FOURTH DIVISION
June 30, 2016

No. 1-16-0521

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Tyler O., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	15 JD 3902
	)	
TYLER O., a Minor,	)	Honorable
	)	Stuart F. Lubin,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's equal protection rights were not violated by section 5-715(1) of the Juvenile Court Act where the Act requires a minimum five-year term of probation for juveniles who have been adjudicated delinquent of forcible felonies, while the term of probation for other juveniles who have been adjudicated delinquent of lesser crimes are not subject to a mandatory minimum five-year term of probation; therefore, respondent's sentence is affirmed.

¶ 2 Respondent Tyler O. was convicted of armed robbery and sentenced to five years of probation pursuant to section 5-715(1) of the Juvenile Court Act (the Act). 705 ILCS 405/5-715(1) (West 2012). This section of the Act mandates a minimum sentence of five years of probation for all juvenile wards of the court who have been adjudicated delinquent of first-degree murder, a Class X felony or a forcible felony. *Id*. On appeal, respondent challenges his five-year probation sentence arguing that section 5-715(1) of the Act violates his equal protection rights guaranteed by the U.S. Constitution and the Illinois Constitution where juveniles convicted of lesser offenses are not subject to a mandatory minimum five-year term of probation and a sentence of probation for those minors can be terminated at any time by the court. For the reasons below, we affirm respondent's sentence.

¶ 3 Background

¶ 4 On December 15, 2015, the State filed a petition for adjudication of wardship against Tyler O., charging him with armed robbery, robbery and two counts of theft, for taking the iPhone of UIC student Kevin McDonald in the evening of December 4, 2015. Tyler was tried on January 27, 2016, and found guilty of armed robbery.

¶ 5 At trial, McDonald testified that at 7:20 p.m. on December 4, 2015, he was walking toward the UIC campus on the Peoria Street Bridge. As he walked across the bridge, someone called out to him. He turned and saw a person waiving to him. He walked over to the person, a white male who he did not recognize. The individual was wearing a bandana over his mouth and lower face.

¶ 6 The individual told McDonald that his sister was supposed to pick him up, but his phone battery was dead. The individual then asked to use McDonald's phone to call his sister. McDonald wanted to help, so he handed his iPhone 6 over to the individual.

¶ 7 The individual made a brief call on the phone. After hanging up, the individual told McDonald that the number had not been his sister's, then motioned to another white male who was also wearing a bandana over his face. The second individual, who was later identified as Tyler, walked over, and the two spoke briefly about the telephone number. The first individual, who was still in possession of the telephone, attempted to make another call, then told McDonald that the call went straight to voicemail. McDonald then asked for his phone back. The second individual pulled out a knife and said, "How about this?" McDonald retreated, and the two individuals absconded with the phone. McDonald called the UIC police to report the incident.

¶ 8 Officer Hochbaum testified regarding the investigation he conducted, which ultimately concluded in Tyler's arrest.

¶ 9 CTA investigator Frank Higgins testified how he examined CTA security camera footage to pinpoint Tyler's address and create the exhibits entered into evidence by the State, including pictures that showed the two individuals believed to have taken McDonald's cell phone. McDonald was unable to identify the two individuals who had taken his cell phone because they were masked, but he did recognize their clothing in the pictures created by Higgins.

¶ 10 Kelly Lancer, Tyler's mother, testified that she did not remember her answers to questions Hochbaum asked her during his investigation.

¶ 11 The State used Hochbaum to impeach Lancer. Hochbaum testified that Lancer admitted that one of the individuals in the pictures was Tyler. She also identified the other individual as Tom Kaniewski, a friend of Tyler's. Lancer told Hochbaum that Tyler had access to her Ventra card, confirming information that Higgins had extracted from the CTA's computer system.

¶ 12 The State rested. The defense did not present any witnesses or evidence. After denying the defense's motion for acquittal, the court found Tyler guilty of armed robbery.

