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FIFTH DIVISION  
April 29, 2016

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN THE INTEREST OF T.T., a Minor,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellant.	)	Cook County.
	)	
	)	No. 15 JD 3128
	)	
	)	The Honorable
	)	Lori Wolfson,
	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

**ORDER**

¶1 **HELD:** Respondent failed to demonstrate that the mandatory five-year probation term under the Juvenile Court Act violates the equal protection clause.

¶2 Respondent-minor, T.T., was 15 years old when adjudicated a delinquent for armed robbery, a forcible felony. T.T. was sentenced to the mandatory statutory minimum of five years' probation pursuant to section 5-715(1) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-715(1) (West 2014)). On appeal, T.T. contends his equal protection rights were violated because the mandatory five-year probation sentence is

contrary to the purpose of the Act and does not have a rational basis. Based on the following, we affirm.

¶3

### FACTS

¶4 The State filed a petition for adjudication of wardship, alleging that T.T. was delinquent of two counts of armed robbery, two counts of aggravated robbery, two counts of robbery, two counts of aggravated battery, and two counts of battery.<sup>1</sup>

¶5 Prior to trial, the trial court found probable cause and an urgent and immediate necessity that respondent be confined to the Juvenile Temporary Detention Center, but instead released him to his grandfather, with whom he lived, and placed him on electronic monitoring. Respondent violated the terms of his electronic monitoring on several occasions, but, after a week of no violations, the trial court removed the electronic monitoring bracelet and instead imposed a curfew.

¶6 At trial, 17-year-old Michael Demasy testified that on February 24, 2015, at approximately 11:30 p.m., he and his friend, Yin Men Chen, were in a parking lot located at 237 W. Alexander Street in Chicago. The pair were sitting on a ledge near the opening of the parking lot when five individuals approached. Demasy identified respondent as one of those individuals. Another one of the five individuals instructed Demasy and Chen not to move and demanded that they turn over all of their belongings. That individual was holding a brick in his hand at the time. Demasy responded that they did not have anything and, while Demasy reached for his bag, the individual hit him with the brick. According to Demasy, respondent was present when Demasy was struck with the brick. The individual then took Demasy's and Chen's property. Demasy testified that he

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<sup>1</sup> The State additionally alleged counts for possession of a stolen motor vehicle and criminal trespass to a motor vehicle, but did not pursue the counts.

bled where he was struck by the brick, but he was not seriously injured. According to Demasy, the five individuals then left the parking lot and entered a car before leaving the scene.

¶7 Demasy testified that he and Chen proceeded to Chen's house where she called the police. Chen also accessed the global positioning system (GPS) for her phone, which had been stolen, to track its whereabouts. Demasy recalled that, when the police arrived, they transported him and Chen to a location where they identified the assailants while remaining in the police car. Respondent was one of the individuals Demasy identified. Demasy approximated that 30 to 40 minutes passed between when he was struck with the brick and when he identified the assailants.

¶8 Chen testified that respondent took her property, including her book bag and her phone. Chen stated that she tracked her phone using an iPhone application for locating a lost phone. When the police arrived at Chen's house, she demonstrated the application to the police and the officer dispatched the phone's location over the police radio. Chen stated that she and Demasy were transported from her house to another location to identify the assailants, at which time she positively identified respondent.

¶9 Officer Jose Villa testified that he responded to Chen's police call and spoke to Chen and Demasy. Villa observed Chen's GPS tracking application and dispatched a location and description of the offenders over his radio. Villa testified that he soon learned a van containing individuals matching the descriptions had been apprehended by other officers. Villa then transported Chen and Demasy to the location where the individuals were being detained. Both Chen and Demasy identified respondent as one of the assailants.

¶10 At the close of the evidence, respondent was adjudicated a delinquent by the trial court. The trial court announced that all the lesser-included offenses merged into the armed robbery count for purposes of sentencing. Following a dispositional hearing, the trial court imposed the mandatory five-year term of probation, along with DNA indexing, 30 hours community service, participation in the Juvenile Advisory Council, TASC, mandatory school, curfew at dark, and ordered no involvement with gangs, guns, or drugs.

¶11 This appeal followed.

¶12 ANALYSIS

¶13 Respondent contends the five-year mandatory minimum probation requirement violates the equal protection clause because it is contrary to the purpose of the Act and not rationally related thereto.

¶14 It is firmly established that statutes carry a strong presumption of constitutionality. *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). In order to defeat that presumption, the challenging party must "clearly establish" the alleged constitutional violation. *Id.* This court must find that a statute is constitutional if "reasonably possible." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 79. A challenge to the constitutionality of a statute raises questions of law, which we review *de novo*. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 323 (1996).

