No. 127304

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Respondent-Appellee,<br><br>-vs-<br><br>TOROLAN WILLIAMS,<br><br>Petitioner-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Appellate Court of Illinois, No. 1-19-0535.<br><br>There on appeal from the Circuit Court of Cook County, Illinois , No. 08 CR 15108.<br><br>Honorable Carol M. Howard, Judge Presiding. |

**REPLY BRIEF FOR PETITIONER-APPELLANT**

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SUPREME COURT CLERK

## ARGUMENT

**Torolan Williams presented the gist of a constitutional claim in his initial *pro se* post-conviction petition that his mandatory life sentence for crimes he committed when he was 22 years old is unconstitutional as applied to him.**

In his *pro se* post-conviction petition, Torolan Williams argued that his mandatory life sentence was unconstitutional as applied to him because he was 22 years old at the time of the offense and the sentencing court had no discretion to consider his youth and its hallmark characteristics. (C. 97-101).On appeal, Williams seeks second-stage post-conviction proceedings so that he can fully develop and present his claim that his natural life sentence imposed on him when he was 22 years old violated the proportionate penalties clause of the Illinois Constitution. (Op. Br. 7-27). In response, the State argues that Williams has not proven that his mandatory life sentence is unconstitutional as applied to him, and that his claim is forfeited. None of the State's arguments have merit. Thus, this Court should reverse the summary dismissal of Williams' *pro se* petition and remand for second-stage proceedings, including the appointment of counsel.

### A. The State's forfeiture claims are waived.

The State argues that Williams' as-applied claim is forfeited because Williams should have raised the as-applied challenge at sentencing. (St. Br. 18-19). The State also argues that the ineffective assistance of counsel claims that Williams set forth his as-applied claim in is forfeited because he did not raise them on appeal. (St. Br. 23). The State's forfeiture claims are waived where the State failed to raise them in the appellate court. "The rules of waiver are applicable to the State as well as the defendant in criminal proceedings, and the State may waive an argument that the defendant waived an issue by failing to argue waiver in a timely manner." *People v.*

*Williams*, 193 Ill. 2d 306, 347-48 (2000). Indeed, when proceeding in the appellate court, the State did not claim forfeiture, and instead argued that Williams' claim had no arguable basis in law or fact. (St. App. Br. 11-12). Notably, the State acknowledged that Williams argued that trial counsel was ineffective for failing to challenge the constitutionality of the sentencing statute, and took no objection to the liberal construction of Williams' as-applied claim on appeal. (St. App. Br. 12). Thus, this core as-applied claim was litigated below, and the State has waived its forfeiture claim.

**B.1. Williams did not forfeit his proportionate penalties claim by failing to raise it at sentencing.**

The State contends that Williams' proportionate penalties claim was available to him at sentencing because his age at the time of the offenses, circumstances of the crimes, and criminal history were part of the of the trial record, and cites *People v. Clark*, 2023 IL 127273, *People v. Haines*, 2021 IL App (4th) 190612, and *People v. Moore*, 2023 IL 126461 to support its argument. (St. Br. 23). Initially, those cases are distinguishable, as they dealt with successive post-conviction petitions, and provided an explanation for why those petitioners could not state the requisite "cause" for the advancement of their petitions. *Clark*, 2023 IL 127273, ¶62; *Haines*, 2021 IL App (4th) 190612, ¶49; *Moore*, 2023 IL 126461, ¶40. Furthermore, none of those cases suggested that the as-applied challenges at issue in them were forfeited because they were not raised at sentencing as the State suggests. *Clark*, 2023 IL 127273, ¶67; *Haines*, 2021 IL App (4th) 190612, ¶57; *Moore*, 2023 IL 126461, ¶42. Nor did they stand for the holding that a petitioner may never raise a proportionate penalties challenge in a post-conviction petition if it has not been raised at sentencing. Notably, in *Clark* and *Moore*, the proportionate penalties challenges had not been raised at sentencing, and this Court decided them on grounds other than forfeiture. *Clark*, 2023 IL 127273, ¶¶90-94; *Moore*,

