No. 130015

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-20-0646
Plaintiff-Appellee,	)	
v.	)	There on appeal from the Circuit Court of Cook County, Illinois No. 14 CR 1785
EUGENE SPENCER,	)	The Honorable Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

A jury found defendant guilty of first degree murder, attempted murder, and home invasion — offenses he committed when he was just 12 days short of his 21st birthday — and found that defendant personally discharged a firearm during the attempted murder and home invasion. Following a sentencing hearing in January 2020, the trial court sentenced defendant to consecutive prison sentences of 50 years for first degree murder, 25 years for attempted murder, and 25 years for home invasion; the latter two sentences were below the statutory minimum. Defendant is eligible for parole after he serves 20 years of his aggregate sentence. Defendant appeals the appellate court's judgment affirming his sentences. A6-58.[1] No issue is raised on the pleadings.

ISSUE PRESENTED

Whether defendant's sentences comport with article I, section 11 of the Illinois Constitution (the penalties provision) because they were determined according to the seriousness of his offenses and with consideration of his rehabilitative potential.

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[1] "C__," "SecC__," and "R__" refer to the common law record, secured common law record, and report of proceedings. "SupR__" and "Sup3R__" refer to first and third volumes of the supplemental report of proceedings. "PTE __ at __" and "PSE __ at __" refer to the People's trial and sentencing exhibits. "Def. Br. __" and "A__" refer to defendant's brief and appendix. "Def. App. Ct. Br. __" and "Def. App. Ct. Reply Br. __" refer to the opening and reply briefs that defendant filed in the appellate court, which have been filed in this Court pursuant to Rule 318(c). "PA__" refers to this brief's appendix.

JURISDICTION

The Court allowed leave to appeal on November 29, 2023, and has jurisdiction under Supreme Court Rules 315 and 612(b).

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 5/5-4.5-115 (2020)

This statute (the youthful offender parole statute) is reproduced in the appendix to this brief. *See* PA1-4.[2]

STATEMENT OF FACTS

I. Defendant Agrees to Kill Yolanda Holmes for Money, Unlawfully Enters Her Apartment, Kills Her, and Attempts to Kill Her Boyfriend Curtis Wyatt.

In September 2012, defendant reached an agreement with his friend Qawmane Wilson: Wilson would pay defendant $4,200 to kill a woman while she was asleep in her apartment. PTE 182 at Clip3 6:20-8:08. Defendant claimed that he did not know the identity of the woman he agreed to kill and only later learned that she was Wilson's mother, Yolanda Holmes. *Id.* at Clip3 8:08-9:20, 17:00-40.

[2] The statutory citations in this brief are to the 2020 versions, unless otherwise specified. The 2024 amendments to the youthful offender parole statute do not change the analysis of defendant's claim. *See* Public Act 102-1128, available at https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-1128&GA=102.

Defendant and Wilson took steps to ensure the plan's success. Holmes lived across the city in a fourth-floor apartment of a secured, large multi-unit complex. R118-26, 132-44; SupR317-21, 376-77. Defendant took a revolver from Wilson and gathered props — clothes and a laundry detergent bottle — so he would look like a tenant while in the apartment building. SupR559-67; PTE 182 at Clip2 9:45-11:40, 18:30-18:40, Clip3 8:08-8:30. He wore earbuds to communicate by phone with Wilson, who would direct defendant through the building and to Holmes's apartment. PTE 182 at Clip3 12:00-12:42.

Wilson's girlfriend, Loriana Johnson, drove defendant to Holmes's apartment building. SupR557-58, 566-70; PTE 182 at Clip2 12:30-13:30. Wilson gave defendant the code to get into the building, called his mother and told her he was coming over, and asked her to leave the apartment door unlocked. R103-11; SupR362-64; PTE 182 at Clip2 6:30-8:10, 12:40-13:55, Clip3 10:10-12:10.

Defendant entered the building alone. R138-39; SupR570; PTE 2. He took the elevator to the fourth floor, left the props in a stairwell, entered Holmes's unlocked apartment, and shot her at close range in the head as she lay sleeping in her bed. R139-46; SupR363-64, 526-27; PTE2-8; PTE 182 at Clip2 20:00-20:35.

Unexpectedly, Holmes's boyfriend, Curtis Wyatt, was in the bed next to Holmes. SupR364; PTE 182 at Clip2 18:20-20:35. Defendant shot at Wyatt multiple times until the revolver jammed, SupR364-66, 571-72; he

then put Wyatt in a chokehold and repeatedly hit him in the head with the revolver, leaving Wyatt stunned and dazed, SupR364-69. Wyatt wriggled free from the chokehold and fled to the kitchen. SupR368-69.

Meanwhile, Wilson told defendant over the phone to make sure the woman (Holmes) was dead, so defendant grabbed a knife from the kitchen (where he saw Wyatt passed out on the floor), returned to the bedroom, and stabbed Holmes twice in the abdomen. SupR524-25; PTE 182 at Clip3 13:15-14:45, 20:00-23:38. Defendant then retrieved the props from the stairwell, wrapped the knife in the "laundry," and left the building. R146-51; PTE9-13; PTE 182 at Clip2 36:15-37:00, Clip3 24:05-26:00.

Johnson drove defendant back to their neighborhood, where defendant discarded the props and the knife in a dumpster. SupR571-73. In the car, defendant told Johnson that he "had to do it" and that he had grabbed a knife after the gun jammed. SupR572. Defendant told police after the crimes that Wilson paid him only $70 of the agreed-upon $4,200. PTE 182 at Clip3 6:20-9:20, 17:15-17:50. About 10 days later, Wilson emptied his mother's bank account of nearly $70,000. R468; PTE 181 (Oct. 3, 2012 statement).

II. Defendant Is Arrested, Indicted, Found Fit to Stand Trial, and Convicted of First Degree Murder, Attempted Murder, and Home Invasion.

Defendant was arrested in December 2013, when he was 22 years old. C44. The following month, the grand jury returned an indictment charging

defendant with multiple offenses, including first degree murder, attempted murder, and home invasion. C61-202.

In February 2019, the case proceeded to trial. SupR240, 296.[3] The jury heard the facts described above and found defendant guilty of all three offenses and that defendant personally discharged a firearm during the attempted murder and home invasion. SecC5-7; R658-65, 681-84.[4]

III. The Trial Court Considers Factors and Evidence in Aggravation and Mitigation, Sentences Defendant, and Denies His Motion to Reconsider the Sentences.

Defendant's crimes subjected him to consecutive prison terms of 20 to 60 years for first degree murder, 730 ILCS 5/5-4.5-20(a); 6 to 30 years for attempted murder, plus a mandatory firearm enhancement of 20 years, 720 ILCS 5/8-4(c)(1)(C); 730 ILCS 5/5-4.5-25(a); and 6 to 30 years for home invasion, plus a mandatory firearm enhancement of 20 years, 720 ILCS 5/19-6(a)(4), (c); 730 ILCS 5/5-4.5-25(a). *See* 730 ILCS 5/5-8-4(d)(1) (providing for mandatory consecutive sentences). Defendant must serve the murder sentence at 100%, the attempted murder sentence at 85%, and the home invasion at 50%. *Id.* § 3-6-3(a)(2)(i)-(ii), (a)(2.1). Because defendant was

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[3] Defendant and Wilson were tried simultaneously before different juries and sentenced simultaneously before the trial court. SupR703-04.

[4] On the murder charge, after the trial court declined to instruct the jury to determine whether defendant personally discharged the firearm that proximately caused Holmes's death (because the evidence was unclear whether the bullets or the stabbing caused her death), the prosecutor did not seek an instruction asking the jury to determine whether defendant personally discharged a firearm during the murder. R585-89.

under 21 when he committed the offenses, he is eligible for parole after serving 20 years of the aggregate sentence. *Id.* § 5-4.5-115(b).

In August 2019, in anticipation of the sentencing hearing, defense counsel asked the trial court to review two appellate court decisions — *People v. Buffer*, 2017 IL App (1st) 142931, and *People v. House*, 2019 IL App (1st) 110580-B[5] — that concerned changes in sentencing law for young offenders. Sup3R75-76. The trial court stated that it was familiar with the cases, Sup3R76, and directed the parties to address them at the sentencing hearing, Sup3R79.

The sentencing hearing was held in January 2020, when defendant was 28 years old. SupR702-04, 788. The trial court received a presentence investigation report (PSI), victim impact statements from Holmes's sister and Wyatt, and testimony about defendant's disciplinary history during pretrial custody. SupR692, 705-27, 739-62, 790.

A. PSI, evidence, and allocution

The PSI, prepared in May 2019, provided information about defendant's background. SecC8. Defendant's mother raised him and his nine siblings after his father left when defendant was a child. SecC11. Defendant described his childhood as "fair" but unstable. *Id.* Before age 11, he lived with 15 other people in his grandmother's apartment in a public housing

[5] This Court allowed leave to appeal in both cases. *See People v. House*, 2021 IL 125124, ¶ 31 (reversing appellate court's judgment); *People v. Buffer*, 2019 IL 122327, ¶ 2 (affirming appellate court's judgment on different grounds).

complex. *Id.* His family struggled financially, and his basic needs were not always met; at one point he was homeless. SecC11-12. When the housing complex was torn down, defendant moved with his mother and siblings to better living conditions but continued to experience financial difficulties. SecC12. From about age 12 to 16, defendant suffered physical abuse by his mother's boyfriend. *Id.* Defendant reported that he had a good relationship with his siblings until his mother died in the year between his crimes and arrest; his father died sometime in 2012. SecC11.

Defendant attended multiple schools during his childhood and left school during 11th grade because his home life was unstable, and he was struggling to eat and survive. SecC12. Defendant played football and wrestled during school. *Id.* He attended a special education program for learning issues. SecC12, 14. Defendant described himself as a "C" and "D" student who did not get along with his teachers because he did not understand the work. SecC12. He was suspended once for fighting. *Id.* And from age 16 to 24, defendant was "affiliated" with the Gangster Disciples. SecC13.

In the year preceding his arrest, defendant worked at a moving company earning about $1,200 per month. SecC12-13. He lived with his friend's mother and paid $75 per month in rent. SecC13.

Defendant reported that he was in good physical health but suffered from high blood pressure and had a torn ligament in his knee and nerve

damage in his neck. SecC14; *see* SupR789. He began abusing marijuana at age 13, alcohol at age 18, and cocaine at age 21. SecC14-15. Defendant had experienced blackouts, memory lapses, and other negative consequences of his substance abuse, and his friends expressed concern, but he never attended treatment. SecC14-16. While in pretrial custody, defendant twice attempted suicide and was prescribed medication for depression and anxiety. SecC14. At the time of the PSI, defendant was "doing okay," *id.*, but he "felt depressed and stressed due to his pending court matter," SecC15.

The officer who prepared the report noted that defendant had no prior criminal history and no juvenile delinquency information was available due to defendant's age (28) at the time of the PSI. SupC10. Defendant wanted to but had not yet obtained his GED. SecC12. He saw himself as a person who "get[s] an education, work[s], and obey[s] the law." SecC15.

