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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> J.L., a Minor)	Appeal from the Circuit Court
)	of Cook County.
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
)	No. 09 JD 4837
v.)	
)	
J.L.,)	The Honorable
Respondent-Appellant).)	Colleen F. Sheehan,
)	Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* The minor respondent waived her *Apprendi* challenge to the extended jurisdiction and juvenile prosecutions (EJJ prosecution) statute by pleading guilty, where she negotiated a plea agreement based on the

EJJ designation of her case. Even if she did not waive the *Apprendi* challenge, the EJJ statute does not violate *Apprendi*.

¶ 2 J.L., the minor respondent, pled guilty to attempted first degree murder pursuant to a negotiated plea agreement and was sentenced, pursuant to that agreement, to an indeterminate period of time with the Department of Juvenile Justice which would automatically terminate when she turned 18 years of age, and to an adult sentence of 12 years which was stayed, as long as respondent did not commit further offenses and obeyed the terms of her juvenile probation. Before her guilty plea and sentencing, the trial court had designated respondent's case as appropriate for prosecution under the extended jurisdiction and juvenile prosecutions (EJJ prosecution) statute (705 ILCS 405/5-810 (West 2008)), and her guilty plea and sentence were entered pursuant to that statute, as will be explained in greater detail below. After the plea and sentencing, the trial court revoked the stay of respondent's adult sentence, as the result of respondent's subsequent commission of a retail theft.

¶ 3 In her appellate brief, respondent claimed: (1) that the trial court erred in designating respondent's prosecution as an EJJ prosecution; (2) that respondent's guilty plea should be vacated because the trial court failed to admonish her properly at the guilty plea; and (3) that the EJJ prosecution statute violates the due process clause and the principles expressed by the United

States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and more recently in *Alleyne v. United States*, 570 U.S. ___, 133 S.Ct. 2151 (2013).

¶ 4 However, at oral argument before this court, respondent abandoned her first two claims, arguing that we lacked jurisdiction to consider them. Since our supreme court has directed this court not to scour the record for reasons to reverse and to avoid issuing rulings on unargued claims, we will not review a claim where no party seeks our review. *People v. Givens*, 237 Ill. 2d 311, 323-24 (2010) (we "assign to courts the role of neutral arbiter of matters the parties present").

¶ 5 However, respondent did argue at oral argument that the Illinois Supreme Court would have the authority to consider the first two claims under both its supervisory authority and the doctrine of *parens patriae*. Thus, respondent did not withdraw these claims but instead reserved them for argument before the supreme court. As respondent acknowledges, that is an argument best considered by the supreme court, not this court.

¶ 6 At oral argument, Presiding Justice Gordon indicated that he was troubled by the fact that the claims of a minor respondent would not be heard, and the State responded that it was arguable whether respondent in this case could bring a postconviction petition, since she is now serving an adult sentence under the sole jurisdiction of the adult criminal court. *C.f. In re Vincent K.*,

2013 IL App (1st) 112915, ¶ 45 (minors, who are adjudicated delinquent, cannot file a postconviction petition since the "proceedings in juvenile court are not criminal trials that result in convictions"). However, since the present case involves a direct appeal, the issue of whether respondent could bring her claims on a postconviction petition is simply not before us.

¶ 7 With respect to the one claim that respondent is still pursuing before this court, the State argued at oral argument that we had jurisdiction to consider it, to the extent that respondent was arguing that the facts supporting the revocation of the stay needed to be proved to a jury and beyond a reasonable doubt. However, even when both parties concede that we have jurisdiction, we still have an independent duty to consider whether we do. *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009) ("courts of review have an independent duty to consider jurisdiction even if a jurisdictional issue is not raised by the parties"). For the following reasons, we conclude that respondent waived her *Apprendi* claim by pleading guilty and that, even if she did not waive it, the EJJ statute does not violate *Apprendi*. Thus, we affirm respondent's conviction and sentence.

