FIRST DIVISION
March 28, 2016

No. 1-12-1159
2016 IL App (1st) 121159-U

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. 99 CR 27656
	)	
ANGEL PANTOJA,	)	
	)	Honorable James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Exclusive jurisdiction provision did not violate eighth amendment or due process; defendant's sentence was not unconstitutional under eighth amendment or proportionate penalties clause of Illinois Constitution; mittimus corrected to reflect one conviction for first degree murder.

¶ 2 Defendant, Angel Pantoja, appeals from an order of the circuit court that dismissed his petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). On appeal, defendant contends that: (1) the exclusive jurisdiction provision of the Illinois Juvenile Court Act of 1987 (705 ILCS 405/5-120 (West 2000)) violates the eighth amendment to the United States Constitution; (2) the exclusive jurisdiction provision violates

due process; (3) applying the Illinois truth-in-sentencing statute (730 ILCS 5/3-6-3(a)(2)(i) (West 2000)) to defendant's sentence violates the eighth amendment; (4) his 23-year sentence is unconstitutional under the eighth amendment and *Miller v. Alabama*, 132 S. Ct. 2455 (2012); (5) his 23-year sentence is unconstitutional under the proportionate penalties clause of the Illinois Constitution; and (6) his mittimus should be corrected to reflect only one conviction for first degree murder. We affirm and order the mittimus corrected.

¶ 3 In November 1999, defendant and a co-defendant, Ricardo Anaya, were charged with two counts of first degree murder related to the shooting death of 16-year-old Angel Perez. At the time of the incident, defendant was 17 years old. Initially, defendant and Anaya were tried simultaneously, with defendant receiving a jury trial and Anaya a bench trial. While Anaya was ultimately convicted and sentenced to 25 years in prison, defendant's jury was deadlocked and the court declared a mistrial. Defendant was subsequently retried before a new jury. According to the evidence presented at trial, defendant and Perez had been members of rival gangs.

¶ 4 At defendant's second trial, Edwin Hernandez testified that in the early morning hours of November 13, 1999, he was standing near Oakley Park in Chicago with a few of his friends, including Perez. After he left to walk home, he heard shots coming from the corner of 50th Place and Oakley. When he turned around, he observed two people shooting at his friends. According to Hernandez, one of the shooters was wearing a green coat and the other was wearing a blue coat. Once the shooters ran away, Hernandez went to see what happened to his friends and observed that Perez had been shot. The police arrived and Hernandez was taken to the police station, where he identified the shooters by their coats. In court, Hernandez identified defendant as one of the shooters.

¶ 5 Officer Thomas Laurin was conducting a traffic stop near the scene when he heard gunshots. Officer Laurin and his partner headed towards the sound of the shots and observed three men running to a parked red Mustang. One of the men wore a blue jacket, another wore a green jacket, and the third wore a baseball cap and flannel shirt. Officer Laurin's partner eventually caught the man in the green jacket, who Officer Laurin identified as defendant. Anaya was subsequently apprehended by another officer.

¶ 6 Officer Arthur Oswald, a forensic investigator, testified that he recovered .45 caliber cartridge casings, metal fragments, a bullet, and a .45 caliber pistol from the scene. Officer Thomas Bresnahan, who was summoned to help, testified that he found a blue steel .38 revolver in a weeded area. Testimony from evidence analysts indicated that defendant had gunshot residue on his left palm and on the cuff of his jacket.

¶ 7 A medical examiner testified that Perez died of multiple gunshot wounds and each of the wounds could have been fatal. A firearms examiner testified that the two bullets that were recovered from Perez's body were fired from the recovered .45 caliber gun.

¶ 8 Assistant State's Attorney Maureen Lynch testified that she interviewed defendant after the incident and had advised defendant of his *Miranda* rights. Defendant subsequently made a statement that is summarized as follows. Defendant previously attended Hubbard High School, but dropped out during his senior year. In July 1999, he joined the Latin Kings, whose rivals included the Satan Disciples. Through the Latin Kings, defendant met Anaya and Arturo Cobus, who were both with defendant during the incident. At the time, the Latin Kings believed that members of the Satan Disciples had killed other Latin Kings. At around 2:30 a.m. on November 13, defendant, Anaya, and Cobus were around 51st Street and Rockwell when someone suggested that they "go pass by Oakley," which meant going into Satan Disciples territory and