¶ 13 At the sentencing hearing, based on his social investigation, the probation officer recommended the minimum sentence for respondent's offense—five years of probation. The sentencing statute provides a minimum five-year term of probation for minors, like respondent, who have been adjudicated delinquent for committing a forcible felony:

> "The period of probation or conditional discharge shall not exceed 5 years or until the minor has attained the age of 21 years, whichever is less, except as provided in this Section for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony or a forcible felony. The juvenile court may terminate probation or conditional discharge and discharge the minor at any time if warranted by the conduct of the minor and the ends of justice; provided, however, that the period of probation for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony, or a forcible felony shall be at least 5 years." 705 ILCS 405/5-715(1) (West 2012).

Further,

> "'Forcible felony' means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual." 720 ILCS 5/2-8 (West 2012).

The probation officer noted that Tyler willingly participates in and enjoys school; at the time, he was enrolled in school while in post-trial detention, where he had a "good report." The probation officer stated that Tyler used cannabis, but was willing to participate in substance abuse treatment and cooperate with any drug and counseling recommendations. The probation officer identified Tyler's goals as going back to school "on a regular basis," and participating in "any type of treatment" with the probation department. The probation officer believed that Tyler "should be given an opportunity on probation due to the benefits he has in [his] school that are currently in place and he's willing to work with the [probation] department." In addition, the following evidence was presented at the sentencing hearing: respondent's mother and father both had extensive criminal histories; respondent was exposed to physical domestic abuse between his mother and father at a very young age; respondent's mother described him as "very angry, aggressive, sad, irritable and defiant"; respondent had been held in juvenile detention on two prior occasions; respondent's IEP indicated that he suffers from emotional disorder, anxiety and Oppositional Defiant Disorder (ODD); and respondent had a number of reported incidents at school, a history of cutting himself and, although he denied it, there was some evidence to indicate that he was gang involved.

¶ 14 The court adopted the probation officer's recommended sentence, five years of probation, with various attendant conditions. For the reasons below, we affirm respondent's sentence of five years of probation.

¶ 15 Analysis

¶ 16 Respondent argues that section 5-715(1) of the Juvenile Court Act (the Act), which was enforced in this case and which mandates a minimum sentence of five years of probation for all juvenile wards of the court who have been adjudicated delinquent of first-degree murder, a Class

X felony or a forcible felony (705 ILCS 405/5-715(1) (West 2012)), regardless of the circumstances of the offense or the individual juvenile's personal characteristics, is contrary to the stated purposes of the Act and, accordingly, violates his equal protection rights. Respondent asserts that "section 5-715(1) of the Act violates equal protection because the legislature's distinction between juvenile wards who have been adjudicated delinquent of forcible felonies and juvenile wards who have been adjudicated delinquent of other offenses is not rationally related to any of the four expressed purposes of the Act." Specifically, respondent argues that "the legislature's distinction between juvenile wards who have been adjudicated delinquent of forcible felonies and those who have been adjudicated delinquent of other offenses fails to advance" the purposes of the Act because a mandatory minimum of five years of probation: (1) does not serve the goal of protecting citizens from juvenile crime; (2) is contrary to the Act's purpose of holding each juvenile offender directly accountable for his or her acts; (3) conflicts with the Act's purpose of providing individualized assessments of each juvenile; and (4) does not further the goal of providing due process based on the Supreme Court's precedent in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 130 S. Ct. 2011 (2012), as well as *State v. Lyle*, 2014 WL 3537026 (July 18, 2014).

¶ 17 The State responds by arguing that respondent failed to demonstrate how he is similarly situated to juveniles who commit nonforcible felonies and, in the alternative, assuming *arguendo* he is similarly situated to juveniles who commit nonforcible felonies, five years of mandatory probation is rationally related to the Act's goals and is constitutional. With respect to respondent's argument that the statute does not further the goal of due process, the State argues that not only was respondent the ideal candidate for five years mandatory probation, but the case law cited by respondent, namely *Miller*, *Roper*, *Graham* and *Lyle*, does not support his argument

because those cases dealt with juveniles prosecuted in the adult criminal system rather than under the Act and juveniles that had received the most severe criminal punishments.

