No. 127304

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-0535
Respondent-Appellee,	)	
	)	There on Appeal from the Circuit Court of Cook County, Illinois,
v.	)	No. 08 CR 15108
	)	
	)	
TOROLAN WILLIAMS,	)	The Honorable Carol M. Howard,
Petitioner-Appellant.	)	Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7938
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
6/27/2024 9:17 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE CASE

Petitioner appeals the appellate court's judgment affirming the trial court's judgment dismissing his postconviction petition at the first stage. A27-43.[1] The issue raised on the pleadings is whether the petition was frivolous or patently without merit.

ISSUES PRESENTED

Petitioner was convicted of five first degree murders that he committed when he was 22 years old. The trial court sentenced him to natural life in prison. The issues presented are:

1. Whether petitioner forfeited his claim that his sentence violates article I, section 11 of the Illinois Constitution (the proportionate penalties provision) because he failed to raise it at sentencing, in a motion to reconsider sentence, or on direct appeal.

2. Whether the trial court properly dismissed petitioner's postconviction petition because his claim that direct appeal counsel was ineffective for not arguing that trial counsel was ineffective for failing to raise a proportionate penalties claim is both forfeited and indisputably meritless.

---

[1] "C__," "SupC__," "SecC__," and "R__" refer to the common law record, supplemental common law record, secured common law record, and report of proceedings, respectively. "SupR__" refers to the supplemental report of proceedings found in the volume of record that also contains the supplemental common law record. "Pet. Br. __" and "A__" refer to petitioner's brief and appendix. "PLA __" refers to petitioner's petition for leave to appeal in this Court. "Pet. App. Ct. Br. __" refers to petitioner's opening brief in the appellate court, which has been filed in this Court pursuant to Rule 318(c).

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 612, and 615(d). On September 27, 2023, this Court allowed leave to appeal.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Ill. Const., Art. I, § 11

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

730 ILCS 5/5-8-1 (2008)

Sec. 5-8-1. Sentence of Imprisonment for Felony.

(a) Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

(1) for first degree murder,

* * *

(c) the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed if the defendant,

* * *

(ii) * * * is found guilty of murdering more than one victim[.]

STATEMENT OF FACTS

I. Petitioner Is Convicted of Five First Degree Murders and an Armed Robbery.

In 2008, when he was 22 years old, petitioner and his friend, Michael King, fatally shot Donovan Richardson, Reginald Walker, Anthony Scales, Whitney Flowers, and Lakesha Doss in Richardson's home; they ransacked the home; and they then took the victims' belongings to petitioner's home

with the help of his friend, Arthur Brown. The grand jury returned a 73-count indictment. SecC5-78. Before trial, the trial court suppressed statements petitioner made to police after he invoked his right to counsel but permitted the prosecution to admit the statements petitioner made before he invoked that right. SecC89; R626-29. In May 2014, the case proceeded to a jury trial on charges of intentional, knowing, and felony first degree murder for each victim, and for the armed robbery of Richardson. SupR713-21.

The evidence[2] showed that before the murders, petitioner visited Richardson's home to sell him a medallion that petitioner believed was worth about $4,000, but left upset and angry after Richardson met with petitioner for only five minutes, refused to buy the medallion, and showed petitioner a "much larger" medallion. R1615-16, 1619-21, 1675-76. Later, petitioner learned from King that Richardson had a safe containing at least $50,000. R1635-36. Petitioner and King then decided to rob Richardson. R1641-42.

A day or two later, petitioner called King and arranged to meet him near Richardson's home. R1641-42, 2078-88. Petitioner and King armed themselves with firearms, went into Richardson's home, fatally shot each of its five occupants in the head, ransacked the home, and left with numerous stolen items, including multiple television sets, a special edition Xbox,

---

[2] The record on appeal does not include the complete trial testimony. The cross-examination of one witness, Anthony Civinelli, and the entirety of the testimony from two witnesses, Joseph Raschke and Detective Timothy Murphy, are missing. This Court resolves any doubts that arise from the incomplete record against petitioner. *People v. Carter*, 2015 IL 117709, ¶ 19.

watches, earrings, bracelets, rings, and marijuana. R1440-52, 1578-83, 1926-30, 1641-42, 2086-87, 2095-2127, 2140-47. Brown waited in the alley behind Richardson's home and helped petitioner and King load the proceeds in King's car. R1401-20, 2092-2105. As King drove the three men to petitioner's home after the crimes, petitioner and King were giggling, calling each other "crazy," and saying what they did was "crazy shit." R2105-06. Petitioner, King, and Brown moved the stolen items into petitioner's home, King left without taking any of them, and Brown stayed overnight. R2107-09. Before Brown left the following morning, petitioner gave him two watches, diamond earrings, and marijuana from the robbery proceeds. R2113-20.

That afternoon, Scales's girlfriend and his cousin went to Richardson's house and found the victims inside. R1277-78, 1289-93, 1301, 1305-18. Each victim had died from a gunshot wound to the head. R1440-46; SupR525-81. Richardson's and Walker's bodies were on the floor in front of a couch. R1443-44. Richardson was shot at close range in the right side of his head. SupR551-60. Walker was shot in the back of his head. SupR560-69. Scales's body was nearby between a pool table and loveseat, R1445, and he was shot twice: once at close range in the right side of his head (the bullet exited his eye), and again on his left arm. SupR570-81. Flowers's body was propped up on a wall, naked and wearing a shower cap. R1331, 1442. She was shot twice: once at close range in the left side of her head, and again in the back of her right thumb. SupR539-50. The bullet that was lodged in Flowers's

head was .38 caliber and had a polymer coating called nyclad, rather than the typical copper coating. R1973, 1985-86. Finally, Doss's body was at the bottom of the front staircase wearing a shower cap and nightshirt. R1445-46. She was shot in the top of her head. SupR525-38.

Petitioner and King had "ransacked" and "torn apart" Richardson's home and left it in "complete disarray." R1330-31, 1334-35, 1440-52. The kitchen cabinets and refrigerator doors were open. R1330-31, 1440-41. The bathroom cabinets also were open, and the toilet tank covers had been removed. R1441-42, 1449. The jacuzzi tub's panels in the upstairs bathroom had been pried open. R1449. The couches were cut open. R1334, 1444. Air vent covers had been removed. R1292, 1446. The insulation in the basement had been ripped out. R1334, 1447. The attic had been searched. R1345, 1448-51. The mattresses and beds were flipped. R1447-50. The closets had been searched, and the safe in the primary bedroom closet was left open. R1447-50. "[E]verything that you could think that could be searched . . . [had] be[en] searched." R1450.

Brown returned to petitioner's home after he heard about the murders on the news. R2119-20. At that time, he saw six guns on petitioner's floor, including two 9mm semiautomatics and a .38 caliber revolver. R2120-22. Approximately two weeks later, petitioner moved in with his childhood friend, Orson Headon. R1924-25, 2125-26. Headon saw petitioner with,

among other things, an Xbox, two TVs, a computer, a .45 caliber firearm, and another gun. R1926-30, 2126-28.

About a month after the murders, petitioner asked his friend, Jermaine Nash, and Nash's cousin, Robert Johnson, to help him rob a pawnshop. R1602-03. Johnson overheard a conversation in which petitioner answered a phone call, put it on speaker, and yelled at the caller, "how you lose my gun, that is my ATM, that is how I make my money." R1603. After he finished the call, petitioner told Johnson and Nash that "what happened" at Richardson's home "was all [him]." R1578, 1594. Petitioner elaborated that "they" shot one girl in the head, causing her head to instantly swell and her eye to pop out. R1580-81. They also shot one of the men in the head and when they heard him snoring, they thought he was still alive, so they shot him again. R1581; *see also* SupR581-82 (medical examiner's testimony that agonal breathing — audible shallow, deep breathing — commonly occurs just before death). Petitioner said they shot another girl who was so good looking that he wanted to have sex with her. R1581. He further explained that they searched the house for so long that it began stinking, so they left. R1582. Petitioner complained that he wanted to steal a chinchilla coat but left it because it was too hot to wear it at the time. R1582-83; *see* R1450 (police found chinchilla coats in Richardson's closet after murders).

Petitioner was arrested shortly after his confession to Johnson and Nash. R1584-85, 1609. He initially denied being involved in the murders,

R1623, but later told police that he served as a lookout for a "Michael Price" (whom police determined was actually King), R1616-19, 1623-24. Petitioner claimed that he looked out from the street corner, the house's perimeter, the alleys, and a nearby vacant lot, R1636-37, but did not have his cell phone or know Michael Price's phone number, R1642-43; his plan was to run and find a pay phone if police came, *id.* When police tried to transfer petitioner from one station to another, he escaped from the police car and was eventually apprehended following a chase. R1629-31.

