

No. 1-14-1218

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. 13 CR 12070
)	
JAWAUN ALEXANDER,)	Honorable
)	Rosemary G. Higgins,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

¶ 1 *Held:* The exclusive jurisdiction provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-120 (West 2012)), did not deprive defendant of his constitutional rights. Defendant's mittimus must be corrected to conform to the trial court's oral pronouncement at sentencing.

¶ 2 Following a bench trial, defendant Jawaun Alexander was found guilty of robbery, aggravated battery in a public place and unlawful restraint.¹ He was sentenced to three

¹ Defendant's name is also spelled Juwaun in the record.

concurrent three-year prison terms. 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 Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-120 (West 2012)).

¶ 3 On appeal, defendant contends the exclusive jurisdiction provision of the Act, which exempted him from juvenile court proceedings due to his age, deprived him of his constitutional right to due process and violated the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. He further contends that his mittimus must be corrected to reflect the trial court's oral pronouncement at sentencing. We affirm, and correct the mittimus.

¶ 4 Defendant's arrest and prosecution arose out of a June 6, 2013, incident during which the victim, Yesenia Correa, was pushed to the ground and had her iPhone taken.

¶ 5 At trial, the victim testified that she was walking home between 6 and 7 p.m. in the evening. She was listening to her iPhone through her headphones. Her iPhone was in a case that also contained her identification and a debit card. At one point, she felt someone "reach over" and try to take the phone. Although the phone fell, it was still attached to the victim via her headphones. As she reached for her phone, she made eye contact with defendant. The victim and defendant then both grabbed for the phone. Defendant repeatedly said: "Let go bitch. Let go." The victim kept screaming "F*** you, no." As the victim and defendant struggled over the phone, the victim was "tackled" by a male later identified as Damian or Damijwan Bonds. The victim landed on her back. Defendant stood over her trying to take the phone while Bonds kicked her in the right arm. After about five minutes, the victim "lost [her] grip" on the phone and the

two men ran off. The victim chased them on foot. An unidentified man pulled over, asked the victim what happened, and then offered to drive her around to look for defendant and Bonds.

¶ 6 The victim subsequently saw defendant and Bonds by a laundromat. When they began to run, the victim and the man followed them. Eventually, the victim and the man were able to tackle Bonds. When the police arrived, the victim told them what had happened and described defendant. She later identified defendant in a photographic array and in a line-up as the person who took her iPhone.

¶ 7 Defendant testified that on June 6, 2013, he went to a tattoo parlor with his brother, Joshua Alexander and his cousins, Christopher Alexander and Isaac Harris. He got home from school around 4:30 p.m. and left the house between 5 and 5:30 p.m. Joshua drove the group to the tattoo parlor. The group stayed at the tattoo parlor while Joshua got a tattoo. They left around 7 p.m. "at the earliest." Joshua then drove the group to Union Station where Christopher took a train to Peoria. Joshua, Isaac and defendant went home, arriving around 8:30 p.m. Defendant had never seen the victim before and denied knowing Bonds.

¶ 8 Defendant's brother, Joshua Alexander, and his cousins, Isaac Harris and Christopher Alexander, testified consistently with defendant that: (1) the group left defendant's home between 5 and 5:30 in a car driven by Joshua; (2) the group stayed at the tattoo parlor while Joshua got a tattoo; and (3) the group then went to Union Station so that Christopher could take a train to Peoria. Joshua and Isaac also testified that that Joshua, Isaac and defendant returned to defendant's home between 8 and 8:30 p.m.

¶ 9 In finding defendant guilty, the trial court found the victim to be credible. With regard to defendant and his family members, the court found them incredible in that "their recollection was very specific about that date, but in this Court's opinion coached by one another and prepared by

one another." Ultimately, defendant was found guilty of robbery (count 1), aggravated battery in a public place (count 2), and unlawful restraint (count 3). The trial court sentenced defendant to three years in prison "on each count, 1, 2, and 3; 2 and 3 to merge into Count 1, which is the robbery." Defendant's mittimus, however, lists three convictions and three prison sentences. The mittimus also states: "COUNTS 2, 3 TO MERGE INTO CT 1."

