THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT

No. 120796
IN THE
SUPREME COURT OF ILLINOIS

In re DESTINY P., a minor, (PEOPLE OF THE STATE OF ILLINOIS Petitioner-Appellant, v. DESTINY P., a minor, Respondent-Appellee).	)	Appeal from the Circuit Court of Cook County, Juvenile Justice Division. No. 14 JD 01625 The Honorable Stuart Katz Judge Presiding.

BRIEF OF PETITIONER-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of Illinois,
100 West Randolph, 12th Floor
Chicago, Illinois 60601
Attorney for Petitioner-Appellant
People of the State of Illinois.

ANITA ALVAREZ,
State's Attorney of Cook County,
309 Richard J. Daley Center,
Chicago, Illinois 60602
(312) 603-5496
eserve.CriminalAppeals@cookcountyil.gov
ALAN J. SPELLBERG,
MICHELLE KATZ,
ANNETTE COLLINS,
VERONICA CALDERON MALAVIA,
Assistant State's Attorneys,
Of Counsel.

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

THE LEGISLATURE DID NOT VIOLATE RESPONDENT'S EQUAL PROTECTION RIGHTS WHEN IT AFFORDED A JURY TRIAL RIGHT TO CHRONIC JUVENILE OFFENDERS CHARGED WITH FIRST DEGREE MURDER UNDER THE HJO AND VJO STATUTES BUT DID NOT AFFORD SUCH A RIGHT TO NON-RECIDIVIST MINORS, LIKE RESPONDENT, WHO ARE CHARGED WITH FIRST DEGREE MURDER AND FACE SENTENCING UNDER THE GENERAL DOJJ STATUTE **17**

McKeiver v. Pennsylvania, 403 U.S. 528 (1971) 17

In re Fucini, 44 Ill. 2d 305 (1970) 17

Lindsay v. Lindsay, 257 Ill. 328 (1913) 17

In re M.I., 2013 IL 113776 18

People ex rel. Carey v. White, 65 Ill. 2d 193 (1976) 18

705 ILCS 405/5-101(3) (2104) 18

705 ILCS 405/5-605(1) (2014) 18

705 ILCS 405/5-815 (2014) 19

705 ILCS 405/5-820 (2014) 19

A. Standard Of Review And Equal Protection Principles **19**

People ex rel. Birkett v. Konetski, 233 Ill. 2d 185 (2009) 19

People v. Warren, 173 Ill. 2d 348 (1996) 20

Baker v. Miller, 159 Ill. 2d 249 (1994) 20

Wauconda Fire Prot. Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417 (2005) 20

People v. Whitfield, 228 Ill. 2d 502 (2007) 20

People v. Mosley, 2015 IL 115872 21

People v. Masterson, 2011 IL 110072 21

In re Jonathan C.B., 2011 IL 107750 21

B. The Circuit Court's As-Applied Equal Protection Ruling Must Be Reversed Because Respondent, A First-Time Offender, Is Not Similarly Situated To Recidivist Offenders Charged With First Degree Murder And Sentenced Under The HJO And VJO Statutes 21

In re Jonathan C.B., 2011 IL 107750 21

In re M.A., 2015 IL 118049 23

People v. Warren, 173 Ill. 2d 348 (1996) 23

People v. Taylor, 221 Ill. 2d 157 (2006) 23

In re A.G., 195 Ill. 2d 313 (2001) 23

In re Jaime P., 223 Ill. 2d 526 (2006) 23

People v. J.S., 103 Ill. 2d 395 (1984) 23

People ex rel. Castle v. Spivey, 10 Ill. 2d 586 (1957) 25

People v. Dunigan, 165 Ill. 2d 235 (1995) 26

People ex rel. Carey v. Chrastka, 83 Ill. 2d 67 (1980) 26

In re M.G., 301 Ill. App. 3d 401 (1st Dist. 1998) 26

In re B.L.S., 202 Ill. 2d 510 (2002) 28

In re G.O., 304 Ill. App. 3d 719 (1st Dist. 1999) *reversed and vacated on other grounds*, *In re G.O.*, 191 Ill. 2d 37, 44-46 (2000).. 32

705 ILCS 405/5-33 (1992) 23

705 ILCS 405/5-750 (2) (2014) 24

705 ILCS 405/5-801 25

705 ILCS 405/5-815(a) (2014) 26

705 ILCS 405/5-815(a)(4) 26

705 ILCS 405/5-815 (4) 27

705 ILCS 405/5-820 (g) 27

705 ILCS 405/5-820 (a) 28

705 ILCS 405/5-815(f) 28

705 ILCS 405/5-820(f) 28

730 ILCS 5/5-8-7(c) (2009) (now 730 ILCS 5-4.5-100(c) (2016) 28

730 ILCS 5/3-6-3 (2104) 29

730 ILCS 5/3-6-3 (a)(2.1) (2014) 29

730 ILCS 5/3-6-3(a)(2)(iii) 29

730 ILCS 5/3-6-3(a)(2)(i) (2014) 29

C. The Legislative Determination To Afford A Jury Trial To HJO And VJO Offenders, And Not All Other Juveniles Charged With First degree Murder, Is Rationally Related To A Legitimate Government Purpose 33

People v. Whitfield, 228 Ill. 2d 502 (2007) 33

In re J.W., 204 Ill. 2d 50 (2003) 33

People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117 (1998) 33

Thillens, Inc. v. Morey, 11 Ill.2d 579 (1957) 34

People v. Dunigan, 165 Ill. 2d 235 (1995) 34

People v. Taylor, 221 Ill. 2d 157 (2006) 34

In re Jonathon C.B., 2011 IL 107750 34

In re Rodney H., 223 Ill. 2d 510 (2006) 35

People v. J.S., 103 Ill. 2d 395 (1984) 35

People ex rel. Carey v. Chrastka, 83 Ill. 2d 67 (1980) 35

In re M.G., 301 Ill. App. 3d 401 (1st Dist. 1998) 35

Rummel v. Estelle, 445 U.S. 263 (1980) 36

Spencer v. Texas, 385 U.S. 554 (1967) 36

Williams v. Illinois, 399 U.S. 235 (1970) 36

Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942) 36

Patsone v. Pennsylvania, 232 U.S. 138 (1914) 36

In re Deshawn G., 2015 IL App (1st) 143316 37

In re S.P., 297 Ill. App. 3d 234 (1st Dist. 1998) 39

In re L.F., 119 Ill. App. 3d 406 (2d Dist. 1983) 39

705 ILCS 405/5-101(3) 33

705 ILCS 405/5-605(1) 33

705 ILCS 405/5-805 (2014) 35

705 ILCS 405/5-750 (2) (2014) 35

705 ILCS 405/5-801 37

NATURE OF THE CASE

On April 29, 2014, the People filed a petition for adjudication of wardship under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 *et seq.*, alleging, *inter alia*, that Destiny P. (hereinafter "respondent") had committed first degree murder. (C.L. 6-8) On December 16, 2015, respondent filed a motion for a jury trial, claiming, *inter alia*, that her equal protection rights were violated because 705 ILCS 405/5-750(2) (2012) did not grant first-time juvenile offenders charged with first degree murder a right to a jury trial even though such juveniles, if found guilty, face a mandatory, determinate sentence to the Department of Juvenile Justice (DOJJ) until their 21st birthday without possibility of parole for five years. (C.L. 194-204) Specifically, respondent asserted that she was similarly situated to chronic juvenile offenders who have a right to a jury trial when adjudicated delinquent under the Habitual Juvenile Offender statute, 705 ILCS 405/5-815 (2012), and the Violent Juvenile Offender statute, 705 ILCS 405/5-820 (2012), because habitual and violent juvenile offenders, if charged with murder, faced "nearly identical" sentences of mandatory commitment to the DOJJ until their 21st birthday (although habitual and violent juvenile offenders were not granted the possibility of parole under their respective statutes). (C.L. 201-202) On February 9, 2016, the circuit court granted respondent's motion for a jury trial, finding that respondent's equal protection rights were violated. (R. 41)

The People filed a timely motion to reconsider, which the court denied in a Rule 18 order on April 5, 2016. (C.L. 201-202, 289-293, R. 71-82) In that order, the circuit court held that the Juvenile Court Act, which expressly denied respondent a jury trial under 705 ILCS 405/5-101(3) and 705 ILCS 405/5-605(1), was unconstitutional on equal

protection grounds as applied to respondent and any other minor charged with first degree murder. (C.L. 292)

The People filed their notice of appeal on April 19, 2016, appealing directly to this Court under Supreme Court Rule 603 (eff. Feb. 6, 2013). (C.L. 297) An amended notice of appeal was filed on April 29, 2016. (C.L. 302) No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the Juvenile Court Act comports with equal protection principles where it does not grant a right to a jury trial to juveniles who are charged with first degree murder and subject to sentencing under 705 ILCS 405/5-750 (2), but grants a jury right to juveniles who are charged and sentenced under the Habitual Juvenile Offender and Violent Juvenile Offender statutes (705 ILCS 405/5-810 and 820).

JURISDICTION

Jurisdiction lies pursuant to Supreme Court Rule 603.

STATUTES INVOLVED

705 ILCS 405/5-101, which sets for the purpose and policy of the Juvenile Court Act, states in relevant part:

* * *

> (3) In all procedures under this Article, minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors. Minors shall not have the right to a jury trial unless specifically provided by this Article. 705 ILCS 405/5-101 (2014).

705 ILCS 405/5-605 (1) (2014), provides in pertinent part:

> Sec. 5-605. Trials, pleas, guilty but mentally ill and not guilty by reason of insanity.
>
> (1) Method of trial. All delinquency proceedings shall be heard by the court except those proceedings under this Act where the right to trial by jury is specifically set forth. At any time a minor may waive his or her right to trial by jury. 705 ILCS 405/5-605 (1) (2014).

705 ILCS 405/5-750, generally governs a minor's commitment to the Department of Juvenile Justice and states in relevant part:

> (1) Except as provided in subsection (2) of this Section, when any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the Department of Juvenile Justice, if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under Section 5-740 [705 ILCS 405/5-740], or it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; and (b) commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement. Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:
>
> (A) Age of the minor.
> (B) Criminal background of the minor.

(C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.
(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.
(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.
(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.
(G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor.

* * *

(2) When a minor of the age of at least 13 years is adjudged delinquent for the offense of first degree murder, the court shall declare the minor a ward of the court and order the minor committed to the Department of Juvenile Justice until the minor's 21st birthday, without the possibility of aftercare release, furlough, or non-emergency authorized absence for a period of 5 years from the date the minor was committed to the Department of Juvenile Justice, except that the time that a minor spent in custody for the instant offense before being committed to the Department of Juvenile Justice shall be considered as time credited towards that 5 year period. Nothing in this subsection (2) shall preclude the State's Attorney from seeking to prosecute a minor as an adult as an alternative to proceeding under this Act.* * * 705 ILCS 405/5-750 (2014).

705 ILCS 405/5-815, the Habitual Juvenile Offender statute provides in pertinent part:

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

1. the third adjudication is for an offense occurring after adjudication on the second; and

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

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

4. the third offense was based upon the commission of or attempted commission of the following offenses: first degree murder, second degree murder or involuntary manslaughter; criminal sexual assault or aggravated criminal sexual assault; aggravated or heinous battery involving permanent disability or disfigurement or great bodily harm to the victim; burglary of a home or other residence intended for use as a temporary or permanent dwelling place for human beings; home invasion; robbery or armed robbery; or aggravated arson.

Nothing in this Section shall preclude the State's Attorney from seeking to prosecute a minor as an adult as an alternative to prosecution as an habitual juvenile offender.

* * *

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

* * *

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

For purposes of determining good conduct credit, commitment as an Habitual Juvenile Offender shall be considered a determinate commitment, and the difference between the date of the commitment and the minor's 21st birthday shall be considered the determinate period of his confinement. 705 ILCS 405/5-815 (2014).

705 ILCS 405/5-820, the Violent Juvenile Offender statute provides in relevant part:

Sec. 5-820. Violent Juvenile Offender. (a) Definition. A minor having been previously adjudicated a delinquent minor for an offense which, had he or she been prosecuted as an adult, would have been a Class 2 or greater felony involving the use or threat of physical force or violence against an individual or a Class 2 or greater felony for which an element of the offense is possession or use of a firearm, and who is thereafter adjudicated a delinquent minor for a second time for any of those offenses

shall be adjudicated a Violent Juvenile Offender if:

(1) The second adjudication is for an offense occurring after adjudication on the first; and

(2) The second offense occurred on or after January 1, 1995.

* * *

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

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

* * *

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

For purposes of determining good conduct credit, commitment as a Violent Juvenile Offender shall be considered a determinate commitment, and the difference between the date of the commitment and the minor's 21st birthday shall be considered the determinate period of his or her confinement.

(g) Nothing in this Section shall preclude the State's Attorney from seeking to prosecute a minor as a habitual juvenile offender or as an adult as an alternative to prosecution as a Violent Juvenile Offender. * * *. 705 ILCS 405/5-820 (2014).

730 ILCS 5/3-6-3, entitled "Rules and regulations for sentence credit," provides in pertinent part:

(a) (1) The Department of Corrections shall prescribe rules and regulations for awarding and revoking sentence credit for persons committed to the Department which shall be subject to review by the Prisoner Review

Board.

(1.5) As otherwise provided by law, sentence credit may be awarded for the following:

(A) successful completion of programming while in custody of the Department or while in custody prior to sentencing;

(B) compliance with the rules and regulations of the Department; or

(C) service to the institution, service to a community, or service to the State.

