2017 IL App (1st) 14-3392-U

THIRD DIVISION
June 21, 2017

No. 1-14-3392

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellee,	)	of Cook County, Illinois,
	)	Criminal Division.
	)	
JARRON PRICE,	)	No. 12 CR 08225
	)	
Defendant-Appellant.	)	The Honorable
	)	Joan Margaret O'Brien,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Lavin and Pucinski concurred in the judgment.

ORDER

Held: A 15-year minimum mandatory sentenced for armed violence (720 ILCS 5/33-A-3) (West 2012)) was not unconstitutional as applied to the 19-year old defendant either under the eight amendment of the United States Constitution (U. S. Const., amend. VIII) or the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11).

¶ 1 Following a bench trial in the circuit court of Cook County, the then 19-year-old defendant, Jarron Price, was found guilty of armed violence and sentenced to the statutory minimum sentence of 15 years' imprisonment. On appeal, the defendant argues that the sentencing provision of the Armed Violence Statute (720 ILCS 5/33-A-3) (West 2012)), under which he

was sentenced, violates both the Eight Amendment of the United States Constitution (U. S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), as they apply to him, a 19-year old defendant, because it imposes a mandatory harsh 15-year minimum sentence without taking into account the transient signature qualities of his youth. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On April 30, 2012, the 19-year-old defendant was charged with: (1) one count of armed violence, predicated on his simultaneous possession of a handgun and less than 15 grams of cocaine (720 ILCS 5/33A-2(a) (West 2012); 720 ILCS 570/402(c) (West 2012)) (count I); (2) four counts of unlawful use of a weapon by a felon (hereinafter UUWF) predicated on a single prior aggravated battery conviction (720 ILCS 5/24-1.1(a), (e) (West 2012)) (counts II-V); (3) ten counts of aggravated unlawful use of a weapon (hereinafter AUUW) (720 ILCS 5/24-1.6 (West 2012)) (counts VI-XV); and (4) one count of possession of a controlled substance (*i.e.*, less than 15 grams of cocaine) (720 ILCS 570/402(c) (West 2012)).

¶ 4 The parties proceeded with a bench trial at which the following evidence was adduced. Chicago Police Officer John Helsel testified that at about 1 p.m. on April 4, 2012, he was working with his partner Officer Kevin Tuttle. The officers were inside their unmarked squad car in plain clothes, when they received of a radio call of shots fired in the vicinity of 113th Street and Perry Avenue. According to the call, the offender was wearing a white hat and black jacket.

¶ 5 Officer Helsel, who was driving the unmarked squad car, proceeded to the area. As he

approached near 117 West 111th Place, he noticed an individual who matched the description of the offender, opening a gate trying to exit a front yard. The officer made an in court identification of the defendant as that individual.

¶ 6 Officer Helsel pulled up parallel to the defendant and asked him to step over to the vehicle, but the defendant fled northbound through the yard and a gangway. Officer Helsel's partner exited the car and chased after the defendant, while Officer Helsel pursued the defendant with his vehicle. Officer Helsel drove westbound in the alley between 111th Street and 111th Place, and observed the defendant running northbound through a vacant lot next to 133 West 111th Street. Officer Helsel saw that his partner was still chasing the defendant.

¶ 7 Officer Helsel testified that while the defendant was running northbound through the vacant lot, he observed him take a chrome revolver from his waistband and throw it onto the roof of the building located at 133 West 111th Street. Officer Helsel stated that he was about 25 feet away from the defendant when he observed him disposing of the gun. As the officer proceeded in his pursuit he drove through the alley to Wentworth Avenue, and turned right several times until he came upon his partner handcuffing the defendant at 127 West 111th Street. Officer Helsel learned from his partner that during the chase the defendant had also disposed of a plastic bag containing suspect narcotics onto the roof of the building at 127 West 111th Street.

