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SIXTH DIVISION
January 30, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|-----------------------------------|---|-------------------|
| IN THE INTEREST OF U.S., a Minor, |) | Appeal from the |
| |) | Circuit Court of |
| Respondent-Appellant. |) | Cook County. |
| |) | |
| |) | No. 14 JD 02024 |
| |) | |
| |) | The Honorable |
| |) | Patricia Mendoza, |
| |) | Judge Presiding. |

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

ORDER

¶1 **HELD:** The minor failed to satisfy his burden of clearly demonstrating that the mandatory 5-year minimum probationary term imposed by section 5-715(1) of the Juvenile Court Act for his commission of robbery, a forcible felony, violated his equal protection rights. However, the minor's term of probation must be modified to terminate on his 21st birthday.

¶2 Respondent-minor, U.S., was 17 years old when adjudicated a delinquent for robbery, a forcible felony. U.S. was sentenced to a mandatory statutory minimum of five

years' probation pursuant to section 5-715(1) of the Juvenile Court Act (Act) (705 ILCS 405/5-715(1) (West 2014)). On appeal, U.S. contends his equal protection rights were violated by the imposition of the mandatory minimum sentence of five years' probation where the statute treats juvenile felons more harshly than an adult convicted of the same forcible felony who is eligible for probation. In the alternative, U.S. contends his probation sentence must be modified to terminate on his 21st birthday pursuant to section 5-755 of the Act (705 ILCS 405/5-755 (West 2014)). Based on the following, we affirm the application of the mandatory minimum sentence, but modify U.S.'s probation to terminate on his 21st birthday in compliance with section 5-755 of the Act.

¶3

FACTS

¶4 The State filed a petition for adjudication of wardship, alleging U.S. was a delinquent minor having committed robbery, theft from a person, and aggravated battery when he took the cellular phone of T.S., another minor. The case proceeded to trial.

¶5 At trial, T.S. testified that at approximately 11 a.m. on May 24, 2014, she was walking near 15th Street and Tripp Avenue in Chicago, Illinois, on her way to her job at the Franklin Park District. She was 15 years old at the time. In route, T.S. encountered U.S. near a store. U.S. requested T.S.'s phone number, but T.S. ignored him and continued walking. Approximately two minutes later, T.S. observed U.S. sitting on a park bench near the park district. T.S. walked past U.S., about three feet from him. T.S. then walked through the basketball court, but proceeded across the street to retrieve a basketball. At the time, T.S. had a small wallet around her left wrist and was carrying her iPhone in her left hand. As T.S. walked across the street, U.S. followed behind. According to T.S., U.S. then reached for and pulled T.S.'s pink sweater while holding

T.S.'s left arm. T.S. turned around and U.S. grabbed for her cellular phone. The pair struggled, but U.S. ultimately gained control of the phone. U.S. pushed T.S. and fled. T.S. testified that she chased U.S. toward 15th Street and Kedvale Avenue and then through an alley. U.S. continued to run toward and through a lot located at 14th Street and Kedvale Avenue.

¶6 As T.S. chased U.S., she noticed a police officer in his vehicle. T.S. approached the officer and reported that her phone had been stolen. T.S. was crying at the time. T.S. described her assailant as having dark skin and dreadlocks in his face and wearing a black t-shirt and Rock and Revival faded jeans. T.S. drove around the area with the police officer, driving past the store where T.S. first encountered U.S. and past the park district. T.S. and the officer stopped the vehicle near the park to talk to people about the situation, during which time the officer received a message on his radio indicating that the assailant had been found. T.S. and the officer then relocated to Roosevelt Road and Kildare Avenue, where other officers were detaining U.S. T.S. was seated in the back seat of the police vehicle and identified U.S. as her assailant. T.S. estimated that the identification was approximately 15 minutes after the offense. T.S. testified that her phone was never returned to her. She stated that she purchased the phone for approximately \$350.

¶7 Officer Luis Loaiza testified that, on the date in question, T.S. approached his police car in hysterics. According to Officer Loaiza, T.S. was yelling, crying, and screaming out hysterically. Initially, Officer Loaiza was unable to understand what T.S. was saying, but learned that T.S.'s cellular phone had been stolen. T.S. provided a description of her assailant (male black with dreadlocks, wearing a black t-shirt and blue jeans), which Officer Loaiza provided as a flash message over his radio. Officer Loaiza

then toured the area with T.S. in his police vehicle in an attempt to locate the assailant. Eventually, Officer Loaiza and T.S. relocated to Roosevelt Road and Kildare Avenue where two officers were detaining U.S. While remaining in Officer Loaiza's vehicle, T.S. positively identified U.S., stating, "that's him. He took my phone." U.S. then was placed in custody.