The trial court further heard testimony and received documentation about defendant's disciplinary history while in pretrial custody and the resulting criminal charges, which remained pending at the time of sentencing. SupR705-29, 739-58. Defendant had been disciplined 33 times. SupR708; PSE 2 at 2-89. On 13 separate occasions defendant masturbated in front of other people — including 2 assistant public defenders, 5 nurses, 4 prison guards, a commissary supervisor, and visiting members of the public — and sometimes refused to stop even after being ordered to do so because he believed that he could do what he wanted and did not care about the

consequences. SupR713-18, 754-55; PSE 2 at 38-67, 71-74. On nine other occasions, defendant battered staff or fought fellow inmates, PSE2 at 13-26, 32-34, 78-85, including one incident where defendant put urine and feces in a bottle and sprayed it on a correctional officer, SupR749-52. He twice threatened other inmates or staff, including once with a shank. SupR719-20; PSE 2 at 10-12, 68-70. He was caught with a shank on two other occasions. SupR722-24; PSE 2 at 86-89. His remaining seven infractions were for stealing the keys to his shackles, possessing "hooch," and disobeying or refusing to follow rules and orders. SupR710-14, 719-21; PSE 2 at 2-9, 27-31, 35-37, 75-77. Defendant's disciplinary infractions resulted in criminal charges in 9 separate cases: 2 counts of "mob action/force/2+ persons," 7 counts of aggravated battery of a correctional officer, 3 counts of resisting a correctional officer, 4 counts of public indecency, and 2 counts of public indecency with lewd exposure. SecC10; *see* SupR715-22, 744, 757.

Defendant presented no evidence. In allocution, he stated that jail taught him how to be a better person and it had "been a while since [he] caught any cases." SupR765.

B. Argument

Defense counsel asked the trial court to sentence defendant under Eighth Amendment precedent governing the sentencing of juvenile homicide offenders because defendant was 20 years old when he committed his crimes and his brain was not then fully developed. SupR784-85; *see Miller v.*

Alabama, 567 U.S. 460 (2012) (Eighth Amendment bars mandatory life without parole for juvenile homicide offenders); *People v. Buffer*, 2019 IL 122327, ¶ 40 (extending *Miller*'s rule to sentences greater than 40 years).[6] Counsel argued that the appellate court had extended *Miller* to young adult offenders under the penalties provision, so defendant's aggregate prison sentence should not exceed 40 years. SupR786. Counsel further acknowledged that "[defendant] will be eligible, no matter what sentence you give him today, for parole in 20 years[.]" SupR785.

In the alternative, counsel requested the minimum sentence for each offense — which counsel believed was 20 years for first degree murder, 21 years for attempted murder while armed with a firearm, and 21 years for home invasion while armed with a firearm — to be served consecutively, resulting in an aggregate minimum sentence of 62 years. SupR786-87, 789. In support, counsel argued that defendant was an "easy target" who served as Wilson's "puppet" in committing the crimes, SupR787-88, and emphasized defendant's young age, lack of criminal history, difficult childhood (during which his basic needs had not been met and he suffered physical abuse),

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[6] At that time, this Court had interpreted *Miller* to also bar discretionary life-without-parole sentences for juvenile homicide offenders unless the record showed that the sentencing court considered the juvenile offender's youth and made a finding of incorrigibility. *See People v. Holman*, 2017 IL 120655, ¶¶ 34, 38, 43-44, 46. Following *Jones v. Mississippi*, 593 U.S. 98 (2021), the Court overruled *Holman* and clarified that *Miller* bars only mandatory life-without-parole sentences for juvenile homicide offenders. *People v. Wilson*, 2023 IL 127666, ¶¶ 33-42.

intellectual delays as shown in school records,[7] and housing insecurity. SupR787-90.

The prosecutor sought a greater sentence, believing that the aggregate minimum was 72 years (not 62 years) because the 20-year firearm enhancement for personal discharge (not the 15-year enhancement for being armed with a firearm) applied to defendant's attempted murder and home invasion. SupR777-78. In support, the prosecutor emphasized the seriousness of the offenses, including that the murder was "cold" and "calculated," SupR779; that defendant, not Wilson, had "actually caused the serious harm because he pulled the trigger" and then stabbed Holmes to make sure she was dead, SupR774, 776; and that defendant expected and received compensation for the murder, SupR775. The prosecutor argued that *Miller* did not apply because defendant was nearly 21 years old when he committed the offenses and not a juvenile, SupR778-79, but even if it did, defendant's crimes did not reflect the transient immaturity or impulsivity of youth, and his subsequent behavior during pretrial custody demonstrated that he lacked rehabilitative potential, SupR779-80.

B. Sentencing and motion to reconsider

The trial court recognized that it needed to determine defendant's sentences in accordance with the seriousness of his crimes and after considering the goal of restoring him to useful citizenship. SupR797-98.

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[7] The school records are not in the record on appeal.

Accordingly, before sentencing defendant, the trial court reviewed the PSI "two or three times" and considered the aggravating and mitigating factors and evidence. SupR790, 792, 797-98.

The court found defendant's young age and lack of a prior record to be mitigating. SupR798, 802. But it accorded great weight to the seriousness of defendant's offenses, emphasizing that defendant agreed to kill Wilson's mother for about $4,000, drove across the city to do so, shot her, then stabbed her to make sure she was dead, and tried to kill Wyatt. SupR792, 794-800, 804-05. The court found defendant's actions to be "cold-hearted," SupR797, 806-07, noted his difficulties with authority while in pretrial custody, SupR796-97, 801, and saw no reason defendant should return to the community, SupR805, 808. Thus, the court found that unlike the youth sentencing precedent defendant cited, the statutorily authorized sentences for defendant's crimes were appropriate. SupR801. Accordingly, the court sentenced defendant to consecutive prison terms of 50 years for first degree murder, 25 years for attempted murder, and 25 years for home invasion, under the incorrect assumption that the minimum sentence for the latter two crimes was 21 years. SupR807-08; *see supra*, pp. 5-6.

Defendant moved to reconsider his sentences. He claimed that his aggregate sentence was excessive under the penalties provision because it failed to adequately account for his age, lack of criminal history, and background, C1282-83, and was imposed without specific consideration of

youth and a finding of incorrigibility, C1283-85. In support, the motion discussed a statute governing the sentencing of juvenile offenders, C1285 (citing 730 ILCS 5/5-4.5-105), and a statute providing parole review to offenders under age 21, C1285 (citing 730 ILCS 5/5-4.5-110 (2019)). Based on these statutory changes, as well as *Miller* and Illinois decisions interpreting *Miller*, defendant argued he was entitled to the same sentencing procedures that applied to juvenile offenders. C1284-85; *see* SupR822.

The trial court denied the motion to reconsider, emphasizing the premeditated nature of defendant's murder of Holmes, that he agreed to kill Holmes for money, that he committed three serious crimes, and that his aggregate sentence was appropriate for his crimes. SupR823-26.

IV. The Appellate Court Affirms Defendant's Convictions and Sentences.

On appeal, as relevant here, defendant argued that his aggregate sentence violates the penalties provision "as applied to him" because it is "a *de facto* life sentence that cannot be imposed upon a 20-year old [*sic*] emerging adult without consideration of the mitigating factors of youth as articulated in *Miller v. Alabama* and codified in 730 ILCS 5/5-4.5-105." Def. App. Ct. Br. 2, 35. According to defendant, the trial court's failure to apply *Miller*'s rule to him rendered his sentence unconstitutional under the penalties provision. *Id.* at 39-43. And, defendant posited, he "is certainly capable of rehabilitation," so he "cannot be sentenced to an aggregate term beyond 40 years in prison." *Id.* at 43. Accordingly, defendant asked the

appellate court to reduce his sentence, or remand for resentencing to an aggregate term of no more than 40 years in prison. *Id.*

In August 2023, the appellate court, in a 2-1 decision, affirmed the trial court's judgment. A6-7, ¶ 2. First, the court rejected defendant's reliance on 730 ILCS 5/5-4.5-105, which by its plain language "only applies to individuals who committed the offense when they [were] under the age of 18," whereas defendant was 20 years old when he committed his crimes. A43-44, ¶¶ 128-29.[8] Second, the court rejected defendant's proportionate penalties claim — premised on his assertion that he had received the mandatory sentence that *Miller* prohibits for juvenile homicide offenders, A45-47, ¶¶ 135-38 (citing *People v. Savage*, 2020 IL App (1st) 173135, ¶ 61, *abrogated by People v. Hilliard*, 2023 IL 128186, ¶ 28); *see Savage* 2020 IL App (1st) 173135, ¶¶ 61, 75 (penalties provision "offers broader path [for young adult offenders] to the same type of relief" afforded by *Miller*, and allowing further postconviction proceedings on "*Miller*-type claim" because trial court did not comply with *Miller* when sentencing young adult) — because defendant was eligible for parole after 20 years and therefore he was not subject to and did not receive "a *de facto* life sentence." A47-49, ¶¶ 141-43. Therefore, the court concluded, "defendant's as-applied constitutional challenge based on *Miller* necessarily fails." A49, ¶ 143.

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[8] The court also held that the statute did not apply to defendant because it "only applies to an offense committed on or after January 1, 2016" and defendant committed his offenses before that date. A43, ¶ 128.

Justice Hyman concurred in part and dissented in part. A50-54, ¶¶ 150-167. He would have rejected defendant's claim as premature under *People v. Harris*, 2018 IL 121932, because defense counsel "presented no witnesses in mitigation" and the trial court declined Wilson's request for an additional hearing to determine whether *Miller* applied to him. A50-51 ¶¶ 155-57 (Hyman, J., concurring in part, dissenting in part). Justice Hyman further faulted the majority for not applying the "cruel or degrading" standard that governs proportionate penalties claims but did not apply the standard to defendant's case and noted only that eligibility for parole did not control that analysis. A53-54, ¶¶ 164-67 (Hyman, J., concurring in part, dissenting in part).

STANDARD OF REVIEW

The Court reviews defendant's constitutional claim *de novo*. *People v. Miller*, 202 Ill. 2d 328, 335 (2002).

ARGUMENT

The Court Should Affirm Defendant's Sentences Because They Comport with the Penalties Provision.

The Court should affirm the appellate court's judgment. *Miller v. Alabama* held that the Eighth Amendment to the United States Constitution prohibits mandatory life without the possibility of parole for juvenile homicide offenders. 567 U.S. 460 (2012). Defendant posits that this Eighth Amendment rule applies to him under the penalties provision because his brain was not fully developed at age 20, and his crimes resulted from

youthful immaturity. Setting aside that *Miller* is irrelevant to a claim under the penalties provision, and assuming, *arguendo*, that *Miller*'s rule could be imported into the penalties provision and applied to non-juvenile offenders like defendant, the appellate court correctly rejected defendant's claim because he did not receive the punishment that this Court has held *Miller* prohibits: a mandatory prison sentence that requires him to spend more than 40 years in prison. Instead, defendant received a sentence that affords him a possibility of release after 20 years in prison.

Defendant's argument that he should nevertheless prevail because his opportunity for parole is insufficient to satisfy *Miller* ignores that both this Court and the Supreme Court have held that a mandatory sentence that provides parole eligibility before a juvenile homicide offender spends more than 40 years in prison satisfies *Miller*. Even if defendant were correct that parole eligibility alone is not enough, Illinois's youthful offender parole statute is consistent with *Miller* because it provides defendant a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Accordingly, just as a juvenile homicide offender sentenced under the same scheme as defendant could not demonstrate an Eighth Amendment violation under *Miller*, defendant cannot succeed on his *Miller*-based proportionate penalties theory, even assuming the theory is cognizable.

