

No. 1-12-1259

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

<i>In re</i> TYWAUN D., a MINOR,)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County.
Petitioner-Appellee,)	
)	No. 11 JD 4114
v.)	
)	Honorable
Tywaun D.,)	Stuart P. Katz,
Respondent-Appellant).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The ruling of the trial court is affirmed because the mandatory minimum sentence of five years' probation for a minor who commits a forcible felony pursuant to 705 ILCS 405/5-715(1) of the Juvenile Court Act does not violate the equal protection clauses of the United States and the Illinois constitutions and is not contrary to the purpose of the Juvenile Court Act. The trial court's order is corrected to reflect adjudications of delinquency for the offenses of residential burglary and theft where burglary is a lesser included offense of residential burglary.

¶ 2 This appeal arises from a May 1, 2012 judgment entered by the circuit court of Cook County in which defendant-appellant Tywuan D. (Tywaun) was adjudicated delinquent based on residential burglary, burglary, and theft. On appeal, Tywaun argues that: (1) the mandatory

minimum sentence of five years' probation for a minor who commits a forcible felony pursuant to section 5-715(1) of the Juvenile Court Act (the Act) (705 ILCS 405/5-715(1) (West 2010)) violates the equal protection clauses of the United States and Illinois constitutions because the mandatory minimum sentencing is contrary to the purposes of the Act and, therefore, does not have a rational basis; and (2) the trial court erred by adjudicating Tywaun delinquent based on both burglary and residential burglary because burglary is a lesser included offense of residential burglary. For the following reasons, we affirm the judgment of the circuit court of Cook County. We vacate the adjudication of delinquency based on burglary and order the clerk of the circuit court to correct the mittimus.

¶ 3

BACKGROUND

¶ 4 On September 3, 2011, Officer Michael Keeney (Officer Keeney) responded to a burglary report filed by Jessica Shorter (Shorter). Shorter found the back door of her home forced open and several items taken from her home including a computer, Wii video game, radio, television, VCR, and digital camera with a combined value exceeding \$500.00. Officer Keeney met with Shorter, Croshana Campbell (Croshana), and one other person. Croshana was Shorter's neighbor and a witness to the burglary. Croshana provided Officer Keeney with four names of potential suspects to the burglary, one of which was Tywaun. Shorter did not know the suspects nor did she give them permission to enter her house.

¶ 5 On September 4, 2011, Detective Siphen (Siphen) was assigned to investigate the burglary of Shorter's home. Siphen spoke with Croshana by telephone. Siphen met with Tiana Brown (Tiana) and Tiara Brown (Tiara), Croshana's sisters who were also witnesses to the burglary. Siphen showed Tiara and Tiana two photographs of the suspects. Tiara identified the individuals in the photographs as the ones she saw running from Shorter's house. Tiara

recognized them from school and from being friends with her sister. One of the suspects identified was Tywaun.

¶ 6 On September 6, 2011, Siphen arrested Tywuan at his home at 6501 S. Hamilton Ave., Chicago, Illinois. Tywuan was charged with theft (720 ILCS 5/16-1(a)(1) (West 2010)), burglary (720 ILCS 5/19-1(a) (West 2010)), and residential burglary pursuant (720 ILCS 5/19-3 (West 2010)).

¶ 7 On March 23, 2012, a bench trial commenced in the circuit court of Cook County for the four co-defendants, including Tywaun. At trial, Croshana testified that at approximately 11:00 a.m. on September 3, 2011, she was awakened by a banging noise. Croshana testified that she looked out of her bedroom window and saw Tywaun and his co-defendants standing in the alley behind Shorter's house. Croshana testified that one of the co-defendants yelled out "did they get the door open?" and then seconds later, another co-defendant yelled "we in this bitch." Croshana testified that Tywaun and another co-defendant ran across Shorter's backyard toward Shorter's house. Croshana testified that she walked downstairs to her door to make sure the boys did not enter her house. Once Croshana confirmed the boys were not in her house, Croshana testified that she and her sister, Tiara, went back to Croshana's bedroom window and saw all four co-defendants, including Tywaun, run through Shorter's yard holding "stuff." Croshana testified that Tywaun had a pink bicycle in his hands. Croshana testified that her brother was one of the co-defendants, and she yelled her brother's name from the window and told him she was going to call the police. She also told him to return Shorter's belongings. Tywaun dropped the bicycle he was carrying. One other co-defendant dropped a book bag he was carrying. The co-defendants, including Tywaun, then ran from the alley.