¶18 The trial court found U.S. delinquent of robbery, concluding that T.S. viewed U.S. three separate times and was "extremely credible." The trial court imposed five years of probation, a stay order for a 30 day sentence in the juvenile temporary detention center, 60 hours of community service, attendance at a community impact panel, a restraining order indicating no unlawful contact with T.S., and mandatory school attendance. This appeal followed.

¶19 ANALYSIS

¶10 I. Challenge to Section 5-715(1) of the Act

¶11 U.S. contends his equal protection rights were violated by the imposition of the five-year mandatory probation sentence.

¶12 Section 5-715(1) of the Act provides:

"The period of probation or conditional discharge shall not exceed 5 years or until the minor has attained the age of 21 years, whichever is less, except as provided in this Section for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony or a forcible felony. The juvenile court may terminate probation or conditional discharge and discharge the minor at any time if warranted by the conduct of the minor and the ends of justice; provided, however, that the period of

probation for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony, or a forcible felony shall be at least 5 years." 705 ILCS 405/5-715(1) (West 2014).

There is no dispute that robbery is a forcible felony. See 720 ILCS 5/2-8 (West 2014).

¶13 Statutes carry a strong presumption of constitutionality. *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). In order to defeat that presumption, the challenging party must "clearly establish" the alleged constitutional violation. *Id.* This court must find a statute to be constitutional if "reasonably possible." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 79. A challenge to the constitutionality of a statute raises questions of law, which we review *de novo*. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 323 (1996).

¶14 U.S. asserts a facial and as applied challenge to section 5-715(1) of the Act, arguing the statute violates his equal protection rights because it treats juveniles convicted of forcible felonies more harshly than adults convicted of forcible felonies that are eligible for probation.

¶15 The equal protection clause "guarantees that similarly situated individuals each will be treated in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 116. The guarantee, however, "allows the legislature to create distinctions between different groups of people as long as that distinction avoids 'criteria wholly unrelated to the legislation's purpose.'" *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14 (quoting *In re Jonathon C.B.*, 2011 IL 107750, ¶ 116). The equal protection analysis is the same under

both the Illinois Constitution and the United States Constitution. *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14.

¶16 The parties agree that the rational basis test applies here because the classification between minors and adults involves neither a fundamental right nor a suspect class. See *People v. Breedlove*, 213 Ill. 2d 509, 518 (2004). The rational basis test " 'simply inquires whether the method or means employed by the statute to achieve the stated [goal or] purpose of the legislation are rationally related to that goal.' " *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14 (quoting *Breedlove*, 213 Ill. 2d at 518. That said, the movant must prove he or she is similarly situated to the comparison group before this court will make a rational basis inquiry. *In re J.F.*, 2014 IL App (1st) 123579, ¶ 14. If the movant fails to do so, his or her equal protection claim must fail. *Id.* "Equal protection is not offended when dissimilar groups are treated differently." *People v. P.H.*, 145 Ill. 2d 209, 231 (1991).

¶17 U.S. argues that he satisfied the threshold requirement of demonstrating disparate treatment between similarly situated juvenile probationers convicted of forcible felonies and adults convicted of forcible felonies that are eligible for probation where the juveniles described are subject to longer and more stringent probationary terms than their adult counterparts. U.S. maintains that an adult convicted of a Class 1 or Class 2 forcible felony is subject to a maximum probation term of 4 years and an adult convicted of a Class 3 or Class 4 forcible felony is subject to a maximum of 30 months' probation, with some enumerated exceptions. 730 ILCS 5/5-4.5-30(d), 5-4.5-35(d), 5-4.5-40(d), 5-4.5-45(d) (West 2014). According to U.S., an adult, therefore, who is guilty of a Class 2 robbery, as U.S. was, is eligible for a maximum probation of four years and can receive a

lesser term if deemed appropriate by the trial court. See 720 ILCS 5/18-1 (West 2014); 730 ILCS 5/5-4.5-35(d) (West 2014). By contrast, a juvenile convicted of robbery like U.S. must serve a mandatory sentence of five years' probation without making an individualized assessment of the circumstances of the offense or the offender. In addition, U.S. argues that adult nonviolent forcible felons eligible for probation receive superior benefits to those conferred on minors, *i.e.* dismissal of the case upon successful completion of a "special program."¹

