

No. 1-12-1736

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 27083
	)	
JESUS RODRIGUEZ,	)	Honorable
	)	Diane G. Cannon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed the defendant's postconviction petition.

¶ 2 On May 16, 2012, the circuit court of Cook County summarily dismissed defendant Jesus Rodriguez's petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)) (the postconviction petition). On appeal, this court affirmed the dismissal of the postconviction petition in a Rule 23 order dated May 19, 2014. Following the supreme court's decision in *People v. Reyes*, 2016 IL 119271, our supreme court issued a supervisory order

directing us to vacate our May 2014 order and reconsider that judgment in light of *Reyes*. Having done so, we affirm.

¶ 3

### BACKGROUND

¶ 4 The relevant underlying facts of this case are set forth in this court's January 7, 2010 decision deciding the defendant's direct appeal (*People v. Rodriguez*, No. 1-07-3465 (2010) (unpublished order under Supreme Court Rule 23)). The defendant and his three codefendants were charged with robbing and murdering 67-year-old Ilija Arezina. The defendant was 17 years old at the time of the offense. The defendant's codefendants pled guilty to first-degree murder and robbery, and were sentenced respectively. The defendant elected to proceed to trial by jury.

¶ 5 The jury found the defendant guilty of first-degree murder. Following a sentencing hearing at which it considered mitigating and aggravating factors, the trial court sentenced the defendant to 60 years of imprisonment, the maximum sentence under the statutory 20 to 60-year range for first degree murder. 730 ILCS 5/5-8-1(a)(1)(a) (West 2004).

¶ 6 On direct appeal, the defendant argued that his 60-year sentence was excessive and that the trial court's consideration of his prior arrests at his sentencing constituted reversible error. On January 7, 2010, this court affirmed. See *People v. Rodriguez*, No. 1-07-3465 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 On February 22, 2012, the defendant filed a petition<sup>1</sup> pursuant to the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that his trial counsel was ineffective for failing to call codefendants to testify on his behalf, and that the trial court erred in precluding him from calling those codefendants to testify. On May 16, 2012, the trial court

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<sup>1</sup> The petition was a combined postconviction petition and a petition for relief from judgment on the basis of actual innocence under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)).

summarily dismissed the defendant's postconviction petition as frivolous and patently without merit.

¶ 8 On May 31, 2012, the defendant filed a notice of appeal. Notably, his appellate arguments (unlike the claims in the postconviction petition) challenged the constitutionality of the statutory sentencing scheme for juveniles.

¶ 9 On May 19, 2014, this court affirmed the dismissal of the defendant's postconviction petition. In January 2017, following its decision in *People v. Reyes*, 2016 IL 119271, our supreme court issued a supervisory order directing us to reconsider this appeal in light of *Reyes*. Accordingly, on January 18, 2017, this court vacated our May 2014 order and directed the parties to submit supplemental briefing.

#### ¶ 10 ANALYSIS

¶ 11 We now review whether dismissal of the defendant's postconviction petition was warranted in light of the defendant's claims: (1) that the "exclusive jurisdiction statute" of the Juvenile Court Act of 1987 (705 ILCS 405/2-120 (West 2008)) and sentencing scheme violate the constitutional prohibition against cruel and unusual punishment; (2) that the exclusive jurisdiction statute and sentencing scheme violates substantive and procedural due process rights; and (3) that the defendant's sentence amounts to an unconstitutional *de facto* life sentence under our supreme court's decision in *Reyes*.

¶ 12 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a three-step procedural mechanism by which a convicted defendant can assert that there was a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. *People v. Harris*, 224 Ill. 2d 115 (2007). A postconviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings.

*People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). Under the Act, a defendant bears the burden of establishing that a substantial deprivation of his constitutional rights occurred. *People v. Waldrop*, 353 Ill. App. 3d 244, 249 (2004). At the first stage, a postconviction petition may be summarily dismissed if the claims in the petition are frivolous and patently without merit. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009); see 725 ILCS 5/122-2.1(a)(2) (West 2010).

