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2015 IL App (3d) 120757-U

Order filed January 7, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-12-0757
v.)	Circuit No. 12-CF-367
)	
DEONTE L. MOORE,)	Honorable Chris Frederickson
)	and Stephen Kouri,
Defendant-Appellant.)	Judges, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held:* The juvenile court judge erred in finding the delinquent minor could not be rehabilitated through programs in the juvenile justice system and transferring the minor's case to criminal court where minor would be tried as an adult.

¶ 2 The State filed a juvenile petition alleging Deonte Moore (the minor),¹ age 13, was delinquent based on an armed robbery taking place on April 14, 2009. In his first appeal, the

¹ Since this case involves both juvenile court and criminal court issues, and due to his age, we refer to Deonte Moore as "the minor" throughout this order.

minor challenged both the transfer of the case to adult court, as well as the mandatory, minimum, 21-year sentence. This court reversed and remanded the matter for another transfer hearing before the juvenile court judge.

¶ 3 After remand, the juvenile court judge again transferred the charges to adult criminal court. Once in criminal court, the minor was convicted and sentenced by another judge to the mandatory, minimum, 21-year sentence.

¶ 4 In this appeal, the minor claims the juvenile court abused its discretion by allowing the discretionary transfer of his case to adult court, and also challenges the constitutionality of the mandatory, minimum, 21-year sentence he received as a juvenile transferred to adult court. We reverse and remand.

¶ 5 **BACKGROUND**

¶ 6 Initially, on April 14, 2009, 13-year-old Deonte Moore, was charged by juvenile petition with armed robbery of a bank in Peoria, in the juvenile delinquency case No. 09-JD-163. The trial court granted the State's motion to transfer the cause from juvenile court to adult criminal court pursuant to section 805(3)(b) of the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/5-805(3)(b) (West 2008). Following a bench trial for armed robbery, the court found the minor guilty and sentenced the minor to serve the mandatory minimum term of 6 years imprisonment for armed robbery plus a mandatory 15-year enhancement for possessing a firearm during the commission of the crime for a total 21-year sentence for the minor, who was 13 years of age when he committed the offense.

¶ 7 **I. First Appeal**

¶ 8 In the first appeal, this court held the juvenile court abused its discretion by transferring the case to adult court because it did not adequately address all of the required statutory, as well

as non-statutory, factors under the juvenile transfer statute (705 ILCS 405/5-805(3)(b) (West 2008)). *People v. Moore*, 2011 IL App (3d) 090993, ¶ 29. In that decision, this court held that “[t]he State failed to present any testimony as to the types of facilities available for [the minor’s] treatment or rehabilitation in *juvenile detention* as compared to the adult division of the Department of Corrections.” (Emphasis added.) *Id.* at ¶ 22. This court expressed concern that the trial judge only “relied on [the minor’s] noncompliance while on probation but failed to consider [the minor’s] potential for rehabilitation by participating in mandatory services in juvenile detention.” *Id.* at ¶22. In the first appeal, this court concluded that the trial court also was unaware of, and therefore failed to consider, the length of the potential adult sentence, including the mandatory, minimum, 21-year sentence, when determining whether transfer should be allowed. *Id.* at ¶ 27.²

¶ 9

II. Transfer Hearing Following Remand

¶ 10

On November 22, 2011, after remand, the State filed an amended juvenile delinquency petition for armed robbery and an amended motion to transfer the case to adult court. On March 2, 2012, the court conducted the hearing on the State’s amended motion to transfer (second transfer hearing). Initially, at the State’s request, the court took judicial notice of the minor’s prior delinquency file, case No. 07-JD-495, the minor’s only other adjudication, as a delinquent minor for a domestic battery charge, a Class A misdemeanor. The parties also stipulated to the admission of the prior testimony of Officer Christopher Hauk, who testified at the first transfer hearing but had since retired from the Peoria police department. Additionally,

² This court also previously held that the State failed to establish that the minor possessed a deadly weapon by showing either the gun was loaded and operable, or by demonstrating that it was used or capable of being used in a dangerous manner, such as a bludgeon or club, and indicated the State might consider amending the juvenile petition on remand. *People v. Moore*, 2011 IL App (3d) 090993, ¶ 23.

the parties stipulated to the court's admission of State's Exhibit No. 7, various recordings from the bank's video cameras on the date in question.

