

FIRST DIVISION
MAY 19, 2014

No. 1-12-1736

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 04 CR 24639
)	
JESUS RODRIGUEZ,)	Honorable
)	Diane G. Cannon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed the defendant's postconviction petition at the summary stage; Illinois' sentencing scheme does not violate juvenile offenders' constitutional right against cruel and unusual punishment or due process rights.

¶ 2 This appeal arises from the May 16, 2012 judgment entered by the circuit court of Cook County, which summarily dismissed defendant Jesus Rodriguez's petition filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)) (the postconviction petition). On this appeal, the defendant argues for the first time that Illinois' sentencing scheme violates juvenile offenders' constitutional rights because they automatically treat 17-year-olds as adults

without any court consideration of their youth, attendant characteristics, and level of participation in the offense. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 The relevant underlying facts of this case are set forth in this court's January 7, 2010 decision on direct appeal (*People v. Rodriguez*, No. 1-07-3465 (2010) (unpublished order under Supreme Court Rule 23)), which we adopt and reproduce as follows. The record shows that the defendant and his codefendants, Juan Lopez (Juan), Jomar Lopez (Jomar), and David Alvarado (David), were charged with robbing and murdering 67-year-old Ilija Arezina. Codefendant Juan pled guilty to first-degree murder and was sentenced to a 47-year prison term. Codefendant Jomar pled guilty to first-degree murder and was sentenced to a 20-year prison term. Codefendant David pled guilty to robbery and was sentenced to a 12-year prison term. The defendant elected to proceed to trial by jury.

¶ 5 At the September 2007 trial, the evidence showed that on September 22, 2004, 17-year-old defendant, Juan, Jomar, and David, participated in a robbery in the area of West Grace Street and North Keystone Avenue in Chicago, Illinois. David testified that it was the defendant's idea to rob somebody in order to buy marijuana. David drove the group in search of someone to rob, and, when they saw the 67-year-old victim, the defendant directed David to stop the vehicle, after which the defendant and codefendants Juan and Jomar exited the car. The defendant then acted as a lookout while Juan and Jomar robbed the victim of his wallet. During the robbery, Juan and Jomar beat the victim and knocked him to the ground. On October 1, 2004, the victim died from injuries he sustained during the robbery. Following closing arguments, the jury found the defendant guilty of felony murder.

¶ 6 At the November 2007 sentencing hearing, the State introduced victim impact statements from the victim's family, including ones from his sons, who asked that the trial court consider the defendant's involvement in the crime, as well as codefendants' sentences. In aggravation, the State called Officer Anthony Schwocher (Officer Schwocher) to testify. Officer Schwocher had responded to a police dispatch call, two days prior to the instant incident, regarding a robbery at 3656 North Keeler Avenue in Chicago. Officer Schwocher testified that, when he arrived at the scene of the prior robbery, he interviewed 75-year-old Anthony Genualdi, who told him that three Hispanic men had taken his wallet and had hit him in the head during the robbery (the Genualdi robbery). Assistant State's Attorney Guy Lisuzzo (ASA Lisuzzo) also testified in aggravation that on October 11, 2004, the defendant gave a handwritten statement in which he admitted to his participation in the Genualdi robbery. The State indicated that the defendant was on probation for two aggravated robbery cases at the time he committed the instant offense, and that the defendant was involved in a robbery of another senior citizen two days prior to the instant offense.

¶ 7 In mitigation, defense counsel argued that although the presentence investigation report (PSI report) indicated that the defendant had been arrested as a juvenile, he did not have any prior juvenile adjudications in his criminal history. Defense counsel then read a list of the defendant's arrests in order to show their non-violent nature. Defense counsel noted that the defendant's involvement in violent crimes had only been recent, and further remarked on the defendant's history of drug abuse, his diagnosis for depression, and his alcoholic father's abandonment of the family. Defense counsel further noted the defendant's role in the offense and the sentence terms of his codefendants.

