Circuit Court for Harford County
Case No. 12-K-17-001195

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0844

September Term, 2019

ANDREW PHILLIP ZARAGOZA

v.

STATE OF MARYLAND

Arthur,
Leahy,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 15, 2021

On July 20, 2017, 16-year-old Andrew Zaragoza killed his mother, Donna Zaragoza. Zaragoza was charged with one count of first-degree murder and two counts of openly carrying a dangerous weapon with the intent to injure.

Before trial, Zaragoza moved to transfer his case from the circuit court to the juvenile court. The circuit court denied his motion, citing Maryland Code (2001, 2018 Repl. Vol.), § 4-202(c)(2) of the Criminal Procedure Article ("CP"), which forbids a circuit court from transferring a criminal case to a juvenile court when the alleged crime is first-degree murder and the defendant was 16 or 17 years old when the alleged crime was committed. In his motion, Zaragoza acknowledged that CP § 4-202(c)(2) barred the transfer, but argued that he was entitled to a "transfer hearing" under the Due Process Clause of the United States Constitution and the Maryland Declaration of Rights.

At trial before the Circuit Court for Harford County, Zaragoza argued that he had acted in self-defense and that he suffered from battered child syndrome, resulting from years of physical, emotional, and sexual abuse by his mother. The jury acquitted Zaragoza of first-degree murder, but found him guilty of second-degree murder and both counts of openly carrying a dangerous weapon with the intent to injure.

Zaragoza petitioned to transfer jurisdiction to the juvenile court for sentencing. The circuit court denied his petition, citing CP § 4-202.2(a), which bars criminal courts from transferring a case to the juvenile court for sentencing if the juvenile defendant was 16 years old or older at the time of the offense and was convicted of second-degree murder. In his petition, Zaragoza again acknowledged that the statute barred the transfer to the juvenile court, but argued that CP § 4-202.2(a) violated the Due Process Clause

and the Equal Protection Clause of the United States Constitution and the analogous provision of the Maryland Declaration of Rights.

The circuit court sentenced Zaragoza to 30 years of incarceration, with all but 15 years suspended.

Zaragoza appeals, arguing that the court violated his due process and equal protection rights in denying his requests for a pre-trial and pre-sentencing transfer hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In this appeal, Zaragoza does not deny that he killed his mother. Nor does the State deny that Zaragoza suffered abuse at the hands of his mother, and his late father, since early childhood. As the appeal solely concerns the constitutionality of the Maryland statutes that preclude the juvenile court from exercising jurisdiction over certain cases involving juveniles, we shall summarize the facts in brief.

In the early morning of July 20, 2017, Zaragoza sent text messages to a friend. One read, "Mom is dead." Another read: "My life has been a ride but I've let it all out. It's over. Maybe I'll get a chance at rebirth."

The friend called 911. The Harford County Sheriff's Department responded to Zaragoza's townhouse. Upon their arrival, the law enforcement officers found Donna Zaragoza on the floor of her bedroom. Paramedics confirmed that she was dead.

The officers found Zaragoza locked in his bedroom. They asked Zaragoza if he was injured. He told them that he had stabbed himself and had ingested bleach. He also told them that he had killed his mother and that he wanted to die. He surrendered his

knife and opened the door. After the paramedics treated his wounds, the officers handcuffed Zaragoza and transported him to the hospital for further treatment. On August 8, 2017, Zaragoza was indicted on charges of first-degree murder and two counts of openly carrying a dangerous weapon with the intent to injure.

On September 8, 2017, Zaragoza filed a motion to transfer the case to the juvenile court. In his motion, Zaragoza acknowledged that a transfer was statutorily precluded by CP § 4-202(c)(2). Nevertheless, he argued that the circuit court should hold a "transfer hearing" because, he said, the statute was an "unconstitutional violation of the Due Process Clauses of the 5th and 14th Amendments to the United States Constitution and Article 24 of the Maryland Declaration of Rights."

The circuit court held a hearing on December 11, 2017, to consider Zaragoza's motion. At the hearing, counsel for Zaragoza conceded that he did not have a "right to be tried as a juvenile."[1] Instead, counsel maintained that Zaragoza had a right to a "transfer hearing," at which the court could "consider his youth, age, and [his] characteristics" before deciding his transfer request. She argued that Zaragoza had a "liberty interest in having his youth and attendant circumstances or characteristics be considered by" the circuit court. CP § 4-202 "ran afoul of the due process clause," she argued, because it interfered with Zaragoza's asserted liberty interest.

[1] Counsel was correct. *In re Samuel M.*, 293 Md. 83, 95 (1982) (stating that "there is no constitutional right to be treated as a juvenile"); *accord Miles v. State*, 88 Md. App. 360, 390 (1991); *see also* note 6, below.

The motions court asked defense counsel to identify any "specific authority" that would allow the court to "hold a transfer hearing to ultimately make the determination of whether or not to keep the individual in circuit court or to transfer [the case] to juvenile court." Defense counsel responded that "[t]his is a case of first impression, so there's no specific authority one way or the other."

The motions court determined that, because Zaragoza was 16 years old and was charged with first-degree murder, "the jurisdiction of this case lies with the circuit court and not the juvenile court as set forth in [CP §] 4-202(c)." The court further determined that Zaragoza did not have a constitutional right to a transfer hearing and that his due process rights "remain fully intact." Thus, the court denied the motion.

At trial, Zaragoza advanced a theory of self-defense. He testified that, on the night of the murder, his mother had returned home late at night. It was apparent she had been using drugs. She began to abuse him physically, sexually, and verbally, as she had for years. After he told his mother that he would call child protective services, she stabbed him in the chest. At that point, he testified, he responded by hitting her in the head with a hammer and stabbing her in the chest.