¶ 10 On appeal, defendant first contends that the version of Illinois's exclusive jurisdiction provision in effect at the time of the offense, which provided that 17-year-olds were to be prosecuted as adults, deprived him of due process and violated the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution.

¶ 11 The version of the exclusive jurisdiction provision in effect at the time of the offense stated that, subject to certain exceptions, Illinois's juvenile court jurisdiction only applied to minors under 17 years old. 705 ILCS 405/5-120 (West 2012). Because defendant was 17 years old at the time of the offense, he was not subject to juvenile proceedings.

¶ 12 In reviewing the exclusive jurisdiction provision, we keep in mind that "[a]ll statutes carry a strong presumption of constitutionality." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). The party challenging a statute has the burden to demonstrate that it is invalid. *People v. Graves*, 207 Ill. 2d 478, 482 (2003). "Whether a statute is constitutional is a question of law that we review *de novo*." *Id.*

¶ 13 Defendant argues that the exclusive jurisdiction provision at issue is constitutionally invalid after the United States Supreme Court's decisions in *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), because the provision did not provide any opportunity for a trial court to consider a defendant's youth and its attendant characteristics, or the circumstances of the offense. According to

defendant, Illinois's statutory scheme is cruel and unusual because it mandates adult prosecution and sentencing for all 17-year-olds based on a predetermination that those juveniles do not share the inherent characteristics of youth that the Supreme Court has repeatedly said render them less culpable than adult offenders. In further support of his argument, defendant notes that the Act has since been amended to apply to minors under 18 years old.

¶ 14 In *Roper*, the Supreme Court held that imposing the death penalty on juvenile offenders under 18 years old violates the eighth amendment. *Roper*, 543 U.S. at 568. In reaching this conclusion, the Court discussed key differences between juveniles under 18 years old and adults, including a lack of maturity and an underdeveloped sense of responsibility, more vulnerability to negative influences and outside pressures, and a character that is not as well formed as that of an adult. *Id.* at 569-70. In *Graham*, the Court held that the eighth amendment forbids a sentence of life without parole for juvenile offenders who commit nonhomicide offenses because a sentence of life without parole "improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Graham* 560 U.S. at 73-75. In *Miller*, the Court held that the eighth amendment forbids a sentencing scheme that mandates life in prison without parole for juveniles who commit homicide because such sentencing schemes "by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Miller*, 132 S. Ct. at 2467, 2469.

¶ 15 Although *Roper*, *Graham*, and *Miller* limited the range of penalties for juvenile offenders, defendant's challenge to the exclusive jurisdiction provision of the Act fails in light of, *inter alia*, our supreme court's decision in *People v. Patterson*, 2014 IL 115102.

¶ 16 In *Patterson*, our supreme court analyzed the constitutionality of the automatic transfer provision of the Act, and rejected the defendant's procedural and substantive due process, eighth

amendment and proportionate penalties claims. *Id.* ¶¶ 93-110. The court rejected the defendant's reliance on *Roper, Graham, and Miller, i.e.*, his reliance on the Supreme Court's eighth amendment caselaw, to support his procedural and substantive due process claims. *Id.* ¶ 97. The court concluded that "a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id.* The court further found that because the automatic transfer statute is not a sentencing statute, the defendant's eighth amendment and proportionate penalties challenges "cannot stand." *Id.* ¶¶ 104-106. The court also explained that access to juvenile courts is not a constitutional right because the Illinois juvenile court system is a "creature of legislation." *Id.* ¶ 104.

¶ 17 The same reasoning utilized in rejecting constitutional challenges to the automatic transfer provision of the Act is equally applicable to the exclusive jurisdiction provision challenged by defendant in the instant case. We find *People v. Harmon*, 2013 IL App (2d) 120439, to be persuasive.

