Nos. 121306 & 121345 (Consolidated)

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>-vs-<br><br>KEVIN HUNTER & DRASHUN WILSON<br><br>Defendants-Appellants | ) | Appeal from the Appellate Court of Illinois, Nos. 1-14-1904 and 1-14-1500.<br><br>There on appeal from the Circuit Court of Cook County, Illinois, Nos. 11 CR 9381 and 12 CR 19490.<br><br>Honorable Evelyn B. Clay and Honorable Thaddeus L. Wilson, Judges Presiding. |

**BRIEF AND ARGUMENT FOR DEFENDANTS-APPELLANTS**



MICHAEL J. PELLETIER
State Appellate Defender

PATRICIA MYSZA
Deputy Defender

KATIE ANDERSON,
Counsel for Defendant-Appellant Kevin Hunter
MEREDITH N. BARON,
Counsel for Defendant-Appellant Drashun Wilson,
Assistant Appellate Defenders
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

**ORAL ARGUMENT REQUESTED**

## POINTS AND AUTHORITIES

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## NATURE OF THE CASE

Kevin Hunter was convicted of aggravated vehicular hijacking with a firearm, armed robbery with a firearm, and aggravated kidnaping with a firearm after a bench trial and was sentenced to three concurrent terms of 21 years. Drashun Wilson was convicted of attempt first degree murder after a jury trial and was sentenced to 31 years.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

## ISSUES PRESENTED FOR REVIEW

*People v. Hunter*, No. 121306

Whether the amendment to 705 ILCS 405/5-130, under which Kevin Hunter would no longer be subject to mandatory transfer to criminal court, applies to Kevin, whose case was pending on direct appeal on the amendment's effective date, where the statute is procedural, contains no statement of temporal reach, and applies to pending cases under the Section 4 of the Statute on Statutes; and

*People v. Hunter*, No. 121306; *People v. Wilson*, No. 121345

Whether Drashun Wilson and Kevin Hunter, who were under the age of 18 at the time of their respective offenses and whose cases were pending on direct appeal as of January 1, 2016, are entitled to new sentencing hearings under 730 ILCS 5/5-4.5-105(b), at which the trial court may decline to impose what were previously mandatory firearm enhancements.

## STATUTES AND RULES INVOLVED

**5 ILCS 70/4. Rights, etc., saved; criminal cases; application of new law by consent (2016).**

No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act.

**705 ILCS 405/5-130. Excluded jurisdiction (2016).**

(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.

**730 ILCS 5/5-4.5-105. Sentencing of individuals under the age of 18 at the time of the commission of an offense (2016).**

(a) On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence:

> (1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;
>
> (2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;

(3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(4) the person's potential for rehabilitation or evidence of rehabilitation, or both;

(5) the circumstances of the offense;

(6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;

(7) whether the person was able to meaningfully participate in his or her defense;

(8) the person's prior juvenile or criminal history; and

(9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.

(b) Except as provided in subsection (c), the court may sentence the defendant to any disposition authorized for the class of the offense of which he or she was found guilty as described in Article 4.5 of this Code, and may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession, possession with personal discharge, or possession with personal discharge that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(c) Notwithstanding any other provision of law, if the defendant is convicted of first degree murder and would otherwise be subject to sentencing under clause (iii), (iv), (v), or (vii) of subparagraph (c) of paragraph (1) of subsection (a) of Section 5-8-1 of this Code based on the category of persons identified therein, the court shall impose a sentence of not less than 40 years of imprisonment. In addition, the court may, in its discretion, decline to impose the sentencing enhancements based upon the possession or use of a firearm during the commission of the offense included in subsection (d) of Section 5-8-1.

## STATEMENT OF FACTS

*People v. Kevin Hunter*, No. 121306

The State charged Kevin Hunter with one count each of armed robbery, aggravated kidnapping and aggravated vehicular hijacking, all while armed with a firearm. The information alleged that on May 17, 2011, at approximately 3:45 a.m., Kevin and two unidentified men robbed Steven Maxwell of personal property and his vehicle at gunpoint and kidnaped him. (KH C. 36-38.)[1] In May of 2011, Kevin Hunter was 16 years old. (KH C. 20.) However, pursuant to the version of 705 ILCS 405/5-130(1)(a) in effect at that time, which excluded from juvenile jurisdiction any minor aged 15 or older who is charged with armed robbery with a firearm or aggravated vehicular hijacking with a firearm, he was automatically transferred to adult court.

Following a bench trial before the Honorable Evelyn Clay on November 14, 2013, Kevin was convicted on all three counts. (KH C. 163.) He was sentenced to the minimum of six years on all three underlying offenses. (KH C. 163.) However, the trial court was also required to impose a 15-year firearm enhancement for each offense. 720 ILCS 5/10-2(b); 720 ILCS 5/18-2(b); 720 ILCS 5/18-4(b) (West 2013). As a result, Kevin was sentenced to 21 years total, with the sentences to run concurrently at 85% with three years of mandatory supervised release. (KH R. PP8, KH C. 163.)

Kevin's opening brief on direct appeal was filed on July 31, 2015, and argued

[1] Cites to the record are as follows. Citations to (KH C.__) and (KH R. __) refer to the common law record and report of proceedings in Kevin Hunter's case. Citations to (DW C.__) and (DW R.__) refer to the common law record and report of proceedings in Drashun Wilson's case.

that the State failed to prove beyond a reasonable doubt that he was armed with a firearm. He further argued that the trial court erred in failing to conduct a *Krankel* hearing when Kevin alleged that his attorney usurped his right to testify, and that the mittimus needed to be corrected to reflect credit for the proper number of days in pretrial custody. The State filed its response on October 30, 2015.

While Kevin's direct appeal was pending, the governor signed Public Acts 99-258 and 99-69, which established new juvenile sentencing laws and amended the statutes that define the jurisdiction of juvenile court, including the excluded jurisdiction provision. *See* 2015 Ill. Legis. Serv. 99-258; 2015 Ill. Legis. Serv. 99-69. The newly-created Unified Code of Corrections Sections 5-4.5-105(a) and 5-4.5-105(b) require judges to consider additional factors in mitigation when sentencing juveniles, and allow judges to refrain from imposing firearm enhancement penalties on juveniles. 730 ILCS 5/5-4.5-105(a), (b) (West 2016). The amendments to Section 5-130(1)(a) of the Juvenile Court Act raised the age at which minors are automatically transferred, from 15 to 16 years old. 705 ILCS 405/5-130(1)(a) (West 2016). Additionally, armed robbery while armed with a firearm, and aggravated vehicular hijacking while armed with a firearm, are no longer automatic transfer offenses under the amended Section 5-130(1)(a).

On February 2, 2016, Kevin filed a Supplemental Brief arguing that he is entitled to a new sentencing hearing under Section 5-4.5-105 of the Illinois Criminal Code at which the trial court has discretion to decline to impose the firearm enhancement because the legislature amended Section 5-4.5-105 while Kevin's case was pending on direct appeal. Kevin also argued that he is entitled to a discretionary transfer hearing because procedural amendments to the excluded

jurisdiction statute, which are retroactive, made transfers to adult court discretionary for 16-year-olds charged with aggravated vehicular hijacking, armed robbery, and kidnaping while armed with a firearm.

The First District Appellate Court issued its decision on June 30, 2016. *People v. Hunter*, 2016 IL App (1st) 141904. The *Hunter* court rejected Kevin's arguments as to the sufficiency of the evidence supporting the firearm enhancement and the *Krankel* issue. *Id.* at ¶¶ 20, 32. The First District did agree that the mittimus should be corrected. *Id.* at ¶ 79.

The *Hunter* court rejected Kevin's argument that he should be resentenced under 730 ILCS 5/5-4.5-105, holding that Section 5-4.5-105 "state[s] its proper temporal reach by clearly indicating that a court is required to apply its provisions only at sentencing hearings held '[o]n or after the effective date' of Public Act 99-69, *i.e.*, January 1, 2016." *Id.* at ¶ 43. The *Hunter* court also rejected Kevin's as-applied challenge that the firearm enhancement portion of his sentence was unconstitutional. *Id.* at ¶¶ 50-61.

The *Hunter* court also held that the amended Section 5-130(1)(a) does not apply to Kevin. It found that, unlike Section 5-4.5-105, Section 5-130 contained no statement of temporal reach. *Id.* at ¶ 70. However, the *Hunter* court held that Section 5-130 could not be applied retroactively to Kevin under Section 4 of the Statute on Statutes (5 ILCS 70/4) because it would "clearly have a retroactive impact on this matter." *Id.* at ¶ 73. The *Hunter* court also specifically declined to follow the holding of *People v. Patterson*, 2016 IL App (1st) 101573-B, which held that Section 5-130 does apply retroactively to cases pending on direct appeal. *Hunter*, 2016 IL App (1st) 141904, ¶¶ 76-7. The First District denied Kevin's petition

for rehearing on August 4, 2016, but it did issue an amended opinion that addressed some of the arguments in the petition.

Kevin subsequently filed a petition for leave to appeal, which was granted.

*People v. Drashun Wilson*, No. 121345

On September 23, 2012, Drashun Wilson was arrested in relation to the shooting of Floyd Fulton, who sustained a single gunshot wound to the left cheek. (DW C. 13-15, 27; DW R. R13-14.) Drashun, who was 17 years old at the time of the offense, was subsequently charged with three counts attempt first degree murder, as well as one count of aggravated battery with a firearm. (DW C. 13-15, 24-29.)

Following a jury trial, Drashun was found guilty of attempt first degree murder and aggravated battery with a firearm. (DW C. 116-18, 183; DW R. R114-17.) The jury also found that, during the commission of the attempt first degree murder, Drashun personally discharged a firearm that proximately caused great bodily harm. (DW C. 117; DW R. R114-17.) Drashun was subsequently sentenced to the minium term of 31 years' imprisonment – consisting of six years for the attempt murder and 25 years for the mandatory firearm enhancement – to be served at 85% and followed by three years of mandatory supervised release. (DW C. 183; DW R. S6.) No motion to reconsider was filed.

On direct appeal, Drashun argued that the Illinois Juvenile Court Act's exclusive jurisdiction statute, and application of the 25-year mandatory firearm enhancement and truth-in-sentencing provision to his sentence, violated the United States and Illinois Constitutions in that he was automatically tried and sentenced as an adult, without any consideration of his youthfulness and its attendant

characteristics. The First District Appellate Court also allowed supplemental briefing regarding Section 5-4.5-105, which was passed during the pendency of Drashun's appeal and set forth new procedures at sentencing hearings for defendants who were under the age of 18 at the time of the commission of their offenses. P.A. 77-2097 §5-4.5-105, added by P.A. 99-69 §10, eff. Jan. 1, 2016; P.A. 99-258, §15, eff. Jan. 1, 2016; 730 ILCS 5/5-4.5-105 (2016). Specifically, Drashun argued that he is entitled to a new sentencing hearing under Section 5-4.5-105(b), at which the trial court has discretion to decline to impose the firearm enhancement, because the statute is retroactive to cases pending on direct appeal.

The First District issued its decision on August 19, 2016. *People v. Wilson*, 2016 IL App (1st) 141500. The First District rejected Drashun's arguments that the exclusive jurisdiction statute violates the eighth amendment, and the 25-year mandatory firearm enhancement and truth-in-sentencing provision violate the eighth amendment and proportionate penalties clause. *Id.* at ¶¶ 19-44.

The First District also rejected Drashun's argument that he should be re-sentenced under Section 5-4.5-105, holding that Public Act 99-69 solely applies prospectively and not retroactively. *Id.* at ¶¶ 16-17. The *Wilson* court held that the temporal reach of the statute was clearly demonstrated by the plain language of Public Act 99-69, concluding that "the use of the present tense 'commits' immediately following the temporal element ["on or after the effective date"] demonstrates the legislature's intent that the statute apply to offenses committed after the effective date [of January 1, 2016]." *Id*.

Drashun subsequently filed a petition for leave to appeal, which was granted.

## ARGUMENT

### The Legislature Intended for its Procedural Amendments to 705 ILCS 405/5-130 and the Newly-Enacted 730 ILCS 5/5-4.5-105(b) to Apply to Cases Pending on Direct Appeal on the Effective Date of Both Statutes.

In *People v. Patterson*, this Court urged the legislature "to review the automatic transfer provision based on the current scientific and sociological evidence indicating a need for the exercise of judicial discretion in determining the appropriate setting for the proceedings in these juvenile cases." 2014 IL 115102, ¶ 111. The legislature answered this call by amending Section 5-130 of the Juvenile Court Act, which now extends the jurisdiction of the juvenile court to all minors charged with armed robbery, aggravated kidnaping, and aggravated vehicular hijacking. 705 ILCS 5/405-130(1)(a). The legislature also enacted Section 5-4.5-105(b), which eliminates mandatory firearm enhancements for all offenders under 18 years of age at the time of the offense. These statutes provide the discretion necessary to impose appropriate sentences for juvenile offenders and were intended to apply to all juveniles with pending cases. *See People ex. rel. Alvarez v. Howard*, 2016 IL 120729 (applying new transfer statute retroactively to juvenile who had already been automatically transferred to adult court). As this Court showed in *Howard*, the rules of statutory interpretation prove that the legislature clearly intended for these important statutes to apply to juveniles with pending cases, including those still awaiting a final judgment on direct appeal.

The appellate courts below, in decisions reached prior to *Howard*, held that neither statute applies to cases pending on direct appeal. *People v. Hunter*, 2016 IL App (1st) 141904,¶ 43; *People v. Wilson*, 2016 IL App (1st) 141500, ¶ 16. These decisions subvert the intent of the legislature as they deny juveniles with cases

awaiting final judgment on appeal the benefit of these reforms, ignore the policy reasons supporting their enactment, and now directly contradict this Court's jurisprudence determining the temporal reach of newly-enacted or amended statutes. As such, this Court should reverse these decisions and remand both cases so that Kevin can have a discretionary transfer hearing, and, if necessary, a new sentencing hearing, and Drashun can receive a new sentencing hearing.

*Background*

Kevin Hunter was 16 years old at the time of the charged offenses – armed robbery, aggravated vehicular hijacking, and aggravated kidnapping – and he was automatically transferred to adult court where, after he was convicted, the sentencing court imposed the minimum term of 21 years' imprisonment. The trial court sentenced him to the minimum sentence of six years on the underlying offense, but was required to also impose a 15-year firearm enhancement for possessing a weapon during the offense. (KH R. PP6-8.) The firearm enhancement more than tripled the length of Kevin's sentence, and also stripped the trial court of its discretion to determine if a lesser sentence was more appropriate for Kevin, given his youth and rehabilitative potential.

Drashun Wilson was 17 years old at the time of the charged offenses – attempt first degree murder and aggravated battery with a firearm – and, like Kevin, was automatically transferred to adult court.[2] Drashun was also given the minimum sentence of six years on the underlying offense. However, the trial court was also required to impose a 25-year firearm enhancement, which extended his sentence to a total of 31 years. The firearm enhancement was over four times the length

[2] Drashun does not contest his transfer to adult court.

of the underlying sentence, and, like in Kevin's case, stripped the court of the necessary discretion to determine if a lesser sentence was warranted.

If Kevin was charged today, the trial court would have the discretion to try him in juvenile court. Furthermore, if Kevin were to be transferred to adult court, the court would have the discretion to determine whether the firearm enhancement was appropriate, as it would likewise have the discretion to do if Drashun were sentenced today. In so doing, the trial court would be able to craft sentences that would address Kevin's and Drashun's rehabilitative potential and the need to protect society from juvenile offenders consistent with the scientific and sociological evidence. Because the legislature intended for these statutory changes to apply to juveniles with pending cases awaiting final judgment, this Court should hold that Kevin and Drashun are entitled to the protection of these reforms.

*The Landgraf Analysis and Section 4 of the Statute on Statutes*

The question of how to analyze the temporal reach of a statute was resolved by this Court in *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27 (2001), where this Court adopted the retroactivity analysis of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), for new and amended laws passed by the legislature. *Commonwealth Edison*, 196 Ill. 2d at 36-39. *Landgraf* sets forth a multi-part test to determine retroactivity, and the first step is to determine whether the legislature has clearly indicated the temporal reach of the new or amended statute. *Id*. at 37. If the legislature has clearly indicated the statute's temporal reach, then, absent a constitutional prohibition, the expression of the legislature's intent must be given effect. *Id.* at 38.

Under the second step of the *Landgraf* analysis, if the legislature did not clearly indicate the temporal reach,

> the court must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern.

*Id.* at 37, *quoting Landgraf*, 511 U.S. at 280.