looking for Satan Disciples. From the gutter of a nearby house, defendant retrieved a .38 caliber revolver that belonged to the Latin Kings. Defendant knew that when he and his friends went to Satan Disciples territory, he was to shoot at any Satan Disciples they saw. Defendant placed the gun into the pocket of his dark green jacket and went to Cobus's car. When the three friends arrived in Satan Disciples territory, Cobus waited in the car while defendant and Anaya walked up a street. Defendant eventually saw two Satan Disciples exiting a van, and he and Anaya shot at them until defendant had no more bullets. Defendant ran back to the car and tossed his gun into an empty lot when he saw a police car. Defendant was caught by the police after he jumped over a fence.

¶ 9 Following closing arguments, the jury was provided with instructions, including an accountability instruction. Ultimately, the jury found defendant guilty of first degree murder.

¶ 10 A presentence investigation report (PSI) indicated that defendant was raised by both parents and that he had a good relationship with his family. When defendant was in school, he received B's and C's, was in the Chess Club and on the wrestling team, and played the trombone. The PSI further stated that defendant was kicked out of school in 1999 for possessing marijuana on school grounds. Defendant joined the Latin Kings at the age of 17 and quit the gang in 2000. According to the PSI, defendant did not have a juvenile record or any prior adult convictions.

¶ 11 At the sentencing hearing, the State contended in aggravation that defendant chose to be a Latin King, arm himself with a gun, and enter rival gang territory to go after a Satan Disciple. The State asserted that although defendant had minimal criminal background, the facts of the case were very aggravating. The State requested the maximum sentence.

¶ 12 In mitigation, defense counsel noted that defendant was 17 years old at the time of the offense. Defense counsel further stated that defendant had been in school until his third year of

high school and that "there is a rehabilitative portion of his life that you could take into consideration in your sentence." Defense counsel stated "they made some stupid choices out there," but asserted that the evidence showed that it was Anaya who shot Perez at close range. According to defense counsel, defendant could be rehabilitated. Defense counsel requested the minimum sentence.

¶ 13 Defendant made a statement in allocution, stating that he realized he had made a mistake in joining a gang. Defendant further stated that he "did everything [he] could do to get out of it" while incarcerated and had placed himself in a life-learning deck in jail. Defendant offered apologies to the victim's family, asked for the family's forgiveness, and stated that he "[prayed] that they may have some sort of comfort in seeing us go down."

¶ 14 In sentencing defendant, the court stated that defendant "chose to join a gang as opposed to staying away from all that." The court further stated that it was most troubled by the premeditation involved, adding that "it was like you were on a hunt just looking for somebody to kill *** ." The court believed that defendant was contrite and realized the enormity of his errors, "but justice must run its course and there must be a severe price to pay for the severe crime that you committed." The court also stated that it was "mindful of the fact that first-degree murder carries a 100[%] tag to the sentence." Additionally, the court acknowledged that the State wanted it to "make [defendant] an old man" before he was released from prison. The court stated that although the premeditated aspect of the case was particularly aggravating, there was "much mitigating as well," and sentenced defendant to 30 years in prison.

¶ 15 Defendant later filed a motion to reconsider his sentence. At the hearing on the motion, the court noted that Anaya had received a lesser sentence than defendant. Questioning whether it had properly considered defendant's conduct as opposed to Anaya's conduct, the court asserted

that it may not have given proper deference "to the fact that the co-defendant's conduct may have been somewhat more egregious on this case *** ." The court reduced defendant's sentence to 23 years in prison.

¶ 16 Defendant subsequently appealed, contending that: (1) the trial court erred when it denied his motion to suppress his statement; (2) the trial court admitted improper hearsay testimony; and (3) the State made improper statements during closing argument. On November 14, 2003, this court affirmed defendant's conviction. *People v. Anaya & Pantoja*, Nos. 1-01-2217 & 1-01-3788 (cons.) (2003) (unpublished order under Supreme Court Rule 23).

