

[Cite as *State v. Hawkins*, 2015-Ohio-5383.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

TYRIN HAWKINS

Defendant-Appellant

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Appellate Case No. 2015-CA-16

Trial Court Case No. 2014-CR-507

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 22nd day of December, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Tyrin Hawkins, appeals from his conviction and sentence in the Clark County Court of Common Pleas after he pled guilty to one count of aggravated murder with an attendant firearm specification. Hawkins, who was a juvenile at the time of the offense, contends the trial court erred in sentencing him to prison without considering his youth as a mitigating factor. Hawkins also contends the trial court should have considered his age prior to overruling his motion to withdraw his guilty plea. Finally, Hawkins claims the trial court should have permitted him to withdraw his guilty plea due to an alleged claim of self-defense. For the following reasons, the judgment of the trial court will be affirmed.

Facts and Course of Proceedings

{¶ 2} On August 4, 2014, Hawkins was indicted for one count of aggravated murder, one count of murder, one count of carrying a concealed weapon, and one count of tampering with evidence. In addition, the aggravated murder and murder charges each included a firearm specification. The charges stemmed from allegations that Hawkins shot and killed Jeff Wellington outside an apartment complex on Limestone Street in Springfield, Ohio. Hawkins was 17 years old at the time of the shooting.

{¶ 3} Following his indictment, Hawkins entered into a plea agreement with the State, whereby he agreed to plead guilty to aggravated murder and the attendant firearm specification. In exchange for Hawkins's guilty plea, the State agreed to dismiss all the other charges alleged in the indictment and to not prosecute him for an assault that occurred while he was incarcerated in the Clark County Jail. The State also agreed that

it would recommend Hawkins not be sentenced to life in prison without parole and that a presentence investigation would be conducted prior to sentencing.

{¶ 4} At Hawkins's plea hearing, the State recited the facts that supported the aggravated murder charge. Specifically, the State claimed that Hawkins sought revenge on a young man named A.J. Walker for previously pointing a gun at him and his friends. In the early morning hours of April 20, 2014, Hawkins learned that Walker was attending a party at an apartment complex on Limestone Street. Hawkins went to the apartment complex to confront Walker, but Walker would not come outside. However, several other individuals came out of the apartment, including Jeff Wellington, who was one of Walker's friends. Hawkins engaged in a conversation with Wellington and brandished a firearm, demanding to know where Walker was. When Wellington refused to acknowledge that Walker was at the party and affirmed that Walker was his friend, Hawkins shot Wellington one time in the chest, killing him.

{¶ 5} After the State recited the foregoing facts, the trial court engaged in a plea colloquy with Hawkins. During the colloquy, Hawkins advised the trial court that he was now 18 years old, that he had discussed the case and defenses with his attorney, that he was satisfied with his attorney's representation, and that his decision to plead guilty was made of his own volition. Hawkins also advised the trial court that he understood the maximum penalty he could receive pursuant to the plea agreement was a mandatory life sentence with a chance of parole after 33 years (30 years for the aggravated murder charge and three years for the firearm specification). Hawkins further advised that he understood by pleading guilty he was admitting to the truth of the facts recited by the State and that he understood the elements of the offense that the State would have been

required to prove at trial. Thereafter, Hawkins indicated that he understood all the rights he was waiving by pleading guilty. Hawkins then pled guilty to aggravated murder with the firearm specification and the trial court scheduled a sentencing hearing for February 11, 2015.

{¶ 6} At the beginning of his sentencing hearing, Hawkins moved to withdraw his guilty plea and a hearing was then held on that matter. In explaining the motion, Hawkins's trial counsel claimed that Hawkins wanted to withdraw his plea so that he could tell his side of the story at trial. Specifically, Hawkins's trial counsel stated that Hawkins believed he should not have pled guilty to aggravated murder because he did not plan to kill Wellington in advance with prior calculation and design. Hawkins's trial counsel also argued that because Hawkins was a teenager, he had an underdeveloped brain that made it difficult for him to make important decisions on legal matters.

