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SIXTH DIVISION
December 12, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF T.A., a Minor,)	Appeal from the
)	Circuit Court of
Respondent-Appellant.)	Cook County.
)	
)	No. 13 JD 5009
)	
)	The Honorable
)	Stuart P. Katz,
)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶1 *HELD:* The minor failed to satisfy his burden of clearly demonstrating that the mandatory 5-year minimum probationary term imposed by section 5-715(1) of the Juvenile Court Act for his commission of residential burglary, a forcible felony, violated his due process and equal protection rights.

¶2 Respondent-minor, T.A., was 16 years old when adjudicated a delinquent for residential burglary, a forcible felony. T.A. was sentenced to the mandatory statutory minimum of five years' probation pursuant to section 5-715(1) of the Juvenile Court Act (Act) (705 ILCS 405/5-

715(1) (West 2012)). On appeal, T.A. raises facial and as applied due process and equal protection challenges to the statute. Based on the following, we affirm.

¶3

FACTS

¶4 The State filed a petition for adjudication of wardship, alleging that T.A. was delinquent of residential burglary, burglary, criminal trespass to real property, and attempted theft. At T.A.'s adjudication hearing, Patricia Watkins testified that she lived at 5423 S. Michigan Avenue, Apartment 2, in Chicago, Illinois. On December 3, 2013, at approximately 12:50 p.m., Watkins was in her kitchen and looked through the peephole of her rear door. Watkins observed two males walking up the rear stairs. Watkins called the police because she did not recognize the males to be residents in the building. According to Watkins, approximately three or four seconds later, she heard items dropping on the floor directly above her. Watkins testified that she called the police again within five minutes of her first call. The police arrived soon after. Watkins said that an officer called her and asked if she would exit her apartment to identify the offenders. Watkins refused. The officer then requested instead if she would stand at her rear window to identify the males and she agreed. Watkins identified the males, stating that, at the time she first observed them through the peephole, T.A. was wearing a black hoody and had dreadlocks and the other offender was wearing a gray sweatshirt. When Watkins identified T.A. and the other offender, they were wearing the same clothes, but the other offender was wearing a hat.

¶5 Donna Eggleston testified that she lived at 5423 S. Michigan Avenue, Apartment 3, in Chicago, Illinois. On December 3, 2013, Eggleston locked her apartment doors prior to leaving for work in the morning. When she arrived back home later that evening, Eggleston attempted to gain entry through the rear porch of her apartment, but the wrought iron screen door was jammed. Eggleston observed that the rear door was open and her flat screen television was

resting near it. Eggleston then went through one of her neighbor's apartments on the lower floor to gain access to the front of the apartment building. Eggleston was able to enter her apartment through the front door and observed that the contents of her dining room were in disarray and her television had been moved.

¶6 Officer Jerome Anderson testified that, on the date in question, he was on patrol when he received a flash message regarding a burglary in progress. Officer Anderson proceeded to the 5500 block of S. Michigan Avenue. While in route, Officer Anderson observed two males matching the description of the offenders. When the officer approached, the offenders fled. One of the males was wearing a black hoody and black pants and had dreadlocks, while the other male was wearing a gray hoody. Officer Anderson testified that the offenders were stopped by two sergeants and another officer. The offenders then participated in a show up, during which they were positively identified. Officer Anderson placed T.A. in custody. T.A. stated that he was helping his friend make some money for his two-year-old baby. Officer Anderson then proceeded to Eggleston's apartment where he observed the back window and rear door were open and a flat screen television was near the inside of the door. Officer Anderson also observed a steel pipe near the door.

¶7 Sergeant Thomas Risley testified that he received a flash message regarding the offense at issue and observed two males running southbound across a parkway at 55th Street and Michigan Avenue. Sergeant Risley and another sergeant detained the offenders and brought them to the alley behind 5423 S. Michigan Avenue. Sergeant Risley called Watkins and requested her participation in a show-up identification. According to Sergeant Risley, Watkins initially was hesitant, but eventually identified the offenders. Sergeant Risley proceeded to

Eggleston's apartment where he entered through the rear window because the steel security door was locked. Sergeant Risley observed a large flat screen television near the rear door.

¶8 T.A. was adjudicated a delinquent. The trial court merged all of the counts into the residential burglary count. The parties agreed that section 5-715(1) of the Act required the trial court to sentence T.A. to 5 years' probation. The trial court also imposed 40 hours of community service and referred T.A. to a TASC program. This appeal followed.

¶9 ANALYSIS

¶10 T.A. contends his due process rights and equal protection rights were violated by the imposition of the five-year mandatory probation sentence.

¶11 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 2012).

There is no dispute that residential burglary is a forcible felony. See 720 ILCS 5/2-8 (West 2012).

¶12 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 a statute to be 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).

