

No. 1-10-2807

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 14528
)	
DOMINIQUE BENTLEY,)	The Honorable
)	Frank Zelezinski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Neville and Salone, JJ., concurred in the judgment.

ORDER

- ¶ 1 *Held:* Automatic transfer provision of the Juvenile Court Act of 1987 is not unconstitutional; sentence entered was not an abuse of discretion; judgment affirmed.
- ¶ 2 Following a jury trial, defendant Dominique Bentley, was tried as an adult, and convicted of first degree murder. He was then sentenced to 40 years' imprisonment. On appeal, he maintains that the automatic transfer provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130 (West 2006)) is unconstitutional and that his sentence is excessive.
- ¶ 3 The record shows that defendant was born on December 4, 1991, and on June 12, 2007,

he was charged with the first degree murder of Shane Bramwell, who was 21 years of age. Pursuant to the automatic transfer provision of the Act (705 ILCS 405/5-130 (West 2006)), defendant's case was heard in criminal court because he was statutorily excluded from the jurisdiction of the juvenile court based on the fact that he was at least 15 years of age and was accused of first degree murder. *People v. Jackson*, 2012 IL App (1st) 100398, ¶6.

¶ 4 Defendant elected to be tried by a jury and was convicted of first degree murder. The State's evidence showed that during the evening hours of June 12, 2007, defendant was with Trinee Gaston, Keturah Lee, Jimmy Brooks, Marissa Mayfield and Joseph Walker at Walker's house near Drexel Avenue and Lincoln Highway in Ford Heights. While there, Mayfield received a phone call from the victim, Bramwell. Mayfield, holding the phone to her chest, told Walker and defendant that the victim was "the dude y'all [*sic.*] can rob." Defendant responded, "I hope he got some money," and that he was "fixing to rob him." Brooks said that, if they are going to rob the victim, they should try and get him out of his car to do so, and suggested that Mayfield offer to hug the victim to get him out of the car.

¶ 5 Mayfield then handed the phone to Gaston who told the victim to come to Walker's house. The victim told Gaston he was already there, and waiting outside. Brooks gave defendant a "laser site" gun which he placed in his coat pocket, and the two went outside where they saw the victim sitting in his car. Mayfield and Gaston walked up to the passenger side of the car and spoke to the victim who had one hand on the armrest and was holding a cellular phone in the other hand. While Gaston and Mayfield were talking to the victim, defendant walked up to the driver's side window with a gun in his hand, and shot the victim. The victim's car then sped across the street, almost crashing into a house, and stopped. When Brooks asked defendant why he fired the gun, defendant responded, "[m]an, you know how your gun is." He also told Walker

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that he fired the gun because the victim, "was reaching for something," then gave the gun back to Brooks. Defendant left the black jacket he was wearing in Walker's house; and when police arrived on the scene, they found the victim dead in his car, and recovered defendant's black jacket which tested positive for gunshot residue.

¶ 6 At the close of evidence defendant was found guilty of first degree murder. The jury, however, did not find that the State proved beyond a reasonable doubt that defendant personally discharged a firearm that proximately caused the death of the victim.

¶ 7 At the sentencing hearing, the victim's mother read her victim impact statement reflecting on the loss of her only child, Shane Bramwell. She stated that the impact of this case cannot be measured, that there is no amount of time and punishment that can render or erase or ease the burden placed on her by this tragedy, and that her family feels and lives this pain daily. She thus requested the maximum sentence available by law.

¶ 8 In contrast, defense counsel argued in mitigation that defendant was only 15 years old at the time of the offense, that he had a hard upbringing and was not constantly raised by his single mother who had a history of mental illness and had been in and out of the criminal justice system. Counsel further noted that defendant has no adult background, that he did not plan the robbery, and was not found to be the shooter. Counsel also noted that defendant was currently in a high school program.