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

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

"J.F. also claims that she is similarly situated to adults convicted of robbery. Juveniles adjudicated delinquent under the Juvenile Court Act are not similarly situated to adult offenders because they are not subject to adult sentencing. [Citation.] In contrast to J.F.'s sentencing hearing, if an adult robber is convicted of a Class 2 felony, the adult is subject to a minimum three-year prison term. [Citation.] Although an adult offender may receive a four-year term of probation instead of a term of years, the adult offender still faces incarceration at sentencing while a juvenile does not. Also, adult robbers must serve a two year supervisory term on release. [Citation.] Even though the Juvenile Court Act's 1999 amendments have augmented the original purpose by including juvenile

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

accountability and public safety objectives, courts have not recognized juvenile proceedings as criminal in nature. [Citations]." *In re J.F.*, 2014 IL App (1st) 123579, ¶ 16.

¶20 Similarly here, an adult convicted of robbery, a Class 2 felony (720 ILCS 5/18-1 (West 2014)), is eligible for a sentence of imprisonment of not less than 3 years and not more than 7 years. 730 ILCS 5/5-4.5-35(a) (West 2014). While the adult offender may receive a four-year term of probation instead of a prison term, an adult found guilty of robbery faces incarceration at sentencing whereas a juvenile does not. 730 ILCS 5/5-4.5-35(a), (d) (West 2014); 705 ILCS 405/5-715(1) (West 2014). In addition, the adult offender is subject to a two-year term of mandatory supervised release while a juvenile offender is not. See 730 ILCS 5/5-4.5-35(l) (West 2014). Instead, for the commission of a forcible felony by a juvenile, section 5-715(1) of the Act imposes a mandatory five-year probationary term, or, if a shorter term, until the minor attains the age of 21 years at which time the proceeding automatically terminates. *In re Jamie P.*, 223 Ill. 2d 526, 534 (2006). Therefore, despite his attempt to limit the comparison group to adult offenders that received a probation sentence, U.S. has failed to demonstrate that he is similarly situated where, as a juvenile, he was not at risk of receiving a prison term nor was he subject to mandatory supervised release like an adult offender. *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 151-52; see, e.g., *In re Jonathon C.B.*, 2011 IL 107750, ¶ 118 (the minor "never faced the possibility of an adult criminal sentence, and instead received a sentence that automatically terminated in five years, when he reached 21, with no mandatory supervised release term. The plain language of the Act sets the age of 21 as the maximum for all juvenile dispositions, with the limited exception of juveniles subject

to the [extended juvenile jurisdiction (EJJ)] proceedings. [Citation.] Jonathon, therefore, was not subject to the severe deprivation of liberty of an adult sentence and, thus, was not similarly situated to minors subject to EJJ prosecution or adult sex offenders").

Moreover, unlike an adult offender and contrary to U.S.'s argument that the statute relieves the courts of all independent review, under the Act, even if a trial court finds the minor guilty of an offense, the court has the option to forego imposing a sentence by finding that it is not in the best interest of the minor or the public to make the minor a ward of the court. 705 ILCS 405/5-620 (West 2014); 705 ILCS 405/5-705(1) (West 2014).

¶21 In sum, because we find that U.S. failed to show that he is similarly situated to an adult that committed a forcible felony where he was not subject to the severe deprivation of liberty imposed by potential incarceration, his equal protection claim must fail. We need not make a rational basis inquiry where U.S. failed to satisfy this threshold requirement.

¶22 II. Challenge to Probation Term Pursuant to Section 5-755 of the Act

¶23 U.S. next argues, and the State agrees, that his probation term must be modified to terminate on his 21st birthday.

¶24 Section 5-755(1) of the Act provides:

"All proceedings under this Act in respect of any minor for whom a petition was filed on or after the effective date of this amendatory Act of 1998 automatically terminate upon his or her attaining the age of 21 years

except as provided in Section 5-810."² 705 ILCS 405/5-755(1) (West 2014).

¶25 U.S.'s five-year probationary began on August 13, 2014, and ends on August 13, 2019. U.S. was born on October 30, 1997, and will turn 21 years' old on October 30, 2018. As a result, U.S.'s probation term must be modified to conclude on October 30, 2018. See *In re Jamie P.*, 223 Ill. 2d at 540-41.

¶26 CONCLUSION

¶27 U.S. has failed to demonstrate section 5-715(1) of the Act unconstitutionally violates his equal protection rights. We, therefore, affirm the judgment of the circuit court, but modify the probation term to terminate on October 30, 2018.

¶28 Affirmed as modified.

² Section 5-810 relates to an extended juvenile jurisdiction prosecution, which is not at issue in this case. See 705 ILCS 405/5-810 (West 2014).