

2018 IL App (1st) 142540-U

No. 1-14-2540

May 9, 2018

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

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 CR 25773
)	
WILLIE TAYLOR,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The automatic transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130(1) (West 2004)), did not deprive defendant of his right to due process. Defendant was proven guilty of armed robbery pursuant to an accountability theory beyond a reasonable doubt when the evidence at trial established that defendant, codefendant and two other boys beat the victim until he fell to the ground then codefendant removed a link card from the victim's wallet. Pursuant to *People v. Hunter*, 2017 IL 121306, certain 2016 changes to the Juvenile Court Act of 1987 and the Unified Code of Corrections do not apply retroactively to defendant.

¶ 2 Following a bench trial, defendant Willie Taylor was found guilty of first degree murder and armed robbery. He was sentenced to 21 years in prison for the murder conviction and to a consecutive 6-year sentence for the armed robbery. Although defendant was 15 years old at the time of the offense, he was tried and sentenced as an adult in accordance with the “automatic transfer provision” set forth in section 5-130(1) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130(1) (West 2004)).

¶ 3 On appeal, defendant first contends that section 5-130(1) of Act, which automatically transferred 15 and 16-year olds charged with first degree murder to adult court, deprived him of procedural and substantive due process. Defendant next contends that the State failed to prove beyond a reasonable doubt that he was accountable for the armed robbery committed by the other offenders because there was no evidence that he shared a criminal intent with the principals or that there was a common design to commit an armed robbery. Defendant finally contends that he is entitled to resentencing in juvenile court in light of Public Act 99-258 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130 (West 2014)), which amended the automatic transfer provision of the Act. In the alternative, defendant contends that he is entitled to resentencing pursuant to the retroactive application of Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105), which requires the consideration of additional factors in mitigation when sentencing minors.

¶ 4 In 2017, this court determined that the 2016 amendment to the automatic transfer provision of the Act applied retroactively to defendant's case, and remanded the cause for resentencing in juvenile court. See *People v. Taylor*, 2017 IL App (1st) 142540-U. The State

then filed a petition for rehearing. We granted the petition for rehearing and withdrew our previous order. For the following reasons, we now affirm defendant's conviction and sentence.

¶ 5 Defendant's arrest and prosecution arose from a June 17, 2005 incident during which the victim, Willie Green, was beaten and his "link" card was taken from his wallet. The victim died from his injuries.

¶ 6 During the incident, defendant, codefendant Deon Sails,¹ 14-year-old Jonathan Rucker and "A.P." allegedly beat the victim with their fists and threw a garbage can at his head. After the victim was on the ground, codefendant allegedly took the victim's wallet, removed a link card, and threw the wallet on the victim. The matter proceeded to a simultaneous, severed trial where defendant was tried by the trial court and codefendant was tried by a jury.²

¶ 7 Andre Donner testified that around 11:00 p.m. on June 17, 2005, he was "coming" from a gas station where he had been talking to Doncell "Chum" Richard. At one point, he sat on a fire hydrant. He heard a man say "ah" like "when something hurt you." It was "[r]eal loud." Donner got up and looked around the corner. He observed a "man getting beat up by four boys." At the same time, Chiquita Hicks was walking her dog on the other side of the street. Richard subsequently arrived on his bicycle.

¶ 8 At trial, Donner identified defendant and codefendant as two of the boys he observed. The other two boys were Jonathan Rucker and "some kid" named A.P. Donner knew defendant and codefendant from school and the neighborhood. Donner observed the boys punching the victim hard with their closed fists all over the victim's body. When the victim fell to the ground,

¹ Codefendant's surname is also spelled Sales in the record.

