

NOTICE  
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2016 IL App (5th) 130561-U

NO. 5-13-0561

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 09-CF-346
	)	
MARNEZ CRAWFORD,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Welch and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant's sentence was not constitutionally disproportionate to that received by his codefendant, we affirm the denial of his postconviction petition. Where defendant did not establish that his sentencing in adult court was in violation of the U.S. and Illinois Constitutions, we affirm his sentence. Where the State was not statutorily required to request an adult sentencing hearing for defendant, we affirm his sentence.

¶ 2 Defendant, Marnez Crawford, and his cousin, C.T., committed an armed robbery when both were 16 years of age. Defendant held a gun on his robbery victims, while his cousin removed a wallet from a victim's pocket. Both minors were charged with armed robbery with a firearm, a Class X felony that mandated that they be tried as adults. Defendant ultimately reached a plea agreement, and pled guilty to armed robbery with a

dangerous weapon. He was sentenced to prison for 15 years. Defendant's cousin was ultimately adjudicated a delinquent minor for simple robbery and received probation. Defendant appeals the denial of his postconviction petition, arguing that his sentence was constitutionally disproportionate to his cousin's sentence; that his sentence violated clauses of the United States and Illinois Constitutions because he was convicted of a lesser charge that would not require a mandatory transfer from juvenile to adult court; and that his adult criminal sentence should be vacated because the State neglected to request a hearing to have him sentenced in adult court. For the reasons that follow, we affirm.

¶ 3

#### FACTS

¶ 4 In March 2009, defendant Marnez Crawford and his cousin, C.T., were together in a Belleville park. Both boys were 16 years old. The boys approached a group of two men and two women in the park with the intent to rob them. Defendant had a weapon, told the group to give C.T. their money, and threatened to shoot one of the victims. C.T. reached into one of the victim's pockets and removed a wallet. Thereafter, defendant and C.T. fled the scene.

¶ 5 Defendant spoke to the police within the week after the robbery and admitted his participation. The State charged defendant and C.T. each with two counts of armed robbery with a firearm pursuant to section 18-2(a)(2) of the Criminal Code of 1961 (720 ILCS 5/18-2(a)(2) (West 2006)), a Class X felony. Because of the classification of the criminal offense charged and the fact that both boys were at least 15 years of age when the crimes were committed, defendant and C.T. were not eligible to be in juvenile court,

and their cases were transferred to adult court for trial. 705 ILCS 405/5-130(1)(a)(iv) (West 2006).

¶ 6 Defendant's attorney requested that the case be transferred to juvenile court, arguing that the mandatory transfer statute was unconstitutional and subjected juveniles to a mandatory transfer to adult court without a hearing. He further argued that the juveniles would be sentenced as adults without any analysis of their mental culpability. The trial court denied defendant's motion.

¶ 7 Shortly after the trial court denied the motion, defendant and the State reached a plea agreement. By the terms of the agreement, defendant would plead guilty to two reduced counts of armed robbery with a dangerous weapon, and in exchange the State agreed to seek no more than two concurrent 15-year terms of imprisonment. Defendant pled guilty as agreed, and he was sentenced to the two concurrent 15-year terms on September 30, 2010.

¶ 8 On January 26, 2011, defendant filed a *pro se* motion for reduction of sentence. He argued that his sentence should be reduced because he did not have a criminal record, and because he had faithfully complied with electronic monitoring for 14 months. The motion to reconsider was filed more than 30 days after the date of sentencing, and therefore, the trial court no longer had jurisdiction to hear the motion. 735 ILCS 5/2-1202(c), (e) (West 2006).

¶ 9 On March 4, 2011, defendant filed a *pro se* motion to withdraw his guilty plea and to vacate his sentence. In this motion, he argued that his attorneys failed to explain the nature of the case and forced him to accept the plea bargain. Additionally, defendant

contended that he was not mentally competent to enter a plea because he was a juvenile. He filed a notice of appeal at the same time. On March 7, 2011, the trial court entered its order declining to hear his motion on the same jurisdictional basis. This court dismissed defendant's appeal on April 27, 2011, because he had not filed a motion to withdraw his guilty plea and vacate the judgment within 30 days of sentencing. Ill. S. Ct. R. 604(d) (eff. July 1, 1975).