¶ 8 Following mitigation and aggravation, the trial court sentenced the defendant to 60 years of imprisonment. In imposing the sentence, the trial court stated that it had considered the factors in aggravation and mitigation, the PSI report, and counsel's arguments. The trial court referred several times to the defendant's "arrest after arrest," and indicated that the defendant made it his job to rob the elderly. The trial court specifically stated that it did not use the facts of this case in determining his sentence, but instead looked at his background, participation in the crime, robberies of senior citizens, two convictions for aggravated robberies, and arrests as a juvenile.

¶ 9 On direct appeal, the defendant argued that his 60-year sentence was excessive, particularly in light of several mitigating factors, including the nature and circumstances of the offense, his background, and his rehabilitative potential. He further argued that the trial court's consideration of his prior arrests constituted reversible error because that evidence was unreliable. On January 7, 2010, this court affirmed the defendant's murder conviction and sentence, holding that the defendant's 60-year sentence was not excessive and that the trial court did not commit reversible error in imposing the sentence. See *People v. Rodriguez*, No. 1-07-3465 (2010) (unpublished order under Supreme Court Rule 23).

¶ 10 On February 22, 2012, the defendant filed a postconviction petition¹ (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that defense counsel was ineffective for failing to call codefendants Juan and Jomar to testify on his behalf at trial, and that the trial court erred in precluding him from calling codefendants Juan and Jomar to testify.

¹ The petition was a combined postconviction petition and a petition for relief from judgment on the basis of actual innocence under section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2010)).

¶ 11 On May 16, 2012, the trial court summarily dismissed the defendant's postconviction petition as frivolous and patently without merit.

¶ 12 On May 31, 2012, the defendant filed a notice of appeal.

¶ 13 ANALYSIS

¶ 14 We determine whether Illinois' statutory sentencing provisions unconstitutionally violate juvenile offenders' Eighth Amendment and due process rights, which we review *de novo*. See *People v. Woodrum*, 223 Ill. 2d 286, 307 (2006).

¶ 15 The defendant argues that Illinois' statutory sentencing scheme for juveniles is unconstitutional, because it subjects 17-year-olds who are charged with felonies to be automatically subjected to adult prosecution and sentencing, without individualized court consideration of their youth and youth's "attendant characteristics." Specifically, he asserts that section 5-120 of the Juvenile Court Act (the Juvenile Act) (705 ILCS 405/2-120 (West 2008)) (the exclusive jurisdiction provision) violates juveniles' Eighth Amendment and due process rights. He further argues that, the imposition of harsh adult sentences on 17-year-old defendants, without any prior court consideration of their youth, youth's attendant characteristics, and level of participation in the offense, also violates the Eighth Amendment. He contends that the *de facto* life sentence imposed upon him ignores the State's constitutional requirement that the sentencing scheme consider "the objective of restoring the offender to useful citizenship." In support of his constitutional challenges, he cites to United States (U.S.) Supreme Court cases in which the Court held that "fundamental differences between juvenile and adult minds" make children under 18 less culpable than adults for the same offenses, and thus, juveniles should be treated differently. See *Miller v. Alabama*, 567 U.S. ____ (2012); *Graham v. Florida*, 560 U.S. 48 (2011).

¶ 16 The State counters that the defendant has forfeited review of this issue on appeal because he failed to raise this issue in his postconviction petition. Even if not forfeited, the State argues, summary dismissal of the defendant's postconviction petition was proper because he has failed to present a gist of a constitutional claim, where he has no arguable basis in law. Specifically, the State contends that the exclusive jurisdiction provision of the Juvenile Act is clear and unambiguous on its face and, thus, should be presumed constitutional. The State argues that neither the Eighth Amendment nor the proportionality clause of the Illinois Constitution is implicated by the exclusive jurisdiction provision, because classification by age does not constitute "punishment." The State contends that nothing in the holdings of *Miller* and *Graham* precludes the prosecution of 17-year-olds in adult criminal court, and that the imposition of an adult sentence upon the defendant did not implicate his rights under the Eighth Amendment, where the defendant did not receive a mandatory natural life sentence and he was an active participant in the planning and execution of the crime. The State further contends that the exclusive jurisdiction provision does not violate due process rights.