(2) The rules and regulations on sentence credit shall provide, with respect to offenses listed in clause (i), (ii), or (iii) of this paragraph (2) committed on or after June 19, 1998 * * *, the following:

(i) that a prisoner who is serving a term of imprisonment for first degree murder or for the offense of terrorism shall receive no sentence credit and shall serve the entire sentence imposed by the court * * *. 730 ILCS 5/3-6-3 (2014).

STATEMENT OF FACTS

On April 28, 2014, during a shooting in the City of Chicago, Endia M. was killed and Lankia R. was injured. (C.L. 7) On that same day, Chicago police officers arrested fourteen-year-old respondent for the shooting. (C.L. 6-7) On April 29, 2014, the People filed a petition for adjudication of wardship under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 *et seq.*, alleging, *inter alia*, that respondent committed four counts of first degree murder, one count of attempt murder, one count of aggravated battery with a firearm, and three counts of aggravated unlawful use of a weapon, and one count of unlawful possession of a weapon. (C.L. 6-8) Respondent does not have a criminal background. (C.L. 214)

On December 16, 2015, respondent filed a motion for a jury trial, alleging that her equal protection rights[1] were violated because 705 ILCS 405/5-750 (2) (2014) ("the DOJJ provision") did not grant her a right to a jury trial even though it subjected her to a "mandatory, determinate sentence to the Department of Juvenile Justice until her 21st birthday, without possibility of parole for five years." (C.L. 195-204) Respondent asserted that she was similarly situated to chronic recidivist juvenile offenders who have a right to a jury trial when adjudicated delinquent under the Habitual Juvenile Offender ("HJO") statute, 705 ILCS 405/5-815 (2012), and the Violent Juvenile Offender ("VJO") statute, 705 ILCS 405/5-820 (2012). (C.L. 200-204) Respondent pointed out that both the

---

[1] The circuit court rejected respondent's related due process claim, acknowledging that the constitutional right to a jury trial does not apply to juvenile proceedings pursuant to *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (1971); *In re Fucini*, 44 Ill. 2d 305 (1970); *People v. Taylor*, 221 Ill. 2d 157 (2006); and *People v. Jonathan C.B.*, 2011 IL 107750 (2011). (C.L. 289)

VJO and HJO statutes expressly provide that "[t]rial on the petition shall be by jury unless the minor demands, in open court and with advice of counsel, a trial by the court without a jury." (C.L. 201) *citing* 705 ILCS 405/5-815 (d) and 705 ILCS 405/5-820 (d). Relying on *In re G.O.*, 304 Ill. App. 3d 719, 727-28 (1st Dist. 1999), *reversed and vacated on other grounds*, *In re G.O.*, 191 Ill. 2d 37, 44 (2000), as persuasive authority, respondent argued that, as a juvenile charged with murder, she is similarly situated to juveniles charged as habitual offenders and juveniles charged as violent offenders because all three types of juvenile offenders are subjected to "punitive, determinate, non-discretionary sentences of commitment to the age of 21." (C.L. 201-03) Respondent contended that there was no rational basis to treat these three types of juvenile offenders differently and that there was no legitimate legislative goal to be served by granting a jury trial right to violent and habitual offenders while denying it to first-time offenders charged with murder. (C.L. 203-04)

At the February 9, 2016 hearing on respondent's motion, the People objected, arguing that the two classes of juveniles were not similarly situated because (1) juveniles sentenced under the HJO and VJO statutes were chronic, recidivist offenders but juveniles under the DOJJ provision were not; and (2) the sentences imposed on the two classes were not the same. (R. 22-27) Accordingly, the legislature's decision to provide a jury trial right to a different class of offender than respondent did not violate equal protection principles. (R. 27)

In granting respondent's motion, the circuit court first found that the DOJJ provision was "silent" on whether a minor is entitled to a jury trial, while the HJO and VJO statutes, which also have determinate sentencing provisions, expressly provide

habitual and violent offenders with the right to a jury trial. (R. 31) The circuit court found that juveniles charged with first degree murder under the DOJJ provision were similarly situated to juveniles charged under the HJO and VJO statutes. (R. 38-40) In doing so, the circuit court rejected the People's argument that the sentencing scheme of the DOJJ provision differs from the scheme found in the HJO and VJO statutes, stating, "in reality, both murder and HJO/VJO minors get that parole eligibility after five years on some other differences." (R. 38) Relying on the appellate court decision in *G.O.*, the circuit court disagreed that the prior adjudications of the juveniles charged under HJO and VJO "separated" them from the non-recidivist juveniles charged with first degree murder under the DOJJ provision. (R. 39) The circuit court found that "juveniles found guilty of murder are probably worse off than minors who are found guilty under the HJO and VJO provision in terms of the sentence they are going to get." (R. 39-40)

In concluding that the distinct treatment with respect to jury trials did not pass the rational basis test, the circuit court stated:

> "In both situations, murder and HJO/VJO, determinant sentences are entered until the age of 21. The purpose of both murder sentences and HJO sentences is the protection of society in addition to rehabilitation to the minor. The [Appellate] Court in *G.O.* found no rational basis for granting jury trials to HJO/VJO while denying to youths who are facing first degree murder charges. The Court there found no legislative goal that would be rationally stated by the legislature or by any kind of goal to create that type of separation.
>
> In each class – in each of those classes, a member of the class is given a nearly identical sentence. The differences are minor and arbitrary at best. Each ends up in the same place for substantially the same amount of time and for the same stated legislative purpose. It's the finding of this Court that denying Destiny [P.] a jury trial could deprive her of the equal protection rights as a minor who is being tried of first degree murder and facing a determinate sentence versus any other minor would be tried under the HJO or VJO statute who could be tried -- have a right to a jury trial and then get a determinate sentence under the age of 21." (R. 40)

The circuit court also discussed the impact that its equal protection ruling had on the DOJJ provision:

> "That is not to say that the statute itself violates equal protection as the Court in *G.O.* did. I do not believe that I have to declare the statute unconstitutional because the statute is in itself silent as to whether or not the minor should be entitled to a jury trial." (R. 41)

Nevertheless, the circuit court found "that as a matter of constitutional rights, denying this minor Destiny, a jury trial would violate her equal protection rights," and, therefore, granted her motion for a jury trial. (R. 41) Finally, the circuit court noted, "I am honestly unsure whether this ruling would give [the People] the right to an interlocutory appeal." (R. 41)

On March 2, 2016, the People filed a motion to reconsider the February 9, 2016 order, or alternatively to amend the order to comply with Illinois Supreme Court Rule 18.[2] (C.L. 213-231) The People argued that respondent, a first-time offender, was not similarly situated to recidivist offenders adjudicated delinquent under the HJO and VJO statutes. (C.L. 222) In particular, the People maintained that the HJO and VJO statutes

---

[2] In their motion, the People initially pointed out that, contrary to the circuit court's ruling, the Juvenile Court Act is not "silent" on whether a juvenile charged with first degree murder under the DOJJ provision, under 705 ILCS 405/5-750(2) (2104) is entitled to a jury trial. (C.L. 219) In particular, the People asserted that pursuant to 705 ILCS 405-5101(3) (2104) and 705 ILCS 405/5-605(1) (2014), the Juvenile Court Act states that juveniles do not have a right to a jury trial unless specifically provided for under article V of the Act. (C.L. 219) The People, therefore, argued that the circuit court's ruling of unconstitutionality "in reality constitutes a determination that the Juvenile Court Act's statutory treatment of the right to a jury trial, which is defined in sections 5-101(3) and 5-605(1), and implemented in the DOJJ provision, is unconstitutional on equal protection grounds." (C.L. 219-220) Accordingly, the People argued that if the circuit court denied the People's motion to reconsider, it should amend its February 9, 2016 order to include the requisite findings of unconstitutionality set forth in Illinois Supreme Court Rule 18. (C.L. 220)

covered a different category of juvenile offender than the DOJJ provision, namely recidivist juvenile offenders, and that these juvenile offenders were subjected to a harsher sentencing scheme under the HJO and VJO statutes. The People also pointed to the different sentences faced by the two categories of juvenile offenders. (C.L. 223-226)

In the alternative, the People argued that even chronic habitual offenders charged with murder were similarly situated to first-time juvenile offenders charged with murder, the legislature's decision to confer a jury trial right on minors adjudicated under the HJO and VJO statutes survived scrutiny under the rational basis test. (C.L. 227) In this regard, the People maintained that the legislature had sufficient grounds to treat habitual and violent juvenile offenders differently than other offenders within the juvenile system, including minors charged with first degree murder. (C.L. 228) Specifically, the People contended that, absent a transfer situation, the legislature determined that a juvenile under the age of 16 who was adjudicated delinquent of first degree murder could best be successfully rehabilitated within the juvenile justice system by a mandatory term of confinement with a parole provision. (C.L. 228) By contrast, the People pointed to the fact that habitual and violent juvenile offenders posed a distinct problem for the legislature because "these chronic offenders 'would appear to have gained little from the rehabilitative measures of the juvenile court system' (*People ex rel. Carey v. Chrastka*, 83 Ill.2d 67, 80 (1980)) and 'exhibi[t] little prospect for restoration to meaningful citizenship within that system' (*In re M.G.*, 301 Ill.App.3d 401, 408, (1st Dist. 1998))." (C.L. 228) Thus, the People argued that the legislature "created a balance between keeping the habitual and violent offenders under the protection of the juvenile justice system, while imposing a harsher and more adult-like sentence." And because of "the

more punitive sentence, the legislature decided to afford these offenders the right to a jury trial." (C.L. 230)

In response, respondent asserted that the People were incorrect in claiming that juveniles under the DOJJ provision were not similarly situated to juveniles under the HJO and VJO statutes. According to respondent, the People failed to set out any "practical differences" that defeated the comparison made by the circuit court. (C.L. 284) Respondent disagreed that HJO and VJO offenders will serve more time in custody than offenders sentenced under the DOJJ provision. (C.L. 284-87) Thus, respondent maintained that "the three categories of minors who face mandatory incarceration are similarly situated" and, therefore, "should be granted jury trials." (C.L. 285)[3]

On April 5, 2016, the circuit court heard argument, made an oral ruling and entered a written Rule 18 order that memorialized its ruling. (R. 71-82; C.L. 289-93) In that written order, the circuit court acknowledged that the Juvenile Court Act expressly denied jury trial rights to minors charged with first degree murder under 705 ILCS 405/5-101(3) and 705 ILCS 405/5-750 (2). (C.L. 288) The circuit court, however, denied the People's motion to reconsider its equal protection ruling.

The court found that juveniles adjudicated on charges of first degree murder under the DOJJ provision and juveniles adjudicated Habitual or Violent Offenders were

---

[3] In response to the People's alternative argument regarding the need for a Rule 18 order, respondent argued that "the Juvenile Court Act's general provisions regarding jury trials are not mandatory, merely permissive or directory." Consequently, the circuit court's ruling "did not declare the entirety of the Juvenile Court Act unconstitutional, and there was no need for a Rule 18 order" (C.L. 286-87)

similarly situated because they all faced a "determinate sentencing structure upon adjudication, with commitment until the age of 21." (C.L. 290) In so finding, the court rejected the People's argument that juveniles found guilty of first degree murder and sentenced under the DOJJ provision faced a different and more lenient sentencing structure than chronic offenders who were charged with first degree murder under the HJO and VJO statutes. (C.L. 290) Although the circuit court acknowledged that "there are minor differences" in the sentences faced by the two groups, it determined that "minors in each of these situations receive a determinative sentence to the Illinois Department of Juvenile Justice until the age of 21....the slight differences being the points at which they may be eligible for parole (eligible, not required)." (C.L. 290)

In rejecting the sentencing distinctions between first-time offenders charged with murder under the DOJJ provision and chronic offenders charged with murder under the HJO and VJO statues, the court stated that the legislature's express inclusion of first degree murder as a predicate offense under the HJO statute (and by definition under the VJO statute) did not reflect a legislative intent "to differentiate it from a charge of murder standing alone." (C.L. 291) The Court also found that "the assertion that the legislature granted jury trials to minors charged with repeated offenses [was] a superficial attempt to differentiate them from minors charged with first degree murder, and lacks logic if examined more closely." (C.L. 291) The court reasoned that there were other recidivist minors (who did not commit murder), including those who could potentially receive "longer periods of confinement who are not accorded the opportunity for a jury trial." (C.L. 291) As an example, the court pointed to minors "on their second offense who are charged as Class 2 felons." (C.L. 290) The court also determined that "it [made] little

sense that a person who has committed two violent but non-lethal offenses has the right to a jury trial as opposed to a person who is alleged to have killed someone," and "[e]ven less so for someone with three non-violent offenses." (C.L. 291) According to the court, "the simple fact that someone has a recidivist history standing alone is meaningless unless there is a consequence for that criminal history." (C.L.291) The court elaborated:

> "[I]t is not the fact that someone committed multiple offenses that triggers the jury trial right, it is the enhanced sentence that follows. Had the legislature not attached an enhanced sentence to the HJO and VJO minors, leaving them with indeterminate sentences, would they be given the right to a jury trial? The answer is surely no. It is the sentence, not the number of adjudications that triggers the jury trial. Th[at] leaves HJO and VJO minors in substantially the same position as minors charged with murder." (C.L. 291)

