

2024 IL App (1st) 221173-U

No. 1-22-1173

Order filed March 22, 2024

Fifth Division

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 03 CR 27435 (01)
)	
IRINEO BARBOSA,)	Honorable
)	William G. Gamboney,
Defendant-Appellant.)	Judge, presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Justices Mikva and Lyle concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the judgment of the circuit court denying defendant's motion for leave to file a successive postconviction petition where defendant cannot show cause for failing to raise his proportionate penalties sentencing challenge in his initial postconviction petition.
- ¶ 2 Defendant Irineo Barbosa appeals from the denial of his motion for leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)). On appeal, defendant contends that his motion satisfied the cause and prejudice

test for filing a successive postconviction petition because it presented new, previously unavailable evidence regarding his immaturity and brain development as a 22-year-old at the time the offenses were committed. For the following reasons, we affirm.

¶ 3 Defendant was convicted of four counts of attempted first degree murder of Chicago police officers William Hronopoulos, Daniel McGreal, Keith Melmine, and Richard Waszak with a firearm, and was sentenced to 50 years' imprisonment. The facts of the case are detailed in this court's order on direct appeal. See *People v. Barbosa*, No. 1-05-2297 (2007) (unpublished order under Illinois Supreme Court Rule 23). Accordingly, we recount only the facts from our order on direct appeal, along with other evidence adduced at sentencing, that are necessary to resolve the present appeal.

¶ 4 At a bench trial, the evidence established that on November 9, 2003, the four officers were investigating numerous reports of shootings. They encountered defendant and another man, both of whom fired at the officers, who took cover behind trash cans in an alley and returned fire. After driving away and crashing the escape vehicle, defendant was arrested. A .40-caliber handgun and 9-millimeter semiautomatic pistol were recovered from the vehicle. The State presented evidence of a gunshot residue test establishing that defendant had recently discharged a firearm. A firearms expert determined that the .40-caliber handgun fired 14 shots, and the 9-millimeter pistol fired 18 shots. The parties stipulated to defendant's 2003 conviction for unlawful possession of a weapon.

¶ 5 The court found defendant guilty on all charges and merged the counts, sentencing defendant on four counts of attempted first degree murder of a police officer. During sentencing, evidence showed that defendant was 22 years old at the time of the offense, was a member of the Spanish Vice Lords as a teenager, and had sustained a serious head injury as a child. The court

sentenced defendant to four concurrent terms of 50 years' imprisonment, commenting that defendant's actions showed "complete disregard for human life."

¶ 6 On direct appeal, defendant argued that his attorney conceded his guilt as to several weapons charges, and the court improperly relied upon its opinion of the crime in sentencing him. We affirmed. See *Barbosa*, No. 1-05-2297 (2007) (unpublished order under Illinois Supreme Court Rule 23).

¶ 7 In March 2008, defendant filed a *pro se* postconviction petition, arguing, *inter alia*, that his trial counsel was ineffective for conceding his guilt, denying his right to confront witnesses by accepting stipulated testimony, and failing to meet with him prior to trial to discuss the case. Defendant also argued that his sentence did "not conform to the statutory requirement" and was void.

¶ 8 The circuit court summarily dismissed defendant's *pro se* petition, finding the issues frivolous and patently without merit. We affirmed. See *People v. Barbosa*, No. 1-08-2505 (2009) (unpublished order under Illinois Supreme Court Rule 23).

¶ 9 On September 24, 2021, defendant, through counsel, filed the instant motion seeking leave to file a successive postconviction petition and successive petition. Postconviction counsel argued that defendant's sentence violated the proportionate penalties clause of the Illinois Constitution because the sentencing court "was not permitted to consider his youth and attendant circumstances." Counsel argued that "a growing body of scientific evidence" supported the concept that defendant, age 22 at the time of the offense, was still undergoing brain development, rendering him more similar to a juvenile than a mature adult. Counsel noted a trend in Illinois courts to consider such scientific evidence as applied to young adults, and cited *People v. House*,

2019 IL App (1st) 110580-B, *rev'd and vacated in part*, 2021 IL 125124, where we held that the Illinois constitution prohibited a mandatory life sentence for a young adult offender who was 19 years old at the time of the offense. Counsel argued that defendant's youth in conjunction with his drug addiction and other issues made him the functional equivalent of a juvenile.