Notably, in Illinois, courts need never go beyond the first step of the *Landgraf* analysis. *Caveney v. Bower*, 207 Ill. 2d 82, 91-94 (2003); 5 ILCS 70/4 (2016). Instead, when a law contains no explicit indication of temporal reach, Illinois courts turn to Section 4 of the Statute on Statutes, a general savings clause which provides that procedural statutory laws apply retroactively, while substantive changes do not. *Caveney*, 207 Ill. 2dat 91-94; *see also People v. Glisson*, 202 Ill. 2d 499, 506-07 (2002). Accordingly, this Court has held that where the legislature does not clearly indicate the temporal reach of a statute, the inquiry is whether the statute is procedural or substantive. *People v. Atkins*, 217 Ill. 2d 66, 71 (2005).

This Court applies the same analysis in determining the temporal reach of a newly-amended statute regardless of whether the case was pending in the trial court or on direct appeal on the amendment's effective date. *See, e.g., Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 321-24 (2006) (applying the first step of *Landgraf* and Section 4 of the Statute on Statutes and holding that a procedural statute that became effective while the case was pending on direct appeal applied to the case); *Atkins*, 217 Ill. 2d at 68-74 (rejecting the State's claim that a statute that became effective while the case was pending on direct appeal applied because the amendment was substantive, and thus could not apply retroactively under

Section 4 of the Statute on Statutes); *Glisson*, 202 Ill. 2d at 507 (applying Section 4 of Statute on Statutes to determine the retroactivity of a statutory amendment passed while case was pending on direct appeal, and finding that the statute did not apply because it was substantive).

Whether a statute will be applied retroactively is a matter of statutory construction, which is a legal issue reviewed *de novo*. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009).

### A. The Procedural Amendments to Section 5-130 Apply to Cases Pending on Direct Appeal as of January 1, 2016, the Effective Date of the Statutory Amendments. Thus, Kevin's Case Should be Remanded to Juvenile Court to Give the State an Opportunity to Petition to Transfer him to Adult Criminal Court.

This Court recently held that the amended version of 705 ILCS 405/5-130 applies to pending cases. *People ex. rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 35. As this Court's retroactivity jurisprudence does not distinguish between cases pending in the trial court and cases pending on direct appeal, *Howard*'s conclusion that the amended Section 5-130 applies to pending cases, also applies to the case at bar. In finding that the amendment to Section 5-130 does not apply to pending cases, the court below, which did not have the benefit of *Howard*, misapplied and misstated the law. *Hunter*, 2016 IL App (1st) 141904, ¶ 73. This Court should reverse *Hunter*, follow *Howard*, and remand Kevin's case to the trial court to determine whether he should be adjudicated in juvenile or criminal court.

Section 5-130 was amended in response to this Court's request to reform juvenile sentencing, and now reads in relevant part:

> (1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with: (i) first degree

> murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.
>
> These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.

705 ILCS 405/5-130. "[T]he amended version of section 5-130(1)(a) extends the jurisdiction of the juvenile court to all minors charged with armed robbery, aggravated kidnaping, and aggravated vehicular hijacking." *Hunter*, 2016 IL App (1st) 141904, ¶ 66. Like Section 5-4.5-105, Section 5-130 is, at its core, about allocating the necessary discretion to appropriately handle juvenile offenders to the trial courts.

This Court recently held that Section 5-130 applies to pending cases in *Howard*, 2016 IL 120729. The defendant in *Howard* was charged with, *inter alia*, first-degree murder based on a shooting incident that occurred on March 29, 2013, when the defendant was 15 years old. *Id.* at ¶¶ 3-4. The charges were brought in adult court under Section 5-130 of the Juvenile Court Act, which, at the time, automatically excluded 15-year-olds charged with murder from juvenile court. *Id.* at ¶ 4. The amendment to Section 5-130 that is at issue here became effective after the defendant was automatically transferred to adult court, but before he was tried and sentenced. *Id.* at ¶ 5. In 2016, the trial court granted the *Howard* defendant's motion to transfer his case to juvenile court under the amended provision. *Id.* at ¶¶ 6-9. The State challenged the trial court's decision by filing a writ of mandamus in this Court, arguing that the new Section 5-130 should not apply to a defendant who had already been transferred. The State asked this Court to rescind the trial court's order transferring the defendant's case back to

juvenile court. *Id.* at ¶ 10.

This Court held that the statutory amendment did indeed apply to pending cases, such that the transfer to juvenile court was valid. *Id.* at ¶ 35. In reaching that result, this Court once again explained that the first step in any retroactivity analysis is to determine whether the legislature clearly indicated the temporal reach of the amended statute. *Id.*, at ¶ 19, *citing Commonwealth Edison Co.*, 196 Ill. 2d at 36-39. This Court further clarified that in all cases where the temporal reach of a statutory amendment is not set forth in the amendment itself, Section 4 establishes the temporal reach by default. *Howard*, 2016 IL 120729, at ¶ 20, *citing* 5 ILCS 70/4 (West 2014). Thus, in Illinois, either the language of the amendment controls *or* the temporal reach is controlled by Section 4, which provides that procedural statutory amendments are applied retroactively. *Id.* Either way, once the legislature's intent with respect to temporal reach is ascertained, it must be given effect. *Id.*, at ¶ 19.

Looking to the text of Public Act 99-258 and comparing Section 5-130, which has no savings clause, to other affected sections, some of which do include a savings clause, this Court concluded that there was nothing in the text of the amendment to Section 5-130 itself that indicated the statute's temporal reach. *Howard*, 2016 IL 120729, at ¶¶ 21, 27. Thus, this Court held that the temporal reach of Section 5-130 is governed by Section 4 of the Statute on Statutes. 5 ILCS 70/4. Because Section 5-130 had already been found procedural in *Patterson*, it applies retroactively, unless doing so would violate the constitution. *Id.* at ¶ 28. The State conceded that applying 5-130 retroactively does not violate the constitution, and this Court concluded that the amendment must apply "to pending cases." *Id.*

*Howard*'s holding that the amended Section 5-130 applies to "pending cases" requires a remand for a discretionary transfer hearing in this case. Like *Howard*, Kevin's case was pending on the effective date of the amended Section 5-130, albeit on direct appeal. "Prosecution" is statutorily defined as "all legal proceedings by which a person's liability for an offense is determined, commencing with the return of the indictment or the issuance of the information, and *including the final disposition of the case upon appeal*." 720 ILCS 5/2-16 (West 2016) (emphasis added). "Sentence is the disposition imposed on the defendant by the court." 725 ILCS 5/102-20 (West 2016). According to these definitions, the imposition of a sentence does not constitute the final disposition in a criminal case. Instead, the final disposition occurs at the conclusion of the direct appeal. *See also People v. Chupich*, 53 Ill. 2d 572, 584 (1973) ("We are of the opinion that 'sentencing stage' and 'final adjudication' do not mean the same thing, and that the appellate courts have correctly held that the penalties provided in the Controlled Substances Act are applicable to cases pending upon direct appeal. The same result will follow under the Unified Code of Corrections.").

Indeed, this Court applies the same analysis in determining the temporal reach of a newly-amended statute regardless of whether the case was pending in the trial court or on direct appeal on the amendment's effective date. *People v. Atkins* is illustrative as to this point. 217 Ill. 2d 66 (2005). In *Atkins*, the defendant was charged with residential burglary, but was convicted of burglary, which the trial court mistakenly believed was a lesser included offense at the time of the offense. *Id*. at 67-68. However, the statutory amendment that made burglary a lesser-included offense of residential burglary did not become effective until *after*

the defendant was convicted and sentenced. *Id.* at 71. On appeal, the State argued that the statutory amendment applied retroactively to the defendant. *Id.* at 68. This Court, noting that the defendant's conviction could only stand if the statutory amendment applied retroactively, applied *Commonwealth Edison* and *Caveney* and first determined that "the legislature did not indicate that the amendment should be applied retroactively. Accordingly, section 4 [of the Statute on Statutes] applies, and the question before us is whether the amendment to the residential burglary statute is substantive or procedural." *Id.* at 71. This Court expressly rejected the State's argument that the statutory amendment was procedural, and held that the amendment was substantive "because it altered the scope of the residential burglary statute," and thus could not apply retroactively to the defendant. *Id.* at 72-74.

*Atkins* illustrates that this Court's retroactivity analysis is the same regardless of whether a case is pending in the trial court or on direct appeal on the effective date of the statutory amendment. *See also Johnson v. Edgar*, 176 Ill. 2d 499, 518-19 (1997) ("Generally, where the legislature changes the law while an appeal is pending, the case must be disposed of by the reviewing court under the law as it then exists, not as it was when the decision was made by the lower court. Accordingly, the fact that curative legislation is enacted during the pendency of an appeal does not preclude its application by the reviewing court.") (internal citations omitted); *People v. Glisson*, 202 Ill. 2d 499, 507 (2002) (applying Section 4 of Statute on Statutes to determine the retroactivity of a statutory amendment passed while case was pending on direct appeal, and finding that the statute did not apply because it was substantive); *People v. Digirolamo*, 179 Ill. 2d 24, 50

(1997) (in determining the applicability of a statutory amendment that became effective while the case was pending on direct appeal, noting that "[w]here the legislature intends a retroactive application of the amendment and the statutory amendment relates to changes in procedure or remedies, and not substantive rights, it applies retroactively to pending cases"). In other words, this Court's retroactivity jurisprudence does not distinguish between cases pending in the trial court and those pending on direct appeal. As Kevin's case was pending on the effective date of the amended Section 5-130, his case should be remanded for further proceedings in accordance with the amended statute.

This Court has previously applied procedural statutes that became effective while a case was pending on direct appeal to that particular case. For example, in *Allegis Realty Investors v. Novak*, the plaintiffs challenged certain taxes imposed by the defendants in 1997 on the grounds that the defendants failed to follow the proper procedures in levying the tax. 223 Ill. 2d 318, 321-24 (2006). After this Court granted the defendant's petition for leave to appeal, the legislature enacted Public Act 94-962, which retroactively cured the defects in the procedures the defendants used in levying the taxes at issue. *Id.* at 328-29.

This Court framed the issue as whether Public Act 94-962 applied retroactively to the case before it, which was pending on direct appeal at the time of the enactment. *Id.* at 329-30. This Court then applied the *Landgraf* and *Commonwealth Edison* test, looking to the intent of the legislature, and then to Section 4 of the Statute on Statutes if legislative intent could not be discerned from the statute itself. *Id.* at 330-33. Based on the language of Public Act 94-962, it was clear that the legislature intended for the statute to apply retroactively.

*Id.* at 333. This Court then rejected the plaintiff's constitutional challenges to the statute, held that the statute applied to the case at bar, and remanded the case for further proceedings. *Id*. at 334-42.

*Allegis* demonstrates that when a procedural statute becomes effective while a case is pending on direct appeal, absent a legislative statement to the contrary, the statute applies to the pending case. *See also People v. Kellick*, 102 Ill. 2d 162 (1984) (statutory amendment that removed defendant's offense from the category of death penalty eligible offenses that became effective after defendant was convicted and sentenced applied, requiring the Court to vacate defendant's sentence). It also illustrates that this Court uses the same analysis – looking first to the amended statute itself, and then to Section 4 of the Statute on Statutes if the legislature included no language as to temporal reach in the amended statute – in determining whether a statutory amendment applies to a particular case, regardless of whether the case was pending in the trial court or on direct appeal when the statutory amendment became effective.

The only published appellate court decision issued between this Court's ruling in *Howard* and the filing date of this brief also concluded that *Howard* applies to cases pending on direct appeal as of the effective date of the amended Section 5-130. In *People v. Scott*, the First District appellate court adopted the *Howard* holding and held that it applied with equal force to cases pending on direct appeal on the amended statute's effective date. 2016 IL App (1st) 141456, ¶ 45. The *Scott* court stated:

> We also acknowledge that the procedural posture of this case differs slightly from the procedural posture before the court in *Howard*. Specifically, the case in *Howard* was pending before the trial court when Public Act 99-258 was passed, whereas this case was pending

> on appeal when the amendment was enacted. But under either circumstance, we would apply the same test [in determining the temporal reach of the amended section 5-130].

*Id*. at ¶46. The *Scott* court vacated the defendant's sentence, and remanded the case to the trial court for resentencing and for the State to move for the defendant to be transferred to adult court, should it chose to do so. *Id*. at ¶ 64.

Similarly, prior to *Howard*, two other divisions of the First District appellate court have also held that the amended Section 5-130 applies to cases that were pending on direct appeal as of the amendment's effective date. *People v. Patterson*, 2016 IL App (1st) 101573–B (*Patterson II*), ¶¶ 11-21; *People v. Ortiz*, 2016 IL App (1st) 133294, ¶¶ 26-36 (considering the reasoning employed in *Hunter* and *Patterson II*, rejecting *Hunter*, and adopting the reasoning and holding of *Patterson II*).

The State may argue, as it did in *Howard*, that Section 4 of the Statute on Statutes applies only to "the proceedings thereafter," and then only "so far as practicable." As in *Howard*, this argument must be rejected. The *Howard* Court specifically noted, "'[p]racticable' is not synonymous with 'convenient.' Rather, it means 'possible to practice or perform: capable of being put into practice, done, or accomplished : FEASIBLE.'" *Id*. at ¶ 32, *citing* Webster's Third New International Dictionary 1780 (1993); Black's Law Dictionary 1291 (9th ed. 2009) (defining "practicable" as "reasonably capable of being accomplished; feasible"). This Court concluded that "[c]learly, transferring this case to juvenile court for a transfer hearing is something that is feasible," and to the extent that such transfer posed an inconvenience, the legislature chose not to make the amendment prospective only, and it was not this Court's function to second-guess the legislature's choices. *Howard*, 2016 IL 120729, at ¶¶ 32-33. If the State repeats this argument here,

this Court should reject it for these same reasons. Indeed, it is no more impracticable to remand this case for a transfer hearing than it would be in *Howard*. Cases on appeal are routinely remanded for further proceedings without difficulty. Here, Kevin is not challenging the verdict, he is merely challenging whether he was properly sentenced before the correct division of the circuit court. While this may not be convenient for the State, it is most certainly practicable, as it is well within this Court's authority to remand cases for further proceedings.

Finally, this Court should apply the holding in *Howard* to this case and overturn the decision of the lower appellate court in *Hunter* because that decision is inconsistent with this Court's cases analyzing the temporal reach of an amended statute as it utilizes the retroactive impact test, which this Court explicitly declined to adopt. *Caveney*, 207 Ill. 2d at 94. Like this Court in *Howard*, the *Hunter* court acknowledged that Section 5-130 was procedural, and found that it was silent as to its temporal reach. 2016 IL App (1st) 141904, ¶¶ 67, 70. However, *Hunter* then sharply diverged from this Court's well-settled precedent in applying Section 4 of the Statute on Statutes. *Hunter* claimed that under Section 4, statutory amendments "that are procedural in nature *may be* applied retroactively, while those that are substantive *may not*." *Hunter*, 2016 IL App (1st) 141904, ¶ 38, *citing Caveney*, 207 Ill.2d at 94 (emphasis added by *Hunter* court). Thus, *Hunter* believed *Caveney* gave courts discretion to determine which procedural amendments will apply to pending cases in the face of legislative silence in the amendment at issue. Because no prior authority acknowledged – let alone defined – this discretionary power, the *Hunter* court looked to the second step of the *Landgraf* analysis and adopted the retroactive impact test. *Hunter* then applied the retroactive impact

test to determine if the amended version of Section 5-130 applied to Kevin:

> [I]f applying the statute retroactively will have a retroactive impact in that it 'will impair rights a party possessed when acting, increases a party's liability for past conduct, or impose new duties with respect to transactions already completed' 'a court will presume that the statute does not govern absent clear legislative intent favoring such a result.'

2016 IL App (1st) 141904, ¶ 72, *citing Allegis Realty Investors*, 223 Ill. 2d 318, 331 (2006); and *Schweickert v. AG Services of America, Inc.*, 355 Ill. App. 3d 439, 444 (2005)). *Hunter* concluded that because applying Section 5-130 to Kevin's case "would clearly have a retroactive impact on this matter," the amended Section 5-130 did not apply. *Id.* at ¶¶73, 77.

However, as this Court reaffirmed in *Howard*, Illinois does not apply the retroactive impact test. The retroactive impact test is part of the second stage of the *Landgraf* analysis. *Landgraf*, 511 U.S. at 280. "[A]s this court explained in *Caveney*, an Illinois court will never need to go beyond step one of the *Landgraf* test because the legislature has clearly set forth the reach of every amended statute," either in the amended statute itself or by default in Section 4 of the Statute on Statutes. *Howard*, 2016 IL 120729, ¶ 21. This Court also explicitly rejected the State's reliance on the second step of the *Landgraf* analysis. *Id.* at ¶ 29. As *Hunter*'s holding relies on its invocation of the retroactive impact test, *Hunter* is simply not good law in Illinois, and should be overturned by this Court.