The circuit court also stated that a closer examination of the DOJJ sentencing structure established that "one can categorize the levels of sentence in terms of harshness." (C.L. 291) The court concluded that "[a]t bottom [were] minors, who under normal sentencing provisions receive an indeterminate sentence until the age of 21." (C.L. 291) The court noted that "[t]hese minors can be paroled at any time, and experience and the IDJJ guidelines tell us that they typically serve anywhere from a few months up to 2 years in the IDJJ." (C.L. 291) The court found the HJO and VJO were next in in terms of harshness. According to the court, the HJO and VJO offenders are sentenced until they are 21, with day-for-day good time and that "mathematically, that means that a minor sentenced at the age of 13 has 8 years until he/she turns 21", and "[a]ssuming good behavior, with day for day good time, that minor will serve a maximum of 4 years in the IDJJ." (C.L. 291) The court then calculated that "a minor who is 17 years old has four years until he/she turns 21, which means with good behavior he/she

will serve 2 years in the IDJJ." (C.L. 291) The court then stated that "by contrast, a minor who has been adjudicated guilty of first degree murder cannot be paroled in less than 5 years, or his/her 21st birthday." (C.L. 291) Thus, the court opined that minors adjudicated of first degree murder fell under the harshest sentencing tier. (C.L. 291) Based on this assessment, the court found there was no rational basis or justification for granting the right to a jury trial to "a minor positioned in the middle tier of IDJJ" "as opposed to a minor who will undoubtedly do more time for murder." (C.L. 291) The court determined that minors facing murder charges should receive a jury trial because they face a harsher sentence than the habitual and violent juvenile offenders "who will be paroled earlier." (C.L. 292)

In support of this conclusion, the circuit court relied on the long-vacated appellate decision in *G.O.* as persuasive authority and concluded:

> "In each class, murder, HJO and VJO, a member of the class is given a nearly identical sentence. Any differences are minor and arbitrary at best. Each ends up in the same place for substantially the same amount of time, and for the same legislative purpose. It is the finding of this court that denying Destiny [P.] a jury trial would deprive her of the equal protection of the law as a minor who is being tried for first degree murder and facing a determinate sentence, versus any other minor who is tried under the HJO or VJO statute." (C.L.292)

Accordingly, the court held that the Juvenile Court Act, which expressly denied respondent a jury trial under 705 ILCS 405/5-101(3) and 705 ILCS 405/5-605(1), was unconstitutional on equal protection grounds as applied to respondent and as to any other minor charged with first degree murder. (C.L. 292)

ARGUMENT

THE LEGISLATURE DID NOT VIOLATE RESPONDENT'S EQUAL PROTECTION RIGHTS WHEN IT AFFORDED A JURY TRIAL RIGHT TO CHRONIC JUVENILE OFFENDERS CHARGED WITH FIRST DEGREE MURDER UNDER THE HJO AND VJO STATUTES BUT DID NOT AFFORD SUCH A RIGHT TO NON-RECIDIVIST MINORS, LIKE RESPONDENT, WHO ARE CHARGED WITH FIRST DEGREE MURDER AND FACE SENTENCING UNDER THE GENERAL DOJJ STATUTE.

The circuit court's ruling that respondent, and any other non-recidivist minor charged with first degree murder, must be granted the right to a jury trial under the Juvenile Court Act is based on a fundamentally flawed equal protection analysis that usurps the legislative prerogative to determine the circumstances in which minors will be given the right to a jury trial in delinquency proceedings. Neither the Illinois Constitution nor the United States Constitution guarantees a trial by jury in delinquency proceedings. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Fucini*, 44 Ill. 2d 305 (1970). This Court has long held that the right to a jury trial in delinquency proceedings is not constitutionally compelled under the Illinois Constitution because the Juvenile Court Act is of statutory origin and is not "'a proceeding according to the course of the common law in which the right of a trial by jury is guaranteed.'" *Fucini*, 44 Ill. 2d at 310, *quoting Lindsay v. Lindsay,* 257 Ill. 328, 335-336 (1913). Comparably, the United States Supreme Court held that trial by jury is neither a necessary element of the fundamental fairness guaranteed by the due process clause, nor an essential component of accurate fact finding. 403 U.S. at 543. In rejecting the claim that a minor is constitutionally entitled to a jury trial, the Supreme Court stated:

> "We are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young * * *. The States, indeed, must go forward. *If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature*. That, however, is the State's privilege and not its obligation." (Emphasis added.) 403 U.S. at 547.

This Court recently reiterated that, under the United States Constitution, the Supreme Court "has traditionally given states wider latitude in adopting particular trial and sentencing procedures for juveniles—including whether to have a jury trial at all." (Internal quotations omitted.) *In re M.I.*, 2013 IL 113776, ¶ 47.

When Illinois became the first State legislature to create a separate court system for juveniles (1899 Ill. Laws 131), the Illinois General Assembly (hereinafter "the legislature") exercised its authority to "experiment" with the type of role (if any) a jury system would have in delinquency proceedings. The original act, entitled the Family Court Act, granted the right to a jury of six in delinquency proceedings. *See* Hurd's Rev. Stat. 1899, ch. 23, par. 170; Ill. Rev. Stat. 1965, ch. 23, par. 2002. The Family Court Act was replaced, effective January 1, 1966, by the Juvenile Court Act, which did not include a provision for jury trials. *People ex rel. Carey v. White*, 65 Ill. 2d 193, 199-202 (1976) (trial court could not exercise equitable powers to grant jury trial in delinquency proceedings because such an exercise was "contrary to the parameters outlined by the legislature"). Currently, the Juvenile Court Act provides that juveniles do not have a right to a jury trial unless specifically provided under article V of the Act. 705 ILCS 405/5-101(3) (2104) and 705 ILCS 405/5-605(1) (2014). In the unique cases of habitual and violent offenders, the legislature afforded these individuals, as a matter of legislative

grace, an opportunity to elect to be tried by jury. *See* 705 ILCS 405/5-815 (2014) (HJO statute); 705 ILCS 405/5-820 (2014) (VJO statute).[4]

The circuit court, in reliance upon this statutory grant, concluded that non-recidivist first degree murderers were similarly situated to habitual and violent offenders and, therefore, were denied equal protection. However, a proper analysis of the statutes and the legislative intent driving their enactment reveals no equal protection violation. Non-recidivist juveniles, like respondent, who are charged with first degree murder are not similarly situated to habitual and violent offenders who are charged with first degree murder under the HJO and VJO statutes. Due to their status as recidivist offenders, habitual and violent juvenile offenders face a distinct and harsher sentencing scheme. Even assuming, *arguendo*, that respondent is similarly situated to habitual and violent offenders, there is a rational basis and a legitimate state objective in affording recidivist offenders a right to a jury trial under the HJO and VJO statutes, while not affording such a right to non-recidivist offenders who are charged with first degree murder and face sentencing under the general DOJJ statute. The circuit court's judgment should be reversed.

A. Standard Of Review And Equal Protection Principles.

This Court reviews the constitutionality of a statute *de novo*. *People ex rel. Birkett*

---

[4] As pointed out earlier, the legislature also provided a jury trial right to juveniles who are tried in juvenile court under the EJJ statute (705 ILCS 405/5-810 (2014)). However, the court and the parties recognized that this provision is not pertinent to the instant equal protection issue because (unlike respondent and habitual and violent offenders), juveniles prosecuted under the EJJ statute face an adult sentence. Consequently, respondent did not include EJJ juveniles in her comparison group. (C.L. 200-04)

v. Konetski, 233 Ill. 2d 185, 200 (2009). A statute enjoys a strong presumption of constitutionality and the challenging party "must clearly establish a constitutional violation" to overcome the presumption of constitutionality. *Id.* "[W]hether a statute is wise or desirable is not a concern for the court. Rather, it is wholly for the legislature to balance the advantages and disadvantages of legislation." *People v. Warren*, 173 Ill. 2d 348, 356 (1996). This Court's focus is upon the constitutionality of the Act, bearing in mind its role of upholding the legislative prerogative if at all reasonably possible. In effecting this role, principles of statutory construction apply with equal force to constitutional analysis. *Baker v. Miller*, 159 Ill. 2d 249, 257 (1994). The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent, and the best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Konetski*, 233 Ill. 2d at 193.

In assessing equal protection claims under both the Federal and State Constitutions, Illinois courts apply the same legal analysis. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. *See Wauconda Fire Prot. Dist. v. Stonewall Orchards, LLP*, 214 Ill. 2d 417, 434 (2005). The Equal Protection Clause guarantees that similarly situated individuals will be treated in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently. *People v. Whitfield*, 228 Ill. 2d 502, 512 (2007). The Equal Protection Clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose. *Wauconda Fire Prot. Dist.*, 214 Ill. 2d at 434. Where no suspect class or fundamental right is involved, courts apply rational basis scrutiny. *Whitfield*, 228 Ill. 2d at

512. Under this test, the court's review is generally deferential and simply inquires whether the means employed by the statute to achieve the stated purpose of the legislation are rationally related to that goal. *People v. Mosley*, 2015 IL 115872, ¶ 40.

However, a court need not apply the rational basis test where the party challenging the classification cannot meet the threshold requirement of demonstrating that she is similarly situated to the comparison group. *People v. Masterson*, 2011 IL 110072, ¶ 25. If the challenging party cannot meet this preliminary threshold, the equal protection claim fails. *Masterson*, 2011 IL 110072, ¶ 25; *In re Jonathan C.B.*, 2011 IL 107750, ¶ 120.

B. The Circuit Court's As-Applied Equal Protection Ruling Must Be Reversed Because Respondent, A First-Time Offender, Is Not Similarly Situated To Recidivist Offenders Charged With First Degree Murder And Sentenced Under The HJO And VJO Statutes.

Respondent's equal protection claim fails at the threshold because she fails to show that she is similarly situated to habitual and violent juvenile offenders. *See In re Jonathan C.B.*, 2011 IL 107750, ¶ 120. Focusing solely on the dispositional aspect of the statutes at issue, the circuit court held that juveniles charged with first degree murder and subject to sentencing under the DOJJ provision were similarly situated to *all* juveniles charged under the HJO and VJO statutes, because all three types of offenders face a mandatory, determinate sentence of commitment to the DOJJ until the age of 21. (C.L. 290) In particular, the circuit court found that both groups faced "nearly identical" sentences with the only difference being the "points at which they may be eligible for parole." (C.L. 290) Based on this erroneous assessment, the circuit court concluded that "[a]ny difference was minor and arbitrary at best." (C.L. 292) Even though it discounted

the differences as insignificant, the circuit court also made the conflicting determination that non-recidivist offenders sentenced for murder under the DOJJ provision were subjected to a harsher penalty than recidivist offenders under the HJO and VJO statutes. The court stated that "juveniles found guilty of murder are probably worse off than minors who are found guilty under the HJO and VJO provision in terms of the sentence they are going to get." (R. 39-40)

Neither assessment is correct. Although the DOJJ provision and HJO and VJO statutes set forth a mandatory commitment to the DOJJ until the age of 21, that is where the similarities end. In its threshold inquiry, the circuit court committed three errors: (1) it erroneously discounted the distinct legislative purpose behind the HJO and VJO statutes; (2) it incorrectly defined the comparison group; and (3) it inaccurately assessed the sentencing schemes set out in the DOJJ provision and the HJO and VJO statutes. A proper interpretation of these provisions shows that the HJO and VJO statutes cover a different category of juvenile offenders than the DOJJ provision, namely recidivist juvenile offenders, and that these recidivist offenders are subjected to a "harsher" sentencing scheme under the HJO and VJO statutes because that they have shown little potential for rehabilitation and pose a danger to the public.

As to the first error, the circuit court mistakenly dismissed the fact that the legislative purpose in enacting the DOJJ provision was different from the legislative policies that propelled the enactment of the HJO and VJO statutes. In this regard, the court stated that "the assertion that the legislature granted jury trials to minors charged with repeated offenses [was] a superficial attempt to differentiate them from minors charged with first degree murder. . . ." (C.L. 291) The circuit court disagreed that the

prior adjudications of juveniles charged under HJO and VJO "separated" them from the juveniles charged with first degree murder under the DOJJ provision. (R. 39) However, the legislative purpose in enacting these statutes cannot be removed from the threshold inquiry. This Court has held that "a determination that individuals are similarly situated for equal protection purposes cannot be made in the abstract" without "considering the purpose of the particular legislation. *In re M.A.*, 2015 IL 118049, ¶ 29; *see also People v. Warren*, 173 Ill. 2d 348, 363 (1996).

