

No. 130930

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF
ILLINOIS,

Respondent-Appellant,

-VS-

CORWYN BROWN,

Petitioner-Appellee.

Appeal from the Appellate Court of Illinois, No. 1-22-1859 & 1-23-0328 (Consolidated).

There on appeal from the Circuit Court of Cook County, Illinois , No. 93 CR 22656.

Honorable
James B. Linn,
Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Whether this Court should affirm the appellate court's holding that Corwyn Brown's natural life sentence as an habitual criminal under 730 ILCS 5/5-4.5-95 (a), imposed for conduct committed as a teenager, is unconstitutional.

STATUTES AND RULES INVOLVED

720 ILCS 5/33B-1 Habitual criminals —Determination—Application of Article (1995)

- (a) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now classified in Illinois as a Class X felony or murder, and is thereafter convicted of a Class X felony or, committed after the two prior convictions, shall be adjudged an habitual criminal.
- (b) The two prior conviction need not have been for the same offense.
- (c) Any convictions which result from or are connected with the same transaction, or result from offenses committed at the same time, shall be counted for the purposes of this Section as one conviction.
- (d) This Article shall not apply unless each of the following requirements are satisfied:
 - (1) the third offense was committed after the effective date of this Act;
 - (2) the third offense was committed within 20 years of the date that judgment was entered on the first conviction, provided, however, that time spent in custody shall not be counted;
 - (3) the third offense was committed after conviction on the second offense;
 - (4) the second offense was committed after conviction on the first offense.
- (e) Except when the death penalty is imposed, anyone adjudged an habitual criminal shall be sentenced to life imprisonment.

720 ILCS 5/33B-1 (1995)

730 ILCS 5/5-4.5-95 General Recidivism Provisions (2016)

(a) HABITUAL CRIMINALS.

- (1) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now (the date of the offense committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and who is thereafter

convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

* * * *

- (4) This Section does not apply unless each of the following requirements are satisfied:
 - (A) The third offense was committed after July 3, 1980.
 - (B) The third offense was committed within 20 years of the date that judgment was entered on the first conviction; provided, however, that time spent in custody shall not be counted.
 - (C) The third offense was committed after conviction on the second offense.
 - (D) The second offense was committed after conviction on the first offense.
- (5) Anyone who, having attained the age of 18 at the time of the third offense, is adjudged an habitual criminal shall be sentenced to a term of natural life imprisonment.

730 ILCS 5/5-4.5-95(a) (eff. Jan. 1, 2016).

730 ILCS 5/5-4.5-95 General Recidivism Provisions (2021)

(a) HABITUAL CRIMINALS.

- (1) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now (the date of the offense committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and who is thereafter convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.
- (2) The 2 prior convictions need not have been for the same offense.
- (3) Any convictions that result from or are connected with the same transaction, or result from offenses committed at the same time, shall be counted for the purposes of this Section as one conviction.
- (4) This Section does not apply unless each of the following requirements

are satisfied:

- (A) The third offense was committed after July 3, 1980.
 - (B) The third offense was committed within 20 years of the date that judgment was entered on the first conviction; provided, however, that time spent in custody shall not be counted.
 - (C) The third offense was committed after conviction on the second offense.
 - (D) The second offense was committed after conviction on the first offense.
 - (E) The first offense was committed when the person was 21 years of age or older.
- (5) Anyone who is adjudged an habitual criminal shall be sentenced to a term of natural life imprisonment.

* * * *

- (b) When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 forcible felony after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 forcible felony was committed) classified in Illinois as a Class 2 or greater Class forcible felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender. This subsection does not apply unless:
- (1) the first forcible felony was committed after February 1, 1978 (the effective date of Public Act 80-1099);
 - (2) the second forcible felony was committed after conviction on the first;
 - (3) the third forcible felony was committed after conviction on the second; and
 - (4) the first offense was committed when the person was 21 years of age or older.
- (c) (Blank).

730 ILCS 5/5-4.5-95 (eff. Jan 1, 2021).

STATEMENT OF FACTS

Corwyn Brown has served 30 years of a natural life sentence imposed upon him pursuant to Illinois' Habitual Criminal statute (Ill.Rev.Stat.1983, ch. 38, par. 33B-1) after he was found guilty of aggravated vehicular hijacking and aggravated sexual assault in 1995. (CI. 412)

On July 13, 2021, Brown filed a motion for leave to file a successive post-conviction petition, arguing that his natural life sentence is unconstitutional where one of his qualifying convictions underpinning his status as an habitual criminal was committed when he was just 17 years old. (C. 310-315, 317-321) On December 7, 2022, Brown filed a second motion for leave to file a successive post-conviction petition, raising the same issue. (CI. 3412-3423) The circuit court denied Brown leave to file both successive petitions. (R. 1915; C. 451) Following *People v. Stewart*, 2022 IL 126116 and *People v. Durant*, 2024 IL App (1st) 211190-B, the appellate court reversed that ruling, vacated Brown's natural life sentence, and remanded to the trial court for resentencing. *People v. Brown*, 2024 IL App (1st) 221859-U, ¶¶ 13-19.

Jury Trial

At trial, State's witnesses testified about the incidents that took place on the night of September 7, 1993, that led to Brown's convictions for aggravated vehicular hijacking and aggravated sexual assault. (R. 477-517, 553-558, 829)

Sentencing

After trial, the State petitioned the court to adjudge Brown as an habitual criminal, and noted in aggravation two prior convictions for armed robbery in

1980, when Brown was 17 years old, in case numbers 80I605058 and 80I605062. (CI. 419-420; R. 877) It also noted another armed robbery conviction in 1984. (R. 880) Based on those prior Class X convictions, the court sentenced Brown to life in prison as an habitual criminal. (R. 892-894)

Direct Appeal and Prior Collateral Appeals

The appellate court upheld Brown's conviction and sentence on direct appeal, finding that the evidence was sufficient to support a conviction. *People v. Brown*, No. 1-95-2116, Rule 23 Order (1st Dist., November 26, 1995) (CI. 504-506)

Between 1998 and 2001, Brown filed several collateral petitions, alleging various claims of error in the proceedings, that the trial and appellate courts dismissed. (C. 234-235; CI. 515, 535, 933-934, 793-816, 863, 872-874, 923, 1154-1155, 1420-1421, 1945-1955, 3484-3488)

Instant Post-Conviction Proceedings

On July 13, 2021, Brown filed a motion for leave to file a successive post-conviction petition, arguing that his life sentence was unconstitutional where he was not eligible to be sentenced as an habitual criminal because his 1980 convictions for armed robbery, case numbers 80I605058 and 80I605062, used to impose the habitual criminal statute, were committed when he was a juvenile. (C. 310-355) On October 26, 2022, the circuit court denied Brown leave to file the petition. (R. 1915) Citing *People v. Durant*, 2022 Ill App (1st) 211190-U, the court found that the amendment to the habitual criminal statute, stating that a prior conviction committed as a juvenile cannot support a habitual criminal conviction, is not retroactive. (R. 1914-1915) Brown filed a notice of appeal and the case was

assigned appeal number 1-22-1859. (C. 419)

On December 7, 2022, Brown filed another motion for leave to file a successive post-conviction petition raising the same issue, including that his sentence violated the proportionate penalties clause of the Illinois Constitution. (CI. 3412-3423) The circuit court denied Brown leave to file this successive petition as well. (C. 451) Brown filed a notice of appeal and the case was assigned appeal number 1-23-0328. (C. 464) On July 27, 2023, the appellate court allowed the motion to consolidate the appeals.

On appeal, the appellate court followed the decisions in *People v. Stewart*, 2022 IL 126116 and *People v. Durant*, 2024 IL App (1st) 211190-B, and held that Brown's sentence as a habitual criminal pursuant to subsection 5-4.5-95(a) violated his due process rights because he committed one of his prior Class X offenses before he was 21 years of age. *People v. Brown*, 2024 IL App (1st) 221859-U, ¶¶ 13-19. The appellate court reversed the circuit court's judgments denying leave to file the successive post-conviction petitions, vacated Brown's life sentence as an habitual criminal, and remanded for resentencing. *Id.*, ¶ 21.

ARGUMENT

This Court should affirm the appellate court’s holding that Corwyn Brown’s natural life sentence as an habitual criminal under 730 ILCS 5/5-4.5-95 (a), imposed for conduct committed as a teenager, is unconstitutional.

In Illinois, courts have long held that when identical language appears in different sections of the same statute, it should be given the same meaning. In 2021, the Illinois legislature amended sections (a) and (b) of the Habitual Criminal Act (“HCA”), 730 ILCS 5/5-4.5-95, with the same language, requiring the prior qualifying felonies under both the habitual offender and mandatory Class X provisions to have been committed when the defendant was at least 21 years of age. This Court has already interpreted the language in subsection (b), the Class X sentencing provision, to have merely clarified the law, and not changed it, excluding from mandatory Class X sentencing anyone whose prior felonies occurred before turning 21, even those sentenced before the amendment’s effective date. *People v. Stewart*, 2022 IL 126116, ¶22. Because subsection (a), the habitual offender provision, contains identical language to subsection (b), sound logic dictates that the amendment to subsection (a) was also a clarification that applies to defendants who were sentenced before its effective date. *People v. Durant*, 2024 IL App (1st) 211190-B, ¶¶ 31-34. Thus, this Court should affirm the appellate court’s holding that because Corwyn Brown was only 17 when he committed his first armed robbery, the 2021 clarification establishes that he never qualified as an habitual offender under subsection (a), and remand for resentencing.

Corwyn Brown has served 30 years of a natural life sentence in prison under the HCA as a consequence of his conduct as a mere teenager. In 1995, Brown was

convicted of two Class X felonies and the court sentenced him as an habitual offender after finding he had two prior Class X felony convictions, including one from 1980 when he was 17 years old, qualifying him for sentencing under the HCA. Brown filed a motion for leave to file a successive post-conviction petition, arguing that his natural life sentence was unconstitutional, the sentence should be vacated, and the case should be remanded for resentencing. (C. 310-355; CI. 3412-3423) Following this Court's decision in *Stewart*, 2022 IL 126116, the appellate court held that Brown's prior 1980 conviction did not qualify him as an habitual offender because the 2021 amendment to the HCA clarified that a defendant could be sentenced as an habitual offender only where "the first offense was committed when the person was 21 years of age or older," and Brown was only 17 at the time of a prior qualifying offense. *People v. Brown*, 2024 IL App (1st) 221859-U, ¶¶ 13-19; 730 ILCS 5/5-4.5-95 (a).

