

No. 1-12-1154

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

<i>In the Interest of TAVAREA. C.</i> , a Minor,)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 11JD5373
)	
TAVAREA C.,)	Honorable
)	Andrew Berman,
Respondent-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *HELD*: Circuit court order adjudicating minor delinquent of aggravated robbery and sentencing him to 5 years' probation affirmed where respondent was afforded equal protection under the law; circuit court order adjudicating minor delinquent of aggravated assault, robbery and theft vacated where the adjudications violated the one-act, one-crime doctrine.

¶ 2 Following a bench trial, minor respondent Tavarea C. was adjudicated delinquent of aggravated robbery, robbery, aggravated assault, and theft and was sentenced to 5 years'

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probation. On appeal, respondent challenges the constitutionality of the probation provision set forth section 5-715 of the in the Illinois Juvenile Court Act of 1987 ("Juvenile Court Act" or "Act"). 705 ILCS 405/5-715 (West 2010). He also raises a one-act, one-crime violation argument. For the reasons explained herein, the judgment of the circuit court is affirmed in part and vacated in part.

¶ 3

I. BACKGROUND

¶ 4 On December 14, 2011, sixteen-year-old Brittney H. was walking home from school when she was approached by a fellow student who displayed an object that appeared to be a firearm and forcibly took her backpack and cell phone. Thereafter, the State filed a petition for adjudication of delinquency in connection with the incident, alleging that respondent had committed the offenses of aggravated robbery, robbery, theft, and aggravated assault. During the bench trial that followed, the circuit court adjudicated respondent delinquent of the aforementioned offenses.¹ The circuit court subsequently ordered respondent to perform community service and imposed a mandatory 5-year sentence of probation in accordance with section 5-715 of the Juvenile Court Act (705 ILCS 405/5-715 (West 2010)).

¶ 5

II. ANALYSIS

¶ 6

A. Equal Protection Challenge

¶ 7 On appeal, respondent challenges the mandatory probation provision contained in section

¹ Because respondent does not challenge the sufficiency of the evidence underlying his delinquency adjudications, we need not recount the evidence presented during the circuit court proceedings.

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5-715 of the Juvenile Court Act, which requires juveniles who commit first degree murder, a Class X felony, or a forcible felony like aggravated robbery, to be subject to a probation period of “at least 5 years.” 705 ILCS 405/-5-715(1) (West 2010). Because adults offenders who commit forcible felonies, may in certain appropriate circumstances, receive a probation sentence, which “shall not exceed 4 years” (730 ILCS 5/5-4.5-30(d) (West 2010)), respondent argues that the probation provision contained in the Act is unconstitutional “because there is no rational basis for giving him and similarly situated juveniles * * * less protection than adult forcible felony offenders.”

¶ 8 The State, in turn, acknowledges that the applicable probation provisions for juvenile and adult offenders differ, but asserts that respondent cannot "meet the threshold requirement of establishing that he is similarly situated to the class of adult aggravated robbery offenders such that equal protection comparison is appropriate." Given his inability to meet the threshold requirement for an equal protection claim, the State argues that respondent's constitutional challenge necessarily fails.

¶ 9 The constitutionality of a statute is an issue of law that is subject to *de novo* review. *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005). Because statutes carry a “strong presumption” of constitutionality, it is the burden of the party challenging the constitutionality of a given statute to “clearly establish” that the statute violates constitutional protections. *Id.* at 487; see also *People v. P.H.*, 145 Ill. 2d 209, 220-21 (1991). A reviewing court is duty-bound to “construe a statute in a manner that it upholds its validity and constitutionality if it reasonably can be done.” *People v. Graves*, 207 Ill. 2d 478, 482 (2003).

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¶ 10 The statute at issue in the instant appeal is the probation provision contained in section 5-715(1) of the Juvenile Court Act, which provides as follows:

"The period of probation or conditional discharge shall not exceed 5 years or until the minor has attained the age of 21 years, whichever is less, except as provided in this Section for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony or a forcible felony. The juvenile court may terminate probation or conditional discharge and discharge the minor at any time if warranted by the conduct of the minor and the ends of justice; provided, however, that the period of probation for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony, or a forcible felony shall be at least 5 years." 705 ILCS 405/5-715(1) (West 2010).