¶13 I. Due Process Challenge

¶14 T.A. argues that section 5-715(1) of the Act is unconstitutional on its face and as applied to him where the purpose behind the statute is to combat and prevent violent forcible felonies, yet the statute equally punishes nonviolent offenders, as it did T.A. for the nonviolent forcible felony of residential burglary. The State responds that the plain language of the statute does not differentiate between violent and nonviolent forcible felony offenders and the statute must be applied as written. Moreover, the State argues that the statute is reasonably related to the goal of the rehabilitation and restoration of minor offenders to a noncriminal life.

¶15 "Under substantive due process ***, a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest." *People v. R.G.*, 131 Ill. 2d 328, 342 (1989). Where, as in this case, the challenged statute does not affect a fundamental right, the so-called rational basis test applies. *People v. Johnson*, 225 Ill. 2d 573, 584 (2007). The rational basis test provides a two-pronged inquiry: (1) whether there is a legitimate state interest behind the legislation; and (2) if so, whether there is a reasonable relationship between that interest and the means the legislature chose to pursue it. *Id.* "The rational basis test is highly deferential; its focus is not on the wisdom of the statute. [Citation.] If there is any conceivable set of facts to show a rational basis for the statute, it will be upheld. [Citation.]" *Id.* at 585.

¶16 T.A.'s constitutional challenge requires this court to engage in statutory construction. The primary goal of statutory construction is to ascertain and give effect to the legislature's

intent. *Bjorkstam v. MPC Products Corp.*, 2014 IL App (1st) 133710, ¶ 28. The best indication of legislative intent is the statutory language itself, applying the plain and ordinary meaning of the terms. *Id.* Where the language is clear and unambiguous, the terms must be applied as written without resort to additional aids of statutory construction. *People v. Howard*, 233 Ill. 2d 213, 218 (2009).

¶17 T.A. admits that the plain language of section 5-715(1) of the Act does not differentiate between juveniles guilty of nonviolent forcible felonies and those guilty of violent forcible felonies. Notwithstanding, T.A. argues that punishing nonviolent offenders, such as himself, in the same manner as violent offenders is not reasonably related to the purpose of the statute. As a result, T.A. maintains the statute does not satisfy the rational basis test.

¶18 The rules of statutory construction are clear. We must apply the plain language as written. See *Bjorkstam*, 2014 IL App (1st) 133710, ¶ 28. Turning to the challenged statute, section 5-715(1) states that "the period of probation for a minor who is found to be guilty for an offense which is *** a forcible felony shall be at least 5 years." 705 ILCS 405/5-715(1) (West 2012). The legislative intent is clearly demonstrated by the unambiguous language; all minors found to be guilty of forcible felonies are subject to a minimum period of 5 years' probation. Moreover, there is no question that residential burglary is a forcible felony. 720 ILCS 5/2-8 (West 2012). Section 2-8 of the Criminal Code of 2012 provides:

" 'Forcible felony' means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any

other felony which involves the use of threat of physical force or violence against any individual." 720 ILCS 5/2-8 (West 2012).

The legislature did not distinguish between types of forcible felonies. Residential burglary is categorized as a forcible felony just the same as the other listed offenses. We will not depart from the plain language of the statute by reading into it limitations, exceptions, or conditions that conflict with the expressed intent of the legislature. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 56.

¶19 Turning to the rational basis test, 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 2012).

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).

¶20 We conclude that imposing a mandatory minimum term of five years' probation against a juvenile that commits a forcible felony is rationally related to the stated purposes of the Act. First, the imposition of a five-year mandatory probation term serves to protect citizens from the commission of forcible felonies by juveniles. In fact, the supreme court has long held that residential burglary classifies as a forcible felony because " 'residential burglary contains more possibility for danger and serious harm than that of places not used as dwellings. There is a considerably greater chance of injury and danger to persons in the home context than the burglary of a place of business.' " *People v. Bales*, 108 Ill. 2d 182, 193 (1985) (citing *People v. Gomez*, 120 Ill. App. 3d 545, 549 (1983)). Second, the statute is designed to hold juveniles accountable for committing forcible felonies by imposing a five-year minimum term of probation. Third, the statute is related to the goal of rehabilitation by allowing the trial court to maintain a watchful eye over the juvenile for at least a five-year period. Finally, the statute maintains a trial court's ability to make an individualized assessment of each juvenile where the court could have decided to not make T.A. a ward of the court (705 ILCS 405/4-620 (West 2012)) or the court could have committed T.A. to the Department of Corrections, Juvenile Division, until he reached 21 years of age (705 ILCS 405/5-710(a), (b)(7) (West 2012)).

¶21 Moreover, the record from T.A.'s hearing further demonstrates that the statute satisfies the rational basis analysis. In particular, T.A.'s probation officer said T.A. was a good candidate for probation. T.A. lived in a gang-infested neighborhood riddled with shootings, handguns, and drugs. T.A. violated the terms of his court-ordered electronic monitoring by spending time in the neighborhood. In addition, T.A. repeatedly was suspended from school and had anger management issues. We, therefore, find the mandatory 5-year probationary term was reasonably related to the goals of the Act in relation to T.A. See *In re Lakisha M.*, 227 Ill. 2d at 273-74 (the 'important purposes' of the Act are protecting citizens from juvenile crime, holding juvenile offenders directly accountable for their acts, and rehabilitating offenders to prevent further delinquent behavior).

