

No. 1-16-2428

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 12663
)	
EDWIN CARRASQUILLO,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the trial court's imposition of defendant's 65-year prison sentence for first-degree murder. We find the sentence is neither excessive nor an unconstitutional *de facto* life sentence.

¶ 2 A jury convicted defendant Edwin Carrasquillo of first-degree murder and specifically found that he personally discharged the firearm that proximately caused the death of the victim. The court sentenced defendant to 65 years' imprisonment, which included a 25-year statutory enhancement for his personal discharge of the firearm. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West

2010). On direct appeal, he challenges the imposition of the 65-year prison sentence as excessive. We affirm.

¶ 3 BACKGROUND

¶ 4 On the evening of June 15, 2010, Adrian Gates was shot and killed as he stood in the middle of the street, waiting to cross at 3656 Grand Avenue in Chicago. Police officers arrested defendant, who was 19 years old at the time, and his cousin, Andrew Ruiz, as they fled the scene. Defendant and Ruiz were tried simultaneously before separate juries.¹

¶ 5 The evidence at defendant's trial revealed that Gates exited his girlfriend's maroon minivan and began to walk across Grand Avenue. He stopped at the midway point of the street to allow traffic to clear. At this time, defendant, a passenger in a white minivan that had parked directly behind them, stepped out of the vehicle and pointed a gun at Gates. Defendant fired the gun three times and Gates fell to the ground. Gates' girlfriend saw defendant run back to the white minivan, which then drove away. She found Gates lying in the street with a gunshot to his head. Autopsy results confirmed that Gates suffered a single gunshot wound to the back of the head, that he died as a result of the gunshot wound, and that the manner of the death was homicide. A second witness testified that she observed the shooting while she was stopped in her car to allow Gates to cross the street in front of her.

¶ 6 Police in the area responded to a dispatch about the fleeing minivan on the westbound I-290 expressway. A witness driving on the expressway observed a man lean outside the passenger side of the van and throw a gun which landed near a barricade. Police later recovered a .45-caliber semiautomatic weapon. Ballistic testing confirmed that the bullet recovered from Gates and the two cartridge casings at the scene matched the gun.

¹ Ruiz is not a party to this appeal.

¶ 7 After the police stopped the white minivan, all four occupants were taken separately to the police station for questioning. The van's occupants included Ruiz, who drove, along with defendant in the front passenger seat and Oscar Alvarez and Nathaniel Alvarado, seated in the back. Alvarado provided the police with a statement naming defendant as the shooter and later gave a videotaped statement, in which he identified defendant as the shooter. Alvarado also testified before the grand jury that defendant shot Gates. During trial, however, Alvarado stated that he did not remember his grand jury testimony and claimed that police told him what to say when he provided his statement. He denied seeing defendant get out of the minivan, denied seeing defendant shoot Gates, and denied that any shooting had occurred. Based on this testimony, Alvarado's grand jury testimony was submitted into evidence and published at trial. Alvarez testified that Alvarado jumped out of the van, he heard gunshots, and saw Alvarado get back into the van.

¶ 8 Defendant testified on his own behalf and admitted that he had a prior 2009 conviction for possession of a controlled substance. He stated that he got into Ruiz's minivan with Alvarez and Alvarado to get food. He was not in possession of a gun. Ruiz stopped along Grand Avenue and Alvarado jumped out of the van. He did not see a gun in Alvarado's hand. He then heard gun shots and ducked. Defendant denied that he saw the shooting. Alvarado got back into the van and asked if he was "cool." Defendant then told Ruiz to continue driving.

¶ 9 The jury found defendant guilty of first degree murder and also determined that he had personally discharged a firearm that proximately caused Gates's death. The trial court denied defendant's motion for a new trial.

¶ 10 At the sentencing hearing, the defense proffered letters of support from defendant's mother and from defendant himself, as well as a certificate from a Bible study class that he

completed. Defense counsel read defendant's letter into the record. The defense also argued in mitigation that because defendant's parents separated at an influential time in his life, defendant received guidance from and was heavily influenced by Ruiz, a ranking gang member. Ruiz acknowledged at his own sentencing hearing that he placed defendant in a bad situation. The defense further noted that defendant did not have a violent background and that there was no premeditation involved. Noting that defendant was only 19 years old at the time, the defense argued that he had demonstrated rehabilitation and maturation while in custody.