¶ 11 In contrast, the penalty provision for adult offenders who commit a Class 1 forcible felony other than second degree murder is contained in section 5-4.5-30 of the Unified Code of Corrections, which states:

"§ 5-4.5-30. CLASS 1 FELONIES; SENTENCE. For a Class 1 felony:

(a) TERM. The sentence of imprisonment, other than for second degree murder, shall be a determinate sentence of not less than 4 years and not more than 15 years. * * *

(d) PROBATION; CONDITIONAL DISCHARGE. Except as provided [elsewhere in this Code], the period of probation or conditional discharge shall not exceed 4 years. The court shall specify the conditions of probation or conditional discharge as set forth in Section 5-6-3 (730 ILCS 5/5-6-3). In no case shall an offender

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be eligible for a disposition of probation or conditional discharge for a Class 1 felony committed while he or she was serving a term of probation or conditional discharge for a felony. * * *" 730 ILCS5/5-4.5-30(a), (d) (West 2010).

¶ 12 Having set forth the relevant statutory provisions, we now address the merit of the equal protection argument raised in this appeal. The right to equal protection under the law is provided for in both the federal and Illinois State constitutions and statutory enactment must comply with these guarantees. U. S. Const. amend. 14, sec 1; Ill. Const. 1971, art. I., sec. 2. To state a cause of action for an equal protection clause violation, a party must allege that there are other individuals who are similarly situated to him who are treated differently than him and that there is no rational basis for the differential treatment. *In re Vincent K.*, 2013 IL App (1st) 112915, ¶ 53. The analysis applied to equal protection claims brought pursuant to the federal constitution is the same analysis that is applied to claims brought under the Illinois State constitution. *In re Jonathon C.B.*, 2011 IL107750, ¶ 116; *In re A.A.*, 181 Ill. 2d 32, 36-37 (1998); *People v. Perea*, 347 Ill. App. 3d 26, 38 (2004). Although the tenets of equal protection require the government to treat similarly situated persons in a similar manner, the equal protection clause does not wholly preclude legislatures from drawing distinctions between different classes of people; rather, it simply precludes the government from making classifications on the basis of criteria that are wholly unrelated to a statute's purpose. *Jonathon C.B.*, 2011 IL 107750, ¶ 116; *A.A.*, 181 Ill. 2d at 37. The level of scrutiny applied to legislative classifications depend on the nature of the classification involved. *A.A.*, 181 Ill. 2d at 37. Classifications based on race, national origin, or those affecting fundamental rights are subjected to strict scrutiny review, whereas classifications

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based on economic or social welfare are reviewed deferentially under the rational basis test.

A.A., 181 Ill. 2d at 37. Before engaging in any type of scrutiny, however, it is axiomatic that the party raising an equal protection challenge, must first meet the threshold requirement and show that he is similarly situated to the compared group. *People v. Masterson*, 2011 IL 110072, ¶ 25.

Without this initial showing, an equal protection claim necessarily fails. *Masterson*, 2011 IL 110072, ¶ 25; *Vincent K.*, 2013 IL App (1st) 112915, ¶ 54.

¶ 13 Here, respondent's claim fails because he cannot meet the threshold requirement of an equal protection claim and show that he is similarly situated to the compared group. See *P.H.*, 145 Ill. 2d at 231 ("Equal protection is not offended when dissimilar groups are treated differently"). Courts have consistently recognized that juveniles who are adjudicated delinquent are not "similarly situated" to adult offenders given that juvenile delinquency proceedings under the Juvenile Court Act are not criminal proceedings and do not result in criminal convictions. See, e.g., *Jonathon C.B.*, 2011 IL 107750, ¶¶ 92-95; *In re Rodney H.*, 223 Ill. 2d 510, 520-21 (2006); *Vincent K.*, 2013 IL App (1st) 112915, ¶ 54. Although adult offenders who commit a Class 1 forcible felony like aggravated robbery, may in certain circumstances, be eligible for probation, a period of which "shall not exceed 4 years," convicted adults also face the possibility of incarceration. 730 ILCS 5/5-4.5-30(a), (d) (West 2010) (stating that the term of imprisonment for an adult convicted of a Class 1 felony other than second degree murder, "shall be a determinate sentence of not less than 4 years and not more than 20 years"). In addition, all adult offenders are subject to a 2-year mandatory supervisory release term. 730 ILCS 5/5-4.5-30(l) (West 2010). Here, in contrast, respondent was not subject to a criminal conviction. *In re*

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Rodney, H., 223 Ill. 2d at 520 ("Indeed, 'no suggestion or taint of criminality attaches to any finding of delinquency by a juvenile court.' ") (quoting *In re Dow*, 75 Ill. App. 3d 1002, 1006 (1979)). Moreover, respondent never faced the possibility of an adult criminal sentence including incarceration, nor was he subject to a mandatory supervised release term.