¶ 10 On September 26, 2012, defendant filed a *pro se* petition for postconviction relief. He argued that his guilty plea was not knowing and voluntary; that he was denied the effective assistance of counsel; that his transfer from juvenile to adult court was unconstitutional; and that his two concurrent 15-year prison sentences were disparate to the sentence of probation that his codefendant, C.T., received. The trial court entered an order on December 26, 2012, finding that defendant had pled the gist of a constitutional claim. The court also appointed an attorney to represent him. The appointed attorney filed an amended petition for postconviction relief on April 17, 2013. The State filed a motion to dismiss. At the hearing on the motion to dismiss, the State withdrew its motion and agreed to file an answer. At this July 3, 2013, motion hearing, by agreement of the State and defendant, the court set a date for an evidentiary hearing because several of defendant's allegations could not be resolved without testimony. On October 10, 2013, the trial court held this evidentiary hearing on the amended postconviction petition. Defendant was the only witness at the hearing, and he argued that the sentences were unfair because he and C.T. both admitted to being at the scene of the crime, both admitted to participating in the crime, and both were 16 years old. He also expressed his

lack of understanding as to why C.T. was allowed to proceed as a juvenile and he was not.

¶ 11 On October 21, 2013, the trial court denied defendant's petition. The court noted that C.T. received a "markedly less severe sentence," but noted that defendant was the individual holding the gun during the robbery—not C.T. The court stated that "[i]t is reasonable for an individual that threatened one with a dangerous weapon to receive a longer sentences [*sic*] than an unarmed accomplice."

¶ 12 Defendant appeals to this court and argues that his sentences were constitutionally disproportionate to that of his codefendant; that because he pled guilty to a lesser crime that was not subject to transfer to the adult court, imposition of an adult sentence is unconstitutional; and that because the State failed to request an adult sentencing hearing, his sentence is void.

¶ 13 LAW AND ANALYSIS

¶ 14 In Illinois, defendants who are serving an Illinois criminal sentence can file a petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)) alleging that their Illinois and federal constitutional rights were denied. *People v. Coleman*, 183 Ill. 2d 366, 378-79, 701 N.E.2d 1063, 1070-71 (1998). There are three stages to a proceeding under the Post-Conviction Hearing Act. *People v. Gaultney*, 174 Ill. 2d 410, 418-19, 675 N.E.2d 102, 106-07 (1996). At the first stage, the trial court must review the petition and determine whether "the petition is frivolous or is patently without merit." *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). If the court determines that the petition is frivolous or patently without merit, the court must

dismiss the petition. *Id.* A petition is deemed frivolous or patently without merit if after assuming that the allegations are true and are liberally construed, the petition fails to present the " 'gist of a constitutional claim.' " *Id.* (quoting *Gaultney*, 174 Ill. 2d at 418, 675 N.E.2d at 106). At the second stage, the trial court appoints an attorney to represent the defendant. 725 ILCS 5/122-4 (West 2006). The State is required to answer the petition or file a motion to dismiss. 725 ILCS 5/122-5 (West 2006). Then the trial court must determine if the defendant has made a substantial showing of a constitutional violation. *People v. Edwards*, 197 Ill. 2d 239, 246, 757 N.E.2d 442, 446 (2001). If the trial court finds that the defendant has met this standard, then the petition moves to the third stage and the court holds an evidentiary hearing. 725 ILCS 5/122-6 (West 2006). At the third stage, the defendant bears the burden of proving that his constitutional rights were violated by a preponderance of the evidence. *People v. Lego*, 168 Ill. 2d 561, 577, 660 N.E.2d 971, 979 (1995). On appeal of the denial of a postconviction petition after a hearing has been held, we review the case to determine if the judgment is contrary to the manifest weight of the evidence. *Coleman*, 183 Ill. 2d at 384-85, 701 N.E.2d at 1073-74.

¶ 15 Disparity of Sentences

¶ 16 On appeal, defendant initially argues that his sentence was grossly disproportionate to that of C.T., his codefendant. A disparity between noncapital sentences presents a cognizable claim under the Post-Conviction Hearing Act. *People v. Rodriguez*, 402 Ill. App. 3d 932, 940, 932 N.E.2d 113, 121 (2010) (citing *People v. Caballero*, 179 Ill. 2d 205, 215, 688 N.E.2d 658, 663 (1997)).

