

FIRST DIVISION
January 25, 2016

No. 1-14-0047

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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 17855
)	
CORNELIUS HEARD,)	Honorable
)	Nicholas Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Liu and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction and sentence are affirmed where the State filed a petition to sentence defendant as an adult, and the trial court properly considered all of the factors in granting the State's petition.

¶ 2 Defendant, Cornelius Heard, appeals his conviction after a bench trial of robbery and his sentence of seven years' imprisonment. On appeal, defendant contends that the trial court erred in sentencing him as an adult pursuant to section 5-130(1)(c)(ii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130(1)(c)(ii) (West 2012)), because the evidence presented at the

hearing to support the State's petition was insufficient. Defendant requests that his sentence be vacated and the cause remanded for an adjudication of delinquency and sentencing pursuant to the Act. For the following reasons, we affirm.

¶ 3

JURISDICTION

¶ 4 The trial court sentenced defendant on December 13, 2013. Defendant filed a notice of appeal on December 17, 2013. Accordingly, this court has jurisdiction pursuant to Article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 603 (eff. Oct. 1, 2010); R. 606 (eff. Mar. 20, 2009).

¶ 5

BACKGROUND

¶ 6 Defendant was charged in connection with an incident involving an armed robbery. Although he was 15 years old at the time, the State charged him as an adult pursuant to section 5-130(1)(a) of the Act (705 ILCS 405/5-130(1)(a) (West 2012)). The following facts are relevant to the issues on appeal. At defendant's bench trial, Ronnie Hill testified that on August 30, 2012, around 6 p.m., he was at his brother's house and went outside to throw out the garbage. Before entering the alley, Hill noticed three young men walking towards him but "thought nothing of it." After throwing out the garbage and urinating, he walked around the garage and suddenly felt a gun pointed at his head. Hill stated that he felt the barrel of the gun behind his head, and it felt "like steel." He froze and tried to look behind him, but the offender "jacked the barrel, like click, click." The person holding the weapon then went through Hill's pockets, taking his cell phone, an iPod, and about \$3.00. The offenders fled the scene and Hill noticed one of them held a gun in his hand. Hill described that offender as having braids, "like dreads"

and wearing a white or yellow shirt. The entire incident lasted about 10 to 15 seconds, and Hill was about 15 feet away when he viewed the offender holding the gun.

¶ 7 Hill ran to his truck where his fiancé was waiting. He told her he had been robbed and he jumped into the truck and drove in the direction of the fleeing offenders. On the way, he flagged the police and gave them a description of the offenders. The police soon stopped a person fitting Hill's description and he was searched. Defendant was identified as the person stopped by the police. The police found a cell phone and iPod on defendant and when they showed Hill the items, Hill identified them as belonging to him. On cross-examination, Hill acknowledged that he had several felony convictions.

¶ 8 Officer Haynie testified that he and his partner were in a marked squad car when Hill flagged them down. After speaking with Hill, the officers "tour[ed]" the area looking for a person with a yellow and black shirt, with dreads, and having a medium-light complexion. In about five minutes, they found an individual fitting the description and stopped him. Officer Haynie identified defendant as the person they stopped. The officers searched defendant and recovered a cell phone in his front pocket and an iPod was on the ground approximately three feet from where they stopped defendant. He showed the items to Hill, who identified them as belonging to him. The officer testified that 10 to 13 minutes had passed from the time the robbery occurred to when the police detained defendant.

¶ 9 After the State rested its case, defendant entered the following evidence by stipulation as impeachment of Hill: on June 30, 1994, Hill gave the name of Carl Hill to Chicago police when he came into contact with them; on September 12, 2001, he gave the name of Tyrone Spikes to the police when he came into contact with them; on March 27, 1997, he gave the name of Mayven Stewart to the police; on November 18, 1989, he gave the name of Michael Hill to the

police, and on two other occasions when he came into contact with police he gave the names of Sylvester Hill and Stony G. Defendant elected not to testify and the trial court admonished him. Defendant rested his case.

¶ 10 After closing arguments, the trial court found that while in the alley defendant was approached by the offenders, felt and heard an object behind him, and had property taken. The trial court found Hill's testimony credible, including his testimony about feeling the steel of a gun on the back of his head. Although no weapon was found, the trial court noted that the 10 to 13 minutes from the robbery to defendant's detention was plenty of time for defendant to store or dispose of the weapon. However, the trial court found defendant guilty of robbery instead of armed robbery "[u]nder these circumstances." The trial court stated that "it was never shown beyond a reasonable doubt that the defendant had a gun."

