No. 126432

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ROBERT CHRISTOPHER JONES, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-14-0573. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 99-CF-395. Honorable H. Chris Ryan, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

Robert Christopher Jones, petitioner-appellant, appeals from a judgment denying his motion for leave to file a successive post-conviction petition. An issue is raised concerning the sufficiency of the post-conviction pleadings.

On May 19, 2000, pursuant to a fully-negotiated guilty plea, Robert pled guilty to first degree murder, two counts of armed robbery, and residential burglary, and was sentenced to concurrent terms of 50, 30 and 15 years' imprisonment, respectively (CL2 C433-34, R50-65). In June 2002, he unsuccessfully sought post-conviction relief (CL2 C441-58, 489, R121-24).

In April 2014, Robert filed a successive *pro se* post-conviction petition (CL3 C1-39). In May 2014, he filed a motion for leave to file the successive petition (CL3 C42-43). Leave was denied on July 7, 2014 (CL3 C45). The Appellate Court, Third Judicial District, affirmed in a Rule 23 order on October 13, 2016. *People v. Jones*, 2016 IL App (3d) 140573-U. On March 25, 2020, this Court exercised supervisory authority, and directed the appellate court to vacate its judgment and re-decide the appeal. The court below again affirmed in a Rule 23 order on July 8, 2020. *People v. Jones*, 2020 IL App (3d) 140573-UB. This Court granted leave to appeal on November 18, 2020.

ISSUE PRESENTED FOR REVIEW

WHETHER THE APPELLATE COURT, THIRD JUDICIAL DISTRICT, ERRED IN RULING THAT 17-YEAR-OLD ROBERT CHRISTOPHER JONES' 1999 GUILTY PLEA PRECLUDED HIM FROM LATER FILING A SUCCESSIVE POST-CONVICTION PETITION CHALLENGING HIS *DE FACTO* LIFE SENTENCE OF 50 YEARS' IMPRISONMENT. BECAUSE THAT SENTENCE WAS IMPOSED ABSENT CONSIDERATION OF THE ATTENDANT CIRCUMSTANCES OF YOUTH OR A JUDICIAL FINDING THAT ROBERT WAS PERMANENTLY INCORRIGIBLE, AND BECAUSE THERE WAS NO EVIDENCE PRESENTED TO THE PLEA JUDGE ESTABLISHING THAT ROBERT WAS PERMANENTLY INCORRIGIBLE, ROBERT SHOULD BE ENTITLED TO A NEW SENTENCING HEARING OR TO A REMAND FOR FURTHER POST-CONVICTION PROCEEDINGS.

JURISDICTION

Jurisdiction lies with this Court under Supreme Court Rules 315 and 612(b). This Court allowed defendant's timely petition for leave to appeal on November 18, 2020. *People v. Jones*, No. 126432.

STATEMENT OF FACTS

On October 13, 1999, defendant Robert Jones was charged by indictment with eight counts of first degree murder [720 ILCS 5/9-1(a)(1), (3) (1998)], two counts of armed robbery, a Class X felony [720 ILCS 5/18-2 (1998)], one count of residential burglary, a Class 1 felony [720 ILCS 5/19-3 (1998)], and one count of home invasion, a Class X felony [720 ILCS 5/12-11 (1998)]. Specifically, it was alleged that on October 1, 1999, Robert stabbed and killed George and Rebecca Thorpe without lawful justification and with intent to kill (Counts I and II), while committing armed robbery (Counts III and IV), while committing residential burglary (Counts V and VI), and while committing home invasion (Counts VII and VIII). It was further alleged that on October 1, 1999, Robert, while armed with a knife, took property from the presence of George and Rebecca Thorpe by the use of force (Counts IX and X), entered their dwelling with intent to commit theft (Count XI), and entered their dwelling while knowing them to be present and intentionally caused them injury (Count XII) (CL1 C34-45).

On May 19, 2000 (R50, *et seq.*), pursuant to a fully-negotiated plea agreement, Robert pled guilty to Count II first degree murder (intentional murder of Rebecca Thorpe), Counts XI and X armed robbery, and Count XI residential burglary, the remaining charges were dismissed, and he was sentenced to concurrent prison terms of 50 years for first degree murder, 30 years for each count of armed robbery, and 15 years for residential burglary, and he was given 232 days sentence credit for time spent in pre-sentence custody (CL2 C433-34, R50-65). The parties waived a hearing in mitigation and aggravation and waived the preparation of a pre-sentence investigation (R64). Robert was 16 years old at the time of the offenses and 17 years old at the time of his guilty plea (R54, 61).

Robert first sought post-conviction relief in June 2002 (CL2 C441-58).Counsel was appointed to represent Robert (CL2 C471), and the cause proceeded to an evidentiary hearing on August 30, 2002 (R73, *et seq.*). At the conclusion of the hearing, the court denied relief (CL2 C489, R121-24). The Appellate Court, Third Judicial District, affirmed. *People v. Jones*, No. 3-02-0671 (Rule 23 order, February 5, 2004).

On April 28, 2014, Robert filed a successive *pro se* post-conviction petition alleging that the automatic-transfer provision for 16-year-olds such as himself and the truth-in-sentencing requirement that he serve every day of his 50-year sentence violated constitutional principles announced by the United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005) (CL3 C1-39). On May 14, 2014, Robert filed a motion for leave to file his successive petition, arguing that the *Miller* line of cases had not been decided when he pled guilty in 2000, and that the statutory scheme under which he was sentenced was void (CL3 C42-43). On July 7, 2014, the circuit court issued an order denying defendant leave to file his successive petition (CL3 C45).

A timely notice of appeal was filed, and the Office of the State Appellate Defender was appointed to represent Robert (CL3 C47, 49). He raised a single issue on appeal, arguing that the cause should be remanded for further post-conviction proceedings because the *pro se* petition established cause and prejudice based on changes in the law entitling him to leave to file a successive petition. The appellate court affirmed in a Rule 23 order issued on October 13, 2016. *People v. Jones*, 2016 IL App (3d) 140573-U. The court found Robert waived his claim by pleading guilty and agreeing to his sentences, and that he had not received a life sentence or a *de facto* life sentence because he could complete his prison term by age 66. *Id.*, ¶¶ 13-17.

