2015 IL App (1st) 1131972-U

SECOND DIVISION
August 25, 2015

No. 13-1972

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellee,	)	
	)	
v.	)	No. 09 CR 12214
	)	
LATREAL VEAL,	)	
	)	Honorable James Rhodes
Petitioner-Appellant.	)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err when it did not appoint counsel to represent defendant in his *pro se* posttrial motion alleging ineffective assistance of counsel because the trial court was merely conducting a preliminary *Krankel* inquiry of defendant's claims that was not an adversarial hearing. The automatic transfer statute is not facially unconstitutional nor is it unconstitutional as applied to defendant. The mandatory term of imprisonment and the truth in sentencing statute are not facially unconstitutional nor are they unconstitutional as applied to defendant. Two of defendant's three convictions for home invasion and defendant's convictions for aggravated unlawful restraint are vacated under the one act, one crime doctrine.

¶ 2 Following a bench trial, defendant Latreal Veal was convicted of three counts of home

invasion, three counts of armed robbery and three counts of aggravated unlawful restraint. The trial judge sentenced defendant to concurrent terms of 21 years of imprisonment for the three armed robbery charges, 6 years for each of the home invasion charges and 2 years for each of the aggravated unlawful restraint charges. Defendant appeals his convictions and sentences. For the following reasons, we affirm in part and vacate in part.

¶ 3 BACKGROUND

¶ 4 Antonio Bovino testified to the following facts. On June 7, 2009, he lived with his wife and son at 12848 Lincoln Street in Blue Island, Illinois. On that date, around noon, he was working in his backyard when he noticed two teenagers standing in the alley near his garage. The boys were dressed in black and were wearing hooded sweatshirts with their hoods up. Antonio testified that one of the boys was taller about 5 feet 8 inches tall and the other was shorter, between 5 feet 3 inches and 5 feet 4 inches tall. Antonio identified defendant in court as the tall teenager. The shorter one was co-defendant Lavell Randolph.

¶ 5 Antonio testified that he entered the garage through the open side door and asked the two boys if they needed anything and defendant said "no." Antonio returned to the yard while the boys walked away. Less than a minute later, Antonio turned around and saw defendant waking towards him holding a gun pointed at him. Defendant and Randolph pushed Antonio inside the garage, forced him onto the floor and asked him for money. Antonio told them that he had no money. Randolph then searched Antonio's pocket. Defendant pushed Antonio toward the house while pressing the gun behind Antonio's neck. Randolph followed them. They all went in the basement where Antonio's wife, Mabel Bovino, was sitting at the computer. Defendant told Antonio and Mabel to sit on the couch and he then went upstairs. About 30 seconds later, Antonio heard his son, Franco Bovino, screaming. Subsequently,

defendant returned to the basement with Franco while pointing a gun at Franco's head. Defendant forced Franco sit on the couch with his parents.

¶ 6 Defendant left the gun with Randolph, he put on some brown gloves and went upstairs. Antonio heard noise coming from upstairs. Defendant returned downstairs and asked where the money was. He then went upstairs again. He returned downstairs within five minutes and had phones and keys in his hands. Defendant told Antonio and his family not to call the police, and if they did they would return at night and kill them. Franco told defendant that the phones would be of no use and defendant indicated that they will leave them next to the garbage bin.

¶ 7 Once defendant and Randolph left, Franco ran to the neighbor's house and called the police. Antonio testified that digital cameras, jewelry and about two hundred dollars from his wife's purse were all missing. Antonio testified that the drawers and cabinets were open and that there was a mess on the floor. Antonio identified defendant from a photo array that evening and picked defendant out of a lineup the following day.

¶ 8 Mabel Bovino testified as follows. On June 7, 2009,around noon, she was sitting at the computer desk when her husband came in the basement with two young African-American men she did not recognize. Mabel identified defendant in court and stated that defendant was the taller boy while co-defendant Randolph was the shorter one. Mabel testified that defendant was holding a gun behind her husband's head. Defendant and Randolph ordered her to stay calm and to sit on the sofa along with her husband. Defendant went upstairs and she then heard her son, Franco, screaming. Defendant and her son came downstairs. Defendant ordered Franco to join his parents on the sofa. Defendant gave his gun to Randolph and then put on some gloves. He then went upstairs again. Defendant returned and asked where they had more money. After defendant left, Mabel noticed that the money from her wallet, her rings and necklace from her

jewelry box and all her perfumes were missing. Mabel testified that defendant warned them not to call the police because he was watching them and would come back to kill them if they did. Mabel identified defendant from a photo array that evening and picked defendant out of a lineup the following day.

