

No. 1-13-1771

**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  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 14697
	)	
ROMAIRAL ALLEN,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court  
Presiding Justice Liu and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's sentence did not violate the eighth amendment to the United States Constitution, or the proportionate penalties clause of the Illinois Constitution, where the sentencing scheme applied to defendant allowed the trial court to consider mitigating factors such as defendant's age, as well as the seriousness of the offense, and defendant was not sentenced to a mandatory term of life in prison without parole.

¶ 2 Defendant, Romairal Allen, was convicted after a jury trial of first degree murder in which he personally discharged a firearm proximately causing death. The trial court sentenced defendant to 27 years' imprisonment for first degree murder and an additional 25 years for the

statutory mandatory firearm enhancement, followed by three years mandatory supervised release. On appeal, defendant contends that his sentence of 52 years' imprisonment must be vacated and the matter remanded for resentencing because the statutory scheme resulting in his sentence precluded the trial court from considering his youth, in violation of the eighth amendment to the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). For the following reasons, we affirm.

¶ 3

#### JURISDICTION

¶ 4 The trial court sentenced defendant on April 24, 2013. Defendant's motion to reconsider was denied on May 16, 2013. He filed a notice of appeal on the same day. Accordingly, this court has jurisdiction pursuant to Article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 603 (eff. Oct. 1, 2010); R. 606 (eff. Mar. 20, 2009).

¶ 5

#### BACKGROUND

¶ 6 On July 15, 2010, around 3:30 p.m., the victim, Jeremiah Sterling, was in the basement of his residence on May Street in Chicago with two other friends, Harold Ivey and Alonzo Gause. All three left the victim's house in order to smoke cannabis, and walked down May Street toward 115th Street. As they turned into the alley, they saw a group of boys but kept walking. Defendant, who was 17 years old and who Alonzo recognized as "Moo Moo," came up to them from behind and said, "are you from the Town, y'all from the Town?" They saw that defendant had a silver handgun and Harold started running away from defendant in zigzags. As he ran he heard shots fired and heard bullets hit the street and a garage near him. Alonzo

stood next to the victim and saw defendant point the gun and shoot at Harold. Alonzo then ran out of the alley and eventually ran on to May Street.

¶ 7 Aisha Jones testified that on July 15, 2010, around 3:45 p.m., she was in her home when she heard gunshots. She looked out her second floor window which overlooks the alley between May Street and Aberdeen Street. Jones saw defendant fire at the victim and Alonzo, and then she saw Alonzo run. Defendant continued to shoot at the victim as he attempted to dodge the bullets. The victim fell to the ground and defendant walked to him and shot him in the head. Defendant then ran towards 115th Street. Jones and her daughter called 911 and went outside to aid the victim. An ambulance transported the victim to a hospital where he was pronounced dead.

¶ 8 After the police spoke with Harold and Alonzo, they obtained defendant's address and placed him into custody. At the police station, Harold and Alonzo separately identified defendant in line ups as the person who shot at them in the alley. Jones also viewed the line up and stated that she was "97%" sure defendant was the shooter. After the State concluded its case, defendant moved for a directed verdict which the trial court denied. The jury found defendant guilty of first degree murder of the victim, and also found that during the commission of the murder, defendant personally discharged a firearm that proximately caused the death of another. The trial court denied defendant's motion for a new trial.

¶ 9 Prior to sentencing, defendant was interviewed for a presentence investigation report (PSI). During the interview, defendant did not report any problems in his childhood or any psychological health issues. In mitigation, defendant's mother testified that defendant was very close to his father's mother and his family unit was close. When he was three years old, he and his mother were victims of a home invasion where the offender held a knife to their throats.

Defendant was diagnosed with post-traumatic stress disorder and he offered a University of Chicago Hospital report stating that he had been referred for anxiety and aggressive behavior. Defendant remembers taking "blue pills" to keep calm. Defendant had a prior adjudication for unlawful use of a weapon, and as part of his treatment he received prescriptions for Risperdal and Wellbutrin in January of 2010. Defendant's girlfriend died from complications in childbirth in April 2010, and he did not receive counseling.

¶ 10 In aggravation, the State presented defendant's history of aggressive behavior, his suspension for possession of an unlawful weapon, his lack of remorse, and asked the court for a sentence in the "mid level range" as a deterrent to others. After the parties presented evidence in aggravation and mitigation, defendant apologized to the victim's family for what happened but denied he committed the crime.