Zaragoza admitted that, after stabbing his mother, he stabbed himself in the chest and neck and drank bleach in an effort to kill himself before any law enforcement officers arrived. On cross-examination, Zaragoza admitted that he had not told the responding officers or paramedics that his mother had stabbed him.

Defense witnesses testified that Donna Zaragoza had physically and verbally abused Zaragoza since he was at least three years old. The witnesses testified that she

struggled with substance-abuse issues. Zaragoza and the defense witnesses testified that his mother was especially apt to abuse Zaragoza physically and sexually when she was under the influence of drugs.

Zaragoza advanced the theory that he suffered from battered child syndrome, resulting from years of abuse. The court instructed the jury that battered child syndrome could serve as a complete or "perfect" defense to murder and manslaughter or an incomplete or "imperfect" defense that mitigates murder to manslaughter. *See generally State v. Smullen*, 380 Md. 233, 268 (2004) (holding that the statutory defense of battered spouse syndrome applies to battered children as well).

In closing argument, the State disputed Zaragoza's claim of self-defense, arguing that it was "implausible" that Zaragoza's wounds were anything other than self-inflicted.

The jury found Zaragoza not guilty of first-degree murder. The jury, however, rejected his claims of perfect and imperfect self-defense and found him guilty of second-degree murder and two counts of openly carrying a dangerous weapon with the intent to injure.

Zaragoza petitioned the court to transfer jurisdiction from the circuit court to the juvenile court for sentencing. In his petition, Zaragoza acknowledged that CP § 4-202.2(a) prohibited the transfer because he had been found guilty of second-degree murder. Nonetheless, he argued that CP § 4-202.2(a) violated the Equal Protection Clause and Due Process Clause of the United States Constitution and the analogous provision of the Maryland Declaration of Rights. The State responded that the statutes

were constitutional and that Zaragoza's conviction barred him from invoking the jurisdiction of the juvenile court. The circuit court denied the petition.

The circuit court sentenced Zaragoza to 30 years of imprisonment for second-degree murder and six years, to be served consecutively, for openly carrying a dangerous weapon with the intent to injure. The court suspended all but 15 years.

QUESTIONS PRESENTED

Zaragoza filed this timely appeal, presenting the following questions, which we have reworded:

1. Do CP § 4-202(c)(2) and CP § 4-202.2(a)(1) violate constitutional principles of due process?

2. Do CP § 4-202(c)(2) and CP § 4-202.2(a)(1) violate constitutional principles of equal protection?[2]

We hold, first, that neither CP § 4-202(c)(2) nor CP § 4-202.2(a)(1) vest juvenile defendants with protected liberty interests to be treated as juveniles; thus, the circuit court did not deprive Zaragoza of his due process protections in denying his request for a transfer hearing. Second, we hold that CP § 4-202(c)(2) and CP § 4-202.2(a)(1) are

[2] Zaragoza asked:

1. Must the judgment be reversed because § 4-202(c)(2) and § 4-202.2(a)(1) of [the] Criminal Procedure Article, which precluded Appellant from transferring his case to juvenile court, violate principles of due process?

2. Must the judgment be reversed because § 4-202(c)(2) and § 4-202.2(a)(1) also violate principles of equal protection?

rationally related to legitimate governmental interests in accordance with the principles of equal protection. Therefore, we affirm the decision of the circuit court.

STANDARD OF REVIEW

We review *de novo* a trial court's legal consideration of a constitutional right. *Piazza di Joey, LLC v. Mayor and City Council of Baltimore*, 470 Md. 308, 339 (2020). *See State v. Cates*, 417 Md. 678, 691 (2011); *Schisler v. State*, 394 Md. 519, 535 (2006). "In addressing a claim involving the constitutionality of a statute, we begin 'with a presumption that the statute is constitutional.'" *Beattie v. State*, 216 Md. App. 667, 678 (2014) (quoting *Walker v. State*, 432 Md. 587, 626 (2013)). "The appellant bears the burden of overcoming this presumption and establishing the statute's unconstitutionality." *Id.* "We will not find a statute unconstitutional if, 'by any construction, it can be sustained.'" *Id.* (quoting *Galloway v. State*, 365 Md. 599, 611 (2001)).

DISCUSSION

I. Statutory Framework

From the standpoint of a child, the juvenile court has enormous advantages over an adult criminal court: the child is deemed to have committed a "delinquent act," and not to have committed a crime (*see* Maryland Code (1974, 2020 Repl. Vol.), § 3-8A-03(a) of the Courts & Judicial Proceedings Article ("CJP") § 3-8A-01(*l*)); the proceedings against the child are civil in nature (*see, e.g.*, *In re Victor B.*, 336 Md. 85, 91 (1994)); the child is not subjected to punishment, but is afforded treatment, guidance, and rehabilitation

(*Smith v. State*, 399 Md. 565, 580-81 (2007)); and the court's jurisdiction over the child comes to an end when the child turns 21. CJP § 3-8A-07(a).

In general, juvenile courts have "exclusive original jurisdiction" over children who have committed an act that would be a crime if committed by an adult. *See* CJP § 3-8A-03(a). "The juvenile courts," however, "are created by statute and have limited jurisdiction." *Smith v. State*, 399 Md. at 571. Consequently, the juvenile courts "may exercise only those powers expressly designated by statute." *Id.* at 574.

