FOURTH DIVISION
September 3, 2015

No. 1-13-2217

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 C4 40135
	)	
BRIAN BUCHANAN,	)	Honorable
	)	Thomas M. Tucker,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order sentencing defendant to a statutory minimum 45-year prison term after being found guilty but mentally ill of first-degree murder with a firearm is affirmed; there is no precedent or consensus that the imposition of a minimum 45-year sentence upon a person found guilty but mentally ill is unconstitutional.

¶ 2 Following a bench trial, defendant Brian Buchanan was found guilty but mentally ill of first-degree murder with a firearm of Henry Glenn. The trial court judge sentenced defendant to 45 years in the Illinois Department of Corrections (IDOC), 20 years for the first-degree murder conviction plus a 25-year firearm enhancement. Defendant now appeals his sentence arguing that it violates the U.S. Constitution and the Illinois Constitution, and requests that this court correct his mittimus, which he argues erroneously states he was found guilty but mentally ill on five counts of first-degree murder. For the reasons below, we affirm the trial court's 45-year sentence and direct the clerk of the circuit court to correct defendant's mittimus to reflect that he was found guilty but mentally ill on one count of first-degree murder with a firearm, instead of five counts.

¶ 3 BACKGROUND

¶ 4 Following a bench trial, defendant was found guilty but mentally ill of the first-degree shooting murder of Henry Glenn. The evidence presented at trial established that Lisa Buchanan knew defendant because she married defendant's brother in 1983. On August 10, 2005, Lisa was living in an apartment building located on South 6th Street in Maywood, Illinois. Neighbors would often gather in the patio behind the apartment building, sometimes to drink. Henry Glenn would come over often. Henry and defendant were present on the patio on August 10th, along with several others. Henry was sitting on a bench when Lisa observed defendant reach for something between Henry's legs. Henry then stated "that's some gay s***," and defendant then left the patio area.

¶ 5 Clarence Thomas lived on the second floor of Lisa's building. Clarence knew defendant and Henry. On August 10th, Clarence was upstairs with his fiancée on the back stoop. Defendant came upstairs around 7:00 p.m. or 8:00 p.m. and told Clarence that he had been in a

fight with Henry and that "he was going to f*** him up." Defendant left, and Clarence and his fiancée went inside to watch TV.

¶ 6 During that time, Lisa left the apartment building to get fast food and later to go to the liquor store. When she returned, she went to the patio to sweep. At that time, Henry was sitting in the back patio alone. While sweeping, defendant returned to the yard, and Lisa noticed he was carrying a silver gun in his hand. Defendant began speaking with Henry, and the last thing Lisa heard Henry say was that "he wasn't afraid to die." Sometime between 8:00 p.m. and 9:00 p.m., Clarence also heard defendant and Henry arguing and, specifically, heard Henry say, "I'm not scared to die, I've been in the Army." Lisa then heard a shot fired and saw blood coming out of Henry's head and defendant walking toward the alley with the gun in his hand. Clarence also heard the gunshot. Clarence and his fiancée came downstairs and saw Henry with a gunshot wound to his head. Clarence also saw defendant walking away towards the alley and saw defendant make a motion with his hands. Clarence was then able to see the gun in defendant's hand.

¶ 7 On August 10th, Rodney Whitaker and his girlfriend came by the apartment building and observed Henry on the back patio while Lisa was sweeping. Rodney then noticed that Henry was "having words" with someone. Rodney went inside for a moment and when he came back out he noticed that defendant had a gun in his hand. When Rodney saw the gun, he hurried away. When Rodney was about a block down the alley, he heard a gunshot.

¶ 8 Detective Luis Vargas was called to the scene at approximately 9:40 p.m. on August 10, 2005. When he arrived, he saw Henry in a chair at the back of the building. Detective Vargas noticed that Henry was not moving and that he had a bullet hole on the right side of his head.

Evidence Technician Sergeant Patrick Granberry also arrived at the scene. He noticed a wound to both sides of Henry's head and recovered a spent shell casing next to Henry's body.