Prior to 1999, a minor adjudged delinquent of first degree murder in juvenile court was subject to commitment with no mandatory minimum sentence. *See* 705 ILCS 405/5-33 (1992).[5] The enactment of the DOJJ provision, under the Juvenile Reform Act (Pub. Act 90-590, eff. Jan. 1, 1999), reflected "a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law." *People v. Taylor*, 221 Ill. 2d 157, 167 (2006); *see also In re A.G.*, 195 Ill. 2d 313, 317 (2001); *In re Jaime P.*, 223 Ill. 2d 526, 535-36 (2006). It is evident that the legislature implemented a mandatory minimum sentence for first degree murder because murder "has always been set apart from other crimes." *People v. J.S.*, 103 Ill. 2d 395, 404 (1984). Even though these

---

[5] In 1995, the legislature passed the Safe Neighborhood Act under Public Act 88-680 (eff. Jan. 1, 1995), which originally imposed the mandatory minimum sentence found in the DOJJ provision (705 ILCS 405/5-750(2) (2014)) at issue here. *See* 705 ILCS 405/5-33(1.5) (1996). However, this Court found that the Safe Neighborhood Act was unconstitutional in its entirety because it violated the single subject clause of the Illinois Constitution. *People v. Cervantes*, 189 Ill. 2d 80, 98 (1999). Consequently, the DOJJ provision was held to be void from its inception. *In re G.O.*, 191 Ill. 2d 37, 44-46 (2000). In response, the legislature passed the Juvenile Justice Reform Act under Public Act 90-590 (eff. Jan. 1, 1999), which replaced the unconstitutional provision with the DOJJ provision, 705 ILCS 405/5-750(2) (1999).

juvenile offenders were neither subject to an automatic transfer nor eligible for a discretionary transfer to adult court, the enactment of the DOJJ provision fulfilled the purpose of holding these minors more accountable for the commission of murder within the juvenile court system. At the same time, the DOJJ provision recognizes that, despite the seriousness of the crime, these juveniles had the potential for rehabilitation. This recognition is made evident by the sentencing scheme.

Under the DOJJ provision, if a minor at least 13 years of age is adjudicated delinquent of first degree murder, she must be "committed to the Department of Juvenile Justice until the minor's 21st birthday, *without the possibility of aftercare release, furlough, or non-emergency authorized absence for a period of 5 years from the date the minor was committed to the Department of Juvenile Justice*, except that the time that a minor spent in custody for the instant offense before being committed to the Department of Juvenile Justice shall be considered as time credited towards that 5 year period." 705 ILCS 405/5-750 (2) (2014)[6]. In other words, the DOJJ provision imposes a mandatory minimum sentence of five years (less time in pre-sentence custody).

The DOJJ provision further provides that "[u]pon release from a Department facility, *a minor adjudged delinquent for first degree murder shall be placed on aftercare release until the age of 21, unless sooner discharged from aftercare release or custodianship is otherwise terminated* in accordance with this Act or as otherwise

---

[6] Public Act 98-558 (eff. January 1, 2014) substituted the term "aftercare release" for the term "parole" throughout the Juvenile Court Act. The People will use the terms interchangeably.

provided for by law." (Emphasis added.) 705 ILCS 405/5-750 (2). Thus, under the DOJJ, a juvenile's parole can be terminated (at any time) before the juvenile turns 21 years old.

The circuit court was correct in finding that a juvenile is not automatically released and placed on parole after five years, but that it is left to the discretion of the juvenile parole board. (C.L. 290) However, the court failed to realize that the DOJJ provision establishes a mandatory minimum sentence of five years (minus time spent in pre-sentencing custody). In other words, a minor can be committed anywhere from five years or up to her 21st birthday (8 years if the minor is 13 at the time of sentencing). This scheme does not set forth a "determinate" sentence as that term is commonly understood. Rather, it is "indeterminate" in that it contains a range within which the juvenile parole board can exercise its discretion to order a juvenile released from custody and terminate parole. *See People ex rel. Castle v. Spivey*, 10 Ill. 2d 586, 592 (1957). The DOJJ provision expressly comprehends the juvenile court system's mechanism for early release. This sentence is described in terms of a "range" with built-in early release considerations.

In contrast to the DOJJ provision, the plain language of the HJO and VJO statutes demonstrates that these statutes cover a different category of juvenile offender: recidivist offenders who have proven themselves to pose a serious danger to the public by their prior adjudications. In fact, the "legislative declaration" for the "violent and habitual juvenile offender provisions" (705 ILCS 405/5-801) states that "[t]he General Assembly finds that a disproportionate amount of serious crime is committed by a relatively small number of juvenile offenders." *Id.* In the context of the adult habitual criminal statute, this Court recognized that habitual criminal statutes do not define a new or independent offense but merely prescribe the circumstances under which a defendant found guilty of a

specific crime may be more severely punished because that defendant has a history of prior convictions. *People v. Dunigan*, 165 Ill. 2d 235, 242-43 (1995). This legislative scheme is reflected in both the HJO and VJO statutes.

With respect to the HJO statute, this Court has long recognized that "[t]he apparent predominant purpose of the Act is to protect society from an individual who, having committed three serious offenses, would appear to have gained little from the rehabilitative measures of the juvenile court system." *People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67, 80 (1980); *see also In re M.G.*, 301 Ill. App. 3d 401, 409 (1st Dist. 1998). In particular, the HJO statute covers "[a]ny minor having been twice adjudicated a delinquent minor for offenses which, had he been prosecuted as an adult, would have been felonies under the laws of this State, and who is thereafter adjudicated a delinquent minor for a third time shall be adjudged an Habitual Juvenile Offender." 705 ILCS 405/5-815(a) (2014). The third offense must be "based upon the commission of or attempted commission of the following offenses: *first degree murder*, second degree murder or involuntary manslaughter; criminal sexual assault or aggravated criminal sexual assault; aggravated or heinous battery involving permanent disability or disfigurement or great bodily harm to the victim; burglary of a home or other residence intended for use as a temporary or permanent dwelling place for human beings; home invasion; robbery or armed robbery; or aggravated arson." (Emphasis added.) 705 ILCS 405/5-815(a)(4). The HJO statute thus expressly identifies first degree murder as one of the predicate offenses.

In similar fashion, the VJO statute has the "apparent purpose of protecting society from an individual who has committed two serious violent offenses involving the use or

threat of physical force or violence against an individual or possession or use of a firearm. To further its purpose, the legislature determined that a violent juvenile offender should be confined until the age of 21." *In re M.G.*, 301 Ill. App. 3d at 409, *citing Chrastka*, 83 Ill. 2d at 80. Specifically, the VJO statute covers "[a] minor having been previously adjudicated a delinquent minor for an offense which, had he or she been prosecuted as an adult, would have been a Class 2 or greater felony involving the use or threat of physical force or violence against an individual or a Class 2 or greater felony for which an element of the offense is possession or use of a firearm, and who is thereafter adjudicated a delinquent minor for a second time for any of those offenses shall be adjudicated a Violent Juvenile Offender * * *." 705 ILCS 405/5-820 (a) (2014). Thus, by definition, under the VJO statute, a repeat offender whose second offense is first degree murder is eligible to be adjudicated delinquent under the VJO statute because first degree murder is an offense greater than a Class 2 felony. In fact, both statutes permit the People to pursue HJO and VJO adjudications in the alternative. 705 ILCS 405/5-815 (4); 705 ILCS 405/5-820 (g).

In this case, the circuit court marginalized the fact that first degree murder can be used as a predicate offense under the HJO and VJO statutes. The court erroneously concluded that the HJO and VJO statutes did not "differentiate" a prosecution for murder under those statutes from "a charge of murder standing alone." (C.L. 291) This flawed reasoning led the court to commit its second error, namely the misidentification of the comparison group. Because first degree murder can be a predicate offense for both statutes, the proper comparison group in this case is a juvenile charged with first degree murder under the HJO and VJO statutes. *See* 705 ILCS 405/5-815(a); 705 ILCS 405/5-

820 (a). This distinction is crucial because the amount of time a juvenile actually serves in the DOJJ as a habitual or violent offender is dependent on the charged predicate offense.

Juveniles adjudicated delinquent under the HJO and VJO statutes are subjected to an identical sentence, but this sentence differs from the sentencing scheme found in the DOJJ provision. Both the HJO and VJO statutes direct the trial judge to commit a recidivist minor "to the Department of Juvenile Justice until his 21st birthday, *without possibility of aftercare release, furlough, or non-emergency authorized absence.*" 705 ILCS 405/5-815(f); 705 ILCS 405/5-820(f). So, unlike non-recidivist juveniles who are eligible for parole after five years under the DOJJ provision, recidivist minors adjudicated under the HJO and VJO statutes are *not* entitled to parole at all. Habitual and violent juvenile offenders are entitled to credit for time spent in custody prior to sentencing. *See In re B.L.S.*, 202 Ill. 2d 510, 518-19 (2002) (court held that, pursuant to 730 ILCS 5/5-8-7(c) (2009) (now 730 ILCS 5-4.5-100(c) (2016)), habitual juvenile offenders are entitled to pre-sentencing custody credit).

Furthermore, under both the HJO and VJO statutes, "the minor shall be entitled to earn one day of good conduct credit for each day served as reductions against the period of his confinement." 705 ILCS 405/5-815(f); 705 ILCS 405/5-820(f). Notably, "[s]uch good conduct credits shall be earned or revoked according to *the procedures applicable to the allowance and revocation of good conduct credit for adult prisoners serving determinate sentences for felonies.*" (Emphasis added.) 705 ILCS 405/5-815(f); 705 ILCS 405/5-820(f). In calculating good conduct credit, the statutes provide that for purposes of determining good conduct credit, commitment "shall be considered a determinate

commitment, and the difference between the date of the commitment and the minor's 21st birthday shall be considered the determinate period of his confinement." 705 ILCS 405/5-815(f); 705 ILCS 405/5-820(f). Hence, in contrast to the DOJJ provision, the HJO and VJO statutes expressly identify the mandatory sentence as a "determinate" one for purposes of calculating good conduct credit.

Because both the HJO and VJO statutes provide for good conduct credit according to procedures for adult offenders, the Code of Corrections becomes relevant here. The "procedures applicable for adult prisoners facing sentencing for felonies" are found in 730 ILCS 5/3-6-3 (2104). Under section 3-6-3, the computation of good conduct credit is dependent on the felony for which the prisoner is serving time. Section 3-6-3 provides that, with the exception of prisoners convicted of certain enumerated crimes, a prisoner serving a term of imprisonment shall receive one day of good conduct credit for each day of his prison sentence. 730 ILCS 5/3-6-3 (a)(2.1) (2014). One enumerated offense is armed robbery. A prisoner serving a sentence for an armed robbery that resulted in great bodily harm to the victim "receives no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment." 730 ILCS 5/3-6-3(a)(2)(iii). This means that such a prisoner serves 85% of his time. Significantly, section 3-6-3 mandates that "a prisoner who is serving a term of imprisonment for first degree murder or for the offense of terrorism shall receive no sentence credit and shall serve the entire sentence imposed by the court * * *. 730 ILCS 5/3-6-3(a)(2)(i) (2014). This means that a prisoner serving time for first degree murder must serve 100% of her sentence. Consequently, juveniles sentenced for first degree murder under the HJO and VJO statutes do not receive good

conduct credit and are required to be committed until the age of 21 (minus pre-sentencing custody credit).

Thus, contrary to the circuit court's finding, a juvenile facing a first degree murder charge under the HJO or VJO statutes is not similarly situated to first-time juvenile offender who commits murder, because habitual and violent offenders serve a more severe sentence. The following chart provides a brief summary of these differing schemes.

***NON-RECIDIVIST OFFENDERS CHARGED WITH MURDER* (DOJJ)**	***HABITUAL AND VIOLENT OFFENDERS CHARGED WITH MURDER* (HJO & VJO)**
Mandatory Commitment Until 21 Years Of Age	Mandatory Commitment Until 21 Years Of Age
Eligible For Parole After 5 Years	**No Possibility Of Parole**
With Pre-Sentencing Custody Credited Toward Mandatory Minimum of 5 years	Pre-Sentencing Custody Credited To Sentence
No Mention of Good Conduct Credit	Express Ineligibility For Good Conduct Credit
Discretionary Release From Parole Or Custodianship Possible	**Determinate Sentence: No Early Release Or Parole – Must Serve Until Age Of 21 Years, Only Minus Pre-Sentencing Custody Credit**

By failing to identify the proper comparison group – juveniles charged with murder under the HJO and VJO statutes – the court erroneously concluded that respondent was "worse off" than habitual and violent offenders, thereby committing its third and most significant error: the failure to recognize that recidivist offenders charged

with first degree murder face a "harsher" sentencing scheme under the HJO and VJO than a first-time offender charged with first degree murder under the DOJJ.

For example, a 13-year old non-recidivist juvenile who committed murder shortly after her 13th birthday and is committed to the DOJJ one year later will serve a potential seven-year term in custody, until she is 21. However, she would be eligible for parole after five years in custody, when she is 19. And, if she spent a year in detention prior to her commitment, that year would be credited against the five-year period so she would be eligible for parole when she was 18. The juvenile parole board would have the discretion to terminate her parole anytime thereafter, potentially allowing her release after only four years, at the age of 18.

Under the HJO and VJO, by contrast, a habitual or violent juvenile offender who commits murder would always have to serve more time, potentially almost two more years in custody. For example, if that juvenile committed the murder shortly after she turned 13, and was sentenced one year later, she would face seven years of incarceration, until the age of 21. With credit for one year spent in detention prior to sentencing, she would face incarceration until she was 20, or a six-year term. Because she would neither be entitled to any good conduct credit (just like adult offenders who commit murder) nor the possibility of parole, she would not be released from custody prior to her 20th birthday.