Police recovered from petitioner's home a .38 caliber revolver, a semiautomatic magazine clip containing 9mm rounds, and a single 9mm round. R1948-53.[3] The revolver could neither be identified nor excluded as one of the firearms used in the murders, R1973-74, 2011-12, and contained residue that showed it had fired a round of nyclad ammunition, R2038-43.

Several of the stolen items were traced back to petitioner. At the time of his arrest, petitioner still had the Xbox, R1801-02, 1809-10; SupR488-89, and a TV, R1926-27, 1947-48. He had sold another of the TVs to Brown's friend, R2261-62, and pawned jewelry that belonged to the victims, R1324, 2242, 2292-95. Brown had pawned the watches and jewelry that petitioner gave him. R2114-18.

---

[3] King's brother testified that a week or two before the murders, petitioner was playing with his 9mm gun, "was trigger happy[,] and fired a shot off in the air." R1844.

While in pretrial custody, petitioner admitted to Brown that he shot Richardson while Richardson was sitting on the couch and shot one of the girls after she would not stop screaming; petitioner claimed that King shot the other three victims. R2140, 2146-47.

At trial, petitioner's counsel presented the theory that King and Brown committed these "brutal," "horrible," and "vicious" crimes, and manipulated and took advantage of petitioner, who "was a 22-year-old smart aleck kid" and not accountable for the crimes. R1272, 1274-75; SupR652, 655, 661-62, 662, 667. The jury found petitioner guilty of all five first degree murders and the armed robbery of Richardson. SupC335-40; SupR737-40.[4]

II. Petitioner Waives His Right to Present Mitigation Evidence and Receives Prison Sentences of Natural Life for Each Murder and 20 Years for Armed Robbery.

In August 2014, one day before petitioner's 29th birthday, the trial court held a sentencing hearing. SupC412; SupR750-76.

The court considered the statutorily required presentence investigation report (PSI), which provided limited information because petitioner refused to cooperate with the investigator. SupC345-60; SupR753; *see* 730 ILCS 5/5-3-1. The PSI showed prior convictions for criminal trespass to a vehicle,

[4] Brown pleaded guilty to one count of first degree murder and agreed to testify against petitioner and King in exchange for the dismissal of the other charges and a recommended prison sentence of 24 years. R2147-49. Following a separate jury trial, King was convicted of five counts of first degree murder and one count of armed robbery, and sentenced to natural life. *People v. King*, 2017 IL App (1st) 143242-U, ¶ 2.

criminal trespass to land, and possession of cannabis. SupC347. No juvenile delinquency information was available due to petitioner's age at the time of the PSI. SupC346-47.

Petitioner had no amendments or additions to the PSI. SupR753. His attorney "waive[d]" petitioner's right to present evidence and argument in mitigation, and petitioner declined to make a statement in allocution. SupR769, 772-73. In aggravation, the People presented victim impact statements. SupC402-11; SupR754-68. The statements showed, among other things, that Doss was a 17-year-old honor-roll student when petitioner killed her, SupC410-11; SupR767-68; and that by killing Richardson and 22-year-old Flowers, petitioner left their toddler son an orphan, SupC405-06; SupR765-66.

Petitioner was convicted of murdering more than one person, so the multiple-murder sentencing statute required a sentence of natural life in prison. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (2008). Nevertheless, before imposing sentence, the trial court reviewed its notes, the PSI, and the mitigating and aggravating factors and evidence. SupR769. It then sentenced petitioner to consecutive prison sentences of natural life for each intentional first degree murder and 20 years for armed robbery. SupR773-74. The court also advised petitioner that if he wanted to "challenge the sentence or any aspect of the sentencing hearing," he needed to file a written motion to reconsider sentence within 30 days, and that "[a]nything [he] fail[ed] to put in [that] written

motion w[ould] be waived for all time." SupR774-75. Petitioner stated that he understood, SupR776, and filed a notice of appeal that day without filing a motion to reconsider sentence, SupC422-23; SupR774.

III. Petitioner's Convictions Are Affirmed on Direct Appeal.

On appeal, petitioner's appointed counsel challenged his convictions on five grounds, SecC92, including that the trial court should have suppressed all of petitioner's statements to police as involuntary because police denied him his statutory right to make a reasonable number of telephone calls after his arrest, SecC92-95. The appellate court affirmed petitioner's convictions. SecC92-104. On petitioner's first issue, a majority of the court held that petitioner's statements were voluntary and his statutory right to make a telephone call was not denied, SecC92-96; Justice Mikva, specially concurring, would have found that police violated petitioner's statutory right to a telephone call but that this violation did not render petitioner's statements involuntary, SecC104-05.

This Court denied leave to appeal. *People v. Williams*, No. 122774 (Ill. Jan. 18, 2018).

IV. The Trial Court Dismisses Petitioner's Postconviction Petition.

In October 2018, petitioner filed a postconviction petition. C85-100. As relevant here, petitioner alleged that direct appeal counsel was ineffective for failing to argue that trial counsel was ineffective for not raising an as-applied challenge to the multiple-murder sentencing statute under the

proportionate penalties provision. C97. Petitioner attached no evidence to his petition in support of this claim. *See* C85-100.

Specifically, petitioner argued that counsel should have challenged the mandatory life sentence because it precluded consideration of mitigating factors such as "[p]etitioner's age, his minimal criminal history, his actual involvement in the crime[,] and the 'hallmark features of his youth.'" C97. In support, petitioner discussed Eighth Amendment cases concerning the sentencing of juvenile offenders. C97-99 (discussing *Miller v. Alabama*, 567 U.S. 460 (2012), *Graham v. Florida*, 560 U.S. 48 (2011), and *Roper v. Simmons*, 543 U.S. 551 (2005)). He contended that "there has been an emerging consensus that the brain research on which these cases relied has itself evolved to demonstrate that the brains of young adults continue to develop into their mid-20s." C99. Petitioner based this contention on:

> (1) a 2002 declaration from Dr. Ruben C. Gur, which was filed in support of the petition for a writ of certiorari in *Patterson v. Texas*, No. 02-6010 (U.S. Aug. 26, 2002);
>
> (2) a 2014 law review article discussing sentencing under the Eighth Amendment, *see* Andrea MacIver, *The Clash Between Science and the Law: Can Science Save Nineteen-Year-Old Dzhokhar Tsarnaev's Life?*, 35 N. Ill. U. L. Rev. 1 (2014); and
>
> (3) an Eighth Amendment nonprecedential decision from the United States District Court for the District of Connecticut, *see Cruz v. United States*, No. 11-CV-787 (JCH), 2018 WL 1541898 (D. Conn. Mar. 29, 2018), *vacated and remanded*, 826 F. App'x 49 (2d Cir. Sept. 11, 2020)).

C99-100. In conclusion, petitioner argued that sentencing him to life in prison shocks the moral sense of the community and asked the court to "order

a new sentencing hearing at which the court will be afforded the discretion to consider [p]etitioner's youth and potential for rehabilitation and to impose a sentence based on these mitigating factors that fulfills the express Illinois Constitutional mandate of restoring [p]etitioner to useful citizenship." C100.

In January 2019, the trial court dismissed the petition as frivolous or patently without merit. A6-25. Applying the governing standard from *Strickland v. Washington*, 466 U.S. 668 (1984), *see* A14-15, 18-19, the court found no arguable merit to petitioner's ineffective assistance of appellate counsel claim grounded in trial counsel's failure to raise a proportionate penalties challenge to his sentence, A22-25. The court explained that petitioner's underlying proportionate penalties claim was itself meritless because *Miller* does not apply to petitioner and courts had rejected proportionate penalties claims similarly focusing on the lack of discretion the multiple-murder sentencing statute affords a trial court. A23-24. And because the proportionate penalties claim was meritless, it was not arguable that appellate counsel's decision not to argue that trial counsel was ineffective for failing to raise the proportionate penalties claim "was either objectively unreasonable or prejudicial to the outcome of his appeal." A22, 24-25.

V. The Appellate Court Affirms the Trial Court's Judgment.

On appeal, petitioner did not argue the ineffective assistance of appellate counsel claim that he had alleged in his postconviction petition.