¶ 10 Defense counsel attached the affidavits of defendant and his mother, Cristina Barbosa, the latter of whom averred that in May 1986, when defendant was five years old, he sustained a serious head injury.¹ After release from the hospital, defendant repeated kindergarten because he could not “keep up with the academics,” and relearned how to walk after several months. Cristina further averred that defendant had required special education classes for the remainder of elementary school.

¶ 11 Counsel also attached a May 4, 2020, statement from developmental psychologist James Garbarino, regarding defendant's development and its impact on his behavior during the offense. Garbarino opined that viewing 18 years of age as a “bright line” for maturity was “not in accord” with current research in developmental science. Garbarino summarized research regarding the brains of emerging adults, which establish that individuals in the age range “18-25” are not adults, but rather “manifest a mix of adolescent and adult characteristics and functioning.” Youths who had experienced “significant trauma and deprivation” were “especially prone to developmental delays.”

¶ 12 Garbarino noted that defendant grew up in an “urban war zone,” and so became “extreme[ly] sensitiv[e] to threat[s],” and responded with preemptive aggression. Further, defendant became involved in a gang as a “default option” due to family connections and

¹ As Cristina Barbosa shares the same last name as defendant, we will refer to her by her first name.

“psychological neediness.” Defendant also contended with “significant adversity” in his family life, which negatively influenced his development. Defendant participated in positive activities and programs during incarceration, and desired to move to Texas to be with extended family. Garbarino concluded that “the toxic and traumatic nature” of defendant’s adolescence was a “clear and present” influence “on his response to the events of November 9, 2003.”

¶ 13 On July 13, 2022, the circuit court denied defendant leave to file a successive postconviction petition, finding that his claims did not satisfy the cause and prejudice test. The court found that defendant’s claim regarding the unconstitutionality of his life sentence would not have been successful if presented in his initial petition, because he was not a juvenile at the time of his offense, and thus was not entitled to relief under Illinois law.² The court found that although Illinois courts have expanded the principles of *Miller v. Alabama*, 567 U.S. 460 (2012), to offenders aged 18 and 19 years old, no Illinois decision applied the *Miller* principles to a 22-year-old defendant. Thus, the court found that defendant’s sentence did not violate the proportionate penalties clause of the Illinois constitution.

¶ 14 On appeal, defendant argues that the circuit court erred in denying him leave to file a successive postconviction petition where he presented new, previously unavailable evidence that his brain was immature and still developing at the time of the offense. Specifically, defendant contends that he was unable to raise a claim that his sentence was unconstitutional in his first postconviction petition because the evidence to support it, namely the report establishing current developmental science related to his own brain development, did not exist at the time of his first

² The circuit court noted that the petition was defendant’s second successive postconviction petition. The record only contains evidence of defendant’s initial 2008 postconviction petition.

petition. This new research would have provided a basis for defendant to raise a claim that his sentence violated the proportionate penalties clause of the Illinois constitution because he was an emerging adult at the time of the offenses.

¶ 15 The Act provides a three-stage mechanism by which defendants can collaterally challenge their convictions for violations of federal or state constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2020); *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007). “Successive petitions are highly disfavored, and the statutory bar will be relaxed only when fundamental fairness requires it.” *People v. Figueroa*, 2022 IL App (1st) 172390-B, ¶ 22.

¶ 16 Section 122-1(f) of the Act specifies that only one postconviction petition may be filed by a defendant without leave of court. 725 ILCS 5/122-1(f) (West 2020); *People v. Lusby*, 2020 IL 124046, ¶ 27. Leave of court “may be granted only if a [defendant] demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure.” 725 ILCS 5/122-1(f) (West 2020).³ The defendant may show cause by “identifying an objective factor that impeded his or her ability to raise” the claim during initial proceedings, and prejudice by “demonstrating that the claim not raised” during the initial proceedings “so infected the trial that the resulting conviction or sentence violated due process.” *Id.*

¶ 17 The cause and prejudice standard is “more exacting” than review of an initial postconviction petition. *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 21. Both prongs of the cause and prejudice test must be satisfied for a court to properly grant leave to file a successive

³ Leave of court may also be granted if a defendant “asserts a fundamental miscarriage of justice based on actual innocence.” *People v. Robinson*, ¶ 42. Defendant’s motion and successive petition do not assert an actual innocence claim.

petition. See *People v. Wilson*, 2023 IL 127666, ¶ 25. Leave to file a successive petition should be denied “when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law.”. *People v. Smith*, 2014 IL 115946, ¶ 35. We review a denial of leave to file a successive petition *de novo*. *Lusby*, 2020 IL 124046, ¶ 27.

