

2014 IL App (2d) 121045-U
No. 2-12-1045
Order filed February 27, 2014

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
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-1832
)	
JUAN VARGAS,)	Honorable
)	Allen M. Anderson,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* The excluded-jurisdiction provision of the Juvenile Court Act, which subjected defendant to adult trial and sentencing, does not violate the eighth amendment or due process, as it does not mandate the death penalty or life imprisonment.
- ¶ 2 Following a jury trial, defendant, Juan Vargas, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) and sentenced to 31 years' imprisonment. He appeals, contending that the excluded-jurisdiction provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130(1)(a) (West 2006)), requiring that he be tried as an adult, violates the eighth amendment (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois

Constitution (Ill. Const. 1970, art. I, § 11), as well as due process (U.S. Const., amend. V; Ill. Const. 1970, art. I, § 2). Following established precedent, we disagree and affirm.

¶ 3 Defendant, who was 16 years old at the time, was indicted for the murder of George Caro. Pursuant to the excluded-jurisdiction provision, he was tried in adult court.

¶ 4 Evidence at trial showed that in the early morning of September 4, 2005, defendant was among a group gathered at Carmen Ortiz's Aurora home. Defendant, as well as several others present, were members of the Latin Kings, and apparently they had a problem with Caro. It was decided that Caro should be "violated," or given a physical beating. Accordingly, defendant and three other men beat Caro on a nearby sidewalk while two others acted as lookouts. When Caro lost consciousness, the group carried him to a yard where he would not be visible to passersby. At 4 a.m., a neighborhood resident saw someone lying on the ground and called police, who found Caro's body lying in the yard.

¶ 5 At sentencing, the prosecutor noted that the trial court could consider defendant's young age in mitigation. The court sentenced defendant to 31 years' imprisonment. Defendant timely appeals.

¶ 6 Defendant contends that the excluded-jurisdiction provision, which automatically subjects 16- and 17-year-olds accused of certain crimes, including murder, to trial in adult court, and the full range of punishments available there, violates the eight amendment. U.S. Const., amend. VIII. He contends that automatically subjecting a juvenile to the full range of adult penalties, without any individualized consideration of the juvenile's particular characteristics or the circumstances of the crime, constitutes cruel and unusual punishment. (Defendant also contends that the provision violates the Illinois constitution's proportionate penalties clause, but does not make a separate argument in that regard.)

¶ 7 Defendant acknowledges that several appellate court decisions have rejected this contention. He contends, however, that those decisions should be reexamined in light of Supreme Court decisions holding that inflicting harsh punishments on juvenile offenders without individualized consideration of both the juveniles' personal traits and the circumstances of the offenses violates the eighth amendment.

¶ 8 The eighth amendment prohibits cruel and unusual punishment. *Id.* In *Roper v. Simmons*, 543 U.S. 551, 575 (2005), the Court held that imposing the death penalty on juvenile defendants violated the eighth amendment. In *Graham v. Florida*, 560 U.S. 48, 75 (2010), the Court held that automatically sentencing a juvenile to life without the possibility of parole for a nonhomicide crime was unconstitutional. Most recently, in *Miller v. Alabama*, 567 U.S. ___, ___, 132 S. Ct. 2455, 2475 (2012), the Court extended these holdings, ruling that automatically sentencing a juvenile to life-without-parole, even for a homicide, violated the eighth amendment. The Court expressed concern that such mandatory penalties “preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at ___, 132 S. Ct. at 2467.

¶ 9 As defendant acknowledges, Illinois courts have refused to extend *Roper*, *Graham*, and *Miller* to invalidate provisions of the Act. Recently, in *People v. Harmon*, 2013 IL App (2d) 120439, we rejected the argument that *Roper*, *Graham*, and *Miller* mandated a finding that the exclusive-jurisdiction provision of the Act (705 ILCS 405/5-120 (West 2012)) violated the eighth amendment. In doing so, we stated the following:

“*Graham*, *Roper*, and *Miller* stand for the proposition that a sentencing body must have the chance to take into account mitigating circumstances before sentencing a juvenile to the ‘harshest possible penalty.’ [Citation.] The harshest possible penalties involved in

those cases, *i.e.*, the death penalty and life imprisonment without the possibility of parole, are simply not at issue here. See *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 51 (“[T]he Supreme Court in *Roper*, *Graham*, and *Miller* was only concerned with the death penalty and life without the possibility of parole, which are the two most severe punishments allowed under the United States Constitution.”). Further, the trial court was able to consider defendant’s age, as well as other circumstances, in determining what sentence within the range to impose. Also, as the State notes, the *Miller* Court addressed the subject of automatic transfer statutes, which are similar to the exclusive-jurisdiction statute at issue here, and did not find them to be unconstitutional.” *Harmon*, 2013 IL App (2d) 120439, ¶ 54.

¶ 10 *Harmon* followed *Pacheco*, which held that the excluded-jurisdiction provision did not run afoul of the eighth amendment. The court reasoned that the provision does not actually impose any punishment, but merely dictates the forum where the juvenile’s guilt will be decided. *Pacheco*, 2013 IL App (4th) 110409, ¶ 55. See also *People v. Willis*, 2013 IL App (1st) 110233, ¶ 53; *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 19; *People v. Salas*, 2011 IL App (1st) 091880, ¶ 66.

¶ 11 We find no reason to depart from *Harmon* or the precedents on which it relied. As in *Harmon*, the trial court *was* able to consider defendant’s age and individual characteristics. In fact, the prosecutor acknowledged that the court could consider defendant’s age as a mitigating factor, and we presume that it did so (*People v. Flores*, 404 Ill. App. 3d 155, 158 (2010)). In doing so, it selected a penalty in the middle of the 20-to-60-year range. Thus, as in *Harmon*, the concerns about automatically imposing the harshest possible penalties on a juvenile are simply not present here.

¶ 12 Defendant alternatively contends that the automatic-transfer provision violates due process. He maintains that due process requires an individualized decision whether to transfer a particular juvenile offender to adult court. However, he cites no case so holding, and he acknowledges that the Illinois Supreme Court has specifically rejected the contention that the excluded-jurisdiction provision violates due process. *People v. J.S.*, 103 Ill. 2d 395, 404-05 (1984); see also *Willis*, 2013 IL App (1st) 110233, ¶ 48; *Pacheco*, 2013 IL App (4th) 110409, ¶ 63.

¶ 13 Defendant again cites to the policy concerns underlying *Miller*. As noted, *Miller*, *Roper*, and *Graham* deal only with the imposition of the death penalty or natural-life imprisonment on juvenile offenders. They do not mandate any particular process for the imposition of lesser penalties and, in any event, we are bound by our supreme court's decision in *J.S.*

¶ 14 Defendant suggests that we hold this case in abeyance until the supreme court decides *Pacheco*. We decline to do so. Given the consistent precedent from both the supreme and appellate courts rejecting defendant's arguments, we need not await the supreme court's decision in *Pacheco* for guidance on this issue.

¶ 15 The judgment of the circuit court of Kane County is affirmed.

¶ 16 Affirmed.