{¶ 7} The trial court overruled Hawkins's motion to withdraw his plea, finding that during the plea colloquy, Hawkins demonstrated an understanding of the nature and elements of the offense, the possible maximum penalties, and the facts alleged by the State. The trial court also found that Hawkins was represented by a competent defense counsel and that no new information or defenses had been presented to warrant the withdrawal of his guilty plea. Thus, the trial court ultimately concluded that Hawkins's motion was nothing more than a last minute change of heart.

{¶ 8} After issuing its decision, the trial court then proceeded to sentencing and imposed a mandatory term of life in prison with parole eligibility after Hawkins served 30 years for the aggravated murder charge and three years for the firearm specification. The three-year firearm specification was ordered to be served prior and consecutively to

the 30-year sentence for aggravated murder. During sentencing, the trial court explicitly stated: “I’m not taking [Hawkins’s] youth into consideration.” Disposition Trans. (Feb. 11, 2015), p. 34.

{¶ 9} Hawkins now appeals from his conviction and sentence, raising the following single assignment of error for review:

COURT ERRED IN STATEMENT AT SENTENCING THAT COURT IS
NOT TAKING HIS [DEFENDANT’S] YOUTH INTO CONSIDERATION.

{¶ 10} Although Hawkins’s assignment of error generally asserts that the trial court erred by failing to take his youth into consideration at sentencing, Hawkins also argues that the trial court erred by failing to consider his age when ruling on the motion to withdraw his guilty plea. Hawkins further argues that the trial court erred by denying the motion to withdraw his guilty plea due to an alleged claim of self-defense. We will address each of Hawkins’s three arguments more fully below.

Considering Youth at Sentencing

{¶ 11} Hawkins initially claims that the trial court erred by failing to take his youth into consideration at sentencing. In support of his position, Hawkins cites to the Supreme Court of Ohio’s decision in *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890. In *Long*, the Supreme Court applied the United States Supreme Court’s decision in *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and held that “[a] court, in exercising its discretion under R.C. 2929.03(A), must separately consider the youth of a juvenile offender as a mitigating factor before imposing a sentence of life without parole.” (Emphasis added.) *Long* at paragraph one of the syllabus. In

addition, *Long* held that “[t]he record must reflect that the court specifically considered the juvenile offender’s youth as a mitigating factor at sentencing *when a prison term of life without parole is imposed.*” (Emphasis added.) *Long* at paragraph two of the syllabus.

{¶ 12} We recently discussed *Long* and *Miller* in *State v. Jones*, 2d Dist. Montgomery No. 26333, 2015-Ohio-3506. In *Jones*, a juvenile offender was convicted of various offenses, including aggravated murder, and thereafter appealed from his aggregate prison sentence of 36 years to life on grounds that the trial court did not take his youth into consideration at sentencing. *Id.* at ¶ 4-5. Although we ultimately found that the record established the trial court did consider the offender’s youth, we also stated that:

Jones’ reliance on *Miller v. Alabama* is misplaced in any event. In *Miller*, the U.S. Supreme Court invalidated mandatory sentencing schemes that require juveniles convicted of homicide to “receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes[.]” *Miller* at 2475. The Ohio Supreme Court recently applied *Miller* in *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, another case cited by Jones. In *Long*, the defendant received a sentence of life in prison without parole for an aggravated murder he committed at age 17. Citing *Miller*, the Ohio Supreme Court held that “a court, in exercising its discretion under R.C. 2929.03(A), must separately consider the youth of a juvenile offender as a mitigating factor before imposing a sentence of life without parole[.]” *Long* at ¶ 1. In the present case, of course, the trial court did not impose a

sentence of life without parole. Therefore, neither Miller nor Long directly applies here.

(Emphasis added.) *Jones* at ¶ 8.

