2017 IL App (1st) 150819-U

No. 1-15-0819

Order filed October 25, 2017

Third Division

**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 DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 09 CR 16948 |
| | ) | |
| DEANGELO WILLIAMS, | ) | Honorable |
| | ) | Timothy Joseph Joyce, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Howse concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's 32-year sentence for attempted first degree murder is affirmed over his contention that his sentence, which included a 20-year firearm enhancement, was excessive because he was 21 years old at the time of the offense and the victim did not suffer great bodily harm.

¶ 2 Following a bench trial, defendant was convicted of attempted first degree murder ((720 ILCS 5/8-4(a) (West 2008); 720 ILCS 5/9-1(a)(1) (West 2008)) and sentenced to 32 years' imprisonment. Defendant's sentence included a 20-year enhancement because he personally

discharged a firearm during the commission of the offense. 720 ILCS 5/8-4(c)(1)(C) (West 2008). On appeal, defendant contends that his sentence is excessive and that his mittimus should be corrected to accurately reflect the offense of which he was convicted. We affirm defendant's sentence and order the mittimus corrected.

¶ 3 Defendant was arrested on September 7, 2009, after turning himself over to the Chicago Police. He was subsequently charged by indictment with, in relevant part, two counts of attempted first degree murder of Glynn Hall and aggravated battery with a firearm. Defendant waived his right to a jury and the case proceeded to a bench trial.

¶ 4 Hall testified that in 2009 he was the coach of the Chicago Cardinals, a baseball team which competed in an amateur league for men. At about 2:00 p.m. on September 6, 2009, the Cardinals were playing a double header. At the beginning of the first game, defendant expressed to Hall his dissatisfaction with not having enough playing time. In response, Hall showed defendant that he had poor batting statistics, and told him that he would not get to bat, but would be the starting pitcher for the first game. During the third inning, Hall removed defendant from the game for allowing too many hits. Before the second game, defendant, who was visibly upset, expressed his dissatisfaction for not getting his money's worth from the team, and said that the coach "need[ed] his ass whooped." About five to ten minutes later, defendant said "some more things," which led Mike Harlan, the captain of the team, to stand up and tell defendant that he "cannot disrespect Hall." Defendant and Harlan appeared as if they were about to fight, but someone separated them.

¶ 5 After the altercation, Harlan told defendant that he was kicked off the team because of his attitude. Defendant then grabbed his bag, walked fifteen to twenty feet away, and returned with a

gun. Harlan and Hall started running. Defendant chased Hall along the first base line while firing the gun. After hearing gunshots, Hall first felt pain from a bullet that went through his arm, and then felt pain from another bullet that skimmed his shoulder. Hall then felt a bullet hit him in the shoulder, followed by a bullet that hit him in the middle of the back but landed in the neck. Hall collapsed to the ground behind the fence along the first base line, where defendant stood over him, pointed the gun at his head, and pulled the trigger twice, but the gun did not fire. Defendant then ran away.

¶ 6 Hall was treated at Christ Hospital, where he did not receive surgery. One bullet was lodged near his spine, and another near his carotid artery in the neck. No bullets were removed from his body. The bullet in Hall's neck came out in April 2012 when Hall was treating the wound himself. The bullet near Hall's spine still remains.

¶ 7 Harlan testified to substantially the same sequence of events as Hall. On the date in question the Cardinals were playing a double header at Harlan High School, and defendant was the starting pitcher for the first game. During the third inning of the first game, Hall removed defendant as pitcher. Defendant did not get to bat during the second game and sat in the dugout, where he expressed his displeasure with Hall and said "I'm going to fuck this motherfucker up." Defendant then approached Hall. Harlan stepped in between defendant and Hall, and Hall told defendant that it was up to Harlan whether defendant was still on the team. Harlan told defendant that he was no longer on the team because fighting was unacceptable. Afterward, defendant exited the dugout, walked to his gym bag, and retrieved a gun. Harlan then heard shots fired, and ran towards third base. Meanwhile, defendant chased Hall down the first baseline, pointing the gun at Hall's back. Hall fell behind a dugout. Before Hall fell, Harlan heard defendant fire five

shots. After Hall fell, defendant stood over him and twice attempted to fire the gun, but it did not discharge. Defendant proceeded to run away on 97th Street.