¶ 9 Franco Bovino testified consistently with his parents. Franco testified to the following facts. On that date, he was walking into the house when defendant approached and pointed a gun at his head. Defendant asked for money. Franco led defendant to his room and told him that the money was located in a dresser's top drawer. Defendant took the money and then led Franco downstairs while holding a gun pressed to Franco's back. Defendant gave the gun to Randolph and then went upstairs again. Defendant returned and he seemed upset because he did not find money. Franco told him that his mother has money in her purse. Defendant went back up again. When he returned, he was carrying car keys, the cordless house phone and cell phones. Franco asked defendant to leave their car keys and their phones. Defendant told Franco that he was going to leave the phones by the garage. Defendant told Franco and his family that they needed to be more careful while instructing them not to call the police. Franco identified defendant from a photo array later that evening and he picked defendant out of a lineup the following day. Franco testified that defendant wore a pair of white and black Nike shoes and that Randolph wore a pair of red and black Nike shoes. The State presented two pairs of shoes to Franco and he identified them as the shoes worn by defendant and Randolph.

¶ 10 Detective Deana Rzab testified that she responded to a home invasion that occurred at 12848 South Lincoln in Blue Island on June 7, 2009. She arrived there to take photographs of the crime scene and to collect items from the residence. Detective Rzab testified that she proceeded to the area of 154th and Pauline in Harvey, Illinois, where another detective was

talking with Randolph and an unidentified woman. Detective Rzab searched the woman, and recovered three rings and a necklace and took custody of a cell phone and the black and red Nike gym shoes that Randolph was wearing. Detective Rzab proceeded to 15329 Lincoln Avenue in Harvey, Illinois, where she searched the home of Docia Laster, defendant's mother. Detective Rzab recovered black and white gym shoes and two black hooded sweatshirts from defendant's bedroom. Detective Rzab did not find any proceeds of the robbery in the house.

¶ 11 The defense called Docia Laster, defendant's mother. Docia Laster testified that defendant was home cooking between 11:00 a.m. and 12:00 p.m. She testified that defendant left the house at about 12:30 p.m. She said he returned around 6:00 p.m. after the police had stopped by looking for him. Docia Laster denied telling Detective Henehan that she did not know where defendant was and insisted that she informed police about the alibi when she went to the station shortly after defendant's arrest.

¶ 12 Detective Henehan testified in rebuttal that on June 7, 2009, Docia Laster told him that she did not know the whereabouts of her son.

¶ 13 Defendant, sixteen years old at the time the crime occurred, was charged by indictment with three counts of armed robbery, three counts of home invasion and three counts of aggravated unlawful restraint. Defendant was tried as an adult under the Juvenile Court Act's automatic transfer provision, 705 ILCS 405/5-130(West 2009), which mandates that anyone fifteen years old or older be tried as an adult for certain offenses, one of which is armed robbery when the armed robbery was committed with a firearm. 705 ILCS 405/5-130(1)(a). After a bench trial, the trial court found defendant guilty of all counts.

¶ 14 The defense made a motion for a new trial on defendant's behalf. The trial court denied

defendant's motion. Subsequently, defense counsel moved to preclude the imposition of the 15-year firearm enhancement based on the arguments that it constituted a double enhancement. Specifically, defendant claimed that the enhancement was used once to trigger the automatic transfer of the prosecution from juvenile court to adult court, and again to increase the minimum penalty to 21 years. The trial court ultimately ruled that there was no double enhancement and denied defendant's motion. Defense counsel argued next that the court failed to admonish defendant about an offer of 13 years made to him by the State when the offer was less than the minimum of 21 years. The court noted that it had not been aware of the offer. At a subsequent court date, defense counsel informed the court that defendant wanted to ask for a *Krankel* hearing because defendant claimed that counsel was ineffective when counsel failed to inform him that the minimum sentence was 21 years. Counsel stated that the State made an offer of 13 years to defendant and that defendant rejected the offer. The State did not recall making that offer.