¶ 11 The State presented testimony from several police officers who investigated the armed robbery incident, including: Officers Douglas Hopwood, Javier Grow, Paul Tuttle, and Tim Turner, and Detective Marvin Kenser. Their testimony included details of the incident robbery on April 13, 2009; evidence gathered on that date; and the minor's statements to the police officers at the time of his arrest.³

¶ 12 Chief Probation Officer Mark Bronke testified that he prepared a two-page list of the services available for a delinquent who is court-ordered to complete a term of juvenile probation, rather than a commitment to the juvenile Department of Corrections (juvenile DOC).⁴ Regarding residential placement programs available for juveniles serving a term of juvenile probation, Bronke said his list included Arrowhead Ranch and Indian Oaks. However, according to Bronke, the Peoria County probation department had previously used other programs including: Kemmer Village, located south of Decatur; Children's Home, a youth farm campus in Peoria; New Salem Children's Home; and Intervention, near Chicago. The exhibit Bronke prepared for the court included Gateway Foundation and Chestnut Health Systems as agencies that, like White Oaks, provide substance abuse assessments and programs for minors on probation. Bronke testified that some of those programs have waiting lists, but not all of them. At the time of his testimony, Bronke had not determined, and could not advise the court, whether the minor would qualify for any of these programs to be completed as a condition of juvenile probation.

³ We refer to the facts from our earlier opinion regarding the police officers' testimony about the armed robbery investigation.

⁴ This document is marked as People's Exhibit No. 8.

¶ 13 Further, Probation Officer Ricky Spencer testified he was the minor's probation officer during his earlier probation, which began on April 25, 2008, in Peoria case No. 07-JD-495. Spencer had been a juvenile probation officer for almost 27 years. Spencer stated the minor did not complete any of his court-ordered programs, including anger management classes, grief counseling, or his drug/alcohol assessment, before the date of the armed robbery on April 13, 2009. Although the minor had some school attendance and behavior problems in 2008, Spencer said the violations preceding the armed robbery were of such a nature that Spencer was not required to file a violation of the minor's probation.

¶ 14 Spencer testified that the minor's mother was very involved in the minor's probation, and advised Spencer when the minor ran away from home and failed to cooperate with his mother's rules on multiple occasions. Spencer testified that the minor's mother "was asking for help" and requested the probation department deal with these incidents swiftly by asking Spencer to obtain an arrest warrant for her son. However, after conferring with the chief probation officer, Spencer determined the minor's violations were not significant enough, at that time, to obtain an arrest warrant for the minor at any point in time until just before the armed robbery occurred.

¶ 15 Spencer said, due to the minor's behavior while on probation in case No. 07-JD-495, he scheduled a staffing for March 19, 2009, to decide how to proceed in the minor's case. This staffing included Spencer, the minor, the minor's mother and grandmother, and the chief probation officer at the time. On the day of that staffing, the minor appeared and submitted to a drug urine test, as requested, which tested positive for marijuana. Based on the test result, Spencer formally filed a violation report requesting an arrest warrant on March 19, 2009, weeks before the armed robbery on April 13, 2009.

¶ 16 The minor's mother, Juanita Moore (mother) testified that she felt the minor desperately needed the services offered by the conditions of probation. According to mother, she told Spencer about the minor's 2008 suspension and later expulsion from school, hoping Spencer would secure an arrest warrant which might force her son to take the probation terms more seriously, but learned from Spencer that the probation department would not take action based on her son's expulsion from school and failure to follow mother's rules. As a result, mother felt helpless and did not know what else she could do to help her son.

¶ 17 III. Court's Ruling After the Second Transfer Hearing

¶ 18 At the close of the second transfer hearing, on April 2, 2012, the juvenile court judge discussed the discretionary transfer provisions of the Act (705 ILCS 405/5-805(3)(b) (West 2008)), requiring the judge to, first, find probable cause existed that the minor committed the armed robbery and, second, that it was not in the public's best interest to proceed under the Act. The judge said the statute instructs the court to "give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency than the other factors set forth in that statute."

