

FIFTH DIVISION
September 5, 2014

No. 1-12-3290

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. 11 CR 18607 (02)
)	
DARIUS YOUNG,)	
)	Honorable
Defendant-Appellant.)	Clayton J. Crane,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court ruled the automatic transfer provision of the Juvenile Court Act of 1987 was constitutional and the defendant's conviction and sentence for armed robbery with a dangerous weapon other than a firearm was affirmed.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Darius Young (Young) was found guilty of armed robbery with a dangerous weapon other than a firearm (720 ILCS 5/18-2(a)(1) (West 2010)), aggravated battery (720 ILCS 5/12-3.05(d)(2) (West 2010)),

and aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2010)). The trial judge sentenced Young to six years in the Illinois Department of Corrections merging the aggravated battery and aggravated unlawful restraint convictions into the conviction of armed robbery with a dangerous weapon other than a firearm,. On appeal, Young—who was 15 years old at the time of the offense—argues the automatic transfer provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (automatic transfer provision) (705 ILCS 405/5-130 (West 2010)) is unconstitutional. For the following reasons, we find the automatic transfer provision constitutional and affirm the judgment and sentence imposed by the circuit court.

¶ 3

BACKGROUND

¶ 4 The record on appeal discloses the following facts. On November 14, 2011, Young and codefendant Johnathan Harris (Harris) were charged by information with: armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2010));¹ armed robbery with a dangerous weapon other than a firearm, to wit, a bludgeon (720 ILCS 5/18-2(a)(1) (West 2010)); two counts of aggravated battery (720 ILCS 5/12-3.05(d)(2) (West 2010)); and aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2010)). Young was prosecuted as an adult pursuant to the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130(1)(a)(iv) (West 2010)), which provides in part that 15-and 16-year-old defendants charged with armed robbery with a firearm are to be prosecuted under the Criminal Code of 1961 (720 ILCS 5/1-1 to 47-25 (West 2010)).

¶ 5 At trial, Daniel Glenn (Glenn) testified that on September 27, 2011, he participated in a dice game near 4758 West Van Buren Street in Chicago. Young and Harris joined the game in

¹ The record on appeal does not contain this count of the information, but the record otherwise establishes—and the parties do not dispute—that Young was charged with armed robbery with a firearm.

progress. Glenn won all of Young's money. Glenn left the game when he began to believe he was being cheated by Harris.

¶ 6 Glenn then rolled his wheelchair into an alley to relieve himself. According to Glenn, Harris ran into the alley, holding a dull gray 9 mm handgun and demanding money from Glenn. After Glenn inquired whether Harris was going to shoot him in broad daylight, Harris paused and "put the gun behind his back." Glenn testified that at this time, Young also entered the alley, removed money from Glenn's pocket at the direction of Harris, and handed the money over to Harris. Glenn testified that when Harris directed Young to search Glenn for more money, Glenn "tussled" with Young and Harris. Glenn further testified that Young removed the remaining money from his pocket and handed it to Harris, whereupon Young and Harris ran away. Glenn additionally testified that a few minutes later, Young returned, assisted Glenn back into his wheelchair, threw \$45 into the wheelchair, and stated, "I just wanted my birthday money back, my \$120." Young then departed from the area again.

¶ 7 In the early evening, Glenn reported the incident to the police and named Young (by his nickname) and Harris as his attackers. On October 5, 2011, Glenn identified Harris in a lineup at the police station at Harrison and Kedzie. On October 6, 2011, Glenn identified Young from a photographic array he was shown at the same police station.

¶ 8 Young testified on his own behalf that when Glenn entered the alley, Harris pointed a gun at Young's leg and stated he needed Young's help to recover his money. Young testified he assisted Harris because he was afraid for his life. After the incident Young returned \$45 to Glenn from the \$120 he received from Harris. According to Young, he did not inform the police of his compelled participation in the robbery because he was more afraid of Harris than he was of the police. Young acknowledged he could have run from the scene when Harris entered the

alley.

¶ 9 Following closing arguments, during which the State argued Young was legally accountable for the conduct of Harris, the trial judge found Young guilty of armed robbery with a dangerous weapon other than a firearm, one count of aggravated battery, and aggravated unlawful restraint. The trial judge, however, found Young not guilty of armed robbery with a firearm and one count of aggravated battery. The trial judge rejected Young's account of the incident, but found there was insufficient proof the weapon used was a firearm.

¶ 10 On September 4, 2012, Young filed a posttrial motion to reconsider and vacate judgment or, in the alternative, for a new trial, arguing the State failed to prove him guilty beyond a reasonable doubt, he was denied due process of law and equal protection of the law, and was denied a fair and impartial trial. On September 21, 2012, the trial judge denied Young's posttrial motion.

