

No. 1-14-0324

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

In re Jonathan A., a Minor,)
Respondent-Appellant) Appeal from the Circuit Court of
(The People of the State of Illinois,)
Petitioner-Appellee,) Cook County.
v.)
Jonathan A.,) No. 13 JD 3286
Respondent-Appellant).) Honorable Stuart Katz,
Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** The mandatory minimum length of five years' probation for minors who have been adjudicated delinquent of forcible felonies does not violate constitutional principles. The minor's probation order is modified, however, to terminate on his 21st birthday.

¶ 2 After a trial, the court below adjudicated minor-respondent Jonathan A. to be a ward of the court for committing aggravated robbery and two other less serious crimes. The court placed

him on five years' probation. On appeal, respondent contends that: (1) the statute establishing a mandatory minimum sentence of five years' probation for minors who commit forcible felonies violates minors' rights to due process, equal protection of the law, and rights guaranteed by the Eighth Amendment to the United States constitution; and (2) the trial court erred by establishing a probation period which extends past the minor's 21st birthday. We affirm on the constitutional issues but modify the probationary period.

¶ 3

BACKGROUND

¶ 4 The State filed a petition for adjudication of delinquency alleging that the 16-year-old minor-respondent, Jonathan A., committed the forcible felony of aggravated robbery, by knowingly taking a cellular telephone, purse and currency from another person, A.J., on July 31, 2013, through the use of force or threatening the imminent use of force (720 ILCS 5/18-1(b) (West 2012)). The State also charged respondent with robbery and theft from person under the same set of operative facts.

¶ 5 At trial, A.J. testified that two individuals, one of whom was respondent, exited a motor vehicle and approached her with pointed guns as she was walking on a public street. The individuals took her purse, which contained cash and a cellular telephone, and drove away. She notified the police, and the police took her to a location a few blocks away where she observed police cars and three men sitting handcuffed on a curb, with a fourth man being removed from the bar by an officer. She identified them immediately as the offenders. She stated that she saw an officer recover her purse from the rear seat of the car. The officers later returned her telephone to her.

¶ 6 Two Chicago police officers involved in the apprehension also testified at trial. Their testimony was consistent with the victim's. One officer discovered what he thought were

handguns in the suspects' vehicle, but realized only upon close inspection that they were pellet or BB guns.

¶ 7 The court found that the evidence of respondent's guilt was "overwhelming." Although the probation officer recommended 18 months' probation, the court noted that the mandatory minimum probation period was five years. The court adjudicated respondent to be a ward of the court, merged all the counts into the aggravated robbery count, and sentenced him to five years' probation, subject to various conditions, and to perform 40 hours of community service. This appeal followed.

¶ 8 ANALYSIS

¶ 9 On appeal, respondent suggests that the mandatory minimum probation period for juveniles who commit forcible felonies (705 ILCS 405/5-715(1) (West 2012)) is unconstitutional because: (1) it violates his right to equal protection and due process because it treats minors more harshly than adult offenders found guilty of the same crime and the difference is not rationally related to any legitimate state goal; (2) it is not rationally related to the Juvenile Court Act's stated goals; and (3) it violates rights guaranteed by the Eighth Amendment and the due process clause by failing to allow for individualized consideration of the minor being sentenced. He also claims that because he was over 16 when sentenced, the five-year probation order impermissibly extends past his 21st birthday.

¶ 10 A series of three recent United States Supreme Court decisions provides the background for respondent's constitutional claims: *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); and *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012).

¶ 11 In *Roper*, the 17-year-old defendant was tried and convicted as an adult and sentenced to death. The issue before the Court was whether the minor defendant's death penalty sentence

violated the Eighth Amendment's prohibition of cruel and unusual punishment. The *Roper* Court held that the Eighth and Fourteenth Amendments prohibit a sentence of death on defendants who were under the age of 18 at the time of the commission of their crime. *Roper*, 543 U.S. at 578.

¶ 12 The 16-year-old defendant in *Graham* was charged as an adult with attempted robbery. He pled guilty to armed burglary with assault and battery and attempted armed robbery. He was initially sentenced to concurrent three-year terms of probation, but when he violated his probation by committing a home invasion robbery, possessing a firearm, associating with others engaged in criminal activity, and attempting to avoid arrest, the trial court revoked his probation and sentenced the defendant to what, in effect, was life in prison without parole. The *Graham* Court held that the Eighth Amendment does not permit a sentence of life without parole for a juvenile criminal who does not commit a homicide. *Graham*, 560 U.S. at 79.

