

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (3d) 180382-U

Order filed September 10, 2021

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-18-0382
	)	Circuit No. 17-CF-231
SAMANTHA P. GORDON,	)	Honorable
Defendant-Appellant.	)	Kevin W. Lyons, Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Daugherty and Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Neither defendant's 38-year sentence nor the statutory scheme she was sentenced under are unconstitutional.

¶ 2 Defendant, Samantha P. Gordon, appeals her sentence of 38 years' imprisonment. She argues that she is entitled to a new sentencing hearing or periodic parole review because the statutory scheme she was sentenced under is unconstitutional under the proportionate penalties clause of the Illinois Constitution, both facially and as applied to her. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

The State charged defendant by indictment with first degree murder (720 ILCS 5/9-1(a)(3) (West 2016)), armed robbery (*id.* § 18-2(a)(2)), and robbery (*id.* § 18-1(a)). The State dismissed the robbery charge and the matter proceeded to a jury trial.

¶ 5

The trial evidence established that defendant and her boyfriend, Michael Howard, planned to rob the victim, Garrison Collins. Defendant drove herself, Howard, and Gemmia Shird to Collins's residence. Defendant entered the residence and consumed drugs with Collins. Defendant made sure the door was open for Howard to enter. After Howard entered, he shot and killed Collins. Defendant took Collins's billfold prior to fleeing. The jury found defendant guilty on both charges.

¶ 6

The matter proceeded to sentencing. The court only considered a sentence for murder as it had determined that armed robbery was a lesser included offense. Defendant faced a minimum sentence of 20 years' imprisonment for the murder, plus a mandatory 15-year firearm enhancement, for a minimum total of 35 years' imprisonment.

¶ 7

The presentence investigation report (PSI) showed that defendant was 20 years old at the time the offenses were committed. It further indicated that defendant had a troubled family history which included abuse. Additionally, she began using illicit drugs at the age of 12 and continued using drugs until her arrest in this matter. Further, defendant had dropped out of high school. In sentencing defendant, the court took into consideration the PSI, evidence and arguments of counsel, defendant's statement of allocution, the statutory factors in aggravation and mitigation, and the history and character of defendant. The court also gave due regard to the circumstances and nature of the offenses. The court sentenced defendant to a total of 38 years' imprisonment, which was comprised of 23 years for murder plus the 15-year firearm enhancement.

¶ 8

## II. ANALYSIS

¶ 9 On appeal, defendant argues overall that she is entitled to a new sentencing hearing or periodic parole review because the statutory scheme she was sentenced under is unconstitutional under the proportionate penalties clause of the Illinois Constitution, both facially and as applied to her.

¶ 10 Turning to her specific arguments, defendant, relying on *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny, first argues that the sentencing court was required to consider her youth and its attendant characteristics. In *Miller*, the Supreme Court held that the eighth amendment prohibited mandatory life sentences without the possibility of parole for juveniles and that prior to imposing such a sentence, the court must first take into account the offender's youth and its attendant characteristics. *Id.* at 479-80. While defendant attempts to characterize her argument as one under the Illinois Constitution to differentiate it from the cases stating that *Miller's* protections only apply to individuals under the age of 18, she fails to provide any analysis under the Illinois Constitution as to this specific argument. Thus, her argument is, in essence, one under *Miller* and its progeny and is treated as such here.

¶ 11 To prevail on a claim based on *Miller* and its progeny a defendant who committed the offense as a juvenile must show that he or she was subject to a natural or *de facto* life sentence and that the sentencing court failed to consider the offender's youth and its attendant characteristics. *People v. Buffer*, 2019 IL 122327, ¶ 27. Because defendant was a 20-year-old adult at the time she committed the offenses, and her 38-year sentence was neither a natural nor *de facto* life sentence, her arguments in this regard fail. See *People v. Harris*, 2018 IL 121932, ¶ 61 (noting and agreeing with multiple cases where claims for extending *Miller* to offenders 18 years of age or older have been rejected); *Buffer*, 2019 IL 122327, ¶ 41 (unequivocally stating that a juvenile's sentence of 40 years or less is not a *de facto* life sentence).

¶ 12 Defendant next asserts that the mandatory firearm enhancement (730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2016)) is unconstitutional on its face for young adults who are under the age of 21 under the Illinois Constitution. However, young adults are nonetheless adults and “Illinois courts have repeatedly upheld the constitutionality of the mandatory firearm enhancement statute when reviewing adult defendants’ sentences.” *People v. Barnes*, 2018 IL App (5th) 140378, ¶ 20. Therefore, this argument fails.

¶ 13 Defendant further asserts that her 38-year sentence is unconstitutional under the proportionate penalties clause of the Illinois Constitution. She appears to argue that her sentence is a *de facto* life sentence and that it would shock the conscience of the community. In this regard, defendant argues that the mandatory firearm enhancement and the statutory provision requiring her to serve her entire sentence are unconstitutional as applied to her.

¶ 14 As relevant here, “[a] statute may be deemed unconstitutionally disproportionate if \*\*\* the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” *People v. Miller*, 202 Ill. 2d 328, 338 (2002). First, while defendant had a troubled upbringing, involving abuse, drug use, and the failure to graduate high school, and she generally argues her youth should have been considered in her sentencing based upon social science research, she fails to point to any evidence tying any of these factors to a particular immaturity in her at age 20. Further, defendant is not someone who was barely over 18 years old, rather she was 20 years old at the time she committed the offenses. Moreover, she planned and participated in the robbery which led to the victim being shot. In fact, defendant not only drove the shooter to the location of the crime, but also provided him with access to the victim. Under these circumstances, we cannot say that a 38-year sentence would shock the moral sense of the community. Therefore, this argument does not provide a basis for relief.

¶ 15

### III. CONCLUSION

¶ 16

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

¶ 17

Affirmed.