¶ 9 The parties stipulated that the Maywood Fire Department arrived, observed a gunshot wound on the right side of Henry's head with an exit wound on the left side of his head. Henry was declared dead. Medical Examiner Dr. Valerie Arangelovich conducted an autopsy and determined that Henry died of a gunshot wound to the head.

¶ 10 Detective Charles Porter put out an investigative alert for defendant. On January 13, 2006, defendant was located in an apartment in Carpentersville, Illinois.

¶ 11 Following the State's case, defendant moved for a directed finding, which was denied. Defendant then presented evidence in support of his insanity defense. Although defendant does not challenge the trial court judge's finding that he was guilty but mentally ill of first-degree murder, we will briefly discuss the evidence that was presented at trial relating to defendant's mental state at the time of the shooting. Defendant called Dr. Carole Rosanova, an expert in the forensic psychology, to testify. After interviewing defendant and reviewing defendant's medical records as well as the police reports, Dr. Rosanova opined that defendant suffered from bipolar disorder with psychotic features and polysubstance dependence. Dr. Rosanova also opined that defendant suffered from periods of depression as well as manic behaviors. She testified that defendant could become "psychotic" and experience "hallucinations" with erratic behavior. Dr. Rosanova testified that defendant's medical records indicated that he had attempted suicide and, in January 2005, after presenting to the hospital with cuts on his arms, defendant was diagnosed with bipolar disorder with psychotic features and was given medication. Follow-up appointments were scheduled for defendant at the Eckert Center, but he failed to show. Dr. Rosanova testified that when defendant was on medication, he "would seem to be a normal

person to most lay people," but that when he was off medication, he was a "different person, irritable, argumentative [] capable of violence" and capable of harming himself and others.

¶ 12 Dr. Rosanova testified that alcohol could have a "[d]isastrous impact" on defendant because he suffered from bipolar disorder. Accordingly, Dr. Rosanova opined that at the time defendant shot Henry, he was suffering from the "mental disorder of bipolar disorder with psychotic features" and as a "result of the disorder, did not have the capacity to appreciate the criminality of his actions." Dr. Rosanova did not recall reviewing any statements given by the persons who witnessed the shooting.

¶ 13 Defendant also called Dr. Marva Phyllis Dawkins, a clinical psychologist, to testify in regards to his mental state at the time of the shooting. Dr. Dawkins was also qualified as an expert in the field of forensic psychology. Based on her interview with defendant and review of the medical records, Dr. Dawkins opined that defendant had "bipolar II disorder mix." Dr. Dawkins opined that to a reasonable degree of psychological and scientific certainty on the day defendant shot Henry: (1) defendant was suffering from bipolar II disorder, (2) the disorder was in an untreated state, and (3) the disorder could have impacted defendant's actions to the extent that he would not have appreciated the consequences of his actions. Dr. Dawkins also stated that a "reasonable inference" could be made that defendant was insane at the time he shot Henry.

¶ 14 After defendant rested, he sought to reopen the case. This was allowed, and Dr. Dawkins took the stand and testified that defendant did not tell her that he had shot Henry, despite her prior testimony that he had. The State sought to strike this testimony, and after the trial court judge denied that request, defendant rested.

¶ 15 In rebuttal, the State presented testimony of Dr. Roni Seltzberg who was qualified as an expert in the field of forensic psychology. After reviewing all relevant records in the case and

interviewing defendant twice, it was Dr. Seltzberg's opinion to a reasonable degree of medical and psychiatric certainty that at the time of the shooting, defendant "was not experiencing an acute psychotic disorder which would have resulted in his lack of substantial capacity to appreciate the criminality of the alleged conduct." Dr. Seltzberg opined that even if defendant had a bipolar disorder, which Dr. Seltzberg did not testify was the case, that was not equivalent to an insanity finding. Dr. Seltzberg testified that some of defendant's symptomology was consistent with alcohol withdrawal in a long-term abuser. Dr. Seltzberg also opined that he disagreed with Dr. Rosanova's opinion because: (1) Dr. Rosanova failed to mention in her report that defendant had reported hearing voices in the past, had a high alcohol level and had tested positive for drugs, (2) Dr. Rosanova's opinions were based on prior diagnoses instead of specific symptoms, (3) the statements of the witnesses to the shooting showed that defendant was not acting abnormally during the incident, and (4) defendant had a pattern of engaging in criminal activity.

