2015 IL App (1st) 121577-U
No. 1-12-1577

THIRD DIVISION
May 11, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07 CR 144
	)	
RAMIREZ TAYLOR,	)	
	)	The Honorable
Defendant-Appellant.	)	Frank Zelezinski,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin specially concurred.

ORDER

¶ 1 *Held*: Minor defendant's first degree murder conviction affirmed where defendant was not prejudiced by the admission of other crimes evidence and where his adult criminal trial conducted in accordance with the exclusive jurisdiction provision of the Illinois Juvenile Court Act did not infringe upon his constitutional rights; minor defendant's 60-year sentence affirmed where the circuit court properly considered his age as well as other relevant aggravating and mitigating factors prior to imposing the sentence.

¶ 2 Following a jury trial, defendant Ramirez Taylor was convicted of first degree murder and was sentenced to 60 years' imprisonment. Although he was 17 years old at the time of the offense, defendant was tried and sentenced as an adult in accordance with the exclusive

jurisdiction provision set forth in section 5-120 of the Illinois Juvenile Court Act of 1987 ("Juvenile Court Act" or "Act") (705 ILCS 405/5-120 (West 2006)). On appeal, defendant seeks reversal of his conviction, arguing that the circuit court erred when it permitted the State to introduce prejudicial other crimes evidence. He also challenges the constitutionality of the Illinois Juvenile Court Act's exclusive jurisdiction provision and sentencing scheme. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On August 15, 2006, Shone Mathews was shot and killed. One month later, defendant was arrested when he attempted to run from police during the course of a traffic stop. Once he had been caught, police discovered that he was wearing a bulletproof vest and was in possession of a firearm with an extended ammunition clip. After the police recovered those items, defendant was charged with aggravated unlawful use of a weapon.[1] Following defendant's arrest for that offense, his gun was sent to the Illinois State Crime Lab for testing and was found to be a match to ballistics evidence that had been recovered at the scene of Mathews's death. Once police learned of these results, defendant was subsequently charged with the first degree murder of Mathews. Although he was just 17 years of age at the time of the offense, the cause was transferred from juvenile court to adult criminal court as required by the exclusive jurisdiction provision of the Juvenile Court Act. 705 ILCS 405/5-120 (West 2006). Following the transfer, defendant elected to proceed by way of a jury trial.

¶ 5 Prior to start of trial, the State filed a Motion to Allow Evidence of Another Crime, seeking the court's permission to introduce details of the traffic stop that had led to defendant's

[1] In a separate jury trial, defendant was convicted of aggravated unlawful use of a weapon for carrying a weapon without a Firearm Owner's Identification Card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2006)) and the offense was elevated to a Class X felony because he had been wearing the bulletproof vest while in possession of that firearm (720 ILCS 5/24-2.6(d) (West 2006)). Defendant was sentenced to 16 years' imprisonment for that offense. This court upheld that conviction and sentence on appeal. *People v. Taylor*, 2013 IL App (1st) 110166.

earlier arrest and conviction for aggravated unlawful use of a weapon. Specifically, the State wanted to introduce evidence that at the time of the traffic stop and his attempted flight from the scene, defendant had been wearing a bulletproof vest and had been in possession of a firearm that had been used in Mathews's shooting death. The State argued that proof of defendant's other crime was admissible and relevant to establish: defendant's identity as the shooter who had killed Mathews; details of the investigation into Mathews's death and defendant's subsequent arrest for that crime; and defendant's consciousness of guilt. The court presided over a hearing on the motion, and after reviewing the arguments of both parties, ruled as follows:

> "As the Court has heard the evidence, the Court notes that the defendant was arrested as he was fleeing the police with a weapon, which was tied to ballistic evidence, as being at the scene of the murder as indicated by the State.
>
> This certainly does put this weapon in the realm of being evidence for the murder trial, and certainly does put the defendant as possessing that weapon, circumstantially, as well as direct evidence of possessing it in direct relation to the murder. * * *
>
> Now, though the defendant was arrested sometime later, the circumstances of his arrest become relevant to show how he in fact may have become part of the system, and been involved in the police investigation, and also if certain evidence was collected during the course of his arrest, which becomes relevant to the main charge being the murder charge here, it may be explained.
>
> The Court does fin[d], that not only to show identity of the defendant, but namely the circumstances of his arrest, would be relevant factors here to allow evidence of another crime.

> The Court will allow the circumstances of his arrest, being the other crime, which involved his being stopped by the police, and being found in possession of the handgun to be presented. There is an issue of the bullet proof vest, and the Court will allow that evidence to be presented.
>
> However, State, this is pro[of] of other crime evidence. I really do not want the bullet proof vest to be presented as direct evidence here during your murder trial. You may have it testified to, but the relevant factor of that arrest would be strictly the possession of the gun, which becomes evidence. * * *
>
> You may present testimony regarding it, but I don't want you parading the bullet proof vest in front of the jury or the trier of fact, whoever it shall be, because, I do not feel that it is relevant to the actual crime itself, and I will not allow the proof of other crime evidence to be elaborated much more than that."

¶ 6 Notwithstanding the court's ruling, defendant filed a motion *in limine* shortly before trial commenced and requested the court to bar the State from introducing evidence that he had been wearing " 'body armor' or a 'bulletproof vest' " at the time of his arrest for the offense of aggravated unlawful use of a weapon, arguing that it was overly prejudicial. The circuit court, however, disagreed, stating: "I made my ruling allowing the State to present the facts and circumstances of the defendant's arrest and recovery of the weapon, but we will go no further than that, and I will allow them only to mention that in and itself going no further than that." The cause then proceeded to trial.

¶ 7 At trial, William McDuffie testified that on August 15, 2006, he spent the day at his friend Pebbles's house, which was located on Wallace Street in Riverdale, Illinois. He began playing a dice game in front of the house with about ten other people. As more people arrived

throughout the day and joined the game, McDuffie and the others relocated to the backyard sometime in the early evening. He estimated that there were "25 to 30 people" at Pebbles's house that night. McDuffie stopped playing dice around 8 p.m. once he had lost all of his money. After he stopped playing the game, he returned to the front of Pebbles's house and then "w[alked] a couple of houses down" and joined a small group of people who were standing around and talking. Shortly thereafter, he saw three men walked towards them. McDuffie recognized one of the men as Sug, whom he had known for "[a] couple of years," but testified that he did not know the two men accompanying him. He described one of the men as a heavyset black male who was wearing a towel on his head. McDuffie described the third male as a skinny, light skinned black male and identified him as defendant.

¶ 8 McDuffie testified that as the three men got closer, Sug and the heavyset man stopped walking, but defendant continued walking to the rear of Pebbles's house toward the dice game. McDuffie remained where he was and lost sight of defendant as he entered the backyard. Approximately five to ten minutes later, McDuffie heard gunshots and he and everybody else began running. Although McDuffie did not remain at the scene and talk to any of the police officers who responded to the shooting that night, he was interviewed by Detective Graziano approximately one week after the shooting. Several months later, on December 6, 2006, McDuffie went to the Riverdale Police Department where he viewed a physical lineup. Defendant was included in the physical lineup and McDuffie identified him as the skinny light skinned male he had seen walk into Pebbles's backyard shortly before the shooting.

¶ 9 On cross-examination, McDuffie denied that he had been drinking that evening and acknowledged that he had not been in the backyard when the shots were fired. He also admitted that he had not seen defendant with a gun prior to the shooting.

¶ 10 Heather Hanson, a Sergeant with the Illinois State Police, testified that on August 15, 2006, she was working as a crime scene investigator and received an assignment to report to a residence located on Wallace Street in Riverdale, Illinois. When she arrived at the location at approximately 9:30 p.m., Hanson spoke to Detective Graziano from the Riverdale Police Department and learned that approximately 20 people had been playing a dice game in the backyard of the residence when the shooting occurred. After that conversation, Hanson began to take photographs and document the crime scene. She testified that she found the victim lying face up on the cement patio located in the rear of the residence and observed a metal fragment from a bullet situated "very close" to the victim. Sergeant Hanson found a second metal bullet fragment "along the track of the sliding glass [rear] door." During the investigation, two shell casings were also found at the scene. One was under the victim's body and the other was in a neighbor's yard. The casings were collected in accordance with police protocol and were sent to the crime lab for testing and analysis.

¶ 11 Riverdale Police Department Sergeant Rich Graziano testified that on August 15, 2006, at approximately 8 p.m. there were reports of shots fired in the area of 136th and Wallace. When he arrived in the area, he saw "people running from the yards." As he walked around the scene, Sergeant Graziano encountered a male subject lying on a concrete porch located in the backyard of a residence bleeding from "his upper neck, upper chest area." It was immediately apparent that the victim had "suffered from some type of major injury." Sergeant Graziano and other responding officers immediately secured the crime scene and began to interview various witnesses.

¶ 12 During those interviews, police obtained physical descriptions of three suspects. One was a "male black, approximately 6-foot, 300 pounds, another male black, 5'11", no other

physical [description other] than that, and another male black, 5'11", maybe 175-pound, light skinned with some sideburns." In addition to obtaining physical descriptions of the offenders, Sergeant Graziano learned that the nickname for one of the suspects was Sug. Thereafter, on October 4, 2006, Sergeant Graziano received a phone call from the Illinois State Crime Lab informing him that a shell casing that had been recovered from the crime scene and submitted for testing was found to match a gun that had been seized during an a recent arrest in Harvey, Illinois. Following his conversation with the crime lab, Sergeant Graziano testified that defendant became a suspect in Mathews's shooting and on December 6, 2006, he asked McDuffie to come to the station and view a photo spread. After positively identifying defendant from the photo spread, McDuffie viewed a physical lineup and again identified defendant as the light-skinned black male that he had seen walk into Pebbles's backyard shortly before the shooting.

¶ 13 On December 7, 2006, the day after McDuffie's positive identification, Sergeant Graziano interviewed defendant, who agreed to waive his *Miranda* rights[2] and participate in a videotaped interview.[3] Initially, defendant denied knowing Mathews and denied being involved in Mathews's death. He also stated that he "ain't never hanged [*sic*] out in, in Riverdale." As Sergeant Graziano continued to question defendant, he admitted knowing the victim's brother, Willie Mathews, whose nickname was "Kill Will," and then acknowledged that he knew the victim, but stated that he did not have any problems with Mathews. When asked about the night of the shooting, defendant told Sergeant Graziano that "got a call [from Big Moe] to take a ride with him" and stated that he "didn't know what was going on till we got there." Defendant then

[2] We note that the Illinois Department of Corrections identifies defendant's birthday as October 16, 1988. He was thus 17-years-old at the time of the offense, which occurred on August 15, 2006, and 18-years-old at the time of his December 7, 2006, custodial interview with Sergeant Graziano.

[3] The videotaped interview lasted approximately two hours. Relevant portions of the interview were played for the jury during defendant's trial.

admitted that he was present when "there was [*sic*] three shots fired" and that he was in possession of a firearm at that time, but stated that his gun "didn't hit" the victim. Defendant explained that he simply discharged his weapon "twice in the dirt." He stated that someone else fired a Mac 11 and that the shots fired from that weapon "bust[ed] a window" and hit Mathews. Defendant did not identify the individual who fired the Mac 11, but admitted that he fled the scene after Mathews was shot.

¶ 14 Officer Harlen Lewis testified that in 2006, he was employed by the Harvey Police Department and was a member of the Special Operations Unit, which investigated gang and drug activity. He recalled that on the evening of September 15, 2006, he was in an unmarked police car with two partners: Officers Tony Dubois and Leonard Weathers. At approximately 9:30 p.m., they were driving northbound on Winchester Avenue when they were almost struck by a gray Buick LeSabre. The officers activated the car's lights and the Buick came to a stop when it pulled into a driveway on 148th Street. Once Officer Lewis exited his vehicle and approached the Buick, "the driver's side rear door opened up, and [defendant] emerged from it" and "began to run away." Officer Lewis noticed that defendant was carrying a "black object" in his hand that "appeared to be a gun." He pursued defendant on foot until he was able to "tackle[] him and br[ing] him to the ground." Once he did so, Officer Lewis twisted defendant's wrist and was able to gain control of the gun, which turned out to be a black nine-millimeter Glock 19 that contained a "high capacity *** extended magazine." Officer Lewis testified that the extended magazine contained nineteen rounds of .9 mm ammunition and that a single round "was actually in the weapon." Once Officer Lewis secured the gun, he performed a protective pat down of defendant's person and discovered defendant was wearing a bulletproof vest that was similar to

his own. After taking defendant into custody, the gun was inventoried in accordance with police protocol and was sent to the crime lab for testing.

¶ 15 Patricia Wallace, a forensic scientist employed by the Illinois State Police, testified that she specialized in firearm identification and performed analyses on the firearm evidence recovered in this case. She examined two cartridge cases that had been found at the scene of the shooting and determined that they "were fired [from] two different guns." Wallace conducted additional testing and was able to conclude that one of those cartridge cases had been fired from the .9 mm Glock that had been in defendant's possession at the time of the traffic stop.

¶ 16 Doctor Adrienne Segovia, an Assistant Medical Examiner at the Cook County Medical Examiner's Office, testified that on August 16, 2006, she performed Mathews's autopsy. During her external examination of Mathews's body, Doctor Segovia observed two gunshot entrance wounds on the left side of his neck and two gunshot exit wounds on the right side of his neck. During her internal examination, Doctor Segovia found that both gunshots had struck Mathews's jugular vein and that one had also pierced his carotid artery. She classified both of the wounds as "fatal" and identified the manner of his death as homicide.

¶ 17 Once the State rested its case-in-chief, defense counsel moved for a directed finding, but the motion was denied. Defendant elected not to testify and defense counsel rested without calling any witnesses. The jury commenced deliberations and ultimately returned with a verdict finding defendant guilty of the offense of first degree murder. In doing so, the jury also made a specific finding that defendant personally discharged a firearm during his commission of the offense. At the sentencing hearing that followed, the circuit court, after reviewing the arguments advanced by the parties in aggravation and mitigation, imposed a sentence of 60 years'

imprisonment, which included a 20-year mandatory firearm enhancement. Defendant's post-trial and post-sentencing motions were denied and this appeal followed.

¶ 18 ANALYSIS

¶ 19 Other Crimes Evidence

¶ 20 On appeal, defendant first argues that he was denied a fair trial because the circuit court permitted the State to introduce other crimes evidence and inform the jury that he "possessed body armor *** at the time of his arrest."[4] He maintains that the other crimes evidence was "entirely irrelevant to [his murder] charge" and that the admission of that evidence "prejudiced [him] in the eyes of the jury."

¶ 21 The State responds that the court did not err in admitting the other crimes evidence because "the events surrounding defendant's September 15th arrest [when he attempted to flee during a traffic stop] was relevant to show the circumstances surrounding defendant's arrest and to explain police conduct and their investigation leading to defendant's line-up identification and subsequent arrest for Mathews's murder."

¶ 22 As a general rule, evidence of other crimes or prior bad acts, that is, evidence of crimes or acts for which a defendant is not on trial, may be admitted only if it is relevant for a purpose other than to establish the defendant's bad character or his propensity to commit the charged offense. *People v. Pike*, 2013 IL 115171, ¶ 11; *People v. Evans*, 373 Ill. App. 3d 948, 958 (2007). Accordingly, other crimes evidence may be admitted to show modus operandi, intent, motive, identity, or the absence of mistake. *Pike*, 2013 IL 115171, ¶ 11; *People v. Hensely*, 2014 IL App (1st) 120802, ¶ 50. In addition, other crimes evidence may be used to explain police

[4] In defendant's opening brief, he also argued that the court erred in allowing the State to present testimony that the gun recovered from him during the traffic stop contained an extended magazine clip. In his reply brief, however, defendant acknowledged that the parties never treated the extended magazine clip separate from the gun and elected to "withdraw[]" that argument on appeal.

course of conduct and the investigation leading up to the defendant's arrest, but only where "such evidence is also relevant to specifically connect the defendant with the crime[] for which being tried." *People v. Lewis*, 165 Ill. 2d 305, 345-46 (1995); see also *People v. Nieves*, 193 Ill. 2d 513, 530 (2000). Ultimately, however, even where the other crimes evidence is relevant for purposes other than the defendant's criminal propensity, the evidence should not be admitted where its probative value is outweighed by its prejudicial effect. *Pike*, 2013 IL 115171, ¶ 11. Even when an there is an error with respect to other crimes evidence, the improper admission of other crimes evidence only necessitates reversal where it can be concluded that the evidence "must have been a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different." *People v. Hall*, 194 Ill. 2d 305, 339 (2000).

¶ 23 Here, the circuit court found that evidence of the events pertaining to defendant's September 15, 2006, arrest during the course of a traffic stop, where he was found in possession of a firearm that was subsequently linked to Matthews's death, was relevant and admissible to prove defendant's identity as Matthews's killer as well as to provide details about the circumstances of his arrest for that offense. Defendant concedes that it was permissible for the State to be allowed to elicit evidence that he possessed the gun at the time he was arrested during the traffic stop because it was subsequently linked to a shell casing found at the scene of Matthews's shooting, but argues that "there was no permissible evidentiary reason to elicit evidence that [he] was wearing body armor" at that time as well. We agree with defendant. Although the State suggests that it was proper to admit the circumstances of defendant's September 15, 2006, arrest "as a whole," the bulletproof vest was never connected to Mathews's shooting death and Officer Lewis's testimony concerning the vest itself was unnecessary to establish the steps taken by law enforcement officials during the investigation into Mathews's

death or establish defendant's identity as the shooter. That is, Officer Lewis could have simply testified that defendant ran from police during the course of a traffic stop and was found to be in possession of a firearm that was subsequently found to be a match to ballistics evidence that was recovered at the scene of Mathews's death. Accordingly, we find that the circuit court erred in allowing the State to introduce evidence that defendant was wearing a bulletproof vest at the time that he was found to be in possession of the firearm at issue in the instant case.

¶ 24 We further find, however, that the error does not warrant automatic reversal. See *People v. Nieves*, 193 Ill. 2d 513, 530-31 (2000) (recognizing that an error pertaining to the admission of other crimes evidence is subject to harmless error review). Here, the evidence against defendant was compelling. Notably, defendant was caught within a month of Mathews's murder with a handgun that was matched to a shell casing recovered from the crime scene under Mathews's dead body. Although defendant denied shooting Mathews, he did admit that he was in Pebbles's backyard at the time of the shooting and that he fired his weapon twice. Defendant's presence at the scene was corroborated by eyewitness William Duffie who testified that shots were fired shortly after defendant entered Pebbles's backyard. Although we acknowledge that the State made several brief references to the bulletproof vest during the trial, we find that any purported error with respect to the admission of other crimes evidence pertaining to the bulletproof vest was harmless given the overwhelming evidence against defendant. *Nieves*, 193 Ill. 2d at 530 (stating that the improperly admitted other crimes evidence is harmless "when a defendant is neither prejudiced nor denied a fair trial based upon its admission").

¶ 25 Constitutionality of the Exclusive Jurisdiction Provision

¶ 26 Defendant next challenges the constitutionality of the Illinois Juvenile Court Act's exclusive jurisdiction provision, arguing that it violates the eighth amendment's prohibition

against cruel and unusual punishment and offends procedural and substantive due process principles. Specifically, he argues that "the Illinois Juvenile Court Act's exclusive jurisdiction provision, which excludes seventeen-year-old minors from juvenile court jurisdiction, violates juvenile's constitutional rights because it automatically treats all seventeen-year-old minors charged with felonies as adults during prosecution and sentencing, without any consideration of their youthfulness and its attendant characteristics."

¶ 27 The State argues that "[d]efendant's argument is nothing more than a revamped version of the challenge previously made and repeatedly rejected to the constitutionality of the [related] [a]utomatic [t]ransfer provision" contained in the Act. Specifically, the State contends that the exclusive jurisdiction provision, like the automatic transfer provision, "does not impose any punishment on the juvenile defendant, but rather it only provides a mechanism for determining where [a] defendant's case is to be tried," and thus, does not violate the eighth amendment's prohibition against cruel and unusual punishment. In addition, the State further argues that exclusive jurisdiction provision does not violate any due process guarantees because it, like the automatic transfer provision, is "founded on a rational basis where there is an obvious overwhelming interest in protecting the public from the overwhelming danger posed by criminal acts with which this defendant stands charged."

¶ 28 The constitutionality of a statute is an issue of law that is subject to *de novo* review. *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005). Because statutes carry a "strong presumption" of constitutionality, it is the burden of the party challenging the constitutionality of a given statute to "clearly establish" that the statute violates constitutional protections. *Id*. at 487. A reviewing court is duty-bound to "construe a statute in a manner that it upholds its validity and constitutionality if it reasonably can be done." *People v. Graves*, 207 Ill. 2d 478, 482 (2003).

¶ 29 The Illinois Juvenile Court Act's exclusive jurisdiction provision in effect at the time of the offense[5] provided: "§ 5-120. Exclusive jurisdiction. Proceedings may be instituted under the provisions of this Article [The Juvenile Court Act] 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, and 5-180 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 2006).

¶ 30 The Illinois Juvenile Court Act's automatic transfer provision in effect at the time of the charged offense provided: "§ 5-130: Excluded jurisdiction. (1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of the offense was at least 15 years of age and who is charged with (1) first degree murder *** These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." 705 ILCS 405/5-130 (West 2006).

¶ 31 Defendant argues that the Illinois Juvenile Court Act's exclusive jurisdiction provision does not withstand constitutional scrutiny in light of a series of United States Supreme Court cases recognizing that fundamental differences exist between juvenile and adult offenders and that criminal procedural laws that completely fail to take a juvenile offender's age into account violate the eighth amendment's prohibition against cruel and unusual punishment. The specific cases relied upon by defendant include *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). In *Roper*, the

[5] It is worth noting that in January 2014, the age of defendants under the jurisdiction of juvenile court was raised from 17 to 18 years of age. Pub. Act 98-61 (eff. Jan. 1, 2014) (amending 705 ILCS 405/5-120 (West 2010)). However, the nature of certain crimes, including, as here, first degree murder, still requires a juvenile defendant to be tried as an adult.

United States Supreme Court held that the eighth amendment forbids the imposition of the death penalty on offenders who were under 18 years of age when they committed their crimes. Thereafter, in *Graham*, the Court held that the imposition of a life sentence without the possibility of parole on a juvenile offender who does not commit a murder, violates the tenets of the eighth amendment. Finally, in *Miller*, the Court concluded that any sentencing scheme calling for the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of their offense violates the eighth amendment's prohibition against cruel and unusual punishment.

¶ 32 During the pendency of defendant's appeal, our supreme court issued its opinion in *People v. Patterson*, 2014 IL 115102, in which it examined the constitutionality of the Juvenile Court Act's automatic transfer provision (705 ILCS 405/5-130 (West 2006)) in light of the United States Supreme Court's decisions in *Roper*, *Graham* and *Miller* and ultimately concluded that the provision did not violate the eighth amendment's prohibition against cruel and unusual punishment or procedural and substantive due process guarantees. In rejecting the defendant's eighth amendment challenge, the court reasoned that the automatic transfer provision is not punitive in nature; rather, it simply dictates the forum and procedure to be utilized to determine the culpability of juvenile offenders charged with certain crimes. *Patterson*, 2014 IL 115102, ¶¶ 104-05. Accordingly, the court concluded that "in the absence of any actual punishment imposed by the transfer statute, defendant's eighth amendment challenge cannot stand. [Citations.]" *Id.* ¶ 106. The court further found the defendant's reliance on the eighth amendment analyses set forth in *Roper*, *Graham* and *Miller* to support his procedural and substantive due process claims unpersuasive, reasoning that "the applicable constitutional standards differ considerably between due process and eighth amendment analyses" and that "a

constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id*. ¶ 97. Moreover, the court emphasized that the automatic transfer provision was a "creature of legislation" and "decline[d] to second-guess the validity of the legislature's judgment" that criminal court is the proper trial setting for a limited group of juveniles charged with certain serious crimes. *Id*. ¶¶ 104-05. While the court "strongly urge[d]" the legislature to re-evaluate the automatic transfer provision in light of the scientific and sociological evidence recognizing the need for judicial discretion in determining the appropriate setting for juvenile cases, the legislature has not yet completed that work. It can only be hoped that the legislature will also re-evaluate the period of time that 17 year olds charged with felonies were excluded from the jurisdiction of juvenile court and automatically subjected to adult court, to see whether a case by case review is appropriate.

¶ 33 In light of our supreme court's decision in *Patterson*, defendant's constitutional challenge to the Illinois Juvenile Court Act's exclusive jurisdiction provision necessarily fails. See, *e.g.*, *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 55 (finding that the same reasoning utilized by courts in rejecting constitutional challenges to the automatic transfer statute was equally applicable to the exclusive jurisdiction provision). The exclusive jurisdiction provision, like the automatic transfer provision excludes a specific class of juvenile offenders from adjudication in a juvenile forum and subjects them to adult criminal prosecution and sentencing. Neither provision imposes punishment; rather, these provisions dictate where a juvenile's case should be tried. Accordingly, the exclusive jurisdiction provision in effect at the time of the offense did not violate the eighth amendment's proscription against cruel and unusual punishment and the analyses employed in *Roper*, *Graham* and *Miller* are not applicable and do not warrant a different result. See *Patterson*, 2014 IL 115102, ¶¶ 97, 106. The exclusive jurisdiction

provision in effect at the time of the offense also did not offend due process guarantees because it, like the automatic transfer provision, was based on the legislature's determination that adult criminal court is the proper trial setting for older juveniles charged with serious crimes. *Id.* ¶ 105.

¶ 34 Due to our supreme court's *Patterson* decision, we are without authority to find the Juvenile Court Act's exclusive jurisdiction provision unconstitutional. We do, however, join our supreme court in urging the legislature to reconsider both the automatic transfer provision and the exclusive jurisdiction provision, which currently omit any mechanism by which the circuit court can consider the characteristics of juvenile offenders before subjecting them to adult criminal prosecution and sentencing. While these provisions may, in their current form, comport with the letter of the law, they do not take into consideration any of the inherent characteristics of youth, including "children's diminished culpability and heightened capacity for change," factors cited repeatedly by the United State's Supreme Court in its *Roper-Graham-Miller* trilogy. *Miller*, 132 S. Ct. at 2469.

¶ 35 Constitutionality of Sentence

¶ 36 In a related claim, defendant also challenges the constitutionality of his sentence. He argues that the 60-year sentence imposed by the circuit court is "tantamount to a life sentence," that "violates the [United States Supreme Court's] holding in *Miller v. Alabama*, which prohibits sentencing a juvenile offender 'to a lifetime in prison' without consideration of the offender's age and the 'hallmark features' of his youth."

¶ 37 The State, in turn, argues that defendant's sentence does not violate the Court's decision in *Miller v. Alabama* because that holding was limited to sentencing schemes mandating sentences of life imprisonment without the possibility of parole, which are "qualitatively

different" from fixed term-of-year sentences, which is the type of sentence at issue in the instant case.

¶ 38 As set forth above, in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the United States Supreme Court held that any sentencing scheme calling for the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of their offense violates the eighth amendment's prohibition against cruel and unusual punishment. In so holding, the court reasoned that "children are constitutionally different from adults for purposes of sentencing" and that "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." *Id*. at 2464-2465. Based on these differences, the court held that "a judge must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty possible for juveniles" and concluded that any sentencing scheme mandating the imposition of a life sentence without possibility of parole on a juvenile offender absent any consideration of the "hallmark features" of youth including "immaturity, impetuosity, and failure to appreciate risks and consequences" runs afoul of the constitutional guarantees of the eighth amendment. *Id*. at 2468.

¶ 39 Here, because defendant was prosecuted in adult criminal court, he was automatically subjected to adult sentencing provisions including: 730 ILCS 5/5-8-1(a)(1)(a) (West 2006) (mandating a minimum sentence of "not less than 20 years and not more than 60 years[' imprisonment]" for an offender convicted of first degree murder); 730 ILCS 5/5-8-1(a)(1)(d)(ii) (West 2006) (mandating a minimum 20-year sentencing enhancement be imposed on an offender who personally discharged a firearm during the commission of the offense); 730 ILCS 5/3-6-3(a)(2)(i) (2006) (truth-in-sentencing provision requiring an offender convicted of first degree murder to serve the entire sentence imposed upon him by the circuit court). Considered as a

whole, these provisions mandated that defendant was subject to a minimum sentence of 40 years' imprisonment and a maximum sentence of 80 years' imprisonment absent any specialized consideration of his youth.

