

No. 1-12-2501

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 12 CR 2270
)	
MELVIN RICHARDSON,)	
)	Honorable Timothy Joseph Joyce,
Defendant-Appellee.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** The recent supreme court opinion in *People v. Fiveash*, 2015 IL 117669, requires us to reverse the judgment below, which had dismissed the charges against the defendant for aggravated sexual assault. We remand for further proceedings on the charges as presented.

¶ 2 On June 23, 2014, we held that the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-120 (West 2008)) did not allow prosecution of a 29-year-old man in adult criminal court for a sexual assault he allegedly committed at age 14. *People v. Richardson*, 2014 IL App (1st) 122501 (*Richardson I*) (judgment vacated January 8, 2016). While the State's petition for leave to appeal in *Richardson* was pending before it, our supreme court considered a similar case and

held that such a prosecution was, in fact, viable. *People v. Fiveash*, 2015 IL 117669. Accordingly, the court issued a supervisory order returning this case to us with directions that we vacate our judgment in *Richardson I* and reconsider it in light of *Fiveash* to determine if a different result was warranted. *People v. Richardson*, No. 118028 (Nov. 25, 2015). We then allowed the defendant and the State to submit supplemental memoranda addressing whether this case had any characteristics which would bring it outside the control of *Fiveash*. Upon consideration of these additional materials and the supreme court's opinion in *Fiveash*, we find that we must reverse the judgment below and allow the defendant's prosecution to proceed.

¶ 3 The pertinent allegations and background were set forth in *Richardson I*, so we only briefly summarize them here. In 2009, 26-year-old Melvin Richardson was indicted for aggravated criminal sexual assault. The assault allegedly took place in 1997, when Richardson was 14 years old and the victim was 17 years old. Although the victim reported the crime immediately, the State did not charge anyone because the victim could not identify her assailant. Years later, a Combined DNA Index System (CODIS) match identified Richardson as the victim's possible assailant. *Richardson*, 2014 IL App (1st) 122501, ¶ 1.

¶ 4 Initially, the State filed a delinquency petition against Richardson in juvenile court, intending to seek a discretionary transfer to adult criminal court. However, the juvenile court dismissed the indictment with prejudice based on *In re Luis R.*, 388 Ill. App. 3d 730 (2009), *rev'd on other grounds*, 239 Ill. 2d 295 (2010), finding it lacked jurisdiction because of Richardson's age. *Richardson*, 2014 IL App (1st) 122501, ¶ 3. The State did not appeal that ruling. Instead, the State re-indicted Richardson and filed criminal charges against him in adult criminal court. Thereafter, Richardson moved to dismiss or, in the alternative, transfer his case to juvenile court. The trial court granted Richardson's motion to dismiss and held that

“Richardson was now immune from prosecution in the same manner as if the case was barred by a statute of limitations.” *Id.*

¶ 5 In *Richardson I*, the State argued that as a matter of law, the trial court’s dismissal of Richardson’s indictment was erroneous. The State contended that a proper construction of the various statutes dictated that Richardson’s prosecution was permissible. We disagreed, and affirmed the dismissal of the charges in a published opinion. *Id.* ¶¶ 16-17.

¶ 6 In *Fiveash*, 2015 IL 117669, our supreme court considered the case of a defendant who was charged at age 23 with committing several different assaults against the same victim over a period of time. Some incidents allegedly occurred when the defendant was 14; others, not until after he had turned 15. Had the defendant been charged promptly, he would have had the benefit of a discretionary transfer hearing to allow him to be tried in juvenile court for the offenses allegedly committed when he was 14. However, because of the seriousness of the offenses charged, he would have been automatically transferred to adult criminal court for trial on those committed after he turned 15. *Fiveash*, ¶ 15, n.2.

¶ 7 The *Fiveash* court stated that the 21-year-old “age out” provision in section 5-120 of the Act (705 ILCS 405/5-120 (West 2004)) did not bar the prosecution “of defendant in criminal court for offenses he allegedly committed when he was 14 or 15 but was not charged until he was over 21 and no longer subject to the Act.” *Id.* ¶ 48. The court found that, in enacting an especially long statute of limitations for certain crimes, the legislature opened the door to allow defendants to be prosecuted as adults for acts they committed long before as minors. The *Fiveash* court specifically declined to follow the contrary analysis we employed in *Richardson*. *Id.* ¶¶ 35-41.

¶ 8 The defendant argues that his case is distinguishable from *Fiveash* because Richardson was 14 when he allegedly committed the offense in question, but the defendant in *Fiveash* “turned 15 during the pendency of the crimes for which was charged.” Accordingly, he contends, he should have had the benefit of a discretionary transfer hearing in juvenile court. However, *Fiveash* does not support this contention. The court made no distinction between the crimes Fiveash allegedly committed when he was 14 and those when he was 15, stating: “[s]ection 5-120 of the Act does not bar the prosecution of defendant in criminal court for offenses he allegedly committed when he was 14 or 15 but was not charged with until he was over 21 and no longer subject to the Act.” *Id.* In so holding, the *Fiveash* court rejected a claim identical to the one defendant makes here. The court essentially held that a defendant’s right to a discretionary transfer hearing only applies when the defendant is “subject to the juvenile court’s authority,” *i.e.*, when he is still under age 21. *Id.* ¶ 15, n.2; ¶ 48.

¶ 9 For these reasons, we find there are no distinguishing characteristics of this case which bring it outside the control of the precedent established in *Fiveash*. We reverse the order dismissing the charges and remand this cause to the trial court for further proceedings.

¶ 10 Reversed and remanded.