2026 IL App (1st) 250144-U

No. 1-25-0144

Order filed September 18, 2026

FOURTH DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. KEON HICKS, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Criminal Division. No. 94 CR 22537 03 Honorable Joanne F. Rosado, Judge, presiding.

JUSTICE MITCHELL delivered the judgment of the court.
Justice Mikva and Justice Wilson concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of defendant's successive postconviction petition is reversed where defendant sufficiently established prejudice for failing to raise his proportionate penalties clause claim in his initial petition.

¶ 2 Defendant Keon Hicks appeals the circuit court's dismissal of his second-stage, successive postconviction petition arguing that his mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). The issue is whether the circuit court erred in dismissing defendant's claim because he satisfied the prejudice standard, permitting him to bring the claim in a successive postconviction petition. For the following reasons, we reverse.

¶ 3 I. BACKGROUND

¶ 4 In 1998, defendant Keon Hicks was convicted of two counts of first-degree murder after a jury trial for offenses he committed when he was 20 years old (720 ILCS 5/9-1(a) (West 1992)). The circuit court declined to impose the death penalty but sentenced defendant to life imprisonment as required by statute (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998)).

¶ 5 At trial, Stanford Price testified that in August 1994, he and defendant were members of the Black Disciples. At that time, the Black Disciples were at war with the Gangster Disciples, another street gang. On August 17, 1994, around 1:00 p.m., Price was home in his apartment in the 6100 block of South Wabash Avenue in Chicago. He heard people talking outside, opened his door, and saw defendant and several others. Defendant was loading a MAC-11 semiautomatic weapon and another man, Mark Coleman, was loading a TEC-9 automatic weapon. Price went back into his apartment and, a few minutes later, heard gunshots. When the gunfire stopped, he looked out his window and saw defendant, Coleman, and a third man, Rouande Whitfield, running past. Coleman was still holding the TEC-9 gun.

¶ 6 Shortly after, Price walked to 61st Street and Michigan Avenue because he heard somebody had been shot. In the courtyard between two row house buildings, Price saw Carl Johnson and Reginald Derrick lying dead. Price knew them both and knew Johnson was a member of the Gangster Disciples, but Derrick did not belong to a gang. Later, Price spoke with Coleman who said Derrick was in the wrong place at the wrong time and Coleman was not trying to shoot him. Price also saw defendant that night, holding the same MAC-11 gun as earlier.

¶ 7 Leon Watson testified that he was a member of the Black Disciples and knew defendant. His statement to an assistant state’s attorney on January 24, 1995, was admitted at trial. According

to his statement, Watson saw defendant, Coleman, and Whitfield together in the lobby of 6215 South Wabash Avenue, defendant's building, on the day in question. Coleman told the others that the Gangster Disciples were outside drinking beer. Then, the group walked towards 61st Street and Michigan Avenue, and Watson followed them. The group entered Price's building, and Watson saw defendant loading a MAC-11 gun and Coleman loading a TEC-9 pistol. Watson knew the group was going to shoot the Gangster Disciples that were outside, and he was going to act as security. Defendant and Coleman walked around 50 feet and began firing. When Watson heard the shots, he ducked down so did not see who they were shooting. After the shooting, he saw defendant, Coleman, and Whitfield running to defendant's building.

¶ 8 Defendant's transcribed statement to an assistant state's attorney on August 24, 1994, was admitted at trial. In the statement, defendant relayed that on August 17, 1994, he went to the lobby of his building and saw Whitfield, Watson, and others. Coleman entered the lobby and told the group that there were some Gangster Disciples outside on 61st Street and Michigan Avenue beside the row houses and said, "let's get them." Defendant took a MAC-11 gun with him. The group stopped at 6147 South Wabash Avenue where Coleman lived, and Coleman retrieved a TEC-9 gun. Then, they headed to 61st Street and Michigan Avenue. As they approached, Coleman fired 10 shots towards the crowd behind the row houses, and defendant shot twice. After, defendant ran with the rest of the group towards his building with the gun in his pants.

¶ 9 The State presented additional testimony from law enforcement officers, other gang members, and a medical examiner. The examiner explained that Johnson died of a gunshot wound to the chest and Derrick died of a gunshot wound to the head. The parties stipulated that police recovered eight 9mm cartridge casings, nine 9mm bullets, and that both MAC-11 and TEC-9

handguns fire 9mm bullets. Defendant called several witnesses including his mother, Mary Hudson, who testified that defendant was home with her during the shooting.