¶ 8 Robert McKenzie, the assistant coach of the Cardinals, testified to substantially the same sequence of events as Hall and Harlan. McKenzie recalled that, at a game about one week before the double header, defendant was adamant about making sure that he pitched in upcoming games and said that there would be "some problem" if he did not get to pitch. During this same conversation, defendant also told McKenzie he had anger issues. At the double header, defendant, Hall, and Harlan argued in a loud and aggressive manner. McKenzie then saw defendant leave the dugout, grab his bag that was hanging on a nearby fence, and return with a gun in his right hand. Defendant chased Hall towards first base while pointing the gun at Hall's back. When Hall fell behind a dugout, McKenzie saw defendant stand over Hall and extend his hand with the gun, but did not hear or see any bullets discharge. Defendant then ran away.

¶ 9 The State entered into evidence defendant's written statement to Detective James Scannell and Assistant State's Attorney Sam Cervera. In the statement, defendant related that he lost his job at the Lucky Strike Bowling Alley, but that he still made money as a babysitter. Defendant stated that he "has a hard time controlling his anger and just explodes on people—sometimes for little or no reason at all." After several months of unsuccessfully looking for a job, "all this anger had him like a time bomb waiting to explode." On the date in question, between the first and second games, defendant found a gun at nearby Harlan High School, and kept it because he thought he might need it for protection. During the second game, defendant was in the dugout with Harlan and complained to Harlan about how Hall was running the team. Hall approached defendant, and told defendant that he could hear what defendant was saying.

Defendant became very angry about how Hall addressed him "with animosity," and was ready to fight. Harlan then told defendant to go home. Defendant "was really upset at this point and all his problems over work and not getting a job just came to a head and [he] lost control." Defendant took the gun out of his gym bag, and "just started shooting." Defendant "ran after Coach Hall and began firing at Coach Hall's back. [Defendant] doesn't know whether his bullets hit the Coach. [Defendant] did see the coach hit the ground[.] [Defendant] states that he fired his gun at the Coach because he didn't like the way the Coach had been speaking to him in the dug out." Afterward, defendant ran away and discarded the gun in a backyard.

¶ 10 Defendant testified that he did not complain to the team about his playing time. According to defendant, the last time he saw Hall was during second week of August 2009, when Hall invited him to a party. Defendant went to the party at Hall's house. When he arrived, only Hall was present at the house and defendant joined him for a drink. About thirty minutes into consuming the drink, defendant felt weak and was unable to resist Hall, who kissed defendant's face and chest, and touched defendant's genitals. Defendant lost consciousness for seven to eight hours and woke up with anal pain. Defendant left Hall's residence, and did not tell anyone about the incident because he was embarrassed and thought nobody would believe him.

¶ 11 Defendant testified that, on the date in question, he was pulled from pitching during the first game of the double header, and placed in right field. Defendant stated that he had no problem with being pulled from pitching. During the second game, when the rest of the team was out on the field, Hall sat next to defendant on a dugout bench and apologized to him. Defendant tried to leave, but Hall "snatched" him by his shoulder and sat him back down. Defendant told Hall that he wanted to be left alone. When Harlan and other teammates returned from the field,

defendant told Harlan to get Hall away from him because Hall was harassing him. Defendant also told Harlan that if Hall did not stop, he was going to "knock [Hall] out." Hall encouraged defendant to fight him before their teammates separated them. Harlan then asked defendant to leave. Defendant went to his bag in the dugout, where Hall, who is 6'1" and about 200 pounds, approached him aggressively and used derogatory language. Defendant, who is 5'9" and 155 pounds, felt afraid that Hall, who was about four feet away, was going to attack him. Defendant then took out a gun from his bag and shot Hall. Defendant had the gun because he found it near Harlan High School and picked it up for no reason.

¶ 12 On cross-examination, defendant denied standing over Hall and pointing a gun at him, but admitted to shooting the gun until he ran out of bullets. Defendant also stated that he did not have anger problems his entire life, that he never told Scannell or Cervera about his apprehension of Hall because neither of them asked about it, and that he picked up the gun he found for protection.

¶ 13 The trial court rejected defendant's claim of self-defense, and found him guilty of one count of attempted first degree murder and aggravated battery with a firearm. The trial court found defendant not guilty of the other count of attempted first degree murder, for discharging a firearm that proximately causes great bodily harm, because the State failed to make a showing that Hall suffered great bodily harm. The court denied defendant's motion for a new trial and ordered a presentence investigation report (PSI).

¶ 14 Defendant's PSI report reflects that defendant first met with a mental health professional after he was arrested. Defendant was not diagnosed with any mood disorders, but was taking

mood stabilizers at the time of the PSI report. Defendant indicated that he would be cooperative with mental health treatment if it was ordered as a condition of his sentence.