¶ 17 The imposition of criminal punishment is very important and is one of the most

sensitive of judicial responsibilities. *People v. Godinez*, 91 Ill. 2d 47, 55, 434 N.E.2d 1121, 1125 (1982). The trial court's decision on punishment must be given substantial weight, as the trial court judge had the ability to observe the proceedings and may have had insights beyond what the written record contains. *Id.* Fundamental fairness dictates that codefendants who are similarly situated should not be given unreasonably disparate sentences. *Id.* at 55, 434 N.E.2d at 1126; *Rodriguez*, 402 Ill. App. 3d at 939, 932 N.E.2d at 120. A mere disparity in sentences, without more, is not a violation of fundamental fairness. *Rodriguez*, 402 Ill. App. 3d at 939-40, 932 N.E.2d at 120. However, disparate sentences can be appropriate "where it is warranted by differences in the nature and extent of the concerned defendants' participation in the offense." *Godinez*, 91 Ill. 2d at 55, 434 N.E.2d at 1126. Additionally, the difference in sentences may be appropriate in light of the character and history of the codefendants, their criminal records, or their rehabilitative potential. *People v. Foster*, 199 Ill. App. 3d 372, 393, 556 N.E.2d 1289, 1303 (1990); *Rodriguez*, 402 Ill. App. 3d at 940, 932 N.E.2d at 120-21. Furthermore, the actual disparity between the sentences is not controlling; the reason for the disparity is controlling. *Foster*, 199 Ill. App. 3d at 393, 556 N.E.2d at 1303. (citing *People v. Coustin*, 174 Ill. App. 3d 824, 827, 529 N.E.2d 89, 91 (1988)).

¶ 18 In this case, the trial court specifically stated its rationale for the disparate sentences in its order denying defendant's postconviction petition. The trial court stated that defendant held a gun during the robbery, whereas C.T. did not. Overall, defendant's degree of participation in the crime was far more culpable for the crimes than C.T.'s degree of participation. Defendant admitted his use of the gun and threats of violence. A

defendant armed with a gun during the commission of a crime is clearly different than a defendant who was not armed with a deadly weapon. *People v. Stokes*, 102 Ill. App. 3d 909, 917, 430 N.E.2d 370, 376 (1981). A defendant's use of a weapon increases the potential for violence and may also traumatize the victims. *Id.* "More severe treatment of offenders [with a weapon], as opposed to the class of unarmed offenders, is entirely rational." *Id.*

¶ 19 Additionally, we note that defendant and C.T., while originally charged with the identical crimes, ended up in different courts and were convicted of different crimes. Defendant was convicted of and sentenced for armed robbery with a dangerous weapon—a Class X felony. 720 ILCS 5/18-2(b) (West 2006). The sentencing range was 6 to 30 years and probation was not an option. 730 ILCS 5/5-4.5-25(b), (d) (West 2008). C.T. was convicted of and sentenced for simple robbery—which would have been a Class 2 felony in adult court. 720 ILCS 5/18-1(c) (West 2006). A Class 2 felony has a sentencing range of three to seven years and probation is an option. 730 ILCS 5/5-4.5-35 (West 2008). Because of the classification of the felony involved, after his negotiated plea, C.T.'s case was not required to remain in adult court and his sentence of probation was dispensed in juvenile court. Quite simply, although defendant and C.T. were codefendants, they were convicted of completely different crimes. Codefendants who are ultimately convicted of different crimes are not construed as "similarly situated." *People v. Martinez*, 372 Ill. App. 3d 750, 760, 867 N.E.2d 24, 32-33 (2007); *People v. Lusietto*, 316 Ill. App. 3d 143, 146, 736 N.E.2d 689, 692 (2000). Therefore, defendant and C.T. were not similarly situated, and their sentences were not disparate. *Martinez*, 372 Ill.



App. 3d at 760, 867 N.E.2d at 32-33; *Lusietto*, 316 Ill. App. 3d at 146, 736 N.E.2d at 692.

¶ 20 Additionally, in this case, defendant entered into a negotiated plea for the sentence he received. The State offered defendant a 15-year sentence for a lesser charge, and defendant accepted that offer. In doing so, he was not subject to the enhanced sentence applicable to the original charge—a penalty range of 21 to 45 years. Defendant made this choice, and now should not be allowed to disregard the considerations he received in this plea deal. See *In re Derrico G.*, 2014 IL 114463, ¶ 91, 15 N.E.3d 457.

¶ 21 Defendant also argues that at the time of the robbery, C.T. was physically much larger and imposing than he was. Therefore, he claims that C.T.'s size should have equated to his use of a gun. We disagree. During this robbery, there was no evidence presented regarding any physical threat by C.T. Clearly, C.T. was present at the robbery, but he had no weapon. The State presented evidence that defendant held a gun and threatened to shoot a victim. We find that the use of a gun, with its inherent present threat of injury or even death, was of far greater import.