¶ 8 According to Officer Helsel, after the defendant was placed into custody, the two officers proceeded to retrieve the contraband that the defendant had disposed of during the chase. According to Officer Helsel, in that vein, Officer Tuttle was able to climb up to the roof of 127 West 111th Street and retrieve a plastic bag containing several bags of suspect cannabis, and several white, knotted bags containing a rock-like substance, suspect crack cocaine. Subsequently, with the help of the fire department, which had since arrived at the scene, Officer

Tuttle was able to climb to the roof of 133 West 111th Street from where he retrieved a chrome Taurus revolver loaded with six live rounds. According to Officer Helsel, both the plastic bag and the revolver were inventoried.

¶ 9 Chicago Police Officer Kevin Tuttle next testified consistently with his partner, Officer Helsel. He stated that after the defendant fled from them, he pursued the defendant on foot first north through the yard at 117 West 111th Place, and then through a vacant lot behind that yard. When the defendant reached the alley, he ran westward with Officer Tuttle in pursuit. According to the officer, the defendant then ran into a vacant lot, where the officer observed him reach into his waist and throw something to the left. Officer Tuttle could not tell what the defendant threw.

¶ 10 Officer Tuttle averred that the defendant then ran out onto 111th Street, turned right and ran a short distance, turned right again onto the property at 127 West 111th Street, where he tossed a plastic bag onto the one-storey garage roof of the building on that lot. The officer stated that he was about 15 feet away from the defendant when he observed him dispose of the bag. According to Officer Tuttle, at that point, the defendant stopped and surrendered. While Officer Tuttle was placing the defendant under arrest, Officer Helsel pulled upon in his car.

¶ 11 After speaking with Officer Helsel, Officer Tuttle retrieved the items that the defendant had thrown during the chase. He first climbed onto the garage roof of 127 West 111th Street to retrieve the plastic bag. Officer Tuttle testified that that bag contained seventeen Zip lock bags of crushed, green leafy substance, that he suspected to be cannabis, and nine individually wrapped clear plastic bags containing a rock-like substance which he believed was crack cocaine. Subsequently, the officer relocated to 133 West 111th Street, and with the use of a fire department ladder climbed to the roof of that building from which he retrieved a chrome Taurus

.38 caliber revolver, with six live rounds. Officer Tuttle inventoried the items he found, and sent them to the Illinois State police forensic lab.

¶ 12 Officer Tuttle further testified that together with Officer Helsel he subsequently interviewed the defendant at the police station. The defendant told the officer that he found the handgun two days earlier in a plastic bag. Officer Tuttle explained that the defendant could not provide the officers with a Firearm Owners Identification (FOID) card, and that his residence did not match the vacant lot at which he disposed of the gun. The officer also explained that when he found the gun it was uncased. Officer Tuttle also stated that the defendant was on a public way in the alley and on 111th Place and that to the officers' knowledge he was not an invitee on that property for the purpose of displaying the handgun. In addition, the officer stated that to his knowledge the defendant was not on city property for the lawful commerce in firearms.

¶ 13 On cross-examination, Officer Tuttle acknowledged that during the interview with the defendant, the defendant never acknowledged to having had possession of the narcotics.

¶ 14 The parties next stipulated that if called to testify, Illinois State Police Crime Lab forensic chemist, Jamie Hess would testify that she received an inventoried plastic bag containing seventeen items of plant material and nine items of chunky substance, and after having tested them, she could confirm that the plant material was indeed cannabis and the chalky substance cocaine. Hess would further state that she tested five of the seventeen plant materials, which tested positive for 2.9 grams of cannabis, with 6.7 grams of the plant material (*i.e.*, twelve items) not tested. She would also aver that she tested one item of chalky substance and that it tested positive for 0.1 grams of cocaine, with 0.8 grams of the chalky substance not tested (*i.e.*, eight items). The parties also stipulated that a proper chain of custody was maintained at all times.