CJP § 3-8A-03(d)(1), which defines the jurisdiction of the juvenile courts, states that the juvenile courts do not have jurisdiction over juvenile offenders who are at least 14 years old and are charged with an act "that, if committed by an adult, would be a crime punishable by life imprisonment." Included among these proscribed charges is first-degree murder. Maryland Code (2002, 2012 Repl. Vol.), § 2-201(b)(1) of the Criminal Law Article ("CL").

When the criminal courts obtain jurisdiction over a delinquent youth, either because the juvenile court has waived its jurisdiction, *see* CJP § 3-8A-06, or because the court was statutorily precluded from exercising jurisdiction in the first instance, the criminal court may return jurisdiction to the juvenile court, subject to certain statutory exclusions. CP § 4-202.

CP Section 4-202 governs the transfer of criminal cases from the adult criminal court to the juvenile court, a process known in Maryland as "reverse-waiver." *Smith v.*

State, 399 Md. at 572 n.6.[3] Under CP § 4-202(b), the criminal court has discretion to transfer a case to the juvenile court before trial if:

> (1) the accused child was between 14 and 18 years old at the time of the alleged crime;
>
> (2) the crime the child allegedly committed is excluded from the jurisdiction of the juvenile court under [CJP] § 3-8A-03(d)(1), (4), or (5); and
>
> (3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

CP § 4-202(b)(1)-(3).

Criminal courts, however, may *not* transfer a case to the juvenile court if "the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed." CP § 4-202(c)(2).

In general, if CP § 4-202(c)(2) prohibited a pre-trial transfer to the juvenile court, but the juvenile defendant was found not guilty of a charge over which the juvenile court had no jurisdiction under CJP § 3-8A-03(d)(1) or (4), the trial court may transfer jurisdiction to the juvenile court for sentencing. CP § 4-202.2(a)(1)-(2). The trial court, however, may *not* transfer a case to the juvenile court for sentencing if the juvenile defendant was found guilty of a charge that precludes jurisdiction in the juvenile court under CJP § 3-8A-03(d)(1) or (4). CP § 4-202.2(a)(1). Section 4-202(a)(1) bars juvenile

[3] "Waiver," meanwhile, is the transfer of jurisdiction from the juvenile court to the criminal court. *See* CJP § 3-8A-06; *Smith v. State*, 399 Md. at 572 n.6.

courts from obtaining jurisdiction for sentencing over 16 or 17-year-old juveniles who have been convicted of second-degree murder. CJP § 3-8A-03(d)(4)(iii).

II. Due Process Clause

Zaragoza contends that CP § 4-202(c)(2) and § 4-202.2(a) violate his right to due process. He argues that CP § 4-202(c)(2) and § 4-202.2(a) create liberty interests that entitle him to due process protections, in the form of a transfer hearing, "regardless of the charges or convictions at issue." The State responds that Zaragoza's claim is meritless because he lacked "any statutory right" to have the case adjudicated in the juvenile court. We agree that neither CP § 4-202(c)(2) nor § 4-202.2(a)(1) vest liberty interests in juvenile defendants whose cases are beyond the statutory jurisdiction of the juvenile court.

The Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights "protect an individual's interest in substantive and procedural due process." *Reese v. Dep't of Health and Mental Hygiene*, 177 Md. App. 102, 149 (2007). While "there are four 'categories' of due process actions" (*Reese v. Dep't of Health and Mental Hygiene*, 177 Md. App. at 149 (quoting *Samuels v. Tschechtelin*, 135 Md. App. 483, 523 (2000)),[4] Zaragoza focuses

[4] The four categories of due process claims are: "'(1) a procedural due process claim premised on the deprivation of a property interest; (2) a procedural due process claim premised on the deprivation of a liberty interest; (3) a substantive due process claim premised on the deprivation of a property interest; and (4) a substantive due process claim premised on the deprivation of a liberty interest.'" *Reese v. Dep't of Health and Mental Hygiene*, 177 Md. App. at 149 (quoting *Samuels v. Tschechtelin*, 135 Md. App. at 523).

on procedural due process claims concerning the deprivation of a liberty interest. He argues that the statutes are unconstitutional because they deprive juveniles "of any opportunity to have an individualized assessment" of whether they should be tried as juveniles or as adults.

A. Procedural Due Process

"'Procedural due process imposes constraints on governmental decisions [that] deprive individuals of 'liberty' or 'property' interests[.]'" *Reese v. Dep't of Health and Mental Hygiene*, 177 Md. App. at 149 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). Procedural due process "is not a rigid concept"; it "calls only for such procedural protections as the particular situation demands." *Reese v. Dep't of Health and Mental Hygiene*, 177 Md. App. at 151 (quoting *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 509 (1998)). "When protected interests are implicated, the right to some kind of prior hearing is paramount." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972); *see also Roberts v. Total Health Care, Inc.*, 349 Md. at 509 ("[a]t '[t]he core of due process is the right to notice and a meaningful opportunity to be heard'") (quoting *LaChance v. Erickson*, 522 U.S. 262, 266 (1998)); *Knapp v. Smethurst*, 139 Md. App. 676, 703 (2001) ("[a] fundamental component 'of the procedural due process right is the guarantee of an opportunity to be heard'") (quoting Lawrence Tribe, *American Constitutional Law* § 10-15, at 732 (2d ed. 1988)).

"In order for due process guarantees to attach, they must protect a legally cognizable 'liberty interest[.]'" *McLaughlin-Cox v. Maryland Parole Comm'n*, 200 Md. App. 115, 120 (2011). "[S]ome liberty interests are so fundamental that they are

inherently subject to protections of procedural due process[.]" *Branch v. McGeeney*, 123 Md. App. 330, 354 (1998). Nonetheless, the "range of interests" protected by procedural due process "is not infinite." *Board of Regents of State Colleges v. Roth*, 408 U.S. at 570.