¶15 Section 5-715(1) of the Act provides:

"The period of probation or conditional discharge shall not exceed 5 years or until the minor has attained the age of 21 years, whichever is less, except as provided in this Section for a minor who is found to be

guilty for an offense which is first degree murder, a Class X felony or a forcible felony. The juvenile court may terminate probation or conditional discharge and discharge the minor at any time if warranted by the conduct of the minor and the ends of justice; provided, however, that the period of probation for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony, or a forcible felony shall be at least 5 years." 705 ILCS 405/5-715(1) (West 2014).

There is no dispute that armed robbery is a forcible felony. See 720 ILCS 5/2-8 (West 2014).

¶16 As stated, respondent has raised an equal protection challenge. The equal protection clause "guarantees that similarly situated individuals each will be treated in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 116. The guarantee, however, "allows the legislature to create distinctions between different groups of people as long as that distinction avoids 'criteria wholly unrelated to the legislation's purpose.'" *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14 (quoting *In re Jonathon C.B.*, 2011 IL 107750, ¶ 116). The equal protection analysis is the same under both the Illinois Constitution and the United States Constitution. *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14.

¶17 The parties agree that the rational basis test applies here because the classification between minors and adults involves neither a fundamental right nor a suspect class. See *People v. Breedlove*, 213 Ill. 2d 509, 518 (2004). The rational basis test " 'simply inquires whether the method or means employed by the statute to achieve the stated [goal or] purpose of the legislation are rationally related to that goal.'" *In re J.F.*, 2014 IL App

(1st) 123579, ¶ 14 (quoting *Breedlove*, 213 Ill. 2d at 518. That said, the movant must prove he or she is similarly situated to the comparison group before this court will make a rational basis inquiry. *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14. If the movant fails to do so, his or her equal protection claim must fail. *Id.* "Equal protection is not offended when dissimilar groups are treated differently." *People v. P.H.*, 145 Ill. 2d 209, 231 (1991).

¶18 Respondent argues that the legislature's distinction between juveniles adjudicated delinquent of forcible felonies and juveniles adjudicated delinquent of other offenses is not rationally related to the expressed purposes of the Act. In doing so, respondent requests that this court abandon the threshold requirement in bringing an equal protection challenge, namely, establishing that he is similarly situated to the comparison group. The Illinois Supreme Court, however, has instructed that "it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group." *People v. Masterson*, 2011 IL 110072, ¶ 25; see also *In re M.A.*, 2015 IL 118049, ¶ 26. As stated, an equal protection claim cannot succeed if the movant fails to satisfy this threshold inquiry. *In re Deshawn G.*, 2015 IL App (1) 143316, ¶ 37; *People v. Whitfield*, 228 Ill. 2d 502, 513 (2007). Therefore, we decline respondent's request to abandon the similarly-situated analysis.

¶19 Generally, in the context of an equal protection challenge, a determination of whether the individuals are similarly situated will require an analysis of the purpose of the legislation at issue. *Id.* Section 5-101 of the Act states:

"(1) It is the intent of the General Assembly to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect

the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the General Assembly declares the following to be important purposes of this Article:

- (a) To protect citizens from juvenile crime.
- (b) To hold each juvenile offender directly accountable for his or her acts.
- (c) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to rehabilitate and to prevent further delinquent behavior through the development of competency in the juvenile offender. As used in this Section, "competency" means the development of educational, vocational, social, emotional and basic life skills which enable a minor to mature into a productive member of society.
- (d) To provide due process, as required by the Constitution of the United States and the State of Illinois, through which each juvenile offender and all other interested parties are assured fair hearings at which legal rights are recognized and enforced." 705 ILCS 405/5-101 (West 2014).

In *In re Lakisha M.*, the supreme court noted that our legislature "has explicitly set forth as 'important purposes' of the Juvenile Court Act protecting citizens from juvenile crime, holding juvenile offenders directly accountable for their acts, and rehabilitating offenders to prevent further delinquent behavior." 227 Ill. 2d 259, 273-74 (2008) (citing 705 ILCS 405/5-101 (West 2014)).

¶20 The supreme court has recognized that amendments made to the Act in 1999 changed some of the terminology of the Act such that it now provides for a number of features common to a criminal trial. *People v. Taylor*, 221 Ill. 2d 157, 167 (2006).

