

NOTICE
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2018 IL App (5th) 150532-U

NO. 5-15-0532

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Perry County.
)	
v.)	No. 14-CF-45
)	
CHASE L. McCLANAHAN,)	Honorable
)	James W. Campanella,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s sentence of 39 years for predatory criminal sexual assault of a child is neither excessive nor unconstitutional.

¶ 2 Defendant, Chase L. McClanahan, pleaded guilty to the offense of predatory criminal sexual assault of a child and was sentenced by the circuit court of Perry County to 39 years in the Illinois Department of Corrections followed by 3 years to natural life of mandatory supervised release. Defendant argues on appeal that his sentence is excessive claiming that it violates the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. 1, § 11). Defendant asserts that the trial court failed to

properly consider defendant's youth and its attendant circumstances, and his rehabilitative potential. We affirm.

¶ 3 On February 20, 2015, defendant pleaded guilty to having committed an act of sexual penetration of the victim who was under the age of 13 years at the time of the offense. The factual basis revealed that defendant placed his finger in the vagina of a one-year-old infant, tearing the infant's skin in the genital region and causing profuse bleeding. The examining doctor, an expert in child abuse and board certified in general pediatrics and in child abuse pediatrics, testified at defendant's sentencing hearing that she examined the infant the day after she had been treated in the emergency room. The doctor testified that she had never seen injuries as serious or as severe as the injuries suffered by the victim. The examination of the victim also revealed a "clear and consistent history of sexual abuse" that was the result of "blunt penetrating trauma to the hymen or genitals." According to the mother's written victim impact statement, the infant reverted in development in that she no longer attempted to walk or talk. She had difficulties urinating and suffered constipation due to her injuries, which were compounded by the anxiety and distress which she suffered during diaper changes. The victim was severely bruised and she bled from her injuries for days. Defendant claimed that while cleaning the victim, he may have pushed too hard on the wet wipe in her vaginal area and torn something in the area. He also indicated he might have caused scratches with his fingers.

¶ 4 In exchange for defendant's plea, the State agreed to drop a second count and to argue only one sentencing enhancement, the age of the victim. The sentencing range was

6 to 60 years with mandatory supervised release of 3 years to life. The trial court sentenced defendant to 39 years stating that the only reason the sentence was not longer was because of defendant's age. Defendant was 19 at the time of the offense and was 20 years old when he pled guilty.

¶ 5 Defendant argues on appeal that his sentence violates both the eighth amendment of the U.S. Constitution as well as the proportionate penalties clause of the Illinois Constitution of 1970. Defendant believes the court failed to properly consider his youth during his sentencing and imposed a *de facto* life sentence on him. As defendant points out, "criminal punishment should be graduated and proportioned to both the offender and the offense." *People v. Davis*, 2014 IL 115595, ¶ 18. And, "sentencing a juvenile offender to a mandatory term of years that is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the eighth amendment." *People v. Reyes*, 2016 IL 119271, ¶ 9. Defendant points out that juveniles are less culpable for their crimes, and courts should consider a defendant's youth and its attendant circumstances during sentencing. While defendant admits he is no longer a juvenile, he contends all of the circumstances of youth are still with him as a 19-year-old. Defendant further argues his sentence also violates the proportionate penalties clause given that young people have a greater rehabilitative potential. Because the court failed to consider defendant's youth, its attendant circumstances, and his rehabilitative potential, defendant concludes his cause should be remanded for a new sentencing hearing.

¶ 6 Whether a sentence is constitutional is a question of law which is reviewed *de novo*. *People v. Taylor*, 2015 IL 117267, ¶ 11. Clearly defendant's sentence is not facially unconstitutional because defendant was not under the age of 18 at the time he committed the underlying offense. See *People v. Thompson*, 2015 IL 118151, ¶¶ 42-43. Defendant's challenge therefore can only be characterized as an as-applied constitutional challenge. The question then becomes whether this argument was raised in the trial court and whether the record is sufficiently developed to consider such a claim. Defense counsel argued at sentencing and in the motions to reconsider that defendant's sentence was excessive, given his rehabilitative potential and his immaturity. Counsel did not call any witnesses or present any evidence to support an as-applied challenge, nor did counsel even mention the constitutionality of defendant's sentence. Consequently, defense counsel's arguments cannot be characterized as an as-applied constitutional challenge to defendant's sentence. The constitutionality argument is therefore raised for the first time on appeal and is forfeited. See *Thompson*, 2015 IL 118151, ¶ 44.

¶ 7 Notwithstanding forfeiture, we also conclude defendant's arguments are meritless. A trial court has broad discretion in sentencing, and we will not disturb its decision merely because we might have weighed the pertinent factors differently. *People v. Horta*, 2016 IL App (2d) 140714, ¶ 40. More importantly, we will not reduce a sentence that is within the statutory limits unless it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Horta*, 2016 IL App (2d) 140714, ¶ 40.

¶ 8 Defendant was over the age of 18, and the trial court adequately considered defendant's youth and its attendant characteristics at sentencing. The court noted this was defendant's first felony conviction and expressly stated that it would not sentence him to the maximum of 60 years' imprisonment. Instead the court imposed a sentence of 39 years, specifically noting defendant taking responsibility for his actions, his apparent remorse, his lack of extensive criminal history, and his youth. On the other hand, it should also be noted that this offense occurred while defendant was on conditional discharge for a misdemeanor theft conviction. Additionally, defendant had been placed in a position of trust by the victim's mother to help care for the victim, and defendant clearly violated that trust. The statement of facts from the plea hearing further indicated that the medical examination of the victim revealed a consistent history of sexual abuse. And, attached to the presentence investigation was an incident report indicating that defendant sexually assaulted another inmate while in jail awaiting sentencing. The record reveals a pattern of sexual assaults perpetrated by defendant from which the court could reasonably find that defendant's potential for rehabilitation was diminished, even in light of his youth. Under the circumstances, we conclude that defendant's 39-year sentence was properly imposed and does not offend either the eighth amendment or the proportionate penalties clause.

¶ 9 "To succeed on a proportionate penalties claim, a defendant must show *** that the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community ***." *People v. Klepper*, 234 Ill. 2d 337, 348 (2009). The relevant inquiry as to whether a penalty is unconstitutionally

disproportionate must be decided with reference to both the seriousness of the offense and the character of the defendant. *Horta*, 2016 IL App (2d) 140714, ¶ 70. Again, defendant pled guilty to the violent sexual abuse of a 12-month-old baby. The assault occurred with such force as to tear the infant's skin in the genital region, causing profuse bleeding. According to the impact statement of the victim's mother, the infant reverted in development, and bled from her injuries for days. The seriousness of defendant's crime cannot be overstated. Though defendant was relatively young at the time, he was undeniably an adult when he committed the crime and was sentenced. And, while he expressed remorse and responsibility at his sentencing hearing, defendant's history also reveals a pattern of sexual abuse and an inability to conform his conduct to the law. Given that defendant's scant potential for rehabilitation need not be weighed more than the seriousness of his crime, we agree that defendant's sentence is not unconstitutional. See *People v. Taylor*, 102 Ill. 2d 201, 206 (1984).

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Perry County.

¶ 11 Affirmed.