¶ 18 Defendant’s claim arises from *Miller v. Alabama*, 567 U.S. 460 (2012) and its progeny, which establish that the eighth amendment requires sentencing courts “to have discretion in sentencing juveniles after considering the juvenile’s youth and the attendant characteristics of youth.” *People v. Clark*, 2023 IL 127273, ¶ 54. The basis for this decision is that juveniles “have diminished culpability and greater prospects for reform,” and are, thus, “less deserving of the most severe punishments.” (Internal quotation marks omitted.) *Miller*, 567 U.S. at 471. The *Miller* court discussed juveniles’ lack of maturity, recklessness, vulnerability to peer pressure and negative external influences, and that they have characters and traits which are “not as well formed as an adult’s” and, thus, “less likely to be evidence of irretrievable depravity.” (Internal quotation marks omitted.) *Id.*

¶ 19 In Illinois, the supreme court has expanded *Miller* to include *de facto* life sentences, which it defined as prison sentences exceeding 40 years. See *People v. Buffer*, 2019 IL 122327, ¶ 41. It has also noted that “[t]he *Miller* Court was concerned with mandatory life sentences where the sentencing court had no discretion to consider the juvenile offender’s youth before imposing the harshest prison sentence available.” *Clark*, 2023 IL 127273, ¶ 71. Accordingly, *Miller* does not apply to discretionary life sentences “where the sentencing court does have discretion to consider

youth and attendant characteristics at sentencing.” *Id.* (citing *Jones v. Mississippi*, 593 U.S. 98, 106 (2021)).

¶ 20 Here, defendant failed to establish cause for not being able to raise the claim in an earlier petition because *Miller* and its progeny only applies to juveniles, not young adults such as defendant who was 22 years old at the time of the offenses. See *People v. Moore*, 2023 IL 126461, ¶¶ 38-44 (denying leave to file successive petition for the defendants, young adult offenders, who argued that their sentences violated the proportionate penalties clause of the Illinois Constitution). Further, *Miller* did not “present new proportionate penalties clause principles with respect to discretionary sentencing of young adult offenders.” See *Clark*, 2023 IL 127273, ¶ 93; *People v. Hilliard*, 2023 IL 128186, ¶¶ 27-28. Defendant, therefore, could have raised the proposed claim under the proportionate penalties clause in an earlier petition. Thus, he has not satisfied the cause prong of the cause and prejudice test. See *Clark*, 2023 IL 127273, ¶ 94.

¶ 21 Defendant contends, however, that his petition established cause because of the availability of new evidence in Garbarino’s report, namely, that his brain was immature and still developing at the time of the offense. Defendant argues that the new scientific evidence regarding emerging adult development, which Garbarino relied upon in arguing for extending *Miller*’s “bright line” to emerging adults, established cause to grant leave to file a successive petition. Defendant emphasizes that he could not have raised his claim earlier because he lacked the scientific evidence to support it.

¶ 22 Despite defendant’s claim that he relies solely on new evidence to establish cause, the facts regarding defendant’s youth, childhood injury, and troubled adolescence were all presented to the court during sentencing. Garbarino’s report establishes that developmental science has evolved

since *Miller*, and young adults are developmentally more similar to juveniles than adults. However, the line drawn at age 18 in *Miller* was “not based primarily on scientific research,” but rather was “the point where society draws the line for many purposes between childhood and adulthood.” (Internal quotation marks omitted.) *People v. Harris*, 2018 IL 121932, ¶ 60; see also *Hilliard*, 2023 IL 128186, ¶ 39. “New research findings do not necessarily alter that traditional line between adults and juveniles.” *Harris*, 2018 IL 121932, ¶ 60; see *People v. Carrion*, 2020 IL App (1st) 171001, ¶ 38 (the defendant’s “flat allegation as to evolving science on juvenile maturity and brain development” was insufficient to show “how he was particularly affected by any immaturity” to satisfy the standard for leave to file his successive postconviction petition).

¶ 23 In sum, we find that defendant did not establish cause to warrant relaxation of the bar against filing a successive postconviction petition. Defendant was 22 years old at the time of the offense, and his sentence was not a mandatory life sentence. Defendant has failed to establish cause, and the circuit court properly denied him leave to file his successive postconviction petition.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.