

No. 1-12-1412

**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 re DEANTAY D.	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 11 JD 04655
v.	)	
	)	
DEANTAY D., a Minor,	)	Honorable
	)	Colleen F. Sheehan,
Respondent-Appellant.)	)	Judge Presiding
	)	

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

**ORDER**

¶ 1 *Held:* Respondent has failed to establish that he is similarly situated to the groups to which he compares himself and therefore cannot state an equal protection claim. Defendant cannot establish a due process violation.

¶ 2 Respondent, Deantay D., was adjudicated delinquent for the robbery and theft of Tim D., and was sentenced for robbery to five years' probation. Respondent now appeals and argues that

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section 5-715(1) of the Juvenile Court Act (Act) (705 ILCS 405/5-715(1) (West 2012)), which subjects juveniles who have been adjudicated delinquent of a forcible felony to a mandatory minimum sentence of five years probation violates the equal protection clause of the United States and Illinois Constitutions because mandatory minimum sentencing is contrary to the purposes of the Act and therefore does not have a rational basis. He also argues that section 5-715(1) violates due process because it prohibits individualized considerations in sentencing. For the following reasons, we find that section 5-715(1) of the Act does not violate equal protection, nor does it violate due process.

¶ 3

#### BACKGROUND

¶ 4 Tim D. testified that on October 27, 2011, he was in a Chicago park waiting for his friends when a group of boys, including defendant, approached and "half surround[ed] him." Defendant stood by while another boy checked Tim's pockets and took his phone. Defendant testified that he was in the park with a group of boys, including Eli R. Eli approached Tim and took his phone. Defendant told Eli to stop and to give Tim his phone back. Eli refused.

¶ 5 The court entered a finding of delinquency for robbery and theft stating the defendant was accountable for Eli's actions because he participated in surrounding Tim and then walked away with the group. The court stated that there was a reasonable inference that a group standing around while a member went through someone's pockets would help that member if the victim resisted.

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¶ 6 At sentencing, the court acknowledged that it was required to sentence defendant to five years' probation because robbery is considered a forcible felony. The court vacated the finding of delinquency for theft. It is from this judgment that defendant now appeals.

¶ 7 ANALYSIS

¶ 8 Defendant argues that subjecting juveniles who have been adjudicated delinquent of a forcible felony to a mandatory minimum sentence of five years' probation violates the equal protection clauses of the United States and Illinois Constitutions because mandatory minimum sentencing is contrary to the purpose of the Act and therefore does not have a rational basis. Defendant makes two claims under the equal protection clause. First, he claims that his right to equal protection was violated because he was punished more severely than juvenile offenders who commit non-forcible felonies. Second, he contends that section 5-715(1) of the Act violates equal protection because it treats certain juvenile respondents, those serving probation for forcible felonies, more harshly than similarly situated adult offenders. Finally, defendant claims that that section 5-715(1) violates due process because it prohibits individualized considerations in sentencing.

¶ 9 At the outset we must note that, although defendant's argument is focused on the mandatory imposition of a five year probationary term for a forcible felony adjudication, the trial court retained the ability to take into consideration the individualized circumstances of this offense and the offender and it had the discretion to impose a sentence other than probation, i.e., commitment to the Department of Corrections, Juvenile Division, until he attained the age of 21. 705 ILCS 405/5-710 (a), (b)(7) (West 2012). Thus, defendant's argument must be viewed from

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the perspective that where probation is ordered, a mandatory term of years cannot be required but the term should be left to the discretion of the sentencing court.

¶ 10 The portion of the Act under which respondent was sentenced and claims is unconstitutional provides:

"Probation. (1) 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 2012).

¶ 11 All statutes are presumed to be constitutional and the party challenging the statute bears the burden of proving the statute unconstitutional. *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). Whenever reasonably possible, a court must construe a statute to uphold its constitutionality. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005). Whether a statute is constitutional is a question of law reviewed *de novo*. *Malchow*, 193 Ill. 2d at 418.

