

No. 1-15-0728

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 14482
)	
TRAVIS CONNER,)	Honorable
)	William Timothy O'Brien,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

Held: The exclusive jurisdiction provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-120 (West 2010)), did not deprive defendant of his constitutional rights.

¶ 1 Defendant Travis Conner appeals from the circuit court's dismissal, upon the State's motion, of his *pro se* petition for relief pursuant to the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). On appeal, defendant contends that the exclusive jurisdiction provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-120 (West 2010)), in effect at that time of his guilty plea, which exempted him from juvenile court proceedings due to his age, deprived him of his constitutional right to due process and violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. We affirm.

¶ 2

BACKGROUND

¶ 3 The record reflects that on January 20, 2012, defendant, who was proceeding *pro se*, requested a conference pursuant to Supreme Court Rule 402 (eff. July 1, 1997). Following the conference, defendant entered pleas of guilty to armed robbery with a firearm in case numbers 10 CR 8796 and 11 CR 14482, and was sentenced to two concurrent 21-year prison terms, *i.e.*, 6 years for the offense and a 15-year sentencing enhancement because a firearm was used during the commission of each offense. Both offenses occurred on April 25, 2010 when defendant was 17 years old.¹ Defendant's probation was also revoked in case number 10 CR 1455 and he was sentenced to three years in prison. This sentence was to run concurrent to his sentences for armed robbery. Defendant did not move to withdraw his pleas nor did he file a direct appeal.

¶ 4 In July 2012, defendant filed a *pro se* postconviction petition in case number 11 CR 14482 alleging that he was denied the effective assistance of counsel when counsel permitted defendant to enter a plea of guilty and "accept" the 15-year firearm enhancement for armed robbery when the enhancement is unconstitutional, and that he was denied due process when the trial court imposed the 15-year firearm enhancement "consecutive" to defendant's 6-year term of imprisonment for his armed robbery conviction.

¶ 5 The petition was docketed and postconviction counsel was appointed. On July 18, 2014, postconviction counsel filed a certificate pursuant to Supreme Court Rule 651(c) (eff. Apr. 26, 2012), stating that counsel had consulted with defendant by mail to ascertain his contentions of constitutional deprivation, obtained and examined the report of proceedings, and determined that the petition "as it is written adequately represents" defendant's "constitutional claims and

¹ Defendant's date of birth is April 26, 1992. The offenses to which he pled guilty occurred on April 25, 2010, one day before his 18th birthday.

deprivations.” Therefore, postconviction counsel would not be supplementing the *pro se* petition. The State then filed a motion to dismiss, which the circuit court granted. Defendant now appeals.

¶ 6

ANALYSIS

¶ 7 On appeal, defendant contends that the version of the Juvenile Court Act’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.

¶ 8 Initially, we note that defendant makes no arguments on appeal challenging the circuit court’s dismissal of his postconviction petition, and, consequently, has forfeited those arguments on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (“Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”). Rather, defendant challenges the constitutionality of section 5-120 of the Juvenile Court Act for the first time before this court. Defendant admits that he did not raise this issue in his *pro se* postconviction petition, but argues that a challenge to a final judgment based on a facially unconstitutional statute is exempt from forfeiture and may be raised at any time, including for the first time on collateral appeal. See *People v. Thompson*, 2015 IL 118151, ¶ 32 (“A second type of voidness challenge that is exempt from forfeiture and may be raised at any time involves a challenge to a final judgment based on a facially unconstitutional statute that is void *ab initio*.”). The State does not argue forfeiture, and addresses the merits of defendant’s contention on appeal.

¶ 9 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 2010). Because defendant was 17 years old at the time of the offense, he was not subject to juvenile proceedings.

¶ 10 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.*

¶ 11 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*, 567 U.S. 460, 132 S. Ct. 2455 (2012), because the provision did not provide any opportunity for a trial court to consider his 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 when the “justifications for adult sentences do not apply to 17-year-olds” because juveniles “as a class” generally are less culpable than adult offenders. In further support of his argument, defendant notes that the Juvenile Court Act was subsequently amended to apply to minors under 18 years old.

¶ 12 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*, 567 U.S. at ___, 132 S. Ct. at 2467, 2469.

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

¶ 14 In *Patterson*, the defendant contended that the mandatory transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2008)), which automatically transferred certain minors from the jurisdiction of the juvenile court to the adult criminal court, was constitutionally invalid. 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 was not a sentencing statute, the defendant’s eighth amendment and proportionate penalties challenges “cannot stand.” *Id.* ¶¶ 104-106. The court finally explained that access to juvenile courts was not a constitutional right because the Illinois juvenile court system was a “creature of legislation.” *Id.* ¶ 104. See also *People v. Fiveash*, 2015 IL 117669, ¶ 21 (adjudication in juvenile court is not a matter of a constitutional right).

¶ 15 The same reasoning utilized in rejecting constitutional challenges to the automatic transfer provision of the Juvenile Court Act is equally applicable to the exclusive jurisdiction

provision of the Juvenile Court Act challenged by defendant in this case. We find *People v. Harmon*, 2013 IL App (2d) 120439, instructive.

¶ 16 In that case, the court rejected the same arguments defendant raises here. The court noted that *Roper*, *Graham*, and *Miller* 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 found that while the eighth amendment prohibits cruel and unusual punishments, the exclusive jurisdiction provision of the Juvenile Court Act did not impose punishment; rather, it specified the forum in which a defendant's guilt may be adjudicated. *Id.* ¶¶ 55-56. 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. See also *Fiveash*, 2015 IL 117669, ¶ 45 (citing *Patterson*, 2014 IL 115102, ¶¶ 97-98) (noting that neither it nor the United States Supreme 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).

¶ 17 For the same reasons, 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 characteristics at sentencing. See *Harmon*, 2013 IL App (2d) 120439, ¶ 62. Similarly, we conclude that the exclusive jurisdiction provision of the Juvenile Court Act does not violate the eighth amendment or the proportional penalties clause. *Id.* ¶¶ 55-56. See also *People v. Cavazos*, 2015 IL App (2d)

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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 Juvenile Court Act).

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.