¶ 10 The jury found defendant guilty of two counts of first-degree murder. The State sought the death penalty. In mitigation, defendant emphasized his upbringing, his children, his minor and non-violent criminal history, and that the evidence did not prove he fired the fatal shots. The circuit court explained that the sentencing options for defendant were "not very great." The circuit court found sufficient mitigation to preclude imposition of the death penalty but stated that it would "comply with the requirement of the statute" and sentenced defendant to life imprisonment.

¶ 11 On direct appeal, defendant challenged the denial of his pre-trial motions to quash arrest and suppress evidence. This court affirmed. See *People v. Hicks*, 313 Ill. App. 3d 1091 (2000) (table) (unpublished order under Illinois Supreme Court Rule 23). In 2001, defendant filed his initial *pro se* postconviction petition arguing that he was denied a fair trial where the State improperly defined accountability for the jury and introduced prejudicial gang evidence, and that his sentence was void since the statute he was sentenced under was declared unconstitutional. The circuit court dismissed the petition, and this court affirmed. See *People v. Hicks*, 329 Ill. App. 3d 1229 (2002) (table) (unpublished order under Illinois Supreme Court Rule 23).

¶ 12 In 2016, defendant sought leave to file the successive postconviction petition at issue here. Defendant argued his mandatory life sentence was unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny because he was 20 years old at the time of his offense. The circuit court denied defendant's motion, and defendant appealed. Pursuant to an agreed order, the matter was remanded to the circuit court and advanced to second-stage postconviction proceedings.

¶ 13 Defendant amended his petition to include a report prepared by Dr. James Garbarino, a developmental psychologist. The report outlined the science of brain development and opined on defendant's development at the time of his offense, discussing his upbringing, decision-making, emotional regulation, and rehabilitative potential, among other related topics. The State moved to dismiss defendant's successive petition arguing he failed to establish cause and prejudice for not bringing his claim earlier. 725 ILCS 5/122-5 (West 2024). The circuit court granted the State's motion, and this timely appeal followed. Ill. S. Ct. R. 651(a) (eff. July 1, 2017).

¶ 14 II. ANALYSIS

¶ 15 Defendant contends the circuit court erred in dismissing his claim that his mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution because he made a substantial showing of cause and prejudice. As to cause, defendant argues the legal and factual basis of his claim was unavailable to him when he filed his initial petition. As to prejudice, defendant argues that he was more akin to a juvenile than an adult at the time of his offense. The State argues defendant cannot show cause because a proportionate penalties clause claim and the scientific basis for that claim were previously available to him. Further, the State argues that defendant cannot show prejudice because he has not shown his brain development was more like a juvenile and his sentence does not shock the moral conscience of the community given the nature of his offense.

¶ 16 The Post-Conviction Hearing Act provides a remedy for criminal defendants who claim their constitutional rights were substantially denied. 725 ILCS 5/122-1 *et seq.* (West 2016); *People v. Spencer*, 2025 IL 130015, ¶ 46. The Act generally permits a defendant to file only one petition, but a defendant can file a successive petition with leave of the court when the petition

"demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." 725 ILCS 5/122-1(f).

¶ 17 After this appeal was fully briefed, this court, on its own motion, stayed the case in light of the Illinois Supreme Court granting leave to appeal in *People v. McGee*, 2025 IL App (1st) 231591-U, *pet. for leave to appeal granted*, No. 131880 (allowed Sept. 24, 2025), which might have controlled the cause and prejudice issue in this appeal. During the stay, however, the Illinois General Assembly passed, and the governor signed into law, Public Act 104-0564 (eff. July 10, 2026). The Public Act amended the Post-Conviction Hearing Act and eliminated the cause requirement for defendants raising proportionate penalties clause challenges if they were under 21 years old at the time of their offense:

> "A petitioner who was convicted of a felony offense committed when that person was under 21 years of age who seeks leave to file a successive post-conviction petition claiming that his or her sentence violates Section 11 of Article I of the Illinois Constitution does not have to demonstrate cause as set forth in subsection (f) of this Section." Pub. Act 104-0564 (eff. July 10, 2026) (amending 725 ILCS 5/122-1(g)).