Pet. App. Ct. Br. 2, 10. Instead, he argued only that the circuit court erred by dismissing his postconviction petition because he raised an arguable claim that his mandatory natural-life sentence violates the proportionate penalties provision. *Id.*

In May 2021, the appellate court, in a 2-1 decision, affirmed the judgment dismissing petitioner's postconviction petition. A27, ¶ 1. The court held that for petitioner to "make a claim that *Miller* applies to him" under the proportionate penalties provision, he needed to "allege facts specific to him as a 22-year-old adult and how they rendered him more akin to a juvenile when he committed his offenses." A36, ¶ 28. But petitioner "did not allege any facts particular to him that rendered him the functional equivalent of a juvenile," A37, ¶ 31, and the record belied any such allegation because petitioner planned and instigated the robbery that resulted in the murders of five people, A37, ¶ 32; A39, ¶ 36. Moreover, the court found, the petition "cited only general articles finding that the brain continues to mature into one's mid-twenties," A37, ¶ 31, which were insufficient to demonstrate that the General Assembly's decision to require a natural life sentence "for an adult who was convicted of murdering more than one person[ ] is so wholly disproportionate to the offense as to shock the moral sense of the community," A38, ¶ 35. Accordingly, the court found no basis in the law to support petitioner's claim that his mandatory sentence violates the

proportionate penalties provision "merely because he was 22 years old when he committed the offenses." A38-39, ¶ 35.

Justice Mikva dissented. A39-42, ¶¶ 40-49. She would have found that petitioner's claim "has an arguable basis in law and is not positively contradicted by the record," A42, ¶ 47 (Mikva, J., dissenting), because the record "is devoid of any facts concerning [petitioner]'s particular circumstances" due to his decision not "to participate in the preparation of [the PSI]," not to "offer the court a statement in allocution," and "waive[r] [of] all arguments in mitigation" at sentencing, A42, ¶ 46 (Mikva J., dissenting). Justice Mikva recognized that petitioner's petition had alleged no circumstances suggesting that his "own specific characteristics were so like those of a juvenile that imposition of a life sentence" on him shocks the moral sense of the community. A40-41, ¶¶ 42-43 (Mikva, J., dissenting). But she did "not believe that this, on its own, should prevent his petition from advancing to the second stage" because petitioner was pro se and it was unreasonable to expect him to allege facts to support his claim where the record contained no such facts due to his failure to offer them at sentencing. A41-42, ¶¶ 45-46.

STANDARD OF REVIEW

This Court reviews de novo the trial court's first-stage dismissal of petitioner's postconviction petition. *People v. Hilliard*, 2023 IL 128186, ¶ 19.

ARGUMENT

This Court Should Affirm the Appellate Court's Judgment Because Petitioner's Postconviction Petition Is Frivolous or Patently Without Merit.

The Court should affirm the appellate court's judgment. The claim that petitioner presents to this Court — that his mandatory natural-life sentence violates the proportionate penalties provision — is forfeited. Petitioner failed to raise it at sentencing and in a written post-sentencing motion, despite the availability of the claim's factual and legal bases.

Moreover, the claim that petitioner alleged in his postconviction petition to overcome his forfeiture — that direct appeal counsel was ineffective for not arguing that trial counsel provided ineffective assistance by failing to raise the proportionate penalties claim — is also forfeited because petitioner did not raise it on appeal from the dismissal of his postconviction petition. Forfeiture aside, the ineffective assistance of appellate counsel claim is frivolous or patently without merit, because, at bottom, his natural-life sentence is proportionate to his five first degree murders, even if, at age 22, his maturity level was comparable to that of juveniles. Accordingly, the Court should affirm the appellate court's judgment.

A. To survive first-stage dismissal of his postconviction petition, petitioner must allege a claim that has an arguable basis in law or fact.

The Post-Conviction Hearing Act allows a petitioner to assert "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). The petition must "clearly set forth the respects in which petitioner's constitutional rights were violated." *Id.* § 122-2. "Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." *Id.* § 122-3.

A proceeding under the Act "'is not a substitute for, or an addendum to, direct appeal.'" *People v. Veach*, 2017 IL 120649, ¶ 46 (quoting *People v. Kokoraleis*, 159 Ill. 2d 325, 328 (1994)). Rather, "[t]he purpose of the proceeding is to resolve allegations that constitutional violations occurred at trial, when those allegations have not been, and could not have been, adjudicated previously." *People v. Evans*, 186 Ill. 2d 83, 89 (1999). Thus, the doctrine of forfeiture bars issues that could have been raised but were not raised on direct appeal. *People v. Dorsey*, 2021 IL 123010, ¶ 31. And "[t]he failure to raise [an] alleged error at trial constitute[s] a [forfeiture] of the issue both for purposes of direct appeal or postconviction proceedings." *People v. Eastin*, 36 Ill. App. 3d 69, 70 (5th Dist. 1976); *Evans*, 186 Ill. 2d at 92; *see also People v. Roberts*, 75 Ill. 2d 1, 10 (1979) (trial counsel forfeits a defendant's "right to raise certain errors in later proceedings by fail[ing] to object to those errors at trial").

The Act provides three stages of review. *People v. Hilliard*, 2023 IL 128186, ¶ 19. At the first stage, the court reviews the petition without input from the People, *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996), and if it

determines that "the petition is frivolous or is patently without merit, it shall dismiss the petition," 725 ILCS 5/122-2.1(a)(2). A petition is frivolous or patently without merit if its claims have no arguable basis in law or in fact, meaning they rely on indisputably meritless legal theories or fanciful factual allegations. *Hilliard*, 2023 IL 128186, ¶ 19. The "frivolous or patently without merit" standard also includes claims that are legally barred due to forfeiture, waiver, procedural default, *res judicata*, or a lack of standing. *People v. Johnson*, 2021 IL 125738, ¶¶ 48-50; *People v. Blair*, 215 Ill. 2d 427, 446, 450 (2005). These are "considerations the trial court must contemplate when determining whether a defendant's petition asserts the gravamen of a constitutional claim — not assertions that must be advanced by the State." *People v. Pellegrini*, 2019 IL App (3d) 170827, ¶ 47; *see Blair*, 215 Ill. 2d at 446 ("we will not direct a judge to ignore the doctrines of waiver, forfeiture, and procedural default where a review of the facts ascertainable from the record clearly demonstrates that the claim could have been raised in the prior proceeding"). And because this Court's review is de novo, it may consider whether these doctrines support the trial court's first-stage dismissal of the petition, regardless of whether the People raised the issue below.[5]

[5] Moreover, "[i]t is well established that the appellee may urge any point in support of the judgment on appeal, even though not directly ruled on by the trial court, so long as the factual basis for such point was before the trial court." *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 31 (cleaned up); *see also People v. Horrell*, 235 Ill. 2d 235, 241 (2009).

B. Petitioner forfeited his proportionate penalties claim.

1. Petitioner failed to preserve his proportionate penalties claim for direct and postconviction review.

Petitioner's claim that his sentence is constitutionally disproportionate is forfeited because he did not raise it to the trial court at sentencing and in a written post-sentencing motion.

Defendants must raise and develop an evidentiary record to support claims of sentencing error in the trial court, or risk forfeiture of the claim on direct and postconviction review. To preserve a claim of sentencing error — including a "challenge to the correctness of a sentence or any aspect of the sentencing hearing," 730 ILCS 5/5-4.5-50(d); *accord* Ill. S. Ct. R. 605(a)(3) — defendant must raise the error both contemporaneously at the time of sentencing and in a written post-sentencing motion. *People v. Harvey*, 2018 IL 122325, ¶ 15; *accord People v. Reed*, 177 Ill. 2d 389, 393-94 (1997). These requirements are functionally equivalent to those requiring a defendant to both contemporaneously object to a trial error and raise the issue in a post-trial motion. *See Reed*, 177 Ill. 2d at 394; *People v. Enoch*, 122 Ill. 2d 176, 185-86 (1988).

The preservation requirement for sentencing errors serves the same purpose as the preservation requirement for trial errors. These requirements "allow the trial court an opportunity to review a defendant's contention[s] of sentencing error and save the delay and expense inherent in appeal if they

are meritorious." *Reed*, 177 Ill. 2d at 394; *see also Enoch*, 122 Ill. 2d at 186. And they give the reviewing court the benefit of a developed evidentiary record, and the trial court's factual findings and reasoned judgment on the claim. *See Reed*, 177 Ill. 2d at 394; *People v. Hampton*, 149 Ill. 2d 71, 98-99 (1992).

Accordingly, any claims that a defendant could have raised but did not raise in accordance with these preservation rules are forfeited for both direct and postconviction review. *Reed*, 177 Ill. 2d at 395; *Enoch*, 122 Ill. 2d at 186-88; *Roberts*, 75 Ill. 2d at 10. Indeed, courts have routinely enforced this established forfeiture rule, *see*, *e.g.*, *People v. King*, 192 Ill. 2d 189, 196 (2000) (defendant forfeited issue for postconviction review "by failing to make an objection and establish a record on which the issue could be resolved"); *People v. Silagy*, 116 Ill. 2d 357, 371 (1987) (same, where defendant failed to raise claim at trial); *People v. Kamsler*, 40 Ill. 2d 532, 534 (1968) (same); *People v. Armes*, 37 Ill. 2d 457, 459 (1967) (same); *People v. Doherty*, 36 Ill. 2d 286, 291 (1966) (same), including in circumstances where the defendant's petition provided additional evidence to support the forfeited claim, *see*, *e.g.*, *Evans*, 186 Ill. 2d at 91-92 (defendant forfeited claim for postconviction review by not presenting available evidence to support claim at post-trial proceeding); *People v. Goins*, 103 Ill. App. 3d 596, 598-600 (1st Dist. 1981) (same, where defendant failed to presented available evidence to support claim at trial).