¶ 17 On February 29, 2012, defendant filed a petition for postconviction relief. The petition stated that after the direct appeal, defendant's appellate attorney notified defendant that his office would not file a petition for leave to appeal to the Illinois Supreme Court, but did not advise defendant of his remaining rights on appeal or other options to further challenge his conviction. According to the petition, defendant became aware of the postconviction process and other challenges to his conviction and sentence when he consulted with counsel on an unrelated matter in 2008. As grounds for relief, the petition stated that defendant was denied effective assistance of counsel because his trial counsel did not consult with him and did not pursue defenses and witnesses that defendant could have provided. The petition further stated that trial counsel met with defendant twice, once before his bond hearing and once the day before trial.

¶ 18 On March 6, 2012, the trial court summarily dismissed defendant's postconviction petition. In its ruling, the court stated that the petition did not indicate what defendant's counsel missed or might have done differently if he had spoken to defendant in greater detail.

¶ 19 On appeal, defendant departs from the issue raised in his petition and instead challenges his sentence on several constitutional grounds. Defendant first contends that the version of

Illinois's exclusive jurisdiction provision in effect at the time of the offense (705 ILCS 405/5-120 (West 2000)), which provides that 17-year-olds are to be prosecuted as adults, violates the eighth amendment to the United States Constitution. Defendant argues that the exclusive jurisdiction provision is constitutionally invalid after the United States Supreme Court's decisions in *Miller*, 132 S. Ct. 2455, and *Graham v. Florida*, 560 U.S. 48 (2010), because the provision does not provide any opportunity for a judge to consider the defendant's age, its attendant characteristics, or the circumstances of the offense. According to defendant, Illinois's statutory scheme is cruel and unusual because it mandates adult prosecution and sentencing for all 17-year-olds based on a predetermination that those juveniles do not share the inherent characteristics of youth that the Supreme Court has repeatedly said render them less culpable than adults.

¶ 20 Before we address the merits of defendant's argument, we consider the State's assertion that defendant has forfeited his claims because they were not in his postconviction petition. The Act provides a method by which criminal defendants can assert that their convictions were the result of a substantial denial of their constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). Generally, "any issues to be reviewed must be presented in the petition filed in the circuit court." *People v. Jones*, 211 Ill. 2d 140, 148 (2004). In response to the State's contention that he forfeited his claims, defendant asserts that " 'a challenge to the constitutionality of a statute may be raised at any time.' " *In re M.I.*, 2013 IL 113776, ¶ 39.

¶ 21 After the briefs were filed in this matter, our supreme court decided *People v. Thompson*, 2015 IL 118151, which is relevant to the forfeiture issue here. *Thompson* found that the defendant had forfeited his as-applied constitutional challenge to his sentence when he raised it for the first time on appeal from the denial of his section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)). *Thompson*, 2015 IL 118151, ¶ 39. The defendant had argued that his as-applied

challenge was a challenge to a void judgment, which could be raised at any time. *Id.* ¶ 30. In addressing the defendant's argument, the supreme court discussed three types of voidness challenges: (1) a challenge based on a lack of personal or subject matter jurisdiction; (2) a challenge to a final judgment based on a facially unconstitutional statute that is void *ab initio*; and (3) a challenge to a sentence that does not conform to the applicable sentencing statute. *Id.* ¶¶ 31-33. Importantly, the court noted that the void *ab initio* doctrine does not apply to an as-applied constitutional challenge. *Id.* ¶ 32. The court further stated that the third type of voidness challenge, based on the "void sentence rule," was abolished in *People v. Castleberry*, 2015 IL 116916, ¶ 19. *Thompson*, 2015 IL 118151, ¶ 33. The court continued that defendant's as-applied challenge was not one of the challenges recognized by the court as "exempt from the typical rules of forfeiture and procedural bars in section 2-1401" and was therefore forfeited. *Id.* ¶ 39.

¶ 22 The court also discussed reasons why facial and as-applied challenges are not interchangeable. A facial challenge requires a showing that the statute is unconstitutional under any set of facts, making the specifics facts related to the challenging party irrelevant. *Id.* ¶ 37. However, an as-applied challenge "is dependent on the particular circumstances and facts" of the defendant. *Id.* As a result, it is important that for as-applied challenges, "the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review." *Id.*

¶ 23 *Thompson* suggests that a distinction should be made between facial and as-applied constitutional challenges raised for the first time on appeal. However, it is unclear whether *Thompson* applies to proceedings under the Act, an issue that was also not addressed by the parties. A subsequent supreme court case, *People v. Ligon*, 2016 IL 118023, ¶ 9, stated that "[v]oidness challenges stemming from the unconstitutionality of a criminal statute under the

proportionate penalties clause may be raised at any time." Additionally, this court has recently stated that an as-applied constitutional challenge to a statute was not forfeited when raised for the first time on direct appeal. *People v. Burnett*, 2015 IL App (1st) 133610, ¶ 82. In the midst of this uncertainty over whether as-applied constitutional challenges can be forfeited in postconviction proceedings, we address both facial and as-applied challenges.

¶ 24 Turning to the merits of defendant's contentions, we examine whether the exclusive jurisdiction provision (705 ILCS 405/5-120 (West 2000)) violates the eighth amendment's ban on cruel and unusual punishment (U.S. Const., amend. VIII). The version of the exclusive jurisdiction provision in effect at the time of the offense stated that, subject to certain exceptions, a minor under the age of 17 could not be prosecuted under the state's criminal laws, and was instead subject to juvenile proceedings. 705 ILCS 405/5-120 (West 2000). Because defendant was 17 at the time of the offense, he was prosecuted as an adult.[1] In reviewing the exclusive jurisdiction provision, we keep in mind that "[a]ll statutes carry a strong presumption of constitutionality." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). The party challenging the statute has the burden of demonstrating it is invalid. *People v. Graves*, 207 Ill. 2d 478, 482 (2003). Further, "[w]hether a statute is constitutional is a question of law that we review *de novo*." *Id*.

¶ 25 Defendant's argument relies on three United States Supreme Court decisions: *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham*, 560 U.S. 48, and *Miller*, 132 S. Ct. 2455. We briefly summarize each. In *Roper*, 543 U.S. at 568, the Supreme Court held that imposing the death penalty on juvenile offenders under 18 violates the eighth amendment. In reaching this conclusion, the Court discussed key differences between juveniles under 18 and adults—

[1] As defendant notes, section 5-120 of the Juvenile Court Act of 1987 was subsequently amended so that the juvenile courts have jurisdiction over any minor under the age of 18. 705 ILCS 405/5-120 (West 2014).

juveniles have a lack of maturity and an underdeveloped sense of responsibility, they are more vulnerable to negative influences and outside pressures, and a juvenile's character is not as well formed as that of an adult. *Id*. at 569-70. Additionally, the Court stated that juveniles have "diminished culpability" and therefore the "penological justifications for the death penalty apply to them with lesser force than to adults." *Id*. at 571. Five years later, in *Graham*, 560 U.S. at 74, the Court held that the eighth amendment forbids a sentence of life without parole for juvenile offenders who commit nonhomicide offenses. The Court stated that life without parole is "the second most severe penalty permitted by law." (Internal quotation marks omitted.) *Id*. at 69. The Court further stated that a sentence of life without parole "improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Id*. at 73. The Court added that a state was "not required to guarantee eventual freedom," but a state must "give defendants *** some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*. at 75. Finally, in *Miller*, 132 S. Ct. at 2469, the Court held that the eighth amendment forbids a sentencing scheme that mandates life in prison without parole for juveniles who commit homicide. The Court stated that mandatory life-without-parole penalties "by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id*. at 2467. The Court also noted that "[b]y making youth (and all that accompanies it) irrelevant to the imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id*. at 2469.

¶ 26 Although *Roper*, *Graham*, and *Miller* expanded protections for juvenile offenders, defendant's challenge is nonetheless foreclosed by our supreme court's decision in *People v. Patterson*, 2014 IL 115102. In that case, the court held that the automatic transfer provision (705 ILCS 405/5-130 (West 2008)), which automatically transfers certain minors from the jurisdiction

of juvenile court to the adult criminal court, does not violate the eighth amendment, even in light of *Roper*, *Graham*, and *Miller*. *Patterson*, 2014 IL 115102, ¶¶ 100, 106. Although *Patterson* considered a different provision, we find its holding applies here because the two provisions have the same effect—certain juveniles are automatically tried as adults. In *Patterson*, the court stated that "access to juvenile courts is not a constitutional right" because our juvenile justice system is a "creature of legislation." *Id*. ¶ 104. The court found that the automatic transfer provision was "purely procedural," rather than punitive, and therefore the eighth amendment did not apply. *Id*. ¶ 105-06. Because the exclusive jurisdiction provision operates in much the same way as the automatic transfer provision, specifying the forum where a defendant will be tried, it too is procedural under *Patterson* and defendant's eighth amendment challenge fails. We note that even before *Patterson*, the Second District also concluded that the exclusive jurisdiction provision does not violate the eighth amendment because the statute only specifies the forum where the defendant's guilt will be adjudicated. *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 55. Additionally, although defendant contends that *Patterson* was wrongly decided, "we are required to follow supreme court precedent on an issue unless and until that conclusion is revisited by our supreme court or overruled by the United States Supreme Court." (Internal quotation marks omitted.) *In re Shermaine S.*, 2015 IL App (1st) 142421, ¶ 32.

¶ 27 Next, we consider defendant's contention that the exclusive jurisdiction provision violates substantive and procedural due process. Defendant asserts that *Roper*, *Graham*, and *Miller* have implications beyond the eighth amendment. Defendant further argues that we should apply a strict scrutiny analysis to the exclusive jurisdiction statute, and asserts that *Graham* and *Miller* establish that juveniles have a fundamental liberty interest in not being automatically prosecuted as adults. Defendant also states that the exclusive jurisdiction provision would fail even the

rational basis test in light of *Graham* and *Miller*. As to procedural due process, defendant argues that *Miller* stands for the general proposition that criminal court procedures that require children to be treated as adults without proper consideration of their age are impermissible.

¶ 28 As with his eighth amendment challenge, defendant's due process arguments are foreclosed by *Patterson*. As our supreme court noted, because *Roper*, *Graham*, and *Miller* were all decided under the eighth amendment, they could not support a due process challenge to the automatic transfer statute. *Patterson*, 2015 IL 115102, ¶ 97. "A constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id.* Further, the Second District stated that the reasoning of Illinois cases prior to *Patterson* that found that the automatic transfer provision does not violate due process "applies with equal force to the closely related exclusive jurisdiction provision." *Harmon*, 2013 IL App (2d) 120439, ¶ 59. See *People v. Jackson*, 2012 IL App (1st) 100398, ¶¶ 16-17 (finding that the automatic transfer provision does not violate substantive or procedural due process); *People v. Salas*, 2011 IL App (1st) 091880, ¶¶ 76-80 (disagreeing that principles in *Roper* and *Graham* " 'transcend' " the eighth amendment and rejecting the defendant's due process challenges to the automatic transfer provision). We also reiterate that we lack the authority to overrule decisions of our supreme court, which are binding on all lower courts. *People v. Banks*, 2015 IL App (1st) 130985, ¶ 16.

¶ 29 Next, defendant contends that the application of the truth-in-sentencing statute (730 ILCS 5/3-6-3(a)(2)(i) (West 2000)) to his sentence violates the eighth amendment. Defendant acknowledges that requiring him to serve 100% of his sentence does not necessarily amount to a life sentence, but states that it nevertheless constitutes a severe penalty that more than tripled the minimum sentence for a Class X offense. Additionally, defendant argues that *Miller* questioned the validity of any and all sentencing statutes that treat juveniles and adults the same way.

¶ 30 Defendant's argument rests on a broad reading of *Miller* that our state's courts have rejected. Illinois cases have interpreted *Miller* to only apply to situations where the harshest possible penalty is imposed, which did not occur here. See *Patterson*, 2014 IL 115102, ¶ 108 (stating that term of 30 years, which reflected mandate to serve 85% of sentence, "[a]lthough lengthy," was not comparable to the death penalty or life without parole, and noting that the Supreme Court had "clearly distinguished" those sentences from others); *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 67 ("the United States Supreme Court has drawn the eighth amendment line at life without the possibility of parole and we cannot cross that line"); *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 58 (stating that the Supreme Court did not hold in *Roper*, *Graham*, or *Miller* that the eighth amendment prohibited a juvenile from being subject to same mandatory minimum sentence as an adult, unless that mandatory minimum sentence was death or life without parole). Until our supreme court states otherwise, we too must read *Miller* to only require that a trial court consider a defendant's youth "before imposing the harshest possible penalty for juveniles" (*Miller*, 132 S. Ct. at 2475). The truth-in-sentencing statute means that defendant will have to serve all of his 23-year sentence. While lengthy, this sentence is not equivalent to the harshest possible sentence of life without parole. Accordingly, defendant's eighth amendment challenge to the truth-in-sentencing statute fails.

¶ 31 Next, defendant contends that his sentence is void because it violates the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution. We first consider defendant's eighth amendment challenge. Defendant argues that our state's current sentencing scheme fails to provide for an examination of a juvenile's age and its hallmark features. Defendant additionally asserts that there was no evidence that the

sentencing judge explicitly considered the mitigating developmental factors associated with defendant's youth.

¶ 32 As noted above, Illinois cases have held that *Miller* requires a court to account for a defendant's youth before sentencing a juvenile to the harshest possible penalties—not every time a juvenile is sentenced. See *People v. Pace*, 2015 IL App (1st) 110415, ¶ 132 ("*Miller* *** merely stands for the proposition that the state cannot impose adult mandatory *maximum* penalties on a juvenile offender without permitting the sentencing authority to take the defendant's youth and other attendant circumstances into consideration" (emphasis in original)); *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 98 (" '*Graham*, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the *harshest possible penalty* for juveniles' " (emphasis in original) (quoting *Miller*, 132 S. Ct. at 2475)).

¶ 33 To further illustrate how firm the eighth amendment line is, we note that this court has found a sentence that was much longer than defendant's 23-year sentence, and did not consider the defendant's youth, did not violate the eighth amendment because that sentence was not life without parole. In *Gipson*, 2015 IL App (1st) 122451, ¶¶ 65, the court stated that the combined effect of the sentencing scheme at issue was that the sentencing court had no discretion to sentence defendant to less than 52 years in prison, which he ultimately received. The court further noted that when defendant was released, his remaining years in society would be "precious few." *Id*. ¶ 67. Nonetheless, the court did not find that Illinois's transfer and sentencing scheme violated the eighth amendment because the Supreme Court "has drawn the eighth amendment line at life without the possibility of parole and we cannot cross that line." *Id*. Here, the trial court was required to sentence defendant to at least 20 years in prison (730 ILCS

5/5-8-1(a)(1)(a) (West 2000)), but because defendant was not subject to the harshest possible penalty of life without parole, the court did not have to take into account the considerations of youth stated in *Miller*.

¶ 34 Next, defendant asserts that his sentence is unconstitutional under the proportionate penalties clause of the Illinois Constitution. Defendant contends that the proportionate penalties clause offers defendants greater protections than the eighth amendment, and that other rulings have indicated that the proportionate penalties clause gives greater protection to minors than to adults. Additionally, defendant points to another jurisdiction, Iowa, that has relied on *Miller* to conclude that all mandatory minimum sentences violate its constitution as applied to juveniles.

¶ 35 As a preliminary matter, we first address the parties' disagreement about the relationship between the eighth amendment and the proportionate penalties clause. The State disagrees with defendant's assertion that the proportionate penalties clause offers defendants greater protection than the eighth amendment. We agree with defendant's interpretation. Our proportionate penalties clause states 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. Our supreme court has stated that the relationship between the eighth amendment and the proportionate penalties clause is "not entirely clear." *People v. Clemons*, 2012 IL 107821, ¶ 40. Subsequently, in *Patterson*, 2014 IL 115102, ¶ 106, the supreme court again referred to the relationship between the two provisions. After finding that the automatic transfer provision did not violate the eighth amendment because the provision did not impose actual punishment, the court went on to reject the defendant's challenge to the provision under the proportionate penalties clause "[b]ecause the *** proportionate penalties clause is co-extensive with the eighth amendment's cruel and unusual punishment clause." *Id.* As in other

cases before this court, we believe that the supreme court meant that, like the eighth amendment, the proportionate penalties clause only applies when a penalty has been imposed. See *Pace*, 2015 IL App (1st) 110415, ¶ 139; *Gipson*, 2015 IL App (1st) 122451, ¶ 70. Further, once a punishment has been imposed, the proportionate penalties clause indeed provides greater protection. *Pace*, 2015 IL App (1st) 110415, ¶ 139. Accordingly, we will independently analyze defendant's proportionate penalties claim.

