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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAMES MICHAEL AMADEO, Defendant and Appellant.	B261791 (Los Angeles County Super. Ct. No. BA111319)

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

Richard D. Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

In 1997, James Michael Amadeo was convicted of a special circumstance murder he committed at the age of 16 and sentenced to life in prison without the possibility of parole (LWOP). In 2013, Amadeo filed a writ of habeas corpus, seeking recall of his sentence and resentencing pursuant to *Miller v. Alabama* (2012) 567 U.S. ___, 132 S.Ct. 2455 (*Miller*) and *People v. Gutierrez* (2014) 58 Cal.4th 1354 (*Gutierrez*). After holding a hearing at which it considered the factors outlined in *Miller* and *Gutierrez*, the court denied Amadeo's petition.

Amadeo now contends the trial court improperly balanced the factors, placing undue weight on the circumstances of Amadeo's offense while giving insufficient consideration to his efforts at rehabilitation. We disagree. "[A]s long as a trial court gives due consideration to an offender's youth and attendant characteristics" as required by *Miller* and its progeny, "it may, in exercising its discretion under Penal Code section 190.5, subdivision (b), give such weight to the relevant factors as it reasonably determines is appropriate under all the circumstances of the case." (*People v. Palafox* (2014) 231 Cal.App.4th 68, 73 (*Palafox*).) The trial court here considered the relevant factors and acted within the bounds of reason when it concluded that a sentence of LWOP was the appropriate one. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

I. Underlying Conviction and Sentence[1]

In 1994, when he was 16 years old, Amadeo was a ward of the juvenile court housed at the Dorothy Kirby Center. He and another juvenile housed at the facility hatched a plan to escape and go "AWOL." The plan called for Amadeo to call for a guard, throw aspirin in his face, "kick[] the shit" out of him, grab his keys and money, lock him in a utility closet, then run to the coconspirator's housing unit, unlock the door, and "start beating staff with desk legs" to incapacitate them while the duo escaped.

[1]The facts in this section are taken from our opinion in Amadeo's prior appeal (*People v. Amadeo* (Mar. 1, 1999) B114458 [nonpub. opn.]), of which we take judicial notice on our own motion. (Evid. Code, §§ 452, subd. (a), 459, subd. (a).) The facts as relayed in Amadeo's submissions are in accord.

Amadeo put the plan into motion on April 3, 1994. He borrowed a screwdriver from a guard, for the ostensible purpose of fixing a curtain rod. Instead, he used the screwdriver to remove a leg from the desk in his room. Later that evening, Amadeo made a request to use the restroom. When the guard on duty, 58-year-old Arnold Garcia, arrived at his door to let him out, Amadeo beat him repeatedly with the desk leg. Garcia sustained at least four severe wounds to the head, any one of which would have been fatal, as well as bruising to his shoulders, arms, hands, upper thigh, and buttocks. The wounds were consistent with Garcia lying on the ground being beaten while his head scraped against the ground. Garcia later died at the hospital. Amadeo and his coconspirator were apprehended while running away from the Dorothy Kirby Center. Amadeo had in his possession both a screwdriver and a set of keys.

A jury found Amadeo guilty of four felony offenses: murder (Pen. Code, § 187, subd. (a)),[2] second degree robbery (§ 211), conspiracy to escape from a juvenile facility (§ 182, subd. (a)(1)), and escape from a juvenile facility by force or violence (Welf. & Inst. Code, § 871, subd. (b)). The jury found true the allegation that Amadeo used a deadly weapon in the commission of the offense (§ 12022, subd. (b)), and further found true three special circumstance allegations: (1) that the murder was committed for the purpose of preventing arrest and perfecting an escape (§ 190.2, subd. (a)(5)), (2) that the murder was an intentional killing of a peace officer engaged in the performance of his duties (§ 190.2, subd. (a)(7)), and (3) that the murder was committed during the course of a robbery (§ 190.2, subd. (a)(17)(A)). The trial court sentenced Amadeo to LWOP on the murder count, plus one year for the use of a deadly weapon, and stayed the sentences on the remaining counts. We affirmed the convictions in 1999. (*People v. Amadeo* (Mar. 1, 1999) B114458 [nonpub. opn.])