¶ 11 In sentencing defendant, the trial court stated that it would "take into consideration matters statutory aggravation and mitigation, non-statutory matters, remorse, rehabilitation" to determine "a just sentence." The trial court acknowledged defendant's young age, and referred to the studies indicating that the immature brain of an adolescent may lead him to behave impulsively. It reasoned, however, that defendant did not commit "an impulsive crime." "Defendant had on him a gun at the time of this occurrence and I believe he was looking for someone to shoot. At no time at all did these individuals pose a threat to the defendant. The individuals were not armed. There was not any foul words or curse words or any type of threatening words that were given to the defendant before the shooting occurred." The trial court noted that "defendant continued to fire his weapon after the three individuals were fleeing." The trial court stated it would take into account defendant's young age, but did not "think that excuses the behavior, justifies the behavior or, frankly, explains \*\*\* this behavior." It also

acknowledged that "life gave [defendant] a bad hand" and stated it would take into consideration his psychiatric history, his rehabilitative potential, and whether he expressed any remorse.

¶ 12 The trial court stated that the statutory minimum sentence defendant could receive was 20 years "plus 25-year extension \*\*\* for using a weapon that was personally discharged and proximately caused death." The maximum sentence was natural life without parole or "85 years at the max if [it] was not to impose life in prison." It acknowledged that any sentence given "is going to be the term of your natural life but for a couple years." The trial court, however, noted that "violence permeates this city" and that "[s]omething has to be done." It stated that it had to look at the community and assure that people who commit these "random, violent, senseless crimes \*\*\* will be dealt with harshly."

¶ 13 After taking all of these factors into consideration, the trial court sentenced defendant to 27 years imprisonment, plus a mandatory 25 years for personally discharging a weapon which proximately caused death, for a total of 52 years' imprisonment. Defendant filed a motion to reconsider which the trial court denied. Defendant filed this timely appeal.

¶ 14 ANALYSIS

¶ 15 Defendant argues that his sentence for first-degree murder must be vacated and the cause remanded for resentencing because the statutory scheme resulting in his sentence violates the eighth amendment to the United States Constitution, and the proportionate penalties clause of the Illinois Constitution. "Constitutional challenges carry the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional." *People v. Patterson*, 2014 IL 115102, ¶ 90. Therefore, this court has "a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of its validity." *Id.* The party challenging the constitutionality of a statute bears the burden of proving its invalidity.

*People v. Miller*, 202 Ill. 2d 328, 335 (2002). Whether a statute is constitutional is reviewed *de novo*. *Id.*

¶ 16 The trial court applied three statutes in determining defendant's sentence. Section 5-4.5-20(a)(1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-20(a) (West 2010)) establishes that for first degree murder, "[i]mprisonment shall be for a determinate term of (1) not less than 20 years and not more than 60 years \*\*\*." Section 5-8-1(a)(1)(d)(iii) of the Code (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)) provides that "if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, \*\*\* or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court." Section 3-6-3(a)(2)(i) (730 ILCS 5/3-6-3(a)(2)(i) (West 2010)) further provides "that a prisoner who is serving a term of imprisonment for first degree murder \*\*\* shall receive no good conduct credit and shall serve the entire sentence imposed by the court \*\*\*." Since the convergence of these three statutes results in a mandatory minimum sentence of 45 years' imprisonment for juveniles tried as adults before the trial court can consider his age or the characteristics of youth in mitigation, defendant argues that the sentencing scheme is unconstitutional pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

¶ 17 *Miller* involved the separate cases of two 14-year old juveniles convicted of murder and sentenced to a statutory mandatory term of life imprisonment without the possibility of parole. *Id.* at 2461-62. On appeal to the United States Supreme Court, both defendants argued that the respective statutes mandating their sentences violated the eighth amendment. That amendment's prohibition of cruel and unusual punishment guarantees that punishment for a crime should be proportionate to both the offender and the offense. *Id.* at 2463.

¶ 18 The Supreme Court noted that the concept of proportionality should be viewed according to " 'the evolving standards of decency that mark the progress of a maturing society.' " [Internal citations omitted.] *Id.* The court discussed its prior decisions of *Roper v. Simmons*, 125 S. Ct. 1183 (2005), and *Graham v. Florida*, 130 S. Ct. 2011 (2010), which established "that children are constitutionally different from adults for purposes of sentencing." *Id.* at 2464. *Roper* and *Graham* relied on findings that showed children lack maturity and have an underdeveloped sense of responsibility, are more vulnerable to negative influences, and have character that is not yet well formed. *Id.* These "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 2465. Therefore, *Graham* held that a mandatory sentence of life without parole given to a juvenile for committing a nonhomicide crime was disproportionate and violated the eighth amendment. *Id.* at 2466.