2023 IL 126461, ¶¶40-44. Yet, the State, without any legal support, suggests that a petitioner is forever precluded from a proportionate penalties challenge in an *initial* post-conviction petition if it has not been raised at sentencing. The State's argument runs afoul to this Court's repeated holdings that post-conviction petitions provide the proper forum for as-applied challenges, without ever stating they first have to be raised at sentencing. Indeed, the Post-Conviction Act exists to allow petitioners to raise constitutional issues that are not encompassed in the trial record and rely on additional facts outside of the record. *People v. House*, 2021 IL 125124, ¶15. That is just what Williams' case presents: a proportionate penalties challenge to his sentence based on additional facts relating to brain science that were not brought out at sentencing and pertain to his mandatory natural life sentence. (C. 97-101).

**B.2. Williams' proportionate penalties claim was not available to him at sentencing.**

The State contends that Williams could have raised his proportionate penalties claim at sentencing where his sentencing hearing was in 2014 and "nothing prevented petitioner from relying on his age" to argue that his mandatory life sentence violated proportionate penalties. (St. Br. 22). However, it would have been futile for Williams to present such an argument when a proportionate penalties claim of this kind would not have been available to Williams as a young adult. Indeed, Illinois jurisprudence at the time of Williams' sentencing hearing dealt primarily with minors raising proportionate penalties claims not emerging young adults. *See People v. Davis*, 388 Ill. App. 3d 869, 882 (2009) (mandatory natural life sentencing statute as applied to juvenile principles did not violate proportionate penalties); *People v. Davis*, 2014 IL 115595, ¶49 (same); *People v. Smolley*, 375 Ill. App. 3d 167, 171 (2007) (same).

In addressing this very argument in *People v. Herring*, 2022 IL App (1st) 210355,

¶37, the appellate court noted that because the defendant was an emerging young adult facing a mandatory life sentence, "an argument attempting to apply *Miller* under the proportionate penalties clause would have been futile at [the defendant]'s original sentencing hearing, mainly because the Illinois Supreme Court did not invite adult defendants to raise these claims in post-conviction proceedings until 2015."

Here, too, Williams was sentenced in 2014, one year short of this Court's invitation to young adults to challenge the constitutionality of their sentences based on *Miller* under the proportionate penalties clause. It would have been futile for Williams to have raised his proportionate penalties challenge. The State cites *People v. Leon Miller*, 202 Ill. 2d 202 Ill. 2d 328, 336-38 (2002), as support for its proposition that Williams could have raised his as-applied challenge at sentencing. (St. Br. 23). Yet, the State ignores that *Leon Miller* only applied to juveniles who were accountable for offenses, and upheld mandatory natural life for multiple murders for adults. *Leon Miller*, 202 Ill. 2d at 341. Thus, while *Leon Miller* was available to juveniles, it was not available to emerging adults like Williams who were the shooter, a point that the State later acknowledges. (St. Br. 34-35).

**B.3. Williams' proportionate penalties claim is not forfeited because he is raising it for the first time in a post-conviction petition.**

The State misapprehends *Thompson*, *Harris*, and *House* when it argues that an initial post-conviction petition is not the "proper vehicle to raise a proportionate penalties claim." (St. Br. 24). The State's argument makes no sense. In all of those cases, the proportionate penalties claims were not raised at sentencing, and this Court held that it was appropriate to raise them in a post-conviction petition. *See People v. Thompson*, 2015 118151, ¶44 (citing the Act as "expressly designed" to address as-applied proportionate penalties challenge raised by emerging adult); *People v. Harris*,

