2026 IL App (1st) 250410-U
Order filed: August 31, 2026

FIRST DISTRICT
THIRD DIVISION

No. 1-25-0410

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 97 CR 24870 02
	)	
TERRANCE POLK,	)	Honorable
	)	William G. Gamboney,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Martin and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: The second-stage dismissal of defendant's successive postconviction petition is reversed, and this matter is remanded for third-stage proceedings, where defendant established cause and prejudice and made a substantial showing to support his claim that his sentence violated the proportionate penalties clause.

¶ 2 Defendant, Terrance Polk, appeals from the second-stage dismissal of the third successive postconviction petition he filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)) where the postconviction court found that he failed to demonstrate cause and prejudice with respect to his claim that his sentence was unconstitutional as applied to

him under the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I). For the following reasons, we reverse and remand for further proceedings.

¶ 3 In 1999, a jury convicted 19-year-old defendant and his two codefendants, Anthony Whitfield and Van Whitfield, all members of the Mickey Cobras street gang, of the first degree murder of Gerard Thomas and Brodie Trotter, members of the Black Disciples street gang, stemming from a 1997 shooting at a public housing complex in Chicago. The trial court sentenced each of them to a mandatory term of natural life in prison (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998)). On direct appeal, this court affirmed the convictions and sentences. *People v. Whitfield*, No. 1-00-1303 (2002) (unpublished order under Supreme Court Rule 23).

¶ 4 Defendant and codefendants' convictions largely resulted from the testimony of Kaneita Billups, Venus Smith, and Darlene Billups, residents of a building located at South State Street (building) that is part of the housing complex.

¶ 5 The evidence at trial established that members of the Black Disciples, including Gerard and Brodie, as well as members of the Mickey Cobras were present in the building and vying for control. Kaneita and Venus knew several members of the Mickey Cobras, including defendant, codefendants, Christopher Whitfield, Terrance Thomas, and Lionel Blackwell.

¶ 6 On August 11, 1997, following a confrontation between the two gangs, Kaneita and Venus heard defendant say, "We fixing to take it to the ground," and then heard a loud commotion in the lobby of the building. While standing on the porch, Kaneita and Venus saw codefendants and Thomas run down the stairs to the ground floor.

¶ 7 Kaneita testified that a crowd had formed outside the building and she saw Anthony and defendant running out of the building, holding guns. She saw Christopher and defendant fighting with a boy in an orange jacket, and she heard Thomas say, "F**k him up," or "Get him."

¶ 8 Kaneita heard a gunshot but did not know who had fired the gun. Thomas then said, "Work it," or "Work him" and everyone began shooting. She saw Thomas and Lionel shoot their guns and saw Christopher holding a gun. Kaneita then saw Brodie walking toward the building, heard a gunshot, and saw him fall to the ground. Christopher and defendant stood over Brodie and said, "Yeah, yeah, yeah," and "We got us one." Defendant and codefendants then fled the scene in automobiles. Kaneita went downstairs and saw Gerard lying on the ground.

¶ 9 Venus also testified that she saw Christopher and defendant fighting with a boy. She heard a gunshot but did not see who had fired the gun. Immediately after hearing the gunshot, Venus saw Christopher moving away from the building with something in his hand. Thomas retrieved a gun from an automobile and said, "Work him" before pointing the gun at the building and firing a shot. Venus saw Lionel and Christopher shooting. Anthony and defendant had guns, but Venus did not see them shoot. She observed Brodie walking and eating. Then he fell. Christopher and defendant stood over his body, high-fived, and said, "We got us one." Defendant, codefendants, Lionel, Christopher, and Thomas fled the scene in automobiles. Venus went downstairs and saw Gerard lying on the ground.

¶ 10 Darlene, Kaneita's mother, testified that she heard a commotion, looked down from her apartment window, and saw a group that included defendant and codefendants fighting. She also saw defendant and Christopher fighting with a boy wearing an orange shirt. Defendant, codefendants, Christopher, Lionel, and Thomas were all holding guns. Thomas yelled, "Get them," and fired his gun. Darlene then saw Lionel and Van shoot, but she did not see defendant or Anthony fire their guns. Defendant and Christopher walked to Brodie, stood over his body, and said, "Yeah, we got one" before high-fiving. Defendant and codefendants left the area in automoblies. Darlene then went downstairs and saw Gerard lying on the ground.