Robert petitioned this Court for leave to appeal in November 2016, arguing that his guilty plea was void because it was entered to avoid a now-unconstitutional mandatory life term, and asking this Court to resolve a conflict over what constitutes a *de facto* life sentence. On March 25, 2020, this Court denied leave to appeal but entered a supervisory order directing the appellate court to vacate its judgment and to determine whether a different result is warranted based on the Eighth Amendment, *Miller v. Alabama*, and *People v. Buffer*, 2019 IL 122327. *People v. Jones*, No. 121579.

On July 8, 2020, the appellate court issued a decision affirming the denial of leave, finding that Robert waived his challenge to his sentences by entering into a fully-negotiated guilty plea. *People v. Jones*, 2020 IL App (3d) 140573-B. On August 11, 2020, Robert filed a petition for rehearing. The court denied rehearing without comment on August 18, 2020 (Appendix). This Court granted leave to appeal on November 18, 2020.

ARGUMENT

The Appellate Court, Third Judicial District, Erred In Ruling That 17-Year-Old Robert Christopher Jones' 1999 Guilty Plea Precluded Him From Later Filing A Successive Post-Conviction Petition Challenging His *De Facto* Life Sentence Of 50 Years' Imprisonment. Because That Sentence Was Imposed Absent Consideration Of The Attendant Circumstances Of Youth Or A Judicial Finding That Robert Was Permanently Incorrigible, And Because There Was No Evidence Presented To The Plea Judge Establishing That Robert Was Permanently Incorrigible, Robert Should Be Entitled To A New Sentencing Hearing Or To A Remand For Further Post-Conviction Proceedings.

STANDARD OF REVIEW

722 ILCS 5/122-1(f) (2014) requires that a post-conviction petitioner "demonstrate" cause and prejudice in order to obtain leave to file a successive petition. This Court reviews *de novo* whether the petitioner has made out a *prima facie* showing of cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 25; *People v. Wrice*, 2012 IL 111860, ¶ 50. The constitutionality of a statute is also a question of law subject to *de novo* review. *People v. Gray*, 2017 IL 120958, ¶ 57.

ARGUMENT

Charged with, *inter alia*, two counts of first degree murder committed against two different people in 1999 (CL1 C34-45), 16-year-old Robert Christopher Jones faced a mandatory sentence of natural life imprisonment if convicted. 730 ILCS 5/5-8-

1(a)(1)(c)(ii) (1999). In order to avoid dying in prison, Robert, who was then 17 and who had no apparent viable defense, entered into a fully-negotiated plea agreement in May 2000 whereby he pled guilty to one count of first degree murder and three other offenses and received four concurrent sentences, the longest of which was 50 years' imprisonment (CL2 C433-34, R50-65). The plea judge made no finding that Robert was permanently incorrigible. Indeed, the judge made no findings at all other than that there was a factual basis for the plea and the plea was knowing and voluntary (R62-63). The judge then proceeded to impose the agreed sentences after the parties waived a hearing in mitigation and aggravation and the preparation of a pre-sentence report (R64-65).

Fourteen years later, in April 2014, Robert filed a *pro se* successive post-conviction petition and a petition for leave to file it (CL3 C1-39, 42-43). The petition alleged several challenges to Robert's sentences based on the United States Supreme Court's recent decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). The circuit judge denied leave without explanation (CL3 C45). The appellate court affirmed on the grounds that Robert's 50-year sentence did not constitute a life or a *de facto* life sentence, and that Robert's guilty plea barred him from later challenging his sentences. *People v. Jones*, 2016 IL App (3d) 140573-U. This Court subsequently directed the appellate court to reconsider its decision in light of *People v. Buffer*, 2019 IL 122327, and *Miller v. Alabama*. On remand, the appellate court again denied relief, this time solely on the basis that "he waived any constitutional challenge to his sentence by fully negotiating his plea." *People v. Jones*, 2020 IL App (3d) 140573-UB, ¶ 14.

This Court should reverse the appellate court and either remand this cause for a new sentencing hearing or for additional post-conviction proceedings including the

appointment of counsel. This Court should do so because Robert, who was a juvenile at the time of his offenses and at the time of his guilty plea, is undeniably serving a *de facto* life sentence and the plea judge made no finding that Robert was among the worst juvenile offenders who cannot be rehabilitated and therefore should die in prison. This Court should also find that Robert's plea did not bar him from later mounting a post-conviction challenge to his sentence based on cases such as *Miller v. Alabama* and *People v. Buffer* where such cases were not decided when he pled guilty and where the import of those cases is that the statutory scheme under which he was sentenced was unconstitutional.

A. The sentencing scheme under which Robert was sentenced was unconstitutional

In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the United States Supreme Court held unconstitutional [U.S. Const. Amend. VIII] sentencing schemes mandating sentences of life imprisonment without possibility of parole for offenders who were younger than 18 when they committed their crimes. The Court noted the "hallmark features" of youth -- "immaturity, impetuosity, and failure to appreciate risks and consequences." 132 S. Ct. at 2468. The Court also commented on "children's diminished culpability and heightened capacity for change," and, accordingly, "require[d sentencing judges] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S. Ct. at 2469. Accord, *People v. Gray*, 2013 IL App (1st) 112572, ¶ 9. Speaking in more general terms, the Supreme Court in *Miller v. Alabama* stated that "a sentencing rule permissible for adults may not be so for children," 132 S. Ct. at 2470, and that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juveniles," 132 S. Ct. at 2469. Finally, the *Miller* Court reaffirmed its earlier pronouncement in