¶ 15 The State next entered several exhibits into evidence without objection, including: (1) a

certified copy of the defendant's felony conviction in case No. 10 CR 1116401, wherein on October 4, 2010, he was found guilty of aggravated battery with a weapon (namely, an air rifle) and was sentenced to 30 months' in the Illinois Department of Corrections (IDOC); (2) a certified copy of a juvenile finding of delinquency in case No. 08 JD 05798, wherein the defendant was found guilty of AUUW and was placed on three years' probation; (3) a certified letter from the Illinois State Police confirming that the defendant had never been issued a FOID card; and (4) a copy of the defendant's birth certificate establishing that he was born on January 12, 1993.

¶ 16 After the State rested, defense counsel moved for a directed finding. That motion was denied, and defense counsel rested without presenting any evidence. After hearing closing arguments, the trial court found the defendant guilty on all sixteen counts, which were merged into one armed violence conviction.

¶ 17 Defense counsel subsequently filed a motion for a new trial, arguing, *inter alia*, that the evidence proffered by the State failed to show that the defendant had simultaneously possessed the gun and cocaine, and therefore that the State had failed to prove his guilt for armed violence. The court disagreed, and denied the motion.

¶ 18 At the sentencing hearing, the State argued in aggravation that the defendant was on parole for aggravated battery with a weapon, when he committed the instant offense, and that when he received probation for the firearms offense in juvenile court, the probation was terminated unsatisfactorily. The State therefore sought the imposition of a sentence greater than the statutory minimum of 15 years.

¶ 19 At this point in the proceedings, defense counsel renewed his motion for a new trial, arguing

that there was no evidence presented at trial that the defendant had been on parole at the time he committed the offense. The trial court agreed and vacated its guilty findings on the two UUWF charges premised on the defendant's status as a parolee (counts IV and V).

¶ 20 Defense counsel then proceeded with mitigation, arguing that the defendant was only a 19-year-old teenager when he committed the crime. Defense counsel further argued that the defendant had very good family support and that he had worked hard to rehabilitate himself while in pretrial custody, by, *inter alia*, taking classes, making the honor roll and being only four credits away from completing his studies. Counsel further argued that because this was not a violent crime, the imposition of the minimum sentence of 15 years was appropriate.

¶ 21 In allocution, the defendant stated:

> "[W]hen this case was committed, I was 19 years old. I was still young, you know. I was making mistakes. But since I have been here, I took the time to realize who I was as a person. I'm trying to become a man and I know that a man takes responsibility for his actions. That is what I'm trying to do right now. I know I was wrong but at the time I didn't think what I was doing was wrong. That was wrong for me thinking that. Now I see that as I got older, so I'm just trying to be that person."

¶ 22 The trial court sentenced the defendant to the minimum 15-year sentence permitted under the Armed Violence Statute (720 ILCS 5/33-A-3) (West 2012)), with three years of mandatory supervised release. In doing so, the trial judge explained:

> "[T]the statutory minimum of 15 is so much higher than it used to be for armed violence. It used to be 6. In an armed violence, I think the legislature reacts to things that are going on in Chicago with young people getting killed with handguns."

The court then noted that the defendant had made a mistake, but that because there was nothing violent about his crime, and because of the defendant's age, the minimum sentence was appropriate, so as to give the defendant "a chance to come out of this and start a life and be a law-abiding citizen." The trial court agreed with defense counsel that because no one suffered great bodily harm during the commission of this offense, the truth in sentencing provisions should not apply and the defendant should only have to serve 50% of the sentence (735 ILCS 5/3-6-3 (West 2012)). The court nonetheless stated that the Illinois Department of Corrections (IDOC) was responsible for calculating the defendant's sentence. The defendant now appeals.

¶ 23 II. ANALYSIS

¶ 24 On appeal, the defendant contends that his 15-year mandatory minimum sentence for armed violence (720 ILCS 5/33A-3 (West 2012)) violates both the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), as it applies to him, because it precluded the trial court from considering the signature qualities of his youth at the time the crime was committed and his rehabilitative potential at the time of sentencing.