¶ 19 The court specifically addressed the statutory factors outlined in section 805(3)(b) of the Act. 705 ILCS 405/5-805(3)(b) (West 2008). Regarding section 805(3)(b)(iv) of the Act, the juvenile court concluded that the minor would not cooperate with treatment or voluntarily participate in any available services within the juvenile justice system based on his prior lack of cooperation while on juvenile probation. 705 ILCS 405/5-805(3)(b)(iv) (West 2008). The court found the minor's probation history illustrated the minor "would not comply even if this Court placed him in the Department of Juvenile Justice [juvenile DOC] until he was 21 years of age."

¶ 20 The juvenile court judge continued by stating:

“This Court is well aware of residential placement facilities which may be available to this minor as this Court is required to approve expenditures for minors who are placed in those facilities. The cost of those facilities is solely borne by the Court or by the County of Peoria.”

***[T]o this Court’s knowledge, it’s unclear whether or not [the minor] would qualify for the placement in a residential facility based on the nature of this offense. This Court is aware that there are to this Court’s knowledge no similar residential placement facilities in the adult system. These placement facilities appear to be peculiar or unique with the regard to the juvenile system.

However, as I indicated, it’s up to the residential placement facility whether or not they will accept a minor into that facility, and of course, it’s also an issue as to whether the County would have sufficient funds to pay for such placement.

The court would also have authority to place the minor in the County Juvenile Detention Center. However, by statute, a court can only sentence a minor not to exceed 30 days in a detention facility, and frankly, he would not receive much, if any, services while placed in that detention facility.”

Therefore, the court found there was not a reasonable likelihood that the minor could be rehabilitated before the expiration of the jurisdiction of the juvenile court.

¶ 21 Regarding section 805(3)(b)(v) of the Act, addressing whether the security of the public required sentencing under the adult sentencing provisions, the court again found the minor’s

probation history, pursuant to his 2008 probation order, illustrated he would not become compliant even if the court placed him in juvenile DOC until he was 21 years of age. 705 ILCS 405/5-805(3)(b)(v) (West 2008). The court also found “that the services through the Department of Juvenile Justice while in a Department of Juvenile Justice Facility or while on juvenile parole are not adequate and will not be useful in rehabilitating this minor.”

¶ 22 In support of this finding, the court *sua sponte* specifically directed “everybody’s attention to a report released by the Illinois Department of Juvenile Justice on December 13, 2011,” entitled Youth Reentry Improvement Report.⁵ According to the court, the report stated “that the Juvenile Justice - - the Department of Juvenile Justice is broken, that juvenile parole is broken, that the Department of Juvenile Justice does not provide adequate services to juveniles who are incarcerated in the Department of Juvenile Justice so that they can be successful on juvenile parole.” The court emphasized:

“The report also indicates that the parole arm of the Department of Juvenile Justice does not provide adequate programs or services to minors who are on juvenile parole, and there’s a great likelihood that minors who are placed on parole end up back in the Department of Juvenile Justice or in the adult Department of Corrections.

So if this report is accurate, it could lead one to the conclusion that this minor could not be rehabilitated even if placed in the Department of Juvenile Justice.”

⁵ This report is not part of the record. The transcript indicates that the court relied on this report *sua sponte* and it was not tendered by the State for evidentiary purposes.

¶ 23 Regarding the adequacy of punishment or services factor set forth in section 805(3)(b)(v)(C) of the Act, the court considered the maximum penalties this minor could receive in the juvenile court system, not exceeding his 21st birthday, even if incarcerated.⁶ 705 ILCS 405/5-805(3)(b)(v)(C) (West 2008). The court noted that, in the court's experience, most minors were paroled from juvenile DOC prior to turning 19 years old. The juvenile court also considered the penalties that the minor could receive in the adult system, within the range of 6 to 30 years sentence for armed robbery, with a 15-year add on for the firearm, making the possible sentence between 21 and 45 years.

¶ 24 After considering the statutory factors and giving the greatest weight to the seriousness of the offense and the history of delinquency, the court found that it was not in the public's best interest to proceed under the Act and granted the State's amended motion to transfer to adult court.