Petitioner did not present his proportionate penalties claim to the trial court at sentencing or in a post-sentencing motion. To the contrary, petitioner "waived" both evidence and argument in mitigation, agreed that the multiple-murder statute required natural life sentences, and, despite understanding that he would "waive" a challenge to his sentence "for all time" if he did not file a motion to reconsider his sentence, immediately appealed his conviction without filing the requisite motion. SupR769, 772, 774-76. Because petitioner did not raise his sentencing claim to the trial court, he failed to develop an evidentiary record for the claim, give the trial court an opportunity to address it, and provide the appellate court the benefit of the trial court's reasoned judgment on it. *See Reed*, 177 Ill. 2d at 394. As a result, petitioner forfeited his proportionate penalties claim for both direct and postconviction review.

2. Petitioner's proportionate penalties claim was available to him at the time he was sentenced.

Any argument that petitioner could not have raised his proportionate penalties claim when he was sentenced in August 2014 would be meritless because both the legal and factual bases for petitioner's claim were known then. *See People v. Jackson*, 205 Ill. 2d 247, 274-75 (2001) (unavailability of legal or factual basis for claim might provide cause for not raising claim before initial postconviction petition). In fact, petitioner correctly recognized that his proportionate penalties claim was available at sentencing when he faulted trial counsel for not raising it in his postconviction petition.

Procedural rules are "'designed to induce litigants to present their contentions to the right tribunal at the right time,'" *Veach*, 2017 IL 120649, ¶ 42 (quoting *Massaro v. United States*, 538 U.S. 500, 504 (2003)), i.e., when the legal basis for the claim exists, *see People v. Clark*, 2023 IL 127273, ¶¶ 61-63, 66-67, 83, 91-94; *People v. Guerrero*, 2012 IL 112020, ¶¶ 19-20, and there is "'an opportunity fully to develop the factual predicate for the claim,'" *Veach*, 2017 IL 120649, ¶ 42 (quoting *Massaro*, 538 U.S. at 504) (internal quotation marks omitted)). Petitioner had both the legal and factual bases to raise a proportionate penalties challenge to his sentence when he was sentenced in 2014.

First, the proportionate penalties provision and the legal standards governing petitioner's as-applied challenge were known at the time of his sentencing in August 2014. Since 1970, the proportionate penalties provision has "require[d] that all penalties 'be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.'" *Clark*, 2023 IL 127273, ¶ 51 (quoting Ill. Const., art. I, § 11). Long before petitioner's sentencing, this Court recognized that a penalty violates the proportionate penalties provision if it is "'cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.'" *Id.* (quoting *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002)); *accord People v. Morris*, 136 Ill. 2d 157, 167 (1990). And it was well established that a defendant could raise an as-applied proportionate

penalties challenge to a particular penalty based on his individual circumstances. *See Hilliard*, 2023 IL 128186, ¶ 29 (citing *People v. Fuller*, 187 Ill. 2d 1, 5-6 (1999)); *see also*, *e.g.*, *People v. Huddleston*, 212 Ill. 2d 107, 130-32, 141 (2004); *Leon Miller*, 202 Ill. 2d at 336-38.

Second, the constitutional significance of youth was also well established at the time petitioner was sentenced. This Court "ha[s] long held that age is not just a chronological fact but a multifaceted set of attributes that carry constitutional significance." *People v. Holman*, 2017 IL 120655, ¶ 44, *overruled on other grounds by People v. Wilson*, 2023 IL 127666, ¶ 42. And Illinois law has long accepted that there is "a significant developmental difference not only between minors and adults but also between young adults and older adults." *People v. Haines*, 2021 IL App (4th) 190612, ¶ 51. Illinois cases have also "long held that the proportionate penalties clause require[s] the circuit court to take into account the defendant's 'youth' and 'mentality' in fashioning an appropriate sentence." *Clark*, 2023 IL 127273, ¶ 92 (citations omitted). Just like "with juvenile offenders, Illinois courts were also aware that 'less than mature age can extend into young adulthood — and they have insisted that sentences take into account that reality of human development.'" *Id.* ¶ 93 (quoting *Haines*, 2021 IL App (4th) 190612, ¶ 47). Thus, at his August 2014 sentencing, nothing prevented petitioner from relying on his age at the time of the offenses to claim that his mandatory life sentence is disproportionate under the proportionate penalties provision.

See, *e.g.*, *id.* ¶¶ 24, 93 (in 2001, 24-year-old had essential tools to argue that life sentence violated proportionate penalties provision due to his young age); *Leon Miller*, 202 Ill. 2d at 336-38 (in 2002, 15-year-old successfully argued that his mandatory life sentence violated proportionate penalties provision due to his young age and minimal culpability); *Haines*, 2021 IL App (4th) 190612, ¶ 49 (in 2008, 18-year-old offender had essential tools to raise proportionate penalties challenge to mandatory minimum 45-year sentence); *see also*, *e.g.*, *People v. Moore*, 2023 IL 126461, ¶ 42 (parties knew at sentencing hearings in 1997 that "Illinois law recognized the special status of young adults, especially those subject to adverse influences, for purposes of applying the principles of the proportionate penalties clause").

Finally, the historical facts upon which petitioner's claim relies — the circumstances of his crimes, his criminal history, and his age — were all part of the trial record. Petitioner could have argued at sentencing, as he did at trial, that his actions resulted from negative peer influences to which he was particularly susceptible due to his age. *See* R1272, 1274-75; SupR652, 655, 661-62, 662, 667. And petitioner had "every opportunity to present evidence to show that his criminal conduct was the product of immaturity . . . but chose to offer nothing." *Holman*, 2017 IL 120655, ¶ 49. For these reasons, petitioner could and should have raised his proportionate penalties claim at the time he was sentenced. *See Leon Miller*, 202 Ill. 2d at 343. Because he did not, the claim is forfeited for postconviction review.

Petitioner cannot skirt the procedural bar by citing to scientific research concerning young adult development. *See* C97-99 (relying on research cited in *Miller v. Alabama*, 567 U.S. 460 (2012), or before *Miller* was decided). The research merely confirms the reality of human development that young adults are not fully mature, something that has been known in Illinois for over a century. *See Moore*, 2023 IL 126461, ¶¶ 38, 40-420; *Clark*, 2023 IL 127273, ¶¶ 67, 91-94. Thus, the research provided, at best, merely additional "helpful support" for petitioner's claim, which is insufficient to overcome the forfeiture bar. *Dorsey*, 2021 IL 123010, ¶ 74; *accord Clark*, 2023 IL 127273, ¶¶ 67, 91-94; *see also People v. Erickson*, 161 Ill. 2d 82, 87-88 (1994) (forfeiture bar reaches "all matters that could have been — not merely were not — earlier raised").

Accordingly, petitioner could and should have raised his proportionate penalties claim when he was sentenced and in a post-sentencing motion. Because he did not, it is forfeited.

3. This Court has not held that petitioner may raise a forfeited proportionate penalties claim for the first time in a postconviction petition.

To the extent petitioner argues that this Court has created an exception to the forfeiture doctrine for his proportionate penalties claim, *see* Pet. Br. 12 (arguing that this Court has "ma[d]e clear that . . . a post-conviction petition is the proper vehicle to raise" his proportionate penalties claim), he is incorrect.

To start, none of the decisions petitioner cites addressed, much less decided, the forfeiture question. Those decisions therefore cannot have created an exception to the established forfeiture rule. *See generally Hilliard*, 2023 IL 128186, ¶ 29 (improper for defendant to rely on prior decisions "to support or advance a proportionate penalties clause claim in situations where their analysis does not apply").

