

No. 1-11-1995

**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).

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IN THE INTEREST OF DERRIUS B., a Minor,	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 07 JD 5242
v.	)	
	)	
DERRIUS B.,	)	Honorable
	)	Marianne Jackson,
Respondent-Appellant.)	)	Judge Presiding.
	)	

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Simon and Liu concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly lifted the stay and executed the adult sentence. The Extended Juvenile Jurisdiction (EJJ) statute (705 ILCS 405/5-810 (West 2010)) does not violate his right to a jury and due process. Section 5-810(6) of the EJJ statute is not unconstitutionally vague. (705 ILCS 405/5-810(6) (West 2010)).

¶ 2 Respondent, Derrius B., appeals from his adjudication of delinquency and dispositional order of commitment. Findings of guilt were entered against him for attempt murder and he was

1-11-1995

sentenced to an indeterminate sentence in the Juvenile Department of Corrections (JDOC), followed by five years' probation. An eight-year adult sentence was entered and stayed under the Extended Juvenile Jurisdiction (EJJ) statute (705 ILCS 405/5-810 (West 2010)). The stay was eventually lifted and the adult sentence was imposed. On appeal, respondent argues: (1) the trial judge erred when she declined to reduce his adult sentence because she believed she lacked jurisdiction; (2) the EJJ statute, which subjects a juvenile to greater punishment without a jury finding the necessary facts beyond a reasonable doubt, violates his rights to a jury trial and due process; and (3) the sentencing portion of the EJJ statute is unconstitutionally vague. For the following reasons, we affirm the judgment of the trial court.

¶ 3

#### BACKGROUND

¶ 4 Respondent was arrested and charged by way of two delinquency petitions with three counts of aggravated discharge of a firearm, attempt first degree murder, aggravated battery with a firearm and aggravated battery for shooting at two people, hitting one in the neck. Initially, the State moved to transfer respondent to adult court pursuant to section 405/5-805(3) of the Juvenile Court Act of 1987 (Act). 705 ILCS 405/5-805(3) (West 2006). However, the State withdrew that petition and moved to proceed under the EJJ statute.

¶ 5 A hearing was held on the State's EJJ motion, during which evidence was offered by way of proffer. In case No. 07 JD 5235 it was alleged that on October 23, 2007, respondent saw one victim on the street and while holding a handgun, told the victim to run. The victim ran and heard shots but was unhurt. It was also alleged in case No. 07 JD 5242, that on the same day

1-11-1995

respondent saw another victim in the park. He told the victim that he would return with his gun, which he did, and shot the victim in the neck. After hearing the evidence, the court found probable cause to designate the case under the EJJ statute on both shootings.

¶ 6 Thereafter, the State argued that there was clear and convicting evidence that the matter should be designated an EJJ prosecution because respondent had one prior finding of delinquency for which he received one year supervision, he was non-compliant with the terms of that supervision, he did not attend school regularly and had been suspended several times, he was an admitted member of the Unknown Vice Lords, regularly drank alcohol and smoked marijuana and the offenses he committed were aggressive and premeditated. The court agreed and granted the State's EJJ motion, finding no reasonable likelihood of rehabilitation.

¶ 7 Defendant entered a negotiated plea of guilty several months later. For the lesser charge of aggravated discharge of a weapon under case No. 07 JD 5235, the case was ordered closed. For the attempt murder under case No. 07 JD 5242, respondent was sentenced to the Illinois Department of Corrections, Juvenile Division (JDOC) for six months and upon receiving a good report from the JDOC, respondent would serve a sentence of 5 years' probation, receive a Community Impact Panel, Violence Prevention Program, mandatory school, buccal swab, no gang contact, anger management counseling, attend a mentoring program and perform 100 hours of community service. Also pursuant to the plea agreement, the court sentenced respondent to an eight-year adult sentence, which would be stayed on the condition that respondent not violate the conditions of his juvenile sentence.

