NO. 4-10-0036 Filed 5/31/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONY D. JAMERSON, JR., Defendant-Appellant.	))))))))	Appeal from Circuit Court of Champaign County Nos. 09CF946 09CF974 Honorable Thomas J. Difanis, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

Held: (1) Where the mandatory minimum sentence of 15 years in prison did not violate the proportionate-penalties clause, defendant's sentence need not be vacated; and

(2) Where defendant's 20-year sentence was not an abuse of discretion, we need not reduce the sentence.

In August 2009, a jury found defendant, Anthony D. Jamerson, Jr., guilty of obstructing justice and resisting a peace officer. Another jury found defendant guilty of armed violence. In October 2009, the trial court sentenced defendant to 20 years in prison for armed violence and 3 years for obstructing justice. The court denied defendant's motions for reduction of sentence.

On appeal, defendant argues the mandatory minimum

sentence of 15 years in prison for armed violence with a handgun violates the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11). In the alternative, defendant argues the 20-year sentence was an abuse of discretion. We affirm.

I. BACKGROUND

In June 2009, the State charged defendant by information in case No. 09-CF-946 with one count of armed violence (720 ILCS 5/33A-3(a) (West 2008)), alleging defendant, while armed with a dangerous weapon, a pistol, committed the offense of unlawful possession of a controlled substance, a felony, in that he knowingly and unlawfully possessed less than 15 grams of a substance containing cocaine. Defendant pleaded not guilty.

Also in June 2009, the State charged defendant by information in case No. 09-CF-974 with one count of obstructing justice (720 ILCS 5/31-4(a) (West 2008)), alleging defendant, with the intent to prevent his apprehension, knowingly furnished false information to police officers. The State also charged defendant with one count of resisting a peace officer (720 ILCS 5/31-1 (West 2008)), alleging he knowingly resisted the performance of Amy Swartzwelder of an authorized act within her official capacity as a peace officer. Defendant pleaded not guilty.

In August 2009, defendant's jury trial commenced in case No. 09-CF-974. Champaign police officer Patrick Simons

testified he was on patrol on June 5, 2009, when he saw a vehicle known to be associated with defendant, who had an outstanding warrant. Simons initiated a traffic stop and found defendant in the front passenger seat. When asked his name, defendant stated he was "Carlton Johns." He then provided identification to another officer, who stated it did not match. After defendant exited the vehicle, he pulled away from the officers and ran off. He was eventually apprehended.

Champaign police officer Amy Swartzwelder testified defendant handed her a state identification card in the name of Carlton Johns. Swartzwelder, however, knew Carlton Johns and asked defendant to exit the vehicle. As she grabbed his right arm, defendant "swung his arm around" and "took off running."

The defense did not present any evidence. Following closing arguments, the jury found defendant guilty of obstructing justice and resisting a peace officer.

Later in the month, defendant's jury trial commenced in case No. 09-CF-946. Champaign County sheriff's deputy Craig Dilley testified he participated in the execution of a search warrant on May 29, 2009. Upon arrival at the location, Dilley observed two SWAT members detaining two males near a Chevrolet Caprice parked outside the suspect house. The two males were identified as Prentice Jackson and defendant. As defendant stood up for a pat-down search, Deputy Dilley saw a gun in his right

front coat pocket. Officers then searched defendant and found a clear plastic bag containing suspected crack cocaine in his pants pocket.

Joshua Stern, a forensic scientist with the Illinois State Police, testified his test of the substance recovered from defendant revealed 2.2 grams of a chunky substance containing cocaine.

Defendant testified on his own behalf. He stated he was 19 years old and had been convicted of domestic battery in 2008. At approximately 5 a.m. on May 20, 2009, defendant stated he was in a car driven by Prentice Jackson. Defendant stated he was drunk and had been using crack cocaine. They pulled over, and defendant got into the backseat to sleep. While in the back, he found someone's coat and threw it over him. Some time later, officers were outside telling him not to move. Defendant stated he owned the pants containing the crack cocaine but not the jacket containing the gun.

