THIRD DIVISION
September 20, 2017

No. 1-17-0931

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re NIGEL L., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee.	)	
	)	
v.	)	No. 16 JD 1068
	)	
NIGEL L.,	)	Honorable
	)	George Louis Canellis, Jr.,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed; respondent has not shown mandatory confinement until the age of 21 in the Department of Juvenile Justice is a cruel and unusual punishment or disproportionate penalty.

¶ 2 In May 2016, the State filed a petition for adjudication of wardship alleging respondent,

Nigel L., a minor, committed residential burglary. Because respondent committed at least two prior offenses as a juvenile that would be felonies had respondent been an adult, the State prosecuted respondent as a habitual juvenile offender under the Juvenile Court Act (Act). 705 ILCS 405/5-815 (West 2016). After a jury trial respondent was found guilty of residential burglary. The court sentenced respondent as a habitual juvenile offender to confinement in the Department of Juvenile Justice (DJJ) until he reaches the age of 21, the mandated penalty under the Act. On appeal respondent contends his sentence is invalid under a theory the Act is unconstitutional because it prescribes a mandatory penalty for juveniles without consideration of their age or ability to be rehabilitated. We disagree. For the reasons that follow we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On May 11, 2016, the State filed a petition for adjudication of wardship for respondent, who was 16 years old at the time of the offense. On May 17, 2016, the State filed its notice to prosecute respondent as a habitual juvenile offender. The habitual juvenile offender provision of the Act allows a minor alleged to be a habitual offender to elect to have a jury trial and reads:

> "Sec. 5-815. Habitual Juvenile Offender.
>
> (a) Definition. Any minor having been twice adjudicated a delinquent minor for offenses which, had he been prosecuted as an adult, would have been felonies under the laws of this State, and who is thereafter adjudicated a delinquent minor for a third time shall be adjudged an Habitual Juvenile Offender where:
>
> 1. the third adjudication is for an offense occurring after adjudication on the second; and

2. the second adjudication was for an offense occurring after adjudication on the first; and

3. the third offense occurred after January 1, 1980; and

4. the third offense was based upon the commission of or attempted commission of the following offenses: *** burglary of a home or other residence intended for use as a temporary or permanent dwelling place for human beings ***.

* * *

(d) Trial. Trial on such petition shall be by jury unless the minor demands, in open court and with advice of counsel, a trial by the court without jury.

Except as otherwise provided herein, the provisions of this Act concerning delinquency proceedings generally shall be applicable to Habitual Juvenile Offender proceedings.

* * *

(f) Disposition. If the court finds that the prerequisites established in subsection (a) of this Section have been proven, it shall adjudicate the minor an Habitual Juvenile Offender and commit him to the Department of Juvenile Justice until his 21st birthday, without possibility of aftercare release, furlough, or non-emergency authorized absence. However, the minor shall be entitled to earn one day of good conduct credit for each day served as reductions against the period of his confinement. Such good conduct credits shall be earned or revoked according to the procedures applicable to the allowance and revocation of good conduct

> credit for adult prisoners serving determinate sentences for felonies." 705 ILCS 405/5-815 (West 2016).

Respondent had been twice adjudicated a delinquent minor for committing residential burglary in 2014 and aggravated unlawful use of a weapon in 2015. A jury trial was held on the present charge of residential burglary.

¶ 5 At trial, police testified to receiving a call of a burglary in progress at 3:30 p.m. on May 10, 2016. After an officer climbed over a locked fence, the officer saw a broken window to the home and respondent through that window inside the kitchen holding a laptop and camera box. Respondent saw the officer, dropped what he was holding, and ran toward the front of the home. Police caught respondent after he exited the home before he climbed over the fence, and placed respondent in custody. Though a number of small items were taken from the crime scene, police found no such objects on respondent when searching him upon arrest. The resident of the burglarized home testified he lived at that address, did not know respondent, and did not give respondent permission to enter his home or to remove any items from his home. The jury subsequently found respondent guilty of residential burglary. At the sentencing hearing the State introduced certified copies of two prior convictions for crimes that would be felonies if respondent had been charged as an adult.