² Codefendant Sails was convicted of first degree murder and armed robbery. He was sentenced to an aggregate prison term of 26 years. Codefendant's convictions and sentences were affirmed on direct appeal. See *People v. Sails*, No. 1-08-0968 (2010) (unpublished order under Supreme Court Rule 23).

codefendant picked the victim back up so that the boys could “get to punching him again.” After the victim fell to the ground a second time, codefendant and Jonathan Rucker picked the victim up by the arms. Defendant then retrieved a garbage can, picked it up over his head and threw it at the victim’s head. The victim fell to the ground a third time, unconscious. Codefendant then went into the victim’s wallet, removed a link card and threw the wallet on the victim. The four boys walked off together. As they left, Jonathan Rucker and Richard got into a “little argument.” On June 18, 2005, Donner saw codefendant and asked him “what was all that about last night.” Codefendant stated that he had sold the victim “a dummy,” that is, a fake bag of cocaine, and the victim wanted a refund.

¶ 9 In July 2005, Donner learned that his friend Christian Matthews had been taken into custody in connection with the beating and went to a police station to tell the police that Matthews was not involved. He later provided a handwritten statement to the police and testified before a grand jury. In 2007, Donner pled guilty to possession of a controlled substance and was sentenced to 24 months of probation.

¶ 10 During cross-examination, Donner acknowledged that he did not immediately tell the police about the conversation with codefendant. He also admitted that he told the police and the grand jury that it was defendant, rather than codefendant, who went through the victim’s pockets. When asked what “jogged” his memory, Donner replied that he used to “smoke weed” and now he suffered from “memory loss.” He denied smoking “weed” on the night of the victim’s beating.

¶ 11 Doncell “Chum” Richard testified that he lived in the neighborhood with his mother and his sister, Chiquita Hicks. When Donner called out to him that someone was “getting beat up,”

he went to where Donner was located. Richard then observed an older man on the ground getting beat up. Richard saw “at least six people” standing around the man, but he did not know if “everyone was beating [the victim] up.” At least “three or four” were doing something to the man. At trial, he identified defendant and codefendant as two of those people. Richard saw defendant pick the victim up by the arms. After A.P. punched the victim, the victim fell to the ground. Richard got into an argument with Jonathan Rucker because he told the boys to “get off the block.” Richard was brought to a police station for questioning about the beating on July 31, 2005. He gave a handwritten statement in October 2005, stating that he saw “Willie, Jonathan, A.P., and Deon punching the man on the ground in the head.” He also identified defendant, codefendant and Jonathan Rucker in a line-up.

¶ 12 During cross-examination, Richard testified that he did not see defendant take anything from the victim’s pocket or hit the victim.

¶ 13 Detective Jean Romic testified that she was initially tasked with investigating an aggravated battery, but that it became a murder investigation. In the course of her investigation, she discovered a 911 call which stated “that there were several male teens jumping on an old man.” Specifically, the call indicated that seven boys were involved. On July 31, 2005, Detective Romic picked up Doncell Richard, Christian Matthews and Tyrese Carter. She intended to put on a line-up for certain witnesses, but the line-up did not take place because she could not get in touch with the witnesses. Detective Romic spoke with Donner on October 5, 2005. After that conversation, she began looking for, *inter alia*, defendant and codefendant. Richard and Hicks later identified defendant, codefendant and Jonathan Rucker in line-ups. When Detective Romic

spoke to Donner, he stated that defendant checked the victim's pockets and took the victim's wallet. Donner also stated defendant hit the victim with a garbage can.

¶ 14 Chiquita Hicks, Doncell Richard's sister, testified that she was walking her dog when she saw four boys and an older man. At trial, she identified defendant and codefendant as two of those boys. She observed Jonathan Rucker hit the victim in the head with a garbage can. She also saw all four boys punch the victim with closed fists. At one point, codefendant and Jonathan Rucker went through the victim's pockets. During cross-examination, Hicks testified that she did not see defendant pick up a garbage can and throw it, or go through the victim's pockets.

¶ 15 Defendant was ultimately found guilty of first degree murder and armed robbery. He was sentenced to 21 years in prison for the murder and to a consecutive 6-year term for the armed robbery.

¶ 16 In 2010, defendant filed a *pro se* petition for relief pursuant to the Postconviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that he was denied the effective assistance of trial counsel when counsel failed to perfect his appeal. The petition was dismissed because it was not signed or notarized. In 2011, defendant filed a *pro se* petition for postconviction relief verified pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2010)). The petition was docketed and postconviction counsel was appointed. Ultimately, the trial court granted defendant leave to file a late notice of appeal and to withdraw the postconviction petition. Defendant now appeals.

¶ 17 On appeal, defendant first contends that the version of section 5-130(1) of the Act in effect at the time of the instant offenses, which automatically transferred 15 and 16-year olds charged with first degree murder to adult court, violates procedural and substantive due process.

He argues that the provision does not withstand constitutional scrutiny in light of a series of United States Supreme Court cases recognizing the fundamental differences between juvenile and adult offenders and that criminal procedural laws that fail to take a juvenile offender's age into account violate the eighth amendment's prohibition against cruel and unusual punishment and the proportionate penalties clause of the Illinois Constitution.

¶ 18 In reviewing the automatic transfer provision, we keep in mind that “[a]ll statutes carry a strong presumption of constitutionality.” *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). The party challenging a statute has the burden to demonstrate that it is invalid. *People v. Graves*, 207 Ill. 2d 478, 482 (2003). “Whether a statute is constitutional is a question of law that we review *de novo*.” *Id.*

¶ 19 The Act's automatic transfer provision states that: “[t]he definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with first degree murder ***.” 705 ILCS 405/5-130(1)(a) (West 2004).

¶ 20 Defendant relies, in pertinent part, on three United States Supreme Court decisions, *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), to support his argument that “minors are entitled to additional sentencing protections by virtue of their rehabilitative potential and the fundamental differences between juvenile and adult minds.”

¶ 21 In *Roper*, the Supreme Court held that imposing the death penalty on juvenile offenders under 18 years old violates the eighth amendment. *Roper*, 543 U.S. at 568. In reaching this conclusion, the Court discussed key differences between juveniles under 18 years old and adults,

including a lack of maturity and an underdeveloped sense of responsibility, more vulnerability to negative influences and outside pressures, and a character that is not as well formed as that of an adult. *Id.* at 569-70. In *Graham*, the Court determined that the eighth amendment forbids a sentence of life without parole for juvenile offenders who commit nonhomicide offenses because a sentence of life without parole “improperly denies the juvenile offender a chance to demonstrate growth and maturity.” *Graham*, 560 U.S. at 73-75. In *Miller*, the Court held that the eighth amendment forbids a sentencing scheme that mandates life in prison without parole for juveniles who commit homicide because such sentencing schemes “by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Miller*, 567 U.S. at 476-77, 479-80.

¶ 22 Although *Roper*, *Graham*, and *Miller* limited the range of penalties for juvenile offenders, defendant’s challenge to the automatic transfer provision of the Act fails in light of our supreme court’s decision in *People v. Patterson*, 2014 IL 115102. Defendant acknowledges our supreme court’s holding in *Patterson*, but argues that the “the reasoning in *Patterson* does not withstand scrutiny where the transfer of children to adult court has virtually no consequence other than automatically increasing the sentencing range.”

¶ 23 In *Patterson*, our supreme court was not persuaded by the defendant’s reliance on the eighth amendment analyses set forth in *Roper*, *Graham* and *Miller* as support for his due process arguments because “the applicable constitutional standards differ considerably between due process and eighth amendment analyses” and “a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision.” *Id.* ¶ 97. The court also concluded that the automatic transfer provision did not violate the eighth amendment’s

prohibition against cruel and unusual punishment because the automatic transfer provision is not punitive; rather, it is procedural in that it simply dictates the forum and process utilized to determine the culpability of juvenile offenders charged with certain crimes. *Id.* ¶¶ 100, 104-06. See also *People v. Jackson*, 2012 IL App (1st) 100398, ¶¶ 16-17 (finding that the automatic transfer provision did not deprive the defendant of his right to substantive or procedural due process).

¶ 24 Defendant admits that he challenges the automatic transfer provision solely in order to preserve his claim for “possible further review.” Ultimately, his argument must fail because this court is “required to follow [Illinois] supreme court precedent on an issue ‘unless and until that conclusion is revisited by our supreme court or overruled by the United States Supreme Court.’ ” *In re Shermaine S.*, 2015 IL App (1st) 142421, ¶ 32, quoting *People v. Fountain*, 2012 IL App (3d) 090558, ¶ 23.

¶ 25 Defendant next contends that he was not proven guilty of armed robbery beyond a reasonable doubt pursuant to an accountability theory when there was no evidence that he shared a criminal intent with the principals or that there was a common design to commit an armed robbery. In other words, defendant contends that there was insufficient evidence to find him accountable for “the armed robbery in which he did not participate” because he was “merely present during the robbery committed by others.”

¶ 26 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The trier of fact is responsible for evaluating the credibility of the

witnesses, weighing witness testimony, and determining what inferences to draw from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 27 A person commits robbery when he takes property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ICLS 5/18-1(a) (West 2004). An armed robbery occurs when a person commits robbery while he carries on or about his person or is otherwise armed with a dangerous weapon other than a firearm. 720 ILS 5/18-2(a)(1) (West 2004). A person is legally accountable for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits aids, abets, or agrees or attempts to aid such other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2004). A defendant may be deemed accountable for acts performed by another pursuant to a common plan or purpose. *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995).

¶ 28 The "common design" rule provides that when two or more people engage in a common criminal design or agreement, any acts in the furtherance of that design or agreement committed by one party are considered to be the acts of all parties to the design or agreement, and all are equally responsible for the consequences of those further acts. *In re W.C.*, 167 Ill. 2d 307, 337 (1995). Proof of the common design need not be supported by words of agreement but may be drawn from the circumstances surrounding the commission of the act. *Taylor*, 164 Ill. 2d at 141.

¶ 29 Here, viewing the evidence at trial in the light most favorable to the State, as we must (*Brown*, 2013 IL 114196, ¶ 48), there was sufficient evidence to find defendant guilty, beyond a

reasonable doubt, of armed robbery under an accountability theory. The evidence at trial established that defendant, codefendant, Jonathan Rucker, and A.P. beat the victim until the victim was on the ground. Donner testified that once the victim was on the ground, codefendant removed a link card from the victim's wallet and then threw the wallet onto the victim's body. Chiquita Hicks also testified that she observed all four boys punch the victim with closed fists and that codefendant and Jonathan Rucker went through the victim's pockets. This court cannot say that no rational trier of fact could have found that the victim fell to the ground as a result of the beating inflicted by the four boys, that codefendant removed a link card from the victim's wallet or that defendant was accountable for codefendant's actions pursuant to the common design rule. See *Id.*

¶ 30 Defendant, however, contends that the armed robbery took place after the "completion" of the beating and, therefore, this "subsequent act" was a "new crime." We disagree.

¶ 31 *People v. Philips*, 2014 IL App (4th) 120695, is instructive. In that case, the defendant intended to hit a woman named Frazier in the eye in retaliation for injuries she gave to the mother of his children. The defendant went to Frazier's home accompanied by his friend, Shaunessy Grimes. Grimes was to identify Frazier for the defendant because the defendant did not know her. Grimes brought a rifle along in order to protect the defendant while the defendant attacked Frazier. When the men arrived, however, they saw a crowd of people. The defendant changed his mind about attacking Frazier and planned to leave because he was afraid he would be attacked in turn by the crowd. Grimes then fired the rifle once. A member of the crowd was killed. The defendant later admitted his involvement in the shooting and was convicted of first

degree murder and unlawful possession of a weapon by a felon pursuant to an accountability theory.

¶ 32 On appeal, the court affirmed the defendant's murder conviction, finding that he could not escape liability for the murder merely because his original intention was only to attack Frazier. *Id.* ¶¶ 31, 34. The court concluded that “[b]y attaching himself to a group bent on illegal acts, [the] defendant became accountable for all the crimes of his companions, including the shooting.” *Id.* ¶ 34. The court also noted that to be accountable for the shooting under the common design rule, the defendant need not have shared Grimes's intent to fire the rifle; rather, “[b]y setting out to commit a crime with Grimes, defendant rendered himself legally accountable for Grimes's shooting.” *Id.* ¶¶ 44, 53.

