

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ROBERT EUGENE LEAMON, III,

Defendant-Appellant.

UNPUBLISHED
September 4, 2001

No. 225343
Cass Circuit Court
LC No. 95-008555-FC

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Defendant appeals as of right from his adult sentence of life in prison without parole imposed on his conviction of first-degree murder, MCL 750.316. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1997 defendant was convicted by a jury of first-degree premeditated murder in the 1993 killing of Rebecca Stowe, his girlfriend. Defendant, who was sixteen years old at the time of the charged offense, was tried as an adult. The trial court sentenced defendant to life in prison without parole without first conducting a juvenile sentencing hearing pursuant to MCL 769.1(3). In *People v Leamon*, unpublished opinion per curiam of the Court of Appeals, issued November 24, 1998 (Docket No. 201833), this Court affirmed defendant's conviction but vacated his sentence and remanded for a juvenile sentencing hearing pursuant to MCL 769.1(3), as the statute existed at the time of the offense.

In 1993, MCL 769.1(3) provided:

(3) A judge of a court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the juvenile and the public would be served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, or by imposing any other sentence provided by law for an adult offender. The rules of evidence do not apply to a hearing under this subsection. In making this determination, the judge

* Circuit judge, sitting on the Court of Appeals by assignment.

shall consider the following criteria giving each weight as appropriate to the circumstances:

(a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.

(b) The seriousness and the circumstances of the offense.

(c) Whether the offense is part of a repetitive pattern of offenses which would lead to 1 of the following determinations:

(i) The juvenile is not amenable to treatment.

(ii) That despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to disrupt the rehabilitation of other juveniles in the treatment program.

(d) Whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public if released at the age of 21.

(e) Whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and facilities.

(f) What is in the best interests of the public welfare and the protection of the public security.

The trial court must make findings of fact on each factor. *People v Hazzard*, 206 Mich App 658, 660; 522 NW2d 910 (1994). We review the trial court's findings of fact for clear error, and the ultimate decision to sentence a defendant as a juvenile or as an adult for an abuse of discretion. *People v Thenghkam*, 240 Mich App 29, 41-42; 610 NW2d 571 (2000).

At resentencing, the trial court found that the evidence preponderated in favor of an adult sentence. Defendant argues that the trial court's findings of fact on which it based its decision were clearly erroneous because the court relied on outdated information and focused almost exclusively on his age at resentencing and the seriousness of the offense. We disagree and affirm defendant's sentence. Contrary to defendant's assertion, the trial court considered current information in the form of an updated presentence report and a report from a juvenile justice specialist. The presentence report detailed defendant's behavior in prison. The report from the juvenile justice specialist indicated that defendant's attitudes had not changed since his trial.

The trial court considered each statutory factor in MCL 769.1(3), and made sufficient findings of fact. The court found that while defendant had a limited prior record, he was not introspective, showed no remorse for his actions, and was not amenable to treatment. Defendant committed the most serious of offenses, and acted in a premeditated fashion. His offense was not part of a repetitive pattern of offenses, and while he was not amenable to treatment in a juvenile

program, his behavior would not disrupt other participants in such a program. Defendant was a danger to the public at the time he was sentenced, and would continue to be a danger. Defendant would more likely be rehabilitated in the adult system. He could be held in the juvenile system for only nine months, and it was unlikely that significant rehabilitation could be accomplished in that time. Finally, public welfare and public security would be best served by committing defendant to the adult system. The trial court's findings of fact, based on current information, are not clearly erroneous. *Thenghkam, supra*. Given that the factors did not weigh heavily in defendant's favor, and given the seriousness of the offense, we cannot conclude that the trial court abused its discretion by imposing an adult sentence in this case. *People v Black*, 203 Mich App 428, 430-431; 513 NW2d 152 (1994).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel