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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL ANGEL MAURICIO, Defendant and Appellant.	B269064 (Los Angeles County Super. Ct. No. TA088962)

APPEAL from a judgment of the Superior Court of Los Angeles County. Eleanor J. Hunter, Judge. Affirmed.

Joanna McKim, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Shawn McGahey Webb and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

In November 2006, then 17-year-old defendant and appellant Michael Mauricio participated in two separate, gang-related drive-by shootings that resulted in multiple deaths. In January 2010, a jury convicted Mauricio of three counts of first degree murder, and found true firearm and gang benefit findings attached to all three counts. The trial court thereafter sentenced Mauricio to three consecutive terms of life without the possibility of parole (LWOP) for the murders, plus three consecutive indeterminate terms of 25 years to life for the findings that a principal had personally discharged a firearm causing death. In late 2011, we affirmed the judgment with modifications to certain fees (see *People v. Mauricio* (Nov. 28, 2011, B224505) [nonpub. opn.]), and, in early 2012, the Supreme Court denied Mauricio's petition for review (see *People v. Mauricio* (Feb. 29, 2012, S199094) [nonpub. order]).

Then, beginning around mid-2012, and continuing to the present day, significant case law developed on the subject of juvenile sentencing by way of such cases as *Miller v. Alabama* (2012) 567 U.S. 460 (*Miller*), *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), *People v. Gutierrez* (2014) 58 Cal.4th 1354 (*Gutierrez*), and *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*). As this case law developed, Mauricio's case returned to our court on a number of occasions to address his sentence, given the fact that he committed his murders when he was a minor. (See *People v. Mauricio* (May 30, 2013, B224505) [nonpub. opn.]; and *People v. Mauricio* (Aug. 25, 2014, B224505 [nonpub. opn.].)

Ultimately we affirmed Mauricio's murder convictions, and remanded his case to the trial court for a new sentencing hearing with directions to the trial court to take into consideration *Miller*

and *Gutierrez* in determining if LWOP sentences or other sentences should be imposed. (*People v. Mauricio* (Aug. 25, 2014, B224505 [nonpub. opn.].) Mauricio's present appeal is his fourth, and follows the trial court's new sentencing hearing.

FACTS

In October 2014, our court issued the remittitur following the opinion in *People v. Mauricio* (Aug. 25, 2014, B224505).

In December 2015, Mauricio filed a comprehensive "Brief in Support of Resentencing," plus exhibits and a declaration from his trial counsel stating the results of counsel's investigation of Mauricio's background. The materials included an investigator's report that summarized statements from Mauricio's family members, including his mother and father, as well as statements from friends and neighbors. Further, the materials included a "Psychosocial History" prepared by a social worker. The brief identified the *Miller* factors that must be taken into consideration for juvenile sentencing, and argued that the trial court should sentence Mauricio to a single term of 25 years to life.

On December 9, 2015, the trial court conducted the new sentencing hearing. At that time, the court indicated that it had reviewed trial counsel's papers, and then addressed Mauricio's sentence in light of the *Miller* factors. The court reduced Mauricio's sentences to three consecutive terms of 25 years to life, one for each first degree murder conviction, plus three consecutive terms of 25 years to life for the firearm enhancement findings attached to the counts.

Mauricio filed a timely notice of appeal.

DISCUSSION

I. *Miller*

Mauricio contends his sentence of 150-years-to-life is the "functional equivalent" of an LWOP sentence, and that, as such, it constitutes cruel and unusual punishment under the federal and state constitutions, and violates *Miller*. We disagree.

In *Miller*, the United States Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that *mandates* [a LWOP sentence] for juvenile offenders." (*Miller, supra*, 567 U.S. at p. 469, italics added.) But *Miller* also expressly stated that it was "not foreclosing" a sentencing court's ability to impose a LWOP term on a juvenile homicide offender without violating the Eighth Amendment when, in the sentencer's discretion, the circumstances warrant such a sentence. (*Ibid*.)

Miller identified several factors that a sentencing court must take into consideration in exercising discretion whether to impose a LWOP term on a juvenile homicide offender: (1) the juvenile offender's age at the time he or she committed the incarcerating crime and the "hallmark features" of a person of such age, including immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile's family and home environment; (3) the circumstances of the homicide offense, including the extent of the juvenile offender's participation in the crime and the way familial and peer pressures may have affected him; (4) whether the juvenile offender might have been charged 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." (*Miller, supra*, 567 U.S. at pp. 477-478.)

For purposes of discussion only, we assume Mauricio is correct that his current sentence amounts to the "functional equivalent" of a LWOP sentence. (*Caballero, supra*, 55 Cal.4th at pp. 267-268.) We disagree with Mauricio that the trial court violated *Miller* in imposing the "functional equivalent" of a LWOP sentence without adequately considering the *Miller* factors discussed above. The reporter's transcript of the new sentencing hearing, reviewed in its entirety and not for isolated comments, demonstrates that the trial court considered the *Miller* factors when it imposed Mauricio's current sentence. We simply disagree with Mauricio that the court overly focused on the nature of his crimes, to the exclusion of other *Miller* factors. Mauricio's trial counsel made a comprehensive and professional showing for a *Miller* examination, and the trial court considered the materials presented, and made a reasoned sentencing choice. No more is required under *Miller*.

II. *Franklin*

Even if we were to assume some sentencing shortcoming under *Miller* occurred, we find that reversal and remand for resentencing would not be required in light of *Franklin*.

In *Franklin, supra*, 63 Cal.4th 261, our Supreme Court held that SB 260 (2013-2014 Reg. Sess.), in enacting section 3051, rendered moot a claim that a trial court had imposed a lengthy mandatory sentence on a juvenile offender in violation of *Miller*. (*Franklin, supra*, 63 Cal.4th at pp. 278-282.) *Franklin* explains that SB 260 affords juvenile offenders an opportunity for a parole hearing by at least their 25th year of incarceration, and that this parole eligibility cap supersedes a mandatory sentence imposed

by the trial court, meaning "no *Miller* claim arises." (*Id*. at pp. 277-280.)

While Mauricio correctly notes that *Franklin* expressly limited its mootness holding to juvenile offenders who have been sentenced to lengthy *mandatory* terms (*Franklin, supra*, 63 Cal.4th at p. 280), the Third District Court of Appeal in *People v. Cornejo* (2016) 3 Cal.App.5th 36 recently held that *Franklin*'s mootness analysis logically extends to *Miller* claims where a juvenile offender has received a lengthy sentence that is part mandatory and part discretionary. We find *Cornejo*'s reasoning sound, and, for that reason, find that Mauricio's claim of *Miller* sentencing error would be moot had we not found above that there was no *Miller* error.

III. Remand for a *Franklin* Hearing is not Required

Mauricio contends his case should be remanded to the trial court under *Franklin* to afford him an opportunity to make a record of his characteristics and circumstances at the time of the crimes that will be available at a future youth offender parole hearing. We find such a remand to be unnecessary in light of the facts of this case.

In *Franklin*, after concluding that *Miller* claims are moot in light of the passage of SB 260, the Supreme Court added the following: "It is not clear whether Franklin had sufficient opportunity to put on the record the kinds of information that sections 3051 and 4801 deem relevant at a youth offender parole hearing. Thus, although Franklin need not be resentenced . . . , we remand the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing." (*Franklin, supra*, 63 Cal.4th at p. 284.)

Here, it is clear that Mauricio had an opportunity and exercised that opportunity — at the time of his new sentencing hearing — to present and preserve information of the nature contemplated by *Franklin*. Mauricio's trial counsel presented a comprehensive and commendable compilation of relevant materials that included summaries of statements from Mauricio's parents and a number of family members, neighbors and friends, as well as a Psychosocial History prepared by a social worker. The statements from Mauricio's parents and family members provided information about his upbringing, including that he was born to a drug-addicted mother, and grew up in a gang infested area. Further, there were also statements attesting to Mauricio's character. Mauricio's opening brief does not explain what further information could be presented on remand at a *Franklin* hearing. For all of these reasons, Mauricio has not persuaded us that remand for a *Franklin* hearing is warranted.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

SORTINO, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.