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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. 12 CR 20600
)	
MONTRELL WILLIAMS,)	
)	The Honorable
Defendant-Appellant.)	Noreen Valeria Love,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* minor defendant's armed robbery conviction affirmed where the evidence was sufficient to prove his guilt beyond a reasonable doubt, he received effective assistance of counsel, and where his adult criminal bench trial, conducted in accordance with the automatic transfer provision of the Illinois Juvenile Court Act did not infringe upon his constitutional rights; minor defendant's 21-year sentence affirmed where the mandatory adult criminal sentencing range to which he was subjected was constitutional and where the court considered and relied upon significant mitigating evidence when it elected to impose the minimum sentence allowed by law.

¶ 2 Following a bench trial, defendant Montrell Williams was convicted of armed robbery with a firearm and was sentenced to 21 years' imprisonment. Although he was 16-years-old at

the time of the offense, defendant was tried and sentenced as an adult in accordance with the automatic transfer provision set forth in section 5-130 of the Illinois Juvenile Court Act of 1987 ("Juvenile Court Act" or "Act") (705 ILCS 405/5-130 (West 2010)). On appeal, defendant seeks reversal of his conviction, arguing that the State failed to prove him guilty of the charged offense beyond a reasonable doubt and that he was denied his constitutional right to effective assistance of trial counsel. He also challenges the constitutionality of the Illinois Juvenile Court Act's automatic transfer provision and sentencing scheme and his resulting 21-year sentence. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4

On September 30, 2012, Jose Espino, a taxi driver, was robbed at gun point by three young males who were passengers in his cab. Defendant, a 16-year old high school student, was arrested in connection with the incident and was charged with armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)). Although he was just 16 years of age at the time of the offense, the cause was transferred from juvenile court to adult criminal court as required by the automatic transfer provision of the Juvenile Court Act. 705 ILCS 405/5-130 (West 2012). Co-defendants Armond Thornton and Robert Adams were also arrested and charged with armed robbery.¹ All three co-defendants executed written jury trial waivers in open court and the cause proceeded to simultaneous, but severed, bench trials.

¶ 5

At trial, Espino testified through an interpreter that on September 30, 2012, at approximately 11 p.m., he was dispatched to 500 Linden Avenue located in Bellwood, Illinois. When he arrived at that location, three young African American males came around the side of a house and approached his taxi. Once they entered his cab, they instructed Espino to take them "to

¹ Thornton and Adams filed their own appeals which have been resolved by this court in separate Rule 23 orders: 2015 IL App (1st) 140720-U and 2015 IL App (1st) 133523-U, respectively.

the Lucky Dog [restaurant] in Melrose Park." On his way to Lucky Dog, Espino's passengers directed him to return to the Linden Avenue address in order to pick up another passenger. When he returned to that location, Espino stopped his car. After he did so, one of the passengers reached into the front seat, turned off the car and took the keys from the ignition. Espino, in turn, attempted to grab the passenger's arm, but the young man was able to yank his arm away. The young man then put a gun to Espino's head and instructed him not to move. Espino knew the object placed against his temple was a gun because he could feel "cold metal" and could see the gun out of the corner of his eye. Espino then turned his head to look into the backseat and asked, "What do you want?" In response, the young man told Espino that he wanted "the money." Espino then reached into his pocket and gave the young man \$20.

¶ 6 Espino testified that during this exchange, the other two passengers were not wielding guns or demanding money; however, they were standing outside of the car instructing the gun man to "Hurry up. Rush it. *** [and to] Get it done." After handing over the \$20 bill, Espino took off his seat belt and attempted to get out of his car. When he put his feet outside of the taxi, however, he was again ordered not to move by the gunman, who had also exited the vehicle. The two passengers without the gun began telling the gunman to "check [Espino's] pockets" for more money. Espino then pulled out another \$20 bill, but told them that he had only been working for three hours and had not made much money that evening. After taking Espino's money, I.D.s and business cards, the gunman threw Espino's keys across the street. He then started to retreat and instructed, "[L]et's move. Let's move." The three young men then walked around the side of a house.