¶ 25 A. Forfeiture of As-Applied Challenge

¶ 26 The State first contends that the defendant has forfeited this issue for purpose of appeal because he never raised it before the trial court, and an as applied challenge to a statute cannot be raised for the first time on appeal. In support, the State cites to our supreme court's decision in *People v. Thompson*, 2015 IL 118151.

¶ 27 In *Thompson*, the 19–year–old defendant raised an as-applied constitutional challenge to his sentence for the first time on appeal from the denial of his petition for relief under section 2–1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2–1401 (West 2010)).

Thompson, 2015 IL 118151, ¶¶ 6–7, 14–18. The defendant argued he could raise this claim at any time because it rendered the judgment void. *Thompson*, 2015 IL 118151, ¶ 30. Our supreme court disagreed, holding that judgments are void only where personal of subject matter jurisdiction is lacking or where a judgment is based on a facially unconstitutional statute which is void *ab initio*. *Thompson*, 2015 IL 118151, ¶¶ 31–32, 34. In addition, our supreme court rejected the defendant's assertion that it was illogical to permit a defendant to raise facial, but not as-applied, constitutional challenges to a sentence at any time. *Thompson*, 2015 IL 118151, ¶¶ 35–36. The court explained that while a facial challenge requires demonstrating that a statute is unconstitutional under any set of facts, an as-applied challenge requires demonstrating that the statute is unconstitutional under the particular circumstances of the challenging party. *Thompson*, 2015 IL 118151, ¶ 36. Accordingly, in *Thompson*, the court held that because as-applied challenges are dependent on the particular facts, "it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review." *Thompson*, 2015 IL 118151, ¶ 37.

¶ 28 In *People v. Gray*, 2016 IL App (1st) 13412, ¶ 35, we previously explained that because *Thompson's* rationale "rests on the notion that reviewing courts require a sufficient evidentiary record in order to determine whether a statute is unconstitutional as applied to a particular defendant," that rationale "reflects a distinction between as-applied challenges that lack a sufficient record due to being raised for the first time on appeal and as-applied challenges supported by a sufficiently developed record for appellate review, despite the defendant's failure to raise the issue in the trial court." See also *People v. Mosley*, 2015 IL 115872, ¶ 47 (finding that courts cannot make as-applied determination without an evidentiary record and findings of facts).

¶ 29 In the present case, contrary to the State's position, the record on appeal is sufficient to review the defendant's as-applied challenge to the constitutionality of his sentence. The record contains a transcript of the sentencing hearing, during which the parties thoroughly explored the defendant's social history, family life, youth and potential for rehabilitation, as well as the actions the defendant took to improve himself during the nearly two years of his pretrial incarceration from ages 19 to 21. As such, the record on appeal is sufficient to review the defendant's as applied challenge to the constitutionality of his mandatory minimum 15-year sentence. See *e.g.*, *Gray*, 2016 IL App (1st) 134012, ¶ 36 (holding that the evidentiary record from the trial was sufficient for appellate review of defendant's as-applied challenge); see also *People v. Bingham*, 2017 IL App (1st) 142150 (holding that the record was sufficient to allow the appellate court to review the defendant's as-applied due process challenge to the Sex Offender Registration Act, raised for the first time on appeal, despite the absence of an evidentiary hearing and findings of facts, where the record contained a transcript of the bench trial at which the parties thoroughly explored the circumstances that led to the requirement for the defendant to register as a sex offender, and the record also contained a presentence investigation report regarding such circumstances). Accordingly, we proceed to address the defendant's as-applied constitutional challenge to the sentencing provision of the Armed Violence Statute (720 ILCS 5/33-A-3) (West 2012)), under which he was sentenced to a minimum of 15 years' in prison.