¶ 11 The trial judge immediately proceeded to a sentencing hearing. In aggravation of the offense, the State noted Young previously had been adjudicated delinquent for attempted residential burglary, aggravated battery of a school employee, and aggravated possession of a stolen motor vehicle (originally charged as aggravated vehicular hijacking). In mitigation, defense counsel argued Young should be sentenced as a juvenile because he was convicted of armed robbery with a dangerous weapon other than a firearm and the State failed to request a hearing under section 5-130(1)(c)(ii) of the Act (705 ILCS 405/5–130(1)(c) (ii) (West 2010)) to sentence Young as an adult. Defense counsel also asserted Young had been in school prior to his arrest, was raised by a single mother, and maintained close ties with his family. Defense counsel further argued that Young had acted under the instruction of Harris, an older person. The State responded that it was not required to request a hearing for adult sentencing, based on the Illinois

Supreme Court decision in *People v. King*, 241 Ill. 2d 374 (2011). The trial judge continued the matter to consider whether the State was required to request a hearing to sentence Young as an adult.

¶ 12 On September 28, 2012, the trial judge ruled that, pursuant to the *King* decision and its progeny, the State was not required under section 5-130(1)(c)(ii) of the Act (705 ILCS 405/5–130(1)(c) (ii) (West 2010)) to request a hearing to sentence Young as an adult. The trial judge then ascertained that the parties had presented all of their material in aggravation and mitigation of the offense. Young declined to make a statement in allocution. The trial judge then sentenced Young to six years in the Illinois Department of Corrections, followed by three years of mandatory supervised release. The trial judge also awarded Young 359 days of credit for time spent in custody on this matter.

¶ 13 On October 23, 2012, Young filed a motion to have the trial court reconsider his sentence, primarily based on the argument that the State was required to request a hearing for adult sentencing. On the same date, the trial judge denied the motion to reconsider the sentence. Later that day, Young filed a timely notice of appeal to this court. Young subsequently filed a motion in this court to amend his notice of appeal to reflect the correct date of the judgment, which this court granted on January 10, 2014.

¶ 14 ANALYSIS

¶ 15 On appeal, Young's sole argument is that the automatic transfer provision of the Act (705 ILCS 405/5-130(1)(a)(iv) (West 2010)), which provides in part 15 and 16-year-old defendants charged with armed robbery with a firearm are to be prosecuted as adults under the Criminal Code of 1961 (720 ILCS 5/1-1 to 47-25 (West 2010)), is unconstitutional. Young argues the automatic transfer provision violates the due process clauses of the United States and Illinois

Constitutions, the prohibition against cruel and unusual punishment found in the eighth amendment to the United States Constitution, and the proportionate penalties clause of our state constitution, because it automatically mandates that 15-year-old juveniles like Young, if convicted, are sentenced as adults. Young did not raise the constitutionality of the automatic transfer provision in the trial court, but the constitutionality of a statute may be raised at any time. *E.g., People v. Wright*, 194 Ill. 2d 1, 23 (2000). "All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation. [Citation.] If reasonably possible, a statute must be construed so as to affirm its constitutionality and validity." *People v. Greco*, 204 Ill. 2d 400, 406 (2003). Whether a statute is constitutional involves a question of law, and our review is *de novo*. *People v. McCarty*, 223 Ill. 2d 109, 135 (2006).

¶ 16 The Illinois Supreme Court has held the automatic transfer provision does not violate principles of due process. *People v. J.S.*, 103 Ill. 2d 395, 405 (1984); see also *People v. M.A.*, 124 Ill. 2d 135, 147 (1988) (holding provision of Juvenile Court Act requiring minors charged with unlawful use of weapons on school grounds to be prosecuted as adults does not deprive minors of due process or equal protection of the law). Young acknowledges the automatic transfer provision has previously been held to comply with due process requirements, but contends that those cases were wrongly decided in light of the subsequent United States Supreme Court decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. —, 132 S. Ct. 2455 (2012). As this court has summarized these cases:

"In *Roper*, the Supreme Court held that the eighth amendment prohibits the death penalty for juvenile offenders. *Roper*, 543 U.S. at 568. The Court

reasoned that the 'death penalty is reserved for a narrow category of crimes and offenders,' and that 'juvenile offenders cannot with reliability be classified among the worst offenders.' *Id.* at 569. In *Graham*, the Supreme Court held that the eighth amendment forbids a sentence of life without the possibility of parole for juveniles who did not commit homicide. *Graham*, 560 U.S. at 74-75. The Court said that, although the state is not required to release a juvenile during his natural life, the state is forbidden 'from making the judgment at the outset that those offenders never will be fit to reenter society.' *Id.* at 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 juvenile offenders, including those convicted of homicide. *Miller*, 567 U.S. at —, 132 S. Ct. at 2469. The Court stated that a judge must have the opportunity to look at all of the circumstances involved before determining that life without the possibility of parole is the appropriate penalty. See *id.* at —, 132 S. Ct. at 2469." *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 48.