¶ 36 To succeed on a proportionate penalties claim, a defendant must show either that the penalty is degrading, cruel "or so wholly disproportionate to the offense that it shocks the moral sense of the community," or that another offense containing the same elements has a different penalty. (Internal quotation marks omitted.) *Gipson*, 2015 IL App (1st) 122451, ¶ 69. Here, we do not find that defendant's sentence violated the proportionate penalties clause. Defendant relies primarily on two Illinois cases to support his argument—*People v. Miller*, 202 Ill. 2d 328 (2002) (*Leon Miller*), and *Gipson*, 2015 IL App (1st) 122451. In *Leon Miller*, the juvenile defendant was sentenced to life without parole, a sentence that was found to violate the proportionate penalties clause because the sentence "grossly [distorted] the factual realities of the case and [did] not accurately represent [the] defendant's personal culpability such that it shocks the moral sense of the community." *Leon Miller*, 202 Ill. 2d at 341. The court found that when combined, the automatic transfer statute, accountability statute, and sentencing statute prevented a court from considering the actual facts of the crime, including the defendant's age at the time of the crime and his individual level of culpability. *Id.* at 340. The court also noted that the case "presents the least culpable offender imaginable, a 15-year-old who had 'about a minute from the time this plan began until the act was completed by other persons.' " *Id.* at 341. In *Gipson*, the juvenile defendant's 52-year sentence violated the proportionate penalties clause where the

sentencing scheme did not permit the court to give the defendant's youth and his mental disorders appropriate weight. *Gipson*, 2015 IL App (1st) 122451, ¶ 75. The court found that the court's discretion to impose an appropriate sentence was "most defeated" by the mandatory firearm enhancement. *Id.* ¶ 78.

¶ 37 Here, unlike *Leon Miller* and *Gipson*, neither the circumstances of the offense nor the application of the state's sentencing scheme suggest that defendant's sentence violated the proportionate penalties clause. As the trial court found, defendant premeditated his offense, deciding with his friends to find members of a rival gang and shoot them. Further, although there were certain mandatory aspects of the sentence—being prosecuted in adult court, truth-in-sentencing, and a mandatory minimum sentence, the trial court here nonetheless had wide latitude in sentencing defendant and exercised the discretion it had. The sentencing range for defendant's offense was 20 to 60 years in prison. 730 ILCS 5/5-8-1(a)(1)(a) (West 2000). Before defendant was initially sentenced to 30 years in prison, the court stated that although "the premeditated aspect of this case is particularly aggravating *** there is much mitigating as well." The court noted that defendant realized "the enormity of [his] errors" and that defendant did not have a significant criminal history. Later, after defendant filed a motion to reconsider, the court reduced defendant's sentence to 23 years when the court determined that defendant was less culpable than his co-defendant. Unlike the trial courts in *Leon Miller* and *Gipson*, the trial court here was not constrained by our state's sentencing scheme to fashion a sentence that it believed reflected the offense and defendant's individual characteristics.

¶ 38 We are unpersuaded by defendant's reliance on Iowa cases that found that all mandatory minimum are unconstitutional as applied to juveniles under the Iowa Constitution. See, *e.g.*, *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014) (stating that mandatory minimums for juveniles

"are simply too punitive for what we know about juveniles"). The Iowa Supreme Court has interpreted *Miller* differently from our courts, determining that "[t]he mandatory nature of the punishment establishes the constitutional violation" and that "*Miller* is properly read to support a new sentencing framework that reconsiders mandatory sentencing for all children." *Id*. at 401-02. As discussed above, our courts have read *Miller* more narrowly, and the decisions of foreign courts are not binding on Illinois courts (*People v. Ford*, 368 Ill. App. 3d 562, 573 (2006)). We are required to follow supreme court precedent (*In re Shermaine S.*, 2015 IL App (1st) 142421, ¶ 26), which has interpreted *Roper*, *Graham*, and *Miller* to apply "only in the context of the most severe of all criminal penalties" (*Patterson*, 2014 IL 115102, ¶110).

¶ 39 Lastly, defendant contends, and the State concedes, that this court should vacate one of defendant's murder convictions under the one-act, one-crime rule. Currently, defendant's mittimus reflects two convictions for first degree murder, one for intentionally or knowingly shooting and killing the victim, and the other for shooting the victim knowing that the shooting created a strong probability of death or great bodily harm. Multiple convictions are improper if they are based on precisely the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). Accordingly, pursuant to Illinois Supreme Court Rule 615(b)(1), we order the mittimus to be corrected to reflect one conviction for intentional/knowing first degree murder.

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court and order the mittimus corrected.

¶ 41 Affirmed; mittimus corrected.