¶ 11 In aggravation, the State presented evidence that defendant had been arrested in 2007 for possession of drugs. Defendant was arrested again in 2009 after police found a revolver and baggies of crack in his apartment. In 2012, a sheriff conducted a surprise search of defendant's prison cell and found defendant trying to flush the toilet while holding a "shank" in his left hand. After defendant was moved to the "Christian deck" in the prison, he no longer had disciplinary problems and showed signs of maturity. The State argued that defendant should receive a substantial sentence based on his background (which included the prior felony convictions) and the circumstances concerning the murder. The State also argued that defendant's statement of contrition was contrary to his testimony at trial and that he lied during his testimony.

¶ 12 The court stated that it had the opportunity to hear the witnesses in aggravation and mitigation and to consider the exhibits presented. The court also considered what defendant said in his right of allocution. The court reviewed the presentence investigation report (PSI) and took into consideration all of the statutory factors in aggravation and mitigation. The court then stated:

"Mr. Carrasquillo was 19 years old when this offense was committed. And I am taking that in consideration. But Mr. Carrasquillo made a lot of choices at that time in his life. He chose to stay in a gang. He chose to be in a gang. He was

making big choices about his involvement and participation in a gang. But those choices come with consequences.

And this incident happened [and] it was just tragic and it was senseless. It didn't have to happen. You took the life of somebody who didn't see it coming who had no opportunity to even defend himself in anyway [*sic*], shape, or form. He didn't see it coming. He was in the middle of a busy street with traffic. Your actions endangered the lives of so many people in that area at the time and you had no regard for human life when you got out of that van and shot Mr. Gates. When you pulled that trigger you had no regard if any other person on the street could have been hit by a bullet. It was just absolutely senseless and tragic. Also you were on probation at the time of the offenses.

Your attorney does argue that your previous offenses were all narcotics related and I did that and am taking that into consideration. But this just didn't have to happen. And you did have previous convictions. So you do have a history of prior delinquency or criminal activity.

And the sentence I am going to impose I find is also necessary to deter others from committing the same crime.”

¶ 13 The trial court sentenced defendant to 40 years' imprisonment for first-degree murder in addition to an enhancement of 25 years for personal discharge of the firearm for a 65-year total prison term. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). Defendant moved to reconsider the sentence, which the court denied. This appeal followed.

¶ 14

ANALYSIS

¶ 15 On appeal, defendant only argues that the court imposed an excessive 65-year prison sentence, considering that he was 19 years old at the time. He contends the sentence is a *de facto* natural life sentence and fails to reflect either sufficient consideration of the mitigating evidence demonstrating his rehabilitative potential or an appropriate balancing of rehabilitation and retribution as required by the federal and Illinois constitutions. He seeks a reduction of his sentence to the statutory minimum or, in the alternative, he requests that we vacate his sentence and remand for a new sentencing hearing.

¶ 16 In imposing a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214.

¶ 17 We review a sentence within statutory limits for an abuse of discretion, and we may only alter a sentence when it varies greatly from the spirit and purpose of the law, or if it is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating

factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that this court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 18 In this case, the applicable sentencing range for first-degree murder extended from 45 years at a minimum, including the statutory enhancement for discharge of the firearm, to natural life. 730 ILCS 5/5-4.5-20(a), 5-8-1(a)(1)(d)(iii) (West 2010). Thus, the trial court's imposed 65-year sentence falls within this statutory range. However, defendant contends that it is both excessive and constitutionally unsound.

¶ 19 Defendant's argument that the trial court failed to consider his rehabilitative potential is unavailing. Before imposing sentence, the court reviewed defendant's PSI, considered all the evidence presented in mitigation and aggravation, as well as other relevant statutory factors, and allowed defendant the opportunity to allocute. Defendant repeatedly claims in his opening brief that he shot Gates at Ruiz's direction. However, his citations to the record do not support this claim. He refers to Alvarado's grand jury testimony, wherein Ruiz identified the minivan from which Gates exited. Defendant fails to point to specific evidence presented at trial that demonstrated Ruiz ordered him to shoot Gates. Indeed, defendant testified at trial that Alvarado shot Gates, which conflicts with his latest argument that Ruiz ordered him to shoot Gates. Significantly, defendant identifies no mitigating evidence which was not before the court before it imposed its sentence.