Neither *People v. Thompson*, 2015 IL 118151, nor *People v. Harris*, 2018 IL 121932, arose under the Post-Conviction Hearing Act, such that the Court's opinions may be read to say anything about whether petitioner's forfeiture may be excused. *Thompson* merely observed, in holding that the 19-year-old offender could not raise an as-applied proportionate penalties claim against his mandatory sentence for the first time on appeal from the dismissal of a 735 ILCS 5/2-1401 petition, that the offender "[wa]s not necessarily foreclosed from renewing his as-applied challenge in the circuit court," as the Act "is expressly designed to resolve constitutional issues, including those raised in a successive petition." 2015 IL 118151, ¶ 44. But *Thompson* did not consider whether any future claim would satisfy the Act's requirements. *See id.*

Harris also did not answer whether a petitioner may satisfy the Act's requirements when he could have raised, but did not raise, a proportionate penalties claim at sentencing. *Harris* reversed the appellate court's judgment granting relief on such a claim on direct appeal because the 18-year-old

defendant had not raised it at sentencing and therefore the record did not factually support the appellate court's conclusion. 2018 IL 121932, ¶ 40. *Harris* further rejected the defendant's request for a remand to allow him an opportunity to develop the facts in the trial court. *Id.* ¶ 48. Citing *Thompson*, *Harris* again simply observed that "the defendant was not necessarily foreclosed from raising his as-applied challenge in another proceeding." *Id.* For example, *Harris* explained, the Act "is designed to resolve constitutional issues" and "allows for raising constitutional questions which, by their nature, depend upon facts not found in the record." *Id.* (cleaned up) (citing *People v. Cherry*, 2016 IL 118728, ¶ 33). Thus, like *Thompson*, *Harris* did not consider whether the defendant could satisfy the Act's requirements if he raised a proportionate penalties claim that he could have raised at sentencing in a postconviction petition, as petitioner did here.

People v. House, 2021 IL 125124, also does not help petitioner avoid forfeiture. *See* Pet. Br. 11-12. *House* reversed the appellate court's decision to *grant* relief on a proportionate penalties challenge to a mandatory life sentence, which the 18-year-old defendant alleged in an initial postconviction petition filed in 2001 and amended in 2010. 2021 IL 125124, ¶¶ 1-3, 7-13, 21-32; *People v. House*, 2015 IL App (1st) 110580, ¶¶ 31-34. This Court unanimously agreed that the appellate court erred in granting postconviction relief without a developed evidentiary record but split on whether the case should be remanded for second-stage postconviction proceedings. *House*,

2021 IL 125124, ¶¶ 26-32; *id.* ¶¶ 47-58 (Burke, C.J., concurring in part, dissenting in part); *id.* ¶¶ 60-73 (Burke, J., concurring in part, dissenting in part). The dissenting justices would have rejected the claim as legally meritless on the record presented. *Id.* ¶¶ 47-58 (Burke, C.J., concurring in part, dissenting in part); *id.* ¶¶ 60-73 (Burke, J., concurring in part, dissenting in part). In deciding that remand was the appropriate remedy, the majority focused on the unique procedural posture of the case, which included a prior supervisory order issued by this Court and the parties' joint request that the case be remanded for second-stage proceedings. *Id.* ¶¶ 11-12, 21-32. Given that posture, forfeiture was not a question presented for this Court's consideration.

Nor did *Hilliard* answer the forfeiture question. *Hilliard* held that an 18-year-old defendant's proportionate penalties challenge to the mandatory 25-year firearm enhancement was frivolous and patently meritless. 2023 IL 128186, ¶ 40. The Court did not address whether the defendant's claim was also forfeited or otherwise barred. *See id.* ¶ 41 (declining to address the People's "other asserted bases for affirmance"). When rejecting the defendant's claim, *Hilliard* explained that the Court had not yet "foreclosed emerging adult defendants between 18 and 19 years old from raising as-applied proportionate penalties clause challenges to life sentences based on the evolving science on juvenile maturity and brain development," and only "addressed *the possibility* of a defendant raising" an as-applied challenge to a

mandatory life sentence in an initial postconviction petition. *Id.* ¶ 27 (emphasis added). But *Hilliard*'s observation that it may be possible for a defendant to raise such a claim in a postconviction petition is not a holding that the defendant may bypass the normal rules of forfeiture.

In sum, petitioner's forfeiture should be enforced. The purpose of a postconviction proceeding is to resolve allegations of constitutional error that occurred at trial or sentencing, "when those allegations have not been, *and could not have been*, adjudicated previously." *People v. Mahaffey*, 165 Ill. 2d 445, 452 (1995) (emphasis added). By alleging ineffective assistance of counsel, petitioner correctly recognized in his petition that he could have raised his proportionate penalties claim at sentencing. And because petitioner has failed to preserve or allege an arguable claim of ineffective assistance of counsel to overcome his forfeiture, *see infra*, Section C, petitioner's forfeiture of his available proportionate penalties claim should be enforced.

C. The ineffective assistance of appellate counsel claim that petitioner alleged in his postconviction petition is forfeited and frivolous or patently without merit.

The claim that petitioner alleged in his postconviction petition — that direct appeal counsel was ineffective for failing to argue that trial counsel was ineffective for not raising the proportionate penalties claim at sentencing — is both forfeited and frivolous or patently without merit.

1. Petitioner forfeited his ineffective assistance of appellate counsel claim.

Although he raised the claim in his postconviction petition, petitioner forfeited his ineffective assistance of appellate counsel claim by abandoning it on appeal. He never argued the ineffective assistance of appellate counsel claim in his appellate court briefs, *see* Pet. App. Ct. Br. 2, 9-18, petition for leave to appeal before this Court, PLA 3-4, 9-14, or opening brief in this Court, *see* Pet. Br. 1, 7-27. Petitioner's ineffective assistance of appellate counsel claim is therefore forfeited. *See* Ill. S. Ct. R. 341(h)(7) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *People v. Cotto*, 2016 IL 119006, ¶ 49 ("issues not raised by postconviction petitioner in the appellate court forfeited on review"); *People v. McDonough*, 239 Ill. 2d 260, 276 (2010) ("Issues that a party fails to raise in its petition for leave to appeal . . . are not properly before this [C]ourt and are forfeited."). The appellate court's judgment should be affirmed on this basis alone. *See Cotto*, 2016 IL 119006, ¶ 49.

2. Petitioner's ineffective assistance of appellate counsel claim is frivolous or patently without merit.

Forfeiture aside, the ineffective assistance of appellate counsel claim that petitioner alleged in his postconviction petition is frivolous or patently without merit.

To show ineffective assistance of appellate counsel, petitioner must demonstrate both that (1) counsel's decision not to raise a claim was objectively unreasonable and therefore deficient, and (2) petitioner was prejudiced because had counsel raised the claim, there is a reasonable probability of a different outcome on appeal. *See Smith v. Robbins*, 528 U.S. 259, 285-86 (2000); *People v. Tenner*, 175 Ill. 2d 372, 379 (1997).

Counsel's performance is deficient only when it falls below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Judicial scrutiny of counsel's performance is "highly deferential": courts "indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance" and evaluate counsel's conduct "from counsel's perspective at the time," without "the distorting effects of hindsight." *Id.* at 689.

"It is well established that appellate counsel is not required to raise every conceivable issue on appeal." *Tenner*, 175 Ill. 2d at 387. Indeed, "counsel cannot possibly — and competently — argue every issue imaginable." *Id.* at 388. Court rules limit a brief's length, and "[a] brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal mound made up of strong and weak contentions." *Jones v. Barnes*, 463 U.S. 745, 753 (1983). Thus, "[e]xperienced advocates have always emphasized the importance of screening out weaker arguments on appeal and focusing on at most a few key issues." *People v. Richardson*, 189 Ill. 2d

401, 413 (2000). This process of narrowing the appeal to issues "'more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.'" *Smith v. Murray*, 477 U.S. 527, 536 (1986) (quoting *Jones*, 463 U.S. at 751-52). Because "[e]ffective appellate counsel should not raise every nonfrivolous argument on appeal, but rather only those arguments most likely to succeed," *Davila v. Davis*, 582 U.S. 521, 533 (2017), appellate counsel does not perform deficiently unless the issue that counsel omitted "'was clearly stronger than issues that counsel did present,'" *People v. English*, 2013 IL 112890, ¶ 58 (Freeman, J., specially concurring) (quoting *Robbins*, 528 U.S. at 288).

In addition to establishing deficient performance, petitioner must also show a reasonable probability that, but for appellate counsel's alleged error, the outcome of his appeal would have been different. *Robbins*, 528 U.S. at 285-86. Here, because petitioner alleges that appellate counsel should have argued trial counsel's ineffectiveness, petitioner would need to show a reasonable probability that had counsel done so, he would have obtained relief on his ineffective assistance of trial counsel claim, which in turn requires him to show both that trial counsel was deficient for not challenging the proportionality of his sentence and prejudice from counsel's failure to do so.

Petitioner's petition failed to make an arguable showing on either *Strickland* prong. The claim that petitioner faulted trial counsel for not

raising — that his natural-life sentence violates the proportionate penalties provision — was indisputably meritless, so trial counsel's decision not to raise it was neither objectively unreasonable nor prejudicial. *See People v. Webb*, 2023 IL 128957, ¶ 33 (trial counsel's failure to raise meritless argument cannot constitute deficient performance or prejudice). Consequently, appellate counsel's decision not to raise the meritless ineffectiveness claim was also reasonable and not prejudicial. *See People v. Easley*, 192 Ill. 2d 307, 329 (2000).

a. Petitioner's natural-life sentence is proportionate to his killing of five people.