¶ 17 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a three-step procedural mechanism by which a convicted defendant can assert that there was a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. *People v. Harris*, 224 Ill. 2d 115 (2007). A postconviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). Consequently, issues that could have been raised on direct appeal but were not are forfeited. *Id.* Under the Act, a defendant bears the burden of establishing that a substantial deprivation of his constitutional rights occurred. *People v. Waldrop*, 353 Ill. App. 3d 244, 249 (2004). At the first stage, a postconviction petition may be

summarily dismissed if the claims in the petition are frivolous and patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009); see 725 ILCS 5/122-2.1(a)(2) (West 2010). However, if the petition survives initial review, the process moves to the second stage, where the circuit court appoints counsel for the defendant when the defendant cannot afford counsel. 725 ILCS 5/122-4 (West 2010). A trial court's first-stage dismissal of a postconviction petition is reviewed *de novo*. *People v. Davis*, 403 Ill. App. 3d 461, 464 (2010).

¶ 18 The defendant, arguing that the exclusive jurisdiction provision is unconstitutional, seeks a remandment of this case to the juvenile court for a discretionary transfer hearing, or, in the alternative, requests this court to reduce his sentence or remand the cause for a new sentencing hearing.

¶ 19 As a preliminary matter, we note that the parties dispute whether the defendant has forfeited review of this issue on appeal. The State argues that the issue is forfeited for review because the defendant did not raise it in the postconviction petition. The defendant argues that the issue is not forfeited for appellate review because the void sentencing order, which improperly sentenced him to a *de facto* life sentence in violation of the constitutional principles set forth in *Miller* and *Graham*, may be challenged at any time.

¶ 20 In the postconviction petition, the defendant alleged that defense counsel was ineffective for failing to call codefendants Juan and Jomar to testify on his behalf at trial, and that the trial court erred in precluding him from calling these codefendants to testify. On appeal, however, the defendant has abandoned these claims, but instead, solely challenges the constitutionality of the exclusive jurisdiction provision and Illinois' sentencing scheme. Although the defendant raises this issue for the first time on appeal from the summary dismissal of his postconviction petition, we find that he has not forfeited this issue for review. In *People v. Thompson*, our supreme court

resolved an issue concerning a void sentencing order that was not raised in the postconviction petition, but which was only raised for the first time on appeal. See *People v. Thompson*, 209 Ill. 2d 19, 25-27 (2004) ("[a] void order may be attacked at any time or in any court, either directly or collaterally. An argument that an order or judgment is void is not subject to waiver"); *People v. Brown*, 225 Ill. 2d 188, 203 (2007) (a sentence that is statutorily unauthorized or violates the constitution is void and subject to challenge at any time); *People v. Luciano*, 2013 IL App (2d) 110792, ¶¶ 46-48 (defendant's voidness challenge to his sentence may be raised at any time, including for the first time on appeal from the dismissal of his postconviction petition). Accordingly, we find that the defendant has not forfeited review of this issue on appeal.

¶ 21 Turning to the merits of the defendant's arguments, we determine whether Illinois' statutory sentencing scheme unconstitutionally violates juvenile offenders' Eighth Amendment and due process rights.

¶ 22 Statutes carry a strong presumption of constitutionality, and the party challenging the statute has the burden of demonstrating a constitutional violation. *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). A reviewing court has "a duty to construe a statute in a manner that upholds its validity and constitutionality if it reasonably can be done." *People v. Graves*, 207 Ill. 2d 478, 482 (2003).