II. Petition and Hearing

Amadeo filed a petition for a writ of habeas corpus in propia persona on June 26, 2013. He contended he was entitled to resentencing because the trial court that sentenced

[2]All further statutory references are to the Penal Code unless otherwise indicated.

him in 1997 did not adequately consider the distinctive mitigating circumstances of his youth and background, as required by *Miller*, *supra*, 132 S.Ct. 1255. Amadeo attached to his petition a handwritten declaration in which he described his tumultuous childhood, including physical abuse at the hands of his mother and her boyfriend, to whom he referred as his father; exposure to his parents' drug abuse and domestic violence; upwards of thirty relocations, including two stays at homeless shelters; his father's incarceration; his inability to "deal with school"; his slide into crime; and his stays at four mental health facilities. Amadeo also expressed remorse for his crimes. In addition, he described his "great strides to make the best of a bad situation" he faced in prison, including successfully completing numerous self-help and coping courses, obtaining a paralegal degree, taking college courses, and writing a book about his life. Amadeo further stated, "I truly believe that I have turned my life around, and am no longer the immature, impulsive child I once was. Time tempers youth, and the years have tempered me through and through. I no longer pose the threat that I did as a child, and I humbly ask the court to consider these mitigating factors."

Although it is unclear from the limited record before us precisely what transpired after the petition for writ of habeas corpus was filed, Amadeo at some point obtained counsel through the public defender's office. On November 12, 2014, Amadeo's counsel filed a sentencing memorandum urging the court to recall Amadeo's LWOP sentence and resentence him to 25 years to life. Counsel contended that Amadeo's participation in the 1994 crimes "was a result of his immaturity, impetuosity, and failure to appreciate risks and consequences," that Amadeo "was affected by his home and family environment, from which he lacked the ability to extricate himself," and that Amadeo "has demonstrated the capacity for rehabilitation." In support of the latter contention, counsel attached approximately 100 pages of exhibits, including a letter of remorse Amadeo wrote on June 20, 2014; documents reflecting Amadeo's successful completion of a two-stage prison gang debriefing program; numerous certificates reflecting his participation in and completion of self-help programs such as Anger Management, Narcotics Anonymous, Victim Awareness, and Life Skills and Self-Development; laudatory notes

from his work supervisors; samples of his artwork; and his transcript and completion certificate from a paralegal program.

The deputy district attorney filed an opposing sentencing memorandum. He argued that Amadeo should remain sentenced to LWOP because his actions were premeditated and calculated, the court previously considered his dysfunctional upbringing, the offense was planned and initiated by Amadeo, and his rehabilitative efforts "are of relatively recent vintage" and "should not weigh heavily in the Court's consideration of whether Petitioner deserves resentencing."[3]

On December 1, 2014, the matter came before the court for hearing by the same judge who originally sentenced Amadeo. During the hearing, the court commented that the two main cases Amadeo relied upon, *Miller* and *Gutierrez*, were factually distinguishable from the instant case because "*Miller* involved killings by - - or sentences that were extreme in the sense that non-killers were sentenced under a mandatory scheme of life without parole sentences," and "*Gutierrez* does not involve killing of a police officer."[4] The court nonetheless accepted Amadeo's arguments about those cases and their applicability to his own. The court also heard argument from Amadeo's counsel regarding Amadeo's rehabilitative efforts and family circumstances, and from the deputy district attorney, who emphasized that Amadeo had presented "the huge majority" of his mitigating evidence concerning his age and family circumstances at the original sentencing hearing. The deputy district attorney further highlighted the persistence of conflict among Amadeo's family members and argued that Amadeo made bad choices in

[3]Although both parties referred to—and Amadeo purported to incorporate—the sentencing memorandum Amadeo filed in 1997, that memorandum is not in the record before us.

[4]These comments were partially incorrect. *Miller* resolved two consolidated cases, and although the juvenile offender in one of them, Kuntrell Jackson, was guilty of murder only as an aider and abettor, the other offender, Evan Miller, was a direct perpetrator. (See *Miller*, *supra*, 132 S.Ct. at pp. 2461-2462.) *Gutierrez* also resolved two consolidated cases (see *Gutierrez*, *supra*, 58 Cal.4th at p. 1361), one of which involved the murder of a peace officer (see *id.* at p. 1362) and the other of which did not (see *id.* at p. 1366). Amadeo's counsel challenged the accuracy of the court's comment regarding *Miller* but agreed with the court as to *Gutierrez.*

prison as an adult before undertaking his rehabilitative efforts. During the deputy district attorney's argument, the court pointed out that Amadeo was "a much different person now" who would likely "be much better able to deal with any familial dysfunction," and recognized that Amadeo "has since tried to back off" his poor choices, to the point that prison officials placed him in a "low level institution." The court also stated that Amadeo's rehabilitative efforts were "commendable," and "accept[ed] that he has performed acts that indicate a potential for rehabilitation."