¶ 8 **BACKGROUND**

¶ 9 In the case at bar, the State filed a petition on November 20, 2009, for adjudication of wardship, charging attempted first degree murder and related charges of home invasion, armed robbery and aggravated battery. After hearing

the State's proffer of evidence, the trial court found on November 20, 2009, that probable cause existed for all counts of the wardship petition.

¶ 10 On January 11, 2010, the State filed a motion to transfer the case to adult court to permit prosecution of the minor as an adult or, in the alternative, to designate the case as an EJJ prosecution.

¶ 11 If a juvenile receives an EJJ prosecution designation and is found guilty, the EJJ prosecution statute requires a trial judge to impose two sentences: a juvenile sentence; and an adult criminal sentence that is stayed pending successful completion of the terms of the juvenile sentence. 705 ILCS 405/5-810(4) (West 2008).

¶ 12 On July 15, 2011, the trial court held a hearing on both the State's motions and concluded, first, that there was probable cause to support all counts in the wardship petition and, second, that the case should be designated as an EJJ prosecution.

¶ 13 Subsequent to the EJJ designation, respondent pled guilty on October 28, 2010, pursuant to a negotiated plea agreement. At the sentencing hearing on January 5, 2011, the trial court considered factors in aggravation and mitigation, and then sentenced respondent, pursuant to the plea agreement, to an indeterminate period of time with the Department of Juvenile Justice which would automatically terminate when she turned 18 years of age. Also, pursuant

to the plea agreement, the trial court sentenced respondent to a 12-year adult sentence which was stayed pending successful completion of her juvenile sentence.

¶ 14 A little more than a year later, on February 1, 2012, the State filed a petition to revoke the stay of respondent's adult sentence, alleging that respondent had committed a retail theft on January 10, 2012. After a hearing on the State's petition, the trial court revoked the stay. On August 30, 2012, the trial court denied respondent's motion to reconsider, and this appeal followed.

¶ 15 ANALYSIS

¶ 16 Respondent claims that the EJJ statute violates the due process clause and the principles of *Apprendi* and *Alleyne* because the statute requires a trial court to execute an adult sentence for juveniles who commit a new offense without a finding, by a jury and beyond a reasonable doubt, that the minor committed the new offense. At oral argument before this court, the State argued that we had jurisdiction to consider this claim, to the extent that respondent was arguing that the facts supporting the revocation of the stay had to be found by a jury and beyond a reasonable doubt. Since that is what respondent appears to be arguing, both parties agree that we have jurisdiction to hear this claim. However, even when the parties agree, an appellate court has an independent duty to consider its own jurisdiction. *Lewis*, 234 Ill. 2d at 36-37. For the

reasons discussed below, we conclude that respondent waived her *Apprendi* claim by pleading guilty and that, even if she did not, the statute does not violate *Apprendi* and due process.

¶ 17

I. Waiver

¶ 18

Our supreme court has held that a "defendant waived her sentencing challenges by pleading guilty to the offense with full knowledge that the court could impose an extended term sentence." *People v. Jackson*, 199 Ill. 2d 286, 294-95 (2002). Similarly, in the case at bar, respondent waived her sentencing challenges by pleading guilty to the offense with full knowledge that the court could execute her adult sentence, based on a preponderance finding and without a jury. Thus, respondent waived her *Apprendi* challenge by pleading guilty.

¶ 19

In *Jackson*, our supreme court held that, "[b]ecause defendant waived her *Apprendi* challenge, we need not reach the merits of [her] argument, nor need we address the State's arguments." *People v. Jackson*, 199 Ill. 2d 286, 293 (2002). Similarly, in the case at bar, since respondent waived her *Apprendi* challenge, we need not reach the merits of her argument, nor address the State's arguments.

¶ 20

II. Respondent's *Apprendi* Claim

¶ 21

Even if respondent did not waive her *Apprendi* challenge by pleading guilty, we do not find her *Apprendi* argument persuasive. Respondent argues

that the EJJ statute violates due process and the principles of *Apprendi v. United States*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. ___, 133 S.Ct. 2151 (2013), because it requires a trial court to execute an adult sentence for juveniles who commit a new offense without a jury first finding beyond a reasonable doubt that the minor actually committed the new offense which, in the case at bar, was retail theft.