¶ 33 Similarly, here, it is undisputed that defendant, codefendant, and the other two boys took turns beating the victim. When the victim fell to the ground the last time, Donner testified that codefendant took the victim's wallet and removed a link card. Hicks also testified that codefendant and Jonathan Rucker went through the victim's pockets. Although it may be true, as defendant argues, that codefendant's act of taking the victim's link card was “spontaneous,” the result of the group's actions was that the victim was beaten, a link card was taken from his wallet and the victim later died. Contrary to defendant's assertion, the State was not required to prove that defendant and codefendant shared the same intent with regard to the charged offense, *i.e.*, the armed robbery. Rather, the State needed only to prove that defendant had the intent to promote or facilitate a crime. See *Philips*, 2014 IL App (4th) 120695, ¶ 43. By attaching himself to a group “bent” on an illegal action and taking part in that action, defendant became accountable for all the crimes of his companions, including those of codefendant. Defendant

cannot “escape liability merely because his criminal intentions” did not include a desire to take the victim’s property. See *Id.* ¶ 34. As our supreme court has held, “there is no question that one can be held accountable for a crime other than the one that was planned or intended, provided it was committed in furtherance of the crime that *was* planned or intended.” (Emphasis in original.) See *People v. Fernandez*, 2014 IL 115527, ¶ 19.

¶ 34 Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty of armed robbery when the evidence at trial established that defendant, codefendant, Jonathan Rucker and A.P. beat the victim until he was on the ground and ultimately codefendant took something from the victim’s wallet. *Brown*, 2013 IL 114196, ¶ 48. This court reverses a defendant’s conviction only where the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilt remains (*id.*); this is not one of those cases. We therefore affirm defendant’s armed robbery conviction.

¶ 35 Defendant finally contends that he is entitled to resentencing under provisions of the Act and the Unified Code of Corrections (Code) which came into effect on January 1, 2016. He argues these provisions apply retroactively to his case because it was pending on direct appeal on January 1, 2016. Defendant first contends that he is entitled to a new sentencing hearing in juvenile court in light of Public Act 99-258 (eff. Jan. 1, 2016), which amended section 5-130 of the Act. In the alternative, defendant contends that his cause should be remanded for resentencing pursuant to the retroactive application of Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105), which requires the consideration of additional factors in mitigation when sentencing minors.

¶ 36 Under the version of section 5-130(1) in effect when defendant committed the instant offenses, a 15-year old charged with first degree murder was expressly excluded from the jurisdiction of the juvenile court. See 705 ILCS 405/5-130(1) (West 2004).

¶ 37 The amended version of section 5-130(1) states, in relevant part:

“(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.” Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130 (West 2014)).

¶ 38 The amended version of section 5-130(1) would therefore extend the jurisdiction of the juvenile court to a 15-year old charged, as defendant was, with first degree murder. Such an offender is thereby removed from the jurisdiction of the criminal court, unless the State petitions to transfer the case from the juvenile court to the criminal court pursuant to section 5-805 of the Act. See Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-805 (West 2014)).

¶ 39 Defendant contends that the amendment to section 5-130(1) applies retroactively to his case and that he must be resentenced in juvenile court, as the charged offenses now fall under the juvenile court’s jurisdiction and the State never filed a petition to transfer his case.

¶ 40 However, in *People v. Hunter*, 2017 IL 121306 (Nov. 30, 2017), our supreme court held that section 5-130 of the Act was not retroactive. In that case, the defendant was tried and sentenced as an adult pursuant to the automatic transfer provision, which was amended while his direct appeal was pending. *Id.* ¶¶ 4-8. Before our supreme court the defendant argued that the amendment to section 5-130(1)(a) applied retroactively to his case, and because the offenses with which he was charged were no longer qualifying offenses for automatic transfer to adult court, he requested remand to the juvenile court for a discretionary transfer hearing for the purposes of sentencing. *Id.* ¶ 17.