¶ 11 Defendant filed a motion for a new trial which the trial court denied. The State also filed a petition to sentence defendant as an adult. At the hearing on the petition, the State argued that the offense was committed in an aggressive and premeditated manner; defendant was adjudicated delinquent due to a prior aggravated vehicular hijacking conviction, and the present offense occurred only two weeks after this adjudication; defendant could not be rehabilitated in the juvenile facilities; public security required that defendant be sentenced as an adult; and defendant possessed a firearm while committing the offense. The State also argued that while in the juvenile temporary detention center, defendant had 16 major rule violations from October 17, 2012 to September 29, 2013, he fought with others constantly, mistreated the staff, and started major disturbances. As a result, the State did not "feel that the juvenile facility is appropriate for this defendant" and requested he be sentenced as an adult. In response, defendant argued that he although he was arrested a short time after the robbery, no weapon was

found on him or in the vicinity; he had only one prior conviction, he was still young, and the juvenile detention center would be sufficient to rehabilitate him.

¶ 12 The trial court granted the State's petition to sentence defendant as an adult. In sentencing defendant, the trial court stated that it was "well aware that [it] removed him from juvenile jurisdiction. That was predicated on the fact that [the court] considered his criminality even at his young age he started off in serious offenses that can be committed in this state." The trial court considered the evidence presented at trial, the presentence investigation, evidence offered in aggravation and mitigation, the financial impact of incarceration, the arguments of the attorneys, and defendant's failure to allocate in sentencing. The trial court stated that "this was a fairly serious case." It noted that defendant has "been unable during the periods of time that you were incarcerated in the past to obey any of the rules offered to you. In other words, they are not getting you on track yet. I thought of a way to get you on track." It sentenced defendant to seven years' imprisonment with a recommendation of boot camp. Defendant filed a motion to reconsider his sentence which the trial court denied. Defendant filed this timely appeal.

¶ 13

ANALYSIS

¶ 14 Defendant contends that the trial court improperly sentenced him as an adult where he was not convicted of an offense subject to a mandatory transfer under section 5-130(1)(c)(ii) of the Act, and the evidence presented at the hearing on the State's petition to sentence him as an adult was insufficient. The State responds that the trial court's sentence was proper because a hearing was not required before sentencing defendant as an adult pursuant to *People v. King*, 241 Ill. 2d 374 (2011), and alternatively, the trial court did hold a hearing and considered the relevant factors as required by the Act. Whether the Act mandates sentencing defendant as an adult is a

question of statutory interpretation. In statutory interpretation, this court's primary objective is to ascertain and give effect to legislative intent. *Solon v. Midwest Medical Records Association, Inc.*, 236 Ill. 2d 433, 439 (2010). The best indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. *Id.* Statutory construction is a question of law subject to *de novo* review. *Id.*

¶ 15 Defendant argues that this court must vacate his sentence and remand for an adjudication of delinquency and sentence, because the trial court erred in granting the State's petition to sentence him as an adult. The State contends that the trial court properly sentenced defendant as an adult because the State did not need to file the petition pursuant to the automatic transfer provision of the Act, which mandates adult sentencing for a juvenile defendant in this case. Section 5-130 of the Act provides, in relevant part, as follows:

"(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 first degree murder, aggravated criminal sexual assault, *** armed robbery when the armed robbery was committed with a firearm, or aggravated vehicular hijacking when the hijacking was committed with a firearm.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.

(b)(i) If before trial or plea an information or indictment is filed that does not charge an offense specified in paragraph (a) of this subsection (1) the State's Attorney may proceed on any lesser charge or charges, but only in Juvenile Court under the provisions of this Article. The State's Attorney may proceed under the Criminal Code of 1961 on

a lesser charge if before trial the minor defendant knowingly and with advice of counsel waives, in writing, his or her right to have the matter proceed in Juvenile Court.

(ii) If before trial or plea an information or indictment is filed that includes one or more charges specified in paragraph (a) of this subsection (1) and additional charges that are not specified in that paragraph, all of the charges arising out of the same incident shall be prosecuted under the Criminal Code of 1961.

(c)(i) If after trial or plea the minor is convicted of any offense covered by paragraph (a) of this subsection (1), then, in sentencing the minor, the court shall have available any or all dispositions prescribed for that offense under Chapter V of the Unified Code of Corrections.