Addressing the Class X provision of section 5-4.5-95 (b), *Stewart* held that the 2021 amendment was not intended to change the statute but, rather, to "clarify the meaning of the original statute." 2022 IL 126116, ¶22. Because the amendment was a clarification, its provisions applied retroactively to the *Stewart* defendant who was sentenced before the amendment's effective date. *Id.*, ¶¶ 22-25.

The First District appellate court decision in *People v. Durant*, 2024 IL App (1st) 211190-B, applied *Stewart* to the habitual criminal provision of 730 ILCS 5/5-4.5-95 (a). Finding that the amendments to subsections (a) and (b) used identical language and were changed simultaneously, *Durant* held that the legislature intended that the amendment to subsection (a) was also a clarification and should

also be applied retroactively. *Durant*, 2024 IL App (1st) 211190-B, ¶¶ 31-34. The appellate court's decision in the instant case following *Durant* should be affirmed where the amendment to subsection (a) was a clarification that should be applied retroactively to Brown. *Brown*, 2024 IL App (1st) 221859-U, ¶¶ 13-19.

The State argues that the appellate court's ruling, vacating Brown's natural life sentence, should be reversed because *Stewart's* analysis of the Class X provision under subsection (b) of the statute is not applicable to the habitual criminal provision under subsection (a). (St. Br. 14-28) To reach this conclusion, the State first contends that, despite this Court's holding in *Stewart*, the 2021 amendment to subsection (a) does not apply retroactively, noting that the effective date of the amendment indicated prospective application only. (St. Br. 19-21) The State further argues that the 2021 amendment was a substantive change in the law, not a mere clarification, based on the fact that the split in authority in appellate court cases applied only to subsection (b). (St. Br. 22-27) Next, the State claims that the 2016 amendment to subsection (a) reveals a legislative intent indicating a substantive change in the 2021 amendment. (St. Br. 27-28) As a final matter, the State argues that Brown's claim is not cognizable in a post-conviction petition because it does not raise a claim of a constitutional violation. (St. Br. 14-18)

The State's contentions are wrong. First, the effective date of the amendment to both subsection (a) and subsection (b) was the same, and this Court found that subsection (b) applied retroactively. *Stewart*, 2022 IL 126116, ¶ 23. Logically, the legislature intended that subsection (a) also apply retroactively. Additionally, the split in appellate court authority encompassed the interpretation of the habitual

offender provision in subsection (b), and where *Stewart* held that the amendment to subsection (b), which provides identical language to and was changed at the exact same time as subsection (a), was a clarification, the State's assertion that the amendment to subsection (a) was a substantive change is untenable. *Id.*, ¶ 22.

Moreover, the 2016 amendment to subsection (a) was part of the legislature's attempt to conform the law for every criminal offense with *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), to ensure that no defendant under the age of 18 was sentenced to natural life; the legislature enacted a common scheme across the entire criminal code without regard to the specifics of any individual statute, including the HCA. The 2016 amendment did not address or alter the criteria for qualifying prior convictions and therefore does not affect the interpretation of the 2021 amendment as a clarification. Lastly, the claim is cognizable in a post-conviction petition; sentencing Brown as an habitual offender violates his constitutional rights under the due process clause and Illinois' proportionate penalties clause. *Durant*, 2024 IL App (1st) 211190-B, ¶¶ 41, 52.

Ultimately, the State's position leads to an absurd result: that the addition of identical language in both subsections (a) and (b) was intended to be merely "clarifying" as to one subsection, but amendatory as to another. To avoid this absurdity, this Court should reach the conclusion that subsection (a), like subsection (b), is retroactive, rendering Brown's natural life sentence unconstitutional. Accordingly, this Court should affirm the appellate court's holding and reverse the denial of leave to file Brown's petition, vacate his natural life sentence, and

remand for resentencing. Ill.S.Ct. R. 615(b)(2) (2024); see *People v. Toy*, 2013 IL App (1st) 120580, ¶30 (ordering resentencing from erroneous initial-stage dismissal of proportionate penalties claim).

A. Post-Conviction Principles and Standard of Review

Under Section 122-1(f) of the Post-Conviction Hearing Act (“the Act”), a petitioner must secure leave from the trial court to file a successive petition. 725 ILCS 5/122-1(f) (2022). Leave to file will be granted where (a) the petitioner can show “cause” for the failure to raise the claim in a previous petition and (b) “prejudice” would result if review of the claim were denied. 725 ILCS 5/122-1(f).

“Cause” is defined as some objective factor external to the defense that impeded the claim from being raised in the prior proceeding. *Id.*; *Pitsonbarger*, 205 Ill. 2d at 460. A new substantive rule provides cause “because it was not available earlier to counsel.” *People v. Davis*, 2014 IL 115595 ¶ 42; see also *People v. Hudson*, 195 Ill. 2d 117, 127 (2001) (“cause” established where petitioner “is seeking to assert a legal claim the basis of which was not readily available to counsel” previously). Here, Brown has shown cause because the *Stewart* decision announced a substantive rule narrowing the scope of the HCA—specifically, to exclude people like Brown from its reach—and that rule was not available to Brown until this Court issued the *Stewart* decision in 2022. The State concedes that Brown established cause, noting that the amendment to the HCA did not exist until 2021. (St. Br. 14)

“Prejudice” exists where the claimed error resulted in a conviction or sentence that violates due process. 725 ILCS 5/122-1(f); *Pitsonbarger*, 205 Ill.2d at 464.

Here, prejudice exists because, per *Stewart*, Brown did not qualify as an habitual criminal for whom a natural life sentence was authorized under the prevailing statute, and the imposition of that sentence violates due process and the proportionate penalties clause, as would a refusal to apply *Stewart*'s substantive rules to this case.

This Court reviews the denial of a motion for leave to file a successive post-conviction petition, as well as the constitutionality of a statute, *de novo*. *People v. Robinson*, 2020 IL 123849, ¶ 39.

B. Under *Stewart* and the subsequent analysis in *Durant*, Corwyn Brown never qualified as an habitual criminal.

In 1995, Brown was convicted of aggravated vehicular hijacking and aggravated sexual assault, Class X felonies. Ill. Rev. Stat. 1985 Ch. 38, ¶ 12-14, 18. The State filed a petition requesting the imposition of a natural life sentence pursuant to the HCA. (CI. 419-420) The trial court determined that Brown was an habitual criminal based on his prior Class X armed robbery conviction in 1984, and two prior Class X convictions for armed robbery in 1980 in cases 80I605058 and 80I605062—which were committed when he was 17 years old—and sentenced him to natural life in prison. (R. 892-894) Brown remains in prison today, having served 30 years of his natural life sentence. *See* “N02101—BROWN, Corwyn—Individual in Custody Search”¹; *see Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶17, n.3 (court may take judicial notice of Department of Corrections record).

¹Available online at: <https://idoc.illinois.gov/offender/inmatesearch.html> (Last accessed June 3, 2025).

In 2021, the legislature, under Public Act 101-652, amended the HCA, now codified at 730 ILCS 5/5-4.5-95, to ensure that its two provisions—both subsection (a) and subsection (b)—do not apply unless “the first offense was committed when the person was 21 years of age or older.” 730 ILCS 5/5-4.5-95 (eff. July 1, 2021); P.A. 101-652.

Addressing subsection (b) of the section 5-4.5-95—which mandates a Class X sentence upon a defendant’s third conviction for a Class 2 or higher offense—this Court held in *Stewart* that the legislature’s 2021 amendment was not intended to change the statute but, rather, to “clarify the meaning of the original statute.” 2022 IL 126116, ¶ 22. Accordingly, this Court found that the *Stewart* defendant’s “2013 conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing under the previous version of section 5-4.5-95(b) of the Code.” *Id.*

Because Public Act 101-652’s clarifying amendment to subsection (a) of the HCA—*i.e.*, the provision under which Brown was sentenced to natural life for his third Class X offense—is identical to the amendment to subsection (b) addressed in *Stewart*, the court in *People v. Durant*, 2024 IL App (1st) 211190-B recently held it should be treated in precisely the same manner as the Class X provision. *Id.*, ¶¶ 1-42 (reversing denial of leave to file successive post-conviction petition and vacating life sentence imposed following 2005 conviction); *see also People v. O’Neal*, 2023 IL App (4th) 170682-UB, ¶¶ 21-22, 24 (vacating defendant’s

natural life sentence predicated on being an habitual criminal in light of *Stewart*).² The analysis in *Durant* should direct the outcome of this case. Because Brown's status as an habitual criminal rests upon a conviction that occurred when he was well under 21 years old, his life sentence should be vacated as well.

1. *Stewart* recognized that the 2021 legislation clarified, rather than changed, the age-related eligibility standards of the HCA.

Pursuant to *Stewart*, Brown is not, and never was, eligible for a life sentence under the HCA. Brown was sentenced as an habitual offender because the circuit court found his 1995 conviction to be the third time he was convicted of a Class X offense. However, because Brown's first Class X offense occurred before he reached the age of 21, it cannot serve as a qualifying offense for habitual criminal status under *Stewart*.

At the time of Brown's sentencing, the relevant habitual criminal provision provided:

- (a) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping or first degree murder, and is thereafter convicted of a Class X felony, criminal sexual assault or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

* * * *

- (d) This Article shall not apply unless each of the following requirements are satisfied:
 - (1) the third offense was committed after the effective date of this Act;

⁷ *O'Neal* is cited as persuasive authority under Illinois Supreme Court Rule 23(e)(1); a copy of *O'Neal* is attached in the appendix.

- (2) the third offense was committed within 20 years of the date that judgment was entered on the first conviction, provided, however, that time spent in custody shall not be counted;
- (3) the third offense was committed after conviction on the second offense;
- (4) the second offense was committed after conviction on the first offense.
- (e) Except when the death penalty is imposed, anyone adjudged an habitual criminal shall be sentenced to life imprisonment.

720 ILCS 5/33B-1 (1995) (now codified as amended at 730 ILCS 5/5-4.5-95(a)).(eff. July 3, 1980).

The foregoing habitual criminal provision (subsection (a)) is structured similarly to the Class X sentencing provision (subsection (b)), which requires a Class X sentence for defendants convicted of a third Class 2 or greater felony. The version at issue in *Stewart* provided:

* * * *

- (b) When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender. This subsection does not apply unless:
 - (1) the first felony was committed after February 1, 1978 (the effective date of Public Act 80-1099);
 - (2) the second felony was committed after conviction on the first; and
 - (3) the third felony was committed after conviction on the second.