¶ 41 In addressing the defendant's argument, the court reiterated that it applies the United States Supreme Court's test from *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), when addressing the retroactivity of legislation. *Id.* ¶ 20. When applying the *Landgraf* test, a court should first look to whether the legislature clearly indicated the temporal reach of the amended statute. *Id.* If it did, then the legislature's expression of its intent controls, absent some constitutional problem. *Id.* If, however, the legislature did not signal its intent, then the court should look to whether application of the statute would have "a retroactive impact." *Id.*

¶ 42 Our supreme court then noted that "Illinois courts need never go beyond the first step of the *Landgraf* analysis" because the legislature has already stated the temporal reach of every amended statute. *Id.* ¶ 21. The court noted that the General Assembly included, in section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014)), a " 'general savings clause' " that has been interpreted " 'as meaning that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only.' " *Hunter*, 2017 IL 121306, ¶ 22 (quoting *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 20). In other words, if the statutory amendment itself

does not indicate its temporal reach, then it is “provided by default in section 4 of the Statute of Statutes.” *Hunter*, 2017 IL 121306, ¶ 22 .

¶ 43 The court then applied that version of the test to the amendment to section 5-130. *Id.* ¶¶ 23-36. The court noted that the amendment is procedural (*id.* ¶ 23), and explained that, with regard to procedural amendments, section 4 of the Statute on Statutes “requires that ‘the proceedings *thereafter*’—after the adoption of the new procedural statute—‘shall conform, so far as practicable, to the laws in force at the time of such proceeding.’ ” (Emphasis in original) *Id.* ¶ 31 (quoting 5 ILCS 70/4 (West 2016)). Section 4 thus “contemplates the existence of proceedings after the new or amended statute is effective to which the new procedure could apply.” *Id.* The court therefore concluded that proceedings in the trial court were capable of conforming to the amended statute. *Id.* ¶¶ 27-28, 32-33.

¶ 44 In other words, if trial court proceedings were complete at the time the amendment took effect, and the appellate court finds no error that requires a remand to the trial court, there are no further proceedings in the case to which the amendment could retroactively apply. *Id.* ¶¶ 32-33. To hold that the amended statute applied retroactively to cases pending on direct appeal, *i.e.*, it created an independent basis for a remand, would “effectively creat[e] new proceedings for the sole purpose of applying a procedural statute that postdates [a defendant’s] trial and sentence.” *Id.* ¶ 33. The court rejected this result as inconsistent with the language of section 4 of the Statute on Statutes, and noted its “grave concerns” about the “waste of judicial resources” such a result would create. *Id.* ¶¶ 33, 36.

¶ 45 Here, as in *Hunter*, defendant’s direct appeal was pending when the automatic transfer provision was amended, and we have found no independent basis to remand the case to the trial

court for further proceedings. Therefore, the amended automatic transfer provision does not apply retroactively to defendant's case.

¶ 46 In the alternative, defendant contends that his cause should be remanded for resentencing pursuant to the retroactive application of Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105), which requires the consideration of additional factors in mitigation when sentencing minors.

¶ 47 Section 5-4.5-105 of the Code, effective January 1, 2016, provides:

“(a) *On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence [.]*” (Emphasis added.) Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105).

¶ 48 Our supreme court also rejected the argument that section 5/5-4.5-105 of the Code applied retroactively in *Hunter*. The court noted that the language of subsection (a) limited its temporal reach, and the trial court's obligation set forth in that subsection to consider additional factors in mitigation at sentencing is controlled by the limiting language of the same subsection. *Hunter*, 2017 IL 121306. ¶ 48. Here, defendant's case was pending on direct appeal when section 5-4.5-105 took effect. Following *Hunter*, we find that the amendment to section 5-4.5-105 of the Code does not apply retroactively to defendant's case.

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

¶ 50 Affirmed.