¶ 30 B. Merits of the Defendant's Constitutional Challenges

¶ 31 Pursuant to section 33-A-3(a) of the Armed Violence Statute under which the defendant was sentenced, armed violence with a Category I weapon "is a Class X felony for which the defendant shall be sentenced to a minimum term of imprisonment of 15 years." 720 ILCS 5/33A-3(a) (West 2012). A Category I weapon is defined as "a handgun, sawed-off shotgun, sawed-off

rifle, any other firearm small enough to be concealed upon the person, semiautomatic firearm, or machine gun." 720 ILCS 5/33A-1(c)(2) (West 2012).

¶ 32 It is axiomatic that all statutes carry a strong presumption of constitutionality and that courts will uphold them whenever reasonably possible resolving all doubts in favor of the statue's validity. *People v. Patterson*, 2014 IL 115102, ¶ 90. In matters of sentencing, courts will "generally defer to the legislature because the legislature is institutionally better equipped to gauge the seriousness of various offenses and fashion sentences accordingly." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). "The legislature's discretion in setting criminal penalties is broad, and courts generally decline to overrule legislative determinations in this area unless the challenged penalty is clearly in excess of the general constitutional limitations on this authority." *Sharpe*, 216 Ill. 2d at 487. The constitutionality of a statute is purely a matter of law, requiring *de novo* review. *Patterson*, 2014 IL 115102, ¶ 90.

¶ 33 1. Eight Amendment

¶ 34 On appeal, the defendant first asserts that his minimum mandatory 15-year sentence violates the eight amendment to the United States Constitution (U.S. Const., amend VIII) because the statutory scheme prevented the trial court from considering his age and the mitigating factors related to his youth. The eighth amendment to the United States Constitution, which is applicable to the States through the fourteenth amendment provides: "Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., amend. VIII. This amendment guarantees individuals the right not to be subjected to excessive sanctions and reaffirms the government's duty to respect the dignity of all persons. *Roper v. Simmons*, 543 U.S. 551, 560 (2005). The amendment flows from the basic precept that the

punishment for crimes should be graduated and proportioned to the offense. *Roper*, 543 U.S. at 560.

¶ 35 The defendant's claim of cruel and unusual punishment is premised on three recent United States Supreme Court decisions, which have recognized the special characteristics of juvenile offenders, including, that they: (1) lack maturity and have an underdeveloped sense of responsibility, which leads to poor decision making; (2) are more susceptible to negative influences and peer pressure, and therefore lack the ability to extricate themselves from horrific, crime-producing settings; and (3) are more capable of change than adults, and less likely to be of irretrievably depraved character. See *Roper*, 543 U.S. at 569; *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller*, 567 U.S. at ___, 132 S. Ct. at 2464

¶ 36 With these attendant characteristics in mind, in *Roper*, the Supreme Court first held that the eighth amendment prohibits the imposition of the death penalty where an offender is under 18 years old when he committed the offense. *Roper*, 543 U.S. at 578. Five years, later, in *Graham*, the Supreme Court held that the eighth amendment prohibited the imposition of life without parole on a juvenile offender who did not commit homicide. *Graham*, 560 U.S. at 74. In its latest decision, in *Miller*, the Supreme Court held that mandatory sentences of life in prison without the possibility of parole for a juvenile offender convicted of homicide violated the eight amendment because it precluded the trial court form consider the mitigating factors including the juvenile's age and attendant characteristics and the nature of the individual crime. *Miller*, 567 U.S. 460, ___, 132 S. Ct. at 2468.

¶ 37 Our supreme court has interpreted *Miller*, *Roper* and *Graham*, to further include *de facto* life sentences and has held that a "mandatory term of years that is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the

eighth amendment." *People v. Reyes*, 2016 IL 119271, ¶ 9. As our supreme court explained, "a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering in mitigation his youth, immaturity, and potential for rehabilitation." *Reyes*, 2016 IL 119271, ¶ 9.