¶ 15 At sentencing, the court heard arguments in aggravation and mitigation. In aggravation, the State presented the testimony of five Cook County Correctional Officers, who each testified to separate incidents involving defendant at the Cook County Jail. Officer Hernandez testified that at approximately 8:10 p.m., on January 1, 2011, he saw defendant punching another detainee during a fight. Hernandez also testified that at approximately 8:20 p.m., on January 22, 2011, as defendant left his cell to take medication, he changed the channel on a television that a group of detainees were watching. Defendant told one of the detainees "we are not watching this, we are watching what I want to watch." Defendant then pushed that detainee, leading to a fist fight during which defendant punched another detainee. Other detainees associated with both men began fighting. Jail staff had to break apart the fight, and used pepper spray to subdue defendant. Twenty-six detainees were written up because of the incident.

¶ 16 Officer Gansel testified that at 9:15 a.m., on September 12, 2011, he saw defendant push a detainee during a "clothing exchange." While handcuffing defendant, defendant told Gansel "you don't know who the fuck you are dealing with, I'll fucking kill you." Later that day, defendant said to him "next time I see you, I am going to kick your ass."

¶ 17 Officer Barnett testified that at approximately 7:15 p.m., on January 17, 2012, while he was talking to another inmate, defendant told him "I will knock your ass out." Barnett asked defendant to repeat himself, and defendant replied "you heard me. I will knock your bitch ass out." Defendant then approached Barnett with clenched fists until another a detainee stopped defendant from advancing closer to Barnett. Barnett felt intimidated, and to avoid an altercation,

Barnett walked away from defendant. Barnett also testified that, the three months prior to this incident, defendant attempted to throw urine on him while he worked in the jail's segregated unit. On cross-examination, Barnett acknowledged that he did not write up defendant for the incident involving urine.

¶ 18 Officer Sablich testified that at 7:37 p.m., on September 23, 2014, he saw defendant engage in a fist fight with another detainee. Sablich did not know who started the fight, but did see both detainees striking each other's face and chest with their fists.

¶ 19 Officer Rybarczyk testified that at approximately 10:45 a.m., on October 23, 2014, defendant returned to the living units from the law library with three other detainees. Rybarczyk was required to perform a search of the detainees for contraband before they were allowed to enter the living units. Rybarczyk searched the three other detainees, but defendant refused to be searched. Defendant said Rybarczyk was "on some gay shit and just wanted to touch him," and that he was going to report Rybarczyk and his partner, Officer Strauch, for sexual harassment if they performed the search. Defendant also told Rybarczyk that he had been sexually harassed by jail staff before.

¶ 20 Eventually, defendant complied with the search, and when Strauch went to open the door to the living units, defendant slapped Strauch's hand to prevent him from opening the door. Rybarczyk ordered defendant to face the wall, and defendant replied "fuck that, put me on the wall." Officer Rubio, who Rybarczyk called to help in subduing defendant, tried to spin defendant towards the wall. In response, defendant turned around and punched Rubio in the face several times. Rybarczyk tried to restrain defendant. As he did so, defendant struck him in the chest several times. Additional officers were called to help control defendant, and eventually the

struggle ended when Rubio used pepper spray against defendant. After the incident, Rybarczyk had minor bruises, and Strauch had a bruised eye. The incident left Rubio with broken glasses, a cut forehead and nose, and a bruised arm.

¶ 21 The State also read Hall's victim impact statement to the court. In the statement, Hall related that he feels lucky to be alive after being shot four times, and that he sometimes experiences pain in the shoulder and back because of a bullet that is lodged "only inches" from the heart. As a result of the shooting, Hall does not trust people the way he did before the shooting, and is paranoid of being attacked again. Hall also said that defendant's actions will haunt him for the rest of his life.

¶ 22 In aggravation, the State argued that "defendant has not controlled his anger issues," and that he "lashes out at people for simple things." The State pointed out that defendant's PSI report indicates that he has anger issues and is unsure of how to express himself, and noted that defendant "still believes what he did to Glynn Hall was justified." The State also pointed out that defendant had a conviction for residential burglary, which gave him the opportunity to learn how to control his anger while serving a sentence in Cook County Boot Camp. However, defendant failed to take advantage of this opportunity. The State requested the court to sentence defendant to a substantial period of time because defendant "has never learned to deal with his anger issues, and he is going to hurt somebody."