¶ 13 The trial court’s summary dismissal of a postconviction petition is reviewed *de novo*. *People v. Harris*, 224 Ill. 2d 115, 123 (2007). The constitutionality of the statutory sentencing scheme is also a question of law that is subject to *de novo* review. *People v. Devenny*, 199 Ill. 2d 398, 400 (2002).

¶ 14 As a preliminary matter, we note that the parties dispute whether the defendant has forfeited review of his constitutional challenges, because they were not raised in the postconviction petition in the trial court. The defendant argues that he did not forfeit these issues because a constitutional challenge can be raised at any time.

¶ 15 Although the defendant raised his constitutional challenges for the first time on appeal, we find that he has not forfeited review of any of his constitutional challenges to his sentence.

“[A] challenge to the constitutionality of a sentencing statute may be raised at any time [citation,] including on appeal from a collateral proceeding. [Citation.]” *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 48; see also *In re J.W.*, 204 Ill. 2d 50, 61-62 (2003) (constitutional challenges to a criminal statute can be raised for the first time in the appellate court). Furthermore, as discussed below, each of the defendant’s constitutional arguments stem from *Miller v. Alabama*, 567 U.S. 460 (2012). Our court has held that a juvenile defendant may raise a *Miller*-based challenge to his sentence for the first time on appeal from the dismissal of a postconviction

proceeding. See, e.g., *Warren*, 2016 IL App (1st) 090884-C, ¶¶ 49-50; *People v. Nieto*, 2016 IL App (1st) 121604, ¶¶ 35-39 (2016). Thus, we do not find that forfeiture applies.

¶ 16 Turning to the merits of the defendant's arguments, we first address whether Illinois' statutory sentencing provisions violate juvenile offenders' eighth amendment and due process rights.

¶ 17 Statutes carry a strong presumption of constitutionality, and the party challenging the statute has the burden of demonstrating a constitutional violation. *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). A reviewing court has "a duty to construe a statute in a manner that upholds its validity and constitutionality if it reasonably can be done." *People v. Graves*, 207 Ill. 2d 478, 482 (2003).

¶ 18 At the time of the 2004 offense in the case at bar, the exclusive jurisdiction provision of the Juvenile Act excluded 17-year-old defendants, such as the defendant in this case, from the jurisdiction of juvenile courts and required that they be tried in adult criminal courts. See 705 ILCS 405/2-120 (West 2008).<sup>2</sup> The defendant argues that automatically subjecting 17-year-old defendants to adult prosecution and sentencing, without individualized court consideration of their youth and youth's attendant characteristics, is unconstitutional. In support, the defendant relies on the U.S. Supreme Court's decisions in *Miller* and *Graham*, which held that "fundamental differences between juvenile and adult minds" make children under 18 less culpable than adults, and thus, juvenile offenders should be afforded additional constitutional protections. See *Miller*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010).

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<sup>2</sup> The statute was later amended, effective 2014, to include in the juvenile court system minors who are 17 years old. This change only applied to violations committed on or after the effective date of the amendment and, thus, does not affect our analysis here. See 705 ILCS 405/5-120 (West 2014).

¶ 19 In *Graham*, the U.S. Supreme Court held that the eighth amendment forbids a life sentence without the possibility of parole for juveniles who did not commit homicide, finding that although the state is not required to release a juvenile during his natural life, the state is forbidden "from making judgment at the outset that those offenders never will be fit to reenter society." *Graham*, 560 U.S. at 74-75. In *Miller*, the U.S. Supreme Court held that the eighth amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for offenders who are under 18 years old, including those convicted of homicide. *Miller*, 567 U.S. at \_\_\_\_, 132 S. Ct. at 2468. *Miller* prohibits a sentencing scheme with "mandatory life without parole for a juvenile" offender because it "precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* *Miller* did not prohibit a life sentence for a juvenile under *any* circumstances, but found that the sentencing court must take youth into account: "Although we do not foreclose a sentencer's ability to make that judgment \*\*\* we require it to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469.