¶ 6 The court adjudged respondent a ward of the court and sentenced respondent to confinement in the DJJ until he is 21 years old, with the possibility of early release for good conduct. While in custody during trial, respondent showed "marked improvement." Apart from regularly maintaining good behavior, respondent improved his grades and received a certificate of completion for completing a prevocational course on painting. Respondent's social investigation report indicated that while in juvenile detention "he has been a leader and court

reports indicate he even helps to facilitate groups." Respondent's probation officer informed the court at sentencing that respondent had "done really well" while in custody during trial and acted as a mentor to another troubled youth in custody. Nevertheless, the court imposed the mandated sentence of confinement in the DJJ until respondent reaches the age of 21. The court further noted it "looked at [respondent's] age, [respondent's] criminal background." The court "reviewed them, looked at in detail the results of the assessments, [respondent's] educational background, physical, mental and emotional health, viability of community-based services, as well as services within DJJ which can also meet [respondent's] needs." The court determined after factoring respondent's age and ability to rehabilitate that respondent should be adjudged a ward of the court and committed to the DJJ until he is 21 years old. "Reasonable efforts have been made to prevent or eliminate the need for the minor to be removed from the home, and efforts cannot at this time for good cause shown prevent or eliminate the need for the removal." The court found this was "in the best interest of the minor as well as the public."

¶ 7 ANALYSIS

¶ 8 On appeal respondent contests the constitutionality of the habitual juvenile offender provision of the Act, not the underlying facts of his case. Respondent claims the mandatory sentence prescribed by the habitual juvenile offender provision of the Act is facially unconstitutional because it violates the eighth amendment and the proportionate penalties clause of the Illinois constitution. As respondent frames the issue, the Act is facially unconstitutional because mandatory penalties were found unconstitutional based on their failure to account for an offender's youth and attendant circumstances (*Miller v. Alabama*, 567 U.S. 460, 483 (2012)), and constitute a disproportionate penalty because they fail to consider rehabilitation in sentencing. We disagree.

¶ 9 Standard of Review

¶ 10 Respondent challenges the constitutionality of the habitual juvenile offender provision of the Act. "Our review begins with the presumption that the statute is constitutional. Because of this presumption, the party challenging the statute bears the burden of showing its invalidity." *People v. Leon Miller*, 202 Ill. 2d 328, 335 (2002). Respondent claims the Act is facially unconstitutional, the most difficult constitutional challenge to mount successfully "because an enactment is facially invalid only if no set of circumstances exists under which it would be valid. [Citation.] The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity." *Napleton v. Villlage of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008). A statute withstands a facial constitutional challenge so long as a possible constitutional application exists. "This court has a duty to uphold the constitutionality of a statute when reasonably possible [citation,] and, therefore, if a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity." *Id*. at 306-07. We review respondent's constitutional challenge *de novo* because it raises an issue of law. *People v. McCarty*, 223 Ill. 2d 109, 135 (2006).

¶ 11 Inflicting Punishment

¶ 12 Under the eighth amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The eighth amendment is applicable against the States under the due process clause of the fourteenth amendment. U.S. CONST. amend. XIV, § 1; *Robinson v. California*, 370 U.S. 660, 667 (1962). When determining whether a punishment is cruel and unusual we must keep in mind "the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing

society." *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958).

¶ 13 The Illinois constitution's proportionate penalties clause reads: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." ILL. CONST. art. I, § 11. Analysis of claims under the proportionate penalties clause is co-extensive with claims brought under the eighth amendment. *People v. Patterson*, 2014 IL 115102, ¶ 106. Respondent notes our supreme court found the proportionate penalties clause, while co-extensive with the eighth amendment, is not precisely identical because it further explicates the necessity of factoring the probability of rehabilitation when considering the proportionality of the punishment. *People v. Clemons*, 2012 IL 107821, ¶ 39. Whether or not the proportionate penalties clause affords greater protection than the eighth amendment, our disposition is unaltered.

¶ 14 In order to find a statute unconstitutional for violating the eighth amendment or the Illinois constitution's proportionate penalties clause, the statute must inflict punishment. *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006) ("Both clauses apply only to the criminal process - that is, to direct actions by the government to inflict punishment. [Citations.] We therefore must determine whether the petition for adjudication of wardship here was a direct action by the state to inflict punishment."). If the Act does not punish, then neither the eighth amendment nor the proportionate penalties clause apply and the Act cannot be found unconstitutional on those grounds.