In sum, the amended Section 5-130 is procedural and applies to Kevin's pending case. As Kevin is no longer subject to automatic transfer under Section 5-130, his case should be remanded to juvenile court, where the State will have an opportunity to file a motion for discretionary transfer if it so chooses. *See Howard*, 2016 IL 120729, ¶ 35 (because defendant is no longer subject to automatic transfer,

"defendant's case belongs in juvenile court, unless and until it is transferred to criminal court pursuant to a discretionary transfer hearing"). *Accord Patterson II*, 2016 IL App (1st) 101573-B, ¶ 23 (amended Section 5-130 applies to cases pending on direct appeal on its effective date, and the appropriate remedy is to remand the case back to the trial court, so that the State could have an opportunity to file a petition to transfer the defendant's case to criminal court).

### B. Section 5-4.5-105(b) Applies to Cases Pending on Direct Appeal as of January 1, 2016. Thus, Drashun and Kevin are Entitled to New Sentencing Hearings, at Which the Trial Court May Decline to Impose the Firearm Enhancements.

Drashun was just 17 years old when he was charged with attempt first degree murder. Similarly, Kevin was only 16 years old when he was charged with armed robbery. Both Drashun and Kevin were automatically transferred to adult court where, after being convicted, each was sentenced to the minimum term of six years for the underlying offenses – a sentence that, while substantial, would allow them to re-enter society while still young men and prove their rehabilitative potential. However, since the trial courts were obligated to impose firearm enhancements, a mandatory 25 years was added to Drashun's sentence, for a total of 31 years' imprisonment, and a mandatory 15 years was added to Kevin's sentence, for a total of 21 years' imprisonment. These firearm enhancements not only increased the length of their respective sentences multiple times over, they also stripped the trial courts of their discretion to determine if a lesser sentence was more appropriate given Drashun's and Kevin's youth and rehabilitative potential.

If Drashun and Kevin were sentenced today, the trial courts would indisputably have the discretion to consider whether imposition of the firearm enhancement is appropriate and, in so doing, would be able to craft a sentence

that would accurately address their individual rehabilitative potential. This is because the legislature, in response to this Court's urging for more discretion in juvenile sentencing, passed Public Acts 99-69 and 99-258 while Drashun's and Kevin's direct appeals were still pending. *See Patterson*, 2014 IL 115102, at ¶ 111 (calling upon the legislature to reform juvenile sentencing laws). One of the sentencing reforms instituted as part of these public acts was the enactment of 730 ILCS 5/5-4.5-105, which applies to offenders who were under the age of 18 at the time of the offense who are tried in adult court. Among other changes, Section 5-4.5-105(b) permits courts to decline the imposition of otherwise mandatory firearm enhancements on juvenile offenders.

The appellate courts below held that Section 5-4.5-105(b) does not apply to cases pending on direct appeal and, therefore, does not apply to Drashun and Kevin. *Wilson*, 2016 IL App (1st) 141500, at ¶¶ 11-17; *Hunter*, 2016 IL App (1st) 141904, at ¶ 43. Those decisions, however, relied on the erroneous assumption that the statute expressly states that it applies prospectively. To the contrary, Section 5-4.5-105(b) is silent as to its temporal reach. And since the subsection's purpose is procedural, under Section 4 of the Statute on Statutes, it should be applied to cases pending on appeal. Accordingly, this Court should vacate their sentences and remand for new sentence hearings, at which the courts may exercise their discretion as to whether to impose the firearm enhancements.

**1. Section 5-4.5-105(b) of the Unified Code of Corrections.**

In May 2015, the Illinois legislature passed two bills mandating new transfer and sentencing procedures for juveniles. P.A. 99-69 §10, eff. Jan. 1, 2016; P.A.

99-258, §§ 5, 15, eff. Jan. 1, 2016.[3] In part, the Public Acts amended the Unified Code of Corrections to add 730 ILCS 5/5-4.5-105, a brand new section entitled, "SENTENCING OF INDIVIDUALS UNDER THE AGE OF 18 AT THE TIME OF THE COMMISSION OF AN OFFENSE." Section 5-4.5-105(a) dictates that "[o]n or after the effective date of this amendatory Act of the 99th General Assembly," when a person under the age of 18 commits an offense, the sentencing court must consider certain additional factors in mitigation related to the characteristics of youth, such as the defendant's level of maturity at the time of the offense. 730 ILCS 5/5-4.5-105(a). Under Section 5-4.5-105(b), the sentencing court was granted the discretion to decline to impose otherwise-mandatory firearm enhancements on juveniles:

> (b) Except as provided in subsection (c), the court may sentence the defendant to any disposition authorized for the class of the offense of which he or she was found guilty as described in Article 4.5 of this Code, and may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession, possession with personal discharge, or possession with personal discharge that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

730 ILCS 5/4.5-105(b).

Drashun and Kevin are entitled to be resentenced under Section 5-4.5-105(b) since it is a procedural law, with no language expressly indicating its temporal

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[3] Neither P.A. 99-69 nor P.A. 99-258 have an express provision establishing an effective date. Thus, by operation of the Effective Date of Laws Act, the effective date is January 1, 2016. 5 ILCS 75/1. (bills passed prior to June 1st that "do not provide for an effective date in the terms of the bill" shall become effective on January 1st of the following year or upon its becoming a law, whichever is later."). *See also People v. Patterson*, 2016 IL App (1st) 101573-B, ¶ 13 (finding that Public Act 99-258 did not expressly state its effective date and that the January 1, 2016 effective date came about by statutory default).

reach, that became effective while their cases were still pending on direct review. *Howard*, 2016 IL 120729, at ¶¶18-35 (procedural amendments apply retroactively to pending cases); *Glisson*, 202 Ill. 2d at 509 (procedural, but not substantive, changes to statutes apply to cases pending on direct appeal); *Atkins*, 217 Ill. 2d at 71 (2005) (to determine if a statutory amendment will apply to cases pending on direct review, if there is no clear indication of an amendment's temporal reach in the language of the amendment itself, the inquiry is whether the amendment is procedural or substantive).

**2. The Temporal Reach of Section 5-4.5-105(b).**

This Court's decision in *Howard*, 2016 IL 120729, is once again instructive. *Howard* addressed the temporal reach of the 2016 amendment to Section 5-130 of the Juvenile Court Act, which was passed through the very same Public Act – P.A. 99-258 – that created Section 5-4.5-105(b). Since the amendment to Section 5-130 was a procedural change devoid of an express temporal reach, this Court held that it applied retroactively. In that light, since Section 5-4.5-105(b) is also a procedural change devoid of an express temporal reach then, under *Howard*, it should likewise apply retroactively.

Notably, if the legislature had wanted subsection (b) to apply only prospectively to sentencing hearings occurring after January 1, 2016, or not to apply to cases pending on appeal, it easily could have included a savings clause expressly limiting its application. For example, in *People v. Grant*, 71 Ill. 2d 551, 561 (1978), this Court upheld a savings clause that explicitly restricted a new sentencing law to individuals not yet sentenced. Specifically, the statutory amendment at issue provided that "[i]f a sentence has been imposed before the

effective date of this amendatory act [. . .] the defendant shall not have the right of election even though his case has not been finally adjudicated on appeal[.]" *Id*. This language unambiguously made the sentencing act in *Grant* prospective.

Subsection (b) contains no such savings clause, nor any temporal language whatsoever. 730 ILCS 5/4.5-105(b). This is in stark contrast to subsection (a), which contains a prefatory clause that expressly specifies that it applies only "[o]n or after the effective date" of the statute. Yet Section 5-4.5-105(b), an entirely separate section of the statute, which delineates an entirely distinct procedure for sentencing a specific subset of juvenile offenders, contains no such language. Therefore, the legislature made clear its intent for subsection (a) to apply prospectively, while subsection (b) applies retroactively.

Despite this plain language, in *Wilson* and *Hunter*, the First District concluded that the legislature intended for the temporal reach of both subsections to be identical. Specifically, the appellate court held that the *entirety* of 5-4.5-105 applies prospectively because the text of subsection (a) states that it applies to offenses "[o]n or after the effective date." *Wilson*, 2016 IL App (1st) 141500, at ¶ 16; *Hunter*, 2016 IL App (1st) 141904, at ¶ 43. However, the *Wilson* and *Hunter* courts failed to address the fact that while subsection (a) contains language stating the temporal reach *of that subsection*, the legislature chose to omit such language from section (b).

The language that a legislature chooses to *omit* from its statutes is no less important than the language it chooses to include, and "such legislative silence prevents [a] court from injecting such a restriction, no matter how beneficial the attempted innovation." *Kelley v. Astor Inv'rs, Inc.*, 123 Ill. App. 3d 593, 599 (2nd

Dist. 1984). As this Court has held, under well-settled rules of statutory construction, "[w]hen the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposely in the inclusion or exclusion . . . and that the legislature intended different meanings and results[.]" *Chicago Teachers Union, Local No. 1 v. Board of Ed. of the City of Chicago*, 2012 IL 112566, ¶ 24. Similarly, "where the legislature has employed a term in one place and excluded it in another, it should not be implied where excluded[.]" *In re J.L.*, 236 Ill. 2d 329, 341 (2010), *citing* 2A N. Singer & J. Singer, Sutherland on Statutory Construction § 46:5, at 228-29 (7th ed. 2007). *See also Adames v. Sheahan*, 233 Ill. 2d 276, 311 (2009) ("When Congress includes particular language in one section of a statute but omits it in another section of the same act, courts presume that Congress has acted intentionally and purposely in the inclusion or exclusion"); *Peoria Savings & Loan Association v. Jefferson Trust & Savings Bank*, 81 Ill. 2d 461, 469-70 (1980) (the "legislature's use of certain language in some sections of a statute, but differing language in others, indicates that different results were intended.").

Thus, the fact that the legislature specifically chose to omit the "on or after the effective date" language from Section 5-4.5-105(b) indicates that the legislature did not intend for subsection (b) to operate only after the effective date, which likewise means that it was intended to be retroactive. Had the legislature intended the limiting language included in subsection (a) to also apply to subsection (b), it would have included that language in (b), or in a section above or below that would be applicable to all subsections.

For example, in Public Act 99-258, the very same act that introduced Section 5-4.5-105, the legislature also enacted changes that permit the State to petition to transfer minors from juvenile to criminal court. P.A. 99-258, §5, eff. Jan. 1, 2016; 705 ILCS 405/5-805 (2016). Yet, unlike the changes to the juvenile sentencing procedures at issue in this case, the legislature clearly indicated that the *entire* transfer amendment's temporal reach was prospective by setting forth an independent concluding subsection that states: "(7) The changes made to this Section by this amendatory Act of the 99th General Assembly apply to a minor who has been taken into custody on or after the effective date of this amendatory Act of the 99th General Assembly." P.A. 99-258, §5, eff. Jan. 1, 2016; 705 ILCS 405/5-805.

In contrast, the legislature did not include a savings clause in Section 5-4.5-105 that would have expressly made the entire law prospective. Nor did the legislature include a savings clause in Section 5-4.5-105(b) rendering that particular subsection prospective. Without such language, the legislature expressed its intent that the temporal reach of subsection (b) was not limited based on offense date, sentencing date, or judgment date. Giving effect to the legislature's intent, Section 5-4.5-105(b) should apply to Drashun and Kevin, as their cases were pending on direct appeal on the effective date of the amendment.

Even if the legislature's intent could be said to be ambiguous, Section 5-4.5-105(b) nevertheless remains "silent as to temporal reach[.]" *Howard*, 2016 IL 120729, ¶ 23. Under *Howard*, "section 4 of the Statute on Statutes supplies the default rule and procedural changes are applied retroactively." *Id.* The inquiry for this Court, therefore, is whether this new law is procedural or substantive. *Caveney*, 207 Ill. 2d at 92 (under Section 4, procedural amendments apply retroactively,

while substantive amendments do not); *People v. Ziobro*, 242 Ill. 2d 34, 46 (2011). The clear answer is that Section 5-4.5-105(b) is procedural.

In general, procedural laws prescribe methods for enforcing rights or obtaining redress. *Rivard v. Chicago Fire Fighters Union, Local No. 2*, 122 Ill. 2d 303, 310 (1988). Substantive laws, on the other hand, establish the rights whose invasion may be redressed through a particular procedure. *Id.* at 310. "[P]rocedure embraces 'pleading, evidence and practice.'" *Id.*, *quoting Ogdon v. Gianakos*, 415 Ill. 591, 596 (1953). "'Practice means those legal rules which direct the course of proceedings to bring parties into court and the course of the court after they are brought in.'" *Id.* at 310-11, *quoting Ogdon*, 415 Ill. at 596; *accord People v. Atkins*, 217 Ill. 2d 66, 71-72 (2005). Section 5-4.5-105(b), which grants the trial court discretion as to whether or not it will impose a firearm enhancement on offenders under 18 years of age, is a procedural change in the law.

At Drashun's and Kevin's sentencing hearings, the trial courts had no discretion on whether to include firearm enhancements in their sentences. *See* 720 ILCS 5/8-4(c)(1)(D) (2012) (personal discharge of firearm that causes great bodily harm during an attempt murder requires a 25-year to natural life sentencing enhancement); 720 ILCS 5/18-4(b) (2011) (aggravated vehicular hijacking with a firearm requires a 15-year sentencing enhancement); 720 ILCS 5/10-2(b) (2011) (aggravated kidnaping with a firearm requires a 15-year sentencing enhancement); 720 ILCS 5/18-2(b) (2011) (armed robbery with a firearm requires a 15-year sentencing enhancement). As a result, 17-year-old Drashun and 16-year-old Kevin each received minimum terms of six years, as well as the firearm enhancement. 730 ILCS 5/5-4.5-25(a) (Class X sentencing range is six to 30 years). For Drashun,

this meant an additional 25 years, for a total sentence of 31 years' imprisonment. And for Kevin, this amounted to an additional 15 years, totaling 21 years for each offense, with the sentences to run concurrently.

Under the new law, the trial court "may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession[.]" 730 ILCS 5/5-4.5-105(b). Section 5-4.5-105(b) thereby increases a judge's decision-making authority with respect to offenders under the age of 18. Laws that allocate or change decision making authority, especially with regard to sentencing, are procedural. *See Schriro v. Summerlin*, 542 U.S. 348, 353 (2004), *citing Landgraf*, 511 U.S. at 280-81 ("Rules that allocate decision making authority" from judge to jury to determine the factors in aggravation for purposes of the death penalty "are prototypical procedural rules"); *see also People v. Johnson*, 23 Ill. 2d 465, 470-71 (1962) (concluding that mandating that a judge decide factors in aggravation on resentencing instead of the jury was a procedural change); *People v. Wolst*, 347 Ill. App. 3d 782, 803-04 (1st Dist. 2004) (holding that a law shifting the burden of proof to the defendant to prove the correctness of a mental health facility director's transfer recommendation was procedural and thus retroactive).

Section 5-4.5-105(b) is also unlike other laws that have been deemed substantive. It does not change the elements of an offense. *Glisson*, 202 Ill. 2d at 501, 508 (repealing methamphetamine-possession offense category was substantive change and not retroactive). Nor does it increase the sentencing range. *See People v. Smith*, 2014 IL App (1st) 103436, ¶98 (finding a statutory amendment that revived a mandatory 15-year enhancement for armed robbery to be substantive because it altered the punishment, not the methods by which the defendant was

sentenced). Rather, Section 5-4.5-105(b) merely changes a previously mandatory sentencing procedure to one that is discretionary, resulting in a new process through which courts determine the sentence to impose on a specific subset of juvenile offenders. *See, e.g.*, *Ogdon*, 415 Ill. at 596 (procedural laws embrace "those legal rules which direct the course of proceedings to bring parties into court *and the course of the court after they are brought in*.") (emphasis added). And while subsection (b) may ultimately operate to reduce a given juvenile's sentence, that potential effect of this new sentencing procedure does not render the amendment substantive. *See People v. Patterson*, 2016 IL App (1st) 101573-B, ¶ 15 (finding amendment to automatic transfer provision to be procedural and rejecting State's argument that the amendment's affect on the juvenile's sentence renders it substantive). Instead, Section 5-4.5-105(b) does nothing more than allocate decision-making authority to the sentencing court regarding whether or not a firearm enhancement should be imposed on an individual juvenile. As such, Section 5-4.5-105(b) is procedural and, thus, should be applied to cases pending on direct appeal as of January 1, 2016. 730 ILCS 5/5-4.5-105(b); 5 ILCS 75/1.