Thus, the HJO/VJO sentencing scheme is harsher and more adult-like than the sentencing scheme found in the DOJJ provision, and truly is determinate sentencing, unlike the DOJJ provision, which allows for the possibility of earlier release dependent on the parole board's assessment of a first-time offender's individual potential. In this

latter respect, the DOJJ provision, even with respect to murder, is more akin to the remainder of the Juvenile Court Act. As designed by the legislature, the HJO and VJO contain distinct sentencing structures. Accordingly, in finding that the first-time offender respondent was "worse off," the circuit court wrongly calculated that an HJO or VJO offender would serve less time than a DOJJ offender because it failed to take into account the fact that good conduct credit is not available for first degree murders. (C.L. 291)

The circuit court's reliance on *In re G.O.*, 304 Ill. App. 3d 719 (1st Dist. 1999) *reversed and vacated on other grounds, In re G.O.*, 191 Ill. 2d 37, 44-46 (2000), as persuasive authority was misplaced because *G.O.* suffered the same analytical infirmities. Like the circuit court, the *G.O.* court discounted the legislative policies driving the HJO and VJO statutes. 304 Ill. App. 3d at 727. Like the circuit court, the *G.O.* court incorrectly defined the comparison group and incorrectly found that a non-recidivist juvenile offender charged with first degree murder faced harsher sentencing consequences.

As established, the HJO and VJO statutes cover habitual and violent offenders who are subjected to a harsher and more adult-like sentencing scheme than juveniles, like respondent, who are sentenced under the DOJJ provision. As a result, respondent's equal protection claim should have been rejected because she is not similarly situated to habitual and violent offenders who are charged with first degree murder under the HJO and VJO statutes. *See also In re Jonathan C.B.*, 2011 IL 107750, ¶ 120 ("Because [respondent] is not similarly situated to juveniles subject to EJJ prosecutions or adults facing felony sex offense charges, we need not consider whether there is a rational basis for granting jury trials to minors subject to EJJ prosecutions and adults charged with felony sex offenses, but not to minors charged with felony sex offenses."). This Court

should, therefore, reverse the circuit court's finding of unconstitutionality on this basis alone.

C. The Legislative Determination To Afford A Jury Trial To HJO And VJO Offenders, And Not All Other Juveniles Charged With First degree Murder, Is Rationally Related To A Legitimate Government Purpose.

Even assuming, *arguendo*, that respondent is similarly situated to habitual and violent offenders, the Juvenile Court Act, which expressly denies respondent a jury trial under 705 ILCS 405/5-101(3) and 705 ILCS 405/5-605(1), readily survives rational basis.

As an initial matter, because juveniles do not have a constitutional right to a jury trial and no suspect class is involved, the circuit court properly determined that the rational basis test applies here. *People v. Whitfield*, 228 Ill. 2d 502, 512 (2007). The circuit court, however, erroneously found that there was no rational basis or justification to granting the right to a jury trial to habitual and juvenile offenders, while denying such a right to respondent, who is charged with murder and allegedly faces a harsher sentence than habitual and violent offenders "who will be paroled earlier." (C.L. 292)

Under the rational basis test, a court considers whether the challenged classification bears a rational relationship to a legitimate governmental purpose. *Whitfield*, 228 Ill. 2d at 512. The rational basis test does not require that a statute be the *best* means of accomplishing the legislature's objectives. *In re J.W.*, 204 Ill. 2d 50, 72 (2003), *citing People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998). "It is best left to the legislature and not the courts to determine whether a statute is wise or whether it is the best means to achieve the desired result" and "[i]f there is any conceivable basis for finding a rational relationship, the statute will be upheld." *In re J.W.*, 204 Ill. 2d at 72.

Rarely should a court, favoring one policy over another, use its power to undermine the will of the legislature. Indeed, "[w]hether the enactment is wise or unwise; whether it is based on sound economic theory; whether it is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." *Thillens, Inc. v. Morey*, 11 Ill.2d 579, 593 (1957).

Since juveniles are not entitled to a jury trial in delinquency proceedings as a matter of constitutional imperative, the question really is not, therefore, whether first degree murderers were deprived of such any constitutional right. Thus, the question is whether the legislature had a basis to treat habitual and violent juvenile offenders differently from other juvenile offenders.

"This court has repeatedly recognized that the legislature has the power to declare and define conduct constituting a crime and to determine the nature and extent of criminal sentences." *People v. Dunigan*, 165 Ill. 2d 235, 244 (1995). As pointed out above, the DOJJ provision's mandatory minimum sentence for first degree murder was enacted under the Judicial Reform Act, which represented "a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law." *People v. Taylor*, 221 Ill. 2d 157, 167 (2006). However, this Court has pointed out that "'[e]ven as the legislature recognized that the juvenile court system should protect the public, it tempered that goal with the goal of developing delinquent minors into productive adults, and gave the trial court options designed to reach both goals." *In re Jonathon C.B.*, 2011 IL

107750, ¶ 94, *quoting In re Rodney H.*, 223 Ill. 2d 510, 520 (2006). This Court further stressed that delinquency proceedings under the Juvenile Court Act remain "'protective in nature and the purpose of the Act is to correct and rehabilitate, not to punish.'" *Jonathon C.B.*, 2011 IL 107750, ¶ 94, *quoting In re Rodney H.*, 223 Ill. 2d at 520. There is no doubt that "murder * * * is clearly a crime that, because of its violent nature, has always been set apart from other crimes." *People v. J.S.*, 103 Ill. 2d 395, 404 (1984). Nevertheless, absent an automatic transfer situation (705 ILCS 405/5-805 (2014)) or a discretionary transfer situation (705 ILCS 405/5-805 (2014)), the legislature determined that juveniles under the age of 15 (now 16) who are adjudicated delinquent of first degree murder could best be rehabilitated within the juvenile justice system by a mandatory minimum sentence of commitment to the DOJJ until the age of 21 *with a possibility of parole after five years*. The DOJJ provision also provides for early release from parole. *See* 705 ILCS 405/5-750 (2) (2014). The goal of the DOJJ provision, then, was to address the problem of this most serious offense within the confines of the juvenile justice system. The disposition is admittedly harsher than some of the other provisions in the Act, but justifiably so given that the offense is murder.

Habitual and violent juvenile offenders posed an entirely distinct problem for the legislature. By definition, these chronic and violent offenders "would appear to have gained little from the rehabilitative measures of the juvenile court system" (*People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67, 80 (1980)) and "exhibi[t] little prospect for restoration to meaningful citizenship within that system" (*In re M.G.*, 301 Ill. App. 3d 401, 408 (1st Dist. 1998)). That is not to say that "the rehabilitative purposes of the system were completely forsaken." *M.G.*, 301 Ill. App. 3d at 407. In an effort to protect society, the

HJO and VJO statutes establish a harsher sentencing scheme that requires commitment to the DOJJ without the possibility of parole, and in the context of first degree murder, these offenders are not granted good conduct credit.

In *Chrastka*, this Court explicitly recognized that "[b]y allowing trial by jury in this instance, the legislature has acknowledged the punitive aspect of the [HJO statute]." 83 Ill. 2d at 80. Further, this Court agreed that the legislature has a compelling interest in protecting the public from habitual juvenile offenders. *Id.*

In that case, this Court rejected, *inter alia*, the claim that a juvenile is denied equal protection because his confinement until the age of 21 might be longer than an older juvenile's term for the same offense. In rejecting that claim, this Court held:

> "[W]e believe that the interest in protecting society from the habitual juvenile offender has, through experience, proved to be as compelling as the interest in protecting society from the habitual adult offender, and the broad authority of State legislatures to deal with adult recidivists is well recognized (*Rummel v. Estelle* (1980), 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 ***; *Spencer v. Texas* (1967), 385 U.S. 554, 559-560, 87 S. Ct. 648, 17 L. Ed. 2d 606 ***). We do not believe that the fortuitous disparity of the terms of confinement of habitual juvenile offenders which results from the variance in age of such individuals serves to invalidate the means chosen to effectuate the purpose of the Act. 'The Constitution permits qualitative differences in meting out punishment and there is no requirement that two persons convicted of the same offense receive identical sentences.' (*Williams v. Illinois* (1970), 399 U.S. 235, 241, 90 S. Ct. 2018, 26 L. Ed. 2d 586 ***). And as stated in *Skinner v. Oklahoma ex rel. Williamson* (1942), 316 U.S. 535, 539-40, 62 S. Ct. 1110, 86 L. Ed. 1655 ***, 'Under our constitutional system the States in determining the reach and scope of particular legislation need not provide 'abstract symmetry.' *Patsone v. Pennsylvania* (1914), 232 U.S. 138, 144, 34 S. Ct. 281, 58 L. Ed. 539. They may mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience.'" *Chrastka*, 83 Ill. 2d at 81.

This analysis applies equally to the VJO statute because there is a compelling interest in protecting the public from individuals who have repeatedly committed serious

violent offenses. *See M.G.*, 301 Ill. App. 3d at 409; *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶¶ 43-45. In fact, the "legislative declaration" for the "violent and habitual juvenile offender provisions" (705 ILCS 405/5-801) states that "[t]he General Assembly finds that a disproportionate amount of serious crime is committed by a relatively small number of juvenile offenders." *Id.*

Notably, in her motion for a jury trial, respondent referenced the fact that Governor James Thompson's amendatory veto of the HJO statute (Senate Bill 790) had expressed concern that the provision for jury trial in the habitual offender proceedings may give rise to an equal protection violation. (C.L. 203) Respondent, however, neglected to mention the fact that the amendatory veto was overridden, in large part, because Governor Thompson rewrote the provision in a manner inconsistent with the legislature's intent. "Instead of establishing a new juvenile court procedure," Governor Thompson wanted certain habitual juvenile offenders transferred into the adult system upon commission of a third enumerated felony. 1979 J. Ill. Senate 4778, Amendatory Veto Message. Both chambers of the Illinois General Assembly overrode this amendatory veto. *See* 81st General Assembly, 1979 Sess., Senate Bill 790, Senate Proceedings, October 18, 1970, at 35; 81st General Assembly, 1979 Sess., Senate Bill 790, House Proceedings, October 31, 1979, at 34. Thus, the legislators faced the choice whether to address these recidivist offenders within the realm of the juvenile justice system or to try them as adults – and ultimately chose to keep them in the juvenile justice system, albeit with a more adult-like proceeding and sentence.

The comments of Senator DeAngelis during these proceedings are particularly instructive in this regard. During debate on whether to override the Amendatory Veto, Senator DeAngelis stated,

> "Well, I'm caught in the dilemma between rehabilitation and getting violent offenders off the street. The Governor in his Amendatory Veto is really saying, anyone who commits these crimes is lost, should be tried as an adult and sent away for whatever particular period of time. I'm saying they should be sent away until they're twenty-one." 81st General Assembly, Senate Proceedings, October 18, 1970, at 33.

In this same vein, during the House debates on the Amendatory Veto, Speaker Davis stated the following:

> "And let me say to you once again that his amendatory veto made this Bill much tougher, much more difficult in a law and order position, but unfortunately he rewrote the Bill and therein lies the problem. What the Governor would have had you done [sic] * * * is to mandate * * * that juveniles be tried as adults. There would be no latitude given to the State's Attorney or the juvenile court any longer. He would mandate that juveniles be tried as adults. * * * This issue is simply, 'Do we still believe there is some small hope of rehabilitation while still incarcerated in the juvenile system under the Habitual Juvenile Offender Act?'" 81st General Assembly, House Proceedings, October 31, 1979, at 31.

Thus, the entire history of the habitual juvenile offender provision teaches that the legislators were trying to keep these chronic offenders within the protective auspices of the juvenile justice system in the hopes that they be rehabilitated. They chose to confine these chronic offenders, who had been afforded opportunities and demonstrated an unwillingness to rehabilitate, within the juvenile justice system for the period of their minority. In spite of these provisions mandated for both habitual and violent juvenile offenders, these recidivist provisions manifest a legislative intent to "offe[r juvenile recidivists] enhanced protection from a significantly longer period of incarceration had

[they] been tried and convicted in a criminal proceeding." *In re S.P.*, 297 Ill. App. 3d 234, 239 (1st Dist. 1998). *See also In re L.F.*, 119 Ill. App. 3d 406, 416 (2d Dist. 1983).

In other words, the legislature created a balance by keeping the habitual and violent offenders under the protection of the juvenile justice system while imposing a harsher and more adult-like sentence. In light of the more punitive sentence, the legislature rationally decided to afford these offenders the right to a jury trial. The legislators reasonably could have concluded that these recidivist proceedings more closely resembled adult proceedings and decided to afford these offenders a jury trial right.

Although respondent faces a severe sentence for first degree murder, as this Court recognized, "[u]nder our constitutional system the States in determining the reach and scope of particular legislation need not provide 'absolute symmetry.'" *Chrastka*, 83 Ill. 2d at 81, *quoting Patsone*, 232 U.S. at 144. Because "[i]t is best left to the legislature and not the courts to determine whether a statute is wise or whether it is the best means to achieve the desired result," and there is "a conceivable basis for finding a rational relationship," the DOJJ provision should be upheld. *See In re J.W.*, 204 Ill. 2d at 72. The circuit court's contrary ruling improperly invades the legislature's authority to grant the right to a jury trial in only "certain cases." *See McKeiver*, 403 U.S. at 547. Accordingly, this Court should reverse the circuit court's judgment.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court to reverse the circuit court's order granting respondent a jury trial on equal protection grounds and remand the cause for further proceedings.

Respectfully Submitted,

LISA MADIGAN
Attorney General of Illinois,
100 West Randolph, 12th Floor
Chicago, Illinois 60601
Attorney for Petitioner-Appellant
People of the State of Illinois.

ANITA ALVAREZ,
State's Attorney of Cook County,
309 Richard J. Daley Center,
Chicago, Illinois 60602
(312) 603-5496
eserve.CriminalAppeals@cookcountyil.gov
ALAN J. SPELLBERG,
MICHELLE KATZ,
ANNETTE COLLINS,
VERONICA CALDERON MALAVIA,
Assistant State's Attorney,
Of Counsel.