1-11-1995

¶ 8 On a December 11, 2008, status date, the court received a negative report regarding respondent's behavior from the JDOC. Based on that report, the court sent respondent back to the JDOC for another six months. When respondent returned to court on June 11, 2009, the court received another negative report regarding respondent's behavior from the JDOC, so the court sent respondent back to the JDOC for one year. When respondent's case returned to court on June 9, 2010 for status, it was discovered that he was released prematurely from the JDOC and he was placed on electronic home monitoring. On June 25, 2010, the court vacated his commitment order, but continued his electronic home monitoring, and imposed the five year probation portion of his sentence. Respondent was informed that he was to undergo "mandatory school or educational program. No association with gang members or drug dealers." The court also ordered that he undergo random urinalysis. He was also to meet with Coach Williams, who would act as his mentor, at the YMCA.

¶ 9 On June 26, 2010, defendant appeared in court and stipulated to violating his electronic home monitoring. He was taken into custody. On the return date, the court again instructed respondent to comply with the terms of his probation, to stay out of trouble and imposed a curfew. Respondent was released to reside with his grandmother.

¶ 10 Over the next several months, the court received negative probation reports. On November 4, 2010, respondent's probation officer appeared in court and informed the court that respondent had not been attending school and hadn't been going to the YMCA. On January 6, 2011, respondent's probation officer reported that respondent did not show up for one drug

1-11-1995

treatment session and was late for another. He also had a positive urine drop and had been arrested. Respondent was again lectured to comply with the terms of his probation and that there would be no more chances. On February 7, 2011, the State filed a petition to revoke the stay of the adult sentence based on respondent's failure to attend drug counseling and failure to meet with his probation officer. The State filed a supplemental petition on March 14, 2011, alleging that respondent violated his probation by failing to attend school. While the petitions were still pending, the court asked the parties to research whether it could reduce respondent's adult sentence. On April 18, 2011, stipulated testimony reflected that respondent had missed several drug-treatment appointments, probation meetings, and school days. Respondent was found to be in violation of his probation and the State's motions to lift the stay of the adult sentence were granted.

¶ 11 At sentencing on June 20, 2011, the court noted that after the State filed the petitions to revoke the stay of the adult sentence,

"there were some conversations both on and off the record between [the parties]. And during the course of those meetings, I've represented to counsel that if the minor pleaded to these matters, that the Court would impose a sentence of six years on the minor.

The problem that we have encountered, or that the Court encountered, is that I can find no legal precedent that allows me to change the eight year sentence. At some point the Courts lose what we call jurisdiction, and this is authority over something that they do. It's usually within thirty days after what we call the final appealable order is entered.

1-11-1995

There are some things that the Courts do that you cannot appeal it right then. You have to wait for the entry of what the Court calls or the law calls the final appealable order. In this case the final appealable order was when we sentenced him back in 2008 to the five years probation, six months IDOC, and the eight year sentence.

Obviously, we are way past that thirty days. But if I could have found a way to do it, I would have. But I've had it researched by our legal division. I don't mind saying for the record that I've conferred with some of my colleagues to see whether they could lead me in the direction of some precedents that allowed me to do it. And that is the way the law operates. We operate on what we call precedents."

¶ 12 Respondent's counsel disagreed with the court, arguing that the sentence was not imposed until the stay on the adult sentence was lifted and the court had the authority to reduce the sentence. The court lifted the stay and imposed the 8-year adult sentence. Respondent filed a motion to reconsider sentence, which was denied.

¶ 13 It is from this judgment that respondent now appeals.

¶ 14 DISCUSSION

¶ 15 Respondent first argues that the court had discretion to reduce his eight year sentence to six years and erred when it concluded that it did not have the discretion to reduce the sentence.