{¶ 13} Despite finding that *Miller* and *Long* did not directly apply, we noted in *Jones* that “*Long* arguably might be read more expansively to mean that an offender’s youth always must be considered as a mitigating factor.” *Id.* at ¶ 9. We reached this conclusion based on the fact that the majority in *Long* stated, without qualification, that “ ‘youth is a mitigating factor for a court to consider when sentencing a juvenile.’ ” *Id.*, quoting *Long* at ¶ 19. Nevertheless, we thereafter cited to *State v. Hammond*, 8th Dist. Cuyahoga No. 100656, 2014-Ohio-4673, a decision wherein the Eighth District Court of Appeals refused to extend the holding in *Long* to every sentence involving a juvenile offender. See *Jones* at ¶ 9, fn. 2.

{¶ 14} In *Hammond*, the appellant alleged that the trial court failed to consider his youth as a mitigating factor when imposing a consecutive 18-year prison term. *Hammond* at ¶ 19. In response to this argument, the Eighth District stated the following:

Although Hammond acknowledges that *Long* applies to juveniles who receive a sentence of life without parole, he urges us to extend the rationale to any sentence involving a juvenile. Hammond, however, fails to offer any authority in support of extending the holding of *Long* to the instant case. We do not find the trial court’s failure to discuss Hammond’s youth as a mitigating factor to be grounds for reversal. The same concerns that existed in *Long* simply do not exist in this case.

Id. at ¶ 21-22.

{¶ 15} The Supreme Court of Ohio's concerns in *Long* included the fact that juvenile offenders are not as culpable for their acts as adults and are more amenable to reform. *Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890 at ¶ 29. For juveniles, the Supreme Court likened a life sentence without parole to a death penalty and recognized that such a sentence should rarely be imposed because youth and its attendant circumstances are strong mitigating factors. *Id.* at ¶ 27 and 29. Specifically, the court noted that it is possible for juveniles to become more amenable to rehabilitation as they mature into adulthood and a life sentence without parole would foreclose that possibility. *Id.* at ¶ 27.

{¶ 16} As the record reveals, like the juvenile offenders in *Jones* and *Hammond*, Hawkins did not receive a life sentence without parole. Instead, he received a sentence of life in prison with the possibility of parole after serving 33 years in prison. In turn, the concerns in *Long* with respect to culpability and the possibility of rehabilitation do not exist in this case, as it is still possible for Hawkins to become amenable to rehabilitation as he matures into adulthood and to potentially be released on parole after serving 33 years in prison. Therefore, because there is no authority extending the holding in *Long* to every prison sentence imposed on a juvenile offender, and because the concerns discussed in *Long* do not exist here, we do not find that the trial court erred when it decided not to consider Hawkins's youth at sentencing. Accordingly, Hawkins's argument to the contrary is overruled.

Considering Age in Ruling on Motion to Withdraw Guilty Plea

{¶ 17} Next, Hawkins claims the trial court erred by failing to consider his age when

ruling on the presentence motion to withdraw his guilty plea.

{¶ 18} As a preliminary matter, we note that under Crim.R. 32.1, “ ‘motions to withdraw guilty pleas before sentencing are to be freely allowed and treated with liberality[.]’ ” *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992), quoting *Barker v. United States*, 579 F.2d 1219 (10th Cir.1978) and *State v. Peterseim*, 68 Ohio App.2d 211, 213-214, 428 N.E.2d 863 (8th Dist.1980). However, this does not mean that a defendant has an absolute right to withdraw his plea before sentencing. *State v. Patterson*, 2d Dist. Montgomery No. 26015, 2014-Ohio-4962, ¶ 5, citing *State v. Perkins*, 2d Dist. Montgomery No. 25808, 2014-Ohio-1863, ¶ 29. Rather, “[e]ven under the pre-sentence standard, ‘a defendant must show a reasonable and legitimate basis for the withdrawal of the plea.’ ” *Id.*, quoting *State v. Simpson*, 2d Dist. Montgomery No. 24266, 2011-Ohio-6181, ¶ 10. “ ‘A change of heart is not enough,’ and a trial court’s finding regarding a defendant’s true motivation is entitled to deference.” *Simpson* at ¶ 10, quoting *State v. Williamson*, 2d Dist. Montgomery No. 21965, 2008-Ohio-4727, ¶ 13.