¶ 22 **Mandatory Transfer to Adult Court**

¶ 23 Defendant next argues that there are constitutional issues with application of the mandatory transfer statute to a minor. Certain minors at least 15 years of age,<sup>1</sup> who commit specific crimes, are automatically transferred from juvenile court to adult

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<sup>1</sup>The statute has been amended since the date of this crime, and so the age has been increased to 16 and applicable crimes have been modified. 705 ILCS 405/5-130 (West Supp. 2015).

criminal court. 705 ILCS 405/5-130(1)(a)(iv) (West 2006). As defendant was at least 15 when he committed the crime, and as he was charged with armed robbery with a firearm, he did not meet the definition of a delinquent minor pursuant to the Juvenile Court Act of 1987. *Id.* Defendant's issue with the mandatory transfer statute is that when a minor is ultimately convicted of a lesser crime, a crime that would not have originally been subject to mandatory transfer, the minor's case stays in adult court. Defendant argues that the mandatory imposition of the adult sentencing range violates his constitutional rights. He alleges that the statute violates the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11).

¶ 24 There is a strong presumption that statutes are constitutional. *People v. Patterson*, 2014 IL 115102, ¶ 90, 25 N.E.3d 526. Furthermore, courts must uphold the constitutionality of a statute whenever it is reasonable to do so, and must resolve any doubts in favor of the statute's validity. *Id.* On appeal, we review the constitutionality of a statute on a *de novo* basis. *Id.* (citing *People v. Dabbs*, 239 Ill. 2d 277, 291, 940 N.E.2d 1088, 1097 (2010)).

¶ 25 In *People v. Patterson*, the Illinois Supreme Court addressed the constitutionality of the mandatory transfer provision of the Juvenile Court Act. As in this case, the defendant in *Patterson* argued that the statutory provisions ignore the inherent differences between juveniles and adults, including a minor's greater ability to reform. *Id.* ¶ 89. Similarly, defendant here cites to the same three United States Supreme Court cases that the defendant did in *Patterson*. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v.*

*Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012).

The Supreme Court stated in *Miller* that minors are less culpable for their actions; more suitable to rehabilitation; and "constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at \_\_\_, 132 S. Ct. at 2464. Minors have three characteristics that make their conduct less reprehensible than that of an adult: (1) immaturity and an underdeveloped sense of responsibility; (2) vulnerability to negative influences and pressures; and (3) the changing aspects of their character. *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569.

¶ 26 In *Patterson*, our supreme court began its analysis by reviewing the constitutional language: "The eighth amendment protects defendants against cruel and unusual punishment, while the Illinois proportionate penalties clause similarly bars the imposition of unreasonable sentences, stating that '[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship' [citation]." *Patterson*, 2014 IL 115102, ¶ 101, 25 N.E.3d 526 (citing Ill. Const. 1970, art. I, § 11). The court noted that the express wording of both of these constitutional clauses indicates that the clauses do not apply unless a penalty has already been imposed. Therefore, the mandatory transfer does not result in an automatic constitutional violation because the transfer occurs before imposition of any penalty. *Id.*

¶ 27 The court in *Patterson* rejected the defendant's claim that the transfer statute functions as a sentencing statute simply because the sentences in adult court are harsher than adjudications in juvenile court. *Id.* ¶ 104. The court explained that there is no constitutional right to the Illinois juvenile justice system because the system is statutorily

based. *Id.* Whether a defendant receives a juvenile adjudication or a criminal court trial is simply a matter of procedure. *Id.* (citing *City of Urbana v. Andrew N.B.*, 211 Ill. 2d 456, 486, 813 N.E.2d 132, 149 (2004) (Freeman, J., dissenting); *People v. P.H.*, 145 Ill. 2d 209, 222, 582 N.E.2d 700, 706 (1991)).

¶ 28 Furthermore, the *Patterson* court stated that the mandatory transfer statute is designed to protect the public from common violent crimes. *Id.* ¶ 105. "In enacting the automatic transfer statute, the legislature has reasonably deemed criminal court to be the proper trial setting for a limited group of older juveniles charged with at least one of five serious named felonies." *Id.* (citing *People v. J.S.*, 103 Ill. 2d 395, 403-04, 469 N.E.2d 1090, 1094 (1984)). The court concluded that simply because there was a possibility that a defendant would receive a harsher sentence in criminal court than an adjudication in juvenile court, that possibility does not impact the underlying determination by, and logic of, the legislature that criminal court is appropriate in limited circumstances. *Id.* Because the mandatory transfer statute did not impose punishment, our supreme court rejected both constitutional challenges. *Id.* ¶ 106.

¶ 29 Defendant does not comment upon the supreme court's *People v. Patterson* case. We conclude that the case is directly analogous and dispositive. As our supreme court has held that the mandatory transfer statute does not violate the eighth amendment of the United States Constitution or the proportionate penalties clause of the Illinois Constitution, we hold that defendant's constitutional argument is without merit.

