

SECOND DIVISION

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

IN THE INTEREST OF M.J., a Minor,)	
)	Appeal from the
)	Court Circuit of
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Cook County.
)	
Petitioner-Appellee,)	
)	13 JD 30153
v.)	
)	
M.J.,)	The Honorable
)	Richard F. Walsh,
Minor-Respondent-Appellant).)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The Juvenile Court Act's provision mandating a minimum term of five years' probation for juveniles who commit burglary does not violate the juveniles' rights to due process and equal protection.

¶ 2 The trial court found M.J., a minor, guilty of burglary and sentenced him to five years' probation. In this appeal, M.J. challenges only the constitutionality of the provision in the Juvenile Court Act (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)) that mandates a minimum term of five years' probation for juveniles who commit forcible felonies. We hold that the provision does not violate the juveniles' rights to due process and equal protection.

¶ 3

BACKGROUND

¶ 4

When Harry Wandler slid into his car in his driveway on August 1, 2013, he noticed the conspicuous absence of his radar detector. He called police that day to report the loss. Detective Matthew McDonnell, who investigated a string of car burglaries in the area, found a backpack with a radar detector and other items inside. Wandler identified the radar detector as the one taken from his car. McDonnell's investigation led him to question M.J. on August 7, 2013. M.J., who was 16 years old, admitted that he and two friends toured the area after midnight on three separate nights, trying the doors of parked cars to see if the owners left the cars unlocked. When they found unlocked doors, they took valuables from the cars. They put the valuables in the backpack McDonnell found and tried to find an adult to pawn the items.

¶ 5

The State filed a petition for adjudication of wardship, asking the court to find that M.J. committed burglary. After a bench trial held in May 2014, the court found M.J. guilty of the charge and scheduled a sentencing hearing.

¶ 6

M.J.'s probation officer, Ed Walsh, testified at the sentencing hearing that M.J. had no prior delinquency adjudications. Because of M.J.'s prior regular use of marijuana, M.J. took a drug test, which showed no drugs in M.J.'s system. M.J. also got a job at Wal-Mart and enrolled in a G.E.D. program at a local junior college, where he had perfect attendance.

¶ 7

Walsh testified that M.J. had matured and turned himself around since leaving high school, where he had "terrible attendance, bad grades, and major disciplinary problems." Walsh intended to recommend 18 months' probation, but then he recognized that because the

court found M.J. guilty of a forcible felony, the Act mandated a minimum term of 5 years' probation. See 705 ILCS 405/5-715 (West 2012).

¶ 8 The prosecutor agreed that, for burglary, the Act mandated a minimum term of five years' probation. The court said, "That's ridiculous when it's a car. But that's the law." The court imposed the mandatory minimum term of probation, noting that the probation would actually end after 37 months, when M.J. would turn 21. M.J. now appeals.

¶ 9 ANALYSIS

¶ 10 M.J. challenges only the constitutionality of section 5-715 of the Act, which mandates a minimum term of 5 years' probation for juveniles found guilty of forcible felonies. The Act establishes that when a court finds a juvenile guilty of a crime, the court has several sentencing options. If the court finds incarceration necessary to protect the public from the juvenile's criminal activity, and the law permits incarceration for adults found guilty of the same offense, the court may commit the minor to the Department of Juvenile Justice. See 705 ILCS 405/5-710(1)(b), 405/5-750(1)(b) (West 2012). The court may place the juvenile in detention or in the custody of a suitable person or an appropriate institution. See 705 ILCS 405/5-710(1)(a)(i), (1)(a)(ii), (1)(a)(v) (West 2012); 705 ILCS 405/5-740(1)(a), (1)(e) (West 2012). The court also has the option of putting the minor on conditional discharge or on probation. 705 ILCS 405/5-710(1)(a)(i) (West 2012). If the court chooses to put the minor on probation, section 5-715 provides, "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 (West 2012). M.J. contends that section 5-715, both on its face and as applied to him, violates due process because it does not serve the Act's

purposes, and the section also violates M.J.'s right to equal protection because it punishes juveniles more harshly than similarly situated adults.

¶ 11 Courts presume that statutes are constitutional. *People v. Breedlove*, 213 Ill. 2d 509, 518-19 (2004). We resolve any doubt about the construction of a statute in favor of its constitutionality. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 79. We review the question of a statute's constitutionality *de novo*. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005).

¶ 12 Due Process

¶ 13 M.J. admits that section 5-715 does not implicate fundamental constitutional rights, and therefore we use the rational basis test to determine whether the section comports with due process. Under the rational basis test, the "legislative enactment must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective." *Illinois Gamefowl Breeders Ass'n v. Block*, 75 Ill. 2d 443, 453 (1979). The Act sets forth its purposes, which include "protect[ing] citizens from juvenile crime," "hold[ing] each juvenile offender directly accountable for his or her acts," and "rehabilitat[ing juvenile delinquents and] prevent[ing] further delinquent behavior through the development of competency in the juvenile offender." 705 ILCS 405/5-101(a), (b), (c) (West 2012).