The court nonetheless declined to resentence Amadeo. In arriving at this conclusion, the court articulated and addressed what it termed the "*Miller* factors," five factors courts deciding whether to impose LWOP on juvenile offenders must consider pursuant to *Miller, supra,* 132 S.Ct. at pp. 2468-2469 (which we discuss, *post*). As to the first factor, "a juvenile offender's chronological age and hallmark features, immaturity, impetuosity, and failure to appreciate risks and consequences," the court noted that Amadeo "premeditated" and "planned" the escape, took sequential steps to carry out the plan, and continued to strike Garcia after knocking him unconscious. In considering the second factor, "relevant environmental vulnerabilities" from which Amadeo could not extricate himself, the court noted that Amadeo and his family moved a lot and that Amadeo witnessed abuse. The court further indicated that it was "struck by" Amadeo's statements that he was sent to visit with school counselors and psychiatrists and psychologists on multiple occasions. The court also noted, however, that Amadeo was removed from his parents' custody at the age of about 11 or 12 and was placed with his grandmother, and that he stole from her despite her efforts to do "everything she could to try to help him," including getting him "professional help" at four different treatment centers.

As to the third factor, "evidence of the circumstances of the homicide offense," including "the extent of the defendant's participation and the way familial and peer pressure may have affected him," the court noted that Amadeo "was the instigator" of the crime, even though he had a coconspirator. The court emphasized that "[h]e was the one who planned it. He asked for a screwdriver, he loosened the table leg. He then asked for

a head call. He then struck the 58-year-old probation officer several times with great force." The court characterized the crime as "vicious," "horrific," "gratuitous," and "senseless," because "the 58-year-old man that he killed was unarmed, was no threat to him," and that in spite of that "this defendant kept beating him."[5] The court also noted that *Miller* "talks about the crime reflecting irreparable corruption." The court found the fourth factor, "whether the defendant might have been charged with a lesser offense if not [for] incompetencies associated with youth," inapplicable, a finding with which Amadeo's counsel agreed. As to the final factor, any evidence bearing on the possibility of rehabilitation, the court concluded that although "there are a number of positive factors," and Amadeo's "efforts to rehabilitate himself are commendable," they were "insufficient at this time to convince this court that he should be eligible for parole for this senseless, gratuitous murder of Arnold Garcia so many years ago." The court accordingly denied Amadeo's petition.

Amadeo timely appealed. (See § 1237, subd. (b).)

DISCUSSION

Amadeo contends that the trial court erred by placing controlling weight upon the nature of his offense of conviction when balancing the *Miller* factors. Seizing on the trial court's characterization of his rehabilitation efforts as "insufficient," he argues that "the court relied upon the commitment offense to virtually issue a mandatory LWOP sentence by not resentencing Mr. Am[a]deo because of the immutable circumstances of the underlying crime." Amadeo further contends that because he "has demonstrated that he is amenable to rehabilitation," the trial court's decision should be reversed.

We review the trial court's decision for abuse of discretion (*People v. Sandoval* (2007) 41 Cal.4th 825, 847; *Palafox, supra,* 231 Cal.App.4th at p. 91) and conclude that

[5]Citing trial testimony from a neurosurgeon who testified at Amadeo's trial, the court also noted that "it was likely the victim was unconscious after the first blow." Amadeo refutes this point, arguing it was contradicted by eyewitness testimony that Garcia "was struggling to get up." The court presided over the trial, however, and was within its discretion to credit the testimony of one witness over the testimony of another.

its denial of Amadeo's motion was within the bounds of reason under all of the circumstances (see *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566).

I. Legal Framework

In *Miller*, the United States Supreme Court held that statutes requiring courts to sentence juvenile homicide offenders to LWOP violated the Eighth Amendment ban on cruel and unusual punishments. (*Miller*, *supra*, 132 S.Ct. at pp. 2469, 2475.) The high court explained that its other recent precedents concerning juvenile sentencing, *Roper v. Simmons* (2005) 543 U.S. 551 and *Graham v. Florida* (2010) 560 U.S. 48, along with its "individualized sentencing decisions[,] make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." (*Miller*, *supra*, 132 S.Ct. at p. 2475.) In other words, "a sentencer misses too much if he treats every child as an adult." (*Id*. at p. 2468.) The Court accordingly set forth five considerations – the aforementioned "*Miller* factors" – that sentencing courts need to evaluate before sentencing a juvenile homicide offender to LWOP: (1) "his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) "the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional"; (3) "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"; (4) "that he 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*, 132 S.Ct. at p. 2468.)