¶ 38 Based on the aforementioned precedent, the defendant argues that we should find that his minimum mandatory 15-year sentence was unconstitutional because like in *Miller*, *Roper*, *Graham* and *Reyes*, it prohibited the trial court from considering the attendant characteristics of his youth. Specifically, the defendant argues that we should follow the example of the supreme court of Iowa, which has used the rationale of *Miller*, *Roper* and *Graham* to hold that all mandatory minimum sentencing schemes for juveniles, regardless of the offense or length of the minimum sentence are unconstitutional, because they prevent the trial court from exercising discretion based on the defendants' youth. See *e.g.*, *State v. Lyle*, 854 N.W. 2d 378, 386, 402 (Iowa 2014) (holding that all mandatory minimum sentencing schemes are unconstitutional when applied to juveniles; noting "*Miller* effectively crafted a new subset of categorically unconstitutional sentences: sentences in which the legislature has forbidden the sentencing court from considering important mitigating characteristics of an offender whose culpability is necessarily and categorically reduced as a matter of law, making the ultimate sentence categorically inappropriate"). For the following reasons, we disagree.

¶ 39 Our supreme court has repeatedly held that the rationale of *Miller*, *Roper*, and *Graham* applies "only in the context of the most severe of all criminal penalties," namely capital punishment, natural life imprisonment, or *de facto* life imprisonment. *Patterson*, 2014 IL 115102, ¶ 110; see also *People v. Thomas*, 2017 IL App (1st) 142557, ¶ 26 (noting that our supreme court has held that the reasoning of *Miller*, *Graham* and *Roper* apply only in the context of the most severe of all criminal penalties); see also *Reyes*, 2016 IL 119271, ¶ 9 (" '[T]he

teachings of the *Roper/Graham/Miller* trilogy require sentencing courts to provide an individualized sentencing hearing to weigh the factors for determining a juvenile's "diminished culpability and greater prospects for reform" when, as here, the aggregate sentences result in the *functional equivalent of life without parole*. To do otherwise would be to ignore the reality that lengthy aggregate sentences have the effect of mandating that a juvenile "*die in prison* even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life with the possibility of parole) more appropriate." [Citation.] Such a lengthy sentence " 'means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the juvenile convict], he will remain in prison for the rest of his days.' " [Citations.] (Emphasis added.)).

¶ 40 In the present case, the defendant did not receive the "most severe of all criminal penalties," *i.e.*, he did not receive natural life imprisonment without parole, or a *de facto* life sentence. Rather, he received a mandatory sentence of 15 years' imprisonment for armed violence with a Category I weapon, pursuant to section 33-A-3(a) of the Armed Violence Statue (720 ILCS 5/33A-3(a) (West 2012)), which categorizes that crime as a Class X felony. As such, the rationale of *Miller*, *Roper*, *Graham* and *Reyes* do not extend to his sentence.

¶ 41 Moreover, the State is correct in asserting that unlike the defendant in *Miller*, *Roper*, *Graham* and *Reyes*, the defendant here was not a minor, but rather an adult, when he committed the offense. The decision of the Iowa supreme court in *Lyle*, 854 N.W. 2d at 386, 402 (Iowa 2014) that the defendant would have us adopt, is therefore inapplicable to him, since it prohibits mandatory minimum sentencing for juveniles alone. What is more, although our supreme court has not yet addressed the application of *Miller*, *Roper* and *Graham* to adult defendants, this

appellate court has previously rejected an adult defendant's attempt to extend the rationale of those decisions to his challenge of his *de facto* life sentence. See *Thomas*, 2017, IL App (1st) 14255, ¶ 27 ("this court has held that where an adult defendant receives a sentence that approaches the span of the defendant's lifetime, that term does not implicate the eight amendment right barring cruel and unusual punishment. Defendant cannot demonstrate otherwise under *Miller*, *Roper*, and *Graham*, which involve capital punishment or life sentences without parole for *juvenile* offenders." (Emphasis added.)); but see *People v. Harris*, 2016 IL App (1st) 141744, ¶37 (extending the juvenile sentencing reasoning in *Miller* to include a young adult, i.e., an 18-year-old defendant). Until our supreme court addresses the application of juvenile sentencing to adult defendants, we are not at liberty to extend the rationale of *Miller*, *Roper*, *Graham* and *Reyes* to an adult defendant. Accordingly, we conclude that the defendant's sentence here did not violate the eight amendment.