¶ 13 *Graham* also established that children are considered to be constitutionally different from adults for purposes of sentencing because they have diminished culpability and greater prospects for reform. *Id.* at 68. The Court explained, "because juveniles have lessened culpability they are less deserving of the most severe punishments." *Id.* "An offender's age is relevant to the Eighth Amendment," and, therefore, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* at 76.

¶ 14 In *Miller*, the most recent of the three cases, the Court considered two prosecutions in which 14-year-old defendants received sentences of life in prison without parole following murder convictions. *Miller*, 567 U.S. ____, 132 S. Ct. at 2460. The *Miller* court held that mandatory life imprisonment without parole for juvenile offenders violates the Eighth Amendment's ban on cruel and unusual punishment. *Miller*, 567 U.S. ____, 132 S. Ct. at 2475.

“*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *Id.* In concluding that “youth matters for purposes of meting out the law’s most serious punishments,” the *Miller* court recognized, however, that “ ‘a sentence which is not otherwise cruel and unusual does not becom[e] so simply because it is mandatory.’ ” *Miller*, 567 U.S. ___, 132 S. Ct. at 2470-71 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 995 (1991)).

¶ 15 The constitutionality of a statute raises an issue of law which we review *de novo*. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 323 (1996). All statutes have a strong presumption of constitutionality. To defeat this presumption the challenging party must “clearly establish” the alleged constitutional violation. *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005). We must find a statute to be constitutional if “reasonably possible.” *In re Jonathon C.B.*, 2011 IL 107750, ¶ 79. The equal protection clause “guarantees that similarly situated individuals will be treated in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently.” *Id.* ¶ 116. Both parties here agree that the lenient 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). Under this test, we determine simply “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.” *Id.* Thus, the statute will be upheld if there is any conceivable set of facts to show a rational basis for it. *Id.* at 518-19.

¶ 16 We need not reach the rational basis inquiry, however, unless the party proves he or she is similarly situated to the comparison group. *People v. Masterson*, 2011 IL 110072, ¶ 25.

Without that demonstration, the equal protection claim automatically fails. *People v. Whitfield*, 228 Ill. 2d 502, 513 (2007). The trio of United States Supreme Court cases cited by respondent are inapposite, and not merely because they all dealt with juveniles who were prosecuted in the *adult* criminal system. The *Miller* court emphasized: “*Roper* and *Graham* establish that children are constitutionally *different* from adults *for purposes of sentencing*.” (Emphasis added.) *Miller*, 567 U.S. at ___, 132 S. Ct. at 2464.

¶ 17 Additionally, because the respondent was prosecuted as a juvenile, the court below was not mandatorily required to sentence him to a five-year probationary term after finding him guilty of aggravated robbery. After considering the post-sentencing reports and the “best interests of the public,” it could have discretionarily refused to make the respondent a ward of the court and closed the case. 705 ILCS 405/5-620 (West 2012); 705 ILCS 405/5-705(1) (West 2012). It could have also taken a harsher path and committed him to the Department of Juvenile Justice. 705 ILCS 405/5-710(b) (West 2012); 705 ILCS 405/5-750(1) (West 2012). The mandatory minimum length of the probationary period did not present the “take it or leave it” scenario which respondent suggests. The wide range of sentencing options gave the court considerable discretion and allowed it to make the same type of individualized analysis which the *Miller* court found was particularly appropriate in cases involving juvenile defendants. Accordingly, the five-year probationary term does not run afoul of the principles of *Roper* and its progeny.