¶ 18 In that case, the court rejected the same arguments defendant raises here. The court noted that *Roper, Graham, Miller and J.D.B. v. North Carolina*, 564 U.S. 261 (2011), stand for the proposition that a sentencing body must have the chance to take into account mitigating circumstances before sentencing a juvenile to the harshest possible penalty, which was either the death penalty or life imprisonment without the possibility of parole. *Id.* ¶ 54. The court further stated that the trial court in that case was able to consider the defendant's age, as well as other circumstances, at sentencing. *Id.* The court also concluded that while the eighth amendment prohibits cruel and unusual punishments, the exclusive jurisdiction provision of the Act did not impose punishment; rather, it specified the forum in which a defendant's guilt may be adjudicated. *Id.* ¶¶ 55-56. Therefore, the provision was not subject to, and did not violate, the

eighth amendment or the proportionate penalties clause. *Id.* The court also rejected the defendant's due process arguments as the trial court was able to consider the defendant's youth and its attendant circumstances at sentencing. *Id.* ¶¶ 58, 62.

¶ 19 Subsequently, in *People v. Fiveash*, 2015 IL 117669, ¶ 21, our supreme court reiterated that adjudication in a juvenile court is not a matter of a constitutional right. The court noted that although it had recognized the need to consider juveniles' unique characteristics in the eighth amendment context in *People v. Miller*, 202 Ill. 2d 328, 341-42 (2002), and that the United States Supreme Court had done so in *Roper*, *Graham*, and *Miller*, neither court had ever held that the failure to address the inherent differences between juvenile and adult offenders created a due process violation when the juvenile was potentially subject to a prison sentence involving a term of years rather than the death penalty or natural life in prison. *Fiveash*, 2015 IL 117669, ¶ 45, citing *Patterson*, 2014 IL 115102, ¶¶ 97-98.

¶ 20 Accordingly, we find no due process violation in the case at bar, especially where the trial court was able to consider defendant's youth and its attendant circumstances when sentencing him. See *Harmon*, 2013 IL App (2d) 120439, ¶ 62. Similarly, we conclude that the exclusive jurisdiction provision of the Act is not subject to, and does not violate, the eighth amendment or the proportional penalties clause. *Id.* ¶¶ 55-56. See also *People v. Cavazos*, 2015 IL App (2d) 120444, ¶ 85 (noting the consistent rejection of defendants' efforts in this state to compare the statutes at issue in *Roper*, *Graham* and *Miller* to provisions of the Act).

¶ 21 Defendant next contends that his mittimus must be corrected to reflect the trial court's pronouncement at sentencing that defendant's convictions for aggravated battery in a public place and unlawful restraint were to merge into defendant's conviction for robbery. Although the State

initially argues on appeal that the trial court improperly merged these convictions, the State concedes the issue because it failed to challenge the merger before the trial court.

¶ 22 The trial court's oral pronouncement is the judgment of the court; the written order of commitment is merely evidence of that judgment. *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993). If the mittimus conflicts with the oral judgment of the trial court, this court will correct the mittimus to mirror the oral pronouncement. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). Such a correction may be made without remand. *Id.*, citing Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999).

¶ 23 Here, the trial court sentenced defendant to three years in prison "on each count, 1, 2, and 3; 2 and 3 to merge into Count 1, which is the robbery." Defendant's mittimus states: "COUNTS 2, 3 TO MERGE INTO CT 1" yet it also reflects convictions and sentences under all three counts. Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our power to correct a mittimus without remand (see *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we order the clerk of the circuit court to correct defendant's mittimus by deleting defendant's convictions and sentences for aggravated battery in a public place (count 2), and unlawful restraint (count 3).

¶ 24 We affirm the circuit court of Cook County in all other aspects.

¶ 25 Affirmed; mittimus corrected.