In rebuttal, Urbana police officer Jay Loschen testified he found the cocaine on defendant, who told him the pants and the coat did not belong to him. Loschen also stated defendant appeared to be under the influence of alcohol at the time. Defendant wore the jacket with his arms in both sleeves.

Following closing arguments, the jury found defendant guilty of armed violence. Defendant filed motions for acquittal

or for a new trial in both cases. The trial court denied both posttrial motions.

In October 2009, the trial court conducted the sentencing hearing. The presentence investigation revealed defendant had a juvenile adjudication for unlawful possession of cannabis with intent to deliver, a felony conviction for domestic battery, a misdemeanor conviction for domestic battery, and several traffic offenses. Defendant had never been gainfully employed. He also reported he drank a fifth of tequila daily and smoked marijuana four times per week.

In mitigation, the trial court noted defendant was 19 years old and had helped the police find the whereabouts of his father, who was wanted. In aggravation, the court noted defendant's criminal history and the need to deter. The court sentenced defendant to 20 years in prison on the armed-violence conviction and 3 years in prison on the obstructing-justice conviction. The latter sentence was to run consecutive to the sentence for armed violence. The court also sentenced defendant to 125 days for resisting a peace officer with credit for time served.

Defendant filed a motion for reduction of sentence in both cases. In January 2010, the trial court denied both motions. This appeal followed.

II. ANALYSIS

A. Proportionate-Penalties Clause

Defendant argues the 15-year mandatory minimum sentence for armed violence with a handgun violates the proportionate-penalties clause of the Illinois Constitution as applied to him. We disagree.

We note defendant did not raise this issue in his motion for reduction of sentence. Normally, this would result in forfeiture of the issue on appeal. *People v. Hillier*, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) (finding the defendant must object and file a written postsentencing motion raising the issue to preserve the alleged sentencing error on appeal). However, a challenge to the constitutionality of a statute can be raised at any time. *People v. Hauschild*, 226 Ill. 2d 63, 73, 871 N.E.2d 1, 7 (2007). The constitutionality of a statute is a question of law, and our review is *de novo*. *People v. Pelo*, 404 Ill. App. 3d 839, 882, 942 N.E.2d 463, 499 (2010).

> "All statutes carry a strong presumption of constitutionality. [Citation.] To overcome this presumption, the party challenging the statute must clearly establish that it violates the constitution. *** 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." *People v. Sharpe*, 216 Ill. 2d 481, 487, 839 N.E.2d 492, 497-98 (2005).

The proportionate-penalties clause 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 defendant's sentence can violate the proportionate-penalties clause if, *inter alia*, the sentence "is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community." *Hauschild*, 226 Ill. 2d at 74, 871 N.E.2d at 7. "To determine whether a penalty shocks the moral sense of the community, we must consider objective evidence as well as the community's changing standard of moral decency." *People v. Hernandez*, 382 Ill. App. 3d 726, 727, 888 N.E.2d 1200, 1202-03 (2008); see also *People v. Miller*, 202 Ill. 2d 328, 339, 781 N.E.2d 300, 308 (2002).

The offense of armed violence requires that a person commit a felony "while armed with a dangerous weapon." 720 ILCS 5/33A-2(a) (West 2008). A person is considered armed with a dangerous weapon when he carries on or about his person a Category I weapon, which includes a handgun. 720 ILCS 5/33A-1(c)

(West 2008). Violating section 33A-2(a) with a Category I weapon is a Class X felony with a mandatory minimum sentence of 15 years in prison. 720 ILCS 5/33A-3(a) (West 2008).

Defendant argues the 15-year minimum prison sentence for armed violence is cruel, degrading, and so disproportionate to the offense committed as to shock the moral sense of the community. Defendant contends his conduct was not the primary type of conduct the General Assembly sought to deter in fashioning the stiff penalties for armed violence.