¶ 17 This court, however, has repeatedly considered and rejected the same constitutional arguments based on *Roper*, *Graham*, and *Miller* advanced by Young. See *People v. Willis*, 2013 IL App (1st) 110233; *People v. Pacheco*, 2013 IL App (4th) 110409, *appeal allowed*, No. 116402 (Ill. Sept. 25, 2013)), *People v. Patterson*, 2012 IL App (1st) 101573, *appeal allowed*, No. 115102 (Ill. Jan. 30, 2013)), *People v. Croom*, 2012 IL App (4th) 100932, *People v. Jackson*, 2012 IL App (1st) 100398; *People v. Salas*, 2011 IL App (1st) 091880; *People v. Reed*, 125 Ill. App. 3d 319, 322-25 (1984). We see no reason to depart from the analysis in these decisions, as detailed below.

¶ 18 In both *Croom* and *Jackson*, this court rejected the due process argument Young raises in this appeal, noting *Roper* and *Graham* did not address due process arguments and concerned challenges to sentencing statutes, not automatic transfer statutes. *Croom*, 2012 IL App (4th) 100932, ¶ 16; *Jackson*, 2012 IL App (1st) 100398, ¶ 16. Accordingly, *People v. J.S.* remains on solid footing with the Supreme Court's holdings in *Roper* and *Graham*. *Jackson*, 2012 IL App (1st) 100398, ¶ 16. As an appellate court, we are bound to honor our supreme court's conclusion on an issue "unless and until that conclusion is revisited by our supreme court or overruled by the United States Supreme Court." *People v. Fountain*, 2012 IL App (3d) 090558, ¶ 23.

¶ 19 Young also relies on the holdings in *Roper*, *Graham* and *Miller* to argue the automatic transfer provision violates the proportionate penalties clause of our state constitution (Ill. Const. 1970, art. I, § 11), as well as the eighth amendment to the United States Constitution as incorporated against the states by the fourteenth amendment (U.S. Const. amends. VIII, XIV). Our supreme court has held the "proportionate penalties clause is coextensive with the cruel and unusual punishment clause. [Citations.] Both clauses apply only to the criminal process – that is, to direct actions by the government to inflict punishment." *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006). Accordingly, this court has rejected the argument Young makes here. "Because the automatic transfer provision of the Illinois Juvenile Court Act imposes neither a penalty nor punishment, the proportionate penalty clause of the Illinois Constitution is inapplicable." *Jackson*, 2012 IL App (1st) 100398, ¶ 19; see *Salas*, 2011 IL App (1st) 091880, ¶ 70. Indeed:

"The automatic transfer provision is not a penalty provision in even the broadest sense. It merely dictates for a small class of older juvenile defendants who are charged with the commission of certain heinous crimes where their cases are to be tried. Guilt has not been determined at this stage, let alone what

punishment, if any, should be imposed. The automatic transfer provision does not dictate any form of punishment as that term is used throughout criminal statutes.

Because the automatic transfer provision does not mandate or even suggest a punishment, any analysis as to whether or not it violated the eighth amendment's proscription against cruel and unusual punishment is futile. The automatic transfer provision does not impose any punishment. Therefore, it is not subject to the eighth amendment. We find no violation of the cruel and unusual punishment clause." *Jackson*, 2012 IL App (1st) 100398, ¶ 24; see *Salas*, 2011 IL App (1st) 091880, ¶ 66-68.

¶ 20 In his reply brief, Young argues that a transfer to an adult court which automatically results in a lengthier sentence is punitive. Young relies upon *Alleyne v. United States*, — U.S. —, —, —, 133 S. Ct. 2151, 2160 (2013), in which the United States Supreme Court stated "the legally prescribed range *is* the penalty affixed to the crime," and "[i]t is impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime." The issue in *Alleyne*, however, was whether facts that increase mandatory minimum sentences must be submitted to the jury under the sixth amendment, pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The *Alleyne* Court did not suggest the range of penalties affixed to a crime is itself a punishment subject to scrutiny under the eighth amendment, let alone the proportionate penalties clause of our state constitution. Accordingly, *Alleyne* does not suggest that *Rodney H.*, *Jackson* or *Salas* was wrongly decided. Young's reliance on *Kent v. United States*, 383 U.S. 541, 557 (1966), in which a potentially lengthier sentence in an adult court was a factor in ruling a juvenile was entitled to a hearing on his purported waiver of juvenile court jurisdiction, is similarly unavailing.

¶ 21 Moreover, in *Pacheco*, the court observed that *Roper*, *Graham*, and *Miller* applied to sentences involving the death penalty and life without the possibility of parole, "the two most severe punishments allowed under the United States Constitution." *Pacheco*, 2013 IL App (4th) 110409, ¶ 51. The *Pacheco* court explained, "when taken to its logical extreme, defendant's argument would make any statute unconstitutional which imposes on a juvenile transferred to an adult court the same mandatory minimum sentence applicable to an adult for the same offense." *Pacheco*, 2013 IL App (4th) 110409, ¶ 56. Young has not persuaded this court that *Roper*, *Graham*, and *Miller* extend to every situation where a juvenile may be tried and sentenced as an adult and thus fails to overcome the presumption of constitutionality afforded the automatic transfer provision of the Act. See *Willis*, 2013 IL App (1st) 110233, ¶¶ 57-58.

¶ 22 CONCLUSION

¶ 23 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.