¶ 18 Whether the Act violates respondent's constitutional rights is a question of law, which we review *de novo.* *Jacobson v. Department of Public Aid,* 171 Ill. 2d 314, 323 (1996). We interpret a statute as constitutional if "reasonably possible." *In re Jonathon C.B.,* 2011 IL 107750, ¶ 79. The Supreme Court of Illinois routinely recognizes that statutes have a strong presumption of constitutionality. *People v. Sharpe,* 216 Ill. 2d 481, 486-87 (2005). To defeat this presumption the party challenging must "clearly establish" the alleged constitutional violation. *Id.* at 487.

¶ 19 The equal protection analysis is the same under either the Illinois or United States Constitution. *People v. Shephard,* 152 Ill. 2d 489, 499 (1992); U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2. 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." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 116. This guarantee allows the legislature to create distinctions between different groups of people as long as that distinction avoids "criteria wholly unrelated to the legislation's purpose." *Id.* The parties here agree that respondent's equal protection claim is governed by the rational basis test. This test "simply inquires 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.* The court will not make this rational basis inquiry, however, until the movant proves he or she is similarly situated to the comparison group. *People v. Masterson,* 2011 IL 110072, ¶ 25 ("As a threshold matter, though, it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group."). If a movant cannot meet this

preliminary threshold, the equal protection claim fails. *People v. Whitfield*, 228 Ill. 2d 502, 513 (2007).

¶ 20 Here, we find that respondent has failed to meet the preliminary threshold of an equal protection claim because he cannot show that he and other juvenile offenders who commit forcible felonies and juvenile offenders who commit nonforcible felonies are similarly situated. Preliminarily, our supreme court has previously rejected similarly situated arguments that compare two groups of juvenile offenders. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 117 (finding that although Juvenile Court Act only provided jury trial for those juvenile offenders subject to extended juvenile jurisdiction, habitual offender, or violent offender proceedings, this distinction did not violate equal protection rights of juvenile felony sex offenders because they were not subject to "mandatory incarceration or the possibility of an adult sentence"); *City of Urbana v. Andrew N.B.*, 211 Ill. 2d 456, 466-68 (2004) (Juvenile Court Act provision that allows municipalities to choose whether to prosecute juveniles for ordinance violations under Act or municipal code, which does not provide juveniles with counsel or other procedural protections, is constitutional); *In re G.O.*, 191 Ill. 2d 37, 43 (2000) (finding juveniles charged with first degree murder were "no longer subject to a mandatory sentencing requirement" and, thus, did not need to be afforded jury trial right); *People v. P.H.*, 145 Ill. 2d 209, 231 (1991) (juveniles subject to transfer who had prior felony adjudications and were currently charged with crime committed in furtherance of gang activity were not similarly situated to juveniles charged with offense warranting automatic transfer). Further, because the five-year term of probation at issue here is based on the seriousness of the offense respondent committed, respondent, who was adjudicated delinquent of armed robbery, a forcible felony, is not similarly situated to juveniles adjudicated delinquent of nonforcible felonies. See *People v. J.F.*, 2014 IL App (1st) 123579, *appeal denied*

(Ill. 2014) (juvenile adjudicated delinquent of the forcible felonies of robbery, aggravated battery and battery could not establish that she was similarly situation to juveniles who commit nonforcible felonies). "Equal protection is not offended when dissimilar groups are treated differently." *P.H.*, 145 Ill. 2d at 231. Moreover, by its nature, a forcible felony is dangerous to human life, whereas a nonforcible felony would not ordinarily involve any danger to human life. See *People v. Belk*, 203 Ill. 2d 187, 193 (2003); *People v. Lowery*, 178 Ill. 2d 462, 468 (1997) ("It is the inherent dangerousness of forcible felonies that differentiates them from nonforcible felonies."). Because we find that respondent failed to show how he is similarly situated to juveniles who commit nonforcible felonies, his equal protection claim fails.