730 ILCS 5/5-4.5-95(b) (2017).

In 2021, the legislature amended each of these provisions through P.A.

101-652. (eff. July 1, 2021). Using identical language for amendments to both subsections (a) and (b), the legislation directed that the habitual criminal provision and the Class X sentencing provision are to apply only where “[t]he first offense was committed when the person was 21 years of age or older.” 730 ILCS 5/5-4.5-95(a)(4)(E); 730 ILCS 5/5-4.5-95(b)(4).

This Court held in *Stewart* that this amendment did not change the meaning of the Class X sentencing statute, but instead *clarified* what its meaning had always been. This Court stated that the “issue in this appeal is whether [the *Stewart* defendant’s] 2013 conviction for a Class 1 felony offense at age 17 was a qualifying offense for purposes of Class X sentencing under section 5-4.5-95(b) of the Code.” *Stewart*, 2022 IL 126116, at ¶ 11. It noted a split in appellate court authority over whether the legislature intended a prior conviction to trigger Class X sentencing “if the same offense would have resulted in a juvenile adjudication” under current law, pointing out that the statute was silent on this question. *Id.*, at ¶¶ 16-17. To resolve the split, this Court focused on the legislature’s 2021 decision to amend the statute “to provide that the first qualifying offense for Class X sentencing must have been ‘committed when the person was 21 years of age or older.’” *Id.* at ¶ 19.

Stewart found this amendment was not intended to *change* the law: relying on the principle that a “subsequent amendment to a statute may be an appropriate source for discerning legislative intent” underlying the initial legislation, the court concluded that a presumption of change did not apply here because the 2021 amendment was “intended merely to interpret or clarify the original act,” specifically

by resolving a split in authority among lower courts that had previously interpreted the statute. *Id.*, at ¶ 20. That split, and the statute’s silence, led the court “to conclude that Public Act 101-652 was intended to resolve the conflict in the appellate court and *clarify the meaning of the original statute.*” *Id.* at ¶ 22 (emphasis added). Accordingly, this Court held that the *Stewart* defendant’s “2013 conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing under the previous version of section 5-4.5-95(b) of the Code.” *Id.*

Stewart’s specific holding was quickly (and, at the time, uncontroversially) applied to the HCA’s parallel “habitual criminal” provision found in subsection (a). In February of 2023, the Fourth District appellate court in *O’Neal* found, in agreement with the State’s concession, that *Stewart*’s conclusion “that the 2021 amendment was intended to clarify the meaning of the original statute” applied equally to the habitual offender provision as it did to the Class X sentencing provision. 2023 IL App (4th) 170682-UB, at ¶¶ 21-22. Accordingly, the *O’Neal* court vacated the defendant’s life sentence. *Id.*, at ¶ 24. And a month later, this Court vacated the appellate court’s decision affirming defendant’s life sentence in *Durant*, and remanded the case to the appellate court with instructions to reconsider its decision in light of *Stewart*. 210 N.E.3d 796 (Table) (Mar. 29, 2023).

2. *Durant* followed *Stewart* to hold that the 2021 amendment to subsection (a) of the HCA should be interpreted in the same manner as the identical amendment to subsection (b).

Notably absent from the State’s brief is a discussion of the analysis in *Durant*. In that case, the appellate court held that *Stewart*’s holding required resentencing

for those upon whom natural life sentences were imposed under the HCA's habitual offender provision based on underage convictions, even if such a sentence was imposed long ago.

Durant ultimately established that no offense that was committed when an offender was under the age of 21 can be used as a predicate offense when sentencing an individual as an habitual criminal. The *Durant* defendant was convicted in 2005 of a Class X felony after having been convicted of two prior Class X felonies, the first of which he committed when he was 16, and was sentenced to natural life imprisonment under subsection (a) of the HCA. 2024 IL App (1st) 211190-B, ¶ 5. In 2021, he was denied leave to file a successive post-conviction petition arguing that his sentence was “unconstitutional as applied to him,” in light of the 2021 statutory amendment. 2024 IL App (1st) 211190-B, ¶¶ 8-9. After the appellate court initially affirmed the denial of leave to file, this Court vacated the appellate court's initial order and directed it to reconsider its holding in light of *Stewart*. *Id.* at, ¶ 10 (*citing Durant*, 2022 IL App (1st) 211190-U, ¶¶ 9-14.)

And in light of *Stewart*, the *Durant* court subsequently held the defendant's life sentence was unauthorized and violated due process. 2024 IL App (1st) 211190-B, ¶¶ 25-42. *Durant* recognized *Stewart*'s holding that the 2021 amendment to subsection (b) of the HCA “clarif[ied] existing law such that its minimum age requirement applied even to a person sentenced as a Class X offender before the 2021 amendment.” *Id.* at ¶ 34. The 2021 amendment to subsection (a), which was part of the same Public Act and added that same identical language to a parallel subsection, ought to be interpreted in the same way. 2024 IL App (1st) 211190-B,

¶ 2 (“*Stewart*’s analysis of Public Act 101-652 . . . must apply to the identically worded amendment to the habitual criminal provision in subsection (a) of the same statute.”). Put differently, the simultaneous and identical amendments to subsections (a) and (b), instituted in the same public act, are “properly viewed as the legislature’s restoration of the original intended meaning for both subsection (a) and (b)—that convictions under age 21 should not be used as predicate offenses.” *Id.*, ¶ 30. “Indeed, it would be incongruous and defy common sense to find the legislature did not act with similar intent when it added identical provisions at the very same time in the same public act.” *Id.*, ¶ 32.

Here, the appellate court noted that the “instant appeal turns on the very same issues” as in *Durant. Brown*, 2024 IL App (1st) 221859-U, ¶ 18. The appellate court then relied on *Durant*’s conclusion and held that *Brown* was improperly sentenced as an habitual criminal where one of his predicate convictions occurred when he was younger than 21 years old. *Id.* This Court should affirm that ruling.

3. Interpreting identical amendments to the same statute identically accords with long-standing rules of statutory construction.

Durant’s analysis rests in large part on the well-established “principle that ‘where a word is used in different sections of the same statute, the presumption is that the word is used with the same meaning throughout the statute, unless a contrary legislative intent is clearly expressed.’” *Id.*, ¶ 33 (quoting *People v. Ashley*, 2020 IL 123989, ¶ 36). Illinois courts regularly employ this interpretive tool when seeking to read two like portions of a statute harmoniously. See *McMahan v. Industrial Com’n*, 183 Ill.2d 499, 513 (“Under basic rules of statutory construction,

where the same words appear in different parts of the same statute, they should be given the same meaning unless something in the context indicates that the legislature intended otherwise.”) (*citing People v. Talbot*, 322 Ill. 416, 42-423 (1926)).

Likewise, the United States Supreme Court has consistently endorsed this canon of statutory construction to interpret identical phrases in a consistent manner. “[T]here is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.” *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932); *Sorenson v. Sec’y of Treasury of U.S.*, 475 U.S. 851, 860 (1986) (same); *see also Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006) (“Application of that presumption is particularly apt here; not only did Congress use the same words as are used in § 10(b) and Rule 10b–5, but it used them in a provision that appears in the same statute as § 10(b). Generally, ‘identical words used in different parts of the same statute are ... presumed to have the same meaning.’”) (*quoting IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005)); *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233 (2005) (“[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes.”)

Here, this rule of statutory interpretation directs the presumption that identical amendatory language on a parallel sentencing statute in a single legislative act must have expressed a single legislative intent. That presumption has not been rebutted. As a result, *Stewart’s* recognition that the 2021 amendment to subsection (b) was meant to “clarify the meaning of the original statute” is likewise

true of the identical amendment to subsection (a). *Stewart*, 2022 IL 126116, ¶ 22.

4. The holding in *Stewart* applies retroactively to cases on collateral review because it narrows the scope of a criminal statute.

Durant held that *Stewart*'s interpretation of the amended version of the HCA applied to cases pending on collateral appeal. 2024 IL App (1st) 211190-B, ¶ 39. Specifically, the court recognized that *Stewart* had “effectively narrowed the scope of a criminal statute by interpreting its terms, such that it constitutes a substantive rule that applies retroactively to cases on collateral review.” *Id.*, at ¶ 40. It thus concluded that the *Durant* defendant's sentence of natural life imprisonment “violated the habitual criminal provision in section 5-4.5-95(a) of the Code, and it also constituted a violation of his due process rights.” *Id.*, at ¶ 41.

As a rule, Illinois “follow[s] the federal doctrine that any decision that narrows the applicability of a substantive criminal statute is fully retroactive.” *People v. Alberts*, 383 Ill. App. 3d 374, 382 (4th Dist. 2008) (finding Illinois Supreme Court's decision interpreting scope of involuntary intoxication defense to apply retroactively to case on collateral review); *see also People v. Davis*, 2014 IL 115595, ¶ 36, *citing Schriro v. Summerlin*, 542 U.S. 348, 351-352 (2004); *People v. Rodriguez*, 355 Ill. App. 3d 290, 294 (2d Dist. 2005) (“Illinois follows the federal rule that a decision that narrows a substantive criminal statute must have full retroactive effect in collateral attacks”). In general, where a court construes a statute to narrow the scope of a criminal offense or the applicability of a certain punishment, that decision

is a substantive ruling that applies even to those defendants whose direct appeals were long complete. *See, generally, Bousley v. United States*, 523 U.S. 614, 620 (1998) (non-retroactivity doctrines did not preclude application of decision narrowing elements of firearm statute to long-past conviction); *see also Narvaez v. United States*, 674 F.3d 621, 626-27 (7th Cir. 2011) (discussing how narrowing construction of statute used to establish a sentencing range may be challenged on collateral review). This rule follows the principle that “where the conviction or sentence in fact is not authorized by substantive law . . . finality interests are at their weakest.” *Welch v. United States*, 578 U.S. 120, 131 (2016). This is so, even if the court’s rationale for limiting the statute’s reach is not itself a constitutional holding—if, for instance, the basis for the decision is “a matter of statutory interpretation.” *Id.* at 133 (*citing Bousley*, 523 U.S. at 620-21).