¶ 16 The State then called Dr. Christopher Cooper, the Chief of Psychology with Forensic Clinical Services and also an expert in the field of forensic psychology. After reviewing all relevant records and evaluating defendant, Dr. Cooper gave the opinion that defendant was legally sane at the time of the shooting, and that defendant did not suffer from a mental disease or defect. In forming this opinion, Dr. Cooper noted that due to defendant's marked behavioral inconsistencies, he seemed to be grossly exaggerating psychological symptoms and cognitive impairment. The State then rested its case.

¶ 17 In surrebuttal, defendant re-called Dr. Rosanova who testified that she had reviewed the testimony or Dr. Seltzberg and disagreed with his conclusion that defendant was sane at the time of the shooting.

¶ 18 After closing arguments, the trial court judge found that there was sufficient evidence of defendant's guilt but that defendant was mentally ill at the time of the offense. The trial court judge found that there was insufficient evidence to show that defendant was legally insane at the time of the offense.

¶ 19 Defendant's motion for a new trial was denied, and the parties proceeded to a sentencing hearing. At the hearing, the victim's mother read a victim impact statement, and the State presented evidence of defendant's prior criminal record, which included two convictions for possession of a controlled substance, one conviction for stalking, one conviction for intimidation, two convictions for possession of a controlled substance with intent to distribute, three convictions for domestic battery, one conviction for battery, and one conviction for domestic violence. The State emphasized that defendant could be sentenced to 20 to 60 years for the first-degree murder conviction, plus an additional 25 years under the firearm enhancement statute, and requested that the judge impose an 80-year sentence. In mitigation, defendant emphasized his mental health conditions and reminded the court that he had been found guilty but mentally ill of the shooting death of Henry. After the hearing, the trial court judge imposed a sentence of 45 years and, in doing so, made the following comments:

> "I have had the opportunity to review the PSI; I have reviewed the evidence in this case; I have reviewed what both the State and Defense have put on for their arguments; I have listened to what the defendant has just said [to] me; and I have listened to what he can be sentenced to based on the fact that he used a gun to shoot this other person.

> Based on that I'm going to give him 45 years Illinois Department of Corrections.
>
> During that time I want him to get mental health treatment. He needs mental health treatment. He should get mental health treatment while he is in."

Defendant's motion to reconsider his sentence was denied. Defendant now appeals his sentence arguing that the sentence amounts to an unconstitutional *de facto* life sentence imposed upon person found to be guilty but mentally of first-degree murder with a firearm. For the reasons that follow, we affirm defendant's 45-year sentence for first-degree murder with a firearm.

¶ 20 ANALYSIS

¶ 21 In this appeal, defendant challenges the 45-year sentence imposed by the trial court. He does not challenge any findings made during trial, including the finding that he was guilty but mentally ill of first-degree murder with a firearm. A guilty but mentally ill finding indicates that, at the time of the offense, defendant suffered from "a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior." 720 ILCS 5/6-2(d) (West 2004).

¶ 22 Initially we note the trial court judge sentenced defendant to 45-years in prison, which was the minimum possible sentence he could impose for first-degree murder with a firearm. The sentence was broken down into 20 years for the first-degree murder conviction, (see 730 ILCS 5/5-8-1(a)(1)(a) (West 2004) (requiring a sentence of no less than 20 years and no more than 60 years)), plus an additional statutorily mandated 25 year firearm enhancement (see 730 ILCS 5/5-8-1(d)(iii) (West 2004) (mandatory 25-year enhancement sentence for the use of a firearm during

the commission of the crime)). Defendant argues that this minimum 45-year sentence for a conviction of first-degree murder with a firearm is unconstitutional under the eighth amendment of the United States Constitution and the proportionalities clause of the Illinois Constitution because it amounts to a *de facto* life sentence imposed upon someone whose mental illness was found to have contributed to the commission of a crime by way of a guilty but mentally ill finding. Defendant's argument that the 45-year sentence is a *de facto* life sentence is based upon the facts that: (1) he will not become eligible for release until 2050, when he is 87 years old, and (2) his life expectancy is 64.7 years.