¶ 21 Respondent argues that we should abandon this preliminary threshold test of finding a respondent is similarly situated to the comparison group; however, our supreme court has made clear that: "As a threshold matter, though, it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group." *Masterson*, 2011 IL 110072, ¶ 25. Nevertheless, even if we assume *arguendo* that respondent could somehow demonstrate that he is similarly situated to juveniles who commit nonforcible felonies, we would find that section 5-715(1)'s five-year minimum probation mandate for juveniles who commit forcible felonies is rationally related to the Act's stated purposes. The rational basis standard requires only that the classification reasonably further a legitimate governmental interest. *P.H.*, 145 Ill. 2d at 229. Under that standard, a challenged classification may be invalidated only if it is arbitrary or bears no reasonable relationship to the pursuit of a legitimate State goal. *Id*.

¶ 22 Section 5-101 of the Act contains the legislature's purpose and policy for enacting the Act:

"§ 5-101. Purpose and policy.

(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 2012).

"The purpose and policy section, quoted above, was amended effective January 1, 1999, and our supreme court has acknowledged that this amendment represented a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and of holding juveniles accountable for violations of the law. [Citation.]" (Internal quotation marks omitted.) *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 148.

¶ 23 Respondent acknowledges that this court has considered the argument he presents in this appeal—that section 5-715(1) of the Act violates his equal protection rights—and has not found that argument to be persuasive. See *J.F.*, 2014 IL App (1st) 123579, ¶¶ 10-16 (rejecting a minor defendant's argument that the five-year mandatory probation requirement violates equal protection by drawing a distinction between forcible and nonforcible juvenile offenders); *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 149 ("we find no merit in respondent's claim that drawing a distinction between forcible and nonforcible offenders does not further the Act's rational purpose of protecting the public and holding juveniles accountable."). Instead, respondent argues that these cases were wrongly decided. However, having reviewed this issue again, we see no reason to depart from our recent precedent.

¶ 24 We find that imposing a mandatory minimum five-year probation sentence against a juvenile who commits a forcible felony, *i.e.* a felony that is dangerous to human life, is rationally related to the stated purposes of the Act, especially to the purposes of protecting citizens from juvenile crime, rehabilitating the juvenile, preventing further delinquent behavior, and holding juvenile offenders accountable for their actions. See 705 ILCS 405/5-101 (West 2012). As such, not only is respondent not similarly situated to juveniles who commit nonforcible felonies, but we also find that section 5-715(1) of the Act is rationally related to the Act's stated purpose and policy.

¶ 25 Respondent argues that the difference in treatment of juveniles who commit forcible felonies and juveniles who commit nonforcible felonies pursuant to section 5-715(1) of the Act fails to individually assess juveniles in violation of *Miller*, *Roper*, and *Graham*, as well as *Lyle*. However, we note that because *Roper*, *Graham* and *Miller* all dealt with juveniles being sentenced as adults and being sentenced to the most severe punishments—the death penalty and life without the possibility of parole—we do not see how these cases have any bearing here where respondent was adjudicated under the Act and was merely sentenced to a five-year probation sentence. Furthermore, the ruling in *Lyle* was based on the Iowa constitution and, therefore, is not binding on this court. As such, we affirm respondent's sentence under section 5-715(1) of the Act of five years of probation.

¶ 26 We recognize that respondent cites *Jacobson* for the proposition that the statutory purpose of the statute controls the equal protection clause analysis. However, since we have already found that section 5-715(1) of the Act furthers the purpose and policy of the Act, we find that case to be distinguishable from this case. See *Jacobson*, 171 Ill. 2d 314 (1996) (holding the statutory language at issue was not rationally related to the legislature's stated goals).

¶ 27 Conclusion

¶ 28 For the reasons above, we affirm respondent's sentence of five years of probation.

¶ 29 Affirmed.