As *Durant* recognized, this precedent indicates that because the *Stewart* decision “narrow[ed] the scope of a criminal statute by interpreting its terms,” its rule is substantive and applies on collateral review. *Welch*, 578 U.S. at 129; *Durant*, 2024 IL App (1st) 211190-B, ¶ 39 (“Substantive rules ‘apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him.’”) (*quoting Davis*, 2014 IL 115595, ¶ 36). Indeed, the U.S. Supreme Court has applied *Bousley*’s retroactivity doctrine in the specifically analogous circumstance of an interpretation of the kinds of prior convictions that trigger a recidivist sentencing statute. *Welch*, 578 U.S. at 129 (decision limiting kinds of prior conviction that trigger increased sentences under federal Armed

Career Criminal Act was retroactive).

5. The State's argument that the prospective effective date of the statute indicates legislative intent that the statute cannot be applied retroactively is incorrect.

The State argues that the 2021 amendment to subsection (a) does not apply retroactively because the effective date of Public Act 101-652 was prospective. (St. Br. 20) This argument ignores that the amendment to subsection (a) had the same effective date as the amendment to subsection (b), and in *Stewart*, this Court held that the amendment to subsection (b) applied to the defendant who was sentenced before the effective date, and thus, implicitly had retroactive effect. 2022 IL 126116, ¶¶ 22-23. It defies common sense to suppose the legislature enacted identical amendments at the identical time, and meant for one amendment to apply retroactively and the other to apply prospectively.

The State submits that the legislature expressed its intent for the amendment to have a prospective temporal reach by creating a future effective date of July 1, 2021. (St. Br. 19-20) Citing *People v. Alvin Brown*, 2024 IL 129585, the State asserts that where the legislature delayed the effective date of an amendment to a section in Public Act 101-652, it intended that the amendment apply prospectively only. (St. Br. 20) However, the section of the Public Act at issue in *Alvin Brown* dealt with a *change* to the law, and not a *clarification*. *Alvin Brown*, 2024 IL 129585, ¶¶ 26, 43 (statutory change in Class X eligibility did not apply to defendant, who was sentenced before the amendment). Where a substantive change has been made by the legislature, a future effective date can indicate legislative intent on temporal reach. In the instant case, unlike *Alvin Brown*, the

amendment to subsection (a) was a clarification. As discussed above in subsection B-4, *supra*, because *Stewart* narrowed the scope of a criminal statute such that it constitutes a substantive rule, it applies retroactively to cases on collateral review. *Durant.*, 2024 IL App (1st) 211190-B, ¶ 40.

In further claiming that the amendment only applies prospectively, the State cites *People v. Hunter*, 2017 IL 121306, where this Court considered whether *procedural* amendments to the juvenile sentencing code should apply retroactively to two cases pending on appeal when the changes took effect. *Id.*, ¶¶ 15-56. This Court concluded that, while procedural changes are often applied retroactively, the amendments at issue did not apply retroactively to the defendants' cases because they did not become effective until after the trial proceedings were concluded and the cases were pending in the appellate court. *Id.*

Though *Hunter* discussed section 4 of the Statute on Statutes, and held, “a punishment mitigated by a new law is applicable only to judgments after the new law takes effect,” that maxim has no bearing on Brown's case because the amendment to the HCA was a clarification, and not a substantive change in the law. *Id.*, ¶ 54; see 5 ILSC 70/4.

The State next asserts that “*Stewart* says nothing about retroactivity,” and thus, the fact that *Stewart* held the amendment to subsection (b) was applicable to the petitioner in that case is not determinative of the outcome regarding subsection (a). (St. Br. 21-22) Though *Stewart* did not use the word “retroactive” in its decision, the fact that this Court ruled that the amendment was a clarification and applied it to a defendant who was convicted before the amendment became

effective establishes that this Court applied it retroactively. In fact, in *Fuller*, a Fourth District decision that disagreed with *Durant*, the appellate court summarized the decision in *Stewart* by stating, “the 2021 amendment of subsection (b) was a clarification that had *retroactive* effect.” *People v. Fuller*, 2025 IL App (4th) 231457, ¶ 25 (emphasis added). And *Durant* correctly found that *Stewart*’s interpretation of the amendment applied to cases pending on collateral appeal. 2024 IL App (1st) 211190-B, ¶ 39.

The State’s position that the amendment is not retroactive relies on cases where the legislature made a *change* to a statute, as opposed to a *clarification*. (St. Br. 20-21)

Clarification merely is a legislative declaration of the meaning of the original act, and so a clarifying amendment necessarily has effect back to the date of the original act. This type of alteration does not, strictly speaking, fall within an ordinary retroactivity analysis. But courts nevertheless usually employ the retroactivity idiom in such instances and find that a clarifying or curative provision has retroactive effect.

Sutherland Statutory Construction, Sec. 22:34 (8th ed.) Accordingly, even though *Stewart* did not use the word “retroactive,” it employed the “retroactivity idiom” and found that the clarifying provision in subsection (b) has retroactive effect. Where both subsection (a) and (b) were amended at the same time and given the same effective date, subsection (a), like subsection (b), is a clarification that also has retroactive effect.

6. **Because convictions under age 21 cannot be used as predicate offenses when sentencing an individual as an habitual criminal, the natural life sentence imposed on Corwyn Brown is unauthorized under *Stewart*.**

Like the *Durant* petitioner, Brown is serving a natural life sentence after

having been previously convicted of two other Class X felonies. And, like the *Durant* petitioner, Brown was under 21 when he committed the first of those purportedly qualifying offenses. Under *Durant*'s interpretation of the "original meaning behind" subsection (a) of the HCA, Brown's sentence of natural life imprisonment therefore was unauthorized. *Durant*, 2024 IL App (1st) 211190-B, ¶ 41 (citing *United States v. Shipp*, 589 F.3d 1084, 1091 (10th Cir. 2009)) (where defendant "was sentenced beyond the statutory maximum for his offense of conviction, his due process rights were violated"). Accordingly, it violates Brown's right to due process, as he possesses the "constitutional right to be deprived of liberty as punishment for criminal conduct only to the extent authorized by" statute. *Narvaez*, 674 F.3d at 626-27 (quoting *Whalen v. United States*, 445 U.S. 684, 690 (1980)).

C. This Court should endorse the holdings in *Durant* and *O'Neal* and decline to follow *Smallwood* and *Fuller*.

1. *Smallwood* and *Fuller* require absurd results.

The sound decisions in *Durant* and *O'Neal* stand for the proposition that *Stewart*'s holding as to the 2021 amendment to subsection (b) applies with equal force to the identical amendment to subsection (a), such that individuals like Brown are entitled to sentencing relief.

As the State recognizes in its brief, one Fifth District decision and one Fourth District decision have held differently. (St. Br. 22, 27, 28) In *People v. Smallwood* and *People v. Fuller*, the courts decided that even though *Stewart* found the amendment to subsection (b) of the statute to be clarifying, the identically phrased amendment to subsection (a) was not. *Smallwood*, 2024 IL App (5th) 210407, ¶ 27; *Fuller*, 2025 IL App (4th) 231457, ¶ 41. To parse a distinction between the

effects of P.A. 101-652 upon subsections (a) and (b), however, necessarily carries with it an absurdity: that the addition of identical language was intended to be merely “clarifying” as to one subsection, but amendatory as to another. *Smallwood’s* and *Fuller’s* interpretations are untenable and should not be followed.

The State notes that this Court identified factors relevant to determining whether an amendment is a substantive change to existing law or a mere clarification, including: whether (1) the legislature expressed that it was clarifying the prior law, (2) a conflict existed before the amendment was enacted, and (3) the amendment is compatible with a reasonable interpretation of the prior law and its legislative history. (St. Br. 24, *citing K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 299 (2010)). Here, *Stewart* already determined that the legislature clarified, rather than changed, the law. *Stewart*, 2022 IL 126116, ¶ 22. Also, the split in authority in appellate court decisions on the issue applied to both subsections (a) and (b). *See* subsection C-2, *infra*. In addition, the 2021 amendment is compatible with a reasonable interpretation of the prior law, including the 2016 amendment. *See* subsection C-3, *infra*.

2. The appellate court split in authority applied to both subsections (a) and (b).

Not only do *Smallwood* and *Fuller* fail to heed the rule that similar statutory language expresses similar intent, these decisions ignore how the same logic that led *Stewart* to recognize that the 2021 amendment to subsection (a) was clarifying is equally persuasive with regard to subsection (b). In *Stewart*, this Court recognized that an amendment should be treated as a clarification when the statute is amended in response to a split within the appellate court regarding an issue of statutory

interpretation. 2022 IL 126116 ¶ 21. The State asserts that the split in appellate court authority applied only to subsection (b), and not subsection (a) of the HCA. (St. Br. 23-24, 25-27) However, *People v. Miles*, 2020 IL App (1st) 180736 and *People v. Reed*, 2020 IL App (4th) 180533, cited in the State’s brief, establish that the split applied to both subsections. (St. Br. 23-24) *Stewart* discussed the split in authority concerning subsection (b), and noted that *Miles* held juvenile adjudications should not count as qualifying prior offenses for the implementation of Class X sentencing, whereas *Reed* held juvenile adjudications should qualify. *Stewart*, 2022 IL 126116, ¶ 17, *citing Miles*, 2020 IL App (1st) 180736, ¶ 11; *Reed*, 2020 IL App (4th) 180533, ¶ 25.

In *Miles* and *Reed*, when deciding whether a prior juvenile adjudication would qualify an offender for Class X sentencing, the appellate courts discussed *People v. Bryant*, 278 Ill. App. 3d 578 (1st Dist. 1996) and *People v. Banks*, 212 Ill. App. 3d 105 (5th Dist. 1991), cases where the defendants were sentenced as habitual offenders under subsection (a). *Miles*, 2020 IL App (1st) 180736, ¶¶ 18-22; *Reed*, 2020 IL App (4th) 180533, ¶ 22-23. *Miles* noted that *Bryant* and *Banks* were decided without the help of a clarifying amendment to the Juvenile Court Act in 2016, which would have granted exclusive jurisdiction to the juvenile court over *Bryant’s* and *Banks’* prior offenses. *Miles*, 2020 IL App (1st) 180736, ¶¶ 21-22. The amendment provided “some indication... that the legislature intended that minors who commit [certain offenses] should be treated differently than adults.” *Id.*, ¶ 21. *Miles* suggested that, had the defendants in *Bryant* and *Banks* been convicted after the 2016 amendment, the outcome in those cases would have been

different. *Id.*; see also *People v. Williams*, 2020 IL App (1st) 190414, ¶¶ 20-21 (also discussing *Bryant* and *Banks* and recognizing that prior convictions for offenses that would now result in juvenile adjudications no longer qualified as priors to trigger a Class X sentence). In fact, in *Miles* it was the State who compared the prior offenses under Class X sentencing to those under the habitual criminal provision. *Miles*, 2020 IL App (1st) 180736, ¶ 18. Accordingly, the split in authority applied to both subsections (a) and (b).