Setting *Miller* aside, defendant's remaining proportionate penalties challenge is similarly meritless. As an initial matter, this Court's precedent

establishes that the penalties provision does not apply to the aggregate of the punishments inflicted for multiple offenses; the proportionality of each sentence must be separately analyzed. But even if evaluated in the aggregate, defendant's statutorily-required and court-imposed sentences are proportionate to his three serious violent felonies. Defendant planned and executed the home invasion and murder of Holmes, and tried to kill Wyatt, first by shooting at him until his gun jammed and then by beating him until he passed out. Defendant's actions not only resulted in Holmes's death and harm to Wyatt, but his repeated discharge of a firearm in the multi-unit apartment building risked harm to innocent bystanders. Accordingly, it is consistent with our community's moral sense that defendant's three serious felonies require him to spend his life in prison if he cannot show by the age of 50 that he has matured and been restored to useful citizenship.

A. Defendant's *Miller*-based proportionate penalties claim fails because he did not receive a mandatory sentence of life without the possibility of parole.

The appellate court correctly held that defendant's claim — that he, at age 20, is no different than a juvenile offender, so *Miller*'s Eighth Amendment rule applies equally to him under the penalties provision — was meritless. *See* Def. App. Ct. Br. 2, 34-41; Def. App. Ct. Reply Br. 12-14. Even assuming, *arguendo*, that *Miller*'s rule could be imported wholesale into the penalties provision and defendant could be treated as if he were a juvenile — propositions that lack support in Illinois law, *see infra*, Part B.3 —

defendant's claim fails because he did not receive the punishment that *Miller* proscribes — mandatory life in prison without the possibility of parole.

1. Defendant's claim is meritless because *Miller* does not bar mandatory sentences of *de facto* life with the opportunity for parole after 20 years.

Defendant's mandatory aggregate minimum sentence with the opportunity for parole after 20 years does not fall within *Miller*'s categorical rule. The Supreme Court has "specifically" held that "a life sentence for a juvenile offender does not violate *Miller* or the eighth amendment if there is a possibility of parole." *People v. Dorsey*, 2021 IL 123010, ¶ 54 (citing *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016)). By its terms, *Miller* "forbids [only] a sentencing scheme that mandates life in prison *without possibility of parole* for juvenile [homicide] offenders." 567 U.S. at 479-80 (emphasis added); *see also Jones v. Mississippi*, 593 U.S. 98, 118 (2021). To be sure, in Illinois, *Miller*'s prohibition includes a sentencing scheme that mandates a term-of-years sentence that is "'the functional equivalent of life without the possibility of parole,'" *Dorsey*, 2021 IL 123010, ¶ 43 (citation omitted), *i.e.*, a sentence that provides the juvenile offender "no opportunity to demonstrate rehabilitation and obtain release short of serving more than 40 years in prison," *id.* ¶ 64 (citing *People v. Buffer*, 2019 IL 122327). But "the focus is not on the court-imposed sentence but on whether the State provides an opportunity for release," *id.* ¶ 39 (discussing *Montgomery*, 577 U.S. at 209-10, 212), because "[t]he Eighth Amendment does not foreclose the possibility that [juvenile offenders] will remain behind bars for life" or

"require the State to release that offender during his natural life," *Graham v. Florida*, 560 U.S. 48, 75 (2010)). Accordingly, a mandatory prison sentence of more than 40 years imposed under a statutory scheme that provides an opportunity for parole before the offender spends more than 40 years in prison does not fall within *Miller*'s categorical rule. *See Dorsey*, 2021 IL 123010, ¶¶ 49-54 & n.2, 64; *see also Montgomery*, 577 U.S. at 212.

The statutory scheme under which defendant was sentenced required an aggregate sentence of 72 years in prison (of which defendant needed to serve 55.1 years), *see supra*, pp. 5-6, and further provided that an offender, like defendant, who was under age 21 "at the time of the commission of first degree murder who is sentenced on or after June 1, 2019 . . . *shall be eligible for parole review* by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences," 730 ILCS 5/5-4.5-115(b) (emphasis added). In other words, defendant was sentenced under a scheme that makes him eligible for parole before he spends more than 40 years in prison, so his aggregate minimum sentence does not fall within *Miller*'s rule, and the appellate court correctly held his *Miller*-based claim meritless. *See Dorsey*, 2021 IL 123010, ¶¶ 39, 50 & n.2, 53-56, 64,

2. Defendant's parole eligibility alone brings his aggregate minimum sentence outside *Miller*.

Even though defendant has not been "irrevocably sentence[d] to a lifetime in prison," *Miller*, 567 U.S. at 480, he argues that his aggregate minimum sentence falls within *Miller* because the youthful offender parole

scheme does not provide him "'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,'" *id.* at 479 (quoting *Graham*, 560 U.S. at 75). *See* Def. Br. 15-23. He is wrong. Both this Court and the Supreme Court have held that parole eligibility alone is sufficient to comport with *Miller*.

It is unsurprising that the Supreme Court has "specifically" held that a mandatory life sentence for a juvenile offender does not fall within *Miller* "if there is a possibility of parole," *Dorsey*, 2021 IL 123010, ¶ 54 (citation omitted), because such a rule is a necessary corollary of that Court's reasoning in *Miller*. *Miller* bars "*mandatory* life-without-parole sentences for" juvenile homicide offenders, *Jones*, 493 U.S. at 103 (emphasis in original), because such sentences preclude individualized consideration of the mitigating circumstances of youth, *id.* at 108-09, and thus "'pose[ ] too great a risk of disproportionate punishment,'" *id.* at 110 (quoting *Miller*, 567 U.S. at 479). But that unconstitutional risk of disproportionate punishment is absent when the court imposes "a lifetime prison term *with* the possibility of parole." *Miller*, 567 U.S. at 489 (emphasis in original); *see Graham*, 560 U.S. at 70 (life without parole is "'far more severe'" than life with the possibility of parole (quoting *Rummel v. Estelle*, 445 U.S. 263, 297 (1980)); *Rummel*, 445 U.S. at 280-81 (upholding mandatory life-with-parole sentence because "possibility of parole, however slim, serves to distinguish Rummel from a

person sentenced under" a statute requiring life without parole, as it was "possib[le] that he will not actually be imprisoned for the rest of his life").

Not only is life without the possibility of parole a far more severe sentence than life with the possibility of parole after 20 years, but discretionary parole is "a component of the long-range objective of rehabilitation," *Greenholtz v. Inmates of the Neb. Penal & Corr. Complex*, 442 U.S. 1, 13 (1979), "to help individuals reintegrate into society as constructive individuals" before "the full term of the sentence imposed," *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972). Thus, a sentence of life *with* the possibility of parole provides "hope for some years of life outside prison walls," *Montgomery*, 577 U.S. at 213, and does not "forswear[ ] altogether the rehabilitative ideal," *Graham*, 560 U.S. at 74, "deprive[ ] [the juvenile offender] of the opportunity to achieve maturity," *id.* at 79, or provide the offender "little incentive to become a responsible individual," *id.*; *see also Dorsey*, 2021 IL 123010, ¶ 53. Accordingly, "[e]xtending parole eligibility to juvenile offenders" — *e.g.*, making them "eligible for parole," *Montgomery*, 577 U.S. at 212 — is sufficient to provide "'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,'" *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 75); *see Montgomery*, 577 U.S. at 212.

Defendant is wrong that *Miller* requires that a parole statute have specific terms or conditions to fall outside *Miller*'s rule. *See*, *e.g.*, Def. Br. 15

(complaining that parole scheme provides "no recourse to seek review of the parole board's determination"), 15-16, 20-21 (parole scheme does not provide enough hearings and requires board to consider seriousness of offense and factors related to "the nature of the offense"), 17-18 (parole is "'too speculative' and may cause a juvenile to die in prison despite demonstrated maturity and rehabilitation"). When the Supreme Court determined that parole eligibility sufficed to satisfy *Miller*, it knew and understood the common characteristics of a discretionary parole scheme, including that:

- there are "few certainties" in a discretionary parole system, *Greenholtz*, 442 U.S. at 8;
- such a system "provides no more than a mere hope that the benefit will be obtained," *id.* at 11;
- a parole board "assess[es] whether, in light of the nature of the crime, the inmate's release will minimize the gravity of the offense, weaken the deterrent impact on others, and undermine respect for the administration of justice," *id.* at 8; *see also Swarthout v. Cooke*, 562 U.S. 216, 216-17 (2011) (*per curiam*) (upholding parole denial that was based on "especially cruel and callous manner" of offense); *Cal. Dep't of Corr. v. Morales*, 514 U.S. 499, 502-03 (1995) (same where denial based on "heinous, atrocious, and cruel nature of [prisoner's] offense");
- "there is no set of facts which, if shown, mandate a decision favorable to the individual," *Greenholtz*, 442 U.S. at 10; and
- a board's decision to deny parole is generally unreviewable, *Swarthout*, 562 U.S. at 220-22.

Nevertheless, the Supreme Court determined that life *with* eligibility for parole falls outside of *Miller* pursuant to this "settled law" and without "express[ing] any disagreement with [this] long-expressed understanding" of

the discretionary parole process. *Heredia v. Blythe*, 638 F. Supp. 3d 984, 996-97 (W.D. Wis. 2022); *see*, *e.g.*, *Rummel*, 445 U.S. at 280-81 (although Rummel had no enforceable right to parole, mandatory life sentence satisfied Eighth Amendment because he was eligible for parole).

Indeed, no Supreme Court decision supports defendant's assertion, *see* Def. Br. 15-21, that *Miller* "was announcing a new standard for parole of juvenile offenders or using the phrases 'meaningful opportunity' and 'demonstrated maturity and rehabilitation' as terms of art for . . . an elaborate new regime of parole for juvenile offenders," *Heredia*, 638 F. Supp. 3d at 994. To the contrary, the Supreme Court is careful to "'avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems'" when it announces a new substantive rule of constitutional law, *Jones*, 593 U.S. at 117-18 (quoting *Montgomery*, 577 U.S. at 211), and did not intend for implementation of *Miller*'s rule to "impose an onerous burden on the States" when it held that parole eligibility suffices to comport with *Miller*, *Montgomery*, 577 U.S. at 212; *see Jones*, 593 U.S. at 118 (refusing to "add still more procedural requirements" to *Miller*). In sum, defendant's complaints about the youthful offender parole statute do not undermine that he is eligible for parole before he serves more than 40 years in prison, which brings his sentence outside *Miller*'s scope.

The out-of-state decisions upon which defendant relies, *see* Def. Br. 16-19, are unpersuasive. Many were decided under *Graham*, which, unlike

Miller, categorically bars life without parole for juvenile nonhomicide offenders (as opposed to *mandatory* sentences for juvenile homicide offenders), *Graham*, 560 U.S. at 75; or before *Jones*, which clarified that *Miller* does not preclude a discretionary sentence of life without parole for a juvenile homicide offender, does not require a finding of incorrigibility, and allows a sentencer to impose that punishment if the seriousness of the offense warrants it, *People v. Wilson*, 2023 IL 127666, ¶¶ 34-42 (discussing *Jones*). *See* Def. Br. 16, 19 (citing *Bonilla v. Iowa Bd. Of Parole*, 930 N.W.2d 751 (Iowa 2019) (before *Jones* and in part under *Graham*); *Hawkins v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 140 A.D.3d 34 (N.Y. App. Div. 2016) (before *Jones*); *State v. Patrick*, 172 N.E.3d 952 (Ohio 2020) (same); *Swatzell v. Tenn. Bd. Of Parole*, No. 3:18-cv-01336, 2019 WL 1533445 (M.D. Tenn. April 9, 2019) (before *Jones* and in part under *Graham*); *Maryland Restorative Just. Initiative v. Hogan*, No. ELH-16-1021, 2017 WL 467731 (D. Md. Feb. 3, 2017) (before *Jones*); *Hayden v. Keller*, 134 F. Supp. 3d 1000 (E.D. N.C. 2015) (under *Graham*)).

In addition, *Greiman v. Hodges*, 79 F. Supp. 3d 933 (S.D. Iowa 2015), and *Hayden*, on which defendant relies, were decided before *Montgomery* and thus do not reflect *Montgomery*'s express statement that parole eligibility suffices to comply with *Miller*. More significantly, the federal circuit courts of appeal governing those districts, as well the courts that issued *Swatzell* and *Hogan* — two more cases on which defendant relies, Def. Br. 16 — have since

rejected the notion that *Miller* requires more than parole eligibility for a juvenile offender. *See Brown v. Precythe*, 46 F.4th 879, 885-86 (8th Cir. 2022); *Atkins v. Crowell*, 945 F.3d 476, 479 (6th Cir. 2019); *Bowling v. Va. Dep't of Corr.*, 920 F.3d 192, 197-200 (4th Cir. 2019); *see also Bullock v. Miller*, 670 F. Supp. 3d 866, 878-79 (S.D. Iowa 2023) (recognizing that *Brown* held, contrary to *Greiman*, that "*Miller* factors are not necessary considerations at state parole board proceedings").

Moreover, even if the district court decisions were correctly decided (and they were not), at most they provide support for a juvenile offender who has been denied parole despite demonstrated maturity and rehabilitation to file a 42 U.S.C. § 1983 civil rights action against the parole authorities. *See*, *e.g.*, *Howard v. Coonrad*, 546 F. Supp. 3d 1121, 1125, 1131-32 (M.D. Fla. 2021) (cited at Def. Br. 16); *see generally Moore v. Ga. Bd. of Pardons and Paroles*, No. 23-12468, 2024 WL 1765706, at *3-4 (11th Cir. Apr. 24, 2024) (nonprecedential) (noting disagreement among federal courts and summarizing cases). Indeed, three of the state court decisions that defendant cites involve similar actions against parole authorities following parole denials. *See* Def. Br. 16 (citing *Bonilla*, 930 N.W.2d at 757-58*, State v. Thomas*, 269 A.3d 487, 500-02, 504-07 (N.J. Super. 2022); *Hawkins*, 140 A.D.3d at 35-36). And none of the decisions holds that *Miller* bars a sentence of life *with* parole.

The cited Alaska appellate court decision, *see* Def. Br. 16-17, also did not hold that life with the possibility of parole falls within *Miller*. *See Fletcher v. State*, 532 P.3d 286, 319-21 (Alaska Ct. App. 2023). Rather, consistent with this Court's precedent, *see Dorsey*, 2021 IL 123010, ¶¶ 47, 50, *Fletcher* held that the juvenile offender's 135-year sentence was functionally equivalent to life without parole because she did not become parole-eligible until after she served 45 years of that sentence, 532 P.3d at 319-20.

Nor — contrary to defendant's suggestion, *see* Def. Br. 17 — did *Diatchenko v. Dist. Att'y for Suffolk Dist.*, 27 N.E.3d 349 (Mass. 2015), hold that *Miller* requires judicial review of a parole decision for a sentence of life with parole to comport with *Miller*. The part of *Diatchenko* requiring judicial review pertained to mandatory sentences of life without parole and was decided under the Massachusetts Constitution. 27 N.E.3d at 353-54, 365. But the Massachusetts Supreme Judicial Court has repeatedly held that neither the Eighth Amendment nor the Massachusetts Constitution prohibits mandatory sentences of life *with* the possibility of parole. *See Commonwealth v. McDermott*, 225 N.E.3d 286, 305-06 (Mass. 2024).

In the end, only *Patrick* arguably supports defendant's position, *see* Def. Br. 19, but it is inconsistent with *Miller* and this Court's precedent. In that 4-3 decision, the Ohio Supreme Court — relying on an interpretation of *Miller* that the Supreme Court later repudiated in *Jones* — held that parole eligibility "is not material" under *Miller* because it "does not guarantee a

defendant's release from prison." *Patrick*, 172 N.E.3d at 959. But both the Supreme Court and this Court have held that the Eighth Amendment does not *require* a juvenile offender's release from prison; rather, *Miller* requires only an *opportunity* for release before a juvenile homicide offender has spent more than 40 years in prison. *See supra*, at Part A.1.

It is unsurprising, therefore, that *Patrick* is an outlier. Consistent with this Court's decision in *Dorsey*, the "great majority of jurisdictions" have concluded that *Miller* does not prohibit mandatory sentences of life *with* the possibility of parole. *State v. Link*, 482 P.3d 28, 31, 42-43, 45-47 (Or. 2021) (*en banc*) (collecting cases); *People v. Cavazos*, 2023 IL App (2d) 220066, ¶ 51 (collecting additional cases), *PLA pending*, No. 129863 (Ill.); *see also*, *e.g.*, *Sanders v. Eckstein*, 981 F.3d 637, 643-44 (7th Cir. 2020) (juvenile offender's sentence of 140 years with parole eligibility after 36 years falls outside *Graham* and *Miller*); *Farmer v. State*, 281 A.3d 834, 838, 851 (Md. 2022) (similar). In short, mandatory *de facto* life with the possibility of parole comports with *Miller*. Accordingly, defendant was not sentenced to the punishment that *Miller* prohibits, and the appellate court correctly rejected his *Miller*-based claim.

3. Defendant's sentence falls outside *Miller* even if something more than eligibility for parole were required.

Even if eligibility for parole alone were not sufficient for a mandatory life sentence to fall outside *Miller*'s categorical rule — and both *Montgomery* and this Court have held that it is — and further assuming that the phrase

"some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" requires something more than parole eligibility, *see* Def. Br. 15-18, the youthful offender parole statute provides that opportunity. Thus, defendant's sentence falls outside of *Miller*'s rule even under this reasoning.

The General Assembly "created the new parole statute and modified the parole review factors for the purpose of creating a meaningful opportunity for parole for juvenile offenders" in response to *Miller*. *Cavazos*, 2023 IL App (2d) 220066, ¶ 54; *see id.* ¶ 53. In doing so, the General Assembly was "fully aware of *Miller* and the relevant considerations concerning juvenile sentencing." *Id.* ¶ 54; *see Buffer*, 2019 IL 122327, ¶ 35 ("when statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law"). And the General Assembly expressly incorporated *Miller*'s core principles into the statute: the parole board "*shall consider* the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration." 730 ILCS 5/5-4.5-115(j) (emphasis added). Thus, rather than "forswear[ing] altogether the rehabilitative ideal," the statute expressly provides an offender the incentive to mature and become responsible. *Graham*, 560 U.S. at 74, 79.

Moreover, the statute includes additional provisions to ensure that the offender has a meaningful chance to obtain release based on demonstrated

maturity and rehabilitation. The offender may petition for review 3 years prior to serving the minimum 20 years. 730 ILCS 5/5-4.5-115(c). After receiving a properly filed petition, the board must immediately set a date for parole review. *Id.* Within six months of the date being set, a prison representative must "meet with the eligible person and provide information about the parole hearing process and personalized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior," and the offender may request "any additional programs and services which the eligible person believes should be made available to prepare the eligible person for return to the community." *Id.* § 5-4.5-115(d).

Additionally, the offender has the right to counsel at the parole hearing, and the board must appoint counsel a year before the hearing date if the prisoner is indigent. *Id.* § 5-4.5-115(e). Nine months before the hearing, the board must give the offender and his attorney, with specified limited exceptions, "any written documents or materials it will be considering in making its decision" and that duty to disclose information is ongoing. *Id.* § 5-4.5-115(f). The offender has a right to be present, provide evidence, and make a statement at the hearing. *Id.* § 5-4.5-115(h); 20 Ill. Adm. Code § 1610.40(b)-(d). Any psychological evaluation submitted for the board's consideration "shall be prepared by a person who has expertise in adolescent brain development and behavior, and *shall take into consideration* the

diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and increased maturity of the person." 730 ILCS 5/5-4.5-115(h) (emphasis added).

In sum, the youthful offender parole statute sets forth a process that provides the offender a meaningful opportunity to present evidence of, and obtain parole based on, the offender's demonstrated rehabilitation, growth, and maturity, and, accordingly, is consistent with *Miller* even if *Miller* requires something more than an opportunity for parole. *See Cavazos*, 2023 IL App (2d) 220066, ¶¶ 54-60 (youthful offender parole statute provides the meaningful opportunity for release described in *Miller*); *see also Brown*, 46 F.4th at 886-87 (allowing parole board to consider youth-related factors sufficient under *Miller*); *Bowling*, 920 F.3d at 198-99 (*Miller* provides "no further protections" than allowing parole board to consider offender's "age at the time of the offense," evidence of "maturation since then," and *Miller*'s principle that juveniles who commit serious crimes are capable of change).

Defendant's arguments to the contrary, *see generally* Def. Br. 17-22, are unavailing. To start, the parole opportunity is not meaningless merely because the parole statute provides homicide offenders two parole review hearings ten years apart. *Id.* at 17-18. Each parole opportunity is meaningful and provides an incentive for the offender to take advantage of programs that will facilitate growth, maturity, and rehabilitation. If the offender is denied parole at the first opportunity, the board provides a

"written decision which states the rationale for denial, including the primary factors considered . . . within 30 days." 730 ILCS 5/5-4.5-115(*l*). A juvenile offender who has been denied parole then has sufficient time to pursue additional programming, become ready for reintegration into the community, and petition for review again. *See id.* § 5-4.5-115(c)-(*l*), (n). If unable to demonstrate rehabilitation at the second opportunity, by which time the offender's brain has been fully developed for nearly two decades, then the offender will serve the sentence that the court deemed proportionate to his crime(s). Nothing in the phrase "'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,'" *Miller*, 567 U.S. at 479 (citation omitted), suggests that a State must provide unlimited, repeated parole opportunities long after the offender's brain is past the developmental stage and the prospects for reform have substantially diminished. *See Rodriguez v. Mass. Parole Bd.*, 193 N.E.3d 1050, 1055-56 & n.5 (Mass. 2022) ("If the juvenile offender has not rehabilitated [after 15 years in prison], he or she simply has not realized the 'greater prospects for reform' distinctive of youth" and any subsequent rehabilitation during adulthood is "disconnected from the 'prospects for reform' distinctive of youth."). It was reasonable for the General Assembly, having considered *Miller*, to balance the transient immaturity of young offenders and their greater prospects for reform against the seriousness of the offense of first degree murder and determine that a young homicide offender who could not

demonstrate maturity and rehabilitation after 30 years of imprisonment should serve the entirety of the proportionate, court-imposed sentence.

Defendant is also wrong that other States' legislative choices demonstrate that the General Assembly's determinations are contrary to *Miller*. *See* Def. Br. 17-18. Each State makes its own "broad moral and policy judgments . . . when enacting [its] sentencing laws," *Jones*, 593 U.S. at 119-20, and "'must have due flexibility in formulating parole procedures and addressing problems associated with confinement and release,'" *Hill v. Walker*, 241 Ill. 2d 479, 494 (2011) (quoting *Garner v. Jones*, 529 U.S. 244, 252 (2000)). The General Assembly properly "'explore[d] the means and mechanisms for compliance' with eighth amendment mandates pertaining to juvenile sentencing," *Buffer*, 2019 IL 122327, ¶ 40 (quoting *Graham*, 560 U.S. at 75), made policy choices, *see People v. Hilliard*, 2023 IL 128186, ¶ 39, and decided on a parole scheme that provides procedures specific to youthful offenders and well beyond what due process requires, *see Swarthout*, 562 U.S. at 220-21 (where State creates liberty interest in parole, due process requires only "opportunity to be heard" and "statement of the reasons why parole was denied").