¶ 23 In mitigation, defendant's mother, Vanessa Williams Hunt, testified that she raised defendant until he was seven years old. At that time, her family began raising defendant because of her substance abuse problem. After living with her brother, defendant lived with Hunt's father for two years, before returning to her at age 10. Her mother had legally adopted defendant to

avoid defendant becoming a ward of the State. Hunt also testified that defendant's father was imprisoned at least twice, and that her current husband is in prison.

¶ 24 Defense counsel also detailed defendant's difficult childhood. Counsel highlighted that defendant's parents separated when he was seven years' old, and defendant was removed from his mother's custody shortly thereafter because of her addiction. Defendant was subsequently placed in various homes, and eventually resided with a stepfather who abused him. Defense counsel argued defendant "is a young man who was taught at an early age that anger, frustration, and fighting are acceptable." Counsel pointed out that defendant has self-identified his anger problems and has received treatment for anger management since December 2009. Counsel also pointed out that defendant attained a GED and has goals to go to college. Defense counsel asked the court that defendant not be sentenced for so long that he is unable to reach his potential and contribute to society. Counsel also asked that defendant be sentenced as a Class 1 offender because defendant was "acting under such a sudden and inten[se] passion from serious provocation." See 720 ILCS 5/8-4(c)(1)(E) (West 2014) (authorizing Class 1 sentencing for attempted murder where defendant "was acting under a sudden and intense passion resulting from serious provocation by the individual whom the defendant endeavored to kill.").

¶ 25 In allocution, defendant apologized for his actions and acknowledged that he acted improperly. Defendant said that he has changed, and has learned how to control his anger. Defendant also said that there was video footage of him acting in self-defense during the incident involving Rybarczyk. Defendant informed the court that, other than the incident involving Rybarczyk, he has not been disciplined by jail staff since 2012.

¶ 26 In announcing its sentencing decision, the trial court rejected defendant's request to be sentenced as a Class 1 felon because it did not believe defendant's testimony about the shooting. The court noted that defendant intended to kill Hall where the evidence showed that he attempted to shoot Hall even after having shot him multiple times. The court pointed out that, had defendant actually shot Hall the last two times he tried to fire the gun, he would have been guilty of first degree murder. The court noted that "[i]t continues to astound me that Mr. Hall having suffered those wounds, one which continues to lie about an inch from his heart, the other ones close proximity to his spine, has the ability to enjoy life at all, let alone in the manner in which he does."

¶ 27 The court stated that it considered defendant's PSI report and his 2007 conviction for residential burglary. In addition, the court found that the State's evidence showed defendant has not made significant changes regarding his anger management. In doing so, the court recounted the testimony of the correctional officers, who provided more examples of defendant's aggressive behavior. The court highlighted Gansel and Rybarczyk's testimony as being indicative of defendant's failure to change how he handles his anger The court pointed out that defendant expresses his anger towards others without due regard for how it effects them. The court merged defendant's convictions for attempted first degree murder and aggravated battery with a firearm and sentenced defendant to twelve years' imprisonment, plus a 20-year mandatory sentencing enhancement because he personally discharged a firearm during the commission of the offense. See 720 ILCS 5/8-4(c)(1)(C) (West 2008). Defendant's motion to reconsider sentence was denied.

¶ 28 On appeal, defendant first contends that his sentence is excessive. He argues that, in light of the substantial mitigating evidence presented, such as his age and the fact that Hall did not suffer great bodily harm, anything more than the statutorily required minimum sentence of 26 years' imprisonment is excessive.

¶ 29 The Illinois Constitution "requires a trial court to impose a sentence that achieves a balance between the seriousness of the offense and the defendant's rehabilitative potential." *People v. Knox*, 2014 IL App (1st) 120349, ¶46 (citing Ill. Const. 1970, art. I, § 11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008)). Finding such a balance requires the trial court to consider aggravating and mitigating factors, including: " 'the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education.' " *Id.* (quoting *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992)). It is also proper for the sentencing court to consider the nature of the offense, including the circumstances and extent of each element as committed. *People v. Bowman*, 357 Ill. App. 3d 290, 304 (2005). A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261 (1995).