¶ 8 At trial, Tiara testified that everyone except one co-defendant was holding something as they ran from Shorter's house. Tiara also testified that she knew the co-defendants from school and because they were friends with her sister. The trial court found all co-defendants, including Tywaun, guilty of all three charges. The trial court placed Tywaun under electronic monitoring until the sentencing hearing.

¶ 9 At the sentencing hearing on May 1, 2012, Probation Officer Basley (Basley) testified that during his social investigation, Tywaun's mother was concerned about Tywaun being a "follower" because his behavior changed when the family moved to the neighborhood. Basley also testified that Tywaun's mother wants him to understand that "this is not the way to go." Basley testified that Tywaun's grades recently dropped from B's to F's and that Tywaun had a few disciplinary incidents at school.

¶ 10 At sentencing, the trial court acknowledged that Tywaun was 13 years old at the time of the offense. Also, the court acknowledged that during the pendency of the case at issue, Tywaun and one of his co-defendants were charged with the commission of a Class X armed robbery on February 19, 2012, and a Class 3 attempted robbery on September 1, 2011. Both of those cases were dropped by the State because the complaining witnesses failed to appear for trial. However, the trial court made it clear to Tywaun that those cases were "not dismissed because [Tywaun was] not guilty. [They] were dismissed because the complaining witnesses [] didn't show up."

¶ 11 At sentencing on May 1, 2012, the trial court sentenced Tywaun to a mandatory minimum sentence of five years' probation pursuant to section 5-715(1) of the Act in addition to \$200 restitution to Project Pay; ten days of the Sheriff's Work Release Program (SWAP); DNA testing; mandatory school earning A's and B's; referral to TASC; no gang activity; no guns; no

drugs or alcohol; and a restraining order of no contact with Shorter, Croshana, or Tiara. On May 2, 2012, Tywaun filed a timely notice of appeal. Therefore, this court has jurisdiction to consider Tywaun's arguments on appeal pursuant to Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. Feb. 6, 2013).

¶ 12

ANALYSIS

¶ 13 We determine the following issues on appeal: (1) whether the mandatory minimum sentence of five years' probation for a minor who commits a forcible felony pursuant to section 5-715(1) of the Act violates the equal protection clauses of the United States and Illinois constitutions and is contrary to the purpose of the Act; and (2) whether the trial court erred by adjudicating Tywaun delinquent based on both burglary and residential burglary.

¶ 14 As a preliminary matter, we determine the standard of review to be applied in this case. Assessing equal protection claims is the same under both the United States and Illinois constitutions. *Nevitt v. Langfelder*, 157 Ill. 2d 116, 124 (1993). In reviewing a claim that a statute violates equal protection, the court applies different levels of scrutiny depending on the nature of the statutory classification involved. *Jacobson v. Dept. of Public Aid*, 171 Ill. 2d 314, 322-23 (1996). Classifications based on race or national origin or affecting fundamental rights are strictly scrutinized. *Id.* at 323. Intermediate scrutiny applies to discriminatory classifications of sex or illegitimacy. *Id.* In all other cases, the court employs only a rational basis review. *Id.* Here, the challenged statute does not involve a fundamental right or a suspect class. Thus, we apply a rational basis review. In applying a rational basis review, the court inquires whether the methods or means employed in the statute to achieve the stated goal or purpose of the legislation are rationally related to that goal. *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 74 (1990). The legislation carries a strong presumption of constitutionality. *People v. Blackorby*,

146 Ill. 2d 307, 318 (1992). If any set of facts can reasonably be conceived to justify the classification, the statute must be upheld. *People v. Shephard*, 152 Ill. 2d 489, 502 (1992). Whether a rational basis exists for a classification presents a question of law, which this court considers *de novo*. *Cutinello v. Whitley*, 161 Ill. 2d 409, 417 (1994). Therefore, we apply the *de novo* standard and a rational basis review in addressing Tywaun's arguments on appeal.