Notably, *Miles* and *Reed* were decided by the appellate courts in 2020. The legislature amended the HCA in 2021. “If an amendment was enacted soon after controversies arose about the meaning of the original act, a legislature logically may have intended a formal change to interpret, or clarify, the original act, rebutting the presumption of substantial change.” Sutherland Statutory Construction, Sec. 22:29 (8th ed.). The fact that the legislature amended the HCA shortly after the split arose in *Miles* and *Reed* rebuts any presumption that the change was substantial and supports that the legislature merely clarified the statute.

3. **The 2016 amendment to subsection (a) was an effort by the legislature to conform with the dictates of *Miller* and *Graham* across the entire criminal code without specific regard to any particular statute, including the HCA. The 2016 amendment only concerned the third offense in subsection (a) but was silent as to the age of the two qualifying prior offenses. Thus, the 2016 amendment does not indicate that the 2021 amendment was a change rather than a clarification of the law.**

In addition, in an effort to force a distinction between the identical amendments to the two subsections of the HCA, *Smallwood* and *Fuller* relied almost entirely on a 2016 amendment to subsection (a) of the HCA that required a defendant

be 18 years old by the third qualifying offense in order to qualify as an habitual criminal for whom a natural life sentence was mandatory. *Smallwood*, 2024 IL App (5th) 210407, at ¶ 27; *Fuller*, 2025 IL App (4th) 231457, ¶¶ 20-25, 40-41. The courts, though, misinterpreted that amendment where they ignored the legislative purpose and context behind that amendment. Public Act 99-69, titled “CRIMINAL LAW—SENTENCING PERSON UNDER AGE 18,” was meant to ensure that Illinois law was brought into compliance with the Eighth Amendment holdings of *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012); P.A. 99-69 (eff. Jan. 1, 2016).

Several years ago, the United States Supreme Court held, in the case of *Miller* against Alabama, that a mandatory sentence of life in prison without the possibility of parole was unconstitutional when applied to juveniles. We have been working for 3 years now on a legislative response. This bill reflects an agreement among all of the stakeholders.

99th Ill. Gen. Assem., Senate Proceedings, May 19, 2015, at 84 (statements of Senator Harmon); *see also*, 99th Ill. Gen. Assem., House Proceedings, April 22, 2015, at 171-72 (statements of Representative Currie) (“This is an agreement. . .on how to respond to . . .the Miller case, dealing with how in the future people under the age of 18 charged with felonies are sentenced.”).

Relevant here, the U.S. Supreme Court had categorically prohibited natural life sentences for non-homicide offenses by those under 18 years old in *Graham*. To implement this decision in Illinois, the legislature went through the Code of Corrections and added an identically phrased provision to several sentencing statutes to eliminate any possibility that a defendant would be sentenced to natural life for a non-homicide offense committed before they turned 18. It appears the

legislature identified every instance in the Criminal Code where a natural life sentence for a non-homicide offense was mentioned, and added a provision limiting it to those over 18, using identical language for each amendment: P.A. 99-69 amended the life sentencing provisions of the aggravated kidnapping statute, 720 ILCS 5/10–2 (limiting mandatory life for repeat offenders to those who have “attained the age of 18 years at the time of the commission of the offense”), criminal sexual assault, 720 ILCS 5/12–13, (limiting mandatory life for repeat offenders to those who have “attained the age of 18 years at the time of the commission of the offense”), aggravated criminal sexual assault, 720 ILCS 5/12–14 (same language in multiple sentencing provisions), predatory criminal sexual assault of a child, 720 ILCS 5/11–1.40 (same language, in two different aggravated sentencing provisions), ritualized abuse of a child, 720 ILCS 5/12–33 (using same language to limit discretionary life sentence), terrorism, 720 ILCS 5/29D–14.9 (limiting mandatory life required in some circumstances to those who have “attained the age of 18 years at the time of the commission of the offense”), hindering prosecution of terrorism, 720 ILCS 5/29D–35, and finally, the habitual criminal statute (“attained the age of 18 years at the time of the commission of the third offense”).

This series of near-identical amendments to seemingly every instance where Illinois law could be read to impose a mandatory natural life sentence rebuts the notion that the legislature was seeking to implicitly authorize life sentences for 18-year-olds, as the *Smallwood* and *Fuller* courts imagined. The legislature’s actions reveal they were not trying to address the age of the two prior qualifying offenses

in the HCA and were instead enacting a comprehensive scheme to comply with *Miller* and *Graham*. The legislature drew a stark line clear across the sentencing code to ensure there was never a circumstance where a non-homicide offense could result in mandatory life for someone under 18. To read this action by the legislature as somehow *authorizing* life sentences for some youthful offenders, as *Smallwood* and *Fuller* did, brazenly subverts this legislative purpose.

In addition, the 2016 amendment did not affect Class X sentencing by background because the maximum sentence that can be imposed for a Class X offender is 30 years in prison – not a natural life sentence. 730 ILCS 5/5-4.5-95(b). Thus, the 2016 changes made to the habitual criminal provision in section 5-4.5-95(a) simply made the statute compliant with federal law – that no one under the age of 18 could be sentenced to mandatory natural life imprisonment without the possibility of parole – and did not implicate the age required at the time of the predicate offenses. In fact, given the need for two prior predicate Class X offenses, it would be nearly impossible to be adjudicated an habitual criminal at the age of 18. 730 ILCS 5/5-4.5-95(a). Where the 2016 amendment was silent as to the age of the two qualifying prior offenses, it cannot be concluded that the 2016 amendment prescribed the minimum age at the time of the qualifying offenses and there is no reason why the 2016 amendment should change the application of this Court’s reasoning in *Stewart* to the habitual criminal provision.

Indeed, *Smallwood* and *Fuller* require an absurdity: that the legislature intended a system where only those over 21 at the time of the prior conviction have to worry about mandatory Class X sentences, but conduct when far younger

can trigger a natural life sentence. *See, e.g., People v. Palmer*, 2021 IL 125621, ¶ 53 (legislature presumed not to intend absurd or unjust results). Because the legislature should not be presumed to have intended to create such an unjustified disproportionality, let alone by implication of language that expressly sought to prevent unlawful life sentences, *Smallwood* and *Fuller* are incorrect and should not be followed.

D. This claim is cognizable on post-conviction review as it alleges constitutional violations of the due process clause and Illinois’ proportionate penalties clause.

The State argues that the instant claim is not cognizable on post-conviction review because it does not allege a constitutional violation in Brown’s 1995 sentencing proceedings. (St. Br. 15-18) Contrary to the State’s assertion, Brown’s claim does allege a constitutional violation. As noted above in subsection B-4, *supra*, Brown’s natural life sentence violates his right to due process, where he can be deprived of liberty “only to the extent authorized by” statute. *Narvaez*, 674 F.3d at 626-27 (quoting *Whalen v. United States*, 445 U.S. 684, 690 (1980)).

The federal and state constitutions mandate that “[n]o person shall be deprived of life, liberty or property without due process of law.” Ill. Const. 1970, art. I, § 2; U.S. Const., amend. XIV, cl. 1. A sentence beyond the statutory maximum implicates due process rights. *U.S. v. Shipp*, 589 F.3d 1084, 1088 (10th Cir. 2009). Indeed, in *Durant*, the appellate court held that the petitioner’s sentence did not merely violate the habitual criminal provision, but it also violated his due process rights. *Durant*, 2024 IL App (1st) 211190-B, ¶ 41, citing *Shipp*, 589 F.3d 1084 (due process violation where defendant improperly sentenced as “armed career

criminal” under the Armed Career Criminal Act of 1984, where one of the predicate offenses underlying the sentence was not a “violent felony” within the meaning of that statute); *see also Whalen*, 445 U.S. at 689 (“The Due Process Clause of the Fourteenth Amendment, however, would presumably prohibit state courts from depriving persons of liberty or property as punishment for criminal conduct except to the extent authorized by state law); *Wasko v. Vasquez*, 820 F.2d 1090, 1091 (9th Cir. 1987) (relief granted to petitioner sentenced to an unauthorized term of two years, finding he “has a protected liberty interest, under the Fourteenth Amendment, against excessive punishment; he may be deprived of his liberty only to the extent authorized by state statute); *Burge v. Butler*, 867 F.2d 247, 250 (5th Cir. 1989) (*citing Wasko* and finding “[v]iolation of state sentencing statutes can in certain circumstances invoke the due process protections of the Constitution”).

In addition, the imposition of a natural life sentence also violates Illinois’ proportionate penalties clause. The proportionate penalties clause of the Illinois Constitution requires that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. 1, §11. A sentence violates the proportionate penalties clause where “the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002). “[W]hether a punishment shocks the moral sense of the community is based upon an ‘evolving standard[] of decency that mark[s] the progress of a maturing society.’” *Id.*, quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Thus, “as our society evolves, so too do

our concepts of elemental decency and fairness which shape the ‘moral sense’ of the community.” *Leon Miller*, 202 Ill. 2d at 339.

A finding that the imposition of Brown’s natural life sentence was proper would yield an illogical result. Pursuant to *Stewart*, defendants under the age of 21 at the time of prior convictions would not be subject to a Class X sentence, but they would be subject to a natural life sentence. That outcome is not only absurd, but shocks the moral sense of the community. In fact, in *Durant*, Justice Hyman’s concurring opinion commented on this inequity and concluded that such an outcome “thwarts the proportionate penalties clause.” *Durant*, 2024 IL App (1st) 211190-B, ¶ 42 (Hyman, J., concurring).

The State cites *Dockins v. Hines*, 374 F.3d 935, 940 (10th Cir. 2004), *Brown v. McKune*, No. 13-3078-SAC, 2015 WL 567001, at *3 (D. Kan. Feb. 11, 2015), and *Nelson v. Booker*, No. 06-CV-10190, 2008 WL 2915117, at *15 (E.D. Mich. July 25, 2008), to support the position that federal courts have refused to find a federal constitutional right to retroactive application of more lenient sentencing rules. (St. Br. 17) These cases deal with *changes* to the sentencing laws. *Dockins*, 374 F.3d at 940 (denying certificate of appealability when finding no retroactive application of new law where state legislature *changed* law to make it more lenient); *Brown*, No. 13-3078-SAC, 2015 WL 567001, at *3 (denying application for writ of habeas corpus when finding no retroactive application of new law where state legislature *changed* attempted second degree murder from a level 1 felony to a level 3 felony); *Nelson*, No. 06-CV-10190, 2008 WL 2915117, at *15 (denying application for writ of habeas corpus when finding no retroactive application of

new law where state legislature *changed* the law and where state courts already specified that the sentencing provision applied prospectively). Unlike these federal court cases, as *Stewart* made clear, the Illinois state legislature *clarified* the recidivist statute, and did not change the law.