To be sure, other States have balanced the interests differently by favoring some procedures over others, or simply relying on their general parole schemes without enacting new provisions specific to juvenile offenders. *See*, *e.g.*, *Fletcher*, 532 P.3d at 298 (citing five jurisdictions, including Illinois,

that modified parole statutes after *Miller* to require consideration of youth); *id.* at 296-97 (noting "at least" 15 States that enacted legislation after *Miller*; majority of those set eligibility for parole or resentencing between 20 and 30 years, with some as low as 15 and others as high as 40 years); *Link*, 482 P.3d at 657-59 & n.22 (collecting cases similarly showing that juvenile offenders are first eligible for parole between 25 and 40 years in other States); *see also*, *e.g.*, *Brown*, 46 F.4th at 884-88 (in Missouri, no right to counsel, expert witness, or to review information in advance of parole hearing); *Holly v. State*, 211 A.3d 496, 498-501, 503-07 (Md. Ct. Spec. App. 2019) (in Maryland, no right to counsel, only 15 days advance notice of hearing, and board discloses information it will consider in making parole decision only upon inmate's request); *see generally* Jorge Renaud, *Grading the Parole Release Systems of All 50 States*, PRISON POLICY INITIATIVE (Feb. 26, 2019), at Appx. A, https://www.prisonpolicy.org/reports/parole_grades_table.html.

But defendant is wrong that Illinois's youthful offender parole statute is "among the harshest . . . in the country," Def. Br. 17, merely because the General Assembly chose to provide different procedures — such as appointed counsel and the opportunity for psychological evaluations — rather than more frequent and/or additional parole reviews. *Compare*, *e.g.*, *Bonilla*, 930 N.W.2d at 789-92 (in Iowa, no right to counsel or independent psychological evaluation for juvenile offenders where parole reviews are annual). As the appellate court correctly held, although the period between parole reviews is

lengthy, "the process *overall* remains meaningful, particularly as the new parole statute requires the Board to consider concerns implicated by *Miller* and its progeny." *Cavazos*, 2023 IL App (2d) 220066, ¶¶ 55-56 (emphasis in original).

Nor is the opportunity for release rendered meaningless merely because the board is also required to consider "aggravating factors," such as the nature and number of crimes and history of substance abuse, gang affiliation, and emotional stability, and must deny parole if "release at that time would deprecate the seriousness of his or her offense or promote disrespect for the law," 730 ILCS 5/5-4.5-115(j)(2). *See* Def. Br. 20-21. Nothing in *Miller* precludes a parole board from, in addition to the offender's maturation and rehabilitative potential, "considering the seriousness of the inmate's homicide offense in the parole determination." *Brown*, 46 F.4th at 888; *see Heredia*, 638 F. Supp. 3d at 987, 996-97. Here, the statute requires the board to consider not only the seriousness of the offense and the "aggravating factors" that defendant cites, but also the youth-related factors cited in *Miller* and the offender's growth and maturity since his crime. 730 ILCS 5/5-4.5-115(j).

Indeed, whether the offender has demonstrated growth and maturity necessarily depends on the "aggravating factors" defendant cites. *See Diatchenko*, 27 N.E.3d at 359-60 (when determining juvenile offender's "suitability for parole," board must "weigh multiple factors and consider . . .

[a] potentially massive amount of information," including information about nature and circumstances of offense). For example, an offender who committed multiple violent offenses with a firearm due to a history of substance abuse, gang affiliation, or emotional instability will need to demonstrate growth in areas that an offender who did not have the same history will not need to. In other words, the presence of certain factors "establish[es] a baseline to measure rehabilitation," *Bonilla*, 930 N.W.2d at 773, and is pertinent to "determin[ing] whether the offender is ready for reintegration into the community," *Heredia*, 638 F. Supp. 3d at 997. And if the offender has not demonstrated maturity and rehabilitation considering those factors, "then [the board] could reasonably find that release 'at that time' would deprecate the seriousness of the offense." *Cavazos*, 2023 IL App (2d) 220066, ¶ 58. Thus, contrary to defendant's argument, Def. Br. 15, 20, the statute does not mandate that parole be denied in every murder case or contradict *Miller*.

Defendant is also incorrect that *Miller* required the General Assembly to provide for judicial review of a parole decision. Def. Br. 22. Nothing in *Miller* or any Eighth Amendment precedent mandates this. The single decision defendant cites that provides a right to judicial review, *Diatchenko*,

is inapposite because it was decided under the Massachusetts Constitution. *Diatchenko*, 27 N.E.3d at 365.[9]

Nor was the availability of administrative or judicial remedies "one of the key reasons" for *Dorsey*'s holding that statutory credit provides a juvenile offender a sufficient opportunity for early release, Def. Br. 22. *See Dorsey*, 2021 IL 123010, ¶¶ 49-54. Instead, starting from the premise that discretionary parole suffices under *Miller*, *Dorsey* rejected the defendant's arguments that the credit scheme provides a *less* meaningful opportunity than parole and held that the credit scheme affords an opportunity for release that "is at least on par with discretionary parole for a life sentence, which has specifically been held by the Supreme Court to pass muster under the eighth amendment." *Id.* ¶ 54. In other words, *Dorsey* emphasized that discretionary parole suffices under *Miller* and merely noted that administrative and judicial remedies help ensure that Illinois's credit scheme provides a similarly sufficient mechanism under *Miller*.

At bottom, defendant's complaints rest on the improper presumption that parole authorities will act in a manner inconsistent with *Miller* and the

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[9] Nor does *Diatchenko* provide the substantive review that defendant appears to seek. *See* Def. Br. 22. A Massachusetts juvenile offender sentenced to life "is entitled to receive judicial review of only one parole denial (any of the offender's choosing)." *Rodriguez*, 193 N.E.3d at 1055 (summarizing *Diatchenko*). And in that review, the court assesses only "*whether* the board has taken into account the youth-related factors in making its decision," not the basis for or correctness of the board's decision. *Id.* at 1057 (emphasis added).

youthful offender parole statute's language and purpose. *See* Def. Br. 18-23 (assuming board will arbitrarily deny parole to him and all youthful offenders). But "[t]he fact that a statute might be susceptible of misapplication does not necessarily make it unconstitutional." *People v. Wills*, 61 Ill. 2d 105, 109 (1975) (cleaned up). Moreover, defendant is not yet eligible for parole, so he cannot prevail based on his speculation that the statute will be applied arbitrarily to him. *See id.* (refusing to consider constitutionality of parole provision where defendant not yet eligible for parole); *Sanders*, 981 F.3d at 644 (similar).

Accordingly, defendant's reliance on parole board statistics from 2017, 2019, and 2020, *see* Def. Br. 18, is misplaced. To start, the statistics are irrelevant because they relate to parole percentages for "C-Number" inmates — *i.e.*, those sentenced before 1978 under the indeterminate sentencing scheme — *not* inmates sentenced under the youthful offender parole statute. *See*, *e.g.*, *44th Annual Rpt.*, *Jan. 1 to Dec. 31, 2020*, Ill. Prisoner Rev. Bd. (July 2022), at 5, 7-9. And, even if they were relevant, the statistics do not support defendant's inference that the board acted arbitrarily in denying parole to C-numbered inmates. The numbers reveal nothing about the offenders who were denied parole, *e.g.*, their age at the time of their offenses, crimes, disciplinary records, rehabilitative efforts, or other myriad relevant factors, so there is no basis to infer that the denials were improper. Put

simply, defendant's argument that offenders will be arbitrarily denied parole under the youthful offender parole statute is speculative and baseless.

In sum, the General Assembly responded to *Miller* by creating a parole scheme that is specific to young offenders and for the purpose of releasing offenders who demonstrate maturity and rehabilitation. The only decision to hold otherwise, *People v. Gates*, 2023 IL App (1st) 211422, *PLA pending*, No. 130271 (Ill.), *see* Def. Br. 17,[10] rests on the same flawed interpretation of *Dorsey* that defendant advances before this Court. *See People v. Doe*, 2024 IL App (1st) 220811-U, ¶ 23 (finding *Gates*'s distinction of *Dorsey* "untenable").[11] Every other appellate panel to have considered the question has correctly concluded that a mandatory life sentence imposed under the youthful offender parole scheme comports with *Miller*. *See id.* ¶ 22 (collecting published decisions); *see also*, *e.g.*, *People v. Anderson*, 2024 IL App (1st) 220864, ¶ 11. For the reasons discussed, this Court should likewise hold that the youthful offender parole statute provides the opportunity for release that *Miller* requires. Accordingly, even if *Miller*'s rule could be extended to young adult offenders, defendant's mandatory minimum aggregate sentence of *de facto* life with the possibility of parole after 20 years would not fall within its

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[10] *People v. Carrasquillo*, upon which defendant relies, Def. Br. 17, is inapposite because it did not consider a sentence imposed on an offender entitled to parole under the youthful offender parole statute, 2023 IL App (1st) 211241, ¶ 1.

[11] The nonprecedential Rule 23 orders cited in this brief are available on the Illinois courts' website, at https://www.illinoiscourts.gov/top-level-opinions/.

ambit. The appellate court thus correctly rejected defendant's *Miller*-based proportionate penalties theory.

B. Defendant's sentences are not cruel or degrading and thus comport with the penalties provision.

Any remaining claim under the penalties provision fails because defendant's sentences are not cruel, degrading, or so wholly disproportionate to his offenses as to shock the moral sense of the community. Defendant presented only the *Miller*-based proportionate penalties theory to the appellate court, which the court properly rejected. The appellate court did not, contrary to defendant's characterization, *see* Def. Br. 9-12, 24-28, hold that *no* offender sentenced to a prison term that includes an opportunity for parole could successfully challenge a sentence under the penalties provision. But successful proportionate penalties challenges are rare. The sentencing determinations of both the General Assembly and the trial court are presumed constitutional and, here, defendant cannot satisfy his heavy burden to overcome those presumptions.

Defendant's sentences are proportionate to his serious offenses, whether the sentences are reviewed individually, as the Court's longstanding jurisprudence instructs, or in the aggregate, as defendant assumes.

1. Defendant's individual sentences are proportionate to his offenses.

A sentence violates the penalties provision when it is "'cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.'" *People v. Clark*, 2023 IL 127273, ¶ 51 (citation

omitted). The provision provides a check on the trial court and the legislature, requiring both to consider the provision's dual objectives when determining a sentence. *People v. Clemons*, 2012 IL 107821, ¶¶ 29-30; *People v. Taylor*, 102 Ill. 2d 201, 206 (1984). But neither the trial court nor the legislature must set the goal of rehabilitating an offender above the goal of providing a penalty according to the seriousness of the offense. *Taylor*, 102 Ill. 2d at 206; *accord Hilliard*, 2023 IL 128186, ¶ 40; *People v. Alexander*, 239 Ill. 2d 205, 214 (2010).