¶ 11 During closing arguments, the State argued that, although defendant was not a shooter, he could be found guilty under an accountability theory in that he was "part of the plan" that resulted in the murders of Gerard and Brodie. Following evidence and closing arguments, the jury received instructions, including an instruction on an accountability theory. The jury thereafter found defendant and codefendants guilty of two counts of first degree murder.

¶ 12 On March 24, 2000, the trial court held a death penalty hearing. At the hearing, the parties stipulated that defendant was over the age of 18 at the time of the offense and the trial court found him eligible for the death penalty. In aggravation, the State provided a victim impact statement from the mother of one of the victims. As to defendant's background, in 1998, he had been found guilty of robbery and sentenced to three years' imprisonment.

¶ 13 In mitigation, the defense submitted a report created by Caryn Platt Tatelli, a licensed clinical social worker (Tatelli report). Tatelli interviewed defendant and codefendants, who are defendant's cousins, about their "developmental life history"; reviewed school, medical, and juvenile records; researched the neighborhood in which defendant and codefendants were raised; and interviewed three family members: Julia Polk, defendant and codefendants' aunt, Leola Polk, defendant and codefendants' grandmother, and Rosetta Polk, defendant's mother and codefendants' aunt. The report found that the family had a "history of mental illness and mental retardation." Codefendants' mother had been sick and was in a long-term care facility with some memory loss. The family indicated that her illness was caused by substance use. Codefendants' older sister functions at the level of a twelve-year-old, cannot read or write, and cannot live on her own. Julia's daughter is "slow," functions at the level of a five-year-old, and needs constant supervision. Defendant was raised by Rosetta and Leola; his father was absent. Rosetta, at times, was unable to care for defendant due to school and work. Rosetta had a drug problem and was a

prostitute, which was known to the community. Defendant's peers would tease him about his mother's addiction. Defendant was briefly treated for attention and concentration problems as a child, but Rosetta had him stop taking his medication due to concerns of addiction. Defendant was a "learning disabled" student and had an "individualized education program" (IEP) in 1990. The IEP indicated that defendant had "moderate learning disabilities"; he had received services for "behavior disordered" students, but those services were discontinued due to his behavior improving; and his vocabulary and reading skills were at a third grade level and his mathematics abilities were at a fifth grade level. As to their environment, defendant and codefendants spent time living with Leola, who lived in the Robert Taylor Homes (RTH), a CHA housing project. RTH was "notoriously known as the world's biggest public housing project and one of the most impoverished neighborhoods in the United States." The physical condition was "well below acceptable levels." Violence and gangs were very prevalent. "Gang members frequently loitered in public areas selling crack or cocaine and patrolling lobbies and abandoned apartment buildings." Neither defendant nor codefendants "had an appropriate male role model to provide them with support, guidance, and education about the proper ways to behave and conduct oneself."

¶ 14 The trial court found "sufficient mitigation" to preclude imposing the death penalty and sentenced defendant and codefendants to mandatory natural life imprisonment without the possibility of parole under section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998)).

¶ 15 We affirmed defendant and codefendants' convictions and sentences on direct appeal. *People v. Whitfield*, No. 1-00-1303 (2002) (unpublished order under Supreme Court Rule 23).

¶ 16 Defendant, along with codefendants, filed a postconviction petition in 2001, alleging that the State withheld the nature of several witnesses' relationships with members of a rival gang in

violation of *Brady v. Washington*, 373 U.S. 83 (1963). Following an evidentiary hearing, the postconviction court denied this postconviction petition and this court affirmed the denial. *People v. Whitfield*, No. 1-08-1870 (2011) (unpublished order under Supreme Court Rule 23).

¶ 17 In 2012, defendant, along with codefendants, filed a motion for leave to file a successive postconviction petition asserting their actual innocence. The postconviction court denied leave to file. Defendant and codefendants did not appeal.