¶ 7 Espino retrieved his keys and then placed a call to 911 to report the incident, which had been recorded on the camera he had in his taxi. Espino explained that his cab was equipped with

a hidden camera that takes still images of the backseat of the car at regular intervals. It is activated when any door to the vehicle is opened. Because the camera only takes pictures at regular intervals and does not record everything, Espino acknowledged that there were no still images showing a gun held to his head or of him grabbing the arm of one of his passengers. There were, however, still images taken of the passengers. Notwithstanding the images captured by his cab's camera, Espino acknowledged that he was unable to identify any of the three co-defendants in court as the passengers who had robbed him.

¶ 8 On cross-examination by co-defendant Thornton's counsel, which was adopted by defendant and Adams, Espino acknowledged that the robbery happened "fast" and was effectuated in "seconds." He also testified that when police officers arrived on scene he told them that he believed the three young men had entered a specific house, but the officers did not investigate that house, informing him that it was the detective's responsibility to do so.

¶ 9 Detective Zachary Sienkiewicz, a police officer with the Hillside Police Department, testified that in 2012, he was the school liaison officer at Proviso West High School (Proviso West). In that capacity, he dealt with any criminal issues that arose at the school and became familiar with the students attending the school. Detective Sienkiewicz recalled that in October 2012, he met with Detectives Buckner and O'Neal, two officers from the Bellwood Police Department, who showed him a "video of still shots taken from a taxi cab." He recalled that the images depicted "three subjects in the backseat of the cab and the taxi driver in the front seat." Based on the time he had spent as a liaison officer at Proviso West, Detective Sienkiewicz "recognized all three subjects" recorded on the video because they were students enrolled at the high school. He identified defendant, and co-defendants Thornton and Adams as the three

individuals depicted on the video of still images taken from Espino's taxi cab. He specifically testified that he had "multiple interactions with [defendant] at the high school."

¶ 10 Bellwood Police Detective Corey O'Neal confirmed that in October 2012 he was assigned to investigate Espino's case. He further confirmed that he went to Proviso West High School on October 9, 2012, where he picked up defendant and co-defendant Thornton² and transported them to the Bellwood Police Station. He testified that after the two young men were separated, he spoke to co-defendant Thornton, who waived his *Miranda* rights and agreed to talk to him. Co-defendant Thornton initially denied that he was a passenger in Espino's cab on the night in question. After being shown still images taken from inside of Espino's cab, Thornton acknowledged that one of the individuals in the picture looked like him, but stated that he did not remember being in a cab on September 30, 2012. Later, Thornton admitted to being in Espino's cab, but denied that he knew the names of the two other individuals who had been in the cab with him that evening. Thornton also denied that there had been a robbery that evening, stating that he had simply taken the driver's keys out of the ignition and thrown them in the street as he exited the cab. There is no evidence that defendant or co-defendant Adams provided any statements to Officer O'Neal.

¶ 11 After the State presented the aforementioned testimony, defense counsel for co-defendant Thornton moved for a directed finding, arguing that Espino's testimony was not credible given that none of the still images captured by the camera in his cab showed one of the passengers pointing a gun at him. Moreover, Espino was unable to identify any of the three co-defendants in court as the perpetrators of his alleged armed robbery. Defendant's counsel adopted co-defendant Thornton's argument for a directed finding and both motions were denied. Defendant

² It appears from the record that co-defendant Adams was no longer attending Proviso West High School in October 2012 and that he was not taken into custody at the same time that defendant and co-defendant Thornton were taken into custody on October 9, 2012.

elected not to testify and the defense called no witnesses. His co-defendants neither testified nor called any witnesses of their own and the parties subsequently engaged in closing arguments. During closing argument, defense counsel again reiterated that the still images from Espino's cab did not show a gun, did not show any of the passengers reaching for Espino's keys, and thus did not corroborate Espino's testimony. Moreover, counsel argued:

"[T]here is no indication that Mr. Williams actually did anything. Mr. Williams [unlike co-defendant Thornton] didn't make any statements to the police about his activities. Mr. Williams was not alleged to have had a gun. Mr. Williams was not alleged to have any money or participated in this in any way aside from supposedly being out of the car.