However, the supreme court concluded that " [t]he policy that seeks to hold juveniles accountable for their actions and to protect the public does not negate the concept that rehabilitation remains a more important consideration in the juvenile justice system than in the criminal justice system and that there are still significant differences between the two, indicating that "the ideal of separate treatment of children is still worth pursuing." ' [Citations.]" *In re Jonathon C.B.*, 2011 IL 107750, ¶ 87.

¶21 The State contends respondent has failed to demonstrate that he is similarly situated to either juveniles who commit nonforcible felonies or adult offenders and, therefore, his equal protection challenge must fail. We agree.

¶22 Our supreme court and this court repeatedly have rejected similarly situated arguments that compare juveniles adjudicated delinquent of forcible felonies with juveniles adjudicated delinquent of nonforcible felonies, as well as with adults. See *In re Jonathon C. B.*, 2011 IL 107750, ¶¶ 117-20 (finding that although the Act only provided jury trials for juvenile offenders subject to extended juvenile jurisdiction, habitual offenders, or violent offender proceedings, the distinction did not violate the equal protection rights of juvenile sex offenders because they were not subject to "mandatory incarceration or the possibility of an adult sentence"); *People v. J.F.*, 2014 IL App (1st) 123579, ¶¶ 15-16 (finding a juvenile adjudicated delinquent of multiple forcible felonies could not establish that she was similarly situated to juveniles who committed nonforcible felonies); *In re Edgar C.*, 2014 IL App (1st) 141703, ¶¶ 149-152 (finding the Act did not impermissibly draw a distinction between juvenile forcible offenders and nonforcible offenders and the Act did not treat a juvenile robber more harshly than an adult robber); *In re P.H.*, 145 Ill. 2d at 231 (finding juveniles subject to transfer from



juvenile court who had prior felony adjudications and were currently charged with a crime committed in furtherance of gang activity were not similarly situated to juveniles charged with an offense that warranted automatic transfer from juvenile court). We find no reason to depart from these well-reasoned cases.

¶23 Here, respondent was adjudicated delinquent of armed robbery. Respondent is, therefore, a qualitatively different kind of offender than a minor adjudicated delinquent of a nonforcible felony. It is the inherent dangerousness of forcible felonies that differentiate them from nonforcible felonies. *People v. Golson*, 32 Ill. 2d 398, 406 (1965). As a result, respondent's reliance on *Jacobson* is not persuasive. *Jacobson*, 171 Ill 2d at 328 (finding the distinction drawn by the section of the Public Aid Code between parents whose 18 to 20 year-old children live with them and those whose children live elsewhere did not satisfy the rational basis test and was struck down as a violation of equal protection). Rather, contrary to respondent's argument, the mandatory five-year term of probation supports the purpose of the Act in protecting the public and holding juveniles accountable for violations of the Act, while still supporting the goal of rehabilitation and allowing for an individualized sentence. See *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 150.

¶24 Moreover, as a juvenile offender, respondent was not at risk of receiving a prison term nor was he subject to mandatory supervised release like an adult offender. *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 151-52; see, e.g., *In re Jonathon C.B.*, 2011 IL 107750, ¶ 118 (the minor "never faced the possibility of an adult criminal sentence, and instead received a sentence that automatically terminated in five years, when he reached 21, with no mandatory supervised release term. The plain language of the Act sets the

age of 21 as the maximum for all juvenile dispositions, with the limited exception of juveniles subject to the [extended juvenile jurisdiction (EJJ)] proceedings. [Citation.] Jonathon, therefore, was not subject to the severe deprivation of liberty of an adult sentence and, thus, was not similarly situated to minors subject to EJJ prosecution or adult sex offenders"). In addition, unlike an adult offender and contrary to T.T.'s argument that the statute relieves the courts of all independent review, under the Act, even if a trial court finds the minor guilty of an offense, the court has the option to forego imposing a sentence by finding that it is not in the best interest of the minor or the public to make the minor a ward of the court. 705 ILCS 405/5-620 (West 2014); 705 ILCS 405/5-705(1) (West 2014). The record in this case clearly demonstrates that the trial court conducted an individualized assessment of T.T. in fashioning his sentence.

¶25 Simply stated, T.T. has failed to show that he is similarly situated to a juvenile adjudicated of a categorically less serious nonforcible felony or an adult that committed a forcible felony where he was not subject to the severe deprivation of liberty imposed by potential incarceration. T.T.'s equal protection claim, therefore, must fail.

¶26 CONCLUSION

¶27 We affirm the judgment of the trial court.

¶28 Affirmed.