APPENDIX

APPENDIX TO THE BRIEF

Index to the Record A1

Petition for Adjudication of Wardship A8

Transcript of Circuit Court's Order, Granting Minor's Motion For Jury Trial On Equal Protection Grounds A11

Written Ruling on Motion of Minor For A Jury Trial, and State's Motion To Reconsider A22

The People's Notice of Appeal A28

The People's Amended Notice of Appeal A29

INDEX TO THE RECORD

Common Law Record ("C.L.")

Volume 1:

Memorandum of Orders ("Half Sheet") 2

Petition for Adjudication of Wardship (April 29, 2014) 6

Appearance Filed By Cook County Public Defender's Office 9

People's Motion For Pre-Discovery 10

Minor's Motion For Discovery 11

People's Answer To Minor Minor's Motion for Discovery 12

Order for Release Of Medical Records (Lakina R.) 13

Order for Release Of Medical Records (Ednia M.) 13

Agreed, Qualified Protective Order 15

Order (preserving OEMC communications) 17

Arraignment and Plea Of Not Guilty Order (April 29, 2014) 18

Subpoena Duces Tecum 19

Subpoena Duces Tecum 20
Cook County Public Defender

Attempted Service of Court Process 21

Subpoena Duces Tecum 22

Order (preserving OEMC communications) 23

Summons (mother) 24

Affidavit of Service (mother) 25

Subpoena Duces Tecum 26

Subpoena Duces Tecum 27

Subpoena Duces Tecum 28

Juvenile Temporary Detention Center Report 29

Continuance Order 32

Subpoena Duces Tecum 34

Subpoena 35

Subpoena Duces Tecum 36

Subpoena Duces Tecum 37

Subpoena Duces Tecum 38

Subpoena Duces Tecum 41

Subpoena 42

Subpoena Duces Tecum 43

Agreed, Qualified Protective Order 44

Continuance Order 46

Order for release of CPD's ERI's And Electronic Discovery 47

Continuance Order 48

Subpoena Duces Tecum 49

Continuance Order 50

Minor's Motion For Discovery/Bill of Particulars 51

Subpoena Duces Tecum 62

People's Motion To Permit Prosecution Of The Minor
Under Criminal Laws Of Illinois 63

People's Motion To Designate Proceedings As An
Extended Jurisdiction Juvenile Prosecution 66

Juvenile Temporary Detention Center Report 69

Continuance Order 72

Continuance Order 73

Minor's Motion To Declare
the Discretionary Transfer Statute Unconstitutional 75

Minor's Motion to Preclude
Use of Pretrial Admissions at Trial 94

Minor's Motion To Preclude The Prosecution From Seeking
Designation As An Extended Juvenile Jurisdiction Prosecution 102

Minor's Motion To Assign Clear and Convincing Evidence Burden
to State Discretionary Transfer Hearing 109

Minor's Motion To Declare The Extended Juvenile
Jurisdiction Statute Unconstitutional 115

Continuance Order 118

Memorandum Of Law In Support Of Minor's Motion To Declare
The Extended Juvenile Jurisdiction Statute Unconstitutional 120

Continuance Order 163

Administrative Special Order (Media Access) 165

Subpoena Duces Tecum 167

Minor's Motion To Vacate General Administrative Order 168

Continuance Order 171

Continuance Order 173

Continuance Order 176

Continuance Order 178

Continuance Order 180

Request For File 182

Continuance Order 183

Continuance Order 184

Subpoena Duces Tecum 185

Order (attire) 187

Continuance Order 188

Administrative Special Order (Media Access) 190

Continuance Order 191

Order (Facebook RIP Endia M.) 193

Minor's Motion for Jury Trial 194

Juvenile Temporary Detention Center Report 205

Continuance Order 207

Continuance Order 208

Protective Order Regarding Grand Jury Transcripts
And ATF Reports 209

Notice of Victim's Assertion of Rights 211

Continuance Order 212

People's Motion To Reconsider February 9, 2016 Order,
Granting Minor-Respondent The Right To A Jury Trial
On Equal Protection Grounds, Or Alternatively
To Amend The Order To Comply With Illinois Supreme Court Rule 18 213

Juvenile Temporary Detention Center Report 233

Continuance Order 235

Minor's Motion In Limine To Prevent State From Eliciting
Testimony Regarding Phone Calls
between Destiny [P.] and Donnell Flora 236

Minor's Motion In Limine to Bar Purported Gang Evidence 239

Minor's Motion To Order State To Provide Video Statement Log 243

Minor's Motion To Bar Evidence of Bad Acts 246

Minor's Motion In Limine To Redact Videotaped Interrogation
And Issue Proper Limiting Instructions 249

Volume 2:
Minor's Motion In Limine To Redact Videotaped Interrogation
And Issue Proper Limiting Instruction 252

Minor's Motion In Limine To Prevent State From Admitting Evidence
Or Prior Conviction Or, And Pending Federal Charges
of, Co-Defendants 256

Minor's Motion In Limine To Prevent State From Eliciting Co-Defendant's
Statements 259

Minor's Motion In Limine To Order State To Play Unedited Version
Of Video 262

Minor's Motion In Limine To Allow Expert Testimony 266

Forensic Psychology Clinic 269

Minor's Motion In Response To State's Motion To Reconsider
Order For Jury Trial 281

Ruling on Motion of Minor For A Jury Trial,
and State's Motion To Reconsider 288

Pretrial Motion Order 294

Plea of Guilty – Trial Order 295

Continuance Order 296

Notice of Appeal (April 19, 2016) 297

Order Appointing Public Defender On Appeal 298

Continuance Order 299

Order Appointing State Appellate Defender On Appeal 300

Continuance Order 301

Amended Notice Of Appeal (April 29, 2016) 302

Report of Proceedings ("R.")

February 9, 2016

Discovery 4

Minor's Motion for Jury Trial

Minor's Argument 16

People's Argument 22

Minor's Rebuttal 27

Circuit Court Ruling 31

April 5, 2016

People's Motion To Reconsider February 9, 2016 Order, Granting Minor-Respondent The Right To A Jury Trial On Equal Protection Grounds, Or Alternatively To Amend The Order To Comply With Illinois Supreme Court Rule 18

People's Argument 50

Minor's Argument 58

Circuit Court Ruling 65

Minor's Motion In Limine To Allow Expert

People's Comments 85

Circuit Court Ruling 85

Minor's Motion In Limine To Bar Purported Gang Evidence

People's Comments 87

Circuit Court Ruling 87

Minor's Motion In Limine To Order The State To Provide video Statement Log

People's Comments 88

Circuit Court Ruling 88

Minor's Motion In Limine To Bar Evidence Of Prior Bad Acts

People's Argument 90

Minor's Argument 90

Circuit Court Ruling 91

Minor's Motion In Limine To Redact Videotape Interrogation And Issue Proper Limiting Instructions

Minor's Argument 92

People's Argument 95

Circuit Court Ruling 98

Minor's Motion In Limine To Prevent State From Admitting Evidence Of Prior Conviction And Pending Federal Charges of Co-defendants
People's Comments 102
Circuit Court Ruling 104

Minor's Motion In Limine To Prevent State From Eliciting Testimony Regarding Phone Calls
Minor's Argument 105
People's Argument 107
Circuit Court Ruling 107

Minor's Motion In Limine To Play Unedited Version Of Video
Minor's Argument 108
People's Argument 110
Circuit Court Ruling 114

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
DEPARTMEI OF JUVENILE JUSTICE AND C LD PROTECTION
JUVENILE JUSTICE DIVISION

IN THE INTEREST OF DESTINY PHILLIPS A Minor	No. 14JD01625

PETITION FOR ADJUDICATION OF WARDSHIP

I, KATHLEEN KAIN on oath state on information and belief:

1. DESTINY PHILLIPS is a female minor born on 07/07/1999, who resides or may be found in this county at 5744 S EMERALD AVE CHICAGO, IL 60621 773-571-2327 1st Fl.

2. The names and residence addresses and telephone numbers of the minor's parents, legal guardian, custodian, and nearest known relative are:
MOTHER: SERYNTHIA JEFFERSON 5744 S EMERALD APT 1 CHICAGO, IL 60621 773-949-4234
FATHER: ~~UNKNOWN~~ Richard Antonio-Phillips-deceased
GUARDIAN:
CUSTODIAN:
OTHER:

(The minor and persons named in this paragraph are designated respondents.)

3. The minor is delinquent by reason of the following facts:

1 On or about April 28, 2014, in violation of SECTION 9-1(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIP committed the offense of FIRST DEGREE MURDER, in that the above-named minor, without lawful justification intentionally or knowingly shot India Martin while armed with a firearm, and during the commission of this offense personally discharged a firearm, thereby causing the death of Indi Martin.

2 On or about April 28, 2014, in violation of SECTION 9-1(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIP committed the offense of FIRST DEGREE MURDER, in that the above-named minor, without lawful justification intentionally or knowingly shot India Martin while armed with a firearm, thereby causing the death of India Martin.

3 On or about April 28, 2014, in violation of SECTION 9-1(a)(2) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIP committed the offense of FIRST DEGREE MURDER, in that the above-named minor, without lawful justification, shot India Martin while armed with a firearm, and during the commission of this offense personally discharged a firearm, knowing said act created a strong probability of death or great bodily harm to India Martin, thereby causing the death of India Martin.

FILED
04/29/2014 09:29 am
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
JUVENILE DIVISION

CIRCUIT COURT OF COOK COUNTY ILLINOIS

Signed and sworn to before me on 04/29/2014
Dorothy Brown
Dorothy Brown, Clerk of the court

A8

C 006

4 On or about April 28, 2014, in violation of SECTION 9-1(a)(2) of ACT 5 c CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILI committed the offense of FIRST DEGREE MURDER, in that the above-named minor, without lawful justification, shot India Martin while armed with firearm, knowing said act created a strong probability of death or great bodily harm to India Martin, thereby causing the death of India Martin.

5 On or about April 28, 2014, in violation of SECTION 8-4(a) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILL committed the offense of ATTEMPT FIRST DEGREE MURDER in that the above-named minor, without legal justification, with intent to kill, whi armed with a firearm, she discharged a firearm at Lanika Reynolds, strik Lanika Reynolds in the arm, which constituted a substantial step toward commission of the offense of FIRST DEGREE MURDER, in violation of Chapte 720 of Act 5 Section 9-1(a)(1) of the Illinois Compiled Statutes as amended.

6 On or about April 28, 2014, in violation of SECTION 12-4.2(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIPS committed the offense of AGGRAVATED BATTERY WITH A FIREARM, in that the above-named minor, in committing a battery in violation of Secti 12-3 of Act 5 of Chapter 720 of the Illinois Compiled Statutes, knowingly and by means of the discharging of a firearm caused an injury to Lanika Reynolds in that the above-named minor discharged a firearm at Lanika Reynolds, striking Lanika Reynolds in the arm.

7 On or about April 28, 2014, in violation of SECTION 24-1.2(a)(2)of ACT 5 CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLI committed the offense of AGGRAVATED DISCHARGE OF A FIREARM, in that the above-named minor discharged a firearm in the direction of another person

8 On or about April 28, 2014, in violation of SECTION 24-1.6(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIPS committed the offense of AGGRAVATED UNLAWFUL USE OF A WEAPON, in that the above-named minor knowingly carried on or about his or her perso a firearm, at a time when he was not on his own land, or in his own abode or a fixed place of business, and the person possessing the firearm has nc been issued a currently valid Firearm Owner's Identification Card (Section (3)(C)).

9 On or about April 28, 2014, in violation of SECTION 24-1.6(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIPS committed the offense of AGGRAVATED UNLAWFUL USE OF A WEAPON, in that the above-named minor knowingly carried on or about his or her person a firearm, at a time when he was not on his own land, or in his own abode or a fixed place of business, and the person possessing the weapon was under 21 years of age and in possession of a handgun as defined in Section 24-3, unless the person under 21 is engaged in lawful activities under the Wildlife Code.

10 On or about April 28, 2014, in violation of SECTION 24-3.1(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes, as amended, DESTINY PHILLIPS committed the offense of UNLAWFUL POSSESSION OF FIREARMS, in that the above-named minor, being a person under 18 years of age, knowingly had

FILED
04/29/2014 09:29 am
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
JUVENILE DIVISION

CIRCUIT COURT OF COOK COUNTY ILLINOIS

Signed and sworn to before me on 04/29/2014

Dorothy Brown, Clerk of the court

in his possession a firearm of a size which may be concealed upon the person.

4. The minor is detained in custody.

5. A hearing has been scheduled for 04/29/2014.

6. It is in the best interests of the minor and the public that the minor be adjudged a ward of the court.

PETITIONER ASKS THAT THE MINOR BE ADJUDGED A WARD OF THE COURT AND FOR OTHER RELIEF UNDER THE JUVENILE COURT ACT.

CB# 18883454 IR# 2246833 RD# HX240739 YD# 0
JEMSID# 10318430
CALENDAR# 55
ARRESTING AGENCY: N/A
FF# 0

KATHLEEN K

Petitio

ATTORNEY: ANITA ALVAREZ
ATTORNEY NUMBER: 33182
ATTORNEY FOR: THE PEOPLE OF THE STATE OF ILLINOIS
1100 S. HAMILTON
CHICAGO, ILLINOIS 60612
312-433-7000

CLERK OF THE CIRCUIT COURT, COOK COUNTY OF ILLINOIS

FILED
04/29/2014 09:29 am
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
JUVENILE DIVISION

Signed and sworn to before me on 04/29/2014

Dorothy Brown, Clerk of the court

A10

C 008

in court and --

MS. JEFFERSON: Her grandfather.