¶22 In sum, we conclude that section 5-715(1) of the Act did not violate T.A.'s substantive due process rights.

¶23 **II. Equal Protection Challenge**

¶24 T.A. next contends section 5-715(1) of the Act is unconstitutional on its face and as applied to him as a violation of his equal protection rights where the statute treats juvenile felons convicted of a forcible felony more harshly than adults convicted of forcible felonies who are eligible for probation.

¶25 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. The parties agree that the rational basis test applies 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). As previously stated, 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.*

¶26 T.A. argues that he satisfied the threshold requirement of demonstrating disparate treatment between similarly situated juvenile probationers convicted of forcible felonies and adults convicted of forcible felonies who are eligible for probation where the juveniles described are subject to longer and more stringent probationary terms than their adult counterparts. T.A. maintains that an adult convicted of a Class 1 or Class 2 forcible felony is subject to a maximum probation term of 4 years and an adult convicted of a Class 3 or Class 4 forcible felony is subject to a maximum of 30 months' probation, with some enumerated exceptions. 730 ILCS 5/5-4.5-30(d), 5-4.5-35(d), 5-4.5-40(d), 5-4.5-45(d) (West 2012). According to T.A., an adult, therefore, who is guilty of a Class 1 residential burglary is eligible for a maximum probation of four years and can receive a lesser term if deemed appropriate by the trial court. See 720 ILCS 5/19-3 (West 2012); 730 ILCS 5/5-4.5-30(d) (West 2012). By contrast, a juvenile convicted of residential burglary like T.A. must serve a mandatory sentence of five years' probation without making an individualized assessment of the circumstances of the offense or the offender. In

addition, T.A. argues that adult nonviolent forcible felons eligible for probation receive superior benefits to those conferred on minors, *i.e.* dismissal of the case upon successful completion of a "special program."¹

¶27 The State responds that this court recently rejected a nearly identical argument in *In re J.F.*, 2012 IL App (1st) 123579. The State argues that T.A. cannot avoid a similar result by limiting the comparison group to adults who have actually received probation.

¶28 *In re J.F.* is instructive; therefore, we quote the case at length.

"J.F. also claims that she is similarly situated to adults convicted of robbery. Juveniles adjudicated delinquent under the Juvenile Court Act are not similarly situated to adult offenders because they are not subject to adult sentencing. [Citation.] In contrast to J.F.'s sentencing hearing, if an adult robber is convicted of a Class 2 felony, the adult is subject to a minimum three-year prison term. [Citation.] Although an adult offender may receive a four-year term of probation instead of a term of years, the adult offender still faces incarceration at sentencing while a juvenile does not. Also, adult robbers must serve a two year supervisory term on release. [Citation.] Even though the Juvenile Court Act's 1999 amendments have augmented the original purpose by including juvenile accountability and public safety objectives, courts have not recognized juvenile proceedings as criminal in nature. [Citations]." *In re J.F.*, 2014 IL App (1st) 123579, ¶ 16.

¶29 Similarly here, an adult convicted of residential burglary, a Class 1 felony (720 ILCS 5/19-3 (West 2012)), is eligible for a sentence of not less than 4 years and not more than 15

¹ T.A. cites the offender initiative program (730 ILCS 5/5-6-3.3 (West 2012)) and second chance probation (730 ILCS 5/5-6-3.4 (West 2012)).

years. 730 ILS 5/5-4.5-30(a) (West 2012). While the adult offender may receive a four-year term of probation instead of a prison term, an adult found guilty of residential burglary faces incarceration at sentencing whereas a juvenile does not. 730 ILS 5/5-4.5-30(a), (d) (West 2012); 705 ILCS 405/5-715(1) (West 2012). In addition, the adult offender is subject to a two-year term of mandatory supervised release while a juvenile offender is not. See 730 ILS 5/5-4.5-30(l) (West 2012). Instead, for the commission of a forcible felony by a juvenile, section 5-715(1) of the Act imposes a mandatory five-year probationary term, or, if a shorter term, until the minor attains the age of 21 years at which time the proceeding automatically terminates. *In re Jamie P.*, 223 Ill. 2d 526, 534 (2006). Therefore, despite his attempt to limit the comparison group to adult offenders who received a probation sentence, T.A. has failed to demonstrate that he is similarly situated where, as a juvenile, he was not at risk of receiving a prison term nor was he subject to mandatory supervised release like an adult offender. 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] 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"). Moreover, unlike an adult offender and contrary to T.A.'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 2012); 705 ILCS 405/5-705(1) (West 2012).

¶30 In sum, because we find that T.A. failed to show that he is similarly situated to an adult who committed a forcible felony where he was not subject to the severe deprivation of liberty imposed by potential incarceration, his equal protection claim must fail.

¶31 CONCLUSION

¶32 T.A. has failed to satisfy his burden of clearly demonstrating section 5-715(1) of the Act is unconstitutional. We, therefore, affirm the trial court's sentencing order.

¶33 Affirmed.