¶ 25 IV. Adult Criminal Proceedings

¶ 26 On April 10, 2012, the grand jury returned a bill of indictment charging the minor, as an adult, with the Class X felony offense of armed robbery, pursuant to section 18-2(a)(2) of the Criminal Code of 1961. 720 ILCS 5/18-2(a)(2) (West 2010). After a stipulated bench trial, the criminal trial judge found the minor guilty of the offense of armed robbery.

¶ 27 The court ordered a presentence report prior to the sentencing hearing, which included a handwritten letter by the minor, filed September 7, 2012. In this letter, the minor stated he dropped out of school in 6th grade, but after being placed in "TYC Harrisburg," (Illinois Youth Center - Harrisburg),⁷ the minor earned his "eighth grade diploma," passed his "high school

⁶ The minor was 16 years old at the time of this second hearing.

⁷ A juvenile DOC facility.

constitution,” and brought all of his grades up from F’s to A’s, B’s, and C’s. In this letter, the minor said he also had a job and did not get into any fights during that placement.

¶ 28 At the close of the evidence during the sentencing hearing, defense counsel again raised the constitutional objections to an indiscriminately harsh sentence regarding the application of the mandatory adult sentencing provisions to a 13-year-old minor with an unloaded gun. The court then sentenced the minor to the mandatory minimum sentence of 21 years in prison, 6 years for armed robbery, plus the mandatory 15 years because the minor possessed a firearm during the offense. The minor filed a timely notice of appeal.

¶ 29 ANALYSIS

¶ 30 On appeal, the minor contends that the juvenile court judge erred by granting the discretionary transfer of his case to adult criminal court because the judge did not consider all of the statutory factors. Additionally, the minor contends that the adult mandatory minimum sentencing provisions, requiring the minor to serve 21 years in prison, violate the U.S. and Illinois constitutions because the sentence is indiscriminately harsh for a minor who committed the offense at age 13 with an unloaded firearm.

¶ 31 In Illinois, the Act gives the juvenile court judge discretion to transfer a 13-year old minor’s case to criminal court, to be tried as an adult, if the judge first determines probable cause exists to believe the allegations regarding the charged offense are true. 705 ILCS 405/5-805(3)(a) (West 2008). Additionally, the juvenile court must determine that it is not in the best interests of the public to proceed in juvenile court. *Id.* It is well established that the purpose of the transfer proceeding is to balance the best interests of the juvenile offender, including his potential for rehabilitation, against the public's interest in being protected from crime. *People v. Clark*, 119 Ill. 2d 1, 12 (1987); *People v. Moore*, 2011 IL App (3d) 090993, ¶ 19. To perform

this balancing test in a transfer proceeding, a juvenile court judge must weigh the statutory factors outlined in the Act (705 ILCS 405/5-805(3)(b) (West 2008)) as well as non-statutory factors. *People v. Clark*, 119 Ill. 2d 1, 12 (1987); *People v. Moore*, 2011 IL App (3d) 090993, ¶ 19-20.

¶ 32 Section 805(3)(b) of the Act sets forth the factors to be considered when determining whether to transfer a juvenile case to adult court, including:

- “(i) the age of the minor;
- (ii) the history of the minor, including:
 - (A) any previous delinquent or criminal history of the minor,
 - (B) any previous abuse or neglect history of the minor, and
 - (C) any mental health, physical, or educational history of the minor or combination of these factors;
- (iii) the circumstances of the offense, including:
 - (A) the seriousness of the offense,
 - (B) whether the minor is charged through accountability,
 - (C) whether there is evidence the offense was committed in an aggressive and premeditated manner,
 - (D) whether there is evidence the offense caused serious bodily harm,
 - (E) whether there is evidence the minor possessed a deadly weapon;
- (iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:

(A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;

(B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.” 705 ILCS 405/5-805(3)(b) (West 2008).

¶ 33 We review the decision transferring a juvenile to criminal court under the abuse of discretion standard, however, our supreme court has held that this discretion is limited and controlled by the Act (705 ILCS 405/1-1 *et seq.* (West 2008)). *People v. Morgan*, 197 Ill. 2d 404, 422-23 (2001); *Moore*, 2011 IL App (3d) 090993, ¶ 21. Thus, to affirm an order allowing a discretionary transfer of a minor to criminal court, the appellate court must determine if there was sufficient evidence in the record as to *each* statutory factor to support the transfer order. *Moore*, 2011 IL App (3d) 090993, ¶ 20, citing *Clark*, 119 Ill. 2d at 18. The burden is on the State to present sufficient evidence as to each factor. *Clark*, 199 Ill. 2d at 18; *Morgan*, 197 Ill. 2d at 428.