¶ 19 The Supreme Court in *Miller* then reasoned that the analysis in *Graham* implicates any mandatory life sentence without parole imposed on a juvenile, even in homicide cases. *Id.* at 2467-68. Such sentencing schemes "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other \*\*\* [a]nd still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses \*\*\*." *Id.* at 2467-68. Furthermore, "this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." *Id.* at 2468. The Supreme Court held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 2469. It did not foreclose the imposition of such a penalty in homicide cases altogether, but

required the sentencing body "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

¶ 20 Here, defendant was not sentenced to life in prison without parole. The minimum sentence defendant could receive was 45 years' imprisonment. Although lengthy, he would finish serving his sentence at the age of 62 and be released. That circumstance is not the same as serving a mandatory sentence of life in prison without parole. See *Patterson*, 2014 IL 115102, ¶ 110 (the Illinois supreme court interpreted *Graham's* holding as limited to the imposition of the mandatory life in prison without parole, and declined to find that a prison term of 36 years for a juvenile who personally committed three counts of aggravated criminal sexual assault violated the eighth amendment).

¶ 21 Even if defendant's sentence is viewed as essentially the same as life in prison without parole, the Supreme Court in *Miller* did not foreclose a sentencer's ability to sentence a juvenile to life without parole in homicide cases so long as the sentence "take[s] into account how children are different." *Miller*, 132 S. Ct. at 2469. See also *People v. Davis*, 2014 IL 115595, ¶ 43 (pursuant to *Miller*, "[a] minor may still be sentenced to natural life imprisonment without parole so long as the sentence is at the trial court's discretion rather than mandatory). The trial court here had a range for sentencing on defendant's first degree murder conviction of 20 to 60 years pursuant to section 5-4.5-20(a)(1) of the Code. It expressly considered defendant's age, his youth, and other mitigating factors. It also considered the senseless violence of defendant's crime, his lack of remorse, and the need to protect the community before sentencing defendant to 27 years' imprisonment for first degree murder. Pursuant to *Miller*, therefore, the sentencing scheme at issue here does not violate the eighth amendment.



¶ 22 Defendant also argues that statutory scheme resulting in a mandatory minimum sentence of 45 years' imprisonment for juveniles violates the proportionate penalties clause of the Illinois Constitution. Defendant contends that the proportionate penalties clause "offers broader protection to juveniles than the Eighth Amendment, such that a 45-year mandatory minimum prison term violates the Illinois Constitution when automatically applied to minors" citing *People v. Clemons*, 2012 IL 107821 (2012) as support. In *Clemons*, our supreme court stated that the proportionate penalties clause "went beyond the framer's understanding of the eighth amendment" due to its focus on "the objective of rehabilitation." *Id.*, ¶ 40. However, we note that *Clemons* was decided prior to the United States Supreme Court's decision in *Miller*, which found that the eighth amendment, as applied to juvenile defendants, forbade courts from imposing a mandatory sentence of life in prison without parole because the defendant's age and other mitigating factors cannot be taken into consideration. *Miller*, 132 S. Ct. at 2469. Whether the proportionate penalties clause provides greater protection for juvenile defendants than the eighth amendment in light of *Miller* is an issue we need not address at this time, as it is not relevant to our determination.

¶ 23 Our legislature's discretion to prescribe penalties for defined offenses includes the authority to determine mandatory sentences which, by definition, limit the court's discretion in imposing sentences. *People v. Taylor*, 102 Ill. 2d 201 (1984). Article I, section 11 of the Illinois Constitution contains two further limitations on penalties: they must be determined (1) "according to the seriousness of the offense" and, (2) "with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. However, as our supreme court observed in *Taylor*, nothing in this clause indicates that the court must give the possibility of rehabilitating

an offender greater weight than the seriousness of the offense in determining a proper sentence. *Taylor*, 102 Ill. 2d at 206.