2018 IL 121932, ¶48 (rejecting as-applied challenge raised by defendant on direct appeal and stating claim could be raised through Post-Conviction Hearing Act); and *People v. House*, 2021 IL 125124, ¶32 (remanding for second-stage proceedings so that the record could be further developed). In none of these cases did this Court hold that because the as-applied challenges had not been raised at sentencing, the issue was forfeited. Despite this Court's clear invitation to petitioners like Williams to put forth their as-applied challenges in a post-conviction petition, the State continues to argue that just because it is possible to raise an as-applied challenge in a post-conviction petition, it does not mean that it is not forfeited. (St. Br. 28). Again, this argument makes no sense. Certainly, this Court would not suggest that an as-applied claim can be raised in a post-conviction petition if such a claim is forfeited. And unsurprisingly, the State can cite to no legal authority to support this argument.

**C.1 & C.2. Williams' as-applied claim is not frivolous or patently without merit where it is legally and factually arguable and is not rebutted by the record.**

Initially, the State frames Williams' argument as an ineffective assistance of appellate counsel claim. (St. Br. 28, 29). However, Williams' claim before this Court is not raised as an ineffective assistance of appellate counsel claim. Indeed, his claim is based upon facts that are outside of the trial record, specifically science on the development of emerging young adults' brains, and therefore this claim could not have been raised on direct appeal. (C. 97-101). Williams seeks second-stage proceedings so that he can develop the record and add facts that were not in the trial record and pertain specifically to the proportionate penalties claim and sentencing. None of these facts outside of the record could have been relied on by appellate counsel on direct appeal.

Here, Williams' substantive claim is that his mandatory life sentence for crimes he committed when he was 22 years old is unconstitutional as applied to him. (C. 97-101). Although his petition includes an allegation of ineffective assistance of appellate counsel, given the dearth of facts in the record, appellate counsel would have had no facts to raise a sentencing argument or trial counsel's ineffectiveness for not making a sentencing argument, a point which the State ostensibly concedes. (St. Br. 40). Nonetheless, the mere fact that trial and appellate counsels' ineffectiveness was not raised on appeal, or any of the other arguments contained in Williams' petition for that matter, does not mean the claims are forfeited. These arguments are contained in the petition itself. At the second stage, post-conviction counsel can amend the *pro se* petition, and appointed counsel could very well amend all of those arguments contained within the petition.

**C.2.a. Williams' proportionate penalties claim is arguably meritorious.**

The State does not dispute that as-applied constitutional challenges exist in Illinois, that this Court has found statutes unconstitutional as applied to both juvenile and adult defendants, and that courts have also extended juvenile sentencing laws to late adolescent offenders. (Op. Br. 8-13). This case law offers legal support for each element of Williams' claim, showing it has an arguable basis in the law and should advance to second-stage proceedings. *See People v. Hodges*, 234 Ill. 2d 1, 16 (2009).

The State argues that Williams' mandatory natural life sentence is proportionate to the offense, and that this Court has "repeatedly rejected facial and as-applied challenges to statutes that require minimum sentences for adult offenders[.]" (St. Br. 34). The State cites *People v. Hilliard*, 2023 IL 128186 for this proposition. (St. Br. 34). However, this Court's decision in *Hilliard* upheld the mandatory 25-year firearm enhancement in that case because that enhancement was not a mandatory life sentence.

*Hilliard*, 2023 IL 128186, ¶27. This Court noted further that even with the mandatory 25-year sentence, the defendant's total sentence of 40 years was less than a *de facto* life sentence for juveniles. *Id.* Indeed, the defendant's 40-year sentence was discretionary where the sentencing court sentenced him to 15 years for first-degree murder, when it had available to it a sentencing range of six to 30 years. *Id.* at ¶9. Thus, this Court's decision in *Hilliard* rejected the as-applied challenge based upon the fact that the defendant did not receive a mandatory life sentence.