¶ 23 When challenging the constitutionality of a mandatory sentencing statute, our courts have repeatedly recognized that the legislature has discretion to prescribe penalties for defined offenses. See *People v. Kasp*, 352 Ill. App. 3d 180, 185 (2004); *People v. Taylor*, 102 Ill. 2d 201, 208 (1984). The legislature's discretion necessarily includes the power to prescribe mandatory sentences, even if these mandatory sentences restrict the judiciary's discretion in imposing sentences. *Taylor*, 102 Ill. 2d at 208. A statute is presumed to be constitutional, and, thus, the party challenging it bears the burden of clearly demonstrating its invalidity. *Kasp*, 352 Ill. App. 3d at 184. We are duty-bound to construe a statute in a manner that upholds its validity and constitutionality if this can reasonably be done. See *People v. Cosby*, 305 Ill. App. 3d 211, 224 (1999) (we must affirm a statute's constitutionality and validity whenever possible). However, the power to impose sentences is not without limitation; the penalty must satisfy constitutional constrictions. *People v. Miller*, 202 Ill. 2d 328, 336 (2002).

¶ 24 Among the "constitutional constrictions" that penalties must satisfy are the provisions of the eighth amendment of the United States Constitution (U.S. Const., amend.VIII) and article I, section 11, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 11). The eighth

amendment, applicable to the states by virtue of the fourteenth amendment (see *Robinson v. California,* 370 U.S. 660, 666 (1962)), provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend.VIII. In turn, article I, section 11, of the Illinois Constitution of 1970 provides: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. We review *de novo* a challenge to the constitutionality of a statute. *People v. Luciano,* 2013 IL App (2d) 110792, ¶ 43.

¶ 25 Defendant argues that the mandatory sentence of 45-years-to-life for first-degree murder with a firearm, as applied to a person found guilty but mentally ill of that crime, like himself, violates the cruel and unusual punishment clause of the United State Constitution and the proportionalities clause of the Illinois Constitution. See U.S. Const., amends. VIII, XIV; Ill. Const. 1970, art. I, § 11. Specifically, defendant repeatedly argues that the 45-years-to-life sentencing range prohibited the trial court judge from "meaningfully" considering defendant's mental illness, bipolar disorder with psychotic features, and the fact that "there were substantial grounds to excuse or justify the defendant's criminal conduct, though failing to establish a defense." However, we find that this argument directly contradicts the record. First of all, it is clear that the trial court judge discussed and meaningfully considered these mitigating factors when imposing a sentence as the trial court ordered that defendant receive mental health treatment while in prison. Secondly, the trial court sentenced defendant to the minimum possible sentence available, despite the fact that defendant had a lengthy criminal record consisting of two convictions for possession of a controlled substance, one conviction for stalking, one conviction for intimidation, two convictions for possession of a controlled substance with intent to distribute, three convictions for domestic battery, one conviction for battery, and one conviction

for domestic violence. As such, we find defendant's argument that the trial court judge could not "meaningfully" consider mitigating factors when imposing a 45-year sentence on an adult found guilty but mentally ill of first-degree murder with a firearm to be without merit because his sentence could have been more severe.

¶ 26 Defendant argues in his reply brief that "constitutional proportionality under the Eighth amendment and Illinois constitution ought to provide sentencing judges with the discretion to impose a sentence of less than 45 years on a severely mentally ill defendant convicted of first degree murder with a firearm." We acknowledge that there is precedent against imposing life sentences without the possibility of parole and the death penalty upon juveniles (see *Graham v. Florida*, 130 S. Ct. 2011 (2010); *People v. Miller*, 202 Ill. 2d 328, 341 (2002)) and against imposing the death penalty upon persons with mental deficiencies (see *Atkins v. Virginia*, 536 U.S. 304 (2002)). However, even if we assume *arguendo* that defendant's 45-year sentence was a *de facto* life sentence, we find no such precedent against imposing a life sentence upon persons found guilty but mentally ill of first-degree murder with a firearm, and defendant fails to point out any such precedent.

¶ 27 While defendant concedes that he is not requesting that we treat him as a juvenile, thus making any juvenile cases inapplicable here, his citation to *Atkins*, a case relating to criminal offenders with diminished intellectual functioning, is misplaced. Not only have we previously upheld a natural life sentence imposed upon a defendant with a diminished mental capacity convicted of two murders on a theory of accountability (see *People v. Brown*, 2012 IL App (1st) 091940); see also *People v. Rice*, 257 Ill. App. 3d 220, 228-29 (1993) (rejecting constitutional challenge to life sentence imposed upon 16-year-old defendant with mild mental retardation)), which defeats defendant's argument in and of itself, but our courts have recognized that there are

legally significant differences between offenders with diminished mental capacities and offenders with mental illnesses, making cases like *Atkins* distinguishable from this one. Mental illnesses do not relieve offenders of responsibility for their crimes. See *People v. Crews*, 122 Ill. 2d 266, 280-81 (1988) ("mental illness, as that term is used with respect to [guilty but mentally ill] offenders, must not be equated with insanity and does not relieve an offender of responsibility for his criminal conduct."). Section 6-2(d) of the Criminal Code of 1961 provides: "For purposes of this Section, 'mental illness' or 'mentally ill' means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior." 720 ILCS 5/6-2(d) (West 2004). On the other hand, the Supreme Court has stated that with respect to persons with diminished mental capacities, they:

> "frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions,

but they do diminish their personal culpability." *Atkins,* 536 U.S. at 318.

¶ 28 Moreover, given that our supreme court has upheld the death penalty for a defendant found guilty but mentally ill of murder and attempted murder (see *Crews*, 122 Ill. 2d at 277 (guilty but mentally ill offenders are eligible to receive the full range of sentences—including the death penalty—that may be imposed on persons who are guilty of offenses and who are not mentally ill), we cannot see how a lesser sentence of 45-years in prison, even if considered a *de facto* life sentence, could be unconstitutional under the eighth amendment or the proportionalities clause. Although the *Crews* decision was authored almost 30 years ago, our courts have yet to back down from the notion that was established in that case: that guilty but mentally ill offenders may receive the same sentences as any other guilty offenders. See *People v. Gay*, 2011 IL App (4th) 100009, ¶¶ 28-29 (upholding a 97-year sentence on a mentally ill adult convicted of 16 felonies where there was no consensus against punishing mentally ill adults with life without the possibility of parole).

¶ 29 Although defendant argues that *People v. Clemons*, 2012 IL 107821, supports his argument that his 45-year sentence is unconstitutional because that case emphasizes that the proportionalities clause was crafted "with the objective of restoring the offender to useful citizenship" and defendant's sentence here leaves no hope for restoration, we find that argument to be unpersuasive. First, the defendant in *Clemons* committed the crime of armed battery, while, in this case, defendant murdered someone by shooting him point blank in the head. See *People v. Winchester*, 352 Ill. 237, 248 (1933) (The murder of another human has long been held "the highest crime known to the law."). The severity of the offense committed by this defendant distinguishes this case from *Clemons*. Furthermore, our courts have established that "the

penological ends of retribution and incapacitation are met by allowing courts to sentence mentally ill persons as severely as others." *Gay*, 2011 IL App (4th) 100009, ¶ 29. Thus, we find defendant's reliance on the principles laid out in *Clemons* to be unpersuasive here.

¶ 30 Finally, defendant argues that his mittimus must be corrected because it erroneously shows that he was found guilty but mentally ill of five first-degree murders, instead of one. The State concedes this issue. Accordingly, we order the clerk of the circuit court to correct the mittimus to reflect that defendant was found guilty but mentally ill of one count of first-degree murder with a firearm, instead of five counts.

¶ 31 CONCLUSION

¶ 32 For the reasons above, we affirm the trial court's 45-year sentence and order the mittimus be corrected to reflect that defendant was found guilty but mentally ill on one count of first-degree murder with a firearm, instead of five counts

¶ 33 Affirmed.