¶ 34 In the minor's earlier appeal, this court held that “[a] juvenile judge must evaluate information concerning the type of facilities available for the treatment or rehabilitation of the minor and must evaluate the likely effectiveness of those facilities in light of the history and present circumstances of the minor.” *Moore*, 2011 IL App (3d) 090993, ¶ 20, citing *Morgan*, 197 Ill. 2d at 428-29. Specifically, in reversing the juvenile court's initial ruling transferring the minor's case to adult court in the first appeal, this court held:

“[A] review of the broad services available to [the minor] for the instant offense was not presented to the trial court. The State failed to present any testimony as to the types of facilities available for [the minor’s] treatment or rehabilitation in juvenile detention as compared to the adult division of the Department of Corrections. Moreover, the juvenile judge did not consider any evidence regarding the adequacy of those services, or the punishment. The court relied on [the minor’s] noncompliance while on probation but failed to consider [the minor’s] potential for rehabilitation by participating in mandatory services in juvenile detention.” *Moore*, 2011 IL App (3d) 090993, ¶ 22.

¶ 35 During the second transfer hearing after remand, the State once again presented no evidence regarding the advantages or disadvantages of services available to this minor in juvenile DOC. The dissent suggests, because the juvenile court judge considered that it could only place the minor for 30 days or less in a local juvenile detention center, the juvenile court adequately considered the potential rehabilitation or treatment services available to the minor.

¶ 36 Our first decision remanded the matter to the juvenile court to specifically consider the services available in juvenile DOC, rather than adult DOC. *Moore*, 2011 IL App (3d) 090993, ¶ 22. Here, the record reveals this minor was housed at “IYC Harrisburg,” a juvenile DOC facility, pending the outcome of his first appeal. After remand from this court, neither the State nor the minor’s attorney informed the juvenile court that this minor was offered or took advantage of programs at IYC Harrisburg during his stay. However, our appellate record includes a letter presented by the minor during his adult sentencing hearing, which states the minor earned his eighth grade diploma; passed his high school constitution test; brought his

grades up to A's, B's, and C's; had a job; and did not get into any fights while incarcerated in juvenile DOC waiting for his sentencing hearing before Judge Khouri.

¶ 37 Instead of advising the court regarding programs available in juvenile DOC after remand, the State merely advised the juvenile court about programs available to minors placed on juvenile probation. Clearly, the juvenile court properly considered the minor's failure to benefit from the structure provided by court services during his first, and only, court-ordered juvenile probation.

¶ 38 In this case, the prosecution had an opportunity to provide the juvenile court judge with additional evidence that this particular minor could not be rehabilitated by programs available in juvenile DOC and, therefore, should be transferred to adult court. Yet, the prosecution failed to provide the court any information about the programs available to this minor in juvenile DOC.

¶ 39 It appears the juvenile court was mindful that it was required to compare services available in juvenile DOC to those available in adult DOC in order to determine whether the juvenile justice system offered advantages over adult court. The court then relied on a report released by the Illinois Department of Juvenile Justice to support its conclusion that the current juvenile justice system offers no advantages in terms of rehabilitating minors. According to the judge, this report indicated, "[T]he Department of Juvenile Justice does not provide adequate services to juveniles who are incarcerated in the Department of Juvenile Justice so that they can be successful on juvenile parole." The court observed the report indicated our juvenile justice system should receive a failing grade.⁸

¶ 40 The law is well settled that the decisions of a trial judge are limited to the exhibits offered and admitted in evidence and the record made in open court, except for matters for which the

⁸ However, the court did not articulate what, if any, percentages of the minors committed to juvenile DOC succeeded and what percentages failed.

court can take judicial notice. *People v. Rivers*, 410 Ill. 410 at 416. However, in this case, the juvenile court judge relied on a report that was not presented by either party and then stated: “[I]f *this report is accurate*, it could lead one to the conclusion that this minor could not be rehabilitated even if placed in the Department of Juvenile Justice.” (Emphasis added.)