¶ 30 It is well-settled that the trial court has broad discretionary powers in imposing a sentence and the trial court's decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The reviewing court "gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the

'cold' record." *People v. Fern*, 189 2d 48, 53 (1999). Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 31 In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People v. Alexander*, 239 Ill. 2d 205, 213-14 (2010). Rather, the reviewing court will alter a sentence only if the trial court abused its discretion. *People v. Bowman*, 357 Ill. App. 3d 290, 303 (2005). Moreover, when "a sentence falls within statutory guidelines, it is presumed to be proper and will not be disturbed absent an affirmative showing that the sentence is at variance with the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense." *Knox*, 2014 IL App (1st) 120349, ¶46.

¶ 32 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 32 years' imprisonment. Defendant was convicted of attempted first degree murder, a Class X felony with a sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/8-4(c)(1) (West 2008); 730 ILCS 5/5-4.5-25 (West Supp. 2009). Because defendant personally discharged a firearm while attempting to commit first degree murder, he was subject to a mandatory 20-year enhancement. 720 ILCS 5/8-4(c)(1)(C) (West 2008). Therefore, defendant faced a minimum sentence of 26 years and a maximum sentence of 50 years' imprisonment. Because the trial court's 32-year sentence falls within the statutory range, we presume that it is proper, and we will not find an abuse of discretion unless the sentence is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Knox*, 2014 IL App (1st) 120349, ¶46.

¶ 33 Defendant does not dispute that his sentence fell within the permissible range or that he was subject to Class-X sentencing with an enhancement of 20 years' for personally discharging a firearm. Defendant also does not claim that the trial court considered an improper sentencing factor. Rather, he argues that his sentence is greatly at variance with the purpose and spirit of the law because a sentence greater than the statutorily required minimum of 26 years runs contrary to the constitutional requirement that the sentencing court focus on "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, Art. I § 11. In particular, defendant claims that his sentence does not reflect his rehabilitative potential because this court recognizes that young adults are developmentally similar to adolescents. See *People v. House*, 2015 IL App (1st) 110580, ¶95 ("Young adults are, neurologically and developmentally, closer to adolescents than they are to adults."). Defendant also argues that his sentence fails to account for the abuse and neglect he suffered in childhood that led him to grow "into a young man who demonstrated anger issues and anti-social behavior," for which he is now medicated. Defendant further argues that the trial court's sentence fails to achieve a balance between the seriousness of the offense and his rehabilitative potential, where the victim of his attempted murder did not suffer permanent, debilitating injuries.

¶ 34 However, the record shows that this mitigation evidence was presented to the trial court before it imposed its sentence. As noted above, we presume that the trial court properly considered all mitigation evidence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing.

¶ 35 The record shows that these factors were outlined in defendant's PSI report and defense counsel's argument in mitigation. This included evidence of defendant's age, struggle with anger management, and family life. The trial court heard defense counsel's arguments that defendant is a "young man" that endured a difficult childhood, has received treatment for anger management, and earned his GED. The PSI also documents defendant's age, mental difficulties, his level of education, and his work history. The court expressly noted that it considered defendant's PSI report and stated that defendant was "born without privilege." Furthermore, the trial court considered the non-debilitating nature of Hall's injuries, as it heard Hall's testimony at trial, and it made a finding that defendant did not inflict great bodily harm. In light of this record, defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we will not do. See *Alexander*, 239 Ill. 2d at 214 ("it is not our duty to reweigh the factors involved in [the defendant's] sentencing decision").

¶ 36 Moreover, as mentioned, a sentencing court is not required to award a defendant's rehabilitative potential greater weight than the seriousness of the offense. *Coleman*, 166 Ill. 2d at 261. This court has stated that "[i]n fashioning the appropriate sentence, the most important factor to consider is the seriousness of the crime." *People v. Busse*, 2016 IL App (1st) 142941, ¶ 28. Here, the evidence showed that defendant chased Hall and shot him multiple times in the back because he was angry with how Hall coached an amateur baseball team. Defendant also stood over Hall and attempted to shoot him again, but the gun did not discharge. Given the nature of this offense, we cannot say that the trial court abused its discretion in sentencing defendant to 32 years' imprisonment, a term six years greater than the statutorily required minimum. See *People v. Mimes,* 2014 IL App (1st) 082747-B, ¶43 (45 years' imprisonment for

attempted first degree murder by 19 year old offender not excessive where an aggravating factor was that he "approached the 17 year-old, unarmed victim and began firing multiple gunshots from a distance of only two or three feet away."); see also *People v. Whitfield*, 2014 IL App (1st) 123135, ¶¶ 38-42 (two 45-year sentences for attempted first degree murder imposed on a 16 year-old offender was not excessive where "defendant's act of shooting in the direction of [one of the victim's] head, thwarted only by a malfunction of his gun, was a very serious offense," the victims suffered minor to no injuries, and the offense "involved shooting unarmed victims who did not provoke him.").