{¶ 19} Ohio courts often consider the following nine factors when considering a motion to withdraw a guilty plea:

- (1) whether the accused is represented by highly competent counsel, (2) whether the accused was given a full Crim.R. 11 hearing before entering the plea, (3) whether a full hearing was held on the motion, (4) whether the trial court gave full and fair consideration to the motion, (5) whether the motion was made within a reasonable time, (6) whether the motion sets out specific reasons for the withdrawal, (7) whether the accused understood the nature of the charges and possible penalties, (8) whether the accused was

perhaps not guilty of or had a complete defense to the charge or charges,
and (9) whether the state is prejudiced by withdrawal of the plea.

(Citations omitted.) *State v. Preston*, 2d Dist. Montgomery No. 25393, 2013-Ohio-4404,
¶ 19.

{¶ 20} “Consideration of the foregoing factors involves a balancing test. No single factor is dispositive.” *Patterson* at ¶ 7, citing *Preston* at ¶ 20. “In reviewing the various factors, the ultimate issue remains whether a reasonable and legitimate basis for withdrawing the plea exists. The question for us is whether the trial court abused its discretion in making this determination.” *Id.* This typically involves a trial court’s failure to exercise sound, reasonable, and legal decision-making. *Id.* at ¶ 5, citing *Perkins* at ¶ 27.

{¶ 21} Contrary to Hawkins’s claim otherwise, the record indicates that the trial court did in fact consider his age prior to overruling the motion to withdraw his guilty plea. Specifically, the trial court stated the following:

I’m aware of the decision regarding minors and their – and the issues that their age presents to a Court and, in particular, where that has been raised most significantly is where you have a minor looking at the possibility of a life sentence without the possibility of parole. That’s not part of this case. At the time the Defendant did enter the plea, he was 18 years of age, although I understand the Defense argument that going from 17 to 18 does not automatically develop the brain any better. There is no ruling that I’m aware of that says an 18-year-old can’t enter a plea of guilty after it’s been determined he understands the nature of the offense, the elements, the

possible maximum penalties, and the facts that are being alleged by the State.

Disposition Trans. (Feb. 11, 2015), p. 13.

{¶ 22} After a thorough review of the record, we cannot say the trial court abused its discretion in ultimately determining that Hawkins's age was not a reasonable and legitimate basis for withdrawing his plea. The record of the plea hearing establishes that Hawkins, despite his age, demonstrated an understanding of the nature and elements of the charge at issue, the facts that he was admitting to by pleading guilty, and the possible penalties he could receive upon pleading guilty. Therefore, for the foregoing reasons, Hawkins's claim that the trial court erred in failing to consider his age in ruling on the motion to withdraw his guilty plea is overruled.

Self-Defense Claim

{¶ 23} For his last argument, Hawkins contends the trial court erred by denying the motion to withdraw his guilty plea because, under his version of events, he was acting in self-defense when he shot and killed Jeff Wellington. Hawkins, however, never raised this argument before the trial court. In fact, during the hearing on his motion to withdraw, the trial court specifically stated that it had "not been given any information * * * about any new facts or new defenses which has come to the understanding of the Defendant or of the defense attorneys." Disposition Trans. (Feb. 11, 2015), p. 13. Rather, the record indicates that Hawkins wanted to withdraw his plea so that he could tell his side of the story at trial; specifically, that he had not planned in advance to shoot and kill Wellington. "It is axiomatic that a defendant cannot raise new grounds for withdrawing his pleas for

the first time on appeal.” *State v. Pierce*, 2d Dist. Montgomery No. 22440, 2008-Ohio-4930, ¶ 25. Therefore, because Hawkins failed to raise this issue below, we will not address this claim for the first time on appeal. Accordingly, Hawkins’s argument regarding his claim of self-defense is likewise overruled.