In passing the armed-violence statute, the General Assembly found "[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 2008). The legislature noted the use of a firearm in the commission of a felony "significantly escalates the threat and the potential for bodily harm, and the greater range of the firearm increases the potential for harm to more persons." 720 ILCS 5/33A-1(a)(2) (West 2008). To deter the use of firearms in the commission of a felony, the General Assembly found it appropriate for a greater penalty when a firearm is used or discharged. 720 ILCS 5/33A-1(b)(1) (West 2008).

Defendant stresses the General Assembly's focus on the "use" or "discharge" of a firearm during the commission of a

felony and notes he was simply a possessor of a handgun, which was tucked away in his coat pocket. Defendant argues he "did not commit the classic type of armed violence targeted by the legislature for harsher penalties."

While defendant was not wielding or discharging a handgun while in possession of the cocaine in this case, a person is considered armed with a dangerous weapon for purpose of the armed-violence statute when he carries a handgun on or about his person. 720 ILCS 5/33A-1(c)(1) (West 2008). "[T]he defendant need not actually use the weapon in the commission of the felony." *People v. Alejos*, 97 Ill. 2d 502, 508, 455 N.E.2d 48, 50 (1983); see also *People v. Drakeford*, 139 Ill. 2d 206, 210, 564 N.E.2d 792, 794 (1990). In looking at the harsher penalties for possessing a weapon while committing a felony, the supreme court found:

> "the chances that violence will erupt and cause great bodily harm because of the weapon are increased when a felony is committed; one who creates such danger by committing the felony while possessing the weapon is culpable and should bear the consequences for the danger his conduct poses. The 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 508-09, 455 N.E.2d at 51.

See also *People v. Davis*, 199 Ill. 2d 130, 141, 766 N.E.2d 641, 647 (2002) (finding the armed-violence "statute mandates a severe penalty, not only to punish the criminal, but to deter the use of weapons in the commission of a felony, thus affording society greater protection").

In the case *sub judice*, police officers found defendant in the backseat of a car with cocaine in his pants and a handgun in his coat pocket. While no violence occurred in this case, the potential for harm to the public and police officers was present. The scourge of illegal drugs in our society is well documented, and the purchase, possession, and distribution of those drugs are oftentimes associated with the presence of handguns. All too often, those handguns have been utilized in drug transactions with deadly consequences. While the actual use of the firearm poses the most severe threat of harm, the General Assembly understood that deterring felonious individuals from possessing a firearm in the first place is the best way to dissuade him from using or wielding that weapon. Given the nature of the crime involved here and the need to deter others from committing the same acts, defendant's 15-year minimum sentence for armed vio-

lence does not rise to the level of being cruel, degrading, or so disproportionate to the offense as to shock the moral sense of the community.

In his second argument, defendant puts forth the claim that, given his age of 19 years, he "did not have a fully developed frontal lobe to assist him in putting information into context and in controlling impulses." He argues the 15-year minimum sentence "removes a court's discretion to impose a lower-level prison sentence consistent with the lower culpability level of an incompletely developed and youthful offender."

Defendant relies on *People v. Clark*, 374 Ill. App. 3d 50, 52, 869 N.E.2d 1019, 1023 (2007), where the 18-year-old defendant was convicted of first-degree murder and sentenced to 44 years in prison. Along with presenting the testimony of family members and a gang expert at his sentencing hearing, the defendant called a neuropsychologist, Dr. Ruben Gur, who offered his expertise on how brain development impacts behavior. *Clark*, 374 Ill. App. 3d at 71, 869 N.E.2d at 1039. Dr. Gur stated "the frontal lobe is responsible for integrating 'all the information in relation to the context.'" *Clark*, 374 Ill. App. 3d at 71-72, 869 N.E.2d at 1039. He talked of a process called myelination, which enhances "brain function by increasing the speed in which impulses travel throughout the brain." *Clark*, 374 Ill. App. 3d at 72, 869 N.E.2d at 1039. Babies have no myelin, and Dr. Gur