¶ 18 In 2015, defendant, along with codefendants filed a motion for leave to file a second successive postconviction petition asserting actual innocence and ineffectiveness of trial counsel. The postconviction court denied leave to file the second successive postconviction petition and we affirmed the decision. *People v. Whitfield*, 2017 IL App (1st) 152407-U.

¶ 19 In 2017, defendant filed a *pro se* motion to file a third successive postconviction petition (petition), alleging that his mandatory sentence of natural life in prison without the possibility of parole violated the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), as applied to him under *Miller v. Alabama*, 567 U.S. 460 (2012). The postconviction court denied defendant leave to file the petition. On appeal, we found that defendant's allegations underlying his as-applied eighth amendment and proportionate penalties claims, taken as true, were sufficient to satisfy the cause-and-prejudice test and reversed the postconviction court's decision denying defendant leave to file the petition and remanded the matter for further proceedings. *People v. Polk*, 2019 IL App (1st) 180516-U.

¶ 20 On remand, defendant amended the petition on several occasions based on changes in the law relating to successive postconviction petitions and proportionate penalties claims. Defendant acknowledged, citing *People v. Moore*, 2023 IL 126461, that he could no longer bring a *Miller*

eighth amendment claim in that he was 19 at the time of the offense. Defendant thereafter filed a third amended successive postconviction petition (amended petition) based solely on the proportionate penalties clause, relying on *People v. Harris*, 2018 IL 121932, and *People v. Thompson*, 2015 IL 118151. Defendant attached to the amended petition an article on the science of late-adolescent research on emerging adults, an analysis from Dr. James Garbarino, documents from high school showing that he was "learning disabled," a published study finding that the brains of individuals with learning problems appear to develop more slowly and may stop developing around the time of puberty, and a memorandum showing that he had completed educational classes while incarcerated.

¶ 21 The State moved to dismiss the amended petition arguing that defendant could not establish cause where our supreme court in *Moore*, 2023 IL 126461 (citing *People v. Clark*, 2023 IL 127273), found that the new rule in *Miller* did not provide cause for a young adult to raise a claim under the proportionate penalties clause. Defendant responded that he established cause where, prior to the decisions in *Harris*, 2018 IL 121932 and *Thompson*, 2015 IL 118151, he could not have brought an as-applied challenge under the proportionate penalties clause based on emerging adult brain development. He argued that he established prejudice where, until these cases were decided, he had no recourse to argue that his mandatory life sentence was disproportionate when considering his youth and brain development. After a hearing, the postconviction court entered a written order finding that defendant did not establish cause or prejudice for failing to raise this claim earlier, relying on *People v. Dorsey*, 2021 IL 123010, and *People v. Hilliard*, 2023 IL 128186, and dismissed the amended petition.

¶ 22 After the postconviction court denied his motion to reconsider the dismissal, defendant appealed.

¶ 23 The Act provides a procedure for criminal defendants to challenge their convictions based on alleged violations of their state or federal constitutional rights. *People v. Morales*, 2019 IL App (1st) 160225, ¶ 17; 725 ILCS 5/122-1 *et seq.* (West 2024). At the first stage, the postconviction court evaluates the petition and determines whether it is frivolous or patently without merit. *Morales*, 2019 IL App (1st) 160225, ¶ 17. If the court determines that the petition is not frivolous or patently without merit, it is docketed for second-stage proceedings. *Id.* The State must either file a motion to dismiss or an answer within 30 days of the court's order. *People v. Thames*, 2021 IL App (1st) 180071, ¶ 76 (citing 725 ILCS 5/122-5 (West 2016); *People v. Allen*, 2015 IL 113135, ¶ 21). If the petition makes a substantial showing of a constitutional violation, it advances to a third-stage evidentiary hearing where the postconviction court receives evidence and determines whether defendant is entitled to relief. 725 ILCS 5/122-6 (West 2024); *Morales*, 2019 IL App (1st) 160225, ¶ 17. At the third stage, the postconviction court makes factfinding and credibility determinations. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 24 The Act contemplates the filing of only one postconviction petition, where it provides that any claim not presented in an original or amended petition is waived. 725 ILCS 5/122-3 (West 2024); *People v. Prante*, 2023 IL 127241, ¶ 59; *People v. Robinson*, 2020 IL 123849, ¶ 42. Therefore, a defendant must obtain leave of court to file a successive petition. 725 ILCS 5/122-1(f) (West 2024); *Thames*, 2021 IL App (1st) 180071, ¶ 77. To obtain leave, a defendant has the burden of "establishing either 'cause and prejudice' for failing to raise the claim earlier or 'a fundamental miscarriage of justice based on actual innocence.' " *People v. Sparkman*, 2026 IL App (1st) 240715, ¶ 29 (citing *Robinson*, 2020 IL 123849, ¶ 42; 725 ILCS 5/122-1 (West 2016)). Under the cause-and-prejudice test, a defendant must establish both (1) cause for the failure to raise a claim in an earlier proceeding and (2) prejudice resulting from that failure. *People v.*

