

ment. We affirm.

¶ 5

I. BACKGROUND

¶ 6 In June 2007, a grand jury indicted defendant, 16 years old at the time of the offense, on one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2006)), alleging he, or one for whose conduct he was legally responsible, knowingly took property from Corey Wright by the use of force or threatening the imminent use of force while armed with a dangerous weapon, a handgun. The grand jury also indicted defendant on one count of armed violence (720 ILCS 5/33A-2 (West 2006)), alleging he, or one for whose conduct he was legally responsible, knowingly committed the felony offense of vehicular hijacking in that he took a motor vehicle from Wright by the use of force while armed with a handgun. Although defendant was 16 years old at the time of the robbery, he was prosecuted as an adult pursuant to the automatic transfer provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (automatic transfer statute) (705 ILCS 405/5-130(1)(a) (West 2006)), which provides, in part, that 15- and 16-year-old defendants charged with armed robbery, when the armed robbery was committed with a firearm, are to be prosecuted under the Criminal Code of 1961 (720 ILCS 5/1-1 to 47-25 (West 2006)).

¶ 7 In December 2007, defendant agreed to plead guilty to the charge of armed robbery, and the State agreed to drop the armed-violence charge. The trial court admonished defendant that the armed-robbery charge was a Class X felony with a sentencing range of 6 to 30 years in prison. In its factual basis, the State indicated Wright pulled into the driveway at his home and was approached by three black males, one of whom displayed a handgun. The men ordered Wright to lie on the ground and hand over his wallet and car keys. The men also threatened to shoot him. The three males left in Wright's car. When police stopped the vehicle

they found defendant driving. The court found defendant knowingly entered his guilty plea.

¶ 8 In February 2008, the trial court sentenced defendant to 16 years in prison. The court also imposed various fines and court costs, and credited defendant with \$1,175 for pretrial detention.

¶ 9 Defendant filed a motion to reconsider sentence, which the trial court denied. Defendant appealed, and this court remanded the case on the ground that trial counsel failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Richards*, No. 4-08-0628 (May 18, 2009) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 10 In July 2009, defense counsel orally adopted the previously filed motion to reconsider sentence. The trial court denied the motion. On appeal, this court affirmed defendant's sentence but remanded for the modification and offset of certain fines and fees. *People v. Richards*, No. 4-09-0636 (Mar. 16, 2010) (unpublished order under Supreme Court Rule 23).

¶ 11 In October 2011, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2010)), arguing his sentence was void because he entered into a negotiated guilty plea for 16 years that should have included a 3-year term of mandatory supervised release (MSR). Defendant also argued his trial and appellate counsel were ineffective for not raising this issue. He asked the trial court to vacate his plea and resentence him to 13 years with an additional 3-year MSR term.

¶ 12 In November 2011, the trial court dismissed the petition, finding it frivolous and patently without merit. The court noted defendant had been admonished as to the appropriate MSR term at the plea hearing and the term was listed on the sentencing judgment. This appeal

followed.

¶ 13

II. ANALYSIS

¶ 14 On appeal, defendant does not raise the issue he set forth in his postconviction petition. Instead, he argues the automatic transfer statute is unconstitutional. Specifically, he claims the statute violates the eighth and fourteenth amendments where it forces minors to be tried as adults for certain offenses, without any consideration of whether the minor is amenable to programs available through the juvenile court, and therefore prevents the trial court from considering sentencing provisions available to minors and requires the court to impose a mandatory adult sentence. Also, defendant argues the statute violates substantive and procedural due process by requiring all 15- and 16-year-old juveniles charged with certain serious offenses to be prosecuted and sentenced as adults without any opportunity for antecedent findings that the offender should not be treated as a juvenile.

¶ 15

A. Standard of Review

¶ 16 As noted, defendant did not raise the constitutionality of the automatic transfer statute in his postconviction petition. However, the constitutionality of a statute may be raised at any time. *People v. Winningham*, 391 Ill. App. 3d 476, 480, 909 N.E.2d 363, 367 (2009).

¶ 17 "All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation. [Citation.] If reasonably possible, a statute must be construed so as to affirm its constitutionality and validity." *People v. Greco*, 204 Ill. 2d 400, 406, 790 N.E.2d 846, 851 (2003). Whether a statute is constitutional involves a question of law, and our review is *de novo*. *People v. McCarty*, 223 Ill. 2d 109, 135, 858 N.E.2d 15, 32 (2006).

¶ 18

B. The Automatic Transfer Statute

¶ 19

Section 5-130(1)(a) of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2006)) provides as follows:

"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, (ii) aggravated criminal sexual assault, (iii) aggravated battery with a firearm where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State."