¶ 16 The EJJ statute provides, in relevant part,

"(4) Sentencing. If an extended jurisdiction juvenile prosecution under subsection (1) results in a guilty plea, a verdict of guilty, or a finding of guilt,

1-11-1995

the court shall impose the following:

- (i) one or more juvenile sentences under Section 5-710; and
- (ii) an adult criminal sentence in accordance with the provisions of Chapter V of the Unified Code of Corrections, the execution of which shall be stayed on the condition that the offender not violate the provisions of the juvenile sentence. " 705 ILCS 405/5-810(4) (West 2010)

When a respondent is found to have violated the conditions of a juvenile sentence, the following portion of the EJJ statute applies:

"(6) When it appears that a minor convicted in an extended jurisdiction juvenile prosecution under subsection (1) has violated the conditions of his or her sentence, or is alleged to have committed a new offense upon the filing of a petition to revoke the stay, the court may, without notice, issue a warrant for the arrest of the minor. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a new offense, the court shall order execution of the previously imposed adult criminal sentence. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a violation of his or her sentence other than by a new offense, the court may order execution of the previously imposed adult criminal sentence or may continue him or her on the existing juvenile sentence with or without modifying or enlarging the conditions. Upon revocation of the stay of the adult criminal sentence and

1-11-1995

imposition of that sentence, the minor's extended jurisdiction juvenile status shall be terminated. The on-going jurisdiction over the minor's case shall be assumed by the adult criminal court and juvenile court jurisdiction shall be terminated and a report of the imposition of the adult sentence shall be sent to the Department of State Police." 705 ILCS 405/5-810(6) (West 2010).

¶ 16 The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 26 (2005). The best indicator of the legislature's intent is the language of the statute, which must be accorded its plain and ordinary meaning. *Id.* "We construe statutes as a whole, so that no part is rendered meaningless or superfluous." *People v. Jones*, 223 Ill. 2d 569, 581 (2006). Where the language of the statute is clear and unambiguous, this court will apply the statute as written without resort to aids of statutory construction. *In re R.L.S.*, 218 Ill. 2d 428, 433 (2006).

¶ 17 The plain language of the EJJ statute is clear and unambiguous. The statute plainly states, "[a]fter a hearing, if the court finds by a preponderance of the evidence that the minor committed a violation of his or her sentence other than by a new offense, the court may order execution of the *previously imposed adult criminal sentence* or may continue him or her on the existing juvenile sentence with or without modifying or enlarging the conditions." (Emphasis added). 705 ILCS 405/5-801(6) (West 2010). Thus, the court is limited and can only take three actions: (1) execute the previously imposed adult criminal sentence; (2) continue the existing juvenile sentence without change; or (3) continue the juvenile sentence by modifying or

1-11-1995

enlarging the conditions. The statute allows the court to continue the juvenile on his juvenile sentence with or without modification and, in the same sentence, it denies the court the authority to modify the previously imposed adult criminal sentence. The legislature's use of the term "previously imposed" demonstrates the intent that the original sentencing order be followed if the stay on the adult sentence is lifted. If the legislature intended to allow the court to reconsider or change the previously imposed adult criminal sentence it would have done so. The plain language of the statute indicates a legislative intention to require the juvenile court judge, at the time the juvenile sentence is imposed, to determine the appropriate adult sentence in the event of a subsequent proven violation of the juvenile sentence and whether revocation of the stay of the adult criminal sentence and execution of the previously imposed adult sentence is warranted.

¶ 18 Furthermore, the court had no discretion to modify the previously imposed adult sentence where it was imposed as part of a negotiated plea agreement. "Our supreme court has declared that plea agreements, and especially negotiated plea agreements for fully negotiated pleas where the parties have agreed on the appropriate sentence, are generally governed by contract law."

*People v. Donelson*, 2011 IL App (1st) 092594 ¶ 14 (citing *People v. Absher*, 242 Ill. 2d 77, 90 (2011)). Plea agreements are contracts between the State and the defendant, and the circuit court is not a party to the agreement. *People v. Smith*, 406 Ill. App. 3d 879, 888-89 (2010). Our supreme court explained in *People v. Whitfield*, 217 Ill. 2d 177, 183-84 (2005), that "[w]hen seeking relief from a guilty plea, either directly or collaterally, there are two separate, though closely related, constitutional challenges that may be made: (1) that the plea of guilty was not

1-11-1995

made voluntarily and with full knowledge of the consequences, and (2) that defendant did not receive the benefit of the bargain he made with the State when he pled guilty.” Respondent has not alleged that there was error in the initial sentencing or that there was any error in the manner in which the plea agreement was reached. Respondent never made any attempt to challenge his plea agreement nor has he taken any steps to vacate the plea agreement. Consequently, he cannot now challenge the portion of his sentence that he now hopes might be reduced.