Moreover, the trial court's sentencing determination is "presumed proper." *People v. Webster*, 2023 IL 128428, ¶ 21. When deciding on a sentence for a particular crime, the court must consider all available pertinent evidence, including the nature and circumstances of the crime; the offender's degree of participation in the crime; his rehabilitative potential; his remorse or lack thereof; and his personal history, including his age, general moral character, mentality, social environment, habits, demeanor, criminal history, and education. *See Clark*, 2023 IL 127273, ¶ 92; *People v. Fern*, 189 Ill. 2d 48, 53, 55 (1999). But the penalties provision does not additionally "require the judge to detail for the record the process by which he concluded that the penalty he imposed was appropriate," *People v. La Pointe*, 88 Ill. 2d 482, 493 (1981), and it presumes that the court "considered any mitigating evidence before it, absent some indication to the contrary other than the sentence itself," *People v. Thompson*, 222 Ill. 2d 1, 45 (2006). Thus, a trial

court's sentencing determination is "'entitled to great deference and weight,'" and reviewed for an abuse of discretion. *La Pointe*, 88 Ill. 2d at 492-93 (citation omitted).

The legislatively determined sentence similarly carries a strong presumption of constitutionality that may be overcome only with a clear showing that it is grossly disproportionate to the crime. *Hilliard*, 2023 IL 128186, ¶ 21; *People v. Rizzo*, 2016 IL 118599, ¶¶ 23, 48. Thus, when resolving a challenge under the penalties provision, the 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 *People v. Leon Miller*, 202 Ill. 2d 328, 340 (2002)), bearing in mind that "[t]he legislature'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.

a. Defendant's sentences of 25 years each are proportionate to his attempted murder and home invasion.

Defendant's 25-year sentences for the attempted murder of Wyatt and home invasion of Holmes's apartment do not shock the moral sense of our community.

In fact, the trial court misunderstood the applicable sentencing ranges for defendant's attempted murder and home invasion and sentenced defendant to *less* than the minimum for each of those crimes. *See supra*, pp. 5-6, 12. The jury found defendant guilty of attempted murder and home

invasion and found that he personally discharged a firearm during each of those offenses. Accordingly, the minimum sentence for each offense was 26 years (6 years for the base offense plus a mandatory firearm enhancement of 20 years). *See supra*, pp. 5-6. Defendant's sentence of 25 years for each offense is less than the respective statutory minimum.

Because the statutory minimum sentence for each crime is proportionate to the offense, defendant cannot establish that the lesser, court-imposed sentences are disproportionate. Requiring an offender convicted of attempted murder or home invasion to spend a minimum of six years in prison is not unconscionable, as both are among "the most serious felonies" and directed at harming others. *People v. Sharpe*, 216 Ill. 2d 481, 526 (2005); *People v. Hill*, 199 Ill. 2d 440, 452-53 (2002), *overruled on other grounds by Sharpe*, 216 Ill. 2d at 520-21. And the mandatory firearm enhancements, which increase the minimum sentence for each offense, also comport with the penalties provision. *See Sharpe*, 216 Ill. 2d at 525 (citing *People v. Morgan*, 203 Ill. 2d 470, 488-49 (2003), and *Hill*, 199 Ill. 2d at 452-53). The General Assembly unanimously passed the firearm enhancements to deter the use of firearms in the commission of offenses, *Hilliard*, 2023 IL 128186, ¶ 22; *Hill*, 199 Ill. 2d at 457-58, and combat the pervasive and enhanced danger that arises when an attempted murder or home invasion "is committed with a weapon that not only enhances the perpetrator's ability to kill the intended victim, but also increases the risk that grievous harm or

death will be inflicted upon bystanders," *Sharpe*, 216 Ill. 2d at 524-25; *see Hill*, 199 Ill. 2d at 452-53. The General Assembly determined that the seriousness of those offenses in particular warrants the additional penalty and outweighs the objective of rehabilitating the offender. *Sharpe*, 216 Ill. 2d at 525-26. Accordingly, the legislature permissibly fixed the minimum terms for attempted murder and home invasion in which the defendant discharges a firearm at 26 years. *See id.*

Even considering defendant's young age and mitigating circumstances, application of the minimums to defendant (much less a sentence below the minimum) is not so harsh as to grossly distort the factual realities of his offenses and misrepresent his culpability. *See Leon Miller*, 202 Ill. 2d at 341 (sentence constitutionally excessive where it "grossly distort[ed] the factual realities of the case and d[id] not accurately represent [the] defendant's personal culpability"). Defendant invaded Holmes's apartment and repeatedly fired his gun until it jammed. And in his attempt to kill Wyatt, defendant not only fired multiple shots at him but also repeatedly hit him with the gun and then choked him to unconsciousness. Defendant's actions endangered not only Holmes and Wyatt but also others in the multi-unit building. *See Hilliard*, 2023 IL 128186, ¶ 34 (use of firearm in public housing complex endangered innocent bystanders). In short, defendant's personal discharge of a firearm after invading Holmes's apartment and in his attempt to kill Wyatt "pose[d] an extreme danger to both the intended victims and

innocent bystanders," *id.* ¶ 22, and fits squarely within the serious conduct, degree of harm, and societal dangers that the General Assembly sought to address when it enacted the enhanced penalties for these crimes.

Indeed, the General Assembly recently confirmed that applying this minimum to young adult offenders like defendant reflects the community's moral sense. The General Assembly "determined that courts should have the discretion to determine whether to impose the firearm enhancement on individuals who were juveniles when they committed their crimes." *Id.* ¶ 38 (citing 730 ILCS 5/5-4.5-105(b)). But it "made a deliberate choice not to extend this discretion to sentences for individuals who were adults at the time of their offenses." *Id.* This legislative judgment "in and of itself is an expression of the general moral ideas of the people," *id.*, and demonstrates that defendant's sentences for attempted murder and home invasion are not shocking to our community's moral sense.

b. Defendant's 50-year sentence for his premeditated intentional murder of Holmes is proportionate.

Defendant's 50-year sentence for the intentional first degree murder of Holmes also is not shocking to our community's conscience. As defendant implicitly concedes, *see* Def. Br. 9-18, it is not shocking to our community's moral sense that the General Assembly required a minimum prison sentence of 20 years for first degree murder. Murder is an offense "deserving of the most serious form[ ] of punishment" available, *Graham*, 560 U.S. at 69, including natural life without parole, *see People v. Jones*, 2021 IL 126432,

¶ 27, because "in terms of moral depravity and of the injury to the person and to the public, [no crime] can[ ] be compared to murder in [its] severity and irrevocability," *Graham*, 560 U.S. at 69 (cleaned up). The General Assembly therefore reasonably concluded that no set of mitigating circumstances permits a sentence of less than 20 years in prison for first degree murder. *See People v. Dunigan*, 165 Ill. 2d 235, 244-47 (1995); *Taylor*, 102 Ill. 2d at 206-09.

Nor did the trial court abuse its discretion in sentencing defendant to 50 years for his intentional murder of Holmes. The court recognized its duty to determine a sentence in accordance with the dual objectives of the penalties provision. SupR797-98. To that end, the court considered and weighed all the relevant factors and evidence before determining that defendant's premediated, "cold-hearted" killing of Holmes for about $4,000 warrants a sentence of 50 years in prison. SupR797, 806-07, 823-26. The trial court reviewed, "two or three times," the mitigating information in the PSI about defendant's childhood, housing insecurity, and other difficulties. SupR790, 792, 797-98; SecC11-15. And it found defendant's young age and lack criminal history to be mitigating. SupR798, 802.

But the court reasonably accorded greater weight to the seriousness and nature of defendant's crime and his repeated failures to comply with the law and rules while in pretrial custody. *See Alexander*, 239 Ill. 2d at 212-15 (penalties provision allows court to give greater weight to seriousness of

offense than goal of rehabilitating offender). Twelve days before his 21st birthday, defendant agreed to kill Wilson's mother for about $4,000, prepared a ruse to avoid detection, took a firearm, and drove across the city to carry out the plan. There, he gained entry to the apartment complex, entered Holmes's apartment, shot her in the head as she slept, and then stabbed her to make sure she was dead. Defendant's crime was extremely serious and showed a deliberate indifference to the value of human life. Moreover, in the 6 years after he was arrested at age 22, defendant demonstrated that he was unable to control his antisocial behavior by repeatedly violating criminal laws and jail rules. In short, the trial court reasonably exercised its discretion when sentencing defendant to 50 years for his murder of Holmes.

c. Defendant's arguments to the contrary misapprehend the record and the law.

Defendant's arguments to the contrary misconstrue the record and fail to apply established proportionate penalties principles.

To start, defendant is incorrect that the trial court refused to consider, or improperly weighed, youth-related factors. Def. Br. 29-36. The trial court expressly considered defendant's young age and rehabilitative potential. SupR797-98, 802-03, 808. And it presumably knew from longstanding Illinois precedent that "'less than mature age can extend into young adulthood,'" *Clark*, 2023 IL 127273, ¶ 93 (citation omitted), and that it was required to consider defendant's youth, mentality, social environment, education, and any other factors related to his youth, *id.* ¶ 92.

The trial court correctly rejected defendant's request, s*ee* C1283-85; SupR778-80, 784-89, 822; A24, ¶ 73, A41, ¶ 121, that it go further and apply a statute that applies only to the sentencing of juvenile offenders, *see* 730 ILCS 5/5-4.5-105(b) (entitled "sentencing of individuals under the age of 18 at the time of the commission of an offense") (capitalization omitted), and *Miller*, a decision that applies only to the sentencing of juvenile offenders, 567 U.S. at 489, because defendant was not a juvenile at the time of his crimes. SupR786, 800-03, 823; *see* A43-44, ¶¶ 128-29. The trial court did not refuse to consider defendant's youth, as defendant argues, Def. Br. 32, but instead treated him as the young adult he was, rather than as a juvenile. *See Hilliard*, 2023 IL 128186, ¶ 39 ("The distinction between a juvenile and adult remains significant."). Indeed, the court expressly found that defendant's young age was mitigating. SupR797-98, 802-03. Nor did it contradict that finding, as defendant asserts, Def. Br. 32, by stating that "[defendant] *is* a grown up man" in the context of discussing defendant's choices in jail and specifically that he was "in and out of trouble." SupR798 (emphasis added). Defendant was a "grown up man," especially at the time he was accumulating offenses while in custody.

Nor was the trial court obligated to agree with defendant's argument that he merely acted as Wilson's "puppet" in committing the murder. Def. Br. 33. The court presided over the trial, watched defendant's interview with police, heard all the evidence, and reasonably concluded that defendant made

his own choices and "[n]obody forced him to follow [Wilson]," SupR790, or "kill that woman," SupR799. Even if defendant had "a heightened susceptibility to Wilson's influence," Def. Br. 33, defendant admitted that he agreed to kill a stranger for money and then helped plan the murder. Nothing in the record suggests that Wilson coerced defendant to take the firearm, get into the car with Johnson and travel (without Wilson) to the other side of the city, enter Holmes's building alone, enter Holmes's apartment alone, shoot Holmes in the head, and then stab her to make sure she was dead. Each choice was defendant's, and he could have abandoned the plan at any of a number of opportunities. It was entirely reasonable for the trial court to view and treat defendant as more than Wilson's stooge.