¶ 18 Given this amendment, the Illinois Supreme Court remanded *McGee* back to the appellate court and we lifted the stay in this appeal. We ordered supplemental briefing for the parties to address the application of the Public Act to this case. In their supplemental briefing, both parties referenced *People v. Sparkman*, 2026 IL App (1st) 240715, ¶ 39, where this court recently concluded that "the amendment is procedural in nature and applies retroactively." Since then, at least one other case has followed suit. See *People v. Polk*, 2026 IL App (1st) 250410-U, ¶ 26 ("[B]ased on a recent amendment to the Act, a defendant whose crimes occurred when they were under 21 years old and who claim[s] that their sentence violates the proportionate penalties clause is relieved of the burden to demonstrate cause to proceed with a successive petition."). In light of

the procedural nature of the amendment, we are in agreement with these panels, which have held that the cause requirement is eliminated. We now address the issue that remains on appeal: prejudice.

¶ 19 "[A] prisoner shows prejudice by demonstrating that the claim *** so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f). If the circuit court grants leave to file a successive postconviction petition, it advances to the second stage of the three-stage process for evaluating petitions. *People v. Bailey*, 2017 IL 121450, ¶ 26; *People v. Robinson*, 2020 IL 123849, ¶ 43. The State may then move to dismiss the petition for the defendant's failure to prove cause or prejudice. *Bailey*, 2017 IL 121450, ¶ 26. We review the circuit court's assessment of prejudice *de novo*. *People v. Clark*, 2023 IL 127273, ¶ 47; see *People v. Sanders*, 2016 IL 118123, ¶ 31.

¶ 20 Defendant argues he has made a substantial showing of prejudice where he has shown that the science underlying *Miller* and its progeny applies to his individual facts and circumstances. In *Miller*, the United States Supreme Court held that a mandatory sentence of life without parole violated the eighth amendment's prohibition on cruel and unusual punishment for those who were under 18 at the time of their offense. 567 U.S. at 465; *People v. Thompson*, 2015 IL 118151, ¶ 16. Instead, the sentencing court must have discretion to consider a juvenile offender's youth and attendant characteristics before imposing a life sentence. *Miller*, 567 U.S. at 483. This includes the "immaturity, impetuosity, and failure to appreciate risk and consequences that are the hallmarks of youth." (Internal quotation marks omitted.) *Sparkman*, 2026 IL App (1st) 240715, ¶ 33.

¶ 21 After *Miller* was decided, the Illinois Supreme Court opened the door for young adult defendants to use *Miller*'s reasoning to raise as-applied constitutional challenges to their sentences

in postconviction petitions under the proportionate penalties clause of the Illinois Constitution. *People v. Horshaw*, 2024 IL App (1st) 182047-B, ¶ 50 (citing *Thompson*, 2015 IL 118151; *People v. Harris*, 2018 IL 121932; *People v. House*, 2021 IL 125124, ¶¶ 21-31); Ill. Const. 1970, art. I, § 11 ("All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship."). In essence, "a young-adult offender" could argue, "through an adequate factual record, that his or her own specific characteristics were so like those of a juvenile that imposition of a life sentence absent the safeguards established in *Miller* was cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community." (Internal quotation marks omitted.) *Horshaw*, 2024 IL App (1st) 182047-B, ¶ 49 (quoting *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 25).

¶ 22 To succeed on such a claim, "(1) the young adult defendant must plead, and ultimately prove, that his or her individual characteristics require the application of *Miller*; (2) if, and only if, the young adult makes such a showing, the trial court considers whether the initial sentencing hearing complied with *Miller*; and (3) if the initial sentencing hearing was *Miller* compliant, then the trial court can reject the defendant's claim, but, if it was not, the court should order resentencing." *People v. Green-Hosey*, 2025 IL App (2d) 240284, ¶ 39, *pet. for leave to appeal granted*, No. 131560 (allowed Sept. 24, 2025).

¶ 23 Defendant's report, prepared by Dr. Garbarino, discusses the brain development science that underlies *Miller*. Dr. Garbarino explains that adolescents' frontal lobes are immature, which affects decision-making, impulse control, and managing emotions. While all brain development in an individual under 25 is compromised, the quality of an individual's experience affects the development of white brain matter. "Thus, the more coherent and supportive the social and

psychological environment a youth has experienced, the more well-developed will be his neural systems, and thus his 'mental resources' that can be brought to bear in processing morally (and criminally) relevant information and managing the links between emotions and behavior."