Edwards, 2012 IL 111711, ¶ 22 (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002)). When leave is granted, the successive petition advances to the three-stage process for evaluating postconviction petitions. *Id.* ¶ 26. However, because the filed successive petition has already satisfied a higher standard, the first stage is rendered unnecessary, and the successive petition proceeds to the second stage. *Thames*, 2021 IL App (1st) 180071, ¶ 78 (citing *People v. Sanders*, 2016 IL 118123, ¶¶ 25, 28).

¶ 25 After leave to file has been granted, "the State may relitigate either cause or prejudice in a motion to dismiss." *Sparkman*, 2026 IL App (1st) 240715, ¶ 30 (citing *People v. Bailey*, 2017 IL 121450, ¶ 26). The dismissal of a successive postconviction petition without a third-stage evidentiary hearing is reviewed *de novo*. *Thames*, 2021 IL App (1st) 180071, ¶ 80 (citing *Pendleton*, 223 Ill. 2d at 473)). We perform the same analysis that the postconviction court would perform (*People v. McDonald*, 2016 IL 118882, ¶ 32) and take as true all well-pled allegations that are not positively rebutted by the record (*Robinson*, 2020 IL 123849, ¶ 45).

¶ 26 A defendant "demonstrates cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceeding." 725 ILCS 5/122-1(f) (West 2024); *Thames*, 2021 IL App (1st) 180071, ¶ 77. However, based on a recent amendment to the Act, a defendant whose crimes occurred when they were under 21 years old and who claim that their sentence violates the proportionate penalties clause is relieved of the burden to demonstrate cause to proceed with a successive petition. *Sparkman*, 2026 IL App (1st) 240715, ¶ 37. Specifically, on July 10, 2026, after the postconviction court dismissed defendant's amended petition, section 122-1 of the Act was amended by adding subsection (g), providing:

> " 'A petitioner who was convicted of a felony offense committed when that person was under 21 years of age who seeks leave to file a successive post-conviction petition claiming

> that his or her sentence violates Section 11 of Article I of the Illinois Constitution does not have to demonstrate cause as set forth in subsection (f) of this Section.' " *Sparkman*, 2026 IL App (1st) 240715, ¶ 37 (citing Pub. Act 104-564 (eff. July 10, 2026) (amending 725 ILCS 5/122-1)).

The amendment applies retroactively and therefore defendant is not required to show cause. See *Sparkman*, 2026 IL App (1st) 240715, ¶ 39 ("Because the amendment would affect only whether a procedural hurdle applies to a particular filing, we conclude that the amendment is procedural in nature and applies retroactively to defendant's successive petition. Accordingly, defendant is not required to show cause").

¶ 27 We turn to whether defendant established prejudice. A defendant establishes "prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceeding so infected the trial that the resulting conviction or sentence violated due process." 725 ILCS 5/122-1(f) (West 2024); *Thames*, 2021 IL App (1st) 180071, ¶ 77.

¶ 28 To address prejudice, we must first discuss *Miller* and its Illinois progeny. In 2012, the United States Supreme Court, in *Miller*, held that the eighth amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" convicted of homicide. 567 U.S. at 479. The *Miller* court noted that "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471. Before a life sentence can be imposed, the sentencing court must consider "mitigating circumstances" such as "an offender's youth and attendant characteristics." *Id.* at 483, 489.