The State also argues that *Leon Miller* is the "only case in which this case in which this Court has found mandatory minimum particularly unconstitutionally disproportionate to a particular offender," and that *Leon Miller* is distinguishable because the defendant in that case was a juvenile and his degree of participation was minimal. (St. Br. 34). But this argument ignores that this Court has held repeatedly that emerging adults, like Williams, may raise as-applied challenges in an initial post-conviction petition, without *ever* rejecting such a claim on the merits. *See Thompson*, 2015 IL 118151, ¶¶43-44; *Harris*, 2018 IL 121932, ¶48; *House*, 2021 IL 125124, ¶32. *See also Clark*, 2023 IL 127273, ¶87 ("Defendant is correct that this court has not foreclosed 'emerging adult' defendants between 18 and 19 years old from raising as-applied proportionate penalties clause challenges to life sentences based on the evolving science on juvenile maturity and brain development."). Thus, Williams' claim has arguable legal merit.

Moreover, neither the fact that Williams was not a juvenile at the time of the offense nor his degree of participation in the offenses undermine his as-applied challenge to his mandatory life sentence. Indeed, in *Leon Miller*, this Court disavowed any set test for what punishment is so wholly disproportionate as to shock the moral sense

of the community; rather, the issue turns on the facts of each case, viewed under evolving standards of decency. 202 Ill. 2d at 339-40. *See also People v. Daniels*, 2020 IL App (1st) 171738, ¶¶29, 31 ("Nowhere did the *Harris* court suggest . . . that a defendant's degree of participation in a crime . . . should utterly disqualify him from raising such a claim"); *accord People v. Ross*, 2020 IL App (1st) 171202, ¶28.

Williams acknowledges the seriousness of the facts in this case, particularly that multiple people were killed during the course of a robbery. Yet, this fact alone cannot justify preventing him from developing a record to develop facts to show that a mandatory natural life sentence was disproportionate to him. That there were multiple deaths is not an exception to the proportionate penalties clause. Indeed, *Harris* and *House* demonstrate that youth should be considered when sentencing offenders with juvenile-like brains. *See Harris*, 2018 IL 121932 at ¶48 (finding post-conviction proceedings provide the opportunity to develop a record complete with the latest developments in the science of young adult brains); *see also House*, 2021 IL 1215124, ¶31 (same).

**C.2.b. Williams' proportionate penalties claim is not precluded by *People v. Wilson*, 2023 IL 127666.**

The State argues that Williams' claim is not viable and that the case law upon which he relies is outdated. (St. Br. 43). However, the courts in the cases to which Williams cited to referred to the proportionate penalties claims as being raisable in a post-conviction petition. Moreover, the State's reliance on *Moore*, *Clark*, and *Dorsey*, 2021 IL 123010, is inapposite where they pertain only to successive post-conviction petitions. (St. Br. 44). Indeed, the State cites these cases in order to disregard Williams' reliance on scientific research concerning brain development, in which this Court held that neither *Miller* nor its cited scientific research provided announced any new principles

under the proportionate penalties clause to raise an as-applied challenge in a successive post-conviction petition. (St. Br. 44). But this Court's rulings were related to the cause element for a successive petition, not a first-stage petition as in this case.

Here, Williams does not have to show why he did not raise this issue in an earlier petition because he did not file one. Rather, for a first-stage post-conviction petition, Williams' petition was required to meet the low threshold of an arguable claim that is not rebutted by the record. *See Herring*, 2022 IL App (1st) 210355, ¶31 (first-stage petition has much lower pleading standard than a successive post-conviction petition). A petition lacking an arguable basis in law or fact "is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). An indisputably meritless legal theory is one which is "completely contradicted by the record;" a fanciful factual allegation is one that is "fantastic or delusional." *Id*. at 16-17. This Court's holdings in *Hilliard* and the other cases cited by the State do not render Williams' as-applied challenge to his mandatory natural life sentence delusional. Nor is his claim rebutted by the record. Indeed, nowhere in the record is there an indication that Williams was not similar to that of a juvenile offender.

The State points out that the courts in *People v. Minniefield*, 2021 IL App (1st) 170541 and *People v. Savage*, 2020 IL App (1st) 17315 only upheld the young adult petitioners' proportionate penalties claims non-frivolous because of a change in the law. (St. Br. 44-45). However, these cases did not suggest that without a change in the law, the claim would be frivolous.