¶ 23 At the time of the 2004 offense in the case at bar, the exclusive jurisdiction provision of the Juvenile Act, the subject of the defendant's instant constitutional challenge, excluded 17-year-old defendants from the jurisdiction of juvenile courts and required that they be tried in adult criminal courts. See 705 ILCS 405/2-120 (West 2008).² The defendant argues that

² The statute was later amended, effective 2014, to include in the juvenile court system minors who are 17 years old. This change only applied to violations committed on or

automatically subjecting 17-year-old defendants to adult prosecution and sentencing pursuant to the exclusive jurisdiction provision, without individualized court consideration of their youth and youth's attendant characteristics, is unconstitutional. In support, the defendant cites to the U.S. Supreme Court's decisions in *Miller* and *Graham*, which held that "fundamental differences between juvenile and adult minds" make children under 18 less culpable than adults, and thus, juvenile offenders should be afforded additional constitutional protections. See *Miller*, 567 U.S. ____; *Graham*, 560 U.S. 48.

¶ 24 In *Graham*, the Supreme Court held that the Eighth Amendment forbids a life sentence without the possibility of parole for juveniles who did not commit homicide, finding that although the state is not required to release a juvenile during his natural life, the state is forbidden "from making judgment at the outset that those offenders never will be fit to reenter society." *Graham*, 560 U.S. at 74-75. In *Miller*, the Supreme Court held that the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for offenders who are under 18 years old, including those convicted of homicide, by finding that the sentencing scheme prevented the court from considering the juvenile's "lessened culpability" and "greater capacity for change." (Internal quotation marks omitted.) *Miller*, 567 U.S. at ____ (quoting *Graham*, 560 U.S. at 68, 74). The Supreme Court in *Miller* recognized that children: (1) have a lack of maturity and an underdeveloped sense of responsibility that leads to recklessness, impulsivity, and heedless risk-taking; (2) are more vulnerable to outside pressures and negative influences and do not have the ability to extricate themselves from horrific, crime-

after the effective date of the amendment and, thus, does not affect our analysis here. See 705 ILCS 405/5-120 (West 2014). As discussed, the defendant was 17 years old at the time of the murder.

producing settings; and (3) have characters that are not as well-formed as adults, with traits less fixed and actions less likely to be evidence of irretrievable depravity. *Id.* at ____.

¶ 25 The defendant argues that the exclusive jurisdiction provision violates the Eighth Amendment, which prohibits "cruel and unusual" punishment. U.S. Const., amend. VIII. We find that this court's recent decision in *People v. Harmon*, 2013 IL App (2d) 120439, has already addressed and rejected the same Eighth Amendment arguments that the defendant raises here. In *Harmon*, this court, in discussing *Graham*, *Miller*, and *Roper v. Simmons*, 543 U.S. 551 (2005), found that the Supreme Court in those cases was only concerned with the death penalty and life sentences without the possibility of parole, which were the harshest possible penalties allowed under the U.S. Constitution. *Harmon*, 2013 IL App (2d) 120439, ¶ 54; see also *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 51. Because no life sentence or death penalty was imposed on the *Harmon* defendant, who was 17 years old at the time of the offense, and the trial court was able to consider the defendant's age and other circumstances in determining what sentence within the range to impose, the *Harmon* court rejected the defendant's arguments that *Roper*, *Graham*, and *Miller* justified his constitutional challenge. Likewise, in the instant case, the defendant was neither given a mandatory life sentence nor the death penalty, and the trial court considered mitigating circumstances prior to sentencing the defendant within the statutory sentencing range, the defendant's constitutional challenge cannot be justified under the cited Supreme Court cases. Although this case does not involve the imposition of a mandatory minimum sentence of life imprisonment, the defendant contends that the holdings of *Graham* and *Miller*, along with the Supreme Court's decisions in *Roper* (holding that Eighth Amendment prohibits the death penalty for juvenile offenders) and *J.D.B. v. North Carolina*, 564 U.S. ____ (2011) (holding that a child's age is a relevant consideration in the *Miranda* custody analysis),

should extend to categorically protect juveniles like him, who received a "*de facto*" life sentence for a felony murder conviction based on an accountability theory, but who did not personally kill the victim nor had the specific intent to kill. We decline to extend the holding of those cases as the defendant suggests, where, as discussed, no mandatory life sentence was imposed upon the defendant, but rather, the court considered the parties' arguments, mitigating and aggravating factors, as well as the PSI report containing his age and other background information, prior to sentencing the defendant to a specific and finite number of years in prison.