¶ 15 Under established Illinois Supreme Court precedent, juvenile court proceedings do not impose punishment.

> " 'The first purpose of [a juvenile court] statute is not to punish but to correct ***.' Indeed, 'no suggestion or taint of criminality attaches to any finding of

> delinquency by a juvenile court.' [Citations.] Thus, because the petition for adjudication of wardship was not a direct action by the state to inflict punishment, neither the proportionate penalties clause nor the cruel and unusual punishment clause apply here." *In re Rodney H.*, 223 Ill. 2d at 520-21.

Notwithstanding contrary precedent, respondent argues mandatory commitment to the DJJ until the age of 21 is a punishment because the purpose is, at least partly, to remove the offender from the public and due to the conditions faced by detainees in the DJJ. Respondent's argument fails to contest the reasoning in *Rodney H.* where the court indicated juvenile proceedings do not inflict punishment because there is no taint of criminality. Even when found a habitual juvenile offender, the taint of criminality does not follow the juvenile upon release from the DJJ. Therefore, the habitual juvenile offender provision of the Act does not impose punishment; it does not violate the eighth amendment and is not a disproportionate penalty.

¶ 16 Eighth Amendment

¶ 17 Even if we granted the Act punishes respondent, we must still find it constitutional due to our supreme court's ruling in *People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67 (1980), finding the habitual juvenile offender provision of the Act constitutional under the eighth amendment and proportionate penalties clause of the Illinois constitution. As the appellate court we are bound by the precedent of our supreme court. *People v. Artis*, 232 Ill. 2d 156, 164 (2009) ("The appellate court lacks authority to overrule decisions of this court, which are binding on all lower courts."). Respondent does not dispute this point; rather, he argues *Chrastka* relies on *Rummel v. Estelle*, 445 U.S. 263 (1988), for its holding the Act does not violate the eighth amendment and is therefore out of step with a recent line of cases decided by the Supreme Court of the United States. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010);

Miller v. Alabama, 567 U.S. 460 (2012). Respondent argues this line of cases overturn *Rummell* and therefore overturn *Chrastka*. Respondent's position is that *Miller v. Alabama* declared mandatory penalties unconstitutional because a court must factor consideration of respondent's youth and attendant circumstances when determining punishment.

¶ 18 While the *Chrastka* court relied on *Rummel* for its holding under the eighth amendment, respondent's contention that his case is factually similar to *Miller v. Alabama* is unavailing. First, respondent was sentenced as a juvenile under the Act rather than as an adult like the defendants in *Miller*.

> "*Miller*, however, is factually distinguishable and does not support deviating from precedent established in *Chrastka*, which, as an appellate court, we are required to follow. In *Miller*, and the cases it relies on, *Roper*, and *Graham*, the defendants were under the age of 18, but were tried as adults in the criminal system." *In re Shermaine S.*, 2015 IL App (1st) 142421, ¶ 25.

Second, and most importantly, respondent did not receive a life sentence without possibility of parole:

> "Further, the *Miller* Court did not hold that the eighth amendment prohibited any mandatory penalties but, rather, only mandatory life sentences. While [respondent] was given a mandatory sentence of commitment until the age of 21, that sentence is far less egregious than the sentence of life in prison without the possibility of parole that the trial court gave to the *Miller* defendant." *Id*.

The defendants in *Miller* were sentenced to life without possibility of parole whereas respondent is only sentenced to confinement until the age of 21, with even the possibility of early release for good behavior. 705 ILCS 405/5-815(f) (West 2016). That respondent can be released earlier for

good behavior is indicative of the Act not only factoring in rehabilitation, but encouraging it. This varies dramatically from life without the possibility of parole where not even good behavior would allow a juvenile defendant to be released early. Respondent does not face remotely similar confinement as the defendants in *Miller*.