¶ 29 In *Harris*, 2018 IL 121932, our supreme court foreclosed a defendant's facial argument that the eighth amendment protections as articulated in *Miller* should apply not just to juveniles under the age of 18, but also to young adults, ages 18 to 21, noting that the United States Supreme

Court has clearly and consistently drawn the line at age 18 for purposes of juvenile sentencing protections in the eighth amendment context. *Id.* ¶¶ 58, 61. However, *Harris* left open the possibility for an offender between ages 18 and 21 to make an as-applied challenge under the proportionate penalties clause. See *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 25 (citing *Harris*, 2018 IL 121932, ¶ 48 (18-year-old defendant), and *Thompson*, 2015 IL 118151, ¶¶ 43-44 (19-year-old defendant)). "Our supreme court has recognized that young adult offenders may raise as-applied challenges under the proportionate penalties clause where a defendant receives a mandatory life sentence and an adequate factual record can be developed." *People v. Conwell*, 2026 IL App (1st) 240714, ¶ 33 (citing *People v. Spencer*, 2025 IL 130015, ¶ 44, *Dorsey*, 2021 IL 123010, ¶ 87); see *People v. House*, 2021 IL 125124 (recognizing that a young adult offender may raise an as-applied proportionate penalties claim where the circumstances of the offender's youth and development are demonstrated through an evidentiary record).

¶ 30 The proportionate penalties clause of the Illinois Constitution provides 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. The proportionate penalties clause provides broader protections than those provided in the eighth amendment. *People v. Gipson*, 2015 IL App (1st) 122451, ¶¶ 69-78; *People v. Clemons*, 2012 IL 107821, ¶ 36. A sentence violates the proportionate penalties clause if "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) (*Leon Miller*). Our supreme court has never defined what constitutes a cruel or degrading sentence that is "wholly disproportionate to the offense" because "as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." *Id.* at 339. To determine whether

defendant's sentence is disproportionate, "[w]e review the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence within our community's evolving standard of decency." *Id.* at 340.

¶ 31 "In the context of an emerging-adult claim under the proportionality and restoration clauses of the Illinois Constitution, that means he must plead, and ultimately prove, that his or her individual characteristics require the application of *Miller*. In other words, he must demonstrate that his *** own individual characteristics were so like those of a juvenile that receipt of a life sentence without the *Miller* safeguards was cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community." (Internal citations and punctuation omitted.) *People v. Reyes*, 2026 IL App (1st) 241172-B, ¶ 41.

¶ 32 Defendant argues that the facts and circumstances here establish prejudice. At the time of the offense, he was 19 years old. At the death penalty hearing, there was mitigating and youth related evidence of his background, family history, and circumstances. The trial court was precluded from further considering these factors after finding that the death penalty was not appropriate because a life sentence without parole was mandatory.

¶ 33 The holding in *Sparkman*, 2026 IL App (1st) 240715, guides our analysis as to whether defendant established prejudice. In *Sparkman*, the 18-year-old defendant was convicted on two counts of first degree murder. *Id.* ¶ 1. The evidence at trial showed that the defendant shot and killed two members of a rival street gang. *Id.* ¶ 8. At a death penalty hearing, mitigation evidence was presented involving his upbringing and its negative impact on his early childhood development. *Id.* ¶ 12. The trial court sentenced the defendant to two concurrent terms of mandatory life imprisonment without parole. *Id.* ¶ 15. In a successive postconviction petition, the defendant argued, for the first time, that his mandatory life sentence was unconstitutional as

applied to him under *Miller*. *Id.* ¶ 18. At the second stage, the postconviction court dismissed the successive petition for the defendant's failure to satisfy the cause-and-prejudice test. *Id.* ¶ 23. On appeal, this court explained that in order to sustain the dismissal for failure to establish prejudice,

> "we must conclude, as a matter of law, that he failed to show that his claim—that, as applied to him, the statutory provisions that prevented the sentencing court from considering any mitigation before imposing mandatory life sentences without the opportunity for parole for the murders he committed when he was 18 years old—so infected his sentencing hearing that his resulting sentence violated due process given the scientific research related to juvenile and young adult brain development, and the new sentencing laws and case law that have trended in the direction of certain increased protections for juveniles and young adults." *Id.* ¶ 41.