For these reasons, Drashun and Kevin respectfully request that this Court find that Section 5-4.5-105(b) applies to cases pending on direct appeal as of January 1, 2016, reverse their sentences, and remand for new sentencing hearings, at which the court will have discretion as to whether to impose a firearm enhancement.

## CONCLUSION

For the foregoing reasons, Kevin Hunter and Drashun Wilson, defendants-appellants, respectfully request that this Court:

1. Remand Kevin Hunter's case back to juvenile court, so that the State may have the opportunity to file a petition to transfer his case to adult court if it so chooses; and
2. Remand Kevin Hunter's and Drashun Wilson's cases for new sentencing hearings pursuant to 730 ILCS 5/5-4.5-105(b), at which the courts will have discretion in determining whether to impose the firearm enhancements.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

KATIE ANDERSON
Assistant Appellate Defender,
for Defendant-Appellant Kevin Hunter
MEREDITH N. BARON
Assistant Appellate Defender,
for Defendant-Appellant Drashun Wilson
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANTS-APPELLANTS

## CERTIFICATE OF COMPLIANCE

I, Katie Anderson, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding 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 33 pages.

/s/Katie Anderson
KATIE ANDERSON
Assistant Appellate Defender

No. 121306 & 121345 (Consolidated)

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>-vs-<br><br>KEVIN HUNTER & DRASHUN WILSON<br><br>Defendants-Appellants | ) | Appeal from the Appellate Court of Illinois, Nos. 1-14-1904 and 1-14-1500.<br><br>There on appeal from the Circuit Court of Cook County, Illinois, Nos. 11 CR 9381 and 12 CR 19490.<br><br>Honorable Evelyn B. Clay and Honorable Thaddeus L. Wilson, Judges Presiding. |

**NOTICE AND PROOF OF SERVICE**

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;
Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602;
Mr. Kevin Hunter, Register No. M45461, Dixon Correctional Center, 2600 North Brinton Avenue, Dixon, IL 61021;
Mr. Drashun Wilson, Register No. M44846, Pinckneyville Correctional Center, 5835 State Route 154, Pinckneyville, IL 62274.

Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Brief and Argument in the above-entitled cause was submitted to the Clerk of the above Court for filing on March 6, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel and mailed one copy to the defendants-appellants in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Brief and Argument will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.



/s/Kelly Kuhtic
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANTS-APPELLANTS

## APPENDIX TO THE BRIEF

**Kevin Hunter No. 121306**



**Drashun Wilson No. 121345**

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**Report of Proceedings ("R")**

2016 IL App (1st) 141904

SIXTH DIVISION
June 30, 2016
Modified upon denial of rehearing August 12, 2016

No. 1-14-1904

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 9381 |
| | ) | |
| KEVIN HUNTER, | ) | Honorable |
| | ) | Evelyn B. Clay, |
| Defendant-Appellant. | ) | Judge Presiding. |

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court, with opinion.
Justices Hoffman and Hall concurred in the judgment and opinion.

## OPINION

¶ 1 Following a bench trial, defendant, Kevin Hunter, was convicted of armed robbery, aggravated kidnaping, and aggravated vehicular hijacking, and sentenced to concurrent terms of 21 years' imprisonment, which included a 15-year enhancement for defendant's use of a firearm. Defendant, age 16 at the time of the offense, was tried and sentenced as an adult in accordance with the automatic transfer provision set forth in section 5-130 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130 (West 2010)). On appeal, defendant contends that: (1) the State failed to prove beyond a reasonable doubt that he was armed with a firearm during the charged offenses; (2) the trial court erred in failing to conduct a *Krankel* inquiry; (3) his case should be remanded for resentencing under new provisions contained in Public Act 99-69, section 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105), which took effect during the pendency of his appeal; (4) his case should be remanded for resentencing in the juvenile court under Public Act 99-258, section 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130, 5-805 (West 2014)), which

also took effect during the pendency of his appeal; and (5) the mittimus must be corrected to reflect the proper credit for presentence incarceration. For the following reasons, we affirm the judgment of the trial court and order the mittimus corrected.

¶ 2 I. BACKGROUND

¶ 3 We set forth the facts necessary to provide background for defendant's first claim of error. Additional facts relevant to other issues on appeal will be included as needed throughout our opinion.

¶ 4 Defendant was charged with aggravated kidnaping, armed robbery, and aggravated vehicular hijacking. At trial, Steven Maxwell, testified that he parked his Jeep on the north side of Chicago at approximately 3:45 a.m. on May 17, 2011, after spending several hours at a bar and drinking one beer. While walking home down a dark street, he was approached by three men, including defendant, who Mr. Maxwell identified in court. One of the men asked Mr. Maxwell: "what you got." Then, defendant "flashed a gun" for a few seconds, pulling it slightly out of his coat and placing it near his chest or stomach. The gun was "squared off" and resembled a "Glock." Mr. Maxwell, who had a Firearm Owner's Identification (FOID) card and had previously seen a real gun, thought the gun looked real. The first man said that he knew Mr. Maxwell had a car and ordered him to surrender his keys, phone, and wallet. Mr. Maxwell complied but asked for his FOID card, which the man returned. Mr. Maxwell walked to his Jeep with the three men, and the first man said to Mr. Maxwell: "you're coming, too." The third man said that he "didn't want any part of it," and walked away.

¶ 5 Defendant and the first man ordered Mr. Maxwell to enter the rear driver's side door and to put on a seatbelt. The first man sat in the driver's seat and defendant sat in the front passenger

seat. They engaged the child safety locks and told Mr. Maxwell that they would drive around and drop him off "somewhere," but would not hurt him. The men asked Mr. Maxwell how far they were from his house and for directions to drive south. Defendant told Mr. Maxwell not to lie because "they knew where [he] lived and where [his] family lived." Mr. Maxwell did not see the gun again, but defendant repeatedly threatened to shoot him.

¶ 6 After "circling around" for approximately three hours, the first man drove to a gas station and put gas in the Jeep. No other customers were present. Defendant stayed in the vehicle but ordered Mr. Maxwell to purchase a "Black and Mild" (a type of cigar). Mr. Maxwell walked to the window of the gas station to make the purchase, but did not ask the clerk for help because he had to shout his request and worried that the men would hear him. He did not try to run because he thought that the men would catch him. He returned to the Jeep and the men continued driving until they released him at 47th and State Streets. Mr. Maxwell went to a police station and reported what had happened. At approximately 9:30 a.m., he went to 75th and State Streets, where he saw his Jeep on the sidewalk, resting on its side against a wall. Later that day, Mr. Maxwell identified defendant in a physical lineup.

¶ 7 Officer Chan testified that he was on patrol at approximately 7:30 a.m. on May 17, 2011. He heard tires screeching and drove toward 75th Street and Indiana Avenue, where he saw a Jeep "flipped over on the sidewalk." Defendant exited the driver's side door, jumped from the car, and fled. Officer Chan detained defendant less than two blocks away and conducted a pat down. Afterwards, an evidence technician was called to process the Jeep.

¶ 8 The State published a video of the crash, which was entered into evidence. The defense did not move for a directed verdict, and defendant did not testify.

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¶ 9 In finding defendant guilty of aggravated kidnaping, armed robbery, and aggravated vehicular hijacking while armed with a firearm, the trial court stated that Mr. Maxwell was "very credible," and noted that he had described the appearance of defendant's gun and testified that it looked real. The trial court also observed that Mr. Maxwell had a FOID card and "was aware of weapons."

¶ 10 At the hearing on defendant's motion to vacate the convictions, defense counsel contended that Mr. Maxwell was "mistaken" when he testified that defendant had been armed with a firearm. Counsel argued, *inter alia*, that Mr. Maxwell had spent the night in a bar, encountered defendant on a dark street, and had seen the alleged weapon for only a few seconds. According to counsel, the State had attempted to portray Mr. Maxwell as a firearms expert, but no testimony established that he could distinguish between real and fake firearms. In response, the State contended that Mr. Maxwell's FOID card and his testimony "demonstrated his familiarity with guns." The trial court denied defendant's motion, stating:

> "The Court finds that the victim was credible and he was in belief of being *** shot [by] a firearm and he did say on direct what type. It was a Glock. The victim was the person who possessed the [FOID] card and indicates some familiarity with the weapons. The Court finds it was long enough of an observation of the flash from this item that was in defendant's hands and what he described later on as a Glock.
>
> The Court finds that it is sufficient and beyond a reasonable doubt that *** this offense occurred with a firearm."

¶ 11 Following a sentencing hearing, the trial court imposed concurrent terms of 21 years' imprisonment for each offense on May 29, 2014. The 21-year sentence included a mandatory 15-year sentencing enhancement for defendant's use of a firearm.

¶ 12 II. ANALYSIS

¶ 13 A. Sufficiency of the Evidence

¶ 14 On appeal, defendant first contends that the State failed to prove beyond a reasonable doubt that he was armed with a firearm during the charged offenses. Defendant submits that the State neither produced the gun at trial nor presented evidence that the gun could have been fired. Consequently, the only evidence of a firearm was the victim's testimony, which defendant argues is insufficient to sustain his conviction. Defendant observes that Mr. Maxwell saw the gun for just a few seconds, when defendant "slightly" pulled it from his jacket during their encounter on a dark street. Mr. Maxwell did not describe the color or size of the gun, and only testified that the gun looked like a "Glock" on redirect examination. Thus, according to defendant, Mr. Maxwell may have seen a BB gun, air pistol, or other device that is excluded from the statutory definition of a firearm. Additionally, defendant argues that the trial court improperly inferred that Mr. Maxwell's FOID card bolstered his ability to identify a firearm. Under these circumstances, defendant submits that his repeated threats to shoot the victim were merely intended to "secure [his] cooperation," and do not establish that defendant was armed.

¶ 15 The standard of review on a challenge to the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A reviewing court will not substitute its judgment for that of the trier of fact on

questions involving the credibility of witnesses or the weight of the evidence. *Id.* To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). A defendant's conviction will be reversed only if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 16 In this case, defendant was convicted of aggravated kidnaping, armed robbery, and aggravated vehicular hijacking. 720 ILCS 5/10-2(a)(6), 18-2(a)(2), 18-4(a)(4) (West 2010). On appeal, defendant contests only whether the evidence establishes that he was armed with a firearm during each of the charged offenses. To determine what constitutes a "firearm" under the Criminal Code of 1961, we look to the meaning ascribed under the Firearm Owners Identification Card Act (FOID Card Act). 720 ILCS 5/2-7.5 (West 2010). In relevant part, the FOID Card Act defines a "firearm" as "any device *** which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1 (West 2010). This definition excludes pneumatic guns, spring guns, paint ball guns, certain BB guns, and signal guns. *Id.* However, the fact that a defendant possessed a firearm, as defined under the FOID Card Act, need not be established by "direct or physical evidence" because the "unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed [with a firearm] during a robbery." *People v. Fields*, 2014 IL App (1st) 110311, ¶ 36.

¶ 17 Here, the evidence viewed in the light most favorable to the State was sufficient to establish that defendant committed the charged offenses while armed with a firearm. Mr.

Maxwell testified that defendant "flashed a gun" for several seconds during their initial encounter, pulling it slightly out of his coat and placing it near his chest or stomach. Mr. Maxwell noticed the gun was "squared off," and stated that it resembled a "Glock." He had previously seen a real gun, and thought that defendant's gun looked real. Additionally, Mr. Maxwell testified that defendant had threatened to shoot him while displaying the gun, and repeated this threat throughout the encounter. Based on this testimony, the trial court found that Mr. Maxwell was "very credible," and was "aware of weapons," and that he had a sufficient opportunity to observe and identify the object in defendant's hands.

¶ 18 The court also noted that Mr. Maxwell possessed a FOID card, but contrary to defendant's assertion, nothing in the record suggests that the court improperly relied on this fact as the basis for accepting Mr. Maxwell's testimony. Rather, the court's comments indicate that it considered Mr. Maxwell's testimony and credibility as a whole in determining that defendant was armed with a firearm, and we will not disturb these findings on review. *People v. Lissade*, 403 Ill. App. 3d 609, 612 (2010) (trier of fact is "best positioned to judge the credibility of the witnesses" and its decision "is entitled to great deference").

¶ 19 Defendant further argues that the State failed to prove beyond a reasonable doubt that the gun did not fall within the statutory exception to the general definition of a firearm in the FOID Card Act. However, the trial court was not required to discount Mr. Maxwell's testimony that the gun looked real or to speculate whether the gun was something other than a firearm as defined by statute. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992) (trier of fact need not search out explanations consistent with the defendant's innocence and raise them to reasonable doubt). Moreover, in view of the victim's credible testimony, the absence of physical evidence does not

render the trial court's findings unreasonable or unsatisfactory. *Fields*, 2014 IL App (1st) 110311, ¶ 36. Defendant relies upon *People v. Ross*, 229 Ill. 2d 255 (2008), and *People v. Crowder*, 323 Ill. App. 3d 710 (2001). However, no evidence at trial suggested that defendant's gun falls within the statutory exception to the statutory definition of a firearm (*Ross*, 229 Ill. 2d at 276-77 (police officer testified that defendant's gun was a "pellet gun")), nor is this a case where the State destroyed the gun, precluding the defendant from mounting a defense (*Crowder*, 323 Ill. App. 3d at 712-13).

¶ 20 Nonetheless, defendant has submitted photographs of air pistols and pellet guns taken from retail websites, and asks this court to take judicial notice that these objects are not statutorily defined firearms, yet nonetheless resemble the gun that the victim described at trial. This request is improper, as the photographs were not submitted to the trial court. If we were to consider these photographs for the first time on appeal, it "would amount to a trial *de novo* on an essential element of the charges." *People v. Williams*, 200 Ill. App. 3d 503, 513 (1990). Accordingly, we decline to consider these newly introduced photographs, and conclude that the evidence at trial was sufficient to establish that defendant was armed with a firearm during the charged offenses.

¶ 21 B. *Krankel*

¶ 22 Defendant next contends that the trial court erred in failing to conduct a preliminary inquiry into his claim, made during his statement in allocution at sentencing, that defense counsel rendered ineffective assistance by usurping defendant's right to testify. As we find defendant's statement in allocution did not raise a claim of ineffective assistance of counsel, we hold that the

trial court had no duty to conduct an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 23 In *Krankel*, our supreme court established the action to be taken by the court when a defendant asserts a *pro se* posttrial claim of ineffective assistance of counsel. The court should first examine the factual basis underlying the defendant's claim. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). If the court determines the claim lacks merit or is addressed only to matters of trial strategy, new counsel need not be appointed, and the *pro se* motion may be denied. *Id.* If, however, the defendant's allegations reveal possible neglect of the case, new counsel should be appointed to argue the claim of ineffective assistance. *Id.*; see also *Krankel*, 102 Ill. 2d at 189.

¶ 24 In order for *Krankel* to be applicable, however, the defendant must have sufficiently alleged a claim of ineffective assistance. *Taylor*, 237 Ill. 2d at 75-77. The defendant must "raise specific claims with supporting facts before the trial court is required to consider the allegations." *People v. Walker*, 2011 IL App (1st) 072889-B, ¶ 34. Allegations that are "conclusory, misleading or legally immaterial, or do not identify a colorable claim of ineffective assistance of counsel" do not require further inquiry by the trial court. *Id.* The question of whether a defendant has sufficiently alleged ineffective assistance of counsel is one of law, and, therefore, subject to a *de novo* standard of review. *Taylor*, 237 Ill. 2d at 75.

¶ 25 Turning to the record in the present case, the following colloquy occurred after the State rested its case-in-chief:

> "DEFENSE COUNSEL: Your [H]onor, I've spoken with Mr. Hunter, I don't believe he's going to testify.

THE COURT: Mr. Hunter, this is your trial and you have a right to testify at your own trial. Is it your decision and your decision only, of course in consultation with your attorney, is it your decision not to testify at your own trial?

THE DEFENDANT: Yes, ma'am."

¶ 26 Later, during sentencing, defense counsel stated:

"As long as this case has been pending before [Y]our Honor, no adult has ever shown up for Kevin. The one time someone did show up, it was his twin sister. There was a problem in the courtroom with her. I can tell you that Kevin was sitting next to me at the time his sister created the scene in the courtroom and he was trying to tell her just to be quiet and leave and so I think that does operate as mitigation for him."

¶ 27 The court then offered defendant the opportunity to speak in allocution. The following colloquy occurred:

"THE COURT: Mr. Hunter, is there anything you wish to say before your sentence?

THE DEFENDANT: I say I change my—

ASSISTANT PUBLIC DEFENDER: Do you want to say anything to the Judge,

Kevin? This is your time to say it.

THE COURT: Do you have anything to say about the case that you have been sentenced on? Remember the trial when you sister was here?

THE DEFENDANT: Yeah.

THE COURT: I know you do. Do you have anything to say before I tell you what your sentence is? Anything at all?

THE DEFENDANT: I want to say whatever happened that day, that was between her. The witness on the stand. She told me not to get on the stand. I was telling the truth. I wanted to have a chance to tell my side of the story. I didn't have anything to do with it.

THE COURT All right.

THE DEFENDANT: She is the one that did it.

THE COURT: Beg your pardon.

THE DEFENDANT: Go ahead."

¶ 28 Defendant contends that his statement in allocution advised the trial court that counsel had rendered ineffective assistance by preventing him from testifying at trial, and that the court erred in failing to conduct a preliminary *Krankel* inquiry into this allegation. Defendant acknowledges that he waived his right to testify. However, defendant contends that his waiver was "irrelevant" to whether the court should have conducted a *Krankel* inquiry, because without having made an inquiry, the court could not know whether counsel had "unduly coerced [defendant] into the waiver."

¶ 29 The State responds that defendant did not assert a claim of ineffective assistance when he spoke in allocution, as his statement was incoherent and may have referred to an earlier incident in court involving his sister rather than a disagreement with defense counsel. Additionally, the State argues that the court had previously queried defendant regarding the waiver of his right to testify and had no "*sua sponte* duty to inquire into the reason for defendant's decision not to

testify at trial." The State also observes that defendant never informed the court, in either an oral motion or posttrial motion, that he wished to testify but was prevented by defense counsel. Consequently, the State argues that the court had no reason to know from defendant's statement in allocution that he was alleging that counsel had prevented him from testifying.

¶ 30 In reply, defendant argues that "the record as a whole" suggests that his statement in allocution contained a complaint about defense counsel, rather than his sister. Defendant submits that the record shows multiple instances where he "attempted to raise concerns" regarding his case and his attorney before the court, but was not allowed to speak. According to defendant, these instances explain why he was not more persistent in raising complaints about counsel at sentencing.

¶ 31 After considering defendant's statement in allocution in context, we find that defendant did not raise a claim for ineffective assistance of counsel and, therefore, the trial court did not err in not conducting a *Krankel* inquiry. Both the trial court and defense counsel encouraged defendant to "say anything" he wished. Defendant's statement was rambling and "amenable to more than one interpretation." *Taylor*, 237 Ill. 2d at 77. Moreover, we cannot say that defendant's remarks at previous appearances in his case placed the trial court on notice that defendant was raising a claim of ineffective assistance at his sentencing hearing, as his statement in allocution neither mentioned his attorney nor made a specific claim of ineffective assistance. *People v. Porter*, 2014 IL App (1st) 123396, ¶ 12 (awareness by the trial court that defendant has complained of counsel's representation "imposes no duty by the trial court to *sua sponte* investigate defendant's complaint"); see also *People v. Gillespie*, 276 Ill App. 3d 495, 502 (1995) ("Nothing in *Krankel* suggests that if the issue [of ineffective assistance] is not raised

before the trial court a duty should be placed on the trial court to raise the issue of ineffectiveness of counsel *sua sponte*.").

¶ 32 Assuming, *arguendo*, that defendant's remarks referred to defense counsel, it is apparent that he never contended that counsel prevented him from testifying at trial. Rather, defendant stated that "she told me not to get on the stand" and that he "wanted to have a chance to tell [his] side of the story." See *People v. Hernandez*, 2014 IL App (2d) 131082, ¶ 33 (finding no ineffective assistance where "defendant's allegations reflect that counsel did not *prohibit* defendant from testifying but, rather, counsel gave strategic advice, defendant listened to that advice, and defendant chose not to testify" (emphasis in original)). In this case, where the record reveals "no clear basis for an allegation of ineffectiveness of counsel," the trial court "had no duty to conduct a preliminary investigation of the factual matters underlying defendant's claim." *People v. Garland*, 254 Ill. App. 3d 827, 834 (1993). Consequently, defendant's claim that the trial court erred in not conducting a *Krankel* inquiry is without merit.

¶ 33 C. Resentencing

¶ 34 After defendant filed his brief on appeal, he filed a supplemental brief arguing that certain statutory amendments that took effect while his appeal was pending should be applied retroactively to his case.[1] Specifically, defendant contends that his case must be remanded for resentencing under new sentencing provisions contained in Public Act 99-69, section 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105) and Public Act 99-258, section 5 (eff. Jan. 1, 2016)

[1]The State filed a supplemental response brief in accordance with an order of this court. Defendant subsequently requested leave to file a supplemental reply brief, which we also permitted.

(amending 705 ILCS 405/5-130, 5-805 (West 2014)).[2] Both the enactment of section 5-4.5-105 of the Unified Code of Corrections (Code) and the amendments to sections 5-130 and 5-805 of the Act took effect on January 1, 2016, while defendant's case was pending on direct appeal.[3] Consequently, we must decide whether these provisions apply retroactively to defendant's case.

¶ 35 "Whether an amendment to a statute will be applied prospectively or retroactively is a matter of statutory construction." *Thomas v. Weatherguard Construction Co.*, 2015 IL App (1st) 142785, ¶ 63. Therefore, we review this issue *de novo*. *Id.*

¶ 36 In considering whether an amendment applies prospectively or retroactively, we follow the approach set forth by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). See *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29. Under the first step of the *Landgraf* analysis, "if the legislature has clearly indicated the temporal reach of the amended statute, that expression of legislative intent must be given effect, absent a constitutional prohibition." *Id.* We apply the plain and ordinary meaning of the statutory language whenever possible, and construe statutes to give a reasonable meaning to all words and sentences so that no part is rendered superfluous. *People v. Glisson*, 202 Ill. 2d 499, 504-05 (2002). If the statute is clear and unambiguous, courts cannot read into the statute limitations,

[2]These provisions will be referred to, respectively, as section 5-4.5-105 of the Unified Code of Corrections and sections 5-130 and 5-805 of the Juvenile Court Act of 1987.

[3]The text of section 5-4.5-105 appears in Public Act 99-69, section 10, passed on May 19, 2015, and signed into law on July 20, 2015, and also in Public Act 99-258, section 15, passed on May 31, 2015, and signed into law on August 4, 2015. The amendments to sections 5-130 and 5-805 of the Act appear in Public Act 99-258, section 5. Neither public act specifies an effective date for the provisions at issue in this appeal. Under section 1 of the Effective Date of Laws Act (5 ILCS 75/1(a) (West 2014)), however, bills passed prior to June 1 of a calendar year "shall become effective on January 1 of the following year, or upon its becoming a law, whichever is later." Thus, the effective date for section 5-4.5-105 of the Code and the amendments to sections 5-130 and 5-805 of the Act is January 1, 2016.

exceptions, or other conditions not expressed by the legislature or resort to other aids of statutory construction. *Id.* at 505.

¶ 37 Under the second step of the *Landgraf* analysis, if the amendment contains no express provision regarding its temporal reach, "the court must go on to determine whether applying the statute would have a retroactive impact." *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29. If applying the statute retroactively "will impair rights a party possessed when acting, increases a party's liability for past conduct, or impose new duties with respect to transactions already completed" "a court will presume that the statute does not govern absent clear legislative intent favoring such a result." *(quoting Allegis Realty Investors v. Novak,* 223 Ill. 2d 318, 331 (2006).

¶ 38 However, Illinois courts rarely look beyond the first step of the *Landgraf* analysis. *Caveney v. Bower*, 207 Ill. 2d 82, 94 (2003). This is because amendments which do not themselves contain a clear indication of legislative intent regarding temporal reach are "presumed to have been framed" in view of section 4 of the Statute on Statutes. *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 31 (citing 5 ILCS 70/4 (West 2000)). Section 4, "often referred to as the general saving clause of Illinois" (*Novak*, 223 Ill. 2d at 331), provides:

> "No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as

> practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act." 5 ILCS 70/4 (West 2010).

Construing this statutory language, our supreme court held in *Caveney*, 207 Ill. 2d at 92, that where the legislation itself does not specifically include an expression of legislative intent as to temporal reach, section 4 "represents a clear legislative directive as to the temporal reach of statutory amendments and repeals: those that are procedural in nature *may* be applied retroactively, while those that are substantive *may not*." (Emphases added.)

¶ 39 With these principles in mind, we turn to the amended provisions of the Code and the Act that defendant contends should apply retroactively in his case.

¶ 40 1. Section 5-4.5-105 of the Code

¶ 41 First, we consider whether section 5-4.5-105 of the Code applies retroactively to defendant's case, which was pending on direct appeal when the provision took effect. In relevant part, section 5-4.5-105 provides:

> "(a) *On or after the effective date of this amendatory Act* of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following

> additional factors in mitigation in determining the appropriate sentence[.]" (Emphasis added.) Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105).

¶ 42 Section 5-4.5-105 then sets forth several factors that the court must consider in mitigation, including, *inter alia*, the offender's "age, impetuosity, and level of maturity at the time of the offense," his or her "family, home environment, educational and social background, including any history of parental neglect," and his or her "potential for rehabilitation." *Id.* Additionally, sections 5-4.5-105(b) and 5-4.5-105(c) provide that, except in cases where the offender has been convicted of certain homicide offenses, the trial court "may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession." *Id.* Prior to the enactment of section 5-4.5-105, a 15-year firearm enhancement was mandatory for all offenders convicted of committing aggravated kidnaping, armed robbery, and aggravated vehicular hijacking while armed with a firearm. 720 ILCS 5/10-2(a)(6), 18-2(a)(2), 18-4(a)(4) (West 2010).

¶ 43 Our analysis of whether section 5-4.5-105 applies retroactively or prospectively begins with the first step of the *Landgraf* analysis, which directs us to consider whether the statute clearly expresses the legislature's intent regarding temporal effect. *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29. We find that, read plainly, section 5-4.5-105 does state its proper temporal reach by clearly indicating that a court is required to apply its provisions only at sentencing hearings held "[o]n or after the effective date" of Public Act 99-69, *i.e.*, January 1, 2016. Nothing in the statute suggests that section 5-4.5-105 applies retroactively to cases where, as here, sentencing

occurred prior to January 1, 2016, and we may not subvert the plain language by reading into the statute conditions not expressed by the legislature. *Glisson*, 202 Ill. 2d at 505.

¶ 44 Indeed, courts recognize that the use of language providing that a statutory addition or amendment applies only to specific acts or occurrences taking place "on or after" a particular date clearly expresses the legislature's intent regarding temporal effect. See *Sadler v. Service*, 406 Ill. App. 3d 1063, 1066 (2011) (a new statute of limitations, while a procedural rule, was not to be applied retroactively where the statute explicitly stated it only applied to promissory notes "dated on or after the effective date" (internal quotation marks omitted) of the amendatory Act; the appellate court found that this language expressed "a clear temporal reach"); *Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 401 Ill. App. 3d 966, 1002-03 (2010) (where amendments to the Eminent Domain Act included language that they were applicable only to complaints to condemn filed on or after its effective date, "[t]he words of the statute prevent us from applying the amendments" to a complaint filed prior to that date); *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 407 (2009) (statutory language providing that amendment thereto applied to actions commenced on or after the effective date of that amendment presented a situation "in which the legislature has clearly indicated when the relevant statute applies"); *People v. Wasson*, 175 Ill. App. 3d 851, 854 (1988) (where statutory amendment stated it shall only apply on or after the effective date of the amendatory act, the legislature "expressly provided" that the law was "not intended to be applied retroactively").

¶ 45 Nevertheless, defendant argues that neither the plain language of the statute nor its title: "Sentencing of Individuals Under the Age of 18 at the Time of the Commission of an Offense," prevent the statute from applying to offenses that occurred before the effective date.

Additionally, defendant notes that section 5-4.5-105 lacks a savings clause, even though a savings clause appears in a different provision contained in the same bill, and he submits that the legislature would have included a similar clause in section 5-4.5-105 if the statute were to apply only prospectively.[4]

¶ 46 However, to the extent that defendant contends that the language of section 5-4.5-105 does not provide for prospective application, we reject it for the reasons discussed above. To the extent that defendant would have us look to the content of other statutory provisions to determine the legislature's intent with respect to the temporal reach of section 5-4.5-105, we reject that invitation in light of our supreme court's clear indication that when applying the first step of the *Landgraf* analysis, "it is not proper to look to the entire statute for legislative intent." *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 34. Instead, the court must determine "whether the text of the amended provision, itself, clearly expresses the legislature's intent that the amendment be given either prospective or retrospective application." *Id.*

¶ 47 Defendant and the State raise other arguments with respect to the retroactivity of section 5-4.5-105, including the possible applicability of section 4 of the Statute on Statutes. In light of our resolution of this issue on the plain language of the statute and at the first step of the *Landgraf* analysis, we find these additional arguments irrelevant. *Doe A.*, 234 Ill. 2d at 406 ("Because section 4 of the Statute on Statutes operates as a default standard, it is inapplicable to situations where the legislature has clearly indicated the temporal reach of a statutory

[4]Defendant references Public Act 99-258, section 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130, 5-805 (West 2014)), which in part amends section 5-805 of the Act to require the State to petition for offenders under age 18 at the time of an offense to be sentenced in criminal court. In relevant part, Public Act 99-258, section 5 also provides that "[t]he changes made to [section 5-805] by this amendatory Act of the 99th General Assembly apply to a minor who has been taken into custody on or after the effective date of this amendatory Act of the 99th General Assembly." Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130, 5-805 (West 2014)).

amendment."); *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 24 (where the legislature clearly expresses its intent, "there is no need to turn to the alternative statutory sources suggested by plaintiffs in order to define the temporal reach of the Act").

¶ 48 We do note that defendant argues that section 5-4.5-105 should apply retroactively because it represents a "public policy shift" with respect to juvenile sentencing. Defendant likens his case to *People v. Bailey*, 1 Ill. App. 3d 161, 164 (1971). In *Bailey*, the defendant was sentenced to not less than 2 and not more than 10 years' imprisonment for marijuana-related offenses. *Id.* at 162. While the case was pending on appeal, a new law reduced the penalty for the same offenses to not more than 1 and not more than 5 years' imprisonment. *Id.* at 164-65. This court modified the defendant's sentence under the new scheme, recognizing that a "significant, substantial and mitigating basic public policy change [had] intervened." *Id.* at 164. However, we also noted that the new law expressly stated that the revised sentencing scheme would apply for any violation occurring prior to the law's effective date, if the case had not reached sentencing *or a final adjudication*. *Id.* at 164-65. The present case is distinguishable, as section 5-4.5-105 contains no comparable language that permits the statute to apply retroactively to still pending cases in which sentence was imposed prior to the statute's effective date. Consequently, defendant's argument does not change our conclusion that section 5-4.5-105 applies only prospectively.

¶ 49 Defendant further contends that if we conclude that section 5-4.5-105 may only be applied prospectively, the mandatory firearm enhancement is unconstitutional as applied to him, and his case must be remanded for resentencing so that the trial court may consider his youth and

rehabilitative potential in accordance with the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. *See* U.S. Const., amend. VIII; Ill. Const. 1970, art. I, § 11.

¶ 50 As an initial matter, the State alleges that defendant forfeited his as-applied constitutional challenge by not raising the issue at an evidentiary hearing before the trial court. Consequently, the State argues that defendant may only raise a facial challenge to section 5-4.5-105 and, in this case, defendant has not made such an argument on appeal. Defendant maintains that the record contains the facts essential to his claim, *i.e.*, that he was 16 years old when he committed the offenses, but the trial court could not exercise discretion in imposing the firearm enhancement. For the following reasons, even if the record was sufficient to preserve defendant's as-applied constitutional challenge, we cannot say that his rights were violated.

¶ 51 The constitutionality of a statute is a question of law that we review *de novo*. *People v. Williams*, 2015 IL 117470, ¶ 8. An as-applied challenge to a statute's constitutionality requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party. *People v. Thompson*, 2015 IL 118151, ¶ 36. In contrast, a facial challenge to a statute's constitutionality requires a showing that the statute is unconstitutional under any set of facts, such that the specific facts related to the challenging party are irrelevant. *Id.* All statutes carry a "strong presumption of constitutionality," and the party challenging the statute has the burden of clearly establishing its invalidity. *People v. Mosley*, 2015 IL 115872, ¶ 22. We apply these principles in reviewing each of the constitutional violations alleged by defendant.

¶ 52 First, we consider defendant's claims under the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. Although

defendant brings his as-applied constitutional challenge under both provisions, he contends that the proportionate penalties clause offers greater protection than the eighth amendment. See, *e.g.*, *People v. Pace*, 2015 IL App (1st) 110415, ¶ 139 ("when a punishment has been imposed, the proportionate penalties clause provides greater protection"). In this analysis, we independently analyze whether defendant's sentence violates either provision.

¶ 53 The eighth amendment, applicable to the states through the fourteenth amendment (*Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008)), provides that " '[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted' " (quoting U.S. Const., amend. VIII). The United States Supreme Court has interpreted the cruel and unusual punishment clause to prohibit "inherently barbaric punishments" as well as punishments which are "disproportionate to the crime." *Graham v. Florida*, 560 U.S. 48, 59 (2010).

¶ 54 Defendant submits that the mandatory firearm enhancement precludes the trial court from considering mitigating factors in sentencing juvenile offenders, and, therefore, may be unconstitutional under the eighth amendment. We rejected a similar argument in *Pace*, 2015 IL App (1st) 110415, ¶ 3, where the defendant pled guilty to one count of first degree murder, one count of first degree murder in which he personally discharged a firearm that proximately caused death, and two counts of aggravated battery with a firearm. *Id.* The court sentenced the defendant to an aggregate sentence of 100 years' imprisonment, which included a mandatory 25-year firearm enhancement. *Id.* ¶ 30. The defendant was 16 years old at the time of the offense. *Id.* ¶ 3. On appeal, the defendant contended, *inter alia*, that the mandatory firearm enhancement violated the eighth amendment of the United States Constitution because the "the 57-year minimum sentence the court was required to impose was a *de facto* life sentence." *Id.* ¶ 131. According to

defendant, this sentencing scheme violated the United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which held that the eighth amendment prohibited the imposition of statutorily mandated sentences of life imprisonment without parole for juveniles convicted of homicide. *Pace*, 2015 IL App (1st) 110415, ¶ 130. We found that the mandatory firearm enhancement did not violate the eighth amendment, as the trial judge in *Pace* retained discretion to consider the defendant's youth in imposing a sentence between 57 years and life imprisonment. *Id.* ¶ 134.

¶ 55 In the present case, defendant was convicted of three Class X felonies: aggravated kidnaping, armed robbery, and aggravated vehicular hijacking. 720 ILCS 5/10-2(a)(6), 18-2(a)(2), 18-4(a)(4) (West 2010). The sentencing range for each offense, including a mandatory 15-year firearm enhancement, was 21 to 45 years. 730 ILCS 5/5-4.5-25 (West 2010). Although this sentencing range is substantial, defendant was not subject to a sentence comparable to the penalty that was rejected in *Miller*.

¶ 56 Moreover, the trial court received a detailed presentence investigation (PSI) report containing information regarding defendant's age, childhood history of abuse and neglect, drug and alcohol use, mental health treatment, and prior juvenile criminal history. The State relied upon defendant's prior criminal history in aggravation in support of its request for a sentence above the minimum, while defense counsel stressed defendant's history of neglect in arguing for a minimum sentence. Thus, the trial court was presented with and considered the mitigating factors, including defendant's youth, before imposing the minimum 21-year sentence for each offense. Here, as in *Pace*, the mandatory firearm enhancement did not preclude the trial court

from considering defendant's age in mitigation. Therefore, we cannot say defendant's sentence violated the eighth amendment.[5]

¶ 57 Next, we consider defendant's as-applied constitutional challenge under the proportionate penalties clause of the Illinois Constitution. In relevant part, this clause provides that penalties must be determined "both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. A challenge under the proportionate penalties clause "contends that the penalty in question was not determined according to the seriousness of the offense." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005).

¶ 58 In *Sharpe*, our supreme court recognized that the imposition of a mandatory firearm enhancement does not necessarily violate the proportionate penalties clause. The court stated:

> " 'Our court has previously rejected claims that the legislature violates article 1, section 11, when it enacts statutes imposing mandatory minimum sentences. Our decisions have recognized that the legislature's power necessarily includes the authority to establish mandatory minimum sentences, even though such sentences, by definition, restrict the inquiry and function of the judiciary in imposing sentence.' " *Id.* at 525 (quoting *People v. Dunigan*, 165 Ill. 2d 235, 245 (1995)).

[5] Defendant contends that this conclusion is in conflict with the recent decision in *People v. Nieto*, 2016 IL App (1st) 121604, ¶¶ 47-50, in which another panel of this court concluded that "*Miller* requires that a juvenile be given an opportunity to demonstrate that he belongs to the large population of juveniles not subject to natural life in prison without parole, even where his life sentence resulted from the trial court's exercise of discretion" (citing *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). We reject defendant's reliance on this case, as the defendant in that case, who was 17 at the time of the offense, was sentenced to a term of 78 years' imprisonment. *Nieto*, 2016 IL App (1st) 121604, ¶ 13. It was only after concluding that amounted to a "sentence of natural life without parole" that we concluded such a sentence was unconstitutional. *Id.*, ¶ 42. Again, while the sentence defendant faced and received here was substantial, it does not amount to a sentence of natural life without the possibility of parole.

¶ 59 In applying these principles to the present case, our decision in *People v. Banks*, 2015 IL App (1st) 130985, is instructive. In *Banks*, the defendant was convicted of first degree murder and sentenced to 45 years' imprisonment, including a 25-year mandatory firearm enhancement. *Id.* ¶ 18. The defendant was 16 years old at the time of the offense. *Id.* On appeal, the defendant contended, *inter alia*, that the firearm enhancement violated the proportionate penalties clause of the Illinois Constitution by precluding the trial court from making an "individualized determination" in view of his age and culpability. (Internal quotation marks omitted.) *Id.* ¶ 17. We found that the mandatory firearm enhancement did not violate the proportionate penalties clause, as the trial court retained discretion to impose a sentence within the statutory range and could consider the mitigating factors, including defendant's age. *Id.* ¶¶ 23-24. In the present case, as in *Banks*, the mandatory firearm enhancement did not preclude the trial court from considering defendant's age as mitigation in its determination of defendant's sentence. Therefore, we find no violation of the proportionate penalties clause.

¶ 60 Defendant argues, however, that *Pace* and *Banks* lack precedential value because they were decided before section 5-4.5-105 of the Code had taken effect. Defendant also argues that the equal protection clauses of the United States and Illinois Constitutions also require remand for resentencing, as section 5-4.5-105 now permits the court to consider youth and rehabilitative potential in deciding whether to impose the firearm enhancement on similarly situated offenders sentenced after the effective date of January 1, 2016. See U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2.

¶ 61 As we have established, however, the provisions of section 5-4.5-105 apply only prospectively and do not control defendant's case. *Pace* and *Banks* are thus applicable to the

sentencing scheme at issue here. Moreover, "[p]rospective application of a new doctrine or rule of law does not violate the equal protection of laws under either the Federal or Illinois constitution." *Coney v. J.L.G. Industries, Inc.*, 97 Ill. 2d 104, 125 (1983); see also *People v. Richardson*, 2015 IL 118255, ¶ 10 ("neither the fourteenth amendment nor the Illinois Constitution prevents statutes and statutory changes from having a beginning, nor does either prohibit reasonable distinctions between rights as of an earlier time and rights as they may be determined at a later time").

¶ 62 In view of all the foregoing, we reject defendant's retroactivity and constitutionality arguments with respect to section 5-4.5-105.

¶ 63 2. Section 5-130 of the Act

¶ 64 We next consider whether the amendment to section 5-130 of the Act applies retroactively to defendant's case, which was pending on direct appeal when the amendment took effect.

¶ 65 Under the version of section 5-130(1)(a) in effect when defendant committed the present offenses, minors age 15 or older who, like defendant, were charged with armed robbery, aggravated kidnaping, and aggravated vehicular hijacking, were expressly excluded from the jurisdiction of the juvenile court. 705 ILCS 405/5-130(1)(a) (West 2012).[6] The amended, current version of section 5-130(1)(a) states, in relevant part:

> "(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age

[6]While aggravated kidnaping was not included in this version of section 5-130, the charges of armed robbery and aggravated vehicular hijacking were included, with the statutory provision further providing that charges for those offenses "and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." 705 ILCS 405/5-130(1)(a) (West 2012).

and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130 (West 2014)).

¶ 66 In substance, the amended version of section 5-130(1)(a) extends the jurisdiction of the juvenile court to all minors charged with armed robbery, aggravated kidnaping, and aggravated vehicular hijacking. These offenders are thereby removed from the jurisdiction of the criminal court, unless the State petitions to transfer the case from the juvenile court to the criminal court pursuant to section 5-805 of the Act. See Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-805 (West 2014)).

¶ 67 Defendant contends that the amendment to section 5-130(1)(a) applies retroactively to his case and that he must be resentenced in juvenile court, as the charged offenses now fall under the juvenile court's jurisdiction and the State never filed a petition to transfer his case. Defendant observes that the amendment to the Act is procedural. See *People v. Patterson*, 2014 IL 115102, ¶ 105 (recognizing that "the transfer statute is purely procedural"). Defendant also notes that section 5-130(1)(a) lacks a savings clause or other language that would limit its retroactive effect, whereas a savings clause does appear in both another amendment contained in the same

public act that amended section 5-805 and in a prior amendment to section 5-130(1)(a) itself.[7] According to defendant, the amendment to section 5-130(1)(a) would have included a similar savings clause had the legislature intended the provision only to apply prospectively, and as such the legislature clearly intended retrospective application of the amendment. Defendant finally contends that, even if no evidence of legislative intent is present, at the very least section 5-130(1)(a) must be "presumed to have been framed" in view of section 4 of the Statute on Statutes (*J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 31), which "represents a clear legislative directive as to the temporal reach of statutory amendments and repeals: those that are procedural in nature may be applied retroactively" (*Caveney*, 207 Ill. 2d at 92).

¶ 68 The State contends that the amended version of 5-130(1)(a) does not apply retroactively to defendant's case. According to the State, the amendment includes a delayed effective date that mandates its prospective application, as Public Act 99-258, section 5, which amended section 5-130(1)(a), was passed on May 31, 2015, but did not take effect until January 1, 2016. Therefore, the State submits that its failure to petition for defendant to be sentenced in criminal court is irrelevant because no petition was required under the version of section 5-130(1)(a) in effect at the time of defendant's trial and sentencing and the amendment does not apply retroactively. Additionally, the State argues that defendant's request for a new sentencing hearing, but not a transfer hearing under the amended, current language section 5-805, constitutes tacit acknowledgment that the legislature did not intend new transfer hearings for minors whose cases were already in the judicial system on January 1, 2016.

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[7]In relevant part, Public Act 99-258, section 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-805 (West 2014)), provides that the changes made to section 5-805 "apply to a minor who has been taken into custody on or after the effective date of this amendatory Act." The savings clause from the prior amendment to section 5-130 states that the changes made to this section by Public Act 98-61 apply to a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61). Pub. Act 98-61 (eff. Jan. 1, 2014).

¶ 69 We need not address all of these arguments to resolve this issue. Rather, to determine whether the amendment to section 5-130(1)(a) of the Act applies retroactively to defendant's case, we proceed under the same principles set forth in our analysis of section 5-4.5-105 of the Code.

¶ 70 Thus, following *Landgraf*, we must first consider whether the legislature "has clearly indicated the temporal reach of the amended statute," and give effect to that expression of legislative intent. *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29. In this case, the amendment to section 5-130(1)(a) contains no language indicating whether the legislature intended the amendment to apply retroactively or prospectively from the effective date of January 1, 2016. While defendant asks us to consider portions of other statutory provisions to determine the legislature's temporal intent, we again decline to do so in light of our supreme court's clear statement that we *must* determine "whether the text of the amended provision, itself, clearly expresses the legislature's intent that the amendment be given either prospective or retrospective application." *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 34.

¶ 71 However, even if we accepted defendant's argument that the amendment to section 5-130(1)(a) of the Act represents merely a procedural change that *may* be applied retroactively pursuant to section 4 of the Statute on Statutes, we would decline to do so here. Section 4, itself, indicates that proceedings following an amendment "shall conform, *so far as practicable*, to the laws in force at the time of such proceeding." (Emphasis added.) 5 ILCS 70/4 (West 2010). This court has previously held that this language did not require retroactive application of a prior amendment to a prior version of the transfer provision in the Act, where the amendment "became

effective prior to [defendant's] trial, although after [defendant's] transfer and indictment." *People v. Miller*, 31 Ill. App. 3d 436, 441 (1975). We come to a similar conclusion here.

¶ 72 Furthermore, "[e]ven if a statutory amendment is procedural, it may *not* be applied retroactively if the statute would have a retroactive impact." (Emphasis added.) *Schweickert v. AG Services of America, Inc.*, 355 Ill. App. 3d 439, 444 (2005). Thus, if applying the statute retroactively will have a retroactive impact in that it "will impair rights a party possessed when acting, increases a party's liability for past conduct, or impose new duties with respect to transactions already completed" "a court will presume that the statute does not govern absent clear legislative intent favoring such a result." *Allegis Realty Investors*, 223 Ill. 2d at 331 (citing *Landgraf*, 511 U.S. at 280); see also *Schweickert*, 355 Ill. App. 3d at 444 (recognizing that an amendment has an impermissible retroactive impact where it "attaches new legal consequences to events completed before the statute was changed").

¶ 73 Applying the amendment to section 5-130(1)(a) would clearly have a retroactive impact on this matter, as it would impose new duties with respect to transactions already completed and attach new legal consequences to events completed before the statute was changed. The offenses for which defendant was charged and convicted were subject to automatic transfer to criminal court and defendant was automatically subject to criminal sentencing prior to the changes made by Public Act 99-258. See 705 ILCS 405/5-130, 5-805 (West 2014). In the trial court, the State needed to take no action to accomplish these results in this case, a matter where defendant has already been tried, convicted, and sentenced in criminal court. Applying the amended language retroactively to this case would either require the State to file new petitions seeking criminal prosecution and sentencing on remand, or would result in significant legal consequences for its

failure to have done so previously. Even though defendant's appeal was pending when Public Act 99-258 was enacted, we decline to apply it retroactively to this matter in light of these retroactive impacts. See *People v. Yarbor*, 383 Ill. App. 3d 676, 684 (2008) (where, in a direct appeal, this court refused retroactive application of an amendment to Rule 431(b), which imposed duties on a trial court with respect to *voir dire*, because it would " 'impose new duties' on an already completed criminal prosecution" and subject "all pending direct appeals from a jury trial would be subject to reversal and a new trial").

¶ 74 In reaching this conclusion, we necessarily reject defendant's arguments that: (1) by applying the retroactive impact test, we are improperly invoking the second step of the *Landgraf* analysis in violation of our supreme court's precedent, and (2) we should follow the holding reached in *People v. Patterson*, 2016 IL App (1st) 101573-B, ¶ 23, in which another panel of this court concluded that the amendment to section 5–130 applies retroactively.

¶ 75 First, while our supreme court has noted that courts will "rarely" look beyond the first step of the *Landgraf* analysis in light of section 4 of the Statute on Statutes (*Caveney*, 207 Ill. 2d at 94), it has not indicated that the second step—considering any possible retroactive impact—is wholly irrelevant. Indeed, recent opinions from our supreme court clearly indicate that an analysis of potential retroactive impact remains an important consideration. See *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 23; *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29-30

¶ 76 Second, we respectfully disagree with the analysis in *Patterson*, 2016 IL App (1st) 101573-B. In finding that the amendments to section 5–130 apply retroactively, the *Patterson* court appears to have concluded that, under the section 4 of Statute on Statutes, procedural

amendments apply retroactively to *all cases* pending on direct appeal." *Id.*, ¶ 17. However, as discussed above, that section merely indicates that proceedings following an amendment "shall conform, *so far as practicable*, to the laws in force at the time of such proceeding." (Emphasis added.) 5 ILCS 70/4 (West 2010). Section 4 thus "represents a clear legislative directive as to the temporal reach of statutory amendments and repeals: those that are procedural in nature *may be* applied retroactively, while those that are substantive *may not*." (Emphases added.) *Caveney*, 207 Ill. 2d at 92. It does not *require* retroactive application of procedural amendments.