¶ 12 To state a cause of action for a violation of equal protection, a plaintiff must allege that there are other people similarly situated to him, that these people are treated differently than him, and that there is no rational basis for this differentiation. See *Safanda v. Zoning Board of*

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*Appeals*, 203 Ill. App. 3d 687, 695 (1990); accord *Kaczka v. Retirement Board of the Policemen's Annuity and Benefit Fund*, 398 Ill. App. 3d 702, 707–08 (2010). Equal protection requires that similarly situated individuals will be treated in a similar manner. *People v. Reed*, 148 Ill. 2d 1, 7 (1992). The equal protection clauses of the United States and Illinois Constitutions do not deny the State the power to draw lines that treat different classes of people differently, but prohibits the State from according unequal treatment to persons placed by a statute into different classes for reasons wholly unrelated to the purpose of the legislation. *People v. Shepard*, 152 Ill. 2d 489, 499 (1992). A court uses the same analysis in assessing equal protection claims under both the state and federal constitutions. *Reed*, 148 Ill. 2d at 7.

¶ 13 The level of scrutiny to be applied when analyzing legislation under equal protection depends on the type of legislative classification at issue. Classifications based on race or national origin or affecting fundamental rights are strictly scrutinized. *McLean v. Department of Revenue*, 184 Ill. 2d 341, 354 (1998). Rational basis review is employed when the legislative classification does not implicate a suspect classification or a fundamental right. *Shepard*, 152 Ill. 2d at 500. Under the rational basis test, the challenged statute must bear a rational relationship to the purpose the legislature intended to achieve by enacting it. *Id.*

¶ 14 As defendant acknowledges, he is not a member of a suspect class. “[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.” *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). Accordingly, the proper analysis we are to employ here is the rational basis test.

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¶ 15 Under the rational basis test, a statutory classification need only bear a rational relationship to a legitimate state goal. *Reed*, 148 Ill. 2d at 7-8. More specifically, we are charged with determining, " ' whether the statute is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare. ' "" *People v. Bradley*, 79 Ill. 2d 410, 417 (1980), quoting *Heimgaertner v. Benjamin Electric Manufacturing Co.*, 6 Ill. 2d 152, 159 (1955). Only if the statute withstands this test can it be upheld. *Reed*, 148 Ill. 2d at 7-8.

¶ 16 However, before we can reach the ultimate question of whether the complained of statute violates equal protection, we must first determine whether respondent is similarly situated to the comparison group. *People v. Whitfield*, 228 Ill.2d 502, 513 (2007). When a party fails to make this showing, his equal protection challenge must fail. *Id.*

¶ 17 Without explanation, other than to say that all juveniles under the Act are similarly situated, respondent claims that juvenile offenders who commit forcible felonies are similarly situated to those juvenile offenders who commit non-forcible felonies, but are treated differently in that those who commit non-forcible felonies are not subject to the mandatory minimum sentence of 5 years' probation.

¶ 18 Robbery is a forcible felony (720 ILCS 5/2–8 (West 2010)). It is the inherent dangerousness of forcible felonies that differentiates them from non-forcible felonies. *People v. Golson*, 32 Ill.2d 398, 406 (1965). It is purely a legislative decision as to whether an offense is dangerous enough to qualify as a forcible felony. *People v. McCormick*, 332 Ill. App. 3d 491 (2002).

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¶ 19 With respect to a juvenile's commission of a forcible felony, the legislature has clearly chosen to treat juveniles who commit forcible felonies more harshly than those who commit non-forcible felonies. "The equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 116. In this case, the legislature determined that a distinction should be made between those juveniles who commit inherently dangerous forcible felonies and those who do not. While this distinction remains, respondent cannot properly claim that he is similarly situated to those juveniles who commit non-forcible felonies. Where the challenging party is not similarly situated to the group he compares himself to, he does not state an equal protection claim. *Whitfield*, 228 Ill. 2d at 512.