Mr. Espino indicated that he heard somebody say, you know, 'Hurry up.' There was no indication that Mr. Williams actually said anything. [Espino] couldn't identify any of the individuals.

For these reasons, your [H]onor, we think the State has not met their burden to find Mr. Williams guilty beyond a reasonable doubt. We ask that you find him not guilty."

¶ 12 After hearing arguments of the parties and evaluating the aforementioned evidence, the circuit court made a finding of guilty as to each defendant. At the sentencing hearing that followed, the circuit court, upon hearing the evidence offered in aggravation and mitigation, sentenced defendant and his two co-defendants to 21 years' imprisonment, the mandatory minimum sentence allowed by statute. In doing so, the court stated that if it could have imposed a lesser sentence, it would have done so. This appeal followed.

¶ 13

ANALYSIS

¶ 14

Sufficiency of the Evidence

¶ 15 Defendant first challenges the sufficiency of the evidence. Specifically, he argues the State failed to present the requisite evidence to sustain his conviction under an accountability theory and that he "should not have been found accountable for Armond Thornton's crime where there was no evidence [he] engaged in prior planning of the crime and no evidence [he] took action intended to advance or assist commission of the crime."

¶ 16 The State, in turn, responds that defendant's challenge to the sufficiency of the evidence is without merit because the totality of the evidence "established that defendant, with the intent to promote and facilitate the commission of the armed robbery, aided or attempted to aid Thornton in the commission of the offense." The State emphasizes that based on Espino's testimony, co-defendant Thornton held a gun to his head and demanded money, while defendant and co-defendant Adams remained outside of the cab urged Thornton to "get it done." When Espino initially only produced \$20, defendant and Adams then instructed Thornton to check Espino's pockets for more money. Based on this evidence, the State asserts that defendant was "not 'merely present' " when the crime occurred; rather, he was an active participant.

¶ 17 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute

its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007).

¶ 18 In accordance with section 5-2(c) of the Criminal Code of 2012, a person is legally accountable for the conduct of another when he "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2012); *People v. Cooper*, 194 Ill. 2d 419, 434 (2000). Where "2 or more persons engage in a common criminal design or agreement, any acts in furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts." 720 ILCS 5/5-2(c) (West 2012); *People v. Fernandez*, 2014 IL 115527, ¶ 13. Specific words of agreement between codefendants are not necessary to establish that they shared a common criminal design; rather a shared common design may be inferred from the circumstances. *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995); *People v. Willis*, 2013 IL App (1st) 1102331 ¶ 79. Although mere presence at a crime scene is insufficient, on its own, to establish a defendant's guilt under an accountability theory, "a fact finder may infer a defendant's accountability from h[is] approving presence at the scene of the crime and from evidence of conduct showing a design on defendant's part to aid in the offense." *People v. Martinez*, 278 Ill. App. 3d 218, 223 (1996).

¶ 19 Here, viewing the evidence in the light most favorable to the State, we find that the State presented sufficient evidence to prove defendant guilty of the offense of armed robbery with a

firearm pursuant to an accountability theory beyond a reasonable doubt. The evidence adduced at trial, established that the three co-defendants entered Espino's taxi together and instructed him to drive them to a nearby restaurant. While en route to the restaurant, Espino was subsequently instructed to return back to the 500 block of Linden Avenue. Upon doing so, co-defendant Thornton placed a gun against Espino's head and demanded money. Instead of leaving the scene, defendant and co-defendant Adams stood outside of the taxi and urged Thornton to "hurry up" and "get it done." Moreover, after Espino initially produced \$20, defendant and co-defendant Adams urged Thornton to check Espino's pockets for more money. After taking Espino's money and ID, Thornton threw the keys down the street and the three young men fled together. The evidence thus establishes that each of the three defendants were actively involved in the armed robbery and engaged in acts in furtherance of the common design to rob Espino. We therefore reject defendant's challenge to the sufficiency of the evidence.