stated studies showed "myelination is not completed in the frontal lobe until the 'third decade of life,' or around age 22." *Clark*, 374 Ill. App. 3d at 72, 869 N.E.2d at 1039. As for adolescents, Dr. Gur stated they will act on impulse because "the frontal lobe is not fully able to provide that context." *Clark*, 374 Ill. App. 3d at 72, 869 N.E.2d at 1039. He also stated adolescents "have a hard time changing their course of action because they are not able to understand the full context and the frontal lobe is not fully able to provide that context." *Clark*, 374 Ill. App. 3d at 72, 869 N.E.2d at 1039.

It is a sad commentary on our present state of societal affairs, notwithstanding our courageous 18-year-olds fighting for our freedom overseas, when defendant attempts to mitigate his criminal acts, on the basis of an expert in another case, based on the supposed undeveloped nature of his 19-year-old brain. Nothing in this case indicates defendant could not control his impulses. Defendant would have us believe, with no expert testimony whatsoever, that his undeveloped frontal lobe could not put into context the impulses permeating his brain such that it caused him to uncontrollably get into the backseat of a car to sleep off his stupor with cocaine in his pants and a loaded gun in his pocket. Given defendant's criminal history, including being on mandatory supervised release at the time of his arrest, one could surmise he would have a better understanding than most

19-year-olds of the criminal law and the need to conform his actions thereto. We find no merit in defendant's argument. Accordingly, we find no proportionate-penalties violation.

B. 20-Year Prison Sentence

In the alternative, defendant argues his 20-year sentence for armed violence was an abuse of discretion where he was only 19 years old, he did not use or wield the handgun, and his predicate offense was a Class 4 felony possession of a single bag of cocaine. We disagree.

The Illinois Constitution mandates "[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. "'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.'" *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217 Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). "A reviewing court gives great deference to the trial court's sentencing decision because the trial judge, having

observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the cold record." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008).

The offense of armed violence with a handgun is a Class X felony with a mandatory minimum sentence of 15 years in prison. 720 ILCS 5/33A-3(a) (West 2008). A Class X felon is subject to a maximum of 30 years in prison. 730 ILCS 5/5-8-1(a)(3) (West 2008). As the trial court's 20-year sentence fell within the relevant sentencing range, we will not disturb that sentence absent an abuse of discretion.

Defendant, however, argues the trial court failed to take into account his rehabilitative potential, given his age, and put too much emphasis on the deterrence factor, something the legislature had already considered in fashioning the mandatory minimum sentence.

The presentence report indicated defendant had a juvenile conviction for unlawful possession of cannabis with intent to deliver. As an adult, he had felony and misdemeanor

convictions for domestic battery. He also had several traffic violations. At the time of his arrest, he was on mandatory supervised release.

Defendant's father has been in and out of jail throughout defendant's life. Defendant and his siblings were adjudged neglected and abused minors in 1990. He fathered one child with the woman who was the victim in his domestic-battery cases. Defendant attended high school until the eleventh grade. He first began drinking alcohol at the age of 16 and stated he drank a fifth of tequila daily. He also started smoking marijuana at the age of 16 and used it four times per week.

The facts here support defendant's 20-year sentence. Despite his young age, defendant's criminal history indicated his inability to conform to the requirements of the law. Moreover, the trial court noted the need to "loudly and clearly" deter others from committing the same crime. See *People v. Malin*, 359 Ill. App. 3d 257, 265, 833 N.E.2d 440, 447 (2005) (finding the trial court was not obligated to place greater weight on mitigating factors than on the need to deter others). Defendant argues the legislature, in the armed-violence statute, already sought to deter the use of firearms in the commission of a felony. However, defendant points to no law prohibiting the sentencing judges of this state, all of whom are vested with a broad range of discretion, from also imposing a sentence with the hope of

deterring others from committing the same crime. Defendant received a sentence 5 years above the minimum but 10 years below the maximum. We find no abuse of discretion.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed.