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2017 IL App (3d) 140037-U

Order filed September 8, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois.
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0037
v.)	Circuit No. 12-CF-287
)	
SHYHEIM CHAPAI,)	Honorable
)	Chris L. Fredericksen and Kevin W.
Defendant-Appellant.)	Lyons,
)	Judges, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in transferring defendant's case from juvenile to criminal court; (2) defendant's sentence did not violate the proportionate penalties clause of the Illinois Constitution.

¶ 2 Defendant, 13-year-old Shyheim Chapai, was convicted of armed robbery under the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/18-2(a)(2) (West 2008)) and sentenced to 21 years of imprisonment, which included a 15-year mandatory firearm enhancement (720 ILCS 5/18-2(b) (West 2008)). On appeal, defendant argues: (1) the trial court erred in granting the

State's motion to transfer his case from juvenile court to the criminal court; and (2) the imposition of the statutorily mandated 15-year firearm enhancement as applied to him, a 13-year-old defendant, violated the proportionate penalties clause of the Illinois Constitution. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4

A. Defendant's Background and Juvenile Delinquency

¶ 5

On August 21, 2006, at the age of 11, defendant was adjudicated a delinquent for retail theft and was placed on 12 months of probation. As conditions of his probation, defendant was ordered to, among other things, not violate any criminal law or municipal ordinance, report to the probation office as directed, not possess any firearm or dangerous weapon, not ingest alcohol or illegal drugs, attend school, abide by school rules, cooperate with social services, not run away from home, and participate in and complete court-ordered counseling that included counseling in the retail theft program.

¶ 6

On December 22, 2006, the State filed a juvenile petition, alleging defendant violated his probation by failing to attend probation appointments. After a juvenile warrant was issued, defendant was taken into custody of the Peoria County Juvenile Detention Center. On February 23, 2007, defendant admitted to the probation violation and was adjudicated as being in violation of the conditions of his probation. A juvenile probation sentencing report indicated defendant: considered himself a leader among his peers; last used marijuana on April 9, 2007; was failing in all major subjects in school; and was not provided services "due to his failure to report." The report also indicated that defendant had been in violation of his home detention order "on six separate occasions" when checked on by a home detention officer, with defendant conceding that he would leave his home when his mother was at work. The report further indicated defendant

missed four of the last seven days of school since returning from spring break. On April 20, 2007, the juvenile judge sentenced defendant to an additional year of probation (to expire on April 20, 2008) and ordered defendant to, among other things, serve 30 days in the Peoria County Detention Center, and follow the same conditions of probation as previously imposed with the addition of counseling to include anger management.

¶ 7 On September 24, 2007, the State filed a juvenile petition, alleging that defendant violated probation by resisting a peace officer on September 22, 2007, which violated a criminal statute. Defendant was placed on home detention. The State subsequently filed an adjudication complaint, alleging defendant was in contempt of court for failing to comply with the terms of the home confinement order multiple days because he was not home when checked upon and was not away from home for any approved purpose. Defendant was taken into custody of the Peoria County Juvenile Detention Center and was subsequently adjudicated as having violated the conditions of his probation. The criminal contempt petition was dismissed, with the parties stipulating that defendant's contempt would be used as aggravating evidence at sentencing. A report prepared by defendant's probation officer indicated defendant missed many weekly probation appointments, did not listen to his mother, came and went as he pleased, had behavior problems in school, and failed to cooperate with the Mental Health Juvenile Justice Program. A report from the detention center indicated that defendant had been involved in three fights in the 43 days that he was detained there. On January 11, 2008, defendant was sentenced to one year of probation (expiring on January 11, 2009), with the same conditions of probation as previously placed on him, in addition to the condition that he participate in the "Mental Health Juvenile Justice Initiative."

¶ 8

B. Armed Robbery Offense

¶ 9 On October 21, 2008, at the age of 13, defendant committed the armed robbery offense in this case. On October 23, 2008, the State filed a juvenile delinquency petition, and the following day the State filed a motion to transfer the matter from juvenile court to criminal court. In the motion, the State alleged that the offense was aggressive and premeditated, there were not appropriate facilities available to the Juvenile Court for defendant, and the security of the public required that defendant remain in custody “beyond his minority,” as evidenced by the seriousness of the offense and the fact defendant was previously adjudicated delinquent, violated his probation, and was in possession of a .32 caliber handgun during the armed robbery in this case, which occurred while he was on probation.

¶ 10 On November 17, 2008, the State's motion to transfer was granted. The case was transferred, with defendant remaining in juvenile detention during the pendency of the case in criminal court. On May 15, 2009, pursuant to a stipulated bench trial, defendant was found guilty of armed robbery. Defendant filed a motion for new trial, arguing that the trial court erred in granting the State’s motion to transfer. The trial court reviewed the juvenile court records of the transfer hearing and denied defendant’s motion. The trial court sentenced defendant to 21 years of imprisonment, which included a statutorily mandated 15-year firearm enhancement. Defendant appealed. On appeal, this court vacated the trial court's transfer order and remanded this cause for further proceedings, holding the juvenile court judge abused his discretion in granting the transfer because there was no evidence in regard to several statutory factors that were required to be considered, such as defendant’s potential sentence in criminal court and the advantages of treating defendant within the juvenile justice system. *People v. Chapai*, 2011 IL App (3rd) 090719-U, ¶¶ 16-17. This court also noted there was no evidence to support the

juvenile judge's finding that the .32 caliber unloaded handgun used in the robbery was a "deadly weapon." *Id.* at ¶ 17.

¶ 11

C. Transfer Hearing on Remand

¶ 12

On remand, on March 12, 2012, a second hearing on the State's motion to transfer took place. Defendant was 17 years old at the time of the transfer hearing. The juvenile judge took judicial notice of defendant's prior juvenile delinquency file and his two violations of probation.

¶ 13

The chief juvenile probation officer for Peoria County testified that in his official capacity he was aware of all the Peoria County juvenile court services programs that were available to defendant and that the services available in the Illinois Department of Juvenile Justice (IDJJ) were "very similar in nature to some of the services that [were available] in probation." The People's exhibit four listed several juvenile court services and programs, including: "Anger Management" (a nine-week group session to improve anger control through social skill competence, empathy skills, and moral reasoning); "Mental Health Juvenile Justice (MHJJ)" (assisted juveniles in the judicial system diagnosed with serious mental health issues); "Gateway Foundations" and "Chestnut Health Systems" (inpatient and outpatient treatment for substance abuse); "White Oaks" (outpatient substance abuse treatment); "Apology Letters" (probationer writes an apology to the victim(s) as part of the "Balance and Restorative Justice"); "Arrowhead Ranch" (providing therapeutic residential treatment for adolescents by blending cognitive behavioral strength-based therapy, education, and community service to motivate at-risk youth to become productive and responsible and by providing the "highest quality" counseling, education, and social services to the youths and their families); and "Redeploy Illinois" (for juveniles who are at high-risk for commitment to the IDJJ and juveniles previously sent to corrections will be evaluated and placed in a 21-day residential program at Youth Farm

where they receive a psychological evaluation, drug screening, and assessments). The chief juvenile probation officer also testified that the juvenile probation department had utilized additional residential treatment programs not listed in the exhibit that would provide juveniles with cognitive behavioral therapy, education, counseling, social services and anger management services.

¶ 14 Detective Keith McDaniel testified that the victim of the armed robbery identified defendant as the assailant with the gun. The video of the armed robbery showed defendant touching a windowsill and a fingerprint taken from the windowsill matched defendant's fingerprint. The day after the armed robbery, defendant's mother called police and indicated that defendant was involved in the armed robbery and she had recovered some of the money. Defendant and his mother went to the police station to discuss the case and turn in the money. McDaniel testified that defendant gave a statement, indicating that his 16-year-old friend asked defendant to go with him to do a robbery. The 16-year-old friend showed defendant an unloaded handgun. Defendant asked how they would do the robbery without bullets. The 16-year-old told defendant that they did not want to kill anyone so they did not need bullets. Defendant admitted to McDaniel that he had pointed the unloaded handgun at the cashier and demanded money.

¶ 15 McDaniel also testified that the 16-year-old gave a statement indicating that on the day of the incident, defendant asked him if he had "that thing," which referred to a gun. The 16-year-old told McDaniel that defendant would ask for and carry the gun whenever they were going somewhere and defendant had "a beef." The 16-year-old retrieved the gun and gave it to defendant. The 16-year-old suggested that they stop by the gas station "before going up on the hill." As they were walking there, defendant grinned and said he was going to rob the gas station. The 16-year-old told defendant to "quit playin.'" Defendant stated, "[f]or real I'm gonna

stick dude up." After they walked into the gas station, defendant pointed the gun at the clerk and asked for money.

¶ 16 McDaniel also testified that defendant and his mother had reported that defendant was taking numerous daily medications for mood disorders, including anxiety, depression, and sleeping disorders. Defendant's mother reported that defendant had been diagnosed with Psychological Affective Disorder and was seeing his doctor once per month and a therapist twice per week.

¶ 17 A video of the incident was introduced into evidence. The video showed defendant walking into the gas station, pointing a gun at the cashier, and demanding money.

¶ 18 Evidence of defendant's mental health indicated that defendant had been diagnosed with attention deficit hyperactivity disorder (ADHD), major depressive disorder, and a learning disability in the areas of working memory, processing speed, and executive functioning. He experienced mild to moderate periods of secondary depression with impulsive reactions and was diagnosed with cognitive dysfunction and oppositional defiant and impulsive behaviors. A mental health professional indicated that defendant's "[m]ood, stability, impulsivity, and attention problems appear[ed] to be reactionary," in that it was defendant's attitude and behaviors that brought about his mood and attention difficulties.

¶ 19 Defendant's mother testified that prior to the armed robbery, when defendant was on probation for the retail theft offense, she contacted the probation department to inquire about available intervention programs. Defendant had previously completed a two-day program through the probation department but did not qualify for any other programs because he did not have enough police involvement. She testified defendant would now be able to take advantage of those additional programs in light of the armed robbery and she would have resources

available to support defendant. According to defendant's mother, in the weeks leading up to the offense, defendant had been doing well in school—he had been placed on an IEP, began a new school program, improved his grades, and was on the honor roll. Defendant's mother further testified that defendant's medications had just been adjusted and his behavior had improved. She described defendant's behavior as a "total turnaround" just prior to the offense and "then this."

¶ 20 Additional evidence included defendant's prior delinquency adjudication for retail theft and the resulting probation, and his two subsequent probation violations.

¶ 21 In favor of a transfer to criminal court, the prosecutor noted the court was provided a list of available services for defendant and stated, "th[is] Court has full knowledge of all these programs [available to defendant] having dealt with these programs for a long time and sentencing minors in this court week after week, month after month, year after year." The prosecutor argued that defendant committing the serious offense armed robbery while he was on probation, despite beginning to do well as a result of the provided services, showed that rehabilitation of defendant was not likely prior to the expiration of the juvenile court's jurisdiction. The prosecutor noted defendant was the perpetrator with the gun and was in control of the premeditated robbery. The prosecutor also noted that the applicable sentencing range in criminal court was between 21 and 45 years of imprisonment and the availability of punishment in the juvenile court system would be inadequate given the seriousness of the crime.

¶ 22 Defendant's attorney argued that defendant committed the crime at the "extremely young" age of 13. She argued that defendant's prior delinquencies of retail theft, misdemeanor resisting a police officer, and failing to report to probation did not equate to a significant criminal history. Defendant's attorney also argued that defendant should be given the opportunity to take advantage of programs in the juvenile system. Defendant's attorney conceded that the offense of

armed robbery was a serious offense but noted that the gun was not loaded and was not a deadly weapon. She also noted that defendant did not provide the gun.

¶ 23 In ruling on the State's motion to transfer, the juvenile judge found there was probable cause to believe that defendant committed the alleged criminal offense and that it was not in the public's best interest to proceed in juvenile court. The trial court considered the factors for a discretionary transfer set forth in section 5-805 of the Juvenile Court Act of 1987 (discretionary transfer statute) (705 ILCS 405/5-805(3) (West 2012)), noting he was required to give greater weight to the seriousness of the alleged offense and the minor's prior record than the other factors. The juvenile judge also indicated that while defendant's age was a factor to be considered, the statute did not indicate that age should be given the greatest weight.

¶ 24 Pursuant to the discretionary transfer statute, the juvenile judge considered defendant's age, history of delinquency, history of abuse or neglect, mental health, and physical or educational history. See 705 ILCS 405/5-805(3)(a)(i), (3)(a)(ii) (West 2012). The juvenile judge noted that defendant was 13 at the time of the armed robbery and defendant had a prior delinquency of retail theft, two probation violation adjudications, and engaged in three fights while at the detention center. The juvenile judge acknowledged that defendant's history of delinquency was "relatively minor" and that defendant had a "significant history of mental health issues." He noted, however, that mental health professionals had attempted to control defendant's behavior with the prescription medications and counseling and further noted that part of defendant's sentencing for violating probation was mental health counseling and an evaluation for the use of psychotropic medications. The juvenile judge additionally indicated defendant did not have a history of abuse or neglect. He further noted defendant's behavioral issues at school and the fact that defendant had received an IEP and his grades had recently been improving.

¶ 25 The juvenile judge also considered the circumstance of the offense, including the seriousness of the offense, whether defendant was charged through accountability, whether there was evidence that the offense was aggressive, premeditated, caused great bodily harm and whether there was evidence that defendant possessed a deadly weapon. See 705 ILCS 405/5-805(3)(a)(iii) (West 2012). The juvenile judge noted the offense of armed robbery was “extremely serious.” He found defendant was a main actor in the armed robbery, with defendant and one of the other assailants “basically running the show” and with defendant possessing the gun during the offense. The juvenile judge indicated he reviewed the video of the armed robbery and found defendant was the person who threatened the victim with the gun and the offense was aggressive and premeditated. The juvenile judge stated, “[a]ll one has to do is view the videotape which indicates the aggressive nature of all the participant[s’] conduct, including this minor.” The juvenile judge also found there had been no bodily harm to the victim and that defendant had not used a deadly weapon.

¶ 26 The juvenile judge considered the advantages of treatment within the juvenile system, including whether there were facilities or programs or both particularly available in the juvenile system. See 705 ILCS 405/5-805(3)(a)(iv) (West 2012). In doing so, the juvenile judge noted the State’s evidence of services available in probation and evidence of various residential placement facilities. The juvenile judge noted that each month the court had to approve expenditures for minors placed in residential facilities, with the costs borne by the county and ranged from \$130 to \$400 per day for the programs running between 9 to 12 months. He also indicated that he believed the residential placement facilities were “particular to the Juvenile Justice System” and whether defendant could be placed in such a program would depend on whether the facility would accept him. He further indicated evidence was presented on the

“Redeploy Illinois” program, which was only available to minors and was not available to adults. The juvenile judge indicated, “[b]ased on the serious nature of this offense, the Court in effect would be guessing as to whether or not [defendant] could be placed in such a facility.”

¶ 27 The juvenile judge additionally considered whether the security of the public required defendant to be sentenced as an adult, taking into consideration defendant’s history of services, including his willingness to participate meaningfully in available services, the likelihood of rehabilitation before the expiration of the juvenile court’s jurisdiction, and the adequacy of the punishment or services. See 705 ILCS 405/5-805(3)(a)(v) (West 2012). The juvenile judge noted that prior to the armed robbery, defendant had received services through juvenile probation, including mental health treatment, a psychotropic evaluation, and adjustments to his medication to control his behavior, with his mother obtaining additional mental health counseling for him. The juvenile judge specifically found that based on defendant’s failure to comply with probation and services previously offered by the juvenile probation department it was unlikely defendant would meaningfully participate in available services through the probation department. The juvenile judge had “significant concerns” about defendant’s ability to be rehabilitated through available services in the juvenile probation department considering defendant’s failure to comply with those services in the past. The juvenile judge referenced a Juvenile Justice Commission study prepared by the Juvenile Justice Commission, which had been released four months prior to the transfer hearing, that indicated inadequate services were provided for juveniles incarcerated in the Illinois Department of Juvenile Justice (IDJJ) so that when minors were released on parole they were not prepared to successfully complete parole and many paroled minors violated parole or committed crimes as adults. The juvenile judge considered the adequacy of punishments or services if defendant remained in the juvenile

system, noting defendant's sentence could not exceed his 21st birthday in the juvenile system and, if he were transferred to criminal court he would receive a sentence of between 6 to 30 years of imprisonment with an additional 15-year firearm enhancement.

¶ 28 Giving the greatest weight to the seriousness of the offense and defendant's history, as directed by the discretionary transfer statute, and considering all the other applicable factors, the juvenile judge found probable cause that defendant committed the offense of armed robbery and it was in the best interest of the public to proceed by transferring defendant to criminal court.

¶ 29 D. Trial and Sentencing

¶ 30 On November 25, 2013, after a stipulated bench, defendant was convicted of armed robbery. On December 13, 2013, the sentencing judge noted the offense occurred when defendant was 13 years old and noted defendant had been in custody for five years, one month, and 26 days—"[]onger than high school, longer than college, longer than law school." The sentencing judge indicated that he considered the presentence investigation report (PSI), evidence, arguments of the lawyers, factors in aggravation and mitigation, the history and character of defendant, and the circumstances and nature of the offense. He sentenced defendant to 21 years imprisonment, indicating it was the sentence "that must be imposed" in accordance with applicable law. Defendant appealed.

¶ 31 ANALYSIS

¶ 32 On appeal, defendant argues: (1) the trial court erred in granting the State's motion to transfer his case from juvenile court to criminal court; and (2) the imposition of the statutorily mandated 15-year firearm enhancement, as applied in this case, was a violation of the proportionate penalties clause of the Illinois Constitution.

¶ 33 I. Transfer to Criminal Court

¶ 34 Defendant argues the trial court improperly granted the State’s motion to transfer his case to criminal court because the State failed to present evidence of the facilities or services available through the juvenile court system, there was no evidence of the time he spent from September 2009 until November 2011 at the Kewanee Juvenile Detention Center, the juvenile judge improperly relied on his own research in considering the statutory factors, and the juvenile judge failed to properly consider defendant’s age in deciding the motion to transfer. The State argues that adequate evidence was presented on all of the statutory factors and the juvenile judge did not err in granting motion to transfer.

¶ 35 We review the decision to transfer a juvenile case to criminal court under the abuse of discretion standard, although that discretion is limited and controlled by the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-1 *et seq.* (West 2012)). *People v. Morgan*, 197 Ill. 2d 404, 423 (2001). A decision to transfer a juvenile to criminal court requires “faithful adherence” to the statutory requirements governing transfer proceedings in light of the purpose of those requirements. *People v. Clark*, 119 Ill. 2d 1, 12 (1987). In reviewing a juvenile court’s transfer order, this court will not reweigh the applicable factors but will affirm an order transferring a minor to criminal court where there was sufficient evidence in the record as to each statutory factor to support the transfer order. *Morgan*, 197 Ill. 2d at 428 (citing *Clark*, 119 Ill. 2d at 18).

¶ 36 Section 5-805(3) of the Juvenile Act allows for the discretionary transfer of a juvenile matter to criminal court, upon motion by the State, where the juvenile petition alleges the commission of a crime by a minor who is 13 years of age or older and the juvenile judge finds probable cause to believe that the allegations in the motion to transfer are true and it is not in the best interest of the public to proceed under the Juvenile Act. 705 ILCS 405/5-805(3)(a) (West

2012). In determining whether to grant a motion for a discretionary transfer, the court “shall consider among other matters,” the following:

“(i) the age of the minor;

(ii) the history of the minor, including:

(A) any previous delinquent or criminal history of the minor,

(B) any previous abuse or neglect history of the minor, and

(C) any mental health, physical, or educational history of the minor or combination of these factors;

(iii) the circumstances of the offense, including:

(A) the seriousness of the offense,

(B) whether the minor is charged through accountability,

(C) whether there is evidence the offense was committed in an aggressive and premeditated manner,

(D) whether there is evidence the offense caused seriously bodily harm,

(E) whether there is evidence the minor possessed a deadly weapon;

(iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(v) whether the security of the public requires sentencing under Chapter V of the

Unified Code of Corrections:

(A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;

(B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency than to the other factors listed in this subsection." 705 ILCS 405/5-805(3)(b) (West 2012).

¶ 37 The purpose of a transfer proceeding is to balance the juvenile offender's best interests, particularly in regard to the potential for rehabilitation, against the public's interest in being protected from being the victim of crimes perpetuated by minors. *Morgan*, 197 Ill. 2d at 424-25. In deciding whether to transfer a juvenile to criminal court, a juvenile judge must receive and consider sufficient evidence regarding each statutory factor, evaluating information concerning the types of facilities available for treatment or rehabilitation of the minor and the likely effectiveness of those facilities in light of the minor's history and present circumstances and considering the applicable sentencing range should the minor be sentenced as an adult. *People v. Moore*, 2011 IL App (3d) 090993, ¶ 20 (citing *Clark*, 119 Ill. 2d at 18). Adequate balancing under the statute requires a determination of which sentence would best serve both interests at stake. *Moore*, 2011 IL App (3d) 090993, ¶ 20.

¶ 38 a. Evidence of Services in Juvenile Justice System

¶ 39 Defendant contends the State failed to provide sufficient evidence of the types of facilities and services available in the IDJJ. Defendant also argues that in contrast to this court's directive in *Moore*, "[t]he State failed to present any testimony as to the types of facilities available for defendant's treatment or rehabilitation in juvenile detention as compared to the adult division of the Department of Corrections." See *Moore*, 2011 IL App (3d) 090993, ¶ 22. In considering the advantages of treatment within the juvenile justice system, a juvenile judge must receive and evaluate information concerning the types of facilities available for treatment or rehabilitation of the minor and the likely effectiveness of the available facilities in light of the

history and present circumstances of the juvenile. *Id.* ¶ 20 (citing *Morgan*, 197 Ill. 2d at 428-29). Adequate balancing under the statute also requires consideration of which penalty would best serve both the best interest of the minor and the security of the public. *Moore*, 2011 IL App (3d) 090993, ¶ 20.

¶ 40 In support of his contention, defendant cites *Moore*, 2011 IL App (3d) 090993, in which the juvenile judge allowed the transfer of a 13-year-old defendant's armed robbery case to criminal court. The minor in *Moore* had a prior delinquency adjudication for domestic battery for choking his grandmother, failed to keep his probation appointments, and failed to complete anger management classes. *Id.* ¶ 3. On appeal in *Moore*, this court reversed the transfer order where, among other things, the judge failed to adequately address the statutory factor of "the availability and advantages of treatment services in the juvenile system" where the State failed to present a review of the "broad services available to defendant" and failed to provide evidence of "the types of facilities available for defendant's treatment and rehabilitation in juvenile detention as compared to the adult division of the Department of Corrections." *Id.* ¶ 22 (citing 705 ILCS 405/5-805(3)(b)(iv) (West 2008)). In reversing the transfer order, this court specifically noted that the juvenile judge had relied on defendant's noncompliance while on probation to support the transfer order but failed to consider his potential for rehabilitation in light of services available in juvenile detention. *Id.*

¶ 41 In this case, the chief probation officer testified to the services available for juveniles on probation and indicated those services were similar to those offered through the juvenile justice department. The State entered an exhibit into evidence describing various juvenile court services available to defendant, including anger management programs, mental health assistance, and residential treatment programs. In analyzing the statutory factor of "the advantages of treatment

within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system,” the juvenile judge specifically noted that residential facilities and the “Redeploy Illinois” program were only available in the juvenile justice system. Additionally, the State’s exhibit four listed descriptions of each service, program, or facility, including whether the programs were for juvenile participants.

¶ 42 Moreover, the question on appeal is whether the juvenile judge received and considered sufficient evidence regarding each statutory factor. See *Clark*, 119 Ill. 2d at 18. In this case, sufficient evidence was presented regarding each statutory factor. Defendant’s history, defendant’s lack of cooperation with prior services, the circumstances of the offense, and the security of the public weighed heavily in support of the transfer. In the two years defendant was on probation and receiving services prior to the armed robbery in this case, defendant violated the terms of a home confinement order on at least six known occasions, repeatedly violated the conditions of his probation (missing 10 probations appointments while on probation in 2006, missing 9 or 10 probation appointments while on probation in 2007, carrying a firearm, missing school, using marijuana, and committing the crime of resisting a peace officer), and engaged three fights during his 43-day stay in juvenile detention prior to the armed robbery. Defendant does not specify any particular service that would be available in the IDJJ but unavailable in the IDOC that could have likely rehabilitated him and which the juvenile judge failed to consider. Rather, defendant merely indicates in his brief on appeal that an internet search revealed that one particular juvenile detention facility offered programming such as education, psychiatric, medical care, and counseling and an IDOC prison indicated the prison was overcrowded and the educational needs of its inmates went unmet. However, the juvenile judge was presented with evidence regarding programs and services available to defendant in the juvenile justice system,

including services similar to those referenced by defendant's internet search. Our review of the record indicates the juvenile judge received sufficient evidence and properly considered each statutory factor, giving the greatest weight to seriousness of the offense and defendant's prior record of delinquencies, as required under the statute.

¶ 43 b. Time Served in Juvenile Detention after the Offense (2009-2011)

¶ 44 Defendant also claims that State failed to introduce "essential evidence" regarding his "history of services" and his "willingness to participate meaningfully in [those] available services" where no information was presented of his time in a particular juvenile detention facility from 2009 to 2011. He argues that "presumably" he participated in services and programs during his juvenile detention stay but the State failed to present that "necessary" information. Defendant did not present evidence of any participation in services or programs during his 2009-2011 juvenile detention in opposition of the motion to transfer in the trial court, nor does he claim on appeal that he actually participated in any services or programs. Based on the evidence before the court, the juvenile judge did not abuse his discretion in granting the motion to transfer.

¶ 45 c. Considerations of a Juvenile Justice Commission Report and
the Costs Associates with Residential Treatment Facilities

¶ 46 Defendant also argues that the juvenile judge erred in referring to a report and to the costs of residential treatment, both of which were not in evidence, when considering whether to grant the State's motion to transfer. Defendant contends his due process rights were violated by the judge's reference to the Juvenile Justice Commission report and the costs of residential placement because the judge's transfer determination was improperly based upon the judge's own investigation and was untested by cross-examination.

¶ 47 In response, the State contends defendant has forfeited this issue on appeal because defendant failed to object to the juvenile judge's reference to the report in the trial court and failed to include the argument in a posttrial motion. The State further contends that any evidentiary error was harmless and did not constitute reversible error because there was no reasonable probability that the outcome of the transfer hearing would have been different even if the juvenile judge had not referenced the report.

¶ 48 In response to the State's forfeiture argument, defendant argues for a plain error review.

¶ 49 The record indicates defendant failed to challenge the propriety of the trial court's references to the report and costs of residential treatment at the time of the transfer hearing or in a posttrial motion. See *People v. Belknap*, 2014 IL 117094, ¶ 66 (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (in order to preserve a purported error for review, a defendant must object to the error at trial and raise the error in a posttrial motion)). Accordingly, this issue was forfeited for appellate review.

¶ 50 We acknowledge that under the *Sprinkle* doctrine, the application of the forfeiture rule is less rigid where the basis for the objection is the circuit judge's conduct. *People v. McLaurin*, 235 Ill. 2d 478, 485-86 (2009) (citing *People v. Sprinkle*, 27 Ill. 2d 398 (1963) (holding that a less rigid application of the rule requiring timely and proper objections to preserve issues for appeal should prevail where the basis of the objection is the conduct of the trial judge)). The *Sprinkle* doctrine relaxes or ignores the forfeiture rule in recognition of the fact that a lawyer who objects to a comment or question by the judge in front of a jury may irreparably damage his client's interests. *McLaurin*, 235 Ill. 2d at 486-87 (citing *People v. Tyner*, 30 Ill. 2d 101, 105 (1964) (reviewing racially derogatory and biased remarks by the trial judge while questioning the defendant); *People v. Barrow*, 133 Ill. 2d 226, 260 (1989) (reviewing trial judge's allegedly

improper remarks to the jury during jury selection); *People v. Nevitt*, 135 Ill. 2d 423, 455 (1990) (reviewing trial court's alleged bias comments and rulings against the defendant); *People v. Sims*, 192 Ill. 2d 592 (2000) (reviewing trial judge's expression of sympathy to victim's grandmother); *People v. Woolley*, 205 Ill. 2d 296, 301-02 (2002) (reviewing trial judge's comments to venire at defendant's second trial about the death sentence that had been imposed after the first trial)).

¶ 51 The *Sprinkle* doctrine has also been applied to forfeited errors of judicial conduct where no jury was present. *McLaurin*, 235 Ill. 2d at 487-488 (citing *People v. Dameron*, 196 Ill. 2d 156, 171 (2001) (reviewing conduct of a trial judge in sentencing defendant to death where the trial judge relied on evidence outside the record of a social science book and a transcript of sentencing comments by the judge in a 1966 murder trial); *People v. Williams*, 173 Ill. 2d 48, 85 (1996) (reviewing a trial judge's alleged refusal to allow defense counsel to participate in formulating responses to jury notes)). Reviewing unpreserved errors under the *Sprinkle* doctrine resembles review of plain errors that threaten the integrity of the judicial process and has been applied in some extraordinary circumstances where an objection to the trial court's own conduct "would have fallen on deaf ears." ' *McLaurin*, 235 Ill. 2d at 487 (quoting *People v. Davis*, 378 Ill. App. 3d 1, 10 (2007)).

¶ 52 However, in addressing the *Sprinkle* doctrine, the Illinois Supreme Court has also indicated that the failure of trial counsel to raise claims of error before the trial court denies the court the opportunity to correct the error immediately and such failures "can be excused only under extraordinary circumstances." *McLaurin*, 235 Ill. 2d at 488. "That we have seldom applied *Sprinkle* to noncapital cases further underscores the importance of uniform application of the forfeiture rule except in the most compelling of situations." *Id.*

¶ 53 Here, the alleged errors at the transfer hearing of the juvenile judge referencing facts that were not in evidence do not create an appropriate case to overlook forfeiture. The juvenile judge did not make the alleged errors in the presence of the jury and the record does not indicate an extraordinary circumstance or that an objection would have “fallen on deaf ears.” See *id.*

¶ 54 Because we find no compelling reason to relax the forfeiture rule, we consider the forfeited issue of under the plain error doctrine. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *Belknap*, 2014 IL 117094, ¶ 66 (citing *Enoch*, 122 Ill. 2d at 186). Illinois Supreme Court Rule 615(a) provides that insubstantial errors are to be disregarded but substantial errors, known as plain errors, “may be noticed although they were not brought to the attention of the trial court.” Generally, there are two instances when it is appropriate to apply the plain error doctrine to a forfeited error: (1) when a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) when a clear or obvious error was so serious that it affected the fairness of defendant’s trial and challenged the integrity of the judicial process. *People v. Sebby*, 2017 IL 119445, ¶ 48. The initial step in reviewing a forfeited issue for plain error is to determine whether there was a clear or obvious error. *Id.* at ¶ 49.

¶ 55 The issue of the whether defendant was denied due process by trial court’s reliance information on outside the record at defendant’s transfer hearing is reviewed *de novo*. See *Dameron*, 196 Ill. 2d at 171-72. The standard for determining the requirements of due process in any juvenile proceeding is ‘ “fundamental fairness.” ’ *People v. Taylor*, 76 Ill. 2d 289, 302 (1979) (quoting *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971)). To determine the specific procedural safeguards that fundamental fairness requires in the context of a particular proceeding, one must understand the nature of the proceeding. *Taylor*, 76 Ill. 2d at 302. Thus, to

discern whether the essentials of due process and fair treatment were provided in a juvenile transfer hearing, it is important to keep in mind the exact nature of a juvenile transfer hearing. See *Id.* at 302-03.

¶ 56 A juvenile transfer hearing is not adjudicatory in that it does not determine the guilt or innocence of the juvenile. *Id.* Instead, a transfer hearing is dispositional in nature and is used to determine the forum in which the juvenile’s guilt or innocence is to be adjudicated. *Id.* The sole purpose of the transfer hearing is to determine whether the best interests of the child and of society would be served by the juvenile court retaining jurisdiction over the juvenile or whether, under all the circumstances, the juvenile should be transferred to be tried as an adult. *Id.*

¶ 57 Being that a transfer hearing is not adjudicatory, the procedural safeguards required at criminal trials and adjudications of delinquency are not mandated by due process at a transfer hearing. *Id.* at 303. The purpose of a transfer hearing ‘ “may best be effectuated by the sound exercise of the juvenile court judge’s discretion at an informal hearing, limited of course by the general requirements of due process and fair treatment, but not governed by the strict rules of procedure and evidence applicable at either a criminal trial or at a juvenile court delinquency hearing.” ’ *Id.* (quoting *State v. Piche*, 74 Wash. 2d 9, 14 (1968) (Cert. denied, 393 U.S. 1041)). The rules of evidence in a juvenile transfer hearing “shall be the same as under Section 5-705 of [the Juvenile Act (705 ILCS 405/5-805(4) (West 2012)],” which provides, “[a]ll evidence helpful in determining [whether to grant the State’s transfer motion], including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purpose of the trial.” 705 ILCS 405/5-705(1) (West 2012); *cf.* Ill. R. Evid. 1101(b)(3) (eff. Jan. 6, 2015) (the Rules of Evidence do not apply in certain proceedings). The

use of documentary or testimonial evidence of a reliable nature, even though hearsay, at a transfer hearing is not constitutionally impermissible. *Taylor*, 76 Ill. 2d at 304-05.

¶ 58 In this case, the trial court’s reference to the Juvenile Justice Commission Report and to the costs associated with juvenile residential placement that were not in evidence did not violate due process. Specifically, in considering the statutory factor of the advantages of treatment within the juvenile system, including whether facilities or programs were “particularly available” in the juvenile system, the juvenile judge had commented that the court had to approve the expenditures for placement of juveniles in residential facilities, the costs were paid by the county, and the costs ranged from \$35,000 to \$144,000 per juvenile per year. At most, the juvenile judge’s comments indicate that, while placement in a residential treatment facility was available in the juvenile system, it would impractical and fiscally impossible to send every juvenile offender to a residential treatment facility. The juvenile judge’s experience with the realities of the costs associated with residential treatment facilities in the juvenile system was relevant to the exercise of his discretion in granting the transfer, and ‘ “it is neither possible nor desirable for a person to whom the State entrusts an important judgment to decide in a vacuum, as if he had no experiences.” ’ *People v. Tye*, 141 Ill. 2d 1, 22 (1990) (quoting *Barclay v. Florida*, 463 U.S. 939, 950-51 (1983)). Therefore, we do not believe the juvenile judge’s references in this case to his own background and experience regarding the costs associated with placing a juvenile in a residential treatment facility when he was considering the “availability” of facilities or programs in the juvenile system denied defendant a fair transfer hearing.

¶ 59 In considering whether the security of the public required defendant to be sentenced as an adult, which included considerations of defendant’s history of services, likelihood of rehabilitation in the juvenile system, and the adequacy of punishment or services, the juvenile

judge referenced a recent report by the Juvenile Justice Commission that indicated services for those in the IDJJ and on parole from the IDJJ were inadequate and many minors released on parole violated parole or committed crimes as adults. The report was only one aspect of the juvenile judge's analysis of whether the security of the public required defendant to be sentenced as an adult, with the judge also noting that defendant had already received many of the applicable services available in the juvenile system prior to committing the armed robbery in this case. The judge's discussion of a recent and relevant report indicating the reality of a lack of services available in the IDJJ for juvenile offenders to become successfully rehabilitated was not improper. We do not believe the juvenile judge's comments about the report denied defendant a fair transfer hearing. See *Tye*, 141 Ill. 2d at 21 (citing *Barclay*, 463 U.S. at 948 (1983)).

¶ 60 Defendant cited to *People v. Rivers*, 410 Ill. 410, 416 (1951) and *Dameron*, 196 Ill. 2d at 171-72 in support of his contention that a determination made by a trial judge that is based upon a private investigation by the court or based upon private knowledge of the court, untested by cross-examination or any of the rules of evidence, constitutes a denial of due process. We find *Rivers* and *Dameron* to be readily distinguishable.

¶ 61 In *Rivers*, the Illinois Supreme Court reversed the murder convictions of four juvenile defendants and held that a private investigation by the trial judge during a bench trial was a denial of the defendants' right to due process. *Rivers*, 410 Ill. at 418-419. In *Rivers*, at the murder trial, the trial court expressed doubt about the evidence against two of the juveniles and requested a lesser charge be brought against them. *Id.* at 415. After a two-month continuance, the trial judge said, "[i]f there was ever a cold-blooded, premeditated killing, this is one." *Id.* The trial judge stated that murders by juveniles were "on the rampage everywhere" and "according to the State's Attorney, John S. Boyle, there [were] over 400,000 unlicensed, and

unregistered guns in Chicago, most of which [were] exposed to potential murderers and youngsters,” in reference to the unregistered guns used in the murder. *Id.* at 415-16. The Illinois Supreme Court reversed and remanded for a new trial, finding the trial court erred by basing its determination of the defendants’ guilt upon its own private investigation or knowledge, noting that the record contained no direct evidence of a premeditated murder, unlicensed guns or teenage murderers, or anything “by which [the] court c[ould] gauge the scope and extent of any inquiry or the acquisition of evidence made by the court.” *Id.* at 418-19. The Illinois Supreme Court held that where the evidence is close and the record does not show the scope and extent of an outside inquiry, any such inquiry is presumed prejudicial. *Id.* at 419.

¶ 62 In *Dameron*, defendant waived his right to a sentencing-phase jury. *Dameron*, 196 Ill. 2d at 159. In sentencing defendant to death, the judge had commented extensively about a book that contained social science statistics and vague generalizations about crime that were not part of the record. *Id.* at 176-77. One excerpt of the book referenced by the judge indicating that it was difficult for adults who commit violent crimes to reverse their antisocial proclivities conflicted with evidence defendant had presented in mitigation through expert testimony of a forensic psychologist that defendant felt genuine remorse and the symptoms of defendant’s specific psychological disorders generally dissipated around the age of 40. *Id.* at 177. The sentencing judge in *Dameron* also referenced a transcript of comments made by his circuit court judge father regarding his father’s experience in imposing a death penalty sentence in a 1966 murder case. *Id.* at 177-79. The Illinois Supreme Court vacated defendant’s death sentence and remanded for a new sentencing hearing, holding the sentencing judge violated due process by giving weight to the social science book and the comments of his father in the 1966 death penalty case, which were not in evidence. *Id.*

¶ 63 In contrast to the murder trial in *Rivers* and the death penalty hearing in *Dameron*, the juvenile judge’s comments and references in this case were made during a discretionary juvenile transfer hearing. In *Rivers*, it was clear that the judge had been heavily influenced by an unknown outside source and, because there was no indication of the scope and extent of the outside information obtained by the trial judge, the unknown outside influence was presumed to be prejudicial. The record in this case indicates the scope and extent of the juvenile judge’s “outside inquiry,” so there is no presumed prejudice. As opposed to *Dameron*, the juvenile judge’s references in this case to the costs of residential treatment and the report of inadequate services in the IDJJ did not directly contradict defendant’s evidence and was not the majority of support for the juvenile judge’s decision to grant the transfer. Rather, in the context of the transfer hearing, wherein the purpose is to determine the best interests of the minor and of society and the proceeding is not governed by the strict rules of procedure and evidence, the juvenile judge’s references to the Juvenile Justice Commission report and to his knowledge regarding costs of residential treatment were not improper, and thus not error.