Petitioner's sentence comports with the proportionate penalties provision. That provision "requires the legislature, in defining crimes and their penalties, to consider the constitutional goals of restoring an offender to useful citizenship and of providing a penalty according to the seriousness of the offense." *People v. Taylor*, 102 Ill. 2d 201, 206 (1984). As relevant here, a defendant challenging a mandatory sentence under the proportionate penalties provision must overcome the strong presumption that the sentence is constitutional and "*clearly* establish[ ]" that the sentence is "cruel or degrading," i.e., that it is "so wholly disproportionate to the offense committed as to shock the moral sense of the community." *People v. Rizzo*, 2016 IL 118599, ¶¶ 28, 36-39, 41, 48 (cleaned up) (emphasis in original). In determining whether a sentence shocks the moral sense of the community, this Court reviews "'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.'" *Hilliard*, 2023 IL 128186, ¶ 20 (quoting *Leon Miller*, 202 Ill. 2d at 340).

When applying this standard, the Court keeps in mind that the General Assembly's "determination of a particular punishment for a crime in and of itself is an expression of the general moral ideas of the people," *id.* ¶ 38, and that judgment is presumed constitutional, *People v. Coty*, 2020 IL 123972, ¶ 22. The legislature enjoys broad discretion in setting criminal penalties, *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005), because it is institutionally better equipped and more capable than the judiciary to identify and remedy the evils confronting our society, gauge the seriousness of various offenses, and fashion sentences accordingly, *Rizzo*, 2016 IL 118599, ¶ 36; *Huddleston*, 212 Ill. 2d at 129-30. Accordingly, this Court will overrule the General Assembly's judgment as to the appropriate sentence for a particular crime only when the "'the challenged penalty is clearly in excess of the general constitutional limitations on this authority.'" *Coty*, 2020 IL 123972, ¶ 43 (quoting *Sharpe*, 216 Ill. 2d at 487).

Moreover, the General Assembly's "power to prescribe penalties for defined offenses . . . necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary's discretion in imposing sentences." *Id.* ¶ 24. Nothing in the proportionate penalties provision requires the General Assembly to give greater weight or

consideration to the possibility of rehabilitating an offender than to the seriousness of the offense. *Hilliard*, 2023 IL 128186, ¶ 40; *accord Coty*, 2020 IL 123972, ¶ 24; *Huddleston*, 212 Ill. 2d at 129, 145; *Taylor*, 102 Ill. 2d at 206. Instead, the General Assembly may consider the severity of an offense and determine that no set of mitigating circumstances could permit an appropriate punishment less than a mandatory minimum. *Rizzo*, 2016 IL 118599, ¶ 39; *People v. Dunigan*, 165 Ill. 2d 235, 245 (1995); *Taylor*, 102 Ill. 2d at 206. As a result, this Court has repeatedly rejected facial and as-applied challenges to statutes that require minimum sentences for adult offenders, including statutes that require life imprisonment or lengthen sentences through application of mandatory firearm enhancements or consecutive sentencing provisions. *See Hilliard*, 2023 IL 128186, ¶ 40; *Coty*, 2020 IL 123972, ¶¶ 43-44; *Rizzo*, 2016 IL 118599, ¶ 39; *Sharpe*, 216 Ill. 2d at 524-27; *Huddleston*, 212 Ill. 2d at 129-45; *People v. Morgan*, 203 Ill. 2d 470, 487-89; *People v. Hill*, 199 Ill. 2d 440, 452-54 (2002); *People v. Arna*, 168 Ill. 2d 107, 114 (1995), *abrogated on other grounds*, *People v. Castleberry*, 2015 IL 116916, ¶¶ 13, 19; *Dunigan*, 165 Ill. 2d at 244-48; *Taylor*, 102 Ill. 2d at 204-10.

In fact, for serious crimes like petitioner's, "*Leon Miller* is the only case in which this [C]ourt has found a mandatory minimum penalty unconstitutionally disproportionate as applied to a particular offender." *Hilliard*, 2023 IL 128186, ¶ 33; *see Leon Miller*, 202 Ill. 2d at 340-43. There,

the convergence of three statutes — the Juvenile Court Act's automatic transfer statute, the accountability statute, and the multiple-murder sentencing statute — required a life sentence for "a 15-year-old with one minute to contemplate his decision to participate in the incident and [who] stood as a lookout during the shooting, but never handled a gun." *Leon Miller*, 202 Ill. 2d at 340-41. Upholding the trial court's finding of unconstitutionality, this Court concluded that the mandatory life sentence "grossly distort[ed] the factual realities of the case and d[id] not accurately represent [Miller]'s personal culpability such that it shock[ed] the moral sense of the community" to apply it to him. *Id.* at 341. The Court explained that subjecting Miller — "'the least culpable offender imaginable'" — to "the same sentence applicable to the actual shooter" was "particularly harsh and unconstitutionally disproportionate." *Id.*

Two factors were essential to the Court's holding: (1) Miller was a juvenile, and (2) his degree of participation in the offenses was minimal. *Id.* at 340-43. The Court explained that a life sentence might be appropriate under the proportionate penalties provision for a juvenile offender who actively participated in the planning of a crime that results in multiple murders. *Id.* at 341. But because the 15-year-old was not an active participant, this Court upheld the trial court's ruling that applying the mandatory life sentence to him shocked the moral sense of the community. *Id.* at 341-43.

Cases decided after *Leon Miller* demonstrate that the finding of unconstitutionality there depended on the unique facts and circumstances of that case. *See Hilliard*, 2023 IL 128186, ¶ 34; *Huddleston*, 212 Ill. 2d at 130-31. In *People v. Davis*, for example, this Court held that the 14-year-old's mandatory life sentence violated the Eighth Amendment but upheld the sentence under the proportionate penalties provision. 2014 IL 115595, ¶¶ 4, 43, 45. Davis had "carried a weapon to the crime scene, which he perhaps dropped," and "entered the abode where the murders occurred." *Id.* ¶¶ 4, 8. The Court reaffirmed that the proportionate penalties provision "does not necessarily prohibit a sentence of natural life without parole where a juvenile offender actively participates in the planning of a crime that results in multiple murders." *Id.* ¶ 45 (citing *Leon Miller*, 202 Ill. 2d at 341-42); *accord Dorsey*, 2021 IL 123010, ¶¶ 73-74. Accordingly, *Davis* confirmed that the proportionate penalties provision permits the General Assembly to fix a penalty based on the severity of the offense and to conclude that some offenses are sufficiently severe that no mitigating factor, including the possibility of rehabilitation for a young offender, warrants less than the minimum sentence.

Here, trial counsel reasonably could have considered the foregoing law — including *Davis*, which was decided six months before petitioner's sentencing — and determined that any proportionate penalties challenge based on petitioner's relative youth had virtually no chance of success. The

General Assembly determined that natural life is the appropriate sentence when an adult offender is convicted of two or more murders. Petitioner was an adult who murdered *five* people. Each of the five victims died from a gunshot wound to the head, three of the victims were shot at close range, and petitioner personally shot at least two of the victims. Moreover, unlike Leon Miller — who had "had moments to decide whether to help the accomplices and stood as a lookout during the subsequent shooting but did not touch a gun," *Hilliard*, 2023 IL 128186, ¶ 34 — petitioner planned the armed robbery of Richardson's home, solicited the help of others, armed himself, shot two of the home's occupants while his friend shot the other three, ransacked virtually every part of the house, stole numerous items from the victims, laughed as he transported the proceeds to his own home, and then distributed and sold them. In short, petitioner was the instigator of the criminal plan and a principal offender in the unprovoked murders.

Petitioner's crimes were thus extremely serious and showed a deliberate indifference to the value of human life. *See Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008) ("in terms of moral depravity and of the injury to the person and to the public," no crime is comparable to murder "in [its] severity and irrevocability" (quotations omitted)). Indeed, as his trial attorney correctly observed, his crimes were "brutal," "horrible," and "vicious." R1272, 1274; SupR652. Petitioner's level of culpability is therefore not comparable to Leon Miller's, and is instead "deserving of the most serious form[] of

punishment" available in Illinois, natural life in prison. *Graham v. Florida*, 560 U.S. 48, 69 (2010).