¶ 15 We first determine whether the mandatory minimum sentence of five years' probation for a minor who commits a forcible felony pursuant to section 5-715(1) of the Act violates the equal protection clauses of the United States and Illinois constitutions and is contrary to the purpose of the Act.

¶ 16 Tywaun argues that the mandatory minimum sentence of five years' probation for juveniles who have been adjudicated delinquent based on a forcible felony pursuant to section 5-715(1) of the Act violates the equal protection clauses of the United States and Illinois constitutions because it is contrary to the purpose of the Act. Tywaun contends that the probation requirement is a "one-size-fits-all" standard that conflicts with the purpose of the Act by prohibiting the trial court from considering a juvenile defendant's individual circumstances and personal characteristics in crafting a sentence. Tywaun argues that the purpose of the Act is to provide individualized assessment of each juvenile, protect the public from juvenile crime, and hold each juvenile accountable for his or her acts. As such, Tywaun argues that the distinction between juveniles who have been adjudicated delinquent based on forcible felonies and juveniles who have been adjudicated delinquent based on other offenses set forth in section 5-715(1) of the Act violates the equal protection clauses of the United States and Illinois constitutions because the distinction is not rationally related to the expressed purpose of the Act.

¶ 17 Specifically, Tywaun claims that requiring juveniles who have been adjudicated delinquent based on forcible felonies to receive a mandatory minimum sentence of five years' probation does not allow the trial court to consider whether an individual's background and circumstances call for a lesser sentence in order to render that person more amenable to rehabilitation. Thus, Tywaun argues that section 5-715(1) of the Act allows the government to accord different treatment to persons who have been placed into different classes on the basis of criteria that are not rationally related to the stated purpose of the Act.

¶ 18 In response, the State argues that section 5-715(1) of the Act does not violate the equal protection clauses of the United States and Illinois constitutions and is not contrary to the purpose of the Act. The State asserts that the legislature properly determined that juvenile offenders who commit forcible felonies are more dangerous to themselves and others because of the higher risk of the use and threat of force in face-to-face encounters with victims. As such, the State argues that the minimum sentence of five years' probation is rationally related to the purpose of the Act which is to hold juvenile offenders accountable for their actions and to protect citizens. The State contends that the mandatory five-year probation period for juvenile offenders who have committed forcible felonies is a reasonable means of furthering the purpose of the Act. The State argues that it is reasonable to keep a juvenile offender who has been adjudicated delinquent based on a forcible felony, under the direct control of the trial court for at least a five-year period in order to properly rehabilitate the offender and prevent recidivism. Additionally, the State argues that the trial court has discretion to consider each juvenile's individual characteristics even under section 5-715(1) of the Act, as seen in this case where the trial judge could have imposed a harsher sentence on Tywaun.

¶ 19 "[T]he guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner." *People v. R.L.*, 158 Ill. 2d 432, 437 (1994). It does not preclude the State from enacting legislation that draws distinctions between different categories of people, but it does prohibit the government from according different treatment to persons who have been placed by statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation. *Nevitt*, 157 Ill. 2d at 124. In employing a rational basis test, a court must first determine whether there is a legitimate state interest in the goal sought to be achieved by the statute, and, if so, whether there is a rational relationship between that goal and the means the legislature chose to obtain it. *People v. Johnson*, 225 Ill. 2d 573, 584-85 (1997). The statute need not be the best method of accomplishing a legislative goal but, rather, it must simply be reasonable. *Id.* at 592. "Under the rational basis test, a court's review of a legislative classification is limited and generally deferential." *Shephard*, 152 Ill. 2d at 502.

¶ 20 In this case, Tywaun argues that the mandatory minimum sentence of five years' probation pursuant to section 5-715(1) of the Act violates the equal protection clauses of the United States and Illinois constitutions and is contrary to the purpose of the Act because it does not allow the trial court to consider individual circumstances and personal characteristics in crafting a sentence. He also argues that section 5-715(1) allows the State to accord different treatment to persons who have been placed into different classes based on criteria that are not rationally related to the stated purpose of the Act. We do not agree.

