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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-287

No. COA20-214

Filed 15 June 2021

Cumberland County, No. 99 CRS 1543

STATE OF NORTH CAROLINA

v.

TAMEIKA ROSE DOUGLAS

Appeal by defendant from judgment entered 30 August 2019 by Judge James F. Ammons, Jr., in Cumberland County Superior Court. Heard in the Court of Appeals 11 May 2021.

Joshua H. Stein, Attorney General, by Assistant Attorney General Robert C. Ennis, for the State.

Glenn Gerding, Appellate Defender, by Assistant Appellant Defender Amanda S. Hitchcock, for defendant.

ARROWOOD, Judge.

¶ 1

Tameika Rose Douglas (“defendant”) appeals from judgment entered 30 August 2019 resentencing defendant to life imprisonment without parole (“LWOP”) for two first-degree murder convictions. For the following reasons, we vacate and remand.

I. Background¹

¶ 2

Defendant’s convictions stem from two separate gang-initiated criminal episodes during the night of 16 August 1998 and early morning hours of 17 August 1998. Defendant was one of nine members of the Crips gang who undertook a number of “missions,” or criminal acts, during the night of 16-17 August 1998, in Fayetteville, North Carolina. In addition to defendant, the gang members included gang leader or “queen” Christina Walters (“Walters”), Ione Black (“Black”), Francisco Edgar Tirado (“Tirado”), Eric Queen (“Queen”), Carlos Frink (“Frink”), John Juarbe (“Juarbe”), Carlos Nevills (“Nevills”), and Darryl Tucker (“Tucker”). These individuals belonged to different “sets,” or subgroups, of the Crips gang.

¶ 3

On 16 August 1998, the gang members, including defendant, gathered at Walters’ residence to prepare for the evening’s missions. Defendant, Walters, and an unidentified male drove to the local Wal-Mart to steal toiletries and clothing and

¹ Pursuant to N.C. Gen. Stat. § 7A-27(a)(1), Francisco Edgar Tirado and Eric Devon Queen, both of whom were members of the same gang as defendant and present at the times of the events giving rise to defendant’s convictions, jointly appealed their convictions for first-degree murder and the resulting judgments imposing the sentence of death, which were entered 11 April 2000. Our Supreme Court allowed that appeal to bypass the Court of Appeals and rendered a decision in the matter on 13 August 2004. *See State v. Tirado*, 358 N.C. 551, 599 S.E.2d 515 (2004). While the issues raised in the instant appeal are different than those raised in Tirado and Queen’s earlier appeal, the facts underlying the appeals are nearly identical. Therefore, we will recite many of the same facts and procedural events discussed by the Supreme Court in *State v. Tirado*.

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purchase cartridges. Using fingernail polish from Walters' bedroom, Tirado painted the tips of the bullets blue, the color identified with the Crips gang.

¶ 4

After the group returned from Wal-Mart, Walters assigned a mission to defendant, Black, and Nevills, directing them to find a victim to rob, steal the victim's car, put the victim in the trunk of the car, then return to Walters' residence within an hour and a half. Walters and an unidentified male drove defendant, Black, and Nevills to a location, dropped them off, and provided Nevills with a gun.

¶ 5

Defendant, Black, and Nevills walked around looking for a car to steal, and at about 12:30 a.m., they spotted Debra Cheeseborough ("Ms. Cheeseborough") closing and locking the door to the Bojangles restaurant where she worked as a manager. Defendant and her crew abducted Ms. Cheeseborough at gunpoint and forced her into the back seat of her car. On the way back to Walters' residence, the gang members robbed Ms. Cheeseborough of her jewelry and money, and then remembering their instructions, stopped and forced her into the trunk. When they reached Walters' trailer, everyone gathered around the car, arguing over who would shoot Ms. Cheeseborough. Thereafter, defendant, Walters, Tirado, Tucker, and Queen drove Ms. Cheeseborough's car to Smith Lake, a location on the Fort Bragg military base. Ms. Cheeseborough was removed from the trunk, and defendant took from Ms. Cheeseborough a cross that she was wearing around her neck. Walters then pointed a handgun at her and pulled the trigger. When the pistol jammed, Walters recocked

it and fired a bullet into Ms. Cheeseborough's right side, knocking her to the ground on her stomach. As she lay there, she heard a male say "[s]hoot her in the head." Walters fired another shot that passed through Ms. Cheeseborough's glasses, grazed her eyelid, and hit her in the thumb. Walters fired additional shots into Ms. Cheeseborough's back, side, right leg, and chest. Ms. Cheeseborough feigned death and the gang members drove away. The next morning, a passerby found Ms. Cheeseborough. She was taken to a hospital and treated for multiple gunshot wounds. Ms. Cheeseborough ultimately survived.

¶ 6

After the group left Ms. Cheeseborough for dead, they returned to Walters' trailer, where the rest of the gang remained congregated. Walters then ordered a second "mission" to find another victim to kidnap, place in the trunk of his or her car, and bring the victim and vehicle back to the trailer. Defendant, Queen, Walters, and several others drove Ms. Cheeseborough's car to hunt for another victim. They eventually targeted a Pontiac Grand Prix driven by Susan Moore ("Ms. Moore") in which Tracy Lambert ("Ms. Lambert") was a passenger. After following the Grand Prix for some distance, Queen was able to trap it at the end of a dead-end road. Walters handed a gun to Tucker and someone in the car told him to "go ahead." Queen, Walters, and Frink then drove away in Ms. Cheeseborough's car after Queen directed defendant, Black, and Tucker to return to Walters' trailer in forty-five minutes. Defendant and Tucker forced Ms. Moore and Ms. Lambert into Ms. Moore's

trunk at gunpoint, and then defendant, Black, and Tucker drove Ms. Moore's car to Walters' trailer. At one point during the drive, Tucker stopped the car so that defendant could open the trunk and rob Ms. Moore and Ms. Lambert of their jewelries.

¶ 7

Upon the group's arrival at Walters' trailer, the entire gang surrounded the car. While the gang divided Ms. Moore's and Ms. Lambert's money and jewelry and burned their purses and identifications, they discussed who would kill the women. On instructions from Walters, the gang members, including defendant, then drove Ms. Cheeseborough's and Ms. Moore's cars to a location in Linden, North Carolina. Ms. Moore and Ms. Lambert were forced out of the trunk of the Grand Prix. Both were pleading for mercy. Queen told Ms. Lambert to shut up, then shot her in the head. As Ms. Lambert fell, Queen walked back to the car and stood next to Tirado. When Tirado held a large knife to Ms. Moore's throat, Ms. Moore begged him not to cut her and to shoot her instead. In response, Tirado shot Ms. Moore in the back of the head. Both Ms. Lambert and Ms. Moore died of their wounds.

¶ 8

The gang members, including defendant, returned to Walters' trailer in Ms. Cheeseborough's and Ms. Moore's cars, and then split up. Defendant and six other gang members fled to Myrtle Beach, South Carolina, where they were later arrested in a motel room rented by Walters. Defendant was fifteen years of age at the time of the crimes committed in August 1998.

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¶ 9 In January 1999, defendant was indicted in two separate cases stemming from the crimes discussed above. In Case No. 99 CRS 1543, defendant was charged with two counts of first-degree murder, two counts of first-degree kidnapping, two counts of robbery with a dangerous weapon, one count of conspiracy to commit first-degree murder, one count of conspiracy to commit first-degree kidnapping, and one count of conspiracy to commit robbery with a dangerous weapon, all involving the crimes committed against victims Ms. Moore and Ms. Lambert on 17 August 1998. On 22 February 1999, in Case No. 99 CRS 2708, defendant was charged with attempted first-degree murder, conspiracy to commit first-degree murder, assault with a deadly weapon with intent to kill inflicting serious bodily injury, first-degree kidnapping, and robbery with a dangerous weapon for crimes committed against Ms. Cheeseborough on 17 August 1998.

¶ 10 On 7 September 2000, defendant pled guilty to all charges. Defendant did not have a plea agreement with the State. However, the plea transcript noted that the trial court would consolidate all counts in both case files for sentencing on the condition that defendant provide truthful testimony in any proceedings requested by the State. Defendant received one consolidated sentence of LWOP.

¶ 11 In May 2011, defendant filed a motion for appropriate relief claiming that her sentence violated the United States and North Carolina Constitutions. On 11 July 2012, the motion was granted, awarding defendant a *de novo* resentencing

hearing under *Miller v. Alabama*, 567 U.S. 460, 183 L. Ed. 2d 407 (2012) (holding that mandatory life imprisonment without parole for persons under the age of eighteen at the time of their crimes violates the Eighth Amendment of the United States Constitution). After the resentencing hearing in August 2019, the trial court again sentenced defendant to LWOP.² Defendant gave oral notice of appeal at the close of the hearing. On 16 March 2020, the trial court entered a written order memorializing its findings of fact and conclusions of law supporting its LWOP sentence.

¶ 12 Defendant's appeal is properly before this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444.

II. Discussion

¶ 13 Defendant argues that the trial court erred by resentencing her to LWOP for crimes committed when she was fifteen years of age by failing to make adequate findings to justify the sentence. Defendant also contends that her sentence is unconstitutional and therefore that this Court should vacate her LWOP sentence and impose a sentence of life with parole.

¶ 14 The State concedes that the trial court failed to make adequate findings to support defendant's LWOP sentence. The State posits that this "case should be

² Defendant and Tirado were resentenced together at the hearing in August 2019.

remanded to the trial court for an order containing adequate findings to support its sentencing decision.” However, under the circumstances of this case, the State maintains that a sentence of LWOP is not unconstitutional and that this Court should remand to the trial court for the entry of an order containing adequate findings supporting the LWOP sentence.

