

No. 1-13-2783

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CR 5060
	)	
EFRAIN BECERRA,	)	
	)	Honorable
Defendant-Appellant.	)	Nicholas Ford,
	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Illinois Juvenile Court Act's exclusive jurisdiction provision, which defendant challenges as unconstitutional, does not apply to defendant and the 80-year sentence was not excessive where the trial court considered defendant's age and rehabilitative potential in making its determination.

¶ 2 Following a jury trial, defendant Efrain Becerra (defendant), who was 17 years old at the time of the offense at issue, was convicted of first degree murder. The jury also specially found defendant personally discharged a firearm which caused the death of the victim, Johnny

Vasquez. Defendant was sentenced to 50 years' incarceration for first degree murder with an additional 30 years' enhancement added on as a result of the finding that he personally discharged a firearm that proximately caused the death of the victim for a total of 80 years' incarceration. On appeal, defendant contends that the exclusive jurisdiction provision of the Illinois Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-120 (West 2008))<sup>1</sup> violates his constitutional rights and the 80-year sentence was excessive given his age and minimal criminal history. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3

### BACKGROUND

¶ 4 The parties do not dispute the relevant testimony presented at trial as defendant does not challenge the sufficiency of the evidence on appeal. On February 14, 2009, Johnny Vasquez was shot and killed near the corner of 19th and Loomis in Chicago. That evening, defendant (aka "Pipo"), a member of the Latin Counts street gang, traveled with fellow gang members, Taylor Hock (aka "Moco"), Samuel Ruacho (aka "Skills"), and Jose Ruacho (aka "Lil' Evil"), from Rockford, Illinois to Schaumburg, Illinois in defendant's 1994 blue Mercury Grand Marquis. While in Schaumburg, defendant attended a party where he met Anthony Mendoza (aka "Guero"), a fellow Latin Counts gang member. Defendant, Moco, Skills, Lil' Evil, and Guero, along with three other individuals, then decided to travel to Chicago in a three-vehicle caravan: defendant's Grand Marquis; Guero's Pontiac Aztec; and a Dodge Neon. Upon arriving in Chicago, the group attended a party on 18th Street. Shortly thereafter, defendant, Moco, Skills, Lil' Evil, and Guero decided to drive into a rival gang's territory apart from the caravan. Moco drove defendant's vehicle, while defendant was in the passenger seat and Skills, Lil' Evil, and Guero were in the back seat.

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<sup>1</sup>Defendant's brief refers to the "2009 version" of the statute; however the version cited herein was the version that was in effect at the time of the offense.

¶ 5 As they approached the corner of 19th and Loomis, the victim was walking on the sidewalk while flashing La Raza gang signs. Defendant reached into the back seat, pulled out a 9mm semiautomatic rifle, rolled down his window, and began shooting at the victim. The victim was struck in the leg and began limping down the street. Defendant exited the vehicle and pursued the victim, shooting the rifle multiple times and ultimately striking the victim in the arm and back. The victim fell to the ground. Defendant ran back to his vehicle, got into the front passenger seat, and informed the others that he had just "dropped" the victim, meaning he had killed him. The occupants of the vehicle then laughed and engaged in a "gang shake-up" in which they all shook hands.

¶ 6 Guero then instructed Moco to drive to a gas station at the corner of Ashland Avenue and Roosevelt Road. The other two vehicles from the caravan then arrived at the gas station where Guero exited the Grand Marquis, opened defendant's door and obtained the rifle, placing it under his jacket. Guero then entered his Pontiac Aztec. The caravan headed towards the Eisenhower expressway. Two patrolling police officers, who had heard a description of defendant's vehicle over the police radio, identified the Grand Marquis and pulled it over before it reached the Eisenhower expressway. Guero's vehicle and the Dodge Neon, however, were not stopped by police.

¶ 7 The four individuals in the Grand Marquis exited the vehicle and were searched. A pair of black gloves was discovered in defendant's pocket. No weapons were recovered from the vehicle; however, one 9mm cartridge casing was discovered in the back seat. An eye-witness was brought by police to the location the Grand Marquis was stopped. The eye-witness identified defendant as the shooter approximately 15 to 20 minutes after the shooting had occurred. The black gloves subsequently tested positive for gunshot residue. Both defendant's

and Guero's DNA were found on the gloves. The rifle was never recovered.