¶ 42 2. Illinois Proportionate Penalties Clause

¶ 43 We next consider the defendant's claim that his sentence should be vacated under the proportionate penalties clause of the Illinois Constitution. The proportionate penalties clause of the Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. A challenge under this clause " 'contends that the penalty in question was not determined according to the seriousness of the offense.' " *Thomas*, 2017 IL App (1st) 142557, ¶ 29 (quoting *Sharpe*, 216 Ill. 2d at 487.) As relevant here, a successful challenge shows that the penalty imposed is "cruel, degrading," or is "so wholly disproportionate to the offense committed as to shock the moral sense of the community." (Internal citations and quotation marks omitted.) *People v. Rizzo*, 2016 IL 118599, ¶ 37.

¶ 44 Our supreme court has never defined what constitutes cruel or degrading punishment, or what punishment is so disproportionate to the offense that it shocks the moral sense of the community. See *Thomas*, 2017 IL App (1st) 142557, ¶ 46 (citing *People v. Leon Miller*, 202 Ill. 2d 328, 339 (2002)). The reason for this is that "as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." *Leon Miller*, 202 Ill. 2d at 339.

¶ 45 The defendant here contends that because under section 33-A-3(a) of the Armed Violence Statute (720 ILCS 5/33A-3(a) (West 2012)), the trial court had no choice but to impose the minimum term of 15 years' imprisonment without any discretion to consider his age, the characteristics of youth, and his capacity for rehabilitation, that sentence violates the standard that a punishment must not be cruel, degrading, or wholly disproportionate with the offense as to shock the moral sense of the community. See *Rizzo*, 2016 IL 118599, ¶ 37; see also *Patterson*, 2014 IL 115102, ¶ 106. We disagree.

¶ 46 In *People v. Brown*, 362 Ill. App. 3d 374, 385 (2005) , this appellate court upheld a proportionate penalties challenge to the 15-year minimum sentenced for armed violence predicated on the defendant's possession of a firearm during an attempt to flee from the police. In doing so, the court in *Brown* noted that the armed violence statue was enacted " 'to respond emphatically to the growing incidence of violent crime.' " *Brown*, 362 Ill. App. 3d at 384 (quoting *People v. Alejos*, 97 Ill.2d 502, 507–08 (1983)). As the legislature explained, "[t]he use of a dangerous weapon in the commission of a felony offense poses a much greater threat to the public health, safety, and general welfare, than when a weapon is not used in the commission of the offense." 720 ILCS 5/33A–1(a)(1) (West 2002). "[T]he chances that violence will erupt and cause great bodily harm because of the weapon are increased when a felony is committed * * *."

Alejos, 97 Ill. 2d at 508–09. Accordingly, "[t]he stiff punishment mandated by the armed-violence provision is intended not only to punish the criminal and protect society from him but also to deter his conduct—that of carrying the weapon while committing a felony." *Alejos*, 97 Ill. 2d at 509. While recognizing that the 15-year minimum sentence was "a stringent penalty" the court further found the penalty to be reflective of the seriousness of the offense, and therefore concluded that the sentence was "not cruel, degrading, or so grossly disproportionate to the offense as to shock the moral sense of the community." *Brown*, 362 Ill. App. 3d at 385.