¶ 20 Relying on *Graham* and *Miller*, the defendant in this case contends that the exclusive jurisdiction provision violates the eighth amendment prohibition on "cruel and unusual" punishment (U.S. Const., amend. VIII.) because it subjects 17-year-olds to adult sentencing without individualized court consideration of their youth and youth's attendant characteristics. The Second District's decision in *People v. Harmon*, 2013 IL App (2d) 120439, has already addressed and rejected the same eighth amendment arguments that the defendant raises here. In rejecting the contention that the exclusive jurisdiction statute violated the prohibition on cruel and unusual punishment, the *Harmon* court found that *Graham* and *Miller* only concerned the

death penalty and life sentences without the possibility of parole, the harshest possible penalties allowed under the United States Constitution. 2013 IL App (2d) 120439, ¶ 54. The *Harmon* court further noted that, in that case “the trial court was able to consider defendant’s age, as well as other circumstances, in determining what sentence within the range to impose.” *Id.* Likewise, in the instant case, the defendant was not given a mandatory sentence, and the trial court considered mitigating circumstances prior to sentencing him within the applicable 20 to 60-year statutory range.

¶ 21 The *Harmon* court further noted that Illinois courts have previously rejected similar constitutional challenges, albeit in the context of the "automatic transfer provision" of the Juvenile Act, 705 ILCS 405/5-130 (West 2008), which allows 15 to 16 year olds who are charged with first-degree murder and other violent crimes to be automatically tried in adult criminal court. See, e.g., *People v. Willis*, 2013 IL App (1st) 110233, ¶ 53 (upholding the constitutionality of the automatic transfer provision); *People v. Salas*, 2011 IL App (1st) 091880, ¶ 66 (same). The *Harmon* court found that the reasoning of those decisions applied to the exclusive jurisdiction provision—namely, that the provision does not impose a "punishment" but rather, specifies the forum in which the defendant's guilt may be adjudicated. *Harmon*, 2013 IL App (2d) 120439, ¶ 55. We find no reason to depart from the sound holding in *Harmon* or the precedents on which it relied, and thus, we hold that the exclusive jurisdiction provision does not violate the eighth amendment's prohibition on cruel and unusual punishment.

¶ 22 The defendant separately argues that the exclusive jurisdiction provision of the Juvenile Act violates juvenile offenders' substantive and procedural due process rights. See U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2. With respect to substantive due process, he asserts that the exclusive jurisdiction provision implicates a fundamental right and is thus subject to

“strict scrutiny” review, meaning that it be upheld only if it is necessary to achieve a compelling state interest and is “narrowly tailored” to accomplish that goal. *People v. Cornelius*, 213 Ill. 2d 178, 204 (2004). He argues that the *Miller* and *Graham* decisions suggest that 17-year-old juvenile offenders have a fundamental liberty interest in *not* being automatically treated as adults. He alternatively argues that, even if strict scrutiny does not apply, the provision nonetheless violates due process under the rational basis test, meaning that the statute lacks a rational relationship to its legislative purpose. *Cornelius*, 213 Ill. 2d at 203-04. The defendant additionally argues that the statute violates procedural due process, as it treats all 17-year-old juvenile offenders as adults, without a prior hearing to determine if such treatment is appropriate.

¶ 23 The due process clauses contained in both the U.S. and Illinois Constitutions prohibit the government from depriving any individuals of "life, liberty or property, without due process of law." U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2.

¶ 24 The court in *Harmon* considered and rejected the exact same due process challenge to the exclusive jurisdiction provision, concluding: "Illinois precedent holds that the automatic transfer provision does not violate a juvenile's due process rights, and the same reasoning applies with equal force to the closely related exclusive jurisdiction provision." *Harmon*, 2013 IL App (2d) 120439, ¶ 59. *Harmon* observed that our supreme court, in *People v. J.S.*, 103 Ill. 2d 395 (1984), applied the rational basis test to the automatic transfer provision, and concluded that the statute was rationally based on the juvenile's age and the threat posed by the offenses because of the violence and frequency of their commission. *Id.*; see also *People v. M.A.*, 124 Ill. 2d 153, 147 (1988) (holding that the automatic transfer provision does not violate due process).