¶ 64 d. Consideration of Defendant’s Age

¶ 65 Defendant also argues that the juvenile judge failed to properly consider the importance of his age and had only briefly addressed defendant’s age with one sentence: “Obviously the minor was 13 years of age when this act was committed.” Defendant argues the juvenile judge failed to “appreciate the recent developments in juvenile law.” He cites to four United States Supreme Court decisions that he contends “reflect the nation’s shifting attitudes towards minors involved in criminal proceedings” and recognize that the hallmark features of youth—immaturity, impetuosity, and the failure to appreciate risks and consequences—play an important role in determining a minor’s culpability. *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that

the execution of those under 18 years of age at the time of their capital crime is prohibited by Eighth and Fourteenth Amendments); *Graham v. Florida*, 560 U.S. 48 (2010) (holding the Eighth Amendment prohibits the imposition of a sentence of life without parole for a juvenile offender who did not commit homicide; a sentence for a juvenile nonhomicide offender must allow for a meaningful opportunity to obtain release); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (holding that a child's age properly informs the *Miranda* custody analysis); and *Miller v. Alabama*, 567 U.S. 560 (2012) (holding mandatory life imprisonment without parole sentence for those under the age of 18 at the time of their crime violates the Eighth Amendment's prohibition on cruel and unusual punishment). Defendant argues that the juvenile judge had a “responsibility” to fully consider the inherent immaturity and impetuosity of defendant’s action and the judge’s failure to appreciate “this important shift in juvenile law” was error.

¶ 66 Defendant’s argument is without merit. Our role in reviewing a transfer case is to determine whether, in evaluating the evidence in light of the statutory factors, the juvenile judge abused his discretion. See *Morgan*, 197 Ill. 2d at 423. The record shows the juvenile judge reviewed defendant’s memorandum of law regarding the moral culpability of minors and properly considered defendant’s age in accordance with the language of the discretionary transfer statute.

¶ 67 e. Guidance as to Juvenile Transfer Hearings

¶ 68 Defendant requested that this court provide “further guidance” to the lower court in regard to the transferring of juvenile cases to criminal court. We have addressed the issues of alleged error presented on appeal pertaining to defendant’s transfer hearing in this case. We decline defendant’s request for “further guidance” in regard to procedures for transfer hearings. See *People ex rel. Partee v. Murphy*, 133 Ill. 2d 402, 408 (1990) (the jurisdiction of a reviewing

court is restricted to cases which present an actual controversy, and “we decline to issue advisory opinions on moot or abstract questions of law”).

¶ 69

II. 15-Year Firearm Enhancement

¶ 70

Defendant argues that the application of a 15-year firearm enhancement to his sentence for the armed robbery that he committed when he was 13 years old violates the proportionate penalties clause of the Illinois Constitution as applied to him. Initially, we note that as of January 1, 2016, section 5-4.5-105 of the Unified Code of Corrections (Code) allows the sentencing judge discretion in applying a firearm enhancement to a sentence for a juvenile offender. 730 ILCS 5/5-4.5-105 (West 2016). However, section 5-4.5-15 of the Code specifically indicates that the amendment is applicable only to crimes committed by minors on or after January 1, 2016—the effective date of the enactment. 730 ILCS 5/5-4.5-105 (West 2016). Prior to the enactment of section 5-4.5-105, a 15-year firearm enhancement was mandatory for all offenders convicted of aggravated kidnapping, armed robbery, or aggravated vehicular hijacking if committed while armed with a firearm. 720 ILCS 5/10-2(a)(6), 18-1(a)(2), 18-4(a)(4) (West 2014). Defendant concedes that section 5-4.5-105 applies only prospectively and this case is not directly affected by its enactment. See *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 48, petition for leave to appeal granted Nos. 121306, 121345 (Nov. 23, 2016) (section 5-4.5-105 of the Code applies only prospectively).

¶ 71

Nonetheless, defendant argues that his age is particularly important in deciding whether the mandatory firearm enhancement, as applied to him, is constitutional. Defendant argues children have been recognized by the U.S. Supreme Court as differing from adults in that children “lack maturity” and have an underdeveloped sense of responsibility, leading to recklessness and impulsivity, and they are vulnerable to negative influences and outside

pressures. See *Miller*, 567 U.S. at 471-74; *Miller*, 202 Ill. 2d at 337-43 (recognizing inherent developmental differences between juveniles and adults). Defendant contends that applying a 15-year firearm enhancement to him, a 13-year-old offender, violates the proportionate penalties clause of the Illinois Constitution and his case must be remanded for resentencing without regard to a firearm enhancement.

¶ 72 The constitutionality of a statute is a question of law reviewed *de novo*. *Hunter*, 2016 IL App (1st) 141904, ¶ 20 (citing *People v. Williams*, 2015 IL 117470, ¶ 51). An as-applied challenge to the constitutionality of a statute requires a showing that the statute violates the constitution as applied to the facts and circumstances of the challenging party. *Hunter*, 2016 IL App (1st) 141904, ¶ 20. All statutes carry a “strong presumption of constitutionality,” so that the party challenging the statute has the burden of clearly establishing its invalidity. *Id.* (citing *People v. Mosley*, 2015 IL 115872, ¶ 22).

¶ 73 The proportionate penalties clause of the Illinois Constitution provides that penalties must 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. To succeed on a proportionate penalties claim the defendant must show either that the penalty is degrading, cruel or so wholly disproportionate to the seriousness of the offense that it shocks the moral sense of the community or that another offense containing the same elements has a different penalty. *People v. Gibson*, 2015 IL App (1st) 122451, ¶ 69.

¶ 74 Here, defendant’s only claim of a constitutional violation stems from his argument that the mandated firearm enhancement did not allow for proper consideration of defendant’s age. However, the mandatory firearm enhancement, as applied to defendant in this case, did not preclude the trial court from considering defendant’s age in mitigation where the sentencing

judge had discretion to impose a sentence within a 24-year statutory range (6-30 years of imprisonment) and had discretion to consider mitigating factors, including defendant's age. See *Hunter*, 2016 IL App (1st) 141904, ¶ 59; *People v. Banks*, 2015 IL App (1st) 130985, ¶¶ 23-24. Therefore, the application of the mandatory firearm enhancement in this case did not violate the proportionate penalties clause.

¶ 75

CONCLUSION

¶ 76

The judgment of the circuit court of Peoria County is affirmed.

¶ 77

Affirmed.