¶ 20 Moreover, our supreme court has rejected other similarly situated arguments comparing one group of juveniles to another. In *In re Jonathon C.B.*, 2011 IL 107750, ¶ 117, our supreme court found that the equal protection rights of juvenile felony sex offenders were not violated when the Act provided a jury trial to those juvenile offenders subject to the Extended Juvenile Jurisdiction provision, habitual offender or violent offender proceedings, where they were not subject to "mandatory incarceration or the possibility of an adult sentence." In *In re G.O.*, 191 Ill. 2d 37, 43 (2000), the court found that juveniles charged with first degree murder need not be afforded a jury trial right where they were "no longer subject to a mandatory sentencing requirement." Also, in *People v. P.H.*, 145 Ill. 2d 209, 231 (1991), the court held that juveniles who had prior felony adjudications and were charged with a crime committed in furtherance of

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gang activity were not similarly situated to juveniles charged with an offense warranting automatic transfer.

¶ 21 The five-year term of probation was warranted in this case given the seriousness of the offense. Therefore, defendant is not similarly situated to juveniles that commit non-forcible felonies. Therefore, we must reject respondent's equal protection claim.

¶ 22 We similarly reject respondent's argument that minors who have been adjudicated delinquent for forcible felonies are similarly situated to adults who commit Class 2 forcible felonies and can receive a maximum of four years' probation, one year less than a juvenile who commits a forcible felony. Respondent has again failed to establish the requisite threshold of "similarly situated" required to state an equal protection claim. Respondent is a minor who has been adjudicated delinquent. Unlike an adult who has been convicted of a felony, respondent does not have a criminal conviction on his record. Even though respondent may be subject to the imposition of an adult sentence if he fails to complete his juvenile adjudication properly, he does not yet have a criminal conviction. *In re Vincent K.*, 2013 IL App (1st) 112915. "Indeed, no suggestion or taint of criminality attaches to any finding of delinquency by a juvenile court." *In re Dow*, 75 Ill. App. 3d 1002, 1006 (1979). See also *In re Vincent K.*, 2013 IL App (1st) 112915, ¶ 49. Consequently, for purposes of respondent's equal protection argument, we find that respondent is not similarly situated to adults sentenced to probation for Class 2 forcible felonies.

¶ 22 Defendant finally argues that section 5-715(1) violates due process because juveniles have a right to individualized consideration at sentencing. Defendant cites to *Roper v. Simmons*,

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543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455, 2475 (2012), to support his position that children are constitutionally different from adults for sentencing purposes and are less deserving of the most severe punishment and are more amenable to rehabilitation.

¶ 23 In *Roper v. Simmons*, the Supreme Court held the eighth amendment bars capital punishment for juvenile offenders. *Roper*, 543 U.S. at 551. In *Graham v. Florida*, the Court held a sentence of life without parole violates the eighth amendment when imposed on juvenile non-homicide offenders. *Graham*, 560 U.S. at 101. Most recently, in *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455, 2475 (2012), the Court extended these holdings, ruling that automatically sentencing a juvenile to life-without-parole, even for a homicide, violated the eighth amendment. The Court expressed concern that such mandatory penalties “preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at \_\_\_, 132 S. Ct. at 2467.

¶ 24 Defendant acknowledges that the Supreme Court has not yet extended its holdings in *Roper*, *Graham*, or *Miller* to include other considerations outside of the eighth amendment, but nevertheless urges that such extension is necessary to ensure that juveniles receive due process. Under the facts and circumstances presented in this case, we decline defendant's invitation to extend the reasoning in *Roper*, *Graham* and *Miller* to include defendant's due process claim. Defendant in this case was given a forcible felony sentence of mandatory five years' probation which is substantially incomparable to a sentence to death or life imprisonment such that

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extending the constitutional analysis and basis employed in *Roper*, *Graham* and *Miller* is not warranted without further guidance from our supreme court.

¶ 25

#### CONCLUSION

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 27 Affirmed.

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