¶ 30 Alternatively, defendant argues that his adult court sentence is unconstitutional because he was ultimately convicted of a lesser offense that would not have been subject

to a mandatory transfer from juvenile court. This argument also fails. In *People v. King*, the defendant was originally charged with first degree murder, but ultimately convicted of attempted first degree murder. *People v. King*, 241 Ill. 2d 374, 376, 948 N.E.2d 1035, 1036 (2011). At issue was whether the defendant could be sentenced as an adult for attempted first degree murder. That question required the court to determine if that offense was "covered by" the original first degree murder charge that required mandatory transfer to adult court. *Id.* at 382, 948 N.E.2d at 1039.

¶ 31 Section 5-130(1)(c)(i) of the Juvenile Court Act addresses sentencing of a minor convicted of any offense "covered by" section 5-130(1)(a) (the mandatory transfer statute). *Id.* at 380, 948 N.E.2d at 1038. If the original charge was one of the delineated charges mandating a transfer from juvenile court to adult court, then any lesser charge that arises out of that incident is "covered by" the original charge, and the case remains in adult court. *Id.* In *King*, the court concluded that because murder was a charge included in the mandatory transfer statute, any other charges arising out of the same incident would also be prosecuted in adult court. *Id.* (citing 705 ILCS 405/5-130(1)(b)(ii) (West 2000)). The court found support for this statement in the statutory language that provided: "[t]hese charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." *Id.* at 383-84, 948 N.E.2d at 1040 (quoting 705 ILCS 405/5-130(1)(a) (West 2000)). The court held that in this case attempted murder arose from the same incident as the criminal offense specified in section 5-130(1)(a): murder. *Id.* at 380, 948 N.E.2d at 1038.

¶ 32 In this case, defendant was charged with armed robbery with a firearm. This

charge resulted in the case being transferred from the juvenile court to the adult criminal court. As the case progressed, a plea deal was reached. The State agreed to dismiss the charge, armed robbery with a firearm, in exchange for defendant's guilty plea to a lesser charge, armed robbery with a dangerous weapon. We conclude that this lesser offense is an offense that arose out of the same incident, and that therefore, the entire prosecution correctly took place in criminal court. 705 ILCS 405/5-130(1)(a) (West 2006). We also hold that defendant's plea of guilt for the lesser offense was an offense "covered by" the greater offense specified in section 5-130(1)(a), and therefore, the trial court was correct in sentencing defendant pursuant to the applicable criminal penalties contained within the Unified Code of Corrections. 705 ILCS 405/5-1301(c)(i) (West 2006); see also *People v. Toney*, 2011 IL App (1st) 090933, ¶ 44, 957 N.E.2d 939 (where the conviction for second degree murder was "covered by" the original first degree murder charge because it arose out of the same incident).

¶ 33 State's Request for a Hearing in Criminal Court

¶ 34 Defendant finally argues that this court should vacate his adult sentence and conviction and remand his case to the circuit court for entry of an adjudication of delinquency. He contends that because he was a minor, the State was required to request an adult hearing. To support this argument, defendant cites to section 5-130(1)(c)(ii) of the Juvenile Court Act. He contends that the statute mandates that if the minor is convicted of a nonmandatory transfer charge, the State must file a motion to have the minor remain in adult court for sentencing. 705 ILCS 405/5-130(1)(c)(ii) (West 2006).

A review of the full language of that subsection is instructive:

"If after trial or plea the court finds that the minor committed an offense *not covered* by paragraph (a) of this subsection (1), that finding shall not invalidate the verdict or the prosecution of the minor under the criminal laws of the State; however, unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified Code of Corrections, the Court must proceed under Sections 5-705 and 5-710 of this Article." (Emphasis added.) *Id.*

The supreme court addressed this issue in *People v. King* and stated that whether the State needed to file a motion seeking to have the minor sentenced as an adult depended upon whether or not the offense to which he pleaded guilty was "covered by" section 5-130(1)(a). *King*, 241 Ill. 2d at 382, 948 N.E.2d at 1039. Therefore, the State was only required to seek a hearing if the offense at issue was "not covered by" section 5-130(1)(a). *Id.*

¶ 35 Here, defendant concedes that *King* controls. As the charge to which defendant pled guilty, armed robbery with a dangerous weapon, was covered by the original charge, armed robbery with a firearm, the State was not required to request a hearing, and defendant's sentencing in adult court was correct.

¶ 36 **CONCLUSION**

¶ 37 For the foregoing reasons, we affirm the order of the St. Clair County circuit court denying defendant's postconviction petition for relief.

¶ 38 Affirmed.