¶ 41 In this case, the court made a contingent finding that *if* the report was accurate, then transfer to adult court would be warranted for this minor. A determination made by the trial judge based on the court's investigation, untested by cross-examination, or any of the rules of evidence may rise to the level of a denial of due process of law. *Id.*; *People v. Dameron*, 196 Ill. 2d 156 at 171-72. Based on this record, we conclude the court's ruling was not supported by the evidence presented to the court during the transfer hearing. Consequently, we reverse the juvenile court's decision to transfer this case to adult court and remand the minor's case for further proceedings in juvenile court. In light of our disposition on this transfer issue, it is not necessary for this court to reach the minor's constitutional arguments regarding the mandatory 21-year sentence he received as a 13-year-old offender, subject to the mandatory sanctions our legislators require the court to impose for an armed robbery committed by an adult offender.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we reverse the order of the juvenile court, transferring this case to adult criminal court, vacate the minor's adult criminal conviction, and remand this case to the juvenile court for further proceedings consistent with this order.

¶ 44 Reversed and remanded.

¶ 45 JUSTICE SCHMIDT, dissenting.

¶ 46 The trial court did not abuse its discretion in transferring defendant's case to criminal court, nor did the mandatory 15-year firearm enhancement violate the United States or Illinois Constitution. Therefore, I respectfully dissent.

¶ 47 I. Transfer to Criminal Court

¶ 48 The majority finds that the court erred in transferring defendant's case to criminal court. This is so, says the majority, due to the juvenile court's failure to consider the types of mandatory programs defendant would participate in if his case stayed in the juvenile court system. *Supra* ¶ 35. I disagree.

¶ 49 In the first appeal, this court reversed and remanded the juvenile court's order granting the State's motion to transfer defendant's case to criminal court. We found that the State did not provide evidence concerning the types of facilities or rehabilitation services available to juveniles in the juvenile justice system. On remand, the State presented evidence of services available and the court considered the availability of such services when transferring defendant's case to criminal court.

¶ 50 Mark Bronke, Chief Juvenile Probation Officer, testified that he was familiar with the juvenile court services available to minors. Bronke identified a two-page document describing services his office primarily uses for referred juveniles. The court admitted this document into evidence without objection. Bronke also testified that juveniles could also participate in residential placement programs, where they would receive counseling, education, and social services. In addition, juveniles suffering from drug and alcohol abuse had the opportunity to reside at treatment facilities. The juvenile court acknowledged that "there are to this Court's knowledge no similar residential placement facilities in the adult system." The juvenile court stated that it could place defendant in a juvenile detention center, but the court could sentence

defendant to no more than 30 days in detention. The juvenile court also stated that defendant would not receive many, if any, services if the court placed him in a detention facility.

¶ 51 After considering the programs available within the juvenile court system, the juvenile court found that defendant would not cooperate with the programs. Defendant's past behavior in the juvenile justice system supports this finding. While on probation, defendant: (1) ran away from home; (2) was expelled from school; (3) tested positive for marijuana; (4) was dropped from anger management classes for failure to attend; and (5) failed to appear for court dates and probation appointments. Moreover, defendant's mother, Juanita Moore, testified that the juvenile justice system did not provide adequate help while defendant was on probation. Despite the fact that Mrs. Moore regularly notified probation officers when defendant violated his probation, the officers never arrested defendant or issued a warrant for violating probation. Mrs. Moore requested, several times, that the officers take defendant into custody due to the fact that defendant continuously ran away from home. Instead of arresting defendant, the officers continued to return defendant to Mrs. Moore's house and informed her that there was no outstanding probation-violation warrant. Based on the availability of services in the juvenile justice system and defendant's past behavior in the juvenile justice system, the juvenile court did not abuse its discretion in transferring defendant to criminal court.

¶ 52 II. Constitutionality of the Mandatory 15-Year Firearm Enhancement

¶ 53 Having determined that the juvenile court did not abuse its discretion in transferring defendant's case to criminal court, I find it is necessary to consider defendant's constitutional arguments.

¶ 54 The court sentenced defendant to the minimum 6 years plus the mandatory 15-year firearm enhancement, totaling 21 years' imprisonment. Defendant argues that the mandatory 15-

year firearm enhancement, as applied to minors, violates the United States and Illinois Constitutions; the enhancement imposes a specific sentence without regard to the minor's status at the time of the offense. I disagree.