Conclusion

{¶ 24} Having overruled all the arguments under Hawkins’s sole assignment of error, the judgment of the trial court is affirmed.

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FAIN, J., concurs.

DONOVAN, J., dissenting:

{¶ 25} I disagree. I would find that the trial court erred when it expressly refused to consider Hawkins’ juvenile status when it imposed a mandatory term of life in prison with the possibility of parole after thirty-three years. “[C]hildren are constitutionally different from adults for purposes of sentencing.” *Miller*, at _____, 132 S.Ct. at 2464. We recognized in *Jones* that the *Long* court held “that youth is a mitigating factor for a court to consider when sentencing a juvenile.” *Jones*, 2d Dist. Montgomery No. 26333, 2015-Ohio-3506, ¶ 9, citing *Long*, ¶ 9. Nothing in *Long* limited this consideration to life without parole cases.

{¶ 26} As noted by the Supreme Court in *Long*, Ohio’s own felony sentencing structure requires a trial court to consider certain factors that make the offense more or

less serious and that indicate whether the offender is more or less likely to commit future offenses. R.C. 2929.12. “Although youth is not individually mentioned in the statute, an offender’s conduct is considered less serious when there are ‘substantial grounds to mitigate the offender’s conduct, although the grounds are not enough to constitute a defense.’ R.C. 2929.12(C)(4). R.C. 2929.12(C) and (E) also permit a trial court to consider ‘any other relevant factors’ to determine that an offense is less serious or that an offender is less likely to recidivate.” *Long* at ¶ 18. An offender’s youth and the attendant circumstances of youth should be considered under either or both of these provisions pursuant to *Miller* and *Long* before the court imposes a sentence on a juvenile.

{¶ 27} The majority draws a distinction between cases where a youthful offender is sentenced to life without the possibility of parole and cases where a youthful offender is afforded the chance for parole after serving a set number of years in prison, in this case thirty-three years. However, this ignores the broad language utilized in *Long* and noted by this court in *Jones*.

{¶ 28} I recognize that the appropriate consideration of the offender’s youth may not ultimately have a determinative impact upon the decision of the trial court when deciding what sentence to impose as it may be that the trial court finds that other sentencing factors outweigh the fact of the offender’s youth and “its attendant circumstances.” In such a case, which may include this one, the trial court may, in its discretion, give modest weight to the offender’s juvenile status when imposing sentence. That does not mean, however, that a trial court can simply refuse to consider the defendant’s youth, as it did in this case. Given what is known today about adolescents’ cognitive and emotional development, youth is a relevant consideration. Because it may

be a substantial and compelling factor in a particular case, to ignore it entirely is error. “There is a distinction between the refusal to exercise discretion at all and an abuse of discretion that is, in fact, exercised. . . . A blanket refusal is an abdication of judicial responsibility.” *State v. Rice*, 180 Ohio App.3d 599, 2009-Ohio-162, 906 N.E.2d 506, ¶ 22 (2d Dist.) (Donovan, J., dissenting).

{¶ 29} *Miller, Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), *J.B.D. v. North Carolina*, __ U.S. __, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011), and *Long* have all taught us that juveniles are different, even when subject to mandatory bind-over and decades of imprisonment for brutal homicides. When formulating the sentence for the crime committed by Hawkins, the trial court must consider youth as it is relevant to the purposes and principles of sentencing. As emphasized in *Long* at ¶ 32, “there is nothing novel about the fact that our youth commit murders and mayhem. But the legal lens through which we view their sentencing has changed.”

{¶ 30} Accordingly, I would reverse and remand to the trial court for resentencing.

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