¶ 19 Respondent next argues that the EJJ statute is unconstitutional under *Apprendi v. New Jersey*, 530 U.S 466 (2000) and its progeny, because it does not require that the designation of the case under the EJJ statute be made by a jury under the reasonable doubt standard. In *Apprendi*, the Supreme Court determined that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi*, 530 U.S. at 490.

¶ 20 Our supreme court and this court have repeatedly held that the EJJ statute does not violate *Apprendi*. *In re Christopher K.*, 217 Ill. 2d 348, 363 (2005); see *In re J.W.*, 346 Ill. App. 3d 1, 10-12 (2004); *In re Matthew M.*, 335 Ill. App. 3d 276, 289 (2002). Most recently in *In re Marquis I.*, our supreme court held that *Apprendi* does not apply to the EJJ statute because, “for the purposes of *Apprendi*, the statutory maximum is not the juvenile sentence under the Juvenile Court Act, but rather the maximum sentence allowed by the offense committed.” *In re Marquis I.*, 2013 IL 113776, ¶ 46. We find no valid reason, nor does respondent provide one, why we should depart from these holdings.

1-11-1995

¶ 21 Finally, respondent claims that the sentencing portion of the EJJ statute is facially vague for two reasons. First, it does not properly notify a respondent as to the acts necessary to invoke the imposition of the adult sentence. Second, it fails to provide adequate guidance to authorities to enforce its provisions.

¶ 22 In Illinois, we presume all statutes to be constitutional and the burden of rebutting that presumption is on the party challenging the validity of the statute. The party challenging the statute must demonstrate a clear constitutional violation. *People v. Greco*, 204 Ill. 2d 400, 406 (2003). We must also construe a statute so as to affirm its constitutionality, if reasonably possible. *Id.* We review the constitutionality of a statute *de novo*. *Id.* at 407.

¶ 23 “A statute is unconstitutionally vague if the terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts.” *People v. Pembrock*, 62 Ill. 2d 317, 322 (1976). In the context of a vagueness challenge, due process is satisfied if: “(1) the statute’s prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited, and (2) the statute provides sufficiently definite standards for law enforcement officers and triers of fact that its application does not depend merely on their private perceptions.” *Id.*

¶ 24 The relevant portion of the statute in question here states:

"(6) When it appears that a minor convicted in an extended jurisdiction

1-11-1995

juvenile prosecution under subsection (1) has violated the conditions of his or her sentence, or is alleged to have committed a new offense upon the filing of a petition to revoke the stay, the court may, without notice, issue a warrant for the arrest of the minor. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a new offense, the court shall order execution of the previously imposed adult criminal sentence. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a violation of his or her sentence other than by a new offense, the court may order execution of the previously imposed adult criminal sentence or may continue him or her on the existing juvenile sentence with or without modifying or enlarging the conditions. " 705 ILCS 405/5-810(6) (West 2010).

¶ 25 Respondent maintains that,

"[a] youth serving an EJJ sentence in Illinois cannot know precisely what is encompassed by his or her responsibility not to violate the provisions or conditions of the juvenile sentence. It is unknown whether the 'conditions' of the juvenile sentence are limited to those articulated in the disposition order or whether they include oral directives and written requirements issued by the probation officer."

¶ 26 The State responds that the EJJ statute is not unconstitutionally vague and that a plain reading of the statute provides sufficient specificity as to the possible events that trigger application of the adult sentence. The State maintains that it is clear that the "conditions" of respondent's juvenile sentence are those requirements placed upon him by the sentencing court.

1-11-1995

If a juvenile is sentenced to probation, the probation conditions are established by the judge and provided to the minor. In the event that respondent is only sentenced to a term of commitment to the JDOC, the conditions are the successful completion of juvenile detention by implication and adherence to all the rules and regulations of the JDOC, a copy of which is given to minors upon entrance into the JDOC. 20 Ill. Adm. Code 702.50, 504:30, 701.60, 801.420.

