

No. 2—09—1131  
Order filed June 10, 2011

**NOTICE:** This order was filed under Supreme court Rules 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07—CF—1836
	)	
MAX AGUILAR,	)	Honorable
	)	Timothy Q. Sheldon
Defendants-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Zenoff and Schostok concurred in the judgment.

**ORDER**

*Held:* The automatic transfer provision of section 5—103 of the Illinois Juvenile Court Act (705 ILCS 405/5—130(a)(a)(West 2010)) does not violate due process; affirmed.

Defendant, Max Aguilar, was charged with the offense of first-degree murder in connection with the beating death of George Caro. At the time the offense was committed, defendant was 15 years' old and, pursuant to the automatic transfer provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5—130 (West 2010)), defendant's case was transferred to criminal court so that he could be prosecuted as an adult. Following a consolidated bench trial, defendant was found guilty of the offense. Thereafter, the trial court sentenced defendant to 20 years' imprisonment. Defendant

contends that section 5—130 of the Act is invalid as it violates procedural due process. Specifically, defendant maintains that, under section 5—130 of the Act, minors are transferred to adult court without any determination about who should be transferred and who could benefit from juvenile court. He argues that the transfer of the offenders to adult court without a hearing bears no rational relationship to any legitimate governmental purpose. Consequently, defendant contends that the automatic transfer provision which mandates that 15- and 16-year-olds charged with the enumerated offenses listed therein are automatically transferred to criminal court is facially unconstitutional as well as unconstitutional as applied to him.

We begin our analysis with the presumption that the statute is valid. See *People v. M.A.*, 124 Ill. 2d 135, 144 (1988). “The party challenging the constitutionality of a statute bears the burden of rebutting that presumption and clearly establishing its unconstitutionality.” *Russell v. Department of Natural Resources*, 183 Ill. 2d 434, 441 (1998). The constitutionality of a statute is a question of law subject to *de novo* review. *Miller v. Rosenberg*, 196 Ill. 2d 50, 57 (2001).

The legislature, pursuant to its police power, has wide latitude in determining what the public interest and welfare require and to determine the measures needed to secure such interest, but this discretion is limited by the constitutional guarantee that a person may not be deprived of liberty without due process of law. *In re K.C.*, 186 Ill. 2d 542, 550 (1999). Nowhere in the Federal or in this State's constitution is there found the right to be treated as a juvenile for jurisdictional purposes. *People v. J.S.*, 103 Ill. 2d 395, 402 (1984). Where, as here, the statute does not affect a fundamental constitutional right, the court applies the rational-basis test to determine the legislation's constitutionality. *People v. Wright*, 194 Ill. 2d 1, 24 (2000). A statute attacked on due process grounds will be upheld so long as it (1) bears a reasonable relationship to the public interest sought

to be protected and (2) the means employed are a reasonable method of achieving the desired objective. *People v. Carpenter*, 228 Ill. 2d 250, 267-68 (2008). When applying the rational-basis test, the court is highly deferential to the findings of the legislature. *People v. Johnson*, 225 Ill. 2d 573, 585 (2007).

Section 120 of the Act provides, in relevant part:

“Except as provided in Section 5—705, 5—130, 5—805, and 5—810 of this Article, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.” 705 ILCS 405/5—120 (West 2010).

Section 5—130 of the Act provides in part:

“The definition of delinquent minor under Section 5—120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with: (i) first degree murder \*\*\* .

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.” 705 ILCS 405/5—130(1)(a)(i) (West 2010).

Juveniles have neither a common law nor a constitutional right to adjudication under the Act. *In re J.W.*, 346 Ill. App. 3d 1, 11 (2004). The Act is a purely statutory creature whose parameters and application are defined solely by the legislature. *People v. P.H.*, 145 Ill. 2d 209, 223 (1991). No transfer is granted from juvenile to adult court under section 5—130 of the Act. See *J.S.*, 103 Ill. 2d at 402-04. Rather, section 5—130 forbids juvenile court jurisdiction in cases in which the offender is at least 15 years of age and is charged with one of the enumerated offenses, such as first-degree murder. In this case, because defendant was charged with first-degree murder and was 15

years' old at the time he was charged, he was outside the protection of the Act. See, e.g., *People v. DeJesus*, 127 Ill. 2d 486, 488 (1989).

Our supreme court has rejected constitutional challenges to section 5—130. See, e.g., *People v. R.L.*, 158 Ill. 2d 432, 444 (1994) (statute has rational basis to deter narcotics activity in public housing, and thus does not violate equal protection); *P.H.*, 145 Ill. 2d at 231-33 (the automatic “gang transfer” provision does not violate due process as the provision is reasonably designed to curtail gang activity); *People v. M.A.*, 124 Ill. 2d 135, 147 (1988) (automatic transfer provision providing 15- and 16-year-olds charged with unlawful use of weapons on school grounds does not violate due process or equal protection). In *J.S.*, 103 Ill. 2d at 405-07, the supreme court noted that the legislature, by lowering the age for juvenile court jurisdiction in relation to certain crimes, was not usurping a judicial function but redefining the applicability of a statute which it created under its legislative power. The court held that the automatic transfer provision does not violate due process as it is reasonably designed to remedy evils which the legislature has determined to be a threat to the public health, safety, and general welfare due to the violent nature and frequency of commission of those crimes.