¶ 26 In upholding the constitutionality of the exclusive jurisdiction provision, the *Harmon* court further noted that multiple Illinois courts have previously considered and rejected similar constitutional challenges, *albeit* in the context of the "automatic transfer provision" of the Juvenile Act (705 ILCS 405/5-130 (West 2008)). See, e.g., *People v. Willis*, 2013 IL App (1st) 110233, ¶ 53 (upholding the constitutionality of the automatic transfer provision); *People v. Salas*, 2011 IL App (1st) 091880, ¶ 66 (same); *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 24 (same); see generally *People v. M.A.*, 124 Ill. 2d 135, 144-47 (1988). The automatic transfer provision allows 15 to 16 year olds who are charged with first-degree murder and other violent crimes to be automatically tried in adult criminal court. *Id.* The *Harmon* court, citing *Salas*, 2011 IL App (1st) 091880 and *Pacheco*, 2013 IL App (4th) 110409, found that the reasoning applied by the *Salas* and *Pacheco* courts in holding that the automatic transfer provision did not violate the Eighth Amendment, applied with equal force to the exclusive jurisdiction provision—namely, that the provision is not subjected to the Eighth Amendment because it does not impose a "punishment" but rather, specifies the forum in which the defendant's guilt may be

adjudicated.³ *Harmon*, 2013 IL App (2d) 120439, ¶ 55. We find no reason to depart from the sound holding in *Harmon* or the precedents on which it relied, and thus, we hold that the exclusive jurisdiction provision does not violate the Eighth Amendment.

¶ 27 Nor do we find that the exclusive jurisdiction provision implicated the proportionate penalties clause of the Illinois Constitution, which 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. The plain language of the clause specifically addresses penalties. Because the defendant challenges the procedure—the exclusive jurisdiction provision—that exposed him to the range of possible penalties for adults in criminal court, and the provision imposes no punishment or penalty, the proportionate penalties clause is inapplicable. Moreover, where the defendant's claim cannot prevail under the Eighth Amendment, he cannot prevail under the proportionate penalties clause of the Illinois Constitution because it offers no broader protections than the federal constitution. See *People v. Clay*, 361 Ill. App. 3d 310, 328, n. 10 (2005) (no legal authority to suggest that the Illinois Constitution offers broader protections than the Eighth Amendment under the U.S. Constitution); *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 206-07 (2009) (Illinois' proportionate penalties clause "is coextensive with the federal constitution's prohibition against cruel and unusual punishment").

¶ 28 The defendant further argues that the exclusive jurisdiction provision under the Juvenile Act violates juvenile offenders' substantive and procedural due process rights. See U.S. Const.,

³ The State's brief makes arguments that the automatic transfer provision under section 5-130 of the Juvenile Act (705 ILCS 405/5-130 (West 2008)) is constitutional. However, as the defendant's reply brief clarifies, the automatic transfer provision is not at issue in this case and, thus, we need not address, nor do we choose to disturb, the well-settled law regarding the constitutionality of the automatic transfer provision.