Indeed, sentencing an adult homicide offender to life imprisonment is not novel. *See Miller*, 567 U.S. at 482; *id.* at 495 (Roberts, C.J., dissenting); *Taylor*, 102 Ill. 2d at 208-09. Both this Court and the United States Supreme Court have upheld mandatory natural-life sentences for adults who commit crimes less serious than murder. *See*, *e.g.*, *Coty*, 2020 IL 123972, ¶¶ 43-44 (upholding mandatory natural life for intellectually disabled adult convicted of second predatory criminal sexual assault of a child); *Huddleston*, 212 Ill. 2d at 110-11, 145 (similar); *Harmelin v. Michigan*, 501 U.S. 957 1002-05 (1991) (controlling opinion of Kennedy, J.) (upholding mandatory life without parole for possession of large quantity of cocaine where offender had no prior felony convictions). Consistent with this precedent, courts in Illinois and other jurisdictions have routinely upheld life-without-parole sentences for young adult homicide offenders. *See Harris*, 2018 IL 121932, ¶¶ 59-61 (citing cases and observing that challenges to such sentences "have been repeatedly rejected"); *People v. Wooters*, 188 Ill. 2d 500, 502-03, 505-09 (1999) (three-justice opinion upholding life sentence for 20-year-old with no criminal history convicted of murdering child under age 12); *People v. Handy*, 2019 IL App (1st) 170213, ¶ 40 (citing cases upholding life sentences for young adult offenders who actively participate in homicide). In sum, "there is a paucity of authority nationwide holding that a young adult offender could ever be

exempted from a mandatory life without parole sentencing scheme based on a proportionate-penalties argument." *House*, 2021 IL 125124, ¶ 71 (Burke, J., concurring in part, dissenting in part).

Accordingly, given this broad consensus that natural life is an appropriate sentence for an adult convicted of first degree murder, petitioner's life sentence for his execution of five people is not unconscionable. This is true even assuming, as his postconviction petition alleged, and as he argues now, that he had rehabilitative potential because his brain was not yet fully developed at age 22, he had a minimal criminal history, and his codefendants (who were older than he by a couple years) had some influence on his actions. *See* C97; Pet. Br. 9, 19-20. Our society has long accepted the common knowledge that younger adults are less mature and therefore have greater rehabilitative potential than older adults. *See supra*, Section B.2. But, again, the proportionate penalties provision does not require the General Assembly to give greater weight and consideration to the possibility of rehabilitating an offender than to the seriousness of the offense. *Hilliard*, 2023 IL 128186, ¶ 40. The General Assembly's judgment that petitioner should be imprisoned for life after he personally killed two people by shooting them in the head and actively facilitated the killing of three others fits squarely within the serious conduct, degree of harm, and societal dangers the General Assembly sought to address when it prescribed that sentence. *See Taylor*, 102 Ill. 2d at 206-07. Accordingly, because petitioner's life sentence is

consistent with "the factual realities of the case" and "accurately represent[s] [his] personal culpability," it is not the extraordinary case in which trial counsel could have clearly demonstrated that the sentence violates the proportionate penalties provision. *Leon Miller*, 202 Ill. 2d at 341. Consequently, trial counsel was not ineffective, and appellate counsel's decision not to raise the meritless ineffectiveness claim was also reasonable and not prejudicial.

b. Petitioner's arguments are unavailing.

As noted, *see supra* Section C.1, petitioner does not address the ineffective assistance of appellate counsel claim he raised in his petition, so his arguments fail to consider whether trial counsel's decision not to raise the proportionate penalties claim was reasonable at the time counsel made it, or prejudicial. Even setting that aside, petitioner's arguments on the forfeited proportionate penalties claim fail to demonstrate that counsel failed to pursue a meritorious issue.

To start, petitioner's characterization of his claim — as "an as-applied, *Miller*-like challenge to an emerging young adult life sentence," Pet. Br. 12 — "is a contradiction in terms," *Haines*, 2021 IL App (1st) 190612, ¶ 52. *Miller* announced an Eighth Amendment rule that applies only to juvenile homicide offenders. *See Harris*, 2018 IL 121932, ¶¶ 58, 60. It did not change proportionate penalties principles or the applicable law with respect to young

adults. *See Moore*, 2023 IL 126461, ¶¶ 40-42. Thus, an "as-applied *Miller*-like" claim simply does not exist under the proportionate penalties provision.

For that reason, petitioner's assertion that this Court has already recognized the "viability" of such a claim, Pet. Br. 12, is incorrect. In *Thompson*, *Harris*, and *House*, the Court addressed the claims as the young adult defendants had framed them. In each case, the defendant characterized his claim as grounded in *Miller*, and the Court rejected the claim as lacking sufficient factual support without addressing whether the claim found legal support in the proportionate penalties provision. *See supra*, Section B.3. Indeed, in none of the cases did the Court apply the governing proportionate penalties provision standard by comparing the gravity of the defendants' crimes with the severity of the penalties to determine whether the penalties shocked the moral sense of the community. *Compare House*, 2021 IL 125124, ¶¶ 68-70 (Burke, J., concurring in part, dissenting in part) (applying this standard to find mandatory life sentence constitutional). In sum, the Court never decided, one way or the other, whether the defendants' proportionate penalties claims had any legal merit, and petitioner's contention that the Court found such claims "viable" thus goes too far. *See People v. Howard*, 2021 IL App (2d) 190695, ¶ 39 ("neither *Harris* nor *House* put forward a new substantive rule of law").

Petitioner is also incorrect when he argues that his sentence is disproportionate because it was mandatory, and thus precluded the trial

court from considering youth-related factors and finding incorrigibility. *See* C100 (petition asks for "new sentencing hearing at which the court will be afforded the discretion to consider [p]etitioner's youth and potential for rehabilitation"); Pet. Br. 13-15, 20, 23-25 (arguing that sentence is unconstitutional because sentencer lacked discretion to consider youth, did not consider youth or youth-related factors, and crime does not demonstrate incorrigibility).

This argument is wrong for at least two reasons. First, *Miller* does not require that the trial court "specifically address[] the '*Miller* factors'" and "make[] a finding of permanent incorrigibility" before sentencing a juvenile homicide offender to life without parole. *Wilson*, 2023 IL 127666, ¶ 42. And, second, the argument does not allege a viable claim under the proportionate penalties provision. While the Eighth Amendment prohibits certain sentencing practices — such as "a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders" and thus prevents a sentencer from considering a juvenile's youth, *Miller*, 567 U.S. at 479 (emphasis added) — the proportionate penalties provision contains no similar restrictions, *see Davis*, 2014 IL 115595, ¶ 45; *supra*, Section C.2.a. Rather, the proportionate penalties provision focuses on "the sentencing outcome" for the particular offender, not "the procedure by which the sentence was imposed." *Haines*, 2021 IL App (4th) 190612, ¶ 36; *see Coty*, 2020 IL 123972, ¶ 41 (sentence does not become unconstitutionally disproportionate "simply

because it is mandatory" (cleaned up)); *Hill*, 199 Ill. 2d at 448-49 (individualized sentencing is matter of public policy for General Assembly, not constitutional requirement); *Taylor*, 102 Ill. 2d at 206 (similar); *Leon Miller*, 202 Ill. 2d at 341-42 (refusing to categorically prohibit mandatory life imprisonment for all juvenile homicide offenders guilty by accountability). And here, as discussed, even assuming that petitioner's maturity at age 22 were considered similar to that of a juvenile's, natural life is not wholly disproportionate to his five first degree murders. *See Davis*, 2014 IL 115595, ¶ 45; *supra*, Section C.2.a.

Perhaps for these reasons, petitioner resorts to reliance on appellate court decisions that, after *Miller*, deviated from established proportionate penalties principles to apply new or different state constitutional standards for young adult offenders who do not fall within *Miller*'s rule. *See* Pet. Br. 14, 17-22. Initially, none of these appellate court decisions existed until after petitioner filed his postconviction petition, so his trial and appellate attorneys could not have been deficient for not raising claims based on them. Moreover, the Court already recognized in *Hilliard* that many of these decisions are contrary to the Court's subsequent decisions. 2023 IL 128186, ¶ 28. Although petitioner parses the appellate court decisions in an attempt to salvage their outdated holdings, Pet Br. 14 & n.2, 18 & n.3, none survive the Court's later precedent.

To start, three of the decisions incorrectly held that *Miller* provides cause for a young adult offender to raise a proportionate penalties claim in a successive postconviction petition. *See People v. Ross*, 2020 IL App (1st) 171202, ¶ 21, *abrogated by Hilliard*, 2023 IL 128186, ¶ 28; *People v. Minniefield*, 2020 IL App (1st) 170541, ¶ 31, *abrogated by Hilliard*, 2023 IL 128186, ¶ 28; *People v. Carrasquillo*, 2020 IL App (1st) 180534, ¶ 108. Because Illinois law has long recognized the constitutional significance of young adulthood, *see supra* Section B.2, and *Miller* did not announce any new principles under the proportionate penalties provision, this Court has since held, on three occasions, that neither *Miller* nor the scientific research cited therein provides cause for an offender to raise a proportionate penalties claim in a successive postconviction petition. *See Moore*, 2023 IL 126461, ¶¶ 40-42; *Clark*, 2023 IL 127273, ¶¶ 67, 91-94; *Dorsey*, 2021 IL 123010, ¶ 74; *see also Hilliard*, 2023 IL 128186, ¶ 28.