The State also argues that the cases to which Williams cited were decided before this Court's overruling of *People v. Holman*, 2017 IL 120655 in *People v. Wilson*, 2023 IL 127666. (St. Br. 45). However, the reason that *Wilson* overruled *Holman* does not

apply in this case. In *Wilson*, this Court held that the sentencing court does not need to go through all of the *Miller* factors or make a finding of incorrigibility. *Wilson*, 2023 IL 127666, ¶42. Here, Williams is not arguing that the sentencing court was required to consider his youth and its attendant characteristics. Rather, the issue is that the court could not do so because Williams faced mandatory natural life. Indeed, *Holman* and *Wilson* were based upon discretionary life sentences. *Holman*, 2017 IL 12065, ¶34; *Wilson*, 2023 IL 127666, ¶44. Both cases further dealt with successive post-conviction petitions, which cannot be procedurally compared to a first-stage post-conviction petition like this one. *Holman*, 2017 IL 120655, ¶20; *Wilson*, 2023 IL 127666, ¶20.

The State argues that Williams' claims are not supported, and that his "*pro se* status does not excuse his failure to comply with the Act." (St. Br. 46-47). Yet, this argument treats this case as if it were at later stages of post-conviction proceedings and Williams were required to *prove* that his mandatory life sentence is unconstitutional as applied to him. *See People v. Edwards*, 197 Ill. 2d 239, 246-47 (2001) (whether defendant has made a "substantial showing of a constitutional violation" is inappropriate at first stage). However, as Williams argued in his brief, there is support in the record for his claim that youth affected his participation in the offense. (Op. Br. 23-26). While the State insists that trial counsel could have highlighted these factors during sentencing (St. Br. 22), case law concerning youthful offenders and *mandatory* life sentencing was not available. Moreover, when it comes to expert evidence concerning young adult brain science, it is unreasonable to expect a *pro se* prisoner to have access to the scientific materials that *Harris* and *House* require. Or for that same *pro se* prisoner to understand which facts about himself would highlight this expert evidence besides his age. *See Herring*, 2022 IL App (1st) 210355, ¶35 ("obtaining that kind of [expert] evidence from prison without a lawyer is [unreasonably burdensome]."); *see also People*

*v. Zumot*, 2021 IL App (1st) 191743, ¶29 (must take into account that at the first stage a *pro se* petitioner will be unaware of specific legal basis and facts that are "'critical parts of a complete and valid constitutional claim.'") (quoting, *Edwards*, 197 Ill. 2d at 245).

Finally, the State contends that by asserting an as-applied challenge to his mandatory life sentence, Williams is suggesting that he "should receive greater procedural rights than a juvenile offender." (St. Br. 46). This is certainly not the case. Williams is not requesting this Court afford him any greater procedural rights than a juvenile offender. Rather, he is asking this Court to allow him to demonstrate that at 22 years old, he was *similar* to a juvenile offender. Moreover, Williams does not argue that his rehabilitative potential be given *greater* weight than the seriousness of the offense, but that his mandatory life sentence *hinders* his rehabilitative potential, while *also* being disproportionate to his offense. Neither this argument nor any other argument from the State demonstrate that Williams' *pro se* as-applied challenge is frivolous or patently without merit, and therefore it should not have been summarily dismissed at the first stage of proceedings. This Court should therefore reverse the appellate court's judgment and remand the case for further post-conviction proceedings.

## CONCLUSION

For the foregoing reasons, Torolan Williams, Petitioner-appellant, respectfully requests that this Court reverse the appellate court's judgment in *People v. Williams*, 2021 IL App (1st) 190535, and remand for further post-conviction proceedings.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 12 pages.

/s/Ashlee Johnson
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**NOTICE AND PROOF OF SERVICE**

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 24, 2024, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Jacob J. Vicik
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