2015 IL App (2d) 121240-U
No. 2-12-1240
Order filed March 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHRISTOPHER PERALTA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 10-CF-1338 Honorable Timothy Q. Sheldon, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's argument that the provision requiring his transfer from juvenile to adult court, resulting in his exposure to adult sentencing and "truth in sentencing" provisions, is unconstitutional, fails. Affirmed.

¶ 2 In 2012, defendant, Christopher Peralta, pleaded guilty to first-degree murder (720 ILCS 5/9-1(a)(3) (West 2010)) for a crime that he committed in 2010, when he was age 16. The trial court accepted defendant's negotiated plea and sentenced him to 20 years' imprisonment. The court denied defendant's motion to withdraw his plea, and defendant appeals.

¶ 3 On appeal, defendant argues that Illinois law is unconstitutional where the mandatory transfer of juveniles to adult court (705 ILCS 405/5-130 (West 2010)), with application of adult sentencing ranges and "truth in sentencing" provisions (730 ILCS 5/3-6-3(a)(2)(i), (ii) (West 2010) (requiring that he serve 100% of the murder sentence), does not permit consideration of youthfulness at the time of the offense. As similar issues were being considered, we ordered this case held in abeyance pending our supreme court's review of *People v. Pacheco*, 2013 IL App (4th) 110409 (pet. for leave to appeal allowed, No. 116402 (Sept. 25, 2013)) or *People v. Jenkins*, 2013 Il App (1st) 103006-U (pet. for leave to appeal allowed, No. 115979 (Sept. 25, 2013)). On January 27, 2015, however, the supreme court determined that those petitions were improvidently granted and, therefore, it vacated those orders and denied the petitions for leave to appeal. Accordingly, this disposition no longer needs to be held in abeyance. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant was charged with first-degree murder and attempt armed robbery in relation to an incident that occurred on May 22, 2010. Specifically, shortly after midnight on May 22, 2010, defendant and Joshua Dunbar approached two brothers, Oscar and Edgar Guerra-Guzman, who were at a skate park in Elgin with two girls. Defendant and Dunbar tried to steal the brothers' backpacks. There was an extended struggle, wherein defendant fought with Oscar and Dunbar fought with Edgar. During the struggle, Dunbar pulled out a knife and stabbed Edgar in the heart, killing him. Defendant pulled Dunbar off of Edgar after the stabbing occurred. Defendant was wearing a ski mask, which was found in his mother's car a few days later. Defendant was charged with being accountable for Edgar's murder.

¶ 6 On the day his jury trial was to commence, defendant pleaded guilty to one count of felony murder in exchange for a 20-year sentence. The court accepted the plea and imposed the 20-year sentence. Defendant later moved to withdraw his plea, but the motion was denied. Defendant appeals.

¶ 7 II. ANALYSIS

¶ 8 Defendant argues on appeal that the statutes that caused him to be tried and sentenced as an adult are unconstitutional.

¶ 9 First, however, defendant asserts that, because it concerns a jurisdictional question (*i.e.*, whether the statutes are unconstitutional such that personal jurisdiction over him should have been retained by the juvenile court), this issue is not waived by virtue of his guilty plea. See, *e.g.*, *People v. DelVecchio*, 129 Ill. 2d 265, 293 (1989) ("a voluntary plea of guilty waives all errors or irregularities in obtaining that plea that were not jurisdictional"). The State agrees that defendant did not waive the issue, but it does not agree that the issue is a jurisdictional one. Rather, the State agrees that there is no waiver because one may challenge the constitutionality of a statute at any time. We agree with the State. Here, the issue is not the court's authority to try or sentence defendant outside of juvenile court, as the statutory scheme in place clearly provides such authority. Rather, defendant argues that the statutory scheme itself is unconstitutional. As such, he did not waive the issue, because challenges to the constitutionality of statutes may be raised at any time. See, *e.g.*, *People v. Jackson*, 199 Ill. 2d 286, 300 (2002); see also *People v. Rennie*, 2014 IL App (3d) 130014, ¶ 13. We review *de novo* arguments concerning the constitutionality of statutes. *People v. McCarty*, 223 Ill. 2d 109, 135 (2006). Further, we presume that all statutes are constitutional and, where possible, must construe a

statute to uphold its validity and constitutionality. *People v. Vasquez*, 2012 IL App (2d) 101132, ¶ 53.