¶ 47 The defendant, nonetheless, argues that the sentencing scheme as applied to him, a 19-year-old, when he committed the offense, violates the proportionate penalties clause because he is more similar to a juvenile defendant than an adult, and therefore not permitting the trial court to consider the characteristics attendant to juveniles only because he was 19, instead of 17, is purely arbitrary. In support, he cites to *People v. House*, 2015 IL App (1st) 110580, ¶ 94.

¶ 48 In *House*, a 19-year-old defendant, who acted as a lookout during two killings was sentenced to natural life imprisonment for two convictions of first degree murder on an accountability theory. *House*, 2015 IL App (1st) 110580, ¶ 3. That term was imposed pursuant to an Illinois statute mandating a natural life term for defendants 17 years or older found guilty of murdering more than one victim. *House*, 2015 IL App (1st) 110580, ¶ 82 (citing 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998)). In finding the multiple-murder provision unconstitutional under to the Illinois proportionate penalties clause, the court in *House* found that the sentence "shock[ed] the moral sense of the community," because although House was young, lacked any prior violent convictions, and acted only as a lookout during the murders, the trial court was prevented from taking any of this information into account in sentencing him. *House*, 2015 IL App (1st)

110580, ¶ 101. In coming to this decision, the court in *House* relied heavily on the idea that, as a teenager, House was more similar to a juvenile than a full-grown adult. The court explained that

> "[r]esearch in neurobiology and development psychology has shown that the brain does not finish developing until the mid-20s, far later than was previously though. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged setting." (Internal quotation marks omitted). *House*, 2015 IL App (1st) 119580, ¶ 95.

In addition, the court noted that several countries in Europe had already extended juvenile justice to include young adults. See *House*, 2015 IL App (1st) 119580, ¶ 96 (noting that in Germany and the Netherlands, juvenile justice is extended to young adults ages 18 to 21, and in Sweden it is extended to defendants up to 25 years in age).

¶ 49 While we acknowledge the weight of the rationale in *House*, and understand how in this particular case, one could argue that the 19-year-old defendant here is not much different form a 17-year-old in terms of youthful characteristics, "a line must be drawn at some point." *Thomas*, 2017 IL App (1st) 142557, ¶ 47. At present, our legislature has determined that at the age of 18, a person is an adult for sentencing purposes. Specifically, in response to the new research regarding juvenile defendants, our legislature enacted a new sentencing provision (730 ILCS 5/54.5-105 (West Supp. 2015), effective January 1, 2016, providing that "when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense," the sentencing court must consider the enumerated mitigating factors, including, *inter alia*, the person's age, impetuosity, level of maturity, ability to consider risks and consequences of behavior, the person's subjection to outside pressure, including peer pressure, the person's family, home educational and social background, the person's potential for e rehabilitation. See

also Pub. Act. 98–61, § 5 (eff. Jan. 1, 2014) (amending 705 ILCS 405/5–105(3) (West 2012)) (raising the age of what constitutes a "delinquent minor" from 17 to 18, and changing the definition to, "any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance."). We agree with other decisions of our appellate court that have found that it is for the legislature and, not the courts, to revisit the sentencing scheme and afford greater discretion to trial judges' for defendants that are 18 years of age or older. *Thomas*, 2017 IL App (1st) 142557, ¶ 47. Until the legislature chooses to do so, however, we are bound by the limits set forth in our statutes.

¶ 50 For this reason, we find that the adult defendant has failed to meet his burden in overcoming the strong presumption that his mandatory 15-year sentence under the Armed Violence Statute (720 ILCS 5/33A-3(a) (West 2012)), violated the Illinois proportionate penalties clause (Ill. Const. 1970, art. I, § 11); see *People v. Willis*, 2013 IL App (1st) 110233, ¶ 43 ("Our supreme court has instructed us that statutes 'are presumed constitutional' and that a party challenging the validity of a statute bears the burden of rebutting that presumption.").

¶ 51 III. CONCLUSION

¶ 52 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 53 Affirmed.