¶ 15 Following a hearing in aggravation and mitigation, the trial court asked defendant if he had anything to say prior to being sentenced. Defendant stated that had he been informed that the minimum sentence in his case was 21 years, he would have accepted the State's offer of 7 to 15 years. Defense counsel stated that the State did not make such an offer. Defendant claimed that, if that was true, than counsel misled him about the plea offer. Defendant also contended that the trial court had indicated to him that the State did not have a good case against defendant. The trial court suspended the sentencing hearing and continued the case for a future date in order to review the transcripts from the previous proceedings.

¶ 16 On the next court date, the trial court indicated that it received and reviewed all the

relevant transcripts it had requested. The court also noted that it received a letter from the defendant. The letter is not included in the common law record for the appeal. The trial court asked defendant about the letter. Defendant stated that he wrote the letter because he felt that he had been railroaded and that defense counsel must have been lying about the State's offer. Defendant insisted that he was made an offer of 7-15 years and contended that he did not understand how the minimum in this case could be 21 years. Defendant also claimed that defense counsel only visited him in jail once to discuss his case with him.

¶ 17 The trial court asked the defense counsel to be sworn in. Defense counsel stated that the State made an offer of 13 years and that she informed defendant that this offer was less than the mandatory minimum of 21 years. Counsel stated that defendant rejected the offer based on his belief that the trial court had stated that if he went to trial, he would not be found guilty. Counsel stated that although she only visited defendant once in jail, she had spoken with him numerous times in private at the courthouse.

¶ 18 The trial court then asked defendant whether he had any questions for counsel. Defendant asked counsel several questions regarding the motions that counsel had filed to preclude the imposition of the 15-year enhancement. Defendant expressed his dissatisfaction with counsel's representation because defendant did not have a good understanding about his case. The State did not ask defense counsel any questions. The trial court found that defendant did not establish that his counsel was ineffective and denied defendant's motion for a new counsel. The trial court sentenced defendant to the minimum sentence of 21 years on the three armed robbery convictions, to run concurrently with the sentence of 6 years on each of the invasion charges and 2 years on each of the aggravated unlawful restraint charges.

¶ 19 On appeal, defendant argues that: (1) he was denied the assistance of counsel when the

trial court required him to conduct a *pro se* examination of his attorney, during the hearing for his *pro se* posttrial motion for ineffective assistance of counsel; (2) his convictions for two counts of home invasion should be vacated because there was only one entry in the house; (3) his convictions for all three counts of aggravated unlawful restraint should be vacated because they were inherent in the armed robbery convictions; (4) the automatic transfer statute violates the Eighth Amendment and the Proportionate Penalties Clause. For the purpose of clarity, we will address defendant's arguments in the foregoing numerical order.

¶ 20 ANALYSIS

¶ 21 I. Appointment of Counsel

¶ 22 Defendant contends that the trial court erred when it failed to appoint counsel to represent him at a hearing on his *pro se* posttrial motion where he raised several ineffective assistance of counsel claims. Specifically, after the trial court denied defense counsel's motion for a new trial, defense counsel informed the court that defendant wanted to make an allegation of counsel ineffectiveness because, according to defendant, counsel failed to advise him that the minimum sentence in his case was 21 years. In addition, defendant had mailed the court a letter alleging that his counsel was ineffective for: (1) failing to file a motion to quash his arrest, (2) misrepresenting that the State had made an offer of 7-15 years in his case, and (3) only visiting him once in jail to discuss his case.

¶ 23 Defendant contends that the trial court erroneously required defendant to conduct a *pro se* examination of his own trial counsel without appointing counsel or securing a waiver of counsel, and that the trial court denied defendant his constitutional right of assistance of counsel during a critical stage of proceedings. Defendant requests that this court remand the matter for appointment of new counsel pursuant to *People v. Krankel,* 102 Ill. 2d 181 (1984). The State

responds that the questioning by the trial court and by defendant of the defense counsel merely constituted a preliminary inquiry to determine the factual basis of defendant's ineffectiveness claims and it did not convert the preliminary *Krankel* inquiry into an adversarial proceeding.

