

NOTICE

Decision filed 06/27/23. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-23-0176

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

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

<i>In re</i> JOSIAH L., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Coles County.
	)	
Petitioner-Appellee,	)	
	)	No. 17-JD-38
v.	)	
	)	
Josiah L.,	)	Honorable
	)	Matthew L. Sullivan,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE BOIE delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 The respondent, Josiah L., appeals the circuit court's order granting the State's petition to revoke the stay on and execute his adult sentence of 25 years' imprisonment based on his having committed a new offense. The respondent has filed a motion for summary relief arguing that the court's order should be reversed because, even assuming he had committed a new offense, he was no longer subject to the adult sentence where he completed his juvenile sentence before the commission of the new offense. The State has advised this court via letter that it does not object to the respondent's motion. For the following reasons, we reverse the circuit court's judgment and vacate the respondent's sentence.

¶ 2 In 2017, the State filed a petition seeking to have the respondent adjudicated delinquent alleging that while at school, the respondent, who was 14 years old at the time, committed the

offense of aggravated battery with a firearm in that he shot D.D., whom he knew to be a fellow student, with a handgun. The respondent subsequently admitted the allegations of the petition and was committed to the Illinois Department of Juvenile Justice (Department) for an indeterminate term, not to exceed his twenty-first birthday. The court also imposed a stayed adult sentence of 25 years' imprisonment based on its previous designation of the cause as an extended jurisdiction juvenile proceeding (705 ILCS 405/5-810 (West 2016)). As a result of this conviction, the respondent was subject to the registration requirements of the Murderer and Violent Offender Against Youth Registration Act (Registration Act) (730 ILCS 154/10(a) (West 2016)), which required him to register his address with local law enforcement annually or anytime his address changed.

¶ 3 On March 2, 2020, the Department released the respondent into aftercare. In accordance with the Registration Act, the respondent registered his grandparents' home in Toledo, Illinois, as his place of residence. On October 23, 2020, the respondent received a letter from the Department congratulating him on having completed aftercare and advising him that he had been discharged from the Department.

¶ 4 On March 2, 2021, the respondent again registered his grandparents' home as his place of residence. On December 14, 2021, detective Alex Hesse of the Mattoon Police Department learned that the respondent had been seen at a basketball game in Mattoon, Illinois. Hesse began an investigation into the respondent's place of residence and learned that he had registered his grandparents' home as his place of residence. Hesse contacted the respondent's grandfather, Randy Carlsen. According to Hesse, Carlsen told him that the respondent had moved back to his parents' home in Mattoon, Illinois, several months earlier.

¶ 5 Upon learning that Hesse was looking for him, the respondent voluntarily went to the Mattoon Police Department. He told police that his registered address was his grandparents' home, but he had been staying with his parents out of convenience because he was working for his stepfather. The respondent was arrested and charged with failing to notify police of a change in address, in violation of the Registration Act.

¶ 6 On December 17, 2021, the State filed a petition to revoke the stay of the respondent's adult sentence. Attached to the petition was Hesse's affidavit wherein he stated that the respondent had told him that he had been staying with his parents in Mattoon "since around October 23, 2020."

¶ 7 A hearing on the petition was held on April 22, 2022. Detective Hesse testified that he began an investigation into the respondent on December 14, 2021, after learning that he had been seen at a basketball game in Mattoon, Illinois. Hesse was aware of the respondent's conviction for aggravated battery with a firearm and that, as a result of that conviction, the respondent was required by the Registration Act to register his address annually with local law enforcement. Upon learning that the respondent had registered his grandparents' home in Toledo, Illinois, as his address, Hesse contacted the respondent's grandfather, Randy Carlsen. Carlsen told Hesse that the respondent no longer lived there and that he had been living with his parents in Mattoon for the past several months. Hesse further testified that the respondent subsequently came to the police department and spoke with him. The respondent told Hesse that his registered address was his grandparents' home in Toledo, Illinois, but that he had been staying at his parents' house in Mattoon since "October of 2020."

