justify a departure sentence, the trial court’s articulation of the reasons for imposing a departure sentence must explain how the extent of the departure is proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Steanhouse (On Remand) (Steanhouse III)*, 322 Mich App 233, 239; 911 NW2d 253 (2017), vacated in part on other grounds 504 Mich 969 (2019). If the trial court does not clearly state its reasons for the extent of an upward departure sentence, an appellate court may not substitute its own judgment regarding the justification of the sentence. *People v Skinner*, 502 Mich 89, 113; 917 NW2d 292 (2018).

Defendant first presented argument that she was only 24-years-old when she committed the crimes, her brain was not yet fully rational, and that her brain development mitigated against the sentence imposed. She presented the court with scientific writings on brain development. The court discounted this argument, noting that the high school graduate defendant was a mother fully responsible for the lives of her minor children when she committed the crimes. The court also noted that the broader society contained persons who at 25 acted as lawyers, assuming significant responsibilities in that role. We cannot say the court erred in rejecting the evolving neuroscience as a mitigation factor in this case.

Next, defendant argued that the court should take into consideration the mitigating circumstances contained in the mitigation specialist’s report. The mitigation specialist asserted that the defendant was a victim of abuse as a child and was raised in a “bad” neighborhood. The report also noted defendant’s reformation while in prison. The court discredited the report due to inconsistencies between it and the information contained in the original Presentence Investigation Report (PSIR) from 2015. While the PSIR stated defendant grew up in a stable household, the mitigation report contained allegations of abuse at the hands of defendant’s mother. Another inconsistency was that the mitigation report stated that the defendant worked as a stripper, while the PSIR reported defendant worked at a fast food restaurant and a university bookstore. The correctness of the PSIR was never challenged during the appeal. The myriad inconsistencies between the report and admitted or verified facts led the court to conclude that the mitigation specialist’s report was unreliable and not worthy of credit.

The court addressed the traditional factors for sentencing: protection of society and deterrence. As to the factor of protecting society, the court said it found no reason to revisit its determination from defendant’s original sentencing that she does not belong in society because she is a danger due to the circumstances of the offense which included shooting a victim begging for her life. Regarding the deterrent effect of defendant’s sentence, the court stated it could not say for sure what the deterrent effect of defendant’s particular sentence would be, but that a stern sentence for someone convicted of a cold-blooded murder and attempted murder would have some deterrent effect.

A significant factor in the court’s sentencing determination was defendant’s lack of remorse. A sentencing court may consider a defendant’s lack of remorse in crafting a sentence. *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1995). A defendant’s lack of remorse is properly considered along with assessing the defendant’s potential for rehabilitation. *People v*

Barnes, 332 Mich App 494, 506; 957 NW2d 62 (2020). The court stated that since defendant based much of her argument for resentencing on her post-conviction rehabilitation, it was fully within its discretion to consider how defendant's lack of remorse factored into sentencing. According to the trial court, defendant never once expressed remorse for the fact that Douglas was dead at her hand, or the terror she caused Johnson when she shot her. In a statement defendant read during the resentencing hearing, defendant did express sympathy to the family of the deceased, but she did not offer an apology for the murder, just its sequelae of pain to the family of the deceased. Defendant offered no apology for the surviving victim either. Thus, we can neither find that the court had erred in considering lack of remorse nor in determining that the defendant failed to express remorse.

The court resentenced defendant to 33 to 55 years' imprisonment for second-degree murder, 20 to 30 years' imprisonment for AWIM, and two years' imprisonment for felony-firearm. This was a reduction of six years in defendant's minimum sentence for second-degree murder. The court justified departing from the sentencing guidelines recommendation for second-degree murder because defendant had not shown remorse for her victims, which was a factor unaccounted for in the guidelines. The court also noted that defendant's new second-degree murder sentence was 21 months above the upper limit of the guidelines, and it likewise justified the degree of departure based on defendant's lack of remorse.

Based on the record, the trial court did not abuse its discretion in sentencing defendant to an upward departure sentence for second-degree murder. The court considered permissible factors in determining that a guidelines sentence would be disproportionate. The court also went out of its way to note it was not basing defendant's departure sentence for second-degree murder on impermissible factors, including acquitted conduct or defendant's failure to admit guilt. And the court provided sufficient justification for departing from the sentencing guidelines and the extent of the departure in crafting defendant's second-degree murder sentence.

In sum, defendant's second-degree murder sentence was reasonable, proportionate, and not an abuse of discretion on the part of the trial court.

Affirmed.

/s/ Michael J. Kelly
/s/ Cynthia Diane Stephens
/s/ James Robert Redford