Zaragoza correctly concedes, as he did in the circuit court, that he has no constitutional right to be tried as a juvenile. *See In re Samuel M.*, 293 Md. 83, 95 (1982) ("there is no constitutional right to be treated as a juvenile"); *accord Miles v. State*, 88 Md. App. 360, 390 (1991); *see also* note 6, below. He writes: "the issue in this case is not whether there is an inherent constitutional right to be treated as a juvenile." "Rather," he says, "the issue" is whether CP § 4-202(c)(2) and § 4-202.2(a)(1) "create liberty interests that require certain protections in order to comport with due process."

States may "creat[e] new liberty interests, which then become entitled to federal constitutional protection." *Branch v. McGeeney*, 123 Md. App. at 354; *see Vitek v. Jones*, 445 U.S. 480, 488 (1980) ("[w]e have repeatedly held that state statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment"). "A liberty interest . . . may arise from an expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Constitutional protections attach "if a state legislature enacts 'specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow[.]'" *McLaughlin-Cox v. Maryland Parole Comm'n*, 200 Md. App. 115, 122 (2011) (quoting *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 463 (1989)).

Here, it is impossible to read the relevant statutes to create a liberty interest to a hearing to determine whether Zaragoza was eligible for a transfer to the juvenile court.

We begin with the premise that, when a juvenile has committed an act that would be a crime if committed by an adult, the juvenile does not have "'an inherent right'" to be treated as a juvenile. *In re Samuel M.*, 293 Md. at 95 (quoting *Woodard v. Wainwright*, 556 F.2d 781, 785 (5th Cir. 1977)). To the contrary, the legislature grants the right and may restrict or qualify the right as it sees fit, as long as it does not do so in an arbitrary or discriminatory way. *In re Samuel M.*, 293 Md. at 95 (citing *Woodard v. Wainwright*, 556 F.2d at 785); *Miles v. State*, 88 Md. App. at 390.

As previously stated, "[t]he juvenile courts are created by statute and have limited jurisdiction." *Smith v. State*, 399 Md. at 571; *accord Crosby v. State*, 71 Md. App. 56, 59 (1987). The principal jurisdictional provision is CJP § 3-8A-03(a)(1), which states that the juvenile court "does not have jurisdiction over . . . [a] child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under [CP] § 4-202." Zaragoza was charged with first-degree murder, which is punishable by life imprisonment. CL § 2-201(b)(1). Consequently, the juvenile court had no jurisdiction over his case or any "other charges arising out of the same incident," unless the circuit court could transfer the case to the juvenile court under CP § 4-202.

CP § 4-202, however, prohibited a transfer from the circuit court to the juvenile court for trial, because "the alleged crime [was] murder in the first degree and the

accused child was 16 or 17 years of age when the alleged crime was committed." Moreover, CP § 4-202.2(a) prohibited a transfer from the circuit court to the juvenile court for sentencing, because Zaragoza was convicted of second-degree murder, a charge that the juvenile court was precluded from exercising jurisdiction over by CJP § 3-8A-03(d)(4)(iii). Zaragoza, therefore, had no statutory right to have his case transferred to the juvenile court, whether for trial or for sentencing. Because the statutes create no right to a transfer to the juvenile court, they could not possibly have given Zaragoza a statutorily-created liberty interest in being treated as a juvenile.

Zaragoza relies primarily on *Kent v. United States*, 383 U.S. 541 (1966), in arguing that the circuit court erred in denying his request for a transfer hearing. In that case, a District of Columbia statute gave the juvenile court "original and exclusive jurisdiction" over a 16-year-old child. *Id*. at 556. Under the statute, the court could waive its jurisdiction only after a "full investigation." *Id*. at 547. In Kent's case, however, the juvenile court had waived its jurisdiction without conducting the hearing that the child had requested; without conferring with the child, his parents, or his counsel; without making any findings; and without citing any reasons for the waiver. *Id.* at 546. On appeal, Kent argued that the juvenile court violated his due process rights by waiving its jurisdiction without holding a hearing. *Id.* at 551.

The Supreme Court agreed, holding that, while the District of Columbia statute gave the juvenile court "considerable latitude" in determining whether to waive its jurisdiction, the statute did not grant the juvenile court "a license for arbitrary procedure." *Id.* at 552-53. The juvenile court could not waive its jurisdiction without a "full

investigation," in "compliance with the statutory requirement[.]" *Id.* at 553. "[A]s a condition to a valid waiver order," therefore, Kent was "entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision." *Id.* at 557.

According to Zaragoza, "the *Kent* court recognized that a juvenile could be transferred to adult court only if, as demanded by due process, a court conducts an individualized inquiry." We disagree with his characterization of the case. The *Kent* Court held that the juvenile was entitled "to certain procedures and benefits as a *consequence of his statutory right to the 'exclusive' jurisdiction of the Juvenile Court*[,]" not because of a fundamental constitutional right. *Kent v. United States*, 383 U.S. at. at 557 (emphasis added); *see also id.* (stating the "result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel").

Kent is quite a bit different from this case. Unlike the juvenile court here, the court in *Kent* had "original and exclusive" jurisdiction over the case under the terms of the applicable statute. *Kent* held that the juvenile court could not waive its "original and exclusive" jurisdiction over the juvenile, and thereby deprive him of "the special rights and immunities" attendant to a juvenile court proceeding (*id.* at 556), without due process of law. By vesting the juvenile court with "original and exclusive" jurisdiction over juvenile cases and prohibiting the court from transferring a juvenile case to a criminal court without a "full investigation," the District of Columbia statute created a liberty

interest that could be divested only if the requirements of procedural due process were met. *See id*. at 557.