THE COURT: Grandfather, all right. Destiny is represented again by Kathy Roller and Beth Tarzia. State is represented by Athena Farmakis, and I note for the record that the victim's mother in this case, Ms. Dukes, is back in court.

All right. The Defense has filed a motion for a jury trial. Both sides have argued. The motion for jury trial comes before this Court because the Juvenile Act sentencing provisions for murder, which hold that a minor who is convicted of first degree murder is to be held in the Department of Corrections until 21 -- the age of 21, is silent on whether or not that minor is entitled to a jury trial. (Inaudible) Habitual Juvenile Offender statute and the Violent Juvenile Offender statutes, which also have determinate sentencing provisions but do grant the provisions for jury trials in those cases.

While the EJJ statute also grants a jury trial, the EJJ statute is a different

A11

situation than HJO and VJO, as we refer to them, and will not be part of the discussion.

The Defense has moved on two bases for a jury trial. One is a due process claim under the Fourteenth Amendment to the United States Constitution as well as the Illinois Constitution and equal protection argument under both US Constitution and Illinois Constitution.

Addressing first the due process argument, that due process requires that a jury trial be granted, and the Defense has argued that likening the Juvenile Act to a criminal act and likening the types of sentences that can be imposed that a minor is entitled to due process rights particularly, I know a lot of the arguments have been made after the Juvenile Court Act was amended in 1998 to reflect more criminality or make it more criminal-like in nature that the failure of the legislature to provide for jury trials for juveniles violates due process.

This, of course, has been addressed multiple times by the U.S. Supreme Court and

the Illinois Supreme Court. First of all, of course, its statutes are presumed to be constitutional and that the party challenging the statute has the burden of demonstrating a clear constitutional violation that comes under a number of cases, including People Ex Rel. Birkett v. Konetski, 233 Ill. 2d. 185. That was in 2009, and that a Court will construe a statute to be constitutional if reasonably possible and resolve any doubt of the construction of statute in favor of its validity.

The U.S. Supreme Court, as to the issue of a juvenile having a substantive or procedural due process right to a jury trial, was first addressed or notably addressed by the U.S. Supreme Court in McKiever vs. Pennsylvania. That's a 403 US 528 in 1971 where they found that the federal or U.S. Fourteenth Amendment due process rights does not ensure a right to a jury trial in Juvenile Court.

The Illinois Supreme Court found the same thing, that there is no due process

violation in the Juvenile Court Act where juvenile trials are not granted the right to a jury trial, and as both sides noted, that was In Re: Fucini, 44 Ill.2d 305 in 1970.

The Defense, in their arguments, reflected a couple of times to People vs. G.O., and specifically referred to -- it was Justice Burke's dissent. G.O., in its majority opinion, specifically even addressed this issue and rejected any due process arguments, despite their other rulings. And in a more recent case, People vs. Jonathan C. B., which was a 2011 case cited at 958 NE.2d 227, and it was argued there that the 1998 reform of the Juvenile Justice Act created a more punitive Juvenile Court process. They rejected the argument in Jonathan C. B. that due process required a jury trial in juvenile cases.

It was further rejected by People vs. Taylor, 221 Ill.2d 157 in 2006 by the Illinois Supreme Court, and of course, the last case was the Jonathan C. B. case.

It has been repeatedly found that

there is no due process right to a jury trial in juvenile cases, and although it could be argued, I assume -- I suppose that the pendulum is sort of swinging the other way in terms of juvenile rights or consideration of juveniles as juveniles. That doesn't really impact the constitutionality of the legislature's formation of how juveniles are to be treated in court and what rights they are to be accorded. Again, the U.S. Supreme Court and Illinois Supreme Courts have addressed this on a number of times and have not granted that right.

It is not -- it's far above my pay grade to tell the U.S. Supreme Court what is correct and what is not correct. It's above my pay grade to tell the Illinois Supreme Court what is correct and not correct. I follow their precedent. I follow their law, and I find that there is no due process right to a jury trial in juvenile cases.

We then turn to the equal protection arguments. This is -- there are, of course, two ways to review equal protection arguments.

One would be a strict scrutiny, where you would have suspect class. That's not the situation here. The other is the rational basis standard.

In conducting an equal protection analysis, the Court's applied the same standards under the United States Constitution and the Illinois Constitution. That's under Wauconda Fire Protection District v. Stonewall Orchards, LLP, found at 214 Ill.2d 417. It's cited in 2005. The equal protection clause guarantees that similarly situated individuals will be treated in a similar fashion unless the government can demonstrate an appropriate reason to treat them differently. That's cited in People v. Whitfield, 228 Ill.2d 502, 2007. The equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose, and I am actually citing those out of the Jonathan C. B. case.

The rational basis standard -- under the rational basis standard, the classification has to be rationally related to or further a legitimate state interest. The Court's using the rational basis scrutiny will invalidate the classification only if it is arbitrary or bears no reasonable relationship to the pursuit of a legitimate state goal.

The Jonathan C. B. case discusses equal protection as it relates to that case, but that case is an apposite to the situation. In the Jonathan C. B. case, of course, that was not a murder case. That was a sexual assault case so that the sentence in that case would have been an indeterminate sentence under the normal Juvenile Court sentencing, whereas here, we're dealing with a determinate sentence under the murder provisions that came in, I believe, in the 1998 -- maybe it was before that, the earlier amendments to the Juvenile Court Act. So the equal protection argument, that is not a craft that would be similarly situated to the case here with Destiny Phillips.

So the first question to this Court is with Destiny's case or all juvenile murder cases, are they similarly situated to youths who are being sentenced under Habitual Juvenile Offender or the Violent Juvenile Offender Act, or are they different categories of people, allowing the legislature to draw the proper distinctions. The State has argued that murder differs from the HJO and VJO, that they are not similarly situated or arguments resting on differences in the sentencing structure such as mandatory credit for time served, although, in reality, both murder and HJO/VJO minors get that for parole eligibility after five years on some other differences.

This Court looks to both the sentence structure that's set forth in legislature, and even though the case of G.O., People v. G.O., which, again, was cited at 304 Ill. App.3d 719 in 1999, as Ms. Roller noted, that case was vacated by the Illinois Supreme Court, but it was only vacated due to the fact that when the Juvenile Act was first amended to create a determinate sentencing for minors convicted of

murder, that it violated the single subject rule, so the sentencing structure at that time had to be vacated.

This issue has never been (inaudible) found litigated and brought back up before an Appellate Court in the State of Illinois, which is far as this Court is aware of.

G.O. disagreed, and I'm going to give a lot of weight to the argument of the majority opinion in G.O., not just because it was an Appellate Court decision, even though it was vacated, but for the logic of the majority opinion that was stated. And just for the record, I am not citing G.O. as ruling precedent. I am simply referring to it as persuasive argument.

That Court there disagreed that prior adjudications, which are different for HJO and VJO versus a minor who's facing murder whom doesn't require prior adjudications, separates those due to the fact that juveniles found guilty of murder are probably worse off than minors who are found guilty under HJO or VJO provisions in terms of the sentences they are

going to get.

In both situations, murder and HJO/VJO, determinant sentence are entered until the age of 21. The purpose of both murder sentences and HJO/VJO sentences is the protection of society in addition to rehabilitation to the minor. The Court in G.O. found no rational basis for granting jury trials to HJO/VJO while denying to youths who are facing first degree murder charges. The Court there found no legislative goal that would be rationally stated by the legislature or by any kind of goal to create that type of separation.

In each class -- in each of those classes, a member of the class is given a merely identical sentence. The differences are minor and arbitrary at best. Each ends up in the same place for substantially the same amount of time and for the same stated legislative purpose. It's the finding of this Court that denying Destiny Phillips a jury trial would deprive her of the equal protection rights as a minor who is being

tried of first degree murder and facing a determinate sentence versus any other minor would be tried under the HJO or VJO statute who would be tried -- have a right to a jury trial and then get a determinate sentence under the age of 21.

That is not to say that the statute itself violates equal protection as the Court in G.O. did. I do not believe that I have to declare the statute unconstitutional because the statute is in itself silent as to whether or not the minor should be entitled to a jury trial.

I find that as a matter of constitutional rights, denying this minor, Destiny, a jury trial would violate her equal protection rights. I therefore grant the motion for a jury trial.

State, I am honestly unsure whether this ruling would give you the right to an interlocutory appeal. You don't believe so? I don't know if you would even want to proceed to that.

MS. FARMAKIS: Right.

Ruling on Motion of Minor Respondent For a Jury Trial, and State's Motion to Reconsid

ENTERED

APR 05 2016

DOROTHY BROWN
CLERK OF CIRCUIT COURT

In the Circuit Court of Cook County
14 JD 1625
In Re Destiny Phillips

The defense has filed a motion for a jury trial. Both sides have argued the original motion, as well as the motion to reconsider. Pursuant to Supreme Court Rule 18, I am issuing this written ruling.

The motion comes before this court because the Juvenile Court Act does not accord a minor a jury trial when charged with the offense of first degree murder, unless the petition is accompanied by a petition to treat the minor as an habitual juvenile offender under 710 ILCS 405/5-815, a violent juvenile offender under 705 ILCS 405/5-820, or a petition for extended jurisdiction juvenile under 705 ILCS 405/5-810. The state correctly points out in their motion to reconsider that the Juvenile Court Act is not silent on the question of whether or not a minor otherwise charged with murder is entitled to a jury trial; 705 ILCS 405/5-101(3) states: "in all procedures under this Article, minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors. Minors shall not have the right to a jury trial unless specifically provided by this article" (eff. Jan. 1999); further, 705 ILCS 405/5-605(1) states: "Method of trial: All delinquency proceedings shall be heard by the court except those proceedings under this Act where the right to a jury trial is specifically set forth. At any time a minor may waive their right to a trial by jury."

A review of the passage of the various statutes noted in the preceding paragraph suggest that the legislature was aware of the jury trial provisions for HJO, VJO and EJJ statutes when the Juvenile Court Act was amended to include them, and did not include the right to a jury trial for minors facing murder charges. The sentencing provisions for a minor convicted of first degree murder have been consistent since before the implementation of the HJO, VJO and EJJ statutes, and the Juvenile Court Act has been amended numerous times since then. Therefore, it is clear that the legislature did not, and still does not intend to provide for the right to a jury trial in first degree murder cases.

While the EJJ statute grants a right to a jury trial, that statute is invoked in different circumstances and creates different penalties from HJO, VJO and murder, and will not be a part of this discussion.

The defense has moved for a jury trial based on two separate arguments. The first is a due process claim under the fourth amendment to the U.S. Constitution as well as the Illinois Constitution. The second is an equal protection argument under both constitutions.

Addressing first the due process argument that the Due Process Clause requires that a jury trial be granted: The defense has argued that amendments in the Juvenile Court Act have rendered the Act to more closely resemble the Illinois Criminal Code, and the types of sentences that a minor can face resemble adult criminal sentences. This would, per their argument, raise constitutional issues of due process entitling them to a jury trial. This court is aware that after the 1998 amendments to the Juvenile

Court Act, it has been argued many times that the Act became more criminal in nature, and that the failure of the legislature to provide jury trials for minors violates Due Process.

The argument that juveniles should have a due process right to a jury trial has been addressed multiple times by the U.S. Supreme Court and the Illinois Supreme court. Firstly, statutes are presumed to be constitutional, and the party challenging the statute has the burden of demonstrating a clear constitutional violation. People ex rel. Birkett v. Konetsky, 233 Ill. 2d. 185 (2009). Holding that a court will construe a statute to be constitutional if reasonably possible and resolve any doubt of the constitutionality of the statute in favor of its validity.

Additionally, this court is cognizant of the fact that the Juvenile Court system exists, not as a constitutional right in and of itself, but as a creature of legislative construct, and that therefore, the legislature is given great deference in its construction and application.

Addressing specifically the issue of a substantive or procedural due process right to a jury trial, The U.S. Supreme Court notably addressed the issue in McKeiver v. Pennsylvania, 403 U.S. 528 (1971). The court there found that the 14th amendment does not ensure a right to a jury trial in juvenile cases.

The Illinois Supreme Court made the same finding, that there is no due process violation in the Juvenile Court Act where juveniles are not granted the right to a jury trial. In Re Fucini, 44 Ill. 2d. 305 (1970).

The defense, in their arguments has referred to People v. G.O. 304 Ill. App. 3d 719 (1999), and specifically to Justice Burke's dissent. Notably, G.O. was reversed and vacated by the Illinois Supreme Court, because the sentencing provisions involved were held to be void, as the bill which created them violated the same subject rule. The high court never addressed the substantive issues raised in the appellate court.

The appellate court majority, in G.O. also rejected any due process arguments. In a more recent case, People v. Jonathan C. B., 2011 IL 107750 (2011), 958 N.E. 2d 227, the minor respondent in that case argued that the 1998 reform of the juvenile court act created a more punitive juvenile court process, invoking adult due process rights. That court rejected that argument, and again held that there was no due process right to a jury trial.

The due process argument was further rejected by People v. Taylor, 221 Ill. 2d 157 (2006).