¶ 25 Although the defendant acknowledges that *J.S.* rejected a due process challenge to the closely related automatic transfer provision of the Juvenile Act, he contends that the *Miller* and

*Graham* decisions call into question the holding of *J.S.* decision. In *Harmon*, the court rejected this argument as unpersuasive. *Harmon*, 2013 IL App (2d) 120439, ¶ 61-62. We decline to deviate from the sound reasoning of *Harmon*. As discussed, *Miller* and *Graham* did not concern due process violations, and concerned only the "harshest possible" penalties of capital punishment and mandatory life imprisonment without the possibility of parole. See *Harmon*, 2013 IL App (2d) 120439, ¶ 62. Accordingly, we hold that the exclusive jurisdiction provision does not violate juvenile offenders' right to due process.

¶ 26 Finally, pursuant to our supreme court's supervisory order, we address whether the defendant's sentence amounts to an unconstitutional *de facto* life sentence under *Reyes*, 2016 IL 119271. The defendant contends that *Reyes* extends *Miller*'s reasoning to prohibit any "de facto life sentences" imposed on juveniles. He claims that his 60-year sentence constitutes a *de facto* life sentence "under a scheme that did not sufficiently consider his youth, attendant characteristics, and level of participation in the offense." Thus, he argues that *Reyes* mandates reduction of his sentence, or remand for resentencing.

¶ 27 In *Reyes*, our supreme court held: "*Miller* makes clear that a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering in mitigation his youth, immaturity, and potential for rehabilitation." *Id.* ¶ 9. In *Reyes*, a juvenile defendant was convicted of first degree murder and attempted murder, resulting in a "mandatory minimum aggregate sentence of 97 years' imprisonment." *Id.* ¶ 2. The defendant argued that "the various sentencing statutes \*\*\* eliminate[d] all judicial discretion and impose[d] on him a mandatory prison term that could not be served within one lifetime, i.e. a *de facto* life sentence," violating the eight amendment pursuant to *Miller*. *Id.* ¶ 5.

¶ 28 Our supreme court agreed, reasoning that: “A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole—in either situation the juvenile will die in prison.” *Id.* ¶ 9. The *Reyes* court held that defendant’s “mandatory, *de facto* life-without-parole sentence” was unconstitutional pursuant to *Miller* and remanded for resentencing. *Id.* ¶ 10.

¶ 29 We disagree with the defendant’s contention that *Reyes* applies to his 60-year sentence. Regardless of whether a 60-year term constitutes a *de facto* life sentence, the State correctly points out that the defendant’s sentence was not a statutorily mandated sentence. *Reyes* is explicit that it applies to a “mandatory term of years sentence that cannot be served in one lifetime” and that, pursuant to *Miller*, a juvenile “may not be sentenced to a mandatory, unsurvivable prison term” without considering youth and related factors. (Emphasis added.) 2016 IL 119271, ¶ 9. Limiting *Reyes*’ application to mandatory sentences is consistent with *Miller*. As *Reyes* emphasized, *Miller* “was not a categorical prohibition of life-without-parole sentences for juvenile murderers. 132 S. Ct at 2469. Rather, the Court’s holding required that life-without parole sentences be based on judicial discretion *rather than statutory mandates*.” (Emphasis added.) *Reyes*, 2016 IL 119271, ¶ 4.

¶ 30 The defendant’s 60-year sentence was simply not mandated by statute. The defendant was subject to a statutory sentencing range of 20 to 60 years for his first degree murder conviction. 730 ILCS 5/5-8-1(a)(1)(a) (West 2004). The trial court exercised its discretion, after considering numerous factors at a sentencing hearing, that the upper end of this range was

appropriate.<sup>3</sup> Thus, *Reyes* is inapplicable and does not support reversing the dismissal of the defendant's postconviction petition.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.

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<sup>3</sup> Moreover, as noted in our 2010 Rule 23 order on the direct appeal, the trial court's exercise of discretion is demonstrated by the fact that the court could have, but did not, enhance the sentence based on the victim's age.