¶ 20 In imposing its sentence, the court specifically noted that defendant committed the murder while on probation for another felony offense. When defendant shot Gates in the back of the head, he callously fired a weapon multiple times on a public way without regard for human

life. The court noted the senseless and tragic nature of the incident. The court considered defendant's age and nonviolent prior narcotics offenses in mitigation, but found the numerous aggravating factors and the seriousness of the crime far outweighed that mitigation. The court had a superior opportunity to evaluate defendant's credibility, demeanor, and character, and we are prohibited from substituting our judgment for that of the trial court simply because we might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13. Since defendant's sentence falls within the sentencing range, we cannot say that it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 212. As a result, the trial court did not abuse its discretion in imposing this sentence. *Id.*

¶ 21 Defendant next contends that his sentence is an unconstitutional *de facto* life sentence pursuant to the proportionate penalties clauses of the United States and Illinois Constitutions. Defendant also argues that the reasoning of *Miller v. Alabama*, 567 U.S. 460 (2012) applies to him despite the fact that he was 19 years old at the time of the offense. Defendant concludes that, since his sentence is unconstitutional as applied to him, we must either reduce his sentence to the minimum or remand this matter for resentencing. We review *de novo* whether a sentence is constitutional. *People v. Taylor*, 2015 IL 117267, ¶ 11.

¶ 22 The proportionate penalties clause of the Illinois constitution provides that “[a]ll 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. 1970, art. I, § 11. A sentence violates the proportionate penalties clause if it is “cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005) (citing *People v. Moss*, 206 Ill. 2d 503, 522 (2003)). We may determine whether a sentence shocks the moral sense of the community by considering both objective evidence and

also “the community’s changing standard of moral decency.” *People v. Hernandez*, 382 Ill. App. 3d 726, 727 (2008).

¶ 23 In this case, the court sentenced defendant to a total of 65 years in prison, which consisted of 40 years for the crime itself and 25 years for the firearm enhancement. Defendant is not allowed early release and must serve the entire sentence. 730 ILCS 5/3-6-3(a)(2)(i) (West 2010). The evidence at trial established that defendant fired three shots at Gates in the middle of a busy Chicago street without regard for human life. Defendant shot Gates in the back of the head. Defendant had prior convictions on his record and had a history of criminal activity. Though it was not at the minimum end of the range, the court’s sentence was well within the sentencing range. We cannot say that defendant’s sentence of 65 years is disproportionate to this offense or otherwise shocks the moral sense of the community. *Sharpe*, 216 Ill. 2d at 487.

¶ 24 The State concedes that under *People v. Buffer*, 2019 IL 122327, ¶¶ 40-41, a *de facto* life term for juvenile offenders, meaning under the age of 18, is any sentence over 40 years. Defendant was 19 years of age at the time he committed the murder. In *People v. Harris*, 2018 IL 121932, ¶ 60, our supreme court specifically noted that the United States Supreme Court “acknowledged its line at age 18 was an imprecise ‘categorical rule[]’ but emphasized that ‘a line must be drawn,’ and that the line was drawn at age 18 because “that ‘is the point where society draws the line for many purposes between childhood and adulthood.’ ” *Id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 574 (2005)). The *Harris* court concluded that “[n]ew research findings do not necessarily alter that traditional line between adults and juveniles.” *Id.*

¶ 25 Following *Harris*, we disagree with defendant’s claim that the reasoning of *Miller* should apply to him. *Miller* and its predecessors, *Roper* and *Graham v. Florida*, 560 U.S. 48 (2010), “explicitly limited their scope to the sentencing of those who were under 18 years old at the time

of their crimes.” *People v. Horta*, 2016 IL App (2d) 140714, ¶ 84; see also *People v. Pittman*, 2018 IL App (1st) 152030, ¶¶ 30-31; *People v. Thomas*, 2017 IL App (1st) 142557, ¶ 28. Although defendant discusses various studies on long-term drug use and brain development in juveniles and young adults, there is nothing in the record to show that it was presented and examined at the trial court level, and this is not the appropriate forum to first raise this argument. *Harris*, 2018 IL 121932, ¶ 41 (“[A] reviewing court is not capable of making an as-applied finding of unconstitutionality in the ‘factual vacuum’ created by the absence of an evidentiary hearing and findings of fact by the trial court”).

¶ 26 In *People v. Thompson*, 2015 IL 118151, the 19-year-old defendant argued for the first time on appeal that *Miller* should apply with equal force to him. *Id.* ¶¶ 18-21. Our supreme court, however, deferred consideration of the issue because, in as-applied challenges, “it is paramount that the record be sufficiently developed,” and the record in that case contained nothing as to the “‘evolving science’ on juvenile maturity and brain development” and its application to the circumstances in that case. *Id.* ¶ 38. We therefore decline defendant’s invitation to expanding the reasoning of *Miller* to the case before us. *Harris*, 2018 IL 121932, ¶¶ 41, 48 (declining to remand the matter for an evidentiary hearing on direct appeal because an as-applied constitutional challenge is more appropriately raised in a post-conviction petition or in a petition seeking relief from a final judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016))).

¶ 27

CONCLUSION

¶ 28 Defendant’s sentence is neither excessive nor an unconstitutional *de facto* life sentence.

¶ 29 Affirmed.