Here, by contrast, the juvenile court never had any jurisdiction over Zaragoza. Furthermore, because the circuit court was statutorily prohibited from transferring its jurisdiction over Zaragoza to the juvenile court, whether for trial or for sentencing, the juvenile court could never have acquired jurisdiction over his case. Unlike the juvenile in *Kent*, therefore, Zaragoza had no statutorily-created liberty interest in being treated as a juvenile. Zaragoza, therefore, had no due process right to a hearing to determine whether his case should proceed in the juvenile court as opposed to the circuit court.[5]

In any event, a transfer hearing would have been futile here, because regardless of the outcome of the hearing, the juvenile court could not exercise jurisdiction over the case. *See State v. Watkins*, 423 P.3d 830, 836 (Wash. 2018). Zaragoza does not have a constitutional right to a hearing to determine whether his case should proceed in a court

[5] Numerous cases from other jurisdictions have reached the same conclusion. *See, e.g., State v. Angel C.*, 715 A.2d 652, 662-63 (Conn. 1998) (citing 10 state and federal cases for the proposition that "statutes providing, under stated circumstances, for mandatory adult adjudication of offenders of otherwise juvenile age, routinely have been upheld against due process challenges based on *Kent*"); *State v. Orozco*, 483 P.3d 331, 338 (Idaho 2021) (collecting authorities for the proposition that juveniles have no liberty interest in their status as juveniles when the governing statute exempts the alleged offense from the jurisdiction of the juvenile court); *Commonwealth v. Concepcion*, 164 N.E.3d 842, 853 n.11 (Mass. 2021) (distinguishing *Kent* on the ground that the District of Columbia statute gave the juvenile court discretion to waive its jurisdiction whereas the statute at issue in that case, like the statute here, prohibited the juvenile court from exercising jurisdiction over a juvenile who is charged with first- or second-degree murder); *State v. Gaige*, 468 P.3d 532, 534-35 (Or. Ct. App. 2020) (distinguishing *Kent* on the ground that the governing statute "left the juvenile court with no discretionary power over the determination whether defendant should be tried in adult court or adjudicated in juvenile court").

that is statutorily prohibited from considering it. As the Supreme Court of Utah stated in upholding a statute that precluded the juvenile courts from exercising jurisdiction over certain serious crimes committed by 16- and 17-year-old youths, "One cannot hold an interest in something to which one was never entitled." *See State v. Angilau*, 245 P.3d 745, 750 (Utah 2011). Because the Maryland statutes gave the circuit court no authority to transfer Zaragoza's case, due process did not require that he "be granted a hearing at which the court could exercise that nonexistent authority." *State v. Gaige*, 468 P.3d 532, 535 (Or. Ct. App. 2020).

In a separate argument, Zaragoza asserts that CP § 4-202(c)(2) and § 4-202.2(a) deprive him of due process by creating arbitrary classifications of juvenile defendants. Due process is violated, Zaragoza contends, when a legislature "creates a non-rebuttable presumption that certain juveniles are not fit for the juvenile justice system, regardless of their particular circumstances."

Zaragoza appears to challenge the statutory distinction between 14- and 15-year-old children, whose cases can be transferred for trial in the juvenile court if they are charged with first-degree murder, and 16- and 17-year-old children, whose cases cannot be transferred for trial if they are charged with that offense. Zaragoza likens the statutes in this case to statutes that made "irrebuttable presumptions" in a manner that deprived all members of a class of any due process protections. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 644 (1974) (holding that a county school board "burden[ed] the exercise of a protected constitutional liberty" by creating an "irrebuttable presumption" that pregnant teachers were physically incompetent without any "individualized

determination" of the teachers' ability); *Stanley v. Illinois*, 405 U.S. 645, 649 (1972) (holding that the state violated the fundamental right of unmarried fathers to raise their children by presuming that the fathers are unfit to retain custody of their children).

While "permanent irrebuttable presumptions have long been disfavored under the Due Process Clause[,]" a protected liberty interest must be present before due process protections are implicated. *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. at 644; *id.* at 647. Zaragoza acknowledges as much when he states that under cases like *LaFleur* "non-rebuttable presumptions resulting in a loss of liberty or property violated due process." As previously established, however, neither CP § 4-202(c)(2) nor § 4-202.2(a)(1) vest juvenile defendants with protected liberty interests. The legislature, therefore, had the right to "restrict or qualify" the rights of juvenile defendants "as long as no arbitrary or discriminatory classification is involved." *Miles v. State*, 88 Md. App. 360, 390 (1991) (quoting *In re Samuel M.*, 293 Md. 83, 95 (1982)); *accord State v. Angilau*, 245 P.3d 745, 749 (Utah 2011) ("[t]he juvenile system is a legislative creation, and the legislature can choose to exclude certain minors from that system so long as the exclusion is not arbitrary or impermissibly discriminatory").

As Zaragoza repeatedly concedes, this Court has previously held that § 4-202's predecessor did not violate due process or equal protection even though it permitted a reverse-waiver for juveniles aged 14 and 15 who were charged with first-degree murder, but prohibited it for juveniles aged 16 or 17 who were charged with the same offense. *Miles v. State*, 88 Md. App. at 389. In *Miles*, our predecessors recognized that "'[c]ut-off ages' have always been, and will continue to be, a necessary factor" in a legislature's

determination of "whether a person is capable of assuming certain responsibilities." *Id.* at 392. For instance:

> [t]he right to vote, the right to drive, the right to purchase alcohol all have in common a certain "cut-off'" age where a determination has been made that the quality of mind of one individual – in the case at bar, a 16 or 17-year-old charged with first degree murder – is indistinguishable from another, *e.g.*, a 14 or 15-year-old charged with the same offense.