¶ 8 The respondent testified that on March 2, 2020, he was released "on parole." The respondent registered with local law enforcement and gave his grandparents' address as his place of residence. The respondent also began working for his stepfather, who lived in Mattoon. The

respondent's stepfather would pick him up from his grandparents' home and bring him back after work. The respondent never stayed overnight at his parents' house while on parole. The respondent testified that he was "released from parole" on October 23, 2020. After that, the respondent often spent the night at his parents' house after working because it was more convenient.

¶ 9 At the conclusion of the hearing, the court found that the State had proved, by a preponderance of the evidence, that the respondent had committed the offense of failing to register a change of address, as required by the Registration Act. Accordingly, the court lifted the stay on the respondent's 25-year sentence. This appeal followed.

¶ 10 In his motion for summary relief, the respondent argues that, even assuming that he had violated the Registration Act, he was no longer subject to the 25-year adult sentence where he had completed his juvenile sentence and had been discharged from aftercare before he was alleged to have committed that offense. The respondent seeks a reversal of the circuit court's order vacating the stay of his 25-year adult sentence and vacatur of that sentence. As noted above, the State has advised this court that it does not object to the respondent's motion.

¶ 11 The respondent was adjudicated delinquent in an extended jurisdiction juvenile prosecution pursuant to section 5-810 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-810 (West 2016)). Section 5-810(4) of the Act states:

“(4) Sentencing. If an extended jurisdiction juvenile prosecution *** results in a guilty plea, a verdict of guilty, or a finding of guilt, the court shall impose the following:

(i) one or more juvenile sentences under Section 5-710; and

(ii) an adult criminal sentence ***, the execution of which shall be stayed on the condition that the offender not violate the provisions of the juvenile sentence.”

Id. § 5-810(4).

Section 5-810(6) provides that if a minor convicted in an extended jurisdiction juvenile prosecution is alleged to have committed a new offense, the State may file a petition to revoke the stay of the adult sentence. *Id.* § 5-810(6). If, after a hearing, the court finds by a preponderance of the evidence that the minor has committed a new offense, the court shall order the execution of the previously stayed adult offense. *Id.* Section 5-810(7) of the Act provides that “[u]pon successful completion of the juvenile sentence the court shall vacate the adult criminal sentence.” *Id.* § 5-810(7).

¶ 12 Section 5-710(1) of the Act sets forth the kinds of sentencing orders that may be imposed upon delinquent minors who have been made wards of the court. *Id.* § 5-710(1). Subsection (1)(b) provides that a minor between the ages of 13 and 19 who has been made a ward and has been found guilty of a felony may be committed to the Department under section 5-750. *Id.* § 5-710(1)(b). Section 5-750(3) provides that “the commitment of a delinquent to the Department of Juvenile Justice shall be for an indeterminate term which shall automatically terminate upon the delinquent attaining the age of 21 years *** unless the delinquent is sooner discharged from aftercare release.” *Id.* § 5-750(3).

¶ 13 The sentence imposed on the respondent consisted of a juvenile sentence and a stayed adult sentence of 25 years’ imprisonment. The juvenile sentence consisted of commitment to the Department until he reached the age of 21 years or until he was discharged from aftercare release. The respondent was discharged from aftercare release on October 23, 2020. By virtue of section 5-750(3), the respondent’s juvenile sentence ended on that date and, pursuant to section 5-810(7),

his adult sentence should have been vacated. Because his alleged violation of the Registration Act occurred after October 23, 2020, the circuit court erred in lifting the stay on and ordering execution of the adult sentence.

¶ 14 For the foregoing reasons, and pursuant to Supreme Court Rule 23(c)(8) (eff. Feb. 1, 2023), we reverse the circuit court's order revoking the stay on the respondent's adult sentence of 25 years' imprisonment and we vacate that sentence.

¶ 15 Order reversed; sentence vacated.