Similarly, at least two of petitioner's cited decisions, as well as the appellate court's decision below, A36-38, ¶¶ 34-36, rested on a misunderstanding of the relevance of post-*Miller* legislative enactments (all of which occurred after petitioner's sentencing). For instance, *Minniefield* and *Savage* found the young adult offenders' proportionate penalties claims non-frivolous in part because the General Assembly had recently enacted a youthful offender parole scheme that prospectively provides an opportunity for parole for persons under age 21. *Minniefield*, 2021 IL App (1st) 170541,

¶ 40; *People v. Savage*, 2020 IL App (1st) 173135, ¶¶ 68, 70, *abrogated by Hilliard*, 2023 IL 128186, ¶ 28. But, as the Court has since recognized, "[t]he distinction between a juvenile and adult remains significant," and the General Assembly's "decision not to broaden the [parole statute's] reach to [apply retroactively to] *all* defendants under 21 shows that it was implementing the legislation as a policy change rather than a reflection that the previous statutory scheme was abhorrent to the community's moral sense." *Hilliard*, 2023 IL 128186, ¶ 39 (emphasis in original).

Moreover, all but one of the cited appellate court decisions were decided before the Court overruled *Holman*, and they rested on the incorrect understanding that *Miller* precludes life sentences for juvenile offenders without a record that shows consideration of youth and a finding of incorrigibility. *Wilson*, 2023 IL 127666, ¶ 42. This erroneous understanding of *Miller* influenced the appellate court's analyses of the proportionate penalties claims, resulting in findings that the young adult offenders' claims had potential merit because the sentencers failed to adequately consider youth and its attendant characteristics. *People v. Chambers*, 2021 IL App (4th) 190151, ¶¶ 53, 61-63, 75, 78-81; *Ross*, 2020 IL App (1st) 171202, ¶¶ 16-17, 27; *Savage*, 2020 IL App (1st) 173135, ¶¶ 74-75 & n.7; *Minniefield*, 2020 IL App (1st) 170541, ¶¶ 36, 45; *Carrasquillo*, 2020 IL App (1st) 180534, ¶ 97. One non-precedential decision, *People v. Crockett*, 2023 IL App (1st) 220128-U, ¶ 46, even relied on *Holman*'s incorrect understanding of *Miller*, ignoring

that *Holman* had been overruled a month earlier.[6] Indeed, petitioner's argument starts from the same erroneous premise and suggests that he, as a 22-year-old offender, should receive greater procedural rights than a juvenile offender. *See* Pet. Br. 15, 24-27 (arguing that sentence is disproportionate because "record does not demonstrate that the sentencing court took any of the *Miller* factors into account," and petitioner's "crime itself does not demonstrate that [he] is incapable of rehabilitation"). The Court should reject this absurd argument and overrule the appellate court decisions upon which petitioner relies as inconsistent with the Court's precedent.

To the extent petitioner's "as-applied *Miller*-like claim" is not merely an application of *Holman*'s outdated understanding of *Miller* to young adult offenders, but that the scientific research referenced in *Miller* supports a finding that his natural-life sentence for five murders is shocking to the moral sense of the community, it alleges a cognizable, albeit indisputably meritless, claim under the proportionate penalties provision. Factually, the claim is unsupported, as the appellate court found, A37, ¶ 32, because the trial evidence demonstrates that petitioner's conduct was "calculated and goal-oriented," and not the result of impulsivity due to an immature brain,

---

[6] The remaining non-precedential orders upon which petitioner relies, *see* Pet. Br. 14, were issued prior to January 1, 2021, and lack even persuasive value under Rule 23(e)(1). But they suffer from the same infirmities as the other decisions upon which petitioner relies. *See People v. Keller*, 2020 IL App (1st) 191498-U, ¶¶ 12-13, 16-18; *People v. Ashby*, 2020 IL App (1st) 180190-U, ¶¶ 1, 16, 25, 35, 42.

A39, ¶ 36; *see supra*, Section C.2.a, and petitioner never produced any evidence showing how the scientific research applies to *his* specific facts and circumstances, A39, ¶ 36; *see Harris*, 2018 IL 121932, ¶¶ 45-46.

Petitioner's response that he can "'fill this factual vacuum'" at the second stage, *see* Pet. Br. 18, 21-23, *see also* A41-42, ¶¶ 45-46 (Mikva., J, dissenting), misapprehends the applicable standards. Petitioner had the opportunity to raise his proportionate penalties claim and produce supporting evidence at sentencing. *See supra*, Section B.2. When he did not, he needed to attach the evidence to his postconviction petition to support his allegation that trial counsel should have raised a proportionate penalties claim based on that evidence (or state why such evidence was not attached). *See* 725 ILCS 5/122-2 ("petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached"); *see also Coty*, 2020 IL 123972, ¶ 22 ("defendant who has an adequate opportunity to present evidence in support of an as-applied, constitutional claim will have his claim adjudged on the record he presents"). Rather than comply with these requirements, petitioner, then nearly 29 years old, refused to participate in preparation of the PSI and at sentencing; four years later, he filed a postconviction petition containing nothing more than his bare allegation that young adult brains are generally not fully developed, with no explanation for his disregard of the Act's requirements. *See People v.*

Delton, 227 Ill. 2d 247, 258 (2008) ("broad conclusory . . . allegations are not allowed under the Act").

Petitioner's pro se status does not excuse his failure to comply with the Act, *see* Pet. Br. 22-23, as the Act contemplates that petitions will be filed by pro se prisoners and nevertheless requires supporting documentation, *see People v. Harris*, 2019 IL App (4th) 170261, ¶ 19; *see also People v. Hodges*, 234 Ill. 2d 1, 10 (2009). And *People v. Edwards*, 197 Ill. 2d 239, 244-45 (2001) — upon which petitioner and the dissenting justice below relied, Pet. Br. 16-17, 22; A41, ¶¶ 44-45 (Mikva, J., dissenting) — does not hold otherwise. "[*Edwards*] had neither reason nor occasion to assess the sufficiency of the petition's supporting documentation." *People v. Collins*, 202 Ill. 2d 59, 69 (2002). And, as the appellate majority correctly recognized, A36, ¶ 28, the Court has since repeatedly held that a postconviction petitioner must attach documentation that provides support for the petition's allegations. *See People v. Allen*, 2015 IL 113135, ¶¶ 26-32, 34; *Hodges*, 234 Ill. 2d at 10; *Delton*, 227 Ill. 2d at 254-56.

Not only is the claim factually unsupported, but petitioner's claim is also legally meritless. Even considering petitioner's relative youth and minimal criminal history, and assuming that he was developmentally immature, petitioner's natural-life sentence is proportionate to the gravity of killing five people during a planned armed robbery. *See* Section C.2.a.

Counsel therefore reasonably declined to press this meritless claim, and counsel's decision did not prejudice petitioner.

In the final analysis, an "as-applied *Miller*-like" claim does not exist under the proportionate penalties provision. Certainly, the provision allows an offender to claim that his sentence — mandatory or discretionary — is constitutionally disproportionate. And the offender may support such a claim with evidence showing his diminished culpability for the offense or rehabilitative potential. But whether a particular claim has a reasonable chance of success depends on the facts and circumstances of the individual case. In the vast majority of cases, an attack on the legislative minimum sentence will be legally meritless because the sentence itself represents the general morals of the community and carries a strong presumption of constitutionality. *See Hilliard*, 2023 IL 128186, ¶ 43; *Coty*, 2020 IL 123972, ¶ 22. Nothing in petitioner's record or petition comes close to overcoming this presumption.

In sum, petitioner's natural-life sentence is clearly proportionate to his five first degree murders. His trial attorney therefore reasonably declined to raise the meritless contention, and his appellate attorney reasonably decided to press different claims that could have resulted in reversal of petitioner's convictions rather than the doomed ineffective assistance of trial counsel claim. Accordingly, the trial court properly dismissed petitioner's postconviction petition as frivolous or patently without merit.

CONCLUSION

This Court should affirm the judgment of the appellate court.

June 27, 2024

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7938
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellee
People of the State of Illinois

RULE 341(c) CERTIFICATE OF COMPLIANCE

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. 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(a), is 50 pages.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

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 27, 2024, the **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

Ashlee Johnson
Assistant Appellate Defender
Office of the State Appellate Defender
203 North LaSalle Street, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Petitioner-Appellant

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General