¶ 24 In *People v. Krankel*, 102 Ill. 2d at 187–89, the Illinois Supreme Court concluded that the failure to appoint new counsel to argue a defendant's *pro se* posttrial motion alleging ineffective assistance of trial counsel was an error and remanded the cause for a new hearing on the claim. However, new counsel is not automatically required every time a defendant presents a *pro se* posttrial claim that his counsel was ineffective. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Instead, the trial court must examine the factual basis of the defendant's claim in order to determine whether new counsel should be appointed. *Id.* at 77–78. A trial court may conduct such a preliminary examination by questioning trial counsel about the facts and circumstances surrounding the defendant's allegations, engaging in a discussion with the defendant, or relying on its own knowledge of counsel's performance and the insufficiency of the defendant's allegations on their face. *Id.* at 78–79. If the court determines that the claim lacks merit or pertains only to matters of trial strategy, then it need not appoint new counsel and may deny the *pro se* motion. *Id.* at 78. If, however, the court finds that the allegations show possible neglect, the matter then proceeds to the second step of a *Krankel* proceeding, and new counsel must be appointed to represent the defendant at a hearing on his *pro se* claims of ineffective assistance of counsel. *Id.*

¶ 25 A trial court's decision whether to appoint new counsel after conducting a preliminary *Krankel* inquiry is normally reviewed for manifest error. *People v. Walker*, 2011 IL App (1st) 072889, ¶ 33. However, the reviewing court reviews *de novo* the manner in which the trial court conducted its *Krankel* hearing and the hearing's legal sufficiency. *People v. Fields*, 2013 IL App

(2d) 120945, ¶ 39. Under either standard, the trial court did not err in finding that defendant's posttrial allegations of ineffective assistance of counsel were meritless. The trial court's decision not to appoint counsel to represent defendant in pursuing his claims was justified for the reasons stated below.

¶ 26 In the instant case, the record indicates that the trial court was evaluating defendant's claims of ineffective assistance of counsel in order to determine whether new counsel should be appointed to represent defendant in arguing his ineffectiveness claims. Specifically, when defendant indicated that he was dissatisfied with defense counsel's representation, the court questioned defendant and defense counsel in order to determine the basis of defendant's complaint. The court first allowed defendant to present his claims. Defendant contended that his counsel did not inform him that the minimum sentence was 21 years and that is the reason why he rejected the State's offer of 7-15 years. Additionally, defendant claimed that counsel did not represent him properly and had only visited him once before his trial.

¶ 27 Next, the trial court and defendant questioned defense counsel. After being sworn in, counsel reiterated that defendant rejected the 13-year offer made by the State because defendant informed her that the judge previously told him that he would be found not guilty if he went to trial. Counsel also explained that although she had only visited defendant once in jail, she had spoken with him numerous times in private at the courthouse. The trial court then asked defendant whether he had any questions for counsel. Defendant asked counsel questions regarding various motions that counsel had filed. The State did not ask defense counsel any questions.

¶ 28 Therefore, based on the proceeding as a whole, the trial court conducted a preliminary inquiry regarding defendant's claims and not a hearing on the merits or a critical stage of

proceedings where the appointment of counsel would be required. The trial court found that defendant's allegations had no merit because counsel's decisions on how to defend a case and the motions that she filed were matters of trial strategy that did not make her assistance unreasonable. The State in this case made no comments regarding defendant's claims, never called any witnesses to testify against defendant, and did not question defendant or defense counsel. The trial court's and defendant's questioning of defense counsel was simply a method to ascertain the facts and circumstances surrounding the allegedly ineffective representation as "the trial court may inquire with trial counsel about the facts and circumstances surrounding the defendant's allegations, and may also briefly discuss the allegations with the defendant." *People v. Jolly*, 2014 IL 117142, ¶ 30.

¶ 29 Defendant's reliance on *People v. Cabrales*, 325 Ill. App. 3d 1 (2001) is misplaced. Defendant contends that, just as in *Cabrales*, the trial court conflated the preliminary inquiry authorized under *Krankel* with the substantive hearing on defendant's *pro se* claims, and it denied defendant's right to counsel. In *Cabrales*, the trial court allowed the defendant to proceed without representation in a posttrial motion after the defendant requested to do so. *Cabrales*, 325 Ill. App. 3d at 2. The trial court appointed the defendant's trial counsel to act as his stand-by attorney, but when the trial court realized that among the allegations in the defendant's *pro se* posttrial motion were allegations of ineffective assistance, it vacated its order appointing the trial counsel as stand-by counsel. *Cabrales*, 325 Ill. App. 3d at 1-2. The matter proceeded to the inquiry about the factual bases of the defendant's ineffective-assistance claims, and the State was allowed to cross-examine the defendant. *Id.* at 3-4. Additionally, the trial counsel was also examined by the defendant and cross-examined by the State. *Id*. at 4. This court concluded that the trial court erred by skipping the preliminary inquiry and turning the proceedings into an

adversarial hearing between the defendant and the State. *Id*. at 5–6. This court reversed the trial court and remanded the matter to be picked up at the preliminary factual investigation phase of the *Krankel* hearing. *Id*. at 6.