¶ 20 Ineffective Assistance of Counsel

¶ 21 Defendant next argues that he was denied his constitutional right to effective assistance of trial counsel. He argues that counsel filed no pre-trial motions, failed to cross-examine Espino, and failed to effectively challenge the State's accountability theory.

¶ 22 The State responds that defendant's ineffective assistance of counsel claim necessarily fails because the record demonstrates that "defense counsel evoked sound trial strategy and unrelentingly advocated for defendant at trial." Moreover, given the evidence against him, the State argues that defendant cannot establish that he was prejudiced by any of defense counsel's purported shortcomings.

¶ 23 It is well-established that every criminal defendant has a constitutional right to receive effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I § 8;

Strickland v. Washington, 466 U.S. 668, 685, 104 S. Ct. 2052, 2063, 80 L. Ed. 2d 674, 691-92 (1984). The right to effective assistance of counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. To prevail on a claim of ineffective assistance of trial counsel, the defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984) and establish that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced defendant. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984); *People v. Baines*, 399 Ill. App. 3d 881, 887 (2010). With respect to the first prong, the defendant must overcome the "strong presumption" that counsel's action or inaction was the result of sound trial strategy. *People v. Jackson*, 205 Ill. 2d 257, 259 (2001); *People v. Shelton*, 401 Ill. App. 3d 564, 584 (2010). "In recognition of the variety of factors that go into any determination of trial strategy, * * * claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review." *Wilborn*, 2011 IL App. (1st) 092802, ¶ 79, quoting *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002); see also *People v. Mitchell*, 105 Ill. 2d 1, 15 (1984) ("The issue of incompetency of counsel is always to be determined by the totality of counsel's conduct.") To satisfy the second prong, the defendant must establish that but for counsel's unprofessional errors, there is a reasonable probability that the trial court proceeding would have been different. *People v. Peebles*, 205 Ill. 2d 480, 513 (2002). A defendant must satisfy both the performance and prejudice prongs of the *Strickland* test to prevail on an ineffective assistance of counsel claim. *Evans*, 209 Ill. 2d at 220; *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶ 24

Based on our review of the record, we disagree that defendant was denied his constitutional right to effective assistance of counsel. Although defendant is correct that defense counsel filed no pre-trial motions, he fails to identify what pre-trial motions counsel should have filed and how those motions would have altered his trial outcome. Moreover, although defense counsel did not personally cross-examine Espino, counsel adopted questions posed by co-defendant Thornton's attorney, which essentially sought to challenge Espino's credibility as a witness and reveal inconsistencies between Espino's version of the events and the still-images captured by the taxi's camera. We emphasize that "counsel's strategic choices are virtually unchallengeable" (*People v. Palmer*, 162 Ill. 2d 465, 476 (1994)) and conclude that defense counsel's decision to adopt the line of inquiry posed by co-defendant Thornton's counsel was not an unsound trial strategy. Moreover, we note that defense counsel did cross-examine Detective O'Neal and sought to elicit information about the shortcomings of the police investigation into the robbery, including the detective's failure to investigate any of the houses on Linden Avenue where Espino believed he last saw the offenders. Counsel again challenged the strength of the State's case during his closing argument. During that closing argument, counsel also challenged the premise that defendant could be accountable for co-defendant Thornton's actions, arguing that there was no evidence that defendant "actually said anything" during the crime or "participated in any way aside from supposedly being outside of the car." Although defendant argues that this was "too little, too late," defense counsel clearly challenged the sufficiency of the evidence against his client. The mere fact that counsel's challenge was unsuccessful does not support an ineffective assistance of counsel claim. See, e.g., *People v. Walton*, 378 Ill. App. 3d 580, 589 (2007). Assuming *arguendo* that any of defense counsel's actions or inactions could be considered unreasonable, defendant's ineffective assistance of counsel claim still fails because he

cannot satisfy the prejudice prong of the *Strickland* test given the strength of the evidence against him, namely, Espino's testimony that all three co-defendants were active participants in the armed robbery. We therefore reject defendant's ineffective assistance of counsel claim and affirm his conviction.

¶ 25 Constitutionality of the Automatic Transfer Provision and Sentencing Scheme

¶ 26 Finally, defendant challenges the constitutionality of the Juvenile Court Act's automatic transfer provision and sentencing scheme. Specifically, he argues that the provision, which subjects minors to adult criminal prosecution and sentencing absent any consideration of the inherent differences between juvenile and adult offenders, violates the eighth amendment's prohibition against cruel and unusual punishment as well as federal and state due process guarantees.

¶ 27 The State responds that defendant's challenge to the Juvenile Court Act's automatic transfer provision lacks merit. Given that the automatic transfer provision does not impose punishment, but simply dictates the forum where a defendant's case is to be tried, the State argues that the provision does not violate the eighth amendment's prohibition against cruel and unusual punishment. The State further argues that the automatic transfer provision does not violate any due process guarantees because it is based on the legislature's reasonable determination that the public interest is best protected by requiring certain older juvenile offenders who commit the worst crimes to be subject to adult criminal prosecution and sentencing.

¶ 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 automatic transfer provision provides as follows:

"§ 5-130: Excluded jurisdiction. The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm." 705 ILCS 405/5-130 (West 2010).

¶ 30 Defendant argues that the Illinois Juvenile Court Act's automatic 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 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.

¶ 31 In *People v. Patterson*, 2014 IL 115102, our supreme court recently examined the constitutionality of the Juvenile Court Act's automatic transfer provision 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 any 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 did suggest that the legislature re-evaluate the automatic transfer provision, the legislature has not yet completed that work.

¶ 32 Although defendant acknowledges our supreme court's holding in *Patterson*, he suggests that the court's reasoning "does not withstand scrutiny, where the transfer of children to adult court has virtually no consequence other than automatically increasing the applicable sentencing range." We, however, are without authority to ignore supreme court precedent and are thus unable to find the Juvenile Court Act's automatic transfer provision unconstitutional. We do, however, join our supreme court in urging the legislature to re-consider both the automatic transfer provision and the exclusive jurisdiction provision, which currently omit any mechanism by which the circuit court can consider the unique characteristics of juvenile offenders before subjecting them to adult criminal prosecution and sentencing.³ While these provisions may, in their current form, comport with the letter of the law, they are certainly at variance with the spirit of the law and 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. At its core, the problem with the automatic transfer and exclusive jurisdiction provisions is that it gives full and unfettered discretion to the State's Attorney to charge or overcharge a juvenile, with no oversight, no guidelines, and no process for review. When juveniles are charged or overcharged with certain serious offenses, they wind up in adult court – and then have to stay there. Even if they are found not guilty of the actual crime charged, they are still potentially subject to adult sentencing for any lesser-included offense. This is the legal

³ We note that the supreme court again recently "encouraged" the Illinois legislature to reevaluate the provisions contained in the Juvenile Court Act given "the inherent tension and potential for perceived unfairness between juvenile dispositions and the comparatively harsh punishments defendants may face in criminal court for offenses allegedly committed as juveniles." *People v. Fiveash*, 2015 IL 117669, ¶ 46.

equivalent of a bottomless pit: there is no way for a juvenile to get out of the trap the State's Attorney sets unless he is found not guilty of anything. For juveniles, who have well recognized impulse problems, this is a catastrophe waiting to happen. The sad truth is, it does happen way too often.

