

2015 IL App (2d) 120913-U  
No. 2-12-0913  
Order filed April 21, 2015

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 02-CF-2047
	)	
JOSHUA MINNITI,	)	Honorable
	)	Patricia Piper Golden,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Burke and Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The excluded jurisdiction statute does not violate the eighth amendment, the proportionate penalties clause, or due process. The defendant is not entitled to a new sentencing hearing under *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012).
- ¶ 2 Following a bench trial, the defendant, Joshua A. Minniti, was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)), home invasion (720 ILCS 5/12-11(a)(2) (West 2000)), and two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2000)). The defendant appeals from the third-stage denial of his petition for postconviction

relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). Specifically, the defendant argues that, either alone or in combination with the application of mandatory consecutive sentencing and truth-in-sentencing laws, the excluded jurisdiction statute (705 ILCS 405/5-130 (West 2002)), which requires that juveniles be tried and sentenced as adults, is unconstitutional. The defendant also argues that, under the holding in *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012), the Illinois statutory sentencing scheme is unconstitutional as applied to him. For the reasons that follow, we affirm.

¶ 3

### BACKGROUND

¶ 4 On October 8, 2002, the defendant was indicted on four counts of first degree murder, home invasion, and two counts of aggravated criminal sexual assault, based on crimes committed against the victim, Irma Braun, at her residence on October 20 and 21, 2001. The defendant was 15 years old at the time of the offenses and 16 years old at the time of the indictment.

¶ 5 On February 6, 2004, following a bench trial, the trial court found the defendant guilty of one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)), home invasion (720 ILCS 5/12-11(a)(2) (West 2000)), and both counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2000)). On November 30, 2004, at sentencing, the trial court found the defendant eligible for a natural life sentence for the first degree murder based on the brutal and heinous nature of the crime. See 730 ILCS 5/5-8-1(a)(1)(b) (West 2002). The trial court also found that the defendant inflicted severe bodily injury on the victim. In weighing the defendant's lack of a prior record and the brutality of the crime, the trial court ultimately sentenced the defendant to 61 years' imprisonment for murder and three consecutive six-year terms of imprisonment for his convictions of home invasion and two counts of aggravated criminal sexual assault. See 730 ILCS 5/5-8-1(a)(3) (West 2002) (providing range of 6 to 30

years for Class X felonies); see also 730 ILCS 5/5-8-4(a)(i) (West 2002) (requiring consecutive sentences if one of the offenses for which defendant was convicted was first degree murder or a Class X felony and the defendant inflicted severe bodily injury). In total, the defendant was sentenced to 79 years' imprisonment.

¶ 6 On April 30, 2007, on direct appeal, this court affirmed the defendant's conviction and sentence. *People v. Minniti*, 373 Ill. App. 3d 55, 74 (2007). On September 5, 2008, the defendant filed a *pro se* post-conviction petition pursuant to the Act. Counsel was subsequently appointed to represent the defendant. On May 11, 2011, the defendant filed an amended post-conviction petition. In the amended petition, the defendant made several allegations concerning the ineffective assistance of trial counsel and appellate counsel. The trial court denied the State's motion to dismiss and the case proceeded to a third-stage evidentiary hearing. On August 14, 2012, following the evidentiary hearing, the trial court denied the defendant's petition. The defendant filed a timely notice of appeal.

¶ 7 ANALYSIS

¶ 8 On appeal, the defendant argues that the excluded jurisdiction statute (705 ILCS 405/5-130 (West 2002)), which requires that 15- and 16-year olds charged with certain crimes be prosecuted and sentenced as adults, is unconstitutional. More specifically, he contends that the excluded jurisdiction statute, either alone or in conjunction with the application of mandatory consecutive sentencing (730 ILCS 5/5-8-4(a) (West 2002)) and truth-in-sentencing laws (730 ILCS 5/3-6-3 (West 2002) (requiring the defendant to serve 100% of his sentence for first degree murder and 85% of his sentences for home invasion and aggravated criminal sexual assault)), is unconstitutional because it violates 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), as well as the due process clauses of both the United States Constitution (U.S. Const., amends. V, XIV) and the Illinois Constitution (Ill. Const. 1970, art. I, § 2). The defendant further argues that his 79-year term of imprisonment is a *de facto* mandatory natural life term of imprisonment that is unconstitutional pursuant to *Miller*.

¶ 9 At the outset, we note that the State argues that the defendant has forfeited his claims on appeal because they were not raised in his post-conviction petition.<sup>1</sup> However, it is well settled that a defendant may challenge the constitutionality of a statute at any time. *In re M.I.*, 2013 IL113776, ¶ 39; *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 45. In arguing that the present claims are forfeited, the State relies on *People v. Jones*, 213 Ill. 2d 498, 504 (2004). In *Jones*, our supreme court held that a claim not raised in a post-conviction petition cannot be argued for the first time on appeal. *Id.* at 505. However, the new claims raised in *Jones* did not challenge the constitutionality of a statute. Accordingly, we find the State's reliance on *Jones* misplaced and we will address the defendant's arguments.