¶ 10 We now turn to the merits of defendant's argument. Defendant argues that the "excluded jurisdiction" provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2006)), which provides that minors 15 years old or older who commit certain crimes, including first-degree murder, be excluded from juvenile court, unconstitutionally subjects minors to adult prosecution and sentencing without any consideration of their youthfulness and its attendant circumstances. See 705 ILCS 405/5-130(1)(a)(i) (West 2010). Defendant further notes that section 5-130 of the Juvenile Court Act, while not itself a sentencing statute, has sentencing implications, because, once transferred to adult court, minors are subject to adult sentencing provisions without any consideration of their youth. For example, defendant notes that, if he had been tried and convicted in juvenile court, he would have been sentenced to imprisonment that would terminate upon his 21st birthday, for a *maximum* sentence of approximately 5 years (705 ICLS 405/5-750(2) (West 2010)). In contrast, by virtue of his being tried as an adult, he was subjected to a *minimum* of 20 years (730 ILCS 5/5-4.5-20(a) (West 2010)). Given that the statute leaves no room for the trial court to make an individualized assessment of the propriety of charging him as an adult (where, for example, the crime that triggered the transfer was implicated only because he was charged as accountable for another's actions), defendant asserts that section 5-130 is unconstitutional. Further, defendant contends that recent authority from the Supreme Court makes clear that juvenile offenders are inherently different from adult offenders, and, therefore, section 5-130 of the Juvenile Court Act, which does not take into account those differences, violates the eighth amendment (U.S. Const., amend. VIII), the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11

(which is read co-extensively with the eighth amendment, *see In re Rodney H.*, 223 Ill. 2d 510, 518 (2006))), and due process. We disagree.

¶ 11 The Supreme Court decisions upon which defendant relies emphasize that juvenile offenders are inherently different from adult offenders and, therefore, that which may be constitutional as applied to an adult might not meet constitutional muster when applied to a juvenile. See *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455, 2469 (2012) (even for those convicted of homicide, the eighth amendment prohibits "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders."); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (when imposed on juvenile offenders for crimes other than homicide, a life sentence without the possibility of parole violates the eighth amendment); *Roper v. Simmons*, 543 U.S. 551, 568-73 (2005) (capital punishment for juvenile offenders violates the eighth amendment). However, our supreme court in *People v. Patterson*, 2014 IL 115102, ¶¶ 89-111, rejected the arguments that defendant raises here, namely, that *Miller*, *Graham*, and *Roper* operate to render unconstitutional section 5-130 of the Juvenile Court Act. The court in *Patterson* essentially reaffirmed existing caselaw holding that section 5-130 of the Juvenile Court Act does not violate due process, the eighth amendment, or the proportionate penalties clause.[1] *Id.*; see *e.g.*, *Harmon*, 2013 IL App (2d) 120439, ¶¶ 54-56, 59-62 (despite holdings in *Miller*, *Roper*, and *Graham*, section 5-130 does not violate eighth amendment); *People v. Willis*, 2013 IL App (1st) 110233, ¶ 53 (despite holdings in *Miller*, *Roper*, and *Graham*, section 5-130 does not violate eighth amendment or proportionate penalties clause); *Pacheco*, 2013 IL App (4th) 110409, ¶¶ 55, 65

[1] To the extent that defendant's argument relies on cases involving *ex post facto* challenges (*e.g.*, *United States v. Juvenile Male*, 819 F.2d 468, 471 (4th Cir. 1987)), the court in *Patterson* also rejected those arguments. *Patterson*, 2014 IL 115102, ¶¶ 102-03.

(same); *People v. Jackson*, 2012 IL App (1st) 100398, ¶¶ 17, 19 (despite holdings in *Roper* and *Graham*, section 5-130 does not violate eighth amendment or proportionate penalties clause); *People v. Salas*, 2011 IL App (1st) 091880, ¶¶ 66, 76-80 (same).

¶ 12 In sum, we reject defendant's arguments and affirm.

¶ 13 III. CONCLUSION

¶ 14 For the forgoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 15 Affirmed.