¶ 77 Moreover, in light of its apparent conclusion that retroactive application of the amendments to section 5–130 was mandatory, the *Patterson* court undertook no retroactive impact analysis. As demonstrated above, our own analysis of the amendments to section 5-130 demonstrates clear, impermissible retroactive impacts and preclude us from applying them in this case

¶ 78 D. Presentence Credit

¶ 79 Finally, defendant contends, and the State correctly concedes, that his mittimus must be corrected to reflect one additional day of credit for presentence incarceration. A defendant is entitled to credit for any part of a day he spent in custody up to, but not including, the day of sentencing. 730 ILCS 5/5-4.5-100(b) (West 2010); *People v. Williams*, 239 Ill. 2d 503, 505, 510 (2011). Here, the record establishes that defendant was arrested on May 17, 2011, and remained in custody until his sentencing on May 29, 2014, a total of 1108 days, excluding the day of sentencing. The trial court, however, granted defendant presentence incarceration credit for 1107 days. Remand is unnecessary, as this court may correct the mittimus at any time. *People v.*

*Anderson*, 2012 IL App (1st) 103288, ¶ 35. Accordingly, we direct the clerk of the circuit court to amend the mittimus to reflect 1108 days of presentence credit.

¶ 80 For the foregoing reasons, we affirm the judgment of the trial court and order the mittimus corrected.

¶ 81 Affirmed; mittimus corrected.

No.121306

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS )
V. )
KEVIN HUNTER )
Defendant

CASE NUMBER 11CR0938101
DATE OF BIRTH 04/05/95
DATE OF ARREST 05/17/11
IR NUMBER 1923835 SID NUMBER 011400741

# ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

| Count | Statutory Citation | Offense | Sentence | Class |
|---|---|---|---|---|
| 001 | 720-5/18-4(A)(4) | AGG VEHICLE HIJACKING/FIREARM | YRS. 021 MOS.00 | X |
| | and said sentence shall run concurrent with count(s) ___ ___ ___ ___ | | | |
| 002 | 720-5/10-2(A)(6) | AGG KIDNAPING ARMED W/FIREARM | YRS. 021 MOS.00 | X |
| | and said sentence shall run concurrent with count(s) ___ ___ ___ ___ | | | |
| 003 | 720-5/18-2(A)(2) | ARMED ROBBERY/ARMED W/FIREARM | YRS. 021 MOS.00 | X |
| | and said sentence shall run concurrent with count(s) ___ ___ ___ ___ | | | |
| ____ | _____ | _____ | YRS. ____ MOS. ___ | ____ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ____ | _____ | _____ | YRS. ____ MOS. ___ | ____ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 1107 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____
AND: consecutive to the sentence imposed under case number(s)
_____ _____ _____ _____ _____

IT IS FURTHER ORDERED THAT 3 YEARS MSR COUNTS 1 2 3 MERGE_____
BOND REVOKED REMANDED MITT TO ISSUE_____
_____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED MAY 29, 2014 ENTER: 05/29/14

CERTIFIED BY M MARYANN REYES
DEPUTY CLERK

ENTERED
MAY 29 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

JUDGE CLAY, EVELYN B. 1692

GCPP 05/29/14 12:21:59

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CCG N305

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

| | | | |
|---|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS | ) | | |
| | ) | No. | 11-CR-09381 |
| -vs- | ) | Trial Judge: | E. CLAY |
| | ) | Attorney: | SHARON SIMS |
| KEVIN HUNTER | ) | | |

## NOTICE OF APPEAL

An Appeal is taken from the order of judgment described below:
APPELLANT'S NAME: KEVIN HUNTER
IR# 1923835 D.O.B.: 04/05/95
APPELLANT'S ADDRESS: ILLINOIS DEPARTMENT OF CORRECTIONS
APPELLANT'S ATTORNEY: State Appellate Defender
ADDRESS: 203 N. LaSalle, 24th Floor, Chicago, IL 60601
OFFENSE: AGGRAVATED VEHICLE HIJACKING, AGGRAVATED KIDNAPPING, ARMED ROBBERY
JUDGEMENT: GUILTY
DATE: 05-29-14
SENTENCE: 21 YEARS ILLINOIS DEPARTMENT OF CORECTIONS

Sharon L Sims
APPELLANT'S ATTORNEY

## VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and the Appoint Counsel on Appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is unable to pay for the Record or appeal lawyer.

Sharon L Sims
APPELLANT'S ATTORNEY

## ORDER

IT IS ORDERED the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished appellant without cost within 45 days of receipt of this Order.

Dates to be transcribed;

PRE-TRIAL MOTION DATES(S): 04/02/13
JURY WAIVER DATE(S): N/A
TRIAL DATE(S): 11/14/13
SENTENCING DATE(S): 05/29/14
DATE: 06/03/14

FILED
JUN 03 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

OTHER:_____

ENTER: E Clay 1692
JUDGE

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**Report of Proceedings ("R")**

**Direct** **Cross** **Redir.** **Recr.**

2016 IL App (1st) 141500

FIFTH DIVISION
August 19, 2016

No. 1-14-1500

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 12 CR 19490 |
| | ) | |
| DRASHUN WILSON, | ) | The Honorable |
| | ) | Thaddeus L. Wilson, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justices Gordon and Burke concurred in the judgment and opinion.

## OPINION

¶ 1 Following a jury trial, defendant, Drashun Wilson, was found guilty of attempted first degree murder and aggravated battery with a firearm. The jury found that, during the attempted first degree murder, defendant personally discharged a firearm and proximately caused great bodily harm. Defendant was 17 years old at the time of the offense. He was subject to the 25-years-to-life firearm enhancement (720 ILCS 5/8-4(a), (c)(1)(D) (West 2012)) and was sentenced to the mandatory minimum 31 years' imprisonment. On appeal, defendant contends: (1) the newly enacted Public Act 99-69 (eff. Jan. 1, 2016) has retroactive application and entitles him to remand for a resentencing hearing; (2) the exclusive jurisdiction statute violates the eighth amendment; and (3) the 25-year mandatory firearm enhancement and truth-in-sentencing

provision violate the eighth amendment and proportionate penalties clause. Based on the following, we affirm.

¶ 2 FACTS

¶ 3 Briefly stated, the trial evidence demonstrated that, in the afternoon of September 23, 2012, defendant was with at least one other male near 59th Street and Wabash Avenue in Chicago, Illinois, when he raised a handgun and shot toward 59th Street. Defendant was wearing a blue Cubs jacket, a black skull cap, and blue jeans. At the time, Alvin Thomas was standing next to the alley adjacent to his apartment building located at 5927 South Wabash Avenue. Thomas observed the shooting. The State introduced video surveillance footage of the location and date in question. Thomas identified defendant as the individual on the video raising his hands and shooting, and then turning and running down the alley.

¶ 4 Floyd Fulton also testified that he was walking near 59th Street and Wabash Avenue at the time in question. When Fulton arrived at the alley of 59th Street, he observed "some little kids playing" in the alley. Fulton then observed an individual point at him. According to Fulton, he heard "bang, bang, bang" and saw "a little flash," so he ran down 59th Street toward Wabash Avenue. While running, Fulton felt something hot on his tongue and, after spitting an object out of his mouth, discovered that he was "bleeding compulsively." The police arrived minutes later and Fulton was transported to the hospital for treatment of a gunshot wound to the left cheek, which resulted in "comminuted fractures" of the middle and back corner of the sinus and skull bone.

¶ 5 Fulton was not able to identify the perpetrator of the offense, but Thomas positively identified defendant as the shooter during a show-up identification. Defendant was arrested and transported to the police station. A discharged bullet was recovered from the scene and

defendant's hands testified positive for gunshot residue. Defendant later provided an incriminating police statement.

¶ 6 Assistant State's Attorney Sarah Karr testified that defendant agreed to provide a typed statement. In his statement, defendant provided that, around 2:30 p.m. on September 23, 2012, he was with some friends in the neighborhood. He did not possess a weapon at the time; however, while they were walking in an alley near 59th Street and Wabash Avenue, someone named "Inkey" handed him a loaded handgun. As defendant walked down the alley, he observed an individual wearing all black pass the alley and "then c[o]me back and [start] looking down the alley at [defendant] and the group of people he was with." According to the statement, defendant was instructed by his friends to shoot the individual. Defendant stated that he had never shot a gun prior to the date in question, so he used both hands and aimed at the individual. Defendant shot the gun four times. Defendant stated that the individual ran, as did everyone in defendant's group. Defendant ran down the alley toward Wabash Avenue, at which point "he just threw the gun and kept going."

¶ 7 Defendant testified at trial that the typed police statement was false, denying any involvement in the shooting. Defendant acknowledged that, on the date in question, he was wearing a Cubs jacket and black skull cap. Defendant additionally acknowledged that the individual in the surveillance video also wore a Cubs jacket and black skull cap, but he denied that the individual in the video was him.

¶ 8 As stated, the jury found defendant guilty of attempted first degree murder, during which he personally discharged a firearm and proximately caused great bodily harm, and aggravated battery with a firearm. In subsequently sentencing defendant to the statutory minimum of 31

years' imprisonment on the attempted first degree murder count (the aggravated battery with a firearm count merged therein), the trial court stated that it considered:

> "the evidence at trial, the gravity of the offense, the presentence investigation report, the financial impact of incarceration, all evidence, information, and testimony in aggravation and mitigation, any substance abuse issues and treatment, the potential for rehabilitation, the possibility of sentencing alternatives, and all hearsay presented deemed relevant and reliable."

This timely appeal followed.

¶ 9 ANALYSIS

¶ 10 I. Public Act 99-69

¶ 11 Defendant first contends he is entitled to have his case remanded to the trial court for a resentencing hearing pursuant to the recently enacted Public Act 99-69. More specifically, defendant argues that Public Act 99-69, which became effective on January 1, 2016, should be applied retroactively to his case because its effective date was after his sentencing, but while his direct appeal was pending.

¶ 12 Public Act 99-69 provides:

> "(a) On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence:

(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider the risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;

(2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;

(3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(4) the person's potential for rehabilitation or evidence of rehabilitation, or both;

(5) the circumstances of the offense;

(6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;

(7) whether the person was able to meaningfully participate in his or her defense;

(8) the person's prior juvenile or criminal history; and

(9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor.

(b) Except as provided in subsection (c) [relevant to first degree murder convictions], the court may sentence the defendant to any disposition authorized for the class of the offense of which he or she was found guilty as described in Article 4.5 of this Code, and may, in its discretion, decline to impose any otherwise applicable sentencing enhancement based upon firearm possession, possession with personal discharge, or possession with personal discharge that proximately causes great bodily harm, permanent

disability, permanent disfigurement, or death to another person." Pub. Act 99-69, § 10 (eff. Jan. 1, 2016).

¶ 13 The question before this court requires us to construe Public Act 99-69. The primary objective of statutory construction is to ascertain and give effect to the legislature's intent. *In re A.A.*, 2015 IL 118605, ¶ 21. The most reliable indicator of the legislature's intent is the plain language of the statute. *Id.* Where the statutory language is clear and unambiguous, this court will enforce it as written and will refrain from reading into it exceptions, conditions, or limitations not expressed therein. *Id.* Statutory construction presents a question of law, which we review *de novo*. *Id.*

¶ 14 In order to determine whether a statute may be applied retroactively, as opposed to prospectively, the Illinois Supreme Court has adopted the approach established by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 23 (citing *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001)). Our supreme court advised:

> "Under *Landgraf*, if the legislature has clearly prescribed the temporal reach of the statute, the legislative intent must be given effect absent a constitutional prohibition. Where there is no express provision regarding the temporal reach, the court must determine whether applying the statute would have a 'retroactive' or 'retrospective' impact; that is, 'whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.' [Citation.] Where there would be no retroactive impact, as defined in *Landgraf*, the court may apply the statute to the parties. [Citation.] However, if applying

the statute would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied. [Citation.]" *Hayashi*, 2014 IL 116023, ¶ 23.

¶ 15 Defendant argues that the language of Public Act 99-69 demonstrates the legislature's intent for a trial court to follow the newly outlined procedures at any sentencing hearing occurring on or after the effective date of the statute. Defendant contends that the statute does not place any temporal restrictions on the occurrence of the offense, so long as the defendant is sentenced in 2016 and was 17 years of age when the offense was committed. Because his case was pending on direct appeal and he was 17 years old at the time of the offense, defendant maintains that he is entitled to a new sentencing hearing.

¶ 16 After applying the *Landgraf* test to Public Act 99-69, we conclude that, based on its plain language, the legislature indicated a prospective application of the statute. The language of Public Act 99-69 demonstrated its temporal reach by stating, in relevant part, that "on or after the effective date," when an individual "commits an offense" and was under the age of 18 at the time it was committed, the sentencing court must consider the additional mitigating factors listed and could decline to impose any otherwise applicable firearm sentencing enhancement. Public Act 99-69 was filed on February 17, 2015, as House Bill 2471, and signed into law on July 20, 2015, with the effective date of January 1, 2016. See *Landgraf*, 511 U.S. at 257 ("[a] statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date"). Therefore, the statute provides that a sentencing court's application of the additional mitigating factors and discretion to decline imposition of an applicable firearm enhancement will take place when an individual that is under 18 years of age "commits" the offense on or after January 1, 2016. Contrary to defendant's

interpretation, the use of the present tense "commits" immediately following the temporal element demonstrates the legislature's intent that the statute apply to offenses committed after the effective date. *Cf. Hayashi*, 2014 IL 116023, ¶ 17 (term "has been convicted" demonstrated the legislature's intent that the statute apply to convictions occurring before the effective date). In sum, we find Public Act 99-69 solely applies prospectively and not retroactively.

¶ 17 Because we have concluded that the temporal reach of the statute was clearly demonstrated by the legislature, we need not turn to the alternative statutory sources suggested by defendant. Section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2012)), controls by default only in cases where the legislature has not clearly defined the temporal reach of the statute at issue. *Hayashi*, 2014 IL 116023, ¶ 24. In instances where the temporal reach is clearly indicated by the legislature, such as here, section 4 is inapplicable. *Id.* Similarly, the savings clause of the Civil Administrative Code of Illinois (20 ILCS 5/5-95 (West 2012)) is inapplicable to our analysis. *Hayashi*, 2014 IL 116023, ¶ 24.

¶ 18 II. Constitutional Arguments

¶ 19 Defendant next contends the exclusive jurisdiction statute and application of the 25-year mandatory firearm enhancement and truth-in-sentencing provision to his sentence violate the eighth amendment and proportionate penalties clause where, as a 17-year-old, he was automatically tried and sentenced as an adult absent consideration of his youthfulness and its attendant circumstances.

¶ 20 The eighth amendment, which is applicable to the states through the fourteenth amendment (see *Robinson v. California*, 370 U.S. 660, 666 (1962)), provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const., amend. VIII. The eighth amendment, also known as the cruel and unusual

punishment clause, has been interpreted by the Supreme Court as prohibiting "inherently barbaric punishments" in addition to those that are disproportionate to the offense. *Graham v. Florida*, 560 U.S. 48, 59 (2010). In turn, article I, section 11, of the Illinois Constitution of 1970, also known as the proportionate penalties clause, provides: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11.

¶ 21 A. Exclusive Jurisdiction

¶ 22 Defendant argues that, pursuant to the United States Supreme Court decisions of *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham*, and *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), the Illinois exclusive jurisdiction statute applicable to his case (705 ILCS 405/5-120 (West 2012)) was cruel and unusual in violation of the eighth amendment.

¶ 23 Section 5-120 of the Juvenile Court Act of 1987 provided, at the relevant time[1]:

> "Exclusive jurisdiction. Proceedings may be instituted under the provisions of this Article concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance, and any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance classified as a misdemeanor offense." 705 ILCS 405/5-120 (West 2012).

In other words, under the Illinois exclusive jurisdiction statute relevant to this case, 17-year-old felony offenders were excluded from the juvenile court system.

[1]This statute was amended effective January 1, 2014, to grant juvenile courts jurisdiction over any minor under the age of 18 who is charged with a felony.

¶ 24 The law is clear that a statute is presumed to be constitutional, and the party challenging it bears the burden of demonstrating its invalidity. *Hayashi*, 2014 IL 116023, ¶ 22. Moreover, where reasonably possible, we must construe a statute so as to affirm its validity and constitutionality. See *People v. Greco*, 204 Ill. 2d 400, 406 (2003). Whether a statute is constitutional raises a question of law, which we review *de novo*. *People v. Graves*, 207 Ill. 2d 478, 482 (2003).