¶ 14 Although we acknowledge that the Juvenile Court Act was amended in 1999, and " 'now contains a purpose and policy section which represents a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law' " courts nonetheless have rejected arguments that amendments to the Act have rendered juvenile proceedings equivalent to criminal prosecution. *Jonathon C.B.*, 2011 IL 107750, ¶ 92, quoting *In re A.G.*, 195 Ill. 2d 313, 317 (2001); see also *In re Lakisha M.*, 227 Ill. 2d 259, 270 (2008); *In re Vincent K.*, 2013 IL App (1st) 112915, ¶ 49. Accordingly, because respondent is not similarly situated to adult offenders, we reject his equal protection argument. See, e.g., *Jonathon C.B.*, 2011 IL 107750, ¶ 120 (rejecting the minor's argument that Juvenile Court Act's prohibition of jury trials in delinquency proceedings, except in certain limited circumstances, violates juveniles' rights to equal protection because juveniles are not similarly situated to adult offenders); *Vincent K.*, 2013 IL App (1st) 112915, ¶ 54 (finding that juveniles who are adjudicated delinquent are not similarly situated to convicted adult offenders and thus, the Juvenile Court Act's provision preventing juveniles from seeking collateral relief by utilizing the criminal post-conviction process did not violate the juvenile respondent's right to equal protection under the law); *In re Olivia C.*, 371 Ill. App. 3d 473, 476-77 (2007) (rejecting the minor's argument that her inability to file an interlocutory appeal in

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accordance with Supreme Court Rule 604(f), which is a remedy applicable to criminal proceedings, was an equal protection clause violation because she was not similarly situated to criminal adult defendants).

¶ 15

B. One-Act, One-Crime

¶ 16 Next, respondent argues, and the State agrees that his delinquency adjudications for robbery, theft, and aggravated assault should be vacated because the multiple adjudications violate the one-act, one-crime doctrine.

¶ 17 The one-act, one-crime rule prohibits the imposition of multiple criminal convictions based on one single criminal act. *People v. King*, 66 Ill. 2d 551, 566 (1977). This rule applies to juvenile delinquency proceedings. *In re Samantha V.*, 234 Ill. 2d 359, 375 (2009); *In re Jessica M.*, 399 Ill. App. 3d 730, 741 (2010).

¶ 18 Here, the State's petition for delinquency alleged that respondent committed the offenses of aggravated robbery, robbery, theft, and aggravated assault. All of these offenses were based on respondent's use of an item, which appeared to be a gun, to take a backpack and cell phone from the victim. Because each of the offenses stemmed from the same act, respondent's multiple delinquency adjudications cannot stand. *Samantha V.*, 234 Ill. 2d at 375; *Jessica M.*, 399 Ill. App. 3d at 741. The proper remedy for a one-act, one-crime rule violation is to vacate the less serious offenses and enter a single finding of delinquency on the most serious offense. *Samantha V.*, 234 Ill. 2d at 380. Because aggravated robbery is the most serious offense in this case, we vacate his adjudications for robbery, theft and aggravated assault, and order that a single finding

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of delinquency be entered on the aggravated robbery offense.²

¶ 19

III. CONCLUSION

¶ 20 The judgment of the circuit court is affirmed in part and vacated in part.

¶ 21 Affirmed in part; vacated in part.

² Aggravated robbery is a Class 1 felony while robbery is a Class 2 felony. 720 ILCS 5/18-1(e) (West 2010). Theft, in turn is a Class 3 felony (720 ILCS 5/16-1(b)(4) (West 2010)), and aggravated assault is a Class A misdemeanor (720 ILCS5/12-2(d) (West 2010)).