¶ 40 Although defendant was not subject to a sentence of mandatory life imprisonment without the possibility of parole, the specific sentence decreed unconstitutional in *Miller*, the 60-year sentence that he received is certainly not inconsequential. In addition, because he is subject to the truth-in-sentencing provision applicable to the offense of first degree murder, defendant is not eligible to earn day-for-day credit for time served; rather, he must serve his entire sentence. 730 ILCS 5/3-6-3(a)(2)(i) (2006).[6] While this court agrees with defendant's contention that "in a practical sense, [his] sentence *is* a life sentence," neither the United States Supreme Court nor the Illinois Supreme Court has expanded the scope of *Miller* to discretionary non-life sentences, the type of sentence imposed upon defendant. See, *e.g.*, *Patterson*, 2014 IL 115102, ¶ 110 ("[B]oth this court and the United States Supreme Court have closely limited the application of the rationale expressed in *Roper*, *Graham*, and *Miller*, invoking it only in the contexts of the most severe of all criminal penalties," i.e., the death penalty or mandatory life imprisonment without the possibility of parole). Accordingly, although defendant was subject to a mandatory adult sentencing range of 40 to 80 years' imprisonment (730 ILCS 5/5-8-1(a)(1)(a) (West 2006); 730 ILCS 5/5-8-1(a)(1)(d)(ii) (West 2006)), we are without authority to find the mandatory statutory range of sentences for first degree murder to be unconstitutional as applied to defendant because the circuit court was afforded the discretion to consider mitigating factors, including defendant's

[6] We also note that defendant's 60-year sentence must be served consecutively to the 16-year sentence imposed following his aggravated unlawful use of a weapon conviction. 730 ILCS 5/5-8-4(a)(d)(1) (West 2006) (mandating that a defendant convicted of first degree murder or a Class X felony to serve his sentences consecutively). Moreover, based on the specific truth-in-sentencing provision applicable to defendant's aggravated unlawful use of a weapon conviction, although he is eligible for day-for-day good time credit, he is nonetheless statutorily required to serve 8 years of the total sentence imposed. 730 ILCS 5/3-6-3(a)(2.1) (West 2006).

age, prior to imposing a sentence within that statutory range. And, in this case, the circuit court clearly did consider all the mitigating and aggravating factors prior to exercising its discretion and imposing defendant's mid-range 60-year sentence.

¶ 41 Specifically, the court stated:

"[T]he elements of mitigation which the Court has heard are the fact that the defendant at the time of this incident was 17 years of age. He had a rough life, losing his mother, as the presentence investigation report indicates, and didn't have a lot of life which he had yet lived at that point. He became involved in the matters which led to this crime which he has been convicted of by the jurors. The Court considers all factors in mitigation regarding the defendant.

In aggravation, there are many matters to be considered just as well. The Court heard the entire trial, observed the statement of the defendant, and the State has argued that there was a bit of defiance, lack of remorse during the statement.

The Court also has heard the fact that the weapon which was used in this crime was found on the defendant approximately a month after this murder with a 30-bullet clip in a semiautomatic weapon with a bullet proof vest, items which nobody's dreamt about, to be used by military people, not yet people on the street.

The Court also has heard the testimony again through the PSI, the aggravating factors that exist when the defendant was in custody there in the County jail. He stayed in the Cook County Jail during the pendency of these cases. And the fact that at least two occasions the defendant was caught possessing a shank, a knife-type instrument.

There's been incidents in which he's brought violence on correctional guards. I heard the Sergeant just testify to the fact that simply as defendant was handcuffed at Cermak

Hospital and asked him to sign a waiver that he didn't want medical care, he punched him out for no reason whatsoever, as what I've heard.

It's the Court's position that things just continue and continue onwards with [defendant] in the wrong direction. During this period of time in the Cook County Jail, this Court has heard good things that do happen there. People entering programs, getting educations. If they have drug problems, they can seek treatment. And though that period of time is one which is involving incarceration, you look at, some people seek to do good.

From what I heard, certainly [defendant] is not a model prisoner by any means. And the Court has to look at all factors, again, in aggravation and mitigation as to what the appropriate sentence is.

Looking at all factors in front of me, the way things have developed from the outset of this crime, thereafter, I question the rehabilitative potential of [defendant]. The direction is going, it appears to be weaker if not nil.

Therefore, considering all factors as to what had occurred, the nature of this crime, this Court feels that on Count One the appropriate sentence will be, and he will be sentenced to serve 60 years in the Illinois Department of Corrections ***."

¶ 42 Defendant's Challenge to the Constitutionality of the Truth in Sentencing Act

¶ 43 Defendant also challenges the Truth in Sentencing Act (730 ILCS 5/5-8-4(a)(i) (West 2006)) as it applied to him.

¶ 44 Throughout the many discussions and analyses of the impact of this state's laws on juvenile offenders, three statutes: automatic transfer, mandatory sentencing, and truth in sentencing, have been treated like three parts of the same whole. This has led to the almost

automatic assumption that the Truth in Sentencing Act is constitutional because it is so intricately linked in these analyses to the other two.

¶ 45 However, taken as it is written, the Truth in Sentencing Act is a stand-alone act that should be considered separately for its constitutionality as applied to juvenile offenders such as defendant here.

¶ 46 While defendant is not a particularly engaging or sympathetic juvenile offender, the fact still remains that as a juvenile offender, tried, convicted and sentenced as an adult for murder in the first degree, the Truth in Sentencing Act requires him to serve 100% of his sentence.

¶ 47 This is not part of the sentencing scheme; it is part of the state's criminal procedure as a mandate to and for the authority of the Department of Corrections.

¶ 48 It is not a sentencing statute because it does not rely on any judge, or any court, to impose or administer it. " 'Sentence' is the disposition imposed by the court on a convicted defendant." 730 ILCS 5/5-1-19 (West 2006).

¶ 49 It is a corrections statute because only the Department of Corrections can administer it: "The Department of Corrections shall prescribe rules and regulations for awarding and revoking sentence credit for persons committed to the Department *** a prisoner who is serving a term of imprisonment for first degree murder *** shall receive no sentence credit and shall serve the entire sentence imposed by the court." 730 ILCS 5/3-6-3(a)(2)(i) (West 2006)).

¶ 50 We recognize that in the Rubik's cube of decision-making, a sentencing judge will, and indeed must, consider all the moving parts: the crime, the class of crime, the aggravating and mitigating factors, the legally possible sentencing range, any enhancements, any exceptions, mandatory sentencing, and what impact the Truth in Sentencing Act will have. But, that is not to say that the Truth in Sentencing Act only exists as an extension of the other sentencing factors.

It has a life of its own; if it were repealed tomorrow, the rest of the sentencing statutes would still exist. It is that separate life of the Truth in Sentencing Act that is troubling where it intersects the sentencing of juvenile offenders.

¶ 51 One of the required filters in sentencing juveniles is, and must be, their potential for rehabilitation. It is a different prism than the potential of adult defendants for rehabilitation. The United States Supreme Court and the Illinois Supreme Court have acknowledged what every parent and every civilized society knows: children are different from adults. They have a larger and potentially unlimited ability to change as they mature, and those changes can be for the better, or unfortunately, for the worse, depending in large part on their own history when dropped into the surroundings and experiences of prison.

¶ 52 Indeed, the Unified Code of Corrections defines, as one of the powers and duties of the Department of Corrections, the responsibility "to accept persons committed to it by the courts of this State for care, custody, treatment *and rehabilitation*…" (Emphasis added.) 730 ILCS 5/3-2-2(1)(a) (West 2016).

¶ 53 Indeed, the concept of rehabilitation is firmly rooted in our legal history. This duty and the responsibility for rehabilitation first appeared in 1973 (Ill. Rev. Stat. 1973, 1003-2-2). Before that, beginning in 1869, the Commissioners of the Penitentiary were directed to provide "diminution of sentence if no infractions of the discipline" occurred with reductions in sentence for good conduct. The prisoner would then get a certificate of "restoration" (Statutes of Illinois, 81 § 2, Gross, 1869). By 1880, the Commissioners were required to develop rules that "shall best conduce to the reformation of convicts" (Ill. Rev. Stat. 1880, 108 § 10) and to provide for "good time" for convicts who followed the rules (Ill. Rev. Stat. 1880, 108 § 45).

¶ 54 "When defining crimes and their penalties, the legislature must 'consider the constitutional goals of restoring an offender to useful citizenship and of providing a penalty according to the seriousness of the offense." *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002) (quoting *People v. Taylor*, 102 Ill. 2d 201, 206 (1984)).

¶ 55 In *People v. Roper*, 543 U.S. 551 (2005) the U.S. Supreme Court in deciding that the death penalty for juvenile offenders is unconstitutional stated: "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, 'the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside'" *Roper* at 570, quoting *Johnson v. Texas*, 509 U.S. 350 at 368.

¶ 56 *Roper* continues: "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, and which is characterized by callousness, cynicism and contempt for the feelings, rights and suffering of others. If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, we conclude that States should refrain from asking jurors to issue a far graver condemnation – that a juvenile offender merits the death penalty. When a juvenile

offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity." (Internal quotations omitted.) *Roper* at 573-74.

¶ 57 While *Roper* was a death penalty case, and this case is not, the underlying reasoning – that most juveniles are capable of rehabilitation, that it is impossible at sentencing to predict which ones can be rehabilitated and to what degree, and that the state must provide a meaningful opportunity for juvenile defendants to demonstrate their rehabilitation at some point along the line – points in the direction of finding that the Truth in Sentencing Act, as it applies to juveniles denies them the fundamental right to demonstrate rehabilitation.

¶ 58 The U.S. Supreme Court expanded its analysis of juvenile offenders in *Graham v. Florida*, 560 US 48 (2010), a life without parole case involving a non-homicide crime. "Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison that an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only. See *Roper*, at 572, [] This reality cannot be ignored." *Graham* at 70. The Court stated: "***life without parole [] alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration *** this sentence 'means denial of hope, it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit [of the convict], he will remain in prison for the rest of his days." *Graham* at 69-70 quoting *Naovarath v. State*, 105 Nev. 525, 526 (1989).

¶ 59 The *Graham* court reviewed retribution, deterrence, incapacitation and rehabilitation. Regarding incapacitation the court reasoned: "By denying the defendant the right to reenter the

community the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of juvenile nonhomicide offender's capacity for change and limited moral culpability. A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. ***The Eighth Amendment ***does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.*" *Graham* at 75.

¶ 60 Acknowledging that *Graham* concerned a nonhomicide offense, and Taylor was convicted of first degree murder does not alter the analysis: that it is impossible for any system to determine at the outset that a juvenile offender is totally irredeemable and can never be rehabilitated. The Truth in Sentencing Act as it applies to juvenile offenders does exactly that. It deprives the juvenile homicide offender any opportunity to demonstrate rehabilitation. That ignores the reality that juveniles by definition are immature and moving toward maturity. Granted, some juveniles will not be able to demonstrate maturity and rehabilitation. It is the deprivation of the chance to demonstrate fundamental change in his nature that offends our view of juveniles and justice in the same context.

¶ 61 Finally, the *Miller* court considered whether a sentence of life without parole for a juvenile convicted of murder was unconstitutional, and found that it violated the Eighth Amendment's prohibition against cruel and unusual punishments.

¶ 62 "Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole, 'An offender's age,' we make clear in *Graham*, 'is relevant to the Eighth Amendment, ' and so ' criminal

procedure laws that fail to take defendant's youthfulness into account at all would be flawed. *Miller v. Alabama*, 132 S. Ct. 2455, 2466 (internal quotations omitted).

¶ 63 The Miller court went on to analyze what it called the "confluence" of state laws and reasoned that it was the impact of several laws acting together that caused concern because it was impossible to tell if the states "actually 'intended to subject such offenders to those sentences' " or if it was just the fact that statutes in combination had the effect of life without parole for juvenile offenders. See *Miller* at 2473.