¶ 10 We review *de novo* a challenge to the constitutionality of a statute. *People v. Luciano*, 2013 IL App (2d) 110792, ¶ 43. Further, we presume statutes are constitutional. *People v. Vasquez*, 2012 IL App (2d) 101132, ¶ 53. Thus, a defendant challenging the constitutionality of

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<sup>1</sup> After briefing in this case was completed, the defendant filed a *pro se* objection asserting that appellate counsel's failure to raise any of the issues included in his amended postconviction petition would result in procedural default of those issues for purposes of federal *habeas corpus* or other review. The defendant asks us to take notice of his objection so that he may preserve those issues. While we express no opinion on whether, as the defendant presumes, his objection will indeed preserve any such issues, we do take notice of his objection.

a statute must establish its constitutional invalidity. *Id.* The eighth amendment protects both children and adults from cruel and unusual punishment. U.S. Const., amend. VIII; *Miller*, 567 U.S. at \_\_\_\_; 132 S. Ct. at 2463. The proportionate penalties clause of the Illinois Constitution provides that “[a]ll 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. The proportionate penalties clause is coextensive with the cruel and unusual punishment clause of the eighth amendment. *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 54.

¶ 11 The defendant’s arguments are based on three United States Supreme Court decisions. In *Roper v. Simmons*, 543 U.S. 551, 568 (2005), the Supreme Court held that the eighth amendment barred capital punishment for juvenile offenders. In *Graham v. Florida*, 560 U.S. 48, 82 (2010), the Supreme Court held that a sentence of life without the possibility of parole violated the eighth amendment when imposed on juvenile offenders for crimes other than homicide. In *Miller*, the Supreme Court held that the eighth amendment prohibited “a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders,” even those convicted of homicide offenses. *Miller*, 567 U.S. at \_\_\_\_; 132 S. Ct. at 2469. *Miller* did not preclude a sentence of life without parole for homicide offenders; it required only that the trial court first consider the special characteristics of young offenders, such as immaturity, impetuosity, and the failure to appreciate risks and consequences, before imposing such a sentence on a juvenile defendant. *Id.* at 2468-69. The defendant contends that these cases support the proposition that the excluded jurisdiction statute, which automatically imposes adult sentencing provisions on minors, is unconstitutional.

¶ 12 However, subsequent to the filing of the defendant’s briefs in this case, our supreme court issued its decision in *People v. Patterson*, 2014 IL 115102, which specifically rejected the same

arguments raised by the defendant here. In *Patterson*, our supreme court held that the excluded jurisdiction statute (705 ILCS 405/5-130 (West 2002)), even when applied with mandatory consecutive sentencing and truth-in-sentencing laws, did not violate the eighth amendment or the proportionate penalties clause. *Id.* ¶ 106. The court reasoned that the purpose of the excluded jurisdiction statute was not to punish a defendant; its purpose was to establish the relevant forum for the prosecution of a juvenile charged with one of five serious crimes. *Id.* ¶ 105. The trial court rejected the assertion that the resultant application of mandatory consecutive sentencing and truth-in-sentencing laws rendered the excluded jurisdiction statute a sentencing statute. *Id.* ¶ 104. The court held that, because the excluded jurisdiction statute failed to impose actual punishment, the defendant's eighth amendment challenge necessarily failed. *Id.* ¶ 106. The court also rejected the defendant's challenge based on the proportionate penalties clause because that clause was co-extensive with the eighth amendment's cruel and unusual punishment clause. *Id.*

¶ 13 The defendant here also argues that the excluded jurisdiction statute violates the due process clauses of the United States and Illinois Constitutions. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. This argument was also rejected in *Patterson*. In *Patterson*, the court noted that it had found that the excluded jurisdiction statute did not violate due process in *J.S.*, 103 Ill. 2d at 405, and, later, in *People v. M.A.*, 124 Ill. 2d 135, 147 (1988). *Patterson*, 2014 IL 115102, ¶¶ 93-95. The court rejected the *Patterson* defendant's reliance on the eighth amendment analyses in *Roper*, *Graham*, and *Miller*, to support his due process claims, noting that "a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id.* ¶ 97. The *Patterson* court held that *Roper*, *Graham*, and

*Miller* did not provide a basis to reconsider its holding in *J.S. Id.* ¶ 98. Thus, the defendant's due process claim fails under *Patterson* as well.