¶ 15 On appeal of a sentence imposed on a juvenile convicted of first-degree murder, we review the trial court’s findings of fact to determine if they are supported by competent evidence and, if so, such findings are binding on appeal. *State v. Ames*, 268 N.C. App. 213, 218, 836 S.E.2d 296, 300 (2019) (citation omitted). “The trial court’s weighing of mitigating factors to determine the appropriate length of the sentence is reviewed for an abuse of discretion.” *State v. Sims*, 260 N.C. App. 665, 671, 818 S.E.2d 401, 406 (2018) (citation omitted).

¶ 16 For juveniles convicted of premeditated and deliberate first-degree murder, “the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.” N.C. Gen. Stat. § 15A-1340.19B(a)(2) (2019). At such a hearing, the defendant may submit any mitigating factor or circumstance to the trial court. *See* N.C. Gen. Stat. § 15A-1340.19B(c)(1)-(9) (enumerating non-exhaustive list of mitigating factors). The trial court “shall consider any mitigating factors in determining whether, based upon all the

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circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole instead of [LWOP].” N.C. Gen. Stat. § 15A-1340.19C(a) (2019). The trial court must then enter a sentencing order that “include[s] findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.” *Id.* The sentencing court must “expressly state the evidence supporting or opposing those mitigating factors” *State v. Santillan*, 259 N.C. App. 394, 403, 815 S.E.2d 690, 696 (2018).

¶ 17 We agree with the parties that the trial court’s findings are insufficient to warrant the imposition of defendant’s LWOP sentence. The trial court failed to make findings addressing the presence or absence of each factor set out in N.C. Gen. Stat. § 15A-1340.19B(c) and also failed to delineate evidence supporting or opposing those mitigating factors. Moreover, the trial court failed to make ultimate findings on the absence or presence of said factors and assess evidence related to the same. Indeed, during the resentencing hearing, the prosecutor expressed concerns about resentencing defendant to LWOP.

¶ 18 We therefore vacate defendant’s consolidated LWOP sentence and remand for a new sentencing hearing. *See State v. May*, 255 N.C. App. 119, 124, 804 S.E.2d 584, 587 (2017) (holding that trial court erred by entering judgment sentencing defendant to LWOP without making the required statutory findings and thus vacating and

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remanding for a new sentencing hearing); *see also State v. Antone*, 240 N.C. App. 408, 412, 770 S.E.2d 128, 131 (2015) (holding same). On remand, the trial court shall resentence defendant per the statutory obligations set out in N.C. Gen. Stat. § 15A-1340.19A *et seq.*, and pursuant to the standards set out in applicable case law. *See, e.g., Miller*, 567 U.S. at 460, 183 L. Ed. 2d at 407; *State v. James*, 371 N.C. 77, 813 S.E.2d 195 (2018); *Ames*, 268 N.C. App. at 213, 836 S.E.2d at 296.

¶ 19 Defendant also challenges the constitutionality of the LWOP sentence. Because we vacate defendant’s LWOP sentence on the grounds of insufficient findings of fact, we need not address defendant’s as-applied challenge, which may be mooted based on the trial court’s new findings or the new sentence imposed. *See Santillan*, 259 N.C. App. at 403, 815 S.E.2d at 696; *see also State v. Goodman*, 298 N.C. 1, 20, 257 S.E.2d 569, 582 (1979) (citations omitted) (“In accord with a well-established precept of appellate review, this court refrains from deciding constitutional questions when there is an alternative basis upon which a case may properly be decided.”).

¶ 20 In addition, we decline the State’s invitation to essentially affirm defendant’s LWOP sentence and order the trial court to generate findings (which may or may not exist) to justify the sentence. Likewise, we decline defendant’s request to impose a sentence of life with the possibility of parole. As we stated in *Ames* under similar circumstances, “sentencing is a task for the trial court.” *Ames*, 268 N.C. App. at 227, 836 S.E.2d at 305 (citation omitted); *see also State v. Westall*, 116 N.C. App. 534, 551,

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449 S.E.2d 24, 34 (1994) (citation omitted) (“It is not the role of an appellate court to substitute its judgment for that of the sentencing judge as to the appropriate length of the sentence.”). Given the errors committed below, the appropriate remedy is to remand this matter to the superior court to conduct a new sentencing hearing. *See Ames*, 268 N.C. App. at 228, 836 S.E.2d at 306 (vacating LWOP sentence and remanding for resentencing under similar circumstances).

III. Conclusion

¶ 21 For the foregoing reasons, we vacate defendant’s sentence of life without parole and remand for a new sentencing hearing with respect to her first-degree murder convictions.

VACATED AND REMANDED FOR RESENTENCING.

Judges COLLINS and GORE concur.

Report per Rule 30(e).