¶ 14 M.J. contends that the legislature adopted the 5 year minimum period for probation as a means of addressing the problem of juveniles who commit violent crimes, and therefore the legislature should have limited the sections reach to crimes of violence, and should not have applied the mandatory minimum to all forcible felonies. We must adhere to the plain and unambiguous language of the Act (see *People v. Jones*, 223 Ill. 2d 569, 581 (2006)), which

applies the mandatory minimum to all forcible felonies, including burglary. 705 ILCS 405/5-715 (West 2012); 720 ILCS 5/2-8 (West 2012). The section addresses the problem of juveniles who commit crimes that have high potential for turning violent. "It is the inherent dangerousness of forcible felonies that differentiates them from nonforcible felonies." *People v. Lowery*, 178 Ill. 2d 462, 468 (1997). "Those who commit forcible felonies know they may encounter resistance, both to their affirmative actions and to any subsequent escape." *People v. Hickman*, 59 Ill. 2d 89, 94 (1974).

¶ 15 In *People v. McCormick*, 332 Ill. App. 3d 491 (2002), the defendant similarly argued that courts should not treat car burglaries like crimes of violence, because the burglary of an unoccupied car poses little threat of violence. The *McCormick* court said,

"Burglary of a nonresidence can pose a threat of injury for the same reasons as burglary of a residence, sometimes a greater threat. Even when no one is present when the burglar enters the office or car, someone could come. Walking in upon a burglar, anywhere, would be an intimidating experience. Any intruder is a physical menace because one never knows what the intruder will do. Burglaries commonly go bad. People panic. Trying to protect their property or themselves, the innocent get hurt. We realize that some burglaries are more physically threatening than others, but equal protection does not require 'mathematical nicety' in the creation of classifications (*Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369, 377, (1911)). As long as the legislative classification has a rational relationship to the State's objectives, it is valid, even if the classification is imperfect or ' "to some extent both underinclusive and overinclusive." ' *New York*

City Transit Authority v. Beazer, 440 U.S. 568, 592 n. 39, 99 S.Ct. 1355, 1369 n. 39, 59 L.Ed.2d 587, 606-07 n. 39 (1979), quoting *Vance v. Bradley*, 440 U.S. 93, 108, 99 S.Ct. 939, 948, 59 L.Ed.2d 171, 183 (1979)." *McCormick*, 332 Ill. App. 3d at 496-97.

¶ 16 Juvenile offenders who commit forcible felonies are more dangerous to themselves and others because of the higher risk of the use and threat of force in face-to-face encounters. Thus, the legislature's mandatory minimum sentence of five years' probation for juveniles found delinquent based on forcible felonies bears a rational relationship to the Act's purpose of protecting citizens, holding juvenile offenders accountable for their actions, and rehabilitating juvenile offenders. The legislature could reasonably find that juveniles who have committed forcible felonies need the extra court supervision of extended probation to aid in their rehabilitation. See *People v. Meyer*, 176 Ill. 2d 372, 379 (1997); *People v. Dowery*, 20 Ill. App. 3d 738, 741 (1974). We find that section 5-715, both facially and as applied to M.J., does not violate due process.

¶ 17 Equal Protection

¶ 18 Next, M.J. argues that section 5-715's mandatory 5-year probation period violates his right to equal protection because the law imposes harsher punishments on juveniles found guilty of burglary and eligible for probation than it imposes on adults similarly guilty of burglary and eligible for probation. If a court chooses to impose a sentence of probation on an adult found guilty of car burglary, the Unified Code of Corrections establishes that the period of probation cannot exceed 4 years. 730 ILCS 5/5-4.5-30(d), 5-4.5-35(d) (West

2012). Under section 5-715 of the Act, the court must sentence a juvenile guilty of the same crime to at least 5 years of probation.

¶ 19 Again, M.J. admits that the statutes do not involve a suspect classification, and therefore we need to decide only whether the legislature had a rational basis for distinguishing the treatment of the two classes of offenders. *McCormick*, 332 Ill. App. 3d at 495. For this test, we conduct a limited, deferential review of the challenged classification. *McCormick*, 332 Ill. App. 3d at 495. "[I]f any state of facts can reasonably be conceived to justify the enactment, it must be upheld." *People v. Shephard*, 152 Ill. 2d 489, 502 (1992). "[T]here must be a reasonable basis for distinguishing the class to which the law applies from the class to which the statute is inapplicable." *People v. Coleman*, 111 Ill. 2d 87, 95 (1986). "If the reasonableness of the statute is 'fairly debatable,' we will defer to the legislative judgment and uphold the statute." *McCormick*, 332 Ill. App. 3d at 496, quoting *Thillens, Inc. v. Morey*, 11 Ill. 2d 579, 591 (1957).

¶ 20 Probation counts as a form of punishment, but "the purpose of probation is to benefit society by restoring a defendant to useful citizenship, rather than allowing a defendant to become a burden as an habitual offender." *Meyer*, 176 Ill. 2d at 379. We find that the legislature could rationally conclude that juvenile offenders need, and stand to benefit from, the rehabilitative supervision of probation, and the juvenile offenders have greater need than adult offenders for the supervision. See *Meyer*, 176 Ill. 2d at 379; *In re G.B.*, 88 Ill. 2d 36, 44 (1981). We find that the mandatory imposition of a 5-year period of probation on juveniles sentenced to probation for forcible felonies does not violate the juveniles' right to equal protection of the laws.

¶ 21 The juvenile court will lose jurisdiction over M.J. after a mandatory probation period of only 37 months, a period well within the range available if the court had convicted M.J. as an adult. Therefore, we cannot say that section 5-715, as applied to M.J., violates M.J.'s right to the equal protection of the laws.

¶ 22 CONCLUSION

¶ 23 We hold that the provision for a mandatory term of 5 years' probation for juveniles who commit forcible felonies does not violate the juveniles' rights to due process or equal protection. Accordingly, we affirm the trial court's judgment.

¶ 24 Affirmed.