Id. at 392-93.

The *Miles* Court held that "the difference in treatment is not, on its face, so irrational and invidiously discriminatory as to constitute a denial of either the equal protection or due process clauses." *Id*. at 393.

Zaragoza acknowledges that *Miles* is "at odds" with his arguments. He argues that *Miles* should be revisited and abrogated because "*Miles* did not have the benefit of subsequent developments in the law, psychology, neuroscience, and other fields" that "confirm that due process requires an individualized assessment of all juveniles who request reverse waiver in Maryland." Zaragoza observes that, over the past two decades, the Supreme Court "has acknowledged with increased scrutiny that differences between adults and juveniles merit greater protections for the latter." *See Roper v. Simmons*, 543 U.S. 551, 569 (2005) (holding that the Eighth Amendment's prohibition against "cruel and unusual punishments" precludes states from sentencing juvenile offenders to death); *Graham v. Florida*, 560 U.S. 48, 75 (2010) (holding that the Eighth Amendment bars courts from imposing sentences of life without parole on juvenile offenders who have been convicted of offenses other than homicide); *Miller v. Alabama*, 567 U.S. 460, 470

(2012) (holding that the Eighth Amendment forbids mandatory life sentences without the possibility of parole for juvenile offenders).

We agree that the Supreme Court, and the Maryland General Assembly, have increasingly acknowledged that juveniles have physiological and developmental differences from adults and that those differences necessitate different protections in certain circumstances. However, the Supreme Court cases cited by Zaragoza concern the Eighth Amendment limitations on the criminal sentences that criminal courts may impose on juvenile offenders; they say nothing about the forum in which a juvenile case must proceed under the Fourteenth Amendment. The Court of Appeals, on the other hand, has held that juvenile offenders do not have a constitutional right to be tried in the juvenile courts. *See In re Samuel M.*, 293 Md. at 95; *accord Miles v. State*, 88 Md. App. at 390. Courts elsewhere uniformly agree.[6]

[6] *See, e.g.*, *State v. B.T.D.*, 296 So. 3d 343, 361 (Ala. Crim. App. 2019) ("[a] juvenile offender does not have a constitutionally protected liberty interest in juvenile-court adjudication"); *C.D. v. State*, 458 P.3d 81, 82-83 (Alaska 2020) ("'[a] juvenile offender has no constitutional right to be tried in juvenile court'") (quoting *W.M.F. v. State*, 723 P.2d 1298, 1300 (Alaska Ct. App. 1986)); *State v. Belcher*, 721 A.2d 899, 903 (Conn. App. Ct. 1998)) ("there is no constitutional right to be treated as a juvenile; the right is statutory"); *Calhoun v. State*, 397 So. 2d 1152, 1153 (Fla. Dist. Ct. App. 1981) ("there is no common law, inherent, or constitutional right to be tried as a juvenile"); *Chapman v. State*, 385 S.E.2d 661, 662 (Ga. 1989) ("any right a defendant may have to be treated as a juvenile is not an inherent right specifically protected by the constitution, but one created by statute"); *People v. Patterson*, 25 N.E.3d 526, 551 (Ill. 2014) ("access to juvenile courts is not a constitutional right because the Illinois juvenile justice system is a creature of legislation"); *Stout v. Commonwealth*, 44 S.W.3d 781, 785 (Ky. Ct. App. 2000) ("[i]t is axiomatic that a juvenile offender has no constitutional right to be tried in juvenile court"); *State v. Watkins*, 423 P.3d 830, 835 (Wash. 2018) ("'there is no constitutional right to be tried in a juvenile court'') (quoting *In re Boot*, 925 P.2d 964, 973 (Wash. 1996)); *Jahnke v. State*, 692 P.2d 911, 928 (Wyo. 1984) ("[t]here is no constitutional right to be tried as a juvenile"); *Stokes v. Fair*, 581 F.2d 287, 289 (1st Cir.

Furthermore, the Maryland General Assembly has explicitly limited the jurisdiction of the juvenile court. The legislature determined that, once they have reached a certain age, juvenile offenders who commit grave offenses must be tried as adults. Addressing a similar challenge to a Washington statute that divested the juvenile court of the power to adjudicate cases involving serious offenses committed by juveniles, the Supreme Court of Washington stated that "[t]he principle that juveniles are developmentally different from adults . . . does not factor into our determination of whether a jurisdictional statute . . . is constitutional because resolving this issue does not require us to assess a youthful defendant's culpability or subjective mental state." *State v. Watkins*, 423 P.3d at 838. "To resolve this issue we need decide only whether the legislature has the authority to define the scope of juvenile court jurisdiction." *Id.* at 838-39. As the Washington court concluded, "[t]he answer is yes – the legislature can define the scope of juvenile court jurisdiction because the legislature itself created the juvenile court system and there is no constitutional right to be tried in juvenile court." *Id.* at 839.

Zaragoza also attempts to distinguish *Miles* by arguing that, unlike in *Miles*, "the issue in this case is not whether there is an inherent constitutional right to be treated as a juvenile." He argues that CP § 4-202(c)(2) and § 4-202.2(a)(1) violate due process by depriving "certain youth" of the opportunity to have an "individualized assessment"

1978) ("there is no constitutional right to any preferred treatment as a juvenile offender"); *Woodard v. Wainwright*, 556 F.2d 781, 785 (5th Cir. 1977) ("[t]reatment as a juvenile is not an inherent right but one granted by the state legislature, therefore the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved").

before denying a transfer to the juvenile court. As previously established, however, neither CP § 4-202(c)(2) nor § 4-202.2(a)(1) vest juvenile defendants with a liberty interest in being tried in a juvenile court. In drafting the statute, the legislature did not deprive "certain youth" of due process in determining that the juvenile court does not have jurisdiction over 16-year-old defendants charged with first-degree murder (CP § 4-202(c)(2)) and 16-year-old defendants convicted of second-degree murder (CP § 4-202.2(a)(1)).

B. As-Applied Due Process Challenge

Zaragoza argues that CP § 4-202(c)(2) and § 4-202.2(a)(1) violate due process "as applied." In an "as-applied" due process challenge, the appellant has the burden of proving that a statute "is unconstitutional on the facts of a particular case or in its application to a particular party." *Motor Vehicle Admin v. Seenath*, 448 Md. 145, 181 (2016).

Zaragoza argues that the statutory prohibitions violate due process in cases, such as his own, in which juvenile defendants raise the defense of self-defense predicated upon a claim of battered child syndrome. He complains that he "never had an opportunity to argue that the compelling circumstances of his case warranted reverse waiver."

As Zaragoza acknowledges, however, he did not raise an as-applied challenge before the circuit court. Hence, he has failed to preserve the argument. *See* Md. Rule 8-131(a) (this Court will not decide any issue "unless it appears by the record to have been

raised in or decided by the trial court"). We cannot reverse the circuit court for failing to consider an argument that Zaragoza did not make.[7]

Zaragoza contends that, although he failed to preserve his argument, this Court can consider it because, he says, "post-conviction relief would be inevitable." Zaragoza does not clarify why post-conviction relief would be "inevitable" beyond citing *Moosavi v. State*, 355 Md. 651 (1999).

Moosavi concerns an appellate court's ability to consider arguments that appellants properly preserved, but failed to assert in their briefs. *Id.* at 661-62. *Moosavi* neither permits nor requires an appellate court to consider an argument that the appellant failed to preserve in the trial court.

Because Zaragoza did not preserve his as-applied due process challenge before the circuit court, and because the limited exceptions established by the Court in *Moosavi* are inapplicable, we decline to consider his argument on appeal.[8]

III. Equal Protection Clause

Zaragoza argues that CP § 4-202(c)(2) and § 4-202.2(a) violate the Equal Protection Clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights.[9] Under the Equal Protection Clause, "[n]o State shall . . . deny to

[7] Zaragoza does not request that we engage in plain error review.

[8] Even if we were to consider Zaragoza's arguments, we would reject them, because they assume, incorrectly, that he has a statutorily-based liberty interest. As we have explained, he has no such interest.

[9] "Although the Maryland Constitution contains no express equal protection clause," the due process or "Law of the Land" provision of the Maryland Constitution,

any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Equal Protection Clause "is 'essentially a direction that all persons similarly situated should be treated alike.'" *Washington v. State*, 450 Md. 319, 341 (2016) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

"The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantages to various groups or persons." *Romer v. Evans*, 517 U.S. 620, 631 (1996). "In most instances when a governmental classification is attacked on equal protection grounds, the classification is reviewed under the so-called 'rational basis' test." *Murphy v. Edmonds*, 325 Md. at 356; *see Romer v. Evans*, 517 U.S. at 631 ("if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end").[10]

contained in Article 24 of the Declaration of Rights, "embodies the concept of equal protection of the laws to the same extent as the Equal Protection Clause of the Fourteenth Amendment." *Murphy v. Edmonds*, 325 Md. 342, 353 (1992); *see Hornbeck v. Somerset Cty. Bd. of Educ.*, 295 Md. 597, 640 (1983) (noting that the Court has "long recognized that decisions of the Supreme Court interpreting the Equal Protection Clause of the federal Constitution are persuasive authority in cases involving the equal treatment provisions of Article 24"); *Attorney General v. Waldron*, 289 Md. 683, 705 (1981) (inner citations omitted) ("because this State has no express equal protection clause[,] . . . Article 24 has been interpreted to apply in like manner and to the same extent as the Fourteenth Amendment of the Federal Constitution"); Dan Friedman, *The Maryland State Constitution* 59-60 (2011).

[10] In other instances, if the statutory classification "burdens a 'suspect class' or impinges upon a 'fundamental right,' the classification is subject to strict scrutiny." *Murphy v. Edmonds*, 325 Md. at 356. As explained, there is no fundamental right to be adjudicated as a juvenile, and Zaragoza does not contend that any level of scrutiny other

A statutory classification analyzed under the rational basis test, the most deferential standard of constitutional review, will "pass constitutional muster so long as it is 'rationally related to a legitimate governmental interest.'" *Lonaconing Trap Club, Inc. v. Maryland Dep't of Env't*, 410 Md. 326, 341 (2009) (quoting *Conaway v. Deane*, 401 Md. 219, 274 (2007)). This Court "'will not overturn' the [legislative] classification 'unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [this Court] can only conclude that the [governmental] actions were irrational.'" *Murphy v. Edmonds*, 325 Md. at 355 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 471 (1991)) (further citations omitted). The party seeking to overturn a statutory classification "must show by clear and convincing evidence that it does not rest upon any rational basis but is essentially arbitrary." *Lonaconing Trap Club, Inc. v. Maryland Dep't of Env't*, 410 Md. at 343 (citing *Dep't of Transp. v. Armacost*, 299 Md. 392, 409 (1984)). As a "statutory classification reviewed under the rational basis standard enjoys a strong presumption of constitutionality[,]" the statute "will be invalidated only if the classification is clearly arbitrary." *Murphy v. Edmonds*, 325 Md. at 356.

Zaragoza argues that the statutory prohibitions on reverse-waiver violate the Equal Protection Clause by creating what he calls "a legal fiction" that prevents "certain youth from accessing the juvenile justice system[.]" He contends that the "legal fiction" – that some juveniles are more deserving of "special protections and individualized

than rational basis applies. Thus, the alleged statutory classification is not subject to "strict scrutiny."

consideration" than others – does not advance legitimate governmental interests because recent case law and research shows that "all youth are similarly situated in terms of maturity, susceptibility to societal pressures, and ability to 'grow out of' or otherwise reform problematic behaviors."

Zaragoza also argues that CP § 4-202(c)(2) and CP § 4-202.2(a)(1) "thwart the legislative purposes" of the juvenile justice system, which are set forth in CJP § 3-8A-02, and "conflict with these stated legislative goals."[11] He cites studies for the proposition

[11] CJP § 3-8A-02 sets forth the following purposes:

> (1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:
>
> (i) Public safety and the protection of the community;
>
> (ii) Accountability of the child to the victim and the community for offenses committed; and
>
> (iii) Competency and character development to assist children in becoming responsible and productive members of society;
>
> (2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community;
>
> (3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention;
>
> (4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

that similar statutes lead to recidivism, do not deter youth crime, and do not "protect the community." He cites other studies for the proposition that "transfer prohibitions," like CP § 4-202(c)(2) and CP § 4-202.2(a)(1), do not assist juveniles in "reforming their character and becoming productive members of society." In addition, he argues that the statutes "thwart" the statutory purposes of holding parents' responsible for their children's behavior and strengthening family ties. He concludes that CP § 4-202(c)(2) and § 4-202.2(a)(1) "block[] the fulfillment" of the goals of the juvenile court and fail to advance any legitimate government interest.

The State responds that Zaragoza's argument is "misguided" because the legislature made the reasonable determination that certain conduct committed by older youths "should be resolved in accordance with the traditional goals and objectives of the criminal justice system." In the State's view, "[t]he legislature could 'rationally' have

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(5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

(7) To provide to children in State care and custody:

(i) A safe, humane, and caring environment; and

(ii) Access to required services; and

(8) To provide judicial procedures for carrying out the provisions of this subtitle.

decided that there is a limit to the lenient rehabilitation-focused policies underlying Maryland's juvenile court, and that the limit[] is reached in cases involving allegations of first-degree murder committed by a person over sixteen years of age."

We agree with the State. Zaragoza failed to carry his burden of proving that CP § 4-202(c)(2) and § 4-202.2(a) are not rationally related to any legitimate government interest. Just as the juvenile courts advance legitimate interests, *see* CJP § 3-8A-02(a), the criminal courts advance legitimate government interests as well. The limited prohibition against reverse-waiver is not arbitrary or irrational merely because some of the purposes of the criminal court, such as rehabilitation, punishment, and deterrence, "contrast sharply" (*Gaines v. State*, 201 Md. App. 1, 8-9 (2011)) with the purposes of the juvenile court. The legislature has determined that some crimes committed by juveniles – particularly juveniles who are almost old enough to be adults – are so abhorrent that jurisdiction in the juvenile court is not in the best interest of the public or the defendant. That decision was neither arbitrary nor discriminatory.

And, as explained above, this Court has held that is not "clearly arbitrary" or irrational to use cut-off ages in limiting the jurisdiction of the juvenile court. *See Miles v. State*, 88 Md. App. at 392 ("[c]ut-off ages' have always been, and will continue to be, a necessary factor in making a determination of whether a person is capable of assuming certain responsibilities"); *see also Roper v. Simmons*, 543 U.S. at 574 (explaining that while the "qualities that distinguish juveniles from adults do not disappear when an individual turns 18 . . . a line must be drawn"). Just as the legislature can rationally determine when a person is capable to drive, vote, marry, obtain an abortion without

parental consent, fly an airplane, buy beer, wine, or liquor, or purchase a regulated firearm, so too can the legislature rationally determine that, at 16 years of age, juvenile offenders should have the maturity and self-control to prevent them from committing certain heinous crimes. *See Miles v. State*, 88 Md. App. at 392-93.

Furthermore, "[w]e need not be convinced that the reasons for the [classifications] are good ones; that is a question for the legislature." *Dep't of Transp. v. Armacost*, 299 Md. 392, 413 (1984). "We need only find a rational relationship between the legislature's goal and the means chosen to achieve it." *Id.* "'[I]t is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation.'" *Id.* (quoting *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 658 (1983)). The power to expand the jurisdiction of the juvenile court belongs solely to the legislature and not to this Court.

The General Assembly recently enacted the Juvenile Restoration Act, which allows some juvenile offenders to petition for a reduced sentence. *See* Maryland Code (2001, 2019 Repl. Vol., 2021 Supp.), § 8-110 of the Criminal Procedure Article. Thus, the legislature has begun, and we anticipate will continue, to amend legislation to account for the contemporary understanding that "children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking"; that "children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers'"; and that children "have limited 'contro[l] over their own environment'" and lack the ability to extricate

themselves from horrific, crime-producing settings." *Miller v. Alabama*, 567 U.S. at 471 (quoting *Roper v. Simmons*, 543 U.S. at 569)). Zaragoza's arguments are more appropriately directed to the legislature than to the courts.

Here, the decision to prohibit the transfer of cases to juvenile court by certain juveniles is not "clearly arbitrary." As CP § 4-202(c)(2) and § 4-202.2(a) are rationally related to legitimate governmental interests, the circuit court did not deprive Zaragoza of equal protection in denying his transfer hearing requests.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.