¶ 33 In a related claim, defendant also challenges the constitutionality of his sentence. Relying principally on the United States Supreme Court's decision in *Miller v. Alabama*, where the court held that the imposition of sentences of mandatory life imprisonment without the possibility of parole on juvenile offenders was unconstitutional, he argues that the imposition of any mandatory adult minimum sentence on juveniles, such as 21-year sentence to which he was subjected, also violates the constitutional prohibition against cruel and unusual punishment because it precludes any consideration of a juvenile offender's age or the hallmark characteristics of youth.

¶ 34 In this case, because defendant was prosecuted in adult criminal court, he was automatically subject to a mandatory adult sentencing range of 21 to 45 years' imprisonment for the offense of armed robbery with a firearm absent any consideration of his age. 720 ILCS 5/18-2(a)(2) (West 2010)).⁴ Although this sentencing range is not inconsequential, it is not the equivalent of a sentence of mandatory life imprisonment without the possibility of parole, the specific sentence decreed unconstitutional in *Miller*. Ultimately, based on the current legal landscape, the sentencing scheme to which defendant was subjected cannot be deemed unconstitutional. See *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

⁴ Given his prosecution in adult criminal court, defendant is statutorily required to serve 50% of his 21-year sentence based on the specific truth-in-sentencing provision applicable to his offense. 730 ILCS 5/3-6-3(a)(2.1) (West 2010).

death penalty or mandatory life imprisonment without the possibility of parole); see also *People v. Pace*, 2015 IL App (1st) 110415, ¶ 132 ("*Miller*, however, 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 attendant characteristics into consideration"); *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 58 ("The Supreme Court did not hold in *Roper*, *Graham*, or *Miller* the eighth amendment prohibits a juvenile defendant from being subject to the same mandatory minimum sentence as an adult, unless the mandatory minimum sentence was death or life in prison without the possibility of parole").

¶ 35 Although the mandatory term-of-year sentencing range to which defendant was subjected is not unconstitutional based on the current state of the law, we nonetheless strongly object to the application of any mandatory sentencing requirements to juveniles transferred to adult court pursuant to either the automatic transfer or exclusive jurisdiction provision. Mandatory sentencing requirements preclude the circuit court from fully exercising its discretion to determine the appropriate sentence to be applied to a juvenile offender. The court cannot give full and meaningful consideration to the hallmark characteristics of youth when constrained by mandatory sentencing requirements. Indeed, it is evident that the circuit court's discretion was limited by the mandatory minimum sentence plus the firearm enhancement applicable in the instant case. The court stated several times during the sentencing hearing that it would have imposed a lesser sentence on defendant and his co-defendants if it were not bound by the 21-year minimum sentence requirement. We reiterate our appeal to the legislature to reevaluate the automatic transfer and exclusive jurisdiction provisions of the Juvenile Court Act as well as the mandatory sentencing provisions to which juveniles are subjected when they are tried as adults. We note that the legislature has taken certain steps to ameliorate, going forward, the harsh

sentences to which juveniles are exposed when they are tried as adults. See 730 ILCS 5/5-4.5-105 (eff. January 1, 2016) (permitting sentencing courts to take into account certain characteristics of offenders under the age of 18 and allowing courts to decline to impose automatic sentencing enhancements for certain juvenile offenders). We strongly encourage the legislature to continue to evaluate and address the problems inherent in trying juvenile offenders in adult court.