¶ 24 Dr. Garbarino further illustrates why this science applies to defendant's individual characteristics. The report explains that several factors compromised defendant's maturation and development at the time of his offense. For example, Dr. Garbarino analyzes how defendant's childhood marked by exposure to trauma and community violence impacted his brain development. The report details that as early as seventh grade, defendant was exposed to extreme violence when his friend was shot in the head. Further, when he was 16 years old, defendant witnessed someone being shot and killed firsthand. Defendant further estimated he went to at least 10 funerals between the ages of 15 and 20. The report also details that defendant himself was shot twice in his adolescence.

¶ 25 Dr. Garbarino also explains that defendant's dysfunctional family and related trauma further contributed to his cognitive limitations and impulsiveness. The report details that defendant was physically abused by his father and siblings. Defendant's father, who was an alcoholic, suffered from war flashbacks and would throw bricks at defendant, threatening to kill him. Defendant witnessed his father being violent to his mother as early as four years old. Moreover, defendant's father abandoned his family and was later murdered by his best friend. The report describes that defendant scored worse than 999 out of 1000 Americans on a test measuring "Adverse Childhood Experiences."

¶ 26 Dr. Garbarino also opines that defendant has evidenced rehabilitation and maturation since his offense. At the time of the report, defendant had received only two disciplinary violations in

27 years of incarceration, had positive assessments from work supervisors, studied for his GED, and was involved in tutoring, among other things. Considering defendant's petition and his supporting materials, he has shown "a connection between the applicable science and his own characteristics." *People v. Wilson*, 2022 IL App (1st) 192048, ¶ 89.

¶ 27 Moreover, at defendant's initial sentencing hearing, the circuit court had no discretion to consider defendant's youth and attendant circumstances since the sentencing scheme did not allow anything less than a life sentence. The circuit court found sufficient mitigation to preclude imposition of the death penalty but was precluded from considering mitigating factors in sentencing defendant to life imprisonment. Defendant has, therefore, made a substantial showing of prejudice.

¶ 28 The State argues defendant cannot show prejudice because, considering the details of the offense, defendant's life sentence for this double murder does not "shock the moral sense of the community." The State, however, misstates the relevant inquiry. Our courts have established that "a life sentence without parole *is* shocking to the moral sense of the community if it was imposed upon an emerging adult defendant who has established that (1) the science underlying *Miller* and its progeny applies to his or her specific facts and circumstances and (2) his or her age and youth-attendant circumstances were not considered at the original sentencing hearing before that life sentence was imposed." (Emphasis in original.) *Green-Hosey*, 2025 IL App (2d) 240284, ¶ 59; *People v. Sanchez*, 2026 IL App (1st) 240305, ¶ 57.

¶ 29 Additionally, the State argues that rehabilitation is not relevant to this analysis since the legislature already considered and disregarded rehabilitation when creating the sentencing scheme. The essential question, however, is whether defendant was more like a juvenile at the time of his

offense. Rehabilitation is relevant evidence that, at the time of the offense, defendant in fact "possessed rehabilitative potential incompatible with the imposition of a life sentence." (Internal quotation marks omitted.) *Wilson*, 2022 IL App (1st) 192048, ¶ 93.

¶ 30 The State also argues that Dr. Garbarino's report is insufficient because portions are affirmatively rebutted by the record. The State points only to defendant's claim, referenced in the report, that the death penalty charge against him was dropped due to his limited criminal history when, in fact, the State argued in favor of the death penalty and the circuit court declined to impose it. This single discrepancy, however, which could be attributed to defendant's misapprehension of legal proceedings, is not sufficient to wholly discredit Dr. Garbarino's report and his findings. Similarly, the State argues that, in many instances, Dr. Garbarino's observations and conclusions are too generalized. At this stage, however, we review only the legal sufficiency of the petition, liberally construing the allegations in favor of the defendant and taking all well-pleaded facts as true. *People v. Domagala*, 2013 IL 113688, ¶ 35; *People v. Sanders*, 2016 IL 118123, ¶ 31. Dr. Garbarino's report has enough specificity to satisfy the standard at this stage. We express no opinion on whether defendant can meet his burden at a third-stage evidentiary hearing. Defendant has made a substantial showing of prejudice and the dismissal of his petition at the second stage was, therefore, in error.

¶ 31 III. CONCLUSION

¶ 32 The judgment of the circuit court of Cook County is reversed and remanded for third-stage proceedings.

¶ 33 Reversed and remanded.