¶ 8 Following closing argument and jury instructions, the jury deliberated and found defendant guilty of first degree murder. The jury also found defendant personally discharged the firearm proximately causing the victim's death.

¶ 9 On July 18, 2013, defendant filed a posttrial motion for a new trial. That same day the trial court denied the posttrial motion and proceeded to a sentencing hearing. In aggravation, the State presented an investigator from the Cook County Jail, Cody Batir, who testified that while awaiting trial defendant was twice found in possession of homemade weapons or "shanks," engaged in a large gang fight, and had graffiti inside his cell. Several articles of gang paraphernalia were also discovered in defendant's cell including a "gang kite" which is "a handwritten letter from one inmate to the next" with a "list of each member of the Latin [C]ounts throughout the compound," a gang stencil that had recently been tattooed on defendant's neck, and a gang oath used in gang initiation. In mitigation, defendant's mother and sister testified that defendant was a loving, caring son and brother and that defendant was diagnosed with a learning disability. Three letters in mitigation were also presented to the court. Defense counsel then argued for the minimum sentence of 45 years' imprisonment based, in part, on the fact defendant was 17 years old at the time of the offense. When asked whether he wanted to say anything in allocution, defendant replied, "No, sir."

¶ 10 Following argument from counsel for both sides, the trial judge initially stated he considered all of the factors in aggravation and mitigation of the offense, the financial impact of incarceration, the arguments of counsel, and the victim impact statements, as well as defendant's "short" allocution. The trial judge observed defendant was raised in a loving home, faced academic challenges, and "was involved in some positive things." The trial court, however,

remarked that defendant's gang activity had not abated during his time in Cook County Jail. The trial court found defendant's continued gang affiliation to be a "major factor" in his sentencing determination, noting that he does not see "this degree of emersion [in gang activity] very often." Moreover, defendant had been previously convicted as a juvenile of aggravated battery with a firearm. The trial judge sentenced defendant to 50 years in prison, with a 30-year enhancement for personally discharging the firearm proximately causing death to another person, for a total of 80 years' imprisonment.

¶ 11 On August 13, 2013, defendant filed a motion to reconsider his sentence in which he asserted that at the time of the shooting he was 17 years old and under the influence of either drugs or alcohol. On August 30, 2013, the trial judge denied the motion to reconsider the sentence. Defendant had previously filed his notice of appeal on August 20, 2013.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant raises two main contentions: (1) that the Act's exclusive jurisdiction provision is unconstitutional; and (2) that his 80-year sentence was excessive. We discuss each argument in turn.

¶ 14 1. Illinois Juvenile Court Act

¶ 15 Defendant contends that the exclusive jurisdiction statute (705 ILCS 405/5-120 (West 2008)) is unconstitutional because it automatically treats all 17-year-olds charged with felonies as adults during prosecution and sentencing, without any consideration of their age and culpability. Specifically, defendant asserts the exclusive jurisdiction statute violates the prohibition on cruel and unusual punishment in the United States and Illinois constitutions (U.S. Const. amend. VIII; Ill. Const. 1970 art. I, § 11), as well as his federal and state substantive and procedural due process rights (U.S. Const. amend V, XIV; Ill. Const. 1970 art. I § 2).

¶ 16 In addressing a challenge to the constitutionality of a statute, we presume that the statute is constitutional. *People v. Greco*, 204 Ill. 2d 400, 406 (2003). If reasonably possible, a court must construe the statute so as to uphold its constitutionality and validity. *Id.* The party challenging the statute's constitutionality has the burden of demonstrating its invalidity. *Id.* Whether a statute is constitutional is reviewed *de novo*. *Id.* at 407.

¶ 17 Initially, we acknowledge that section 5-120, the statute defendant argues is unconstitutional, did not apply to him at the time of the offense because defendant was over 17 years of age. See *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 50 (noting that the Illinois' juvenile court jurisdiction applied only to minors under 17 years old (705 ILCS 405/5-120 (West 2006))). The exclusive jurisdiction provision in effect at the time of defendant's offense states, in relevant part:

"Proceedings may be instituted under the provisions of this Article concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance. Except as provided in Sections 5-125, 5-130, 5-805, and 5-810 of this Article, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." 705 ILCS 405/5-120 (West 2008).<sup>2</sup>

Section 5-130 of the Act further provides in relevant part:

"The definition of delinquent minor under section 5-120 of this Article shall not apply to any minor who at the time an offense was at least 15 years of age and who is charged with: (i) first degree murder \*\*\* [...] These charges and all other charges arising out of the

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<sup>2</sup> Section 5-120 was amended, effective January 1, 2010, to also include in the juvenile court system minors under 18 who were not charged with a felony. 705 ILCS 405/5-120 (West 2010); *Harmon*, 2013 IL App (2d) 120439, ¶ 50 n. 1.

same incident shall be prosecuted under the criminal laws of this State." 705 ILCS 405/5-130(1)(a) (West 2008).

Thus, section 5-120 alone did not place defendant's adjudication within the criminal system. Instead, it was the automatic transfer provision of section 5-130 of the Act, which removed 17-year-olds charged with first degree murder, like defendant, from adjudication under the juvenile system and placed their causes within the criminal system. 705 ILCS 405/5-120, 130 (West 2008). The provision defendant challenges on appeal did not apply to him, accordingly defendant's argument fails.<sup>3</sup>

¶ 18

## 2. Excessive Sentence

¶ 19 Defendant next contends that the trial court abused its discretion in sentencing him as a juvenile to a total of 80 years' imprisonment and not considering his potential for rehabilitation. The State responds that the trial court entered a sentence within the statutory range after considering the appropriate sentencing factors, and did not abuse its discretion in sentencing defendant to an 80-year term.

¶ 20 The trial court has broad discretionary powers to fashion an appropriate sentence within the statutory limits prescribed by the legislature. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The trial court must base its sentencing determination on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character,

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<sup>3</sup> We note that recently our supreme court held that the automatic transfer statute (705 ILCS 405/5-130 (West 2008)), does not violate due process or the eighth amendment. *People v. Patterson*, 2014 IL 115102, ¶¶ 89-111. In addition, Illinois courts have followed the same *Patterson* analysis in rejecting claims that the exclusive jurisdiction statute violates the eighth amendment and due process. *People v. Harmon*, 2013 IL App (2d) 120439, ¶¶ 50-62 (leave to appeal denied Jan. 28, 2015). This is so because the exclusive jurisdiction and automatic transfer statutes are not punitive sentencing statutes but are forum statutes, providing only procedural mechanisms for determining where a defendant's case is to be tried. *Id.*; see *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 24; *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 55; *People v. Salas*, 2011 IL App (1st) 091880, ¶¶ 66, 76, 79.

mentality, social environment, habits, and age. *Id.* A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A sentence will be deemed an abuse of discretion where the sentence is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). "A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record." *Fern*, 189 Ill. 2d at 53; see *Alexander*, 239 Ill. 2d at 212-13.

¶ 21 In considering the propriety of a sentence, "the reviewing court must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *Fern*, 189 Ill. 2d at 53; see *Alexander*, 239 Ill. 2d at 213. "[I]t is not our duty to reweigh the factors involved in [the trial court's] sentencing decision." *Alexander*, 239 Ill. 2d at 214. Moreover, " '[a] defendant's rehabilitative potential \*\*\* is not entitled to greater weight than the seriousness of the offense.' " *Id.* (quoting *People v. Coleman*, 166 Ill. 2d 247, 261 (1995)); see *People v. Hopkins*, 363 Ill. App. 3d 971, 988 (2005). It is presumed the trial court properly considered all mitigating factors and rehabilitative potential presented, and the burden is on the defendant to affirmatively prove otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors such as the lack of a prior record, and the absence of aggravating factors does not require the minimum sentence be imposed. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 22 Relying on *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48

(2010), and *Miller v. Alabama*, 567 U.S. \_\_\_\_, 132 S. Ct. 2455 (2012), defendant asserts the trial court must also consider the diminished culpability of a juvenile offender and that his youth at the time of the offense is a significant factor weighing against imposition of a long sentence. These cases, however, do not support defendant's contention as they are inapposite to the case at bar. *Roper* held the death penalty unconstitutional as applied to juveniles. *Roper*, 543 U.S. at 578. This case does not involve capital punishment. *Graham* involved the constitutionality of imposing on juveniles a sentence of life without parole for nonhomicide offenses. *Graham*, 560 U.S. at 74. This case involves a homicide. *Miller* held the eighth amendment forbids a sentencing scheme which mandates life in prison without the possibility of parole for juvenile offenders, even in homicide cases. *Miller*, 567 U.S. at \_\_\_\_, 132 S. Ct. at 2469. This case does not involve a mandatory life sentence.

¶ 23 Defendant has failed to prove the trial court abused its discretion in determining a sentence in this matter. First, defendant's sentence of 50 years' imprisonment for first degree murder and 30 years' imprisonment falls well within the statutory range of 20 and 60 years for first degree murder (730 ILCS 5/5-4.5-20(a) (West 2012)) and the minimum of 25 years' for the enhancement (730 ILCS 5/5-8-1(1)(d)(iii) (West 2012)). These sentences were imposed consecutively by the trial court as mandated by statute. 730 ILCS 5/5-8-4(d) (West 2012). Therefore, the sentences are presumptively not excessive. See *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 57 (the defendant's sentence was well within the statutory sentencing range for first degree murder).

¶ 24 Second, the trial court expressly stated that it considered the argument of defense counsel wherein counsel emphasized that defendant was 17 years old at the time of his arrest and that "17 year old[s] are about at the height of their stupidity." Defense counsel further argued:

"I don't know anyone that's looked really deeply at their teen years and said they didn't do stupid things. This takes this to a whole new level granted. But the idea that a 17 year old can do something so silly, so stupid, so violent, I think is sort of what we would expect when you are considering the types of lives that they are leading."

Defense counsel then requested defendant receive the minimum total sentence of 45 years and further acknowledged that, "By all accounts no matter what the court chooses and the range it's going to be is basically the rest of his life." Moreover, the trial court noted it considered the presentence investigation report as well as the evidence presented at trial, both of which included defendant's age at the time of the crime. We note that although the trial court did not specifically mention each of the mitigating factors upon which defendant now relies, the trial court is not required to recite and assign a value to each mitigating factor (*People v. Meeks*, 81 Ill. 2d 524, 534 (1980)), and is presumed to have considered all relevant factors absent a contrary showing in the record (*People v. Franks*, 292 Ill. App. 3d 776, 779 (1997)). The record here establishes that the trial court considered the evidence in aggravation and mitigation, including defendant's age, and determined that defendant's gang-motivated killing of the 16-year-old victim warranted a sentence above the minimum. See *People v. Costello*, 224 Ill. App. 3d 500, 510 (1992) (the seriousness of the crime is the most important sentencing factor).

¶ 25 In addition, the record demonstrates that the trial court considered defendant's potential for rehabilitation when it indicated that it considered all of the statutory factors in aggravation and mitigation, the testimony of his mother and sister during sentencing, and the three letters from individuals who are familiar with him. It is not our prerogative to reweigh these same factors and independently conclude that the sentence was excessive. *Alexander*, 239 Ill. 2d at 214. A defendant's potential for rehabilitation is but one factor that must be weighed against

other countervailing factors (*People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)) and, in this case, we find no abuse of discretion in the sentence imposed given defendant's criminal history, the nature of the offense, and his conduct in jail while awaiting sentencing to permit this court to disturb the decision rendered. See *People v. Almo*, 108 Ill. 2d 54, 69-70 (1985) (holding the trial court did not abuse its discretion in sentencing the defendant after considering the facts and circumstances of the case and the defendant's prior history). Accordingly, the sentence imposed by the trial court is affirmed.

¶ 26

#### CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 28 Affirmed.