¶ 21 First, it is clear from the record that the trial court *did* consider individual circumstances and personal characteristics of Tywaun during sentencing. The record shows that the trial court considered Tywaun's change in behavior after his family moved into the neighborhood; his disciplinary incidents at school; the drastic drop in his school grades; the fact that his mother was

very concerned about Tywaun being a "follower"; and Tywaun's previous charges of armed robbery and attempted armed robbery. The trial court considered the fact that Tywaun's family would be able to provide some sense of well being, as his mother expressed that she wants Tywaun to know "this is not the way for him to go." It is also clear from the record that the trial court warned Tywaun of the consequences of his behavior, stating, "You're starting out here with some really serious cases. If you violate the probation that I'm about to put you on *** you are very, very likely going off to St. Charles." Furthermore, the trial court considered the strong likelihood of rehabilitation for Tywaun, stating that Tywaun, "could have an amazing future *** [he is] obviously smart *** if [he] would put the effort into school that [he] put[s] into just fooling around and doing the wrong things." It is clear from the record that the trial court could have imposed a harsher sentence on Tywaun. However, the court chose to give Tywaun the mandatory minimum sentence of five years' probation, including additional penalties, because the court decided this sentence was "in the best interest and welfare" of Tywaun.

¶ 22 Second, Tywaun cites and relies upon cases that are distinguishable from the case at bar in making his argument. For example, Tywaun cites to *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314 (1996). In *Jacobson*, the plaintiffs sought review of a Department of Public Aid (Department) determination that they were liable for support of their 19-year-old daughter and were required to reimburse the Department for welfare payments it had made to their daughter under a public aid program pursuant to a section of the Public Aid Code. *Id.* at 317. The plaintiffs challenged the constitutional validity of the section of the Public Aid Code which required a welfare recipient's parents to reimburse the State where the recipient was over the age of 18 and under the age of 21 and lived at home, but imposed no corresponding obligation on the parents of 18 to 20 year-old welfare recipients who lived on their own. *Id.* at 320. The purpose

of the Public Aid Code was to "assist in the alleviation and prevention of poverty and thereby protect and promote the health and welfare of all the people of this State." *Id.* at 324.

¶ 23 The Illinois Supreme Court determined that the distinction drawn by the section of the Public Aid Code between parents whose 18 through 20 year-old children live with them and those whose children reside elsewhere did not satisfy the rational basis test and was struck down as invalid on the basis that it violated equal protection. *Id.* at 328. The court reasoned that although most children between 18 and 21 years old who live with their parents do so because they cannot afford to live independently, it is far from clear that the parents who allow such children to live with them do so because they have superior economic resources. *Id.* at 326. "A parent's decision to take in a child *** can be motivated by any number of considerations. *** [I]t might spring from pity, compassion, a sense of duty, or a need for companionship." *Id.* at 325. As such, the court stated that the statutory scheme created by the section has a result of imposing the heaviest burden of support on families who are least able to afford it because they struggle to help their children, and must then reimburse the State for the privilege of doing so. *Id.* at 326. By contrast, the court noted, "wealthier parents who are fortunate enough to have the resources to help their children pay for separate apartments have no obligation to the State at all." *Id.* The court determined that the objectives of the Public Aid Code would be equally met by requiring reimbursement from parents whose children do not live with them. *Id.* at 325. The court concluded that families who can support their children should be required to reimburse the State regardless of where a child calls home. *Id.*

¶ 24 Tywaun's analogy to *Jacobson* is misguided. The Act states as follows:

"(1) It is the intent of the General Assembly to promote a juvenile justice system capable of dealing with the problem of

juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the General Assembly declares the following to be important purposes of this Article:

(a) To protect citizens from juvenile crime.

(b) To hold each juvenile offender directly accountable for his or her acts.

(c) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to rehabilitate and to prevent further delinquent behavior through the development of competency in the juvenile offender. As used in this Section, 'competency' means the development of educational, vocational, social, emotional and basic life skills which enable a minor to mature into a productive member of society.