(ii) If after trial or plea the court finds that the minor committed an offense not covered by paragraph (a) of this subsection (1), that finding shall not invalidate the verdict or the prosecution of the minor under the criminal laws of the State; however, unless the State requests a hearing for the purposes of sentencing the minor under Chapter V of the Unified Code of Corrections, the court must proceed under Sections 5-705 and 5-710 of this Article. *** If after the hearing the court finds that the minor should be sentenced under Chapter V of the Unified Code of Corrections, then the court shall sentence the minor accordingly having available to it any or all dispositions so prescribed." 705 ILCS 405/5-130(1)(a) through (c)(ii) (West 2012).

¶ 16 Our supreme court interpreted these provisions in *King*. *King* involved a 15 year old defendant who was charged with first degree murder, one of the crimes section 5-130(1)(a) specifies "shall be prosecuted under the criminal laws of this State." *King*, 241 Ill. 2d at 376-78. The State subsequently added an additional count of attempted first degree murder

arising out of the same incident. *Id.* at 376. The defendant negotiated a plea to the attempted first degree murder charge in exchange for dismissal of the murder charges, and he was sentenced to 15 years' imprisonment. *Id.* On appeal, the defendant argued that he pled guilty to a charge not specified in section 5-130(1)(a) and therefore his sentence was void because the State failed to request a hearing as required by section 5-130(1)(c)(ii). *Id.* at 377. The appellate court agreed, reversing the defendant's conviction and remanding the cause with directions. *Id.*

¶ 17 The supreme court upheld the defendant's sentence, finding that since an offense covered by section 5-130(1)(a) includes both charges specified in the section and "all other charges arising out of the same incident," the trial court properly sentenced the defendant as an adult without a hearing pursuant to section 5-130(1)(c)(ii). *Id.* at 378. It determined that an offense " 'covered by' " section 5-130(1)(a) includes offenses specifically noted in the subsection as well as " 'all other charges arising out of the same incident.' [Citation]. " *Id.* at 382. Likewise, section 5-130(1)(c)(i) provides that if a minor is convicted of any offense covered by section 5-130(1)(a), he shall be sentenced as an adult under the Unified Code of Corrections. *Id.* at 385. The supreme court reiterated that like section 5-130(1)(a), the terms "covered by" in subsection (c)(ii) include offenses specified in the section "as well as those arising out of the same incident." *Id.* at 386.

¶ 18 The appellate court in *People v. Toney*, 2011 IL App (1st) 090933, ¶ 43, applied *King* to a case where the juvenile defendant was charged with first degree murder, but ultimately convicted of second degree murder although he was never charged with second degree murder. Although a hearing was held to determine whether to sentence the defendant as an adult, defendant argued that the trial court did not give proper weight to the relevant statutory factors and therefore his

sentence was improper. *Id.*, ¶ 32. The appellate court affirmed the defendant's sentence, finding that he was not entitled to a hearing under *King*. *Id.*, ¶ 48. The *Toney* court reasoned that *King* did not limit its holding regarding section 5-130(c)(i)'s sentencing provision to only charged offenses arising out of the same incident, but rather held that for sentencing purposes an offense covered by section 5-130(1)(a) includes those specified " 'as well as those arising out of the same incident.' " *Id.*, ¶ 51, quoting *King*, 241 Ill. 2d at 386. The court also noted that although the defendant was only charged with first degree murder, the State had to prove all of the elements of first degree murder beyond a reasonable doubt in order to obtain a conviction for second degree murder, plus the additional factor of unreasonable belief that his actions were justified. Therefore, second degree murder is actually a lesser mitigated offense of first degree murder. *Id.*, ¶¶ 47, 48.

¶ 19 We acknowledge the court's well-reasoned opinion in *Toney*, but *Toney* contains some factual distinctions from our case. As the court in *Toney* noted, its case involved a first degree murder charge and a second degree murder conviction. Here, defendant was charged with armed robbery but convicted of robbery for which he was not charged. Unlike the first degree murder/second degree murder situation in *Toney*, the State did not need to prove all of the elements of armed robbery in order to obtain a conviction for robbery, a lesser-included offense of armed robbery.