After considering the precluded mitigation evidence, including the scientific evidence of brain development and the evidence specific to the defendant's brain development and the changes to sentencing laws and recent case law, we concluded that defendant demonstrated prejudice. *Id.*

¶ 34 Here, similar to *Sparkman*, defendant was a young adult, 19 years old, at the time of the offense. He was convicted on an accountability theory and did not have a lengthy criminal history. The Tatelli report showed that defendant was subject to both family and peer pressure at the time of the offense. He and codefendants were cousins and grew up together. They were members of a gang. Their family had a history of mental illness and substance abuse, and they did not have present and available father figures. Defendant's mother was a drug addict and a prostitute, and his peers teased him about his mother's problems. Defendant had difficulty with attention and concentration for which he had been treated with medication. However, his mother stopped his medication due to her concerns about addiction. He had learning disabilities and received services

for behavior issues. Defendant was exposed to violence and gang activity on a daily basis when in the care of his grandmother at a large public housing complex. Gang members frequented the housing complex where they would sell drugs and takeover vacant apartment buildings. Defendant presented a report from Dr. Garbarino with the amended petition. This report revealed and confirmed that defendant grew up in a dysfunctional family where his father was not around. He witnessed domestic violence and was exposed to substance abuse as a child. He was bullied and ostracized as a child due to his mother's drug addiction and prostitution and was sexually assaulted by a male friend of his father's. He became a substance abuser at a young age. Defendant also had firsthand encounters with violence in his childhood where many of his friends were injured or killed while living in a high-violence neighborhood where gangs were active. The report compared these individualized childhood experiences to the science of youth brain development and concluded that the *Miller* factors were present in his case.

¶ 35 At the time of defendant's sentencing, the statutory scheme effectively limited the trial court's ability to impose a lesser sentence. Therefore, we conclude, as did this court in *Sparkman*, that after considering the precluded mitigation evidence, including the scientific evidence of brain development and the evidence specific to defendant's brain development, defendant demonstrated prejudice. See *Sparkman*, 2026 IL App (1st) 240715, ¶ 41.

¶ 36 Next, we consider whether defendant made a substantial showing of a constitutional violation.

¶ 37 In evaluating this issue, we are guided by this court's recent decision in *People v. Reyes*, 2026 IL App (1st) 241172-B. There, this court concluded that a similar claim by the defendant, who was 19 when he committed his crime, was sufficiently stated at the second stage where it was supported by an in-depth, individualized report from the same doctor that issued the report in this

case, Dr. Garbarino. *Id*. ¶ 42. This court noted that the report there:

> "[I]dentified adverse events and environments in [the defendant's] childhood and—crucially—explained how those had hampered [the defendant's] psychological development, particularly in the areas of executive function and emotional regulation, which, according to Dr. Garbarino, are crucial elements in effective, pro-social decision-making. In the report, Dr. Garbarino described [the defendant], at the time of the shooting, as an untreated, traumatized child inhabiting and controlling the body of a teenager. He also opined that [the defendant] demonstrated immaturity of thought and emotional control, impetuous and impulsive action, and failure to appreciate the full consequences of his criminal behavior, all of which reflected a slower maturation process than [the defendant] would have experienced in a healthier environment." (Internal citations and punctuation omitted.) *Id*.

¶ 38 The report issued by Dr. Garbarino in this matter and attached to the amended petition came to a similar conclusion based upon a similar evaluation of defendant's history. In his analysis, Dr. Garbarino opined, in part, that:

> "[Defendant's] behavior reflected immature impulsiveness due to his brain development. His behavior was the result, in part, of the dysfunctional family in which he grew up. The social context in which he participated in the crime that led to his arrest and incarceration exacerbated his adolescent problems with making good decisions ('executive function') and managing his emotions ('affective regulation'). His behavior reflected the effects of developing a "war zone mentality" with all that implies for moral judgment. His crime (and most of his prior delinquent behavior as a gang member) occurred in the company of and under the influence of peers. What is more, although he was tried as an adult in the criminal

> justice system, he was best understood as "an untreated traumatized child," and he was not well equipped to make good decisions about his legal situation. Finally, and perhaps most importantly, the nature of his behavior at age 19 could not and did not accurately predict what he could become as an adult, because his potential for rehabilitation was masked by his youth at the time of his crimes."