The State further contends that the claim is not cognizable because no constitutional violation occurred at the original sentencing hearing. (St. Br. 17-18, *citing People v. Flores*, 153 Ill. 2d 264, 277 (1992)) The Post-Conviction Hearing Act states that a prisoner may bring a claim under the act if he asserts that, “in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both[.]” 725 ILCS 5/122-1(a)(1) (2022). Because the legislature always intended the habitual criminal statute to prohibit life sentences for those whose prior offenses were committed before the age of 21, a constitutional violation did occur at the original sentencing hearing where the sentencing court imposed an improper life sentence on Brown.

The State’s reliance on *People v. LaPointe*, 2023 IL App (2d) 210312, *People v. Bucio*, 2023 IL App (2d) 220326, and *People v. Barry*, 2023 IL App (2d) 220324, to argue that the claim is not cognizable is misplaced. In these cases, the petitioners argued that the provision of a newly enacted law, 730 ILCS 5/5-4.5-115(b), barring those sentenced before June 1, 2019, from parole eligibility violated the equal protection clauses of the United States and Illinois Constitutions. *LaPointe*, 2023 IL App (2d) 210312, ¶¶ 15-17; *Bucio*, 2023 IL App (2d) 220326, ¶¶ 11-15; *Barry*, 2023 IL App (2d) 220324, ¶¶ 13-15. The courts held that the petitioners did not

raise a claim that they were denied any constitutional rights in the proceedings that resulted in their sentence based on the fact that the legislative amendment was a *change* to the prior statute. None of the parties, however, contended that the change in the statute was a mere clarification of the prior version of the law. The petitioners argued that the change in the law violated their constitutional rights. Unlike the parole eligibility statute, the habitual criminal statute at issue here involved a clarification of the prior law, and not a change. Thus, the effective date of the habitual criminal statute is not determinative of the issue as it was in *LaPointe*, *Bucio*, and *Barry*.

E. The proper remedy is vacatur of Brown’s life sentence and remand for resentencing in the Class X range.

The appellate court in the instant case and in *Durant* found further post-conviction proceedings unnecessary because there were no disputed issues of fact once it was clear that an ineligible past conviction had been erroneously used to trigger a life sentence. Accordingly, the appellate courts vacated the natural life sentences. *Brown*, 2024 IL App (1st) 221859-U, ¶¶ 19-21; *Durant*, 2024 IL App (1st) 211190-B, ¶ 42. *See also People v. Buffer*, 2019 IL 122327, ¶¶ 44-47 (in appeal from dismissal of post-conviction petition, the appropriate remedy was vacatur of unconstitutional sentence because “the record before us does not require factual development” and “[a]ll the facts and circumstances to decide defendant’s claim are already in the record”).

Because the legislature used identical language in subsections (a) and (b) of the HCA, the legislature intended the sections to be interpreted identically. Pursuant to *Stewart*, and to avoid an absurd and disproportionate outcome, because

subsection (b) must be applied retroactively, subsection (a) should be applied retroactively as well. For these reasons, this Court should affirm the appellate court's reversal of the denial of leave to file Brown's petition, grant Brown's petition on this issue, vacate his natural life sentence, and remand for resentencing. Ill. Sup. Ct. R. 615(b)(2) (2024). Brown has been in continuous custody for this offense for 30 years. He respectfully asks this Court to order resentencing without additional procedural delays. *See Buffer*, 2019 IL 122327, ¶ 46-47 (proceeding directly to new sentencing hearing, rather than remanding for further pointless post-conviction proceedings, promotes "the interests of judicial economy").

CONCLUSION

For the foregoing reasons, Corwyn Brown, Petitioner-Appellee, respectfully requests that this Court affirm the appellate court's order which vacated the circuit court's denial of leave to file the successive petition, reversed Brown's life sentence, and remanded the cause for a new sentencing hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 40 pages.

/s/Arianne Stein
ARIANNE STEIN
Assistant Appellate Defender

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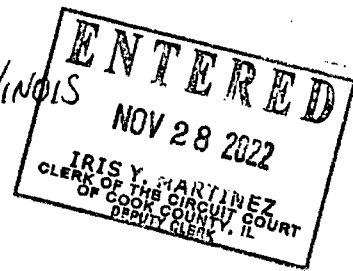
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Case Number 93CR2265601	Defendant Name BROWN, CORWYN		Attorney PUBLIC DEFENDER	Court Date 10/26/2022	Court Call/Time 9:00 AM
CB/DCN#	IR# 0707916	EM	Case Flag APP	Bond#	Bond Type Bond Amount \$0.00
CHARGES		* IN CUSTODY 10/24/2022 *			COURT ORDER ENTERED
					CODES

C001 38-12-14-A(2) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty	<i>Pro Se</i> <i>for Sentencing</i> <i>w/o MERIT</i> <i>DENIED</i> <i>Per P. Durant</i> <i>Hillings Appellate Ct.</i> <i>No 1-21-1190</i> <i>Clear to note L</i>		
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C003 38-12-14-A(2) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty			
C004 38-12-14-A(2) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty			
C005 38-12-14-A(1) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty			
C006 38-12-14-A(1) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty			
C007 38-12-14-A(1) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty			
C008 38-12-14-A(1) AGG CRIM SEX ASSAULT 04/27/1995 Verdict of Guilty			
C009 38-12-14-A(4) AGG CRIM SEX ASSAULT 05/24/1995 No Order on Count			
C010 38-12-14-A(4) AGG CRIM SEX ASSAULT 05/24/1995 No Order on Count			
JUDGE:	JUDGE'S NO.:	RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK: <i>PCarr</i>	VERIFIED BY:

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION



PEOPLE OF THE STATE OF ILLINOIS,)
RESPONDENT,)

v.)
CORWYN BROWN,)
PETITIONER.)

CASE No. 93-CR-22656
HON. JAMES B. LINN
PRESIDING JUDGE

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT ON 11-20-2022,
I SHALL FILE THE ORIGINAL AND TWO (2) DUPLICATE
COPIES OF NOTICE OF APPEAL OF THE NOW "DENIED"
MOTION / PETITION FOR RESENTENCING WITHOUT MERIT
ON OCTOBER 26, 2022, WITH THE CLERK OF THE CIRCUIT
COURT OF COOK COUNTY, ILLINOIS, CRIMINAL DIVISION.

Corwyn Brown NO2101
CORWYN BROWN NO2101

STATE OF ILLINOIS
COUNTY OF LIVINGSTON } SS:

I, CORWYN BROWN NO2101, FIRST BEING DULY SWORN
UPON OATH, DO HEREBY STATE THAT UNDER PENALTY OF PERJURY
THE ABOVE IS TRUE AND CORRECT.

1st Corwyn Brown NO2101

Sheet # 1	CRIMINAL DISPOSITION SHEET Defendant Sheet #1			Branch/Room/Location Criminal Division, Courtroom 700 2650 South California Avenue, Chicago, IL, 60608		Court Interpreter
Case Number 93CR2265601	Defendant Name BROWN, CORWYN		Attorney Name SMITH, JUDIE 006224360		Session Date 1/5/2023	Session Time 09:00 AM -
CB/DCN# 9484609	IR # 0707916	EM	Case Flag APP	Bond #	Bond Type	Bond Amt
CHARGES		** IN CUSTODY 10/18/1993 ** COURT ORDER ENTERED				CODES
C001 38-12-14-A(2) AGG CRIM SEX ASSAULT 5/24/1995 DEFT. SENTENCED TO Life		<i>For Se P.C. Successive w/o MERIT, Denies; Age 17 predicate in instant case NOT UNCONSTITUTIONAL</i> <i>clerk to notify</i>				
C001 38-12-14-A(2) AGG CRIM SEX ASSAULT 5/24/1995 DEFT. SENTENCED TO Life						
C002 38-12-14-A(2) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
C002 38-12-14-A(2) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
C003 38-12-14-A(2) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
C003 38-12-14-A(2) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
C004 38-12-14-A(2) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
C004 38-12-14-A(2) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
C005 38-12-14-A(1) AGG CRIM SEX ASSAULT 4/27/1995 Verdict of Guilty						
JUDGE: Linn, James B		JUDGE'S NO: 1544	RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK:			VERIFIED BY:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

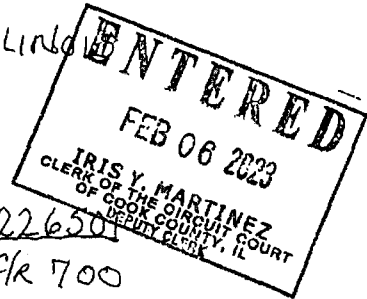
PEOPLE OF THE STATE OF ILLINOIS,)
RESPONDENTS,)

V.

CORWYN BROWN NO2101,
APPELLANT,)

CASE No. 93 CR 226501

JUDGE LINN CR 700



NOTICE OF APPEAL

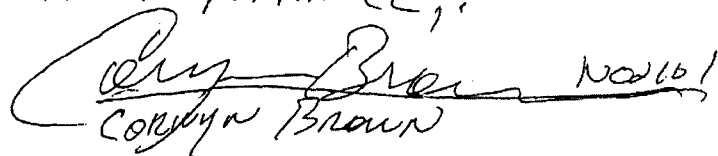
PLEASE BE ADVISED THAT NOTICE OF APPEAL IS BEING FILED REGARDING THE JANUARY 5, 2023, DENIAL OF PETITIONER'S PRO-SE PETITION FOR SUCCESSIVE POST-CONVICTION — BEFORE THE HON. JUDGE JAMES B. LINN. A COPY OF WHICH WILL BE FORWARDED TO THE FOLLOWING BY US MAIL PLACED IN THE BARS ON JANUARY 29, 2023, TO BE MAILED TO THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS:

HON. IRIS Y. MARTINEZ, CLERK
CLERK OF THE CIRCUIT COURT
COOK COUNTY CLERK STAFF
2650 S. CALIFORNIA AVE
CHICAGO, ILLINOIS. 60608

HON. KIMBERLY FOX, X
STATE'S ATTORNEY OFFICE
COOK COUNTY STATES ATTY.
2650 S. CALIFORNIA AVE.
CHICAGO, ILLINOIS. 60608

PROOF OF SERVICE

YOU ARE HEREBY NOTIFIED THAT ON JANUARY 29, 2023, I PLACED THIS NOTICE OF APPEAL IN THE MAIL SYSTEM. I PLACED COPIES OF THE NOTICE OF APPEAL IN THE PRISON MAIL SYSTEM AT THE PONTIAC CC.