¶ 24 In challenging the constitutionality of the sentencing statutes applied here, defendant relies on *People v. Miller*, 202 Ill. 2d 328 (2002) (hereinafter referred to as *Leon Miller*).<sup>1</sup> In *Leon Miller*, the 15 year old defendant was standing on a street corner when two others carrying guns asked him to serve as a lookout. *Id.* at 330. The defendant agreed but did not handle or touch any guns. About one minute later, the other two fired gunshots killing two people. When he heard the gunshots, the defendant ran to his girlfriend's house. *Id.* at 331. The defendant was convicted of the murders under a theory of accountability, and under the relevant sentencing statute the trial court was to impose a sentence of life in prison without parole. *Id.* at 331-32. The trial court refused to impose such a sentence on the defendant, finding that under the circumstances, applying the multiple murder sentencing statute violated both the eighth amendment and the proportionate penalties clause. Instead, the trial court sentenced the defendant to a term of 50 years' imprisonment. *Id.* at 332.

¶ 25 Our supreme court noted that the defendant's sentence resulted from the converging of three statutes: section 5-4(6)a of the Juvenile Court Act of 1987 (705 ILCS 405/5-4(6)a (West 1996)) mandating that all 15- or 16-year old offenders be prosecuted as adults; the accountability statute which effectively bars courts from considering the offender's degree of culpability in the crime; and the multiple-murder sentencing statute which precludes courts from considering the age of the offender or the offender's participation in the crime in imposing a sentence of life without parole. *Id.* at 340. It found that when these statutes converged in the defendant's case,

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<sup>1</sup> Defendant also relies on an Iowa case as support. However, this court is not bound to follow decisions from other states. *North Pole Corp. v. Village of East Dundee*, 263 Ill. App. 3d 327, 337 (1994).

the trial court never had the opportunity to consider the defendant's age or his individual level of culpability, or the actual facts of the crime, when it sentenced him. *Id.*

¶ 26 The supreme court "agree[d] with defendant that a mandatory sentence of natural life in prison with no possibility of parole grossly distorts the factual realities of the case and does not accurately represent defendant's personal culpability such that it shocks the moral sense of the community." *Id.* at 341. It is particularly true where the defendant received the same sentence as the actual shooter. *Id.* The court observed, however, that it is "possible to contemplate a situation where a juvenile offender actively participated in the planning of a crime resulting in the death of two or more individuals, such that a sentence of natural life imprisonment without the possibility of parole is appropriate" but that was not the case before the court. *Id.* Our supreme court affirmed the trial court's sentence of 50 years' imprisonment imposed on the defendant. *Id.* at 343.

¶ 27 *Leon Miller* is distinguishable. Here, defendant was not convicted of murder on a theory of accountability. Rather, the evidence showed that he actively participated in the offense by firing shots from a gun that killed the victim. Defendant also did not receive a mandatory sentence of life in prison without parole. Furthermore, in sentencing defendant the trial court did consider mitigating factors such as defendant's young age and the studies defendant submitted finding that the adolescent brain is different from an adult brain. However, the trial court noted the unprovoked aggression displayed by the defendant in shooting at the boys, and that "violence permeates this city" and "[s]omething has to be done." It stated that it had to look at the community and assure that people who commit these "random, violent, senseless crimes \*\*\* will be dealt with harshly." The trial court sentenced defendant to 27 years imprisonment, plus a mandatory 25 years for personally discharging a weapon which proximately caused death, for a

total of 52 years' imprisonment or seven years more than the statutory minimum he could have received. Defendant's sentence here, as an active participant in the crime who fired the fatal shot, is only two years more than what the defendant in *Leon Miller* received, and which our supreme court upheld. As such, we find that defendant's sentence does not violate the proportionate penalties clause.

¶ 28 Defendant argues that the cases of *Roper*, *Graham* and *Miller* "represent a dramatic progression in Supreme Court jurisprudence" and the "next logical step" is to ban "mandatory term-of-years sentences that deny juvenile defendants any meaningful chance to become productive members of society." However, he acknowledges that when given the opportunity to expand the rulings, our supreme court declined and noted that the United States Supreme Court limited the application of *Roper*, *Graham* and *Miller* to "the most severe of all criminal penalties." *Patterson*, 2014 IL 115102, ¶ 110. Our supreme court did express concern "over the absence of any judicial discretion in Illinois's automatic transfer provision" in light of those decisions, and urged the legislature to review the provision "based on the current scientific and sociological evidence indicating a need for the exercise of judicial discretion \*\*\*." *Id.*, ¶ ¶111-12. As the appellate court, we must follow the law as declared by our supreme court. *People v. Dodds*, 2014 IL App (1st) 122268, ¶ 46. Therefore, we decline defendant's invitation to extend the narrow holdings of *Roper*, *Graham* and *Miller*.

¶ 29 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 30 Affirmed.