¶ 22 Respondent acknowledges that the Illinois Supreme Court already rejected an *Apprendi* challenge to the EJJ statute in *In re M.I.*, 2013 IL 113776, but she tries to distinguish the *M.I.* case on the ground that respondent's case proceeded further than the case of the minor in *M.I.* In respondent's case, the stay of the adult sentence was revoked; whereas in *M.I.* the stay had not yet been revoked. *In re M.I.*, 2013 IL 113776, ¶ 1.

¶ 23 "Whether the EJJ statute violates *Apprendi* presents a question of law, which we will review *de novo*." *In re M.I.*, 2013 IL 113776, ¶ 39. " '[A]s this court has noted in the past, a challenge to the constitutionality of a statute may be raised at any time.' " *In re M.I.*, 2013 IL 113776, ¶ 39 (quoting *People v. McCarty*, 223 Ill. 2d 109, 122 (2006)).

¶ 24 "The *Apprendi* decision requires that 'any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.' " *In re M.I.*, 2013 IL 113776, ¶ 44

(quoting *Apprendi*, 530 U.S. at 490). In *Alleyne*, 570 U.S. ___, 133 S.Ct. at 2155, the United States Supreme Court held that "any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." In the case at bar, respondent waived her right to a jury and pled guilty to attempted first degree murder and received, pursuant to a negotiated plea agreement, a 12-year sentence for the commission of attempted first degree murder.

¶ 25 Respondent argues that, since the revocation of the stay is based on a finding by a trial court, by a preponderance of the evidence, that she committed a new offense (705 ILCS 405/5-810(6) (West 2010)), her sentence was, in effect, increased by 12 years without a jury making a finding beyond a reasonable doubt.

¶ 26 Respondent's criminal sentence is, and always has been, 12 years for the commission of attempted first degree murder. Because she was a juvenile and was fortunate enough to have her case designated as an EJJ prosecution instead of as an adult case, the already-existing 12-year sentence was stayed. Under the EJJ statute, after a minor pleads guilty, the trial court "impose[s]" both a juvenile sentence and "an adult criminal sentence," at the same time and as a result of the guilty plea. 705 ILCS 405/5-810(4) (West 2010). However, "the adult criminal sentence" is "stayed on the condition that the offender not violate the provisions of the juvenile sentence." 705 ILCS 405/5-810(4)(ii) (West

2010). Thus, respondent negotiated and agreed to a 12-year sentence which was never increased at any time. Instead, respondent lost the benefit of her stay by committing a second offense.

¶ 27 Since respondent's sentence was never increased, *Apprendi* does not apply. Our supreme court reached the same conclusion in *M.I.*, in language which respondent characterizes as mere *dicta*. In *M.I.*, our supreme court stated "for the purposes of *Apprendi*, the statutory maximum is not the juvenile sentence." *In re M.I.*, 2013 IL 113776, ¶ 46. This is because "juveniles have neither a common law nor a constitutional right to adjudication under the Juvenile Court Act [705 ILCS 405 (West 2012)]." *In re M.I.*, 2013 IL 113776, ¶ 46. See also *In re Christopher K.*, 348 Ill. App. 3d 130, 142 (2004) (rejecting respondent's argument that the procedure for lifting the stay of the adult sentence violated *Apprendi*, because it required the trial court to make a finding based upon a preponderance of the evidence), *rev'd on other grounds*, 217 Ill. 2d 348 (2005).

¶ 28 For the foregoing reasons, we are not persuaded by respondent's *Apprendi* arguments.

¶ 29 CONCLUSION

¶ 30 For the following reasons, we conclude that respondent waived her *Apprendi* claim by pleading guilty and that, even if she did not, the EJJ statute

¶ 31 does not violate *Apprendi*. Thus, we affirm the judgment and sentence.

¶ 32 Affirmed.