The *Miller* Court made clear that it was not foreclosing "a sentencer's ability" to conclude that LWOP was an appropriate sentence for a particular juvenile homicide offender. (*Miller*, *supra*, 132 S.Ct. at p. 2469.) Instead, it explicitly stated that its ruling "mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty" (*id*. at p.

2471), such that sentencing courts going forward were obligated "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" before imposing LWOP sentences (*id.* at p. 2469). In *Montgomery v. Louisiana* (2016) ___U.S. ___, 136 S.Ct. 718, 736, the Court held that *Miller* applies retroactively to offenders like Amadeo, whose LWOP sentences became final before *Miller* was decided.

The pertinent statute governing sentencing of juvenile offenders remains section 190.5. Subdivision (b) of that statute provides that "The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life." Section 190.5, subdivision (b) "confers discretion on the sentencing court to impose either life without parole or a term of 25 years to life on a 16- or 17-year-old juvenile convicted of special circumstance murder, with no presumption in favor of life without parole." (*Gutierrez, supra*, 58 Cal.4th at p. 1387.) The sentencing court "must consider the aggravating and mitigating factors enumerated in Penal Code section 190.3 and the California Rules of Court," which include "'[t]he age of the defendant at the time of the crime.' (Pen. Code, § 190.3, factor (i).)" (*Gutierrez, supra*, 58 Cal.4th at p. 1388.) Section 190.3, subdivision (i) in turn "provides a basis for the court to consider that '"youth is more than a chronological fact"' and to take into account any mitigating relevance of 'age and the wealth of characteristics and circumstances attendant to it,' as *Miller* requires. (*Miller, supra*, 567 U.S. at p.__, 132 S.Ct. at p. 2467.)" (*Gutierrez, supra*, 58 Cal.4th at p. 1388.)

The California Supreme Court has interpreted *Miller* to require a sentencing court "to admit and consider relevant evidence of" the five *Miller* factors. (*Gutierrez, supra*, 58 Cal.4th at pp. 1388-1389.) Relevant evidence on a petition for resentencing includes evidence that a juvenile offender has undertaken efforts to rehabilitate him or herself while incarcerated. (*People v. Lozano* (2016) 243 Cal.App.4th 1126, 1137-1138.)

Although a court must consider the *Miller* factors and all relevant evidence pertinent to them prior to sentencing a juvenile offender to LWOP or declining to resentence him or her to a determinate sentence, "[n]o particular factor, relevant to the decision whether to impose LWOP on a juvenile who has committed murder, predominates under the law." (*Palafox, supra,* 231 Cal.App.4th at p. 73.) "Hence, as long as a trial court gives due consideration to an offender's youth and attendant characteristics," it may, "in exercising its discretion under Penal Code section 190.5, subdivision (b), give such weight to the relevant factors as it reasonably determines is appropriate under all the circumstances of the case." (*Ibid.*)

II. Analysis

Amadeo contends the trial court gave impermissibly undue weight to the third *Miller* factor, the nature and circumstances of his crime of conviction. It is apparent from the record that the court placed significant weight upon this factor: it repeatedly emphasized the heinous nature of the crime and concluded that the other circumstances, including Amadeo's efforts to rehabilitate himself, were "insufficient at this time to convince this court that he should be eligible for parole." Before arriving at this conclusion, however, the court articulated and considered the other pertinent *Miller* factors. It considered whether the crime reflected the hallmarks of youth, immaturity, impetuosity, and failure to appreciate risks, and concluded that the planned nature of the crime demonstrated it did not. The court also took note of the environmental vulnerabilities to which Amadeo was exposed as a child, noting that it had read Amadeo's submissions addressing those issues. Acknowledging that Amadeo's early upbringing was difficult, the court nevertheless found compelling that Amadeo began living with his grandmother four to five years before the Garcia murder and continued to act out despite her efforts to obtain treatment for him. The court also considered the efforts Amadeo made to rehabilitate himself, even interrupting the deputy district attorney to observe that Amadeo was "a much different person now" who "has since tried to back off" the poor choices he initially made in prison and made "commendable"

efforts at rehabilitation. The court concluded that positive factor did not outweigh the other factors, which in its view were neutral at best and negative at worst.