Although defendant concedes that the automatic transfer provision at issue here comports with constitutional requirements, he asserts that the penological justifications of retribution, deterrence, incapacitation, and rehabilitation “simply do not apply to juvenile offenders.” He requests that we re-examine the rationale of the “decades-old cases” of our Illinois Supreme Court in light of the more recent United States Supreme Court opinions of *Graham v. Florida*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 2011 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Court determined that additional constitutional protections for juvenile offenders are necessary because of the “fundamental difference

between juvenile and adult minds,” and *Kent v. United States*, 383 U.S. 541, 557 (1966), in which the Supreme Court held that transfers from juvenile to adult court violate procedural due process absent an investigation to determine whether transfer is appropriate. We reject defendant’s request.

First, we note that our supreme court previously addressed *Kent* and found it not dispositive in resolving whether section 5—130 violates procedural due process. *J.S.* 103 Ill. 2d at 405. The supreme court held that, unlike the statute at issue in *Kent*, the automatic transfer provision of the Act does not leave room for disparity in treatment between individuals within its proscription, as it requires all 15- and 16-year-olds, who are that age at the time of an offense and charged with one of the enumerated offenses, to be prosecuted in the adult criminal court system. *J.S.*, 103 Ill. 2d at 405. See also *Alvarado v. Hill*, 252 F. 3d 1066, 1069 (9<sup>th</sup> Cir. 2001) (holding that *Kent* does not hold that automatic transfer statutes are unconstitutional; rather, it holds that a court must follow adequate procedures when statutorily required).

Second, neither *Roper* nor *Graham* alter the validity of well-established Illinois precedent. Neither case addresses the constitutionality of an automatic transfer provision and are inapposite. In *Roper*, the Supreme Court held that the imposition of the death penalty on individuals under 18 years of age constituted cruel and unusual punishment. *Roper*, 543 U.S. at 568. The court observed that the death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded, no matter how heinous the crime. *Roper*, 543 U.S. at 568. In reaching this determination, the court noted several distinctions between juveniles and adult offenders: (1) juveniles lack maturity and have an underdeveloped sense of responsibility; (2) juveniles are more vulnerable or susceptible to negative influences and outside pressures, including

peer pressure; and (3) juveniles have not fully formed their character, as their personality traits are more transitory than adults. *Roper*, 543 U.S. at 569-70. Relying in part on the conclusion that juveniles are less culpable for their actions, the court observed: “[o]nce the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults.” *Roper*, 543 U.S. at 571. Unlike the present case, *Roper*’s holding applies to the imposition of the death penalty for offenders who are under 18 years of age at the time the offense is committed. Additionally, *Roper* does not espouse that the penological justification for greater rehabilitative potential applies to all minor offenders.

In *Graham*, the Supreme Court considered whether the constitution permits a juvenile offender to be sentenced to life without parole for a nonhomicide offense. *Graham*, \_\_\_ U.S. at \_\_\_, 130 S. Ct. at 2017-18. The court examined the “evolving standards of decency that mark the progress of a maturing society” to answer the question. *Graham*, \_\_\_ U.S. at \_\_\_, 130 S. Ct. at 2021 (citing *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)). It determined that sentencing a minor to life without parole for a nonhomicide crime was cruel and unusual punishment because the lessened degree of culpability of minors makes them “less deserving of the most severe punishments.” *Graham*, \_\_\_ U.S. at \_\_\_, 130 S. Ct. at 2026 (citing *Roper*, 543 U.S. at 569). The court, however, recognized that a line existed “between homicide and other serious violent offenses against the individual.” *Graham*, \_\_\_ U.S. at \_\_\_, 130 S. Ct. at 2027 (citing *Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008)). Defendant’s case does not involve a nonhomicide offense and he was not sentenced to life without parole. In fact, defendant received the most lenient sentence (20 years) available for a person convicted of first-degree murder under the criminal laws of this State. See 730 ILCS 5/5—4.5—20(a) (West 2010).

Defendant argues alternatively that the automatic transfer provision is unconstitutional as applied to him. Defendant maintains the trial judge's comments indicate the judge would have transferred defendant to juvenile court if the option were available. Based on our review of the record, the trial judge did not state that he would have transferred defendant to juvenile court. Rather, the court commented about defendant's youth and tragic background in consideration of the mitigating factors for sentencing.

To mount a successful facial challenge, defendant must fulfill the difficult task of establishing the statute's invalidity under any set of facts. *People v. Greco*, 204 Ill. 2d 400, 407 (2003). In contrast, an "as applied" challenge requires defendant to show the statute violates the constitution as it applies to him. *People v. Garvin*, 219 Ill. 2d 104, 117 (2006). Defendant does not present any argument as to how the statute violates the constitution as it applies to him. Defendant does not argue how he is treated differently from any other offender of the same age. Further, imposing the penological concerns would defeat the statute's purpose of excluding jurisdiction based on the age of the offender and the threat posed by the offense to the victim and the community because of its violent nature and frequency of commission. That said, the trial court did consider defendant's youth and rehabilitative potential when it sentenced him to the minimum 20-years in prison for first-degree murder, including such factors as defendant's lack of maturity and vulnerability to negative influences. Defendant has not sustained his burden to establish that the statute is unconstitutional as applied to him.

Based on the preceding, the judgment of the circuit court of Kane County is affirmed.

Affirmed.