¶ 55 The Eighth Amendment, as applied to the states through the Fourteenth Amendment, protects against excessive bail, excessive fines, and cruel and unusual punishment. U.S. Const., amend. VIII. The Illinois Constitution protects individuals from disproportionate sentences and all penalties shall be determined based on the seriousness of the offense and with the objecting of rehabilitating the wrongdoer to a useful citizen. Ill. Const. 1970, art. 1, § 11. The disproportionate sentences provision is coextensive with the Eighth Amendment. *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006). We presume that statutes are constitutional. *People v. Miller*, 202 Ill. 2d 328, 335 (2002). The party challenging the constitutionality bears the burden of establishing its constitutionality is invalid. *Id.* A statute may be unconstitutionally disproportionate if: (1) the punishment for the offense is cruel, degrading, or wholly disproportionate that it shocks the moral sense of the community; (2) similar offenses are compared and the conduct that constitutes a less serious threat to the public health and safety is punished more harshly; or (3) identical offenses are given different sentences. *People v. Miller*, 202 Ill.2d at 338 (citing *People v. Davis*, 177 Ill. 2d 495, 503-04 (1997)).

¶ 56 Defendant faced a mandatory 15-year enhancement for using a firearm during the commission of the robbery. Without the mandatory 15-year add-on, defendant faced a minimum of 6 years' imprisonment. Would that be unconstitutional? I think not. What if the mandatory minimum was ten years, one year, or six months? What if defendant was 17 years old as opposed to 13 years old? This court is not in the position to draw the line as to which mandatory sentences are too harsh, as applied to minors.

¶ 57 The Supreme Court has made distinctions between juveniles and adults, but those cases involved life sentences or mandatory life without parole. See *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (capital punishment imposed on a minor violated the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48 (2010) (the Eighth Amendment prohibits sentencing juveniles to life without parole where the juvenile did not commit a homicide offense); *Miller v. Alabama*, 132 S. Ct. 2455 (U.S. Ala. 2012) (sentencing juveniles to mandatory life without parole is unconstitutional). While the Supreme Court held that mandatory life without parole cannot be imposed on a minor, it has never held that all mandatory terms are unconstitutional as applied to minors. *Miller v. Alabama*, 132 S. Ct. 2455.

¶ 58 There is a distinction between mandatory life without parole and the mandatory 15-year enhancement defendant faced. In *People v. Pacheco*, the court held that the minimum 20-year term was not unconstitutional as applied to the minor defendant. *Pacheco*, 2013 IL App (4th) 110409, ¶ 58. The court reasoned that the legislature has discretion to prescribe penalties for defined offenses; implicit in its discretion is the power to set mandatory minimums. *Id.* ¶ 48 (citing *People v. Miller*, 202 Ill. 2d at 336). Moreover, the minimum 20-year sentence the defendant faced did not compare with the death penalty or mandatory life without parole. *Pacheco*, 2013 IL App (4th) 110409, ¶ 58.

¶ 59 Furthermore, finding that all mandatory sentences are unconstitutional as applied to minors would prevent the juvenile court from transferring juveniles, who committed even the most heinous of crimes, to criminal court. The juvenile court transfers juveniles who commit serious offenses. Serious crimes hold serious punishment. There are some crimes for which the criminal court does not have the authority to impose a probation period. For example, first-degree murder carries a minimum sentence of 20 years. 730 ILCS 5/5-5-3(c)(2)(A) (West 2008);

730 ILCS 5/5-4.5-20(d) (West 2008); *People v. Lopez*, 166 Ill. 2d 441, 452 (1995). The court shall sentence the offender to not less than the minimum term of imprisonment. 730 ILCS 5/5-5-3(c)(2) (West 2008). Every nonprobational offense carries with it a sentencing range. The minimum sentence in that range is, by definition, a mandatory sentence to the extent that a trial court cannot sentence the offender to a term of years below that minimum. I do not believe the appellate court is equipped to draw the line between acceptable and constitutionally defective minimum sentences for juveniles convicted of serious offenses.

¶ 60 For the foregoing reasons, I respectfully dissent.