¶ 36 Turning to defendant's specific sentence, we find that his 21-year sentence does not constitute cruel and unusual punishment under the current state of the law. As explained above, the circuit court was afforded discretion to sentence defendant within a fixed sentencing range of 21 to 45 years' imprisonment. 720 ILCS 5/18-2(a)(2) (West 2010). At the sentencing hearing, the State acknowledged defendant's lack of criminal record, and "ask[ed] for a sentence of 25 years imprisonment." In mitigation, defense counsel emphasized defendant's young age, lack of previous criminal history, his strong family ties, and his desire to complete school and possibly "go into the Navy." In addition, defense counsel read into the record a letter submitted on defendant's behalf from the pastor of his church, where he regularly attended services and Sunday School. In the letter, the pastor characterized defendant as "a truly good person" and requested the court to give him "another chance." Defendant was also afforded the opportunity to give a statement in allocution. In his statement to the court, defendant expressed his desire to "further [his] educational career" so that he could "try to help solve problems in overall the next generation and be a role model to [his] younger brother."

¶ 37 After hearing evidence in mitigation and defendant's statement in allocution, the court sentenced defendant to 21 years' imprisonment, the minimum sentence allowed by statute. In doing so, the court stated:

"I have looked at the PSI's on each of you, and I don't think that any of you young men are bad young men. I think that, the same way that all of us did when we were teenagers, you do some stupid things and somebody gets into trouble, but this is kind of the ultimate. You are not like a lot of young people who come before me who are absolute thugs or committing murders. I don't see that in any of you. I hope that, though this is a setback, that you do something positive when you get into the penitentiary, continue your education, do everything that you need to do, read a lot, that is something that's going to get you a long way in life because not only—I mean, you're going to increase your vocabulary, a lot of things will go along with that. I encourage you to stay in touch with your families. Let me encourage you to stay away from the guys in there who will be trouble. You do not want to get into that crowd, because then when you get out, you're going to follow those ways, and this is going to become a lifestyle for you. If I could have sentenced you to something else, I promise you I would have done that. I want to wish each of you good luck, and keep your head up."

¶ 38

Based on the record, it is clear that the court was mindful of the mitigating evidence presented on defendant's behalf and indicated that it would have sentenced defendant to a lesser sentence if able to do so. At the same time, the court acknowledged during the sentencing hearing that armed robbery with a firearm, the offense of which defendant was convicted, was a "very serious offense" and that the Illinois legislature has deemed 21 years' imprisonment an "appropriate" minimum sentence for that offense. Ultimately, given that the circuit court retained and clearly exercised its discretion to consider defendant's youth and other mitigating circumstances prior to imposing a significant sentence, we are unable to conclude based on the current state of the law, that defendant's sentence constitutes cruel and unusual punishment in

violation of his eighth amendment rights. See, *e.g.*, *Banks*, 2015 IL App (1st) 130985, ¶ 21; *Pace*, 2015 IL App (1st) 110415, ¶ 134; *Cavazos*, 2015 IL App (2d) 120171, ¶ 100.

¶ 39 We also necessarily reject defendant's related argument that his 21-year sentence violates the proportionate penalties clause under the Illinois State Constitution. That provision mandates 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. "To succeed on a proportionate penalties claim, a defendant must show either that the penalty imposed is cruel, degrading, or [that it is] so wholly disproportionate to the offense that it shocks the moral sense of the community ***." *People v. Klepper*, 234 Ill. 2d 337, 348-49 (2009). A sentence does not violate the constitutional requirement of proportionality "if it is commensurate with the seriousness of the crime and gives adequate consideration to the rehabilitative potential of the defendant." *People v. St. Pierre*, 146 Ill. 2d 494, 513 (1992). Here, defendant fails to show, and this court is unable to find, that his 21-year sentence is cruel and degrading or wholly disproportionate to the offense that is shocks the moral sense of the community. Although we are not entirely unsympathetic to defendant, the crime of which he was convicted was a serious one. Moreover, we note that the proportionate penalties clause is "coextensive" (*Patterson*, 2014 IL 115102, ¶ 106; *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006)) with the eighth amendment's cruel and unusual punishment clause and conclude that defendant's proportionate penalties argument fails for the same reasons that we found that his eighth amendment challenge also failed. See, *e.g.*, *Banks*, 2015 IL App (1st) 120985, ¶ 24.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court is affirmed.

¶ 42 Affirmed.