(d) To provide due process, as required by the Constitutions of the United States and the State of Illinois, through which each juvenile offender and all other interested parties are assured fair hearings at which legal rights are recognized and enforced." 705 ILCS 405/5-101 (West 2010).

¶ 25 The purpose of the Act is instructive as to why the legislature imposed a mandatory minimum sentence of five years' probation for juveniles who are adjudicated delinquent based on a forcible felony, a Class X felony, or first-degree murder as compared to juveniles who are adjudicated delinquent based on other offenses. As the State points out, the legislature properly determined that juvenile offenders who commit forcible felonies are more dangerous to themselves and others because of the higher risk of the use and threat of force in face-to-face encounters. As such, the legislature's mandatory minimum sentence of five years' probation for juveniles who are adjudicated delinquent based on forcible felonies versus those who are not, is rationally related to the Act's purpose of protecting citizens, holding juvenile offenders accountable for their actions, and providing individualized assessment of juvenile offenders in order to rehabilitate them. Rehabilitating juveniles who have committed a forcible felony by keeping them under the direct control of the trial court for at least five years is reasonable to accomplish the goals of the Act because of the severity of the crime as compared to other offenses.

¶ 26 Unlike *Jacobson*, juvenile offenders, such as Tywaun, are not similarly situated to juvenile offenders who commit other offenses, because forcible felonies involve the use of force and threatened use of force and pose greater risks to victims. One cannot say in this instance that the Act's purpose of protecting citizens, holding juvenile offenders accountable for their actions, and providing individualized assessment of juvenile offenders in order to rehabilitate them can be met by equal probation periods for forcible felonies and other offenses. It is clear that juvenile offenders who commit forcible felonies are of a different class than those who commit other offenses. As such, different mandatory sentencing of juvenile offenders adjudicated

delinquent based on forcible felonies versus those who are adjudicated delinquent based on other offenses does not violate equal protection and is not contrary to the purpose of the Act.

¶ 27 Furthermore, Illinois case law lends support to the legislature's purpose and reasoning for specifically including a mandatory minimum sentence of five years' probation for juveniles who commit forcible felonies. See, *People v. Dean*, 363 Ill. App. 3d 454, 465 (2006) ("the legislature considers residential burglary to be a very serious criminal offense that involves a high risk of harm to members of the public."); *People v. Sturlic*, 130 Ill. App. 3d 120, 129-30 (1985) ("the legislature has placed emphasis and value upon the privacy and sanctity of a place used as a residence in determining the seriousness of the penalty for the crime of residential burglary. The legislature has determined that residential burglary contains more possibility for danger and serious harm than places not used as dwellings.").

¶ 28 Moreover, the legislature has the power to enact mandatory minimum sentences despite the fact that they limit the sentencing court's discretion and function. *People v. Dunigan*, 165 Ill. 2d 235, 245 (1995). Such legislative action does not render the legislation violative of the constitution. *People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67, 78-80 (1980). However, in this case, the trial court did in fact have sentencing discretion as it considered Tywaun's individual circumstances and personal characteristics in sentencing.

¶ 29 Accordingly, we find that the mandatory minimum sentence of five years' probation for a minor who commits a forcible felony pursuant to section 5-715(1) of the Act does not violate the equal protection clauses of the United States and Illinois constitutions and is not contrary to the purpose of the Act.

¶ 30 Next, we determine whether the trial court erred by adjudicating Tywaun delinquent based on both burglary and residential burglary.

¶ 31 Burglary is a lesser included offense of residential burglary and should be merged pursuant to the one-act, one-crime doctrine. 720 ILCS 5/19-3(a) (West 2010). Tywaun and the State agree that Tywaun's adjudication based on delinquency for burglary should be vacated and the mittimus corrected. As such, we order the clerk of the trial court to correct the mittimus to reflect an adjudication of delinquency for residential burglary and theft.

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County but vacate the adjudication for burglary as that count shall be merged into the residential burglary adjudication.

¶ 33 Affirmed in part; vacated in part; mittimus corrected.