¶ 14 Finally, the defendant argues that his 79-year aggregate total prison sentence is a *de facto* mandatory natural life term of imprisonment and that, under *Miller*, his case should be remanded for resentencing. As a preliminary matter, we note that the defendant's conviction, sentence, and direct appeal all occurred prior to the Supreme Court's determination in *Miller*. The State argues that *Miller* should not be applied retroactively to cases on collateral review. However, subsequent to the filing of the State's appellee brief, our supreme court, in *People v. Davis*, 2014 IL 115595, ¶ 39, rejected this argument and held that because *Miller* declared a new substantive rule, it applied retroactively to cases on collateral review.

¶ 15 Turning to the merits, we note that in *Patterson*, the defendant argued that the combination of the excluded jurisdiction statute and the applicable sentencing statutes were unconstitutional as applied to him because, as a non-homicide offender, he was less deserving of more serious forms of punishment. *Patterson*, 2014 IL 115102, ¶ 107. In rejecting this argument, our supreme court noted that both it and the United States Supreme Court have limited the application of the rationale expressed in *Roper*, *Graham*, and *Miller* to only those cases involving "the most severe of all criminal penalties," namely, the death penalty or a sentence of life without parole. *Id.* ¶¶ 108, 110. The court found that "[a] prison term totaling 36 years for a juvenile who personally committed three counts of aggravated criminal sexual assault does not fall into that category." *Id.* ¶ 110. The *Patterson* court thus declined to extend the Supreme Court's eighth amendment rationale to the facts of that case. *Id.* Recently, in *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 99, this court held that *Miller* did not extend to the defendant's 75-

year sentence, which was based on the aggregation of sentences for first-degree murder and attempted first-degree murder.

¶ 16 In the present case, the defendant was sentenced to an aggregate term of 79 years' imprisonment. As in *Patterson* and *Cavazos*, we decline to extend the eighth amendment rationale in *Miller* to the facts of this case. The defendant did not receive the most severe of all possible penalties, such as the death penalty or life without the possibility of parole. Unlike the *Miller* defendants, both of whom were sentenced to life without parole based on single murder convictions, the present defendant received consecutive term-of-year sentences based on multiple convictions. Here, the defendant was convicted of first degree murder, home invasion, and two counts of aggravated criminal sexual assault. While he was subject to natural life imprisonment for first degree murder, the trial court sentenced him to 61 years' imprisonment. Further, he received the minimum sentences for home invasion and aggravated criminal sexual assault. Because the defendant did not receive the "harshest possible penalt[ies]," his sentence does not violate *Miller*. *Miller*, 567 U.S. at \_\_\_\_; 132 S. Ct. at 2475.

¶ 17 We acknowledge that there is a split of authority on this issue. Compare *Bear Cloud v. State*, 2014 WY 113, ¶ 33, 334 P. 3d 132 (Wyo. 2014) (extending *Miller* rationale to aggregate sentences that resulted in the functional equivalent of life without parole), and *State v. Null*, 836 N.W. 2d 41, 70-71 (Iowa 2013) (same), with *State v. Brown*, 2012-0872, pp. 14-15 (La. 5/7/13), 118 So. 3d 332 (holding that *Graham* did not preclude aggregate fixed term sentences, based on multiple convictions, that exceeded the juvenile defendant's life expectancy), *Bunch v. Smith*, 685 F.3d 546, 552 (6th Cir. 2012) (holding *Graham* did not apply to an 89-year sentence resulting from consecutive fixed-term sentences for multiple nonhomicide offenses), and *State v. Kasic*, 265 P.3d 410, 414-15 (Ariz. Ct. App. 2011) (holding that *Graham* was limited to

sentences of “life without parole”). Nonetheless, we conclude that an expansion of the holding in *Miller* to the facts of this case would result in confusion and uncertainty. See *Bunch*, 685 F.3d at 552 (questioning what number of years might or might not constitute a *de facto* life sentence, whether race, gender, or socioeconomic status would have to be considered, and whether the number of crimes would matter).

¶ 18 Moreover, to the extent that *Miller* requires a trial court to consider the defendant’s age and attendant circumstances of youth before sentencing a juvenile, that requirement was satisfied here. Before sentencing the defendant, the trial court stated that it would consider many relevant factors including: the defendant’s age, mentality, social environment, and the possibility of rehabilitation. In sentencing the defendant, the trial court considered in mitigation that the defendant had little criminal history and a troubled childhood. In aggravation, the trial court considered the exceptionally brutal and heinous circumstances of the murder. The defendant was eligible for a sentence of 20 years to natural life for the first degree murder conviction. After weighing the relevant factors, the trial court exercised its discretion in sentencing the defendant to 61 years’ imprisonment for murder, rather than natural life, and to the minimum terms of imprisonment for home invasion and aggravated criminal sexual assault. The trial court acknowledged that, because of the consecutive sentences, the defendant may never be released from prison. However, it further stated that “for the protection of the public, I don’t have a real issue with that.” Thus, in accord with *Miller*, the record demonstrates that the trial court considered the defendant’s age and capacity for change before imposing sentence.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 21 Affirmed.