The approach the court took was similar to that taken by the court in the closely analogous case of *Palafox*, *supra*, 231 Cal.App.4th at pp. 79-80. In *Palafox*, the juvenile defendant and a coconspirator were convicted of burglarizing a home and beating the elderly residents to death with a baseball bat. (See *Palafox*, *supra*, 231 Cal.App.4th at pp. 73-74.) The court sentenced the defendant to two consecutive LWOP terms and was ordered to reconsider the decision in light of *Miller*, which was decided during the pendency of his appeal. (See *id.* at pp. 74-75). At the defendant's resentencing hearing, the trial court articulated and considered the *Miller* factors. (See *id.* at pp. 78-80.) The court concluded: "'Weighing all of those factors and considering them and exercising my discretion, I find some factors that are essentially neutral, just a couple that tend to weigh in favor of a life without the possibility of parole sentence or at least don't point against it, and a couple of factors that I think do weigh in favor of a less than life without the possibility of parole sentence, but it isn't a counting exercise. It is a weighing exercise as it would be in a penalty phase in a death penalty case were the jury trying the matter. [¶] I come back to the fact in the end when I weigh these factors, *the one that is by far the greatest weight to me is the circumstances of the offences* [*sic*] *that were committed in this particular case* and not just the severity and brutality of the crimes involved, . . . there is absolutely no question that the potential consequences to the [victims], who were doing nothing other than sleeping in their own home, were unaware prior to the assaults at the beginning . . . . [¶] I find almost more chilling than . . . what happened . . . when the offences [*sic*] were committed the fact two individuals in question stood outside at some point and had a discussion about what to do to the people inside if they were located. That to me is almost a very definition of premeditated murder.'" (*Palafox*, *supra*, 231 Cal.App.4th at pp. 80-81, emphasis added.) The court resentenced the defendant to two consecutive terms of LWOP (*id.* at p. 81), and the defendant appealed.

The appellate court affirmed. It reasoned, "The trial court here thoughtfully weighed the applicable factors, particularly defendant's youth and its attendant circumstances, and implicitly concluded defendant was unfit ever to reenter society. We cannot say it exceeded the bounds of reason, all of the circumstances being considered, under section 190.5, subdivision (b)." (*Palafox*, *supra*, 231 Cal.App.4th at p. 91.) We reach the same conclusion here. The trial court considered the *Miller* factors, and appropriately gave the most weight to the one it found most compelling. While we or another court may have drawn different inferences or weighed the *Miller* factors differently, we cannot say that the court's analysis and conclusion were outside the bounds of reason.

Amadeo argues that the court should have placed more weight upon his well-documented and apparently substantial efforts at rehabilitation. Indeed, one could read his briefing to suggest that the court should have placed controlling weight upon the final *Miller* factor, evidence bearing on the possibility of rehabilitation. For instance, he asserts that "the law has evolved . . . to recognize that immature individuals can be rehabilitated, and when that is shown, they should not be sentenced to life without parole," that the court "had the added benefit of being able to recognize Mr. Am[a]deo's rehabilitative efforts, that demonstrated he is not a reflection of 'irreparable corruption,'" and that "[t]he trial court disagreed that the key issue was whether or not Mr. Am[a]deo was a juvenile who could be rehabilitated," and asks this court to reverse the decision below "[b]ecause Mr. Am[a]deo has demonstrated that he is amenable to rehabilitation." This approach would have the effect of eviscerating the trial court's discretion to balance all of the relevant *Miller* factors and select an appropriate sentence under section 190.5. No particular factor uniformly may predominate over the others, regardless of the outcome to which it tends to point (see *Palafox*, *supra*, 231 Cal.App.4th at p. 73); it would be just as problematic to afford presumptively controlling weight to the rehabilitation factor as it would to afford controlling weight to the nature of the crime.

Amadeo also points to language in *Miller* noting that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," because of the

difficulty inherent in distinguishing "between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' (*Roper*, [*supra*,] 543 U.S. at p. 573; *Graham*, [*supra*,] 560 U.S., at ___, 130 S.Ct., at 2026-2027.)" (*Miller*, *supra*, 132 S.Ct. at p. 2469.) He contends the trial court ignored this "admonition" and "went out of its way to distinguish *Gutierrez*" and *Miller*. Although the trial court did initially question the applicability of *Miller* and *Gutierrez* to the instant case, it ultimately accepted Amadeo's arguments that the cases were applicable and considered each of the *Miller* factors before denying Amadeo's petition. The court complied with the "certain process" mandated by *Miller.* (*Miller*, *supra*, 132 S.Ct. at p. 2471.) Its conclusion lies within the bounds of reason and accordingly is affirmed.

DISPOSITION

The order of the trial court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.