¶ 18 Recently, another panel of this court rejected similar challenges to the mandatory minimum probationary period. *People v. J.F.*, 2014 IL App (1st) 123579. The *J.F.* court first rejected challenges to the sentencing structure based on equal protection, finding that the minor respondent was not similarly situated to an adult offender because “juveniles adjudicated

delinquent under the Juvenile Court Act are not similarly situated to adult offenders because they are not subject to adult sentencing.” *Id.* ¶ 16 (citing *Jonathon C.B.*, 2011 IL 107750, ¶¶ 117-18). The court also noted that if an adult robber is convicted of a Class 2 felony, the adult, unlike a juvenile, is subject to a minimum three-year prison term and its corresponding deprivation of personal liberty. *Id.* (citing 730 ILCS 5/5-4.5-35(a) (West 2010)). The *J.F.* court found that the one-year disparity in possible probationary terms was valid, partially because an adult offender can be incarcerated while a juvenile cannot. Also, the court noted, adults must serve a two year supervisory term upon release. *Id.* (citing 730 ILCS 5/5-4.5-35(l) (West 2010)). Respondent in this case was not subject to either of these possible penalties. Accordingly, respondent here is not similarly situated to an adult charged with the same crime, and the equal protection claim thus fails. We also note, on the issue of rational basis, that the legislature could rationally determine that juveniles, due to their young age, might require a longer period of supervision than adults, to better enable them to use youth-oriented programs and to prevent recidivist conduct during their impressionable teenage years.

¶ 19 Similarly, we do not find merit in respondent’s second claim that the mandatory sentence violates constitutional principles because it runs contrary to the stated purposes of the juvenile justice system. Our supreme court has spoken regarding that characterization, noting: “[t]he policy that seeks to hold juveniles accountable for their actions and to protect the public does not negate the concept that rehabilitation remains a more important consideration in the juvenile justice system than in the criminal justice system and that there are still significant differences between the two ***.” *People v. Taylor*, 221 Ill. 2d 157, 170 (2006). The *J.F.* court relied on *Taylor* to reject the claim made here that the mandatory minimum probationary period violates the juvenile’s right to equal protection of the law because the mandatory term is neither

rationally related to the rehabilitative goals of the Juvenile Court Act nor to the “individualized assessment” sentencing discretion afforded to judges in juvenile courts. *J.F.*, 2014 IL App (1st) 123579, ¶ 16. The court found that proceedings under the Juvenile Court Act are not primarily criminal in nature even though the Act’s original purposes have been augmented by including “juvenile accountability and public safety objectives.” *Id.* We find no reason to depart from the *J.F.* court’s well-reasoned holdings on either of these two constitutional claims.

¶ 20 The respondent also raises a claim under the Eighth Amendment, which, as applied to the states by the Fourteenth Amendment, prohibits cruel and unusual punishments. He claims that it is impermissible to automatically subject minors to a minimum probation term longer than that available to adults without permitting judges to consider the juvenile’s individual characteristics. Because this claim significantly overlaps with the equal protection claim we have addressed above, we adopt our analysis therein with respect to this additional claim. Additionally, we note that our supreme court has determined that the Eighth Amendment does not apply to juvenile proceedings initiated by a petition for an adjudication of wardship because the proceedings are neither “criminal in nature” nor do they “inflict punishment” within the ambit of that amendment. *In re Rodney H.*, 223 Ill. 2d 510, 521 (2006).

¶ 21 Respondent also argues that the mandatory probationary period violates his right to due process of law. However, he does not develop this as a stand-alone basis for reversal. Instead, he presents it as part of his equal protection and Eighth Amendment analysis, wherein he relies on *Roper*, *Miller*, and *Graham* for the proposition that judges in juvenile cases must be permitted discretion in sentencing. However, as we have found above, the court below did have significant discretion in sentencing and could have imposed a much more severe sentence in this case.

Thus, we cannot find that the cases cited support a finding that the sentence violated respondent's due process rights.

¶ 22 Finally, respondent argues that the trial court was unauthorized to impose a probationary period that ran past his 21st birthday, because juvenile court jurisdiction ends at that point. 705 ILCS 405/5-755(1) (West 2012); *In re Jaime P.*, 223 Ill. 2d 526, 540 (2006) (holding that juvenile probation must end by 21st birthday). Respondent turns 21 on February 11, 2018. However, his probation began on December 11, 2013 and was set to terminate five years later on December 11, 2018, resulting in an excess period of nine months. The State agrees, as do we, that respondent's probation must be shortened to terminate on his 21st birthday. Pursuant to our authority under Supreme Court Rule 615 (Ill. S. Ct. R. 615)), we modify the probationary period to terminate on February 11, 2018.

¶ 23

CONCLUSION

¶ 24 Accordingly, we affirm the trial court's sentencing order but modify the probationary period to terminate on February 11, 2018.

¶ 25 Affirmed as modified.