If the minor is convicted of one of the listed offenses, "then, in sentencing the minor, the court shall have available any or all dispositions prescribed for that offense under Chapter V of the Unified Code of Corrections." 705 ILCS 405/5-130(c)(i) (West 2006).

¶ 20

C. The Eighth Amendment

¶ 21

The eighth amendment to the United States Constitution states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. Within the last decade, the United States Supreme Court has considered a number of eighth-amendment cases involving sentences imposed on juvenile

offenders.

¶ 22 In *Roper v. Simmons*, 543 U.S. 551, 568 (2005), the Supreme Court held the eighth amendment bars capital punishment for juvenile offenders. The Court stated that "[b]ecause the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." *Roper*, 543 U.S. at 568.

¶ 23 In *Graham v. Florida*, 560 U.S. ___, ___, 130 S. Ct. 2011, 2034 (2010), the Court held a sentence of life without parole violates the eighth amendment when imposed on juvenile nonhomicide offenders. In that case, the Court found the punishment of "life without parole is 'the second most severe penalty permitted by law.'" *Graham*, 560 U.S. at ___, 130 S. Ct. at 2027 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (opinion of Kennedy, J.)). "Life without parole is an especially harsh punishment for a juvenile [because] *** a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender." *Graham*, 560 U.S. at ___, 130 S. Ct. at 2028. The Court stated that although "[t]he Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life[, i]t does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." *Graham*, 560 U.S. at ___, 130 S. Ct. at 2030.

¶ 24 Several Illinois courts have considered the constitutionality of the automatic transfer statute in light of *Roper* and *Graham*. In *People v. Salas*, 2011 IL App (1st) 091880, ¶ 65, 961 N.E.2d 831, 846, the defendant argued the statute violated the eighth amendment by mandating that all 15- and 16-year-old defendants who have been charged with the applicable offenses must be transferred to adult court without consideration of their youthfulness or

culpability.

¶ 25 In finding the defendant's argument without merit, the First District found the statutes at issue in *Roper* and *Graham* dealt with the punishment of juveniles. *Salas*, 2011 IL App (1st) 091880, ¶ 66, 961 N.E.2d at 846. "By contrast, the automatic transfer statute at issue here does not impose any punishment on the juvenile defendant, but rather it only provides a mechanism for determining where defendant's case is to be tried, *i.e.*, it provides for the forum in which his guilt may be adjudicated." *Salas*, 2011 IL App (1st) 091880, ¶ 66, 961 N.E.2d at 846. Since the statute does not impose any punishment, the First District found it was not subject to the eighth amendment. *Salas*, 2011 IL App (1st) 091880, ¶ 66, 961 N.E.2d at 846.

¶ 26 In *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 23, 965 N.E.2d 623, 631, the defendant argued "it is cruel and unusual punishment for the legislature to mandate that any 15-year-old juvenile be automatically subjected to adult criminal court proceedings because there may be some possibility that the ultimate punishment he or she receives if found guilty may be disproportionate to his or her criminal involvement." The First District, adhering to its previous ruling in *Salas*, disagreed. *Jackson*, 2012 IL App (1st) 100398, ¶ 23, 965 N.E.2d at 631.

"The automatic transfer provision is not a penalty provision in even the broadest sense. It merely dictates for a small class of older juvenile defendants who are charged with the commission of certain heinous crimes where their cases are to be tried. Guilt has not been determined at this stage, let alone what punishment, if any, should be imposed. The automatic transfer provision does not dictate any form of punishment as that term is used throughout

criminal statutes. Because the automatic transfer provision does not mandate or even suggest a punishment, any analysis as to whether or not it violated the eighth amendment's proscription against cruel and unusual punishment is futile. The automatic transfer provision does not impose any punishment. Therefore, it is not subject to the eighth amendment." *Jackson*, 2012 IL App (1st) 100398, ¶ 24, 965 N.E.2d at 632.

¶ 27 In this case, defendant acknowledges our sister courts' decisions in *Salas* and *Jackson* but argues the United States Supreme Court's recent decision in *Miller v. Alabama*, 567 U.S. ___, ___, 132 S. Ct. 2455 (2012), discussed transfer statutes, and thus the issue requires a reexamination in light thereof. In *Miller*, 567 U.S. at ___, 132 S. Ct. at 2460, two 14-year-old offenders were convicted of murder, and the trial courts had no discretion but to sentence them to life in prison without the possibility of parole. The defendants argued the mandatory life sentence without parole for juvenile offenders violated the eighth amendment.