Roper v. Simmons, 543 U.S. 551 (2005), that it is "'the rare juvenile offender whose crime reflects irreparable corruption'" and who should receive a sentence of life imprisonment. *Miller*, 132 S. Ct. at 2469 (quoting *Roper*, 543 U.S. at 573). *Miller* applies retroactively. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

In *People v. Holman*, 2017 IL 120655, ¶¶ 38, 40, this Court stated that *Miller* applies to both mandatory and discretionary life sentences. Your Honors also cited language appearing in both *Miller* and *Montgomery* that the differences in children "'counsel against irrevocably sentencing them to a lifetime in prison,'" and that "'a sentencing hearing where youth and its attendant circumstances are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who are not.'" 2017 IL 120655, ¶ 38 (quoting *Montgomery*, 136 S. Ct. at 733, 735, and *Miller*, 132 S. Ct. at 2460, 2469). While a sentencing judge has discretion to impose a life sentence on a juvenile, the judge must first make a finding of "irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." 2017 IL 120655, ¶ 46.

As noted in the introduction to this argument, having been charged in 1999 with, *inter alia*, the first degree murder of two different individuals, Robert faced a mandatory life sentence if convicted of those charges. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1999). At that time, it made no difference that Robert was only16 when he committed the offenses. A sentencing judge would have had no discretion to consider a sentence less than natural life if Robert had been convicted of two murder charges. Consequently, that sentence was unconstitutional as applied to Robert.

The appellate court stated Robert "face[d] the possibility of a mandatory life sentence." *People v. Jones*, 2020 IL App (3d) 140573-UB, ¶ 20. The appellate court

was wrong. Had Robert not entered into a negotiated guilty plea, it is a certainty that he would have been sentenced to natural life. The factual basis recited at Robert's guilty plea hearing established that Robert confessed to killing two people (R58-61). The record reveals that the only possible defense would have been insanity. Robert was in fact examined on the issues of both insanity and fitness prior to his guilty plea, but the doctor's report revealed he was fit and did not have a valid insanity defense (CL1 C18-19, 24, 29, R8-10, 84-87, 91-92). The sentencing scheme in 1999 was therefore unconstitutional as applied to Robert because he would have received a mandatory life sentence, without regard for his young age or the hallmark features of youth, or whether he was permanently incorrigible, had he proceeded to trial or entered an open guilty plea.

The sentencing scheme in 1999 was also unconstitutional as applied to Robert because it allowed the judge to impose a *de facto* life sentence without first considering his age or the hallmark features of youth or whether he was permanently incorrigible. In *People v. Reyes*, 2016 IL 119271, ¶ 9, this Court found that sentences so long they are the functional equivalent of life sentences - *de facto* life sentences - are likewise unconstitutional when imposed on juveniles absent consideration of the defendant's youth and whether he is beyond rehabilitation. More recently, in *People v. Buffer*, 2019 IL 122327, ¶¶ 40-42, this Court established that any prison sentence over 40 years constitutes a *de facto* life sentence that may not be imposed upon a juvenile unless the judge first considers his youth and its attendant circumstances. According to this Court, there is no constitutional difference [U.S. Const. Amend. VIII] between a sentence of natural life imprisonment and a *de facto* life sentence. *Id.*, ¶ 27.

Pursuant to a negotiated guilty plea, Robert Jones received four concurrent prison sentences, the longest of which was 50 years (CL2 C433-34, R50-65). But the judge

made no findings as to the attendant circumstances of youth or whether Robert was beyond rehabilitation when he accepted the plea agreement and imposed the agreed sentences. Just as the mandatory life sentence Robert faced absent the plea was unconstitutional, then, so, too, the negotiated 50-year *de facto* life sentence was unconstitutional as well.

B. Robert's successive petition adequately alleged cause and prejudice

725 ILCS 5/122-2.1(f) (2014) requires that a post-conviction petitioner demonstrate cause and prejudice in order to obtain leave to file a successive petition. This Court has interpreted Section 122-2.1(f) to require the petitioner to make a *prima facie* showing of cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 25; *People v. Wrice*, 2012 IL 111860, ¶ 50. Robert Jones satisfied that standard here.

Indeed, the appellate court ruled that Robert's petition and motion for leave to file it "established 'cause' based on the simple fact that *Miller*, its progeny, and the recent changes in Illinois sentencing law were not established at the time he filed his first postconviction petition." *People v. Jones*, 2020 IL App 140573-UB, ¶ 14.

This Court should conclude that Robert also established, or at least pleaded a *prima facie* case of, prejudice because, as discussed above, Robert was sentenced pursuant to an unconstitutional sentencing scheme. He faced a mandatory life sentence that violated the Eighth Amendment to the United State Constitution because, absent a negotiated plea, the judge would have been required to impose that sentence without regard for Robert's youth or its attendant characteristics, and without first finding that Robert was permanently incorrigible. In order to avoid what would have been a certain life sentence, Robert accepted a negotiated term of years, but that sentence - 50 years' imprisonment - likewise violated the Eighth Amendment because it was a *de facto* life

sentence and the judge had no duty, in accepting the plea and imposing that sentence, to consider Robert's youth or its attendant characteristics, or to first find that Robert was beyond rehabilitation.

The post-conviction judge denied Robert leave to file his successive petition without explanation. His written order simply stated the petition was "denied and not docketed for consideration" (CL3 C45). The appellate court at least considered the topics of cause and prejudice. The court properly found cause but erroneously found no prejudice.

C. Robert's guilty plea should not have precluded him from later seeking post-conviction relief from his unconstitutional, de facto life sentence of 50 years' imprisonment

The appellate court ruled that Robert was unable to establish prejudice so as to obtain leave to file his successive petition "because he waived any constitutional challenge to his sentence by fully negotiating his plea." 2020 IL App (3d) 140573-UB, ¶ 14. The appellate court did not, indeed it could not, disagree with the cases which this Court directed it to consider – *Miller v. Alabama* and *People v. Buffer*. But the court believed that the foregoing case law did not apply to Robert because he agreed to the 50-year sentence as part of his guilty plea back in 2000. According to the court below, Robert "entered into a plea agreement in which he stipulated to a *de facto* life sentence" and, as a result, he surrendered the right to later challenge that sentence. 2020 IL App (3d) 140573-UB, ¶ 16.

The appellate court's decision cannot stand for several reasons. First, Robert did not knowingly stipulate to a *de facto* life sentence. Yes, he agreed to 50 years, but he did not do so with the knowledge that this Court, 19 years later, would find such a sentence to be the functional equivalent of a life sentence, or that this Court and the United States Supreme Court would, years later, find such a sentence could not be imposed

on a juvenile absent consideration of the attendant circumstances of youth and a finding that the juvenile could not be rehabilitated.

Second, the appellate court apparently misconstrued *Miller* and *Buffer* when it said that defendant waived his current argument that he was not afforded an opportunity to present evidence in mitigation. *Id.*, ¶ 17. It is true that a new sentencing hearing would allow the defense to present evidence concerning his potential for rehabilitation and the applicability of the various factors set forth in the Illinois sentencing statute that essentially codified the teachings of *Miller*, 730 ILCS 5/5-4.5-105 (2016). But the appellate court seemingly overlooked the fact that the onus is now on the judge sentencing a juvenile for criminal conduct to consider and make such findings. Unless the judge does so, he simply cannot impose a life or a *de facto* life sentence on a juvenile. For example, this Court in *Buffer* remanded for re-sentencing because "the circuit court failed to consider defendant's youth and its attendant characteristics in imposing sentence." 2019 IL 122327, ¶ 42. And this Court directed that, on remand, Buffer was to be sentenced in accordance with 730 ILCS 5/5-4.5-105. *Id.* ¶ 47. This Court in *Holman* stressed that Section 5-4.5-105 "now requires the trial court to consider" these factors. 2017 IL 120655, ¶ 45. Consider as well:

> On the record before us, none of the sentencing judges addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether the petitioner was among the very "rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."

Tatum v. Arizona, 137 S. Ct. 11, 12 (2016) (Sotomayor, J., concurring) (citation omitted). Accord, *e.g.*, *People v. Reyes*, 2020 IL App (2d) 180237 (remanding for re-sentencing because judge failed to find juvenile was beyond rehabilitation before imposing *de facto* life sentence); *People v. Johnson*, 2020 IL App (3d) 130543-B, ¶ 33 (remanding for

re-sentencing where judge imposed *de facto* life sentence on juvenile but failed to find irretrievable depravity or irreparable corruption necessary to impose life sentence); *People v. Nieto*, 2016 IL App (1st) 121604-B, ¶¶ 58-59 (remanding for re-sentencing because judge had not found defendant was among rarest of juvenile offenders who was permanently incorrigible and had not considered characteristics of defendant's youth before imposing *de facto* life sentence).

Third, as noted above, the appellate court found Robert was only potentially facing a life sentence before he pled guilty. Based on this apparent misapprehension of the facts of the case and Illinois sentencing law, the court below rejected Robert's claim based on the decision in *Brady v. United States*, 397 U.S. 742 (1970). 2020 IL App (3d) 150473-UB, ¶ 20. *Brady* is factually distinguishable from Robert's case because Brady pled guilty in order to avoid a potential death sentence. After the New Mexico statute providing for that potential sentence was struck down by the United States Supreme Court, Brady sought to undo his plea via habeas corpus proceedings. His attempt was unsuccessful precisely because he pled guilty to avoid a potential, not a certain, sentence. *Brady* has no application here.

Fourth, the appellate court relied on inapposite case law for the proposition that a defendant who pleads guilty waives a claim that his constitutional rights were violated *before* he entered his plea. 2020 IL App (3d) 140573-UB, ¶ 16 (citing *People v. Townsell*, 209 Ill. 2d 543 (2004); *Tollet v. Henderson*, 411 U.S. 258 (1973)). The error here – receipt of an unconstitutional sentence – did not occur before his plea. It occurred as a result of his plea.

Fifth and finally, the court's decision cannot stand because the weight of authority in Illinois favors Robert's challenge to his unconstitutional sentence despite his guilty

plea. See *People v. Applewhite*, 2020 IL App (1st) 142330-B; *People v. Parker*, 2019 IL App (5th) 150192; *People v. Daniels*, 2020 IL App (1st) 171738.

Applewhite is a case involving facts very similar to Robert Jones' case. Applewhite, like, Robert, received a *de facto* life sentence (45 years) pursuant to a fully-negotiated guilty plea entered before *Buffer* was decided. Applewhite later sought relief in a post-conviction petition that was summarily dismissed. Following a remand by this Court for reconsideration in light of *Buffer*, the First Judicial District reversed the order summarily dismissing the post-conviction petition and remanded to the circuit court for a new sentencing hearing. Of particular relevance to the instant case, the *Applewhite* Court had the following to say about the impact of Applewhite's guilty plea on his constitutional challenge to his sentence:

> [T]he defendant did not waive his right to challenge the constitutionality of his sentence notwithstanding that he entered a negotiated guilty plea. See *Class v. United States*, 583 U.S. ___, ___, 138 S. Ct. 798, 803-05 (2018) (a guilty plea does not bar a constitutional claim on appeal where, on the face of the record, the court had no power to impose the sentence) . . . .

Applewhite, 2020 IL App (1st) 142330-B, ¶19. See also *United States v. Broce*, 488 U.S. 563, 569 (1989) (guilty plea and ensuing conviction "comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence"; defendant may bring collateral challenge where court had no power to enter conviction or impose the sentence).

The *Applewhite* Court also observed that "[a]lthough the instant case involves a guilty plea while *Buffer* did not, that is a distinction without a difference for purposes of the guiding principles articulated by the supreme court in sentencing juveniles such as the defendant in this case." *Id.*, ¶ 20. Notably, the State on appeal conceded that Applewhite's negotiated guilty plea did not waive his right to challenge the

constitutionality of his sentence, and that the cause should be remanded for re-sentencing. *Id.*, ¶¶ 19-20. *Applewhite* thus provides strong support for Robert's position that his guilty plea did not waive his constitutional challenge to his sentence.

In *Parker*, the defendant pled guilty to first degree murder and the parties agreed to a sentencing cap of 50 years' imprisonment. The defendant ultimately received a sentence of 35 years' imprisonment. He subsequently filed a motion for leave to file a successive post-conviction petition raising a very similar issue to the one Robert raised, arguing he pled guilty to avoid a natural life sentence, and he would not have pled guilty and agreed to a 50-year sentencing cap had he known that both the life sentence and a 50-year sentence were unconstitutional under *Miller* and *Buffer*. The Fifth Judicial District reversed and remanded for additional post-conviction proceedings based on the retroactive application of *Buffer* despite the fact that Parker had entered into a partially-negotiated guilty plea and had not actually received a *de facto* life sentence. *Parker* is persuasive here because Robert also pled guilty and also did so in order to avoid a now-unconstitutional natural life sentence. Indeed, the instant case is even worse than *Parker* because, unlike the defendant in that case, Robert did receive what we now know is a *de facto* life sentence.

In *Daniels*, the 18-year-old defendant pled guilty in 1994 to first degree murder and agreed to a life sentence in order to avoid the death penalty. He later sought post-conviction relief based on *Miller* and his status as an "emerging adult." The appellate court reversed the denial of leave to file a successive petition and remanded for additional proceedings, because the cases on which he relied "were decided long after his sentencing, direct appeal, and previous postconviction proceedings." 2020 IL App (1st) 171738, ¶ 34. Although *Daniels* involved an "emerging adult," not a juvenile, the court's ruling

that the defendant could challenge his sentence based on *Miller* and is progeny despite his guilty plea, provides further support for Robert's argument that the appellate court's analysis, and its conclusion, were seriously flawed and, therefore, the decision in Robert's case must be reversed.

Robert would also note a fourth Illinois decision, albeit a Rule 23 order, supporting his argument: *People v. Hudson*, 2020 IL App (1st) 170463-U. In *Hudson*, the 17-year-old defendant pled guilty to armed robbery with a firearm and agreed to the mandatory minimum 21-year sentence in order to avoid the potential maximum sentence of 45 years' imprisonment – a sentence we now know constitutes *de facto* life under *Buffer*. He later sought post-conviction relief based on *Buffer*. The appellate court, citing *Parker*, remanded for re-sentencing, finding that the plea was not knowing or voluntary because it was entered before *Buffer* was decided. 2020 IL App (1st) 170463-U, ¶ 27.Because of the change in the law, Hudson "was never properly admonished about the constitutionally appropriate sentencing range." *Id.*, ¶ 30. The court remanded for re-sentencing, rather than additional post-conviction proceedings, in the interest of judicial economy and expedience. *Id.*, ¶ 48. Although *Hudson* is not precedential [Illinois Supreme Court Rule 23(e)(1) (2020)], Rule 23 does not prohibit this Court from adopting the reasoning of the *Hudson* Court [*Byrne v. Hayes Beer Distributing Co.*, 2018 IL App (1st) 172612, ¶ 22], which, as explained, is very similar to and relies on the reasoning of the published *Parker* opinion. Moreover, defendant cites *Hudson*, not as binding authority, but "as an example of a court's reasoning and as a reasonability check." *In re Estate of LaPlume*, 2014 IL App (2d) 130945, ¶¶ 23-24.

Robert would also note one authority outside Illinois that supports his position on appeal and that undermines the decision of the court below: *Malvo v. Mathena*, 893

F.3d 265 (4th Cir. 2018), *cert. granted*, 139 S. Ct. 1317 (2019), *cert. dismissed*, 140 S. Ct. 919 (2020). In *Malvo*, the 17-year-old defendant faced only two sentencing alternatives, death or life imprisonment. In order to avoid the death penalty, he entered into a fully-negotiated plea agreement and received a life sentence. He later filed a federal habeas corpus petition based on *Miller* and on the retroactivity holding in *Montgomery*. The Fourth Circuit Court of Appeals ruled that "even though Malvo's life-without-parole sentences were fully legal when imposed, they must now be vacated because the retroactive constitutional rules sentencing juveniles adopted subsequent to Malvo's sentencings were not satisfied during his sentencings." 893 F.3d at 267. The court remanded for re-sentencing and a determination whether Malvo was one of the rare incorrigible juvenile offenders who may receive a life sentence, or whether he should receive a shorter sentence because his crimes reflected the transient immaturity of youth. *Id.* In so ruling, the court specifically rejected the argument that Malvo's guilty plea waived his entitlement to sentencing relief. 893 F.3d at 275-77.

Collectively, the courts that decided *Applewhite*, *Parker*, *Daniels*, *Hudson* and *Malvo* engaged in thoughtful and persuasive analysis consistent with Robert Jones' position that his negotiated guilty plea did not act as a bar to his post-conviction *Miller-Buffer* challenge to his *de facto* life sentence. This Honorable Court should adopt the reasoning of these cases and reverse the decision of the Third Judicial District in Robert's case.

D. This Court should remand this cause to the circuit court for re-sentencing or, in the alternative, for further post-conviction proceedings

Generally, when post-conviction relief is denied at any stage prior to a third-stage evidentiary hearing, the appropriate relief is a remand fur additional post-conviction proceedings. Indeed, that was the relief requested by Robert on appeal when he filed

his opening brief in this case in the appellate court in 2016. That was also the relief granted by the courts in *Parker* and *Daniels*. However, the courts in *Applewhite*, *Hudson* and *Malvo* remanded for re-sentencing. As noted above, the court in *Hudson* did so in the interest of judicial economy and expedience, and the State on appeal in *Applewhite* agreed that re-sentencing was the proper remedy. Because the record is clear that Robert received a *de facto* life sentence and that the plea judge agreed to impose that sentence without first considering the attendant circumstances of youth or whether Robert was permanently incorrigible and beyond rehabilitation, he submits that the better remedy is to remand for re-sentencing. Just as some say that "all roads lead to Rome," all roads here lead to a new sentencing hearing even if the parties are required to first navigate the additional stages of the post-conviction hearing process.

E. Summary

The High Court of the land has observed that it is "the rare juvenile offender whose crime reflects irreparable corruption." *Roper v. Simmons*, 543 U.S. 551, 573 (2005). In homicide cases, judges should not impose life terms for "the vast majority of juvenile offenders." *Montgomery v. Louisiana*, 136 S. Ct. 718, 734. The imposition of such a sentence requires a finding of "irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *People v. Holman*, 2017 IL 120655, ¶ 46. Robert Jones, who was 16 years old at the time of his offenses, pled guilty and was sentenced before any of these cases were decided. The plea judge accepted his plea and imposed the agreed sentence – a sentence we now know to be a *de facto* life sentence – without first finding that Robert could not be rehabilitated. The judge likewise imposed the agreed sentence without first considering the attendant circumstances of youth as is now mandated by *Miller v. Alabama* and its progeny, and

by 730 ILCS 5/5-4.5-105. As a result, the circuit judge erred by refusing to allow Robert leave to file his successive post-conviction petition challenging his sentence after *Miller* was decided. Robert therefore respectfully requests that this Honorable Court reverse the decision of the appellate court and either remand this cause for re-sentencing pursuant to the teachings of *Miller* and *Buffer*, and the requirements of Section 5-4.5-105 of the Code of Corrections, or remand this cause for further post-conviction proceedings including the appointment of counsel.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the appellate court affirming the denial of leave to file a successive post-conviction petition, and should either remand this cause for a new sentencing hearing in accordance with 730 ILCS 5/5-4.5-105 or remand this cause for further post-conviction proceedings including the appointment of counsel.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 22 pages.

/s/Mark D. Fisher
MARK D. FISHER
Assistant Deputy Defender

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ROBERT JONES

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CICORD

THIRTEENTH JUDICIAL CIRCUIT
IN THE CIRCUIT COURT OF LASALLE COUNTY, ILLINOIS

People of the State of Illinois,

FILED
JUL 17 2014
LA SALLE COUNTY CIRCUIT CLERK
THIRTEENTH JUDICIAL CIRCUIT OF ILLINOIS

No. 99-CF--395

vs.

Robert Jones,

Defendant.

ORDER

The above cause coming on Defendant's Motion for leave to proceed in a successive post-conviction Petition, the Court having examined said Petition and the court file, the Court finds and orders as follows:

Defendant's Successive Petition is denied and not docketed for consideration.

Therefore, Defendant's Petition, Application to Proceed in Forma Pauperis and Motion for Appointment of Counsel are summarily denied and dismissed.

This is an appealable order.

DATE 7/17, 20 14

JUDGE H. CHRIS RYAN

C-45

A-36

In the Circuit Court of the 13th Judicial Circuit
La Salle County, Illinois
(Or in the Circuit Court of Cook County).

FILED
JUL 25 2014
LA SALLE COUNTY CIRCUIT CLERK
THIRTEENTH JUDICIAL CIRCUIT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
v.)
Robert C. Jones)
Defendant/Appellant

No. 99-CF-395

Notice of Appeal

An appeal is taken from the order or judgment described below:

(1) Court to which appeal is taken: Appellate court 3rd District Ottawa IL. 61350

(2) Name of appellant and address to which notices shall be sent:
Name: Robert C. Jones K-82050
Address: Menard Corr. CTR Menard IL

(3) Name and address of appellant's attorney on appeal: Pro-se
Name: Robert C. Jones K-82050
Address: P.O Box 1000 Menard IL 62259
If appellant is indigent and has no attorney, does he want one appointed?
yes I would like an attorney

(4) Date of judgment or order: July 17 2014

(5) Offense of which convicted: First Degree murder
residential Burglary Armed Robbery

(6) Sentence: 50 years

(7) If appeal is not from a conviction, nature of order appealed from: Sussessive Post Conviction

Signed Robert C Jones K-82050
(May be signed by appellant, attorney for appellant, or clerk of circuit court)

C-47

2020 IL App (3d) 140573-UB

Order filed July 8, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0573
v.	)	Circuit No. 99-CF-395
ROBERT CHRISTOPHER JONES,	)	
	)	Honorable H. Chris Ryan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Wright, specially concurred.

ORDER

¶ 1 Held: The trial court did not err in denying defendant's pro se motion for leave to file a successive postconviction petition.

¶ 2 Defendant, Robert Christopher Jones, appealed from the trial court's order denying leave to file a successive postconviction petition. Defendant argued that the trial court erred in finding that he failed to satisfy the cause and prejudice test. Specifically, defendant contended that his

sentence constitutes a mandatory life sentence for a juvenile offender in violation of the United States Supreme Court's decision in Miller v. Alabama, 567 U.S. __, 132 S. Ct. 2455 (2012).

¶ 3 Initially, this court affirmed the trial court's judgment. People v. Jones, 2016 IL App (3d) 140537-U. This court found that the trial court did not err in finding that defendant failed to satisfy the cause and prejudice test for leave to file his successive postconviction petition. We found that defendant did not receive a life sentence. In addition, we found that the sentence was not mandatory given that defendant entered a fully negotiated plea.

¶ 4 In a supervisory order, the Illinois Supreme Court directed us to vacate that decision and to reconsider it in light of People v. Buffer, 2019 IL 122327. In Buffer, the supreme court determined that any sentence greater than 40 years' imprisonment constitutes a de facto life sentence.

¶ 5 Pursuant to the Illinois Supreme Court's supervisory order, we vacate our prior judgment in Jones, 2016 IL App (3d) 1405370-U, and this order will now stand as our disposition for this matter. For the reasons stated below, we again affirm the dismissal of defendant's motion for leave to file a successive postconviction petition.