¶ 30 In the present case, unlike in *Cabrales,* the trial court conducted a preliminary investigation of defendant's *pro se* motion to determine whether his claims were valid and whether he needed new counsel to present the claims at an evidentiary hearing. Unlike *Cabrales*, the record here indicates that the court was well aware of the need to inquire into defendant's claims. When defense counsel first informed the court that defendant raised some claims of ineffective assistance of counsel, the court immediately explained that defendant was not entitled to a new counsel unless an inquiry under *Krankel* established otherwise. The court then went on to conduct that inquiry, without conducting "a full hearing on the merits of defendant's *pro se* motion." *Id*. at 6. Additionally, unlike *Cabrales*, in the instant case, the State did not question defendant or defendant's counsel. Therefore, the trial court was not required to appoint new counsel before this preliminary investigation, as there was no *per se* conflict of interest just because the defendant filed a *pro se* motion alleging ineffective assistance. The defendant's attorney was not in a *per se* conflict of interest situation during the trial court's preliminary investigation because he was not arguing a motion predicated on allegations of his own ineffectiveness. *Moore*, 207 Ill. 2d 68. As such, the trial court did not err in its decision not to appoint counsel to represent defendant's claims of ineffectiveness because the trial court was merely conducting a preliminary *Krankel* inquiry of defendant's claims and it was not an adversarial hearing.

¶ 31 II. Merger Under The One Act, One Crime Doctrine

¶ 32 Defendants argues, and the State agrees that, under one act, one crime principle, this

court should vacate two of defendant's convictions for home invasion. Defendant was found guilty of three counts of home invasion under section 720 ILCS 5/12-11(a)(3), based on his entry into the home of the Bovino family, where the three victims Antonio, Mabel and Franco lived. In *People v. Sims*, 167 Ill. 2d 483, 523, the Illinois Supreme Court held that "a defendant can stand convicted of only one count of home invasion where there was only one entry regardless of the number of the victims." Therefore, two of defendant's three convictions for home invasion will be vacated and the mittimus should be corrected accordingly.

¶ 33 Next, defendant argues that his convictions for aggravated unlawful restraint must be vacated because they are based on the same act as his convictions for armed robbery, violating the one act, one crime rule. Defendant contends that the act of restraining the three victims was based on the same physical act that gave rise to defendant's conviction for armed robbery.

¶ 34 A defendant cannot be convicted of multiple offenses arising from the same physical act under the one act, one crime doctrine. *People v. King*, 66 Ill. 2d 551, 566 (1977). An act is defined as "any overt or outward manifestation that will support a different offense." *Id.* Where multiple convictions of greater and lesser offenses are rendered for offenses arising from a single act, a sentence should be imposed on the most serious offense and the convictions on the less serious offenses should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). The reviewing court will compare the applicable sentences for each crime in order to determine which offense is the lesser offense. *People v. King*, 66 Ill. 2d at 556. An offender commits aggravated unlawful restraint when he or she knowingly detains another without legal authority and while using a deadly weapon. 720 ILCS 5/10–3, 10–3.1 (West 2010). Aggravated unlawful restraint is a Class 3 felony. *Id.* An offender commits armed robbery when he or she takes property from another by the use of force or by the threat of imminent force, while armed with a dangerous weapon. 720

ILCS 5/18–2(a)(1) (West 2010). Armed robbery is a Class X felony. *Id.*

¶ 35 In *People v. McWilliams*, 2015 IL App (1st) 130913, this court, vacated a defendant's aggravated unlawful restraint conviction finding that the aggravated unlawful restraint conviction was based on the same act as defendant's armed robbery conviction. In *McWilliams*, defendant and his co-offenders initially ordered the two victims to the ground while pointing BB guns that the victims believed were real guns. *Id.* at ¶ 5. One of the men struck one of the victims in the head with the butt of the BB gun. *Id.* The defendants then took the victims' money, phones, and personal items. *Id.* After instructing the victims to stay on the ground and count to 50, defendants fled. *Id.* This court reasoned that the robbery started when the victims were first restraint at gun point and did not end once the men had taken the victims' property, but continued until defendants had fled the scene, because the escape was facilitated by the same threat of force that accomplished the robbery. *Id.* at 19. This court held that the restraint of the two victims was inherent in the robbery and ended concurrently with the robbery, constituting the same physical act. *Id.*