Defendant's remaining arguments are equally flawed because they fail to apply longstanding proportionate penalties principles and improperly treat Eighth Amendment decisions like *Miller* and *Buffer* as controlling the proportionate penalties analysis. *See* Def. Br. 23-29, 34-36. For instance, defendant faults the trial court for "emphasiz[ing] the seriousness of the offense in fashioning its sentence." *Id.* at 33-34. But the penalties provision allows the trial court to place greater weight on the seriousness of an offense than the goal of rehabilitation. *See Hilliard*, 2023 IL 128186, ¶ 40; *Alexander*, 239 Ill. 2d at 212-15. And although *Miller* is irrelevant under the penalties provision, *see infra*, Part B.3, not even that decision prevents a sentencer from considering the facts to "decide that life without parole

remains appropriate despite the defendant's youth," *Jones*, 593 U.S. at 115, either because the sentencer "deem[s] the defendant's youth to be outweighed by other factors or deem[s] the defendant's youth an insufficient reason to support a lesser sentence under the facts of the case," *id.* at 115 n.7. Accordingly, the trial court did not abuse its discretion when it concluded that the mitigating circumstances of defendant's youth and upbringing were outweighed by the seriousness of defendant's premeditated and cold-blooded murder of Holmes or insufficient reasons to support a prison sentence less than 50 years.

2. The penalties provision does not apply to the aggregate of punishments inflicted for different offenses.

Defendant's analysis is also flawed because it incorrectly assumes that the penalties provision applies to his aggregate sentence for multiple offenses.

For more than 100 years, since *People v. Elliott*, this Court has recognized that the 1870 "Illinois constitutional provision requiring that all penalties shall be proportionate to the nature of the offense does not apply to the aggregate of the punishments inflicted for different offenses." *People v. Carney*, 196 Ill. 2d 518, 529 (2000) (citing *People v. Elliott*, 272 Ill. 592, 600 (1916)). When "a defendant is sentenced upon different indictments or different counts of the same indictment, the correct method of entering judgment is not for the total time in gross, but for a specified time under each

count." *Elliott*, 272 Ill. at 603. Thus, "the punishment under each count must be considered by itself" in a proportionality analysis. *Id.* at 600.

Since *Elliott*, this Court has repeatedly reaffirmed the "settled rule in this state that sentences which run consecutively to each other are not transmuted thereby into a single sentence," *People v. Wagener*, 196 Ill. 2d 269, 286 (2001) (citing cases), because "[e]ach conviction results in a discrete sentence that must be treated individually," *Carney*, 196 Ill. 2d at 530. Consecutive sentencing provisions "determine[ ] only the manner in which a defendant will serve his sentences for multiple offenses." *Id.* at 531-32. Thus, "when consecutives sentences are imposed, they do not form a single sentence *for any purpose* other than determining the manner in which the sentences are to be served for the purpose of determining an offender's eligibility for parole." *Id.* at 530 (emphasis added).

For example, in *Carney*, the Court refused to apply *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to consecutive sentences, even though "a defendant who receives consecutive sentences will serve a longer period of imprisonment than a defendant who receives identical concurrent sentences." *Carney*, 196 Ill. 2d at 529; *see also People v. Phelps*, 211 Ill. 2d 1, 13-14 (2004) (citing *Carney* and treating discrete sentences individually in double enhancement analysis); *People v. Wendt*, 163 Ill. 2d 346, 355 (1994) (imposition of consecutive sentences does not constitute an increase in penalty). And in *People v. Kilpatrick*, the Court held that a trial court could

not correct an error in imposing consecutive prison sentences of 9 and 6 years for two separate offenses by resentencing the defendant to "a single sentence of 15 years in prison on the two offenses." *Carney*, 196 Ill. 2d at 530 (citing *People v. Kilpatrick*, 167 Ill. 2d 439, 441-42 (1995)). "[A]lthough the total number of years defendant would be incarcerated was unchanged, consecutive sentences are not treated as a single sentence" and the trial "court's action effectively increased [the] defendant's sentences for each offense to 15 years." *Id.* (citing *Kilpatrick*, 167 Ill. 2d at 446-47).

Although *Elliott* was decided under the 1870 Constitution, its underlying principle that consecutive sentences "do not form a single sentence *for any purpose* other than determining the manner in which the sentences are to be served," remains an established part of Illinois jurisprudence, *id.* at 529-30 (emphasis added), and applies equally to challenges under the 1970 Constitution's penalties provision. The same "cruel or degrading" standard applies under both the 1870 and 1970 provisions, notwithstanding that the 1970 provision used "different wording" and added the rehabilitation clause. *Sharpe*, 216 Ill. 2d at 490-91, 521, 525-26; *see Elliott*, 272 Ill. at 601; *People ex rel. Bradley v. Ill. State Reformatory*, 148 Ill. 413, 421-22 (1894). And the rehabilitation clause of the 1970 provision does not prevent either the legislature or the judiciary from giving greater weight and consideration to the seriousness of an offense than the

possibility of rehabilitating an offender when determining a proper penalty. *Taylor*, 102 Ill. 2d at 206.

The Court should therefore reject defendant's implicit request to "lump[ ] together" his consecutive sentences, *Carney*, 196 Ill. 2d at 531, and hold that the penalties provision "'does not apply in any manner to the aggregate of the punishments inflicted for different offenses,'" *id.* at 529-30 (quoting *Elliott*, 272 Ill. at 600), because how a defendant will serve multiple sentences is irrelevant to whether each sentence is proportionate to the crime committed. *See*, *e.g.*, *People v. Anderson*, 325 Ill. App. 3d 624, 637-38 (4th Dist. 2001) (comparing 15-year sentence for each offense rather than aggregate 45-year sentence for all three offenses, as defendant had argued); *People v. Spencer*, 2021 IL App (1st) 191237-U, ¶¶ 2, 59 n.1 ("fact that defendant is to serve [murder] sentence consecutively to his 20-year sentence for [another offense] has no bearing on the excessiveness of his sentence for first-degree murder").

3. Alternatively, defendant's aggregate sentence comports with the penalties provision.

Even if the penalties provision applied to the aggregate of sentences imposed for separate offenses — and it does not — neither defendant's aggregate minimum sentence nor his aggregate actual sentence for his serious, violent offenses shocks the moral sense of the community.

First, applying the aggregate minimum sentence to defendant comports with the penalties provision. Defendant is incorrect that his

opportunity for parole is irrelevant in this analysis. *See* Def. Br. 29. Analysis of the aggregate minimum sentence depends on the proposition that consecutive sentencing is relevant. Consecutive sentencing "determines only the manner in which a defendant will serve his sentences for multiple offenses." *Carney*, 196 Ill. 2d at 532. So, if how a defendant will serve multiple sentences is relevant (here, consecutively), then the analysis must include consideration of whether defendant is eligible for statutory credit and/or parole. Indeed, the General Assembly cannot, without violating the Ex Post Facto Clause, eliminate the opportunities for statutory credit or parole it has provided at the time of sentencing because the prescribed punishment included these opportunities. *Weaver v. Graham*, 450 U.S. 24, 30-36 (1981) (statutory credit); *Rodriguez v. U.S. Parole Comm'n*, 594 F.2d 170, 175 (7th Cir. 1979) (parole). In sum, if the penalties provision applies to the aggregate sentence imposed, then the analysis must include consideration of any opportunities for statutory credit and parole.

Defendant fails to clearly establish that it shocks the moral sense of the community that the General Assembly determined that his serious crimes warrant an aggregate minimum sentence of 55.1 years (effectively life) in prison with the earliest possibility of parole after 20 years. *See supra*, pp. 5-6. The General Assembly determined defendant's aggregate sentence in accordance with both the seriousness of his offenses and the goal of restoring him to useful citizenship. As detailed in Part B.1, *supra*, defendant's serious

crimes demonstrated his deliberate indifference to the value of human life. Defendant invaded Holmes's apartment for the purpose of shooting her while she slept; after accomplishing that goal, defendant repeatedly tried to kill Wyatt, shooting at him until the gun jammed and beating him until he passed out; and then defendant stabbed Holmes to make sure she was dead. In short, defendant killed one person, attempted to kill another, and endangered the community by repeatedly firing a gun inside a multi-unit apartment complex, all in the name of a $4,000 gain. Punishing defendant's cold-blooded crimes with an aggregate sentence that amounts to life in prison is consistent with the General Assembly's goals, *see supra*, Part B.1, and that aggregate minimum sentence is proportionate to defendant's serious offenses, *see Hilliard*, 2023 IL 123972, ¶ 40.

But the General Assembly also gave weight to the constitutional goal of restoring an offender to useful citizenship by recognizing defendant's youth and providing an opportunity for release after he serves 20 years of the *de facto* life sentence. As discussed in Part B.1.a, *supra*, the General Assembly recently considered defendant's young age, retained the mandatory firearm enhancements for young adults, and thus confirmed that this is the appropriate aggregate sentence for defendant's offenses. Accordingly, the General Assembly's determination — that defendant's serious crimes require him to spend his life in prison if he cannot show after 20 or 30 years that he

has matured and been restored to useful citizenship — achieves both goals of the penalties provision and does not shock the moral sense of our community.

For the same reasons, the aggregate 100-year sentence that the court imposed (and that defendant might serve if he does not obtain earlier release *and* loses all statutory credit) is proportionate to defendant's serious offenses. In this case, there is "no practical difference between" the 55.1-year aggregate sentence that the General Assembly required and the 100-year aggregate sentence that the trial court imposed; both are *de facto* life terms. *People v. Coty*, 2020 IL 123972, ¶¶ 47, 50. And because the aggregate minimum sentence is proportionate to the seriousness of defendant's offenses, the Court need not separately analyze whether the trial court abused its discretion when imposing the 100-year term. *See id.* To the extent there is any difference, it stems from the imposition of the 50-year term for first degree murder, which comports with the penalties provision, *see supra*, Part B.1.b.

Defendant's contrary analysis rests on the incorrect presumption that the penalties provision *always* provides greater protections than the Eighth Amendment. *See* Def. Br. 10-12, 23-26. The Court's precedent establishes that the penalties provision provides protections that are different from, and not always greater than, those provided by the Eighth Amendment.

The penalties provision allows the General Assembly to 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; *Dunigan*, 165 Ill. 2d at 245, "even though such sentences, by definition, restrict the inquiry and function of the judiciary in imposing sentence," *Dunigan*, 165 Ill. 2d at 245. For this reason, the Court has repeatedly "rejected claims that the legislature violates [the penalties provision] when it enacts statutes imposing mandatory minimum sentences," *id.*, including statutes that require life imprisonment or lengthen sentences through application of mandatory firearm enhancements, *id.*; *see*, *e.g.*, *Hilliard*, 2023 IL 128186, ¶ 40; *Coty*, 2020 IL 123972, ¶¶ 43-44; *Sharpe*, 216 Ill. 2d at 524-27; *People v. Huddleston*, 212 Ill. 2d 107, 129-45 (2004); *Morgan*, 203 Ill. 2d at 487-89; *Hill*, 199 Ill. 2d at 452-54; *Taylor*, 102 Ill. 2d at 204-10.

In fact, for serious crimes like defendant'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 statutory scheme required a natural-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 341. This Court concluded that the natural-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.* Subjecting Miller — "'the least culpable offender imaginable'" — to "the same sentence applicable to the actual shooter" was "particularly harsh and unconstitutionally disproportionate." *Id.* But, the Court emphasized, this holding did "not imply" that mandatory natural life was never appropriate and such a sentence might be appropriate for a juvenile offender who, unlike Miller, actively participated in the planning of a crime that resulted in multiple murders. *Id.*

For example, in *People v. Davis*, where the Court reaffirmed that *Leon Miller*'s holding depended on its facts and circumstances, 14-year-old Davis had "carried a weapon to the crime scene, which he perhaps dropped," and "entered the abode where [multiple] murders occurred." 2014 IL 115595, ¶¶ 4, 8. This Court held that Davis's mandatory natural-life sentence for these crimes violated the Eighth Amendment under *Miller* but upheld the sentence under the penalties provision, *id.* ¶¶ 43, 45, because our constitution "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); *see Dorsey*, 2021 IL 123010, ¶¶ 73-74. Accordingly, *Davis* confirmed that the penalties provision does not encompass a *Miller*-like rule, even when sentencing a juvenile offender, because the General Assembly may

permissibly conclude that some offenses are sufficiently severe that no mitigating factor warrants less than a particular minimum.