¶ 28 The Supreme Court agreed. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2460. The Court noted "children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at ___, 132 S. Ct. at 2464. Also, the mandatory sentencing schemes prevented the sentencing courts from taking into consideration an offender's youth, which "prohibit[ed] a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Miller*, 567 U.S. at ___, 132 S. Ct. at 2466. "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and conse-

quences." *Miller*, 567 U.S. at ____, 132 S. Ct. at 2468. Along with factors such as the family and home environment and the possibility of rehabilitation, the Court held the eighth amendment prohibits "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at ____, 132 S. Ct. at 2469. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Miller*, 567 U.S. at ____, 132 S. Ct. at 2469.

¶ 29 We find defendant's reliance on *Miller* unavailing. The Supreme Court's focus in that case was on the mandatory sentence of life without parole for juvenile homicide offenders. The Court did not hold the eighth amendment would prohibit *any* mandatory penalties for juveniles, let alone automatic transfer to adult court. Moreover, the adult sentencing scheme, with a minimum six-year term for a Class X felony (730 ILCS 5/5-8-1(a)(3) (West 2006)), cannot compare with the mandatory sentence of life in prison without parole found in *Miller*.

¶ 30 The Supreme Court did mention statutes that allow for discretion at the transfer stage, but that was in response to the States' arguments that the discretion utilized at the transfer stage, *i.e.*, deciding whether to try the juvenile offender as an adult, foreclosed the need for individualized consideration before sentencing a juvenile to life in prison without the possibility of parole. *Miller*, 567 U.S. at ____, 132 S. Ct. at 2474-75. The Court stated "the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court." *Miller*, 567 U.S. at ____, 132 S. Ct. at 2475. While the Court found a violation of the eighth amendment in that case, it did not pronounce that automatic transfer statutes are unconstitutional. The Court concluded as follows:

"*Graham, Roper*, and our individualized sentencing deci-

sions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing *the harshest possible penalty for juveniles*. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." (Emphasis added.) *Miller*, 567 U.S. at ____, 132 S. Ct. at 2475.

¶ 31 Here, the automatic transfer statute does not constitute punishment. Moreover, while a juvenile tried in adult court may be subject to sentencing as a Class X offender, the minimum six-year sentence does not equate to "the harshest possible penalty for juveniles" that would violate the eighth amendment's prohibition against cruel and unusual punishment as articulated in *Roper*, *Graham*, and *Miller*. Further, at sentencing, a trial court has the discretion to consider an offender's youth as mitigation in fashioning a sentence between the minimum and maximum amounts. The Supreme Court has not said a mandatory minimum six-year sentence for a juvenile offender convicted of armed robbery in adult court violates the eighth amendment, and we find no violation here.

¶ 32 D. Due Process

¶ 33 Defendant argues the automatic transfer statute violates substantive and procedural due process by requiring all 15- and 16-year-old juveniles charged with certain serious offenses to be prosecuted and sentenced as adults without any opportunity for antecedent findings

that the individual offender should not be treated as a juvenile.

¶ 34 We note, and defendant concedes, that courts of this state have found the automatic transfer statute does not violate a juvenile offender's substantive and procedural due-process rights. See *People v. J.S.*, 103 Ill. 2d 395, 402-05, 469 N.E.2d 1090, 1094-95 (1984); *People v. Patterson*, 2012 IL App (1st) 101573, ¶ 27, 975 N.E.2d 1127, 1132-33; *People v. Croom*, 2012 IL App (4th) 100932, ¶¶ 13-18, 975 N.E.2d 1107, 1111-12; *Jackson*, 2012 IL App (1st) 100398, ¶¶ 13-17, 965 N.E.2d at 628-30; *Salas*, 2011 IL App (1st) 091880, ¶¶ 75-79, 961 N.E.2d at 848-50; *People v. Reed*, 125 Ill. App. 3d 319, 322-25, 465 N.E.2d 1040, 1042-44 (1984).

¶ 35 In *Croom*, 2012 IL App (4th) 100932, ¶ 16, 975 N.E.2d at 1112, this court noted *Roper* and *Graham* did not consider due-process arguments and found those cases distinguishable because each "applied (1) a different analysis (2) under a different test for (3) an alleged violation of a different constitutional provision regarding severe sentencing sanctions—not the automatic transfer to adult court at issue here." Now on appeal, defendant argues *Miller*, which the more recent cases did not address, requires a different result. However, *Miller* again dealt with eighth-amendment arguments and not substantive and procedural due process. As *J.S.* remains good law and defendant fails to persuade the eighth-amendment analysis in *Miller* should apply to his due-process arguments, his claim that the automatic transfer statute is unconstitutional is without merit.

¶ 36

III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this

appeal.

¶ 38

Affirmed.