¶ 20 Furthermore, it is not clear whether the supreme court intended to limit its holding in *King* to only charges arising out of the same incident. Although the supreme court stated that "[o]ffenses 'covered by' section 5-130(1)(a) include those 'specified in' that section as well as those arising out of the same incident," in the following paragraph it referred again to the "charge[s]" in the case. *King*, 241 Ill. 2d at 386. Also, in its analysis immediately prior to

making that statement, the court discussed section 5-130(1)(c)'s sentencing provisions and noted that "covered by" in that section means the offenses specified in section 5-130(1)(a) "as well as all *charges* arising out of the same incident." [Emphasis added.] *Id.* at 385.

¶ 21 Additionally, in its determination the supreme court in *King* discussed the situation where the minor was "charged with only a lesser offense" of an offense specified in section 5-130(1)(a) and waived his right to proceed in juvenile court. It found that in this case the minor "would not be convicted of an offense 'covered by' section 5-130(1)(a)" and "would not be subject to sentencing under the Unified Code of Corrections unless the State requested a hearing under section 5-130(1)(c)(ii)." *Id.* at 385. However, *King* provides no further analysis and does not address the situation we have in the case before us, where the juvenile defendant was charged only with a specified offense but subsequently convicted of an uncharged lesser offense arising out of the same incident but not specified in section 5-130(1)(a). Nonetheless, we need not determine whether *King* applies here because the State did file a petition to sentence defendant as an adult and the trial court held a hearing on the petition.

¶ 22 The factors the trial court must consider when ruling on the State's petition is set forth in section 5-130(1)(c)(ii) of the Act as follows: (a) whether evidence shows the offense was committed in an aggressive and premeditative manner; (b) age of the minor; (c) previous history of the minor; (d) whether facilities are available for treatment and rehabilitation of the minor; (e) whether public security requires that the minor be sentenced under Chapter V of the Unified Code of Corrections; and (f) whether the minor possessed a deadly weapon when committing the offense. 705 ILCS 405/5-130(1)(c)(ii) (West 2012). The trial court must consider the factors set forth in the Act. *People v. Vasquez*, 327 Ill. App. 3d 580, 586 (2001). No one factor is determinative, and each factor need not be given equal weight. *People v. Martin*, 285 Ill. App.

3d 623, 631 (1996). Furthermore, "not all of the statutory criteria must be resolved against the minor to justify treating him as an adult." *Vasquez*, 327 Ill. App. 3d at 586. "Where the record shows that the [trial] court considered all the factors and its determination is not an abuse of discretion, then the ruling will be affirmed on appeal." *Martin*, 285 Ill. App. 3d at 631.

¶ 23 Defendant argues that the trial court abused its discretion in granting the State's petition because the State did not present sufficient evidence on all of the factors and the trial court did not make explicit findings on any of the factors. We reiterate that the trial court is required only to consider all of the factors in making its determination, and the fact that the trial court did not make an explicit finding is not conclusive proof that it failed to consider that factor. *Vasquez*, 327 Ill. App. 3d at 589.

¶ 24 The State alleged all of the factors in its petition. At the hearing, the State brought up defendant's criminal history which included a conviction for aggravated vehicular hijacking just two weeks prior to this incident. The State also argued that while at the juvenile detention center defendant had 16 major rule violations, including fighting with peers, abusing staff, and inciting disturbances. Therefore, the State "[did] not feel that the juvenile facility is appropriate for this defendant." In response, defense counsel argued that defendant was young and could be rehabilitated in a juvenile department facility, has only one prior conviction, and that police never recovered a weapon in the case.

¶ 25 Although the trial court did not make explicit findings as to all of the factors, it considered the factors given the arguments of the parties at the hearing. See *Vasquez*, 327 Ill. App. 3d at 589-90 (looked at the State's written petition mentioning factors and the trial court's comments to determine whether the trial court properly considered the factors). In sentencing defendant, which took place at the same time as the petition hearing, the trial court's statements

further indicate it considered the factors. It stated that "this was a fairly serious case." The trial court noted "that [it] removed him from juvenile jurisdiction. That was predicated on the fact that [the court] considered his criminality even at his young age he started off in serious offenses that can be committed in this state." The trial court placed emphasis on the seriousness of defendant's offense, implying the security of the public is at issue, as well as the fact defendant committed these crimes at a young age. It was mindful of his potential for rehabilitation, telling defendant at sentencing that "you have been unable during the periods of time that you were incarcerated in the past to obey any of the rules offered to you. In other words, they are not getting you on track yet. I thought of a way to get you on track." Although the trial court acknowledged that a deadly weapon was never recovered, no one factor is determinative. *Martin*, 285 Ill. App. 3d at 631. The trial court did not abuse its discretion in granting the State's petition.

¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.