¶ 36 Similarly, in the instant case, defendant and co-defendant Randolph restrained the victims into the basement at gun point. While the victims were held at gunpoint in the basement, defendant went upstairs and looked for money and valuables. Defendant than took the Bovinos' money, cell phones and car keys. The restraint of the victims at gun point was simultaneous with defendant's act of taking the victims' property and continued until the defendants left the victims' house. Just as in *McWilliams*, the restraint of the three victims was a single continuous act, inherent in the robbery that ended when defendant and Randolph left the victims' house.

¶ 37 The State argues that defendant's acts of restraining the victims and robbing them in the instant case constituted distinct multiple acts. The State contends that the unlawful restraint

consisting in holding the victims at gun point began before the armed robbery and it extended beyond the time necessary to complete the armed robbery, and cites in support *People v. Williams*, 143 Ill. App. 3d 658 (1986). In *Williams*, the defendant approached the victim as she entered her car, pointed a gun at her, and told her to get inside. *Id.* at 660. Defendant forced the victim to sit down and place her head between her legs. *Id.* Next, defendant drove around for 20 or 30 minutes. *Id*. He then took the money from the victim's purse and ordered her to get out of the car. *Id.* Defendant was convicted of armed robbery and unlawful restraint. *Id.* On appeal, defendant contended that his unlawful restraint conviction should be vacated because it was "incidental" to the armed robbery. *Id.* at 667. The appellate court held that "defendant's [unlawful restraint] conviction was proper because the conduct comprising the offense was an act separate from the armed robbery, was not necessary to effectuate the armed robbery, exceeded the force requirement of armed robbery, and each of the offenses required proof of different elements." *Id.*

¶ 38 However, the State's reliance on *Williams* is misplaced. Unlike *Williams* where defendant drove the victim's car for about 20 to 30 minutes before he took the victim's money, defendant here did not restrain any person for 20 or 30 minutes before proceeding with the armed robbery. Instead, defendant restrained the victims from the beginning until the end of the armed robbery—that is, from the moment he displayed a gun and demanded money, until the moment he took the cell phones, the car keys and the money. Here, defendant's aggravated unlawful restraint convictions were carved from the same physical act as his armed robbery convictions and lasted until the robbery was complete. Although defendant pointed a gun at the victims, and then handed the gun to co-defendant Randolph, that restraint was not a separate or independent physical act form the robbery. Rather, the armed robbery in this case was ongoing until

defendant and Randolph left the premises. Defendant took property from the victims during closely related interactions between defendant and the victims, each by the use or threat of force. Therefore, defendant's aggravated unlawful restraint convictions must be vacated because they are based on the same physical act as his armed robbery convictions.

¶ 39 III. Constitutionality of Automatic Transfer

¶ 40 Defendant contends next that the automatic transfer statute (705 ILCS 405/5-130) violates the Eighth Amendment, the Proportionate Penalties Clause as well as federal and state rights to due process. The Eighth Amendment prohibits the infliction of cruel and unusual punishment. U.S. Const. amend VIII, XIV. The Illinois Supreme Court has recently held that the automatic transfer statute does not violate the Eighth Amendment or the Proportionate Penalties Clause. *People v. Patterson*, 2014 IL 115102, ¶ 89. The Court held that the automatic transfer is not punishment, as it only provides a mechanism for determining where defendant's case is to be tried. *Id*. at ¶ 105; see also *People v. Salas*, 2011 IL App (1st) 091880, ¶ 66; *People v. Jackson*, 2012 IL App (1st) 100398 at ¶ 24; *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 55.

¶ 41 In addition, the Illinois Supreme Court and this court have consistently held that the automatic transfer statute does not violate the right to either procedural or substantive due process. *People v. Patterson*, 2014 IL 115102, ¶ 89; *People v. J.S.*, 103 Ill.2d 395, 402-05; *Salas*, 2011 IL App (1st) 091880, at ¶ 75-76, 78-79. Based on existing precedent, we reject defendant's arguments that the automatic transfer provision is unconstitutional.