¶ 19 Respondent has not shown the *Chrastka* court's finding the Act does not violate the eighth amendment is out of step with the recent line of juvenile justice cases. Sentences prescribing mandatory confinement until the age of 21 handed down by juvenile courts have not been found unconstitutional. Just as the juvenile offender in *Shermaine* respondent here was sentenced as a juvenile, unlike the defendants sentenced as adults in *Roper*, *Graham*, and *Miller*.

> "Like the respondents in *Chrastka*, [respondent] was sentenced as a habitual juvenile offender to a mandatory minimum sentence of commitment until he is 21 years old as a result of recidivism. *** Although the United States Supreme Court has in recent years addressed the eighth amendment rights of juveniles tried as adults, it has not similarly addressed the rights of juveniles like [respondent] who are tried in the juvenile court system. Further, the Illinois Supreme Court has not revisited its holding in *Chrastka*." *In re Shermaine S.*, 2015 IL App (1st) 142421 at ¶ 26.

As we found when we decided *Shermaine*, *Chrastka* has not been overturned by either our supreme court or the Supreme Court of the United States. Respondent was treated as a juvenile in sentencing. Simply because he received a mandatory sentence does not mean the sentence did not factor his youth and attendant circumstances.

¶ 20 The Act factors in rehabilitation, differing dramatically from the punishments in *Roper*, *Graham*, and *Miller* where juveniles were either to die by execution, or condemned to die

imprisoned.

> "Life-without-parole terms, the Court wrote, 'share some characteristics with death sentences that are shared by no other sentences.' [Citation.] Imprisoning an offender until he dies alters the remainder of his life 'by a forfeiture that is irrevocable.' [Citations.] And this lengthiest possible incarceration is an 'especially harsh punishment for a juvenile,' because he will almost inevitably serve 'more years and a greater percentage of his life in prison than an adult offender.' [Citation.] The penalty when imposed on a teenager, as compared with an older person, is therefore 'the same ... in name only.' [Citation.] All of that suggested a distinctive set of legal rules: In part because we viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment. We imposed a categorical ban on the sentence's use, in a way unprecedented for a term of imprisonment." *Miller v. Alabama*, 567 U.S. at 474-75.

While the Act may impose a mandatory penalty, that penalty is neither "especially harsh," nor does it forfeit the remainder of respondent's life. Instead, the Act presupposes the psychological and physiological findings concerning the decision-making capabilities of juveniles and their potential for rehabilitation because the Act releases the juvenile offender when he becomes 21, or sooner for good behavior.

> "Even as the legislature recognized that the juvenile court system should protect the public, it tempered that goal with the goal of developing delinquent minors into productive adults, and gave the trial court options designed to reach both goals. Article V may represent 'a fundamental shift from the singular goal of

> rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law,' but proceedings under the Act still are not criminal in nature." *In re Rodney H.*, 223 Ill. 2d at 520.

While the penalty under the Act may be mandatory, that does not mean the sentence imposed by the Act fails to factor the offender's youth and attendant circumstances. In the present case, the Act factors in respondent's capability of rehabilitation by releasing him either at the age of 21 or earlier for good behavior.

¶ 21 The *Miller* court reasoned a sentence of life without possibility of parole was unconstitutional because the sentence was inconsistent with goals of punishment: such a sentence could not fulfill a rehabilitative role. It was not the mandatory nature of the penalty that made the sentence constitutionally deficient. The constitutional problem stemmed from foreswearing rehabilitation altogether.

> "*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because '[t]he heart of the retribution rationale' relates to an offender's blameworthiness, 'the case for retribution is not as strong with a minor as with an adult.' [Citations.] Nor can deterrence do the work in this context, because 'the same characteristics that render juveniles less culpable than adults' - their immaturity, recklessness, and impetuosity- make them less likely to consider potential punishment. [Citations.] Similarly, incapacitation could not support the life-without-parole sentence in *Graham*: Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgment that [he] is incorrigible' - but 'incorrigibility

> is inconsistent with youth.' [Citations.] And for the same reason, rehabilitation could not justify that sentence. Life without parole 'forswears altogether the rehabilitative ideal.' [Citation.] It reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." *Miller*, 567 U.S. at 472-73.

We have no similar concerns with the habitual juvenile offender provision of the Act. The Act does not give up on rehabilitating juvenile offenders; their confinement only lasts till they turn 21. The Act does not mandate habitual juvenile offenders are incorrigible or irrevocably remove them from society.