amends. V, XIV; Ill. Const. 1970, art. I, § 2. With respect to substantive due process, he asserts that the exclusive jurisdiction provision fails to survive the strict scrutiny test, and that the strict scrutiny test, rather than the rational basis test, applied because the *Miller* and *Graham* decisions suggest that 17-year-old juvenile offenders have a fundamental liberty interest in *not* being automatically treated as adults, without first allowing them to show that such treatment would be inappropriate due to their youth and youth's attendant characteristics. Specifically, he argues that because the exclusive jurisdiction provision requires courts to prosecute and sentence 17-year-old juveniles indistinguishably from adults without allowing prior inquiry concerning their relative culpability, maturity, or capacity for rehabilitation, the challenged statute implicates a fundamental right. To allow 17-year-old juvenile offenders to be automatically treated as adults under the exclusive jurisdiction provision, he contends, creates an improper and irrebuttable presumption that children and adults are equally morally culpable—in direct contrast to the findings in *Miller* and *Graham*. He argues that, even if 17-year-old juvenile defendants have no fundamental liberty interest in not being automatically treated as adult criminals, the provision nonetheless violates due process under the rational basis test. The defendant argues that treating all 17-year-old juvenile offenders as adults under the exclusive jurisdiction provision, without a prior hearing to determine if such treatment is appropriate and without any opportunity to be heard, also violates procedural due process.

¶ 29 The State counters that the exclusive jurisdiction provision does not violate due process under the U.S. or Illinois Constitutions. Specifically, the State argues that the rational basis test, rather than the strict scrutiny test, govern review of the challenged statute because the classification of age implicated neither a suspect class nor a fundamental right, and the *Miller* and *Graham* decisions give no indication that defendants under age 18 have a fundamental right

to be tried as juveniles rather than adults. The State argues that the exclusive jurisdiction provision satisfies the rational basis test, where the statute bears a rational relationship to the legislative purpose of promoting public safety, providing for the State's interest in allowing more severe punishment for 17-year-old felons, and allowing juvenile defendants who commit misdemeanors to be adjudicated in juvenile court.

¶ 30 The due process clauses contained in both the U.S. and Illinois Constitutions prohibit the government from depriving any individuals of "life, liberty or property, without due process of law." U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, §2.

¶ 31 We find that this court in *Harmon* has considered and rejected the exact same due process challenge to the exclusive jurisdiction provision. In so holding, the *Harmon* court noted that "Illinois precedent holds that the automatic transfer provision does not violate a juvenile's due process rights, and the same reasoning applies with equal force to the closely related exclusive jurisdiction provision." *Harmon*, 2013 IL App (2d) 120439, ¶ 59. The *Harmon* court observed that our supreme court, in *People v. J.S.*, 103 Ill. 2d 395 (1984), applied the rational basis test to analyze the automatic transfer provision, and it stated that the statute was rationally based on the juvenile's age and the threat posed by the offenses because of the violence and frequency of their commission. *Id.*; see also *M.A.*, 124 Ill. 2d at 147 (holding that the automatic transfer provision does not violate due process). The *Harmon* court also cited several appellate court cases which supported the holding in *J.S.* See *Salas*, 2011 IL App (1st) 091880, ¶¶ 76-77 (holding that *J.S.* remains good law in light of *Roper* and *Graham* because those cases related to Eighth Amendment challenges and did not address any due process arguments); *Jackson*, 2012 IL App (1st) 100398, ¶ 16 (agreeing with *Salas* and holding that the automatic transfer provision does not violate either substantive or procedural due process); *People v. Croom*, 2012 IL App (4th)

100932, ¶ 16 (relying on *Salas* and *Jackson* to conclude that the automatic transfer provision does not violate due process); *People v. Patterson*, 2012 IL App (1st) 101573, ¶ 27 (following *Croom*); see also *Willis*, 2013 IL App (1st) 110233, ¶ 53 (holding that the automatic transfer provision was constitutional).

¶ 32 Although the defendant acknowledges that our supreme court in *J.S.* has rejected a due process challenge to the closely related automatic transfer provision of the Juvenile Act, he contends that the *Miller* and *Graham* decisions have implications that extend beyond the Eighth Amendment and, thus, call into question the holding in the *J.S.* decision. In *Harmon*, the defendant raised the same argument, which this court rejected and found unpersuasive. We decline to deviate from the sound reasoning and holding in *Harmon*. As discussed, *Miller* and *Graham* addressed Eighth Amendment challenges, not alleged due process violations, and concerned only the "harshest possible" penalties of capital punishment and mandatory life imprisonment without the possibility of parole. See *Harmon*, 2013 IL App (2d) 120439, ¶ 62. As noted, no mandatory life sentence or death penalty was imposed upon the defendant, but rather, the court considered the parties' arguments, mitigating and aggravating factors, and the PSI report containing his age and other relevant background information, prior to sentencing him to a specific number of years in prison. Accordingly, we hold that the exclusive jurisdiction provision does not violate juvenile offenders' right to due process.