¶ 27 As we recently explained in *In re Dionte J.*, 2013 IL App (1st) 110700, ¶ 102, and *In re Omar M.*, 2012 IL App (1st) 100866, ¶ 83-85, the term “conditions” explicitly refers to the “conditions of his or her sentence.” (Emphasis in original.) see 705 ILCS 405/5–810(6) (West 2008)). “Where the trial court orders provisions such as probation or drug counseling in addition to the juvenile detention term, those provisions of the juvenile sentence would be part of the \* \* \* ‘conditions.’ Where the trial court does not impose any additional provisions at sentencing, the term ‘conditions’ refers only to the minor’s completion of his or her sentence and the minor’s adherence to the Illinois Department of Corrections (IDOC) rules and regulations during that time.” *In re Omar M.*, 2012 IL App (1st) 100866, ¶ 84; *In re Christopher K.*, 348 Ill.App.3d 130, 146-47 (finding that the EJJJ statute was not vague, the appellate court held that a juvenile violates the “conditions of his or her sentence” by a “failure to comply with the juvenile sentence”); *aff’d in part & rev’d in part on other grounds*, 217 Ill.2d 348, 363 (2005). As a result, the term “conditions” is not vague. *In re Omar M.*, 2012 IL App (1st) 100866, ¶ 84. Therefore,

1-11-1995

we find that the EJJ statute does specify what conduct will trigger the imposition of a minor's adult-stayed sentence.<sup>1</sup>

¶ 28 Respondent next claims that neither the EJJ statute nor the Act provide explicit standards for the application of the stayed adult sentence by judges and that the statute and the Act do not provide any guidance or standards for judges to determine when a violation of the conditions of the sentence should result in the execution of the adult sentence or the severity of the sentence to be imposed.

¶ 29 The Act's section on "[p]urpose and policy" provides guidance to trial court judges. "The purpose of this Act is to secure for each minor subject hereto such care and guidance \* \* \* as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community \* \* \*." 705 ILCS 405/1-2 (West 2008). Furthermore, the legislature has determined that:

"in order to protect the public, the juvenile justice system must compel compliance with the conditions of probation by responding to violations with swift, certain, and fair punishments and intermediate sanctions. The Chief Judge of each circuit shall adopt a system of structured intermediate sanctions for violations of the terms and conditions of a sentence of supervision, probation or conditional discharge, under this Act." 705 ILCS 405/5-705(6) (West 2008).

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<sup>1</sup> Respondent did not challenge the term "offense" as used in section 5-810(6).

1-11-1995

Trial court judges are granted the discretion to affect these goals. *In re Omar M.*, 2012 IL App (1<sup>st</sup>) 100866, ¶ 88; 705 ILCS 405/1-2(4) (West 2008).

¶ 30 In addition, under section 5-801(6) the court must find by a *preponderance of the evidence* that the minor violated the terms of his or her sentence prior to determining the proper disposition in a case,. Only then does the court have three options in terms of sentencing under the EJJ: 1) execute the previously imposed adult criminal sentence; (2) continue the existing juvenile sentence; or (3) continue the juvenile sentence by modifying or enlarging the conditions. The court has the discretion to determine the proper disposition in a juvenile case and this court will not overturn a trial court's determination absent an abuse of discretion. *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009). Contrary to respondent's argument, there are sufficient guidelines and standards in place for judges to determine when a violation of the conditions of the sentence should result in the lifting of a stay and execution of an adult sentence.

¶ 31 We similarly reject respondent's argument that the EJJ grants probation officers too much discretion in determining when the imposition of an adult sentence is triggered. The lifting of the stay and imposition of the adult sentence only occurs following a hearing wherein the court, not probation officers, must find by a preponderance of the evidence that the minor committed a violation of his or her sentence. 705 ILCS 405/5-810(6) (West 2010).

¶ 32 A person of ordinary intelligence can understand what type of conduct is prohibited by section 5-810(6) and the terms provide sufficient clarity and definiteness so as to prevent

1-11-1995

arbitrary and discriminatory conduct by law enforcement officers and the judiciary. Therefore, we find that section 5-810(6) of the EJJ statute is not unconstitutionally vague.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 35 Affirmed.

1-11-1995

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