CORWYN BROWN NO2101

No. 1-22-1859 and 1-23-0328

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court of
ILLINOIS,	)	Cook County, Illinois
	)	
Respondent-Appellee,	)	
	)	No. 93 CR 22656
-vs-	)	
	)	
CORWYN BROWN,	)	Honorable
	)	James B. Linn.
Petitioner-Appellant.	)	Judge Presiding.

ORDER

This matter coming to be heard on Appellant's motion, all parties having been duly notified, and the Court being advised in the premises,

IT IS HEREBY ORDERED:

That Appellant's Motion to Consolidate Appeals 1-22-1859 and 1-23-0328 is hereby allowed.

s/Aurelia Pucinski
JUSTICE

ORDER ENTERED

JUL 27 2023

APPELLATE COURT FIRST DISTRICT

2024 IL App (1st) 221859-U
Nos. 1-22-1859 and 1-23-0328 (cons.)

FIRST DIVISION
June 27, 2024

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party 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,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 93 CR 22656
	)	
CORWYN BROWN,	)	
	)	The Honorable
Defendant-Appellant.	)	James B. Linn,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was improperly sentenced to natural life as a habitual criminal since his armed robbery conviction cannot be used as a qualifying offense since defendant was younger than 21 years old when it occurred.

¶ 2 Defendant Corwyn Brown appeals the circuit court's denial of his motions for leave to file a successive postconviction petition. Defendant argues that the circuit court erred by denying his motions for leave to file a successive postconviction petition since our supreme court's decision in *People v. Stewart*, 2022 IL 126116 demonstrates that defendant's armed robbery

Nos. 1-22-1859 & 1-23-0328 (cons.)

conviction cannot be used as a qualifying offense for sentencing as a habitual criminal since defendant was younger than 21 years old when it occurred. We reverse and remand for resentencing pursuant to *People v. Stewart*, 2022 IL 126116 and *People v. Durant*, 2024 IL App (1st) 211190-B.

¶ 3

BACKGROUND

¶ 4

On April 27, 1995, a jury convicted defendant of aggravated criminal sexual assault and aggravated vehicular hijacking. The circuit court sentenced him to life imprisonment as a habitual criminal based on his prior convictions. Defendant's prior convictions included his armed robbery conviction, which he committed when he was younger than 21 years old.¹ At the time of his sentencing, the habitual criminal provision in effect—720 ILCS 5/33B-1 (West 1994)—did not specify whether a defendant must have reached any particular age when he committed any of the predicate offenses. We affirmed his conviction and sentence on direct appeal. *People v. Brown*, No. 1-95-2116 (1997) (unpublished order under Illinois Supreme Court Rule 23).

¶ 5

On April 28, 1998, defendant filed a *pro se* postconviction petition alleging ineffective assistance of trial counsel. The circuit court summarily dismissed the petition as untimely. We affirmed the dismissal. *People v. Brown*, No. 1-98-2668 (1999) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 6

Defendant then filed a *pro se habeas corpus* petition, which the circuit court denied as patently without merit. Defendant appealed. Defendant also filed a successive *pro se*

¹ Defendant was born on April 21, 1962. On June 4, 1980, he was convicted of two counts of armed robbery. The record does not contain the date which defendant committed the armed robbery. Defendant alleges in his current brief that he was 17 years old at that time. The State does not dispute that defendant was 17 years old at that time. Additionally, defendant was not 21 years old until April 21, 1983. We make clear that whether defendant was 17 years old or 18 years old at the time he committed the armed robbery does not change the outcome of this appeal, as the applicable statutory age involved herein is 21 years old. See 730 ILCS 5/5.4.5-95(a) (West 2022).

Nos. 1-22-1859 & 1-23-0328 (cons.)

postconviction petition, which the circuit court summarily dismissed as meritless. Defendant appealed. After those two appeals were consolidated, defendant's appellate counsel filed a motion for leave to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). We granted the motion and affirmed the circuit court. *People v. Brown*, Nos. 1-00-2842, 1-01-1061 (2002) (consolidated) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 7 On October 23, 2003, defendant filed a *pro se* motion for relief from final judgment under section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2002)). The circuit court summarily dismissed his 2-1401 petition. We affirmed the dismissal of the petition. *People v. Brown*, 1-04-0319 (2005) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 8 On July 23, 2021, defendant filed a *pro se* motion for leave to file a successive postconviction petition. Defendant's appellate counsel filed a motion for leave to withdraw as appellate counsel pursuant to *Finley*, 481 U.S. 551. We granted the motion and affirmed the circuit court. *People v. Brown*, No. 1-21-1626 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 9 On July 13, 2021, defendant filed a motion for leave to file a successive postconviction petition alleging that his life sentence was unconstitutional since the legislature amended the habitual criminal provision to require that the first qualifying offense occur when a defendant is 21 years or older. Specifically, in Public Act 101-652 (eff. July 1, 2021), the legislature amended section 5-4.5-95(a) of the Unified Code of Corrections (Code) to specify that a person cannot be adjudged a habitual criminal unless "[t]he first offense was committed when the person was 21

Nos. 1-22-1859 & 1-23-0328 (cons.)

years of age or older.” 730 ILCS 5/5-4.5-95(a)(4)(E) (West 2022). Defendant’s conviction for armed robbery occurred when he was younger than 21 years old.

¶ 10 On October 26, 2022, the circuit court denied defendant leave to file the petition. The circuit court concluded that based on our decision in *People v. Durant*, 2022 IL App (1st) 211190-U, *vacated*, 2024 IL App (1st) 211190-B the amendment to the habitual criminal provision was not retroactive. Defendant appealed. On December 7, 2022, defendant filed another motion for leave to file a successive postconviction arguing the same issue. Additionally, defendant alleged that his sentence violated the proportionate penalties clause of the Illinois Constitution. The circuit court denied defendant leave to file the petition. Defendant appealed. We consolidated the appeals.

¶ 11 While this appeal was pending, the supreme court issued a supervisory order in the *Durant* matter directing us to vacate our September 2022 decision in that appeal and consider the effect of its opinion in *Stewart*, 2022 IL 126116, which discussed the identically-worded amendment to the Class X sentencing provision in section 5-4.5-95(b) of the Code (730 ILCS 5/5-4.5-95(b)(4) (West 2022)). On March 25, 2024, we issued a subsequent opinion in *Durant* concluding that, in light of *Stewart*, convictions for crimes committed before the age of 21 could not serve as predicates for the habitual criminal provision, and that *Stewart* applied retroactively on collateral review. *Durant*, 2024 IL App (1st) 21190-B.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant argues that the circuit court erred by denying his motions for leave to file a successive postconviction petition since our supreme court’s decision in *People v. Stewart*, 2022 IL 126116 demonstrates that defendant’s armed robbery conviction cannot be used as a qualifying offense for sentencing as a habitual criminal since defendant was younger than 21

Nos. 1-22-1859 & 1-23-0328 (cons.)

years old when it occurred. The State responds that the legislature’s amendment to section 5-4.5-95(a) does not apply retroactively. We addressed identical arguments in *People v. Durant*, 2024 IL App (1st) 211190-B.

¶ 14 On September 26, 2022, we issued our initial decision in *Durant*. *People v. Durant*, 2022 IL App (1st) 211190-U, ¶ 10, *vacated*, 2024 IL App (1st) 211190-B. We concluded that the legislature’s amendment to section 5-4.5-95(a) of the Code (730 ILCS 5/5-4.5-95(a)(4)(E) (West 2022)) did not apply retroactively. *Id.* ¶ 10.

¶ 15 On October 20, 2022, our supreme court issued its opinion in *Stewart*, 2022 IL 126116. In *Stewart*, the defendant was sentenced prior to the legislature’s amendment of the Class X sentencing provision which specified that the first predicate felony must have been committed “when the person was 21 years of age or older.” 730 ILCS 5/5-4.5-95(b)(4) (West 2022); *Stewart*, 2022 IL 126116, ¶ 5, 19. Our supreme court determined that the amendment applied retroactively and held that a defendant’s Class X sentence under section 5-4.5-95(b) of the Code (730 ILCS 5/5-4.5-95(b) (West 2016)), should be vacated because one of the predicate felony offenses occurred when he was 17 years old. *Stewart*, 2022 IL 126116, ¶ 1.

¶ 16 On December 6, 2022, the defendant in *Durant* filed a petition for leave to appeal in our supreme court. *Durant*, 2024 IL App (1st) 211190-B, ¶ 22. Our supreme court denied the defendant’s petition but directed us to vacate our September 2022 order and consider the effect of *People v. Stewart*, 2022 IL 126116 on the issue of whether his life sentence was unconstitutional. *Id.* .

¶ 17 On remand pursuant to the supervisory order, we determined that “*Stewart*’s discussion of Public Act 101-652’s amendment to the Class X provision in subsection (b) must inform our interpretation of the simultaneous amendment to the habitual criminal provision in subsection

(a)” of the same statute. *Id.* ¶ 30. We “emphasize[d] that both amendments were implemented simultaneously” and “the legislature inserted the exact same language” into both subsections. *Id.* ¶ 32. We stated that it would be illogical to determine that the legislature did not act with the same intent when it added identical provisions at the same time in the same public act. *Id.* We noted that our reasoning was consistent with principles of statutory construction. *Id.* ¶ 33. We held that, pursuant to *Stewart*, the 2021 amendment to the habitual criminal provision must be regarded as a clarification and restoration of the original law, and that it applies retroactively. *Id.* ¶ 38. Additionally, we determined that our holding applied to cases on collateral review. *Id.*

¶ 18 The instant appeal turns on the very same issues this court addressed in *Durant* after the supreme court directed us to consider the effect of *Stewart* in that matter. Accordingly, based on our supreme court’s decision in *People v. Stewart*, 2022 IL 126116 and our decision in *People v. Durant*, 2024 IL App (1st) 211190-B, we find that defendant was improperly sentenced to natural life as a habitual criminal, where one of the predicate convictions occurred when he was younger than 21 years old. His sentence violated the habitual criminal provision in section 5-4.5-95(a) of the Code and his constitutional due process rights. *See Durant*, 2024 IL App (1st) 211190-B, ¶ 41 (citing *United States v. Shipp*, 589 F.3d 1084 (10th Cir. 2009)).