¶ 42 IV. Constitutionality of The Mandatory Firearm Enhancement And The Truth In Sentencing Statute When Imposed On Minors

¶ 43 Similar to and interrelated with the prior argument, defendant contends that the application of the 15-year firearm enhancement and the mandatory truth in sentencing statute

violate the Eighth Amendment when applied to minors. Defendant challenges the constitutionality of these statutes based on a line of recent United States Supreme Court cases: *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). The cases essentially provide that minors cannot be sentenced to the death penalty and cannot be mandatorily sentenced to life imprisonment without the possibility of parole. Defendant relies, among others, on one statement in *Miller* to support his argument: "'[a]n offender's age * * * is relevant to the Eighth Amendment,' and so 'criminal procedure laws that fail to take a defendant's youthfulness into account at all would be flawed.'" *Miller*, 132 S. Ct. at 2466. Thus, defendant urges us to hold that the legislature is prohibited from imposing an automatic sentence on a minor that is the same as the sentence it would impose on an adult for the same crime. We decline to take the holdings in *Roper*, *Graham*, and *Miller* that far.

¶ 44 The line of Supreme Court cases relied upon by defendant does not stand for as broad of a position as he suggests, nor does it compel the conclusion that mandatory prison sentences cannot in any instance be imposed on minors. Each of the cases before the United States Supreme Court dealt with capital punishment or life imprisonment without the possibility of parole. In its holdings in any of those cases, the Court could have invalidated all mandatory minimum sentences for minors, but it did not. Instead, the Court limited those holdings to the "most severe" punishments allowed under the United States Constitution: the death penalty and life imprisonment without the possibility of parole (*Miller*, 132 S.Ct. at 2466). *Roper*, *Graham*, and *Miller* do not compel the broad reading that defendant requests us to ascribe to them: that juveniles charged with certain offenses may not be tried in criminal court and, if found guilty, sentenced to the attendant penalties.

¶ 45 A minor has no constitutional right to be prosecuted as a juvenile, and the legislature is entitled to define the scope of protections afforded to minors under the Juvenile Court Act. *Perea*, 347 Ill.App.3d at 36. The Illinois legislature has made a determination that a certain class of juvenile offenders that commit heinous crimes is not entitled to the protections it affords to other minor offenders. 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 a clear constitutional violation. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005). A court must construe a statute so as to affirm its constitutionality if reasonably possible. *Id.* To deem a statute facially unconstitutional, we must find that there are no circumstances in which the statute could be validly applied. *People v. Davis*, 2014 IL 115595, ¶ 25. This Court has already found that the challenged statutory scheme can be constitutionally applied under some circumstances, *Salas*, 2011 IL App (1st) 091880, and we find no reason to depart from that holding.

¶ 46 Finally, defendant asserts an additional basis for a finding of unconstitutionality the fact that he was sentenced as an adult as opposed to being adjudicated delinquent. Defendant contends that the provisions excluding certain minors from the definition of a "delinquent minor," based solely on the charged offense is unconstitutional because it does not allow the minor any opportunity to be heard on whether there should be a criminal conviction or an adjudication of delinquency.

¶ 47 Under section 5–130 of the Juvenile Court Act, if a minor was at least 15 years of age at the time of the offense and is charged with armed robbery when the armed robbery was committed with a firearm, such “charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.” 705 ILCS 405/5–130(1)(a). Also, if a minor is convicted of any offense “covered by” section 5–130(1)(a), then that minor shall be

directly sentenced as an adult. *People v. Toney*, 2011 Il App (1st) 090933 ¶ 48; *People v. King*, 241 Ill.2d at 378; 705 ILCS 405/5–130(1)(c)(i). In the instant case, defendant was 16 years old at the time he committed the armed robbery while armed with a firearm and, so, he was properly charged, convicted and sentenced as an adult under the automatic transfer provision. In light of the current state of our precedent, and for the other reasons stated above, we reject defendant's constitutional challenges. Instead, we find that the statutory scheme is not facially unconstitutional because, as here, it may be validly applied in some circumstances. We likewise find that the statutory scheme is not unconstitutional as applied to defendant.

¶ 48 CONCLUSION

¶ 49 Accordingly, we vacate two of defendant's three convictions for home invasion. We also vacate defendant's aggravated unlawful restraint convictions, because they were carved from the same physical act as his armed robbery convictions. We otherwise affirm defendant's convictions for three counts of armed robbery and one count of home invasion with their respective concurrent sentences of 21 years and 6 years of imprisonment.

¶ 50

¶ 51 Affirmed in part and vacated in part. Mittimus corrected.