¶ 37 In reaching this conclusion, we are not persuaded by the string of U.S. Supreme Court cases, cited by defendant, which hold that capital punishment and sentences of life imprisonment without the possibility of parole are unconstitutional when applied to juvenile offenders. See *Roper v. Simmons*, 543 U.S. 551 (2005) (capital punishment for juvenile offenders unconstitutional); *Graham v. Florida*, 560 U.S. 48 (2010) (life sentence without possibility of parole unconstitutional as applied to juveniles who had committed crimes other than homicide); *Miller v. Alabama*, 567 U.S. 460 (2012) (life sentence without parole unconstitutional as applied to juveniles who had committed homicide). These cases considered that, "as compared with adults, juveniles lack maturity, have an underdeveloped sense of responsibility, and are more easily influenced by peer pressure, and, because the character of a juvenile is not yet fully formed, his or her personality traits remain susceptible to change." *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 96. See *Roper*, 543 U.S. at 569-70; *Graham*, 560 U.S. at 68; *Miller*, 567 U.S. at 476.

¶ 38 Defendant argues that youthful offenders who are not technically juveniles should nevertheless be sentenced less harshly than older offenders because they have developmental limitations that render them less blame worthy for their poor choices and because they are more capable of rehabilitation. Relying on *People v. House*, 2015 IL App (1st) 110580, defendant contends that we should reduce his sentence to the minimum term of 26 years' imprisonment because he was 21 years old at the time of the shooting,

¶ 39 Although, in *House* this court applied the U.S. Supreme Court's reasoning regarding juveniles to a defendant who was 19, that case dealt with a sentence that was more severe and at least partially mandated by statute without any consideration of defendant's age. See *House*, 2015 IL App (1st) 110580, ¶ 82-101. In *House*, we vacated a mandatory life sentence as applied to a 19 year-old under the proportional penalties clause of the Illinois Constitution, finding that the sentence "shocks the moral sense of the community." *Id.* at ¶ 101. Here, unlike in *House*, defendant is not making an "as applied" proportionate penalties challenge to a mandatory sentencing statute. As such, the applicability of *House* to this case is limited. More importantly, here, unlike in *House*, defendant was not sentenced to a *de jure* life sentence after being convicted, under a theory of accountability, of murder, during which he merely acted as a "look out." See *House*, 2015 IL App (1st) 110580, ¶101. Rather, as mentioned, defendant was sentenced to 32 years' imprisonment, a term six years above the statutory required minimum, for attempted murder, during which he shot Hall multiple times in the back and attempted to shoot him again.

¶ 40 We are likewise not persuaded by defendant's argument that his sentence is "mostly a product of mandatory add-ons" that are currently discretionary for defendants, who are three

years younger than him at the time he committed this firearm-related offense. While designating eighteen as the beginning of adulthood is somewhat arbitrary in light of research showing the brain does not fully develop until the mid-twenties (*House*, 2015 IL App (1st) 110580, ¶95), eighteen is ultimately " 'the point where society draws the line for many purposes between childhood and adulthood.' " *People v. Thomas*, 2017 IL App (1st) 142557, ¶47 (quoting *Roper*, 543 U.S. at 574). The legislature "has determined that at the age of 18, a person is an adult for sentencing purposes," and " 'it is for the legislature, and not the courts, to revisit the sentencing scheme and afford greater discretion to trial judges' for defendants 18 years of age or older." *Id.* (quoting *People v. Harris*, 2016 IL App (1st) 141744, ¶80 (Mason, J., concurring part and dissenting in part)).

¶ 41 Finally, defendant requests that we correct his mittimus to accurately reflect his sentence. We have the authority to order the correction of the mittimus without remanding. *Brown*, 2015 IL App (1st) 130048, ¶50. Our review of the mittimus shows that, while it lists defendant's offense as attempted first degree murder, it does not cite to the attempt statute (720 ILCS 5/8-4(a) (West 2008)), and shows that defendant is serving a Class M sentence, instead of a Class X sentence. Accordingly, we direct the clerk of the circuit court to issue a corrected mittimus that reflects the proper statutory citation for the offense of which defendant was convicted, and that he is serving a Class X sentence.

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and correct the mittimus.

¶ 43 Affirmed; mittimus corrected.