¶ 33 The defendant also argues that, as a result of the application of the exclusive jurisdiction provision, the automatic *imposition* of adult sentences on all 17-year-old defendants, without prior court consideration of their youth, youth's attendant characteristics, and level of participation in the offense, violates the Eighth Amendment's constitutional prohibitions against cruel and unusual punishments. Specifically, he argues that the exclusion from juvenile court

17-year-old defendants who are charged with felonies, combined with statutes that provide harsh sentences for felony offenses, impermissibly impose automatic harsh adult penalties on these defendants without proper consideration of their youth, youth's attendant characteristics, and their level of participation in the offense. The defendant contends that this sentencing scheme, which resulted in a *de facto* life sentence for him who only acted as a lookout in the case at bar, is constitutionally invalid in light of *Miller* and *Graham*. He maintains that his 60-year sentence is unconstitutional because, as a result of the truth-in-sentencing provision of the Unified Code of Corrections (the Code) (730 ILCS 5/3-6-3(a)(2)(i) (West 2008)), he must serve the entirety of his sentence—the result of which is a *de facto* life sentence that was imposed without consideration of his youth and youth's attendant characteristics, in direct contravention of the holdings in *Miller* and *Graham*. He further argues that, in light of *Miller* and *Graham*, Illinois' statutory scheme violates the Eighth Amendment because there is a "disconnect between legitimate penological justifications"—such as retributive purposes, deterrence, incapacitation, rehabilitation—and the harsh adult sentences imposed upon 17-year-old juvenile offenders. He further contends that, because he was convicted of felony murder on an accountability theory and he was only a lookout during the crime, his sentence is unconstitutional where Illinois law impermissibly prohibited the court from considering his limited role in the offense. Under *Miller* and *Graham*, he points out, the Supreme Court recognized that a juvenile offender who "did not kill or intend to kill, has a twice diminished moral culpability."

¶ 34 The State counters that there is nothing in the *Miller* and *Graham* decisions to suggest that the review undertaken by the Supreme Court regarding the lessened culpability of juveniles was meant to preclude prosecution of 17-year-old defendants in criminal court. The State argues that, unlike the *Miller* and *Graham* defendants, the defendant here did not receive a natural life

sentence without the possibility of parole, and the trial court had considered all factors in mitigation and aggravation, including his extensive criminal history, in imposing the sentence. The State further argues that nothing in *Miller*, *Graham* and *Roper* suggests that the Eighth Amendment prohibits a juvenile defendant from being subjected to the same mandatory minimum sentence as an adult, unless the mandatory minimum sentence was death or life in prison without the possibility of parole.

¶ 35 We find that this court in *Harmon* has already considered and rejected the same arguments, by finding that *Miller*, *Graham*, and *Roper* did not hold that "the [E]ighth [A]mendment prohibits a juvenile from being subject to the same mandatory minimum sentence as an adult, but rather that the prohibition was limited to the mandatory minimum sentences of the death penalty or life without the possibility of parole." *Harmon*, 2013 IL App (2d) 120439, ¶ 56 (quoting *Pacheco*, 2013 IL App (4th) 110409, ¶ 57) (holding that the imposition of an adult sentence on a juvenile did not violate the Eighth Amendment or the proportionate penalties clause)). We see no reason to deviate from the holding in *Harmon*. We reiterate that the defendant here was not subjected to the harshest possible penalties—the death penalty or natural life imprisonment without the possibility of parole—which were at issue in the referenced Supreme Court cases. Rather, the trial court, *did* consider the parties' arguments, factors in aggravation and mitigation, as well as the PSI report containing his age and other background information, prior to sentencing him to a finite number of years in prison.