This precedent shows that the penalties provision does not always provide greater protections than the Eighth Amendment. The two provisions differ in their text, their governing principles, and the limits they place on the legislature's authority. *See generally Clemons*, 2012 IL 107821, ¶¶ 29-30, 35-40. In most circumstances, a sentence that "passes muster under the proportionate penalties clause . . . would seem to comport with the contemporary standards of the eighth amendment." *Coty*, 2020 IL 123972, ¶ 45. But there may be circumstances where our legislature's judgment is consistent with our community's mores but inconsistent with those of the nation such that our legislature's judgment would violate the Eighth Amendment but not the penalties provision. *Id.* Generally, these situations will arise in the context of the Eighth Amendment's categorical rules, such as in *Davis*. *See* 2014 IL 115595, ¶¶ 43, 45.[12] In such circumstances, the penalties provision does not always place greater limits than the Eighth Amendment on the General Assembly's authority to determine sentences.

[12] Of course, the General Assembly and Illinois courts are bound to enforce the Eighth Amendment's categorical rules under the Supremacy Clause, even when there is no violation of the Illinois Constitution. *See* U.S. Const., art. VI, cl. 2; *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015) (States "must not give effect to state laws that conflict with federal laws"); *Wilson*, 2023 IL 127666, ¶ 42 (this Court must follow Supreme Court's framework for applying Eighth Amendment).

Here, *Miller*'s categorical rule does not apply to defendant. He is not a juvenile and he did not receive a sentence of life *without* the possibility of parole. And nothing about the penalties provision suggests that it would extend protections to defendant under these circumstances that the Eighth Amendment would not. Accordingly, applying established proportionate penalties principles, defendant fails to clearly demonstrate that his aggregate sentence is so wholly disproportionate to the facts and circumstances of his case that it shocks the moral sense of our community.

CONCLUSION

This Court should affirm the judgment of the appellate court.

November 13, 2024

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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 14,330 words.

/s/ Gopi Kashyap
GOPI KASHYAP
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APPENDIX

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Article 4.5. General Sentencing Provision

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730 ILCS 5/5-4.5-115

5/5-4.5-115. Parole review of persons under the age of 21 at the time of the commission of an offense

Effective: January 1, 2020 to December 31, 2023

§ 5-4.5-115. Parole review of persons under the age of 21 at the time of the commission of an offense.

(a) For purposes of this Section, "victim" means a victim of a violent crime as defined in subsection (a) of Section 3 of the Rights of Crime Victims and Witnesses Act including a witness as defined in subsection (b) of Section 3 of the Rights of Crime Victims and Witnesses Act; any person legally related to the victim by blood, marriage, adoption, or guardianship; any friend of the victim; or any concerned citizen.

(b) A person under 21 years of age at the time of the commission of an offense or offenses, other than first degree murder, and who is not serving a sentence for first degree murder and who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 10 years or more of his or her sentence or sentences, except for those serving a sentence or sentences for: (1) aggravated criminal sexual assault who shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences or (2) predatory criminal sexual assault of a child who shall not be eligible for parole review by the Prisoner Review Board under this Section. A person under 21 years of age at the time of the commission of first degree murder who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences, except for those subject to a term of natural life imprisonment under Section 5-8-1 of this Code or any person subject to sentencing under subsection (c) of Section 5-4.5-105 of this Code.

(c) Three years prior to becoming eligible for parole review, the eligible person may file his or her petition for parole review with the Prisoner Review Board. The petition shall include a copy of the order of commitment and sentence to the Department of Corrections for the offense or offenses for which review is sought. Within 30 days of receipt of this petition, the Prisoner Review Board shall determine whether the petition is appropriately filed, and if so, shall set a date for parole review 3 years from receipt of the petition and notify the Department of Corrections within 10 business days. If the Prisoner Review Board determines

that the petition is not appropriately filed, it shall notify the petitioner in writing, including a basis for its determination.

(d) Within 6 months of the Prisoner Review Board's determination that the petition was appropriately filed, a representative from the Department of Corrections shall meet with the eligible person and provide the inmate information about the parole hearing process and personalized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Following this meeting, the eligible person has 7 calendar days to file a written request to the representative from the Department of Corrections who met with the eligible person of any additional programs and services which the eligible person believes should be made available to prepare the eligible person for return to the community.

(e) One year prior to the person being eligible for parole, counsel shall be appointed by the Prisoner Review Board upon a finding of indigency. The eligible person may waive appointed counsel or retain his or her own counsel at his or her own expense.

(f) Nine months prior to the hearing, the Prisoner Review Board shall provide the eligible person, and his or her counsel, any written documents or materials it will be considering in making its decision unless the written documents or materials are specifically found to: (1) include information which, if disclosed, would damage the therapeutic relationship between the inmate and a mental health professional; (2) subject any person to the actual risk of physical harm; (3) threaten the safety or security of the Department or an institution. In accordance with Section 4.5(d)(4) of the Rights of Crime Victims and Witnesses Act and Section 10 of the Open Parole Hearings Act, victim statements provided to the Board shall be confidential and privileged, including any statements received prior to the effective date of this amendatory Act of the 101st General Assembly, except if the statement was an oral statement made by the victim at a hearing open to the public. Victim statements shall not be considered public documents under the provisions of the Freedom of Information Act. The inmate or his or her attorney shall not be given a copy of the statement, but shall be informed of the existence of a victim statement and the position taken by the victim on the inmate's request for parole. This shall not be construed to permit disclosure to an inmate of any information which might result in the risk of threats or physical harm to a victim. The Prisoner Review Board shall have an ongoing duty to provide the eligible person, and his or her counsel, with any further documents or materials that come into its possession prior to the hearing subject to the limitations contained in this subsection.

(g) Not less than 12 months prior to the hearing, the Prisoner Review Board shall provide notification to the State's Attorney of the county from which the person was committed and written notification to the victim or family of the victim of the scheduled hearing place, date, and approximate time. The written notification shall contain: (1) information about their right to be present, appear in person at the parole hearing, and their right to make an oral statement and submit information in writing, by videotape, tape recording, or other electronic means; (2) a toll-free number to call for further information about the parole review process; and (3) information regarding available resources, including trauma-informed therapy, they may access. If the Board does not have knowledge of the current address of the victim or family of the victim, it shall notify the State's Attorney of the county of commitment and request assistance in locating the victim or family of the victim.

Those victims or family of the victims who advise the Board in writing that they no longer wish to be notified shall not receive future notices. A victim shall have the right to submit information by videotape, tape recording, or other electronic means. The victim may submit this material prior to or at the parole hearing. The victim also has the right to be heard at the parole hearing.

(h) The hearing conducted by the Prisoner Review Board shall be governed by Sections 15 and 20, subsection (f) of Section 5, subsections (a), (a-5), (b), (b-5), and (c) of Section 10, and subsection (d) of Section 25 of the Open Parole Hearings Act and Part 1610 of Title 20 of the Illinois Administrative Code. The eligible person has a right to be present at the Prisoner Review Board hearing, unless the Prisoner Review Board determines the eligible person's presence is unduly burdensome when conducting a hearing under paragraph (6.6) of subsection (a) of Section 3-3-2 of this Code. If a psychological evaluation is submitted for the Prisoner Review Board's consideration, it shall be prepared by a person who has expertise in adolescent brain development and behavior, and shall take into consideration the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and increased maturity of the person. At the hearing, the eligible person shall have the right to make a statement on his or her own behalf.

(i) Only upon motion for good cause shall the date for the Prisoner Review Board hearing, as set by subsection (b) of this Section, be changed. No less than 15 days prior to the hearing, the Prisoner Review Board shall notify the victim or victim representative, the attorney, and the eligible person of the exact date and time of the hearing. All hearings shall be open to the public.

(j) The Prisoner Review Board shall not parole the eligible person if it determines that:

(1) there is a substantial risk that the eligible person will not conform to reasonable conditions of parole or aftercare release; or

(2) the eligible person's release at that time would deprecate the seriousness of his or her offense or promote disrespect for the law; or

(3) the eligible person's release would have a substantially adverse effect on institutional discipline.

In considering the factors affecting the release determination under 20 Ill. Adm. Code 1610.50(b), the Prisoner Review Board panel shall consider the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration.

(k) Unless denied parole under subsection (j) of this Section and subject to the provisions of Section 3-3-9 of this Code: (1) the eligible person serving a sentence for any non-first degree murder offense or offenses, shall be released on parole which shall operate to discharge any remaining term of years sentence imposed upon him or her, notwithstanding any required mandatory supervised release period the eligible person is required to serve; and (2) the eligible person serving a sentence for any first degree murder offense, shall be released

on mandatory supervised release for a period of 10 years subject to Section 3-3-8, which shall operate to discharge any remaining term of years sentence imposed upon him or her, however in no event shall the eligible person serve a period of mandatory supervised release greater than the aggregate of the discharged underlying sentence and the mandatory supervised release period as sent forth in Section 5-4.5-20.

(*l*) If the Prisoner Review Board denies parole after conducting the hearing under subsection (j) of this Section, it shall issue a written decision which states the rationale for denial, including the primary factors considered. This decision shall be provided to the eligible person and his or her counsel within 30 days.

(m) A person denied parole under subsection (j) of this Section, who is not serving a sentence for either first degree murder or aggravated criminal sexual assault, shall be eligible for a second parole review by the Prisoner Review Board 5 years after the written decision under subsection (*l*) of this Section; a person denied parole under subsection (j) of this Section, who is serving a sentence or sentences for first degree murder or aggravated criminal sexual assault shall be eligible for a second and final parole review by the Prisoner Review Board 10 years after the written decision under subsection (k) of this Section. The procedures for a second parole review shall be governed by subsections (c) through (k) of this Section.

(n) A person denied parole under subsection (m) of this Section, who is not serving a sentence for either first degree murder or aggravated criminal sexual assault, shall be eligible for a third and final parole review by the Prisoner Review Board 5 years after the written decision under subsection (*l*) of this Section. The procedures for the third and final parole review shall be governed by subsections (c) through (k) of this Section.

(*o*) Notwithstanding anything else to the contrary in this Section, nothing in this Section shall be construed to delay parole or mandatory supervised release consideration for petitioners who are or will be eligible for release earlier than this Section provides. Nothing in this Section shall be construed as a limit, substitution, or bar on a person's right to sentencing relief, or any other manner of relief, obtained by order of a court in proceedings other than as provided in this Section.

Credits

P.A. 77-2097, § 5-4.5-110, added by P.A. 100-1182, § 5, eff. June 1, 2019. Amended and renumbered as § 5-4.5-115 by P.A. 101-288,§ 10, eff. Jan. 1, 2020.

730 I.L.C.S. 5/5-4.5-115, IL ST CH 730 § 5/5-4.5-115

Current through P.A. 103-1052 of the 2024 Reg. Sess. Some statute sections may be more current, see credits for details

End of Document

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 November 13, 2024, the **Brief and Appendix of Plaintiff-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:

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