¶ 6 I. FACTS

¶ 7 At 16 years old, defendant was charged by indictment with eight counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(3) (West 1998)), two counts of armed robbery (id. § 18-2), one count of residential burglary (id. § 19-3), and one count of home invasion (id. § 12-11). The indictment alleged that defendant stabbed and killed George and Rebecca Thorpe, while committing armed robbery, residential burglary, and home invasion. The indictment also alleged that defendant, while armed with a knife, took property from the presence of George and Rebecca

by use of force, entered their dwelling with the intent to commit theft while knowing them to be present and intentionally caused them injury.

¶ 8 On May 19, 2000, pursuant to a fully negotiated plea agreement, defendant pled guilty to one count of first degree murder (intentional murder of Rebecca), one count of residential burglary, and two counts of armed robbery. The remaining counts were dismissed. The trial court admonished defendant regarding the consequences of pleading guilty. After admonishing defendant, the court found defendant's plea to be knowingly and intelligently made. The parties waived a hearing in mitigation and aggravation and waived the preparation of a presentence investigation report. Pursuant to the agreement, the trial court sentenced defendant to concurrent prison terms of 50 years for murder, 15 years for residential burglary and 30 years for each armed robbery.

¶ 9 The factual basis presented at the guilty plea hearing established that defendant confessed to entering George and Rebecca's home at 2 a.m. to obtain money. Defendant was armed with a knife. Defendant considered George and Rebecca to be his great aunt and uncle. Defendant said he did not know how many times he stabbed George, but then went to Rebecca's room and stabbed her when she reached for the telephone. Defendant did not recall how many times he stabbed Rebecca. Rebecca made "gurgling sounds," so defendant put a pillow over her face to stop the sounds. Defendant then took Rebecca's purse and lockbox.

¶ 10 Defendant did not appeal his convictions, but he subsequently filed a *pro se* petition for postconviction relief. Defendant argued that his trial counsel was ineffective and his sentence violated his due process rights. After an evidentiary hearing, the trial court denied defendant's petition. Defendant appealed, and this court affirmed. *People v. Jones*, 3-02-0671 (2004) (unpublished order under Supreme Court Rule 23).

¶ 11 Next, defendant filed a pro se successive postconviction petition. The petition alleged that the automatic-transfer provision for juvenile offenders, and the truth-in-sentencing requirement that he serve his entire sentence violated the constitutional principles announced in the United States Supreme Court's decisions in Miller v. Alabama, 567 U.S. __, 132 S. Ct. 2455 (2012), Graham v. Florida, 560 U.S. 48 (2010), and Roper v. Simmons, 543 U.S. 551 (2005). Two weeks after filing his pro se successive postconviction petition, defendant filed a pro se motion for leave to file his successive postconviction petition. Defendant alleged he forgot to include the motion with his successive postconviction petition. The motion argued that he should be granted leave to file his successive petition because the Miller line of cases had not been decided when he pled guilty, and the statutory scheme under which he was sentenced was void. The trial court denied defendant leave to file his successive petition.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant contends that the cause should be remanded for further postconviction proceedings because recent case law (Miller, Roper, Graham) and changes in Illinois sentencing law entitle him to file a successive petition. The Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 2014)) contemplates the filing of only one postconviction petition. People v. Davis, 2014 IL 115595, ¶ 14. Nevertheless, a successive petition for postconviction relief can be considered on its merits if it meets the two-part cause and prejudice test. 725 ILCS 5/122-1(f) (West 2014). "Cause" is defined as an "objective factor external to the defense that impeded counsel's efforts to raise the claim in an earlier proceeding" and "prejudice" exists where the petitioner can show that the alleged constitutional error so infected his trial that the resulting conviction violated due process. Davis, 2014 IL 115595, ¶ 14.

¶ 14 Upon review, we find that defendant established "cause" based on the simple fact that *Miller*, its progeny, and the recent changes in Illinois sentencing law were not established at the time he filed his first postconviction petition. *Id.* ¶ 42. Nevertheless, we hold that defendant failed to establish prejudice because he waived any constitutional challenge to his sentence by fully negotiating his plea.

¶ 15 *Miller* holds that a mandatory life sentence for a juvenile violates the eighth amendment prohibition against cruel and unusual punishment. *Miller*, 567 U.S. at 479. *Miller* does not prohibit sentencing a juvenile offender to life imprisonment, but instead, requires the sentencing court to consider a juvenile's youth and attendant circumstances prior to sentencing. *Id.* This principle applies not only to a sentence of life imprisonment, but also de facto life sentences. *People v. Reyes*, 2016 IL 119271, ¶¶ 7, 8. In *Buffer*, The Illinois Supreme Court drew a bright-line rule that a sentence greater than 40 years constitutes a de facto life sentence. *Buffer*, 2019 IL 122327, ¶ 42. *Miller* applies retroactively. *People v. Davis*, 2014 IL 115595, ¶ 34.

¶ 16 In analyzing defendant's claim, we note that neither the United States Supreme Court nor the Illinois Supreme Court has extended the holding in *Miller* to sentences that result from a fully negotiated plea. To the contrary, under Illinois law, defendant waived any claim of a constitutional error by virtue of his fully negotiated plea. Defendant entered into a plea agreement in which he stipulated to a de facto life sentence. In so doing, defendant relinquished any rights to challenge nonjurisdictional errors or irregularities, including constitutional errors. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004) (citing *People v. Peeples*, 155 Ill. 2d 422, 491 (1993)). A guilty plea "represents a break in the chain of events that had preceded it," and a defendant who has pleaded guilty may not claim his constitutional rights were violated before he entered his plea. *People v. Wendt*, 283 Ill. App. 3d 947, 956-57 (1996) (citing *Tollet v. Henderson*, 411 U.S. 258, 267 (1973).