¶ 36 The defendant cites *People v. Leon Miller*,⁴ 202 Ill. 2d 328 (2004), for support of his position that his sentence is unconstitutional. In *Leon Miller*, the 15-year-old juvenile defendant

⁴ We address this case as *Leon Miller* in order to avoid confusion with the U.S Supreme Court's decision in *Miller*, which is referenced repeatedly throughout this order.

was automatically transferred by statute for trial as an adult; was tried under an accountability theory which, by statute, holds all participants with a common criminal design equally responsible; and the applicable multiple-murder sentencing statute does not allow consideration of the defendant's age or extent of participation in the crime. *Id.* at 340. The *Leon Miller* defendant had served as a "lookout" during the murder of two people, for which he was convicted, and the trial court concluded that the statute-mandated sentence of natural life imprisonment, as applied to the defendant, would offend the proportionate penalties clause. *Id.* at 341. Instead, the trial court sentenced the defendant to a term of 50 years in prison. *Id.* at 332. On appeal, our supreme court agreed with the trial court's judgment, finding that the convergence of the accountability statute, the transfer statute, and the multiple-murder sentencing statute, eliminated the court's ability to consider any mitigating factors, such as the defendant's age and his individual level of culpability. *Id.* at 341. The *Leon Miller* court concluded that, a mandatory sentence of natural life imprisonment was particularly harsh and unconstitutional when applied to the 15-year-old defendant, who had but one minute to contemplate his decision to participate in the incident and stood as a lookout. *Id.* In so holding, the *Leon Miller* court recognized that its decision was "consistent with the long-standing distinction made in this state between adult and juvenile offenders." *Id.* We find *Leon Miller* to be factually distinguishable. Significantly, unlike *Leon Miller*, the defendant in the case at bar was not subjected to the imposition of any mandatory minimum sentence of natural life imprisonment, but was sentenced to a specific term of 60 years in prison after the trial court had the opportunity to consider mitigating and aggravating factors. Further, unlike *Leon Miller*, the defendant was 17 years old at the time of the offense, had ample time to decide whether to participate in the offense, and actively helped his cohorts locate a potential victim before serving as a lookout during the actual

robbery. We find that nothing in *Leon Miller* suggests that a court is required in every case to consider a juvenile defendant's limited level of participation in the offense prior to sentencing him; rather, it is only where a juvenile defendant is subjected to a mandatory sentence of life imprisonment, such as occurred in *Leon Miller*, that a court is required to do so. See generally *People v. Thompson*, 313 Ill. App. 3d 510, 516 (2000) (a defendant who is convicted on an accountability theory shares equal guilt with the principal perpetrators of the crime). This holding is in line with the Supreme Court's later decision in *Miller*, which only pertains to juvenile offenders who are subject to the harshest penalties of death penalty and life imprisonment without the possibility of parole. Thus, we find the defendant's reliance on *Leon Miller* to be without merit. We further reject the defendant's characterization that this court's January 7, 2010 order affirming his conviction and sentence, held that "the sentencing judge was required to ignore [the defendant's] degree of participation in the offense when determining the proper length of his sentence." Rather, the relevant portion of this court's January 7, 2010 order simply rejected the defendant's argument that his sentence should be reduced on the basis that he played a lesser role in the crime, by stating that "the fact that defendant was only a 'lookout,' and convicted on an accountability basis does not necessitate that his sentence be reduced." See *Rodriguez*, No. 1-07-3465 (2010) (unpublished order under Supreme Court Rule 23). Thus, the defendant's arguments regarding the constitutionality of the exclusive jurisdiction provision and the imposition of his sentence must fail. Accordingly, we hold that the trial court properly dismissed the defendant's postconviction petition at the summary stage of the proceedings. In light of our holding, we need not address the defendant's arguments pertaining to remedy.

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

¶ 38 Affirmed.