¶ 19 Since there are no disputed issues of fact, we find that defendant is entitled to resentencing under *Stewart* and its application to the habitual sentencing provision. *See Durant*, 2024 IL App (1st) 211190-B, ¶ 42.

20 CONCLUSION

¶ 21 For the foregoing reasons, we reverse the circuit court’s denial of defendant’s motions for leave to file a successive postconviction petition, vacate his natural life sentence, and remand for resentencing in accordance with this order.

Nos. 1-22-1859 & 1-23-0328 (cons.)

¶ 22 Reversed and remanded.

2023 IL App (4th) 170682-UB

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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).

Appellate Court of Illinois, Fourth District.

The PEOPLE of the State of Illinois,
Plaintiff-Appellee,
v.
Jermal O'NEAL, Defendant-Appellant.
No. 4-17-0682

|
Filed February 15, 2023

Appeal from the Circuit Court of Sangamon County, No. 14CF1059, Honorable [Peter C. Cavanagh](#), Judge Presiding.

ORDER

JUSTICE [STEIGMANN](#) delivered the judgment of the court.

*1 ¶ 1 *Held*: (1) The trial court did not err by failing to instruct the jury on self-defense.

(2) Defendant did not receive ineffective assistance of trial counsel.

(3) The trial court committed plain error by sentencing defendant as a habitual criminal to a term of natural life because defendant committed one of the two predicate Class X offenses when he was 17 years old.

¶ 2 In July 2017, a jury found defendant, Jermal O'Neal,

guilty of (1) being an armed habitual criminal, a Class X felony ([720 ILCS 5/24-1.7 \(West 2014\)](#)) and (2) unlawful possession of a weapon by a felon, a Class 2 felony (*id.* § 24-1.1(a), (e)). In September 2017, the trial court sentenced defendant to a term of natural life in prison pursuant to section 5-4.5-95(a) of the Unified Code of Corrections (Code) ([730 ILCS 5/5-4.5-95\(a\)](#) (West 2014)), based on defendant's two prior Class X felony convictions for (1) armed robbery in 1993 and (2) possession with intent to deliver a controlled substance in 1998. Defendant appealed, and this court affirmed. [People v. O'Neal](#), 2021 IL App (4th) 170682, ¶ 2, 196 N.E.3d 95.

¶ 3 Defendant filed a petition for leave to appeal, which was denied. However, the Illinois Supreme Court issued a supervisory order ([People v. O'Neal](#), No. 127171 (Ill. Nov. 30, 2022)), directing this court to vacate our prior judgment and reconsider our decision in light of [People v. Stewart](#), 2022 IL 126116, on the issue of whether defendant's conviction for armed robbery may be used to impose a natural life sentence.

¶ 4 Having reconsidered defendant's argument that the trial court erred by imposing a natural life sentence under section 5-4.5-95(a) of the Code, in light of [Stewart](#), we vacate defendant's natural life sentence and remand the cause for a new sentencing hearing. We otherwise affirm defendant's convictions.

¶ 5 I. BACKGROUND

¶ 6 In September 2014, the State charged defendant with (1) being an armed habitual criminal, a Class X felony and (2) unlawful possession of a weapon by a felon, a Class 2 felony. In July 2017, a jury found defendant guilty on both counts. Subsequently, in September 2017, the trial court sentenced defendant as a habitual criminal to natural life in prison pursuant to section 5-4.5-95(a) of the Code ([730 ILCS 5/5-4.5-95\(a\)](#) (West 2014)), based on defendant's two prior Class X felony convictions for (1) armed robbery in 1993 and (2) possession with intent to deliver a controlled substance in 1998. Defendant was 17 years old when he committed the armed robbery.

¶ 7 Defendant appealed, arguing that (1) the trial court erred when it refused to instruct the jury on self-defense; (2) he received ineffective assistance of counsel because trial counsel failed to subject the State's case to meaningful

adversarial testing; (3) the court's use of his two prior Class X felonies, which established an element of the offense of being an armed habitual criminal, to qualify him for a life sentence under the habitual criminal sentencing statute, constituted improper double enhancement; (4) his life sentence violated the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution; and (5) the court erroneously used his armed robbery conviction to impose a natural life sentence under section 5-4.5-95(a) of the Code because the conduct underlying that conviction—committed when he was 17 years old—was not classified as a Class X felony at the time of sentencing.

*2 ¶ 8 In March 2021, this court affirmed defendant's convictions and sentence. [People v. O'Neal](#), 2021 IL App (4th) 170682, ¶2. Subsequently, defendant filed a petition for leave to appeal with the Illinois Supreme Court, which was denied. However, the Illinois Supreme Court issued a supervisory order ([People v. O'Neal](#), No. 127171 (Ill. Nov. 30, 2022)), directing this court to vacate our prior judgment, which we did, and, in light of *Stewart*, reconsider our decision on the issue of whether defendant's conviction for armed robbery may be used to impose a natural life sentence.

¶ 9 II. ANALYSIS

¶ 10 As an initial matter, we note that although defendant's initial appeal raised multiple issues, we adhere to our original decision on all issues except the propriety of defendant's sentence. See [People v. O'Neal](#), 2021 IL App (4th) 170682, ¶¶ 51-72. However, having reconsidered defendant's argument that the trial court erred by imposing a natural life sentence under section 5-4.5-95(a) of the Code and the parties' supplemental briefing on the issue in light of *Stewart*, we vacate defendant's natural life sentence and remand the cause for a new sentencing hearing. We otherwise affirm defendant's convictions.

¶ 11 A. Plain Error

¶ 12 The plain error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

“(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error

occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” [People v. Sargent](#), 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

¶ 13 The usual first step in a plain error analysis is to determine whether any error occurred at all. *Id.* If error did occur, then we determine whether either of the plain error prongs are satisfied. [Id.](#) at 189-90.

¶ 14 B. General Recidivism Provisions and *Stewart*

¶ 15 1. Habitual Criminal and Class X Sentencing

¶ 16 At the time of defendant's sentencing, section 5-4.5-95(a) of the Code ([730 ILCS 5/5-4.5-95\(a\) \(West Supp. 2017\)](#)) provided, in pertinent part, as follows:

“Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now (the date of the offense committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and who is thereafter convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.”

Subsection (b) of that same section—namely, the subsection reviewed by the supreme court in *Stewart*—provided similar language, as follows:

“When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, except for an offense listed in subsection (c) of this Section, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony, except for an offense listed in subsection (c) of this Section, and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender.” *Id.* § 5-4.5-95(b).

*3 In 2021, both subsections were amended to require that for the subsections to apply, the first qualifying offense had to have been committed when the defendant was 21 years of age

or older. [730 ILCS 5/5-4.5-95 \(West Supp. 2021\)](#).

¶ 17 2. Stewart

¶ 18 Recently, in *Stewart*, 2022 IL 126116, ¶ 14, the supreme court interpreted a previous version of section 5-4.5-95(b) ([730 ILCS 5/5-4.5-95\(b\)](#) (West 2016)) that contained the same relevant language as the version at issue in this case. The supreme court specifically addressed “whether the legislature intended a prior felony conviction to be a qualifying offense for Class X sentencing if the same offense would have resulted in a juvenile adjudication had it been committed on the date of the present offense.” *Stewart*, 2022 IL 126116, ¶ 16. Based on a later amendment to section 5-4.5-95(b) (Pub. Act 101-652 (eff. July 1, 2021) (adding a fourth requirement that the first qualifying offense was committed when the person was 21 years of age or older)), the supreme court answered that question in the negative. *Stewart*, 2022 IL 126116, ¶ 22.

¶ 19 On the facts of that case, the supreme court held the defendant's 2013 conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing under the applicable version of section 5-4.5-95(b). *Stewart*, 2022 IL 126116, ¶ 22.

¶ 20 C. This Case

¶ 21 Here, defendant contends that because offenses committed as a juvenile are not qualifying offenses for subsection (b), they likewise are not qualifying offenses for subsection (a). Defendant explains that the two subsections have similar language and were both amended in 2021 to include a requirement that the first qualifying offense had to have been committed when the defendant was 21 years of age or older. Accordingly, defendant asserts, the same reasoning that the supreme court applied when interpreting subsection (b) in *Stewart* should be applied to subsection (a) in this case. See *Stewart*, 2022 IL 126116, ¶ 22 (concluding that the 2021 amendment was intended to clarify the meaning of the original statute).

¶ 22 The State appropriately concedes (1) that “[t]he decision in *Stewart* is thus directly contrary to that reached by the court in this case” and (2) “[t]his court is required to follow *Stewart* and must therefore [vacate] defendant's sentence and remand

for resentencing.” We accept the State's concession, vacate defendant's natural life sentence, and remand for a new sentencing hearing. We otherwise affirm this court's prior decision regarding all other issues defendant argued in his original appeal. See *O'Neal*, 2021 IL App (4th) 170682, ¶¶ 51-72.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm defendant's convictions, vacate defendant's natural life sentence for his armed habitual criminal conviction, and remand for a new sentencing hearing.

¶ 25 Affirmed in part and vacated in part; cause remanded.

Justices Lannerd and [Knecht](#) concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2023 IL App (4th) 170682-UB, 2023 WL 2017455

People v. O'Neal, Not Reported in N.E. Rptr. (2023)

2023 IL App (4th) 170682-UB

End of Document

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No. 130930

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-22-1859 & 1-23-0328
	)	(Consolidated).
Respondent-Appellant,	)	
	)	There on appeal from the Circuit
-vs-	)	Court of Cook County, Illinois , No.
	)	93 CR 22656.
	)	
CORWYN BROWN,	)	Honorable
	)	James B. Linn,
Petitioner-Appellee.	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603,
 eserve.criminalappeals@ilag.gov;

Ms. Eileen O'Neill Burke, State's Attorney, Cook County State's Attorney Office,
 300 Daley Center, Chicago, IL 60602,
 eserve.criminalappeals@cookcountysao.org;

Mr. Corwyn Brown, Register No. N02101, Pontiac Correctional Center, P.O. Box
 99, Pontiac, IL 61764

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 June 13, 2025, the Brief and Argument 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-appellee 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 Brief and Argument to the Clerk of the above Court.

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