Not only did defendant waive his right to challenge his sentence, he also affirmatively waived his right to present evidence in mitigation and the preparation of a presentence investigation report. As a result, defendant waived any claim of a constitutional violation premised on the holding in Miller. He cannot now argue that his sentence is unconstitutional under Miller.

¶ 17 In short, the sentencing court never denied defendant the opportunity to offer mitigation evidence of his youth and attendant characteristics. Instead, he affirmatively waived that right as part of a fully negotiated plea agreement. A guilty plea entered on the competent advice of counsel waives all constitutional objections to the conviction. Townsell, 209 Ill. 2d at 545. His present argument amounts to a challenge that he was never afforded an opportunity to present evidence that he never offered and to request relief he never sought.

¶ 18 In reaching this conclusion, we reject defendant's reliance on recent changes in Illinois sentencing law. The first statute cited by defendant (730 ILCS 5/5-4.5-105 (West 2015)) requires sentencing judges to consider certain factors that distinguish juvenile offenders from adult offenders, and exercise discretion when deciding to impose a statutory 25-years-to-life gun enhancement for juvenile offenders. Notably, the statute relates to gun enhancement sentences and does not extend to first degree murder sentences. The other statute (730 ILCS 5/5-8-1(a)(1)(c) (West 2014)) was amended to limit mandatory life sentences to adult offenders as reflected in Miller. As discussed above, defendant waived his constitutional argument by virtue of his fully negotiated plea.

¶ 19 Despite the above, defendant requests that we consider the context in which he pled guilty. Specifically, defendant calls our attention to the possible sentence he faced had he gone to trial and been convicted of two counts of first degree murder: a mandatory natural life sentence. See 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998). According to defendant, he was forced to plead guilty

in order to avoid a mandatory life sentence—a sentence that violates Miller. Defendant's argument overlooks the fact that this sentencing provision was not actually applied to him in light of the fact he negotiated (and agreed) to plead guilty to a single count of first degree murder. The mere fact that defendant faced the possibility of a mandatory life sentence does not mean that defendant's 50-year negotiated sentence violates the principles established in Miller, much less establish prejudice for leave to file a successive postconviction petition.

¶ 20 To the extent defendant suggests that facing the possibility of a mandatory life sentence rendered his plea involuntarily made, we note that the trial court admonished defendant prior to accepting his plea. The court found defendant's plea to be knowingly and voluntarily made and accepted his plea. We agree that his plea was voluntarily and intelligently made. A plea is not invalid simply because "the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions." Brady v. U.S., 397 U.S. 742, 757 (1970). In other words, Miller's holding that mandatory life sentences for juveniles are unconstitutional does not affect the voluntariness of defendant's plea.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of La Salle County.

¶ 23 Affirmed.

¶ 24 JUSTICE WRIGHT, specially concurring:

¶ 25 I concur in all respects with the majority's disposition. I write separately to point out that the sentencing relief defendant has requested in his successive postconviction petition is unfounded and has no basis in law.

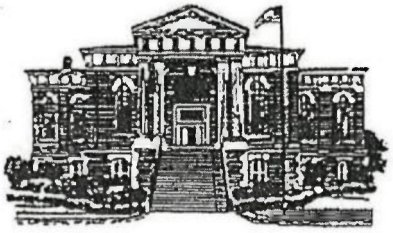
¶ 26 Here, defendant requests a retrospective hearing to have the circuit court exercise its discretion, contrary to statute, and decide whether this double homicide should have been

addressed by the juvenile division of the circuit court rather than moving forward as a criminal prosecution. Absent the exercise of judicial discretion, defendant claims he did not receive due process. Respectfully, based on this record, I submit that it is extremely unlikely that any judge would have concluded that these two senseless murders and various other crimes did not merit the criminal prosecution of this youthful offender in an adult court setting. Moreover, defendant does not claim that if the trial court had been allowed to exercise its discretion, the double homicide would have remained a juvenile court proceeding subject to the dispositional limitations of the Juvenile Court Act. Even if due process required the State to begin proceedings against this youthful offender in juvenile court, which it does not, the error would be harmless. See People v. Jones, 81 Ill. 2d 1, 6-7 (1979) (holding that indicting a minor prior to the court's transfer of the case from juvenile court to criminal court, while error, is not necessarily reversible error). Therefore, I conclude the request for a retrospective hearing on whether this matter should have resulted in a criminal prosecution is entirely meritless.

¶ 27 In addition, defendant is equally unentitled to a new sentencing hearing based on the procedural posture of this appeal. As the majority emphasizes, this was a fully negotiated guilty plea. In order to have the trial court consider his youthful characteristics for purposes of sentencing, defendant would have to request to withdraw his guilty plea, a plea which resulted in a sentence defendant approved as part of a fully negotiated package. Presumably, defendant has not adopted this approach because that process would result in the reinstatement of the various counts related to the murder of a second victim that were dismissed as part of the original plea agreement.

¶ 28 For these reasons, I agree with the majority's analysis and would add that the relief requested on the face of this successive postconviction petition was doomed from the outset.

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT



Matthew G. Butler
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

August 18, 2020

Mark David Fisher
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350-1014

RE: People v. Jones, Robert Christopher
General No.: 3-14-0573
County: LaSalle County
Trial Court No: 99CF395

The court has this day, August 18, 2020, entered the following order in the above entitled case:

Appellant's Petition for Rehearing is DENIED.

Matthew G. Butler
Clerk of the Appellate Court

c: Justin Andrew Nicolosi
Karen Kay Donnelly

No. 126432

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ROBERT CHRISTOPHER JONES, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-14-0573. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 99-CF-395. Honorable H. Chris Ryan, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Ms. Todd Martin, LaSalle County State's Attorney, 707 Etna Road, Room 251, Ottawa, IL 61350;

Mr. Robert C. Jones, Register No. K82050, Joliet Treatment Center, 2848 West McDonough, Joliet, IL 60436

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 January 26, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Nicole Weems
LEGAL SECRETARY
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Service via email will be accepted at
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