¶ 25 As stated, defendant's argument is based primarily on *Roper*, *Graham*, and *Miller*. In *Roper*, the Supreme Court held that the eighth amendment bars capital punishment for juvenile offenders under the age of 18. *Roper*, 543 U.S. at 568. In reaching its conclusion, the Supreme Court identified the key differences between juveniles and adults, such that juveniles lack maturity and have an underdeveloped sense of responsibility, are more vulnerable to negative influences and outside pressures, and have a less developed character. *Id.* at 569-70. The Court stated that juveniles have a "diminished culpability" and, thus, the "penalogical justifications for the death penalty apply to them with lesser force than to adults." *Id.* at 571. Five years later, in *Graham*, the Supreme Court held that a sentence of life without the possibility of parole violates the eighth amendment when imposed on juvenile offenders who commit nonhomicide offenses. *Graham*, 560 U.S. at 74-75. The *Graham* Court found that life without parole is the "second most severe penalty permitted by law" (internal quotation marks omitted) and "improperly denies the juvenile offenders a chance to demonstrate growth and maturity." *Id.* at 69, 73. Finally, most recently in *Miller*, the Supreme Court held that the eight amendment prohibits a sentencing scheme that mandates life in prison without parole for juvenile offenders, even for those convicted of homicide offenses. *Miller*, 567 U.S. ___, 132 S. Ct. 2455. The Supreme Court reasoned that mandatory life without parole penalties "by their nature, preclude a sentencer from

taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at ___, 132 S. Ct. at 2467. The Court added that "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id.* at ___, 132 S. Ct. at 2469.

¶ 26 Defendant argues that these three Supreme Court opinions demonstrate that the Illinois exclusive jurisdiction statute violated the eighth amendment where it automatically subjected all 17-year-old felony offenders to prosecution and sentencing as adults. Defendant acknowledges his argument was considered and rejected in *People v. Harmon*, 2013 IL App (2d) 120439, but he maintains that case was wrongly decided and lacks applicability to his case because *Harmon* was based on the automatic transfer statute for 15- and 16-year-old offenders and did not consider the imposition of the mandatory firearm enhancement or the truth-in-sentencing provision. Moreover, defendant argues that *Harmon* lacks binding precedential value because it is a Second District case. Defendant additionally acknowledges that in *People v. Patterson*, 2014 IL 115102, the Illinois Supreme Court rejected a challenge to the automatic transfer statute, concluding that neither the eighth amendment nor the proportionate penalties clause was implicated because the statute itself did not impose a penalty. Defendant maintains that, to the extent the *Patterson* holding can be applied to the exclusive jurisdiction statute, it was wrongly decided.

¶ 27 Keeping the presumptive constitutionality of the statute in mind and defendant's burden to demonstrate its invalidity, we conclude that the exclusive jurisdiction provision applicable to this case did not violate the eighth amendment. Similar to the reasoning employed in *Harmon*, we note that *Roper*, *Graham*, and *Miller* stand for the proposition that a sentencing body must have a chance to take into account mitigating circumstances, *i.e.*, a juvenile's age and the

attendant circumstances, before sentencing the juvenile to the "harshest possibility penalty." (Internal quotation marks omitted.) *Harmon*, 2013 IL App (2d) 120439, ¶ 54. Neither of the harshest possible penalties, *i.e.*, the death penalty and life imprisonment without the possibility of parole, were at issue in *Harmon* nor in this case. Moreover, the record shows that the trial court considered all of the factors in aggravation and mitigation, as well as the presentence investigation report and all evidence presented to the court prior to sentencing him to the statutory minimum prison term. The trial court, therefore, considered defendant's age and the attendant circumstances in fashioning his sentence. See *id.*

¶ 28 Furthermore, in *Patterson*, our supreme court rejected a similar eighth amendment challenge, albeit to the automatic transfer provision. The automatic transfer provision of the Juvenile Act allows 15 and 16 year olds who are charged with first degree murder and other violent crimes to be automatically tried in adult criminal court. 705 ILCS 405/5-130 (West 2012). In rejecting the defendant's eighth amendment and proportionate penalties claims and the defendant's reliance on *Roper*, *Graham*, and *Miller*, the supreme court found that the automatic transfer statute is not a sentencing statute, and that access to juvenile courts is not a constitutional right because the Illinois juvenile court system is a creature of the legislature. *Patterson*, 2014 IL 115102, ¶ 97. In addition, the *Harmon* court cited *People v. Salas*, 2011 IL App (1st) 091880, and *People v. Pacheco*, 2013 IL App (4th) 110409, both pre-*Patterson* cases, and found the reasoning that applied in those cases in holding the automatic transfer provision did not violate the eighth amendment, namely, that the provision is not subject to the eighth amendment because it does not impose a "punishment" but rather specifies the forum for adjudicating the defendant's guilt, applied with equal force to the exclusive jurisdiction provision. *Harmon*, 2013 IL App (2d) 120439, ¶ 55. We agree with *Harmon* that the reasoning of *Patterson* regarding the automatic

transfer provision equally applies to the exclusive jurisdiction provision where the two provisions have the same effect, namely, certain juveniles are automatically tried as adults. In other words, the exclusive jurisdiction provision is also procedural, in that it specifies the forum where a defendant will be tried. The challenged statute, therefore, does not impose punishment. As a result, defendant's eighth amendment challenge to the exclusive jurisdiction provision must fail.

¶ 29 B. Automatic Imposition of Adult Sentencing Statutes

¶ 30 Defendant additionally contends that, as a result of the application of the exclusive jurisdiction provision, the automatic imposition of the adult firearm enhancement statute and the truth-in-sentencing provisions violated his eighth amendment rights and the proportionate penalties clause.

¶ 31 1. Eighth Amendment

¶ 32 Pursuant to section 8-4(a), (c)(1)(D) of the Criminal Code of 2012 (Criminal Code), defendant was subject to a mandatory 25-years-to-life firearm enhancement. See 720 ILCS 5/8-4(a), (c)(1)(D) (West 2012). This enhancement was added to the Class X sentence of not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012). Additionally, the truth-in-sentencing statute applied to defendant, such that he was required to serve 85% of his sentence. 730 ILCS 5/3-6-3(a)(2)(ii) (West 2012).

¶ 33 In *People v. Miller*, 202 Ill. 2d 328, 336 (2002) (*Leon Miller*), our supreme court instructed that:

> "We have repeatedly recognized that the legislature has discretion to prescribe penalties for defined offenses. [Citation.] The legislature's discretion necessarily includes the power to prescribe mandatory sentences, even if these mandatory sentences restrict

> the judiciary's discretion in imposing sentences. [Citation.] However, the power to impose sentences is not without limitation; the penalty must satisfy constitutional constrictions."

¶ 34 We are reminded that *Miller* merely stands for the proposition that the State cannot impose the mandatory penalty of life imprisonment without the possibility of parole on a juvenile without permitting the sentencing authority to take the defendant's youth and other attendant circumstances into consideration. *Miller*, 567 U.S. ___, 132 S. Ct. 2455. Illinois courts have repeatedly been asked to extend *Miller*'s prohibition on mandatory life sentences for juvenile offenders to mandatory term-of-years sentences imposed upon juveniles, even sentences of such length that they could arguably be described as *de facto* life sentences. Our courts consistently have rejected those requests. See *Patterson*, 2014 IL 115102, ¶¶ 107-11; *People v. Pace*, 2015 IL App (1st) 110415, ¶¶ 131-34; *People v. Reyes*, 2015 IL App (2d) 120471, ¶¶ 22-25, *appeal allowed*, No. 119271 (Ill. Sept. 30, 2015); *People v. Cavazos*, 2015 IL App (2d) 120444, ¶¶ 87-88; *People v. Banks*, 2015 IL App (1st) 130985, ¶¶ 20-24. The only contrary decisions appear to be *People v. Gipson*, 2015 IL App (1st) 122451, and *People v. Nieto*, 2016 IL App (1st) 121604.

¶ 35 For the reasons recited therein, we align ourselves with the decisions rejecting such an extension of *Miller*. Accordingly, until the Illinois or United States Supreme Court rules otherwise, we will continue to follow the line of cases limiting *Miller* to instances of mandatory life imprisonment without the possibility of parole. See *Pace*, 2015 IL App (1st) 110415, ¶ 134. In this case, the trial court had discretion to impose a sentence between 31 years and 55 years. As defendant concedes, his sentence did not amount to life imprisonment without the possibility of parole. We, therefore, conclude defendant failed to satisfy his burden of persuading this court

that his eighth amendment rights were violated when he was sentenced to the minimum of 31 years' imprisonment.

¶ 36 We note that, in enacting Public Act 99-69, the legislature has provided a means by which the trial court can consider the characteristics of juvenile offenders before subjecting them to adult criminal prosecution and sentencing. The creation of this new statute, however, does not render the firearm enhancement and truth-in-sentencing statutes unconstitutional.

¶ 37 2. Proportionate Penalties Clause

¶ 38 We next consider defendant's argument that his sentence is unconstitutional under the proportionate penalties clause of the Illinois Constitution. There has been some debate regarding whether the proportionate penalties clause offers defendants greater protections than the eighth amendment. In *Pace*, this court considered the competing arguments and held, based on the relevant law, that, when a punishment has been imposed, the proportionate penalties clause provides greater protection. *Id.* ¶ 139. As a result, we will independently analyze whether defendant's sentence violates the proportionate penalties clause.

¶ 39 To succeed in a proportionate penalties claim, a defendant must show either that the penalty is degrading, cruel, "or so wholly disproportionate to the offense that it shocks the moral sense of the community," or that another offense containing the same elements has a different penalty. (Internal quotation marks omitted.) *Gipson*, 2015 IL App (1st) 122451, ¶ 69.

¶ 40 In *People v. Sharpe*, 216 Ill. 2d 481, 525 (2005), the supreme court found the firearm enhancement statute did not violate the proportionate penalties clause, explaining:

> "it would not shock the conscience of the community to learn that the legislature has determined that an additional penalty ought to be imposed when murder is committed

with a weapon that not only enhances the perpetrator's ability to kill the intended victim, but also increases the risk that grievous harm or death will be inflicted upon bystanders."

While *Sharpe* did not involve the application of the firearm enhancement statute to a juvenile conviction of attempted murder, as in the case before us, it is relevant to note the supreme court has determined that subjecting defendants guilty of crimes involving firearms to substantial mandatory minimum sentences does not shock the moral sense of the community. See *Pace*, 2015 IL App (1st) 110415, ¶ 141.

¶ 41 Defendant argues that his sentence shocked the moral sense of the community where he was just over 17 years old at the time of the shooting, had no prior convictions, had a supportive family, had never shot a gun prior to the offense, and was peer pressured by friends to shoot the victim on the date in question. Defendant's argument primarily relies on *Leon Miller* and *Gibson* for support.

¶ 42 In *Leon Miller*, a juvenile defendant was sentenced to life without parole, which was found to violate the proportionate penalties clause because the sentence "grossly distort[ed] the factual realities of the case and [did] not accurately represent [the] defendant's personal culpability such that it shocks the moral sense of community." *Leon Miller*, 202 Ill. 2d at 341. In so finding, the Illinois Supreme Court determined that, when combined, the automatic transfer statute, the accountability statute, and the multiple-murder sentencing statute prevented the trial court from considering the actual facts of the crime, *i.e.*, the age of the defendant at the time of the offense and the defendant's culpability. *Id.* (identifying the defendant as "the least culpable offender imaginable," in that he was 15 years old at the time and agreed to serve as a lookout when approached by two individuals who, within one minute, open fired, killing two people). In *Gipson*, this court reversed a 52-year prison term of a juvenile defendant convicted of attempted

murder, finding the sentence violated the proportionate penalties clause because the sentence failed to consider the defendant's age and mental disorders. *Gipson*, 2015 IL App (1st) 122451, ¶ 75. The case was remanded with instructions to conduct a retroactive fitness hearing and, in the event the defendant was found fit to stand trial, he should be resentenced without applying the firearm enhancement. *Id.* ¶¶ 38, 69, 78.

¶ 43 We find *Leon Miller* and *Gipson* are distinguishable. *Leon Miller* and *Gipson* both limited their holdings to the facts of those cases. In fact, the supreme court did not announce a "blanket rule of law." *Pace*, 2015 IL App (1st) 110415, ¶ 145. Moreover, in this case, the evidence demonstrated that defendant did not act as a lookout, merely having one minute to contemplate his actions before the offense. Nor was there a question of defendant's mental fitness. Instead, the evidence demonstrated that defendant pursued the victim down an alley, raised his firearm, and shot at the victim four times before fleeing. Although there were certain mandatory aspects of defendant's sentence, namely, mandatory minimum sentencing and truth-in-sentencing, the trial court retained wide latitude to fashion a sentence. As previously discussed, the trial court exercised that discretion by sentencing defendant to the mandatory minimum of 31 years' imprisonment. Ultimately, we conclude that defendant's sentence in this case did not violate the proportionate penalties clause.

¶ 44 We are unpersuaded by defendant's reliance on an Iowa Supreme Court case finding that all mandatory minimum juvenile sentences are unconstitutional. See *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014). The Iowa Supreme Court has interpreted *Miller* more broadly than our courts. The decisions of foreign courts are not binding on Illinois courts. See *People v. Reese*, 2015 IL App (1st) 120654, ¶ 70. Instead, we are required to follow our supreme court precedent,

which has interpreted *Roper*, *Graham*, and *Miller* to apply "only in the context of the most severe of all criminal penalties." *Patterson*, 2014 IL 115102, ¶ 110.

¶ 45 CONCLUSION

¶ 46 Based on the foregoing, we find Public Act 99-69 does not apply to defendant's sentence, which we conclude was constitutional.

¶ 47 Affirmed.

Defendant

DATE OF ARREST 09/23/12
IR NUMBER 2173305 SID NUMBER 021945741

# ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

| Count | Statutory Citation | Offense | Sentence | Class |
|---|---|---|---|---|
| 002 | 720 - 5/8-4(A)(720-5 | (ATT) ATTEMPT MURDER/INTENT TO | YRS. 031 MOS.00 | X |
| | and said sentence shall run concurrent with count(s) ___ ___ ___ ___ | | | |
| ___ | _____ | _____ | YRS. ___ MOS. ___ | ___ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ___ | _____ | _____ | YRS. ___ MOS. ___ | ___ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ___ | _____ | _____ | YRS. ___ MOS. ___ | ___ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ___ | _____ | _____ | YRS. ___ MOS. ___ | ___ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0586 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____
AND: consecutive to the sentence imposed under case number(s)
_____ _____ _____ _____ _____

IT IS FURTHER ORDERED THAT COUNT 4 TO MERGE WITH COUNT 2.DNA ORDER.DAAR.3YRS MSR.MITT TO ISSUE _____
_____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

ENTERED
JUDGE THADDEUS L. WILSON-1976
MAY 02 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

DATED MAY 02, 2014 ENTER: 05/02/14

CERTIFIED BY M MIXON
DEPUTY CLERK

JUDGE: WILSON THADDEUS L 1976

GCPH 05/02/14 10:27:48 CCG N305

A-61

TO THE _____ COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL BUREAU

PEOPLE OF THE STATE OF ILLINOIS

v.

Dershawn Wilson

Case No. 12CR1949001
Trial Judge Judge Wilson
Court Reporter
Attorney Marshall Weinberg
Appeal Check Date
Appeal Bond None

FILED
JUDGE THADDEUS L. WILSON-1976
MAY 02 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

## NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:
Appellant's Name: Dershawn Wilson
Appellant's Address: CCJ
Appellant's Attorney: Marshall Weinberg
Address: 1021 W Adams
Offense: Att Murder
Judgment: Guilty of Att Murder
on a Jury Trial
Date:
Sentence: 31 yrs IDoc
Date Notice Filed: 5/2/14

Dershawn Wilson
By M Weinberg atty
Appellant

## VERIFIED PETITION FOR REPORT OF PROCEEDINGS AND COMMON LAW RECORD

Under Supreme Court Rules 605-608 Appellant requests the Court to order; (1) the Official Court Reporter to transcribe an original and the copy of the proceedings, file the original with the Clerk and deliver the copy to the Appellant, or upon Appellant's written request to the Appellant's attorney of record, and (2) the Clerk to prepare the Record on Appeal.

The Appellant, being duly sworn, states that at the time of his/her conviction, s/he was and s/he now is unable to pay for the Record or an appellate lawyer.

*Dershawn Wilson
Appellant

SUBSCRIBED and SWORN TO before me this _____ day of _____, _____

Notary Public

## ORDER

IT IS ORDERED; 1. The State appellate Defender appointed as counsel on appeal, and 2. the Record and Report of Proceedings be furnished to appellant without fees.

3/11/14, 3/12/14, [illegible], _____
3/13/14, _____, _____
_____, _____, _____

DATE: May 2, 2014 ENTER: _____ 1976
Judge Judge's No.

I acknowledge receipt: _____ Court Reporter

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

A-62

C 00135