¶ 64 The Illinois Truth in Sentencing Act is a good candidate for the same reasoning: did the Illinois legislature actually intend for juveniles who are: 1) transferred automatically to adult court by the charging decision of the state's attorney, with no requirement for any protocol or reason, and with no judicial review; and are then 2) subject to adult sentences, including adult enhancements; to then be 3) subject to the truth in sentencing provisions that require (for a murder conviction) they must serve 100% of their sentence with no possibility of demonstrating maturity or rehabilitation? Or was the effect of the Truth in Sentencing Act just an unintended consequence of the transfer to adult court without its own specific legislative decision making?

¶ 65 An analysis of the General Assemblies from the 87th (1991-1992) through the 96th (2009 - 2010) for relevant topics reveals that the Truth in Sentencing Act was one part of the legislature's response to a severe uptick in violent crime in the early l990's. The Congress of the United States responded with the 1994 Crime Bill (Violent Crime Control and Law Enforcement Act of 1994, PL 103-322, effective September 13, 1994). Among other things the bill provided federal incentive money for states that adopted truth in sentencing laws in which violent offenders must serve at least 85% of their sentence. Congress dangled $3.95 billion for 1996 to 2000 in front of states that passed truth in sentencing laws. It is worth noting that former president Bill Clinton

recently renounced his 1994 crime bill: "The problem is the way it was written and implemented, we have too wide a net….We have too many people in prison. And we wound up spending – putting so many people in prison that there wasn't enough money left to educate them, train the for new jobs and increase the chances when they came out that they could live productive lives." http://thehill.com/blogs/blog-briefing-room-news/241247-bill-clinton-renounces-his 1994...(May 6, 2015). In a later CNN interview, the former president said: "In that bill there were longer sentences. And most of these people are in prison under state law, but the federal law set a trend…And that was overdone. We were wrong about that." http://www.cnn.come/2015/07/15/politics/bill-clinton-1994-crime -bill/ (July 15, 2015).

¶ 66 States, including Illinois, wanting to be "tough on crime" and in search of those federal dollars responded with tougher sentences, mandatory sentences, enhanced sentences, automatic transfer of juveniles to adult court for certain crimes, and the Truth in Sentencing Act.

¶ 67 During the debates on the various bills in the House and the Senate, the Illinois Legislature did not debate the behavioral, psychological or social characteristics of juveniles. This is not surprising since the scientific research in this area is relatively new.

¶ 68 And, it is clear that the legislature did not, during this time period, ever consider the result of the confluence of these tough on crime measures on juveniles. It is this intersection that is most troubling because it is when truth in sentencing is meshed with mandatory sentences and mandatory transfer to adult court that the consequences are most apparent. And those are the very same consequences on juveniles that were never specifically detailed, debated or considered when the Legislature was considering these bills.

¶ 69 To her credit, Rep. Barbara Flynn Curie, in a related debate on December 1, 1994, said: "We need to find out whether we are on the right track in dealing with serious crimes committed by juveniles….we've tried, get tough. I think it's time for us to get smart…" (p.72)

¶ 70 There are other members of the Legislature that were consistent in their instinct that the tough measures being debated and passed were not necessarily the answer for juvenile crime.

¶ 71 More persuasive to their colleagues were those who argued for the various bills. Rep. Rosemary Mulligan, in House debates on April 7, 1995 said: "Rehabilitation is a good thing, but I think we all realize that by the time a young person has committed a crime we may have passed the point where we can rehabilitate them …." (p. 173).

¶ 72 There was no debate on the Truth in Sentencing Act that focused specifically on its impact on juveniles transferred to adult court who were then subject to mandatory sentence, or for that matter on juveniles at all. The Truth in Sentencing Act [as part of P.A. 89-404] became effective August 20, 1995. It was later struck down by the Appellate Court as unconstitutional because the full bill violated the single subject rule in *People v. Pitts*, 295 Ill. App. 3rd 182 (1998), see also *People v. Reedy*, 295 Ill. App. 3d 34 (1998) and *People v. Reedy*, 186 Ill. 2d. 1 (1999).

¶ 73 In 1998 the Illinois Legislature re-enacted the provisions of the Truth in Sentencing Act [P.A. 90-592] again, curing the constitutional problem, but with no specific debate on its impact on juvenile offenders who were transferred to adult court and then subject to mandatory sentences.

¶ 74 One example of the lack of attention to the ramifications of the intersection of these tough on crime bills appears the in debate to add certain sexual offenses to the truth in sentencing provisions. Rep. Hoffman asked: "What about juveniles? Does this apply to any juvenile

crimes?" and Rep. Righter responded: "Only if they are tried and convicted as adults, it's my understanding." (March 9, 1999, p. 6) Those three sentences can hardly qualify as robust debate. The measure passed without any more discussion.

¶ 75 However, even if the legislature had at some point in the past engaged in debate on the specific issue of whether juveniles tried as adults should be subject to the Truth in Sentencing Act, what we know now about juvenile development should require a new analysis by the legislature. We encourage the legislature to begin that process.

¶ 76 Based on the current precedent, we are necessarily required to reject defendant's challenge to his sentence and affirm that sentence on appeal. We emphasize, however, that although the sentencing scheme to which defendant was subjected is not *per se* unconstitutional in light of *Miller's* express rationale, we question whether it is acceptable as a matter of public policy. This court, in particular finds the specific truth in sentencing provision to which defendant was subjected (730 ILCS 5/3-6-3(a)(2)(i) (2006)), which precludes defendant from any possibility of early release, to be particularly vexing because defendant cannot, under any circumstance, demonstrate his potential for rehabilitation at any time prior to the completion of his sentence. Nonetheless, although we are aware of the effect of the truth in sentencing provision as applied to defendant, we have no authority to change it and are obligated to accept it as constitutional. See *Patterson*, 2014 IL 115012 ¶¶ 107-110.

¶ 77 CONCLUSION

¶ 78 The judgment of the circuit court is affirmed.

¶ 79 Affirmed.

¶ 80 PRESIDING JUSTICE MASON and JUSTICE LAVIN, specially concurring.

¶ 81 We concur in the judgment only.