It has been repeatedly found that there is no due process right to a jury trial in juvenile cases, and although it could be argued that the current trend in juvenile law is favoring the rights of juveniles, the consistent holdings on the constitutionality of these provisions has not changed, and this court will not presume to rule against the prior findings in regards to due process.

I now turn to the equal protection arguments. There are two ways to review allegations of denial of equal protection. The first is a strict scrutiny test where a suspect class is involved. We do not have that situation here. The second is the rational basis standard.

In conducting an equal protection analysis, courts shall apply the same standards under the United States' Constitution and the Illinois Constitution. Wauconda Fire Protection District v. Stonewall Orchards, LLP., 214 IL 2d 417 (2005). The Equal Protection Clause guarantees that similarly situated individuals will be treated in a similar fashion unless the government can demonstrate an appropriate reason to treat them differently. People v. Whitfield, 228 Ill.2d 502 (2007). The Equal Protection Clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose. Jonathan C.B., *supra.*

Under the rational basis standard, the classification has to be rationally related to, or further a legitimate state interest. Courts using the rational basis scrutiny will invalidate the classification only if it is arbitrary or bears no reasonable relationship to the pursuit of a legitimate state goal.

The Court in Jonathan C.B. discusses equal protection as it relates to that case, but that case in inapposite to this situation. In the Jonathan C.B. case, the charged offense was a sexual assault, not a murder. The sentence therefore was indeterminate under the normal juvenile sentencing procedures. In this case, we are dealing with a murder charge that results in a determinate sentencing, if adjudicated. This sentencing structure was created, I believe, in the 1998 amendments to the juvenile court act, if not earlier. Therefore, the minor in Jonathan C.B., or any minor sentenced to an indeterminate sentence would not be similarly situated to Destiny Phillips.

So the first question to this court relating to Destiny's case, or any juvenile murder case, is whether or not they are similarly situated to minors who are being sentenced under the Habitual Juvenile Offender Act, or the Violent Juvenile Offender Act, or are they different categories of people, allowing the legislature to draw proper distinctions. The State has argued that murder cases differ from the HJO and VJO cases, that they are not similarly situated.

Specifically, the State has argued that the sentence structures differ because minors sentenced to the Department of Juvenile Justice for murder are mandatorily paroled after five years (see the State's motion to reconsider, where this line of argument is repeated several times). However, a plain reading of 705 ILCS 405/5-750(2), which reads, in part: "When a minor of the age of at least 13 years is adjudged delinquent for the offense of first degree murder, the court shall declare the minor a ward of the court and order the minor committed to the Department of Juvenile Justice until the minor's 21st birthday, without the possibility of parole, furlough, or non-emergency authorized absence for a period of 5 years from the date the minor was committed to the Department of Juvenile Justice...." The State misreads this as requiring parole after 5 years. In fact, the plain reading of this statute holds that a minor may not be paroled earlier than 5 years, but not mandated at that point in time. The State's reading of the statute would actually render pointless the initial language of commitment until the 21st birthday. Therefore, the State fails in its repeated arguments that minors sentenced for murder have different sentencing structures than minors who are sentenced under the HJO and VJO statutes. Although there are minor differences, minors in each of these situations receive a determinate sentence to the Illinois Department of Juvenile Justice until the age of 21....the slight differences being the points at which they may be eligible for parole (eligible, not required).

A24

The State further argues in their motion to reconsider that minors charged as Habitual and Violent Juvenile Offenders differ as a class from minors that are charged with murder. The argument is that HJO and VJO minors are recidivists, and that the enhanced sentencing structure for recidivists therefore allow for the right to a jury trial. The State argues that minors charged with murder do not have to be recidivists, and that the legislature must have been aware of this, as they included murder as a possible predicate offense for the HJO statute. A simple reading of the HJO statute, delineating the third predicate offense shows that the legislature is simply listing the standard forcible felony offenses....not that they were deliberately listing murder there as if to differentiate it from a charge of murder standing alone.

The assertion that the legislature granted jury trials to minors charged with repeated offenses is a superficial attempt to differentiate them from minors charged with first degree murder, and lacks logic if examined more closely. Firstly, there are other recidivist minors, including those who could potentially receive longer periods of confinement who are not accorded the opportunity for a jury trial. One example would be minors on their second gun offense who are charged as class 2 felons.

Secondly, it makes little sense that a person who has committed two violent but non-lethal offenses has a right to a jury trial as opposed to a person who is alleged to have killed someone. Even less so for someone with three non-violent offenses.

Third, the simple fact that someone has a recidivist history standing alone is meaningless unless there is a consequence for that criminal history. In other words, it is not the fact that someone has committed multiple offenses that triggers the jury trial right, it is the enhanced sentenced that follows. Had the legislature not attached an enhanced sentence to HJO and VJO minors, leaving them with indeterminate sentences, would they be given the right to a jury trial? The answer is surely no. It is the sentence, not the number of adjudications that triggers the jury trial. The leaves HJO and VJO minors in substantially the same position as minors charged with murder.

Additionally if one examines the IDJJ sentencing structure more closely, one can categorize the levels of sentences in terms of harshness. At the bottom are minors, who under the normal sentencing provisions receive an indeterminate sentence until age 21. These minors can be paroled at any time, and experience and the IDJJ guidelines tell us that they typically serve anywhere from a few months up to 1 or 2 years in IDJJ. Next come the minors sentenced under HJO and VJO provisions. Contrary to the State's assertion, they receive a less harsh sentence than minors adjudicated of murder. They are sentenced until they are 21, with day for day good time. Mathematically, that means that a minor sentenced to IDJJ at age 13 has 8 years until he/she turns 21. Assuming good behavior, with day for day good time, that minor will serve a maximum of 4 years in IDJJ. A minor who is 17 years old has 4 years until he/she turns 21, which means with good behavior he/she will serve 2 years in IDJJ. By contrast, a minor who has been convicted of first degree murder cannot be paroled in less than 5 years, or his/her 21st birthday. To suggest that a minor positioned in the middle tier of IDJJ sentences should be entitled to a jury trial, as opposed to a minor who will undoubtedly do more time for murder lacks any rational basis or justification. The suggestion that they are differentiated due to the number of crimes they have committed is a weak attempt to find a superficial differentiation and ignores the true basis for the

classification, that being the sentence. The State argued in their motion to reconsider that this court undermined its own finding by suggesting that minors receiving a harsher sentence cannot be considered to be similarly situated to the HJO/VJO minors. It is far more spurious to suggest that they are not similarly situated, and that minors receiving a harsher sentence should not receive a jury trial whereas minors who will be paroled earlier should.

The equal protection scrutiny does not require that the parties be identically situated, and the simple ability to discern some discrepancies does not mean the scrutiny fails. What these situations have in common is the determinate sentencing structure upon adjudication, with commitment until the age of 21. Clearly, minors adjudicated of first degree murder and minors adjudicated Habitual or Violent Juvenile offenders are similarly situated under this analysis.

This court has examined the sentence structure created by the legislature, as did the appellate court in People v. G. O., 304 Ill. App. 3d 719 (1999). Again, that case was vacated by the Illinois Supreme Court due to the fact that the sentencing structure for minors charged with murder was passed in legislation that violated the single subject rule. The Illinois Supreme Court, therefore never reached the merits of the case. This issue has never to the best of this court's knowledge, been litigated or appealed since 1999. This court has read, and agrees with the majority opinion in G.O., using it for its logic, not for precedential value (the State in its motion to reconsider incorrectly alleges that this Court relied on People v. G. O. as precedent...in fact, I did not do so). That Court disagreed that prior adjudications, i.e. recidivism separates HJO and VJO minors from minors facing murder charges. Further, in fact found that minors facing murder charges are probably worse off in terms of their sentences. That court found that minors in all of those situations receive determinate sentences until the age of 21. They found that the purpose of the sentences for each is to protect society as well as the rehabilitation of the minor. That Court found no rational basis for granting jury trials to HJO and VJO minors while denying it to minors facing murder charges. The Court in G.O. found no legislative goal that would be rationally stated by the legislature or by any goal to create that type of separation. This court agrees with that reasoning.

In each class, murder, HJO and VJO, a member of the class is given a nearly identical sentence. Any differences are minor and arbitrary at best. Each ends up in the same place for substantially the same amount of time, and for the same legislative purpose. It is the finding of this court that denying Destiny Phillips a jury trial would deprive her of the equal protection of the law as a minor who is being tried for first degree murder and facing a determinate sentence, versus any other minor who is tried under the HJO or VJO statute.

To clarify, however, I do not find that the Juvenile Court Act, 705 ILCS 405/5-101(3) and 405/5-605 (1) is unconstitutional on its face. Certainly, any minor charged and sentenced under the Juvenile Court Act who is not charged with first degree murder and is not accorded a jury trial is in a different position altogether. Those minors receive an indeterminate sentence, putting them in a different class. I find only that the statute is unconstitutional as applied to Destiny Phillips, and any other minor facing a charge of first degree murder. Pursuant to Supreme Court Rule 18, I find:

(b)That the sections of the Juvenile Court Act involved are 705 ILCS 405/5-101(3) and 405 5/605(1);

A26

(c)(1) that the two sections of the Juvenile Court Act violate the Equal Protection Clauses of the 14th amendment to the United States Constitution, and Article 1, section 2 of the Illinois Constitution;

(2) That the two sections are found to be unconstitutional as applied;

(3) The statute cannot be reasonably be construed in a manner that will preserve its constitutionality as applied;

(4) That the finding of unconstitutionality is necessary to this decision and that this finding cannot rest upon alternate grounds;

(5) That the notice requirement is satisfied as the State is a party to this action and the State has had an opportunity to respond.

Entered this day, April 5, 2016

Judge Stuart P. Katz

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-JUVENILE JUSTICE DIVISION

IN THE INTEREST OF DESTINY PHILLIPS, a minor (PEOPLE OF THE STATE OF ILLINOIS Petitioner-Appellant,	)	Case No. 14 JD 1625
vs. DESTINY PHILLIPS, a minor	)	Honorable Stuart P. Katz
Respondent-Appellee.)	)	Trial Judge

NOTICE OF APPEAL
Joining Prior Appeal / Separate Appeal / Cross Appeal
(circle one)

An appeal is taken from the order or judgment described below:

1. Court to which appeal is taken: **Illinois Supreme Court**
2. Name and address of Appellant's attorney on appeal:
   Name: Cook County State's Attorney
   Address: 50 West Washington, Richard J. Daley Center, 3rd Floor, Chicago, IL 60602
   Phone: 312-603-5496; Email: eserve.CriminalAppeals@cookcountyil.gov
3. Name of Appellee's Attorney and address to which notices shall be sent:
   Name: Kathy Roller, Assistant Public Defender
   Address: Cook County Public Defender, Juvenile Justice Division
   2240 W Ogden Ave, Chicago, Illinois 60612-4220
   If Appellee is indigent and has no attorney; does she want one appointed? Yes
4. Date of Judgment or Order: April 5, 2016
5. Appeal is taken from: Trial Court Order

April 5, 2016 denial of the People's motion to reconsider the February 9, 2016 order, granting respondent's motion for a jury trial on the ground that the Juvenile Court Act, 705 ILCS 405/5101(3) and 405/5-605(1), is unconstitutional on equal protection grounds as applied to respondent and any other minor facing a charge of first degree murder.

Assistant State's Attorney

Notice filed dated: _____
Appeal check date: _____

428

THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-JUVENILE JUSTICE DIVISION

IN THE INTEREST OF DESTINY P., a minor (PEOPLE OF THE STATE OF ILLINOIS Petitioner-Appellant,	)	Case No. 14 JD 1625
vs. DESTINY P., a minor Respondent-Appellee.)	)	Honorable Stuart P. Katz Trial Judge

AMENDED NOTICE OF APPEAL
Joining Prior Appeal / Separate Appeal / Cross Appeal
(circle one)

An appeal is taken from the order or judgment described below:

1. Court to which appeal is taken: **Illinois Supreme Court**
2. Name and address of Appellant's attorney on appeal:
   Name: Cook County State's Attorney
   Address: 50 West Washington, Richard J. Daley Center, 3rd Floor, Chicago, IL 60602
   Phone: 312-603-5496; Email: eserve.CriminalAppeals@cookcountyil.gov
3. Name of Appellee's Attorney and address to which notices shall be sent:
   Name: Kathy Roller, Assistant Public Defender
   Address: Cook County Public Defender, Juvenile Justice Division
   2240 W Ogden Ave, Chicago, Illinois 60612-4220
   If Appellee is indigent and has no attorney; does she want one appointed? Yes
4. Date of Judgment or Order: April 5, 2016
5. Appeal is taken from: Trial Court Order

April 5, 2016 denial of the People's motion to reconsider the February 9, 2016 order, granting respondent's motion for a jury trial on the ground that the Juvenile Court Act, 705 ILCS 405/5101(3) and 405/5-605(1), is unconstitutional on equal protection grounds as applied to respondent and any other minor facing a charge of first degree murder.

Assistant State's Attorney

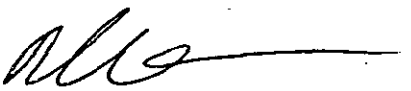
FILED
APR 9 PM 12:42
CLERK OF THE CIRCUIT COURT
JUVENILE JUSTICE DIVISION

Notice filed dated: _____
Appeal check date: _____

A29

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 40 pages.

By: 

VERONICA CALDERON MALAVIA,
Assistant State's Attorney