¶ 9 The court stated that it had reviewed all matters in aggravation and mitigation including all the factors in the pre-sentence investigation report (PSI), and heard the arguments in aggravation and mitigation by the attorneys. The court noted that there were a number of mitigating factors to be considered, particularly noting defendant's age. The court also considered the facts presented, including the victim impact statement, and noted that this was not

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a random shooting but, rather, a premeditated matter in which the victim was lured to the area and subsequently shot. The court then sentenced defendant to 40 years' imprisonment "[b]ased upon all matter in which [it] considered in aggravation and mitigation."

¶ 10 On appeal, defendant first contends that the automatic transfer provision of the Act is unconstitutional. He maintains that this provision violates the due process clause of the fourteenth amendment of the United States Constitution, the prohibition against cruel and unusual punishment under the eighth amendment of the United States Constitution and the proportionate penalties and due process clauses of the Illinois Constitution of 1970. Defendant acknowledges that the Illinois Supreme Court has previously found the automatic transfer provision of the Act constitutional (*People v. J.S.*, 103 Ill. 2d 395 (1984)), but maintains that the legal landscape has changed since 1984 and "cannot be squared with the Supreme Court's opinions" in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, -- U.S. --, 130 S. Ct. 2011 (2010), or the emerging scientific research relied upon in those two decisions.

¶ 11 This court has recently addressed and rejected the same exact arguments in *People v. Jackson*, 2012 IL App (1st) 100398, ¶¶6-24. See also *People v. Salas*, 2011 IL App (1st) 091880, ¶¶52-80. We find no reason to revisit that precedent in this case (*People v. Sanders*, 2012 IL App (1st) 102040, ¶¶34-35), and therefore, following *Jackson*, and *Salas*, we reject defendant's claims that the automatic transfer provision of the Act is unconstitutional.

¶ 12 In doing so, we have examined *J.D.B. v. North Carolina*, -- U.S.--, 131 S. Ct. 2394 (2011), which defendant cites in his reply brief for the claim that the principles set forth in *Roper* and *Graham* regarding juveniles versus adults are not limited to the context of the eighth amendment and should be applied here. We find that *J.D.B.* has no bearing on this case. In *J.D.B.*, the issue, answered in the affirmative, was whether a child's age, when known or

objectively apparent to a reasonable police officer, must be considered by the court in conducting a *Miranda* custody analysis. This holding has nothing to do with the constitutionality of the automatic transfer provision of the Act. Furthermore, and most notably, the Supreme Court, in reaching its conclusion in *J.D.B.*, stated that a child's age is not necessarily a determinative or even significant factor in every *Miranda* custody case. *J.D.B.*, 131 S. Ct. at 2406.

¶ 13 Defendant also contends that his sentence was excessive. He maintains that the court failed to give proper weight to the mitigating factors of his youth, troubled family background, potential for rehabilitation, the alleged fact that he was only a participant and not an instigator of the offense, his lack of a criminal history, and that he was taking high school classes.

¶ 14 There is no dispute that the 40-year sentence imposed by the trial court falls within the statutory range provided for first degree murder (720 ILCS 5/9-1(a)(1) (West 2010); 730 ILCS 5/5-8-1(a)(1) (West 2010)), and given that fact, we may not disturb that sentence absent an abuse of discretion in the term imposed (*People v. Jones*, 168 Ill. 2d 367, 373-74 (1995)). We find none here.

¶ 15 The record shows that the court considered the aggravating and mitigating factors presented by the parties, and also defendant's pre-sentence investigation report which allows us to presume that it took into account his potential for rehabilitation. *People v. Powell*, 159 Ill. App. 3d 1005, 1011 (1987). The court was not required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense (*People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994)), which, in this case, involved premeditated criminal activity, and resulted in the fatal shooting of another young man.

¶ 16 Although defendant cites other cases in which defendants' sentences were reduced, we note that a sentence cannot be attacked based on the ground that a lesser sentence was imposed in

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another unrelated case because the sentence entered against defendant is to be imposed based on the particular facts of the instant case. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900-01 (1994). Here, contrary to defendant's contention, the evidence showed that he was not simply a participant but, rather, that he commented to one of his friends that he was "fixing to rob [the victim]," thus showing premeditation. In sum, we find no abuse of discretion by the trial court in the sentence imposed, and have no basis for interfering with the sentencing determination entered by the court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 17 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.