¶ 39 Here, on these facts, we conclude that defendant made a sufficient substantial showing to preclude a second-stage dismissal of his proportionate penalties claim and that this claim warrants a third stage hearing.

¶ 40 The State argues that defendant's sentence does not shock the moral sense of the community where he was an adult, armed with a gun, and along with two other people, committed multiple murders in a city-owned housing complex, to try to maintain control of the area in conjunction with his gang. The State, similar to an argument that was rejected in *Sparkman*, cites *Hilliard*, 2023 IL 128186. In *Hilliard*, the 18-year-old defendant fired multiple gunshots at the victim at close range with no demonstrated provocation. *Id.* ¶ 5. The defendant was convicted of attempted first degree murder and sentenced to 15 years' imprisonment, plus the minimum of 25 years for the firearm enhancement. *Id.* ¶ 9. In an initial postconviction petition, the defendant argued that the mandatory nature of the 25-year firearm enhancement violated the proportionate penalties clause because it deprived the trial court of the ability to consider that he was only 18 years old at the time of the offense; he had no prior criminal convictions; his culpability was mitigated because his age placed his cognitive abilities with those of 16 to 17 year olds; scientific research showed that the parts of the brain that govern impulsivity, judgment, and future planning continue to develop until people are in their early twenties; he had a "troubling social history, where he did not have a relationship with his father and had not been enrolled in school since the

fifth grade"; and he had rehabilitative potential since he had a supportive family and no street gang involvement. (Internal quotation marks omitted.) *Id.* ¶¶ 11-12. The defendant maintained that *Leon Miller*, supported his proportionate penalties claim. *Id.* ¶ 30 (citing *Leon Miller*, 202 Ill. 2d at 343 (holding that a mandatory sentence of natural life violated the proportionate penalties clause where the defendant was 15 years old, had one minute to contemplate whether to participate in the incident, and stood as a lookout during the shooting but never handled a gun)).

¶ 41 Our supreme court rejected the defendant's argument and affirmed the first-stage dismissal of his petition as frivolous and patently without merit. *Hilliard*, 2023 IL 128186 ¶ 40. The court held that his reliance on *Leon Miller* was misplaced because his situation was "readily distinguishable" from the 15-year-old defendant, who "had moments to decide whether to help the accomplices and stood as a lookout during the subsequent shooting but did not touch a gun"; the recent legislation, which gave courts discretion to impose the firearm enhancement on juvenile offenders and offered parole review to defendants under 21 years old at the time of certain offenses, did not support a showing that the defendant's mandatory firearm enhancement sentence was contrary to society's evolving standard of decency because the legislature chose not to make that legislation retroactive; and our constitution does not indicate that an offender's possibility of rehabilitation was to be given greater weight than the seriousness of the offense in determining a proper penalty. *Id.* ¶¶ 27, 33-34, 36-39, 40.

¶ 42 However, here, unlike in *Hilliard*, and similar to *Sparkman*, the statutory scheme under which defendant was sentenced mandated that he receive a life sentence without the opportunity for parole for crimes he committed at the age of 19. Additionally, defendant did not shoot the victims and was convicted on an accountability theory. We follow the reasoning of *Sparkman* and find that *Hilliard* does not support the second stage dismissal of the amended petition. See

Sparkman, (distinguishing *Hilliard* and finding that the 18-year-old defendant made a substantial showing that his mandatory life sentence without parole violated the proportionate penalties clause where the sentencing court was not able to consider his youth and its attendant circumstances).

¶ 43 For the foregoing reasons, we reverse the judgment of the circuit court dismissing defendant's successive postconviction petition and remand this matter for third-stage evidentiary proceedings under the Act.

¶ 44 Reversed and remanded.