¶ 22 The Act does not remove consideration of youth from the balance of sentencing, as the *Miller* Court found problematic. "By removing youth from the balance - by subjecting a juvenile to the same life-without-parole sentence applicable to an adult - these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Miller*, 567 U.S. at 474. Here the juvenile is not subject to the law's harshest term of imprisonment. Far from it. Respondent faces a maximum sentence of three years confinement in the DJJ. The problem with the penalties imposed in *Miller*, *Graham*, and *Roper*, is that they condemned juveniles by depriving them of an opportunity to reach maturity of judgment in society. "The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. In *Roper*, that deprivation resulted from an execution that brought life to its end." *Graham*, 560 U.S. at 79. The *Graham* Court found a mandatory term of life in prison without the possibility of parole similarly deprived a juvenile because the juvenile has "no chance of reconciliation with society, no hope." *Id*. Here we have no similar concern. Respondent is not deprived of achieving

maturity of judgment because respondent will only be held in the DJJ until he reaches the age of 21. After, he has an opportunity to achieve maturity of judgment in society, unlike a criminal defendant who is sentenced to life without parole, or an equivalent sentence.

¶ 23 Proportionate Penalties Clause

¶ 24 Respondent argues analysis of his claim differs under the Illinois constitution's proportionate penalties clause because the clause is more protective than the eighth amendment. Even if we agreed analysis under the proportionate penalties clause differs, the outcome remains the same. Although respondent asserts *Chrastka* was overturned by the Supreme Court of the United States in its line of juvenile cases (*Roper*, *Graham*, *Miller*), respondent fails to contest the *Chrastka* court's holding under the Illinois constitution's proportionate penalties clause. The *Chrastka* court did not rely on federal case law for that portion of its holding, meaning the analysis under the proportionate penalties clause would not have been overturned by *Roper*, *Graham*, or *Miller*. The *Chrastka* court analyzed whether the Act properly considered a juvenile offender's rehabilitative potential:

> "The legislature could legitimately conclude that an individual who has committed three such offenses has benefited little from the rehabilitative measures of the juvenile court system and exhibits little prospect for restoration to meaningful citizenship within that system as it had heretofore existed. The rehabilitative purposes of the system are not completely forsaken, but after the commission by an individual of a third serious offense, the interest of society in being protected from criminal conduct is given additional consideration. We consider it to be entirely reasonable and constitutionally permissible for the legislature to so provide and to authorize the disposition specified in the

legislative scheme it has developed." *Chrastka*, 83 Ill. 2d at 80.

Respondent claims analysis under the eighth amendment and the Illinois constitution's proportionate penalties clause differ slightly because the Illinois constitution provides for consideration of rehabilitation. Although the Act allows for respondent's confinement until age 21, it does not abandon the goal of rehabilitation. The possibility of early release for good behavior itself is a motivator for respondent to rehabilitate himself. See *McGinnis v. Royster*, 410 U.S. 263, 271 (1973) ("the granting of good-time credit toward parole eligibility takes into account a prisoner's rehabilitative performance."). Even were we to agree with respondent that analysis under the Illinois constitution's proportionate penalties clause and the eighth amendment differ, respondent's argument still fails because our supreme court has not revisited whether the Act continues to properly consider a juvenile's rehabilitative potential. Until it does, we are bound by its precedent on this matter of Illinois law. *Artis*, 232 Ill. 2d at 164.

¶ 25 Respondent failed to meet his burden of proving the habitual juvenile offender provision of the Act violates either the eighth amendment or the proportionate penalties clause of the Illinois constitution. The Act does not impose punishment and is not unconstitutional under those grounds. Further, respondent does not face a similar situation as the juveniles in *Roper*, *Graham*, or *Miller* because he is not sentenced to execution or to spend the rest of his life in prison. Respondent is sentenced to confinement in the DJJ until he is 21 years old, showing the Act factors a juvenile respondent's rehabilitative potential. Our supreme court has previously found the habitual juvenile offender provision of the Act constitutional. Respondent has not justified deviation from the *Chrastka* court's holding.

¶ 26 CONCLUSION

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

¶ 28 Affirmed.